

Receipt number AUSFCC-8266599

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**PLAINTIFFS, CECELIA MARIE
WORLTON, WILLIAM LAYNE
WORLTON, BYRON E. BRIMM,
ANDREW L. LAURSEN AND SHANA A.
LAURSEN, INDIVIDUALLY AND AS
TRUSTEES OF LAURSEN FAMILY
TRUST - 2001 U/I DTD. FEBRUARY 2,
2001,**

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

NO. 22-1569 L

COMPLAINT

Plaintiffs, Cecelia Marie Worlton, William Layne Worlton, Byron L. Brimm, Andrew L. Laursen and Shana A. Laursen, Individually and as Trustees of Laursen Family Trust - 2001 U/I Dtd. February 2, 2001, complain against Defendant, the United States of America, acting through the United States Department of Agriculture Forest Service (referred to hereafter, collectively, as “USFS”), as follows:

INTRODUCTION

1. The Chetco Bar Fire (the “Fire” or “Chetco Bar Fire”) was a wildfire discovered initially in the Kalmiopsis Wilderness, Oregon. First reported on July 12, 2017, it burned 191,125 acres. Its enormous size resulted from USFS’s decision to use the fire to achieve natural

resource management objectives and qualified it as a “mega fire.” USFS management use of the fire contributed to its growth to such an extent that it eventually even threatened the city of Brookings, Oregon. This lawsuit, under the Tucker Act for inverse condemnation, seeks compensation for property taken by USFS in its use and management of the Chetco Bar Fire. The factual gravamen of the case consists of the taking of Plaintiffs’ property as fuel for USFS’s planned ignitions (often referred to as backfires¹) it conducted in its management of the Chetco Bar Fire. USFS used stands of Plaintiffs’ timber, and other material on Plaintiffs’ property, as fuel for the planned ignitions. The backfires that USFS ignited, per its planning, served natural resource management objectives deemed by USFS to be in the nation’s public interest. These natural resource management objectives included, without limitation, (a) the restoration of the natural role of fire into the local federal and non-federal ecosystem; and (b) hazardous wildfire fuel reduction on federal lands and the lands of the non-federal local community, both public and private. Thus, USFS used planned ignitions and backfiring operations (or, collectively, “firing operations”) from August 17-August 20, 2017, to achieve its natural resource management objectives, and to otherwise manage its lands, to benefit the public as a whole. On two of the four days, August 19 and August 20, 2017, USFS directly used Plaintiffs’ lands and timber resources as its backfiring fuel. USFS’s decision to take Plaintiffs’ property for the purpose of planned ignitions forced Plaintiffs, alone, to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. USFS’s pursuit of natural resource management objectives, by use of Plaintiffs’ property as backfiring fuel on August 19 and

¹ “A backfire is a fire set along the inner edge of a fireline to consume the fuel in the path of a wildfire, or to change the direction of force of the fire's convection column.” <https://ask.usda.gov/s/article/What-is-a-backfire-wildfire-suppression-technique> (accessed 8/21/2022)

August 20, 2017, resulted in the uncompensated taking of Plaintiffs' property for public benefit. This action seeks just compensation for these takings.

JURISDICTION AND VENUE

2. The United States Court of Federal Claims has jurisdiction over the subject matter of this action pursuant to the Tucker Act, 28 U.S.C. § 1491, implementing the proscription of government taking of private property without just compensation set forth in the Fifth Amendment to the United States Constitution.

3. Venue for an inverse condemnation action under the Tucker Act is proper in the United States Court of Federal Claims in Washington, D.C.

PARTIES

4. At all relevant times Plaintiffs Cecelia Marie Worlton and William Layne Worlton owned interests in real and personal property located in Brookings, Oregon. (See Ex. A, attached.)

5. At all relevant times Plaintiff Byron L. Brimm owned interests in real and personal property located at Brookings, Oregon. (See Ex. B, attached.)

6. At all relevant times Plaintiffs Andrew L. Laursen and Shana A. Laursen, individually, owned interests in personal property located at the property identified in ¶ 7, below, in Brookings, Oregon.

