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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SOUTHEAST ALASKA CONSERVATION COUNCIL;)
ALASKA WILDERNESS LEAGUE; and SIERRA CLUB,)

Plaintiffs,)

v.)

UNITED STATES FOREST SERVICE;)
UNITED STATES DEPARTMENT OF AGRICULTURE;)
BETH PENDLETON, in her official capacity as United)
States Forest Service Region 10 Regional Forester; and)
FORREST COLE, in his official capacity as Forest)
Supervisor for the Tongass National Forest,)

Defendants.)

) Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(5 U.S.C. §§ 701-706; 16 U.S.C. § 1604; 16 U.S.C. §§ 528-531; 16 U.S.C. § 539d;
42 U.S.C. § 4332; 16 U.S.C. § 3120)

SUMMARY

1. This action challenges the Record of Decision for the Big Thorne Project, signed by Tongass Forest Supervisor Forrest Cole on June 28, 2013 (the Record of Decision), and the associated Final Environmental Impact Statement (the Big Thorne EIS).

2. The Big Thorne Project is a massive logging project in the Tongass National Forest, consisting almost entirely of old-growth logging. It contains 148.9 million board-feet (mmbf) of timber, more than was cut from the Tongass National Forest in the five fiscal years preceding the Big Thorne Record of Decision combined. It encompasses roughly 8,500 acres. In fact, it is by far the largest timber project on the Tongass National Forest since the Ketchikan and Sitka pulp mills were still in operation under 50-year timber sale contracts in the early 1990s.

3. The Big Thorne Project is located on the north-central portion of Prince of Wales Island. This portion of the Tongass has experienced so much habitat loss from past decades of old growth logging and road construction that a sustainable dynamic between the Alexander Archipelago wolf, the Sitka black-tailed deer, and human hunting opportunities is already jeopardized. The Big Thorne Project will harvest most of the best remaining mid- and low-elevation deer winter old-growth habitat on the north-central part of Prince of Wales Island, putting the sustainability of the Alexander Archipelago Wolf population in doubt. The Big Thorne Project area is used heavily by subsistence hunters because it is close to all of the major towns on Prince of Wales Island. The project will cause irreparable harm to those hunters, as it will for hundreds of years compromise the area's ability to sustain deer in the face of dwindling habitat, predation, and human demands. The Big Thorne Project, given the decades of old-

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growth logging that have already taken place on Prince of Wales Island, will likely result in the collapse of a sustainable and resilient relationship between deer, wolves, and human hunting.

4. The Forest Service based the Big Thorne Project on a highly exaggerated calculation of market demand for Tongass timber. Overestimating the need for timber has substantial adverse effects. It misleads the public. It wastes vast sums of taxpayer money. It pushes the Forest Service to schedule a massive sale in an area where past habitat loss and road access already jeopardized the sustainable dynamic among deer, wolves, and human hunters. Had the agency accurately perceived the demand for timber, it would have been possible to schedule a much smaller sale, or no sale at all. The Forest Service staff could have considered, and the Forest Supervisor selected, much less damaging alternatives.

5. The Forest Service also acknowledged that it lacks critical information regarding the current population of the Alexander Archipelago wolf. The Forest Service must have a current wolf population estimate to be able to implement certain standards and guidelines in the Tongass Land Management Plan (the Forest Plan) that the Forest Service adopted to help ensure the viability of the wolf on the Tongass. Yet, the Forest Service is proceeding with Big Thorne, and approving construction of more than 46 miles of new roads and reconstruction of more than 36 miles of existing roads, without first obtaining this population information. The Big Thorne EIS failed to grapple with this missing information and, as a result, does not describe the full potential effects of the Big Thorne Project on the Tongass environment or the communities that depend on a sustainable wolf, deer, and human deer hunting dynamic.

6. Finally, long-term maintenance of a deer herd, capable of providing sustainable wolf populations while providing for continued human deer hunting opportunities, is an important objective in the Tongass National Forest. The Forest Plan requires the Forest Service

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to “[p]rovide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.” Forest Plan at 4-95, WILD1.XIV.A.2. “This is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are the primary prey of wolves.” *Id.* The deer habitat capability in the Big Thorne Project area is already below the 18 deer per square mile standard. Indeed, most of Prince of Wales Island is already below the 18 deer per square mile standard. By approving the Big Thorne Project, the Forest Service will drive the area even farther out of compliance with the Forest Plan’s deer habitat standard. Despite these failures, the Forest Service concluded that a sustainable wolf population could be maintained because areas outside the Big Thorne Project area could support wolves. The Forest Service, however, provided no analysis in the Big Thorne EIS to explain why it concluded a handful of small isolated areas outside of the Big Thorne Project area will be able to provide sufficient numbers of wolves and amounts of deer habitat capability to ensure the Forest Service will meet the Forest Plan’s standard and guideline to provide for sustainable wolf populations and human hunting opportunities.

