§ 2:12. Form of complaint based on Trust Doctrine

VERIFIED COMPLAINT

The Plaintiffs, complaining of the Defendants by their attorney,————— ————, set forth and allege: *Name of Attorney*

1. Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code, section 1331(a), "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

This action arises under Article VI, section 2, of the Constitution of the United States, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," and involves the declaration and interpretation of the Plaintiffs' rights secured by the Ninth Amendment of the Constitution of the United States, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people," and under the *due process* and *equal protection* clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States, ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law; . . .", ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The matter in controversy, exclusive of interest and costs, exceeds the value of Ten Thousand ($10,000.00) Dollars.

2. Jurisdiction.

Jurisdiction of this Court is invoked under Title 28, United States Code, section 1343(3): "To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

This action is authorized by Title 42, United States Code, section 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress," and by Title 42, United States Code, section 1981, providing, "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

3. Jurisdiction

This is also a proceeding for Declaratory Judgment under Title 28, United States Code, sections 2201 and 2202, declaring the rights and legal relations of the parties to the matter in controversy, specifically:

(a) That the proposed Florissant Fossil Beds National Monument is a national natural resource.

(b) The right of all the people of the United States in and to the full benefit, use and enjoyment of the unique values of the proposed Florissant Fossil Beds National Monument, without diminution or degradation resulting from any of the activities of the Defendants or their Successors in interest, sought to be restrained herein.

(c) That the degradation of the unique National Natural Resources of the proposed Florissant Fossil Beds National Monument by the Defendants or their Successors in interest violates the rights of the Plaintiffs, guaranteed under the Ninth Amendment of the Constitution of the United States and protected by the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States.

4. Class Action

The Plaintiff, DEFENDERS OF FLORISSANT, INC., is a non-profit, public-benefit corporation duly organized and existing under Colorado law. DEFENDERS OF FLORISSANT, INC. is made up of scientists and other citizens dedicated to the protection of the environment generally and the paleontological values at or near Florissant, Colorado, specifically.

Policy for DEFENDERS OF FLORISSANT, INC. is set by a Board of Trustees composed of scientists, distinguished citizens and counsel. Its concern with the area at or near Florissant, Colorado, is founded on bróad ecological grounds and a conviction that the ecological values represented there are unique and irreplaceable.

This action is brought by DEFENDERS OF FLORISSANT, INC., on behalf of all those entitled to the full benefit, use and enjoyment of the particular natural resources herein described without diminution by the actions of the Defendant, as a class suit in accordance with the provisions of Rule 23(a) of the Federal Rules of Civil Procedure.

The members of this class are so numerous as to make it impracticable to bring them all before this Court. There being common questions of law and fact and common relief sought, this action is a proper class suit. The members of this class are fairly and adequately represented by the Plaintiff and the Plaintiff has no interest adverse to that of any individual who might be entitled to the full benefit, use and enjoyment of the natural resources herein described without diminution resulting from the actions of the Defendant.

5. The Proposed Florissant Fossil Beds National Monument[3]

The proposed national monument comprises an area of 6,000 acres on the east slope of the Rocky Mountains. Located in a region of high recreation use and

3. The very heart of environmental litigation is the complaint, and the key to any successful complaint seeking to protect a national natural resource treasure is the description of that resource in such detail as will persuade the court that the subject matter of the litigation is of national import. Unless the allegations of these descriptive allegations are properly denied they will stand and often support applications for extraordinary provisional remedies.

If any of the descriptive allegations are denied, they immediately raise a substantial issue of fact to be determined by hearing on the merits before any procedural motion to dismiss can be decided.

relatively close to a fast growing metropolitan complex, heavy visitation is expected.

The primary resources are the unique Oligocene lake beds with their plant and insect fossil-bearing layers and related geological features. These resources, combined with a scenic setting and secondary recreational and biological resources, constitute a relatively compact natural unit.

