

2. At issue in this case is the Forest Service's approval of the transfer of 380 acres of the most spectacular and important components of the National Forest System lands to private interests. The agency authorized the transfer of nine federal parcels, which include hundreds of acres of wilderness caliber, roadless lands and wild rivers adjacent to the South San Juan Wilderness. In addition to loss of lands that buffer the Wilderness Area, the Valle Seco 2019 Land Exchange increases private recreation opportunities for the non-Federal proponents while removing public land used for recreation along the San Juan River and Blanco Rivers. The pristine federal parcels, including riparian and wetland areas, are being conveyed to private ownership largely without protections to minimize or prevent development. In exchange, the public will acquire the Valle Seco land parcel – 880 acres of currently private land near Chromo, Colorado – which will be added to the National Forest System.
3. The Land Exchange serves principally to enlarge the expansive 3,100-acre Bootjack Ranch, owned by a billionaire Texan, one of the non-Federal proponents. Bootjack Ranch spans the valley encompassing the western approaches of Wolf Creek Pass and the upper reaches of the San Juan River. As documented in the Environmental Assessment, the Bootjack Ranch owner purchased the Valle Seco parcel then threatened to fence the 880 acres and develop the land with a domestic elk farm and a hunting lodge, then apply for year-round motorized and utility access if the Land Exchange was not approved.
4. There was no serious consideration of acquiring these 880-acre parcel through means other than the land exchange process, including direct purchase or condemnation. The direct acquisition alternative would maintain existing Forest System boundaries,

and their important functions. The acquisition of the 880 acres could then be accomplished on its own merits.

5. Plaintiffs challenge the Decision Notice & Finding of No Significant Impact (DN/FONSI) signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final Environmental Assessment (EA) prepared by the San Juan National Forest and dated September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022.
6. The Valle Seco 2019 Land Exchange is a land exchange between the USFS and a collection of private landowners in Archuleta County, Colorado. Through the exchange the private parties would acquire nine separate parcels covering approximately 379 acres of currently federal public lands in exchange for transferring one approximately 880-acre parcel of currently private land into public ownership.
7. Under the applicable federal public land laws, all land exchanges must be reviewed and approved in a manner that ensures the exchange is in the public interest, that the lands exchanged are of equal value (regardless of acreages), and that the public has a genuine opportunity to participate in the agency's review of all direct, indirect, and cumulative impacts of the exchange.
8. In this case, the USFS has engaged in a process that denied access to appraisal and other information necessary to give the public a meaningful opportunity to participate in the evaluation of the proposed exchange. As part of this process, the agency

undervalued the public lands to be exchanged and the private economic benefit the recipients of these lands will gain. The result is a skewed exchange that disproportionately benefits the private landowners at the expense of the public and the public land resources.

9. Further, the USFS failed to conduct a lawful analysis of the environmental effects that will result from the exchange, including impacts to valuable public land resources, wildlife, and public access.
10. For these reasons, the USFS's approval of the Exchange cannot lawfully stand. Plaintiffs ask this Court to Declare that the Exchange and related decisions violate federal law.
11. In addition, Plaintiffs ask this Court to vacate and remand the decisions to the USFS pending the agency's compliance with FLPMA, NFMA NEPA, the APA and all other applicable requirements, and to enjoin the Exchange approval until all illegalities are corrected.

JURISDICTION AND VENUE

12. This is a suit pursuant to the APA, FLPMA, NFMA, and NEPA. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question), 5 U.S.C. §§ 701-706 (judicial review provisions of the APA), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief).
13. Venue is properly before the District of Colorado pursuant to 28 U.S.C. §§ 1391 (b) and (e). The USFS San Juan National Forest, the USFS Rocky Mountain Regional Office, and named defendant David Neely are located in Colorado. The parcels subject to the land exchange are located in Archuleta County, Colorado. Plaintiffs

Colorado Wild Public Lands, and San Juan Citizens Alliance are located and have their principal places of business in Colorado.

14. This Petition is timely filed within six years of the issuance of the Forest Service Final Record of Decision, as required by 28 U.S.C. § 2401(a).
15. The Forest Service Final Decision Notice constitutes a final agency action because the USFS has completed its review and made a final decision on the Exchange. The Forest Service Decision Memorandum constitutes final agency action on the Colorado Roadless Area Boundary Modification. No other administrative review is available or required.

PARTIES

16. Plaintiff Colorado Wild Public Lands (CWPL) is a Colorado non-profit corporation headquartered in Basalt, Colorado with members distributed throughout the state of Colorado. Plaintiff's organizational mission is to protect the integrity of Colorado's public lands by advocating for transparency and public engagement in federal land exchanges.
17. CWPL regularly monitors land exchanges involving Colorado's federal public lands to ensure compliance with applicable laws and regulations and to ensure that the public interest is represented throughout the process. These monitoring activities seek to ascertain the relative benefits and detriments to public user groups, potential disparities in appraised real estate values used to evaluate exchanges, cumulative impacts on ecological communities, and conservation objectives of proposals. CWPL compiles and analyzes that information and disseminates that information to its membership, the general public, and public officials through various sources

including publications, its website and newsletter, general news media coverage, and public presentations. CWPL's successful efforts at educating the public and elected officials on issues concerning federal government land exchange programs and activities that affect the environment contribute significantly to the public's understanding of governmental operations and activities. CWPL also participates in federal decision-making processes and encourages other affected members of the public to similarly participate. Where necessary to protect the public interest, CWPL files administrative appeals and civil actions, and generally seeks to ensure that federal agencies comply with federal environmental and public land laws.

18. Plaintiff San Juan Citizens Alliance (SJCA) is a regional non-profit citizens conservation organization headquartered in Durango, Colorado. SJCA advocates for clean air, pure water, and healthy lands, which are the foundations of resilient communities, ecosystems and economies in the San Juan Basin. SJCA represents 1,000 dues-paying members and several thousand additional supporters who share the organization's mission of conserving natural resources of the San Juan Basin. SJCA has been actively involved with reviewing resource development project proposals and federal land use plans throughout the San Juan National Forest for over 20 years. SJCA participates in the administrative and legal processes associated with federal public land exchanges in Southern Colorado in a similar manner to CWPL, as discussed above.
19. CWPL's and SJCA's members live and recreate on or near the lands to be conveyed to the USFS, as well as the lands being removed from the National Forest System and provided to the private interests in the exchange. CWPL's and SJCA's members use

and enjoy these lands for recreation, spiritual, cultural economic and aesthetic enjoyment.

