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

10 HELENA HUNTERS & ANGLERS, a non-profit  
11 organization; the ALLIANCE FOR THE WILD  
ROCKIES, a non-profit organization; AMERICAN  
12 WILDLANDS, a non-profit organization; NATIVE  
ECOSYSTEMS COUNCIL, a non-profit organization; )

13 Plaintiffs, )

14 vs. )

15 )  
16 )  
17 TOM TIDWELL, in his official capacity as  
Regional Forester for the United States Forest Service, )  
18 Region One; the UNITED STATES FOREST  
SERVICE, an agency of the United States Department )  
19 of Agriculture; and the UNITED STATES  
DEPARTMENT OF AGRICULTURE, a federal )  
20 department, )

21 Defendants. )  
22 )

Cause No. \_\_\_\_\_

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

23 INTRODUCTION

24 1. Plaintiffs bring this civil action for declaratory and injunctive relief against  
25 the above named Defendants (hereinafter the U.S. Forest Service or "USFS") pursuant to  
26 the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., and the citizen suit  
27 provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540 (g), for violations of

1 the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., the National  
2 Forest Management Act (“NFMA”), 16 U.S.C. §1600 et seq., and section 7 of the ESA,  
3 16 U.S.C. § 1536.

4 2. This civil action arises from the USFS’s decision to issue the Montana Army  
5 National Guard (“MT National Guard”) a twenty-five year special use permit (“SUP”) to  
6 construct, operate, and maintain a Biathlon training facility *in the middle* of a narrow  
7 wildlife corridor on the Continental Divide, just east of MacDonald Pass.

8 3. On June 12, 2008 the USFS issued a decision notice and finding of no  
9 significant impact (“DN/FONSI”) authorizing the construction and maintenance of a new  
10 access road, fifty-car parking lot, assorted buildings, shooting range, observation area,  
11 new trail construction, and the widening of existing trails within the Helena National  
12 Forest (“HNF”) to construct the Biathlon training facility (hereinafter “Biathlon Project”).

13 4. The Biathlon Project will be used to train biathletes to represent the National  
14 Guard in “national and international competitions” including the “biathlon World Cup  
15 and Winter Olympic events.”

16 5. According to the best scientific data available – including federal, state, and  
17 private wildlife biologists – the USFS’s decision to authorize the Biathlon Project within  
18 a narrow strip of HNF lands on the Continental Divide will severely impact the area’s  
19 value as a wildlife corridor or “linkage area” for Canada lynx (“lynx”), wolverine, gray  
20 wolves, grizzly bears and year-long habitat for elk and moose. In fact, the most intensive  
21 portion of the proposed Biathlon Project, i.e., the new access road, five new buildings,  
22 parking lot, shooting range, and spectator deck will all occur in the narrowest point of  
23 HNF land (approximately 1 ½ mile wide) and will extend nearly across the *entire width* of  
24 the HNF, effectively removing it from wildlife use and destroying habitat connectivity on  
25 public land on the Continental Divide.

26 6. Wherefore, the Plaintiffs – four organizations dedicated to protecting and  
27 restoring wildlife habitat, populations, and corridors along the Continental Divide – are

1 hereby compelled to bring this civil action.

2 JURISDICTION AND VENUE

3 7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (Federal  
4 Question).

5 8. This Court has the authority to review the USFS's action complained of herein,  
6 and grant the relief requested, for Plaintiffs' NEPA and NFMA claims pursuant to the  
7 APA, 5 U.S.C. § 701 et seq. Plaintiffs are challenging a final agency action and have  
8 exhausted all available administrative remedies.

9 9. This Court has the authority to review the USFS's action and/or inaction  
10 complained of herein, and grant the relief requested, for Plaintiffs' ESA claims pursuant  
11 to the ESA's citizen suit provision, 16 U.S.C. § 1540 (g). All requirements for judicial  
12 review required by the ESA, 16 U.S.C. § 1540 (g), including the requirement of providing  
13 sixty days notice of intent to sue prior to filing a civil action, have been satisfied.

14 10. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment),  
15 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706  
16 (APA).

17 11. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e).

18 12. There is a present and actual controversy between the Parties.

19  
20 PARTIES

21 13. Plaintiff, HELENA HUNTERS AND ANGLERS ("HHAA"), is a non-profit  
22 organization dedicated to protecting and restoring fish and wildlife to all suitable habitats  
23 and to conserving all natural resources as a public trust, vital to our general welfare.  
24 HHAA promotes the highest standards of ethical conduct and sportsmanship, and  
25 promotes outdoor recreation opportunity for all citizens to share equally. HHAA is based  
26 in Helena, Montana.

27 14. Plaintiff, the ALLIANCE FOR THE WILD ROCKIES ("the Alliance") is a

1 non-profit conservation and education organization with approximately 2,000 members.  
2 The mission of the Alliance is to protect and restore the ecological integrity of the  
3 Northern Rockies bio-region which includes the area of the Continental Divide at issue in  
4 this civil action. The Alliance is based in Helena, Montana.

