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1 PAUL A. TURCKE (applicant *pro hac vice*)
2 MOORE SMITH BUXTON & TURCKE
3 950 West Bannock Street, Suite 520
4 Boise, Idaho 83702
5 Telephone: (208) 331-1800
6 Facsimile: (208) 331-1202
7 pat@msbtlaw.com

DENNIS PORTER (Cal. Bar #67176)
Attorney at Law
8120 36th Avenue
Sacramento, CA 95824-2304
Telephone: (916) 381-8300
Facsimile: (916) 381-8726
dlporter2@yahoo.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NJV

CV 10 2047

10 DEL NORTE COUNTY, CALIFORNIA; DEL)
11 NORTE ROD AND GUN CLUB; LAKE EARL)
12 GRANGE; NORTH COAST CLIFFHANGERS 4)
13 WHEEL DRIVE CLUB; CALIFORNIA)
14 ASSOCIATION OF 4 WHEEL DRIVE CLUBS;)
15 BLUE RIBBON COALITION;)

Case No. CV 10-_____

COMPLAINT

14 Plaintiffs,

15 v.

16 UNITED STATES FOREST SERVICE; an agency of)
17 the United States Department of Agriculture; SIX)
18 RIVERS NATIONAL FOREST; TYRONE)
19 KELLEY, Forest Supervisor, Six Rivers National)
20 Forest; MARY KAY VANDIVER, District Ranger,)
21 Gasquet Ranger District/Smith River National)
22 Recreation Area;)

21 Defendants.

NATURE OF ACTION

23 1. This action seeks declaratory and injunctive relief requiring Defendants United
24 States Forest Service, Six Rivers National Forest, Tyrone Kelley and Mary Kay Vandiver (the
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ORIGINAL

1 “Forest Service”) to acknowledge and adhere to controlling law while managing the Six Rivers
2 National Forest.

3 2. Plaintiffs specifically challenge the Forest’s recent and ongoing actions, under the
4 guise of “road maintenance”, which have utilized heavy equipment to intentionally conduct
5 ground-disturbing removal of culverts, installation of berms, “water bars and rolling dips” and
6 decommissioning of road surfaces. These activities have been performed without any notice to
7 or opportunity for comment by the public, without consultation with associated agencies
8 concerning water quality or other possible impacts, and without meaningful internal analysis of
9 such possible impacts.
10

11 3. An example of the challenged conduct includes actions taken in late 2009 along
12 Forest Road 17N92, which is in the Smith River watershed. A contractor acting under the
13 control and supervision of the Forest performed ground-disturbing activities which coincided
14 with seasonal precipitation events to cause erosion and deposition of sediment-laden runoff to the
15 watershed. These activities occurred in the absence of legally-required analysis of potential
16 environmental impacts connected to such actions.
17

18 4. Plaintiffs additionally challenge the formal process, or lack thereof, by which the
19 Forest recently designated roads, trails and areas for motorized use through publication of a
20 Motor Vehicle Use Map (“MVUM”). Contrary to applicable law and regulation, as well as
21 established practice throughout the National Forest System, the MVUM was published without
22 opportunity for public review, comment, administrative appeal, or other meaningful public
23 involvement.
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1 contractual, recreational/aesthetic and other interests. The County acts by and through its duly-
2 convened Board of Supervisors, who have attempted, in accordance with applicable law and
3 regulation, to work collaboratively and cooperatively with the Forest regarding matters addressed
4 within and beyond this Complaint.

5
6 9. Plaintiff Del Norte Rod and Gun Club (“RG Club”) is a California unincorporated
7 nonprofit association comprised of approximately 110 members. RG Club members are
8 connected not through their interest in any particular activity or sociopolitical attribute, but
9 through their common interest in outdoor sporting activities in the Forest, specifically including
10 Del Norte County, California and the Smith River corridor within the Forest. RG Club members
11 have enjoyed, and hope for themselves and future generations to enjoy, a variety of recreational,
12 aesthetic, and commercial activities within the Forest. These activities include sightseeing,
13 hunting, fishing, camping, wildlife and plant viewing, photography, and travel associated with
14 and necessary to such activities via motorized vehicles, horseback and on foot.