7. At all relevant times Plaintiffs, Andrew L. Laursen and Shana A. Laursen as Trustees Of Laursen Family Trust - 2001 U/1 1-F . Dtd. February 2, 2001, owned interests in real and personal property located in Brookings, Oregon. (See Ex. C, attached.)

8. At all relevant times, Defendant United States of America, acting through an agency of the United States Department of Agriculture, the United States Forest Service (USFS), and/or other federal governmental entities duly organized and existing under and by virtue of the laws of the United States of America, or agents of any of the foregoing, has responsibility for,

among other things, managing and controlling the federally-owned land commonly known as the Rogue River-Siskiyou National Forest.

GENERAL ALLEGATIONS

The Rogue River-Siskiyou National Forest

9. The Rogue River-Siskiyou National Forest consists of approximately 1.8 million acres of varying terrain—grass, shrub, and timber lands. It is divided into seven separate sections that encompass eight separate mountain ranges, and it is the oldest forest preserve in the United States.

10. The Rogue River-Siskiyou National Forest is home to stands of old growth, including Port Orford cedar and Douglas fir. The world’s tallest pine tree, a 268.35-foot (81.79 m) Ponderosa Pine, is located in this national forest. The Rogue River-Siskiyou National Forest contains all or part of eight separate wilderness areas.

11. At all relevant times, USFS was responsible for and in fact controlled:

- (a) Natural resource management within the Rogue River-Siskiyou National Forest and other federal lands;
- (b) Fire modeling and management within the Rogue River-Siskiyou National Forest;
- (c) Fire management and fire suppression activities within the Rogue River-Siskiyou National Forest;
- (d) The use of fire in national forests, including the Rogue River-Siskiyou National Forest, to manage resources such as timber, habitat, recreational values, wilderness, and watersheds.

USFS Plan to “Restore the Natural Role of Fire” to the Landscape

12. In April 2014, USFS completed the final phase of its National Cohesive Wildland Fire Management Strategy (the “Strategy”). Its “vision statement” reads: “Vision: To safely and effectively extinguish fire when needed; use fire where allowable; manage our natural resources;

and as a nation, to live with wildland fire.” The Strategy does not limit USFS’s use of wildland fire to federal lands. Rather, two fundamental goals of the Strategy are (a) the creation of “resilient landscapes” of all ownerships, whether public or private, federal, or nonfederal, and (b) what USFS calls “fire adapted communities.” According to USFS, this also means, “[a]ll who have a stake in the outcome, from property owners to the Federal government must share the financial burden” of implementing the Strategy.

13. USFS implemented a five-year plan to effectuate its Strategy in June 2015. It incorporated its wildland fire use (WFU) Strategy and included nonfederal public lands and privately owned real property in its USDA Forest Service Strategic Plan: FY 2015-2020 (the “Plan”). In the Plan, USFS anticipates opportunities to use natural fires and is candid in its aims: “Fire can . . . be a tool to help meet desirable outcomes for healthy forest and grassland ecosystems and to help us restore, maintain, and protect healthy forests and grasslands.” “Using the latest tools, we decide . . . when and where to use fire to achieve our objectives for long-term ecosystem health and resilience” of lands regardless of ownership. “By applying the best available science and land management and by working closely with landowners and other partners, we will restore the natural role of fire while helping at-risk communities adapt to wildfire hazards.” USFS’s Plan purposely extended its use of reasonably anticipated natural fire to include its nonfederal neighbors: rural communities, nonfederal public agencies, and private owners of real property.

14. USFS stated its purpose in the Plan thus:

Wildfire poses increasing risks for growing rural communities near forest land. More than 70,000 communities are at risk from wildfire. USFS works through cross-jurisdictional partnerships to help communities become safer. From 2008 through 2013, our joint efforts more than doubled the number of designated Firewise communities able to survive a wildfire without outside intervention. By fire adapting their communities, homeowners and

landowners alike can reduce fire risks and work toward healthier landscapes and stronger communities.

