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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

MONROE COUNTY BOARD)
OF COMMISSIONERS)
100 West Kirkwood Avenue)
The Courthouse Room 322)
Bloomington, IN 47404)
MONROE COUNTY ENVIRONMENTAL)
COMMISSION)
100 West Kirkwood Avenue)
The Courthouse Room 322)
Bloomington, IN 47404)
DR. PAUL DAVID SIMCOX)
8309 So Ashley Ave.,)
Bloomington IN 47401)

Case No. 4:20 – cv – 106

**PLAINTIFFS’ COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

HOOSIER ENVIRONMENTAL COUNCIL)
3951 N. Meridian St., Ste. 100)
Indianapolis, IN 46208)

INDIANA FOREST ALLIANCE)
2123 North Meridian Street)
Indianapolis, IN 46219)

Plaintiffs,)

v.)

UNITED STATES FOREST SERVICE)
Sidney R. Yates Federal Building)
201 14th St SW)
Washington, DC 20227)

MICHAEL CHAVEAS, FOREST SUPERVISOR,)
Hoosier National Forest)
Supervisor’s Office)
811 Constitution Avenue)
Bedford, IN 47421)

MICHELLE PADUANI, DISTRICT RANGER,)
Hoosier National Forest)
Brownstown District Office)
811 Constitution Avenue)
Bedford, IN 47421)

_____)

INTRODUCTION

1. This case challenges the United States Forest Service's ("USFS" or "the Service") Houston South Vegetation Management and Restoration Project ("the Project"), which consists of commercial logging, including clearcuts, shelterwood cuts, selective cuts, and thinning cuts, as well as road building, herbicide application, and prescribed burning in the Hoosier National Forest—i.e., the only National Forest in the State of Indiana. Many of these activities will be carried out on steep slopes with highly erodible soils. The Project will pollute streams that flow into Lake Monroe, which is the largest lake in Indiana, serves as the only source of public drinking water for over 145,000 people, and already suffers from degraded water quality due to pollution from activities such as logging and agriculture. The Project area also contains some of the best preserved and most recreationally important forests in the State of Indiana, abuts the only designated wilderness area in the State, and serves as habitat for numerous vulnerable species of wildlife, including species listed as threatened or endangered under the federal Endangered Species Act ("ESA"). The clearcuts, logging, road construction, and burning associated with this Project will adversely impact all of these environmental resources and will permanently harm Plaintiffs and their interests in these environmental resources.

2. At every opportunity for comment during the administrative process for this Project, members of the public including Plaintiffs explained that this Project would have significant adverse impacts on important environmental resources, such as drinking water, recreationally important trails, and sensitive species, and urged the Forest Service to consider alternatives that would better preserve environmental resources. To that end, public comments suggested highly specific alternatives and explained how various alternatives are consistent with the Forest Service's goals and would better preserve the environment. However, the Forest

Service refused to examine *any* of the alternatives the public proposed, and instead only considered undertaking the Project as proposed or undertaking no action at all.

3. By refusing to consider any alternatives to its proposed Project in favor of an all-or-nothing analysis, and by refusing to prepare an Environmental Impact Statement (“EIS”) to consider this Project’s significant environmental impacts, rather than a more limited Environmental Assessment (“EA”) denying that the Project has any significant environmental impacts, the Forest Service violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4347. At the same time, because the Forest Service’s chosen course of action fails to comport with the agency’s own stated goal of protecting and restoring watershed health, contained in its governing Forest Plan, the Project also violates the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 472a, 521b, 1600-1614, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706.

JURISDICTION

4. This case arises under the judicial review provisions of the APA, 5 U.S.C. §§ 704, 706. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court and Division because the Project at issue will take place in Jackson County and Lawrence County, Indiana.

PARTIES

6. Plaintiff Monroe County Board of Commissioners is a local governing body, elected pursuant to Indiana Code 36-2-2 et seq., serving as the Executive and Legislative branches of Monroe County Government, which represents the interests of the residents of Monroe County, Indiana. The Board of Commissioners’ responsibilities include advocating on behalf of Monroe County residents regarding federal projects that may impact residents’ health

and welfare. The Board of Commissioners submitted comments on the draft EA for the Project and filed timely objections to the Service's decision. The Board's comments and objections identified specific adverse environmental impacts from the Houston South Project and repeatedly requested that the Forest Service consider specific alternatives that would better protect the environment and the interests of the citizens of Monroe County.

7. Plaintiff Monroe County Environmental Commission is a local board created by the Board of Commissioners and serves in an advisory role to the Monroe County government. The Environmental Commission focuses on educating the community and engaging residents and businesses in supporting initiatives which will help ensure a healthier and more economically viable future for the County. This work includes advocating for Monroe County residents' access to safe drinking water and high-quality outdoor recreation opportunities, which encourages tourism and local economic development. The Environmental Commission submitted comments on the draft EA for this Project and timely filed an objection to the Service's decision to undertake the Project. The Environmental Commission's comments and objections identified specific adverse environmental impacts from the Houston South Project and repeatedly requested that the Forest Service consider specific alternatives that would better protect the environment and the interests of the citizens of Monroe County.

8. The Forest Service's decision to undertake the Project harms the Monroe County Board of Commissioners' and the Monroe County Environmental Commission's interests in ensuring that residents of Monroe County have access to clean, safe drinking water and opportunities for high-quality outdoor recreation. The Board of Commissioners and Environmental Commission repeatedly raised these issues in comments and objections and requested that the Forest Service consider alternatives to the Project that would better protect the

environment and the interests of the Monroe County residents whom the Board represents and for whom the Commission advocates. However, the Forest Service denied that the impacts to the environment, or to the interests of the residents of Monroe County, were significant; likewise, the Forest Service refused to consider any of the alternatives to the Project that the Board or Commission suggested.

9. Plaintiff Dr. Paul David Simcox is a resident of Monroe County, a member of the Monroe County Environmental Commission, and a regular hiker in the Hoosier National Forest. Dr. Simcox is a plant biochemist with a Ph.D. from University of California at Los Angeles who has worked on local environmental issues since he moved to Bloomington in 2013. Dr. Simcox has served as an active volunteer member in various local environmental organizations, including service on the board of the Indiana Forest Alliance and Friends of Lake Monroe and service with the Hoosier Environmental Council. Mr. Simcox is currently a member of both the Indiana Forest Alliance and the Hoosier Environmental Council. As an environmental advocate, Dr. Simcox has served as a liaison between environmental organizations and the state government and has testified before both chambers of the state legislature on environmental issues. In 2017, the Monroe County Council appointed Dr. Simcox to serve on the Monroe County Environmental Commission, a position that Dr. Simcox continues to hold at this time.

10. Dr. Simcox has advocated for a more environmentally protective means of managing the area of the Houston South Project since he joined the Monroe County Environmental Commission. The Project's area is important both to his professional interest as a member of the Environmental Commission in advocating for the interests of Monroe County residents, and to his own personal recreational and aesthetic interests. Likewise, Mr. Simcox

relies on the water treated from Lake Monroe for his drinking water, because no other utility provides drinking water where Mr. Simcox lives.

11. Dr. Simcox has an extensive history of recreational activities in the Hoosier National Forest, including in the particular location of the Houston South Project. Based on his extensive experience hiking in southern Indiana, Dr. Simcox believes that the Houston South Project's location includes some of the most pristine deep woods in the State and some of the most unique woods in the entire Midwest region. The size of the forested parcels in the location of the Houston South Project, the role of these forested parcels as components of some of the largest contiguous areas of protected forest in the entire Midwest, the forest's role in preserving water quality in Lake Monroe, and the diversity of wildlife in these areas make the location of the Project an extremely valuable environmental, recreational, and aesthetic resource that, in Mr. Dr. Simcox's view, is unique and irreplaceable.

12. Dr. Simcox especially values the few long-distance woodland footpaths in Indiana including the Knobstone Trail, which runs through the location of the Houston South Project. The Knobstone Trail is the longest woodland footpath in Indiana, offering many miles of rugged, backcountry hiking opportunities; this unique, long-distance trail encompasses several nearly contiguous sections that offer a total of roughly 160 miles of continuous hiking.¹ The portion of the Knobstone Trail that runs through the location of the Houston South Project is of vital importance to the entire trail because it connects the northern and southern segments of the trail that are located on state or private land rather than the National Forest. The Hickory Ridge

¹ The three sections of the Knobstone Trail are known as the Tecumseh Trail, the Pioneer Trail, and the Knobstone Trail. The Pioneer Trail is the middle section and runs through the Hoosier National Forest, including through the location of the Houston South Project. The entirety of the Trail is generally referred to, and is referred to in this Complaint, as the Knobstone Trail.

area, which is within the Houston South Project area, provides numerous trails that intersect the long-distance Knobstone trail and provide a unique combination of hiking opportunities along the Knobstone trail. This area provides valuable variety in the lengths of hikes, ranging from day hikes to overnight camping opportunities to long-distance hiking. Because of the unique, lengthy backcountry hiking opportunities the Knobstone Trail provides, it attracts numerous hikers each year, including hikers who use the Trail to train for other long-distance hikes such as the Appalachian Trail. Dr. Simcox has hiked on the Knobstone Trail, including the portions of the Trail that pass through the location of the Houston South Project, and in his view, this portion of the Trail constitutes an extremely valuable recreational and aesthetic resource. Dr. Simcox has hiked regularly in the Hoosier National Forest in the past several years, and anticipates continuing to hike in the National Forest roughly once a month. Dr. Simcox desires to continue hiking in the location of the Houston South Project and specifically on the portions of the Knobstone Trail that pass through the location of the Houston South Project along with other trails in that area.

