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19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**  
21 **SAN FRANCISCO DIVISION**

21 KARUK TRIBE OF CALIFORNIA, )  
22 )  
23 Plaintiff, )  
24 v. )  
25 UNITED STATES FOREST SERVICE, )  
26 JEFF WALTER, Forest Supervisor, Six Rivers )  
National Forest; MARGARET BOLAND, )  
27 Forest Supervisor, Klamath National Forest, )  
Defendants. )

Civ. No. 04-4275 (SBA)

**FEDERAL DEFENDANTS'**  
**ANSWER TO PLAINTIFF'S**  
**SECOND AMENDED**  
**COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants United States Forest Service, Jeff Walter in his official capacity as Forest Supervisor of the Six Rivers National Forest, and Margaret Boland in her official capacity as Forest Supervisor of the Klamath National Forest (collectively “Federal Defendants”), by and through their undersigned counsel, answer the allegations contained in the Plaintiff’s Second Amended Complaint for Declaratory and Injunctive Relief (“Second Amended Complaint”) as follows:

The numbered paragraphs of this Answer correspond to the numbered paragraphs of the Plaintiff’s Second Amended Complaint.

1. The allegations in paragraph 1 constitute Plaintiff’s characterization of its case to which no response is required.

2. The allegations in paragraph 2 constitute Plaintiff’s characterization of its case to which no response is required, and characterizations of documents which speak for themselves, are the best evidence of their contents, and will be produced for the Court’s review as part of the administrative record.

3. The allegations in the first, second, fourth, and fifth sentences of paragraph 3 constitute Plaintiff’s characterization of its case to which no response is required, and characterizations of documents which speak for themselves, are the best evidence of their contents, and will be produced for the Court’s review as part of the administrative record. The allegations in the third sentence of paragraph 3 constitute conclusions of law to which no response is required.

4. The allegations in paragraph 4 constitute Plaintiff’s characterization of national and regional forest service guidance documents which speak for themselves, are the best evidence of their contents, and will be produced for the Court’s review as part of the administrative record. The remaining allegations in the first sentence of paragraph 4 about how the Forest Service will interpret the May 26, 2004 memorandum during the upcoming mining season are speculative and requires no response.

5. The allegations in paragraph 5 constitute Plaintiff’s characterization of its case to which no response is required, and characterizations of documents which speak for themselves,

are the best evidence of their contents, and will be produced for the Court's review as part of the administrative record.

6. The allegations in paragraph 6 constitute Plaintiff's characterization of its case to which no response is required, and conclusions of law to which no response is required. The Court is referred to the cited statutes for a true and complete statement of their provisions.

7. In response to the allegations in the first sentence of paragraph 7, Defendants admit that they received notices from Plaintiff in a letter of June 15, 2004. The remaining allegations in the first sentence of paragraph 7 constitute Plaintiff's characterization of its letter, which speaks for itself and is the best evidence of its contents. Defendants admit the allegations in the second sentence of paragraph 7. In response to the third sentence of paragraph 7, Defendants admit that more than sixty days have elapsed since the notices was served. Whether the letter was "properly" served is a conclusion of law to which no response is required. The allegations in the fourth and fifth sentences of paragraph 7 are conclusions of law to which no response is required.

8. The allegations in paragraph 8 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes for a true and complete statement of their provisions.

9. In response to the allegations in the first sentence of paragraph 9, Defendants admit only that the headquarters of the Six Rivers National Forest is within the Northern District of California. Defendants deny that a substantial part of the events giving rise to this suit occurred in this District. The remainder of the first sentence of paragraph 9 constitutes conclusions of law to which no response is required. Defendants admit the second sentence of paragraph 9. In response to the allegations in the third sentence of paragraph 9, Defendants admit only that the Orleans Ranger District of the Six Rivers National Forest is located in Orleans, California, in Humboldt County. Except as expressly admitted, Defendants deny the allegations in the third sentence of paragraph 9.

