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

IDAHO RIVERS UNITED, and	)	
MORGAN and OLGA WRIGHT,	)	No. 1:15-cv-169
	)	
<i>Plaintiffs,</i>	)	
	)	COMPLAINT
vs.	)	
	)	
DISTRICT RANGER JOE HUDSON	)	
in his official capacity, and UNITED	)	
STATES FOREST SERVICE,	)	
	)	
<u>Defendants.</u>	)	

INTRODUCTION

1. Plaintiffs IDAHO RIVERS UNITED (“IRU”) and MORGAN and OLGA WRIGHT challenge the unlawful November 20, 2014 decision by Defendants U.S. FOREST SERVICE and DISTRICT RANGER JOE HUDSON (jointly, “Forest Service”) to designate forest road 652 on the Nez Perce National Forest as a “public road,” thereby allowing the Idaho

Department of Lands (“IDL”) to utilize the road for commercial log hauling operations without obtaining a special use permit as required under Forest Service regulations, and without conducting any analysis of adverse impacts upon the Selway Wild and Scenic River corridor, contrary to the National Environmental Policy Act (NEPA), the Wild and Scenic Rivers Act (WRSA), the Forest Service’s corridor river management plan, and other legal requirements.

2. Forest road 652 is a short unimproved spur road that parallels the Selway River within the federally-designated Selway Wild and Scenic River corridor. Approximately 740 feet of forest road 652 crosses the Wrights’ residential property near the Swiftwater Bridge over the Selway River. The road continues through an adjacent state land parcel where IDL proposes to conduct a large timber sale, which will clearcut a projected 6.89 million board feet of timber to be removed by over a thousand commercial logging truck trips utilizing the road through the Wrights’ property. After crossing the state land parcel, the forest road 652 re-enters private property, where it dead-ends. No public authority maintains road 652. The Wrights currently maintain the beginning of road 652 for access to their property, but the road is a rough dirt track beyond their residential structures. In no way does road 652 qualify as a “public road,” and it has never been so designated by the Forest Service, before now.

3. Because the Forest Service erroneously determined that road 652 is a “public road,” it unlawfully exempted IDL from obtaining a required Forest Service special use permit to use the road for its commercial timber sale operations, and failed to conduct any analysis of the impacts of IDL’s timber sale and commercial road use activities upon the Selway River and the Wild and Scenic River corridor. Thus, Plaintiffs have been deprived of their statutory rights to participate in the decision to allow an activity that will very likely result in significant harm not only to the Selway Wild and Scenic River corridor but also to the Wrights’ property.

4. Accordingly, Plaintiffs seek judicial review and reversal of the Forest Service's erroneous and unlawful determination that forest road 652 is a public road, as well as declaratory and injunctive relief to prevent the Forest Service from allowing IDL's unauthorized commercial use of forest road 652 and injuries to Plaintiff's interests and property until such time as the Forest Service has complied with its legal duties and issued a valid special use permit for IDL's proposed use of the road.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Forest Management Act, 16 U.S.C. § 1601 *et seq.*; the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287; the National Forest Roads and Trails Act, 16 U.S.C. § 535; the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*

6. An actual, justiciable controversy now exists between Plaintiffs and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and the affected public lands and resources are located in this judicial district.

8. The federal government waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

9. Plaintiff IDAHO RIVERS UNITED (“IRU”) is an Idaho non-profit corporation with its principal place of business in Boise, Idaho. IRU is a membership-based conservation organization representing those who love the freedom, adventure, and solitude of Idaho’s rivers. IRU’s mission is to protect and restore the rivers of Idaho, and it has become a powerful force for safeguarding Idaho’s imperiled wild fish populations, protecting and enhancing stream flows and riparian areas, and defending and promoting the wild and scenic qualities of Idaho’s rivers.

10. IRU members, supporters, and staff work, live, study, and recreate throughout Idaho, including the Selway, Lochsa and Clearwater Wild and Scenic Rivers corridor; and they use and enjoy the public lands and waters of the Selway River and its corridor for recreational, conservation, scientific, aesthetic and other uses. These uses will be harmed or impaired by the Forest Service’s decision challenged herein, including by allowing potentially catastrophic landslides or other erosion impacting the Selway River and its Wild and Scenic corridor due to logging, road building and other activities associated with the proposed IDL timber sale. Moreover, the Forest Service’s violations of law, as alleged herein, injure IRU and its staff, members, and supporters, by denying them the ability to adequately participate in the public review process and denying them information concerning environmental impacts and other issues that Forest Service regulations, NEPA, and the Wild and Scenic Rivers Act require the Forest Service to disclose, analyze, and seek public review of prior to determining that road 652 may be a public road, and before approving a special use permit for IDL’s proposed use of the road for commercial activities.