20. CWPL and SJCA, their staff, volunteers, and members have and will continue to suffer direct injury by the Defendants' failure to comply with the statutory requirements of FLPMA, NFMA, NEPA, the APA, and the implementing regulations for these statutes in the agency's approval of the Valle Seco 2019 Land Exchange. A favorable outcome of this litigation will redress these injuries. The USFS decision to permanently transfer federal public lands out of public ownership will negatively affect CWPL's and SJCA's interests and their members' use and enjoyment of sensitive public lands. Harm to the environment flows from Defendants' FLPMA and NEPA violations, which conceal the facts and circumstances of the USFS decisionmaking processes. CWPL and SJCA bring this action on behalf of their respective organizations, staff, volunteers, and members.
21. CWPL and SJCA submitted extensive comments to defendant USFS regarding the Valle Seco 2019 Land Exchange. CWPL provided comments during the agency's scoping period on December 12, 2019 and participated in the public comment period on the Valle Seco 2019 Land Exchange Draft Environmental Assessment, submitting comment letters dated October 1, 2020, and October 3, 2020. SJCA submitted a comment letter during the initial scoping period on December 13, 2019, and a comment letter on the Valle Seco 2019 Land Exchange Draft Environmental Assessment dated October 5, 2020. Further, both CWPL and SJCA submitted formal objections to the land exchange to the USFS in accordance with the agency objection procedures on November 2, 2021, and November 6, 2021, respectively.

22. Defendant United States Forest Service (USFS) is an agency within the United States Department of Agriculture. The USFS's San Juan National Forest has direct responsibility for the public lands subject to the Valle Seco 2019 Land Exchange and responsibility for approving the land exchange. The USFS Regional Office in Denver oversees the San Juan National Forest and issued the Responses to Objections at issue in this case.
23. Defendant United States Department of Agriculture is the federal agency department with oversight and control over the USFS.
24. Defendant David Neely is the Acting Forest Supervisor of the San Juan National Forest. Mr. Neely signed the DN/FONSI for the Valle Seco 2019 Land Exchange on June 29, 2022 and is named as a defendant in his official capacity as Acting Forest Supervisor of the San Juan National Forest.
25. Defendant Randy Moore is the Chief of defendant United States Forest Service and is named as a defendant in his official capacity as Chief. Mr. Moore signed the Decision Memorandum authorizing the Colorado Roadless Area Boundary Modification at issue in this case on February 23, 2022.

STATUTORY AND REGULATORY BACKGROUND

26. The Federal Land Policy and Management Act (FLPMA) sets forth the governing standards for USFS land exchanges. In FLPMA, "Congress declares that it is the policy of the United States that ... the public lands be retained in Federal ownership, unless ... it is determined that disposal of a particular parcel will serve the national interest." 43 U.S.C. § 1701(a). The land exchange provisions of FLPMA specifically state that: "A tract of public land or interests therein may be disposed of by exchange

... where the Secretary determines that the public interest will be well served by making the exchange.” 43 U.S.C. § 1716(a). The USFS’s public interest assessment must include consideration of the burden as well as the benefits that might flow from a land exchange. The public interest test is at the heart of Congress’ directive to the federal land agencies to protect public, rather than private, concerns in every exchange.

27. FLPMA requires that the value of federal and non-federal lands involved in an exchange be of equal market value, and that equal value be established before a land exchange may take place. For lands with more than \$150,000 of value, such as the subject property, the difference in value between federal and non-federal lands cannot exceed 25 percent. 43 U.S.C. § 1716(b); 36 C.F.R. § 254.12(b).
28. FLPMA also mandates that the appraisal standards used by the agencies “reflect nationally recognized appraisal standards, including to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions.” 43 U.S.C. § 1716(f)(2). USFS regulations also require compliance with Uniform Appraisal Standards for Federal Land Acquisitions (“UASFLA”). 36 C.F.R. §§ 254.2, 254.9 and 254.42(b).
29. The UASFLA require that lands be appraised as if in private ownership and available for sale in the open market. Lands must be valued at their most profitable use allowed by law to be carried out on the premises, considered in terms of physical possibility, legal permissibility, and financial feasibility.
30. The UASFLA require that when a property is adaptable to a use other than the existing use, its marketable potential for such use should be considered to the extent that potential affects market value. The UASFLA further require when land is

underlaid with marketable minerals, whether or not they are in separate ownership, the existence of those minerals must be considered in determining the market value of the property.

31. The UASFLA also specify that an appraisal's opinion of value shall be supported by confirmed sales of comparable or nearly comparable lands having like optimum uses. In selecting the comparable sales to be used in valuing a given property, the greatest weight should be given to the properties most comparable to the property being appraised.
32. FLMPA, the UASFLA, federal regulations implementing FLPMA, and the Forest Service Directive System, consisting of the Forest Service Manual and Handbooks, require that equal value determinations for land exchanges be based on the highest and best use of the property, estimating the value of lands and companies as if in property ownership and available for sale in the open market. 43 U.S.C. § 1716(f)(2); 36 C.F.R. §§ 254.2, 254.9(b)(i), (ii); Forest Service Manual ("FSM") 5410.5; Forest Service Appraisal Handbook ("FSH") 5409.12, ch. 10, § 12.1. In determining the highest and best use, the appraiser must consider the uses of similar properties being purchased in the market area. FSH 5409.12, ch. 10, §13.34.
33. Federal regulations require that an agency appraisal consider the contributory value of minerals to the extent consistent with the highest and best use of the property. 36 C.F.R. § 254.9(b)(iv). Premiums may be paid for land based on the presence of valuable minerals, and the value of minerals should be carefully examined to the extent that private industry would examine them. FSH 5409.12, ch. 10, § 12.22(11).

34. Property from which one or more minerals could be economically produced may be appraised as a mineral property if the real property market recognizes that value. Market value may be based on demonstrated anticipation of new uses or perceived potential for the occurrence of a valuable mineral deposit on the property and on facts showing that the physical and economic possibility of such activity would be reflected in the price agreed upon between a willing buyer and seller having knowledge of all such characteristics and that private demand for the land for mineral exploitation is a substantial probability. FSH 5409.12, ch. 20, § 23.
35. The UASFLA are applicable to determine of value for land exchanges under FLPMA, federal regulations and Forest Service directives. 43 U.S.C. §1716(f)(2); 36 C.F.R. §§ 254.2, 254.9, 254.42(b); FSH 5409.12, ch. 60, § 65.1. The UASFLA require that an appraisal of value be supported by sales of comparable lands having like optimum uses; that items of comparison shall include market conditions, locations, and physical characteristics, and that the greatest weight be given to the properties most comparable to the property under appraisal.
36. The Forest Service Appraisal Handbook states that nearby arm's length transactions, comparable to the land under appraisal, and reasonably current are the best evidence of market value and states that the sales comparison approach is normally the best evidence of market value. FSH 5409.12, ch. 60, § 66, Exhibit 01, Basic Specifications for Real Property Appraisals C-2.2 (b)(3), Part III.
37. The Forest Service must manage the National Forest System in accordance with substantive planning and procedural requirements of the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600, *et seq.* NFMA places a high value on

maintaining roadless areas in Colorado. See Colorado Roadless Rule (77 Fed. Reg. 39577; 36 C.F.R. part 294, subpart D). Roadless areas are often provided additional protections of the Wilderness Act. 36 C.F.R. Part 294 (66 FR 3244-3272 (Jan. 12, 2001)). Private lands are not eligible for NFMA or Wilderness Act protection of roadless character.

