Laurence ("Laird") J. Lucas (ISB # 4733)
Bryan Hurlbutt (ISB # 8501)
Rebecca Strauss (ISB # 11285)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
llucas@advocateswest.org
bhurlbutt@advocateswest.org
rstrauss@advocateswest.org

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

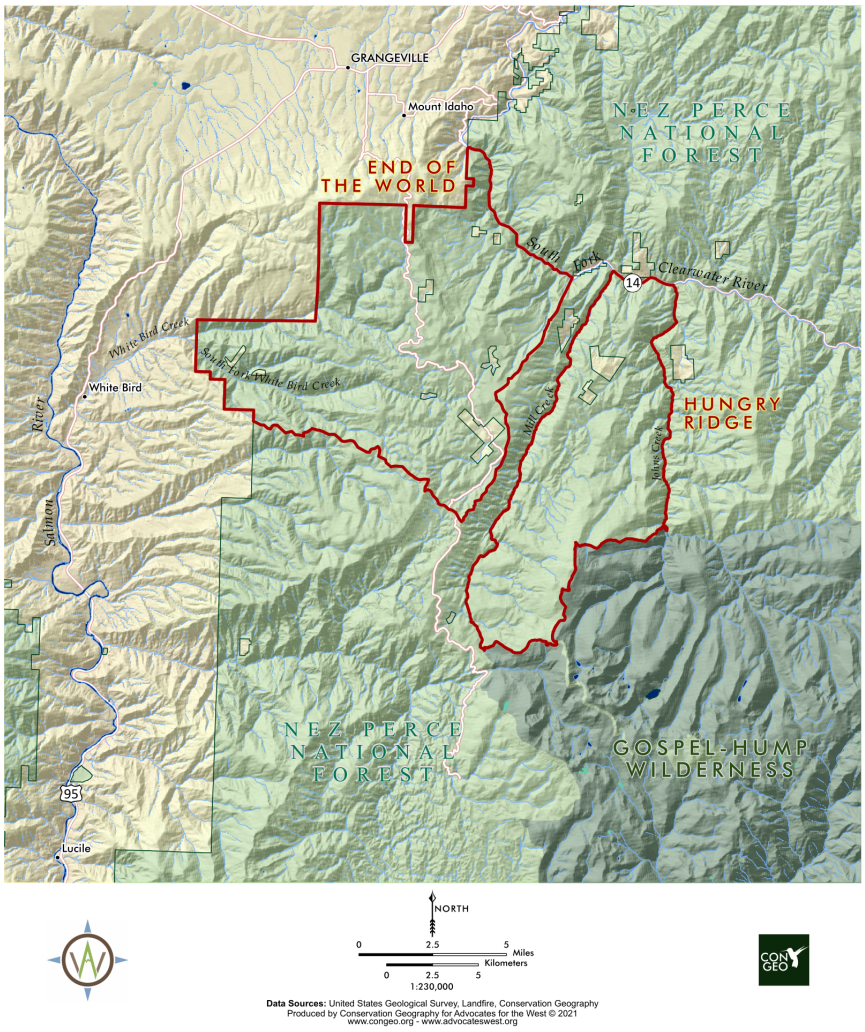
FRIENDS OF THE CLEARWATER *Plaintiff*, v. CHERYL F. PROBERT, in her official capacity as Forest Supervisor of the Nez Perce-Clearwater National Forests; and U.S. FOREST SERVICE *Defendants*.	)	No. 3:21-cv-189 **COMPLAINT**

NATURE OF THE ACTION

1. This action challenges the approvals by Defendants Cheryl Probert and U.S. Forest Service (jointly, "Forest Service") of two massive logging projects, known as "End of the World" and "Hungry Ridge," on the Nez Perce-Clearwater National Forests for violations of the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Endangered Species Act (ESA), and Administrative Procedure Act (APA).

2. As illustrated on Figure 1, below, End of the World and Hungry Ridge are located near each other on the Salmon-Clearwater Divide: the mountainous, forested ridge separating the Salmon River and the South Fork Clearwater River southeast of Grangeville, in Idaho County.

Fig. 1. Map of End of the World and Hungry Ridge Project Areas



3. Together, End of the World and Hungry Ridge involve logging more than 26,000 acres (over 40 square miles) over the next ten years. Of that, 7,144 acres (over 11 square miles) of forest would by logged by "regeneration harvest," which includes what is commonly known as clearcutting and other similar practices, and which would result in 41 supersized forest openings each so large they exceed the 40-acre standard limit on logging openings.

4. The two projects are separated by a narrow sliver of National Forest land that is currently being logged under another Forest Service-approved project, called "Doc Denny." Together with Doc Denny and other recent and nearby logging, End of the World and Hungry Ridge will transform the Salmon-Clearwater Divide, destroying and degrading wildlife habitat that the Forest Service admits will not return for at least a century, if ever.

5. Among other errors, the Forest Service violated NEPA by preparing only an Environmental Assessment (EA) for End of the World, instead of a full Environmental Impact Statement (EIS), and concluding—incorrectly—that the massive project will not have any significant environmental impacts. For Hungry Ridge, the Forest Service did prepare an EIS to evaluate its significant impacts, but there too, the agency violated NEPA by improperly downplaying and failing to take a hard look at the lasting negative environmental effects.

6. The Forest Service also violated NEPA by misleading the public and refusing to acknowledge and address the mounting scientific evidence undermining the agency's assumptions about logging, forest health, fire, and climate change—assumptions the agency relied on to justify the massive amounts of logging approved in both projects. In *Bark v. U.S. Forest Service*, 958 F.3d 865 (9th Cir. 2020), the Ninth Circuit recognized that these are the types of highly controversial issues surrounding logging that must be candidly addressed, not issues the Forest Service can simply brush aside during the NEPA process, as it did here.

7. In the face of mounting biodiversity and climate crises, protecting old growth forests is more important than ever. The Nez Perce Forest Plan sets minimum levels of old growth that must be maintained both forest-wide and within every Old Growth Analysis Area in the forest. Already depleted on the Salmon-Clearwater Divide, the Forest Service approved logging in over 1,000 acres of old growth total for both projects, more than half of which is

regeneration harvest. Yet, the Forest Service failed to show it meets the minimum old growth requirements, both forest-wide and within the project areas, in violation of NEPA and NFMA.

8. The Forest Service also violated NEPA by erroneously asserting each project would have only short-term and negligible impacts on fisher and other "sensitive species" of wildlife that rely on old growth and other mature forest. The Forest Service admitted that limited suitable mature forest wildlife habitats remain in each area, and that after being logged it takes 100 to 150 years to reestablish as wildlife habitat. But the Forest Service improperly downplayed these significant, long-lasting effects to wildlife.

9. For both Hungry Ridge and End of the World, the Forest Service refused to acknowledge the harmful effects the projects pose for grizzly bears, in violation of NEPA and the ESA. Grizzly bears are listed as a "threatened" species under the ESA and, after being extirpated from the area, they have recently been documented on and near the Salmon-Clearwater Divide. Downplaying the significance of recent bear sightings, the Forest Service claims—falsely—that the flurry of activity and the lasting impacts of logging tens of thousands of acres of forest over the next decade will have "no effect" on grizzly bear.

10. Finally, End of the World and Hungry Ridge also threaten significant harmful effects to water quality, ESA-listed Snake River steelhead, and other at-risk fish species that inhabit streams on the Salmon-Clearwater Divide. The Forest Service admits local steelhead populations are at "high risk," multiple streams in the area already fail to meet Forest Plan fish habitat objectives, and these streams will be further degraded by the logging and related road construction and log hauling for both projects. But the Forest Service again improperly dismissed these impacts too, in violation of NEPA and NFMA.

11. Based on these and other violations of law, Plaintiff Friends of the Clearwater requests that the Court hold unlawful and vacate the Forest Service's approvals of End of the World and Hungry Ridge, and enter other relief as prayed for below.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including NEPA, 42 U.S.C. § 4321 *et seq.*; NFMA, 16 U.S.C. § 1600 *et seq.*; ESA, 16 U.S.C. § 1531 *et seq*; the APA, 5 U.S.C. § 701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. §§ 2212, 2214.

13. An actual, justiciable controversy exists between Plaintiff and Defendants. The requested relief is therefore proper under 5 U.S.C. §§ 701–706 and 28 U.S.C. §§ 2201–2202.

14. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Plaintiff and Defendant are located in this district, and the public lands and resources in question are located within Idaho County in this district.

15. The federal government has waived sovereign immunity under 5 U.S.C. § 702.

PARTIES

16. Plaintiff FRIENDS OF THE CLEARWATER is a non-profit conservation organization based in Moscow, Idaho.

17. Friends of the Clearwater is a grassroots advocacy group that works to protect the public wildlands, wildlife, and waters of north-central Idaho, including the Nez Perce-Clearwater National Forests. Since 1987, Friends of the Clearwater has worked to protect biodiversity and wildlands in the central Idaho bioregion, including the Salmon-Clearwater Divide, through a

Forest Watch program, through grassroots public involvement, outreach, education, and, when necessary, litigation.

18. Friends of the Clearwater board, staff, members, and supporters regularly visit, use, and enjoy the public lands and waters in the Nez Perce-Clearwater National Forests, including on the Salmon-Clearwater Divide, for recreation, conservation, scientific, aesthetic, and other uses, and they will continue to do so in the future. Friends of the Clearwater board, staff, members, and supporters observe, enjoy, and appreciate native fish and wildlife, mature and old growth forests, and clean and healthy rivers and streams in the Salmon-Clearwater Divide. These uses will be harmed or even eliminated by the logging authorized by the End of the World project and the Hungry Ridge project.

19. Moreover, the Forest Service's violations of law injure Friends of the Clearwater and its board, staff, members, and supporters by denying them the ability to adequately participate in the public review processes for End of the World and Hungry Ridge, and by denying them information concerning potential environmental impacts and other issues that NEPA requires agencies to disclose, analyze, and seek public review of prior to authorizing the projects.

20. Friends of the Clearwater also suffers injury-in-fact because it has devoted time, energy, and money to protecting public lands, forests, and wildlife, and advocating for only responsible forest management in the Salmon-Clearwater Divide. Friends of the Clearwater has diverted resources from other efforts to pursue its mission and has instead used those resources to conduct field visits, submit public comment to the Forest Service, file administrative objections, and engage with local, state, and federal officials about their concerns with the End of the World and Hungry Ridge projects.

21. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States within the U.S. Department of Agriculture. The Forest Service is vested with the authority and duty to manage and protect the public lands and resources of the Nez Perce-Clearwater National Forests.

