

COMPLAINT

1988 FEB 14 AM 9:24

1 Jon L. Heberling
2 McGARVEY, HEBERLING, SULLIVAN
3 & McGARVEY
4 745 South Main
Kalispell, Montana 59901
(406) 752-5566

FILED
BY _____
DEPUTY

5 MONTANA ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY

6 FRIENDS OF THE WILD SWAN, a)
7 Montana non-profit corporation,)

8 Plaintiff,)

9 -vs-)

10 DEPARTMENT OF STATE LANDS,)

11 Defendant.)

Cause No.

DV- 89-073B

COMPLAINT

MICHAEL H. KEEDY

12 Plaintiff alleges:

13 1. Friends of the Wild Swan is a Montana non-profit
14 corporation with its business address at Swan Lake, Montana.

15 2. The Department of State Lands is a political
16 subdivision of the State of Montana. The Department of
17 State Lands, Forestry and Field Operations Divisions, have
18 the management responsibility for the school trust forest
19 lands, under the general direction of the Board of Land
20 Commissioners. For administrative purposes, the Department
21 has divided the State geographically into six administrative
22 areas. Each area is administered by a separate State Land
23 Office organized and staffed to provide the needed support
24 to the Department's programs. The Northwest Region office
is located at Kalispell, Montana. The Northwest Region is
directly responsible for supervision of the management of a
number of forest units, including the Swan River State
Forest Unit, located in the vicinity of the community of
Swan Lake, Montana.

25 3. Friends of the Wild Swan is a corporation dedicated

1 to conservation of the natural environment, including
2 fisheries, wildlife, water quality, aesthetics, and re-
3 creational values, and promotes the local economy of the
4 Swan Valley.

5 4. On April 23, 1987, the Swan River State Forest
6 issued its preliminary environmental review on the Swan
7 River Timber Sale, and thereafter the Board of Land
8 Commissioners approved the sale.

9 5. On May 21, 1987, the Swan River State Forest first
10 published notice of its decision to offer the Swan River
11 Timber Sale.

12 6. On June 23, 1987, the Swan River State Forest
13 entered a Timber Sale Agreement with Stoltz Lumber Company
14 on the Swan River Timber Sale.

15 7. Members of Friends of the Wild Swan reside in the
16 Swan Valley and hunt, fish, hike, horseback ride, and
17 recreate in areas directly affected by activities permitted
18 under the Swan River Timber Sale. Managers of the Swan
19 River State Forest have taken the position that the State
20 Forest is open to public access. Members of Friends of the
21 Wild Swan use the Swan River for recreation adjacent to the
22 area of the Swan River Timber Sale. Members of the Friends
23 of the Wild Swan are engaged in occupations dependent on
24 recreation and tourism, which are directly affected by
25 activities permitted under the Swan River Timber Sale.
26 Members of Friends of the Wild Swan own real property
adjacent to the Swan River Timber Sale and their property
values are directly affected by activities permitted under
the Swan River Timber Sale. The Friends of the Wild Swan
and its individual members are adversely affected by
activities permitted under the Swan River Timber Sale
complained of herein.

FIRST CLAIM -- ENVIRONMENTAL IMPACT STATEMENT

1. All paragraphs above are incorporated by this
reference.

1 2. The Swan River Timber Sale is a connected action
2 with all other Swan River State Forest management actions.
3 The Swan River Timber Sale does not have a current or valid
4 EIS to tier to, and accordingly in order to provide proper
5 consideration of cumulative impacts under ARM 26.2.603(d),
6 an EIS is required on the Swan River Timber Sale.

7 State Lands has recognized that the Swan Highway
8 Corridor has a significant effect on the environment, in the
9 interagency agreement dated _____.

10 3. The Swan River Timber Sale design violates the
11 interagency agreement to protect the Swan Highway Corridor.
12 As a result, the Swan River Timber Sale has a significant
13 effect upon the environment, and an EIS is required under
14 §

15 **SECOND CLAIM -- INADEQUATE PRELIMINARY
16 ENVIRONMENTAL REVIEW**

17 1. All paragraphs above are incorporated by this
18 reference.

19 2. The Preliminary Environmental Review on the Swan
20 River Timber Sale is inadequate in its evaluation of effects
21 on riparian wildlife areas, including habitat for the blue
22 heron, bald eagle, pileated woodpecker and osprey, effects
23 on grizzly bear habitat, old growth, water quality, the Swan
24 Highway, recreation and economics. The Preliminary
25 Environmental Review was issued and the Timber Sale
26 Agreement was signed before a biological evaluation was ever
done.

 3. Areas including the site of the Swan River Timber
Sale are currently under consideration by the Department of
State Lands as a research natural area. The Preliminary
Environmental Review omitted to consider the effects of
clearcuts on research natural area status.

