

Sarah K. McMillan (Mont. Bar No. 3634)
WildEarth Guardians
P.O. Box 7516
Missoula, Montana 59807
Ph: (406) 549-3895
smcmillan@wildearthguardians.org
Counsel for Plaintiff WildEarth Guardians

Matthew K. Bishop (Mont. Bar No. 9968)
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
Ph: (406) 324-8011
bishop@westernlaw.org

John R. Mellgren, *application for pro hac vice pending*
Western Environmental Law Center
120 Shelton McMurphey Blvd., Ste. 340
Eugene, Oregon 97401
Ph: (541) 359-0990
mellgren@westernlaw.org

Counsel for Plaintiffs

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

WILDEARTH GUARDIANS, a non-profit
organization; and WILDERNESS
WORKSHOP, a non-profit organization;

Plaintiffs,
vs.

AURELIA SKIPWITH, in their official
capacity as Director of the U.S. Fish and
Wildlife Service; and UNITED STATES
FISH and WILDLIFE SERVICE, a federal
agency.

Federal-Defendants.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. WildEarth Guardians and Wilderness Watch (collectively “Plaintiffs”), bring this civil action for declaratory and injunctive relief against Federal-Defendants Aurelia Skipwith, in their official capacity as Director of the U.S. Fish and Wildlife Service, and the United States Fish and Wildlife Service (collectively “Service”) under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* for violations of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*

2. This case challenges the Service’s unreasonable delay and failure to comply with this Court’s September 7, 2016 remand order in *Wildearth Guardians v. U.S. Dep’t of the Interior*, Case No. CV 14-270-M-DLC, 205 F. Supp. 3d 1176 (D. Mont. 2016).

3. In *WildEarth Guardians*, this Court: (1) held that the Service erred in its September, 2014 final rule designating critical habitat for Canada lynx (“lynx”) in the United States by excluding the state of Colorado and certain National Forests in Montana and Idaho from the critical habitat designation; and (2) remanded the matter back to the Service for further action consistent with its order. *Id.* at 1189-1190.

4. Nearly *four years* later, the Service has yet correct these errors or take any steps towards revising its critical habitat rule for lynx as directed to do so by this Court in *WildEarth Guardians*. Plaintiffs are thus compelled to file this civil action. The Service’s failure to and/or decision not to comply with this Court’s order in *WildEarth Guardians* qualifies as “agency action unlawfully withheld or unreasonably delayed”

and/or is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the ESA],” 5 U.S.C. §§ 706(1), (2)(A).

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702.

6. Final agency action exists that is subject to judicial review pursuant to 5 U.S.C. § 704. An actual, justiciable controversy exists between Plaintiffs and the Service. The Court has authority to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202 and 5 U.S.C. §§ 705 & 706.

7. Venue in this court is proper under 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. Plaintiffs maintain offices within this judicial district. The Service maintains offices within this judicial district. Many of the documents related to the decisions at issue in this litigation are housed within this judicial district. Prior public comment periods related to the decisions at issue in this litigation directed members of the public to submit comments to a Service office within this judicial district. Service staff members working on the decisions at issue in this litigation work within this judicial district. Lands impacted by the actions and inactions at issue in this litigation occur within this judicial district. Lynx occur within this judicial district.

8. Venue in the Missoula division is proper as the events or omissions giving rise to this litigation occurred within the counties making up the Missoula division of the U.S. District Court for the District of Montana. Lands affected by the

events or omissions at issue in this litigation occur within the counties making up the Missoula division of the U.S. District Court for the District of Montana. The Missoula division of the U.S. District Court for the District of Montana previously resolved litigation related to the events or omissions at issue in this litigation.

9. Plaintiffs have exhausted any and all available and required administrative remedies. Plaintiff WildEarth Guardians meets the requirements for Article III standing to pursue this civil action by and through its members who are adversely affected by the decision at issue in this litigation. Plaintiff Wilderness Watch meets the requirements for Article III standing to pursue this civil action by and through its members who are adversely affected by the decision at issue in this litigation.

10. Plaintiffs have a significant, concrete interest in protecting and enjoying lynx and their recovery. Plaintiffs have a significant, concrete interest in ensuring the Service complies with federal law and this Court's previous order in *WildEarth Guardians*. These interests are and will continue to be harmed by the Service's actions and inactions at issue in this litigation and a favorable ruling from this Court will redress those harms. This matter is ripe for judicial review.