15
16 10. Plaintiff Lake Earl Grange (“LEG”) is a California unincorporated nonprofit
17 association with approximately 150 members. LEG members access the Forest using both
18 motorized and non-motorized means of transportation in pursuit of various outdoor recreational
19 activities including equestrian use, hunting, fishing, wood gathering driving for pleasure,
20 camping, nature viewing and similar pursuits. LEG members have enjoyed in the past, and have
21 concrete plans to enjoy in the future, such activities along or within areas accessible via the
22 routes addressed herein.

23
24 11. Plaintiff North Coast Cliffhangers 4 Wheel Drive Club (“Cliffhangers”) is a
25 California unincorporated nonprofit association with approximately 25 members. Cliffhangers is
26

1 a member club in good standing of the California Association of 4 Wheel Drive Clubs.
2 Cliffhangers members access the Forest using both motorized and non-motorized means of
3 transportation in pursuit of various outdoor recreational activities including equestrian use,
4 hunting, fishing, wood gathering driving for pleasure, camping, nature viewing and similar
5 pursuits. Cliffhangers members have enjoyed in the past, and have concrete plans to enjoy in the
6 future, such activities along or within areas accessible via the routes addressed herein.
7

8 12. Plaintiff California Association of 4 Wheel Drive Clubs (“Cal4”) is a California
9 mutual benefit corporation representing over 8,000 members and 160 clubs in the State of
10 California. Cal4 members use motorized means to access and enjoy lands managed by the Forest
11 Service throughout California. In particular, Cal4 members share a common interest in owning,
12 maintaining, and operating customized 4-wheel drive vehicles such as Jeeps and Broncos on dirt
13 roads and trails. Such vehicular access also facilitates Cal4 members’ various outdoor activities,
14 such as picnicking, camping, sightseeing, wildlife and nature study, hunting and fishing, and
15 similar activities. Many Cal4 members, due to age, physical condition, or other factors, would be
16 unable to enjoy meaningful participation in their chosen activities without vehicular access to
17 lands managed by the Forest Service. As an organization, Cal4 is dedicated to the protection of
18 the values and natural resources in the Six Rivers and other National Forests and regularly works
19 with land managers to provide recreation opportunities, preserve natural resources, and promote
20 cooperation between public land visitors.
21

22 13. Plaintiff Blue Ribbon Coalition, Inc. (“BlueRibbon”) is an Idaho nonprofit
23 corporation representing over 10,000 individual members and 1,200 businesses and organizations
24 with approximately 600,000 members nationwide. BlueRibbon members use motorized and
25
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1 nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to
2 access Forest Service and other public lands throughout the United States, including such lands
3 in California. BlueRibbon has a long-standing interest in the protection of the values and natural
4 resources addressed herein, and regularly works with land managers to provide recreation
5 opportunities, preserve resources, and promote cooperation between public land visitors.
6 BlueRibbon members have visited the Forest via the above-described means of access and intend
7 to do so in the future.
8

9 14. Defendant United States Forest Service is a federal agency within the United
10 States Department of Agriculture. The Forest Service is charged with administering and
11 overseeing United States Forest System lands in accordance with applicable law.
12

13 15. Defendant Six Rivers National Forest is a subunit of the United States Forest
14 Service comprised of approximately 957,590 National Forest acres and 133,410 acres of other
15 ownership in California. The Forest's main office is located in Eureka.

16 16. Defendant Tyrone Kelley is the Forest Supervisor for the Six Rivers National
17 Forest. As his title implies, he is the supervisor for the Forest and is the ultimate authority for the
18 actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies
19 with applicable law. He is sued solely in his official capacity.

