

WESTERN ENVIRONMENTAL LAW CENTER
Matthew Bishop
Post Office Box 1507
1 Taos, New Mexico 87571
Tel. (505) 751-0351
2 Fax. (505) 751-1775
bishop@westernlaw.org

3 Attorney for Plaintiffs
4

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF NEW MEXICO

7 FOREST GUARDIANS, a nonprofit corporation;)
8 SINAPU, a nonprofit corporation; CENTER)
FOR NATIVE ECOSYSTEMS, a nonprofit)
9 corporation; ANIMAL PROTECTION OF NEW)
MEXICO, a nonprofit corporation; ANIMAL)
10 PROTECTION INSTITUTE, a nonprofit)
corporation; and CARSON FOREST WATCH,)
11 a nonprofit organization,)

12 Plaintiffs,)

13 vs.)

14 HARV FORSGREN, Regional Forester, U.S. Forest)
15 Service, Region 3; U.S. FOREST SERVICE, a federal)
agency; ANN VENEMAN, Secretary of the U.S.)
16 Department of Agriculture; and the UNITED STATES)
DEPARTMENT OF AGRICULTURE, a federal)
17 department,)

18 Defendants.)
19

Civil Action No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

20 INTRODUCTION

21 1. Plaintiffs bring this civil action for declaratory and injunctive relief against the
22 above named Defendants (hereinafter the “Forest Service”) pursuant to the citizen suit
23 provision of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540 (g), and the
24 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 to 706, for violations of the ESA
25 and National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 to 4370e.
26

1 2. This civil action arises out the Forest Service’s failure and refusal to take any
2 steps towards the conservation of threatened Canada lynx (hereinafter “lynx”) in two
3 National Forests in the Southern Rocky Mountains – the Carson and Santa Fe National
4 Forests.

5 3. The Southern Rocky Mountains stretch from south-central Wyoming, through
6 Colorado, and into north-central New Mexico.

7 4. The Carson and Santa Fe National Forests are located at the southern edge of
8 the Southern Rocky Mountains in north-central New Mexico.

9 5. Despite the well-documented lynx habitat and occurrence, migration, and even
10 deaths of lynx in the Carson and Santa Fe National Forests, the Forest Service has failed
11 and is refusing to: (1) initiate and complete informal and formal section 7 consultation on
12 how implementation of its Land and Resource Management Plans (hereinafter “LRMPs”)
13 affects lynx as required by the ESA; and (2) prepare a supplemental NEPA document –
14 either an Environmental Assessment (EA) or Environmental Impact Statement (EIS) – to
15 assess the significant new information or circumstances of having lynx in their respective
16 National Forests as required by NEPA.

17 6. In a letter dated December 29, 2003, the Forest Service concedes that lynx have
18 been and are likely present within the two National Forests but contends that “any
19 Canada lynx found in New Mexico have no ESA status and, therefore, no Section 7
20 consultation is required.”

21 7. According to the Forest Service, as soon as federally protected lynx cross the
22 Colorado/New Mexico state line, all “ESA status” afforded to the species ends.

23 8. The Carson and Santa Fe National Forests failure and refusal to extend “ESA
24 status” to lynx in north-central New Mexico creates an increased risk of actual,
25 threatened, and imminent harm to the lynx and its survival in the Southern Rockies.

1 claims pursuant to the APA, 5 U.S.C. §§ 701-706.

2 15. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment),
3 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706
4 (APA).

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

6 17. There is a present and actual controversy between the parties.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
PARTIES

18. Plaintiff FOREST GUARDIANS is a non-profit corporation with approximately 2,000 members throughout the United States, including New Mexico and Colorado. Forest Guardians' mission is to protect and restore the natural biological diversity of forests in America's Southwest, including the Southern Rockies' San Juan and Sangre de Cristo Mountains. Members of Forest Guardians live in and around the San Juan and Sangre de Cristo Mountains and engage in outdoor recreation, wildlife viewing, and other activities in the Carson and Santa Fe National Forests and intend to continue to do so. The health of the Carson and Santa Fe National Forests, including their native species like lynx, is an important part of the members' aesthetic and recreational enjoyment of the forests. Many of Forest Guardians' 2,000 members and staff live in and around the Southern Rockies' San Juan and Sangre de Cristo Mountains where lynx have been released, will be released, and currently reside. Forest Guardians' members and staff have, and will continue, to regularly and repeatedly use the "core lynx recovery area" in southwestern Colorado – including areas throughout the San Juan Mountains and Sangre de Cristo Mountains in the Carson and Santa Fe National Forests – where lynx are currently residing and traveling for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. Forest

1 Guardians' members and staff derive scientific, recreational, conservation, and aesthetic
2 benefits from the lynx's existence in the wild and return to the Southern Rockies. Forest
3 Guardians' members and staff are also working to protect and restore lynx populations to
4 the Southern Rockies and in particular north-central New Mexico. For Forest Guardians'
5 members and staff, working to restore lynx to the Southern Rockies and observing lynx in
6 the wild, as well as being aware of the presence of lynx and the health of lynx habitat, are
7 key components to their enjoyment of their visits to these areas. Forest Guardians and its
8 members and staff believe that all species and their natural communities have the right to
9 exist and thrive. Forest Guardians' members and staff use the best available science to
10 forward their mission through participation in policy formation, administrative processes,
11 legal action, public outreach and organizing, and education. Forest Guardians and its
12 members and staff have a specific, concrete interest in protecting and restoring the
13 Canada lynx and its habitat to the Southern Rockies and are leading a campaign with
14 other conservation groups to that end. The Carson and Santa Fe National Forests' failure
15 to comply with section 7 of the ESA and NEPA in implementing its LRMPs in the
16 Southern Rockies' San Juan and Sangre de Cristo Mountains, as alleged in this complaint,
17 has, and continues to harm Forest Guardians' concrete interests. Forest Guardians and its
18 members are concerned about the threat to lynx in the Southern Rockies from the Carson
19 and Santa Fe National Forests' LRMPs – programmatic planning documents that establish
20 forest-wide and area-specific standards and guidelines to which all projects must adhere
21 but which provide no conservation measures for threatened lynx. The Carson and Santa
22 Fe National Forests' failure to consult, and assess the impacts of their LRMPs on lynx
23 could further inhibit the recovery of lynx in the Southern Rockies – a contiguous
24 mountain range that extends into north-central New Mexico and the Carson and Santa Fe
25 National Forests. The Forest Service's failure to comply with the ESA and NEPA results

1 in uninformed decisions and creates an increased risk of actual, threatened, and imminent
2 harm to the lynx and Forest Guardians' members' interest in protecting and restoring lynx
3 to the Southern Rockies. The Forest Service's failure to comply with section 7 of the
4 ESA and NEPA significantly increases the risk of unnecessary and avoidable mortality of
5 lynx in an already vulnerable Southern Rocky Mountain lynx population. Just one
6 unnecessary and avoidable mortality of a lynx in the Southern Rockies significantly
7 reduces the likelihood that the current lynx recovery program will succeed. The Forest
8 Service's uninformed decisions thus create an increased risk of harm to the lynx and
9 Forest Guardians' real and concrete interest in restoring and protecting lynx in the
10 Southern Rockies. The Forest Service's failure to comply with section 7 of the ESA and
11 NEPA has adversely affected and continues to adversely affect the interests of Forest
12 Guardians and its staff and members. These harms and injuries are fairly traceable to the
13 Forest Service's failure to comply with the ESA and NEPA. These injuries can be
14 remedied by the relief requested. Forest Guardians brings this action on behalf of itself
15 and its adversely affected members and staff.

