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Attorneys for Plaintiffs

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

Paul and Cathy Donohoe; Torian
Donohoe; Kyle and Anna Donohoe;
David and Kayce Arthun, and Castle
Creek Ranch L.P.,

Plaintiffs,

vs.

U.S. Forest Service, Forest Supervisor
Mary Erickson, District Ranger Ken
Coffin,

Defendants.

Case No.: _____

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

I. INTRODUCTION

1. Plaintiffs seek judicial review under the citizen suit provisions of the Administrative Procedure Act (APA) and the Endangered Species Act (ESA) of the United States Forest Service (Forest Service) analysis and authorization of a

trail construction project in the Initial Creek/West Fork of the Stillwater River Area (Project Area) of the Custer Gallatin National Forest, Beartooth Ranger District. The full scope of the Forest Service's proposed trail construction project was to construct three plus miles of trail as well as an associated foot/stock bridge over the Westfork of the Stillwater River between the Castle Creek Trailhead and Westfork of the Stillwater River Trailhead (Project).

2. The Forest Service purported to comply with the National Environmental Policy Act (NEPA) by using categorical exclusions (CatEx) to build the Project, which it did in two phases. Phase 1, consisting of reconstructing the trail between the Initial Creek Campground and West Fork of the Stillwater River Trail Head (West Fork Trailhead), was completed in the fall of 2019. Phase 2 of the project has not yet started. The Project, if completed, will significantly impact and disrupt the natural balance and status quo of the area. The Forest Service has slated Phase 2 for implementation as soon as possible and has advised Plaintiffs that it may begin construction immediately. Besides the harm already caused, completing the Project will irreparably damage Plaintiffs' interest.

3. The Forest Service impermissibly segmented the Project to serve a single constituency, backcountry horse users, using funding and implementation under multiple Forest Service and Federal Highway Administration (FHWA) categorical exclusions. After responding to Plaintiffs' sixty-day notice of intent to sue letter

by initiating ESA Section 7 consultation with the United States Fish and Wildlife Service (USFWS), the Forest Service misrepresented the scope of the Project and its potential impacts on the threatened grizzly bear, rendering the consultation inaccurate and insufficient.

4. The Forest Service's approval of the Project under two separate Decision Memoranda was arbitrary and capricious, an abuse of discretion, was not in accordance with the law, and is not supported by substantial evidence in the record.

5. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 *et seq.*, the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*

6. Plaintiffs request the Court set aside the remainder of the Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin implementation of the Initial Creek – Castle Creek Connector Trail portion of the Project (Phase 2).

7. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including (if they prevail) attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and the Endangered Species Act, 16 U.S.C. § 1540(g)(4), and such other relief as this court deems just and proper.

II. JURISDICTION

8. This action arises under the laws of the United States and involves the United States as a Defendant; therefore, this Court has subject matter jurisdiction over the Plaintiffs' claims under 28 U.S.C. §§ 1331, 1346.

9. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs use and enjoy the Custer-Gallatin National Forest for hunting, fishing, cattle grazing, camping, enjoying the scenery and wildlife, and engaging in other recreational activities. Plaintiffs' privately owned property is surrounded by the Project Area and within the Custer Gallatin National Forest, is immediately adjacent to the proposed trail construction Project, and is significantly impacted by all Forest Service decisions in the Project Area. Plaintiffs' agricultural business is conducted on lands within the Project Area and on private lands immediately outside the Project Area. Plaintiffs have substantial interest in the federal government's monitoring and management of the grizzly bear in the Greater Yellowstone population, especially in light of significant documented growth in bear population. Plaintiffs intend to continue to use and enjoy the area continuously for generations to come.

10. The Plaintiffs' recreational, aesthetic, economic, spiritual, and educational interest have been adversely affected and irreparably injured by Defendants' implementation of Phase 1 of the Project and will be irreparably damaged if

Defendants implement the remainder of the Project, Phase 2. These are concrete and actual damages and injuries caused by the Defendants failure to observe and comply with mandatory duties under NEPA, the ESA, NFMA, and the APA.

11. This Court has the authority to redress the Plaintiffs' injuries by granting the relief requested under the 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 705-06.

12. Plaintiffs submitted timely comments and objections concerning the Project in the available NEPA scoping process for Phase 2 and no further opportunity for appeal was available under Forest Service regulations. They have, therefore, exhausted their administrative remedies.

13. Plaintiffs provided Defendants with the appropriate notice of intent to file suit for violations of the ESA.

III. VENUE

14. Venue is proper under 28 U.S.C. § 139 (e)(1) and L.R. 3.2(b). A substantial part of the events or omissions giving rise to this action occurred in Sweetgrass or Carbon County and the property that is the subject to the action is in Sweetgrass County, which according to L.R. 1.2(c) is in the Billings Division of the United States District Court for the District of Montana.

IV. PARTIES

15. Plaintiffs Torian Donohoe, Kyle Donohoe, Anna Donohoe, and David and Kacey Arthun are the shareholders of Castle Creek Ranch LP. All shareholders of

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