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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GREATER YELLOWSTONE COALITION,)
JACKSON HOLE CONSERVATION)
ALLIANCE, CITIZENS FOR TETON)
VALLEY, WYOMING OUTDOOR)
COUNCIL, and SIERRA CLUB,)

Plaintiffs,)

vs.)

JERRY B. REESE, Forest Supervisor,)
Caribou-Targhee National Forest; and)
NORBERT C. KULESZA, Deputy Regional)
Forester, Intermountain Region, U.S. Forest)
Service,)

Defendants.)

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case renews plaintiffs' challenge to a U.S. Forest Service proposal to conduct a land exchange under which it will transfer 120 acres of Caribou-Targhee National Forest land at the base of Grand Targhee Ski and Summer Resort ("Grand Targhee"), a ski resort bordering the Jedediah Smith Wilderness Area and within four miles of Grand Teton National Park, to GT Acquisition I, LLC, a private developer. In Greater Yellowstone Coalition v. Reese, Civ. No. 01-0176-E-BLW, slip op. at 6 (D. Idaho Aug. 8, 2001), this Court overturned a prior Forest Service decision to conduct this same exchange, holding that the Forest Service had failed to undertake an "informed and meaningful consideration" of the "no action" alternative – i.e., the alternative of not proceeding with the exchange – in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq. The Court enjoined the proposed Grand Targhee exchange "until NEPA is complied with by the Forest Service." Reese, slip op. at 8.

2. On November 25, 2002, the Forest Service once again decided to proceed with the same exchange that was enjoined by this Court. However, in reaching that decision, the Forest Service has not undertaken the meaningful consideration of the "no action" alternative that this Court ordered. Instead, the Forest Service has undertaken an exercise in form over substance. Although the Forest Service has purported to reconsider the "no action" alternative pursuant to NEPA, throughout its remand process it has continued to adhere to a contract with GT Acquisition I, LLC ("GTA-1"), that committed the agency to conduct precisely the same exchange that was invalidated by this Court's August 2001 decision. Thus, the Forest Service did not engage in a new decision-making process designed to accurately consider the "no action" alternative. Instead, it engaged in

a meaningless paperwork exercise designed to justify a decision already made. Yet the purpose of NEPA “is not to generate paperwork – even excellent paperwork – but to foster excellent action.” 40 C.F.R. § 1500.1(c). The Forest Service’s continued adherence to its exchange contract with GTA-1 made a mockery of this Court’s remand for meaningful consideration of the “no action” alternative and violated the most fundamental requirements of NEPA.

3. Moreover, the Forest Service has relied on its illegal adherence to this same contract to avoid re-evaluating its appraisal of the Grand Targhee property to be exchanged. That appraisal is outdated pursuant to the Forest Service’s own guidelines, and its failure to accurately reflect current property values has been detailed in an appraisal review by the accounting firm of Price Waterhouse Coopers. Instead of updating the appraisal or addressing the Price Waterhouse Coopers review, the Forest Service has claimed that the appraisal values were fixed by its December 2000 exchange contract with GTA-1. Yet the Forest Service’s continued adherence to that agreement in the wake of this Court’s August 2001 decision was illegal. Section 206 of the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1716(b), requires the Forest Service to ensure that properties involved in a land exchange shall be of equal value. The Forest Service may not hide behind an illegal contract to avoid that requirement. In attempting to do so here, the Forest Service has violated the FLPMA.

JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES

4. Plaintiffs bring this action pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 et seq. This Court has jurisdiction over plaintiffs’ claims

pursuant to 28 U.S.C. § 1331 (federal question), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.

5. Venue lies in the District of Idaho pursuant to 28 U.S.C. § 1391(e) because defendant Reese resides in this District and a substantial part of the events or omissions giving rise to plaintiffs' claims occurred in this District.

