

Kelly E. Nokes (Mont. Bar No. 39465862)
Western Environmental Law Center
P.O. Box 218
Buena Vista, CO 81211
(575) 613-8051
nokes@westernlaw.org

Matthew K. Bishop (Mont. Bar No. 9968)
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 324-8011
bishop@westernlaw.org

Counsel for Plaintiffs

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

HELENA HUNTERS AND
ANGLERS ASSOCIATION, a non-
profit organization;
WESTERN WATERSHEDS
PROJECT, a non-profit organization;
the SIERRA CLUB, a non-profit
organization; and WILDEARTH
GUARDIANS, a non-profit
organization,

Plaintiffs,

vs.

RANDY MOORE, in his official
capacity as Chief of the U.S. Forest
Service; the UNITED STATES

No.

COMPLAINT

FOREST SERVICE, a federal agency; MARTHA WILLIAMS, in her official capacity as Director of the U.S. Fish and Wildlife Service; and the UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency; DEB HAALAND, in her official capacity as Secretary of the Interior; and the UNITED STATES DEPARTMENT OF THE INTERIOR, a federal department,

Federal-Defendants.

INTRODUCTION

1. Plaintiffs bring this civil action against Federal-Defendants, the United States Forest Service (“Forest Service”), and U.S. Fish and Wildlife Service (“FWS”), under section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, for violations of the ESA and National Environmental Policy Act (“NEPA”).

2. This case challenges the Forest Service’s revised Land and Resource Management Plan (“revised forest plan”) for the Helena portion of the Helena-Lewis and Clark National Forest (“Helena National Forest”) and FWS’s biological opinion on how the revised

forest plan may affect threatened grizzly bears, Canada lynx (lynx), and lynx critical habitat.

3. The revised forest plan removed *all* ten wildlife standards from the previous, Helena Forest Plan. These ten wildlife standards were based on the best available science, developed with input from state and Federal wildlife biologists, and included mandatory forest plan direction to ensure sufficient hiding cover and low open road densities remained on important elk summer and winter range. These ten wildlife standards thus provided important protections for big game habitat and security and benefited other species – including threatened grizzly bears and lynx – who also depend on sufficient hiding cover and low open road densities.

4. The Forest Service and FWS, however, never carefully considered and evaluated how its significant decision and the removal of all ten wildlife standards from the Helena Forest Plan may affect big game or threatened species, including grizzly bears and lynx on the Helena National Forest.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704.

6. This Court has the authority to review the Forest Service's and FWS's action(s) and/or inaction(s) complained of herein and grant the relief requested under 16 U.S.C. § 1540(g) and 5 U.S.C. § 706.

7. Plaintiffs exhausted all available administrative remedies. Plaintiffs submitted comments on the draft environmental impact statement ("EIS") for the revised forest plan. Plaintiffs also submitted timely objections to the draft decision and draft record of decision. In accordance with the applicable regulations and guidance, objections were sent to and heard by the Forest Service's Northern Regional Office in Missoula, Montana. The Forest Service denied Plaintiffs' objections.

8. All requirements for judicial review required by the ESA were satisfied. Plaintiffs sent the Forest Service and FWS a valid sixty-day notice of intent to sue letter in accordance with the ESA via email and U.S. Mail (delivery confirmation). Plaintiffs filed this case after the sixty-day period had run. The Forest Service and FWS confirmed receipt of Plaintiffs' sixty-day notice but never responded.

9. The relief sought is authorized by 28 U.S.C. § 2201, 28 U.S.C. § 2202, 16 U.S.C. § 1540, and 5 U.S.C. § 706.

10. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

11. Plaintiffs have organizational standing. Plaintiffs satisfy the minimum requirements for Article III standing. Plaintiffs – including their members, supporters, and staff – have suffered and continue to suffer injuries to their interests in protecting and restoring big game and wildlife habitat, including habitat for grizzly bears and lynx, as a result of the revised forest plan. This Court can redress these injuries by granting the relief requested. There is a present and actual controversy between the Parties.

PARTIES

12. Plaintiff, HELENA HUNTERS AND ANGLERS ASSOCIATION (Helena Hunters), is a non-profit, all volunteer organization based in Helena, Montana. Helena Hunters is dedicated to protecting and restoring fish and native wildlife to all suitable habitats and to conserving all natural resources as a public trust, vital to our general welfare. Helena Hunters works to promote the highest

standards of ethical conduct and sportsmanship, and promotes outdoor recreation opportunities for all citizens to share equally. Members and supporters of the organization depend on the healthy, functional, intact public lands of the Helena National Forest because they sustain and nurture our way of life. Helena Hunters brings this action on behalf of its members and supporters.

13. Plaintiff, WESTERN WATERSHEDS PROJECT (“WWP”), is a non-profit organization with more than 12,000 members and supporters dedicated to protecting and conserving the public lands, watersheds, and native wildlife across the American West, including big game species, grizzly bears, and lynx. WWP’s Montana office is located in Missoula, Montana. WWP brings this action on behalf of itself, its members, and its supporters.

14. Plaintiff, SIERRA CLUB, is a national non-profit conservation organization with more than 649,000 members. Headquartered in Oakland, California, the Sierra Club maintains offices throughout the country, including Montana. The Sierra Club’s mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to educate

and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. The Sierra Club and its members have advocated for grizzly bear recovery in the lower-48 States and protection of grizzly bear habitat for more than 20 years. The Sierra Club brings this action on behalf of itself, its members, and its supporters.

15. Plaintiff, WILDEARTH GUARDIANS (Guardians) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians is specifically committed to ensuring the survival and recovery of grizzly bears, lynx, and other threatened species in the lower-48 States. Guardians has approximately 187,665 active members and supporters across the American West, including many who reside in Montana. Guardians maintains an office in Missoula, Montana, where most of its work to conserve grizzly bears and lynx occurs. Guardians brings this action on behalf of itself, its members, and its supporters.

