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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

ALLIANCE FOR THE WILD ROCKIES, a non-profit)
organization,)
)
Plaintiff,)
)
vs.)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

DANIEL ASHE, Director of United States Fish and)
Wildlife Service, TOM TIDWELL, Chief of the United)
States Forest Service, FAYE KRUEGER, Regional)
Forester for the Northern Region of the United States)
Forest Service, PAUL BRADFORD, Supervisor of the)
Kootenai National Forest, UNITED STATES FOREST)
SERVICE, an agency of the United States Department)
of Agriculture, UNITED STATES FISH & WILDLIFE)
SERVICE, an agency of the United States Department)
of the Interior,)
)
Defendants.)

NATURE OF THE ACTION

1. Plaintiff Alliance for the Wild Rockies hereby brings this civil action for declaratory and injunctive relief against the Federal Defendants pursuant to the citizen suit provision of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-706, for violations of the ESA, the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h, and the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1687.

2. This action challenges the Forest Service's April 2, 2012, decision to approve the Young Dodge logging project on the west side of the Lake Koocanusa Reservoir in the Kootenai National Forest (KNF) in northwestern Montana.

3. The Young Dodge project authorizes industrial logging and prescribed burning on 6,478 acres of public lands in the KNF. The project includes logging on 3,230 acres. Another 3,986 acres are authorized to be burned. One purpose of the project is to "restore historical patch-sizes." Accordingly, the project entails regeneration logging (resembling clearcuts) in units up to 390 acres in size. Because creating numerous large "patches" will create conditions that violate existing standards of the KNF Land and Resource Management Plan (Forest Plan) for big game movement corridors, hiding cover, and open road density, implementation of the project requires three amendments to the KNF Forest Plan.

4. The proposed logging and burning will occur in the remote and biologically rich Cabinet Yaak ecosystem. The area is home to small and threatened populations of grizzly bear and Canada lynx. The Project will impact habitat for grizzlies and designated critical habitat for lynx.

5. The United States Forest Service (USFS) approved the project. USFS sought concurrence from the United States Fish and Wildlife Service (FWS) that the project would have no effect on Canada lynx or grizzly bears. FWS concurred with USFS's finding.

6. Wherefore, Plaintiff, a local conservation organization dedicated to protecting and restoring the biological integrity of the Rocky Mountains, is compelled to bring this suit.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the ESA claim pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g). This Court has jurisdiction over the NEPA and NFMA claims pursuant to 28 U.S.C. § 1331 (federal question).

8. This Court has authority to review the actions of USFS and the FWS pursuant to the APA, 5 U.S.C. §§ 701-706. The relief sought is authorized by 28 U.S.C. § 2201(a) (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706 (APA).

9. Plaintiff challenges final agency action under the APA. Plaintiff has exhausted all available administrative remedies.

10. More than sixty-days ago, Plaintiff gave Defendants notice of their intent to file this suit related to its ESA claim pursuant to 16 U.S.C. § 1540(g)(2)(A). Defendants' violations of the ESA continue.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because Defendants reside in this District and a substantial part of the events and/or omissions giving rise to this action occurred in this District.

12. A present and actual controversy exists between the parties.

PARTIES

13. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a Montana non-profit conservation and education organization with approximately 2,000 members. The mission of the Alliance is to protect and restore the ecological integrity of the Northern Rockies bio-region which includes the Young Dodge project area in the Kootenai National Forest. The Alliance's registered office is in Missoula, Montana.

14. Defendant DANIEL ASHE is Director of the United States Fish and Wildlife Service and in that capacity is responsible for implementing and complying with federal law, including the laws implicated by this action.

15. Defendant TOM TIDWELL is the Chief of the United States Forest Service and in that capacity is responsible for implementing and complying with federal law, including the laws implicated by this action.

16. Defendant FAYE KRUEGER is the Regional Forester for the Northern Region of the Forest Service and in that capacity is responsible for implementing and complying with federal law, including the laws implicated by this action.

17. Defendant PAUL BRADFORD is the Supervisor of the Kootenai National Forest and in that capacity is responsible for implementing and complying with federal law, including the laws implicated by this action.

18. Defendant UNITED STATESE FOREST SERVICE is an agency within United States Department of Agriculture and is responsible for applying and implementing the federal laws and regulations at issue in this action.

19. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within U.S. Department of the Interior and is responsible for implementing the federal laws and regulations at issue in this action.

