

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

DEFENDERS OF WILDLIFE
1130 17th Street NW
Washington, DC 20036

SOUTHERN UTAH WILDERNESS
ALLIANCE
425 East 100 South
Salt Lake City, UT 84111

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR
1849 C St., NW
Washington, DC 20240

BUREAU OF LAND MANAGEMENT
1849 C St., NW
Washington, DC 20240

Defendants.

No. 22-cv-1891

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Defenders of Wildlife and Southern Utah Wilderness Alliance (collectively, Conservation Groups) bring this action for declaratory and injunctive relief against Defendants United States Department of the Interior (Interior) and Bureau of Land Management (BLM), challenging their adoption of a December 2020 so-called “Pinyon-Juniper Categorical Exclusion Rule,” which purports to authorize extensive destruction of native pinyon-juniper habitats across the American West without requiring prior analysis and public disclosure of possible environmental impacts or alternatives under the National Environmental Policy Act (NEPA). *See* National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11), 85 Fed. Reg. 79504 (Dec. 10, 2020) (PJ CX Rule).

2. The PJ CX Rule amends the Department of Interior’s Manual on NEPA implementing procedures by adopting a new “categorical exclusion” that allows BLM to approve projects destroying (by cutting, masticating, and mulching) up to 10,000 acres each of pinyon pine and juniper forests across habitat for the greater sage-grouse and mule deer without first preparing any Environmental Impact Statement or even any Environmental Assessment under NEPA. *See* PJ CX Rule, 85 Fed. Reg. at 79517. The PJ CX Rule contains no limit on the number of such pinyon-juniper treatment projects that BLM may approve in sage-grouse and/or mule deer habitat across the American West.

3. In adopting the PJ CX Rule, Defendants claimed that this category of pinyon-juniper removal projects would have no significant effect on the public lands and wildlife. That decision is arbitrary, capricious, and contrary to law, including because it is riddled with errors and oversights, and is inconsistent with the best available scientific information.

4. For example, in adopting the PJ CX Rule, Defendants refused to consider the cumulative effects of pinyon-juniper removal projects, citing 2020 NEPA regulation changes adopted by the Council on Environmental Quality (CEQ) to assert that “NEPA specifically does not require evaluation of cumulative effects.”¹ Yet the NEPA revisions did not eliminate BLM’s

¹ On July 16, 2020, CEQ issued a Final Rule amending its NEPA regulations. *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020) (“2020 NEPA Rule”). The 2020 NEPA Rule became effective September 15, 2020, and Defendants applied the 2020 NEPA Rule in adopting the PJ CX Rule here. This Complaint thus cites the 2020 NEPA Rule, unless noted otherwise. But the validity of the 2020 NEPA Rule is currently being challenged before several courts, and Secretarial Order (“SO”) No. 3399 bars implementation of the 2020 NEPA Rule “in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect on September 14, 2020.” *See* Secretarial Order 3399 (April 16, 2021), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_0.pdf. (last visited June 30, 2022).

obligation to consider reasonably foreseeable cumulative effects, as the CEQ expressly noted. *See, e.g.*, 2020 NEPA Rule, 85 Fed. Reg. at 43355 (“the final rule does not ignore cumulative effects”).

5. Defendants also arbitrarily relied on unverified observations and a selective review of prior BLM vegetation treatment projects (including prior pinyon-juniper treatments) to support their assertion that approving pinyon-juniper removal projects under the PJ CX Rule will have no significant environmental impacts, instead of obtaining credible and verified monitoring data. CEQ’s own rules and guidance requires that project-specific “Findings of No Significant Impacts” (FONSI) cannot be “relied on as a basis for establishing a categorical exclusion unless the absence of significant environmental effects has been verified *through credible monitoring of the implemented activity*.” *See* Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 Fed. Reg. 75628, 75630 (Dec. 6, 2010) (emphasis added). Defendants ignored this requirement and refused to collect any credible monitoring information to inform their conclusions. Defendants similarly erred by recasting the available scientific information and public comments to support its new policy, as discussed in detail below.

6. Defendants’ unlawful adoption of the PJ CX Rule has harmed the Conservation Groups and the public, including by depriving them of NEPA’s procedural safeguards, and threatening irreparable environmental and other harms. Accordingly, Conservation Groups respectfully pray that the Court hold unlawful, reverse, and set aside the PJ CX Rule, and enter such preliminary or permanent injunctive relief as may be requested hereafter to forestall irreparable harm and protect the public interest pending adjudication of their claims.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), because Plaintiffs allege that Defendants violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and/or the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., in adopting the PJ CX Rule. This Court also can provide relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 5 U.S.C. §§ 553, 702, and 706 (Administrative Procedure Act).

8. The challenged PJ CX Rule is a final agency action subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, and 706.

9. Venue in the District of Columbia is appropriate under 28 U.S.C. § 1391(e)(1) because Defendants U.S. Department of Interior and BLM are headquartered in Washington, D.C.; the primary author of the PJ CX Rule, Stephen Tryon, the Director of the Department of Interior's Office of Environmental Policy and Compliance, is located in Washington, D.C.; Plaintiff Defenders of Wildlife is headquartered in Washington, D.C.; Plaintiff Southern Utah Wilderness Alliance maintains an office in Washington, D.C.; and a substantial part of the events and omissions at issue occurred in this District, including the administrative process associated with promulgation of the PJ CX Rule and its approval by Federal Defendants in this District.

PARTIES

10. Plaintiff DEFENDERS OF WILDLIFE (Defenders) is a national non-profit conservation organization with 2.1 million members and supporters. Defenders is headquartered in Washington, D.C., with offices throughout the country. Defenders focuses in particular on conserving and recovering wildlife species that are listed under the Endangered Species Act or otherwise recognized as being of conservation concern, including the greater sage-grouse and

pinyon jay, a bird that lives in the pinyon-juniper forest and was petitioned for listing under the Endangered Species Act by Defenders in April 2022. Defenders has a long and consistent track record of working on the conservation of at-risk species in the interior West including sage-grouse and Defenders advocates for these imperiled species in multiple ways, including through scientific research, engaging in land management planning processes, and advocating to government agencies for heightened conservation protections.

11. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) is a non-profit organization based in Salt Lake City, Utah, and SUWA also has an office in Washington, D.C. SUWA has more than 14,000 members from all fifty states, the District of Columbia, and several foreign countries. SUWA's mission is the preservation of the outstanding wilderness and other sensitive public lands and wildlife habitat at the heart of the Colorado Plateau. SUWA advocates for proper management of these lands and wildlife habitat, and the associated natural and cultural resources, in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique character through research and public education; supports both administrative and legislative initiatives to permanently protect Utah's wild places within the National Park and National Wilderness Preservation Systems or by other protective designations where appropriate; and builds support for such initiatives on both the local and national level. Specifically, SUWA engages frequently on site-specific federal agency management actions that have the potential to harm or enhance sagebrush and pinyon-juniper habitat through vegetation removal, and places specific emphasis on protecting species like the pinyon jay in its comments and recommendations during the NEPA process for these projects.

12. Conservation Groups rely on the information and analysis made available by BLM (and other federal agencies) under NEPA to understand the likely harms of proposed

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