13. Dr. Simcox is familiar with the adverse impacts on forests and hiking trails that result from the management activities included in the Houston South Project, such as commercial timber harvesting on an industrial scale, the conversion of trails into logging roads built to serve heavy equipment, clearcuts, and prescribed burning. Dr. Simcox has observed the impacts of such activities on a similar trail he previously enjoyed hiking and has found that these activities permanently devastated the aesthetic and recreational opportunities those trails once offered, in addition to causing environmental harm such as sedimentation and pollution of local waterways and the loss of valuable wildlife habitat. Dr. Simcox used to lead hiking groups through nearby trails in southern Indiana before those trails were subjected to the sorts of activities that the

Houston South Project involves, but generally no longer visits these sites due to the environmental degradation from timber harvest, trail closing and re-routing, logging road construction and associated management activities. Although Dr. Simcox occasionally leads hiking groups along these degraded trail sections in order to educate the public about the adverse impacts associated with timber harvesting, he finds visiting these formerly pristine sites a painful reminder of the loss of their former condition. Dr. Simcox fears that the Houston South Project will have similar impacts on the trails in the Project area where he enjoys hiking; these adverse impacts could include the closure of individual trail segments for extended periods, as well as the conversion of forested backcountry foot paths into deforested logging roads that do not offer the same type of aesthetic or recreational experience.

14. Dr. Simcox submitted detailed, specific comments on this Project at every opportunity, and timely filed an objection to the Service's decision to conduct the Project. Dr. Simcox's comments and objections repeatedly explained the vital importance of Lake Monroe as a source of drinking water and recreational opportunities and explained how Lake Monroe has become badly degraded due to contamination over the 14 years since the Forest Service issued a large-scale management plan for the Hoosier National Forest in 2006. Dr. Simcox specifically and repeatedly noted that the Service's own 2006 plan for the Hoosier National Forest included a goal of protecting and restoring watershed health and explained that the Houston South Project is inconsistent with that goal. Likewise, Dr. Simcox repeatedly pointed out that the 2006 Forest Plan and underlying EIS were outdated due to changes in the health of Lake Monroe due to its impairment by algae which are not mentioned in the 2006 Plan. Accordingly, Dr. Simcox repeatedly implored the Service to consider an alternative that would better protect and restore Lake Monroe. Likewise, Dr. Simcox explained that the Project will adversely impact aesthetic

and recreational resources in the Hoosier National Forest, including the Knobstone Trail, and will harm wildlife that depend on the forest for habitat, and requested that the Service consider alternatives that would better protect these resources. For example, Dr. Simcox requested that the Service consider an alternative that would retain a forested buffer zone along high-value trails such as the Knobstone Trail.

15. The Forest Service's decision to undertake the Houston South Project, and its refusal to consider any alternatives to the Project, harm Dr. Simcox. As a resident of Monroe County who depends on Lake Monroe for his sole source of drinking water, and as an advocate for the preservation of this resource for the people of Monroe County as part of the Monroe County Environmental Commission, Dr. Simcox's personal and professional interest in the preservation of the quality of the water in Lake Monroe will be adversely impacted by this Project. Additionally, Dr. Simcox's personal recreational and aesthetic interests in the unique resources in the Houston South Project area, such as the Knobstone Trail, will be adversely impacted by the Houston South Project. The Project will harm Dr. Simcox's recreational interests by preventing him from hiking certain trails and adversely impacting the aesthetic quality of trails that remain open. For example, the Project will likely entail building logging roads over various trails which Dr. Simcox has enjoyed hiking due to the natural, deep-woods experience these trails currently provide; once converted into logging roads, these former deep-woods trails will no longer provide the type of experience Dr. Simcox enjoys. Some of these adverse aesthetic impacts may be so severe that Dr. Simcox will no longer be able to enjoy hiking in the Project area. Similarly, the Project will also impair Dr. Simcox's professional interests as a member of the Monroe County Environmental Commission in ensuring that other Monroe County residents have access to high-quality outdoor recreation experiences.

16. Plaintiff Indiana Forest Alliance (“IFA”) is a non-profit organization dedicated to the long-term health and well-being of Indiana’s native forests. IFA provides accurate information to the people of Indiana to involve them in efforts to protect Indiana’s forests and works to ensure their opportunities for input into decision-making that affects forests, including decision-making by the Forest Service. IFA speaks out for the native animals, plants, and other creatures who survive in Indiana’s forests and cannot speak for themselves. IFA’s mission is to preserve and restore Indiana’s native hardwood forest ecosystem for the enjoyment of all.

17. Plaintiff IFA submitted detailed comments to the Forest Service regarding the Houston South Project at every opportunity and timely filed an objection to the Service’s decision to undertake this Project. IFA’s comments explained that the Project will have significant adverse impacts on Lake Monroe, on recreational opportunities in the Project area, and on vulnerable wildlife species, including species listed as threatened or endangered under the ESA, and requested that the Service consider alternatives that would better protect these resources. Plaintiff IFA also submitted information from its own taxonomic surveys in the Project area that reveal the presence of numerous vulnerable species and requested that the Service consider alternatives that better protect vulnerable wildlife. Likewise, IFA’s comments directed the Service’s attention to the fact that the Project area—including land that will be burned—abuts the nearby Charles C. Deam Wilderness Area and requested that the Service consider additional alternative means to protect this resource.

18. The Forest Service’s decision to undertake the Houston South Project harms the aesthetic, recreational, and professional interests of IFA and its members. IFA members regularly use the Project area for hiking, birdwatching, camping, and other similar outdoor activities, but the Project will have significant adverse impacts on the ability of IFA’s members

to engage in high-quality outdoor recreational opportunities. For example, trail closures and the conversion of trails into logging roads will adversely impact IFA members' aesthetic and recreational interests in hiking and camping in the Project area. Likewise, the Project's adverse impacts on wildlife may impair IFA's professional interest in conducting taxonomic surveys in the Project area in the future.

19. Plaintiff Hoosier Environmental Council ("HEC") is a non-profit organization whose mission is to make Indiana a better place to live, breathe, work, and play. HEC works toward these goals principally through education and advocacy. For example, HEC works to educate the public about the activities of federal land managers such as the Forest Service and how those activities affect the natural resources that the citizens of Indiana enjoy. Likewise, HEC engages in advocacy efforts that include advocating for federal land managers such as the Forest Service to take actions that meaningfully protect and restore the environment in Indiana.

20. Plaintiff HEC submitted detailed comments to the Forest Service regarding the Houston South Project at every opportunity and timely filed an objection to the Service's decision to undertake this Project. Plaintiff HEC's comments noted that the Forest Service's own goals for the Hoosier National Forest include protecting and restoring watershed health, and encouraged the agency to consider alternatives that would more effectively accomplish this goal, for example by siting projects outside of the watersheds of municipal drinking water supplies or by considering alternative project tools that may better protect watershed resources. Likewise, HEC's comments drew the Service's attention to the Project's adverse impacts on wildlife and recreational interests and repeatedly encouraged the Forest Service to consider alternatives that would better protect wildlife and recreational opportunities within the Hoosier National Forest. HEC's comments also drew attention to specific deficiencies in the Service's environmental

analysis, such as its refusal to conduct a comprehensive analysis of the Project's cumulative environmental impacts.

21. The Forest Service's decision to undertake the Houston South Project harms the aesthetic, recreational, and professional interests of HEC and its members. HEC members regularly use the Project area for hiking, birdwatching, camping, and other similar outdoor activities, but the Project will have significant adverse impacts on the ability of HEC's members to engage in high-quality outdoor recreational opportunities. For example, trail closures and the conversion of trails into logging roads will adversely impact HEC members' aesthetic and recreational interests in hiking and camping in the Project area. Likewise, the Project's adverse impacts on wildlife may impair HEC's professional interest in advocating for the preservation of a more intact ecosystem in the Project area.

22. A court order vacating the Service's decision to undertake the Project and/or requiring the Service to conduct a new analysis that complies with NEPA would redress Plaintiffs' injuries, because such a ruling would require the Service to undertake a new analysis that may yield a decision that is more protective of the environment and of Plaintiffs' interests in the environment.

23. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture that is responsible for managing the nation's National Forests, including the Hoosier National Forest.

24. Defendant Michael Chaveas is the Forest Supervisor for the Hoosier National Forest. As the Forest Supervisor, Mr. Chaveas is responsible for the actions challenged in this Complaint. Mr. Chaveas is sued in his official capacity.

25. Defendant Michelle Paduani is the District Ranger for the Brownstown Ranger District and the Tell City Ranger District within the Hoosier National Forest. Ms. Paduani signed the Decision Record and Finding of No Significant Impact for the Houston South Project and is thus responsible for the actions challenged in this complaint. Ms. Paduani is sued in her official capacity.

FACTS GIVING RISE TO PLAINTIFFS' COMPLAINT

I. STATUTORY AND REGULATORY FRAMEWORK

A. The National Forest Management Act

26. Historically, Congress has considered the protection of waterways and watersheds to be one of the central purposes of federally owned forests. For example, shortly after authorizing the President to establish “forest reserves” in 1891, Congress enacted the Organic Administration Act of 1897, specifying that “[n]o public forest reservation shall be established, except to improve and protect the forest within the reservation, *or for the purpose of securing favorable conditions of water flows*, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.” *See U.S. v. New Mexico*, 438 U.S. 696, 706–07 (1978) (quoting 30 Stat. 5, as codified, 16 U.S.C. § 475) (emphasis added). Likewise, “[a]dministrative regulations at the turn of the century confirmed that national forests were to be reserved for only these two limited purposes.” *Id.* at 708.

27. Today, the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 472a, 521b, 1600-1614, sets forth the statutory framework and specifies procedural and substantive requirements under which the Forest Service must manage National Forest System lands. Although Congress has expanded the purposes of National Forests to embrace a system of “multiple use” management, *see generally* Multiple Use and Sustained Yield Act, 16 U.S.C. §§

528–31, Congress has continued to recognize the importance of protecting waterways, and NFMA still requires that the Forest Service continue its historic role in protecting waterways and watersheds. *See, e.g., id.* § 1604(g)(2)(E) (allowing timber harvest “only where . . . watershed conditions will not be irretrievably damaged”).

28. Procedurally, NFMA requires the Service to develop a Land and Resource Management Plan (“LRMP” or “Forest Plan”) for each unit of the National Forest system. *Id.* § 1604(a). After the Service develops a Forest Plan for a unit of the National Forest, any subsequent agency action, including site-specific plans and actions within that National Forest, must both comply with NFMA and be consistent with the governing Forest Plan. *Id.* § 1604(i).

