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

<p>ALLIANCE FOR THE WILD ROCKIES</p> <p>, Plaintiff,</p> <p>vs.</p> <p>LEANNE MARTEN, Regional Forester of Region One of the U.S. Forest Service, UNITED STATES FOREST SERVICE, and , UNITED STATES FISH AND WILDLIFE SERVICE,</p> <p>Defendants.</p>	<p>CV-</p> <p>COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF</p>
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1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act (APA) which stems from the U.S. Forest Service's (Forest Service) authorizations, analyses, and lack thereof on the Lolo National Forest (Forest) related to and regarding the Environmental Assessment and Decision Notice and Finding of No Significant Impact for the Soldier-Butler Project (Project).
2. Plaintiff Alliance for the Wild Rockies ("Alliance") attests that the decisions approving the challenged authorizations, analyses, and lack thereof are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. 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.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*
4. Plaintiff requests that the Court set aside the Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin implementation of the Project.
5. Plaintiff seeks a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees

pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief this Court deems just and proper.

I. JURISDICTION

6. 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 claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
7. An actual controversy exists between Plaintiff and Defendants. Plaintiff's members use and enjoy the Lolo National Forest for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiff's members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.
8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiff's members have been and will be adversely affected and irreparably injured if Defendants implement the Project. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, NFMA, and the APA. The requested relief would redress these injuries and this Court has the

authority to grant Plaintiff's requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

9. Plaintiff submitted timely written comments and objections concerning the Project in the available administrative review process, thus it has exhausted administrative remedies. Therefore, the Court has jurisdiction to review Plaintiff's APA claims.

II. VENUE

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and Local Rule 3.3(a)(1). Defendant Marten resides within the Missoula Division of the United States District Court for the District of Montana.

III. PARTIES

11. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000 individual members, many of whom are located in Montana. Members of the Alliance observe, enjoy, and appreciate Montana's native wildlife, water quality, and

terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area in the Lolo National Forest. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems as set forth below. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members.

12. Defendant LEANNE MARTEN is the Regional Forester for the Northern Region/Region One of the U.S. Forest Service, and in that capacity is charged with ultimate responsibility for ensuring decisions made at each national forest in the Northern Region, including the Lolo National Forest, are consistent with applicable laws, regulations, and official policies and procedures.
13. Defendant UNITED STATES FOREST SERVICE (Forest Service) is an administrative agency within the U.S. Department of Agriculture, and is responsible for the lawful management of our national forests, including the Lolo National Forest.
14. Defendant UNITED STATES FISH AND WILDLIFE SERVICE (FWS) is an administrative agency within the U.S. Department of Interior.

IV. FACTUAL ALLEGATIONS

15. The Forest Service issued its Final Environmental Assessment for the Soldier-Butler Project (Soldier-Butler Environmental Assessment) in October 2019.
16. The Forest Service signed the Soldier-Butler Final Decision Notice and Finding of No Significant Impact (Decision Notice) authorizing the Project in on April 17, 2020.
17. On June 23, 2020, Plaintiff filed a 60-Day Notice of Intent to Sue under the ESA's citizen suit provision, alleging violations of the ESA related to open road density and survival standards for female grizzly bears; the Forest Service's failure to base its decision on the "best scientific and commercial data;" violations of ESA § 9 prohibitions on taking; its failure to analyze the nexus between the Ninemile DCA and the Grizzly Bear Recovery Plan and Conservation Strategy; and the Forest Service's failure to consider other important aspects of the problem, such as the impact of illegal motorized use of administratively closed roads and a history of road closure violations.
18. The Forest Service reinitiated consultation with the U.S. Fish & Wildlife Service on August 10, 2020.

19. A Revised Biological Opinion, issued by FWS on October 2, 2020, indicated that the proposed action has not changed.
20. The Project is located within the Ninemile Ranger District of the Lolo National Forest.
21. The Project area encompasses approximately 45,160 acres and is located about seven miles northwest of Huson, Montana, and extends from the East Fork of Burnt Fork Creek southwest to Butler Creek and from the Ninemile Road #412 to the Reservation Divide.
22. The Project includes a portion of the Reservation Divide Inventoried Roadless Area.
23. The Project area lies entirely within the Lolo National Forest.
24. The Decision Notice implemented a “Selected Action.” The Decision Notice states that the Selected Action is “a blend of Alternative B and Alternative C presented in the Environmental Assessment.”
25. The Selected Action implements all of the Proposed Road and Trail Treatments as analyzed in Alternative B.
26. The Selected Action implements all of the Proposed Vegetation Treatments analyzed in Alternative B except Unit 21 and Unit 92.
27. The Decision Notice authorizes treatment on 9,975 acres and will remove 17.5 million board feet of timber from the Project area.

