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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WILDEARTH GUARDIANS and  
WESTERN WATERSHEDS PROJECT,  
  
Plaintiffs,

vs.

U.S. DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH  
INSPECTION SERVICE WILDLIFE  
SERVICES, U.S. FOREST SERVICE, and  
BUREAU OF LAND MANAGEMENT,  
  
Defendants.

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Every year, our nation's most majestic animals, including wolves, bears, coyotes, bobcats and mountain lions, are poisoned, trapped and gunned down by Wildlife Services, an agency within the United States Department of Agriculture ("USDA"), Animal and Plant Health Inspection Service (hereinafter "APHIS" or "Wildlife Services"). Funded with millions of taxpayer dollars, and without modern scientific support, this program uses cruel and often archaic methods to capture and kill wildlife from their native ecosystems, largely at the behest of livestock producers. Across Nevada, Wildlife Services uses fixed-wing aircraft and helicopters to aerially shoot coyotes; body-gripping traps, neck snares and leghold traps to kill mountain lions, black bears, bobcats, badgers, coyotes, skunks, hares, ground squirrels, beaver and foxes; gas cartridges and poisons to exterminate coyotes in their dens; M-44 devices (also known as "sodium cyanide bombs") to kill canines like foxes and coyotes; and other poisons to annually eliminate thousands of native birds like ravens. Wildlife Services' indiscriminate killing methods have also resulted in scores of unintentional animal deaths and injuries nationwide, including federally-protected endangered and threatened species and even family pets.

2. Plaintiffs WildEarth Guardians ("Guardians") and Western Watersheds Project ("WWP") challenge Nevada (NV)-Wildlife Services' July 2020 *Final Environmental Assessment: Predator Damage Management in Nevada* ("Final 2020 EA" or "2020 Nevada PDM EA") and associated Decision Notice/Finding of No Significant Impact ("DN/FONSI"). These decision documents purport to authorize NV-Wildlife Services to continue, as well as expand, its program of aerial gunning, poisoning, trapping, and other killing of coyotes, mountain lions, ravens, and a host of other wildlife across Nevada without fully disclosing or adequately analyzing environmental impacts, in violation of the National Environmental Policy

1 Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. §§ 1500-  
 2 1508,<sup>1</sup> issued by the Council on Environmental Quality (“CEQ”).

3           3.       Even though it devotes millions of dollars and thousands of person-hours each  
 4 year to aerial gunning, poisoning, shooting, trapping, and otherwise killing thousands of animals  
 5 across Nevada, and even though there is a growing body of science contesting the efficacy of  
 6 these actions and pointing out their adverse environmental impacts, NV-Wildlife Services has  
 7 unlawfully refused to prepare a comprehensive Environmental Impact Statement (“EIS”)  
 8 disclosing the direct, indirect, and cumulative effects of its Nevada “predator damage  
 9 management” activities, as required by NEPA.  
 10

11           4.       A full EIS is required in light of the potentially significant environmental effects  
 12 of NV-Wildlife Services’ statewide predator damage management program (“PDM”), including  
 13 the decision to allow predator control activities to resume and potentially expand within  
 14 congressionally designated Wilderness Areas and agency-designated Wilderness Study Areas.  
 15 As discussed *infra* ¶ 75, pursuant to the settlement agreement reached in *WildEarth Guardians v.*  
 16 *U.S. Dep’t of Agric., APHIS*, No. 2:12-cv-00716-MMD-PAL (ECF No. 67-1, filed October 5,  
 17 2016), Wildlife Services ceased predator control activities in Wilderness Areas and Wilderness  
 18 Study Areas until adopting the 2020 DN/FONSI and issuing the 2021 Annual Work Plans  
 19 challenged herein.  
 20

21           5.       NV-Wildlife Services’ killing of native wildlife in designated Wildernesses for  
 22 the stated purpose of protecting private agricultural interests (*i.e.*, preventing or reducing future  
 23

24  
 25  
 26 <sup>1</sup> All citations are to the 1978 Council on Environmental Quality (“CEQ”) regulations, 40 C.F.R.  
 27 Part 1500, which were in effect at the time Wildlife Services issued the 2020 Nevada PDM EA  
 28 and DN/FONSI challenged herein and are the CEQ regulations that these decisional documents  
 purport to follow. On September 14, 2020, the Trump Administration issued a final rule revising  
 the CEQ regulations. *See* 85 Fed. Reg. 43304 (July 16, 2020) (Update to the Regulations  
 Implementing the Procedural Provisions of the NEPA, Final Rule).

1 losses of commercial livestock), with the approval of Defendant U.S. Bureau of Land  
 2 Management (“the Bureau” or “BLM”) through the Nevada BLM 2021 Annual Work Plan and  
 3 the Bureau’s associated Decision Record/FONSI and Minimum Requirements Decision Guide,  
 4 also violates the Wilderness Act, 16 U.S.C. §§ 1131-1136, by sanctioning an impermissible  
 5 “commercial enterprise” within designated Wilderness Areas, *id.* § 1133(c), without  
 6 demonstrating that lethal PDM is either necessary for a valid “wilderness purpose,” *id.* §  
 7 1133(d)(5), or necessary for preventing serious losses of domestic livestock, and by offending  
 8 the Act’s mandate to preserve the untrammeled and “natural conditions” that are a part of the  
 9 “wilderness character” of the applicable designated Wildernesses, *id.* §§ 1131, 1133. Defendants  
 10 Wildlife Services and the Bureau have similarly violated Nevada’s Wilderness enabling  
 11 legislation because lethal control of wildlife in Bureau-managed Wildernesses for the stated  
 12 purpose of protecting commercial livestock is outside the scope of permissible wildlife  
 13 management activities under The Lincoln County Conservation, Recreation, and Development  
 14 Act of 2004 (Pub. L. No. 108-424) (“Lincoln County Conservation Act”) and The White Pine  
 15 County Conservation, Recreation, and Development Act, or Pam White Wilderness Act, of 2006  
 16 (Pub. L. No. 109-432) (“White Pine County Conservation Act”).

20  
 21 6. Plaintiffs bring related claims against Defendants U.S. Forest Service and the  
 22 Bureau for authorizing NV-Wildlife Services to annually kill native wildlife on federal public  
 23 lands, including within ecologically significant and specially designated areas like Wildernesses  
 24 and Wilderness Study Areas, through Annual Work Plans. The Annual Work Plans provide no  
 25 public disclosure of the efficacy or local environmental impacts of Wildlife Services’ activities  
 26 and do not demonstrate consistency with federal land management requirements.<sup>2</sup> By approving  
 27

28  
<sup>2</sup> The Bureau’s April 2021 Decision Record/FONSI and Determination of NEPA Adequacy for  
*BLM Adoption of Activities Proposed and Analyzed in BLM-Administered Designated*

1 NV-Wildlife Services' wildlife killing on these federal public lands without legally adequate  
2 site-specific environmental analyses, the Bureau and Forest Service violate NEPA.

3 7. NV-Wildlife Services' annual killing of native predators, including coyotes and  
4 thousands of ravens, to purportedly "benefit" sage grouse is also unlawful because it exceeds the  
5 agency's statutory authority under the Animal Damage Control Act, which only allows Wildlife  
6 Services to take actions deemed "necessary" to control "injurious animal species." 7 U.S.C. §  
7 426. The 2020 Nevada PDM EA and DN/FONSI fail to establish that ravens and coyotes are  
8 depressing or otherwise injuring populations of sage-grouse and are thus "injurious," and hence  
9 Wildlife Services lacks the statutory authority to undertake the killing of native wildlife for this  
10 stated purpose.  
11

12 8. Accordingly, Plaintiffs request that this Court reverse, vacate, and set aside the  
13 2020 Nevada PDM EA and DN/FONSI and the 2021 Forest Service and BLM Annual Work  
14 Plans. Plaintiffs further request that this Court enjoin NV-Wildlife Services from conducting its  
15 PDM activities on the affected federal public lands unless and until Defendants have fully  
16 complied with federal law.  
17

### 18 JURISDICTION AND VENUE

19 9. This Court has jurisdiction over Plaintiffs' claims herein pursuant to 28 U.S.C. §  
20 1331 (federal question jurisdiction), 28 U.S.C. § 1346(a)(2) (an agency of the United States as  
21 the defendant), and 5 U.S.C. §§ 701-706 (the Administrative Procedure Act, or "APA"). There  
22 now exists between the parties an actual, justiciable controversy within the meaning of the  
23 Declaratory Judgment Act, 28 U.S.C. § 2201.  
24

25  
26  
27 *Wilderness and Wilderness Study Areas in the Environmental Assessment: Predator Damage*  
28 *Management in Nevada* similarly fails to provide the requisite public disclosure and site-specific  
analysis of the full scope of PDM activities that BLM authorized under the Nevada BLM 2021  
Annual Work Plan for the applicable BLM Districts in Nevada.