5 15. Plaintiff, AMERICAN WILDLANDS (“AWL”) is a non-profit organization  
6 with approximately 500 members dedicated to keeping the Northern Rockies ecologically  
7 intact by restoring and maintaining connections between key habitats for healthy  
8 populations of native fish and wildlife. AWL is based in Bozeman, Montana.

9 16. Plaintiff, NATIVE ECOSYSTEMS COUNCIL (“NEC”), is a non-profit  
10 advocacy organization based in Three Forks, Montana dedicated to protecting and  
11 restoring native ecosystems on public lands in the Northern Rockies. In furtherance this  
12 mission, NEC’s members and staff have been active in public land management in the  
13 Northern Rockies region, which includes the Continental Divide in the HNF, for more  
14 than 14 years.

15 17. Plaintiffs’ members and staff use the best available science to forward their  
16 respective missions through participation in policy formation, administrative processes,  
17 public outreach, education, and if need be, legal action.

18 18. Plaintiffs’ members and staff have a specific, concrete interest in protecting  
19 and restoring the biological integrity of the Continental Divide, including protecting and  
20 restoring big game (elk), grizzly bear, wolf, and lynx habitat and corridors along the  
21 Continental Divide in the HNF. In fact, the conservation and recovery of native species  
22 like elk and lynx (as well as other native species) is a major program effort for Plaintiffs.  
23 Plaintiffs report on the status of, and threats to, such species to its members, the public at  
24 large, and the press. The Plaintiffs also prepare and submit comment letters and appeals  
25 on various USFS projects, activities, and/or plans (when given the opportunity) that may  
26 impact such species and their habitat. The Plaintiffs submitted comments to the USFS  
27 when they notified the public of their decision to authorize the Biathlon Project.

1 Plaintiffs commented on the USFS's draft environmental assessment ("EA") for the  
2 Biathlon Project, the MT National Guard's's draft FONSI and administratively appealed  
3 the USFS's decision authorizing the Biathlon Project.

4 19. Plaintiffs' members and staff frequently communicate with various USFS  
5 officials, including biologists and other staff members about public lands management  
6 issues on the HNF. Plaintiffs' members and staff frequently raises concerns about the  
7 direct, indirect, and cumulative impacts of various land management actions on native  
8 wildlife and wildlife habitat.

9 20. Plaintiffs' members and staff have, and will continue, to regularly and  
10 repeatedly use the Continental Divide in the HNF where the proposed Biathlon Project  
11 would be constructed (hereinafter "project area"). Plaintiffs' members and staff use the  
12 project area for hunting, wildlife observation, research, aesthetic enjoyment, skiing, and  
13 other recreational, scientific, and educational activities. Plaintiffs' members and staff  
14 derive scientific, recreational, conservation, and aesthetic benefits from using the project  
15 area. Plaintiffs' members enjoy hunting and viewing (and being aware of) wildlife in the  
16 area and experiencing the forest, diverse plant communities, and unique riparian areas and  
17 wetlands located within the project area which form the headwaters for a number of  
18 watersheds along the Continental Divide. For Plaintiffs' members and staff, using the  
19 area in conjunction with working to restore the biological and natural integrity of the  
20 Continental Divide and, in particular, working to protect and restore this area as a wildlife  
21 corridor is a key component to their enjoyment of their visits to the area. Plaintiffs'  
22 members and staff will continue work for the protection and restoration of wildlife habitat  
23 and travel corridors along the Continental Divide. Filing this civil action against the  
24 USFS to ensure compliance with federal law is part of this effort.

25 21. The USFS's decision to authorize the Biathlon Project harms Plaintiffs'  
26 concrete interests. Once built, Plaintiffs' members and staff will no longer be able to use  
27 and enjoy the project area for scientific, recreational, conservation, and aesthetic

1 purposes. Plaintiffs' members and staff will no longer hunt in the area or spend time  
2 hiking and enjoying the area. During construction and once built, the Biathlon Project's  
3 new road, trails, fifty car parking lot, shooting range, and new buildings will forever alter  
4 and destroy the natural-setting and biological integrity of the project area. The USFS's  
5 decision to approve the Biathlon Project without complying with NEPA, NFMA, and the  
6 ESA also results in uninformed decisions and creates an increased risk of actual,  
7 threatened, and imminent harm to the Plaintiffs' members interests in protecting and  
8 restoring the biological and natural integrity of the Continental Divide. The USFS's  
9 failure to comply with NEPA, NFMA, and the ESA significantly increases the risk of an  
10 unnecessary and avoidable harm to wildlife resources and the Plaintiffs' concrete  
11 interests. The USFS's failure to comply with NEPA, NFMA, and the ESA adversely  
12 affects and continues to adversely affect the interests of the Plaintiffs and their respective  
13 staffs and members. Plaintiffs bring this action on behalf of themselves and their  
14 adversely affected members and staff.

15 22. If the Court orders the USFS to comply with NEPA, NFMA, and the ESA as  
16 requested by this civil action, then the harm to the Plaintiffs' interests would be  
17 alleviated.

