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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,<br><br>Plaintiffs,<br><br>v.<br><br>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; CHARLES MARK, Salmon-Challis National Forest Supervisor; and VIRGIL MOORE, Director, Idaho Department of Fish and Game,<br><br>Defendants. | Case No. 4:16-cv-12-BLW<br><br>**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## FEDERAL CASES

**STATUTES AND LEGISLATIVE MATERIALS**



**REGULATIONS AND ADMINISTRATIVE MATERIALS**

## INTRODUCTION

This case challenges the U.S. Forest Service's decision to authorize unprecedented helicopter intrusions in the Frank Church-River of No Return Wilderness ("River of No Return Wilderness") to facilitate the State of Idaho's plans for manipulating wildlife population dynamics and artificially boosting numbers of elk in the wilderness. On January 6, 2016, the Forest Service (the "Service") authorized 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 Wilderness to place radio telemetry collars on sixty elk. The goals of IDFG's elk-collaring project are to collect data to document the causes of recent elk-population declines compared to levels observed in the 1990s—before the reintroduction of wolves to the wilderness and associated restoration of natural predatory-prey dynamics—and, apparently, to assess the effectiveness of IDFG's recent wolf-killing efforts in reducing the wilderness wolf population and inflating elk numbers for the benefit of commercial outfitters and recreational hunters. FS000003-04, FS014761.[1] To plaintiffs' knowledge, the Service's decision to approve IDFG's project authorized the most extensive helicopter intrusion on wilderness character that ever has been allowed in the National Wilderness Preservation System.

The challenged decision was not only unprecedented but also unlawful. The Wilderness Act charges the Service, as federal steward of the River of No Return Wilderness, with a duty to preserve the "natural," "untrammeled" conditions that define the area as wilderness. 16 U.S.C. §§ 1131(c), 1133(b). To that end, the Act prohibits the Service from authorizing specific actions in wilderness that Congress determined are antithetical to wilderness character—including helicopter landings and placement of installations such as radio collars on wildlife—unless those

[1] Citations to the Administrative Record are indicated by "FS," followed by the bates-stamped page number.

actions are "necessary to meet minimum requirements for the administration of the area" as wilderness. Id. § 1133(c) (emphases added). The Service's authorization for IDFG's helicopter-assisted elk-collaring project violates this mandate because IDFG's project is not necessary to administer the River of No Return Wilderness as a wilderness area. See id. To the contrary, IDFG's project advances state wildlife management plans that call for affirmatively manipulating wolf and elk populations in the Middle Fork Zone by killing the majority of wolves there—a program that the Service itself admits is antithetical to preserving the "natural" and "untrammeled" character of the River of No Return Wilderness as the Wilderness Act requires. 16 U.S.C. § 1131(c); see FS014758-59. Further, in approving IDFG's project, the Service violated the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq. ("NEPA"), and its implementing regulations by irrationally concluding that IDFG's plan to make 120 helicopter landings and collar sixty wild elk in the wilderness would have only insignificant environmental effects and, on that basis, failing to analyze the project's impacts and a reasonable range of alternatives in an environmental impact statement ("EIS").

In addition to violating governing statutes, the Service's decision violated the direction provided by this Court's precedent. In 2010, this Court reviewed the Service's authorization for IDFG to make up to twenty helicopter landings to radio collar wolves in the River of No Return Wilderness and held that "[h]elicopters … are antithetical to a wilderness experience" and their use in wilderness may be justified only in the "rare case" where it is truly necessary to preserve the wilderness itself. Wolf Recovery Found. v. U.S. Forest Serv., 692 F. Supp. 2d 1264, 1268 (D. Idaho 2010). In that case, the Service argued that the "very unique" circumstances necessary to approve helicopter operations in wilderness existed because IDFG's 2010 project was designed to "aid the restoration of a specific aspect of the wilderness character"—wolves—"that

had earlier been destroyed by man." Id. at 1268, 1270. Though this Court accepted the Service's argument, it made clear that

> the next helicopter proposal in the [River of No Return] Wilderness will face a daunting review because it will add to the disruption and intrusion of this collaring project. The Forest Service must proceed very cautiously here because the law is not on their side if they intend to proceed with further helicopter projects in the [River of No Return] Wilderness.

Id. at 1270 (emphasis added). Instead of following this Court's direction, the Service in this case approved further helicopter intrusions in the River of No Return Wilderness based on circumstances that are far from "rare" or "unique"—i.e., a state agency's desire for data to inform its wildlife-management actions. Further, the Service identified no independent wilderness-preservation need for IDFG's helicopter intrusions and ignored the fact that the state wildlife-management plans advanced by IDFG's elk-collaring project are actually destructive of wilderness.

In issuing the challenged authorization, the Service also defied this Court's 2010 direction that, should the Service ever again approve helicopter operations in the River of No Return Wilderness, the agency "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" before helicopter operations commence. Id. Despite this clear instruction, the Service's January 2016 authorization allowed IDFG to immediately commence helicopter landings and elk capture-and-collar operations in the wilderness and IDFG rushed to complete its project in just three days—before plaintiffs were able to seek even preliminary relief from this Court.

IDFG's immediate implementation of the Service's unlawful decision added to the degradation of wilderness character inflicted by the Service's 2010 approval of helicopter operations in the River of No Return Wilderness, and the presence of sixty collared elk will

continue to degrade wilderness character for years to come. Adding to this injury, IDFG utilized the opportunity afforded by the Service's unlawful decision to also place radio collars on four wolves in the River of No Return Wilderness—an action the Service never authorized. FS015155. Given IDFG's plan to kill the majority of wolves in the Middle Fork Zone of the wilderness, the agency's ability to locate the four collared wolves—and, by association, their pack members—with the benefit of the illegally placed radio collars threatens still further degradation of wilderness character through the targeting and killing of those wolves. To remedy the ongoing harm to wilderness character caused by the Service's violation of the Wilderness Act, NEPA, and this Court's rulings, plaintiffs seek judicial relief.

## BACKGROUND

The River of No Return Wilderness is the largest forested wilderness area in the continental United States, encompassing nearly 2.4 million acres. Congress recognized the "immense national significance" of this "undisturbed ecosystem" by establishing the River of No Return Wilderness in 1980. Central Idaho Wilderness Act of 1980, § 2(a), P.L. 96-312, 94 Stat. 948, 96th Cong. (1980). The wilderness provides incomparable opportunities for backcountry recreation and solitude. It supports abundant native wildlife including elk, bighorn sheep, mountain goats, black bears, and wolverines, and it serves as a stronghold for a wilderness icon—the gray wolf.