15. The Strategy's policy, implemented in the Plan, of using anticipated natural fire to alter landscapes in communities, on nonfederal public lands and on private real property was then executed nationwide by the Chief of USFS. To wit, from 2015 through at least 2018, USFS adopted and implemented WFU in managing National Forests under its delegated management and control. In addition to scorching National Forest lands, however, it extended its Plan of WFU to millions of acres of "state, and private lands" outside the National Forests.

16. Since 2015, USFS has implemented the Strategy and the Plan on a nationwide basis purposefully using reasonably anticipated natural wildfire, augmented by large-scale backfires, to burn private and nonfederal public lands and communities, forcing them to "live with wildland fire" in the National public interest. USFS use of the Chetco Bar Fire, and the large-scale backfires it employed, arose directly from the Strategy, as executed nationwide under the Plan, and applied locally in the Rogue River-Siskiyou National Forest.

17. To achieve its natural resource benefit objectives and in the course of fire incident management on the Chetco Bar Fire, USFS employed planned ignitions in the form of large-scale backfires designed to artificially grow the naturally occurring wildfire to sizes much larger than if it has been left to burn naturally. The large-scale planned ignitions on the Chetco Bar Fire ignored political and property boundaries and used Plaintiffs' nonfederal resources as backfire fuel, imposing the costs of the natural resource management objectives upon Plaintiffs.

18. Neither the Strategy nor the Plan, however, included any provision for compensation of the private property USFS intended to take in executing the Plan with intentionally ignited backfires undertaken to achieve natural resource management objectives. Similarly, USFS did not compensate Plaintiffs for the private property USFS took with

intentionally ignited backfires undertaken to achieve natural resource management objectives on the Chetco Bar Fire.

WFU and the Chetco Bar Fire -- July 13-28, 2017

19. On or about June 24, 2017, the Chetco Bar Fire began in a remote portion of the Rogue River-Siskiyou National Forest in southwest Oregon. The fire was small at first and was not reported until July 12, 2017, at 2:42 p.m.

20. On July 13, 2017, the USFS Gold Beach District Ranger, Tina Lanier, issued a Wildland Fire Decision Support System (WFDSS) report. It identified the USFS as the “jurisdiction agency” and the Rogue River-Siskiyou National Forest as the “responsible unit” regarding the fire.

21. The written rationale included in the WFDSS report reflects an intent to use the fire to achieve natural resource management objectives. It reads, in relevant part, as follows:

The Chetco Bar Fire is located in the middle of the Kalmiopsis in a very inaccessible place. The planning area is almost entirely within scar from the Biscuit Fire (2002). Values at risk from the fire are considered to be low at this point. However, wilderness and wild and scenic river objectives will be applied to all actions to protect those values. It grew from approximately 1-2 acres to 10-12 acres in the last 24 hours. Current fire behavior is low to moderate, spreading in the surface fuels with 1-2 foot flame-lengths. There is heavy dead and down in some areas from trees killed in the Biscuit fire. Fuels are a mixture of forest fuels structures, brush fields, and some sparsely vegetated areas. Spread is mainly through rollout and steepness of terrain. Anticipated weather changes may add to potential fire spread with uphill runs making access difficult for resources to engage in fire suppression safely. A long term assessment will be completed to evaluate the threat to values at risk relative to the fires current location and projections for the next three weeks. The current course of action includes minimal use of resources to monitor fire activity, look for potential management action points and areas for possibly contingency line construction. This course of action carefully weighs potential management actions in consideration of the values at risk, probability of success, and relative risks. Implement a communication strategy to inform public, cooperators, and key stakeholders on current fire status and planned actions. Maintain and strengthen relationships with partnership agencies, organizations, and community

groups and members. Likelihood of public impacts is low but trail closures may be implemented.

