

Kelly E. Nokes (Mont. Bar No. 39465862)
Western Environmental Law Center
208 Paseo del Pueblo Sur, No. 602
Taos, NM 87571
Ph: (575) 613-8051
nokes@westernlaw.org

Susan Jane M. Brown, *application for pro hac vice pending*
Western Environmental Law Center
4107 NE Couch St.
Portland, OR 97232
Ph: (503) 680-5513
brown@westernlaw.org

John R. Mellgren, *application for pro hac vice pending*
Western Environmental Law Center
120 Shelton McMurphey Blvd., Ste. 340
Eugene, OR 97401
Ph: (541) 359-0990
mellgren@westernlaw.org

Counsel for Plaintiffs

Marla Fox, *application for pro hac vice pending*
P.O. Box 13086
Portland, OR 97213
Ph: (651) 434-7737
mfox@wildearthguardians.org

Counsel for Plaintiff WildEarth Guardians

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

WILDEARTH GUARDIANS, a non-profit
organization; and WESTERN
WATERSHEDS PROJECT, a non-profit
organization,

Plaintiffs,

Case No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

vs.

CHIP WEBER, in his capacity as Forest Supervisor for the Flathead National Forest; and the UNITED STATES FOREST SERVICE, a federal agency;

Federal-Defendants.

INTRODUCTION

1. WildEarth Guardians and Western Watersheds Project (collectively “Plaintiffs”), bring this civil action against Federal-Defendants Chip Weber, in his official capacity as Forest Supervisor for the Flathead National Forest, and the United States Forest Service (collectively “Forest Service”) under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, for violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*; the National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 *et seq.*; U.S. Forest Service National Forest System Land Management Planning regulations (“Forest Planning Rules”), 36 C.F.R. § 219.1 *et seq.*; Executive Order 11644 (as amended by Executive Order 11989); and U.S. Department of Agriculture travel management regulations, 36 C.F.R. Part 212.

2. This case challenges the Forest Service’s decision finalizing the 2018 revision to the Flathead National Forest Land Management Plan (the “Forest Plan for the Flathead National Forest” or “revised Forest Plan”). The Flathead National

Forest (the “Flathead” or “Forest”) in northwestern Montana is a crown jewel of our nation’s public lands system. The Forest supports some of the last-remaining, fully intact native ecosystems in the country and is home to a wide variety of rare and imperiled native species, including: grizzly bears, wolverine, and Canada lynx. The Forest is also rich in aquatic resources, and is home to endangered runs of bull trout and vital corridors of bull trout critical habitat.

3. In December 2018, the Forest Service published a revised Forest Plan for the Flathead National Forest. The revised Forest Plan sets the stage for forest management activities (e.g., logging, road development, recreation management, etc.) for at least the next 15 years.

4. After submitting extensive comments, meeting with Forest Service personnel about their concerns during the administrative objection phase, and exhausting all other options and available remedies, Plaintiffs are compelled to pursue this civil action because the revised Forest Plan is legally deficient and has detrimental impacts upon a variety of native wildlife species, including: grizzly bears, wolverine, Canada lynx, and bull trout and their associated habitats on the Flathead National Forest.

5. Plaintiffs’ members and supporters have worked hard to protect and conserve the valuable wildlife and habitat afforded by the Flathead National Forest for many decades and remain committed to ensuring the Forest Service manages the Forest in accordance with NEPA, NFMA, and the Forest Planning Rules.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331. Final agency action exists that is subject to judicial review under 5 U.S.C. §§ 702 and 704. An actual, justiciable controversy exists between Plaintiffs and Defendants.

7. Venue is proper under 28 U.S.C. §§ 1391. All or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. Plaintiffs maintain offices within this judicial district. The lead Defendant's office is located within this judicial district. The administrative records at issue in this litigation were prepared within this judicial district. The public lands and resources affected by the Flathead Forest Plan are located within this judicial district.

8. This case is properly filed in Missoula, Montana. The Forest Service decision at issue in this litigation was made in Kalispell, Montana. Kalispell, Montana is geographically located within Flathead County, Montana. The Forest Service lands affected by the decision at issue in this litigation are located in Flathead, Missoula, Lake, and Lincoln Counties, Montana.

9. Plaintiffs have exhausted any and all available and required administrative remedies. Plaintiff WildEarth Guardians meets the requirements for Article III standing to pursue this civil action by and through its members who are adversely affected by the decision at issue in this litigation. Plaintiff Western Watersheds Project meets the requirements for Article III standing to pursue this civil action by and through its members who are adversely affected by the decision at issue

in this litigation. Plaintiffs have a significant, concrete interest in protecting and enjoying the wildlife and public lands on the Flathead National Forest. These interests are and will continue to be harmed by the Forest Service's revised Forest Plan and a favorable ruling from this Court will redress those harms. This matter is ripe for judicial review.

10. This Court has authority to issue the relief requested under 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. §§ 702 and 706.

PARTIES

11. Plaintiff, WILDEARTH GUARDIANS ("Guardians"), is a nonprofit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers and health of the American West. WildEarth Guardians has over 236,000 members and supporters, many of whom have particular interests in grizzly bears, Canada lynx and its critical habitat, wolverine, and bull trout and its critical habitat. Many of Guardians' members also have particular interests in the management of forest roads and travel planning on the Flathead National Forest. Guardians has an organizational interest in ensuring the Forest Service's compliance with all federal laws.

12. Plaintiff, WESTERN WATERSHEDS PROJECT ("WWP"), is a nonprofit organization dedicated to protecting and restoring western watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP has over 9,500 members and supporters, many of whom have particular interests in grizzly bears, Canada lynx and its critical habitat, wolverine, and bull trout and its critical

habitat. Many of WWP's members also have particular interests in the management of grazing, forest roads and travel planning on the Flathead National Forest. WWP has an organizational interest in ensuring the Forest Service's compliance with all federal laws.

13. Plaintiffs' members use and enjoy the Flathead National Forest for skiing, snowshoeing, hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other aesthetic, recreational, scientific, spiritual, vocational, and educational activities. Plaintiffs' members use the areas within the Flathead National Forest that have been designated as open to snowmobile use through the revised Forest Plan and identified as suitable for snowmobile use through the revised Forest Plan. As a result of the decisions made in the revised Forest Plan, their use and enjoyment of these specific areas will be diminished. Plaintiffs' members intend to continue to use and enjoy the areas opened or suitable to snowmobiling frequently and on an ongoing basis in the future. Plaintiffs and their members rely on the Federal-defendants to follow the laws pertaining to environmental review and travel planning in order that Plaintiffs and their members may stay informed and participate in travel planning decisions, and their interests in participating in such decisions are injured by the failures of the Forest Service to follow the laws and regulations as described in this Complaint.

14. The aesthetic, recreational, scientific, spiritual, vocational, and educational interests of Plaintiffs' members have been and will be adversely affected

and irreparably injured if the Forest Service is allowed to continue implementing the revised Forest Plan as approved. These are actual, concrete injuries caused by the Forest Service's failure to comply with mandatory duties under NEPA, Forest Service regulations, U.S. Department of Agriculture regulations, the APA, and pertinent Executive Orders. Plaintiffs and their members have also suffered procedural harm from the Forest Service's failure to comply with mandatory duties under NEPA, the APA, Forest Service regulations, U. S. Department of Agriculture regulations, and pertinent Executive Orders. The requested relief would redress these injuries. This Court has the authority to grant Plaintiffs' requested relief.

15. Each Plaintiff includes within its mission and purpose the promotion of sound use of public lands, the protection of the wildlife that inhabit such lands, and the promotion of non-motorized winter recreation opportunities on public lands. Plaintiffs have an interest in insuring that federal agencies follow the law, including travel planning processes and procedures of the statutes, regulations, and Executive Orders listed in this Complaint. Plaintiffs' organizational interests are adversely affected and injured by the Forest Service's failures as described in this Complaint.

16. Plaintiffs' members and supporters have not been compelled to participate in this lawsuit.

17. If this Court issues the relief requested, the harm to Plaintiffs' mission and that suffered by their members and supporters will be alleviated and/or lessened.

18. Defendant CHIP WEBER, is named in his official capacity as Forest Supervisor for the Flathead National Forest. Mr. Weber is the federal official with responsibility for all Forest Service actions and inactions challenged in this Complaint.

19. Defendant UNITED STATES FOREST SERVICE (“Forest Service”) is an agency of the United States and is a division of the U. S. Department of Agriculture. The Forest Service is responsible for implementing NEPA and its implementing regulations, NFMA, Forest Planning Rules, Executive Order 11644 (as amended), and travel management regulations.

BACKGROUND

The Flathead National Forest

20. The 2.4 million-acre Flathead National Forest lies in the heart of the Rocky Mountains and the core of the Crown of the Continent Ecosystem, just west of the continental divide and just south of the Canadian border. Its unique position within a larger complex of wilderness and unroaded areas bordering Glacier National Park and a remote portion of British Columbia, make the Flathead a central facet in one of the largest and last remaining wild areas of the lower 48 states.

