

Bryan Hurlbutt (ISB # 8501)
Laurence (“Laird”) J. Lucas (ISB # 4733)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
bhurlbutt@advocateswest.org
llucas@advocateswest.org

Roger Flynn (*pro hac vice pending*) (Colo. Bar # 21078)
WESTERN MINING ACTION PROJECT
P.O. Box 349
Lyons, CO 80540
(303) 823-5738
(303) 823-5732 (fax)
wmap@igc.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE, THE)
WILDERNESS SOCIETY, EARTHWORKS,)
FRIENDS OF THE CLEARWATER,)
WILDERNESS WATCH,)
)
Plaintiffs,)
)
vs.)
)
LANNOM, KEITH B., Payette National Forest)
Supervisor, and U.S. FOREST SERVICE,)
)
Defendants.)
_____)

No. 01:15-cv-246

COMPLAINT

NATURE OF THE ACTION

1. Plaintiffs bring this action to enforce this Court's prior ruling in *American Independence Mines & Minerals Co. v. United States Department of Agriculture, et al.*, No. 1:00-cv-00291-BLW (D. Idaho). In that case, Chief District Judge B. Lynn Winmill ordered that the Forest Service may allow only very limited mineral confirmation activities in the Frank Church–River of No Return Wilderness for purposes of trying to prove the validity of two pre-existing mining claims at the Golden Hand mining site. See Mem. Decision, *Am. Independence Mines & Minerals Co. v. United States Dept. of Agric.*, No. 1:00-cv-00291-BLW (D. Idaho Aug. 9, 2002) (hereafter "*AIMMCO v. USDA*").

2. Directly contrary to Judge Winmill's ruling in *AIMMCO v. USDA*, the Forest Service just approved a June 19, 2015 Record of Decision ("ROD") and associated Environmental Impact Statement ("EIS") for the "Golden Hand Project." As approved, the Forest Service would allow extensive drilling, bulldozing, road construction, motor vehicle traffic, and use of heavy motorized mining equipment by the claimant, American Independence and Mineral Mining Company ("*AIMMCO*"), within the Frank Church Wilderness, far beyond the more limited activities that *AIMMCO* previously proposed to prove the validity of its Golden Hand lode mining Claims 1 and 2.

3. In *AIMMCO v. USDA*, Judge Winmill held that the Forest Service must allow *AIMMCO* access to Golden Hand Claims 1 and 2 to undertake limited mineral confirmation activities, because the alleged mining claims pre-dated the date that mineral entry was withdrawn from the Frank Church Wilderness, and because *AIMMCO* claimed it needed further information to prove its mineral interest on each claim. But Judge Winmill emphasized that even the limited activities proposed by *AIMMCO* in 1987 must be scaled back, stating: "*AIMMCO*

must reduce the scope of its surface disturbing proposals, focus only on work that is necessary to support validity, and propose mitigation and protective measures.” *AIMMCO v. USDA*, Mem. Decision at 11.

4. Rather than scaling back and *reducing* the extent of mineral operations in the Wilderness as directed by this Court, AIMMCO greatly *expanded* its proposal. The new Golden Hand Project is more intrusive, significantly expands the amount of surface disturbing activities in the Frank Church Wilderness, and is not limited to confirming mineral deposits located on Claims 1 and 2 that AIMMCO had already exposed by the end of 1983. Nevertheless, Federal Defendants approved the Project without even acknowledging the limitations imposed by Judge Winmill in *AIMMCO v. USDA*.

5. On Golden Hand Claim 1—where AIMMCO previously proposed only to chip away inside an existing mine adit using hand tools—the Forest Service is now allowing AIMMCO to reopen the adit using an excavator; build 7 drill pads for motorized core drilling outside of the adit; use a bulldozer to excavate trenches outside of the adit; and construct roads and stream crossings within the Wilderness. On Claim 2—where AIMMCO previously proposed to do some drilling and trenching on the claim’s southern boundary—the Forest Service is now allowing AIMMCO to construct drill pads and dig trenches on the opposite side of the claim. The Forest Service is further allowing AIMMCO to construct and operate a drill pad and associated facilities in the Wilderness (depicted as drill site #3) on unclaimed lands outside the boundary of Claim 1 or 2.

6. As approved by the Forest Service’s June 2015 ROD, AIMMCO may now embark on an expanded fishing expedition to search for minerals using bulldozers and drill rigs in the Frank Church Wilderness more than 30 years after the deadline for discovering valuable

deposits. Federal mining and public land laws, such as the 1872 Mining Law, 30 U.S.C. §§ 21-42, and the Wilderness Act, 16 U.S.C. § 1131 *et seq.*, however, do not allow mining claimants within withdrawn lands to search for new exposures of mineral deposits. Instead, as held by Judge Winmill, the claimants are limited to work “to confirm and corroborate preexisting exposures of a valuable mineral deposit.” *AIMMCO v. USDA*, Mem. Decision at 8.

7. Notably, in the ROD and EIS, the Forest Service failed to disclose AIMMCO’s original proposal from 1987, never acknowledged Judge Winmill’s specific instructions in *AIMMCO v. USDA* (to scale back and reduce the amount of surface disturbance and to focus on only work necessary to support the alleged validity of mineral exposures which had already been discovered), and failed to assess whether AIMMCO’s expanded proposal complied with these instructions—which it does not.

8. Not only does the Golden Hand Project increase the footprint of surface disturbance in the Frank Church Wilderness over what AIMMCO proposed in 1987, but to carry out these activities over the next three years, AIMMCO would create a flurry of motorized industrial activity that will further degrade the Wilderness far beyond what the company previously proposed and would violate requirements of the Wilderness Act and the Wilderness Management Plan for the Frank Church Wilderness to limit motorized activity to a minimum and only that which is essential.

9. Specifically, the Forest Service has authorized AIMMCO to make 571 motor vehicle incursions 3 miles into the Wilderness and back out each year (1,713 motorized trips over 3 years) to deliver supplies and equipment to Claims 1 and 2 and the off-claim drill site. The majority of these annual vehicle incursions—around 400—would be to transport workers in pickup trucks for shift changes, even though the Forest Service acknowledges workers could

walk or ride pack animals instead. The Forest Service has also authorized AIMMCO to make an undisclosed number of motor vehicle trips entirely within the Wilderness to transport workers and equipment around the Project site.

10. In addition to the pickup truck traffic, the Forest Service has authorized AIMMCO to use a variety of other vehicles and motorized equipment in the Frank Church Wilderness, including a dump truck, a flatbed truck, a bulldozer, a loader or excavator, a drill rig, an air compressor, a jackhammer, and generators. AIMMCO would use this equipment in the Wilderness to reconstruct or construct over four miles of road, to construct 11 drill pads and drill 13 to 18 core holes 500 to 800 feet underground, to excavate several trenches to bedrock, and to pump water from Coin Creek. And while the Forest Service admits this intense motorized activity will degrade the wilderness experience for visitors over the next three years, the agency mostly ignored considering alternative ways AIMMCO could proceed that would cause less wilderness degradation.

11. Similarly, the Forest Service failed to take seriously the harm AIMMCO's activities would cause to streams and ecologically important riparian areas at the Project site. Golden Hand Claims 1 and 2 include Forest Service-designated Riparian Conservation Areas ("RCAs") along Coin Creek and one of its tributaries. Nevertheless, the Forest Service authorized AIMMCO to construct roads, clear drill pads, excavate trenches, and pile waste rock in and near these RCAs.

12. The Forest Service's approval of these significantly expanded, highly motorized mining activities in the Frank Church Wilderness exceeds Judge Winmill's order in *AIMMCO v. USDA* and violates the Wilderness Act, 16 U.S.C. § 1131 *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), the National Forest Management Act, 16 U.S.C.

§ 1600 *et seq.* (“NFMA”), the Forest Service Organic Administration Act of 1897, 16 U.S.C. § 473 *et seq.* (“Organic Act”), the implementing regulations of these laws, the Forest Plan for the Payette National Forest, and the Wilderness Management Plan for the Frank Church–River of No Return Wilderness.

