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

WESTERN WATERSHEDS PROJECT,
WILDEARTH GUARDIANS, and
PREDATOR DEFENSE,

Plaintiffs,

v.

USDA APHIS, USDA APHIS WILDLIFE
SERVICES, U.S. FOREST SERVICE, and
BUREAU OF LAND MANAGEMENT,

Defendants.

No. 1:20-cv-213

COMPLAINT

INTRODUCTION

1. Defendant USDA APHIS Wildlife Services (Wildlife Services) kills thousands of coyotes and other wildlife in Idaho each year under outdated Environmental Assessments (EAs) from 2002 and 1996, thus implementing its predator damage management actions without

adequate analysis under the National Environmental Policy Act (NEPA). Wildlife Services carries out some of these killings using poisons and/or traps manufactured or distributed by its “Pocatello Supply Depot,” a secretive federal facility based in Pocatello, Idaho, whose operations it has not considered in any NEPA analysis since 1994 and whose effects on the environment in Idaho it has never considered. It undertakes these actions despite this Court’s summary judgment decision in *Western Watersheds Project et al. v. USDA APHIS Wildlife Services*, 320 F. Supp. 3d 1137 (D. Idaho 2018), where it held that Wildlife Services’ Idaho predator killings could have a significant effect on the environment warranting an Environmental Impact Statement (EIS).

2. In that case, Plaintiffs challenged Wildlife Services’ reliance on a November 2016 *Final Environmental Assessment: Predator Damage and Conflict Management in Idaho* and associated Decision/Finding of No Significant Impact (2016 EA/FONSI) to conduct predator control in Idaho, without first preparing an EIS to address growing scientific controversy and uncertainty over the effects and efficacy of lethal predator control, as well as potential impacts from such killing to Wildernesses and other unique geographic areas.

3. While this Court vacated and remanded the 2016 EA/FONSI in its November 2018 Remedies Decision, it declined to enter interim conditions restricting Wildlife Services’ activities or impose deadlines for an EIS. *See W. Watersheds Project v. Wildlife Services*, 2018 WL 6251358, at *2-3 (D. Idaho Nov. 29, 2018). The Court acknowledged that its vacatur of the 2016 EA/FONSI would allow Wildlife Services to determine, during the remand, whether to continue conducting Idaho predator damage control under the provisions of “two earlier EAs, one completed in 1996 for the northern and central regions of Idaho, and the other completed in

2002 for the southern region,” which Plaintiffs did not challenge in the 2016 EA/FONSI litigation. *Id.* at *2. The Court stated that the EAs’ age “makes [them] weak support for any action,” and that Plaintiffs would “in all likelihood, hold the agency accountable by refiling a challenge to directly challenge the two EAs,” but instructed that Plaintiffs “file a new action, rather than amend this complaint,” to do so and stated it would “further require that the new action be assigned to this Court given its familiarity with the issues.” *Id.*

4. Following the November 2018 Remedies Decision, Wildlife Services announced it would prepare a full EIS for some of its Idaho predator damage management actions, including its Idaho wolf control activities along with the other predator control actions discussed in the 2016 EA/FONSI. *See* USDA APHIS, *Environmental Impact Statement for Predator Damage Management in Idaho*, 84 Fed. Reg. 7326 (March 4, 2019). According to the Federal Register notice, this new EIS would replace the 1996 and 2002 EAs, once completed. *Id.* Wildlife Services has not committed to any deadline for completing the new EIS, and has repeatedly indicated that it will take approximately 5 years. Given Wildlife Services’ history of delay, even in a best-case scenario, this means the EIS will likely not be completed until 2024.

5. With regard to wolf control actions, Wildlife Services has agreed to significantly limit its activities pending completion of the new EIS via a recent settlement with Plaintiffs, which this Court approved, in *Western Watersheds Project et al. v. Grimm*, No. 1:16-cv-218-BLW-CWD, ECF No. 47 (settlement, filed March 11, 2020), ECF No. 48 (court approval, filed March 13, 2020).

6. In contrast, Wildlife Service has not agreed to restrictions requested by Plaintiffs for its other predator damage management. While it completes the EIS, Wildlife Services kills

coyotes and other wildlife by aerial gunning, poisoning, trapping, and other methods, and purports to rely on the 1996 and 2002 EAs to support its actions. Because Wildlife Services relies on the outdated and inadequate 1996 and 2002 EAs, Plaintiffs now seek judicial review and relief declaring that Wildlife Services may not rely on those EAs to provide NEPA coverage for its predator damage management activities in Idaho.

7. Plaintiffs bring related claims against Defendants Bureau of Land Management (BLM) and the U.S. Forest Service (Forest Service), which authorize Wildlife Services' aerial gunning of coyotes and other indiscriminate wildlife killing on public lands in Idaho each year. BLM and the Forest Service authorize such actions through Annual Work Plans signed yearly between each Forest or BLM District and Wildlife Services. The Annual Work Plans provide no public disclosure of the efficacy or environmental impacts of Wildlife Services' activities and do not demonstrate consistency with federal land management requirements. By approving Wildlife Services' aerial gunning and other wildlife killing on public lands without a legally adequate environmental analysis, BLM and the Forest Service violate NEPA.

8. Plaintiffs also seek judicial review of USDA APHIS and Wildlife Services' funding and operation of the Pocatello Supply Depot without a full and current analysis considering and disclosing the environmental effects of manufacturing and distributing special traps and poisons for wildlife killing within Idaho and elsewhere in the country. USDA APHIS and/or Wildlife Services manufacture deadly poisons and devices not available from any other source at the Pocatello Supply Depot, for use by Wildlife Services and others, without considering current information revealing the serious effects those poisons and devices have on the environment and on the public.

9. Accordingly, Plaintiffs seek judicial relief holding that Wildlife Services, BLM, and the Forest Service are acting unlawfully in authorizing and conducting predator control actions in Idaho, and that USDA APHIS and Wildlife Services are acting unlawfully in funding and operating the Pocatello Supply Depot, without disclosing and analyzing the environmental effects of those actions.

JURISDICTION AND VENUE

10. 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. The actions challenged are final agency actions properly subject to judicial review under the APA and an actual, justiciable controversy now exists between Plaintiffs and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

11. 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 Plaintiff Western Watersheds Project has its principal place of business here.

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

PARTIES

13. Plaintiff WESTERN WATERSHEDS PROJECT (WWP), an Idaho nonprofit

membership organization with over 12,000 members and supporters, 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, including predator populations. WWP is headquartered in Hailey, Idaho, with additional staff in Boise, along with staff and offices in other states.

14. 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 more than 275,000 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 has an office and staff in Boise and maintains several other offices around the West, including in Missoula and Denver.

