

Administrative and Legal Review Opportunities for Collaborative Groups



**NORTHERN ARIZONA
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Ecological Restoration Institute



Western Environmental Law Center

The Ecological Restoration Institute

The Ecological Restoration Institute at Northern Arizona University is a pioneer in researching, implementing, and monitoring ecological restoration of dry, frequent-fire forests in the Intermountain West. These forests have been significantly altered during the last century, with decreased ecological and recreational values, near-elimination of natural low-intensity fire regimes, and greatly increased risk of large-scale fires. The ERI is working with public agencies and other partners to restore these forests to a more ecologically healthy condition and trajectory—in the process helping to significantly reduce the threat of catastrophic wildfire and its effects on human, animal, and plant communities.

Cover photo:

The Dinkey Collaborative in California was created in 2010 when the Sierra National Forest was awarded a Collaborative Forest Landscape Restoration Program project. Collaborative groups like the Dinkey increasingly have become engaged in forest restoration projects on national forest lands across the West. *Photo by Dorian Fougères*

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Table of Contents

Introduction	2
Forest Service Administrative Review Process	2
Judicial Review.....	5
Intervention.....	6
Amicus Curiae	8
Injunctions	10
Settlements.....	10
Considerations When Seeking Legal Advice	10
Conclusion.....	12
Appendix A: Brief of Amici Curiae Nathan J. Poage, Rocky Mountain Elk Foundation, and Jeff Gerwing in Support of Defendant-Intervenor-Appellee Interfor U.S., Inc.	13

Introduction

With the enactment of the Healthy Forests Restoration Act, Forest Landscape Restoration Act, and similar laws and policies, *collaboration* — an open and inclusive process through which two or more individuals or organizations work together to address a problem/issue that concerns them all and that no one of them is likely to be able to resolve alone¹ — has gained increasing popularity as a way to resolve natural resource management challenges. As collaboration has become more common, collaborative groups such as the Blue Mountains Forest Partners, Four Forests Restoration Initiative, Southwest Crown of the Continent, and Selway-Middle Fork Clearwater Collaborative have become increasingly engaged in forest restoration project development on national forests across the West. With this increased engagement in the project development process, collaborative groups are beginning to see the fruits of their work from start to finish: landscape prioritization, project area identification, field trips, prescription development, proposals for action, project implementation, and monitoring of results are all now part of the work of collaborative groups.

Still, active forest management and collaboration remains controversial with some segments of the population. As part of the democratic process associated with the management of public lands owned by all Americans, all citizens have the fundamental right to disagree with federal land managers and their collaborative partners about whether a particular project should be implemented. Consequently, Congress created administrative and judicial review processes to allow dissatisfied stakeholders an opportunity to be heard, and to advocate for a different course of action than that proposed by federal land managers.

The purpose of this memo is to provide collaborative organizations or groups with information about the Forest Service's administrative review process, as well as the judicial review process, and opportunities for engagement at both levels. ***This memo is not legal advice, and no attorney/client relationship is created or implied by the information contained herein.*** Instead, this memo is a resource for collaborative groups to educate themselves on the laws and procedures surrounding administrative and judicial reviews of Forest Service projects.

Forest Service Administrative Review Process

First, a brief primer on a citizen's right to petition her government. [The First Amendment to the United States Constitution](#) prohibits Congress from abridging “the right of the people ... to petition the Government for a redress of grievances.” To provide an avenue for the public to petition its government, Congress has enacted several laws that provide statutory authority for administrative and judicial review of decisions made by federal agencies such as the Forest Service. Finally, the Forest Service has enacted regulations in the Code of Federal Regulations (C.F.R.) that guide how the public may seek review of a decision made by that agency.

In general, seeking administrative review of (or, “challenging” or “contesting”) a federal agency decision is required in order to exhaust administrative remedies and establish standing, which is the capacity of an individual or organization to seek judicial review of a final agency action.² There are limited exceptions to this general rule, discussed in the section “Judicial Review.”

After decades of using a post-decisional administrative appeal process, the Forest Service now utilizes a pre-

1. See generally, RED LODGE CLEARINGHOUSE, <http://rlch.org/content/collaboration-handbook> (last visited Dec. 2, 2014).

2. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

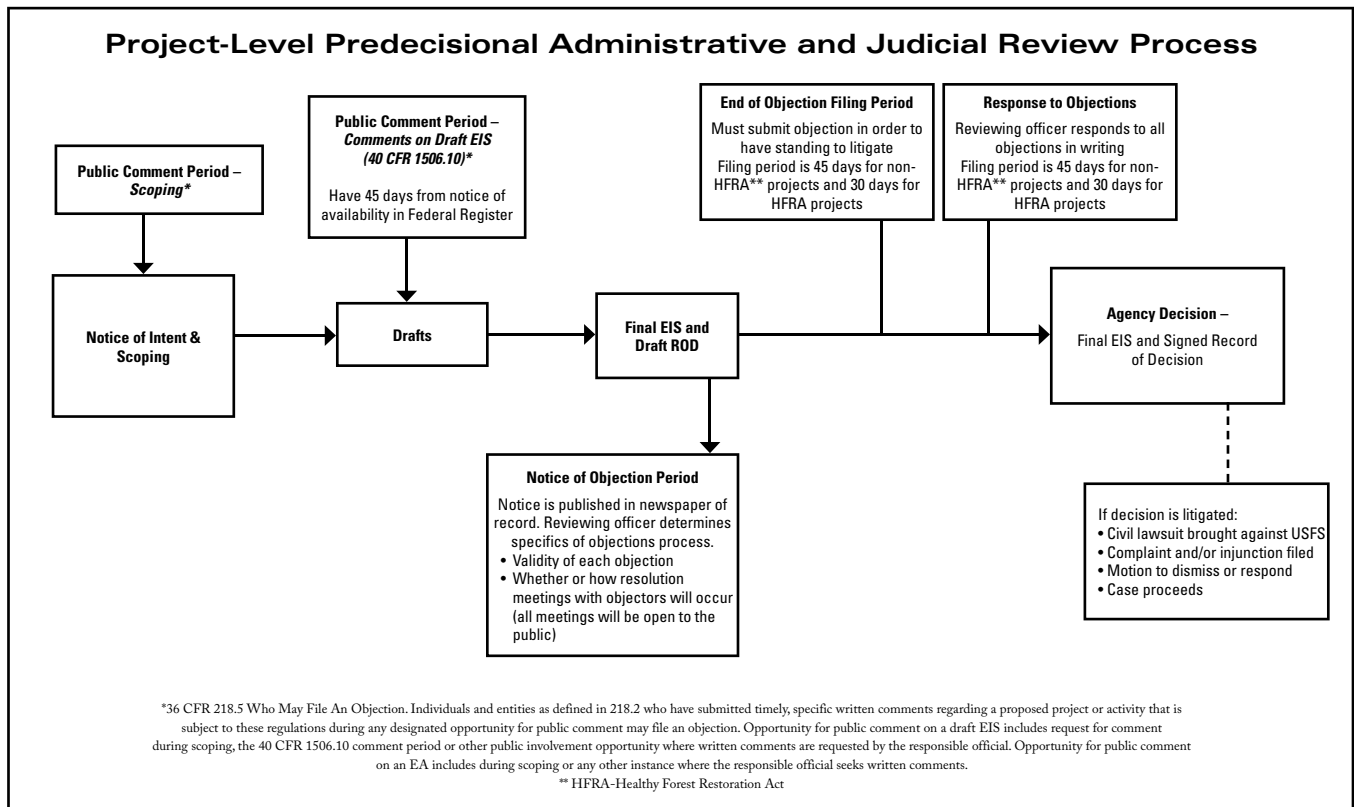


Figure 1. Predecisional administrative and judicial review process for project-level agency decisions.