13. Because the Forest Service’s approval of the Golden Hand Project is thus arbitrary, capricious, and contrary to law, Plaintiffs request that this Court set aside and vacate, reverse, and remand the ROD and EIS issued by the Forest Service; enjoin the Forest Service’s approval of the Golden Hand Project; and enter other relief as prayed for below.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; the Wilderness Act, 16 U.S.C. § 1131 *et seq.*; NEPA, 42 U.S.C. § 4321 *et seq.*; NFMA, 16 U.S.C. § 1600 *et seq.*; the Organic Act, 16 U.S.C. § 473 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; and the Equal Access to Justice Act, 28 U.S.C. § 2412.

15. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is therefore proper under 5 U.S.C. §§ 701–706 and 28 U.S.C. §§ 2201–2202.

16. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Defendants are located in this district, and the public lands and resources in question are in this district.

17. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

18. Plaintiff IDAHO CONSERVATION LEAGUE is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. The Idaho Conservation League is Idaho's largest state-based conservation organization. The Idaho Conservation League's mission is to protect Idaho's wild lands, clean water, clean air, healthy families, and quality way of life through citizen action, public outreach, education, advocacy, and litigation, among other efforts.

19. The Idaho Conservation League and its approximately 25,000 supporters are dedicated to protecting Idaho's wildernesses. Since its founding in 1973, the Idaho Conservation League has played a leading role in wilderness designation and protection in Idaho. The Idaho Conservation League has long been active in promoting the designation and proper management of the Frank Church Wilderness.

20. Plaintiff THE WILDERNESS SOCIETY was formed in 1935 by Aldo Leopold, Bob Marshall, and several other of the most highly respected conservationists of their day. The Wilderness Society is a national non-profit conservation organization with more than 200,000 members nationwide, including over 1,300 in Idaho. The Wilderness Society's mission is to protect our nation's shared wildlands. The Wilderness Society engages in a broad range of activities, including economic, scientific, and policy research; promotion of conservation efforts, education and publications; and advocacy. The Wilderness Society has a field office and staff in Boise, Idaho.

21. Passage of the Wilderness Act in 1964, which was originally drafted by former executive director of The Wilderness Society Howard Zahniser, represented the culmination of more than 20 years of effort by The Wilderness Society to achieve federal protection for our

nation's wildernesses. Since that time, The Wilderness Society has led the effort to permanently protect nearly 110 million acres of wilderness in 44 states, including the Frank Church Wilderness which was established by the Central Idaho Wilderness Act of 1980. The Wilderness Society also works to ensure sound management of existing wilderness and other public lands.

22. Plaintiff EARTHWORKS is a nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks fulfills its mission by working with communities and grassroots groups to reform government policies, improve corporate practices, influence investment decisions, and encourage responsible materials sourcing and consumption. Earthworks partners with local affected communities and national and international advocates to respond to and solve the growing threats to the earth's natural resources, clean water, biodiversity, special places, and communities from irresponsible mining, drilling, and digging.

23. Earthworks was created in 2005, when two organizations (the Mineral Policy Center and the Oil & Gas Accountability Project) joined forces. Earthworks has its main office in Washington D.C., and an office in Missoula, Montana.

24. Plaintiff FRIENDS OF THE CLEARWATER is a nonprofit conservation organization based in Moscow, Idaho. Friends of the Clearwater is a grassroots advocacy group that works to protect the public wildlands, wildlife, and waters of north-central Idaho, including in the Frank Church Wilderness. Since 1987, Friends of the Clearwater has strived to protect biodiversity and wildlands in the central Idaho bioregion through a Forest Watch program, litigation, grassroots public involvement, outreach, and education.

25. Plaintiff WILDERNESS WATCH is a nonprofit conservation organization founded in 1989. Wilderness Watch's sole focus is the preservation and stewardship of lands

and rivers included in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. Wilderness Watch has members throughout the country, including many in Idaho. Wilderness Watch has been actively involved in management issues concerning the Frank Church Wilderness for more than 20 years through submitting comment letters, administrative appeals, litigation, and regular meetings and discussions with the Forest Service.

26. Plaintiffs, and their staff and supporters, use and enjoy the Frank Church Wilderness lands and waters at and around the Golden Hand Project site, and other public lands in central Idaho, as well as the forest, fish, wildlife, solitude, and other natural resources found at and around the Project site for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes such as hiking, viewing and appreciating wildlife, and enjoying the peace and quiet of the Wilderness. As they have for many years in the past, and do currently, Plaintiffs and their staff and supporters intend to continue these uses this year and in each year of the foreseeable future. These include the lands at issue here, in the Middle Fork Salmon and Big Creek watersheds and their tributaries, that will be adversely affected by the Project. Plaintiffs, and their staff and supporters, are deeply committed to protecting wilderness, including the Frank Church Wilderness.

27. Plaintiffs' interests have been, are being, and will continue to be irreparably injured and harmed by Defendants' actions as challenged herein. Unless the relief prayed for herein is granted, Plaintiffs and the public will suffer irreparable harm and injury to their legally-protected interests.

28. Plaintiffs' interests are irreparably harmed and injured by the Forest Service's approval of the Golden Hand Project, which will degrade the Frank Church Wilderness and Plaintiffs' experiences both during active operations and afterward. During the Project, vehicles,

drill rigs, bulldozers, and other motorized activity in the Wilderness will create noise, visual, and other disturbances. AIMMCO's surface disturbance activities, including building roads, digging trenches, constructing drill pads, and clearing a staging area in the Wilderness, will transform this recovering natural area to a scarred industrial site, with short- and long-term adverse impacts to the Wilderness.

29. Plaintiffs' staff, members, and supporters are injured when their experience visiting wilderness, including the Wilderness lands adversely affected by the Project, are impaired not only by hearing and seeing motorized activities and people working in wilderness, but also by knowing that wilderness is being occupied and worked in by people and motorized machines, which disrupts the natural ecosystem and the wilderness character that they want to preserve and enjoy. Plaintiffs' interests are further irreparably harmed because the Forest Service's decision aids AIMMCO in its efforts to establish further rights to pursue additional mining activities in the Frank Church Wilderness, which runs directly counter to Plaintiffs' goals of preserving the Frank Church Wilderness and preventing unnecessary motorized activities and mining there.

30. Plaintiffs' interests are irreparably harmed by the Forest Service's action approving the new Golden Hand Project which substantially exceeds the scale of what AIMMCO sought to do when it first proposed the Project in 1987 and substantially exceeds what is allowed by this Court's decision in *AIMMCO v. USDA*. This approval allows for more road construction, more motor vehicle incursions, and more motorized trench digging and drilling within the Frank Church Wilderness, without considering whether these activities were necessary, as the Wilderness Act requires, and without complying with the Forest Plan and Wilderness Management Plan. Plaintiffs' interests are also irreparably harmed by the Forest

Service's failure to thoroughly assess and disclose the Project, its impacts, and alternatives to the public through the NEPA process, including by failing to consider an alternative allowing only what AIMMCO requested to do in 1987 and failing to consider an alternative reducing or eliminating the use of motorized equipment in the Wilderness.

31. Defendant KEITH B. LANNOM is the Forest Supervisor of the Payette National Forest. Defendant Lannom has supervisory and management authority over Forest Service decisionmaking in the Payette National Forest and is responsible for ensuring that the Forest Service's actions within the Payette National Forest comply with all federal laws and regulations. Defendant Lannom signed the Record of Decision on June 19, 2015, approving the Golden Hand Project based on the EIS. Defendant Lannom is sued solely in his official capacity.

32. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States within the U.S. Department of Agriculture. The Forest Service is charged with managing the public lands and resources of the Payette National Forest at issue in this case in accordance and compliance with federal laws and regulations.

LEGAL BACKGROUND

33. Congress has charged the Forest Service with managing wildernesses within our national forest lands to preserve their solitude, wildlife, scenery, and other natural resources for future generations. To that end, the Forest Service's management of our public lands is subject to a number of federal statutes that impose substantive constraints on the agency's activities and obligate the agency to undertake environmental review and public comment processes to ensure that decisions regarding the allocation of valuable resources are fully informed and transparent. The Forest Service has also promulgated binding regulations that impose additional procedural and substantive requirements on its management decisions. Together, these authorities limit the

activities that may occur in our national forests and wildernesses, and require the Forest Service to conduct environmental assessment and public review before lawful activities with significant environmental effects may go forward.