1           10.     The requested declaratory relief is authorized by 28 U.S.C. § 2201(a). The  
2 requested injunctive relief is authorized by 28 U.S.C. § 2202. An award of costs, attorneys' fees,  
3 and other expenses is authorized, should Plaintiffs prevail, by the Equal Access to Justice Act  
4 ("EAJA"), 28 U.S.C. § 2412.  
5

6           11.     Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because a  
7 substantial part of the events or omissions giving rise to the claims herein occurred within this  
8 district, Plaintiffs have members who reside in this district, and this case includes a challenge to  
9 Defendants' activities in Nevada.  
10

11           12.     This action is properly assigned to the Northern Division of this Court because a  
12 significant part of Defendants' actions challenged by Plaintiffs herein occurs in that Division.  
13

#### 14                                   PARTIES

15           13.     Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization  
16 dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the  
17 American West. Guardians is headquartered in Santa Fe, New Mexico and has more than  
18 190,000 members and supporters across the West. Many of Guardians' members live, work, and  
19 recreate in areas affected by Wildlife Services' activities in the State of Nevada.  
20

21           14.     Plaintiff WESTERN WATERSHEDS PROJECT is a nonprofit membership  
22 organization with over 12,000 members and supporters and is dedicated to protecting and  
23 conserving the public lands and natural resources of watersheds in the American West. WWP, as  
24 an organization and on behalf of its members, is concerned with and active in seeking to protect  
25 and improve wildlife and predator populations, natural resources, and ecological values of  
26 watersheds throughout the West and in Nevada. WWP is headquartered in Hailey, Idaho, and has  
27 additional staff and offices in other Western states.  
28

1           15.     Plaintiffs have a long history of working to protect and restore native wildlife  
2 species across the West. Guardians operates a wildlife program with campaigns focused on  
3 native carnivore protection and restoration as well as reigning in the controversial, cruel, and  
4 destructive practices of Wildlife Services, including the agency's use of poisoning, trapping, and  
5 aerial gunning methods. WWP's mission includes protecting and restoring western watersheds  
6 and wildlife through education, public policy initiatives, and legal advocacy, and WWP has been  
7 successful at challenging predator control and other initiatives harming native carnivores  
8 throughout the West. Plaintiffs also actively participate in the public NEPA process for Wildlife  
9 Services' PDM programs and activities in Nevada and other states nationwide. Plaintiffs  
10 regularly comment on Wildlife Services' activities and educate the public on the agency's killing  
11 of wildlife.  
12  
13

14           16.     Plaintiffs' staff, members, and supporters are dedicated to ensuring that Wildlife  
15 Services complies with all applicable federal laws. Wildlife Services' wildlife killing program in  
16 Nevada, along with its associated 2020 Nevada PDM EA and DN/FONSI, adversely affect  
17 Plaintiffs' interests in Nevada's wildlife—including coyotes, mountain lions, bobcats, black  
18 bears, gray wolves, ravens, and other species—that could intentionally or unintentionally be  
19 killed by Wildlife Services.  
20  
21

22           17.     Plaintiffs' members and supporters live and recreate in or near areas in Nevada  
23 where the implementation of Wildlife Services' wildlife killing program occurs or may occur  
24 under the challenged agency decisions—including federally-designated Wildernesses and  
25 Wilderness Study Areas. Plaintiffs' members and supporters engage in activities including  
26 hiking, observing wildlife, and other pursuits for health, recreational, scientific, spiritual,  
27 educational, aesthetic, professional, and other purposes. They enjoy observing, attempting to  
28



1 observe, photographing, and studying wildlife, including signs of those species' presence in  
2 these areas. The opportunity to possibly view wildlife or their signs is of significant interest and  
3 value to Plaintiffs' members and supporters, and it increases their use and enjoyment of public  
4 lands and ecosystems in Nevada. Plaintiffs' members and supporters have regularly engaged in  
5 these activities in the past, and they intend to continue to do so in the upcoming months.  
6

7 18. Plaintiffs' members and supporters are concerned about the impacts of carnivore  
8 removal on carnivore populations, prey populations, non-target species, and their ecosystems.  
9 They are also concerned about the impacts of poisoning birds on bird populations, non-target  
10 species, and their ecosystems. They have strong interests in enjoying and experiencing the  
11 profound cultural, spiritual, recreational, and ecological benefits of Wildernesses and Wilderness  
12 Study Areas in their natural, untrammelled state, where robust populations of native carnivores  
13 can carry out their essential roles in balancing ecosystems, free of unnecessary persecution by  
14 humans. Finally, they are also concerned about the toxicants and traps used by Wildlife Services  
15 in Nevada, which place them and their companion animals at risk. Plaintiffs' members and  
16 supporters often walk or engage in outdoor recreation in areas where they, their loved ones,  
17 and/or their companion animals may be at risk due to M-44s, traps, and other harmful toxicants  
18 and devices introduced to the landscape by Wildlife Services.  
19  
20  
21

22 19. Plaintiffs' members and supporters also have a procedural interest in ensuring that  
23 Wildlife Services' activities comply with all applicable federal statutes and regulations.  
24 Guardians has worked to reform Wildlife Services' activities throughout the United States,  
25 including in Nevada. Plaintiffs and their members and supporters have an interest in preventing  
26 Wildlife Services from being involved in lethal wildlife damage management, particularly  
27  
28



1 predator control, and have an interest in promoting the use of more effective and proactive non-  
2 lethal alternatives that foster communities' coexistence with wildlife.

3         20. The interests of Plaintiffs' members and supporters have been, and will continue  
4 to be, adversely affected and aggrieved by the Defendant agencies' failure to comply with NEPA  
5 and its implementing regulations, the Bureau and Wildlife Services' failure to comply with the  
6 Wilderness Act in approving lethal predator control activities in designated Wildernesses, and by  
7 Wildlife Services' activities that are *ultra vires* of the ADCA. These are actual, concrete, and  
8 particularized injuries caused by Defendants' violations of law, as set forth herein.  
9

10         21. The relief Plaintiffs seek in this Complaint would redress the injuries of their  
11 members and supporters. The relief Plaintiffs request, if granted, would prevent Wildlife  
12 Services from engaging in PDM activities unless and until it complies with federal law.  
13 Plaintiffs' requested relief, if granted, could also reduce the amount of lethal predator control and  
14 other wildlife killing conducted in Nevada. In particular, State agencies, local municipalities, and  
15 private livestock producers cannot completely replace Wildlife Services' activities as authorized  
16 through the 2020 Nevada PDM EA and DN/FONSI because they do not have the equipment or  
17 trained wildlife-killing personnel utilized by Wildlife Services.  
18

19         22. In sum, Plaintiffs' interests, and those of their members and supporters, have  
20 been, are being, and—unless this Court grants the requested relief—will continue to be harmed  
21 by Defendants' actions and inactions challenged in this Complaint. If this Court issues the relief  
22 requested, the harm to Plaintiffs' interests, and those of their members and supporters, will be  
23 redressed.  
24

25         23. Defendant USDA APHIS WILDLIFE SERVICES is an agency or instrumentality  
26 of the United States, within the USDA, whose responsible for carrying out "predator damage  
27  
28

control” and wildlife killings in Nevada and nationwide. Wildlife Services receives federal and cooperator funding to undertake wildlife damage management activities in Nevada, including for the protection of private commercial interests such as livestock grazing.

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

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

## LEGAL FRAMEWORK

### I. Animal Damage Control Act

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

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).

27. As amended in 2001, Section 426 now reads:

1 The Secretary of Agriculture may conduct a program of wildlife services with respect to  
 2 injurious animal species and take any action the Secretary considers necessary in  
 3 conducting the program. The Secretary shall administer the program in a manner  
 4 consistent with all of the wildlife services authorities in effect on the day before October  
 5 28, 2000.

6 7 U.S.C. § 426 (2001).

7 28. Upon information and belief, Wildlife Services has never promulgated regulations  
 8 implementing or interpreting this authority. Nonetheless, Wildlife Services is subject to  
 9 regulations promulgated by the Secretary of Agriculture under 7 U.S.C. Subtitle A and by  
 10 APHIS under 7 U.S.C. Subtitle B Part 300.

11 29. In carrying out its activities, Wildlife Services must comply with all other  
 12 applicable federal laws, including those listed below.

## 13 **II. National Environmental Policy Act**

14 30. The National Environmental Policy Act (“NEPA”) is our “basic national charter  
 15 for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s twin aims are (1) to ensure  
 16 that agencies consider every significant aspect of the environmental impact of a proposed action  
 17 and (2) to inform the public that the agency has considered environmental concerns in its  
 18 decision-making process. *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.  
 19 2002).  
 20

21 31. Moreover, “the NEPA process is intended to help public officials make decisions  
 22 that are based on understanding of [sic] environmental consequences, and take actions that  
 23 protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c). The CEQ regulations  
 24 “provide the direction to achieve this purpose.” *Id.* To that end, “NEPA procedures must insure  
 25 [sic] that environmental information is available to public officials and citizens before decisions  
 26 are made and before actions are taken.” *Id.* § 1500.1(b). This “information must be of high  
 27  
 28

1 quality,” as “accurate scientific analysis, expert agency comments, and public scrutiny are  
2 essential to implementing NEPA.” *Id.*

3 32. Under NEPA, a federal agency must prepare an EIS for all “major Federal actions  
4 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The  
5 phrase “human environment” is “interpreted comprehensively to include the natural and physical  
6 environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14.  
7

8 33. To determine whether an action may be “significant”—triggering the requirement  
9 to prepare an EIS—the agency may first prepare an Environmental Assessment (“EA”). *Id.* §  
10 1501.4(b). Significance determinations are governed by CEQ regulations, which require agencies  
11 to consider both the context of the action and the intensity of the environmental impacts. *Id.* §  
12 1508.27.  
13

14 34. “Intensity” requires the agency to consider several factors, including potential  
15 effects on public health or safety, *id.* § 1508.27(b)(2); any “unique characteristics of the  
16 geographic area,” including proximity to specially designated lands, *id.* § 1508.27(b)(3); effects  
17 that are “likely to be highly controversial,” *id.* § 1508.27(b)(4); effects that are “highly uncertain  
18 or involve unique or unknown risks,” *id.* § 1508.27(b)(5); the potential for “cumulatively  
19 significant impacts,” *id.* § 1508.27(b)(7); and the potential for adverse effects to species listed  
20 under the Endangered Species Act (“ESA”) (hereinafter “federally listed species”) or ESA-  
21 designated critical habitat, *id.* § 1508.27(b)(9). These intensity factors may individually or  
22 collectively be sufficient to require an EIS. *See Blue Mountains Biodiversity Project v.*  
23 *Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).  
24  
25

26 35. If the agency determines that its action is not significant, and therefore that an EIS  
27 is not necessary, the agency must prepare a Finding of No Significant Impact (“FONSI”). *Id.* §  
28

1 1501.4(e). A FONSI is a document that briefly explains why the proposed action “will not have a  
2 significant effect on the human environment.” *Id.* § 1508.13.

3 36. The environmental analysis, whether in an EA or an EIS, must disclose and  
4 analyze the direct, indirect, and cumulative effects of the proposed action on the environment. *Id.*  
5 § 1502.16. Direct effects are “caused by the action and occur at the same time and place,”  
6 whereas indirect effects are “caused by the action and are later in time or farther removed in  
7 distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative effects are “the impact  
8 on the environment which results from the incremental impact of the action when added to other  
9 past, present, and reasonably foreseeable future actions.” *Id.* § 1508.7. An agency cannot avoid  
10 finding that a proposed action may be significant “by terming an action temporary or by breaking  
11 it down into small component parts.” *Id.* § 1508.27(b)(7).

