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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' SEPARATE
STATEMENT
OF UNDISPUTED FACTS**

Pursuant to Local Civil Rule 7.1(b)(1), Plaintiffs submit this Separate Statement of Undisputed Facts in support of their Motion for Summary Judgment:

1. Gray wolves once roamed throughout Idaho. Threatened Rule, 68 Fed. Reg. 15805 (Apr. 1, 2003). After hunting and an active government-sponsored eradication program nearly exterminated them in the lower 48 states, the few remaining in Idaho were protected as endangered under the Endangered Species Act (ESA) in 1974. *See id.* at 15806; *Defenders of Wildlife v. Hall*, 565 F.Supp.2d 1160, 1164 (D. Mont. 2008). As part of a recovery plan, the U.S. Fish and Wildlife Service (FWS) released wolves into Central Idaho in 1995-96. *See Proposed Establishment of a Nonessential Experimental Population*, 59 Fed. Reg. 42118 (Aug. 16, 1994). This release was part of an effort to establish populations in suitable habitat identified in Idaho, Montana, and Wyoming. *Id.*

2. FWS originally defined recovery as 10 breeding pairs in each of the three recovery areas for three consecutive years, 59 Fed. Reg. at 42119 (citing Service (1987)), but soon acknowledged that this was “at best, a minimum recovery goal.” 2009 Delisting Rule, 74 Fed. Reg. 15130 (Apr. 2, 2009) (AR-EA #778).¹ It added a meta-population of at least 300 wolves with movement between the areas as a requirement for recovery. *Id.*

3. In 2002, anticipating delisting, the Idaho Legislative Wolf Oversight Committee (ILWOC) wrote a plan to facilitate the transfer of management authority from FWS to the state. AR-EA #507. The plan set a floor of 15 breeding pairs in Idaho. *Id.* at 9497.

4. FWS did not propose delisting wolves in the northern Rockies until 2007. *See* 2007 Proposed Delisting Rule, 72 Fed. Reg. 6106 (Feb. 8, 2007); AR-EA #488, 9178.

¹ Defendants submitted two Administrative Records, titled “AR-EA” (for documents relating to the 2011 Wolf EA) and “AR-DNS” (for “Decision Not to Supplement” documents after the EA), plus supplemental record materials. *See* ECF #14-15. Each AR consists of separate PDFs that are consecutively paginated. Plaintiffs’ record citations here identify which AR the document belongs to (AR-EA or AR-DNS); the number of the PDF file (i.e., #778), and, if relevant, a pin-cite to the page number in the consecutively-paginated record. Thus, “AR-EA #488, 9178” cites document #488 in the AR-EA, page 9178.

5. On March 6, 2008, the Idaho Department of Fish and Game (IDFG) adopted its own wolf management plan with a goal of maintaining Idaho's wolf population at 2005-07 levels (518-732 wolves) through the 5-year post-delisting period, from 2008-12. AR-EA #488, 9175.

6. FWS issued a rule delisting wolves in the northern Rockies in 2008. 2008 Delisting Rule, 73 Fed. Reg. 10514 (Feb. 27, 2008). The District of Montana enjoined the rule because there was no evidence of genetic exchange between the populations in the three recovery areas, among other reasons. *Hall*, 565 F.Supp.2d at 1169. The court also noted:

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.

7. In 2009, FWS again issued a rule delisting the wolf populations in Idaho and Montana. 2009 Delisting Rule, 74 Fed. Reg. 15123 (Apr. 2, 2009). That rule required each recovery area to maintain a population of 15 breeding pairs and 150 wolves. *Id.* at 15132. The FWS noted that central Idaho provides “the greatest amount of highly suitable wolf habitat” of any wolf population area, and assumed that the central Idaho wolf population would continue to function as a “core” population that would provide a constant source of dispersing wolves into surrounding areas. *Id.* at 15137, 15185 (“Without core refugia areas like ... the central Idaho wilderness that provide a steady source of dispersing wolves, other potentially suitable wolf habitat is not likely to be capable of sustaining breeding pairs.”).

8. IDFG conducted a single wolf hunting and trapping season in 2009, during which 188 wolves were killed, before the District of Montana vacated the delisting decision. Ans ¶ 48; see *Defenders of Wildlife v. Salazar*, 729 F.Supp.2d 1207, 1228-29 (D. Mont. 2010).

