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

WESTERN WATERSHEDS PROJECT,
WILDEARTH GUARDIANS, CENTER FOR
BIOLOGICAL DIVERSITY, and PREDATOR
DEFENSE,

Plaintiffs,

v.

USDA APHIS WILDLIFE SERVICES,

Defendant.

No. 1:17-cv-206

COMPLAINT

INTRODUCTION

1. Plaintiffs Western Watersheds Project, WildEarth Guardians, Center for Biological Diversity, and Predator Defense challenge Defendant USDA APHIS Wildlife Services’ November 2016 *Final Environmental Assessment: Predator Damage and Conflict*

Management in Idaho (2016 Idaho EA) and associated Decision Notice/Finding of No Significant Impact (DN/FONSI). These decision documents purport to authorize Wildlife Services to continue and expand its program of aerial gunning, poisoning, trapping, and other killing of coyotes, foxes, black bears, mountain lions, ravens, and a host of other wildlife across Idaho without full public disclosure of environmental impacts or thorough evaluation of reasonable alternatives, in violation of the National Environmental Policy Act (NEPA).

2. Even though it devotes millions of dollars and thousands of person-hours each year to aerial gunning, poisoning, shooting, trapping, and otherwise killing thousands of animals across Idaho, and even though there is a growing body of science contesting the efficacy of these actions and pointing out their adverse environmental impacts, Wildlife Services has unlawfully refused to prepare a comprehensive Environmental Impact Statement (EIS) disclosing the direct, indirect, and cumulative effects of its Idaho predator control activities, as required by NEPA.

3. A full EIS is required in light of Wildlife Services' statewide activities, and because Wildlife Services now plans to expand its Idaho activities by killing native wildlife at the request of Idaho Department of Fish and Game (IDFG) to "protect" other species – particularly by poisoning thousands of ravens to supposedly boost greater sage-grouse populations. This Court has rejected two prior attempts by Wildlife Services to expand its activities to encompass sage-grouse predator killing for IDFG. *Committee for Idaho's High Desert v. Collinge*, 148 F. Supp. 2d 1097 (D. Idaho 2001) (granting preliminary injunction against USDA APHIS for violating NEPA in failing to study ecological impacts of planned project to kill sage-grouse "predators"); Memorandum Decision, *Committee for Idaho's High Desert v. Collinge*, No. 1-02-cv-172-BLW (D. Idaho, March 4, 2003) (granting summary judgment for plaintiff, holding Wildlife Services' prior EA for proposed sage-grouse predator

control project violated NEPA).

4. Here, Wildlife Services again violated NEPA by failing to examine any site-specific impacts of its anticipated activities, and failing to establish that ravens and other predators are depressing or otherwise injuring populations of sage-grouse and other desired game species.

5. Wildlife Services' attempt to expand its Idaho program to kill sage-grouse predators and other wildlife to "benefit" native species is also unlawful because it exceeds the agency's statutory authority under the Animal Damage Control Act, which only allows Wildlife Services to take actions deemed "necessary" to control "injurious animal species." 7 U.S.C. § 426. The 2016 Idaho EA and DN/FONSI fail to establish that the target species are "injurious," and hence Wildlife Services lacks statutory authority to undertake its proposed new wildlife killing.

6. Accordingly, Plaintiffs request that the Court reverse, vacate, and set aside the 2016 Idaho EA and DN/FONSI and enjoin Wildlife Services from conducting its expanded Idaho predator control activities until it has fully complied with law.

JURISDICTION AND VENUE

7. 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 Animal Damage Control Act, 7 U.S.C. § 426(a)-(d); 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 Defendant, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

8. 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 one or more Plaintiffs reside in this district.

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

PARTIES

10. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is an Idaho-based nonprofit membership organization with over 1,500 members, 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.

11. 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 Idaho. The Center has over 52,000 members, including many who reside in, explore, and enjoy the native species and ecosystems of Idaho.

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 207,000 members and supporters, many of whom have particular interests in native predators 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.

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 and to help people learn to coexist with them. Established in 1990 with a focus on rehabilitating predator species, Predator Defense later broadened its focus to address the public management policies and predator control methods threatening predators and their habitats, with the ultimate goal of ending America's war on wildlife.

14. The Plaintiff organizations place a high priority on protecting and conserving wildlife species, including native predators, 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 wildlife populations and to communicate to the public and policy-makers about the values of preserving wildlife 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, including those where Wildlife Services conducts its activities. Plaintiffs' members, supporters, and/or staff frequently engage in hiking, camping, boating, hunting, fishing, photography, wildlife watching, and other activities in order to observe and enjoy Idaho's wildlife, including predators. Some of them have directly witnessed Wildlife Services' predator killing and other activities in Idaho and have been deeply upset by the experience. Plaintiffs and their members, supporters, and/or staff have suffered, and will foreseeably continue to suffer, direct injuries to their recreational, aesthetic, professional, scientific, spiritual and other interests and activities as a result of Wildlife Services' predator-killing in Idaho.

16. Plaintiffs and their members, supporters, and/or staff are also directly injured by

Defendant's failure to fully disclose and evaluate the environmental impacts of Wildlife Services' predator control activities. They are injured by Defendant's failure to adequately analyze or disclose the environmental impacts of these activities and alternatives to them, including direct, indirect and cumulative impacts and site-specific impacts and alternatives. Plaintiffs and their members, supporters and/or staff have a strong procedural interest in ensuring that Defendant complies with all applicable federal statutes and regulations. Plaintiffs have worked to reform Wildlife Services' activities throughout the United States, including in Idaho, and have a strong interest in ensuring that Defendant discloses specific information about environmental impacts of Wildlife Services' actions to the public, and weigh alternatives to those actions.

17. Defendant USDA APHIS 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. Defendant Wildlife Services maintains an Idaho State Office which supervises and conducts a wide range of predator control activities in Idaho, including the activities proposed in the 2016 Idaho EA and approved in the DN/FONSI.