29. Substantively, NFMA requires that the Forest Service “insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish.” *Id.* § 1604(g)(3)(A). Likewise, NFMA includes a substantive requirement that the Service “insure that timber will be harvested from National Forest System lands only where . . . soil, slope, or other watershed conditions will not be irreversibly damaged” and where “protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat.” *Id.* § 1604(g)(3)(E).

30. NFMA requires that the Service “insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate and even-aged stand of timber will be used as a cutting method on National Forest System lands only where . . . for clearcutting, it is

determined to be the optimum method, and for other cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land use management plan.” *Id.* § 1604(g)(3)(F). NFMA requires that any such cuts must be “carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.” *Id.* § 1604(g)(3)(F)(v).

B. The National Environmental Policy Act

31. NEPA is the nation’s “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). Its purposes are to “help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment,” and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* § 1500.1(b), (c).

32. The Council on Environmental Quality (“CEQ”)—an agency within the Executive Office of the President—has promulgated regulations implementing NEPA, see 40 C.F.R. §§ 1500–1508, which are “binding on all federal agencies.” *Id.* § 1500.3.

33. To accomplish its underlying goals, NEPA requires federal agencies to prepare a “detailed statement”—i.e., an EIS—for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(c). An EIS must describe (1) “the environmental impact of the proposed action,” (2) “the adverse environmental effects which cannot be avoided,” and (3) “alternatives to the proposed action.” 42 U.S.C. § 4332(C)(i)–(iii). By definition, the environmental impacts that require analysis under NEPA are far broader than just those affecting the ecosystem itself; such effects include “ecological (such as the effects on

natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health” impacts. 40 C.F.R. § 1508.8(b).

34. Each EIS must consider the underlying federal “purpose and need” for the proposed action, and “rigorously explore and objectively evaluate” the environmental impacts of “all reasonable alternatives” to the proposed action. 40 C.F.R. §§ 1502.13, 1502.14 (emphasis added). NEPA further provides that agencies “shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). CEQ has deemed the alternatives analysis “the heart” of the NEPA process because it “present[s] the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14.

35. NEPA requires that, in evaluating the alternatives of a proposed action, agencies take a “hard look” at the effects of the proposed action as compared to all reasonable alternatives. See 40 C.F.R. §§ 1502.1, 1502.16. The EIS must assess the direct, indirect, and cumulative impacts of the proposed action, including adverse environmental effects that cannot be avoided. *Id.* § 1508.25. Direct effects are those “caused by the action and occur at the same time and place,” while indirect effects are those “caused by the action” that occur “later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative impacts are those that result from the “incremental impact[s]” of the proposed action when added to the impacts of other past, present, and reasonably foreseeable future actions, whether undertaken by other federal agencies or private third parties. *Id.* § 1508.7. “Cumulative impacts

can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

36. To aid in determining whether an EIS is required, the agency may prepare an EA that analyzes the environmental impacts of the proposed action as well as its alternatives. 40 C.F.R. §§ 1501.4(c), 1508.9. Although less rigorous than an EIS, an EA must “include brief discussions” analyzing direct, indirect, and cumulative impacts of the proposed action, as well as alternatives to the action. *Id.* § 1508.9; *see also* 42 U.S.C. § 4332(E) (requiring agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources”).

37. In determining whether an EIS is required, an agency must consider whether the proposed action has a “significant” effect on the human environment. 40 C.F.R. § 1508.27. The “significance” determination is based on numerous factors, including “[t]he degree to which the proposed action affects public health and safety,” the “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas,” “the degree to which the effects on the quality of the human environment are likely to be highly controversial,” “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,” “[t]he degree to which the action may adversely affect an endangered or threatened species,” and “[w]hether the action threatens a violation of Federal, State, or local law.” *Id.* § 1508.27(b). An action is also significant if it “is related to other actions with individually insignificant but cumulatively significant impacts.” *Id.* § 1508.27(b)(7). “Significance exists if it is reasonable to anticipate a cumulatively significant impact on the

environment” and “cannot be avoided by terming an action temporary or by breaking it down into small component parts.” *Id.* The presence of any one of these factors requires the preparation of an EIS.

38. If, in the course of preparing the EA, the agency determines that an EIS is not required, it must issue a Finding of No Significant Impact (“FONSI”) explaining the reasons why the agency has determined that its proposed action “will not have a significant impact” on the environment. 40 C.F.R. § 1508.13.

39. Public participation in agency decision-making, including disclosure of information concerning an agency’s proposed action, its impacts, and public input into the development of reasonable alternatives to the action, is central to NEPA’s statutory and regulatory scheme, regardless of whether an agency prepares an EIS or an EA. The CEQ regulations require that federal agencies “shall to the fullest extent possible . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment,” and require agencies to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” *Id.* §§ 1500.2, 1506.6(a). Thus, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* § 1500.1(b). In short, “[a]ccurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

II. FACTUAL BACKGROUND

A. Environmental Resources in the Location of the Houston South Project

40. The Hoosier National Forest, which the U.S. Forest Service describes as “Indiana’s National Treasure,” is the only national forest in the State of Indiana.² The Hoosier National Forest is home to the Charles C. Deam Wilderness area, the only congressionally designated wilderness area in the State of Indiana. The Forest provides habitat for numerous wildlife species, including species listed as threatened or endangered under the ESA, as well as species recognized as rare or vulnerable by the State of Indiana or by the Forest Service itself. The Forest provides some of the most popular opportunities in the State of Indiana for outdoor recreation such as hiking and camping.

41. The Hoosier National Forest was established in 1935. According to the Service’s 2006 Forest Plan for this National Forest, “[t]he driving force for establishing the Hoosier was to stabilize and restore eroding lands and protect watersheds from sediment.” Widespread deforestation in Indiana around the turn of the 20th century led to extensive damage to soils, watersheds, and waterways, and the National Forest was established in part in order to halt and reverse this environmental damage. The Forest has pursued that goal by acquiring large parcels of contiguous land and by promoting reforestation in order to retain soils, prevent adverse impacts to waterways, and provide for a healthy ecosystem. For example, in order to protect and restore soil, and to prevent sediment from flowing into local watersheds, the Forest Service planted various species of trees, including pines, on slopes that otherwise were prone to erosion.

² See U.S. Forest Serv., *Hoosier National Forest – Indiana’s National Treasure*, <https://www.youtube.com/watch?v=8qWerRFJWjc> (last accessed April 6, 2020).

Such selective reforestation efforts included planting pine trees in the area of the Houston South Project.

42. The 2006 Forest Plan aims to continue “the historic mission of the Hoosier for watershed protection and restoration.” The Forest Plan includes a “goal,” or an “overall purpose of the Forest,” to “Maintain and Restore Watershed Health.” The Forest Plan notes that “[t]his goal emphasizes collaborative stewardship of watersheds” and avers that “[t]he Forest will contribute to the restoration of water quality and soil productivity to improve the condition of those watersheds impacted by past land use practices.” The Plan further states that the Service will “[g]ive priority to stabilizing areas discharging soil into watercourses, especially those that affect the watershed of municipal or recreational reservoirs.”

43. The Hoosier National Forest abuts Lake Monroe, which is the largest lake in Indiana and a reservoir which provides the only source of drinking water for more than 120,000 people in Bloomington, Indiana and Indiana University, and other surrounding communities. In addition to thus being a critical environmental resource, Lake Monroe is also an important recreational and economic resource, attracting roughly 1.5 million visitors each year and contributing significantly to the local economy.

44. Lake Monroe and its tributaries suffer from pollution and a resulting significant degradation of water quality. Pollution to Lake Monroe includes sedimentation and runoff from nearby land uses, such as agriculture and forestry, which contribute to the degraded quality of the Lake and its tributaries. Such sedimentation and pollution particularly increase the incidence of harmful algal blooms, which typically occur in warm summer months. Each year for the past eight years, harmful algal blooms in Lake Monroe have led the State of Indiana’s Department of Environmental Management to issue warnings to the public that exposure to algal blooms can

result in rashes, skin or eye irritation, nausea, stomach aces, and neurological symptoms, and advising members of the public that they should contact a physician if they experience any symptoms after recreational activities in Lake Monroe. These recreational advisories also note that the algal blooms can be poisonous to animals and that pets should not swim or drink where algae is present. Sedimentation and algal blooms also substantially increase the cost of treating the water of Lake Monroe for use as drinking water. Forestry activities such as timber harvesting contribute sedimentation and other nutrient runoff that exacerbate the degraded conditions in Lake Monroe and its tributaries.

45. The Houston South Project is located in the watershed of Lake Monroe. The waterways in the Houston South Project area flow eventually into Lake Monroe. The overall Lake Monroe watershed includes the Lake Monroe-Salt Creek watershed, the Middle Fork Salt Creek watershed, the North Fork Salt Creek watershed, and the South Fork Salt Creek watershed. The Houston South Project occupies roughly 35.5% of the South Fork Salt Creek watershed. The South Fork Salt Creek watershed in turn constitutes 102.4 square miles of the total 432 square miles of Lake Monroe's drainage area (or roughly 25%), and the Forest Service has found that the South Fork Salt Creek contributes roughly 30% of the water that flows into Lake Monroe.

46. The Hoosier National Forest is the single largest landowner in the watershed of Lake Monroe. The National Forest represents roughly 20% of the total acreage of the Lake's watershed. The National Forest constitutes over 40% of the South Fork Salt Creek watershed.

47. Although the Forest Service takes various measures to mitigate the extent to which forestry practices cause sedimentation and contamination of waterways, the 2006 Forest Plan notes that "soil and water mitigation and protection measures" have only "moderate"

reliability. No mitigation measure or management practice proposed by the Forest Service is 100% effective in preventing sediment or other runoff from entering streams.