FACTS

20. In 1975 FWS listed the Grizzly Bear (*Ursus arctos horribilis*) as threatened with extinction under the ESA. In 1993 FWS found that the grizzly bear population in the Cabinet-Yaak Ecosystem (CYE) is warranted for uplisting to endangered status, but that such uplisting was precluded by higher priority actions. Since then, the grizzly bear population in the CYE has remained warranted for listing as endangered, but precluded by higher priorities. FWS has not designated critical habitat for the grizzly bear.

21. There are an estimated 45 grizzly bears in the CYE. The grizzly bear population in the CYE exists at low elevations (between 2000 and 4000 feet) in a Pacific maritime climate where dense, wet forests of cedar and hemlock dominate the landscape. These aspects of its habitat make this population of grizzlies unique.

22. The grizzly bear population in the CYE is also the only population of grizzly bears in the United States that is known to be in decline. Data indicate that the CYE grizzly bear population in the CYE is declining due to unsustainable levels of mortality. Data indicate that recent levels of human-caused mortality in the CYE do not appear to be sustainable. Between 1982 and 2009, 37 grizzly bears in the CYE died from human causes, with poaching being the leading individual source of mortality. The grizzly bear population in the CYE is endangered due to continuing high levels of human caused mortality, a decreasing population trend, genetic and demographic isolation, inadequate habitat protections, increased fragmentation both within the recovery zone (due to mines and private land development) and in intervening habitat with other grizzly bear populations. The rate of population decline for the grizzly bear population for the CYE has been calculated to be between 2.7-4.1 percent of the population annually.

23. The ongoing effects of climate change are expected to impact grizzly bears by, among other things, causing increased forest fires that, in turn, result in reductions in forest cover.

24. The increase in human-caused grizzly bear mortality in the CYE since 1999 may be related to habitat conditions, including decreased huckleberry production causing bears to search for foods on private lands.

25. In 1993 FWS issued a Grizzly Bear Recovery Plan. The Recovery Plan establishes demographic recovery criteria for the CYE grizzly bear population. The demographic recovery criteria include (1) six females with cubs over a running 6-year average both inside the recovery zone and within a 10 mile area immediately surrounding the recovery zone, excluding Canada; (2) 18 of 22 bear management units (BMUs) occupied by females with young from a running 6-year sum of verified sightings and evidence; and (3) known human-caused mortality not to exceed 4 percent of the population estimate based on the most recent three year sum of females with cubs. The Recovery Plan provides that no more than 1.2 percent total human-caused mortality shall be females. These mortality limits cannot be exceeded during any two years for recovery to be achieved. Presently, grizzly bear numbers are so small in this ecosystem that the mortality goal is zero known human-caused mortalities. As of 2011 FWS has found that none of the demographic recovery criteria in the Recovery Plan has been met.

26. Grizzly bears under-use or avoid otherwise preferred habitats that are frequented by people. This includes areas containing preferred habitat for breeding, feeding, shelter, and reproduction. Such under-use of preferred habitat can result in a significant change in normal grizzly bear behavior. Long-term displacement of female grizzly bears may result in long-term under-use of that area by female grizzly bears because cubs have limited potential to learn to use

the area. In this way, learned avoidance can persist for more than one generation of grizzly bears before grizzly bears again utilize habitat after disturbances have ceased.

27. The impacts of human disturbance on grizzly bears are most harmful to female grizzlies.

28. Grizzly bears that are displaced due to human disturbance may move into areas where they are forced into competition with other bears.

29. Because of the harmful effects of human disturbance on grizzly bears, the establishment of core areas is important for grizzly bear survival. Core areas are those areas with no motorized access (during the non-denning period) or heavily used foot/livestock trails, providing some level of secure habitat for grizzly bears.

30. In 2011 USFS amended the KNF Forest Plan to address motorized access within the grizzly bear recovery zone and adjacent areas and its potential effects on grizzly bears (Access Amendment). The Access Amendment establish motorized access standards for BMUs in the CYE, along with administrative use levels. The amendment establishes design elements and timelines for implementation of the standards. The amendment sets road-density standards for areas outside the recovery zone that received regular use by grizzly bears (these areas are referred to as “Bears Outside the Recovery Zone recurring use polygons,” or “BORZ polygons”).