16 19. Plaintiff, CENTER FOR NATIVE ECOSYSTEMS ("CNE"), is a non-profit
17 advocacy organization dedicated to conserving and recovering naturally functioning
18 ecosystems in the greater Southern Rocky Mountains and plains. It maintains offices in
19 Paonia and Boulder, Colorado. CNE has approximately 200 members in Colorado and
20 other states including New Mexico. Many of CNE's members and staff live in and
21 around the Southern Rockies where lynx have been released, will be released, and
22 currently reside. CNE and its members and staff value the ways that humans benefit from
23 protecting native biological diversity, including protecting clean water and fresh air,
24 healthy human communities, sources of medicines and foods, and recreational
25 opportunities. CNE and its members and staff believe that all species and their natural

1 communities have the right to exist and thrive. CNE uses the best available science to
2 forward its mission through participation in policy formation, administrative processes,
3 legal action, public outreach and organizing, and education. CNE has a specific, concrete
4 interest in protecting and restoring the Canada lynx and its habitat to the Southern
5 Rockies and are leading a campaign with other conservation groups to that end. The
6 conservation and recovery of lynx in the Southern Rockies is a major program effort for
7 CNE. CNE repeatedly reports on the status of Colorado's lynx release program to its
8 members and the press. CNE repeatedly distributes news releases to the media and
9 garners news coverage on Southern Rocky Mountain lynx issues. CNE prepared and
10 submitted a comment letter, signed by eight other conservation groups, on the Forest
11 Service's scoping notice regarding the preparation of LRMP amendments for lynx
12 throughout Colorado and southern Wyoming. CNE has actively tracked the Forest
13 Service's lynx habitat mapping process in the Southern Rockies over the past several
14 years, frequently communicating with various Forest Service biologists and other staff
15 and reviewing Forest Service data and maps. CNE frequently raises concerns about the
16 potential impacts of proposed land management actions on lynx and lynx habitat, and
17 frequently assists other conservation organizations in doing the same. For example, CNE
18 joined groups in submitting comments on the proposed Millswitch Timber Sale in which
19 we discussed at some length potential impacts to lynx and lynx habitat. Similarly, we
20 joined several other groups in submitting an October 25, 2002 comment letter on the
21 proposed Missionary Ridge Timber Salvage project, again raising concerns about
22 potential impacts of the proposed project on lynx and lynx habitat. CNE also prepared a
23 guide on the status, conservation needs, and management implications regarding lynx in
24 the Southern Rocky Mountains, and distributed this guide to other conservation groups
25 throughout the region. CNE's members and staff have, and will continue, to regularly

1 and repeatedly use the “core lynx recovery area” in southwestern Colorado – including
2 areas throughout the San Juan Mountains and Sangre de Cristo Mountains in north-
3 central New Mexico which encompass the Carson and Santa Fe National Forests – where
4 lynx are currently residing and traveling for observation, research, aesthetic enjoyment,
5 and other recreational, scientific, and educational activities. CNE’s members and staff
6 derive scientific, recreational, conservation, and aesthetic benefits from the lynx’s
7 existence in the wild and return to the Southern Rockies. For CNE’s members and staff,
8 working to restore lynx to the Southern Rockies and observing lynx in the wild, as well as
9 being aware of the presence of lynx and the health of lynx habitat, are key components to
10 their enjoyment of their visits to these areas. In furtherance of this interest, CNE staff
11 and members visited National Forest lands near Creede, Colorado on April 23, 2003 to
12 witness the release of several lynx into the wild. CNE members and staff will continue to
13 fight for the restoration of lynx to the Southern Rockies and will continue to visit lynx
14 habitat in the Southern Rockies, including the Carson and Santa Fe National Forests, in
15 the hopes of seeing lynx once again. CNE and its members are concerned about the
16 threat to lynx in the Southern Rockies from the Carson and Santa Fe National Forests’
17 LRMPs – programmatic planning documents that establish forest-wide and area-specific
18 standards and guidelines to which all projects must adhere but which provide no
19 conservation measures for threatened lynx. The Carson and Santa Fe National Forests’
20 failure to consult, and assess the impacts of their LRMPs on lynx could further inhibit the
21 recovery of lynx in the Southern Rockies – a contiguous mountain range that extends into
22 north-central New Mexico and the Carson and Santa Fe National Forests. The Forest
23 Service’s failure to comply with section 7 of the ESA and NEPA in implementing its
24 LRMPs, as alleged in this complaint, has, and continues to harm CNE’s concrete
25 interests. The Forest Service’s failure to comply with the ESA and NEPA results in

1 uninformed decisions and creates an increased risk of actual, threatened, and imminent
2 harm to the lynx and CNE's members' interest in protecting and restoring the lynx to the
3 Southern Rockies. The Forest Service's failure to comply with section 7 of the ESA and
4 NEPA significantly increases the risk of an unnecessary and avoidable mortality of lynx
5 in an already vulnerable Southern Rocky Mountain lynx population. Just one
6 unnecessary and avoidable mortality of a lynx in the Southern Rockies significantly
7 reduces the likelihood that the current lynx recovery program will succeed. The Forest
8 Service's uninformed decisions thus create an increased risk of harm to the lynx and
9 CNE's real and concrete interest in restoring and protecting lynx in the Southern Rockies.
10 The Forest Service's failure to comply with section 7 of the ESA and NEPA has
11 adversely affected and continues to adversely affect the interests of CNE and its staff and
12 members. These harms and injuries are fairly traceable to the Forest Service's failure to
13 comply with the ESA and NEPA. These injuries can be remedied by the relief requested.
14 CNE brings this action on behalf of itself and its adversely affected members and staff.

15 20. Plaintiff SINAPU, named after the Ute word for wolves, is dedicated to the
16 restoration and protection of native wildlife like lynx and their habitat in the Southern
17 Rockies and connected high plains and deserts. Many of Sinapu's 1,000 members and
18 staff live in and around the Southern Rockies' San Juan and Sangre de Cristo Mountains
19 where lynx have been released, will be released, and currently reside. Sinapu's members
20 and staff have, and will continue, to regularly and repeatedly use the "core lynx recovery
21 area" in southwestern Colorado – including areas throughout the San Juan Mountains and
22 Sangre de Cristo Mountains in north-central New Mexico which encompass the Carson
23 and Santa Fe National Forests – an area where lynx are currently residing and traveling
24 for observation, research, aesthetic enjoyment, and other recreational, scientific, and
25 educational activities. Sinapu's members and staff derive scientific, recreational,

