

Oliver Wood (UT#17474)
Oliver Wood Law, PLLC
P.O. Box 581312
Salt Lake City, Utah 84158
(206) 351-5320
ofinnwood@gmail.com

*Attorney for Plaintiffs Center for Biological Diversity,
Yellowstone to Uintas Connection, Alliance for the Wild Rockies,
and Native Ecosystems Council*

Edward B. Zukoski (Colorado #26352)
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(303) 641-3149
tzukoski@biologicaldiversity.org
Application for Pro Hac Vice pending

*Attorney for Plaintiff
Center for Biological Diversity*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

**CENTER FOR BIOLOGICAL
DIVERSITY, YELLOWSTONE TO
UINTAS CONNECTION, ALLIANCE
FOR THE WILD ROCKIES, and
NATIVE ECOSYSTEMS COUNCIL,**

Plaintiffs,

v.

**UNITED STATES FOREST
SERVICE; SUSAN EICKHOFF,
Supervisor, Ashley National Forest,**

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. 2:24-cv-297

INTRODUCTION

1. Pursuant to District of Utah Local Civil rule 7.4, Plaintiff Center for Biological Diversity (“the Center”), Yellowstone to Uintas Connection (“Y2U”), Alliance for the Wild Rockies (“the Alliance”), and Native Ecosystems Council (“NEC”) seek judicial review of Defendant United States Forest Service’s (“Forest Service”) 2023 decision to approve logging on up to 177,706 acres in Utah’s iconic aspen forests, known as the Ashley National Forest Aspen Restoration Project (“Aspen Project”).

2. The Ashley National Forest encompasses about 1.4 million acres in northeastern Utah and southwestern Wyoming. Some of the Forest’s most spectacular scenery occurs in an around the High Uintas Wilderness, which is located about 70 miles due east of Salt Lake City. The wilderness includes King’s Peak (the highest point in Utah) and much of the Uinta Mountains, the largest east-west trending mountain range in the lower 48 states. Aspen forests within Inventoried Roadless Areas outside the wilderness provide habitat for bighorn sheep, deer, elk, bear, and raptors, including the imperiled northern goshawk, and provide suitable habitat for elusive and rare forest dwellers including lynx and wolverine.

3. Aspen ecosystems support a wide array of plant and animal species due to their high productivity and structural diversity. Many consider it the most important deciduous forest type in western North America. In addition, aspen stands play an increasingly important role in the suppression and management of wildfires because they can act as natural fuel breaks.

4. On October 2, 2023, Ashley National Forest Supervisor Susan Eickhoff, signed the Decision Notice for the Aspen Project. The Forest Service's decision to authorize the Aspen Project will lead to vegetation treatments using industrial, mechanized means through masticators, skid steers, chainsaws, and other methods on up to 177,706 acres, including up to 147,858 acres (231 square miles) in Inventoried Roadless Areas. Although called an aspen restoration project, the Aspen Project will remove both conifers and aspen using commercial logging and prescribed fire.

5. The Roadless Area Conservation Rule ("Roadless Rule") prohibits the cutting, sale, or removal of trees in Inventoried Roadless Areas, except in limited circumstances when the removal of generally small diameter trees is allowed.

6. The Aspen Project violates the Roadless Rule because it places no limits on the size of trees to be removed, nor does it otherwise demonstrate or ensure that only generally small diameter trees would be removed. The Forest Service ignored repeated public requests that the agency explain how the project would comply with the Roadless Rule, particularly in light of project prescriptions that appear to require removal of the largest trees in individual stands.

7. In addition, the environmental assessment ("EA") the Forest Service prepared for the Aspen Project fails to disclose where or when logging will take place inside Inventoried Roadless Areas; disclose whether or how logging will be limited to small diameter trees; nor does it describe the location or timing of different treatment types, or the nature of individual stands to be logged. This failure to take a "hard look" at

the Aspen Project's proposal and its impacts violates the National Environmental Policy Act ("NEPA").

8. Because the Forest Service's approval of the Aspen Project violates the Roadless Rule and NEPA, this court should vacate the decision.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief); and the Administrative Procedure Act ("APA") 5 U.S.C. §§ 701-706. This Court may order relief pursuant to 28 U.S.C. § 2201 (declaratory judgment) and § 2202 (further relief), and 5 U.S.C. §§ 702 and 706.

