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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF MONTANA  
11 MISSOULA DIVISION

12 FRIENDS OF THE WILD SWAN, a non-profit  
13 organization; ALLIANCE FOR THE WILD  
14 ROCKIES, a non-profit organization;  
15 MONTANA ECOSYSTEM DEFENSE  
16 COUNCIL, a non-profit organization; and  
17 the NATIVE ECOSYSTEMS COUNCIL, a  
18 non-profit organization,

19 Plaintiffs,

20 vs.

21 DEBORAH L.R. AUSTIN, in her official capacity  
22 as Forest Supervisor for the Lolo National Forest;  
23 LESLIE WELDON, in her official capacity as  
24 Regional Forester for the United States Forest  
25 Service, Region One; and the UNITED STATES  
26 FOREST SERVICE, an agency of the United  
27 States Department of Agriculture;

28 Defendants.

CV \_\_\_\_\_

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

1 INTRODUCTION

2 1. Plaintiffs, Friends of the Wild Swan et al., hereby bring this civil action  
3 for declaratory and injunctive relief against the above named Defendants  
4 (collectively “the Forest Service”) pursuant to the Administrative Procedure Act  
5 (APA), 5 U.S.C. § 701 et seq. and the citizen suit provision of the Endangered  
6 Species Act (ESA), 16 U.S.C. § 1540 (g), for violations of the National  
7 Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., the National Forest  
8 Management Act (NFMA), 16 U.S.C. §1600 et seq., and section 7 of the ESA, 16  
9 U.S.C. § 1536.

10 2. On March 25, 2011, the Forest Service signed a final decision  
11 authorizing the “Colt Summit Restoration and Fuels Reduction Project”  
12 (hereinafter “Colt Summit project” or “project”) on the Lolo National Forest,  
13 approximately 10 miles north of Seeley Lake, Montana. On September 13, 2011,  
14 the Forest Service issued a second decision affirming its original March 25, 2011,  
15 decision.

16 3. The Colt Summit project is a five year project that includes logging  
17 prescriptions and road treatments to be implemented over a 4,330 acre area of the  
18 Lolo National Forest.

19 4. This civil action challenges the Forest Service’s controversial decision--  
20 as part of the Colt Summit project--to aggressively log, slash, and burn  
21 approximately 2,038 acres of a mature, dense forest in a biologically rich area of  
22 the Lolo National Forest.

23 5. Logging will occur in old growth stands, in critical habitat for Canada  
24 lynx (*lynx*), in a primary watershed and critical habitat for bull trout, and in an  
25 area deemed essential to the survival and recovery of grizzly bears in the Northern  
26 Rockies ecosystem. The project is also located in an important east-west wildlife  
27 corridor where lynx and grizzly bears are most likely to cross Highway 83 as they

1 move between the Mission and Swan Mountains.

2 6. Despite this fact, the Forest Service approved the Colt Summit project  
3 with a short environmental assessment (EA) that focuses solely on the “benefits”  
4 of some of the road treatments (i.e., removal of one culvert and decommissioning  
5 one road) and ignores the potential impacts of the project as a whole, including  
6 how the various logging prescriptions, road building and road reconstruction will  
7 impact lynx, grizzly bears, and bull trout. The Forest Service also ignored its own  
8 Lolo Forest Plan standards designed to conserve lynx and bull trout in the region.

9 7. Wherefore, Plaintiffs--four Montana conservation organizations  
10 dedicated to protecting and restoring native wildlife habitat on the Lolo National  
11 Forest and ensuring Forest Service compliance with federal law--are hereby  
12 compelled to bring this civil action.

#### 13 14 JURISDICTION AND VENUE

15 8. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331  
16 (Federal Question).

17 9. This Court has the authority to review the Forest Service action  
18 complained of herein, and grant the relief requested, for Plaintiffs’ NEPA and  
19 NFMA claims pursuant to the APA, 5 U.S.C. § 701 et seq. Plaintiffs are  
20 challenging a final agency action and have exhausted all available administrative  
21 remedies.

22 10. This Court has the authority to review the Forest Service’s action and/or  
23 inaction complained of herein, and grant the relief requested, for Plaintiffs’ ESA  
24 claims pursuant to the ESA’s citizen suit provision, 16 U.S.C. § 1540 (g). All  
25 requirements for judicial review required by the ESA including the requirement of  
26 providing sixty days notice of intent to sue prior to filing a civil action have been  
27 satisfied.

1 11. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory  
2 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5  
3 U.S.C. § 706 (APA).

4 12. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e).  
5 The Colt Summit project is located in Missoula County, Montana.

6 13. There is a present and actual controversy between the Parties.

7  
8 **PARTIES**

9 14. Plaintiff, FRIENDS OF THE WILD SWAN, is a Montana non-profit  
10 organization with its principal place of business in Swan Lake, Lake County,  
11 Montana. Friends of the Wild Swan is dedicated to the conservation of natural  
12 resources and preserving the biological integrity of the of the Flathead and Lolo  
13 National Forests.

