

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

FOREST GUARDIANS,
COLORADO WILD,
CENTER FOR NATIVE ECOSYSTEMS,
CARSON FOREST WATCH,
K. RANDAL MCKOWN,
GILBERT DURAN, and
ALICE DURAN,

Plaintiffs,

v.

U.S. FOREST SERVICE,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs challenge Defendants' failure to comply with environmental laws before authorizing the 2,282-acre County Line logging project in the Rio Grande National Forest. This is the largest logging project to be undertaken in Colorado in the last decade -- removing almost 30 million board feet of timber, the equivalent of 4,800 to 5,800 logging trucks-- and constructing or reconstructing over 15 miles of roads.

2. On July 18, 2005, the U.S. Forest Service issued a Record of Decision ("ROD") approving the logging project. In doing so, the Forest Service violated the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600 et seq., the Forest Service's 1982 NFMA

planning regulations, and the Revised Land and Resource Management Plan for the Rio Grande National Forest by approving the project without first collecting quantitative data on populations of certain species known as management indicator species, and without first conducting adequate assessments of soil productivity, watershed disturbances, and stream health. The Forest Service also violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331 et seq. by failing to adequately analyze impacts of the logging project on soil and watershed resources in its environmental impact statement.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

4. On or about September 19, 2005, Plaintiffs timely filed an administrative appeal of the Forest Service’s approval of this project. The Forest Supervisor, Peter L. Clark, denied Plaintiffs' appeal on or about October 21, 2005.

5. Venue is proper in the District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff Forest Guardians is a non-profit corporation with approximately 1,650 members throughout the United States, including Colorado. Forest Guardians' mission is to protect and restore the natural biological diversity of forests in America's Southwest, including forests in the Rio Grande National Forest. Members of Forest Guardians engage in outdoor recreation, wildlife viewing, and other activities in the Rio Grande National Forest, including the

County Line logging project area, and intend to continue to do so. The health of the Rio Grande National Forest and its native species is an important part of the members' aesthetic and recreational enjoyment of the forest. Logging activities in the Rio Grande National Forest adversely impact Forest Guardians members' interest in the national forest. Forest Guardians brings this action on behalf of itself and its adversely affected members to force Defendants to comply with all laws before, during, and after the County Line logging project. The educational, scientific, aesthetic, spiritual, and conservation interests of Forest Guardians and its members have been, are being, and, unless this Court grants the requested relief, will continue to be adversely affected and irreparably injured by Defendants' action and inaction.

7. Plaintiff Colorado Wild is a Colorado non-profit corporation with its principal place of business in Durango, Colorado. Colorado Wild is an environmental conservation organization whose primary interests and goals are the protection and restoration of forested wildlife habitat throughout the southern Rocky Mountains. Colorado Wild has been involved with monitoring National Forest management issues since its inception in July, 1998. Colorado Wild, through the National Environmental Policy Act and the Freedom of Information Act, monitors and participates in many aspects of public land management and educates the public about such management. Colorado Wild comments extensively on proposed public land management decisions and when necessary files administrative appeals and lawsuits. Colorado Wild's staff and supporters have a long history of engaging in efforts to preserve the public lands affected by the Forest Service's proposed timber sales in the Rio Grande National Forest. Colorado Wild's members continually use the National Forests, including the Rio Grande

National Forest, the County Line logging project area proper, as well as streams fed by the area, for the purposes of ecological health, recreation, aesthetic enjoyment, and other purposes.

Those uses and interests are harmed by activities which threaten the integrity of the forested wildlife habitat in the County Line area, such as the proposed logging project. Colorado Wild brings this action on its own behalf and on behalf of its adversely affected members and staff.

8. Plaintiff Center for Native Ecosystems is a non-profit organization based in Denver, Colorado that works to conserve and recover native and naturally functioning ecosystems in the Southern Rockies and the Upper Rio Grande bioregion. It works with lawmakers and public citizens to preserve natural resources and unfragmented wildlife habitat, and to restore wildlife migration corridors on the Rio Grande National Forest. Members of Center for Native Ecosystems use and enjoy the County Line logging project area for purposes of ecological health, recreation, aesthetic enjoyment and other purposes. The interests and uses of the Center for Native Ecosystems in the project area are being, and, unless the Court grants the relief requested in this Complaint, will continue to be harmed by the County Line logging project.