38. In conducting a NEPA review, the USFS must invite, consider, and respond to public comments, and solicit these comments from the public and other agencies in a manner that ensures informed and meaningful opportunities for participation in the NEPA process. 40 C.F.R. Part 1503, § 1506.6.
39. NEPA requires that the USFS must conduct a “hard look” at a number of types of actions and effects – direct, indirect, connected, cumulative, and similar actions. Direct effects are those that are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.8(a). Indirect effects are those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Id. at § 1508.8(b). Indirect effects “may include growth inducing effects and other effects related to induced changes in the pattern of land use. . . and related effects on air and water and other natural systems, including ecosystems.” Id. Connected actions are those which are “closely related,” including those that “[c]annot or will not proceed unless other actions are taken,” or those that are “interdependent parts of a larger action and depend on the larger action for their justification.” Id. at § 1508.25(a)(1). Cumulative actions are those that “have cumulatively significant impacts and should therefore be discussed in the same impact statement.” Id. at § 1508.25(a)(2). Similar actions include those that have

“common timing or geography.” Id. at § 1508.25(a)(3). A project’s “cumulative impact,” is:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

40. NEPA requires federal agencies to prepare EISs prior to proceeding with any “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332 (2)(C). EISs must contain a “detailed statement” of the environmental impacts associated with the proposed federal action. 42 U.S.C. § 4332 (2)(C)(i). A primary purpose of an EIS is: (1) to provide decisionmakers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences; and (2) to provide the public with information and an opportunity to participate in gathering information. 40 C.F.R. § 1500.1(b).
41. NEPA regulations require that an agency must conduct its analysis to avoid unlawful segmentation of the proponent’s overall plan into smaller parts involving action with less significant environmental effects. 40 C.F.R. § 1508.25(a)(1). Where an agency has multiple proposals before it, it has a duty to coordinate its reviews to establish the real scope of the proposal under review. 40 C.F.R. § 1508.23 (“A proposal may exist in fact as well as by agency declaration that one exists.”). Doing otherwise violates the serves to segment the NEPA analysis of the federal action. 40 C.F.R. §§ 1501.6, 1508.5.

42. The NFMA requires that all site-specific actions authorized by the USFS be consistent with Forest Plan standards and guidelines. 16 U.S.C. § 1604(i). These site-specific projects must be analyzed by the Forest Service and the analysis must show that each project is consistent with the plan.
43. A district court's review of the agency's final agency action is governed by 5 U.S.C. § 706 of the federal Administrative Procedure Act ("APA"). Section 706(2)(A) of the APA provides that "[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This plain language "confirms that ordinary practice is to vacate unlawful agency action." United Steel Union v. MSHA, 925 F.3d 1279, 1287 (D.C. Cir. 2019) quoted by Standing Rock Sioux Tribe v. United States Army Corps of Eng'rs, 985 F.3d 1032, 1050 (D.C. Cir. 2021)(upholding vacatur and distinguishing vacatur from injunctive relief for already-built pipeline).
44. Agency action is "arbitrary and capricious" under the APA if the agency in question: [1] relied on factors which Congress had not intended it to consider, [2] entirely failed to consider an important aspect of the problem, [3] offered an explanation for its decision that runs counter to the evidence before the agency, or [4] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); accord Colorado Env'tl. Coalition v. Dombeck, 185 F.3d 1162, 1167 (10th Cir. 1999).
45. An agency action may be upheld under the APA only where the agency complied with prescribed procedures, and ultimately, whether it examined relevant data within the

record and “articulated a satisfactory explanation for its decision, including a rational connection between the facts found and the decision made.” Colorado Wild, Heartwood v. United States Forest Serv., 435 F.3d 1204, 1213 (10th Cir. 2006); accord Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1574-75 (10th Cir. 1994).

FACTUAL BACKGROUND

46. On April 26, 2019, a Feasibility Analysis for the Valle Seco 2019 Land Exchange was approved by the Forest Service’s Rocky Mountain Regional Office. The Forest Service and the non-Federal Party signed the Agreement to Initiate (ATI) on May 17, 2019, formally moving forward with the process to begin analysis of a value-for-value exchange.
47. The Forest Service approvals in the Feasibility Analysis are internal and preliminary, and were not subjected to NEPA analysis.
48. The Forest Service prepared a feasibility analysis of the proposed exchange in May 2019. The feasibility analysis was not informed by NEPA procedures.
49. The Valle Seco 2019 Land Exchange is a proposed land exchange between the USDA Forest Service (the Federal Party) and a group of individuals, collectively referred to as the “non-Federal Party.” The non-Federal Party consists of Bootjack Ranch, LLC; David C. Lindner Trust; David C. Lindner Dynasty Trust; David K. Skidmore; and Cynthia A. Sites. The San Juan National Forest is the administrative unit.
50. On May 17, 2019, the Forest Service signed an ATI with the non-Federal Party (defined above) to pursue the Valle Seco 2019 Land Exchange.
51. The non-Federal Party of the land exchange hired Western Land Group to help facilitate and plan the land Valle Seco 2019 Land Exchange. Western Land Group

regularly serves as a third-party, non-agency proponent of private landowners' interests in controversial land exchange proposals. See Pagosans for Pub. Lands v. United States Forest Serv., 2007 U.S. Dist. LEXIS 96814, at *7 (D. Colo. Aug. 22, 2007); United States v. Renzi, 651 F.3d 1012, 1017 (9th Cir. 2011); Rocky Mt. Wild v. Dallas, 2017 U.S. Dist. LEXIS 231942, at *9 (D. Colo. Sep. 14, 2017).

52. To incentivize the federal agency to agree to pursue the land exchange, the non-federal proponents threatened to degrade, or destroy the value of the 880-acre Valle Seco property if the USFS did not agree to pursue a land exchange. As described in the Final Environmental Assessment, the non-federal proponents outlined efforts to fence the entire 880-acre property with a high, wildlife-proof fence, turn the property into a domestic elk farm, propose to run powerlines across national forest lands to access the property, apply for year-round motorized access through valuable elk and deer habitat, drill water wells, construct a private hunting lodge, manager's cabin, equipment building, and otherwise degrade the high ecological value of the land in order to provoke acquiescence to the exchange.
53. Acquisition to protect the National Forest from degradation of these 880 acres is available via other means than a land exchange.