6. Plaintiffs have attempted to resolve their claims herein by administratively appealing the Grand Targhee land exchange decision to the Forest Service pursuant to 36 C.F.R. § 215. Defendant Kulesza denied plaintiffs' appeal on February 24, 2003. Therefore, plaintiffs have exhausted all available administrative remedies.

PARTIES

7. Plaintiff Greater Yellowstone Coalition is a regional conservation group whose mission is to assure ecosystem health and natural resources conservation throughout the Greater Yellowstone Ecosystem of Idaho, Montana, and Wyoming, which includes the Caribou-Targhee National Forest. Greater Yellowstone Coalition is a non-profit corporation and has approximately 12,500 individual members.

8. Plaintiff Jackson Hole Conservation Alliance is a non-profit organization based in Jackson, Wyoming with more than 1,800 members from all 50 states and four foreign countries. The Jackson Hole Conservation Alliance is dedicated to responsible land stewardship in Teton County, Wyoming, to ensure that human activities are in harmony with the area's irreplaceable wildlife, scenic and other natural resources.

9. Plaintiff Citizens for Teton Valley, Inc. ("CTV") is a non-profit corporation established in 1989. CTV's mission is to protect, preserve, and enhance the quality of life, the diverse rural and agricultural economy, the scenic beauty, and the

natural environment and social resources within and surrounding Teton Valley in Idaho and Wyoming. CTV is a volunteer-based organization, with no paid staff, and has a membership of approximately 100 people. Members of CTV reside, work, own property, and recreate in the Teton Valley area and have a strong interest in both the protection of public lands and sound land-use planning.

10. Plaintiff Sierra Club is a nationwide conservation organization with more than 740,000 members. The mission of the Sierra Club is: “To explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.”

11. Plaintiff Wyoming Outdoor Council is a conservation organization founded by Wyoming residents in 1967 to coordinate groups and take action for natural resource conservation and environmental protection throughout Wyoming. Wyoming Outdoor Council is a non-profit corporation, and has approximately 1,500 individual members, as well as many organizational members.

12. Defendant Jerry B. Reese is the Supervisor of the Caribou-Targhee National Forest, and is the federal officer responsible for authorizing the Grand Targhee land exchange. Defendant Reese is sued in his official capacity.

13. Defendant Norbert C. Kulesza is the Deputy Regional Forester for the Intermountain Region of the U.S. Forest Service, and was the federal officer responsible for deciding plaintiffs’ administrative appeal of the Forest Service’s decision to conduct the Grand Targhee land exchange. Defendant Kulesza is sued in his official capacity.

14. Members of each of the plaintiff conservation groups use the Caribou-Targhee National Forest, including the areas associated with the Grand Targhee land exchange, for recreational and business pursuits, including hiking, hunting, fishing, leading pack trips, and aesthetic enjoyment. The land exchange will result in increased development of those lands, and increased human impacts on wildlife and plants in the area, as well as increased vehicle traffic, emission of both air and water pollutants, fragmentation of wildlife habitat, and disturbance of pristine environments. The defendants' legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, recreational, scientific, educational, and wildlife preservation interests of members of the plaintiff organizations.

15. Plaintiffs' aesthetic, conservation, recreational, scientific, educational, and wildlife preservation interests have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely and irreparably injured by defendants' failure to comply with federal law. These are actual, concrete injuries, traceable to defendants' conduct, that would be redressed by the relief sought herein. Plaintiffs have no adequate remedy at law.

**THE CARIBOU-TARGHEE NATIONAL FOREST AND
GRAND TARGHEE RESORT**

16. Grand Targhee is located on federal land along the western rise of the Teton Mountains, in the Caribou-Targhee National Forest. The resort directly abuts the Jedediah Smith Wilderness Area. Grand Targhee is located in one of America's most spectacular wildlands, home to grizzly bears, elk, bald eagles, wolverines, bighorn sheep, and an array of other wildlife, and provides a critical corridor for such wildlife to move

between the wild country surrounding Yellowstone National Park to the north, and the wild country surrounding the Gros Ventre and Snake Rivers to the south and east.