10. Venue is proper in this Court under 28 U.S.C. § 1391(e) because it is where a substantial part of the events or omissions giving rise to the claims occurred and the federal public lands at issue are situated in this district (including in Daggett, Duchesne, Uintah, and Wasatch counties, Utah).

PARTIES

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit corporation dedicated to the protection of endangered species and wild places through science, policy, and environmental law. The Center is headquartered in Tucson, Arizona, with offices throughout the United States, and includes staff who reside in Salt Lake City. The Center has more than 79,000 members and over 1.7 million online activists who are dedicated to the protection of endangered species and wild places. More than 3,600 Center members reside in Utah.

12. Plaintiff YELLOWSTONE TO UINTAS CONNECTION is a non-profit public interest organization dedicated to protecting the integrity of habitat for native fish and wildlife in the wildlife corridor that connects the Greater Yellowstone Ecosystem and Northern Rockies to the Uinta Wilderness and Southern Rockies. Members of Y2U work to restore fish and wildlife habitat in the Yellowstone to Uintas Corridor through the application of science, education, and advocacy. Y2U's members' and staff's professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems by approving the challenged Project. Y2U brings this action on its own behalf and on behalf of its adversely affected members.

13. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000 individual members, some of whom reside in Utah. Members and staff of the Alliance observe, enjoy, and appreciate the Ashley National Forest's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area. The Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems. The Alliance brings this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit corporation with its principal place of business in Three Forks, Montana. Native Ecosystems Council is dedicated to the conservation of wildlife and public lands in the Northern Rockies, including in Utah. Its members observe, enjoy, and appreciate Utah's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area. Its members' professional and recreational activities are directly affected by Defendants' failure to perform their duties. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected member.

15. The members and/or staff of the Center, Y2U, the Alliance, and NEC (collectively, "Conservation Groups") include individuals who use (and intend to continue to use) the Ashley National Forest, including the lands that are now planned for logging as part of the Aspen Project. These members and staff use, and have plans to use, the Project area for observation, research, aesthetic enjoyment, and other recreational, scientific, spiritual, and educational activities. Conservation Groups' members and staff use, and plan to use, the Project area to enjoy its character and to observe or study imperiled species. These members' interests will be irreparably harmed by the planned logging in the Project area, as they will not be able to enjoy this area in its unlogged state any longer, nor will they be able to observe or attempt to observe the species which use and are dependent on these areas in their unlogged state. Logging in these areas for the Aspen Project in violation of the Roadless Area Conservation Rule will undermine the Conservation Groups' mission of protecting wild places and wildlife.

16. For example, Deeda Seed is a Center staff member who lives in Salt Lake City. Ms. Seed is also a Center member. Over the past 35 years, Ms. Seed has visited the Ashley National Forest numerous times to camp, hike, appreciate the magnificent natural scenery, seek out and view wildlife, and enjoy natural and unspoiled lands, including Inventoried Roadless Areas that abut the High Uintas Wilderness. For example, during each of the summers of 2020, 2021, and 2022, Ms. Seed camped for a weekend with family and friends at the Iron Mine Campground, which is surrounded by lands protected by the Roadless Area Conservation Rule. She hiked, enjoyed scenic views, searched for wildlife, and enjoyed the natural and unspoiled landscapes in Inventoried Roadless Area the Ashley National Forest has identified for logging pursuant to the Aspen Project (the Little Pond Aspen treatment units). Ms. Seed has made plans to return to this area in July 2024. If the Aspen Project is implemented as proposed, Ms. Seed will be harmed by sights and sounds of logging, and will be less able to enjoy the scenery, wildlife, and other values in a highly altered landscape once logging authorized by the Aspen Project occurs. As a result, she will be unlikely to return to the area.