28. The Project will be implemented over an 8-10 year period.
29. Several units within the Project area have been logged, thinned, and/or burned within the past decade, and some hand thinning and underburning units are continuing to be implemented.

PROJECT ROADS

30. The Soldier-Butler Environmental Assessment states, “As currently mapped and inventoried, the entire road system in the Soldier-Butler analysis area contains approximately 400 miles of existing and previously decommissioned road under various jurisdictions (NFS, State, BLM and private).”
31. The Soldier-Butler Decision Notice states that the Project will construct 7 miles of new permanent road and 9.4 miles of temporary roads.
32. The Soldier-Butler Decision Notice states that the Project will also add 35.4 miles of “undetermined roads” to the road system.
33. The project proposes new permanent construction of the “Pine Creek Road” which will bisect an area that has provided relatively secure habitat for bears and other wildlife due to its relative inaccessibility.
34. The Forest Service wildlife biologist stated that even though the Pine Creek Road will be closed to motorized use, its permanent

construction will have long-lasting effects to the area in terms of providing non-motorized human access into an area that has historically been extremely difficult to access.

35. The Forest Service wildlife biologist stated, “New road construction, particularly the ‘fire access road’ that would extend into the Pine Creek and Marion Creek areas, would provide new non-motorized access into an area that is currently very difficult to access. This road, plus the commercial thinning that would occur in the area, would substantially change the character of that area, reducing the sense of security and undisturbed nature of the area for big game.”
36. The Soldier-Butler Environmental Assessment discloses that there are 144 miles of National Forest Service System Roads in the Project area.
37. The Soldier-Butler Transportation Report discloses that there are 142 miles of National Forest System Roads in the Project area.
38. The Soldier-Butler Transportation Report discloses that 151 miles of unauthorized roads exist on the Project area: 137 are “undetermined” and 14 are “not needed.” All of these roads are currently closed to the public.

39. “Undetermined roads” are unauthorized roads—not included in the Forest Service Road System and where long-term purpose and need has yet to be determined.
40. “Not needed roads” or “Unneeded roads” are unauthorized roads—not included in the Forest Service Road System and but have determined to be not needed for long-term management of national forest resources.
41. The Transportation Report states that the Project will decommission 3.1 miles of National Forest System Roads.
42. The Transportation Report discloses that the Project will add 18.3 miles of roads to the National Forest System.
43. The Decision Notice states that the Project will decommission 100 miles of “Unneeded Roads.”
44. The Decision Notice states that the Project will decommission 4 miles of undetermined roads that will be reconstructed and used during the timber sale.
45. The Transportation Report discloses that the Project will “naturally decommission” 72.9 miles of unauthorized roads.
46. The Transportation Report states that 31.8 miles of roads in the Project area will be decommissioned at level 3, 4 or 5.

47. The Forest Service discloses, “Most of the undetermined roads to be decommissioned can be decommissioned naturally (level 3-DN); that is left to grow in and “naturalize” on their own. Of these 3-DN roads, entrance obliterations may not be necessary due to the condition of the road (e.g., brushed in, and/or bermed) or the condition of the parent road (closed, to be decommissioned or stored).”
48. The Decision Notice only authorizes decommissioning of “undetermined roads” and “unneeded roads.”
49. The Decision Notice does not disclose how many miles of National Forest System Roads the Project will decommission, if any.
50. Of the 104 miles of Undetermined and Unneeded Roads the Project is decommissioning, 72.9 miles will receive no treatment.
51. The Project area includes large areas of privately-owned lands.
52. There are 54 miles of private roads on the Project area.
53. Many of these roads lead to residences and others have administrative and unauthorized use, crossing over private inholdings and providing access to clusters of spur roads and high road density.
54. The Forest Service actively negotiated with private landowners to get road access across their properties as part of Project Implementation, thereby making these roads on private lands effectively “open.”

