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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

COMPLAINT

NATURE OF ACTION

1. On February 10, 2016, Defendant USDA Wildlife Services aurally gunned down 21 gray wolves in central Idaho's Lolo elk zone. These deaths added to at least 636 wolves killed by Wildlife Services in Idaho between 2006 and 2015. In addition to aerial gunning, Wildlife Services captures wolves in foothold traps, often later killing them; shoots them; and uses wire snares to strangle them. The effects of killing Idaho's native apex predators cascade through the environment, particularly in the Lolo zone, where Wildlife Services has now slaughtered wolves several years in a row.

2. Wildlife Services' wolf killing program operates under the auspices of a March 2011 Environmental Assessment (2011 Wolf EA) and Decision/Finding of No Significant Impact (Decision/FONSI). The 2011 Wolf EA claims to evaluate the environmental impacts of killing wolves that may have predated upon domestic livestock, as well as expanded wolf-killing meant to boost elk herds. But both the 2011 Wolf EA and Decision/FONSI are deeply flawed because Wildlife Services has never disclosed or analyzed how many wolves may be killed; the ecological impacts of doing so, even on central Idaho's Wildernesses; or the cumulative impacts of the agency's killing combined with extensive private hunting and trapping. A valid assessment of direct, indirect and cumulative impacts would have shown that Wildlife Services' wolf-killing activities may have a significant effect on the human environment, and thus the agency should have prepared an environmental impact statement (EIS) rather than an EA.

3. Additionally, circumstances have changed greatly since the EA issued. Approximately two months after the 2011 Wolf EA and Decision/FONSI issued, the U.S. Fish and Wildlife Service (FWS) issued a decision removing wolves from protection under the federal Endangered Species Act (ESA). With wolves under state management, the Idaho Department of

Fish and Game (IDFG) instituted new recreational hunting and trapping seasons with liberal bag limits. IDFG also abandoned its objective of maintaining a population of 518-732 wolves by reverting to a 2002 wolf management plan drafted by the Idaho Legislature, which sets a floor of only 15 breeding pairs or 150 wolves. These changes drastically altered the context in which Wildlife Services' killing occurs, as it now occurs in conjunction with the killing of several hundred wolves each year by private hunters and trappers. A wealth of new science raises questions about how Wildlife Services' activities impact wolves and their ecosystem under this new management regime, as well as questions about whether killing wolves is effective at preventing livestock depredation at all, and whether killing wolves increases social tolerance for wolves, as Wildlife Services assumes. Wildlife Services must supplement its prior analysis to consider the impacts of its wolf killing activities in light of these significant new circumstances and new information.

4. Defendants violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, by failing to conduct a full EIS and instead issuing the flawed 2011 Wolf EA and Decision/FONSI, and by refusing to complete supplemental NEPA analysis to consider significant new information.

5. Plaintiffs seek relief reversing and remanding Wildlife Services' 2011 Wolf EA and Decision/FONSI, ordering Wildlife Services to supplement its NEPA analysis, and ordering Wildlife Services to comply with its NEPA duties by preparing an EIS for its Idaho wolf management activities. Plaintiffs also seek relief ordering Wildlife Services to halt its wolf killing activities until it has prepared an updated, valid NEPA analysis.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370; the Administrative Procedure Act, 5 U.S.C. §§ 701-706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and the Equal Access to Justice Act, 28 U.S.C. § 2412. An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

7. Venue in this Court is proper under 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and because Defendant Grimm and two Plaintiffs reside in this district.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

9. WESTERN WATERSHEDS PROJECT (WWP) is an Idaho-based nonprofit membership organization with over 1,500 members, which is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, and in Idaho.

10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the Center) is a nonprofit organization that is dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center is based in Tucson, Arizona, with offices throughout the country, including in Idaho. The Center has 48,646 members, including many who reside in,

explore, and enjoy the native species and ecosystems of the Northern Rockies.

11. Plaintiff FRIENDS OF THE CLEARWATER (FOC) is an Idaho nonprofit conservation organization with its principal place of business in Moscow, Idaho. FOC and its members defend the Idaho Clearwater Bioregion's wildlands and biodiversity through a Forest Watch program, litigation, grassroots public involvement, outreach and education. FOC works to protect native species in Idaho affected by Wildlife Services' indiscriminate killing of wildlife, including wolves, grizzly bears, black bears, lynx, and wolverines.