22. At the time, the fire was approximately 10 acres in size.

23. Six days later, according to the WFDSS report issued on July 19, 2017, the fire had grown to 50 acres. The author of the July 19 WFDSS indicated the following “courses of action”:

07/19/2017 Limit fire spread using direct or indirect tactics that include burnout or holding operations utilizing contingency line that follow the Biscuit Fire and Collier Butte Fire dozer lines and Forest System Roads in order to Keep fire east of MAP 7 (west Kalmiopsis); Forest System Roads 1909 and 1917; and FST1102 along the wilderness boundary in order to protect high value resources including private lands, high use public recreation areas, and high value timber.

07/19/2017 Limit fire spread using direct or indirect tactics that include burnout² or holding operations utilizing contingency line that follow the Biscuit Fire, Silver Fire, Labrador Fire and Buckskin Fire dozer lines; topographic features, natural fire barriers, and Forest System Roads in order to keep fire within the northern, southern, and eastern boundaries of the Kalmiopsis Wilderness.

24. Thus, the strategy was consistent with continuing to grow the fire. For example, suppression techniques were “indirect,” meaning the intention was to (a) build or use already existing contingency fire line, and (b) to conduct planned ignitions strategically to direct the growth and spread of the fire for natural resources objectives.

25. WFDSS records document a decision to undertake planned ignitions and backfiring operations to enlarge the Chetco Bar Fire for USFS land management purposes, consistent with the Plan, in “restoring the natural role of fire” to the local landscape.

Local Values at Risk

26. The WFDSS decision documents are consistent with the July 2017 “Long Term

² USFS personnel use the terms “burnout” and “backfire” synonymously.

Risk Assessment of Not Burning Out to River” (LTRA), in which Ranger Lanier accepted the risk to “high value resources” which include “private lands, forest service infrastructure, and high value timber,” as less than zero. In fact, one of the possible outcomes the assessment predicted, “Scenario #5,” identified a risk for the fire to spread, as it eventually did, to the outskirts of Brookings, Oregon by mid-September.

27. USFS found this risk acceptable because the public and private lands between its management fire and the high value resources in the town of Brookings, including property owned by Plaintiffs, created a thick buffer of unburned private lands that USFS could use as backfiring fuel to mitigate risk for the urban interface. It intended to protect the “high value” resources in Brookings, as USFS executed its WFU tactics that directed the fire toward the west, by taking private lands and timber resources, some of which were owned by the Plaintiffs, as fuel for planned ignitions and backfiring operations. USFS did not consult with Plaintiffs on this decision.

Expanding WFU – July 29-August 16, 2017

28. By July 29, 2017, WFU of the Chetco Bar Fire had restored the natural role of fire to 2,181 acres of the landscape. In the next 17 days, before the ignition of major backfires began, USFS had restored wildfire to its natural role on the landscape at a rate of 195 acres per day.

29. On August 16, 2017, USFS fire managers believed the fire could spread beyond the Kalmiopsis Wilderness and a predetermined “Management Action Point” (MAP), developed by USFS as a trigger to initiate additional backfires. As USFS grew the fire to the west, it prepared to conduct planned ignitions on a full ten-mile front. The August 16, 2017, Incident Action Summary (ICS-209) read:

Fire is currently threatening a critical Management Action Point and will likely cross based on expected weather. Management Action is to burn

approximately 10 miles of contingency line. The requested T2IA Crew is needed for 3-5 shifts to complete two sections of handline on the planned contingency line. The two DIVS are a critical need to plan for future firing operations and scouting additional contingencies. Time will be limited to complete and be prepared for firing if this M.A.P. is breached.

USFS designed these WFU tactics to restore the natural role of fire in the local landscape. USFS used Plaintiffs' property, meanwhile, to mitigate the risks its WFU tactics posed for high value resources in and around Brookings, Oregon.

30. Private property was situated to the west and southwest of the fire location. Their lands comprised a substantial portion of what USFS designated as the buffer it would use to mitigate risk for high value resources in and around Brookings, Oregon. USFS did not confer with Plaintiffs or seek their consent to use the private property as a buffer to protect the high value resources from the planned backfires. USFS did not confer with Plaintiffs or seek their consent to using the private property as fuel for its planned ignitions and backfiring operations. Nevertheless, USFS used its authority to execute a fire management plan designed to restore the natural role of fire on the local landscape.

