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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

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14
15 FRIENDS OF GUALALA RIVER, et al.,

Case No. 20-cv-06453-JD

16 Plaintiffs,

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

17
18 vs.

19 GUALALA REDWOOD TIMBER, LLC,

Date: June 24, 2021
Time: 10:00 a.m.
Courtroom: 11
Judge: Hon. James Donato
Action Filed: September 15, 2020
Trial Date: None

20 Defendant.
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8 *Bair v. California Dep't of Transp.*, No. C 10-04360 WHA, 2011 WL 2650896

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10 *California v. Tahoe Regional Planning Agency*, 766 F.2d 1319 (9th Cir. 1985) 20

11 *Marbled Murrelet v. Babbitt*, 83 F.3d 1068 (9th Cir. 1996)..... 10, 19

12 *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644 (2007)..... 11, 19

13 *Nat'l Wildlife Fed'n v. Burlington N.R.R., Inc.*, 23 F.3d 1508 (9th Cir.1994) 18

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17 *Sierra Club v. Marsh*, 816 F.2d 1376 (9th Cir. 1987)..... 20

18 *Souza v. California Dep't of Transportation*, No. 13-CV-04407-JD, 2014 WL

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21 *W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 13-0176 (BLW), 2013

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23 *Wild Equity Inst. v. City & Cty. of San Francisco*, No. C 11-00958 SI, 2011 WL

24 5975029 (N.D. Cal. Nov. 29, 2011)..... 11

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on June 24, 2021 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable James Donato of the United States District Court for the Northern District of California, San Francisco Division, located at San Francisco Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Friends of Gualala River (“FOGR”) and Center for Biological Diversity (“CBD,” collectively with FOGR, “Plaintiffs”) will and hereby do move for an order preliminarily enjoining Defendant Gualala Redwood Timber, LLC (“GRT”) from engaging in logging in the portion of the Gualala River floodplain known as the “Dogwood” area, while this action is pending, on the grounds that such logging is reasonably certain to result in the take of certain threatened and endangered species, result in irreparable harm, the balance of the hardships is in favor of Plaintiffs to the required degree, and the public interest would be served by the injunction.

RELIEF REQUESTED

Plaintiffs seek a preliminary injunction to stop the logging of a 100-year-old flood plain forest, along the Gualala River, that is home four threatened and endangered species: Northern California (“NC”) steelhead, Central California Coast (“CCC”) coho salmon, northern spotted owl, and California (“CA”) red legged frog (collectively the “Listed Species”).¹

INTRODUCTION

The forest of the Gualala River floodplain, located on the border between Sonoma and Mendocino County, is among the southern-most redoubts of four of Northern California’s most iconic threatened and endangered species. Last logged over 100 years ago, broad, flat, and well-watered by the Gualala River, the forest is primeval in quality, with towering redwoods and Douglas firs that evoke the old growth forests that formerly blanketed the coastal range to Santa Cruz and beyond. As those old growth forests disappeared, so did fish, birds, and amphibians that

¹ FOGR and CBD have standing to pursue these claims and make this request. *See* Declaration of Jeff Miller (“Miller Dec.”); Declaration of Charles Ivor (“Ivor Dec.”).

1 lived in them. Absent the preliminary injunction sought herein, this summer², GRT will log that
 2 forest, likely killing, harassing, and/or harming individual members of each of the Listed Species
 3 and causing irreparable harm to efforts to keep these animals from sliding into extinction.

4 Plaintiffs are likely to prevail in their claims that the proposed logging is reasonably
 5 certain to result in the “take” of each of the Listed Species in violation of Section 9 of the
 6 Endangered Species Act (“ESA”). There can be no dispute that each of the Listed Species
 7 occupies the forest to be logged. The occupancy of each is well documented, including, in the
 8 case of CCC coho, NC steelhead, and CA red-legged frogs, through environmental DNA
 9 (“eDNA”) sampling conducted by Plaintiffs last year. And the declarations by Plaintiffs’
 10 experts—Drs. Chris Frissell, Sarah Kupferberg, and Dominick DellaSalla—outline multiple
 11 mechanisms by which the proposed logging is reasonably certain to kill, harm, harass, and/or
 12 harm the Listed Species. These include both direct take and indirect take through significant
 13 habitat modification and/or degradation that significantly impairs essential behavioral patterns of
 14 the Listed Species, including breeding, feeding, and/or sheltering. They further detail how these
 15 harms would result in species-wide impacts and delayed implementation of the Listed Species’
 16 respective Recovery Plans, causing the type of irreparable harm that requires maintenance of the
 17 status quo while Plaintiffs’ claims are pending.

18 It is expected that GRT will, nonetheless, argue that it simply not possible for take to
 19 result because it intends to comply with California’s state law regulatory regime for logging and
 20 various associated take-avoidance guidelines regarding northern spotted owl, NC steelhead, and
 21 CCC coho.³ Indeed, GRT has intimated that it intends to argue this as a matter of law. The fallacy
 22 of this argument is multi-faceted. The only mechanism by which a party can, *as a matter of law*,
 23 avoid an ESA § 9 take finding, is by utilizing ESA § 10, to wit: creating a Habitat Conservation
 24 Plan (“HCP”) and obtaining an Incidental Take Permit (“ITP”) from the United States Fish and
 25 Wildlife Service (“USFW”) or the National Marine Fisheries Service (“NMFS”), as applicable.

26 _____
 27 ² As described in the joint case management statement filed concurrently with this motion on May
 28 20, 2021 (Dkt. 59), GRT expects to receive authorization to commence logging on approximately
 July 14, 2021.

³ The California Forest Practice Rules (“FPRs”), Cal. Code Regs. tit. 14, §§ 896 *et seq.*

1 GRT has never done so with regards to any of the Listed Species. Moreover, USFW and NMFS
 2 have, in fact, repeatedly confirmed the inefficacy of the state law regulatory regimes on which
 3 GRT intends to rely, and have likewise confirmed that California’s take avoidance requirements
 4 are nowhere near as stringent as those required by an HCP. It is, therefore, not surprising that, as
 5 explained in the accompanying expert declarations, notwithstanding GRT’s promises that it will
 6 comply with the California Department of Forestry and Fire Protection (“CalFire”), USFW, and
 7 NMFS’ guidelines for take avoidance, it is reasonably certain that take will not be avoided; and,
 8 in certain circumstances, it is not even possible for GRT to comply with the take avoidance
 9 measures, given baseline conditions.