14 15. Plaintiff, ALLIANCE FOR THE WILD ROCKIES, is a Montana non-  
15 profit conservation and education organization with approximately 2,000  
16 members. The mission of the Alliance is to protect and restore the ecological  
17 integrity of the Northern Rockies bio-region which includes the Colt Summit  
18 project area in the Lolo National Forest. The Alliance is based in Helena,  
19 Montana.

20 16. Plaintiff, MONTANA ECOSYSTEM DEFENSE COUNCIL, is a  
21 Montana non-profit, grassroots organization headquartered in Kalispell, Montana.  
22 The Council was established in 1990 to protect and restore biological diversity,  
23 water quality and ecosystem integrity in the Northern Rockies region, which  
24 includes the Lolo National Forest and Colt Summit project area.

25 17. Plaintiff, NATIVE ECOSYSTEMS COUNCIL, is a non-profit  
26 advocacy organization based in Three Forks, Montana dedicated to protecting and  
27 restoring native ecosystems on public lands in the Northern Rockies. In

1 furtherance this mission, Native Ecosystem Council’s members and staff have  
2 been active in public land management in the Northern Rockies region, including  
3 the Lolo National, for more than 14 years.

4 18. Plaintiffs’ members and staff use the best available science to forward  
5 their respective missions through participation in policy formation, administrative  
6 processes, public outreach, education, and if need be, legal action against the  
7 Forest Service to ensure compliance with federal law.

8 19. Plaintiffs’ members and staff have a specific, concrete interest in  
9 protecting and restoring the biological integrity of the Lolo National Forest, the  
10 Seeley-Swan valley, and the Colt Summit project area, including protecting and  
11 restoring habitat (including critical habitat) for lynx, grizzly bears, wolverine, and  
12 bull trout. The survival and recovery of native species like lynx, grizzly bears,  
13 wolverine, and bull trout is a major focus area for Plaintiffs.

14 20. In furtherance of these concrete interests, Plaintiffs report on the status  
15 of, and threats to, such species to its members, the public at large, and the press.  
16 Plaintiffs also prepare and submit comment letters and appeals on various Forest  
17 Service projects, activities, and/or plans (when given the opportunity) that may  
18 impact such species and their habitat on the Lolo National Forest. Plaintiffs, for  
19 instance, submitted comments to the Forest Service when they notified the public  
20 of their decision to authorize the Colt Summit project. Plaintiffs commented on  
21 draft EA for the project and administratively appealed the Forest Service’s  
22 decision notice and finding of no significant impact for the project.

23 21. Some of Plaintiffs’ members own land near the project area. Plaintiffs’  
24 members and staff have, and will continue, to regularly and repeatedly use the  
25 Lolo National Forest, Seeley-Swan valley, and the Colt Summit project area.  
26 Plaintiffs’ members and staff use this area for wildlife observation, research,  
27 hunting, aesthetic enjoyment, skiing, and other recreational, scientific, and

1 educational activities. Plaintiffs' members and staff derive scientific, recreational,  
2 conservation, and aesthetic benefits from using the Lolo National Forest and the  
3 Colt Summit project area. Plaintiffs' members and staff enjoy viewing (and being  
4 aware of) native wildlife in the area and experiencing the mature forest, including  
5 100 plus year old lodgepole pines, Douglas-fir and Engelmann spruce forests, the  
6 diverse vegetative plant communities, and unique wetlands, lakes, riparian areas  
7 and streams in the Colt Summit project area. For Plaintiffs' members and staff,  
8 using and working to protect the biological integrity of the Colt Summit project  
9 area is extremely important to them. Plaintiffs' members and staff will continue to  
10 use (both personally and professionally) and work for the protection and  
11 restoration of wildlife habitat in the Lolo National Forest, including the project  
12 area. Filing this civil action against the Forest Service to ensure compliance with  
13 federal law is part of this effort.

14         22. The Forest Service's decision to authorize logging and road treatments  
15 as part of the Colt Summit project harms Plaintiffs' concrete interests. The  
16 logging and road building authorized by the Colt Summit project which change  
17 and adversely affect the existing forest structure and wildlife in the project area.  
18 The project is likely to adversely affect the biological integrity of the mature  
19 forests and streams in the project area and the native wildlife like grizzly bears,  
20 lynx, wolverine, and bull trout that depend on them. Once implemented,  
21 Plaintiffs' members and staff will no longer want or be able to use and enjoy the  
22 Colt Summit project area for scientific, recreational, hunting, conservation, and  
23 aesthetic purposes. Plaintiffs' members and staff will be less likely to spend time  
24 hiking, hunting, and enjoying the area if the mature and old growth forest stands  
25 and understory are logged, slashed, and burned as prescribed by the project.  
26 Plaintiffs believe the project will forever alter and destroy the natural-setting and  
27 quality wildlife habitat in the area.

1           23. The Forest Service’s decision to approve the Colt Summit project  
2 without complying with the ESA, NEPA, and NFMA as alleged in this complaint  
3 also results in uninformed decisions and creates an increased risk of actual,  
4 threatened, and imminent harm to Plaintiffs’ concrete interests. The Forest  
5 Service’s failure to comply with the ESA, NEPA, and NFMA significantly  
6 increases the risk of an unnecessary and avoidable harm to wildlife resources and  
7 to Plaintiffs’ concrete interests. The Forest Service’s failure to comply with the  
8 ESA, NEPA, and NFMA adversely affects and continues to adversely affect  
9 Plaintiffs’ interests. Plaintiffs bring this action on behalf of itself and its adversely  
10 affected members and staff.