decisional objection process to conduct administrative review of project-level agency decisions (Figure 1).³ Those procedures, found at [36 C.F.R. Part 218](#), outline what steps an interested party must take in order to seek administrative review of a project-level decision. The administrative review process occurs after the close of the environmental review process, and is governed by a separate law, the [National Forest Management Act](#). Notably, the administrative review occurs before the Forest Service makes a final decision to implement a project, and takes the form of an objection to the proposed decision. In order to have standing to object to a project, an individual must have commented on the project during the environmental review (also known as the National Environmental Policy Act (NEPA) process),⁴ and the objection must be based on issues previously raised before the agency during the NEPA process.

As opposed to the Forest Service’s post-decisional administrative appeal procedures (which are no longer in effect), these relatively new pre-decisional objection procedures do not specifically provide an avenue for interested parties to participate in the administrative review process. Interested parties are typically those parties who do not involve themselves in the notice and comment process provided by NEPA and therefore do not have standing to participate in the administrative review process, but may have some interest in the project such as being an adjacent private landowner, permittee, or, for the purposes of this memo, a collaborative group.

3 Under the 2012 National Forest Management Act Planning Rule, the Forest Service also utilizes a predecisional objection process for decisions implementing new, revised, or amended forest plans. 36 C.F.R. §§ 219.50 – 219.62.

4 [36 C.F.R. § 218.8\(c\)](#); 5 U.S.C. § 704; *see also*, *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 900 (9th Cir. 2002) (requiring issue exhaustion). If new information comes to light between the comment period and objection period that gives rise to another issue (which could not have been raised earlier), then it is likely that an objector can raise this issue as well. *See generally*, 40 C.F.R. §1502.9(c)(1)(ii) (“significant new information”).

Of course, if a collaborative group does formally participate in the environmental analysis and review process (a.k.a. “the NEPA process”) by submitting comments on a collaboratively-developed project, it would have standing to participate in the objection resolution process as an Objector, provided it actually objects to the project.⁵ [36 C.F.R. § 218.5](#). Collaborative groups that provide formal comments on a project do not need to have any “official” status under local, state, or federal law: they do not need to be a tax-exempt (Section 501(c)(3) in the United States tax code) organization, chartered under state law, governance agreements, or any other imprimatur of formality. Just as with any other community group that decides to gather together to work towards some cause, a collaborative group needs only to decide to work together and to self-identify as a particular collaborative. [36 C.F.R. § 218.2](#) (“Objector”).



The Four Forest Restoration Initiative (4FRI) in Arizona consists of more than 30 stakeholders and includes forest supervisors and staff of the Coconino, Kaibab, Tonto, and Apache-Sitgreaves National Forests. Photo courtesy of the ERI

[36 C.F.R. § 218.11](#) outlines the authority of the Forest Service to engage parties who have not participated in the environmental review and comment process, but who wish to be involved in the agency’s decision-making process:

36 C.F.R. § 218.11 Resolution of Objections

- a) Meetings. Prior to the issuance of the reviewing officer’s written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. ***Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.***

36 C.F.R. § 218.11(a) (emphasis added). This regulation clearly states that while objection resolution meetings do not require formal public notice, they are open to the public. More importantly, the reviewing officer — the Forest Service official one level above the line officer who issued the proposed decision⁶ — is vested with complete discretion to determine whether anyone other than an objector may participate in the objection resolution meeting. Additionally, the regulations do not define “participate,” so what involvement in an objection resolution meeting as a non-objector looks like follows no standard format: the reviewing officer can decide whether non-objectors may speak, attend in person (versus telephonically or by video conference), or otherwise impose restrictions on involvement. Moreover, the reviewing officer may change these conditions of participation depending on the project or even the identity of the non-objector, so even if a non-objecting party is permitted to speak in one objection resolution meeting, there is no guarantee that the same party will be similarly allowed to even attend by phone another resolution meeting on a different project.

5. An objection must include the Objector’s name, address, telephone number, name of the proposed project, specific issues objected to, and citations to previous comments where the issue was raised, among several other items. [36 C.F.R. § 218.8](#).

6. 36 C.F.R. § 218.3(a).

Given that the reviewing officer is vested with complete discretion to determine the format, content, and participants in an objection resolution meeting, it is possible that the reviewing officer could permit interested stakeholders such as collaborative groups to attend and be actively involved in the resolution meeting. However, there is no requirement that the reviewing officer do so.

It is also important to note that even if a reviewing officer permits a collaborative group to participate in an objection resolution meeting, this participation does not confer standing on the group to later involve itself in legal proceedings should the project be challenged in court.

As collaboratively-developed projects have become more common, some collaborative groups have begun to seek permission from the Forest Service to participate in objection resolution meetings. Groups that have pursued this option have simply sent a letter to the reviewing and/or responsible official seeking participation in the resolution meeting; these requests have been met with varying degrees of success. Regardless, participation (however that word is interpreted and implemented) in objection resolution meetings is one way that collaborative groups can continue to influence the development and implementation of collaborative restoration projects.

Of course, if a collaborative group does formally participate in the environmental analysis and review process (a.k.a. “the NEPA process”) by submitting comments on a collaboratively-developed project, it would have standing to participate in the objection resolution process as an Objector, provided it actually objects to the project.⁷ [36 C.F.R. § 218.5](#). Collaborative groups that provide formal comments on a project do not need to have any “official” status under local, state, or federal law: they do not need to be a tax-exempt (Section 501(c)(3) in the United States tax code) organization, chartered under state law, governance agreements, or any other imprimatur of formality. Just as with any other community group that decides to gather together to work towards some cause, a collaborative group needs only to decide to work together and to self-identify as a particular collaborative. [36 C.F.R. § 218.2](#) (“Objector”).

Obviously, another way for collaborative groups to participate in the objection resolution process is to file an objection to the project. Providing formal comments during the NEPA comment process, followed by an objection, would provide a collaborative group with standing to participate in the objection resolution process, and to litigate the project in its own name. However, given that the fundamental nature of collaborative groups is to overcome disagreement through diverse stakeholder engagement, objecting to a project that was developed by such an organization is somewhat antithetical to the spirit of collaboration.