1 conservation, and aesthetic benefits from the lynx's existence in the wild and return to the
2 Southern Rockies. For Sinapu's members and staff, working to restore lynx to the
3 Southern Rockies and observing lynx in the wild, as well as being aware of the presence
4 of lynx and the health of lynx habitat, are key components to their enjoyment of their
5 visits to these areas. Sinapu and its members and staff believe that all species and their
6 natural communities have the right to exist and thrive. Sinapu's members and staff use
7 the best available science to forward their mission through participation in policy
8 formation, administrative processes, legal action, public outreach and organizing, and
9 education. Sinapu and its members and staff have a specific, concrete interest in
10 protecting and restoring the Canada lynx and its habitat to the Southern Rockies and are
11 leading a campaign with other conservation groups to that end. Sinapu and its members
12 are concerned about the threat to lynx in the Southern Rockies from the Carson and Santa
13 Fe National Forests' LRMPs – programmatic planning documents that establish forest-
14 wide and area-specific standards and guidelines to which all projects must adhere but
15 which provide no conservation measures for threatened lynx. The Carson and Santa Fe
16 National Forests' failure to consult, and assess the impacts of their LRMPs on lynx could
17 further inhibit the recovery of lynx in the Southern Rockies – a contiguous mountain
18 range that extends into north-central New Mexico and the Carson and Santa Fe National
19 Forests. In furtherance of our concrete interest in protecting and restoring the lynx to the
20 Southern Rockies, we (Sinapu) intervened in a lawsuit brought by the Farm Bureau,
21 which had filed suit against the Colorado Division of Wildlife in an attempt to derail lynx
22 reintroduction efforts and prevent the release of additional lynx in 2003. The Colorado
23 Division of Wildlife and Sinapu prevailed in the suit and lynx were released in the winter
24 of 2002-2003 in the Colorado Rockies. On April 23, 2003, a number of Sinapu's staff
25 and members witnessed the release of seven lynx into the wild in the San Juan National
26

1 Forest of Colorado. Sinapu also worked with the Pitkin County Commission to pass a
2 resolution stating that they want lynx in their county. The County Commission sent their
3 letter to the Colorado Wildlife Commission. Sinapu's staff and members have also
4 testified at the Colorado Wildlife Commission's hearings in support of augmenting the
5 lynx reintroduction program and supplied two letters in support of the augmentation to
6 the Colorado Department of Wildlife. Additionally, on October 24, 2002, a few of
7 Sinapu's staff and members met with Colorado Division of Wildlife staff to discuss lynx
8 conservation issues in the Southern Rockies. The Forest Service's failure to comply with
9 section 7 of the ESA and NEPA in implementing its LRMPs for the Carson and Santa Fe
10 National Forests, as alleged in this complaint, has, and continues to harm Sinapu's
11 concrete interests. The Forest Service's failure to comply with the ESA and NEPA
12 results in uninformed decisions and creates an increased risk of actual, threatened, and
13 imminent harm to the lynx and to Sinapu's members' interest in protecting and restoring
14 the lynx to the Southern Rockies. The Forest Service's failure to comply with section 7
15 of the ESA and NEPA significantly increases the risk of an unnecessary and avoidable
16 mortality of lynx in an already vulnerable Southern Rocky Mountain lynx population.
17 Just one unnecessary and avoidable mortality of a lynx in the Southern Rockies
18 significantly reduces the likelihood that the current lynx recovery program will succeed.
19 The Forest Service's uninformed decisions thus create a real risk of harm to the lynx and
20 Sinapu's real and concrete interest in restoring and protecting lynx in the Southern
21 Rockies. The Forest Service's failure to comply with section 7 of the ESA and NEPA has
22 adversely affected and continues to adversely affect the interests of Sinapu and its staff
23 and members. These harms and injuries are fairly traceable to the Forest Service's failure
24 to comply with the ESA and NEPA. These injuries can be remedied by the relief
25 requested. Sinapu brings this action on behalf of itself and its adversely affected
26

1 members and staff.

2 21. Plaintiff ANIMAL PROTECTION OF NEW MEXICO (“APNM”) is a non-
3 profit membership organization, organized under the laws of the State of New Mexico,
4 that advocates for the rights of animals. APNM is dedicated to educating the public on
5 animal welfare issues in the State of New Mexico and works diligently to protect and
6 restore native species and their habitat in the State. Many of APNM’s 1,800 members
7 and staff live in and around the Southern Rockies’ San Juan and Sangre de Cristo
8 Mountains where lynx have been released, will be released, and currently reside.
9 APNM’s members and staff have, and will continue, to regularly and repeatedly use the
10 Carson and Santa Fe National Forests and the “core lynx recovery area” in southwestern
11 Colorado – including areas throughout the San Juan Mountains and Sangre de Cristo
12 Mountains in north-central New Mexico which encompass the Carson and Santa Fe
13 National Forests – where lynx are currently residing for observation, research, aesthetic
14 enjoyment, and other recreational, scientific, and educational activities. APNM’s
15 members and staff derive scientific, recreational, conservation, and aesthetic benefits
16 from the lynx’s existence in the wild and return to the Southern Rockies. For APNM’s
17 members and staff, working to restore lynx to the Southern Rockies and observing lynx in
18 the wild, as well as being aware of the presence of lynx and the health of lynx habitat, are
19 key components to their enjoyment of their visits to these areas. APNM and its members
20 and staff believe that all species and their natural communities have the right to exist and
21 thrive. APNM’s members and staff use the best available science to forward their
22 mission through participation in policy formation, administrative processes, legal action,
23 public outreach and organizing, and education. APNM and its members and staff have a
24 specific, concrete interest in protecting and restoring the Canada lynx and its habitat to
25 the Southern Rockies and are leading a campaign with other conservation groups to that

1 end. APNM and its members are concerned about the threat to lynx in the Southern
2 Rockies from the Carson and Santa Fe National Forests' LRMPs – programmatic
3 planning documents that establish forest-wide and area-specific standards and guidelines
4 to which all projects must adhere but which provide no conservation measures for
5 threatened lynx. The Carson and Santa Fe National Forests' failure to consult, and assess
6 the impacts of their LRMPs on lynx could further inhibit the recovery of lynx in the
7 Southern Rockies – a contiguous mountain range that extends into north-central New
8 Mexico and the Carson and Santa Fe National Forests. The Forest Service's failure to
9 comply with section 7 of the ESA and NEPA in implementing the Carson and Santa Fe
10 LRMPs, as alleged in this complaint, has, and continues to harm APNM's concrete
11 interests. The Forest Service's failure to comply with the ESA and NEPA results in
12 uninformed decisions and creates an increased risk of actual, threatened, and imminent
13 harm to the lynx and APNM's members' interest in protecting and restoring the lynx to
14 the Southern Rockies. The Forest Service's failure to comply with section 7 of the ESA
15 and NEPA significantly increases the risk of an unnecessary and avoidable mortality of
16 lynx in an already vulnerable Southern Rocky Mountain lynx population. Just one
17 unnecessary and avoidable mortality of a lynx in the Southern Rockies significantly
18 reduces the likelihood that the current lynx recovery program will succeed. The Forest
19 Service's uninformed decisions thus create an increased risk of harm to the lynx and
20 APNM's real and concrete interest in restoring and protecting lynx in the Southern
21 Rockies. The Forest Service's failure to comply with section 7 of the ESA and NEPA has
22 adversely affected and continues to adversely affect the interests of APNM and its staff
23 and members. These harms and injuries are fairly traceable to the Forest Service's failure
24 to comply with the ESA and NEPA. These injuries can be remedied by the relief

1 requested. APNM brings this action on behalf of itself and its adversely affected
2 members and staff.