The ancient lake beds of Florissant preserve more species of terrestial fossils than any other known site in the world. The insect fossils are of primary significance. They represent the evolution and modernization of insects better than any other known site in America. In addition, the fossil plants, emphasized dramatically by the petrified tree stumps and the great variety of leaf fossils, add greatly to the primary values. Fossils of spiders, other invertebrates, fish, and birds also have been found at Florissant.

The beds have been a famous collecting ground by numerous scientists for nearly a century and continue to be of great value for paleontological research.

The present-day vegetation is one of pine-covered hills and grassy meadows. In good years the wildflower display in June and July may be spectacular and is an acknowledged tourist attraction.

The wildlife of the area includes many species of large and small mammals and birds; but though varied, it is in no sense unique and like vegetation is secondary in importance to the geological resources.

The recreational resources are related to the mild summer climate, the pleasant open terrain and the resources discussed above. Their values are supplemental in making the visitor's experience a richer one.

Physiographic and Geologic Setting: The Florissant Fossil Beds are located in a depression of the undulating surface of the Rocky Mountain Peneplain which flanks Pikes Peak on the west at a general elevation of about 9,200 feet. The landscape is dominated by Pikes Peak, whose summit is 5,000 feet higher than the level of the peneplain and about 15 airline miles southeast of Florissant. The Florissant depression, elevation 8,200 feet at the village, has been eroded from several hundred to a thousand feet below the general level because of the presence of less resistant Tertiary sediments. The edges of the depression rise irregularly to the erosion surface of the peneplain which is slightly over 8,800 feet at its highest point within the proposed national monument. To the west and northwest is South Park, separated from the Florissant depression by a narrow mountainous ridge.

The depression is irregularly sickle-shaped, the arc being about 10 miles long and 2 miles wide, and concave toward the southwest. Only the south arm of the basin is included within the proposed national monument. It is drained by Grape Creek, a small, intermittent stream. The southernmost portion of the basin

To properly plead a description of a national natural resource treasure requires thorough familiarity with all the published material concerning the resource and a compilation of all the statements contained in such material that can be supported with competent scientific evidence. When in doubt it is better to avoid making a statement than to raise an issue of fact that can be decided against the plaintiff.

The above description of the Proposed Florissant Fossil Beds National Monument was taken in large measure from the published scientific literature compiled by Dr. Estella Leopold of the United States Geological Survey and material distributed by the United States Geological Survey and the National Parks Service.

Pleading material from these sources also lessens the burden of producing expert witnesses from the government services involved on the trial of the action. All that is necessary is to show them the Complaint, indicate the source of the allegations and invite the government expert to support the material already published by the agency.

(within the monument) is approximately 300 feet higher than it is at the north boundary.

The tertiary deposits of the Florissant Valley are largely of volcanic origin. They were deposited on the eroded surface of the Pikes Peak granite which forms the higher parts of the landscape surrounding the basin deposits. The Florissant lake bed shales form the most prominent outcrops, but they constitute only a minor part of the total thickness. These lacustrine beds contain one of the richest known deposits of warm-temperate fossil flora and insects.

Geologic History: Subsequent to the birth of the Rocky Mountains, 60 million years ago, a period of erosion ensued. By Oligocene time, 40 million years ago, the mountains in the Florissant region had been reduced generally to a broad, gently rolling hill land—a piedmont of low relief and moderate elevation.

Volcanic eruptions covered the region with pyroclastics to a depth of 40 to 60 feet or more, and the drainage of the area was blocked, thus forming the Florissant Lake. The rolling slopes and the lakeshore were mantled by many types of deciduous trees and immense Sequoia groves.

Explosive eruptions and mud flows eventually filled the lake. The mud flows engulfed and buried the lakeshore trees which were gradually petrified. Insects, leaves, and other forms of life were carried to the lake bottom and preserved between alternating layers of volcanic ash. The source of the volcanic material appears to have been the Guffey volcano, 15 miles southwest of Florissant. The life cycle of the Florissant Lake perhaps never exceeded 5,000 years.