16. Plaintiffs have members and supporters who have standing to pursue this civil action in their own right and their interests in

conserving wildlife habitat for big game and threatened species on the Helena National Forest (at stake in this case) are germane to their respective organization's purposes.

17. Plaintiffs' members, supporters, and staff are dedicated to ensuring our public lands provide sufficient and protected habitat for wildlife species, including deer, elk, and other big game species, as well as for threatened grizzly bears and lynx. Plaintiffs' members and supporters and staff are also dedicated to ensuring the long-term survival and recovery of grizzly bears in the lower-48 States and ensuring the Forest Service and FWS comply with the law and ensure all decisions affecting public lands and grizzly bear conservation utilize the most up-to-date and best available science. Plaintiffs' members, supporters, and staff also understand the importance of taking a hard look at the environmental effects of agency actions as required by NEPA and ensuring full compliance with section 7 of the ESA's consultation provisions.

18. Plaintiffs' members, supporters, and staff live near and/or routinely recreate on public lands in the Helena National Forest including the specific areas like the Divide landscape directly affected

by the revised forest plan. Plaintiffs' members, supporters, and staff recreate on public lands in the Helena National Forest for a variety of reasons, including big game hunting, hiking, photography, and wildlife viewing. Plaintiffs' members, supporters, and staff enjoy observing—or attempting to observe—and studying grizzly bears, including signs of grizzly bear presence and/or photographing grizzly bears in areas where the species is known to den, travel, and occur, including along the Continental Divide in the Helena National Forest. The opportunity to view wildlife, including grizzly bears and grizzly bear sign in the wild and in the area affected by the revised forest plan decision by itself is of significant interest and value to Plaintiffs' members, supporters, and staff and increases their use and enjoyment of the action area.

19. Plaintiffs' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from big game species, lynx, and grizzly bears, and seeing (or trying to see) grizzly bears in the wild, and working to conserve grizzly bears in the lower-48 states, including by working to facilitate grizzly bear movement and occupancy to areas outside the protected National Parks or grizzly bear primary conservation areas (recovery zones),

including on a large portion of public lands within the Helena National Forest. In furtherance of these interests, Plaintiffs' members, supporters, and staff have worked and continue to work to conserve big game habitat and security and habitat for grizzly bears and lynx and other species. Ensuring that the Forest Service and FWS comply with the law as alleged in this case when making important decisions to revise a forest plan and other decisions affecting our public lands in areas occupied by grizzly bears and other species is a key component of Plaintiffs' interests.

20. The Forest Service's revised forest plan for the Helena National Forest, which removed all ten wildlife standards, has harmed, is likely to harm, and will continue to harm Plaintiffs' interests in big game, big game habitat and security, lynx, and grizzly bears and grizzly bear conservation. Plaintiffs' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the revised forest plan. If this Court issues the relief requested, the harm to Plaintiffs' interests will be alleviated and/or lessened.

21. Federal-Defendant RANDY MOORE is sued in his official capacity as Chief of the United States Forest Service. As Chief, Mr.

Moore is the federal official with responsibility for all Forest Service officials' actions and/or inactions challenged in this case.

22. Federal-Defendant UNITED STATES FOREST SERVICE, is an agency within the United States Department of the Agriculture that is responsible for applying and implementing the federal laws and regulations challenged in this case.

23. Federal-Defendant MARTHA WILLIAMS is sued in her official capacity as Director of the United States Fish and Wildlife Service. As Director, Ms. Williams is the federal official with responsibility for all FWS officials' actions and/or inactions challenged in this case.

24. Federal-Defendant, UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this case.

25. Federal-Defendant, DEB HAALAND, is sued in her official capacity as Secretary of the Interior. As Secretary, Ms. Haaland is the federal official with responsibility for all FWS officials' actions and/or inactions challenged in this case.

26. Federal-Defendant, the UNITED STATES DEPARTMENT OF THE INTERIOR, is the federal department responsible for applying and implementing the federal laws and regulations challenged in this case.

BACKGROUND

The Helena Forest Plan's ten wildlife standards

27. Since 1986, the Forest Service has been managing habitat for wildlife, including summer and winter range and security for big game species, on the Helena National Forest pursuant to ten forest-wide big game wildlife standards in the Helena Forest Plan (hereinafter “ten wildlife standards”).

28. Wildlife standard 1 in the Helena Forest Plan directs the Forest Service to maintain adequate thermal and hiding cover in winter and summer range for big game species to support habitat potential. “Thermal cover” is cover used by animals to ameliorate the effects of weather. The Helena Forest Plan defines “thermal cover” as stands of coniferous trees 40 feet or more in height, with an average crown closure of 70 percent or more, and at least 15 acres in size. The Helena Forest Plan defines “hiding cover” as vegetation capable of hiding 90

percent of a standing adult deer or elk from view at a distance of 200 feet or less, and being at least 40 acres in size. The Montana Department of Fish, Wildlife and Parks (State) defines “hiding cover” as a stand of coniferous trees having a crown closure of greater than 40 percent.

29. Wildlife standard 2 in the Helena Forest Plan directs the Forest Service to conduct a hiding cover analysis in all NEPA documents for specific projects. Standard 2 states that the hiding cover analysis should be done on a drainage or elk herd unit basis. Standard 2 directs the Forest Service to refer to the Montana Cooperative Elk-Logging Study (in appendix C of the Helena Forest Plan) for recommendations and research findings on how to maintain adequate cover during project work.

30. Wildlife standard 3 in the Helena Forest Plan states that, subject to hydrologic and other resource constraints, elk summer range must be maintained at 35 percent or greater hiding cover and areas of winter range must be maintained at 25 percent or greater thermal cover in drainages or elk herd units. The Forest Service measures compliance with standard 3 at the elk herd unit level.