18 23. Defendant TOM TIDWELL, is sued in his official capacity as the Regional  
19 Forester for Region One (Northern Rockies) of the USFS. As the Regional Forester, Mr.  
20 Tidwell is the federal official with responsibility for all USFS officials' inactions or  
21 actions in the HNF challenged in this complaint.

22 24. Defendant UNITED STATES FOREST SERVICE (USFS) is an agency  
23 within the U.S. Department of Agriculture that is responsible for applying and  
24 implementing the federal laws and regulations challenged in this complaint.

25 25. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)  
26 is a department of the United States Government with supervisory and managerial  
27 responsibility over the USFS and is responsible for applying and implementing the federal

1 laws and regulations challenged in this complaint.

2 BACKGROUND

3 The Continental Divide: A Key Wildlife Corridor

4 26. The proposed Biathlon Project will be located on the eastern slope of the  
5 Continental Divide in the middle of a narrow isthmus of National Forest System lands  
6 within the HNF.

7 27. The project area for the Biathlon Project is within the headwaters for several  
8 local drainages including Ten Mile Creek which is municipal water source for Helena.  
9 The headwaters occur as springs, seeps, wetlands, wet meadows, and a variety of sub-  
10 irrigated sites that support a wide array of productive vegetation, i.e., riparian forbs,  
11 sedges, and grasses, as well as aspen, alder, and willows.

12 28. Even though the narrow corridor of HNF land where the proposed Biathlon  
13 Project will be located is bisected by U.S. Highway 12, the best scientific information  
14 available reveals that wildlife have used and currently use this area of the HNF as a north-  
15 south linkage area.

16 29. According to the Montana Department of Fish Wildlife & Parks (“MFWP”),  
17 the project area provides habitat connectivity between larger blocks of forest habitat to  
18 north (i.e., Scapegoat Wilderness, Bob Marshall Wilderness, Nevada Mountain  
19 Inventoried Roadless Area (“IRA”)) and forested habitat to the south (i.e., Jericho  
20 Mountain IRA, Lazyman Gulch IRA, Beaverhead-Deerlodge National Forest).

21 30. MFWP states that the project area is “recognized as crucial wildlife habitat  
22 and as a fundamental corridor for the movement of wildlife throughout the region. The  
23 importance of the Continental Divide as a genetic conduit through the landscape for rare  
24 and uncommon wildlife species cannot be overstated.”

25 31. The USFS also classifies the project area as a “key linkage area” for wildlife.

26 32. In the USFS’s Wildlife Specialists Report for the MacDonald Pass, Austin,  
27 and Empire grazing allotments on the Continental Divide, the Agency notes that the

1 project area is “important [because] it is part of a wildlife linkage zone – sometimes  
2 characterized as a travel corridor – through which species such as elk, moose, wolves,  
3 grizzly bears, bobcats, lynx, mountain lions, wolverines, and others move between large  
4 wildland ecosystems to the north and south.”

5 33. According to the USFS, “[s]pecies of interest that occur in this area include  
6 grizzly bear, lynx, wolves, wolverine, mountain lions, black bears, elk, mule deer, and  
7 moose.”

8 34. According to the USFS, while the entire spectrum of National Forest land in  
9 the region does provide room for many of these animals to traverse, it is the wide-array of  
10 productive wet sites, i.e., wetlands, seeps, springs, and wet meadows just off both sides of  
11 the Continental Divide that “serves to concentrate a lot of activity in this area.”

12 35. On June 5, 2008 the Lewis and Clark County Commission adopted Resolution  
13 2008-57 to “Protect and Promote the Conservation of Wildlife Habitat and Corridors on  
14 the Continental Divide.”

15 36. According to the Lewis and Clark County Commission, the “Continental  
16 Divide in Lewis and Clark County is home to wildlife populations and wildlands that are  
17 treasured and used by Lewis and Clark County’s residents.”

18 37. According to the Lewis and Clark County Commission, the “Continental  
19 Divide represents one of the most critical wildlife corridors in the contiguous United  
20 States.”

21 38. In Resolution 2008-57 the Lewis and Clark County Commission formally  
22 “recognizes the unique and priceless value of the Continental Divide’s wildlife  
23 populations and wildlands to residents of Lewis and Clark County.”

24 39. Grizzly bears are known to occur on the Continental Divide and in the vicinity  
25 of the project area.

26 40. MFWP reports that the project area connects large blocks of grizzly bear  
27 habitat to the north and south of the project area.



1 41. According to MFWP, grizzly bear “reports in the project area have come to  
2 MFWP on several occasions and have been recorded.”

3 42. As of 2006, MFWP records show: (1) regular patterns of reports of grizzly  
4 bears present east of Elliston in the Spotted Dog drainage (6 miles west of MacDonald  
5 Pass); (2) a female with offspring in the upper Little Blackfoot drainage over several  
6 consecutive years; (3) grizzly bear sightings over the last 8 years in the upper Little  
7 Prickly Pear Creek; (4) a grizzly female and cubs in the Lyons Creek-Flesher Pass-Rogers  
8 Pass area; (5) a dead grizzly bear on Mount Hagen near Butte in 2005; and (6) reports of  
9 grizzlies along the Rimini Road.