17. Grand Targhee falls within Teton County, Wyoming, on the border of Teton County, Idaho. Both counties have experienced tremendous human population growth in recent years. That growth has resulted in ever-increasing residential development, and ever-rising property values, on both sides of the Teton Mountains.

18. The Caribou-Targhee National Forest governs operations at Grand Targhee through a Master Development Plan (“MDP”). The current MDP was established in 1994. Several groups appealed the MDP, resulting in a 1994 Appeal Resolution Agreement between the Forest Service and the appealing parties that imposed specific limitations on the type and amount of development permissible at Grand Targhee.

19. The MDP, as modified by the Appeal Resolution Agreement, specifically limits development of additional accommodations at Grand Targhee. It restricts development of lodging at Grand Targhee to an amount equal to lodging available in the Teton Valley. It also imposes the following constraints: “[L]odging (up to 686 units) will be authorized only when winter utilization of lodging at Targhee exceeds 50% and based on a trend, it is expected that lodging will reach 65% within three years, and subject to determination of financial feasibility and destination skier demand.” Thus, as this Court summarized in its August 2001 decision, under the MDP “there were four constraints on further building at the Resort: (1) the building would not result in total Resort units exceeding those in the Valley; (2) the winter utilization rate exceeds 50%; (3) the rate

will reach 65% in three years; and (4) the financial feasibility and projected skier demand meet Forest Service approval.” Reese, slip op. at 5.

20. The EIS and ROD for the 1994 MDP projected that this level of authorized lodging development and other increases in Grand Targhee’s capacity would meet skier demand for the next 25 to 30 years. Grand Targhee has constructed no new lodging facilities at the base of the resort since 1994.

21. Despite skyrocketing growth on private lands in the Idaho and Wyoming counties that straddle the Teton Mountains, the area around Grand Targhee, under federal management, has remained in relatively pristine condition.

THE GRAND TARGHEE LAND EXCHANGE

22. The U.S. Forest Service first proposed a land exchange involving Grand Targhee in 1989. That exchange would have swapped the Grand Targhee lands for approximately 700 acres of private land on the South Fork of the Snake River. In 1990, a federal court invalidated that proposal, holding that the Forest Service was required to complete an environmental impact statement (“EIS”) under NEPA before it could proceed.

23. In September 1997, defendant Reese announced a land exchange by which lands surrounding Grand Targhee would be exchanged for lands at Squirrel Meadows, a privately owned National Forest inholding approximately 26 miles east of Ashton, Idaho. In August 1999, the Forest Service released its Draft EIS describing the proposed Squirrel Meadows-Grand Targhee land exchange. In December 2000, the Caribou-Targhee National Forest released its Final EIS describing the proposed exchange.

24. The proposed exchange analyzed in the December 2000 Final EIS would transfer 120 acres of Forest Service property surrounding the base of Grand Targhee to GTA-1. In return, the Caribou-Targhee National Forest would receive a portion of the 421-acre inholding at Squirrel Meadows. Under the proposal, the Forest Service would receive three parcels of land at Squirrel Meadows totaling 400 acres; the remaining 21-acre parcel would remain in private hands.

25. On December 12, 2000, defendant Reese issued a Record of Decision (“ROD”) approving the Grand Targhee-Squirrel Meadows land exchange.

26. By transferring the lands at Grand Targhee into private hands, the above-described land exchange would remove the constraints on development contained in the MDP, as modified by the Appeal Resolution Agreement, and in Forest Service policies governing the type of development that may be undertaken on National Forest lands.

27. Unconstrained development at Grand Targhee will have a substantial adverse environmental impact and significantly affect the socio-economic structure of the surrounding communities.

THIS COURT’S AUGUST 2001 RULING

28. On April 20, 2001, a coalition of conservation groups, including the plaintiffs in this case, filed a complaint in this District challenging the Forest Service’s decision to proceed with the exchange and asserting violations of NEPA and FLPMA.