10 These facts, which together show a likelihood of success on the merits and irreparable
 11 harm, together with those going to a balancing of the equities and public interest, entitle Plaintiffs
 12 to a preliminary injunction, and they respectfully request that the Court enter one, here.

FACTS

I. The Gualala River Watershed

13
 14
 15 The Gualala River flows through southern Mendocino and northern Sonoma counties
 16 about 100 miles north of San Francisco. Declaration of Stuart Gross (“Gross Dec.”) Ex. A at p.
 17 1.⁴ The 298 square mile watershed consists of rugged mountainous terrain with erodible soils
 18 forested by redwood, Douglas fir, madrone, and tan oak. *Id.* It is one of the few and ever-
 19 shrinking examples of mature redwood forests that once carpeted the Northern California coast.
 20 *Id.* This lush riparian forest is the home of many different species of plants and animals, including
 21 the Listed Species; and each of the Listed Species depend on the riparian habitat in the watershed
 22 and the floodplain of the river. CCC coho and NC steelhead shelter, feed, and breed in the river
 23 and its tributaries, which, while essential to the survival of these species, are already damaged by
 24 sedimentation and nutrient loading from past logging, as well as temperature increases as a result
 25 of the reduced canopy coverage. Declaration of Dr. Chris Frissel (“Frissell Dec.”) Ex. A, pp. 1-2.
 26 The northern spotted owl uses that same dense canopy for nesting, roosting, hunting, and as a

27
 28 ⁴ In the concurrently filed Request for Judicial Notice, Plaintiffs request judicial notice of exhibits
 A through M of the Gross Dec.

1 refuge from extensive predation by the invasive barred owl. Declaration of Dr. Dominick
 2 DellaSalla (“DellaSalla Dec.”) Ex. A, pp. 1-2. And CA red legged frogs live and breed in the
 3 moist woody debris in the forest understory of the floodplain to be logged, as well as in the river
 4 itself and the surrounding off-channel pools and wetlands of the to-be-logged area. Declaration of
 5 Dr. Sarah Kupferberg (“Kupferberg Dec.”) Ex. A, pp 6-7.

6 The Listed Species’ occupancy of this forest is despite the abuse that the Gualala River
 7 watershed has suffered over the last 150 years, which has, in turn, made the mature floodplain
 8 forests that GRT intends to log all the more essential for these animals. Intensive commercial
 9 logging of the watershed began in the 1860s and continued through the 1950s. Gross Dec. Ex. B.,
 10 p. 818. The deleterious effects of that historical logging on the watershed and the flora and fauna
 11 that depend on it are well-documented and still keenly felt today.⁵ As stated by the California
 12 Department of Fish and Game in 1989:

13 Our files indicate the Garcia and Gualala River systems were subjected to some of
 14 the most damaging logging shows [sic] in the early 1950’s and periods previous to
 15 the 1950’s. In some cases, the streams were buried in ten feet of silt and cull logs.
 16 For example, in the notes taken of an August 18, 1964 stream survey of the South
 17 Fork of Fuller Creek it states, ‘The stream is almost a total log jam consisting of
 large logs, slash, and debris from logging operations. There are over 40 partial
 barriers present. The entire South Fork is heavily polluted by logging damage.’

18 *Id.*, Ex. C. Because it has been approximately 100 years since the lower floodplain of the Gualala
 19 River was logged and it enjoys plentiful water and nutrients from the river, the forest that GRT
 20 intends to cut provides a critical refuge for the Listed Species, in an environment that is otherwise
 21 severely stressed. *See, e.g., Id.* Ex. B, pp. 821-823; Frissell Dec. Ex A, p. 10; DellaSalla Dec. Ex.
 22 A, p. 18; Kupferberg Dec. Ex. A, pp. 14-15.

23 _____
 24 ⁵ As stated in the NMFS Multispecies Recovery Plan, “[t]he first documented accounts of logging
 25 of old growth redwoods [in the Gualala River watershed] date back to 1862 in lower portions of
 26 the watershed. By 1965, aerial photos of the watershed show large areas denuded of trees and
 27 scarred by roads and skid trails. Logging and clearing of dense conifer and woodland areas was
 28 frequently followed by prolonged cattle grazing. Following slowed periods of logging in the
 1970s and 1980s, timber harvest activity again increased in the 1990s. During the 1990s, smaller
 but numerous clear-cut blocks appeared in the redwood lowland areas under Gualala Redwoods,
 Inc. ownership.” Gross Dec. Ex. B, p. 818 (internal citations omitted).

1 **II. GRT’s Proposed Logging In The Dogwood Area**

2 Pursuant to the Dogwood Timber Harvest Plan (“THP”), GRT plans to log redwood trees
 3 in the lower Gualala River floodplain, which was last logged approximately a century. Gross Dec.
 4 Ex. D at § 2. The area to be logged is separated into 21 distinct units.⁶ *Id.* at § 2 p. 8. The THP
 5 will primarily involve cutting mature second-growth redwoods ranging from 90 to 100 years old.
 6 *Id.* at § 2 pp. 7.1-8; Ex. B., p. 819. Accomplishing this logging will require the use of heavy
 7 equipment within the floodplain, including tractors, skidders, feller-bunchers, and trucks. *Id.*, Ex.
 8 D at § 2 p. 14. GRT will fell the trees, then drag them through the forest undergrowth to the dirt
 9 roads using skid trails. *Id.* at § 2 p. 21. Landings—clearings carved out for the sorting and loading
 10 of logs for shipping—will be created for stacking the felled trees prior to being transported along
 11 the logging roads. *Id.* The logging roads will be maintained by spraying them with water drafted
 12 from holes dug in the gravel bars of the Gualala River. *Id.* at § 2 p. 33. In sum, GRT’s timber
 13 harvest will be accomplished by the use of invasive heavy equipment that will damage the forest
 14 canopy, undergrowth, the river itself, and the species that inhabit each. *Id.* at § 4 p. 153.

