

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 07-13008

Kurt J. Meister

Plaintiff

v

Secretary, United States Department of
Agriculture; Chief, United States Department of
Agriculture, Forest Service; Charles L. Myers,
Regional Forester, United States Department
of Agriculture, Forest Service, Eastern Region;
Forest Supervisor, Huron-Manistee National
Forests

Defendants

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SECOND AMENDED COMPLAINT

1. This court has jurisdiction pursuant to 28 U.S.C. §1331.

2. The Secretary, United States Department of Agriculture, (the “Secretary”) is required to develop, maintain and, as appropriate, revise land and resource management plans for the Huron-Manistee National Forests (the “Forests”).

3. Defendant Myers is required to review all land and resource management plans and final environmental impact statements for the Forests and either approve or disapprove them.

4. The Forest Supervisor, Huron-Manistee National Forests has overall responsibility for the preparation of the forest plan and the environmental impact statement for the Forests.

BACKGROUND

5. The Forests contain approximately 978,918 acres of Forest Service lands.

6. There are approximately 6,200 miles of designated snowmobile trails in the State of Michigan.

7. There are approximately 5,675 miles of designated snowmobile trails in the State of Michigan outside of the Forests.

8. The Land and Resource Management Plan for the Forests adopted in 1986, as amended, (the “1986 Plan”) designated approximately 59,626 acres of Semiprimitive Nonmotorized (“SPNM”) areas and approximately 11,375 acres of Semiprimitive Motorized (“SPM”) areas.

The 2006 Decision and
The 2006 Plan

9. On or about September 18, 2003, the Forest Service published a notice of intent in the Federal Register (the “2003 Notice of Intent”).

10. The only major public issue identified during the planning process arising out of the 2003 Notice of Intent was that the demand for semiprimitive recreation, both motorized and nonmotorized, had increased.

11. On or about March 20, 2006, the Regional Forester, United States Department of Agriculture, Forest Service, Eastern Region, issued a Record of Decision (the “2006 Decision”) adopting the 2006 Land and Resource Management Plan (the “2006 Plan”) for the Forests.

12. The 2006 Plan replaced the 1986 Plan.

13. The 2006 Plan designated approximately 62,300 acres of SPNM areas and approximately 17,150 acres of SPM areas.

14. On or about September 29, 2010, the United States Court of Appeals for the Sixth Circuit (the "Sixth Circuit") filed its Opinion and Judgment in this case.

15. The Sixth Circuit held that the Forest Service had to identify the supply of lands on which participants in an activity are afforded a quality recreation opportunity.

16. The Sixth Circuit held that the Forest Service's estimate of snowmobiles and cross-country skiers was entirely arbitrary.

17. The Sixth Circuit held that the Forest Service had not complied with the requirement to prepare a demand-supply analysis.

18. The Sixth Circuit held that the Forest Service had not complied with the requirement to reduce duplication in meeting recreation demands with respect to snowmobiling.

19. The Sixth Circuit held that the Forest Service had not complied with the mandate to minimize conflicts between ORVs and other uses and interests of the Forests.

20. The Sixth Circuit upheld the 2006 Decision regarding the areas designated as SPNM in the 2006 Plan.

21. Defendants neither requested a *rehearing en banc* nor appealed the Sixth Circuit Opinion and Judgment.

The 2012 Decision and
Amendment 1

22. On or about December 28, 2010, the Forest Service published a notice of intent in the Federal Register (the “2010 Notice of Intent”).

23. The purpose and need for action in the 2010 Notice of Intent was to remedy the deficiencies identified by the Sixth Circuit.

24. The proposed action in the 2010 Notice of Intent was to evaluate an alternative that closes areas designated as SPNM in the 2006 Plan to snowmobile use and firearm hunting (subject to existing rights) and closes the area designated Primitive in the 2006 Plan (the Nordhouse Dunes Wilderness) to firearm hunting (subject to existing rights).

25. Possible alternatives in the 2010 Notice of Intent were a No Action Alternative and a Modified Closure Alternative in which the Forest Service would ban firearm hunting and snowmobile use in some portion of the 13 areas designated as SPNM in the 2006 Plan and the Nordhouse Dunes Wilderness.

26. One of the major public issues identified during the planning process arising out of the 2010 Notice of Intent was that the Forests should provide opportunities for quiet recreation experiences.

27. On or about August, 2011, the Forest Service released the Huron-Manistee National Forests - Recreation Supply and Demand Analysis For the Supplemental Environmental Impact Statement dated August 2011 (the "First Analysis").

28. Plaintiff submitted comments on the First Analysis and the Draft Supplemental Environmental Impact Statement for the Land and Resource Management Plan - Huron-Manistee National Forests dated September, 2011 (the "DSIES").

29. On or about January 27, 2012, the Forest Service released the Huron-Manistee National Forests Recreation Supply and Demand Analysis For the Supplemental Environmental Impact Statement (the "Revised Analysis").

30. On or about January 27, 2012, the Forest Service released the Final Supplemental Environmental Impact Statement for the Land and Resource Management Plan - Huron-Manistee National Forests (the "SIES").

31. SEIS analyzed four alternatives in detail (the "2012 Alternatives").

32. Alternative 1 in the SEIS was similar to the no action alternative listed as a possible alternative in the 2010 Notice of Intent.

33. Alternative 2 in the SEIS was similar to the proposed action in the 2010 Notice of Intent.

34. Alternative 3 in the SEIS would have reclassified all areas designated as SPNM in the 2006 Plan as either roaded natural or SPM areas and managed them under the Recreational Opportunity Spectrum (“ROS”) classification of roaded natural or SPM, respectively.

35. Alternative 4 in the SEIS was similar to Alternative 3 in the SEIS, except that it would reclassify all areas designated as SPNM in the 2006 Plan as special areas.

36. SEIS also considered 6 other alternatives which were eliminated from detailed study.

37. On or about January 27, 2012, Defendant Myers issued a Record of Decision (the “2012 Decision”) adopting Amendment 1 to the 2006 Plan (“Amendment 1”).

38. The 2012 Decision adopted a modified version of Alternative 4 which not only changed the ROS classification of all areas designated as SPNM in the 2006 Plan, but also changed the ROS classification of the Nordhouse Dunes Wilderness from Primitive to SPNM.

39. The 2012 Decision was based on information contained in the SIES.

40. The SEIS was based on information contained in the Revised Analysis.

41. The 2012 Decision was based on information contained in the Revised Analysis.

42. Upon information and belief, the phrase “Meister panel” when used in the 2012 Decision, the SEIS, the DEIS, the Revised Analysis and the First Analysis refers to the Sixth Circuit.