55. The Forest Service excluded open roads on private lands within the Project Area from its analysis.
56. Within the Project area, 57 miles of road are open to motorized public use year-round with no restrictions.
57. Another 9 miles are open seasonally from June 15 to October 14.
58. The remaining 39 miles of road within the Project area are either restricted (closed) to all public motorized access with physical barriers, such as gates or berms, or are closed to public motorized access except for snowmobiles and some administrative use.
59. These roads are available for non-motorized public access.
60. During Project implementation, in addition to temporary road construction and use, approximately 40.3 miles of roads that are currently closed to public motorized access would also be used for Project implementation.
61. The Forest Service wildlife biologist disclosed that, “Use of these roads during the project will effectively make them the same as open roads in terms of the effects to grizzly bears, which are primarily displaced due to disturbance.”

FRENCHTOWN FACE PROJECT

62. The Project area overlaps with the Frenchtown Face Ecosystem Restoration Project area (Frenchtown Face Project).
63. The Frenchtown Face Project was approved in 2006.
64. The Frenchtown Face Project includes 1,641 acres of prescribed burning of harvest and maintenance units and 615 acres of thinning and prescribed burning which have not yet been implemented.
65. The Frenchtown Face Project authorized decommissioning of 115 miles of roads, stating that “most of the road decommissioning, however, (approximately 110 of the 114.7 miles) will receive ‘Level III’ closures, which typically involve deep ripping of the road surface, drainage structure removal and restoration, and entrance closures through boulders.”
66. The Soldier-Butler Environmental Assessment discloses that within the area where the Soldier-Butler and Frenchtown Face Projects overlap (“overlap area”) are 85 miles of roads that the Frenchtown Face Project previously authorized to be decommissioned.
67. The Soldier-Butler Environmental Assessment discloses that only 15 miles of roads in the overlap area have been decommissioned—70 miles out of the 85 miles have not yet been decommissioned.

68. The Soldier-Butter Project reverses the Frenchtown Face Project's decision to decommission the roads in the overlap area.
69. Instead of decommissioning the remaining 70 miles the Frenchtown Face Project authorizes in the overlap area, the Soldier-Butler Project will only decommission 34 miles of roads within the overlap area.
70. Neither the Soldier-Butter Environmental Assessment nor Decision Notice disclose what level of decommissioning these 34 miles of road in the overlap area will receive.
71. The Forest Service states that the decision to reverse the Frenchtown Face Project's decision to decommission the 70 miles are "due to uncounted for pre-existing rights on roads, the need for them during implementation of Soldier-Butler Project, and/or because some of these roads are in the wildland-urban interface and are needed for ingress and egress for public and firefighter safety."
72. The Forest Service did not adequately discuss or disclose the total number of roads that the Soldier-Butler Project and the Frenchtown Face Project will either add to or remove from the National Forest Road System.

SNAGS

73. The Lolo National Forest Plan provides Standard 25 for snags, which states: “In the portion of the Forest more than 200 feet from all system roads, sufficient snags and dead material will be provided to maintain 8 percent of the population of snag-using species normally found in an unmanaged Forest. (See Appendix N, Procedures to Implement the Forest Snag Standard.)”
74. Appendix N sets for “Snag Retention Prescriptions” for different vegetation communities:

Table 1: Snag Retention Prescriptions

	Moderately Warm and Dry DF/Ponderosa Habitat Group 2	Moderately Cool and Dry Douglas-fir/Huckleberry Pinegrass Habitat Group 2	Moist Midelevation Spruce/Grand Fir Habitat Group 4	Cold and Dry Subalpine Fir Habitat Group 5
Total hard snags needed/ac. (min. size 10" d.b.h., 15' tall)	4.0	3.0	3.5	1.0
No. of big snags needed (20" d.b.h., 40' tall-included in amount)	.1 (1/10 ac.)	.1 (1/10 ac.)	.1 (1/10 ac.)	None
Amount dead and down needed/ac. (min. size 6" dia., 8' long)	8-10 tons	10-15 tons	12-20 tons	--
No. of live replacements needed/ac.	.3 (3/10 ac. or 1/3 ac.)	.3 (3/10 ac. or 1/3 ac.)	.3 (3/10 ac. or 1/3 ac.)	--
No. of soft "stubs" needed/ac.	All additional available	All available	All available	All available

Definitions

Hard snag - sound, potentially merchantable
Stub - soft brokentop, obviously rotten, crumbly
Replacement - live, older tree, preferably brokentop

In General Leave the Following:

--Big snags over small snags
--Brokentop over intact top
--Cull over merchantable trees
--Live culls over dead merchantable trees
--Larch over ponderosa over Douglas-fir over
all other species diseased over healthy

75. The Forest Service notes that, in general, snags are abundant across the Lolo National Forest.
76. However, the Forest Service concedes, “Specific snag surveys were not conducted in the Soldier-Butler project area.”
77. The Soldier-Butler Wildlife Report states, “Past logging in the mid-elevations of the project area removed snags and coarse wood as well as canopy cover, due in part to logging practices of the past that did not aim to retain snags and snag recruitments . . . These areas are still regrowing, although large dead and downed wood is still scarce and will continue to be for several more decades.”
78. The Forest Service further concedes in the Soldier-Butler Wildlife Report, “Loss of large snags and coarse wood would likely occur in both commercial and non-commercial thinning units.”
79. Pileated woodpeckers function as an indicator of mature forest/snag habitats in the Lolo National Forest Plan.
80. The nest tree is the most important variable for predicting nesting habitat.
81. Nest tree diameters are generally larger than 15 inches and can either be snags or live trees.

82. In the Soldier-Butler Project area, nesting habitat was identified as any stands with trees 15 inches in diameter at breast height or larger, with canopy 40% or greater.
83. Due to their nesting and roosting requirements, pileated woodpeckers are often associated with old-growth or mature forest stands.
84. The Forest Service states in the Soldier-Butler Wildlife Report that, “Nesting habitat for pileated woodpeckers currently covers approximately 4% of the analysis area (1,694 acres), and foraging habitat covers another 46% of the analysis area (20,912 acres). Note that nesting habitat is included in foraging habitat.”
85. The Forest Service discloses that the Project will treat 5,734 acres of foraging habitat and 641 acres of nesting habitat.
86. The remaining acres of nesting habitat for pileated woodpeckers after project implementation will be 1,053 acres, which is 2% of the Project area.
87. In other words, only 2% of the Project area will have snags or live trees with diameters 15 inches or larger.
88. The Lolo National Forest Plan also provides Standard 4 in Management Area 21 which states, “Provide stands at least 30-40 acres in size that are decadent, multi-storied, fully stocked, contain

snags with dead and down materials greater than 15 tons per acre, and contain 15 trees per acre greater than 20 inches d.b.h. These stands should be well distributed over the Forest.”

89. In the Project area, approximately 618 acres are located in Management Area 21.
90. The Soldier-Butler Project would treat 328 acres in Management Area 21 within Units 24, 25, 26, 70, and 93.
91. The Forest Service does not discuss or disclose whether the Project meets Standard 4 for Management Area 21 or Forestwide Standard 25 for snags.

ELK

92. Elk are a management indicator species for the Lolo National Forest, used to gauge impacts on all big game species and other species that use similar habitats on the Forest.
93. Elk generally need large expanses of intact habitat that includes healthy forage and browse with limited noxious or invasive weeds, and areas with limited human disturbance that can provide security for the herds.
94. Goals for the Ninemile Elk Management Unit (EMU) include maintaining 80% of existing habitat security (MTFWP 2004). This

requires secure habitat areas in summer, controlling vulnerability from hunting, and providing winter range sufficient to support elk when little forage is available.

95. Management Area 18 and Management Area 23 on the Lolo National Forest are managed for elk winter range.
96. The Lolo National Forest Plan states that the lands within Management Areas 18 and 23 are “winter range for deer, elk, and bighorn sheep.”
97. A goal for Management Area 18 is to “Optimize forage production and cover for deer, elk, and bighorn sheep on winter range.”
98. A goal for Management Area 23 is “provide optimal forage:cover ratios for deer, elk, and bighorn sheep winter range . . . ”
99. Standard 7 for Management Area 18 and 23 states, “Retain as a minimum a 50:50 cover:forage ratio. The majority of cover should be thermal cover, that is, trees greater than or equal to 40 feet tall with a crown density greater than or equal to 50 percent.”
100. Much of the Soldier-Butler Project area falls within Management Areas 18 and 23.

