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United States of America

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

UNITED STATES OF AMERICA, Plaintiff, vs. TOM MACLAY, Defendant.	CV 06- 008-M-LBE COMPLAINT
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INTRODUCTION

This is a civil suit for damages and declaratory and injunctive relief against Tom Maclay (Maclay) resulting from his unauthorized and illegal actions on the National Forest. The United States asks this court to find Maclay has unlawfully and illegally trespassed upon and interfered with property of the United States, managed by the United States Forest Service, and to permanently enjoin him from such activity in the

future. The United States asks the court to order Maclay to pay damages to the United States for damage done to the National Forest lands, and for the cost of rehabilitation work.

THE PARTIES

1. Plaintiff is the United States of America, on behalf of the United States Department of Agriculture, Forest Service (hereafter USFS).
2. Defendant Tom Maclay resides in Missoula County, in the District of Montana.

JURISDICTION AND VENUE

3. This court has jurisdiction under 28 U.S.C. § 1345 (United States as plaintiff).
4. Venue is proper under 28 U.S.C. § 1391(b) in the District of Montana.
5. This action arises under the laws of the United States, and the laws of the State of Montana insofar as those laws have been incorporated into federal law.
6. A justiciable controversy exists between plaintiff and defendant and the relief requested by Plaintiff is proper pursuant to 28 U.S.C. § 2201-2202, and Rule 65 of the Federal Rules of Civil Procedure.

TRESPASS AND INTERFERENCE WITH PROPERTY OF THE UNITED STATES

7. Defendant is the owner of certain lands which abut lands of the United States managed by the Bitterroot and Lolo National Forests. Forest Service Road 1311 (FSR 1311) traverses defendant's property before entering the National Forest. The United States holds a recorded easement for that portion of FSR 1311 which traverses defendant's property.

8. In 2003, the USFS closed the roads of the McClain Creek drainage, including FSR 1311, to motorized vehicles beyond Maclay's property boundary for public safety reasons. USFS sent Maclay a copy of the Closure Order. On January 6, 2004, the USFS issued Maclay two Letters of Permission to use FSR 1311 for the express purposes of a log haul from Maclay's property and to access Carlton Lake for Maclay's Carlton Lake Irrigation Company. The letters did not authorize the cutting of vegetation or ground disturbing activities on national forest lands.

9. On July 22, 2004, Maclay was issued another Letter of Permission authorizing him to operate a truck on the closed roads. The permission was limited to July 22 and 23, 2004 and explicitly stated no vegetation was to be cut nor was any motorized use allowed off of the existing roads.

10. In March 2005, the Bitterroot National Forest, Stevensville Ranger District, received public complaints regarding trees cut along FSR 1311 on the National Forest and of a ski grooming machine (Bombardier) parked on National Forest Land. Forest Service personnel verified that trees had been cut on the National Forest. Forest Service personnel then contacted Maclay who admitted to using the Bombardier on National Forest lands.

11. The Forest Service conducted an inspection of the illegal activity. It appeared that trees were cut to allow the Bombardier clearance to travel the road. Maclay subsequently admitted to Forest Service personnel that he had cut trees along the road located on the National Forest. Maclay had no authorization to conduct such activity.

12. In early June 2005, the Forest Service conducted further investigation of national forest lands in the vicinity of Maclay's property. Several old logging roads on National Forest Service Land had been reopened. The Forest Service also discovered several newly constructed roads. In total, by June 28, 2005, the Forest Service had found seven roadways had been cleared of vegetation and seven additional areas of new road construction. On July 15, 2005, Maclay admitted to clearing the roads while on a telephone conversation with Forest Service District Ranger Dan Ritter. Maclay had no authorization from the Forest Service to undertake such activity on the National Forest.

13. In total, Maclay has illegally cut approximately 400 trees on the National Forest, including trees located within the Carlton Ridge Research Natural Area (RNA), a nationally unique ecosystem which is permanently protected and managed in its natural state.

14. The unauthorized and illegal actions of Tom Maclay have interfered with and damaged the property of the United States, including the Carlton Ridge RNA. Because of the defendant's actions, it is necessary for the United States to bring this action.

REQUEST FOR RELIEF

Wherefore, plaintiff requests that this court:

1. Enter judgement declaring that defendant's actions, as set forth above, constitute trespass upon the property of the United States;
2. Grant permanent injunctive relief restraining defendant and all persons acting in concert or participation with defendant from proceeding with any trespass on National

Forest Service Land, including reopening closed National Forest Service roads, illegal logging activities, and other unauthorized ground disturbing activities;

3. Grant the United States damages in an amount equal to the cost of restoring and rehabilitating the property to its pre-existing condition and for other damages caused by the unauthorized activities of the defendant, such damages to be established at trial; and

4. Award plaintiff its costs, expenses, attorney fees, and for such other and further relief as this court finds appropriate.

DATED this 24th day of January, 2006.

WILLIAM W. MERCER
United States Attorney

/s/ Mark Steger Smith
MARK STEGER SMITH
Assistant U.S. Attorney