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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

CASCADIA WILDLANDS, an Oregon non-profit corporation; **THE CENTER FOR BIOLOGICAL DIVERSITY**, an Arizona non-profit corporation; and **BENTON FOREST COALITION**, an Oregon corporation,

Plaintiffs,

vs.

BUREAU OF LAND MANAGEMENT, an administrative agency of the United States Department of Interior,

Defendant,

Civ. Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

(Violation of Federal Land Policy and
Management Act)

INTRODUCTION

1. Plaintiffs, Cascadia Wildlands, The Center for Biological Diversity, and the Benton Forest Coalition (collectively “Plaintiffs”), bring this civil action, arising under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, challenging the Bureau of Land Management (“BLM” or “Defendant”), for violating the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 302 *et seq.*

2. Defendant BLM violated the FLPMA by failing to comply with the Salem District Record of Decision and Resource Management Plan (“RMP”), as amended by the Northwest Forest Plan (“NFP”), in its planning and implementation of the Rickard Creek timber sale (“Rickard Creek”). The Salem BLM RMP incorporates the NFP.

3. By initiating this action, Plaintiffs seek to: 1) obtain a declaration that the BLM’s decision to allow the logging of occupied red tree vole habitat and the logging of individual nest trees contributes toward the need to list the vole, which is already a Candidate Species and Bureau Sensitive Species (“BSS”), as an Endangered Species, thereby violating the Northwest Forest Plan, the Salem Regional Management Plan, and FLPMA; 2) obtain a declaration that the BLM’s determination that the project area is a non-high priority site for red tree voles is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 3) compel the BLM to manage pursuant to the species’ Management Recommendations within the project area; and 4) enjoin the BLM and its contractors, assigns, and other agents from proceeding with the Rickard Creek timber sale, unless and until this Court determines that the violations of law set forth herein have been corrected.

4. The requested relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). The cause of action arises under the laws of the United States, including the APA and FLPMA.

6. The relief requested is proper under 28 U.S.C. §§ 2201-2202 (declaratory judgment), and 5 U.S.C. §§ 701 *et seq.*

7. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events, actions, or omissions giving rise to the claims herein occurred within this judicial district. The BLM official who authorized this decision is headquartered in Salem, Oregon, which is located within this district. Plaintiffs have offices within this district.

8. This case is filed properly in Eugene, Oregon pursuant to Local Rules 3.3 and 3.4 because the Rickard Creek timber sale is located within Benton County, Oregon.

PARTIES AND STANDING

9. Plaintiff **CASCADIA WILDLANDS** is a non-profit corporation headquartered in Eugene, Oregon, with approximately 5,000 members and supporters throughout the United States. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore wild ecosystems in the Cascadia Bioregion, extending from Northern California up into Alaska. Cascadia Wildlands envisions vast old growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands' members have used and will continue to use the Rickard Creek timber sale area for activities such as hiking, bird watching, mushroom picking, and other recreational and professional pursuits. The interests of Cascadia Wildlands and its members will be irreparably injured if the Rickard Creek timber sale is allowed to proceed without compliance with FLPMA and other federal laws and regulations.

10. Plaintiff **THE CENTER FOR BIOLOGICAL DIVERSITY** is a non-profit organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center is based in Tucson, Arizona with offices in California, Minnesota, New Mexico, Oregon, Washington, and the District of Columbia. The Center's Oregon office and Endangered Species program has long advocated for protections for the red tree vole, especially the imperiled vole population in Oregon's devastated coast range. The Center has more than 42,000 members, including many who reside in Oregon and enjoy exploring Oregon's state forests and observing, detecting, and climbing to detect red tree voles.

11. Plaintiff **BENTON FOREST COALITION** is an organization of volunteers who work closely with Cascadia Wildlands and the Coast Range Association to conserve native old growth forests on public lands. The Benton Forest Coalition also works with the Salem District office of the BLM to enhance local recreational opportunities by exploring and marking routes for hiking trails in BLM forests. Benton Forest Coalition members frequent the Rickard Creek project area for activities such as hiking, bird watching, and wildlife viewing. Benton Forest Coalition members have a consistent and abiding interest in the ecology of native and old growth forests, and the ability of the Benton Forest Coalition and its members to pursue this interest will be irreparably injured if the Rickard Creek timber sale area is allowed to proceed without compliance with FLPMA and other federal laws and regulations.