9. Plaintiff Carson Forest Watch is a volunteer citizen group based in Penasco, New Mexico that monitors forest management activities on the national forests of northern New Mexico and southern Colorado. Members of Carson Forest Watch regularly use and enjoy the natural resources of the County Line logging project planning area for nature study, wildlife viewing, photography and outdoor recreation. Carson Forest Watch has participated in the public participation process for the County Line logging project since its inception. Carson

Forest Watch and its members have substantial interests in the County Line logging project area which are being, and, unless the Court grants the relief requested in this Complaint, will continue to be harmed by the U.S. Forest Services' failure to comply with applicable law before approving the County Line logging project. Carson Forest Watch brings this action on its own behalf and on behalf of its adversely affected members.

10. Plaintiff K. Randal McKown is an individual who owns property adjacent to the area of the proposed logging. The value, use and enjoyment of his property and the surrounding national forest lands will be severely harmed by impacts from the logging on scenic values, wildlife populations, water quality, as well as noise and traffic hazards.

11. Plaintiffs Gilbert and Alice Duran are individuals who own private property adjacent to the area of the proposed logging. The value, use and enjoyment of their property and the surrounding national forest lands will be severely harmed by impacts from the logging on scenic values, wildlife populations, water quality, as well as noise and traffic hazards.

12. Defendant U.S. FOREST SERVICE is the federal agency in charge of administering the nation's National Forests, including the Rio Grande National Forest in southwestern Colorado.

STATUTORY AND REGULATORY BACKGROUND

I. NATIONAL FOREST MANAGEMENT ACT AND REGULATIONS

13. Through NFMA, Congress established a two-step process for managing the National Forests. First, NFMA directs the Forest Service to prepare and implement comprehensive land management plans for each national forest. 16 U.S.C. § 1604(b). These

Land and Resource Management Plans (commonly known as Forest Plans) determine resource management direction, the level of resource production and management, the availability and suitability of lands for resource management, and wildlife and habitat conservation requirements for a fifteen-year period. Id. § 1604. Second, the Forest Service must ensure that site-specific management projects within a National Forest, including logging projects, are consistent with Forest Plans. 16 U.S.C. § 1604(i).

14. NFMA requires the Secretary of Agriculture to promulgate regulations to guide Forest Plan development. The regulations must provide for diversity of plant and animal communities (§ 1604(g)(3)(B)); insure that timber will be harvested only where soil, slope, or other watershed conditions will not be irreversibly damaged (§ 1604(g)(3)(E)(i)); insure that timber will be harvested only where protection is provided for streams from detrimental changes in water temperatures, blockages of water courses, and deposits of sediments, where harvests are likely to seriously and adversely affect water conditions or fish habitat (§ 1604(g)(3)(E)(iii)); insure that cuts designed to regenerate an even-aged timber stand are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation and esthetic resources (§ 1604(g)(3)(F)); and insure that effects of forest management are evaluated based on continuous monitoring and assessment in the field to prevent substantial and permanent impairment of the productivity of the land. § 1604(g)(3)(C).

15. To fulfill these requirements, the Forest Service promulgated NFMA regulations on September 30, 1982. See National Forest System Land and Resource Management Planning,

47 Fed. Reg. 43,026 (Sept. 30, 1982) (formerly codified at 36 C.F.R. Part 219 (July 1, 2000 ed.) (“1982 NFMA Regulations”).

16. The 1982 NFMA Regulations implement NFMA’s animal and plant community diversity mandate by requiring the Forest Service to “maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” 36 C.F.R. § 219.19; see also id. § 219.27(a)(6).

17. To ensure compliance with the “viability” requirement, the 1982 NFMA Regulations require the Forest Service to select and monitor changes in the population of certain forest species known as management indicator species (“MIS”). 36 C.F.R. § 219.19. The Forest Service selects MIS because changes in their population are indicative of effects on other species of selected major biological communities. Id. § 219.19(a)(1).

18. The 1982 NFMA Regulations specifically require the Forest Service to monitor MIS population trends. 36 C.F.R. § 219.19(a)(6). According to these regulations, the Forest Service must obtain quantitative data on MIS in a project area before approving a project, such as the County Line logging project. Following project approval, the Forest Service must continue to monitor MIS in a project area in order to evaluate effects of management activities on MIS populations.

