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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

WILDEARTH GUARDIANS,

Plaintiff,

vs.

UNITED STATES DEPARTMENT  
OF AGRICULTURE ANIMAL AND  
PLANT HEALTH INSPECTION  
SERVICE; JANET L. BUCKNELL, in  
her official capacity as Deputy  
Administrator of the Animal and Plant  
Health Inspection Service,

Defendants.

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

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. WildEarth Guardians (“Guardians”) brings this lawsuit against Defendants U.S. Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) and Janet L. Bucknall, the Deputy Administrator for APHIS’s Wildlife Services program.<sup>1</sup> Wildlife Services continues to kill predators and numerous other native wildlife species without supplementing decades-old environmental analyses for its so-called “Predator Damage Management” program in Montana. In so doing, Wildlife Services is violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347; the implementing Council on Environmental Quality (“CEQ”) regulations, 40 C.F.R. §§ 1500-1508; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

2. Every year, our nation’s most majestic animals, including wolves, black and grizzly bears, eagles, coyotes, and mountain lions, are poisoned, trapped and gunned down by Wildlife Services, a program within the USDA. Funded with millions of taxpayer dollars, this program uses cruel and often archaic methods to capture and kill wildlife from their native ecosystems, largely at the behest of livestock producers. Across Montana, Wildlife Services uses fixed-wing

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<sup>1</sup> Wildlife Services is a program or component of APHIS, within the USDA. As all of the allegations in this Complaint relate to the Wildlife Services program, which functions as a semi-autonomous agency, Defendants will hereinafter be collectively referred to as “Wildlife Services.”

aircraft and helicopters to aerially shoot coyotes, red foxes, and wolves; body-gripping traps, neck snares and leghold traps to kill mountain lions, wolves, black bears, federally listed grizzly bears, coyotes, skunks and red foxes; gas cartridges and poisons to exterminate coyotes, red foxes, and prairie dogs in their dens; sodium cyanide M-44 devices to kill canines like foxes and coyotes; and other poisons to eliminate native birds like ravens. Family pets and federally protected species are also injured or killed by the agency's indiscriminate killing methods.

3. Despite its extensive activities, Wildlife Services has never prepared an Environmental Impact Statement ("EIS") disclosing the breadth and environmental impacts of its Montana program to the public, as NEPA requires. Instead, it continues to operate in the state under woefully outdated Environmental Assessments ("EAs") from the mid-1990s that rely on studies mostly dating back to the 1970s and 80s.

4. NEPA, however, requires supplemental analysis when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. 40 C.F.R. § 1502.9(c)(1)(ii). More than 20 years have passed since Wildlife Services analyzed the impacts of its Predator Damage Management program in Montana in finalized NEPA documents. New information and circumstances relevant to the predator-killing program, such as new scientific publications on the ineffectiveness of predator control, require

that Wildlife Services prepare a supplemental NEPA analysis.

5. Through this complaint, Guardians seeks a declaration that Wildlife Services' ongoing authorization and implementation of its wildlife killing programs in Montana violates federal law and is otherwise arbitrary and capricious. Guardians additionally seeks injunctive relief to redress the injuries caused by these violations of the law. Should Guardians prevail, it will seek an award of costs, attorneys' fees, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. §§ 701 *et seq.* (Administrative Procedures 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.

7. 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 injury to Guardians and its members occurred and continues to occur in this district. Guardians also maintains an office in this district.

### **PARTIES**

8. Plaintiff 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 more than 275,000 members and supporters across the West, including those who reside in and visit the State of Montana. Guardians maintains offices in several states, including Missoula, Montana; Denver, Colorado; Portland, Oregon; and Santa Fe, New Mexico. Guardians has a long history of working to protect and restore native wildlife species across the West in general and Montana in particular, including gray wolves, mountain lions, black bears, grizzly bears, Canada lynx, coyotes, fishers, prairie dogs and wolverines. Guardians operates a wildlife program with campaigns focused on native carnivore protection and restoration, and on reining in the controversial, cruel, and destructive practices of Wildlife Services including the use of poisoning, trapping, and aerial gunning.