Judicial Review

Once the Forest Service makes a final decision to implement a project, the decision is ready for judicial review. [36 C.F.R. § 218.14](#). A party challenging the decision must have standing, which in this case means that the party has participated in the comment and administrative review process. *Id.* In the typical case in which a collaborative group has not provided formal comments through the NEPA process, and also has not objected to the project, the collaborative group would not have standing (nor the desire) to challenge the decision. However, if another party does seek judicial review of the Forest Service’s decision to implement a collaborative project, collaborative groups have two options to engage in the judicial review process: *intervention* or appearance as *amicus curiae*.

7. An objection must include the Objector’s name, address, telephone number, name of the proposed project, specific issues objected to, and citations to previous comments where the issue was raised, among several other items. [36 C.F.R. § 218.8](#).

Intervention

In litigation, there are typically two parties: the ***Plaintiff*** and the ***Defendant***. A Plaintiff is the party who has standing to challenge an action in court, and a Defendant is the party who supports that action. In this case, the Plaintiff can be a private individual or organization, and the Defendant is the Forest Service. The Plaintiff and Defendant are full parties to the litigation and can file motions and briefs and participate in oral argument.

The first, and most common, way for a party to engage in litigation who is not either a Plaintiff or Defendant is as an ***Intervenor***, a party who has a demonstrable interest in the subject matter of the litigation, but does not necessarily have standing to bring or defend a lawsuit. The Federal Rules of Civil Procedure, the “rules” that govern litigation in federal court, allow a party to intervene in litigation as an Intervenor under two circumstances: either “as of right,” or “permissively.”

Intervention as of right is granted by the court under the following circumstances:

Upon timely application anyone shall be permitted to intervene in an action...when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

FED. R. CIV. P. 24(a). The court will evaluate a motion to intervene as of right using a four-part test: 1) the application to intervene must be timely; 2) the applicant must demonstrate a legally protected interest in the action; 3) the action must threaten to impair that interest; and 4) no party to the action can be an adequate representative of the applicant’s interests.⁸ A party seeking to intervene as of right must be able to demonstrate all four elements to the court’s satisfaction, which is a highly fact-specific inquiry. Essentially, a party must demonstrate that they have “the right” to be a party to the litigation.

If a party cannot (or seeks not to) demonstrate that they meet the test for intervention as of right, a party may seek to gain participation in the litigation by seeking permissive intervention. The Federal Rules of Civil Procedure state that ***permissive intervention*** is appropriate when a party can demonstrate that its interest “shares a question of law or fact in common with the underlying action and if the intervention will not unduly delay or prejudice the rights of the original parties.” FED. R. CIV. P. 24(b).⁹ Permissive intervention is a much more lenient standard, and relies on equitable concepts: the court may grant permissive intervention when the principle of fairness indicates that a party *should* be part of the litigation, even if they do not have the *right* to participate: this is a decision that the judge will make based on her discretion, and there is no “test” to determine whether permissive intervention will be granted by the court. So, this inquiry, too, is highly fact-specific.

It is likely that a collaborative group seeking to intervene in a judicial action would be admitted as a permissive Intervenor. Regardless of the type of intervention, once the court grants a motion to intervene, the Intervenor participates as a full party in the litigation: an Intervenor may file motions and briefs and participate in oral argument. To this extent, an Intervenor has the same “rights” as a Plaintiff or Defendant, but the court does have discretion to structure the involvement of Intervenor in the litigation, including setting page limits for briefs and time limits on oral argument.

8. *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998).

9. *Acree v. Republic of Iraq*, 370 F.3d 41, 49 (D.C. Cir. 2004).

Given that collaborative groups generally support the restoration project at issue in litigation, such parties would be intervening on behalf of the Forest Service, making the collaborative group a Defendant-Intervenor. As such, the collaborative group would essentially step into the shoes of the Forest Service, and offer rebuttal arguments as to why the project complies with the law and should be implemented. In particular, the collaborative group would offer arguments that specifically implicate the interests of the collaborative group, for example, about the important benefits to wildlife, fire risk reduction, community well-being, and social agreement conferred by the project. These interests are unique to the collaborative group: while also important to the Forest Service, they affect members of the collaborative — and the collaborative process more generally — differently than they affect a federal agency.



Blue Mountains Forest Partners is a diverse group of stakeholders in eastern Oregon who collaborate to improve the resilience and well-being of forests and communities in the Blue Mountains.

Photo by Vernita Ediger

Often, although not always, Intervenor will coordinate with the party on whose behalf they have intervened: in this case, the Forest Service. This coordination may take the form of responding to particular arguments or claims that each party is better suited to addressing, providing declarations in support of an issue, or sharing oral argument time. In other situations, there may be little or no coordination. This is an issue typically addressed by legal counsel shortly after the court grants intervention.

Cost

When a Plaintiff initiates a legal action in federal court, they are required to pay a “filing fee,” which is currently \$400. Intervenor is not required to pay a filing fee.

Instead, the primary cost associated with intervention is paying for an attorney. Most private attorneys charge their clients based on an hourly rate that reflects the attorney’s experience and expertise, but other private attorneys will charge a flat rate for their representation.¹⁰ These rates vary drastically across jurisdictions (urban/metro/rural, district court vs. appellate, etc.).

On the other hand, *pro bono* attorneys will undertake representation of a party at a much reduced or even free rate. When representing Plaintiffs, many attorneys will undertake *pro bono* representation with the hopes of prevailing in the litigation and obtaining compensation for their work based on numerous federal fee-shifting statutes¹¹ such as the Equal Access to Justice Act, Civil Rights Act of 1964, Fair Labor Standards Act, Age Discrimination in Employment Act of 1967, Equal Credit Opportunity Act, or Voting Rights Act of 1965, among many others. If these *pro bono* attorneys do not win their case, they will not be paid for their work under this approach.

10. For example, the Oregon State Bar publishes economic information about Oregon attorneys: <https://www.osbar.org/docs/resources/Econsurveys/12EconomicSurvey.pdf>.

11. In the United States, we have what is known as “the American rule,” which states that each party in litigation bears their own costs of bringing or defending against suit. Most other countries follow the English Rule, under which the losing party pays the costs of litigation, including the attorneys’ fees of the winning party. American “fee shifting” statutes impose the English Rule on federal agencies, such that if a Plaintiff prevails in litigation against a federal agency and demonstrates several prerequisites, the Plaintiff is entitled to collect the costs of litigation from the federal government. The concept behind fee shifting statutes is to encourage “private attorneys general” to defend important public or unpopular interests that otherwise would not be vindicated by private interests.

When representing Intervenors, however, attorneys are generally not eligible for attorneys' fees under these and other fee-shifting statutes. Therefore, as an Intervenor, a collaborative group will likely need to compensate their attorney out of their own pocket, if the attorney is not willing to take the case for free or reduced rates. Parties may also seek to represent themselves in the litigation *propria persona* or *pro se*, which means that they do not have legal counsel who draft motions, file briefs, and appear in court but rather do all of these things themselves. Court procedures are more lenient for *pro se* parties, but given that collaborative groups are groups of people by definition, and given the complexity of federal law and practice, it is unlikely that a collaborative group would represent itself *pro se* in litigation.

