UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREEN CLIMATE, Plaintiff, v. BROOKE ROLLINS, in her official capacity as Secretary of Agriculture, Defendant.	)	Case No. 1:25-cv-1760-CJN

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

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On August 8, 2025, Defendant Brooke L. Rollins, Secretary of Agriculture in her official capacity, filed a Motion to Dismiss the cause of action alleging the Court lacks jurisdiction to hear the case. Green Climate (GC) opposes the Motion and asks the Court to deny it and allow the parties to begin discovery.

I. INTRODUCTION

Green Climate (GC) brings this action under the Infrastructure Investment and Jobs Act (IIJA), 16 U.S.C § 6592; Healthy Forest Restoration Act (HFRA) 16 U.S.C. Chapter 84; Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706; and Executive Order 14225, seeking judicial review of Secretary of Agriculture Brooke L. Rollins Memorandum 1078-006, entitled "Increasing Timber Production And Designating An Emergency Situation On National Forest System Lands, dated April 3, 2025 (published April 4, 2025) (Memorandum). More precisely, GC challenges the final Emergency Situation Determination (ESD), which is a final order, made by Secretary Rollins under the IIJA and the Memorandum as a whole which is also a final order.

Section 5 of the Memorandum directs that the Under Secretary for Natural Resources and Environment in coordination with the Office of General Counsel, shall implement the Memorandum. The Chief of the United States Forest Service will carry out the responsibilities assigned in the Memorandum in lieu of the Under Secretary. On April 3, 2025 (the same date that the Memorandum was signed), Christopher B. French, Acting Associate Chief, United States Forest Service (NFS) issued a letter entitled "Forest Service Letter (1300), Implementation of Secretarial Memo 1078-006" to all NFS Regional Foresters and Deputy Chiefs. The Letter directs that within 90 days (of April 3, 2025) to develop and adopt a strategy and program of work to increase timber volume on NFS land by 25%. (Attached).

As a result of the ESD, the Memorandum and the Letter, the Department of Agriculture (DOA) and NFS are authorized to harvest up to 112,646,000 acres of forests and ordered to harvest 28,161,500 acres in the next five years. The Letter provides for no discretion in the harvesting requirement (28,161,500 acres). This harvesting will be accomplished without following NFS statutes, rules or guidance or soliciting public input. The ESD, Memorandum and Letter were issued in final form. No public notice nor public input was provided for. The ESD and the Memorandum are final orders that if not appealed at this point in the legal process may not be appealable later. See,5 U.S.C. §§ 551, 701-706. A later challenge to the ESD and the Memorandum cannot determine the legal status of each and will be too late. At that point only the actual timber harvesting will be at issue.

GC seeks declaratory and injunctive relief vacating the ESD, and the Memorandum from the Court and asks the Court to enjoin its on-going implementation under the Letter and otherwise unless and until Defendant complies with the IIJA, HFRA and APA.

A. Green Climate

As noted in the Complaint, GC is a charitable organization with members that recreate in National Forests and National Parks. This recreation includes hiking, camping and fishing. Our members also actively work to protect federal forest land and share our focus on combating climate change through the protection and conservation of National Forests. The present cause of action is an example of this commitment.

GC is a 501(c)(3) non-stock corporation organized under the laws of the Commonwealth of Virginia. GC has nine members who are committed to the protection and conservation of our National Forests. As provided above, some of our members recreate in our National Forests. In addition to recreating, one of our members studies all aspects of national forest ecology including

in depth research on the health of National Forests and the capture and sequestration of greenhouse gas emissions by trees in these forests.

Much if not all these activities occur in specific areas or National Forests determined by Defendant to be in an Emergency Situation. Memorandum, Map A (attached). The authorization of harvesting through the designation of over 112,000,000 acres of forest land as an Emergency Situation and the implementation of this ESD and the Memorandum under Section 5. IMPLEMENTATION of the Memorandum will cause actual harm to GC and our members by disrupting or entirely preventing the continuation of these activities. GC is authorized by its members to and is the best party to bring this action.