IDFG hypothesizes that what it deems "excessive" elk predation by gray wolves has caused wilderness elk numbers to decline. FS000003. IDFG's 2014 Elk Management Plan, which provides direction for the elk-collaring project at issue, FS011723-24, establishes a goal of inflating elk numbers to levels last achieved in the 1990s, before wolves were restored to the landscape, by "aggressively manag[ing] elk and predator populations," FS014633-34. To

implement this direction, IDFG's specific Predation Management Plan for the Middle Fork Zone of the River of No Return Wilderness calls for, among other things, deploying professional trappers as needed to kill 60% of the resident wolves in the Middle Fork region and maintaining the wolf population at that depressed level through successive years of agency wolf killing. FS011015-011016. IDFG took action to implement these plans in the winter of 2013-14, when it sent a hired trapper into the Middle Fork Zone of the wilderness to eradicate as many resident wolf packs as possible. See FS014761; Pls.' Mot. for Judicial Notice, Exs. 1, 2.[2]

To further implement these management plans, IDFG in 2014 requested authorization from the Service to utilize helicopters to radio-collar elk and wolves in the Middle Fork Zone. See FCRONR-ElkWolves MRDG Draft4 052915 at 23, attached to FS000444 (draft Forest Service analysis of IDFG proposal for ten-year elk- and wolf-collaring project) [3]; FS000227 (Service meeting notes discussing IDFG proposal for elk- and wolf-collaring); FS000444 (Service emails discussing IDFG elk- and wolf-collaring proposal). IDFG subsequently abandoned its request for authorization to collar wolves. See FS000227, FS000444. Instead, on August 8, 2015, IDFG submitted for Forest Service review an analysis of a "Planned Action" involving ten years of annual helicopter landings in the Middle Fork Zone to collar thirty elk

[2] Plaintiffs Wilderness Watch and Western Watersheds Project and other conservation groups sued the Service to halt IDFG's 2013-14 wolf-killing operation in the River of No Return Wilderness. The day IDFG was required to respond to plaintiffs' motion for emergency relief in the U.S. Court of Appeals for the Ninth Circuit, IDFG announced it had pulled its trapper out of the wilderness and halted the challenged operations. See Pls.' Mot. for Judicial Notice, Ex. 1. By that time, IDFG's trapper had successfully killed nine wolves in the wilderness. Id. Ex. 1, ¶ 5. Because IDFG's announcement disavowed further wolf killing in the wilderness only through June 30, 2014, plaintiffs pressed forward with their Ninth Circuit preliminary injunction appeal. However, approximately one month before oral argument, IDFG mooted that appeal by announcing that it would conduct no further wolf killing in the wilderness before November 1, 2015. See id. Ex. 2, ¶ 8.

[3] This document is not bates stamped but is attached to a Forest Service email appearing in the Administrative Record at FS000444.

calves each year plus an adequate number of adult females to maintain sixty collared adult females. FS000018. Though IDFG also analyzed a five-year alternative, the state agency concluded that it likely could not obtain valid elk mortality data with only five years of collaring activity, even with more intensive operations. FS000028. Under either scenario, IDFG proposed to conduct helicopter landings and elk collaring in the wilderness from December to March each year, with calf-collaring completed by January 15. FS000018-19, FS000028. In its formal submission to the Service, IDFG sought to justify this proposal based on its asserted need to evaluate its hypothesis that wolf predation has unacceptably reduced the elk population in the wilderness, see FS000003-04, but Forest Service briefing notes evidence the Service's recognition that IDFG intended "to gather additional information on elk mortality and the effects of wolf control activities in the Middle Fork Zone," FS014761 (emphasis added). Both objectives advance IDFG's plans to dramatically reduce the Middle Fork wolf population and artificially boost elk numbers by generating data to justify IDFG's "aggressive[]" management plans and measuring the effectiveness of its recent efforts to implement those plans through professional extermination of wilderness wolf packs. FS014634; see FS000003; FS014761.

On August 24, 2015, the Service issued a proposal to authorize the first year of IDFG's elk-collaring project, involving approximately 120 helicopter landings and capture and collaring of sixty elk over five days between December 2015 and March 2016. FS000101-103. Plaintiffs participated in the pre-decisional administrative process, alerting the Service that its proposed decision would violate the Wilderness Act and NEPA. FS011922-40. Further, on December 14, 2015, plaintiffs sent a letter to Defendants Mark and Rasure asking the Service to reconsider its proposed approval of IDFG's project. FS015135-38. At a minimum, plaintiffs requested that the Service allow sufficient time for a legal challenge to that decision before IDFG could

commence helicopter landings and elk collaring in the wilderness, citing this Court's decision in Wolf Recovery Foundation, No. CV 09-686-E-BLW, 2010 WL 2898933, at *1 (D. Idaho July 21, 2010). FS015135-36.

Nevertheless, on January 6, 2016, the Service issued a final Decision Notice and Finding of No Significant Impact approving IDFG's helicopter-assisted elk-collaring project in the River of No Return Wilderness, FS014515-33, as well as a Temporary Special Use Permit authorizing immediate implementation of the project, FS015139-48. IDFG commenced helicopter operations on Thursday, January 7, 2016, FS015151, and plaintiffs filed their complaint in this action that same day. On Friday, January 8, 2016, plaintiffs contacted counsel for the federal defendants to inform them of plaintiffs' intention to seek a temporary restraining order and preliminary injunction unless the parties could reach an agreement to suspend implementation of the challenged decision while litigation proceeded; counsel for the federal defendants responded that the Service was unwilling to enter into such an agreement. Preso Decl. ¶ 4. Accordingly, plaintiffs prepared a motion for preliminary relief for filing in this Court on Sunday, January 10, 2016. But shortly after 11:00 a.m. on January 10, plaintiffs' counsel received an email from counsel for the federal defendants stating that IDFG had completed its elk-collaring operations the day before—i.e., in the first three days after permit issuance. Id. ¶ 5. As a result, plaintiffs did not file their motion for preliminary relief and instead now move for summary judgment and permanent equitable relief.

## ARGUMENT

In approving unprecedented helicopter intrusions in the River of No Return Wilderness to support IDFG's plans for manipulating natural predator-prey dynamics in the wilderness, and

doing so without adequate environmental review, the Forest Service violated the Wilderness Act and NEPA.

## I. JURISDICTION AND STANDARD OF REVIEW

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. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, which directs the reviewing court to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," id. § 706(2)(A). Under this standard, "[c]ourts must carefully review the record to ensure that agency decisions are founded on a reasoned evaluation of the relevant factors, and may not rubber-stamp administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." Friends of Yosemite Valley v. Norton, 348 F.3d 789, 793 (9th Cir. 2003) (quotation and alterations omitted).