PARTIES

11. Plaintiff, WILDEARTH GUARDIANS ("Guardians"), is a nonprofit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers and health of the American West. WildEarth Guardians has over 235,000 members

and supporters, many of whom have particular interests in lynx and the designation of lynx critical habitat. Guardians has offices and staff across the West, including offices in Missoula, Montana, Denver, Colorado, Santa Fe, New Mexico, and Boise, Idaho. Guardians has an organizational interest in ensuring the Service's compliance with all federal laws and this Court's order in *WildEarth Guardians*. Guardians' interests in lynx recovery are harmed by the Service's on-going and continued failure to comply with this Court's order in *WildEarth Guardians* and the Service's failure to correct the errors identified by this Court when excluding certain National Forests in Montana and Idaho and the state of Colorado from the lynx critical habitat rule and designation.

12. Plaintiff, WILDERNESS WORKSHOP, is a nonprofit organization headquartered in Carbondale, Colorado and advocates for public lands and wildlife across the western slope of Colorado. Wilderness Workshop has more than 800 staff and members, many of whom have particular interests in lynx and the designation of lynx critical habitat. Wilderness Workshop has an organizational interest in ensuring the Service's compliance with all federal laws and this Court's order in *WildEarth Guardians*. Wilderness Workshop's interests in lynx recovery are harmed by the Service's on-going and continued failure to comply with this Court's order in *WildEarth Guardians* and the Service's failure to correct the errors identified by this Court when excluding certain National Forests in Montana and Idaho and the state of Colorado from the lynx critical habitat rule and designation.

13. Plaintiffs, as well as their members, staff, and supporters are dedicated to ensuring the long-term survival and recovery of lynx in the contiguous United States and ensuring the Service complies with the ESA and bases all critical habitat decisions on the best scientific and commercial data available, as directed to do so by this Court in *WildEarth Guardians*.

14. Plaintiffs' members and staff live near and/or routinely recreate in areas occupied by lynx and in lynx habitat in the contiguous United States.

15. Plaintiffs' members and staff enjoy observing and studying lynx in the wild, including signs of lynx presence throughout the species' current range. The opportunity to possibly view lynx or signs of lynx in the wild—by itself—is of significant interest and value to Plaintiffs' members and staff and increases their use and enjoyment of public lands.

16. Plaintiffs' members and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits from lynx and lynx habitat, recreating in areas occupied by lynx, and in working to conserve lynx and obtain habitat protections for lynx, including critical habitat designation, in the contiguous United States.

17. Plaintiffs, and their members and staff, have worked and continue to work to conserve lynx and lynx habitat in the contiguous United States, including in Colorado and National Forests in Montana and Idaho.

18. Plaintiffs, and their members and staff, have a protectable interest in ensuring lynx habitat across its range is considered for critical habitat designation.

19. Plaintiffs' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the Service's revised critical habitat decision and actions and/or inactions challenged in this complaint. If this Court issues the relief requested the harm to Plaintiffs' interests will be alleviated and/or lessened.

20. Defendant AUERELIA SKIPWITH is sued in their official capacity as Director of the U.S. Fish and Wildlife Service. As Director, Mx. Skipwith is the federal official with responsibility for all Service officials' inactions and/or actions challenged in this complaint, including compliance with this Court's order in *WildEarth Guardians*.

21. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this complaint, including compliance with this Court's order in *WildEarth Guardians*.

FACTS

Canada lynx

22. Lynx are medium-sized cats with long legs, large paws, and webbed toes adapted to walking on snow. Lynx have long tufts on their ears.

23. Snowshoe hares are the primary prey for lynx across their range. The percentage of diet composed of snowshoe hare varies by geography across their

range. Snowshoe hare comprise between 35-97% of lynx diet in different places throughout the species' range. Snowshoe hares are associated with boreal and subalpine forests.

24. Red squirrels are an important secondary food source for lynx. Red squirrels are the main alternate prey during periods of low hare abundance.

25. Lynx are habitat specialists that occur primarily in spruce-fir vegetation types that receive persistent snowfall. Sufficient horizontal cover is an important feature for lynx habitat.

26. In forest stands that have suffered wildfire or beetle kill events, lynx continue to occupy and reproduce in them after such events if there is sufficient dense horizontal cover.