15. Plaintiff PREDATOR DEFENSE is a 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 coyotes and wolves 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.

16. The Plaintiff organizations place a high priority on protecting and conserving wildlife species, including coyotes and other 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, and promoting a co-existence ethic.

17. Plaintiffs' members, supporters, and/or staff live, work, recreate, study, and otherwise use and enjoy public lands throughout Idaho, including on BLM's Twin Falls District, where Wildlife Services kills hundreds of coyotes each year. Plaintiffs' members, supporters, and/or staff frequently engage in hiking, camping, boating, hunting, fishing, photography, and other activities in order to observe and enjoy Idaho's wildlife, including coyotes and other predators. They have directly witnessed Wildlife Services' predator killing and other activities in Idaho and 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, scientific, professional, spiritual and other interests and activities as a result of Wildlife Services' wildlife-killing in Idaho.

18. Plaintiffs and their members, supporters, and/or staff are also directly injured by Wildlife Services' continued predator control activities in Idaho without fully disclosing and evaluating the direct, indirect, and cumulative environmental impacts of those activities, including on federally-managed lands. They are injured by Wildlife Services' failure to adequately analyze alternatives to its predator control activities, including non-lethal options, and by Defendants' failure to determine whether those activities comply with federal laws and land use plans. Plaintiffs and their members, supporters and/or staff have a strong procedural interest in ensuring that Defendants comply 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 Defendants disclose specific information about environmental impacts of Wildlife Services' actions to the public, and weigh alternatives to those actions.

19. Plaintiffs and their members, supporters, and/or staff are also directly injured by USDA APHIS and Wildlife Services' funding and operation of the Pocatello Supply Depot without fully disclosing and evaluating the direct, indirect, and cumulative environmental impacts of that action or evaluating reasonable alternatives. USDA APHIS and/or Wildlife Services manufacture and distribute poisons and traps for killing wildlife from the Pocatello Supply Depot which are not available from any other supplier, and which are shipped nationwide, and even worldwide. Plaintiffs wish to end the use of these poisons and traps, especially on public lands, and have devoted substantial organizational resources to those ends.

20. Defendant U.S. DEPARTMENT OF AGRICULTURE (USDA) ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS) is an agency of the United States within USDA that contains Wildlife Services. On its own and/or through Wildlife Services, it funds and oversees operation of the Pocatello Supply Depot, a facility owned by USDA and operated by federal employees, which manufactures, stores, and distributes poisons and traps that Wildlife Services and others use for killing wildlife.¹

21. Defendant USDA WILDLIFE SERVICES (Wildlife Services) is an agency or

¹ Upon information and belief, Plaintiffs allege that USDA APHIS and Wildlife Services both have roles in funding and operating the Pocatello Supply Depot. Consequently, they allege that "USDA APHIS and/or Wildlife Services" is responsible for funding and operating the Pocatello Supply Depot and associated NEPA compliance.

instrumentality of the United States within USDA APHIS. Wildlife Services carries out “wildlife damage management” activities—frequently by killing wildlife.

22. Defendant BUREAU OF LAND MANAGEMENT (BLM) is an agency of the United States charged with managing certain federal lands in Idaho according to federal statutes and regulations. BLM authorizes Wildlife Services to operate on lands it manages through Annual Work Plans.

23. Defendant U.S. FOREST SERVICE (Forest Service) is an agency of the United States charged with managing certain federal lands in Idaho according to federal statutes and regulations. The Forest Service authorizes Wildlife Services to operate on lands it manages through Annual Work Plans.

24. Plaintiffs have Article III standing to bring this action because they are directly injured by the procedural and substantive NEPA and APA violations alleged herein, which are redressable by this Court.

STATEMENT OF FACTS

25. Wildlife Services is a federal agency that, for a century or more, has carried out “animal damage control” activities that largely consist of killing wildlife, mostly to benefit private livestock operators. In 2018, Wildlife Services reported killing 2,652,405 animals nationwide, and it “removed/destroyed” over 50,000 more. This included killing over 68,000 coyotes in 48 states. Media reports suggest that the death toll from Wildlife Services’ activities may be underreported and in truth, the numbers of wildlife killed may be much greater.

26. To help carry out Wildlife Services’ extermination agenda, USDA APHIS and/or Wildlife Services manufacture and distribute poisons and traps, which are not otherwise

available, from the Pocatello Supply Depot, a building in downtown Pocatello, Idaho owned by the U.S. Department of Agriculture and operated by USDA APHIS and/or Wildlife Services (under various names) since 1940.

27. Using traps and poisons manufactured at the Pocatello Supply Depot, as well as other methods that include aerial gunning, Wildlife Services kills thousands of birds and wildlife in Idaho each year. In 2018, for instance, Wildlife Services reported killing at least 2,924 coyotes, 84 wolves, 14 black bears (12 of which it trapped unintentionally), and 8 mountain lions in Idaho. It also reported accidentally killing one domestic dog. 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 these actions, including not only the “predator damage management” actions addressed in the 1996 and 2002 EAs but additional wolf, avian, rodent, and other control actions. Upon information and belief, Wildlife Services also operates the Pocatello Supply Depot.

28. The full scope of Wildlife Services’ activities in Idaho is difficult to determine, partly because the agency has never prepared a full EIS to analyze and disclose to the public the entirety of its activities and their environmental effects.

NEPA Analyses

29. In 1994, Wildlife Services prepared a nationwide Programmatic EIS (PEIS) purporting to analyze its wildlife damage control program across the county, which it reissued in 1997 with some corrections. That analysis is the only public NEPA analysis discussing the Pocatello Supply Depot—and it addressed the facility’s operations in only a cursory fashion. The 1994/97 PEIS is badly outdated and Wildlife Services recently agreed in separate litigation

no longer to tier any NEPA analysis to that document. *See* Stipulation of Dismissal, *WildEarth Guardians v. USDA APHIS*, No. 2:12-cv-716-MMD-PAL (D. Nev. Oct. 16, 2016), ECF No. 68.

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

31. In 1998, Wildlife Services issued an EA and FONSI for *Bird Damage Management in the Idaho Wildlife Services Program* (“Bird EA”). This EA was followed by an Amendment and FONSI in 2003, and an additional Amendment and FONSI in 2006.

32. In 2001, Wildlife Services proposed to undertake an “experimental” program at Idaho Department of Fish and Game’s (IDFG’s) request to kill ravens for the “benefit” of sage-grouse. Wildlife Services did not conduct any EIS or EA for this highly-controversial proposal, but instead purported to rely on a “categorical exclusion” to avoid NEPA disclosure and analysis. This Court enjoined Wildlife Services from carrying out this initial sage-grouse predator control proposal. *Comm. for Idaho’s High Desert v. Collinge*, 148 F. Supp. 2d 1097 (D. Idaho 2001).