Further, this case continues to present a live controversy requiring this Court's adjudication regardless of IDFG's completion of helicopter operations under the challenged decision. "[C]ompletion of activity is not the hallmark of mootness. Rather, a case is moot only where no effective relief for the alleged violation can be given." Neighbors of Cuddy Mountain v. Alexander, 303 F.3d 1059, 1065 (9th Cir. 2002) (citations omitted); see also Knox v. Serv. Employees Intern. Union, -- U.S. --, 132 S. Ct. 2277, 2287 (2012) ("A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.") (quotations and alteration omitted). Here, as set forth in plaintiffs' amended complaint and discussed infra, plaintiffs request an injunction to mitigate the harm caused by the

Service's Wilderness Act and NEPA violations by requiring IDFG to destroy the data obtained from the radio collars illegally placed on elk and wolves during IDFG's January 2016 operations and prohibiting IDFG from using any such data to facilitate IDFG's wolf-killing plans in the River of No Return Wilderness. First Amend. Compl. 40-41 (ECF No. 11). Where, as here, harm from the challenged action may be remedied by such "mitigation strategies," the case remains live. Neighbors of Cuddy Mountain, 303 F.3d at 1066; accord Ore. Nat. Res. Council v. U.S. Bureau of Land Mgmt., 470 F.3d 818, 821 (9th Cir. 2006).

Even assuming, arguendo, that this case no longer presents a live controversy—which it does—the mootness exception for cases that are capable of repetition, yet evading review, applies. This exception applies where (1) the duration of the challenged action is too short to be fully litigated, and (2) there is a reasonable likelihood that the same party will be subject to the action again. Shell Offshore v. Greenpeace, 709 F.3d 1281, 1287 (9th Cir. 2013). Here, the Service's authorization of IDFG's helicopter-assisted elk-collaring operations in the River of No Return Wilderness was too short-lived for a challenge to that decision to be fully litigated before the authorization's expiration. Fewer than four days elapsed between the challenged decision and IDFG's completion of elk-collaring operations. Preso Decl. ¶¶ 3, 5; FS015150. In any event, the Service's authorization would have expired by its own terms on March 31, 2016, less than three months after issuance. FS015139. Accordingly, the challenged action is inherently too short-lived to be fully litigated before its expiration. See Shell Offshore, 709 F.3d at 1287 ("An action is 'fully litigated' if it is reviewed by [the Court of Appeals] and the Supreme Court.") (citation omitted); Alaska Ctr. for the Envt. v. U.S. Forest Serv., 189 F.3d 851, 855 (9th Cir. 1999) (permit effective for two years too short-lived to be fully litigated before expiration). In addition, there is a reasonable likelihood that plaintiffs will be subject to the challenged action

again. Plaintiffs have twice now faced the Service's short-term authorizations for helicopter intrusions in the River of No Return Wilderness. In the most recent instance, the Service issued its short-term, immediately effective authorization despite this Court's admonition in the Wolf Recovery Foundation case that the agency should not issue such authorizations without providing an opportunity for judicial review prior to implementation. Wolf Recovery Found., 2010 WL 2898933, at *1. Further, IDFG has stressed that it must continue elk collaring in the wilderness in successive years to obtain usable data, see FS010975 (IDFG stating ten years of successive collaring operations necessary to collect valid data), FS010985 (IDFG stating even five years of more intensive collaring would be insufficient to generate valid data); accordingly, the Service itself acknowledged that "[c]ontinued long-term elk collaring" in the wilderness is "reasonably foreseeable," FS011757. This satisfies the second prong of the mootness exception. See Alaska Ctr. for the Envt., 189 F.3d at 856 (satisfying "repetition" prong requires only "some indication that the challenged conduct will be repeated").[4]

In sum, this Court has jurisdiction over plaintiffs' claims for relief from ongoing harm to the River of No Return Wilderness and plaintiffs' interests therein caused by the Service's unlawful decision.

## II. THE FOREST SERVICE VIOLATED THE WILDERNESS ACT

The Forest Service violated the Wilderness Act by authorizing IDFG to conduct 120 helicopter landings in the River of No Return Wilderness to carry out an elk-collaring project

[4] This Court held that the controversy in Wolf Recovery Foundation was not "capable of repetition" because "[t]he Court's opinion makes 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 here—based on unique facts—is unlikely to be repeated." Wolf Recovery Found., 2010 WL 2898933, at *1. The Service's conduct in issuing the challenged authorization undermines the premise for this conclusion and demonstrates the need for adjudication of plaintiffs' claims.

that is not necessary to preserve wilderness character and, indeed, that advances state wildlife management plans that are antithetical to the very concept of wilderness.

The Wilderness Act establishes a National Wilderness Preservation System to safeguard our nation's wildest landscapes in their "natural," "untrammeled" condition. 16 U.S.C. § 1131(a), (c). "The agency charged with administering a designated wilderness area"—here, the Service—"is responsible for preserving its wilderness character." High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630, 646 (9th Cir. 2004) (citing 16 U.S.C. § 1133(b)). As defined by Congress, "[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 untrammeled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). Accordingly, Congress declared that certain actions—including any "landing of aircraft" and placing any "structure or installation"—are antithetical to wilderness character and prohibited such actions in wilderness unless "necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act]." Id. § 1133(c). "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.

### A. IDFG's Helicopter-Assisted Elk-Collaring Project is Not Necessary to Preserve the Wilderness Character of the River of No Return Wilderness

The Service's authorization for IDFG to make 120 helicopter landings in the River of No Return Wilderness and place "installation[s]"—in the form of radio collars—on wild elk violates the Wilderness Act because IDFG's project is not necessary to preserve the area's wilderness character. 16 U.S.C. § 1133(c); see FS011755 (Service acknowledging that "[t]he radio collars fitted on captured animals are installations" and "would adversely affect the undeveloped character of the wilderness"). As this Court has held, "[h]elicopters carry 'man and his works'

and so are antithetical to a wilderness experience." Wolf Recovery Found., 692 F. Supp. 2d at 1268; see also Mont. Wilderness Ass'n v. McAllister, 666 F.3d 549, 556 (9th Cir. 2011) (stating that, from a "common-sense perspective," helicopter presence "would plainly degrade … wilderness character"). 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.'" Wolf Recovery Found., 692 F. Supp. 2d at 1268 (quoting 16 U.S.C. § 1133(c)). Yet, in explaining the "purpose and need" for the helicopter landings and elk-collaring authorized in its decision, the Service failed to explain how IDFG's project would advance wilderness preservation, stating instead that the project's purpose is to enable IDFG to gather data it needs 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." FS014517 (emphasis added). The Service further stated that its own purpose in issuing the challenged authorization was solely to respond to IDFG's request. FS014517-18; FS011729.