27. Lynx habitat can be impacted by wildfire. Lynx habitat can be impacted by beetle kill.

28. In Colorado, there is no relationship between hare occupancy or density and whether or not an area was impacted by beetle kill.

29. In Colorado, red squirrel occupancy and density declined post-beetle kill events.

30. In Colorado, lynx are using landscapes that have experienced beetle kill events in the same way and to the same extent that they did before the area experienced the beetle kill events.

31. In Colorado, the most important forest management issue is to maintain stem density of understory trees, in particular, young fir.

32. Lynx denning habitat is important to lynx as natal and maternal dens are used to raise kittens for the first 6-8 weeks of their life.

33. Lynx denning habitat can occur in both spruce-fir and lodgepole stands. Lynx denning habitat occurs in a variety of forest structural stages, from young regenerating forests to old forests.

34. To be functional, lynx denning habitat must be in or adjacent to lynx foraging habitat.

35. Lynx denning habitat provides kittens with protection from extreme temperatures, precipitation, or predators.

36. The common components of lynx denning habitat are large woody debris—including down logs and root wads—and dense horizontal cover.

37. During the first few months of life, denning habitat must be available throughout the home range to give kittens an escape route from predators and cover from the elements.

38. In its 2014 final rule designating lynx critical habitat, the Service included denning habitat as a Primary Constituent Element (“PCEs”) that provides for a species’ life-history processes and is essential to the conservation of the species when determining which lands should be designated as Canada lynx critical habitat. As such, the Service identified denning habitat to be a physical or biological feature needed to

support and maintain lynx populations over time and which, therefore, is essential to the conservation of the lynx.

39. Lynx occur in Montana. Lynx occur in Idaho. Lynx occur in Washington. Lynx occur in Oregon. Lynx occur in Wyoming. Lynx occur in Colorado. Lynx occur in New Mexico. Lynx occur in Utah.

40. Lynx were reintroduced to Colorado. From 1999 to 2006, 218 lynx were released in Colorado's San Juan Mountains.

41. Habitat exists in the southern Rockies that qualifies as critical habitat for lynx.

42. Habitat exists in Colorado that qualifies as critical habitat for lynx.

Listing of lynx as a threatened species under the ESA

43. On March 24, 2000, the Service determined the contiguous United States population of lynx to be threatened under the ESA.

44. Lynx in the contiguous United States are currently listed as threatened under the ESA.

45. Lynx in the contiguous United States continue to qualify as a threatened species under the ESA.

46. Lynx were listed as threatened under the ESA because of threats related to the present or threatened destruction, modification, or curtailment of its habitat. This includes threats from timber harvest, fire suppression, and conversion of forest

lands to agriculture. These threats not only remove lynx habitat, but also isolate habitat into small, fragmented patches of habitat.

47. Lynx were listed as threatened under the ESA because of threats related to the lack of adequate regulatory mechanisms. In particular, the Service concluded existing regulatory mechanisms did not adequately address the needs of lynx, or reduce the threats to the species or its habitat.

48. Lynx were listed as threatened under the ESA because of threats related to other natural or manmade factors affecting the continued existence of the lynx. In particular, the Service concluded lynx movements may be negatively influence by high traffic volume on roads bisecting suitable lynx habitat.

49. Lynx in the contiguous United States are threatened by habitat loss. Lynx in the contiguous United States are threatened by habitat loss from forest fire events. Lynx in the contiguous United States are threatened by habitat loss from insect kill events.

50. Lynx in the contiguous United States are threatened by incidental trapping. Lynx in the contiguous United States are threatened by climate change. Lynx in the contiguous United States are threatened by their small population size. Lynx in the contiguous United States are threatened by the isolated nature of their populations. Lynx in the contiguous United States are threatened by the cumulative nature of the threats they face.

Critical habitat for lynx

51. Under Section 4(a)(3)(A) of the ESA, 16 U.S.C § 1533(a)(3)(A), the Service must designate habitat for listed species which is considered to be “critical habitat” for the species.

52. Critical habitat is defined as: (1) specific areas occupied by the species at the time of listing on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations; and (2) specific areas not occupied by the species at the time of listing but nonetheless deemed essential to the conservation of the species. 16 U.S.C. § 1532(5)(A).

53. The Service has designated critical habitat for lynx three times.

54. The Service has not completed the critical habitat designation process for lynx.

The 2006 critical habitat rule

55. On November 9, 2006, the Service issued a final rule designating critical habitat for lynx in the contiguous United States. The Service’s 2006 rule designated approximately 1,841 square miles of critical habitat for lynx in three states: Montana, Washington, and Minnesota.

