

INTRODUCTION

1. This case challenges the U.S. Forest Service’s (“Forest Service” or “agency”) unlawful evasion of Endangered Species Act (“ESA” or “Act”) requirements in approving the West Reservoir Project (“Project”) in the Flathead National Forest (“Flathead” or “Forest”). Following two orders from this Court faulting the Forest Service’s unlawful renunciation of longstanding protections for imperiled species against excessive roadbuilding in their habitats, the agency now purports to invoke ESA emergency consultation procedures in its latest attempt to sidestep its statutory obligations. There is, however, no emergency. Accordingly, the Forest Service’s action is arbitrary and capricious in violation of the ESA and should be invalidated by this Court.

2. The Flathead National Forest spans 2.4 million acres in northwest Montana and has long provided a sanctuary for grizzly bears and bull trout—both listed as threatened under the ESA. The Flathead’s value to these species depends in large part on the fact that much of the Forest has remained relatively free of roads, and the human intrusion and sediment pollution that roads engender.

3. In 2018, the Forest Service issued a Revised Forest Plan that abandoned longstanding limits on the number of roads in grizzly bear and bull trout habitat in the Flathead. These discarded protections were important for conservation of these species because roads cause increased mortality and disturb essential life functions for grizzly bears, and roads—and their associated motorized use—generate sediment that contaminates bull trout habitat. The Revised Plan substantially weakened the Flathead’s road-management framework by allowing obsolete roads to remain on the landscape without effective measures to block vehicle traffic or reduce waterway contamination.

4. These changes in the Flathead Forest’s management direction allowed significant harm to grizzly bears and bull trout but were not properly evaluated under the ESA. As a result, this Court has twice determined that the Forest Service’s abandonment of its longstanding framework to limit road development and motorized use in grizzly bear and bull trout habitats was irrational and unlawful under Section 7 of the Act.

5. Nonetheless, the Forest Service designed the West Reservoir Project in accordance with the Revised Plan’s invalid road management

provisions. The Project includes, among other activities, 4.7 miles of road construction and reconstruction to facilitate 2,001 acres of logging within important grizzly bear and bull trout habitat in the Forest. The Project would violate the prior limits—i.e., the most recent lawfully adopted provisions—governing road density within grizzly bear habitat in the Forest.

6. Like the Revised Plan, the West Reservoir Project is subject to Section 7 of the ESA, which requires the Forest Service and U.S. Fish and Wildlife Service (“FWS”) to consider all relevant factors that may affect the conservation of ESA-listed species, including the impact of new roadbuilding, inadequate road reclamation, and logging on grizzly bears and bull trout, and then determine based on this analysis whether the agency action is likely to jeopardize these species. Until such interagency consultation is completed, Section 7 prohibits project implementation.

7. Despite acknowledging that the Project is likely to adversely affect grizzly bears and bull trout, the Forest Service yet again bypassed its ESA obligations, claiming that “emergency circumstances” relieved the Forest Service of the need to formally consult with FWS.

Yet the Forest Service identified no unexpected exigency that plausibly supports its “emergency” claim.

8. The agency’s error is especially egregious because the Project includes some of the same types of road activities that also lacked adequate consultation in the context of the Revised Plan, as this Court has twice determined. The negative impacts of roads on protected species are undisputed, yet, with the West Reservoir Project, the Forest Service would inflict such impacts without ever having adequately analyzed them—not for the Revised Plan, and not for the Project.

9. Because there is no emergency to justify the Forest Service’s evasion of ESA requirements, the use of emergency consultation procedures is arbitrary and capricious and violates the plain language and purpose of the ESA and its implementing regulations. To enforce the ESA and to protect grizzly bears and bull trout, Plaintiffs request that the Court declare the Project unlawful and provide temporary, preliminary, and permanent injunctive relief prohibiting the Forest Service from implementing the Project.

JURISDICTION AND VENUE

10. Plaintiffs bring this action pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g)(1), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), both of which waive Defendants’ sovereign immunity.

11. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question) and the citizen-suit provision of the ESA, 16 U.S.C. § 1540(g)(1), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–02.

12. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because Plaintiffs Swan View Coalition and Friends of the Wild Swan reside in this District and the ESA violations alleged in this Complaint occurred in this District. Venue is proper in the Missoula Division of the District because a substantial part of Plaintiffs’ claims arise in Flathead County. *See* Mont. Code Ann. § 25-2-125; Local Civ. R. 1.2(c)(5), 3.2(b).

13. Plaintiffs provided Defendants with sixty days’ written notice of Plaintiffs’ intent to sue on April 6, 2026, as required by 16 U.S.C. § 1540(g)(2).

PARTIES

14. Plaintiff Swan View Coalition is a non-profit conservation organization dedicated to conserving water quality and quiet, secure habitats for fish, wildlife, and people in the Flathead National Forest and greater Flathead River Basin. The Coalition's office is in Kalispell, Flathead County, Montana. The Coalition brings this action on its own behalf and on behalf of its adversely affected members.

15. Plaintiff Friends of the Wild Swan is a non-profit organization with its principal place of business in Swan Lake, Lake County, Montana. Friends of the Wild Swan is dedicated to the conservation of the water quality, fish and wildlife habitat, and biological integrity of the Flathead National Forest. Friends of the Wild Swan brings this action on its own behalf and on behalf of its adversely affected members.

16. Plaintiffs have long-standing interests in the preservation and recovery of grizzly bears and bull trout in the Flathead, both because they and their members place a high value on these species, and because the presence of grizzly bears and bull trout is essential to the healthy functioning of the Northern Continental Divide Ecosystem.

Plaintiffs have been active in seeking to protect and recover grizzly bears and bull trout from their imperiled status through a wide array of actions, including public outreach and education, scientific analysis, and advocacy intended to promote healthy ecosystems in the region.

17. Plaintiffs' members use the Flathead National Forest for a wide range of activities and recreational pursuits, including hiking, camping, backpacking, wildlife viewing, and aesthetic enjoyment. In so doing, Plaintiffs' members seek to observe, photograph, and study grizzly bears and bull trout in their native habitats. Plaintiffs derive aesthetic, recreational, scientific, inspirational, and other benefits from these activities.

18. The challenged West Reservoir Project will reduce opportunities for Plaintiffs' members to experience grizzly bears and bull trout in the wild in the Flathead National Forest because new road construction and logging in the Project area will degrade grizzly bear and bull trout habitat and displace these species from areas that Plaintiffs' members use to observe, photograph, and study them. The legal violations alleged in this Complaint therefore cause direct injury to the aesthetic, conservation, recreational, scientific, educational,

inspirational, and wildlife preservation interests of Plaintiffs and their members.

19. Plaintiffs' members' aesthetic, conservation, recreational, scientific, educational, inspirational, and wildlife preservation interests have been, are being, and, unless the relief prayed for in this Complaint is granted, will continue to be adversely and irreparably injured by Defendants' failures to comply with the ESA. These are actual, concrete injuries, traceable to Defendants' conduct, which would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

20. Defendant Tom Schultz is the Chief of the U.S. Forest Service. In that capacity, Defendant Schultz has supervisory responsibility over the Forest Service's management of national forest lands, including the Flathead National Forest, and the Forest Service's compliance with ESA requirements. Defendant Schultz is sued in his official capacity.

21. Defendant Anthony Botello is the Forest Service Supervisor for the Flathead National Forest. In that capacity, Defendant Botello is responsible for the management of the Flathead National Forest,

including compliance with the ESA. Defendant Botello is sued in his official capacity.

22. Defendant U.S. Forest Service is a federal agency within the U.S. Department of Agriculture. The Forest Service is responsible for managing national forest lands, including the Flathead National Forest, and ensuring that Forest Service activity complies with the ESA.

LEGAL BACKGROUND

I. THE ENDANGERED SPECIES ACT

23. The Endangered Species Act is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). It is intended “to halt and reverse the trend toward species extinction, whatever the cost.” *Id.* at 184. The ESA specifically sought to ensure that grizzly bears would not be “driven to extinction.” *Id.* at 184 (quoting 119 Cong. Rec. 42,913 (1973)).