WFU and Planned Ignitions – August 17-18, 2017

31. USFS began executing its WFU on the evening of August 17, 2017, by planned ignitions designed to manage the Chetco Bar Fire. USFS wrote in the Chetco Bar Fire Evening Update, 08/17/2017, 9:00 P.M.: "fire crews will begin using strategic firing operations as part of their planned suppression strategy starting as early as tonight." The Evening Update continued:

This will include a planned ignition operation to remove fuels between the prepped containment line along USFS Road 1917 between Upper Chetco trailhead and Vulcan Peak trailhead. This will create a larger fire break and assist in fire containment. Today air tankers dropped retardant around Quail Peak Lookout and along fires edge to help slow its progression. Tomorrow air tanker support will continue and assist firing operations along Forest Service Road 1917.

Expect to see an increase in smoke visibility in the coming days as a result of strategic firing operations.

32. The “containment line” described in the August 17, 2017 “Evening Update” runs some ten miles along a roughly north/south line beginning at about the location of Quail Prairie Lookout, east of Packer’s Cabin.

33. The USFS planning document for the next day, August 18, 2017, included written instructions for the southwest and northwest perimeters of the fire. It assigned fire personnel with the “TASKS” of “[c]omplete final prep of control lines and be prepared to initiate firing operations.” The “END STATE” was to be: “Contingency line is in place and sufficient to fire and hold. Firing is successfully supported and conducted when fire conditions dictate. Additional contingency lines for future implementation are identified.”

34. On August 18, 2017, fire managers ignited a backfire along the south side of Forest Road 1917 between Forest Road 060 and Packer’s Cabin at about 10:30 a.m.

35. As planned, the fire they started continued to grow dramatically. An infrared map prepared from a flyover conducted that afternoon shows this intentionally ignited backfire had (by 4:50 p.m.) burned as far as Quail Prairie Creek, just north of Forest Road 050. This is over two miles from where the fire managers intentionally ignited the backfire.

36. USFS ignited backfires on August 18, 2017, in part, on or near private lands owned by Plaintiffs without their managers’ prior knowledge or consent. USFS intentionally used the property of Plaintiffs as backfire fuel in its management of the fire.

More Planned Ignitions – August 19-20, 2017

37. On August 19, 2017, USFS conducted planned ignitions east of the Chetco River to increase the buffer between the area of WFU and values at risk. The written plan for the day shift indicates that the “end state” of the day’s work should be “Contingency line is in place

sufficient to fire and hold.” It also states: “Firing is successfully supported and conducted when fire conditions dictate.” Firefighters executed firing operations as planned. The infrared map of August 19, 2017, shows backfires ignited to the north and west of a community called Wilderness Retreat were still burning with “intense heat” as of 10:58 p.m. on August 19, 2017.

38. USFS executed its August 19, 2017, planned ignitions and backfiring operations, in part, on or near private lands owned by Plaintiffs without their prior knowledge or consent.

39. USFS planned on backfiring to the west of the Chetco River and to the south of Panther Creek on the evening of August 19, 2017. The August 19, 2017, 10:58 p.m. infrared survey showed USFS’s planned ignitions had carried the fire all the way to the east bank of the river in the vicinity of the Chetco River Inn.

40. USFS intended to and did utilize property belonging to Plaintiffs, and others, as fuel for the backfires it ignited to achieve natural resource management objectives. The planned ignitions increased the intensity and rate of spread of the wildfire, with commensurate benefits in restoring the natural role fire to the local landscape.

41. As of August 20, 2017, USFS had established a contingency line at the top of Gardner Ridge, west of the Chetco River, using Road 800 and FS Road 1407, which both run in a north-south direction on the ridgetop. USFS ordered its personnel to undertake more planned ignitions west of the river, on or near Plaintiffs’ property.