101. The commercial and non-commercial thinning and burning would occur throughout much of the areas assigned as Management Area 18 and 23 under the Project.
102. The Soldier-Butler Environmental Assessment states, “Units with commercial treatments would result in 30-80% canopy reductions, depending on the unit, which would render these areas unsuitable for providing thermal cover, snow intercept, and hiding cover.”
103. The Soldier-Butler Environmental Assessment states, “The reductions in thermal cover that would occur under either alternative would continue to decrease thermal cover in Winter Range on the heels of the Frenchtown Face project, which eliminated thermal cover on approximately 600 acres of Winter Range in the analysis area within the past decade, mostly in the Butler and McCormick Creek areas.”
104. Montana Fish Wildlife and Parks urged the Forest Service, “consider an alternative that leaves more cover for wildlife.”
105. The Soldier-Butler Environmental Assessment calculated cover:forage ratio using two analysis areas: “Effective Winter Range” and “Winter Range.”

106. The Soldier-Butler Wildlife report states that “Effective Winter Range” is “a larger area than what is covered by Management Areas 18 and 23 identified in the Forest Plan, but is consistent with the definition of Big Game Winter Range in the Forest Plan (i.e., ‘the area available to and used by big game through the winter season.’)”
107. The Soldier-Butler Wildlife report indicates that “Winter Range” is Management Areas 18 and 23 within the Project area.
108. There is a total 22,642 acres of Effective Winter Range in the Project area.
109. There is a total of 8,877 acres of Winter Range (Management Areas 18 and 23) in the Project area.
110. Alternative B would reduce cover on a total of 4,510 acres within Effective Winter Range for elk and on 2,876 acres within Winter Range (Management Areas 18 and 23).
111. Alternative B would result in 2,816 acres of cover in Winter Range (Management Areas 18 and 23), and 9,775 acres in Effective Winter Range remaining in the Project area.
112. This would result in a cover:forage ratio of 32:68 in Winter Range (Management Area 18 and 23); and a cover:forage ratio of 43:57 in

Effective Winter Range:

Table 18. Changes in Cover:Forage ratio between the two action alternatives, considering both the winter range MAs and the Effective Winter Range area.

		Existing Condition		Alternative B		Alternative C	
		acres	%	acres	%	acres	%
Winter Range MAs in Soldier Butler project area	Cover	5,692	64	2,816	32	4,391	49
	Forage	3,182	36	6,059	68	4,483	51
Effective Winter Range in Soldier Butler project area	Cover	14,284	63	9,775	43	11,969	53
	Forage	8,325	37	12,835	57	10,640	47

113. The Soldier-Butler Environmental Assessment states, “Alternative B includes a site-specific Forest Plan Amendment that would allow for the amount of cover to drop below 50% in the winter range, for the sake of accomplishing fuels reduction. Alternative C would retain enough cover to meet the Forest Plan Standard as written, and provide more areas for big game to seek cover from deep snows and harsh weather in winter.”
114. The Decision Notice for the Project did not implement a site-specific Forest Plan Amendment that would allow for the amount of cover to drop below 50% in winter range.
115. The Decision Notice implements the timber harvest proposed in Alternative B except it will not implement harvest in Unit 21 (129 acres) and non-commercial treatment in Unit 92 (67 acres).

116. The Decision Notice states that “Resource Project Measures (RPMs) were adjusted for big game security in response to comments submitted by the public and Montana Fish, Wildlife and Parks.”
117. The Decision Notice states, “These changes along with findings from the effects analysis have eliminated the need to include a Forest Plan amendment for standards regarding: (1) thermal cover for big game species in winter range; and, (2) requiring generally restricting some activities to summer and fall months as originally anticipated.”
118. However, even with the Forest Service’s decision not to implement Unit 21 and Unit 92 and assuming those Units provide cover in Effective Winter Range (Management Area 18 and 23), there will only be 44% cover remaining.
119. Standard 4 for Management Area 18 requires, “all logging and road building for normal activities will generally be restricted to the summer and fall months.”
120. The Resource Protection Measure the Decision implements to “minimize disturbance to big game on winter range” states that no logging, log hauling, or road building will occur December 15-May 1 on all units and roads east of Kennedy Creek.

- 121. There is land in Management Area 18 west of Kennedy Creek.
- 122. The Decision allows for logging, log hauling, and road building during the winter on units west of Kennedy Creek.
- 123. The Project does not authorize a site-specific suspension for Management Area 18 Standard 4.