Other costs associated with intervention include costs of copying and printing documents, postage, legal database access for research, travel, telephone, and other associated incidental expenses. Typically these costs are not significant and usually cost less than \$1,000. If an Intervenor chooses to hire an expert, expert fees can range from free to quite expensive (hundreds to multiple thousands of dollars), depending on the expert.

Time Commitment

The time commitment on behalf of Intervenors is largely what the party makes it. Some Intervenors want to be highly engaged in the litigation: reviewing briefs, drafting declarations, discussing strategy with their attorneys, attending oral argument, and engaging in other aspects of the litigation. Other Intervenors do not want to be actively engaged in the litigation and leave the vast majority of the work to their attorneys. Given the cooperative nature of collaborative groups,¹² these parties may be particularly engaged in some aspects of the litigation, for example, crafting arguments about the nature of the collaborative process used to develop the project at issue in the litigation. Because collaborative conservation is something with which most attorneys will not be familiar, the active participation of the collaborative group may be very important to accurately advocating for the group's position.

Amicus Curiae

In what is perhaps the [most mispronounced Latin phrase](#) used in litigation, *amicus curiae* (pronounced *uh-mahy-kahy kyoo r-ee-ee*) — or “friend of the court” — were traditionally nonparties to litigation whose chief function was to prevent an uninformed legal or factual error from prejudicing the litigation. Today, however, *amicus* (plural: *amici*) parties are nonparties who have a strong interest in the outcome of the litigation that is not represented by parties already before the court. Collaborative groups fit nicely within this concept.

Amicus appear most often in the federal Courts of Appeals and the Supreme Court, but do sometimes — though much more rarely — appear in federal District Courts. The [Federal Rules of Civil Procedure](#) do not have any rules relating to *amicus* participation in federal district court, but the [Federal Rules of Appellate Procedure](#) (and the [Supreme Court's rules of practice](#)) do have several rules regulating the participation of *amicus*, including the timing and format of *amicus* briefs. An attorney can help make sure the appropriate procedures are followed in the courts of higher review.

In general, parties seeking *amicus* status must seek the written permission of the existing parties to the litigation to participate. If this is not granted by the existing parties, the *amicus* must seek permission from the court by motion, but usually leave to appear as an *amicus* is freely granted. Typically, *amicus* file one brief outlining their interest in the litigation, and may file a responsive brief if the existing parties to the litigation address any of the *amicus*' arguments in their briefs. Typically *amicus* do not file declarations as do full parties to the litigation, but in some circumstances a declaration from an *amicus* may be appropriate. Courts have the discretion to determine whether *amici* may participate in oral argument.

12. In litigation with several parties (and a collaborative group is essentially a grouping of multiple parties), it is prudent for the multiple interests to designate a single representative that will be the contact person for the attorney. This allows the attorney to engage directly with one person who has the authority to speak for the group.

Given that an additional party to the litigation means more paperwork, the courts have been clear that participation as *amicus* should be a relatively rare occurrence. *Amicus* briefs should be short and to the point. Duplication of existing arguments is much disfavored, as is *amicus* participation in “ordinary” cases. On the other hand, if important policy considerations are at stake, then *amici* can provide important context for the court to consider as it evaluates the merits of the case. Indeed, the following reasons may be provided in seeking *amicus* status: to examine policy issues; to supplement a party’s brief; to endorse a particular position; to provide a historical perspective; to provide technical assistance; to apply political pressure; to provide socioeconomic information; or to explain the real-world ramifications of the litigation.

In choosing this route to participation in the judicial review process, collaborative groups should consider the following things:

- **Interest.** Why do you want to participate in the litigation? How is your interest different than that espoused by the existing parties? What context can you provide that the Defendants and Plaintiffs cannot? What are the broader policy interests at play in the litigation, about which the court should be aware? Is there “history” associated with the project or the broader context that is outside of the record for the case but nonetheless important to the resolution of the litigation? Does the collaborative group possess scientific knowledge that can be shared with the court? Can the collaborative group provide “technical” advice or information — perhaps about the collaborative process or reasons for place-based collaborative conservation in the first place — that would be useful to the court?



The 4FRI landscape spans 2.4 million acres and is the largest landscape-scale restoration project selected by the CFLR Program. The Final EIS and Draft ROD for the first phase of the project was released in November 2014. Photo courtesy of the U.S. Forest Service

- **Arguments.** Courts have been very clear that *amicus* who only raise claims or issues already represented by the existing parties to the litigation are disfavored. Furthermore, *amicus* may not raise issues that are novel or not advanced by the existing parties. Threading this needle can be difficult, but given that collaborative groups may have a different perspective than either the agency advancing the project, or a party challenging the decision to implement that project, collaborative partners may be able to strike the right balance.

Cost

As with participation as an Intervenor, there is no filing fee to appear as an *amicus*, so the main cost associated with *amicus* participation is the cost of hiring an attorney. Other costs can include travel, copying and printing, and legal research.

Time Commitment

Again similar to participation in litigation as an Intervenor, the time commitment associated with appearance as an *amicus* is largely what the party makes it. Given that *amicus* typically address broad policy issues and real-world implications of the litigation, there may be less legal research associated with this type of involvement, but

developing cogent arguments about how and why a particular case “matters” to *amicus* can be just as time consuming. The particular facts and a group’s appetite for engagement will shape the time commitment associated with appearing as *amicus curiae*.

Injunctions

Often in litigation, a Plaintiff will seek an injunction, which is an equitable remedy provided by a court that either orders someone to do something, or orders them not to do something. Typically, a Plaintiff will seek an injunction — either a “temporary restraining order” lasting no more than 14 days, or a “preliminary injunction” lasting longer than 14 days — to stop the implementation of a land management project. Injunctions are available for collaborative projects, just like any for other federal action under judicial review.

As an equitable remedy, a court has the discretion to grant or deny a request for an injunction. The court will look at four factors when evaluating a request for an injunction: whether a party seeking an injunction 1) is likely to succeed on the merits (i.e., that the Plaintiff can prove a violation of law); 2) is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in their favors; and 4) an injunction is in the public interest. [Winter v. NRDC, 555 U.S. 7, 20](#) (2008). There is substantial case law that interprets each of these four factors, and whether a Plaintiff will be able to meet this test is highly fact-specific.

If a party files a motion for an injunction, and a collaborative group is admitted to participate in the litigation as either an Intervenor or *amicus*, the group will have the opportunity to respond to the motion and be heard by the judge on the motion. As part of responding to the motion for an injunction, the collaborative group can supply its own information about how a delay in the implementation of the project would affect their interests, whether they are ecological, social, or economic in nature.

Only if a motion for an injunction is granted by the court may the implementation of a project be halted: simply filing a motion does not affect project implementation. Moreover, even if a court finds that a violation of law is probable, the court is not required to halt implementation: the judge will balance the interests of allowing a project to go forward against those seeking to halt implementation, and may allow a project to go forward if “the equities” favor it.