43. After adoption of the Amendment 1, Plaintiff filed a timely appeal of the 2012 Decision with the Chief, United States Department of Agriculture, Forest Service (the “2012 Administrative Appeal”).

44. On or about November 5, 2012, the Reviewing Officer for the Chief, United States Department of Agriculture, Forest Service issued a decision on the 2012 Administrative Appeal (the “Chief’s 2012 Decision”).

45. The Chief’s 2012 Decision affirmed the 2012 Decision.

46. On or about November 20, 2012 the Secretary, United States Department of Agriculture, acting through the Deputy Under Secretary for Natural Resources and Environment, elected not to review the Chief’s 2012 Decision.

47. The Chief’s 2012 Decision is the final administrative decision of the United States Department of Agriculture on the 2012 Administrative Appeal.

48. Plaintiff has exhausted his administrative remedies regarding the 2012 Decision.

49. All conditions precedent to bringing this action have been performed and have occurred.

50. No further factual development, analysis, consideration or action is required by the Forest Service to redesignate all of the areas which were designated as SPNM in the 2006 Plan.

51. The activities permitted on most of the areas of the Forests substantially diminish Plaintiff's walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing experiences.

52. No further factual development, analysis, consideration or action is required by the Forest Service to allow off-road vehicles ("ORVs") in and around areas designated as SPNM in the 2006 Plan; trails designated specifically for hiking, biking, cross-country skiing and/or equestrian uses (collectively "Nonmotorized Trails"); and wild and scenic rivers and rivers identified by the Forest Service as eligible to become wild and scenic rivers (collectively "Wild and Scenic Rivers").

53. Immediately upon the adoption of the Amendment 1, Plaintiff was prevented from enjoying the areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers free from the dangers and sounds of ORVs.

54. Immediately upon the adoption of the Amendment 1, the Nordhouse Dunes Wilderness was the only place on the Forests where Plaintiff could enjoy a SPNM experience on the Forests.

55. Immediately upon the adoption of Amendment 1, the Nordhouse Dunes Wilderness was the only place on the Forests where Plaintiff could enjoy walking, hiking, cross-country skiing and snowshoeing free from the noise and danger created by ORVs.

56. Immediately upon the adoption of the Amendment 1, there was no place on the Forests where Plaintiff could enjoy mountain biking or kayaking free from the noise and danger created by ORVs.

VIOLATIONS OF THE INFORMATION QUALITY ACT

57. The Information Quality Act (the "IQA") requires the Department of Agriculture to issue guidelines ensuring and maximizing the quality and objectivity of information.

58. The Department of Agriculture issued guidelines (the "IQA Guidelines") intended to ensure that the information disseminated by the Forest Service to the public is substantively accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner.

59. The Forest Service is required to strive to ensure and maximize the quality and objectivity of the information disseminated to the public.

60. The Forest Service is required to identify the source of the information so the public can assess whether the information is objective.

61. The Forest Service is required to ensure that transparency is addressed in its review of the information prior to its dissemination.

62. The Forest Service is required to treat information quality as integral to every step in its development of information.

Violations Regarding the
Base Used to Determine Projected Use

63. Plaintiff adopts by reference the statements contained in paragraphs 1 through 62 of this Complaint.

64. The 2002 National Visitor Use Monitoring Survey (the "2002 NVUM") for the Forests found that 0.0 percent of visitors said snowmobiling, cross-country skiing or snow shoeing was their primary activity.

65. The National Survey on Recreation and the Environment (the "NSRE") found that approximately 2/3 as many people participated in cross-country skiing as snowmobiling on the Forests.

66. The NSRE database is supposed to be used by the Forest Service to evaluate outdoor recreation uses and trends on Forest Service lands.

67. The Michigan State Comprehensive Outdoor Recreation Plan (the "MSCORP") found that approximately 2/3 as many people participated in cross-country skiing as snowmobiling in Michigan.

68. The Forest Service adjusted the survey strategy in 2007 National Visitor Use Monitoring Survey (the "2007 NVUM") from that used in the 2002 NVUM to address the lack of information about winter use activities.

69. The 2007 NVUM found that approximately 1/4 as many people participated in cross-country skiing as snowmobiling (the "2007 NVUM Participation").

70. The 2007 NVUM found that approximately 1/2 of the cross-country skiers considered cross-country skiing as their primary activity (the "2007 NVUM Primary Purpose").

71. The 2007 NVUM found that almost all snowmobilers considered snowmobiling as their primary activity.

72. The 2007 NVUM found that approximately 1/8 as many people identified cross-country skiing as their primary activity as people who identified snowmobiling as their primary activity.

73. Upon information and belief, in preparing the 2007 NVUM Primary Purpose data, respondents were only allowed to select one primary purpose.

74. Upon information and belief, in preparing the 2007 NVUM Primary Purpose data, if a person used the Forests to snowmobile and cross-country ski and said that their primary purpose was to snowmobile, their use of the Forests to cross-country ski would not have been included.

75. The 2007 NVUM Participation data is a better measure of demand than the 2007 NVUM Primary Purpose data.

76. Despite the problems with the 2002 NVUM data; the inconsistencies between the 2007 NVUM Primary Purpose data and the NSRE, MSCORP, and 2007 NVUM Participation data; and the fact that the number of people using the Forests for an activity is unrelated to whether or not it is their primary activity, the Forest Service used the 2007 NVUM Primary Purpose data as the base to determine the projected use levels for snowmobiling and cross-country skiing on the Forests ("Projected Use").

77. The Revised Analysis violates the IQA because it used the 2007 NVUM Primary Purpose data as the base to determine Projected Use.

78. The SEIS violates the IQA because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base to determine Projected Use.

79. The 2012 Decision violates the IQA because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base to determine Projected Use.

80. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base to determine Projected Use.

81. Using the 2007 NVUM Primary Purpose data as the base to determine Projected Use resulted in the projected use for cross-country skiing being substantially lower than it would have been had the Forest Service used the NSRE, MSCORP or 2007 NVUM Participation data.

82. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base to determine Projected Use which made it appear that there was less demand for cross-country skiing than there actually is.

Violations Regarding the
Projections Used to Determine Projected Use

83. Plaintiff adopts by reference the statements contained in paragraphs 1 through 82 of this Complaint.

84. The projections contained in Table 11 of the Revised Analysis (the “Table 11 Projections”) purport to be based on *Outdoor Recreation for 21st Century America: A Report to the Nation: The National Survey on Recreation and the Environment*, H. Ken Cordell, 2004 (“Cordell 2004”).