JURISDICTION, RIGHT OF ACTION, AND VENUE

7. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02. Judicial review is available under the Administrative Procedure Act. 5 U.S.C. §§ 701-06.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PLAINTIFFS

9. Southeast Alaska Conservation Council (SEACC) is a non-profit, member-based organization, with hundreds of members, a majority of whom are Alaskans from all walks of life,

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including commercial fishermen, Alaska Natives, tourism and recreation business owners, small timber operators and high-value-added manufacturers, hunters, and guides. SEACC reaches out to its members, and the general public, through various means, including its website, Facebook and Twitter accounts, its newsletter, “The Ravencall,” other publications, action alerts, and public meetings. SEACC’s mission is to protect the special places of the world’s largest temperate rainforest, promote conservation, and advocate for sustainability in human use of natural resources. Inspired by the land, wildlife, cultures, and communities of Southeast Alaska, SEACC strives to insure this interconnected whole exists for future generations. To achieve its mission, SEACC and its members have worked to protect the Tongass National Forest and advocated for balanced, sustainable use of the Tongass National Forest’s renewable forest resources, including fish and wildlife and the commercial, recreational, and subsistence use of such resources, under the Tongass Timber Reform Act, Alaska National Interest Lands Conservation Act, National Forest Management Act and the Multiple Use Sustained Yield Act. SEACC’s public advocacy, education, and organizing efforts have created a legacy of effective partnerships with leaders within the region, and across the state and country. SEACC led the nearly decade long grassroots push for passage of the Tongass Timber Reform Act in 1990. SEACC’s community forest planning efforts, promotion of restoration, stewardship, and renewable energy projects, and land protection advocacy all contribute to its efforts to address ecological, energy, and economic needs throughout the Tongass.

10. Alaska Wilderness League (the League) is a non-profit organization with approximately 90,000 members and activists located in Alaska and throughout the United States. The League was founded in 1993 to advocate for protection of Alaska’s public lands and waters, which are threatened with environmental degradation. The League is headquartered in

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Washington, DC and has Alaska offices in Anchorage, Barrow, Fairbanks, and Juneau. The League works to preserve Alaska's wild lands and waters by engaging citizens and decision makers with a courageous, constant, victorious voice for Alaska. The League works at the federal level on a variety of issues affecting Alaska's wild land and waters including the Tongass National Forest. The League's rainforest program is focused on protecting old growth forest in the Tongass.

11. The Sierra Club is a national nonprofit organization of approximately 620,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Members of the Sierra Club nationally, and the Tongass Group Sierra Club locally, use the Tongass National Forest for recreation, commercial and recreational fishing, subsistence, wildlife viewing, and other activities. The Sierra Club has advocated for the protection of Tongass wildlands and the values therein since 1892 when the club was created by John Muir. The Sierra Club has been active in creating, opposing, or supporting Tongass land management actions for 45 years. These efforts include helping to secure the final passage of the Tongass Timber Reform Act, commenting on successive Tongass National Forest Plans, advocating for the inclusion of the Tongass National Forest in the Roadless Area Conservation Rule, advocating for the designation of Tongass inventoried roadless areas as wilderness, and commenting on numerous individual timber sales and other projects in Southeast Alaska. The Alaska Chapter of the Sierra Club has approximately 1,400 members with about 290 of them residing in Southeast Alaska as members of the Tongass Group Sierra Club.

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12. Members of plaintiff organizations reside near, visit or otherwise use and enjoy the Tongass National Forest, including the areas affected by the Big Thorne Project. In particular, members of plaintiff organizations use these areas for recreation, subsistence and sport hunting and fishing, wildlife viewing, photography and education, and aesthetic and spiritual enjoyment. The plaintiffs and their members derive scientific, recreational, aesthetic, and conservation benefits of and enjoyment from these areas. The logging authorized in the Big Thorne Project will directly and irreparably injure these interests.

13. The plaintiff organizations monitor the use of forest ecosystems and compliance with the laws respecting these ecosystems, educate their members and the public concerning management of these ecosystems, and advocate policies and practices that conserve the natural value of these ecosystems. It is impossible to achieve these organizational purposes fully without adequate information and public participation in the processes required by law. The interests and organizational purposes of the plaintiffs are directly and irreparably injured by defendants' violations of the laws as described in this complaint.

14. The plaintiffs participate actively in the administrative processes established for management of the Tongass National Forest, including the Big Thorne Project. Plaintiff groups have submitted comments on proposed actions and draft environmental impact statements (EISs) for the Forest Plan and the Big Thorne Project at issue in this complaint. These groups have also filed appeals of the Forest Plan and the Big Thorne Project at issue in this complaint. Plaintiffs have exhausted administrative remedies for the decision challenged in this complaint. These organizations seek declaratory and injunctive relief preventing the Forest Service from proceeding with actions that cause harm to the environment, and thereby to their members, pending compliance with the law.

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DEFENDANTS

15. The full name of Defendant United States Forest Service is United States Department of Agriculture, Forest Service. It is an agency of the Department of Agriculture entrusted with the administration of the national forests, including the Tongass National Forest.

16. Defendant United States Department of Agriculture is the department of the executive branch responsible for overseeing the activities of the Forest Service.

17. Defendant Beth Pendleton is sued in her official capacity as Regional Forester for Region 10 of the United States Forest Service. Pendleton was the decision-maker in the administrative appeals of the Big Thorne Project.

18. Defendant Forrest Cole is sued in his official capacity as the Forest Supervisor for the Tongass National Forest. Cole signed the Record of Decision for the Big Thorne Project.

FACTS

The Tongass National Forest

19. The Tongass National Forest is one of the few old-growth temperate rainforests in the world and this country's largest national forest. Its towering stands of 700 year old trees provide vital habitat for Sitka black-tailed deer, bears, salmon, goshawks, and the Alexander Archipelago wolf. Large portions of the Tongass have been devastated by decades of industrial clearcut logging.

