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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	Civil No. _____
)	
Plaintiff,)	
)	COMPLAINT FOR
vs.)c	DECLARATORY AND
)	INJUNCTIVE RELIEF
UNITED STATES FOREST SERVICE,)	
)	
_____ Defendant _____)	

I. Preliminary Statement

1. With this lawsuit Plaintiff WildEarth Guardians seeks to compel Defendant United States Forest Service (“Forest Service”) to comply with the mandatory procedural and substantive requirements of the Endangered Species Act (“ESA”) in connection with its actions related to travel management in the Santa Fe National Forest (“SFNF”).

2. Motorized travel in the SFNF harms the Jemez Mountains salamander, both through destruction of its habitat by means including subterranean soil compaction and habitat fragmentation and through direct mortality as a result of vehicle strikes.

3. In this action, WildEarth Guardians alleges that the Forest Service has failed to consult with the United States Fish and Wildlife Service (“FWS”), as required by Section 7(a)(2) of the ESA, as to the effects of its recent Travel Management Plan on the Jemez Mountains salamander. 16 U.S.C. § 1536(a)(2). Such a consultation is required because the Travel Management Plan is a final agency action that results in adverse effects to the species and its critical habitat.

4. The Travel Management Plan is described in the June 2012 Record of Decision for Travel Management on the Santa Fe National Forest (“TMP ROD”) and the June 2012 Final Environmental Impact Statement for Travel Management on the Santa Fe National Forest (“TMP FEIS”). The Travel Management Plan is accompanied by (1) a May 2013 Travel Management Implementation Plan for the Santa Fe National Forest (“TMP Implementation Plan”) and (2) the 2014 listing of roads and trails in Jemez Mountains salamander critical habitat as open on the Motor Vehicle Use Map for the Santa Fe National Forest (“MVUM”). (Hereafter in this Complaint, these actions will be referred to collectively as the “Travel Management Plan” or “TMP”).

5. The Travel Management Plan guides and constrains the Forest Service’s management of all motorized travel on the SFNF, including both on-road and off-road travel. Specifically, the Travel Management Plan constitutes the Forest Service’s determination of which routes (both roads and trails capable of handling off-road vehicles) in the SFNF are open to motorized travel, and which routes are closed to motorized travel.

6. As a result of the Forest Service’s illegal failure to consult as to the adverse impacts of the Travel Management Plan on the Jemez Mountains salamander and its

critical habitat, the Forest Service cannot ensure that its Travel Management Plan complies with the substantive requirements of Section 7(a)(2) of the ESA and cannot ensure that it does not cause “take” in violation of Section 9 of the ESA, 16 U.S.C. § 1538.

7. WildEarth Guardians seeks to compel the Forest Service to comply with (a) the agency’s procedural duty to initiate and to complete an ESA Section 7(a)(2) consultation with the FWS as to the effects of the Travel Management Plan on the Jemez Mountains salamander and its designated critical habitat; (b) the agency’s substantive duty to ensure that its Travel Management Plan does not jeopardize the Jemez Mountains salamander, or destroy and/or adversely modify its designated critical habitat in violation of 16 U.S.C. § 1536(a)(2); and (c) the agency’s duty to ensure that its Travel Management Plan does not result in “take” of endangered species in violation of 16 U.S.C. § 1538.

8. Accordingly, in this action WildEarth Guardians seeks declaratory and injunctive relief in connection with the Forest Service’s continuing implementation and administration of those aspects of the Travel Management Plan that adversely affect the Jemez Mountains salamander and its habitat, and that result in the “take” of Jemez Mountains salamanders.