85. Cordell 2004 does not contain any projections of the activities described in Table 11 for the years indicated in Table 11.

86. Upon information and belief, the Table 11 Projections were supposed to have been based on the projections for the “North Region” contained in *Outdoor Recreation in American Life: A National Assessment of Demand and Supply Trends*, H. Ken Cordell, 1999 (the “Cordell Projections”).

87. The authors of the Cordell Projections were, at the time the Cordell Projections were published, all employees of the United States Department of Agriculture, Forest Service.

88. The purpose of the Cordell Projections is to project future outdoor recreation participation and consumption as mandated by the Renewable Resources Planning Act.

89. The Cordell Projections for activities such as snowmobiling are substantially different than the Table 11 Projections.

90. Upon information and belief, there is no basis for the Table 11 Projections.

91. The Revised Analysis violates the IQA as a result of using the Table 11 Projections.

92. The SEIS violates the IQA because it was based on the Revised Analysis which used the Table 11 Projections.

93. The 2012 Decision violates the IQA because it was based on the Revised Analysis which used the Table 11 Projections.

94. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which used the Table 11 Projections.

95. Using the Table 11 Projections to determine Projected Use resulted in the Projected Use for snowmobiling being more than 4 times higher than it would have been had the Forest Service used the Cordell Projections.

96. Using the Table 11 Projections to determine Projected Use resulted in the Projected Use for cross-country skiing being lower than it would have been had the Forest Service used the Cordell Projections.

97. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it was based on the Revised Analysis which used the Table 11 Projections which made it appear that snowmobile use would

increase at a much faster rate than it is projected to and cross-country skiing would increase at a slower rate than it is projected to.

Violations Regarding the
Determination of Projected Use

98. Plaintiff adopts by reference the statements contained in paragraphs 1 through 97 of this Complaint.

99. The 2012 Decision was made without observance of the procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use.

100. Using the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use resulted in the Projected Use for snowmobiling in 2050 being substantially higher than it would have been had the Forest Service used the NSRE data and the Cordell Projections.

101. Using the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use resulted in the Projected Use for cross-country skiing in 2050 being substantially lower than it would have been had the Forest Service used the NSRE data and the Cordell Projections.

102. Using the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use resulted in the Projected Use for snowmobiling being more than 10 times as much as the Projected Use for cross-country skiing in 2050.

103. Had the Forest Service used the NSRE data and the Cordell Projections to determine Projected Use, the Projected Use for snowmobiling and cross-country skiing in 2050 would have been approximately equal.

104. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use which made it appear that the projected demand for snowmobiling is much higher than it actually is and the projected demand for cross-country skiing is much lower than it actually is.

Violations Regarding the
Market Area

105. Plaintiff adopts by reference the statements contained in paragraphs 1 through 104 of this Complaint.

106. The FEIS used the Lower Peninsula of Michigan as the cumulative effects area for semiprimitive recreation opportunities.

107. The cumulative effects area is the area over which the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) undertakes such actions is considered.

108. The cumulative effects area is the largest area over which the Forest Service evaluates the effects of its actions.

109. The First Analysis stated that the Sixth Circuit established the market area as the State of Michigan.

110. The First Analysis stated that this Court determined the market area as the State of Michigan.

111. The Revised Analysis stated that this Court determined the market area as the State of Michigan.

112. The DSEIS stated that this Court established the market area as the State of Michigan.

113. The SEIS omitted the reference to this Court having established the market area, but used the State of Michigan as the market area.

114. Neither this Court nor the Sixth Circuit addressed the cumulative effects area in the FEIS.

115. Neither this Court nor the Sixth Circuit established or determined the market area to be used in the Revised Analysis.

116. The Revised Analysis violates the IQA because it stated that this Court established the market area as the State of Michigan.

117. The SEIS violates the IQA because it was based on the Revised Analysis which stated that this Court established the market area as the State of Michigan.

118. The 2012 Decision violates the IQA because it was based on the Revised Analysis which stated that this Court established the market area as the State of Michigan.

119. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which stated that this Court established the market area as the State of Michigan.

120. Inclusion of the Upper Peninsula of Michigan in the market area resulted in the appearance of many more opportunities for activities such as walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing than are available in the Lower Peninsula of Michigan.

121. An important consideration for recreationists in Michigan is the distance to their desired recreation opportunity.

122. A majority of visitors to the Forests are from areas in southern Michigan.

123. Use levels decline the further north one goes.

124. Of those people willing to go somewhere else to pursue their preferred activity, less than half will travel more than 50 miles to pursue their activity elsewhere.

125. The SEIS did not provide any reason for using a market area in the Revised Analysis which was different from the cumulative effects area used in the FEIS.

126. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it was based on the Revised Analysis which included the Upper Peninsula of Michigan which is not part of the market area.

Violations Regarding
Elimination of All SPNM Areas

127. Plaintiff adopts by reference the statements contained in paragraphs 1 through 126 of this Complaint.

128. The 2006 Decision classified areas based upon the Forest Service's interpretation of the ROS which allowed areas to be classified based upon an aspiration or objective, which the Forest Service referred to as "desired future condition".

129. The SEIS stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient.

130. The Sixth Circuit did not address the Forest Service's classification of areas based upon their desired future condition.

131. The Sixth Circuit did not order the Forest Service to review or change the classification of any areas designated as SPNM in the 2006 Plan.

132. The SEIS violates the IQA because it stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient.

133. The 2012 Decision violates the IQA because it was based on the SEIS which stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient.

134. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient.

135. The Forests are among the rare places in the Lower Peninsula of Michigan with a land base large enough and contiguous enough to provide opportunities for solitude or for relatively remote and semiprimitive types of recreation.

136. Limited opportunities exist for primitive and semiprimitive nonmotorized experiences in Michigan.

137. Areas available for non-motorized activities are at a premium in the Midwest and additional acreage should be preserved or added whenever possible.

138. The Chief's 2012 Decision held that eliminating all areas designated as SPNM in the 2006 Plan brought the Forests into compliance with the ROS.

139. Land and management plans must be revised when the conditions have significantly changed.

140. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it eliminated all areas designated as SPNM in the 2006 Plan which was contrary to the major public policy issues to increase SPNM areas and quiet recreation experiences.

VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT

141. The Secretary is required to develop and revise land and resource management plans in compliance with the National Forest Management Act (the "NFMA").

142. Land and resource management plans must provide for multiple use and, in particular, include coordination of outdoor recreation.