19. The 1982 NFMA Regulations also set forth minimum management requirements for protection of soil, water and other resources, including affirmative obligations to “[c]onserve soil and water resources and not allow significant or permanent impairment of the productivity of the land” (36 C.F.R. § 219.27(a)(1)); “minimize serious or long-lasting hazards from flood,

wind, wildfire, erosion, or other natural physical forces” (id. § 219.27(a)(2)); and give “[s]pecial attention” to “land and vegetation for approximately 100 feet from edges of all perennial streams” Id. 219.27(a)(4), (e). In the area along perennial streams requiring special attention, “[n]o management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment shall be permitted . . . which seriously and adversely affect water conditions or fish habitat.” 36 C.F.R. § 219.27(e).

20. The 1982 NFMA Regulations require the Forest Service to monitor and evaluate impacts of management activities. Among other things, the Regulations require that Forest Plans include “[m]onitoring and evaluation requirements that will provide a basis for a periodic determination and evaluation of the effects of management practices” (36 C.F.R. § 219.11(d)), “[m]onitoring requirements that provide for “[d]ocumentation of the measured prescriptions and effects, including significant changes in productivity of the land” and a description of “actions, effects or resources to be measured.” Id. § 219.12(k)(2), (k)(4)(i). The Regulations also require the Forest Service to conduct a “[a] program of monitoring and evaluation . . . that includes consideration of . . . the effects upon National Forest Management of activities on nearby lands . . . under the jurisdiction of local governments” (Id. § 219.7(f)); and an “[e]valuation of existing or potential watershed conditions that will influence soil productivity, water yield, water pollution, or hazardous events.” 36 C.F.R. § 219.23(e).

21. The 1982 NFMA Regulations also provide that “conservation of soil and water resources involves the analysis, protection, enhancement, treatment and evaluation of soil and water resources and their response under management and shall be guided by instructions in

official technical handbooks” that are regional in scope or, where feasible, specific to physiographic or climatic provinces. § 219.27(f).

II. NATIONAL ENVIRONMENTAL POLICY ACT

22. Congress enacted NEPA to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4331. To fulfill this stated goal, NEPA requires federal agencies to analyze the environmental impacts of a particular action before proceeding with that action. *Id.* § 4332(2)(C). In addition, federal agencies must notify the public of its proposed projects and allow the public to comment on the fully-disclosed environmental impacts of those projects. 40 C.F.R. §§ 1501.2. NEPA applies to the development of Forest Plans and site-specific actions.

23. The cornerstone of NEPA is the environmental impact statement (“EIS”). An EIS is required for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. In the EIS, the federal agency must identify and disclose to the public all impacts of the proposed action, including direct, indirect and cumulative impacts. 42 U.S.C. § 4332(2), 40 C.F.R. §§ 1508.7 – 1508.8. Indirect impacts that must be analyzed include indirect effects on water and other natural systems that are caused by the action and are later in time or farther removed in distance than direct effects. 40 C.F.R. § 1508.8. Cumulative impacts must be analyzed in light of other past, current and reasonably foreseeable future projects, including projects undertaken by other agencies or persons. 40 C.F.R. § 1508.7.

FACTUAL BACKGROUND

I. THE RIO GRANDE NATIONAL FOREST

24. The Rio Grande National Forest is located in southwestern Colorado on the eastern slope of the Continental Divide. The Forest covers 1.9 million acres, 120 miles from east to west and 60 miles from north to south.

25. The Rio Grande National Forest contains two Wilderness Areas (the Weminuche Wilderness and the South San Juan Wilderness) and portions of the Continental Divide Trail, a hiking trail that traverses the entire state. The forest provides excellent natural, cultural, and recreational opportunities, including mountain biking, snowmobiling, swimming, hiking, hunting, fishing, bird watching and cross-country skiing.

II. THE RIO GRANDE NATIONAL FOREST PLAN

A. Forest Plan Issuance.

26. The Forest Service issued a Revised Land and Resource Management Plan for the Rio Grande National Forest in November 1996 (“Forest Plan”).

27. The Forest Plan was issued under and remains subject to the the 1982 NFMA Regulations.

28. The Forest Plan acknowledges that Section 219.19(6) of the 1982 NFMA Regulations imposes monitoring requirements that are legally required to ensure maintenance of viable, vertebrate populations.

29. The Forest Plan includes management requirements, including requirements set forth in or required by the provisions of NFMA and the 1982 NFMA Regulations described

above. A number of the requirements are incorporated into the Forest Plan from the Forest Service's Regional Soil Management Handbook, FSH 2509.18, and Regional Watershed Conservation Practices Handbook, FSH 2509.25.