22. Defendant CHERYL F. PROBERT is the Forest Supervisor of the Nez Perce-Clearwater National Forests. Ms. Probert approved the End of the World and Hungry Ridge projects on behalf of the Forest Service. She is sued solely in her official capacity.

23. Each violation of law, as alleged herein, injures the aesthetic, commercial, conservation, scientific, recreational, educational, fish and wildlife preservation, and/or other interests of Friends of the Clearwater and its board, staff, members, and supporters. These are actual, concrete injuries caused by Defendants' violations of law, and the judicial relief sought would remedy, in whole or in part, Friends of the Clearwater's injuries.

24. Friends of the Clearwater's interests have been, are being, and will continue to be irreparably injured and harmed by Defendants' actions as challenged herein. Unless the relief prayed for herein is granted, Friends of the Clearwater and the public will suffer irreparable harm and injury to their legally protected interests.

LEGAL BACKGROUND

A. The National Environmental Policy Act

25. NEPA requires federal agencies to take a "hard look" at the environmental consequences of their proposed actions. *See* 42 U.S.C. § 4321 *et seq*.; *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976); *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). To take this "hard look," federal agencies must prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C.

§ 4332(2)(C).

26. An EIS must provide a "full and fair discussion of significant environmental impacts," and inform "decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.[1]

27. An agency may avoid an EIS only if it finds, after preparing an EA, that the action will have "no significant impact," in which case the agency may issue a finding of no significant impact (FONSI). 40 C.F.R. §§ 1501.4(b), 1508.9 & 1508.913 (1978). The standard for when an impact "may" be significant, and thus the agency must prepare an EIS, is a "low standard." *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006).

28. NEPA's purpose is "to foster excellent action," and the "NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c). The NEPA process requires that "environmental information is available to public officials and citizens before decisions are made and before actions are taken." *Id.* at 1500.1(b). The information agencies are required to gather and disclose during the NEPA process "must be of high quality." *Id.* "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.*

[1] The Council on Environmental (CEQ) adopted NEPA regulations that guide every federal agency's implementation of NEPA at 40 C.F.R. Part 1500. CEQ revised its NEPA regulations on July 16, 2020. The new CEQ regulations apply to any NEPA process begun after September 14, 2020; for NEPA processes that were initiated before September 14, 2020, an agency "may" apply the new regulations. 40 C.F.R. § 1506.13 (2020). The NEPA processes for End of the World and Hungry Ridge each began prior to September 14, 2020, and the Forest Service never indicated for either project that it was applying the new regulations. Therefore, this Complaint references the prior NEPA regulations adopted in 1978 and amended in 1986 and 2005.

29. The scope of NEPA review is broad. A federal agency must consider alternatives to the proposed action and evaluate and disclose environmental impacts. 40 C.F.R. § 1508.9. Impacts include direct, indirect, and cumulative effects of the proposed action and its alternatives on ecological, aesthetic, historic, cultural, economic, social, and health interests. *Id.* §§ 1508.7 & 1508.8. Cumulative effects are the impacts on the environment that result from incremental impacts of the action when added to all other past, present, and reasonably-foreseeable future actions regardless of what agency or person undertakes such other actions. *Id.* § 1508.7. "Cumulative impacts can result from individually minor but collectively significant actions." *Id.*

B. The National Forest Management Act & Nez Perce Forest Plan

30. NFMA requires the Forest Service to prepare a land and resource management plan (commonly called a "forest plan") for each national forest including standards and guidelines for managing the forest. 16 U.S.C. §§ 1604(a), (e) & (g)(3)(B). Among other requirements, NFMA imposes the duty that the Forest Service "provide for diversity of plant and animal communities" in its forest plans. 16 U.S.C. § 1604(g)(3)(B). NFMA and its implementing regulations also require that all management actions approved by the Forest Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

31. In 1987, the Forest Service adopted a forest plan for the Nez Perce National Forest (hereinafter "Nez Perce Forest Plan" or "Forest Plan"), which contains goals, objectives, guidelines, and standards for managing logging and for protecting old growth forest, water quality, fish, and wildlife on the lands of the Nez Perce National Forest, and which apply to the Hungry Ridge and End of the World projects challenged here.

32. Pursuant to NFMA, the Forest Service also designates "sensitive species," which it manages to: (1) ensure Forest Service actions do not contribute to loss of viability; (2) ensure

activities do not cause the status of any species to move toward federal ESA listing; and (3) incorporates concerns for sensitive species throughout the planning process, reducing negative effects to species, and enhancing opportunities for mitigation. Forest Service Manual, 2670. Designated terrestrial sensitive species on the Nez Perce National Forest include fisher, bald eagle, black-backed woodpecker, flammulated owl, mountain quail, pygmy nuthatch, white-headed woodpecker, bighorn sheep, bats (fringed myotis, long-eared myotis, long-legged myotis, and Townsend's big-eared), gray wolf, wolverine, ring-necked snake, and boreal toad. Designated aquatic sensitive species included westslope cutthroat trout, interior redband trout, Snake River spring chinook salmon, Pacific lamprey, and pearlshell mussel.

33. The Forest Service also designates "management indicator species" (MIS) in its Forest Plans to monitor and evaluate the effects of the agency's actions. The Nez Perce Forest Plan designated MIS species which: (a) are threatened or endangered; (b) have special habitat needs that may be influenced significantly by agency actions; (c) are commonly hunted, fished, or trapped; (d) are non-game species of special interest; or (e) their population changes are believed to indicate the effects of agency actions on other species of selected major biological communities or on water quality. Management indicator species in the Nez Perce National Forest include bald eagle, grizzly bear, bighorn sheep, fisher, gray wolf, northern goshawk, pileated woodpecker, pine marten, elk, moose, peregrine falcon, westslope cutthroat trout, Chinook salmon, and steelhead.

34. To protect wildlife, the Forest Plan directs the Forest Service to, among other things: "[m]aintain viable populations of existing native and desirable non-native vertebrate wildlife species"; "[c]ooperate with future recovery efforts on behalf of the peregrine falcon, bald eagle, gray wolf, and grizzly bear"; and "[m]onitor population levels of all Management

Indicator Species on the Forest." *Nez Perce Forest Plan* at II-18.

35. Additionally, the Forest Plan includes measures to protect old growth forest and the wildlife that utilize old growth. Specifically, the Forest Plan directs the Forest Service to: "Provide management for minimum viable populations of old-growth and snag-dependent species by adhering to the standards in Appendix N." *Id.* at II-19.

36. Appendix N includes "Minimum Requirements for Amount and Distribution of Old Growth." *Id.* at App'x N, p. 2. Those minimum requirements are "to maintain 10 percent of the total forested acres [across the Nez Perce National Forest] as old growth with no less than 5 percent of the forested acres maintained as old growth within each prescription watershed or combination of watersheds totaling 5,000 to 10,000 acres," and "[a]n additional 5 percent of the forested acres within each prescription watershed shall be designated as replacement old growth." *Id.*

37. The Forest Service created "Old Growth Analysis Areas" to serve as the prescription watersheds (or combinations of prescription watersheds) within which the minimum five percent existing old growth and minimum five percent replacement old growth requirements in Appendix N must be met.

38. Appendix N also establishes standards for "Identification and Designation of Old-Growth Stands." *Id.* It provides that "[o]ld-growth stands will be identified through the use of stand exam information, aerial photos, and field reconnaissance." *Id.* Further, "[a]ll stands will be inventoried and prioritized with highest priority for inventory in those drainages with proposed timber sales or activities that could adversely impact old growth." *Id.*

39. Appendix N also sets goals and requirements for the size and relative location of stands and complexes of old growth, and specifies how to count existing old growth versus

replacement old growth within the same complex, including the following:

> Where available, stands should be at least 300 acres. Next best would be a core block of 150 acres with the remaining blocks of no less than 50 acres and no more than 1/2 mile away. If existing old-growth blocks are less than 100 acres, the stands between the old- growth blocks should be designated old growth replacement. The entire unit consisting of old-growth blocks and replacement old growth should be managed as an old-growth complex. If the old-growth component is less than 50 percent of the complex, the complex should be considered replacement old growth. Within the old-growth complex, only the stands that meet old-growth criteria will be counted toward meeting the allocation for existing old growth. The replacement stands will be counted toward meeting the allocation for replacement old growth.

Id. (emphasis added).

40. To protect streams, the Forest Plan includes standards, among others, to: apply established best management practices; follow specified guides "to compare alternative effects on sediment and water yields"; "[e]valuate site-specific water quality effects as part of project planning [and] [d]esign control measures to ensure that projects will meet Forest water quality goals"; and "[p]erform a watershed cumulative effects feasibility analysis of projects involving significant vegetation removal . . . to ensure that the project, considered with other activities, will not increase water yields or sediment beyond acceptable limits." *Nez Perce Forest Plan* at II-21.

41. To protect fisheries, the Forest Plan includes a standard requiring the Forest Service to "[m]eet established fishery / water quality objectives for all prescription watersheds as shown in Appendix A." *Id.* This requires showing a positive, upward trend in habitat carrying capacity before allowing any logging to proceed in a watershed that fails to meet fisheries objectives. Appendix A states: "Sediment is the primary limiting factor in these streams. Improvements will be scheduled between 1986 and 1995. Timber management can occur in these watersheds, concurrent with improvement efforts, as long as a positive, upward trend in carrying capacity is indicated."

C. The Endangered Species Act

42. The ESA, 16 U.S.C. § 1531 *et seq.*, is the nation's preeminent wildlife protection law. Congress enacted the ESA to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such species. 16 U.S.C. § 1531(b). Under the ESA, the Secretary of the Interior or Commerce lists a species as "endangered" if it is "in danger of extinction throughout all or a significant portion of its range," or "threatened" if it is "likely to become an endangered species within the foreseeable future." 16 U.S.C. §§ 1533(a)(1), 1532(6) & (20).

43. Section 7(a)(2) of the ESA requires all federal agencies "insure that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [designated critical] habitat." 16 U.S.C. § 1536(a)(2). The ESA's implementing regulations require federal agencies to review their actions at the "earliest possible time" to determine whether an action may affect listed species or their critical habitat. 50 C.F.R. § 402.14. Agency action for purposes of Section 7(a)(2) includes federal agency authorization of private activities, such as logging on National Forest land.