31. Wildlife standard 4 in the Helena Forest Plan directs the Forest Service to implement an aggressive road management program to maintain or improve big game security. The term “big game security” refers to the need to provide secure areas for elk and other big game species (mule deer, while-tailed deer, moose, and other game animals) from predators and hunters during the fall hunting season. “Security” is the protection inherent in any situation that allows big game to remain in a defined area despite an increase in stress or disturbance. Security allows elk and other big game species to remain on public lands and avoid being displaced onto private lands while under stress during the fall hunting season. The two main variables that contribute to big game security include open road density and the amount of vegetative hiding cover. Other variables include topography, weather conditions, the timing and duration of the hunting season, hunter numbers, technology, land ownership, and hunting regulations. The amount of security is determined and mapped by qualified local biologists after taking into consideration all potential variables.

32. Wildlife standard 4 in the Helena Forest Plan directs the Forest Service to maintain and improve big game security by

maintaining certain amounts of vegetative hiding cover and limiting open road density during the big game rifle season. The term “open road density” includes all motorized routes open during the big game rifle season. Roads are calculated at 100 percent the length of all public roads and 25 percent the length of private roads (this relationship is based on research indicating that roads with less use have reduced impacts to big game).

33. Wildlife standard 4 in the Helena Forest Plan states that to protect big game security, the Forest Service will ensure road densities do not exceed numeric limits (in table) depending on the amount of available hiding cover.

34. Under forest-wide standard 4a in the Helena Forest Plan, the amount of hiding cover (as defined by the Forest Service in the forest plan or defined by the State) dictates the level of open road density allowed. The more hiding cover, the more road density allowed. Conversely, the less hiding cover, the less open road density allowed. The specific numeric values included in standard 4a are as follows:

<u>Existing % cover (Fed)</u>	<u>Existing % cover (state)</u>	<u>Open Road Density Allowed</u>
56	80	2.4 miles per square mile
49	70	1.9 miles per square mile
42	60	1.2 miles per square mile
35	50	0.1 miles per square mile

35. Wildlife standard 4a in the Helena Forest Plan states that the existing hiding cover to open road density ratio should be determined over a large geographic area, such as a timber sale analysis area, a third order drainage, or an elk herd unit. To implement standard 4a the Forest Service relies on the elk herd unit to measure hiding cover to open road density. Forest-wide standard 4a applies forest-wide, including within the Wildland Urban Interface (WUI).

36. Under wildlife standard 4a in the Helena Forest Plan, big game security is calculated for all lands (regardless of ownership) within elk herd units, including all private lands. Elk and other big game species do not recognize differences in land ownership. Wildlife standard 4a takes into account road densities and various types of projects on private lands inside the elk herd unit (ski developments, mining activity, as well as logging, home developments, etc.). Wildlife standard 4a takes all motorized routes open during the big game rifle

season into account when determining open road density. There are no exemptions for temporary or administrative management activities under wildlife standard 4a in the Helena Forest Plan.

37. Wildlife standard 4b in the Helena Forest Plan directs the Forest Service to close all elk calving grounds and nursery areas to motorized vehicles during the peak use by elk (calving is usually in late May through mid-June and nursery areas are used in late June through July).

38. Wildlife standard 4c in the Helena Forest Plan directs the Forest Service to close all winter range areas to motorized vehicles between December 1 and May 15 (subject to some exceptions).

39. Wildlife standard 5 in the Helena Forest Plan directs the Forest Service to ensure that the minimum size for hiding cover on elk summer range will be at least 40 acres and the minimum size for thermal cover on elk winter range will be 15 acres.

40. Wildlife standard 6 in the Helena Forest Plan directs the Forest Service to follow the Montana Cooperative Elk-Logging Study Recommendations (included in forest plan appendix c) during all timber sale and road construction projects.

41. Wildlife standard 7 in the Helena Forest Plan directs the Forest Service to inventory and map all important summer, fall, and winter ranges for big game species.

42. Wildlife standard 8 in the Helena Forest Plan directs the Forest Service to analyze the possible impacts to big game winter range for any proposed sagebrush reduction program.

43. Wildlife standard 9 in the Helena Forest Plan directs the Forest Service to protect big horn sheep and mountain goat range during resource activities. Under this standard, all project plans for livestock, timber, and other resource development must include stipulations to avoid or mitigate impacts to bighorn sheep and mountain goat range. Under this standard, all conflicts between livestock and these wildlife species must be resolved in favor of big game.

44. Wildlife standard 10 in the Helena Forest Plan directs the Forest Service to manage moose habitat to provide adequate browse species diversity and quantity to support current moose populations.

45. The ten wildlife standards in the Helena Forest Plan are non-discretionary and must be complied with by the Forest Service.

46. All site-specific, project level, and resource plans must be consistent with the ten wildlife standards in the Helena Forest Plan.

47. The ten wildlife standards in the Helena Forest Plan were designed to protect and restore big game habitat and security on the Helena National Forest.

48. The ten wildlife standards in the Helena Forest Plan benefit and protect habitat for other, non-game wildlife species, including gray wolves, grizzly bears, lynx, and wolverine.

49. The ten wildlife standards in the Helena Forest Plan benefit wildlife and wildlife habitat by ensuring sufficient hiding cover remains on the landscape. The ten wildlife standards benefit wildlife and wildlife habitat by restricting open road densities on the landscape. The ten wildlife standards benefit wildlife by ensuring that big horn sheep receive deference if management conflicts arise. The ten wildlife standards apply throughout the Helena National Forest and in specific geographic areas important for wildlife movement and connectivity including in areas where other specific standards do not apply. The ten wildlife standards in the Helena Forest Plan were developed with input

from state and federal wildlife biologists and incorporate over 15 years of research from the Montana Cooperative Elk-Logging Study.