10. Defendants deny the allegations in the first sentence of paragraph 10. The second sentence of paragraph 10 constitutes conclusions of law to which no response is required.

11. Defendants admit the allegations in the first and second sentences of paragraph 11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 11.

12. Defendants admit the allegations in the fourth sentence of paragraph 12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 12.

13. The allegations in paragraph 13 constitute Plaintiff's characterization of its case and conclusions of law, to which no response is required. To the extent a response is required, Defendants admit only that suction dredging in some instances may result in limited and localized impacts to wildlife, fisheries, water quality, recreation, and visual resources. Except as expressly admitted herein, Defendants deny the allegations in paragraph 13.

14. The allegations in paragraph 14 constitute Plaintiff's characterization of its case and conclusions of law, to which no response is required.

15. Defendants admit the allegations in paragraph 15.

16. Defendants admit the allegations in the first sentence of paragraph 16. The allegations in the second sentence of paragraph 16 constitute conclusions of law to which no response is required.

17. Defendants admit the allegations in paragraph 17.

18. The allegations in the first sentence of paragraph 18 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that the Southern Oregon/Northern California coast ("SONCC") coho salmon was listed as a threatened species and that the listing is currently in place. Defendants state that the listing was found to be invalid by the District of Oregon in California State Grange v. Evans, Civ. No. 02-6044-HO (D. Or.), but that the listing remains in place during the time that it is being remanded to the agency. In response to the allegations in the second sentence of paragraph 18, Defendants admit that there are watersheds within the Klamath and Six Rivers National Forests where SONCC coho, bald eagle, and northern spotted owl occur. Defendants state that whether any particular suction

dredging operation would affect these species depends upon factors that are specific to the site, including details of the particular mining operation.

19. In response to the allegations in the first sentence of paragraph 19, Defendants admit only that the Regional Forester for the Pacific Southwest Region of the Forest Service has designated spring chinook (*Oncorhynchus tshawytscha*) and summer steelhead (*Oncorhynchus mykiss*) as “sensitive species” within the meaning of the Forest Service Manual. Defendants deny the allegations in the second sentence of paragraph 19. Defendants state that the status of the Pacific lamprey (*Lampetra tridentata*) was recently reviewed, and the species was determined not to warrant listing under the Endangered Species Act (“ESA”). See 69 Fed. Reg. 77158 (Dec. 27, 2004). Defendants further state that the status of the North American green sturgeon (*Acipenser medirostris*) is currently under review to determine whether it warrants listing under the Endangered Species Act.

20. In response to the allegations in paragraph 20, Defendants admit that suction dredging occurs within rivers and streams in the Six Rivers and Klamath National Forests, some of which provide habitat for the referenced fish species. The remaining allegations constitute Plaintiff’s characterization of its case to which no response is required.

21. Defendants admit the allegations in the first sentence of paragraph 21. Defendants deny the allegations in the second sentence of paragraph 21.

22. In response to the allegations in paragraph 22, Defendants admit only that suction dredges are high-pressure water pumps driven by powered motors that create suction in a flexible intake pipe and may be three to twelve inches in diameter. Defendants state that the size of the intake pipe is regulated by the state of California, and that nozzles greater than 8 inches are generally not permitted, and most dredging is done with 4 inch intake nozzles.

23. In response to the allegations in the first sentence of paragraph 23, Defendants admit only that some instances of suction dredging may affect stream channels and topography. In response to the allegations in the second sentence of paragraph 23, Defendants admit only that rocks, gravel, and silt are displaced and deposited in various locations, which may include the

dredge hole, actively moving gravel, and some undisturbed areas. Defendants deny the allegations in the third sentence of paragraph 23.

24. Defendants admit the allegations in the first sentence of paragraph 24. Defendants deny the allegations in the second and third sentences of paragraph 24 on the grounds that they are an overly broad characterization of the effects of suction dredging. Defendants state that whether any particular suction dredging operation would affect eggs and young salmon would depend upon factors that are specific to the site, including details of the particular operation.