21. Inherently, this prime geographic location makes the Flathead a preeminent landscape for connecting habitats and core populations of a diverse array of wildlife. The Forest is inhabited by hundreds of species of native mammals, birds, fish, reptiles, amphibians, and invertebrates. The Forest is home to one of the last remaining — and most ecologically intact — assemblages of medium to large

carnivores in the contiguous United States, harboring grizzly bears, Canada lynx, wolverine, and gray wolves (among others) within its borders.

22. The Flathead is part of Canada lynx critical habitat unit 3 of the U.S. Fish and Wildlife Service's Northern Rocky Mountains region, and is home to one of the largest populations of federally protected, threatened grizzly bears in the lower 48 states. The Forest is the largest public landowner within the Northern Continental Divide Ecosystem ("NCDE"), one of the U.S. Fish and Wildlife Service's seven grizzly bear ecosystems in the continental United States. The largest known population of wolverines — a species proposed for listing under the federal Endangered Species Act ("ESA") — also roam the Flathead's unparalleled high-alpine environs.

23. The Forest's fecund aquatic resources — its many lakes, rivers, streams, and wetland resources, including: fens, marshlands, glaciated ponds, woodland vernal pools, wet meadows, and sloughs — and accompanying riparian corridors, provide high water quality and crucial habitats for wildlife and aquatic species. Bull trout and westslope cutthroat trout spawn in natal streams on the Forest upon migration from the Forest's namesake, Flathead Lake, which is one of the largest natural freshwater lakes in the American West.

Forest Plan Revision for the Flathead National Forest

24. Forest Plans are the primary source of direction for a National Forest. Forest Plans are meant to provide forest-wide, geographic area, and management area

desired conditions, objectives, standards, guidelines, and suitability of lands for specific uses.

25. NFMA directs revision of Forest Plans from time to time based on significant changes in conditions, but at least every fifteen years.

Forest Planning Framework

26. The Flathead National Forest revised its Forest Plan under the requirements of the Forest Service's 2012 Forest Planning Rules.

27. The Forest Service's 2012 Forest Planning Rules, 36 C.F.R. § 219 *et seq.*, require inclusion of plan components, including standards or guidelines, that address social and economic sustainability, ecosystem services, and multiple uses integrated with the plan components for ecological sustainability and species diversity. The Forest Planning Rules require plan components to maintain or restore vegetation and ecosystems to provide for species diversity, including threatened and endangered species.

28. In addition to the environmental analysis required under NEPA, the Forest Service's Forest Planning Rules also require interested parties administratively exhaust their concerns by participating in an objection process. The objection process is a final opportunity for administrative review of unresolved public concerns over the Forest Service's proposed decision. Parties must submit an objection to the Forest Service identifying concerns with the draft Record of Decision ("ROD") for a revised Forest Plan.

29. The revised Forest Plan replaces the Flathead's 1986 Forest Plan, including the more than 20 amendments to the 1986 Forest Plan, in its entirety.

The NEPA Process

30. The Forest Service published the notice of intent to revise the Flathead Forest Plan and prepare an environmental impact statement ("EIS") assessing the effects of the revised Forest Plan in the Federal Register on March 6, 2015.

31. In May 2015, Plaintiff WildEarth Guardians submitted timely scoping comments on the Forest Service's notice of intent to revise the Flathead Forest Plan and prepare an EIS.

32. The Forest Service published a notice of availability of a draft EIS for the revised Forest Plan in the Federal Register on June 3, 2016.

33. WildEarth Guardians and Western Watersheds Project submitted timely comments on the Forest Service's draft EIS for the revised Forest Plan on October 3, 2016.

34. The Forest Service published a notice of opportunity to object to the revised Forest Plan and its draft ROD on December 15, 2017.

35. WildEarth Guardians and Western Watersheds Project submitted a timely objection on February 8, 2018. Sierra Club was a party to the objection submitted on February 8, 2018.

36. WildEarth Guardians' staff participated in objection resolution meetings in Kalispell, Montana in April 2018.

37. WildEarth Guardians submitted a letter on May 17, 2018 to Regional Forester Leanne Marten recommending the Flathead National Forest commit to site-specific winter travel planning within one year of the signing of the final ROD.

38. On August 15, 2018, the Forest Service reviewing officer issued its response to eligible objections. The August 15, 2018 response to objections included instructions for additional analysis the Forest Service needed to undertake before issuing the final ROD.

39. The Forest Service completed its final EIS for the revised Forest Plan in November 2018.

40. Forest Supervisor Chip Weber signed the final ROD for the revised Forest Plan on December 24, 2018.

41. On December 27, 2018, the Forest Service published a notice in the Federal Register that Forest Supervisor Chip Weber had signed the final ROD for the Flathead National Forest's revised Forest Plan. The Flathead National Forest revised Forest Plan took effect on January 26, 2019.

Endangered Species Act Consultation

42. The Forest Service completed a Biological Assessment on October 31, 2017. This Biological Assessment assessed potential impacts to threatened and endangered species from implementation of the Flathead National Forest's revised Forest Plan. The Biological Assessment concluded the revised Forest Plan is likely to adversely affect bull trout and designated bull trout critical habitat, grizzly bear,

Canada lynx, and Canada lynx critical habitat. The Biological Assessment concluded the revised Forest Plan may affect, but is not likely to jeopardize, wolverine.

43. The U.S. Fish and Wildlife Service (“FWS”) issued a Biological Opinion on November 22, 2017. The Biological Opinion concluded the revised Forest Plan is not likely to jeopardize the continued existence of bull trout, grizzly bear, or Canada lynx, or adversely modify designated bull trout critical habitat or Canada lynx critical habitat.

Wildlife on the Flathead National Forest

44. The Flathead National Forest is home to a wealth of rare and imperiled wildlife species. The Forest provides essential habitat for wildlife not found elsewhere in the contiguous United States.

Grizzly Bears (Ursus arctos horribilis)

45. Grizzly bears (*Ursus arctos horribilis*) are a subspecies of brown bear (*U. arctos*) that occur in North America, Europe, and Asia.

46. Grizzly bears once occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska. Prior to European settlement, there were approximately 50,000 grizzly bears in the western United States. By the 1930s, grizzly bears had lost approximately 98 percent of their historic range in the western United States. Of the 37 grizzly bear populations present in the contiguous United States in 1922, 31 were extirpated by 1975. By the early 1970s, only a few hundred grizzly bears remained in the contiguous United States.

47. In 1975, FWS listed all grizzly bears in the contiguous United States as a threatened species under the federal ESA. In the 1975 listing, FWS determined grizzly bears in the contiguous United States were threatened by a combination of factors. FWS determined grizzly bears in the contiguous United States had lost a significant amount of habitat in the contiguous United States. At the time, grizzly bear range was confined to only three regions, one of which was the Bob Marshall Ecosystem in northern Montana.

48. Isolation and the lack of connectivity between grizzly bear populations in the contiguous United States was considered a threat to grizzly bears in the 1975 listing. The 1975 listing also identified human-caused mortality as a threat to grizzly bears. The 1975 listing identified the inadequacy of existing regulatory mechanisms as a threat to grizzly bears. The 1975 listing identified the overall lack of data and scientific information on grizzly bear needs as a threat to grizzly bears. The 1975 listing identified increasing human use of the bears' habitat as a threat to grizzly bears.

49. The FWS identified six recovery ecosystems in the contiguous United States where grizzly bears are known to have inhabited and where suitable habitat available for grizzly bear conservation remains, including: (1) the NCDE; (2) the Greater Yellowstone Ecosystem; (3) the Cabinet-Yaak Ecosystem; (4) the Selkirk Mountains Ecosystem; (5) the Bitterroot Ecosystem; and (6) the North Cascades Ecosystem.

50. The Flathead National Forest is home to one of the largest remaining populations of grizzly bears in the contiguous United States. This population of grizzly bears on the Flathead National Forest is part of the NCDE grizzly bear population. There are approximately 900 grizzly bears in the NCDE.

51. Grizzlies in the NCDE are threatened by multiple factors. In particular, grizzly bears in the NCDE are significantly threatened by roads. FWS considers the management of roads to be one of the most important variables in managing grizzly bear habitat.

52. Grizzly bears are adversely impacted by roads through direct mortality from vehicle strikes. Grizzly bears are adversely impacted by roads through direct mortality from illegal harvest. Grizzly bears are adversely impacted by roads through indirect mortality resulting from habituation to humans. Grizzly bears are adversely impacted by roads through avoidance of key habitat as they attempt to move away from roads and road activity. Grizzly bears are adversely impacted by roads through displacement from key habitat as they attempt to move away from roads and road activity. Grizzly bears are adversely impacted by roads through modification of their core habitat due to roads and road construction. Grizzly bears are adversely impacted by roads through fragmentation of their core habitat due to roads and road construction.

