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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RALPH MAUGHAN, DEFENDERS OF WILDLIFE, WESTERN WATERSHEDS PROJECT, and WILDERNESS WATCH, Plaintiffs, v. TOM VILSACK, U.S. Secretary of Agriculture; TOM TIDWELL, Chief, U.S. Forest Service; NORA RASURE, Regional Forester of Region Four of the U.S. Forest Service; KEITH LANNOM, Payette National Forest Supervisor; and VIRGIL MOORE, Director, Idaho Department of Fish and Game, Defendants.	Case No. 4:14-cv-00007-EJL **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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INTRODUCTION

This case challenges the U.S. Forest Service's disregard of its legal duties to manage and protect the Frank Church-River of No Return Wilderness ("Frank Church Wilderness"). The Forest Service has violated these duties by allowing, authorizing, and facilitating an Idaho Department of Fish and Game ("IDFG") program to exterminate two packs of gray wolves in the Wilderness in an attempt to inflate elk populations for the benefit of commercial outfitters and recreational hunters. Congress has imposed substantive restrictions on the activities the Forest Service may undertake and authorize in federal wilderness areas, as well as mandatory environmental review and public comment procedures to ensure that management of wilderness resources conforms to those substantive restrictions and is fully informed and transparent. By allowing the extermination of two packs of gray wolves in the Frank Church Wilderness, and doing so without formal agency or public review, the Forest Service has violated the National Forest Management Act ("NFMA"), 16 U.S.C. § 1604(i); the Wilderness Act, 16 U.S.C. § 1133(b); the Service's permitting regulations, 36 C.F.R. §§ 251.50-251.65; and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(2)(C).

By this motion, plaintiffs Ralph Maughan, Defenders of Wildlife, Western Watersheds Project, and Wilderness Watch seek temporary and preliminary injunctive relief to halt this wolf extermination program to prevent irreparable environmental harm until the Court can fully adjudicate this case. As set forth below, plaintiffs are likely to prevail on the merits, immediate injunctive relief is essential to avoid irreparable environmental harm, and both the balance of equities and the public interest support an injunction. Because IDFG's wolf extermination program in the Frank Church Wilderness is ongoing and the targeted wolf packs could be exterminated at any time, plaintiffs request immediate relief from this Court to preserve the status quo and the targeted wolf packs pending a full adjudication of their claims. The Court

should issue a temporary restraining order and preliminary injunction to prohibit the Forest Service and IDFG from authorizing, facilitating or conducting any wolf extermination activities in the Frank Church Wilderness pending a final judgment in this case.

BACKGROUND

The Frank Church-River of No Return Wilderness is a 2.4-million-acre complex of rugged mountains, deep canyons, and wild rivers constituting the largest forested wilderness area in the lower-48 states. Congress recognized the "immense national significance" of "the famous 'River of No Return'" and the surrounding wild lands by creating the Frank Church Wilderness in 1980. Central Idaho Wilderness Act of 1980, P.L. 96-312, 94 Stat. 948, 96th Cong. (1980). In so doing, Congress specifically sought "to provide statutory protection for the lands and waters and the wilderness-dependent wildlife and the resident and anadromous fish which thrive within this undisturbed ecosystem." Id. § 2(a)(2). The Frank Church Wilderness harbors abundant wildlife populations, including wolverines, elk, bighorn sheep—and gray wolves, a once-extirpated native species that was restored to the wilderness through a 1995 federal reintroduction program.

The gray wolf is an important element of the wilderness character of the area. The U.S. Forest Service, which administers the Frank Church Wilderness, has explicitly recognized "the importance of wolf recovery to enhancement of wilderness character" in the Frank Church Wilderness. Wolf Recovery Found. v. U.S. Forest Serv., 692 F. Supp. 2d 1264, 1266 (D. Idaho 2010) (quoting Forest Service decision memorandum). On that basis, the Forest Service in 2010 successfully defended before this Court a decision authorizing IDFG to dart and collar wolves from helicopters in the Frank Church Wilderness; the Court held that man's attempt "to restore the wilderness character of the area by returning the wolf" justified limited use of a helicopter for wilderness administration under the Wilderness Act, 16 U.S.C. § 1133(c). 692 F. Supp. 2d at

1268. Based on the most recent information available, the portion of the Frank Church Wilderness encompassing the Middle Fork of the Salmon River is home to six documented wolf packs, including two packs occupying the tributary Big Creek drainage, the Golden Creek and Monumental Creek packs. See Declaration of Timothy Preso ("Preso Decl.") Ex. 2 at 10, 44 (IDFG & Nez Perce Tribe, 2012 Idaho Wolf Monitoring Progress Report (2013)).