3 22. Plaintiff ANIMAL PROTECTION INSTITUTE (“API”) is a national
4 nonprofit advocacy organization headquartered in Sacramento, California. API is
5 dedicated to educating and encouraging the public to treat animals humanely. To
6 accomplish its objectives, API engages in litigation, legislative activity, research, and
7 public education. API also comments regularly on federal and state proposals that affect
8 wildlife and companion animals. Among its many programs, API advocates for non-
9 lethal methods to manage conflicts with wildlife, with particular emphasis on protecting
10 threatened and endangered species like Canada lynx. Many of API’s approximately
11 85,000 members, supporters, and staff use and live in and around the Southern Rockies’
12 San Juan and Sangre de Cristo Mountains where lynx have been released, will be
13 released, and currently reside. API’s members and staff have, and will continue, to
14 regularly and repeatedly use the “core lynx recovery area” in southwestern Colorado –
15 including areas throughout the San Juan Mountains and Sangre de Cristo Mountains in
16 the Carson and Santa Fe National Forests – where lynx are currently residing for
17 observation, research, aesthetic enjoyment, and other recreational, scientific, and
18 educational activities. API’s members and staff derive scientific, recreational,
19 conservation, and aesthetic benefits from the lynx’s existence in the wild and return to the
20 Southern Rockies. For API’s members and staff, working to restore lynx to the Southern
21 Rockies and observing lynx in the wild, as well as being aware of the presence of lynx
22 and the health of lynx habitat, are key components to their enjoyment of their visits to
23 these areas. API and its members and staff believe that all species and their natural
24 communities have the right to exist and thrive. API’s members and staff use the best
25 available science to forward their mission through participation in policy formation,

1 administrative processes, legal action, public outreach and organizing, and education.
2 API and its members and staff have a specific, concrete interest in protecting and
3 restoring the Canada lynx and its habitat to the Southern Rockies and are leading a
4 campaign with other conservation groups to that end. API and its members are concerned
5 about the threat to lynx in the Southern Rockies from the Carson and Santa Fe National
6 Forests' LRMPs – programmatic planning documents that establish forest-wide and area-
7 specific standards and guidelines to which all projects must adhere but which provide no
8 conservation measures for threatened lynx. The Carson and Santa Fe National Forests'
9 failure to consult, and assess the impacts of their LRMPs on lynx could further inhibit the
10 recovery of lynx in the Southern Rockies – a contiguous mountain range that extends into
11 north-central New Mexico and the Carson and Santa Fe National Forests. The Carson
12 and Santa Fe National Forests' failure to comply with section 7 of the ESA and NEPA ,
13 as alleged in this complaint, has, and continues to harm API's concrete interests. The
14 Forest Service's failure to comply with the ESA and NEPA results in uninformed
15 decisions and creates an increased risk of actual, threatened, and imminent harm to the
16 lynx and API's members' interest in protecting and restoring the lynx to the Southern
17 Rockies. The Forest Service's failure to comply with section 7 of the ESA and NEPA
18 significantly increases the risk of an unnecessary and avoidable mortality of lynx in an
19 already vulnerable Southern Rocky Mountain lynx population. Just one unnecessary and
20 avoidable mortality of a lynx in the Southern Rockies significantly reduces the likelihood
21 that the current lynx recovery program will succeed. The Forest Service's uninformed
22 decisions thus create an increased risk of harm to the lynx and API's real and concrete
23 interest in restoring and protecting lynx in the Southern Rockies. The Forest Service's
24 failure to comply with section 7 of the ESA and NEPA has adversely affected and
25 continues to adversely affect the interests of API and its staff and members. These harms

1 and injuries are fairly traceable to the Forest Service’s failure to comply with the ESA
2 and NEPA. These injuries can be remedied by the relief requested. API brings this
3 action on behalf of itself and its adversely affected members and staff.

4 23. Plaintiff CARSON FOREST WATCH is a volunteer citizen group dedicated
5 to protecting and restoring the native ecosystems and wildlife communities of New
6 Mexico with particular emphasis on north-central New Mexico’s Carson National Forest.
7 Carson Forest Watch has a long history of involvement and concern regarding the Forest
8 Service’s wildlife killing activities in New Mexico. Carson Forest Watch has reviewed
9 numerous NEPA documents and decisions by the Forest Service and has long monitored
10 wildlife killing activities on public lands throughout New Mexico. Many of Carson
11 Forest Watch’s members and staff live in and around the Southern Rockies’ San Juan and
12 Sangre de Cristo Mountains where lynx have been released, will be released, and
13 currently reside. Carson Forest Watch’s members and staff have, and will continue, to
14 regularly and repeatedly use the “core lynx recovery area” in southwestern Colorado –
15 including areas throughout the San Juan Mountains and Sangre de Cristo Mountains in
16 the Carson and Santa Fe National Forests where lynx are currently residing for
17 observation, research, aesthetic enjoyment, and other recreational, scientific, and
18 educational activities. Carson Forest Watch’s members and staff derive scientific,
19 recreational, conservation, and aesthetic benefits from the lynx’s existence in the wild
20 and return to the Southern Rockies. For Carson Forest Watch’s members and staff,
21 working to restore lynx to the Southern Rockies and observing lynx in the wild, as well as
22 being aware of the presence of lynx and the health of lynx habitat, are key components to
23 their enjoyment of their visits to these areas. Carson Forest Watch and its members and
24 staff believe that all species and their natural communities have the right to exist and
25 thrive. Carson Forest Watch’s members and staff use the best available science to

1 forward their mission through participation in policy formation, administrative processes,
2 legal action, public outreach and organizing, and education. Carson Forest Watch and its
3 members and staff have a specific, concrete interest in protecting and restoring the
4 Canada lynx and its habitat to the Southern Rockies and are leading a campaign with
5 other conservation groups to that end. Carson Forest Watch and its members are
6 concerned about the threat to lynx in the Southern Rockies from the Carson and Santa Fe
7 National Forests' LRMPs – programmatic planning documents that establish forest-wide
8 and area-specific standards and guidelines to which all projects must adhere but which
9 provide no conservation measures for threatened lynx. The Carson and Santa Fe National
10 Forests' failure to consult, and assess the impacts of their LRMPs on lynx could further
11 inhibit the recovery of lynx in the Southern Rockies – a contiguous mountain range that
12 extends into north-central New Mexico and the Carson and Santa Fe National Forests.
13 The Forest Service's failure to comply with section 7 of the ESA and NEPA, as alleged in
14 this complaint, has, and continues to harm Carson Forest Watch's concrete interests. The
15 Forest Service's failure to comply with the ESA and NEPA results in uninformed
16 decisions and creates an increased risk of actual, threatened, and imminent harm to the
17 lynx and Carson Forest Watch's members interest in protecting and restoring the lynx to
18 the Southern Rockies. The Forest Service's failure to comply with section 7 of the ESA
19 and NEPA significantly increases the risk of an unnecessary and avoidable mortality of
20 lynx in an already vulnerable Southern Rocky Mountain lynx population. Just one
21 unnecessary and avoidable mortality of a lynx in the Southern Rockies significantly
22 reduces the likelihood that the current lynx recovery program will succeed. The Forest
23 Service's uninformed decisions thus create an increased risk of harm to the lynx and
24 Carson Forest Watch's real and concrete interest in restoring and protecting lynx in the
25 Southern Rockies. The Forest Service's failure to comply with section 7 of the ESA and
26

1 NEPA has adversely affected and continues to adversely affect the interests of Carson
2 Forest Watch and its staff and members. These harms and injuries are fairly traceable to
3 the Forest Service's failure to comply with the ESA and NEPA. These injuries can be
4 remedied by the relief requested. Carson Forest Watch brings this action on behalf of
5 itself and its adversely affected members and staff.