9. Guardians' staff, members, and supporters are dedicated to ensuring that Wildlife Services complies with all applicable federal laws. Wildlife Services' wildlife killing program in Montana, along with its associated 1997 Environmental Assessments and Findings of No Significant Impact for western and eastern Montana ("1997 EAs/FONSIs") and 2012 EA and associated 2013 FONSI for Gray Wolf Damage Management in Montana, adversely impact Guardians' interests in Montana's wildlife when Wildlife Services kills native wildlife—intentionally or unintentionally—including gray wolves, grizzly bears, black bears, coyotes, mountain lions, bobcats, foxes, raptors, ravens, skunks, prairie dogs and

others. Guardians also has members who are adversely affected by the threat that Wildlife Services poses to companion animals in Montana.

10. Guardians' members and supporters live and/or recreate in or near areas in Montana where implementation of Defendants' wildlife killing program occurs, for the purposes of hiking, observing wildlife, and other recreational and professional pursuits. Guardians' members and supporters enjoy observing, attempting to observe, photographing, and studying wildlife, including signs of those species' presence in these areas. The opportunity to possibly view wildlife or their signs in these areas is of significant interest and value to Guardians' members and supporters, and it increases the use and enjoyment of public lands and ecosystems in Montana. Guardians' members and supporters have regularly engaged in these activities in the past, and they intend to continue to regularly do so in the upcoming months.

11. Guardians' members and supporters have a procedural interest in ensuring that Wildlife Services' activities comply with all applicable federal statutes and regulations. Guardians has worked to reform Wildlife Services' activities throughout the United States, including in Montana. Guardians and its members and supporters have an interest in preventing Wildlife Services from being involved in lethal wildlife damage management, particularly predator

control, and promoting the use of more effective and proactive nonlethal alternatives that foster communities' coexistence with wildlife.

12. In sum, the interests of Guardians' members and supporters have been, and will continue to be, injured by Wildlife Services' wildlife-killing activities in Montana and its failure to comply with NEPA in implementing its Predator Damage Management program.

13. The relief Guardians seeks in this complaint would redress the injuries of its members and supporters. The relief Guardians requests, if granted, would prevent Wildlife Services from engaging in lethal predator damage management activities unless and until it complies with federal law. Guardians' requested relief, if granted, could reduce the amount of lethal predator control and other wildlife killing conducted in Montana. The Montana Department of Fish, Wildlife and Parks, Montana Department of Agriculture, local municipalities, and private livestock producers cannot completely replace Wildlife Services' activities authorized through the 1997 EAs/FONSIs and 2012 Gray Wolf Damage Management EA/FONSI. Those entities do not have the equipment, such as fixed-wing aircraft for aerial gunning operations, or trained wildlife killing personnel utilized by Wildlife Services.

14. Guardians' interests, and those of its members and supporters, have been, are being, and, unless the requested relief is granted, will continue to be

harm by Wildlife Services' actions and inactions challenged in this complaint. If this Court issues the relief requested, the harm to Guardians' interests, and of the harm to their members and supporters' interests, will be redressed.

15. Defendant USDA ANIMAL AND PLANT HEALTH INSPECTION SERVICE ("APHIS") is an agency or instrumentality of the United States, within the USDA, whose Wildlife Services program is responsible for carrying out "predator damage control" and wildlife killings on behalf of the federal government in Montana and nationwide. Wildlife Services receives federal and cooperator funding to undertake wildlife damage management activities in Montana.

16. Defendant JANET L. BUCKNALL is being sued in her official capacity as the Deputy Administrator of USDA APHIS's Wildlife Service's program.

## **LEGAL BACKGROUND**

### **I. National Environmental Policy Act**

17. Under NEPA, a federal agency must prepare an Environmental Impact Statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment...." 42 U.S.C. § 4332(2)(C). The human environment "shall be interpreted comprehensively to include the natural and physical

environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14.

18. “The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(c). The CEQ “regulations provide the direction to achieve this purpose.” *Id.* To that end, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* § 1500.1(b).