A. The Wilderness Act

34. Congress adopted the Wilderness Act in 1964 “for the permanent good of the whole people,” in order to “secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” Pub. L. 88-577 (1964); 16 U.S.C. § 1131. To that end, the Wilderness Act provides for the establishment of a National Wilderness Preservation System and requires federally protected wilderness to “be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, [and] the preservation of their wilderness character.” 16 U.S.C. § 1131(a).

35. The Wilderness Act charges the Forest Service with “preserving the wilderness character” of designated wilderness within its jurisdiction. *Id.* § 1133(b). The Wilderness Act defines “wilderness” as “an area where the earth and its community of life are untrammelled by man . . . retaining its primeval character and influence . . . which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation,” and possesses other characteristics. 16 U.S.C. § 1131(c).

36. Section 4 of the Wilderness Act addresses the “use of Wilderness Areas,” and expressly provides that “there shall be . . . no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, [and] no other form of mechanical transport” in designated

wilderness, except as may otherwise be specifically provided by law or “as necessary to meet minimum requirements for the administration of the area for the purpose of this [Act].” 16 U.S.C. § 1133(c).

37. While mining is incompatible with wilderness, and while the Wilderness Act ultimately withdrew wilderness lands from entry and appropriation under the mining laws, prospectors were given until midnight on December 31, 1983 to locate mining claims. 16 U.S.C. § 1133(d)(3). Such activities are “subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture,” including “where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed.” *Id.* “In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.” *Id.* § 1134(b).

38. Forest Service regulations command that in wilderness areas: “Operations shall be conducted so as to protect National Forest surface resources in accordance with general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling and production . . . including, where essential, the use of mechanized transport, aircraft or motorized equipment.” 36 C.F.R. § 228.15(b). Furthermore, the Forest Service must resolve any resource conflicts in wilderness to ensure that “wilderness values will be dominant” unless limited by the Wilderness Act, subsequent laws, or regulations. 36 C.F.R. § 293.2(c).

B. The National Forest Management Act

39. NFMA provides the framework for the Forest Service's management of our national forest lands. NFMA requires the Forest Service to create and follow comprehensive Land and Resource Management Plans (commonly called Forest Plans) for each national forest. 16 U.S.C. §§ 1604(a), (e), & (g)(3)(B). NFMA and its implementing regulations require that all management actions approved by the Forest Service must be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(e).

40. The Payette National Forest has adopted a revised Forest Plan which contains binding standards and other guidelines for managing mineral resources. U.S. Forest Serv., Revised Land and Resource Mgmt. Plan for the Payette National Forest (2003). The Forest Plan incorporates the Wilderness Management Plan for the Frank Church–River of No Return Wilderness, which contains additional binding standards and other guidelines. Forest Plan at III-274. Standard XIII.E.1 in the Wilderness Management Plan provides: “Reasonable access is allowed to valid mineral claims established before December 31, 1983. Such access is only for essential and exclusive use for the valid mining operations.” FC-RONR Wilderness Management Plan (May 22, 2009), p. 2-43. The Plan also includes Standard XIII.E.2, which provides: “Reasonable access will be located to have the least lasting impact in wilderness values. To accomplish this, the use of motorized access by ground or air to claims shall be authorized only when proven essential. Road, trail, bridge, or aircraft landing area construction or improvements is limited to those clearly identified as essential to the operation.” *Id.*

41. The Forest Plan includes standards aimed at protecting Riparian Conservation Areas (RCAs) from mineral activities. RCAs include streams and the riparian areas on either side of the streams. Forest Plan Standard MIST08 prohibits locating “new structures, support

facilities, and roads” in RCAs unless “no alternative” exists. Forest Plan at III-49. Forest Plan Standard MIST09 “prohibit[s] solid and sanitary waste facilities in RCAs” unless there is “no alternative to locating mine waste (waste rock, spent ore, tailings) facilities in RCAs.” *Id.* at III-50. When there is no alternative, both MIST08 and MIST09 require strict analysis and mitigation before allowing incursions in RCAs. *Id.* at III-49–III-50.

C. The National Environmental Policy Act

42. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(h), is America’s basic “charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The Council on Environmental Quality (CEQ) promulgates regulations implementing NEPA, which are binding on all federal agencies. *Id.* §§ 1500–1518.4.

43. NEPA requires federal agencies to ensure fully informed decision-making and to provide for public participation in environmental analysis and decision-making. 40 C.F.R. § 1500.1(b)–(c). NEPA serves two principal purposes: (1) it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and (2) it guarantees that the relevant information will be made available to the public so it may play a role in the decisionmaking process. This “hard look” at an action’s impacts fosters both informed decision-making and informed public participation.

44. NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). “Environmental information [must be made] available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). Among other things, an EIS must consider a reasonable range of alternative

actions and assess site specific and cumulative impacts. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14,1502.16, 1508.25.

45. One of NEPA’s fundamental goals is to “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321. The scope of NEPA review is quite broad, including disclosure and consideration of all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect, and cumulative effects on “ecological. . . aesthetic, historic, cultural, economic, social, or health” interests. *Id.* § 1508.8(b). The federal agency must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; . . . [d]evote substantial treatment to each alternative considered in detail including the proposed action; . . . [and i]nclude reasonable alternatives not within the jurisdiction of the lead agency.” *Id.* § 1502.14(a)-(c).

46. NEPA obligates the agency to make available to the public high-quality information including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. 40 C.F.R. § 1500.1(b). The CEQ’s implementing regulations for NEPA provide that information used to inform NEPA analysis “must be of high quality” and that “[a]ccurate scientific analysis . . . [is] essential to implementing NEPA.” *Id.* The agency’s discussion and analysis must be based on professional and scientific integrity. *Id.* § 1502.24.

D. The Forest Service Organic Act

47. The Organic Act of 1897 authorizes the Forest Service to promulgate regulations for the national forests “to regulate their occupancy and use and to preserve the forests thereon from destruction.” 16 U.S.C. § 551.

48. The Forest Service’s mining regulations are found at 36 C.F.R. Part 228. These regulations state that “all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources.” 36 C.F.R. § 228.8. In proposing a mining operation, the applicant must fully describe “measures to be taken to meet the requirements for environmental protection in § 228.8.” 36 C.F.R. § 228.4(c)(3). These regulations also require that “[i]n addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.” 36 C.F.R. § 228.8(e).

49. Thus, in addition to the restrictions placed on the agency’s review and approval of the Project under the Wilderness Act and related regulations, the agency must ensure that all adverse environmental impacts are “minimized” and fisheries and wildlife habitat is maintained and protected.

STATEMENT OF FACTS

A. The Frank Church–River of No Return Wilderness

50. In recognition of the “immense national significance” of “the famous ‘River of No Return’” and the surrounding wildlands, Congress designated the River of No Return Wilderness through the Central Idaho Wilderness Act in 1980. P.L. 96-312, 94 Stat. 948, 96th Cong. (1980). Congress established the Wilderness “in order to provide statutory protection for the lands and waters and the wilderness-dependent wildlife and the resident and anadromous fish which thrive within this undisturbed ecosystem.” *Id.* § 2(a)(2).

51. Later renamed the Frank Church–River of No Return Wilderness, in recognition of the leading role played by Idaho Senator Frank Church in securing its protection, the 2.3

million acre Wilderness is the largest contiguous wilderness in the continental United States. Together with the adjacent Gospel Hump Wilderness and surrounding roadless national forest land, it is the core of a 3.3 million acre roadless area. Adding to this grandeur, the Frank Church Wilderness borders the 1.3 million acre Selway-Bitterroot Wilderness, which lies to the north and is separated from the Frank Church by a single dirt road (the Magruder Corridor).

52. The Frank Church Wilderness contains parts of several mountain ranges, including the Salmon River Mountains and the Bighorn Crags. The ranges are split by steep canyons of the Middle and Main Forks of the Salmon River.

53. The Middle Fork Salmon River itself is one of the world's most highly prized wilderness rivers, offering whitewater rafting, fishing, hiking, and abundant wildlife viewing opportunities. The Middle Fork was designated as one of the original wild and scenic rivers in the 1968 Wild and Scenic Rivers Act. 16 U.S.C. § 1274(a)(7).