20 17. Defendant Mary Kay Vandiver is the District Ranger of the Gasquet Ranger
21 District, Smith River Recreation Area. She retains ultimate authority and is charged with
22 ensuring compliance with applicable law for actions taken within her Ranger District. She is
23 sued solely in her official capacity.
24

25 LEGAL FRAMEWORK

1 18. The APA addresses and regulates the function of executive branch administrative
2 agencies within our system of open government. Among such functions, the APA represents a
3 waiver of sovereign immunity by the United States and outlines the circumstances in which
4 “final agency action” may be subject to judicial review, as well as the standards of review to be
5 applied in such challenges. Since many statutes and regulations do not provide for a private right
6 of action, the APA provides the jurisdictional basis for judicial review of administrative
7 decisions by federal land management agencies applying statutes like NEPA and NFMA to
8 public lands like the Forest.

10 19. NEPA represents “our basic national charter for protection of the environment.”
11 40 C.F.R. § 1500.1. NEPA’s protections of the “environment” refer to the “human
12 environment” which “shall be interpreted comprehensively to include the natural and physical
13 environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14.
14 Among its numerous purposes, NEPA procedures are designed to foster informed agency
15 decisionmaking based upon informed public participation.

17 20. NFMA establishes the statutory framework for management of the National Forest
18 System. In NFMA and other statutes, “Congress has consistently acknowledged that the Forest
19 Service must balance competing demands in managing National Forest System lands. Indeed,
20 since Congress’ early regulation of the national forests, it has never been the case that “the
21 national forests were...to be ‘set aside for non-use.’” *The Lands Council v. McNair*, 537 F.3d
22 981, 990 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated
23 expressly within NFMA, is offered in the Multiple-Use Sustained Yield Act (“MUSYA”), which
24 provides that the various surface resources be managed “so that they are utilized in the
25

1 combination that will best meet the needs of the American people” and to “achieve[] and
2 maintain[] in perpetuity [] a high-level annual or regular periodic output of the various
3 renewable resources of the national forests without impairment of the productivity of the land.”
4 16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”); 16
5 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

6
7 21. NFMA procedurally requires the Forest to prepare and revise a “forest plan.” 16
8 U.S.C. § 1604. A forest plan lays out broad guidelines to advance numerous goals and
9 objectives, including to “insure consideration of the economic and environmental aspects of
10 various systems of renewable resource management, including the related systems of silviculture
11 and protection of forest resource, to provide for outdoor recreation (including wilderness), range,
12 timber, watershed, wildlife, and fish....” *Id.* at (g)(3)(A). These plans contain desired
13 conditions, objectives and guidance for project and activity decisionmaking, but do not approve
14 or execute projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is
15 subject to change through plan amendment in site-specific or project-level planning, or through
16 revision of the Forest Plan itself. 36 C.F.R. § 219.12 (2007). Additional guidance and criteria
17 are presented in activity-specific rules, such as the Travel Management Rule provides for
18 motorized access to the Forest System.

19
20 22. On November 9, 2005, the Forest Service published in the Federal Register a
21 Final Rule entitled “Travel Management; Designated Routes and Areas for Motor Vehicle Use.”
22 70 Fed.Reg. 68264-68291 (Nov. 9, 2005) (the “Travel Management Rule”). The Travel
23 Management Rule was issued following publication of, and receipt of public comment upon, a
24 proposed rule and was otherwise promulgated in accordance with notice-and-comment
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1 rulemaking procedures of the APA. As such, the Travel Management Rule carries force and
2 effect of law and the procedures and provisions therein are binding upon the Forest Service.

3 23. The Travel Management Rule generally “requires designation of those roads,
4 trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles
5 off the designated system, as well as use of motor vehicles on routes and in areas that is not
6 consistent with the designations.” 70 Fed.Reg. 68264 (Nov. 9, 2005).