The Helena Forest Plan's lynx direction

50. In addition to the ten wildlife standards, the Helena Forest Plan also includes specific forest plan standards and direction for lynx. In 2007, the Helena Forest Plan was amended to incorporate specific management direction for lynx (hereinafter “lynx direction”).

51. The lynx direction in the Helena Forest Plan applies to lynx analysis units (LAUs) and areas of the Helena National Forest deemed “occupied lynx habitat.” Occupied lynx habitat is defined as an area having at least two verified lynx observations or records since 1999 (unless transient individuals) or evidence of reproduction. Areas considered “unoccupied” should consider the new lynx direction but are not required to follow it.

52. Large portions of the Helena National Forest are considered “occupied lynx habitat” as per the 2007 lynx direction (except for some of the isolated mountain ranges). The Rocky Mountain, Upper Blackfoot and Divide geographic areas of the Helena National Forest are considered “occupied lynx habitat” in the Helena Forest Plan and LAUs

have been mapped and delineated in these areas. These LAUs were updated in 2017.

53. The lynx direction in the Helena National Forest includes standards specific to lynx but only in LAUs in occupied lynx habitat.

54. Standard ALL-S1 in the Helena Forest Plan states that new or expanded permanent developments and vegetation management projects must maintain habitat connectivity in an LAU and/or linkage area (identified by the lynx direction).

55. Standard VEG-S1 in the Helena Forest Plan states that if more than 30 percent of lynx habitat in an LAU is in a stand initiation stage that does not yet provide winter snowshoe hare habitat, no additional habitat may be regenerated by vegetation management projects. Fuel treatment projects within the wildland urban interface (WUI) are exempt from this standard, subject to some limitations.

56. Standard VEG-S2 in the Helena Forest Plan states that timber management projects shall not regenerate more than 15 percent of lynx habitat on National Forest lands in an LAU in a ten-year period. Fuel treatment projects in the WUI are exempt from this standard, subject to some limitations.

57. Standard VEG-S5 in the Helena Forest Plan states that precommercial thinning projects that reduce hare habitat can only occur within 200 feet of administrative sites, for research studies, if new information reveals it is not likely to adversely affect lynx or would have long-term benefits to lynx, for conifer removal, for daylight thinning, or to restore whitebark pine. Fuel treatment projects in the WUI are exempt from this standard, subject to some limitations.

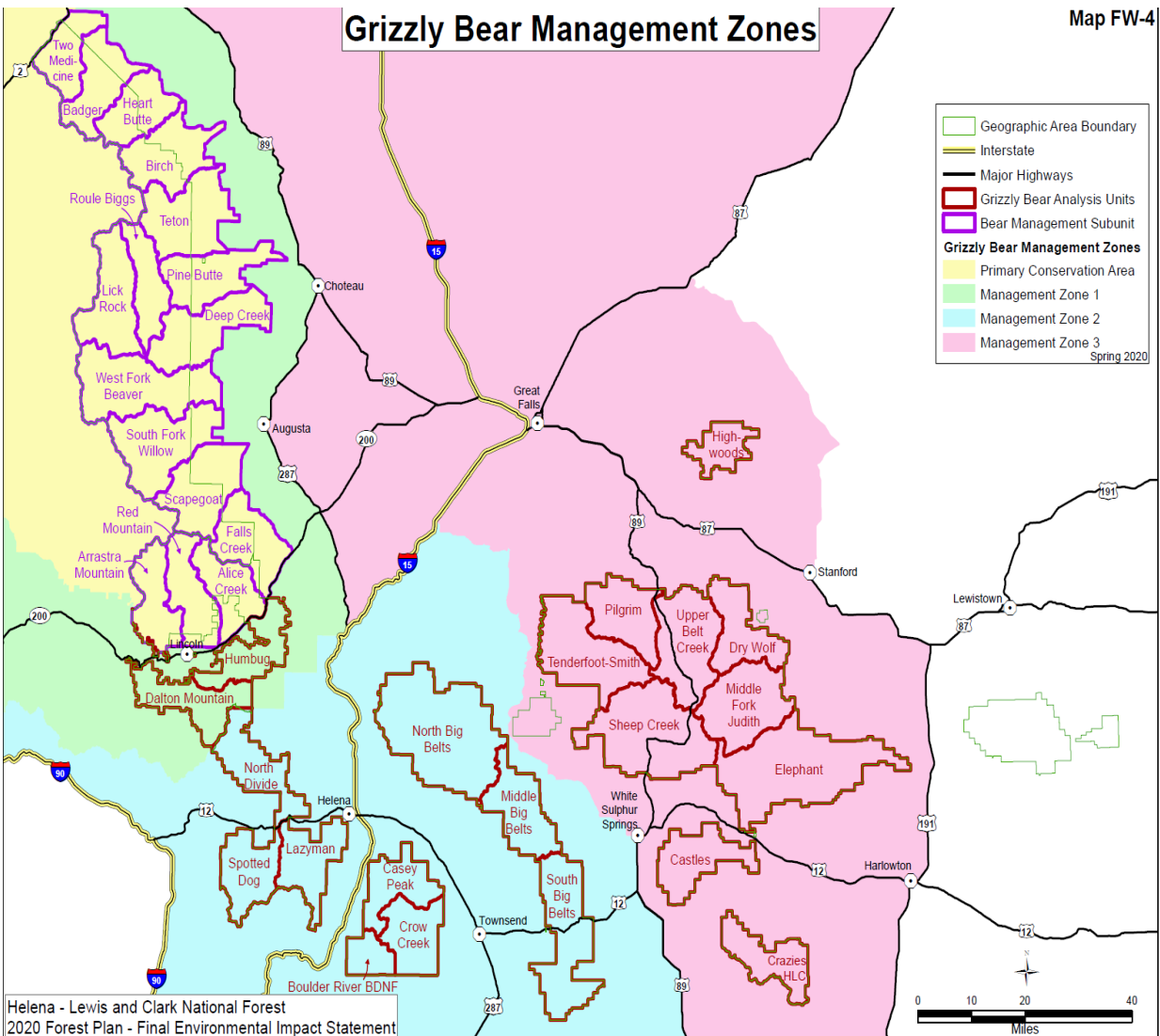
58. Standard VEG-S6 in the Helena Forest Plan states that vegetation management projects that reduce hare habitat in multi-story mature or late successional forest may only occur within 200 feet of administrative sites, for research studies, or incidental removal for salvage harvests. Fuel treatment projects in the WUI are exempt from this standard, subject to some limitations.

