

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY; and )  
SIERRA CLUB, )

*Plaintiffs,* )

v. )

DAVID BERNHARDT, in his official capacity as )  
Secretary of the United States Department of the )  
Interior; AURELIA SKIPWITH, in her official )  
capacity as Director of the United States Fish and )  
Wildlife Service; UNITED STATES FISH AND )  
WILDLIFE SERVICE; and UNITED STATES )  
FOREST SERVICE, )

*Defendants,* )

and )

UPPER GREEN RIVER CATTLE )  
ASSOCIATION; SOMMERS RANCH, LLC; )  
PRICE CATTLE RANCH; MURDOCK LAND )  
AND LIVESTOCK CO.; and WYOMING STOCK )  
GROWERS ASSOCIATION, )

*Applicants in Intervention.* )

No. 1:20-cv-00855-APM

**APPLICANTS IN  
INTERVENTIONS' PROPOSED  
ANSWER TO PLAINTIFFS'  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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Applicants in Intervention, the Upper Green River Cattle Association; Sommers Ranch, LLC; Price Cattle Ranch; Murdock Land and Livestock Co.; and the Wyoming Stock Growers Association (collectively, "Ranchers"), hereby respond to Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint") (ECF No. 1) as follows:

**INTRODUCTION**

1. Paragraph 1 consists of a summary of the claims and assertions of Plaintiffs' Complaint, which are responded to below and to which no separate response is required. To the extent a response is necessary, Ranchers deny every allegation not specifically admitted below.

2. Paragraph 2 appears to characterize provisions of the Record of Decision reauthorizing livestock grazing under the Upper Green River Area Rangeland Project, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 2 not consistent therewith. Ranchers note that livestock grazing has occurred in this area for over 100 years, beginning in the late 1800s, and continues virtually unchanged today.

3. Paragraph 3 appears to characterize provisions of the April 29, 2019 Biological Opinion (“2019 BiOp”) at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 3 not consistent therewith.

4. Paragraph 4 appears to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 4 not consistent therewith.

5. Paragraph 5 appears to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 5 not consistent therewith.

6. Paragraph 6 asserts legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

7. Paragraph 7 asserts legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

8. Paragraph 8 asserts legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations. Ranchers deny the factual assumption that fully implemented conservation measures are insufficient to minimize conflicts in the project area.

9. Paragraph 9 asserts legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

10. Paragraph 10 asserts legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

### **JURISDICTION AND VENUE**

11. Admit.

12. Admit, though Ranchers contend venue would be more appropriate in the U.S. District Court for the District of Wyoming.

13. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 13 and, therefore, deny the same.

### **PARTIES**

14. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 14 and, therefore, deny the same.

15. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 15 and, therefore, deny the same.

16. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 16 and, therefore, deny the same.

17. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 17 and, therefore, deny the same.

18. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 18 and, therefore, deny the same.

19. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 19 and, therefore, deny the same.

20. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 20 and, therefore, deny the same.

21. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 21 and, therefore, deny the same.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

### **STATUTORY BACKGROUND**

26. Paragraph 26 purports to characterize, and quotes from, provisions of the Endangered Species Act (“ESA”), which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 26 not consistent therewith.

27. Paragraph 27 purports to characterize, and quotes from, provisions of the ESA, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 27 not consistent therewith.

28. Paragraph 28 purports to characterize, and quotes from, provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 28 not consistent therewith.

29. Paragraph 29 purports to characterize, and quotes from, provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 29 not consistent therewith.

30. Paragraph 30 purports to characterize, and quotes from, provisions of the regulations implementing the ESA, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 30 not consistent therewith.

31. Paragraph 31 purports to characterize, and quotes from, provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 31 not consistent therewith.

32. Paragraph 32 purports to characterize, and quotes from, provisions of the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 32 not consistent therewith.

33. Paragraph 33 purports to characterize, and quotes from, provisions of the ESA, APA and/or related caselaw, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 33 not consistent therewith.

