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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE; and
GOLDEN EAGLE AUDUBON SOCIETY,

Plaintiffs,

vs.

U.S. FOREST SERVICE,

Federal Defendant,

and

IDAHO COPPER CORPORATION,

Intervenor-Defendant.

Case No: 1:25-cv-329-AKB

**PLAINTIFFS' OPENING BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

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TABLE OF ACRONYMS

APA	Administrative Procedure Act
EA	Environmental Assessment
EIS	Environmental Impact Statement
DN	Decision Notice
FONSI	Finding of No Significant Impact
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
RCAs	Riparian Conservation Areas

Fig. 1. “Map 8. Surface water resources” from EA Appendix 6.3 (AR-890).

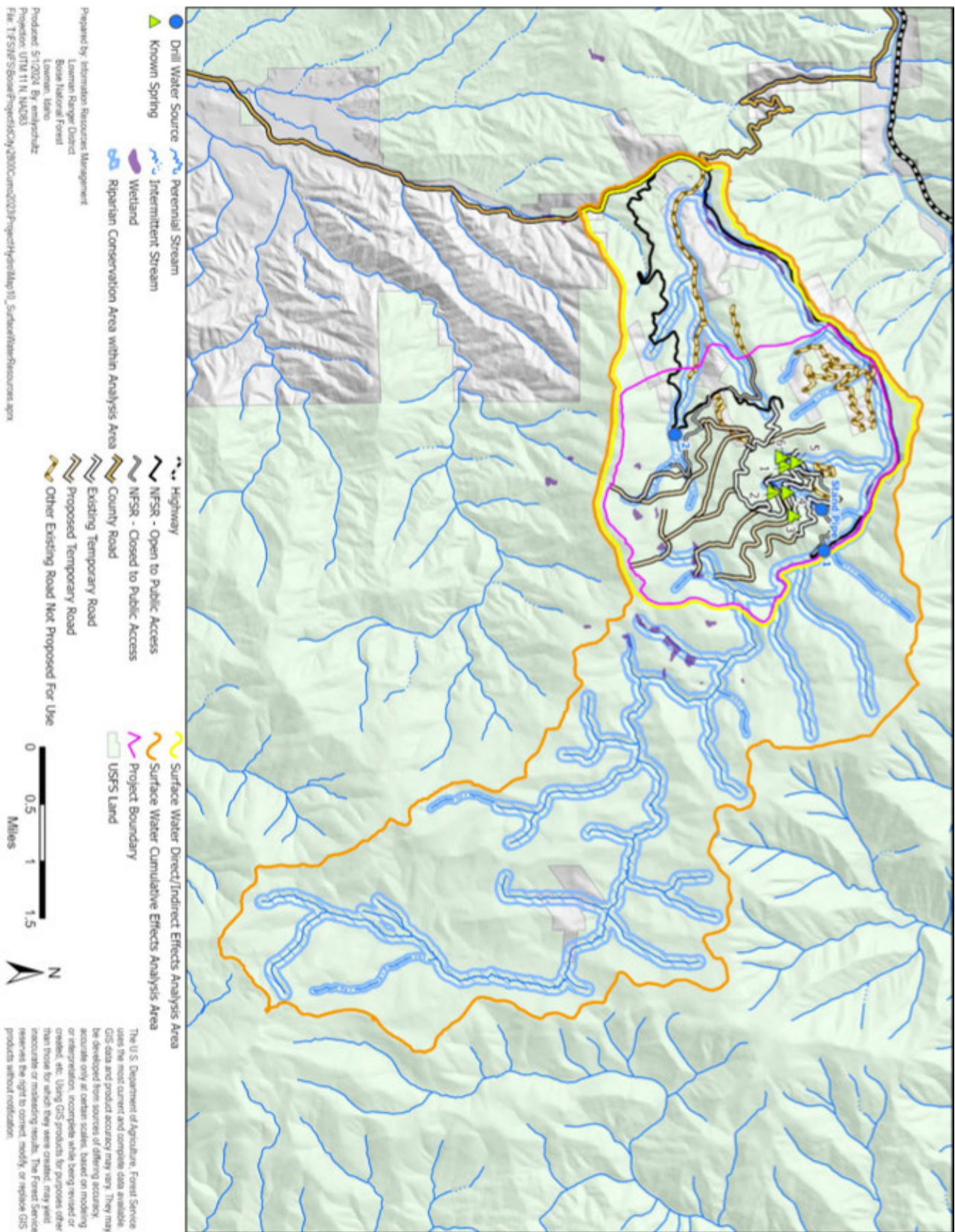


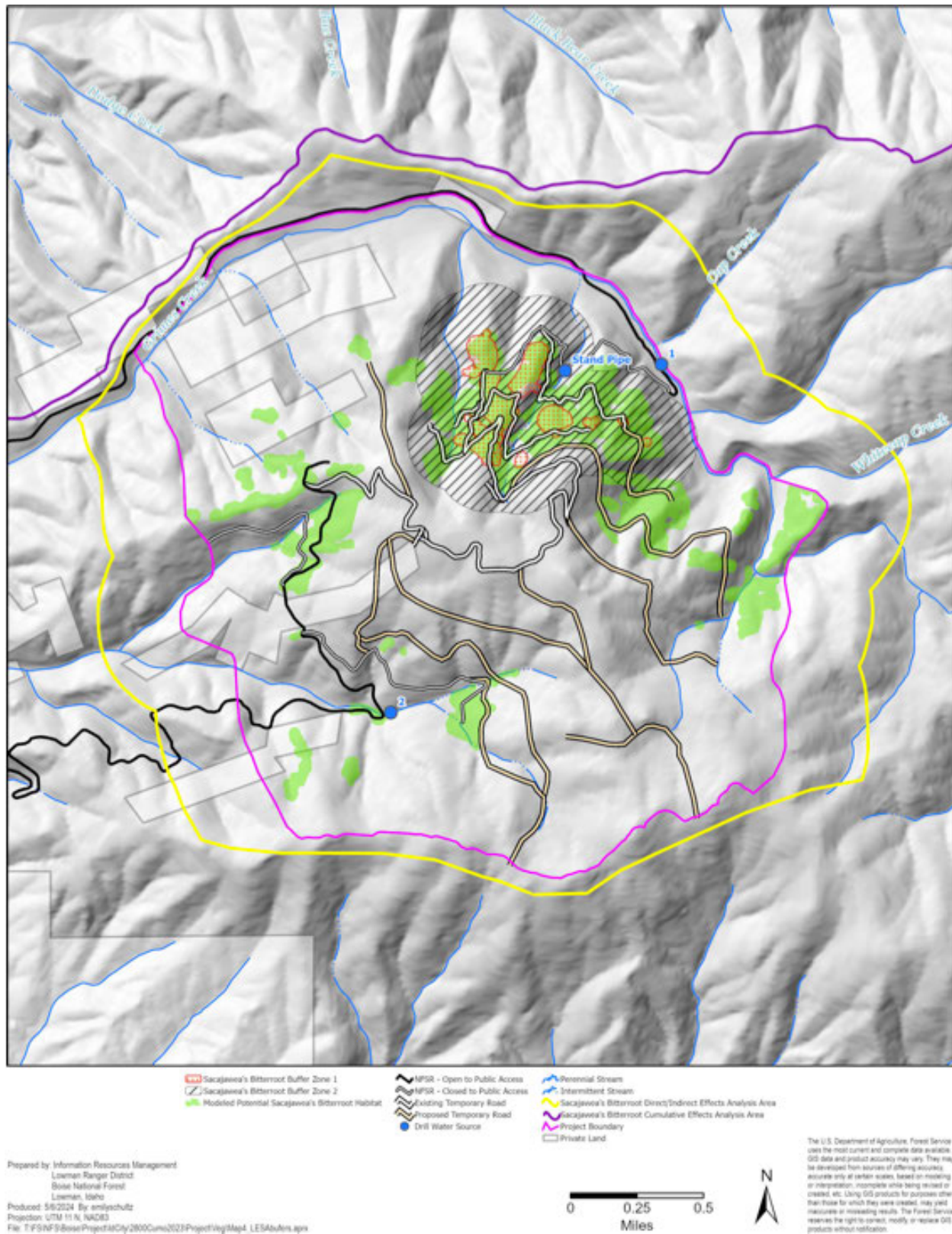
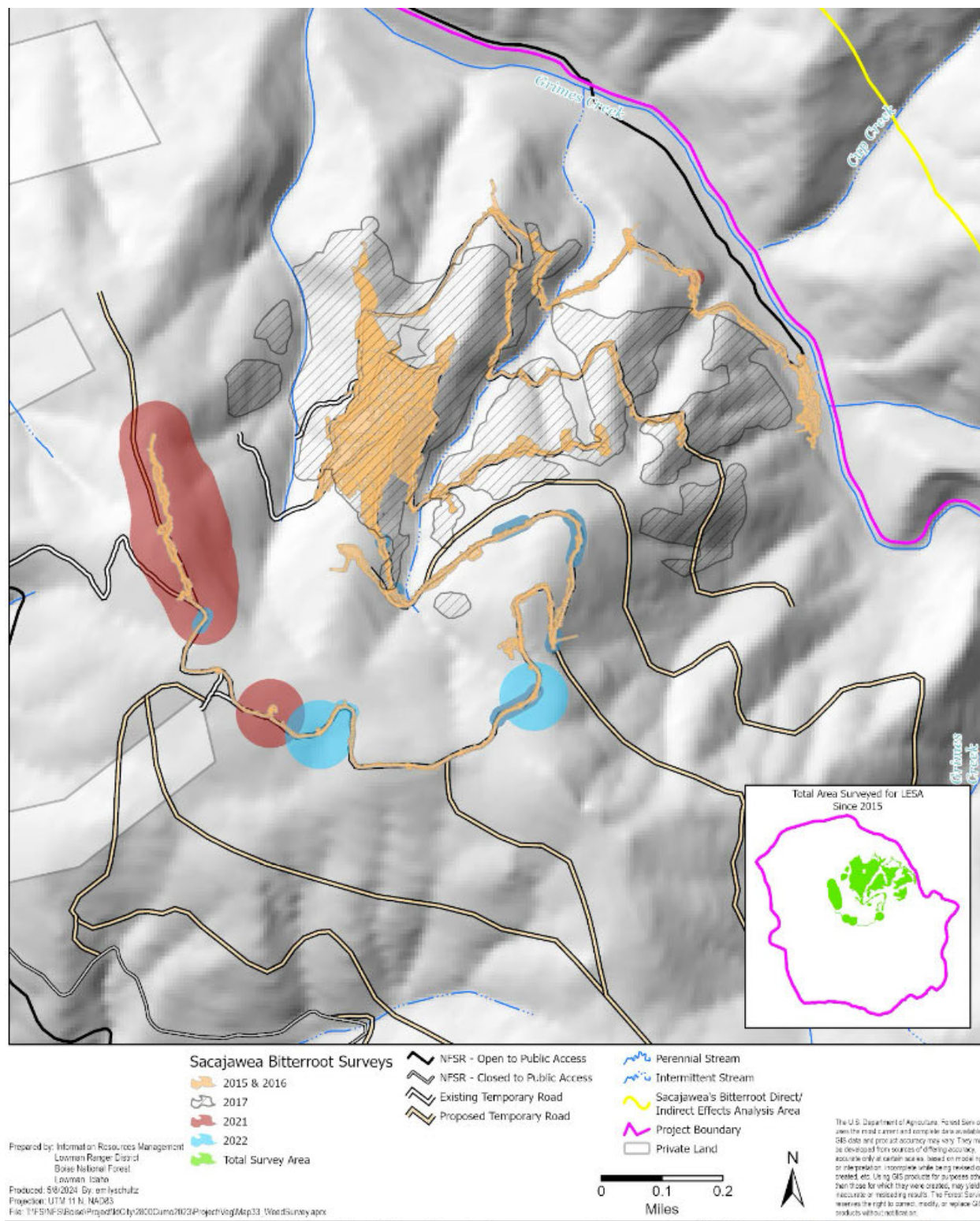
Fig. 2. “Map 3. Sacajawea’s bitterroot” from EA Appendix 6.3 (AR-885)

Fig. 3. “Map 4. Sacajawea’s bitterroot surveys” from EA Appendix 6.3 (AR-886)

INTRODUCTION

Plaintiffs challenge Defendant U.S. Forest Service’s actions approving the 2023 CuMo Exploration Project, a six-year mine exploration located in the headwaters of Grimes Creek, a tributary to Mores Creek, which flows into the Boise River. Intervenor-Defendant Idaho Copper Corporation is “focused on exploring and developing a massive copper-molybdenum-silver deposit” at the Project site,¹ where its preliminary plans envision mining a 3,500-foot deep open-pit mine (AR-6740). The Project challenged here includes clearing forest to construct roads and drill pads and drilling up to 250 exploration holes at the potential mine site.

Twice in the past, the Forest Service approved a similar project (the 2007 CuMo Exploration Project). Both times, this Court found the approval unlawful. First, this Court held that the Forest Service violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et. seq.*, by failing to gather baseline groundwater hydrology information needed to take the requisite “hard look” at the potential effects of drilling hundreds of deep exploration holes. *Idaho Conservation League v. U.S. Forest Serv.*, No. 1:11-cv-00341-EJL, 2012 WL 3758161 (D. Idaho Aug. 29, 2012) (“*ICL I*”). In 2016, this Court held that the Forest Service violated NEPA and the National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 *et seq.*, by failing to gather up-to-date baseline information on the rare plant Sacajawea’s bitterroot. *Idaho Conservation League v. U.S. Forest Serv.*, No. 1:16-cv-0025-EJL, 2016 WL 3814021 (D. Idaho July 11, 2016) (“*ICL II*”).