B. Facts And Applicable Law

The paragraphs 9-22 of the Complaint include the following facts, applicable laws and legal interpretations. The inclusion of factual detail runs counter to Defendant's repeated claims that the Complaint only includes conclusory arguments with no plausible details. Further the applicable law and legal analysis included in these paragraphs satisfy the Defendant's argument that no substantive law can be found in the Complaint. The fact that GC failed to set out a specific section named Applicable Law should not provide the basis for dismissal of the Complaint. Nor should this formatting error, allow the Defendant to argue that no substantive law is included in the Complaint. Motion at 11. A defendant should be expected to read the Complaint before filing a motion to dismiss it.

On March 1, 2025, the White House issued Executive Order (EO) 14225, Immediate Expansion of American Timber Production. The purpose of the EO is to expand timber harvesting on federal lands which is "critical to our Nation's well-being." Most relevant to this matter is Section 2 of the EO.

> "Sec. 2. Directives to the Secretary of the Interior and the Secretary of Agriculture. (a) Within 30 days of the date of this order, the Secretary of the Interior and the Secretary of Agriculture, through the Director of the Bureau of Land Management (BLM) and the Chief of the United States Forest Service (USFS), respectively, shall each issue new or updated guidance regarding tools to facilitate increased timber production and sound forest management, reduce time to deliver timber, and decrease timber supply uncertainty, such as the Good Neighbor Authority described in 16 U.S.C. § 2113a, . . ."

The EO only ordered Defendant to "issue new or updated guidance regarding tools to facilitate increased timber production and sound forest management, reduce time to deliver timber, and decrease timber supply uncertainty." In the Memorandum, Defendant sets out the "actions that I am directing the Forest Service to take in response to EO 14225." Memorandum at 1. The actions in the Memorandum (ESD Order and Memorandum Order) go well beyond the issuance of "guidance regarding tools." Had Defendant issued the requested guidance, GC would not have a cause of action. Instead, the Memorandum "details the actions I am directing the Forest Service to take in response to EO 14225." The actions taken in the Memorandum are final, implantable (and are being implemented) and appealable.

In making the ESD Order, Defendant first declared an Emergency Situation (ES). An ES "means a situation on National Forest System land for which immediate implementation of 1 or more authorized emergency actions is necessary to achieve 1 or more of the following results: (A) relief from hazards threatening human health and safety. (B) mitigation of threats to natural resources on National Forest system land or adjacent land. 16 U.S.C. 6592c(a)(2).

Defendant took emergency action (EA) and designated 112,646,000 of NFS forest land for emergency harvesting (66,940,000 acres of NFS lands because of wildfire risk; 78,800,000 acres because of "declining forest health making them at risk of substantial increased tree mortality over the next 15 years;" 33,846,000 that are both subject to wildfire risk and declining health). Under the IIJA, an ES can only be declared and an EA taken to "mitigate the harm to life, property, or important natural or cultural resources on National Forest System land or adjacent land." Section 6592c.

Current Forest plans identify approximately 43 million acres of the 144 million forested acres managed by the NFS as suitable for timber production. Memorandum at 2. Over the past five years, an average three billion board feet of feet of timber were harvested and sold annually from these 43 million acres. *Id.* The 30 million acres of NFS forest that will be harvested and sold per the ESD and the Memorandum is in addition to the current annual 3 billion board feet.

"After making an emergency situation determination with respect to National Forest System land, the Secretary may carry out authorized emergency actions on that National Forest System land in order to achieve reliefs from hazards threatening human health and safety or mitigation of threats to natural resources on National Forest System land or adjacent land, including through-

(A) the salvage of dead or dying trees;

(B) the harvest of trees damaged by wind or ice;

(C) the commercial and noncommercial sanitation harvest of trees to control insects or disease, including trees already infested with insects or disease;

(D) the reforestation or replanting of fire-impacted areas through planting, control of competing vegetation, or other activities that enhance natural regeneration and restore forest species;

(E) the removal of hazardous trees in close proximity to roads and trails;

(F) the removal of hazardous fuels;

(G) the restoration of water sources or infrastructure;

(H) the reconstruction of existing utility lines; and

(I) the replacement of underground cables."