31. The Access Amendment generally requires all BMUs to contain within eight years minimum 55% core area, and maximum 33% open motorized route density (OMRD) greater than one mile per square mile and maximum 26% total motorized route density (TMRD) greater than two miles per square mile. In core areas, once route closures are established, no entry is permitted for at least 10 years. Therefore, except for emergencies or other unforeseen circumstances requiring independent section 7 consultation, newly created core may not be entered for at least 10 years after creation.

32. The Access Amendment provides an exception for motorized entry to core areas that would not require additional section 7 consultation: entrance for road decommissioning and stabilization activities. The Access Amendment further establishes limits for road use associated with administrative activities. Administrative use shall not exceed 60 vehicle round trips per bear year per road. In contrast, if the number of trips exceeds 60 trips per active bear year in the CYE, then the road would be considered “open” for analysis and reporting purposes.

33. In 2011 FWS issued a Biological Opinion for the Access Amendment (BiOp). The BiOp addresses the nature and effects of roads and motorized access on grizzly bears in the CYE recovery zone. The BiOp does not address the nature and effect of logging or prescribed burning on grizzly bears in the CYE. The BiOp states that “[a]part from traditional routine uses along forest roads, there are other activities that might affect grizzly bears. These types of uses are not analyzed here and would undergo independent section 7 consultation (if necessary) in accordance with the ESA and its implementing regulations. These types of uses such as . . . logging . . . can also affect the function of grizzly bear habit, beyond the impacts of associated road uses.”

34. The BiOp did not consider future federal actions that are unrelated to the Access Amendment on the basis that they require separate consultation pursuant to section 7 of the ESA. The BiOp concluded that the Access Amendment would not jeopardize the continued existence of grizzly bears in the CYE. The BiOp included an Incidental Take Statement (ITS). In the ITS, FWS anticipated that the incidental take of grizzly bears was likely to occur in the form of harm and harassment of female grizzlies. Harassment would occur from displacement due to road-related disturbances, and harm would occur from habitat modification and degradation from high road densities, which would also result in displacement. Displacement of female grizzly bears

from key habitat areas in highly roaded areas may result in decreased fitness that impairs a female's inherent reproductive potential.

35. Using the core habitat and road density benchmarks as surrogates for take, FWS anticipated that some level of incidental take of female grizzly bears will occur within individual BMUs as long as: (1) OMRD exceeds one mile per square mile in more than 33 percent of a BMU; (2) TMRD exceeds two miles per square mile in more than 26 percent of a BMU; and/or (3) core area makes up less than 55 percent of a BMU. In BORZ areas, FWS anticipated that linear miles of road are likely causing incidental take of grizzly bears and will likely continue to do so.

36. The ITS is predicated on the grounds that if more than one entry of core occurs prior to the end of 2019 within any block of core, or occurs for more than one bear season, or occurs for reasons other than road decommissioning or stabilization activities, the level of anticipated take would be exceeded and reinitiation of consultation would be required.

37. The Access Amendment authorizes re-entry to core areas one time only and exclusively for road decommissioning and stabilization activities. The BiOp adopted the "design elements" of the Access Amendment as RPMs, but provided no terms and conditions. Among other conservation recommendations, FWS recommended that USFS develop, in coordination with the FWS and the IGBC, a strategy for addressing point sources disturbances, such as helicopter logging and mining.

38. On April 2, 2012, USFS authorized the Young Dodge Project. The project would occur in the Young Creek and Dodge Creek drainages on the west side of the Koocanusa Reservoir in the Kootenai National Forest in northwestern Montana. In the past 15 years, 63 percent of the Young Dodge Planning Sub-unit (PSU) has been logged. A variety of cuts have been used:

clearcut with reserves, seed tree cuts, shelterwood cuts, and sanitation salvage cuts. Road construction associated with these previous logging projects has negatively affected grizzly bears.

39. The Young Dodge Project would involve industrial logging of 28 units on 2,168 acres and prescribed burning in 19 units on 3,986 acres in the project area. Another 1,042 acres may be logged prior to burning. This logging and burning will occur over the next eight years. The Project includes numerous large regeneration cuts, which will connect to previous clearcuts to create six large openings. These six openings will be 540, 279, 269, 220, 163, and 99 acres in size.

40. USFS decided it must make three project-specific amendments to the KNF Forest Plan to implement the Project. The amendments relate to Forest Plan standards for big-game movement corridors, hiding cover, and open road density.