44. To fulfill Section 7(a)(2)'s mandate, the "action agency" must consult with the National Oceanic and Atmospheric Administration (NOAA Fisheries) and/or the Fish and Wildlife Service (FWS) if a proposed action "may affect" a listed species or its critical habitat. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(a). The Ninth Circuit holds that "the minimum threshold for an agency action to trigger consultation with the Wildlife Service is low." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011).

45. FWS is responsible for consultation for bull trout and for grizzly bear. *See* 50 C.F.R. § 402.01. *Id.* NOAA Fisheries (also known as the National Marine Fisheries Service) is

responsible for consultations for anadromous fish species, including Snake River steelhead and Chinook salmon.

46. Under the ESA Section 7 consultation process, an action agency, like the Forest Service here, must prepare a biological assessment (BA) to evaluate the potential effects of a proposed action on listed species, and determine whether a species is "likely to be adversely affected" (LAA) or "not likely to be adversely affected" (NLAA) by the proposed action. 50 C.F.R. § 402.12. For LAA actions, the action agency must seek "formal" consultation with FWS and/or NOAA Fisheries. 50 C.F.R. § 402.14(a). For NLAA actions, the action agency may seek "informal" consultation with FWS and/or NOAA Fisheries. 50 C.F.R. § 402.14(b).

47. During ESA consultation, the consulting agency must review all relevant information, evaluate the current status of the species or critical habitat, and evaluates the effects of the proposed action on the listed species and its critical habitat. 50 C.F.R. § 402.14(g)(1)–(3). Throughout its analysis, the consulting agency must utilize the "best scientific and commercial data available." 16 U.S.C. § 1536(a)(2); 50 C.F.R. §402.14(d).

48. Informal consultation concludes with a Letter of Concurrence from the consulting agency. 50 C.F.R. § 402.14(b). A letter of concurrence is only appropriate when the BA or other information demonstrates that the action has no likelihood of adverse effect to the listed species. *Id. See also* U.S. Fish and Wildlife Service & National Marine Fisheries Service, *Endangered Species Consultation Handbook* (1998), pp. 3–12.

49. Formal consultation results in a Biological Opinion (BiOp) from the consulting agency. BiOps include binding reasonable and prudent measures, as well as binding terms and conditions, for the action agency to protect listed species or critical habitat. 16 U.S.C. § 1536(b)(4). If the consulting agency makes a jeopardy determination, the BiOp may specify

reasonable and prudent alternatives that will avoid jeopardy and will allow the agency to proceed with the action. 16 U.S.C. § 1536(b).

50. After the completion of formal consultation, the action agency must determine whether and in what manner to proceed with the action in light of its Section 7 obligations and the BiOp. 50 C.F.R. § 402.15(a).

The Administrative Procedure Act

51. The APA empowers federal courts to hold unlawful and set aside any final agency action which is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2). Under the APA, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfgs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation omitted).

STATEMENT OF FACTS

A. Overview of End of the World, Hungry Ridge, and the Salmon-Clearwater Divide

52. The End of the World and Hungry Ridge logging projects are located near each other in the Salmon River Ranger District of the Nez Perce National Forest, as depicted on Figure 1, above.

53. The projects are located on the Salmon-Clearwater Divide, which is the forested, mountainous ridgeline separating the Salmon River from the South Fork Clearwater River (*see* Figure 1). The project areas provide habitat to many native, special-status fish and wildlife species that live along the Salmon-Clearwater Divide, including grizzly bear, fisher, and Snake River steelhead, among others.

54. The End of the World project area encompasses 49,565 acres of National Forest lands on the Salmon-Clearwater Divide approximately six miles south of Grangeville, Idaho. Most streams in the End of the World project area are in the White Bird Creek drainage and flow generally west into White Bird Creek, which in turn flows into the Salmon River.

55. The Hungry Ridge project area encompasses 30,000 acres of National Forest lands and is less than half a mile east/southeast of End of the World, about 17 miles southeast of Grangeville, and next to the Gospel Hump Wilderness. Streams in the Hungry Ridge project area generally flow north into the South Fork Clearwater River.

56. Both project areas have already been logged in the past. Within End of the World, 26,705 acres (about half of the site) have been logged since the 1940s. Within Hungry Ridge, 21,119 acres (over two-thirds of the site) have been logged since the 1960s.

57. The amount of logging in recent decades in the Salmon-Clearwater Divide has been much lower than what it was in earlier decades. At End of the World, after much higher levels of logging in prior decades, only around 1,500 acres were logged in the 1990s, 1,700 acres in the 2000s, and 114 acres in the 2010s. At Hungry Ridge, logging peaked in the 1980s; since then, only around 1,500 acres were logged in the 1990s and 700 acres in the 2000s.

58. Nearby surrounding areas on the Salmon-Clearwater Divide outside of the End of the World and Hungry Ridge boundaries have been logged too. Among other logged areas, this includes the narrow sliver of National Forest separating End of the World and Hungry Ridge, which is currently being logged as part of the Doc Denny project. The Forest Service approved the 4,280-acre Doc Denny project in 2013. Doc Denny is already underway to log over 1,000 acres and construct 3.4 miles of new road.

59. Dwarfing all other logging projects in the area in recent decades, End of the World involves logging around 19,000 acres of forest to harvest 144 million board feet of timber. Hungry Ridge involves logging over 7,000 acres of forest to harvest 173 million board feet of timber. In addition to logging thousands of acres on the Salmon-Clearwater Divide, End of the World and Hungry Ridge include extensive road construction and making roughly 63,400 round trips in log haul trucks, plus prescribed burning and some watershed improvement activities.

60. Both projects are slated to begin soon, and both are expected to last about thirteen years in total, with ten years of logging and three years of follow-up activities. Plaintiff reserves the right to seek injunctive relief before the Forest Service allows any ground-disturbing activities or logging to begin on either of the projects, as may be necessary to preserve the status quo and prevent irreparable harm until these challenges are adjudicated on the merits.

B. Forest Service Approval of Hungry Ridge

61. The Forest Service initiated the "Hungry Ridge Restoration Project" in February 2014 by publishing in the Federal Register a notice of intent to prepare an EIS and commencing a 45-day "scoping" comment period.

62. In March 2018, the Forest Service released the Draft EIS. In the Draft EIS, the Forest Service considered taking no action (Alternative 1), the Forest Service's proposed action (Alternative 2), and two other alternatives (Alternatives 3 and 4).

63. In November 2019, the Forest Service released a Final EIS and Draft Record of Decision (ROD), proposing to select Alternative 2 and initiating the administrative objection period.

64. Friends of the Clearwater submitted timely scoping comments in 2014, timely comments on the Draft EIS in 2018, and timely objections in 2020. At each stage of the process,

Friends of the Clearwater raised numerous, detailed concerns with the project, including the Forest Service's failure to gather adequate baseline information and take a hard look at the impacts to old growth and other forest habitat, wildlife, fish, and water quality as required by NEPA. Friends of the Clearwater also raised concerns that the project failed to comply with Forest Plan requirements to identify and protect minimum amounts of old growth and replacement old growth forest, to protect water quality, and to monitor, protect, and sustain fish and wildlife. Friends of the Clearwater also submitted numerous studies on logging, forest health, wildfire, and climate change, many of which questioned the Forest Service's rationale for the logging associated with the project, especially logging in old growth.

65. The Nez Perce Tribe and others also filed administrative objections to the Draft ROD, raising similar concerns. The Forest Service released written responses to the objections, agreeing to make some revisions to its analysis, but denying most objections raised by Friends of the Clearwater and by other objectors. The Forest Service then issued a new Final EIS in September 2020, making revisions to the previous Final EIS.

66. Thereafter, the Forest Service continued adding new documents to the project record. On February 26, 2021, Friends of the Clearwater wrote to the Forest Service requesting public comment and another objection period for Hungry Ridge in light of the revised Final EIS and new information added to the project record, including new information and agency determinations about the presence of grizzly bears in and around the project area. But the Forest Service never responded.

67. On March 3, 2021, Friends of the Clearwater submitted a letter to the Forest Service, raising additional concerns about the Forest Service's refusal to assess the project's affects to grizzly bear in the new Final EIS; failure to analyze how climate change is affecting

the project area, how forests in the project area sequester carbon, and how Hungry Ridge will increase greenhouse gases; and failure to identify and protect old growth forest and old growth-associated wildlife species at Hungry Ridge, particularly fisher. But the Forest Service never responded.

68. On March 24, 2021, the Forest Supervisor Probert signed the Final ROD approving Hungry Ridge, based on the revised September 2020 Final EIS, selecting Alternative 2 without soliciting further public comment, without holding another objection period, and without addressing Friends of the Clearwater's concerns. Alternative 2 was the option with the most logging and the fewest fish and wildlife protections.

69. The stated purpose and need for the Hungry Ridge project in the ROD is "to manage forest vegetation to restore natural disturbance patterns; improve long-term resilience at the stand and landscape levels to better address climate change; reduce the potential risk to private property and structures; maintain and improve habitat structure, function and diversity; and improve watershed conditions."

70. The project includes some watershed restoration activities, including replacing culverts and decommissioning roads, and also includes some other non-logging activities, like prescribed burning. But most of what the Forest Service approved is commercial logging.

71. As approved, Hungry Ridge involves logging of 7,144 acres of forest to harvest 173 million board feet of timber over 10 years. Of that, the vast majority of logging, 5,185 acres, would be "regeneration harvest," which includes what is commonly known as clearcutting and other similar logging practices. The other 1,959 acres would be logged using "intermediate harvest" techniques. Twenty-nine supersized regeneration logging units would be so large that the Forest Service had to seek approval from the Regional Forester to exceed the standard 40-

acre limit on the size of forest openings. One supersized regeneration logging unit would be 405-acres, more than ten times the normal limit.

72. To facilitate this extensive commercial logging, over thirty miles of new road would be constructed through the forest, and nearly seventy miles of other roads would be reconstructed, reconditioned, or maintained.

73. Hungry Ridge includes logging in 669 acres of old growth forest. Most old growth logging—530 acres—is regeneration. Yet throughout the EIS and ROD, the Forest Service focused on justifying the 139 acres of intermediate harvest it authorized in old growth, without explaining why it authorized regeneration harvest, and so much of it, in old growth.

74. In the ROD, the Forest Service asserted that "[a]ll practical means to avoid or minimize environmental harm from the decision are adopted . . . including mitigation measures for natural and cultural resources." And throughout the ROD and EIS, the Forest Service repeatedly downplayed the project's adverse effects to forests, streams, fish, and wildlife as being short-term, temporary, and small, and by claiming the project will improve fish and wildlife habitat in the long-term.