25. Defendants deny the allegations in paragraph 25.

26. Defendants admit the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27. Defendants state that whether any particular suction dredging operation causes significant disturbance of surface resources, or affects water quality, fish species, or their habitat depends upon factors that are specific to the site, including details of the particular operation.

28. The allegations in paragraph 28 constitute extensive factual argument that is inconsistent with the requirements of FED.R.CIV.P. 8(a). To the extent a response is required, Defendants deny the allegations as overly broad characterizations of the effects of suction dredging which in some cases are not supported by sufficient information in the scientific literature. Defendants state that whether any particular suction dredging operation affects aquatic habitat, fish, or other aquatic life depends upon factors that are specific to the site, including details of the particular operation.

29. The allegations in the first sentence of paragraph 29 regarding “natural and human induced conditions” lack sufficient specificity or definition to formulate a response and are therefore denied on that basis. Defendants deny the allegations in the second and third sentences of paragraph 29.

30. Defendants admit the allegations in the first sentence of paragraph 30. Defendants deny the allegations in the remainder of paragraph 30, on grounds that the terms “highbanking” and “mechanized sluicing” are subject to varying definitions, and can include

activities not included in Plaintiff's description. Defendants acknowledge that the activities described in paragraph 30 are types of mining.

31. Defendants deny the allegations in paragraph 31 on the grounds that they are an overly broad characterization of the effects of mechanized sluicing. Defendants state that whether any particular mining operation results in the listed effects depends upon factors that are specific to the site, including details of the particular operation. Defendants state that this type of operation is not occurring under the determinations challenged in this case.

32. The allegations in the first sentence of paragraph 32 constitute Plaintiff's characterization of its case and legal conclusions to which no response is required, and characterizations of the documents listed in paragraph 3 which speak for themselves, are the best evidence of their contents, and will be produced for the Court's review as part of the administrative record. Additionally, the allegations about what the Forest Service will do in response to future notices of intent are entirely speculative and require no response.

33. In response to the allegations in the first sentence of paragraph 33, Defendants admit that they conducted meetings with the Tribe where they explained the Forest Service's interpretation of various legal authorities with respect to suction dredge mining. Defendants deny the allegations in the second sentence of paragraph 33. The allegations in the third sentence of paragraph 33 constitute legal and factual argument, and conclusions of law to which no response is required. In response to the allegations in the fourth sentence of paragraph 4, Defendants admit only that they received notices of intent ("NOIs") from miners during the summer of 2004 and responded to some of those NOIs by issuing the documents listed in paragraph 3. The remaining allegations in the fourth sentence of paragraph 33 constitute Plaintiff's characterizations of the documents listed in paragraph 3, which speak for themselves, are the best evidence of their contents, and will be produced for the Court's review as part of the administrative record.

34. In response to the allegations in paragraph 34, Defendants admit only that for the proposed operations referenced by the letters in paragraph 3, the Forest Service did not prepare environmental assessments ("EAs") or environmental impact statements ("EISs") under the

National Environmental Policy Act (“NEPA”). The allegations in paragraph 34 regarding what the Forest Service will do in response to future NOIs are entirely speculative and require no response. The allegations in the remainder of paragraph 34 constitute conclusions of law to which no response is required.

35. The allegations in the first sentence paragraph 35 are Plaintiffs’ characterizations of national and regional guidance letters which speak for themselves, are the best evidence of their contents, and will be produced for the Court’s review as part of the administrative record. The allegations in the first sentence of paragraph 35 regarding what the Forest Service will do in response to future NOIs are entirely speculative and require no response. In response to the allegations in the second sentence paragraph 35, Federal Defendants admit that where a plan of operations is not required by the mining regulations, the Forest Service does not prepare EAs or EISs under NEPA or engage in consultation under the ESA. The remaining allegations in paragraph 35 constitute Plaintiff’s characterization of its case to which no response is required, and Plaintiff’s characterization of the two memoranda referenced in paragraph 2, which speak for themselves, are the best evidence of their contents, and will be produced for the Court’s review as part of the administrative record.