AQUATICS AND HYDROLOGY

- 124. The Project area contains streams providing habitat for native fish, such as bull trout and westslope cutthroat trout.
- 125. Forest roads are the leading current source of sediment in Project area streams.
- 126. Historically, mining in stream channels was a major source of sediment delivery.
- 127. Project area streams all have extensive histories of mining activities with private ownership near their confluences with Ninemile Creek. This has caused multiple streams to be listed as exceeding water quality standards by the Montana DEQ (2005).
- 128. Sediment loads in all Project area streams are elevated above natural conditions. This is particularly true in watersheds that were extensively mined (including Kennedy, McCormick, and Josephine),

although all watersheds are currently impacted by stream-adjacent roads.

129. Unrepaired mine sites actively contribute to the degraded existing sediment condition.
130. Much of the Reservation Divide is roadless such that headwater reaches were not mined or logged and remain in fairly pristine condition. However, low–middle reaches in the Project area are more accessible and have been severely affected by surface mining, timber harvest, road systems, and agriculture.
131. There are four streams in the project area listed as impaired for water quality on the Montana State 303d list: Josephine Creek, Kennedy Creek, Little McCormick Creek, and McCormick Creek.
132. These creeks are listed as impaired for reasons including sedimentation.
133. Additionally, Big Blue Creek and upper McCormick Creek (Little McCormick to headwaters) were both previously listed with the original 2005 TMDL but have since been delisted (MDEQ, 2005).

134. Sediment is the indicator that is currently the most degrading, as the existing road systems represents a chronic non-point sediment delivery source.
135. Kennedy Creek, Little McCormick Creek, McCormick Creek, and Butler Creek are in the Soldier-Butler/Frenchtown Face overlap area.
136. The Soldier-Butler Hydrology Report states that to address the sedimentation issue in Kennedy Creek, “further road decommissioning, upgrades, and culvert replacements need to be done to address sediment loading from forest roads.”
137. The Soldier-Butler Hydrology Report states that McCormick watershed receives the most sediment from roads, followed by the Butler Creek Watershed.
138. The Frenchtown Face Project authorized road decommissioning for roads in the Kennedy Creek, Little McCormick, McCormick Creek, and Butler Creek watersheds to reduce sediment load.
139. The Soldier-Butler Project reverses the Frenchtown Face decision to decommission the roads in the Kennedy Creek, Little McCormick and McCormick Creek watersheds.

140. Josephine Creek is listed as impaired for sedimentation from forest roads.
141. Josephine Creek is not within the Soldier-Butler/Frenchtown Face overlap area.
142. The lower reach of Josephine Creek below Road 890 “has been extensively placer mined. Noticeable effects from this are an increased bed load, decreased size of bed load substrate, and obvious siltation.”
143. The Hydrology reports states that “Sedimentation reduction from forest roads will need to be addressed.”
144. Current sediment delivered to Josephine Creek is 12.7 tons per year.
145. The amount of sediment delivered to streams in the Project area is highest under Alternative B.
146. During Project implementation, sediment delivered to Josephine Creek will be 33.8 tons per year.
147. Increased hauling on riparian roads and roads with stream crossings would increase sedimentation into streams during Project implementation.

148. Post implementation, sediment delivered to Josephine Creek will be 12.8 tons per year.
149. The road on either side of Josephine Creek would be reconstructed to accommodate log hauling.
150. This new haul road will be within the Josephine Creek Riparian Habitat Conservation Area and would deliver more sediment into Josephine Creek.
151. The combination of heavily-weighted log trucks and increased traffic volume on unpaved roads would be expected to double the amount of sediment produced above current conditions. This additional sediment would be of danger to streams where haul routes are located within RHCAs and/or cross a stream.
152. Site conditions are such that even correctly implemented BMPs would not completely eliminate sediment delivery.
153. The Soldier-Butler Fisheries Report states that “the new road construction [in Pine Creek], would likely deliver substantial amounts of sediment to Pine Creek during implementation . . . the new permanent creek crossing would likely be a perpetual source of sediment delivery.”

154. The Lolo National Forest Plan Standard 28 states, “Land management practices shall be designed to have a minimum impact on the aquatic ecosystem, free from permanent or long-term unnatural imposed stress. (A long-term stress is defined as a downward trend of indicators such as aquatic insect density or diversity, fish populations, intragravel sediment accumulations, or channel structure changes that continue for more than 1 hydrologic year as determined by procedures outlined in the Forest Plan Monitoring Requirements.)”
155. The Fisheries Report states, “the new permanent [Pine] creek crossing would likely be a perpetual source of sediment delivery. Although the new road and crossing would be constructed with all applicable BMPs (e.g., sediment basins, slash filter windrows, etc.), and the new road would not be open to public use (i.e., less surface powdering, greater BMP effectiveness), some amount of sediment would be expected to enter Pine Creek. This long-term degradation of the sediment indicator conflicts with Forest Plan standard 28 and would be noteworthy if left unaddressed (i.e., downward trend of aquatic ecosystem indicator). The Butler Creek road realignment is therefore proposed as a long-term sediment reduction action to offset Pine Creek sediment inputs.”