17. John Carter, a resident of Bondurant, Wyoming, is a member of Alliance for the Wild Rockies, and is the Founder and is currently a Board Member and Ecologist for the Yellowstone to Uintas Connection. From the 1970s to the first decade of the 2000s, Mr. Carter spent many days recreating, traveling in, hiking, photographing, and observing wildlife on the Ashley National Forest, including within the Inventoried Roadless Areas which the Ashley Aspen Project has approved for logging and burning. In the 1970s, Mr. Carter backpacked with friends into the high peaks and ridges of the

Forest for several summers. In the 1980s, while living in Logan, Utah, Mr. Carter drove through the northern and eastern parts of the Ashley National Forest via Highways 44 and 191 roughly six times a year while working on oil shale developments in the Uinta Basin. During those drives, Mr. Carter stopped and skied in winter and hiked in summer into the Forest, including within roadless areas. Mr. Carter thus has observed and hiked or skied in or within view of many of the cutting units in the Cart Creek Aspen unit, identified for treatment in the Project Decision Notice, which are adjacent to, or accessible or visible from Highway 191. In the 1990s and first decade of the 2000s, Mr. Carter on behalf of Y2U and other conservation groups spent many days in the summer and fall hiking, camping, and conducting surveys of ecosystem health in relation to livestock damage throughout the Ashley National Forest, especially within the High Uintas Wilderness. His travels into the wilderness included hiking through aspen forests authorized for logging by the Aspen Project. Further, wildlife that Mr. Carter enjoyed seeking out and viewing in the Wilderness, including elk and bighorn sheep, travel between the Wilderness and the Inventoried Roadless Areas now authorized for logging by the Aspen Project. Mr. Carter has made plans to return to northeastern portion of the Ashley National Forest south and southeast of Dutch John and along Highway 191 in the fall of 2024 for hiking, viewing aspen fall colors, and seeking out wildlife. If the Aspen Project is implemented as proposed, Mr. Carter will be harmed by sights and sounds of logging, and will be less able to enjoy the scenery, wildlife, and other values in a highly altered landscape once logging authorized by the Aspen Project occurs. As a result, he will be unlikely to return to the area.

18. The Center, Y2U, the Alliance, and NEC participated extensively in the Forest Service's process for approvals of the Aspen Project, including submitting comments on the Forest Service's initial proposal to exclude the project from environmental review in 2019, commenting on the draft environmental assessment in July 2021, and filing objections to the proposed action in July 2022. The Center, Y2U, the Alliance, and NEC have exhausted all legally required administrative remedies before bringing this action.

19. The Forest Service's violation of the Roadless Rule, NEPA, and the APA in approving the Aspen Project have already and will continue to injure the interests of the Center, Y2U, the Alliance, NEC, and their members. The relief sought herein would redress these injuries. The Center, Y2U, the Alliance, and NEC have no other adequate remedy at law.

20. This suit is brought by the Conservation Groups on behalf of themselves and their adversely affected members and staff. The Conservation Groups and their members' collective present and future interests in and use of the Aspen Project areas are and will be directly and adversely affected by the challenged decision. Those adverse effects include, but are not limited to: (1) impacts to native plants and wildlife and their habitats within and around the Project areas from logging; (2) reduction and impairment of recreation opportunities; (3) impaired aesthetic value of forest lands, trails, and landscapes caused by the Forest Service's logging; and (4) loss of scientific study and viewing opportunities with regard to wildlife in areas proposed for logging. In addition, the Conservation Groups and their members and staff have an interest in ensuring that the

Forest Service comply with all applicable laws, regulations, and procedures pertaining to the management of national forest lands.

21. Defendant SUSAN EICKHOFF is sued in her official capacity as the Supervisor of the Ashley National Forest. She is directly responsible for forest management in the Ashley National Forest and for ensuring that all resource management decisions comply with applicable laws and regulations. Supervisor Eickhoff signed the October 2, 2023 Decision Notice for the Aspen Project challenged here.

22. Defendant UNITED STATES FOREST SERVICE is a federal government agency within the Department of Agriculture, which holds the National Forests in trust for the American people and is responsible for federal agency actions in the Aspen Project area.

LEGAL FRAMEWORK

I. THE ADMINISTRATIVE PROCEDURE ACT

23. Because neither the Roadless Rule nor NEPA includes a citizen suit provision, this case is brought in part pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, 701-706.

24. The APA allows persons and organizations to challenge final agency actions in the federal courts. 5 U.S.C. §§ 702, 704. The APA declares that a court shall hold unlawful and set aside agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Id.* § 706(2)(A).

II. THE ROADLESS AREA CONSERVATION RULE

25. The Roadless Area Conservation Rule (“Roadless Rule”), adopted by the Forest Service in 2001, generally prohibits road construction and the “cutting, sale, or removal” of trees within identified “inventoried roadless areas.” 36 C.F.R. §§ 294.12(a) & 294.13(a), published in 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001).