41. Regeneration cuts include clearcuts, seed tree, and shelterwood cuts. Seed tree and shelterwood cuts are similar to clearcuts, except a small number of trees are left per acre. Seed tree cuts remove 85-90% of the forest canopy and leave 8-20 trees per acre. Shelterwood cuts remove 60-75% of the forest canopy and leave 10-40 trees per acre. The project includes seven units of seed tree cuts totaling 850 acres. It also includes three units of shelterwood cuts totaling 199 acres.

42. The project also includes three units of mosaic cuts totaling 135 acres and two units of free selection cuts totaling 437 acres. Mosaic cuts remove 60-70% of the forest canopy and retain 6-40 trees per acre. Free selection cuts remove 40-60% of the forest canopy.

43. Logging and prescribed burning will occur within East Fork Yaak Bear Management Unit (BMU #16). The Project includes burning 376 acres of core grizzly bear habitat in Unit 46.

This burn would be ignited by helicopter. The helicopter flight path and burn would impact 9459 acres of grizzly bear habitat within BMU 16 and the adjacent West Kootenai BORZ polygon. Additionally, a 53-acre post and pole cut would occur along Road 303 in BMU 16, which would displace grizzly bears from 431 acres. Road 303 is currently restricted year-long to motor vehicles. BMU 16 does not currently meet benchmark standards for minimum percentage core or maximum percentage of TMRD.

44. The majority of the Project's remaining logging and burning activities occur within the West Kootenai BORZ polygon. Logging operations within the West Kootenai BORZ polygon would disturb and displace grizzly bears from approximately 17,596 acres over the life of the Project (eight years). Hauling on restricted roads would disturb and displace grizzly bears from approximately 6440 additional acres.

45. Regeneration cuts under the Project will connect openings created by previous clearcuts that will remove grizzly bear movement corridors, which may impede grizzly bear use of localized areas in the short-term or create areas of unavailable forage, greater than 600 feet from cover, diurnally. It is important to have suitable foraging areas adjacent to suitable cover because adult male grizzlies sometimes kill juveniles and cubs over food, breeding opportunities, and territorial defense. Female grizzlies are known to select dense, isolated forest cover to help reduce the risk of offspring mortality. Grizzly bear vulnerability to human-caused mortality is also partially a function of habitat security. Decreases in habitat security can increase grizzly bear mortality risks.

46. USFS issued a Supplemental Environmental Impact Statement (SEIS) for the Project and found that it may affect and is likely to adversely affect the grizzly bear. USFS found that effects of the Project are within the range-of-effects analyzed in the BiOp for the Access

Amendment. USFS found that the Project is therefore not likely to result in the loss of grizzly bears from the CYRZ or West Kootenai BORZ, even though the existing condition of BMU 16 falls short of the “benchmarks” considered unlikely to have adverse effects on grizzly bears.

47. FWS issued a letter of concurrence. FWS determined that subsequent to the BiOp for the Access Amendment, review of projects that are likely to affect grizzly bears as a result of access management can have three outcomes: (1) for projects that will result in insignificant or discountable effects (i.e., are not likely to adversely affect grizzly bears), FWS can provide a concurrence letter at the request of the Forest; (2) for projects that would result in adverse effects to grizzly bears that are consistent with, and fully analyzed under, the 2011 programmatic biological opinion, FWS can provide a letter that confirms that the project is in compliance with the programmatic biological opinion and affirm that the programmatic biological opinion provides ESA section 7 compliance; or (3) for projects that would result in adverse effects to grizzly bears that were not fully analyzed in the programmatic biological opinion, FWS would prepare a new biological opinion for that action. FWS found that the Young Dodge project is consistent with the Access Amendment and would not adversely affect the threatened grizzly bear in ways other than those analyzed in the BiOp for the Access Amendment. FWS found that the project will not result in any additional adverse impacts or incidental take over the baseline condition.

48. In April 2012 USFS issued a supplemental record of decision (SROD) for the Young Dodge Project. In the SROD, USFS found that the project may affect, but is not likely to adversely affect the grizzly bear.

49. In March 2000, FWS listed the Canada lynx (*Lynx canadensis*) as threatened with extinction under the ESA. The Young Dodge Project is located in occupied lynx habitat. The

Young Dodge Project is located in designated lynx critical habitat. The Young Dodge Project area is deemed essential to the survival and recovery of lynx in the contiguous United States. The project area contains suitable habitat for both foraging and denning for lynx. The project area provides high quality snowshoe hare habitat.