In mid-December 2013, IDFG initiated a program to eliminate the Golden Creek and Monumental Creek packs in order to inflate elk populations for the benefit of commercial outfitters and recreational hunters. See Preso Decl. Ex. 3 (Rocky Barker, Idaho Fish and Game turns to hired hunter, Idaho Statesman, Dec. 17, 2013), Ex. 4 (Letter from Virgil Moore, IDFG Director, to Nora Rasure, Regional Forester (Dec. 27, 2013)). To that end, IDFG dispatched a hired hunter-trapper into the Frank Church Wilderness to kill the wolves in these packs. See Preso Dec. Exs. 3 (Barker article). IDFG's program does not involve recreational hunting, but rather professional extermination of two wolf packs.

Under the Wilderness Act, the Forest Service must protect and manage the Frank Church Wilderness "so as to preserve its natural conditions," 16 U.S.C. § 1131(c), and is "responsible for preserving its wilderness character," High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630, 646 (9th Cir. 2004) (citing 16 U.S.C. § 1133(b)). To implement that directive, the Forest Service's own binding management plan for the Frank Church Wilderness requires that "[c]ontrol of problem animals will be permitted only on a case-by-case basis in coordination with the Idaho Department of Fish and Game, [the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS")]-Wildlife Services and the U.S. Fish and Wildlife Service, and with Regional Forester approval." Preso Decl. Ex. 1 at 2-28 (U.S. Forest Serv., Frank Church-River of No Return Wilderness Mgmt. Plan (Dec. 2003)). The forest plan's inter-agency

coordination and elevated decision-making protocol provides an essential safeguard to ensure protection of the Frank Church Wilderness, as Forest Service guidance on Wilderness Act compliance contained in an appendix to the wilderness management plan makes clear that "[w]ildlife damage control in wilderness" must be carefully limited. Id., Appendix I at I-10. The guidance counsels that "wildlife damage control" may be pursued only "to protect Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock"; conspicuously absent is any provision for "damage control" to promote commercial outfitting or recreational hunting. Id. Moreover, the guidance states that "[w]ildlife damage control must be approved by the administering agency on a case-by-case basis." Id.

Nevertheless, when contacted by IDFG about its wolf extermination program in the Frank Church Wilderness, the Forest Service took no steps to safeguard the area's wilderness character or even to consider the impacts threatened by IDFG's planned activities. Instead, the agency sent an email to IDFG authorizing IDFG's hunter-trapper to utilize a Forest Service airstrip to access the wilderness and a Forest Service cabin as a base of operations for his program to eliminate the Golden Creek and Monumental Creek packs. See Preso Dec. Ex. 3 (Barker article); Declaration of Gary Macfarlane ¶ 6. Because the Forest Service provided no public notice or opportunity for public involvement in this action, plaintiffs were required to independently investigate the agency's conduct over the recent holiday period and have moved as expeditiously as possible to bring this matter before the Court.

Because of the Forest Service's action, today IDFG's hunter-trapper is in the Frank Church Wilderness, operating from a Forest Service cabin as he actively pursues a program designed to eliminate wolves that the Forest Service itself previously asserted are vital "to

enhancement of wilderness character." Wolf Recovery Found., 692 F. Supp. 2d at 1266 (quoting Forest Service decision memorandum). Because wolf extermination activities in the wilderness are ongoing, plaintiffs seek an order from this Court to halt the wolf extermination program until this Court can fully adjudicate plaintiffs' claims.

ARGUMENT

This Court should issue a temporary restraining order and preliminary injunction to prohibit the Forest Service and IDFG from conducting, authorizing, or facilitating any wolf extermination program or activities in the Frank Church Wilderness pending a final judgment in this case. This Court recently summarized the requirements for issuance of such relief:

> To obtain a temporary restraining order, Plaintiffs must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to them in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. Winter v. Natural Res. Def. Council, 555 U.S. 7, 20-23 (2008). The Ninth Circuit has held that "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2001). Under this approach, "serious questions going to the merits" requires more than showing that "success is more likely than not;" it requires a plaintiff to demonstrate a "substantial case for relief on the merits." Leiva-Perez v. Holder, 640 F.3d 962, 967-68 (9th Cir. 2011).