18. Plaintiffs have Article III standing to bring this action because they are directly injured by the procedural and substantive NEPA, APA, and Animal Damage Control Act violations alleged herein, which are redressable by this Court. Wildlife Services receives federal funding to undertake predator killing, which would not be replaced in the same manner and extent by another entity if Wildlife Services ceased its activities. If this Court grants the relief Plaintiffs request, it would force Defendant to scrutinize in more detail its activities and possibly

change direction in response. It would also force Wildlife Services to cease activities that exceed its authority under the Animal Damage Control Act, lessening Plaintiffs' harm from Wildlife Services' predator killing.

LEGAL BACKGROUND

19. Wildlife Services draws its statutory mandate from the Animal Damage Control Act of 1931. 7 U.S.C. § 426. As originally written, the statute read:

The Secretary of Agriculture is authorized and directed to conduct such investigations, experiments, and tests as he may deem necessary in order to determine, demonstrate, and promulgate the best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, and other animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur-bearing animals, and birds, and for the protection of stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals; and to conduct campaigns for the destruction or control of such animals: *Provided*, That in carrying out the provisions of this section the Secretary of Agriculture may cooperate with States, individuals, and public and private agencies, organizations, and institutions.

7 U.S.C. § 426 (1931).

20. This Depression-era authority was amended in 2001 to read as follows:

The Secretary of Agriculture may conduct a program of wildlife services with respect to **injurious animal species** and take any action the Secretary considers necessary in conducting the program. The Secretary shall administer the program in a manner consistent with all of the wildlife services authorities in effect on the day before October 28, 2000.

7 U.S.C. § 426 (2001) (emphasis added).

21. Upon information and belief, Wildlife Services has never promulgated regulations implementing or interpreting this authority.

22. Wildlife Services is subject to regulations promulgated by the Secretary of Agriculture under 7 U.S.C. Subtitle A, and by the Animal and Plant Health Inspection Service

(APHIS) under 7 U.S.C. Subtitle B part 300.

23. In carrying out its activities, Wildlife Services must comply with other federal laws, including NEPA, NEPA's implementing regulations written by the Council on Environmental Quality, 40 C.F.R. § 1500-1599, and APHIS's NEPA-implementing regulations, 7 C.F.R. § 372.

24. NEPA is our "basic national charter for protection of the environment." 40 C.F.R. §§ 1500-1599. 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 inform the public that it has indeed considered environmental concerns in its decision-making process. "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.* § 1500.1(b).

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”).

28. NEPA defines significance in terms of context and intensity. 40 C.F.R. § 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 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 EISs and EAs 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.

For example, an agency must assess proposed actions on a “site specific” basis for compliance with its land-use plan and governing land use statutes. *Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 934 (9th Cir. 2010). It must also examine the effects of its action on the site where they will be conducted. *See id.* Without quantified, site-specific information, “neither the courts nor the public . . . can be assured that the [government] provided the hard look that it is required to provide.” *Neighbors of Cuddy Mountain v. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998). “[P]ublic scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

32. Agencies must also evaluate a reasonable range of alternative actions. 40 C.F.R. §§ 1502.13, 1502.14. “The existence of a viable but unexamined alternative renders an [EA] inadequate.” *Western Watersheds Project v. Abbey*, 719 F. 3d 1035, 1051 (9th Cir. 2013).

33. APHIS’s NEPA implementing regulations provide that an actions normally requiring environmental assessments include “a more discrete program component and is characterized by its limited scope (particular sites, species, or activities) and potential effect (impacting relatively few environmental values or systems),” and specifically, “[i]mplementation of program plans at the site-specific, action level.” 7 C.F.R. § 372.5(b).

FACTUAL ALLEGATIONS

34. Wildlife Services, under various names, has been killing wildlife since the early 1900s. Calls for reform of its wildlife-killing activities commenced in 1930 and have intensified in the years since then.

35. The agency has long been criticized for its failure to accurately report the numbers of target and non-target wildlife it kills, and reluctance to embrace modern, science-based practices.

36. For example, a 2012 prize-winning series of stories published in the Sacramento

Bee detailed that many scientists believe Wildlife Services' programs are expensive, ineffective, and capable of setting off chain reactions of unintended consequences. It also documented ethical problems including employees hiding non-target animals killed, and large numbers of reported killings of non-target wildlife. The series discussed a collection of well-regarded alternatives that focus on co-existing with wildlife species and using non-lethal methods to address conflicts with carnivores.

Wildlife Services' Activities In Idaho

37. The full scope of Wildlife Services' activities in Idaho is difficult to determine, partly because the agency has never prepared a full EIS under NEPA disclosing to the public its activities and their environmental effects. However, the 2016 Idaho EA and other information sources reveal that Wildlife Services spends millions of dollars and thousands of person-hours per year engaged in a wide variety of wildlife killing actions, including not only the "predator damage management" actions addressed in the 2016 Idaho EA but additional wolf, avian, rodent, insect, and other control actions. These include but are not limited to the following.

38. Wildlife Services uses aerial shooting from fixed-wing aircraft and helicopters to kill coyotes, red foxes, wolves, and feral swine.

39. Wildlife Services "frequently" uses rifles and shotguns to kill wildlife. Sometimes Wildlife Services uses calls to lure in the target species. Wildlife Services also uses trained dogs to pursue and lure target species. Wildlife Services claims trained dogs are particularly effective for tracking and luring coyotes, black bears, and mountain lions.

40. Wildlife Services gasses coyotes, skunks, foxes, wolves, and rodents in their dens by using gas cartridges. The gas cartridges are placed in active burrows, a fuse is lit, and Wildlife Services seals the entrance with soil. The animals inside then die from asphyxiation or

carbon monoxide poisoning.