12. Plaintiff WILDEARTH GUARDIANS (Guardians) is a nonprofit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American west. Guardians has over 165,000 members and supporters, many of whom have particular interests in carnivores and other native species targeted by Wildlife Services. Headquartered in Santa Fe, New Mexico, Guardians maintains several other offices around the West, including in Missoula, Montana and Denver, Colorado. For many years, Guardians has advocated for the restoration of ecologically viable populations of wolves to their historic ranges. This work includes advocacy for ESA protections and against lethal control by Wildlife Services and other entities.

13. Plaintiff PREDATOR DEFENSE is a national nonprofit organization headquartered in Eugene, Oregon. Predator Defense has more than 15,000 supporters throughout the United States, including supporters who reside in Idaho. Predator Defense works to protect native predators like wolves and coyotes and to help people learn to coexist with them. Established in 1990 with a focus on rehabilitating predator species, Predator Defense closed its rehabilitation center in 1995, due to the increasing difficulty finding suitable release sites for rehabilitated animals. Predator Defense then broadened its focus to address the public

management policies and predator control methods threatening predators and their habitat, with the ultimate goal of ending America's war on wildlife.

14. The Plaintiff organizations place a high priority on protecting and conserving wolves in their natural habitats in Idaho, and undertake a wide range of activities including education, advocacy, scientific study, and litigation, in order to protect and conserve wolf populations and to communicate to the public and policy-makers about the values of preserving wolf populations and habitats in Idaho.

15. Plaintiffs' members, supporters, and/or staff live, work, recreate, study, and otherwise use and enjoy public lands throughout Idaho where Wildlife Services carries out wolf killing and control activities.

16. Plaintiffs' members, supporters, and/or staff frequently engage in wildlife watching, hiking, camping, boating, hunting, fishing, photography, and other activities in hopes of seeing and hearing wolves and signs of wolf presence in Idaho, and will continue to do so into the future.

17. Plaintiffs and their members and supporters also find deep spiritual satisfaction and aesthetic enjoyment in the knowledge that Idaho is home to a healthy ecosystem that supports thriving populations of apex predators such as wolves in their natural role.

18. Plaintiffs and their members, supporters, and/or staff have suffered, and will foreseeably continue to suffer, direct injuries to their recreational, aesthetic, scientific, spiritual and other interests and activities as a result of Wildlife Services' wolf killing and control actions in Idaho. In particular, Plaintiffs and their members and supporters have been injured by witnessing evidence of Wildlife Services' wolf killing, trapping, and other activities in Idaho. They have been injured by Wildlife Services' wolf-killing in the Lolo zone and elsewhere in

Idaho, which decreases their chances of seeing and hearing wolves in their natural habitat in central Idaho, including in its Wildernesses.

19. Plaintiffs and their members, supporters, and/or staff are also directly injured by Wildlife Services' consistent refusal to fully disclose and evaluate the environmental impacts of its activities in Idaho, including wolf killing, as NEPA requires. They are injured by Wildlife Services' failure to analyze or disclose the impacts of its wolf-killing activities on Wildernesses, the Sawtooth National Recreation Area (SNRA), and other special places, including direct, indirect and cumulative impacts and alternatives. Plaintiffs and their members, supporters and/or staff have a strong interest in ensuring that Wildlife Services complies with all applicable federal statutes and regulations, including NEPA. Plaintiffs have worked to reform Wildlife Services' activities throughout the United States, including in Idaho, and have a strong interest in ensuring that Wildlife Services fully considers and discloses site-specific information about its activities to the public.

20. Plaintiffs and their members, supporters, and/or staff are directly injured and adversely affected by Wildlife Services' failure to comply with federal law.

21. Defendant TODD GRIMM is the Director of the Idaho State Office of USDA Wildlife Services, and is the responsible federal official for the legal violations and/or omissions at issue herein. He is sued solely in his official capacity.

22. Defendant USDA WILDLIFE SERVICES ("Wildlife Services") is an agency or instrumentality of the United States within the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). It is charged with conducting "wildlife damage management" activities in compliance with local, state and federal laws and regulations.

23. Plaintiffs have Article III standing to bring this action because they are directly

injured by the NEPA violations alleged herein, which are redressable by the relief requested from this Court. In particular, Idaho Wildlife Services employees are tasked with lethal removal of wolves in Idaho, and have special expertise in doing so, especially by aerial gunning. Wildlife Services has been solely responsible for killing wolves at the request of IDFG to boost elk herds in central Idaho's Lolo zone. If this Court granted the requested relief, it would force Wildlife Services to comply with NEPA, parting the veil of secrecy that has, so far, hidden Wildlife Services' operations from public view, and requiring Wildlife Services to scrutinize in more detail—and perhaps reform—its activities. This could reduce human-caused wolf mortalities in Idaho, particularly in the Lolo zone, protecting Plaintiffs' interest in the protection and conservation of this iconic large carnivore.