Wildearth Guardians v. Mark, 2013 WL 6842771, at *3 (D. Idaho Dec. 27, 2013) (attached as Preso Decl. Ex. 8). Plaintiffs satisfy all such requirements.[1]

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

First, plaintiffs are likely to succeed on the merits of their claims. The Forest Service's authorization for IDFG to use the Service's cabin and airstrip for purposes of carrying out a wolf extermination program within the Frank Church Wilderness necessarily reflects approval of that

[1] Plaintiffs' standing to sue is demonstrated by the attached declarations of Kenneth Cole, Gary Macfarlane, Ron Marquart, Ralph Maughan, and Suzanne Stone.

program. That approval was arbitrary, capricious and unlawful under NFMA, the Wilderness Act, the agency's permitting regulations, and NEPA and should be set aside pursuant to 5 U.S.C. § 706(2)(A). Alternatively, the Forest Service's failure to take discrete, mandatory actions to protect the wilderness character of the Frank Church Wilderness constitutes "agency action unlawfully withheld," which this Court should compel pursuant to 5 U.S.C. § 706(1).

A. The Forest Service Violated the National Forest Management Act

The Forest Service's conduct violated NFMA because it flouts the governing land and resource management plan for the Frank Church Wilderness. NFMA prohibits Forest Service action that is inconsistent with the governing forest plan. Lands Council v. McNair, 537 F.3d 981, 989 (9th Cir. 2008) (en banc); see 16 U.S.C. § 1604(i) (all "instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans"). Accordingly, the Forest Service's failure to undertake the mandatory procedures required by the governing forest plan before approving IDFG's wolf extermination program violated NFMA.

The forest plan for the Payette National Forest, which encompasses the Big Creek/Middle Fork area of the Frank Church Wilderness where the Golden Creek and Monumental Creek wolf packs are located, requires the Forest Service to manage the Wilderness in compliance with the Frank Church-River of No Return Wilderness Management Plan. Preso Decl. Ex. 5 at III-274 (U.S. Forest Serv., Revised Land and Resource Mgmt. Plan for the Payette Nat'l Forest (2003)). The Frank Church Wilderness Management Plan, in turn, prohibits Forest Service approval of action to control "problem animals" within the wilderness unless and until the Forest Service (1) coordinates with IDFG, APHIS-Wildlife Services, and the U.S. Fish and Wildlife Service; and (2) secures the approval of the Regional Forester. Preso Decl. Ex. 1 at 2-28 (Frank Church Wilderness Management Plan) (emphasis added).

The Forest Service disregarded these mandates. The Forest Service did not coordinate with APHIS-Wildlife Services or the U.S. Fish and Wildlife Service. Nor did it obtain approval for the IDFG program from the Regional Forester. Instead, the Forest Service simply sent IDFG an email authorizing use of a Forest Service cabin as a base for operations that will degrade the wilderness character of the Frank Church Wilderness. See Preso Dec. Ex. 3 (Barker article); Declaration of Gary Macfarlane ¶ 6. That authorization necessarily reflected the Forest Service's approval of IDFG's program. See Idaho Rivers United v. U.S. Forest Serv., No. 1:11-CV-95-BLW, slip op. at 9 (D. Idaho Mar. 9, 2012) (holding that by refusing to block mega-load convoy transport through national forest or to halt tree-trimming needed to facilitate transport, "the Forest Service essentially approved the convoy's procession") (attached as Preso Decl. Ex. 9). The Forest Service's approval of IDFG's wolf extermination program in the Frank Church Wilderness constituted final agency action that violated NFMA by failing to comply with the governing forest plan. See 16 U.S.C. § 1604(i); Lands Council v. Powell, 395 F.3d 1019, 1034, 1037 (9th Cir. 2004) (vacating Forest Service's action where inconsistent with governing forest plan).

Alternatively, the Forest Service's failure to undertake the inter-agency coordination and Regional Forester review procedures required by the governing forest plan constitutes "agency action unlawfully withheld." 5 U.S.C. § 706(1). The plan's approval, coordination, and decision-making requirements constitute "discrete agency action that [the Forest Service] is required to take" under NFMA, and which this Court should compel under the APA. Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 64 (2004) (emphasis in original); see id. at 71 (recognizing that "an action called for in a plan may be compelled … when language in the plan itself creates a commitment binding on the agency").