42. The planned ignitions executed by USFS on the evening of August 19, 2017, east of the river and the morning of August 20, 2017, west of the river, benefitted from expected strong “Chetco Effect” east winds. The wind helped the fire spread due west, up the steep Panther Creek gorge. The terrain and wind combined to create a veritable firestorm of such heat it vaporized the metal fixtures in a private cabin near the mouth of Panther Creek, leaving

nothing but the concrete foundation and chimney. USFS anticipated and used the Chetco Effect winds to aid in the burning of private lands as fuel for its planned ignitions.

43. On August 20, 2017, USFS executed additional planned ignitions and backfiring operations on Gardner Ridge along Roads 800 and 1407. It successfully fired the area between the River and the Ridge, creating a buffer to the ridge line to protect high value resources from planned ignitions used elsewhere to restore the natural role of fire to the local landscape and to achieve other resources benefits. The fuel for this operation consisted of Plaintiffs' private property including stands of valuable timber, as well as private property of others, including six primary residences and eighteen minor structures burned on Gardner Ridge and Cate Road.

44. USFS's four-day backfiring campaign had increased the size and intensity the Chetco Bar Fire. It grew from 6,016 acres at 11:00 p.m. on August 16, 2017, to 91,551 acres at 11:00 p.m. on August 20, 2017 (a growth rate of nearly 23,000 acres *per day*).

45. USFS ignited its August 20, 2017, backfires, in part, on or near private lands owned by Plaintiffs without their knowledge or consent. USFS intended to and did burn the property of Plaintiffs as fuel for its planned ignitions and backfiring operations.

46. The four days of USFS backfiring successfully "restored fire" to the local federally owned landscape (to USFS's satisfaction and utility), creating what USFS would later refer to a laudable "mosaic" burn scar that USFS intended as the desired end state. USFS also used the backfires to reduce the hazardous wildfire fuel present on the landscape, and, upon information and belief, credited the burned area to its annual hazardous fuel reduction goal. In sum, USFS use planned ignitions and backfiring operations on the Chetco Bar Fire as a tool to achieve natural resource management objectives.

47. By employing the Chetco Bar Fire as a tool, USFS achieved its natural resource management objectives for long-term ecosystem health and resilience of its local lands. USFS used the Chetco Bar Fire to restore the natural role of fire, while adapting the local at-risk communities to wildfire hazards. USFS's Plan purposely extended its use of anticipated natural fire to include its nonfederal neighbors: the rural communities, nonfederal public lands, and private owners of real property, including Plaintiffs. USFS achieved the natural resource management objectives, in part, by its use of Plaintiffs' property as fuel for its planned ignitions and backfires.

48. In 2017, USFS counted acreage burned by unplanned fire in achieving its natural resource management objectives on a national basis. This included much or all the acreage burned in the Chetco Bar Fire, including, upon information and belief, Plaintiffs' property.

COUNT I

(Inverse Condemnation – Timber Resources)

49. Plaintiffs restate, and incorporate in Count I by reference, the foregoing allegations.

50. USFS elected, under its discretion and authority, to use the naturally occurring Chetco Bar Fire to pursue natural resource management objectives as contemplated by the Strategy and in the Plan. It did so in service to the national public interest and to benefit the public at large. One tactic USFS employed in its use of the Chetco Bar Fire in service to the national public interests was planned ignitions and large-scale backfiring operations in and around the naturally occurring Chetco Bar Fire.

51. USFS executed planned ignitions on or near Plaintiffs' property USFS intended to take and did take Plaintiffs' property as fuel for its planned ignitions and backfiring operations. In the ordinary course of events, absent USFS ignition of backfires on or near Plaintiffs' property, Plaintiffs' property would not have burned to the degree and intensity it did

as backfire fuel. Plaintiffs' property would not have been completely or partially consumed by fire absent its use as backfire fuel.

52. The consumption of Plaintiffs' property was the likely and foreseeable result of USFS taking of Plaintiffs' property to fuel its backfires and planned ignitions, and not the incidental or consequential injury inflicted by the taking activity.

