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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,  
CENTER FOR BIOLOGICAL DIVERSITY,  
FRIENDS OF THE CLEARWATER,  
WILDEARTH GUARDIANS, and  
PREDATOR DEFENSE,

Plaintiffs,

v.

TODD GRIMM, Idaho Director,  
Wildlife Services, and USDA WILDLIFE  
SERVICES,

Defendants.

**No. 1:16-cv-218-EJL-CWD**

**PLAINTIFFS' OPENING BRIEF IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

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## **INTRODUCTION**

Since the reintroduction of gray wolves to the Northern Rockies in 1995-96, Defendant Wildlife Services has regularly killed wolves in Idaho that are deemed a threat to livestock – almost 300 between 2006 and 2015 – and removed wolves from highly popular wolf viewing areas, such as the Stanley Basin and Sawtooth National Recreation Area (SNRA).

In 2011, Wildlife Services expanded its wolf control program to assist the Idaho Department of Fish and Game (IDFG) by killing wolves to boost wild ungulate populations. In February 2016, without any public notice, Wildlife Services aeriually gunned down 20 gray wolves in central Idaho's Lolo Zone. This was the sixth year in a row that Wildlife Services has killed wolves in the Lolo Zone, which encompasses a portion of the Selway-Bitterroot Wilderness. Plaintiffs learned from Defendants' Answer that Wildlife Services has also killed wolves in the Idaho Panhandle at IDFG's request.

Wildlife Service's wolf killing program is highly controversial with the public and scientifically, but it operates in secrecy and does not disclose its wolf killing actions beforehand. Combined with private wolf hunting and trapping, Wildlife Services' wolf killing has affected wolf presence in the Stanley Basin/SNRA and Lolo Zone, among other areas, and harmed Plaintiffs' members and others who seek to enjoy seeing and hearing wolves in their natural habitat on public lands, including the SNRA and Selway-Bitterroot Wilderness.

Recent science underscores that killing wolves to benefit elk populations or to reduce livestock depredation may not achieve intended results, and that removing these apex predators leads to ecological effects that cascade through the ecosystem. Yet Wildlife Services has never addressed these direct, indirect, and cumulative impacts in any comprehensive Environmental Impact Statement (EIS), as required by the National Environmental Policy Act (NEPA).

Instead, Wildlife Services carries out its expanded Idaho wolf killing under a March 2011 Environmental Assessment (2011 EA) and Decision Notice/Finding of No Significant Impact (DN/FONSI) that fail to address the controversy, scope, and full impacts of its Idaho wolf control actions. Rather than addressing obvious impacts to the Lolo, or other local wolf populations that may be heavily targeted, the 2011 EA and DN/FONSI claim that Wildlife Services relies on IDFG to maintain a wolf population of around 500 wolves, even though the state plan containing this population objective was withdrawn before the 2011 EA was finalized. Wildlife Services also refuses to acknowledge that its 2011 EA is now badly out-of-date and inaccurate in light of recent science, extensive private hunting and trapping of wolves in Idaho, and Wildlife Services' apparent intent to expand its wolf control actions to "protect" wild ungulates.

As the U.S. District Court for the Western District of Washington recently held in a similar context, Wildlife Services cannot avoid its duty under NEPA to fully analyze and disclose impacts of its wolf killing by simply relying on state wolf management programs, and it should have prepared an EIS to fully analyze its activities and disclose their potential effects to the public. *Cascadia Wildlands v. Woodruff*, 151 F.Supp.3d 1153 (W.D. Wash 2015).

Wildlife Service has committed the same and other errors here. It continues to evade its NEPA duty to fully evaluate the scope and effects of its Idaho wolf killing through an EIS, wrongly deferring to state management. Plaintiffs thus request that this Court grant them summary judgment, reverse and set aside the defective 2011 EA and DN/FONSI, and order Wildlife Services to fully comply with NEPA before continuing with Idaho wolf control actions.<sup>1</sup>

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<sup>1</sup>Plaintiffs will file a motion specifying the remedies they seek after the Court has decided the merits upon summary judgment.

## STATEMENT OF RELEVANT FACTS<sup>2</sup>

### **Wolf Reintroduction In Idaho.**

In 1974, after gray wolves were nearly wiped out in the lower 48 states through hunting and an “active, government-sponsored eradication program,” *Defenders of Wildlife v. Hall*, 565 F. Supp.2d 1160, 1164 (D. Mont. 2008), the U.S. Fish and Wildlife Service (FWS) listed wolves as “endangered” under the Endangered Species Act (ESA). SOF ¶ 1. To aid the species’ recovery, in 1995-96 FWS reintroduced wolves in the Northern Rockies (including central Idaho), under an ESA Section 10(j) rule that permitted FWS to authorize removing or killing wolves under limited circumstances, principally for proven livestock depredation. *Id.*

FWS originally defined recovery of gray wolves in the Northern Rockies as 10 breeding pairs in each of three recovery areas (northwest Montana, central Idaho, and Yellowstone) for three consecutive years. SOF ¶ 2. However, FWS soon acknowledged that this was “at best, a minimum recovery goal.” *Id.* It added that 10 breeding pairs in each of the three areas meant maintaining a meta-population of at least 300 wolves with movement between the areas. *Id.*

Anticipating delisting, in 2002 the Idaho Legislature adopted a wolf management plan that directed IDFG to manage for as few as 15 wolf packs or breeding pairs, without specifying a minimum population. SOF ¶ 3. FWS did not propose to delist wolves in the Northern Rockies until 2007. SOF ¶ 4. At that point, IDFG drafted its own wolf management plan with a goal of maintaining Idaho’s wolf population at 2005-07 levels (518-732 wolves) through a five-year period (2008-2012). SOF ¶ 5.

FWS issued a final rule delisting wolves in the Northern Rockies in 2008. *See* 73 Fed.

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<sup>2</sup>Pursuant to Local Rule 7.1, Plaintiffs submit a Separate Statement of Undisputed Facts (SOF) which provides detailed exposition of the relevant facts and citations to the Administrative Record (AR). Where relevant, the 2011 EA and other key record documents are also cited, for the Court’s convenience.



Reg. 10514 (Feb. 27, 2008). The U.S. District Court in Montana enjoined that rule because there was no evidence of genetic exchange between the populations in the three recovery areas, among other reasons. SOF ¶ 6. The court also observed:

Although ... Idaho, Montana, and Wyoming have committed to managing for at least 150 wolves in 15 breeding pairs, the record in the case demonstrates genetic exchange is not likely to occur with these numbers. At the time of delisting, there were approximately 1,513 wolves in 106 breeding pairs in the northern Rocky Mountains. Genetic exchange that did not occur under these conditions is not likely to occur with fewer wolves and fewer breeding pairs.

