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**October 3, 2019**

Secretary, U.S. Department of Agriculture  
1400 Independence Ave, SW  
Washington, D.C. 20250-0003

Chief, U.S. Forest Service  
201 14th Street, SW  
Washington D.C. 20250

Secretary, U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Director, U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

**RE: 60-Day Notice of Intent to Sue under the Endangered Species Act- Idaho  
Panhandle National Forest, Kootenai National Forest and the Lolo National Forest**

You are hereby notified Alliance for the Wild Rockies, and Native Ecosystems Council (collectively Alliance) intend to file a citizen suit pursuant to the citizen suit provision of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g) for violations of the ESA, 16 U.S.C. § 1531 et seq. Alliance will file the suit after the 60 day period has run unless the violations described in this notice are remedied. The names, addresses, and phone numbers of the organizations giving notice of intent to sue are as follows:

Michael Garrity, Executive Director  
Alliance for the Wild Rockies  
P.O. Box 505  
Helena, Montana 59624  
Tel: (406) 459-5936

Dr. Sara Jane Johnson, Executive Director  
Native Ecosystems Council  
P.O. Box 125  
Willow Creek, MT 59760  
Tel: (406) 285-3611

The names, addresses, and phone numbers of counsel for the notifier are as follows:

Kristine M. Akland, Attorney at Law  
Akland Law Firm, PLLC  
P.O. Box 7472  
Missoula, MT 59807  
Tel: (406) 544-9863

### **NOTICE OF LEGAL VIOLATION**

#### THE AGENCIES MUST COMPLETE ESA CONSULTATION FOR THE 2011 ACCESS AMENDMENTS PRIOR TO IMPLEMENTING TIMBER SALES IN THE IDAHO PANHANDLE, KOOTENAI AND LOLO NATIONAL FORESTS

In November 2011, the Forest Service amended the Forest Plans of the Kootenai, Idaho Panhandle and Lolo National Forests to include wheeled motorized vehicle access and security standards. The “Access Amendments” set standards for open roads, total roads, and core areas for Grizzly Bear Management Units (BMUs) within the Selkirk Recovery Zone on the Idaho Panhandle National Forest and the Cabinet-Yaak Recovery Zone on the Kootenai, Idaho Panhandle and Lolo National Forests. Individual open and total motorized access density and core area standards were set for each of the thirty BMUs. The Access Amendments also set limits on linear miles of open and total roads, known as the “2010 baseline” for each of the seven “Bear Outside Recovery Zone” polygons (BORZ).

In *Alliance for the Wild Rockies v. Cheryl Probert et al.*, CV-18-67-DWM (D. Mont. October 3, 2019), the District of Montana found that data over the last eight years demonstrates that illegal use of roads caused by ineffective road closure methods have contributed to increases in linear road miles and are potentially impacting grizzly bears in ways not previously considered.. The court held that reinitiation of consultation under ESA Section 7 is required under 50 C.F.R §402.16 for the 2011 Access Amendments “as pervasive illegal road use has permitted incidental take to exceed baseline levels under subsection (a); eight years of evidence of such breaches and ineffective closures constitutes new information and reveals new effects on grizzly bears under subsection (b); and, ineffective closures constitute a broken conservation promise amounting to a modification under subsection (c).” The court remanded to the agencies to reinitiate consultation for the Access Amendments impact on grizzly bears for the Kootenai, Idaho Panhandle and Lolo National Forests.

ESA section 7(d) mandates:

#### **(d) Limitation on commitment of resources**

After initiation of consultation required under subsection (a) (2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a) (2) of this section.

16 U.S.C. §1536(d). As the Court held in *Conner v. Burford*, ESA “section 7(d) clarifies the requirements of section 7(a), ensuring that the status quo will be maintained during the

consultation process.” 848 F.2d 1441, 1455 (9th Cir. 1988).

