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

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WILDERNESS WATCH, FRIENDS OF THE))
CLEARWATER, and WESTERN))
WATERSHEDS PROJECT,))
)) Case No. 4:16-cv-12
Plaintiffs,))
))
v.)) COMPLAINT FOR DECLARATORY AND
)) INJUNCTIVE RELIEF
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; and CHARLES))
MARK, Salmon-Challis National Forest))
Supervisor,))
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Defendants.))
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INTRODUCTION

1. This case challenges the January 6, 2016, decision by the U.S. Forest Service to authorize unprecedented helicopter intrusions into the Frank Church-River of No Return Wilderness (the “River of No Return”), a federally protected wilderness area in central Idaho. The challenged decision permits the Idaho Department of Fish and Game (“IDFG”) to make approximately 120 helicopter landings in the remote Middle Fork Zone of the River of No Return to facilitate the placement of radio telemetry collars on sixty wild elk. So far as plaintiffs are aware, this is the most extensive helicopter intrusion on wilderness character that has ever been authorized in the National Wilderness Preservation System. IDFG asserts that elk numbers in the River of No Return have declined unacceptably from their levels in the 1990s, before the reintroduction of gray wolves to the wilderness landscape and the associated restoration of natural predator-prey dynamics. The objective of IDFG’s elk-collaring project is to collect data indicating the causes of elk population decline—which IDFG hypothesizes is largely attributable to what it terms “excessive” predation by native wolves—that will inform IDFG’s decisions concerning hunting, trapping, and “predator control” actions in the wilderness.

2. As defined by Congress in the Wilderness Act, “[a] wilderness, in contrast with those areas where man and his own works dominate the landscape, is ... an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c). The Wilderness Act charges the Forest Service, as federal steward of the River of No Return, with a duty to preserve the area’s wilderness character. Id. § 1133(b). To that end, the Act prohibits the Forest Service from conducting or authorizing specific activities in wilderness areas that Congress determined are antithetical to wilderness character—including helicopter landings and placement of installations such as radio telemetry

collars on wildlife—unless “necessary to meet minimum requirements for the administration of the area” as wilderness. Id. § 1133(c).

3. The Forest Service’s authorization for IDFG to conduct helicopter-assisted elk collaring in the River of No Return violates the Wilderness Act and its implementing regulations because facilitating IDFG’s wildlife-management objectives is not necessary to meet minimum requirements for administering the River of No Return as wilderness. To the contrary, IDFG’s wildlife-management plans, which call for the extermination of sixty percent of the gray wolves in the Middle Fork Zone in order to inflate elk numbers for the benefit of commercial outfitters and recreational hunters, are antithetical to the Wilderness Act’s mandate to preserve the River of No Return’s “untrammled” quality and “natural conditions.” Id. § 1131(c). Even assuming that facilitating IDFG’s wildlife-management goals were necessary to preserve the River of No Return as wilderness, which is not so, the Forest Service failed to demonstrate that IDFG’s helicopter-assisted elk-collaring proposal is the minimum tool necessary to achieve that objective, dismissing alternative research methods that would not degrade wilderness character.

4. In issuing the challenged decision, the Forest Service also violated the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq. (“NEPA”), and its implementing regulations. NEPA requires federal agencies to take a “hard look” at the environmental consequences of their decisions and evaluate all reasonable alternatives that would minimize adverse environmental impacts. The Forest Service violated NEPA by failing to prepare an environmental impact statement (“EIS”) fully analyzing the effects of the helicopter-assisted elk-collaring it authorized. The Forest Service’s failure to prepare an EIS rested on its unjustified finding that IDFG’s approximately 120 helicopter landings in the River of No Return; associated netting, darting, anesthetizing, and processing of targeted elk; and placement of radio telemetry

collars on sixty elk would have “no significant impact” on the environment. Further, the Forest Service masked the true effects of IDFG’s proposal, which calls for repeated helicopter intrusions into the wilderness to continue elk collaring over a five- or ten-year period, by arbitrarily confining its analysis to only the first season of project implementation. The Forest Service also violated NEPA by failing adequately to consider the impacts of low-altitude helicopter flights and landings on non-target wildlife such as bighorn sheep; failing to analyze a reasonable range of alternatives to IDFG’s proposal; and failing to analyze the cumulative effects of IDFG’s elk-collaring combined with other reasonably foreseeable actions in the wilderness—notably, IDFG’s officially adopted plan to exterminate the majority of wolves in the Middle Fork Zone in order to achieve the State’s elk-population objectives.

5. This is not the first time the Forest Service has allowed IDFG to conduct helicopter-assisted wildlife collaring in the River of No Return. In 2010, the Forest Service authorized IDFG to conduct a maximum of twenty helicopter landings in the wilderness to place radio telemetry collars on wolves. Relying on the Forest Service’s assertion that reintroducing wolves in the River of No Return was integral to restoring the area’s wilderness character, and that studying wolf population dynamics to ensure the reintroduction’s success was therefore necessary to preserve wilderness character, this Court rejected a legal challenge to the Forest Service’s 2010 authorization, holding that the “very unique circumstance” occasioned by federal efforts to restore once-extirpated gray wolves to the wilderness justified limited helicopter intrusions into the area. Wolf Recovery Found. v. U.S. Forest Serv., 692 F. Supp. 2d 1264, 1268 (D. Idaho 2010). However, the Court “ma[de] it clear that helicopter use in a wilderness area is antithetical to a wilderness experience, and that the approval of the single project at issue [in that case]—based on unique facts—is unlikely to be repeated.” Wolf Recovery Found. v. U.S. Forest

Serv., No. CV 09-686-E-BLW, 2010 WL 2898933, at *1 (D. Idaho July 21, 2010) (quotation omitted). The Court further stated that if “the Forest Service decides to proceed with a helicopter project in Idaho’s wilderness areas [in the future], the Forest Service is on notice of this Court’s concerns and would be expected to render a final decision enough in advance of the project so that any lawsuit seeking to enjoin the project could be fully litigated.” Id.

6. The challenged authorization defies this Court’s rulings in Wolf Recovery Foundation. Contrary to the Court’s determination that helicopter use in wilderness may be justified only in the rarest of circumstances when it is essential to safeguard wilderness character, the Forest Service has authorized helicopter use to facilitate state wildlife-management decisions that are at best routine—insofar as they concern Idaho’s annual authorizations for recreational hunting and trapping—and, to the extent they concern actions to exterminate native wolves and manipulate natural predator-prey dynamics, are antithetical to the Wilderness Act. Indeed, if helicopter intrusions are permissible whenever a state agency asserts that a wildlife population has declined below the state’s recreation-driven objectives, it is difficult to comprehend when a request to use helicopters in the wilderness to advance wildlife management ever would be denied. Further, the challenged decision allows IDFG to immediately commence helicopter landings and capture-and-collar operations in the wilderness before any legal challenge to that decision can be adjudicated. In issuing this decision, the Forest Service completely disregarded this Court’s direction in Wolf Recovery Foundation to allow sufficient time for a legal challenge to that decision to run its course. More fundamentally, it disregarded its mandatory legal duties under the Wilderness Act and NEPA. Accordingly, plaintiffs seek relief from this Court.