Now, in approving the 2023 CuMo Exploration Project, the Forest Service has yet again failed to comply with these laws. As explained below, the agency violated NFMA and NEPA by relying on outdated and incomplete Sacajawea’s bitterroot surveys, and by otherwise failing to

¹ “Idaho Copper Announces US Forest Service Decision Notice and Finding of No Significant Impact for CuMo Exploration Project Plan,” March 25, 2025 (available at <https://ir.idaho-copper.com/press-releases/#b2iLibScrollTo>).

properly account for the Project’s adverse effects to this rare plant. The agency also violated NFMA by authorizing the construction of new roads in protected Riparian Conservation Areas (“RCAs”) and violated Organic Act regulations by failing to minimize Project impacts to protect the environment. Plaintiffs ask the Court to declare that the Forest Service’s Decision Notice and Finding of No Significant Impact (“DN/FONSI”) approving the Project, and its underlying Environmental Assessment (“EA”), violate federal law and to vacate the Forest Service’s unlawful action approving the Project.

FACTUAL BACKGROUND²

The 2023 CuMo Exploration Project.

The Project is a 6-year mineral exploration project, including 4 years of exploratory drilling and 2 years of reclamation. SOF ¶ 1. As approved, Idaho Copper would construct up to 8.9 miles of new “temporary” mining roads through the site, and use 5.5 miles of existing “temporary” mining roads. SOF ¶ 4. Idaho Copper would construct up to 122 drill sites and drill up to 250 holes. *Id.* Overall, up to 72.3 acres of National Forest lands could be cleared to construct road and drill pads and other infrastructure. *Id.* Each year, Project activities could occur seasonally from April 15 to December 15. *Id.* Up to four drill rigs could run 24 hours per day, every day during drilling operations. *Id.*

Idaho Copper seeks to delineate copper and molybdenum deposits at the Project site, which is approximately 14 miles north of Idaho City and on mostly National Forest land. SOF ¶¶ 1–2. The site is in the headwaters of Grimes Creek, which flows to Mores Creek and then to the Boise River at Lucky Peak Reservoir. *Id.* From there, the Boise River flows through Idaho’s

² Plaintiffs’ Separate Statement of Facts (“SOF”), filed herewith under Local Rule 7.1(b), provides detailed facts and citations to the administrative record (AR) for the Project, explaining its environmental impacts, and Defendant’s approval processes, which are summarized here.

