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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

WILDERNESS WATCH,

Plaintiff,

v.

UNITED STATES FOREST
SERVICE, an agency of the U.S.
Department of Agriculture,

Defendant.

Case No. 9:23-CV-_____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF.**

I. INTRODUCTION

1. Wilderness Watch, a non-profit environmental conservation organization, files this lawsuit to challenge illegal action by the United States Forest Service in the Absaroka-Beartooth Wilderness. The Forest Service, an agency of the Department of the Agriculture charged with administering this Wilderness area, has planned under a recent decision (authorizing the “Buffalo Creek Project”) to poison

miles of streams and wetlands in a mountain watershed to kill all the fish present, and then to stock a new species of fish that is not native to those waters. The aims of the Buffalo Creek Project are to mitigate genetic hybridization between rainbow trout and Yellowstone cutthroat trout outside the Wilderness and to create an artificial reserve of Yellowstone cutthroat trout, post-poisoning, within the Wilderness.

2. But the project activity contravenes the strict legal protections provided in the Wilderness Act. The clear provisions of the Wilderness Act provide for protected natural areas like the Absaroka-Beartooth Wilderness a freedom from human impact and manipulation and a prohibition against the machinery and equipment upon which the Project relies. The Act imposes a legal duty upon the Forest Service to protect the free flow of untrammelled natural processes and forbids human efforts to reengineer nature despite whatever perceptions managers may have about desired conditions.

3. Plaintiffs thus seek declaratory relief holding unlawful the Forest Service's decision to authorize the Buffalo Creek Project and injunctive relief prohibiting the agency from implementing the project.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because this action arises under the laws of the United States,

including the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq., and the Wilderness Act, 16 U.S.C. § 1131 et seq. The requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

5. The federal government waived sovereign immunity and the challenged agency actions are final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

6. Venue in this case is proper in this District under 28 U.S.C. § 1391(e)(1) because Plaintiff Wilderness Watch is located in this District, and all the events giving rise to the claims in this action occurred in this District.

III. PARTIES

7. Plaintiff Wilderness Watch is a national, non-profit conservation organization whose mission is the preservation and proper stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. To that end, since 1989, Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education, and litigation to promote sound stewardship of federal Wilderness areas and Wild and Scenic River corridors. Wilderness Watch is headquartered in Missoula, Montana.

8. The staff, members, and supporters of Wilderness Watch have longstanding interests in preserving the wilderness character of federally designated Wilderness in the region encompassing the Greater Yellowstone Ecosystem,

including in the Absaroka-Beartooth Wilderness. Members of Wilderness Watch value Wilderness and have interests in protecting Wilderness whether or not they ever set foot inside its boundaries. They value Wilderness for its own sake, for the sake of the undisturbed ecosystems in Wilderness areas, and for the sake of current and future generations who rely on the preservation of Wilderness for a multitude of personal, spiritual, societal, and ecological reasons.

9. Wilderness Watch's staff, members, and supporters also visit the Absaroka-Beartooth Wilderness for wilderness-based recreational pursuits such as hiking, snowshoeing, canoeing, hunting, fishing, wildlife viewing, and aesthetic enjoyment. They seek out the Absaroka-Beartooth Wilderness because of its remoteness, because of its diversity of habitats and wildlife, and because of its quietude and natural setting away from human development. Wilderness Watch's staff, members, and supporters also work in fields like tourism, research, and academia that depend upon the wilderness character of protected areas like the Absaroka-Beartooth Wilderness, with minimally disturbed ecosystems, expansive and unfragmented natural landscapes, and immeasurable environmental benefits that stem from leaving the area as unmanipulated by people as possible, as the law requires.

10. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, recreational, scientific, educational, wildlife and wilderness

preservation interests of Wilderness Watch and its staff, members, and supporters by intruding upon the natural systems in the Absaroka-Beartooth Wilderness with intensive human efforts to modify the ecosystem and the habitat there. The activity of using aircraft and other machinery to distribute poisons across over 40 miles of streams and acres of lakes and wetlands, and installing a non-native, man-made fish population for the purpose of expanding a species' range into new habitat will harm Wilderness Watch's legally protected interests in the Absaroka-Beartooth Wilderness. The Project will impair the peace and quiet and the solitude of the wilderness as well as permanently impair its natural, undisturbed quality. In addition to injury to the immediate experience of wilderness character through the intensive Project activity, Wilderness Watch's staff, members, and supporters will be injured by the permanent persistence of management-imposed ecological conditions supplanting natural, unconstrained ecological processes with outcome-driven species composition dictated by Forest Service manipulation.