20. The communities of Southeast Alaska depend on the Tongass National Forest in important ways, including employment in commercial fishing and fish processing, recreation, and tourism. Many residents in communities throughout the Tongass depend heavily on subsistence hunting and fishing to meet their basic needs. More specifically, because of its

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proximity to residents of Thorne Bay, Coffman Cove, Klawock, Craig, and Naukati, the Big Thorne Project is an important hunting area for these communities.

21. Prince of Wales Island is part of a group of islands in the Tongass National Forest known as the Alexander Archipelago. According to the Big Thorne EIS, Prince of Wales Island is the third largest island in the United States. It is roughly the size the Delaware.

22. The Forest Service divides the Tongass National Forest into 21 ecological subdivisions, known as biogeographic provinces. The Forest Service designates provinces based on distinct ecologic and biogeographic features.

23. The Big Thorne Project is in the North Central Prince of Wales Island biogeographic province. The North Central Prince of Wales Island biogeographic province encompasses approximately 71 percent of Prince of Wales Island. The North Central Prince of Wales Island biogeographic province historically contained more productive old-growth forest than any other part of the Tongass National Forest. It has also suffered the highest rates of logging, when compared to the rest of the Tongass National Forest.

Sitka Black-Tailed Deer and Alexander Archipelago Wolf

24. On Prince of Wales Island, two species play a critical role in helping to define the unique biodiversity of the Tongass National Forest – the Alexander Archipelago wolf and the Sitka black-tailed deer. These species are linked inextricably to the overall abundance and health of old-growth forest, because deer provide the wolf’s primary prey and depend upon low elevation old-growth forest to survive the winter.

25. Given their importance to the Tongass ecosystem, the Forest Service has designated both the Alexander Archipelago wolf and the Sitka black-tailed deer as Management Indicator Species pursuant to the National Forest Management Act (NFMA). The Forest Service

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uses the response of Management Indicator Species to land management decisions to predict the responses of other species.

26. The population of wolves on Prince of Wales Island has declined substantially since the middle of the 1990s. This is especially true within the north-central portion of Prince of Wales Island. In the mid-1990s, the area of the Big Thorne Project had the habitat to support 45-50 wolves. In the fall of 2012, researchers estimated there were approximately 29 wolves in the area of the Big Thorne Project. By the spring of 2013, researchers could only account for six to seven wolves left in the area of the Big Thorne Project. After the 2013-14 field season, researchers concluded only four wolves remained in the Big Thorne Project area. This recent data suggests a wolf mortality rate of approximately 73 percent. A mortality rate of 73 percent is approximately twice the sustainable rate of mortality for wolves.

27. The decline in wolves on Prince of Wales Island, including the area of the Big Thorne Project, is the result of old-growth logging, road building, and high levels of wolf mortality from legal and illegal hunting and trapping utilizing both open and closed roads.

28. The Big Thorne Project will reduce the amount of winter habitat for deer. This reduction, over the long-term, will result in a decline in deer numbers. Fewer deer will increase competition between wolves and human hunters. The Big Thorne Project, combined with past logging in the area, creates a high risk that there will be an insufficient number of deer to sustain both wolves and human hunting in the affected portion of Prince of Wales Island.

29. Dr. David Person, a retired biologist with the Alaska Department of Fish and Game with more than 22 years of experience studying wolves and deer in Southeast Alaska, described the effects of the Big Thorne Project as follows:

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Prince of Wales Island, including the Big Thorne project area, is at a tipping point with regard to a viable predator-prey dynamic between wolves and deer. The wolf populations on Prince Wales have been declining precipitously, and wolves are already facing the possibility of extinction on Prince of Wales Island. Big Thorne logging, if it goes forward, will remove the most important remaining deer winter habitat in many of the affected watersheds, which will further reduce the abundance of deer in the project area (especially following severe winters), perhaps for decades to come. As a result, the predator-prey relationship between wolves and deer on Prince of Wales is likely to collapse.

Statement of David K. Person Regarding the Big Thorne Project, Prince of Wales Island (Aug. 15, 2013) (the Person Statement).

30. In March 2014, the U.S. Fish and Wildlife Service announced there is substantial scientific or commercial information indicating that listing the Alexander Archipelago wolf as a threatened or endangered species under the Endangered Species Act (ESA) may be warranted. *See* Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Alexander Archipelago Wolf as Threatened or Endangered, 79 Fed. Reg. 17,993 (March 31, 2014). The U.S. Fish and Wildlife Service based its decision, in part, on the fact the Forest Plan’s standard and guideline that appear to require maintenance of deer habitat capable of supporting at least 18 deer per square mile to provide adequate prey for wolves and human hunters is not met in many timber harvest areas on the Tongass National Forest. *See* 79 Fed. Reg. 17,993, App. A at 6-7. The U.S. Fish and Wildlife Service expressed further concern that “[a]dditional logging is predicted to reduce deer habitat capability further in many of those areas, and result in additional areas that fail to meet the standard.” *Id.* at 6. These conclusions led the U.S. Fish and Wildlife Service to initiate a review to determine whether the wolf must be listed for protection under the ESA.

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The Forest's Service Flawed Market Demand Analysis for the Big Thorne Project

31. In the Record of Decision, the Forest Service approved logging 148.9 mmbf of old-growth and young-growth timber.

32. The Big Thorne Project is the largest volume timber sale project approved in the Tongass National Forest since 1993.

33. The Big Thorne Project is the largest volume timber sale project that the Forest Service has approved in the national forest system in the last 10 years.

