

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,
1411 K Street, NW, Suite 1300
Washington, D.C. 20005

and

SIERRA CLUB,
2101 Webster Street, Suite 1300
Oakland, CA 94612

Plaintiffs,

v.

DAVID BERNHARDT, *in his official
capacity as Secretary of the United States
Department of the Interior,*
1849 C Street NW
Washington, D.C. 20240,

AURELIA SKIPWITH, *in her official
capacity as the Director of the United States
Fish and Wildlife Service,*
1849 C Street NW
Washington, D.C. 20240

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

and

UNITED STATES FOREST SERVICE,
1400 Independence Avenue SW
Washington, D.C. 20250

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No.:

INTRODUCTION

1. In this action, Plaintiffs challenge the U.S. Fish and Wildlife Service's ("FWS") issuance of, and the U.S. Forest Service's ("Forest Service") reliance on, a flawed Biological Opinion regarding the negative impacts to grizzly bears that arise from the Forest Service's authorization of continued livestock grazing in prime grizzly bear habitat within the Bridger-Teton National Forest, in violation of the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544.

2. Specifically, the Forest Service has authorized livestock grazing for cattle for ten years, through the 2028 grazing season, on numerous allotments in the Upper Green River Area Rangeland Project area ("Project"), encompassing the headwaters of both the Green and Gros Ventre River and approximately 170,643 acres. The closest allotment lies less than 30 miles from the boundary of Grand Teton National Park.

3. As a result of previous and ongoing livestock grazing, the Upper Green River Area represents the highest number of grizzly bear conflicts in the entire Greater Yellowstone Ecosystem ("GYE"), and thus has become a sink for grizzly bears. Since 1999, 37 grizzly bears have been killed in the Project's action area, including 35 on the Upper Green grazing allotments.

4. Recognizing that continued livestock grazing was likely to be detrimental to grizzly bears, the Forest Service initiated consultation with FWS as required under Section 7 of the ESA. 16 U.S.C. § 1536(a)(2). Following consultation, FWS issued a Biological Opinion in 2019 ("2019 BiOp") approving the killing of up to 72 grizzly bears over the ten-year life of the

Project. The anticipated and exempted lethal removal of up to 72 bears nearly doubles the number of grizzly bears killed in the project area over the past 20 years

5. FWS concluded that despite the high number of bears that may be killed as a result of the authorized livestock grazing, the Project would not jeopardize grizzly bears. FWS relied upon the Forest Service's commitment to implement enumerated conservation measures to reach its no jeopardy conclusion.

6. Because FWS must rely upon the livestock permittees to implement several of the conservation measures, FWS cannot presume that the measures are reasonably certain to occur. Thus, FWS's reliance upon these conservation measures cannot satisfy the ESA's mandate to ensure that the grazing authorization will not jeopardize grizzly bears.

7. Many of the conservation measures also contain vague language, lack specificity, are mere recommendations, or are subject to agency discretion. Thus, even if the Forest Service is committed to enforcing the conservation measures, the unclear language and voluntary nature of the conservation measures makes it difficult for the agency to enforce them.

8. Even if the Forest Service and the permittees fully implement the conservation measures, these measures are insufficient to protect grizzly bears or minimize conflicts in the project area, as explained in detail below.

9. Furthermore, FWS acknowledged that grizzly bear mortality across the GYE is high and increasing but failed to consider whether the high level of take permitted by the 2019 BiOp may jeopardize the grizzly bear population in connection with the increasing mortality rates across the ecosystem.

10. For these reasons, FWS's no jeopardy conclusion is arbitrary and capricious, and the Forest Service's reliance on that conclusion and the invalid 2019 Biological Opinion is unlawful. 5 U.S.C. § 706(2)(A).

JURISDICTION AND VENUE

11. This action arises under the ESA, 16 U.S.C. § 1531 *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§ 2201-2202 (declaratory judgments and further relief); 16 U.S.C. §§ 1540(c), (g)(1)(c) (action arising under the ESA and citizen suit provision); and 5 U.S.C. § 702 (Administrative Procedure Act).

12. Venue in this Court is proper pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because this civil action is brought against agencies of the United States and officers and employees of the United States acting in their official capacities under the color of legal authority, a substantial part of the events giving rise to the claim occurred in the District of Columbia, and no real property is involved in this action. Plaintiffs Center for Biological Diversity and Sierra Club also maintain offices in this judicial district.

13. Plaintiffs provided Defendants with 60 days' written notice of Plaintiffs' intent to sue on January 21, 2020, as required by 16 U.S.C. § 1540(g)(2)(C).

PARTIES

14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-profit organization that is dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center is incorporated in California and headquartered in Tucson, Arizona, with offices in Arizona, California, Colorado, the District of Columbia, Florida, Hawai'i, Idaho, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Washington, and Mexico. The Center has more than 74,000 active members,

including members within the grizzly bear's current and historic range. The Center and its members have a long-standing interest in conserving native species in the American West and have routinely advocated for the conservation and protection of native species, including grizzly bears.

15. The Sierra Club is a national non-profit organization with 67 chapters and more than 796,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club and its members have advocated for grizzly bear recovery and protection of grizzly bear habitat in the Greater Yellowstone Ecosystem for more than 20 years.

16. Plaintiffs, both organizationally and on behalf of their staff, members, and supporters, have deep and long-standing interests in the preservation and recovery of imperiled species, including grizzly bears in the Greater Yellowstone Ecosystem. To further these goals, Plaintiffs have participated in various agency proceedings and public comment opportunities to protect and recover grizzly bears, including FWS delisting proposals and Forest Service projects that may negatively impact grizzly bears in and around the project area.

17. Specific to the Upper Green River Area Rangeland Project, Plaintiffs actively participated in all stages of the Project, submitting comments throughout the National Environmental Policy Act process, including during initial scoping for the project, and providing comments on the Draft Environmental Impact Statement. Following publication of a Final Environmental Impact Statement, Plaintiffs participated extensively in the objection process provided for under the National Forest Management Act. Plaintiffs submitted two written

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