53. The presence of roads leading to human population centers poses risks to grizzly bears. The presence of dispersed motorized recreation in habitat around

roads poses risks to grizzly bears. Access management is essential to reducing mortality risk to grizzly bears. Managing the construction and use of forest roads is essential to reducing mortality risk to grizzly bears. Managing dispersed motorized recreation is essential to reducing risks to grizzly bears.

54. Roads may cause some grizzly bears to habituate to humans. Grizzly bears that are habituated to humans suffer increased mortality risk.

55. Many grizzly bears will under-use or avoid otherwise preferred habitats that are frequented by humans due to road proximity and related opportunities for human access. This represents a modification of normal grizzly bear behavior that can result in detrimental effects. Grizzly bears will avoid roads. Grizzly bears will avoid corridors adjacent to roads. Grizzly bears will avoid roads and adjacent corridors even when the area contains preferred habitat for breeding, feeding, shelter, and reproduction.

56. Mace and Manley (1993) reported use of habitat by all sex and age classes of grizzly bears was less than expected where total road densities exceeded two miles per square mile. Mace and Manley (1993) also found that adult grizzly bears used habitats less than expected when open motorized route density exceeded one mile per square mile. Female grizzly bears in the Mace and Manley (1993) study area tended to use habitat more than 0.5 mile from roads or trails greater than expected.

57. Grizzly bear core habitat is comprised of areas with no motorized access during the non-denning period. Large blocks of secure core grizzly bear habitat are

vital to grizzly bears. Grizzly bear core habitat provides areas that are free from human influence. Secure core habitat for grizzly bears allows the species to exist under natural, free-ranging conditions. As in most grizzly bear ecosystems in the contiguous United States, in the NCDE, roads are the primary threat to large blocks of grizzly bear security core habitat.

58. Roads are a primary threat to large blocks of grizzly bear security core habitat because they facilitate human presence. Roads are a primary threat to large blocks of grizzly bear security core habitat because they fragment large swaths of habitat into smaller blocks.

59. Grizzly bears in the NCDE are currently isolated from other grizzly bear populations in the contiguous United States. Providing for grizzly bear connectivity is key towards eventually recovering the species across the contiguous United States.

60. Grizzly bears in the NCDE are threatened by the impacts of climate change. The changing climate impacts the availability of grizzly bear food resources. Climate change impacts the number, size, and location of large wildfires. Wildfires can disrupt grizzly bear habitat.

Canada Lynx (Lynx canadensis)

61. The Canada lynx (lynx) is a medium-sized cat with long legs, large paws, webbed toes adapted to walking on snow, long tufts on the ears, and a short, black-tipped tail.

62. Lynx primary food source is snowshoe hare. Lynx are highly specialized in hunting snowshoe hare. Lynx have secondary food sources. Red squirrel is a lynx secondary food source. Lynx consume a greater diversity of prey during summer months than at other times of year.

63. In Montana, snowshoe hares account for approximately 96 percent of biomass in the lynx diet.

64. Lynx habitat is closely correlated with snowshoe hare habitat in much of North America.

65. Lynx are habitat specialists. In the western United States, lynx primarily occur in spruce-fir vegetation types that receive persistent snowfall. Lynx typically inhabit gentle, rolling topography with dense horizontal cover, persistent snow cover, and moderate to high snowshoe hare density.

66. Lynx winter habitat is different from snowshoe hare winter habitat. Lynx winter habitat is more limiting on lynx than snowshoe hare winter habitat.

67. Lynx are known to persist in areas that have experienced large-scale forest mortality events. Lynx are known to reproduce in areas that have experienced large-scale forest mortality events. Lynx are known to persist in forests that have experienced insect kill events. Lynx are known to reproduce in forests that have experienced insect kill events.

68. The average home range for lynx is 39.6 square kilometers. For female lynx, the average home range is 31.1 square kilometers. For male lynx, the average home range is 42.9 square kilometers.

69. Lynx make exploratory movements beyond identified home ranges. In Montana, these exploratory movements range from approximately 15 to 40 kilometers. The duration of these exploratory movements ranges from one week to several months.

70. Lynx are known to disperse. Dispersal is the permanent movement of an animal to a new home range. Young male lynx are most likely to disperse. Female lynx tend to establish home ranges adjacent to their mother.

71. Lynx populations are declining across the contiguous United States. Lynx populations are declining in Montana. Lynx populations are declining on the Flathead National Forest.

72. Canada lynx are listed as threatened under the federal ESA.

73. Lynx experience various threats to their existence. Logging in lynx habitat is a threat to lynx existence. Logging in lynx habitat can cause adverse effects to lynx. Climate change is a threat to lynx existence. Climate change can cause adverse effects to lynx. Canada lynx are threatened by incidental trapping. Canada lynx are threatened by too many roads in lynx habitat.

Wolverine (Gulo gulo luscus)

74. The wolverine is the largest member of the *Mustelidae* (weasel) family.

75. The wolverine resembles a small bear, but with a bushy tail and a broad, rounded head, short rounded ears, small eyes, and a body custom-built for high-elevation mountain living.

76. The wolverine's large, crampon-clawed feet (each with five toes with curved, semi-retractile claws used for digging and climbing) are enormous relative to its body which allow the animal to spread its weight like snowshoes. This gives wolverines an advantage over most competitors and prey during cold months.

77. Wolverines operate at a higher metabolic rate than other animals their size. To hold in heat, wolverines wear a double fur coat which includes a dense inner layer of air-trapping wool beneath a cover of stout guard hairs which add extra insulation. These stout guard hairs, which drape from the wolverine, are textured to resist absorbing moisture and excel at shedding frost (this makes a wolverine's pelt extremely desirable and valuable).

78. Reproductive rates for wolverines are among the lowest known for mammals.

79. Approximately 40 percent of all female wolverines are capable of giving birth at two years old (the average age of reproduction, however, is three years). Female wolverines become pregnant most years and produce a litter of approximately 3.4 kits on average. It is common, however, for females to forgo reproducing every year, possibly saving resources to increase reproductive success in subsequent years.

Female wolverines are also known to reabsorb or spontaneously abort litters prior to giving birth.

80. Breeding generally occurs from late spring to early fall. Female wolverines undergo delayed implantation until the following winter to spring, when active gestation lasts from 30 to 40 days.

81. Wolverine litters are born from mid-February through March.

82. Female wolverines use natal (birthing) dens that are excavated in snow.

83. Deep snow that persists into the late spring is needed for wolverine reproduction.

84. No records exist of wolverines denning anywhere but in snow in the contiguous United States. Wolverines do not den in the absence of snow. This is true even though there is a wide availability of snow-free denning opportunities within the species' geographic range.

85. Stable snow pack greater than five feet deep appears to be a requirement for natal denning because it provides security for offspring and buffers cold winter temperatures.

86. Female wolverines have been known to abandon reproductive dens when temperatures warm and snow conditions become wet. This may indicate that the condition of the snow is important to successful reproduction and that the onset of spring snowmelt may force female wolverines to move kits into alternate denning sites with better snow conditions if they are available.

87. Once the litter is born, wolverines will continue to use the natal den through late April and early May (occupancy of such dens varies from 9 to 65 days). As wolverines grow, females move the kits to multiple secondary “maternal” dens. Researchers think the timing of natal den abandonment may be tied to the accumulation of water in the dens due to snowmelt, the maturation of offspring, disturbance, and/or geographic location.

88. Wolverines require secure, core areas of habitat that are large and linked to other sub-populations. Wolverines require a lot of space; the availability and distribution of food is likely the primary factor in determining wolverine movements and home range size.

89. Female wolverines forage close to den sites in early summer, progressively ranging further from dens as kits become more independent.

90. The best available science reveals climate change will decrease the amount of available wolverine habitat and increase fragmentation between areas of suitable wolverine habitat in the contiguous United States. This will result in a smaller and more isolated population of wolverines in contiguous United States.

91. Peer-reviewed, climate change models predict that warming temperatures and changes in precipitation will result in reduced snowpack and permanent loss of wolverine habitat in the contiguous United States.

92. By 2045, the best available science estimates that 23 percent of current wolverine habitat in the contiguous United States will be lost due to climate warming.

That loss expands to 63 percent of wolverine habitat by the time interval between 2070 and 2099.

93. The best available science reveals that as habitat patches become smaller and more isolated, they are likely to lose the ability to support wolverines. Loss of wolverine habitat also increases habitat fragmentation as islands of wolverine habitat become smaller and intervening areas between wolverine habitat become larger. This habitat alteration will result in the loss of genetic diversity due to inbreeding within a few generations. Further, isolation of wolverines on small habitat islands with reduced connectivity to other populations would also increase the likelihood of sub-populations being lost due to demographic stochasticity, impairing the functionality of the wolverine metapopulation in the contiguous United States.