12. Defendant **BUREAU OF LAND MANAGEMENT** is an agency of the United States and is a division of the Department of Interior. The Bureau of Land Management is charged with managing the lands and resources within the Marys Peak Resource Area of the Salem District, in accordance and compliance with FLPMA and other federal laws and regulations.

13. An actual, justiciable controversy exists between Plaintiffs and Defendants.

14. The aesthetic, recreational, scientific, educational, and other interests of the Plaintiffs and their members have been and will continue to be adversely affected and irreparably injured if Defendants continue to act and fail to act as alleged, affirmatively implementing the action that Plaintiffs challenge with this litigation.

15. These are actual, concrete, and particularized injuries caused by Defendants' failure to comply with mandatory duties under FLPMA and the APA. The relief sought in this Complaint would redress Plaintiffs' injuries.

FACTUAL BACKGROUND

16. The red tree vole (*Arborimus longicaudus*) is among the most arboreal mammals in the Pacific Northwest. As an arboreal mammal, the red tree vole lives most of its life in the forest canopy, rarely venturing down to ground level. Red tree voles are endemic to the moist coniferous forests of western Oregon and extreme northwest California. Red tree voles depend on conifer tree canopies for nesting and foraging. Voles also use conifer tree canopies as travel routes, escape cover, and the canopy cover provides moisture for the species. Red tree voles are closely associated with old growth forest habitat and are highly vulnerable to local extirpations from habitat fragmentation or loss. Additionally, the red tree vole is an important prey for the threatened northern spotted owl and other predators.

17. BLM is required to manage forestland under its jurisdiction according to the terms and requirements of the Northwest Forest Plan ("NWP"). The NWP includes a mitigation measure called the "Survey and Manage" program. The Survey and Manage program is designed to mitigate the effects that logging and other ground-disturbing activities have on local populations of sensitive species.

18. The red tree vole is among the species that are protected by the Survey and Manage program. The Survey and Manage program requires agencies to conduct pre-disturbance surveys for certain species and to manage all known sites within high priority areas. Management of sites is governed by the Management Recommendations developed by the BLM and Forest Service.

19. Because of the red tree vole's vulnerability to logging, and because of its natural role as prey for the threatened northern spotted owl, when red tree vole nests are found in a forest stand, the BLM's Red Tree Vole Management Recommendations require a 10 acre minimum Habitat Area and a 100 meter buffer around active red tree vole nest sites. The size of a Habitat Area increases with the number of nests found in that forest stand.

20. The BLM is generally prohibited from logging within Habitat Areas.

21. The Management Recommendations describe the habitat parameters (environmental conditions) that will provide for a reasonable likelihood of persistence of the taxon at that site. The Management Recommendations were developed as a short-term strategy to maintain the physical integrity of nest sites until the agencies could determine overall population trends or other demographic information essential to developing management recommendations for this species.

22. On October 12, 2011, the United States Fish and Wildlife Service ("FWS") determined that the North Oregon Coast population of red tree voles is threatened with extinction, and that their listing under the Endangered Species Act is warranted but precluded by other agency priorities. The continuing decline of the species and its risk of extinction is the result of continuing timber harvest in the Coast Range. As a result of these findings, the species, in addition to being a Survey and Manage species, is also formally considered a Bureau Sensitive

Species and a candidate species for listing under the federal Endangered Species Act (“ESA”). The North Oregon Coast population of red tree voles includes voles on all lands in the Coast Range north of the Siuslaw River, which encompasses the entire Rickard Creek project area.

23. Bureau Sensitive Species are species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA. The objective of this policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau Sensitive Species to minimize the likelihood of and need for listing of these species under the ESA.

24. The Rickard Creek timber sale is located in Benton County, Oregon, within the Marys River 5th field watershed. The project includes 92 acres of regeneration harvest of 80 year old stands in the matrix, 4 acres of commercial thinning on 74 year old stands in the matrix, and 15 acres of density management of 74 and 80 year old stands in the riparian reserves.

25. The Rickard Creek timber sale as originally proposed was in compliance with a 2007 Record of Decision that attempted to eliminate the requirements of Survey and Manage for the red tree vole in the project area. The 2007 ROD was later invalidated, Survey and Manage reinstated, and the BLM was required to conduct a “re-evaluation” of the project, because 28 trees throughout the area to be clearcut were found to contain evidence of red tree vole use.