41. Wildlife Services uses M-44 devices filled with sodium cyanide to kill canine species like coyotes and red foxes. The M-44 device, also known as a “cyanide bomb,” consists of a capsule containing sodium cyanide, an ejector mechanism, a hollow stake, and scented bait. An animal attracted by the bait will try to pick up or pull the baited capsule holder. When the M-44 device is pulled, a spring-activated plunger propels sodium cyanide into the animal’s mouth. The animal suffocates to death. In March 2017, a teenaged boy was injured when he triggered an M-44 on BLM land near Pocatello, Idaho, while out walking his dog; the dog was killed.

42. Wildlife Services uses a variety of lethal and non-lethal traps to capture and kill wildlife in Idaho. Wildlife Services frequently uses quick-kill or body-gripping traps to kill birds and animals. These traps are lethal to “target” and “non-target” animals alike.

43. Wildlife Services uses foothold traps to capture animals that it often later kills. It also uses foot/leg snares, primarily to capture grizzly bears, black bears, mountain lions, and wolves. Wildlife Services also uses neck/body snares extensively to capture coyotes, red foxes, mountain lions, beavers, and wolves, among other animals.

44. Wildlife Services regularly traps and kills beavers. Since 2006, it has killed over 421 beavers. It also breaches beaver dams by hand and by using explosives. From 2007 to 2011, Wildlife Services used explosives to blow up 60 beaver dams in Idaho.

45. Wildlife Services uses a number of chemicals to tranquilize, immobilize, and sometimes euthanize live-captured wildlife.

46. Wildlife Services regularly poisons birds and other animals using pesticides and toxins. In particular, Wildlife Services uses DRC-1339 to poison birds. DRC-1339 is a restricted-use, slow-acting poison that is primarily used to poison European starlings and

blackbirds on cattle feedlots or dairies; but it can kill target and non-target birds alike.

47. Wildlife Services commonly uses zinc phosphide, a metallic pesticide “toxic to most forms of life” to kill rodents. Zinc phosphide baits set for rodents were linked to the deaths of hundreds of migrating snow geese and Ross’s geese on Mud Lake and Market Lake in eastern Idaho, in 2015 and 2016.

48. Wildlife Services uses anticoagulant rodenticides to kill rodents. These poisons reduce the blood’s clotting ability and damage capillaries. Many of them have a “high potential for secondary poisoning,” meaning that a predator that eats a dead animal afflicted with the poison could also be poisoned. Anticoagulant rodenticide lethally poisoned 50 crows in Nampa, Idaho, in 2017.

49. Wildlife Services uses aluminum phosphide to kill rodents underground.

50. Wildlife Services uses strychnine to poison pocket gophers. Strychnine is very toxic and poses a risk for secondary poisoning. A pet dog was poisoned in the Boise foothills and 14 guard dogs were poisoned in Canyon County, Idaho, in 2016, by strychnine grain baits combined with meat.

51. Wildlife Services sabotages bird reproduction by egg, nest, and hatchling removal and destruction. For example, Wildlife Services “addles” eggs by vigorously shaking them to cause detachment of the embryo from the egg sac, punctures and breaks eggs, and applies oil to eggs to suffocate the embryos inside. It kills hatchlings and non-fledged young by squeezing them to death, asphyxiating them with carbon dioxide, and “cervical dislocation,” *i.e.*, decapitation. Wildlife Services uses devices including lasers, propane exploders, pyrotechnics and radio-controlled vehicles to harass and scare off birds.

52. Upon information and belief, Wildlife Services manufactures and/or distributes

many of these poisons and devices—in particular M-44s and DRC-1339 baits—from its Pocatello Supply Depot, located in Pocatello, Idaho.

Wildlife Services' Coyote Killing in Idaho

53. One of the species targeted most by Wildlife Services' predator management program in Idaho is the coyote, which Wildlife Services kills at the behest of cattle and sheep ranchers mostly operating on public lands.

54. Wildlife Services kills coyotes in Idaho by gunning them down from fixed wing aircraft and helicopters; by trapping them in foothold traps and neck snares, where they are strangled to death, die of exposure, or are later shot; by poisoning them with M-44 devices; by gassing them in their dens; and by luring them in and shooting them on the ground.

55. In 2016, Wildlife Services reported that it shot 3,033 coyotes in Idaho from aircraft and an additional 435 on the ground. It also trapped and killed 339 coyotes in foothold traps and neck snares, and poisoned 53 with M-44s. In sum, Wildlife Services reported killing 3,860 coyotes in Idaho in 2016.

56. This slaughter is largely funded by federal tax dollars—in 2014, for instance, Wildlife Services received approximately 76% of its funding for Idaho operations from federal sources.

57. Upon information and belief, the majority of Wildlife Services' coyote killing occurs upon public lands.

58. Wildlife Services operates on BLM and Forest Service-managed public lands in Idaho under Memoranda of Understanding (MOUs) that assign Wildlife Services the responsibility of ensuring its activities comply with NEPA. It also operates on these federal lands under “annual work plans” between Wildlife Services and individual National Forests or

BLM Districts, which describe the actions that will occur that year and state they comply with Wildlife Services' NEPA analyses.

Wildlife Services' History of NEPA Non-Compliance In Idaho

59. Wildlife Services has never prepared a comprehensive EIS describing its wildlife-killing and other activities in Idaho and disclosing their effects on wildlife and other resources to the public.

60. In 1994, the agency prepared a nationwide Programmatic EIS (PEIS) to analyze its wildlife damage control program across the county. In 1997, it reissued the document with some corrections. These documents are sometimes collectively referred to as the "1994/1997 PEIS."

61. Following that PEIS, Wildlife Services issued a series of EAs for its Idaho activities that purported to tier to or otherwise incorporate the PEIS, including the following.

62. In 1996, Wildlife Services issued a Central and Northern Idaho Predator Control EA, followed in 2004 by a FONSI.

63. In 1998, Wildlife Services issued an EA and FONSI for Bird Damage Management in Idaho. This EA was followed by an Amendment and FONSI in 2003, and an additional Amendment and FONSI in 2006.