48. The Hoosier National Forest is also the site of the Charles C. Deam Wilderness Area, the only congressionally designated Wilderness Area in the State of Indiana. This area's congressional designation as Wilderness requires the Forest Service to preserve the "wilderness character of the area," and to ensure that the area is "devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. § 1133(b). The Houston South Project area abuts the Deam Wilderness, and the Project entails conducting prescribed burns in areas directly adjacent to the Deam Wilderness.

49. The Hoosier National Forest, including the area of the Houston South Project, also provides habitat for numerous wildlife species, including species recognized as vulnerable by the Forest Service or the State of Indiana, and species listed as threatened or endangered pursuant to the ESA. For example, the Indiana Bat and the Northern Long-Eared Bat are both listed under the ESA; the Indiana Bat is listed as endangered, while the Northern Long-Eared Bat is listed as threatened.³ The Indiana Forest Alliance submitted information to the Forest Service

³ The listing of the Northern Long-Eared Bat as merely "threatened," rather than as "endangered," which is a decision with legal and practical implications that allows numerous activities that harm the listed species to proceed, was recently found to be arbitrary and capricious. *See Center for Biological Diversity v. Everson*, No. 1:15-cv-00477-EGS, ECF No. 81 (D.D.C. Jan. 28, 2020). Although the district court did not vacate the "threatened" listing decision, the court's reasoning—as well as indisputable facts about the decline of this species in the decade since the initial listing petition was submitted in 2010—leave no room to doubt that the Northern Long-Eared Bat is, in fact, "endangered" as a factual and scientific matter. Plaintiffs have submitted a 60-day notice letter to the Forest Service and the U.S. Fish & Wildlife Service ("FWS") advising the FWS that its "threatened" listing violates the ESA and advising the Forest Service that its reliance on this "threatened" listing to provide legal cover for activities in the Houston South Project that will, in fact, harm this species violates the ESA as well. *See* 16 U.S.C. § 1540(g)(2) (requiring 60 days notice prior to filing suit over certain ESA violations). Unless the Forest Service and FWS commit to preventing any unauthorized harm to the Northern

documenting the likely presence of Northern Long-Eared Bats in the area of the Houston South Project. The Forest Service found that the Houston South Project will adversely impact both the Indiana Bat and the Northern Long-Eared Bat, but claims that the adverse impacts to these species do not violate the ESA.

50. The Houston South Project will harm various wildlife species. For example, prescribed burning will release smoke that may asphyxiate and kill pups of both bat species listed under the ESA, which have not yet gained the ability to fly away from such threats. Likewise, the Project will adversely impact various bird species.

51. The Hoosier National Forest, including the site of the Houston South Project, also serves as an important environmental resource that mitigates the impact of climate change by storing carbon in trees and soil. The Intergovernmental Panel on Climate Change (“IPCC”) issued a report in 2018 stressing the urgency of climate change and advising that action must be taken within the next 12 years to mitigate the worst effects associated with a changing climate. After southern Indiana was largely deforested in the beginning of the 20th century, and especially since the Hoosier National Forest was established in 1935, the National Forest has operated as a regionally significant carbon “sink,” i.e. a location in which a vast amount of carbon has been removed from the atmosphere and safely stored in trees and soil. The amount of carbon stored in the Hoosier National Forest has steadily increased since at least the early 1990s, showing a roughly 34 percent increase in carbon stored during that time. However, when trees are cut and when the forest floor is burned—as in the Houston South Project—such stored

Long-Eared Bat, Plaintiffs will have no choice but to file an amended Complaint to challenge this unlawful behavior once the statutorily required 60-day notice period elapses.

carbon can be released back into the atmosphere, exacerbating the adverse impacts associated with climate change.

B. The Houston South Project—Logging, Burning, and Building Roads

52. The Houston South Vegetation Management and Restoration Project includes clearcutting, commercial logging, and prescribed burning. The Project will impact 13,500 acres, or roughly 21 square miles, in the northern part of the Hoosier National Forest. The Service will conduct clearcuts over 401 acres, and will conduct other forms of timber harvest over another nearly 4,000 acres. This timber harvest will require the construction of 3.2 miles of new, permanent logging roads, 8.3 miles of new, “temporary” logging roads, and the reconstruction of another 4.9 miles of logging roads. The Project will include prescribed burns repeatedly across as many as 13,500 acres.

53. The Houston South Project will last for well over a decade. The Service projects that the clearcutting and other logging activities will take roughly 12 to 15 years to complete, while the Service intends to conduct repeated prescribed burns in the Project area for the next 20 years.

54. The Houston South Project includes clearcutting 401 acres of non-native pine trees, which the federal government planted to stabilize soil and prevent contamination of waterways. The Service’s 2006 Forest Plan states that “clearcutting may only be used where it has been found to be the optimum method of regeneration to meet multiple-use objectives and is essential to meet forest plan objectives.” In deciding to undertake the Houston South Project, the Forest Service did not consider any alternatives to clearcutting to determine that clearcutting is ostensibly “the optimum method of regeneration” in this particular area, nor did the Service determine during the decision-making process for the Houston South Project that clearcutting is

“essential” to meet plan objectives. The Service did not explain how clearcutting pines that were planted to prevent sediment from entering waterways could reasonably be considered “essential” to the Forest Plan’s objective of restoring watershed health. Clearcutting is a commercial harvest method that provides revenue for the Forest Service, but the Service’s EA does not disclose this fact or divulge how much money the Service expects to make from clearcuts.

55. The Houston South Project includes 703 acres of “shelterwood” harvests, which involve cutting most of the trees in an area, leaving only those needed to provide sufficient shade to shelter a new generation of younger trees. Shelterwood harvesting generally requires multiple rounds of logging in a single area. The 2006 Forest Plan states that shelterwood harvest will be used to regenerate hardwood species “[w]hen conditions warrant.” When deciding to undertake the Houston South Project, the Forest Service did not consider any alternatives to determine that “conditions warrant” the use of shelterwood harvesting as opposed to any less environmentally disruptive activities. Shelterwood harvest is a commercial harvest method that provides revenue for the Forest Service, but the Service’s EA does not disclose this fact or divulge how much money the Service expects to make from shelterwood harvests.

56. The Houston South Project includes “thinning” harvests of 2,327 acres of hardwoods and 78 acres of pine trees. Thinning harvests generally reduce the density of a given stand of trees by roughly one third. The Forest Service has not explained its decision to clearcut hundreds of acres of pine trees in light of its simultaneous decision to instead conduct thinning cuts in 78 acres of pines. Thinning is often a commercial harvest method that provides revenue for the Forest Service, but the Service’s EA does not disclose this fact or discuss how much money the Service expects to make from thinning cuts.

57. The Houston South Project involves 462 acres of “selection harvests,” which involve the selective removal of older, mature—and more commercially valuable—trees from an area of forest, as well as the removal of some trees in all size classes, resulting in the removal of roughly one-third of the trees from a given area. Selection harvest is a commercial harvest method that provides revenue for the Forest Service, but the Service’s EA does not disclose this fact or discuss how much money the Service expects to make from selection harvests.

58. The Houston South Project involves “midstory removal” in 234 acres of the forest, which includes the removal of all midstory trees except those left for wildlife, and 170 acres of “crop tree release,” which involves removing upper-story trees in the forest. Both methods aim to promote the growth of younger trees. Highlighting the fact that the Project’s other harvest methods are revenue-producing, commercial endeavors, the Service’s EA notes—in the EA’s only two uses of the word “commercial”—that these are “not a commercial treatment.”

59. The Houston South Project area includes very steep slopes in areas that will be subject to Project activities. As the Service’s EA states, “steep slopes on much of the forested land exist in the South Fork Salt Creek watershed.” The Service’s EA states that the slopes in the Project area are, at best, “moderately suited” to the use of timber harvest equipment and acknowledges that the steeper slopes in the Project area pose a “very severe” risk of erosion and are “poorly suited” to the use of timber harvest equipment.

60. The Houston South Project involves the application of herbicides across 1,970 acres, with herbicides applied to a cut stump of a vine or into a cut “girdle” around a tree, or used to prevent the regeneration of species the Service deems undesirable. Herbicides may be used to target non-native invasive species or to control the growth of species that the Service deems

undesirable and promote the growth of species the Service favors. The Service has decided to use three types of herbicides: Glyphosate, Imazapyr, and Triclopyr. The Service did not consider any alternative that would conduct forestry activities without the use of any herbicides, or any alternative that would forgo the use of a particular herbicide.

61. The Houston South Project involves conducting prescribed burns over as many as 13,500 acres, depending on whether adjacent landowners consent to burning on their property. At minimum, the Service intends to burn 9,700 acres of federal land. The Service plans to burn an average of 1,500 acres, or 2.3 square miles, annually, and plans to burn the same areas repeatedly. Prescribed burns are planned in the area of the Hoosier National Forest that directly abuts the Deam Wilderness. Trails will be closed while prescribed burns are conducted. Young bats that cannot fly, including the young of threatened or endangered species, may be killed by fire or smoke resulting from prescribed burns. Likewise, ground-nesting birds such as the wood thrush and hooded warbler and slow-moving species such as the eastern box turtle are at risk of harm from prescribed burning. The Forest Service did not consider any alternative that would involve the use of other methods of forest management but would exclude prescribed burning.

62. The Forest Service expects that the Houston South Project will include direct impacts to trails and recreational users of those trails. The Service expects to close 14.5 miles of trails at various times over the next 15 years. It expects 11.5 miles of trails to be directly impacted by logging, and expects to convert several miles of trails into logging roads or skids for transporting felled logs. It expects to conduct clearcuts along 2 miles of trails, shelterwood cuts along 1.5 miles of trails, and thinning cuts along 5.5 miles of trails. The Service also expects to relocate certain trails on a temporary or permanent basis. The Service acknowledges that these actions will have adverse impacts on the aesthetics of the trails, their recreational value, and on

trail users. The Service did not consider any alternatives that would better protect trails, such as the alternative of retaining a forested buffer around especially important trails, which was repeatedly suggested by various members of the public, including Plaintiffs.