7
8 24. The tangible outcome of the planning process required by the Travel Management
9 Rule is publication of a Motor Vehicle Use Map (“MVUM”) which is “[a] map reflecting
10 designated roads, trails and areas on an administrative unit or a Ranger District of the National
11 Forest System.” *Id.* at 68288; 36 C.F.R. § 212.1 (2006).

12 25. The Travel Management Rule requires the agency to apply “general criteria” when
13 designating roads, trails and areas for vehicle use, which include effects on natural and cultural
14 resources, public safety, provision of recreational opportunities, access needs, conflicts among
15 uses of National Forest System lands, the need for maintenance and administration of roads,
16 trails and areas, and the availability of resources for maintenance and administration. 36 C.F.R.
17 § 212.55(a) (2006). The Travel Management Rule further includes “specific criteria” which must
18 be considered, “with the objective of minimizing” effects on specified resources including soils,
19 watersheds, wildlife and associated habitats and conflicts between vehicle and other uses and
20 within vehicle use types. *Id.* at (b).

21
22 26. The Travel Management Rule further describes the process by which roads, trails
23 and areas will be designated, specifically noting that “[t]he public shall be allowed to participate
24 in the designation” process, and that [a]dvance notice shall be given for public comment,
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1 consistent with agency procedures under [NEPA], on proposed designations and revisions.” 36
2 C.F.R. § 212.52(a) (2006).

3 27. The Travel Management Rule does identify circumstances when public
4 involvement consistent with NEPA is not required, indicating “[p]ublic notice with no further
5 public involvement is sufficient if a National Forest or Ranger District has made previous
6 administrative decisions, under other authorities and including public involvement, which restrict
7 motor vehicle use over the entire National Forest or Ranger District to designated routes and
8 areas, and no change is proposed to these previous decisions and designations.” *Id.*

10 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

11 28. The Six Rivers National Forest lies in northern California and encompasses
12 portions of four California counties (Del Norte, Humboldt, Trinity, Siskiyou) in a long narrow
13 pattern of ownership stretching in a narrow 140-mile band from the Oregon border southward to
14 Mendocino County. The Forest includes grassy glades and extensive conifer stands, with
15 elevation ranges from sea level to nearly 7,000 feet. About 1,500 miles of permanent streams are
16 found on the Forest, supplying about 9% of California’s total runoff, and the major waterways
17 draining or passing through the Forest are the Smith, Klamath, Trinity, Mad, Van Duzen and Eel
18 Rivers.
19

20 29. The Forest has long included outstanding and diverse opportunities for both
21 motorized and nonmotorized recreation. The Six Rivers is best known for its valued timber,
22 dispersed recreation, and outstanding anadromous fishing. In particular, the Smith River
23 represents the largest single undammed Wild and Scenic River system in the United States and
24 provides habitat for Chinook and coho salmon, steelhead, and rainbow and cutthroat trout. The
25
26

1 largest steelhead on record in California (27 lbs. 4 oz.) was landed on the Smith, as was the
2 state's second-largest (86 lbs.) recorded Chinook salmon. These fisheries exist in part due to the
3 unique habitat offered by the Smith, including its water quality.

4 30. The road and trail network has long been a foundation of human visitation and
5 livelihood on the Forest. This network has included roughly 2,500 miles of roads and 250 miles
6 of trails, serving varied needs over time created by or associated with 1930s Civilian
7 Conservation Corps projects, historic and modern-day mining and logging, nationally-renowned
8 redwood forests, other unique recreational destinations and features.

9 31. The road and trail network has been addressed through various planning efforts by
10 the Forest. For example, "recreation" is generally addressed in the 1995 Land and Resource
11 Management Plan (or "Forest Plan"), which states:
12

13 Developed recreation opportunities will be adequate to meet project demand.
14 Approximately 50 percent of developed sites will be rehabilitated during the first
15 decade to respond to changing user needs and accessibility requirements. Major
16 facility construction will occur within the Smith River National Recreation Area
17 according to the Smith River National Recreation Area Management Plan; minor
18 site construction will occur elsewhere. Trails will be maintained on the average of
19 every three years and expand to include management for equestrian and mountain
20 bike use. About 16 miles of trail will be constructed or reconstructed during the
21 first decade. Staging areas with facilities to accommodate OHV use will be
22 constructed during the first decade.