26. However, the Forest Service may approve logging “infrequent[ly]” in inventoried roadless areas if the agency determines that certain circumstances exist, including the following:

(1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.

(i) To improve threatened, endangered, proposed, or sensitive species habitat; or

(ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period.

36 C.F.R. § 294.13 (emphasis added).

27. The preamble published with the Roadless Rule emphasizes that these exceptions are meant to allow tree removal in those areas “overgrown” with small diameter trees.

The intent of the rule is to limit the cutting, sale, or removal of timber to those areas that have become overgrown with smaller diameter trees....

[A]ll such determinations of what constitutes “generally small diameter timber” will consider how the cutting or removal of various size classes of trees would affect the potential for future development of the stand, and the characteristics and interrelationships of plant and animal communities

associated with the site and the overall landscape. *Site productivity due to factors such as moisture and elevational gradients, site aspect, and soil types will be considered, as well as how such cutting or removal of various size classes of standing or down timber would mimic the role and legacies of natural disturbance regimes in providing the habitat patches, connectivity, and structural diversity critical to maintaining biological diversity.* In all cases, the cutting, sale, or removal of small diameter timber will be consistent with maintaining or improving one or more of the roadless area characteristics as defined in § 294.11.

Vegetative management would focus on removing generally small diameter trees while leaving the overstory trees intact. The cutting, sale, or removal of trees pursuant to 294.13(b)(1) *must be clearly shown through project level analysis to contribute to the ecological objectives described.* Such management activities are expected to be rare and to focus on small diameter trees.

Forest Service, Roadless Area Conservation Rule, 66 Fed. Reg. 3244, 3257, 3258 (Jan. 12, 2001) (emphases added).

28. Roadless area characteristics as defined in 36 C.F.R. § 294.11 include:

(1) High quality or undisturbed soil, water, and air; (2) Sources of public drinking water; (3) Diversity of plant and animal communities; (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; (5) Primitive, semi-primitive nonmotorized and semi primitive motorized classes of dispersed recreation; (6) Reference landscapes; (7) Natural appearing landscapes with high scenic quality; (8) Traditional cultural properties and sacred sites; and (9) Other locally identified unique characteristics.

29. At least one federal appeals court has set aside a Forest Service logging project within an Inventoried Roadless Area for violating the Roadless Rule because the agency failed to demonstrate that only generally small diameter trees that would be

removed within the project area. *Los Padres ForestWatch v. United States Forest Serv.*, 25 F.4th 649 (9th Cir. 2022).

III. THE NATIONAL ENVIRONMENTAL POLICY ACT

30. Congress enacted NEPA, 42 U.S.C. §§ 4321-4370h, to, among other things, “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “that will prevent or eliminate damage to the environment.” *Id.* § 4321. As a general matter, NEPA requires that federal agencies analyze and disclose to the public the environmental impacts of their actions. *Id.* § 4332(2)(C).

31. To this end, the Council on Environmental Quality (CEQ) promulgated regulations implementing NEPA. Among other things, the rules are intended to “tell federal agencies what they must do to comply with the procedures and achieve the goal of [NEPA],” to “insure that environmental information is made available to public officials and decisions are made and before actions are taken,” and to ensure “better decisions” and “foster excellent action.” 40 C.F.R. § 1500.1(a)-(c) (1978).¹

32. To fulfill its mandates, NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all “major Federal actions significantly affecting the environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4 (1978). Where it is uncertain whether it must prepare an EIS, it must prepare an environmental assessment

¹ Although the Council on Environmental Quality amended its NEPA regulations in 2020, those regulations “apply to any NEPA process begun after September 14, 2020.” 40 C.F.R. § 1506.13 (2020). Because the Forest Service began the NEPA process for the Aspen Project in 2019, and because it applied the 1978 regulations, this court should do the same. *Bair v. Cal. DOT*, 982 F.3d 569, 577 n.20 (2020) (because the agency “applied the previous [1978] regulations to the Project, so do we.”).

(“EA”) to determine whether the action may have significant impacts and thus require preparation of an EIS. 40 C.F.R. § 1508.9 (1978).

33. NEPA and its implementing regulations require federal agencies, including the Forest Service, to take a “hard look” at the environmental consequences of proposed actions and the reasonable alternatives that would avoid or minimize such impacts or enhance the quality of the human environment. See 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. Parts 1502 and 1508 (1978). Further, the information presented in an EA must be of high quality and include “accurate scientific analysis,” and disclose that information and analysis, and its limitations, to the public. 40 C.F.R. § 1500.1(b)–(c) (1978).