11. Plaintiffs MORGAN and OLGA WRIGHT maintain a residence on their private property in Idaho County on the Selway River. The Wright’s property is located

adjacent to the Selway River within the federally-designated Wild and Scenic River corridor; it is encumbered by a Wild and Scenic easement held by the U.S. Forest Service to protect and maintain wild and scenic values on the property, as alleged in more detail below.

12. IDL's proposed Selway Fire timber sale on the adjacent state lands would result in constructing over 3 miles of new road up steep and erosive slopes, and clearcutting about 142 acres within and adjacent to the Selway Wild and Scenic River corridor, yielding over 6.89 million board feet of timber. Well over 1,000 logging trucks would cross the Wrights' property on forest road 652 to remove the timber. The truck traffic across the Wrights' property will seriously interfere with and harm their use and enjoyment of their residence and property. Additionally, the planned timber harvest and road building on IDL's Selway Fire sale would create a serious risk of physical harm to the Wrights and their property, from the potential for mass erosion and resulting landslides from the road and logging activities on state lands adjacent to and behind Wrights' property. Because the Forest Service has approved IDL's road use without a required permit, these serious potential impacts have not been analyzed and the Wrights have been deprived of an opportunity to participate in the Forest Service's decision.

13. Defendant JOE HUDSON is the Moose Creek District Ranger for the U.S. Forest Service on the Nez Perce National Forest, who made the decision classifying forest road 652 as a "public road" challenged here. He is sued in his official capacity, for his actions as an employee within the U.S. Department of Agriculture.

14. Defendant UNITED STATES 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 Nez Perce-Clearwater National Forests, including the Selway Wild and Scenic

River corridor within the Moose Creek Ranger District of the Nez Perce National Forest, at issue here.

15. Defendants' violations of law, as alleged herein, injure the aesthetic, commercial, conservation, scientific, recreational, educational, wildlife preservation, private property, procedural and/or other interests of Plaintiffs and IRU's staff, supporters, and members. These are actual, concrete injuries caused by Defendants' violations of law, and the judicial relief sought would remedy, in whole or in part, Plaintiffs' injuries.

STATEMENT OF FACTS

The Selway Wild and Scenic River.

16. The Selway, Lochsa, and Middle Fork Clearwater rivers of central Idaho have unparalleled history, wildlife, scenery, and recreational opportunities. Based on their outstandingly remarkable wild, scenic, recreational, and other values, these were the very first rivers to be designated by Congress as protected rivers when it enacted the Wild and Scenic Rivers Act in 1968. *See* 16 U.S.C. § 1274(a)(1).

17. The Wild and Scenic Rivers Act designates rivers with "outstandingly remarkable" resource values and protects them for the "benefit and enjoyment of present and future generations." *Id.* § 1271. As the agency responsible for managing the Clearwater, Selway, and Lochsa Wild and Scenic Rivers corridor, the Forest Service is required to "protect and enhance the values which caused it to be included in said system." *Id.* § 1281(a).

18. To protect the outstandingly remarkable values of designated rivers under the Wild and Scenic Rivers Act, the Forest Service is required to take actions on lands it has jurisdiction over within and adjacent to wild and scenic designated rivers. In taking such action, "[p]articular attention shall be given to scheduled timber harvesting . . . which might be

contrary to the purposes of [the Act].” *Id.* § 1283(a).

19. In 1969, the Forest Service adopted a Wild and Scenic river corridor management plan for the Middle Fork Clearwater, Lochsa and Selway Rivers. That plan has not been updated since that time, even though 1986 amendments to the Wild and Scenic Rivers Act required the agency to adopt updated river corridor management plans within 10 years. *See* 16 U.S.C. § 1274(d)(2).

The Wrights’ Property and Forest Service Road 652.

20. Morgan Wright is an avid river rafter and long-time member of IRU, who has enjoyed running the Selway, Lochsa and Clearwater rivers for decades. Reflecting his love for the Selway River and its outstanding remarkable scenic and other values, he purchased a property adjacent to the Selway River over two decades ago, and built and maintains a home there, with his wife, Olga Wright.

21. The Wrights’ property is encumbered by two easements held by the Forest Service: a 1937 right-of-way for a forest road, and a 1977 scenic easement under the Wild and Scenic Rivers Act.