B. The Forest Service Violated the Wilderness Act

The Forest Service violated the Wilderness Act, 16 U.S.C. §§ 1131-1136, by allowing IDFG to undertake a program to exterminate two packs of native gray wolves from the Frank Church Wilderness—wolves that the Service and this Court have recognized are significant to the area's wilderness character. See Wolf Recovery Found., 692 F. Supp. 2d at 1266, 1268. The Wilderness Act imposes an enforceable duty on the Service to preserve the wilderness character of the Frank Church Wilderness. 16 U.S.C. § 1133(b); High Sierra Hikers, 390 F.3d at 646 ("The agency charged with administering a designated wilderness area is responsible for preserving its wilderness character."). That mandate prohibits the Service from undertaking or authorizing actions—such as the extermination of resident native wildlife—that contravene the Wilderness Act's purpose of preserving and protecting designated wilderness lands "in their natural condition." 16 U.S.C. § 1131(a); Wilderness Soc'y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1061 (9th Cir. 2003) (en banc); see also Wolf Recovery Found., 692 F. Supp. 2d at 1268 (acknowledging that, to satisfy the Wilderness Act, the Service's wilderness management activities and those it authorizes "must further the wilderness character of the area").

The extermination of gray wolves in the Frank Church Wilderness in an effort to inflate the elk population for the benefit of commercial outfitters and hunters cannot be reconciled with the mandates of the Wilderness Act. In defining wilderness and the Service's obligation to preserve it, Congress made clear that wilderness is characterized by minimal human influence on the landscape and its natural processes. See 16 U.S.C. § 1131(c) (defining wilderness as an area "where the earth and its community of life are untrammeled by man" and which retains its "primeval character and influence"). The Act sets forth a "broad mandate to protect the forests, waters and creatures of the wilderness in their natural, untrammeled state." Wilderness Soc'y, 353 F.3d at 1061-62 (citing 16 U.S.C. § 1131) (emphasis added); see also Central Idaho

Wilderness Act of 1980, P.L. 96-312, 94 Stat. 948, 96th Cong., § 2(a)(2) (congressional statement that its intent in establishing the Frank Church Wilderness was to protect "wilderness-dependent wildlife"). Accordingly, the Wilderness Act's implementing regulations require the Service to ensure that "[n]atural ecological succession will be allowed to operate freely to the extent feasible." 36 C.F.R. § 293.2(a). Further, the Service must ensure that "wilderness values will be dominant" over any other resource considerations absent contrary instruction from the Wilderness Act itself or other applicable law. Id. § 293.2(c).

IDFG's stated purpose in exterminating the Golden Creek and Monumental Creek wolf packs is antithetical to these statutory and regulatory mandates. IDFG aims to manipulate the natural relationships between wolves and elk in the Frank Church Wilderness by removing wolves from the ecological equation, thereby producing more elk for commercial outfitters and recreational hunters than would be sustained under natural conditions. The Service's authorization of such a program turns its obligations under the Wilderness Act on their head. Rather than discharge its duty to ensure that "wilderness values will be dominant" and "[n]atural ecological succession will be allowed to operate freely," id. § 293.2(a), (c), the Service has sanctioned a program to manipulate the processes of ecological succession and elevate commercial and recreational interests above wilderness values. This the Service cannot do. See High Sierra Hikers, 390 F.3d at 648 (affirming that, "[a]lthough the [Wilderness] Act stresses the

importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use as wilderness") (emphasis in original).[2]

As described above, the Forest Service's plan for managing the Frank Church Wilderness consistent with the Wilderness Act places procedural restrictions on the agency's approval of actions to control "problem animals" and mitigate "wildlife damage." See Preso Decl. Ex. 6 at 12 (U.S. Forest Serv., Record of Decision for Frank Church-River of No Return Wilderness Mgmt. Plan (2003)) (identifying Wilderness Act direction for management plan). The plan prohibits actions to remove "problem animals" from the wilderness unless and until the Service undertakes coordination with IDFG, APHIS-Wildlife Services, and the U.S. Fish and Wildlife Service. Preso Decl. Ex. 1 at 2-28 (Frank Church Wilderness Mgmt. Plan). It also requires approval from the Regional Forester before such actions may proceed. Id. Further, the Service's guidance for implementing the wilderness management plan refines the substantive restrictions placed on wildlife removal actions by the Wilderness Act. That guidance states that actions to remove "problem animals" may proceed in wilderness areas only if necessary "to protect