THIRD CLAIM -- ALTERNATIVE COURSES OF ACTION

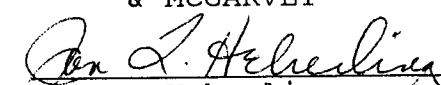
 1. All paragraphs above are incorporated by this
reference.

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4. For such further relief as the Court may deem just.

DATED this 14th day of February, 1989.

MCGARVEY, HEBERLING, SULLIVAN
& MCGARVEY



Jon L. Heberling
Counsel for Plaintiffs

ORDER

1 MONTANA ELEVENTH JUDICIAL
2 DISTRICT COURT,
3 FLATHEAD COUNTY

CLERK OF DISTRICT COURT
JOHN VAN

1989 MAR 16 AM 8:34

BY M. Van
DEPUTY

5 FRIENDS OF THE WILD SWAN,)
6 a Montana non-profit)
7 corporation,)
8)
9 Plaintiff,)
10 vs.)
11 DEPARTMENT OF STATE LANDS,)
12)
13 Defendant.)

No. DV-89-073 (B)

ORDER

12 F. H. Stoltze Land & Lumber Company having filed a motion
13 to intervene, together with a brief in support of the motion;
14 and this Court having been advised by counsel that the other
15 parties have no objection to said motion; and good cause
16 appearing for said motion;

17 IT IS HEREBY ORDERED that the motion of F. H. Stoltze Land
18 & Lumber Company to intervene in this action be, and is hereby,
19 granted. F. H. Stoltze Land & Lumber Company shall hereafter
20 appear as a Defendant in this matter. F. H. Stoltze Land &
21 Lumber Company is hereby granted permission to file that answer
22 and counterclaim and demand for trial by jury, a copy of which
23 was attached to its motion to intervene, with the Clerk of the
24 above-entitled Court.

25 DATED this 16th day of March, 1989.

26 Michael H. Keedy
27 District Judge

28 I hereby certify that I have mailed a true
copy of this document to:

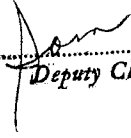
29 Richard Thurett, Todd
30 Harmon + Don L. Heberling
31 by depositing same in the U. S. Mail this
32 16th day of March,

33 19 89
34 JOHN VAN
35 Clerk of the District Court
36 By John Van
37 Deputy Clerk

AMENDED COMPLAINT

FILED 9-26-89
JOHN VAN
Clerk of the District Court

1 Jon L. Heberling
2 MCGARVEY, HEBERLING, SULLIVAN
3 & MCGARVEY
4 745 South Main
Kalispell, Montana 59901
(406) 752-5566

By  Deputy Clerk

5 MONTANA ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY

6 FRIENDS OF THE WILD SWAN, a)
7 Montana non-profit corporation,)
8 Plaintiff,) Cause No.
9) DV-89-073 (B)
10 -vs-) AMENDED
11 DEPARTMENT OF STATE LANDS,) COMPLAINT
12 Defendant.)

13 Plaintiff alleges:

14 1. Friends of the Wild Swan is a Montana non-profit
15 corporation with its business address at Bigfork, Montana.

16 2. The Department of State Lands is a political
17 subdivision of the State of Montana. The Department of
18 State Lands, Forestry and Field Operations Divisions, have
19 the management responsibility for the school trust forest
20 lands, under the general direction of the Board of Land
21 Commissioners. For administrative purposes, the Department
22 has divided the State geographically into six administrative
23 areas. Each area is administered by a separate State Land
24 Office organized and staffed to provide the needed support
25 to the Department's programs. The Northwest Region office
is located at Kalispell, Montana. The Northwest Region is
directly responsible for supervision of the management of a
number of forest units, including the Swan River State
Forest Unit, located in the vicinity of the community of
Swan Lake, Montana.

26 3. Friends of the Wild Swan is a corporation dedicated
AMENDED COMPLAINT 1

1 to conservation of the natural environment, including
2 fisheries, wildlife, water quality, aesthetics, and re-
3 creational values, and promotes the local economy of the
4 Swan Valley.

4 4. On April 23, 1987, the Swan River State Forest
5 issued its preliminary environmental review on the Swan
6 River Timber Sale, and thereafter the Board of Land
7 Commissioners approved the sale.

7 5. On May 21, 1987, the Swan River State Forest first
8 published notice of its decision to offer the Swan River
9 Timber Sale.

9 6. On June 23, 1987, the Swan River State Forest
10 entered a Timber Sale Agreement with Stoltz Lumber Company
11 on the Swan River Timber Sale.