24. To achieve the ESA’s goals, Section 7 of the Act requires each federal agency to ensure that its actions are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.” 16 U.S.C § 1536(a)(2). An agency action

“jeopardizes” a protected species if it “reasonably would be expected, directly or indirectly,” to reduce appreciably the species’ likelihood of survival and recovery “by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02; *see Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 930–31 (9th Cir. 2008).

25. Pursuant to Section 7, before undertaking or authorizing an action that may affect ESA-listed species or their critical habitat, the Forest Service must consult with the appropriate expert fish and wildlife agency, which is FWS for grizzly bears and bull trout. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.01(b). That formal consultation process culminates in FWS’s issuance of a biological opinion, reflecting FWS’s determination—based on “the best scientific and commercial data available”—of whether the proposed action will jeopardize a listed species or destroy or adversely modify designated critical habitat for such species. 16 U.S.C. § 1536(a)(2), (b)(3)(A); *see* 50 C.F.R. § 402.14.

26. If FWS concludes that a proposed action is likely to jeopardize a listed species, the action may not proceed. *See* 16 U.S.C. § 1536(a)(2). In such circumstances, FWS must determine whether

“reasonable and prudent alternatives” exist that would avoid jeopardy.
Id. § 1536(b)(3)(A).

27. If FWS concludes that implementing a proposed action or a reasonable and prudent alternative will not jeopardize a protected species but will nevertheless result in “take” of individuals of such species—e.g., kill, injure, or harm a member of the species—then the agency must issue an incidental take statement with its biological opinion. *Id.* § 1536(b)(4); 50 C.F.R. § 402.14(i)(1); *see also* 16 U.S.C. § 1532(19) (defining “take”). Incidental take statements include provisions that limit an action’s adverse impacts on protected species. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1).

28. An agency action subject to the interagency consultation requirement of Section 7 may not be implemented “until consultation is satisfactorily concluded.” *Lane Cnty. Audubon Soc’y v. Jamison*, 958 F.2d 290, 295 (9th Cir. 1992).

29. In rare circumstances of truly compelling and exigent need, an ESA regulation permits a modified Section 7 consultation procedure. Specifically, when “emergency circumstances mandate” swift action due to “situations involving acts of God, disasters, casualties, national

defense or security emergencies, etc.,” agencies may consult on an action “informally through alternative procedures that the [FWS] Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act.” 50 C.F.R. § 402.05(a). Formal consultation, however, is still required “as soon as practicable after the emergency is under control.” *Id.* § 402.05(b). “The emergency exception is meant for unexpected exigencies.” *Forest Serv. Emps. for Env’t Ethics v. U.S. Forest Serv.*, 397 F. Supp. 2d 1241, 1257 (D. Mont. 2005); *see also Wash. Toxics Coal. v. U.S. Dep’t of Interior, Fish & Wildlife Serv.*, 457 F. Supp. 2d 1158, 1195 (W.D. Wash. 2006).

FACTUAL BACKGROUND

I. THE FLATHEAD NATIONAL FOREST

30. The Flathead National Forest lies in the heart of the Rocky Mountains and the core of the Northern Continental Divide Ecosystem, west of the continental divide. Its key 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 undeveloped areas of the lower-48 States.

31. The fact that much of the Flathead has remained a largely unroaded landscape helps make it 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 most ecologically intact assemblages of medium to large omnivores and carnivores in the contiguous United States, harboring grizzly bears, Canada lynx, wolverines, and gray wolves (among others) within its borders.

32. The Forest's abundant 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 spawn in streams in the Forest and migrate to Flathead Lake (which is one of the largest natural freshwater lakes in the West), Hungry Horse Reservoir (which is in the Project area), and other lakes.

II. LONGSTANDING PROTECTIONS FOR GRIZZLY BEARS AND BULL TROUT

33. For more than 30 years, the Flathead National Forest's 1986 Land and Resource Management Plan and its amendments provided a

framework for managing the Forest, including measures to protect species and habitat while providing for a wide range of human uses.