*Hall*, 565 F. Supp.2d at 1171–72.

In 2009, FWS issued a revised rule delisting wolves in Idaho and Montana. 74 Fed. Reg. 15123 (Apr. 2, 2009). The rule required each recovery area to maintain a population of only 15 breeding pairs and 150 wolves. *Id.* at 15132. IDFG instituted a wolf hunting and trapping season, during which 188 wolves were killed, before the District of Montana vacated the 2009 rule. *Defenders of Wildlife v. Salazar*, 729 F.Supp.2d 1207 (D. Mont. 2010); SOF ¶ 8.

With wolves returned to federal management, IDFG withdrew the 2008 wolf management plan in late 2010, SOF ¶ 13, and submitted a request to FWS to remove wolves in central Idaho's Lolo Zone to "protect" elk. SOF ¶ 9. IDFG's request contemplated maintaining a reduced population of 20-30 wolves in the Lolo Zone for five years. *Id.* FWS never finalized a plan based on the request. *Id.*

Also in 2010, IDFG issued an "updated" draft predation management plan for the Lolo Zone and the adjacent Selway Zone that proposed reducing the local wolf population through an "adaptive strategy" beginning with an 11-month wolf hunting and trapping season with no harvest limits. SOF ¶ 10. That plan did not identify a minimum wolf population. *Id.* Fourteen percent of the Lolo Zone and 79 percent of the Selway Zone are in federally-designated wilderness. SOF ¶ 22.

### **Wildlife Services' Idaho Wolf Killing and 2011 EA.**

While wolves were listed under the ESA, Wildlife Services was responsible for most human-caused wolf mortality in Idaho, killing 298 wolves between 2005 and 2009 in response to requests from livestock producers. SOF ¶ 25. Rather than conduct any Environmental Impact Statement (EIS) or other public NEPA analysis at that time, Wildlife Services purported to justify killing these wolves under “categorical exclusions” (CEs).<sup>3</sup> SOF ¶ 25. Wildlife Services only began NEPA analysis of its Idaho wolf control program after being sued and determining that relying on CEs was potentially “vulnerable.” *Id.*

Wildlife Services thus prepared a draft Idaho Wolf EA in August 2010 (Wolf EA) and revised it in December 2010. SOF ¶¶ 11-24. Underscoring the high controversy surrounding its wolf killing actions, Wildlife Services received over 100,000 comments on the draft Wolf EAs, including from Plaintiffs. SOF ¶ 12.

Plaintiffs' comments highlighted that the draft Wolf EAs reflected an unwarranted bias in favor of lethal controls, instead of non-lethal methods; that killing wolves to boost ungulate herds in the Lolo and Selway Zones is scientifically flawed and that the EA failed to justify projected actions there; that the EA failed to specify amounts and locations of planned wolf control actions; that it did not address all the likely direct, indirect, and cumulative impacts of wolf killing, including cumulative impacts with private wolf hunting and trapping on local and state-wide wolf populations; and that Wildlife Services had not explained how it would comply with federal land management requirements. *Id.* Plaintiffs also explained that Wildlife Services must prepare a full EIS under NEPA to address the likely significant impacts of its expanded Idaho wolf control program. *Id.*

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<sup>3</sup> CEs are categories of activities defined by an agency that do not individually or cumulatively have a significant effect on the human environment. 40 C.F.R. §§ 1500.4(p), 1508.4.

Wildlife Services finalized the 2011 EA, and adopted its preferred alternative through the DN/FONSI on March 29, 2011. SOF ¶ 24. The 2011 EA and DN/FONSI approved expanding Wildlife Services' existing activities related to livestock depredation in order to allow Wildlife Services to kill wolves to "protect" elk and other wild ungulates at IDFG's request. *Id.* The FONSI claimed that these approved actions posed no significant environmental impacts, and that none of the NEPA factors requiring preparation of an EIS were present. *Id.*

Rather than comprehensively analyze the effects of Wildlife Services' activities under any alternative, the 2011 EA repeatedly cited Idaho's state wildlife management authority and IDFG's withdrawn 2008 wolf management plan to contend that Wildlife Services' actions would not reduce Idaho's wolf population below an acceptable threshold or cause any other significant impacts. SOF ¶ 18. As the EA stated:

IDFG has independent state authority for conducting wildlife management activities, and the actions of state agencies not involving federal funding or federal agency actions are not subject to the requirements of NEPA.

*Id.* Although the EA claimed to consider the cumulative effects of IDFG's management "where appropriate," *id.*, it actually relied on IDFG's wolf population objectives to avoid such analysis, stating (for example) that under all alternatives, "it is reasonable to expect that . . . IDFG[']s adaptive management approach will ensure that the cumulative impacts on Idaho's wolf population do not result in the population going below 500 (IDFG 2008a, 2009a)." SOF ¶ 18. It claimed that, post-ESA delisting, a similar number of wolves would likely be killed under any alternative because even if Wildlife Services reduced its assistance, IDFG or FWS would perform "similar levels of wolf removals." *Id.*

The EA's assumption that IDFG would maintain a population of at least 500 wolves relied on IDFG's 2008 wolf management plan, but IDFG had abandoned that plan before the

final EA issued. *Id.*; SOF ¶ 13. While the EA noted that FWS had endorsed the 2002 Idaho wolf plan's objective of 15 breeding pairs, it did not acknowledge that FWS had set this as an absolute floor or discuss the scientific controversy as to whether such a population was sustainable or recovered. SOF ¶ 19.

The 2011 EA also failed to include any site-specific analysis of Wildlife Services' proposed activities or their effects. SOF ¶ 21. Although it disclosed that wolves in the Lolo Zone would likely be targeted for removal to support IDFG's elk management objectives there, the EA did not discuss the action's effects on local wolf populations, on wolf recovery, or on the local environment (including wildernesses). SOF ¶¶ 21-23. It did not discuss peer review comments that criticized the proposal, SOF ¶ 9, only citing very broad science to support its assumption that killing wolves would work to increase ungulate populations. AR-EA #005, 138. The EA also discussed only the Lolo wolf request IDFG submitted to FWS in 2009, even though IDFG issued a draft predation management plan outlining expanded activities (covering both the Lolo and Selway Zones and eliminating any minimum population objectives) in 2010. SOF ¶ 10. The EA asserted that actions under the preferred alternative would comply with land-use plans governing management of federal lands, without any supporting analysis and without disclosing the relevant plan provisions. SOF ¶ 23.

