

## Ecosystem Management Coordination

### Court Decisions

Nothing to Report

### Litigation Update

Nothing to Report

### New Cases

#### Forest Plan | Region 2

**Defenders of Wildlife v. U.S. Forest Service and U.S. Fish and Wildlife Service** (21-2992, D. Colorado) **Region 2**—On November 8, 2021, the plaintiff filed a complaint in the District Court of Colorado against the Forest Service and U.S. Fish and Wildlife Service (FWS) for violations of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and Administrative Procedures Act (APA) regarding the **revised Rio Grande Forest Plan** (May 2020) and **revised biological opinion** (BO) (February 2, 2021), pertaining to Canada lynx and its critical habitat. The plaintiff claims the: (1) 2021 Revised BO violates ESA requirements because it fails to reconcile its no jeopardy conclusion with the trend toward extirpation of lynx in Colorado; (2) Forest Service failed to provide the FWS with the best available science and key relevant information in its biological assessment, in violation of ESA; and (3) EIS fails to take a hard look at, or to adequately analyze, lynx usage in the northern portion of the Forest.

#### **The plaintiff claims:**

1. 2021 Revised BO (and 2019 BO, to the Extent Applicable) violate the ESA and APA:  
The 2021 Revised BO violates ESA requirements because it fails to reconcile its no jeopardy conclusion with the trend toward extirpation of lynx in Colorado:
  - a. Fails to adequately analyze the effects of the 2020 Revised Forest Plan by accepting the Forest Service's decision to deem the northern part of the previously mapped lynx habitat to be "low use" without any basis.
  - b. Concludes, contrary to the best available science, that the northern habitat areas are "low use" lynx habitat.
  - c. Arbitrarily drops the Lynx Units in the Sangre de Cristo Mountains from protection without study, analysis, or explanation.

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- d. Fails to adequately analyze the effects of allowing extensive salvage logging in “high-use” areas.
  - e. Adopts an unlawful environmental baseline.
  - f. Fails to analyze the recovery of the lynx (district population segment).
2. Reliance on 2021 Revised BO and/or 2019 BO Violates ESA and APA:  
 The Forest Service failed to provide the FWS with the best available science and key relevant information in its biological assessment, in violation of ESA, then relied on an incomplete, arbitrary, and unlawful BO in violation of the ESA and APA. Subsequently, the Forest Service violated the ESA and APA in its adoption and implementation of the 2020 Revised Forest Plan for the Rio Grande National Forest.
3. EIS Violates NEPA and the APA:
- a. The Forest Service’s EIS failed to take a hard look at, or to adequately analyze, lynx usage in the northern portion of the Forest.
  - b. The rollback of lynx habitat protections in “low-use” areas.
  - c. The impacts of significantly increased logging in “high-use” areas.

## **Forest Plan | Region 2**

**San Luis Valley Ecosystem Counsel, et al. v. Dan Dallas, et al.** (21-2994, D. Colorado)  
**Region 2**-On November 8, 2021, the plaintiffs filed a complaint in the District Court of Colorado against the Forest Service for authorizing the **2020 Revised Rio Grande Forest Plan**. The plaintiffs claim 2020 Revised Forest Plan violated: (1) NFMA by not contributing to the recovery of the Umcompahgre Fritillary Butterfly or the Canada lynx, and does not provide adequate winter sustainable recreation opportunities; (2) TMR Subpart C by including the language that allows unregulated OSV use on the Forest; (3) NEPA by not disclosing and analyzing the direct, indirect, and cumulative effects from the implementation of the plan on the butterfly and lynx and their habitats; and by not analyzing a reasonable range of alternatives in the plan’s final EIS.

### **The plaintiffs claim:**

- 1. 2020 Revised Forest Plan Violates NFMA –
  - a. Fails to comply with 36 CFR 219.9 – Diversity of Plant and Animal Communities:
    - i. Umcompahgre Fritillary Butterfly: Plan fails to include species specific plan components for the butterfly and fails to contribute to the recovery of the butterfly. The 2020 Revised Forest Plan does not contain plan components specific to the Umcompahgre fritillary butterfly, does not sufficiently contribute to the recovery of the butterfly, does not address threats to the butterfly.