11. Defendant United States Forest Service is an administrative agency within the United States Department of Agriculture. The Forest Service is entrusted with the management of designated Wilderness areas within national forest system boundaries, including the Absaroka-Beartooth Wilderness within the Gallatin National Forest.

IV. LEGAL FRAMEWORK

12. In 1964, Congress passed the Wilderness Act, which established the National Wilderness Preservation System and imposed legal requirements for federal administration of lands designated as Wilderness. Pub. L. 88-577, 78 Stat. 893-96 (Sept. 3, 1964); 16 U.S.C. § 1131 et seq. The Wilderness Act has an “explicit statutory purpose ‘to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition.’” *Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1055 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)).

13. The Wilderness Act defines “wilderness” as “an area where the earth and its community of life are untrammelled by man,” as “retaining its primeval character and influence,” and as “protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c).

14. Although the Wilderness Act recognizes that conservation-related activities can sometimes be appropriate within wilderness areas, *see* 16 U.S.C. § 1133(b), the statute places paramount its mandate of wilderness preservation, requiring that all activities in designated Wilderness be conducted in a manner that “preserv[es] . . . wilderness character” and “will leave [designated wilderness areas]

unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a). Congress expressly prohibited certain activities in designated Wilderness that are defined by the Act to be antithetical to wilderness character preservation. The statute dictates that “there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation” within Wilderness areas. 16 U.S.C. § 1133(c). The only exception that this provision affords is for activities that are “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” *Id.*

15. The Wilderness Act imposes a legal duty on federal lands agencies that administer designated Wilderness to “preserv[e] the wilderness character of the area.” In a designated Wilderness area that may also have “other purposes for which it may have been established,” the Wilderness Act expressly requires that administration for those purposes be conducted “as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

16. In 1978, Congress designated over 900,000 acres within the Custer and Gallatin National Forests as the Absaroka-Beartooth Wilderness, to be managed according to the provisions of the Wilderness Act. Pub. L. 95-249, 92 Stat. 162 (Mar. 27, 1978). Later enactments in 1983 and 1984 made a minor boundary adjustment and then added an additional 23,750 acres within the Shoshone National Forest to

the designated Wilderness. Pub. L. 98-140, 97 Stat. 903 (Oct. 31, 1983); Pub. L. 98-550, 98 Stat. 2809 (Oct. 30, 1984).

17. Regulations governing Forest Service Wilderness administration make clear the paramount obligation to safeguard wilderness character and natural processes: “Natural ecological succession will be allowed to operate freely to the extent feasible,” and “[i]n resolving conflicts in resource use, wilderness values will be dominant[.]” 36 C.F.R. § 293.2(a), (c).

18. The Forest Service maintains a Manual providing Wilderness management direction, and it contains guidance and instruction on the agency’s own internal policies and interpretations for approaching its administration of designated Wilderness.

19. The Forest Service Manual states an overarching Wilderness objective to “[m]aintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces.” The Manual also states an objective for “management of wildlife and fish” to “[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.”

20. The agency’s Manual also “[d]iscourage[s] measures for direct control (other than normal harvest) of wildlife and fish populations.”

21. The Forest Service manual also states clearly as follows: “Do not stock exotic species of fish in wilderness.”

22. “Exotic species,” according to the Forest Service Manual, are those that are “not indigenous, native, or naturalized.” An “indigenous” species is one that “naturally occurs in a wilderness area and that was not introduced by man.” A “native” species is one that “naturally occurs in the United States and that was not introduced by man.” A “naturalized” species is one that is “close genetically or resembles an indigenous species and that has become established in the ecosystem as if it were an indigenous species.”