This explanation of the project's purpose does not satisfy the Wilderness Act's requirement for the Service to demonstrate that the authorized helicopter landings and wildlife-collaring are "necessary" to preserve wilderness character in the River of No Return Wilderness. 16 U.S.C. § 1133(c) (emphasis added). To the contrary, the Service's justification turns the standard established by the Wilderness Act on its head by authorizing helicopter intrusions and wildlife-collaring in wilderness simply because a state agency desires data to inform its own management decisions—hardly a "rare case." Wolf Recovery Found., 692 F. Supp. 2d at 1268. Moreover, the state management plans that are served by IDFG's elk-collaring project are

themselves antithetical to wilderness character, as they involve actions to "aggressively manage elk and predator populations," FS014633-34 (Idaho Elk Management Plan)—including through killing the majority of wolves in the Middle Fork Zone in a quest to engineer IDFG's desired elk numbers, FS011015-16 (IDFG's Predation Management Plan). Indeed, the Forest Service understood that at least part of the purpose for IDFG's project was to "monitor[] the effects of wolf control activities conducted in the Middle Fork" area in 2013-14. FS014761. Such aggressive manipulation of natural predator-prey dynamics is the antithesis of wilderness—"an area where the earth and its community of life are untrammeled by man" and "which is protected and managed so as to preserve its natural conditions," 16 U.S.C. § 1131(c)—and activities to advance plans for such manipulation cannot legitimately be deemed necessary for wilderness administration. See FS014759 (Service acknowledging that any "[d]irect and intentional control of wolf populations in the [River of No Return Wilderness] is a trammeling action (i.e., management action that intentionally controls or manipulates any aspect of an ecosystem) that negatively impacts both the untrammeled and natural qualities of wilderness character").[5]

Yet in concluding that IDFG's elk-collaring project is necessary to preserve the wilderness character of the River of No Return Wilderness, the Service never even considered the state wildlife-management plans that animate and provide direction for the project, claiming

[5] The Wilderness Act's "savings clause" is not to the contrary. That clause provides that nothing in the Wilderness Act "shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests." 16 U.S.C. § 1133(d)(7). This language merely affirms the operation of traditional conflict preemption principles, preserving states' authority to regulate wildlife within their borders except where such regulation conflicts with federal objectives for managing federal lands. See Nat'l Audubon Soc'y, Inc. v. Davis, 307 F.3d 835, 854 (9th Cir. 2002) (interpreting substantially identical language from savings clause in National Wildlife Refuge System Improvement Act); Wyoming v. United States, 279 F.3d 1214, 1229-35 (10th Cir. 2002) (same); see also Meister v. U.S. Dep't of Agric., 623 F.3d 363, 378-79 (6th Cir. 2010) (rejecting Forest Service argument that the Wilderness Act's savings clause precluded it from closing wilderness area to hunting authorized under state law).

those plans are "beyond the scope" of the Service's analysis. FS011822. In determining that an action is necessary for administering the River of No Return area as wilderness, the Service cannot rationally disregard that action's purpose. Cf. Wilderness Soc'y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1063 (9th Cir. 2003) (en banc) (in determining whether proposed action is proscribed by Wilderness Act, agency must evaluate action's "purpose and effect"). Further, the Service never attempted to reconcile its conclusion that wilderness character will be preserved by an action that advances IDFG's management plans, which call for eradicating most resident wolves in the Middle Fork Zone, with the Service's own assertion that wolves are an essential element of wilderness character, which the agency argued before this Court to justify its 2010 wolf-collaring authorization. See Wolf Recovery Found., 692 F. Supp. 2d at 1266 (quoting Forest Service decision describing "the importance of wolf recovery to enhancement of wilderness character"). The Service reaffirmed as recently as July 2015 that "wolf populations in the [River of No Return Wilderness] are a critical component of the natural quality of wilderness character for the area." FS014759 (Service briefing paper).[6] The Forest Service's unexplained reversal from asserting that wolves are an essential element of wilderness character to accepting IDFG's claim that helicopter intrusions are needed to document wolves' purportedly "excessive" natural predation on elk, FS000003—with the only constant being the Service's judgment that helicopter intrusions and wildlife-collaring in the wilderness are "necessary"—is inherently arbitrary.

Though not identified as part of the project's "Purpose and Need," FS014517-FS014519, the Service alternatively speculated in its Decision Notice that IDFG's elk-collaring project is

[6] Although this document is labeled a "draft," the Forest Service's index to the administrative record indicates that it was "used as final." Notice of Lodging of Additional Docs. for the Administrative Record and Implementation Docs., Ex. B at 2 (ECF No. 17-2).

justifiable under the Wilderness Act because the data obtained could reveal whether elk declines indicate degradation of natural conditions and "may enable IDFG and the Forest Service to take action to reduce or reverse future declines." FS014525. This justification fails at the outset because IDFG stated that ten successive years of elk capture-and-collar operations in the wilderness—not one year, as the Service authorized—are required to generate data that could be useful in explaining the causes of elk declines. FS010975, FS010985. Accordingly, even if the Service's speculative purpose offered a valid basis for helicopter intrusions in the wilderness, that purpose could not meaningfully be served by the action the agency authorized. More fundamentally, however, the Service cited no evidentiary support for its speculation that the project may help preserve natural conditions, instead merely stating that IDFG's data could benefit natural character "[i]f elk population declines are due to unnatural conditions." FS014525 (emphasis added). If the agency could invoke the narrow exception from the Wilderness Act's prohibition against helicopter landings and installations based on mere speculation that helicopter-assisted wildlife-collaring might turn up information indicating unnatural conditions, the exception would quickly swallow the rule.

Further, the evidence in the record indicates that elk declines since the mid-1990s likely reflect restoration of natural conditions coincident with the reintroduction of wolves and reestablishment of natural predator-prey relationships. See FS014586 (IDFG admitting that, "[h]istorically, elk numbers in Idaho were lower than they are today" and "elk populations probably peaked in the 1960s" in north-central Idaho), FS000003 (IDFG hypothesizing that elk decline is largely attributable to wolf predation). In speculating that this situation somehow may not reflect natural conditions, the Service never evaluated what elk-population level reflects natural predator-prey relationships in the River of No Return Wilderness nor explained how

declines IDFG attributes to wolf reintroduction—an event the Service itself advocated as essential for restoring wilderness character—could logically constitute degradation of natural conditions. At a minimum, these were "relevant factors" that the agency was required to evaluate before unleashing the harmful effects of IDFG's project on wilderness character. See Friends of Yosemite Valley, 348 F.3d at 793 (quotation omitted).

In sum, the Forest Service failed rationally to demonstrate that IDFG's helicopter-assisted elk-collaring project—which could at best inform routine state wildlife-management decisions and actually serves to inform IDFG's plans to "aggressively manage" wilderness wildlife to artificially inflate elk numbers, FS014633-34—is "necessary to meet minimum requirements" for administering the River of No Return as wilderness. 16 U.S.C. § 1133(c) (emphases added). For this reason alone, the Service's authorization of that project violated the Wilderness Act. Id.