11           24. If this Court orders the Forest Service to comply with the ESA, NEPA,  
12 and NFMA as requested by this civil action then the harm to Plaintiffs’ concrete  
13 interests would be alleviated.

14           25. Defendant DEBORAH AUSTIN, is sued in her official capacity as the  
15 Forest Supervisor for the Lolo National Forest. As Forest Supervisor, Ms. Austin  
16 is the federal official with responsibility for all Forest Service officials’ inactions  
17 or actions in the Lolo National Forest challenged in this complaint.

18           26. Defendant LESLIE WELDON, is sued in her official capacity as the  
19 Regional Forester for Region One (Northern Rockies) of the Forest Service. As  
20 the Regional Forester, Ms. Weldon is the federal official with responsibility for all  
21 the Forest Service officials’ inactions or actions in the Lolo National Forest  
22 challenged in this complaint.

23           27. Defendant UNITED STATES FOREST SERVICE is an agency within  
24 the U.S. Department of Agriculture that is responsible for applying and  
25 implementing the federal laws and regulations challenged in this complaint.

1 BACKGROUND

2 The Colt Summit project.

3 28. On March 25, 2011, the Forest Service issued a final decision  
4 authorizing the Colt Summit project. On September 13, 2011, the Forest Service  
5 issued a second decision affirming (in its entirety) the original March 25, 2011,  
6 decision.

7 29. The Forest Service authorized the Colt Summit project pursuant to an  
8 EA and after issuing a decision notice and finding of no significant impact.

9 30. The Colt Summit project is to be implemented over the next 5 years.

10 31. The Colt Summit project includes both vegetative treatments (i.e.,  
11 logging, slashing, burning) and various road treatments (i.e., re-construction,  
12 decommissioning, clearing) in a large 4,330 acre area of the Lolo National Forest.

13 Vegetative treatments.

14 32. The Colt Summit project includes vegetative treatments on  
15 approximately 2,038 acres of public land on the Lolo National Forest.

16 33. Approximately 597 acres of public land in the project area will be  
17 commercially thinned (called an “improvement cut”). This treatment will remove  
18 live merchantable-sized trees (7 inches diameter breast height (dbh) or larger) and  
19 some beetle-killed trees. Stands of live, green trees will also be logged to open up  
20 the timber stands to “more air flow and light” and “reduce the risk” of future bark  
21 beetle infestation. Once logged, the remaining understory in the timber stands,  
22 i.e., the duff and litter, seedlings, saplings, and understory flora and fauna, would  
23 be burned. The Forest Service refers to this practice as an “underburn.”

24 34. Approximately 69 acres of the project area will be irregular shaped,  
25 shelterwood patch cuts with understory slashing and burning. A “shelterwood”  
26 cut is similar to a clearcut with a few more trees being left in place in order to  
27 create a partial canopy cover. The shelterwood cuts will vary in size and density.



1           35. Approximately 1,216 acres of the project area will be subject to  
2 “understory slashing” and burning. This treatment removes and burns the forest’s  
3 understory seedlings, saplings, flora, and fauna.

4           36. Approximately 19 acres of the project area will be “vista” cut using a  
5 seedtree (modified clearcut) or shelterwood cut. The purpose of the “vista” cuts is  
6 to provide better views of the Swan Range to recreationalists using a re-  
7 constructed road in the project area (road # 4366).

8           37. Approximately 137 acres of old-growth forest in the project area will be  
9 commercially thinned with the remaining understory being slashed and burned.

10 Road treatments.

11           38. The Forest Service will decommission approximately 4.1 miles of the  
12 Colt Summit Road (# 646). This road will be converted to a trail (b1 closure) that  
13 will be closed to summer motorized use but remain open as a motorized  
14 snowmobile trail during the primary winter recreation season.

15           39. Approximately 5.1 miles of road (# 4366 and # 16553), just east of  
16 #646, will be re-constructed and receive heavy maintenance in order to receive  
17 motorized access into the area. In addition, the Forest Service will build 0.3 miles  
18 of new, permanent road that will link the re-constructed road with existing routes  
19 in the analysis area. This new road will also create a “loop” route for winter  
20 snowmobile use on # 646.

21           40. Approximately 13.1 miles of old “undetermined” routes will be cleared,  
22 brushed, and used as logging roads for “winter haul.” These old routes are  
23 currently vegetated with brush and trees and are not currently drivable or included  
24 as system roads in the Lolo travel plan. The Forest will clear, brush, and if need  
25 be blade and conduct minor drainage work on these routes in order to convert  
26 them into winter logging roads.

27           41. Approximately 2.1 miles of “temporary” roads will be built to complete

1 the logging prescriptions. An additional 7.1 miles of routes would receive  
2 additional maintenance and best management practices.

3 42. Approximately 28.4 miles of road (including the temporary roads, #  
4 646, and all winter haul routes) would eventually be decommissioned after the 5  
5 year project is completed.