50. The project area is located in the Young Dodge Lynx Analysis Unit (LAU). Lynx habitat occurs in the Young Dodge LAU in the project area. There are historical records of lynx presence in the Young Dodge Project area. The project area and logging units include mature multi-storied forest stands and late successional forest stands that provide good hare habitat.

CLAIMS FOR RELIEF

COUNT I ESA VIOLATION (consultation on grizzly bears)

51. Plaintiff incorporates by reference all preceding paragraphs.

52. USFS's and FWS's consultation on grizzly bears has violated and continues to violate section 7 of the ESA, 16 U.S.C. § 1536, and its implementing regulations, 50 C.F.R. § 402. USFS's biological assessment concluded that the effects of the Young Dodge project on grizzly bears were "within the range-of-effects analyzed in the programmatic [biological opinion] for the 2011 Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones and therefore, in itself, is not likely to result in the loss of grizzly bears from the CYRZ or West Kootenai BORZ." FWS concurred, finding that the Young Dodge project was "consistent with, and fully analyzed under, the 2011 programmatic biological opinion." In concurring in the conclusion that the Project would have no adverse effects on grizzly bears beyond those analyzed in the BiOp for the Access Amendment, FWS failed to consider or analyze (1) the impacts to grizzly bears from the large amounts of prescribed burning

and industrial logging authorized by this project; (2) the impacts from reduced hiding cover for grizzly bears; (3) the impacts from reduced movement corridors for grizzly bears; (4) the impacts of increased administrative use of roads on grizzly bears; (5) the impacts of helicopter use on grizzly bears; and (6) the impacts of helicopter entry and burning in core grizzly bear habitat.

53. USFS's conclusion that no adverse effects to grizzly bears beyond those analyzed in the Access Amendments BiOp would occur, and the FWS's concurrence, violate section 7(a)(2) of the ESA and are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitute "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1), (2)(A).

COUNT II
(ESA VIOLATION)
(consultation on lynx and lynx critical habitat)

54. Plaintiff incorporates by reference all preceding paragraphs.

55. USFS's and FWS's consultation on lynx and lynx critical habitat has violated, and continues to violate Section 7 of the ESA, 16 U.S.C. § 1536, and its implementing regulations, 50 C.F.R. § 402. USFS determined and FWS concurred that the Young Dodge project may affect but not likely adversely affect lynx or lynx critical habitat. In making and concurring with this determination, the USFS and FWS (1) incorrectly assumed the project was in compliance with the Northern Rockies Lynx Management Direction and used the Northern Rockies Lynx Management Direction as a proxy for Section 7 consultation on lynx and lynx critical habitat; (2) incorrectly assumed the logging would occur only in non-lynx or "matrix" habitat; (3) failed to analyze the direct, indirect, and cumulative impacts to lynx and lynx critical habitat; (4) failed to properly define the environmental baseline, lynx winter habitat, or the "action area"; (5) failed to utilize the best available science as required by Section 7 of the ESA; and (8) incorrectly

assumed that the effects to lynx were covered by the first tier BiOp prepared for the Northern Rockies Lynx Management Direction.

56. USFS's determination and the FWS's concurrence that the Young Dodge Project is not likely to adversely affect lynx or lynx critical habitat violate section 7 of the ESA and are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitute "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1), (2)(A).

COUNT III: ESA VIOLATION
(take of grizzly bears)

57. Plaintiff incorporates by reference all preceding paragraphs.

58. USFS's approval of the Young Dodge project violates section 9 of the ESA, 16 U.S.C. § 1538, and its implementing regulations, 50 C.F.R. §§ 17.21, 17.31(a), (c). The BiOp for the Access Amendment concluded that current conditions in BMUs that did not meet benchmark standards and BORZ polygons are causing disturbance and displacement that is harming and harassing grizzly bears resulting in take. The Incidental Take Statement for the Access Amendment shielded access management actions consistent with its provisions from the section 9 take prohibition.

59. Currently, BMU 16 and the West Kootenai BORZ do not meet benchmark standards. Logging, burning, and helicopter use in the BMU 16 and the West Kootenai BORZ polygon authorized by this Project will result in disturbance and displacement of grizzly bears that will harm and harass them, constituting take. Such take is not shielded by the Access Amendment or any other ITS, and consequently will violate the section 9 take prohibition.