LEGAL BACKGROUND

National Environmental Policy Act

24. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). It requires federal agencies to “take seriously the potential environmental consequences of a proposed action” by taking a “hard look” at the action's consequences. The statute's twin objectives are (1) to ensure that agencies consider every significant aspect of the environmental impact of a proposed action, and (2) to guarantee that relevant information is available to the public to promote well-informed public participation.

25. NEPA requires federal agencies to prepare a detailed EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

26. An agency may prepare an Environmental Assessment (EA) to briefly put forth sufficient evidence and analysis to determine whether to prepare an EIS or to instead issue a Finding of No Significant Impact (FONSI). 40 C.F.R. § 1508.9.

27. An agency may only issue a FONSI for actions with no significant impact on the human environment. *Id.* § 1508.13. 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. *See Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (“An EIS must be prepared if substantial questions are raised as to whether a project ... may cause significant degradation of some human environmental factor.” (Internal quotations omitted)).

28. NEPA defines significance in terms of context and intensity. *Id.* § 1508.27. Ten “intensity” factors help determine whether an agency action may cause significant impacts. *Id.* § 1508.27(b). The presence of even one of the factors may be sufficient to require preparation of an EIS. Factors include: “Unique characteristics of the geographic area such as proximity to . . . ecologically critical areas,” *id.* § 1508.27(b)(3); effects that are “highly uncertain or involve unique or unknown risks” or “likely to be highly controversial,” *id.* § 1508.27(b)(5), (4); cumulative impacts, *id.* § 1508.27(b)(7); and the extent to which the action threatens violation of other laws, *id.* § 1508.27(b)(10). If the agency’s action may be environmentally significant under even one of these criteria, the agency must prepare an EIS.

29. Both EAs and EISs must discuss a proposed action’s direct, indirect, and cumulative effects. 40 C.F.R. § 1502.16. Direct effects are “caused by the action and occur at the same time and place,” whereas indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” *Id.* § 1508.7.

30. An agency may “tier” a narrower NEPA analysis to a broader NEPA analysis, by “incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.” *Id.* § 1508.28. However, agencies may only tier to documents that have undergone NEPA analysis.

31. To satisfy NEPA’s hard look and public disclosure and participation requirements, an agency must evaluate in detail a project’s potential site-specific impacts.

32. An agency has a continuing obligation to comply with NEPA and must prepare a supplemental NEPA analysis when “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” emerge. 40 C.F.R. § 1502.9(c)(1)(ii) (applicable to APHIS as set forth in 7 C.F.R. § 372.1). Even after an agency has begun to implement an approved project, it must supplement its analysis if there remains major federal action to occur and the 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. Identifying new information is the agency’s responsibility: “Compliance with NEPA is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 558-59 (9th Cir. 2000) quoting *City of Davis v. Coleman*, 521 F.2d 661, 667 (9th Cir.1975).

33. To assist the agency in determining whether a Supplemental Environmental Impact Statement (SEIS) is required, an agency may prepare an EA. The agency must take a hard look at the new information to determine whether supplementation might be necessary. To take the hard look at the proposed action’s effects that NEPA requires, an agency may not rely on incorrect assumptions or data in its NEPA analysis. “General 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).

34. An agency’s decision not to prepare an EIS or other supplemental NEPA analysis may be overturned if it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

STATEMENT OF FACTS

Gray wolves.

35. Gray wolves are the largest members of the dog family and adults may weigh from 40-175 pounds. They are usually grizzled gray in color, but their coats may range from pure white to coal black.

36. Wolves live in tight-knit packs with a refined social structure. They communicate through body postures and facial expressions. Packs are primarily family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf. A pack usually consists of two to 12 wolves.

37. Wolf packs occupy large territories and defend these territories from other wolves. In the Northern Rockies, wolf territories are often as large as 200 to 400 square miles.

38. Typically, only the alpha male and female in a wolf pack reproduce. Breeding occurs in February or March and pups are born in April or May. After the pups are weaned, all pack members help feed, care for, and play with them.