After the lake was filled or "dried up," the surface was covered by a deposit of light-colored pumiceous tuffs. Then followed erosion of the surface, and stream deposition of pebble conglomerate containing rounded fragments of the basic lavas.

This total depth of sediments was deformed by gentle folding and complex faulting, which was followed by erosion and channeling of the surface layers, the channels then being filled with lava flows from the Guffey volcano.

All of this, from the first deposition on the eroded granite surface to the latest volcanic activity, occurred in Lower and Middle Oligocene times, an approximate duration of 10 million years. Since that time there has been a long period of erosion which has reduced the terrain to its present character.

Description of the Geological Resources: The geological resources are the rock components making up the deposits in the Florissant basin. They also include outcrops of granite, the basement rock upon which the deposits were made. The present outline of the beds is due to complex faulting and subsequent erosion, and does not represent, in any sense, an old lake margin. The lake covered a much greater area than that shown within the outline on the map. A portion of the deposits have been eroded away since the faulting, leaving the fragmentary remains clinging to the borders of the basin. In nearly every place where the actual contact with the granite can be seen along the fault lines, the beds are upturned.

The succession of the deposits is as follows, beginning at the top:

Lithologic Divisions Numbered From Base to Top	Approximate Thickness (in feet)
7. Trachy-andesite	0–50
Hiatus	
6. Basic breccia with augite andesite (Thirty-nine Mile volcanics)	10–100
Hiatus	
5. Pumiceous andesite tuffs, shales, and	

	agglomerates, and volcanic river gravels	30
	Hiatus	
4.	Rhyolitic tuff	±20
3.	Lake shales and associated volcanic sediments	±50
2.	Bedded andesite tuffs (mudflows)	±55
1.	Basal water-laid pebbly arkose	±10

The beds, instead of forming a single unit, comprise a complex and varied series of sediments and volcanics which can be divided easily into at least five members (Nos. 1–5, in above listing). The total thickness is approximately 165 feet. However, in no one place is the total thickness exposed. The plant and insect-bearing member (No. 3) makes up less than a third of the total thickness, and it alone is of lacustrine origin. The remaining beds are mudflows and reworked river-deposited tuffs.

The richest fossiliferous beds, which are above the floor deposits, are approximately 20 feet thick. Fossil leaves, seeds, and insects are most abundant and best preserved in paper-thin shales of this member. Because of the thinness of these shales they curl and disintegrate when dried upon exposure. This characteristic would make it difficult to prepare an in-place exhibit of the insect and leaf fossils.

The andesite tuffs of member No. 2 represent the great mudflows which destroyed the trees which were in their path. The lowest petrified trees are about 25 feet below the top of this member. Standing Sequoia stumps up to 10 feet in diameter and 14 feet tall are found. Between 10 and 15 feet above these appears another layer of fossil trunks which are smaller—not more than 5 feet in diameter—and lying prostrate. Scattered trunks are also found in the uppermost layers of the tuffs.

The petrified Sequoias are suggestive of the California redwood (*Sequoia sempervirens*), but because it differs somewhat, the wood has been named *Sequoioxylon pearsallii*. Other trees represented by fossil stumps and leaves are pine and several deciduous species such as walnut, beech, willow, oak, and maple.

A number of the tree stumps, including large Sequoias, are exposed at the two commercially operated petrified forest areas. Some of these have been exposed by excavating around them. Many other stumps could be exposed by removing a very shallow over-burden. Some of the exposed stumps have fallen apart as a result of exposure; some are wired together by steel cables.

In addition to the insect, leaf, and wood fossils, the beds contain numerous microfossils. These occur in light-colored diatomite and sapropel laminae which alternate with one another, and in some places with light-colored pumice and graded tuff laminae. Ranking below the fossil insects and leaves in numbers of specimens found here are thin-shelled mollusks, and fresh water fishes. Several bird feathers and a few bird carcasses have been found.