143. The Secretary is required to promulgate regulations under the principles of the Multiple-Use Sustained Yield Act (the "MUSYA") for development and revision of land and resource management plans.

144. The Forest Service promulgated the regulations compiled in 36 C.F.R. part 219 (2000) pursuant to the NFMA.

145. The Forest Service is required to comply with 36 C.F.R. §219.21 (2000) in developing, adopting and revising the 2006 Plan and Amendment 1.

Violations Regarding
Failure to Prepare a Proper
Demand Analysis

146. Plaintiff adopts by reference the statements contained in paragraphs 1 through 145 of this Complaint.

147. The Forest Service is required to identify the recreational preferences of user groups and the settings needed to provide quality recreation opportunities.

148. The Forest Service interprets 36 C.F.R. §219.21(a)(2) (2000) to require a demand-supply analysis.

149. The Sixth Circuit held that the estimates of visitors to the Forests are integral to the demand-supply analysis.

150. The Revised Analysis violates the NFMA because it used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use.

151. The SEIS violates the NFMA because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use.

152. The 2012 Decision violates the NFMA because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use.

153. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use.

154. The Forest Service has not evaluated the level of recreation uses by type (i.e., snowmobiling, cross-country skiing, hiking, etc.).

155. The Forest Service has not evaluated the demand for recreation opportunities on the Forests that are not currently being offered.

156. The Revised Analysis violates the NFMA because the Forest Service did not evaluate the level of recreation uses by type or the demand for recreation opportunities that are not currently being offered.

157. The SEIS violates the NFMA because it was based on the Revised Analysis in which the Forest Service did not evaluate the level of recreation uses by type or the demand for recreation opportunities that are not currently being offered.

158. The 2012 Decision violates the NFMA because it was based on the Revised Analysis in which the Forest Service did not evaluate the level of recreation uses by type or the demand for recreation opportunities that are not currently being offered.

159. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis in which the Forest Service did not evaluate the level of recreation uses by type or the demand for recreation opportunities that are not currently being offered.

160. Without correct information about Projected Use, the 2012 Decision made choices about which recreation opportunities would be offered on the Forests and in what quantities.

161. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because the Forest Service adopted Amendment 1 without correct information about Projected Use.

162. Without information about the level of recreation uses by type or the demand for recreation opportunities, the 2012 Decision made choices about which recreation opportunities would be offered on the Forests and in what quantities.

163. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because the Forest Service adopted Amendment 1 without evaluating the level of recreation uses by type or the demand for recreation opportunities that are not currently being offered.

Violations Regarding
Failure to Prepare a Proper
Supply Analysis

164. Plaintiff adopts by reference the statements contained in paragraphs 1 through 163 of this Complaint.

165. The Forest Service has not evaluated the quality of recreation opportunities provided on the Forests.

166. Just providing a certain number of miles of trail may not meet the recreation preference of the user group if the trail itself does not provide a quality recreation experience.

167. The Forest Service is required to identify the settings needed to provide quality recreation opportunities.

168. The Forest Service uses the ROS to identify the settings needed to provide quality recreation opportunities.

169. Preparation of the SEIS must comply with the Forest Service Manual.

170. The Forest Service is required to use the ROS Users Guide.

171. The ROS Users Guide provides a detailed methodology for determining the potential supply of opportunities that are currently available.

172. Part of the methodology in the ROS Users Guide is for the Forest Service to use the Recreation Information Management system (the "RIM").

173. The RIM provides for the analysis and retrieval of data on all recreation sites, areas and trails of the national forests.

174. The RIM is supposed to provide information for recreation input into the land and resource management planning process to enable planners to appraise tradeoffs which may result from other land or resource uses.

175. Upon information and belief, the Forest Service did not use the RIM in the process of determining the potential supply of opportunities that are currently available.

176. The Forest Service's goal in changing the ROS classification of all areas designated as SPNM in the 2006 Plan was to attain full compliance with all ROS characteristics at the time of the analysis.

177. The methodology contained in the ROS Users Guide does not direct the Forest Service to evaluate whether an area is in full compliance with the ROS characteristics at the time it is analyzed.

178. The Sixth Circuit did not direct the Forest Service to evaluate whether an area is in full compliance with the ROS characteristics at the time it is analyzed.

179. Upon information and belief, the Forest Service did not follow the methodology contained in the ROS Users Guide in determining the potential supply of opportunities that are currently available.

180. The Revised Analysis violates the NFMA because the Forest Service did not follow the methodology contained in the ROS Users Guide in determining the potential supply of opportunities that are currently available.

181. The SEIS violates the NFMA because it was based on the Revised Analysis in which the Forest Service did not follow the methodology contained in the ROS Users Guide in determining the potential supply of opportunities that are currently available.

182. The 2012 Decision violates the NFMA because it was based on the Revised Analysis in which the Forest Service did not follow the methodology contained in the

ROS Users Guide in determining the potential supply of opportunities that are currently available.

183. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis in which the Forest Service did not follow the methodology contained in the ROS Users Guide in determining the potential supply of opportunities that are currently available.

184. The basic assumption underlying the ROS is that quality in outdoor recreation is best assured through provision of a diverse set of opportunities.

185. Recreation opportunity is the availability of a real choice for a user to participate in a preferred activity within a preferred setting.

186. The recreation spinoff should be a mix of opportunities in which the public recreates free of conflict and incompatible activities and settings.

187. Had the Forest Service followed the methodology contained in the ROS Users Guide, it would not have eliminated the Hoist Lakes Area as a designated SPNM area.

188. Had the Forest Service followed the methodology contained in the ROS Users Guide, it would not have eliminated all of the areas designated as SPNM in the 2006 Plan.

189. The Sixth Circuit held that it is not enough for the Forest Service to merely identify the supply of lands on which an activity can occur; it must identify the supply of lands on which participants in that activity are afforded a quality recreation opportunity.

190. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it eliminated all of the areas designated as SPNM in the 2006 Plan.

Violations Regarding
Failure to Examine Interactions Among
ORVs and Other Uses of the Forests

191. Plaintiff adopts by reference the statements contained in paragraphs 1 through 190 of this Complaint.

192. The Forest Service did not examine the interactions among recreation opportunities.

193. During the time this case has been pending, the Forest Service has allowed ORVs to be operated in and around areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers.

194. The Forest Service has designated Nonmotorized Trails on the Forests.

195. Nonmotorized Trails exist on the Forests which are part of an interconnected trail system extending beyond the proclamation boundaries of the Forests.

196. Several rivers within the proclamation boundaries of the Forests are Wild and Scenic Rivers.

197. The Forest Service has identified additional rivers within the proclamation boundaries of the Forests as eligible to become Wild and Scenic Rivers.