53. USFS taking of Plaintiffs' property to fuel its backfires and planned ignitions appropriated a benefit to USFS at the expense of Plaintiffs by taking their timber resources for backfire fuel.

54. Plaintiffs possessed protectable property interests in the property taken by USFS to fuel its backfires and planned ignitions.

55. USFS did not compensate and does not intend to compensate Plaintiffs for the takings described herein.

56. Plaintiffs are entitled to receive just compensation for the taking as described herein in an amount to be proven at trial of not less than \$10,000.

57. Plaintiffs are entitled to reimbursement of their reasonable expenses, costs, disbursements, expert fees, and attorney's fees under the provisions of 42 U.S.C. 4654(c).

COUNT II

(Inverse Condemnation – Real Property)

58. Plaintiffs restate, and incorporate in Count II by reference, the foregoing allegations.

59. USFS intended to and did invade Plaintiffs' protected property interest by using the property to fuel the planned ignitions described herein, or, in the alternative, the invasion was the direct, natural, or probable result of the planned ignitions.

60. USFS's invasion of Plaintiffs' property interests to obtain fuel for its backfiring operations and planned ignitions is the direct, natural, or probable result of such authorized activity, and not the incidental or consequential injury inflicted by them.

61. USFS's taking of Plaintiffs' property as fuel for its backfires and planned ignitions appropriated a benefit to USFS at the expense of Plaintiffs, at least by pre-empting the Plaintiffs' right to enjoy their property for an extended period of time, rather than merely by inflicting an injury that reduced the property's value.

62. Plaintiffs possessed protectable property interests in the property taken by USFS to fuel its backfires and planned ignitions.

63. USFS did not compensate and does not intend to compensate Plaintiffs for the takings described herein.

64. Plaintiffs are entitled to receive just compensation for the taking as described herein in an amount to be proven at trial of not less than \$10,000.

65. Plaintiffs are entitled to reimbursement of their reasonable expenses, costs, disbursements, expert fees, and attorney's fees under the provisions of 42 U.S.C. 4654(c).

COUNT III

(Inverse Condemnation – Real Property – Alternative)

66. Plaintiffs restate, and incorporate in Count III by reference, the foregoing allegations.

67. In the alternative to Count II, USFS's taking of Plaintiffs' property had a material detrimental economic effect on Plaintiffs, depriving them of the benefits of their property.

68. Plaintiffs' reasonable investment-backed expectations, given the relative economic impact on them, outweighs the public welfare interest protected by the USFS in taking of Plaintiffs' property to fuel its backfires and planned ignitions.

69. USFS's taking of Plaintiffs' property imposed a heavy burden on them, forcing Plaintiffs as individuals to bear economic burdens which, in all fairness and justice, should be borne by the public as a whole.

70. Plaintiffs possessed protectable property interests in the property taken by USFS to fuel its backfires and planned ignitions.

71. USFS did not compensate and does not intend to compensate Plaintiffs for the takings described herein.

72. Plaintiffs are entitled to receive just compensation for the taking as described herein in an amount to be proven at trial of not less than \$10,000.

73. Plaintiffs are entitled to reimbursement of their reasonable expenses, costs, disbursements, expert fees, and attorney's fees under the provisions of 42 U.S.C. 4654(c).

REQUEST FOR RELIEF

Accordingly, Plaintiffs request, for each of them, a money judgment for just compensation, plus reasonable expenses to include attorney fees, expert witness fees, and other costs, disbursements, and expenses of obtaining judgment against the United States; and such other and further relief as may be appropriate in the circumstances.

DATED this 21st day of October 2022.

Respectfully Submitted,

By: /s/Quentin M. Rhoades
Quentin M. Rhoades
RHOADES & ERICKSON PLLC
430 Ryman Street
Missoula, Montana 59802
Telephone: (406) 721-9700
qmr@montanalawyer.com

OF COUNSEL

Robert Erickson, Esq.
RHOADES & ERICKSON PLLC
430 Ryman Street
Missoula, Montana 59802
Telephone: (406) 721-9700
erickson@montanalawyer.com

PRO QUERENTE