Treasure Valley and is a source of drinking and agriculture water for this most populous part of Idaho. *Id.*

The Project site is home to about a third or even up to half of the entire known population of the rare plant Sacajawea's bitterroot. *See* SOF ¶ 3. The site supports many other at-risk species, including flammulated owl, northern goshawk, Columbia spotted frog, and bull trout. *Id.* Bull trout, which are listed as "threatened" under the federal Endangered Species Act, appear to be barely hanging on in the headwaters of Grimes Creek, where they may be the only remaining population of bull trout in the Mores Creek watershed. *Id.*

The Project would cause significant harm to the Plaintiff organizations and their members whose use and enjoyment of the Project area and its surrounds, including the Grimes Creek watershed and the Boise National Forest, would suffer from the Project's adverse impacts to water, land, air, fish, wildlife, and plants, as detailed in the attached declarations.³

Remands of the 2007 CuMo Exploration Project.

This Court twice declared unlawful, vacated, and remanded the Forest Service's approval of an earlier iteration of the Project, called the 2007 CuMo Exploration Project. *See* SOF ¶¶ 7–10. The 2007 Project was first approved in February, 2011, when the Forest Service issued a DN/FONSI, based on an EA. *See* AR-3898. The 2007 Project included constructing 10.2 miles of road, constructing 137 drill sites, and drilling up to 259 explorations holes over five years. AR-3901, 3903.

Plaintiffs filed suit, and in 2012, this Court vacated and remanded the DN/FONSI and EA, holding that the agency violated NEPA by failing to gather baseline information needed to take a hard look at the risks drilling posed to groundwater. *See ICL I*, 2012 WL 3758161.

³ The accompanying Robison, Rusnak Jr., Wallesz, and Fullen declarations establish Article III standing. *See W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 484–86 (9th Cir. 2011).

During the litigation and before the 2012 remand, mineral exploration commenced as Mosquito Gold constructed 1.8 miles of temporary road, constructed six drill sites, and drilled nine exploration holes. AR-1754.

In 2015, the Forest Service issued a Supplemental EA and a Supplemental DN/FONSI, approving the 2007 Project again, this time with some additional baseline groundwater hydrology analysis and water quality mitigation measures. *See* AR-4088, 4092. Before it approved the Project, the Grimes Fire burned 923 acres of the Project site, and a firefighting line was bulldozed through the largest populations of Sacajawea's bitterroot at the site; but the Forest Service never resurveyed Sacajawea's bitterroot or its habitat after the fire and before it approved the Project. *See* AR-4157–58.

Plaintiffs filed suit, and this Court remanded and vacated the Supplemental EA and DN/FONSI. *See ICL II*, 2016 WL 3814021. The Court found a NEPA violation because “the Forest Service’s analysis . . . failed to take a ‘hard look’ at the Project’s impacts on the environment with regard to a known rare and at risk plant.” *Id.* at *16. “[T]he Court finds the Forest Service failed to re-evaluate the baseline data for [Sacajawea’s bitterroot] following the Grimes Fire prior to approving the Project. Without an accurate baseline, the Project’s monitoring and mitigation measures will not be effective or accurate.” *Id.* at *17. The Court also found a NFMA violation because: “Failing to obtain the necessary baseline is contrary to Guideline BTGU01 [in the Forest Plan] because the Forest Service did not determine the existing suitable habitat for and presence of [Sacajawea’s bitterroot] within or near the project area.” *Id.* at *17.

In 2016, another fire (the Pioneer Fire) burned 1,578 acres of the Project area, including in Sacajawea’s bitterroot habitat. *See* AR-1756.

After the 2016 remand, the Forest Service began work on a second Supplemental EA for the 2007 Project, which went out for public comment in 2018 and early 2019. *Id.* The Supplemental EA utilized Sacajawea’s bitterroot surveys conducted in 2017 in portions of Project site. *See id.* This environmental analysis was never completed, and the 2007 Project was never approved again. *See id.*

Approval of the 2023 CuMo Exploration Project

In September 2023, Idaho Copper submitted a Plan of Operations to the Forest Service requesting approval of the 2023 CuMo Exploration Project, which mostly seeks to complete the remainder of the 2007 Project. AR-1754, 1758. Plaintiffs submitted scoping comments, urging the Forest Service to prepare a full Environmental Impact Statement (“EIS”) instead of a shorter EA and to conduct new and comprehensive surveys for Sacajawea’s bitterroot instead of relying upon older and incomplete surveys from 2017. *See* AR-4726–76. Their comments also urged the Forest Service to comply with Forest Plan standards including MIST08, which prohibits locating roads, drill pads, and other structures and facilities in RCAs unless there is no alternative. *See* AR-4755–58.

In May 2024, instead of preparing an EIS, the Forest Service issued a Draft EA. SOF ¶ 12. Plaintiffs submitted comments warning that the Forest Service was relying on outdated Sacajawea’s bitterroot surveys from 2017, was failing to protect Sacajawea’s bitterroot and RCAs, and should prepare an EIS. *Id.* In September 2024, the Forest Service issued the Final EA and a Draft DN/FONSI, initiating an objection period. SOF ¶ 13. Plaintiffs submitted timely objections, again warning the Forest Service of these same failures. *Id.*

In March 2025, the Deputy Regional Forester issued a written response to objections. AR-5694. Although they denied Plaintiffs’ objections, the Deputy Regional Forester expressly

instructed the Forest Service that, before a decision notice can be signed, the agency must: “Provide rationale in [the] Decision Notice why reliance on 2017 survey data is appropriate for Sacajawea’s bitterroot”; and “Provide rationale in the Decision Notice how the project complies with Forest Plan Standards, specifically MIST04, MIST08, and MIST09.” AR-5695. One day later, on March 14, 2025, Forest Supervisor Brant Petersen signed the DN/FONSI, approving the 2023 CuMo Exploration Project based on the EA, with no additional analysis. AR-1877–92.

Compared to the Draft DN/FONSI, with respect to Sacajawea’s bitterroot, the Final DN/FONSI added only a single sentence regarding the agency’s conclusion that the Project may impact individual plants but is not likely to cause a trend to federal listing or loss of viability. The sentence merely states: “For Sacajawea’s bitterroot, baseline surveys collected in 2017 and supplemented by botanical clearance surveys in 2021 and 2022 represent the most recent dataset available and is appropriate when considering the life history of the species and lack of substantial change from stochastic events or project work in the time since the surveys (EA Section 3.2 and Botanical Resources and Non-native Plants Resource Report).” AR-1888.

Compared to the Draft DN/FONSI, with respect to MIST04, MIST08, and MIST09, the Final DN/FONSI added only two sentences, repeating its assertion that the Project complies with the Forest Plan and adding: “This includes MIST04, MIST08, and MIST09. The EA identifies several measures to protect RCAs, such as WR-9 found in Appendix B, which limits, to a reasonable extent, the amount of activity that may take place in an RCA.” AR-1886.

In the DN/FONSI, the Forest Service described the Project’s “context” as “limited” in its size and activities, without mentioning that the site is home to about a third or even half of all Sacajawea’s bitterroot plants in the world or that it is upstream of Idaho’s largest population. AR-1181. The DN/FONSI concluded that the Project “will not significantly affect the quality of

the human environment, considering the context and intensity of impacts” and “[t]hus, an environmental impact statement will not be prepared.” AR-1184. To implement the Project, Idaho Copper must submit to the Forest Service a revised Plan of Operations, an acceptable financial assurance bond, and proof or waiver of Clean Water Act certification. AR-1890.

STANDARDS OF REVIEW

Summary judgment is appropriate if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. Plaintiffs’ claims arise under causes of action established by the APA. The APA authorizes judicial review of federal agency actions, including Defendants’ issuance of the DN/FONSI and EA. 5 U.S.C. § 702. The APA requires courts to hold unlawful and set aside agency decisions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

In applying the APA, the Court will “engage in a substantial inquiry” and conduct a “thorough, probing, in-depth review.” *Oregon Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1125 (9th Cir. 2007). The agency’s decisions must be “fully informed and well-considered.” *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988). “An agency’s action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an explanation for the decision that is contrary to the evidence, . . . or if the agency’s decision is contrary to the governing law.” *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005). “An agency action qualifies as ‘arbitrary’ or ‘capricious’ if it is not reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 280 (2024) (quotation omitted). An agency “must offer ‘a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made’ and cannot simply ignore ‘an important aspect of the problem.’” *Id.* (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

ARGUMENT

I. NATIONAL FOREST MANAGEMENT ACT VIOLATIONS

The Forest Service violated NFMA by failing to ensure the Project is consistent with binding Forest Plan standards and guidelines designed to protect RCAs and “sensitive species” of plants, including Sacajawea’s bitterroot, from Idaho Copper’s exploration.