19. To determine whether an action is significant—i.e., whether an EIS is necessary for the proposed action—an agency may first prepare an Environmental Assessment (“EA”). *Id.* § 1501.4(b). “Significance” determinations are governed by CEQ regulations, which require agencies to consider both the context of the action and the intensity of the environmental impacts. *Id.* § 1508.27. If the agency determines that a full EIS is not necessary, the agency must prepare a finding of no significant impact (“FONSI”). *Id.* § 1501.4(e). A FONSI is a “document...briefly presenting the reasons why [the proposed] action...will not have a significant effect on the human environment.” *Id.* § 1508.13.

20. The environmental analysis must disclose and analyze the direct, indirect, and cumulative effects of the proposed action on the environment. *Id.* §§ 1502.16 (environmental consequences), 1508.7 (cumulative impacts), 1508.8 (direct and indirect effects), 1508.25(c)(3) (scope of impacts that must be considered).

21. NEPA regulations allow for “tiering” of environmental reviews, when appropriate. Tiering is the process of incorporating by reference coverage of general matters in broader environmental impact statements, such as national program or policy statements, into subsequent narrower environmental analyses, such as regional or ultimately site-specific statements. *See* 40 C.F.R. § 1508.28. Although tiering to a previous EIS may be permissible, the previous document must actually discuss the impacts of the narrower program or project at issue.

22. After preparing an EIS or EA, an agency may not simply rest on the original document. The agency must gather and evaluate new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned actions. *See Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

23. NEPA requires that a federal agency prepare a supplemental NEPA document when “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” emerge.

*Id.* § 1502.9(c)(1)(ii); *see Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 560 (9th Cir. 2006).

## **II. Administrative Procedure Act**

24. NEPA does not contain an internal standard of review, so judicial review is therefore governed by the APA. Under the APA, courts “shall hold unlawful and set aside” agency action, findings, or conclusions found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

25. In addition, APA section 706(1) authorizes reviewing courts to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

## **FACTUAL BACKGROUND**

### **I. Wildlife Services’ Nationwide Wildlife-Killing Program**

26. Wildlife Services and its precursors have specialized in killing wildlife for more than 100 years and are responsible for the eradication of wildlife like wolves, bears, and other animals from much of the United States, particularly in the West. Wildlife Services contracts with other federal agencies, non-federal government agencies, and private landowners.

27. Wildlife Services kills approximately one and a half million native animals every year in the U.S. In Fiscal Year 2018, Wildlife Services reported that it killed 357 gray wolves; 68,186 adult coyotes, plus an unknown number of coyote pups in 361 destroyed dens; 515,915 red-winged blackbirds; 338 black bears; 375 mountain lions; 1,002 bobcats; 173 river otters, plus an additional 537 killed “unintentionally;” 3,349 foxes, plus an unknown number of fox pups in 133 dens; and 22,521 beavers.

28. Each year, Wildlife Services unintentionally kills thousands of nontarget animals. The wildlife-killing program unintentionally killed 2,700 nontarget animals in 2018, including bears, bobcats, foxes, muskrats, otters, porcupines, raccoons, and turtles. Its killing of nontarget birds included chickadees, cardinals, ducks, eagles, hawks, herons, owls, and turkeys. Dozens of domestic animals—including companion animals and livestock—were also killed. These killings undermine efforts to conserve and recover state and federally protected endangered wildlife, which oftentimes need protection in part due to Wildlife Services’ historic and ongoing practices.

29. Former employees have alleged that Wildlife Services underreports the numbers of animals the agency kills. Therefore, the actual numbers of animals Wildlife Services has killed are likely greater than reported.

30. Many of the species Wildlife Services targets play critical roles in ecosystems, and their removals result in a cascade of unintended consequences. The loss of top predators is well documented to cause a wide range of unanticipated impacts that are often profound, altering processes as diverse as the dynamics of disease, wildfire, carbon sequestration, invasive species, and biogeochemical cycles. In short, the removal of so many animals from the environment—especially predators—significantly alters native ecosystems directly, indirectly, and cumulatively.

31. Many of the methods Wildlife Services uses—including snares; leg-hold and body-gripping traps; and gas cartridges—are fundamentally nonselective, environmentally destructive, inherently cruel, and often ineffective. For example, leg-hold traps are internationally recognized as inhumane and have been banned or restricted in many countries and states within the United States. Upon being trapped, animals frantically struggle to free themselves both by attempting to pull their trapped limb out of the device and by chewing at the trap itself or even their own limbs. The force of the jaws clamping on the animal's limb and the subsequent struggle result in severe trauma, including mangling of the limb; fractures; damage to muscles and tendons; lacerations; injury to the face and mouth; broken teeth; loss of circulation; frostbite; and amputation. Wildlife Services often fails to routinely check its traps and in Montana there is no general

trap check requirement. Thus, many animals experience prolonged suffering and sometimes eventually die of exposure.