II. Parties

9. Plaintiff WildEarth Guardians is a non-profit corporation, incorporated in New Mexico, with 44,000 members nationwide. WildEarth Guardians’ primary goals include protection and restoration of endangered species and riparian and other sensitive ecosystems in the southwestern United States that have been impaired as a result of public and private actions and projects, including excessive off-road vehicle use and

other harmful recreational activities. Many members and staff of WildEarth Guardians live and/or recreate in New Mexico and frequently use and enjoy, and intend to continue using and enjoying, the SFNF for recreational, aesthetic, and scientific activities. These activities include hiking and looking for wildlife, including the Jemez Mountains salamander, in the SFNF. WildEarth Guardians, its staff, and its members have a substantial interest in this matter and are adversely affected and aggrieved by the Forest Service's failure to comply with the ESA since this failure adversely affects an endangered species and its habitat in a way that impairs the survival and recovery of this species, and thereby adversely affects the interests of WildEarth Guardians, its staff, and its members in appreciating, viewing, and looking for the species in the wild. The relief requested in this Complaint will redress WildEarth Guardians' and its members' and staffs' injuries.

10. Defendant the Forest Service is a federal agency housed in the United States Department of Agriculture that is charged with managing activities in the SFNF. The Forest Service, like all other federal agencies, is required to comply with the ESA in the administration of its duties.

III. Jurisdiction and Venue

11. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), 16 U.S.C. § 1540(g)(1) (ESA citizen suit provision), and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

12. As required by the ESA, WildEarth Guardians has provided the Forest Service with sixty days' notice of its intent to commence a citizen suit in connection with the ESA

violations alleged in this complaint. 16 U.S.C. § 1540(g).

13. Venue is proper in this judicial district pursuant to 16 U.S.C. § 1540(g)(3)(A) (ESA citizen suit provision) and pursuant to 28 U.S.C. § 1391(e) because this is an action against an agency of the United States, because the cause of action arises in New Mexico, and because Plaintiff WildEarth Guardians is a non-profit organization incorporated in the State of New Mexico.

14. There exists now between the parties hereto an actual and justiciable controversy in which WildEarth Guardians is entitled to have a declaration of its rights and of the Forest Service's obligations and further relief, because of the facts and circumstances hereafter set out.

IV. Legal Background

15. The structure and function of the ESA, 16 U.S.C. §§ 1531, *et seq.*, are premised on Congress' finding that the biggest threat to the continued survival of endangered species is the destruction of their natural habitats. Accordingly, the ESA contains various provisions that are specifically intended to halt the trend of habitat destruction.

16. The expressed purpose of the ESA is "to provide a program for the conservation [of] endangered species and threatened species" and "to provide a means whereby the ecosystems upon which [such] species depend may be conserved." 16 U.S.C. § 1531(b).

17. Pursuant to the ESA, the FWS has the duty to list imperiled species as threatened or endangered on the basis of biological criteria. 16 U.S.C. § 1533(c).

18. Once a species is listed as threatened or endangered under the ESA, Section 7(a)(2) of the ESA imposes important obligations on federal agencies to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize that species

or result in the destruction or adverse modification of that species' designated critical habitat. 16 U.S.C. § 1536(a)(2). These obligations are known as the "Section 7(a)(2) substantive duties."

19. In order to assure that federal agencies comply with their Section 7(a)(2) substantive duties, Section 7(a)(2) of the ESA mandates a "consultation" process in which federal agencies are required to engage in consultation with the FWS to ensure that their actions do not jeopardize the species or adversely modify their critical habitat. 16 U.S.C. § 1536(a)(2). The duties set out in this portion of Section 7(a)(2) are known as the "Section 7(a)(2) procedural duties."

20. As used in the ESA, agency "action" includes those "actions directly or indirectly causing modifications to the land, water, or air" where federal agencies exercise discretionary control. 50 C.F.R. § 402.02(d). The Forest Service exercises discretionary control over a variety of actions on its lands, including the Travel Management Plan referenced in this Complaint. Therefore, the Forest Service's approval of the Travel Management Plan in the SFNF constitutes "action" under Section 7(a)(2).

21. Section 7(a)(2)'s substantive and procedural duties are triggered whenever a federal agency proposes to take one of these discretionary actions that "may affect" threatened and endangered species.

22. As described in this Complaint, the Forest Service's Travel Management Plan in the SFNF "may affect" the Jemez Mountains salamander and its habitat.