11 7. Officers and Directors of Friends of the Wild Swan
12 reside in the Swan Valley and hunt, fish, hike, observe
13 wildlife, and recreate in areas directly affected by
14 activities permitted under the Swan River Timber Sale.
15 Managers of the Swan River State Forest have taken the
16 position that the State Forest is open to public access.
17 Officers and Directors of Friends of the Wild Swan use the
18 Swan River for recreation adjacent to the area of the Swan
19 River Timber Sale. A Director of Friends of the Wild Swan
20 owns interests in real property adjacent to the Swan River
21 Timber Sale and her property values are directly affected by
22 activities permitted under the Swan River Timber Sale. The
23 Friends of the Wild Swan and its individual officers and
24 directors are adversely affected by activities permitted
25 under the Swan River Timber Sale complained of herein, and
26 particularly by damage to old growth habitat, wildlife
27 habitat, aesthetic and recreational values, all in violation
28 of their constitutional rights to a clean and healthful
29 environment, 1972 Montana Constitution, Article II §3.

FIRST CLAIM -- ENVIRONMENTAL IMPACT STATEMENT

1. All paragraphs above are incorporated by this

1 reference.

2 2. The Swan River Timber Sale is a connected action
3 with all other Swan River State Forest management actions.
4 The Swan River Timber Sale does not have a current or valid
5 EIS to tier to, and accordingly in order to provide proper
6 consideration of cumulative impacts under ARM 26.2.603(d),
7 an EIS is required on the Swan River Timber Sale.

8 3. State Lands has recognized that the Swan Highway
9 Corridor has a significant effect on the environment, in the
10 interagency agreement dated 8-27-79. The Swan River Timber
11 Sale design violates the interagency agreement to protect
12 the Swan Highway Corridor. As a result, the Swan River
13 Timber Sale has a significant effect upon the environment,
14 and an EIS is required under §75-1-201(1)(b)(iii), MCA.

15 **SECOND CLAIM -- INADEQUATE PRELIMINARY**
16 **ENVIRONMENTAL REVIEW**

17 1. All paragraphs above are incorporated by this
18 reference.

19 2. The Preliminary Environmental Review on the Swan
20 River Timber Sale is inadequate in its evaluation of effects
21 on riparian wildlife areas, including habitat for the blue
22 heron, bald eagle, pileated woodpecker and osprey, effects
23 on grizzly bear habitat, old growth, the Swan Highway
24 Corridor, recreation and economics. The Preliminary
25 Environmental Review was issued and the Timber Sale
26 Agreement was signed before a biological evaluation was ever
done.

3. Areas including the site of the Swan River Timber
Sale are currently under consideration by the Department of
State Lands as a research natural area. The Preliminary
Environmental Review omitted to consider the effects of
clearcuts on research natural area status.

THIRD CLAIM -- ALTERNATIVE COURSES OF ACTION

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reference.

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- 4. For costs of suit, and
- 5. For such further relief as the Court may deem just.

DATED this 20th day of April, 1989.

McGARVEY, HEBERLING, SULLIVAN
& McGARVEY

Jon L. Heberling
Jon L. Heberling
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THE FOREGOING WAS DULY SERVED
BY MAIL UPON ATTORNEYS OF RECORD AT THEIR ADDRESS OR
ADDRESSES, THIS 20th DAY OF April, 1989

McGARVEY, HEBERLING, SULLIVAN AND McGARVEY

BY Jayne Martenson
secretary
745 S. MAIN
KALISPELL, MT 59901

ORDER OF DISMISSAL WITH PREJUDICE

1 Jon L. Heberling
2 McGARVEY, HEBERLING, SULLIVAN
3 & McGARVEY
4 745 South Main
5 Kalispell, Montana 59901
6 (406) 752-5566

CLERK OF DISTRICT COURT

91 SEP 17 PM 2:55

BY FILED SN
DEPUTY

7 MONTANA ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY

8 FRIENDS OF THE WILD SWAN, a)
9 Montana non-profit corporation,)

10 Plaintiff,)

11 -vs-)

12 DEPARTMENT OF STATE LANDS, and)
13 F.H. STOLTZ LAND & LUMBER COMPANY,)

14 Defendants.)

Cause No. DV-89-073(B)

ORDER OF DISMISSAL
WITH PREJUDICE

15 Pursuant to a written stipulation entered into between
16 the parties hereto, through their respective attorneys, that
17 the above-entitled action has been fully and finally
18 compromised and settled on the merits:

19 IT IS HEREBY ORDERED that the above-entitled action in
20 its entirety, including all claims and counterclaims, is
21 dismissed with prejudice, each party to bear its own costs.

22 DATED this 11th day of September, 1991.

23 I hereby certify that I have mailed a true
24 copy of this document to:

25 Jon L. Heberling
Todd Hammer

26 by depositing same in the U. S. Mail this
27 17 day of September,
28 19 91

29 JOHN VAN
30 Clerk of the District Court

31 By
32 Deputy Clerk

R. D. McPhillips
R. D. McPHILLIPS
DISTRICT COURT JUDGE

ORDER OF DISMISSAL WITH PREJUDICE