## **II. History of NEPA Analysis of Wildlife-Killing Programs in Montana**

32. In 1994, Wildlife Services prepared (and in 1997 amended) a Programmatic EIS (“1994 PEIS”) to analyze its nationwide wildlife damage control program. This outdated document relies on science from the 1970s and 80s, with some studies dating back decades further. In fact, in 2016, Wildlife Services issued a formal notice acknowledging that the 1994 programmatic EIS is outdated, that the agency would no longer rely upon it, and that it intended to redo or revise all the NEPA documents currently tiered to the 1994 PEIS.

33. In 1997, Wildlife Services issued two EAs/FONSI for its “Predator Damage Management” program in Montana, one for western Montana and one for eastern Montana. In both of the 1997 EAs, Wildlife Services states that its analysis “relies on existing data contained in research and published documents and the [Animal Damage Control (“ADC”)] programmatic EIS (USDA 1994) to which this document is tiered.”

34. In 2002, Wildlife Services issued two virtually identical “Environmental Assessment Monitoring” reports for its Predator Damage Management program in Montana, one for each half of the state. These roughly 7-page reports, which Wildlife Services describes as “supplemental analyses,”

summarized annual figures for reported livestock depredations and the number of predators Wildlife Services reported killing in 2001. The reports concluded that “there continues to be no indications that [Wildlife Services’] predator damage management is having adverse impacts on wildlife populations or the quality of the human environment[.]” The agency concurrently issued two Decisions/FONSIIs allowing the program to continue as previously analyzed and authorized in the 1997 EAs/FONSIIs.

35. Similarly, in 2008, Wildlife Services issued a “5-Year Environmental Monitoring Review” of its statewide Predator Damage Management program that summarized the number of reported livestock depredations in Montana and the number of predators Wildlife Services reported killing in the state for fiscal years 2002 through 2006. This review also included a brief analysis of Wildlife Services’ predator killing program as it related to Montana’s gray wolf and grizzly bear populations (two species not previously analyzed in the 1997 EAs/FONSIIs as part of Wildlife Services’ Predator Damage Management program). Based on this review, Wildlife Services again concluded that there was no reason to revise the 1997 EAs/FONSIIs and that it would continue to implement its Predator Damage Management program as analyzed and approved under those prior analyses and associated decisions.

36. In 2012, Wildlife Services issued an EA for “Gray Wolf Damage Management in Montana for the Protection of Livestock, Other Domestic Animals, Human Safety, and Other Resources.” According to this EA, from 2006 to 2011, an annual average of 20.1% of the minimum wolf population was intentionally killed to protect livestock. In 2013, Wildlife Services issued a FONSI and signed a decision for its Gray Wolf Damage Management program in Montana, which authorized the agency to continue killing wolves at the request of the state wildlife agency (Montana Fish, Wildlife and Parks) and livestock owners, by means of shooting, snares, aerial gunning (shooting fleeing wolves from airplanes or helicopters), denning (removing wolf pups from dens and euthanizing them), and lethal injection.

37. In Montana, the 1997 EAs/FONSIs and 2012 Gray Wolf Damage Management EA/2013 Decision and FONSI authorize Wildlife Services’ statewide involvement in predator-killing programs. The 1997 EAs/FONSIs authorize the use of leg-hold traps, cage traps, neck snares, ground shooting, hunting dogs, aerial hunting, M-44s (sodium cyanide “bombs”), livestock protection collars filled with Compound 1080, gas cartridges (to kill animals in dens), and more.

38. Target species listed in the 1997 EAs/FONSIs include coyote, red fox, black bear, mountain lion, bobcat, raccoon, badger, striped skunk, and ravens.

39. The 1997 EAs/FONSI report that Wildlife Services also unintentionally killed several nontarget animals in the mid-1990s in Montana, including red foxes, porcupines, striped skunks, badgers, mountain lions, gray wolves, and dogs.