39. Loss of one or both members of the breeding pair disrupts a pack’s social structure, and may even cause the pack to disband. Research shows that heavily hunted wolf populations have elevated levels of both stress and reproductive hormones, and that killing

wolves results in increased, compensatory breeding. Relatedly, researchers have found that livestock depredations may actually increase in years following lethal control actions.

40. Wolves predate primarily upon medium and large mammals like deer and elk, but they have also been known to eat bison, bighorn sheep, beavers, snowshoe hares, small mammals, birds, and even large invertebrates. They also sometimes kill and eat livestock and other domestic animals.

41. Wolves' presence in the ecosystem has a pervasive and far-reaching influence. Wolves keep prey species alert and moving, reducing ungulate browsing on willows and aspen and preventing overuse of riparian areas and meadows. This "landscape of fear" and its consequences influence everything from plant communities to soil nutrients. A community of life, from beetles, to birds, to grizzly bears, feeds on carrion from wolf kills. Wolves also change the behavior of—and may reduce long-term abundance of—other predators like coyotes and mountain lions.

42. At the end of 2015, IDFG estimated that Idaho is home to 786 wolves and 33 breeding pairs.

Wolf Management in Idaho.

43. Gray wolves once roamed throughout Idaho. After they were nearly wiped out in the lower 48 states, through hunting and an active government-sponsored eradication program, the Northern Rocky Mountain population of the gray wolf present in Idaho was protected as threatened under the ESA in 1974. As part of a recovery plan, the U.S. Fish and Wildlife Service (FWS) released wolves into Central Idaho in 1995 and 1996. The goal was to establish populations in suitable habitat that had been identified in Idaho, Montana, and Wyoming. The wolves were released pursuant to a rule under Section 10(j) of the ESA, which allowed for

removal of wolves in certain limited circumstances.

44. In 2002, anticipating that FWS would remove wolves from the ESA's list of threatened species, IDFG adopted a plan prepared by the Idaho Legislative Wolf Oversight Committee to facilitate the transfer of management authority from FWS to the state. That plan effectively set a management floor of 15 breeding pairs and 150 wolves. Wolves remained on the ESA's threatened species list.

45. In 2008, again anticipating delisting, IDFG adopted a new plan with a goal of maintaining Idaho's wolf population at 2005-2007 levels (518-732 wolves) through the 5-year post-delisting period. That plan stated it would be in effect from 2008-2012.

46. While wolves were listed under the ESA, Wildlife Services was responsible for almost all human-caused wolf mortality in Idaho. Between 2005 and 2009, Wildlife Services killed 322 wolves in Idaho.

47. In 2009, FWS delisted the Northern Rocky Mountain population of the gray wolf, including populations in Idaho. FINAL RULE TO IDENTIFY THE NORTHERN ROCKY MOUNTAIN POPULATION OF GRAY WOLF AS A DISTINCT POPULATION SEGMENT AND TO REVISE THE LIST OF ENDANGERED AND THREATENED WILDLIFE, 74 Fed. Reg. 15,123 (Apr. 2, 2009). In its determination, 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.

48. With wolves under state management, IDFG immediately instituted a hunting and trapping season. It conducted a single wolf hunting and trapping season in 2009, during which 188 wolves were killed, before the delisting decision was vacated by the Montana Federal

District Court in 2010, in *Defenders of Wildlife v. Salazar*, 729 F.Supp.2d 1207, 1228-29 (D. Mont. 2010).

49. After *Defenders of Wildlife v. Salazar* 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 under a theory that it might boost elk populations. See LETHAL TAKE OF WOLVES IN THE LOLO ELK MANAGEMENT ZONE OF IDAHO; DRAFT ENVIRONMENTAL ASSESSMENT, 76 Fed. Reg. 7875 (Feb. 11, 2011). The proposal was to reduce that zone's wolf population of 76 by 40-50 wolves at minimum, and maintain it at 20-30 wolves for a period of five years. The plan was never finalized.

The 2011 Wolf EA.

50. In 2010, Wildlife Services issued a draft EA on "Gray Wolf Damage Management in Idaho" analyzing its Idaho wolf "damage management" activities for the first time.

51. Wildlife Services received over 100,000 comments on the draft Wolf EA, including from Plaintiffs. Plaintiffs' comments challenged many of the EA's assumptions regarding the propriety and presumed effects of Wildlife Services' activities for scientific, ethical, and legal reasons. For instance, Plaintiffs highlighted that Wildlife Services' assumption that lethal wolf control increases social acceptance of wolves is not supported by science, that the analysis reflected an unwarranted bias in favor of lethal controls, that killing wolves to boost ungulate herds is improper, and that Wildlife Services had not explained how it would comply with managers' mandates on lands where it planned to conduct its activities, among other issues.