56. The Service’s 2006 rule excluded all National Forest and BLM lands from the critical habitat designation.

57. The Service’s 2006 rule excluded the entire Southern Rocky Mountains (south-central Wyoming, Colorado, and north-central New Mexico) from the critical habitat designation.

58. The Service’s 2006 rule excluded north-central and northeastern Washington (Kettle and Wedge ranges) from the critical habitat designation because, according to the Service, there “is no evidence that a lynx population has occupied the Kettle Range since 1995.”

59. The Service’s 2006 rule excluded areas deemed occupied by lynx in Idaho and Montana at the time of listing from the critical habitat designation because they are located on National Forest and BLM lands which convey “considerable management attention for lynx.”

60. On July 20, 2007, the Service announced it would review the 2006 critical habitat rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. The Service’s review of the 2006 rule determined that it was improperly influenced by then deputy assistant secretary of the Interior Julie MacDonald and, as a result, may not be supported by the record, may not be adequately explained, or may not comport with the best available science.

The 2009 critical habitat rule

61. On February 25, 2009, the Service issued a revised rule designating critical habitat for lynx in the contiguous United States.

62. The Service's 2009 revised rule designated approximately 39,000 square miles of critical habitat for lynx in the contiguous United States in the states of Maine, Minnesota, Montana, Wyoming, Idaho, and Washington.

63. The Service's 2009 revised rule excluded the entire Southern Rocky Mountains (south-central Wyoming, Colorado, and north-central New Mexico) from the critical habitat designation.

64. The Service's 2009 rule excluded areas deemed occupied by lynx in Idaho and Montana at the time of listing from the critical habitat designation, including, but not limited to, portions of the Idaho Panhandle National Forest, Clearwater National Forest and Targhee National Forest in Idaho and portions of the Lolo National Forest, Kootenai National Forest (Cabinet Mountains), Bitterroot National Forest, Helena National Forest (area south of Highway 12, along the Continental Divide), Gallatin National Forest, and Beaverhead-Deerlodge National Forest. No explanation for these exclusions was provided. The Service's 2009 rule also excluded Oregon from the revised critical habitat rule.

65. In 2010, this Court issued a decision in *Alliance for the Wild Rockies v. Lyder*, 728 F. Supp.2d 1126 (D. Mont. 2010), finding several flaws in the Service's 2009 revised critical habitat rule. The Court in *Lyder* kept the 2009 revised critical habitat rule in place but ordered the Service to undertake a new analysis and determination, consistent with the Court's memorandum opinion and order.

The 2014 critical habitat rule

66. On September 12, 2014, the Service issued a revised rule designating critical habitat for lynx in the contiguous United States. The Service's 2014 revised rule designated approximately 38,954 square miles of critical habitat for lynx in the contiguous United States in the states of Maine, Minnesota, Montana, Wyoming, Idaho, and Washington.

67. The 2014 rule designated less than the total acreage of critical habitat designated under the 2009 revised rule.

68. In the 2014 revised rule, the Service determined that no areas unoccupied at the time of listing are essential to the conservation of the species. The Service only considered areas "occupied" at the time of listing for potential inclusion in the revised critical habitat rule.

69. The Service's 2014 revised rule excluded the entire Southern Rocky Mountains (south-central Wyoming, Colorado, and north-central New Mexico) from the critical habitat designation. The Service stated that the Southern Rockies was excluded because the areas likely do not "possess the physical and biological features essential to lynx in sufficient quantity and spatial arrangement to sustain lynx populations over time. Therefore, we find that the habitat in Colorado and elsewhere in the Southern Rocky Mountains does not contain the PCE[s]." The Service stated that the Southern Rockies was also excluded because of the area's distance and isolation from Canada and other lynx populations in the contiguous United States and

low snowshoe hare densities. The Service also determined that “there is no reliable evidence that lynx populations” were ever established in Colorado or elsewhere in the Southern Rockies.