10 43. According to MFWP, these observation reports indicate grizzly use along this  
11 segment of the Continental Divide and the Divide’s function in allowing grizzly bear  
12 passage north and south.

13 44. The USFS states that grizzly bear reports in recent years have “come from the  
14 vicinity of MacDonald Pass and upper Sweeney Creek, north of Highway 12.”

15 45. Gray wolves are known to occur in the project area.

16 46. According to the USFS, the project area was formerly part of the home range  
17 of the Great Divide wolf pack – a small pack centered in the vicinity of Mullan tunnel to  
18 the north. The USFS reports that the pack dissolved after the alpha female was killed on  
19 Highway 12 in 2002 on the east side of MacDonald Pass near the proposed access road  
20 for the Biathlon Project.

21 47. The USFS reports that it is not uncommon for wolves to settle in an area  
22 where a pack previously existed.

23 48. The USFS notes that this area provides suitable habitat for wolves and  
24 includes a diverse array of native prey species for wolves.

25 49. According to USFS, the project area “is productive enough as a summer  
26 habitat for large herbivores that it will continue to attract new wolves moving down from  
27 the north.”

1 50. Lynx are also known to occur in the project area.

2 51. The project area is included within the U.S. Fish & Wildlife Service's  
3 ("FWS's") proposed critical habitat for lynx.

4 52. The USFS's Northern Rockies Lynx Management Direction ("NRLMD")  
5 classifies the project area as "occupied lynx habitat" and as a key north-south "linkage  
6 zone" for lynx.

7 53. The project area is included within a lynx analysis unit ("LAU").

8 54. Lynx are known to move through the project area and reside both north and  
9 south of the project area.

10 55. Recent tracking surveys conducted by Wild Things Unlimited ("WTU") reveal  
11 that "coyotes, bobcats and weasels were relatively common in the [project area], and that  
12 lynx and red fox occasionally moved through the area."

13 56. According to WTU, densities of snowshoe hare tracks (generally low to  
14 moderate, and occasionally high) and red squirrel tracks (moderate throughout), along  
15 with numerous detections of prey species, suggest the presence of a good food supply for  
16 resident and transient mid-sized carnivores such as lynx.

17 57. According to WTU, the observation of "lynx tracks leading to and crossing  
18 Highway 12 from the south, into the [project area] is evidence that the [project area] lies  
19 within an important wildlife travel corridor."

20 58. According to WTU, the observations of considerable lynx activity south of  
21 Highway 12 and the project area, along with sightings of a lynx on December 16, 2006  
22 suggest the presence of one or more resident lynx in close proximity to the project area.

23 59. In July, 2003, MFWP documented a road-killed lynx approximately 2.5 km  
24 west of the project area.

25 60. The wildlife biologist conducting the WTU surveys report that they are seeing  
26 "consistent lynx activity" near the project area.

27 61. Recent WTU tracking surveys (2006 - 2008) indicate consistent wildlife

1 movement over the past two winters in the project area and north and south of the  
2 proposed project area.

3 62. WTU is currently under a 5-year contract with the USFS to conduct similar  
4 rare carnivore surveys in the Gallatin National Forest. The study methodology used for  
5 those surveys is largely the same used for the tracking studies conducted on MacDonald  
6 Pass.

7 63. Wolverine are also known to occur within the project area.

8 64. The WTU surveys document wolverine in and near the project area.

9 65. The project area is an important “linkage habitat” for wolverine.

10 66. The project area is occupied by moose and is considered moose habitat.

11 67. The project area is occupied by elk and is considered elk summer and winter  
12 range.

13 The USFS’s Authorization of the Biathlon Project on the Continental Divide

14 68. On June 12, 2008 the USFS issued a DN/FONSI authorizing the MT National  
15 Guard to construct, operate, and maintain the Biathlon Project for a period of up to 25  
16 years in the middle of the narrow wildlife corridor.

17 69. The Biathlon Project will be used to train biathletes to represent the National  
18 Guard in “national and international competitions” including the “biathlon World Cup  
19 and Winter Olympic events.”

20 70. The Biathlon Project will require the building a new 0.4 mile/40 foot-wide  
21 access road with two gates.

22 71. The Biathlon Project will require the building of five new facilities including a  
23 two-story (2,000 square foot) warm-up facility, a maintenance building, a spectator deck,  
24 a latrine with two fault toilets, and a target storage facility.

25 72. The Biathlon Project will require a new 50 vehicle parking lot.

26 73. The Biathlon Project will require the building of a shooting range on top of a  
27 concrete pad. Shooters will use .22 caliber lead bullets.

1 74. The Biathlon Project will require new electrical power lines.

2 75. The Biathlon Project will require 2.2 miles of new trails and 7.7 to 8.4 miles  
3 of rebuilt trails that will be widened and/or reconstructed to 20' feet wide.