C. The Forest Service's Decision-Making Process for the Project

1. Scoping and Public Comments

63. Forest Service regulations require the agency to conduct a scoping process for “all Forest service proposed actions.” 36 C.F.R. § 220.4(e). The Service issued a scoping notice for the Houston South Project on November 26, 2018, providing a 30-day period for the public to submit comments. The scoping comment period closed on December 26, 2018—the day after Christmas.

64. The Forest Service's scoping notice purported to “give the public an opportunity to provide early and meaningful participation on a proposed action prior to a decision being made.” The scoping notice advised the public that “[i]f you have substantially different ideas than are presented in this proposed action, we may develop a new action alternative around those ideas,” thus inviting the public to submit “substantially different ideas.”

65. The Forest Service's scoping notice stated that the project area is largely in “Management Area 2.8,” a management area that was designated in the 2006 Forest Plan. The scoping notice also stated that the Service's desired conditions for Management Area 2.8 include maintaining 4 to 12 percent of this Management Area in “young forest habitat and diversity of age class and forest structure.” The scoping notice stated that because the Houston South Project area contained “no stands in the 0 to 9 year age class,” the “desired amount of early-successional habitat described in the Forest Plan (4-12%) is not being met.”

66. Nearly half, or 44.6%, of the Hoosier National Forest is in Management Area 2.8. Of the 90,900 acres of land located in Management Area 2.8, only 27,000 acres are located in watersheds that supply surface drinking water for municipalities. Because the majority of Management Area 2.8—and certainly more than 12% of Management Area 2.8—is located outside of watersheds that supply municipal drinking water, such as Lake Monroe’s watershed or that for Patoka Lake, the Forest Service has the ability to meet the management objectives for Management Area 2.8 by locating forestry management activities outside of watersheds that provide municipal drinking water. In other words, the Forest Service could practically—and legally has discretion to—implement the Forest Plan by ensuring that 4 to 12% of Management Area 2.8 overall consists of “young forest habitat and diversity of age class and forest structure” without undertaking logging and burning in the watershed of Lake Monroe.

67. The scoping notice did not propose considering any alternative that would involve meeting the Forest Service’s goals for Management Area 2.8 by locating management activities outside of the watershed of Lake Monroe. Instead, the Forest Service decided to conduct logging and burning in the Houston South Project area, as opposed to other areas, *before* issuing its scoping notice for the Project.

68. The scoping notice stated a relatively broad purpose for the Houston South Project. The purpose was to “[m]eet Forest Plan direction to promote tree growth, reduce insect and disease levels and move landscape toward historic conditions,” to “[i]ncrease the resiliency and structure of forested areas (stands) by restoring the composition, structure, pattern and ecological processes necessary to make these ecosystems sustainable” and to “[t]ake actions, where needed,” to meet this purpose.

69. The scoping notice’s purported “need” for the Houston South Project included the following provisions:

- “to provide a mosaic of forest conditions dominated by hardwoods and restore dry hardwood forest ecosystems that have not experienced periodic disturbance due to fire or other naturally occurring events,” specifying as a purported part of the need for the project that “[r]eintroducing fire would promote regeneration and maintenance of mast producing oak and hickory”;
- “to reduce the amount of pine in the project area to provide more suitable habitat to a wider array of wildlife species”; and
- “to reduce sediment deposition into streams and lakes in the project area.”

70. The scoping notice described the proposed action, including the specific number of acres that would be subjected to various forms of logging, an estimate of the number of acres that would be burned, an estimate of the miles of roads that would be constructed, and an estimate of the number of acres on which the Service would apply herbicides. The use of herbicides was not a stated part of the purpose and need for the Project in the scoping notice.

71. The Forest Service’s scoping notice did not inform the public that the Service would later assert that scoping comments would be the only driver for the development of reasonable alternatives to the proposed Project, or that the Service may revise the stated purpose and need for the project to foreclose alternatives proposed by the public. Instead, the scoping notice invited the public to submit “substantially different ideas” from what the Service proposed.

72. Numerous individuals and organizations requested that the Forest Service extend the scoping comment period in view of the Service’s seemingly arbitrary decision to schedule the comment period during the busy winter holiday season. Requests for an extension of the scoping comment period were submitted by Plaintiffs, by other environmental advocates, by the Mayor

of Bloomington, and by State Representative Matt Pierce and State Senator Mark Stoops, who represent residents of Monroe County.

73. The Forest Service declined to extend the scoping comment period and has never explained why it set the deadline for scoping comments on the day after Christmas.

74. Despite the highly inconvenient deadline, numerous members of the public, including Plaintiffs, submitted scoping comments. These comments specifically requested that the Forest Service consider a variety of reasonable alternatives. For example, the Monroe County Council, including Plaintiffs Monroe County Commission and Monroe County Environmental Commission, submitted scoping comments explaining the critical importance of Lake Monroe, the degraded nature of its water quality, and the fact that sedimentation—such as sedimentation associated with timber harvesting—exacerbates the existing harms to the Lake. These scoping comments stressed that the Forest Service “do[es] not have to conduct this timber management project in the Lake Monroe watershed,” and that “[t]here are alternative locations to choose from,” including “many other [Management] 2.8 Areas that do not directly supply surface runoff for community drinking water.” These scoping comments further asked the Service to specify any alternative locations it may have considered, asked that the Forest Service “take us through how you compared those alternatives,” and stressed that Monroe County “would like to engage with [the Service] in a discussion about these and other alternatives” before the Service developed a final plan of action for the Houston South Project.

75. The Forest Service refused Monroe County’s request to arrange a meeting at which the Service could present additional information about the Project and take public input. On February 15, 2019, the Forest Service sent a letter to the Monroe County Council providing a brief response to some of the County’s comments, and indicating that the Service “would be

happy to attend a council meeting and give a short presentation about our process and where we are currently if you feel like this would be helpful.” Monroe County then requested that this meeting take place. Ten days later, the Forest Service “respectfully decline[d]” Monroe County’s request for this meeting.

76. In its response to scoping comments, the Forest Service denied that the Houston South project takes place in the Lake Monroe watershed. Instead, the Service stated that “[t]he proposed project occurs in the South Fork Salt Creek watershed, not the Lake Monroe-Salt Creek watersheds.” As described above, the South Fork Salt Creek watershed contributes roughly 30% of the total inflow to Lake Monroe.

77. The Forest Service’s response to scoping comments did not explain whether the Service considered alternative locations in Management Area 2.8 for management activities, and did not state that the Service would consider any alternative that would better protect Lake Monroe.

78. Other scoping comments, including from Plaintiffs, similarly stressed the need for the Forest Service to “analyze a meaningful range of alternatives to its proposed action.” These scoping comments requested that the Forest Service consider specific alternatives, including the following:

- A “Lake Monroe Watershed Health Protection and Enhancement” alternative, which “would focus on actions to protect and enhance the health of Lake Monroe and its tributaries” through such actions as road decommissioning, restoration of eroded or degraded sites on Forest Service land, acquisition and restoration of land, and collaboration with neighboring landowners and other state and federal agencies to contribute to the restoration of Lake Monroe;
- A “HNF Forest Recreation Alternative,” which would “focus management actions on providing and enhancing sustainable outdoor recreation opportunities” such as trails or backcountry campsites and that would “[l]imit vegetation management to that necessary to provide user safety and eliminate invasive species”;

- An alternative of “Vegetation management in Management Area 2.8 outside the Lake Monroe watershed”; and
- “One or more alternatives that contain different levels and mixes of the management practices provided for in the proposed Houston South project.”

79. The Forest Service’s response to scoping comments claimed that “[p]ublic comments did not drive an additional alternative” and denied that the Service had any obligation to consider any additional alternatives. The Service refused to consider conducting management activities outside the Lake Monroe watershed as an alternative in the NEPA process, stating that “[o]ther areas in the Brownstown Ranger District may be considered in the future, but not as an alternative.” The Forest Service claimed it could forgo considering any alternatives to the proposed Project because it purported to find that “there are no unresolved conflicts concerning alternative uses of available resources.”

2. *The Draft EA and Public Comments*

80. The Forest Service issued a draft EA and draft FONSI for the Houston South Project on July 26, 2019, and provided a 30-day period for the public to submit comments.

81. The draft EA for the Houston South Project did not consider any of the alternatives that members of the public, including Plaintiffs, suggested during the scoping period. Instead, the draft considered only one action alternative, i.e. the Project as proposed, and a no-action alternative.

82. The draft EA claimed that the Houston South Project would not have any significant impacts on the environment, including on Lake Monroe or on any aesthetic or recreational resources. The draft EA denied that the Project would have direct or indirect effects on Lake Monroe, and refused to consider cumulative impacts on Lake Monroe from the Project in light of other activities in the Lake’s watershed. Instead, the draft EA limited the scope of its

analysis of cumulative impacts solely to the South Fork Salt Creek watershed, refusing to consider whether the Project might have cumulative impacts on the downstream Lake Monroe.

83. The draft EA did not consider any alternative that would accomplish the Forest Plan's objectives for Management Area 2.8 by conducting activities such as logging and burning in the large amount of National Forest inside that Management Area but outside the Lake Monroe watershed. Instead, the Forest Service amended the stated "Need for Action" to claim that it was necessary to take action in the particular area of the Houston South Project. Thus, the Forest Service responded to the public's request that the Service consider siting environmentally harmful activities outside of the Lake Monroe watershed not only by refusing to consider any such alternative, but by rephrasing the stated need for the Project in a manner that was designed to foreclose the public's ability to argue that NEPA required consideration of such an alternative.

84. The draft EA's new statement of the ostensible need for the Houston South Project stated that the Service had decided to log, build roads, and burn in this area "because stand densities are very high in portions of the project area and [tree] mortality is occurring." The Service's draft EA did not compare stand density or tree mortality in the Houston South Project area to any other portions of the Hoosier National Forest. Instead, the draft EA stated that the Service had previously conducted similar activities in "the southern end of the forest over the course of four different project areas, two of which were in management area 2.8" and stated that "[t]he Forest Leadership team decided it was appropriate for the next active forest management proposal to be in the Houston South area."