The Helena Forest Plan's grizzly standards

59. In addition to the ten forest-wide standards and 2007 lynx direction, the Helena Forest Plan included specific grizzly bear standards for managing habitat in certain areas. In 2018, the Forest Service amended the Helena Forest Plan and replaced the then-existing grizzly bear standards with new, specific direction premised on

guidance included in the Northern Continental Divide Ecosystem (NCDE) Conservation Strategy.

60. The 2018 grizzly bear standards to the Helena Forest Plan identify various “management zones” for grizzly bears and include specific standards, including motorized route-density standards, designed to conserve grizzly bears in some of those zones.



61. The primary conservation area (“recovery zone”) depicted in yellow is where most grizzlies reside, where continual occupancy is documented, and an area considered a “source” population in the region. Inside the recovery zone, specific grizzly bear subunits are delineated and used to evaluate and analyze effects to grizzly bears (areas outlined in purple). Three grizzly bear subunits in the Helena National Forest are located inside the recovery zone: Arrastra Mountain, Red Mountain, and Alice Creek.

62. Management zone 1 (which includes the southern half of the Upper Blackfoot geographic area – depicted in green) is where continual occupancy of grizzly bears is expected, but at lower densities than in the recovery zone. In management zone 1 (and other areas outside the recovery zone), the forest has created and delineated “grizzly bear analysis units” or “GBAUs” to evaluate and analyze effects (red outline). The two GBAUs in the Helena National Forest that are in management zone 1 are Dalton Mountain and Humbug.

63. Management zone 2 (which includes the Divide, Big Belts and Elkhorns geographic areas in the Helena National Forest) is where occupancy of grizzlies may occur but at lower densities than zone 1 and

where management is focused on maintaining opportunities for grizzly bear movement between recovery areas (depicted in light blue).

Management zone 2 is important for grizzly bear connectivity between recovery zones in the Northern Rockies.

64. Management zone 3 (including the Highwoods, Little Belts, Castles, and Crazies geographic areas in the Helena National Forest) is where grizzly bear occupancy is not known to occur nor expected in the future due to lack of sufficient habitat (depicted in pink).

65. The 2018 grizzly bear standards in the Helena Forest Plan include specific standards for the management of grizzly bear habitat in the recovery zone (yellow area) and management zone 1 (green area). There are no grizzly bear standards in management zone 2.

66. Standard NCDE-STD-AR-2 in the Helena Forest Plan states that the levels of “open motorized route density” or “OMRD” and “total motorized route densities” or “TMRD” are not allowed to increase above the December 31, 2011 baseline levels in the recovery zone and levels of “secure core” must also be maintained at such levels in the recovery zone, except under certain conditions (i.e., temporary routes and routes

used for administrative use are not counted). Compliance with this “2011 baseline” standard is measured at the grizzly bear subunit level.

67. OMRD is the percent of a grizzly bear subunit with open motorized route densities exceeding 1 mile per square mile. TMRD is the percent of a grizzly bear subunit with total motorized route densities exceeding 2 miles per square mile. “Secure core” areas in the recovery zone are areas that are 500 meters or more from a route open to public wheeled motorized use during the grizzly bear non-denning season, a gated route, or a route closed only with a sign, that is greater than or equal to 2,500 acres in size. Roads restricted with physical barriers (not gates), decommissioned roads, impassable roads, temporary roads, over-the-snow motorized routes/areas, and non-motorized trails are allowed within secure core, unless otherwise restricted (e.g., by other national forest plan direction). Outside the recovery zone, the goal is to manage for “secure habitat,” which are areas more than 500 meters from any motorized route and greater than 2,500 acres in size.

68. The 2011 baseline levels of OMRD, TMRD, and secure core for the three grizzly bear subunits in the recovery zone in the Helena National Forest are as follows:

Subunit	OMRD (% > 1.0 mile/sq. mile)	TMRD (% >2.0 mile/sq. mile)	Core
Arrastra Mtn.	15	19	75
Alice Creek	9	17	71
Red Mtn.	22	20	62

69. The Forest Service reported that these 2011 baseline values/numbers for OMRD, TMRD, and secure core were adjusted in 2017 to account for various changes in data (purportedly without any changes to the on-the-ground situation). The “adjusted” 2011 baseline for these three subunits in the recovery zone is as follows:

Subunit	OMRD (% > 1.0 mile/sq. mile)	TMRD (% >2.0 mile/sq. mile)	Core
Arrastra Mtn.	16	19	74
Alice Creek	10	18	71
Red Mtn.	24	21	61

70. The scientific papers on threats to grizzly bears and grizzly bear habitat reveal that adverse effects to grizzly bears in the recovery zone are likely to occur when: OMRD exceeds 1-mile per square-mile in more than 19% of the subunit; TMRD exceeds 2-miles per square-mile

in more than 19% of the subunit; and secure core is less than 68% of the subunit during the non-denning period. These scientific benchmarks designed to avoid adverse effects to grizzly bears are commonly referred to as the “19-19-68” rule.