4 76. The Biathlon Project will allow both summer (June-September) and winter  
5 (December -February) use as well as year round maintenance use.

6 77. The Biathlon Project will require the disruption of approximately 32 acres of  
7 National Forest land.

8 78. The Biathlon Project will require approximately 31.8 of clearing and tree  
9 removal.

10 79. ATV and snowmobile use will occur within the project area.

11 80. The Biathlon Project will require approximately 16 stream crossings.

12 81. The Biathlon Project will require the dredging and filling of waters of the  
13 United States and jurisdictional wetlands.

14 82. The Biathlon Project will require the disruption of over 3 acres of wetlands.

15 83. The new buildings, parking lot, shooting range, and about a third of the new  
16 trails for the Biathlon Project will occur within the HNF Land and Resource Management  
17 Plan's ("Forest Plan's) management area ("MA") T-5.

18 84. The access road, most of the trails, and all of the stream crossings will occur in  
19 MA T-4.

20 85. Pursuant to the HNF Forest Plan, MA T-5 "consists of suitable timber stands  
21 interspersed with natural openings, generally with existing livestock allotments."

22 86. Vegetation and water resource management are the principal objectives for  
23 lands included within MA T-5 and MA T-4.

24 87. MA T-5 and MA T-4 are not intensively developed sites.

25 88. The USFS's Soil Scientist states that building the Biathlon Project will result  
26 in approximately 32 acres of soil disturbance. This includes approximately .16 acres for  
27 the buildings and spectator deck, 1.94 acres for the access road, 18.64 acres for trail

1 modifications, 5.34 acres for new trails, 3.37 acres for the shooting range and parking lot,  
2 and 2.38 acres for areas connecting the shooting range to the buildings.

3 89. According to the USFS's Soil Scientist, building the Biathlon Project will  
4 result in accelerated soil erosion (at least in the short term) and soil compaction (during  
5 the duration of use of the Biathlon Project).

6 90. According to the USFS's Soil Scientist, all types of soil disturbance (e.g.,  
7 accelerated erosion and compaction) which would result from the construction of the  
8 Biathlon Project would represent an "irretrievable . . . commitment of resources."

9 91. The Biathlon Project will result in an increase in groomed and/or snow  
10 compacted trails in the project area and LAU.

11 92. According to MFWP, the Biathlon Project will severely impact the  
12 Continental Divide's and project area's value and use as a wildlife corridor.

13 93. According to MFWP, permitting the Biathlon Project "would lead to serious  
14 fracturing of the linkage zone, the connecting corridor, and would be yet another human  
15 intrusion onto the Continental Divide."

16  
17 COUNT I

18 NEPA VIOLATION  
19 (EIS)

20 94. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

21 95. The USFS has violated, and continues to violate, NEPA and NEPA's  
22 implementing regulations by failing to prepare an environmental impact statement  
23 ("EIS") for the Biathlon Project.

24 96. NEPA requires the USFS to prepare an EIS for major federal actions  
25 significantly affecting the quality of the human environment. 42 U.S.C. § 4332; 40 C.F.R.  
26 § 1502.4. "Significantly" as used in NEPA requires considerations of both context and  
27 intensity. 40 C.F.R. § 1508.27.

1 97. The USFS's decision to authorize the Biathlon Project is a major federal  
2 action "significantly" affecting the quality of the human environment requiring an EIS as  
3 defined by 40 C.F.R. § 1508.27.

4 98. The USFS's decision not to prepare an EIS for the Biathlon Project is  
5 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law "  
6 and constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§  
7 706 (2)(A), 706 (1).

8 COUNT II

9 NEPA VIOLATIONS  
10 (Impacts, Best Science, Disclose Opposing Views)

11 99. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

12 100. The USFS has violated, and continues to violate, NEPA and NEPA's  
13 implementing regulations by: (1) failing to adequately consider and analyze the direct,  
14 indirect, and cumulative impacts of its decision to authorize the Biathlon Project on the  
15 wildlife corridor, habitat (including wetlands), and wildlife populations; (2) failing to use  
16 and rely on the best scientific information available or failing to support its conclusions  
17 with studies or analysis; and (3) failing to disclose opposing scientific views and opinions  
18 on the likely adverse effects of the Biathlon Project on the wildlife corridor, habitat, and  
19 wildlife populations.

20 101. NEPA requires the USFS to adequately consider and analyze the direct,  
21 indirect, and cumulative impacts of its decision to authorize the Biathlon Project.  
22 Cumulative impacts are the impacts on the environment which result "from the  
23 incremental impact of the action when added to other past, present, and reasonably  
24 foreseeable future actions regardless of what agency (Federal or non-Federal) or person  
25 undertakes such other actions." 40 C.F.R. § 1508.7.

26 102. NEPA requires the USFS to use and rely on the best scientific information  
27 available when assessing impacts. Information contained in NEPA documents must be

1 “of high quality” and the USFS must provide some study or analysis in NEPA documents  
2 to support its conclusions. 40 C.F.R. § 1500.1 (b). NEPA also requires the USFS to  
3 disclose responsible opposing views and opinions. 40 C.F.R. 1502.9 (b).