33. 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. *See* Memorandum Decision and Order, *Comm. for Idaho’s High Desert v. Collinge*, No. 1:02-cv-172-BLW (D. Idaho, March 4, 2003), ECF No. 73.

34. 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.

35. In 2004, Wildlife Services issued an EA and FONSI for *Rodent Damage*

Management in Idaho (“Rodent EA”).

36. 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* (“Wolf EA”).

37. 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.

38. Because Wildlife Services has relied on these disjointed partial EAs, it has never publicly disclosed or even considered the combined or cumulative effects of its predator control actions in Idaho. This allows Wildlife Services to segregate the wildlife it kills in the greatest abundance—and the effects of the methods it uses to do so—into separate analyses. For instance, Wildlife Services’ killing of starlings is covered in its Bird EA; its killing of jackrabbits and other rodents is covered in its Rodent EA; its wolf-killing is covered in its Wolf EA; and its killing of coyotes, black bears, and mountain lions is covered in the 1996 and 2002 EAs, despite the fact that those actions have interrelated and cumulative effects on the environment. Much of this killing occurs through use of poisons, such as DRC-1339, strychnine, zinc phosphide, sodium nitrate, fumigants, and M-44s, distributed from the Pocatello Supply Depot, but no current or adequate NEPA analysis covers the operation of that facility.

39. Plaintiffs filed suit before this Court in 2015 to challenge Wildlife Services’ unlawful reliance on these piecemeal, partial, and outdated NEPA analyses for its Idaho predator control actions. *See* Compl., *W. Watersheds Project v. Grimm*, No. 1:15-cv-40-EJL (D. Idaho,

Feb. 11, 2015), ECF No. 1. After Wildlife Services decided to update those older EAs by conducting a new Idaho NEPA analysis, which it represented would be completed by February 2016, Plaintiffs voluntarily dismissed that case. *See id.*, Stipulation of Dismissal, ECF No. 17.

40. In November 2016, Wildlife Services replaced the 1996 and 2002 EAs with the 2016 EA/FONSI referenced above, which this Court reversed in its June 2018 Summary Judgment decision. *See W. Watersheds Project v. Wildlife Services*, 320 F. Supp. 3d 1137 (D. Idaho 2018).

41. The 2016 EA, which covered Wildlife Services' "Idaho Predator Damage Management Program" that consisted of numerous predator control activities, was flawed and biased in numerous ways, as the public and other agencies pointed out in comments to Wildlife Services. For example, BLM wrote: "The document thus far does not read like a real analysis of the potential [Predator Damage Management] outside of lethal methods. Instead, it sounds like a pre-decisional defense of lethal methods, and fails to consider the real benefits of alternative approaches." Elsewhere, BLM also stated,

As it reads now, the document ignores years of research on the nature of complex predator/prey relationships. How does predator control impact the stability of prey species populations relative to their competitors? How does predator control impact carrying capacity? How does predator control impact cyclic vs. non-cyclic prey populations? How does predator control affect the composition and abundance of other predator species or a guild of other prey species?

The agency further observed the analysis dismissed "a large body of evidence that predator removal can have indirect effects on local ecological systems." The Forest Service and IDFG raised similar concerns, as did the Plaintiffs and other concerned citizens.

42. In holding that the 2016 EA/FONSI violated NEPA, the Court underscored these and other critical agency comments, and held that scientific uncertainty and controversy

concerning Wildlife Services' predator killing, along with Wildlife Services' projected activities in the Boulder White-Clouds Wilderness and other unique geographic areas, warranted an EIS. *W. Watersheds Project*, 320 F. Supp. 3d 1137 (summary judgment opinion); *W. Watersheds Project*, 2018 WL 6251358 (remedies order remanding and vacating).

43. In particular, the Court took issue with Wildlife Services' intensive, long-term coyote killing, which Wildlife Services planned to conduct without any analysis of site-specific impacts. As the Court explained in its Summary Judgment opinion, "[t]he lack of dispersed impacts for coyote removal, in combination with the removals being conducted repeatedly for years, raises a concern that local populations could be depleted below sustainable levels.... Lacking any site-specific information, and relying entirely on State-wide information, Wildlife Services could easily have missed the adverse impacts on local populations." *W. Watersheds Project*, 320 F. Supp. 3d at 1147.

44. Despite this Court's rulings, Wildlife Services has determined to conduct its predator damage management actions to kill coyotes and other predators in Idaho by relying on the 1996 and 2002 EAs, and it plans to continue these actions until it has completed the new EIS announced in March 2019—a process it says will take five years.

45. Wildlife Services has not agreed to limit its activities in many ways requested by Plaintiffs in the interim, although it has stated that until a new EIS is prepared: 1) it will not use Compound-1080 or M-44s in Idaho, 2) it will not kill predators covered under the 1996 and 2002 EAs in Idaho to "protect" prey species other than the northern Idaho ground squirrel, 3) it will not kill coyotes on a "preventive" basis in Special Management Areas, including Wildernesses, Wilderness Study Areas, Areas of Critical Environmental Concern (ACECs) and National

Monuments, 4) it will not kill predators in Wildernesses or Wilderness Study Areas in Idaho, except in response to threats to human health and safety, and 5) it will not kill predators in some ACECs (but will kill wildlife in the Boise Front, Hixon Columbia Grouse Habitat, Long-billed Curlew Habitat, Mud Flat "Shoofly" Oolite, North Menan Butte, Snake River, and Upper Snake Complex ACECs), or National Monuments (except for Craters of the Moon National Monument), unless in response to a threat to human health and safety.

46. In other words, while Wildlife Services has agreed to some limitations, it intends to carry out predator control actions throughout many areas of Idaho using gunning, trapping, poisoning and other methods. Because it is relying on the 1996 and 2002 EAs, these actions have never been analyzed in an EIS nor undergone site-specific NEPA analysis.

47. Wildlife Services' decision to rely on the 1996 and 2002 EAs to support its predator killing actions and its execution of those actions, including those authorized by the Annual Work Plans with BLM and the Forest Service, or undertaken following Wildlife Services' application of its "Wildlife Decision Model," constitute final agency actions subject to judicial review. Because the 1996 and 2002 EAs are woefully outdated and inadequate, Wildlife Services is now conducting predator control actions in Idaho without first completing a valid NEPA analysis.