### B. The Forest Service Irrationally Determined that Helicopter-Assisted Elk Collaring is the Minimally Intrusive Method for Achieving IDFG's Objectives

In addition, the Service's authorization violated the Wilderness Act because it rests on an irrational determination that IDFG's helicopter-assisted elk collaring in wilderness was the minimum tool "necessary" to achieve IDFG's stated objectives. 16 U.S.C. § 1133(c); see Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d 1024, 1037 (9th Cir. 2010) (stating that agency authorizing action generally prohibited by Wilderness Act must find that action is necessary and involves minimum intrusion on wilderness character); see also FS014520 (Forest supervisor stating, in Service decision notice, "[m]y primary concern in making this decision to permit motorized uses in wilderness was determining the minimum necessary for administration of the area"), FS005464-522 ("minimum requirements" analysis for IDFG's proposal). The Service's "minimum requirements" determination was arbitrary and unlawful for two reasons.

First, the Service irrationally concluded that there is no way to investigate the role of wolves and other factors in elk-population dynamics in the River of No Return Wilderness besides helicopter-assisted elk collaring. See FS014520 (Service stating IDFG's project constitutes minimum intervention available); FS011827-28 (Service rejecting alternative research proposal and stating IDFG's project is the minimum necessary for wilderness administration). In reaching this conclusion, the Service rejected, without justification, an alternative study proposal that would have investigated the same issues of elk population dynamics as IDFG's project with no adverse impact on wilderness character. In August 2014, the Service received a proposal from the Aldo Leopold Wilderness Research Institute ("Leopold Institute")—the federal government's interagency wilderness research body—to convene a "blue ribbon panel" of scientists to investigate wolf-elk population dynamics in the River of No Return Wilderness without using helicopters or radio collars. FS012146 (agency emails describing Leopold Institute study); FS012143-44 (Leopold Institute study prospectus). In response to comments on its proposed decision, the Service acknowledged that the Leopold Institute study would have investigated the same issues as IDFG's project but rejected this alternative as "outside the scope" of its analysis because it is not what IDFG proposed. FS011827-28. In fact, correspondence among Service officials indicates that the Service itself halted the Leopold Institute study in deference to objections from IDFG. See FS012145 (Service official expressing concern that Leopold Institute study could compromise Service's "relationship building" with IDFG); FS012146 (Leopold Institute staff describing IDFG's refusal to participate in study and lack of Service support for study). Having rejected an alternative study that would have investigated the same issues without taking actions generally prohibited by the Wilderness Act—and, indeed, having subverted that study—the Forest Service cannot credibly claim that IDFG's

helicopter-assisted elk-collaring project involves the minimum intrusion on wilderness character necessary to achieve the state's objectives.

Second, even assuming elk collaring were necessary to shed light on IDFG's questions—which it was not for the reasons stated—the Service irrationally rejected the alternative of collaring elk in non-wilderness zones with comparable habitat conditions, hunting pressure, and wolf densities as the River of No Return Wilderness's Middle Fork Zone. In late 2014, IDFG began "a statewide elk survival and cause-specific mortality data collection effort" involving the collaring of 500 elk in six non-wilderness zones representing habitat conditions across the state. FS011725. IDFG acknowledged that some of the same "elk population dynamics" existing in the Middle Fork Zone are also present in non-wilderness elk zones "where wolf densities are medium to high," such as the Lolo Zone. FS000004. Yet the Service dismissed the alternative of collaring elk in similar non-wilderness environments on the ground 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." FS011724. This assertion is undermined by IDFG's own statement that certain non-wilderness zones present similar conditions for elk as wilderness areas. FS000004. More fundamentally, simply deferring to IDFG's unsupported hypothesis does not satisfy the Service's statutory burden to demonstrate that helicopter landings and wildlife collaring represent the minimum "necessary" intrusion on wilderness character by establishing that there are no non-wilderness zones anywhere in the state where useful elk-population data could be obtained. 16 U.S.C. § 1133(c) (emphasis added).

In upholding the Service's 2010 authorization of helicopter-assisted wolf-collaring in the River of No Return Wilderness, this Court made clear that any future helicopter operations in the wilderness would be "extraordinarily difficult to justify." Wolf Recovery Found., 692 F. Supp.

2d at 1270. The Service's unsupported conclusion that 120 helicopter landings and radio-collaring of sixty elk constitutes the minimum intrusion on wilderness character necessary to administer the River of No Return area as wilderness—in the face of alternatives the Service failed meaningfully to examine and, in the case of the Leopold Institute study, subverted—falls short of the high bar set by the Wilderness Act and this Court. For this reason too, the Service violated the Wilderness Act.

## III. THE FOREST SERVICE VIOLATED NEPA

The Service's authorization for IDFG's helicopter-assisted elk collaring project in the River of No Return Wilderness also violated NEPA. NEPA's look-before-you-leap mandate requires federal agencies to "carefully weigh environmental considerations and consider potential alternatives to [a] proposed action before the government launches any major federal action." Lands Council v. Powell, 395 F.3d 1019, 1026 (9th Cir. 2004). To that end, NEPA requires federal agencies to prepare a detailed EIS before making decisions with significant environmental effects. 42 U.S.C. § 4332(2)(C). In authorizing IDFG's elk-collaring project, the Service violated NEPA by (1) arbitrarily concluding that the project's environmental effects would be insignificant and, on that basis, failing to prepare an EIS; and (2) failing to consider a reasonable range of alternatives to IDFG's project in the abbreviated NEPA analysis that the Service did complete.

### A. The Forest Service Arbitrarily Failed to Prepare an EIS

The Service arbitrarily found that IDFG's project would have no significant impact on the environment and therefore determined not to prepare an EIS, instead preparing a less exhaustive Environmental Assessment ("EA") of IDFG's project. FS014515-33 (Service's decision not to prepare EIS); FS011715-845 (EA). To be valid, such a Finding of No Significant

Impact ("FONSI") must be supported by a "convincing statement of reasons why potential effects are insignificant." Save the Yaak Comm. v. Block, 840 F.2d 714, 717 (9th Cir. 1988) (quotation omitted). Where the record raises "substantial questions … regarding whether the proposed action may have a significant effect upon the human environment, a decision not to prepare an EIS is unreasonable." Id. (citation omitted) (emphasis in original).

Here, the Service's decision to forego an EIS irrationally overlooked the foreseeable cumulative effect threatened by the remainder of IDFG's proposed ten-year helicopter-assisted elk-collaring program, arbitrarily dismissed the precedent established by approving the first year of operations under that program, and disregarded the significance of the protected wilderness area the project would harm. NEPA's implementing regulations prescribe specific factors the agency must consider to determine whether a proposed action's environmental effects may be "significant" and necessitate an EIS. See 40 C.F.R. § 1508.27. A finding that even one of these factors applies "may be sufficient to require preparation of an EIS in appropriate circumstances." Ocean Advocates v. U.S. Army Corp's of Eng'rs, 402 F.3d 846, 865 (9th Cir. 2004) (citation omitted). Here, at least four factors apply.