34. NEPA requires that agencies “succinctly describe the environment of the area(s) to be affected or created by the alternative under consideration.” 40 C.F.R. § 1502.15 (1978). NEPA also requires the action agency to set an appropriate baseline detailing the nature and extent of the resources in the area: “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.” Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act* 41 (January 1997).

35. An EA must also identify and take a “hard look” the direct, indirect, and cumulative impacts of each reasonable alternative, including a project’s ecological, aesthetic, economic, social, and health effects. 40 C.F.R. §§ 1508.7 (1978) (defining cumulative impact), 1508.8 (1978) (defining environmental effects); 1508.9(b) (1978) (requiring EAs to disclose the “environmental impacts of proposed action and

alternatives”). Direct impacts are those impacts “caused by the action and [that] occur at the same time and place.” *Id.* § 1508.8(a) (1978). Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b) (1978). Cumulative impacts are “the impact[s] on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7 (1978).

FACTUAL BACKGROUND

36. In October 2019, the Ashley National Forest proposed to categorically exclude from review under the National Environmental Policy Act a proposal to undertake a variety of “treatments,” including mechanical logging, for up to 10-20 years across 177,707 acres in any aspen community within the proposed planning area, including within Inventoried Roadless Areas.

37. In November 2019, conservation groups, including the Center, Alliance, Y2U, and NEC submitted comments on the proposal. Among other things, the Conservation Groups urged the Forest Service to prepare at least an environmental assessment (EA) to review the environmental impacts of the proposal and warned that the proposal threatened to violate the Roadless Rule and NEPA’s “hard look” mandate.

38. In June 2021, the Ashley National Forest issued an environmental assessment (“June 2021 EA”) purporting to analyze the environmental impacts of the

same proposal, which would allow logging within 147,858 acres of Inventoried Roadless Areas.

39. The Forest Service acknowledged that aspen and conifer removal must comply with the Roadless Rule exception concerning the removal of generally small-diameter trees. The June 2021 EA asserted that: “Design criteria included in this EA would ensure that only generally small diameter trees will be cut, sold, or removed in [Inventoried Roadless Areas].” The June 2021 EA did not identify which design criteria would limit the cutting, sale, or removal of trees to generally small diameter trees, and none on their face appear to do so.

40. Neither the June 2021 EA, nor a “roadless evaluation” prepared by the Ashley National Forest which the EA cites and relies on, nor any documentation supporting the June 2021 EA specifies the size of trees within the project area, or the size of trees within inventoried roadless areas within the project area, or the size of trees to be removed in roadless areas, or defined the term “small diameter.”

41. The Center, the Alliance, Y2U, and NEC submitted comments on the June 2021 EA addressing among other things the Aspen Project’s failure to comply with the Roadless Rule and NEPA’s “hard look” mandate.

42. The Forest Service issued a revised, final EA and a draft Decision Notice for the Aspen Project in June 2022 (“June 2022 EA”). Like the June 2021 EA, the June 2022 EA acknowledged that aspen and conifer removal must comply with the Roadless Rule exception concerning the removal of generally small diameter trees. The June 2022 EA again asserted that “only generally small diameter trees will be cut, sold, or removed

in [Inventoried Roadless Areas].” Like the earlier Forest Service analysis, the June 2022 EA contains no design criteria for logging in inventoried roadless areas that limit the cutting, sale, or removal of trees to generally small diameter trees.

43. Neither the June 2022 EA, nor the “roadless evaluation” which the EA cites and relies on, nor any documentation supporting the June 2022 EA: specified the size of trees in within the project area; specified the size of trees within Inventoried Roadless Areas within the project area; specified the size of trees to be removed in Inventoried Roadless Areas; defined the term “small diameter” as it relates to stands within Inventoried Roadless Areas; addressed the frequency of logging within Inventoried Roadless Areas; demonstrated that any stands within Inventoried Roadless Areas were “overgrown” with small diameter trees; or considered how the cutting or removal of various size classes of trees would affect the potential for future development of any stand where logging within Inventoried Roadless Areas was authorized.