34. The Big Thorne Project is the largest volume timber sale project that the Forest Service has approved in the national forest system in the last 15 years.

35. The Big Thorne Project is the largest volume timber sale project that the Forest Service has approved in the national forest system in the last 20 years.

36. The Forest Service cited "Timber Supply" as "Issue 1" in both the Big Thorne EIS and Record of Decision. The Forest Service presented its detailed rationale for scheduling a timber sale in the Big Thorne Project area in Appendix A of the Big Thorne EIS. Appendix A, entitled "Reasons for Scheduling the Environmental Analysis of the Big Thorne Project, FY 2013," presents the detailed volume calculations that led the Forest Service staff to decide that a large timber sale project was needed in the Big Thorne Project area.

37. Based on the analysis in Appendix A of the Big Thorne EIS, the Forest Service established a goal of providing 429 mmbf of timber under contract in 2013 to meet market demand. That volume is more than 20 times the actual volume of 21 mmbf that was logged in fiscal year (FY) 2012. It is 315 mmbf more than the 114 mmbf the Forest Service had under contract as of April 2013. The analysis in Appendix A led the Forest Supervisor to conclude that

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it was necessary to approve the Big Thorne Project, which provides 148.9 mmbf of timber. This is more than seven times the amount logged in FY2012 in the Tongass National Forest.

38. Appendix A relied in significant part on projections prepared by Brackley, et al., in 2006 (the Brackley Report). The Brackley Report identified four demand “scenarios” named, in order from lowest to highest demand, “limited lumber,” “expanded lumber,” “medium integrated,” and “high integrated.” In all of them, even the lowest “limited lumber” scenario, demand rises over time. Appendix A adopted the “expanded lumber” scenario. Under this scenario, demand was forecast to increase steadily from 61.9 mmbf in 2007 to 90.5 mmbf in 2012, and to continue to rise to 230.9 mmbf by 2025.

39. The Brackley Report projections turned out to be wrong. In reality, logging fell to 18.7 mmbf in 2007, climbed to 36 mmbf in 2010, and fell back to 20.8 mmbf in 2012. By 2012, actual harvest was only 23 percent of the Brackley Report’s “expanded lumber” forecast. The reason for the gap was, in large part, the collapse in housing markets and associated worldwide demand for wood products that occurred after the Brackley Report.

40. The timber market demand projections the Forest Service used in its decision to proceed with the Big Thorne Project were based on the Brackley Report. The projections were not adjusted downward to reflect changes in harvest levels or world timber markets. They were, however, adjusted upward—from “limited lumber” to “expanded lumber”—based on export policy and overseas markets.

41. The Forest Service’s decision to adjust the volume scenario from “limited lumber” to “expanded lumber” had a significant effect on the demand projections. In 2014, the first full year that Big Thorne Project timber potentially could have been cut, it raised the demand projection from 57.3 mmbf to 105.6 mmbf. The latter number is five times higher than

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the cut level of the most recent full year preceding the Big Thorne Record of Decision, FY2012. It also produced a volume-offered goal for 2013 of 143 mmbf. The lower scenario would have resulted in a volume-offered goal of 89 mmbf.

42. The Forest Service established its goal of achieving 429 mmbf under contract in 2013 by multiplying the volume-offered goal—143 mmbf—by three. This was the wrong calculation. The Forest Plan establishes an objective to “Provide 2 to 3 years supply of volume under contract to local mills....” Forest Plan at 2-7. This goal is a ratio of contract volume to harvest. Instead of using harvest numbers, the Forest Service staff used the volume-offered goal, which is a measure of neither actual harvest nor predicted harvest. It is, instead, the result of an inventory adjustment system designed by Morse (2000) to meet volume projections and goals for uncut volume under contract. Had the Forest Service staff looked at actual recent harvest or even projected harvest, rather than the volume-offered goal, the resulting volume under contract goal would have been substantially lower.

43. Had the Forest Service made reasonable assumptions about timber needs, it would have been clear that no new timber is needed to meet near-term market demand and that only much smaller amounts would be needed in later years. The agency’s goal is to have a two to three year supply of timber under contract. In the three years preceding the Big Thorne decision—FY2010 to FY2012—timber sale purchasers cut a total of 89.4 mmbf from the Tongass. The average was about 30 mmbf/year but on a downward trend during that time. Given there was already 114 mmbf under contract in April 2013, it would have been possible to cut an average year’s timber with no new offerings and still have 84 mmbf remaining under contract. This would be a 2.8-year supply, well within the Forest Service’s goal of maintaining a two to three year supply under contract. In future years, it would take only another 30 mmbf or

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so per year, or less if demand continues to decline, to replace the amount cut and maintain the desired supply under contract.

The Forest Service's Findings Regarding Impacts on Subsistence Deer Hunting

44. In the Record of Decision, Forest Supervisor Cole explained that the Forest Service's subsistence evaluation concluded that "all of the [Big Thorne Project] action alternatives may result in a significant restriction of subsistence uses of deer, due to potential effects on abundance, distribution, and competition." Record of Decision at 42.

45. In the Record of Decision, Forest Supervisor Cole explained that: "Based on the analysis presented in the Big Thorne EIS, the findings in this Record of Decision and the analysis for the Forest Plan, I have determined that the Selected Alternative strikes a balance between meeting the resource needs of the public and protecting the forest resources." Record of Decision at 43.