75. According to the ROD, implementation of the Hungry Ridge project may occur immediately after the ROD is signed.

C. Forest Service Approval of End of the World

76. After the Hungry Ridge EIS process was already years underway, the Forest Service initiated the End of the World project in 2017. While Hungry Ridge and End of the World are located in similar, nearby areas, and while they authorize similar amounts and types of logging and other activities, the Forest Service prepared only an EA for End of the World, instead of an EIS.

77. In March 2018, Friends of the Clearwater submitted timely scoping comments to the Forest Service, warning of the project's likely adverse effects to forests, streams, fish, and wildlife, and urging the agency to prepare an EIS instead of an EA.

78. In October 2019, without taking further public comment and without preparing an EIS, the Forest Service released the Environmental Assessment (EA) for End of the World and a Draft Decision Notice and Finding of No Significant Impact (DN/FONSI). The EA considered taking no action and two action alternatives. Alternative A was the proposed action. Alternative B was virtually identical to the proposed action but with slightly less logging. The Draft DN/FONSI proposed selecting Alternative B.

79. On November 12, 2019, Friends of the Clearwater filed timely objections. As it did for Hungry Ridge, Friends of the Clearwater raised numerous, detailed concerns with the End of the World project, including the Forest Service's failure to gather adequate baseline information and failure to take a hard look at the impacts to old growth and other forest habitat, wildlife, fish, and water quality, as required by NEPA. Friends of the Clearwater also raised concerns that the project failed to comply with Forest Plan requirements to identify and protect minimum amounts of old growth forest, to protect water quality, and to monitor, protect, and sustain fish and wildlife. Friends of the Clearwater also submitted numerous studies on forest health, fire risk, and logging, many of which questioned the Forest Service's rationale for the logging associated with the project, especially logging in old growth.

80. Like with Hungry Ridge, the Nez Perce Tribe and others also filed objections. The Forest Service subsequently issued a written response, declining to grant Friends of the Clearwater's objections.

81. On January 25, 2021, Forest Supervisor Probert signed the DN/FONSI, selecting Alternative B, approving End of the World based on the EA, and declining to prepare an EIS.

82. The stated purpose and need of End of the World in the DN/FONSI is to: "[r]educe the risk or extent of, or increase resilience to, insect or disease infestation; [r]educe wildlife risk to the local communities and surrounding federal lands; [r]estore forest vegetation, dry meadows, and grasslands to healthy conditions; and [i]mprove water quality and aquatic habitats." The DN/FONSI adds, "[o]pportunities also exist in the project area to increase the resilience of the forest to insects, disease, and fire."

83. Like Hungry Ridge, the End of the World project includes some watershed restoration activities, including replacing culverts and decommissioning roads, and also includes some other non-logging activities, like prescribed burning. But most of what the Forest Service approved is commercial logging.

84. As approved, End of the World involves logging around 19,000 acres of forest to harvest 144 million board feet of timber over ten years. Of that, nearly 1,600 acres would be logged by regeneration harvest, which includes what is commonly known as clearcutting and other similar practices. The other 16,340 acres would be logged using intermediate harvest techniques. Twelve supersized regeneration logging units would be so large that the Forest Service had to seek approval from the Regional Forester to exceed the 40-acre limit on forest openings, including for a 230-acre opening.

85. To access logging units, more than fifteen miles of new road would be constructed.

86. Logging would occur in 364 acres of old growth, including 5 acres of regeneration harvest in old growth.

87. In the DN/FONSI, the Forest Service admits logging will harm fish and wildlife, degrade water quality, and eliminate and degrade wildlife habitat, but claims "all effects would be minimal or short-lived" and therefore not significant. The Forest Service also claims to have to made its decision "with consideration of past, present and reasonably foreseeable future actions . . . which could have a cumulative significant effect," but states—without any explanation and without even mentioning Hungry Ridge—that the EA and its supporting documents did not find any significant cumulative effects.

D. Logging, Forest Health, Fire, and Climate Change

88. To justify the massive amount of logging it approved for End of the World and Hungry Ridge, and to downplay the adverse effects to wildlife, the Forest Service relies on assumptions that logging might reduce the risk of severe wildfire, reduce the risk of insect and disease infestation, and foster more resilient forests that mimic historical forest conditions.

89. In its public comments and objections, Friends of the Clearwater submitted numerous scientific studies on logging, forest health, fire, and climate change that directly refute, or raise serious questions about, many of the Forest's Service's assumptions for both projects. Among others, this includes studies supporting the following:

- Fireproofing actions taken on private property are the biggest factor driving whether and to what degree private property will survive a wildfire, not the size and intensity of the wildfire;
- Forest moisture is the primary driver of wildfire intensity, not forest fuel load;
- Logging to reduce fuels can increase the likelihood of severe wildfire;
- Wildlife intensity and ignition are strongly related to weather conditions and only weakly related to fuel loads in subalpine forest;

- Old growth forests can counter the impacts from high severity wildfires;
- Native insects enhance forest resistance and resilience to fire and generally reduce the severity of wildfires;
- Due to climate change, historical forest conditions might not return after logging and other treatments and forest might not even grow back at all;
- Fuel treatments remove three times more stored carbon from forests that what is purportedly saved by altering wildfire behavior;
- Converting mature and old growth forests to younger forest, such as by logging, reduces stored carbon and increases atmospheric carbon dioxide for decades;
- Allowing forests to mature can remove more carbon dioxide from the atmosphere than can logging them and letting them regrow.
- Current forest management is projected to reduce the rate of carbon dioxide sequestration in forests;

90. Instead of factoring this information into its decision-making for both projects, the Forest Service ignored or minimized it. In the End of the World DN/FONSI and EA, and in the Hungry Ridge ROD and EIS, the Forest Service never disclosed or considered the significant uncertainties and controversies surrounding whether and to what degree the amounts of total logging it authorized, or the specific types and locations of logging it authorized, might help, hinder, or have no effect on meeting each project's stated purpose and need.

E. Cumulative Adverse Effects of Past, Ongoing, and New Logging on the Salmon-Clearwater Divide

91. Together, End of the World and Hungry Ridge—each massive on their own—would result in logging more than 26,000 acres of the Salmon-Clearwater Divide to harvest more than 300 million board feet of timber over the next ten or so years. But the DN/FONSI and EA

for End of the World and the ROD and EIS for Hungry Ridge fail to provide this combined information or factor it into their analyses.

92. Furthermore, the thin sliver of National Forest land separating End of the World and Hungry Ridge is currently being logged as part of another project, Doc Denny. Another ongoing logging project, "Adams Camp" is underway in the area too.

93. But the End of the World DN/FONSI and EA fail to even mention Hungry Ridge, Doc Denny, or Adams Camp. Buried in the End of the World project record, a Forest Service's cumulative effects document merely lists Hungry Ridge, Doc Denny, and other past, present, and foreseeable future projects, without providing any quantified or detailed information and without accounting for the potentially significant effects to forests, streams, fish, and wildlife along the Salmon-Clearwater Divide when these projects are considered together.

94. Similarly for Hungry Ridge, the Forest Service does not even mention End of the World in the ROD, barely discusses it in the EIS, and fails to address the combined adverse environmental effects of the projects. And while the EIS mentions Doc Denny and Adams Camp, the Forest Service ignored up-to-date, readily-available information about those projects and their combined effects with Hungry Ridge.

F. Adverse Effects of Logging Old Growth Forests

95. Old growth forests are biodiversity hotspots, are naturally resilient to fire, fight climate change by sequestering carbon, and are refugia for species facing a changing climate. End of the World includes 5 acres of regeneration harvest and 359 acres of intermediate harvest in old growth. Hungry Ridge includes 530 acres of regeneration harvest and 139 acres of intermediate harvest in old growth.

96. Regeneration harvest eliminates old growth habitat by cutting down most of the trees, as well as clearing or removing other ecologically important components of the forest, such

as snags and woody debris. The Forest Service admits it takes about 100 to 150 years for forest logged by regeneration techniques to reestablish to the point where it again becomes mature forest habitat for wildlife and might then regain the attributes of old growth forest.

97. Intermediate harvest degrades old growth forests, even when done so as to leave some of the oldest, largest trees in place, as the Forest Service says will occur for Hungry Ridge and End of the World. Old growth is more than the mere presence of a sufficient number of large, old trees. Old growth is an ecological community resulting from decades of natural processes, including the legacies from fire, insects, and disease, such as the presence of dead and dying trees that create habitat for many species. Intermediate harvest typically removes these features of old growth, significantly degrading its ecological and wildlife habitat values for decades.

G. "Existing Old Growth" at Hungry Ridge and End of the World

98. The Nez Perce National Forest is divided up into numerous Old Growth Analysis Areas. The End of the World project area includes, or partially includes, five such Old Growth Analysis Areas. The Hungry Ridge project area includes, or partially includes, six Old Growth Analysis Areas.

99. Within each Old Growth Analysis Area, the Forest Plan requires the Forest Service to maintain at least five percent existing old growth, and also requires designating at least another five percent replacement old growth. If an Old Growth Analysis Area has less than five percent existing old growth, the Forest Service must look to adjacent Old Growth Analysis Areas to identify whether any extra old growth is available to make up the difference.

100. The Forest Plan defines what qualifies as old growth, which the Forest Service calls "Forest Plan Old Growth" or "FPOG." Forest Plan Old Growth is a stand of forest that meets the following criteria set forth in the Forest Plan:

> Old-growth stand refers to a stand of timber that, generally, meets the following criteria:
> 1. At least 15 trees per acre > 21 inches diameter at breast height (DBH). Providing trees of this size in the lodgepole pine and sub-alpine fir stands may not be possible.
> 2. Two or more canopy layers.
> 3. At least .5 snags per acre > 21 inches DBH and at least 40 feet tall.
> 4. Signs of rot and decadence present.
> 5. Overstory canopy closure of 10-40 percent; understory canopy closure of at least 40 percent; total canopy closure at least 70 percent.
> 6. Logs on the ground.

Nez Perce Forest Plan, App'x N.

101. In their comments and objections, Friends of the Clearwater and others pointed out that the Forest Service failed to show that many Old Growth Analysis Areas at End of the World and at Hungry Ridge currently meet the Forest Plan requirement that at least five percent of forested acres must be existing old growth.

102. Using the Forest Service's own numbers of the acres it determined qualify as Forest Plan Old Growth at each project site (set forth in Table 43 in the Wildlife Specialist Report for End of the World and in Table 3-50 in the Hungry Ridge EIS), none of the five Old Growth Analysis Areas at End of the World currently meet the minimum five percent existing old growth requirement, and only two of the six at Hungry Ridge meet the minimum.