52. Wildlife Services issued the final Wolf EA in March 2011.

53. The final 2011 Wolf EA, entitled "Gray Wolf Damage Management in Idaho for

Protection of Livestock and Other Domestic Animals, Wild Ungulates, and Human Safety,” 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.

54. The continued wolf damage management program, and the proposed action/preferred alternative, included killing wolves using such methods as shooting, calling and shooting, aerial shooting, traps (including foothold traps), and neck snares (a wire loop that tightens around an animal’s neck, choking it).

55. Like the delisting decision, the 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.

56. The EA never analyzed or disclosed how Wildlife Services’ activities would affect wolf populations, either in Idaho, in the wolf recovery area, or at any site-specific level. Thus, the EA failed to assess whether the projected wolf killing will achieve its intended objectives, or how it might impact wolf populations at the local, statewide, or regional scale.

57. Instead, the EA repeatedly relied on IDFG’s assertion that it would continue to achieve the wolf population objectives in its 2008-2012 management plan (518-732 wolves) to conclude that Wildlife Services’ activities would not significantly affect the wolf population in Idaho, or elsewhere. Wildlife Services also noted several times that the FWS had endorsed the

2002 management plan's objective of maintaining at least 15 breeding pairs of wolves. Even though the 2008-2012 management plan was set to expire the year after the EA issued, and the 2002 management plan contemplated maintaining a population of as few as 150 wolves, the EA assumed that under all alternatives "it is reasonable to expect that 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)." 2011 Wolf EA, 82.

58. Although the 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, it did not analyze how Wildlife Services' killings would affect wolf populations in light of cumulative impacts on wolves from private hunting and trapping in Idaho and adjacent states. The EA also did not describe how these cumulative effects might differ under a scenario in which a population of at least 500 wolves in Idaho would be maintained, as opposed to one where the population could dip to as low as 150 wolves. Nor did the EA analyze how cumulative losses of wolves under either management regime would cascade throughout the environment and affect other ecological features and species. Again, the EA relied on IDFG's intention to maintain a "sustainable" wolf population instead of doing a comprehensive effects analysis.

59. The EA specifically disclaimed any requirement to analyze or disclose the site-specific impacts of its activities, even though it discussed IDFG's 2010 request to FWS to kill wolves in the Lolo and Selway zones. As a result, the EA did not discuss the effects of killing large numbers of wolves in specific regions for several years in a row. The EA did not address impacts to Wildernesses or other special places in any detail, even though the Lolo zone—one location in which such concentrated wolf-killing was projected to occur—is located within and adjacent to the Selway-Bitterroot Wilderness.

60. The EA did not explain how the wolf control actions it described comply with the land management mandates of the Forest Service and Bureau of Land Management, which manage federal lands upon which the actions may occur.

61. Wildlife Services selected the preferred alternative and issued a Decision and FONSI in March 2011. That Decision/FONSI was signed by Jeffrey S. Green, Regional Director, on March 29, 2011. The FONSI claimed that none of the factors requiring preparation of an EIS were present.

62. The decision to adopt the preferred alternative allowed Wildlife Services to expand its operations to begin helping IDFG kill wolves in an attempt to boost wild ungulate populations.

63. After the FONSI, Wildlife Services issued “monitoring updates” in 2012, 2013 and 2015. In each monitoring update, Wildlife Services determined that there was no need to supplement its NEPA analysis.

New Information and Significant Changes Since the 2011 Wolf EA.

64. Congress directed the FWS to delist Idaho’s wolves on April 15, 2011, approximately two and a half weeks after the 2011 Wolf EA and Decision/FONSI issued. The FWS issued a rule doing so on May 5, 2011. REISSUANCE OF FINAL RULE TO IDENTIFY THE NORTHERN ROCKY MOUNTAIN POPULATION OF GRAY WOLF AS A DISTINCT POPULATION SEGMENT AND TO REVISE THE LIST OF ENDANGERED AND THREATENED WILDLIFE, 76 Fed. Reg. 25590-25592 (May 5, 2011).

65. Two weeks after wolves were officially delisted, on May 19, 2011, IDFG abandoned its 2008 plan and reinstated the 2002 wolf management plan drafted by the Idaho Legislature. This eliminated the 2008 plan’s management objective of maintaining the wolf

population in Idaho at 2005-2007 levels, instead setting a minimal floor of only 15 breeding pairs or 150 wolves.