29. In a Memorandum Decision issued August 8, 2001, this Court held that the Forest Service had violated NEPA in approving the Grand Targhee exchange. The Court held that the Forest Service had failed to adequately address the no-action alternative required by NEPA. See Reese, slip op. at 3-8. The Court noted the “crucial

nature of the no-action alternative,” observing that “[a]n informed and meaningful consideration of the no-action alternative ... assures that there is no inadvertent ‘thumb on the scales’” in the agency decision-making process. Id. at 4.

30. In the August 2001 decision, this Court specifically found fault with the Forest Service’s consideration of the no-action alternative in light of the four constraints on development at Grand Targhee set forth in the 1994 MDP. As the Court explained, “the Forest Service must project what development would take place at the Resort if the trade was abandoned and the 120 acres of Resort property remained subject to the constraints on development imposed by the Forest Service on this land. This no-action alternative must then be compared to the other alternatives, all of which assume that the Resort acreage would be privately owned.” Id. Examining the December 2000 Final EIS, the Court found, inter alia, that “[t]he four constraints are never considered as a group,” that the issue of “financial feasibility is not discussed in the EIS,” and that “whatever data there is concerning the four constraints is never collected and discussed in the no-action alternative.” Id., slip op. at 6-7.

31. The Court concluded that “the EIS violated NEPA for failing to discuss the four constraints on development in making its projections of building growth under the no-action alternative,” and “enjoin[ed] the Grand Targhee land exchange until NEPA is complied with by the Forest Service.” Id., slip op. at 8.

THE FOREST SERVICE’S ACTIONS ON REMAND

32. In the wake of this Court’s August 2001 ruling, the Forest Service undertook a supplemental EIS process for the purported purpose of addressing the no-action alternative.

33. The Forest Service issued a Draft Supplemental EIS addressing the proposed Grand Targhee exchange on June 17, 2002, solicited public comments, and issued a Final Supplemental EIS on November 25, 2002. Also on November 25, 2002, defendant Reese signed a supplement to the December 12, 2000 ROD, authorizing precisely the same Grand Targhee-Squirrel Meadows land exchange that this Court had enjoined in August 2001.

34. This outcome for the Forest Service's remand NEPA process was not the result of a new and independent decision-making process by the agency. Rather, it was a pre-ordained conclusion. This is because throughout the remand NEPA process the Forest Service continued to bind itself to a December 12, 2000 agreement with GTA-1 that committed the agency to conduct the same Grand Targhee exchange involved in the prior round of litigation before this Court. In other words, the Forest Service conducted the entire remand environmental analysis process with the very "thumb on the scales" that this Court warned of in its August 2001 decision.

THE GRAND TARGHEE EXCHANGE AGREEMENT

35. The Forest Service entered into a contract with GTA-1 on December 12, 2000, before this Court's decision invalidating the prior Forest Service proposal for a Grand Targhee land exchange. The contract, entitled the "Exchange Agreement," provides in pertinent part as follows:

[T]he non-Federal Party does hereby agree to convey to the United States the real property described in Schedule A, consisting of three pages attached hereto and made a part hereof, and in addition thereto pay to the United States of America the sum of THREE THOUSAND SIX HUNDRED TWENTY-FIVE and no/100 dollars (\$3,625.00) cash equalization payment. In exchange therefore, the United States agrees to convey to the non-Federal Party by Patent issued by the USDA Forest Service, as authorized by the Bureau of Land Management, Department of

the Interior, the real property described in Schedule B, consisting of five pages attached hereto and made a part hereof. The agreed to values for this exchange are as follows:

Property of the non-Federal Party:	Parcel #1	\$2,673,000.00
	Parcel #2	\$569,000.00
	<u>Parcel #3</u>	<u>\$114,375.00</u>
	Total	\$3,356,375.00
Property of the United States:		\$3,360,000.00

Exchange Agreement at 1 (emphasis added). Thus, the Exchange Agreement committed the Forest Service to conduct the very exchange that was invalidated by this Court's August 2001 decision.