9. After *Defenders of Wildlife* returned wolves to federal management, IDFG submitted a request to FWS to conduct a five-year wolf removal program in central Idaho's Lolo Elk Management Zone. AR-EA #500, 9410. It proposed to reduce the Zone's wolf population of 76 by 40-50 wolves at minimum, and maintain it at 20-30 wolves for five years. *Id.* at 9409. Peer reviewers suggested that IDFG's elk population objectives were unrealistic; population declines were caused by habitat condition, not wolves; and that the proposed action would not achieve the intended results because the duration was not long enough. AR-EA #503, 9443-45. One peer reviewer suggested "[b]efore launching what will undoubtedly be a socially controversial wolf control program, IDFG needs to make predictions of what will happen and when." *Id.* at 9447. This initial plan was never finalized. Ans. ¶ 49.

10. IDFG issued an "updated" draft predation management plan for the Lolo and Selway Zones in 2010 that proposed an "adaptive" strategy to achieve elk population objectives, including an 11-month recreational wolf hunting and trapping season with no harvest limits. AR-EA #499, 9390. The plan did not specify a minimum wolf population for the two Zones. *See id.*

11. In August 2010, Wildlife Services issued a draft EA on "Gray Wolf Damage Management in Idaho," (Wolf EA) comprehensively analyzing its Idaho wolf "damage management" activities under NEPA for the first time. AR-EA #157. It issued a revised draft EA in December 2010. AR-EA #135, 998.

12. Wildlife Services received over 100,000 comments on the draft Wolf EAs, including from Plaintiffs. *See* AR-EA #s 057, 058, 074, 075, 087, 097, 101, 104. Plaintiffs' comments highlighted that the analysis reflected an unwarranted bias in favor of lethal controls, that killing wolves to boost ungulate herds is improper and unjustified in the Lolo and Selway Zones, that Wildlife Services had not explained how it would comply with managers' mandates

on federal lands where it planned to conduct its activities, and that Wildlife Services needed to prepare an Environmental Impact Statement (EIS), among other issues. *Id.*

13. IDFG withdrew the 2008 Wolf Management Plan on December 8, 2010. Ans. ¶ 65; AR-EA #501.

14. Wildlife Services issued the final Wolf EA in March 2011. AR-EA #005, *see* AR-EA #003 (DN/FONSI).

15. The final 2011 EA analyzed five alternatives: (1) a “No Action” alternative, continuing Wildlife Services’ wolf damage management program of killing wolves at the behest of livestock producers; (2) the “proposed action/preferred alternative,” continuing its existing program while also killing additional wolves in cooperation with IDFG for “ungulate protection”; (3) continuing the current program, killing wolves for ungulate protection, and additionally sterilizing wolves and using gas cartridges to suffocate pups in wolf dens; (4) nonlethal wolf management only; and (5) no wolf damage management by Wildlife Services in Idaho. AR-EA #005, 104-06.

16. The preferred alternative included killing wolves using such methods as shooting, calling and shooting, aerial shooting, traps, and neck snares. *Id.* at 113. Wildlife Services has “special expertise” killing wolves using these methods. Ans. ¶ 23.

17. The 2011 EA assumed that central Idaho would continue to serve as a source population to maintain a viable population of wolves throughout the Northern Rocky Mountains. *See* AR-EA #005, 122-24 (“[Central Idaho] will continue to provide suitable habitat for a resident wolf population and will be a dependable source of dispersing wolves to help maintain a viable wolf population in the NRM (USFWS 1994).”).

18. The 2011 EA assumed that under all alternatives “USFWS or IDFG 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)." AR-EA #005, 132; *see id.* at 80 ("Wolf management goals are established by the responsible agency...."). It also assumed that "it is reasonably foreseeable that, in the absence of any assistance by WS in wolf damage management in Idaho IDFG and/or USFWS could conduct or authorize other entities to perform similar levels of wolf removals." *Id.* at 97. It disclaimed responsibility for analyzing the impacts of this management, reasoning:

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. This EA considers the cumulative impacts of independent state actions where appropriate.

Id. at 59 n. 4; *see also id.* at 101 (stating that whether wolf control to "protect" ungulates is appropriate or not is up to IDFG/FWS).

19. Although the Wolf EA noted that FWS had endorsed the 2002 management plan's objective of maintaining at least 15 breeding pairs of wolves, it ignored the controversy as to whether this minimum population is sufficient for recovery., *id.* at 132-33; *see Hall*, 565 F.Supp.2d at 1170-72 (genetic exchange is unlikely to occur at "minimum" populations of 15 breeding pairs or 150 wolves per state).