94. Wolverines are vulnerable to trapping due to their habit of ranging widely in search of carrion, which would bring them into frequent contact with poison baits and traps set for other species. Trapping occurs on the Flathead National Forest. Traps set for other animals can incidentally capture a wolverine.

95. Because of their scavenging nature, wolverines come readily to man-made baits and are thus vulnerable to skilled trappers. Females with newborn young are limited in their ranging and foraging capacities and, as such, are especially vulnerable to baited traps.

96. Wolverine are sensitive to disturbance from motorized winter recreation activities. Wolverine alter their behavior in response to motorized winter recreation

activities. Wolverine avoid areas where motorized winter recreation activities occur. Female wolverine demonstrate a stronger response to motorized winter recreation activities than male wolverine. Male wolverine exhibit a negative response to motorized winter recreation activities. Female wolverine exhibit a negative response to motorized winter recreation activities.

97. The best available science reveals that motorized winter recreation poses the greatest threat to wolverine persistence and recovery after climate change.

98. The cumulative effect of climate change and motorized winter recreation on wolverine is significant. The cumulative effect of climate change and motorized winter recreation negatively affects wolverine.

99. As wolverines lose habitat to the effects of climate change, wolverine and motorized winter recreationists will be forced to share smaller and smaller habitat patches. Decreasing areas with sufficient snow will amplify the effect of motorized winter recreation on wolverine due to the fact that motorized winter recreation will be concentrated in smaller areas on the Flathead National Forest.

100. Designated wilderness areas may not necessarily provide for all of the wolverine's life history requirements.

101. Wolverine meta-populations require connectivity to maintain genetic health and population persistence.

102. Wilderness areas isolated from each other by expanses of forest lands subject to logging, motorized recreation, and other activities not allowed in designated wilderness can make movements dangerous for dispersing young wolverine.

103. Designated wilderness areas can provide secure wolverine denning habitat. Designated wilderness areas do not, on their own, ensure a healthy wolverine population over the long term.

Bull Trout (Salvelinus confluentus) and Bull Trout Critical Habitat

104. Bull trout (*Salvelinus confluentus*) is a species listed as threatened under the federal ESA throughout the coterminous United States. Since listing bull trout as threatened, FWS has designated and redesignated bull trout critical habitat multiple times. In 2010, FWS designated critical habitat for bull trout that included critical habitat on the Flathead National Forest.

105. The Flathead supports 12 bull trout core areas of the Columbia Headwaters Recovery Unit. Nine of the core areas are considered “simple” core areas, each representing a single local bull trout population. Three of the core areas are considered “complex” because they represent larger interconnected habitats, each containing multiple spawning streams and considered to host separate and largely genetically identifiable local bull trout populations. The Flathead also contains four designated critical habitat sub-units for bull trout, all within the Clark Fork River Basin Critical Habitat Unit (CHU 32).

106. Bull trout are members of the salminidae family. Bull trout are primarily freshwater fish, with occasional instances of anadromy. Historically, bull trout occurred from Alaska to California, however they now live primarily in Washington, Oregon, Idaho, and Montana. Bull trout have been largely extirpated from the southern end of their historic range in California.

107. Bull trout require migration corridors as part of their life cycle. Migration is important for the genetic integrity of bull trout. The Flathead River system is home to bull trout migration. Bull trout can migrate up to 250 kilometers to spawn within the Flathead River system.

108. Bull trout are a cold-water fish of relatively pristine streams and lakes. Bull trout have specific habitat requirements: cold, clean, complex and connected habitat. Bull trout are sensitive to water temperatures above 54 degrees Fahrenheit. Bull trout require cold water for all stages of their life cycle. Juvenile bull trout distribution is limited by stream temperatures above 59 degrees Fahrenheit. Optimum stream temperature for juvenile bull trout is between 44 and 46 degrees Fahrenheit. Optimum stream temperature for incubation of juvenile bull trout eggs is between 35 to 39 degrees Fahrenheit.

109. Bull trout streams must have clear water. Bull trout streams must have a clean surface substrate. Bull trout streams must have complex habitats. Complex habitats include deep pools. Complex habitat includes wood cover such as snags and overhanging banks.

110. Bull trout require fresh water with stable stream channels and loose, clean gravel for spawning. Bull trout prefer habitats with complex and diverse cover and rocky bottoms for rearing offspring. Deeper pools and ponds containing woody debris, undercut banks, and boulders are optimal features of bull trout habitat.

111. Bull trout require stream beds made up of loose, clean gravel. Fine sediment negatively affects the survival rate of bull trout eggs.

112. Bull trout occur over a large area, but their distribution and abundance has declined. Scientists have documented several local extinctions of bull trout. Remaining bull trout populations tend to be small and isolated from each other, making the species more susceptible to local extinctions.

113. Historical habitat loss, degradation and fragmentation are threats to bull trout. The introduction of and competition with nonnative species such as brown, lake, and brook trout are threats to bull trout. Blockage of migratory bull trout corridors is a threat to bull trout. Instream flow alterations associated with water diversions, road construction and maintenance are threats to bull trout and its critical habitat. Grazing practices are a threat to bull trout and its critical habitat. Poor water quality is a threat to bull trout and its critical habitat. The 2015 Recovery Plan for bull trout identifies climate change effects as a factor affecting bull trout and bull trout critical habitat.

114. Fragmentation and isolation of local populations of bull trout is a significant factor that has resulted in a legacy of degraded bull trout critical habitat.

Degradation of spawning and rearing habitat and upper watershed areas from forest and rangeland practices and intensive development of roads is a significant factor that has resulted in a legacy of degraded bull trout critical habitat.

115. Climate change may affect bull trout and designated bull trout critical habitat by warming stream temperatures, altering stream hydrology, and changing the frequency, magnitude, and extent of climate-induced events including floods, droughts, and wildfires. A warming climate is expected to shrink cool spawning and rearing areas.

116. Logging and other vegetation management in riparian areas harms water quality. Logging in riparian areas increases soil moisture and surface runoff. Logging in riparian areas reduces shade cover. Logging in riparian areas removes vegetation along banks. Logging in riparian areas that removes vegetation along banks destabilizes those banks. Logging in riparian areas raises water temperatures. Logging in riparian areas reduces the potential for recruitment of woody material.

117. Road construction in riparian areas harms water quality. Road construction in riparian areas accelerates erosion. Road construction in riparian areas introduces invasive species to sensitive riparian ecosystems. Roads are a primary source of sediment impacts to developed watersheds. Accumulation of fine sediment is detrimental to bull trout. Sediment delivered to streams is greatest in riparian areas where roads cross the streams.

118. The use of forest roads in riparian areas harms water quality. The use of forest roads in riparian areas accelerates erosion. The use of forest roads in riparian areas increases the amount of sediment entering receiving waters. Increased sediment in waterways increases the turbidity and temperature of receiving waters. The use of forest roads in riparian areas introduces invasive species to sensitive riparian ecosystems.

119. Unmaintained forest roads on the Forest pose a risk to bull trout and designated bull trout critical habitat.

120. Livestock grazing in riparian areas can harm water quality. Livestock grazing in riparian areas reduces vegetation and stability of surrounding stream banks. Livestock grazing in riparian areas increases sediment to receiving waters. Livestock grazing near streams can cause changes in channel morphology. Livestock trailing, chiseling, and soil displacement along stream banks can result in collapse of undercut bank areas, increased bank angle, loss of bank cover, and stream widening. Concentrated livestock waste can cause eutrophication of lakes and ponds.

121. A culvert is a structure that allows water to flow under a road from one side to the other. Debris and sediment can build up in a culvert without regular maintenance and cleaning. A culvert plugged with debris and sediment can fail. A plugged culvert that fails can deliver large amounts of sediment from the road surface, ditch, and fill slopes to receiving waters. Culverts that remain in the road behind gates or berms are less likely to be inspected. Culverts that remain in the road behind gates

or berms are less likely to be maintained. Culverts that remain in the road behind gates or berms pose an increased risk of failure.

122. The existing road system on the Forest includes closed forest roads with culverts behind gates or berms. The terms and conditions of previous ESA consultation documents required the Forest Service to annually monitor culverts left behind gates and berms on the Forest. In 2015, FWS concluded annual culvert monitoring was necessary to prevent harms from culvert failures on the Flathead. The Forest Service has failed to annually monitor culverts left behind gates and berms on the Forest. The existing road system on the Forest poses a risk to bull trout and designated bull trout critical habitat.

Winter Motorized Travel on the Flathead

123. In 1972, President Nixon issued Executive Order 11644 requiring the Forest Service to develop travel management regulations to limit off-road vehicle use, including over-snow vehicles (“OSVs”, which include snowmobiles), only to designated areas and trails.