54. Big Creek is a major tributary to the Middle Fork Salmon River. Big Creek is renowned for fishing and is a popular hiking and horsepacking destination. The Taylor Ranch, operated as a field research station by the University of Idaho, is located on Big Creek near its confluence with the Middle Fork.

B. The Golden Hand Project Area

55. The Golden Hand Project Area is located in the Big Creek drainage on the Payette National Forest, approximately 19 miles north of Yellow Pine, Idaho. The Project Area includes 1,309 acres of National Forest System lands, including roughly 291 acres within the Frank Church Wilderness. The actual claims encompass approximately 20 acres each and are located near Coin Creek, a tributary of Beaver Creek, which flows into Big Creek, a tributary of the Middle Fork Salmon River.

56. The Golden Hand Site is accessed from Pueblo Summit, which is an undeveloped trailhead portal to the Wilderness. At Pueblo Summit, there is a wilderness boundary sign, trailhead, and gate to block motorized access to the Wilderness. Dirt roads accessible by high-clearance, four-wheel drive vehicles lead from Edwardsburg and Big Creek up to Pueblo Summit (Forest Roads #371 and #373). From Pueblo Summit, Forest Service Trail #13 leads to the claims approximately 3 miles inside the Wilderness.

57. J.M. Hand located the Golden Hand deposit in 1889. Up until 1941, some gold and silver development and production occurred. But since 1941, there has been no mineral production. There have been further exploration and development activities, most of which occurred prior to 1979.

58. After the Idaho Primitive Area was established in 1931, preexisting travel routes (including roads) were all considered trails, and motorized access to Golden Hand required a Class D Road Use Permit. And at the end of 1983, the Frank Church Wilderness was withdrawn from mineral entry, as provided in the Wilderness Act. *See* 16 U.S.C. § 1133(d)(3).

59. According to the Forest Service, AIMMCO located Golden Hand Lode Mining Claims 1–5 in 1979 and located Claims 6–8 in 1983. From 1980 to 1984, the Forest Service authorized AIMMCO to access the Golden Hand Claims using some motorized equipment to conduct assessment, exploration, and development work. Specifically, in 1980, the Forest Service authorized AIMMCO to clear roads for vehicle access to recover gold bearing material using pick, shovel, and a hand operated rocker box. In 1981, the Forest Service authorized AIMMCO to clean out caved tunnel portals and conduct sample drilling using a backhoe-loader, compressor, and tractor. The Forest Service approved similar activities in 1982 and 1983.

According to the Forest Service, the agency “inadvertently approved” AIMMCO to go in again in 1984—after the withdrawal—for drilling and soil sampling.

60. Despite this history of mining activities, much of the area near Golden Hand is pristine, and previously impacted areas are recovering well. In the Golden Hand Project EIS, the Forest Service explains that while the site includes signs of past mineral activity and occupancy, “[n]atural processes are clearly at work to re-establish a more natural system.” The EIS also explains that “[b]ecause the site is difficult to access (four to five hour drive from McCall, the nearest full service community), and an hour to hour and a half hike, the sense of remoteness and the opportunity for solitude is high.”

61. Over the last 30 years, the area has been accessed for the enjoyment of hikers, hunters, and horse riders. The Forest Service estimates that on average between 1982 and 2011, 15 groups entered the Wilderness annually via the Pueblo Summit Trailhead. Two miles below Pueblo Summit, at the Mosquito Ridge Trailhead, 29 groups entered the Wilderness annually. And at the Big Creek/Smith Creek Trailhead, 215 groups entered the Wilderness annually.

62. Pueblo Summit, which is AIMMCO’s proposed access point to the Wilderness, is the starting point for the Chamberlain Basin Loop, a 50-mile backpacking or horsepacking route that passes through the Golden Hand Project Area, including through Claims 1 and 2. The book *Backpacking Idaho* describes this remarkable area as follows:

Close your eyes and try to picture what the American mountain west looked like 200 years ago. You know what I mean: One of those scenes sometimes pictured in western movies showing vast forests, an endless series of lonesome ridges and peaks, pristine lakes, and lots of wildlife. Now open your eyes and head for the Frank Church-River of No Return Wilderness to see how well you did. There is no better place in America to run this experiment, because this is the second largest wilderness area in the contiguous 48 states and it is perhaps the last place where you can still hike for days, weeks, or even months, and never even come close to a road.

The hike into Chamberlain Basin, actually a high, forested plateau, is one of the more enticing trips in this wilderness, because it has a particular abundance of wildlife, several good-sized lakes, excellent views, and reasonable trail access. . . .

Although reasonably good, the scenery on this hike does not compare to the grandeur of most of the other trips in the this book. Instead, the trip's appeal lies in the feeling of being in a true wilderness, a quality that does not show up in pretty pictures.

Douglas Lorain, *Backpacking Idaho* (Wilderness Press 2004), p. 126 (emphasis added). The book describes the start of the loop, from Pueblo Summit to the Golden Hand Site and Coin Creek, as follows:

The view from Pueblo Summit is inspiring. As far as the eye can see to the north and east there are rolling, forested mountains and canyons with no roads or any other signs of man. This is the perfect place to test how well you did on that visualization experiment I suggested earlier.

Stepping out now into true wilderness, you go around the gate and follow an abandoned jeep track that has now deteriorated into a wide, rubbly trail. For the next 2 miles this old track slowly descends through forests of subalpine firs and lodgepole and limber pines to the interesting old buildings and remains of the Golden Hand Mine, which are worth investing some time to explore.

Id. at 127 (emphasis added).

C. AIMMCO's 1987 Work Assessment Request & Judge Winmill's 2002 Order

63. Because mineral operations within withdrawn wilderness may only proceed upon the claimant's establishment of "valid existing rights," the Forest Service commenced a validity contest on February 15, 1987, challenging the validity of the eight Golden Hand claims. In response, AIMMCO submitted its 1987 Assessment Work Request to the Forest Service, seeking to do appraisal and other work on the claims to support its claim of validity.

64. According to AIMMCO's Statement of Undisputed Facts in *AIMMCO v. USDA*: "The stated purpose of the 1987 Assessment Work Request was to confirm and corroborate the mineral bearing xenolith on the 'Glory Hole' (Claims 2, 3, and 4) and to remove caved material from the Ella Portal in Claim 1." *See AIMMCO v. USDA*, Dkt. 48, ¶ 35. On Claim 1, AIMMCO

proposed to use hand labor to clear the entry to the Ella Adit. On Claim 2, AIMMCO proposed mapping, sampling, trenching, and drilling related to the Glory Hole deposit.

65. The Forest Service permitted only the non-surface disturbing proposals, and thus allowed only the mapping and sampling proposals on Claim 2. The Forest Service denied the other proposals as inconsistent with the Wilderness Act. AIMMCO responded by filing the *AIMMCO v. USDA* lawsuit in 1988.¹ In the meantime, the Interior Board of Land Appeals (IBLA) found Claims 1 and 2 to be invalid. On Golden Hand Claim 1, the IBLA ruled that there was no present exposure, because the Ella Adit had collapsed. In *AIMMCO v. USDA*, Judge Winmill reversed the finding for Claim 1, holding that IBLA improperly required a “present” exposure and ignored evidence of a prior mineral exposure. *See AIMMCO v. USDA*, Mem. Decision at 8. On Golden Hand Claim 2, the IBLA assumed there was an exposure, but ruled that AIMMCO failed to satisfy the marketability test necessary to prove claim validity, relying on the lack of samples submitted by AIMMCO. Judge Winmill reversed, holding that this failure to submit samples was due to the Forest Service’s rejection of the 1987 Assessment Work Request. *Id.* at 9.

66. Judge Winmill then reversed the Forest Service’s denial of AIMMCO’s 1987 Assessment Work Request. *Id.* at 9–12. Based on the 1872 Mining Act, Judge Winmill held that, “AIMMCO must be allowed a fair opportunity to prove the validity of its claims. At the same time, the Forest Service is authorized to require AIMMCO to adhere to all rules and regulations governing the Payette National Forest and the Frank Church Wilderness.” *Id.* at 10. The Court observed, however: “It does not appear that either party has attempted to strike this

¹ The lawsuit was first filed as *American Independence Mines and Minerals Company v. Lyng, et al.*, Civ. No. 88-1250 (D. Idaho Jul. 21, 1988). The litigation was stayed while the validity determination proceeded. *See AIMMCO v. USDA*, Mem. Decision at 3. AIMMCO filed a motion to reactivate the lawsuit, and this Court agreed, ordering that the lawsuit be given a new number, Civil No. 00-291-S-BLW. *Id.* at 6.

balance. . . . For its part, AIMMCO insisted on using various earth-moving machines, claiming that because it used these machines before withdrawal, it had the right to use them after withdrawal.” *Id.* at 10–11.