156. There are four tributary watersheds between the Pine Creek watershed and the Butler Creek watershed.
157. The Butler Creek road realignment will not directly or indirectly effect the sedimentation in Pine Creek caused by the Project's Pine Creek crossing.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Forest Service's inadequate impacts analysis violates NEPA and the
APA.

158. All previous paragraphs are incorporated by reference.
159. The Forest Service violated the NEPA by failing to examine the cumulative impacts of the Soldier-Butler Project and the Frenchtown Face Project.
160. NEPA requires federal agencies' environmental analysis to consider "any adverse environmental effects which cannot be avoided." 42 U.S.C. §4332(2)(C)(ii). When several actions may have cumulative or synergistic environmental impacts, the Forest Service must consider these actions together and prepare a comprehensive environmental analysis.

161. Agencies are required to take a hard look at direct, indirect and cumulative impacts of a proposed action. 40 C.F.R. § 1508.25(c).
162. Direct impacts are “caused by the action and occur at the same place and time.” *Id.* § 1508.8(a). Indirect impacts are “caused by the action and are later in time or further removed in distance but are still reasonably foreseeable.” *Id.* § 1508.8(b).
163. Cumulative impacts are “the impacts[s] on the environment which 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 actions.” *Id.* § 1508.7.
164. The Forest Service conducted an inadequate cumulative impacts analysis because it failed to consider the combined effects of the Frenchtown Face Project and Soldier-Butler Project, specifically the decision to reverse the Frenchtown Face Project’s decision to decommission 70 miles of road in the Soldier-Butler Project area.
165. The Forest Service neglected to analyze its failure to follow through on mitigation and restoration aspects of the Frenchtown Face Project; therefore, its Soldier-Butler analysis failed to adequately comply with

NEPA and the APA by failing to consider an important aspect of the Project. .

SECOND CLAIM FOR RELIEF

The Forest Service has failed to demonstrate that the Project complies with Lolo National Forest Plan Standards, in violation of NFMA, NEPA, and the APA.

166. All previous paragraphs are incorporated by reference.
167. The National Forest Management Act requires the Forest Service to “develop, maintain, and, as appropriate, revise [forest plans] for units of the National Forest System.” 16 U.S.C. § 1604(a).
168. At the project level, NFMA requires each individual project be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).
169. The Lolo National Forest operates under a 1986 Forest Plan which guides all natural resource management activities and establishes managements standards for the Forest.
170. The Forest Plan provides Standard 7 for Management Area 18 and 23 that requires the retention of a minimum of 50:50 cover:forage ratio.

171. The Project Environmental Assessment acknowledged the Project would not meet this standard and analyzed a site-specific amendment for this standard.
172. The Project Decision notice did not authorize a site-specific amendment for Standard 7 for Management Area 18 and 23.
173. The Project will violate Standard 7 for Management Area 18 and 23 because the Project will not result in a cover:forage ratio of at least 50:50.
174. The Forest Plan contains Standard 4 for Management Area 18 which restricts all logging and roadbuilding activities to summer and fall months.
175. The Project will violate Standard 4 for Management Area 18 because logging and roadbuilding activities are authorized during winter.
176. The Forest Plan contains Forestwide Standard 25 for snags.
177. The Project concedes that no snag survey was conducted for the Soldier-Butler Project area.
178. The Forest Service fails to demonstrate that the Project meets Forestwide Standard 25 for snags because it failed to determine the current existing condition.