[2] The Wilderness Act's "savings clause" does not preclude the Forest Service from prohibiting IDFG's unlawful wolf extermination program nor relieve its obligation to do so. That clause provides that nothing in the Wilderness Act "shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests." 16 U.S.C. § 1133(d)(7). The effect of the savings clause is simply to preserve states' traditional authority to regulate fish and wildlife within their borders except where such regulation conflicts with federal objectives for the management of federal public lands. See Nat'l Audubon Soc'y v. Davis, 307 F.3d 835, 854 (9th Cir. 2002) (interpreting substantially identical language from savings clause in the National Wildlife Refuge System Improvement Act); Wyoming v. United States, 279 F.3d 1214, 1231-35 (10th Cir. 2002) (same). Thus, the Service may not avoid its statutory duty to preserve the wilderness character of the Frank Church Wilderness by arguing that the savings clause prohibits it from interfering with IDFG's management of wolves on federal wilderness lands within Idaho's borders. See Meister v. U.S. Dep't of Agric., 623 F.3d 363, 378-79 (6th Cir. 2010) (rejecting Service's argument that the Wilderness Act's savings clause precluded it from closing wilderness area to hunting that was authorized under state law). A contrary conclusion that "the [federal government] lacks the power to make a decision regarding the health of wildlife on [federal public lands] when a State, for whatever reason, disagrees with that decision proves too much." Wyoming, 279 F.3d at 1233.

Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock." Id. Appendix I at 10.

IDFG's wolf extermination program does not comply with these procedural and substantive limitations on animal control actions in the Wilderness and does not promote the Wilderness Act's mandate to preserve wilderness character. Thus, the extermination program violates the Wilderness Act. See Wilderness Soc'y, 353 F.3d at 1064-65 (in reviewing a claim under the Wilderness Act, the court must ask whether the "purpose and effect" of the challenged project serves the Act's substantive mandate to preserve wilderness). The Service's authorization for IDFG to use its airstrip and cabin to carry out the wolf extermination program necessarily reflected authorization of that program and was arbitrary, capricious, and contrary to law. 5 U.S.C. § 706(2)(A). Alternatively, the Service's failure to undertake the discrete interagency coordination and Regional Forester approval procedures mandated by the wilderness management plan constitutes "agency action unlawfully withheld" in violation of the Wilderness Act that should be compelled by this Court under the APA, 5 U.S.C. §§ 704, 706(1). S. Utah Wilderness Alliance, 542 U.S. at 64; Gros Ventre Tribe v. United States, 469 F.3d 801, 814 (9th Cir. 2006).

C. The Forest Service Violated Its Own Special Use Permitting Regulations

The Forest Service also violated its own regulations governing "special uses" of national forest lands. Under Forest Service regulations, "[a]ll uses of National Forest System lands, improvements, and resources," except those specifically excluded by regulation, "are designated 'special uses.'" 36 C.F.R. § 251.50(a). Further, "[b]efore conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use

authorization from the authorized officer" unless the proposed use qualifies for and receives an explicit regulatory waiver. Id.

IDFG's wolf extermination program—which is occurring on national forest lands from a base of operations in a Forest Service facility—is a special use of national forest lands and does not qualify for any exemption or waiver from the special use permit requirement. Although "[a] special use authorization is not required for noncommercial recreational activities, such as … hunting," id. § 251.50(c) (emphasis added), IDFG's program does not involve recreational hunting. Rather, IDFG has hired a professional hunter-trapper to exterminate two wolf packs in the Frank Church Wilderness. Further, although the Forest Service may waive the special use permit requirement if an appropriate agency officer determines that the proposed use will have only "nominal effects" or "is regulated by a State agency … in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations," id. § 251.50(e)(1), (2), IDFG's wolf extermination program does not qualify for such a waiver because it will degrade wilderness character within the Frank Church Wilderness. Further, it conflicts with the Frank Church-River of No Return Wilderness Management Plan and the Forest Service's own policy guidance for compliance with the Wilderness Act, which does not allow for wolf removal in the circumstances at issue. See Preso Decl. Ex. 1 at 2-28, Appendix I at 1-10 (Frank Church Wilderness Mgmt. Plan). Accordingly, the special-use permit requirement applies.[3]

[3] As discussed above, the waivers set forth in 36 C.F.R. § 251.50(e) are inapplicable. However, any argument by the Forest Service that it invoked these waivers would only underscore the fact that the Forest Service engaged in final agency action approving IDFG's wolf extermination program in the Frank Church Wilderness because granting such a waiver requires an affirmative determination by a Forest Service officer that the proposed special use is eligible for a waiver. See id.