36. Despite this Court's August 2001 decision invalidating the prior Grand Targhee exchange decision and requiring further analysis of the no-action alternative, the Forest Service continued to adhere to this Exchange Agreement with GTA-1 throughout its remand NEPA process. Accordingly, regardless of what the Forest Service's reconsideration of the no-action alternative may have demonstrated about the impacts and trade-offs of the Grand Targhee exchange, there could be only one outcome to the agency's administrative process: approval of the Grand Targhee exchange as originally proposed in December 2000. The Forest Service thus interpreted this Court's August 2001 decision not to require that the agency conduct a new and better informed decision-making process, but instead merely to require that the agency create better paperwork in support of its prior decision.

37. Reflecting the Forest Service's treatment of the remand process as an effort to create sufficient documentation to justify a decision already made, rather than an objective re-evaluation of the Grand Targhee exchange proposal, the Forest Service's

supplemental NEPA analysis again failed to grapple with significant factors affecting consideration of the no-action alternative.

38. For example, despite an explicit admonition from this Court, the Forest Service once again failed to meaningfully examine GTA-1's ability to finance the development proposed in the 1994 MDP without privatization of the land at the base of the resort. This Court's August 2001 decision described "financial feasibility" as an "important constraint on growth" and noted that the Forest Service's failure to discuss this specific constraint in the EIS was "troubling." Reese, slip op. at 6. The Court also found that the administrative record contained conflicting evidence regarding the financial feasibility constraint and that the EIS should have substantiated the Forest Service's assertion that "the Resort's new owners are financially strong." Id.

39. Nevertheless, the Forest Service's November 2002 Supplemental EIS is still silent as to GTA-1's ability to finance new lodging construction on Forest Service land if the exchange does not take place. The Supplemental EIS merely lists several improvements to the resort's non-lodging facilities in recent years and makes the unsupported assertion that "[s]ince financing has been available for these improvements which do not generate immediate revenue, it is likely that financing will be available for improvements which would generate revenue, e.g. lodging and commercial space." Nowhere does the Forest Service provide a "hard look" at the financial feasibility issue, much less explain how the agency's current conclusion can be reconciled with past statements by the Forest Service and GTA-1 that the land exchange is necessary to facilitate private development that would be difficult, if not impossible, to finance if the Grand Targhee property remained in federal ownership.

40. The bias inherent in the Forest Service remand process conducted under the shadow of the Exchange Agreement is also apparent in the agency's methodology for considering the timeframe for expected development without a land exchange. The Forest Service's supplemental examination of the no-action alternative assumed a 10-year period for development under the 1994 MDP, even though the MDP had projected that development at the base of the resort would occur over a 25- to 30-year period. In so doing, the Forest Service inflated the likely development under the no-action alternative in a manner that minimized and misrepresented the difference in environmental impacts between the no-action alternative and the alternative of conducting the exchange.

THE STALE APPRAISAL

41. The Forest Service's continued adherence to the Exchange Agreement not only corrupted and predetermined the agency's remand NEPA process, it also provided the agency's justification for failing to reconsider an appraisal of the Grand Targhee exchange property that was stale under the Forest Service's own guidelines.

42. The Forest Service obtained an appraisal of the Grand Targhee property in November 2000. It appraised the value of the Grand Targhee property as of June 25, 2000. That appraisal is now more than two years old, and its valuation date is approaching three years old. Pursuant to the Forest Service's own manual provisions governing appraisals for land exchange proposals, "[a]pproved appraised values are valid for a maximum of 1 year from the date of the value estimate." U.S. Forest Service, Forest Service Manual § 5414 (emphasis added). Thus, under the Forest Service's own standards, the appraisal underlying the Grand Targhee exchange is outdated and may no longer be relied upon by the agency.