Wildlife Services' Coyote Killing in Idaho

48. Wildlife Services focuses much of its Idaho predator-killing on "protecting" livestock from coyotes.

49. While Wildlife Services has committed not to use M-44s to kill coyotes in Idaho until it has completed the required EIS, it kills them by other means, including: gunning them

down from fixed-wing aircraft and helicopters; trapping them in foothold traps and neck snares, where they are strangled to death, die of exposure, or are later shot; gassing them in their dens, using sodium nitrate cartridges manufactured by the Pocatello Supply Depot; and luring them in and shooting them on the ground. This slaughter is mostly funded by federal tax dollars—in 2018, for instance, Wildlife Services received approximately 60% of its funding for Idaho operations from federal sources.

50. Coyotes are territorial, with territories spaced across the landscape like puzzle pieces. Each territory is controlled by a dominant pair of coyotes. Coyotes are monestrous, with only the dominant breeding pair typically producing a single litter per territory each spring. However, coyote territories may overlap and breeding pairs may have several nonbreeding “helpers” at the den during whelping, when pups are born.

51. Coyotes primarily prey upon smaller mammals, like jackrabbits, pocket mice, and voles. They also occasionally prey upon larger animals such as pronghorn fawns, elk calves, and mule deer, and sometimes kill smaller domestic livestock, as well.

52. Territorial breeding adults are responsible for most livestock depredations. Removals of non-depredating coyotes can exacerbate predation problems by creating vacancies to be filled by new “breeders” that might kill livestock. Those vacancies may also be filled by younger, more desperate “floater” coyotes that might be more likely to prey on livestock.

53. Wildlife Services presently kills coyotes in Idaho under its 1996 and 2002 EAs. Wildlife Services kills several thousand coyotes in Idaho each year, primarily to benefit private livestock operations.

54. Wildlife Services does not know how many coyotes inhabit the State of Idaho.

Wildlife Services has guessed that Idaho's coyote population is about 0.6 per square mile, or 50,134 coyotes. Wildlife Services has never estimated coyote populations in specific areas where it may target the species.

55. In 2018, Wildlife Services reported that it shot 2,107 coyotes in Idaho from aircraft and an additional 375 on the ground. It also trapped and killed 421 coyotes in foothold traps and neck snares, and gassed approximately 21 coyotes in their den using gas cartridges manufactured at the Pocatello Supply Depot.²

56. Adding to the effects of these mortalities, IDFG allows coyotes to be recreationally hunted and trapped. Because coyotes are classified as a predator that may be shot on sight, IDFG does not keep an accurate accounting of how many coyotes are recreationally shot—but in 2017-18, 804 licensed trappers in Idaho reported trapping 4,628 coyotes, in addition to those shot.

57. Wildlife Services has never considered how high levels of sport harvest may be combining with the effects of its own activities to affect localized coyote populations.

58. Wildlife Services has never disclosed whether it is removing coyotes from the same local areas in Idaho each year or considered how those removals, combined, may be affecting the environment.

The 1996 and 2002 EAs

59. Like the deficient 2016 EA, the 1996 and 2002 EAs do not consider the effects of

² Wildlife Services' 2019 Program Data Report, in which it catalogues wildlife killed by different means, is not yet available. Likewise, Plaintiffs have not yet obtained Wildlife Services' 2019 Work Plan and 2018 Summary Report for the Twin Falls District despite multiple FOIA requests. The facts recited here rely on the most recent data available.

Wildlife Services' coyote-killing to local coyote populations, instead analyzing effects at much broader regional scales. Because the amount of coyote killing from Wildlife Services' actions adds up to only a small percent of the population in the large analysis areas, the 1996 and 2002 EAs assume effects will not be significant, even while admitting that "localized populations" may be targeted. But, as this Court previously noted, this approach risks overlooking adverse impacts on local populations. *See W. Watersheds Project*, 320 F. Supp. 3d at 1147.

60. For example, in the 2002 Southern Idaho EA, Wildlife Services estimated that its 48,570 square mile analysis area would support a coyote population of 29,100. In contrast, the 4,336 coyotes that the EA stated Wildlife Services kills annually in Southern Idaho appear to be a relatively small proportion—only 15 percent. Yet, Wildlife Services states that it only actually killed coyotes on approximately 12,813 square miles. Using Wildlife Services' method of estimating coyote populations, the population of *that* area is only about 7,688 coyotes. The 4,336 coyotes Wildlife Services kills annually actually amount to 56 percent of the estimated population of the areas where it conducts the removals—and this proportion does not consider mortality from other sources like hunting and trapping.

61. Similarly, the 1996 Northern and Central Idaho EA concluded that Wildlife Services' operations are insignificant because they remove only a small proportion of the analysis area's estimated coyote population. In truth, though, Wildlife Services only conducts activities on about 4% of the analysis area, or 907,000 acres (1,417 square miles). The estimated coyote population of the area on which Wildlife Services actually operates is approximately 850, and from 1993-1995, Wildlife Services killed an average of 776 coyotes each year in that area, or 91% of that population—a figure that does not account for sport harvest by hunters and trappers.

62. Moreover, the 1996 Northern and Central Idaho EA relies on the Connolly & Longhurst (1975) study to assert that coyotes can sustain annual removals of up to 70% of their numbers and still maintain a viable population. But more recent, and rigorous, science admitted that removing more than 70% of the coyote population annually would extirpate the local population within 7 years and that removal rates of 70% would be difficult to sustain because of increasing scarcity of coyotes. It also found that removals of 50 or 60 percent of the population resulted in more transient animals, a younger age structure, and higher reproduction.

63. Thus, the level of coyote removals Wildlife Services is conducting in Northern and Central Idaho is above the level thought to result in localized extirpations within seven years. The level of coyote removals Wildlife Services is conducting in Southern Idaho is above the threshold where population-level effects occur, and when combined with mortality from other sources, may occur at levels where local extirpations are possible. The 2002 and 1996 EAs do not rigorously evaluate the potential that Wildlife Services' activities may be causing or contributing to extirpations of local coyote populations, or affecting the population structure and behavior of those populations, because they evaluate the impacts of Wildlife Services' coyote killing at an incorrect scale that dilutes the true effects of localized killings.

64. Likewise, Wildlife Services' 1996 Northern and Central Idaho EA relies on outdated studies from 1983 and 1990 to support its assumption that "proactively" killing coyotes by gunning down any coyote it finds on grazing allotments that have experienced predation problems in the past can prevent future predation problems. The 2002 Southern Idaho EA substantiates the same assumption by relying on Wagner and Conover (1999), a study that Treves et al. (2014) criticized for not meeting minimal standards of scientific rigor, as this Court

noted in its Summary Judgment opinion concerning the 2016 EA. *See W. Watersheds Project*, 320 F. Supp. 3d at 1144. Newer science shows that indiscriminately removing coyotes can actually increase predation on livestock and that the effectiveness of lethal control generally—and “proactive” control in particular—has not been established as scientifically valid. The 1996 and 2002 EAs and FONSIIs do not consider any of this newer science.