198. ORVs are a source of noise on the Forests.

199. Snowmobiles are ORVs.

200. The noise from ORVs on the Forests can be heard over one mile away.

201. The Forest Service has designated trails specifically for ORVs ("ORV Trails") within areas designated as SPNM in the 2006 Plan.

202. The Forest Service has allowed other governmental entities and/or organizations to designate ORV Trails within and along the perimeter of areas designated as SPNM in the 2006 Plan.

203. There are ORV Trails on Forest Service roads and/or lands.

204. Within the proclamation boundaries of the Forests, where ORV Trails are not on roads which are Forest Service roads and/or lands, the ORV Trails are connected to ORV Trails which are on Forest Service roads and/or lands.

205. ORV Trails cross Nonmotorized Trails on the Forests.

206. ORV Trails run nearly parallel to, and within 200 feet of, Nonmotorized Trails on the Forests.

207. ORV Trails cross Wild and Scenic Rivers on the Forests.

208. ORV Trails run nearly parallel to, and within 1,000 feet of, Wild and Scenic Rivers on the Forests.

209. The Forest Service is required to examine the interactions among recreation opportunities.

210. The SEIS violates the NFMA because it did not examine the interactions among recreation opportunities.

211. The 2012 Decision violates the NFMA because it was based on the SEIS which did not examine the interactions among recreation opportunities.

212. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not examine the interactions among recreation opportunities.

213. The 2006 Plan results in walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers having to interact with ORVs.

214. Walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers prefer not to interact with ORVs.

215. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not reduce the interactions between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers in the 2006 Plan.

Violations Regarding
Failure to Consider the Impacts of
ORV Use on Other Uses of the Forests

216. Plaintiff adopts by reference the statements contained in paragraphs 1 through 215 of this Complaint.

217. The Forest Service did not consider the impacts of ORV use on recreation opportunities such as walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing and the quality of experience.

218. The Forest Service is required to consider the impacts of other uses on recreation opportunities and the quality of experience.

219. The SEIS violates the NFMA because it did not consider the impacts of ORV use on other recreation opportunities and the quality of experience.

220. The 2012 Decision violates the NFMA because it was based on the SEIS which did not consider the impacts of ORV use on other recreation opportunities and the quality of experience.

221. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not consider the impacts of ORV use on other recreation opportunities and the quality of experience.

222. Hikers would be bothered to a significant extent if they hear motorcycles.

223. Walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers would be bothered to a significant extent if they hear ORVs.

224. The presence of ORVs in and around areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers negatively impacts the quality of experience for walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

225. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not reduce the impacts of ORV use on walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

Violations Regarding
Failure to Evaluate the Potential Effects of
Vehicle Use Off Roads

226. Plaintiff adopts by reference the statements contained in paragraphs 1 through 225 of this Complaint.

227. Upon information and belief, the Forest Service has not evaluated the potential effects of vehicle use off roads on other visitors to the Forests who enjoy walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing.

228. Upon information and belief, the Forest Service has not evaluated the potential effects of vehicle use off roads using parts of the Forests which are not designated ORV Trails.

229. Upon information and belief, the Forest Service has not evaluated all of the potential effects of vehicle use off roads.

230. The Forest Service is required to evaluate the potential effects of vehicle use off roads.

231. The SEIS violates the NFMA because the Forest Service did not evaluate all of the potential effects of vehicle use off roads.

232. The 2012 Decision violates the NFMA because was based on the SEIS in which the Forest Service did not evaluate all of the potential effects of vehicle use off roads.

233. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because was based on the SEIS in which the Forest Service did not evaluate all of the potential effects of vehicle use off roads.

234. Vehicle use off roads results in ORVs using parts of the Forests which are not designated ORV Trails.

235. Vehicle use off roads results in ORVs using parts of the Forests which are designated Nonmotorized Trails.

236. Vehicle use off roads results in ORVs being in closer proximity to walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers than is contemplated in the 2006 Plan.

237. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not reduce the potential adverse effects of vehicle use off roads.

Violations Regarding
Failure to Consider
Alternatives to Address Significant Issues

238. Plaintiff adopts by reference the statements contained in paragraphs 1 through 237 of this Complaint.

239. Of the 2012 Alternatives, only Alternative 2 responded to the major public issue of the increased demand for semiprimitive recreation.

240. The alternatives must provide different ways to address and respond to the major public issues.

241. The SEIS violates the NFMA because the 2012 Alternatives do not provide different ways to address and respond to the major public issue of the increased demand for semiprimitive recreation.

242. The 2012 Decision violates the NFMA because it was based on the SEIS which did not contain alternatives which provided different ways to address and respond to the major public issue of the increased demand for semiprimitive recreation.

243. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not contain alternatives which provided different ways to address and respond to the major public issue of the increased demand for semiprimitive recreation.

244. Of the 2012 Alternatives, only Alternative 2 responded to the major public issue of providing opportunities for quiet recreation experiences.

245. The SEIS violates the NFMA because the 2012 Alternatives do not provide different ways to address and respond to the major public issue of providing opportunities for quiet recreation experiences.

246. The 2012 Decision violates the NFMA because it was based on the SEIS which did not contain alternatives which provided different ways to address and respond to the major public issue of providing opportunities for quiet recreation experiences.

247. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not contain alternatives which provided different ways to address and respond to the major public issue of providing opportunities for quiet recreation experiences.

248. The 2012 Decision did nothing to meet the increased demand for semiprimitive recreation.

249. The 2012 Decision substantially reduced the supply of areas available for semiprimitive recreation on the Forests.

250. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it reduced, rather than increased, the areas available for semiprimitive recreation.

251. There is a desire on the part of some visitors to the Forests for the opportunity to recreate in an environment with a high probability of isolation from the sounds of human activity.

252. The 2012 Decision did not provide more opportunities for quiet recreation experiences.

253. The 2012 Decision resulted in the Nordhouse Dunes Wilderness being the only place on the Forests available for quiet recreation.

254. The 2012 Decision substantially reduced the supply of areas available for quiet recreation on the Forests.

255. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it reduced, rather than increased, the areas available for quiet recreation.

Violations Regarding
Failure to Reduce Duplication in
Meeting Recreational Demands

256. Plaintiff adopts by reference the statements contained in paragraphs 1 through 255 of this Complaint.

257. The Forest Service is required to use the MSCORP.

258. The Forest Service used the 2007 NVUM Primary Purpose data, rather than the MSCORP data, as the base for determining Projected Use.