14 37. Moreover, NEPA requires federal agencies, whether in an EA or an EIS, to take a  
15 “hard look” at the potential environmental consequences of a proposed action. *Kern*, 284 F.3d at  
16 1066. To satisfy NEPA’s hard look requirement, an agency must include quantified and detailed  
17 information, such as site-specific data, in its evaluation of potential environmental impacts.  
18 *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998).  
19 “Without such information, neither the courts nor the public, in reviewing the [agency’s]  
20 decisions, can be assured that the [agency] provided the hard look that it is required to provide”  
21 under NEPA. *Id.* NEPA’s implementing regulations also require that an agency describe the  
22 environmental baseline of the areas to be affected, 40 C.F.R. § 1502.15, and address “appropriate  
23 mitigation measures not already included in the proposed action or alternative,” 40 C.F.R. §§  
24 1502.14(f), 1502.16(h).  
25  
26  
27  
28

38. Finally, NEPA requires federal agencies, whether in an EA or an EIS, to “[r]igorously explore and objectively evaluate all reasonable alternatives” to the proposed action. 40 C.F.R. § 1502.14. If an agency fails to examine a viable alternative, its analysis is rendered inadequate. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013).

### III. Wilderness Act

39. The Wilderness Act of 1964 established the National Wilderness Preservation System, under which Congress may designate Wilderness Areas. 16 U.S.C. § 1131(a). “Wilderness” is defined as “an area where the earth and its community of life are untrammelled by man,” where the land has retained “its primeval character and influence,” and where the land has “been affected primarily by the forces of nature.” *Id.* § 1131(c). Moreover, a Wilderness is an area that “is protected and managed so as to preserve its natural conditions,” and provides “outstanding opportunities for solitude” or “primitive and unconfined” recreation. *Id.*

40. Wilderness areas must “be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness” and so as to protect and preserve their “wilderness character.” *Id.* § 1133(b).

41. In furtherance of this goal, the Wilderness Act sets forth a broad prohibition on the operation of all commercial enterprise within designated Wilderness “[e]xcept as *specifically* provided for [in the Act].” *Id.* § 1133(c) (emphasis added).

42. Accordingly, the Act expressly identifies certain nonconforming uses that are exceptions to its prohibition on “commercial enterprise.” 16 U.S.C. § 1133(d)(1)-(4). The Act’s prohibition on commercial enterprises must be enforced whenever one of the specified exceptions is not present. *Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1062 (9th Cir. 2003) (*en banc*). Among the specific exceptions is the continuation of commercial



1 livestock grazing on national forest lands where such use was established prior to the Act's  
2 passage on September 3, 1964, subject to reasonable regulations deemed necessary by the  
3 Secretary of Agriculture. *Id.* § 1133(d)(4).

4  
5 43. During initial implementation of the Wilderness Act, the Forest Service saw that  
6 livestock grazing was to be continued, but imposed regulations such as prohibiting the  
7 development of structures like fences and stockponds. In response to those restrictive  
8 regulations, Congress issued guidelines on "Grazing in National Forest Wilderness Areas" in the  
9 House Committee Report (H.R. REP. NO. 96-617) accompanying the Colorado Wilderness Act of  
10 1980, Pub. L. No. 96-560 at § 108, commonly known as the Congressional Grazing Guidelines,  
11 and added a statutory note to the Wilderness Act stating "the provisions of the Wilderness Act  
12 relating to grazing shall be interpreted and administered in accordance with the Congressional  
13 Grazing Guidelines."<sup>3</sup>  
14

15  
16 44. The Congressional Grazing Guidelines present five "guidelines and policies" and  
17 a summary statement, which largely address the conditions under which an administering agency  
18 may authorize the maintenance, repair, reconstruction and construction of facilities (*e.g.*, fences,  
19 water lines and wells, and stock tanks), and the emergency use of motorized equipment, to  
20 support grazing operations in Wilderness Areas. H.R. REP. NO. 101-405, Appendix A. The  
21 Congressional Grazing Guidelines do not address "predator control" or make any mention of  
22 managing wildlife for the purported protection of commercial livestock in Wilderness Areas.  
23

24 45. The Wilderness Act's "special provisions" further provide that "commercial  
25 services" within Wilderness Areas may be performed only "to the extent necessary for activities  
26

27 <sup>3</sup> The substantive language of this Report was duplicated in House Report 101-405, Appendix A,  
28 referenced in the Arizona Desert Wilderness Act of 1990, which extended to Bureau-managed  
wilderness lands the same grazing guidelines that Congress had applied to Forest Service lands a  
decade earlier. House Report 101-405, Appendix A is cited in subsequent legislation pertaining  
to Nevada wilderness designations, *see infra* ¶ 48.



1 which are proper for realizing the recreational or other wilderness purposes of the areas.” *Id.* §  
2 1133(d)(5). Among those purposes are “the public purposes of recreational, scenic, scientific,  
3 educational, conservation, and historical use.” *Id.* § 1133(b).

4  
5 46. Congress also enacted the Nevada Wilderness Protection Act of 1989, Pub. L.  
6 No.101-195, which designated 13 new Forest Service Wilderness areas and one Forest Service  
7 Wilderness area addition totaling 733,400 acres in Nevada. Section 4 directs management in  
8 accordance with the Wilderness Act of 1964. *Id.* Section 6 allows continued livestock grazing  
9 “where established before the date of enactment” in accordance with the Wilderness Act (16  
10 U.S.C. 1133(d)(4)) and section 108 of Pub. L. No. 96-560, and requires the Secretary of  
11 Agriculture to review all grazing management “to insure that such policies, practices, and  
12 regulations fully conform with and implement the intent of Congress regarding grazing in such  
13 areas” and to submit a report to Congress, at least every five years, detailing the progress made  
14 by the Forest Service in carrying out these grazing related provisions.  
15  
16

17 47. Congress subsequently enacted The Lincoln County Conservation, Recreation,  
18 and Development Act of 2004 (Pub. L. No. 108-424) (“Lincoln County Conservation Act”),  
19 which designated 14 new Bureau-managed Wilderness Areas totaling 768,294 acres in Nevada,  
20 and The White Pine County Conservation, Recreation, and Development Act, or Pam White  
21 Wilderness Act, of 2006 (Pub. L. No. 109-432) (“White Pine County Conservation Act”), which  
22 designated 12 new Bureau-managed Wilderness Areas and two Bureau-managed Wilderness  
23 Area additions totaling 558,133 acres in Nevada. In enacting the County Conservation Acts,  
24 Congress expressly stated that it found these public lands to contain “priceless habitat” for  
25 wildlife and that their preservation as Wilderness would benefit the County and all of the greater  
26 United States by “ensuring the conservation of ecologically diverse habitat[.]” *Id.*  
27  
28

1           48. Congress also established separate provisions for livestock grazing management  
2 and wildlife management in the County Conservation Acts. Both allow continued livestock  
3 grazing, “subject to [] reasonable regulations, policies, and practices” and consistent with the  
4 Wilderness Act of 1964 and Appendix A of House Report 101-405 (1990) (the “Congressional  
5 Grazing Guidelines”). Pub. L. No. 108-424 § 324(b); Pub. L. No. 109-432 § 204(b). Wildlife  
6 management, however, is limited to management activities that “maintain or restore fish and  
7 wildlife populations and habitats” within such designated Wildernesses if those activities are  
8 “consistent with relevant wilderness management plans,” the original Wilderness Act of 1964,  
9 and “appropriate policies” such as those that allow for the occasional and temporary use of  
10 motorized vehicles if the Secretary determines such use “would promote healthy, viable, and  
11 more naturally distributed wildlife populations . . . .” Further, under the White Pine County  
12 Conservation Act, such management activities must be “necessary” to maintain or restore  
13 populations and habitats. White Pine County Conservation Act § 329(b); Lincoln County  
14 Conservation Act § 209(b).

15           49. Although the Congressional Grazing Guidelines do not address lethal “control” or  
16 “management” of wildlife as a component of “grazing management” that should be allowed  
17 within Wilderness, and despite the fact that the five enumerated guidelines speak only to the  
18 continuation of grazing itself and the structures, facilities, and use of motorized equipment to  
19 support livestock grazing operations therein, the Forest Service and Bureau interpret the  
20 Congressional Grazing Guidelines’ following broad summary statement as allowing lethal  
21 control of native wildlife in designated Wilderness for the perceived purpose of protecting  
22 commercial livestock from potential depredations: “the general rule of thumb on grazing  
23 management in wilderness should be that activities or facilities established prior to the date of an  
24  
25  
26  
27  
28

1 area's designation as wilderness should be allowed to remain in place and may be replaced when  
2 necessary for the permittee to properly administer the grazing program." H.R. REP. NO. 101-405.

3  
4 50. Both the Forest Service and Bureau have also issued policy directives that allow  
5 lethal wildlife control in Wilderness areas where "necessary . . . to prevent serious losses of  
6 domestic livestock." Forest Service Manual 2320, § 2323.33c; BLM Manual 6340. Upon  
7 information and belief, the Defendant agencies have never promulgated regulations authorizing  
8 PDM activities in designated Wilderness.

9  
10 51. In 2002, the U.S. District Court for the District of Arizona explained that because  
11 "Congress is silent or, at most, ambivalent as to whether the Wilderness Act allows lethal  
12 predator control to protect private livestock grazing in wilderness areas" that it was appropriate  
13 to apply *Chevron* deference to the Forest Service's interpretation of the Act regarding this issue.  
14 *Forest Guardians, et. al. v. APHIS, et. al.*, 99-cv-61-TUC-WDB, 2000 WL 34510092, \*3-4 (D.  
15 Ariz. Nov. 14, 2000). Applying *Chevron*, the district court held that the Forest Service's  
16 interpretation of the Wilderness Act as allowing lethal predator control for the purpose of  
17 protecting commercial livestock in Wilderness Areas was reasonable because: (1) the Wilderness  
18 Act permits livestock grazing to continue where such use was already established prior to the  
19 Act's passage and private livestock grazing "implicitly includes . . . lethal control of predators";  
20 (2) the Congressional Grazing Guidelines generally states "that activities associated with private  
21 livestock grazing should be permitted to continue . . ."; and (3) the legislative history of the Utah  
22 Wilderness Act of 1984 mentions lethal predator control. *Id.* The Ninth Circuit, applying  
23 *Skidmore* deference to the Forest Service's interpretation that livestock grazing "implicitly  
24 includes . . . lethal control of predators[.]" affirmed, holding "the Act allows lethal predator  
25  
26  
27  
28

1 control where *necessary* to protect pre-existing grazing operations.” *Forest Guardians*, 309 F.3d  
2 1141, 1143 (2002) (emphasis added).