Nevertheless, the Forest Service defied its own regulatory requirements. The Forest Service received a request from IDFG to use a Forest Service airstrip and cabin to facilitate the extermination of two wolf packs from the Frank Church Wilderness. See Macfarlane Decl. ¶ 6; Preso Decl. Ex. 4 (Moore letter). Under the regulations described above, receipt of that proposal required the Forest Service to "screen the proposal to ensure that the use meets" minimum requirements, including that "[t]he proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands" and "with standards and guidelines in the applicable" forest plan. 36 C.F.R. § 251.54(e)(1)(i), (ii). Upon finding that any proposed use does not satisfy these requirements, "the authorized officer shall advise the proponent that the use does not meet the minimum requirements" and no permit may be issued. Id. § 251.54(e)(2) (emphasis added). Instead of following these mandates, the Forest Service bypassed its special use permitting requirements entirely and sent an email to IDFG approving use of its airstrip and cabin to carry out the wolf extermination program—despite the obvious conflict between that program and applicable laws, regulations, policies, and the governing forest plan for the Frank Church Wilderness.

The Forest Service's approval of IDFG's proposal and associated wolf extermination program constituted final agency action in violation of the Forest Service's own special use permitting regulations. See 36 C.F.R. § 251.50, 251.54. Alternatively, the Forest Service's regulatory obligations to require a special-use permit; to screen IDFG's proposal for consistency with applicable laws, regulations, policies, and the governing forest plan; and to deny a permit for a proposal that is inconsistent with such authorities are "discrete agency action[s] that [the Forest Service] is required to take," and which this Court should compel under 5 U.S.C. § 706(1). S. Utah Wilderness Alliance, 542 U.S. at 64 (emphasis in original).

D. The Forest Service Violated the National Environmental Policy Act

The Forest Service's failure to conduct any environmental review of its decision to facilitate and approve IDFG's wolf extermination program within the Frank Church Wilderness violated NEPA. NEPA is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). It requires federal agencies to consider environmental harms and the means of preventing them in an Environmental Impact Statement ("EIS") before approving "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). To determine whether a proposed federal action will "significantly affect" the environment, the responsible agency may first prepare an environmental assessment, which is a less exhaustive study of the proposed action, its impacts, and alternatives. 40 C.F.R. §§ 1501.4, 1508.9.

Here the Forest Service conducted no NEPA analysis whatsoever to inform its decision to approve an activity that will degrade the wilderness character of one of the premiere wilderness areas of the United States. This failure violated NEPA. IDFG's extermination of two wolf packs and associated degradation of wilderness character within the Frank Church Wilderness will have significant environmental effects. See, e.g., 40 C.F.R. § 1508.27(b)(3), (10) (determination of "significance" under NEPA requires consideration of "[u]nique characteristics of the geographic area such as proximity to … ecologically critical areas" and threatened "violation of a Federal … law or requirements imposed for the protection of the environment").

Further, the extermination program involves "major Federal action." The fact that IDFG rather than the Forest Service is carrying out the wolf extermination program is immaterial to the Service's NEPA obligation. Under NEPA, "major Federal action" triggering the EIS requirement "includes actions with effects that may be major and which are potentially subject to Federal control and responsibility." 40 C.F.R. § 1508.18. This definition embraces "projects

and programs entirely or partly … assisted, … regulated, or approved by federal agencies," id. § 1508.18(a), including "[a]pproval of specific projects" such as "actions approved by permit or other regulatory decision as well as … federally assisted activities," id. § 1508.18(b)(4).

Accordingly, even if the Forest Service had approved nothing more than IDFG's use of a federal airstrip and cabin, the Service violated NEPA by unleashing the direct and indirect effects of that approval—i.e., the state's wolf extermination program in the Frank Church Wilderness—without undertaking any environmental analysis to inform its decision. See Save Our Sonoran, Inc. v. Flowers, 408 F.3d 1113, 1122 (9th Cir. 2005) (holding that, even where agency's permitting authority extended only to waters falling under federal jurisdiction, "it is the impact of the permit on the environment at large that determines the [agency's] NEPA responsibility"); see also 40 C.F.R. §§ 1508.8, 1508.18 (requiring consideration of direct and indirect effects in identifying "major Federal action"). Moreover, the Forest Service's action necessarily reflected the agency's approval of IDFG's wolf extermination program itself, representing a further agency action undertaken in violation of NEPA.