JURISDICTION AND VENUE

7. Plaintiffs bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, which waives the federal defendants' sovereign immunity, see id. § 702. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202.

8. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to plaintiffs' claims occurred in this district.

PARTIES

9. Plaintiff Wilderness Watch is a non-profit conservation organization whose sole mission is the preservation and proper stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. To that end, since 1989 Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education, and litigation to promote sound stewardship of federal wilderness areas and Wild and Scenic River corridors. Wilderness Watch is headquartered in Missoula, Montana, and has offices in Idaho and Minnesota. Wilderness Watch has a long history of advocacy to preserve the wilderness character of the River of No Return, including participation in legal challenges to the Forest Service's 2010 authorization for IDFG to utilize helicopters for the purpose of collaring wolves in the wilderness and the Forest Service's role in IDFG's 2013-14 wolf-trapping activities aimed at exterminating the River of No Return's Golden Creek and Monumental Creek packs.

10. Plaintiff Friends of the Clearwater is a grassroots advocacy group that works to protect the public wildlands, wildlife, and waters in the Clearwater basin of north-central Idaho, including the River of No Return Wilderness. Friends of the Clearwater was established in 1987

to defend the Idaho Clearwater Bioregion's wildlands and biodiversity, which it works to accomplish through a Forest Watch program, litigation, grassroots public involvement, outreach and education. Friends of the Clearwater has engaged in scientific monitoring, administrative advocacy, and public engagement aimed at characterizing and protecting the wilderness character of the River of No Return. Friends of the Clearwater is headquartered in Moscow, Idaho.

11. Plaintiff Western Watersheds Project is a regional non-profit conservation organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. Western Watersheds Project is headquartered in Hailey, Idaho, with staff in Boise, Idaho, and in other western states. Western Watersheds Project staff, members, volunteers, and supporters engage in administrative and legal advocacy, public education, and scientific study aimed at protecting and enhancing riparian areas, water quality, fisheries, wildlife habitat, and other natural resources and ecological values of western watersheds, including the Middle Fork Salmon River watershed and the River of No Return Wilderness. Western Watersheds Project has a long history of advocacy to preserve the wilderness character of the River of No Return, including through a multi-year campaign to close the Camas Creek grazing allotment, located partially within the wilderness, as well as participation in a legal challenge to the Forest Service's 2010 authorization for IDFG to utilize helicopters for the purpose of collaring wolves in the wilderness.

12. All plaintiff groups and their staff, members, and supporters have longstanding interests in preserving the wilderness character of federally designated wilderness in the Northern Rockies region, including the River of No Return. Members of each of the plaintiff groups use the River of No Return Wilderness—including the Middle Fork Zone where IDFG's

helicopter-assisted elk collaring will occur—for recreational pursuits such as hiking, summer and winter camping, backpacking, snowshoeing, backcountry skiing, boating, hunting, fishing, wildlife viewing, and aesthetic enjoyment. Members of the plaintiff groups seek out the River of No Return, including the Middle Fork Zone, for these activities because of its incomparably remote, quiet, and untrammelled qualities and the opportunities for exceptional solitude and reflection that it offers. Members of the plaintiff groups work in industries, such as tourism and academia, that depend on the continued existence of a minimally disturbed ecosystem in the River of No Return. Members of the plaintiff groups seek to view and study native wildlife, including elk and wolves, in the Middle Fork Zone and observe the natural interactions between these wildlife species without human manipulation.

13. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, economic, recreational, scientific, educational, and wildlife preservation interests of the plaintiff groups and their members. These are actual, concrete injuries traceable to defendants' conduct that would be redressed by the relief requested. Plaintiffs have no adequate remedy at law.

14. Defendant Tom Vilsack is the United States Secretary of Agriculture. In that capacity, Secretary Vilsack has supervisory responsibility over the United States Forest Service. Defendant Vilsack is sued in his official capacity.

15. Defendant Tom Tidwell is the Chief of the United States Forest Service, a federal agency within the Department of Agriculture. The Forest Service is responsible for managing the River of No Return and the Payette and Salmon-Challis National Forests and for administering the Wilderness Act and the National Environmental Policy Act in those areas. Defendant Tidwell is sued in his official capacity.

16. Defendant Nora Rasure is the Regional Forester for Region Four of the United States Forest Service, which encompasses the Payette and Salmon-Challis National Forests and the Middle Fork Zone of the River of No Return where IDFG is authorized to conduct helicopter-assisted elk collaring. Defendant Rasure is sued in her official capacity.

17. Defendant Charles Mark is the United States Forest Service Supervisor for the Salmon-Challis National Forest, which encompasses portions of the Middle Fork Zone of the River of No Return where IDFG is authorized to conduct helicopter-assisted elk collaring. Defendant Mark is designated as the responsible federal official for the challenged Forest Service decision authorizing IDFG's elk-collaring activities in the River of No Return. Defendant Mark is sued in his official capacity.

LEGAL FRAMEWORK

18. **The Wilderness Act.** Congress enacted the Wilderness Act, 16 U.S.C. §§ 1131-1136, “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a). To that end, the Wilderness Act provides for the establishment of a National Wilderness Preservation System “with the explicit statutory purpose ‘to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition.’” Wilderness Soc’y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1055 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)). Congress defined “wilderness” as an area “where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c). A wilderness area must retain its “primeval

character and influence,” not visibly reflect “the imprint of man’s work,” and provide “outstanding opportunities for solitude.” Id.

19. Though the Wilderness Act recognizes recreational and scientific activities as appropriate uses of wilderness areas, see id. § 1133(b), the statute makes the mandate of wilderness preservation paramount, requiring that all such activities be conducted in a manner that “preserv[es] ... wilderness character” and “will leave [designated wilderness areas] unimpaired for future use and enjoyment as wilderness,” id. § 1131(a).

20. Further, Congress expressly prohibited certain activities in federally protected wilderness areas that it determined to be antithetical to wilderness character and its preservation. The Wilderness Act categorically prohibits any commercial enterprise or permanent road within designated wilderness. Id. § 1133(c). The Act further dictates that “there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation” within wilderness areas unless such activity is “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” Id. (emphasis added). “To constitute ‘administration of the area,’ the activity must further the wilderness character of the area.” Wolf Recovery Found., 692 F. Supp. 2d at 1268.

21. The Wilderness Act charges the Service with “preserving the wilderness character” of designated wilderness areas within its jurisdiction, 16 U.S.C. § 1133(b), including the River of No Return, and with “protect[ing] and manag[ing] [wilderness areas] so as to preserve [their] natural conditions,” id. § 1131(c). Accordingly, the Service’s regulations dictate that wilderness use must be “consistent with the maintenance of primitive conditions,” and

require that in resolving management conflicts in wilderness, “wilderness values will be dominant” unless expressly limited by statute or regulation. 36 C.F.R. § 293.2(b), (c).