First, based on the record before the Service, it was reasonable to anticipate "cumulatively significant impacts" on the environment from IDFG's proposed operations and all other reasonably foreseeable actions in the wilderness. 40 C.F.R. § 1508.27(b)(7); see also id. § 1508.7 (defining "cumulative impact" to include effects of all "reasonably foreseeable future actions"). In its EA, the Service acknowledged that it is "reasonably foreseeable" that IDFG will undertake "[c]ontinued long-term" helicopter-assisted elk capture-and-collar operations in the River of No Return Wilderness after the 2016 winter. FS011757. The Service further conceded that such long-term operations threaten "to change the untrammeled, 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. Despite these findings, the Service ultimately dismissed the significance of cumulative effects to the River of No Return Wilderness in a single sentence, asserting without explanation that "the EA discloses that the Selected Alternative will not result in any known significant … cumulative effects." FS014529. That conclusion does not follow logically from, and indeed misstates, the Service's own findings in its EA and cannot support the agency's determination not to prepare an EIS. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (for its decision to be upheld under arbitrary-or-capricious standard, agency must articulate "a rational connection between the facts found and the choice made") (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)). Given the Service's acknowledgement that IDFG's foreseeable operations threaten a significant cumulative impact on the wilderness, an EIS was required. See 40 C.F.R. § 1508.27(b)(7).[7]

Second, the effects of the challenged authorization are significant because the Service's decision "may establish a precedent" for future authorizations. 40 C.F.R. § 1508.27(b)(6). This is so because the Service's rationale for approving IDFG's winter 2016 project—that IDFG needs quality data to inform its wildlife-management decisions, FS014517—would apply with equal force to evaluation of continued IDFG elk-collaring operations in successive years. Indeed, as described supra, IDFG has stressed that to obtain valid data it must continue operations in the wilderness in future years. FS000018, FS000028. Despite IDFG's statements

[7] This Court also has recognized the cumulative harm from repeated helicopter intrusions into wilderness. See Wolf Recovery Found., 692 F. Supp. 2d at 1270 (stating, in upholding Service's 2010 helicopter authorization, that "the next helicopter proposal in the [River of No Return] Wilderness will face a daunting review because it will add to the disruption and intrusion of this collaring project").

and the Service's own concession that continued elk collaring is reasonably foreseeable, the Service denied that the challenged authorization will have any precedential effect because the Service promises to consider "on its own merit" in a new NEPA analysis any forthcoming IDFG proposal to continue elk capture-and-collar operations in the River of No Return Wilderness. FS014529. But this elevates form over substance. The Service offered no reason to believe that the relevant factors regarding future IDFG proposals for wilderness elk collaring, or the Service's evaluation of them, would vary in any way from the challenged decision. Accordingly, the promise of a new analysis does nothing to dispel the precedential effect of the challenged authorization on that future analysis.

Third, the Service's authorization affects a geographic area with "[u]nique characteristics"—namely, a federally protected wilderness of "immense national significance," Central Idaho Wilderness Act, supra, § 2(a)(1)—another regulatory factor indicating significant environmental effects and the need for an EIS. 40 C.F.R. § 1508.27(b)(3). Though the Service conceded in its EA that "direct and indirect impacts to wilderness character resulting from the proposed action would be major," FS011756 (emphasis added), in determining not to prepare an EIS the agency again contradicted its own analysis by concluding that "effects to wilderness character will not be significant," FS014529 (Service FONSI). The Service offered no rational explanation how impacts to wilderness character could be major but insignificant.

Fourth, as discussed supra, the challenged authorization "threatens a violation of Federal … law or requirements imposed for protection of the environment"—namely, the Wilderness Act—which itself renders the authorization's environmental effects significant. 40 C.F.R. § 1508.27(b)(10).

For these reasons, the Service's conclusion that its authorization of 120 helicopter landings and associated capturing, anesthetizing, processing, and collaring of sixty elk in the wilderness would have no significant environmental impact was arbitrary. At a minimum, the record raises "substantial questions" about the project's significance, rendering the agency's failure to prepare an EIS unlawful. Ocean Advocates, 402 F.3d at 864 (quotation omitted).

**B. The Forest Service Failed to Consider Reasonable Alternatives**

The Forest Service also violated NEPA by failing to consider reasonable alternatives to the proposed action. Regardless of whether an agency prepares an EIS or EA, it must "study, develop, and describe appropriate alternatives to recommended courses of action" that would minimize adverse environmental impacts. 42 U.S.C. § 4332(2)(E); see W. Watersheds Project v. Abbey, 719 F.3d 1035, 1050 (9th Cir. 2013) (holding this requirement applies to EAs). To fulfill that mandate, the agency must articulate the proposed action's "purpose and need" broadly enough to allow consideration of all reasonable 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) (quotation and alteration omitted). Further, NEPA does not permit an agency to allow another entity's objectives to "define the scope of the proposed project" in a manner that "necessarily and unreasonably constrains the possible range of alternatives." Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt., 606 F.3d 1058, 1070, 1072 (9th Cir. 2009) (holding that agency violated NEPA by allowing private objectives to preclude consideration of otherwise reasonable alternatives).

The Service violated these requirements. It narrowly defined the "purpose and need" for its proposed action as "responding … to IDFG's proposal to land helicopters in the Wilderness

as necessary to conduct its capture and collar operations," articulating no wilderness-management purpose and need for the proposed federal action and instead enabling IDFG's purpose to dictate and limit the scope of its analysis. FS011729; FS014517. As a consequence, the Service dismissed reasonable alternatives for investigating elk population dynamics that deviated from IDFG's preferred helicopter-assisted research methodology, regardless of whether such alternatives might satisfy IDFG's stated objectives while better preserving wilderness character. See, e.g., FS011828 (Service stating Leopold Institute study is "outside the scope" of Service's NEPA analysis because it is not what IDFG proposed). That the Leopold Institute study, for example, differed from IDFG's proposal is an irrational basis to disregard it in the Service's NEPA analysis; inherent in the Service's obligation to examine alternatives is a duty to consider actions other than the action contemplated in the proposal before the agency. Ultimately, "[t]he existence of a viable but unexamined alternative renders an EA inadequate." W. Watersheds Project, 719 F.3d at 1050 (alteration omitted) (quoting Westlands Water Dist. v. Dep't of Interior, 376 F.3d 853, 868 (9th Cir. 2004)). For this reason too, the Service violated NEPA.