65. Under the 1996 and 2002 EAs and Decision/FONSIIs, Wildlife Services may kill coyotes even in Craters of the Moon National Monument, ACECs, and Special Management Areas, which were designated to protect environmental features. Indeed, Wildlife Services has stated that it intends to kill predators in Craters of the Moon National Monument, as well as the Boise Front, Hixon Columbia Grouse Habitat, Long-billed Curlew Habitat, Mud Flat "Shoofly" Oolite, North Menan Butte, Snake River, and Upper Snake Complex ACECs. In assessing the 2016 EA, this Court held that the potential for predator control activities to occur in Wilderness or other unique geographic areas warranted an EIS.

66. These outdated EAs failed to include any site-specific analysis, using virtually identical reasoning to the invalid 2016 EA—claiming that local removals are insignificant relative to the statewide population and that site-specific analysis will occur through the Annual Work Plans and through application of Wildlife Services’ “Wildlife Decision Model,” a “thought process” which occurs with no documentation.

67. Thus, the flaws Plaintiffs highlighted, and this Court recognized, in the 2016 EA are equally apparent in the 1996 and 2002 EAs, and are exacerbated by the age of the analyses. These flaws are amplified by each of the FONSIIs issued in which Wildlife Services found the EAs still adequate. Wildlife Services’ decision to rely on these EAs and FONSIIs to conduct its

predator control actions is misplaced given their obvious deficiencies, which this Court acknowledged when it stated that their age and failure to address new information makes them only weak support for any action. *W. Watersheds Project*, 2018 WL 6251358, at *2.

Governing Agreements

68. Wildlife Services operates on BLM-managed lands in Idaho under a 2012 Memorandum of Understanding (MOU) between it and BLM. It operates on Forest Service lands in Idaho under a separate but similar 2017 MOU.

69. The 2012 MOU provides that BLM will “[c]ooperate with APHIS-WS [Wildlife Services] in the development and annual review of [Wildlife Damage Management] plans affecting the BLM lands and resources *and ensure they are consistent with FLPMA and other Federal laws.*” (emphasis added). The MOU also purports to assign Wildlife Services responsibility for ensuring its activities on BLM lands comply with NEPA. The 2017 MOU contains similar provisions applicable to the Forest Service.

70. The Wildlife Damage Management plans referenced in the MOUs are Annual Work Plans that Wildlife Services claims to execute yearly with each BLM District or Forest. The Annual Work Plans are not subject to public review and comment; contain no analysis of environmental impacts and alternatives; and only outline in very broad terms the activities Wildlife Services may undertake on public lands. Wildlife Services prepares the Annual Work Plans and they are theoretically reviewed at closed-door annual meetings between Wildlife Services and the land management agency. In reality, these meetings sometimes do not occur and the land management agency may not even have a copy of the Annual Work Plan that is in effect.

71. Through the Annual Work Plans, BLM and the Forest Service authorize Wildlife Services to operate on federal lands they manage.

72. Wildlife Services relies on the Annual Work Plans for authorization to conduct predator control on federal lands, including in Wildernesses and other special management areas.

73. The Annual Work Plans claim to comply with the relevant NEPA analyses, in this case the 1996 or 2002 EA, depending on which Forest or BLM District is at issue. Because they do not contain any NEPA analysis, they effectively “tier” to those analyses.

BLM Twin Falls District

74. A significant portion of Wildlife Services’ coyote killing occurs in Southern Idaho and, in particular, on BLM’s Twin Falls District.

75. BLM’s Twin Falls District encompasses 3.9 million acres and three field offices in southern Idaho. Primary uses of the District include livestock grazing. The District also contains special resources, such as BLM ACECs, Lands with Wilderness Characteristics, and the BLM-managed portion of Craters of the Moon National Monument—where Wildlife Services does not rule out continuing predator control while it prepares the EIS.

76. Using Wildlife Services’ method of estimating coyote populations in Idaho, the Twin Falls District is home to approximately 3,657 coyotes.

77. The “primary basis” for Wildlife Services’ activities on the Twin Falls District is protection of livestock owned by private ranchers and corporations that graze on public lands.

78. In 2011, Wildlife Services reported killing 1,847 coyotes on the Twin Falls District, in response to 35 incidences of reported livestock depredation. In 2013, Wildlife Services reported killing 629 coyotes on the Twin Falls District, in response to 15 verified

livestock depredations. In 2014, Wildlife Services reported killing 723 coyotes on the Twin Falls District in response to 9 verified livestock depredations. Plaintiffs do not know how many coyotes Wildlife Services may have killed on the Twin Falls District in 2015 because they do not have Wildlife Services' 2016 work plan and 2015 summary report for the Twin Falls District.

79. In 2016, Wildlife Services reported killing 1,028 coyotes on the Twin Falls District in response to 4 verified depredations. In 2017, Wildlife Services reported killing 844 coyotes on the Twin Falls District, in response to 13 verified depredations. In other words, Wildlife Services alone killed approximately 50% of the Twin Falls District's estimated coyote population in 2011, followed by 20-30% each year in 2013, 2014, 2016, and 2017. There is no information about how much of the Twin Falls District Wildlife Services operates on or the percentage of coyotes killed in specific areas.

80. Adding to the effect of Wildlife Services' actions, hunters and trappers reported killing approximately 1,301 coyotes in counties comprising the Twin Falls District in 2017, 1,871 in 2016, 1,354 in 2014, and 1,745 in 2013.

81. If Wildlife Services' assumptions about Idaho's coyote population are accurate, Wildlife Services and private hunters and trappers combined likely eradicated almost 60% of the coyote population on the Twin Falls District in 2017, 2016, and 2014, and almost 50% in 2013.

82. Killing such a large proportion of the coyote population on a yearly basis for numerous years in a row is certainly affecting the population, the social structure of individual packs, as well as the ecological environment on the Twin Falls District. Wildlife Services has never discussed the impacts of removing 50% or more of a coyote population for multiple years in a row, because it has never assessed the site-specific direct, indirect, and cumulative impacts

of its operations targeting coyotes on the Twin Falls District or elsewhere in Idaho.

83. Wildlife Services has not fully examined the environmental impacts of its predator control activities in Southern Idaho, and it has never examined the impacts of its activities specifically on the coyote population of the Twin Falls District when combined with state-sanctioned hunting, trapping, and other mortality.