Section 6592c(b)(2).

EAs following an ESD can only order the emergency harvest of trees that are dead or dying, damaged by wind or ice and the sanitation harvest of infected trees must be harvested to "mitigate the harm to life, property, or important natural or cultural resources on National Forest System land or adjacent land." Timber harvesting alone is not an EA, because it is non-emergent and accomplished through a separate NFS process which involves proposals and contracts with third parties. *See*, Memorandum at 2 (discussing the use of Forest plans for the harvesting and sale of timber from NFS land).

The HFRA, and subsequent regulations and guidance, directly address the identification and harvest of trees that pose wildfire risks and are declining from disease and insect infestation. The IIJA recognizes the primacy of existing NFS law and regulations when it provides that

"Any authorized emergency action carried out under paragraph (2) on National Forest System land shall be conducted consistent with the applicable land and resource management plan."

Section 6592c(b)(3).

The NFS already has a process for addressing Emergency Situations and ESDs. 36 CFR 218.21 (2024). The Orders were issued under the IIJA to avoid this process. It is important to note that Section 6292(e) contemplates direct appeal from EAs under 6292(c) providing that "[a] Court

shall not enjoin an authorized emergency action under this section if the court determines that the plaintiff is unable to demonstrate that the claim of the plaintiff is likely to succeed on the merits"

If the ESD and the Memorandum are not appealed at this point, legal process may not be appealable later. *See*, 5 U.S.C. §§ 551, 701-706. A later challenge to NFS actions under these Orders cannot determine the legal status of each and will be too late. Plaintiff will be left to challenge actions harvesting timber because of these Orders. It is unclear at best whether the ongoing implementation under the IIJA will provide any opportunity for later appeal.

The Orders and Memorandum constitute final agency action subject to judicial review under federal law including the APA because it has direct and immediate legal consequences. GC can appeal final agency actions that violate federal law on that basis alone. *See,* Count I – Violation of Law.

The fact that Defendant's Orders, Memorandum and Letter deliberately bypass the APA generally and USDA and NFS requirements specifically does not preclude the Court from finding that the APA is violated and invalidate the Orders, Memorandum and Letter. No other remedy exists except appeal to this Court. *See,* Count II – Violation of the Administrative Procedure Act.

I. RESPONSE TO MOTION TO DISMISS

The Motion is replete with errors of fact and law. GC will address each in turn, but it may be useful to include examples here as a means of introduction.

- "Memorandum 1078-006 does not compel any action nor authorize the cutting of a single tree." Motion at 1.

- Plaintiff has not sufficiently alleged that it has any members. *Id.* at 7
- Plaintiff fails to state a claim upon which relief may be granted because it does not identify the *substantive* law that was allegedly violated. *Id.* at 11.

To defeat the Motion, GC must demonstrate that the Complaint contains sufficient facts when accepted as true by the Court are plausible enough to prove its case. The Complaint meets this test because the Court can "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). The facts and applicable law enumerated above are more than plausible for the Court to infer not only that GC has standing and the matter is justiciable, but also that GC can win the case.

In its Motion, Defendant seems to insist that the Complaint must articulate all relevant legal standards and contain sufficient evidence meet the burden necessary for a Court to make a final determination on the questions of standing and justiciability. This position is reasonable in the context of a Rule 56 summary judgment motion. It is not reasonable at the initial motion stage. Defendant can argue standing and justiciability until a final decision by the Court and on appeal. For example, Defendant cites *Friends of the Earth v. Laidlaw* as establishing the test for associational standing. Motion at 6. GC does not disagree, but Defendant argues that the Complaint must meet this test, or the Motion should be granted for lack of standing. The *Friends of the Earth* applied the test to a summary judgment motion and evaluated detailed evidence before finding that the plaintiff had associational standing. The Complaint may not establish the detailed evidence in the Friends of the Earth, but it does provide the Court with a plausible factual basis to reasonably infer that GC has associational standing, and the case is justiciable at this stage.