6 43. The Forest Service will replace one culvert and remove one culvert on  
7 Colt Creek.

8 44. The Forest Service will spray herbicides along approximately 34 miles  
9 of National Forest system roads, 6 acres within the logging units, and on all  
10 disturbed soils, including landing areas and skid trails.

11 The Colt Summit project area.

12 45. The proposed Colt Summit project area is located in Missoula County,  
13 Montana, approximately 10 miles north of Seeley Lake, Montana.

14 46. The 4,330 acre project area is in the Seeley Lake Ranger District, Lolo  
15 National Forest..

16 47. The project area is located in southwest corner of one of the largest  
17 intact landscapes in the continental United States, commonly referred to as the  
18 “Crown of the Continent.”

19 48. The Crown of the Continents’ 10 million acres of forest, rocks, pristine  
20 rivers and streams, and wetlands includes large intact ecosystems and corridors,  
21 primarily on public lands that include Glacier National Park, the Bob Marshall  
22 Wilderness, and large tracts of National Forest land in the Flathead, Lewis &  
23 Clark, Helena, and Lolo National Forests. These National Forest lands still contain  
24 the full compliment of wildlife, including grizzly bears, lynx, wolverine, wolves,  
25 moose, bull trout, and westlope cutthroat trout, and the core habitat and corridors  
26 that are necessary for the long-term survival and recovery of native species in the  
27 Northern Rockies.

1           49. The project area straddles Highway 83 in the Seeley-Swan valley. The  
2 project area encompasses Summit Lake, borders Rainy Lake, and includes  
3 numerous wetlands, wet meadows, and tributaries to the Clearwater River.

4           50. The project area is bordered by the Mission Mountains and Mission  
5 Mountain Wilderness to the east and the Swan Mountains and Bob Marshall  
6 Wilderness complex to the west.

7           51. This project area is considered to be an important east-west travel  
8 corridor for grizzly bears and Canada lynx (lynx).

9           52. The project area is located between approximately 4,000 feet and 4,900  
10 feet elevation.

11           53. The project area experiences cold snowy winters.

12           54. The 4,330 acre Colt Summit project area is characterized by relatively  
13 moderate terrain intersected with steep ravines. The timber stands in the project  
14 area dominated by lodgepole pine, larch, douglas fir, and spruce, some of which  
15 have been infested with mountain pine beetles.

16           55. The timber stands in the project area include a wide variety of forest  
17 compositions and structure, from relatively sparse to large areas of mature forest,  
18 with dense understory and horizontal cover.

19           56. Approximately 89% of the project area is classified as being included in  
20 either vegetative response unit 3 (moist midslopes) or vegetative response unit 4  
21 (cool and dry upper slopes).

22           57. The project area is not a “dry” forest habitat.

23           58. The project area includes over 200 acres of old growth forest.

24           59. The project area and harvest units include multi-story mature and late-  
25 successional forests.

26           60. The project area and harvest units include areas with high percentages of  
27 old, senescent lodgepole pine.

1 Grizzly bears.

2 61. The Colt Summit project is located in occupied grizzly bear habitat.

3 62. The project area is located within the Northern Continental Divide  
4 Ecosystem grizzly bear recovery area.

5 63. The project area is located in Management Situation 1 habitat (MS-1  
6 habitat) as identified by the Interagency Grizzly Bear Committee (IGBC).

7 64. MS-1 habitat includes grizzly bear population centers (i.e., areas key to  
8 the survival of the grizzly where seasonal or year-long grizzly activity, under  
9 natural and free-ranging conditions are common) with the requisite habitat  
10 components that are needed for the species to survive and recover in the wild.

11 65. In MS-1 habitat, the IGBC states that the “probability is very great that  
12 major Federal activities or programs may affect the grizzly.

13 66. Management decisions in MS-1 habitat must favor the needs of the  
14 grizzly bear when grizzly bear habitat and other land use values compete.

15 67. Approximately 94 percent of the proposed harvest units in the Colt  
16 Summit project are within the Lolo Forest Plan’s Management Area (MA) 20.

17 68. MA 20 represents essential grizzly bear habitat on the Lolo National  
18 Forest and includes habitat components for denning and feeding as well as  
19 adequate cover for grizzly bears.

20 69. All management decisions in MA 20 must be consistent with the  
21 recovery goals and recovery plan for grizzly bears.

22 70. The project area is within a portion of the Big Salmon, Upper South  
23 Fork Flathead, Mission Range, and Rattlesnake Bear Management Units.

24 71. The project area is within the Mission and Swan grizzly bear subunits.

25 72. The Swan subunit currently provides portions of overlapping female  
26 grizzly home ranges that extend from the Swan face west across Highway 83 to  
27 the Mission Mountains.

1 73. Multiple male grizzly bears have been captured and radio collared  
2 within the northern portion of the Swan subunit.

3 74. The U.S. Fish & Wildlife Service determined that existing motorized  
4 access in the Swan subunit is likely adversely affecting grizzly bears using the  
5 Swan subunit.

6 75. The U.S. Fish & Wildlife Service determined the number of existing  
7 roads and road densities in the Swan subunit likely results in adverse affects to  
8 grizzly bears.