23. Accordingly, the Travel Management Plan triggers the Forest Service's substantive and procedural Section 7(a)(2) duties.

24. Federal agencies may comply with their Section 7(a)(2) procedural duties through

an “informal consultation” or a “formal consultation” with the FWS.

25. If an action agency, such as the Forest Service in this case, determines, through the preparation of a Biological Assessment (“BA”) or otherwise, that an action may affect, but “is not likely to adversely affect,” any threatened or endangered species, then the action agency may seek to fulfill its Section 7(a)(2) procedural duties through “informal consultation.” 50 C.F.R. § 402.13. If the FWS agrees with the action agency’s determination that a proposed action “is not likely to adversely affect” any threatened or endangered species and provides a written concurrence to that effect, then the action agency’s Section 7(a)(2) procedural obligations with respect to the proposed action are concluded.

26. If the action agency determines that a proposed action may adversely affect a threatened or endangered species, or if the FWS does not concur with an action agency’s “not likely to adversely affect” determination, then the action agency must commence a “formal consultation” with the FWS. 50 C.F.R. § 402.14.

27. While the Section 7(a)(2) consultation process is ongoing, ESA Section 7(d) prohibits the action agency from taking any action that would result in irreversible and irretrievable effects. 16 U.S.C. § 1536(d).

28. The formal consultation process concludes with the issuance of a Biological Opinion (“BO”) by the FWS. 50 C.F.R. § 402.14. In this BO, the FWS determines whether a proposed agency action comports with the agency’s Section 7(a)(2) substantive duties and provides suggestions for the modifications of agency action that will promote and enhance the survival and recovery of threatened and endangered species. Id.

29. If the FWS, through the BO process, finds that a proposed agency action will

jeopardize a listed species or adversely modify its designated critical habitat, the FWS formulates a Reasonable and Prudent Alternative (“RPA”) that avoids that effect.

30. If the FWS makes a determination that a proposed action will jeopardize a species or adversely modify critical habitat and issues an RPA to avoid that effect, the action agency must either implement the RPA or seek relief from the Endangered Species Committee (colloquially known as the “God Squad”). 16 U.S.C. § 1536(e). The Endangered Species Committee is a committee of seven cabinet-level members that has the authority to exempt a federal project from the requirements of Section 7(a)(2), thereby accelerating a species’ decline towards extinction.

31. Section 9 of the ESA prohibits any person, including any federal agency, from “taking” an endangered species. 16 U.S.C. § 1538(a)(1). Taking is defined broadly under the ESA to include harming, harassing, or killing a protected species either directly or by degrading its habitat sufficiently to significantly impair essential behavioral patterns. See 16 U.S.C. § 1532(19); 50 C.F.R. § 17.3.

32. To maintain compliance with Section 9, a federal agency may cause the “take” of a listed species incidental to an otherwise lawful activity only after obtaining an Incidental Take Statement (“ITS”) from the FWS. 16 U.S.C. §§ 1536(b)(4), (o). The FWS incorporates an ITS into the BO that it issues if it finds that implementation of the action that is the subject of a BO (as modified by the RPA, if any) will result in the “incidental take” of individuals of a listed species. 16 U.S.C. § 1536(b)(4).

33. An ITS sets forth the amount of incidental take that is permitted, and that is therefore exempt from the otherwise absolute take prohibition of ESA Section 9. Id. In every ITS, the FWS specifies the amount of incidental take that is expected to occur as a

result of the implementation of the federal action which is the subject of the BO. See 16 U.S.C. § 1536(b)(4)(C)(i); 50 C.F.R. § 402.14(i)(1)(I). Any take above the amount specified in the ITS constitutes a violation of Section 9.

34. Re-initiation of consultation on an action that was already approved and subject to a Section 7(a)(2) consultation is required under a number of circumstances, including when “a new species is listed or critical habitat designated that may be affected by the identified action.” Id. § 402.16(d).

