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

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

Plaintiffs,

v.

USDA WILDLIFE SERVICES,

Defendant.

No. 1:17-cv-206-BLW

**PLAINTIFFS’ SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

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

1. Wildlife Services is a federal agency or instrumentality within the U.S. Department of Agriculture, which conducts “predator damage management” actions in Idaho each year through its Idaho Office. Ans. ¶¶ 17-18, ECF No. 5.

2. For decades, Wildlife Services has conducted taxpayer-funded wildlife killing operations in Idaho, primarily “predator control” actions aimed at removing alleged threats to livestock. Ans. ¶¶ 38-50; AR 37253-63¹ (describing existing program). These wildlife killing actions include: (a) aerial shooting from fixed-wing aircraft and helicopters to kill coyotes, red foxes, and wolves; (b) using trained dogs to track, lure, and kill coyotes, black bears, and mountain lions; (c) gassing coyotes, skunks, and rodents in their dens; (d) using M-44 devices filled with sodium cyanide to kill canines like coyotes; (d) using quick-kill or body-gripping traps to kill birds and animals, and foothold traps, leg snares, and neck snares to capture or kill animals, including coyotes, red foxes, mountain lions, beavers, and wolves; and (e) using pesticides, rodenticides, and other toxics to poison birds and rodents. Ans. ¶¶ 38-50.

3. Each year, Wildlife Services conducts wildlife control activities on approximately 9,687.5 of the 83,557 square miles in Idaho,² and it conducts predator “damage management” activities on approximately 4,844 of these. AR 37232. Many of these predator control actions occur on public lands managed by the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). AR 37233.

¹ “AR ____” refers to the page number of the supplemented Administrative Record filed by Wildlife Services, ECF No. ____.

² Acres are converted into square miles by dividing square acres by 640, the number of acres in a square mile.

4. Wildlife Services also kills hundreds of thousands of birds and wildlife in Idaho each year. AR 57287-57341. Coyotes comprised 89.7 percent of the four-year average of predators that Wildlife Services killed in Idaho (excluding starlings and animals killed under other NEPA documents, including wolves and rodents). AR 37296.

5. For its coyote killing and other predator control actions occurring on public lands in Idaho, Wildlife Services operates under “Memoranda of Understanding” with the BLM and USFS to authorize its activities. AR 38222-27 (BLM MOU), AR 38248-54 (USFS MOU); *see also* AR 37169 (Final EA). These MOUs are very general and do not provide site-specific direction for Wildlife Services’ activities. *See* AR 38222-27, 38248-54.

6. To provide more specific authorization for its predator control actions on federal public lands in Idaho, Wildlife Service claims that it conducts annual meetings and prepares “Annual Work Plans” (AWPs) with BLM and USFS. AR 37255. AWP meetings are “very informal and no members of the public attend the meetings.” AR 79256 (Graves comm. describing AWP process). Site-specific information for Wildlife Service’s proposed predator control activities is purportedly detailed in the AWP. AR 37255. Wildlife Services claims it then determines which “methods or strategies” to use at the site-specific level by applying its “Wildlife Services Decision Model” in an “analytical thought process.” AR 37221, 37248-49.

7. However, the Administrative Record and other documents obtained by Plaintiffs under the Freedom of Information Act reveal that these AWP meetings often do not happen at all, or do not happen expeditiously. *See* Declaration of Talasi B. Brooks and Exs. 1-8.

8. As part of its annual Idaho predator control actions, Wildlife Services particularly targets coyotes. Ans. ¶ 54. In 2016, Wildlife Services reported that it shot 3,033 coyotes in Idaho from aircraft and an additional 435 on the ground. Ans. ¶ 55. It also trapped and killed

339 coyotes in foothold traps and neck snares, and poisoned 53 with M-44s. *Id.* In total, Wildlife Services reported killing 3,860 coyotes in Idaho in 2016. *Id.*

9. Wildlife Services makes the general statewide estimate that 0.6 coyotes per square mile, or approximately 50,134 coyotes, inhabit Idaho. AR 37303 (Final EA). It guesses it may kill up to 6,000 coyotes per year, and that an average of 3,838 additional coyotes are killed by private hunters and trappers each year, for total average annual mortality of 10,186. AR 37304. This, it estimates, amounts to approximately 20.3 percent of the statewide coyote population. AR 37305. It assumes the coyote population can withstand annual removals of up to 60 percent without changes to population size. AR 37304.