9 76. Timber harvesting on Plum Creek (private) and State lands in the Swan  
10 and Mission subunits and on neighboring Bear Management Units and subunits in  
11 recent years has reduced habitat for grizzly bears.

12 Canada lynx.

13 77. The Colt Summit project area is in occupied lynx habitat.

14 78. The project area is located in designated lynx critical habitat.

15 79. The project area is located in a lynx linkage area, as identified by the  
16 Northern Rockies Lynx Management Direction.

17 80. The project area is located in the Rocky Mountain Research Station's  
18 Seeley Lake study area.

19 81. The project area is located near Summit and Rainy Lakes, a region of  
20 the Seeley-Swan valley where lynx are most likely to cross Highway 83 and an  
21 area that has the highest probability of use by lynx.

22 82. The project area is located in the Clearwater Lynx Analysis Unit.

23 83. The project area includes suitable lynx habitat for foraging and  
24 denning.

25 84. The project area provides good snow-shoe hare habitat.

26 85. The project area is occupied by snow-shoe hare and red squirrels.

27 86. Thinning, shelterwood cuts, seedtree cuts, and removing understory in

1 mature, multi-storied timber stands and old growth will adversely effect lynx, lynx  
2 habitat (denning and foraging), and lynx critical habitat.

3 87. Lynx do not use forest lands that have been recently subjected to a  
4 regeneration harvest (seedtree or shelterwood) or thinning for either foraging or  
5 denning.

6 88. Forests that have been subjected to thinning in the Seeley-Swan valley  
7 are avoided by lynx.

8 89. Timber harvest and thinning practices affect lynx distribution in home  
9 ranges.

10 90. Pursuant to the Northern Rockies Lynx Management Direction  
11 (Guideline HU G7), new permanent roads should not be built on ridge-tops and  
12 saddles, or in areas identified as important for lynx habitat connectivity.

13 Bull trout.

14 91. Lakes, rivers, and streams within the project area are occupied by bull  
15 trout and are designated as bull trout critical habitat.

16 92. Lakes, rivers, and streams within the project area are considered priority  
17 watershed as defined by the Inland Native Fish Strategy (INFISH).

18 93. The Forest Service determined that the Colt Summit project is likely to  
19 adversely affect bull trout.

20 COUNT I

21 NEPA VIOLATION  
22 (EIS required)

23 94. Plaintiffs incorporate by reference all preceding paragraphs.

24 95. NEPA requires the Forest Service to prepare an environmental impact  
25 statement (EIS) when a federal action may significantly affect the quality of the  
26 environment.

27 96. In determining whether a proposed action may “significantly” impact

1 the environment, both the context and intensity of the action must be considered.  
2 40 C.F.R. §1508.27.

3 97. In evaluating intensity, the Forest Service must consider and apply  
4 numerous “significance” factors including whether there will be impacts to an  
5 ecologically critical area, impacts to wetlands, impacts to threatened and  
6 endangered species and critical habitat, cumulative impacts, impacts that are likely  
7 to be highly controversial and/or uncertain, and whether the project was approved  
8 in violation of law or establishes precedent for future actions. 40 C.F.R.  
9 §1508.27(b).

10 98. The Colt Summit project may “significantly” impact the environment  
11 requiring preparation on of an EIS.

12 99. The Forest Service’s decision not to prepare an EIS for the Colt Summit  
13 project violates NEPA and is “arbitrary, capricious, an abuse of discretion, or  
14 otherwise not in accordance with law ” and/or constitutes “agency action  
15 unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

## 16 COUNT II

### 17 NEPA VIOLATION 18 (impacts)

19 100. Plaintiffs incorporate by reference all preceding paragraphs.

20 101. Pursuant to NEPA, the Forest Service must take a hard look at how the  
21 Colt Summit project may directly, indirectly, and cumulatively impact native  
22 wildlife, including lynx, grizzly bears, wolverine, and bull trout.

23 102. Direct effects are caused by the action(s) and occur at the same time  
24 and place. Indirect effects are caused by the action(s) but occur later in time or are  
25 farther removed in distance but are still reasonably foreseeable. Cumulative effects  
26 are defined as “the impact on the environment which results from the incremental  
27 impact of the action when added to other past, present, and reasonably foreseeable

1 future actions regardless of what agency or person undertakes such other actions.  
2 Cumulative impacts can result from individually minor but collectively significant  
3 actions taking place over a period of time.” 40 C.F.R. § 1508.7

4 103. The Colt Summit project, when added to other past, present, and  
5 reasonably foreseeable future actions occurring in the area, including but not  
6 limited to Highway 83, residential development, motorized recreation (winter and  
7 summer), utility corridors, logging on Plum Creek and State lands, and the Summit  
8 Mountain Pine Beetle Salvage Project on land immediately adjacent to the Colt  
9 Summit project, may have a significant, cumulative effect on grizzly bears, lynx,  
10 wolverine, bull trout, and use of the area as a wildlife corridor.

11 104. In approving the Colt Summit project, the Forest Service refused  
12 and/or failed to take a hard look at the direct, indirect, and cumulative effects as  
13 required by NEPA.