A. NFMA Background

“NFMA creates a two-step process for the management of our national forests.” *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1249 (9th Cir. 2005). First, the Forest Service must prepare a land and resource management plan (commonly called a “forest plan”) for each national forest with standards and guidelines governing where and how activities can occur. *Id.*; *see also* 16 U.S.C. § 1604(f). Second, NFMA and its implementing regulations require that all projects in a forest must be consistent with the governing forest plan. *Native Ecosystems Council*, 428 F.3d at 1249; *see also* 16 U.S.C. § 1604(i); 36 C.F.R. 219.15 (“Every project and activity must be consistent with the applicable plan components.”).

“It is well-settled that the Forest Service’s failure to comply with the provisions of a Forest Plan is a violation of NFMA.” *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 961 (9th Cir. 2005). This includes Forest Service approval of mining projects, like in *ICL II* where this Court found such a NFMA violation. 2016 WL 3814021 at *17. *See also Save Our Cabinets v. U.S. Dep’t. of Agric.*, 254 F. Supp. 3d 1241, 1258–59 (D. Mont. 2017) (Forest Service violated NFMA by approving mining project that would not meet the Forest Plan’s “desired conditions” protecting water quality).

The Forest Service has adopted a forest plan for the Boise National Forest (the “Forest Plan”), which contains standards, goals, objectives, guidelines, and desired conditions for

managing mining and mine explorations and for protecting plants, water quality, fish, and wildlife in the Boise National Forest. *See* AR-2041–2813 (Forest Plan).

B. The Project Is Not Consistent with Forest Plan Standard MIST08’s RCA Protections

To protect streams and fish habitat from sediment and temperature increases and other pollution and alterations, the Forest Plan designates and protects Riparian Conservation Areas (“RCAs”). *See* SOF ¶¶ 16–17. “RCAs include traditional riparian corridors, perennial and intermittent streams, wetlands, lakes, springs, reservoirs, and other areas where proper riparian functions and ecological processes are crucial to maintenance of the area’s water, sediment, woody debris, nutrient delivery system, and associated biotic communities and habitat.” AR-2784. For perennial stream reaches, RCAs extend to 300 feet on either side of the stream; for intermittent streams and wetlands, RCAs extend to 150 feet on either side. AR-2620; AR-926.

Among the standards protecting RCAs, Forest Plan mining standard MIST04 requires the Forest Service to “[m]itigate degrading effects from locatable mining operations situated within RCAs by identifying reasonable locations for access, processing, and disposal facilities outside of RCAs, where possible.” AR-2178. Mining standard MIST08 requires:

Locate new structures, support facilities, and roads outside RCAs. Where no alternative to siting facilities in RCAs exists, locate and construct the facilities in ways that avoid or minimize degrading effects to RCAs and streams, and adverse effects to TEPC species. Where no alternative to road construction in RCAs exists, keep roads to the minimum necessary for the approved mineral activity. Close, obliterate, and revegetate such roads if no longer required for mineral or other management activities.

Id. (emphases added). Standard MIST09 similarly “[p]rohibit[s] solid and sanitary waste facilities in RCAs” unless “no alternative” exists. AR-2179.

In response to public comments raising concerns about the Project’s compliance with these standards and its adverse effects to RCAs, the Forest Service prohibited locating any drill

pads in RCAs. SOF ¶ 18. But it did not do the same for roads. *Id.* Instead, the Forest Service authorized Idaho Copper to build roads in RCAs to accommodate up to five stream crossings where necessary. *Id.*; AR-1766. The Forest Service left undetermined the locations of those up to five crossings and associated roads in RCAs, punting the issue to later, post-approval, and post public review, decisions through Idaho Copper’s annual operating plans, as explained below.

In so doing, the Forest Service acted arbitrarily and capriciously and failed to ensure the Project is consistent with standard MIST08. First, Forest Plan compliance cannot be deferred to the future. But that is what the Forest Service did here when it refused to consider alternatives to locating roads in RCAs now and stated it will do so later through the annual operating plans. Second, even if it were permissible as a general matter to defer compliance with MIST08 to the future, the agency violated NFMA anyway because the annual operating plan process here is inadequate to ensure compliance with MIST08 in the future.

1. Improper Reliance on Future Compliance with MIST08

While the Project is “results driven” and thus might change some as it proceeds, Idaho Copper’s proposal includes numerous roads it plans to construct crossing through and/or traveling within RCAs. SOF ¶ 19. *See* AR-890 (map of proposed roads and RCAs reproduced as Figure 1 above). Figure 1 shows more than 5 new stream crossings (blue shaded areas), and shows other new road segments within streamside RCAs. And it shows additional RCA incursions in wetlands (purple areas). Yet for these RCA incursions, the agency never considered whether there was “no alternative,” and it never considered whether the amount of road in RCA was kept to the “minimum necessary” as required by MIST08.

At the outset, the agency’s failure to consider alternatives to constructing mining roads in RCAs was specifically rejected in *Hells Canyon Pres. Council v. Haines*, No. CV 05-1057-PK,

2006 WL 2252554, **7–10 (D. Or. 2006). Like MIST08, the relevant Forest Plan standard in that case prohibited new roads, structures, and support facilities in RCAs (called “RHCAs” in that plan) “unless no alternative exists.” *Id.* at *8. The Forest Service argued that its analyses of riparian road incursions could be fleshed out later during project implementation. *Id.* The court rejected these arguments, holding that, “the Forest Service is responsible for analyzing the necessity of these new roads, whether alternatives exist, and providing more specific assurances that new road construction will be limited to the minimum amount necessary,” and that it “must provide a more thorough analysis.” *Id.* None of that happened in this case either.

Here, the EA failed to consider alternatives to roads in the RCAs. The EA does not even mention MIST08, nor do any of the many specialist reports prepared for the Project, even though those documents discuss dozens of other applicable Forest Plan provisions.⁴ The Draft DN/FONSI did not mention MIST08 either. The Final DN/FONSI was amended to mention MIST08, but only in response to the objection reviewer officer’s direction that the agency must explain how the Project complies with this provision. AR-1886; AR-5695. Yet all the Final DN/FONSI provides is a conclusory statement that the Project complies with MIST08 without any explanation or documentation. AR-1886.

⁴ For example, where the EA discusses effects of Project activities to RCAs, it notes various mitigation measures and Forest Plan standards related to RCAs (including SWST01, 04, 05, 07, and 11), but does not mention MIST08. AR-1820. In fact, the EA does not mention MIST08 *anywhere*. *See* AR-1746–876. Similarly, the Fisheries Technical Report identifies various relevant Forest Plan provisions, including multiple mining-specific provisions, but does not mention MIST08 there (AR-918–21) or anywhere (*see* AR-913–968). The Surface Water Hydrology Technical Report identifies Forest Plan provisions it says are relevant to soil, water, riparian, and aquatic management, but does not mention MIST08 (AR-1019–1020). The Groundwater Technical Report identified Forest Plan provisions relevant to soil, water, riparian, and aquatic management for hydrologic resources, but does not mention MIST08 there (AR-974), nor anywhere (*see* AR-969–1011). And while the Minerals and Geology Technical Report at least mentions some of the “MI” (mining) Forest Plan provisions, it too fails to mention MIST08 there (AR-1270) or anywhere (AR-1265–1293). Nowhere in any of these documents does the Forest Service consider whether there are alternatives locating roads in RCAs.

Instead of showing compliance with binding standard MIST08 at the time it approved the Project, the Forest Service deferred this to later. In the agency’s Forest Plan Consistency Documentation, the Forest Service says it will demonstrate compliance with MIST08 through the annual operating plans Idaho Copper must submit prior to each year’s operations. AR-1353. Through those plans, the Forest Plan Consistency Documentation asserts, Idaho Copper will consider all practicable alternatives before impacting RCAs and will keep any RCA road incursion to the minimum necessary. *Id.*

But the Ninth Circuit has rejected the “decision to authorize the Project first and verify [NFMA compliance] later.” *Ecology Ctr. v. Austin*, 430 F.3d 1057, 1071 (9th Cir. 2005). There, the Forest Service “plan[ned] to verify soil conditions in the activity areas after authorizing the Project, but before actually commencing harvest activities.” *Id.* See also *WildEarth Guardians v. Jeffries*, 370 F. Supp. 3d 1208, 1234 (D. Or. 2019) (“The duty to demonstrate Forest Plan consistency applies at the time of the decision, not at a speculative future date.”).