36. Defendants admit the allegations in the first sentence of paragraph 36. In response to the allegations in the second sentence of paragraph 36, Defendants admit only that EAs and EISs were not prepared for the mining claims and operations referenced in subparts (2), (3), (4), and (5) of paragraph 5. The remaining allegations in paragraph 36 constitute conclusions of law to which no response is required.

37. Defendants admit the allegations in the first sentence of paragraph 37, except that they deny that the amount of mining conducted by the New 49ers was “unknown” to the Forest Service. The allegations in the second and fourth sentences of paragraph 37 constitute Plaintiffs’ characterization of a page on the World Wide Web, which speaks for itself and is the best evidence of its contents. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the third and ninth sentences of paragraph 37. Defendants admit the allegations in the fifth sentence of paragraph 37. The allegations in the



sixth and seventh sentences of paragraph 37 constitute plaintiffs' characterization of documents which speak for themselves, are the best evidence of its content, and will be produced for the Court's review as part of the administrative record. The allegations in the eighth sentence of paragraph 37 constitute conclusions of law to which no response is required.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first, second, fifth, eighth, and tenth sentences of paragraph 38. The third, fourth, and ninth sentences are Plaintiff's characterization of a page on the World Wide Web, which speaks for itself and is the best evidence of its contents. Defendants admit the allegations in the sixth sentence of paragraph 38. In response to the seventh sentence of paragraph 38, Defendants lack knowledge or information as to what lands are included in within "the Club's 60 linear miles of proven gold-producing properties," and aver that the Forest Service's degree of regulatory control over, and knowledge of, mining on lands with the National Forest System is set forth in the mining regulations at 36 C.F.R. § 228A.

39. The allegations in paragraph 39 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

40. The allegations in paragraph 40 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

41. The allegations in paragraph 41 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

42. The allegations in the first and third sentences of paragraph 42 constitute conclusions of law to which no response is required. Defendants deny the allegations in the second sentence of paragraph 42.

43. The allegations in the first and fourth sentences of paragraph 43 constitute Plaintiff's characterization of its case, to which no response is required. To the extent a response is required, the allegations are denied. Defendants deny the allegations in the second sentence of

paragraph 43. Defendants state that whether any particular suction dredging operation adversely affects SONCC coho salmon and other fish species depends upon factors that are specific to the site, including details of the particular operation. Defendants admit the allegations in the third sentence but state that the viewpoints expressed in Mr. Grunbaum's report are his own, and not those of the Forest Service.

44. The allegations in paragraph 44 constitute Plaintiff's characterization of its case and conclusions of law to which no response is required. To the extent a response is required, Defendants deny that they have failed to account for impacts to the mentioned fish species. Defendants admit that the Regional Forester for the Pacific Southwest Region of the Forest Service has designated spring chinook and summer steelhead as "sensitive species" within the meaning of the Forest Service Manual. Defendants deny that green sturgeon and Pacific lamprey have been designated as "sensitive."

45. The allegations in paragraph 45 constitute legal and factual argument inconsistent with the requirements of FED.R.CIV.P. 8(a), including Plaintiff's characterization of its case and legal authorities, and conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the Forest Service lacked the necessary information to determine the impact of pollution resulting from mining operations.

46. The allegations in paragraph 46 constitute legal and factual argument, including Plaintiff's characterization of its case and legal authorities, and conclusions of law to which no response is required. To the extent a response is required, Defendants deny that mining activities "cannot be allowed under the ESA." Defendants state that whether any particular suction dredging operation affects habitat for SONCC coho or harms stream functions depends upon factors that are specific to the site, including details of the particular operation.

47. The allegations in paragraph 47 constitute legal and factual argument, including Plaintiff's characterization of its case and conclusions of law to which no response is required. To the extent a response is required, Defendants deny that mining activities "cannot be allowed under the ESA." Defendants state that whether suction dredging operations result in cumulative

effects depends upon factors that are specific to the site, including details of the particular operation.