Scoping

54. On November 13, 2019, the San Juan National Forest issued a scoping notice for the proposed Valle Seco 2019 Land Exchange. The notice stated that the exchange would involve the Forest Service's acquisition of two parcels containing approximately 900 acres of land in proximity to Pagosa Springs, Colorado, in exchange for the transfer of eleven parcels totaling approximately 472 acres, which would be conveyed out of

Federal ownership. That notice stated that the USFS had retained the Western Land Group to facilitate the exchange and serve as a point of contact with the Forest Service.

55. CWPL submitted a scoping letter dated December 12, 2019.
56. SJCA submitted a scoping letter dated December 13, 2019
57. Formal public scoping period ended on December 13, 2019.
58. The scoping period included notification of a connected action consisting of a proposed modification to Colorado Roadless Area (CRA) boundaries for the Winter Hill/Serviceberry Mountain, South San Juan Adjacent, and Turkey Creek CRAs, NP 2434. A separate comment period of 90 days was identified for this action.

Draft Environmental Assessment

59. On September 3, 2020, the Forest Service published its Draft Environmental Assessment (Draft EA) for the Valle Seco 2019 Land Exchange. The Draft EA considered four alternative actions: (1) No Action; (2) exchange of ten parcels totaling 452 acres for one private inholding totaling 880 acres; (3) an alternative similar to alternative number two with certain boundary modifications that would alter Winter Hills/Serviceberry Mountain Colorado Roadless Area (CRA) and the designation of NFSR 653 from an ML2 road (seasonally open to all vehicles) to an ML1 road; and (4) similar to alternative three but less acreage would be added to the Winter Hills/Serviceberry Mountain CRA and National Forest Service Road 653 would be entirely decommissioned. The Draft EA acknowledged that two parcels, Federal Parcels 1 and 2, occur within designated CRA and that a modification of CRA boundaries would be required to remove these two parcels from their respective

CRAs. Nevertheless, the Draft EA concluded that the proposal complied with the Colorado Roadless Rule and the Forest Plan.

60. On September 5, 2020, a 30-day public comment period was initiated following the issuance of the Draft EA.
61. CWPL submitted a comment letter on the Draft EA on October 3, 2020.
62. SJCA submitted a comment letter on Draft EA on October 5, 2020.

Final Environmental Assessment and Draft Decision Notice

63. On September 24, 2021, the Forest Service published its Final Environmental Assessment (Final EA) and proposed to approve the exchange of approximately 380 acres of National Forest System lands in nine parcels for approximately 880 acres of privately owned, non-Federal land within the boundaries of the San Juan National Forest. Instead of preparing a more extensive Environmental Impact Statement (EIS), the agency proposed approving the exchange through a Decision Notice and Finding of No Significant Impact (DN/FONSI).
64. The land exchange involves significant impacts that require preparation of an EIS to inform the Forest Service decisionmaking. An EIS was not prepared.

Colorado Roadless Area Boundary Modifications

65. On November 14, 2019, in a separate process, the Forest Service provided public notification of the proposed boundary modification to the Winter Hills/Serviceberry Mountain, Turkey Creek, and South San Juan Adjacent CRA boundaries, initiating a 90-day public comment period for the boundary modification.
66. Based on almost 350 comments received, including from Plaintiffs, most expressing opposition to the proposal, the Forest Service developed alternatives including new

- proposed boundary modifications to the Turkey Creek, South San Juan Adjacent, and Winter Hills/Serviceberry Mountain CRA boundaries.
67. The Forest Service initiated a second 90-day public comment period for the new CRA modifications on May 1, 2021 and received 115 public comments, including from Plaintiffs.
68. On February 23, 2022, Forest Service Chief Randy Moore signed the Decision Memorandum for the CRA boundary modification associated with the Valle Seco 2019 Land Exchange, removing 175.2 acres from the South San Juan Adjacent CRA (Parcel 1) and 0.66 acres from the Turkey Creek CRA (Parcel 2) and to expand the Winter Hills/Serviceberry Mountain CRA by 4,623 acres. The total acreage resulted in 581 fewer acres added to the Winter Hills/Serviceberry Mountain CRA than what was analyzed in Alternative 3 in the EA.

Administrative Review and Objection Period

69. The Forest Service provided public notice of the objection period on July 15, 2021.
70. On September 24, 2021, the Forest Service provided notice of the public objection period. The Forest Service extended the objection period by 45 days, and CWPL submitted its objections on November 2, 2021. SJCA submitted an objection jointly with the Center for Biological Diversity, Defendants of Wildlife, and the Great Old Broads for Wilderness on November 8, 2021.
71. On December 3, 2021, CWPL submitted a letter to the Forest Service criticizing the Forest Service's refusal to release appraisals and related documents for the Valle Seco 2019 Land Exchange necessary for an understanding of the USFS's proposed decision and its basis prior to the release of the signed Draft DN and requesting an

- additional 45 days to review the appraisals in preparation for the Objection Resolution meeting.
72. On December 9, 2021, the Forest Service, through Joshua Sidon, Deputy Director for Strategic Planning at the USFS Regional Office in Denver, denied CWPL's request to extend the date for the Objection Resolution Meeting necessary to provide CWPL, SJCA, and other objectors with sufficient time to review appraisals and related records.
73. In its response, the agency Forest Service also noted that it would not address CWPL's request that it be allowed to review the appraisals and related documents for the Valle Seco 2019 Land Exchange prior to the Objection hearing, stating "[g]iven the current litigation associated with FOIA request for the appraisals, the Forest Service will not be addressing this specific topic that is under litigation during the objection resolution meeting."
74. The Forest Service held an objection resolution meeting on December 14, 2021, with SJCA and CWPL participating. No resolution was reached with the objectors.