124. The need for this Executive Order was due to the large number of off-road recreational vehicles, including OSVs, being used on public lands that were in conflict with land and resource management practices, environmental values, and recreational activities. This demonstrated the need for a unified federal policy towards the use of recreational vehicles on public lands. This resulted in Executive Order 11644.

125. Executive Order 11644, as amended by Executive Order 11989, obligates the Forest Service to “establish policies and provide for procedures that will ensure the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Off-road vehicles include over-snow vehicles.

126. Executive Order 11644 obligates the Forest Service to promulgate rules requiring it to locate motorized routes to (1) minimize damage to soil, watershed, vegetation, or other resources of public lands; (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and (3) minimize conflicts between off-road vehicle use and other recreational uses.

127. In 2005, the Forest Service issued the Travel Management Rule to implement the requirements of Executive Order 11644. The Forest Service issued regulations specific for winter travel planning in 2015. This is referred to as Subpart C or the 2015 OSV Rule.

128. Subpart C of the Travel Management Rule requires the designation of roads, trails, and areas on National Forest System lands open to OSV use, and any use off of those designated roads and trails and outside of designated areas is prohibited. This is referred to as the “closed unless designated open” approach. Winter travel planning must be performed for all National Forest lands where snowfall is adequate for that use to occur.

129. The winter travel planning process must provide for public involvement, coordination with other entities, and application of the minimization criteria.

130. Specific criteria must be considered and applied in designating trails and areas for over snow motor vehicle use, with the objective of minimizing, including damage to soil, watersheds, vegetation, and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; and conflicts between motor vehicle use and existing or proposed recreational uses of the Forest. These specific criteria are referred to as the “minimization criteria.” The Forest Service must not just consider these minimization criteria, but must affirmatively demonstrate how it evaluated and applied the minimization criteria in any decision designating trails and areas for motor vehicle use with the objective of minimizing impacts and conflicts.

131. Roads, trails, and areas designated for OSV use must be reflected on an OSV use map made publicly available.

132. The Forest Service can avoid preparing winter travel plans if it has made previous decisions, under other authorities and including public involvement, that restrict motor vehicle or OSV use to designated routes and areas over an entire administrative unit or Ranger District, or parts of an administrative unit or Ranger District where snowfall is adequate for OSV use to occur, and no change is proposed to those previous decisions. In those instances, the Forest Service issues public notice of the designations without any further public involvement.

133. Snowmobiles and OSVs have substantial harmful impacts on a variety of resources, including air quality, water quality, vegetation and wildlife. OSV use also adversely impacts the experiences of other users of National Forest lands, such as those seeking quiet recreation, and degrades Wilderness characteristics, including opportunities to experience solitude and participate in primitive forms of recreation.

134. OSV use damages exposed soils and vegetation. OSV use can harm water quality, especially early or late in the season where there is a likelihood of inadequate snow levels. Damage from OSV use may also occur where wind exposes soil and vegetation. OSV use can cause significant damage to browse plants important to wildlife. OSV use compacts snow. Snow compaction can reduce the soil temperature and soil microbial activity, and can slow germination of seeds. Snow compaction can result in wet and soft trails due to slower snow melt, ultimately leading to damage by other users in the spring. OSVs that run over or near vegetation damage trees and shrubs by tearing at the bark, ripping off branches, or topping trees.

135. OSVs are designed to, and do, travel off-trail, disturbing soil, creating weed seedbeds, and dispersing seeds widely. The greatest vector for spread of weeds is through motorized vehicles—cars, trucks, All Terrain Vehicles (“ATVs”), and snowmobiles. Fuel leaks and exhaust from OSV use also negatively impacts soil quality and vegetative health.

136. Motors from OSV use create noise that degrades the naturalness of an area. OSV use diminishes opportunities for solitude and primitive recreation. OSV

use reduces the likelihood that Congress will eventually designate such areas as Wilderness.

137. OSV use can have adverse impacts on wildlife. The presence and noise from OSV use increases stress to wildlife in the winter. Wildlife are vulnerable in the winter. OSV use causes both a physiological and behavioral response in wildlife. OSV use facilitates competition among species. OSV use causes displacement and avoidance of wildlife. OSV use reduces the amount of available habitat because species avoid motorized vehicles. Harmful impacts from winter motorized use can be significant, especially where specific routes cut through wildlife habitat.

138. OSV use can have significant adverse impacts on grizzly bears. OSV use can have significant adverse impacts on wolves. OSV use can have significant adverse impacts on Canada lynx. OSV use can have significant adverse impacts on North American wolverine. OSV use can have significant adverse impacts on greater sage-grouse. OSV use can have significant adverse impacts on black bear. OSV use can have significant adverse impacts on many “big game” species like Rocky Mountain elk, deer, moose, bighorn sheep, and mountain goat.

139. Technological advances in recreational machinery have increased the power and ability of snowmobiles and other OSVs. Changes in technology include increasing power and ability of OSVs. New technological capabilities of OSVs allow riders to navigate steeper terrain, deeper snow, and more dense forests. OSVs are able to travel much farther into the backcountry as a result of increased power and ability of

OSVs. New technology allows OSVs to partake in activities such as highmarking—where OSVs race up steep slopes toward ridge tops and then quickly turn before capsizing and race back down the slope.

140. Motorized snow bikes are becoming popular on the Flathead. Motorized snow bikes are more narrow than traditional snowmobiles. Motorized snow bikes allow riders to go through tighter spaces than traditional snowmobiles. Motorized snow bikes allow riders to access more narrow terrain and more dense forests than traditional snowmobiles.

141. Increases in machine power and geographic scope of OSV activity has changed, and exacerbated, the impacts of OSVs on the environment, wildlife, and other recreationists.

The 2018 Forest Plan for the Flathead National Forest

Grizzly Bear Habitat Direction and the NCDE Conservation Strategy

142. The revised Forest Plan relies on the contents of the 2018 NCDE Conservation Strategy as basis for its grizzly bear habitat management direction.

143. In 2013, the Interagency Grizzly Bear Committee, NCDE Sub-Committee developed a draft Conservation Strategy outlining a post-delisting management framework for grizzlies in the NCDE. The NCDE Conservation Strategy was finalized in July 2018. The Forest Service is a signatory to the NCDE Conservation Strategy.

144. The Forest Service relied on the 2013 draft NCDE Conservation Strategy during the notice and comment periods for the proposed revised Forest Plan, draft EIS, and during the objection period. The Forest Service adopted the management framework of the July 2018 NCDE Conservation Strategy for managing grizzly bear habitat on National Forest System lands in its final ROD for the revised Forest Plan.

145. The management framework consists of a number of management zones in which differing levels of protections for grizzly bears are applied: (1) the Primary Conservation Area (“PCA”) – the same area as the recovery zone identified in the FWS’s 1993 Grizzly Bear Recovery Plan; (2) Management Zone 1 – a defined area surrounding the PCA within which the grizzly bear population status and trend are monitored; (3) Demographic Connectivity Areas (“DCAs”) – including the Salish and Ninemile DCAs, portions of zone 1 with specific habitat measures to allow female grizzly bear occupancy and eventual dispersal to other ecosystems in the lower 48; (4) Management Zone 2 – an area where grizzly bears are expected to be present at low densities; and (5) Management Zone 3 – areas where management emphasis is primarily focused on conflict response.

146. The PCA for the NCDE encompasses approximately 5.7 million acres. The Forest Service manages 60.9 percent of these lands. The Flathead National Forest contains 37 percent of lands in the NCDE PCA and 5 percent of lands within

Management Zone 1, including DCAs, as adopted by the NCDE Conservation Strategy.

147. The 2013 draft NCDE Conservation Strategy was never made available for public comment. The 2013 draft NCDE Conservation Strategy is not a NEPA document. The 2018 final NCDE Conservation Strategy was never made available for public comment. The 2018 final NCDE Conservation Strategy is not a NEPA document. The 2018 final NCDE Conservation Strategy was signed in July 2018, after the Flathead had completed its public review and comment process under NEPA, and after the Forest had completed the objection resolution meetings for the revised Forest Plan.

Road Density, Grizzly Bear Secure Core, and the 2011 Baseline

148. The revised Forest Plan adopts components relating to road density levels on the Forest. Managing road density is one of the most important factors for managing grizzly bear habitat security.

149. Flathead Forest Plan Amendment 19 to the 1986 Flathead Forest Plan (1995) incorporated forest-wide objectives and standards pertaining to motorized access and security core areas in grizzly bear habitat in order to provide adequate habitat protections for grizzly bears. Amendment 19 established a standard for no net increase in total motorized access density or open motorized access density and no net decrease in security for 54 grizzly bear management subunits. Amendment 19 also established numeric objectives to limit open motorized route density and total

motorized route density, and to ensure secure core at specified levels within each grizzly bear management subunit. The grizzly bear objectives and standards of Amendment 19 were not discretionary.

