

1136. Nationwide Memoranda of Understanding (“MOUs”) and Annual Work Plans (“AWPs”) between Wildlife Services, a program within the United States Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (hereinafter “APHIS-Wildlife Services”) and the land management agencies, here the USFS and BLM, authorize APHIS-Wildlife Services to systematically kill and remove native wildlife in Wilderness to promote private commercial grazing operations. These agency actions unlawfully sanction an impermissible “commercial enterprise” within designated Wilderness, *id.* § 1133(c), and offend the Act’s mandate to preserve the “natural” and “untrammelled” conditions that define the “wilderness character” of these specially designated areas, *id.* §§ 1131, 1133.

3. Accordingly, Plaintiffs challenge uniform and recurring agency practices implemented through MOUs and AWP’s that systematically authorize predator control in designated Wilderness Areas across multiple states within the Tenth Circuit, including New Mexico, Colorado, Utah and Wyoming. The legality of these actions turns on a common question of statutory interpretation—whether the Wilderness Act permits the government to authorize and implement lethal control of native wildlife solely for the economic benefit of private livestock producers and commercial grazing enterprises in designated Wilderness.

4. Because killing native wildlife in designated Wilderness for this commercial purpose is impermissible under the plain language of the Wilderness Act and antithetical to the statute’s core purpose of preserving the “untrammelled,” “primeval,” and “natural conditions” of these special areas, Petitioners ask this Court to hold unlawful and vacate the nationwide MOUs and the applicable AWP’s and permanently enjoin the approval and implementation of predator control on behalf of private livestock producers on the relevant Wilderness Areas.

JURISDICTION AND VENUE

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. §§ 701 *et seq.* (Administrative Procedure Act). It has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 701–706.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the agency’s violations of law occurred and continue to occur in this district and Petitioner WildEarth Guardians also maintains its headquarters office in this district.

PARTIES

7. Petitioner WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians has been headquartered in Santa Fe, New Mexico for more than 30 years, with numerous staff members currently working and residing in New Mexico. Guardians also has more than 180,000 members and supporters across the West, including those who live near, work, and recreate in Wilderness Areas affected by the Defendant Agencies’ authorization and implementation of predator control therein, especially in the states of New Mexico, Colorado, Utah and Wyoming. Guardians has a long history of working to protect and restore native wildlife species across the West in general and New Mexico, Colorado, Utah and Wyoming in particular. Guardians operates a wildlife program with campaigns focused on protecting native carnivores including wolves, mountain lions, grizzly bears, black bears, and coyotes from persecution over conflicts with livestock and on reining in the controversial, cruel, and destructive practices of APHIS-Wildlife Services including the use of poisoning, trapping, and aerial gunning. Guardians also has a long history of engaging in public policy advocacy,

agency oversight, public education, research, and litigation to ensure paramount protections for designated Wilderness Areas.

8. Petitioner WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit conservation organization founded in 1993 and headquartered in Hailey, Idaho. WWP has over 50,000 members and supporters, and works in eleven states across the West, including New Mexico, Colorado, Utah, and Wyoming. WWP seeks to protect public lands, wildlife, and other natural resources and ecological values of western watersheds, particularly by addressing impacts caused by domestic livestock grazing. The killing of native wildlife for the benefit of commercial livestock operations is one of these impacts.

9. Petitioner WILDERNESS WATCH is a national, non-profit conservation organization whose 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. An essential component of Wilderness Watch’s work includes efforts to ensure that Congress’s express directive for stewardship under the Wilderness Act is reflected in administrative and other activity on the ground.

10. Petitioners’ staff, members, and supporters are dedicated to ensuring that APHIS-Wildlife Services and federal land management agencies comply with all applicable federal laws. APHIS-Wildlife Services’ wildlife killing activities within Wilderness Areas and on adjacent federal public lands in New Mexico, Colorado, Utah and Wyoming adversely impact Petitioners’ interests in preserving the “untrammeled” and “natural” conditions that define each affected Wilderness Area.