22. To effectuate these statutory and regulatory mandates, the Service’s wilderness-management guidance states that, “[w]here there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations.” U.S. Forest Serv. Manual § 2320.3 (2007). To implement the Wilderness Act’s prohibitory provisions, the Service’s guidance states that wildlife research methods that temporarily infringe on wilderness character are permissible only if “the information sought is essential for wilderness management and alternative methods or locations are not available.” U.S. Forest Serv. Manual § 2323.37.

23. Though the Wilderness Act does not preempt states’ traditional responsibilities to manage wildlife on federally protected wilderness lands, including through the issuance of recreational hunting and trapping licenses, the exercise of state management responsibilities is constrained by the Wilderness Act and the restrictions it imposes for protection of wilderness character. 16 U.S.C. § 1133(d)(7).

24. **The National Environmental Policy Act.** NEPA, 42 U.S.C. §§ 4321-4370h, is “our basic national charter for protection of the environment,” 40 C.F.R. § 1500.1(a). Congress enacted NEPA “to protect the environment by requiring that federal agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action before the government launches any major federal action.” Lands Council v. Powell, 395 F.3d 1019, 1026 (9th Cir. 2004).

25. To that end, NEPA requires federal agencies to prepare a detailed environmental impact statement (“EIS”) before undertaking “major Federal actions significantly affecting the

quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS must describe the underlying purpose and need for the proposed action and “[r]igorously explore and objectively evaluate all reasonable alternatives” that are consistent with the identified purpose and need. 40 C.F.R. §§ 1502.13, 1502.14(a). The EIS must also evaluate a no-action alternative and all reasonably available measures to mitigate adverse environmental impacts. Id. § 1502.14(d), (f). Through these analytical requirements, NEPA ensures that federal agencies will “carefully consider[] detailed information concerning significant environmental impacts” and guarantees that such information will be available to the public so that it “may also play a role in both the decisionmaking process and the implementation of that decision.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

26. To determine whether a proposed federal action will “significantly affect” the environment and thus require an EIS, the responsible agency may first conduct 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. In evaluating a proposed action’s significance, the agency must consider, inter alia, (1) “[u]nique characteristics of the geographic area” affected by the action, (2) “[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration,” (3) “[w]hether the action threatens a violation of Federal ... law or requirements imposed for the protection of the environment,” and (4) “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27. “Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” Id.

27. Under NEPA, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” Id. § 1502.4(a).

28. If the agency concludes that no EIS is required because the proposed action will not significantly affect the environment, it must issue a “finding of no significant impact,” or “FONSI,” explaining the basis for that determination. Id. § 1508.13. A FONSI must be supported by a “convincing statement of reasons why potential effects are insignificant.” Save the Yaak Cmte. v. Block, 840 F.2d 714, 717 (9th Cir. 1988) (quotation omitted). “If substantial questions are raised regarding whether the proposed action may have a significant effect upon the human environment, a decision not to prepare an EIS is unreasonable.” Id. (emphasis in original) (citing Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric., 681 F.2d 1172, 1178 (9th Cir. 1982)).

FACTUAL BACKGROUND

I. THE RIVER OF NO RETURN WILDERNESS

29. The Frank Church-River of No Return Wilderness is the largest forested wilderness area in the continental United States, encompassing 2,366,757 acres. “With the exception of the subdued topography of Elk Creek on the south end of the wilderness and the vast plateau called Chamberlain Basin, the wilderness is a sea with waves of one steep ridge after another. The major canyons of the Middle Fork and main Salmon [Rivers] twist through the mountains, in places almost 7,000 feet deep, deeper than the Grand Canyon.” Ralph Maughan & Jackie Maughan, The Hiker’s Guide to Idaho 56 (Falcon Press 1984). The wilderness landscape is extremely diverse, ranging from semi-arid grass and brushlands at 2,000 feet of elevation along the lower main Salmon River to alpine summits above 10,000 feet in the Bighorn Crags.

However, the general character of the River of No Return consists of extensive coniferous forest, scattered meadows, and open grassy slopes breaking into steep, rugged canyons.

30. Congress recognized the “immense national significance” of “the famous ‘River of No Return’” and the surrounding wildlands by establishing the River of No Return Wilderness in 1980. Central Idaho Wilderness Act of 1980 § 2(a)(1), P.L. 96-312, 94 Stat. 948, 96th Cong. (1980). Congress designated the River of No Return a federally protected wilderness area “in order 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).

31. Congress’ concern for the area’s wilderness-dependent wildlife was well founded, as the River of No Return today hosts a great diversity and abundance of wildlife species. These include elk, bighorn sheep, mountain goats, mule deer, mountain lions, black bears, moose, whitetail deer, and smaller numbers of lynx, fishers, and wolverines.

32. The River of No Return also serves as a stronghold for a wilderness icon—the gray wolf. Gray wolves are native to central Idaho and the northern Rockies, but by 1925 the species had been eradicated from the region through unlimited—indeed, often government-sponsored—shooting, trapping and poisoning. Gray wolves were among the first species to receive federal protection under the Endangered Species Act, 16 U.S.C. § 1531, et seq., when that statute was enacted in 1973. In 1995, the federal government initiated a program to restore gray wolves to their former Northern Rockies range by reintroducing the species in appropriate habitats, including the River of No Return. The Forest Service has explicitly recognized and advocated for “the importance of wolf recovery to enhancement of wilderness character” in the

River of No Return Wilderness. Wolf Recovery Found., 692 F. Supp. 2d at 1266 (quoting Forest Service decision memorandum).

II. IDFG'S HELICOPTER-ASSISTED ELK-COLLARING PROJECT

33. On August 8, 2015, IDFG requested authorization from the Forest Service to utilize helicopters to place radio telemetry collars on elk in the Middle Fork Zone, an approximately 1.7-million acre region of the River of No Return Wilderness north of Stanley, Idaho. IDFG's "Planned Action" involves ten years of annual helicopter flights and landings in the Middle Fork Zone to place radio collars on thirty elk calves each year plus an adequate number of adult female elk to maintain a total of sixty collared adult females. Idaho Dep't of Fish & Game, Wilderness Act Minimum Requirements Analysis, Middle Fork Zone Elk Monitoring 16 (Aug. 7, 2015) ("IDFG Analysis"). As an alternative, IDFG proposed a five-year collaring project, which would require more intensive helicopter use and collaring operations to compensate for the shortened time period. However, IDFG's proposal states that, even with more intensive radio-collaring on an annual basis, it is unlikely that the state agency could obtain valid data in only five years of collaring. Under either scenario, IDFG's collaring efforts and associated helicopter landings would occur from December to March each year and involve netting and darting elk from a helicopter and conducting blood sampling and related procedures on tranquilized elk.

34. The purpose of IDFG's elk-collaring project is to obtain data indicating the causes of recent elk population declines in the Middle Fork Zone. IDFG hypothesizes that a "significant portion" of documented elk population decline in the River of No Return is "related to excessive predation following federal reintroduction of wolves into the Frank Church-River of No Return Wilderness in the mid-1990s." IDFG Analysis 1. IDFG's proposal states that the data obtained

through elk collaring will inform its decisions concerning public hunting and trapping authorizations in the wilderness as well as “other management activities” by IDFG aimed at reversing elk population trends. Id. at 22.