35. Take of an endangered species that is not covered by a BO/ITS is a violation of Section 9 and leaves the agency that approved the action that causes the take subject to liability under that provision.

36. As explained in this Complaint, the aforementioned Travel Management Plan has caused and is causing harm to the Jemez Mountains salamander and its critical habitat and has not been subjected to consultation to assess those harms in violation of both the substantive and procedural requirements of Section 7(a)(2).

37. The ongoing effects of the Travel Management Plan also cause take due to habitat destruction and direct mortality from vehicle strikes that is not proceeding subject to a BO/ITS. Therefore, the Forest Service is also in violation of ESA Section 9.

V. **Factual Background**



Photo Credit: Chris Newsom

38. The Jemez Mountains salamander is dark brown above with occasional fine gold to brassy coloring, stippling on its back and sides, and a sooty gray underside. It is slender and elongate with webbed feet and a reduced fifth toe.

39. This species is strictly terrestrial and does not use standing water for any life stage. It is lungless and accomplishes respiration through its skin. This type of respiration requires a moist microclimate to function properly. As a result, substrate moisture, through its effect on absorption and loss of water, is very important to the ecology of the species.

40. The Jemez Mountains salamander, as its name would suggest, is endemic to the Jemez Mountains in northern New Mexico and is found nowhere else in the world. Its sole habitat is around the rim of a collapsed volcanic crater, with the exception of a few occurrences within the crater.

41. The majority of the species' habitat occurs on federal lands managed by the Forest Service between 7,200 and 9,500 feet (2,200 and 2,900 meters) in the SFNF.

42. The Jemez Mountains salamander spends most of its life underground, except for when environmental conditions are relatively warm and wet, typically corresponding to July through September. When it is aboveground, the species is often found under decaying logs, rocks, bark, or moss mats or inside decaying logs or stumps.

43. The species is highly reliant on suitable soil moisture (likely the most important indicator of all); very specific soil pH level, soil composition, and temperature; forest composition; presence of decaying coniferous logs (for the aboveground portion of their life cycle); and presence of deep, fractured, subterranean, igneous rock (for the belowground portion of their life cycle).

44. The species moves very little and each salamander has a likely home range of about 86 square feet. As a result, habitat connectivity limitations could have profound effects taking the form of increased vulnerability to genetic drift (the process where small population size causes chance alterations in the genetic composition of a population by natural selection) and inbreeding, fewer successful breeding opportunities, and increased susceptibility to stochastic events (those occurring in a random pattern, such as floods, fires, and tornados), amongst other threats.

45. While population size and trends are difficult to accurately gauge for the species, “the number of salamanders observed during recent surveys is far less than observed in historical surveys,” and “[c]urrently, there is no known location where the number of salamanders observed is similar to that observed in 1970.” See 78 Fed. Reg. 55,600, 55,604 (Sept. 10, 2013). In addition to reduced numbers at all known capture locations, the species appears to have been completely extirpated in some areas where it was historically observed. See id.

46. The FWS “consider[s] the establishment of roads and trails to be a threat that will likely continue to impact the salamander and its habitat, increasing the risk of extirpation of some localities.” Id. at 55,618. The FWS has also stated that “by closing some areas [of the SFNF] to [off-road vehicle] use, the magnitude of impacts in areas [of the SFNF] open to [off-road vehicle] use in salamander habitat will be greater.” Id. (citation omitted).

47. Additionally, the FWS has “acknowledge[d] that some individual salamanders may be killed or injured by vehicles and [off-road vehicles], and that [off-road vehicles] use impacts salamander habitat.” Id.

48. The FWS recognized that “the extensive roads that currently exist in the Jemez Mountains have significantly impacted the salamander and its habitat due to the possible death and injury of salamanders; fragmentation and population isolation; habitat loss; habitat modification near road edges; and in some cases, increased exposure to chemicals, salts, and pollution.” Id. Furthermore, “[r]oads and trails have . . . likely reduced persistence of existing salamander localities.” Id. at 55,619.