40. The 1997 EA/FONSI for Wildlife Services' Predator Damage Management program in western Montana covers the following 24 counties: Beaverhead, Broadwater, Cascade, Deer Lodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Meagher, Mineral, Missoula, Park, Pondera, Powell, Ravalli, Sanders, Silver Bow, Sweet Grass and Teton. According to this 1997 EA, in the mid-1990s, Wildlife Services had active agreements to conduct predator damage management on about 5.6 million acres of state and private lands within these counties, as well as agreements with the U.S. Forest Service ("USFS") and U.S. Bureau of Land Management ("BLM") to conduct predator management on federal public lands within two BLM Districts (Butte, western portion of the Lewistown), the Beaverhead, Helena and Lewis and Clark National Forests, and the National Bison Range.

41. The 1997 EA/FONSI for Wildlife Services' Predator Damage Management program in eastern Montana covers the following 28 counties: Big Horn, Blaine, Carbon, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum,

Phillips, Prairie, Roosevelt, Rosebud, Sheridan, Stillwater, Toole, Treasure, Valley, Wheatland, Wibaux and Yellowstone. According to this 1997 EA, in the mid-90s, Wildlife Services had active agreements to conduct predator damage management on about 12.8 million acres of state and private lands within these counties as well as agreements with the USFS, BLM and U.S. Fish & Wildlife Service (“FWS”) to conduct predator management on federal public lands within two BLM Districts (Miles City, and the eastern portion of the Lewistown), on the Lewis and Clark National Forest, and Charles M. Russell National Wildlife Refuge.

42. In September 2016, Wildlife Services released a pre-decisional Environmental Assessment for “Predator Damage and Conflict Management in Montana.” On October 14, 2016, Guardians submitted written comments on the pre-decisional EA.

43. As of the date of this complaint, Wildlife Services still has not supplemented its 1997 EAs/FONSIs or finalized the 2016 pre-decisional Environmental Assessment. To date, Wildlife Services has never prepared an EIS analyzing the impacts of its wildlife killing programs in Montana and instead continues to rely on the outdated 1997 EAs that tier to the admittedly outdated 1994 PEIS.

44. Wildlife Services continues to kill thousands of animals in Montana every year. In 2018, Wildlife Services reported killing 7,875 coyotes, 46 gray

wolves, 90 red foxes, 19 mountain lions, 7 black bears, 1 grizzly bear and thousands of other animals in Montana.

### **III. New Information and Circumstances Affecting Wildlife-Killing Programs in Montana**

45. Since Wildlife Services prepared its 1997 EAs/FONSI and the 2012 Wolf Damage Management EA/2013 FONSI, new information and circumstances demonstrate that supplemental NEPA analysis is required for the agency's wildlife killing programs in Montana.

46. For example, numerous studies published since the 1990s call into question Wildlife Services' assumption that killing predators effectively protects commercial livestock over the long-term. For example, Wielgus and Peebles (2014)<sup>2</sup> found that killing predators to protect livestock can backfire and may increase livestock depredation. In addition, Treves and others (2016)<sup>3</sup> found little or no scientific support for the proposition that killing predators such as wolves, mountain lions, and bears reduces livestock losses (*see also* van Eeden *et al.* 2018).<sup>4</sup>

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<sup>2</sup> R. B. Wielgus, K. A. Peebles, Effects of wolf mortality on livestock depredations. PLoS One. 9, 1–16 (2014).

<sup>3</sup> A. Treves, M. Krofel, J. Mcmanus, Predator control should not be a shot in the dark. Front. Ecol. Environ. 14, 380–388 (2016).

<sup>4</sup> van Eeden LM, Eklund A, Miller JRB, López-Bao JV, Chapron G, et al. Carnivore conservation needs evidence-based livestock protection. PLOS Biology 16(9): e2005577 (2018).

