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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**MEDFORD DIVISION**

**OREGON NATURAL RESOURCES COUNCIL  
FUND**, an Oregon nonprofit corporation; **SIERRA  
CLUB**, a California nonprofit corporation; and  
**HEADWATERS**, an Oregon nonprofit corporation,

Plaintiffs,

v.

**KENT CONNAUGHTON**, Regional Forester, Pacific  
Northwest Region, U.S. Forest Service; and **U.S.  
FOREST SERVICE**, a federal agency,

Defendants,

**MT. ASHLAND ASS'N**, dba **SKI ASHLAND**,

Defendant-Intervenor.

CV-05-3004-PA

FEDERAL DEFENDANTS'  
NOTICE OF SATISFACTION  
OF TERMS OF INJUNCTION OR,  
IN THE ALTERNATIVE, MOTION  
TO DISSOLVE INJUNCTION

197), pursuant to instructions the U.S. Court of Appeals for the Ninth Circuit handed down on remand from the appeals taken from the original judgment of this Court. In its Amended Judgment and Injunction, this Court enjoined implementation of the expansion of the Mt. Ashland Ski Area the Forest Service had authorized in its 2004 Record of Decision addressing that action “until the Forest Service corrects the violations of the National Forest Management Act, 16 U.S.C. § 1600 *et seq.*, and of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, that the Ninth Circuit identified in the Opinion filed by that court on September 24, 2007.”

On April 22, 2011, the Forest Service issued a Supplemental Record of Decision (“SROD”) for the proposed Mt. Ashland Ski Area Expansion in which Rogue River-Siskiyou National Forest Supervisor Scott Conroy documented his findings that the agency had corrected the procedural violations identified in the Ninth Circuit’s opinion through its preparation of supplemental analysis of the environmental effects of the proposed expansion. Based in part on these findings and the Forest Service’s supplemental environmental analysis, Supervisor Conroy also announced in the SROD that he was readopting his earlier decision memorialized in the 2004 ROD. A number of groups and individuals filed administrative appeals of the supplemental decision in the SROD to the Regional Forester for the Forest Service’s Pacific Northwest Region. On August 31, 2011, Defendant and Regional Forester Kent Connaughton denied all of these administrative appeals, which constitutes the Forest Service’s final administrative determination with respect to the Mt. Ashland Ski Area expansion implementation decision.

In light of the foregoing, Defendants hereby give notice to the Court and parties that they have corrected the legal violations the Ninth Circuit found in the Forest Service’s analysis of the

2004 decision and setting forth their position that the pending injunction in this Court's Amended Judgment is therefore no longer in effect. In part because they know Plaintiffs have a different position on this question, they also move, in the alternative, for the Court to dissolve the injunction if it should decide that such a judicial act is necessary given the language of its injunction. In accordance with LR 7-1, undersigned counsel for Federal Defendants certifies that he has conferred with counsel for the other parties regarding the motion in the alternative, and has learned as a result that Defendant-Intervenors do not oppose the motion and, in fact, share Federal Defendants' position that, by its terms, the injunction is already no longer in effect, and that Plaintiffs oppose the motion.

The issues to be decided by this Notice/Motion are as follows: (1) should the Court issue an order simply confirming its position that the injunction is no longer in effect as a result of the fact that the Forest Service has carried out supplemental analysis on the very issues the Ninth Circuit identified were in need of supplemental analysis and so has satisfied the terms of the injunction leading to its termination; and/or (2), if the Court does not share Federal Defendants' principal position and believes that a motion to dissolve the injunction is necessary, does the Court's review of the supplemental analysis that Federal Defendants have undertaken, under the appropriate deference and standard of review for such questions, demonstrate that such analysis satisfies the terms of the injunction such that it should be dissolved henceforth?

In addition, Federal Defendants wish to advise the Court that, solely as a matter of cooperative case management and in an effort to avoid triggering the possibility of a request for preliminary injunctive relief, Federal Defendants also represent that they will not authorize any ground-disturbing activities authorized by the SROD until at least April 1, 2012. As used in this

motion, ground-disturbing activities is defined to include tree falling, road construction, or any other activity with environmental effects of a similar magnitude, but does not include work on site that would have only minimal or negligible effects on the ground such as surveying, monitoring, or other similar activities that are preparatory to the supplemental decision's implementation. Defendants' agreement in this regard does not constitute, and may not be relied upon as, a basis for entitlement to or seeking any award of attorney's fees or costs.

Federal Defendants respectfully submit that good cause exists for the Court to issue an order indicating its concurrence with their principal position that the injunction the Court entered is no longer in effect because the Forest Service has conducted the very supplemental analysis to which the duration of the injunction, by its very terms, is explicitly tied; and/or, in the alternative, for the Court to dissolve the injunction based on a review of that analysis under the appropriate standard.

Respectfully submitted this 9th day of February 2012.

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