23 Record of Decision at ROD-4 & 5; 1995 Six Rivers LRMP.

24 32. As is common throughout the National Forest System, "visitor use maps" were
25 created and widely distributed to the public, generally depicting the roads and trails available for
26 travel as well as seasonal or other restrictions on specific routes/areas.

1 33. Notwithstanding the foregoing, a route/area status as “open”, “closed” or
2 “restricted” on the Forest’s “visitor use maps” may or may not accurately reflect the outcome of a
3 formal administrative decision.

4 34. Neither the Forest nor any entire Ranger District has ever formally designated
5 roads, trails and areas for motorized (or other) access through a process involving advance notice
6 and opportunity for public involvement and administrative appeal consistent with the NEPA.
7

8 35. Subsequent to promulgation of the Travel Management Rule the Forest evaluated
9 how to generate an initial MVUM. The Forest did not conduct a formal planning process
10 including public notice and involvement.

11 36. In September, 2009, the Forest published an MVUM.

12 37. The route/area designations on the September 2009 MVUM did not coincide with
13 those on the preceding “forest visitor map.” Nor did the September, 2009, MVUM designations
14 coincide with those on any map distributed by the Forest or otherwise made available to forest
15 visitors or the public.
16

17 38. According to media reports, the Forest intends to begin a collaborative process, as
18 well as analysis through an Environmental Assessment under NEPA, that will consider
19 modifications to the MVUM.

20 39. On information and belief, and in accordance with the Travel Management Rule,
21 the September 2009 MVUM will reflect the formal status of routes and areas on the Forest. As a
22 result, the MVUM will define and restrict public access to and within the Forest by motorized
23 vehicle type. Those determined by agency or law enforcement officers to be in violation of the
24 MVUM prescriptions will face criminal sanctions under applicable law and regulation.
25
26

1 40. Plaintiffs and their members reside near (or within) the Forest, and enjoy the
2 Forest in their livelihood as well as their recreational and aesthetic pursuits. Life in the area
3 offers challenges, which are largely outweighed by the natural beauty and relatively unspoiled
4 character of lands within and surrounding the Forest, and the relaxed pace of living still
5 meaningfully connected to the outstanding natural and physical environment.
6

7 41. In mid-December 2009, members of Plaintiff organizations were visiting the
8 Forest and noticed ground-disturbing activities underway, including what appeared to be removal
9 of culverts; recontouring of road surfaces; grading; building or reconfiguration of berms; and
10 related travel; all involving heavy equipment such as “caterpillar” tractors and large trucks.

11 42. The aforementioned activities were observed in several locations on the Forest,
12 specifically including along Forest Road 17N92. Forest Road 17N92 is not designated for
13 motorized travel under the MVUM and was in late 2009 (and is presently) physically obstructed
14 by a locked gate.
15

16 43. On approximately December 22, 2009, Plaintiff members were in the vicinity of
17 Forest Road 17N92, and observed numerous Forest Service vehicles at the locked gate and could
18 hear what sounded like heavy equipment operating in the vicinity of Road 17N92 beyond the
19 locked gate.

20 44. Plaintiff members revisited Road 17N92 on subsequent occasions and observed
21 ground-disturbing activities and modifications to the roadbed and surrounding terrain.
22 Coincident with seasonal rainfall common to the area, rivulets and small tributaries to the
23 adjacent streams previously protected through functioning culverts and erosion-control devices
24

1 were depositing much greater than normal volume of chocolate-brown water to the adjacent
2 waterways, which ultimately drain into the Smith River.