Settlements

Should the Plaintiffs and Defendants decide to resolve the litigation without a judge deciding the merits of the challenge, the parties may seek to *settle* the lawsuit on terms favorable to them. Intervenors are sometimes involved in this process, but not always: it is up to the Defendants and Plaintiffs to decide whether to involve Intervenors in the settlement process. Intervenors may object to a settlement agreement between Plaintiffs and Defendants, but it will be up to the judge to determine whether such an objection has merit. Amici are not involved in settlement negotiations.

Considerations When Seeking Legal Advice

Most people hope to never need a lawyer and therefore view the process of seeking out and retaining legal advice to be rather daunting. Plus, all those lawyer jokes —! Nonetheless, obtaining legal representation does not need to be a difficult process, but it is one that you should undertake with the same degree of care that you would seek out in any other kind of professional: in short, it pays to do your homework.¹³

13. The Oregon State Bar is an excellent resource for members of the public seeking to hire an attorney (http://www.osbar.org/public/legalinfo/1175_HiringALawyer.htm), and provides several services to help you find the right attorney (<http://www.osbar.org/public/ris/>). Other State Bars offer similar information.

Many lawyers have specialties, including practicing environmental, natural resources, or land use law. In the event that your collaborative group doesn't have one of these specialists on speed dial, your State Bar Association maintains a list of attorneys who practice various areas of law, as well as attorneys who will undertake representation *pro bono*. Your State Bar will also have tips on contacting and retaining legal counsel.

- [Arizona State Bar](#)
- [California State Bar](#)
- [Idaho State Bar](#)
- [Montana State Bar](#)
- [New Mexico State Bar](#)
- [Oregon State Bar](#)
- [Washington State Bar](#)

In general, some things collaborative groups may want to consider when retaining a lawyer include:

- **Cost.** *Pro bono* and reduced cost attorneys are not the norm, and most lawyers will want to be paid for their representation. As mentioned previously, most private attorneys charge their clients based on hourly rates, and will vary based on experience, expertise, and location (for example, an attorney in John Day, Oregon who does not specialize in environmental litigation and recently graduated from law school will charge a much different rate than a Washington, DC lawyer who has been practicing natural resources law before the Supreme Court for 40 years). You should always ask prospective attorneys about their hourly rates.
- **Expertise.** Experience with federal environmental law is extremely useful in litigation of the type discussed in this memo, but not necessary. Simply because a prospective attorney has little experience with environmental or natural resources law does not mean they will not be able to competently and zealously represent a collaborative group in litigation. Nevertheless, familiarity with the issues common to this type of litigation is a relevant consideration.
- **Scope of representation.** When engaging an attorney, it is critical to know what you are getting for your money and time. Will the attorney represent the collaborative group in just the district court, or on appeal if the Forest Service loses the case? Will the attorney engage in any post-litigation work, such as review of settlement agreements? What happens if the attorney puts in more work than expected: is the collaborative group responsible for paying the attorney for that additional work? Must the collaborative group pay for any time the attorney's clerk spends writing a brief? These are some of the questions you should ask prospective attorneys about what they will be doing for your collaborative group. After these discussions, your attorney will prepare an attorney-client representation agreement that will set out in writing the rights and responsibilities of both the client and the attorney.
- **Personality.** As collaborative groups know, it is all about relationships. Whether you like and can get along with a prospective attorney is an *extremely* important consideration, given that you may be spending substantial time with that person, not to mention paying them for an important service: representing you on an issue in which you are heavily invested. Someone may be an excellent attorney but an impossible person.

Conclusion

The purpose of this memorandum is to inform collaborative partners and organizations that may be interested in engaging in the administrative and judicial review processes that sometimes follow after the collaborative process. Whether and how to engage in these adversarial procedures can feel antithetical to the collaborative process, but engaging in them can be important to adequate representation of the collaborative conservation vision.

Appendix A

Case Nos. 14-35398 & 14-35548

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARK,

Plaintiff-Appellant

v.

LISA NORTHROP, Forest Supervisor Mt. Hood National Forest and U.S. FOREST SERVICE, a

federal agency,

Defendants-Appellees,

and

INTERFOR U.S., INC.,

Defendant-Intervenor-Appellee.

On Appeal from The United States District Court for the
District of Oregon, Case No. 3:13-cv-1267-HZ

**BRIEF OF AMICI CURIAE NATHAN J. POAGE, ROCKY MOUNTAIN ELK
FOUNDATION, and JEFF GERWING IN SUPPORT OF DEFENDANT-
INTERVENOR-APPELLEE INTERFOR U.S., INC.**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, proposed amici curiae state that Rocky Mountain Elk Foundation is a nonprofit corporation that does not issue shares to the public or own subsidiaries that issue shares to the public. Nathan J. Poage and Jeff Gerwing are individuals acting in non-corporate capacity.

DATED this 20th day of November, 2014.

/s/ Caroline Lobdell, OSB #021236
Attorney for Proposed Amici Curiae

TABLE OF CONTENTS

I. INTEREST OF AMICI CURIAE 16

II. INTRODUCTION..... 17

 A. Community-based Collaborative Groups and Stewardship Contracting 17

 B. CSP’s Background, Structure, and Decisionmaking Process 18

 C. CSP’s Role in the Jazz Environmental Assessment and the Jazz
 Thinning Project..... 19

III. SUMMARY OF ARGUMENT 20

IV. ARGUMENT 20

V. CONCLUSION 21

I. INTEREST OF AMICI CURIAE

Proposed amici curiae are members of Clackamas Stewardship Partners (CSP or “the collaborative”), a group of diverse local stakeholders concerned with achieving restoration objectives in the Clackamas River Basin while also benefiting the local economy. CSP has been actively involved in a collaborative role with the Forest Service on the Jazz Thinning Project from the outset, and has offered comments at the various stages of environmental review under the National Environmental Policy Act (NEPA). The undersigned individual members of CSP wish to describe and emphasize the benefits of this collaborative process, and offer support of the final Jazz Thinning Environmental Assessment (EA) and the resulting Jazz Thin Stewardship Project.

Nathan J. Poage, Ph.D is a research forester formerly employed by the U.S. Forest Service’s Forestry Sciences Laboratory who served as CSP’s lead facilitator from 2008 to 2013. Dr. Poage was extensively involved in working with CSP’s members and with the Forest Service to identify and address forest health issues in the Mt. Hood National Forest, including with the Jazz Project. Dr. Poage continues to be involved as a member of CSP and remains interested personally in Mt. Hood National Forest and the Forest Service’s use of stewardship contracting.

Jeff Gerwing, Ph.D, is an Associate Professor of Environmental Sciences and Management at Portland State University. Dr. Gerwing has studied the impacts of logging on forest ecosystems and investigated the ways those impacts can be mitigated through improved management practices. He is a member of CSP and has helped CSP to develop and monitor stewardship contract projects in the Mt. Hood National Forest.