6 24. Defendant HARV FORSGREN is sued in his official capacity as Regional
7 Forester for the U.S. Forest Service, Region 3. Mr. Forsgren is the federal official with
8 ultimate responsibility for all Forest Service officials' inactions or actions in Region 3
9 which includes the Carson and Santa Fe National Forests at issue in this complaint.

10 25. Defendant U.S. FOREST SERVICE is an agency within the U.S. Department
11 of Agriculture that is responsible for applying and implementing the federal laws and
12 regulations challenged in this complaint.

13 26. Defendant ANN VENEMAN is sued in her official capacity as Secretary of
14 the U.S. Department of Agriculture. Ms. Veneman is the federal official with ultimate
15 responsibility for all Forest Service officials' inactions or actions challenged in this
16 complaint.

17 27. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
18 is a department of the United States Government with supervisory and managerial
19 responsibility over the U.S. Forest Service and is responsible for applying and
20 implementing the federal laws and regulations challenged in this complaint.

1 FACTUAL BACKGROUND

2 The Federal Listing of the Canada Lynx

3 _____ 28. On March 24, 2000, the FWS published a final rule determining the
4 contiguous U.S. Distinct Population Segment (DPS) of lynx to be “threatened” under the
5 ESA (hereinafter “Final Rule”). 65 Fed. Reg. 16052. ____

6 29. For an animal to be listed under the ESA, it must be a “species.” 16 U.S.C. §
7 1533.

8 30. The ESA defines a species as “any subspecies of fish or wildlife or plants, and
9 any distinct population segment of any species of vertebrate fish or wildlife which
10 interbreeds when mature.” 16 U.S.C. § 1532 (16).

11 31. The ability to list a “distinct population segment” or DPS of a vertebrate
12 species allows the FWS to protect and conserve a segment of a species before large-scale
13 decline occurs that would necessitate listing a species throughout its entire range (e.g.,
14 allowing the FWS to list the lynx in the lower 48 states even though the species exists in
15 larger numbers in Canada and Alaska). 61 Fed. Reg. 4722.

16 32. In 1996, the FWS adopted a policy to clarify their interpretation of the term
17 “distinct population segment” or DPS. 61 Fed. Reg. 4722.

18 33. The FWS’s clarification states that it considers three elements when making a
19 decision whether to list a DPS as threatened or endangered under the ESA. These
20 include: (1) the discreteness of the population segment (i.e., is the population separated
21 from the remainder of the species by physical barriers or international boundaries); (2)
22 the significance of the population segment to the species to which it belongs (i.e., would
23 the loss of the population segment result in a gap in the species range or does the segment
24 inhabit a unique or unusual setting); and (3) the conservation status of the population

1 segment in relation to the ESA’s standards (i.e., does the population segment qualify as a
2 threatened or endangered species). 61 Fed. Reg. 4722.

3 34. The FWS determined that the contiguous U.S. population of lynx qualified as
4 a DPS after applying the three elements outlined in the FWS’s DPS policy. 65 Fed. Reg.
5 16060.

6 35. The FWS first determined that lynx in the contiguous U.S. are “discrete based
7 on the international boundary between Canada and the contiguous United States due to
8 differences in management of lynx and lynx habitat.” 65 Fed. Reg. 16060.

9 36. The FWS next determined that lynx in the contiguous U.S. met the
10 significance factor because “lynx in the contiguous U.S. may be considered biologically
11 and ecologically significant simply because of the climatic, vegetational, and ecological
12 difference between lynx habitat in the contiguous U.S. and that in northern latitudes in
13 Canada and Alaska.” 65 Fed. Reg. 16060.

14 37. After determining the contiguous U.S. population of lynx to be both discrete
15 and significant, and therefore qualifying as a DPS, the FWS applied the ESA standards
16 and labeled the lynx population segment “threatened” under the ESA.

17 38. In labeling the lynx “threatened,” the FWS recognized that “[w]ithin the
18 contiguous United States population segment, the range of the lynx is divided regionally
19 by ecological barriers and unsuitable lynx habitat.” 65 Fed. Reg. 16061.

20 39. These regions include: (1) the Northeastern region; (2) the Great Lakes region;
21 (3) the Southern Rocky Mountain region; and (4) the Northern Rocky Mountain region.
22 65 Fed. Reg. 16061.

23 40. Despite the “discreteness” and isolated nature of each of the four lynx regions
24 in the contiguous U.S., the FWS determined that none of the four regions, individually,
25 fulfill the “significance” factor and thus do not warrant separate DPS listings.

1 41. Instead, the FWS concluded that “the listable entity is the contiguous United
2 States DPS of the lynx, consisting of the Northeast, the Great Lakes, the Northern
3 Rockies/Cascades, and the Southern Rockies regions.” 65 Fed. Reg. 16061.

4 The Canada Lynx

5 42. The lynx is a medium-sized cat with long legs, large, well-furred paws, long
6 tufts on the ears, and a short, black-tipped tail.

7 43. It is difficult to distinguish a lynx (*Lynx canadensis*) from its North American
8 relative, the bobcat (*Lynx rufus*). The two species are both about the same size, have ear
9 tufts and facial ruffs, and have short tails. The differences include only: (1) the size of
10 the feet (lynx have very large feet that look out of proportion to the rest of their body); (2)
11 the amount of black on the tail (the tip of the tail on a lynx is completely black whereas a
12 bobcat’s tail has a black spot on the top and is white underneath); (3) discrete differences
13 in coloring (the pelage of a lynx generally consists of uniform coloring whereas bobcats
14 will typically have some distinct spots or striping); and (4) generally larger and more
15 conspicuous ear tufts and facial ruffs in lynx.

16 44. Lynx are highly specialized, migratory, and transient predators that inhabit
17 extremely large areas of land.

18 45. The size of lynx home ranges varies by the animal’s gender, abundance of
19 prey, season, and the density of lynx populations. Documented lynx home ranges vary
20 from 3 to 300 square miles. 65 Fed. Reg. 16053.

21 46. The FWS’s Final Rule states that “lynx home ranges at the southern extent of
22 the species’ range are generally large compared to those in the northern portion of the
23 range in Canada.” 65 Fed. Reg. 16053.

24 47. The lynx’s primary prey is the snowshoe hare.
25
26

1 48. Snowshoe hares comprise 35-97% of the lynx's diet throughout its range.
2 Other prey species include red squirrel, grouse, rabbits, flying squirrel, ground squirrel,
3 porcupine, beaver, mice, voles, shrews, fish, and small ungulates. Canada Lynx
4 Conservation Assessment and Strategy (LCAS), Interagency Lynx Biology Team,
5 (January 2000) at 5.