15 **III. The Endangered and Threatened Species in the Gualala River Floodplain**

16 The Gualala River and its surrounding environs are home to the NC steelhead, CCC coho,
 17 northern spotted owl, and CA red legged frog. Each of these species is listed as “threatened” or
 18 “endangered” under the ESA, and all of them have been pushed to the brink of extinction, in large
 19 part as a result of commercial timber harvesting. GRT’s logging in the Dogwood area is
 20 reasonably certain to result in the take of each of these species and cause irreparable harm to each
 21 and the habitat that it depends on for survival.

22 **A. The Northern California Steelhead**

23 The NC steelhead is the anadromous form of the coastal rainbow trout, meaning that it
 24 migrates between fresh and salt water as part of its life cycle. Like all anadromous salmonids,
 25 including CCC coho, NC steelhead, with minor exceptions, always return to the rivers or streams
 26 they were born in. Frissell Dec. Ex. A, p. 10. NC steelhead were listed as a threatened species
 27

28 ⁶ The units are numbered 1-24, but there are no units 2, 3 and 4.

1 under the ESA in 2000. Gross Dec. Ex. E. In 2016, NMFS promulgated a recovery plan for the
2 NC steelhead, citing the “inadequacy of regulatory mechanisms, destruction and modification of
3 habitat, and natural and man-made factors” as the “primary causes for the decline” of the NC
4 steelhead. *Id.*, Ex. B at p. 6.

5 NC steelhead inhabit the Gualala River throughout the course of their life cycle — NC
6 steelhead begin their lives as eggs in stream gravels, feed on tiny invertebrates in the water
7 column as fry, spend 1-3 years in the stream until they are large enough to migrate through the
8 estuary and into the ocean, then return to the stream to begin the process anew. *Id.*, Ex. B at p.
9 817; Frissell Dec. Ex. A, pp. 11-12. Environmental DNA testing confirms the presence of NC
10 steelhead throughout the lower watershed in which GRT intends to log, and although past and
11 recent accounts of NC steelhead suggest the population is currently self-sustaining, the numbers
12 of returning adult steelhead are highly variable and possibly declining. *Id.*; Frissell Dec. Ex. A,
13 pp. 6-7. NMFS rates the following indicators for salmonid viability and watershed conditions in
14 the Gualala River as “poor”: pool shelter, primary pools, pool/riffle/run ratio, impaired hydrology
15 (passage flow for smolts), stream side road density, water temperature, and summer juvenile
16 steelhead reduced density and abundance. Gross Dec. Ex. B at p. 819. The recovery plan
17 identifies its focus for the river as: “improving these poor conditions as well as those needed to
18 ensure population viability and functioning watershed processes.” *Id.*

19 NMFS specifically identifies logging, wood harvesting, and roads associated with logging
20 as “high threats” to the Gualala River NC steelhead population. *Id.* at p. 821. Timber harvests
21 result in the take of NC steelhead via impacts including reduced in-stream large woody debris,
22 increased water temperature, and increased erosion and sedimentation. Frissell Dec., Ex. A p. 13.
23 The recovery plan observes that “although logging has improved compared to historical practices,
24 habitat degradation from past logging and potential impacts associated with future logging will
25 continue to threaten the recovery of steelhead and their habitat” in the Gualala River. Gross Dec.
26 Ex. B, p. 821. NMFS’ Gualala River Conservation Action Planning Viability Table ranks logging
27 as posing the highest risk to NC Steelhead:
28

NC steelhead Gualala River CAP Threat Results

Threats Across Targets		Adults	Eggs	Summer Rearing Juveniles	Winter Rearing Juveniles	Smolts	Watershed Processes	Overall Threat Rank
Project-specific-threats		1	2	3	4	5	6	
1	Agriculture	Medium	Medium	Medium	Medium	Medium	Medium	Medium
2	Channel Modification	Low	Low	Medium	Low	Low	Medium	Medium
3	Disease, Predation and Competition	Low	Low	Low	Low	Low	Low	Low
4	Fire, Fuel Management and Fire Suppression	Low	Low	Low	Low	Low	Low	Low
5	Fishing and Collecting	Medium		Low		Low		Low
6	Hatcheries and Aquaculture							
7	Livestock Farming and Ranching	Medium	Medium	Medium	Medium	Low	Medium	Medium
8	Logging and Wood Harvesting	High	Medium	High	High	High	High	High
9	Mining	Low	Low	Low	Low	Low	Low	Low
10	Recreational Areas and Activities	Low	Low	Medium	Low	Low	Low	Low
11	Residential and Commercial Development	Low	Low	Low	Low	Low	Low	Low
12	Roads and Railroads	Medium	Medium	Medium	Medium	Medium	High	High
13	Severe Weather Patterns	Medium	Medium	Medium	Low	Medium	Low	Medium
14	Water Diversion and Impoundments	Medium	Low	Medium	Medium	Medium	High	Medium

Id., Ex. B at p. 835. And, at various points in the Recovery Plan, with regard to California’s regulatory mechanisms for avoiding take of Northern California steelhead, NMFS states that the applicable Forest Practices Rules “do not fully address the limiting factors for steelhead.” *Id.*, Ex. B at pp. 492-493.

B. The CCC Coho Salmon

The CCC coho is a species of anadromous fish, which, like the NC steelhead, migrates between salt and fresh water as part of its life cycle. Recent environmental DNA sampling (“eDNA”) confirms that CCC coho still maintain a presence in the Gualala River. Frissell Dec. Ex. A, pp. 6-7. CCC coho use the Gualala River during their life cycle in a similar manner to all anadromous salmonids — starting as eggs amongst clean stream gravels, sheltering and feeding amongst cover in the stream as juveniles, then migrating into the estuary and ocean as adults, before returning to breed. *Id.* at pp. 7-8. GRT’s impending logging project is likely to further harm this distressed population, which is on the brink of complete collapse. *Id.* at pp. 8-10.

NMFS released its Final CCC Coho Recovery Plan, in 2014, with the goal of restoring CCC coho to healthy, self-sustaining numbers. Gross Dec. Ex. F. The recovery plan states that “[l]ogging and wood harvesting, severe weather, roads, and water diversion and impoundment” are the greatest threats to coho in the Gualala River. *Id.*, Ex. F at p. 217. Like NC steelhead, timber harvests result in the take CCC coho via impacts including reduced in-stream large woody debris, increased water temperature, and increased erosion and sedimentation. Frissell Dec., Ex.