14 105. The Forest Service’s refusal and/or failure to adequately analyze the  
15 direct, indirect, and cumulative impacts of the Colt Summit project on grizzly  
16 bears, lynx, wolverine, bull trout, and use of the area as a wildlife corridor violates  
17 NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
18 accordance with law ” and/or constitutes “agency action unlawfully withheld or  
19 unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

### 21 COUNT III

#### 22 NFMA VIOLATION 23 (Forest Plan standard VEG S6 for lynx)

24 106. Plaintiffs incorporate by reference all preceding paragraphs.

25 107. Pursuant to NFMA, all site-specific management decisions must be  
26 consistent with the Lolo Forest Plan. 16 U.S.C. § 1604 (i).

27 108. The Lolo Forest Plan was amended in 2007 to include new standards



1 to conserve lynx, commonly referred to as the Northern Rockies Lynx  
2 Management Direction or “lynx standards.”

3 109. Standard VEG S6 directs that timber harvesting projects that reduce  
4 snowshoe hare habitat in multi-story mature or late-successional forests may only  
5 occur: (1) within 200 feet of administrative units . . .; (2) for research studies . . .;  
6 or (3) for incidental removal during salvage harvest. Standard VEG S6 does not  
7 apply to fuel treatments within the wildland urban interface (WUI), subject to one  
8 limitation: Fuel treatments in the WUI that do not meet VEG S6 cannot occur on  
9 more than 6 percent of lynx habitat in the Lolo National Forest.

10 110. The Forest Service did not use (or attempt to show compliance with)  
11 standard VEG S6's WUI exemption when approving the Colt Summit project.

12 111. Standard VEG S6 applies to the Colt Summit project.

13 112. The Colt Summit project includes vegetative treatments (logging,  
14 slashing, understory removal, underburns) in mature and/or late-successional  
15 forest and multi-storied units that will reduce snowshoe hare habitat.

16 113. The Colt Summit project includes timber harvesting in mature, multi-  
17 storied forest units that are not: (1) within 200 feet of administrative units; (2) are  
18 not for research; and (3) are not for incidental removal during salvage harvest.

19 114. The Forest Service failed to comply and/or ensure compliance with  
20 standard VEG S6 when approving the Colt Summit project.

21 115. The Forest Service’s failure to comply and/or ensure compliance with  
22 standard VEG S6 for lynx violates NFMA and is “arbitrary, capricious, an abuse  
23 of discretion, or otherwise not in accordance with law ” and/or constitutes “agency  
24 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706  
25 (1).

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COUNT IV

NFMA VIOLATION  
(Forest Plan standard ALL S1 for lynx)

116. Plaintiffs incorporate by reference all preceding paragraphs.

117. Pursuant to NFMA, all site-specific management decisions must be consistent with the Lolo Forest Plan. 16 U.S.C. § 1604 (i).

118. Standard ALL S1 in the Lolo Forest Plan directs that any new projects or developments in occupied lynx habitat must maintain habitat connectivity in a Lynx Analysis Unit and/or linkage area.

119. The Colt Summit project is located in occupied lynx habitat, in the Clearwater Lynx Analysis Unit, and in the middle of a lynx linkage area.

120. Recent and on-going studies on lynx movements in the Seeley-Swan valley show that the Colt Summit project area is located in the middle of a east-west lynx movement corridor, where lynx are most likely to cross Highway 83 (near Rainy Lake).

121. In approving the Colt Summit project, the Forest Service failed to discuss and/or recognize the importance of the project area for providing habitat connectivity for lynx and failed to comply and/or ensure compliance with standard ALL S1.

122. The Forest Service's failure to comply and/or ensure compliance with standard ALL S1 for lynx violates NFMA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law " and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

COUNT V

NFMA VIOLATION  
(INFISH standards for bull trout)

123. Plaintiffs incorporate by reference all preceding paragraphs.

1           124. Pursuant to NFMA, all site-specific management decisions must be  
2 consistent with the Lolo Forest Plan. 16 U.S.C. § 1604 (i).

3           125. The Lolo Forest Plan was amended in 1995 by the Inland Native Fish  
4 Strategy (INFISH).

5           126. INFISH is designed to provide protections for existing populations of  
6 native trout in priority watersheds on 22 National Forests, including the Lolo.

7           127. The Clearwater River and all its tributaries above the outlet of Salmon  
8 Lake, where the Colt Summit project is located, is a priority watershed.

9           128. INFISH established riparian management objectives, riparian habitat  
10 conservation areas, and Forest Plan standards in priority watersheds for native  
11 trout species in the Clearwater river watershed.

12           129. INFISH's standards include: (1) a 300 foot buffer on each side of all  
13 perennial, fish bearing streams; (2) a 150 foot buffer on each side of all non-fish  
14 bearing streams; (3) a 100 foot buffer on each side of all intermittent streams; and  
15 (4) buffers around all wetlands, ponds, and lakes (the depends on the size of the  
16 wetland, pond, or lake).

17           130. INFISH's standards can only be modified if, based on a site-specific  
18 data or a watershed analysis, the Forest Service can show that the buffers are not  
19 needed in order to meet the riparian management objectives. The rationale  
20 supporting any changes to the INFISH buffers must be carefully documented by  
21 the Forest Service.