3 45. Upon observing the ground-disturbing activities on Road 17N92, Plaintiff
4 members contacted Forest and County officials. Following these reports, Forest personnel
5 appeared at public meeting before the Del Norte County Board of Supervisors on January 26,
6 2010. A presentation regarding various topics was presented to the Board of Supervisors, and
7 questions were raised by the Board and addressed by Forest personnel specifically addressing
8 Road 17N92. The proceedings of that meeting, including the entire Forest Service presentation,
9 were recorded with video/audio recording equipment. *See, e.g.*, proceedings of January 26, 2010,
10 meeting beginning at approximately 1 hour, 33 minutes into recording, accessible via Del Norte
11 County website at <http://www.dnco.org/agendas/bos/publishedmeetings.htm>.

12
13 46. At approximately the same time Plaintiff members performed research through
14 the Forest's website and other means and learned that the Forest had solicited bids for a project
15 entitled "Smith River NRA Storm Proofing" in August, 2009. A document entitled "Solicitation,
16 Offer and Award" is dated August 24, 2009 for Requisition #302010, AAP #05NP100940996.
17 The document is 69 pages long, and is hereinafter referred to as "the Contract."

18
19 47. The Contract states "[t]he intent for this contract is to secure services for
20 removing culverts on the Smith River National Recreation Area of Six Rivers National Forest.
21 Work consists of excavation and embankment, disposal of existing culverts, and the installation
22 of rolling dips and waterbars on approximately nine miles of roads." Contract at p. 4; Section C-
23 1.1 – Scope of Contract. The Contract further estimates the quantity of various "items" required
24 of the contractor, including "removal of culverts" (25 items); "drainage excavation, water bar"
25
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1 (28 items); “drainage excavation, rolling dip, Type 2” (4 items); and “roadway obliteration,
2 method 2” (1 item). Contract at p. 3; Section B-1 Schedule of Items. The estimate of price range
3 for the described services “is between \$100,000 and \$250,000.” Contract at p. 1.

4 48. The Forest did not perform analysis of the action(s) proposed by the Contract in
5 accordance with NEPA.

6 49. The Forest did not consult with the U.S. Fish and Wildlife Service in accordance
7 with the Endangered Species Act, or with state or federal agencies in accordance with state or
8 federal water quality statutes such as the Clean Water Act.

9 50. The Forest did not notify the public of the Contract or associated actions. The
10 public was not provided an opportunity to comment upon the Contract or associated actions. Nor
11 was the public provided an opportunity to administratively appeal or otherwise challenge
12 negotiation, letting or implementation of the Contract.

13 51. On information and belief, the Contract has not been fully implemented.

14
15 **COUNT ONE: VIOLATION OF NFMA; Travel Management Rule**
16 **(Adoption of MVUM)**

17 52. Plaintiffs hereby incorporate by reference each statement and allegation
18 previously made.

19 53. The MVUM was not adopted through a public planning process. Specifically, the
20 Forest did not, prior to publishing the MVUM, comply with the requirements of the Travel
21 Management Rule that “[a]dvance notice shall be given for public comment, consistent with
22 agency procedures under [NEPA], on proposed designations and revisions.” 36 C.F.R. §
23 212.52(a) (2006).
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1 54. Neither the Forest nor any of its Ranger Districts has made previous
2 administrative decisions, under other authorities and including public involvement, which restrict
3 motor vehicle use over the entire National Forest or Ranger District to designated routes and
4 areas, and no change is proposed to these previous decisions and designations. *See, id.*

5
6 55. Defendants' actions described above, to specifically include adopting and
7 publishing the MVUM, are made reviewable through the APA and are arbitrary, capricious, or
8 otherwise not in accordance with law; contrary to constitutional right, power, privilege or
9 immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of
10 procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should
11 therefore be declared unlawful and set aside by this Court.

12
13 56. Plaintiffs have exhausted all administrative remedies required by law in order to
14 seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
15 have conducted no public process, and have offered no opportunity for administrative
16 participation, review, or "administrative remedies" to exhaust.