22. The 1937 easement conveyed a 30-foot right-of-way “for the construction, repair, maintenance, and operation of a common, main, or State public highway and as a connecting link in the . . . Goddard Point Road #289 Project.” This right-of-way is where forest road 652 crosses the Wrights’ property.

23. The Goddard Point Road #289 Project for which the 1937 easement was obtained never occurred however, and the Forest Service never improved road 652 beyond a native-surface dirt track believed to have been made by the Civilian Conservation Corps in the 1930’s. The Wrights have maintained a short section of the spur road for access to their home, but no

public or private entity maintains forest road 652 beyond the Wrights' property. Last year, the Forest Service approved signage at the beginning of forest road 652 on the Wrights' property that states: "Dead End. No Turn Around."

24. In 1977, pursuant to the Wild and Scenic Rivers Act, the Forest Service obtained a scenic easement over the Wrights' entire property and other parcels near it, for the purpose of protecting the wild and scenic values of the Selway River corridor. Thus, the easement covers the 1937 right-of-way grant for forest road 652. The Forest Service's scenic easement strictly limits development and activities on the Wrights' property, including prohibitions on industrial or commercial activity, changes to the topography, and removal of trees.

25. The Forest Service's existing Wild and Scenic corridor management plan for the Middle Fork Clearwater, Lochsa, and Selway Rivers states that "[a]ccess roads to serve private lands are to be controlled by scenic easements to ensure compatibility with development of the special planning area and with river environment protection." *See* U.S.D.A. FOREST SERVICE, RIVER PLAN: MIDDLE FORK CLEARWATER INCLUDING THE LOCHSA AND SELWAY OF THE NATIONAL WILD AND SCENIC RIVER SYSTEM (1969), p. 9.

Regulations Governing Use of Forest Roads And Travel Management Planning.

26. Pursuant to NFMA, the National Forest Roads and Trails Act, and other authorities, the Forest Service has adopted regulations governing administration of the National Forest Transportation system, which regulate use of National Forest System roads including forest road 652 at issue here. *See* 36 C.F.R. Parts 212 & 251.

27. A National Forest System road is defined under the regulations as a "forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority." 36 C.F.R. §212.1. A "forest road" is

defined as a “road . . . wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.” *Id.*

28. Generally, forest roads are available for any lawful purpose subject to the rules and regulations governing their use. *See* 36 C.F.R. § 212.6(c) (“use of existing National Forest System roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used”).

29. The Forest Service’s policy for managing access to intermingled non-Federal lands is to grant permission for access across Forest lands and easements when necessary. 36 C.F.R. § 212.6(a). Use of forest roads for ingress or egress is also subject to rules and regulations pertaining to road use. *Id.*, § 212.6(b).

30. If a Forest road is not authorized for general public use, then a “special use” or “road use” authorization is required before using the road to access non-Federal lands. 36 C.F.R. §§ 251.50(d)(1), 251.110(d). Such special use authorization may be denied on various grounds, including if the “proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses,” the “proposed use would not be in the public interest,” or the “proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization.” 36 C.F.R. §251.54(e)(5).

31. Any individual or entity seeking special use (or road use) authorization must submit an application to the Forest Service under the process outlined in 36 C.F.R. § 251.54. Applications for special uses shall be rejected at the screening stage if “the proposed use

would be incompatible with the purposes for which the lands are managed.” *Id.*, § 251.54(e)(5)(i). Applications that make it past screening to the processing stage are subject to public review and comment under NEPA. *Id.*, § 251.54(g)(2)(ii).

32. Under the Forest Service’s travel management planning regulations, which were adopted in 2005, the National Forests are directed to undertake a travel management planning process – including public involvement and NEPA analysis – to designate all roads, trails and areas on National Forests for which motor vehicle use is allowed, including designation of vehicle class, time of year, and other authorizations or restrictions on motor vehicle usage. *See* 36 C.F.R. §§ 212.50-.56. Designated roads, trails, and areas open to motor vehicle use “shall be identified on a motor vehicle use map” or MVUM. *Id.*, § 212.56.

33. In designating roads, trails, and other areas open to motor vehicle use on a MVUM, the Forest Service responsible official (either Forest Supervisor or District Ranger) “shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.” 36 C.F.R. § 212.55(a).

34. The Nez Perce National Forest, where Forest road 652 is located, formally began the travel management planning process under 36 C.F.R. §§ 212.50 *et seq.* in May 2007, when it published a Notice of Intent to prepare an Environmental Impact Statement (“EIS”) for a MVUM.