103. Existing old growth percentages will drop even more after the logging approved for End of the World and Hungry Ridge. In the end, only one of eleven Old Growth Analysis Areas would meet the minimum five percent requirement.

104. To boost the apparent amount of existing old growth, the Forest Service included not just Forest Plan Old Growth in its tables, but also added in acreage of two other areas: (1) forest stands it determined satisfy the screening criteria for "North Idaho Old Growth" (NIOG); and (2) forest stands located within areas the Forest Service designated as "Management Area

20" (MA 20). But the mere fact that a stand of forest is North Idaho Old Growth and/or is located within an MA 20 area does not mean it qualifies as old growth under the Forest Plan.

105. North Idaho Old Growth is not the same as Forest Plan Old Growth. North Idaho Old Growth is based on a different set of criteria. For example, for ponderosa old growth, only eight or more sufficiently large trees meet the criteria for North Idaho Old Growth; whereas, at least fifteen large trees per acre are required to qualify as Forest Plan Old Growth. Furthermore, unlike Forest Plan Old Growth, which defines what qualifies as an old growth stand, North Idaho Old Growth is based on a screening device for selecting stands that may be suitable for management as old growth and was intended as an initial guide, not as criteria for determining whether a stand is indeed old growth.

106. Thus, a forest stand that meets the screening criteria for North Idaho Old Growth does not necessarily qualify as Forest Plan Old Growth. In fact, when the Forest Service evaluated forest stands at End of the World and Hungry Ridge, it found: some stands qualified as Forest Plan Old Growth; some stands qualified as both Forest Plan Old Growth and North Idaho Old Growth (labeled as "NIOG/FPOG" in the tables); and some stands qualified as North Idaho Old Growth only. Yet, the Forest Service counted all of these as existing old growth, including the many stands of North Idaho Old Growth, even though the agency never found those stands qualified as Forest Plan Old Growth.

107. Management Area 20 is not a category of existing old growth. Under the Forest Plan, the Forest Service divided National Forest lands in the Nez Perce National Forest into different management areas, each with different goals and limitations. MA 20 is one such management area, and the stated goal for MA 20 is to "[p]rovide 'suitable' habitat (existing and replacement) for old-growth-dependent wildlife species." *Forest Plan* at III-56. The Forest

Service designated various blocks of land as MA 20, which are distributed across the entire Nez Perce National Forest, including multiple MA 20 blocks at the End of the World and Hungry Ridge sites. *Id.*

108. The fact that a particular forest stand is located in an area of MA 20 does not mean it is Forest Plan Old Growth (or even North Idaho Old Growth). As the Forest Plan states for MA 20:

> Approximately half of the area has a timber condition class of overmature sawtimber (150 years or older). The remainder of the area is comprised of immature stands (40-80 years) that will provide for replacement old growth habitat.

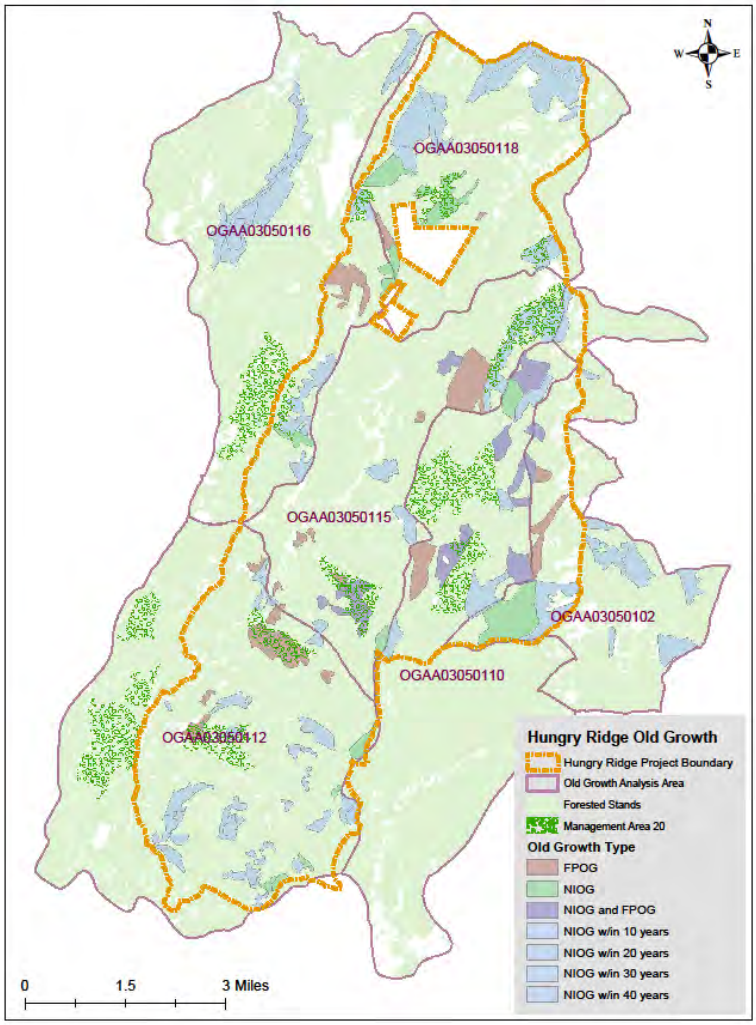
Id. (emphasis added). As Forest Plan Appendix N provides, a single "old growth complex" can include areas of existing old growth as well as areas of replacement old growth, and: "Within the old-growth complex, only the stands that meet old-growth criteria will be counted toward meeting the allocation for existing old growth. The replacement stands will be counted toward meeting the allocation for replacement old growth."

109. When it approved End of the World and Hungry Ridge, the Forest Service gathered and reviewed forest stand data for portions of—but not all of—each project area. For those stands where the Forest Service gathered sufficient data, the Forest Service determined whether the stand qualified as Forest Plan Old Growth and/or met the screening criteria for North Idaho Old Growth. But for the rest of the forest stands—those for which the Forest Service lacked sufficient data—it did not make those determinations.

110. As illustrated in the map below for Hungry Ridge (reproduced from Fig. 19 in the EIS), some of the areas the Forest Service determined were Forest Plan Old Growth (and/or North Idaho Old Growth) partially overlap with MA 20 blocks. But as the map shows (as do the Forest Service's tables), the majority of MA 20 areas have no overlap with stands the Forest

Service actually determined were Forest Plan Old Growth (or North Idaho Old Growth). Nevertheless, the Forest Service counted these large swaths of MA 20 land as existing old growth, instead of separating out existing and replacement old growth as required by the Forest Plan.

Fig. 2. Map of Hungry Ridge Old Growth Analysis Areas
(reproduced from Fig. 19 in the Hungry Ridge EIS)



111. As shown in Table 43 in the Forest Service's Wildlife Specialist Report for End of the World, and in Table 3-50 in the Hungry Ridge EIS, by including North Idaho Old Growth and by including unverified areas of MA 20, the Forest Service greatly inflated the amount of

purported "existing old growth" in each Old Growth Analysis Area, such that all Old Growth Analysis Areas would appear to exceed the five percent minimum existing old growth requirement.

112. Based on its improperly inflated existing old growth numbers, the Forest Service erroneously assumed every Old Growth Analysis Area at End of the World and Hungry Ridge meets the five percent standard, never consider whether adjacent Old Growth Analysis Areas have extra existing old growth to compensate (which they might not), and authorized extensive old growth logging.

H. "Replacement Old Growth" at End of the World and Hungry Ridge

113. In addition to the five percent minimum existing old growth requirement, the Forest Plan has a separate requirement to designate at least five percent of each Old Growth Analysis area as "replacement old growth." Replacement old growth is not existing old growth. Replacement old growth is defined in Forest Plan Appendix N as a timber stand that will meet old-growth criteria within 100 years.

114. In its old growth tables (Table 43 in the End of the World Wildlife Specialist Report and Table 3-50 in the Hungry Ridge EIS), the Forest Service lists acres of replacement old growth in each Old Growth Analysis Area. The Forest Service's replacement old growth numbers show that none of the five Old Growth Analysis Areas at End of the World satisfy the minimum five percent requirement. At Hungry Ridge, one old growth analysis area fails to satisfy the minimum five percent requirement.

115. The Forest Service never directly discloses these facts in the Hungry Ridge ROD and EIS or End of the World DN/FONSI and EA, and instead asserts that both projects meet the required minimum five percent replacement old growth. In both tables, the Forest Service masks over this by misleadingly adding all existing old growth and replacement together to calculate

what it called the "Total % OG" in each Old Growth Analysis Area, instead of clearly considering existing and replacement old growth separately, as required by the Forest Plan. And in response to Friends of the Clearwater's objections raising concerns about whether and how the Forest Service identified and designated replacement old growth, and whether sufficient replacement old growth will be protected from logging authorized by both projects, the Forest Service did not even muster a response and brushed these concerns off without explanation.

I. Forest-wide Old Growth

116. In addition to raising concerns about the Forest Service's failure to ensure compliance with the Forest Plan requirements for existing and replacement old growth within the Old Growth Analysis Areas at both project sites, Friends of the Clearwater and others commented on and objected to the Forest Service's assertions made in documents prepared for both projects that it was in compliance with the Forest Plan requirement to maintain at least ten percent old growth throughout the entire Nez Perce National Forest.

117. Friends of the Clearwater and others raised concerns that the Forest Service improperly relied on North Idaho Old Growth and MA 20 areas, instead of using the definition of old growth in the Forest Plan (Forest Plan Old Growth), to estimate forest-wide old growth. They also raised concerns about the Forest Service's reliance on data from the Forest Inventory and Analysis (FIA) Program as being too coarse and otherwise limited to accurately determine the amount of old growth within the Nez Perce National Forest.

118. Friends of the Clearwater also raised concerns that, even if it were appropriate to use FIA data, the Forest Service relied on outdated data based on a report prepared in 2010 using FIA data ranging from about 2000 to 2010. FIA plots of land are reviewed every 10 years, with different plots reviewed on different years. Thus, a 2010 report based on FIA data utilizes data as recently as 2010 for some forest plots, data as old as 2000 for other plants, and data gathered on

years in between 2000 and 2010 for other plots. But as Friends of the Clearwater showed in its objections, even the most recent 2010 data is no longer accurate, as the Forest Service has substantially increased its timber output on the Nez Perce National Forest since 2010.