20. The 2011 EA purported to consider both scenarios under which wolves would remain listed under the ESA and under which they would be de-listed and state managed. AR-EA #005 at 85-86, 103.

21. The 2011 EA disclaimed any requirement to analyze or disclose the site-specific impacts of its activities, *id.* at 81-82, 99, even though it discussed IDFG's 2010 request to FWS to kill wolves in the Lolo and Selway Zones, *id.* at 172, 131. Wildlife Services stated that it would determine which site-specific actions to conduct using its "WS Decision Model," an

analytical thought process. *Id.* at 81, 108. It suggested that further detail about actions would be set forth in its work plans. *E.g., id.* at 83, *see* AR-DNS #156-64 (examples of work plans).

Neither process includes public disclosure or NEPA analysis.

22. The 2011 EA did not address impacts to wildernesses or other special places in any detail, even though activities were projected for the Lolo and Selway Zones, which occur within and adjacent to wilderness. *See id.* at 120 (chart discussing wilderness measures), 167. Fourteen percent of the Lolo Zone and 79 percent of the Selway Zone are wilderness. *Id.* at 72-73; AR-DNS #106, 5117.

23. The 2011 EA asserted that the selected alternative would comply with governing Forest Service and Bureau of Land Management land use plans, with no further analysis. AR-EA #005, 77.

24. Wildlife Services selected the 2011 EA's preferred alternative and issued a Decision Notice and Finding of No Significant Impact (DN/FONSI) on March 29, 2011. AR-EA #003, 3-49. The DN/FONSI claimed that none of the factors requiring preparation of an EIS were present. *Id.* at 12-14. This decision allowed Wildlife Services to expand its operations to begin helping IDFG kill wolves to "protect" wild ungulates. *Id.* at 10-12.

New Information and Significant Changes Since the 2011 Wolf EA.

25. While wolves were listed under the ESA, Wildlife Services was responsible for the majority of human-caused wolf mortality in Idaho. Ans. ¶ 46. Between 2005 and 2009, Wildlife Services killed 298 wolves in Idaho. *Id.* Some or all of this work occurred under categorical exclusions (CEs) that exempted them from NEPA analysis. *See e.g.,* AR-EA #747-77. Wildlife Services only began NEPA analysis after it was sued and determined that its practice of relying primarily on CEs was potentially "vulnerable." *See* AR-EA #24, 311; *Wolf*

Recovery Found. v. U.S. Forest Serv., No. 4:09–0686–E–BLW, DN 1 (D. Idaho Dec. 31, 2009) (Second Claim for Relief).

26. Congress directed FWS to delist Idaho wolves on April 15, 2011, and FWS complied on May 5, 2011. 2011 Delisting Rule, 76 Fed. Reg. 25590-25592 (May 5, 2011).

27. On May 19, 2011, the IDFG Commission directed IDFG to manage wolves as big game animals, under the 2002 wolf plan. Ans. ¶ 65. In May 2011, Wildlife Services first killed wolves to “protect” wild ungulates in the Lolo Zone at IDFG’s request. Ans. ¶ 67. On July 28, 2011, the IDFG Commission voted to set a wolf hunting and trapping season with a statewide bag limit of 220 wolves. Ans. ¶ 66.

28. In December 2011, IDFG issued a final Revised Predation Management Plan for the Lolo and Selway Elk Zones, which adopted an 11-month wolf hunting and trapping season with no harvest limits. AR-DNS #291, 5117. The plan did not specify a minimum wolf population for the Zones. *Id.*

29. In February 2012, Wildlife Services issued a “FY 2011 Monitoring Report” for the 2011 EA.² AR-DNS #276. The report stated that wolves were under state management governed by the 2002 and 2008 Wolf Management Plans, which would ensure a population of “about 500 wolves.” *Id.* at 4400. It did not discuss the new predation management plan for the Lolo and Selway Elk Zones. It concluded that no new information or impacts merited supplementing the EA. *Id.* at 4404. In June 2013, Wildlife Services issued a similar “FY 2012 Monitoring Report.” AR-DNS #275. It also concluded that supplementation was not necessary. *Id.* at 4394.