64. In 2001, Wildlife Services proposed to undertake an "experimental" program at IDFG's request to kill ravens for the purported benefit of sage-grouse. Wildlife Services did not conduct any EIS or EA for this proposal, but instead purported to rely on a "categorical exclusion" to avoid NEPA disclosure and analysis of this highly controversial proposal. As noted above, this Court enjoined Wildlife Services from carrying out this initial sage-grouse predator control proposal. *Committee for Idaho's High Desert v. Collinge*, 148 F. Supp. 2d 1097

(D. Idaho 2001).

65. Wildlife Services again sought to expand its Idaho activities to include raven killing to supposedly benefit sage-grouse through issuance of an EA in 2002, which again failed to comply with NEPA. This Court granted summary judgment reversing and remanding that proposal. *Committee for Idaho's High Desert v. Collinge*, No. 1-02-cv-172-BLW (D. Idaho, March 4, 2003)(memorandum decision).

66. In 2002, Wildlife Services issued an EA and FONSI for Predator Damage Management in Southern Idaho, followed by a “five year update” in 2007 and another FONSI in 2008.

67. In 2004, Wildlife Services issued an EA and FONSI for Rodent Damage Management in Idaho.

68. In 2011, Wildlife Services issued an EA and FONSI regarding “Gray Wolf Damage Management in Idaho for Protection of Livestock and other Domestic Animals, Wild Ungulates, and Human Safety.”

69. In March 2014, Wildlife Services issued a draft supplement to the 2002 EA for Predator Damage Management in Southern Idaho, primarily focusing on yet another raven killing proposal to supposedly benefit the sage-grouse. Following significant public opposition, Wildlife Services did not finalize that draft EA supplement.

NEPA Process for 2016 Idaho EA and DN/FONSI and 2014 Litigation

70. On September 8, 2014, three of the Plaintiffs sent Wildlife Services a letter informing it that its various Idaho NEPA analyses were in need of supplementation, and that its program was violating the Endangered Species Act in several respects.

71. On November 3, 2014, Wildlife Services responded, stating that it intended to

issue a draft EA for public comment in the spring of 2015, if not sooner.

72. In December 2014, Wildlife Services issued a scoping notice for a new Idaho EA on its Idaho predator control actions, aside from wolves, rodents, and some birds.

73. Plaintiffs submitted extensive comments on the scoping notice.

74. On February 11, 2015, three Plaintiffs filed an action challenging Wildlife Service's failure to conduct an EIS for its Idaho program, its failure to supplement its various outdated EAs, and failure to comply with the Endangered Species Act.

75. In June 2015, Wildlife Services issued a Draft EA analyzing the impacts of some of its predator damage management activities in Idaho, which included discussion of five alternatives: (1) continuing its existing activities; (2) ceasing its activities; (3) providing non-lethal assistance only; (4) providing non-lethal assistance before any lethal control; and (5) expanding its existing activities to encompass killing predators at the request of IDFG to "protect" game species. Wildlife Services identified Alternative 5 as the "preferred" alternative.

76. Wildlife Services received 214 comments from the public on its Draft EA, including extensive comments from Plaintiffs. The public comments overwhelmingly opposed Wildlife Service's proposed actions and preferred alternative; only one comment could possibly be construed as supportive of the proposed action.

77. Plaintiffs' comments notified Wildlife Services that the Draft EA suffered from numerous shortcomings. Plaintiffs reiterated that an EIS was required and that Wildlife Services relied upon unfounded assumptions regarding the need for the proposed action. They also pointed out that the Draft EA had failed to adequately describe several alternatives because it assumed, without foundation, that other entities would entirely replace Wildlife Services' predator killing if Wildlife Services ceased doing so; noted Wildlife Services' failure to provide

adequate baseline information about target species; and highlighted that Wildlife Services failed to accurately or adequately describe the proposed alternative and failed to consider numerous reasonable alternatives. Plaintiffs explained that the analysis fell short of the requisite hard look at numerous issues, including the cumulative impacts of removing coyotes and wolves; science regarding the efficacy of predator damage management; humaneness of predator-control methods; impacts on non-target species; cost-benefit analysis of predator killing activities; indirect and cumulative impacts; and impacts to wildernesses and other special places. They also alerted Wildlife Services that its proposed expansion of its activities was unscientific, unsupported, and unlawful, in part because it failed to justify the actions or adequately disclose their effects.

78. On August 28, 2015, the parties in Plaintiffs' challenge to Wildlife Services filed a stipulation of dismissal, under which Plaintiffs dropped the litigation because Wildlife Services stated that it expected to complete its NEPA analysis and reach a decision by February 1, 2016.

79. February 1, 2016 passed with no Final EA or decision.

2016 Final EA and DN/FONSI

80. Finally, on November 22, 2016, more than nine months later than promised, Wildlife Services issued the final 2016 Idaho EA and DN/FONSI, selecting its preferred Alternative 5, *i.e.*, the expanded predator-killing alternative. The final EA superseded the prior Central and Northern Idaho Predator EA, the Southern Idaho Predator EA, and a portion of the Bird EA, referenced above.

81. Unlike its predecessors, the 2016 Idaho EA does not tier to or otherwise incorporate the 1994/1997 PEIS. Wildlife Services recently stipulated in another action brought by Plaintiff WildEarth Guardians not to rely on the 1994/1997 PEIS in future NEPA documents.

See Stipulation of Dismissal, *WildEarth Guardians v. USDA APHIS*, No. 2:12-cv-716 (D. Nevada Oct. 6, 2016) (ECF No. 68).