66. Shortly thereafter, IDFG instituted wolf hunting and trapping seasons with liberal bag limits. Ever since then, the wolves Wildlife Services kills add to hundreds killed by recreational hunting and trapping each year in Idaho. For example, as of April 1, 2016, 259 wolves had been killed by hunting and trapping in Idaho during the 2015-2016 hunting season. In 2015, IDFG reported that 256 wolves were legally hunted and trapped, 54 wolves were killed by Wildlife Services or livestock producers in response to claimed livestock depredations, 21 wolves were killed by Wildlife Services in the Lolo zone to purportedly benefit elk, and 27 were either poached or died from natural causes. In 2014, 256 wolves were killed by hunting and trapping, 42 wolves were killed by Wildlife Services or livestock producers in response to claimed livestock depredations, 25 wolves were killed “to benefit prey species” in the Lolo zone, 19 wolves were killed by “other human causes,” and 18 wolves died where cause of death could not be identified (two of these were from natural causes). In 2013, over 350 wolves were killed recreationally, and Wildlife Services and livestock producers killed 80 wolves.

67. In December 2011, IDFG issued a Revised Predation Management Plan for the Lolo and Selway Elk Zones (located within and adjacent to central Idaho’s Selway-Bitterroot Wilderness), which adopted an 11-month wolf hunting and trapping season with no harvest limits. The plan did not define a minimum wolf population to be maintained; it focused only on achieving elk population objectives. Soon thereafter, IDFG first requested assistance from Wildlife Services to kill wolves in the Lolo zone.

68. In 2014, IDFG issued a new statewide elk plan that called for reducing wolf populations by as much as 70 percent where elk were not meeting management objectives. The

same year, IDFG issued new elk management plans for the Middle Fork, Panhandle, and Sawtooth elk zones. Most of the Middle Fork zone is comprised of the Frank Church River-of-no-Return Wilderness (Frank Church Wilderness). The Sawtooth elk zone covers the western half of the Sawtooth National Recreation Area (SNRA). The Lolo and Selway zones, the Middle Fork zone, and the Sawtooth zone encompass central Idaho. The plans call for aggressive wolf reductions in an attempt to boost elk populations, and most contemplate working with Wildlife Services to achieve those reductions.

69. In addition, the Idaho Legislature provided a new funding source for wolf killing with the 2014 creation of the Wolf Depredation Control Board. The Board's goal is to provide funding for control of wolves and it has received over half a million dollars each year since 2014 to further this objective.

70. New science regarding the impacts of Wildlife Services' actions has emerged since 2011. For instance, a 2014 study by Wielgus & Peebles concluded that killing wolves may actually increase livestock depredations. Rather than taking a hard look at this new information, and other similar information, Wildlife Services dismissed it in the 2015 monitoring report, based on a single oral communication with one of its own researchers.

71. Other new information indicates that predator control intended to inflate populations of elk and other wild ungulates may not be effective, and that most studies regarding the effects of predator control are poorly designed. New science also suggests that killing wolves outside of protected area boundaries can influence wolves' presence within these areas and alter evolutionarily important behaviors, and that human interference alters wildlife behaviors. There is new information about the propriety of manipulating the predator-prey balance within Wilderness. Important new information about the humaneness of predator

control methods has emerged—in particular regarding neck snaring, which Wildlife Services used to kill five wolves in Idaho in 2014. New science suggests that killing wolves does not increase social tolerance of wolves, as the 2011 Wolf EA assumed. And new science has been published about wolves' importance to trophic cascades (the effects of wolves on the ecosystem) and how wolf removal may affect trophic cascades.

72. A 2015 study questions whether Idaho's wolf population can sustain the heavy hunting pressure levied against it while remaining healthy and notes that IDFG's wolf-counting methods have led to much higher wolf population estimates since they were adopted in 2006. This science dovetails with conclusions of other researchers, who noted that killing one or both members of a pack's breeding pair could cause the pack to break up, and that heavily-hunted wolf populations have elevated stress and reproductive hormones.