11. Petitioners' members and supporters recreate in and near Wilderness Areas in New Mexico, Colorado, Utah and Wyoming (where APHIS-Wildlife Services' predator control actions are authorized to occur) for the purposes of enjoying the scenic beauty of the nation's wildest places, to explore vast stretches of roadless terrain on foot or horseback, to observe the community of life that inhabits these remote areas in a state untrammelled by people, and to engage in other recreational, spiritual and professional pursuits. Petitioners' members and supporters enjoy observing, attempting to observe, photographing, and studying wildlife and the defining characteristics of Wilderness, including signs of native carnivores and the key ecological processes these species influence. The opportunity to possibly view free-willed and unrestrained wildlife or their signs in these areas is of significant interest and value to Petitioners' members and supporters, and it increases the use and enjoyment of these public lands and ecosystems in New Mexico, Colorado, Utah and Wyoming. Petitioners' members and supporters have regularly engaged in these activities in the past, and they intend to continue regularly doing so in the upcoming months.

12. Petitioners' members and supporters have an interest in preventing the Defendant Agencies from authorizing and implementing lethal control of native wildlife on federal public lands or their removal therefrom, and promoting the use of more effective and proactive nonlethal alternatives that foster communities' coexistence with wildlife, especially in designated Wilderness Areas.

13. Petitioners' members and supporters are harmed by the wanton killing of wildlife within Wilderness Areas which are set aside to be some of their most secure habitat, at the federal government's own hands and to further subsidize private commercial enterprise—

something the Wilderness system was expressly designed to prohibit and stand in contrast against.

14. In sum, the interests of Petitioners' members and supporters have been, and will continue to be, injured by the Respondent Agencies' actions in authorizing and carrying out the killing and removal of native carnivores and the manipulation of natural ecological processes within designated Wilderness Areas in New Mexico, Colorado, Utah and Wyoming for the perceived benefit of commercial livestock producers.

15. The relief Petitioners seek in this complaint—a declaration that the Wilderness Act prohibits the Respondent Agencies from authorizing and implementing predator control in Wilderness to promote the commercial grazing enterprises of private livestock producers, vacatur of the challenged agency actions that authorize predator control for this commercial purpose in Wilderness, and a permanent injunction prohibiting such predator control in Wilderness—would redress these injuries.

16. Respondent APHIS-WILDLIFE SERVICES is an agency or instrumentality of the United States, within the USDA, whose APHIS-Wildlife Services program is responsible for carrying out “predator control” – also referred to as “predator damage management” (“PDM”) or “wildlife damage management” (“WDM”) – on behalf of the federal government in New Mexico, Colorado, Utah, Wyoming and nationwide. APHIS-Wildlife Services receives federal and/or cooperator funding to undertake WDM actions in New Mexico, Colorado, Utah, and Wyoming, including for the stated purpose of protecting private agricultural interests, including commercial livestock grazing within designated Wilderness Areas.

17. Respondent USFS is an agency of the United States within the USDA that is charged with administering congressionally designated Wilderness Areas within national forest

system boundaries according to the Wilderness Act and other federal statutes and regulations, which includes Wilderness Areas within the states of New Mexico, Colorado, Utah, and Wyoming. The USFS authorizes APHIS-Wildlife Services to operate on Wilderness Areas and other federal public lands it manages in accordance with the procedures in the MOU between the Agencies and through AWP.

18. Respondent BLM is an agency of the United States within the Department of the Interior (“DOI”) that is charged with administering designated Wilderness Areas on public lands under its authority according to the Wilderness Act and other federal statutes and regulations, which includes Wilderness Areas within the states of New Mexico, Colorado, Utah and Wyoming. The BLM authorizes APHIS-Wildlife Services to operate on Wilderness Areas and other federal public lands it manages in accordance with the procedures in the MOU between the Agencies and through AWP.

LEGAL BACKGROUND

I. Wilderness Act

19. The Wilderness Act of 1964 established the National Wilderness Preservation System. 16 U.S.C. § 1131(a). “Wilderness” is defined as “an area where the earth and its *community of life* are untrammeled by man,” where the land has retained “its primeval character and influence,” and where the land has “been affected primarily by the forces of nature.” *Id.* § 1131(c) (emphasis added).

20. The Wilderness Act imposes a strict legal duty on federal land management agencies that administer designated Wilderness “to preserve its natural conditions” and “wilderness character.” *Id.* § 1133(b). In a Wilderness Area that may also have “other purposes

for which it may have been established,” the Act expressly requires that administration for those purposes be conducted so “as also to preserve [the area’s] wilderness character.” *Id.*

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

22. The Act does not “specifically” provide for predator control on behalf of private livestock producers or commercial grazing enterprises, nor mention anything related to predator damage management at all.