BLM Twin Falls District Annual Work Plan

84. BLM's Twin Falls District encompasses the Burley, Shoshone, and Jarbidge Field Offices. Each Field Office is managed under one or more land-use plans called a Resource Management Plan (RMP) or Management Framework Plan (MFP). The Burley Field Office is managed under the Cassia RMP, the Monument RMP, and the Twin Falls MFP. The Shoshone Field Office is managed under the Monument RMP, the Sun Valley RMP, the Bennett-Timmerman Hills MFP, and the Magic MFP. The BLM-managed portion of Craters of the Moon National Monument is also within the Shoshone Field Office and is managed under its own management plan. The Jarbidge Field Office is managed under the Jarbidge RMP. Many of these plans contain specific standards and guidelines pertaining to wildlife management and predator management.

85. For example, the 1988 Twin Falls MFP on the Burley Field Office provides that before predator control can occur, BLM must be consulted and determine (1) if predator control is justified; (2) the method of control (trapping, aerial gunning, etc.); and (3) the time of control. Twin Falls MFP, Part 3, WL-3. It provides that “[t]his information, together with actual predation kills of livestock documented by the operator, forms the basis for a decision to allow [predator control] to proceed.” *Id.* It specifically emphasizes that “one of the major principles

and standards of the wildlife program activity is to consider the welfare and habitat requirements of all wildlife, including predacious animals, in programs affecting the public lands.” *Id.* at WL-3.3.

86. Wildlife Services and BLM execute an Annual Work Plan for the Twin Falls District each year, which purports to authorize Wildlife Services’ activities on that district. Each work plan states that it will remain in effect until updated at the next annual work plan meeting, and may be modified or superseded upon the completion of environmental analysis, or if new information indicates that changes are warranted.

87. The Work Plans undergo no public review and are not public documents even though they authorize controversial activities on vast swaths of public lands. Each year, Western Watersheds Project requests these plans from Wildlife Services and BLM via FOIA, but the agencies’ responses are slow and often incomplete. Western Watersheds Project never received the 2019 Annual Work Plan and 2018 Summary Report for the Twin Falls District from either Wildlife Services or BLM, for example, despite requesting them from both agencies. Wildlife Services and BLM executed an Annual Work Plan purporting to cover Wildlife Services’ action on the Twin Falls District in 2018. Plaintiffs allege upon information and belief that they executed a similar Annual Work Plan in 2019 and have executed, or will execute, a similar Annual Work Plan in 2020.

88. The Twin Falls District Work Plans do not undertake site-specific analysis or constrain which methods of predator control may be used under which circumstances. Instead they state that Wildlife Services employees will use the “Wildlife Decision Model” to judge which methods to use at the site-specific level, without public or BLM oversight.

89. Neither Wildlife Services' NEPA analyses, nor the Annual Work Plans include any analysis addressing the impacts that Wildlife Services' protracted, concentrated coyote-killing may be having on the coyote population or other resources on the Twin Falls District, or any area therein where coyote removal is focused.

90. Defendants have offered no explanation of how BLM is ensuring that the directives set forth in its land use plans are followed with regard to Wildlife Services' activities on those lands. Neither Wildlife Services' Annual Work Plans, nor NEPA analysis identify these standards or provide any site-specific analysis demonstrating whether Wildlife Services' activities comply with them. None of the documents through which BLM authorizes Wildlife Services to operate on the Twin Falls District provide any evidence that the requirements of the RMPs and MFPs are being followed.

91. Despite these defects, Wildlife Services continues to routinely prepare—and BLM to routinely approve—Annual Work Plans to kill coyotes on federal lands in Idaho, including the Twin Falls District. BLM's work plans now must tier to the outdated 2002 Southern Idaho EA rather than the invalidated 2016 Idaho EA.

92. Plaintiffs allege, upon information and belief, that Wildlife Services will continue to execute Annual Work Plans with federal agencies that tier to its outdated 1996 and 2002 EAs, and that federal agencies will continue to authorize Wildlife Services to operate on lands they manage through these Annual Work Plans.

93. Plaintiffs further allege, upon information and belief, that Wildlife Services will continue to kill coyotes on public lands in Idaho, including on the Twin Falls BLM District, in 2020 and future years unless this Court grants the requested relief.

The Pocatello Supply Depot

94. In addition, USDA APHIS and/or Wildlife Services manufacture thousands of M-44s and scores of Compound-1080 Livestock Protection Collars in Idaho at the Pocatello Supply Depot, along with other poisons that would not otherwise be available, and distribute them nationwide and even worldwide, even though they have not analyzed the effects of operating that facility since the 1994/97 PEIS.

95. The Pocatello Supply Depot building was built by the U.S. Government using federal funds and opened in 1940—originally, to produce baits for predator control and rodent control programs carried out by Wildlife Services, under its previous name, the Division of Predatory Animal and Rodent Control (PARC). USDA owns the Pocatello Supply Depot. USDA APHIS also funds and operates the Pocatello Supply Depot by funding management positions at the facility, employing at least six federal employees, and accepting orders and payments using federal government forms and payment systems. Wildlife Services’ “wildlife damage management” staff also use the Pocatello Supply Depot building.

96. The mission of the Pocatello Supply Depot is to provide specialized products and services for wildlife damage management activities. The facility supplies products not readily available on the open market due to prohibitive costs and small production quantities. It manufactures products for sale that may contain extremely hazardous chemicals. 20 of 29 restricted use pesticides used by USDA APHIS are manufactured at the Pocatello Supply Depot.

97. Wildlife Services did not commit to disclose and analyze the environmental effects of operating the Pocatello Supply Depot in the upcoming Idaho EIS or change the Pocatello Supply Depot’s operations in the interim. Wildlife Services may recommence using

M-44s and Compound-1080 in Idaho—which would not be available but for the operation of the Pocatello Supply Depot—after it has completed its Idaho EIS. USDA APHIS and/or Wildlife Services fund and operate the Pocatello Supply Depot without an adequate NEPA analysis.

98. Some or all of the items manufactured by the Pocatello Supply Depot are not available from any other source. Items manufactured or distributed by the Pocatello Supply Depot include:

a. The Livestock Protection Collar, containing deadly Compound-1080, a device invented to target coyotes. The collar is placed around the neck of a domestic animal. Compound-1080 is in two reservoirs inside the collar. When a coyote attacks the animal and bites the collar, Compound-1080 is released, killing both the predator and the domestic animal.

b. M-44 “cyanide bombs.” M-44s are baited spring-loaded ejectors that shoot deadly cyanide powder into the face and mouth of an animal that bites them when triggered. They are exclusively manufactured at the Pocatello Supply Depot and are shipped from the facility to applicators nationwide, including to the private residences of many Wildlife Services employees. In some states, including Texas, Nevada, and Wyoming, M-44s may be used by private applicators.

c. Sodium nitrate/charcoal gas cartridges used to kill coyotes and rodents in underground burrows by poisoning them with carbon monoxide. Entrances to the burrows are sealed off, the fuse is lit, and the animals underground asphyxiate to death. If they do not die, they may suffer brain damage. Any other animal in the burrow is also killed.

d. DRC-1339, a poison used to kill birds on feedlots and dairies and also used to kill ravens to “protect” sage-grouse. Upon information and belief, the Idaho Department of Fish and

Game uses DRC-1339 manufactured at or distributed by the Pocatello Supply Depot to kill ravens under a Special Local Need Label. DRC-1339 is commonly mixed into baits made from grain, French fries, or eggs.

e. Strychnine in blocks, grain baits, and paste used to kill porcupines, pigeons, rodents, and other animals.

f. Zinc phosphide in wheat or grain used to poison mice, muskrats, and prairie dogs – a keystone species critical to healthy sagebrush and grassland ecosystems. The Pocatello Supply Depot also sells zinc phosphide concentrate to be mixed into applications by operators.

g. 80 milligram acetaminophen treatments used to kill snakes.

h. Neutroleum alpha, a bait for coyotes, which is considered flammable.

