

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

Case No. _____

Cherokee Forest Voices,)	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
United States Forest Service,)	
)	
Defendant.)	
)	

INTRODUCTION

1. This action challenges the Flatwoods timber sale and the George Creek timber sale in the Cherokee National Forest because the Forest Service failed to insure that these projects and the contracts and other instruments necessary for their implementation will be consistent with the revised Cherokee National Forest Land Management Plan (the “Forest Plan”), as required under the National Forest Management Act, 16 U.S.C. § 1604(i), and because the Forest Service failed to disclose, discuss, and consider adequately the inconsistencies between these projects and the pending revisions to the Forest Plan in the agency’s Environmental Assessments prepared pursuant to the National Environmental Policy Act, 42 U.S.C. § 4332.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§2201-02, and 5 U.S.C. § 706.

PARTIES

3. The Plaintiff in this action is Cherokee Forest Voices, an association of conservation organizations and individuals whose mission is to encourage increased emphasis of the ecological values of the Cherokee National Forest. Cherokee Forest Voices has members who reside near, visit, or otherwise use and enjoy the Cherokee National Forest and, specifically, the Flatwoods and George Creek timber sale project areas, for fishing, hiking, camping, recreation, gathering, wildlife viewing and education, water activities, scientific purposes, scenic beauty and appreciation, and other aesthetic or spiritual enjoyment. These interests directly and irreparably are injured by Defendants' violations of law as described in this complaint.

4. The Plaintiff and its members monitor the use of the Cherokee National Forest for compliance with the laws respecting this forest, educate themselves and the public concerning the management of this forest, and advocate policies and practices that conserve the natural value and long-term health of this forest. These interests directly and irreparably are injured by Defendants' violations of law as described in this complaint.

5. The Defendant in this action is the United States Forest Service, an agency of the United States Department of Agriculture entrusted with the conservation and management of the national forests, including the Cherokee National Forest.

FACTS

6. Under the National Forest Management Act, each national forest is governed by a management plan (“Forest Plan”) that sets standards and guidelines for the entire forest. All permits, contracts or other instruments for the use and occupancy of National Forest lands, including timber sale contracts and other documents, shall be consistent with this Forest Plan. 16 U.S.C. § 1604(i). These management plans must be revised at least every 15 years. 16 U.S.C. § 1604(f).

7. The Flatwoods timber sale proposes to log approximately 950 acres on Holston Mountain in Sullivan County, Tennessee, including 197 acres proposed for clearcutting. Over 7 miles of new roads will be constructed to facilitate this proposed logging. The Flatwoods timber sale area is popular for fishing, hunting, water activities, hiking, camping, scenic appreciation, and recreation.

8. The George Creek timber sale proposes to log 84 acres in the George Creek drainage in Compartment 330 in Carter County, Tennessee, including 68 acres proposed for clearcutting. The proposed project area primarily is a mature cove forest with high biological diversity and species richness.

9. Planning for the Flatwoods timber sale began in 2002. The draft Environmental Assessment for the Flatwoods timber sale was published in the summer of 2003. Similarly, the George Creek Environmental Assessment was published in early 2003, and then re-published in the fall of 2003 after an administrative appeal. Each of these timber sales was planned under the standards and guidelines of the then-existing Cherokee Forest Plan, adopted in 1986.

10. Before and during the same period that these two timber sales were being planned, the Cherokee National Forest was revising its Forest Plan. The process for revising the Cherokee Forest Plan began in 1995 and a Notice of Intent concerning the Plan revision process was published in the Federal Register in 1996. This Forest Plan revision process continued into early 2004.

11. In February 2003, prior to the publication of either the Flatwoods Environmental Assessment or the George Creek Environmental Assessment, the Forest Service published a draft revised Forest Plan that contained the proposed new prescriptions and standards at issue in this case, or even more strict versions of these prescriptions and standards.

12. A “prescription” is a package of management standards applicable to a specific area within the forest. The revised Cherokee Forest Plan contains several new prescriptions and standards that differ significantly from the prior forest plan adopted in 1986. First, significant sections of both the Flatwoods and the George Creek project areas are given new prescriptions that either prohibit logging altogether or significantly reduce the percentage of the area allocated to the early successional habitat that logging creates. Second, the revised Forest Plan adopted a new and more extensive prescription for riparian areas immediately adjacent to perennial, intermittent, and ephemeral streams.

13. Neither the Flatwoods Environmental Assessment nor the George Creek Environmental Assessment disclosed, discussed, or addressed in any way the differences between the standards in the 1986 forest plan and the new prescriptions and standards in the revised Forest Plan, or how these revised prescriptions and standards of the revised

Forest Plan could affect these timber sales, or any issue related to the differences among these revised prescriptions and standards and the 1986 Forest Plan.

14. On January 15, 2004, the Forest Service signed the Record of Decision adopting the final revised Cherokee Forest Plan. Pursuant to this Record of Decision, the revised Forest Plan became effective on March 1, 2004.