Here, the Forest Service authorized up to five stream crossings and associated roads within RCAs while deferring its analysis to be fleshed out later during Project implementation through the annual operating plans. This fails to demonstrate consistency with MIST08 and violates NFMA. The Forest Service is responsible for analyzing the necessity of Idaho Copper’s proposed new roads in RCAs shown in Figure 1, whether alternatives exist, and providing more assurances that any such roads will be limited to the minimum amount necessary.

Characterizing the Project as “results driven” does not change this. In *Center for Biological Diversity v. U.S. Forest Serv.*, No. CV 23-110-M-DWM, 2025 WL 3549515 (D. Montana Dec. 11, 2025) the District of Montana recently confirmed that the Forest Service cannot defer compliance with forest plan standards to the future, even when—like here—the

project involves inherent uncertainties about precisely when and where activities, including road building, will occur. That case challenged a “condition-based management” project for logging and other forest “treatments.” *Id.* at *2. To maintain flexibility, the Forest Service preliminarily identified suitable areas for treatments in the project area but “without identifying the precise location and size of the treatment units or the location and configuration of associated roads.” *Id.*

To show consistency with the forest plan, the Forest Service relied on the fact that “all future treatment activities, including fuels reduction and road construction, must comply with the identified Design Features prior to implementation.” *Id.* at * 6. The court rejected this permit-first, comply-later approach, agreeing with the plaintiffs that these Design Features were mere promises to comply with forest plan standards in the future, and that this was insufficient to show NFMA compliance, which must occur at the time of approval. *Id.* at *7. “The EA does not show that the Project meets the Forest Plan Standards but rather that such compliance will be assessed after the specific treatment actions are identified.” *Id.* “The Forest Service avowing that future activities will comply with NFMA falls far short of showing that those activities do so.” *Id.*

This case presents the same situation. Neither the EA, nor any of the underlying reports, even mention MIST08, let alone show that the Project satisfies it. Instead, the Forest Service is relying on supposed future compliance with MIST08 through Idaho Copper’s annual operating plans and other Project design features. This too “falls far short” and violates NFMA.

2. Inadequate Design Features to Ensure Future MIST08 Compliance

On top of this, the annual operating plan process and Project “design features” the Forest Service relies to show future, post-approval compliance with the Forest Plan are not sufficient to satisfy MIST08. MIST08 directs the Forest Service to locate new mining roads outside of RCAs, unless there is “no alternative.” AR-2178. And when there is “no alternative to road construction

in RCAs,” they must be kept to “the minimum necessary.” *Id.* RCAs include the area within 300 feet on either side of perennial streams, 150 feet on either side of intermittent streams, and 150 feet surrounding wetlands. AR-926; AR-1378–1399. Yet neither the annual operating plans, nor any other Project design features, ensure these specific MIST08 requirements will be met.

The Forest Service issued an Errata on January 17, 2025, which states that the Forest Plan Consistency Checklist’s MIST08 consistency “determination/rationale was updated to clarify the necessity and approval process of stream crossings as they relate to the proposal.” AR-1327. Yet that updated section of the Consistency Checklist is wrong. It now says: “Annual operating plan as required under Appendix 6.2 requires all practicable alternatives be considered before impacting RCAs.” AR-1353. But this is not what the annual operating plans actually require, nor is it what any of the other design features or mitigation measures in Appendix 6.2 of the EA require, nor what any of the final design features and mitigation measures in Appendix B to the DN/FONSI require.

Specifically, “MG-1” is the mitigation measure that requires Idaho Copper to submit an annual operating plan for approval prior to implementing activities. AR-1381. While those plans must identify new roads locations, nothing in MG-1 requires Idaho Copper to show alternatives to locating any roads in RCAs, to explain why there is no alternative, or to seek Forest Service approval of such RCA incursions. *Id.*

Nor is there any such requirement in any of the other design features or mitigation measures. Design feature “WR-G” prohibits building roads within 500 feet of perennial streams and 250 feet of intermittent streams, but it includes an exception anytime Idaho Copper decides in its discretion that a “stream crossing is necessary.” AR-1778. WR-G does nothing to ensure

there are “no alternatives” to these RCA incursions and does nothing to ensure that when a road segment must enter an RCA it is kept to “the minimum necessary,” as MIST08 requires.

The only other relevant mitigation measure is “WR-6,” which directs Idaho Copper to avoid road construction within 100 feet of seeps, springs, and wetlands, and if this is not possible, to provide a supporting rationale and/or alternatives to the Forest Service. AR-1398. While this mitigation measure has some overlap with MIST08’s RCA protections, it falls far short. WR-6 applies only to roads within *100 feet of seeps, springs, and wetlands*; whereas MIST08 applies to roads within *300 feet of perennial streams* and *150 of intermittent streams and wetlands*. See AR-1378–1399. Thus, not only are WR-6’s 100-foot buffers too small to satisfy MIST08, WR-6 does not even apply to perennial and intermittent *streams*. Again, as shown in Figure 1, Idaho Copper’s proposed roads cut through RCAs surrounding numerous *streams* that MIST08 protects. Yet these RCA incursions simply are not covered by WR-6.

The Ninth Circuit has held that the Forest Service violates NFMA when a court is “unable to determine from the record that the agency is complying with the forest plan standard” because it failed follow the specific methods and definitions set out in the forest plan. See *Native Ecosystems Council*, 418 F.3d at 961–64 (NFMA violation where Forest Service used method to calculate elk hiding cover that was different from forest plan method); see also *Hapner v. Tidwell*, 621 F.3d 1239, 1250–51 (9th Cir. 2010) (same); *Alliance for the Wild Rockies v. USFS*, 907 F.3d 1105, 1116–17 (9th Cir. 2018) (Forest Service “decision to adopt a new definition of ‘old forest habitat’” that deviated from definition in forest plan held arbitrary and capricious); *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 970–71 (9th Cir. 2002) (Forest Service violated NFMA when it relied on a “new definition for old growth that is different from the Forest Plan definition”).

Here, Project features MG-1, WR-G, and WR-6 simply do not match the Forest Plan’s definition of RCAs and do not match the methods it sets forth for complying with MIST08, so the Forest Service cannot rely on them to show consistency. By contrast, the 2007 Project had a pre-disturbance “checklist” process requiring for every single proposed new road segment, the mining company had to indicate whether or not it was located in an RCA, whether it considered alternatives to locating the road segment in an RCA, and receive Forest Service approval. AR-5103–04, 5108 (description of checklist process for RCAs); *see also ICL I*, Case 1:11-cv-00341-EJL, ECF No. 26-1 at 44 (checklist).

To be clear, in *ICL I*, this Court never ruled on the more general issue of whether NFMA even permits the Forest Service to rely on assurances of future compliance with Forest Plan standards—which it does not as already explained in the preceding section (*Supra* I.B.1). However, this Court did find that the Forest Service’s checklist process “set forth a plan for approving any encroachments into an RCA that is unavoidable” that satisfied MIST08. *ICL I*, 2012 WL 3758161 at *22. The 2023 Project, however, does not use this same pre-disturbance checklist process. Instead, it uses the inferior annual operating plans and other design features which do not match MIST08.

Ultimately, the agency ignored MIST08 throughout the Project-approval process. It failed to even discuss MIST08 in the EA and its supporting reports. It added a mention of MIST08 to the DN/FONSI only at the very end when the Objection Reviewing Officer directed it to do so. But even then, the agency only inserted a conclusory statement that the Project complies with MIST08. And it updated its Forest Plan Consistency Checklist by adding a false statement that the Project design features and annual operating plan address MIST08 when in fact they do not. This is arbitrary, capricious, and fails to comply with NFMA’s consistency requirement.