Significance of Geological Resources: These deposits represent a small chapter of the geological history of the earth, but one very closely related to the present. What happened here in Oligocene times—the environmental conditions that existed, the life forms that prevailed, the whole story—is written into the Florissant deposits. Scientists have revealed parts of this story, more remains to be told.

The rare quality of the Florissant site lies in the delicacy with which thousands of fragile insects, tree foliage, and other forms of life—completely absent, or extremely rare in most paleontological sites—have been preserved. There is no known locality in the world where so many terrestrial species of one time have been preserved. A total of 144 plant entities or species have been found there. Thirty of these are of uncertain affinity, but the remaining 114 are identifiable with modern species. Approximately 60,000 specimens of insect fossils have been collected here, the site having a world-ranking second only to the Baltic

amber site in Europe. Almost all the fossil butterflies of the new world have come from this site. Even the presence of fresh water diatoms in the Florissant beds is their earliest known occurrence.

The Florissant site has been visited by scientists for nearly a century, and almost all have expressed admiration for the quantity and remarkable perfection of the fossils discovered here. Textbooks of paleontology, historical geology, and entomology cite Florissant as an outstanding locality for fossil insects. Fossil leaves from here are noteworthy and have been described in paleontological and botanical literature. Probably no formation of such limited extent has ever been the subject of as large a body of literature as the Florissant lake beds (226 papers).

The petrified Sequoia stumps are themselves not unique; but they possess high visitor interest and are an especially noble representation of a rather large assortment of Tertiary fossil forests in the western United States. Too, they and other plant fossils represented here are significant to the total Florissant story.

The Oligocene lake beds rest directly upon crystalline rocks, mostly Pikes Peak granite of Pre-Cambrian Age. The Pikes Peak granite is one billion years old, the Oligocene lake beds only 40 million. This unconformity represents a geologic time gap of a billion years. This hiatus in time could be made to have much visitor interest, encompassing, as it does, the entire Paleozoic and Mesozoic Eras, during which time the great deposits of the Grand Canyon and the Utah plateaus were accumulating. This great series of sediments which once covered the Pikes Peak granite had been eroded away long before the Florissant lake deposits began to settle upon the granite.

The insect fossils at Florissant are of primary significance. They represent the evolution and modernization of insects better than any other known site in America. In addition, the fossil flora, emphasized dramatically by the pertified tree stumps and in more subtle tones by the great variety of leaf fossils, greatly adds to the primary values. The site itself has great significance in being a classic locality known to many scientists—it has historic significance to the geologist, the paleontologist, the entomologist, the botanist; it is the home source for the numerous fossil insects and leaves that grace the exhibition halls and the research rooms of so many institutions of learning.

VEGETATION

The Florissant basin lies in the Montane Life Zone, here characterized by tree-covered hills and ridges surrounding small grassland meadows. The hills and ridges, which rise 200 to 400 feet above the meadows are covered predominantly with stands of ponderosa pine. The stands are denser on the north slopes than on the south. The meadows occupy most of the area which falls within the outer limits of the existing Florissant lake beds. Native meadow vegetation, in some places, has been intermixed with domestic grasses and other exotics.

The forest may be characterized ecologically as the yellow pine-aspen association. The yellow pine (*Pinus ponderosa* var. *scopulorum* Engelmann) forms an open grassy forest of small trees and constitutes about 90 per cent of the coniferous trees. The aspen (*Populus tremuloides* Michaus) is the only deciduous tree of importance. It forms scattered groves in moist situations in the pine forest, sometimes occupying large tracts on cool, damp slopes or on burnt-over places. Four other conifers are moderately common and occur as scattered individuals or, very rarely, in small groves: Douglas fir (*Pseudotsuga menziesii* var. *glauca*), Engelmann spruce (*Picea engelmannii*), blue spruce (*Picea pungens*), and limber pine (*Pinus flexilis*). White fir (*Abies concolor*) and lodgepole pine (*Pinus contorta*) are rare. Aspen, thinleaf alder (*Alnus tenuifolia*), water birch (*Betula occidentalis*), and several species of willow (especially *Salix stricta*) form a crowded growth along the streams.