The Forest Service has approved implementation and issued a Record of Decision for the following logging projects on the **Kootenai National Forest**:

Black Gold Salvage Project  
Bristow Area Restoration Project  
Brush Creek Fire Salvage  
Buckhorn Project  
Caribou Fire Salvage and Restoration Project  
Crashed Harvey  
Cub Creek Salvage  
Dry Creek Timber Sale  
Flower Creek Forest Health Hazard Fuels Project  
Glaton Project  
Gateway Ecological Restoration and Maintenance Burning Project  
Gibraltar Ridge Fire Salvage  
Elk Rice Project  
Hellwick Timber Sale  
Kootenai River North Fuels Reduction Project  
Highway 93 Hazard Tree Removal Project  
Hoodoo Wildfire Resiliency Project  
Lower Yaak, Obrien, Sheep Project  
Little Beaver Creek Hazardous Flues Reduction  
Marten Creek Timber Sales and Associated Activities  
Miller West Fisher  
Minton Trout Project  
Moose Peak Fires Salvage Project  
North End Fires Salvage  
Northeast Yaak Project  
Okay Salvage Project  
Pilgrim Timber Sale  
Pipestone Timber sale and Restoration Project  
Posted Poles Timer Stand Improvement  
Rexford and Fortine District 2010-2012 Precommercial Tinning  
Rocky Pin Fuels Reduction  
Silverbutte Bugs Project  
Snow Gulch Reforestation Project  
South Fork Fuels Project  
Sparring Bulls Project  
Spring Board Timber Sale and Hazard Tree Removal  
Spring Gulch Timber Sale  
Sutton Salvage 17 Project  
Tamarack Fire Salvage project  
Trego Project  
Trego Triangle Salvage  
West Fork Fire Salvage & Restoration Project

West Troy Fuels Reduction Project  
Starry Goat Project  
Tenmile Sterling Fire Salvage Project  
Wet Surprise Project  
Young-Dodge Project

The Forest Service has approved implementation and issued a Record of Decision for the following logging projects on the **Idaho Panhandle National Forest**:

“Coeur d’ Alene” Basin Natural Resource Restoration Plan  
Buckskin Saddle Integrated Restoration Project  
Boulder Creek Restoration Project  
Beaver Creek Project  
Bottom Canyon Project  
Blue Alder HRFA Fuels Project  
Camp Robin Project  
Charlie Preston Project  
Clark Creek Blow Down  
Deer Creek Project  
East Fork Meadow Creek  
Fern Hardy HFRA Project  
Garfield Bay Thinning Project  
Gisborne Whitebark Pine Restoration Project  
Green Slate Project  
Grizzly Fire Salvage and Restoration Project  
English Point Forest Health Project  
Halfway Malin Project  
Hanna Flats GNA  
Hellroaring Project  
Hoodoo-Ames Research Project  
Idaho Buckhorn Project  
Jasper Mountain Project  
K and N Salvage  
Kootenai Fuel Reduction  
Kreist Creek Project  
Lakeview-Reeder HFRA Project  
Larch Gold Project  
Leonia Project  
Lone Mountain Thinning Project  
Lookout Ski Beetle Project  
Lower Priest Project  
Marble Fire Salvage  
North Zone Roadside Salvage Project  
North Zone TSI  
Quartz Beetle Project  
Red Beauty HFRA Project  
Potter’s Wheel Project

Scattered Old House Project  
Rolling Hills Lark Project  
Sam Owen Blowdown Tree Removal  
Schweitzer Fuels Reduction  
Shoepak Firewood and Thinning Projects  
Simmons Project  
South Mullan Project  
St. Joe 2012 and 2014 and St. Joe Divide Projects  
Tower Fire Salvage and Reforestation Project  
Treasured Landscapes Prescribed Fire and Whitebark Pine Restoration Project  
TSI 2014  
Twenty Mile Creek Project  
Upper River Burning Project  
Windy Lark Project  
Wooden Spur Resource Management Project  
Upper St. Joe Aquatic Restoration Project

The Forest Service has approved implementation and issued a Record of Decision for the following logging projects on the **Lolo National Forest**:

