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7 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
8 MISSOULA DIVISION

9 FRIENDS OF THE WILD SWAN, a non-profit)
10 organization; ALLIANCE FOR THE WILD ROCKIES, a)
11 non-profit organization; MONTANA ECOSYSTEM)
12 DEFENSE COUNCIL, a non-profit organization; and the)
13 NATIVE ECOSYSTEMS COUNCIL, a non-profit)
14 organization,)

15 Plaintiffs,)

16 vs.)

17 DEBORAH L.R. AUSTIN, in her official capacity as)
18 Forest Supervisor for the Lolo National Forest; LESLIE)
19 WELDON, in her official capacity as Regional Forester)
20 for the United States Forest Service, Region One; the)
21 UNITED STATES FOREST SERVICE, an agency of the)
22 United States Department of Agriculture; ROWAN W.)
23 GOULD, in his official capacity as acting director of the)
24 U.S. Fish & Wildlife Service; the UNITED STATES FISH &)
25 WILDLIFE SERVICE, an agency of the United States)
26 Department of the Interior,)

27 Defendants.)

CV 11-125-M-DWM

**WILDWEST INSTITUTES' AMICUS
BRIEF IN SUPPORT OF PLAINTIFFS**

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24 INTRODUCTION

25 WildWest Institute submits this amici curiae brief in support of Plaintiffs

27 Friends of the Wild Swan, Alliance for the Wild Rockies, Montana Ecosystem

28 Defense Council, and Native Ecosystem Council. As a former member of the

1 Southwestern Crown of the Continent Collaborative (“SWCC”), Amici intend to
2 offer a unique perspective into the relationship between SWCC and the Forest
3 Service and into the planning and implementation of the Colt Summit Project.
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5 SUMMARY

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7 The administrative records makes it clear that the Forest Service
8 prepackaged the Colt Summit Project and delivered it to SWCC. There is no
9 evidence in the administrative record that SWCC offered any input on the project.
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11 There is also no record of SWCC voting to approve this project. If a vote did exist,
12 the Forest Service had extraordinary voting power to help push the project
13 through to the implementation phase. This was all done under the guise of
14 collaboration. SWCC took no action to independently investigate any of the
15 impacts this project would have on the environment. This model is potentially
16 detrimental to collaboratives, who often do important work for the national
17 landscapes, and tarnishes the relationship between the government and the
18 public. If this project is allowed to persist, in the manner it was implemented, it
19 will set a dangerous precedent involving the relationship between the federal
20 government, public interest groups and citizens.
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26 BACKGROUND

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1 The Lolo Restoration Committee (“LRC”) was formed in 2007.¹ Amici has
2 been an active member of the LRC since its inception and is supportive of
3 meaningful collaborations that are open, transparent and inclusive and don’t
4 potentially diminish the role of NEPA. The Lolo Restoration Committee eventually
5 split into two subgroups, separating the Seeley District of the forest from the
6 other four West Side Districts (Missoula, Ninemile, Superior, Plains/Thompson
7 Falls ranger districts). The WildWest Institute’s restoration coordinator, Jake
8 Kreilick, currently serves as chair of the LRC’s Westside Working Group.

9
10 SWCC formed in 2009 following passage of the Collaborative Forest
11 Landscape Restoration Program (“CFLRP”) that was part of the Omnibus Public
12 Land Management Act of 2009. SWCC is a public organization who are open to “all
13 interested participants who support the implementation of the Forest Landscape
14 Restoration Act of 2009.” *Southwestern Crown of the Continent Forest Restoration
15 Collaborative Charter*, Doc. R-5:68131. Amici’s participation in the SWCC took
16 place during the first half of 2010. The entire focus of the SWCC during this period
17 was on submitting an application and proposal to be included, and receive
18 funding, under the CFLRP. Amici participated in a sub-group of SWCC developing

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¹ This Amicus Brief is intended to speak only towards the interactions of the Southwestern Crown Collaborative and the United States Forest Service and does not suggest that the Lolo Restoration Committee or any other Collaborative has acted inappropriately.