71. In management zone 1 (outside the recovery zone and where no grizzly bear subunits are established – just GBAUs in the green section on the map above) standard NCDE-HNF-Zone 1-01 in the Helena Forest Plan directs the Forest Service to ensure that linear open motorized route densities are maintained at or below 2011 baseline levels. Compliance with this standard is measured by the entire management zone 1 area in the Helena National Forest, except under certain conditions (i.e., temporary roads are not counted, for example). The Helena Forest Plan calculates the linear open motorized route density by dividing the total miles of open motorized routes on Helena National Forest lands in management zone 1 by the total square miles of Helena National Forest lands in that same area.

72. There are roughly 233-square miles of National Forest lands in management zone 1. The 2015 linear motorized route densities in management zone 1 reported by the Forest Service are 1.3-miles per

square-mile. The Forest Service does not have data for the 2011 linear motorized route densities in management zone 1.

The 2021 Revised Helena Forest Plan

73. In October, 2021 the Forest Service signed a final Record of Decision (decision) approving a new, revised forest plan for the Helena-Lewis and Clark National Forest (revised forest plan). The Forest Service prepared an environmental impact statement (EIS) for the revised forest plan.

74. When revising the Helena Forest Plan, the Forest Service chose to remove all ten wildlife standards.

75. The revised forest plan does not include the ten wildlife standards that were included in the previous Helena Forest Plan.

76. The revised forest plan does not include wildlife standard 1 from the Helena Forest Plan which directed the Forest Service to maintain adequate thermal and hiding cover on important summer and winter ranges.

77. The revised forest plan does not include wildlife standard 2 from the Helena Forest Plan which directed the Forest Service to do a hiding cover analysis for all project work.

78. The revised forest plan does not include wildlife standard 3 from the Helena Forest Plan which directed the Forest Service to maintain at least 35 percent hiding cover in elk summer range and at least 25 percent thermal cover in elk winter range. There is no standard in the revised forest plan directing the Forest Service to ensure a certain percentage of hiding or thermal cover is maintained. There is no standard in the revised forest plan that includes a hiding cover component for big game species. There is no requirement to maintain hiding or thermal cover in the revised forest plan.

79. The revised forest plan does not include wildlife standard 4a from the Helena Forest Plan which directed the Forest Service to maintain and improve big game security by protecting certain percentages of hiding cover and limiting open road densities in elk herd units. There is no standard in the revised forest plan to protect big game security. There is no standard in the revised forest plan to limit open road densities.

80. The revised forest plan does not include wildlife standard 4b in the Helena Forest Plan which directed the Forest Service to close all elk

calving grounds and nursery areas to motorized vehicles during the peak use by elk.

81. The revised forest plan does not include wildlife standard 4c in the Helena Forest Plan which directed the Forest Service to close all winter range areas to motorized vehicles between December 1 and May 15 (subject to some exceptions).

82. The revised forest plan does not include wildlife standard 5 from the Helena Forest Plan which directed the Forest Service to ensure minimum size areas for hiding cover and thermal cover.

83. The revised forest plan does not include wildlife standard 6 from the Helena Forest Plan which directed the Forest Service to follow the Montana Cooperative Elk-Logging Study Recommendations for all road construction and timber sale projects.

84. The revised forest plan does not include wildlife standard 7 from the Helena Forest Plan which directed the Forest Service to inventory and map all important big game summer/fall and winter ranges.

85. The revised forest plan does not include wildlife standard 8 from the Helena Forest Plan which directed the Forest Service to

analyze how any proposed sagebrush reduction program may impact big game winter range.

86. The revised forest plan does not include wildlife standard 9 from the Helena Forest Plan which directed the Forest Service to protect occupied bighorn sheep and mountain goat range during resource activities.

87. The revised forest plan does not include wildlife standard 10 from the Helena Forest Plan which directed the Forest Service to manage moose habitat to provide adequate browse species diversity and quantity to support current moose populations.

88. The revised forest plan includes the 2007 lynx direction from the Helena Forest Plan.

89. The Forest Service determined that its management of lynx and lynx habitat would remain unchanged since it chose to retain the 2007 lynx direction in the revised forest plan.

90. Lynx and lynx critical habitat benefited from the ten wildlife standards that were removed from the revised forest plan.

91. The ten wildlife standards were more protective of lynx habitat than the lynx direction.

92. The ten wildlife standards that were removed from the revised forest plan provided additional protections to lynx beyond the protections provided by the lynx direction. The lynx direction only applies to LAUs in occupied lynx habitat as defined by the lynx direction. The lynx direction does not apply to most projects and activities, including fuel treatments, that occur within a WUI area. The term “fuel treatment” is defined broadly to include any type of vegetation management action that reduces the threat of ignition, fire intensity, or rate of spread, or is used to restore fire-adapted ecosystems. The WUI is broadly defined and continues to change based on how local communities (typically counties) define the area in their respective wildfire protection plans. In the Helena National Forest, the WUI is broadly defined to include and encompass large portions of the National Forest, including large portions of the Divide geographic area important for lynx, lynx habitat, and lynx movement. Unlike the lynx direction, the ten wildlife standards apply forest-wide, including within the WUI.

93. The ten wildlife standards that were removed from the revised forest plan protected hiding and thermal cover and restricted open road densities in areas occupied by lynx.

94. The ten wildlife standards that were removed from the revised forest plan protected hiding and thermal cover and restricted open road densities in areas where the lynx direction does not apply or areas where projects were exempt from having to comply with the lynx direction.