A. Standing

The Complaint clearly establishes that GC has associational standing to bring this action. *Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 342–43 (1977).* As Defendant points out associational standing focuses on whether an association, like GC, can legally sue on behalf of its members. To do so GC must show "its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted, nor the relief requested requires individual members' participation in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Env't Serv., Inc.*, 528 U.S. 167, 169 (2000) (citing *Hunt v. Washington State Apple Advertising Comm'n,* 432 U.S. 333, 343 (1977). Paragraphs 7 and 19 of the Complaint set forth the facts necessary for the Court to find that at least one of our members have standing in their own right. At least one of our members will an injury in fact that will be redressed by the vacatur of the Memorandum and injunction of its implementation. *Id.*

Members of Friends of the Earth and Citizens Local Environmental Action Network (CLEAN) submitted affidavits testifying to how Laidlaw's activities prevented them from camping, hiking, fishing, picnicking, birdwatching as they did prior to the aggrieved conduct. *Friends of the Earth,* at 181-182. These affidavits were considered as evidence and found to adequately document the injury in fact. *Id.* at 183. The opinion adds that "[w]e have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the esthetic and recreational values of the area will be lessened' by the challenged activity. *Sierra Club v. Morton,* 405 U.S. 727, 735 (1972). The opinion then cites *Defenders of Wildlife,* 504 U.S., at 562-563, "[o]f course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably A cognizable interest for purposes of standing." *Id.* Just as in the *Friends of the Earth* case, our members can provide

affidavits adequately documenting injury in fact to this Court at the Summary Judgment. Defendant does not cite a case where affidavits proving such injury were required to be attached to a complaint. In fact, the Local Rules of this Court discourage the attachment of exhibits to Complaints.

Defendant argues that the Complaint should have designated "where in the hundreds of millions of acres of federal forest lands its 'members' are injured." Motion at 8. This argument parrots the facts at issue in *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). *Lujan* addressed a challenge to a Bureau of Land Management program that alleged illegally opened up millions of acres of public lands to mining activities. There the Supreme Court found at the summary judgment stage that the organization failed to establish that one of its members probably will suffer harm. *See, Friends of the Earth* at 183 (citing *Lujan* 497 U.S. at 889). The facts in the Complaint and Map 1 of the Memorandum are specific as to 112,646,000 acres experiencing an "Emergency Situation." Map 1covers a large area of the George Washington, Jefferson National and Shenandoah National Forests. That is the most likely location of the injury in fact suffered by our members. Given the implementation process under Section 5 of the Memorandum that began simultaneously with the issuance of the Memorandum will harvest almost 30 million acres of National Forest across the country. One of GC's members lives in California and two live in Florida, as well. The illegal harvesting in these states would cause injury in fact to them. Once this action reaches the summary judgment phase, as all cited cases were, GC will provide affidavits proving standing under both *Friends of the Earth* and *Lujan.*

All of GC's members joined through a form on our website which more than qualifies as an "indicia of interest." This process refutes Defendant's claims that GC's members do not exist or are a sham. Motion at 7. The website details GC's mission and actions to further that mission. Among the items discussed (with copies loaded on the site) reviewed by our members are the EO,

Memorandum, and the Orders (ESD and order to increase timber harvesting) and potential challenges to them by GC. The stakes at interest among GC and its members are identical. Likewise, GC and its members seek the same injunctive relief. No civil damages are at issue. GC's associational standing is clear. *Friends of the Earth* at 169.