#### **Significant Changes Since The 2011 EA.**

Two and a half weeks after the 2011 EA and DN/FONSI issued, Congress directed the FWS to reissue its rule delisting wolves in Idaho and Montana, and FWS complied on May 5, 2011. SOF ¶ 26. That same month, Wildlife Services first killed wolves to "protect" wild ungulates in the Lolo Zone, at IDFG's request, and without any public notice. SOF ¶ 27. In July 2011, the Idaho Fish & Game Commission directed IDFG to manage wolves as big game

animals under the 2002 wolf management plan written by the Idaho Legislature, which required maintaining only 15 breeding pairs in the state, and voted to set a wolf hunting and trapping season with a liberal statewide bag limit of 220 wolves. *Id.* In December 2011, IDFG finalized its predation management plan for the Lolo and Selway Zones. SOF ¶ 28. Wildlife Services has killed wolves in the Lolo Zone each year since. Ans. ¶ 1.

In February 2012, Wildlife Services issued a “FY 2011 Monitoring Report” for its Idaho wolf control actions under the 2011 EA. SOF ¶ 29. The report acknowledged that wolves were delisted under the ESA after the 2011 EA was issued. It asserted that wolves were to be managed under both the 2002 and 2008 Idaho wolf plans, which would ensure a population of “about 500 wolves,” even though the 2008 plan containing the 500-wolf population objective had been withdrawn more than a year earlier. *Id.* It did not discuss the new predation management plan for the Lolo and Selway Zones, or Wildlife Services’ actions targeting local wolf populations there. *Id.* It concluded that no new information or impacts merited supplementing the EA. *Id.* Wildlife Services issued an almost identical report in June 2013 that covered Fiscal Year 2012, with different values for the numbers of wolves killed. *Id.*

In 2014, IDFG issued a new statewide elk management plan that called for reducing wolf populations by as much as 75 percent where elk were not meeting management objectives. SOF ¶ 30. The same year, IDFG issued new predation management plans for the Middle Fork, Panhandle, and Sawtooth Zones that call for aggressive wolf reductions in an attempt to boost elk populations. *Id.*<sup>4</sup> The Idaho Legislature created a new Wolf Depredation Control Board to fund these lethal control efforts and funded it with over half a million dollars a year. SOF ¶ 31.

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<sup>4</sup> The Lolo and Selway Zones, the Middle Fork Zone, and the Sawtooth Zone encompass much of the area in central Idaho deemed an important stronghold for wolf recovery. SOF ¶ 30. Most of the Middle Fork Zone is comprised of the Frank Church-River of No Return Wilderness. *Id.* The Sawtooth Zone covers the western half of the SNRA. *Id.*

Also in 2014, a peer-reviewed study (Wielgus & Peebles (2014)) concluded that killing wolves may actually increase livestock depredations. SOF ¶ 32.

In January 2015, Wildlife Services issued a 2013-14 Monitoring Report. SOF ¶ 33. That report discussed Wildlife Services' wolf-killing operations in the Lolo and Selway Zones, stating, based only on a communication with an IDFG employee, that IDFG still intended to maintain a population of 20-30 wolves there. SOF ¶ 33. It also discussed the new Idaho funding for wolf control, stating that the funding could allow Wildlife Services to hire more employees. *Id.* It dismissed the peer-reviewed and published Wielgus & Peebles study as flawed and inapplicable, citing a single communication with a Wildlife Services researcher. *Id.* It did not mention the new predation management plans for the Middle Fork, Panhandle and Sawtooth Zones. The agency again concluded there was no need to supplement the 2011 EA. *Id.*

In 2016, Plaintiffs notified Wildlife Services that extensive new science and new circumstances required supplementation of the 2011 EA under NEPA. SOF ¶ 34. Wildlife Services forwarded some of this information to its National Wildlife Research Center, which concluded, in a one-page letter only specifically addressing three of the studies, that none of it merited supplementation of the 2011 EA. SOF ¶ 35. The agency rejected these studies on grounds that they analyzed impacts of wolf control only on a regional scale, even though the 2011 EA's analysis also analyzed impacts solely on a regional scale. *Id.* It also rejected the new IDFG predation management plans as insignificant by simply citing back to the 2011 EA, even though the EA did not discuss activities that IDFG might request under the plans in any detail. *Id.*

The wolves Wildlife Services kills in Idaho now add to hundreds killed each year through private hunting and trapping. SOF ¶ 37. Idaho hunters and trappers killed 200 wolves in 2011,

329 wolves in 2012, 356 wolves in 2013, and 256 wolves each in 2014 and 2015. Ans. ¶ 3. Wildlife Services and livestock producers killed 50, 59, 80, 42, and 54 wolves in these same years to address livestock depredations—including in popular recreation and wolf viewing areas, such as the Stanley Basin, the SNRA, and the East Fork Salmon River watershed. See SOF ¶ 37. Wildlife Services has killed approximately 103 wolves in the Lolo Zone over the last six years to “protect” wild ungulates. *Id.* Yet because of the defective 2011 EA and DN/FONSI, and Wildlife Services’ refusal to supplement those documents through the equally flawed 2011-15 Monitoring Reports, Wildlife Services has never fully disclosed or analyzed the scope and impacts of these Idaho wolf killing actions, as required by NEPA.<sup>5</sup>

### **LEGAL BACKGROUND**

NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The NEPA process ensures that an agency carefully considers information concerning significant environmental impacts, and that the public may scrutinize the information and participate in the decision-making process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA requires federal agencies to take a “hard look” at potential environmental consequences of proposed actions. *N. Plains Resource Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011). This “ensures that important effects will not

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<sup>5</sup> Wildlife Services’ actions have harmed Plaintiffs’ interests in protecting and recovering wolves in Idaho, in ensuring wolves are able to play their proper ecological role as apex predators, and in seeking out and enjoying seeing and hearing wolves in places like the Stanley Basin, SNRA, and Lolo/Selway Zones. See Declarations of Jon Marvel, Kenneth Cole, Brett Haverstick, David Hunt, Greg Freistadt, Kelly Nokes, Dameon V. Hansen, and Richard Rusnak, filed herewith. Similarly, Wildlife Services’ violations of NEPA in failing to disclose and analyze its wolf control actions and impacts have harmed Plaintiffs’ procedural interests under NEPA. *Id.* Plaintiffs’ declarations and their extensive comments to Wildlife Services in the Administrative Record thus establish their Article III standing to bring this action. See *WildEarth Guardians v. U.S. Dep’t of Agric.*, 795 F.3d 1148, 1154-57 (9th Cir. 2015); *Cascadia Wildlands v. Woodruff*, 151 F.Supp.3d 1153 (W.D. Wash 2015).

be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Methow Valley*, 490 U.S. at 349.