23. When considering narrow circumstances for authorizing the types of uses generally prohibited by the Wilderness Act, the Forest Service typically documents its “minimum requirements analysis”—its substantive consideration of compliance with 16 U.S.C. § 1133(c)—through a “minimum requirements decision guide,” an internal agency worksheet for analyzing various alternatives and describing the perceived legal basis for invoking the Wilderness Act’s narrow exception.

24. The Administrative Procedure Act (APA), 5 U.S.C. §§ 553-559 and §§ 704-706, governs the decision-making, public process, and final actions taken by federal agencies. The APA establishes a right in members of the public harmed by federal agency decisions to redress unlawful actions; the statute authorizes courts to

“hold unlawful and set aside agency action, findings, and conclusions found to be [] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Compliance with the APA hinges on an agency’s well-reasoned decision-making and its consideration of all relevant factors (including statutory requirements) when it acts. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983); *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021).

V. FACTUAL BACKGROUND

The Absaroka-Beartooth Wilderness

25. The Absaroka-Beartooth Wilderness comprises 937,102 acres of rugged, mountainous federal public lands, administered by the Forest Service and abutting Yellowstone National Park on its northern boundary.

26. Protection of portions of this area in its natural state began as early as the 1930s, when the Forest Service administratively designated the Absaroka and Beartooth Primitive Areas.

27. Ten years after passage of the Wilderness Act in 1964, the Forest Service submitted to Congress a proposal to designate a large swath of this area, encompassing the administrative primitive areas, as Wilderness. The “wilderness resource” there, the agency wrote, “is outstanding,” noting its “variety of

ecosystems, topographic features, and untrammelled conditions.” “Except for the construction of a few trails, it has not felt the hand of man,” the agency said.

28. Although the Absaroka-Beartooth Wilderness area represents a remote expanse of natural and undisturbed valleys, peaks, and plateaus, the area in and around Yellowstone National Park had previously seen several types of pernicious human impacts over the years. Notable among these impacts are human efforts to intentionally modify nature to serve people’s subjective recreational desires; in the Greater Yellowstone Ecosystem, federal and state officials and visitors were eager to intensively manipulate fish populations and their habitat, including the introduction of exotic and invasive species popular for sportfishing and the redistribution and “put-grow-and-take” stocking practices of native and nonnative fish species alike.

29. Some of the impacts of these practices were devastating; a quintessential example is the introduction of exotic lake trout, which have preyed upon native Yellowstone cutthroat trout in Yellowstone Lake to markedly deplete the native fish’s population.

30. Sometimes, the practice of modifying nature was viewed with less skepticism. For example, in 1932, Montana state officials planted several thousand rainbow trout into Hidden Lake, on National Forest lands that drain into Yellowstone within what would later become the Absaroka-Beartooth Wilderness. Decades later,

the Forest Service's initial wilderness designation proposal noted, without further comment, that this tributary, Buffalo Fork Creek (also known as "Buffalo Creek") was simply "a rainbow trout fishery."

31. Nonetheless, the importance of Wilderness designation was to remove the human hand from shaping the landscape and safeguard the untrammelled, wild ecosystems into the future. As Congress wrote in one of the reports preceding passage of the bill designating the Absaroka-Beartooth Wilderness, in this "land of jewel-like lakes, clear cold streams, and picturesque waterfalls," of "glaciated timbered valleys and rugged summits," "much of the area is easily disturbed by the works of man and is slow to heal."

32. In 1978, Congress designated the vast Absaroka-Beartooth Wilderness, including the watershed containing Hidden Lake and Buffalo Creek above to its passage into Yellowstone National Park, to be protected and managed according to the strict provisions of the Wilderness Act.

Yellowstone Cutthroat Trout

33. The Yellowstone cutthroat trout is a subspecies of trout native to the Yellowstone River watershed in Montana and Wyoming. The species also had a historic presence on the other side of the continental divide in the Snake River basin.

34. Montana Fish Wildlife and Parks extensively stocks nonnative populations of Yellowstone cutthroat trout around the western half of the state.

35. In the Lamar River watershed in the northern portion of Yellowstone National Park and southern drainages of the Absaroka-Beartooth Wilderness, Yellowstone cutthroat trout are a darling of recreational anglers and a topic of much research and management concern.