150. Specifically, Amendment 19 required no net increase in total motorized route density greater than 2 miles/mile²; no net increase in open motorized route density greater than 1 mile/mile²; and no net decrease in the amount or size of security core areas in all grizzly bear management subunits on the Forest. Amendment 19 also set objectives for all grizzly bear management subunits that are predominantly (greater than 75 percent) National Forest System lands to: (1) limit high-density, open motorized access to no more than 19 percent of a grizzly bear management subunit within 5 years; (2) limit high-density, total motorized access to no more than 24 percent of a bear management subunit in 5 years and no more than 19 percent in 10 years; and (3) provide security core areas that equal or exceed 60 percent of each grizzly bear management subunit in 5 years, and 68 percent in 10 years.

151. The Flathead never achieved the objectives and standards of Amendment 19. Ten grizzly bear management subunits have yet to meet the objectives for open motorized route density. Fifteen grizzly bear management subunits have yet to meet the objectives for total motorized route density. Sixteen grizzly bear management subunits fail to meet the objectives for secure core habitat. The Flathead would need to decommission 518 miles of roads to meet the objectives and standards of Amendment 19.

152. Amendment 19 forest-wide objectives and standards also benefitted bull trout. By limiting route densities on the Flathead, Amendment 19 allowed for fewer roads. Fewer roads and road crossings resulted in reduced risks and threats to bull trout. Amendment 19 objectives and standards requiring the Forest to decommission 518 miles of roads would have benefitted bull trout.

153. The Amendment 19 road density and secure core standards and objectives are based on the best available science.

154. The revised Forest Plan abandons the Amendment 19 road density and secure core standards and objectives. The revised Forest Plan adopts a 2011 baseline by which to measure road density and secure core habitat in the future. The 2011 baseline is an arbitrary baseline.

155. The 2011 baseline generally refers to conditions on the ground as of December 31, 2011. The Forest Service justifies the use of a 2011 baseline because the NCDE population of grizzly bears was increasing in size and expanding in distribution as of that date. The Forest Service concludes that maintaining the on-the-ground conditions that existed as of December 31, 2011 will not preclude the recovery of the NCDE grizzly bear population.

156. The 2011 baseline is derived from the 2013 draft NCDE Conservation Strategy, and subsequently, the 2018 final NCDE Conservation Strategy. Reliance on the 2011 baseline fails to account for changed conditions since December 31, 2011. Reliance on the 2011 baseline fails to account for or consider important factors such

as food resource availability, increased mortalities, and wildfire impacts to the NCDE grizzly bear population since December 31, 2011. Reliance on the 2011 baseline fails to account for changes in the NCDE grizzly bear population's size, distribution, and rate of population change since December 31, 2011.

157. The revised Forest Plan adopts plan components for road density and secure core levels that will maintain on-the-ground conditions as of December 31, 2011. The Forest Service concludes that on-the-ground conditions as of December 31, 2011 contributed to the growth and expansion of the NCDE grizzly bear population. The Forest Service concludes that on-the-ground conditions as of December 31, 2011 will be sufficient for the survival and recovery of the NCDE grizzly bear population.

158. Using the 2011 baseline maintains existing road conditions on the Flathead, with no requirement for future reductions of open motorized route density or total motorized route density, or increases in secure core habitat. The FWS expects that conditions in 32 subunits on the Flathead National Forest will thereby continue to contribute to adverse effects to grizzly bears since motorized route densities are greater than those known to adversely affect grizzly bears (19 percent for open motorized route density and total motorized route density), or the percentage of secure core is less than the threshold known to adversely affect grizzly bears (at least 68 percent).

159. The revised Forest Plan allows for increases in the number and density of forest roads for temporary and administrative uses above the arbitrary 2011 baseline. The revised Forest Plan standards allow temporary changes in the open motorized route density, total motorized route density, and secure core for projects within bear management subunits in the NCDE primary conservation area.

160. The Forest Service has moved away from a policy position — Amendment 19 — that it has stated is the best available science and is necessary for the conservation and recovery of grizzly bears. The Forest Service has instead adopted a revised Forest Plan with plan components that are not based on the best available science because it eschews necessary restrictions on road densities without explaining why it has made this policy decision.

Bull Trout Plan Components

161. The Inland Native Fish Strategy (“INFISH”) amended the Flathead’s 1986 Forest Plan and directed management of bull trout on the Flathead since 1995. The INFISH standards and guidelines applied to all riparian habitat conservation areas (“RHCAs”) and to projects and activities in areas outside of RHCAs that would degrade conditions in RHCAs. The INFISH standards and guidelines addressed, *inter alia*, timber management, roads management, grazing management, recreation management, minerals management, and general riparian area management.

162. Direction under the INFISH standards and guidelines in the 1986 Forest Plan reduced the risk to watersheds, soils, riparian, and aquatic resources from new

and ongoing activities. Based on effectiveness monitoring, the INFISH standards and guidelines were documented to be effective in protecting aquatic resources. INFISH is the best available science.

163. FWS identified in 1998 that the INFISH standards and guidelines lacked an active restoration component.

164. In 2010, FWS determined delayed implementation of Amendment 19 would result in direct and indirect effects to bull trout. This included the delayed decommissioning of 16.5 miles of roads in four subunit watersheds (Red Meadow Creek, Granite Creek, Morrison Creek, and North Fork Lost Creek) that contained 28 culverts and two bridges in bull trout drainages. FWS determined that if the 16.5 miles of road failed, they could produce 476 tons of sediment.

165. The revised Forest Plan eliminates the objectives, standards, and guidelines from Amendment 19. The revised Forest Plan eliminates the objectives, standards, and guidelines from INFISH.

166. For bull trout, the revised Forest Plan replaced the Amendment 19 and INFISH plan direction with a draft Aquatic Riparian Conservation Strategy (“ARCS”). The Forest Service relies on implementation of ARCS and priority watersheds (restoration and conservation watersheds) to restore habitats, maintain or improve the distribution of native aquatic and riparian dependent species, and contribute to the recovery of listed aquatic species. The revised Forest Plan

established the Conservation Watershed Network (“CWN”) to identify watersheds that are native fish strongholds with appropriately functioning aquatic habitats.

167. The revised Forest Plan eliminated the riparian management objectives (“RMOs”) from INFISH. The revised Forest Plan eliminated the requirements under INFISH to complete watershed analysis. The multi-scale watershed analysis required under the revised Forest Plan is less protective than the requirement under INFISH to complete watershed analysis.

168. The revised Forest Plan replaced the standards and guidelines that applied to RHCAs under INFISH with plan components applicable to new Riparian Management Zones (“RMZs”). For example, the revised Forest Plan lacks any standards to prohibit the construction of roads and landings associated with vegetation management, or the use of ground-based equipment, within the RMZ. The revised Forest Plan allows vegetation management in the inner portion of the RMZ under numerous exceptions to the only standard for RMZs.

169. Elimination of the Amendment 19 objectives and standards harms water quality. Elimination of the Amendment 19 objectives and standards harms bull trout and designated bull trout critical habitat. Elimination of the Amendment 19 objectives and standards requiring the Forest to decommission 518 miles of roads harms bull trout and designated bull trout critical habitat.

Winter Travel Management Plan Components

170. In 2003, the Forest Service completed an EIS assessing the effects of the Winter Motorized Recreation Forest Plan Amendment for the Flathead National Forest, commonly referred to as “Amendment 24.” In November 2006, the Forest Service issued its final ROD for Amendment 24. Amendment 24 amended the Flathead’s 1986 Forest Plan.

171. The Forest Service prepared a 2004 Biological Assessment for Amendment 24 that requested formal consultation with FWS on its determination for grizzly bear and written concurrence on its determinations for gray wolf and Canada lynx. In 2008, as a result of a court order, the Forest Service prepared a 2008 modified Biological Assessment to assess impacts from Amendment 24 on grizzly bears. FWS issued a 2008 Biological Opinion that concluded Amendment 24 is not likely to jeopardize the continued existence of the grizzly bear.

172. Amendment 24 included both programmatic and site-specific decisions related to the use of snowmobiles on the Flathead. Amendment 24 programmaticly allowed snowmobiling on 787,200 acres. Amendment 24 designated approximately 3,000 miles of roads and routes for OSV use on the Flathead.

173. On the areas considered “open,” Amendment 24 allowed snowmobiling from December 1 through March 31. Amendment 24 authorized late-season snowmobiling in three specific spring snowmobiling areas and on one set of snowmobile routes: (1) until May 31 in the Lost Johnny area; (2) until May 15 in the

Challenge Creek area; (3) until April 30 in the Six-mile area; and (4) until April 15 on groomed routes in Canyon Creek.