70. The Service’s 2014 lynx critical habitat rule excluded areas deemed occupied by lynx in Idaho and Montana at the time of listing from the critical habitat designation, including, but not limited to, portions of the Idaho Panhandle National Forest, Clearwater National Forest and Targhee National Forest in Idaho and portions of the Lolo National Forest, Kootenai National Forest, Bitterroot National Forest, Helena National Forest (area south of Highway 12, along the Continental Divide), Gallatin National Forest, and Beaverhead-Deerlodge National Forest. The Service determined that these areas were either not occupied by lynx at the time of listing or lack the PCEs in adequate quantity and spatial arrangement. The Service’s 2014 rule also excluded Oregon from the revised critical habitat rule without any explanation.

71. Conservation groups—including some of the plaintiffs in this litigation—challenged the 2014 critical habitat rule on the grounds that the areas excluded from designation were improperly denied critical habitat designation.

WildEarth Guardians v. U.S. Department of the Interior

72. In *WildEarth Guardians*, this Court explained: “Plaintiffs essentially contend that the Service added to or otherwise qualified the [Primary Constituent Elements] with respect to Colorado by requiring the elements of the PCE to be

present and arranged in undefined ways and for undefined periods of time. They also content that the best available science, which indicates that the introduced lynx population in Colorado is reproducing, undercuts the Service's conclusion that the PCE is not present in Colorado. The Court agrees on both fronts." 205 F. Supp. 3d. at 1185.

73. In *WildEarth Guardians*, this Court concluded the Service violated the ESA by: (1) excluding the state of Colorado from the designation, based upon an improper application of the lynx Primary Constituent Elements and ignoring the best available science; and (2) failing to comply with the Court's remand order in *Lyder* with respect to the Beaverhead-Deerlodge, Bitterroot, Nez Perce, Lolo, and Helena National Forests. The Court remanded the 2014 critical habitat rule to the Service for further action consistent with the Court's order.

74. The Service has not complied with the Court's September 7, 2016 remand order. The Service has not published a draft critical habitat rule for Canada lynx since finalizing the 2014 lynx critical habitat rule. The Service has not explained why it has not complied with the Court's September 7, 2016 remand order.

The Service's response to this Court's order in WildEarth Guardians

75. On October 18, 2016, the Service briefed the Regional Director for the Service regarding this Court's decision in *WildEarth Guardians*. In an internal memo related to that briefing, the Service said "it had not yet determined next steps in responding to that remand."

76. In 2017, the Service did not work on or take steps to correct the errors in the 2014 lynx critical habitat rule found by this Court as to Colorado and certain National Forests in Montana and Idaho.

77. In January 2017, the Service prepared a “revised timeline” for lynx that included deadlines for finalizing the SSA report, meetings regarding the SSA, conducting a five-year status review, and preparing a recovery plan (draft and final), if necessary. The Service’s timeline never discusses or includes revising and correcting the 2014 lynx critical habitat rule as directed by this Court in *WildEarth Guardians*.

78. In October 2017, the Service published its final SSA for lynx. The Service said the SSA neither “results in or predetermines” any critical habitat decisions.

79. The final SSA mentions this Court’s September 7, 2016 remand order in *WildEarth Guardians* but does not discuss or commit the Service to take any steps to correct the errors in the 2014 lynx critical habitat rule. The final SSA discusses the 2014 lynx critical habitat rule as if remains valid and without an errors.

80. In November, 2017, the Service released its five-year status review for lynx. The Service announced initiation of this five-year review in December, 2014. The five-year status review does not mention taking any steps to correct the errors in the 2014 lynx critical habitat rule identified by this Court in *WildEarth Guardians*.

81. In 2018, the Service did not work on or take steps to correct the errors in the 2014 lynx critical habitat rule found by this Court as to Colorado and certain National Forests in Montana and Idaho.

82. In 2019, the Service did not work on or take steps to correct the errors in the 2014 lynx critical habitat rule found by this Court as to Colorado and certain National Forests in Montana and Idaho.

83. In 2020, up to the time of filing this Complaint, the Service did not work on or take steps to correct the errors in the 2014 lynx critical habitat rule found by this Court as to Colorado and certain National Forests in Montana and Idaho.

CAUSE OF ACTION

(Non-compliance with this Court's September 7, 2016 remand order in *WildEarth Guardians*)

84. Plaintiffs incorporate by reference all preceding paragraphs.

85. ESA Section 4(a)(3)(A), 16 U.S.C. § 1533(a)(3)(A), directs the Service to designate and revise, as appropriate, critical habitat for species listed as threatened and endangered under the ESA.