6 49. Southern populations of lynx likely prey on a wider diversity of species than
7 northern populations because of lower average hare densities and differences in small
8 mammal communities. In areas characterized by patchy distribution of lynx habitat, lynx
9 may prey on other species that occur in adjacent habitats, potentially including white-
10 tailed jackrabbit, black-tailed jackrabbit, mountain cottontail, sage grouse, and Columbian
11 sharp-tailed grouse. LCAS at 5.

12 50. In the contiguous United States, lynx historically occurred in five separate
13 geographic areas: (1) Northeast; (2) Great Lakes (north-central Minnesota, northern
14 Wisconsin, and the Upper Peninsula and northern portions of Michigan); (3) the Cascade
15 Mountains (western Washington and western Oregon); (4) Northern Rocky Mountains
16 (Idaho, Montana, eastern Washington, eastern Oregon, northeastern Utah, and western
17 Wyoming); and (5) Southern Rocky Mountains (south-central Wyoming, Colorado, and
18 north-central New Mexico). LCAS at 38.

19 The Lynx's Southern Rocky Mountain Geographic Area

20 _____ 51. Members of the FWS, the Forest Service, the Bureau of Land Management
21 (BLM), and the National Park Service (NPS) formed a "Lynx Biology Team" to "provide
22 a consistent and effective approach to conserve Canada lynx on federal lands in the
23 contemporaneous U.S."

1 52. The Lynx Biology Team prepared the LCAS which defines the lynx's
2 "Southern Rocky Mountain Geographic Area" as encompassing the mountainous regions
3 of Colorado, south-central Wyoming, and north-central New Mexico. LCAS at 50.

4 53. The Southern Rockies are isolated from the rest of the Rocky Mountain chain
5 by vast sagebrush and desert shrub communities in the Wyoming Basin and the Red
6 Desert in southern and central Wyoming, and arid Green and Colorado River plateaus in
7 western Colorado and eastern Utah. LCAS at 50.

8 54. Primary "lynx habitat in the Southern Rockies is likely found within the
9 subalpine and upper montane forest zones, typically between 8,000 to 12,000 feet in
10 elevation." LCAS at 52.

11 55. At the "upper elevations of the subalpine, forests are typically dominated by
12 subalpine fir and Engelmann spruce. As the subalpine transitions to the upper montane,
13 spruce-fir forests begin to give way to a predominance of lodgepole pine, aspen, or mixed
14 stands of pine, aspen, and spruce." LCAS at 52.

15 56. The "lower montane zone is dominated by ponderosa pine and Douglas fir,
16 with pine typically dominating the lower, drier, more exposed sites, and Douglas fir
17 occurring on moister and more sheltered sites. Although this forest zone is likely below
18 primary lynx habitat, lower montane forests likely are important as connective habitat
19 where they may facilitate lynx dispersal and movements between blocks of primary
20 habitat, and may provide some foraging opportunities during those movements." LCAS at
21 52.

22 57. The Southern Rockies' subalpine and upper montane forest zones,
23 interspersed with lower montane zones – all of which provide outstanding lynx habitat –
24 exist throughout the San Juan and Sangre de Cristo Mountain ranges. These ranges
25 stretch from southwestern Colorado into north-central New Mexico. LCAS at 51.

1 58. The LCAS recognizes that suitable habitat extends into north-central New
2 Mexico along the Sangre de Cristo mountain range and, especially, in the San Juan
3 Mountains.

4 59. This area of suitable habitat in the Sangre de Cristo and San Juan Mountains
5 is within the Carson and Santa Fe National Forests.

6 60. The Carson National Forest borders the San Juan and Rio Grande National
7 Forests in southern Colorado (two National Forests just across the border that provide
8 identical lynx habitat and have consulted with the FWS) and includes 1.5 million acres in
9 north-central New Mexico ranging from 6,000 to 13,100 feet in elevation.

10 61. The Santa Fe National Forest covers 1.6 million acres ranging from 6,000 to
11 13,000 feet in elevation in the heart of north-central New Mexico.

12 The Return of Lynx to the Southern Rocky Mountain Geographic Area.

13 62. To establish and restore a viable population of lynx to the Southern Rockies,
14 the Colorado Division of Wildlife (“CDOW”) began releasing lynx into a “core recovery
15 area” in southwestern Colorado’s San Juan Mountains in 1999.

16 63. The “core lynx recovery area” is specifically defined as the area of the San
17 Juan and Rio Grande National Forests and associated lands above 9,000 feet extending
18 from Del Norte west to Dolores and north to include the Uncompahgre and Gunnison
19 National Forests in the Gunnison basin (as far north as Taylor Park east to the Collegiate
20 Range).

21 64. CDOW picked southwestern Colorado’s San Juan Mountains as the “core
22 recovery area” (i.e., the place to release lynx) because of its outstanding lynx habitat.

23 65. The San Juan Mountains include relatively large populations of snowshoe
24 hare (the lynx’s primary prey), low road densities, and large forested areas of public land.

25 66. CDOW released 41 lynx in the winter and spring of 1999 and 55 lynx in April
26

1 and May of 2000 into the core lynx recovery area.

2 67. To augment the existing population, and to ensure there are enough lynx in the
3 wild to establish a viable, self-sustaining reproducing population, CDOW released an
4 additional 33 lynx (17 females and 16 males) in the spring of 2003. As with the earlier
5 reintroductions, all lynx were released into southwestern Colorado's core lynx recovery
6 area.

7 68. CDOW plans to release an additional 50 lynx in each of the next two years
8 and up to 15 lynx in 2006-2008.

9 69. Last spring, CDOW documented 9 pairs of lynx during the breeding season.
10 CDOW discovered 6 dens and a total of 16 kittens in the core lynx recovery area. All the
11 dens were in Engelmann spruce/subalpine fir forests in areas of extensive downfall.

12 70. As of November 20, 2003, 51 of the 129 lynx released in the southwestern
13 Colorado's core lynx recovery area are known to have been killed. Of these 51
14 mortalities, 25 are from the 1999 releases, 22 are from the 2000 releases, and 4 are from
15 the 2003 releases.

16 71. Of the 16 kittens known to have been born in 2003, CDOW has 2 known
17 mortalities.

18 72. The causes of death include: starvation (9), hit by vehicles (6), shot (7),
19 probable predation (1), plague (4), and unknown human caused deaths (24).

20 73. CDOW is currently tracking 57 of the 78 lynx still possibly alive.

21 74. Twenty-one lynx are considered missing. By missing, CDOW means that
22 they have not heard a signal from the lynx for at least one year, likely because their collar
23 batteries have died or because the lynx are outside the core research area in southwestern
24 Colorado.

25 75. Many of the 21 missing lynx may inhabit north-central New Mexico.

1 76. The lynx being released in southwestern Colorado’s San Juan Mountains – a
2 mountain range that extends into north-central New Mexico – have moved and continue
3 to move south along the San Juans into northern New Mexico’s Carson and Santa Fe
4 National Forests.

5 77. Through extensive aerial and satellite tracking, CDOW has tracked, and
6 continues to track the movement patterns of the released lynx. Most lynx tracked stayed
7 within the core recovery area. However, there were a number of movements to the south
8 – into northern New Mexico’s Carson and Santa Fe National Forests.