Several shrubby species are also found most abundantly along the watercourses. Wild roses (*Rosa woodsi* var. *fendleri* and *Rosa* spp.), bush cinquefoil (*Potentilla fruticosa*), chokecherry (*Prunus virginiana* var. *melanocarpa*), golden current (*Ribes aureum*), boulder raspberry (*Rubus deliciosus*), and red raspberry (*Rubus idaeus* var. *strigosus*) are the common species in this habitat. On well-watered rocky slopes, serviceberry (*Amelanchier alnifolia*), cliff jamesia (*Jamesia americana*), wax current (*Ribes cereum*) bearberry or "kinnikinnick" (*Arctostaphylos uva-ursi*), and common juniper (*Juniperus communis*) are usually abundant. Mountain-mahogany (*Cercocarpus parvifolous*), snowbrush ceanothus (*Ceanothus velutinus*), ninebark (*Physocarpus intermedius*) skunkbush sumac (*Rhus trilabata*) black sagebrush (*Artemisia nova*), and rubber rabbitbrush (*Chrysothamnus nauseosus*) are confined to dry, warm slopes.

In years of average or better rainfall, the wildflower display in June and July is truly spectacular; every open area is carpeted with paintedcup, many penstemon and crazyweed species, composites, mariposas, harebells, and other varieties. Under the aspens and in wet meadows may be found columbines, pedicularis, iris, shooting-stars, and many others. In August and early September, various sunflowers, groundsels, and fireweed take the place of the earlier flowers, and if there is a late summer rain, frequently this display is as spectacular as the earlier one.

ANIMAL LIFE

There are many species of large and small mammals, including deer, antelope, elk, mountain lions, bobcats, coyotes, beaver, cottontail and jack rabbits, porcupines, one or more bat species, badgers, goldenmantled ground squirrels, chipmunks, Abert squirrels, whitetailed prairie dog, various mice species, and probably well over 100 bird species. In addition, there are numerous insect and butterfly species.

6. The Defendant

That upon information and belief, the defendants, individually and collectively, as their interests may appear are the owners in fee of lands included within the proposed Florissant Fossil Beds National Monument.

Upon information and belief the defendants individually and collectively as their interests may appear are subject to the exercise of eminent domain by the United States of America upon final action by The Congress of the United States which, upon information and belief should occur during the current session of The Congress.

7. Defendants' Actions

That upon information and belief, unless restrained by order of this Court, the Defendants, individually, or their Successors in Interest, will develop the area to be included within the proposed Florissant Fossil Beds National Monument, in such a way as to cause serious, permanent and irreparable damage to the unique national natural resource that is the Florissant Fossil Beds.

That the development of the region of the Florissant Fossil Beds in any way which involves road building, excavation or covering with permanent dwelling units or building structures, the fossil beds, will cause serious permanent and irreparable damage to the unique paleontological resource that is by the Florissant Fossil Beds.

That there are uses of the area compatible with the private ownership thereof, and the preservation of the unique national natural resources, that are the proposed Florissant Fossil Beds.

That the Board of County Commissioners of Teller County have determined the highest and best use of the lands to be included within the proposed Florissant Fossil Beds National Monument, by resolution dated June 9, 1969, and that any

development by the Defendants will be contrary to the stated policy of the Board of County Commissioners of Teller County as set forth in the resolution of June 9, 1969, a copy of which is annexed hereto and made a part hereof designated, Exhibit B.

That upon information and belief the operation of conventional building construction methods, will cause serious permanent and irreparable damage to the unique national paleontological resource represented by the Florissant Fossil Beds.

That the development of the area encompassed within the proposed Florissant Fossil Beds National Monument by Defendants is not compatible with the maintenance of the unique national natural resources, that is the Florissant Fossil Beds.