1 the “proposed treatment,” “wildfire,” “utilization” and “landscape strategy
2 section” of the application, which essentially was a grant-writing exercise. During
3 this process there was no discussion regarding the specific issues concerning any
4 listed Forest Service project in the application, including the Colt Summit Project.
5 Amici withdrew from SWCC, partially due to feeling uncomfortable with writing a
6 grant proposal to the CFLRP to fund specifically listed Forest Service projects prior
7 to the completion of the NEPA process for those projects.
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11 SWCC was selected to be part of the Collaborative Forest Landscape
12 Restoration Program (CFLRP) in August of 2010. *Id.* The Colt Summit Project was
13 enacted in 2010. See *Environmental Assessment, Colt Summit Restoration and*
14 *Fuels Reduction Project*, Doc. A-1:1. The Environmental Assessment (EA) claims
15 that the project “was identified as a priority for treatment in the Southwestern
16 Crown of the Continent’s Collaborative Forest Landscape Restoration Program
17 proposal and advances all of the Montana Forest Restoration Council’s thirteen
18 restoration principles.” *Id.* at A-1:5 (internal parenthesis omitted).² Forest Service
19 meeting notes, however, show this to be categorically untrue.
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25 The Forest Service brought this project to SWCC, with a predetermined
26 Finding of No Significant Impact. There is also no evidence in the record that

27 _____
28 ² Having been deeply involved with the writing and development of the Montana Forest Restoration Council’s thirteen restoration principles Amici strongly disagrees that the Colt Summit Project complies with all thirteen restoration principles.

1 shows that SWCC considered this project at any of their meetings, nor is there any
2 record of a vote being taken to approve this project. This is less a collaboration
3 and more of a rubber-stamping of a pre-packaged project without looking at any
4 of the impacts on the environment or wildlife. This method of project
5 implementation erodes the facade of independence of organizations like SWCC
6 and could be detrimental to collaboratives as a whole.
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10 ARGUMENT

11 I. The Forest Service prepackaged the Colt Summit project and had an
12 extraordinary amount of influence in the SWCC voting process.

13
14 A) The Colt Summit Project is solely a Forest Service project.

15 It is clear from the administrative record that the Forest Service designed
16 the Colt Summit Project, and the specific prescriptions, then delivered the project
17 to the SWCC for approval and inclusion in the SWCC's CFLRP application. During
18 amici's participation in the SWCC during the first half of 2010 the SWCC had no
19 discussion about the specific wildlife, habitat or old-growth issues surrounding the
20 Colt Summit Project and the SWCC didn't provide any specific input on the
21 project. The Forest Service Scoping Notice was published in February, 2010. *Colt*
22 *Summit Restoration and Fuels Reduction Project*, B-1:000311. IDT meeting notes
23 dated February 17, 2010, refer to this scoping statement to define and explain the
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1 proposed Colt Summit Project. *Colt Summit Restoration and Fuel Reduction EA,*
2 *IDT Meeting Notes*, I-6:907. Two months later, in a discussion of the upcoming EA,
3
4 IDT meeting notes, dated April 27, 2010, state “The forest [service] has designed
5 the project to have no significant issues so that a finding of no significant impact
6
7 (FONSI) can be written after the environmental analysis (EA).” *Colt Summit*
8 *Restoration and Fuel Reduction EA, IDT Meeting Notes*, I-8:926.

9
10 Document I-9 of the administrative record contains the above quotation,
11 then furthers that idea by stating, “EA should already have reached conclusions on
12 significance. Write from that point and perspective, providing support and
13 evidence for no significance.” I-9:939. The following three pages basically provide
14 a mini-seminar on how to persuasively say that the actions of the Forest Service
15 have so significant impact on the environment. See I-9:940-942. All of these
16 discussions occurred before May, 2010. The first time the Colt Summit Project
17 turns up in the record in relation to SWCC is in their Landscape Restoration
18 Strategy, updated in May, 2010. *Southwestern Crown of the Continent Landscape*
19 *Restoration Strategy*, R-3:68118. In that document it is simply listed as a project
20 for the fiscal year of 2011. It turns up again in the Southwestern Crown of the
21 Continent Collaborative CFLRP Proposal, again listed only once, as a project to be
22 funded in the 2010-2011 fiscal year. These are the only times in the administrative
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1 record that SWCC even mentions the Colt Summit Project. It is clear that this
2 project was created and crafted solely by the Forest Service.
3

4 B) The record does not support the assertion that SWCC helped create the
5 Colt Summit Project nor that they voted to approve the project.