35. IDFG’s elk-collaring proposal is guided by the state’s Elk Management Plan, which calls for the restoration of elk population levels last achieved in the 1990s, before native wolves were restored to the River of No Return and other areas of Idaho. To achieve that goal, the Elk Management Plan directs IDFG to “aggressively manage elk and predator populations,” including through killing “[more than] 75% of wolves and then maintain[ing] lower wolf numbers annually for 3-5 years” in areas that are not meeting elk-management objectives. Idaho Dep’t of Fish & Game, Idaho Elk Mgmt. Plan 2014-2024, at 49-50 (2014) (“Idaho Elk Mgmt. Plan”). Where IDFG has determined that “elk populations are not meeting objectives and predation is identified as a primary limiting factor”—as IDFG has determined in the River of No Return’s Middle Fork Zone—the Elk Management Plan directs IDFG to conduct “predator management activities,” which are agency-implemented wolf-killing projects designed to supplement wolf take achieved through recreational wolf hunting and trapping. Id. at 50.

36. Pursuant to the Elk Management Plan, IDFG has developed a Predation Management Plan for the Middle Fork Zone of the River of No Return Wilderness that calls for the extermination of 60% of the area’s resident wolves and successive years of agency wolf-killing to maintain the population at that depressed level over the long term. IDFG took action to implement this plan in the Middle Fork Zone during the winter of 2013-14, when it hired a trapper to eradicate as many resident wolf packs as possible. IDFG suspended that action in response to a lawsuit filed by wilderness advocates, including most of the plaintiffs here, but not

before its hired trapper had killed the nine wolves constituting the River of No Return's Golden Creek Pack.

III. THE CHALLENGED FOREST SERVICE AUTHORIZATION

37. On August 26, 2015, the Service issued a Proposed Action Report in which it proposed “to permit, where necessary, the Idaho Department of Fish and Game (IDFG) to conduct operations otherwise prohibited in wilderness in order to monitor elk populations with capture and collar operations. The Forest Service in proposing this project is responding to IDFG’s proposal to conduct helicopter landing[s] in the [River of No Return] Wilderness.” U.S. Forest Serv. Intermountain Region, Proposed Action, Middle Fork Zone Elk Monitoring Project 8 (Aug. 2015). The Service proposed to authorize approximately 120 helicopter landings in the wilderness during the 2015-16 winter to facilitate IDFG’s placement of radio collars on sixty elk in the wilderness. The Service asserted that IDFG’s elk-collaring project “is necessary for the administration of” the River of No Return, and thereby permissible under the Wilderness Act, because “[a]ccurate information [on elk population dynamics] is necessary for IDFG to make informed and effective wildlife management decisions and to set appropriate regulations for consumptive uses,” *id.* at 8, and the data collected “will help determine if the natural character of the wilderness has degraded,” *id.* at 5. The Service also stated that “the use of a helicopter is the minimum tool necessary to accomplish elk captures.” *Id.* at 15. Though the Proposed Action Report acknowledged that successive years of elk collaring in the wilderness are “reasonably foreseeable,” it did not disclose that IDFG proposes to continue helicopter-assisted collaring in the wilderness each winter for the next five or, preferably, ten years, nor that IDFG must conduct such a multi-year project to obtain valid data. *Id.* at 16 (capitalization omitted). Plaintiffs submitted timely comments on the Service’s Proposed Action Report.

38. On October 9, 2015, the Service issued a draft Decision Notice and Finding of No Significant Impact concerning IDFG's proposed helicopter landings and elk collaring in the River of No Return. U.S. Forest Serv. Intermountain Region, Draft Decision Notice and Finding of No Significant Impact, Middle Fork Zone Elk Monitoring Project (Oct. 2014) ("Draft Decision"). The Draft Decision reiterated that IDFG requires accurate elk population information "to make informed and effective wildlife management decisions and to set appropriate regulations for consumptive uses." Id. at 1. It further stated that, "[w]hile the IDFG has a need to collect monitoring data, the Forest Service purpose and need is centric to responding, where necessary, to IDFG's proposal to land helicopters in the Wilderness as necessary to conduct its capture and collar operations." Id. The Draft Decision did not assert that preserving wilderness character is an objective of authorizing IDFG's proposed activities. See id. at 1-3 (statement of "purpose and need" for proposed action).

39. The Service simultaneously issued an Environmental Assessment ("EA") and "Minimum Requirements Decision Guide" intended to satisfy the agency's analytical obligations under, respectively, NEPA and the Wilderness Act. These documents reiterated the Service's assertion that IDFG needs accurate elk-population data to make state wildlife management decisions and establish regulations for consumptive uses, i.e., hunting and trapping. The EA recognized that the proposed helicopter use will adversely affect the untrammeled, undeveloped, and natural qualities of wilderness character in the River of No Return as well as opportunities for solitude and primitive and unconfined recreation there; interfere with the behavior of elk, bighorn sheep, and other wildlife; and result in the placement of radio telemetry devices on wild elk, which devices are themselves "installations and evidence of modern civilization" and would

“adversely affect the undeveloped character of the wilderness.” U.S. Forest Serv. Intermountain Region, *Env’tl Assessment, Middle Fork Zone Elk Monitoring Project 3-12* (Oct. 2015).

40. The EA analyzed in detail only one alternative to IDFG’s proposal: a no-action alternative in which IDFG would not be permitted to conduct any helicopter-assisted elk collaring in the wilderness. Under the no-action alternative, IDFG could continue its practice of conducting aerial elk monitoring surveys, in which elk are observed and counted during low-elevation helicopter flights that do not involve landings in the wilderness.

41. The EA acknowledged that IDFG’s elk-collaring project in the Middle Fork Zone implements Idaho’s Elk Management Plan and that Idaho’s plan calls for exterminating sixty percent of the Middle Fork Zone’s resident wolves. The EA further stated that predator control actions pursuant to that plan, such as IDFG’s killing of nine wolves in the Middle Fork Zone during the 2013-14 winter, “adversely affect the untrammelled character of the wilderness and affect natural conditions.” *Id.* at 3-10. Nevertheless, the EA asserted that future IDFG wolf-killing actions in the wilderness “were not considered to be reasonably foreseeable for the purposes of this EA” and so did not consider the impact of such actions. *Id.* Appx. B-19.

42. The EA acknowledged that long-term elk collaring and associated helicopter landings by IDFG in the River of No Return are “reasonably foreseeable” and would have substantial, “long-term to permanent” adverse effects on the untrammelled, undeveloped, and natural qualities of the River of No Return Wilderness and the outstanding opportunities for solitude there. EA 3-11. Nevertheless, the EA analyzed only the effects of the first year of helicopter-assisted collaring.