To this end, NEPA requires a federal agency to prepare an EIS for any major federal action significantly affecting the human environment. 42 U.S.C. § 4332(C). NEPA analyses must discuss a proposed action’s direct, indirect, and cumulative effects, 40 C.F.R. § 1502.16, and evaluate a reasonable range of alternatives to the proposed action, *id.* §§ 1502.13, 1502.14. Taking the “hard look” NEPA requires includes “considering all foreseeable direct and indirect impacts.” *Ctr. for Biological Diversity v. Salazar*, 695 F.3d 893, 916-17 (9th Cir. 2012). Some quantified information is necessary for an adequate cumulative impacts assessment; “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998); *see also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) (stating that cumulative effects analysis must discuss actual environmental effects).

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA provide that an agency may prepare a shorter Environmental Assessment (EA) to determine whether an EIS is necessary. 40 C.F.R. § 1501.4; *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993. However, NEPA requires a federal agency to prepare an EIS whenever a project “may” have significant environmental impacts. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005). “[T]his is a low standard.” *California Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1097 (9th Cir. 2011). As the Ninth Circuit has explained:

An EIS must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor. Thus, to prevail on a claim that an agency violated its statutory duty to prepare an EIS, a plaintiff need not show that significant effects will in fact occur. It is enough for



the plaintiff to raise substantial questions whether a project *may* have a significant effect on the environment.

*Blue Mountains Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)

(quotations and citations omitted, emphasis added).

An agency's responsibilities under NEPA do not end with completion of an EA or EIS. If a major federal action remains to occur, and significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts emerge, the agency must supplement its NEPA analysis. *See* 40 C.F.R. § 1502.9. The agency must "be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action....'" *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557-58 (9th Cir. 2000).

NEPA violations are reviewed under the Administrative Procedure Act (APA), which directs the reviewing court to (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706; *Or. Nat'l Desert Ass'n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016). When reviewing an agency's decision under NEPA and the APA, the court's role is to determine whether the agency took the requisite "hard look" that NEPA demands and provided "a reasonably thorough discussion" of the probable, significant environmental consequences of the proposed action. *Nat. Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2010).

Similarly, the Court reviews the 2011 EA here "to determine whether it has adequately considered and elaborated the possible consequences of the proposed agency action when concluding that it will have no significant impact on the environment." *Idaho Conservation League v. U.S. Forest Serv.*, 2016 WL 3814021, \*6 (D. Idaho July 11, 2016) (quotations

omitted). In doing so, the Court considers “whether the EA fosters both informed decision-making and informed public participation.” *Id.*

## ARGUMENT

### **I. THE 2011 EA VIOLATED NEPA’S “HARD LOOK” REQUIREMENT.**

#### **A. The 2011 EA Failed To Address Direct, Indirect And Cumulative Effects.**

The Court should reverse and remand the 2011 EA and DN/FONSI because Wildlife Services has failed to take the “hard look” required by NEPA at the direct, indirect and cumulative impacts of its Idaho wolf control activities, including its expanded mission of killing wolves at the request of IDFG.

The 2011 EA assumed that under all alternatives, once delisting occurred, IDFG would maintain the wolf population at a “sustainable” level of about 500 wolves, and, therefore, disclaimed any responsibility for considering in detail how its activities could add to effects on wolves or the environment. *See* AR-EA #005, 102, 132-33, 137-38, 140, 143 (2011 EA).<sup>6</sup> Wildlife Services also assumed that about the same level of wolf mortality would occur under each alternative post-delisting, because “if wolf removal through one strategy is reduced, it would likely be compensated for by increasing wolf removal through one or more other approaches.” *Id.* at 137, *see id.* at 143. Wildlife Services thus did not consider in detail the ecological impacts of its lethal wolf removals because it concluded that under all alternatives the effects of its activities would be similar. *Id.* at. 143-44.

The District Court for the Western District of Washington recently held that such an approach violated NEPA because it failed to fully analyze the impacts of wolf control activities

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<sup>6</sup> To help the Court identify the Administrative Record (AR) documents to which this brief cites, citations include which AR the document comes from (AR-EA or AR-DNS), followed by the number of the PDF in that AR, and the AR page number. Where relevant, the document may also be described in a parenthetical.

in Washington. *Woodruff*, 151 F.Supp.3d at 1163-64. The EA at issue there likewise assumed that other agencies would remove wolves if Wildlife Services did not, and that the agencies would manage for stable wolf populations, rather than evaluating the effects of Wildlife Services' actions on the wolf population. *Id.* The court held this reasoning "deflected" from the fact that Wildlife Services can determine whether or when to conduct lethal removal. *Id.* The court also observed that, while a thorough consideration of effects to the wolf population might overlap with findings in the state's wolf management plan, the state plan was not binding upon Wildlife Services and "a hard look at the effects of lethal removal on gray wolf populations would provide Wildlife Services with a clear structure and boundaries for engagement with the state plan." *Id.* The court rejected Wildlife Services' reasoning for not taking a hard look at the ecological effects of its activities where that reasoning rested on the premise that approximately the same level of wolf killing would occur under all alternatives. *Id.* at 1164.

Wildlife Services' analysis in the 2011 EA is flawed for the same reasons: it avoided assessing direct, indirect and cumulative impacts to wolf populations from Wildlife Services' proposed expanded wolf-killing activities, based on similar facile assertions. The assertion that IDFG's wolf management would ensure a stable population of 500 wolves was particularly unreasonable because it was based on the 2008 plan that had been withdrawn before the EA was finalized (*see* Ans. ¶ 65), a fact the EA failed to even acknowledge. Moreover, the assertion that Wildlife Services' killing activities would have no impact because IDFG would kill the same number of wolves regardless ignored the reality that Wildlife Services has special expertise and resources to kill wolves, Ans. ¶ 23, and that IDFG requested its assistance removing wolves to achieve wolf population objectives rather than attempting the wolf killing itself. *See* AR-EA #47; AR-DNS #291, 5120 (desired wolf removal rates not expected to be achieved through

private hunting and trapping). As in *Woodruff*, it would have been reasonable to assume that at least a short term reduction in wolves killed would occur without Wildlife Services' involvement. This Court should reverse and remand the 2011 EA and DN/FONSI, as the *Woodruff* court did.

**B. The 2011 Wolf EA Is Improperly Tiered To State Plans Prepared Without NEPA Analysis.**

Wildlife Services may not rely on IDFG's wolf management plans to satisfy NEPA's "hard look" requirement. The state plans were produced without the rigorous public scrutiny and firm grounding in science that NEPA requires.