B. Ripeness

Defendant now argues that the Complaint should be dismissed because the matter is not ripe for appeal. The Court is not asked to opine on whether the ESD and Memorandum are mere guidance and not final agency action and GC expected. The fact that the ESD and Memorandum are appealable final orders and final agency action is conceded. Instead, Defendant argues that under D.C. District Court case law, this case should be dismissed under Rule 12(b)(1) for lack of ripeness. *Conf. of State Bank Supervisors*, 313 F. Supp. 3d 285, 294-95 (D.D.C. 2018). *Id.* GC assumes that Defendant seeks to make it clear that ripeness is a subject matter issue distinct from the Motion's subsequent arguments in favor of dismissal under Rule 12(b)(6). To the extent there is a difference, GC agrees that Rule 12(b)(6) does not address questions of subject matter jurisdiction. What is without question is the fact that both the rightness arguments and the 12(b)(6) arguments are not based on the adequacy of the Complaint.

Defendant posits that GC seeks a "pre-implementation advisory opinion" on the Memorandum. Motion at 8. The remainder of the paragraph contains quotes from *Abbott Laboratories*, 387 U.S. 136, 148-149 (1967), *Nat'l Park Hosp. Ass'n at 807-808, Ohio Forestry Ass'n, Inc v. Sierra Club,* 523 U.S. 726, 733 (1998), *Lujan at* 891 and *Sierra Club v. Robertson,* 28 F3d 753, 758 (8th Cir. 1994) (quoting *O'Shea v. Littleton,* 414 U.S. 488, 497 (1974)). No legal points are made.

Likewise, the next paragraph is pulled directly from the language of *Ohio Forestry.* No arguments are made other than "*Ohio Forestry* is instructive." Motion at 9-10.

Justice Thomas authored the seminal opinion on this matter in the *Nat'l Park Hosp. Ass'n v. U.S. Dep't of the Interior* decision. 538 U.S. 803 (2003). The concept of legal ripeness is grounded both in the tenants of Article III limitations and prudential limitations on courts. The doctrine is useful in cases where the law and facts are evolving. *Nat'l Park Hosp. Ass'n* addressed a conflict between the Contract Disputes Act of 1978 (CDA), the National Parks Omnibus Management Act of 1998 (NPOAM) and regulations implementing the NPOAM that created a potential conflict between the CDA and NPOAM. The question was the interpretation of a regulation in the context of two statutes. There was no final agency order or action issue. In fact, the case arose from supplemental briefing sought by the Supreme Court. *Id.* at 807. The majority opinion cites *Ohio Forestry Ass'n, Inc v. Sierra Club* to determine that the regulation "does not create 'adverse effects of strictly legal kind'", *Id.* at 809 (quoting 523 U.S. 726, 733 (1998)). The opinion compares the ambiguous regulation to the Forest Service plan at issue on *Ohio Forestry* in which the Supreme Court found that the provisions of the plan "[they] do anything or refrain from doing anything; They do not grant, withhold, or modify any formal legal license, power, or authority; They do not subject anyone to any civil or criminal liability, they create no legal rights or obligations. The next sentence says "[t]hus, for example, the plan does not give anyone a legal right to cut trees, nor does it abolish anyone's legal right to object to trees being cut." That sentence encapsulates the Defendant's entire argument in this case. It is, of course, completely wrong. The ESD is an action taken by a Cabinet Secretary to address an Emergency Situation with Emergency Actions using an entirely different statute than the National Forestry management Act of 1976 (NFMA). A statute, the IIJA, that was not enacted until 2023. Furthermore, the Memorandum is self-implementing and has been implemented since April 3, 2025.

Defendant illustrates her legal error by assuming that the ESD under the IIJA is comparable to a traditional NFS Emergency Situation Determination under NFMA at issue in the *Ohio Forestry* case.

> "So too here. Like the programmatic plan in *Ohio Forestry* that simply identified areas suitable for timber harvesting, Memorandum 1078-006 and the Emergency Situation Determination identifies acreage under IIJA because of the present wildfire risk and declining forest health. Memorandum 1078-006 at 2. Like in *Ohio Forestry*, withholding judicial review of Memorandum 1078-006 does not cause Plaintiff hardship because neither Memorandum 1078-006 nor the Emergency Situation Determination "give anyone a legal right to cut trees, nor do[] [they] abolish anyone's legal authority to object to trees being cut." *Ohio Forestry*, 523 U.S. at 733."