36. One facet of this management concern is the threat of “hybridization.” Introduced rainbow trout populations interbreed with Yellowstone cutthroat trout, and researchers track changes in levels of hybridized genes in fish that display both rainbow and cutthroat ancestry, diluting the “pure” cutthroat gene pool more desired by anglers and fisheries managers.

Designs to Manipulate Buffalo Creek

37. The rainbow trout in the Absaroka-Beartooth Wilderness’s Buffalo Creek, which drains into Slough Creek and subsequently into the Lamar River in Yellowstone, are a documented source population contributing to the presence of hybrid trout genes within Yellowstone National Park.

38. Due to the presence of a cascade near the park/wilderness boundary, the upper reaches of Buffalo Creek in the Wilderness, including Hidden Lake and a number of other small mountain lakes, are naturally fishless waters.

39. Like in a significant portion of the streams and lakes in the Greater Yellowstone Ecosystem, the presence of trout in this watershed is a human contrivance, perpetuated in the pursuit of recreational sportfishing and borne of a

subjective human value system that led fisheries and land managers to refer to fishless waters as “barren,” despite their abundance of other aquatic life, and to stock them with desired fish species.

40. Despite repeated examples of the negative unforeseen consequences of such ecosystem manipulations, and despite statutory Wilderness designation serving to proscribe further acting upon such impulses, federal and state officials’ penchant for reconfiguring aquatic environments to reflect desired species composition continues to the present.

41. Today, given the perceived threat of hybridized trout and the effects of climate change, the Forest Service’s intended approach to manipulating Buffalo Creek—spurred by Montana Fish, Wildlife and Parks—is to replace the introduced rainbow trout population (the outgrowth of a stocking effort 90 years past) with a newly introduced Yellowstone cutthroat trout population.

42. To accomplish these ends, the Forest Service plans to apply a poison—rotenone, a piscicide that kills all gill-breathing organisms—to over 40 miles of Wilderness stream within the Buffalo Creek drainage, about 11 acres of lake surfaces, and about 25 acres of wetlands.

43. After several successive seasons of poisoning, the agency then plans to spend several successive years restocking the same waterways with Yellowstone cutthroat trout.

44. The agency frames this effort to place the cutthroats in waters beyond their natural range as one of creating “climate refugia”—in other words, treating the protected Wilderness area as a repository for growing supplemental, artificial populations of fish to compensate for harms to the species from human activity elsewhere on the landscape.

The Agency’s Project Development and Final Action

45. In March of 2022, the Forest Service initiated its public engagement under the National Environmental Policy Act (NEPA) by releasing a draft environmental assessment of the “Buffalo Creek Yellowstone Cutthroat Trout Conservation Project” and soliciting public comment.

46. Plaintiff and many others provided extensive comments to the agency.

47. In April of 2022, the Forest Service released its final environmental assessment and draft decision notice approving the Buffalo Creek Project.

48. Plaintiff filed a formal objection to the agency’s project approval.

49. In August of 2023, the Forest Service approved the Project over Plaintiff’s administrative objection.

50. The Project as ultimately formally approved would be substantively implemented beginning in the summer of 2024.

51. In the Project, the Forest Service approved up to five years of rotenone application across 46 miles of streams and over 30 acres of lakes and wetlands.

52. The Forest Service approved the transport of project personnel to work sites in the Wilderness by helicopter.

53. The Forest Service approved the erection of a radio repeater in the Wilderness to be used during the duration of the project.

54. The Forest Service approved the erection of three remote field camps and the delivery of over 6,000 pounds of gear each summer to support these camps.

55. The Forest Service approved helicopter landings to facilitate the delivery of over 12,000 pounds of equipment and rotenone into the Wilderness.

56. The Forest Service approved the construction of fish barriers at the outlet of Hidden Lake, using material from around the landscape wrapped in irrigation tarp, to persist for up to five years.

57. The Forest Service approved the aerial spraying of rotenone over 25 acres of open water in two large wetland meadows.

58. The Forest Service approved the use of gasoline powered pumps to distribute rotenone within the lakes and wetlands.

59. The Forest Service approved the restocking of most of the poisoned waterways with Yellowstone cutthroat trout over a subsequent period of five years.