Alternatively, "major Federal action" includes "the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts … under the Administrative Procedure Act … as agency action." 40 C.F.R. § 1508.18; see Ramsey v. Kantor, 96 F.3d 434, 445 (9th Cir. 1996) ("It is clear from federal regulations that federal inaction can count as federal action for purposes of triggering the EIS requirement under NEPA."). Here, the Forest Service's failure to undertake the discrete inter-agency coordination and Regional Forester approval procedures mandated by NFMA, the Wilderness Act, and the governing forest plan, as well as its failure to satisfy the discrete regulatory requirements imposed by the agency's special use permitting regulations, constitutes agency action unlawfully withheld that is reviewable by this

Court under 5 U.S.C. § 706(1). Accordingly, the Forest Service's failure to undertake these mandatory procedures before allowing IDFG's wolf extermination program to proceed constitutes "major Federal action" triggering NEPA requirements, and its disregard of those requirements violated NEPA.

II. INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IRREPARABLE ENVIRONMENTAL HARM

Injunctive relief is necessary to prevent likely irreparable environmental harm. "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 545 (1987).

Here, plaintiffs have a documented interest in the wilderness character of the Frank Church Wilderness, including specifically the Big Creek/Middle Fork area and the wolves constituting the Golden Creek and Monumental Creek wolf packs. See Cole Decl. ¶¶ 6-9, 11; Macfarlane Decl. ¶¶ 3-5, 8; Marquart Decl. ¶¶ 3-4; Maughan Decl. ¶¶ 5-8, 10-11, 14; Stone Decl. ¶¶ 8-11, 15. The ongoing program to eliminate the Golden Creek and Monumental Creek wolf packs and the resulting degradation of wilderness character in the Frank Church Wilderness present an imminent, actual, and ongoing threat of irreparable injury to plaintiffs' interest. See High Sierra Hikers, 390 F.3d at 642 (affirming injunction upon finding that "environmental injury to the wilderness areas [was] 'likely'" due to "a reduction in the population of sensitive species"; "The record clearly supports the likelihood of continued injury absent adequate protective measures.").

The situation here is not akin to that addressed by the Court's recent decision in Wildearth Guardians v. Mark, where plaintiffs seeking to halt a wolf-killing derby did not

demonstrate that "they will suffer harm other than what might ordinarily occur during a successful hunting season within lawful limits prescribed by the state of Idaho." 2013 WL 6842771, at *5. Here, IDFG undertook its extraordinary wolf extermination program in the Frank Church Wilderness specifically because "[s]port hunters have a hard time getting into the area" and therefore were not successful in killing as many wolves as IDFG desired. Preso Decl. Ex. 3 (Barker article). IDFG therefore dispatched a professional hunter-trapper into the wilderness to inflict greater wolf losses than any "successful hunting season within lawful limits prescribed by the state of Idaho" might achieve. Wildearth Guardians, 2013 WL 6842771, at *5; see Preso Decl. Ex. 3 (Barker article). The ongoing threat of such losses and their harmful impact on the wilderness character of the Frank Church Wilderness, one of the premier wilderness areas in the United States, amply demonstrates a threat of irreparable environmental injury warranting injunctive relief.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SUPPORT AN INJUNCTION

The balance of equities and the public interest in preserving the wilderness character of the Frank Church Wilderness also support issuance of injunctive relief. As to the balance of equities, the asserted reason for eliminating the Golden Creek and Monumental Creek wolf packs is to inflate elk numbers to meet IDFG's population goals. See Preso Decl. Exs. 3 (Barker article), 4 (Moore letter). Yet the entire reason why IDFG deemed an affirmative wolf extermination program necessary to achieve its desired elk population is that too few sport hunters choose to enter the remote Big Creek/Middle Fork area to remove wolves through recreational hunting. See id. Indeed, IDFG's own data show that the Middle Fork region hosts some of the lowest elk hunter densities in the state. See Preso Decl. Ex. 7 at 8 (IDFG, Draft Idaho Elk Mgmt. Plan (Dec. 2013)). The limited number of hunters affected by IDFG's

perceived elk shortfall diminishes the weight of IDFG's asserted countervailing interest. In any event, IDFG's most recent survey data revealed a population of more than 4,200 elk in the Middle Fork area, see id. at 97; IDFG's desire to boost elk numbers even higher—beyond the number that is naturally maintained when "the earth and its community of life are untrammeled by man," 16 U.S.C. § 1131(c)—cannot outweigh the mandate to preserve wilderness character within an area designated by Congress for that express purpose, see id. §§ 1131(c), 1133(b).

As to the public interest, the Ninth Circuit's analysis of that issue in High Sierra Hikers is controlling here:

> Congress has recognized through passage of the Wilderness Act, 16 U.S.C. §§ 1131-1136, that there is a strong public interest in maintaining pristine wild areas unimpaired by man for future use and enjoyment. Because Congress has recognized the public interest in maintaining these wilderness areas largely unimpaired by human activity, the public interest weighs in favor of equitable relief.