82. The selected Alternative 5 continues Wildlife Services' suite of wildlife-killing activities across the state. However, the DN/FONSI states that Wildlife Services-Idaho will discontinue all use of M-44s on public lands. As noted, though, an M-44 on BLM lands near Pocatello injured a boy and killed a dog in March 2017. In response to a petition from environmental groups, Wildlife Services has now stated it will cease using M-44s in the State of Idaho, and will remove all M-44s currently placed, until further notice.

83. Alternative 5 also expands Wildlife Services' Idaho predator control activities, which primarily consist of killing coyotes and other predators in response to requests from livestock producers, to also respond to requests from IDFG by killing coyotes, black bears, mountain lions, foxes, badgers, ravens, and other predators to supposedly "enhance" populations of desired species including greater sage-grouse, Columbia sharp-tailed grouse, mule deer and white-tailed deer, pronghorn antelope, northern and southern Idaho ground squirrels, and unidentified waterfowl. In addition, "natural resource management agencies could request [Wildlife Services]' assistance with . . . other types of natural resource protection projects," although the 2016 Idaho EA fails to provide any explanation, description, location, temporal limitation, analysis, or discussion of these potential activities whatsoever.

84. The 2016 Idaho EA fails to correct many of the flaws and NEPA defects that Plaintiffs identified in their scoping comments and comments on the Draft EA. Wildlife Services declined to prepare an EIS fully analyzing all of its Idaho activities—including its wolf, bird, rodent, and other activities—and their direct, indirect, and cumulative effects.

85. Because Wildlife Services considers the effects of its Idaho activities under

several different EAs, and does not disclose when or where it plans to remove predators, the 2016 Idaho EA and DN/FONSI never examine the potential overlapping impacts of removing different predators from the same areas at the same time.

86. For example, Wildlife Services never analyzes the cumulative effects of killing predators like coyotes, black bears, and mountain lions under the 2016 Idaho EA together with killing wolves under its 2011 Wolf EA. It does not analyze the effects of poisoning ravens using DRC-1339 while also using DRC-1339 to poison starlings at feedlots and dairies across the State of Idaho. It does not disclose how the areas in which it conducts these activities may overlap with one another or how they may act in concert to increase or change impacts on the environment.

87. Nor does Wildlife Services provide accurate baseline information about predators targeted for removal. Wildlife Services guesses how many of predators inhabit each square mile of the state and multiplies that number by the area of the state—for example, it estimates Idaho’s coyote population at 0.6 coyotes per square mile, or around 50,000. This approach assumes that predators uniformly inhabit each square mile of the state, including high elevation areas and urban centers.

88. Then, Wildlife Services judges the cumulative effects of its actions by comparing the amount of predators it kills each year, and those killed by recreational hunters and trappers, with its estimates of statewide predator populations. Not only is this analysis premised on Wildlife Services’ loose estimates of wildlife populations, but it also assumes that the effects of Wildlife Services’ actions will be uniformly distributed statewide, even though the FONSI admits that “the proposed activities will occur in limited areas of Idaho when requested and are not national or regional in scope.”

89. Wildlife Services does not explain how its widespread predator killing, which often occurs on federal and state public lands, complies with federal land use plans, federal regulations, or other standards governing the lands on which it would kill predators under the preferred alternative. It states that compliance is determined in annual work plan meetings, but these closed-door meetings are not open to the public.

90. The 2016 Idaho EA and DN/FONSI fail to demonstrate that Wildlife Services' activities comply with the Wilderness Act of 1964 or other plans and management mandates governing special places designated on federal lands, even though Wildlife Services acknowledges that its continued predator killing may occur within wildernesses, areas of critical environmental concern, wilderness study areas, and other important landscapes. It does not describe baseline conditions in the areas or disclose which predators will be targeted, in which special areas, by which means, for how long. Under the preferred alternative, Wildlife Services could kill any predators, in any wildernesses or other special places, by any means, in any number, without any further public analysis or opportunity for public comment or disclosure. Wildlife Services also refused to consider in detail an alternative that would eliminate predator-killing in wildernesses, proposed wildernesses, and wilderness study areas, claiming little predator-killing in such areas occurs—even though elsewhere the 2016 Idaho EA disclosed that Wildlife Services will very likely kill predators in the Boulder White-Clouds Wilderness and other special places.

91. The 2016 Idaho EA provides no accurate baseline information on any wildlife population it ostensibly seeks to protect, no specific discussion or assessment of existing conditions affecting species to “benefit” from predator killing, no timeline or temporal limitations on Wildlife Services' predator killing activities, and little discussion of the possible

ecological consequences of these expanded activities. It fails to predict positive or negative outcomes of activities to be undertaken. It also continues to rely on the assumption that if Wildlife Services did not undertake predator-killing, some other unidentified entity would. For these reasons and others, the EA does not adequately describe the environmental impacts associated with any alternative.

92. The 2016 Idaho EA provides little detail about the new wildlife killing activities that could occur under its auspices. While the EA generally discusses requests for assistance that Wildlife Services has received from IDFG in the past, it does not disclose when and where those were, where activities may occur in the future, how many or which predators are likely to be targeted, the means by which they will be killed, the duration of proposed actions, why Wildlife Services believes that killing predators will produce the desired outcomes at the site-specific level, whether Wildlife Services has considered non-lethal alternatives to those actions at the site-specific level, or a wealth of other information the public needs to evaluate the requests.

93. For instance, the EA discloses:

There has also been interest in the past by IDFG for WS-Idaho to conduct selective mountain lion predation management to protect California bighorn sheep in the Jim Sage Mountain area of southern Idaho where they were reintroduced in 2004.

EA at 100. This is the only discussion of the Jim Sage project Plaintiffs could locate in the EA, and the EA does not disclose how killing mountain lions will benefit California bighorn sheep in the Jim Sage mountains, how it might affect the environment there, which special resources and endangered species are also present, or any of the other specific information the public would need to evaluate the proposed activities.