Rocky Mountain Elk Foundation (RMEF) is a national conservation organization whose mission is to “ensure the future of elk, other wildlife, their habitat, and our hunting heritage.” During the past 30 years, RMEF has helped protect and enhance more than 6.4 million acres of wildlife habitat, much of it forestland managed by the Forest Service. Maintaining and enhancing deer and elk habitat benefits a wide variety of big game, upland game birds, song birds, raptors, fur bearers and aquatic species.

As members of CSP, proposed amici curiae share an interest in promoting the use of stewardship contracts as a way to achieve restoration objectives. Plaintiff-appellant Bark, who does not support the Jazz Thinning Project, has been a member of CSP for several years, with the exception of the three and a half year period between April 2009 and October 2012. During that time, largely due to its objections to the Jazz EA, Bark initiated the lawsuit from which they now appeal.

CSP, including Bark, has been engaged in the stewardship contract planning process for Clackamas County area projects since 2004. Their involvement stems from the NEPA environmental review process and collaborative guidelines pertaining to the Forest Service’s use of stewardship contracts. See U.S. FOREST SERVICE, RENEWABLE RESOURCES HANDBOOK, FSH 2409.19. CSP is one of many “collaboratives” that utilize the stewardship contracting process outlined in the Handbook to help the Forest Service identify and evaluate restoration projects. As explained more fully below, stewardship contracts have a unique ability to achieve restoration objectives that may not otherwise be within the Forest Service’s budget. Stewardship contracts also tend to benefit from the broad-based support that collaboratives can realize.

CSP has used this collaborative process to make recommendations specific to the Jazz Thinning Project during the “pre-scoping” period, on scoping documents issued by the Forest Service, and after the EA was released. Of significance, in a 2009 letter, CSP initially recommended that the Collawash watershed, where the Jazz Project is located, be the next area that the Forest Service address with thinning and restoration treatments. That recommendation and CSP’s subsequent collaboration with the Forest Service had the consensus support of all CSP members during the period when Bark excused itself from participation.

In short, CSP has spent much time on and, with the exception of Bark, has supported the Forest Service in its environmental review of Jazz and its implementation of the Jazz Thin.

II. INTRODUCTION

A. Community-based Collaborative Groups and Stewardship Contracting.

A collaborative is a place-based stakeholder group that shares the dual concerns of achieving resource restoration objectives in the national forests and benefiting local, rural economies. Collaboratives vary in makeup, size, level of involvement, and decisionmaking processes. But they typically involve federal, state, and local agencies; tribal and local governments; and other interested groups, including non-governmental organizations, resource advisory committees, and conservation districts. In Oregon, as of 2014, there are at least 23 collaboratives operating—almost two for each one of the state’s 13 national forests. See Lee Van Der Voo, Timber Town, OREGON BUSINESS JOURNAL (May 29, 2014), <https://www.oregonbusiness.com/articles/162-june-2014/13039-timber-town>.

Stewardship contracts are the driving force behind these collaboratives. Initially authorized as limited “goods for services” contracts in FY1992 and FY1993, Congress expanded the stewardship program beginning with the FY1999 Interior Appropriations Act in order to test its potential to address forest health issues. ROSS W. GORTE, CONG. RESEARCH SERV., RS20985, STEWARDSHIP CONTRACTING IN FEDERAL FORESTS 5 (2003); see P.L. 105-277, § 347 (1998). Because of the stewardship contract program’s success in filling this void, Congress re-authorized the authority several times before finally making it permanent via the 2014 Farm Bill. See Agricultural Act of 2014, P.L. 133-79, § 8205 (amending Title VI of the Healthy Forests Restoration Act of 2003).

Specifically, stewardship contracting has been successful because it allows the Forest Service (and Bureau of Land Management) to achieve necessary restoration work—e.g., clearing overcrowded dead and dying trees, actively managing dense undergrowth, and thinning dense stands of small trees. GORTE at 1, 4. Despite disagreement among interest groups over what constitutes a healthy forest, national forests in the west “are widely thought to be in poor health.” Id. at 1 (“Interest groups disagree over what constitutes a healthy forest, what has caused the current problems, and what the solutions should be. Nonetheless, most accept that high biomass accumulations . . . can contribute to catastrophic wildfires, pest problems, and lower biological diversity.”).

Stewardship contracts offer additional flexibility and unique benefits to both the government and the public. Fiscally, the Forest Service can take advantage of two primary benefits: (1) accepting restoration work performed by contractors as compensation for wood removed from the forest, and (2) retaining receipts from certain sorts of restoration projects in order to accomplish further restoration work within the forest. See, e.g., Forest Service Renewable Resources Handbook (FSH) 2409.19 at § 61(f) (“Monies received from the sale of forest products . . . removed under a stewardship contract or agreement may be applied . . . without further appropriation.”). By contrast, receipts from standard timber contracts cannot be retained by individual forests. Rather, receipts are deposited in national U.S. Forest Service funds and to the U.S. Treasury’s General Fund.

Collaboratives derive their agency and efficacy from Forest Service policy regarding the use of stewardship contracts. The Forest Service’s Renewable Resources Handbook directs the Forest Service to “[d]evelop projects collaboratively” with these agencies, governments, groups, and individuals. FSH 2409.19 at § 61(1)(a). “Collaboratively” refers to the institutionalized process that provides for increased stakeholder involvement in forest management projects conceived as stewardship contracts.

In practice, this means that the Forest Service identifies and involves relevant stakeholders from the outset when developing a stewardship project. Id. § 61.12a(1). Then, the collaborative group designs “an open, inclusive, and transparent” decisionmaking process, often involving a “skilled facilitator” to foster constructive dialog among members and with the Forest Service. Id. § 61.12a(2). Once a dialog and level of trust exists among members, the decisionmaking process often becomes streamlined. Typically, collaboratives elect to use a consensus or “modified-consensus” approach so as to present to the Forest Service a unified recommendation—whether it be a proposed new project or a series of common issues that the stakeholders agree must be addressed.

The ability to utilize goods for services contracts and retain receipts incentivizes the Forest Service to actively

engage in this collaborative process to achieve restoration work that needs to be done, but which might otherwise go unfunded via the standard congressional appropriation process.

Other incentives for collaboration exist. For example, the Forest Service is subject to fewer restrictions when it uses stewardship contracts, it may engage in multi-year contracts (up to 10 years), use performance-based remuneration schemes, and award projects to the contractors who offer the best value rather than those with the highest bid, among other benefits. *Id.* §§ 61(2)(a)-(c). These long-term contracts assist local contractors in qualifying for loans and making capital-intensive purchases, which in turn helps sustain local timber economies and also provides value to the Forest Service. Together, these powers allow the Forest Service to do more restoration work and adapt contracts to better suit different sorts of project needs and timelines.

Relying on the collaborative process does not exempt the Forest Service from complying with NEPA or the forest planning process under the National Forest Management Act. Yet there is great value for the parties who choose to participate and, sometimes, compromise to achieve mutually agreeable restoration goals in the forest. Achieving those goals in a non-traditional, collaborative manner that transcends partisan issues often associated with environmental law and forest management in the Northwest is the very purpose that Congress sought to achieve when it began experimenting with stewardship contracts.