26. In 2012, the BLM published for review the Rickard Creek Timber Sale 2012 Revised Environmental Assessment and Finding of No Additional Significant Impact (“EA”). The BLM re-designed the project and proposed two additional alternatives: one proposed compliance with the vole’s Management Recommendations; the other proposed to move forward with the clear-cutting by classifying the entire area as a “non-high priority site” for red tree voles.

27. Designation as a “non-high priority site” represents a determination by BLM that loss of the vole populations in the site will not jeopardize a reasonable assurance of the species’ persistence. Plaintiffs are not aware of any other timber sale project that has applied this non-high priority site designation.

28. On May 4, 2012, the BLM issued its Final Decision and Decision Rationale (“Decision”) for the Rickard Creek timber sale. The Decision selected Alternative 2, which instead of buffering red tree vole nest sites in the project area pursuant to the binding vole Management Recommendations, designates the entire project area as a “non-high priority site” for red tree voles. Accordingly, BLM proposes to log, largely by clearcut, these occupied forest stands.

29. The “non-high priority site” designation is an element of the Survey and Manage Program. The Survey and Manage program requires agencies to conduct pre-disturbance surveys for certain species and to manage all known sites within high priority areas. The BLM is to assume all known sites are high-priority until the agencies develop Management Recommendations for the species that address high priority sites. Alternatively, the agency can make a local determination of non-high priority status on a case-by-case basis.

30. In order for BLM to determine that the Rickard Creek project area is a “non-high priority site” for voles, the BLM must ensure the project area satisfies four criteria pursuant to the 2001 ROD. The four criteria are:

- 1) Moderate-to-High number of likely extant sites/records;
- 2) High proportion of sites and habitat in reserve land allocations; or limited number of sites within reserves, but the proportion or amount of potential habitat within reserves is high and there is a high probability that the habitat is occupied;
- 3) Sites are relatively well distributed within the species range; and

4) Matrix Standards and Guidelines or other elements of the Northwest Forest Plan provide reasonable assurance of species persistence.

31. The BLM selected the fifth field watershed as the analysis unit in making the determination that the Rickard Creek timber sale meets these criteria. Rickard Creek is within the Marys River Fifth Field Watershed, within the BLM checkerboard.

32. All red tree vole sites are presumed to be high priority. The BLM has the burden of establishing that the project area is a “non-high priority site.”

Criterion One

33. The BLM conceded in the Biological Evaluation that there are only a “modest” number of likely extant sites within the Marys River Watershed. The BLM approximates that there are only 10 vole nest sites separated by more than 100 meters from other points or clusters of points within the *entire* 193,962 acre Marys River Watershed. Ten vole nest sites or ten clusters of nest sites separated by over a hundred meters is a low number of extant sites in the Marys River Watershed.

34. In making that determination, the BLM primarily relied upon a 2004 study on spotted owl pellets to conclude that a high number of extant red tree vole sites exist in the watershed. This study cannot be relied upon to make a conclusion regarding vole health or population trends. The study expressly warned that its data “should not be used to infer the occurrence of tree voles in areas where old forests have been largely eliminated by harvest.” The area in and around Rickard Creek has been logged extensively over the past decades. There are no more or very few “old forests” in the vicinity of Rickard Creek.

35. The BLM’s determination that criterion one was met was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

Criterion Two

36. The BLM also determined that the second criterion was met. This criterion requires the BLM to demonstrate that there are a high number of sites and habitat in forest reserves or, alternatively, a limited number of sites in reserve if the proportion of habitat in reserves is high *and* there is a high probability that the habitat is occupied by the specific species.

37. Approximately three percent of the watershed is potentially red tree vole habitat within federal reserve land allocations. This is a moderate to low proportion of potential habitat within reserves. Accordingly, the BLM's determination that there were a high number of sites and habitat in forest reserves suitable for red tree voles was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

38. Additionally, the majority of the potential vole habitat identified by the BLM within reserve land allocations is located on the east slope of Marys Peak. The forest reserves located on the east slope of Marys Peak range in elevation from approximately 1,800 feet elevation to 3,900 feet.

39. Forests located at elevations between 1,800 feet and 3,900 feet make poor red tree vole habitat. Red tree voles are increasingly uncommon or absent at these elevations. Accordingly, the BLM's determination that there were a high number of sites and habitat in forest reserves suitable for red tree voles was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

40. Every square-mile section adjacent to the Rickard Creek timber sale is largely dominated by either un-forested land, or younger conifer forests under 80 years in age. This land has been extensively harvested over the past decades.