23. Instead, the Act expressly identifies limited exceptions to its categorical prohibition on “commercial enterprise.” 16 U.S.C. § 1133(d)(1)-(4). Among the specific exceptions is the “grazing of livestock” where such use was established prior to the Act’s passage on September 3, 1964. *Id.* § 1133(d)(4).

II. Animal Damage Control Act

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

The Secretary of Agriculture is authorized and directed to conduct such investigations, experiments, and tests as he may deem necessary in order to determine, demonstrate, and promulgate the best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain...mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, and other animals injurious to agriculture...; and to conduct campaigns for the destruction or control of such animals[.]

7 U.S.C. § 426 (1931).

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

The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program.

7 U.S.C. § 426 (2001).

26. In carrying out its predator control actions, APHIS-Wildlife Services must comply with all other applicable federal laws, including the Wilderness Act.

27. Congress’s enactment of the 1964 Wilderness Act, forbidding the intentional trammeling of the “earth and its community of life” in designated Wilderness abrogates APHIS-Wildlife Services’ authority to kill wildlife within Wilderness Areas for commercial livestock producers. If “provisions in [] two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one.” *EC Term of Years Trust v. United States*, 550 U.S. 429, 435 (2007) (quotation omitted).

III. Administrative Procedure Act

28. Because the Wilderness Act does not contain an internal standard of review, the Administrative Procedure Act (“APA”) governs judicial review. Under the APA, courts shall “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D). Courts must also reverse and set aside agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” *Id.* § 706(2)(C).

FACTUAL BACKGROUND

29. The basic thrust of APHIS-Wildlife Services’ mission to suppress and control wildlife deemed “injurious” to agricultural interests, 7 U.S.C. §§ 8351-8352, has changed little since its inception. Nationwide, the agency still kills hundreds of thousands of wild animals, often with cruel and archaic methods, on an annual basis.

30. Despite the land management agencies' paramount obligation to safeguard wilderness character, the USFS and BLM have nonetheless interpreted the Wilderness Act's narrow exception for the "grazing of livestock" to implicitly allow government agents to kill native wildlife for the intended purpose of preventing livestock losses and promoting commercial grazing enterprises in designated Wilderness. Both the USFS and BLM maintain policy manuals that include guidelines reflecting this statutory interpretation. USFS Manual 2320, §§ 2323.04c, 2323.33c (stating the Regional Forester may approve predator control programs in Wilderness "to prevent serious losses of domestic livestock" and that the USFS "is responsible for determining the need for control, the methods to be used, and approving all proposed predator damage control programs in wilderness"); BLM Manual 6340 (stating "[w]ildlife may be killed, hunted, or otherwise controlled [in Wilderness] if necessary to prevent serious losses of domestic livestock.").

31. These internal policy guidelines on predator control in Wilderness directly conflict with the land management agencies own core Wilderness policy objectives as set forth in the same policy manuals. For instance, mirroring the Wilderness Act, the USFS's stated primary objectives are to "[m]aintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces" and so that "natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist." USFS Manual 2320, §§ 2323.2, 2323.31.

32. Disregarding the plain language and core purpose of the Wilderness Act, as well their own conflicting policy pronouncements, the USFS and BLM have entered into nationwide MOUs and AWP's authorizing APHIS-Wildlife Services to conduct predator control within designated Wilderness Areas.

33. The MOUs and AWP's between APHIS-Wildlife Services and the USFS and BLM, respectively, establish the legal framework, authority, and procedures governing predator control actions on USFS- and BLM-managed public lands, including within designated Wilderness Areas. The MOUs set forth the agency roles and obligations and document the process for approvals and purported compliance with Wilderness Act requirements. The MOUs incorporate by reference the land management agencies' policy manuals that provide direction on predator control actions, i.e., "PDM" or "WDM," that may occur on USFS- and BLM-administered Wilderness Areas.