174. Amendment 24 did not alter locations of existing groomed snowmobile routes.

175. Amendment 24 modified Appendix TT of Amendment 19 to the 1986 Forest Plan by altering the definition of restricted road, reclaimed road, and security core, and by defining the grizzly bear denning season as December 1 through March 31. The modifications to Appendix TT of Amendment 19 under Amendment 24 authorized OSV use on restricted and reclaimed roads after March 31.

176. In 2008, the FWS observed that thousands of acres of the Flathead were not actually useable by snowmobiles due to slope (steepness) or vegetation (e.g., too densely forested). FWS and the Forest Service stated in 2008 that about 63,000 acres of the 787,200 acres open to OSV use received the most common use where slope and vegetation do not impede snowmobile use.

177. The Forest Service and FWS did not include a large portion of the Tally Lake Ranger District in the 63,000 acres estimate. The agencies noted a nominal amount of riding occurs in the Tally Lake Ranger District because it is generally lower elevation and rolling topography that does not provide an aesthetic snowmobile experience.

178. In 2008 the Forest Service recognized that spring time restrictions on snowmobiling in grizzly bear recovery zones had not been strictly enforced. In 2008

the Forest Service recognized that snowmobiling had been occurring throughout open areas on the Flathead as long as snow conditions permitted. In 2008 the Forest Service admitted this resulted in some undocumented and unquantified effects on grizzly bears from spring snowmobiling.

179. Amendment 24 designated NCDE recovery zone lands on the Flathead outside of the North Fork drainage as open to snowmobile use with the exceptions of: (1) designated Wilderness, (2) Jewel Basin Hiking Area, (3) Coram Experimental Forest, (4) LeBeau Research Natural Area, (5) proposed Wilderness, and (6) other specific closures based on research concerns (e.g., certain Management Areas defined in the 1986 Forest Plan).

180. Under Amendment 24, 32 percent of the lynx habitat on the Forest is open to motorized OSV use or is in cross-country ski areas where trails are groomed.

181. The revised Forest Plan adopts the designated routes and areas and associated dates for motorized OSV use identified in Amendment 24. There are direct impacts from OSV use authorized under the revised Forest Plan.

182. The revised Forest Plan identified 31 percent of the Forest as suitable for motorized OSV use. The revised Forest Plan made changes to motorized OSV use suitability resulting in an increase of about 567 acres as suitable for motorized OSV use. The revised Forest Plan changed an area by Marias Pass in the Middle Fork geographic area to management area 5c to allow motorized OSV use on designated routes and areas. The revised Forest Plan changed an area between Soldier Creek and

Bruce Creek in the South Fork geographic area to management area 5c to allow OSV use on designated routes and areas.

Monitoring Components

183. The revised Forest Plan monitoring plan requires monitoring evaluation reports only every other year. The monitoring evaluation report need not address each monitoring question. The revised Forest Plan monitoring plan states that an interdisciplinary team will develop a biennial monitoring evaluation report. The monitoring evaluation report was not available for public review or comment during the public notice or objection process for the revised Forest Plan.

184. The revised Forest Plan monitoring plan does not include monitoring questions or associated indicators to track administrative motorized use of roads within the NCDE primary conservation area.

185. The 2017 Biological Opinion replaces the terms and conditions of existing, ongoing Biological Opinions requiring annual monitoring of culverts on closed forest roads with a plan component that requires monitoring once every six years. The revised Forest Plan requires the Forest Service to monitor only a selection of culverts every six years.

FIRST CLAIM FOR RELIEF

Violations of Forest Planning Rules, 36 C.F.R. § 219

Count I: Failure to Adopt Plan Components that Provide the Ecological Conditions Necessary to Recover Listed Species and Conserve Proposed Species

186. Plaintiffs reallage and incorporate by reference all preceding paragraphs.

187. The revised Forest Plan for the Flathead National Forest violates the 2012 Forest Planning Rules because it lacks plan components to provide the ecological conditions necessary to recover species listed under the federal ESA and to conserve species proposed for listing under the federal ESA.

188. The 2012 Forest Planning Rules require a revised Forest Plan “provide for the diversity of plant and animal communities.” 36 C.F.R. § 219.9. A revised forest plan must provide plan components, “including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.” *Id.* § 219.9(a)(1).

189. The Forest Service must “determine whether or not the plan components required” under § 219.9(a) “provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the project area.” *Id.* § 219.9(b)(1). If the Forest Service determines that the plan components required in § 219.9(a) are “insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.” *Id.*

190. A forest plan must include a monitoring program that enables the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. *Id.* § 219.12(a)(1). The monitoring program must include monitoring questions and associated indicators “designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan’s desired conditions or objectives.” *Id.* § 219.12(a)(2).

191. The monitoring program must contain one or more monitoring questions and associated indicators addressing, *inter alia*, the “status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.” *Id.* § 219.12(a)(4)(iv).

192. The revised Forest Plan lacks plan components that provide the ecological conditions necessary to contribute to the recovery of federally threatened grizzly bears. For example, but not limited to:

- a. The revised Forest Plan lacks standards and guidelines to maintain or restore the ecological integrity of currently existing terrestrial ecosystems on the Forest, including plan components to maintain or restore their

structure, function, composition, and connectivity, to contribute to the recovery of the NCDE grizzly bear population.

- b. The revised Forest Plan eliminates the objectives and standards from Amendment 19 that had proven to be beneficial.
- c. The revised Forest Plan rescinds the Forest's commitment to decommission 518 miles of roads.
- d. The revised Forest Plan lacks standards or guidelines to provide for connectivity of grizzly populations.
- e. The revised Forest Plan monitoring program lacks questions and associated indicators to test relevant assumptions, track relevant changes, or measure management effectiveness and progress toward achieving or maintaining the ecological conditions required under § 219.9 to contribute to the recovery of grizzly bear.

193. The revised Forest Plan lacks plan components that provide the ecological conditions necessary to contribute to the recovery of federally threatened bull trout. For example, but not limited to:

- a. The revised Forest Plan lacks standards and guidelines to maintain or restore the ecological integrity of currently existing aquatic ecosystems and watersheds on the Forest, including plan components to maintain or restore their structure, function, composition, and connectivity, to contribute to the recovery of bull trout.

- b. The revised Forest Plan eliminates the INFISH standards and guidelines that had proven to be beneficial.
- c. The revised Forest Plan lacks any standards to protect watersheds in the conservation watershed network. The revised Forest Plan lacks standards or guidelines to maintain or restore the ecological integrity of watersheds in the conservation watershed network.
- d. The revised Forest Plan monitoring program lacks questions and associated indicators to test relevant assumptions, track relevant changes, or measure management effectiveness and progress toward achieving or maintaining the ecological conditions required under § 219.9 to contribute to the recovery of bull trout.

194. The Forest Service failed to adopt plan components that provide the ecological conditions necessary to recover listed species and conserve proposed species as required by the 2012 Forest Planning Rules, 36 C.F.R. § 219, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

Count II: Failure to Adopt Plan Components to Maintain or Restore the Ecological Integrity of Riparian Areas in the Plan Area.

195. Plaintiffs reallage and incorporate by reference all preceding paragraphs.

196. The revised Forest Plan for the Flathead National Forest violates the 2012 Forest Planning Rules because it lacks standards and guidelines to maintain or restore the ecological integrity of riparian areas in the plan area.

197. The 2012 Forest Planning Rules require a revised Forest Plan “include plan components, including standards or guidelines, to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account: (A) Water temperature and chemical composition; (B) Blockages (uncharacteristic and characteristic) of water courses; (C) Deposits of sediment; (D) Aquatic and terrestrial habitats; (E) Ecological connectivity; (F) Restoration needs; and (G) Floodplain values and risk of flood loss.” 36 C.F.R. § 219.8(a)(3)(i). Further, “[p]lan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas.” *Id.* § 219(a)(3)(ii)(B).

198. The revised Forest Plan failed to adopt plan components to maintain or restore the ecological integrity of riparian areas in the plan area. For example, but not limited to:

- a. The revised Forest Plan includes standards that authorize vegetation management within the inner riparian management zone that does not restore or enhance aquatic and riparian associated resources.

- b. The revised Forest Plan lacks any standards or guidelines that prohibit road construction, road reconstruction, or the use of roads within riparian management zones.
 - c. The revised Forest Plan lacks any standards or guidelines that prohibit existing grazing facilities in riparian management zones.
 - d. The revised Forest Plan lacks any standards or guidelines that prohibit livestock grazing within riparian management zones.
199. The Forest Service failed to adopt plan components to maintain or restore the ecological integrity of riparian areas in the plan area as required by the 2012 Forest Planning Rules, 36 C.F.R. § 219, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

Violations of the National Environmental Policy Act, 42 U.S.C. § 4321

Count I: Failure to Take a “Hard Look” at the Direct, Indirect, and Cumulative Impacts of the Revised Forest Plan for the Flathead National Forest

200. Plaintiffs reallege and incorporate by reference all preceding paragraphs.
201. The revised Forest Plan for the Flathead National Forest violates NEPA because the final ROD and final EIS fail to take a hard look at the direct, indirect, and cumulative impacts of the Forest Service’s proposed actions.
202. The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action and alternatives

to it. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

203. The Forest Service is required to disclose and analyze the direct, indirect, and cumulative effects of the proposed action on the environment. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25(c)(3), 1508.27(b)(7).