3 52. In a subsequent *en banc* ruling, however, the Ninth Circuit held that “[b]ecause  
4 the aim of Congress in the Wilderness Act to prohibit commercial enterprise within designated  
5 wilderness is clear, we do not owe deference to the [agency’s] determination regarding the  
6 permissibility of [a project or activity] if it is a commercial enterprise” that is not among the  
7 Act’s “specific and express exceptions[.]” *Wilderness Soc’y*, 353 F.3d at 1062 (citing Act’s  
8 “broad prohibition” on commercial enterprise, 16 U.S.C. § 1133(c), and its specifically  
9 enumerated exceptions, *id.* § 1133(d)).

#### 12 **IV. Federal Land Policy & Management Act**

13 53. In 1976, under the Federal Land Policy and Management Act (“FLPMA”),  
14 Congress directed the Bureau to review Bureau-managed roadless areas of five thousand acres or  
15 more to determine if they have the wilderness characteristics described in the 1964 Wilderness  
16 Act. 43 U.S.C. § 1782(a). In 1980, pursuant to this direction, the Bureau designated about 25  
17 million acres of land that met these standards as Wilderness Study Areas. Since that time,  
18 Congress has reviewed some of these areas and has designated some as wilderness and released  
19 others for non-wilderness uses. Until Congress makes a final determination on a Wilderness  
20 Study Area, the Bureau must manage such lands “in a manner so as not to impair the suitability  
21 of such areas for preservation as wilderness . . . .” *Id.* § 1782(c).

24 54. FLPMA additionally requires the Bureau to prepare Resource Management Plans  
25 (“RMPs”) for the various districts under its control. 43 U.S.C. § 1712. The Bureau must ensure  
26 that site-specific management actions are consistent with and conform to the governing RMPs,  
27  
28

1 including overlaying Wilderness Management Plans. 43 U.S.C. § 1732(a); 43 C.F.R. §§ 1601.0-  
2 5(b); 1610.5-3(a).

### 3 **V. Administrative Procedure Act**

4  
5 55. Because NEPA and the Wilderness Act do not contain internal standards of  
6 review, the Administrative Procedure Act (“APA”) governs judicial review. Under the APA,  
7 courts shall “hold unlawful and set aside agency action, findings, and conclusions found to be  
8 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or  
9 “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

10  
11 56. In addition, the APA authorizes reviewing courts to “compel agency action  
12 unlawfully withheld or unreasonably delayed.” *Id.* § 706(1). Courts must also reverse and set  
13 aside agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short  
14 of statutory right.” *Id.* § 706(2)(C).

## 15 **STATEMENT OF FACTS**

### 16 **I. History and Overview of Wildlife Services’ National Killing Program**

17  
18 57. Wildlife Services and its precursors have specialized in killing wildlife for more  
19 than a century. In 1931, Congress passed the Animal Damage Control Act, which authorized the  
20 Secretary of Agriculture to “promulgate the best methods of eradication, suppression, or bringing  
21 under control” a whole host of species, including “mountain lions, wolves, coyotes, bobcats,  
22 prairie dogs, and gophers,” for the benefit of agribusiness. As a result, the government initiated  
23 massive poisoning and trapping campaigns that severely diminished America’s wildlife, from  
24 rodents to bird to native carnivores. By the 1940s, government sanctioned wildlife-killing  
25 programs had contributed to the extirpation of species such as wolves and grizzly bears from the  
26 contiguous U.S.  
27  
28

1           58. In 1964, Secretary of the Interior Stewart L. Udall's Advisory Board on Wildlife  
2 and Game Management issued the "Leopold Report" to Congress (named for its chairman, Dr.  
3 A. Starker Leopold, son of pioneering ecologist Aldo Leopold). The Leopold Report described  
4 the wildlife-killing agency as a "semi-autonomous bureaucracy whose function in localities bears  
5 scant relationship to real need and less still to scientific management." It noted the agency's  
6 penchant for indiscriminate wildlife killing through the use of traps and poisons, particularly  
7 Compound 1080. Although the Leopold Report established that the American populace  
8 especially favored native carnivores, the agency and decision-makers continued to favor  
9 agribusiness over the prevailing values of most Americans, as they do today.

12           59. In 1971, a panel chaired by Stanley A. Cain issued a second report to the U.S.  
13 Department of Interior and CEQ. The 207-page "Cain Report" lamented that the government's  
14 wildlife-killing program "contains a high degree of built-in resistance to change" and that  
15 monetary considerations favoring the livestock industry harmed native wildlife populations (Cain  
16 et al. 1971). The Cain Report called for substantive changes to wildlife management regimes by  
17 changing personnel and control methods, valuing "the whole spectrum of public interests and  
18 values," and asserting protections for native wildlife. Citing the Cain Report, in 1972, Richard  
19 Nixon banned the use of toxicants Compound 1080, sodium cyanide, strychnine and thallium by  
20 federal agents on public lands. Reversing Nixon's policy, the Ford and Reagan Administrations  
21 brought Compound 1080 and sodium cyanide back to public lands by the mid-1980s.

24           60. In 2004, 2005 and 2006, the USDA's Office of Inspector General ("OIG")  
25 released audits revealing that APHIS was not in compliance with the Bioterrorism Preparedness  
26 and Response Act. The OIG's 2004 audit showed that Wildlife Services' aircraft (used to shoot  
27 wildlife from the air) were not secured and could potentially be used in terrorist attacks. In the  
28



1 2005 audit, the OIG found that APHIS had not secured “dangerous biological agents and toxins.”  
2 Sodium cyanide and Compound 1080 are particularly dangerous, as they can be used in chemical  
3 warfare and are extremely toxic to humans. In the 2006 audit, the OIG found that APHIS was not  
4 complying with regulations concerning the security of toxins, that it had not secured access from  
5 unauthorized persons, that individuals using toxicants did not have adequate training, and that  
6 inventories had not been maintained to prevent the illegal possession (theft), transfer or sale of  
7 these toxicants. The OIG selected 10 of 75 sites to visit, and none were in compliance with the  
8 Bioterrorism Preparedness and Response Act.  
9

10  
11 61. In November 2007, Wildlife Services itself admitted that it had experienced a  
12 “wake of accidents” that involved its aerial gunning program, its hazardous chemicals inventory,  
13 and more. The aerial gunning program, for instance, has caused ten fatalities and 28 injuries to  
14 federal employees and contractors. In March 2008, the Environmental Protection Agency issued  
15 a notice of warning letter to Wildlife Services for its illegal and unsafe placement of M-44s<sup>4</sup> that  
16 resulted in the injury of a U.S. Fish and Wildlife Service biologist and the death of his dog.  
17

18 62. Over the past few decades, numerous individuals and/or their companion animals  
19 have been exposed to and injured by sodium cyanide from M-44 devices. The incidences  
20 described below are just a few examples.  
21

22 63. In 2003, Dennis Slauch accidentally triggered an M-44 while recreating on  
23 federal public land in Utah. The device fired onto his chest and sodium cyanide powder hit his

24 <sup>4</sup> M-44s are spring-loaded devices, topped with smelly baits that lure carnivores. When a  
25 carnivore tugs on the M-44, a spring shoots a pellet of sodium cyanide into the animal’s mouth.  
26 When the cyanide pellet mixes with moisture, it turns into a deadly vapor. Sodium cyanide  
27 morphs into hydrogen cyanide gas, which is easily absorbed by the lungs. The animal suffocates  
28 to death. Sodium cyanide is acutely toxic to both birds and mammals, and M-44s kill hundreds of  
non-target species (*e.g.*, bears, badgers, kit and swift foxes, bobcats, ringtail cats, javelinas,  
beavers, hawks, and pets) and thousands of target species (particularly coyotes and striped  
skunks) each year. By their very nature, M-44s are indiscriminate. As a result, M-44s pose a  
danger to pets and humans.



1 face, entering his eyes. A blood test found that he had cyanide poisoning and he reported being  
2 severely disabled and unable to work after his encounter with the device. His 2018 death  
3 certificate listed cyanide poisoning as a contributing cause of death.  
4

5 64. In 2006, a U.S. Fish and Wildlife Service biologist's companion dog was lethally  
6 asphyxiated by an M-44 device that had been set by Wildlife Services on public land in Utah.  
7 The biologist was secondarily poisoned from handling his dog and became ill, suffering from a  
8 headache, faintness, and a metallic taste in his mouth.  
9

10 65. In 2017, while hiking on public land in Wyoming, a family's companion dogs  
11 died after being exposed to a sodium cyanide capsule that had been placed to target coyotes.

12 66. Again in 2017, a 14-year-old boy was hospitalized for cyanide exposure after  
13 triggering an M-44 device near his home in Idaho. The boy's companion dog died.  
14

15 67. Despite these tragedies, as well as shifting public attitudes in favor of carnivore  
16 preservation and appreciation, public calls for a coexistence ethic based on nonlethal approaches  
17 for reducing the risk of wildlife-livestock conflicts, and negative publicity and reports such as  
18 those by the Leopold and Cain committees and the OIG, fundamental reforms of Wildlife  
19 Services have not occurred. Nor has APHIS re-evaluated the impact and effectiveness of its  
20 nationwide federal wildlife killing program.  
21

22 68. Not only do Wildlife Services' controversial killing programs cause tragedies like  
23 those listed above, but, as the Sacramento Bee detailed in 2012 in a prize-winning series of  
24 stories, Wildlife Services' programs are expensive, ineffective, and capable of setting off chain  
25 reactions of unintended consequences. The Sacramento Bee series documented ethical problems  
26 including employees hiding non-target animals killed and large numbers of reported killings of  
27 non-target wildlife. APHIS, however, has not failed to reform its wildlife "management"  
28

1 approaches for lack of effective and humane alternatives. Indeed, the Sacramento Bee series and  
2 a plethora of peer-reviewed scientific literature provide a collection of well-regarded alternatives  
3 that focus on coexisting with wildlife species and using nonlethal methods to address conflicts  
4 with carnivores.  
5