17
18 57. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
19 interests arising from and associated with their use and enjoyment of the Forest as a result of the
20 allegations contained in this claim for relief, and these injuries will go unredressed absent
21 judicial relief.

22 **COUNT TWO: VIOLATION OF NEPA**
23 **(Adoption of MVUM)**

24 58. Plaintiffs hereby incorporate by reference each statement and allegation
25 previously made.
26

1 59. NEPA generally requires that federal agencies disclose and consider alternatives
2 to proposals for action that may significantly affect the human environment. NEPA and related
3 procedures “must insure that environmental information is available to public officials and
4 citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1.
5

6 60. The route- and area-specific designations in the MVUM presented at least the
7 potential for significant effects to the human environment. Such effects might be associated with
8 decision to not only designate a route/area as “open” or “closed” to motorized travel, but also
9 whether to restrict such travel based upon site-specific resources, nature of use, seasonal factors,
10 or similar conditions.

11 61. The Forest did not conduct site-specific analysis under NEPA for the designations
12 formalized in the MVUM. Given the lack of public involvement, Plaintiffs are uncertain what, if
13 any, analysis preceded publication of the MVUM.
14

15 62. Plaintiffs and other members of the public are constrained by the prescriptions of
16 the MVUM. Thus, Plaintiffs, their members and citizens, are prohibited from visiting the Forest
17 in any manner contrary to the MVUM, regardless of whether they have previously done so and
18 regardless of whether such prior access was consistent with the applicable “forest visitor map” or
19 other Forest direction.
20

21 63. Plaintiffs, their members and citizens, face criminal sanctions if they are found to
22 be in violation of the provisions of the MVUM.

23 64. Defendants’ actions described above are made reviewable through the APA and
24 are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,
25 power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations;
26

1 without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C.
2 § 706(2), and should therefore be declared unlawful and set aside by this Court.

3 65. Plaintiffs have exhausted all administrative remedies required by law in order to
4 seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
5 have conducted no public process, and have offered no opportunity for administrative
6 participation, review, or "administrative remedies" to exhaust.

7
8 66. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
9 interests arising from and associated with their use and enjoyment of the Forest as a result of the
10 allegations contained in this claim for relief, and these injuries will go unredressed absent
11 judicial relief.

12
13 **COUNT THREE: VIOLATION OF NEPA**
14 **(Failure to Analyze)**

15 67. Plaintiffs hereby incorporate by reference each statement and allegation
16 previously made.

17 68. The actions described within and performed pursuant to the Contract presented at
18 least the potential for significant effects to the human environment.

19 69. In fact, due to poor timing, project design/specifications (or lack thereof),
20 contractor performance or other factors, the actions performed under the Contract caused erosion
21 and deposition of soil and sediment to tributaries of the Smith River.

22 70. The Forest did not conduct site-specific analysis under NEPA for the actions
23 outlined in and carried out under the Contract. The public was not provided an opportunity in
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1 accordance with NEPA or otherwise to review or comment upon the actions outlined in the
2 Contract.

3 71. Defendants' actions described above are made reviewable through the APA and
4 are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,
5 power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations;
6 without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C.
7 § 706(2), and should therefore be declared unlawful and set aside by this Court.
8

9 72. Plaintiffs have exhausted all administrative remedies required by law in order to
10 seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
11 have conducted no public process, and have offered no opportunity for administrative
12 participation, review, or "administrative remedies" to exhaust.
13

14 73. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
15 interests arising from and associated with their use and enjoyment of the Forest as a result of the
16 allegations contained in this claim for relief, and these injuries will go unredressed absent
17 judicial relief.

18 **COUNT FOUR: VIOLATION OF NEPA**
19 **(Taking Action Involving Potential Significant Effects)**

20 74. Plaintiffs hereby incorporate by reference each statement and allegation
21 previously made.

