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

FLATHEAD-LOLO-BITTERROOT CITIZEN)	
TASK FORCE,)	
)	COMPLAINT
Plaintiff,)	
vs.)	
)	
UNITED STATES FISH AND WILDLIFE)	
SERVICE and UNITED STATES FOREST)	
SERVICE,)	
)	
Defendants.)	

1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act (APA) regarding the U.S. Forest Service’s Environmental Assessment and Decision Notice and Finding of No Significant Impact for the Soldier-Butler Project (Project) on the Lolo National Forest (Forest).
2. Task Force Flathead-Lolo-Bitterroot Citizen Task Force (“Task Force”) attests that the decisions approving the Project are arbitrary and

capricious, an abuse of discretion, and/or otherwise not in accordance with law.

3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*
4. Task Force requests that the Court set aside the Project pursuant to 5 U.S.C. §706(2)(A) and enjoin implementation of the Project.
5. Task Force seeks a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief this Court deems just and proper.

I. JURISDICTION

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
7. An actual controversy exists between Task Force and Defendants. Task Force's members use and enjoy the Lolo National Forest for

hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Task Force's members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

8. The aesthetic, recreational, scientific, spiritual, and educational interests of Task Force's members have been and will be adversely affected and irreparably injured if Defendants implement the Project. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, NFMA, and the APA. The requested relief would redress these injuries and this Court has the authority to grant Task Force's requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.
9. Task Force submitted timely written comments and objections concerning the Project in the available administrative review process, thus it has exhausted administrative remedies. Therefore, the Court has jurisdiction to review Task Force's APA claims.

II. VENUE

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and Local Rule 3.3(a)(1). The Soldier-Butler Project is located in the Missoula

Division of the United States District Court for the District of Montana.

III. PARTIES

11. Task Force is an incorporated Montana non-profit public interest organization based in Missoula, Montana. Task Force brings this action on its own behalf and on behalf of its adversely affected members. Task Force works to protect the natural features and primitive aspects of the Northern Rockies and specifically the Flathead, Lolo and Bitterroot National Forests, the native fish and wildlife and habitat for Threatened and Endangered Species – including the grizzly bear – for our continued use and enjoyment. Task Force educates the public on issues affecting our area of concern and participates in the development of long term plans for National Forests and grizzly bear recovery.
12. Defendant UNITED STATES FOREST SERVICE (USFS) is an administrative agency within the U.S. Department of Agriculture.
13. Defendant UNITED STATES FISH AND WILDLIFE SERVICE (FWS) is an administrative agency within the U.S. Department of Interior.

IV. FACTUAL ALLEGATIONS

14. USFS issued its Final Environmental Assessment for the Soldier-Butler Project (Soldier-Butler Environmental Assessment) in October 2019.
15. The Forest Service signed the Soldier-Butler Final Decision Notice and Finding of No Significant Impact (Decision Notice) authorizing the Project on April 17, 2020.
16. On June 9, 2020, Task Force filed a 60-Day Notice of Intent to Sue under the ESA's citizen suit provision, alleging violations of the ESA related to open road density and survival standards for female grizzly bears; the Forest Service's failure to base its decision on the "best scientific and commercial data;" violations of ESA § 9 prohibitions on taking; its failure to analyze the nexus between the Ninemile DCA and the Grizzly Bear Recovery Plan and Conservation Strategy; and the Forest Service's failure to consider other important aspects of the problem, such as the impact of illegal motorized use of administratively closed roads and a history of road closure violations.
17. USFS reinitiated consultation with FWS on August 10, 2020.
18. FWS issued a Revised Biological Opinion on October 2, 2020.

19. The Project is located in the Ninemile Ranger District of the Lolo National Forest.
20. The Project area encompasses approximately 45,160 acres and is located about seven miles northwest of Huson, Montana, and extends from the East Fork of Burnt Fork Creek southwest to Butler Creek and from the Ninemile Road #412 to the Reservation Divide.
21. The Project includes a portion of the Reservation Divide Inventoried Roadless Area.
22. The Project area lies entirely in the Lolo National Forest.
23. The Decision Notice implemented a “Selected Action.” The Decision Notice states that the Selected Action is “a blend of Alternative B and Alternative C presented in the Environmental Assessment.”
24. The Selected Action implements all of the Proposed Road and Trail Treatments as analyzed in Alternative B.
25. The Selected Action implements all of the Proposed Vegetation Treatments analyzed in Alternative B except Unit 21 and Unit 92.
26. The Decision Notice authorizes treatment on 9,975 acres and will remove 17.5 million board feet of timber from the Project area.
27. The Project will be implemented over an 8-10 year period.