6 69. Wildlife Services continues to contract with other federal agencies, non-federal  
7 government agencies, and private land- and resource-owners, annually killing approximately 1.3  
8 million native animals nationwide, primarily at the behest of private agricultural interests. In  
9 2020, Wildlife Services reported that it killed 449 black bears, 703 bobcats, 62,701 adult  
10 coyotes, 2,752 foxes, 381 gray wolves, 5 Mexican gray wolves (a federally listed endangered  
11 species and subspecies of gray wolf), and 284 mountain lions, among many other species, and  
12 destroyed 252 coyote dens and 80 fox dens, killing an unknown number of pups. And with  
13 former employees alleging that Wildlife Services underreports the numbers of animals the  
14 agency kills, the actual death toll from Wildlife Services' activities may be much greater.  
15  
16

17 70. Many of the species targeted by Wildlife Services play critical roles in their  
18 ecosystems—roles responsible for what scientists often refer to as “trophic cascades.” Trophic  
19 cascades alter diverse processes including the dynamics of disease, wildfire, carbon  
20 sequestration, invasive species, and biogeochemical cycles (the cycling of compounds and  
21 elements that are essential for life, such as water, nitrogen, and phosphorus). Conversely, the loss  
22 of apex predators (at the top of the food chain) is well-documented to cause a wide range of  
23 unanticipated and often profound negative impacts that ripple through native ecosystems.  
24

25 71. Each year, Wildlife Services also unintentionally kills thousands of non-target  
26 animals, including companion animals and livestock. In 2020, Wildlife Services unintentionally  
27 killed approximately 2,700 non-target animals and birds nationally, including bears, bobcats,  
28

1 ducks, eagles, foxes, herons, muskrats, otters, porcupines, raccoons, turkeys, and turtles. These  
2 killings undermine efforts to conserve and recover state and federally protected wildlife, which  
3 often need protection in part due to Wildlife Services' historic and ongoing practices.

4  
5 72. In addition to M-44 devices, many of the methods Wildlife Services uses—  
6 including snares, leg-hold and body-gripping traps, and gas cartridges—are fundamentally non-  
7 selective, environmentally destructive, inherently cruel, and often ineffective. For example, leg-  
8 hold traps are internationally recognized as inhumane and have been banned or restricted in  
9 many countries and parts of the United States. Upon being trapped, animals frantically struggle  
10 to free themselves by attempting to pull their trapped limb out of the device and chewing at the  
11 trap, or even chewing at their own limb. The force of a trap's jaws clamping down on an  
12 animal's limb and the subsequent struggle result in severe trauma, including mangle of the  
13 limb, fractures, damage to muscles and tendons, lacerations, injury to the face and mouth, broken  
14 teeth, loss of circulation, frostbite, and amputation. Wildlife Services routinely fails to check its  
15 traps, causing many animals to experience prolonged suffering and, in some cases, to eventually  
16 die of exposure.

## 19 **II. Nevada-Wildlife Services' PDM Program and NEPA Analyses**

20  
21 73. In 2012, WildEarth Guardians brought suit against Wildlife Services in the U.S.  
22 District Court for the District of Nevada on the grounds that it failed to comply with NEPA and  
23 the Wilderness Act in relying on a woefully outdated 1994 Programmatic Environmental Impact  
24 Statement ("PEIS") and an inadequate 2011 Nevada EA/FONSI for its Nevada PDM program.  
25 *WildEarth Guardians v. U.S. Dep't of Agriculture, APHIS*, No. 2:12-cv-00716-MMD-PAL (filed  
26 April 30, 2012).

1           74.     In 2013, the district court granted in part and denied in part APHIS's motion to  
2 dismiss, which the Ninth Circuit Court of Appeals reversed. *WildEarth Guardians v. U.S. Dep't*  
3 *of Agriculture, APHIS*, 795 F.3d 1148 (9th Cir. 2015).  
4

5           75.     The parties then agreed to a stipulated settlement in which APHIS would no  
6 longer rely on its outdated 1994 PEIS and would revise and redo all NEPA documents that had  
7 tiered to the 1994 PEIS, including a new NEPA analysis for the Nevada PDM program. APHIS  
8 additionally agreed to cease PDM activities in all Wilderness Areas and Wilderness Study Areas  
9 in Nevada, with the exception of responding to public health and/or safety emergencies, until a  
10 new NEPA analysis for that statewide PDM program was complete. *WildEarth Guardians v.*  
11 *U.S. Dep't of Agric., APHIS*, No. 2:12-cv-00716-MMD-PAL (ECF No. 67-1).  
12

13           76.     In 2016, Wildlife Services initiated its public scoping process, soliciting public  
14 comment on the development of a new EA for its Nevada PDM program.  
15

16           77.     In December 2016, Plaintiffs timely submitted scoping comments, expressing  
17 several concerns about the proposed Nevada PDM program that it requested Wildlife Services  
18 analyze and address by preparing a full EIS. Moreover, Plaintiffs identified the agency's  
19 obligations to: (1) accurately describe the baseline conditions of the areas to be affected by the  
20 proposed action, (2) fairly analyze an appropriate range of alternatives, (3) take a sufficiently  
21 hard look at the issues, (4) adequately consider the best available science, (5) adequately  
22 consider the impacts of cumulative and similar actions, and (6) adequately consider impacts to  
23 special areas containing unique resources and habitats.  
24

25           78.     In November 2019, Wildlife Services issued a Draft EA inviting further public  
26 comments on the agency's analyses and proposed activities for its Nevada PDM program.  
27  
28

1           79. Many of the 1,699 public comments on the agency’s Draft EA—including those  
2 submitted by Plaintiffs—expressed serious concerns about NV-Wildlife Services’ proposed  
3 PDM activities and the adequacy of its environmental analysis. Plaintiffs again requested that the  
4 agency prepare a full EIS given the potentially significant environmental impacts and  
5 controversy surrounding its Nevada PDM activities. Plaintiffs additionally alleged that the Draft  
6 EA failed to sufficiently address the points raised in their 2016 scoping comments with respect to  
7 Wildlife Services’ legal obligations.  
8

9           80. Wildlife Services issued its Final 2020 Nevada PDM EA and associated  
10 DN/FONSI on July 15, 2020.  
11

12           81. The Final 2020 EA analyzed five alternatives in detail, including a “no action”  
13 alternative that would allow the agency to continue its existing Nevada PDM program without  
14 any modifications.  
15

16           82. In the DN/FONSI, Wildlife Services selected Alternative 2, which allows the  
17 agency to both continue its existing Nevada PDM program as well as expand it by  
18 recommencing lethal predator control in Wilderness areas and WSAs after the roughly 5-year  
19 settlement-driven ban on PDM in these specially designated areas. *See supra* ¶ 75.  
20

21           83. The Final 2020 EA proposed PDM activities across more than 6.2 million acres of  
22 Wilderness and Wilderness Study Areas in Nevada. The Final 2020 EA also states that there is  
23 an “extremely high” (95% - 100%) likelihood that lethal control of wildlife will be conducted in  
24 eight Wildernesses and five Wilderness Study Areas in Nevada over the next ten years based on  
25 a history of recurring conflicts and requests for Wildlife Services’ PDM activities on the same  
26 federal grazing allotments.  
27  
28

1           84.     Though the Bureau’s policy directives allow lethal wildlife control in Wilderness  
2 areas only where “necessary . . . to prevent serious losses of domestic livestock,” neither the  
3 Final 2020 EA nor the Bureau’s Minimum Requirements Decision Guide presents documented  
4 evidence that serious losses of livestock have occurred in the absence of lethal PDM in Nevada’s  
5 Wildernesses, *e.g.*, during the several years that lethal PDM was prohibited in these areas  
6 pursuant to the aforementioned settlement agreement. Instead, the Minimum Requirements  
7 Decision Guide summarily concludes: “[wildlife damage management] to prevent serious losses  
8 of domestic livestock is a critical component in the continuation of livestock operations.  
9 Therefore, administrative action of [wildlife damage management] performed by WS-Nevada at  
10 the request of livestock agricultural producers is necessary in wilderness to prevent serious losses  
11 of the producers’ livestock.”  
12

13  
14           85.     The DN/FONSI allows NV-Wildlife Services to use the following lethal methods  
15 in Wilderness Areas: trapping, snaring, and ground shooting (including with the use of calling,  
16 tracking dogs, or decoy dogs). For Wilderness Study Areas, the DN/FONSI allows NV-Wildlife  
17 Services to use its full suite of both nonlethal and lethal PDM methods, including: distress  
18 sounds and alarm calls, visual scaring techniques, and aerial hazing, harassment, and dispersal;  
19 M-44 devices, large gas cartridges for killing target species in their dens and burrows; poisons,  
20 including chemically treated eggs; traps, foot and neck/body snares, calling to lure in target  
21 species and tracking with dogs/use of decoy dogs followed by ground shooting, including with  
22 lead ammunition; and aerial shooting, overflights, and landings.  
23

24  
25           86.     According to the Final 2020 EA, the majority of NV-Wildlife Services wildlife  
26 killing takes place on federal public lands at the request of private livestock producers (*e.g.*,  
27 stating over the last 5 years, 57.9% of NV-Wildlife Services’ take of target predators and 69.3%  
28

1 of responses to conflicts involving predator species has occurred on Forest Service and Bureau-  
2 managed lands).