B. Forest Plan MIS Requirements.

30. The Forest Plan, as revised in 1996, did not designate MIS. As a result, environmental groups filed an administrative appeal of the Forest Plan. The Forest Service agreed that the Forest Plan unlawfully failed to designate MIS, and directed the Rio Grande National Forest to designate MIS and ensure that the MIS monitoring requirements of Section 219.19 of the 1982 NFMA Regulations are met. Consequently, in October 2003, the Forest Service adopted an amendment to the Forest Plan pursuant to the 1982 NFMA Regulations. ("MIS Amendment").

31. The primary purpose of the MIS Amendment was to assure that species viability is measured and monitored, as directed in Section 219.19 of the 1982 NFMA Regulations.

32. The MIS Amendment designates nine MIS for the Rio Grande National Forest ("RGNF"): brown creeper, hermit thrush, pygmy nuthatch, vesper sparrow, Lincoln's sparrow, Wilson's warbler, mule deer, Rocky Mountain elk, and Rio Grande cutthroat trout (or brown trout, brook trout or rainbow trout to serve as proxies if Rio Grande cutthroat trout is not present).

33. The MIS Amendment to the Forest Plan contains a number of mandatory standards designed to protect wildlife. These standards include requirements that "[a]ctivities will be managed to avoid loss of population viability to MIS," and that "[w]here appropriate,

measures to mitigate adverse effects shall be applied.” For birds designated as MIS, including the hermit thrush and brown creeper, the MIS Amendment requires that “[p]roject specific monitoring will be incorporated into Forest Plan monitoring as applicable.”

C. Forest Plan Soil Productivity Standards.

34. The Forest Plan includes mandatory standards designed to protect soil productivity. One of those standards is a requirement for the Forest Service to “[m]anage land treatments to limit the sum of severely burned and detrimentally compacted, eroded and displaced lands to no more than 15% of any land unit.” This soil productivity standard was incorporated into the Forest Plan from Regional Soil Handbook FSH 2509.18. The Regional Soil Handbook defines a number of the terms included in the soil productivity standard, and makes clear that a detailed evaluation of soils, including sampling of soils at a project site, is required to determine compliance with the soil productivity standard.

D. Forest Plan Watershed Requirements.

35. The Forest Plan prescribes a number of mandatory standards designed to protect watershed areas, including soil, water and aquatic resources, which have been incorporated into the Plan from the Forest Service’s Watershed Conservation Practices Handbook, FSH 2509.25. These standards require the Forest Service to, among other things:

- “[m]anage land treatments to conserve soil site moisture and protect long-term stream health from damage by increased runoff;”
- “[m]anage land treatments to maintain enough organic ground cover in each land unit to prevent harmful increased runoff;”

- “[c]onstruct roads and other disturbed sites to minimize sediment discharge into streams, lakes and wetlands,” and
- “[i]n the water influence zone (“WIZ”) next to perennial and intermittent streams, lakes and wetlands, allow only those land treatments that maintain or improve long-term stream health.”

36. The Forest Plan requires the Forest Service to monitor watershed disturbances.

The Forest Service must conduct an initial assessment of each watershed, which identifies surface disturbances from past, present and proposed activities, and calculates a percentage of surface area disturbed. If the percentage of a watershed’s surface area that is disturbed exceeds a specified threshold, the Forest Service must conduct a detailed field assessment of stream health before authorizing any surface disturbing activities in the watershed. The specified threshold level of surface disturbance requiring a detailed assessment is 15%, except that the threshold is 10% for “watersheds of concern.” “Watersheds of concern” include watersheds for which more than 50% of the watershed area is located within 100 feet of a stream channel. If the detailed assessment identifies impacts to stream health, the Forest Service must restore impacted areas and prevent new disturbances that could further degrade stream health. If the Forest Service approves new surface-disturbing activities, it must require extra mitigation needed to avoid additional stream impacts.

III. THE COUNTY LINE LOGGING PROJECT AND EIS

37. The County Line logging project is proposed for approximately 2,282 acres within the Conejos Peak Ranger District of the Rio Grande National Forest. Logging, road

construction and transporting of logs will occur at high elevations between 10,000 and 11,000 feet.

38. The project area is adjacent to the South San Juan Wilderness Area, two miles northwest of Cumbres Pass. Hunting, hiking, fishing and cross-country skiing are popular recreation activities in this area. Numerous wildlife species utilize the project area.