10. Wildlife Service's coyote killing activities are concentrated in the BLM's Twin Falls and Idaho Falls Districts, which cover most of southern Idaho. Brooks Decl. ¶¶ 9-12, Ex. 9-12. Wildlife Services reported killing 1,847 coyotes on the Twin Falls District in 2011 (Ex. 10), 633 in 2013 (AR 38319), and 723 in 2014 (AR 38331-32). On the Idaho Falls BLM District, Wildlife Services reported killing 718 coyotes in 2012 (Ex. 11), 369 in 2013 (AR 38279-80), and 374 in 2014 (AR 38295). Estimating the Twin Falls District coyote population at 3,714³, and considering IDFG's furbearer reports, which list coyote take by County, Plaintiffs estimate that Wildlife Services and private hunters and trappers combined may have killed 83 percent of the Twin Falls District's coyote population in 2011, 63 percent in 2013, and 68 percent in 2014. *See* AR 39982 (map of TFD listing counties); AR 52300-01 (2010-11 Furbearer harvest by County), AR 39097-98 (2012-13 Furbearer harvest by county), AR 52971-72 (2013-14 Furbearer harvest by county).

11. Despite the concentration of its coyote-killing in southern Idaho, Wildlife

³ The Twin Falls District is almost 3,962,564 acres, or 6,192 square miles. AR 39982. $3,962,564 / 640 = 6,192$ miles. $6,192 \text{ miles} \times 0.6 \text{ coyotes} = 3,714$ coyotes.

Services only considers the impacts it may be having on the environment or on coyote populations at the statewide level. AR 37303-09. It makes no effort to estimate local coyote populations. While it admits that “[i]n some local areas of Idaho, coyote removals may be conducted annually over a period of several years,” it assumes the continuing need for its services in the same areas means its coyote removal rates are “sustainable.” AR 37305.

12. Wildlife Services works each year on only approximately 6.2 million acres, or 9,688 square miles, of the state. AR 37306. Using Wildlife Services’ method of estimating coyote populations, approximately 5,813 coyotes inhabit that area.⁴ If the maximum 10,186 human-caused coyote deaths each year occurred in the area where Wildlife Services operates, it would kill almost twice the area’s estimated coyote population.⁵ The maximum of 6,000 coyotes Wildlife Services may kill in a year, exceeds the number of coyotes estimated to inhabit the area where it conducts work. *See id.* Wildlife Services’ four-year average annual take, 3,080 coyotes, is approximately 53 percent of the estimated coyote population of this area.⁶ *See id.*

13. Wildlife Services admits that removing coyotes can affect both the environment and coyote populations in areas where they are targeted. Ecosystems that are less biodiverse are less resilient. AR 37380 (Final EA).

The loss of apex predators from an ecosystem reduces biodiversity and ... may alter the presence and abundance of mesopredators, increase the intensity of herbivory, or cause shifts in herbivore and small prey populations impacted by mesopredators, and ultimately impact the abundance and composition of plant communities, soil structure, nutrients and even physical characteristics of the environment.

AR 37381 (citations omitted). Coyote removals may cause decline in species richness and rodent diversity and increases of relative abundance of mesopredators like badgers, bobcats, and

⁴ $9,688 \times 0.6 = 5,812.8$.

⁵ $5,813/10,186=175\%$.

⁶ $3,080/5,813=53\%$.

gray foxes. AR 37382. Changes in coyote activity may affect white-tailed deer activity and impacts on plant community composition. AR 37383. Sage-grouse nest success decreased with intensity of coyote removal. AR 37386; *see also* AR 37387 (discussing Mezquida et al. (2006)). Coyote predation is significantly lower in sites with wolves and wolf recovery was documented to increase survivorship of pronghorn antelope. AR 37384.

14. Coyote populations may also respond to removals in unintended ways. For example, they may respond with compensatory reproduction, such as increased litter sizes, and younger members of the pack breeding. *E.g.*, AR 48992 (Gese (2005)), AR 37308 (Final EA, discussing food regulating coyote pack size). The age structure of the pack may also shift to a younger cohort. AR 48996 (Gese (2005)), AR 54209 (Knowlton et al. (1999)). The shift to a younger age-structure may change pack behavior, particularly if the territorial breeding pair of the coyote pack is removed. AR 48983 (Gese (1998))). Territorial breeding adult coyotes are primary sheep predators and removing the adult breeding pair may be counterproductive by allowing access to sheep by potential sheep-killing coyotes. AR 60169 (Sacks et al. (1999)). Gese (2005) found that reducing an estimated coyote population by 44-61% one year and 51-75% the second year reduced coyote pack size and population density and caused the population to shift to a younger age structure, bearing larger litters. AR 48992.