390 F.3d at 643.

IV. THIS COURT SHOULD ISSUE THE REQUESTED INJUNCTION

To prevent irreparable environmental harm to plaintiffs and the wilderness character of the Frank Church Wilderness, this Court should issue a temporary restraining order and preliminary injunction to prohibit the Forest Service and IDFG from authorizing, facilitating, or conducting any wolf extermination activities in the Frank Church Wilderness pending a final judgment in this case. Because killing of wolves in the Frank Church Wilderness pursuant to the defendants' unlawful actions is ongoing, plaintiffs seek a ruling at the earliest possible time.

In this regard, defendant Virgil Moore, director of IDFG, is properly joined as a defendant in this case pursuant to the Federal Rules of Civil Procedure to effectuate complete relief and to avoid imposition of inconsistent obligations. See Nat'l Wildlife Fed'n v. Espy, 45 F.3d 1337, 1344-45 (9th Cir. 1995) (holding that purchasers of property were properly joined

under Rule 19 in an action challenging property transfer by federal agencies); League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency, 558 F.2d 914, 917-18 (9th Cir. 1977) (holding that permissive joinder of developers who received challenged agency approvals was proper). Further, this Court may issue injunctive relief that extends to defendant Moore where, as here, such relief is necessary to vindicate rights afforded by federal law. See S. Carolina Wildlife Fed'n v. Limehouse, 549 F.3d 324, 330 (4th Cir. 2008) ("[F]ederal courts have a form of pendent jurisdiction based upon necessity over claims for injunctive relief brought against state actors in order to preserve the integrity of federal remedies.") (quotations, alteration, and citation omitted); Fund for Animals v. Lujan, 962 F.2d 1391, 1397 (9th Cir. 1992) ("Nonfederal actors may … be enjoined under NEPA if their proposed action cannot proceed without the prior approval of a federal agency."); Sierra Club v. Hodel, 848 F.2d 1068, 1096-97 (10th Cir. 1988) (affirming injunction prohibiting county from continuing road construction bordering a wilderness study area pending federal action to protect wilderness character), overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh, 956 F.2d 970 (10th Cir. 1992).[4]

V. NO BOND SHOULD BE REQUIRED IN THIS PUBLIC INTEREST CASE

In issuing the requested injunctive relief, the Court should impose no, or only a nominal, bond requirement. Under Federal Rule of Civil Procedure 65(c), "it is well settled" that courts have "wide discretion" in setting the amount of the bond. Wilderness Soc'y v. Tyrrel, 701 F. Supp. 1473, 1492 (E.D. Cal 1988) (quoting Natural Res. Defense Council v. Morton, 337 F. Supp. 167, 168 (D.D.C. 1971)). Where, as here, plaintiffs are non-profit organizations or individual citizens seeking an injunction to vindicate an established public interest in

[4] The Eleventh Amendment poses no bar to defendant Moore's joinder. See Ex parte Young, 209 U.S. 123, 159-60 (1908) (holding that private individuals may sue state officials for prospective relief against ongoing violations of federal law); Nat'l Audubon Soc'y, 307 F.3d at 847 (same).

environmental protection, courts routinely waive the bond requirements or impose a nominal bond. See Wilderness Soc'y, 701 F. Supp. at 1492 (setting $100 bond); California ex rel. Van De Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985) (requiring no bond); Friends of the Earth v. Brinegar, 518 F.2d 322, 323 (9th Cir. 1975) (reversing the district court's unreasonably high bond because it served to thwart citizen actions); League of Wilderness Defenders v. Zielinski, 187 F. Supp. 2d 1263, 1272 (D. Or. 2002) (no bond). This Court should do likewise.

CONCLUSION

For the foregoing reasons, plaintiffs Ralph Maughan, Defenders of Wildlife, Western Watersheds Project, and Wilderness Watch respectfully request that this Court grant their motion for a temporary restraining order and preliminary injunction and immediately issue injunctive relief prohibiting the Forest Service and IDFG from conducting, authorizing, or facilitating any wolf extermination program or activities in the Frank Church Wilderness pending a final judgment in this case.

Respectfully submitted this 7th day of January, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2014, I caused the foregoing document to be served by email on the following:

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In addition, I caused the foregoing document to be served on the following by first-class mail, postage prepaid, addressed as follows:

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