259. The Revised Analysis violates the NFMA because the Forest Service used the 2007 NVUM Primary Purpose data, rather than the MSCORP data, as the base for determining Projected Use.

260. The SEIS violates the NFMA because it was based on the Revised Analysis in which the Forest Service used the 2007 NVUM Primary Purpose data, rather than the MSCORP data, as the base for determining Projected Use.

261. The 2012 Decision violates the NFMA because it was based on the Revised Analysis in which the Forest Service used the 2007 NVUM Primary Purpose data, rather than the MSCORP data, as the base for determining Projected Use.

262. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised

Analysis in which the Forest Service used the 2007 NVUM Primary Purpose data, rather than the MSCORP data, as the base for determining Projected Use.

263. The available supply of areas and trails on the Forests and state lands in Michigan where users may enjoy snowmobiling should meet the current and foreseeable demand.

264. The designated snowmobile trails within the proclamation boundaries of the Forests contain loops of various sizes and alternative ways of getting from one place to another.

265. The Forest Service is required to coordinate with recreation opportunities already present and available on other public lands, with the aim of reducing duplication in meeting recreation demands.

266. The Sixth Circuit held that the acreage already dedicated to a particular activity on state land should be considered in deciding how much federal land to allocate to the activity.

267. The Forest Service attempted to comply with the requirement to reduce duplication by holding a series of meetings with the Michigan Department of Natural Resources to discuss feasible opportunities to reduce the duplication of recreation opportunities for visitors who enjoy snowmobiling in the Forest's Primitive and SPNM areas.

268. Both the 1986 Plan and the 2006 Plan provided that snowmobiling was incompatible with the standards and guidelines applicable to Primitive and SPNM areas.

269. Snowmobiling tends to occur in the more developed ROS classes of roaded natural, rural and urban.

270. The 2012 Decision did nothing to reduce duplication in meeting recreation demands with respect to snowmobiling.

271. The 2012 Decision violates the NFMA because it did not reduce duplication in meeting recreation demands with respect to snowmobiling.

272. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it did not reduce duplication in meeting recreation demands with respect to snowmobiling.

273. Upon information and belief, the Forest Service does not know how many miles of designated snowmobile trails are in the Lower Peninsula of Michigan.

274. In addition to the designated snowmobile trails, snowmobiling is allowed on tens of thousands of miles of unplowed county roads in the State of Michigan.

275. Upon information and belief, the Forest Service does not know how many miles of unplowed county roads are in the Lower Peninsula of Michigan.

276. In addition to the designated snowmobile trails, snowmobiling is allowed on unplowed county roads within the proclamation boundaries of the Forests.

277. Upon information and belief, the Forest Service does not know how many miles of unplowed county roads are within the proclamation boundaries of the Forests.

278. While this case has been pending, the Forest Service has constructed new snowmobile trails, or allowed new snowmobile trails to be constructed, on the Forests.

279. Allowing snowmobiling in and around areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers duplicates the snowmobiling recreation opportunity already present and available on state and federal land.

280. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not reduce duplication in meeting recreation demands with respect to snowmobiling.

Violations Regarding
Failure to Minimize Conflicts Between
Off-road Vehicles and Other Uses

281. Plaintiff adopts by reference the statements contained in paragraphs 1 through 280 of this Complaint.

282. By allowing ORVs in and around areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers, the Forest Service has created conflicts between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

283. The presence of ORVs in and around the areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers substantially diminishes Plaintiff's walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing experiences.

284. The Forest Service is required to plan and implement ORV use to minimize conflicts with other uses of the Forests.

285. The 1986 ROS Book requires the Forest Service keep sharply dissimilar opportunities such as ORV Trails and Nonmotorized Trails apart so conflicts are minimized.

286. Amendment 1 did nothing to minimize the conflicts between ORVs and other uses of the Forests.

287. The 2012 Decision violates the NFMA because it did not minimize conflicts between ORVs and other uses of the Forests.

288. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it did not minimize conflicts between ORVs and other uses of the Forests.

289. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not minimize conflicts between ORVs and other uses of the Forests.

Violations Regarding
Failure to Restrict or Prohibit ORVs

290. Plaintiff adopts by reference the statements contained in paragraphs 1 through 289 of this Complaint.

291. ORVs cause considerable adverse effects on visitors to the Forests who enjoy walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing.

292. The Forest Service is required to classify areas and trails of the Forests as to whether or not ORV use may be permitted on the basis of 36 C.F.R. part 295.

293. The Forest Service is required to restrict or prohibit ORVs if they will cause considerable adverse effects on other forest visitors until such time as the adverse effects can be eliminated.

294. The 2012 Decision violates the NFMA because the Forest Service did not restrict or prohibit ORVs until such time as the adverse effects on other forest visitors could be eliminated.

295. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because the Forest Service did not restrict or prohibit ORVs until such time as the adverse effects on other forest visitors could be eliminated.

296. ORV use in and around the areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers causes considerable adverse effects on forest visitors who enjoy walking, hiking, mountain biking, kayaking, cross-country skiing and snowshoeing.

297. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not restrict or prohibit ORVs in and around the areas designated as SPNM in the 2006 Plan, Nonmotorized Trails and Wild and Scenic Rivers until such time as the adverse effects on other forest visitors could be eliminated.

**VIOLATIONS OF THE
MULTIPLE-USE SUSTAINED YIELD ACT**

298. The Secretary is required to develop and administer the Forests for multiple use.

299. Multiple use means that some land will be used for less than all of the resources.

300. Multiple use also means the harmonious and coordinated management of the various resources.

Violations Regarding
Failure to Balance
Competing Uses

301. Plaintiff adopts by reference the statements contained in paragraphs 1 through 300 of this Complaint.

302. Opportunities to experience SPNM experiences are limited in Michigan, especially in the Lower Peninsula.

303. Prior to the 2012 Decision, the Forests were among the few places in the Lower Peninsula of Michigan where people could visit to enjoy quality SPNM experiences.

304. The 2012 Decision reduced the SPNM areas from approximately 62,300 acres in the 2006 Plan to approximately 3,373 acres in Amendment 1.

305. The only SPNM area remaining after the 2012 Decision is the Nordhouse Dunes Wilderness.

306. The use of the Nordhouse Dunes Wilderness exceeded its capacity prior to the 2012 Decision.

307. Using the correct base and projections for snowmobile use, the available supply of areas and trails on the Forests and state lands in Michigan where users may enjoy snowmobiling exceeds the current and foreseeable demand for snowmobiling.