It is well established that a federal agency may not rely on state plans or other non-NEPA documents to avoid undertaking the NEPA "hard look" analysis of its own proposed actions and disclosing that information to the public. *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1073-74 (9th Cir. 2002) (agency could not rely on guidelines produced without NEPA and future site-specific analysis to substitute for an adequate effects analysis); *W. Watersheds Project v. Rosenkrance*, No. 4:09-CV-298-EJL, 2011 WL 39651, \*12 (D. Idaho Jan. 5, 2011) (Bureau of Land Management could not rely on conclusions of rangeland health assessments without including actual analysis in the EA). While an agency may "tier" an analysis to other analyses—that is, incorporate by reference their contents, 40 C.F.R. § 1508.28—it may only do so where the broader analysis actually discusses the impacts of the project at issue and has undergone public scrutiny. *See e.g., Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, 2006 WL 1991414, \*8-9 (E.D. Cal. July 14, 2006). Agencies may tier only to documents that have undergone NEPA analysis; a non-NEPA document prepared and adopted by a state government cannot satisfy a federal agency's obligations under NEPA. *See S. Fork Band Council Of W. Shoshone Of Nevada v. U.S. Dep't of Interior*, 588 F.3d 718, 726 (9th Cir. 2009).

In the 2011 EA and DN/FONSI, Wildlife Services thus wrongly relied on IDFG's wolf population objectives from the 2002 and 2008 wolf management plans, because those plans are non-NEPA documents, are not binding on Wildlife Services, and may be changed at any time. Indeed, IDFG actually withdrew the 2008 wolf management plan containing the 500-wolf population objective before Wildlife Services issued the final EA, and IDFG was directed by the Fish and Game Commission to manage wolves under the 2002 plan shortly thereafter. SOF ¶¶ 13, 27. Thus, not only did the EA unlawfully tier to the state management plans, it also relied on an assumption of maintaining a statewide population of 500 wolves when that assumption was no longer supported. This Court should reverse and remand the 2011 EA, because Wildlife Services wrongly relied on non-NEPA state plans to substitute for a thorough analysis of its activities' direct, indirect, and cumulative effects on the wolf population and the environment. *See S. Fork Band*, 588 F.3d at 726.

**C. The 2011 EA Failed To Analyze Site-Specific Impacts And Activities.**

An agency must fully evaluate the site-specific impacts of a proposed action when it makes the critical decision to act. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050-51 (9th Cir. 2013); *State of Cal. v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (discussing timing of site-specific impacts analysis). An agency must consider effects specific to a site where predator control is contemplated. *Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, 2006 WL 1991414 at \*8-9 (EIS was inadequate where it failed to analyze site-specific impacts of gopher baiting). It also must assess a proposed action on a site-specific basis for compliance with land use plans and land management statutes. *Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 934 (9th Cir. 2010). It may not rely on non-NEPA analyses to consider site-specific impacts. *See Rosenkrance*, 2011 WL 39651 at \*11, *Kern*, 284 F.3d at 1073 (discussed *supra*). Quantified,

detailed information is necessary for an adequate cumulative impacts analysis. *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 995. A NEPA analysis addressing site-specific actions must be prepared where a programmatic EIS fails to adequately address site-specific impacts. *Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008).

Here, the 2011 EA and DN/FONSI claim to allow Wildlife Services to remove wolves anywhere in the state of Idaho without any further NEPA analysis, SOF ¶ 36, while specifically refusing to consider site-specific impacts of Wildlife Services' activities. SOF ¶ 21. Instead, the 2011 EA stated that site-specific decisions would be made through Wildlife Services' "Decision Model" and annual work planning process—each of which occur without any public disclosure or input. *Id.* Indeed, the Decision Model is simply a self-described "thought process," and there is no evidence that it is used. *See id.* Due to this omission, the EA did not analyze the effects of Wildlife Services' actions on any area where they may be concentrated, such as the Stanley Basin/SNRA or the Lolo/Selway Zones. SOF ¶¶ 21, 22. Nor did it document whether such concentrated killing complied with governing land management plans. SOF ¶ 23. Because there is little or no analysis of site-specific impacts, Wildlife Services' cumulative impacts analysis is also highly speculative and inadequate. *See Rosenkrance*, 2011 WL 39651 at \*11.

For instance, even though the 2011 EA disclosed that Wildlife Services would likely remove wolves in the Lolo Zone under the preferred alternative, it did not discuss the effects of its activities on age structure, pack dynamics, or stability of the local wolf populations or on the ecological environment in that Zone. *See AR-EA #005*, 72-73, 131, 172 (2011 EA). It also did not discuss how its activities could impact federally-designated wilderness and wilderness values, even though 14 percent of the Lolo Zone is wilderness. SOF ¶ 22. And it failed to consider how activities targeting wolves that also use the wilderness would impact wolf

recovery, even as it admitted that the population in the central Idaho wilderness stronghold is particularly important to wolf persistence. SOF ¶ 17. *See also* SOF ¶¶ 7, 30 (FWS noting same). Because the 2011 EA contained no site-specific analysis and the agency’s work plans and “WS Decision Model” process never undergo NEPA review, the public has had no opportunity to review or comment on Wildlife Services’ site-specific activities and only becomes aware of them through press releases and court documents, often after the activities have taken place. *See* Ans. ¶¶ 1, 62; SOF ¶ 36; Haverstick Decl. ¶¶ 26, 29. Without providing quantified, detailed information regarding Wildlife Services’ specific activities and their intended effects, there is no evidence Wildlife Services took the required “hard look.” *Rosenkrance*, 2011 WL 39651 at \*11.

For these reasons, the 2011 EA failed to take the required hard look at the effects of Wildlife Services’ activities on wolf populations and the environment, and this Court should order the agency to produce an adequate environmental analysis.

## **II. WILDLIFE SERVICES VIOLATED NEPA BY NOT PREPARING AN EIS FOR ITS IDAHO WOLF CONTROL ACTIVITIES.**

NEPA requires that if an action *may* have a significant effect on the environment, or even if there are *substantial questions* as to whether it may, the agency must prepare an EIS. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005). Significance is determined by “context” and “intensity.” 40 C.F.R. § 1508.27. Context considers an action’s significance in the context of American society as a whole, as well as the affected region, interests, and locality. *Id.* § 1508.27(a). Intensity turns on ten factors, including “unique characteristics of the geographic area,” impacts that “are likely to be highly controversial” or are “highly uncertain,” and potential cumulatively significant impacts. *Id.* § 1508.27(b). The presence of any one factor may be sufficient to require an EIS. *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005). “If the reasons for a finding of no

significant impact are arbitrary and capricious and the complete administrative record demonstrates that the project may have significant impact on the environment, ordering the preparation of an EIS is appropriate.” *Wilderness Soc. v. U.S. Forest Serv.*, 850 F.Supp.2d 1144, 1155 (D. Idaho 2012).

The record before the Court reveals beyond dispute that many of these factors are present here, and that there are at least “substantial questions” about whether Wildlife Services’ Idaho wolf killing actions may have significant environmental impacts, thus requiring an EIS.