48. The allegations in paragraph 48 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

49. The allegations in paragraph 49 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

50. Defendants deny the allegations in paragraph 50 and aver that the Forest Service has regulated suction dredging and mechanical sluicing that is reasonably incidental to mineral prospecting and exploration under the Mining Law and the Mining Regulations at 36 C.F.R. § 228A.

51. Defendants admit the allegations in the first sentence of paragraph 51. Defendants deny the allegations in the remainder the paragraph 51 and aver that the Forest Service does not require special use permits for suction dredge mining, but requires special use permits for certain non-mining activities by the New 49ers.

52. The allegations in the first and second sentences of paragraph 52 constitute conclusions of law to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation is the third sentence of paragraph 52 concerning the “primary purpose” of the New 49ers.

53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. The allegations in paragraph 54 constitute conclusions of law to which no response is required.

55. The allegations in paragraph 55 constitute conclusions of law to which no response is required.

56. The allegations in paragraph 56 constitute conclusions of law to which no response is required. The Court is referred to the cited statute for a true and complete statement of its provisions.

57. Defendants admit the Forest Plans for the Six Rivers and Klamath National Forests contain the Aquatic Conservation Strategy (ACS) and incorporate the Northwest Forest Plan (NFP). The remainder the allegations paragraph 57 purport to characterize the Aquatic Conservation Strategy and the Forest Plans, which speak for themselves, are the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

58. The allegations in paragraph 58 purport to characterize the Forest Plans for the Six Rivers and Klamath National Forests, each of which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

59. The allegations in the first sentence of paragraph 59 –misidentified as 55 in Plaintiffs' Second Amended Complaint– purport to characterize and quote from the Forest Plans for the Six Rivers National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record. The allegations in the second sentence of paragraph 59 purport to characterize a document by Grunbaum, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

60. Defendants deny the allegations in the first sentence of paragraph 60 and aver that riparian reserves are a component of the ACS, the NFP and the Forest Plans for the Six Rivers and Klamath National Forests. Defendants admit the allegations in the second sentence of paragraph 60. The allegations in the third and fourth sentences of paragraph 60 purport to characterize the Forest Plans for the Six Rivers and Klamath National Forests, each of which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

61. Defendants admit the allegations in paragraph 61.

62. The allegations in paragraph 62 purport to characterize and quote from the Forest Plans for the Six Rivers and Klamath National Forests, each of which speaks for itself, is the best

evidence of its content, and will be produced for the Court's review as part of the administrative record.

63. Defendants admit the allegations in the first and second sentences of paragraph 63. Defendants deny the allegations in the third sentence of paragraph 63 and aver that each of the documents cited in paragraphs 3 and 5 was associated with mining operations with the exception of the May 13, 2004 letter cited in paragraph 3, which was not associated with any mining activity.

64. The allegations in paragraph 64 constitute conclusions of law to which no response is required.

65. The allegations in the first, third and fifth sentences of paragraph 65 constitute conclusions of law to which no response is required. The allegations in the second sentence of paragraph 65 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record. With respect to the allegations in the fourth sentence of paragraph 65 Defendants admit that Forest Service employees have stated to the Tribe that a District Ranger may, if site conditions warrant, accept a NOI from operators for specific mining activities in Riparian Reserves.

66. Defendants deny the allegations in first sentence of paragraph 66 as overly broad, and state the individual and cumulative impacts from suction dredging operations depends upon factors that are specific to the site, including details of the particular operation. The allegations in the second sentence of paragraph 66 purport to characterize a document by Grunbaum, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

67. The allegations in the first through fifth sentences of paragraph 67 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record. Defendants deny the allegations in the sixth sentence of paragraph

67. The allegations in the seventh sentence of paragraph 67 regarding what the Forest Service will do in response to future notices of intent are entirely speculative and require no response.

68. The allegations in paragraph 68 constitute legal and factual argument, including conclusions of law to which no response is required.