1 A p. 10. These impacts have been shown to impair the reproductive success of CCC coho due to
 2 increased turbidity, loss of interstitial spaces for use by juveniles, the smothering of eggs by fine
 3 sediments, loss of deep pools, and blockage of spawning habitat by landslides. *Id.*

4 With regard to the California’s Z’berg-Nejedly Forest Practice Act of 1973 and its
 5 regulatory regime for protecting salmonids, referred to as the “Anadromous Salmonid Protection”
 6 or “ASP” rules, NMFS’ CCC coho recovery plan specifically states that they do not adequately
 7 protect CCC coho. Gross Dec. Ex. F. at pp. 121-122; *see also* Ex. H; Ex. I, & Ex. J at p. 97.

8 Similarly, NMFS states in its Recovery Plan for the Southern Oregon/Northern California Coast
 9 (“SONCC”) ESU, which neighbors the CCC coho ESU:

10 [B]oth Oregon and California Forest Practices Acts are inadequate for the
 11 complete protection of salmon in the SONCC coho salmon ESU . . . Although the
 12 California forest practice rules have a requirement for disapproval of timber
 13 harvest plans that would result in a ‘taking’ or finding of jeopardy for listed
 species (14 CCR § 898.2(d)), the rules do not explicitly describe the method for
 effectively implementing this requirement.

14 *Id.* at Ex. G p. 3.54. It is GRT’s claimed obedience to these ASP rules that it asserts will prevent
 15 take of CCC coho and NC steelhead, as a matter of law. They won’t.

16 **C. The Northern Spotted Owl**

17 The northern spotted owl is a medium-sized dark brown owl native to the Pacific
 18 Northwest. DellaSalla Dec. Ex. A, pp. 4-5. It requires older, multi-layered, structurally complex
 19 forests for habitat, and its population has been decimated by commercial logging over the course
 20 of the last century. *Id.* at pp. 6-8. USFW listed the northern spotted owl as “threatened” under the
 21 ESA, in 1990, citing in large part the loss and adverse modification of suitable habitat as the
 22 result of timber harvesting, and promulgated a revised recovery plan in 2011. *Id.* at p. 6; Gross
 23 Dec. Ex. L. The decline of the northern spotted owl has been specifically and repeatedly linked to
 24 habitat degradation caused by logging. DellaSalla Dec. Ex. A at pp. 7-8. Large trees, high canopy
 25 closure, and multiple layers of trees allow the owl to nest and perch in the shade during the heat
 26 of a summer day. *Id.* at p. 5. The structural complexity of older forests also provides suitable
 27 habitat for canopy-dwelling prey species while offering large trees for hunting and nesting by
 28 northern spotted owls. *Id.* Northern spotted owls are known to decline or abandon nesting

1 territories when logging destroys or degrades structurally complex and older forest habitat. *Id.* at
 2 p. 7. In addition to the actual destruction of northern spotted owl habitat, the removal of large-
 3 diameter trees and related canopy reduction invites invasion and competition by the barred owl; a
 4 larger, more aggressive invasive competitor of the northern spotted owl. *Id.* at pp. 8-11.

5 Northern spotted owls live in the Gualala River watershed. The large and mature
 6 secondary growth redwood trees in the riverine corridor in which GRT intends to log represents
 7 some of the last, best northern spotted owl habitat in the Gualala River watershed. *Id.* at p. 20.
 8 GRT’s northern spotted owl surveys – mandated by state law – identify numerous northern
 9 spotted owl activity centers within or adjacent to the Dogwood THP, and its surveyors have made
 10 contacts with northern spotted owls in the area over the last several years, including as recently as
 11 March of 2020, *see* Gross Dec. Ex. D, Amendment No. 2, p. 1, though, for reasons discussed
 12 herein, these surveys are likely undercounting northern spotted owls, *see* DellaSalla Dec. Ex. A at
 13 p. 19. GRT’s logging are reasonably certain to cause take of the NSO by reducing the contiguous
 14 canopy they require for nesting, roosting, and feeding; as well as by increasing the likelihood of
 15 predation by the invasive barred owl. *Id.*, pp. 1-2.

16 **D. The California Red-Legged Frog**

17 The CA red legged frog is the largest frog native to the western United States. Kupferberg
 18 Dec. Ex. A, p. 5. It has been extirpated from over 70% of its historic range and has suffered a
 19 population decline of 90%. *Id.* at p. 8. USFWS listed the frog as a “threatened” species under the
 20 ESA in 1996, and promulgated a recovery plan for the CA red legged frog in 2002, which states
 21 “[t]imber operations and related practices occurring on commercial, private, and public
 22 timberlands within watersheds inhabited by the California red legged frog may contribute to the
 23 degradation of instream and riparian habitat and the decline of California red-legged frog and
 24 other aquatic species.” Gross Dec. Ex. M, p. 22.

25 The CA red legged frog requires both terrestrial and aquatic habitats for living and
 26 breeding. Kupferberg Dec. Ex. A, pp. 6-7. On land, it occupies moist woods, forest clearings,
 27 stream border vegetation, shrub, and grassland communities, and shelters in moist debris piles,
 28 mammal burrows, leaf litter, and under shrubs. *Id.* It moves into aquatic habitats to breed, mating

1 and reproducing in springs, marshes, ponds, and lakes, and in streams and rivers where there are
 2 microhabitats with slow moving water. *Id.* at p. 7. The Gualala River and its surrounding
 3 floodplain are replete with suitable CA red legged frog breeding habitat, and CA red legged frogs
 4 are known to live the Gualala River floodplain and their occupancy has been confirmed by eDNA
 5 sampling. *Id.* at pp. 14-15. GRT’s logging will cause take of CA red legged frogs by crushing
 6 frogs that occupy moist microhabitats on the forest flood, destroying those same microhabitats,
 7 and reducing and interfering with their available aquatic habitat. *Id.* at pp. 1-2.