179. The Forest Plan contains Standard 4 for Management Area 21 which requires stands at least 30-40 acres in size to contain snags with dead and downed material greater than 15 tons per acre and contain 15 trees per acre greater than 20 inches diameter at breast height.
180. The Forest Service fails to demonstrate that the Project meets Standard 4 for Management Area 21 because it fails to disclose the current existing condition regarding Management Area 21 stand sizes with downed material and snag densities and further fails to disclose the Project effects on Management Area 21's stand sizes with down materials and snag densities.
181. The Forest Service fails to demonstrate compliance with Standard 4 for Management Area 21 because it fails to demonstrate that Management Area 21 contains stands at least 30-40 acres in size that contain snags with dead and downed material greater than 15 tons per acre and contain 15 trees per acre greater than 20 inches diameter at breast height.
182. The Forest Plan contains Standard 28, which states, "Land management practices shall be designed to have a minimum impact on the aquatic ecosystem, free from permanent or long-term unnatural imposed stress. (A long-term stress is defined as a downward trend of

indicators such as aquatic insect density or diversity, fish populations, intragravel sediment accumulations, or channel structure changes that continue for more than 1 hydrologic year as determined by procedures outlined in the Forest Plan Monitoring Requirements.)”

183. The Forest Service fails to demonstrate compliance with this standard because it concedes that the Project will not meet this standard.
184. The Forest Service’s failures to comply with the above Forest Plan Standards violate NFMA.
185. The Forest Service’s failure to articulate a rational explanation for deviating from the above Forest Plan Standards is arbitrary and capricious. The Forest Service’s failure to adequately address these issues in the Project Environmental Assessment and to demonstrate compliance with the above Forest Plan Standards also violate NEPA.

THIRD CLAIM FOR RELIEF

The Revised Biological Opinion is inadequate and therefore arbitrary, capricious, and otherwise not in accordance with law, in violation of the APA.

186. All previous paragraphs are incorporated by reference.

187. FWS must prepare a biological opinion for an agency action that is likely to adversely affect the species listed under the ESA.
188. Biological opinions must apply the best available science and cannot ignore available information.
189. The Forest Service concluded in its Project Biological Assessment that the Project would likely adversely affect grizzly bears.
190. FWS provided a Revised Biological Opinion for the Project on October 2, 2020.
191. The Revised Biological Opinion for the Project does not address all the Project's effects on grizzly bears.
192. Regulations require a biological opinion to include "a detailed discussion of the effects of the action." 50 CFR § 404.14(h)(2).
193. The Revised Biological Opinion for the Project uses methods and information that are not based on the best scientific and commercial data and excluded the best available scientific information on open road density and secure core habitat.
194. Accordingly, the Revised Biological Opinion for the Project is arbitrary and capricious and not in accordance with the ESA, in violation of the APA.

VIII. RELIEF REQUESTED

For all of the above-stated reasons, Plaintiff requests that this Court award the following relief:

- A. Declare that the Project, as approved, violates NEPA, NFMA, and the APA;
- B. Declare that the Project is in violation of NFMA, NEPA, and the APA for authorizing treatments in Management Areas 18 and 23 that would reduce cover:forage ration below 50:50 in violation of the Lolo National Forest Plan Standard 7 for Management Areas 18 and 23;
- C. Enjoin the implementation of the Project in Management Areas 18 and 23;
- D. Declare that the Project is in violation of NFMA, NEPA, and the APA for authorizing winter treatments in Management Area 18 in violation of the Lolo National Forest Plan Standard 4 for Management Area 18;
- E. Declare that the Project is in violation of NFMA, NEPA, and the APA for authorizing treatments without demonstrating the Project will provide stands in Management Area 21 that are 30-40 acres in size and contain snags with dead and downed material greater than 15 tones per aces and 15 trees per acre greater than 20 inches in diameter,

in violation of Lolo National Forest Plan Standard 4 for Management Area 21;

- F. Enjoin the implementation of Project in Management Area 21.
- G. Declare that the Project is in violation of NFMA, NEPA, and the APA for authorizing road construction that would cause a long-term stress to Pine Creek in violation of Lolo National Forest Plan Forest-wide Standard 28;
- H. Declare that the Project is in violation of NFMA, NEPA, and the APA for authorizing treatments in the Project area without compliance with Lolo National Forest Plan Forest-wide Standard 25;
- I. Enjoin implementation of the entire Project;
- J. Vacate the Project decision and remand the matter to the agency until such time as the agency demonstrates to this Court that it has adequately complied with the law;
- K. Set aside the Project Decision Notice and Finding of No Significant Impact;
- L. Award Plaintiff its costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and
- M. Grant Plaintiff any such further relief as may be just, proper, and equitable.

Respectfully submitted this 23rd day of October, 2020.

/s/ Kristine M. Akland

Kristine Akland

AKLAND LAW FIRM, PLLC

Attorney for Plaintiff