35. In December 2008, the Nez Perce National Forest released a draft EIS for the MVUM for public comment; and then released a Supplemental Draft EIS in December 2010.

According to the Forest's website, "[b]ased on recent appeals and litigation on Travel Management decisions, the forest is currently finalizing the FEIS analysis" for a completed MVUM on the Nez Perce National Forest, after which it will issue a proposed Record of Decision for public review and objection before adopting a final Record of Decision and publishing the MVUM for the Nez Perce National Forest.

36. To date, the Nez Perce National Forest has not issued an FEIS for the MVUM; and no Record of Decision has been issued adopting a final MVUM for the Nez Perce National Forest.

37. According to the Nez Perce National Forest's website, road and trail designations contained in the Forest's existing road and trail access guides "will remain in place to use until the Forest MVUM map is available to the public." These existing road and trail access guides are dated 2007; as the website acknowledges, "[t]hese documents have not be [sic] recently updated by the forest."

38. Forest service road 652 is shown as a dirt road without a number on the official forest map for the Nez Perce National Forest. Likewise, the 2007 road access guide for the Nez Perce National Forest does not list forest road 652 as open for any motor vehicle use.

39. Because the 2007 road access guide and forest map do not list forest road 652 as open for general use, and because commercial or industrial use of the road is restricted by the 1977 scenic easement, a special use authorization is required under 36 C.F.R. § 251.50(d) for commercial use of the road to haul timber under IDL's proposed Selway Fire salvage sale

Forest Service's Unlawful Determination Re: Forest Road 652.

40. Because Forest road 652 was not listed as a public road in the 2007 road access guide or forest map, and because the Forest Service paid to restrict commercial and industrial

activities on the Wrights' property and protect the Selway Wild and Scenic River through the 1977 scenic easement, the Wrights were shocked to learn that the Defendants Joe Hudson and Forest Service recently determined that forest road 652 is supposedly a "public road," and thereby allowed IDL to reconstruct forest road 652 and haul a projected 6.89 million board feet of timber across their property on forest road 652 without issuing any special use permit, and without considering the environmental impacts of that decision.

41. The back-story of this decision unfolded in e-mails obtained through a Freedom of Information Act (FOIA) request by Plaintiff IRU, seeking information from the Forest Service about IDL's proposed use of forest road 652 for harvesting timber from a parcel of state land along the Selway River and adjacent to the Wrights' property that had recently burned in a wildfire.

42. According to the Forest Service documents obtained under FOIA, IDL contacted the Forest Service on September 2, 2014, because it wanted to use forest road 652 for the timber sale project, but was not sure who owned the road or whether it was a public road. *See* E-mail from Nick Carter to Lawson Tate (Sept. 2, 2014, 9:38 PST). The Forest Service responded by informing IDL that it held a right-of-way easement for forest road 652. *See* E-mail from Roberta Morin to Lawson Tate (Sept. 2, 2014, 17:55 PST).

43. The Forest Service initially – and correctly – advised IDL that a commercial road use permit was required under Forest Service special use permit regulations, before IDL could use the road for its timber sale. On September 3, 2014, IDL began coordinating with the Forest Service to obtain a special use permit for forest road 652. *See* E-mail from Roberta Morin to Eric Barclay (Sept. 3, 2014, 11:32 PST).

44. On September 29, 2014, the Forest Service held a conference call to "discuss

existing conditions, easements, and proposed road use permit(s) and the associated NEPA and consultation that may be necessary. Desired outcome – understanding the procedural requirements necessary for commercial use of road 652” *See* E-mail from Heather Berg to Joe Hudson et al. (Sept. 26, 2014, 16:50 PST).

45. Sometime on or before October 16, 2014, Defendant Forest Service District Ranger Joe Hudson received a completed commercial road use permit application for forest road 652 from IDL. On October 16, 2014, District Ranger Hudson shared the application with his staff and began assembling a team to assess NEPA and Wild and Scenic Rivers Act requirements. *See* E-mail from Joe Hudson to Andrew Schmidt et al. (Oct. 16, 2014, 10:31 PST).

46. On October 31, 2014, Defendant District Ranger Hudson determined that IDL’s road use permit application for forest road 652 fell within a programmatic agreement with the National Marine Fisheries Service and, thus, no further Endangered Species Act consultation was required for the proposed action on the road right-of-way. *See* E-mail from Joe Hudson to Allison Johnson et al. (Oct. 31, 2014, 13:16 PST).