43. Plaintiffs submitted timely objections to the Service’s Draft Decision on November 27, 2015. Plaintiffs argued that the Service’s proposed authorization of IDFG’s

helicopter-assisted elk collaring in the River of No Return would violate the Wilderness Act because (1) facilitating IDFG's elk-management research is not necessary for the administration of the Middle Fork Zone as wilderness; (2) the Service had not demonstrated that IDFG cannot obtain the information it seeks by collaring elk outside the wilderness; and (3) even assuming that facilitating IDFG's research were essential to preserve wilderness character and the necessary data-gathering could not be accomplished outside the wilderness, the Forest Service had not demonstrated that helicopter-assisted collaring is the minimum tool necessary to accomplish the project goal. Plaintiffs also argued that the Service's decision, if finalized, would violate NEPA if not supported by an EIS that fully analyzes all reasonable alternatives to IDFG's proposed action and all foreseeable wildlife disturbance impacts from the proposed helicopter landings, including adverse effects on bighorn sheep.

44. On December 9, 2015, Plaintiffs participated by telephone in an objections-resolution meeting with Defendant Mark and other Salmon-Challis National Forest officials. In that meeting, the Forest Service officials stated that they were unwilling to reconsider their proposed authorization or require changes to the substance or timing of IDFG's project.

45. On December 14, 2015, Plaintiffs sent a letter to Defendants Rasure and Mark as well as Chris Iverson, Deputy Regional Forester for the Forest Service's Intermountain Region, requesting that the Forest Service reconsider the substance and timing of implementation of its proposed decision. That letter cited this Court's rulings in Wolf Recovery Foundation, *supra*, and asserted that the proposed authorization of further helicopter intrusions in the River of No Return, as well as the Forest Service's apparent intention to allow immediate implementation of its authorization—leaving only a few days to a few months for any legal challenge to proceed—would be inconsistent with this Court's rulings. Plaintiffs requested that the Forest Service

reconsider its proposed decision or, at a minimum, delay implementation of that decision sufficiently to allow time for litigation of a legal challenge to that decision. Plaintiffs' counsel was informed by counsel for the federal defendants in early January 2016 that the Forest Service was not interested in these proposals.

46. On January 6, 2016, the Forest Service issued a final Decision Notice and Finding of No Significant Impact ("DN/FONSI") approving IDFG's helicopter-assisted elk-collaring project in the River of No Return, as well as a Temporary Special Use Permit authorizing immediate implementation of the project. The Forest Service's decision authorizes approximately 120 helicopter landings in the Middle Fork Zone of the wilderness, netting and darting of wild elk as necessary to place radio telemetry collars on sixty animals, and blood testing and associated procedures on captured elk. The decision allows IDFG to conduct its operations over five to ten days between January 6, 2016, and March 31, 2016, noting that IDFG's calf-collaring operations must be completed by January 15, 2016. The Forest Service's decision to approve the project rests on its determination that IDFG's helicopter-assisted elk-collaring is necessary to satisfy minimum requirements for administering the River of No Return as wilderness, is the minimum tool necessary for achieving the project's purpose, and will have no significant environmental impacts.

FIRST CLAIM FOR RELIEF
(Violation of the Wilderness Act and Implementing Regulations)

47. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 46.

48. The Wilderness Act expressly prohibits any "landing of aircraft" and any "installation" within designated wilderness "except as necessary to meet minimum requirements for the administration of the area" as wilderness. 16 U.S.C. § 1133(c). As the Forest Service

concedes, radio telemetry collars on wildlife constitute “installations” that are generally prohibited by the Wilderness Act.

49. The Forest Service’s authorization of helicopter landings and elk-collaring by IDFG in the River of No Return violates the Wilderness Act because such action is not “necessary to meet minimum requirements for the administration of the area” as wilderness. Id. The stated purpose of the Forest Service’s decision “is to permit, where necessary, the Idaho Department of Fish and Game (IDFG) to conduct operations otherwise prohibited in wilderness in order to monitor elk populations with capture and collar operations.” U.S. Forest Serv. Intermountain Region, Decision Notice and Finding of No Significant Impact, Middle Fork Zone Elk Monitoring Project 1 (Jan. 2016). “Accurate information is necessary for IDFG to make informed and effective wildlife management decisions and to set appropriate regulations for consumptive uses [hunting and trapping]. In summary, IDFG needs to conduct elk monitoring, including [in] the Middle Fork Zone within the [River of No Return] Wilderness, to meet its management obligations.” Id. (emphasis added). With regard to the Forest Service’s wilderness-management obligations, the statement of purpose and need says only that “the Forest Service purpose and need is centric to responding, where necessary, to IDFG’s proposal to land helicopters in the Wilderness as necessary to conduct its capture and collar operations.” Id.

50. Facilitating a state’s wildlife-management decisions and issuance of hunting and trapping authorizations is not necessary to satisfy minimum requirements for administering the River of No Return as wilderness. “To constitute ‘administration of the area,’ the activity must further the wilderness character of the area.” Wolf Recovery Found., 692 F. Supp. 2d at 1268. While recreational hunting and trapping, as well as scientific research, are permissible uses of wilderness, they do not advance—and are subordinate under the Wilderness Act to—the

preservation of wilderness character. See 16 U.S.C. § 1131(a) (recreational and scientific uses of wilderness permitted only insofar as activities do not impair wilderness character); 36 C.F.R. § 293.2(b), (c) (dictating that human uses of wilderness are allowed only insofar as such use is consistent with maintaining primitive conditions and requiring that management decisions privilege wilderness values over other considerations); see also High Sierra Hikers Ass’n v. Blackwell, 390 F.3d 630, 647 (9th Cir. 2004) (Forest Service management decisions may not “elevate[] recreational activity over the long-term preservation of the wilderness character of the land”).

51. Indeed, here IDFG’s wildlife-management objectives are antithetical to the preservation of wilderness character. IDFG’s elk-collaring project in the River of No Return implements the State’s Elk Management Plan, which directs IDFG to “aggressively manage elk and predator populations,” including through exterminating the majority of resident wolves in the Middle Fork Zone in order to inflate elk numbers to levels last achieved in the 1990s, before native wolves were restored to the wilderness. Aggressive manipulation of natural predator-prey dynamics is the antithesis of wilderness—“an area where the earth and its community of life are untrammelled by man” and “which is protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Yet in concluding that IDFG’s elk-collaring project is in fact necessary to preserve wilderness character, the Forest Service never even considered the state wildlife-management plans that provide direction for the project—claiming IDFG’s elk management and associated predation management plans were outside the scope of its analysis—let alone explained how facilitating those wildlife-management plans is essential to preserve wilderness character. Nor did the Forest Service even attempt to wrestle with the stark inconsistency between its assertion that advancing IDFG’s wildlife-management objectives—

which call for exterminating the majority of gray wolves in the Middle Fork Zone—is necessary to preserve wilderness character and the Forest Service’s own 2010 decision to allow helicopter-assisted wolf-collaring in the wilderness because wolves are an integral component of the River of No Return’s wilderness character. Under the Forest Service’s inconsistent permitting decisions in the elk-collaring and wolf-collaring contexts, wolves were once an essential element of wilderness character, but now their natural predation activities are a potential threat to wilderness character, with the only constant being that the Forest Service deems helicopter landings and wildlife collaring “necessary” in the wilderness. The Forest Service’s inconsistent reasoning is inherently arbitrary, and it is inadequate to justify helicopter landings and elk collaring under the Wilderness Act.