**A. Unique Characteristics of the Geographic Area.**

Wilderness areas are unique geographic areas, and impacts to their wilderness character may meet the significance criteria. *See Wilderness Watch v. Vilsack*, No. 4:16-cv-12-BLW, 2017 WL 241320, \*7 (D. Idaho Jan. 18, 2017) (holding wildlife collaring project within Frank Church-River of No Return Wilderness triggered this EIS factor); *Izaak Walton League of America v. Kimbell*, 516 F. Supp.2d 982, 996-97 (D. Minn. 2007). The presence of important wildlife species or habitat may also support a finding of significance. *See Wilderness Soc.*, 850 F.Supp.2d at 1160; *Native Ecosystems Council & Alliance for the Wild Rockies v. U.S. Forest Serv. ex rel. Davey*, 866 F.Supp.2d 1209, 1228 (D. Idaho 2012).

Wildlife Services asserted in its FONSI that “[t]here are no unique characteristics such as park lands, prime farm lands, wetlands, wild and scenic areas, or ecologically critical areas that would be significantly affected.” AR-EA #003, 13. This claim is patently wrong. The action area for the 2011 EA encompasses the entire state of Idaho, including special places like the Frank Church and Selway-Bitterroot Wildernesses, the SNRA, and others, all of which and been and would continue to be affected by Wildlife Services’ activities. *See* AR-EA #005, 83 (2011 EA). Portions of the Lolo Zone, where wolf removal would be concentrated under the EA’s



preferred alternative, are within the central Idaho wilderness complex and wolves killed in areas outside of the wilderness undoubtedly use the wilderness as well. SOF ¶ 22. This wilderness is part of the “core” area deemed essential to wolf recovery. SOF ¶¶ 7, 17. Wildlife Services did not explain why reducing the wolf population in the Lolo Zone by 70 percent or more over a period of five years would not produce a significant effect on the environment in the Zone and the wilderness it encompasses. *See* AR-EA #005, 73 (2011 EA). Indeed, this plan is intended to have a “significant effect” by reducing the wolf population in the Lolo Zone and bolstering elk herds.<sup>7</sup> *See* AR-EA #499. For these reasons, the “unique characteristics” EIS factor was triggered, requiring an EIS.

**B. Impacts That Are Likely To Be Highly Controversial.**

“An action is ‘highly controversial’ if there is ‘a substantial dispute [about] the size, nature, or effect of the major Federal action rather than the existence of opposition to a use.’” *Woodruff*, 151 F.Supp.3d at 1165 (quoting *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1193 (9th Cir.1988)). Public comments alone may raise substantial questions about the size, nature, and effect of the action, triggering the requirement for an EIS due to high controversy. *Id. See also Sierra Club*, 843 F.2d at 1193 (where conservation group presented opinions of conservationists, biologists, and other experts critical of proposed project, controversy required EIS). In *Woodruff*, the court found Wildlife Services’ proposed wolf killing highly controversial because there was significant disagreement among experts about whether wolf control works to address livestock depredation, the plan and agreements supposedly constraining the effects of the action did not specify whether lethal or non-lethal methods would be used, and Wildlife Services retained discretion to employ its own lethal removal protocols. *Id.* The court found this factor

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<sup>7</sup> “A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.” 40 C.F.R. § 1508.27(b)(1).

weighed heavily in favor of preparation of an EIS. *Id.*

Here, Wildlife Services received over 100,000 comments on its draft Wolf EAs, many of which raised questions about the size, nature, and effects of the action. Ans. ¶ 51. Comments pointed out that the analysis ignored scientific studies that found non-lethal controls effective at addressing livestock depredations, and lethal controls ineffective. AR-EA #087, 809.

Comments and attached science raised questions about whether gray wolf populations were actually “recovered” and whether they could meet recovery objectives while subject to the hunting pressure they would likely be under pursuant to IDFG’s management plans. *See* AR-EA #058, 531-32 (citing Bergstrom et al. (2009)), AR-DNS #183. They also pointed out that the EA was inadequate to justify Wildlife Services’ extensive wolf removals in the Lolo Zone. *Id.*

Peer review of the plan to kill wolves in the Lolo Zone that IDFG proposed to FWS and that Wildlife Services discussed in the 2011 EA likewise reflected scientific controversy. Reviewers questioned whether the proposed wolf killing would work to boost elk herds, whether IDFG’s population objectives for elk were reasonable, and whether wolf predation was the reason for elk decline. SOF ¶ 9. One reviewer pointed out that, because the action was likely to be “controversial,” “IDFG needs to make predictions of what will happen and when.” *Id.* Wildlife Services never addressed concerns like these because it elected not to examine the impacts of its projected wolf killing in detail. SOF ¶¶ 21-22; *see* AR-EA #005, 138 (2011 EA) (providing a very general description of why preferred alternative anticipated to be effective).

Moreover, similar to *Woodruff*, Wildlife Services remains free to employ its own lethal or non-lethal removal protocols, as evidenced by its stated intention to use its internal “Decision Model” to select actions at the site-specific level, and to use the non-public annual work plan process to adapt its methods to comply with governing land use plans. SOF ¶ 21. IDFG’s

reinstated 2002 management plan imposes few constraints on Wildlife Services' operations. SOF ¶¶ 3, 27. The EA claimed that under the preferred alternative Wildlife Services could respond to "requests for assistance" from IDFG to "protect" wild ungulates throughout the state, without any further analysis or disclosure of methods to be used, numbers of wolves to be killed, impacts to special places within or adjacent to proposed action areas, or projected effects of the action. See SOF ¶ 36.

As a result, there is significant controversy about the effects of Wildlife Services' activities and even what those activities might be. Just as in *Woodruff*, this factor weighs heavily in favor of preparing an EIS.

**C. Impacts That Are Highly Uncertain.**

A project may have significant effects where its effects are "highly uncertain or involve unique or unknown risks." *Blackwood*, 161 F.3d at 1213; 40 C.F.R. § 1508.27(b)(5). An agency must prepare an EIS where "uncertainty may be resolved by further collection of data, or where the collection of such data may prevent speculation on potential . . . effects." *Woodruff*, 151 F.Supp.3d at 1165 (quoting *Native Ecosystems Council*, 428 F.3d at 1240). In *Woodruff*, the court found dispute in the scientific community about whether predator control works to address depredations warranted further collection and consideration of data. *Id.*

After the 2010 draft Wolf EAs issued, Plaintiffs' comments alerted Wildlife Services to dispute in the scientific community as to whether lethal controls work to address depredation and to whether nonlethal controls could be more effective, whether the projected activities in the Lolo Zone were justified, and whether the Northern Rockies wolf population was "recovered," as well as other scientific controversy. See SOF ¶ 12. Wildlife Services relied on a misinterpretation of *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 378 (1989), to reject

uncertain science as a basis for needing an EIS, reasoning that “NEPA does not require the courts to resolve disagreements among various scientists as to the methodology used by an agency to carry out its mission.” AR-EA #005, 99 (2011 EA). But the reference in *Marsh* pertained to supplementation of an already-existing EIS, and specifically did not “turn on the meaning of the term ‘significant.’” *Marsh*, 490 U.S. at 377. *Marsh* does not change Wildlife Services’ responsibility to prepare an EIS where effects of an action are highly uncertain. See 40 C.F.R. § 1508.27. Just as in *Woodruff*, the record here reflects dispute in the scientific community about the effects of Wildlife Services’ actions that could be resolved by the collection of more data and information, and Wildlife Services must prepare an EIS.