C. The Project Is Not Consistent with Forest Plan Guideline BTGU01’s Sacajawea’s Bitterroot Survey Requirement

Sacajawea’s bitterroot is a rare plant known to exist in only 42 locations, all in the mountains of Idaho. SOF ¶ 21. The Project site is estimated to be home to 13,735 plants, which represent around a third to half of all known Sacajawea’s bitterroot. *See id.* To protect sensitive plants, including Sacajawea’s bitterroot, the Forest Plan includes botany guideline “BTGU01” which provides that when the Forest Service analyzes a project, “suitable habitat should be determined for Sensitive species within or near the project area” and directs the Forest Service to “[c]onduct surveys for those species with suitable habitat to determine presence.” AR-2163.⁵ Here, the Forest Service failed to comply with BTGU01, in violation of NFMA.

When Idaho Copper submitted its Plan of Operation for the 2023 CuMo Exploration Project, neither it nor the Forest Service conducted surveys for Sacajawea’s bitterroot or gathered any other new baseline information on the plant and its habitat at the Project site. *See* SOF ¶¶ 27–29. In public comments, Plaintiffs repeatedly urged the Forest Service to conduct up-to-date, comprehensive surveys, including during the scoping (AR-4731, 4740), comment (AR-4836, 4849–50), and objection periods (AR-5641–42). Instead, the Forest Service decided to rely on limited surveys conducted in 2017 for the prior iteration of the Project, plus habitat modeling from 2016, noting those were the most recent and complete surveys at the site. SOF ¶ 28.

But by the time the Project was approved in March 2025, those plant surveys were nearly 8 years old. Additionally, there are areas of the Project site that the Forest Service has determined qualify as potential Sacajawea’s bitterroot habitat but which have still never been surveyed,

⁵ BTGU01 states in full: “For site/project-scale analysis, suitable habitat should be determined for Sensitive species within or near the project area. Conduct surveys for those species with suitable habitat to determine presence. Document the rationale for not conducting surveys for other species in the project record.” AR-2163.

including areas where Idaho Copper has proposed new roads. *See* AR-520 (noting “potential habitat that has yet to be surveyed”), 527 (map showing modeled habitat reproduced as Figure 2 above); AR-886 (map of surveys reproduced as Figure 3 above).

Responding to Plaintiffs’ objections, the Deputy Regional Forester expressly instructed the Forest Service that it must: “Provide rationale in [the] Decision Notice why reliance on 2017 survey data is appropriate for Sacajawea’s bitterroot.” AR-5695. Instead of providing the required evidentiary support, the agency merely added to the DN/FONSI: “For Sacajawea’s bitterroot, baseline surveys collected in 2017 and supplemented by botanical clearance surveys in 2021 and 2022 represent the most recent dataset available and is appropriate when considering the life history of the species and lack of substantial change from stochastic events or project work in the time since the surveys (EA Section 3.2 and Botanical Resources and Non-native Plants Resource Report).” AR-1888. This self-serving rationale suffers two flaws.

First, it misleadingly suggests that the 2021 and 2022 surveys are more significant than they really are. In truth, those surveys covered a tiny fraction of the Project site. *See* SOF ¶ 28. *See also* Figure 2 above (map of surveys). The Botanical Resources and Non-native Plants Biological Evaluation and Technical Report (the “Botanical Report”) that the Forest Service prepared for the Project makes clear that “[t]he 2017 baseline data sets are the most recent and complete population datasets available that reflect existing conditions.” AR-484.⁶

Second, the rationale that the Forest Service added to the DN/FONSI—that the 2017 surveys are sufficient due to a lack of substantial change from new events or project work since then—is wrong. In 2014 and 2016, fires and fire-line construction occurred in occupied

⁶ The record also includes a 2022 field report from a Forest Service ecologist. SOF ¶ 31. That report provides only very limited new information and in no way constitutes new surveys that could update or replace the 2017 surveys. *Id.*

Sacajawea’s bitterroot habitat at the Project site. SOF ¶¶ 8, 10. The 2017 surveys provide just a limited, initial snapshot of the aftermath of those significant events that do not account for changes from the fire and firefighting that can unfold over years, as well as weed spread and climate change effects over the last 8 years.

Notably, the Botanical Report admits that there is “lag time between an action and a biological response.” AR-481. “For example, the emergence of non-native plant individuals may occur several years following an action that introduce non-native plant seeds or propagules to a location. A location may experience several growing seasons before the seeds or plan propagules experience the right environmental conditions for germination and establishment.” *Id.* Thus, for the purposes of considering the Project’s effects to Sacajawea’s bitterroot, the Forest Service considered the 4 to 6 years when the Project is underway *plus 5 years* after operations cease. AR-480–81. Yet when it came to the effects of fire and fire-line construction, the agency ignored any lag time in biological response and simply relied on the post-fire snapshot from the 2017.

“An agency’s action is arbitrary and capricious if the agency fails to consider an important aspect of the problem, [or] if the agency offers an explanation for the decision that is contrary to the evidence.” *Lands Council*, 395 F.3d at 1026 (9th Cir. 2005). In *ICL I*, this Court held that by failing to “address the issue regarding the impact the drilling itself will have on the hydrology of the groundwater . . . [t]he Forest Service failed to adequately consider this important aspect of the Project and its impact on the environment and/or articulate a satisfactory explanation for its decision.” 2012 WL 3758161 at *14. And in *ICL II*, this Court held that “the Forest Service has failed to consider an important aspect of the problem with regard to the changed circumstances for [Sacajawea’s bitterroot] as a result of the 2014 Grimes Fire and fire suppression activities.” 2016 WL 33814021 at *15.

Here too, by admitting that the lag time in biological response is important for considering the effects of Project activities on Sacajawea's bitterroot, yet ignoring this lag time when it comes to effects from the fires and fire-line construction, the Forest Service failed to consider an important aspect of the problem and failed to offer a satisfactory explanation for relying on the 2017 surveys. And again, compounding to this failure to comply with BTGU01, there are still areas of the Project site which Forest Service modeling identifies as potential Sacajawea's bitterroot habitat that have *never* been surveyed, including areas where Idaho Copper has proposed building roads and drilling.

D. The Project Is Not Consistent with Standard BTST01's Sacajawea's Bitterroot Habitat Protections

Forest Plan standard "BTST01" requires: "Management actions that occur within occupied sensitive plant species habitat must incorporate measures to ensure habitat is maintained where it is in desired conditions, or restored where degraded." AR-2162. The Forest Service failed to demonstrate the Project is consistent with this binding standard.

First, the Forest Service never identified which areas of occupied Sacajawea's bitterroot habitat at the Project site currently meet "desired conditions" versus which are "degraded." The Grimes and Pioneer fires burned, fire-fighting activities occurred, and past mineral exploration drilling and road work were conducted within occupied Sacajawea's bitterroot. SOF ¶¶ 7–10; *see also* Figure 2 (showing existing mining roads). These activities could mean that some areas meet desired conditions, and other areas may be degraded. But nothing in the Botanical Report (or the EA or DN/FONSI) considers which areas are in desired conditions versus which are degraded.

While the Botanical Report lists BTST01 as an applicable Forest Plan standard (AR-545), it never mentions BTST01 again and never addresses or engages with that standard. Nothing in the record shows the Forest Service ever considered which areas of occupied habitat meet

desired conditions, and which are degraded, as required to comply with BTST01. By failing to even take the step of identifying which habitat is in desired conditions and which is degraded, there is no way for the Court to “determine from the record that the agency is complying with the forest plan standard” in violation of NFMA. *See Native Ecosystems Council*, 418 F.3d at 962.

Moreover, instead of maintaining or restoring those habitats, as required by BTST01, the Forest Service authorized reopening existing roads, plus constructing new roads and drill pads, and other exploration activities which will degrade Sacajawea’s bitterroot habitat. *See* SOF ¶¶ 22–24. The Botanical Report admits the Project’s direct adverse impacts to Sacajawea’s bitterroot from road and drill pad construction, maintenance, and reclamation are “high in probability and high in intensity,” and it estimates that without mitigation measures, the Project “may impact up to 1,059 individual or 7.7 percent of the population and up to 10 acres or 2.5 percent of modeled potential habitat that has yet to be surveyed.” AR-520. Even with Project mitigation measures, the Botanical Report expects a “direct loss of 135 individuals,” not to mention indirect and habitat impacts, and expects “moderate” impacts to Sacajawea’s bitterroot habitat. AR-539. These adverse effects neither maintain areas in desired condition nor restore areas in degraded condition as required for the Project to be consistent with BTST01.