## IV. THIS COURT SHOULD ISSUE AN INJUNCTION TO MITIGATE THE HARM FROM THE FOREST SERVICE'S UNLAWFUL ACTIONS

This Court should remedy the Forest Service's unlawful actions by issuing an injunction. A plaintiff seeking a permanent injunction must demonstrate

> (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 157, 130 S. Ct. 2743, 2756 (2010) (quotation omitted). Here, regardless of the completion of operations under the Service's

unlawful authorization, this Court can and should issue injunctive relief to mitigate the continuing harm caused by the Service's unlawful decision "by limiting its future adverse effects." Nw. Envtl. Def. Ctr. v. Gordon, 849 F.2d 1241, 1245 (9th Cir. 1988); see Neighbors of Cuddy Mountain, 303 F.3d at 1066 (holding injunctive relief would be proper "to help mitigate the damage" caused by defendant's completed unlawful acts).

Specifically, plaintiffs request an injunction requiring the destruction of all data obtained from the radio collars placed on elk and wolves in implementing the Service's unlawful authorization and specifically prohibiting the use of such unlawfully obtained data to advance IDFG's plans to kill wolves in the Middle Fork Zone of the River of No Return Wilderness. To "mitigate the damage" caused by the Service's decision, this Court's remedial authority necessarily must reach defendant IDFG Director Moore, whose agency was the beneficiary of the Service's unlawful action, utilized the access afforded by that action to illegally capture and collar wolves in the River of No Return Wilderness, and now is poised to exploit the fruits of the Service's unlawful action in a manner that would inflict additional harm on the wilderness—specifically, by utilizing data obtained from the illegally-placed wolf collars to target and kill the collared wolves and their pack members pursuant to IDFG's wildlife-management plans. To prevent the Service's action from yielding such cumulative degradation of the wilderness character of the River of No Return Wilderness, this Court should issue the requested injunction.

### A. Injunctive Relief is Needed to Remedy Irreparable Harm

Plaintiffs have suffered irreparable injury and face a continuing threat of further irreparable harm from defendants' actions absent injunctive relief from this Court. "Harm is irreparable when, as [the] name suggests, the harm cannot be undone by an award of compensatory damages." Battelle Energy Alliance v. Southfork Security, 980 F. Supp. 2d 1211,

1220 (D. Idaho 2013) (citation omitted); accord Caribbean Marine Servs. Co. v. Baldridge, 844 F.2d 668, 676 (9th Cir. 1988). "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 545 (1987).

In this case, plaintiffs have suffered irreparable harm to their interest in the wilderness character of the River of No Return Wilderness due to the helicopter-assisted wildlife collaring authorized by the Service. Plaintiffs have a documented interest in the wilderness character of the River of No Return Wilderness, which they seek out for opportunities to experience quiet, solitude, and a natural setting undisturbed by signs of human influence and untrammeled by human manipulation of the environment.[8]

These are precisely the experiences the Wilderness Act protects. "[W]hen federal statutes are violated, the test for determining if equitable relief is appropriate is whether an injunction is necessary to effectuate the congressional purpose behind the statute." Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1177 (9th Cir. 2002) (citation omitted). The Wilderness Act's purpose is to preserve "an area where the earth and its community of life are untrammeled by man," which offers "natural conditions" and "outstanding opportunities for

[8] See Almquist Decl. ¶¶ 6, 8-10, 12, 14; Almquist Supp. Decl. ¶¶ 4-7; Campbell Decl. ¶¶ 6-8, 12; Campbell Supp. Decl. ¶¶ 2-5; Clark Decl. ¶¶ 5, 8-9, 11-12, 14; Cole Decl. ¶¶ 13, 17; Fraser Decl. ¶¶ 2, 4-7, 9-12; Haverstick Decl. ¶¶ 4-5, 7-9; Haverstick Supp. Decl. ¶¶ 2, 5; Hayes Decl. ¶¶ 6, 15; Keele Decl. ¶¶ 3, 6-8; Mabbott Decl. ¶¶ 10-12; Macfarlane Decl. ¶¶ 7, 11; Macfarlane Supp. Decl. ¶¶ 7-8; Marvel Decl. ¶¶ 8, 11; Pope Decl. ¶¶ 10-11, 17-18; Savory Decl. ¶¶ 3, 6-8; Stubblefield Decl. ¶¶ 3, 8-9; Weston Decl. ¶¶ 5-7, 9-10, 18-20; Second Weston Decl. ¶ 3, 6-7, 9-10; Wolke Decl. 7-9.

solitude." 16 U.S.C. § 1131(c); see id. § 1133(b). "Helicopters carry 'man and his works' and so are antithetical to a wilderness experience." Wolf Recovery Found., 692 F. Supp. 2d at 1268.

In this case, the harm to wilderness character caused by approximately 120 helicopter landings in the wilderness pursuant to the Service's unlawful action is compounded by the authorized installation of radio collars on 60 elk—and the unauthorized installation of radio collars on four wolves—within the wilderness. As the Service admitted, "radio collars fitted on captured animals are installations and evidence of modern civilization" that "adversely affect the undeveloped character of the wilderness." FS011755. Plaintiffs' members have planned and are planning trips into the River of No Return Wilderness, and the wilderness experience that Congress sought to protect for them there will be irreparably harmed by encounters with elk or wolves bearing "collars signifying their subjugation"—"as if the wilderness area were merely a managed game farm." Campbell Decl. ¶ 11; Clark Decl. ¶ 11.[9] Further, the collars will remain for years to mar the wilderness for plaintiffs' members and other visitors, as the elk collars "are designed to fall off male calves in one year and would remain on female calves and adult females permanently." FS011755. For this reason alone, plaintiffs satisfy the irreparable harm requirement.[10]

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[9] See also Almquist Decl. ¶ 14; Almquist Supp. Decl. ¶ 7; Campbell Decl. ¶ 6, 11; Campbell Supp. Decl. ¶¶ 5, 7; Clark Decl. ¶¶ 11, 14-15; Cole Decl. ¶ 16-17; Fraser Decl. ¶¶ 7, 10; Haverstick Decl. ¶ 9; Haverstick Supp. Decl. ¶ 6; Hayes Decl. ¶ 15; Keele Decl. ¶¶ 7-8; Mabbott Decl. ¶ 12; Macfarlane Decl. ¶¶ 8, 11; Macfarlane Supp. Decl. ¶¶ 8-9; Marvel Decl. ¶ 11; Pope Decl. ¶ 19; Savory Decl. ¶ 7-8; Stubblefield Decl. ¶¶ 8-9; Weston Decl. ¶ 18; Second Weston Decl. ¶¶ 10-11; Wolke Decl. ¶¶ 5, 8.