99. In 2019, the product inventory at the Pocatello Supply Depot also included (but was not limited to): Traps and snares, Mesurol, Diphacinone, Alpha chloralose, Borax, and various other supplies for manufacturing snares, traps, and poisons.

100. Without the Pocatello Supply Depot, M-44s containing sodium cyanide would not be available, fewer gas cartridges to kill rodents and canids in underground burrows would be in circulation, and less zinc phosphide, strychnine, and other poisons would be in circulation.

101. The Pocatello Supply Depot ships its products to Wildlife Services' state programs and employees, professional exterminators, universities, zoos, and individuals nationwide, and even internationally, sometimes in enormous quantities. For example, in June of 2018 it shipped over two and a half tons of zinc phosphide wheat to its office in Springfield, Illinois, and in August of that year it shipped two tons of zinc phosphide wheat to the Kansas City International Airport in Kansas City, Missouri. In August 2018, it also shipped 28,800 gas

cartridges to the Fresno County Agriculture Department in California. In a single month, between October and November of 2018, Wildlife Services shipped 4,700 M-44s to Texas—both to its Texas state program and to private individuals. It also sent several shipments of acetaminophen to Guam in 2018, 150 M-44 ejector units, stakes and capsule holders to an individual in Queensland, Australia, and also sent other products to Canada.

102. Items manufactured or distributed by the Pocatello Supply Depot have environmental effects that USDA APHIS and/or Wildlife Services have never considered, including effects on human health and safety. Numerous recent examples from Idaho and beyond demonstrate that poisons manufactured or distributed by the Pocatello Supply Depot pose a serious threat to wildlife, pets, and human health.

103. For instance, Plaintiff Predator Defense has collected reports of at least 60 incidents since 1994 in which M-44s have injured or killed humans and domestic animals, including a 2017 incident in which a 14-year old boy walking his dog within a quarter-mile of his family's home in Pocatello suffered cyanide poisoning after triggering an M-44 set to kill coyotes. Plaintiff Predator Defense has also collected reports of at least four apparent incidents in which Compound-1080 has caused secondary poisoning or else been intentionally misused to poison wolves, dogs, and other animals. And, in 2019, the Environmental Protection Agency agreed in litigation against Plaintiff the Center for Biological Diversity to assess the risks posed by zinc phosphide to numerous vulnerable species in light of serious threats to northern spotted owls and others. Order Entering Stipulated Partial Settlement, *Center for Biological Diversity, et al. v. U.S. Environmental Protection Agency, et al.*, No. 3:11-cv-293-JCS (N.D. Cal. Oct. 22, 2019), ECF No. 366. Strychnine baits used to kill ground squirrels are so dangerous to nontarget

species that Canada banned them this year.

104. There is also new scientific information about the effects of these pesticides that USDA APHIS and/or Wildlife Services must consider.

105. USDA APHIS and/or Wildlife Services have never considered the potential threats to the local community from the Pocatello Supply Depot's activities involving these substances, such as discharging byproducts of its manufacturing process associated with these substances into air or water. Because USDA APHIS and/or Wildlife Services have never disclosed or considered such impacts, the public is unaware of risks from manufacturing these toxic compounds. These risks may be significant; the Pocatello Supply Depot building contains four open floor drains that discharge directly into the City of Pocatello sewer system. A 2017 audit revealed numerous violations of expectations for chemical storage. The Pocatello Sheriff has formally asked the Pocatello Supply Depot to stop manufacturing M-44s.

106. Despite this and other information revealing the need for a new NEPA analysis disclosing the effects of operating the Pocatello Supply Depot, both on the environment in Idaho and nationwide, USDA APHIS and/or Wildlife Services fund and operate the Pocatello Supply Depot without an adequate NEPA analysis.

FIRST CLAIM FOR RELIEF

NEPA Violations:

Wildlife Services Predator Damage Management Actions Have No Valid NEPA.

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

108. This First Claim for Relief challenges Wildlife Services' predator control actions in Idaho, and its determination to rely on the 1996 and 2002 EAs and related Decision/FONSIs to support those actions, for violating NEPA because those EAs are badly outdated and

inadequate, and new information shows Wildlife Services' actions may have significant effects the EAs failed to consider.

109. The NEPA process ensures the action agency takes a "hard look" at the environmental impacts of its proposed action.

110. To fulfill this "hard look" requirement, NEPA analyses must discuss a proposed action's direct, indirect, and cumulative effects on the environment. 50 C.F.R. § 1502.16. If an agency determines that there are "substantial questions" as to whether a proposed action may have any significant effect, the agency must prepare an EIS. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864-65 (9th Cir. 2005).

111. To help determine whether an action "may" have a significant environmental impact, an agency evaluates factors including:

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

...

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

50 C.F.R. § 1508.27(b).

112. "To take the required 'hard look' at the proposed project's effect, an agency may not rely on incorrect assumptions or data" in its NEPA analysis. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005); *see also* 40 C.F.R. § 1500.1(b). "[A]n agency errs when it relies on old data without showing that the data remain accurate." *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1052 (9th Cir. 2013).

113. Wildlife Services is violating NEPA by killing predators in Idaho without first preparing a valid and NEPA-compliant EIS for its predator damage management activities, as this Court found must occur when it vacated the 2016 EA/FONSI that covered Wildlife Services' activities in Idaho. An EIS is required by law because Wildlife Services' actions may have a significant effect on the human environment. For instance, those actions may have significant impacts on local coyote populations and unique geographic areas; substantial controversy and uncertainty exists over whether predator control actions are likely to achieve their intended purpose; and these actions are not being taken in accordance with the governing land use plans.