9 78. Aerial telemetry locations of lynx released in 1999 reveal that a number of
10 lynx moved into New Mexico’s Taos, Rio Arriba, and San Juan Counties. The same is
11 true with respect to the 2000 releases, where lynx were tracked as far south as the Los
12 Alamos area in the Jemez Mountains.

13 79. The CDOW reports that at least 83 telemetry locations for lynx released in
14 1999 and 2000 were in New Mexico. These locations were distributed across 9 northern
15 New Mexico counties with concentrations in New Mexico’s San Juan Mountains.

16 80. The CDOW identified a number of travel corridors extending into New
17 Mexico which are used repeatedly by more than one lynx, possibly suggesting route
18 selection based on olfactory cues.

19 81. Southerly movements into New Mexico’s Carson and Santa Fe National
20 Forests include a corridor running down the east side of Wolf Creek Pass to the southeast
21 to the Conejos River Valley.

22 82. Recognizing these movements, the CDOW issued a statement that “[m]ost
23 lynx that we are currently monitoring continue to use terrain within the core research
24 area: New Mexico north to Gunnison, west as far as Taylor Mesa and east to Monarch
25 Pass.”

1 83. According to the New Mexico Department of Game and Fish's ("NMDGF's")
2 "BIOTA Information System" lynx "almost certainly occurred in New Mexico in the San
3 Juan and Sangre de Cristo Mountains."

4 84. The NMDGF acknowledges that lynx "may occur in parts of New Mexico"
5 and as such, issued a public notice about the difference between bobcats and lynx on its
6 website and in its 2003-2004 "Big Game & Furbearer Rules and Regulations."

7 85. Lynx are included on "Checklist of New Mexico Mammals" dated November
8 11, 2003.

9 86. Over the last three years, we know of *at least* four lynx that have been killed
10 in New Mexico.

11 87. Two lynx were shot near Chama, New Mexico, one was hit by a car, and the
12 cause of one death remains unknown (a cut radio collar was found in a dump near Taos,
13 New Mexico).

14 88. CDOW recognized that lynx mortalities occurred throughout the recovery area
15 in the Southern Rockies.

16 89. CDOW determined that lynx "mortalities occurred in New Mexico in higher
17 proportion to all lynx locations in that area than elsewhere."

18 _____ 90. Lynx mortality in areas where lynx densities are low, as in the Southern
19 Rockies region, is particularly disruptive. Evidence indicates that when lynx densities are
20 low "incidental or illegal killing can *significantly* affect lynx population dynamics under
21 some circumstances."

22 Threats to Lynx in the Southern Rocky Mountain Geographic Area

23 _____ 91. The FWS determined that the contiguous U.S. population of lynx is threatened
24 by the inadequacy of existing regulatory mechanisms – in particular Forest Service
25 LRMPs.

1 92. The Final Rule states that 76% of suitably lynx habitat in the Southern
2 Rockies is located on National Forest Service lands.

3 93. The Final Rule states that current Forest Service LRMPs for managing these
4 lands “include programs, practices, and activities within the authority and jurisdiction of
5 Federal land management agencies that may threaten lynx or lynx habitat. The lack of
6 protection for lynx in these plans render them inadequate to protect the species.” 65 Fed.
7 Reg. 16051.

8 94. The FWS’s Final Rule states that “[i]n the Southern Rockies Region . . . the
9 factors affecting lynx . . . are the inadequacy of existing regulatory mechanisms,
10 specifically the lack of guidance for conservation of lynx in Federal land management
11 plans.” 65 Fed. Reg. 16082.

12 95. Forest Service LRMPs “do not adequately address lynx.” 65 Fed. Reg. 16078.

13 96. LRMPs include programs or practices that “result in: habitat conversion;
14 fragmentation or obstruction to lynx movement; roads or winter recreation trails that
15 facilitate access to historical lynx habitat by competitors; and fire exclusion which
16 changes the vegetation mosaic maintained by natural disturbance processes.” 65 Fed.
17 Reg. 16079.

18 The Southern Rocky Mountain Lynx Amendment Process

19 97. The Forest Service is proposing to amend 11 LRMPs in the Southern Rockies
20 to adopt conservation measures for lynx. The 11 LRMPs proposed for amendment
21 include: the Arapaho, Roosevelt, Medicine Bow, Routt, San Juan, Rio Grande, Grand
22 Mesa, Uncompahgre, Gunnison, Pike, and San Isabel National Forests.

23 98. In December 1999, the Forest Service completed a nationwide Biological
24 Assessment (BA) on the effects of its LRMPs on lynx.

1 99. Using the best available scientific and commercial information, including the
2 “Science Report” on lynx and a draft of the LCAS, the BA identified the potential
3 impacts to lynx resulting from 57 Forest Plans throughout the nation.

4 100. The BA’s analysis was broken down by five geographic areas: (1) Cascade
5 Mountains; (2) Northern Rocky Mountains; (3) the Northeast; (4) Great Lakes; and (5)
6 the Southern Rockies.

7 101. In the Southern Rockies – which the BA defines as “the Northern Rocky
8 Mountain Forest, Central Rocky Mountain Basins, Colorado Rocky Mountain, and New
9 Mexico Rocky Mountain Ecoprovinces” – 12 National Forests participated in the BA.
10 These include: the Arapaho, Roosevelt, Medicine Bow, Routt, San Juan, Rio Grande,
11 White River, Grand Mesa, Uncompahgre, Gunnison, Pike, and San Isabel National
12 Forests.

13 102. Neither the Carson National Forest or Santa Fe National Forest in north-
14 central New Mexico – part of the lynx’s Southern Rocky Mountain geographic area –
15 participated in the BA.

16 103. The BA made a number of findings with respect to how the current LRMPs
17 are affecting lynx in the Southern Rocky Mountain geographic area.

18 104. The BA and the LCAS determined that the LRMPs in Southern Rockies may
19 adversely impact lynx and lynx habitat by: (1) having a fire exclusion policy which
20 changes the vegetative mosaic maintained by natural disturbances; (2) allowing grazing of
21 domestic livestock, which reduces forage for lynx prey; (3) allowing roads and winter
22 recreation trails that facilitate access to historical lynx habitat by competitors; (4)
23 allowing levels of human access via forest roads that may present a risk of incidental
24 trapping or illegal shooting of lynx; (5) having limited direction in the Forest Plan

1 pertaining to tree thinning and foraging habitat; and (6) having weak direction for
2 distributing lynx habitat components across the landscape.

3 105. As a solution, the BA recommends amending or revising all LRMPs to
4 incorporate conservation measures, outlined in the LCAS, that would reduce or eliminate
5 the adverse effects to lynx.

6 106. Following completion of the BA, the Forest Service entered into a
7 Conservation Agreement (CA) with the FWS to promote the conservation of lynx and its
8 habitat on National Forest Lands.

9 107. The CA between the Forest Service and the FWS identifies actions, based on
10 the LCAS, that certain Forest Service Regions have agreed to take to reduce or eliminate
11 adverse effects or risks to lynx and its habitat.

12 108. Regions 1, 2, 4, 6, and 9 of the Forest Service participated in, and signed, the
13 CA.