6 The record suggests that SWCC relied solely on the documents and
7 information provided to them by the Forest Service in their discussions, without
8 preparing their own information or investigating the project independently. There
9 is nothing in the meeting notes discussing any environmental impacts, nor is there
10 any evidence that SWCC looked at the impact this project would have on the
11 wildlife in the project area. In fact, the meeting notes indicate that SWCC took the
12 Forest Service's documentation at face value and conducted no independent
13 study of the project whatsoever. There is no evidence that SWCC had any input or
14 participated in any way in creating the Colt Summit Project. The Forest Service
15 provided them with a project, which they took at face value. There is also no
16 evidence that a vote was ever taken to approve this project.
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23 The record actually reflects a higher level of involvement from Plaintiffs
24 than from the collaborative. Plaintiffs, who are not members of the collaborative,
25 attended all meetings, all field trips and submitted extensive, detailed and
26 substantive comments during the entire NEPA process. The record reflects this
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1 elevated level of involvement by Plaintiffs, but only twice does SWCC's meeting
2 notes mention this project. This in and of itself is telling that SWCC did not offer
3 any input or was not involved in this project in any meaningful way.
4

5 C) The Forest Service had significant influence in the voting process of the
6 Southwestern Crown of the Continent Collaboration.

7 Even if a vote took place where SWCC approved this project, the Forest
8 Service maintained, at the time of this project, an extraordinary amount of
9 influence over SWCC's voting block. Under SWCC's charter each individual who
10 attends two meetings, submits a letter signifying their organizations or individual
11 support of the implementation of the Forest Landscape Restoration Act of 2009
12 and submits a written agreement to abide by the rules of the charter, including
13 agreeing in writing that "Each member of the SWCC has a duty of loyalty to the
14 SWCC," becomes a full voting member. *Charter*, Doc. R-5:68131. In addition to all
15 of this, each member must sign a conflict of interest statement. *Id* at R-5:68133.³
16
17 The charter does not aggregate members from the same organization; Each
18 individual gets one vote, not each group represented. *Id*.
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24 According to SWCC's website, seven of the twenty-eight current members
25 of the collaborative are employees of the United States Forest Service. <http://>
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28 ³ Conflict of Interest agreements by their nature suggest that each individual member is prohibited from participating or engaging in any action outside of SWCC that would disagree or appear to go against the goals and ideology of SWCC.

1 www.swcrown.org/about/partners/. That comprises 25% of the voting block, un-
2 naturally high number for one single organization. Two of those government
3 employees are on the executive committee.⁴ Similarly, under the charter, one
4 member of the Forest Service is made co-chair of the collaborative as a whole.⁵
5
6 *Charter*, Doc. R-5:68132. At the time the Colt Summit Project was at issue, the
7 Forest Service had enormous power in directing SWCC's actions.
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10 Comparatively, other collaboratives do not have the level of Forest Service
11 involvement that is found in SWCC. For example, the LRC limits members of the
12 U.S. Forest Service to advisor status and expressly prohibits them from being
13 members of the forest restoration committees. See *Lolo Restoration Committee*
14 *Charter*, pg. 1, available for download at [http://www.montanarestoration.org/](http://www.montanarestoration.org/lolo-committee)
15 [lolo-committee](http://www.montanarestoration.org/lolo-committee). A look at the current members of the LRC confirms this doctrine.
16
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19 There is not a single employee of the U.S. Forest Service listed as a member of the
20 LRC.
21

22 On a national scale, Blue Mountain Forest Partners (BMFP), a collaborative
23 organization who work to preserve the Blue Mountains in Granite County Oregon,
24

26 ⁴ The Wilderness Society, an amicus in support of the Colt Summit Project, has five of the twenty-eight
27 current members, meaning that the Forest Service and The Wilderness Society together comprise a
28 remarkable 43% of the voting block of SWCC. <http://www.swcrown.org/about/partners/>

⁵ The SWCC charter was amended on 2/14/12 to remove Forest Service employees as co-chairs. At the
time of Colt Summit, however, the charter in the administrative record controlled.

1 do allow federal partners, but those partners are qualified as non-voting
2 members. See *Blue Mountain Forest Partners Operations Manual*, page 5,
3 available for download at [http://sites.google.com/site/
4 bluemountainsforestpartners/organization/docs](http://sites.google.com/site/bluemountainsforestpartners/organization/docs). BMFP encourages Federal
5 Partners, that is Forest Service employees, to participate in the collaborative, but
6 they are expressly prohibited from voting on proposed projects or collaborative
7 activity.⁶ *Id.* The level of Forest Service involvement in SWCC’s voting and
8 operations structure is not common among collaboratives.
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13 In summary, the administrative record conclusively shows that the Forest
14 Service 1) prepackaged the Colt Summit Project and delivered it to SWCC and 2) at
15 the time of the Project’s implementation, the Forest Service had enormous
16 control over the voting and direction of SWCC projects. This allowed the Forest
17 Service, in this instance, to enact a project of their own design under the guise of
18 public collaboration.
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22 II. Southwestern Crown’s scheduling structure favors Forest Service employee 23 participation over public participation.