15. Wildlife Services assumes none of these effects will occur because it claims its activities occur only in limited geographic areas, for a discrete period of the year, and remove only a few individuals. *E.g.*, AR 37381-82. But measured on a local scale, the number of coyotes Wildlife Services removes annually, particularly when combined with mortality from other sources, is within the range in which Gese (2005) observed impacts to local coyote populations. *See* ¶¶ 10, 12, *supra*.

16. Wildlife Services has never prepared an Environmental Impact Statement (EIS) analyzing the environmental impacts associated with its predator control activities in Idaho and disclosing them to the public. Ans. ¶¶ 59, 84, 98.

17. Instead, over the years Wildlife Services has relied on a series of piecemeal Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs) purporting to discuss impacts of various aspects of its Idaho predator killing, including but not limited to: A 1996 Central and Northern Idaho Predator Control EA, followed in 2004 by a FONSI; a 1998 EA and FONSI for Bird Damage Management in Idaho, followed by an Amendment and FONSI in 2003, and an additional Amendment and FONSI in 2006; a 2002 EA and FONSI for Predator Damage Management in Southern Idaho, followed by a “five year update” in 2007 and another FONSI in 2008; a 2004 EA and FONSI for Rodent Damage Management in Idaho; and a 2011 EA and FONSI regarding Gray Wolf Damage Management in Idaho. AR 62010-62894. These EAs purport to tier to a programmatic EIS Wildlife Services prepared in 1994. Ans. ¶ 61.

18. In addition, Wildlife Services has previously proposed twice to undertake experimental raven-killing to purportedly benefit greater sage-grouse, but abandoned those proposals after this Court declared them to be unlawful. *See Committee for Idaho’s High Desert v. Collinge*, 148 F. Supp. 2d 1097 (D. Idaho 2001); *Committee for Idaho’s High Desert v. Collinge*, No. 1:02-cv-172-BLW (D. Idaho March 4, 2003), ECF No. 73 (Memorandum Decision).

19. In June 2015, Wildlife Services issued a Draft *Environmental Assessment for Predator Damage and Conflict Management in Idaho* (Draft EA), purporting to disclose and analyze the impacts of its predator damage management activities in Idaho, except for wolf control actions, removal of starlings, or removal of beavers and other rodents which are

addressed in other NEPA documents listed above. AR 32097-32382 (Draft EA).

20. The June 2015 Draft EA discussed five alternatives: (1) continuing Wildlife Services' existing activities in Idaho; (2) ceasing its activities; (3) providing non-lethal assistance only; (4) providing non-lethal assistance before any lethal control; and (5) the "preferred" alternative, expanding its existing activities to encompass killing predators at the request of IDFG to "protect" game species. AR 32195 (Draft EA, listing alternatives).

21. The preferred alternative in the Draft EA included expanding Wildlife Services' existing predator control actions to including killing native wildlife at the request of IDFG to supposedly benefit other desired wildlife species, including a new proposal to kill ravens and other predators for the purported benefit of greater sage-grouse, and to likewise kill native predators to supposedly benefit Columbian sharp-tailed grouse, mule and white-tailed deer, bighorn sheep, pronghorn antelope, northern and southern Idaho ground squirrels, ring-necked pheasants, and "waterfowl." AR 32099-100 (listing target predators and wildlife to be "protected"). It also claimed Wildlife Services might conduct other, unidentified predator control activities so long as it determined their cumulative impacts would be within the range considered in the EA. AR 32203 (Draft EA).

22. The Draft EA provided no specific details or locations for these proposed predator killing actions to supposedly benefit sage-grouse and other wildlife, saying only that Wildlife Services would respond to requests in the future from IDFG. AR 32124, 32203.

23. Through the public comment period held on the Draft EA, Wildlife Services received overwhelmingly critical feedback from both the public and other federal and state agencies, including BLM, USFS, US Fish and Wildlife Service (FWS) and the Idaho Department of Fish and Game (IDFG). *See* AR 30737-31001 (FWS Comments), AR 31267-31531 (BLM

Comments), AR 31002-31266, 31795-32057 (USFS Comments), AR 32058-70 (IDFG Comments). Wildlife Services received hundreds of public comments, the vast majority of which opposed the proposed activities. AR 32393-35090.