28. Several units in the Project area have been logged, thinned, and/or burned in the past decade, and some hand thinning and underburning units are continuing to be implemented.
29. The Soldier-Butler Environmental Assessment states, “As currently mapped and inventoried, the entire road system in the Soldier-Butler analysis area contains approximately 400 miles of existing and previously decommissioned road under various jurisdictions (NFS, State, BLM and private).”
30. The Soldier-Butler Decision Notice states that the Project will construct 7 miles of new permanent road and 9.4 miles of temporary roads.
31. The Soldier-Butler Decision Notice states that the Project will also add 35.4 miles of “undetermined roads” to the road system.
32. The project proposes new permanent construction of the “Pine Creek Road” which will bisect an area that has provided relatively secure habitat for bears and other wildlife due to its relative inaccessibility.
33. The Forest Service wildlife biologist stated that even though the Pine Creek Road will be closed to motorized use, its permanent construction will have long-lasting effects to the area in terms of

providing non-motorized human access into an area that has historically been extremely difficult to access.

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

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

46. The Forest Service discloses, “Most of the undetermined roads to be decommissioned can be decommissioned naturally (level 3-DN); that is left to grow in and ‘naturalize’ on their own. Of these 3-DN roads, entrance obliterations may not be necessary due to the condition of the road (e.g., brushed in, and/or bermed) or the condition of the parent road (closed, to be decommissioned or stored).”
47. The Decision Notice only authorizes decommissioning of “undetermined roads” and “unneeded roads.”
48. The Decision Notice does not disclose how many miles of National Forest System Roads the Project will decommission, if any.
49. Of the 104 miles of Undetermined and Unneeded Roads the Project is decommissioning, 72.9 miles will receive no treatment.
50. The Project area includes large areas of privately-owned lands.
51. There are 54 miles of private roads on the Project area.
52. Privately owned lands comprise 11.1% of the Project Area and contain 30.9 miles of open roads.
53. Many of these roads lead to residences and others have administrative and unauthorized use, crossing over private inholdings and providing access to clusters of spur roads and high road density.

54. The Forest Service actively negotiated with private landowners to get road access across their properties as part of Project Implementation, thereby making these roads on private lands effectively “open.”
55. The Forest Service excluded open roads on private lands in the Project Area from its analysis.
56. In the Project area, 57 miles of road are open to motorized public use year-round with no restrictions.
57. Another 9 miles are open seasonally from June 15 to October 14.
58. The remaining 39 miles of road in the Project area are either closed to all public motorized access with physical barriers, such as gates or berms, or are closed to public motorized access except for snowmobiles and some administrative use.
59. These roads are available for non-motorized public access.
60. During Project implementation, in addition to temporary road construction and use, approximately 40.3 miles of roads that are currently closed to public motorized access would also be used for Project implementation.
61. The Forest Service wildlife biologist disclosed that, “Use of these roads during the project will effectively make them the same as open

roads in terms of the effects to grizzly bears, which are primarily displaced due to disturbance.”

62. NCDE-LNF Zone 1-STD-01 requires no net increase in the density of roads and trails open to public motorized use during the non-denning season above the baseline condition on National Forest System lands inside the Ninemile DCA.
63. For Zone 1, including the Ninemile DCA, maximum allowable open road density is 2mi/mi².
64. Secure core is just 30.5% of the Project Area and only 12.8% of the DCA. In the Project Area, OMRD \geq 1mi/mi² (0.6km/km²) is 63.8% of the area and in the DCA 84.6%. The more lethal level of \geq 2mi/mi² (1.2km/km²) comprises 67.7% of the Project Area and 78.1% of the DCA.
65. The baseline condition is blocking occupancy and movement of grizzly bears from the NCDE to the Cabinet-Yaak and Bitterroot Recovery Areas.
66. The Revised Biological Opinion of October 2, 2020 states, “Approximately 104 miles of road will be decommissioned, mostly via natural regeneration. Since most of these roads have naturally

revegetated and do not receive public access, no ground work will likely be needed. Administratively removing these roads from the system would not result in direct beneficial effects on the ground.”