34. In 1995, the Forest Service issued Amendment 19 to the Forest Plan. To support the survival and recovery of grizzly bears, Amendment 19 set limitations on road density—including separate standards for open and total road density—within management subunits of grizzly bear habitat. U.S. Forest Serv., *Flathead National Forest: Forest Plan Amendment #19 Decision Notice*, 4 (Mar. 1995) [hereinafter Amendment 19]. These subunits are administrative designations of the Northern Continental Divide Ecosystem “approximately the size of the home range for an adult female grizzly bear.” *Id.* at 9.

35. Specifically, Amendment 19 required the Forest Service to: (1) “limit high-density . . . open motorized access to no more than 19 percent of a [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 [bear management subunit] in 5 years, and 68 percent

in 10 years.” *Id.* at 4. It also prevented a net increase in total motorized access density greater than two miles per square mile or a net increase in open motorized access density greater than one mile per square mile in bear management subunits throughout the Forest. *Id.* Critically, Amendment 19 defined total motorized access density to include all roads not fully reclaimed—regardless of whether they are currently used—while open motorized access density included all roads open to public use during the grizzly non-denning season. *Id.* at App. D-2 to -3.

36. To qualify as “reclaimed” and thus be excluded from total road-density calculations, roads had to be treated “to no longer function as a road or trail.” *Id.* at App. D-2. Amendment 19 imposed stringent treatment requirements for reclaiming a road including: (1) removing all stream-aligned culverts; (2) treating the first 200 to 600 feet of the road to preclude motorized and non-motorized use; and (3) treating the remainder of the road to discourage motorized and non-motorized use. *Id.*

37. Because open and total road densities on the Flathead exceeded Amendment 19 road-density objectives, the Amendment prevented the Forest Service from constructing new roads in grizzly

bear habitat until it had reclaimed comparable miles of roads. *Id.* at 4 (requiring that “Forest Service actions will result in a net gain towards the objectives on National Forest System lands”). As a result, under Amendment 19, the Forest Service constructed only 3.2 miles of new roads in Flathead grizzly habitat between 1996 and 2010.

38. Amendment 19’s road-density limitations were important because logging projects—and especially their associated road activities—pose multiple threats to grizzly bears. Roads increase the likelihood of contact with humans, which sometimes leads to poaching, and their associated disturbance and displacement increase the risk of grizzly bear mortality. Grizzly bears learn to avoid roads—even when those roads are no longer used. Roads displace bears from food and habitat and isolate them from each other, reducing genetic diversity. The logging that roads facilitate can further harm grizzly bears by, for example, reducing habitat that supports thermal regulation, denning, and security cover.

39. Logging and road activities also harm bull trout, a highly migratory native fish that requires cold, clean water. Many waterways in the Flathead—including in the Project area—are designated as

critical habitat for bull trout under the ESA, meaning that they have been deemed “essential to the conservation of the species.” 16 U.S.C. § 1532(5)(A)(i). Sediment from both used and unused roads degrades bull trout critical habitat, such as by smothering eggs in spawning gravels and reducing water depth, which decreases the available habitat and increases water temperatures. Although the Forest Service adopted Amendment 19 to protect grizzly bear habitat, the agency has acknowledged that Amendment 19 also helped to conserve bull trout habitat. *See* U.S. Fish & Wildlife Serv., *Biological Assessment for Threatened, Endangered, and Proposed Species: Revised Forest Plan for the Flathead National Forest*, 10 (Oct. 31, 2017) [hereinafter 2017 BA]; *see also* U.S. Fish & Wildlife Serv., *Recovery Plan for the Coterminous United States Population of Bull Trout*, 26 (Sep. 28, 2015).

III. WEAKENED PROTECTIONS IN THE REVISED FOREST PLAN

40. On December 27, 2018, the Flathead National Forest approved its Revised Forest Plan (“Revised Plan”). The Revised Plan abandoned Amendment 19’s road-density requirements, stating that the Forest Service would instead maintain “baseline” road-density levels that existed in grizzly bear habitat in 2011, even though that

baseline had not yet achieved the objectives of Amendment 19. *See* U.S. Forest Serv., *Flathead National Forest Land Management Plan*, 172 (Nov. 2018) [hereinafter Revised Plan].