3 87. Coyotes are by far the most common target species killed by NV-Wildlife  
4 Services. In 2020, for example, NV-Wildlife Services killed 29 mountain lions, 1 bobcat, 2 black  
5 bears, 5 foxes, and 3,662 adult coyotes.  
6

7 88. Between 2015-2020, NV-Wildlife Services killed 14,855 coyotes on Bureau-  
8 managed lands alone. Among coyotes, badgers, bobcats, mountain lions, foxes, and black bears  
9 killed by NV-Wildlife Services in this five-year span on Bureau-managed lands, coyotes  
10 accounted for over 98% of the killing. NV-Wildlife Services' coyote killing on Bureau-managed  
11 lands was concentrated in four out of 17 counties it operated in, with 10,897 coyotes killed in  
12 White Pine, Eureka, Elko, and Humboldt counties. In other words, 73% of NV-Wildlife  
13 Services' coyote killing occurred in just four counties, although it operated in 17 counties.  
14

15 89. Between 2015-2020, NV-Wildlife Services killed 661 coyotes and eight mountain  
16 lions on Forest Service lands, meaning that 98.8% of NV-Wildlife Services killing operations on  
17 Forest Service lands targeted coyotes. Again, the killing was not evenly distributed, and was  
18 concentrated in only a few counties: 50.23% of coyote killing on Forest Service lands were in  
19 White Pine County, 29.9% in Lander, 19.2% in Elko, and 0.6% in Lyon.  
20

21 90. NV-Wildlife Services does not know how many coyotes inhabit the state of  
22 Nevada. NV-Wildlife Services has estimated that Nevada's coyote population is about 0.5 per  
23 square mile, or 54,913 coyotes. The Final 2020 EA explains that its analysis relies on this figure,  
24 0.5 coyotes per square mile, from a U.S. Fish & Wildlife study on coyote abundance in Oregon  
25 in 1979, because "there is no Nevada-specific coyote density estimate in the literature" and  
26 Nevada Department of Wildlife "does not track or attempt to estimate coyote population levels."  
27  
28



1           91. Further, the Final 2020 EA evaluates the impacts of NV-Wildlife Services' coyote  
2 killing at a statewide-scale, thus diluting the degree of localized effects to native ecosystems. The  
3 analysis area is 109,826 square miles—the entire land surface of Nevada; however, NV-Wildlife  
4 Services' intentional coyote killing is concentrated in only a few counties. Between 2015-2020,  
5 for example, 60% of NV-Wildlife Services' coyote killing occurred in Elko, Humboldt, and  
6 White Pine counties, a total area approximately 32% of Nevada's landmass. Further, localized  
7 impacts are exacerbated when non-Wildlife Services coyote killing is factored in. In Eureka  
8 County, for example, NV-Wildlife Services killed 3,106 coyotes over 2015-2020, which  
9 averages to 621.2 per year. The yearly average of non-Wildlife Services coyote take for 2012-  
10 2016 provided by the Final 2020 EA was 4,243 statewide, or 265 per county assuming arguendo  
11 that such take was evenly distributed. Adding NV-Wildlife Services' kills and non-Wildlife  
12 Services kills provides an average of 886 coyotes taken cumulatively per year in Eureka County.  
13 Eureka County is 4,176 square miles and thus, according to Wildlife Services' calculation (0.5  
14 coyotes/square mile), has an estimated coyote population of 2,088. Thus, a rough estimate of  
15 average yearly cumulative take in Eureka County is over 42% of that local population, though  
16 the actual percentage could be even far higher if non-Wildlife Services killing is also  
17 concentrated in the same handful of counties. Yet, NV-Wildlife Services Final 2020 EA does not  
18 evaluate localized impacts of its lethal management activities.

23           92. Between 2015-2020, NV-Wildlife Services also unintentionally caught 74  
24 animals. Among these were 36 bobcats, 11 of which were killed; four black bears, all of which  
25 were killed; and one mountain lion, which was killed.

26 //  
27

28 ///

### III. The 2021 Annual Work Plans

93. As the Final 2020 EA acknowledged, the relevant land management agency, here either the Bureau or Forest Service, must approve of the “final selection” of PDM methods to be used on federal public lands, including in Wilderness Areas and Wilderness Study Areas. This is accomplished through the Annual Work Plan process. Accordingly, NV-Wildlife Services annually coordinates with the Bureau and Forest Service to develop Annual Work Plans, which document the types of operations and restrictions identified by the land management agencies for managing the public lands under their jurisdictions in the State of Nevada. Thus, Annual Work Plans govern how those lands are managed for the upcoming year.

94. Currently, NV-Wildlife Services has signed a 2021 Annual Work Plan with the Forest Service for the Humboldt-Toiyabe National Forest and with the Bureau for eight Bureau Districts that are wholly or partially within Nevada (Battle Mountain, Carson City, Elko, Ely, Northern California, Southern Nevada, Twin Falls (ID), and Winnemucca).

95. The 2021 Annual Work Plan between NV-Wildlife Services and the Forest Service authorizes Wildlife Services to conduct PDM activities on the following Wilderness Areas and Wilderness Study Areas on the Humboldt-Toiyabe National Forest:

- Mt. Rose Wilderness (31,183 acres)
- Currant Mountain Wilderness (47,311 acres)
- East Humboldt Wilderness (32,364 acres)
- Grant Range Wilderness (52,451 acres)
- The Forest Service-administered portion of Mt. Moriah Wilderness (83,711 acres)
- Quinn Canyon Wilderness (26,310 acres)
- Ruby Mountains Wilderness (92,652 acres)

- High Schells Wilderness (121,499 acres)
- The Forest Service-administered portion of Antelope Range WSA (43,700 acres)

96. The 2021 Annual Work Plan between NV-Wildlife Services and the Forest Service, however, stipulates that Wildlife Services must first obtain approval from both the Regional Forester and the specific National Forest's Supervisor, on a case-by-case basis, prior to operating in Forest Service-administered Wilderness Areas.

97. The 2021 Nevada BLM Annual Work Plan authorizes PDM activities on the following ten Wilderness Areas and 14 Wilderness Study Areas on Bureau-managed lands that are wholly or partially within Nevada:

Wilderness Areas Administered by the Bureau's Ely District Office:

- Becky Peak Wilderness (18,189 acres)
- Bristlecone Wilderness (14,095 acres)
- Far South Egans Wilderness (36,299 acres)
- Goshute Canyon Wilderness (42,544 acres)
- Government Peak Wilderness (6,313 acres)
- Highland Ridge Wilderness (68,623 acres)
- Mt. Irish Wilderness (28,274 acres)
- The BLM-administered portion of the Mt. Moriah Wilderness (8,708 acres)
- South Egan Range Wilderness (67,214 acres)
- Worthington Mountains Wilderness (30,594 acres)

Wilderness Study Areas Administered by the BLM Battle Mountain District Office:

- The Bureau-administered portion of the Antelope Range WSA (43,700 acres)

Wilderness Study Areas Administered by the Bureau's Carson City District Office:

- Burbank Canyons WSA (13,395 acres)
- Gabbs Valley Range WSA (81,811 acres)

Wilderness Study Areas Administered by the Bureau's Elko District Office:

- Bluebell WSA (55,665 acres)
- Cedar Ridge WSA (10,009 acres)
- Goshute Peak WSA (69,770 acres)
- Red Spring WSA (7,847 acres)

Wilderness Study Areas Administered by the Bureau's Ely District Office:

- Goshute Canyon WSA (22,225 acres)

Wilderness Study Areas Administered by the Bureau's Winnemucca District Office:

- Fox Range WSA (75,404 acres)
- Mt. Limbo WSA (23,752 acres)
- Poodle Mountain WSA (142,050 acres)
- Selenite Mountains WSA (32,041 acres)

Wilderness Study Areas Jointly Administered by the Bureau's Battle Mountain and Ely District Offices:

- Park Range WSA (47,268 acres)

Wilderness Study Areas Jointly Administered by the Bureau's Battle Mountain, Carson City, and Winnemucca District Offices:

- Augusta Mountains WSA (89,372 acres)

98. The Bureau's policy directives instruct that "[a]nimal damage control in designated wilderness areas must be approved by the State Director on a case-by-case basis[,]" and that "direct control" in Wilderness Areas should be limited to the "individual animals

1 causing the problem” and that “only the minimum amount of control necessary to solve the  
2 problem” should be used. BLM Manual 6830. Additionally, the governing Wilderness  
3 Management Plan for the Highland Ridge, South Egan Range, and Far South Egans  
4 Wildernesses—areas where the 2021 Nevada BLM Annual Work Plan authorizes PDM  
5 activities—requires that wildlife damage management activities to “prevent considerable loss of  
6 livestock” be limited to “the minimum amount of control necessary to resolve wildlife damage  
7 problems.” WMP, Highland Ridge, Mount Grafton, South Egan Range & Far South Egans  
8 Wilderness Nevada (2013). Wilderness Management Plans governing several other Bureau-  
9 managed Wildernesses where the 2021 Nevada BLM Annual Work Plan authorizes PDM  
10 activities require that “proposed wildlife [management] actions . . . be determined necessary to  
11 protect or preserve wilderness character,” in order to be “authorized” in Wilderness Areas.  
12 Bristlecone and Goshute Canyon Wilderness Final WMP (2014); Becky Peak and Government  
13 Peak Wilderness Final WMP (2014).

14  
15  
16  
17 99. Contrary to its own official policy directives and WMP directives, and in contrast  
18 to the Forest Service’s protocol of requiring its approval for Wildlife Services’ PDM activities in  
19 Wilderness Areas on an individual, case-by-case basis, the 2021 Nevada BLM Annual Work  
20 Plan authorizes Wildlife Services to conduct lethal PDM in Bureau-managed Wilderness Areas,  
21 by use of any of the aforementioned methods in ¶ 85 as Wildlife Services deems appropriate in  
22 response to any given request from a private livestock producer. Thus, the Bureau does not  
23 review the circumstances surrounding individual requests for Wildlife Services’ PDM activities  
24 in Bureau-managed Wildernesses (or Wilderness Study Areas) in order to determine, on a case-  
25 by-case basis, whether lethal PDM is “necessary to prevent serious losses of domestic livestock”  
26 nor to ensure “only the minimum amount of control necessary to solve the problem” will be  
27  
28

1 used. Instead, the Bureau delegates this case-by-case decision-making process to Wildlife  
2 Services' personnel. Under the 2021 Nevada BLM Annual Work Plan, Wildlife Services must  
3 simply provide email notification to the Bureau before and after conducting PDM in Bureau-  
4 managed Wildernesses and Wilderness Study Areas.  
5

6 100. The Bureau's own documentation acknowledges that conflicts between wildlife  
7 and livestock (*e.g.*, depredation by predators) often recur in the same areas and during the same  
8 time periods, which typically coincide with both the grazing of newly born lambs and calves in  
9 remote areas on public lands like Wildernesses and Wilderness Study Areas, and the period  
10 when native carnivores are rearing their offspring. Though the Bureau recognizes that these  
11 spatial-temporal factors greatly increase the risk of predation, it does not require grazing permit  
12 holders to adjust their grazing practices on Bureau-managed lands (*e.g.*, season of use, class of  
13 livestock), including within Wildernesses and Wilderness Study Areas, to proactively reduce this  
14 risk.  
15  
16