47. Moreover, many of the species that Wildlife Services targets play critical ecological roles, yet the 1997 EAs never assessed the cascading effects of removing predators from their native ecosystems. Numerous studies have been published since these EAs were developed that demonstrate that removing top predators like wolves and mountain lions results in a cascade of unintended consequences and wide-ranging adverse ecological effects (*e.g.*, Beschta & Ripple 2012, 2014, 2016; Levi *et al.* 2012; Bergstrom *et al.* 2013; Bergstrom 2017).<sup>5</sup>

48. In fact, Wildlife Services did not target gray wolves in Montana at the time the 1997 EAs were developed, as the species had just been reintroduced to Yellowstone National Park in 1995 under the protections of the federal Endangered Species Act (“ESA”). Though Wildlife Services conducted a substantial amount of wolf killing under the flexibility of the ESA’s 10(j) rule while wolves remained federally listed in the Northern Rockies, it was not until 2012 that the agency conducted analysis and issued a separate EA for its gray wolf damage management

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<sup>5</sup> W. J. Ripple, R. L. Beschta, Trophic cascades in Yellowstone: The first 15 years after wolf reintroduction. *Biol. Conserv.* 145, 205–213 (2012); W. J. Ripple, *et al.* Trophic cascades from wolves to grizzly bears in Yellowstone. *J. Anim. Ecol.* 83, 223–233 (2014); R. L. Beschta, *et al.*, Riparian vegetation recovery in Yellowstone: The first two decades after wolf reintroduction. *Biol. Conserv.* 198, 93–103 (2016); Taal Levi, *et al.* Wilmsers, Deer, predators, and Lyme disease. *Proceedings of the National Academy of Sciences*, 109 (27) 10942-947 (2012); B. J. Bergstrom *et al.*, License to Kill: Reforming Federal Wildlife Control to Restore Biodiversity and Ecosystem Function. *Conserv. Lett.* 7, 131–142 (2013).

program in Montana. Even since Wildlife Service prepared this piecemeal wolf management-only EA, much has changed. Most notably, legal wolf hunting and trapping quotas have substantially increased in Montana. For example, the first legal hunt quota that followed the initial delisting of the Northern Rockies wolf population in 2009 was 75 wolves. Most recently, the number of wolves killed by hunters and trappers in the state dramatically rose to 295 wolves for the 2018-19 hunting season.

49. Supplemental analysis is therefore necessary to address both the ecological impacts of removing wolves from their native ecosystems and the cumulative effects to Montana's gray wolf population, *i.e.*, the combined effects of Wildlife Services' killing of wolves when added to the rising number of wolves killed legally, under state-sanctioned wolf hunts, illegally (poaching) and unintentionally (*i.e.*, vehicle collisions).

50. Nor did the 1997 EAs address the lethal removal of grizzly bears. While infrequent, Wildlife Services reports intentionally killing up to five grizzly bears associated with livestock depredations between 2016 and 2018. Given the species' low population numbers range-wide and critical ecological role, a supplemental NEPA analysis is necessary to address intentional lethal control of grizzly bears when added to other human-caused losses, as well as unintentional take from Wildlife Services' predator killing activities throughout Montana.

51. At the time of the 1997 EAs, Wildlife Services also lacked sufficient population data for most target animals (*i.e.*, coyotes, red fox, bobcats, mountain lions and ravens) to provide accurate statewide population estimates for these species. And the population estimates that the 1997 analyses did include are now severely outdated.

52. The number of certain target animals that Wildlife Services has killed in recent years, as well as hunting quotas set by Montana Fish, Wildlife and Parks, has also changed since Wildlife Services prepared its 1997 EAs/FONSI. In some cases, those figures have dramatically increased. For instance, Wildlife Services reported killing, at most, 18 ravens statewide in 1994 for its Predator Damage Management program. In 2018, Wildlife Services reported killing 178 ravens.

53. Further, many native species that Wildlife Services currently kills or has recently killed have not been included in any finalized NEPA analyses or decisional documents. For example, ravens were the only birds analyzed in the 1997 EAs/FONSI. Yet in recent years, Wildlife Services reported that it also collectively killed hundreds of other native birds including hawks, mourning doves, blackbirds, magpies, and turkey vultures. Wildlife Services additionally reported killing many small mammals such as marmots, rabbits, prairie dogs and squirrels that also were not part of any prior NEPA analyses.