41. Moreover, the Revised Plan’s promise to maintain 2011 “baseline” road-density levels in the Flathead Forest’s grizzly bear habitat was illusory. This was because the Revised Plan also weakened the governing standards for “reclaiming” a road and thereby exempting it from road-density limitations. While Amendment 19 had essentially required that a road be obliterated to avoid being counted against road-density limitations, the Revised Plan demanded only that a road “meet the definition of impassable,” and the Revised Plan deemed a road “impassable” if some portion of “the first 50 to 300 feet[] has been treated to make it inaccessible to wheeled motorized vehicles” due to impediments such as “natural vegetation growth . . . scarified ground, fallen trees, boulders, or culvert or bridge removal.” *Id.* at 199. Thus, under the Revised Plan, even felling a few trees or planting a few boulders along the first 50 feet of a road could render it exempt from applicable road-density limitations, even as the rest of the road remained intact on the landscape.

42. The Forest Service undertook formal ESA consultation with FWS about the Revised Plan. Although FWS concluded that the Revised Plan was not likely to jeopardize grizzly bears and bull trout or adversely modify bull trout critical habitat, that biological opinion was flawed—and quickly litigated.

IV. ESA LITIGATION OVER THE REVISED PLAN

43. In April 2019, Swan View Coalition and Friends of the Wild Swan filed a lawsuit challenging the Revised Plan and FWS’s biological opinion. Compl. for Declaratory and Injunctive Relief, *Swan View Coal. v. Bernhardt*, No. 9:19-cv-00060-DLC (D. Mont. Apr. 15, 2019). The plaintiffs chiefly alleged that the Revised Plan and FWS biological opinion violated the ESA because the defendant agencies had failed to acknowledge and consider the impact of the Revised Plan’s weakened road-management framework on grizzly bears and bull trout. On June 24, 2021, this Court issued an order holding, in part, that FWS failed to rationally consider impacts to grizzly bears from unauthorized motorized use on so-called “impassable” roads and impacts to bull trout and bull trout critical habitat from the Revised Plan’s weakened road-reclamation requirements. *WildEarth Guardians v. Steele*, 545 F. Supp.

3d 855, 866–71 (D. Mont. 2021), *aff'd in part, vacated in part on other grounds, remanded sub nom. Swan View Coal. v. Steele*, No. 22-35137, 2023 WL 3918686 (9th Cir. June 9, 2023). The Court remanded the biological opinion to FWS and the Forest Service with instructions to fully consider the Revised Plan’s impacts on these species and their habitat. *Id.* at 886.

44. In response to the Court’s order, on February 16, 2022, FWS issued a revised biological opinion, which made only minor and inadequate revisions to its prior opinion and reached the same conclusions.

45. In May 2022, Swan View Coalition and Friends of the Wild Swan filed another lawsuit against the Forest Service and FWS in this Court. Am. Compl. for Declaratory and Injunctive Relief, *Swan View Coal. v. Haaland*, No. CV 22-96-M-DLC, 2024 WL 3219206 (D. Mont. June 28, 2024). Again, the plaintiffs challenged these agencies’ failure to acknowledge and legitimately evaluate the impact of the Revised Plan’s weakened road-management framework on grizzly bears and bull trout. On June 28, 2024, this Court held that FWS again violated the ESA. The Court specifically held that the revised biological opinion

failed to adequately evaluate the Revised Plan’s abandonment of prior road-building limitations in light of evidence that (1) many administratively “closed” roads are subject to unauthorized use that displaces grizzly bears from important habitat; (2) grizzly bears are also displaced by the existence of even unused roads in their habitat; and (3) bull trout are likely to be harmed by the Forest Service’s abandonment of a former requirement to remove culverts from reclaimed forest roads. *Swan View Coal.*, 2024 WL 3219206, at *7–16. As a result, the Forest Service’s reliance on the revised biological opinion to satisfy its own ESA obligations also violated the ESA. *Id.* at *17. The Court again remanded the relevant provisions of the revised biological opinion for further consideration of the Revised Plan’s impacts on grizzly bears and bull trout. *Id.* at *19.