47. On November 5, 2014, however, Defendant District Ranger Hudson modified his position by determining that IDL’s permit application for road 652 required Endangered Species Act consultation for the timber harvest on state land as an “interrelated/interdependent action.” *See* E-mail from Joe Hudson to Kenneth Troyer (Nov. 5, 2014, 16:14 PST).

48. On November 14, 2014, Defendant District Ranger Hudson received guidance from his staff that a road use permit was not required for road 652, because it is supposedly a “public road.” A string of forwarded e-mails originating from Forest Service employee Janne Joy asserted that forest road 652 meets the Forest Service Manual definition of “public road”

with no restrictions because the “1936” (*sic*) right-of-way was granted for a public highway. See E-mail from Peter Zimmerman to Joe Hudson (Nov. 14, 2014, 13:46 PST). This email notably did not consider the physical features of the road or the fact that it is not shown as a public road on the 2007 road access guide or forest maps, and was riddled with other errors as alleged in more detail below.

49. Accepting this flawed advice, on November 20, 2014, Defendant District Ranger Hudson informed IDL that no Forest Service special use permit was required for hauling commercial timber on forest road 652 because it meets the Forest Service Manual’s definition of public road. Based on that analysis, District Ranger Hudson concluded that there are no existing restrictions on the use of forest road 652, and that IDL is not proposing “any use on these roads outside what is already authorized by regulation or law.” See E-mail from Joe Hudson to Zoanne Anderson (Nov. 20, 2014, 12:43 PST).

Errors In Designation of Forest Road 652 As a “Public Road.”

50. The term “public road” – *i.e.*, the designation used by District Ranger Hudson in the November 20, 2014 determination regarding forest road 652 – is not defined in Forest Service statutes or regulations. However, the Forest Service Manual defines “public road” as “available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration.” F.S.M. 7730.5.

51. Defendant Hudson’s November 20, 2014 determination that forest road 652 is a “public road” failed to address these definitions under the Forest Service Manual and the facts showing that forest road 652 does not qualify as a “public road” under those definitions –

including because forest road 652 is not passable by four-wheel standard passenger cars for most of its length (other than the short stretch maintained by the Wrights across their property); has been gated and locked by the Forest Service for many years past the Wrights' property; is not listed as an open road on the Nez Perce National Forest's 2007 (or prior) road access guides; and is covered by the 1977 scenic easement prohibiting commercial and industrial activities.

52. Prior to the November 20, 2014 determination challenged here, forest road 652 had never been classified by the Forest Service (or any other agency, to Plaintiffs' knowledge) as a "public road." By purporting to newly designate forest road 652 as a "public road," Defendant District Ranger Hudson's determination violated the legal requirements that travel management determinations must be based on public participation and NEPA analysis.

53. Moreover, forest road 652 is not a public road because there is no Forest Service planning document or decision that designates the road as an authorized motorized travel route. Thus, forest road 652 is not open to motorized travel without restrictions, and IDL's proposed use is not authorized by regulation or law but instead requires a special use authorization under 36 C.F.R. § 251.50(d).

54. Forest Road 652 also is not a public road because title is not vested in the U.S. Government as required by the Surface Transportation Assistance Act ("STAA"). 23 U.S.C. § 101(a)(8). The Forest Service does not hold title to any of the land underneath road 652.

55. Forest road 652 also is not a public road because it not "maintained by a public authority," as required by STAA. *Id.* § 101(a)(21). The Wrights maintain the road for access to their residence. Forest road 652 is unmaintained beyond the Wrights' property.

56. Forest road 652 also is not a public road because it is not "open to public travel." 23 C.F.R. § 660.103. Beyond the initial approximate 740 feet on the Wrights' property, forest

road 652 is a native surface dirt track that is not passable in a standard passenger automobile.

57. Forest road 652 also is not a public road because a locked gate restricts public use. *Id.* For approximately thirty years there has been a locked gate on forest road 652 where it leaves state land and re-enters private property. The Forest Service maintains a key to that gate.

58. In addition, the November 20, 2014 determination is erroneous because the Forest Service failed to acknowledge the presence of the 1977 scenic easement covering the entire Wrights' property, including the section of forest road 652 on their land, which prohibits commercial and industrial activities within the easement area.

Status of Proposed IDL Timber Sale.

59. IDL has relied on District Ranger Hudson's November 20, 2014 determination that forest road 652 is a "public road" in proceeding with its plans to conduct its planned Selway Fire timber sale on state lands adjacent to the Wrights' property, utilizing forest road 652 through their property to access the sale and remove the logged timber.