46. In her decision affirming the administrative appeals, Regional Forester Beth Pendleton stated that "the Big Thorne project is necessary, consistent with sound management principles for the utilization of public lands." This finding was based on the analysis in the Big Thorne EIS and Record of Decision.

The Forest Service's Standards and Guidelines for Deer Habitat and Road Density

47. According to the Forest Plan, the Forest Service must manage the Tongass in such a way as to maintain the abundance and distribution of habitats, especially old-growth forests, to sustain viable populations in the planning area and maintain habitat capability sufficient to produce wildlife populations that support the use of wildlife resources for sport, subsistence, and recreational activities. *See* Forest Plan at 2-9. The Forest Plan also identifies specific objectives

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with regard to biodiversity, including the need to provide sufficient habitat to preclude the need for listing species under the Endangered Species Act. *See* Forest Plan at 2-4.

48. According to the Forest Service, the standards and guidelines established in the Forest Plan that promote deer habitat capability and limit road densities in combination with planned levels of timber harvest would have a high likelihood of maintaining viable and well-distributed populations of wolves.

49. The Forest Plan requires the Forest Service to “[p]rovide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.” Forest Plan at 4-95, WILD1.XIV.A.2. “This is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are the primary prey of wolves.” *Id.*

50. The Forest Plan establishes that a road density of 0.7 to 1.0 mile of road per square mile may be necessary to reduce human harvest-related wolf mortality where locally unsustainable wolf mortality has been identified. *See* Forest Plan at 4-95 (WILD1.XIV.A.1.c).

51. Total road density below 1,200 feet elevation on Prince of Wales Island is 0.99 mile per square mile, ranging from 0.7 to 2.5 miles per square miles for the wildlife analysis areas in the Big Thorne Project area. *See* Big Thorne EIS at 3-116. Nonetheless, the Forest Service approved of constructing approximately 46 miles of new roads and reconstructing approximately 37 miles of existing roads for the Big Thorne Project. Big Thorne Record of Decision at 1.

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The Forest Service's Failure to Confront Missing Information Regarding Wolves

52. In 2008, the Forest Service concluded that:

Recent research (Alexander Archipelago Wolf, presented at the Tongass Conservation Strategy Review Workshop 2006) has shown that the [wolf] population on [Prince of Wales] Island is genetically isolated from other Tongass populations, which presents profound implications for maintaining well-distributed wolf populations in light of local declines, given that these populations are are (sic) more sensitive to human activity and habitat disturbance than wolf populations elsewhere in the state (Schoen and Person 2007).

Forest Plan Final Environmental Impact Statement at 3-281.

53. The Big Thorne EIS acknowledged that the Forest Service does not have a current population estimate for the Alexander Archipelago wolf on Prince of Wales Island. The Big Thorne EIS acknowledged that the Forest Service does not have a current population estimate for the Alexander Archipelago wolf in Game Management Unit 2. In fact, the Forest Service does not know the current population of wolves on the Tongass National Forest.

54. In the Big Thorne EIS, the Forest Service relied, in part, on a wolf population estimate published in 1996. It also considered anecdotal information from local trappers during the 2010 Alaska Board of Game meeting in Ketchikan, Alaska to characterize the current wolf population.

55. The Forest Service is working to obtain a wolf population estimate. It has already secured funding to support the wolf population research effort through early 2015.

56. The Forest Service has convened various expert scientific panels to assess the viability of wolves on the Tongass National Forest. In 1997, the wolf panel reviewed the proposed Forest Plan and the standard and guideline addressing road density. The wolf experts explained to the Forest Service that they believed that successful implementation of the Forest

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Plan's road density standard and guideline required accurate knowledge of the current wolf population size.

57. The Big Thorne EIS does not contain a determination that knowing the current wolf population is irrelevant or inessential to the Forest Service's analysis of the impacts and alternatives to the Big Thorne Project.

The Forest Service's Lack of Analysis Regarding Sustainable Wolf Populations and Human Deer Hunting

58. Deer habitat capability in all of the Wildlife Analysis Areas (WAAs) coinciding with the Big Thorne Project fall below the Forest Plan's standard of 18 deer per square mile. In fact, the North Central Prince of Wales Island Biogeographic Province as a whole falls below the Forest Plan standard of 18 deer per square mile. Habitat sufficient to support this density of deer is considered necessary to maintain a sustainable wolf population and meet human harvest demands. *See* Big Thorne EIS at S-8. The Big Thorne Project will drive both the project area WAAs and the North Central Prince of Wales Island Biogeographic Province further below the 18 deer per square mile standard.

59. The Big Thorne EIS asserts that wolves are highly mobile and nearby WAAs with higher deer densities would continue to support wolves in the vicinity of the Big Thorne Project.

60. The Record of Decision similarly concluded that wolves are highly mobile and nearby WAAs with higher deer densities would continue to support wolves in the vicinity of the project.

61. The areas the Forest Service relied on lack sufficient deer habitat and are too small to support sustainable wolf populations. Most of the areas are also too far away from the Big Thorne project area and separated from it by vast areas of previous logging and roads.

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62. The Forest Service provided no analysis in the Big Thorne EIS to explain why it concluded a handful of small isolated areas outside of the Big Thorne Project area will be able to provide sufficient numbers of wolves and amounts of deer habitat capability to ensure the Forest Service will meet Forest Plan's standard and guideline to provide for sustainable wolf populations and human hunting opportunities.