Agency Withholding of Appraisals and Related Documents

75. CWPL submitted a FOIA request to the USFS on September 15, 2020, seeking Valle Seco 2019 Land Exchange appraisals and related records. This request coincided with the public comment period for the Draft EA. SJCA also submitted a request for the release of these records on July 6, 2021.
76. Despite repeated requests for responsive agency records that formed a primary basis for the USFS NEPA and FLPMA review of the Valle Seco 2019 Land Exchange, the USFS withheld appraisals, the TARP, and related records for over a year. This

- withholding directly and significantly impaired CWPL's and SJCA's ability to provide substantive NEPA comments on the proposed land exchange and effectively participate in the public processes for the agency's consideration of the proposal.
77. After CWPL again requested the records in conjunction with the Objection Comment period when the agency released its Final EA and Draft Decision Notice.
 78. The agency's repeated failure to make public unredacted copies of the appraisals and related documents forced CWPL to file a complaint for judicial review under FOIA in the District Court of the District of Columbia on October 21, 2021. The complaint alleged that, without such records, the public could not evaluate the equal value requirement of the Public Interest Determination presented in the draft Decision Notice.
 79. The records were not released before the Objection Hearing on December 14, 2021 completed the administrative NEPA process.
 80. The FOIA complaint addressed the inadequate and limited search and unjustifiable withholding of appraisal information that was prepared for the use of Western Lands Group and other private persons who were promoting the land exchange. *CWPL v. Forest Service*, 21-cv-02802, ECF 1 (U.S. District of Columbia). The Forest Service released unredacted copies of the responsive records to agents of Western Lands Group and other private persons who were promoting the land exchange. The agency continued to deny the public, including CWPL and SJCA, access to the same records during the NEPA process. The agency released the Valle Seco 2019 Land Exchange Draft Environmental Assessment in September 2020. The Appraisals, TARP and related records are dated between August 13 and October 26, 2020. Yet, it was only

- after numerous requests, FOIA submissions, an appeal, and a legal complaint, that CWPL received a redacted copy of Valle Seco Appraisal and TARP on December 22, 2021, barely a week after the Objection Resolution Hearing.
81. Only after CWPL and others demonstrated to the USFS that it had, by its own admission, released copies of the appraisal and related records to non-Federal individuals (*e.g.*, the memorandum accompanying the TARP affirms that it was shared with Western Lands Group representatives as early as October 26, 2020), did the USFS release additional versions of the appraisal and TARP in January and February, 2022, with fewer redactions.
 82. The Forest Service posted a version of the appraisal and TARP on the Valle Seco 2019 Land Exchange project website on January 6, 2022.
 83. CWPL and SJCA submitted a request for an additional comment period to review the new information on January 5, 2022. The Objection Reviewing Officer denied this request.
 84. Notwithstanding that the period of objection had closed, CWPL and SJCA submitted comments on the appraisal reports by letter to the Forest Service on January 19, 2022, demonstrating the ongoing errors in the appraisal approach, methodologies, and conclusions discussed *infra*.
 85. On March 9, 2022, the USFS informed CWPL that it would engage in a second round of appraisals for the proposed Valle Seco 2019 Land Exchange. The USFS did not publish formal notice of its intent to engage in a new appraisal or that it was reconsidering appraisals it finalized in October 2020. The USFS did not accept any

- public comment or conduct any NEPA procedure to analyze the new information in the appraisals.
86. A new appraisal was completed in April 2022. On June 3, 2022, CWPL received an email from the USFS notifying CWPL that the new appraisal for the Valle Seco Land 2019 Exchange was complete. On June 8, 2022, CWPL sent an informal written request for access to the appraisal and related records. The USFS responded that a new FOIA request would be required.
87. On June 10, 2022, CWPL submitted a FOIA request for the appraisal and related records and sought expedited processing, citing the impending decision on the land exchange. The USFS denied CWPL's request for expedited processing.
88. On July 14, 2022, two weeks after the USFS announced its final decision, the agency provided the appraisal and related records in redacted form, withholding information under FOIA Exemptions 4, 5, and 6.
89. Emails produced by the USFS show that private parties, specifically individuals at Western Lands Group, were again involved with the second appraisal process, while CWPL and SJCA were denied the opportunity to be involved. Such records show that this involvement began as early as March 2022, when the USFS engaged Western Lands Group and allowed that private party, but not the public, to provide input on the appraisal update Statement of Work and "Additional Information (Parts 1-4)," which inform the results of the appraisal.
90. The second appraisal did not include Federal Parcel 11 because it was dropped from the land exchange. The second appraisal stated that the non-Federal land and interests are valued at \$3,080,000. The Federal land (Parcels 1-9) and interests are valued at

\$3,050,000. The non-Federal property is valued at \$30,000 more than the Federal property, so the United States will provide a \$30,000 cash equalization payment to the non-Federal party.

91. Upon information and belief, the Forest Service, as of the date of the publication of the DN/FONSI, had not published the April 2022 Appraisal and TARP on the Valle Seco 2019 Land Exchange project website.

Final Decision Notice

92. On June 29, 2022, the Forest Service released its Final Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Valle Seco 2019 Land Exchange. The DN/FONSI implemented Alternative 3 Modified, authorizing the exchange of nine Federal parcels on the San Juan National Forest totaling approximately 379 acres for one non-Federal parcel totaling 880 acres. The DN/FONSI solidifies the loss of approximately 176 acres of designated CRA.
93. As described in the DN/FONSI, the Valle Seco 2019 Land Exchange as approved includes the following parcels described in Tables 1 and 2:

Table 1: Non-Federal Parcel Proposed to be acquired by the United States

Parcel No.	Acreage	Location	Owner/Proponent
A*	880	Valle Seco area	Bootjack Ranch LLC
Total	880		

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Table 2: Federal Parcels proposed to be conveyed to non-Federal Parties

Parcel No.	Acreage	Location	Proponent
1*	174.238	San Juan River area	Bootjack Ranch, LLC
2*	0.66	San Juan River area	Bootjack Ranch, LLC
3	16.0	San Juan River area	Bootjack Ranch, LLC
4	77.739	Blanco Basin area	David K. Skidmore and Cynthia A. Sites
5	32.963	Blanco Basin area	David K. Skidmore and Cynthia A. Sites
6	19.597	Blanco Basin area	David K. Skidmore and Cynthia A. Sites
7	54.196	Blanco Basin area	David C. Lindner Trust and David C. Lindner Dynasty Trust
8	3.5	Blanco Basin area	David C. Lindner Trust and David C. Lindner Dynasty Trust
9	0.046	Blanco Basin area	David C. Lindner Trust and David C. Lindner Dynasty Trust
Total	378.939		

**parcels affecting the Colorado Roadless Area boundary*

94. The DN/FONSI failed to rectify the legal violations of NEPA, NFMA, FLPMA, and the APA identified in the public comment periods and in the formal Objections submitted by CWPL and SJCA.

The Forest Service NEPA Process Precluded Meaningful Public Participation

95. The USFS failed to provide an informed and lawful public process for its consideration of the land exchange. The agency failed to provide meaningful public access to the appraisals that formed the basis of the Valle Seco 2019 Land Exchange. The appraisals are central to the equal value determination. The appraisals bear on the public interest determination required by FLPMA. The appraisals provide essential information for the NEPA disclosures and NEPA evaluation of the exchange proposal. The public did not have access to these NEPA-critical documents during the NEPA process and thus the public could not make an informed, substantive assessment of the equal value requirement or public interest determination.