44. Rather than assert that the aspen stands are thick with smaller trees, the June 2022 EA alleges that there are too many large and old aspen, and not enough small, young aspen in seral stands:

In the persistent aspen, where mature stands are declining, we are typically seeing successful regeneration. However, without active treatments in some of these stands, the skew towards a landscape with mature and old stands would continue for long time periods.

In the seral aspen, there is an abundance of late seral conditions and moderate to extensive colonization by conifers. We are seeing little recruitment of new aspen in these stands (Figure 2).

The June 2022 EA thus indicates that, in both persistent and seral aspen types, the Forest Service intends to treat stands with mature, older, and late seral conditions – large and old trees – to make way for the growth of new (smaller) trees.

45. The June 2022 EA contains a graph showing that the vast majority of aspen and conifer trees in the project area – those identified for cutting and/or removal – are not small; rather, more than 80% of them fall into the largest size classes – 8” diameter at breast height or greater.

46. The proposed action in the June 2022 EA authorizes several types of logging “treatments,” including “Selective Cutting Commercial Removal– Machinery or hand tools.” This type of logging will involve the cutting, sale, or removal of “conifer trees within existing aspen stands to reduce competition with aspen and improve the vigor of residual aspen stand,” an activity that could occur within 1,000 feet of roads on slopes of less than 40% within Inventoried Roadless Areas. The stated “objective” of this treatment is to “[r]emove larger conifer fuel types within aspen stands.” The Forest Service did not explain how removing “larger” conifers in Inventoried Roadless Areas complies with the Roadless Rule mandate that logging in such areas be limited to “generally small diameter” trees.

47. Another logging treatment, “Selective Girdling of Conifers,” which can occur within Inventoried Roadless Areas, would be implemented by “[h]and girdl[ing] large diameter conifer, explaining that “larger trees may be girdled to reduce conifer competition.” The Forest Service did not explain how girdling (cutting) “larger” conifers

in Inventoried Roadless Areas can comply with the Roadless Rule mandate that logging in such areas be limited to “generally small diameter” trees.

48. The Forest Service describes two other treatment types the Aspen Project authorizes within Inventoried Roadless Areas – logging by hand crews and logging using ground-based mechanized equipment – as involving the removal of “all conifers, aspen, or both,” indicating that trees of any size class, not just generally small diameter trees, can be removed.

49. The Center, the Alliance, Y2U, and NEC each filed “objections” pursuant to 36 C.F.R. § 218.8 challenging, among other things, the Forest Service’s failure to ensure that the proposed action complied with the Roadless Rule and NEPA’s “hard look” mandate.

50. In November 2022, Deputy Regional Forester Deborah Oakeson responded to objections concerning the Roadless Rule, upholding the agency’s analysis, stating:

The Roadless Evaluation Report in the project record explains effects on each roadless area and demonstrates compliance with the 2001 Roadless Rule. No new roads would be constructed. Generally small diameter timber would be removed to restore aspen and reduce the risk of uncharacteristic wildfire effects.

The response to objections does not identify how the Forest Service would ensure that only generally small diameter timber would be removed. While the Roadless Evaluation Report identifies the number of acres within each Inventoried Roadless Area that the Aspen Project authorizes for treatment, it does not identify where those acres are, or any limits on the size of trees that would be removed from any of those acres.

51. Forest Supervisor Susan Eickhoff signed the Decision Notice approving the Aspen Project on October 2, 2023. The Decision Notice authorized the proposed action to remove trees on up to 177,706 acres of the Ashley National Forest, including on up to 147,858 acres of Inventoried Roadless Areas.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

The Aspen Project Violates the Roadless Area Conservation Rule

52. The allegations in each paragraph above are incorporated herein by reference.

53. The Roadless Area Conservation Rule generally prohibits road construction and the “cutting, sale, or removal” of trees within identified “inventoried roadless areas.” 36 C.F.R. §294.12(a) & 294.13(a), published in 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001). However, the Forest Service may approve logging “infrequent[ly]” in inventoried roadless areas if the agency determines that certain narrow circumstances exist, including the following:

(1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.

(i) To improve threatened, endangered, proposed, or sensitive species habitat; or

(ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period.

36 C.F.R. § 294.13.

54. The Aspen Project violates the Roadless Rule because, among other things:

(a) Neither the June 2022 Aspen Project EA nor any of the Ashley National Forest's supporting documents defines what constitutes a "small diameter" tree for any of the stands within the project area's Inventoried Roadless Areas.