34. Upon information and belief, the most recent MOU between the USFS and APHIS-Wildlife Services was last signed by the Deputy Chief of the USFS on November 29, 2023 and is effective for five years (until November 29, 2028). This MOU directs the agencies to prepare AWP's that include anticipated WDM actions in Wilderness Areas, and a process for coordination of unplanned actions. The MOU also obligates the agencies to meet annually "or as needed" to review all APHIS-Wildlife Services actions in Wilderness Areas. Under the MOU, APHIS-Wildlife Services is required to notify the USFS prior to the implementation of WDM actions in Wilderness Areas. This 2023 MOU supplanted the previous MOU from 2017.

35. Upon information and belief, the most recent MOU between the BLM and APHIS-Wildlife Services was signed by the BLM Assistant Director on April 15, 2026 and is effective through September 30, 2031. This MOU directs the agencies to prepare AWP's that include "[s]pecific highlights to any proposed WDM actions on specific Wilderness Areas" and an established process for emergency control measures. This 2026 MOU supplanted the previous MOU from 2023, as amended in 2024. The 2026 MOU reinstates the BLM's policy of allowing APHIS-Wildlife Services to use M-44s (sodium cyanide devices) for predator control actions on

BLM-managed public lands under the terms and conditions set forth therein. BLM had previously amended its 2023 MOU with APHIS-Wildlife Services to prohibit the use of M-44 devices on all BLM-managed public land.¹ Further, the Fiscal Year 2024 annual appropriations conference report for Agriculture had prohibited the use of M-44 devices by APHIS-Wildlife Services: “The Secretary is prohibited from purchasing, deploying, or training third parties on the use of M-44 sodium cyanide ejector devices (“M-44s”), including any components or parts, or sodium fluoroacetate (“Compound 1080”), except for activities directly related to the removal of M-44s that have been placed on Federal, Tribal, State and private land.”²

36. The AWP’s between APHIS-Wildlife Services and the USFS and BLM, respectively, authorize and implement WDM actions on specific federal lands, including within designated Wilderness Areas, such as individual national forests and individual BLM Ranger Districts. The AWP’s are typically signed by APHIS-Wildlife Services’ State Directors and USFS Forest Supervisors and BLM District Rangers and coordinated through annual meetings between these officials to govern WDM actions on specific national forests and BLM Districts.

37. For instance, during 2021 in New Mexico, APHIS-Wildlife Services had AWP’s with the USFS and BLM, respectively, for WDM actions meant to prevent commercial livestock losses on six national forests (the Carson, Cibola, Coronado, Gila, Apache and Lincoln National Forests) and four BLM districts (the Socorro, Las Cruces, Roswell, and Carlsbad BLM Districts). Five of these national forests include the following fifteen (15) USFS-administered Wilderness Areas that are wholly or partially in New Mexico:

- Aldo Leopold Wilderness (Gila National Forest)

¹ HQ IB 2024-024.

² Joint Statement, available at:

[https://docs.house.gov/billsthisweek/20240304/FY24%20Ag%20Conference%20JES%20scan%203.2.24%20\(1\).pdf](https://docs.house.gov/billsthisweek/20240304/FY24%20Ag%20Conference%20JES%20scan%203.2.24%20(1).pdf).

- Apache Kid Wilderness (Cibola National Forest)
- Blue Range Wilderness (partially in NM) (Gila National Forest)
- Capitan Mountains Wilderness (Lincoln National Forest)
- Chama River Canyon Wilderness (Santa Fe National Forest)
- Cruces Basin Wilderness (Carson National Forest)
- Gila Wilderness (Gila National Forest)
- Latir Peak Wilderness (Carson National Forest)
- Manzano Mountain Wilderness (Cibola National Forest)
- Pecos Wilderness (Santa Fe National Forest)
- Sandia Mountain Wilderness (Cibola National Forest)
- San Pedro Parks Wilderness (Santa Fe National Forest)
- Wheeler Peak Wilderness (Carson National Forest)
- White Mountain Wilderness (Lincoln National Forest)
- Withington Wilderness (Cibola National Forest)

Three of these BLM Districts include the following thirteen (13) BLM-administered Wilderness

Areas in New Mexico:

- Aden Lava Flow Wilderness (Las Cruces BLM District)
- Ah-Shi-Sle-Pah Wilderness (Roswell BLM District-Pecos Field Office)
- Alamo Hueco Mountains Wilderness (Carlsbad BLM District)
- Big Hatchet Mountains Wilderness (Carlsbad BLM District)
- Bisti/De-Na-Zin Wilderness (Roswell BLM District-Pecos Field Office)
- East Potrillo Mountains Wilderness (Las Cruces BLM District)
- Little Hatchet Mountains Wilderness (Carlsbad BLM District)
- Ojito Wilderness (Socorro BLM Field Office)
- Organ Mountains Wilderness (Las Cruces BLM District)
- Rio San Antonio Wilderness (Socorro BLM Field Office)
- Robledo Mountains Wilderness (Las Cruces BLM District)
- Sierra de las Uvas Wilderness (Las Cruces BLM District)
- West Potrillo Mountains Wilderness (Las Cruces BLM District)

38. Predator control for the intended purpose of preventing commercial livestock losses in designated Wilderness only occurs within those Wilderness Areas where the land management agencies authorize federally permitted livestock grazing (provided that commercial activity was established on those lands prior to the passage of the 1964 Wilderness Act or subsequent Wilderness enabling legislation) and when private livestock producers request predator control services on their behalf.

39. Not all producers that hold permits to graze livestock within designated Wilderness request APHIS-Wildlife Services to conduct predator control on their behalf. Some producers employ proactive livestock husbandry practices and other grazing practices that minimize the risk of livestock being predated upon by native wildlife while grazing in remote and often rugged Wilderness Areas. For example, some producers mitigate depredation risk by maintaining a frequent human presence with their herds through “range riders;” by using livestock guardian dogs; by ensuring sick, injured, or dead livestock are promptly removed so as not to attract predators where livestock are still actively grazing; and by using herding techniques that keep livestock bunched up in more open, defensible areas rather than left to wander unattended. Some producers also avoid grazing newly born calves and lambs that are especially vulnerable to predation and/or adjust the timing of grazing on large, remote federal lands allotments to reduce the risk of depredation events.

40. The land management agencies regulate livestock grazing on all federal public lands under their respective authorities. These regulations establish directives for grazing permit holders (“permittees”) as well as measures to protect resources, including wildlife, from adverse grazing impacts. 43 C.F.R. §§ 4100–4770.5 (BLM’s grazing regulations; 36 C.F.R. §§ 222.1–222.76 (USFS’s grazing regulations). These regulations, many of which are meant to mitigate or prevent the negative environmental consequences of livestock grazing on federal public lands, solely govern this commercial enterprise. These grazing regulations do not address the “control” or killing of wildlife for the intended purpose of preventing livestock losses—agency actions that are separate from the management of grazing itself.

41. The AWP’s between APHIS-Wildlife Services and the land management agencies delineate what, when, why, where, and how predator control or WDM would be conducted on

the federal public lands governed by each plan. Specifically, the AWP's constitute the agencies' final selection of the particular WDM methods to be used and the protocols for carrying out WDM actions. The AWP's also identify applicable legal requirements, as well as agency policies and guidelines, such as those set forth in the USFS's and BLM's governing land management plans, and establish constraints on WDM actions where and when the land management agencies deem appropriate. The AWP's make clear that all WDM actions are subject to the terms and conditions specified in the MOUs and AWP's between the Defendant Agencies.

42. The AWP's, like the ones issued for federal public lands in New Mexico, specify the killing or "control" methods to be used, such as "foot-hold traps, foot or neck snares, aerial predator control, denning [gas cartridges], M-44s [sodium cyanide ejector devices used to target canids], DRC-1339 [poisons used to induce kidney failure in ravens or crows], and ground shooting in conjunction with night-vision equipment, spotlighting, decoy dogs, trail dogs, and predator calling."

43. The AWP's also specify which WDM methods are allowed in specially designated areas such as Wilderness. For example, the 2021 AWP for WDM actions on the Magdalena Ranger District of the Cibola National Forest authorized WDM within the Apache Kid and Withington Wilderness Areas, but prohibited aircraft and M-44s from being used in Wilderness. Similarly, the 2021 AWP for WDM on the Gila and Apache National Forests states that WDM within the Blue Range, Gila and Aldo Leopold Wilderness Areas "will be conducted in accordance with the guidelines and conditions outlined in Appendix B."³ Other AWP's, such as

³ Upon information and belief, "Appendix B," as referenced here refers to a letter from the Regional Forester to the New Mexico State Director for APHIS-Wildlife Services, dated March 15, 2016, which outlined guidelines and conditions for WDM within USFS-administered Wilderness Areas in the Southwestern Region. For instance, the letter provides, "APHIS-WS personnel travel on foot or horseback to conduct control activities, and control activities do not

the 2019 AWP for the Shoshone National Forest in Wyoming, allow the Regional Forester to approve aerial gunning operations within Wilderness in response to livestock depredations on a “case-by-case basis.”

