



**ADVOCATES** for the **West**  
P.O. Box 1612 | Boise, ID 83701

**VIA EMAIL AND FIRST CLASS-MAIL**

December 19, 2013

Chief Tim Tidwell, Chief  
Mary Wagner, Associate Chief  
U.S. Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0003

Re: U.S. Forest Service's Authorization of Wolf Control in the Frank  
Church-River of No Return Wilderness

Dear Chief Tidwell and Deputy Chief Wagner:

I am writing on behalf of my client, the Idaho Conservation League, concerning the U.S. Forest Service's recent approval and authorization of certain wolf control activities within the Frank Church-River of No Return Wilderness (Frank Church Wilderness). According to recent press accounts, the Forest Service has permitted the Idaho Department of Fish and Game, its employees, agents or assignees (IDFG) to use and occupy the National Forest Service lands within the Frank Church Wilderness to undertake predator control and/or animal damage control activities. See <http://www.idahostatesman.com/2013/12/17/2931287/fish-and-game-turns-to-hired-hunterpetition.html>. More specifically, it appears that the U.S. Forest Service has permitted IDFG to use the Forest Service's Cabin Creek cabin, as well as the Forest Service lands within the Frank Church Wilderness, to kill all wolves within the Golden Pack and Monument Pack, which currently occupy the Middle Fork/Big Creek area and the Cabin Creek area of the Frank Church Wilderness, respectively. The Forest Service's authorization of these actions is in direct contravention of the National Forest Management Act, 16 U.S.C. §§ 1600 *et seq.* (NFMA); the Wilderness Act, 16 U.S.C. §§ 1311 *et seq.* and the Frank Church-River of No Return Wilderness Management Plan (Wilderness Plan), the Forest Service's own regulations, policies, manuals, and handbooks; and the National Environmental Policy Act, 42 U.S.C §§ 4321 *et seq.*

I request you to immediately rescind, revoke and withdraw the Forest Service's approval of these actions, and order IDFG to immediately suspend all wolf control activities within the Frank Church Wilderness pending the Forest Service's compliance with federal environmental laws. Moreover, this correspondence provides formal notice that my clients intend to file suit if the Forest Service's refuses to immediately revoke its authorization of IDFG's wolf control activities.

In 1980, President Jimmy Carter signed the Central Idaho Wilderness Act, which created the 2.4 million-acre Frank Church-River of No Return Wilderness. *See* P.L. 96-312, 94 Stat. 948 (July 23, 1980). The Frank Church Wilderness was created expressly to protect this large block of “primitive and undeveloped land” and the “wilderness-dependent wildlife . . . which thrive within this undisturbed ecosystem.” *Id.* at § 2(a).

Section 5(a)(1) of the Central Idaho Wilderness Act mandated the Forest Service prepare a comprehensive management plan for the Frank Church Wilderness, and the Forest Service has adopted – and amended – a series of management plans. Most recently, in late 2003, the Forest Service adopted the current Frank Church-River of No Return Wilderness Management Plan, and in 2009 the Forest Service amended, corrected and otherwise modified the management plan. The current Management Plan requires that the “control of problem animals [within the Frank Church Wilderness] will be permitted only on a case-by-case basis in coordination with the Idaho Department of Fish and Game . . . . Management Plan at 2-28.

Moreover, Appendix I to the Management Plan specifically addresses “Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness.” *Id.* at Appx. I. According to these policies and guidelines, the Forest Service only permits wildlife damage control in the Frank Church Wilderness “to protect Federally listed threatened and endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock.” *Id.* at I-10. The Frank Church Management Plan further requires that “[w]ildlife damage control must be approved by the [Forest Service] on a case-by-case basis,” and all control efforts must “[d]irect control at individual animals causing the problem,” and “[u]se only the minimum amount of control necessary to solve the problem.” *Id.*

The Forest Service Manual reiterates many of these same limitations on animal damage management and predator control in designated Wilderness, of course. Forest Service Manual 2320, Wilderness Management, states,

Predacious mammals and birds play a critical role in maintaining the integrity of natural ecosystems. Consider the benefits of a predator species in the ecosystem before approving control actions. The Regional Forester may approve predator control programs on a case-by-case basis where control is necessary to protect federally listed threatened or endangered species, to protect public health and safety, or to prevent serious loss of domestic livestock. Focus control methods on offending individuals and under conditions that ensure minimum disturbance to the wilderness resource and visitors. . . .

The Forest Service is responsible for determining the need for control, the methods to be used, and approving all proposed predator damage control programs in wilderness.

FSM 2323.33c. *See also id.* at 2650.

As you know, NFMA requires that all resource management actions, including “resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands” must be consistent with the appropriate management plan. 16 U.S.C. § 1604(i); *see Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1068 (9<sup>th</sup> Cir. 1998). Similarly, “all site-specific decisions, including authorized uses of land, must be consistent with the applicable plan.” 36 C.F.R. 219.10. The Ninth Circuit has consistently enjoined actions inconsistent with governing management plans. *See, e.g., Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1376-77 (9<sup>th</sup> Cir. 1998); *Friends of Southeast’s Future*, 153 F.3d at 1068; *Oregon Natural Resources Council v. United States Forest Serv.*, 59 F. Supp.2d 1085, 1091-94 (W.D. Wash. 1999). Predator killing on national forests must similarly be consistent with management plans. *Southern Utah Alliance v. Thompson*, 811 F. Supp. 635, 639 (Utah 1993).

The Forest Service’s approval of the IDFG wolf control project runs contrary to the limitations of the Frank Church-River of No Return Wilderness Management Plan and the Forest Service Manual, and is arbitrary, capricious, and contrary to NFMA, the Wilderness Act and the Administrative Procedures Act. First, IDFG’s wolf control project is intended to assist elk populations (if not elk outfitters), and IDFG’s project is not designed to protect Federally listed threatened and endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock.” Management Plan, Appx. I at I-10. Moreover, eliminating two entire packs – ostensibly because the packs are adversely impacting elk populations – does not comply with the Wilderness Plan’s limitation to “[d]irect control at individual animals causing the problem,” and there is also no indication that eliminating two entire wolf packs amounts to the “minimum amount of control necessary to solve the problem,” even under the best circumstances. *Id.*

For many of these same reasons, IDFG’s wolf control plan runs afoul of the Forest Service Manual, especially since it appears that the Forest Service outsourced the evaluation of need and methods of wolf control to IDFG and its hired contractor. In designated Wilderness Areas, however, the “Forest Service is responsible for determining the need for control, the methods to be used.” FSM 2323.33c

The Forest Service also sidestepped and ignored its own regulations in approving the IDFG’s wolf control project, especially with no public oversight and review. The Forest Service’s regulations require that “[a]ll uses” of National Forest System lands are designated “special uses,” with some exceptions that do not apply here. 35 C.F.R. § 251.50(a). Prior to allowing a special use on National Forest lands – like animal damage control and/or predator control in designated Wilderness – the Forest Service must first issue a special use permit. *Id.* In limited circumstances, the Forest Service may waive the requirement to obtain a special use permit, only after reviewing the proposed use, however, and concluding that the use is adequately regulated by a State agency or other federal agency “in a manner that is adequate to protect National Forest System lands

and resources and to avoid conflict with National Forest System programs and operations, among others exceptions. *Id.* at 251.50(e)(2). *See also* 43 C.F.R. § 251.54 (requirements and procedures for obtaining a special use permit); *id.* at 254.54(e)(5)(i) (requiring that the Forest Service “shall reject” a proposal for a special use permit if the proposed use is inconsistent with management plan).

The Forest Service violated these regulatory requirements by permitting IDFG’s wolf control project without first preparing a special use permit. There is no question that animal damage control and/or predator management in designated Forest Service Wilderness is a “special use,” and the exception for “noncommercial recreational activities” does not apply. Moreover, the Forest Service is precluded from finding an exception applies for so-called adequately regulated state activities, especially because – as discussed in detail above – the IDFG’s project is contrary to the Frank Church-River of No Return Wilderness Management Plan and Forest Service Manual. Under these circumstances, the Forest Service was required to prepare a special use permit – and permit public involvement as necessary under the Forest Service’s own regulations – and its failure to do so is similarly arbitrary, capricious and contrary to law.

Finally, the Forest Service also violated the National Environmental Policy Act in refusing to examine the ecological impacts of allowing IDFG’s wolf control project within the Frank. In this case, the Forest Service failed to prepare an Environmental Assessment, Environmental Impact Statement, Categorical Exclusion or any other environmental review prior to permitting IDFG’s wolf control project, and thus, the Forest Service’s violation of NEPA could not be more stark.

In light of these facts and circumstances, the Idaho Conservation League requests the Forest Service revoke its approval of the IDFG wolf control project, and immediately order the IDFG to cease and desist with all wolf control actions in the Frank pending compliance with the Forest Service’s legal obligations.

Please feel free to contact me if you would like to discuss this matter further, and I may be reached at 208.724.2142. I look forward to your immediate response. Thank you.

Very truly yours,

/s/ Todd C. Tucci

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