17 101. Likewise, nor does the Bureau require grazing permit holders to employ other  
18 nonlethal strategies to reduce the risk of wildlife-livestock conflicts (*e.g.*, maintaining a regular  
19 human presence with their livestock herds, actively keeping sheep and cattle bunched up in open  
20 defensible spaces) before authorizing Wildlife Services to conduct lethal PDM on any Bureau-  
21 managed lands through its Annual Work Plans.  
22

23 102. Though Wildlife Services alleges that livestock producers generally employ  
24 nonlethal methods before requesting Wildlife Services conduct lethal PDM activities on their  
25 behalf, neither Wildlife Services nor the Bureau document which, if any, nonlethal methods  
26 livestock producers unsuccessfully attempted.  
27  
28

1           103. Nor do the Defendant agencies require that the livestock producers themselves  
2 document what strategies they used, if any, or the apparent effectiveness of any such strategy.  
3 Typically, Wildlife Services relies on the livestock producers to monitor and evaluate the  
4 effectiveness of its PDM strategies but does not require them to report back.  
5

6           104. Consequently, Wildlife Services and the Bureau lack actual evidence and analysis  
7 showing lethal control of native wildlife is “necessary” for grazing operations to continue on  
8 these federal public lands, including designated Wildernesses, because modifying grazing  
9 practices and/or employing nonlethal strategies have proven to be ineffective.  
10

### 11                                   **FIRST CLAIM FOR RELIEF**

#### 12                   **Wildlife Services Failed to Prepare an EIS as Required by NEPA**

13           105. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

14           106. This First Claim for Relief challenges Wildlife Services’ violation of the National  
15 Environmental Policy Act, 42 U.S.C. §§ 4321-4370, and NEPA’s implementing regulations, by  
16 refusing to prepare a full NEPA-compliant EIS for its PDM program in Nevada, in light of  
17 information showing its activities may have a significant adverse effect on the human  
18 environment. This claim is brought pursuant to the judicial review provision of the APA, 5  
19 U.S.C. § 706(2).  
20  
21

22           107. Determining whether an action may significantly impact the environment requires  
23 the agency to consider both the context and intensity of the action. 40 C.F.R. § 1508.27.

24           108. NV-Wildlife Services’ PDM program in Nevada may have a significant impact on  
25 the human environment for reasons including but not limited to the following:  
26

- 27           a. The analysis area for NV-Wildlife Services’ PDM activities spans the entire  
28 State of Nevada;



1 b. Wildlife Services' PDM activities affect unique and ecologically critical  
2 geographic areas because they are projected to affect over 6.2 million acres across  
3 18 congressionally designated Wildernesses and 15 Wilderness Study Areas, as  
4 well as other specially designated and ecologically important places;  
5

6 c. Wildlife Services' PDM activities, particularly the widespread use of  
7 indiscriminate killing methods like M-44s, as well as the use of lead ammunition,  
8 threaten public health and safety;  
9

10 d. Wildlife Services' PDM activities are highly controversial and involve  
11 highly uncertain and unknown risks, particularly surrounding both the efficacy of  
12 killing native carnivores to prevent future livestock depredations and cascading  
13 negative ecological consequences;  
14

15 e. Wildlife Services' PDM activities threaten cumulatively significant  
16 environmental effects, particularly when combined with other activities that result  
17 in the lethal removal of native wildlife and adverse impacts to their habitats;  
18

19 f. Wildlife Services' activities under the Final 2020 EA and DN/FONSI  
20 threaten violations of other federal laws, such as the National Forest Management  
21 Act, the Federal Land Policy and Management Act, and the Wilderness Act, in part  
22 because the Defendant agencies have failed to establish that Wildlife Services'  
23 PDM activities are consistent with governing land management plans, including  
24 applicable Wilderness Management Plans, and that lethal PDM activities are  
25 necessary for carrying out livestock grazing in designated Wilderness areas;  
26

27 109. These factors, individually and cumulatively, demonstrate that Wildlife  
28 Services' PDM activities approved under the Final 2020 EA and DN/FONSI constitute a

1 major federal action that poses significant impacts on the environment, and thus Wildlife  
2 Services' decision not to prepare an EIS was arbitrary, capricious, an abuse of discretion,  
3 and not in accordance with law.

## 4 **SECOND CLAIM FOR RELIEF**

### 5 **Wildlife Services failed to take the requisite "hard look" under NEPA**

6  
7 110. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

8 111. This Second Claim for Relief challenges Wildlife Services' violations of the  
9 National Environmental Policy Act, 42 U.S.C. §§ 4321-4370, and NEPA's implementing  
10 regulations, in failing to undertake a thorough and objective "hard look" at the environmental  
11 impacts of its activities proposed in the Final 2020 EA and DN/FONSI. This claim is brought  
12 pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(2).  
13

14 112. NEPA requires all federal agencies to undertake a thorough and public analysis of  
15 the environmental consequences of proposed federal actions, including a rigorous and objective  
16 analysis of reasonable alternative actions; quantified and detailed information, including a  
17 description of baseline conditions; and a thorough evaluation of the direct, indirect, and  
18 cumulative impacts of proposed actions.  
19

20 113. The 2020 Nevada PDM EA and DN/FONSI violate NEPA's "hard look"  
21 requirement and the APA in multiple respects, including but not limited to: failing to include  
22 quantified and detailed information, such as adequate baseline information that contains reliable  
23 predator population estimates and reliable annual maximum sustainable harvest levels; failing to  
24 adequately describe and objectively explore reasonable alternatives designed to mitigate wildlife-  
25 livestock conflicts through science-backed nonlethal strategies; failing to ensure Wildlife  
26 Services' proposed activities are consistent with all governing federal land management plans;  
27  
28

1 and by otherwise failing to take the requisite “hard look” at the direct, indirect, and cumulative  
2 impacts of its proposed actions and alternatives.

3 114. For the foregoing reasons, Wildlife Services’ failure to comply with NEPA’s hard  
4 look requirement is arbitrary, capricious, an abuse of discretion, and not in accordance with the  
5 law under NEPA and the APA. 5 U.S.C. § 706(2)(A).  
6

### 7 **THIRD CLAIM FOR RELIEF**

#### 8 **NEPA Violations: Annual Work Plans**

9 115. Plaintiffs reallege and incorporate by reference all preceding paragraphs.  
10

11 116. This Third Claim for Relief challenges Defendants Wildlife Services, Forest  
12 Service, and the Bureau’s violations of the National Environmental Policy Act, 42 U.S.C. §§  
13 4321-4370, and NEPA’s implementing regulations, by using Annual Work Plans to authorize  
14 PDM actions on federal lands in Nevada without conducting the necessary site-specific NEPA  
15 analysis to assess the effects of such actions occurring on those lands.  
16

17 117. NEPA requires agencies to assess proposed actions on a “site specific” basis for  
18 compliance with their land use plans and governing land use statutes. *See Native Ecosystems*  
19 *Council v. Tidwell*, 599 F.3d 926, 934 (9th Cir. 2010). It also requires agencies to examine the  
20 effects of proposed actions on the site where they will be conducted. *See id.*  
21

22 118. Defendants Wildlife Services, Forest Service, and the Bureau are violating NEPA  
23 by authorizing wildlife killing on the Humboldt-Toiyabe National Forest and 8 BLM Districts in  
24 Nevada through Annual Work Plans without conducting any site-specific NEPA analysis that  
25 analyzes the direct, indirect, and cumulative environmental impacts of the activities authorized  
26 by those plans, or assessing whether the activities authorized comply with federal land use plans  
27 and other federal laws. By failing to conduct such analysis, Defendants Wildlife Services, Forest  
28

1 Service, and the Bureau do not provide for any public disclosure and comment on those  
2 activities, also in violation of NEPA.

3 119. Because Defendants Wildlife Services, Forest Service, and the Bureau have never  
4 adequately disclosed or analyzed site-specific environmental impacts and alternatives under  
5 NEPA for Wildlife Services' activities on the affected federal lands, the Annual Work Plans  
6 between Wildlife Services and the Forest Service and the Bureau are arbitrary and capricious, an  
7 abuse of discretion, and not in accordance with law under NEPA and the APA. 5 U.S.C. §  
8 706(2)(A).  
9

#### 10 **FOURTH CLAIM FOR RELIEF**

##### 11 **Wilderness Act Violations**

12 120. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

13 121. The Wilderness Act prohibits any commercial enterprise, 16 U.S.C. § 1133(c),  
14 except as "specifically provided for" in the Act's list of exceptions. *Id.* § 1133(d)(1)-(4). A  
15 "commercial enterprise" is a "project or undertaking of or relating to commerce" with a  
16 primarily commercial purpose and effect. *Wilderness Soc'y*, 353 F.3d at 1061, 1063. The Act  
17 makes an exception for commercial services only "to the extent necessary for activities which are  
18 proper for realizing the recreational or other wilderness purposes of the areas." 16 U.S.C. §  
19 1133(d)(5). Thus, even when commercial activities serve a valid "recreational" or "wilderness  
20 purpose," the agency must still make a requisite "finding of 'necessity' before authorizing  
21 commercial services in wilderness areas." *High Sierra Hikers Ass'n. v. Blackwell*, 390 F.3d 630,  
22 646 (9th Cir. 2004). Moreover, "a generic finding of necessity does not suffice." *Wilderness*  
23 *Watch, Inc. v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1037 (9th Cir. 2010) (citing *High*  
24 *Sierra*, 390 F.3d at 647).  
25  
26  
27  
28

1           122. Wildlife Services' lethal PDM activities within designated Wildernesses, *e.g.*,  
 2 killing native wildlife within Wilderness Areas solely at the request of private livestock  
 3 producers for the alleged purpose of preventing future losses of commercial livestock is a  
 4 "commercial enterprise" within the meaning of the statute. *Wilderness Soc'y*, 353 F.3d at 1061,  
 5 1063. Lethal PDM activities are not among the Act's specific exceptions to its prohibition on  
 6 "commercial enterprise" within Wilderness Areas. 16 U.S.C. § 1133(d)(1)-(4). Nor do Wildlife  
 7 Services' lethal PDM activities serve to realize the Act's "wilderness purposes" of any  
 8 designated Wilderness Areas. *Id.* § 1133(d)(5). Such activities only serve to protect private  
 9 commercial livestock grazing interests as opposed to furthering wilderness interests or national  
 10 wilderness policy.  
 11  
 12