4 103. The USFS’s failure to adequately consider and analyze direct, indirect, and  
5 cumulative impacts, to use and rely on the best scientific information available, to provide  
6 studies and analysis in support of its conclusions, and to disclose opposing views and  
7 opinions on the likely adverse effects of its decision to authorize the Biathlon Project is  
8 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law ”  
9 and constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§  
10 706 (2)(A), 706 (1).

11 COUNT III

12 NFMA VIOLATION  
13 (Soil Standards)

14 104. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

15 105. In authorizing the Biathlon Project, the USFS has violated, and continues to  
16 violate, its duty to apply and ensure compliance with the USFS’s Region One Soil Quality  
17 Standards (“R1-SQS”).

18 106. Region One of the USFS adopted the R1-SQS to “meet the direction in the  
19 National Forest Management Act” and ensure that National Forest System lands are  
20 managed “without permanent impairment of land productivity and to maintain or improve  
21 soil quality.”

22 107. The USFS’s R1-SQS update, clarify, and replace all previous soil quality  
23 supplements in the handbook, including the Soil and Water Conservation Practices  
24 Handbook (FSH 2509.22). The USFS’s R1-SQS are “based on recent research and  
25 collective experience from the field.”

26 108. Pursuant to the R1-SQS, “[a]t least 85 percent of an activity area must have  
27 soil that is in satisfactory condition.”

1 109. Pursuant to the R1-SQS, the USFS cannot allow an activity that would create  
2 detrimental soil conditions in fifteen percent of a activity area. If fifteen percent or more  
3 of the project area already has detrimental soil conditions, then the Project will not be  
4 permitted to make it worse. Detrimental conditions include compaction, rutting,  
5 displacement, severely burned soil, surface erosion, and soil mass movement.

6 110. Pursuant to the R1-SQS, Forest Supervisors are to ensure that “Forest-wide  
7 and project level plans include soil quality standards” and District Rangers are to ensure  
8 that all “project planning documents identify measures necessary to meet soil quality  
9 standards” and conduct “post-activity implementation monitoring to determine if soil  
10 quality standards have been met.”

11 111. Compliance with the R1-SQS is the only way to ensure compliance with  
12 NFMA’s requirement that soil productivity on National Forest System lands be  
13 maintained.

14 112. Under NFMA, the USFS must “insure research on and (based on continuous  
15 monitoring and assessment in the field) evaluation of the effects of each management  
16 system to the end that it will not produce substantial and permanent impairment of the  
17 productivity of the land.” 16 U.S.C. § 1604 (g)(3)(c).

18 113. Under NFMA, the USFS must “insure that timber will only be harvested  
19 from National Forest System lands only where . . . soil, slope, or other watershed  
20 conditions will not be irreversibly damaged.” 16 U.S.C. § 1604 (g)(3)(E).

21 114. Compliance with the R1-SQS is also the only way to ensure compliance with  
22 the HNF Forest Plan.

23 115. The R1-SQS are incorporated into the Forest Plan and are designed to ensure  
24 compliance with the Forest Plan’s forest-wide and management area (MA) standards and  
25 guidelines for maintaining soil productivity.

26 116. The Forest Plan states that the “Soil and Water Conservation Practices  
27 Handbook (FSH 2509.22) . . . will be incorporated, where appropriate, into all land use



1 and project plans as a principal mechanism for . . .meeting soil . . .goals.” The Soil and  
2 Water Conservation Practices Handbook has been superceded and replaced by the R1-  
3 SQS.

4 117. Pursuant to the Forest Plan all “management activities will be planned to  
5 sustain soil productivity. During project analysis, ground disturbing activities will be  
6 reviewed and needed mitigating actions prescribed.”

7 118. Pursuant to the Forest Plan, the USFS is to monitor for changes in soil  
8 productivity to “insure that management practices do not adversely effect soil  
9 productivity.”

10 119. The management goals for MA T-5 in the Forest Plan include increasing  
11 production and quality of forage, managing timber sites cost-effectively, provide for  
12 healthy stands of timber, emphasizing cost-effective timber production while protecting  
13 soil productivity, and maintaining water quality and stream bank stability.

14 120. The management goals for MA T-4 include maintaining healthy stands of  
15 timber, providing for other resource uses as long as they are compatible with visual  
16 quality objectives, emphasizing cost-effective timber production while protecting soil  
17 productivity, and maintaining water quality and stream bank stability.

18 121. The Forest Plan states that all proposals to harvest timber in MA T-4 and MA  
19 T-5 “will analyze and evaluate the . . . soil productivity impacts.”

20 122. The USFS cannot adequately analyze and evaluate soil productivity impacts  
21 or ensure it is maintaining soil productivity as required in the Forest Plan without  
22 complying with the R1-SQS.

23 123. The USFS cannot adequately measure changes in soil productivity or ensure  
24 compliance with the Forest Plan’s soil variability standard without the R1-SQS.

