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IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF OREGON
PORTLAND DIVISION

**LEAGUE OF WILDERNESS
DEFENDERS/BLUE MOUNTAINS
BIODIVERSITY PROJECT**, an Oregon
nonprofit corporation,

Plaintiff,

vs.

UNITED STATES FOREST SERVICE, an
agency of the United States Department of
Agriculture; and **KENT CONNAUGHTON**,
Regional Forester, Pacific Northwest Region
of the Forest Service,

Defendants.

Case Number: CV-10-1397-SI

**PLAINTIFF'S MOTION FOR
ORDER PARTIALLY VACATING
DEFENDANTS' ILLEGAL RECORD
OF DECISION OR IN THE
ALTERNATIVE FOR A
PERMANENT INJUNCTION
AGAINST CERTAIN HERBICIDE
SPRAYING**

PLAINTIFF'S MOTION FOR ORDER PARTIALLY VACATING DEFENDANTS' ILLEGAL
RECORD OF DECISION

LR 7-1 CERTIFICATION

Pursuant to LR 7-1, the undersigned certifies that the parties have made a good faith effort through telephone conference and e-mail to resolve this dispute and have been unable to do so.

Plaintiff League of Wilderness Defenders/Blue Mountains Biodiversity Project (LOWD), through its counsel, hereby moves this Court for an Order, pursuant to 5 U.S.C. § 706(2) (A), setting aside or vacating in part Defendants' illegal April 2010 Record Of Decision ("ROD"). Specifically LOWD requests the Court vacate that portion of the ROD authorizing the use of herbicides on any national forest lands where herbicide use was not authorized under prior Forest Service decisions. This partial vacatur would still allow the Forest Service to fight invasives by: (1) using both old and new herbicides on the prior acreages where herbicide use was authorized by earlier decisions under certain circumstances, and (2) using any method authorized in the ROD other than herbicide spraying on new acreages specifically identified in the ROD and under its Early Detection Rapid Response Program. LOWD believes such partial vacatur is a narrowly tailored remedy that properly addresses the specific and serious NEPA cumulative impacts violation. Partial vacatur also upholds NEPA's purpose of prohibiting agency action until after the agency has fully and properly considered all of its potential impacts by preventing the Forest Service from using any herbicides in new areas until after it has properly and publicly analyzed the cumulative impacts of such use. However, by requesting only partial vacatur LOWD seeks to maintain the Forest Service's ability to combat invasives in areas where herbicide use was already authorized, consistent with NEPA, and in new areas using non-herbicide methods and thereby creating a lower risk of unknown cumulative impacts.

**PLAINTIFF'S MOTION FOR ORDER PARTIALLY VACATING DEFENDANTS' ILLEGAL
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In the alternative, and only if the Court denies LOWD's request for partial vacatur, LOWD requests an Order permanently enjoining the Forest Service from spraying herbicides in any area where there would be a risk of cumulative impacts and in areas that would cause irreparable harm to LOWD's members' use of the Wallowa Whitman National Forest until the Forest Service has publicly corrected its NEPA violation.

In further support of plaintiff's motion LOWD submits its Memorandum in Support, the Declaration of Dr. Susan Kegley, including attached exhibits, and the previously filed declarations of LOWD members Lee Christie (Doc. 14), Frazier Nichol (Doc. 15), and Jennifer Schemm-Williams (Doc. 16).

DATED this 4th day of September, 2012

Respectfully submitted,

/s/ Tom Buchele

TOM BUCHELE

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, I electronically filed the foregoing document, with the Clerk of the Court for the United States District Court for the District of Oregon, Portland Division and I served a true copy on the following parties through their attorneys via the Court's CM/ECF filing system:

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