**D. Cumulative Impacts.**

A cumulative impact is an “impact on the environment which results from the incremental impact of the action when added to . . . reasonably foreseeable future actions . . . .” 40 C.F.R. § 1508.7. The Ninth Circuit has rejected arguments by agencies that they can rely on the fact that a project may be subject to other state and federal permits or standards as an excuse to avoid reviewing cumulative impacts under NEPA. *S. Fork Band*, 588 F.3d at 726; *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 998; *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006). In *Wilderness Watch*, Chief Judge Winmill held that where an EA only discussed a single-year effort to collar elk in the wilderness, but facts showed the agency foresaw elk collaring in future years, this significance factor was triggered. 2017 WL 241320 at \*6-7.

This case is similar. The 2011 EA discussed a plan to maintain the wolf population in the Lolo and Selway Zones at 20-30 wolves for 5 years. SOF ¶¶ 9, 21. But IDFG’s draft predation management plan—issued while the EA was being produced—did not limit the removals to occurring for only 5 years, or specify a minimum wolf population to maintain in the Zones. SOF

¶¶ 10, 28. Wildlife Services never analyzed how longer, more intensive removals might impact wolves at the site-specific, statewide, or regional levels, beyond stating that a 500-wolf statewide population would be maintained. *E.g.*, AR-EA #005, 130. This omission is particularly glaring given that the Lolo and Selway Zones are key to the central Idaho wilderness complex that is supposed to be a stronghold for wolf recovery. SOF ¶¶ 7, 17.

Nor did Wildlife Services consider the impacts of its “predation management” activities when also added to the reasonably foreseeable impacts from private hunting and trapping in the Lolo/Selway Zones or elsewhere. SOF ¶ 8. Wildlife Services never discussed plans to kill wolves in other management zones for ungulate protection in any detail. Wildlife Services has never disclosed to the public or analyzed the reasonably foreseeable effects of its activities. *See* AR-EA #005, 82 (2011 EA) (potential “expansion” of activities possible). Wildlife Services may not rely on IDFG’s wolf population objectives and plans without doing its own independent analysis.

In summary, the Court must reverse and remand the 2011 EA and DN/FONSI, and order Wildlife Services to prepare an EIS, because the facts demonstrated that: (1) the proposed action could affect unique geographic areas, (2) the nature and effect of the proposed action were controversial, (3) the effects were uncertain, and (4) the action risked significant cumulative impacts.

### **III. AT A MINIMUM, WILDLIFE SERVICES MUST PREPARE A SUPPLEMENTAL NEPA ANALYSIS.**

This Court, at a minimum, should hold that Wildlife Services must prepare supplemental NEPA analysis to evaluate “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(ii). An agency must prepare a supplemental NEPA analysis if there remains a major

federal action to occur, and new information shows that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989). The agency must take a “hard look” at the new information to assess whether supplementation is necessary. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 72-73 (2004).

**A. Wildlife Services Must Supplement In Light Of Significant New Information.**

The context in which Wildlife Services’ wolf killing occurs changed drastically shortly after the 2011 EA and DN/FONSI issued, when Congress directed FWS to delist Idaho wolves under the ESA. SOF ¶ 26. With IDFG’s reduced wolf population objectives, SOF ¶¶ 27, 13, new hunting and trapping seasons, SOF ¶ 27, new predation management plans calling for extensive wolf reductions, SOF ¶¶ 28, 30, IDFG requests for Wildlife Services to kill wolves for the benefit of wild ungulates, SOF ¶ 27, Ans. ¶ 67, and new state funding for killing wolves, SOF ¶ 31, the pressures on wolf populations in Idaho today are vastly greater than they were when the EA issued. Before wolves were delisted, Wildlife Services was responsible for the majority of human-caused wolf mortality in Idaho, and killed approximately 298 wolves over a six-year period. SOF ¶ 25. Now, close to that many wolves are killed each year, by private hunting and trapping alone. *Id.* ¶ 37. It is no exaggeration to state that the wolves Wildlife Services kills now add to hundreds killed in Idaho each year. *Id.*

These new pressures have affected wolf presence and behavior in many parts of the state, including the Stanley Basin/SNRA, East Fork Salmon River, and Lolo/Selway Zones, thus harming the many people – including Plaintiffs’ declarants – that seek to promote wolf recovery and enjoy seeing and hearing wolves in the wild. *See* Marvel, Cole, Haverstick, Freistadt, Rusnak, Hunt, Nokes, and Hansen Declarations. Yet Wildlife Services has never evaluated these

impacts of its expanded wolf killing operations under NEPA.

Significant new science concerning the environmental impacts of these killings has also emerged since the 2011 EA. *See* SOF ¶ 34.<sup>8</sup> Creel *et al.* (2015) found that IDFG's wolf counting methods may produce inflated population estimates and questioned whether a healthy wolf population can withstand the level of removal now levied against it. Creel *et al.* (2016) suggested that Idaho's wolf population shows signs of decline. Creel *et al.* (2015), Borg *et al.* (2014), and Cullingham *et al.* (2016) found that lethal removals can impact wolf pack social structure and population dynamics. Treves *et al.* (2016) critiqued studies supporting the use of lethal predator control as flawed and biased. *Id.*

Rutledge *et al.* (2010) concluded that killing wolves outside of protected area boundaries can affect evolutionarily important social patterns within the areas. Stewart *et al.* (2015) explained that human impacts can alter behaviors of wildlife species. Numerous references show that such impacts can negatively affect wilderness character. *See* AR-DNS #094, 1345 n.9. Wielgus & Peebles (2014) concluded that killing wolves does not actually decrease depredations, building on work like Harper (2008). Imbert *et al.* (2016) concluded that wolf packs were less likely to predate upon livestock than solo wolves. Proulx *et al.* (2016) authored a new study about the inhumaneness of using neck snares, and several new studies have emerged concerning how wolves influence ecological processes, AR-DNS #340 (Beschta letter critiquing trophic cascades analysis).