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- ii. Canada Lynx: Plan components were insufficient to provide for the ecological conditions necessary to contribute to the recovery of the lynx, are insufficient to enable tracking its progress.
  - b. Fails to Comply with S 36 C.F.R. § 219.10 – Sustainable Recreation:  
Plan does not include components related to winter sustainable recreation in meeting rule requirements and does not establish winter recreation settings for the Forest and does not include a winter recreation opportunity spectrum.
2. Fails to Comply with the TMR Subpart C:  
In finalizing the 2020 Revised Forest Plan the Forest Service failed to remove language in the plan that allowed unregulated motorized overs-snow-vehicle (OSV) use on the Forest unless specifically restricted. The Agency failed to abide by the Objection Reviewing Officer’s instructions to rectify an illegal plan provision. As a result, the plan violates the TMR.
3. Violates NEPA:
- a. Fails to Take a Hard Look at the Effects of the 2020 Revised Forest Plan:  
The Forest Service failed to disclose and analyze several direct, indirect, and cumulative environmental effects from its proposed action. For example, the Agency failed to disclose and analyze the direct, indirect, and cumulative effects from the implementation of the 2020 Revised Forest Plan on the Uncompahgre Fritillary butterfly and Canada lynx and their habitats.
  - b. Fails to Analyze a Reasonable Range of Alternatives:  
The Forest Service failed to consider a reasonable range of alternatives in analyzing the impacts of the 2020 Revised Forest Plan and ROD. And the Agency failed to take a hard look at the impacts of designating Special Interest Areas for Spruce Hole and Wolf Creek Pass in violation of NEPA.

### Notice of Intent to Sue

#### Nothing to Report

### Other Agency Cases

#### Bureau of Land Management | Oregon

**Klamath-Siskiyou Wildlands Center, et al. v. U.S. Bureau of Land Management** (21-1647, D. Oregon) **State of Oregon**—On November 11, 2021, the plaintiffs filed a complaint in the District Court of Oregon against the U.S. Bureau of Land Management (BLM) regarding the

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**Lost Antelope Vegetation Management Project** in the Little Butte Creek watershed in Jackson County Oregon (Ashland Field Office of the Medford District). The plaintiffs claim the BLM: 1) violated the Federal Land Policy and Management Act (FLPMA) by authorizing a project that is inconsistent with the applicable Resource Management Plan (RMP); and 2) violated the National Environmental Policy Act (NEPA) by failing to take a hard look at, and adequately disclose and consider the projects effects on, fire risk and hazard and northern spotted owl (NSO) habitat. (Forest Service not named in the complaint)

The plaintiffs claim the BLM:

FLPMA and APA Compliance

1. The EA decision and FONSI are inconsistent with the RMP requirements governing logging in LSR. The EA indicates proposed logging will delay NSO nesting and roosting habitat conditions.
2. Failure to explain and ensure consistency with the RMP directive regarding reducing fire risk in the HLB.

NEPA and APA Compliance

1. Failure to take a hard look at project impacts to spotted owl habitat in the long term.
2. Failure to adequately disclose and consider the project's impacts on fire risk and hazard.
  - a. Tiering to the 2016 RMP was insufficient to meet the BLM's NEPA obligations as the RMP final EIS contains no site-specific analysis of fuels, fire, hazard, or fire risk.
  - b. Failed to disclose post fire fuels treatments that would occur.

**Fish and Wildlife Service | Montana and Idaho**

**Alliance for Wild Rockies and Native Ecosystems Council v. Hilary Cooley, et al.** (21-00136, D. Mont.) **States of Montana and Idaho**—On November 5, 2021, the plaintiffs filed a complaint in the District Court of Montana against the U.S. Fish and Wildlife Service (FWS) regarding the Bitterroot grizzly bear recovery and establishment of nonessential experimental population in the Bitterroot area of Montana and Idaho. Specifically, the FWS failed to issue a new final rule following the publication of their Proposed Rule, and/or failed to comply with the existing Final Rule and Regulation which violates the Administrative Procedures Act (APA). And the Agency failed to prepare a supplemental EIS considering completely changed conditions on the ground in violation of the APA and National Environmental Policy Act (NEPA).

The plaintiffs claim the FWS failed to:

1. Prepare a Final Rule publication of the June 22, 2001, Proposed Rule constitutes unreasonable delay: The APA compels the FWS to conclude rulemaking by issuing a final

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rule after it issued the proposed rule. The FWS unreasonably delayed in complying with this mandate because over 20 years have passed since they issued their proposed rule to remove and select the “No Action Alternative” and the Agency has not yet issued a final rule for the proposed rule.

2. Comply with the terms of the November 14, 2000, Final Rule and Regulation constitutes unreasonable delay and violates APA: The Final Rule and Regulation requires grizzlies be relocated from other areas into the Bitterroot and a minimum of 25 grizzly bears of both sexes would be relocated over a 5-year period. The reintroduction has not occurred and there are currently no plans to do so.
3. Prepare a supplemental EIS violates NEPA and APA: There are substantial changed conditions on the ground that warrant the preparing of a supplemental EIS, such as multiple confirmed grizzly bears in Idaho and Montana portions of the Bitterroot area, as well as its vicinity.

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