46. As of the date of this filing, that remand continues, and there is no legally valid biological opinion in place to ensure that road-management activities conducted under the Revised Plan will not jeopardize the continued existence of grizzly bears and bull trout.

V. THE WEST RESERVOIR PROJECT

47. Despite this Court's repeated findings that the Revised Plan's road management provisions have not lawfully undergone the statutorily required ESA analysis—and, therefore, that they have not been lawfully determined to avoid jeopardizing grizzly bears or bull trout, or destroying bull trout critical habitat—the Forest Service has now designed and approved the West Reservoir Project in accordance with the Revised Plan. See U.S. Forest Serv., *West Reservoir Project Scoping Letter* 1 (Jan. 21, 2025). The Project includes 4.7 miles of new road construction, 2,001 acres of logging, and 4,654 acres of prescribed fire across an action area of 129,608 acres of the Flathead National Forest near Hungry Horse Reservoir. U.S. Forest Serv., *West Reservoir Project: Environmental Assessment*, 6, 9 (Jan. 2026) [hereinafter *Final EA*].

48. Each Plaintiff submitted timely written comments to the Forest Service on both the scoping notice and draft environmental assessment for the Project. Among other concerns, Plaintiffs detailed the Forest Service's insufficient analysis of the impacts of road density and logging on grizzly bears, bull trout, and their habitat.

49. On March 11, 2026, the Forest Service published its Decision Notice and Finding of No Significant Impact authorizing logging, other vegetation treatments, and new road construction. U.S. Forest Serv., *Decision Notice and Finding of No Significant Impact for the West Reservoir Project*, 2 (Mar. 11, 2026) [hereinafter *DN/FONSI*]. In so doing, the Forest Service acknowledged that the Project is “likely to adversely affect” grizzly bears and bull trout. *Id.* at 14.

50. This finding was well justified because the Project includes logging in secure core habitat for grizzly bears in four bear management subunits within the Flathead Forest: Doris Lost Johnny, Jewel Basin Graves, Wheeler Quintonkon, and Wounded Buck Clayton. *Final EA* at 46. These subunits provide important hiding cover and forage habitat for grizzly bears. *Id.* at 43. The agency notes that “[h]iding cover could take up to 20 years to return after treatment.” *Id.* at 45.

51. The Project also includes an increase in open motorized route density and total motorized route density, and a decrease in secure core in grizzly bear management units. *Id.* at 47. While these impacts are precisely those that the Forest Service and FWS unlawfully evaluated in adopting the Revised Plan, the Forest Service’s analysis of

the West Reservoir Project included no discussion of the prior litigation surrounding the Revised Plan or this Court’s prior rulings on the Forest Service and FWS’s ESA violations. Instead, in approving the West Reservoir Project, the Forest Service noted its compliance with the Revised Plan’s standards and guidelines for road density, motorized use, and “impassable” roads to allegedly “limit disturbance” to grizzly bears, without acknowledging that the Revised Plan’s road-management measures were adopted in violation of the ESA. *Id.* at 48–49.

52. The Forest Service’s authorization of new roads and logging in the West Reservoir Project comes despite the Forest Service’s acknowledgments in Project documents that “human-caused mortality is the driving force behind grizzly bear survival rates,” *id.* at 44, “[m]otorized use and human activity have the potential to cause grizzly bear mortality,” and “[d]isturbance from motorized access, mechanical and human activity would disturb grizzly bears potentially altering travel or foraging patterns,” *id.* at 48. The agency also acknowledged that “[g]rizzly bears are highly dependent upon learned habitat” and “disturbance or displacement into unknown territory may lead to sub-

marginal nutrition, reduced reproduction, or greater exposure to adult predatory bears or human food sources, which can lead to human-caused mortality.” *Id.* at 48.