25 124. In authorizing the Biathlon Project, the USFS is not applying or complying  
26 with, and has never evaluated or ensured compliance with, the R1-SQS. The USFS’s  
27 decision to authorize the Biathlon Project is therefore “arbitrary, capricious, an abuse of

1 discretion, or otherwise not in accordance with law ” and constitutes “agency action  
2 unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

3 COUNT IV

4 NFMA VIOLATION  
5 (Elk Standards)

6 125. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

7 126. In authorizing the Biathlon Project, the USFS has violated, and continues to  
8 violate, the Forest Plan’s standards for elk summer and winter range.

9 127. Under NFMA, all site-specific management decisions on the HNF must be  
10 consistent with the Forest Plan. 16 U.S.C. § 1604 (i).

11 128. Pursuant to the Forest Plan, elk summer range is to be maintained at “35  
12 percent or greater hiding cover” and elk winter range is to be maintained at “25 percent or  
13 greater thermal” cover “in drainages or elk herd units.”

14 129. The project area for the Biathlon Project is located within the Greenhorn Elk  
15 Herd Unit (EHU).

16 130. The project area for the Biathlon Project is located within elk summer range.

17 131. The project area for the Biathlon Project is located within elk winter range.

18 132. The MFWP determined that the Biathlon Project is located within elk  
19 summer and winter range.

20 133. In authorizing the Biathlon Project the USFS never evaluated whether the  
21 Forest Plan standard for elk summer range (35% hiding cover) was met at the appropriate  
22 EHU level and the USFS failed to apply the correct methods and standards for  
23 determining compliance with the hiding cover requirements for elk summer range.

24 134. In authorizing the Biathlon Project, the USFS never evaluated whether the  
25 Forest Plan standard for elk winter range (25% thermal cover) was met at the appropriate  
26 EHU level.

27 135. The USFS’s authorization of the Biathlon Project will violate the Forest

1 Plan's standards for elk summer and winter range.

2 136. The USFS's failure to comply and/or ensure compliance with the Forest  
3 Plan's standards for elk summer and winter range is "arbitrary, capricious, an abuse of  
4 discretion, or otherwise not in accordance with law " and constitutes "agency action  
5 unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

6  
7 COUNT V

8 NFMA VIOLATION  
9 (Moose Standards)

10 137. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

11 138. In authorizing the Biathlon Project, the USFS has violated, and continues to  
12 violate, the Forest Plan's standards for managing moose habitat.

13 139. Under NFMA, all site-specific management decisions on the HNF must be  
14 consistent with the Forest Plan. 16 U.S.C. § 1604 (i).

15 140. Pursuant to the Forest Plan, moose habitat "must be managed to provide  
16 adequate browse species diversity and quantity to support current moose populations."

17 141. Aspen, alder, and willow are an important browse species needed to support  
18 current moose populations.

19 142. The project area for the Biathlon Project contains stands of aspen and is  
20 important moose habitat on the HNF.

21 143. The USFS states that "[m]oose are widely distributed throughout the project  
22 area and surrounding vicinity and would be expected to occur in the project area any time  
23 of year, including winter."

24 144. The USFS states that "moose are likely to inhabit the area during winter  
25 months" and that such moose will be "most affected" by the proposed Biathlon Project.

26 145. To build the Biathlon Project, the USFS and MT National Guard will remove  
27 stands of aspen from the project area.

1 146. In authorizing the Biathlon Project, the USFS has never evaluated  
2 compliance with the Forest Plan standard for moose habitat.

3 147. In authorizing the Biathlon Project, the USFS has never evaluated whether  
4 the project area will still “provide adequate browse species diversity and quantity to  
5 support current moose populations” after the Biathlon Project is constructed.

6 148. The Biathlon Project will violate the Forest Plan’s standard for moose  
7 habitat.

8 149. The USFS’s failure to comply and/or ensure compliance with the Forest  
9 Plan’s standards for moose habitat is “arbitrary, capricious, an abuse of discretion, or  
10 otherwise not in accordance with law ” and constitutes “agency action unlawfully  
11 withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

12  
13 COUNT VI

14 NFMA VIOLATION  
15 (Lynx Standards)

16 150. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

17 151. In authorizing the Biathlon Project, the USFS has violated, and continue to  
18 violate, the Forest Plan’s standards for managing lynx.

19 152. Under NFMA, all site-specific management decisions on the HNF must be  
20 consistent with the Forest Plan. 16 U.S.C. § 1604 (i).

21 153. Pursuant to Standard ALL S1 in the Forest Plan (Northern Rockies Lynx  
22 Management Direction) any “[n]ew or expanded permanent development and vegetation  
23 management projects must maintain habitat connectivity in a LAU and/or linkage area.”

24 154. The Biathlon Project is a “new or expanded permanent development” in a  
25 Lynx Analysis Unit.

26 155. The Biathlon Project will not maintain habitat connectivity for lynx in the  
27 LAU.

1 156. The USFS has not taken a hard look at whether the Biathlon Project will  
2 ensure compliance with Standard ALL S1 or provided any support or analysis for its  
3 conclusion that the Biathlon Project will not violate Standard ALL S1.