43. Moreover, there is ample reason to conclude that the Forest Service's November 2000 appraisal no longer accurately reflects the value of the Grand Targhee property. In response to the Forest Service's Draft Supplemental EIS on the proposed Grand Targhee exchange, the plaintiffs submitted an August 2002 report by the accounting firm of Price Waterhouse Coopers regarding its review of the Grand Targhee appraisal. The Price Waterhouse Coopers report identified substantial flaws in the Forest Service's continued reliance on the November 2000 appraisal. Price Waterhouse Coopers pointed out that while the Forest Service appraiser ascertained that local land values were appreciating at a rate of 10 to 25 percent per year, he selected an appreciation rate near the low end of that range – 12.68 percent per year – to value the Grand Targhee property. When Price Waterhouse Coopers recalculated appreciation of the Grand Targhee property at a more reasonable mid-range rate of 18 per cent per year, it determined that “the time adjusted sale prices per acre presented by [the Forest Service appraiser] are low by between \$400 and \$8,000 per acre.” Price Waterhouse Coopers also observed that:

The fact of local land value appreciation also calls into question the validity of the instant appraisal for the purpose of establishing market value as of August 2002. Even the more conservative appreciation rate utilized by [the Forest Service appraiser], when compounded over the 25 months that have elapsed since the effective date of valuation, would result in a significantly higher value today.

44. Nevertheless, the Forest Service rejected the plaintiffs' request that the agency reconsider its appraisal in view of the passage of more than two years since the appraisal's valuation date and the critique offered by Price Waterhouse Coopers. The Forest Service simply took the position that the property values were fixed in the Exchange Agreement to which it continued to adhere.

FIRST CAUSE OF ACTION

(VIOLATION OF NEPA BY FAILURE TO CONSIDER

NO-ACTION ALTERNATIVE)

45. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 44, supra.

46. Under NEPA's implementing regulations, an EIS must include "the alternative of no action." 40 C.F.R. § 1502.14(d).

47. Defendants have failed to give meaningful consideration to the no-action alternative in the Forest Service's November 2002 Final Supplemental EIS. The Forest Service failed to develop or consider a no-action alternative that was free from bias due to the continuing effect of the agency's adherence to the December 2000 Exchange Agreement. The Forest Service failed to meaningfully consider the issue of financing ski area development in the absence of an exchange. The Forest Service failed to develop or consider a no-action alternative that was not prejudiced by reliance upon an artificially compressed timeframe for potential development at Grand Targhee in the absence of an exchange.

48. Defendants have violated NEPA and its implementing regulations by failing to afford meaningful consideration of the no-action alternative.

SECOND CAUSE OF ACTION

(VIOLATION OF NEPA BY IRREVERSIBLE AND IRRETRIEVABLE

COMMITMENT OF RESOURCES PRIOR TO COMPLETION

OF EIS PROCESS)

49. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 48, supra.

50. NEPA requires completion of an EIS before an agency irreversibly and irretrievably commits resources to any major federal action significantly affecting the quality of the human environment. See 42 U.S.C. § 4332(2)(C)(v); 40 C.F.R. § 1502.5(a); see also Metcalf v. Daley, 214 F.3d 1135, 1143 (9th Cir. 2000).

51. Defendants have irreversibly and irretrievably committed resources to the Grand Targhee land exchange before completion of a lawful EIS for the project by adhering to the Forest Service’s Exchange Agreement with GTA-1 throughout the remand NEPA process.

52. Defendants have violated NEPA and its implementing regulations by irreversibly and irretrievably committing resources to the Grand Targhee exchange prior to completing the remand EIS process.

THIRD CAUSE OF ACTION

(VIOLATION OF NEPA BY FORECLOSING ALTERNATIVES

PRIOR TO COMPLETION OF EIS PROCESS)

53. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 52, supra.

54. NEPA’s implementing regulations provide that “[u]ntil an agency issues a record of decision . . . , no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.” 40 C.F.R. § 1506.1(a).