96. The appraisals effectively determined the outcome of the land exchange prior to the agency's release of the Draft EA for public comment. The valuations contained in the appraisals discuss specific values of the public and private lands at issue in the land exchange and constitute indispensable information for the public to review, assess, and provide input to the agency on the merits and impacts of the proposed exchange.
97. The Forest Service Manual permits release of appraisals once they are "completed, signed, and reviewed by the regional appraiser." FSM 5400 Chapter 5410.74(c). The appraisals met that criteria shortly after the close of the Draft EA comment period. It is unlawful to withhold the appraisals pending Forest Service review. The appraisals are agency records subject to FOIA disclosure as soon as they are created or obtained by the USFS. The agency's withholding of the appraisal and the Technical Appraisal Review Report (TARP) precluded meaningful involvement by the public.
98. The USFS has an unlawful policy of only sharing the valuation information with persons advocating for the land exchange. The USFS has an unlawful policy of denying Plaintiffs and similarly situated persons access to valuation information. . Plaintiffs have been denied access to appraisals for federal land exchanges on multiple occasions.
99. The USFS has a policy that prohibits agency personnel in the Regional, Forest, and District offices from maintaining copies of the appraisal information in their files. Upon information and belief, the purpose of this policy is, at least in part, to avoid FOIA production to Plaintiffs and similarly situated persons. This policy functions to deny Plaintiffs' access to appraisal information while allowing project proponents, including Western Land Group, to access appraisal information.

100. USFS records obtained by CWPL during FOIA litigation for appraisals and related records, confirmed that the USFS has a policy of withholding appraisals and related records until “approved in their final form.” This policy was asserted by the USFS in its administrative appeal responses related to that case and in numerous agency records that stated the policy as “accepted for agency use.” Nothing in the text of FOIA supports an interpretation of the agency policy documents (Manual and Handbook) that would allow withholding of appraisal-related information for land exchanges. The selective withholding of appraisal information involving a land exchange proposal is particularly egregious when the valuation information is released, as it was for the Valle Seco 2019 Land Exchange, to the landowner and its agents at the earliest stages of the land exchange when the Forest Service makes its initial determination on whether the parcels are of equal value. *See e.g.*, 36 C.F.R. § 254. The selective withholding of appraisal information prevents the public from meaningful involvement in the NEPA process for exchanges. The withholding biases the NEPA process in favor of the land exchange proposal by shielding important information from public scrutiny.
101. The USFS did not provide any general public forums during the NEPA process, despite the broad public questions and concerns regarding the proposed land exchange and despite the ongoing review of whether the proposal could meet the applicable legal requirements or as a matter of policy should go forward or not. The agency publicized a single opinion editorial in the Durango Herald unabashedly expressing the agency’s predetermined stance in favor of the exchange.

102. The USFS did not sufficiently resolve substantive public comments submitted on the land exchange proposal. Despite the legal requirement to address all comments received during the public review process, the agency provided very few substantive responses, including the agency's failure to address the explicit request that it produce an Environmental Impact Statement instead of a truncated Environmental Assessment, based on the significance and complexity of the proposed action. The agency failed to acknowledge that the majority of public comments received were opposed to the land exchange nor properly account for the impacts associated with the loss of Colorado Roadless Area acreage and suitable Wild and Scenic River corridors.

The Forest Service Unlawfully Segmented its Analysis

103. The USFS unlawfully bifurcated and obfuscated the public review and its analysis of the impacts associated with the proposal by regarding the agency's consideration of the Colorado Roadless Areas Boundary Modification as a "connected" but "separate" action. Parallel but separate processes contravened the NEPA requirement that all cumulative impacts of past, present and reasonably foreseeable actions be reviewed in a single NEPA document. This single NEPA process requirement for the proposed agency action was unmet as a result of the agency's consideration of the Colorado Roadless Area Boundary Modification as a separate NEPA process but without providing any additional information related to such process beyond the notice in the Draft Environmental Assessment. The proposed agency action that required the modification is the land exchange. Exacerbating this error, the agency did not issue responses to the 90-day comment period for the arbitrarily separate Colorado

Roadless Area Boundary Modification, but yet some of its responses to comments were included for the separate NEPA process Valle Seco 2019 Land Exchange Final EA.

104. The unlawfully segmented NEPA process is further exemplified by the agency's premature issuance of a Draft Decision Notice and Finding of No Significant Impact (FONSI) for the land exchange prior to the agency's issuance of a decision on the Colorado Roadless Areas Boundary Modification. The Draft Decision Notice cited future benefits to habitat, vegetation and wildlife resources that will accrue from acreage being added to the Colorado Roadless Areas.

The Forest Service Failed to Review Cumulative Impacts

105. The agency also unlawfully limited its discussion of cumulative impacts to uses on individual parcels without considering impacts in the context of other past or ongoing management actions and projects, which generate similar losses within the forest and failed to consider the totality of management activities. At a minimum, it should have considered past and present actions within the San Juan NF, which lend themselves to quantitative data making broader robust analyses achievable. The agency failed to consider development of parcels transferring to private ownership as a "reasonably foreseeable action." The reasonably foreseeable future uses of the former National Forest System lands are critical to establishing the appraised valuations. Future use analysis is required to consider reasonable restrictions the Forest Service has power to impose when transferring National Forest System lands to private ownership. In 1986, when creating the controversial inholding involving the Village at Wolf Creek, the Forest Service adopted an easement ensuring, among other things, that the use of

the new parcel would receive Forest Service review and approval and remain compatible with the National Forest.

106. The agency's cumulative impacts analysis failed to consider the impact of its actions forest-wide, especially with respect to six sensitive plant species that occur within the proposed land exchange.

The Forest Service Was Required to Prepare an EIS

107. The USFS violated NEPA by failing to prepare an Environmental Impact Statement (EIS) based on the significance, complexity, and controversy regarding the impacts of the proposed action.
108. The agency failed to acknowledge that the majority of public comments received were opposed to the land exchange and especially the loss of CRAs and suitable Wild and Scenic River corridors. The agency also failed to properly account for the fact that the Valle Seco 2019 Land Exchange will result in a net loss of natural wetlands. The federal parcels contain natural palustrine emergent (PEM) wetlands, while wetlands on the non-federal parcels are palustrine scrub-shrub (PSS) wetlands, many of which are supported by livestock watering. The agency relies on Clean Water Act Section 404 permits issued by another federal agency (Army Corps of Engineers) and local land use regulations in lieu of conservation easements to protect post-exchange wetlands on federal parcels 1, 3, and 5, but such protections do not apply if a landowner does not seek a permit therefore such protections are merely speculative.

The Forest Service Failed to Meet FLPMA's Public Interest Test

109. The agency failed to comply with the FLPMA public interest requirement for the Valle Seco 2019 Land Exchange. The exchange is not in the public interest as it

- violates USFS land exchange regulations, including the Forest Plan, because it entails the substantial loss of roadless areas, suitable wild and scenic river corridors, and fragmentation of existing intact habitats, including those specifically called out for retention and protection in the Forest Plan. Discretion afforded to the USFS when considering land exchanges does not include discretion to ignore Forest Plan directives. Parcels proposed for disposal include significant values and uses that are of public interest to retain, including roadless characteristics in Parcel 1. The Forest Service has the power to impose conditions on the post-exchange use of the newly privatized parcel. The Forest Service has used easements that address public interest and minimize post-exchange impacts to the National Forest.
110. The Valle Seco 2019 Land Exchange will result in the loss of approximately 175.86 acres of designated Colorado Roadless Area (CRA). The public expects that the CRAs will be protected as roadless areas and wilderness designations were not recommended in the Forest Plan for certain parcels in part because management under the Colorado Roadless Rule (CRR) would protect roadless characteristics. The proposed land exchange undermines this commitment in the Forest Plan. The land exchange contravenes the directive in the CRR to protect roadless areas. See 77 Fed. Reg. 39577 (July 3, 2012). The agency asserts that proposals to modify the boundary of designated CRAs are subject only to approval of the Chief of the USFS and not subject to any objection process.
111. The agency failed to consider conditions that diminish the stated value of Parcel A, including a mischaracterization of the value of wetlands, that the acquisition of Parcel A with a split mineral estate and livestock grazing may adversely impact wildlife

populations, the fact that opening Parcel A to public use may impact wildlife and the value of the parcel, and the failure of the appraisal to consider reasonably foreseeable development in valuation of the parcel.

112. The agency failed to acknowledge that the majority of public comments received were opposed to the land exchange and especially the loss of CRAs and suitable Wild and Scenic River corridors.
113. The agency did not require that the federal lands conveyed to private ownership as part of the exchange be protected by conservation easements in spite of discretion to do so in 36 CFR § 254.3(h). The Federal parcels included in the proposed exchange contain unique natural and cultural resources, including wetlands, riparian and floodplain acreage, habitat for sensitive species, and cultural sites. The agency failed to incorporate adequate protections for these valuable resources and failed to adequately respond to comments raising such concerns including assuming, without foundation, that uses on such parcels would not cause changes to the scenic integrity objective or scenic character of the parcels.
114. Within Parcel 1, the Conservation Easement applies only to six acres of the 175.48-acre property to protect the portion of that parcel within the existing WSR corridor. The rest of the acreage is vulnerable to as much development as zoning permits, in spite of its roadless qualities, a significant historical site, old growth conifer, habitat for Forest sensitive species and stream frontage, none of which will be augmented or mitigated by the acquisition of Parcel A. Parcel 3 contains valuable public river access located adjacent to one of only a few access points from US 160 to the San Juan River between Pagosa Springs and Wolf Creek Pass. The configuration

- providing for public use of this area is problematic, but the agency failed to consider an agreement between the Agency and non-Federal Proponent, Bootjack Ranch, that the area around the San Juan River will remain in Forest ownership with public access. The agency reconfigured Parcel 5 to remove land containing significant cultural resources, but the remainder of that parcel contains other cultural resources that are not protected, in spite of cultural resources identified on the parcel, and wetlands and habitat for Yellow Ladies Slipper Orchid, a sensitive plant species.
115. The Land Exchange permits over-snow motorized use in contradiction of the project's stated purpose, which is to secure important winter range for elk and mule deer, as well as migratory corridors to maintain wildlife habitat and connectivity for migration. Of great concern is the provision for over-snow motorized vehicles on Parcel A, including the USFS's failure to disclose that Parcel A will be open to snowmobiling, failure to evaluate the impact on elk and deer of opening Parcel A to snowmobiling, and failing to take a hard look at such impacts as required by NEPA.
116. The USFS's premise for approving the exchange, that retention of the lands to be conveyed to private parties is no longer in the public interest, is unsupported by the record and arbitrary and capricious, as that assumption is contradicted by the many values and uses of these lands. Retention of these lands is indeed in the public interest, regardless of any public interest in acquiring the 880 acre parcel
117. The agency approved modification to the Winter Hills/Serviceberry Mountain CRA to incorporate land west of Highway 84, adjacent to Parcel A, as an extension of the existing CRA. The USFS's redefinition of Roadless Area, that such areas are not required to be a contiguous block of land but instead may be a collection of non-

contiguous areas with similar characteristics, is arbitrary and capricious, contrary to more than 80 years of applicable regulation and policy, including but not limited to USFS regulations, including 36 CFR 252.21 (1939), Roadless Area Review and Evaluations, the National Roadless Area Conservation Rule (2001), and the Colorado Roadless Rule (2012). Further, such a modification is also a significant action requiring an Environmental Impact Statement and an amendment of the Colorado Roadless Rule.

118. Additionally, the Land Exchange will also foreclose application of several federal statutes on the lands to be transferred to the non-Federal parties, including, but not limited to the following laws:

- Section 7 of the Endangered Species Act (consultation).
- The National Historic Preservation Act.
- Trust and consultation duties owed to Indian Tribes.

119. The Valle Seco 2019 Land Exchange is contrary to Forest Plan direction and guidance. Specifically, disposal of Parcel 1 from the South San Juan Adjacent CRA fails to conform to Forest Plan Direction because this CRA is managed under Management Area 1, Natural Processes Dominate, which is applied to areas with the least developed, most pristine characteristics. The Forest Plan declined to recommend that Parcel 1 for wilderness designation due in part to its management under the CRR, which would protect its “roadless characteristics.” Disposal of Parcel 1 under the Land Exchange would remove all protections provided by the Forest Plan and CRR. Therefore, disposal of the South San Juan Adjacent CRA is not in the public interest, does not conform to

the Forest Plan, and would not maintain the CRA's undeveloped natural character in violation of the Forest Plan and NFMA.