69. The allegations in paragraph 69 purport to characterize the NFMA and regulations at 36 C.F.R. § 219 (2000) which speak for themselves and are the best evidence of their content. Defendants aver that the cited regulations have been repealed and superceded. See 70 Fed. Reg. 1023 (Jan. 5, 2005).

70. The allegations in the second, third, fourth sixth, seventh, eighth and ninth sentences of paragraph 70 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record. The allegations set forth in the first and fifth sentences of paragraph constitute conclusions of law to which no response is required.

71. The allegations in paragraph 71 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

72. The allegations in paragraph 72 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

73. The allegations in paragraph 73 purport to characterize and quote from the Forest Plan for the Six Rivers National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

74. The allegations in paragraph 74 purport to characterize and quote from the Forest Plan for the Six Rivers National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

75. The allegations in paragraph 75 purport to characterize and quote from the Forest Plan for the Six Rivers National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

76. The allegations in the first and second sentences of paragraph 76 purport to characterize the regulations at 36 C.F.R. § 219 (2000) which speak for themselves and are the best evidence of their content. Defendants aver that the cited regulations have been repealed and superceded. See 70 Fed. Reg. 1023 (Jan. 5, 2005). The allegations in the third and fourth sentences of paragraph 76 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

77. The allegations in paragraph 77 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in paragraph 77.

78. The allegations in paragraph 78 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

79. The allegations in the first and second sentences of paragraph 79 purport to characterize and quote from the Forest Plan for the Six Rivers National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record. Defendants deny the allegations in the third sentence of paragraph 79 and aver that the Tribe was notified of some or all of the operations identified in paragraphs 3 and 5 of Plaintiff's Second Amended Complaint though responses to requests from the Tribe under the Freedom of Information Act. Defendants further aver that the Tribe was informed of suction dredging operations through programmatic discussions between the Forest Service and the Tribe. The allegations in the fourth sentence of paragraph 79 constitute conclusions of law to which no response is required.

80. The allegations in paragraph 80 purport to characterize and quote from the Forest Plan for the Klamath National Forest, which speaks for itself, is the best evidence of its content, and will be produced for the Court's review as part of the administrative record.

81. The allegations in paragraph 81 constitute conclusions of law to which no response is required.

82. The allegations in paragraph 82 constitute legal conclusions to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

83. The allegations in the first and second sentences of paragraph 83 constitute legal conclusions to which no response is required. The remainder of the allegations in paragraph 83 purport to characterize and quote from a February 20, 2001 letter which speaks for itself, and is the best evidence of its content.

84. The allegations in paragraph 84 purport to characterize and quote from a public document filed in Dan Templeton v. United States, Civ. 02-320-C-EJL (D. Idaho), which speaks for itself, and is the best evidence of its content.

85. The allegations in paragraph 85 constitute legal conclusions to which no response is required.

86. Defendants admit the allegations in paragraph 86.

87. Defendants deny the allegations in the first sentence of paragraph 87. Defendants admit the allegations in the second sentence of paragraph 87. The allegations in the third and fourth sentences of paragraph 87 constitute conclusions of law to which no response is required.

88. Defendants admit the first sentence of paragraph 88. The allegations in the remainder of paragraph 88 constitute conclusions of law to which no response is required.

89. The allegations in paragraph 89 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

90. The allegations in paragraph 90 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

91. The allegations in paragraph 91 constitute conclusions of law to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.



92. The allegations in the first sentence of paragraph 92 constitute conclusions of law to which no response is required. In response to the second sentence of paragraph 92, Defendants admit the mining determinations identified by Plaintiff were not circulated for public comment, and aver that the Tribe received notice as provided in paragraph 79 above. The remaining allegations regarding whether public notice and comment will be provided on future mining determinations is speculative and requires no response.

93. The allegations in paragraph 93 constitute conclusions of law to which no response is required.

### **COUNT ONE**

94. Defendants reassert their responses to all proceeding paragraphs.

95. The allegations in paragraph 95 constitute conclusions of law to which no response is required and purport to characterize the Endangered Species Act which speaks for itself and is the best evidence of its content.