15. The Forest Service signed the Decision Notice for the Flatwoods timber sale on December 5, 2003, approximately one month prior to the adoption of the final revised Forest Plan. Despite the pendency of the final revised Forest Plan, this Decision applied the prescriptions and standards of 1986 plan, rather than those of the revised Forest Plan. All of the permits, contracts, or other instruments for the use and occupancy of national forest lands that will be employed to implement the Flatwoods timber sale will be created or executed in August 2004 or later, well after both the adoption date and the effective date of the revised Forest Plan.

16. The Forest Service signed the Decision Notice for the George Creek timber sale on January 26, 2004, eleven days after the adoption of the revised Forest Plan. Despite the adoption of the revised Forest Plan, this Decision applied the prescriptions and standards of 1986 plan, rather than those of the revised Forest Plan. All of the permits, contracts, or other instruments for the use and occupancy of national forest lands that will be employed to implement the Gorge Creek timber sale will be created or executed in 2005 or later, well after both the adoption date and the effective date of the revised Forest Plan.

FIRST CLAIM

(Violations of National Forest Management Act and Administrative Procedures Act)

17. Paragraphs 1 through 16 are incorporated by reference.

18. The Decision Notice for the Flatwoods timber sale and the permits, contracts, and other instruments for the use and occupancy of national forest lands that will be employed to implement this timber sale are inconsistent with the revised Cherokee Forest Plan and in violation of the National Forest Management Act, 16 U.S.C. § 1604(i) in multiple respects, including

a. areas approved for logging in the Flatwoods timber sale pursuant to the 1986 Plan instead are designated for “remote backcountry recreation” and unsuitable for logging in the revised Forest Plan;

b. areas approved for logging in the Flatwoods timber sale pursuant to the 1986 Plan instead are designated for management as “scenic corridor/scenic viewshed” and unsuitable for logging in the revised Forest Plan;

c. areas approved for logging in the Flatwoods timber sale pursuant to the 1986 Plan instead are designated as “dispersed recreation areas” in the revised Forest Plan, with significantly lower goals for early successional habitat, and with greater sensitivity to recreation and scenic values;

d. the significantly lower goal for early successional habitat and the sensitivity to recreation and scenic values in these dispersed recreation areas contradicts or undermines the stated purpose and need for the Flatwoods timber sale and are inconsistent with the clearcutting planned for this project; and

e areas adjacent to perennial, intermittent, and ephemeral streams approved for logging in the Flatwoods timber sale pursuant to the 1986 Plan do not meet and are inconsistent with the revised Forest Plan's Riparian prescription.

19. The Decision Notice for the George Creek timber sale and the permits, contracts, and other instruments for the use and occupancy of national forest lands that will be employed to implement this timber sale are inconsistent with the revised Cherokee Forest Plan and in violation of the National Forest Management Act, 16 U.S.C. § 1604(i) in multiple respects, including

a. areas approved for logging in the George Creek timber sale pursuant to the 1986 Plan instead are designated with a new prescription in the revised Forest Plan which provides for a significantly lower goal for early successional habitat, which contradicts the stated purpose and need for this project, and which is inconsistent with the clearcutting planned for this project; and

b. areas adjacent to perennial, intermittent, and ephemeral streams approved for logging in the Flatwoods timber sale pursuant to the 1986 Plan do not meet and are inconsistent with the revised Forest Plan's Riparian prescription.

20. The Flatwoods timber sale and the George Creek timber sale violate the National Forest Management Act, 16 U.S.C. § 1604(i), because they are inconsistent with the revised Forest Plan, and the Decision Notices for these timber sales and the contracts and other instruments used to implement these timber sales are and will be inconsistent with the Revised Forest Plan. The Forest Service's actions in approving these timber sales despite these inconsistencies were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of 5 U.S.C. § 706.

SECOND CLAIM

(Violations of National Environmental Policy Act and Administrative Procedures Act)

21. Paragraphs 1 through 20 are incorporated by reference.

22. The Forest Service has violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331-4337, by failing adequately to disclose, analyze, consider, or address the inconsistencies between the revised Forest Plan and the Flatwoods and George Creek timber sales, or how the revised Forest Plan would affect these timber sales if applied to them, or any issue related to the differences among these revised prescriptions and standards and the 1986 Forest Plan. The Forest Service’s actions in approving these timber sales in violation of NEPA were arbitrary, capricious, an abuse of discretion, a violation of procedure, and not in accordance with law in violation of 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

a. Enter a declaratory judgment that the Defendant has violated the National Forest Management Act, the National Environmental Policy Act and the Administrative Procedures Act by approving and proceeding with timber sales that are not consistent with the revised Forest Plan and by failing adequately to disclose, analyze, consider or address these inconsistencies in an inadequate environmental analysis under NEPA;

b. Enter appropriate injunctive relief to insure that the Defendant complies with the National Forest Management Act and the National Environmental Policy Act, and specifically to insure that the Defendant take no further actions toward proceeding with these timber sales until the Forest Service has complied with these Acts;

c. Order that the Defendant’s decisions concerning these projects be vacated;

d. Award plaintiffs the costs of this action, including a reasonable attorney's fee; and

e. Grant such other relief as the court deems just and proper.

Respectfully submitted,

Dated: _____

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