The Forest Service Approved the Big Thorne Project

63. The Forest Service has implemented the Forest Plan through numerous timber sales, including the Big Thorne Project.

64. On June 28, 2013, Tongass Forest Supervisor Forrest Cole issued the Record of Decision for the Big Thorne Project, which relied upon the associated Big Thorne EIS.

65. On August 16, 2013, Plaintiffs filed timely administrative appeals of the Forest Supervisor's Big Thorne Record of Decision and the Big Thorne EIS.

66. On August 17, 2013, the Forest Service issued a Request for Proposals (RFP) and Prospectus soliciting offers for the Big Thorne Stewardship Integrated Resource Timber Contract (the Big Thorne RFP). The Big Thorne RFP includes more than 102 mmbf of timber valued at \$8.4 million. This is more than two-thirds of the total timber approved in the Record of Decision. It is approximately three to four years of timber for the entire Tongass National Forest, based on recent cutting levels.

67. On September 9, 2013, the Regional Forester affirmed the Big Thorne decision, but directed the Forest Service to prepare a draft Supplemental Information Report that responded to six specific items related to the Person Statement. The Forest Service convened an interagency group (the Wolf Task Force) to review the Person Statement to determine if the information in the Person Statement constituted significant new information. The Wolf Task

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Force members divided evenly, with exactly half of the members concluding that the Big Thorne Project raises concerns for the future of the wolves.

68. On May 23, 2014, the Forest Supervisor Forrest Cole issued a draft supplemental information report regarding the Big Thorne Project (Draft SIR). Plaintiffs commented on the Draft SIR on June 23, 2014.

69. On August 19, 2014, the Forest Supervisor Forrest Cole issued a final supplemental information report regarding the Big Thorne Project (Final SIR), which concluded that there are no significant new circumstances or information relevant to environmental concerns that require preparation of a Supplemental Environmental Impact Statement for the Big Thorne Project. The Final SIR also explained that the Big Thorne “contract is currently being reviewed and planned to be offered in 2014.”

70. On August 21, 2014, Regional Forester Beth Pendleton concurred with the findings in the Final SIR and announced she had completed her administrative review of the Big Thorne Project. This decision was final agency action for the Big Thorne Project.

STATUTORY FRAMEWORK

National Forest Management

71. Under NFMA, forest management occurs at two stages. At the first stage, the Forest Service prepares a land management plan for each national forest. 16 U.S.C. § 1604. At the second stage, the Forest Service implements each land management plan by approving specific projects that are consistent with the governing forest plan. *Id.* § 1604(i).

72. NFMA specifies that each management plan shall:

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528-531], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

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(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1) of this section

Id. § 1604(e).

73. Under the Multiple-Use Sustained-Yield Act: “It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528. The statute directs the Forest Service to “develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom.” *Id.* § 529.

74. NFMA, *see* 16 U.S.C. § 1604(e)(2), incorporates a definition of multiple use from the Multiple-Use Sustained-Yield Act, which requires that all national forest renewable resources must be “utilized in the combination that will best meet the needs of the American people. . . .” 16 U.S.C. § 531(a).

75. Subject to these NFMA requirements and other applicable laws, and only to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, the Tongass Timber Reform Act (TTRA) exhorts the Forest Service to “seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.” 16 U.S.C. § 539d(a).

National Environmental Policy Act

76. Congress enacted the National Environmental Policy Act (NEPA) to require federal agencies to incorporate environmental concerns into the decision-making process. 42 U.S.C. § 4331(a)-(b). In furtherance of this goal, NEPA compels federal agencies to evaluate

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prospectively the environmental impacts of proposed actions that they carry out, fund or authorize and ensures the public an opportunity to participate in the decision making process.

77. NEPA requires federal agencies to prepare an EIS for any major federal action that may significantly affect the quality of the human environment. *Id.* § 4332(2)(C). The EIS “shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. It “is more than a disclosure document” and “shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.” *Id.*

78. NEPA further requires all agencies of the federal government to prepare “detailed statement[s] on . . . alternatives to [its] proposed action[s],” 42 U.S.C. § 4332(2)(C)(iii), and to “study, develop, and describe appropriate alternatives to [its] recommended courses of action.” *Id.* § 4332(E).

79. Regulations of the Council on Environmental Quality (CEQ) establish an agency’s obligations when preparing an EIS in the face of incomplete or unavailable information. More specifically, 40 C.F.R. § 1502.22(a) requires agencies when “evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement” to determine whether missing information “relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives.” The Forest Service must include such information in the EIS unless the information cannot be “obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known.” *Id.*

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Alaska National Interest Lands Conservation Act

80. Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) to preserve and protect “nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values.” 16 U.S.C. § 3101(a).

81. Congress also sought to protect the “subsistence way of life for rural residents” and the resources upon which they depend. *Id.* § 3101(c).

82. “Subsistence uses” are defined as “customary and traditional uses by rural Alaska residents of wild, renewable resources” *Id.* § 3113.

83. ANILCA provides that when a federal agency is deciding whether to permit the use of public lands, the agency “shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” *Id.* § 3120(a). It further requires that:

No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—

* * *

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Id. § 3120(a).