96. The allegations in paragraph 96 constitute conclusions of law to which no response is required.

97. The allegations in paragraph 97 constitute conclusions of law to which no response is required.

98. The allegations in paragraph 98 constitute conclusions of law to which no response is required.

99. The allegations in paragraph 99 constitute conclusions of law to which no response is required.

100. The allegations in paragraph 100 constitute conclusions of law to which no response is required.

### **COUNT TWO**

101. Defendants reassert their responses to all proceeding paragraphs.

102. The allegations in paragraph 102 constitute conclusions of law to which no response is required.

103. The allegations in the first sentence of paragraph 103 purport to characterize the NFP and the Forest Plans for the Kalmath and Six Rivers National Forests each of which speaks for itself and is the best evidence of its content. The allegations in the second sentence of paragraph constitute conclusions of law to which no response is required.

104. The allegations in the first and third sentences of paragraph 104 constitute conclusions of law to which no response is required. With respect to the allegations in the second sentence of paragraph 104 Defendants admit that it is the position of the Agency that a District Ranger may, if site conditions warrant, accept a NOI from operators for specific mining activities in Riparian Reserves.

105. The allegations in paragraph 105 constitute conclusions of law to which no response is required.

106. The allegations in paragraph 106 constitute conclusions of law to which no response is required.

### **COUNT THREE**

107. Defendants reassert their responses to all preceding paragraphs.

108. The allegations in paragraph 108 constitute conclusions of law to which no response is required.

109. The allegations in paragraph 109 constitute conclusions of law to which no response is required.

### **COUNT FOUR**

110. Defendants reassert their responses to all preceding paragraphs.

111. The allegations in paragraph 111 constitute conclusions of law to which no response is required.

112. The allegations in paragraph 112 constitute conclusions of law to which no response is required.

### **COUNT FIVE**

113. Defendants reassert their responses to all preceding paragraphs.

114. The allegations in paragraph 114 constitute conclusions of law to which no response is required.

115. The allegations in paragraph 115 constitute conclusions of law to which no response is required.

#### **COUNT SIX**

116. Defendants reassert their responses to all preceding paragraphs.

117. The allegations in paragraph 117 constitute conclusions of law to which no response is required.

118. The allegations in paragraph 118 constitute conclusions of law to which no response is required.

119. The allegations in paragraph 119 constitute conclusions of law to which no response is required.

#### **COUNT SEVEN**

120. Defendants reassert their responses to all preceding paragraphs.

121. The allegations in the first sentence of paragraph 121 constitute legal conclusions to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions. Defendants admit the allegations in the second sentence of paragraph 121.

122. The allegations in the first sentence of paragraph 122 constitute legal conclusions to which no response is required. The Court is referred to the cited statutes and regulations for a true and complete statement of their provisions.

123. The allegations in paragraph 123 constitute conclusions of law to which no response is required.

124. The allegations in paragraph 124 constitute conclusions of law to which no response is required.

#### **COUNT EIGHT**

125. Defendants reassert their responses to all preceding paragraphs.

126. The allegations in paragraph 126 constitute conclusions of law to which no response is required.

127. The allegations in paragraph 127 constitute conclusions of law to which no response is required.

The remainder of Plaintiff's complaints consists of Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendants deny Plaintiff is entitled to the relief requested or any relief whatever.

Unless specifically admitted herein, Federal Defendants deny each and every allegation in Plaintiff's Second Amended Complaint.

#### **AFFIRMATIVE DEFENSES**

In addition, Federal Defendants raise the following affirmative defenses:

1. Plaintiffs fail to state a claim upon which relief can be granted.

WHEREFORE, Federal Defendants respectfully request that the Court deny Plaintiff all relief Plaintiffs request, dismiss the Amended Complaint and grant Federal Defendants such other relief as the Court deems appropriate.

Respectfully submitted this 17th day of March, 2005,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2005, I electronically filed the foregoing ANSWER with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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