73. Despite these changed circumstances and significant new information, Wildlife Services continues to kill wolves at higher or similar numbers since the approval of the 2011 Wolf EA, using the same methods it has used for over a decade. For example, in 2014, in Idaho, Wildlife Services killed 24 wolves by shooting them from helicopters, five wolves by neck snaring them, and 20 wolves by trapping them in foothold traps, where they either died of exposure or were later shot. Wildlife Services also killed at least four other wolves, for a total of 53 wolves killed in Idaho. These wolf deaths added to 275 wolves killed recreationally by private hunters and trappers, and by poaching. IDFG documented 360 wolf mortalities in Idaho that year. Humans were responsible for 99 percent of the wolf deaths where cause of death could be determined.

FIRST CLAIM FOR RELIEF
NEPA Violation: Failure to prepare EIS.

74. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

75. This First Claim for Relief challenges Defendants' determination, through the 2011 Wolf EA and Decision/FONSI, that Wildlife Services' activities in Idaho would have no significant impact on the environment, and their failure to prepare an EIS.

76. Wildlife Services' wolf killing activities in Idaho constitute a major federal action significantly affecting the human environment for reasons including but not limited to the following:

- a. Wildlife Services' activities encompass a broad geographic area—the entirety of Idaho—which includes some of the most high-value wolf habitat for the Northern Rockies wolf population;
- b. Wildlife Services' activities affect unique geographic areas, in particular central Idaho's Wildernesses;
- c. Wildlife Services' wolf killing actions are, and were at the time the EA issued, highly controversial both scientifically and in terms of public perception, as evidenced by the bodies of science discussing nonlethal and lethal predator control and their effects, the amount of lethal control a healthy wolf population can withstand, and whether a minimum of 15 breeding pairs is a "sustainable" population, as Wildlife Services asserts, and by the more than 100,000 comments Wildlife Services received on its draft EA;
- d. Wildlife Services' actions are highly uncertain and involve unknown risks,

particularly because Wildlife Services has not described the actions to be taken in detail adequate to assess their effects, relied on IDFG's shifting population objectives to assume its actions would not significantly affect wolves and their recovery, and conducted its analysis at a time when wolves' future listing status was in flux;

- e. Wildlife Services' activities have cumulatively significant impacts when combined with other wolf killing actions;
- f. Wildlife Services' activities threaten violation of other federal laws, such as NFMA, FLPMA and the Wilderness Act, including because Wildlife Services has failed to establish that its activities comply with Forest Service and BLM land management mandates.

77. These factors, individually and cumulatively, demonstrate that Wildlife Services' actions under the 2011 Decision/FONSI have a significant impact on the environment and Defendants' decision not to prepare an EIS was arbitrary, capricious, an abuse of discretion, and not in accordance with law, which has caused and threatens serious prejudice and injury to Plaintiffs' rights and interests.

SECOND CLAIM FOR RELIEF:

NEPA Violation: Failure to take a hard look at effects of actions and alternatives.

78. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

79. This Second Claim for Relief challenges Wildlife Services' 2011 Wolf EA and Decision/FONSI as inadequate to support the selected action, because Wildlife Services failed to take a hard look at multiple aspects of the expanded wolf killing authorized, including the direct, indirect and cumulative effects of Wildlife Services' proposed action and alternatives.

80. The 2011 Wolf EA and Decision/FONSI did not analyze or disclose to the public the direct, indirect and cumulative effects of the proposed action and alternatives in ways including but not limited to the following:

- a. Wildlife Services did not disclose how many wolves it would kill under any alternative.
- b. Wildlife Services did not disclose or analyze the effects of killing wolves in Idaho on wolf populations in heavily targeted areas, Idaho's total wolf population, or the Northern Rockies.
- c. Wildlife Services did not disclose or analyze the effects of killing wolves on wolf presence and behavior in Idaho's Wildernesses or the SNRA.
- d. Wildlife Services did not disclose or analyze the ecological effects of targeting so many wolves in the Lolo zone for lethal control.
- e. Wildlife Services did not disclose or analyze the ecological effects of killing large numbers of wolves in any area where the effects of its activities may be concentrated.
- f. Wildlife Services did not disclose or analyze the direct, indirect, or cumulative ecological effects of its wolf-killing on the wolf population in Idaho when combined with wolf killing from recreational hunting and trapping.
- g. Wildlife Services did not disclose or analyze the ecological effects of its wolf-killing on other species or their habitats due to the trophic cascade dynamic.

81. Instead of analyzing and disclosing the effects of its activities, Wildlife Services

improperly relied upon IDFG's wolf population objectives, which were set forth in unenforceable, non-NEPA documents. By relying on IDFG's management plans to satisfy its duties under NEPA, Wildlife Services effectively tiered its analysis to those plans, which violated NEPA.