86. Critical habitat is defined as (1) specific areas occupied by the species at the time of listing on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations; or (2) specific areas not occupied by the species at the time of listing but nonetheless deemed essential to the conservation of the species. 16 U.S.C. §

1532(5)(A). The Service must base such critical habitat decisions on the basis of the best available science. 16 U.S.C. § 1533(b)(2).

87. The Service has a mandatory duty under the ESA to designate critical habitat for lynx.

88. In *WildEarth Guardians*, this Court remanded the 2014 final lynx critical habitat rule to the Service because the Service had violated the ESA by (1) excluding the state of Colorado from the designation, based upon an improper application of the lynx PCE and ignoring the best available science; and (2) failing to comply with the Court's remand order in *Lyder* with respect to the Beaverhead-Deerlodge, Bitterroot, Nez Perce, Lolo, and Helena National Forests. 205 F. Supp. 3d at 1189-1190.

89. In *WildEarth Guardians*, this Court remanded the September 2014 final lynx critical habitat rule back to the Service for further action consistent with its order. 205 F. Supp. 3d at 1189-1190.

90. On November 1, 2016, this Court clarified the Service could comply with its September 7, 2016 order and judgment by amending the September 2014 lynx critical habitat rule to correct the errors found by this Court as to Colorado and certain National Forests in Montana and Idaho.

91. The Service has not designated critical habitat for lynx since September 7, 2016. The Service has not published a draft rule analyzing the geographies it was required to analyze for lynx critical habitat designation since September 7, 2016. The

Service has not published a final rule analyzing the geographies it was required to analyze for lynx critical habitat designation since September 7, 2016. The Service has not amended the September 12, 2014 lynx critical habitat rule to analyze the geographies it was required to analyze for lynx critical habitat designation since September 7, 2016.

92. Nearly *four years* later, the Service has yet to correct these errors in Colorado and certain National Forests in Montana and Idaho. Nearly *four years* later, the Service has yet to take any steps towards revising its critical habitat rule for lynx, as directed to do so by this Court in *WildEarth Guardians*.

93. The Service's failure to and/or decision to not comply with this Court's order in *WildEarth Guardians* qualifies as "agency action unlawfully withheld or unreasonably delayed" and/or is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the ESA]," 5 U.S.C. §§ 706(1), (2)(A). The Service's failure to and/or decision not to designate critical habitat for lynx as required by this Court's order in *WildEarth Guardians* qualifies as "agency action unlawfully withheld or unreasonably delayed" and/or is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the ESA]," 5 U.S.C. §§ 706(1), (2)(A).

REQUESTS FOR RELIEF

Plaintiffs respectfully request this Court:

A. Issue a declaratory judgment that the Service's failure to and/or decision not to comply with this Court's remand order in *WildEarth Guardians* qualifies as

“agency action unlawfully withheld or unreasonably delayed” and/or is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with [the ESA],” 5 U.S.C. §§ 706(1), (2)(A).

B. Issue an order remanding this matter back to the Service for further analysis and action consistent with both the law and this Court’s September 7, 2016 remand order;

C. Issue an order requiring the Service to publish a draft lynx critical habitat rule in the Federal Register, and open a public comment period on the same, within six (6) months after judgment is entered in this litigation;

D. Issue an order requiring the Service to publish a final lynx critical habitat rule in the Federal Register within eighteen (18) months after judgment is entered in this litigation;

E. Require the Service to submit quarterly status reports to the Court detailing its progress in complying with the remand order;

F. Retain continuing jurisdiction of this matter until the Service fully remedies the violations of law outlined in this complaint;

G. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request;

H. Award Plaintiffs their costs of suit, reasonable expenses, and attorneys’ fees; and

I. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted this 1st day of July, 2020.

/s/ Sarah K. McMillan
Sarah K. McMillan (Mont. Bar No. 3634)
WildEarth Guardians
P.O. Box 7516
Missoula, Montana 59807
Ph: (406) 549-3895
smcmillan@wildearthguardians.org

Counsel for Plaintiff WildEarth Guardians

/s/ Matthew K. Bishop
Matthew K. Bishop (Mont. Bar No. 9968)
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
Ph: (406) 324-8011
bishop@westernlaw.org

/s/ John R. Mellgren
John R. Mellgren, *application for pro hac vice pending*
Western Environmental Law Center
120 Shelton McMurphey Blvd., Ste. 340
Eugene, OR 97401
Ph: (541) 359-0990
mellgren@westernlaw.org

Counsel for Plaintiffs