114. Wildlife Services is also violating NEPA because it conducts its predator damage management activities in Idaho without having taken the required hard look at the effects of its actions. It has failed to take the required hard look because it determined to rely on the 1996 and 2002 EAs that contain outdated information, incorrect assumptions, and inadequate analysis of effects. The 1996 and 2002 EAs also do not contain adequate site-specific information to disclose and analyze the effects of Wildlife Services' actions.

115. Wildlife Services' actions that kill predators in Idaho without the required EIS, and its decision to rely on NEPA analyses from 1996 and 2002 that it knows are outdated and inadequate, are final agency actions that are arbitrary and capricious and not in accordance with law under NEPA and the APA.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF

NEPA Violations:

Wildlife Services has not Completed Supplemental NEPA Analysis and Is Causing Irreversible and Irretrievable Commitments of Resources

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

117. An agency’s responsibility to comply with NEPA does not end once it has completed its NEPA analysis. An agency must prepare a supplemental NEPA analysis if “[t]here 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)(ii).

118. If there remains “major Federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental [NEPA analysis] must be prepared.” *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374 (1989).

119. New information and changed circumstances require that, at a minimum, Wildlife Services must supplement its 1996 and 2002 NEPA analyses.

120. An agency must prepare the required NEPA analysis *before* making any irreversible and irretrievable commitments of resources. *E.g., Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988).

121. Wildlife Services is violating NEPA because it has failed to complete supplemental analyses for the 1996 and 2002 EAs and Decision/FONSI before undertaking further predator control actions in Idaho. These predator killing actions constitute an irreversible and irretrievable commitment of resources.

122. Wildlife Services’ actions that kill predators in Idaho before supplementing its outdated NEPA analyses are arbitrary and capricious and violate NEPA and the APA.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF
NEPA Violations: Work Plans

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

124. This Third Claim for Relief challenges Defendants Wildlife Services, Forest Service, and BLM's violations of NEPA by using Annual Work Plans to authorize predator damage management actions on federal lands in Idaho without conducting the necessary site-specific NEPA analysis to assess the effects of such actions occurring on those lands.

125. NEPA requires agencies to assess proposed actions on a "site specific" basis for compliance with its land-use plan and governing land use statutes. *See Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 934 (9th Cir. 2010). It also requires agencies to examine the effects of proposed actions on the site where they will be conducted. *See id.*

126. Defendants Wildlife Services, Forest Service, and BLM are violating NEPA by authorizing predator killing on National Forest and BLM lands in Idaho through Annual Work Plans without conducting any site-specific NEPA analysis that analyzes the direct, indirect, and cumulative environmental impacts of the activities authorized by those plans, or assessing whether the activities authorized comply with federal land use plans and other federal laws. By failing to conduct such analysis, Defendants Wildlife Services, Forest Service, and BLM do not provide for any public disclosure and comment on those activities, also in violation of NEPA.

127. In particular, Defendants Wildlife Services and BLM are violating NEPA by authorizing predator-killing on the Twin Falls District under the Twin Falls Annual Work Plan(s) without ever conducting site-specific NEPA analysis that discusses the direct, indirect, and cumulative environmental effects of the activities authorized under that Plan.

128. Therefore, Defendants Wildlife Services and BLM have failed to analyze or disclose the direct, indirect, and cumulative impacts of killing hundreds of coyotes each year on the Twin Falls District, such as how that coyote-killing might affect the local coyote populations

or special resources in the area. They have also failed to assess and disclose whether Wildlife Services' actions on the Twin Falls District comply with the governing RMPs and MFPs, or to consider alternative actions such as non-lethal control actions, before signing the Twin Falls Annual Work Plans.

129. Because Defendants Wildlife Services, Forest Service, and BLM have never adequately disclosed or analyzed site-specific environmental impacts and alternatives under NEPA for Wildlife Services' activities on federal lands, the Annual Work Plans between Wildlife Services and the Forest Service and BLM are arbitrary and capricious, an abuse of discretion, and not in accordance with law under Section 706 of the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests. Accordingly, the Court must declare and adjudge those Work Plans unlawful and reverse and set them aside pursuant to the APA, 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

FOURTH CLAIM FOR RELIEF

NEPA Violation: Operating Pocatello Supply Depot Without Adequate NEPA Analysis

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

131. This Fourth Claim for Relief challenges USDA APHIS and/or Wildlife Services' actions funding and operating the Pocatello Supply Depot without adequate NEPA analysis.

132. USDA APHIS and/or Wildlife Services fund and operate the Pocatello Supply Depot—apparently under the auspices of the outdated 1994/97 PEIS —without a current NEPA analysis considering the environmental effects of their actions on the environment in Idaho or nationwide.

133. USDA APHIS and/or Wildlife Services' failure to supplement the 1994/97 PEIS

with current information concerning the effects of operating the Pocatello Supply Depot violates NEPA and the APA.

134. USDA APHIS and/or Wildlife Services' funding and operation of the Pocatello Supply Depot without an adequate NEPA analysis constitute irreversible and irretrievable commitments of resources.

135. By funding and operating the Pocatello Supply Depot without first completing an adequate NEPA analysis, or supplementing the 1994/97 PEIS, USDA APHIS and/or Wildlife Services' actions are arbitrary and capricious and a violation of NEPA and the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests. Accordingly, the Court must declare and adjudge that USDA APHIS and/or Wildlife Services is acting unlawfully in continuing to fund and operate the Pocatello Supply Depot and reverse and set aside such actions pursuant to the APA, 5 U.S.C. § 706.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Under Plaintiffs' First Claim for Relief, order, declare, and adjudge that Wildlife Services' decision to rely on the outdated and unlawful 1996 and 2002 EAs and associated Decision/FONSIs, and its actions conducting predator damage management in Idaho without valid NEPA analysis, violate NEPA and the APA;

B. Under Plaintiffs' Second Claim for Relief, order, declare, and adjudge that Wildlife Services is violating NEPA and the APA by undertaking predator damage management activities before completing supplemental NEPA analyses for the 1996 and 2002 EAs;

C. Under Plaintiffs' Third Claim for Relief, order, declare and adjudge that Defendants Wildlife Services, Forest Service and BLM's Annual Work Plans violate NEPA and the APA, and reverse and set aside the Annual Work Plans;

D. Under Plaintiffs' Fourth Claim for Relief, order, declare and adjudge that USDA APHIS and/or Wildlife Services are violating NEPA and the APA by funding and operating the Pocatello Supply Depot without first preparing an adequate NEPA analysis or without first supplementing the 1994/97 PEIS;

E. Issue such temporary restraining order(s), preliminary injunction(s) and/or permanent injunctive relief as may be requested hereafter by Plaintiffs;

F. 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

G. Grant such further and other relief as the Court deems just and proper to remedy Defendants' violations of law.

Dated this 7th day of May, 2020.

Respectfully submitted,

s/ Talasi B. Brooks

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