60. The Forest Service approved the installation of remote site incubators to distribute Yellowstone cutthroat trout eggs into stocked streams.

61. In total, the Forest Service approved up to 60 days of motorized use including up to 81 aircraft landings in the Wilderness.

The Agency’s Planning and Decision Documents and Legal Shortcomings

62. The Forest Service’s approach of intensively poisoning out the aquatic life in the Buffalo Creek watershed and restocking it with cutthroat trout puts the agency at odds with its statutory Wilderness management mandate to leave the “earth and its community of life...untrammelled by man.” 16 U.S.C. § 1131(c). The very purpose of setting aside Wilderness areas is to reserve a small portion of the landscape to be free from the unintended consequences of acting on human assumptions and the pernicious human influence that dominates elsewhere. The Act assures that the human population “does not occupy and modify all areas” and provides designated areas “preservation and protection in their natural condition.” 16 U.S.C. § 1131(a).

63. A plain reading of the Wilderness Act makes clear that the statutorily permissible scope of administrative work to safeguard untrammelled nature should not encompass the sort of work that requires a decade’s worth of habitat-reengineering effort in reliance on modern industrial technology like helicopters, generators, gasoline pumps, and piscicides. An anthropogenic imprint on the landscape at such a technologically facilitated scale is exactly the sort of impact that the Wilderness Act serves to protect designated areas against.

64. Such work directly contradicts the Forest Service’s own stated policy to “[m]aintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces” and so that “natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.”

65. Thus, in numerous respects, the Forest Service’s incongruous decision to approve the Buffalo Creek Project, despite the statutory barrier to such activity imposed by the Wilderness Act, demonstrates arbitrary, capricious, or unlawful decision-making in violation of the Administrative Procedure Act.

Violation of the Statutory Wilderness Character Mandate

66. The Wilderness Act requires the Forest Service to preserve wilderness character in the Absaroka-Beartooth Wilderness, which means preserving its “untrammeled” nature; its “primeval”—i.e., non-anthropogenic—influence; and its “natural conditions”—i.e., those derived *not* from human controls.

67. The Buffalo Creek Project would not benefit the preservation of wilderness character and instead would significantly degrade it.

68. In its “minimum requirements decision guide,” the Forest Service’s worksheet memorializing its internal assessment of Wilderness Act compliance, the agency documented a net detriment to wilderness character from the Project’s activities.

69. The Forest Service acknowledged that “[r]otenone treatment of lakes, ponds, and wetlands would have a trammeling effect.”

70. The Forest Service acknowledged that “[Fish] stocking and the use of [temporary installments] are considered trammeling actions.”

71. The Forest Service acknowledged that “[u]se of motor vehicles, motorized equipment, or mechanical transport degrades the undeveloped quality” of Wilderness.

72. The Forest Service acknowledged that the construction of fish barriers would degrade wilderness character.

73. The Forest Service acknowledged that the numerous helicopter landings and operation of generators and other motors “would have a negative effect on solitude and the sense of isolation from the sounds and sights of modern civilization,” degrading wilderness character.

74. Deploying its own internal scoring system for wilderness character effects, the Forest Service gave the “aircraft and pack stock supported” alternative that it ultimately approved a score of “-15,” documenting a net detriment to wilderness character.

75. The “no action” alternative received a score of “-1,” reflecting a minor impact on wilderness character due to the presence of rainbow trout but an overall lower impact on wilderness character than the implementation of the Project.

Violation of the Motor and Aircraft Use Prohibition

76. The Forest Service’s “minimum requirements decision guide” serves as a tool for assessing compliance with 16 U.S.C. § 1133(c)’s narrow exception to the Wilderness Act’s general ban on motorized equipment use and aircraft landings.

77. Despite the fact that the Forest Service documented an overall detriment to wilderness character from the Project activity, the Forest Service justified the Project as a benefit to “naturalness” given its ultimate aim to replace the stocked rainbow trout population with a stocked Yellowstone cutthroat trout population. The Forest Service used this justification to frame its decade-long and heavily motorized poisoning and stocking activity as the “minimum necessary” administrative work it could do to comply with the mandate of the Wilderness Act.