119. For both projects, in response to objections, the Forest Service refused to consider these issues. Despite the fact that both projects authorize logging in old growth and would reduce thus reduce the amount of forest-wide old growth, the Forest Service asserted that its compliance with the ten percent forest-wide requirement was outside the scope of these projects and that it could ignore Friends of the Clearwater's concerns.

J. Importance to Wildlife of Large and Connected Blocks of Old Growth and Other Mature Forest

120. The Salmon-Clearwater Divide provides habitat for multiple special status wildlife species. These include Canada lynx, an ESA-listed threatened species, and wolverine, a sensitive species, both of which depend on forested habitat to disperse through the project areas. These also include multiple Forest Service-designated "sensitive species" that depend on mature and old growth forest, including fisher, marten, goshawk, pileated woodpecker, and other species with habitat in both project areas.

121. While the Forest Plan's minimum existing and replacement old growth percentages are important for helping protect these species, the Forest Service acknowledged in the EIS for the Forest Plan that reducing old growth forests to the minimum acreage will likely take a significant toll on wildlife:

> As the quantity of old-growth habitat is reduced and as its distribution patterns and quality are altered, we expect to see significant decreases in the total number of wildlife species and significant changes in species composition of wildlife communities that are associated with these habitats. In effect, an entire ecosystem will drastically change over time as old-growth forests are reduced to a minimum.

Nez Perce National Forest Plan, Final Environmental Impact Statement, p. IV-53. This is

supported by studies suggesting that old growth occupied 20 to 50 percent of many pre-settlement forest ecosystems in the Northern Rockies.

122. Similarly, while the total quantity of existing and replacement old growth is important, so too is to is the size, shape, and location of areas of old growth and of other mature forest. Smaller, narrower, or isolated islands of old growth and other mature forest provide less value to wildlife than do larger and connected swaths of old growth and other mature forest.

123. The logging approved for both End of the World and Hungry Ridge will not only reduce the total amount of old growth and other mature forest at the site, it will also decrease the size, alter the shape, and fragment the connectivity of these important habitats in ways the Forest Service failed to consider in when it approved each project.

K. Adverse Project Effects to Fisher and Other Mature Forest-Associated Wildlife

124. Fisher are a sensitive species and Management Indicator Species in the Nez Perce National Forest. Fisher are a mammal that live in low- to mid-elevation forests, including mountain ranges and riparian areas up to about 6,500 feet elevation in Idaho. Studies in the 1990s showed the range and population levels of fisher declined substantially in the prior century, primarily the result of trapping pressure and habitat alteration from logging. The Northern Rocky Mountain fisher population has been considered by FWS for protection under the ESA.

125. Fisher have been consistently documented on the Salmon-Clearwater Divide, including in the End of the World and Hungry Ridge project areas, but their population levels and trends there are not known.

126. Old growth and other mature forest can provide excellent fisher habitat. Fisher depend on large snags or decadent live trees and logs for denning and resting, and complex physical structures near the forest floor to support adequate prey populations. Old and large trees

can provide denning and resting sites, as can accumulations of woody debris. Canopy cover of at least 40 percent is important, and fisher prefer landscapes with highly connected patches of mature forest (50 percent or more) and small amounts of open areas (five percent or less). An increase in openness from five to just ten percent can reduce the relative probability of occupation of fisher in an area by 39 percent. Fisher avoid open areas, including areas logged within the past twelve years.

127. The End of the World DN/FONSI and EA barely discuss fisher or provide any information on the species and its habitat. In the Wildlife Specialist Report prepared for the EA, the Forest Service determined that fisher habitat in the End of the World has already been degraded by logging and currently fails to meet the above criteria, but also found that fisher are hanging and have been documented in the area. While there are 23,996 acres of "probable" fisher habitat in End of the World, only 41 percent of that habitat is currently mature forest (including old growth), falling short of the 50 percent mature forest preferred by fisher. And as approved, End of the World regeneration logging would eliminate 588 more acres (5.8%) of that important mature forest habitat. Additionally, another 3,540 acres of mature forest habitat would be degraded by intermediate harvest and fuels treatments.

128. Not only will End of the World eliminate and degrade mature forest habitat that fisher need, it will also create more forest openings, which causes further harm to fisher. Around twelve percent of probable fisher habitat in End of the World is currently open area, exceeding the five percent open area threshold for fisher. End of the World regeneration logging would result in another 1,244 acres of open area. Another 10,497 acres of fisher habitat would be logged by intermediate harvest, which the Forest Service recognized might cause gaps large enough to make areas unsuitable for fisher.

129. The Forest Service also admitted that it takes 100 to 150 years for mature forests that fisher rely on to reestablish as mature forest habitat after logging. But the Forest Service asserted, without explanation in the EA or wildlife report, that logging even more mature forest and creating even more, and very massive, open areas in the wake of End of the World will have only negligible, short-term effects to fisher.

130. Like with fisher, the Forest Service ignored and/or downplayed the project's likely adverse effects to conclude End of the World would have no long-term adverse effects to other special-status species that depend on mature forests, including pine marten, goshawk, pileated woodpecker, wolverine, and lynx.

131. Similarly, the Hungry Ridge ROD and EIS downplay adverse effects to fisher and other wildlife. In the Wildlife Specialist Report for Hungry Ridge, the Forest Service acknowledged many ways logging will destroy and degrading fisher habitat, admitted that it takes 100-150 years after logging for suitable fisher habitat to return, and determined forest openings would increase from five percent now to 26 percent after logging.

132. But the Forest Service failed to disclose these significant adverse effects to fisher and other wildlife in the Hungry Ridge EIS. In the wildlife section of the EIS, the Forest Service misleadingly asserted that there "is potential for impacts to wildlife from the Hungry Ridge project, such as reducing habitat for some species . . . and potentially disturbing and displacing wildlife during implementation of proposed activities." In addition to falsely downplaying the adverse effects to wildlife as "potential" impacts, the Forest Service also falsely claimed there will be only "short-term impacts" in the EIS.

133. The Hungry Ridge ROD also includes a section on wildlife, but there the Forest Service wholly ignored the certain and adverse effects to fisher and other wildlife that depend on

mature forests. In the ROD wildlife section, the Forest Service discussed only those ways logging would create more open habitat and how that could benefit a few wildlife species in the area, without even mentioning fisher and other species that will be harmed for the next 100 years or more due to logging old growth and other mature forest habitat.

L. Adverse Project Impacts to Grizzly Bear

134. End of the World and Hungry Ridge will adversely affect grizzly bear.

135. Prior to European settlement, an estimated 50,000 grizzlies roamed the lower 48 states. 82 Fed. Reg. 30,502, 30,508 (Jun. 30, 2017). By the 1930s, just 125 years after European settlers moved into grizzly country, grizzly bears were found in only two percent of their former range. *Id.* By 1975, only six grizzly populations remained in the lower 48. The grizzly bear was listed in the lower 48 states as a threatened species in 1975 under the ESA. 40 Fed. Reg. 31,734 (Jul. 28, 1975). The grizzly bear is also a Management Indicator Species on the Nez Perce National Forest.

136. Since 1982, the U.S. Fish and Wildlife Service has focused on fostering grizzly bear recovery in six ecosystems within the lower 48 states: (1) the Greater Yellowstone Ecosystem; (2) the Northern Continental Divide Ecosystem of north-central Montana; (3) the Cabinet-Yaak area extending from northwest Montana to northern Idaho; (4) the Selkirk Mountains in northern Idaho, northeast Washington, and southeast British Columbia; (5) north-central Washington's North Cascades area; and (6) the Bitterroot Mountains of western Montana and central Idaho. 82 Fed. Reg. at 30,508–09.

137. The Salmon-Clearwater Divide is located adjacent to the Selway-Bitterroot Recovery Area and is within the surrounding Experimental Population Area. Grizzly bears were believed to have previously been extirpated from this area. After ESA listing, FWS identified

this area as one to be repopulated naturally as part of its plan to protect and recover grizzly. In recent years, as grizzly populations have increased, more bears have been detected in and around the Selway-Bitterroot Recovery Area, including recently at End of the World.

138. In 2019, a male grizzly bear was documented in the End of the World project area. The next spring, in April 2020, grizzly bear prints were found nearby along the South Fork Clearwater River. The Idaho Department of Fish and Game and the Forest Service believe this might have been the same grizzly bear, in which case the bear would have hibernated over winter in or near End of the World. Alternatively, it means another grizzly bear was recently in the area.

139. Additional evidence of grizzly bears in and around the Selway-Bitterroot Recovery Area in Idaho has surfaced in recent years. In 2019, there was evidence of a potential grizzly bear in the Newsome area approximately twenty miles northeast of the End of the World boundary. Also in 2019, there was evidence of a potential grizzly bear in the Clear Creek/Big Cedar area approximately fifteen miles north of the End of the World boundary. Additionally, grizzly bears have been documented and/or sighted in Idaho in 2019 and Montana in 2019 near Lolo Pass.

140. In light of recent grizzly bear sightings, FWS notified the Forest Service in 2020 that grizzly bear "may be present" in both the End of the World and Hungry Ridge project areas.

141. Disagreeing with FWS's determination, the Forest Service decided grizzly bears will not be present and that End of the World and Hungry Ridge would, therefore, have "no effect" on grizzly. Based on these no effect findings, the Forest Service never engaged in ESA Section 7 consultation with FWS over either project's affects to grizzly bear, and the Forest Service refused to consider the potential effects to grizzly bear in either the End of the World EA or the Hungry Ridge EIS. The Forest Service did not even respond to the portions of Friends of

the Clearwater's objections raising concerns about grizzly bear.

142. End of the World and Hungry Ridge will individually and cumulatively adversely affect grizzly, both in the short- and long-term. The noise and activity from logging and road construction activities will likely disturb any bears in or near either project site over the next thirteen years. For other wildlife species, including wolverine and lynx, even though these species are not known to "occupy" the sites, these species might occasionally pass through the sites, and the Forest Service admitted the projects could disturb and displace animals while logging and other project activities are underway and would degrade their habitat. Yet, the Forest Service claimed the opposite when it comes to grizzly bears.

143. Grizzlies are particularly susceptible to harm—including mortality—caused by coming into conflict with humans. But the Forest Service failed to acknowledge, let alone evaluate in the EA and EIS, the risk of a bear encountering people working on End of the World or Hungry Ridge over the next thirteen years. Additionally, road density is a primary factor affecting grizzly. End of the World includes building fifteen miles of new "temporary" road, and Hungry Ridge involves building nine miles of new permanent road and 23 miles of temporary road. Increased road density decreases the amount of secure habitat available for bears and increases the likelihood of a conflict with humans.