52. Though not stated as part of the project’s “Purpose and Need,” the Forest Service alternatively speculated that IDFG’s project may be justified under the Wilderness Act because the data obtained could reveal whether elk-population declines in the Middle Fork Zone indicate degradation of natural conditions there and “may enable IDFG and the Forest Service to take action to reduce or reverse future declines.” DN/FONSI 9. This suggestion falls short of a rational demonstration that IDFG’s helicopter-assisted elk-collaring is necessary to preserve natural conditions or any other component of the Middle Fork Zone’s wilderness character. The Forest Service cited no evidence to support its speculation. Yet if the Forest Service could invoke the exception from the Wilderness Act’s prohibitory provisions based on nothing more than speculation that helicopter-assisted wildlife-collaring might inform an assessment of natural conditions, the exception would swallow the rule.

53. The Forest Service’s implied justification for the project is particularly weak because it made no attempt to evaluate what elk-population level reflects natural conditions in

the wilderness, relying solely on IDFG's own hunter-driven population objectives. Moreover, the record supporting the Forest Service's decision indicates that declining elk numbers since the mid-1990s actually represent a restoration of natural conditions. IDFG itself admits that, "[h]istorically, elk numbers in Idaho were likely lower than they are today," Idaho Elk Mgmt. Plan 2, and it attributes recent population declines largely to the restoration of gray wolves to the wilderness. But as the Forest Service argued in justifying its 2010 authorization for helicopter-assisted wolf-collaring in the wilderness, the return of wolves to the River of No Return represents an essential restoration of wilderness character; elk population declines attributable to the restoration of natural predator-prey dynamics cannot logically represent degradation of wilderness character, see 36 C.F.R. § 293.2(a) (dictating that, in wilderness, "[n]atural ecological succession will be allowed to operate freely to the extent feasible").

54. Further, the Forest Service disregarded IDFG's own statement that the data obtained from elk-collaring in the wilderness will be useful to inform wildlife-management decisions only if capture-and-collaring operations continue on an annual basis for more than five, and ideally ten, years—a scenario the Forest Service failed to analyze in making the challenged decision. The Forest Service cannot rationally rely on the purported wilderness-management benefits of obtaining valid elk-mortality data while refusing to consider the adverse impacts to wilderness character from the actions necessary to obtain such data.

55. Even assuming that facilitating IDFG's wildlife-management plans were necessary to protect wilderness character, which it is not, the Forest Service's determination that helicopter-assisted elk-collaring in the wilderness is the "minimum tool" for achieving that objective is arbitrary and unsupported. First, the Forest Service irrationally rejected the alternative of conducting elk capture-and-collar operations in areas outside designated wilderness

that contain similar habitat conditions, predator populations, and hunting pressure as the Middle Fork Zone. Indeed, IDFG recently commenced a study involving the placement of radio telemetry collars on approximately 500 elk in six non-wilderness monitoring zones representing a range of habitat conditions across the state. Some of these study sites, such as the Lolo elk management zone, have experienced comparable elk-population declines and have similar wolf-population and hunter-use densities as the Middle Fork Zone. In its EA, the Forest Service stated that “IDFG hypothesizes that elk survival rates and cause-specific mortality may be very different inside the [River of No Return] Wilderness than outside of it.” EA 1-2. But this assertion is undermined by IDFG’s own acknowledgement that certain non-wilderness zones present similar conditions and management challenges for elk and, in any event, does not constitute a rational determination that there are no non-wilderness zones anywhere in the state where useful elk-population data could be obtained.

56. Second, the Forest Service irrationally rejected alternative research methods in the wilderness that would provide valuable information about the causes of elk-population decline without degrading wilderness character. For example, Plaintiffs noted in their comments and objections to the Forest Service’s proposed decision that the Aldo Leopold Wilderness Research Institute—the federal government’s interagency wilderness research body—proposed in August 2014 to convene an expert investigation of wolf-elk population dynamics in the River of No Return that would assess potential impacts of wolf predation on elk numbers without the use of helicopters or radio telemetry collars. Though the Forest Service acknowledged that the Leopold Institute Study would address the same research questions as IDFG’s helicopter-assisted elk-collaring project, it stated that the Leopold Institute proposal was outside the scope of the Forest Service’s analysis because it is not what IDFG had proposed. The Forest Service cannot

rationality determine that IDFG’s preferred research methodology is the minimum tool for investigating the causes of elk-population decline while rejecting, without analysis, alternative research proposals that address the same questions in a manner that protects wilderness character. Further, email communications obtained from the Forest Service indicate that the Forest Service itself halted the Leopold Institute research project because of objections from IDFG. Having eliminated an alternative tool that would have addressed the same research questions in a manner consistent with the Wilderness Act, the Forest Service cannot credibly assert that IDFG’s helicopter-assisted capture-and-collar project is the minimum tool.

57. As this Court has explained, “[h]elicopters carry ‘man and his works’ and so are antithetical to a wilderness experience.” Wolf Recovery Found., 692 F. Supp. 2d at 1268. Thus, “[i]t would be a rare case where machinery as intrusive as a helicopter could pass the test of being ‘necessary to meet minimum requirements for the administration of the area.’” Id. (quoting 16 U.S.C. § 1133(c)). The Forest Service’s challenged authorization violates the Wilderness Act because the agency has not rationally demonstrated that facilitating IDFG’s wildlife-management objectives is necessary to protect the River of No Return’s wilderness character nor that IDFG’s helicopter-assisted elk-collaring project is the minimum tool necessary for achieving that goal.

SECOND CLAIM FOR RELIEF
(Violation of NEPA and Implementing Regulations—Arbitrary and Unlawful Finding of No Significant Impact and Failure to Prepare an EIS)

58. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 57.

59. NEPA requires federal agencies to prepare a detailed EIS before undertaking any “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS is NEPA’s core requirement; it ensures that the agency will have

available and carefully consider detailed information on significant environmental impacts when making its decision and guarantees that the public also will have access to this information and a meaningful opportunity to participate in the agency's decision-making process. Methow Valley Citizens Council, 490 U.S. at 349.

60. In issuing a Finding of No Significant Impact and failing to prepare an EIS for IDFG's helicopter-assisted elk-collaring project, the Forest Service violated this requirement. The approximately 120 helicopter landings; associated netting, darting, anesthetizing, and processing of targeted elk; and placement of radio collars on sixty elk will have significant environmental effects; at a minimum, the record raises "substantial questions" about the significance of the project's effects, necessitating an EIS. Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846, 864 (9th Cir. 2004) (quotation omitted). Further, in conducting its NEPA review, the Forest Service arbitrarily disregarded the actual scope of IDFG's planned action, which involves ten successive years of elk capture-and-collar operations and associated helicopter landings in the River of No Return. The Forest Service's arbitrary segmentation of IDFG's proposal and consideration of only the first year of planned capture-and-collar operations also renders the FONSI unlawful.