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Administrative Procedure Act

84. The Administrative Procedure Act (APA) authorizes courts to review agency actions and “hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

FIRST CLAIM FOR RELIEF

(National Forest Management Act, Multiple-Use Sustained-Yield Act, and Tongass Timber Reform Act)

85. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

86. In determining the amount of timber needed in the Big Thorne Project, the Forest Service made several errors in projecting market demand for timber. The Forest Service relied heavily on projections presented in the 2006 Brackley Report.

87. The Brackley Report failed to foresee the housing market collapse or its effect on markets for wood products. The Forest Service acted arbitrarily when it conducted its market demand analysis for the Big Thorne Project in a manner that ignored the significant gap between the Brackley Report projections and actual experience.

88. In each year since the Brackley Report, actual cut levels on the Tongass have been lower than the projections for any of the scenarios. Nevertheless, the Tongass staff decided to upgrade the model projections from “limited lumber” to the “expanded lumber” scenario for its market demand analysis of the Big Thorne Project. The Forest Service acted arbitrarily when it made this decision.

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89. The Forest Service erred when it performed the wrong calculation to determine the goal of achieving 429 mmbf under contract in 2013. Instead of using harvest numbers, the Forest Service used the volume-offered goal resulting from the Morse methodology. This volume-offered goal is a measure of neither actual harvest nor predicted harvest. Had the Forest Service looked at actual recent harvest numbers rather than the volume-offered goal, the resulting volume under contract goal would have been substantially lower.

90. In its market demand analysis for the Big Thorne Project, the Forest Service failed to consider all the relevant factors, made a clear error of judgment, and failed to articulate a rational connection between the facts found and the choice made.

91. These errors led the Forest Service to approve an unnecessarily large timber sale, allowing logging in areas that would cause unnecessary harm to other multiple use objectives, such as wildlife and recreation.

92. Under the APA, the Court “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” 5 U.S.C. § 706(2)(A).

93. In approving the Big Thorne Project based on a significant errors projecting market demand, the Forest Service acted arbitrarily and in violation of its obligations under the NFMA, the Multiple-Use Sustained-Yield Act, the TTRA, and the APA.

SECOND CLAIM FOR RELIEF

(National Environmental Policy Act)

94. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

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95. NEPA requires all agencies of the federal government to prepare a “detailed statement” regarding all “major [f]ederal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

96. The presentation of incomplete or misleading information in an EIS violates NEPA.

97. The information about market demand for timber contained in the Big Thorne EIS is outdated, incomplete, arbitrary and misleading. In the Big Thorne EIS, the Forest Service relied on outdated market demand projections to justify the project. The Big Thorne EIS greatly exaggerates the demand for timber on the Tongass based on errors and unexamined assumptions that undermine the stated basis for the Big Thorne Project. As a result, the Big Thorne EIS failed to present the public and the decision-maker with relevant, accurate information regarding actual market conditions and demand.

98. NEPA also requires that an agency in an EIS shall “[r]igorously explore and objectively evaluate all reasonable alternatives” to the proposal. 40 C.F.R. § 1502.14(a).

99. The errors in projecting market demand caused the Forest Service to neglect reasonable, smaller volume alternatives in the Big Thorne EIS.

100. The Forest Service violated NEPA and the applicable regulations by basing its analysis of the Big Thorne Project on an EIS that contains these errors regarding the market demand for Tongass timber.

THIRD CLAIM FOR RELIEF

(Alaska Native Interest Lands Conservation Act)

101. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

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102. In deciding whether to approve a timber sale project, ANILCA requires the Forest Service to evaluate the effect of that project “on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. § 3120(a).

103. When the Forest Service determines that a proposed action “would significantly restrict subsistence uses” then the Forest Service must satisfy certain obligations. *Id.* § 3120(a). Among other requirements, the Forest Service must determine that “such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands” 16 U.S.C. § 3120. The Forest Service must conclude that “the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition” *Id.* Finally, the Forest Service must determine that “reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.” *Id.*

104. The Forest Service acknowledged that “all of the [Big Thorne Project] action alternatives may result in a significant restriction of subsistence uses of deer, due to potential effects on abundance, distribution, and competition.” Record of Decision at 42.

105. The Forester Supervisor determined that “such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands,” 16 U.S.C. § 3120, because “the Selected Alternative strikes a balance between meeting the resource needs of the public and protecting the forest resources.” Record of Decision at 43.

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106. The Forest Service acted arbitrarily because the record does not support the subsistence conclusions. For the reasons stated above, the Forest Service based the Big Thorne Project on significant errors projecting market demand, which affected the amount of land the Forest Service made available for logging in the Big Thorne Project. In making the errors described above, the Defendants' allowed logging in areas that would cause unnecessary harm to subsistence uses in violation of ANILCA, 16 U.S.C. § 3120(a). The decision is arbitrary, capricious and contrary to law.

107. ANICLA requires agencies to evaluate "alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes." *Id.* § 3120(a).

108. The errors in projecting market demand caused the Forest Service to neglect reasonable, smaller volume alternatives to the Big Thorne Project required by ANILCA. The decision is arbitrary, capricious and contrary to law.