LEGAL STANDARD

9 The Federal Rule of Civil Procedure 65 provides courts the authority to preliminarily
 10 enjoin conduct by defendants prior to a full adjudication of the merits of a case. The purpose of a
 11 preliminary injunction is “to preserve the status quo with provisional relief until the merits can be
 12 sorted out.” *Alliance for the Wild Rockies v. Cottrell* (“*AWR I*”), 632 F.3d 1127, 1134 (9th Cir.
 13 2011) (internal quotation omitted). A plaintiff may gain a preliminary injunction by meeting one
 14 of two standards.

15 The first is to establish: (1) that it is likely to succeed on the merits; (2) that it is likely to
 16 suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in
 17 its favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
 18 555 U.S. 7, 20 (2008). The second is to establish that there are “serious questions” going to the
 19 merits, that the balance of hardships tips sharply in the plaintiff’s favor, and that the other two
 20 elements in the first standard are met. *AWR II*, 632 F.3d at 1135 (the “serious questions” approach
 21 “survives *Winter* when applied as part of the four-element *Winter* test.”); *see also Souza v.*
 22 *California Dep’t of Transportation*, No. 13-CV-04407-JD, 2014 WL 1760346, at *3 (N.D. Cal.
 23 May 2, 2014).

24 In the context of ESA cases, courts have consistently found that the balance of the equities
 25 and the public interest *always* tip sharply in favor of protecting endangered or threatened species,
 26 including post-*Winter*. *See, e.g., Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 422 F.3d
 27 782, 793 (“*NWF I*”) (9th Cir. 2005); *Marbled Murrelet v. Babbitt*, 83 F.3d 1068, 1073 (9th Cir.
 28 1996); *Souza*, 2014 WL 1760346, at *8; *All. for the Wild Rockies v. Kruger*, 35 F. Supp. 3d 1259,

1 1265 (D. Mont. 2014); *W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 13-0176 (BLW),
 2 2013 U.S. Dist. LEXIS 91555, *11 (D. Idaho June 26, 2013). As Judge Illston put it: “The
 3 traditional preliminary injunction analysis, however, does not apply to injunctions issued pursuant
 4 to the ESA.” *Wild Equity Inst. v. City & Cty. of San Francisco*, No. C 11-00958 SI, 2011 WL
 5 5975029, at *6 (N.D. Cal. Nov. 29, 2011). This is because in enacting the ESA “Congress has
 6 spoken in the plainest of words, making it abundantly clear that the balance has been struck in
 7 favor of affording endangered species the highest of priorities.” *TVA v. Hill*, 437 U.S. 153, 98
 8 S.Ct. 2279, 57 L.Ed.2d 117 (1978); *see also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551
 9 U.S. 644, 671 (2007).

ARGUMENT

A. There Are, At Least, Serious Questions Going To the Merits of Plaintiffs' Claims, And In Fact, Plaintiffs Are Likely to Succeed

10
 11
 12 Plaintiffs are likely to succeed on the merits of their claims, because, as detailed in the
 13 accompanying expert declarations, there is a reasonable certainty that GRT’s planned logging will
 14 “take” members of the Listed Species, both directly and indirectly, through significant habitat
 15 modification, in violation of Section 9 of the ESA. At the very least, Plaintiffs have demonstrated
 16 that substantial questions exist as to whether such illegal take will occur.

17 Section 9 of the ESA makes it a crime to “take” any species listed as endangered or
 18 threatened. 16 U.S.C. § 1538(a)(1)(B). The term “take” is defined broadly to mean “harass, harm,
 19 pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such
 20 conduct.” 16 U.S.C. § 1532(19). The term “harm” as used in the ESA includes any “significant
 21 habitat modification or degradation where it actually kills or injures wildlife by significantly
 22 impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. §
 23 17.3. This definition includes “significant ... modification or degradation” of a listed species'
 24 habitat. *Babbitt v. Sweet Home Chapter of Cmities. for a Great Or.*, 515 U.S. 687, 691 (1995)
 25 (upholding definition of “harm” in 50 C.F.R. § 17.3). The term “harass,” in the context of “take,”
 26 means “an intentional or negligent act or omission which creates the likelihood of injury to
 27 wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns
 28 which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3.

1 As detailed below, Plaintiffs have demonstrated that GRT's planned logging is reasonably
 2 certain to cause extensive take of NC steelhead, CCC coho, northern spotted owl, and CA red
 3 legged frog. The declarations of Drs. Kupferberg, DellaSalla, and Frissell demonstrate that GRT's
 4 planned logging is likely to take individual members of the four species, as well as modify their
 5 respective habitats, such that all four of the Listed Species will, moreover, suffer irreparable
 6 harm. And NMFS and USFW have repeatedly stated that the prescriptive avoidance regime GRT
 7 intends to follow, here, is not sufficient to prevent take within the meaning of the ESA. *See, e.g.*,
 8 Gross Dec. Ex. I. In the face of such evidence, a preliminary injunction is appropriate to preserve
 9 the status quo until the case can be resolved on its merits.

10 **1. NC Steelhead and CCC Coho**

11 The Dogwood THP is reasonably certain to cause take of NC steelhead and CCC coho in
 12 a number of ways, including by: (1) reducing the amount of large, woody debris in the Gualala
 13 River (which CCC coho and NC steelhead depend on for shelter); (2) changing sensitive
 14 floodplain characteristics that provide key habitat for NC steelhead and CCC coho; (3) increasing
 15 the levels of fine sediment in the river, which will destroy sensitive breeding habitat; (4)
 16 increasing the nutrient load in the river, which will effectively suffocate juvenile NC steelhead
 17 and CCC coho; and (5) increasing the temperature of the river to levels that the salmonids cannot
 18 tolerate. Frissell Dec. Ex. A, pp. 1-2. Further, the mitigation measures that GRT intends to
 19 implement are insufficient to avoid take of the fish. *Id.* at pp. 29-30.

20 **a. Reduction of Large, Woody Debris**

21 NC steelhead and CCC coho require in-stream refugia for sheltering, specifically dead
 22 trees that naturally fall into the stream channel and contribute to the formation of channels and
 23 pools. *Id.* at p. 15. Wood-formed habitats on floodplains are essential to the survival of steelhead
 24 and coho salmon. *Id.* Numerous redwood trees that are marked to be logged within the Dogwood
 25 THP stand in close proximity to floodplain habitats that are important for overwintering of
 26 juvenile steelhead and for rearing coho salmon. *Id.* at p. 16. GRT's removal of large redwood
 27 trees that would otherwise die naturally and fall into the stream will have the effect of depriving
 28 NC steelhead and CCC coho of necessary wintering habitat comprised of large wood. *Id.* at p. 17.