Upon information and belief, the defendant Park Land Company, Claude R. Blue, Kenneth C. Woffard, J. R. Fontan, and M. L. Barnes, jointly or severally intend to commence construction operations immediately which will cause serious permanent and irreparable damage to the National Natural Resource which is the Florissant Fossil Beds.

That upon information and belief, the defendants, individually and collectively, in particular Park Land Company, Central Enterprise Inc., Claude R. Blue, Kenneth C. Woffard, J. R. Fontan, and M. L. Barnes, are preparing to commence immediate construction operations which will cause serious, permanent and irreparable damage to the unique national natural resource, the Florissant Fossil Beds, in violation of the Resolution of the Board of Commissioners of Teller County, annexed hereto and made a part hereof designated, Exhibit B.

8. Equitable Jurisdiction

That this action is properly brought in equity before this court on the following grounds:

(a) The subject matter of the dispute is equitable in nature. This action is brought for the purpose of restraining the Defendants individually, and their Successors in Interest, from damaging or degrading the unique national natural resource that is, the Florissant Fossil Beds, within the area proposed for inclusion in the Florissant Fossil Beds National Monument. The injury which may be inflicted by the Defendants individually or their successors in Interest, if they are permitted to develop the area, without regard for the unique national natural resources represented thereby, will be irreparable, in that it cannot be adequately compensated in damages. The declaratory judgment demanded by the Plaintiffs, together with the equitable relief related thereto are equitable remedies in the substance of character of the rights sought to be enforced or historically, in the province of the Court of Chancery.

(b) There is no adequate remedy at law. The law does not afford any remedy for the contemplated wrong to the American people resulting from the degradation of the unique national natural resources represented by the Florissant Fossil Beds from the development thereof by the Defendants and/or their Successors in Interest, in a way inconsistent with the protection of the paleontological, paleobotanical and palynological resources represented thereby. There is no plain adequate and complete remedy at law as practicable and efficient as the equitable relief sought herein. Nor would the damages sustained by the people of the United States as a result of the improper development of the area, by the Defendants or their Successors in Interest, be capable of measurement and determination in any action at law.

9. Trust

That the Defendants individually and their Successors in Interest, hold the unique national natural resource of the Florissant Fossil Beds, with respect to its paleontological, paleobotanical and palynological values in trust for the full

benefit, use and enjoyment of all the people of this generation, and those generations yet unborn.

That the maintenance of this trust is compatible with the proper efficient development of the resource represented by the area encompassed within the proposed Florissant Fossil Beds National Monument area.

That the administrative agencies of the Federal and State governments are incapable of preventing the irreparable damage which will result from the improper development of the region by the Defendants or their Successors in Interest without regard for the protection of the unique paleontological, paleobotanical and palynological values represented by the Florissant Fossil Beds.

That the maintenance of the trust is consistent with private ownership of the property and does not constitute any taking of the Defendant's property.

WHEREFORE, the plaintiffs individually and on behalf of all those entitled to the full benefit, use and enjoyment of the national resource that are the proposed Florissant Fossil Beds National Monument, respectfully pray:

That this Court take jurisdiction of the matter, and that a three judge court be convened to hear and determine this cause as provided by Title 28 U.S. Code, Section 2281, et seq. and upon such hearing:

(a) Grant judgment declaring the right to the Plaintiff and all others in and to the full benefit, use and enjoyment of the national natural resources that are the proposed Florissant Fossil Beds National Monument without any degradation resulting from the improper development thereof by the Defendants and/or their Successors in Interest.

(b) That the Court issue such orders as will protect the unique paleontological, paleobotanical and palynological values encompassed within the Florissant Fossil Beds, pending the final hearing of determination of this action.

(c) That the Court issue such orders as will protect the unique paleontological, paleobotanical and palynological values encompassed within the Florissant Fossil Beds.

(d) Together with all such other and further relief as to the Court may seem just, proper and necessary under the circumstances to protect the unique national natural resources that are in the Florissant Fossil Beds.

Attorney for Plaintiff