53. With respect to bull trout, the Project area overlaps with critical habitat in Quintonkon Creek, Wheeler Creek, Wounded Buck Creek, and a portion of Sullivan Creek. *Id.* at 66. The Forest Service acknowledged that the Project activities “would increase sediment delivery to area streams relative to current conditions.” *Id.* at 72; *see also id.* at 74 (estimating an increase in road sediment delivery and total sediment delivery in spawning and rearing critical habitat for bull trout in Quintonkon Creek, Wheeler Creek, and Wounded Buck Creek).

54. Despite acknowledging the West Reservoir Project’s expected adverse impacts on ESA-listed species, the Forest Service has not obtained a project-specific biological opinion from FWS to ensure that the Project activities will not jeopardize grizzly bears or bull trout or adversely modify bull trout critical habitat in violation of Section 7 of the ESA. Instead, the Forest Service has attempted to bypass Section 7’s biological opinion requirement through an illegitimate invocation of emergency procedures.

VI. THE FOREST SERVICE'S UNLAWFUL USE OF ESA EMERGENCY PROCEDURES

55. Prior to issuing its Decision Notice for the West Reservoir Project, the Forest Service committed to undertaking ESA consultation and never invoked ESA emergency procedures.

56. The April 2023 Project Initiation Letter made no reference to ESA emergency consultation procedures or an emergency of any kind. It described the Project's "primary purpose" as improving "vegetative communities and associated wildlife habitat" and mentioned "a more fire resilient forest" merely as a possible "secondary benefit[]." Memorandum from Robert Davies & Scott Snelson, U.S. Forest Serv. Hungry Horse-Glacier View and Spotted Bear Ranger Districts to Interdisciplinary Team Members re: SQUISH Project Initiation Letter, 1 (Apr. 6, 2023) (the Project was later renamed).

57. The January 2025 scoping notice for the Project again made no reference to any emergency or emergency procedures.

58. Then, in April 2025, the U.S. Secretary of Agriculture designated an "emergency situation" across 112,646,000 acres (59 percent) of the National Forest System. U.S. Dep't of Agric., Secretary's Memorandum 1078-006, Increasing Timber Production and Designating

an Emergency Situation on National Forest System Lands, 2 (Apr. 3, 2025). The Secretary attributed the purported “crisis” to many of the factors that the agency has long accounted for in forest management: “uncharacteristically severe wildfires, insect and disease outbreaks, invasive species, and other stressors . . . combined with overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression.” *Id.* at 2. Notably, by the time the Secretary issued this declaration, the Forest Service had already addressed those factors (to the extent they were relevant) in the scoping notice for the West Reservoir Project and proposed non-emergency measures to address them.

59. In issuing the April 2025 emergency action determination, the Secretary invoked her authority under the Infrastructure Investment and Jobs Act, 16 U.S.C. § 6592c, which does not authorize the Secretary to reduce ESA requirements. The Secretary’s Memorandum listed ESA emergency consultation among “other emergency authorities” that the agency should use in implementing her declaration but did not purport to change the conditions under which emergency consultation is available. *Id.* at 4.

60. Following the Secretary’s designation, in the September 2025 Draft EA for the West Reservoir Project, the Forest Service indicated that the Project area largely coincided with the Secretary’s “emergency action determination.” U.S. Forest Serv., *West Reservoir Project: Draft Environmental Assessment*, 85 (Sep. 2025) [hereinafter *Draft EA*]. But nowhere did the agency assert that the Project—which would be implemented gradually over a ten-year timeframe, *id.* at 39—was developed to address any emergency or that the Secretary’s designation affected ESA consultation obligations. To the contrary, the Draft EA confirmed that “[c]onsultation with the U.S. Fish and Wildlife Service for grizzly bear will be completed on proposed activities for the West Reservoir project.” *Id.* at 39.

61. The January 2026 Final EA for the West Reservoir Project contained the same language as the Draft EA about the “emergency action determination,” again without claiming any reduction of ESA obligations. *Final EA* at 86. The Final EA again stated that “[c]onsultation with [FWS] for grizzly bear will be completed.” *Id.* at 42.