85. The draft EA did not address whether the Service could meet the Forest Plan's goals for Management Area 2.8 by conducting forestry management activities outside of the Lake Monroe watershed. Likewise, the draft EA did not provide any response to Monroe

County's inquiry as to what alternative areas the Service may have considered for active forest management or explain whether or how the Service compared such alternative areas to reach the determination that it was ostensibly "appropriate" to conduct the Project in this particular area of the National Forest.

86. Numerous members of the public, including Plaintiffs, submitted comments on the draft EA. For example, Plaintiffs Monroe County Commissioners and Monroe County Environmental Commission reiterated their concerns that the Project would contribute to the degradation of water quality in Lake Monroe, and stressed that "there are other locations within [the Hoosier National Forest] that are appropriate for logging but that are not in the watershed of a municipal surface drinking water supply." These comments stressed that such "alternative locations are viable." These comments also noted that the Service's claim "that the proposed Houston South project is not in the Lake Monroe watershed is a red flag." Likewise, Plaintiff Dr. Simcox's comments on the draft EA noted that "[t]he EA text mentions Lake Monroe only three times," which made it "appear[] as though [Forest Service] leadership did not appreciate the important role that Hoosier National Forest [] plays in the Lake Monroe watershed." Dr. Simcox's comments stressed that the Service's EA "are not responsive to public concerns over the potential impact this Project could have on the water quality of this reservoir which services one of the largest populations in Indiana who depend upon surface supplied drinking water."

87. The Monroe County Plaintiffs' comments also requested that the service consider "alternative locations or management approaches," specifically suggesting that "[a]lternative projects could include vegetation management activities outside of municipal surface drinking water supplies, a focus on Lake Monroe watershed health within the watershed, or activities

within the watershed aimed at improving recreation opportunities but that do not present increased contamination risks.”

88. Dr. Simcox’s comments on the draft EA specifically criticized the Service’s process for selecting the Houston South Project area, inquiring whether “comparable stand assessments” were conducted “in other northern 2.8 areas,” and if so, in which areas the Service may have conducted such assessments. Dr. Simcox “respectfully request[ed] that [the Service] release to the public all [its] analysis and reports on how the decision to select the Houston South area from the vast available HNF area was determined,” and noted that without such disclosure, the public would be left to “assume a lack of rigor in [the Service’s] analysis.”

89. Dr. Simcox also provided specific factual evidence to dispute the draft EA’s conclusion that the Houston South Project would not significantly impact Lake Monroe. For example, Dr. Simcox stressed that the draft EA’s assertion that the Project would not significantly affect water quality relied on “successful implementation and effectiveness of best management practices,” and explained that this reliance “is not consistent with past HNF reported performance or with the personnel resources available for the Project.” Dr. Simcox explained that, in addition to the dubious track record of effective implementation of best management practices, the prevention of sedimentation would become increasingly difficult as “[e]xtreme rainfall events are projected to increase from an already accelerated pace in the last three decades.” Dr. Simcox also objected to the Service’s reliance upon a 25 year-old internal non-peer reviewed study due to its lack of merit, because that study is seriously flawed with even its author making numerous disclaimers as to the veracity of its findings regarding erosion from logging sites along Lake Monroe. Plaintiff IFA’s comments also debunked the Service’s reliance on this study, explaining that it suffered from serious technical deficiencies and that, in any

event, this study actually showed substantially increased rates of sedimentation one year after the timber harvest was conducted and associated best management practices were put in place.

90. Likewise, Dr. Simcox criticized the draft EA's refusal to consider cumulative effects on the Lake Monroe watershed, noting that "[t]here is extensive logging and oak restoration work occurring in the region," and stressing that this Project "must be considered in the larger context" of "other activities in the Lake Monroe watershed" by state and private landowners and private timber harvests. Other comments, such as those submitted by Plaintiff HEC, similarly explained that "[g]iven that the streams in the project area flow to Lake Monroe, via the South Fork Salt Creek, and that the project area is part of a larger complex of public land including managed lands owned by other public agencies, the cumulative effects geographic area for all impacts should be considered to be the Lake Monroe watershed."

91. Plaintiff IFA also criticized the draft EA's conclusion that the Project would not significantly impact water quality in Lake Monroe. IFA's comments stressed that "[t]he South Fork of Salt Creek is a primary tributary significantly contributing to the water volume in Monroe Reservoir," which "makes it logical to be reasonably concerned about any plan that involves logging on multiple steep slopes that contain[] highly erodible soils and drain directly into this Creek and its tributaries." Moreover, IFA's comments on the draft EA provided highly detailed critiques of the studies on which the draft EA relied in order to conclude that the Project would not significantly impact water quality.

92. Plaintiffs' comments on the draft EA also criticized the draft EA's analysis of climate change. For example, Dr. Simcox noted that "the most recent report from the Intergovernmental Panel on Climate Change ["IPCC"] states that we have 12 years to mitigate carbon release in the atmosphere." Notably, the Forest Service's analysis of climate change did

not cite this most recent 2018 IPCC report, which was available at the time the Service conducted that analysis. Dr. Simcox stressed that in light of the urgency established in the most recent IPCC report, the Service's claim that the release of carbon to the atmosphere through logging and burning would purportedly be offset by long-term forest growth was not reasonable. Dr. Simcox further supplied specific scientific citations demonstrating the urgency of climate change and disputing the Service's claim that long-term growth of young trees would eventually offset the release of carbon from the Project. Dr. Simcox also disputed the Service's failure to meaningfully consider the impacts on climate change resulting from the Project's prescribed burns.

93. Dr. Simcox also criticized the draft EA's failure to consider any alternatives regarding the use of herbicides, and specifically cited scientific literature demonstrating the safety, health, and environmental risks associated with the use of a particular herbicide, glyphosate, and requested that the Forest Service avoid the use of this particular herbicide.

94. Dr. Simcox specifically disputed the Service's claim that it was unnecessary to consider any alternatives to the Project because there were ostensibly "no unresolved conflicts" about competing uses of resources. Dr. Simcox not only provided scientific citations disputing various aspects of the draft EA's analysis of the proposed Project that demonstrated unresolved conflicts, but also noted that his and numerous other public comments raised unresolved conflicts over aspects of the Project, including specific impacts on various resources and the overall selection of this portion of the National Forest for activities such as logging, burning, and road construction. Dr. Simcox again requested that the Service consider reasonable alternatives, including (as described above) a "Lake Monroe Watershed Health Protection and Enhancement" alternative, a "HNF Forest Recreation alternative" that would include better preservation efforts

for trails such as the Knobstone Trail, an alternative of “Vegetation Management in Other 2.8 and 3.3 Areas,” and an alternative of “Acquir[ing] New Lands for Oak/Hickory Restoration.” Other comments from Plaintiffs suggested similar alternatives. For example, Plaintiff IFA’s comments stressed that the draft EA “needlessly offers an unacceptable ‘all or nothing’ choice that fails to integrate other important goals and objectives in the Land and Resource Management Plan of the [Hoosier National Forest.]”

95. Other members of the public, including Plaintiffs, also disputed central aspects of the draft EA. Plaintiff IFA’s comments on the draft EA specifically described how the Project will have significant environmental impacts, pointing to CEQ regulations that are binding on all federal agencies, and explaining how the Project meets the criteria for significance established in these regulations. For example, with regard to impacts on species listed under the federal ESA, which is one of the significance criteria under NEPA’s implementing regulations, IFA’s comments noted that IFA’s own taxonomic surveys documented the presence of threatened species in the vicinity of the Project and stressed that the Project “will likely degrade summer roosting habitat for the Northern long-eared bat.” Likewise, IFA’s comments stressed that the Project area is directly adjacent to the Charles Deam Wilderness, explaining that the proximity of this unique resource indicates the significance of the Project’s environmental impacts under the CEQ regulations. IFA’s comments specifically explained that “[t]he intensive prescribed burning that the project will undertake along as much as two miles of the border of the Charles Deam Wilderness will alter the natural forest in this area which serves an important role as a buffer area for this heavily used wilderness area.”

96. IFA’s comments on the draft EA also stressed that the Service “downplays and in some instances appears to be oblivious as to this project’s potential impacts on suspended solids

and sediment in the Monroe Reservoir” and on numerous other environmental resources. These comments stressed that the Project will, at a minimum, have a cumulatively significant effect on various resources. Likewise, Plaintiff IFA also drew the Service’s attention to other cumulative impacts, including the destruction of interior forest habitat from this Project which should be considered in light of the fact that this Project is located in one of the only large parcels of deep forest in the state and in light of other activities that harm forest interiors. Plaintiff IFA explained that such impacts, whether direct, indirect, or cumulative, include harm to forest songbirds, some of which are recognized as imperiled by the Forest Service and the Fish & Wildlife Service, such as the cerulean warbler.

97. Comments from Plaintiff HEC also stressed similar issues, including impacts on Lake Monroe’s water quality, impacts on wildlife, and impacts on recreational resources within the National Forest. For example, Plaintiff HEC’s comments on the draft EA stressed that “[t]rail impacts affecting recreational users will be significant.” These comments noted particular popular trails which would be impacted, and challenged the Forest Service’s failure to consider any alternatives that would better protect such resources. Specifically challenging the Service’s claim that there are “no unresolved conflicts” regarding the use of environmental resources, HEC’s comments specifically explained that “[a] choice between trail closure and repurposing trails to accommodate forest management activities, or continued use of the trails for recreation, represents an unresolved conflict about alternative uses of available resources.” HEC elaborated that “the available resources are the trails in the project area, and the alternative uses are either their conversion to a management resource or remaining a recreational resource,” explaining that “[i]f recreational use is prohibited while used as a management resource, then the resource cannot accommodate both uses, thus a conflict results.”