144. All of these adverse effects to grizzly are exacerbated when considering End of the World and Hungry Ridge together and considering them together with other ongoing actions, like Doc Denny and Adams Camp. But for each project, the Forest Service ignored the many ways grizzly may be harmed by the extensive logging and other activities, and the agency never disclosed, evaluated, or mitigated against them in the EA and DN/FONSI for End of the World or the EIS and ROD for Hungry Ridge and never engaged is ESA consultation with FWS.

M. Fish and Streams on the Salmon-Clearwater Divide

145. Streams on the Salmon-Clearwater Divide provide habitat to multiple ESA-listed and sensitive species of fish. Snake River steelhead, Chinook salmon, and bull trout are all found on the Divide, and each is listed as a "threatened" species under the ESA. 62 Fed. Reg. 43937 (Aug. 18, 1997); 57 Fed. Reg. 14653 (Apr. 22, 1992); 63 Fed. Reg. 31647 (Jun. 10, 1998). Westslope cutthroat trout is a sensitive species and management indicator species that is found in streams on the Divide.

146. The majority of the End of the World project area (but none of Hungry Ridge) is in the White Bird Creek drainage, which flows into the Salmon River. Fifty-two miles of streams in the White Bird Creek drainage in the End of the World project area are designated critical habitat for steelhead, including the north and south forks of White Bird Creek and many of their tributaries, including Pinnacle, Little White Bird, Jungle, Asbestos, Cold Springs, Fish, and Tollgate creeks.

147. Steelhead have been documented in each of the above streams. NOAA Fisheries identified White Bird Creek as a major spawning area for the regional population of steelhead. Chinook salmon and bull trout are also expected to access and use White Bird Creek. The Forest Service expects westslope cutthroat trout to occur in some project area streams in the White Bird Creek drainage, but the agency has not identified those streams.

148. Both End of the World and Hungry Ridge border the South Fork Clearwater River, and both project areas include streams that flow the South Fork Clearwater. The South Fork itself is designated critical habitat for ESA-listed steelhead and bull trout. Steelhead and bull trout inhabit the South Fork in the reaches along the project boundaries. Spring Chinook salmon, westslope cutthroat trout, lamprey, and pearlshell mussels also inhabit the South Fork Clearwater along the project boundary as well.

149. The End of the World project area includes some tributary streams that flow north to the South Fork Clearwater River. These tributaries are not known to have fish.

150. All streams in the Hungry Ridge project area flow into the South Fork Clearwater River. The Hungry Ridge project is bounded by two creeks, Johns Creek on the east, and Mill Creek on the west. In the ROD, the Forest Service states, "The Mill Creek and Johns Creek watersheds are of particular importance to bull trout and provide spawning and rearing habitat for steelhead and westslope cutthroat trout." Mill Creek watershed is listed as designated critical habitat for steelhead and bull trout and provides spawning and rearing habitat for westslope cutthroat trout. Johns Creek watershed is designated critical habitat for steelhead and bull trout, and also supports westslope cutthroat trout, providing spawning and rearing habitat for all three.

151. Streams on the Salmon-Clearwater Divide have been impacted by past and ongoing logging, grazing, and other activities, and fish remain at risk in the area. For example, extremely low numbers of steelhead returned to the area in recent years, confirming NOAA Fisheries' classification of local steelhead populations as being at "high risk."

152. Furthermore, at End of the World, the Forest Service determined two creeks in the White Bird Creek drainage currently fail to meet Forest Plan fish habitat requirements: Jungle Creek and Cold Springs Creek. And at Hungry Ridge, the Forest Service determined five streams in the South Fork Clearwater drainage fail to meet fish habitat requirements: Merton Creek; Upper Mill Creek; Deer Creek; American Creek; and Trout Creek.

N. Adverse Effects to Fish and Streams

153. Deposited sediment is an important indicator of fish habitat condition in Idaho Batholith streams, which include streams on the Salmon-Clearwater Divide. A high amount of silt and sand (fine sediment) is correlated with a reduction in habitat quality for trout and salmon in streams in this geologic type. Sediment in transport as suspended sediment or bedload

sediment, and sediment accumulating on the streambed, can negatively affect aquatic invertebrate and fish habitat. Larger inorganic particles, particularly sand, can reduce fish reproduction. Sand can decrease food production and decrease fish cover by filling important pool habitat.

154. For both projects, the Forest Service admitted that logging, road construction and use, and other activities it authorized can deliver sediment to streams, causing suspended sediment and sediment deposition, reducing water quality and fish habitat conditions. But in the End of the World DN/FONSI and EA and the Hungry Ridge ROD and EIS, the Forest Service emphasized the purported long-term benefits of the watershed improvement components of both projects (including road decommissioning and culvert replacements), while ignoring and improperly minimizing adverse effects from logging, road construction, and road use to claim these effects will be short-term and negligible.

155. Decreased water quality and fish habitat during ten years of logging, and potentially after, is neither short-term nor insignificant. This is particularly concerning given the substantially degraded conditions many project area streams are already in and given the high-risk status of steelhead.

156. For example, in the Mill Creek watershed, Hungry Ridge will add to the cumulative effects of the ongoing Adams Camp and Doc Denny logging projects, both of which are also in the Mill Creek watershed. Hungry Ridge will also add to the documented negative effects of ongoing livestock grazing on streams in Upper Mill Creek that have removed nearly all preexisting riparian trees and bushes.

157. In claiming sediment would be negligeable, the Forest Service ignored important indicators of sediment delivery. For both projects, despite the massive amounts of logging, the

Forest Service dismissed timber harvest as an issue indicator and source of sediment, because (according to the Forest Service) logging would not occur within buffers along streams. In reaching this conclusion, the Forest Service pointed to studies that do not actually support its conclusion, relied on one monitoring report based on nothing more than casual observations made during summer dry conditions, and failed to disclose opposing science showing sediment does erode across so-called no-harvest buffers. Much of the logging approved will use ground based heavy equipment, which creates skid trails, which will connect to project roads and ditches, and link to streams.

158. The Forest Service also failed to include the number of road crossings as an important issue in its analyses, or the corresponding log hauling and road maintenance at crossings. Buried in Appendix E of the Hungry Ridge EIS, the Forest Service acknowledged that log hauling from timber harvest is the activity with "the highest risk of contributing sediment to streams outside of road decommissioning and culvert replacements." But the Forest Service never disclosed or considered basic information about the amount, timing, method, and location of log haul and stream crossings for Hungry Ridge. For End of the World, in the Aquatics Specialist Report, the Forest Service did estimate that there are about 100 stream crossings associated with the log haul routes, but it asserted without explanation that log haul is "not expected to add measurable amounts of sediment."

159. In addition to sediment increases, both projects will increase water yield. The Forest Service uses "Equivalent Clearcut Area" (ECA) as a metric developed to estimate water yield and represents the amount of forest canopy openings in a watershed from disturbances such as fire, timber harvest, and road presence. The larger the ECA value, the greater the disturbance in the watershed. A high ECA is a red flag that there may be potential for decreased channel

stability due to sustained increased stream energy.

160. The Forest Service did consider ECA for both projects and found multiple watersheds at each site would be degraded from their current condition of High down to Moderate due the extensive amount of regeneration harvest approved. For example, American Creek is one of two stream reaches in the Hungry Ridge project area the Forest Service identified as "highly sensitive to disturbance." In American Creek, logging would increase ECA from its current value of 3 percent to 25 percent. Similarly, the Forest Service acknowledged that when approximately 15 percent of a watershed is logged, a perceptible change to water yield and stream channels may occur. In the Mill Creek watershed as a whole, the project would harvest 18 percent of the watershed. And this watershed has ongoing human activities, including roads, recreation, and grazing. Mill Creek is still recovering from mass wasting and flooding in 2008, and the watershed is currently below desired conditions for water quality. But the Forest Service brushes these high ECA values off, again stating impacts would be short-term and negligible.

161. For both projects, the Forest Service also admitted that the seven streams mentioned in the previous section (Jungle, Cold Springs, Merton, Upper Mill, Deer, American, and Trout creeks) currently fail to meet Forest Plan requirements for fish habitat conditions and that, therefore, logging is not allowed in those watersheds unless a positive, upward trend is demonstrated.

162. The Forest Service undertook an "upward trend analysis" to justify logging in each of the watersheds. But in those analyses, the Forest Service again embellished the long-term improvements it expects to see after the projects are completed, downplayed the many years of decreasing trends expected while logging is underway, and failed to gather baseline data necessary to determine the current condition and trends for each stream.

FIRST CLAIM FOR RELIEF:
End of the World
NEPA & APA Violations for Failure to Prepare an EIS

163. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

164. This first claim challenges the Forest Service's violations of the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, and NEPA's implementing regulations, by authorizing the End of the World project without preparing an Environmental Impact Statement. Plaintiff brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

165. NEPA requires federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

166. Under NEPA's implementing regulations, "significance" requires an evaluation of both the "context" of the action and its "intensity." "Context" means that "the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality." 40 C.F.R. § 1508.27(a). "Intensity" refers to the "severity of impact." *Id.*, § 1508.27(b). Factors relevant to this determination include the impacts that may be both beneficial and adverse; the degree of impact on public safety; unique characteristics of the geographic area; whether the proposed action is highly controversial; whether the proposed action involves highly uncertain or unknown risks; whether the action will set a precedent for future actions; whether there will be cumulatively significant impacts; and whether the action threatens a violation of other federal or state laws, policies, or requirements. *Id.*

167. The Forest Service's approval of the End of the World project is a major federal action significantly affecting the quality of the human environment and requires preparation of a

full EIS under NEPA for many reasons, including but not limited to:

(a) The massive scale of logging authorized, including 19,000 acres of total logging, 1,600 acres of regeneration harvest, twelve supersized logging openings up to 230 acres in size, logging in 364 acres of old growth forest, and associated road construction, road reconstruction, and road use;

(b) The highly controversial, unknown, and/or uncertain direct, indirect, and cumulative impacts of approved logging and other activities on wildfire risk, forest health, and climate change;

(c) The large, highly controversial, and/or highly uncertain direct, indirect, and cumulative short- and long-term impacts on wildlife, including on ESA-listed grizzly bear and lynx and on fisher, marten, wolverine, and other sensitive species and/or management indicator species and their habitat; and/or

(d) The large, highly controversial, and/or highly uncertain direct, indirect, and cumulative short- and long-term impacts on wildlife, including on ESA-listed steelhead, salmon, and bull trout, and on westslope cutthroat trout and other sensitive species and/or management indicator species and the streams they inhabit.