II. NATIONAL ENVIRONMENTAL POLICY ACT VIOLATIONS

A. NEPA Background

NEPA, 42 U.S.C. §§ 4321–4370(h), requires federal agencies to take a “hard look” at the environmental consequences of their proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). NEPA directs agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning

alternative uses of available resources.” 42 U.S.C. § 4332(H). Agencies must “ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document.” *Id.* § 4332(D). Agencies must also “make use of reliable data and resources,” *id.* § 4332(E), and “initiate and utilize ecological information in the planning and development of resource-oriented projects,” *id.* § 4332(K).

The purpose of NEPA “is to obviate the need for speculation by insuring that available data is gathered and analyzed prior to implementation of the proposed action.” *LaFlamme v. FERC*, 852 F.2d 389, 400 (9th Cir. 1988). In an EA, the Forest Service must take a “hard look” and disclose to the public that it “has adequately considered and elaborated the possible consequences of the proposed agency action.” *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 872 (9th Cir. 2022). The establishment of the baseline conditions is a fundamental requirement of the NEPA process, because an inadequate environmental baseline precludes an accurate assessment of an action’s environmental impacts. *N. Plains Resource Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011).

The Supreme Court recently clarified the highly deferential standard of review that applies in NEPA cases in *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 181 (2025). But “*Seven County* does not grant an agency discretion to forgo NEPA requirements, nor does it displace arbitrary and capricious review.” *Oregon Wild v. U.S. Forest Serv.*, No. 1:22-cv-01007-MC, 2026 WL 96908, *10 (D. Oregon, Jan. 13, 2026) (citing *Seven County*, 605 U.S. at 181–83). The *Oregon Wild* court held it was still bound to follow binding Ninth Circuit NEPA precedent that was not abrogated by *Seven County*. See also *Center for Biological Diversity*, 2025 WL 3549515 at *4 (applying *Seven County* and finding NEPA violation where “lack of specific road mapping prevent[ed] . . . informed decisionmaking”).

B. Failure to Take a Hard Look in Violation of NEPA

The DN/FONSI and EA fail to take the required “hard look” at the Project’s adverse impacts on Sacajawea’s bitterroot, rendering them inadequate under NEPA. The record shows the Project threatens significant impacts to this rare plant. Fewer than 40,000 plants are estimated to exist in 42 locations across the species’ entire range, with nearly 14,000 plants at the Project site. SOF ¶ 21. Prior to considering mitigation measures, the Botanical Report concluded that a limited set of direct Project impacts—those overlapping where existing roadbeds overlap existing Sacajawea’s bitterroot survey data—was alone poised to directly harm approximately 3 to 4.5% of the *entire species*. AR540. This did not even account for indirect and other direct effects. *Id.*

As explained above, survey data documenting Sacajawea’s bitterroot in the area are limited and dated. SOF ¶¶ 27–29. The information available indicates that Sacajawea’s bitterroot is in a precarious and uncertain state—with low occurrence, isolation, and lack of redundancy putting the species’ resilience at risk. SOF ¶ 26. “Research has yet to determine a threshold number of [lost or impacted] individuals the occurrence may withstand before eroding its ability to recover.” AR532.

Given such major implications for a rare, sensitive, and not-well-understood species, the Forest Service should have recognized the likelihood of significant environmental effects and undertaken the work of preparing an adequate EA. The agency did not do that here. Instead, it concluded in its EA and DN/FONSI that there would be no significant environmental impact. Yet when it discusses the “context” of the Project, discusses the “intensity” of its impacts, and offers its conclusion that there will be no significant impacts in the DN/FONSI, the Forest Service does not even mention Sacajawea’s bitterroot. *See* AR-1881–84. For this reason, and for the reasons below, the Forest Service acted arbitrarily and capriciously, failed to take a hard look, and violated NEPA and the APA.

1. Inadequate Sacajawea’s Bitterroot Baseline

The Forest Service’s decision to rely on the 2017 Sacajawea’s bitterroot surveys not only violates NFMA (*see above*); it also violates NEPA. Baseline conditions are necessary to “determine what effect the project will have on the environment” and thus to comply with NEPA. *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016). “Without accurate baseline data before the Project begins, it is impossible to know whether and to what extent the Project’s activities will impact [Sacajawea’s bitterroot] even with the proposed design features, monitoring, and mitigation features.” *ICL II*, 2016 WL 3814021 at *11. The 2017 surveys are outdated—as they fail to account for the lag time in biological response from effects from the 2014 and 2016 fires and firefighting activities, plus effects from climate change and invasive weeds that could have occurred over the last 8 years—and the surveys conducted so far do not cover all Sacajawea’s bitterroot habitat modeled at the site. *See* SOF ¶¶ 27–29, 31. Each of these failures violate NEPA.

The Ninth Circuit has overturned agency decisions that rely on stale data and, thus, lack an adequate baseline. *N. Plains Res. Council*, 668 F.3d at 1085–86; *Lands Council*, 395 F.3d at 1031; *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 704–05 (9th Cir. 1993). In *Lands Council*, for example, six-year-old fish survey data without updated fish habitat surveys was too stale. 395 F.3d at 1031. Similarly here, habitat was modeled in 2016, and the most comprehensive plant surveys were conducted in 2017—making them nearly 8 years old when the Project was approved. *See* AR-483. Neither plant nor plant habitat surveys for Sacajawea’s bitterroot have been updated since then. *See* AR-483–85. Like in *Lands Council*, this data is stale and violates NEPA.

This is particularly concerning since given the unique significance of the Project site to Sacajawea’s bitterroot, and the fact that some areas have still never been surveyed. As the Ninth Circuit explained in *Oregon Natural Desert Association n v. Jewell*, 840 F.3d 562 (9th Cir. 2016),

the agency has “a duty to assess, in some reasonable way, the actual baseline conditions” at the relevant part of the project site. *Id.* at 569. There, the Court held that an agency’s NEPA analysis rested on “inaccurate data” which “rendered its assumption concerning the winter presence of sage grouse at the [relevant part of the project] site arbitrary and capricious.” *Id.* at 570. “Baseline conditions were particularly important here because impacts to sage grouse were by far the most significant concern during environmental review. . . .” *Id.* at 569.

Sacajawea’s bitterroot baseline conditions were among the most significant concerns during environmental review here, given this Court’s 2016 remand and the site’s unique significance as home to up to half the population of this rare species. Failing to survey some areas of potential habitat, and resting on stale 2017 surveys for other areas, fails to establish an adequate baseline, is arbitrary and capricious, and violates NEPA’s hard look mandate.

2. The Forest Service’s Analysis of Effects to Sacajawea’s Bitterroot Is Based on Misrepresentations and Unsupported Assumptions

The DN/FONSI concluded that effects to Sacajawea’s bitterroot would *not* be significant by erroneously stating “mitigation measures . . . would reduce direct and indirect effects to <1% of the population and reduce the overall impact to <1% of the species.” AR-1888. That statement mistranslates the agency’s underlying findings, which come from the Botanical Report. *See* SOF ¶¶ 33–34. When the Botanical Report predicted a loss of “135 individuals or less than 1 percent of the occurrence,” it was addressing only a subset of the likely impacts (“proposed activities with sufficient information to quantitatively assess direct impacts”) and was only addressing the “direct loss” of individual plants (not habitat effects). AR531. Yet the DN/FONSI used these values to misleadingly downplay *all direct and indirect* effects the Project will have on the species.

This is “contrary to the evidence” before the agency and thus must be held unlawful under the APA. *Lands Council*, 395 F.3d at 1026. “An agency fails to meet its ‘hard look’ obligation

[under NEPA] when it relies on incorrect assumptions or data.” *Native Ecosystems Council v. Marten*, 883 F.3d 783, 795 (9th Cir. 2018) (internal quotation, citation, and alteration omitted). “[T]he data the Forest Service provides to the public to substantiate its analysis and conclusions must . . . be accurate.” *Id.* (quotation omitted).

The Forest Service’s error only compounds when considering the “135 individuals” claim upon which the sub-1% conclusion rested. *See* AR531. This numerical figure was itself an arbitrary and unsupported conjecture whose bases is nowhere to be found. For impacts it had data to quantify, the Botanical Report first determined that the Project, without mitigation measures, “may impact up to 1,059 individuals or 7.7 percent of the population and up to 10 acres or 2.5 percent of modeled potential habitat that has yet to be surveyed.” AR-520.