94. In another example, Wildlife Services does not even identify which waterfowl

species it might seek to protect; which predators it might target to do so; or where, and by what means, it might conduct its activities. Under the selected alternative, Wildlife Services claims it could kill any predators, to benefit any “waterfowl,” anywhere in Idaho, by any means it chose, without any further public notice or NEPA analysis.

95. Likewise, the EA vaguely states that “IDFG could also request WS-Idaho for the protection of pronghorn antelope and other wildlife species designated as needing special protection,” without providing any more detail about where, when, by what means, or to what end the activities would occur.

96. The 2016 Idaho EA never discloses the effects of Wildlife Services’ activities on any specific area where they will occur. Instead, the EA states that Wildlife Services will rely on its so-called “Wildlife Decision Model” and annual work planning processes to assess possible effects and methods to be used at the site-specific level. EA at 82. In both cases, the site-specific analysis is done without any further NEPA process and thus precludes public scrutiny or disclosure of site-specific effects.

97. According to Wildlife Services, it need not analyze the effects of its activities “so long as the methods used and cumulative impacts of the projects fall within the parameters analyzed in this EA.” But Wildlife Services’ cumulative impacts analysis fails to satisfy NEPA’s hard look requirement because the EA does not provide the site-specific information necessary to meaningfully evaluate cumulative effects.

Wildlife Services’ Coyote-Killing on the Twin Falls District

98. For example, Wildlife Services’ coyote killing is not uniformly distributed throughout the state, but is concentrated on public lands in southern Idaho and, in particular, on the Bureau of Land Management’s Twin Falls District, which encompasses 3.9 million acres and

three field offices in southern Idaho.

99. In 2011, Wildlife Services reported killing 1,847 coyotes on the Twin Falls District, in response to only 35 incidences of reported livestock depredation. That is an average of more than 52 coyotes per incident. In 2013, Wildlife Services reported killing 629 coyotes on the District, in response to 47 reported incidences of depredation, only 15 of which were verified. In 2014, Wildlife Services reported killing 723 coyotes on the District in response to 56 incidences of reported depredation, only 9 of which it verified. Using Wildlife Services' methods of estimating wildlife populations, Wildlife Services killed approximately 50% of the Twin Falls District's estimated coyote population in 2011, followed by 20% each in 2013 and 2014.

100. In addition, on the BLM's adjacent Idaho Falls District, Wildlife Services reported killing 718 coyotes in 2012, in response to 66 reported incidences of livestock depredation, only 36 of which it verified. In 2013, Wildlife Services reported killing 369 coyotes on the Idaho Falls District in response to 108 reported incidences of depredation, 46 of which it verified. In 2014, Wildlife Services reported killing 374 coyotes in response to 170 reported incidences of depredation, 129 of which it verified.

101. Altogether, on the two Districts, Wildlife Services killed 998 coyotes in 2013 and 1,097 coyotes in 2014. In 2013, the coyotes killed on the Twin Falls and Idaho Falls Districts cumulatively constituted about 36% of those killed by Wildlife Services statewide, and in 2014 they constituted about 48%.

102. Adding to the effect of Wildlife Services' actions, hunters and trappers reported killing approximately 1,354 coyotes on the Twin Falls District in 2013-2014, 1,745 in 2012-2013, and 873 in 2010-2011.

103. Using Wildlife Services' method of estimating coyote populations, Wildlife Services and private hunters and trappers combined eradicated almost 60% of the coyote population on the Twin Falls District in 2014, almost 50% in 2013, and 74% in 2011.

104. Science shows that such intensive, long-term coyote removal may have a multitude of ecological effects. Yet Wildlife Services has evaded analyzing its activities' impacts on the Twin Falls District by conducting its cumulative impacts analysis only on a statewide scale, even though its concentrated coyote killing has, and is intended to have, significant impacts at the local level.

105. Moreover, Wildlife Services' activities are concentrated within certain portions of the Twin Falls District: in the northern portion of the Shoshone Field Office, on the Willow Creek, Hyndman, Muldoon, Hailey Creek, Little Wood, Iron Mine, Slaughterhouse, Red Elephant, Little Beaver, and Croy Creek grazing allotments; in the southwestern portion of the Shoshone Field Office, on the Tunupa, Antelope, South Gooding, Goodtime, Camp 1, Star Lake, Sid Bt, and Camp 3 grazing allotments; in the Jarbidge Field Office, on the Notch Butte, Winter Camp, and Antelope Springs allotments; and in the Burley Field Office, on the Minidoka allotment.

106. These targeted areas have special values. For example, the northern part of the Shoshone Field Office, where Wildlife Services regularly conducts aerial gunning, is unique on the Twin Falls District as it is higher in elevation and forms the southern end of the Pioneer Mountain range. It is also one of the few areas in the Twin Falls District to be partially forested. Due to these topography and vegetation differences, this area is home to a different suite of wildlife than the rest of the District: It is occupied by wolves, and it is habitat and likely home to wolverine and lynx. A wolverine was trapped near this area, 10 miles west of Arco, in 2014.

Two lynx sightings have occurred in the area, one as recently as 2014. Bighorn sheep sightings regularly occur in this area. It is also more popular for recreation than other areas on the District, including for hiking, mountain biking, and motorized recreation.

107. Concentrated aerial gunning of coyotes in the Southern Pioneer Mountains has impacts upon the human environment. The helicopters and gunning likely directly harasses and disturbs the unique species in this area, several of which are known to require solitude, such as wolverine and bighorn sheep. And due to the unique suite of wildlife present, the removal of coyotes indirectly causes cascading impacts upon these wildlife species, their prey, and their environment in a unique way specific to these lands. Observing aerial gunning harms the experience of recreationists hoping to enjoy a quiet mountain environment and observe wildlife.

108. Yet, Wildlife Services never analyzes or considers these considerable impacts because it disclaims any responsibility for considering its activities' impacts at the site-specific level.