61. The Forest Service's determination that IDFG's helicopter-assisted elk-collaring activities during the 2016 winter will have no significant impact on the environment is arbitrary and unsupported. The Forest Service "cannot avoid preparing an EIS by making conclusory assertions that an activity will have only an insignificant impact on the environment. If an agency ... opts not to prepare an EIS, it must put forth a 'convincing statement of reasons' that explain why the project will impact the environment no more than insignificantly.'" Id. (quoting

Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998)) (internal citation omitted).

62. NEPA implementing regulations prescribe specific factors for determining whether the environmental effects of a proposed action will be “significant” and therefore require preparation of an EIS. See 40 C.F.R. § 1508.27. A finding that a single one of these regulatory factors applies to a given project “may be sufficient to require preparation of an EIS in appropriate circumstances.” Ocean Advocates, 402 F.3d at 865 (citing Nat’l Parks & Conservation Ass’n v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001), abrogated on other grounds by Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139 (2010)). Here, at least four of the regulatory factors indicate that the Forest Service’s authorization of helicopter-assisted elk collaring in the River of No Return during the 2016 winter will have significant environmental effects.

63. First, the project would adversely affect a geographic area with “[u]nique characteristics,” 40 C.F.R. § 1508.27(b)(3)—namely, a federally protected wilderness that Congress has recognized possesses “immense national significance.” Central Idaho Wilderness Act, supra, § 2(a)(1); see also EA 3-5 (Forest Service recognizing that, “[a]s the largest block of primitive and undeveloped land outside Alaska, the [River of No Return] Wilderness has national importance”). In its EA, the Forest Service conceded that “direct and indirect impacts to wilderness character resulting from the proposed action would be major.” EA 3-13. Under these circumstances, the Forest Service’s FONSI was arbitrary and an EIS is required.

64. Second, the challenged decision establishes a precedent for future authorizations. 40 C.F.R. § 1508.27(b)(6). The Forest Service acknowledged that IDFG has proposed continuing elk capture-and-collar operations in the Middle Fork Zone in successive years but

wrongly stated that there is currently no formal proposal to implement a longer-term collaring project. To the contrary, as described, IDFG's existing proposal calls for five or, preferably, ten years of annual capture-and-collar operations in the wilderness, characterizing the ten-year formulation as IDFG's "Planned Action." IDFG Analysis 16. "A patently inaccurate factual contention can never support an agency's determination that a project will have 'no significant impact' on the environment." Ocean Advocates, 402 F.3d at 866. Further, even assuming the Forest Service were correct that no formal proposal for ongoing collaring exists, the challenged decision still would establish a precedent for future authorizations because the rationale supporting the Forest Service's approval of helicopter-assisted elk-collaring during the 2016 winter—that IDFG needs quality data to inform its consumptive use and predator-control management decisions—would apply with equal force to proposals to continue that activity in subsequent years.

65. Third, it is reasonable to anticipate a cumulatively significant impact on the environment. 40 C.F.R. § 1508.27(b)(7). "Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." Id. § 1508.7. This Court has acknowledged the cumulative harm from repeated helicopter intrusions into the same wilderness area. See Wolf Recovery Found., 692 F. Supp. 2d at 1270 (stating, in upholding the Forest Service's 2010 authorization for IDFG to use helicopters for wolf-collaring in the River of No Return, that "the next helicopter proposal in the Frank Church[-River of No Return] Wilderness will face a daunting review because it will add to the disruption and intrusion of this collaring project Given that this project is allowed to proceed, the next project will be extraordinarily difficult to

justify.”). In its EA, the Forest Service itself acknowledged that the cumulative effects of continued helicopter-assisted elk collaring in the wilderness after the 2016 winter “would be high (noticeable and affecting more than two qualities of wilderness character), extended (throughout the project area and indirectly affecting adjacent wilderness lands), long-term to permanent (if operations were to occur longer than 5 years), and unique (affecting lands protected by legislation to preserve wilderness character).” EA 3-14. Indeed, the EA states that a multi-year capture-and-collar project, as IDFG has proposed, “has the potential to change the untrammelled, undeveloped, natural, and outstanding opportunities [for solitude] qualities of wilderness character in the [River of No Return] Wilderness for years to come, even though the bulk of the operations would occur over just a few days each winter.” Id. Nevertheless, the Forest Service ultimately concluded that cumulative impacts on the environment will be insignificant. Given the conclusions in the EA and this Court’s decision in Wolf Recovery Foundation, the Forest Service’s unreasoned dismissal of the cumulative effects of multiple years of helicopter-assisted elk collaring in the wilderness was arbitrary and cannot support the Forest Service’s decision to forego an EIS.

66. Further, the Forest Service arbitrarily excluded from its cumulative effects analysis the adverse impacts of IDFG’s elk and predation management plans, which call for aggressive actions to manipulate predator-prey dynamics in the Middle Fork Zone of the River of No Return, including by exterminating sixty percent of the area’s resident wolves through IDFG “predator control” actions. It was arbitrary for the Forest Service to conclude that actions directed by IDFG’s official wildlife management plans, which IDFG has already taken steps to implement, are not “reasonably foreseeable,” 40 C.F.R. § 1508.7, and therefore fail to consider those plans as part of the cumulative effects analysis. Considering the full picture of reasonably

foreseeable actions in the Middle Fork Zone—which include five or ten years of repeated helicopter intrusions and associated elk collaring plus a long-term, sixty-percent reduction of the resident wolf population in an attempt to inflate elk numbers—the Forest Service’s conclusion that cumulatively significant effects on the wilderness are unlikely is arbitrary and capricious.

67. Fourth, as discussed supra, “the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment,” 40 C.F.R. § 1508.27(b)(10)—namely, the Wilderness Act. That the Forest Service’s authorization violates the Wilderness Act itself renders the action’s environmental effects significant and necessitates the preparation of an EIS. Id.

68. In addition to arbitrarily evaluating the regulatory factors for determining “significant” environmental effects, the Forest Service’s FONSI rests on arbitrary segmentation of IDFG’s elk-collaring proposal. The project proposal submitted to the Forest Service by IDFG states that IDFG must conduct ten successive years of helicopter-assisted elk capture and collaring in the Middle Fork Zone in order to obtain valid data. See IDFG Analysis 16 (describing ten-year collaring project as “IDFG[’s] Planned Action” and stating that, “[f]or adequate precision/accuracy, IDFG would collect [elk] survival data over a 10-year time period to evaluate annual survival under a representative range of conditions, such as those associated with fluctuations in weather patterns over time”). IDFG considered a five-year project as an alternative but concluded that “[i]t is unlikely that IDFG can obtain representative variability in survival data in a 5-year period, upon which an extension beyond 5 years would be necessary.” Id. at 26. While IDFG Director Virgil Moore claimed in a letter accompanying IDFG’s project proposal that the results from a single winter of collaring “will have substantial stand-alone value,” Letter from V. Moore to N. Rasure, U.S. Forest Serv., at 2 (Aug. 8, 2015), that statement

is belied by IDFG’s formal project proposal and wilderness-impacts analysis, which explains that data obtained over fewer than ten years would “have limited utility in providing IDFG with the information needed to appropriately manage elk populations to improve site conditions for recreational opportunities in the [River of No Return] over the long-term.” *Id.* at 29.