49. The Forest Service has recognized similar threats and describes the primary threats that the Jemez Mountains salamander faces from off-road vehicle use by explaining that this “use compacts soils and fills interstitial spaces used by the salamander, degrading its habitat. Clearing trails by removing logs takes away the salamander’s aboveground habitat and increases the dryness of its aboveground habitat.” TMP FEIS, Appendix 7 at 303. Such drying is problematic because, as discussed above, “[Jemez Mountains s]alamanders prefer moist environments.” Id.

50. In its Wildlife and Rare Plants Biological Evaluation for Motorized Travel

Management in the Santa Fe National Forest (“TMP BE”), the Forest Service biologist R. William Amy also noted that the motorized routes in the SFNF cause impacts to the Jemez Mountains salamander “includ[ing] habitat loss from vegetation removal, fragmentation of habitat potentially reducing genetic variability of a species population, reduced densities of snags and logs from wood collection and barriers to movement and dispersal.” TMP BE at 29.

51. As a result of the various threats that the Jemez Mountains salamander faces and its likely declining population numbers, the FWS listed the species as endangered throughout its range under the ESA on September 10, 2013. See 78 Fed. Reg. 55,600. This was followed by the final designation of approximately 90,716 acres of critical habitat for the species on November 20, 2013. See 78 Fed. Reg. 69,569. Approximately 56,897 acres of this critical habitat is located within the SFNF. See id. at 69,583. A significant portion of that critical habitat is being or may be affected by the Forest Service’s Travel Management Plan.

VI. Argument

A. The Forest Service’s Travel Management Plan for the SFNF Adversely Affects the Jemez Mountains Salamander

52. On November 9, 2005, the Forest Service published a Travel Management Rule (“TMR”) to implement two executive orders addressing the impacts of off-road vehicles on the public lands and to revise outdated Forest Service regulations addressing the same topic. 70 Fed. Reg. 68,264, 68,265 (Nov. 9, 2005). The TMR mandates that each national forest presumptively eliminate cross-country motor vehicle use and generally restrict motor vehicle use to designated roads and trails so as to minimize their impacts on a variety of forest resources. Id. at 68,265.

53. To comply with the national-scope TMR, the Forest Service is obligated to prepare a Travel Management Plan for each national forest that it manages, and the TMP at issue in this case was promulgated pursuant to this requirement.

54. In the Forest Service's TMP FEIS for the SFNF, the Forest Service recognizes that the off-road vehicle use that is authorized and regulated by the Travel Management Plan poses a variety of threats to the Jemez Mountains salamander. However, despite this recognition of ongoing threats to individual Jemez Mountains salamanders and of ongoing harm to the species' habitat resulting from the Travel Management Plan, the Forest Service has failed to undertake Section 7(a)(2) consultation with respect to the species.

55. The Forest Service determined that its Travel Management Plan for the SFNF "may impact [Jemez Mountains salamander] individuals." See TMP FEIS at 192; see also TMP BE at 30 ("selection of the Preferred Alternative may impact [Jemez Mountains salamander] individuals . . ."). This determination is premised on the acknowledged facts that (1) the Travel Management Plan guides and constrains all motorized travel on the SFNF and (2) motorized travel has various adverse effects on the Jemez Mountains salamander and its habitat.

56. This determination that motorized use of routes on the SFNF negatively impacts Jemez Mountains salamanders and their habitat, made by the Forest Service in both the TMP FEIS and the TMP BE, is confirmation from the Forest Service itself that the Travel Management Plan "may affect" the Jemez Mountains salamander, the trigger for initiation of Section 7(a)(2) consultation. See 16 U.S.C. § 1536(a)(2).

57. Following the listing of the Jemez Mountains salamander and designation of its

critical habitat, the Forest Service's own determination that its Travel Management Plan may affect Jemez Mountains salamander individuals requires that the agency re-initiate Section 7(a)(2) consultation¹ to ensure that the Travel Management Plan is consistent with the Forest Service's Section 7(a)(2) substantive duties.