39. The project area includes steep slopes and soils prone to mass movement (landslide).

40. There are two main creeks in the project area: Wolf Creek, which drains a 7,916 acre watershed in the project area, and the Rio de los Pinos, which drains a 11,420 acre watershed in the project area. Several sensitive species live in these creeks and adjacent riparian habitat area, including the Rio Grande cutthroat trout, boreal toad, goshawk, and American marten.

41. Livestock grazing within the Cumbres Grazing Allotment is an ongoing activity throughout the project area. Livestock grazing in the project area has caused and is continuing to cause damage to streambanks, sedimentation of streams and loss of riparian vegetation.

42. Past logging activity has occurred within the project area, and on private land adjacent to the project area but within the same watersheds. Additional logging on such private lands is anticipated in the future.

43. There are two other ongoing logging projects (Trujillo and Grouse) within both watershed boundaries as well as a proposed timber sale (Neff Mountain). Logging for these three projects totals 946 acres.

44. Timber harvesting, along with logging roads and livestock grazing have been identified as adversely impacting soils and streams in the project area.

45. On August 24, 2001, the Forest Service issued a draft environmental impact statement on the County Line logging project for public review and comment. Plaintiffs submitted comments to the Forest Service on the draft EIS.

46. The Forest Service completed a final Environmental Impact Statement (“FEIS”) and Record of Decision on July 18, 2005.

47. The Forest Service selected Alternative B. The selected project includes thinning of approximately 715 acres of spruce-fir forest through removal of healthy, live trees, and sanitation/salvage harvest of dead and beetle infested Englemann Spruce trees on approximately 841 acres. The selected action also includes reconstruction of 15.6 miles of roads, realignment of .3 miles of roads, and 2.3 miles of temporary road construction.

48. The Forest Service’s approval of the County Line logging project without first collecting MIS population data, conducting analysis and imposing constraints or mitigation requirements sufficient to ensure compliance with the mandatory requirements described above, threatens to cause irreparable harm to the project area’s soils, streambanks, stream water quality and flow, riparian vegetation and aquatic life, including harm attributable to mass movement, increased erosion, runoff and sediment deposition.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(NFMA, 1982 NFMA Regulations and Forest Plan- Failure to Gather MIS Population Data)

49. Plaintiffs restate and incorporate by reference every allegation set forth in the preceding paragraphs.

50. The 1982 NFMA Regulations and the Forest Plan, as amended by the MIS Amendment, require MIS monitoring in a project area prior to approval of a project such as the County Line logging project.

51. In the FEIS, the Forest Service selected five of the Rio Grande National Forest's nine designated MIS for detailed evaluation: brown creeper, hermit thrush, Rio Grande cutthroat trout, elk and mule deer.

52. The Forest Service did not collect data on the population of any of the MIS in the County Line logging project area before approving the project.

53. The Forest Service unlawfully withheld compliance with NFMA by approving the County Line logging project without gathering quantitative population data on MIS within the project area or studying population trends. 5 U.S.C. § 706(1). The Forest Service's decision to authorize the County Line logging project without performing the requisite analysis of MIS as required under NFMA, the 1982 NFMA Regulations, and the Forest Plan is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

(NFMA, 1982 NFMA Regulations, and Forest Plan- Soil Productivity Standard)

54. Plaintiffs restate and incorporate by reference every allegation of the preceding paragraphs.

55. When it approved the County Line logging project, the Forest Service was aware that some soils in the project area are in poor condition, and that past activities have resulted in compaction and other adverse impacts to soils. The Forest Service did not meaningfully assess project area soils to determine whether the 15% soil productivity standard has been exceeded due to natural soil conditions and past activities, or will be exceeded by the timber harvesting and road construction, renovation and relocation activities approved as part of the County Line logging project.

56. Among other things, the Forest Service conducted no testing of soil density in the project area. Soil density testing is necessary to determine whether pre-existing conditions or County Line logging project impacts have resulted or will result in violation of the 15% soil productivity standard.

57. The Forest Service violated NFMA, the 1982 NFMA regulations and the Forest Plan by approving the County Line logging project without meaningfully analyzing whether the soil productivity standard is met. Accordingly, the Forest Service's conclusion in the ROD that this standard will be met was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2)

THIRD CLAIM FOR RELIEF

(NFMA, 1982 Regulations, and Forest Plan -Watersheds)

58. Plaintiffs restate and incorporate by reference every allegation of the preceding paragraphs.

59. The Forest Service conducted initial assessments of the Wolf Creek and Rio de los Pinos watersheds in the County Line logging project area. In the initial assessments, the Forest Service determined the percentage of each watershed's surface area that is disturbed as a result of past activities, and the percentage of each watershed's surface area that is expected to be disturbed by the County Line logging project.