67. Judge Winmill proceeded to explain that the right “balance cannot be struck in this case by a Court-imposed result. It can only be reached by the parties themselves, guided by the directions contained in this decision.” *Id.* at 11. “To reach that balance, both sides must give way. AIMMCO must reduce the scope of its surface disturbing proposals, focus only on work that is necessary to support validity, and propose mitigation and protective measures. The Forest Service must recognize AIMMCO’s right to prepare for the validity hearing, and allow work to that end, while requiring adherence to all applicable rules and regulations.” *Id.* at 11 (emphases added).

68. Finding that “the Forest Service has not applied this balanced perspective,” Judge Winmill concluded that the agency’s denial of AIMMCO’s 1987 Assessment Work Request was arbitrary and capricious, and remanded “to the Forest Service with directions to work out a solution with AIMMCO pursuant to the direction given above.” *Id.* at 11.

D. AIMMCO’s New & Expanded Proposal; Forest Service Initial Pushback and Later Acquiescence.

69. Instead of following Judge Winmill’s instructions to start from the 1987 Assessment Work Request and work with the Forest Service to scale back, reduce, and modify that proposal, AIMMCO submitted a far different and expanded proposal to the Forest Service on September 4, 2007.

70. Documents in the Project Record, which Plaintiffs received from the Forest Service through a Freedom of Information Act request, show that the Forest Service initially

pushed back against AIMMCO's expanded proposal. In an e-mail from District Ranger Joe Harper to Conway Ivy of AIMMCO dated January 27, 2009, District Ranger Harper stated:

We agree that Judge Winmill did not order that a specific work plan be followed. However, the only work plan before the court and before the Forest Service that had been proposed to "confirm and corroborate pre-existing exposures of a valuable mineral deposit" was the 1987 assessment work request submitted in a letter from your counsel, David Lombardi. Mr. Lombardi made it clear that the work proposed in that letter, if permitted prior to the mineral examination, would have satisfied the company's needs for information that would verify the discovery of a valuable mineral deposit. Given that assertion, the only point in my last two letters is that the 1987 request is the logical starting point for discussions. . . .

I too look forward to continuing this process and working together to develop an operating plan that satisfies AIMMCO's needs, is consistent with Judge Winmill's ruling, and minimizes adverse impacts to the protected wilderness area. . . .

71. Despite this initial position, the Forest Service quickly caved in to AIMMCO's demand for expanded mining activities in the Wilderness. Instead of starting with the 1987 proposal, focusing it, and scaling it back pursuant to Judge Winmill's order, the Forest Service worked with AIMMCO for the next two years to develop the new and expanded proposal. AIMMCO submitted a revised proposal to the Forest Service in June and again in November of 2010, which continued to both increase the amount of surface disturbance in the Frank Church Wilderness and allow drilling and trenching outside the boundaries of those activities proposed in 1987.

72. On Claim 1, AIMMCO previously proposed in 1987 only to reopen the Ella Adit for sampling using hand tools. In the new proposal, not only would AIMMCO reopen the Adit for sampling, but it would also construct approximately 7 drill pads and associated support facilities to drill far below the surface. AIMMCO would also excavate pits to collect rock chips from below the surface at various locations on Claim 1 outside of the Ella Adit.

73. On Claim 2, AIMMCO previously sought in 1987 to conduct drilling and trenching targeting the Glory Hole exposure found in or near the southern portion of Claim 2. In the new proposal, AIMMCO would excavate trenches and construct 3 drill pads all in a different location than in the initial proposal (the northern portion of Claim 2).

74. Under the new proposal, AIMMCO would also construct an off-claim drill pad—located in the wilderness, but on neither Claim 1 or 2—which was not even proposed in 1987.

E. Forest Service Approval of AIMMCO’s Expanded Proposal

75. On June 19, 2015, the Forest Service signed the Record of Decision for the Golden Hand Project based on the Environmental Impact Statement, adopting a slightly modified version of AIMMCO’s new and expanded proposal. The approved Golden Hand Project includes some minor modifications from AIMMCO’s proposal. However, the approved Project includes all of the expanded surface disturbing confirmation activities AIMMCO proposed on Claims 1 and 2 as well as the off-claim drilling described above.

Approved Surface Disturbing Confirmation Activities in the Wilderness

76. To conduct these expanded confirmation activities, the Forest Service has authorized AIMMCO to use motorized equipment around the clock during 100-day operating seasons annually. At the Ella Adit, AIMMCO would use a motorized excavator to remove caved/sloughed material and reopen the Adit. AIMMCO would then collect rock chip samples from the Adit to be transported by motor vehicle out of the Wilderness.

77. To obtain underground core samples, AIMMCO would construct 10 drill pads on Claims 1 and 2 and one off-claim drill pad. On the pads, AIMMCO would use a motorized drilling rig 24/7, utilizing two crews on 12 hour shifts, to drill 13 to 18 drill holes approximately 500 to 800 feet in depth to obtain core samples that would be transported by motor vehicle on

reconstructed roads out of the Wilderness daily. Drill pads would be built by expanding the reconstructed roadbeds to be 20 by 20 feet. At each drill pad, AIMMCO would also construct a mud pit with an approximate capacity of 4,000 gallons, or use a portable pit, to hold drilling fluid and cuttings.

78. To excavate trenches on Claims 1 and 2, AIMMCO would use a bulldozer (or other motorized equipment) to excavate down to bedrock. The trench pits would be approximately 6 feet wide by 15 feet long by 10 feet deep and would be located within the reconstructed roadways. AIMMCO would then use a jackhammer to collect rock chip samples from the bottom of the pits. Excavated material would be temporarily stockpiled on the roadways, and rock chip samples would be driven by motor vehicle out of the Wilderness.

Approved Road Building & Motor Vehicle Incursions in the Wilderness

79. To carry out these expanded activities, the Forest Service has authorized AIMMCO to use a bulldozer and other motorized and mechanized equipment to reconstruct and maintain approximately 4 miles of road in the Frank Church Wilderness. AIMMCO would convert Forest Service Trail #13 from a trail to a road for 3 miles (from the Wilderness boundary at Pueblo Summit to Claims 1 and 2) by clearing vegetation and casting rocks. AIMMCO would also reconstruct and maintain around 1 mile of other trails (former roads) in the Wilderness, and would repair a ford on Coin Creek and a ford on a tributary to Coin Creek.

80. The Forest Service has authorized AIMMCO to make up to 571 motor vehicle incursions into and back out of the Wilderness each year. These trips include using pickup trucks and a GMC 6x6 to move equipment, supplies, and workers from the Werdenhoff staging area located outside the Wilderness over Pueblo Summit and through 3 miles of the Wilderness to the Golden Hand claims.

81. Some of AIMMCO's motor vehicle trips would occur during the mobilization and demobilization periods at the beginning and end of each drilling season. Some motor vehicle trips would be for miscellaneous trips to transport drill core samples, consultants, management, and supplies, which the Forest Service estimates would occur, on average, every other day over the drilling season. During a 100-day drilling season, this amounts to 50 motor vehicle trips.

82. The majority of motor vehicle trips would be for transporting workers to and from the site. Twice per day, AIMMCO would drive 2 pickup trucks into and back out of the Wilderness to transport workers for shift changes, instead of having them walk or ride pack animals for 3 miles from Pueblo Summit. Over a 100-day drilling season, this would be 400 motor vehicle trips into and back out of the Wilderness.

Significant Impacts to Wilderness Character

83. The Forest Service admits in the ROD and EIS that noise, light, dust, and surface disturbance from the Golden Hand Project will degrade wilderness character in both the short and long term, harming both Wilderness users as well as nonusers who value the Frank Church Wilderness.