COUNT IV
(NEPA VIOLATION)
(Impacts)

60. Plaintiff incorporates by reference all preceding paragraphs.

61. USFS's approval of the Young Dodge Project violates its duty under NEPA to take a hard look at the Project's direct, indirect, and cumulative impacts on grizzly bears and lynx. The Project involves significant amounts of logging, road work, helicopter use, and prescribed burning that will occur over nearly a decade. These activities will alter grizzly bear and lynx habitat and displace grizzly bears and lynx. USFS's analysis of the Project effects on grizzly bears and lynx fails to adequately consider and analyze the direct, indirect, and cumulative impacts to grizzlies and lynx. USFS's failure to take a hard look at these impacts 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(1), (2)(A).

COUNT V
(NFMA VIOLATION)

(administrative roads, motorized entry to core habitat, favoring grizzly needs)

62. Plaintiff incorporates by reference all preceding paragraphs.

63. USFS's approval of the Young Dodge Project violates its duty to assure that its site-specific actions comply with forest plan standards. 16 U.S.C. § 1604(i). The Access Amendment limits the amount of closed roads that may be used without having to reclassify them as open roads. The Access Amendment also limits motorized entry to core grizzly bear habitat in BMUs to road decommissioning and restabalization activities. The KNF Forest Plan requires the USFS to favor the needs of grizzly bears when grizzly bear habitat and other land uses compete. USFS failed to address or show how the Young Dodge Project will comply with Access Amendment standards for administrative use of closed roads.

64. The Young Dodge Project allows significantly increased administrative use of closed roads and permits motorized helicopter entry to core grizzly bear habitat in BMU 16. The

Project fails to favor the needs of grizzly bear habitat over competing uses. These actions are inconsistent with Access Amendments and KNF Forest Plan standard and, thus, violate NFMA. 16 U.S.C. § 1604(i). USFS's failure to comply and/or ensure compliance with these standards is "arbitrary and 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(1), (2)(A).

COUNT VI
(NFMA VIOLATION)
(Forest Plan Standard Veg S6 for lynx)

65. Plaintiff incorporates by reference all preceding paragraphs.

66. Pursuant to NFMA, all site-specific management decisions must be consistent with the KNF Forest Plan. 16 U.S.C. § 1604(i). USFS amended the KNF Forest Plan in 2007 to include new standards to conserve lynx. This amendment is commonly referred to as the Northern Rockies Lynx Management Direction or "lynx standards." Standard VEG S6 directs that timber harvesting projects that reduce snowshoe hare habitat in multistory mature or late successional forests may only occur (1) within 200 feet of administrative units; (2) for research studies; or (3) for incidental removal during salvage harvest. Standard VEG S6 applies to the Young Dodge Project.

67. The Young Dodge Project includes vegetative treatments in multi-story mature and/or late successional forest stands that will reduce snowshoe hare habitat in violation of Standard VEG S6. USFS failed to comply and/or ensure compliance with standard VEG S6 when approving the Young Dodge Project. USFS's failure to comply and/or ensure compliance with Standard VEG S6 for lynx when approving the Young Dodge project project violates NFMA and is "arbitrary and 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(1), (2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Alliance for the Wild Rockies respectfully requests that the Court grant the following relief:

A. Issue a declaratory judgment that USFS’s authorization of the logging and prescribed burning activities for the Young Dodge Project violates the ESA, NEPA, and NFMA, as alleged above;

B. Issue a declaratory judgment that the USFS’s and FWS’s consultation and concurrence on the Young Dodge Project violate the ESA, as alleged above;

C. Issue an injunction setting aside the USFS’s decision to approve logging and prescribed burning activities for the Young Dodge project;

D. Enjoin USFS from conducting and/or authorizing any logging or burning activities for the Young Dodge Project unless and until the Court determines that USFS has fully remedied its violations of the ESA, NEPA, and NFMA;

E. If necessary, order USFS to mitigate and/or remedy any environmental harm caused by the Young Dodge Project while this civil action is pending;

F. Grant Plaintiff costs and expenses of litigation, including reasonable attorneys’ fees, for its NEPA, NFMA, and ESA claims pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and the ESA, 16 U.S.C. § 1540(g)(4).

G. Grant such other relief as this Court deems necessary, just, and proper.

Respectfully submitted this 14th day of May 2013,

WESTERN ENVIRONMENTAL LAW CENTER

/s/ Shiloh Hernandez

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