22           131. In approving the Colt Summit project, the Forest Service failed to  
23 apply and comply with the INFISH buffers for all streams (perennial and  
24 intermittent), lakes, wetlands, and ponds in the project area.

25           132. In approving the Colt Summit project, the Forest Service shrunk the  
26 size of the INFISH buffers without first conducting the requisite watershed  
27 analysis or providing the site-specific data to demonstrate that the buffers are not

1 needed in order to meet INFISH’s riparian management objectives.

2 133. The Forest Service’s failure to comply and/or ensure compliance with  
3 the INFISH standards violates NFMA and is “arbitrary, capricious, an abuse of  
4 discretion, or otherwise not in accordance with law ” and/or constitutes “agency  
5 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706  
6 (1).

7 COUNT VI

8 NFMA VIOLATION  
9 (Region 1 soil standards)

10 134. Plaintiffs incorporate by reference all preceding paragraphs.

11 135. Pursuant to NFMA, the Forest Service must “insure that timber will  
12 only be harvested from National Forest System lands only where . . . soil, slope, or  
13 other watershed conditions will not be irreversibly damaged.” 16 U.S.C. § 1604  
14 (g)(3)(E).

15 136. Pursuant to NFMA, all site-specific management decisions must be  
16 consistent with the Lolo Forest Plan. 16 U.S.C. § 1604 (i).

17 137. Pursuant to the Lolo Forest Plan, all management activities must be  
18 designed or modified as necessary to maintain soil productivity.

19 138 The Forest Service adopted the Region 1 Soil Quality Standards (soil  
20 standards) to “meet the direction in the National Forest Management Act” and  
21 ensure that National Forest System lands are managed “without permanent  
22 impairment of land productivity and to maintain or improve soil quality.”

23 139. Compliance with the soil standards is the only way to ensure  
24 compliance with NFMA’s requirement that soil productivity on National Forest  
25 System lands be maintained and that management practices are designed and  
26 modified as necessary to maintain soil productivity as required by the Lolo Forest  
27 Plan.

1 140. The soil standards update, clarify, and replace all previous soil quality  
2 supplements in the handbook, including the Soil and Water Conservation Practices  
3 Handbook (FSH 2509.22).

4 141. The soil standards are “based on recent research and collective  
5 experience from the field.”

6 142. Pursuant to the soil standards, “[a]t least 85 percent of an activity area  
7 must have soil that is in satisfactory condition.”

8 143. Pursuant to the soil standards, the Forest Service cannot allow an  
9 activity that would create detrimental soil conditions in 15 percent of a activity  
10 area. If 15 percent or more of the project area already has detrimental soil  
11 conditions, then the project will not be permitted to make it worse. Detrimental  
12 conditions include compaction, rutting, displacement, severely burned soil, surface  
13 erosion, and soil mass movement.

14 144. Pursuant to the soil standards, Forest Supervisors are to ensure that  
15 “Forest-wide and project level plans include soil quality standards” and District  
16 Rangers are to ensure that all “project planning documents identify measures  
17 necessary to meet soil quality standards” and conduct “post-activity  
18 implementation monitoring to determine if soil quality standards have been met.”

19 145. In authorizing the Colt Summit project, the Forest Service is not  
20 complying the soil standards.

21 146. The Forest Service’s failure to comply with the soil standards violates  
22 NFMA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
23 accordance with law ” and/or constitutes “agency action unlawfully withheld or  
24 unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

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COUNT VII

ESA Violation  
(consultation on grizzly bears)

147. Plaintiffs incorporate by reference all preceding paragraphs.

148. The Forest Service’s consultation on grizzly bears has violated, and continues to violate, section 7 of the ESA, 16 U.S.C. § 1536, and the implementing regulations, 50 C.F.R. § 402.

149. Pursuant to section 7 (a)(2) of the ESA, the Forest Service “shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species.” 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14. In fulfilling the requirements of section 7 (a)(2) “each agency shall use the best scientific and commercial data available.” 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14 (d).

150. Pursuant to section 7 of the ESA, the Forest Service prepared a biological assessment (BA) for the Colt Summit project.

151. The Forest Service’s BA concluded that the Colt Summit project did not require formal consultation with U.S. Fish & Wildlife Service and thus require a Biological Opinion because the project was “not likely to adversely affect” grizzly bears.

152. In issuing this “not likely to affect” determination for grizzly bears the Forest Service: (1) failed to properly assess the effects of the Colt Summit project when added the “environmental baseline” which includes all past and present impacts of all Federal, State, or private actions and other human activities in the action area; (2) failed to take into account that the existing roads and road

1 densities in the Swan subunit are already resulting in adverse affects to grizzly  
2 bears and that the project, as proposed (and in conjunction with other actions),  
3 would exceed the level of incidental take allowed for in the December, 2010  
4 Biological Opinion for the Final Access Management Strategy - Swan Subunit; (3)  
5 failed to analyze the impacts of all road treatments (construction, re-construction,  
6 and maintenance) on grizzly bears; (4) failed to properly define the “action area”  
7 for section 7 purposes; (5) failed to account for and analyze the cumulative  
8 impacts; (6) misapplied the term “not likely to adversely affect;” and (7) failed to  
9 utilize the best scientific and commercial data available, including recent grizzly  
10 bear studies in the Seeley-Swan region.  
11

12 153. The Forest Service’s “not likely to adversely affect” determination for  
13 grizzly bears violates section 7 (a)(2) of the ESA and is “arbitrary, capricious, an  
14 abuse of discretion, or otherwise not in accordance with law ” and/or constitutes  
15 “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706  
16 (2)(A), 706 (1).  
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## 18 COUNT VIII

### 19 ESA Violations (consultation on lynx)

20 154. Plaintiffs incorporate by reference all preceding paragraphs.