B. The Forest Service is Currently Allowing Activities to Continue in the SFNF that Constitute Irreversible and Irrecoverable Commitments of Resources in the Absence of Section 7(a)(2) Consultation

58. In the TMP BE, the Forest Service's own biologist notes that listing of routes as open that were previously unauthorized is an "irrecoverable commitment of resources."

TMP BE at 16.

59. The Forest Service reiterates this irrecoverable commitment of resources conclusion in the TMP BA, when it states that,

the Proposed Action would designate motorized routes open to the public which are currently designated as unauthorized routes and not open to the public. This represents an irrecoverable commitment of resources. Once designated, these motorized routes would not be available for wildlife resource use unless specific analysis was undertaken to change the designation and decommission the route.

TMP BA at 3.²

¹ The Forest Service has not yet initiated any formal or informal Section 7(a)(2) consultation addressing the impacts of the Travel Management Plan on the Jemez Mountains salamander. However, this claim is styled as a "re-initiation claim" because the Forest Service did previously initiate Section 7(a)(2) consultation to address the effects of the Travel Management Plan on the Mexican spotted owl and its habitat in the TMP BA. This separate Section 7(a)(2) consultation on the impacts of the Travel Management Plan on the Mexican spotted owl in no way discharges the Forest Service's responsibility to consult as to the Jemez Mountains salamander, and the Forest Service must "re-initiate" Section 7(a)(2) consultation to assess the effects of its Travel Management Plan on the newly listed species and its habitat.

² The TMP BE is not an ESA-compliance document. The TMP BA is the only ESA-compliance document that was produced to assess the effects of the TMP on threatened and endangered species. However, the TMP BA only addresses the effects of the TMP on the Mexican spotted owl and **does not** address the effects of the TMP on the Jemez

60. In addition, the FWS has determined that the Forest Service's closure of certain routes in the SFNF's Jemez Mountains salamander habitat can also result in irretrievable commitments of resources, insofar as the Jemez Mountains salamander is concerned, because it results in increased use and impact of the open routes in Jemez Mountains salamander habitat. See, e.g., 78 Fed. Reg. at 55,618.

61. Section 7(d) of the ESA requires that all irretrievable commitments of resources affecting the Jemez Mountains salamander and/or its critical habitat that are caused by the Forest Service's Travel Management Plan and its ongoing implementation must be suspended until the Forest Service completes Section 7(a)(2) consultation with the FWS.

C. The Forest Service's Failure to Prevent Take has Resulted, and Continues to Result, in a Violation of ESA Section 9's Take Prohibition.

62. Based on the above facts, off-road vehicle travel has taken (as the word "take" is used in Section 9 of the ESA), and continues to take, the Jemez Mountains salamander and destroy its designated critical habitat as set out in paragraphs 46-50 above.

63. Through its Travel Management Plan, the Forest Service has both exacerbated the take of Jemez Mountains salamanders and the destruction of their critical habitat, and has failed to use its authority to adequately protect the species.

64. For instance, FWS determined that Jemez Mountains salamanders are likely killed and injured by off-road vehicle strikes and that off-road vehicle use in the species' habitat destroys and fragments that habitat and has resulted in decreased persistence of the species. See 78 Fed. Reg. at 55,618-619.

65. The Forest Service has also recognized the threats that off-road vehicles pose to

Mountains salamander. Therefore, the TMP BA does not satisfy Forest Service's Section 7(a)(2) procedural obligations as to the Jemez Mountains salamander and its critical habitat.

Jemez Mountains salamanders. The Forest Service acknowledges that off-road vehicle use can destroy and fragment the species' habitat by, *inter alia*, compacting and drying the soil the species relies on for its belowground life history stages and by removing logs, which both further desiccates the soil and also physically removes the species' aboveground habitat. See TMP FEIS, Appendix 7 at 303; TMP BE at 29.

66. Now that the Jemez Mountains salamander is listed as an endangered species and has had critical habitat designated, the ongoing harm to both the species and its critical habitat discussed above represents take.