(b) Neither the June 2022 Aspen Project EA nor any of the Ashley National Forest's supporting documents limits the cutting, sale, or removal of trees in Inventoried Roadless Areas to generally small diameter trees.

(c) While the Forest Service does not explain how any of the Aspen Project provisions will limit logging to small diameter trees, the June 2022 Aspen Project EA indicates that some "treatments" will do the opposite by targeting large trees for cutting, sale, or removal, or by targeting all trees in a stand for removal.

(d) Neither the June 2022 Aspen Project EA nor any of the Ashley National Forest's supporting documents provides stand-level data for inventoried roadless areas to allow the public or the decision-maker to discern either the size of trees in stands in the project area, or the size of trees to be removed.

(e) Neither the June 2022 Aspen Project EA nor any of the Ashley National Forest's supporting documents alleges or demonstrates that stands proposed for logging are "overstocked" with small diameter trees that require thinning.

55. For the above reasons, the Forest Service and Supervisor Eickhoff violated the Roadless Area Conservation Rule in issuing October 2023 Decision Notice, rendering

that decision arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law pursuant to the APA, 5 U.S.C. § 706(2)(A); and accordingly, the Decision Notice must be held unlawful and set aside.

SECOND CAUSE OF ACTION

The Aspen Project Environmental Assessment Violates NEPA

56. The allegations in each paragraph above are incorporated herein by reference.

57. NEPA and its implementing regulations require federal agencies, including the Forest Service, to take a “hard look” at the environmental consequences of proposed actions and the reasonable alternatives that would avoid or minimize such impacts or enhance the quality of the human environment. *See* 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. Parts 1502 and 1508 (1978). Agencies must take a hard look at the direct, indirect, and cumulative impacts of a proposed agency action and all alternatives in an EA. 40 C.F.R. §§ 1508.7, 1508.8 (1978). The information presented in the EA must be of high quality and include “accurate scientific analysis,” and disclose that information and analysis, and its limitations, to the public. 40 C.F.R. § 1500.1(b)–(c) (1978).

58. NEPA also requires environmental analysis to disclose existing conditions in the project area to provide a baseline against which the impacts of alternative courses of action can be compared. *Id.*

59. The Forest Service failed to take the required “hard look” to consider and disclose the Aspen Project’s direct, indirect, and cumulative impacts, including impacts of logging in Inventoried Roadless Areas.

60. For example, the June 2022 EA fails to disclose the nature of forest stands within Inventoried Roadless Areas where tree removal can occur, or where specific types of treatments will occur within Inventoried Roadless Areas, thus making it impossible for the Forest Service or the public to understand the impacts of the proposed action, especially whether the Aspen Project can comply with the Roadless Rule.

61. The Forest Service's failure to take the required "hard look" at the Aspen Project's baseline, and the direct, indirect, and cumulative impacts and the agency's action violates NEPA. By relying on the defective EA and FONSI for its decision, the Forest Service's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and accordingly the Decision Notice and EA must be held unlawful and set aside. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, the Center, the Alliance, Y2U, and NEC respectfully request that this Court enter judgment in its favor and against Defendants and provide the following relief:

1. Declare that Defendants have violated the Roadless Rule, NEPA, and the APA by approving the Aspen Project;
2. Declare unlawful, set aside, and vacate the Aspen Project EA and its Decision Notice;
3. Enjoin Defendants from taking any actions pursuant to the Aspen Project EA and its Decision Notice until they have complied with the Roadless Rule, NEPA, and the APA;

4. Award Plaintiffs the costs it has incurred in pursuing this action, including attorneys' fees, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable provisions; and
5. Grant other such relief the Court deems just and proper.

Respectfully submitted April 24, 2024,

/s/ Oliver Wood
Oliver Wood (UT#17474)
Oliver Wood Law, PLLC
P.O. Box 581312
Salt Lake City, Utah 84158
ofinnwood@gmail.com

*Attorney for Plaintiffs Center for Biological Diversity,
Yellowstone to Uinta Connection, Alliance for the Wild Rockies,
and Native Ecosystems Council*

Edward B. Zukoski (Colorado #26352)
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
tzukoski@biologicaldiversity.org
Application for Pro Hac Vice pending

Attorney for Plaintiff Center for Biological Diversity