44. The AWP also typically acknowledge that APHIS-Wildlife Services’ WDM program includes so-called “corrective” and “preventive” controls of wildlife for the stated purpose of preventing livestock losses. “Corrective” control is used to respond to livestock losses incurred while grazing is underway on the affected federal public lands and is intended to target the animal(s) judged to be involved in those depredation events. “Preventive” control, on the other hand, is used to lethally remove particular predator species in an area with a noted history of livestock depredations and thus is used in advance of any conflicts occurring, such as when APHIS-Wildlife Services aerielly guns down a large number of coyotes weeks or months in advance of livestock being turned out to graze in the target area.

45. The AWP between the agencies specify when, where, and for which target species “corrective” and “preventive” control may be used. For example, the 2021 AWP for the Las Cruces BLM District in New Mexico limits lethal control of black bear and mountain lions to a “corrective basis only” following the verification of livestock “damage,” whereas “preventive” control of coyotes is allowed where there has been a history of livestock depredations within the previous two years as reported by livestock owners or verified by APHIS-Wildlife Services.

require any of the prohibited uses listed in Section 4(c) of the Wilderness Act. These prohibited uses include but are not limited to motor vehicles, motorized equipment, motorboats, aircraft, other forms of mechanical transport, and structures or installations (e.g., traps or game cameras).” This letter also allows WDM in Wilderness to protect commercial livestock on neighboring private properties or when APHIS-Wildlife Services is actively pursuing an animal from an adjacent private property onto a Wilderness Area.

46. Some AWP's also allow APHIS-Wildlife Services to kill wildlife on public lands, including within designated Wilderness, for the intended purpose of preventing livestock losses on neighboring private lands, such as when APHIS-Wildlife Services determines that wildlife responsible for livestock damage are coming from national forest lands or BLM-managed lands or when APHIS-Wildlife Services is in "hot pursuit" of a so-called "offending animal" moving onto designated Wilderness.

47. The nationwide MOUs and area-specific AWP's constitute final agency action reviewable under 5 U.S.C. § 704 because they authorize and govern ongoing predator control actions and practices on USFS- and BLM-managed federal public lands, including within designated Wilderness.

48. The MOUs finalize nationwide policy governing predator control on USFS- and BLM-managed federal public lands, supersede prior agreements, and commit both the land management agencies and APHIS-Wildlife Services to a coordinated operational framework.

49. The AWP's tier to, and incorporate by reference, the relevant nationwide MOU. By detailing where, when, and under what restrictions APHIS-Wildlife Services may conduct predator control or WDM on federal public lands, the AWP's determine "rights *or* obligations." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (emphasis original).

50. The AWP's also mark "the consummation of the agency's decisionmaking process" and have a "direct and immediate" effect on the day-to-day operations of the Respondent Agencies, including the killing of native wildlife on behalf of private livestock producers and commercial grazing enterprises within designated Wilderness. *Id.* For example, the 2020 AWP between the USFS and APHIS-Wildlife Services for WDM on the Shoshone

National Forest in Wyoming, which includes the Absaroka, Washakie, North Absaroka, Fitzpatrick, and Popo Agie Wilderness Areas, states:

This plan and the annual maps and letters authorize wildlife damage management activities on Shoshone National Forest lands by the USDA-APHIS-Wildlife Services program subject to the constraints specified herein, and the requirements of all pertinent Federal and State laws, executive orders, and regulations. It is mutually agreed that all wildlife damage management activities will be carried out according to this plan. This Plan will be implemented effective the date of signature and will remain in effect until superseded by a new annual work plan, unless otherwise terminated in writing by one of the participating agencies.

The AWP between the BLM and APHIS-Wildlife Services contain similar language regarding the Agencies' final approval for implementing WDM actions. For example, the 2020 AWP for the Las Cruces BLM Field Office in New Mexico states:

This plan implements Wildlife Services activities on Las Cruces BLM Field Office administered lands by USDA-APHIS, Wildlife Services, consistent with USDA NEPA documentation and the accompanying Decision Notice and FONSI. The plan is subject to the constraints specified herein, and the requirements of all pertinent Federal and State laws, executive orders, regulations, and the MOU between APHIS-WS and the BLM. Wildlife Services activities will be carried out according to this plan.