1 Cutting of these trees directly curtails natural habitat recovery processes in these forests,
 2 preventing the return of high-quality wintering habitat that NC steelhead and CCC coho require to
 3 thrive. *Id.* GRT may argue that it compensates for this habitat loss by artificially introducing man-
 4 made large woody debris, but, in fact, that artificially placed wood is grossly inadequate to shape
 5 channel form, divert flood flows, or to create or maintain the natural complexity of floodplain
 6 channels and wetlands that NC steelhead and CCC coho require for sheltering. *Id.* at p. 18.

7 **b. Changes In Floodplain Characteristics**

8 Many locations flagged for skid trails within the Dogwood THP are directly imposed on
 9 top of sensitive floodplain features, including distributary channels, swales, and river-parallel
 10 floodplain channel features that provide key wintering habitat for NC steelhead and CCC coho.
 11 *Id.* at p. 19. The result of GRT driving heavy machinery and dragging logged trees over these
 12 locations is certain to be direct alteration of the floodplain habitats. *Id.* Because these essential
 13 habitats are both widespread within Gualala River floodplain and sensitive to direct disturbance,
 14 GRT's planned ground-based logging operations across these floodplains are highly likely to
 15 adversely modify them, which will in turn deprive NC steelhead and CCC coho of high-water
 16 wintering habitat they depend on for shelter. *Id.*

17 **c. Increased Sediment Loading In River, Tributaries, and**
 18 **Floodplain**

19 Coho and steelhead require clean, loose gravels free of fine sediment for spawning and
 20 egg development. The Dogwood THP makes clear that sedimentation is reasonably certain to
 21 occur, Gross Dec. Ex. D at § 4, p. 146, and the Gualala River is already listed as water quality
 22 impaired because of excess sediment. Frissell Dec. Ex. A, p. 21. Use of logging roads will
 23 increase the levels of sediment entering the river, tributaries, and floodplain habitats; and,
 24 thereby, the sediment issues that deprive steelhead and coho of necessary habitat to engage in
 25 spawning and egg development in the Gualala River floodplain will be exacerbated. *Id.* at pp. 22-
 26 23. Dr. Frissell observed roads with long distances of uninterrupted slope, which will collect fine
 27 sediments during the logging and deliver them off of the road at low points, including stream
 28 crossings, road-adjacent floodplain swales and wetlands. *Id.*

1 **d. Increased Nutrient Loading**

2 GRT's plan to cut trees in close proximity to the Gualala River will create localized
 3 hotspots of nutrient increase that are delivered to the surface waters. *Id.* at p. 23. The related soil
 4 disturbance and road runoff create larger nutrient loads in the water via mineral sediment
 5 delivery, which results in increased algal blooms that are already prevalent in the Gualala River.
 6 *Id.* at p. 24. In turn, biological oxygen demand will increase to such levels that oxygen depletion
 7 occurs, effectively suffocating the fish, further stressing and displacing juvenile NC steelhead and
 8 CCC coho from river habitats they need to shelter and feed, even during somewhat cooler early
 9 morning temperatures. *Id.* at p. 25.

10 **e. Increased Water Temperatures**

11 NC steelhead and CCC coho require cold and stable stream temperatures for survival, and
 12 the Gualala River is already listed as water quality impaired for temperature. *Id.* at p. 27. Stream
 13 temperatures increase where canopy reduction allows more sunlight to hit the water; and the
 14 levels of logging anticipated in the Dogwood THP can be expected to reduce canopy cover by
 15 about 6 to 14 percent. *Id.* This magnitude of shade loss is well within the range to cause increases
 16 in summer water temperatures. *Id.* at pp. 27-28. By reducing canopy cover, GRT's planned
 17 logging is highly likely to shrink or eliminate cold water thermal refugia, thereby rendering
 18 summer habitat in the Gualala River increasingly hostile to CCC salmon and NC steelhead — if
 19 the water is too warm for the fish, they cannot shelter, feed, and grow in the stream. *Id.* at pp. 28-
 20 29. Such increases in solar insolation to wetted streams may also further spur algal blooms
 21 already facilitated by nutrient loads, as discussed above. *Id.* at p. 24.

22 **f. Insufficiency of California's ASP Rules**

23 Finally, the protective measures that GRT intends to implement to avoid take of salmonids
 24 are insufficient. NMFS has repeatedly criticized the California FPRs, and has stated in multiple
 25 contexts that they are insufficient to prevent take of endangered and threatened salmonids. This
 26 includes the following statement: "Even the most protective measures in the proposed
 27 Anadromous Salmonid Protection Rules are still less protective than timberland operations that
 28 have secured NMFS' authorization for incidental take under HCPs." Gross Dec. Ex. I. Dr. Frissell

1 concurs in this determination—none of the issues raised above and in his declaration are
 2 adequately accounted for in the ASP rules, and the rules are not sufficient to mitigate the risks of
 3 take posed by the logging. Frissell Dec. Ex. A, p. 29-30.

4 **2. CA Red Legged Frog**

5 GRT’s logging is reasonably certain to cause take of the CA red legged frog through both
 6 direct take and indirect take through significant habitat modification. Tree falling, skidding,
 7 logging, trucking, water drafting, road building, and general heavy equipment use are reasonably
 8 certain to directly kill, harm, and harass the frog and destroy its essential habitat. Kupferberg Dec.
 9 Ex. A, pp. 1-2. Indeed, the Dogwood THP acknowledges that the proposed logging will cause
 10 “disturbance of animal species in the summertime through logging and trucking activity [and] . . .
 11 directly killing certain slow-moving or non-mobile plant and animal species through falling,
 12 skidding, logging, trucking and road-building activities.” Gross Dec. Ex. D, § 4, p. 146. CA red
 13 legged frogs are such a slow-moving animal species. Kupferberg Dec. Ex. A, p. 9.