41. The land within the Riparian Reserves directly adjacent to the harvest units within the Rickard Creek timber sale has not been surveyed for red tree voles.

42. Every tree, or nearly every tree, of the 28 trees with evidence of red tree vole use in the project area is within the units proposed for logging. There are very few, if any, red tree vole sites within the portion of the Habitat Area to be reserved from harvest. Accordingly, the BLM's decision that there were a high number of sites and habitat in forest reserves suitable for red tree voles was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

43. The BLM did not make any express finding about the probability that the available habitat is occupied by red tree voles and contradicts other BLM statements, making the determinations arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

Criterion Three

44. The BLM determined that the third criterion, that voles are well distributed throughout the watershed, was met. Information gleaned from more recent surveys indicate that tree voles are not widely distributed throughout the northern Oregon Coast Range. Voles are not widely distributed in the Northern Mesic Biological Zone. Red tree voles are uncommon or absent in the Northern Mesic Biological Zone. The Rickard Creek timber sale is within the Northern Mesic Biological Zone. The Rickard Creek timber sale is within the northern Oregon Coast Range.

45. The BLM's determination that red tree voles are well distributed throughout the watershed is factually unsupportable and therefore arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.

Criterion Four

46. The fourth criterion prohibits a non-high priority site designation if such a designation would, based on the NWP, not provide reasonable assurance of the species persistence. The BLM improperly determined this criterion was met.

47. Clearcutting the Rickard Creek area would eliminate half or nearly half of the approximated red tree vole sites or group of sites, separated by 100 meters or more in the Marys River Watershed. Five vole sites or group of sites within the Marys River Watershed does not provide for a reasonable assurance of species' persistence within that watershed.

48. The harvest units of the Rickard Creek timber sale contain at least four, potentially five, red tree vole sites separated by more than 100 meters from other points or clusters of points.

49. Approximately one-half of the estimated red tree vole sites in the entire watershed exist within the project area.

50. The recent 12-month finding on red tree voles determined that existing regulatory mechanisms are adequate to provide for the conservation of the red tree vole within the Distinct Population Segment or "DPS." The BLM's duty to ensure the persistence of the red vole in the DPS requires the BLM to consider the species' status on non-federal land.

51. The Rickard Creek timber sale is not within the southernmost portion described in the 12-month finding in the FWS's contemplation of non-high priority sites.

52. The large majority of habitat in the DPS is not federal. Upon taking this into account, the FWS determined that existing regulatory mechanisms are not adequate to protect the DPS, and further logging and habitat fragmentation pose a significant threat to the persistence of the North Coast Population. The BLM's analysis of regulatory mechanisms excluded the

relevant portions of non-federal land in the watershed. Thus, the fourth criterion has not been met.

53. The Fish and Wildlife Service (“FWS”) signed off on the BLM’s proposal to designate the Rickard Creek project area as a non-high priority site for red tree voles. The BLM’s proposal relies upon data from both the Marys River Watershed and data from the Upper Alsea Watershed in making its determination. The Upper Alsea Watershed is within the Mesic Biological Zone for red tree voles, whereas the Marys River Watershed is within the Northern Mesic Biological Zone. It was erroneous for the BLM to use data from both watersheds in their proposal.

Overarching Management Requirements

54. In addition to the requirements of Survey and Manage, the Salem RMP plainly requires the BLM to “[m]anage for the conservation of federal candidate and bureau sensitive species and their habitats so as not to contribute to the need to list and to recover the species.” Accordingly, the BLM is required to “[m]odify, relocate, or abandon a proposed action to avoid contributing to the need to list federal candidate species, state-listed species, bureau sensitive species, or their habitats.”

55. The proposed regeneration harvest, commercial thinning, and density management harvest of the selected Alternative 2 would collectively alter all but 28 acres of this Habitat Area. Red tree voles that currently use these forest stands would be diminished or displaced. Individual red tree vole nests would be lost as a result of the proposed harvest action. 62 acres of the Habitat Area would be lost due to regeneration harvest; four acres would be degraded in the commercial thinning; 15 acres would be logged and nest structure would likely

be lost from the 11 small patch cuts in the density management units. The logging has the potential to extirpate the local vole population.