4 157. The USFS's failure to comply and/or ensure compliance with the Forest  
5 Plan's standard to maintain habitat connectivity for lynx is "arbitrary, capricious, an abuse  
6 of discretion, or otherwise not in accordance with law " and constitutes "agency action  
7 unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

8 COUNT VII

9 ESA VIOLATIONS

10 158. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

11 159. The USFS has violated, and continues to violate, section 7 of the ESA, 16  
12 U.S.C. § 1536, and the implementing regulations, 50 C.F.R. § 402.

13 160. Pursuant to section 7 (a)(2) of the ESA, the USFS, "shall, in consultation  
14 with and with the assistance of the Secretary, insure that any action authorized, funded, or  
15 carried out by such agency . . . is not likely to jeopardize the continued existence of any  
16 endangered or threatened species." 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14. In  
17 fulfilling the requirements of section 7 (a)(2) "each agency shall use the best scientific  
18 and commercial data available." 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14 (d).

19 161. In authorizing the Biathlon Project, the USFS has violated, and continues to  
20 violate, section 7 of the ESA.

21 162. Pursuant to section 7 of the ESA, the USFS prepared a biological assessment  
22 ("BA") for grizzly bears, lynx, and gray wolves. The USFS's BA concluded that the  
23 Biathlon Project "may affect, but is not likely to adversely affect" grizzly bears, lynx and  
24 gray wolves.

25 163. The USFS's "may affect, but is not likely to adversely affect" finding : (1)  
26 failed to properly assess the "effects" and "environmental baseline" of the Biathlon  
27 Project on lynx, grizzly bears, and gray wolves; (2) failed to properly define the "action

1 area” for section 7 purposes; (3) was premised on incorrect assumptions regarding  
2 compliance with the Lynx Conservation Assessment and Strategy (“LCAS”); (4) failed  
3 to analyze the cumulative impacts to lynx, grizzly bears, and gray wolves; and (5) failed  
4 to use the best scientific and commercial data available to insure that its actions are not  
5 likely to jeopardize the continued existence of grizzly bears, lynx, and wolves.

6 164. The USFS also failed to reinitiate consultation as required by 50 C.F.R. §  
7 402.16, in light of new information on the presence of grizzly bears, lynx, and gray  
8 wolves and suitable habitat in the action area.

9 165. The USFS’s failure to comply with section 7 of the ESA is “arbitrary,  
10 capricious, an abuse of discretion, or otherwise not in accordance with law ” and  
11 constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§  
12 706 (2)(A), 706 (1).

13  
14 PRAYER FOR RELIEF

15 166. Plaintiffs repeat and incorporate by reference the allegations of all foregoing  
16 paragraphs.

17 167. WHEREFORE, Plaintiffs respectfully request that this Court grant the  
18 following relief:

19 A. Issue a declaratory judgment that the USFS’s authorization of the Biathlon  
20 Project violated NEPA, NFMA, and the ESA as alleged above;

21 B. Issue declaratory judgment that the USFS’s violation of NEPA, NFMA, and  
22 the ESA as alleged above is “arbitrary, capricious, an abuse of discretion, or otherwise  
23 not in accordance with law” or constitutes agency action unlawfully withheld or  
24 unreasonably delayed under the APA;

25 C. Issue a mandatory injunction setting aside the USFS’s DN/FONSI and  
26 requiring the USFS to prepare an EIS for the Biathlon Project pursuant to NEPA;

27 D. Issue a mandatory injunction requiring the USFS to initiate and complete

1 formal consultation on lynx, grizzly bears, and/or gray wolves pursuant to section 7 of the  
2 ESA;

3 E. Issue a mandatory and permanent injunction prohibiting the USFS from  
4 conducting and/or authorizing any and all work relating to the construction of the  
5 Biathlon Project including, but not limited to, any and all timber harvesting/clearing  
6 work, trail widening, and/or on-the-ground activity related to the Biathlon Project until  
7 the USFS fully remedies the violations of NEPA, NFMA, and the ESA complained of  
8 herein;

9 F. If necessary, issue a mandatory injunction ordering the USFS to mitigate and/or  
10 remedy any environmental harm caused by the building the Biathlon Project while this  
11 civil action was/is pending;

12 G. Issue such injunctive relief as Plaintiffs may subsequently request;

13 H. Retain continuing jurisdiction of this matter until the USFS fully remedies the  
14 violations of law complained of herein;

15 I. Grant the Plaintiffs their costs and expenses of litigation, including reasonable  
16 attorneys' fees for claims brought under the ESA pursuant to 16 U.S.C. § 1540 (g);

17 J. Grant the Plaintiffs their costs and expenses of litigation, including reasonable  
18 attorneys' fees for claims brought under NEPA and NFMA pursuant to the Equal Access  
19 to Justice Act (EAJA), 28 U.S.C § 2412;

20 I. Grant such other relief that this Court deems necessary, just, and proper.

21 Respectfully submitted this \_\_\_\_ day of November, 2008.

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