78. This conclusion suffers numerous flaws.

79. First, the purported benefit to “naturalness” is arbitrarily contrived.

80. As the Forest Service acknowledged, the presence of an artificially stocked Yellowstone cutthroat trout population in the Wilderness reaches of Buffalo Creek is designed to benefit the genetic makeup of fish populations *outside* the Wilderness in Yellowstone National Park.

81. Thus, the agency is using a purported benefit to “naturalness” *beyond* the Wilderness to justify maintaining *non-natural* conditions in the Wilderness. This theory has no support in the Wilderness Act.

82. To the extent the Forest Service characterized the trout stocking as a benefit to wilderness character within the Absaroka-Beartooth Wilderness, the agency only asserted that the human-stocked cutthroat trout would be slightly better than the human-stocked rainbow trout because cutthroats are indigenous to more nearby waters.

83. But this justification derives from an arbitrary and capricious redefinition of “natural.” Under the Forest Service’s own definitions provided in its manual, Yellowstone cutthroat trout qualify as “exotic” in the naturally fishless waters of upper Buffalo Creek, because a fish species that is “introduced by man” cannot qualify as “indigenous” or “native.” As the Forest Service’s own Manual makes clear, the introduction of an “exotic” species can only degrade the naturalness of the Wilderness environment.

84. The Forest Service’s analysis of “necessity” under 16 U.S.C. § 1133(c) also suffered arbitrary and illogical reasoning.

85. For example, the agency justified the necessity of the project in Wilderness on the premise that nowhere else could the specific goals of the project—to eliminate rainbow trout and plant cutthroat trout in Buffalo Creek—be accomplished. This logic, to justify the project based on an unsupported reduction of Wilderness Act compliance goals to perfectly equate to specific project goals, illustrates arbitrary predetermination of the analysis outcome.

Arbitrary and Inaccurate Decision-Making Bases

86. Finally, other aspects of the Forest Service’s documentation and analysis demonstrated unsound assumptions, misrepresentations of science, and illogical or legally unsupported reasoning that are the hallmarks of arbitrary and capricious decision-making.

87. For example, in justifying the more “natural” benefit of stocking Yellowstone cutthroat trout to replace the extant rainbow trout in Buffalo Creek, the agency cited to research that it claimed demonstrated the rainbow trout were a “functionally different predator,” such that cutthroat trout would less impact the other aquatic life in the historically naturally fishless watershed.

88. The scientific research that the agency cited to support this justification had quantified a predatory difference between cutthroat trout and *brook* trout, a fish species from an entirely different genus than cutthroats and rainbows.

89. In fact, due to the similarity between cutthroats and rainbows (as exemplified by their ability to interbreed), one of the papers cited by the agency had even used data derived from rainbow trout as a proxy for cutthroats to establish the comparison with brook trout.

90. The Forest Service thus rested its decision-making on a “functionally different predator” logic that had no basis in the science upon which the agency relied.

91. Furthermore, some of the agency’s justification for the benefit of stocking Yellowstone cutthroat trout in naturally fishless waters was premised on the idea that it would improve the “fitness” of the fish populations (downstream in Yellowstone National Park) and therefore bolster the “health of the fishery” and avoid the result of “fewer fish for anglers.”

92. But this reasoning misrepresents the scientific meaning of genetic “fitness,” which has nothing to do with the physical fitness or health or number of fish and is instead merely a measure of the reproductive success of certain genetic signatures—in this context those of hybrid cutthroat/rainbow genes versus pure cutthroat genes. The science has shown only that increased hybridization results in fewer pure cutthroat genes, i.e., decreased cutthroat “fitness.”

93. The fact that fish with hybrid genes beget more fish with hybrid genes is not itself reflective of anything other than the genetic makeup of the fish populations and does not itself justify management interventions. Here, even if the agency had not wholly misrepresented the meaning of the genetic science, its reasoning would only amount to the circular logic that it seeks to reduce hybridization because otherwise there would be hybrid genes.

94. Additionally, the agency’s justification of “fish for anglers” finds no support in its statutory mandate to preserve untrammeled wilderness character.