84. For example, the ROD states: "The wilderness user will see physical impacts to the land, motorized and mechanized equipment, and hear noise and could see dust from these machines from July to November for up to 3 years This type and amount of development will adversely affect the Wilderness users' sense of solitude and remoteness and enjoyment of a primitive recreation experience in the Beaver Creek and Hand (Coin) Creek drainages, and the surrounding ridge tops that encompass the project area The actual use and the knowledge of these activities will adversely impact the Wilderness character by compromising the natural integrity and untrammeled conditions of the FC-RONR Wilderness"

85. Similarly, the EIS states: “AIMMCO’s proposal would allow for an extensive, when viewed from a wilderness perspective, amount of physical disturbance to the Wilderness, which would adversely affect wilderness character by allowing for the greatest amount of human influence and control. Authorization and maintenance of temporary roads on abandoned roadbeds in the Wilderness would involve clearing routes of vegetation and debris. The drilling at 11 sites and excavation of trenches would result in greater access needs and a larger amount of disturbed area. Ground disturbing activities would compromise the preservation of natural and untrammelled conditions in the [Frank Church] Wilderness now and for future generations.”

86. The Forest Service admits that because the operating season aligns with the most popular times to visit the area (July – November), there would be “limited” opportunities over the 3-year operating period when the public could visit the area without operations taking place, and that, because there is no limit to the length of each operation day, visitors may experience noise, dust, and lights 24 hours a day.

87. Despite recognizing these substantial impacts to the Wilderness, and without addressing the substantial increase in the scope and extent of operations beyond AIMMCO’s 1987 proposal, the Forest Service erroneously asserts in the ROD that these impacts are “the minimum necessary for the administration of the area considering the outstanding legal rights in the project area and the 2002 Court decision.”

The Forest Service Approved a Slightly Modified Alternative to AIMMCO’s Proposal

88. In the EIS, the Forest Service evaluated three alternatives: the No Action Alternative (Alternative A) and two Action Alternatives (Alternatives B and C). Alternative B is AIMMCO’s expanded proposal. Alternative C is substantially the same as AIMMCO’s proposal, as it authorizes the same expanded surface disturbing mineral confirmation activities as

Alternative B. The number and location of drill pads and trenches on Claims 1 and 2 are the same in Alternatives B and C. The confirmation work within the Ella Adit are the same in Alternatives B and C. And use of the off-site drill pad is the same under Alternatives B and C.

89. The EIS describes the principle differences of Alternative C as compared to B as: (a) fuel storage would occur outside the Wilderness instead of within; (b) an in-Wilderness storage site would not be used; (c) an in-Wilderness bunkhouse would not be used as an office; and (d) the number of daily motor vehicle trips into the Wilderness would be slightly reduced.

90. Despite these differences, the Forest Service admitted in the EIS: “The effects of [Alternative C] are essentially the same as for Alternative B, in terms of effects on wilderness character and the four qualities associated with the character. There is really no pragmatic or substantially identifiable difference.” Thus, even though the Forest Service recognized that AIMMCO’s proposal would degrade wilderness character, neither the EIS nor ROD propose any significant measures to lessen that degradation.

91. The Forest Service adopted Alternative C.

F. Forest Service’s Failure to Address Critical Issues Raised by Plaintiffs & the Public
Significant Public Concern During Project Approval

92. Public concern over the Golden Hand Project has been significant throughout the administrative process. The Forest Service initiated formal planning for the Project on November 21, 2008, when it issued a Notice of Intent to prepare an EIS. On March 16, 2010, the Forest Service mailed a scoping package. In response, the Forest Service received more than 20,500 oral and written scoping comments, including comments from Plaintiffs and their members.

93. The Forest Service released the Draft EIS for the Project in June 2012. Over 17,000 comments were received, including comments from Plaintiffs and their members. In the ROD, the Forest Service describes these comments as follows: “Commenters voiced a variety of concerns including, but not limited to, potential adverse impacts on wildlife and wildlife habitat, proper bonding levels, season of operations, minimum tools needed to accomplish the project, public access, affects to historic properties, approval of off-claim drill pads, and contaminants.”

94. By letter dated January 22, 2015, Supervisor Lannom notified Plaintiffs and others that the Forest Service had released the Final EIS and the Draft ROD for the Project, initiating the administrative objection period. Plaintiffs filed timely objections on March 13, 2015.

95. Throughout these processes, including in their comments and objections, Plaintiffs raised many concerns with the Golden Hand Project. Among others, Plaintiffs pointed out the broader extent and intrusiveness of Alternatives B and C compared to AIMMCO’s 1987 Work Assessment Request, and warned that approval of the Project would violate Judge Winmill’s 2002 order in *AIMMCO v. USDA* as well as relevant laws and regulations for governing the national forests and wildernesses. Plaintiffs urged the Forest Service to consider alternatives, including reduced motor vehicle use and locating drill pads and trenches outside of riparian areas. Plaintiffs requested that the Forest Service revisit the ROD and EIS and reduce the extent and intrusiveness of the Project, consistent with Judge Winmill’s 2002 order.

96. Despite Plaintiffs and others repeatedly raising these and similar concerns, the Forest Service left these points largely unaddressed and proceeded to consider only AIMMCO’s proposal and the slightly modified Alternative C.

The Forest Service Was Unwilling to Consider Anything Less Than AIMMCO's Proposed Increase in Surface Disturbing Confirmation Activities

97. In approving the Golden Hand Project, the Forest Service failed to limit AIMMCO's operations to those proposed in 1987, and failed to reduce those operations even further, as instructed by Judge Winmill in *AIMMCO v. USDA*. Instead, the Forest Service considered only two Action Alternatives, both of which authorize the same expanded surface disturbing activities.

98. In discussing the purpose and need of the Golden Hand Project in both the ROD and EIS, the Forest Service acknowledges that it is to be guided by Judge Winmill's 2002 decision in *AIMMCO v. USDA*. But the Forest Service's discussion of *AIMMCO v. USDA*, with respect to Claims 1 and 2, is limited to the following: "The court . . . directed that in regards to Golden Hand No. 1 and No. 2 lode mining claims 'the Forest Service must recognize AIMMCO's right to prepare for [a] validity hearing, and allow work to that end, while requiring adherence to all applicable rules and regulations.'"

99. Nowhere in the ROD or EIS does the Forest Service acknowledge the specific instructions in Judge Winmill's order in *AIMMCO v. USDA* to "reduce" the amount of surface disturbance from what AIMMCO proposed in 1987 and to focus all activity on only what is necessary to prepare for validity.

100. Nowhere in the ROD or EIS does the Forest Service assess whether the Golden Hand Project results in a reduction in the scope of surface disturbing activities on either Claim 1 or 2, or in total, compared to AIMMCO's 1987 proposal. Neither the ROD nor the EIS disclose the activities proposed by AIMMCO in 1987, nor the amount of surface disturbance those activities would cause.

101. In fact, the ROD, EIS, Project Record, and documents filed in *AIMMCO v. USDA*, show that on Claim 1, the Forest Service is now authorizing more surface disturbance than AIMMCO proposed in 1987.

102. Similarly, nowhere in the ROD or EIS does the Forest Service assess whether the Golden Hand Project is focused only on what is necessary to support validity of those mineral exposures AIMMCO had already shown prior to 1984. Neither the ROD nor the EIS identify the mineral exposures AIMMCO had already identified prior to 1984 and sought to confirm in the 1987 request, nor do they assess whether each drill pad and trench approved is necessary and essential to support validity of such exposures.

103. In fact, the ROD, EIS, Project Record, and documents filed in *AIMMCO v. USDA* support only that reopening and taking samples from the Ella Adit might be necessary to support validity of a previously discovered exposure; they do not support finding that any of the other and much more extensive work approved in the Project (drill pads and trenches) correspond to previously discovered exposures.

104. Plaintiffs' administrative objections detailed the ways in which AIMMCO's proposal represents a significant departure from and expansion of its 1987 Assessment Work Request, and warned that approving the Golden Hand Project as proposed in the Draft ROD would fail to comply with Judge Winmill's instructions from *AIMMCO v. USDA*, as well as the Wilderness Act, NFMA, Organic Act, and Forest Service regulations and guidance.

105. In response to Plaintiffs' objections, the Forest Service still refused to compare the Project to AIMMCO's 1987 request or to explain how it was complying with the specific instructions in *AIMMCO v. USDA* to reduce surface disturbance and focus only on work necessary to support validity. Instead, the Forest Service simply claimed: "The Forest completed

an analysis that minimized the extent and intrusiveness of AIMMCO's proposed activities to the greatest extent possible, complied with the Wilderness Act and other federal laws and regulations and Judge Winmill's 2002 decision. Preparing a new or supplemental EIS would not achieve a different outcome."

The Forest Service Was Unwilling to Eliminate or Further Reduce Motor Vehicle Trips and the Use of Other Motorized Equipment

106. While the Forest Service did select Alternative C (which reduces the number of annual motor vehicle incursions into the Wilderness from 771 to 571), neither the ROD nor EIS provide a reasonable explanation for why the Forest Service was unwilling to require, or at least consider an alternative(s) with further reductions in motor vehicle travel within the Wilderness.

107. Notably, in the EIS the Forest Service admits that shift changes, core sample transport, and miscellaneous supplies/overhead transport could occur without using motorized vehicles. But the Forest Service improperly dismissed these ideas.

108. With respect to shift changes, the Forest Service claims that using foot or stock for all shift changes, as well as for other transport when possible, would only "slightly reduce the number of motorized incursions" in the Wilderness. However, the Forest Service estimates that during the 100-day annual operating season, AIMMCO would make two daily shift changes, each requiring two pickup trucks. This adds up to 400 of the 571 annual vehicle trips to the site.

109. The Forest Service also claims that the Project would take longer to complete if non-motorized shift changes are required. This fails to recognize that using more workers and more shifts would enable the Project to proceed on the same timeframe. In the EIS, the Forest Service acknowledges that AIMMCO could use additional workers and shifts to accomplish non-motorized shift changes, but fails to explain why the agency thinks the Project would still take longer.

The Forest Service's MRDG Does Not Correct These Oversights

110. The Project Record includes a Minimum Requirements Decision Guide (MRDG), which the Forest Service says it prepared to address the need to preserve wilderness while permitting AIMMCO's project. But the MRDG is not presented in the ROD or EIS, and it is deficient for multiple reasons. For example, the MRDG fails to acknowledge that AIMMCO's rights on Claims 1 and 2 are narrowly limited to what the Court has mandated for the validity determination, and the thrust of the MRDG reads as if the Forest Service had no choice but to approve the full extent of AIMMCO's expanded proposal. The MRDG also failed to appropriately consider no motorized travel or reductions in motorized travel.

The Forest Service Failed to Protect RCAs

111. It appears that the Forest Service has authorized AIMMCO to locate new roads, structures, and support facilities in RCAs, as well as waste rock piles. Temporary roads would be constructed from old roadbeds, including multiple stretches within RCAs, and would include two stream crossings. At least one drill site and some trench pits may be located in RCAs. Drill sites would have a corresponding mud pit. Trench pits would have rock piles. Water tanks and pipes and pumps may also be located within RCAs.

112. In response to comments submitted by Plaintiffs raising concerns that the Forest Service failed to ensure there was no alternative to doing so before locating these roads, structures, support facilities, and waste facilities in RCAs, the Forest Service provided the conclusory assertion that there were no alternatives to doing so. This response ignores the fact that at least one available alternative—limiting AIMMCO's activities to those proposed in the 1987 Assessment Work Request—would eliminate at least some of these incursions into RCAs.

FIRST CLAIM FOR RELIEF:
Wilderness Act, NFMA, Organic Act, and APA Violations
For Authorizing Excessive Surface Disturbance

113. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

114. This First Claim for Relief challenges Defendants' violations of the Wilderness Act, NFMA, the Organic Act, and their implementing regulations and Forest Service guidance when they issued the June 2015 ROD, and associated EIS, approving the Golden Hand Project, which would allow unlawfully excessive surface disturbance in the Frank Church Wilderness. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

115. Under the Wilderness Act, the Frank Church Wilderness was withdrawn from mineral entry on January 1, 1984. *See* 16 U.S.C. § 1133(d)(3). Any rights AIMMCO may have to conduct confirmation work now are limited to mineral exposures AIMMCO discovered prior to that deadline, and are further conditioned by Judge Winmill's order in *AIMMCO v. USDA*, No. 1:00-cv-00291-BLW (D. Idaho Aug. 9, 2002).

116. Federal mining and public land laws, such as the 1872 Mining Law, 30 U.S.C. §§ 21–42, and the Wilderness Act, 16 U.S.C. § 1131 *et seq.*, do not allow mining claimants within withdrawn lands to search for new exposures of mineral deposits. Instead, as held by Judge Winmill, the claimants are limited to work “to confirm and corroborate preexisting exposures of a valuable mineral deposit.” *AIMMCO v. USDA*, Mem. Decision at 8. Judge Winmill made clear that, under the Wilderness Act, AIMMCO is only allowed to access Claims 1 and 2 for the limited purpose of performing confirmation work focused only on what is necessary to prepare for a validity determination of those mineral exposures that AIMMCO had already discovered by the end of 1983.

117. Judge Winmill also instructed that AIMMCO's proposal would have to scale back and reduce the amount of surface disturbance and otherwise comply with applicable laws, regulations, and guidance. This includes the Wilderness Act requirement that the Forest Service preserve wilderness character and natural conditions in designated wilderness, 16 U.S.C. §§ 1133(b) & (c); the Organic Act regulations requirement that the Forest Service minimize adverse environmental impacts of mining operations, 36 C.F.R. § 228.8; and the Forest Service's wilderness management guidance instructing it to prioritize wilderness values when making management decisions, 36 C.F.R. § 293.2(c) and Forest Service Manual Chapter 2320.3, p. 8.

118. As alleged hereinabove, the Forest Service's approval of AIMMCO's expanded mineral confirmation activities in the Frank Church Wilderness exceeds Judge Winmill's 2002 *AIMMCO v. USDA* order and is unlawful for many reasons, including but not limited to:

- (a) Failing to reduce the scope of surface disturbing activities, and failing to limit AIMMCO's activities to those necessary to support validity of only previously discovered exposures, directly contravening Judge Winmill's *AIMMCO v. USDA* order;
- (b) Authorizing AIMMCO to conduct drilling, excavating, and sampling outside of the bounds of previously discovered mineral exposures on Golden Hand Claims 1 and 2;
- (c) Failing to limit work on Golden Hand Claim 1 to reopening the Ella Adit and examining samples from within, and instead allowing substantially more surface disturbance on Claim 1 than AIMMCO proposed in 1987;
- (d) Authorizing drilling and associated ground disturbance from drill site # 3 which is located within the withdrawn Wilderness area and is not located on any mining claim;

- (e) Failing to recognize that, at most, only those confirmation activities that AIMMCO proposed in its 1987 Assessment Work Request might be essential, and that all drill pads and trenches which were not included in the 1987 proposal are not reasonable or essential; and
- (f) Failing to preserve wilderness character and natural conditions, failing to prioritize wilderness values, and failing to minimize adverse environmental impacts by authorizing AIMMCO's needlessly destructive and expansive proposal.

119. By approving the ROD in June 2015, Defendants have thus violated the Wilderness Act, NFMA, the Organic Act, and related Forest Service regulations and guidance; and their action is arbitrary, capricious, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations, within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF:
Wilderness Act, NFMA, Organic Act, and APA Violations
For Authorizing Unnecessary Motorized Access

120. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

121. This Second Claim for Relief challenges Defendants' violations of the Wilderness Act, NFMA, the Organic Act, and their implementing regulations and Forest Service guidance when they issued the June 2015 ROD, and associated EIS, approving the Golden Hand Project, which would allow a substantial amount of unnecessary motor vehicle incursions and the use of other motorized equipment in the Frank Church Wilderness. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

122. The Wilderness Act requires the Forest Service to preserve wilderness character and natural conditions in designated wilderness. 16 U.S.C. §§ 1133(b) & (c). Forest Service wilderness management regulations and guidance likewise instructs the agency to prioritize wilderness values over others when making competing management decisions. 36 C.F.R. § 293.2(c); Forest Service Manual Chapter 2320.3, p. 8. And regulations adopted under the Organic Act require that the Forest Service minimize adverse environmental impacts of mining operations. 36 C.F.R. § 228.8.