13           123. Defendants Wildlife Services and the Bureau have violated the Wilderness Act  
 14 by: (1) authorizing an impermissible commercial enterprise within designated Wilderness areas;  
 15 and (2) authorizing activities that offend the Act's mandate to preserve the natural conditions that  
 16 are a part of the designated Wilderness Areas' wilderness character—the Act's ultimate goal. 16  
 17 U.S.C. § 1131(a), 1133(b).  
 18

19           124. The Final 2020 EA acknowledges that lethal removal of predators from  
 20 Wilderness Areas for the alleged purpose of "preventing serious losses of domestic livestock"  
 21 admittedly impairs several qualities that make up wilderness character—*i.e.*, that Wildernesses  
 22 are untrammeled, natural, and provide opportunities for primitive and unconfined recreation—in  
 23 the following ways: (1) "[t]he removal of a predator from its native habitat is a trammeling  
 24 action that may manipulate the natural ecosystem within wilderness"; (2) lethal predator removal  
 25 for "administrative purposes" (as opposed to recreational hunting) impairs "the natural quality of  
 26 wilderness character" because the resulting "effects on the ecosystem and environment" create  
 27  
 28

1 an “ecological system [not] entirely free from the effects of modern civilization”; and (3)  
2 predator removal may “impact opportunities for primitive and unconfined recreation . . . which  
3 includes a sense of traveling through a landscape where predators are present.” Additionally, the  
4 Bureau’s Minimum Resources Decision Guide acknowledges that the following authorized PDM  
5 activities admittedly impair these same wilderness qualities: ground shooting, calling, trapping,  
6 snaring, and use of trained tracking dogs. In fact, although the Bureau’s documentation lists  
7 many activities, not a single activity out of the 20 considered has a “positive” effect on  
8 wilderness character. Nevertheless, the Bureau authorized Wildlife Services to lethally remove  
9 an unknown number of wild animals from their native habitats, diminishing the natural and  
10 untrammeled qualities present in these Wilderness Areas, for the perceived purpose of  
11 preventing losses of commercial livestock by shooting, calling, trapping, snaring, and tracking  
12 with trained dogs in violation of the Act’s mandate that Wilderness Areas be administered “in  
13 such a manner . . . so as to provide for . . . the preservation of [each area’s] wilderness  
14 character[.]” 16 U.S.C. § 1131(a), 1133(b).

15  
16  
17  
18 125. Alternatively, to the extent the Wilderness Act’s specific exception for the  
19 continuation of pre-existing livestock grazing, 16 U.S.C. § 1133(d)(4), and/or the summary  
20 statement in the Congressional Grazing Guidelines, can be read to “implicitly” include the killing  
21 of native wildlife where purportedly “necessary” to protect commercial livestock grazing  
22 operations in designated Wilderness Areas, Defendants Wildlife Services and the Bureau have  
23 failed to make the requisite “necessity” finding here. *See e.g., Wilderness Watch, Inc.*, 629 F.3d  
24 at 1037; BLM Manual 6830.

25  
26  
27 126. For instance, the agencies’ own documentation acknowledges that the risk of  
28 predation is highest with grazing vulnerably young lambs and calves and when livestock are left

1 unattended in remote areas. The agencies' own documentation also further indicates that the risk  
2 of predation to livestock can be effectively reduced by nonlethal strategies aimed at modifying  
3 livestock grazing practices and animal husbandry techniques in order to avoid wildlife-livestock  
4 conflicts in the first place. Yet, there is no documentation to show that these other strategies that  
5 could admittedly meet the goal of protecting commercial livestock in Wilderness Areas were  
6 first employed and found insufficient before the Defendant agencies authorized Wildlife  
7 Services' lethal PDM activities in the designated Wildernesses. Further, the agencies' own  
8 documentation states that wildlife-livestock conflicts often recur in the same locations during the  
9 same time periods, casting doubt on the effectiveness of Wildlife Services' lethal PDM strategies  
10 to prevent future losses of commercial livestock. Nor do the Defendant agencies present  
11 evidence that serious losses of domestic livestock occurred in the absence of Wildlife Services'  
12 PDM activities in Wilderness Areas, such as during the several years that lethal PDM activities  
13 were prohibited per the aforementioned legal settlement. In short, the agencies have failed to  
14 adequately demonstrate that NV-Wildlife Services' lethal PDM activities are "necessary" at  
15 all—let alone that the 2021 Nevada BLM Annual Work Plan limits lethal control to the  
16 minimum amount necessary for preventing serious losses of domestic livestock in the designated  
17 Wildernesses.

18  
19 127. For the foregoing reasons, Wildlife Services' Final 2020 EA and DN/FONSI, the  
20 2021 Nevada BLM Annual Work Plan, and the Bureau's Minimum Resources Decision Guide  
21 and Decision Record/FONSI are arbitrary and capricious, an abuse of discretion, and not in  
22 accordance with law under the Wilderness Act and the APA. 5 U.S.C. § 706(2)(A).

23  
24 128. Further, Wildlife Services and the Bureau also acted arbitrarily, capriciously and  
25 not in accordance with Nevada's Wilderness enabling statutes, and in excess of their statutory  
26



1 authority thereunder, by authorizing lethal predator control activities in Bureau-managed  
 2 Wilderness Areas that exceed the scope of permissible wildlife management activities under the  
 3 Lincoln and White Pine County Conservation Acts. Such predator control activities are neither  
 4 limited to, nor necessary for, “maintain[ing] or restor[ing] fish and wildlife populations and  
 5 habitats.” The Defendant agencies have also failed to adequately demonstrate that such activities  
 6 are consistent with relevant wilderness management plans and policies aimed at promoting  
 7 “healthy, viable, and more naturally distributed wildlife populations,” within the applicable  
 8 Wilderness Areas, as required by both statutes. White Pine County Conservation Act, Pub. L.  
 9 No. 108-424, § 324(b); Lincoln County Conservation Act, Pub. L. No. 109-432 § 204(b); 5  
 10 U.S.C. § 706(2)(A), § 706(2)(C).

#### 13 **FIFTH CLAIM FOR RELIEF**

##### 14 **Wildlife Services’ Expanded Predator Killing is *Ultra Vires***

15 129. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

16 130. This Fifth Claim for Relief challenges Wildlife Services’ expanded Nevada  
 17 predator killing as *ultra vires* and beyond the authority delegated by the Animal Damage Control  
 18 Act, as amended. 7 U.S.C. § 426(a)-(d). This Fifth Claim is brought pursuant to the APA, 5  
 19 U.S.C. § 706(2)(C).

20 131. Under the Animal Damage Control Act , as amended, Congress delegated to the  
 21 Secretary of Agriculture the authority to “conduct a program of wildlife services with respect to  
 22 *injurious* animal species.” 7 U.S.C. § 426(a) (emphasis added).

23 132. Wildlife Services lacks the authority to act unless and until Congress confers the  
 24 power upon it to do so. The Animal Damage Control Act does not grant Wildlife Services the  
 25 authority to kill ravens, coyotes, and other native predators, altering native ecosystem functions  
 26  
 27  
 28

1 and predator-prey relationships to ostensibly protect native “prey” or “game” species, without  
2 establishing that such native predators are “injurious” to the populations of wildlife to allegedly  
3 be benefitted.  
4

5 133. In its 2020 Nevada PDM EA and DN/FONSI, NV-Wildlife Services does not  
6 adequately establish that native predators like ravens and coyotes, which have coevolved  
7 alongside native ungulates and sage grouse, are “injurious” to those wild “game” or sage grouse  
8 populations. The Final 2020 EA relies on outdated, inconclusive, and contrary scientific  
9 literature to support its conclusions that killing native predators will benefit populations of wild  
10 “game” or sage grouse.  
11

12 134. Accordingly, Wildlife Services’ approval, in the 2020 Nevada PDM EA and  
13 DN/FONSI, of new and continuing wildlife killing activities at the request of the Nevada  
14 Department of Wildlife and other entities to supposedly benefit or otherwise aid other native  
15 wildlife populations exceeds the limited power conferred upon the agency by Congress through  
16 the Animal Damage Control Act, and is, therefore, *ultra vires*.  
17

18 135. Pursuant to the APA, this Court must reverse and set aside agency action that, as  
19 here, is “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(C).  
20

## 21 **REQUESTS FOR RELIEF**

22 WHEREFORE, Plaintiffs WildEarth Guardians and Western Watersheds Project request  
23 that this Court enter judgment providing the following relief:

24 A. Declare that Defendant Wildlife Services has violated and is violating NEPA, 42  
25 U.S.C. § 4321 *et seq.*, and the implementing CEQ regulations, 40 C.F.R. §§ 1500-1508, by  
26 failing to prepare an EIS for its Nevada PDM activities;  
27  
28

1 B. Order Wildlife Services to complete the EIS required by NEPA, 42 U.S.C. § 4321 *et*  
2 *seq.*, by a reasonable date certain;

3 C. Declare that Wildlife Services has violated and is violating NEPA, 42 U.S.C. § 4321 *et*  
4 *seq.*, and the implementing CEQ regulations, 40 C.F.R. §§ 1500-1508, by failing to take a “hard  
5 look” at actions, alternatives, and environmental consequences;

6 D. Declare that Defendants Wildlife Services, Forest Service and the Bureau’s Annual  
7 Work Plans violate NEPA and the APA, and reverse and set aside the Annual Work Plans;

8 E. Declare that Defendants Wildlife Services and the Bureau’s Annual Work Plans  
9 violate the Wilderness Act, 16 U.S.C. § 1131 *et seq.*, and/or the Lincoln and White Pine County  
10 Conservation Acts;

11 F. Declare that Wildlife Services’ killing of other natural and native predators of “game”  
12 species and other native wildlife like sage grouse are *ultra vires* and beyond the authority  
13 delegated by the Animal Damage Control Act, as amended;

14 G. Vacate Wildlife Services’ 2020 DN/FONSI and Annual Work Plans with the Bureau  
15 and Forest Service and enjoin Wildlife Services and its agents from implementing the challenged  
16 Nevada PDM activities on the affected federal public lands unless and until the violations of  
17 federal law set forth herein have been corrected to the satisfaction of this Court;

18 H. Award Plaintiffs their costs, attorneys’ fees, and other expenses in this action pursuant  
19 to EAJA, 28 U.S.C. § 2412; and

20 I. Grant such other and further relief as this Court deems just and proper.

21 Respectfully submitted this 9th day of December, 2021.

22  
23  
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25  
26  
27  
28  
  
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