12 Tamarack Project  
3-Short Project  
Burdette Ecosystem Maintenance Burn Project  
Cedar-Thom Project  
Center Horse Landscape Restoration Project  
Chippy Fire Salvage Project  
Clear Creek Project  
Colt Summit Restoration/ Fuels Project  
Copper King Fire Salvage Project  
Cottonwood Stream Restoration Project  
Cutoff Project  
Deer Uncle Sam Small Tree Thinning and McGinty's Rock Small Tree Thinning Projects  
Firecracker Annie  
Frenchtown Face Vegetation Management  
Grant Creek Fuels Project  
Horseshoe West Fuels Reduction and Restoration Project  
Jam Cracker Project  
Jocko Lakes Fire Salvage Project  
Johns Creek Prescribed Burning  
Knowles Creek Prescribed Burns  
Liberty Fire Salvage Project  
Little Eddy Project  
Little Quartz Fuels Reduction  
Lolo Peak Fire Restoration  
Lookout Ski Beetle Project  
Marshall Woods Restoration Project  
McCabe and Coopers Lake Small Tree Thinning Project

Moos Peak Fire Salvage Project  
Murphy Creek Project  
Ninemile and Missoula Ranger District Small Tree Thinning Project  
Ninemile Divide Ecosystem Maintenance Burning  
Ninemile Thinning Project  
Petty Creek Big Game Ecosystem Management Burn  
Prescribed Burning in the Great Burn Wilderness and Clearwater Crossing  
Quartz-Haugan Precommercial Thinning Project  
Rennic Stark Project  
Rice Ridge Fire Salvage Project  
Rock Creek Flues Project  
Seeley Lake Fuels Project  
Seeley Lake Ranger District Aspen Restoration Project  
Sheep Gap Fire Salvage Project  
South Fork of Fish Creek Project  
St. Regis South Hazardous Fuels Reduction Project  
Sunrise Fire Salvage Project  
Swan Face Prescribed Burn  
Upper Madison Fuels Project  
Westside Roadside Timber Salvage

It is well-established law that “timber sales constitute per se irreversible and irretrievable commitments of resources under [ESA] §7(d) . . .” *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1057 (9th Cir. 1994). Thus, “individual [timber] sales cannot go forward until the consultation process is complete on the underlying plans which [the agency] uses to drive their development.” *Lane Cnty. Audubon Soc. v. Jamison*, 958 F.2d 290, 295 (9th Cir. 1992). In *Jamison*, the Court further held: “Such an injunction is necessary because until consultation is satisfactorily concluded with respect to the Jamison Strategy, or indeed any other conservation strategy intended to establish the criteria under which sites for sales are to be selected, the sales cannot lawfully go forward. The ESA prohibits the “irreversible or irretrievable commitment of resources” during the consultation period. 16 U.S.C. § 1536(d). The sales are such commitments.” *Id.*

In accordance with this well-established and binding precedent, because the foregoing projects are timber sales, the projects “cannot go forward until the consultation process is complete on the underlying” Access Amendments. See *Id.*; *Pac. Rivers*, 30 F.3d at 1057; see also *Silver v. Babbitt*, 924 F. Supp. 976, 988-89 (D. Ariz. 1995). The Access Amendment is the “conservation strategy intended to establish the criteria under which sites for sales are to be selected,” therefore “until consultation is satisfactorily concluded with respect to the” Access Amendment, “the sales cannot lawfully go forward.” See *Jamison*, 958 F.3d at 295.

#### REMEDY REQUESTED

The Forest Service must withdraw the Decisions for all the foregoing projects or otherwise formally suspend project implementation, until such time as consultation on the Access Amendment is complete. Once consultation on the Access Amendment is complete, the agencies must update their project-specific consultation for the approved projects to ensure compliance

with all measures, terms, and conditions in the updated programmatic Access Amendments reconsultation. If the project decisions are not formally withdrawn or stayed within sixty (60) days, AWR and NEC intend to file claims for declaratory and injunctive relief, as well as attorney and expert witness fees and costs. The intent of this action is to require USDA Forest Service and the FWS to come into full compliance with ESA Section 7(d).

Sincerely,

/s/ Kristine M. Akland

Kristine M. Akland, Counsel for Notifier

cc: U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001