123. The Wilderness Act also prohibits the use of motor vehicles and motorized equipment except as otherwise specifically provided by law or as necessary to meet the minimum requirements for the administration of wilderness. 16 U.S.C. § 1133(c). Similarly, Forest Service regulations instruct the agency to ensure that operations in wilderness are conducted so as to maintain wilderness “unimpaired” for future use and enjoyment, and to preserve wilderness character, and requires the Forest Service to limit the use of mechanized transport and motorized equipment for mineral activities to only when it is “essential.” 36 C.F.R. § 228.15(b).

124. Likewise, the governing Wilderness Management Plan provides that reasonable access is allowed to valid mineral claims established by the December 31, 1983 deadline, but only for “essential” use for “valid mining operations.” FC-RONR Wilderness Management Plan, p. 2-43. The Wilderness Management Plan also limits motorized access to “only when proven essential” and restricts road construction and improvements to “those clearly identified as essential to the operation.” *Id.*

125. As alleged hereinabove, the Forest Service's approval of AIMMCO's highly motorized mineral confirmation activities in the Frank Church Wilderness is unlawful for many reasons including but not limited to:

- (a) Failing to preserve wilderness character and natural conditions, failing to prioritize wilderness values, and failing to minimize adverse environmental impacts by authorizing the excessive use of motorized equipment;
- (b) Allowing AIMMCO to access the site using motor vehicles and allowing AIMMCO to use bulldozers, excavators, trucks, drill rigs, and other motorized equipment in the Wilderness to carry out numerous confirmation activities that either AIMMCO does not have a valid right to perform and/or that have not been proven essential confirmation activities; and
- (c) Failing to limit motorized use to only that which is reasonable, essential, and the minimum necessary, particularly by allowing hundreds of annual motor vehicle trips that the Forest Service admits are not necessary and can instead be accomplished by non-motorized means.

126. By approving the ROD in June 2015, Defendants have thus violated the Wilderness Act, NFMA, the Organic Act, and related Forest Service regulations and guidance, and their action is arbitrary, capricious, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations, within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF:
NFMA & APA Violations
For Failing to Protect Riparian Conservation Areas

127. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

128. This Third Claim for Relief challenges Defendants' violations of NFMA and implementing regulations and the Payette Forest Plan when it issued the June 2015 ROD, and associated EIS, approving the Golden Hand Project, which would allow road construction, excavating trenching, and other activities in designated Riparian Conservation Areas ("RCAs") along Coin Creek and its tributaries. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

129. NFMA requires agencies to ensure its actions are consistent with the applicable Forest Plan. The Payette Forest Plan includes binding standards prohibiting locating roads, structures, support facilities, and waste facilities in RCAs unless no alternative exists. *See* Payette Plan Standard and Guideline MIST08 and MIST09.

130. As alleged hereinabove, the Forest Service's approval of the Golden Hand Project fails to comply with NFMA and the Payette Forest Plan for multiple reasons, including:

- (a) Allowing roads, drill pads, trenches, mud, waste rock piles, support facilities, structures, or waste disposal facilities to be located in RCAs on Coin Creek and its tributaries without evaluating whether no alternatives exist, and when alternatives do in fact exist;
- (b) Failing to fully consider an alternative(s) that would locate some or all roads, trenches, support facilities, and waste outside of RCAs;
- (c) Failing to consider whether an alternative location outside of the RCAs existed for each road, structure, support facility and waste dump/facility authorized by the ROD.

131. By approving the ROD in June 2015, Defendants have thus violated NFMA and the Payette Forest Plan, and their action is arbitrary, capricious, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations, within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

FOURTH CLAIM FOR RELIEF:
NEPA and APA Violations
For Inadequate EIS

132. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

133. This Fourth Claim for Relief challenges Defendants' violations of NEPA, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, in approving the Golden Hand Project, which would allow AIMMCO to pursue expanded surface disturbing mineral activities in the Frank Church Wilderness from what AIMMCO originally proposed, as well as substantial use of motor vehicles and other mechanized equipment. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

134. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the EIS and ROD failed to take the required "hard look" at the Project, its impacts, and alternatives, and are based upon misstatements, errors, and omissions surrounding AIMMCO's surface disturbing activities and this Court's decision in *AIMMCO v. USDA*, which render the EIS grossly deficient under NEPA, for reasons including but not limited to the following:

- (a) Misrepresenting AIMMCO's rights to conduct mineral confirmation activities on Claims 1 and 2;

- (b) Ignoring Judge Winmill's order in *AIMMCO v. USDA*, failing to disclose important details of that ruling, and failing to assess whether AIMMCO's proposal comports with the ruling;
- (c) Failing to acknowledge that Judge Winmill's order in *AIMMCO v. USDA* specifically instructed the Forest Service to reduce the scale of AIMMCO's surface disturbing activities and to ensure that AIMMCO's activities were focused on only those necessary to prepare for proving the validity of previously exposed mineral deposits;
- (d) Failing to disclose or consider the details of AIMMCO's 1987 Assessment Work Request, and failing to disclose or consider that AIMMCO had previously represented that those activities were sufficient to prepare for a validity determination;
- (e) Failing to disclose why AIMMCO now seeks expanded confirmation activities beyond what AIMMCO requested in 1987, and failing to assess any such reason(s);
- (f) Failing to gather basic facts about AIMMCO's proposed activities, including failing to identify and disclose the location and boundaries of mineral exposures AIMMCO claimed to have previously discovered on Claims 1 and 2, and failing to evaluate how AIMMCO's proposed activities relate to preparing for validity for those exposures; and
- (g) Failing to present high quality information and accurate scientific analysis, and failing to use professional integrity.

135. Additionally, as alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service's determination to authorize 571 motor vehicle incursions into the Wilderness each year, plus additional use of motorized equipment, is based upon misstatements, errors, and omissions in the ROD and EIS, which render the EIS grossly deficient under NEPA, including but not limited to the following:

- (a) Ignoring its own determination that shift changes, core transport, and other approved transportation could be accomplished by non-motorized means;
- (b) Inaccurately stating that motor vehicle trips for shift changes make up an insignificant amount of AIMMCO's annual motor vehicle incursions in the Wilderness, when in fact, they make up the vast majority of approved motor vehicle trips; and
- (c) Inconsistently claiming that the Project would take longer if non-motorized shift changes and other non-motorized transport were required, while at the same time recognizing that AIMMCO could accomplish non-motorized transport by using more workers and more shifts.

136. Finally, as alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service's consideration of only two action alternatives and rejection of other viable alternatives based upon misstatements, errors, and omissions in the ROD and EIS render the EIS grossly deficient under NEPA for multiple reasons, including but not limited to the following:

- (a) Failing to fully consider alternatives limiting the scale of AIMMCO's operations to those allowed by the Wilderness Act, proposed in the 1987 Work Assessment

Request, and/or a scaled-back version of the 1987 Request, as Judge Winmill instructed in *AIMMCO v. USDA*;

- (b) Improperly dismissing one or more alternatives that reduce or eliminate motor vehicle travel and the use of other motorized equipment in the Wilderness, relying on inaccurate information and unsupported assumptions as discussed above; and
- (c) Failing to fully review alternative project operations that would avoid the location of roads, structures, support facilities, and waste facilities in RCA's in compliance with the Forest Plan and NFMA.

137. Because Defendants have violated NEPA's requirements in relying on the defective EIS and ROD in approving the Golden Hand Project, their action is arbitrary, capricious, not in accordance with law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations, within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Order, declare, and adjudge that the Forest Service's June 2015 ROD and associated Final EIS approving AIMMCO's mineral confirmation activities in the Frank Church–River of No Return Wilderness are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law under the Wilderness Act, NEPA, NFMA, the Organic Act, and/or the APA;
- B. Vacate, reverse, and remand the ROD and EIS;

C. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiffs may hereafter seek;

D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation under the Equal Access to Justice Act and/or all other applicable authorities; and

E. Grant such further and additional relief as the Court deems just and proper in order to remedy Defendants' violations of law and protect the public interest.

Dated this 7th day of July, 2015.

Respectfully submitted,

/s/ Bryan Hurlbutt

Bryan Hurlbutt

Laurence ("Laird") J. Lucas

Roger Flynn

Attorneys for Plaintiffs