95. For example, in its environmental assessment, the Forest Service justified its overarching pursuit of genetic purity for cutthroat trout in little more than subjective, aesthetic human desires. The agency's analysis stressed the economic and social value of the cutthroat fishery and cited to resources that describe the species' "beauty and willingness to take a fly."

96. Finally, the Forest Service rejected outright any consideration of a Project alternative that would leave the naturally fishless waters in their naturally fishless state after the contemplated removal of rainbow trout. The Forest Service's basis for this decision was a mischaracterization of the applicable law.

97. Federal case law has made explicitly clear that the federal government's constitutional authority over federal public lands extends to "the power to regulate and protect the wildlife living there," despite the traditional role that state governments play in managing wildlife within their borders. *See Safari Club Int'l v. Haaland*, No. 21-35030 (9th Cir. Apr. 19, 2022) (internal citations and quotations omitted). Under the Constitution's Supremacy Clause, federal legislative directives may therefore override conflicts with state wildlife management activities following state law. *Id.*

98. Yet the Forest Service premised its rejection of considering any non-stocking approach on the basis that it was "outside the scope" of what the Forest

Service could decide—on the premise that it remained entirely up to the State of Montana whether stocking activity would recur in the Wilderness.

99. This justification was legally groundless and therefore an additional illustration of the arbitrary and unlawful bases for the Forest Service’s project approval.

VI. LEGAL CLAIMS

CLAIM ONE: VIOLATION OF THE WILDERNESS ACT

100. Plaintiffs hereby reallege and reincorporate all above paragraphs.

101. The Wilderness Act charges the Forest Service with a duty to preserve the wilderness character of the Red Rock Lakes Wilderness. 16 U.S.C. § 1133(b). The Wilderness Act defines Wilderness “in contrast with those areas where man and his own works dominate the landscape,” as “an area where the earth and its community of life are untrammelled by man,” as “retaining its primeval character and influence,” and as “protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Among its provisions to further the protection of wilderness character, the Wilderness Act expressly prohibits the use of motorized equipment, the landing of aircraft, and structures and installations, “except as necessary to meet minimum requirements for the administration of the area” as Wilderness. 16 U.S.C. § 1133(c).

102. The Forest Service’s authorization of the project to poison out the Buffalo Creek watershed and restock it with cutthroat trout violates the Wilderness Act because the project undermines the goals of the Wilderness Act and because the expressly statutorily prohibited activities that the project entails are not “necessary to meet the minimum requirements for the administration of the area” as Wilderness.

103. Because FWS’s decision to implement the project was arbitrary, capricious, an abuse of discretion, and contrary to law—including the Wilderness Act, 16 U.S.C. § 1131 et seq.—this Court must hold unlawful and set aside the agency’s decision under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

VII. REQUESTS FOR RELIEF

104. For all the above-stated reasons, Plaintiffs respectfully request that this Court grant relief as follows:

- a. Declare that the Forest Service’s decision to approve the Buffalo Creek Project violates the Wilderness Act;
- b. Vacate the Forest Service’s August 3, 2023 Decision Notice approving the Buffalo Creek Project;
- c. Grant injunctive relief to prohibit the Forest Service from implementing the challenged project;
- d. Award Plaintiff its reasonable fees, costs, and expenses, including attorney fees, associated with this litigation; and

e. Grant Plaintiff such further relief as this Court may deem just, proper, and equitable.

Date: November 8, 2023

/s/ Andrew Hursh

Andrew Hursh, Montana Bar #68127109

Attorney for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Wilderness Watch

(b) County of Residence of First Listed Plaintiff Missoula, MT (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Andrew Hursh Missoula, MT 59807 Wilderness Watch 406-542-2048 Ext. 6 PO Box 9175

DEFENDANTS

United States Forest Service

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Administrative Procedure Act, 5 U.S.C. § 706; Wilderness Act, 16 U.S.C. § 1131 et seq.

Brief description of cause: Challenge to U.S. Forest Service decision to carry out fisheries management project in violation of the Wilderness Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/08/2023 SIGNATURE OF ATTORNEY OF RECORD Andrew Hursh

Digitally signed by Andrew Hursh Date: 2023.11.08 11:35:52 -0700

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE