

Bryan Hurlbutt (ISB #8501)  
Advocates for the West  
P.O. Box 1612  
208.342.7024 x206  
208.342.8286 (fax)  
bhurlbutt@advocateswest.org

Attorney for Appellant  
Idaho Conservation League

**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
BOARD OF LAND APPEALS**

_____ )	
Idaho Conservation League, Appellant )	IBLA Docket No. IBLA-2015-0175
vs. )	
Bureau of Land Management, )	<b>Appellant’s Statement of Standing &amp; Statement</b>
Respondent )	<b>of Reasons Re: Appeal of Owyhee Canyonlands</b>
_____ )	<b>Wilderness Management Plan</b>

**INTRODUCTION**

Appellant Idaho Conservation League (ICL) submits this Statement of Standing and Statement of Reasons under 43 C.F.R. § 4.412, in support of its Notice of Appeal challenging the U.S. Bureau of Land Management’s (“BLM”) Decision Record (“DR”), Finding of No Significant Impact (“FONSI”), and Environmental Assessment (“EA”) for the Owyhee Canyonlands Wilderness and Wild and Scenic Rivers Final Management Plan (DOI-BLM-ID-B000-2011-0001-EA) (the “Owyhee WMP” or “WMP”).<sup>1</sup>

As set forth below, ICL’s appeal is focused on a single error by BLM in approving the Owyhee WMP: BLM unlawfully reversed its position from the Draft WMP by allowing the commercial trapping of furbearing animals in the Owyhee Canyonlands Wilderness Areas in

<sup>1</sup> ICL’s Notice of Appeal was mailed on May 14, 2015, and received by BLM on May 18, 2015.

violation of the Wilderness Act, 16 U.S.C. 1131 *et seq.*, the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.* (“FLPMA”), and the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”).

As explained below, BLM’s Draft WMP correctly included a prohibition on commercial trapping in the Owyhee Canyonlands Wilderness Areas, consistent with Section 4(c) of the Wilderness Act. However, BLM removed the commercial trapping prohibition from the Final WMP—without any public notice or opportunity for comment—based on the demonstrably false assertion that the Idaho Department of Fish and Game (“IDFG”) issues licenses for only recreational, not commercial, trapping.

In truth, as demonstrated below, trappers licensed by IDFG are allowed to—and typically do—sell the pelts of animals they trap, which is a commercial activity. This fact is evident from IDFG’s own rules, application forms, and other materials readily available to BLM, had the agency bothered to check them. Moreover, IDFG’s annual trapping reports reveal that a substantial number of pelts from animals trapped in Idaho (including Owyhee County where the Owyhee Canyonlands Wilderness Areas are located) are sold by the trappers, again confirming that trapping in Idaho is a commercial enterprise.

Selling pelts from animals trapped in wilderness is a “commercial enterprise” prohibited under Section 4(c) of the Wilderness Act. Indeed, BLM’s own guidance on wilderness management explicitly prohibits the sale or barter of animals or their pelts taken from designated wilderness areas. Nevertheless, the Owyhee WMP allows such commercial trapping, in blatant violation of Wilderness Act Section 4(c), and must be reversed and remanded for BLM to reinstate the previously proposed language from the Draft MFP banning commercial trapping in the Owyhee Canyonlands Wilderness.

BLM's eleventh-hour decision to remove the commercial trapping ban from the Final Owyhee WMP also violates NEPA. As discussed below, BLM failed to provide advance notice and an opportunity for the public to comment on this substantial change to the Draft WMP. Furthermore, BLM failed to base its decision to remove the commercial trapping ban on accurate information, instead relying on patently erroneous information about IDFG's trapping licenses. As a result, BLM failed to engage in the reasoned and informed decision-making demanded by NEPA, again requiring reversal and remand for BLM to correct this glaring error in the WMP.

### **STATEMENT OF STANDING**

The IBLA appeal regulations provide that “[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management . . . shall have a right to appeal to the Board.” 43 C.F.R. § 4.410(a). Those regulations define “party to a case” to include “one who has . . . participated in the process leading to the decision under appeal . . . e.g., [] by commenting on an environmental document.” *Id.* § 4.410(b). A party to a case is adversely affected “when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” *Id.* § 4.410(d).

As discussed below and in the accompanying Declarations of Brad Smith (“Smith Decl.”) and Justin Hayes (“Hayes Decl.”), ICL has standing to pursue this appeal because: ICL submitted comments during the administrative process, *see* Smith Decl., Exhibit 1 (May 31, 2013 comment letter); the organization and ICL staff and supporters have long-standing and legally cognizable interests in the public lands and wildlife affected by the Owyhee WMP, *see* Hayes Decl.; and BLM’s adoption of the flawed Owyhee WMP provision allowing commercial trapping in the Owyhee Canyonlands Wilderness is substantially likely to cause injury to these interests. *Id.*

As detailed in the accompanying declarations, ICL is Idaho's leading conservation group and has worked since 1973 to protect Idaho's wild places, public lands, clean water and air, and wildlife. *See* Hayes Decl. ICL is an IRS 501(c)(3) non-profit organization based in Boise, Idaho, with over 25,000 supporters, and it has staff located in Boise, Ketchum, and Sandpoint, Idaho.

*Id.*

ICL is a member of the Owyhee Initiative and played a leading role in securing designation and protection of the Owyhee Canyonlands Wilderness Areas and Wild and Scenic Rivers in the 2009 Omnibus Public Lands Act (Public Law 111-11). Hayes Decl. As part of the Owyhee Initiative process, ICL staff devoted countless hours over many years in meetings with ranchers, local officials, other interested parties, and Idaho's Congressional delegation, working to hammer out the agreements based on which the Owyhee Canyonlands Wilderness Areas were designated and protected by Congress through the 2009 Omnibus Public Lands Act. *Id.* ICL remains keenly and directly interested in the ongoing protection of the wilderness values of the Owyhee Canyonlands Wilderness Areas, including preventing commercial activities from occurring in the Wilderness in violation of the Wilderness Act. *Id.*

The Owyhee Canyonlands and their designated wilderness areas are located less than a two hours drive from Boise—Idaho's largest metropolitan area—and are accessible from most of southern Idaho, even for a day's outing. Hayes Decl. Reflecting this proximity and the Owyhee Canyonlands' outstanding natural beauty, scenic views, recreational opportunities, and wildlife viewing, ICL staff and supporters have spent innumerable hours visiting this special and magnificent place. *See id.* ICL for many years has led hikes and other educational and recreational outings in the Owyhee region; and ICL staff and supporters have regularly visited the Owyhee Canyonlands Wilderness Areas since their designation in 2009 for many reasons

including hiking, wildlife viewing, recreation, and spiritual and aesthetic enjoyment of wilderness values. *See id.* ICL staff and supporters will continue to regularly visit the Owyhee Canyonlands Wilderness in the immediate and foreseeable future. *See id.*

ICL and its staff and supporters will be adversely affected by BLM's violation of the Wilderness Act in allowing commercial trapping in the Owyhee Canyonlands Wilderness. ICL and its staff and supporters enjoy viewing wildlife in the Wilderness, including species (such as bobcats, coyotes, foxes, beavers, mink, otters and others) that are trapped and sold by IDFG-licensed trappers. *See Hayes Decl. See also Smith Decl., Exhibit 9* (IDFG tables regarding the number of these and other animals commercially trapped in Owyhee County over the last ten years). ICL and its staff and supporters enjoy the aesthetic beauty and other benefits of the natural environment and healthy ecosystems, which depend on the presence of these same animals, particularly in a wilderness setting. *See Hayes Decl.* Allowing commercial trapping in the Owyhee Canyonlands Wilderness will result in animals being trapped, injured, killed, and/or removed from the Wilderness, which directly harms ICL's interests in viewing these wildlife and enjoying the natural ecology of the Wilderness Areas. *See id.*

ICL is also injured by BLM's decision to remove the commercial trapping ban from the Final WMP without providing notice and an opportunity to comment on this change. Because ICL and many of its supporters care deeply about the impacts of trapping, ICL has worked on and continues to work on trapping issues in Idaho, and ICL has developed knowledge and gathered substantial information about trapping. *See Hayes Decl.; Smith Decl.* In its comments on the Draft WMP, ICL expressed its support of the proposed ban on commercial trapping in the Owyhee Canyonlands Wilderness. *Smith Decl., Exhibit 1, p. 9.* Had ICL received notice that BLM was reconsidering the commercial trapping ban, ICL would have requested an opportunity

to provide comment. *See* Hayes Decl. Had BLM sought public comment on this issue, ICL would have submitted comments underscoring that IDFG's trapping regulations do not limit trapping only to recreational trapping, but allow commercial trapping as well. ICL would have also underscored that IDFG obtains substantial information from trappers concerning the number and prices of trapped pelts they sell, underscoring that a substantial amount of trapping in Idaho, and in the Owyhees, is commercial. *Id.*

Accordingly, for these reasons, and as further shown in the accompanying Hayes and Smith Declarations, ICL has standing to pursue this appeal. *See, e.g., Craig M. Weaver*, 141 IBLA 276, 281 (1997); *Kendall's Concerned Area Residents*, 129 IBLA 130, 136–37 (1994); *The Wilderness Society*, 110 IBLA 67, 70 (1989) (all acknowledging appellants' use of the public lands in establishing standing to appeal); *National Wildlife Federation*, 82 IBLA 303, 307–08 (1984) (organization may establish that it is adversely affected within the meaning of 43 C.F.R. § 4.410 by showing that one or more of its members uses the public land in question).

## **STATEMENT OF REASONS**

### **I. RELEVANT FACTS**

#### **A. The Owyhee Wilderness Management Plan**

The Omnibus Public Land Management Act (“OPLMA”) of March 30, 2009 (Public Law 111-11) designated six wilderness areas and sixteen wild and scenic river segments in Owyhee County, Idaho. *DR* at i. These designated wilderness areas are referred to collectively as the Owyhee Canyonlands Wilderness Areas. *WMP* at 1.

On April 10, 2015, BLM signed the Decision Record, Finding of No Significant Impact, and Environmental Assessment for the Owyhee Canyonlands Wilderness and Wild and Scenic Rivers Final Management Plan. *Id.* The Owyhee WMP establishes the management framework

for approximately 517,000 acres of public land. *Id.* About 457,000 acres are within the BLM Boise District, and about 60,000 acres are within the BLM Twin Falls District. *Id.*

Before adopting the Final WMP, BLM prepared the Draft WMP in February 2013 and held a public comment period. *See* Owyhee Canyonlands Wilderness and Wild and Scenic Rivers Draft Management Plan and Environmental Assessment (“Draft WMP”). The Draft WMP prohibited commercial trapping in the Owyhee Canyonlands Wilderness consistent with Section 4(c) of the Wilderness Act. *See* Draft WMP at 10, 53, 62. Specifically, the Draft WMP provided: “Pursuant to Section 4(c) of the Wilderness Act, commercial trapping is prohibited in wilderness areas. Commercial trapping is defined as trapping that involves the sale of furs, hides, or other animal body parts.” *Id.* at 53. During the public comment period, ICL submitted comments as a member of the Owyhee Initiative, including by commenting in support this prohibition on commercial trapping. Smith Decl., Exhibit 1 at 9.

BLM, however, removed the prohibition on commercial trapping from the Final WMP. DR at vii. BLM explained this change as follows:

Trapping is considered a valid activity in wilderness areas, pursuant to Section 4(d)(8) of the Wilderness Act. The Draft Management Plan, however, included a prohibition on commercial trapping in an effort to comply with the Wilderness Act’s general prohibition on commercial activities. We subsequently determined through consultation with the Idaho Department of Fish and Game that the State issues recreational, not commercial, trapping licenses, except for persons who are employed or contracted by Idaho Department of Fish and Game for the purpose of managing targeted wildlife species. Thus, as with hunting and fishing, the Final Management Plan allows trapping in wilderness areas subject to State and Federal regulations, as long as associated access is limited to non-motorized and non-mechanized means. If the State proposes a wildlife management program in wilderness using commercially licensed trappers, the proposal would be evaluated through the Minimum Requirements Analysis process.

DR at vii.

No notice or opportunity for public comment was provided on this revision. *See* Hayes Decl.

## B. IDFG's Trapping Program

Through rules adopted by the Idaho Fish and Game Commission (the "Commission"), IDFG administers a statewide trapping program. *See* Smith Decl., Exhibit 2 (Idaho Fish and Game Commission Rules IDAPA 13.01.16, *The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals*) (hereinafter "Trapping Rules"). Idaho's Trapping Rules establish methods of trapping and taking furbearing animals, predatory wildlife, and unprotected wildlife. *Id.*, Exhibit 2 (Trapping Rules) at 001.02.<sup>2</sup>

Idaho's Trapping Rules do not prohibit the sale of pelts. In fact, IDFG carefully documents the sale of furbearer pelts through its licensed trapping program. Youth residents, adult residents, and non-residents may purchase statewide trapping licenses from IDFG. *See* Smith Decl., Exhibit 3 (IDFG, *Application for Trapping License*). Licensed trappers must abide by trapping seasons and other regulations governing licensed trapping. Trapping seasons vary by region, and localized exceptions and closures exist. *See* Smith Decl., Exhibit 4 (IDFG, *Surveys and Inventories, FY 2014 Statewide Report, Furbearer (Study III, Job 1) (July 1, 2013 to June 30, 2014)*) (hereinafter "2014 Furbearer Report"), pp. 18–20.

All trappers are required to file annual reports with IDFG no later than July 31. Smith Decl., Exhibit 2 (Trapping Rules) at 800.01. Trappers must report—by county—the number of animals trapped, the number of pelts sold, and the total price received for such sales (among other information) for each of the following species: badger, beaver, bobcat, coyote, marten,

---

<sup>2</sup> The Rules define "furbearing animals" as the following species: Marten (*Martes Americana*), Fisher (*Martes pennanti*), Mink (*Mustela vison*), Otter (*Lontra canadensis*), Beaver (*Castor canadensis*), Muskrat (*Ondatra zibethicus*), Bobcat (*Felis rufus*), Lynx (*Felis lynx*), Red Fox (*Vulpes vulpes*), and Badger (*Taxidea taxus*). Smith Decl., Exhibit 2 (Trapping Rules), at 010.01. Predatory wildlife is defined as the following species: Coyote, Jackrabbit, Raccoon, Skunk, and Weasel. *Id.* at 010.02. Unprotected wildlife is defined as all animals other than those classified by the Commission as big game animals, upland game animals, game birds, game fish, crustacea, migratory birds, furbearing animals, threatened or endangered wildlife, protected nongame wildlife, or predatory wildlife. *Id.* at 010.03.

mink, muskrat, otter, raccoon, red fox, spotted skunk, striped skunk, weasel, and wolf. *See* Smith Decl., Exhibit 5 (IDFG Seasonal Reporting Form for Furtakers).

IDFG compiles data from these mandatory trapper reporting forms and publishes an annual statewide furbearer report, such as the 2014 report submitted herewith. *See* Smith Decl., Exhibit 4 (2014 Furbearer Report).

### **C. Information on Licensed Trappers and Pelts Sold in Idaho**

According to IDFG's own reports, the number of trapping licenses issued by IDFG annually has increased from 1,022 during the 2004-2005 trapping season to 2,394 during the 2013-2014 trapping season. *See* Smith Decl., Exhibit 4 (2014 Furbearer Report), p. 7, Table 1. This increase in trapping licenses may be due to higher pelt values over the same time period. For example, a March 2014 story reported by Jessica Murri of *Boise Public Radio* notes that fur prices hit record highs in China, Russia, and Korea. *See* Smith Decl., Exhibit 6. Similar stories were reported by Martin Kidston of the *Missoulian* in December 2013 and Maria Amante of *Michigan Live* in January 2012. *See* Smith Decl., Exhibits 7 & 8.

Idaho trappers reported trapping 52,129 animals during the 2013-2014 trapping season, and after accounting for unfiled trapper reports, IDFG estimates 62,806 animals may have been trapped. Smith Decl., Exhibit 4 (2014 Furbearer Report), p. 8, Table 2. The majority of these trapped animal pelts were sold. *See id.* For example, trappers reported trapping 34,719 muskrat and selling 74 percent of all trapped muskrat for a total of \$223,953.35. *Id.* Trappers also reported trapping 1,053 bobcat (and hunting an additional 64 bobcats while trapping) and selling 56 percent of these trapped and hunted bobcat for a total of more than \$216,000. *Id.*

#### **D. Trapping and Pelt Sales in Owyhee County**

IDFG's annual furbearer reports provide statewide trapping information by species. ICL used the Idaho Public Records Act to obtain county-level trapping data from IDFG for Owyhee County, where the Owyhee Canyonlands Wilderness Areas are located. *See* Smith Decl., ¶ 12.

IDFG provided tables listing, by species, the number of animals trapped in Owyhee County, *see* Smith Decl., Exhibit 9, Table “#Trapped in Owyhee County”; the number of animals otherwise harvested in Owyhee County, *id.*, Table “#Harvested in Owyhee County”; and the number of these trapped and harvested animals which were sold each year from the 2004-2005 trapping season through the 2013-2014 trapping season, as reported by licensed trappers. *Id.*, Table “#Reported Sold”.

Over the last ten trapping seasons (beginning with the 2004-2005 season), licensed trappers reported trapping in Owyhee County: 242 badgers, 559 beavers, 2,042 bobcats, 2,899 coyotes, 320 mink, 13,089 muskrats, 52 otters, 394 raccoons, 267 red foxes, 211 striped skunks, 29 spotted skunks, and 8 weasels. Smith Decl., Exhibit 9, Table “#Trapped in Owyhee County”. Adding these up, a total of 20,112 animals were reported trapped in Owyhee County. Over these ten seasons, trappers also reported harvesting additional animals in Owyhee County by methods other than trapping; however, these numbers are much smaller: 40 badgers, 30 bobcats, 782 coyotes, 5 raccoons, 2 red foxes, and 5 striped skunks. *Id.*, Table “#Harvested in Owyhee County”.

Of these animals trapped and otherwise harvested by trappers in Owyhee County over the last ten seasons, trappers reported selling: 85 badgers, 125 beavers, 1,446 bobcats, 1,976 coyotes, 125 minks, 7,216 muskrats, 15 otters, 82 raccoons, 121 red foxes, 9 striped skunks, and 1 weasel. *Id.*, Table “#Reported Sold”.

Adding up these numbers from Exhibit 9, Table 3, a total of 11,201 pelts were reported sold from animals trapped or harvested by trappers in Owyhee County over the last ten years. Even assuming every one of the animals harvested by non-trapping methods were among the animals sold, there were still 10,337 pelts sold from animals trapped in Owyhee County. This accounts for over half of animals trapped pursuant to IDFG trapping licenses in Owyhee County, and reveals that IDFG’s trapping license program is not limited to “recreational” trapping—as BLM mistakenly asserted in the final WMP—but is in fact commercial trapping in which licensed trappers sell the pelts of the majority of animals trapped.

## **II. STANDARDS OF REVIEW**

To succeed on the merits, the appellant must demonstrate, by a preponderance of the evidence, that the BLM’s decision is unreasonable or does not substantially comply with applicable law or regulation. *See Eason v. BLM*, 127 IBLA 259, 262 (1993). A BLM decision is arbitrary, capricious, or inequitable if it is not supported by any rational basis. *Wayne D. Klump v. BLM*, 124 IBLA 176, 182 (1992).

Reversal is appropriate where the Appellant shows that BLM made a clear error of law or fact; failed to consider important environmental aspects; or its decision is not grounded upon technical expertise of staff competent in their fields. *See, e.g., Committee for Idaho’s High Desert*, 137 IBLA 92 (1996) (“a party challenging a FONSI must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance”); *Wildlife Damage Review*, 150 IBLA 362, 368 (1999) (challenge “must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem”).

Where BLM has approved a management action that violates the Wilderness Act, or has misconstrued Wilderness Act requirements, the IBLA will reverse under these standards. *See, e.g., Wilderness Watch et al.*, 168 IBLA 16, 36-39 (Feb. 17, 2006) (reversing BLM decision allowing road use in wilderness based on NEPA defects and violations of Wilderness Act);

### **III. ARGUMENT**

#### **A. THE OWYHEE WMP VIOLATES THE WILDERNESS ACT**

Section 4(c) of the Wilderness Act prohibits “commercial enterprise” in designated wilderness. 16 U.S.C. § 1133. Trapping animals and then selling their pelts constitutes commercial enterprise. BLM recognized as much when it prepared the Draft WMP for the Owyhee Canyonlands Wilderness. The Draft WMP explicitly prohibited commercial trapping, including the sale of pelts. Draft WMP at 53. But BLM removed the commercial trapping ban from the Final WMP. DR at vii. According to BLM, the agency determined during consultation with IDFG that “the State issues recreational, not commercial, trapping licenses.” *Id.*

It is difficult to understand how BLM could arrive at this determination, unless it was misled by IDFG and made no effort whatsoever to verify IDFG’s claim. As established above, trappers licensed in Idaho are allowed under IDFG trapping rules to sell the pelts of animals they trap, and licensed trappers are required to report to IDFG the number of pelts sold and prices. In fact, licensed trappers reported to IDFG that they sold more than 10,000 animals trapped in Owyhee County over the last ten years. BLM’s determination that IDFG issues only recreational trapping licenses was thus flatly wrong factually, and unreasonable in light of the IDFG trapping rules and data. Because the Owyhee WMP thus allows commercial trapping in the Wilderness, the WMP violates Section 4(c) of the Wilderness Act.

1. Selling Pelts Constitutes Commercial Enterprise Prohibited by Section 4(c)

The Wilderness Act was adopted with the stated goals of “preservation and protection” of wilderness lands “in their natural condition,” so as to “leave them unimpaired for future use and enjoyment as wilderness and so as to provide for the protection of these areas, [and] the preservation of their wilderness character.” 16 U.S.C. § 1131(a). The Act defines “wilderness,” in part, as “an area where the earth and its community of life are untrammeled by man.” *Id.* § 1131(c).

To carry out these goals, Section 4 of the Wilderness Act governs the use of wilderness areas, and includes a subsection entitled “Prohibition provisions.” *See id.* § 1133. Section 4(c) states that, subject to exceptions not relevant here, “there shall be no commercial enterprise . . . within any wilderness area.” *Id.* § 1133(c). The Wilderness Act does not expressly define “commercial enterprise” or “within,” but these terms have been interpreted broadly.

Interpreting this prohibition against commercial enterprises within wilderness, the Ninth Circuit reviewed the language, purpose, and structure of the Wilderness Act and concluded that “Congress spoke clearly to preclude commercial enterprise in the [] designated wilderness, regardless of the form of commercial activity, and regardless of whether it is aimed at assisting the economy with minimal intrusion on wilderness values.” *The Wilderness Society v. United States Fish & Wildlife Serv.*, 353 F.3d 1051, 1062 (9th Cir. 2003).

BLM has also interpreted this prohibition broadly. The agency’s wilderness regulations incorporate Section 4(c)’s prohibition on commercial enterprise in wilderness. *See* 43 C.F.R. § 6302.20. Likewise, BLM Manual 6340, “Management and Designation of Wilderness Areas (Public)” (July 13, 2012), provides guidance to BLM personnel on managing designated wilderness. *See* Smith Decl., Exhibit 10 (BLM Manual 6340) at 1.1. The Manual defines

“commercial enterprise” as: “Any use or activity undertaken for the purpose of the sale of products or services, for the generation of funds or revenue, or for the promotion of a product, individual, or business, regardless of whether the use or activity is intended to produce a profit, including any use or activity where an entry or participation fee is charged.” *Id.* at 1.6.B.2.a.

While the BLM Manual recognizes recreational trapping as an acceptable activity in wilderness, it prohibits the sale of animals trapped in wilderness. The Manual states: “Angling, hunting, antler collecting, and trapping are legitimate wilderness activities subject to applicable federal and state laws and regulations.” *Id.* at 1.6.C.21.c.ix. However, these “recreational activities . . . can be undertaken in wilderness for personal use only.” *Id.* at 1.6.C.21.c.ix.E. The “[s]ale of wildlife products gathered from wilderness is prohibited.” *Id.* at 1.6.C.21.c.ix.E. This includes but is not limited to “sale or barter of any trapped animals or their fur,” and other examples. *Id.* at 1.6.C.21.c.ix.E.

BLM followed this guidance when it prepared the Draft WMP for the Owyhee Canyonlands Wilderness. The Draft WMP provided: “Pursuant to Section 4(c) of the Wilderness Act, commercial trapping is prohibited in wilderness areas. Commercial trapping is defined as trapping that involves the sale of furs, hides, or other animal body parts.” *Id.* at 53.

Thus, to the extent that BLM’s decision to remove the commercial trapping ban from the Final WMP was based on determining that selling pelts is not a commercial enterprise, BLM’s decision is unreasonable and flies in the face of BLM’s own guidance and Congress’s clear intent in Section 4(c) of the Wilderness Act to preclude commercial enterprise in designated wilderness. If, on the other hand, BLM’s decision to remove the commercial trapping ban was based on determining that licensed trappers in Idaho are not allowed to sell the pelts or other parts of trapped animals, then that determination is also unreasonable as explained next.

## 2. Trappers Licensed in Idaho Are Allowed to Sell Pelts and Other Animal Parts

Nothing in Idaho's Trapping Rules prohibit the sale of pelts, or other parts, of trapped animals. *See* Smith Decl., Exhibit 2 (Trapping Rules). In fact, IDFG carefully tracks the sale of pelts and the value of this commercial enterprise. As explained above, IDFG's mandatory trapper reporting forms require licensed trappers to report, by county, the number of pelts sold and total price received for each of 14 furbearing species. *See* Smith Decl., Exhibit 5 (IDFG Seasonal Reporting Form for Furtakers). IDFG uses these reports "to estimate the statewide harvest of furbearers by licensed trappers, the distribution of the harvest, and the market value of the state's furbearer harvest." Smith Decl., Exhibit 4 (2014 Furbearer Report) at 1.

IDFG's most recent annual furbearer report summarized the 2013-2014 trapper reports as follows:

Harvest reports were submitted by 1,985 (83%) of the 2,394 licensed trappers for the 2013-2014 season (Table 1). The fur harvest (trapping and hunting), based on 1,444 reporting trappers who harvested, was 52,986 animals, up from 46,118 the previous trapping season (Table 2). This number includes incidental catches, or those species captured that were not the intended target of the trap. Of this total, 33,912 pelts (64%) were sold for a value of \$699,168.32. Trappers sold their pelts for an average of \$20.62 each, down from \$25.47 the previous year. Trappers harvested an average of 37 pelts per trapper and sold an average of 24 pelts. Based on an average pelt price of \$20.62 and 24 pelts sold per trapper, trappers earned an average income of \$494.88, down from \$662.22 the previous season (Table 2).

Using an approximation of 83% reporting we can estimate harvest for all trappers, including those who did not submit a report, was 63,839 animals taken and 40,858 pelts sold. We estimate as high as \$842,371.47 in value for pelts sold. The estimated statewide value of pelts sold is \$1,504,300, down from \$1,617,688 in the previous season (Table 2).

Muskrat, coyote, beaver, marten, and raccoon respectively, were the most frequently harvested species. Price per pelt for all harvested species ranged from an average of \$349.05 for bobcats (\$438.64 in 2012-2013) to \$4.75 for weasels (\$7.01 in 2012-2013). The top 5 furbearers based upon total dollar value of pelts sold were bobcat, muskrat, coyote, marten, and beaver (Table 3).

*Id.* at 3–4.

Thus, not only are licensed trappers in Idaho allowed to sell pelts, but the majority do so every year for significant amounts of money. And this is equally true in Owyhee County, which where the Owyhee Canyonlands Wilderness Areas are located. As detailed above, of the animals trapped in Owyhee County over the last ten seasons, licensed trappers reported selling at least 10,337 pelts from animals trapped in Owyhee County. *See* Smith Decl., Exhibit 9.

In sum, IDFG allows commercial trapping, including the sale of pelts. BLM cannot simply defer to IDFG on this matter. For example, while BLM's wilderness guidance recognizes that states have a primary and critical role in fish and wildlife management, the guidance states that "[t]he ultimate responsibility to preserve wilderness character rests with the BLM." BLM Manual 6340 1.6.C.21.b.i & ii. BLM failed to live up to this responsibility when it erroneously concluded that Idaho licenses recreational, not commercial, trapping.

### 3. The Owyhee WMP Allows Commercial Trapping in Violation of Section 4(c)

While BLM's Draft WMP explicitly prohibited commercial trapping, including the sale of pelts and other parts of trapped animals, the Final WMP allows licensed trappers in Idaho to trap in the Owyhee Canyonlands Wilderness, without prohibiting the sale of trapped animals or other commercial trapping. This violates the prohibition on commercial enterprise in Section 4(c) of the Wilderness Act and, accordingly, must be reversed by the IBLA to correct this clear legal and factual error.

## **B. BLM VIOLATED FLPMA AND THE OPLMA**

Section 603(c) of FLPMA directs that for BLM lands "designated [by Congress] for preservation as wilderness, the provisions of the Wilderness Act that apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area." Section 1503(a) of the OPLMA designates the six wilderness areas that make up the Owyhee

Canyonlands Wilderness Area, and Section 1503(b)(1) provides that each of these areas are to be administered in accordance with the Wilderness Act. For the same reasons above that BLM violated the Wilderness Act, as explained above, BLM has also violated FLPMA and the OPLMA.

### **C. BLM VIOLATED NEPA**

BLM's last-minute decision to remove the prohibition on commercial trapping from the Owyhee WMP—without notice and opportunity for public comment on this change, and in reliance on false information—further violates the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”).

The Council of Environmental Quality (“CEQ”) has adopted regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1500.3. The Supreme Court has held that “CEQ’s interpretation of NEPA is entitled to substantial deference.” *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

The CEQ regulations provide that NEPA is “our basic charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s purpose is “to foster excellent action,” and the “NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences.” 40 C.F.R. § 1500.1(c). To achieve these goals, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). “The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

CEQ’s NEPA regulations also require that an agency must prepare a supplement to a draft environmental impact statement where, after issuance of the draft, “[t]he agency makes

substantial changes in the proposed action that are relevant to environmental concerns.” 40 C.F.R. § 1502.9(c)(1). This duty to supplement applies whether the agency has prepared an EIS or an EA. *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 566 n.2 (9th Cir. 2000).

Here, BLM made a substantial change to the WMP at the last minute without preparing a supplemental EA or providing any advance notice or opportunity to comment in violation of NEPA. And in making this change, BLM relied on false or misleading information obtained during consultation with IDFG, without doing its homework, also in violation of NEPA.

Had BLM solicited public comment, ICL would have provided comments. Trapping is an important issue to ICL and its supporters. *See* Hayes Decl. ICL staff are familiar with IDFG’s trapping program, review IDFG’s annual furbearer reports, and have submitted multiple public records request to IDFG for trapping data. *Id.* ICL has used and continues to use this knowledge and information on its work around the state related to trapping and wildlife issues. *Id.* ICL would have provided scrutiny and a substantial amount of information to BLM before the agency made its decision. However, because the BLM removed the prohibition against commercial trapping without any additional public notice or comment, ICL was deprived of any opportunity to do so. *Id.*

Even without additional notice and comment, it was unreasonable for BLM to rely only on the false or misleading information obtained during consultation with IDFG. While IDFG apparently characterized its trapping licenses as “recreational,” it is clear upon reviewing IDFG’s trapping regulations, annual furbearer reports, news stories, and other readily available sources of information that licensed trappers in Idaho are allowed to, and in fact do, engage in commercial trapping. BLM either never considered this information or ignored it. Relying on flatly false or misleading factual information violates NEPA, as many decisions underscore. *See*

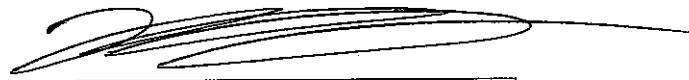
*Earth Island Institute v. USFS*, 442 F.3d 1147, 1159-60 (9th Cir. 2006) (holding unlawful an EIS that presented misleading information and did not explain its conclusions); *Native Ecosystems Council v. USFS*, 418 F.3d 953, 964-66 (9th Cir. 2005) (holding EIS unlawful that relied on inaccurate and misleading information); *NRDC v. USFS*, 421 F.3d 797, 813 (9th Cir. 2005) (reversing because EIS did not “present complete and accurate information to decision makers and to the public”).

#### **IV. RELIEF REQUESTED**

For the foregoing reasons, BLM’s reversal of position from the Draft to the Final WMP is unreasonable and violates the Wilderness Act, FLPMA, and NEPA with regard to BLM’s deletion of the Draft WMP’s prohibition of commercial trapping within the Owyhee Canyonlands Wilderness Areas.

Accordingly, Appellant ICL respectfully requests that the IBLA reverse the Final WMP in this regard only, and remand with instructions for BLM to reinstate the prior language from the Draft WMP prohibiting commercial trapping in the Owyhee Canyonlands Wilderness Areas.

Respectfully submitted this 12th day of June, 2015,



Bryan Hurlbutt (ISB # 8501)

Attorney for Appellant Idaho Conservation League

**CERTIFICATE OF SERVICE**

I certify that on June 12, 2015, I sent a copy of Appellant's NOTICE OF APPEARANCE, STATEMENT OF STANDING AND STATEMENT OF REASONS, DECLARATION OF JUSTIN HAYES, and DECLARATION OF BRAD SMITH (and all Exhibits thereto) to each of the following via Federal Express, overnight delivery:

Bureau of Land Management  
Boise District Office  
3948 Development Avenue  
Boise, Idaho, 83705

Office of the Solicitor  
Field Solicitor  
U. S. Department of the Interior  
University Plaza  
960 Broadway Avenue, Suite 400  
Boise, Idaho, 83706

Signed:   
Bryan Hurlbutt

Attorney for Idaho Conservation League