168. Because the Forest Service violated NEPA's requirements by approving the End of the World project through an inadequate EA and DN/FONSI and by failing to prepare an EIS, its action is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF:
End of the World
NEPA & APA Violations for Inadequate DN/FONSI & EA

169. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

170. This second claim challenges the Forest Service's violations of NEPA, 42 U.S.C. §§ 4321 *et seq.*, and NEPA's implementing regulations, by authorizing the End of the World project based on the defective EA and DN/FONSI without taking a "hard look" at potential impacts as required by NEPA. Friends of the Clearwater brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

171. The End of the World EA and DN/FONSI are based upon unsupported assumptions, errors, and omissions which render them grossly deficient under NEPA and the APA, including but not limited to the following:

(a) Failing to disclose, consider, and factor into its analysis studies showing controversial, uncertain, and negative effects of authorized logging on wildfire, forest health, and climate change;

(b) Failing to gather and utilize accurate, up-to-date, and readily-available baseline information to identify existing and replacement old growth in the Old Growth Analysis Areas at the project site;

(c) Failing to disclose the limitations of the data and methods used, and/or the lack of data used, to identify existing and replacement old growth in the Old Growth Analysis Areas at the project site;

(d) Artificially inflating the purported amount of "existing old growth" to include forest stands that are not existing old growth and/or to include areas where it is unknown whether

they qualify as old growth;

(e) Failing to respond to comments and objections raising concerns about the Forest Service's compliance with forest-wide old growth standards, and failing to disclose the data and methods, and limitations of those data and methods, the Forest Service used to estimate forest-wide old growth;

(f) Failing to take a hard look at the direct, indirect, and cumulative effects of logging and associated activities on wildlife and wildlife habitat, including for ESA-listed grizzly bear and lynx as well as for fisher, marten, wolverine, and other sensitive species and/or management indicator species;

(g) Failing to take a hard look at the direct, indirect, and cumulative effects of logging and associated activities on fish and streams, including on ESA-listed steelhead and Chinook salmon, as well as westslope cutthroat trout and other sensitive species and/or management indicator species; and/or

(h) Failing to take a hard look at the adverse effects to fish and wildlife from End of the World together with the effects of the Doc Denny, Adams Camp, and Hungry Ridge logging projects and all other past, present, and reasonably foreseeable cumulative, similar, and connected actions.

172. By relying on the defective End of the World EA and DN/FONSI, the Forest Service's action approving the project is arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF:
End of the World
NFMA & APA Violations for Failure to Comply with Forest Plan

173. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

174. This third claim challenges the Forest Service's violations of the National Forest Management Act, 16 U.S.C. §§ 1601 *et seq.*, and NFMA's implementing regulations, by failing to comply with NFMA regulations and the Nez Perce Forest Plan when it authorized the End of the World project based on the EA and DN/FONSI. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

175. NFMA and its implementing regulations require that all management actions approved by the Forest Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). The Forest Service's approval of the End of the World project is inconsistent with the Forest Plan and thus in violation of NFMA by, among other issues noted herein:

(a) Failing to maintain at least five percent of the forested acres in every Old Growth Analysis Area at the project site as "existing" old growth forest;

(b) Failing to designate at least five percent of the forested acres in each Old Growth Analysis Area at the project site as "replacement" old growth;

(c) Failing to maintain at least ten percent of the forested acres across the Nez Perce National Forest as old growth; and/or

(d) Failing to demonstrate a positive, upward trend in fish habitat conditions before authorizing logging in Jungle Creek and Cold Springs Creek.

176. The Forest Service's approval of the End of the World EA and DN/FONSI is thus

arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF:
End of the World
APA & ESA Violation for No Effect Finding for Grizzly Bear

177. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

178. This fourth claim challenges the Forest Service's determination that the End of the World project will have "no effect" on grizzly bear and its refusal, therefore, to engage in ESA consultation. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

179. Section 7(a)(2) of the ESA requires federal agencies to consult with the Fish and Wildlife Service to "insure" that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its designated critical habitat. 16 U.S.C. § 1536(a)(2). To comply with Section 7(a)(2), federal agencies must consult over any agency action that "may affect" an ESA-listed species. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(a).

180. The threshold of "may affect" is low and includes any possible effect. The noise and other disturbances, increase in road density, and risk of human-bear conflict during ten years of logging, plus three more years of follow-up work in an area where the FWS recognizes grizzly may be present, where grizzly bears are expected to reestablish and support recovery, and where

one or more grizzly has been documented recently, exceeds the "may affect" threshold.

181. The Forest Service's no effect finding, and refusal to consult, when it approved the End of the World project based on the EA and DN/FONSI is thus arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and the approval must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

FIFTH CLAIM FOR RELIEF:
Hungry Ridge
NEPA & APA Violations for Inadequate ROD & EIS

182. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

183. This fifth claim challenges the Forest Service's violations of NEPA, 42 U.S.C. §§ 4321 *et seq.*, and NEPA's implementing regulations, by authorizing the Hungry Ridge ROD based on the defective EIS without taking a "hard look" at potential impacts as required by NEPA. Friends of the Clearwater brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

184. The Hungry Ridge ROD and EIS are based upon unsupported assumptions, errors, and omissions which render them grossly deficient under NEPA and the APA, including but not limited to the following:

(a) Failing to disclose, consider, and factor into its analysis studies showing controversial, uncertain, and negative effects of authorized logging on wildfire, forest health, and climate change;

(b) Failing to gather and utilize accurate, up-to-date, and readily-available baseline information to identify existing and replacement old growth in the Old Growth Analysis Areas at the project site;

(c) Failing to disclose limitations of the data and methods used, and/or the lack of data used, to identify existing and replacement old growth in the Old Growth Analysis Areas at the project site;

(d) Artificially inflating the purported amount of "existing old growth" to include forest stands that are not old growth and/or to include stands where it is unknown whether they qualify old growth;

(e) Failing to respond to comments and objections raising concerns about the Forest Service's compliance with forest-wide old growth standards, and failing to disclose the data and methods, and limitations of those data and methods, the Forest Service used to estimate forest-wide old growth;

(f) Failing to take a hard look at the direct, indirect, and cumulative effects of logging and associated activities on wildlife and wildlife habitat, including for ESA-listed grizzly bear and lynx as well as fisher, marten, wolverine, and other sensitive species and/or management indicator species;

(g) Failing to take a hard look at the direct, indirect, and cumulative effects of logging and associated activities on fish and streams, including for ESA-listed steelhead and Chinook salmon, as well as westslope cutthroat trout and other sensitive species and/or management indicator species; and/or

(h) Failing to take a hard look at the adverse effects to fish and wildlife from End of the World together with the effects of the Doc Denny, Adams Camp, and Hungry Ridge logging

projects and all other past, present, and reasonably foreseeable cumulative, similar, and connected actions.

185. By relying on the defective Hungry Ridge EIS and ROD, the Forest Service's action approving the project is arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

SIXTH CLAIM FOR RELIEF:
Hungry Ridge
NFMA & APA Violations for Failing to Comply with Forest Plan

186. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

187. This sixth claim challenges the Forest Service's violations of the National Forest Management Act, 16 U.S.C. §§ 1601 *et seq.*, and NFMA's implementing regulations, by failing to comply with NFMA regulations and the Nez Perce Forest Plan in approving Hungry Ridge based on the ROD and EIS. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

188. NFMA and its implementing regulations require that all management actions approved by the Forest Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). The Forest Service's approval of the Hungry Ridge project is inconsistent with the Forest Plan and thus in violation of NFMA by, among other issues noted herein:

(a) Failing to maintain at least five percent of the forested acres in every Old Growth Analysis Area at the project site as "existing" old growth forest;

(b) Failing to designate at least five percent of the forested acres in each Old Growth Analysis Area at the project site as "replacement" old growth;

(c) Failing to maintain at least ten percent of the forested acres across the Nez Perce National Forest as old growth; and/or

(d) Failing to demonstrate a positive, upward trend in fish habitat conditions before authorizing logging in Merton Creek, Trout Creek, American Creek, Deer Creek, and Upper Mill Creek.

189. The Forest Service's approval of the Hungry Ridge project ROD and EIS is thus arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. § 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

SEVENTH CLAIM FOR RELIEF:
Hungry Ridge
APA Violation for No Effect Finding for Grizzly Bear

190. Plaintiff Friends of the Clearwater realleges and incorporates by reference the preceding paragraphs.

191. This seventh claim challenges the Forest Service's determination that the Hungry Ridge project will have "no effect" on grizzly bear and its refusal, therefore, to engage in ESA consultation. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

192. Section 7(a)(2) of the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service to "insure" that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its designated critical habitat. 16 U.S.C. § 1536(a)(2). To comply with Section 7(a)(2), federal agencies must consult over any agency action that "may affect" an ESA-listed species. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(a).

193. The threshold of "may affect" is low and includes any possible effect. The noise and other disturbances, increase in road density, and risk of human-bear conflict during ten years of logging, plus three more years of follow-up work in an area where the FWS recognizes grizzly may be present, where grizzly bears are expected to reestablish and support recovery, and where one or more grizzly has been documented recently, exceeds the "may affect" threshold.

194. The Forest Service's no effect determination, and refusal to consult, when it approved the Hungry Ridge ROD is thus arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and the approval must be held unlawful and set aside under 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Friends of the Clearwater respectfully request that this Court grant the following relief:

A. Order, declare, and adjudge that the Forest Service's EA and DN/FONSI approving the End of the World project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under NEPA, NFMA, ESA, and/or the APA;

B. Order, declare, and adjudge that the Forest Service's EIS and ROD approving the Hungry Ridge project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under NEPA, NFMA, ESA, and/or the APA;

C. Reverse, remand, vacate, and set aside the End of the World EA and DN/FONSI;

D. Reverse, remand, vacate, and set aside the Hungry Ridge EIS and ROD;

E. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiff may hereafter seek;

F. Award Plaintiff its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq*., and all other applicable authorities; and

G. Grant such further and additional relief as the Court deems just and proper in order to remedy Defendants' violations of law and protect Plaintiff and the public interest.

Dated this 28th day of April, 2021.

Respectfully submitted,

/s/ Bryan Hurlbutt
Laurence ("Laird") J. Lucas (ISB #4733)
Bryan Hurlbutt (ISB # 8501)
Rebecca Strauss (ISB # 11285)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
llucas@advocateswest.org
bhurlbutt@advocateswest.org
rstrauss@advocateswest.org

Attorneys for Plaintiff Friends of the Clearwater