60. IDL recently advised Morgan Wright that it is seeking to conduct an auction for the Selway Fire sale imminently, within coming days or weeks.

61. IDL's proposed Selway Fire timber sale will clearcut 142 acres of trees and build over three miles of new roads on extremely steep, unstable slopes, with seven switchbacks, within one mile of the Selway River. Many of those slopes are between 40 to 80 percent in slope. No road construction engineering plan has been developed by IDL. Road construction will require wasting 18,520 cubic yards of native rock and soil on site, essentially creating a waste area in the Selway Wild and Scenic River corridor. IDL also intends to install twenty-seven culverts in streams that feed directly into the Selway River. In addition to the new road building, approximately 0.39 miles of forest road 652 will be reconstructed to a sixteen-foot

travel way. *Id.* IDL has also advised Morgan Wright that the contractor who is awarded the sale may request permission from IDL to build other additional roads in connection with the sale, to increase the contractor's ability to access all the trees for the clearcut in this very steep terrain.

62. The Selway Fire sale is located on state land with virtually identical slope and soil conditions as nearby federal land that the Forest Service previously determined to be unsuitable for road building and logging in 1964 due to grave concerns about erosion and landslides into the Selway River and nearby streams, because of the steepness of the terrain and soil type.

63. In 1964, the Forest Service proposed a timber sale in the Goddard Creek area, which is located up-river and beyond the State-owned tract of land where IDL is currently planning its timber sale. The Forest Service voluntarily withdrew its 1964 logging proposal after the District Ranger determined that "[s]erious slides and slumps may occur due to the road construction and accelerated erosion may result from logging." *See* Letter from District Ranger William Covey to Forest Supervisor John Milodragovich (April 28, 1964).

64. The Forest Service's determination not to proceed with the proposed 1964 timber sale due to concerns about steep, erosive slopes and adverse impacts on the Selway River underscore the threats posed by the IDL's proposed Selway Fire clearcut sale, which will not only threaten similar mass erosion or other adverse impacts directly to the Selway River, but also mar the scenic beauty of the corridor and adversely impact the outstandingly remarkable values of the river and its corridor.

65. These adverse impacts are likely to occur absent judicial relief because the Defendants' erroneous November 20, 2014 determination that forest road 652 is a "public road" means that the Forest Service is not requiring any special use authorization for IDL's proposed

commercial timber hauling activities and thus has not evaluated potential adverse direct, indirect and cumulative impacts under NEPA; nor has the Forest Service evaluated potential impacts for consistency with Wild and Scenic Rivers Act protection of the Selway River and corridor, conflicts with forest resources and uses, or consistency with the scenic easement protecting the Wrights' property (including forest road 652) from commercial or industrial activities.

66. Declaratory and injunctive relief are thus necessary to prevent irreparable harm to the public interest, IRU, and the Wrights' private interests as a result of the Forest Service's unlawful determination challenged here.

CLAIM FOR RELIEF

67. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

68. This claim for relief challenges the Defendants' November 20, 2014 final decision that forest road 652 is a "public road" and hence no special use authorization is necessary for IDL's commercial log hauling operation using forest road 652. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. 706(2).

69. By erroneously determining that road 652 is a "public road" and thus IDL does not need any Forest Service special use authorization to utilize the road for its commercial timber harvesting operations, the Forest Service has violated its duties under the travel planning and special use authorization regulations discussed above, as well as NEPA, NFMA, and the Wild and Scenic Rivers Act.

70. For reasons set forth above, the Forest Service's determination that forest road 652 is a "public road" is arbitrary, capricious, an abuse of discretion, and not in accordance with the law; and must be reversed and set aside pursuant to 5 U.S.C. 706(2).

REQUEST FOR RELIEF

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

- A. Reverse and set aside the Forest Service's November 20, 2014 decision that forest road 652 is a "public road" pursuant to the APA and other authorities cited above;
- B. Order, adjudge, and declare that a special use authorization is required from the Forest Service pursuant to 36 C.F.R. § 251.50 before IDL may undertake its proposed commercial log hauling on forest road 652;
- C. Enter such temporary restraining order(s) and preliminary or permanent injunctive relief as hereafter prayed for by Plaintiffs;
- D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and/or
- E. Grant such further relief as the Court deems necessary or appropriate to redress the Forest Service's legal violations and protect the public lands and resources within and surrounding the Selway River and the Wild and Scenic corridor.

Dated this 19th day of May, 2015. Respectfully submitted,

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