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

72. The Soldier-Butler Environmental Assessment discloses that only 15 miles of roads in the overlap area have been decommissioned—70 miles out of the 85 miles have not yet been decommissioned.
73. Instead of decommissioning the remaining 70 miles the Frenchtown Face Project authorizes in the overlap area, the Soldier-Butler Project will only decommission 34 miles of roads within the overlap area.
74. Neither the Soldier-Butler Environmental Assessment nor Decision Notice disclose what level of decommissioning these 34 miles of road in the overlap area will receive.
75. The Forest Service states that the decision to reverse the Frenchtown Face Project’s decision to decommission the 70 miles are “due to uncounted for pre-existing rights on roads, the need for them during implementation of Soldier-Butler Project, and/or because some of these roads are in the wildland-urban interface and are needed for ingress and egress for public and firefighter safety.”
76. The Forest Service does not adequately discuss or disclose the total number of roads that the Soldier-Butler Project and the Frenchtown Face Project will either add to or remove from the National Forest Road System.

77. The Conservation Strategy states that the moving window GIS analysis procedure is “infeasible” in Zone 1 due to areas of private land where road information is incomplete or unavailable. The EA repeats this claim.
78. The necessary information was in fact available and USFS has a duty to obtain the information for the analysis. Even incomplete information is required to be used when it represents “the best available scientific and commercial data,” and the failure to use this data is arbitrary and capricious.

V. CLAIMS FOR RELIEF

COUNT 1

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

79. All previous paragraphs are incorporated by reference.
80. The Forest Service violated NEPA by failing to examine the cumulative impacts of the Soldier-Butler Project and the Frenchtown Face Project.
81. NEPA requires federal agencies’ environmental analysis to consider “any adverse environmental effects which cannot be avoided.” 42

U.S.C. §4332(2)(C)(ii). When several actions may have cumulative or synergistic environmental impacts, the Forest Service must consider these actions together and prepare a comprehensive environmental analysis.

82. Agencies are required to take a hard look at direct, indirect and cumulative impacts of a proposed action. 40 C.F.R. § 1508.25(c).
83. Direct impacts are “caused by the action and occur at the same place and time.” *Id.* § 1508.8(a). Indirect impacts are “caused by the action and are later in time or further removed in distance but are still reasonably foreseeable.” *Id.* § 1508.8(b).
84. Cumulative impacts are “the impacts[s] on the environment which result[] from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such actions.” *Id.* § 1508.7.
85. The Forest Service conducted an inadequate cumulative impacts analysis because it failed to consider the combined effects of the Frenchtown Face Project and Soldier-Butler Project, specifically the decision to reverse the Frenchtown Face Project’s decision to decommission 70 miles of road in the Soldier-Butler Project area.

86. The Forest Service neglected to analyze its failure to follow through on mitigation and restoration aspects of the Frenchtown Face Project; therefore, its Soldier-Butler analysis failed to adequately comply with NEPA and the APA by failing to consider an important aspect of the Project. .

COUNT 2

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

87. All previous paragraphs are incorporated by reference.
88. FWS must prepare a biological opinion for an agency action that is likely to adversely affect the species listed under the ESA.
89. Biological opinions must apply the best available science and cannot ignore available information.
90. The Forest Service concluded in its Project Biological Assessment that the Project would likely affect grizzly bears.
91. FWS provided a Revised Biological Opinion for the Project on October 2, 2020.

92. The Revised Biological Opinion for the Project does not address all the Project's effects on grizzly bears.
93. Regulations require a biological opinion to include "a detailed discussion of the effects of the action." 50 CFR §404.14(h)(2).
94. The Revised Biological Opinion for the Project uses methods and information that are not based on the best scientific and commercial data and excluded the best available scientific information on road density and secure core habitat.
95. Accordingly, the Revised Biological Opinion for the Project is arbitrary and capricious and not in accordance with the ESA, in violation of the APA.

VI. RELIEF REQUESTED

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

- A. Declare that the Project, as approved, violates NEPA, NFMA, and the APA;
- B. Enjoin implementation of the entire Project;

- C. Vacate the Project decision and remand the matter to the agencies until such time as the agencies demonstrate to this Court that they have adequately complied with the law;
- D. Set aside the Project Decision Notice and Finding of No Significant Impact;
- E. Award Task Force its costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and
- F. Grant Task Force any such further relief as may be just, proper, and equitable.

Respectfully submitted this 26th day of October, 2020.

/s/Timothy Bechtold
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Attorney for Task Force