67. Since this take is proceeding in the absence of a valid BO/ITS, the Forest Service is in violation of Section 9 of the ESA.

VII. Claims for Relief

First Claim for Relief

Violation of 16 U.S.C. § 1536(a)(2) in Connection With
the Forest Service's Aforementioned Travel Management Plan

(Section 7(a)(2) substantive duties)

68. WildEarth Guardians incorporates by reference all preceding paragraphs.

69. The Forest Service has a duty not to jeopardize the Jemez Mountains salamander or to adversely modify or destroy its designated critical habitat.

70. As applied to the SFNF, the Forest Service's approval of the aforementioned Travel Management Plan violates both of the requirements set forth in the paragraph immediately preceding and therefore violates the ESA.

Second Claim for Relief

Violation of 16 U.S.C. §1536(a)(2) in Connection With
the Forest Service's Aforementioned Travel Management Plan

(Section 7(a)(2) procedural duties)

71. WildEarth Guardians incorporates by reference all preceding paragraphs.
72. The Forest Service exercises discretionary control over the aforementioned decisions and has the discretion to modify those actions.
73. The Travel Management Plan is likely to adversely affect the Jemez Mountains salamander and its designated critical habitat.
74. Accordingly, the Forest Service's failure to initiate and to conclude a Section 7(a)(2) consultation with the FWS as to the effects of its Travel Management Plan violates the ESA.

Third Claim for Relief

Violation of Section 7(d) Arising From Ongoing Activities that
Jeopardize the Species' Survival and Adversely Modify its Critical Habitat

(Section 7(d) protection)

75. WildEarth Guardians incorporates by reference all preceding paragraphs.
76. The Forest Service is continuing to implement and administer its Travel Management Plan on lands under its control despite not having commenced a Section 7(a)(2) consultation.
77. Allowing motorized travel in Jemez Mountains salamander critical habitat and in other areas where such use may impact the species must be halted pending completion of consultation in order to avoid irreversible and irretrievable commitments of resources in

violation of 16 U.S.C. § 1536(d).

Fourth Claim for Relief

Violation of 16 U.S.C. § 1538 in Connection With Ongoing
Take in the Absence of a Valid ITS

(Section 9 take)

78. WildEarth Guardians incorporates by reference all preceding paragraphs.

79. The Forest Service, through its Travel Management Plan, is causing and approving take of Jemez Mountains salamanders through both direct harm from vehicle strikes and habitat destruction.

80. Since the Forest Service does not have an ITS, valid or otherwise, for its incidental take of Jemez Mountains salamanders in conjunction with its Travel Management Plan, all of this take is unpermitted and constitutes a violation of the ESA.

VIII. Relief Requested

WHEREFORE, WildEarth Guardians respectfully requests the following relief:

1. An order declaring that those portions of the Forest Service's Travel Management Plan that may adversely affect the Jemez Mountains salamander and/or its critical habitat constitute a violation of the Forest Service's Section 7(a)(2) substantive duties under the ESA.
2. An order declaring that those portions of the Forest Service's Travel Management Plan that may adversely affect the Jemez Mountains salamander and/or its critical habitat were adopted in violation of the Forest Service's Section 7(a)(2) procedural duties under the ESA.
3. An order requiring the Forest Service to initiate and to complete a Section 7(a)(2) consultation with the FWS as to the effects of its Travel Management Plan on the Jemez

Mountains salamander and its critical habitat.

4. An injunction providing that those specific portions of the Forest Service's Travel Management Plan that may cause jeopardy to the Jemez Mountains salamander and/or destruction or adverse modification of its designated critical habitat in the SFNF must be suspended pending completion of consultation.
5. An order declaring that the Forest Service is in violation of the ESA provisions which prohibit the take of Jemez Mountains salamanders in the absence of a valid ITS.
6. An order awarding WildEarth Guardians its reasonable costs in this action, including attorney's fees.
7. Such other relief as this Court determines is just and proper.

Dated: September 4, 2014

Respectfully submitted,

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