62. Only in the March 2026 Decision Notice for the West Reservoir Project did the Forest Service for the first time invoke ESA

emergency consultation procedures “[b]ased on the emergency action determination.” *DN/FONSI* at 14. The agency did not explain why the “emergency action determination” is a legally sufficient basis for using the ESA emergency procedures. The ESA emergency consultation regulation “applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.” 50 C.F.R. § 402.05(a). Here, the agency identified no emergency to which it was responding. Instead, the agency’s purported “emergency” appeared to consist of nothing more than well-known factors, such as generalized wildfire risk and the potential for insect or disease infestations, that have long been considered in Forest Service management decisions. The only new development was the Secretary’s April 2025 Memorandum declaring an “emergency situation” based on such factors. Thus, under the agency’s apparent theory in its Decision Notice, the Secretary’s Memorandum silently eliminated the ESA Section 7 mandate for formal consultation across the majority of the National Forest System—including the West Reservoir Project in the Flathead.

63. The ESA emergency consultation regulation—when properly invoked—allows consultation to “be conducted informally through

alternative procedures that the [FWS] Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act.” *Id.* The Forest Service provided no information about what those alternative procedures would be for the West Reservoir Project.

64. The ESA emergency consultation regulation also mandates that “[f]ormal consultation shall be initiated as soon as practicable after the emergency is under control.” *Id.* § 402.05(b). The agency offered no suggestion as to when formal consultation would occur for the Project or how it would determine when its purported “emergency situation” is under control.

65. In sum, having twice failed to demonstrate ESA compliance for its new, weakened road-management framework under the Revised Flathead Forest Plan, the Forest Service has now attempted to sidestep ESA Section 7’s requirements for a site-specific application of that framework by invoking emergency consultation procedures. However, the Forest Service has identified no unexpected exigency, but only longstanding forest health and wildfire-risk concerns that are widespread in North American forests. The Forest Service’s bogus emergency declaration thus threatens not only to subject grizzly bears

and bull trout in the Flathead Forest to a series of unexamined harms, but also to establish a precedent for widespread Forest Service evasion of fundamental ESA Section 7 requirements across large portions of the National Forest System.

CAUSE OF ACTION

Violation of the Endangered Species Act: Failure to Comply with ESA Consultation Procedures

66. All preceding paragraphs are hereby incorporated as if fully set forth herein.

67. Under Section 7 of the ESA, the Forest Service is required to ensure that the actions it takes will not jeopardize the survival of threatened grizzly bears and bull trout, or destroy or adversely modify bull trout critical habitat. 16 U.S.C. § 1536(a)(2). Where, as here, its action is likely to adversely affect an ESA-listed species, the Forest Service must consult with, and obtain a biological opinion from, the FWS to meet this requirement. *Id.* An agency does not have authority to take an action that violates the ESA.

68. ESA regulations provide for emergency consultation procedures only for “situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.” 50 C.F.R.

§ 402.05(a). The emergency consultation regulation authorizes an alternative, informal consultation process to comply with Section 7, but “[t]he emergency exception is meant for unexpected exigencies.” *Forest Serv. Emps. for Env’t Ethics*, 397 F. Supp. 2d at 1257.

69. Here, the Forest Service has sidestepped the ESA’s clear Section 7 requirements by invoking “emergency consultation procedures” for the West Reservoir Project. *DN/FONSI* at 14. The Forest Service identifies no unexpected exigency to invoke the ESA emergency consultation regulation for the Project, but only longstanding and well-known forest health issues. In these circumstances, the agency’s invocation of the ESA emergency consultation procedures was arbitrary and unlawful.

70. The Forest Service’s failure to comply with ESA Section 7 before authorizing the West Reservoir Project was therefore arbitrary, capricious, and unlawful under the ESA.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the West Reservoir Project decision violates the ESA;

2. Vacate the Project decision;
3. Order compliance with the formal consultation requirements of Section 7 of the ESA;
4. Award Plaintiffs temporary, preliminary, and permanent injunctive relief prohibiting the Forest Service from implementing the Project pending compliance with governing law;
5. Award Plaintiffs their reasonable fees, costs, and expenses, including attorney fees, associated with this litigation; and
6. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 5th day of June, 2026.

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