21 155. The Forest Service’s consultation on lynx has violated, and continues  
22 to violate, section 7 of the ESA, 16 U.S.C. § 1536, and the implementing  
23 regulations, 50 C.F.R. § 402.  
24

25 156. The Forest Service determined that the Colt Summit project was “not  
26 likely to adversely affect” lynx.

27 157. In making this “not likely to adversely affect” determination for lynx  
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1 the Forest Service: (1) failed to properly assess the effects of the Colt Summit  
2 project when added the “environmental baseline” which includes the past and  
3 present impacts of all Federal, State, or private actions and other human activities  
4 in the action area; (2) failed to properly define the “action area” for section 7  
5 purposes; (3) incorrectly assumed that approximately 46 percent of the Clearwater  
6 Lynx Analysis Unit was “unsuitable” lynx habitat; (4) incorrectly assumed the  
7 project was in compliance with the Forest Plan standards for lynx; (5) failed to  
8 account for and analyze the cumulative impacts; (6) misapplied the term “not  
9 likely to adversely affect;” and (7) failed to utilize the best scientific and  
10 commercial data available on lynx in the region.  
11

12 158. The Forest Service’s “not likely to adversely affect” determination for  
13 lynx violates section 7 (a)(2) of the ESA and is “arbitrary, capricious, an abuse of  
14 discretion, or otherwise not in accordance with law ” and/or constitute “agency  
15 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706  
16 (1).  
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## 18 COUNT IX

### 19 ESA Violation (consultation on lynx critical habitat)

20 159. Plaintiffs incorporate by reference all preceding paragraphs.

21 160. The Forest Service’s consultation on lynx critical habitat has violated,  
22 and continues to violate, section 7 of the ESA, 16 U.S.C. § 1536, and the  
23 implementing regulations, 50 C.F.R. § 402.  
24

25 161. Pursuant to section 7 (a)(2) of the ESA, the Forest Service “shall, in  
26 consultation with and with the assistance of the Secretary, insure that any action  
27 authorized, funded, or carried out by such agency . . . is not likely to . . .result in  
28



1 the destruction or adverse modification of [critical] habitat.” 16 U.S.C. § 1536  
2 (a)(2); 50 C.F.R. § 402.14. In fulfilling the requirements of section 7 (a)(2) “each  
3 agency shall use the best scientific and commercial data available.” 16 U.S.C. §  
4 1536 (a)(2); 50 C.F.R. § 402.14 (d).

5 162. The Forest Service determined the Colt Summit project would not  
6 “adversely modify or adversely affect” lynx critical habitat.

7  
8 163. In making this “not likely to affect” determination for lynx critical  
9 habitat, the Forest Service: (1) failed to properly assess the effects of the Colt  
10 Summit project when added the “environmental baseline” which includes the past  
11 and present impacts of all Federal, State, or private actions and other human  
12 activities in the action area; (2) failed to properly define the “action area” for  
13 section 7 purposes; (3) incorrectly assumed that approximately 46 percent of the  
14 Clearwater Lynx Analysis Unit was “unsuitable” lynx habitat; (4) incorrectly  
15 assumed the project was in compliance with the Forest Plan standards for lynx; (5)  
16 inappropriately used compliance with Forest Plan standards for lynx as a proxy for  
17 section 7 consultation on lynx critical habitat; (6) failed to account for and analyze  
18 the cumulative impacts; (7) misapplied the term “not likely to adversely affect;”  
19 and (8) failed to utilize the best scientific and commercial data available.

20  
21 164. The Forest Service’s “not likely to adversely affect” determination for  
22 lynx critical habitat violates section 7 (a)(2) of the ESA and is “arbitrary,  
23 capricious, an abuse of discretion, or otherwise not in accordance with law ”  
24 and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5  
25 U.S.C. §§ 706 (2)(A), 706 (1).



1 H. Retain continuing jurisdiction of this matter until the Forest Service  
2 fully remedies the violations of law complained of herein;

3 I. Grant Plaintiffs costs and expenses of litigation, including reasonable  
4 attorneys' fees for their NEPA and NFMA claims pursuant to the Equal Access to  
5 Justice Act (EAJA), 28 U.S.C § 2412;

6 J. Grant Plaintiffs their costs and expenses of litigation, including  
7 reasonable attorneys' fees for claims brought under the ESA pursuant to 16 U.S.C.  
8 § 1540 (g);

9 K. Grant such other relief that this Court deems necessary, just, and proper.

10 Respectfully submitted this 16<sup>th</sup> day of September, 2011.

11 WESTERN ENVIRONMENTAL LAW CENTER

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