Using the support and input of varied members, collaboratives help build trust and understanding between the community, businesses, local government, and the Forest Service. At the same time, the structure of collaboratives is designed to air out issues before a project goes through the environmental review process and, in many cases, has helped resolve conflicts over forest thinning projects that would otherwise have been litigated. Seeing the program's success in creating mutually beneficial, durable solutions to forest management, Congress in 2014 reaffirmed that authority.

B. CSP's Background, Structure, and Decisionmaking Process.

Clackamas Stewardship Partners was initially conceived in 2004 when members of Clackamas Ranger District in Mt. Hood National Forest, the Clackamas River Basin Council, and members of the Clackamas County Economic Development Commission met to discuss the possibilities of the Forest Service's newly granted "stewardship contracting" authority. It was quickly apparent to the wide range of stakeholders that stewardship contracts could both drive restoration and create jobs in Clackamas County. Since then, CSP has been very active with projects similar to the Jazz Thinning Project.

From 2006–2010, CSP has promoted about \$6 million of job-creating restoration projects in the Clackamas River Basin. Clackamas Stewardship Partners, About Us, http://clackamasstewardshippartners.org/wp/?page_id=249 (last visited Nov. 10, 2014). From 2009–2011, CSP recommended funding over \$825,000 of additional restoration projects using income generated by stewardship contracts for the harvest of second-growth stands in the Mt. Hood area. Projects have included improvement and expansion of aquatic habitat, road repair and decommissioning, repair of sites damaged by off-highway vehicles, enhancement of peregrine falcon nest sites, and vegetation treatments to increase production of culturally valuable huckleberries. For these successes, in 2008 CSP was one of five groups awarded the "Two Chiefs' Partnership Award" by the Forest Service and Natural Resources Conservation Service. U.S. FOREST SERVICE, MT. HOOD NATIONAL FOREST: IMPLEMENTING THE STRATEGIC STEWARDSHIP PROGRAM iii (2008), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_036394.pdf.

CSP furthers its goals by identifying areas where forest health is lacking, recommending projects to the Forest Service that fulfill restoration and economic aims, and commenting on proposed projects. CSP's stated vision is to:

Enhance ecosystem health and economic viability of local communities within the Clackamas River Watershed. The Clackamas Stewardship Partners are committed to a collaborative process that employs stewardship contracting and other innovative tools to meet restoration goals.

The group—comprising voting members, non-voting members, and a Coordinator—utilizes a modified consensus approach. Consensus means that all voting members must support or, at minimum, “live with” a decision and not publicly oppose it. If consensus cannot be reached, voting members adopt a majority report, or set of recommendations to the Forest Service in which areas of agreement and disagreement are clearly recorded. Those members who disagree may develop a minority report that is also included in the recommendation. To be considered an active voting member, groups and individuals must agree to abide by CSP’s vision; commit to active, long-term involvement; participate in a committee; and attend general meetings. Non-voting members (such as the Forest Service) and inactive voting members can participate in meetings, but do not participate in decisionmaking and are not bound by CSP decisions.

The Coordinator holds a part-time contract position and plays a lead role in setting meeting agendas; facilitating discussion and recording minutes; developing grant proposals; tracking retained receipts and goods-for-services projects; managing a multi-stakeholder field monitoring and training program; acting as a liaison between members, media, and other groups; and coordinating with CSP committees. During summer, the Coordinator also facilitates several field trips, led by one or more members, to visit potential and monitor past restoration sites.

Committees fulfill various roles, including creation of monitoring protocols and in-depth reviews of project proposals before they are submitted to the full group.

At bottom, the collaborative’s recognized success relies on its commitments to open dialog, common ground, and creative solutions. At the heart of this process are the retained receipts and goods-for-services contracts that the Forest Service can utilize to achieve more restoration work in the Mt. Hood area. The collaborative’s role is to aid in vetting these projects which might otherwise go unfunded.

C. CSP’s Role in the Jazz Thinning Environmental Assessment and the Jazz Stewardship Project.

As a multi-stakeholder “collaborative,” CSP’s goal is to foster use of stewardship contracts to benefit local forests and rural economies. To that end, in November 2009 the collaborative recommended to the Mt. Hood National Forest’s Clackamas River Ranger District that the Collawash watershed be the focus of the next round of restoration thinning activities in the area. Since the Forest Service began work on the EA and review process in 2010, CSP has also been active in offering comments regarding a number of areas of concern, including: unstable slopes, aquatic resources, roads, late-seral habitat, and early-seral habitat.

The Forest Service has long been aware of these issues and has continued to address concerns identified through the public comment process. For instance, when several CSP members expressed concerns about unstable slopes, a Forest Service geologist led a CSP fieldtrip to Collawash watershed and discussed potential impacts of restoration thinning in the area. As a result, CSP’s 2009 letter identifying the Collawash area asked the Forest Service to, among other things, avoid areas susceptible to landslides. In brief, CSP’s recommendations were:

If the CRRD accepts CSP’s recommendation to focus on the Collawash Watershed for the next round of restoration thinning activities, we urge the CRRD to 1) utilize the best available science, 2) focus on areas with planned road decommissioning, 3) avoid areas that are susceptible to landslides and debris flows, and 4) work with CSP throughout the process.

CSP’s role continued in this vein as the environmental review progressed, by identifying aspects for careful consideration—such as impacts of stream crossings, silvicultural activities in aquatic reserves, road length and fortification issues—and by recommending ways to mitigate those issues. A major recommendation identified certain types of thinning (e.g., variable density with gaps or opening) that would best achieve desired habitat on particular units within the Jazz project area. As noted above, because Bark was not a member of CSP during this time, these recommendations were consensus-based.

Upon Bark's return to CSP, Bark authored a minority opinion regarding commercial thinning projects resulting from the Jazz EA, which argued that the negative ecological impacts of the Jazz Stewardship Project outweighed the restoration value. Bark appeals the Jazz Project raising a number of procedural issues under NEPA and NFMA: whether the agency considered sufficient alternatives; whether technical decisions by the agency are justified; whether a higher level of environmental review was required; and whether the agency complied with the letter and spirit of the forest planning process.

CSP's role in the collaborative process does not directly decide these issues. However, many of the issues identified by Bark have long been cognizable and were among the issues that stakeholders involved in the collaborative addressed in consensus recommendations and in subsequent discussions with the Forest Service.

III. SUMMARY OF ARGUMENT

Proposed amici curiae urge the Court to consider the extensive collaborative process preceding and the many conservation and forest health benefits associated with the Jazz Stewardship Project. CSP has been active in offering comments throughout the environmental review process on a number of areas of concern, including: unstable slopes, aquatic resources, roads, late-seral habitat, and early-seral habitat.