204. When analyzing cumulative effects, the Forest Service must analyze the effects on the environment resulting from the incremental impacts of the action, and its alternatives, when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

205. To satisfy the requirements of the NEPA regulations, the Forest Service must take a “hard look” at the impacts resulting from the proposed action.

206. The Forest Service failed to take the requisite “hard look” at the direct, indirect, and cumulative impacts likely to result from the revised Forest Plan on various aspects of the Flathead National Forest’s natural environment. For example, but not limited to:

- a. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of implementation of the Forest Plan on wolverine. This includes, but is not limited to: impacts from winter

motorized recreation, forest management, and the synergistic impact of various effects cumulatively on wolverine.

- b. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of implementation of the Forest Plan on grizzly bear.
- c. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of implementation of the Forest Plan on Canada lynx and its critical habitat.
- d. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of implementation of the Forest Plan on bull trout and its critical habitat. This includes, but is not limited to, impacts from: grazing, timber management, forest roads in riparian areas, weakening INFISH standards, the existing road network, culverts, culverts remaining on closed roads without adequate annual monitoring, stream crossings, insufficient road and trail system maintenance, climate change, and weaker plan components than those found in the 1986 Flathead Forest Plan or INFISH. Further, the Forest Service ignored baseline data and historic practices that resulted in road failures with direct harmful impacts to water quality and bull trout critical habitat.

- e. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of the adoption and implementation of the Amendment 24 over snow vehicle use designations in the revised Forest Plan and final ROD. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of current over snow vehicle use, expected future over snow vehicle use, and any new information and changed circumstances since 2008.
- f. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of identifying new areas as suitable for over snow vehicle use.

207. The Forest Service failed to take the requisite hard look at the direct, indirect, and cumulative effects of the revised Forest Plan as required by NEPA, 42 U.S.C. § 4332, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

Count II: Failure to Provide Meaningful Public Comment

208. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

209. The Forest Service violated NEPA and the APA because it failed to provide meaningful public comment opportunities to the public during its consideration of environmental impacts resulting from the adoption and implementation of the revised Forest Plan for the Flathead National Forest.

210. The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action and alternatives to it. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

211. Here, the Forest Service never afforded the public the opportunity to review and comment on final documents that served as a basis for its final decision, in violation of NEPA’s public participation requirements. For example, but not limited to:

- a. The draft EIS for the revised Forest Plan relied on a draft Conservation Strategy for the Grizzly Bear in the NCDE. Plaintiffs commented on and objected to the revised Forest Plan and draft ROD regarding how it was inappropriate to rely on a draft document that was not yet finalized. The Conservation Strategy for the Grizzly Bear in the NCDE was finalized in July 2018. This date was after all public comment opportunities on the revised Forest Plan. This date was after all objection opportunities on the revised Forest Plan. The public did not have an opportunity to comment on or object to anything included in the final Conservation Strategy for the Grizzly

Bear in the NCDE as it related to the revised Forest Plan. The Conservation Strategy for the Grizzly Bear in the NCDE did not go through any NEPA process, nor were official public comment opportunities provided on it before it was finalized. The Forest Service modified the preferred alternative in the final EIS and the chosen alternative in the final ROD by adopting the final 2018 Conservation Strategy for Grizzly bear in the NCDE. Adoption of the final 2018 Conservation Strategy for Grizzly Bear in the NCDE altered plan components from the draft Forest Plan to the final Forest Plan. The public never had the opportunity to provide comment on these changes.

- b. The draft EIS and final EIS for the revised Forest Plan rely on and integrate by reference the draft Aquatic and Riparian Conservation Strategy (“ARCS”). In its 2017 Biological Opinion, FWS states the revised Forest Plan contains direction to restore habitats, maintain or improve the distribution of native aquatic and riparian dependent species, and contribute to the recovery of threatened and endangered aquatic species primarily through the implementation of ARCS. The public has not had an opportunity to comment on or object to the substance of what is included in the ARCS. The ARCS did not go through any NEPA process, nor were official public comment

opportunities provided on it before it was incorporated into the revised Forest Plan.

212. The Forest Service failed to provide meaningful public comment by depriving the public of the opportunity to review and comment on final documents, not otherwise subject to NEPA's requirements, that serve as the basis for plan components in the revised Forest Plan, as required by NEPA, 42 U.S.C. § 4332, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

Violations of Travel Management Rule, 36 C.F.R. § 212, and Executive Order 11644, as amended

Count I: Failure to Consider and Comply with Minimization Criteria

213. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

214. The Forest Service violated the Travel Management Rule and Executive Order 11644, as amended, by failing to demonstrate consideration, implementation, and compliance with their "minimization criteria" by adopting existing, programmatic, and site-specific over snow vehicle use designations from Amendment 24 and making changes to OSV suitability in the revised Forest Plan.

215. The Forest Service's adoption of the existing OSV use designations and changes to OSV suitability in the revised Forest Plan and final ROD violated Subpart C of the Travel Management Rule because it did not minimize damage to natural

resources, harassment of wildlife and disruption of wildlife habitat, or conflicts with other recreation users. 36 C.F.R. §§ 212.55(b), 212.81(d). It also violated the Travel Management Rule by adopting existing OSV use designations from Amendment 24 that did not comport with the “closed unless designated open” approach because they continued to implement designations of closed areas rather than discrete, specifically delineated areas open to OSV use.

216. An interpretation of the grandfather provision that allows the Forest Service to adopt prior designations under such circumstances violates the language and intent of the Travel Management Rule as well as Executive Order 11644. *Id.* §§ 212.80-81; E.O. 11644, § 3.

217. The Forest Service did not minimize damage to soils, watersheds, vegetation and other natural resources in developing the revised Forest Plan. The Forest Service did not demonstrate that it minimized damage to soils, watersheds, vegetation and other natural resources in developing the revised Forest Plan.

218. The Forest Service did not minimize harassment of wildlife and significant disruption of wildlife habitat in developing the revised Forest Plan. The Forest Service did not demonstrate that it minimized harassment of wildlife and significant disruption of wildlife habitat in developing the revised Forest Plan.

219. The Forest Service did not minimize conflicts amongst different types of forest users – including between motorized and non-motorized recreationists – in developing the revised Forest Plan. The Forest Service did not demonstrate that it

minimized conflicts amongst different types of forest users – including between motorized and non-motorized recreationists – in developing the revised Forest Plan.

220. The revised Forest Plan’s decision failed to demonstrate implementation of the “minimization criteria” required by the 2005 Travel Management Rule and Executive Order 11644, as amended, and as a result is arbitrary and capricious, an abuse of discretion, and not in accordance with the law. 36 C.F.R. §§ 212.81(d), 212.55(b); 5 U.S.C. § 706(2)(A).

PLAINTIFFS’ REQUESTS FOR RELIEF

Plaintiffs respectfully request this Court:

- A. Declare the Forest Service has violated and continues to violate the law as alleged above;
- B. Remand this matter back to the Forest Service with instructions to comply with NEPA, NFMA, the Travel Management Rule, and Forest Planning Rules as alleged above;
- C. Set aside and vacate relevant and appropriate portions of the Forest Service’s decision approving the revised Forest Plan pending compliance with the law;
- D. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request;
- E. Award Plaintiffs their costs of suit, reasonable expenses, and attorneys’ fees; and

F. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted this 2nd day of April, 2019.

/s/ Kelly E. Nokes
Kelly E. Nokes (Mont. Bar No. 39465862)
Western Environmental Law Center
208 Paseo del Pueblo Sur, No. 602
Taos, NM 87571
Ph: (575) 613-8051
nokes@westernlaw.org

/s/ Susan Jane Brown
Susan Jane M. Brown, *application for pro hac vice pending*
Western Environmental Law Center
4107 NE Couch St.
Portland, OR 97232
Ph: (503) 680-5513
brown@westernlaw.org

/s/ John R. Mellgren
John R. Mellgren, *application for pro hac vice pending*
Western Environmental Law Center
120 Shelton McMurphey Blvd., Ste. 340
Eugene, OR 97401
Ph: (541) 359-0990
mellgren@westernlaw.org

Counsel for Plaintiffs

/s/ Marla Fox
Marla Fox, *application for pro hac vice pending*
P.O. Box 13086
Portland, OR 97213
Ph: (651) 434-7737
mfox@wildearthguardians.org

Counsel for Plaintiff WildEarth Guardians