34. Paragraph 34 purports to characterize, and quotes from, provisions of the ESA and related caselaw, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 34 not consistent therewith. Paragraph 34 also consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

## **FACTUAL BACKGROUND**

### **I. The Upper Green River Area Rangeland Project**

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Ranchers deny the first sentence of Paragraph 39. Ranchers admit the second sentence of Paragraph 39.

## **II. Grizzly Bears in the Greater Yellowstone Ecosystem**

40. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 40 and, therefore, deny the same.

41. Paragraph 41 purports to characterize the 1975 listing determination, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 41 not consistent therewith. Ranchers note that the 1975 listing determination expressly authorized the removal of nuisance grizzly bears. *See* 40 Fed. Reg. 31,734, 31,736 (July 28, 1975) (“A grizzly bear constituting a demonstrable but non-immediate threat to human safety, or *committing significant depredations to lawfully present livestock*, may be taken . . . .” (emphasis added)). Ranchers deny that Plaintiffs’ claim in Paragraph 41 accurately addresses current estimates of grizzly bear populations in the Lower 48 states.

42. Ranchers admit that the Upper Green allotments lie within portions of the Demographic Monitoring Area of the 1993 Grizzly Bear Recovery Plan. The rest of Paragraph 42 appears to characterize the 1993 Grizzly Bear Recovery Plan at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 42 not consistent therewith.

43. Ranchers admit that grizzly bear numbers have dramatically increased over the last several decades, even despite activities such as livestock grazing and lethal removal of problem bears, but deny the remainder of Paragraph 43. Ranchers further note that multiple efforts have been made to formally de-list the grizzly bear under the ESA within the Greater Yellowstone Ecosystem because it is objectively acknowledged that the species meets all recovery criteria.

44. Paragraph 44 appears to characterize the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents. Ranchers admit that the burgeoning grizzly bear population has led to increased depredation on livestock, but deny the remainder of Paragraph 44.

45. The removal figures cited by Plaintiffs in Paragraph 45 apparently derive from the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 45 not consistent therewith.

46. The range figures cited by Plaintiffs in Paragraph 46 apparently derive from the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 46 not consistent therewith.

47. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 47 and, therefore, deny the same.

48. Paragraph 48 appears to characterize the 1993 Grizzly Bear Recovery Plan at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 48 not consistent therewith.

49. Ranchers admit that the project area is occupied by grizzly bears and is indeed a “hotspot” for livestock depredation. Ranchers deny the factual assumption that increased grizzly mortality rates are due to potential mismanagement by federal authorities. The remainder of Paragraph 49 contains legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

### **III. The Forest Service’s Consultation with FWS**

50. Admitted.

51. Paragraph 51 purports to characterize, and quotes from provisions of previous Biological Assessments and Biological Opinions prepared by FWS, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 51 not consistent therewith.

52. Paragraph 52 purports to characterize, and quotes from provisions of previous Biological Assessments and Biological Opinions prepared by FWS, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 52 not consistent therewith.

53. Paragraph 53 purports to characterize, and quotes from provisions of previous Biological Assessments and Biological Opinions prepared by FWS, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 53 not consistent therewith.

54. Paragraph 54 purports to characterize an Incidental Take Statement (“ITS”) issued in 2012, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 54 not consistent therewith.

55. Paragraph 55 purports to characterize the re-initiation of consultation in 2013 and the preparation of a revised Biological Opinion, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 55 not consistent therewith.

56. Ranchers have insufficient information to form a belief as to the truth of the allegations of Paragraph 56 and, therefore, deny the same.

57. Paragraph 57 purports to characterize and cites to provisions of the 2014 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 57 not consistent therewith.

#### **IV. The 2019 BiOp**

58. Paragraph 58 purports to characterize, and quotes from provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 58 not consistent therewith.

59. Paragraph 59 purports to characterize, and quotes from provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 59 not consistent therewith.

