

David A. Bahr (D.D.C. Bar # OR0001)
1035 ½ Monroe St
Eugene, OR 97402
(541) 566-6439
davebahr@mindspring.com

Kristine Akland (Montana Bar # 13787) (*pro hac vice* application pending)
317 E Spruce St, P.O. Box 7274
Missoula, MT 59807
(406) 544-9863
aklandlawfirm@gmail.com

John Persell (Utah Bar # 17298) (*pro hac vice* application pending)
309 N Holland St
Portland, OR 97217
(503) 896-6472
jpersell@westernwatersheds.org

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WESTERN WATERSHEDS PROJECT
126 S Main Street, Suite B
P.O. Box 1770
Hailey, ID 83333,

ALLIANCE FOR THE WILD ROCKIES
P.O. Box 505
Helena, MT 59624,

and YELLOWSTONE TO Uintas
CONNECTION
P.O. Box 280
Mendon, UT 84325,

Plaintiffs,

v.

Civil Case No. 1:20-cv-860

DAVID BERNHARDT,
in his official capacity as
Secretary, U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240,

UNITED STATES FISH AND WILDLIFE
SERVICE,
1849 C Street NW
Washington, DC 20240,

and UNITED STATES FOREST SERVICE,
1400 Independence Avenue SW
Washington, DC 20250,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Greater Yellowstone Ecosystem (GYE) is one of the only places in the Lower 48 United States that still supports a full complement of native wildlife, including moose, elk, pronghorn, wolves, and grizzly bears. The region's forests, meadows, high plains, and mountainous terrain comprise one of Earth's largest temperate-zone ecosystems still existing in a mostly-intact state.

2. The Upper Green River area, on the southern end of the GYE, is often compared to Yellowstone National Park's world-renowned Lamar Valley in terms of biodiversity richness. The Upper Green River area lies at an important crossroads and connection point for many species, including grizzly bears, as they forage for food, migrate, and disperse into surrounding areas. The area also contains at least 27 stream miles of native Colorado River cutthroat trout habitat, leks for greater sage-grouse, and habitat for the Kendall Warm Springs dace, a small endemic fish.

3. These ancestral lands of the Kohogue (Green River Shoshone) people are vital to the recovery and survival of the grizzly bear and the Kendall Warm Springs dace, both species protected under the Endangered Species Act (ESA). The GYE provides one of just five remaining isolated populations of grizzly bears in the Lower 48, while the Kendall Warm Springs are the only known habitat for the imperiled dace.

4. Unfortunately, recent actions by federal agencies increase threats to these species and to the integrity of the GYE. On October 11, 2019, the United States Forest Service (USFS) authorized domestic livestock grazing permits across 170,643 acres of suitable grizzly bear habitat within the GYE, and authorized cattle-herding through the Kendall Warm Springs enclosure. Through the Upper Green River Area Rangeland Project (UGRA Project) on the Bridger-Teton National Forest, USFS permits 8,772 cow/calf pairs and 47 horses to graze six allotments in the area between June 14 and October 15 for the next ten years. UGRA Project Record of Decision at 5.

5. Because USFS recognized domestic livestock grazing on these lands would adversely affect grizzly bears, the agency consulted with the United States Fish and Wildlife Service (FWS) regarding the UGRA Project's impacts. On April 29, 2019, FWS produced a Biological Opinion for the Effects to the Grizzly Bear (*Ursus arctos horribilis*) from the Upper Green River Area Rangeland Project (2019 Biological Opinion), with the Reference Number 06E13000-2019-F-0012.

6. In its 2019 Biological Opinion, FWS concluded the UGRA Project would not jeopardize the continued existence of the grizzly bear in the GYE. Further, FWS included an Incidental Take Statement with the Biological Opinion exempting from civil and criminal

liability under the ESA the killing of up to 72 grizzly bears over the next ten years in association with the UGRA Project. 2019 Biological Opinion at 46 and 48.

7. USFS denied that the UGRA Project would adversely affect the Kendall Warm Springs dace. FWS concurred and no formal consultation for that species occurred.

8. This lawsuit challenges FWS's unlawful 2019 Biological Opinion and Incidental Take Statement regarding the UGRA Project's effects on grizzly bears for violation of section 7 of the ESA. Specifically, FWS violated section 7 of the ESA, 16 U.S.C. § 1536, by failing to consider the best scientific and commercial data available regarding grizzly bear population dynamics and recovery in the GYE, ignoring important aspects of the problem, arbitrarily relying on ineffective conservation measures that lack certainty and specificity, and failing to rationally justify its exemption from ESA liability the anticipated killing of 72 grizzly bears.

9. USFS violated section 7 of the ESA by unlawfully relying on the FWS's flawed 2019 Biological Opinion and Incidental Take Statement to satisfy its own duty to ensure its actions do not threaten the continued existence of grizzly bears in the GYE.

10. USFS also violated section 9 of the ESA, 16 U.S.C. § 1538, which prohibits "take" of ESA-protected species. "Take" is defined by the ESA to include "harm." 16 U.S.C. § 1532(19). USFS admits in its Final Environmental Impact Statement for the UGRA Project (UGRA FEIS) that the herding of cattle through the Kendall Warm Springs enclosure could "cause dace to temporarily switch habitat, elevate turbidity, and alter submergent vegetative cover," all of which constitute harm and an illegal take of the dace. UGRA FEIS at 289.

11. USFS and FWS both violated section 7 of the ESA, 16 U.S.C. § 1538, by failing to engage in formal consultation regarding the effects of the UGRA Project on the Kendall Warm Springs dace.

12. Plaintiffs Western Watersheds Project, Alliance for the Wild Rockies, and Yellowstone to Uintas Connection ask this Court to vacate and remand the challenged agency actions in the interest of protecting the recovery trajectory of the GYE's grizzly bears and the survival of the Kendall Warm Springs dace as required by law and as intended by Congress.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question) and 16 U.S.C. § 1540(c), (g) (ESA), and may issue a declaratory judgment and relief pursuant to 28 U.S.C. § 2201-02 and 16 U.S.C. § 1540 (ESA). Plaintiffs bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, and the ESA citizen suit provision, 16 U.S.C. § 1540(g), both of which waive Defendants' sovereign immunity.

14. Plaintiffs provided Defendants with notice of Plaintiffs' intent to sue on January 24, 2020, as required by 16 U.S.C. § 1540(g)(2).

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because federal Defendants reside in this District.

PARTIES

16. Plaintiff WESTERN WATERSHEDS PROJECT is a non-profit conservation organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, public policy initiatives, and legal advocacy. Headquartered in Hailey, Idaho, Western Watersheds Projects has over 12,000 members and supporters.

17. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a non-profit organization dedicated to the protection and preservation of native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its

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