14 **a. Direct Take**

15 CA red legged frogs require a variety of terrestrial and aquatic microhabitats to complete
 16 their life cycle, including moist debris piles, mammal burrows, leaf litter, marshes, and ponds. *Id.*
 17 at p. 6. All of these microhabitats are ubiquitous throughout the Dogwood THP, and many areas
 18 within the Dogwood THP mirror the locations at which CA red legged frog DNA was detected in
 19 other areas of the Gualala River watershed. *Id.* at p. 15. GRT intends to use heavy machinery to
 20 fell and drag trees in and around these microhabitats. *Id.* at p. 9. Trees will fall into areas of
 21 seasonal wetland that CA red legged frogs are likely to occupy and will crush resident frogs. *Id.* at
 22 p. 11. GRT will haul logs through existing, previously abandoned skid trails, containing
 23 depressions in which water collects, forming seasonal wetlands that CA red legged frogs utilize,
 24 again, crushing any resident frogs. *Id.* at p. 10. Tractors and trucks will drive through moist debris
 25 and leaf litter, crushing underground burrows and above-ground refugia of frogs at the base of
 26 shrubs of herbaceous vegetation and in woody debris, as well as the frogs within both the burrows
 27 and the refugia. *Id.* at p. 10. And GRT will draft water from the stream in an area where Dr.
 28 Kupferberg observed egg masses of a related species of frog that utilizes similar habitat to the CA

1 red legged frog. *Id.* at pp. 11-12. Water drafting will reduce the stream level, stranding and
2 concentrating CA red legged frog tadpoles and expose them to predation. *Id.* Thus, the proposed
3 logging is reasonably certain to directly take CA red legged frog in violation of the ESA. All of
4 the activities described above are not only likely to kill, harm, or harass individual CA red legged
5 frogs, they will also destroy the microhabitats the frogs require. *Id.* at pp. 9-13.

6 **b. Habitat Modification and Insufficient Avoidance Measures**

7 GRT has only designated two small areas within the Dogwood THP as potential habitat
8 for CA red legged frogs. *Id.* at pp. 14-15. In these two areas GRT states that it will comply with
9 USFWS guidelines for avoiding take. *Id.* at 15. But the THP fails to account for a myriad of other
10 areas of suitable habitat within the proposed logging area, and for these other areas GRT has no
11 plans to implement any take mitigation measures whatsoever. *Id.* Even in the areas GRT has
12 identified as potential CA red legged frog habitat, the “buffer zones” GRT has designated are
13 insufficient to account for the dispersal patterns of CA red legged frogs, i.e. the distances which
14 they are known to move within their range. *Id.* at 13-14. Thus, GRT’s claimed take avoidance
15 measures are insufficient to avoid take of the CA red legged frogs. *See id.* at pp. 15-17.

16 CA red legged frogs migrate over long distances to feed and breed, with a maximum
17 known dispersal distance of 2 miles. *Id.* Thus, they require large, connected areas of suitable
18 habitat through which to move. *Id.* But the Dogwood THP makes no effort to account for the fact
19 that CA red legged frogs will require protected corridors to move *between* the two small sites it
20 has designated as suitable habitat. *Id.* at 14. Because GRT’s buffer zone does not account for
21 connecting the aquatic environments with un-logged corridors, GRT will fell trees, use skid trails,
22 and disrupt the ground with heavy equipment in those disregarded corridors, thus likely killing,
23 harming, and/or harassing individual frogs irreparably modifying the habitat they depend upon.
24 *Id.* at 16. Disrupting the corridors between the areas GRT has identified will deprive the frogs of
25 connected habitat through which to move, and will take them by interfering with their breeding
26 and migratory patterns. *Id.*

1 **3. Northern Spotted Owl**

2 GRT's planned logging will remove trees that make up the dense canopy that northern
3 spotted owls depend upon for nesting, roosting, feeding, and breeding, and will increase
4 competition and resulting northern spotted owl extirpation by the owl's more aggressive relative,
5 the barred owl, making take reasonably certain to occur. DellaSalla Dec. Ex. A, p. 2.

6 **a. Reduction of Redwood Canopy That Provides Essential Habitat**

7 Northern spotted owls need contiguous, unfragmented canopy to sustain nesting and
8 roosting behaviors. *Id.* at p. 5. Adult survival is strongly related to dense canopy cover, while
9 foraging habitat can include a mix of natural open areas where owls hunt—that is to say, higher
10 levels of canopy density are necessary for roosting and nesting habitat, while lower levels of
11 canopy density may provide suitable foraging habitat. *Id.* at pp. 12-13. GRT's planned logging
12 will reduce and degrade necessary canopy cover within the Gualala River floodplain and deprive
13 local northern spotted owls of suitable nesting habitat. *Id.* at pp. 13-14. LiDAR and photo analysis
14 indicates that the planned logging will reduce the canopy level by approximately 6 to 14%,
15 putting canopy coverage below the threshold level for high-quality nesting habitat. *Id.* at p. 17.
16 The resulting thinned canopy may still provide suitable *foraging* habitat for the northern spotted
17 owl, but at the expense of increasingly rare suitable *nesting and roosting* habitat. *Id.* Northern
18 spotted owl adult survival rates and site occupancy in the area can reasonably be expected to
19 decline as a result. *Id.*

20 **b. Increased Barred Owl Invasion and Competition**

21 The barred owl is a larger, more aggressive relative of the northern spotted owl that is able
22 to survive in areas that have been damaged by logging, and opportunistically moves into such
23 areas, pushing out already stressed northern spotted owl occupants. *Id.* at p. 8. Continued logging
24 of large-diameter trees, alteration of forest canopies, and associated fragmentation of northern
25 spotted owl habitat further tips the competitive advantage toward barred owls, while increasing
26 the probability of local northern spotted owl extirpation that can accumulate over time, leading to
27 eventual population collapse. *Id.* at p. 9. By fragmenting some of the last contiguous canopy in
28 the watershed, GRT will render the floodplain more permeable to barred owl invasion, and