14 109. As with the BA, Region 3 of the Forest Service, which includes north-central
15 New Mexico's Carson and Santa Fe National Forests, did not participate in or sign the
16 CA.

17 110. After the March 24, 2000 listing of the U.S. contiguous population of lynx as
18 threatened, the FWS used the Science Report, LCAS, Forest Service's BA, and
19 subsequent CA to issue a Biological Opinion ("BO") and complete formal consultation
20 on lynx.

21 111. In the BO, the FWS concludes that the LRMPs, as implemented in
22 conjunction with the CA, are not likely to jeopardize the continued existence of the lynx.

23 112. The FWS's "no jeopardy" finding on the LRMPs is premised on the
24 following factors: (1) the Forest Service's increased commitment toward the conservation
25 of lynx as outlined in the CA and BA; (2) per the CA, the Forest Service's agreement that
26

1 Forest Plans include measures necessary to conserve lynx for all administrative units
2 identified as having lynx habitat; (3) per the CA, the Forest Service’s agreement to amend
3 the Forest Plans to include/consider the lynx conservation measures outlined in the
4 Science Report, the LCAS, and final rule; (4) per the CA, the Forest Service’s agreement
5 to immediately begin identifying and mapping lynx habitat on federal lands; (5) per the
6 CA, the Forest Service’s agreement to consider the recommendations in the LCAS to
7 determine whether a proposed action may affect lynx, prior to making any new decisions
8 to undertake actions in lynx habitat; (6) the Forest Service’s agreement to defer projects
9 that do not involve third parties and may adversely affect lynx until the Forest Plans
10 incorporate the measures necessary to conserve lynx; and (7) the fact that the
11 amendments to many Forest Plans are already in progress and are adopting provisions of
12 the LCAS.

13 113. In sum, the FWS arrived at its “no jeopardy” opinion in the BO based on the
14 assumption that the CA would be implemented by the Forest Service.

15 114. At present, 11 National Forests in the Southern Rocky Mountain Geographic
16 area that participated in the BA, CA, and where considered in the BO (i.e., the Arapaho,
17 Roosevelt, Medicine Bow, Routt, San Juan, Rio Grande, Grand Mesa, Uncompaghre,
18 Gunnison, Pike, and San Isabel National Forests) are now in the process of amending
19 their respective LRMPs to adopt conservation measures for lynx.

20 115. These 11 National Forests are now examining, through an Environmental
21 Impact Statement (EIS) process, the biological, social, and economic effects of the
22 proposed amendment and various alternatives. The proposed amendments will include
23 direction as specified in the LCAS to conserve lynx and lynx habitat.

24 116. As previously mentioned, neither the Carson National Forest nor Santa Fe
25 National Forest – two National Forests in north-central New Mexico that are part of the

1 Southern Rocky Mountain Geographic area and home to lynx and lynx habitat – were
2 included in the BA, CA, or considered in the FWS’s final BO.

3 117. As a result, neither the Carson National Forest nor Santa Fe National Forest
4 are in the process of amending their respective Forest Plans to include conservation
5 measures for lynx.

6 The Carson and Santa Fe National Forests’ Failure and Refusal to Extend ESA
7 Protections to Lynx

8 118. On October 30, 2003 Plaintiffs sent the Carson and Santa Fe National
9 Forests a sixty-day notice of intent to sue letter, informing the Forests of their intent to
10 sue for violations of section 7 of the ESA.

11 119. The sixty-day notice letter put the Forest Service on notice of the existence
12 and death of lynx in the Carson and Santa Fe National Forests and explained the legal
13 requirements of section 7 of the ESA.

14 120. On December 29, 2003 the Forest Service responded to Plaintiffs’ sixty-day
15 notice letter.

16 121. In the December 29, 2003 response letter, the Forest Service stated that it
17 will not conduct any section 7 consultation on lynx in New Mexico. The Forest Service
18 stated that “we have determined that any Canada lynx found in New Mexico have no
19 ESA status and, therefore no Section 7 consultation is required.”

20 122. On February 6, 2004, the Plaintiffs drafted a reply to the Forest Service’s
21 December 29, 2003 letter refusing to conduct section 7 consultation on lynx in the Carson
22 and Santa Fe National Forests.

23 123. Plaintiffs’ February 6, 2004 reply expressed disappointment over the Forest
24 Service’s refusal to extend “ESA status” to lynx in New Mexico and informed the
25 Agency of their intention to go to court.

COUNT II

131. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

132. The Forest Service’s Carson and Santa Fe National Forests have violated, and continue to violate, section 7 (a)(2) of the ESA, 16 U.S.C. § 1536 (a)(2).

133. Pursuant to section 7 (a)(2) of the ESA, all Federal agencies, including the Forest Service, “shall, in consultation with and with the assistance of the [FWS], insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species.” 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14. In fulfilling the requirements of section 7 (a)(2) “each agency shall use the best scientific and commercial data available.” 16 U.S.C. § 1536 (a)(2); 50 C.F.R. § 402.14 (d).

134. The term “agency action” means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States.” 40 C.F.R. § 402.02.

135. The phrase “jeopardize the continued existence of” means to “engage in action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.2

136. The Forest Service’s Carson and Santa Fe National Forests have failed, and continue to fail, to initiate and complete informal consultation with the FWS to insure that their LRMPs are not likely to jeopardize the continued existence of lynx in the Southern Rockies. 16 U.S.C. § 1536 (a)(2). The Forest Service has also failed, and continues to fail, to use the best scientific and commercial data available in insure that its actions are not likely to jeopardize the continued existence of lynx in the Southern Rockies. 16 U.S.C. § 1536 (a)(2).

1 C. Issue a mandatory injunction requiring the Forest Service's Carson and Santa
2 Fe National Forests to initiate and complete formal consultation pursuant to section 7 of
3 the ESA on the impacts of the Carson and Santa Fe National Forest LRMPs on lynx in
4 the Southern Rockies;

5 D. Issue a mandatory injunction requiring the Forest Service's Carson and Santa
6 Fe National Forests to prepare a supplemental EA or supplemental EIS to assess the
7 direct, indirect, and cumulative impacts of, and a reasonable range of alternatives to, its
8 LRMPs on lynx in the Southern Rockies pursuant to NEPA;

9 E. Issue a mandatory injunction prohibiting the Forest Service's Carson and Santa
10 Fe National Forests from funding, authorizing, and/or carrying out any activities or site-
11 specific projects within their jurisdiction that may adversely impact lynx and/or lynx
12 habitat (as outlined in the LCAS) until all violations of law complained of herein are
13 remedied;

14 F. Issue such injunctive relief as Plaintiffs may subsequently request or that this
15 Court may deem appropriate;

16 G. Retain continuing jurisdiction of this matter until the Forest Service's Carson
17 and Santa Fe National Forests fully remedy the violations of law complained of herein;

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

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

23 J. Grant such other relief as this Court deems just and proper.
24
25
26

1 Respectfully submitted this ____ day of February, 2004.

2
3 WESTERN ENVIRONMENTAL LAW CENTER

4
5 _____
6 Matthew Bishop
7 Post Office Box 1507
8 Taos, New Mexico 87571
9 Telephone: (505) 751-0351
10 Fax: (505) 751-1775
11 bishop@westernlaw.org

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 Attorney for Plaintiffs