95. The revised forest plan includes the 2018 grizzly bear standards from the Helena Forest Plan.

96. The Forest Service determined that its management of grizzly bears and grizzly bear habitat would remain unchanged since it chose to retain the 2018 grizzly bear standards in the revised forest plan.

97. The 2018 grizzly standards do not apply outside the recovery zone or management zone 1. The 2018 grizzly bear standards do not apply in management zone 2. The 2018 grizzly bear standards do not apply in many of the geographic areas in the Helena National Forest important for grizzly bear movement and connectivity, including the Upper Blackfoot and Divide geographic areas.

98. The ten wildlife standards that were removed from the revised forest plan provided additional protections to grizzly bears and grizzly bear habitat beyond what is provided by the 2018 grizzly bear standards.

99. The ten wildlife standards removed from the revised forest plan benefited grizzly bears and grizzly bear habitat.

100. The ten wildlife standards that were removed from the revised forest plan applied to the recovery zone, management zone 1, management zone 2, and management zone 3.

101. The ten wildlife standards that were removed from the revised forest plan protected hiding cover, thermal cover, and limited open road densities in management zone 2.

102. The ten wildlife standards that were removed from the revised forest plan were more protective of grizzly bears and grizzly bear habitat than the 2018 grizzly bear standards.

103. The ten wildlife standards that were removed from the revised forest plan helped protect and maintain secure habitat for grizzly bears, including within management zone 2.

104. The Forest Service and FWS previously explained that the ten wildlife standards that were removed from the revised forest plan created “secure habitat” that may be used by, and benefit, grizzly bears.

FIRST CAUSE OF ACTION
(Violation of the ESA – failure to address and evaluate effects to grizzly bears in the lower-48 States or grizzly bear recovery)

105. Plaintiffs incorporate all preceding paragraphs.

106. Section 7 of the ESA requires the Forest Service to consult with FWS on how the revised forest plan may affect listed species, including grizzly bears, which are listed as a single, threatened species in the lower-48 States.

107. Under section 7 of the ESA, if the proposed action may adversely affect a listed species, then FWS must prepare a biological opinion to determine whether the action is likely to jeopardize the continued existence of the listed species. If FWS issues a “no jeopardy” finding it must specify reasonable and prudent measures, and terms and conditions, to minimize the impact of any incidental take resulting from the action. FWS must also specify the amount or extent, and effects, of any incidental take that is anticipated by the proposed action.

108. The Forest Service prepared a biological assessment for the revised forest plan. The biological assessment determined that the revised forest plan may affect and is likely to adversely affect grizzly bears.

109. The Forest Service's biological assessment, including the analysis of the environmental baseline, effects of the action, and cumulative effects never addressed and evaluated how the revised forest plan and removal of the ten wildlife standards may affect grizzly bears in the lower-48 States. The biological assessment never addressed and evaluated how removing the ten wildlife standards may affect grizzly bear movement and connectivity between recovery zones and dispersal outside the NCDE, which is needed for long-term recovery.

110. FWS prepared a biological opinion for the revised forest plan. The biological opinion determined the revised forest plan would not jeopardize the continued existence of grizzly bears.

111. FWS's biological opinion, including the analysis of the environmental baseline, effects of the action, and cumulative effects never addressed or evaluated effects to the listed entity – grizzly bears in the lower-48 States. The biological opinion never addressed and

evaluated how the revised forest plan and the removal of all ten wildlife standards may affect grizzly bear movement and connectivity between recovery zones and dispersal outside the NCDE, which is needed for long-term recovery. The biological opinion's "no jeopardy" finding never addressed and evaluated how the revised forest plan and removal of all ten wildlife standards would affect grizzly bear recovery in the lower 48 States or connectivity and movement between recovery zones.

112. The Forest Service's and FWS's failure to consider and evaluate how the revised forest plan and removal of all ten wildlife standards may affect grizzly bears in the lower 48 states or grizzly bear connectivity or movement and grizzly bear recovery in the lower 48 States is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with ESA. 5 U.S.C. § 706 (2)(A).

**SECOND CAUSE OF ACTION
(Violation of the ESA – Effects of Action)**

113. Plaintiffs incorporate all preceding paragraphs.

114. In consulting on the revised forest plan under section 7 of the ESA, the Forest Service and FWS failed to evaluate and analyze how its decision to remove all ten wildlife standards for big game may affect grizzly bears, lynx, and lynx critical habitat.

115. The Forest Service's biological assessment does not evaluate and analyze in the environmental baseline, effects of the action, and cumulative effects, how the removal of all ten wildlife standards may affect grizzly bears, lynx, or lynx critical habitat.

116. FWS's biological opinion does not evaluate and analyze in the environmental baseline, effects of the action, and cumulative effects how removal of all ten wildlife standards may affect grizzly bears, lynx, or lynx critical habitat. FWS's "no jeopardy" finding in the biological opinion does not evaluate and analyze how the removal of ten wildlife standards may affect grizzly bears or lynx. FWS's "no adverse modification" finding in the biological opinion does not evaluate and analyze how the removal of ten wildlife standards may affect lynx critical habitat.

117. The removal of the ten wildlife standards in the revised forest plan is likely to adversely affect grizzly bears, lynx, lynx critical habitat, and connectivity on the forest and is an important and relevant factor that must be (but was not) considered during the consultation process.

118. The Forest Service's and FWS's failure to consider and evaluate how the removal of all ten wildlife standards may affect grizzly

bears, lynx, and lynx critical habitat is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with ESA. 5 U.S.C. § 706

(2)(A).

**THIRD CAUSE OF ACTION
(Violation of the ESA – 2011 baseline)**

119. Plaintiffs incorporate all preceding paragraphs.

120. In consulting on the revised forest plan under section 7 of the ESA, the Forest Service and FWS relied on compliance with the “2011 baseline” from the 2018 grizzly bear standards.