56. The selected Alternative will fragment the existing vole habitat in the project area. Fragmentation of vole habitat lessens the probability of vole persistence due to the limited dispersal capability of the species and other consequences of species isolation. Ongoing logging of occupied red tree vole habitat, especially regeneration harvest, contributes to the decline of the red tree vole in North Oregon Coast DPS.

57. Regeneration harvest and the loss of individual red tree vole nest sites contribute toward a need to list and to recover the red tree voles within the North Oregon Coast DPS.

58. Federal lands provide the essential habitat for the North Oregon Coast Population of the vole because the land is managed for development or maintenance of late-successional habitat or older forest structure. There is a limited amount of federal land in the north Oregon Coast DPS. Logging on federal land that eliminates vole nests and destroys occupied suitable habitat magnifies the effect of habitat loss because the FWS did not contemplate this type of logging would occur in occupied suitable habitat within the Salem BLM district.

59. The FWS found that because federal lands contain the highest quality habitats, any future gains are likely not sufficient to offset the present threat of habitat loss, modification, or fragmentation, and its ongoing contribution to the isolation of red tree voles in the DPS.

60. Plaintiffs, with the exception of The Center for Biological Diversity, filed scoping comments and EA comments on both the original 2008 project and the present project. On May 22, 2012, Plaintiffs, with the exception of The Center for Biological Diversity, protested the Final Decision for Revised Rickard Creek Timber Sale (“Decision”). The BLM denied this protest. On July 13, 2012, Plaintiffs, with the exception of The Center for Biological Diversity,

appealed and requested a stay of the BLM's Decision for Rickard Creek before the Interior Board of Land Appeals ("IBLA"). Over 45 days have passed since the submission of the request for stay and appeal before the IBLA. Plaintiffs have exhausted all administrative remedies.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

Violation of Salem Resource Management Plan and FLPMA

61. Plaintiffs incorporate by reference all preceding paragraphs.

62. Pursuant to the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1732(a) and its implementing regulations, 43 C.F.R. § 1610.5-3(a), the BLM must ensure that a site specific project conforms to the resource management plan including any alterations or amendments thereto.

63. The Salem BLM RMP requires the BLM to abandon any action that contributes toward the need to list a Candidate Species or any action which creates a need to recover the species or its habitat.

64. The BLM's Decision to proceed with the Rickard Creek timber sale violates FLPMA because logging occupied red tree vole habitat and removing individual nest trees contributes toward the need to list the species and to recover the species and its habitat.

SECOND CLAIM FOR RELIEF:

Violation of Northwest Forest Plan and FLPMA

65. Plaintiffs incorporate by reference all preceding paragraphs.

66. Pursuant to FLPMA, 43 U.S.C. § 1732(a) and its implementing regulations, 43 C.F.R. § 1610.5-3(a), the BLM must ensure that a site-specific project conforms to the resource management plan including any alterations or amendments thereto.

67. The NFP and its mitigation measure Survey and Manage is incorporated into the Salem BLM RMP.

68. The BLM's Decision to proceed with the Rickard Creek timber sale without selecting Alternative 3, which would require red tree vole buffers pursuant to the vole Management Recommendations, violates the Survey and Manage program because the Rickard Creek project area is not properly classified as a non-high priority site.

PRAYER FOR RELIEF

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

A. Declare that Defendant's decision to proceed with the Rickard Creek timber sale violates FLPMA and is arbitrary, capricious, and not in accordance with the law because the BLM failed to follow the red tree vole Management Recommendations in violation of the Survey and Manage program;

B. Declare that Defendants' decision to proceed with the Rickard Creek timber sale violates FLPMA and is arbitrary, capricious, and not in accordance with the law because the selected alternative contributes to the need to list the species and to recover the species and its habitat in violation of the Salem Resource Management Plan;

C. Vacate the Final Decision and Decision Rationale for the challenged project;

D. Order the BLM to withdraw the Rickard Creek timber sale until such time as the agency demonstrates to this Court that it has adequately complied with the law;

E. Enjoin the BLM and its agents, contractors, or other authorized parties from proceeding with any ground-disturbing activity in the Rickard Creek timber sale area unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;

F. Award Plaintiffs their costs of suit and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

G. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted this 26th day of September, 2012.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRCP 7.1, Plaintiffs state that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

Respectfully submitted and dated this 26th day of September, 2012.

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