98. Plaintiff HEC provided similar explanations for other unresolved conflicts of the use of available resources in the National Forest. Accordingly, Plaintiff HEC reiterated that its scoping comments had “identified several reasonable alternatives that are consistent with Forest Plan direction and that could accomplish part or all of the identified purpose and need for this project,” and “strongly disagree[d] with the HNF’s conclusion that there are ‘no unresolved conflicts’ in this project, and thus no need to analyze additional alternatives.” Plaintiff HEC then repeated its request that the Service consider specific reasonable alternatives, such as “[o]ne or more alternatives that contain different levels and mixes of the management practices provided for in the proposed Houston South project.”

99. Public comments also stressed that a consideration of additional alternatives was necessary in order to fulfill the goals of the Service’s 2006 Forest Plan for the Hoosier National Forest. For example, Dr. Simcox’s comments on the draft EA stated that “[a]lternatives should be sought that provide[] a better balance and representation of the Forest Plan,” because “[m]any of the goals stated in the Forest Plan . . . were not included in the EA.” To that end, Dr. Simcox again requested that the Service consider an alternative that would focus on “Lake Monroe Watershed Health Protection and Enhancement.” Likewise, Plaintiffs IFA and HEC also requested that the Service consider this and other alternatives.

3. *The Service’s Final Decision and Public Objections*

100. The Forest Service issued a Final EA and a response to public comments on November 5, 2019. The Service then issued a Draft Decision Notice and FONSI for the Houston South Project on November 8, 2019, and provided 45 days for members of the public to submit objections. Like the draft EA and FONSI, the final EA and FONSI claimed that the Houston South Project would not have any significant impact on the environment.

101. The Service’s final EA did not consider any alternatives beyond the alternatives considered in the draft EA—i.e. the Project as proposed and a no-action alternative.

102. In response to numerous public comments, including from Plaintiffs, requesting consideration of specific alternatives, the Forest Service claimed that it had no duty under NEPA to consider any additional alternatives, reiterating its claim that “[t]here are no unresolved conflicts” about available resources. Likewise, the Service dismissed numerous comments that presented conflicting views about how the Service should treat various resources, such as recreationally important trails or wildlife habitat or drinking water, by claiming that “[d]iffering opinions do not indicate unresolved conflicts.”

103. Despite the fact that numerous comments, including from Plaintiffs, requested that the Service consider specific alternatives—including alternatives that would allow the Project to proceed in its current location, such as an alternative featuring different combinations of the various activities that constitute the proposed Project, or an alternative that would impose only seasonal restrictions on certain activities such as prescribed burning in order to reduce harms to sensitive species—the Service stated that “opposing respondents would not be satisfied with anything less than withdrawal of the proposal, so we have concluded that the no action alternative is the best approximation of what they might ask for.” Likewise, the Service purported to find that “[t]here are no unresolved conflicts because the concerns of those who oppose the project are addressed in the EA through consideration of the no action alternative.”

104. In response to numerous comments explaining inadequacies in the draft EA’s analysis of various issues, the Service claimed that the issues had been sufficiently analyzed in the EA. Likewise, the Service responded to comments explaining that the EA was incorrect to conclude that impacts on the environment would not be significant by simply pointing the

commenter back to the relevant sections of the EA. For example, the Service stated that “issues that did identify a dispute with the proposed action based on an anticipated effect were resolved by analyzing the issues and addressing the concerns in the Environmental Effects section of the EA.” However, the Service acknowledged that “[t]his is not to say this will be acceptable to all people, as some oppose the project.”

105. With regard to impacts on Lake Monroe, the Service responded to public comments by again denying that the Project occurs in the watershed of Lake Monroe, insisting that the Project instead occurs in the South Fork Salt Creek watershed. The Service simultaneously recognized that “[t]he four watersheds that ultimately drain into the Lake Monroe Reservoir include the South Fork Salt Creek” watershed. The Service claimed that “best management practices” for logging projects would prevent any significant impacts to soil or water in the South Fork Salt Creek watershed, thus preventing any significant impacts on Lake Monroe. However, in response to comments explaining that such best management practices have previously proven ineffective in preventing contamination in the Hoosier National Forest, and questioning whether the Forest Service has sufficient staff to ensure that such best management practices are observed during the Project, the Service acknowledged that “[h]iring additional staff to oversee the Houston South project is probably unlikely.” The Forest Service did not meaningfully respond to public comments that specifically called the efficacy of these best management practices into question.

106. In response to public comments calling for a more thorough analysis of cumulative impacts on Lake Monroe or other resources, the Service defended the narrowly drawn areas of cumulative impacts analysis by claiming that the limitations on the area of analysis in the EA was necessary to ensure that the Service considered only impacts that

“overlap in time and space” with effects from the Project. The Service expressly refused to consider impacts from activities on nearby lands that were identified in public comments, finding for example that activities in nearby state forests are “beyond the cumulative effect boundary for soil and water resources.”

107. Members of the public, including Plaintiffs, timely submitted objections to the Forest Service’s draft Decision Notice and FONSI. The Forest Service issued its formal response to objections on February 14, 2020.

108. Plaintiffs objected to the Service’s conclusion that the Project would not have any significant impact on the waters of Lake Monroe. The Service acknowledged that the Project “falls within the South Fork of Salt Creek that eventually drains into the Monroe Reservoir,” but claimed that “a significant distance” between the Project and the Lake meant that any contamination from the project would not likely affect the Lake. However, in addition to failing to adequately consider whether impacts within the South Fork Salt Creek watershed may be cumulatively significant, because the Service limited its consideration of cumulative impacts solely to the South Fork Salt Creek watershed, it did not consider whether the Project may contribute to cumulatively significant impacts on Lake Monroe when considered in combination with other sources of pollution that impact the Lake. The Service asserted that its responses to public comments adequately addressed public concerns.

109. Plaintiffs also objected to the Service’s failure to consider any alternatives beyond no action and the Project as proposed. The Service responded by asserting that “public scoping did not drive a new alternative that meets the need for action in the Houston South Project area.” Likewise, the Service claimed that “because “no new issues beyond those already identified in

the EA arose [in the scoping process] that met the need for action,” there was “no need for a further range of alternatives.”

110. The Service refused to consider any alternative that would forgo—or at least reduce—logging, burning, or road construction in the Lake Monroe watershed by asserting that such an alternative would not meet the purpose and need for the proposed Project. The Service did not acknowledge that it crafted the purpose and need statement on which it relied in order to exclude such an alternative *after* the public requested that the Service consider an alternative that would forgo logging, burning, or road construction in the Lake Monroe watershed.

111. The Service denied that consideration of any other alternative was necessary—such as an alternative that would better protect recreational resources—because the “one identified action alternative . . . includes design features” that ostensibly address the issues that were raised by the public, “including recreation development and watershed protection.” With regard to recreational opportunities, the Service asserted that the proposed action adequately resolved all public concerns about recreation because the EA included a design measure stating that the Service would “[r]estore trailhead to its original condition as much as possible after treatment” and would “[l]op and scatter slash adjacent to the Hickory Ridge and Fork Ridge Trails for 25 feet.” Thus, the Service rejected calls to consider alternatives that would, for example, not convert existing deep-woods footpaths into logging roads surrounded by clearcuts or heavily logged forest, by asserting that actions such as scattering logging debris on the sides of the trails would adequately address impacts to the public that previously enjoyed a natural, deep-woods hiking experience.

112. Likewise, the Service expressly rejected an objection that called on the agency to consider an alternative that would retain a forested buffer on the sides of important trails such as

the Knobstone Trail, by stating that “buffers are not warranted as the Hickory Ridge trails are in the ‘modification’ category of visual quality objectives, per the Forest Plan.” However, the Forest Plan does not require the devastation of the aesthetic value of important trails within the “modification” classification or foreclose the use of buffers to preserve the recreational interests of Forest users; instead, the Forest Plan states that the Service will “manage visual quality objectives for forested areas adjacent to entrance roads and trails” and will “[p]rovide and maintain scenic vistas where appropriate.” The “modification” classification does not require the agency to avoid considering alternatives that would better protect visual, aesthetic, or recreational resources.

113. The Service also rejected objections regarding the Project’s use of glyphosate and calling on the Service to consider an alternative that would not feature the use of this particular herbicide. The Service downplayed public comments and objections explaining that there is profound scientific controversy and uncertainty regarding the health, safety, and environmental impacts of glyphosate, thus denying that the use of this herbicide would have a significant environmental impact. The Service also claimed that no alternatives suggested by the public would meet the purpose and need for the Project, but did not explain why an alternative excluding the use of glyphosate—and using less controversial and potentially damaging herbicides—would purportedly fail to meet the Project’s purpose and need, particularly since the Service has proposed to use at least two other herbicides to which the public has not objected.

114. The Service also rejected objections calling for an expanded analysis of cumulative impacts on Lake Monroe, arguing that such an analysis was unnecessary in light of the Service’s contention that the Project’s use of best management practices would prevent significant direct or indirect impacts on the South Fork Salt Creek watershed. However, the

Service's reliance on such best management practices was called into serious question by public comments that provided substantial scientific criticism of the Service's sources and reasoning. For example, Plaintiff IFA's objections specifically explained that studies of the efficacy of best management practices are of limited scientific value and that some scientific studies of similar best management practices revealed that they were not effective in preventing pollution from sedimentation. Moreover, the purpose of a cumulative impacts analysis is to ensure that even if a particular project's impacts fall below the level of significance, federal agencies nevertheless consider whether such impacts may nevertheless have a cumulatively significant impact when considered with other past, present, or reasonably foreseeable future impacts. Here, such an analysis would have to consider whether the Project's impacts on water quality, even if mitigated by best management practices, would nonetheless contribute to the degradation of the quality of waters that flow into Lake Monroe. By constraining its cumulative impacts analysis area, the Service turned a blind eye to this issue.

115. The Service also rejected objections that argued that the Project will harm threatened and endangered species or other imperiled species. Although the Service acknowledged that the Project may harm the listed Indiana Bat and Northern Long-Eared Bat, which are listed under the ESA, it claimed that such harms do not violate the ESA because they are purportedly consistent with an Incidental Take Statement for the Indiana Bat and comply with a special rule that allows certain impacts to the Northern Long-Eared Bat. With regard to other imperiled bat species, such as the Little Brown Bat and the Tri-Colored Bat, which face extremely severe threats and which the Fish & Wildlife Service is considering for listing under the ESA, the Forest Service acknowledged that the Houston South Project would likely harm these sensitive species, but failed to take a hard look at the Project's direct, indirect, and

cumulative impacts on these species in light of the bevy of other threats these species currently face.