54. In addition, new information regarding the cost-effectiveness of predator control has emerged since the 1990s. For example, Rashford and Grant (2010)<sup>6</sup> published a literature review of economic analyses of predator control. To date, Wildlife Services has yet to issue a comprehensive analysis of the cost-effectiveness of its Predator Damage Management program in Montana. Such a comprehensive analysis should weigh the costs of carrying out the lethal program against the cost of predator-related livestock losses as compared to non-predator related livestock losses (*e.g.*, weather and disease).

55. The 1997 EAs/FONSI also did not consider the potential detrimental effects of Wildlife Services' Predator Damage Management program on the economic values of native carnivores to Montana's non-consumptive wildlife-related industries (*e.g.*, tourism). Supplemental NEPA analysis is thus necessary to provide a credible cost-benefit analysis of Wildlife Services' killing program in Montana. *See e.g.* 40 C.F.R. § 1502.23

56. New information raising ethical concerns about the practices of some Wildlife Services staff has also emerged since the 1990s. For example, in 2012, the Sacramento Bee published a series of articles exposing the practices of Wildlife

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<sup>6</sup> Rashford, B.S., et. al. Economic Analysis of Predator Control: A Literature Review. Cooperative Extension Service, College of Agriculture, University of Wyoming Bulletin, B-1208 (2010).

Services. This series described ethical problems within the agency, including employees hiding killings of nontarget animals. The Sacramento Bee also reported that a Wildlife Services employee based in Wyoming posted photographs online of his dogs attacking coyotes caught in leg-hold traps, and that Wildlife Services did not discipline the employee.

57. After Wildlife Services released the 1997 EAs, the Environmental Protection Agency issued new restrictions to protect endangered species that could be harmed by Wildlife Services' use of gas cartridges to kill denning animals. In the last decade, several M-44s placed by Wildlife Services have poisoned people, nontarget wildlife, and family dogs. Rising concern about the harm caused by these indiscriminate devices has led to multiple states – including Oregon, California, Idaho (temporarily at this point), and Washington – banning their use, in addition to the introduction of federal legislation for a national ban of sodium cyanide devices (HR 2471/S 1301). A supplemental NEPA analysis must analyze the unintended impacts of M-44s and determine whether Wildlife Services should continue to use these dangerous devices in Montana.

58. A variety of nonlethal, alternative methods have been successfully used to prevent wildlife conflicts and protect livestock from predators, as

confirmed by numerous recent studies (*e.g.*, Shivik *et al.* 2003; Lance *et al.* 2010; Hanley 2019).<sup>7</sup>

59. Additional animals that live in Montana were also listed as threatened or endangered under the ESA since the mid-1990s. In 2000, FWS listed the Canada lynx as threatened. In 2014, FWS revised its critical habitat designation for Canada lynx, which includes large swaths of Montana. After decades of listing decisions from FWS, agency reversals and litigation, the North American wolverine is once again proposed for federal listing as a threatened species. In 2015, FWS listed the northern long-eared bat as threatened. FWS also issued a Recovery Plan for the black-footed ferret in 2013, which remains one of the most endangered animals in the world. As that 2013 Recovery Plan notes, lethal control of coyotes may further impact ferret survival, possibly due to rapid rates of recolonization of coyotes after removal (citing Breck *et al.* 2006). Additional species of special concern also have been identified in the state. These species are likely to be affected by wildlife killing programs in Montana, but none were analyzed in the 1997 EAs.

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<sup>7</sup> Shivik, John A.; Treves, Adrian; and Callahan, Peggy, “Nonlethal Techniques for Managing Predation: Primary and Secondary Repellents” (2003); Lance, N. J.; Breck, S. W.; Sime, C.; Callahan, P.; and Shivik, J. A., “Biological, technical, and social aspects of applying electrified fladry for livestock protection from wolves (*Canis lupus*)” (2010).

60. Wildlife Services may also have expanded the geographic scope of its wildlife killing activities on federal public lands since it prepared the 1997 EAs/FONSI. According to the pre-decisional 2016 EA, Wildlife Services has met annually with the USFS and BLM to develop annual work plans for possible wildlife damage management activities on the Custer Gallatin, Beaverhead-Deer Lodge, Bitterroot, Flathead, Kootenai, Lewis & Clark, Lolo, and Helena Forest Districts and the Butte, Central Montana, and Hi-line BLM Districts as well as the Miles City and Billings BLM Field Offices.