60. The Forest Service determined that the percentage of surface area disturbed as a result of past activities in the Wolf Creek watershed is 13.4%, and that additional surface disturbance from the County Line logging project would increase the percentage of surface area disturbed to 14.5%.

61. The Forest Service determined that the percentage of surface area disturbed as a result of past activities in the Rio de los Pinos watershed is 11.3%, and that additional surface disturbance from the County Line logging project would increase the percentage of surface area disturbed to 12.7%

62. The Forest Service's surface area disturbance determinations for the Wolf Creek and Rio de los Pinos watersheds are below the 15% threshold for conducting a detailed assessment of stream health.

63. The Forest Service's surface area disturbance determinations are flawed because, among other things: (1) the Forest Service did not meaningfully estimate the surface disturbance expected from the logging activities proposed as part of the County Line logging project, but rather arbitrarily assumed that the disturbance in each watershed would be "15% of the total harvest unit area;" and (2) the Forest Service failed to account for surface disturbance attributable to past and expected future logging on private land adjacent to the project area.

64. Based on its flawed determinations that surface disturbance in each watershed is below the 15% threshold, the Forest Service failed to conduct the required, detailed analyses of stream health in the Wolf Creek and Rio de Los Pinos watersheds before authorizing the County Line logging project.

65. If the Forest Service had conducted the required detailed analyses of stream health, it would have identified impacts to stream health from, among other things, past and current logging and grazing activities, which require restoration, and a prohibition of or imposition of additional mitigation measures on new surface disturbances to prevent further degradation of stream health.

66. The Forest Service violated NFMA, the 1982 NFMA Regulations and the Forest Plan by approving the County Line logging project without conducting the required detailed analyses of stream health, imposing measures adequate to restore impacted watershed areas, prevent new surface disturbances in the watersheds or mitigate the impacts of new surface disturbances in the watersheds.

67. The Forest Service's determinations that watershed disturbance levels in the Wolf Creek and Rio de los Pinos watersheds do not exceed the threshold for detailed field analysis of stream health are arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

FOURTH CLAIM FOR RELIEF

(NEPA- Failure to Analyze Direct, Indirect and Cumulative Impacts to Soil and Watershed Resources)

68. Plaintiffs restate and incorporate by reference herein every allegation of the preceding paragraphs.

69. The Forest Service violated NEPA by failing to adequately discuss and disclose to the public the impacts of the County Line logging project on soil and watershed resources, including stream banks and channels, water quality and flow, riparian vegetation, fish and wildlife. Among other things, the EIS does not adequately discuss and disclose to the public direct, indirect and cumulative impacts, including impacts attributable to past, present and foreseeable future disturbances, including timber management activities in the water influence zone, to soils, including detrimental compaction, displacement and erosion, and to streams, including erosion, deposition of sediments, blockages of water courses, changes in flow, temperature and chemical composition of stream waters.

70. The Forest Service's approval of the County Line logging project in the absence of an EIS that complies with NEPA was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against all Defendants and provide the following relief:

1. Declare that the Forest Service violated, and continues to violate, NFMA, the 1982 NFMA Regulations, the Forest Plan and NEPA upon authorizing the County Line logging project;
2. Order, through an injunction, the Forest Service to rescind its decision approving the County Line logging project;
3. Order, through an injunction, the Forest Service to comply with NFMA, the 1982 NFMA Regulations, and the Forest Plan by performing the required monitoring and analysis of MIS, and assessments of soil productivity, watershed disturbances, and stream health, and developing required measures to restore impacted watershed areas, and prevent or mitigate the impacts of new surface disturbances in watershed areas;
4. Order, through an injunction, the Forest Service to comply with NEPA by analyzing and disclosing to the public all environmental impacts of the County Line logging project before approving and proceeding with any aspect of the County Line logging project;
5. Award Plaintiffs costs and reasonable attorneys' fees; and
6. Provide such other relief as the court deems just and proper.

Dated: June 27, 2006

Respectfully submitted,

/s/Nicholas F. Persampieri
Nicholas F. Persampieri
Neil Levine
Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202
Telephone: 303-623-9466
Facsimile: 303-623-8083

Attorneys for Plaintiffs