308. The Sixth Circuit held that the Forest Service has the authority to close certain areas of the Forests to certain activities.

309. The 2012 Decision makes no reduction in the number of miles of snowmobile trails on the Forests.

310. Cross-country skiers prefer to ski in SPNM areas.

311. The Forest Service did not determine whether specific areas of the Forests are receiving recreation use levels above capacity.

312. The 2006 Plan and Amendment 1 are required to provide for multiple use.

313. Multiple use involves striking a balance among the many competing uses to which land can be put.

314. The Sixth Circuit held that the Forest Service was required to balance competing uses of the Forests, rather than favoring one or two uses above all others.

315. The 2012 Decision did not balance the supply of SPNM areas on the Forests with the demand for SPNM areas.

316. Upon information and belief, the Forest Service never determined whether the available supply of Nonmotorized Trails and areas where users may enjoy walking, hiking, mountain biking, cross-country skiing and snowshoeing would meet the current and foreseeable demand.

317. The 2012 Decision violates the MUSYA because it favors snowmobilers instead of balancing the competing uses of the Forests.

318. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it favored snowmobilers instead of balancing the competing uses of the Forests.

VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

319. To the fullest extent possible, the policies and regulations of the Forest Service must comply with the National Environmental Policy Act (the "NEPA").

320. The NEPA created the Council on Environmental Quality (the "CEQ").

321. Executive Order 11514 of 1970 as amended ordered the CEQ to issue regulations to federal agencies for the implementation of the NEPA.

322. The CEQ promulgated the regulations compiled at 40 C.F.R. part 1500 (the “CEQ Regulations”) to implement the NEPA.

323. The Forest Service is required to comply with the CEQ Regulations.

324. The CEQ Regulations tell the Forest Service what it must do to comply with the procedures of the NEPA.

325. The Forest Service is required to interpret and administer its policies and regulations to the fullest extent possible in accordance the NEPA and the CEQ Regulations.

326. 36 C.F.R. part 219 (2000) is meant to comply the NEPA.

327. The Forest Service is required to use all practical means to minimize any possible adverse effects of its actions upon the quality of the human environment.

328. The 2006 Plan and Amendment 1 were required to be prepared in accordance with the NEPA.

329. The 2012 Alternatives were required to be formulated according to the NEPA procedures.

Violations Regarding
Inaccurate Information

330. Plaintiff adopts by reference the statements contained in paragraphs 1 through 329 of this Complaint.

331. Environmental information must be available to public officials and citizens before decisions are made and before actions are taken.

332. Information must be of high quality.

333. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing the NEPA.

334. The Forest Service is required to insure the professional integrity, including scientific integrity, of the discussions and analyses in the SEIS.

335. The SEIS must be supported by evidence that the Forest Service has made the necessary environmental analyses.

336. The Revised Analysis violates the NEPA because it used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use and stated that this Court determined the market area.

337. The SEIS violates the NEPA because it stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient and was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use and stated that this Court determined the market area.

338. The 2012 Decision violates the NEPA because it was based on the SEIS which stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient and was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use and stated that this Court determined the market area.

339. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient and was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use and stated that this Court determined the market area.

340. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it was based on the SEIS which stated that the Sixth Circuit found the Forest Service's interpretation of the ROS in the 2006 Decision deficient and was based on the Revised Analysis which used the 2007 NVUM Primary Purpose data as the base and the Table 11 Projections to determine Projected Use and stated that this Court determined the market area.

Violations Regarding
Failure to Consider Opposing Views

341. Plaintiff adopts by reference the statements contained in paragraphs 1 through 340 of this Complaint.

342. The Forest Service provided no explanation of the reason it used the 2007 NVUM Primary Purpose data as the base to determine Projected Use.

343. The Forest Service provided no explanation of the reason it used the Table 11 Projections to determine Projected Use.

344. In Plaintiff's comments on the First Analysis and the DSEIS, he pointed out the problems with using the 2007 NVUM Primary Purpose data as the base to determine Projected Use and requested that the Forest Service use the NSRE data.

345. In Plaintiff's comments on the First Analysis and the DSEIS, he pointed out the problems with the Table 11 Projections and requested that the Forest Service use the Cordell Projections.

346. Plaintiff's request to use the NSRE data and the Cordell Projections was a substantive comment and a responsible opposing view.

347. The Forest Service is required to discuss in the SEIS any responsible opposing view which was not adequately discussed in the DSEIS.

348. The Forest Service is required to respond in the SEIS to any responsible opposing view.

349. Possible responses by the Forest Service to comments, include citing the sources, authorities, or reasons which support the agency's position.

350. The Forest Service is required to attach to the SEIS all substantive comments, whether or not the comment is thought to merit individual discussion by the Forest Service in the SEIS.

351. The SEIS contains no discussion, response or attachment of Plaintiff's comments and request that the Forest Service use the NSRE data and the Cordell Projections.

352. The SEIS violates the NEPA because it did not discuss, respond to, or attach Plaintiff's comments and request that the Forest Service use the NSRE data and the Cordell Projections.

353. The 2012 Decision violates the NEPA because it was based on the SEIS which did not discuss, respond to, or attach Plaintiff's comments and request that the Forest Service use the NSRE data and the Cordell Projections.

354. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS

which did not discuss, respond to, or attach Plaintiff's comments and request that the Forest Service use the NSRE data and the Cordell Projections.

Violations Regarding
Consideration of
Issues Not Listed in the Notice of Intent

355. Plaintiff adopts by reference the statements contained in paragraphs 1 through 354 of this Complaint.

356. Neither the proposed action nor the possible alternatives listed in the 2010 Notice of Intent included using a market area which was different from the cumulative effects area used in the FEIS.

357. The Forest Service is required to determine the scope of issues to be analyzed in the SEIS.

358. The scope consists of the range of actions, alternatives, and impacts to be considered in SEIS.

359. The Revised Analysis violates the NEPA because it used a market area which was different from the cumulative effects area used in the FEIS and, therefore, was beyond the scope of the proposed action.

360. The SEIS violates the NEPA because it was based on the Revised Analysis which used a market area which was different from the cumulative effects area used in the FEIS and, therefore, was beyond the scope of the proposed action.

361. The 2012 Decision violates the NEPA because it was based on the Revised Analysis which used a market area which was different from the cumulative effects area used in the FEIS and, therefore, was beyond the scope of the proposed action.

362. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the Revised Analysis which used a market area which was different from the cumulative effects area used in the FEIS and, therefore, was beyond the scope of the proposed action.