61. Relatedly, the USFS and BLM have revised several of the overarching land management plans for National Forests and BLM Districts in Montana since Wildlife Services issued its 1997 EAs/FONSI. More recent species-specific management plans that either amend or are incorporated into USFS and BLM land management plans have also been adopted since the agency issued its 1997 EAs/FONSI, such as the Grizzly Bear Management Plan for Western Montana (2006). Therefore, a supplemental analysis is further needed to address how Wildlife Services' wildlife killing activities in Montana are consistent with these new federal land management plans as required by the National Forest Management Act ("NFMA"), 16 U.S.C. § 1604(i), the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1712, 1732, and those statutes'

implementing regulations, 43 C.F.R. §§ 1601.0-5, 1610.5-3(a), (b); 36 C.F.R. § 219.15(d).

62. For all the reasons explained above, Wildlife Services' 1997 EAs/FONSIs for its Predator Damage Management program in western and eastern Montana and its 2012 Gray Wolf Damage Management EA/2013 FONSI are now outdated. Wildlife Services can no longer reasonably rely on the analyses in these documents without supplementing the NEPA analyses using recent scientific information. Indeed, Wildlife Services itself acknowledged the necessity of new analysis in 2016 when it announced it would redo all environmental assessments relying on the outdated documents and undertake a new NEPA process for its Montana program.

### **CLAIM FOR RELIEF**

#### **NEPA and APA Violation: Failure to Supplement Outdated NEPA Analyses**

63. Guardians re-alleges and incorporates by reference the preceding paragraphs into the claim set forth below.

64. An agency has a continuing obligation to comply with NEPA and must prepare a supplemental NEPA document when “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” emerge. 40 C.F.R. § 1502.9(c)(1)(ii).

65. More than two decades have passed since Wildlife Services completed the 1994 PEIS and the 1997 EAs/FONSIs for its Predator Damage Management program in Montana. Those analyses are now outdated. Wildlife Services can no longer reasonably rely upon the analyses in these dated documents. Wildlife Services must supplement the NEPA analyses in the 1994 PEIS and 1997 EAs or prepare a new PEIS and new EAs for its Predator Damage Management Program in Montana.

66. Circumstances have changed and new information has also emerged that is relevant to Montana's gray wolf population since Wildlife Services prepared its 2012 EA for Gray Wolf Damage Management in Montana. Wildlife Services must supplement the 2012 EA, prepare a new NEPA analysis for gray wolf damage management, or include this analysis in a new EIS (holistically analyzing all the activities the Wildlife Services conducts in Montana) that incorporates new scientific information that has emerged since the 2012 EA.

67. Wildlife Services violated and continues to violate NEPA by relying on and tiering to its 1994 PEIS and the 1997 EAs/FONSIs for its Predator Damage Management program in Montana.

68. Wildlife Services' failure to supplement its NEPA analysis in its 1994 PEIS and the 1997 EAs/FONSIs for its Predator Damage Management program in Montana, and its failure to limit or halt its ongoing activities while completing new

analyses, as NEPA requires, is arbitrary, capricious, an abuse of discretion, not in accordance with law, and constitutes agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. §§ 706(1), 706(2). These actions and inactions caused or threaten to cause serious prejudice and injury to Guardians' rights and interests.

### **REQUEST FOR RELIEF**

WHEREFORE, Guardians requests that the Court:

A. Declare that Wildlife Services has violated and is violating NEPA, 42 U.S.C. §§ 4321-4347, and the implementing CEQ regulations, 40 C.F.R. §§ 1500-1508, by failing to supplement its outdated NEPA analyses governing its Predator Damage Management program in Montana;

B. Declare that Wildlife Services' failure or refusal to supplement its outdated NEPA analyses and its failure to halt or limit its ongoing activities while completing the new analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law, and constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of the APA;

C. Order Wildlife Services to complete the required supplemental NEPA analysis by a reasonable date certain;

D. Enjoin Wildlife Services and its agents from implementing the challenged Predator Damage Management program unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;

E. Award Guardians its attorneys' fees and costs in this action pursuant to 28 U.S.C. § 2412; and

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 19th day of November 2019,

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