22 75. The actions taken under the Contract were performed within the direction and
23 control of the Forest.
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1 76. The actions taken under the Contract not only presented a potential for significant
2 effects to the human environment, but did in fact ultimately have such effects. Substantial
3 ground-disturbance occurred which altered the slope and other aspects of the affected road prism
4 and surrounding area. The location, timing and nature of culvert removal and associated
5 activities caused significant amounts of erosion, soil loss and/or sediment loading of tributaries
6 in the North Fork Smith River watershed.
7

8 77. These actions and resultant impacts represent violations of NEPA and other
9 applicable law.

10 78. Defendants' actions described above are made reviewable through the APA and
11 are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,
12 power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations;
13 without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C.
14 § 706 (2), and should therefore be declared unlawful and set aside by this Court.
15

16 79. Plaintiffs have exhausted all administrative remedies required by law in order to
17 seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
18 have conducted no public process, and have offered no opportunity for administrative
19 participation, review, or "administrative remedies" to exhaust.
20

21 80. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
22 interests arising from and associated with their use and enjoyment of the Forest as a result of the
23 allegations contained in this claim for relief, and these injuries will go unredressed absent
24 judicial relief.
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**COUNT FIVE: VIOLATION OF NFMA
(Violation of Forest Plan)**

1
2
3 81. Plaintiffs hereby incorporate by reference each statement and allegation
4 previously made.

5 82. A land and resource management plan, or “forest plan” must be designed for each
6 unit of the National Forest System and must “use a systematic interdisciplinary approach to
7 achieve integrated consideration of physical, biological, economic, and other sciences...” in
8 analyzing and allocating specific uses of the applicable forest. 16 U.S.C. § 1604(a).

9
10 83. Following adoption of a Forest Plan, subsequent agency action, including project-
11 level or other site-specific action, “must comply with NFMA and be consistent with the
12 governing forest plan.” *McNair*, 537 F.3d at 989.

13 84. Neither the MVUM nor the Contract are consistent with the Six Rivers Forest
14 Plan. In fact, the Forest has taken actions, through both the MVUM and the Contract, that are
15 not only not consistent with, but directly contradictory to, the Forest Plan.

16
17 85. Defendants’ actions described above are made reviewable through the APA and
18 are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,
19 power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations;
20 without observance of procedure required by law; short of statutory right; or otherwise in
21 violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside
22 by this Court.

23
24 86. Plaintiffs have exhausted all administrative remedies required by law in order to
25 seek relief from Defendants’ actions addressed in this claim for relief. In particular, Defendants
26

1 have conducted no public process, and have offered no opportunity for administrative
2 participation, review, or “administrative remedies” to exhaust.

3 87. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
4 interests arising from and associated with their use and enjoyment of the Forest as a result of the
5 allegations contained in this claim for relief, and these injuries will go unredressed absent
6 judicial relief.
7

8 **REQUEST FOR RELIEF**

9 Wherefore, having alleged the above-described violations of law, Plaintiffs respectfully
10 request judgment in their favor on each and every claim alleged herein, and request that the Court
11 rule, adjudge, and grant relief as follows:

12 1. Declare unlawful the above-described actions taken by the Forest through or in
13 conjunction with the Contract and/or MVUM;

14 2. Remand the matters addressed in the Contract and similar matters in other
15 portions of the Forest for further analysis and action in accordance with applicable law;

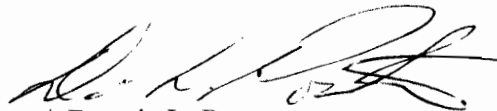
16 3. Issue appropriate preliminary and/or permanent injunctive relief as may be
17 requested by Plaintiffs or determined through appropriate proceedings;

18 4. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as
19 allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 *et seq.* and other applicable law or
20 rule of court; and
21

22 5. Grant such further and additional relief as the Court deems just and proper.
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1 Respectfully submitted this 5 th day of May, 2010.

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5 DENNIS L. PORTER, ATTORNEY AT LAW

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8 s/ Dennis L. Porter

9 Dennis L. Porter

10 Of Attorneys for Plaintiffs
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