As a multi-stakeholder "collaborative," it is the CSP's goal to utilize stewardship contracts to further restoration goals through projects that also benefit the local economy. CSP has supported the Project on a majority basis because it believes the Project will help achieve those objectives, while also benefitting long-term forest health through accelerating the conversion of overstocked plantations into early- and late-seral forest. As CSP members who have heretofore supported the Project, proposed amici curiae urge the court to find that the Project is consistent with the mandates of NEPA and the Northwest Forest Plan.

IV. ARGUMENT

Restoration projects provide many forest health benefits. They are used to transform forests into more valuable habitat for certain types of wildlife, to protect clean water sources, and to make forests more resilient to natural disturbances such as wind, flood, fire, insects, and disease. Stewardship contracts—in the form of goods-for-services contracts and retained receipts projects—are particularly suited to achieving those goals. These projects share three main facets: cooperation, funding, and restoration.

First, the collaborative process that stewardship contracts require fosters cooperation among stakeholders and with the Forest Service, in pursuit of balanced outcomes that all or most stakeholders can support. Second, retained receipts and goods-for-services contracts provide a direct source of funding for local projects that may otherwise go unfunded. Third, these stewardship projects accomplish restoration objectives set by the Forest Service through the forest planning and National Environmental Policy Act (NEPA) processes. These three characteristics are designed to ensure the usefulness and stability of stewardship contracts as a way to bridge the gap between uncertain or meagre agency budgets and the backlog of needed restoration work.

Realizing their flexibility and utility, the Forest Service has increasingly relied on stewardship contracts to accomplish system-wide goals since Congress granted the authority in the late 1990s. CASSANDRA MOSELY & EMILY JANE DAVIS, STEWARDSHIP CONTRACTING FOR LANDSCAPE-SCALE PROJECTS 3 (2010). Congress has also recognized the success of stewardship contracts by continually renewing, and now making permanent this authority. See P.L. 133-79, § 8205.

Congress specifically tailored stewardship contracts to provide this flexibility in achieving conservation goals. MOSELY & DAVIS, *supra*, at 3–4. In addition to providing added certainty for federal land managers and contractors through long-term contracts, stewardship contracts have led to lower costs in agency contracting, increased trust among stakeholders, and increased support of local forestry-related jobs. *Id.* Most importantly, restoration goals are the primary driving force behind these contracts.

The Jazz Thinning EA is designed to accomplish a number of restoration goals, including: (1) conversion of overgrown mid-aged stands to create healthier forest with greater average tree diameter sizes; (2) increased vertical and horizontal variability of stand structures in order to increase biodiversity and return the forest to historical conditions; and (3) greater forest productivity. These goals are in tune with both the Mt. Hood Forest Plan and the Northwest Forest Plan.

For example, a primary purpose of the Jazz Stewardship Project is the conversion of overstocked plantations into early- and late-seral diverse habitat that is more valuable for old-growth and old-growth dependent wildlife. ER at 212. The Mt. Hood Land and Resource Management Plan articulates the ecological principles for active management of late-successional forests in kind:

These standards and guidelines encourage the use of silvicultural practices to accelerate the development of overstocked young plantations into stands with late-successional and old-growth forest characteristics, and to reduce the risk to Late-Successional Reserves from severe impacts resulting from large-scale disturbances and unacceptable loss of habitat. Both the contracting process and the end result of reduced biomass have numerous benefits for forest health and fire risk.

SER 68.

The Jazz Thin Project was designed to achieve these exact restoration goals—which are echoed in the Northwest Forest Plan—by prioritizing Late-Successional Reserves as desired late-successional and old-growth species habitat. *See* Northwest Forest Plan, ER at 207. The Project also utilizes skips and gaps to maintain sufficient canopy cover; maintains density in riparian reserves using buffers; uses mostly existing roads; and seeks to improve wildlife habitat, including for elk, by creating three- to five-acre forage areas. ER at 212–13.

CSP and the Forest Service have been grappling with these issues since 2009. While the Jazz Stewardship Project will undoubtedly result in short-term human impacts to the area, each of the environmental variables and the long-term health of the forest have been considered. CSP members have supported the Project because it will help the Mt. Hood National Forest achieve a long-term transition from overstocked young plantations into healthier, more mature forest that is more biologically diverse and can support a larger range of flora and fauna.

V. CONCLUSION

Proposed amici curiae urge the Court to consider the extensive collaborative process involved and the many forest health benefits associated with the Jazz Stewardship Project, and to find that the Project is consistent with long-term forest objectives and affirm the district court's decisions.

DATED this 20th day of November, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that for Case Nos. 14-35548 and 14-35398, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF on November 20, 2014. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 20th day of November, 2014

/s/ Caroline Lobdell, OSB #021236
Attorney for Proposed Amici Curiae

**CERTIFICATION OF COMPLIANCE PURSUANT TO
FED. R. APP. P. 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR CASE NUMBERS 14-3548 AND 14-35398**

I certify that, pursuant to Fed. R. App. P. 29(c)(5)(7), (d), and 9th Cir. R.
32(a)(7), the attached amici curiae brief is proportionately spaced, has a typeface
of 14 points or more, and contains 7,000 words or less.

DATED this 20th day of November, 2014

/s/ Caroline Lobdell, OSB #021236
Attorney for Proposed Amici Curiae

STATEMENT OF RELATED CASES

Counsel for Amici Curiae is not aware of any other cases currently pending before this Court with substantially similar issues to those in case Nos. 14-35548 and 14-35398.

DATED this 20th day of November, 2014

/s/ Caroline Lobdell, OSB #021236
Attorney for Proposed Amici Curiae

ERI Issues in Forest Restoration Series

Ecological restoration is a practice that seeks to heal degraded ecosystems by reestablishing native species, structural characteristics, and ecological processes. The Society for Ecological Restoration International defines ecological restoration as “an intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity and sustainability... Restoration attempts to return an ecosystem to its historic trajectory” (Society for Ecological Restoration International 2004).

Throughout the dry forests of the western United States, most ponderosa pine forests have been degraded during the last 150 years. Many ponderosa pine areas are now dominated by dense thickets of small trees, and lack their once diverse understory of grasses, sedges, and forbs. Forests in this condition are highly susceptible to damaging, stand-replacing fires and increased insect and disease epidemics. Restoration of these forests centers on reintroducing frequent, low-intensity surface fires—often after thinning dense stands—and reestablishing productive understory plant communities.

The Ecological Restoration Institute at Northern Arizona University is a pioneer in researching, implementing, and monitoring ecological restoration of dry, frequent-fire forests in the Intermountain West. By allowing natural processes, such as fire, to resume self-sustaining patterns, we hope to reestablish healthy forests that provide ecosystem services, wildlife habitat, and recreational opportunities.

The ERI Issues in Forest Restoration series provides overviews and policy recommendations derived from research and observations by the ERI and its partner organizations. While the ERI staff recognizes that every forest restoration is site specific, we feel that the information provided in the series may help decision-makers elsewhere.

This publication would not have been possible without funding from the USDA Forest Service. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the United States Government. Mention of trade names or commercial products does not constitute their endorsement by the United States Government or the ERI.

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