69. NEPA requires federal agencies to analyze in a single EIS the impacts of “connected actions,” which include project components that “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1)(iii). “The purpose of this requirement is ‘to prevent an agency from dividing a project into multiple “actions,” each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.’” Great Basin Mine Watch v. Hankins, 456 F.3d 955, 969 (9th Cir. 2006) (quoting Wetlands Action Network v. U.S. Army Corps of Eng’rs, 222 F.3d 1105, 1118 (9th Cir. 2000), abrogated on other grounds by Wilderness Soc’y v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011)). The Forest Service violated this requirement by failing to prepare an EIS that analyzes the full scope of IDFG’s self-described “Planned Action,” which involves ten successive years of helicopter-assisted elk collaring in the River of No Return, IDFG Min. Requirements Analysis 16, and instead arbitrarily subdividing IDFG’s proposed project and analyzing only the first year of implementation.

THIRD CLAIM FOR RELIEF
(Violation of NEPA and Implementing Regulations—Unreasonably Narrow Statement of Purpose and Need and Failure to Explore a Reasonable Range of Alternatives)

70. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 69.

71. Regardless of whether an agency prepares an EIS or an Environmental Assessment, NEPA requires the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives” to its proposed action that would minimize adverse environmental

impacts. 40 C.F.R. § 1502.14(a); see Western Watersheds Project v. Abbey, 719 F.3d 1035, 1050 (9th Cir. 2013). “The existence of a viable but unexamined alternative renders an EA inadequate.” Western Watersheds Project, 719 F.3d at 1050 (alteration omitted) (quoting Westlands Water Dist. v. U.S. Dep’t of Interior, 376 F.3d 853, 868 (9th Cir. 2004)).

72. Relatedly, the agency’s NEPA analysis must articulate the “purpose and need” for the proposed action in sufficiently broad terms to permit consideration of a reasonable range of alternatives. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 812 (9th Cir. 1999) (quoting City of Carmel-By-The-Sea v. U.S. Dep’t of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997)).

73. The Forest Service’s EA violates these requirements. The Forest Service articulated the purpose and need for IDFG’s helicopter-assisted elk-collaring project in unreasonably narrow terms, stating in its EA that “[t]he purpose of this project is to permit, where necessary, the IDFG to conduct operations otherwise prohibited in wilderness in order to monitor elk populations with capture and collar operations. By proposing this project, the Forest Service is responding to IDFG’s proposal to conduct helicopter landing in the [River of No Return] Wilderness.” EA 1-7. In other words, the Forest Service articulated the purpose and need for the project coextensively with IDFG’s preferred methodology for implementing the project—*i.e.*, helicopter-assisted elk capture and collaring in the wilderness—such that the Forest Service deemed alternatives that would serve IDFG’s data-gathering objectives but deviate from IDFG’s preferred helicopter-assisted methodology outside the scope of the Forest Service’s NEPA analysis.

74. As a consequence, the Forest Service failed to analyze a reasonable range of alternatives to the authorization of helicopter-assisted elk collaring in the wilderness. First, the Forest Service failed to consider alternative research methods for investigating the causes of elk population decline in the Middle Fork Zone that would not require helicopter-assisted capture-and-collar operations. These include, without limitation, the Aldo Leopold Institute's 2014 research proposal concerning wolf-elk population dynamics in the River of No Return, described supra. Second, the Forest Service arbitrarily eliminated from detailed consideration alternatives to place radio-telemetry collars on elk in areas of Idaho that possess similar habitat characteristics, predator populations, and hunter use as the Middle Fork Zone but are not located in designated wilderness. As described supra, IDFG recently began a state-wide study of cause-specific elk mortality utilizing radio telemetry collars on elk residing in a representative range of habitat conditions. IDFG itself stated that some of the study sites, such as the Lolo elk management zone, have experienced comparable elk declines over the relevant time period and possess similar wolf-population and hunter-use densities as the Middle Fork Zone. By failing to fully analyze these alternatives, the Forest Service violated NEPA.

FOURTH CLAIM FOR RELIEF
(Violation of NEPA and Implementing Regulations—Inadequate Analysis of Disturbance Impacts to Non-Target Wildlife)

75. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 74.

76. “NEPA requires agencies to take a ‘hard look’ at how the choices before them affect the environment, and then to place their data and conclusions before the public.” Western Watersheds Project, 719 F.3d at 1047 (quotation omitted). “This ‘hard look’ requires a ‘full and fair discussion of significant environmental impacts’” in the agency’s NEPA analysis. Id. (quoting 40 C.F.R. § 1502.1). “General statements about possible effects and some risk do not

constitute a hard look absent a justification regarding why more definitive information could not be provided.” Id. (quotation omitted).

77. The Forest Service failed to satisfy this standard in analyzing the impacts of IDFG’s approximately 120 helicopter landings on non-target wildlife. For example, the Forest Service’s EA states that bighorn sheep—a sensitive species found in the project area—may be disturbed by low-level helicopter flights but concludes that affected sheep will “resume previous activities once the source of disturbance has been removed, with no long-standing impacts to the species.” EA 3-26. However, research collected and cited by the U.S. Bureau of Land Management (“BLM”) indicates that “[h]elicopter surveys may adversely affect populations of mountain sheep . . . by altering the movement, habitat use, and foraging efficiency of sheep so that survivorship or reproduction is reduced Bighorn can respond so dramatically to helicopter use that it may override other factors affecting sheep movement.” U.S. Bureau of Land Mgmt., Status of the Science On Questions that Relate to BLM Plan Amendment Decisions and Peninsular Ranges Bighorn Sheep 6 (updated March 14, 2001) (citations omitted). As a result, research cited by the BLM “recommend[s] that helicopter flights be kept at over 100 meters above ground level to minimize impacts to bighorn sheep.” Id. Additional research indicates that adverse impacts on bighorn sheep from low-level helicopter flights are more acute in winter conditions.

78. The Forest Service failed to take the requisite “hard look” at the adverse impacts of low-level helicopter flights and landings on sensitive bighorn sheep and other non-target wildlife. This deficiency in the Forest Service’s NEPA analysis is compounded by the agency’s failure to consider the cumulative effects of successive years of helicopter landings in the Middle Fork Zone, as IDFG intends.

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request that this Court:

79. Declare that the Forest Service violated the Wilderness Act, NEPA, and those statutes' implementing regulations by authorizing IDFG's helicopter-assisted elk-collaring project in the River of No Return Wilderness;

80. Set aside the Forest Service's DN/FONSI and Temporary Special Use Permit authorizing IDFG's helicopter-assisted elk-collaring project in the River of No Return Wilderness;

81. Grant temporary, preliminary, and permanent injunctive relief to prohibit the Forest Service from further implementing the challenged authorization;

82. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation; and

83. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 7th day of January, 2016.

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