Defendant continues to apply language from the *Ohio Forestry* opinion (again written in 1998) to the ESD and Memorandum issued under the IIJA.

"Before any logging commences for a qualified project under the Emergency Situation Determination, the Forest Service will still need to (a) identify an area for treatment; (b) ensure the project's consistency for the relevant forest plan; (c) provide for public comment; (d) conduct the appropriate level of NEPA review, and (e) issue a decision approving the project. *See id.* at 730."

If these facts were at all close to those before the Court, GC would be participating in this ongoing administrative process and file an appeal only after it concluded and we are aggrieved. The ESD identified the 112,646,000 acres in an alleged Emergency Situation and ordered Emergency Action. The Memorandum orders additional harvesting and is self-implementing. The ESD and the Memorandum are final orders and action. They are being implemented. None of these steps are being taken under the HFRA, NFMA or and other USDA law or regulation. There is and

will not be a Forest plan; there will be no public comment; there will be no NEPA review; and there will be no further project decisions. Implementation is on-going and it is all within the USDA.

The hardship that GC and its members will suffer if the Court withholds consideration is clear. Our injuries will not be redressed, and the Defendant will continue to act in violation of the IIJA, the HFRA/NFMA, and the APA. On the question of fitness, the finality of the ESD and Memorandum as orders and agency action (which seems to be conceded by the Defendant) are enough proof that the case is fit for consideration by this Court. Nothing is evolving. There is no need to wait until things settle. We must challenge now or lose the opportunity. There is no ongoing action that is staying the June 4, 2025 deadline to challenge these illegal actions. The implementation process may yield another moment for appeal, but that appeal cannot include the ESD and the order to increase harvesting by the Memorandum.

C. Failure to State a Claim

Defendant's final basis for seeking dismissal is under Rule 12(b)(6), alleging the GC failed to allege a substantive violation of law reviewable under the APA. This argument is baffling. As repeatedly captured here, paragraph 1. of the Complaint reads:

> "Plaintiff brings this action under Infrastructure Investment and Jobs Act (IIJA), 16 U.S.C §6592; Healthy Forest Restoration Act (HFRA) 16 U.S.C. Chapter 84; Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706, and Executive Order 14225, seeking judicial review of Secretary of Agriculture Brooke L. Rollins Memorandum 1078-006, entitled "Increasing Timber Production And Designating An Emergency Situation On National Forest System Lands, dated April 3, 2025 (published April 4, 2025) (Memorandum). More precisely, GC challenges the final Emergency Situation Determination (ESD), which is a final order, made by Secretary Rollins under the IIJA and the Memorandum which is also a final order."

It is difficult to understand how GC could have identified the substantive law at issue in this case any clearer. There also should be no confusion that GC is alleging violation of this substantive law by Defendant as the basis for this appeal. Defendant specifically points to the two counts in the Complaint as deficient. She objects to Count I because it uses the term "Federal Law" instead of repeating the EO, IIJA, HFRA. Count II is complaint worthy because the language "[t]he ESD and Memorandum are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law in violation of the APA." The quoted language omits the reference to the Federal Law in Count II which refers to the EO, IIJA, HFRA. All of Defendant's confusion is cured on the next page of the Complaint in Prayer for Relief B. where GC asks the Court to Court to "[d]eclare the ESD and Secretary's Memorandum 1078-006 violate the Infrastructure Investment and Jobs Act, 16 U.S.C.; Healthy Forest Restoration Act, 16 U.S.C. Chapter 84; Administrative Procedure Act, 5 U.S.C. Sections 701-706."

For the foregoing reasons, GC asks the Court to deny Defendant's Motion to Dismiss.

Respectfully submitted,

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