30. In 2014, IDFG issued a new statewide elk plan that called for reducing wolf

² Although the report appeared to address the 2011 EA, it repeatedly referred to “USDA (2010),” apparently the Draft EA.

populations by as much as 75 percent where elk were not meeting management objectives. AR-DNS #111, 1696. The same year, IDFG issued new predation management plans for the Middle Fork, Panhandle, and Sawtooth Elk Zones. AR-DNS #108, 109, 110. The plans call for aggressive wolf reductions to boost elk populations in these Zones. Most of the Middle Fork Zone is comprised of the Frank Church-River of No Return Wilderness. AR-DNS #109, 1608. The Sawtooth Elk Zone covers the western half of the Sawtooth National Recreation Area (SNRA). Ans. ¶ 68. 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. *E.g.*, AR-EA #694, 15561; AR-EA #699, 16134-37.

31. In 2014 the Idaho Legislature created the Wolf Depredation Control Board to fund wolf control. AR-DNS #154, 2679; *see also* AR-DNS #271, 272, 273, 274. It has allocated over half a million dollars each year to these efforts. *Id.*

32. A peer-reviewed 2014 study by Wielgus & Peebles concluded that killing wolves may actually increase livestock depredations. AR-DNS #135.

33. In January 2015, Wildlife Services issued a 2013-14 Monitoring Report. AR-DNS #165. The report stated, based on a communication with an IDFG employee, that IDFG still intended to maintain a population of 20-30 wolves in the Lolo and Selway Zones. *Id.* at 2771. It stated that new Wolf Control Board funding could allow it to hire new employees. *Id.* at 2774-75. It dismissed the Wielgus & Peebles study as flawed, citing a communication with a researcher in its National Wildlife Research Center (NWRC). *Id.* at 2778. It did not mention the new predation management plans. The agency decided not to supplement the 2011 EA. *Id.* at 02783.

34. On April 1, 2016, Plaintiffs notified Wildlife Services that new science and new

circumstances required supplementation of the 2011 EA. AR-DNS #94. Plaintiffs provided science indicating that Wildlife Services' activities could impact wildernesses and protected areas (Rutledge et al. (2010) and Stewart et al. (2015)); other studies echoing Wielgus & Peebles' conclusions about effects of wolf-killing on depredations (Imbert et al. (2016), *see* Larry Pynn, *Heavily-hunted wolf populations have elevated stress, reproductive hormones, study reveals*, Vancouver Sun (Nov. 12, 2014)); new information regarding the effects of lethal control on wolf pack social structure (Creel et al. (2015), Borg et al. (2014), and Cullingham et al. (2016)); science questioning whether Idaho's wolf population can remain stable in light of the heavy-handed removals to which it is subject (Creel et al. (2015), Creel et al. (2016)); new information bearing upon the humaneness of Wildlife Services' methods (*e.g.*, Proulx et al. (2015), Sharp & Saunders (2011)); and new studies regarding the trophic cascade dynamic (Estes et al. (2011), Ripple et al. (2014), Suraci et al. (2016); *see also* AR-DNS #340 (Beschta comments)). *See id.* at 1340-53. Plaintiffs submitted additional information to Wildlife Services on May 16, 2016, May 18, 2016, June 22, 2016, July 27, 2016, and September 15, 2016, including Treves *et al.* (2016), which critiqued studies supporting the use of lethal predator control as flawed and biased. *See* AR-DNS #339, 8156.

35. Wildlife Services forwarded some of this information to the NWRC, which concluded that none of it merited supplementing the EA. *Id.* NWRC addressed three of the studies Plaintiffs submitted, dismissing them because they analyzed impacts of wolf damage management on a regional scale. *Id.* It stated that none of the EA's assumptions had been violated and that while the state could request wolf killing in new areas, Wildlife Services' response is "entirely contingent on actions addressed in our EAs." *Id.* The letter also dismissed Treves *et al.* (2016), which concluded that studies documenting success of lethal predator control

were poorly designed. *Id.* at 08159-62.

36. Plaintiffs learned, for the first time, from the Answer to this Complaint (Ans. ¶ 62) that Wildlife Services has also killed wolves to benefit wild ungulates in the Panhandle Zone. The 2011 EA does not discuss these operations at all, beyond stating that “the Proposed Action would include WS assistance to IDFG with wolf removal in [other areas of Idaho] for the protection of ungulates. Those efforts would only be conducted under the provisions of approved IDFG management plans....” AR-EA #0005, 73.

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, respectively, 50, 59, 80, 42, and 54 wolves in these years to address livestock depredations. AR-DNS # 114, 275-76, 295-97, 434. Wildlife Services has also killed approximately 103 wolves in the Lolo Zone over the last six years to “protect” wild ungulates. *See* AR-DNS #107, 112-13, 295-97.

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Respectfully submitted,

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