Next, the Botanical Report walked through a qualitative discussion of mitigation measures, describing their potential effectiveness and then speculating qualitatively that they would reduce impacts. AR520–29. For example, regarding mitigation measures on heavy equipment operations, the Report notes they “may reduce the probability and intensity of impacts.” AR525. For a few mitigation measures, like for surveying and plant avoidance, the Report surmises “high” effectiveness. *Id.* at 526, 528. But for numerous others, such as those regarding weeds and dust abatement, the Report claims only “moderate to high” effectiveness. AR529. For measures regarding drill site placement in occupied habitat or road or drill site construction in a habitat buffer zone, the Report concludes that the measures only “communicate[] intent” and thus would have “low to moderate” or “moderate” effectiveness. AR528. Ultimately, the Report concludes that the mitigation measures “as a whole would reduce the impacts experienced by the individuals residing outside the roadbeds and road cuts,” and “reduce impacts to Sacajawea’s bitterroot and pollinator habitats to moderate in probability and moderate in intensity.” AR530, 531.

After making these vague, equivocal, qualitative determinations about the effectiveness of Project mitigation measures, the Botanical Report then leaps to the quantitative conclusion that mitigation measures will reduce direct impacts to “no more than the direct loss of 135 individuals or less than 1 percent of the population.” AR530. Yet nothing in the Report explains how that 135 figure was derived. Nowhere in the Botanical Report or EA does the Forest Service explain how its qualitative assessment of Project mitigation measures will achieve such a specific reduction in the number of plants directly harmed.

This lack of a reasoned explanation does not comply with the APA’s requirement that actions be “reasonable and reasonably explained.” *Seven County*, 605 U.S. at 180. Although agencies are afforded some deference in their analyses under NEPA, they cannot rely on “bare assertions” of expertise when the record lacks “the evidence the agency stated it relied upon in reaching its decisions.” *Oregon Wild*, 2026 WL 96908 at *9.

Here, the Forest Service plainly failed this test. Indeed, it failed to demonstrate *any* sufficient data upon which the numeric figures about mitigation could be derived. Those numbers, and the agency’s use of them in the DN/FONSI and EA are the type of “conclusory statements, based on vague and uncertain analysis, . . . [that] are insufficient to satisfy NEPA’s requirements.” *See also Bark v. U.S. Forest Serv.*, 958 F.3d 865, 872 (9th Cir. 2020) (cleaned up). Other courts have faulted agencies for failing “to provide a rational connection between the general mitigation commitments outlined and the specific resolution of any and all significant impacts that may result.” *New Jersey v. U.S. Dep’t of Transp.*, 761 F. Supp. 3d 729, 761–62 (D.N.J. 2024).

In summary, the Botanical Report’s assessment of Sacajawea’s bitterroot lacks any rational explanatory basis for transforming its vague and general assumptions about mitigation into a firm quantitative conclusion that Project would cause the loss of 135 individuals and less than 1% of the

population. Moreover, that quantitative conclusion is limited to only direct losses to individual plants for which the Forest Service had quantifiable information. It does not include indirect impacts. Nor does it include direct impacts for which the agency lacked sufficient information for quantification. Nor does it include habitat effects. Yet, in the EA and DN/FONSI, the Forest Service inaccurately and misleadingly presented those numbers as accounting for all impacts to the species. This is not “the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document” that NEPA demands. 42 U.S.C. § 4332(D)

III. THE FOREST SERVICE’S FAILURES VIOLATE ITS ORGANIC ACT

The Forest Service’s failure to properly analyze and protect against impacts to critical forest resources like RCAs and Sacajawea’s bitterroot violates its duty to protect these resources under the Organic Act. While mining claimants have a “right to enter” public lands, the Forest Service has broad authority to protect public lands, as “Congress has subjected that right to environmental regulation.” *Karuk Tribe v. U.S. Forest Service*, 681 F.3d 1006, 1023 (9th Cir. 2012) (en banc) (quoting Forest Service Organic Act, 16 U.S.C. § 478). “[T]he Forest Service acknowledged that it has ‘broad discretion to regulate the manner in which mining activities are conducted on national forest lands.’” *Id.* at 1025 (cleaned up).

The Organic Act provides that national forests be “established and administered” to “improve and protect the forest within the[ir] boundaries.” 16 U.S.C. § 475. For all forest uses, including mining, the Act also requires the Forest Service to “make provisions for the protection against destruction by fire and depredations upon the public forests and national forests” and authorizes the Forest Service to “make such rules and regulations” regarding “occupancy and use” as may be necessary “to preserve the forests thereon from destruction.” *Id.* § 551.

Implementing these directives, the Forest Service’s Part 228 regulations require that mining operations “be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources.” 36 C.F.R. § 228.8. They also require the mine operator to “take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.” *Id.* § 228.8(e). The Forest Service ensures these requirements are met by “impos[ing] additional habitat protection conditions” or making other “changes” or “additions” to a mining company’s plan of operations. *Id.* § 228.5(a)(3); *see Karuk Tribe*, 681 F.3d at 1025.

Although the agency may not categorically prohibit the company from conducting operations, it has substantial authority to impose mitigation conditions, and is not beholden to a company’s assertions of financial harm. “Virtually all forms of Forest Service regulation of mining . . . will result in increased operating costs.” *Clouser v. Espy*, 42 F.3d 1522, 1530 (9th Cir. 1994) (affirming Forest Service’s authority under the Organic Act to limit motorized access to mining claims even though it would “materially affect[] the commercial viability” of the claims). The standard is reasonableness and feasibility, requiring the agency to impose reasonable mitigation measures that minimize environmental harm. 36 C.F.R. §§ 228.8, 228.8(e). *See, e.g., Rock Creek All. v. U.S. Forest Serv.*, 703 F. Supp. 2d 1152, 1164, 1170 (D. Mont. 2010) (mine approval violated Organic Act and Part 228 regulations by failing to protect water quality and fisheries); *Save Our Cabinets v. U.S. Dep’t of Agric.*, 254 F. Supp. 3d 1241, 1252–55, 1258 (D. Mont. 2017) (same). “This court does not believe the law supports the Forest Service’s concession of authority to miners under the General Mining Act in derogation of environmental laws and regulations.” *Hells Canyon Preservation Council v. Haines*, 2006 WL 2252554, *6 (D. Oregon Aug. 4, 2006) (agency approval of mining operations violated Organic Act restrictions).

It is reasonable and feasible for the Forest Service to use up-to-date Sacajawea’s bitterroot surveys before approving the Project, to determine which areas of habitat meet desired conditions and which are degraded, and to candidly present the potential impacts to the species in the DN/FONSI and EA. It is also reasonable and feasible for the agency to review Idaho Copper’s proposed roads, to consider whether there are alternatives to each proposed RCA incursion, and for any where there is no alternative, to decide how to keep those RCA road miles to the minimum necessary. The Forest Service did none of these things here, in violation of its Organic Act duties.

IV. THE ACTION SHOULD BE HELD UNLAWFUL AND SET ASIDE

Under the APA, “[t]he reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A) (emphasis added). “There is a presumption . . . in APA cases that the offending agency action should be set aside.” *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1094 (9th Cir. 2020).

Because of the APA violations above, the Court should hold unlawful and set aside (vacate) the Forest Service’s DN/FONSI and EA, like the Court did in *ICL I* and *ICL II*. *See also Save Our Cabinets v. U.S. Dep’t of Agric.*, No. CV-16-56-M-DWM, 2017 WL 2829681 (D. Mont. June 29, 2017) (vacating approval of mining operations due to NFMA violation); *Idaho Conservation League v. U.S. Forest Serv.*, No. 1:18-CV-504-BLW, 2020 WL 2115436 (D. Idaho May 4, 2020) (vacating approval of mine exploration due to NEPA hard look violation).

CONCLUSION

For the reasons above, Plaintiffs respectfully request that the Court grant summary judgment to Plaintiffs; hold unlawful, set aside, and remand the Forest Service’s EA and DN/FONSI; and order the Forest Service to prepare an EIS.

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Respectfully submitted,

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