24. Many of the critical comments exposed Wildlife Service's one-sided and biased treatment of the Draft EA's proposed preferred alternative. BLM wrote: "The document thus far does not read like a real analysis of the potential [Predator Damage Management] outside of lethal methods. Instead, it sounds like a pre-decisional defense of lethal methods, and fails to consider the real benefits of alternative approaches." AR 31350. IDFG's large carnivore coordinator echoed this sentiment:

This is a very complete look at the potential impacts of control actions from one perspective and builds a nice case for conducting PM in Idaho. It does not however provide an adequate perspective of enormous availability of literature and research that shows the ineffectiveness or neutral benefit of the actions, thus bringing to question the objectiveness of the EA.

AR 32058 (emphasis added). The Forest Service commented "[t]here is a weakness in this document in that by portraying only one side of the issue, and cherry picking papers, it is assuming that there is not controversy." AR 31086.

25. Reviewers also lambasted Wildlife Services' inadequate and unscientific assessment of the likely ecological effects of its proposed actions. The Forest Service wrote, "[t]he effectiveness and efficiency of predator control for actually limiting damage is quite controversial." AR 31083. BLM noted, "there is no guarantee that predator control will have the intended impact on prey populations." AR 31292. Regarding the Draft EA's trophic cascades section, the Forest Service commented:

Idaho WS Impact on Biodiversity and Impact on Trop[h]ic Cascades seem to be written off in too broad and unsubstantiated way[s] thus dismissing the need to seriously consider if these issues warrant being considered in detail. Ironically, these are some of the issues that are important for WS to address to better show how their activities are or are not

affecting these processes.

AR 31071. Similarly, BLM stated:

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

AR 31292; *see also* AR 31341. It added, “This dismisses a large body of evidence that predator removal can have indirect effects on local ecological systems.” AR 31336.

26. FWS expressed deep discomfort with the Draft EA’s treatment of the indirect effects on raptors from using lead shot to kill coyotes, explaining “we strongly recommend discussing in detail that lead bullets fragment in a shot animals, that many raptors/eagles can feed off of one single carcass, and that a very, very small amount of lead (tiny fragment) can kill an eagle.” AR 32075-76. It suggested including: “1) A commitment to make every effort practical to recover and/or properly dispose of all animals shot with lead ammunition, regardless of animal size, and, if this is not possible, to use non-toxic ammunition, OR 2) a commitment to phase-out the use of any lead ammunition and phase-in the use of non-toxic shot in areas for all WS activities.” AR 32076.

27. Reviewers also raised serious concerns that Wildlife Services’ proposal to kill ravens and other sage-grouse predators to benefit sage-grouse would not work. *E.g.*, AR 31295 (BLM Comments). IDFG suggested removing reference to its own 2015 raven control study, admitting “[i]t is unlikely we will be able to demonstrate benefits to sage-grouse.” AR 32059. Plaintiffs’ comments explained that predator damage management to benefit sage-grouse is unjustified and not supported by the relevant science. AR 33681-82.

28. Comments from federal agencies and the public reflected widespread concern that

Wildlife Services would not coordinate with federal land management agencies before conducting activities, or that its activities might violate the agencies' statutory management mandates. *See* AR 31201 (USFS Comments), 31206 (USFS Comments), 31437 (BLM Comments), 31328 (BLM Comments), 33677-81 (Plaintiffs' Comments).

29. The Draft EA's discussion on the humaneness of its methods also raised red flags with reviewers. BLM recommended replacing the "outdated" citations to Schmidt (1989) and (1992) in the humaneness section, because "the discussion has changed over the last 25 years." AR 31442; *see also* AR 31444-45 (pointing out "dated" cites). The Forest Service commented: "In this section there needs to be discussion about following trap check times. It has been an issue in the past." AR 31115; *see also* AR 31444 (BLM recommending discussion of trapping in humaneness section). IDFG raised this issue as well. AR 32067; *see also* AR 32062 (IDFG stating Wildlife Services should comply with trap check times). IDFG also recommended that pan-tension devices to be used to prevent trapping non-target animals near animal carcasses should be described in detail, "otherwise it'll just (continue to) be ignored." AR 32063.

30. Wildlife Services released its Final EA and Decision/Finding of No Significant Impact (FONSI) in late November 2016. AR 37156 (Final EA), AR 37630 (Decision/FONSI). The Final EA and Decision/FONSI discussed and adopted the preferred alternative virtually unchanged from the Draft EA, and determined it would have no significant impact on the environment. *Id.* In one of a few minor modifications to the preferred alternative, Wildlife Services committed to stop using sodium cyanide ejector devices called M-44s on public lands in Idaho, but a fourteen year-old boy was injured by one of the devices and his dog was killed while walking on public lands, just a few months later. Ans. ¶¶ 41, 82.

Dated: January 26, 2018

Respectfully submitted,
/s/ Talasi B. Brooks

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