116. As required by the ESA Act, Plaintiffs have sent the Forest Service and Fish and Wildlife Service a letter explaining why these assertions are erroneous and why the Project will unlawfully take listed species and providing 60-days notice of Plaintiffs' intention to file suit under the ESA. At the appropriate time, Plaintiffs may amend this Complaint to include additional allegations and claims regarding the Project's unlawful impacts on threatened and endangered species. The Service's admission that the Project may harm listed species is an indication of the Project's significant impacts under NEPA, and is one reason why an EIS is required here.

117. The Service also dismissed objections that explained that an EIS is required in light of the unique characteristics of the geographic area. Plaintiff IFA explained that this Project's area is part of a contiguous block of protected forest that is unique in Indiana, Illinois, and Ohio, including the Knobstone Trail, which is the primary backpacking trail in the state of Indiana, and the Charles C. Deam Wilderness Area, which is the only wilderness area in Indiana. IFA's objection stressed that the Service should consider the recreational value of the Project area in light of its role as part of the largest complex of wild forest land in Indiana and the lower Midwest, and explained that the Service's restricted analysis of recreational impacts solely within the bounds of the Project is inappropriate because it ignores the unique characteristics of the surrounding region and the degree to which impacts in this area may in turn affect recreation and conservation interests more broadly. The Service's response to this objection entirely failed to address the unique regional characteristics of the Project area. For example, the Service's response to public objections did not even mention the Charles C. Deam Wilderness Area.

118. The Service also rejected objections to the EA's analysis of climate change. Public comments and objections explained that the climate change impacts associated with logging that removes older trees and prescribed burning to promote the growth of younger trees are both highly controversial and highly uncertain because there is a significant scientific dispute, and significant scientific uncertainty, about the degree to which the growth of young trees may, in the long term, offset the emissions associated with logging and burning. Likewise, public comments and objections stressed the significant scientific controversy and uncertainty associated with the Service's reliance on long-term offsetting of carbon emissions in light of the scientific consensus established in the IPCC's 2018 report, which highlighted the urgency of reducing carbon emissions in the short term. The Service responded by asserting that the EA found that if left unmanaged, the Hoosier National Forest's older stands, such as those in the Houston South Project area, may become a source of carbon themselves. However, the Service's own analysis of carbon emissions associated with the Hoosier National Forest casts profound scientific uncertainty over the Service's reasoning, because that analysis shows it is as likely that "ecosystem carbon stocks can continue to increase for many decades" and that "on national forest lands, the projected carbon trends" may yield a "net sequestration" of carbon if left undisturbed, with only "a small decline in the rate of net carbon sequestration through 2060." The profound scientific uncertainty and controversy associated with the impacts of the Project's activities on climate change is another reason why an EIS was required here.

119. Public objections, including from Plaintiffs, again stressed the need to consider additional alternatives in order to bring the Houston South Project into alignment with the goals and objectives of the Service's 2006 Forest Plan. For example, IFA's objections stressed the need to "evaluate whether there are alternatives that pose less significant impacts . . . [and] that

can still meet the desired future conditions for this area as well as the objectives of the Forest Plan as a whole.” IFA’s objection stressed that the Forest Plan’s “guidelines for Management Area 2.8 state that ‘Maintain and Restore Watershed health’ will be the highest priority,” and requested that the Service use its “discretion to reduce the scope of proposed project activities in this project to address public concerns and ensure that this priority is addressed.” Likewise, IFA’s objection emphasized that one such alternative the Service should consider in order to implement the Forest Plan’s goal of maintaining and restoring watershed health was to “examine whether these activities can be moved to an entirely different location within Management Area 2.8,” providing detailed maps showing that this Management Area contains at least 63,200 acres (over four times the size of the Project) that are not in the watershed of any municipal reservoir.

120. The Forest Service’s response to public objections entirely failed to address detailed criticisms from Plaintiffs of the Service’s contention that the Project does not present “unresolved conflicts concerning alternative uses of available resources.” Plaintiff HEC submitted a timely and extensive objection letter that addressed in great detail why the Service’s approach to “unresolved conflicts” is unlawful as a legal matter and incorrect as a factual matter. For example, HEC explained that the Forest Service’s own NEPA Handbook explains that—contrary to the Service’s approach here—avoiding the development of alternatives is only appropriate “[w]hen scoping indicates an *agreement* about the proposed action.” Likewise, HEC explained that this is the consensus view among federal land managers, pointing to the NEPA Handbook of the Bureau of Land Management, which similarly states that “[t]here are no unresolved conflicts concerning alternative uses of available resources if consensus has been established about the proposed action based on input from interested parties.” HEC further explained that this approach to unresolved conflicts—focusing on whether the interested public

is in full agreement with a proposed federal action—makes sense in light of the plain meaning of the term “conflict” as well as well-established rules of statutory construction.

121. As HEC further elaborated, “[i]n the case of the Houston South Project, there are many significant areas of legitimate public concern and disagreement about the project actions and outcomes, as well as conflicts created by the project itself between uses of resources.” As HEC noted, the Service’s response “is to dismiss these conflicts as merely ‘differing opinions’ when they are much more than that.” Accordingly, HEC again reiterated its call for the Service to consider reasonable alternatives to the Project.

122. The Service’s response to public objections, including its response to HEC’s objections, does not include the phrase “unresolved conflicts” and does not engage with the substance of HEC’s objections. The Service’s response to objections concluded that “there is no need for a further range of alternatives.”

123. After the objection period for the Houston South Project closed, the Forest Service invited objectors, including Plaintiffs, to a meeting that aimed to determine whether the objectors would be willing to withdraw their objections. At that meeting, objectors again reiterated their request for the Service to consider alternatives to the Project, including specific compromise alternatives that would allow the Project to proceed in its current location. The objectors specifically crafted these alternatives so that they would meet the Forest Service’s stated purpose and need for the Project. For example, Plaintiff IFA requested that the Service consider an alternative that would schedule prescribed burns at times when imperiled bat species are not roosting in trees where their young pups could be harmed by fire or smoke. However, the Forest Service refused to consider any of the alternatives the objectors proposed.

124. On information and belief, the Forest Service is preparing to imminently implement the Houston South Project in areas that are currently witnessing heavy use by local citizens for whom outdoor recreational opportunities are more important than ever, due to the restrictions on other activities associated with the COVID-19 pandemic. On information and belief, the Service has closed certain hiking trails to prepare to convert these trails to logging roads, and has indicated that areas of the Forest will be closed for prescribed burns.

CLAIMS FOR RELIEF

I. Violations of NEPA and the APA

125. Plaintiffs incorporate all preceding paragraphs by reference.

126. This First Claim for Relief challenges Defendants' violations of NEPA, 42 U.S.C. §§ 4321-4347, as well as violations of CEQ's and the Forest Service's implementing regulations, in approving the Project. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. §§ 704, 706. Defendants violated NEPA, its implementing regulations, and the APA in multiple respects through approval of the Project, including but not limited to the following.

127. By failing to consider any alternatives for the Houston South Project beyond the Project as proposed and a no-action alternative—including any mid-range alternatives that would reduce impacts to sensitive resources—the Forest Service violated NEPA, its implementing regulations, and the APA.

128. By constructing an excessively narrow statement of purpose and need for the Houston South Project that excluded reasonable alternatives from the NEPA analysis for the Project, the Forest Service violated NEPA, its implementing regulations, and the APA.

129. By failing to prepare an Environmental Impact Statement to consider the significant impacts of the Houston South Project—despite the existence of substantial impacts to several of NEPA’s “significance” factors identified at 40 C.F.R. § 1508.27(b), including but not limited to factor (b)(2), (b)(3), (b)(4), (b)(5), (b)(7), (b)(8), (b)(9), and (b)(10)—the Forest Service violated NEPA.

130. By failing to engage in a complete analysis of the direct, indirect, and cumulative impacts of the Houston South Project, the Forest Service violated NEPA, its implementing regulations, and the APA.

131. By failing to include in its EA all supporting analyses and information that informed the Forest Service’s decision, including the decision to undertake the Project in the selected area instead of other areas of the National Forest in Management Area 2.8, the Forest Service violated NEPA, its implementing regulations, and the APA.

132. By failing to adequately respond to myriad substantive comments and objections lodged by members of the public, including Plaintiffs, the Forest Service violated NEPA, its implementing regulations, and the APA.

II. Violations of the National Forest Management Act

133. Plaintiffs incorporate all preceding paragraphs by reference.

134. This Second Claim for Relief challenges Defendants’ violations of NFMA, as well as violations of the Forest Service’s implementing regulations, in approving the Project. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. §§ 704, 706. Defendants violated NFMA, its implementing regulations, and the APA in multiple respects through approval of the Project, including but not limited to the following.

135. By deciding to conduct the Houston South Project in a manner that is inconsistent with the goals and objectives of the Land and Resource Management Plan for the Hoosier National Forest—including the goal and objective of protecting and restoring watershed health—the Forest Service violated NFMA.

136. By failing to make determinations required by the Forest Plan regarding the suitability of various management activities, such as clearcutting, before deciding to implement those activities, the Forest Service violated NFMA.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

1. Declaring that Defendants' decision to undertake the Houston South Project is in violation of NEPA and is arbitrary and capricious;
2. Declaring that Defendants' decision to undertake the Houston South Project is in violation of NFMA and is arbitrary and capricious;
3. Enjoining Defendants from taking any action to implement the Houston South Project;
4. Vacating the challenged decision and environmental analysis;
5. Remanding the challenged decision to the Forest Service for further analysis and decision-making consistent with its duties under NEPA, NFMA, and the APA;
6. Awarding Plaintiffs their reasonable attorneys' fees and costs in this action; and
7. Providing any other relief that the Court deems proper.

Respectfully submitted,

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