The Forest Service Did Not Comply with FLPMA's Equal Value Requirement

120. The agency failed to comply with FLPMA's equal value requirements by relying on appraisal methods and values that are not supported by the record and are arbitrary and capricious.
121. The agency's appraisals utilized a faulty process diminishing the reliability and accuracy of the equal value determination. Parcels 3 and 7 should have been appraised individually due to their proximity to paved roads, utility services, and water sources, accessibility without crossing private property, and areas conducive to construction and development.
122. The appraisal for Parcel A unreasonably inflated the development potential of the parcel, but rather incorporates the fact that the parcel was purchased as "trade bait" for the purpose of encouraging a land exchange and should reflect its location in an area of the forest for which management of wildlife habitat is a priority. Other aspects of that parcel were required to have been factored into its valuation, including its split mineral estate and the USFS's lack of interest in purchasing the Bramwell Reservoir No. 2 Water Storage Right associated with that parcel, which would impact potential future development and its value overall.
123. The appraisal also contained faulty instructions, designed to create a set of conditions with a predetermined outcome, namely the discounting of the value of federal land and the inflation of the value of non-Federal Parcel A. Such instructions included an adjustment for the size of the parcels, valuation of Parcel 1 as if it were already

subject to a conservation easement, failure to account for motorized access if the parcel did not have any access prior to the exchange, parcels where development would be feasible, and assumptions that the lands would not benefit from post-conveyance access. The appraisal instructions assumed that non-Federal Parcel A, a privately owned parcel with motorized access, would be assumed to be no longer surrounded by National Forest, which allows the parcel to be treated like any other private property in terms of development potential.

124. The Statement of Work for the appraisals also improperly limited consideration of the highest and best use, which would typically be a combination of grazing, recreation, and seasonal homesites, but in this case includes an assignment-specific instruction that “Sale to the United States or other public entity is not acceptable...use.”

FIRST CAUSE OF ACTION
Violation of NEPA and APA

125. The allegations in all other paragraphs are reasserted as if fully stated herein.
126. The USFS’s actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq., and implementing regulations.

127. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.
128. The USFS failed to follow prescribed NEPA procedures in reviewing and approving the Valle Seco 2019 Land Exchange and CRA boundary modifications, including but not limited to, failing to provide necessary information, including the relevant appraisals, to the public and other expert agencies and commenters to enable meaningful participation in the NEPA process; failing to provide for public meetings; exhibiting unlawful bias in favor of the land exchange; and failing to reasonably resolve substantive public comments.

SECOND CAUSE OF ACTION
Violation of NEPA and APA

129. The allegations in all other paragraphs are reasserted as if fully stated herein.
130. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., and implementing regulations.

131. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.
132. The USFS utilized an unlawfully bifurcated and legally inadequate NEPA process in separating its review of the Valle Seco 2019 Land Exchange and the Colorado Roadless Area boundary modifications such that neither process was conducted in a lawful and transparent manner to give the public and other expert agencies an adequate opportunity to understand and participate in the USFS's review of the impacts of the two actions as required by NEPA.

THIRD CAUSE OF ACTION
Violation of NEPA and APA

133. The allegations in all other paragraphs are reasserted as if fully stated herein.
134. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., and implementing regulations.

135. The USFS’s actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.
136. The USFS failed to conduct the required “hard look” at impacts and effects of the Valle Seco 2019 Land Exchange and the CRA boundary modifications, including a failure to lawfully evaluate and disclose cumulative impacts, impacts stemming from the development of private lands, impacts to wildlife and plant species, impacts to wetlands, impacts to Colorado Roadless Areas and Wild and Scenic River corridors, among other impacts and effects.

FOURTH CAUSE OF ACTION
Violation of NEPA and APA

137. The allegations in all other paragraphs are reasserted as if fully stated herein.
138. The USFS’s actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq., and implementing regulations.

139. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.
140. The USFS failed to prepare an Environmental Impact Statement as required by NEPA, given the significance, complexity, and controversial impacts and effects of the Valle Seco 2019 Land Exchange, relying instead on an unsupported and unlawful Finding of No Significant Impact.

FIFTH CAUSE OF ACTION
Violation of FLPMA and APA

141. The allegations in all other paragraphs are reasserted as if fully stated herein.
142. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the Federal Land Policy Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.*, and implementing regulations.
143. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required

by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.

144. The USFS's determination that the Valle Seco 2019 Land Exchange was in the public interest was unlawful, unsupported by the record, contrary to evidence in the record, was arbitrary and capricious, and in violation of FLPMA and the APA.

SIXTH CAUSE OF ACTION
Violation of FLPMA and APA

145. The allegations in all other paragraphs are reasserted as if fully stated herein.
146. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange, including the DN/FONSI signed on June 29, 2022 by San Juan National Forest Acting Director David Neely, the Final EA prepared by the San Juan National Forest and finalized in September, 2021, the Response to Objections issued on January 20, 2022 by the USFS Rocky Mountain Regional Office, and the Decision Memorandum For the Chief regarding the Colorado Roadless Area, Valle Seco Boundary Line Modification, Final signed by USFS Chief Randy Moore on February 23, 2022 violate the Federal Land Policy Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.*, and implementing regulations.
147. The USFS's actions and omissions noted above in approving the Valle Seco 2019 Land Exchange and CRA boundary modifications are arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations, and therefore violate the APA, 5 U.S.C. §§ 701-706.
148. The USFS's determination of equal value for the Valle Seco 2019 Land Exchange was unlawful, arbitrary, capricious, and without support in the record based on

appraisals and valuations that failed to comply with lawful and acceptable valuation and appraisal standards, conducted in a way that undervalued the public land to be transferred to private parties and overvalued the private lands to be obtained by the USFS.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Enter a Declaratory Judgment that Defendants' actions were arbitrary, capricious, an abuse of discretion, or otherwise unlawful under the APA, FLPMA, NFMA, NEPA and their implementing regulations, and that the Valle Seco 2019 Land Exchange cannot proceed without such compliance.
- B. Vacate and set aside the Forest Service DN/FONSI approving the Valle Seco 2019 Land Exchange, the Decision Memorandum approving the Colorado Roadless Area boundary modifications, and any other agency actions and determinations authorizing the Valle Seco 2019 Land Exchange.
- C. Enjoin the Forest Service from taking any other action to proceed with the Valle Seco 2019 Land Exchange or transfer title to Forest Service land unless and until the Forest Service completes another appraisal, and proposes and approves an exchange that complies with the requirements of FLPMA, NFMA, NEPA, and the APA.
- D. Provide such preliminary injunctive relief as Plaintiffs may request to preserve the status quo pending litigation, to prevent the transfer of federal lands, and to preserve the public management and character of federal public lands.

- E. Award Plaintiffs their reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation under the Equal Access to Justice Act, 28 U.S.C. § 2412.
- F. Grant Plaintiffs such further and additional relief as the Court may deem just and equitable.

Respectfully submitted this 23rd day of September, 2022.

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