55. Defendants have taken an action that limited the choice of reasonable alternatives to the Grand Targhee exchange before issuing a lawful record of decision for the exchange by adhering to the Forest Service’s Exchange Agreement with GTA-1 throughout the remand NEPA process.

56. Defendants have violated NEPA and its implementing regulations by taking action that limited the choice of reasonable alternatives prior to issuing a lawful record of decision.

FOURTH CAUSE OF ACTION

(VIOLATION OF FOREST SERVICE REGULATIONS BY ADHERENCE TO EXCHANGE AGREEMENT AFTER THIS COURT’S AUGUST 2001 DECISION)

57. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 56, supra.

58. Forest Service regulations governing land exchanges require a valid agency decision to approve an exchange as a prerequisite to the agency’s entry into any exchange agreement. See 36 C.F.R. § 254.14(a). These regulations also provide that an exchange agreement “is legally binding on all parties, subject to the terms and conditions thereof, provided ... [i]n the event of an appeal ... a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld.” Id. § 254.14(b)(6).

59. Defendants continued to bind themselves to their Exchange Agreement with GTA-1 despite this Court’s August 2001 ruling invalidating the Forest Service’s December 2000 decision to approve the Grand Targhee land exchange. Moreover, defendants continued to bind themselves to their Exchange Agreement with GTA-1 despite the fact that the plaintiffs herein appealed the Forest Service’s December 2000 decision to approve the Grand Targhee exchange and that decision was not upheld when this Court reviewed the Forest Service’s approval decision.

60. Defendants' continued adherence to their Exchange Agreement with GTA-1 after this Court's August 2001 ruling violates 36 C.F.R. § 254.14(a) and 36 C.F.R. § 254.14(b)(6).

FIFTH CAUSE OF ACTION

(VIOLATION OF FLPMA BY FAILING TO ENSURE THAT FEDERAL LAND IS EXCHANGED FOR PRIVATE LAND OF EQUAL VALUE)

61. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 60, supra.

62. The FLPMA provides that the value of properties involved in a land exchange "either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership." 43 U.S.C. § 1716(b).

63. Defendants have failed to ensure that the Grand Targhee property involved in the proposed Grand Targhee land exchange is of equal value to the private land and cash to be acquired by the United States, and instead have relied upon the Forest Service's Exchange Agreement to avoid proper consideration of the value of the Grand Targhee property in light of the passage of more than two years since the most recent property valuation.

64. Defendants' failure to ensure that the federal land involved in the proposed Grand Targhee exchange is of equal value to the private land and cash to be acquired by the United States in the exchange violates the FLPMA.

REQUEST FOR RELIEF

THEREFORE, plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that the Forest Service has violated NEPA by failing to give meaningful consideration to the no-action alternative in the EIS process for the proposed Grand Targhee land exchange; and

2. Enter a declaratory judgment that the Forest Service has violated NEPA by irreversibly and irretrievably committing resources to the proposed Grand Targhee land exchange before completing the EIS process for the exchange; and

3. Enter a declaratory judgment that the Forest Service has violated NEPA by taking an action that limited the choice of reasonable alternatives before issuing a lawful record of decision for the proposed Grand Targhee land exchange; and

4. Enter a declaratory judgment that the Forest Service has violated 36 C.F.R. § 254.14(a) and 36 C.F.R. § 254.14(b)(6) by continuing to adhere to the December 2000 Exchange Agreement with GTA-1 despite this Court's August 2001 ruling.

5. Enter a declaratory judgment that the Forest Service has violated the FLPMA by failing to ensure that the properties exchanged are of equal value; and

6. Set aside the record of decision approving the proposed Grand Targhee land exchange; and

7. Set aside the Forest Service's December 2000 Exchange Agreement with GTA-1; and

8. Enjoin any implementation of the proposed Grand Targhee land exchange until the above-described violations of law have been remedied; and

9. Award plaintiffs their reasonable costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable law; and

10. Grant plaintiffs such further relief as the Court deems just and appropriate.

Respectfully submitted, this 28th day of February, 2003,

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