60. Paragraph 60 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 60 not consistent therewith.

61. Paragraph 61 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 61 not consistent therewith.

62. Paragraph 62 purports to characterize, and quotes from provisions of previous Biological Opinions and Incidental Take Statements prepared by FWS, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 62 not consistent therewith.

63. Paragraph 63 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 63 not consistent therewith.

64. Paragraph 64 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 64 not consistent therewith.

65. Paragraph 65 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 65 not consistent therewith.

66. Paragraph 66 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 66 not consistent therewith.

67. Paragraph 67 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 67 not consistent therewith.

68. Paragraph 68 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 68 not consistent therewith.

69. Paragraph 69 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 69 not consistent therewith.

70. Ranchers deny the factual assumption that permittees' compliance with conservation measures are voluntary discretionary. The rest of Paragraph 70 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

71. Paragraph 71 purports to characterize some of the Conservation Measures set forth in the 2019 BiOp, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 71 not consistent therewith.

72. Paragraph 72 purports to characterize some of the Conservation Measures set forth in the 2019 BiOp, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 72 not consistent therewith.

73. Paragraph 73 purports to characterize some of the Conservation Measures set forth in the 2019 BiOp, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 73 not consistent therewith.

74. Paragraph 74 purports to characterize some of the Conservation Measures set forth in the 2019 BiOp, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 74 not consistent therewith.

75. Paragraph 75 purports to characterize portions of the 1993 Grizzly Bear Recovery Plan and 2016 Conservation Strategy, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 75 not consistent therewith.

76. Paragraph 76 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 76 not consistent therewith.

77. Paragraph 77 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 77 not consistent therewith. Paragraph 77 also contains legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

78. Paragraph 78 purports to characterize provisions of the 2019 BiOp at issue in this case, which speaks for itself and is the best evidence of its contents; as such, Ranchers deny every allegation in Paragraph 78 not consistent therewith. Paragraph 78 also contains legal conclusions

to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

79. Paragraph 79 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

**FIRST CAUSE OF ACTION  
(FWS's Violation of the ESA and APA)**

80. Ranchers resubmit their answers to Paragraphs 1–79 of Plaintiffs' Complaint.

81. Paragraph 81 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

82. Paragraph 82 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

83. Paragraph 83 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

84. Paragraph 84 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

85. Paragraph 85 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

86. Paragraph 86 purports to characterize portions of the 2019 BiOp, the 1993 Grizzly Bear Recovery Plan and the 2016 Conservation Strategy, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 86 not consistent therewith.

87. Paragraph 87 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

88. Paragraph 88 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

89. Paragraph 89 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

**SECOND CAUSE OF ACTION  
(Forest Service's Violation of the ESA and APA)**

90. Ranchers resubmit their answers to Paragraphs 1–89 of Plaintiffs' Complaint.

91. Paragraph 91 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

92. Paragraph 92 purports to characterize portions of the ESA and related caselaw, which speak for themselves and are the best evidence of their contents; as such, Ranchers deny every allegation in Paragraph 92 not consistent therewith.

93. Paragraph 93 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

94. Paragraph 94 consists of legal conclusions to which no response is required; however, to the extent that a response is necessary, Ranchers deny the allegations.

**AFFIRMATIVE DEFENSES**

- A. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
- B. Plaintiffs lack standing to assert the causes of action contained in Plaintiffs' Complaint.
- C. Plaintiffs' Complaint is barred by Plaintiffs' failure to exhaust administrative remedies.
- D. Plaintiffs' claims are barred by the applicable statute of limitations.

E. Ranchers reserve the right to assert any other claims or defenses as may be available or may become available during the course of these proceedings.

DATED this 13th day of July 2020.

Respectfully submitted by:

MOUNTAIN STATES LEGAL FOUNDATION

/s/ Brian E. Gregg

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2020, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all parties or counsel of record, as more fully reflected on the Notice of Electronic Filing.

/s/ Brian E. Gregg