Wildlife Services' 2016 Twin Falls District Annual Work Plan

109. Instead, Wildlife Services relies upon "annual work plans" produced without any NEPA analysis to address site-specific concerns like compliance with land use plans.

110. For example, the Twin Falls District annual work plan for 2016 states that it "covers" the period between January 1 and December 31, 2016 and "specifies where, when, and under what restrictions WS activities will be implemented on the TFD."

111. The work plan states that Wildlife Services' activities will comply with all of its various EAs and other direction, including a "Supplement to the Environmental Assessment: Predator Damage Management in Southern Idaho 2014"—apparently a reference to the draft sage grouse predator killing proposal that was never finalized. While it states that Wildlife

Services may help with “wildlife enhancement projects,” including for sage-grouse, “[t]he primary basis for WS activities on TFD lands is for livestock protection.”

112. The 2016 Twin Falls District work plan allows Wildlife Services to place traps, snares, or M-44s within as little as $\frac{1}{4}$ mile of any residence, community, or developed recreation site, or closer if requested by the TFD Associate District Manager. It provides that Wildlife Services will notify the TFD before placing M-44s on TFD lands and “when possible” before conducting aerial operations. It authorizes the use of road-killed big game animals as draw stations to lure predators to their deaths in conjunction with Idaho’s “Mule Deer Initiative” and “other predation management efforts.”

113. The 2016 Twin Falls District work plan has very permissive provisions with regards to activities that may be allowed in wilderness, and potentially allows shooting animals from aircraft, as well as killing individual predators that are not responsible for causing damage, in wilderness areas. In contrast, it forbids aerial shooting in an “area of critical environmental concern” (ACEC) established for raptor nesting and closes another “natural relic area” ACEC to Wildlife Services’ actions year-round.

114. The 2016 Twin Falls District work plan provides that it will be revisited at the next annual meeting and that the meeting’s purpose is “to review the coming year’s WS Work plan and to establish specific guidelines to assist field personnel in carrying out their WDM responsibilities consistent with TFD and WS policies.” However, it never identifies specific policies or discusses standards in Twin Falls District resource management plans that might apply to Wildlife Services’ activities.

115. Thus, the work plan fails to provide any of the site-specific NEPA analysis that is absent from the EA.

Wildlife Services' Expanded Predator Killing Is Not Supported By Science

116. Under the 2016 Idaho EA, Wildlife Services may kill predators like coyotes and ravens on the Twin Falls District and elsewhere in Idaho if requested by IDFG, without any further NEPA analysis, without establishing that the requested predator control is warranted or likely to be effective, and without predicting outcomes of actions proposed.

117. Thus, under Alternative 5, Wildlife Services may kill sage-grouse predators if requested, despite a scientific consensus over more than a decade that predation does not pose a significant threat to the greater sage-grouse range-wide or in Idaho. Wildlife Services even admits that its methodology, strategy and technique of killing ravens to ostensibly benefit sage-grouse nesting success and recruitment is new and untested, and Wildlife Services acknowledges that “[t]he question remains as to whether or not predator management can be an effective conservation tools [*sic*], and if so, under what conditions it may be appropriate to use it.” Wildlife Services’ analysis provides none of the site-specific information necessary to assess whether killing sage-grouse predators may be an effective tool to address sage-grouse population declines and does not commit to such analysis down the road.

118. Similarly, the 2016 Idaho EA and DN/FONSI permit Wildlife Services to kill natural predators to benefit Columbian sharp-tailed grouse, even though its own analysis established that “habitat management or manipulation is generally considered the appropriate tool to manage predator impacts on Columbian sharp-tailed grouse and other prairie grouse populations.” Indeed, the best available science on Columbian sharp-tailed grouse states that “predator management is best addressed by protecting and enhancing existing habitats, restoring previously occupied habitats, increasing connectivity between suitable habitats and reducing or modifying factors that facilitate predation,” and that predator control “is only recommended

under extenuating circumstances and should not be viewed as a long-term solution to predation issues” In its 2016 Idaho EA, Wildlife Services never examines or assesses the appropriateness of killing Columbian sharp-tailed grouse predators to improve populations, and never examines the baseline conditions of grouse populations and habitat, as recommended. Yet, under the selected alternative, Wildlife Services could kill predators to benefit Columbian sharp-tailed grouse if it received a request to do so from IDFG.

119. Available science does not support targeting coyotes to boost deer populations, either, but Wildlife Services could do so under the 2016 Idaho EA and DN/FONSI. Wildlife Services acknowledges that, given available science, “WS-Idaho does not anticipate receiving any requests to conduct coyote removal for deer population enhancement.” However, IDFG has requested Wildlife Services’ assistance to boost mule deer populations through coyote removals in the past. Several of Wildlife Services’ existing work plans in Idaho—including the 2016 Twin Falls District work plan—allow for predator killing measures to benefit deer, such as by use of draw stations. Under the selected alternative, Wildlife Services could kill coyotes to benefit deer if it received a request to do so from IDFG.

120. The 2016 EA and DN/FONSI never examine or analyze whether killing predators to ostensibly benefit game species is within Wildlife Services’ statutory authority, and, indeed, Wildlife Services fails to even cite to the appropriate legal authority empowering it to undertake its experimental predator killing programs, EA at 54-55.

FIRST CLAIM FOR RELIEF
NEPA VIOLATION FOR REFUSING TO PREPARE AN EIS

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

122. This First Claim for Relief challenges Wildlife Services’ violation of the National

Environmental Policy Act, 42 U.S.C. §§ 4321-4370, and NEPA's implementing regulations, by refusing to prepare a full NEPA-compliant EIS for its predator damage management activities in Idaho, in light of information showing its activities may have a significant adverse effect on the human environment. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(2).