1 northern spotted owl extirpation is reasonably certain to occur as a result. *Id.* at p. 20. Further,
 2 there are already a large number of barred owls within the Dogwood area, and the method by
 3 which GRT has quantified northern spotted owl presence in the area fails to account for the fact
 4 that barred owls suppress northern spotted owl responses to survey calls. *Id.* at p. 19. Thus, it is
 5 likely that its surveys do not accurately reflect the true extent of northern spotted owl presence in
 6 the Gualala River watershed, and that GRT will, in fact, log within areas that northern spotted
 7 owls are likely to currently occupy, which is reasonably certain to result in direct harm to
 8 individual owls by destroying habitat that they are currently using, thus harassing and disturbing
 9 them through the use of loud, invasive logging equipment. *Id.*

10 **c. Insufficient Take Avoidance Measures**

11 The FPRs that are meant to protect the northern spotted owl are insufficient and
 12 ineffective, because the “cumulative effects of repeated entries within many [northern spotted
 13 owl] home ranges has reduced habitat quality to a degree causing reduced occupancy rates and
 14 frequent site abandonment.” *See* Gross Dec., Ex. K at p. 11. And, even if sufficient, although
 15 GRT claims that it will follow USFW’s guidelines for take avoidance, it has, as described in the
 16 report of Dr. DellaSalla, failed to implement sufficient measures to avoid take. For example, the
 17 canopy thresholds are not sufficient to prevent barred owl invasion, there are no protections for
 18 juvenile owls in search of new territories, and the “buffer zones” it will establish around known
 19 northern spotted owl activity sites only account for a tiny fraction of the owls’ known range.
 20 DellaSalla Dec. Ex. A, pp. 20-21.

21 **B. The Logging is Likely to Cause Irreparable Harm To All Four Species**

22 Irreparable harm, in the context of an ESA §9 take case, is “that which would result in
 23 significant take of the species and/or delays in implementing a recovery plan that would have
 24 significant impacts on the species.” *Pac. Coast Fed’n of Fishermen’s Associations v. Gutierrez*,
 25 606 F. Supp. 2d 1195, 1210 (E.D. Cal. 2008); *citing American Rivers v. U.S. Army Corps of*
 26 *Engineers*, 271 F.Supp.2d 230 (D.D.C.2003). This requires “a definitive threat of future harm to
 27 protected species.” *Nat’l Wildlife Fed’n v. Burlington N.R.R., Inc.*, 23 F.3d 1508, 1512 n.8 (9th
 28 Cir.1994).

1 As discussed *infra* in section A, and in the declarations of Drs. Frissell, Kupferberg, and
 2 DellaSalla, GRT’s intended logging will have far-reaching impacts — i.e. will cause “significant
 3 take” — on each of the Listed Species and their habitat, and will cut directly against the
 4 implementation of the recovery plans that are intended to save them from extinction. Once that
 5 harm occurs, it cannot be undone, and a preliminary injunction is necessary to prevent that result.

6 **C. The Equities Must Balance in Favor Of Protecting Endangered And**
 7 **Threatened Species**

8 As discussed above, “the balance of hardships always tips sharply in favor of endangered
 9 species.” *Marbled Murrelet*, 83 F.3d at 1073; *see also NWF I*, 422 F.3d at 794. The Court, in
 10 *TVA*, held that because the ESA was a manifestation of Congress’ view that the value of
 11 endangered species was “incalculable,” courts’ equitable powers may not be used to balance the
 12 loss of a sum certain against such an incalculable value. 437 U.S. at 194; *see also Nat’l Ass’n of*
 13 *Home Builders*, 551 U.S at 671 (reaffirming holding from *TVA* that economic burden of enforcing
 14 the ESA cannot be considered by the courts, concluding that “the ESA’s no-jeopardy mandate
 15 applies to every discretionary agency action-regardless of the expense or burden its application
 16 might impose”); *accord Souza*, 2014 WL 1760346, at *8 (“The Court finds that the balance of
 17 equities tips sharply in favor of Plaintiffs and protecting the endangered salmon and their critical
 18 habitat pending a merits determination.”).

19 GRT may, nonetheless, argue that it has suffered economic hardship as a result of the
 20 protracted delay of its plan to log the Dogwood area and would suffer further hardship, if it could
 21 not log while this case is pending. However, under the foregoing law, any such hardship *cannot*
 22 outweigh the hardships flowing from the take of these four Listed Species. Moreover, the prior
 23 delay is attributable to GRT’s failures—over a period of five years—to create a THP that
 24 complied with its obligations under the California Environmental Quality Act and the Forest
 25 Practice Act. Regardless, even if GRT does experience some loss of profits, as a result of a pause
 26 on its logging while Plaintiffs’ claims that such logging would imperil the future viability of the
 27 Listed Species, that loss cannot outweigh the incalculable risk posed by the loss of these
 28 endangered and threatened species.

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D. A Preliminary Injunction To Protected Endangered Species Is In The Public Interest

For similar reasons, the public interest would also be served by issuance of the preliminary injunction. “[P]rojects that jeopardize the continued existence of endangered species threaten incalculable harm; accordingly, [Congress] decided that . . . the public interest tips heavily in favor of endangered species.” *Sierra Club v. Marsh*, 816 F.2d 1376, 1383 (9th Cir. 1987). More generally, the “careful consideration of environmental impacts” before a project goes forward serve the public interest. *AWR II*, 632 F.3d at 1138; accord, e.g., *Souza*, No. 13-CV-04407-JD, 2014 WL 1760346, at *8 (“The public interest in ensuring the safety of the endangered salmon and their habitat . . . supports the issuance of a short reprieve here while the merits can be sorted out.”); *Bair v. California Dep’t of Transp.*, No. C 10-04360 WHA, 2011 WL 2650896, at *8 (N.D. Cal. July 6, 2011) (“The public interest is best served by letting the ancients thrive a little longer while the merits of their future are evaluated in court.”). Preserving the status quo in the Gualala River floodplain until a fully informed decision can be made will further the public’s interest, as embodied in the ESA, in preserving diminishing redwood habitat and the endangered species that occupy it.

E. No Bond Should Be Required

There is no ground to require Plaintiffs, who are non-profit, public interest groups acting as private attorneys general to ensure that GRT meets its obligations under the nation’s environmental laws, to post any more than a nominal bond as a condition of granting the requested relief. See *California v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their request for a preliminary injunction enjoining GRT’s planned logging pursuant to the Dogwood THP, pending a resolution of this case on its merits.

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Dated: May 20, 2021

GROSS & KLEIN LLP

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