FOURTH CLAIM FOR RELIEF

(National Environmental Policy Act)

109. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

110. NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major [f]ederal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

111. Where information about the environment or potential effects to the environment from the proposed action is incomplete, NEPA regulations require the Forest Service to determine whether the missing information is "relevant to reasonably foreseeable significant

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adverse impacts and is essential to a reasoned choice among alternatives.” 40 C.F.R. § 1502.22. The Forest Service must include such information in the EIS unless the information cannot be “obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known.” *Id.*

112. The Big Thorne EIS acknowledged the Forest Service lacks a current estimate of the wolf population. In the Big Thorne EIS, the Forest Service relied on a wolf population estimate conducted in 1996. The Forest Service is working to obtain a current wolf population estimate.

113. The Big Thorne EIS did not explain whether the wolf population estimation information is relevant to reasonably foreseeable significant adverse impacts or is essential to a reasoned choice among alternatives.

114. The Forest Service’s decision to proceed with the Big Thorne Project in the absence of an assessment of incomplete or outdated information and without an adequate analysis of potential impacts to the wolves and the relationship between wolves, deer and human hunting was arbitrary, capricious and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(C), 40 C.F.R. § 1502.22, and the APA.

FIFTH CLAIM FOR RELIEF

(National Forest Management Act)

115. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

116. Pursuant to NFMA, the Forest Service must demonstrate that a site-specific project would be consistent with the land resource management plan of the entire forest. 16 U.S.C. § 1604(i).

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117. The Forest Plan requires the Forest Service to “[p]rovide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.” Forest Plan at 4-95, WILD1.XIV.A.2. “This is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are the primary prey of wolves.” *Id.*

118. In the Big Thorne ROD, the Forest Service acknowledged that the Big Thorne Project area already falls below the habitat threshold of 18 deer per square mile in the Forest Plan’s deer habitat capability standard and guideline, which generally is considered necessary to maintain a sustainable wolf population and meet human harvest demands. In fact, the North Central Prince of Wales Island biogeographic province as a whole already falls below the 18 deer per square mile habitat threshold. By approving Big Thorne, the Forest Service will drive these areas fall even farther below the habitat threshold.

119. The Forest Service, nonetheless, asserted that it could implement the Big Thorne Project consistent with the Forest Plan’s deer habitat capability standard and guideline because areas outside of the Big Thorne Project area would continue to support a sustainable wolf population.

120. The Forest Service, however, provided no analysis to explain why it concluded a handful of small isolated areas outside of the Big Thorne Project area will be able to provide sufficient numbers of wolves and amounts of deer habitat capability to ensure the Forest Service will meet the Forest Plan’s standard and guideline to provide for sustainable wolf populations.

121. In its deer habitat capability analysis for the Big Thorne Project, the Forest Service failed to consider all the relevant factors, made a clear error of judgment, and failed to

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articulate a rational connection between the facts found and the choice made. Thus, the Forest Service reached an arbitrary conclusion that the agency can approve the Big Thorne Project consistent with the Forest Plan's deer habitat capability standard and guideline, *see* Forest Plan at 4-95, WILD1.XIV.A.2, and thus it failed to comply with NFMA, its implementing regulations, and the APA.

SIXTH CLAIM FOR RELIEF

(National Environmental Policy Act)

122. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 84.

123. NEPA requires all agencies of the federal government to prepare a “detailed statement” regarding all “major [f]ederal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

124. In the Big Thorne EIS, the Forest Service acknowledged that the Big Thorne Project area already falls below the habitat threshold of supporting 18 deer per square mile in the Forest Plan's deer habitat capability standard and guideline, which generally is considered necessary to maintain a sustainable wolf population and meet human harvest demands. In fact, the Big Thorne EIS acknowledged that the North Central Prince of Wales Island biogeographic province as a whole already falls below the habitat threshold of 18 deer per square mile. By approving Big Thorne, the Forest Service will drive these areas even farther below the habitat threshold.

125. The Big Thorne EIS asserted that the Big Thorne Project is consistent with the Forest Plan's deer habitat capability standard and guideline because areas outside of the Big Thorne Project area would continue to support a sustainable wolf population.

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126. The Big Thorne EIS, however, provided no analysis to explain why the Forest Service concluded a handful of small isolated areas outside of the Big Thorne Project area will be able to provide sufficient numbers of wolves and amounts of deer habitat to ensure the Forest Service will meet the Forest Plan's standard and guideline to provide for sustainable wolf populations and human hunting opportunities.

127. The Forest Service failed to provide an adequate analysis of the potential impacts of the Big Thorne Project on the region's ability to provide sufficient deer habitat to support a sustainable wolf population and human hunting opportunities and, as a result, acted arbitrarily, capriciously and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(2)(C), and the APA.

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request that the Court:

1. Declare that Defendants United States Forest Service, United States Department of Agriculture, Region 10 Regional Forester Beth Pendleton, and Forest Supervisor Forrest Cole have acted arbitrarily under the National Forest Management Act, Multiple-Use Sustained-Yield Act, the Tongass Timber Reform Act, the Alaska National Interest Lands Conservation Act, and the Forest Service's relevant implementing regulations;

2. Declare that Defendants United States Forest Service, United States Department of Agriculture, Region 10 Regional Forester Beth Pendleton, and Forest Supervisor Forrest Cole have violated NEPA and that the actions as set forth above are arbitrary, capricious and not in accordance with law;

3. Vacate the Record of Decision for the Big Thorne Project, signed by Tongass Forest Supervisor Forrest Cole on June 28, 2013;

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4. Enter appropriate injunctive relief;
5. Award Plaintiffs the costs of this action, including reasonable attorney's fees

pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 22nd day of August, 2014.

s/ Thomas S. Waldo

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