121. The Forest Service relied on the 2011 baseline when evaluating the environmental baseline, effects of the action, and cumulative effects in the biological assessment.

122. FWS relied on the 2011 baseline when defining the proposed action and evaluating the environmental baseline, effects of the action, and cumulative effects in the biological opinion. FWS’s “no jeopardy” finding relied on compliance with the 2011 baseline.

123. The 2011 baseline was never subject to NEPA review. The Forest Service and FWS never consulted on the 2011 baseline. The 2011 baseline was developed for the NCDE Conservation Strategy.

124. The 2011 baseline only applies to the recovery zone. The 2011 baseline does not apply to management zone 1 or management zone 2. The Forest Service does not have data on the 2011 baseline conditions in management zone 2.

125. The 2011 baseline is outdated and not premised on the best available science. The 2011 baseline fails to account for the most serious threats to grizzly bears, including the threat from human-caused mortality. The 2011 baseline does not address the loss of hiding cover. The 2011 baseline does not address private land development. The 2011 baseline does not address cumulative effects. The 2011 baseline does not address temporary increases in road densities. The 2011 baseline allows up to six years of exceedances of road densities and secure core.

126. The 2011 baseline does not address the administrative use of roads, which is broadly defined and includes motorized uses for projects. Significant changes to grizzly bear habitat, distribution, and food sources have occurred in the Helena National Forest since 2011. The 2011 baseline does not address changes to grizzly bear food sources. Threats to grizzly bears in the Helena National Forest have changed since 2011.

127. The Forest Service and FWS never explained why the 2011 baseline is and remains the proper metric by which to evaluate and measure impacts to grizzly bears and grizzly bear recovery in the action area, including in the recovery zone or management zone 1. The 2011 baseline is not a proxy or surrogate for analyzing the effects of an action (the revised forest plan and removal of ten wildlife standards) on grizzly bears or grizzly bear recovery.

128. The Forest Service's and FWS's reliance on the 2011 baseline when consulting on the revised forest plan is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with ESA. 5 U.S.C. § 706 (2)(A).

**FOURTH CAUSE OF ACTION
(Violation of NEPA – Effects Analysis)**

129. Plaintiffs incorporate all preceding paragraphs.

130. NEPA requires the Forest Service to adequately disclose, consider, and analyze the direct, indirect, and cumulative effects of its proposed actions.

131. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and occur later in time or farther removed in distance, but are reasonably foreseeable.

Cumulative effects are the impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

132. The Forest Service's EIS for the revised forest plan fails to adequately analyze the direct and indirect effects of removing all ten wildlife standards from the Helena Forest Plan, including standards designed to protect hiding cover and limit open road densities on big game species and habitat (including security), grizzly bears, grizzly bear habitat, grizzly bear movement and recovery, lynx, lynx habitat, and lynx critical habitat.

133. The Forest Service's EIS for the revised forest plan fails to adequately analyze the cumulative effects of removing all ten wildlife standards from the Helena Forest Plan, including standards designed to protect hiding cover and limit open road densities on big game species and habitat (including security), grizzly bears, grizzly bear habitat, grizzly bear movement and recovery, lynx, lynx habitat, and lynx critical habitat. Other activities occurring on the Helena National Forest, including livestock grazing, recreational uses, logging, and

climate change are having and continue to have a cumulative effect on big game species and habitat, grizzly bears, grizzly bear movement and recovery, lynx, lynx habitat, and lynx critical habitat.

134. The Forest Service's failure to analyze the direct, indirect, and cumulative effects of removing all ten wildlife standards is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the NEPA. 5 U.S.C. § 706 (2)(A).

**FIFTH CAUSE OF ACTION
(Violation of NEPA – Alternatives)**

135. Plaintiffs incorporate all preceding paragraphs.

136. NEPA requires the Forest Service to adequately consider and analyze a reasonable range of alternatives.

137. Under NEPA, the alternatives analysis is “the heart” of the environmental analysis because it presents impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options. The alternatives analysis guarantees that agency decisionmakers have before them and take into proper account all possible approaches to a particular action (including total abandonment of the action) which would alter the environmental impact and the cost-benefit balance.

138. The Forest Service's EIS for the revised forest plan fails to consider and analyze a reasonable range of alternatives to removing all ten wildlife standards from the Helena Forest Plan. The Forest Service only took an all (remove all ten wildlife standards) or nothing (keep all ten wildlife standards) approach.

139. The Forest Service's EIS never evaluated keeping some of the ten wildlife standards. The Forest Service never evaluated amending or modifying some or all of the ten wildlife standards (including the numeric requirements for retaining hiding cover and limiting open road densities). The Forest Service never evaluated an alternative that includes specific Management Area direction with standards in areas deemed critical for big game habitat and security. The Forest Service never evaluated and compared a wide range of new and varying standards with varying numeric limits for managing big game habitat and security on the forest based on the best available science.

140. The Forest Service's failure to consider and analyze a reasonable range of alternatives is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the NEPA. 5 U.S.C. § 706 (2)(A).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

- A. Declare the Forest Service and FWS have violated and continue to violate the law as alleged above;
- B. Vacate the Helena National Forest portion of the revised forest plan pending compliance with the law;
- C. Vacate FWS's biological opinion for the revised forest plan;
- D. Remand this matter back to the Forest Service and FWS with instructions to comply with NEPA and the ESA, as outlined herein and directed by this Court;
- E. Award Plaintiffs their reasonable attorneys' fees, costs and expenses of litigation pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g) and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412;
- F. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request.
- G. Issue any other relief this Court deems necessary, just, or proper.

Respectfully submitted this 19th day of July, 2022.

/s/ Kelly E. Nokes
Kelly E. Nokes

/s/ Matthew K. Bishop
Matthew K. Bishop

Counsel for Plaintiffs