51. The AWP are issued on a recurring and approximate annual basis and function as repeated, substantially similar authorizations of predator control actions across federal public lands.

52. Each AWP incorporates and applies the same underlying legal interpretation—that predator control for the benefit of private livestock producers is permissible within designated Wilderness.

CLAIM FOR RELIEF

Wilderness Act Violations

(Ultra Vires and Contrary to Law – 5 U.S.C. § 706(2)(A), (C))

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

(Count I – Defendants Acted *Ultra Vires*)

54. The Wilderness Act prohibits all commercial enterprise unless specifically authorized by the statute. 16 U.S.C. § 1133(c).

55. Predator control is not “specifically provided for” in the Wilderness Act.

56. Because no statutory authorization exists, Respondents lack authority to approve or conduct such predator control or WDM actions.

57. Respondents’ authorization of predator control in Wilderness Areas is therefore: (a) in excess of statutory jurisdiction, authority, or limitations; and (b) *ultra vires*. These actions must be set aside under 5 U.S.C. § 706(2)(C).

(Count II – Defendants’ Actions Are Contrary to Law)

58. Predator control conducted for the intended purpose of preventing commercial livestock losses constitutes a “commercial enterprise” because its purpose and effect is to benefit private economic interests.

59. The Wilderness Act categorically prohibits such commercial enterprise in Wilderness Areas.

60. The Act’s grazing exception allows only “the grazing of livestock,” not predator control or other commercial enterprises on behalf of private livestock producers. 16 U.S.C. § 1133(d)(4).

61. Defendants’ interpretation improperly expands the narrow grazing exception to include actions not authorized by Congress. This interpretation: (a) ignores the plain language of the statute and reads the “specifically provided for” limitation out of the statute; (b) ignores the structure of the statute and conflicts with the requirement that statutory exceptions to a general

prohibition be narrowly construed; and (c) contravenes the Act’s mandate to preserve wilderness character. Because the statutory text is unambiguous, Defendants are not entitled to deference.

62. The land management agencies’ own Wilderness policy reflects the Wilderness Act’s core mandate that ecosystems be “unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces.” USFS Manual, 2320.2; BLM Manual 6340, p. 21 (“Fish and wildlife management activities should emphasize the protection of natural processes in a wilderness context. It is expected that nature, not human intervention, will play the dominant role.”). Yet other provisions of these same policy manuals sanction the killing and control of wildlife in Wilderness to prevent commercial livestock losses. FSM §§ 2323.04c, 2323.33c; BLM Manual 6340. These directives are in direct tension. Predator control – by definition – constitutes intentional human manipulation of wild animals and ecological processes. The Agencies cannot simultaneously require that Wilderness ecosystems remain “unaffected by human manipulation” while authorizing the systematic killing of native wildlife solely to benefit commercial livestock producers.

63. Defendants’ actions are therefore: (a) not in accordance with law; and (b) arbitrary, capricious, and unlawful. These actions must be set aside under 5 U.S.C. § 706(2)(A).

REQUESTS FOR RELIEF

WHEREFORE, Petitioners WildEarth Guardians, Western Watersheds Project, and Wilderness Watch request that this Court enter judgment providing the following relief:

- A. Declare that Defendants’ authorization of predator control in designated Wilderness Areas violates the Wilderness Act;
- B. Hold unlawful and set aside the challenged MOUs and AWP’s to the extent they authorize predator control in Wilderness Areas;

- C. Enjoin Defendants from authorizing or conducting predator control in designated Wilderness Areas for the benefit of private livestock operations;
- D. Award Plaintiffs their costs, attorneys' fees, and other expenses in this action pursuant to EAJA, 28 U.S.C. § 2412; and
- E. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 27th day of May 2026,

/s/ Jennifer Schwartz

Jennifer Rose Schwartz, Bar I.D. #26-299

WildEarth Guardians

213 SW Ash St., Suite 202

Portland, OR 97204

(503) 780-8281

jschwartz@wildearthguardians.org

Counsel for Petitioners