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U.S. DISTRICT COURT
DISTRICT OF WYOMING
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STEPHAN HARRIS, CLERK
CHEYENNE

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

BIODIVERSITY CONSERVATION
ALLIANCE,

Petitioner,

v.

BUTCH BLAZER and ANN MILLS, in their
official capacities as Deputy Under Secretaries
for Natural Resources and Environment, USDA;
and UNITED STATES FOREST SERVICE, an
agency of the United States,

Respondents.

)
)
) Case No. 12CV073-5
)

) **PETITION FOR JUDICIAL**
) **REVIEW**
)

Introduction

1. Pursuant to 5 U.S.C. § 706(2) and Local Civil Rule 83.7.2(a)(1), Petitioner Biodiversity Conservation Alliance (BCA) respectfully requests judicial review of Respondent Deputy Under Secretaries' Discretionary Review Decision (hereafter, "Deputy Under Secretary's Decision") reversing the Chief of the U.S. Forest Service's Appeal Decision Regarding the Medicine Bow National Forest Revised Land and Resource Management Plan, and thereby approving the Revised Forest Plan. This decision constituted final agency action of the United States Department of Agriculture (USDA).

2. Petitioner also seeks judicial review of the final agency action by Respondent U.S. Forest Service adopting the Revised Land and Resource Management Plan for the Medicine Bow National Forest (hereafter, the "Medicine Bow Revised Forest Plan"), as upheld by the Deputy Under Secretary's Decision.

3. Petitioner BCA is a non-profit Wyoming corporation with its principal place of business in Laramie, Wyoming. BCA is dedicated to protecting wildlife and wild places in Wyoming and surrounding states, primarily on public lands. Its members use and will continue to use the Medicine Bow National Forest for outdoor recreation of all kinds, including hiking, wildlife viewing, and photography. BCA brings this action on its own behalf and on behalf of its adversely affected members.

4. Respondents Butch Blazer and Ann Mills are USDA Deputy Under Secretaries for Natural Resources and Environment, and have legal authority for helping to administer and manage the USDA, under which the Forest Service falls. Deputy Under Secretaries Blazer and Mills are among those responsible for assuring that all agencies within the USDA act in conformance with federal laws and regulations. They are sued solely in their official capacities.

5. Respondent U.S. Forest Service is an administrative agency within the U.S. Department of Agriculture, and is charged with managing the public lands and resources of the Medicine Bow National Forest in accordance and compliance with federal laws and regulations.

Jurisdiction and Venue

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*; the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Petitioner and the affected public lands and resources are located in this judicial district.

Final Agency Action and Exhaustion

8. In December 2003, the Forest Service adopted the Medicine Bow Revised Forest Plan to guide management activities on the Medicine Bow National Forest. BCA submitted timely comments on the draft Forest Plan and filed timely administrative appeals of the final Forest Plan to the Regional Forester and Chief of the Forest Service.

9. On February 16, 2006, the Chief of the Forest Service concluded that the Medicine Bow Revised Forest Plan failed to maintain bighorn sheep herds, in violation of wildlife viability requirements imposed by the 1982 NFMA regulations. The Deputy Under Secretary's April 17, 2006 Decision subsequently reversed this conclusion. The Deputy Under Secretary's decision was the final decision for adoption of the Medicine Bow Revised Forest Plan.

10. BCA exhausted its administrative remedies for challenging the Deputy Under Secretary's Decision and the adoption of the Medicine Bow Revised Forest Plan.

Legal Background

11. NFMA, the federal statute guiding management of the National Forests, requires the Forest Service to prepare detailed forest plans, and sets forth requirements for those plans. 16 U.S.C. § 1604.

12. Under NFMA, forest plans must “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area.” 16 U.S.C. § 1604(g)(3)(B).

13. To that end, the 1982 NFMA planning regulations – which the Forest Service expressly followed in adopting the Medicine Bow Revised Forest Plan – mandate that the Forest Service manage fish and wildlife habitat “to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” 36 C.F.R. § 219.19 (1999). The regulations define a “viable population” as “one which has the estimated numbers and distribution to insure its continued existence is well distributed in the planning area.” *Id.* To maintain such populations, the Forest Service must provide adequate habitat to support “at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.” *Id.*

Legal Claims

14. Petitioner seeks judicial review and remand of the Deputy Under Secretary’s Decision, and the adoption of the Medicine Bow Revised Forest Plan, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law under NFMA and the APA, including for the following reasons:

A. The Forest Service acknowledged that bighorn sheep are a species of local concern. Nonetheless, it arbitrarily and capriciously adopted a Revised Forest Plan that admittedly will likely lead to the elimination of one of three bighorn herds currently found in the Medicine Bow National Forest, thus violating NFMA and its implementing regulations.

B. The Chief of the Forest Service reversed and remanded the Medicine Bow Revised Forest Plan because it did not maintain viable populations of bighorn sheep well-distributed throughout the planning area, as required under the NFMA regulations. The Deputy Under Secretary rejected the Forest Service Chief's conclusion in a cursory decision that arbitrarily and capriciously departed from prior agency interpretation of NFMA's implementing regulations and reinstated the unlawful Revised Forest Plan.

15. For the reasons stated above, Respondents' actions are arbitrary, capricious, an abuse of discretion, and/or not in accordance with law and hence must be remanded under the APA, 5 U.S.C. § 706(2).

Prayer for Relief

Wherefore, Petitioner respectfully requests that this Court grant the following relief:

A. Declare that Respondents violated NFMA and its implementing regulations in adopting the Medicine Bow Revised Forest Plan;

B. Overturn the Deputy Under Secretary's Decision approving the Medicine Bow Revised Forest Plan, and remand the Forest Plan to the Forest Service with direction that the agency do a proper viability analysis for bighorn sheep that complies with NFMA and its implementing regulations;

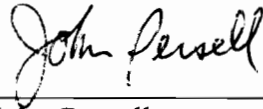
C. Enter other such temporary, preliminary, or permanent injunctive relief as the Petitioner may hereafter specifically seek;

D. Award Petitioner its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and/or all other applicable authorities; and/or

E. Grant such further relief as the Court deems just and proper to remedy Respondents' violations of law and protect Petitioner's interests.

Dated this 6th day of April 2012.

Respectfully submitted,



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