Violations Regarding
Consideration of
Alternatives Not Listed in the Notice of Intent

363. Plaintiff adopts by reference the statements contained in paragraphs 1 through 362 of this Complaint.

364. Neither the proposed action nor the possible alternatives contained in the 2010 Notice of Intent contemplated changing the designation of areas designated as SPNM in the 2006 Plan.

365. The notice of intent must describe the proposed action and the possible alternatives.

366. The SEIS violates the NEPA because it considered alternatives not listed in the 2010 Notice of Intent.

367. The 2012 Decision violates the NEPA because it was based on the SEIS which considered alternatives not listed in the 2010 Notice of Intent.

368. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which considered alternatives not listed in the 2010 Notice of Intent.

369. The 2012 Decision did not reduce duplication in meeting the recreation demand for snowmobiling.

370. The 2012 Decision did not minimize conflicts between ORVs and other uses of the Forests.

371. The 2012 Decision did not remedy the deficiencies identified by the Sixth Circuit.

372. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not respond to the purpose and need for action in the 2010 Notice of Intent.

Violations Regarding
Failure to Formulate a
Broad Range of Alternatives

373. Plaintiff adopts by reference the statements contained in paragraphs 1 through 372 of this Complaint.

374. The Forest Service is required to consider an alternative of no action.

375. Alternative 1 in the SEIS was the required no action alternative.

376. Alternative 1 in the SEIS would not have remedied any of the deficiencies identified by the Sixth Circuit.

377. Alternative 1 in the SEIS did not meet the purpose and need for action in the 2010 Notice of Intent.

378. Alternative 2 in the SEIS did not address the issue of ORV Trails adjacent to areas designated as SPNM in the 2006 Plan.

379. Alternative 2 in the SEIS would not have remedied the deficiencies identified by the Sixth Circuit.

380. Alternative 2 in the SEIS did not meet the purpose and need for action in the 2010 Notice of Intent.

381. Alternative 3 in the SEIS would not have reduced duplication in meeting the recreation demand for snowmobiling.

382. Alternative 3 in the SEIS would not have minimized conflicts between ORVs and other uses of the Forests.

383. Alternative 3 in the SEIS would not have remedied the deficiencies in the 2006 Plan identified by the Sixth Circuit.

384. Alternative 3 in the SEIS did not meet the purpose and need for action in the 2010 Notice of Intent.

385. Alternative 4 in the SEIS would not have reduced duplication in meeting the recreation demand for snowmobiling.

386. Alternative 4 in the SEIS would not have minimized conflicts between ORVs and other uses of the Forests.

387. Alternative 4 in the SEIS would not have remedied the deficiencies identified by the Sixth Circuit.

388. Alternative 4 in the SEIS did not meet the purpose and need for action in the 2010 Notice of Intent.

389. Alternative 10 in the SEIS was similar to Alternative 2 in the SEIS, but added a one mile buffer around the areas designated as SPNM or Primitive in the 2006 Plan.

390. Alternative 10 in the SEIS would have come closest to remedying the deficiencies identified by the Sixth Circuit.

391. Alternative 10 in the SEIS was eliminated from detailed study because of noise sources outside of the Forest Service's control.

392. The alternatives must meet the purpose and need for action.

393. The SEIS must provide alternatives which sharply define the issues and provide a clear basis for choice.

394. The Chief's 2012 Decision found that the SEIS could have done a better job of providing a clear basis for choice among the 2012 Alternatives.

395. The alternatives are the heart of the SEIS.

396. The Forest Service is required to include reasonable alternatives in the SEIS even if they are not within its jurisdiction.

397. The SEIS violates the NEPA because the 2012 Alternatives did not sharply define the issues.

398. The 2012 Decision violates the NEPA because it was based on the SEIS in which the 2012 Alternatives did not sharply define the issues.

399. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS in which the 2012 Alternatives did not sharply define the issues.

Violations Regarding
Failure to Consider
Alternatives to Resolve Conflicts

400. Plaintiff adopts by reference the statements contained in paragraphs 1 through 399 of this Complaint.

401. There were unresolved conflicts in the 2012 Decision regarding ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

402. The Forest Service is required to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.

403. None of the 2012 Alternatives would have resolved the conflicts between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

404. The SEIS violates the NEPA because it was based on the SEIS which did not contain any alternative which would have resolved the conflicts between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

405. The 2012 Decision violates the NEPA because it was based on the SEIS which did not contain any alternative which would have resolved the conflicts between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

406. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not contain any alternative which would have resolved the conflicts between ORVs and walkers, hikers, mountain bikers, kayakers, cross-country skiers and snowshoers.

407. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not resolve conflicts between ORVs and other users of the Forests.

Violations Regarding
Failure to Include
Mitigation Measures

408. Plaintiff adopts by reference the statements contained in paragraphs 1 through 407 of this Complaint.

409. The Forest Service could have mitigated the effects of the 2012 Decision by providing for the relocation of ORV Trails or Nonmotorized Trails to comply with the NFMA.

410. The SEIS did not include any mitigation measures.

411. The Forest Service is required to include appropriate mitigation measures in the SEIS.

412. The SEIS violates the NEPA because it did not include any mitigation measures.

413. The 2012 Decision violates the NEPA because it was based on the SEIS which did not include any mitigation measures.

414. The 2012 Decision was made without observance of procedure required by law and was otherwise not in accordance with law because it was based on the SEIS which did not include any mitigation measures.

415. The 2012 Decision was arbitrary, capricious and an abuse of discretion and was unwarranted by the facts because it did not mitigate conflicts between ORVs and other users of the Forests.

416. Plaintiff adopts by reference the statements contained in paragraphs 1 through 198 of the First Amended Complaint.

REQUEST FOR RELIEF

Plaintiff requests that this Court:

- a. Declare the 2006 Decision unlawful and set aside the 2006 Plan;
- b. Declare the 2012 Decision unlawful and set aside Amendment 1;
- c. Order Defendants to prepare a land and resource management plan for the Forests in compliance with the applicable laws and regulations;
- d. Order Defendants to prepare a land and resource management plan for the Forests that complies with the applicable laws and regulations;
- e. Hold Defendant Myers in contempt of court for failing to obey the Sixth Circuit Opinion and Judgment;
- f. Retain jurisdiction over this matter until Defendants comply with the judgment of this Court;
- g. Award Plaintiff his costs incurred in this action, together with reasonable attorney's fees; and

h. Grant such other relief to which Plaintiff is entitled.

February 14, 2013

s/ Kurt J. Meister

Kurt J. Meister
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P34434

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Judith E. Levy and Pamela S. West, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: None.

s/ Kurt J. Meister

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