24 Under their charter, individuals who wish to join SWCC must simply attend
25 their meetings. *Charter*, R-5:68131. The collaborative “operates under
26

27 ⁶ The Operations Manual asks Federal Partners to be “committed to collaborative processes and project
28 planning procedures; offer resource information; share historical data; conduct NEPA; share technical
expertise; and to participate actively in project discussions and clarify the scope of recommendations
acceptable to the agencies.” See BMFP Operations Manual

1 a principle of transparency, where all its actions, meetings, and records are open
2 for review and comment by the public.” *Charter*,R-5:68131. SWCC’s scheduling
3 and timing meetings, however, favor Forest Service employee participation, where
4 attendance at meetings such as these is part of their job.
5

6
7 SWCC’s scheduled meetings are always held on the third Tuesday of the
8 month, currently from 1 pm to 4 pm.⁷ However, during the period Amici was a
9 member of the SWCC, the meetings ran from 9 am to 4pm. Additionally, according
10 the SWCC website, the Prioritization Committee meets from 10 am to 2pm on
11 various weekdays at the Seeley Lake Ranger District, north of Seeley Lake and the
12 Monitoring Committee meets from 1pm to 4pm on various weekdays, also at the
13 Seeley Lake Ranger District office.
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17 The fact that these meetings are held during the middle of the day, on a
18 weekday makes it difficult for members and the general public to attend these
19 meetings. Those individuals who have full time jobs not directly tied to national
20 forest management must take time off work. Those who don’t live in the Seeley
21 Swan area must also travel to and from the meetings, sometimes at great distance
22 and cost. Forest Service employees, however, attend these meetings as a part of
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⁷ This is according to SWCCs online calendar, found at <http://www.swcrown.org/events/2012-02>

1 their position.⁸ Taking days off work and traveling is not an issue for them because
2 their attendance is a part of their job.

3
4 Furthermore, inability to make the meetings is penalized. Missing three
5 consecutive meetings can result in an individual being stripped of their voting
6 rights. See *Id* at R-5:68131. Therefore, the meeting schedule itself seems to give
7 unfair favoritism towards those members who attend these meetings as a part of
8 their full time job.
9
10

11 III. The relationship between the Forest Service and SWCC could be detrimental to
12 the collaboratives as a whole.

13 Amici stress that this is not an argument against collaboration as a whole.
14
15 Several collaborations have done, and continue to do, important work in restoring
16 and protecting ecosystems both in Montana and on a national scale. The
17 relationship between the Forest Service and SWCC, in this instance, however,
18 allowed the Forest Service free reign to enact their project under the guise of
19 collaboration. If the Forest Service is allowed to prepackage projects and provide
20 them to a group, who in turn enacts them without offering input or investigation,
21 as it has with the Colt Summit Project, it could be extremely detrimental to the
22 works of collaborations as a whole. This allows the Forest Service to enact their
23 projects under the guise of collaboration and outside the bounds of the normal
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⁸ Wilderness Society employees also attend these meetings as part of their full time jobs.

1 voting and direction. It is equally clear that SWCC offered no input or investigation
2 into the project. This operating model allows the Forest Service to implement
3 their own projects under the guise of collaboration. If allowed to continue in this
4 manner, it could be detrimental to the relationship the Forest Service has with
5 public environmental organizations and to collaboratives as a whole.
6
7

8 CERTIFICATE OF COMPLIANCE
9

10 Pursuant to Local Rule 7.1(d)(2)(A) the attached brief is double spaced,
11 typeface of 14 point, and contains 2,625 words, excluding caption and certificates
12 of service and compliance, as indicated by the word processing system used to
13 type this brief.
14

15 CERTIFICATE OF SERVICE
16

17 I hereby certify that on February 27, 2012, I filed this document with the
18 clerk of the United States District Court for the District of Montana using the
19 Court's CM-ECF system which will send a Notice of Electronic Filing to all counsel
20 of record.
21
22

23 /s/Christopher T. Karr
24 Christopher T. Karr
25 Karr Law Firm, PLLC
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27
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