123. Wildlife Services' predator "damage management" activities in Idaho may have a significant effect on the human environment for reasons including but not limited to the following:

- a. Wildlife Services' activities encompass a broad geographic area, the entire State of Idaho;
- b. Wildlife Services' Idaho activities affect unique geographic areas because they are projected to occur in the Boulder-White Clouds Wilderness, as well as other wilderness study areas, ACECs, and special places;
- c. Wildlife Services' Idaho activities are highly controversial both scientifically and in terms of public perception, as evidenced by the overwhelmingly critical comments Wildlife Services received on the EA, including from Plaintiffs. Indeed, Wildlife Services' own analysis indicates that predator killing analyzed in the 2016 Idaho EA may not achieve its intended effects, and thus a large dispute exists about the nature and extent of the effects of its activities.
- d. Wildlife Services' actions are highly uncertain and involve unknown risks because Wildlife Services has not described them in adequate detail and relies on IDFG to determine whether predator killing is necessary or advisable, rather than fully and independently analyzing the effects of its proposed actions.

e. Wildlife Services' activities under the 2016 Idaho EA have cumulatively significant impacts, particularly when combined with other activities Wildlife Services may undertake under its Idaho Wolf, Rodent, and Bird EAs.

f. Wildlife Services' activities under the 2016 Idaho EA threaten violation of other federal laws, such as the National Forest Management Act, the Federal Land Policy and Management Act, and the Wilderness Act, in part because Wildlife Services has failed to establish that its activities comply with Forest Service and BLM land management mandates.

124. These factors, individually and cumulatively, demonstrate that Wildlife Services' predator damage management activities approved under the 2016 Idaho EA and DN/FONSI constitute a major federal action that poses significant impacts on the environment, and thus Wildlife Services' decision not to prepare an EIS was arbitrary, capricious, an abuse of discretion, and not in accordance with law.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF
NEPA VIOLATIONS FOR FAILURE TO TAKE A "HARD LOOK"

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

126. This Second Claim for Relief challenges Wildlife Services' violations of NEPA, 42 U.S.C. §§ 4321-4370, and NEPA's implementing regulations, in failing to undertake a thorough and objective "hard look" at the environmental impacts of its activities proposed in the 2016 Idaho EA and DN/FONSI. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(2).

127. NEPA requires all federal agencies to undertake a thorough and public analysis of

the environmental consequences of proposed federal actions, including a description of baseline conditions; a reasonable range of alternative actions, including a “no action” alternative; and a thorough evaluation of the direct, indirect, and cumulative impacts of proposed actions.

128. Wildlife Services’ 2016 Idaho EA and DN/FONSI violate NEPA and the APA including in the following ways, each of which is a distinct and separate violation of law:

- a. Wildlife Services has improperly segmented its analysis;
- b. Wildlife Services failed to describe an adequate environmental baseline;
- c. Wildlife Services failed to describe actions and alternatives in adequate detail;
- d. Wildlife Services failed to take a “hard look” at the direct, indirect, and cumulative impacts of its proposed actions and alternatives;
- e. Wildlife Services has improperly tiered its NEPA analysis to non-NEPA state management plans and future closed-door analyses; and
- f. Wildlife Services failed to ensure that its activities comply with the standards of land use plans governing management of federal and state lands, including specially-designated areas, on which it operates.

129. For the foregoing reasons, Wildlife Services’ preparation and approval of the final 2016 Idaho EA and DN/FONSI is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF:
WILDLIFE SERVICES’ EXPANDED PREDATOR KILLING IS *ULTRA VIRES*

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

131. This Third Claim for Relief challenges Wildlife Services’ expanded Idaho

predator killing as *ultra vires* and beyond the authority delegated by the Animal Damage Control Act, as amended. 7 U.S.C. § 426(a)-(d). This Third Claim is brought pursuant to the APA, 5 U.S.C. § 706(2)(C).

132. Under the Animal Damage Control Act, as amended, Congress delegated to the Secretary of Agriculture the authority to “conduct a program of wildlife services with respect to injurious animal species and take action the Secretary considers necessary in conducting the program.” 7 U.S.C. § 426(a)(emphasis added).

133. Wildlife Services lacks the authority to act unless and until Congress confers the power upon it to do so, and the Animal Damage Control Act as amended does not grant Wildlife Services the authority to kill predators to ostensibly assist game species populations without establishing that the predators are “injurious” to populations of the game species to be benefitted.

134. Accordingly, Wildlife Services’ approval, in the 2016 Idaho EA and DN/FONSI, of new wildlife killing actions at the request of IDFG (or others) to “benefit” or otherwise aid other native wildlife populations – including the proposed raven killing to benefit sage-grouse – exceeds the limited power that Congress conferred upon Wildlife Services in Section 426a of the Animal Damage Control Act as amended, and is, therefore, *ultra vires*.

135. Pursuant to the APA, the Court must reverse and set aside agency action which, as here, is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. Order, adjudge, and declare that Wildlife Services violated NEPA, NEPA’s implementing regulations and policies, and the APA by refusing to prepare an EIS analyzing the

full range of predator damage management activities it undertakes in Idaho;

B. Order, adjudge, and declare Wildlife Services violated NEPA, NEPA's implementing regulations and policies, and/or the APA in approving the 2016 Idaho EA and DN/FONSI without taking the required NEPA "hard look" at actions, alternatives, and environmental impacts;

C. Reverse, vacate and set aside the 2016 Idaho EA and DN/FONSI;

D. Order, adjudge and declare that Wildlife Services' expanded sage-grouse predator killing project and expanded killing of other natural and native predators of game species are *ultra vires* and beyond the authority delegated by the Animal Damage Control Act, as amended;

E. Enter declaratory and/or injunctive relief requiring Defendants to undertake comprehensive and legally valid NEPA analysis prior to implementing the predator killing projects challenged herein;

F. Enter such temporary, preliminary and/or permanent injunctive relief as Plaintiffs may hereinafter request;

G. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's 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

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

Dated this 11th day of May, 2017.

Respectfully submitted,

s/Talasi B. Brooks
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