Although Plaintiffs notified Wildlife Services of these new circumstances and scientific

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<sup>8</sup> All of these studies were provided to Wildlife Services by Plaintiffs, SOF ¶ 35, and are in the Administrative Record before the Court. *See* AR-DNS #006-092, 095-164. This narrative only discusses a few of the studies Plaintiffs have provided, and the Record contains many more studies bearing upon the effects of Wildlife Services' actions that Wildlife Services has chosen not to address.

information, Wildlife Services rejected all of it as insignificant based on a single letter from its National Wildlife Research Center, which only explicitly addressed three of the studies, and included an appendix addressing a fourth. SOF ¶ 35. Not only was this letter’s reasoning flawed,<sup>9</sup> there is no evidence that Wildlife Services took a “hard look” at the majority of the new information provided. The record shows little consideration of IDFG’s new elk and predation management plans, and no consideration of much new science bearing upon the environmental impacts of Wildlife Services’ actions. Supplementation, here, is action “unlawfully withheld or unreasonably delayed,” and this Court should order Wildlife Services to immediately supplement its NEPA analysis. 5 U.S.C. § 706(1); see *Friends of the Clearwater*, 222 F.3d at 560.

**B. The Monitoring Reports Do Not Take A “Hard Look.”**

To assist in determining whether supplemental NEPA analysis is required, an agency may prepare an internal report or evaluation of new information, such as the FY 2011, 2012 and 2013-14 Monitoring Reports that Wildlife Services prepared here. *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1157 (9th Cir. 2008). But such reports or evaluations must take a “hard look” at the new information to determine whether supplemental NEPA is necessary. *Norton*, 542 U.S. at 72-73. The agency must make a reasoned decision based on its evaluation of the significance or lack of significance of the new information.

*Headwaters v. BLM*, 914 F.2d 1174, 1177 (9th Cir. 1990).

Here, Wildlife Services’ Monitoring Reports do not take the required “hard look” at new

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<sup>9</sup> The letter rejected Wielgus & Peebles (2014), Harper et al. (2008), and Musiani (2005) because those studies analyzed impacts on a “regional scale”—even though Wildlife Services itself analyzed impacts to wolf populations exclusively on the regional scale of the state of Idaho. See SOF ¶ 18. The letter went on to emphasize that the new state wolf and predation management plans did not trigger supplementation because “none of the assumptions presented in the EA regarding ... the minimum wolf populations have been violated,” a justification which, itself, relies on the statewide wolf population required under the new state plan.



information to justify its conclusion that NEPA supplementation is unnecessary. For example, when Wildlife Services issued its 2011 Monitoring Report in February 2012, IDFG had just assumed responsibility for wolf management under the 2002 Plan. SOF ¶¶ 28-29. Yet the 2011 Monitoring Report still assumed that wolves would be maintained at the “2005 population level (about 500 wolves, more than 5 times the minimum Federal recovery level)” pursuant to the withdrawn 2008 Plan. AR-DNS #276, 4400. This was obviously in error, because the 2008 Plan’s population objective had been replaced by the 2002 Plan’s much lower objective of as few as 15 breeding pairs with no minimum population level. SOF ¶¶ 13, 27.

The Monitoring Report also did not mention the new December 2011 “Predation Management Plan” for the Lolo and Selway Elk Zones that adopted an 11-month wolf hunting and trapping season with no harvest limits in addition to Wildlife Services’ wolf killing. AR-DNS #291. The report ignored that these Zones occur partially within designated wilderness when it concluded that Wildlife Services’ activities had no negative impacts on any special places. *See* AR-DNS #276, 4403. The 2012 Monitoring Report, issued in June 2013, duplicated these flaws, copying most of the analysis verbatim and failing to recognize any significant changed circumstances. *See* AR-DNS #275. These factual and substantive defects show that Wildlife Services did not take the “hard look” at new information and changed circumstances that NEPA requires.

The 2013-14 Monitoring Report finally acknowledged wolf control efforts that had been happening in the Lolo Zone since 2011, as well as IDFG’s actual wolf population objective of 15 breeding pairs under the reinstated 2002 Plan. *See* AR-DNS #165. However, like the prior reports, the 2013-14 Monitoring Report failed to grapple with impacts of maintaining the statewide wolf population at a much reduced level, or to discuss any impact on the wilderness

from continued removal of wolves in the Lolo and Selway Zones. It also did not acknowledge IDFG's new 2014 statewide elk plan, which called for reducing wolf populations by as much as 75 percent in areas where elk were not meeting management objectives. AR-DNS #111, 1696. Likewise, the 2013-14 report ignored new predation management plans that call for aggressive wolf reductions in the Middle Fork (AR-DNS #109) and Sawtooth Elk Zones (AR-DNS #108), which also encompass wilderness. It dismissed a new study, Wielgus & Peebles (2014), which suggested that livestock depredations actually increased following wolf control, citing a single communication with one of its own researchers at its National Wildlife Research Center to reject the study as flawed. AR-DNS #165, 2778. It also dismissed the importance of the new funding source for its activities created with the establishment of the Idaho Wolf Control Board, even while admitting that the new funding could help it hire additional staff and respond to "requests for assistance" more quickly. *Id.* at 2774-75.

Again, Wildlife Services concluded that the 2011 EA adequately "covered" new information and circumstances, and that no impacts to "special places" had occurred, so supplementation was not warranted. *Id.* at 2782-83. Essentially, the Monitoring Report assumed that because the Idaho wolf population had not dipped below statewide management minimums, there was no need to supplement. *Id.* at 2783 ("the estimated minimum year-end wolf population for 2013 and 2014 also exceeds the minimum number of wolves analyzed in the EA as the threshold below which WDM measures must be halted or modified and the EA re-evaluated."). This reasoning violates NEPA's guiding principle that an agency should consider the effects of its actions before "resources have been committed or the die otherwise cast." *Methow Valley*, 490 U.S. at 349. Such simplified conclusions gloss over the many impacts to local wolf populations, the ecosystem, and special geographic areas implicated by the changed

circumstances and new information that have arisen since 2011.

Wildlife Services' decisions not to supplement its 2011 EA were unreasonable because they failed to take the hard look at new information concerning the impacts of Wildlife Services' activities that NEPA requires. This Court should thus find these determinations arbitrary and capricious under the APA, 5 U.S.C. § 706(2), and order Wildlife Services to promptly supplement its NEPA analysis under 5 U.S.C. § 706(1).

### CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs summary judgment, reverse and remand the 2011 EA and DN/FONSI, and order Wildlife Service to prepare legally sufficient NEPA analysis before proceeding with further Idaho wolf control actions.

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Respectfully submitted,

*/s/ Talasi B. Brooks*

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