82. Wildlife Services' 2011 EA and Decision/FONSI are inadequate because they failed to take a hard look at the direct, indirect, and cumulative impacts of Wildlife Services' wolf killing and improperly tiered to non-NEPA documents, in violation of NEPA. Accordingly, the EA and Decision/FONSI are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

NEPA Violations: Decisions not to supplement NEPA analysis.

83. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

84. This Third Claim for Relief challenges Defendants' decisions, documented in the 2012, 2013 and 2015 monitoring reports, not to supplement the 2011 Wolf EA.

85. Defendants determined in the 2012, 2013 and 2015 monitoring reports that the 2011 Wolf EA adequately addressed new circumstances and information respecting the effects its activities would have on the environment.

86. Defendants' decisions not to supplement the 2011 Wolf EA, documented in the 2012, 2013 and 2015 monitoring reports, were arbitrary and capricious because Wildlife Services failed to take a hard look at the significant new information showing that its actions would impact the environment in ways it had not yet considered. These decisions are arbitrary and capricious, abuses of discretion, and not in accordance with law under Section 706(2) of the

APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests. Accordingly, the decisions must be reversed and set aside by this Court pursuant to 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF:
NEPA Violation: Failure to supplement 2011 Wolf EA.

87. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

88. This Fourth Claim for Relief is pled in the alternative to Claim Three and challenges Defendants' failure to supplement the 2011 Wolf EA as action unlawfully withheld or unreasonably delayed under Section 706(1) of the APA.

89. Section 706(1) of the APA provides that "[t]he reviewing court shall—(1) compel agency action unlawfully withheld or unreasonably delayed" 5 U.S.C. § 706(1).

90. NEPA and its implementing regulations require that agencies "(1) Shall prepare supplements to either draft or final environmental impact statements if . . . (ii) There are 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); *see also* 42 U.S.C. § 4332.

91. Wildlife Services has a duty under these regulations to supplement its 2011 Wolf EA because significant new circumstances and information bearing upon Wildlife Services' wolf killing activities in Idaho and their environmental consequences has emerged since the 2011 EA, including the delisting of wolves from protection under the ESA; IDFG's reinvigorated reliance on the less protective 2002 wolf management plan drafted by the Idaho Legislature; IDFG's new elk management plans that call for aggressive reductions to wolf populations in central Idaho; the advent of recreational hunting and trapping seasons that results in deaths of hundreds of wolves in Idaho each year; and a raft of new scientific information regarding the environmental and

social effects, efficacy, and humaneness of lethal predator control.

92. Despite this duty, Wildlife Services has failed to supplement its 2011 Wolf EA. Supplementing the 2011 Wolf EA is action unlawfully withheld or unreasonably delayed under Section 706(1) of the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests. Under these circumstances, this Court must compel Wildlife Services to promptly supplement the 2011 Wolf EA.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Declare that Defendants' determination not to prepare an EIS, and instead issue the 2011 Wolf EA and Decision/FONSI, violated NEPA, and order Defendants to promptly comply with NEPA by preparing a legally and scientifically adequate EIS addressing Wildlife Services' Idaho wolf management activities.

B. Declare that the 2011 Wolf EA and Decision/FONSI violated NEPA for failing to take the required hard look at the effects of the proposed action, and set aside the 2011 EA and Decision/FONSI under the APA.

C. Declare that Defendants' determinations, documented in the 2012, 2013 and 2015 monitoring reports, not to supplement the 2011 Wolf EA violated NEPA and the APA, and order Wildlife Services to promptly comply with NEPA by analyzing and disclosing new and relevant information in a legally and scientifically adequate supplement to its NEPA analysis.

D. Declare that Defendants have violated NEPA and the APA by failing to supplement the 2011 Wolf EA and order Wildlife Services to promptly comply with NEPA by issuing a legally and scientifically adequate supplement to the NEPA analysis.

G. Issue such temporary restraining order(s), preliminary injunction(s) and/or permanent injunctive relief as may be requested hereafter by Plaintiffs, including ordering Wildlife Services to halt its wolf control and killing activities until it prepares an updated, valid NEPA analysis;

H. Award Plaintiffs their reasonable costs, litigation expenses, and attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and

I. Grant such further and other relief as the Court deems just and proper to remedy Defendants' violations of law and protect the public interest and the wildlife of Idaho.

Dated this 1st day of June, 2016.

Respectfully submitted,

s/ Talasi B. Brooks
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