[10] It is unclear how long the wolf collars installed by IDFG will remain on the collared animals, but IDFG's counsel reports that the wolf collars have a battery life of approximately four years. Preso Decl. Ex. 1 at 1. This Court may consider such extra-record evidence in addressing remedial issues. See Idaho Watersheds Project v. Hahn, 307 F.3d 815, 833-34 (9th Cir. 2002) (affirming this Court's evaluation of extra-record declaration in permanent injunction determination), abrogation on other grounds recognized by Monsanto, 561 U.S. at 157-58.

In addition, IDFG's collaring of four wolves in implementing the challenged Service authorization threatens further irreparable harm to the wilderness character of the River of No Return Wilderness through IDFG's use of wolf-collar data to locate and kill the collared wolves and their pack members. IDFG has already "trammel[ed]" the River of No Return Wilderness through wolf-killing actions in 2013-14 that the state halted only in response to litigation by two of the plaintiffs here. FS014759; see n.2, infra. Despite that temporary stand-down, IDFG maintains operative plans to "aggressively manage elk and predator populations" in the River of No Return Wilderness for the purpose of artificially inflating the elk population—including a Predation Management Plan prescribing the killing of 60% of resident wolves in the Middle Fork Zone of the wilderness. FS014633-34; FS011015-16. Further, an IDFG spokesman has stated that the agency utilizes radio-telemetry data to locate and kill wolves during such "predator control" actions. Pls.' Mot. for Judicial Notice, Ex. 3. IDFG has averred that it "does not intend to conduct any wolf control actions in the [River of No Return] Wilderness" through June 30, 2016—but makes no promises thereafter. FS015157 (Jan. 21, 2016 letter from defendant Moore to defendant Rasure). Now, as a consequence of the Service's unlawful authorization of IDFG's helicopter intrusions, four wolves residing in the Middle Fork Zone bear collars that transmit the wolves' location to state agents. Further, based on the locations where IDFG captured and collared these four wolves, it appears likely that the collared wolves include members of three separate wolf packs.[11] Compare Preso Decl. Ex. 1 at 2 (map of wolf collaring locations) with Pls.' Mot. for Judicial Notice Ex. 4 at 2 (map of wolf-pack distribution in Middle Fork Zone). Given IDFG's stated intention to kill 60% of the wolves in the Middle Fork Zone of the

[11] IDFG's map indicates that the agency collared one wolf in an area of the wilderness entirely outside the authorized boundary for the elk-collaring project. Preso Decl. Ex. 1 at 2. So far as plaintiffs are aware, IDFG has offered no explanation for landing a helicopter outside the project boundary in connection with the challenged action.

wilderness, IDFG's substantially enhanced ability to locate the collared wolves threatens to facilitate killing of those wolves and their pack members pursuant to IDFG's plan at any time after June 30, 2016.

Such wolf killing, undertaken to artificially inflate the wilderness elk population, would defy "the congressional purpose behind" the Wilderness Act and therefore justifies equitable relief. Biodiversity Legal Found., 309 F.3d at 1177. Both the Service and this Court recognized "the importance of wolf recovery to enhancement of wilderness character" in the River of No Return Wilderness in Wolf Recovery Foundation. 692 F. Supp. 2d at 1266 (quoting Forest Service decision); see also id. at 1268 (recognizing effort "to restore the wilderness character of the area by returning the wolf"). The Service recently reaffirmed that the "wolf populations in the [River of No Return Wilderness] are a critical component of the natural quality of wilderness character for the area." FS014759 (emphasis added). Preservation of such "natural quality" and "wilderness character" is at the heart of the Wilderness Act's requirements. See 16 U.S.C. §§ 1131(c), 1133(b); Wilderness Soc'y, 353 F.3d at 1061-62 (Wilderness Act establishes a "broad mandate to protect the forests, waters, and creatures of the wilderness in their natural, untrammeled state") (emphasis added) (citing 16 U.S.C. § 1131). Accordingly, the Service itself has recognized that wolf killing in the wilderness by IDFG would be antithetical to the Wilderness Act, stating in its July 2015 briefing paper that IDFG's wolf-killing plan "is in conflict with the Wilderness Act and Forest Service policy because it is a direct control measure," FS014760, and "negatively impacts both the untrammeled and natural qualities of wilderness character," FS014759.

Not only would the wolf killing threatened by IDFG's wolf-collaring activity harm wilderness character in defiance of the Wilderness Act, it would irreparably harm plaintiffs.

Plaintiffs have documented a specific interest in observing wolves and signs of their presence, hearing wolves howling, and generally finding aesthetic enjoyment and inspiration from experiencing an environment where wolves and elk interact naturally within the River of No Return Wilderness, including specifically in the Big Creek and Middle Fork Salmon River areas where IDFG collared wolves in January 2016.[12] Killing those wolves pursuant to IDFG's plans—which are now facilitated by the locational information generated by four illegally placed wolf collars—would further irreparably harm plaintiffs' interest. See High Sierra Hikers, 390 F.3d at 642 (affirming injunction upon finding that "environmental injury to the wilderness areas [was] 'likely'" due to "a reduction in the population of sensitive species") (footnote omitted); see also Humane Soc'y of U.S. v. Gutierrez, 523 F.3d 990, 991 (9th Cir. 2008) (affirming that lethal taking of wildlife "is, by definition, irreparable").

In sum, despite completion of the challenged action, injunctive relief remains necessary and appropriate to mitigate the harm from the Service's unlawful authorization "by limiting its future adverse effects" on the wilderness character of the River of No Return Wilderness. Nw. Envtl. Def. Ctr., 849 F.2d at 1245; see also Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 368 (9th Cir. 1989) (recognizing that injunctive relief may issue to remedy completed diversion of water from fishery by requiring storage of equivalent water supply "for possible use during future spawning seasons"). Here such relief should include two components:

First, this Court should require defendant IDFG Director Moore to destroy all data received from the unlawfully installed elk and wolf collars for as long as the collars remain

[12] See Almquist Supp. Decl.; Campbell Supp. Decl.; Clark Decl.; Cole Decl. ¶¶ 10, 12-17; Fraser Decl. ¶¶ 5, 11; Haverstick Decl. ¶¶ 4-5; Haverstick Supp. Decl.; Hayes Decl. ¶¶ 11-12, 17-18; Keele Decl. ¶¶ 3-4, 7-9; Mabbott Decl. ¶¶ 3, 6, 9, 12-14; Macfarlane Supp. Decl.; Marvel Decl. ¶ 8-12; Pope Decl. ¶¶ 10, 17, 19; Savory Decl. ¶¶ 3-4, 7-9; Stubblefield Decl. ¶¶ 7-9; Weston Decl. ¶¶ 11-13; Second Weston Decl.; Wolke Decl. ¶¶ 2-5, 7-10.

operative. Cf. West v. Sec'y of Dep't of Transp., 206 F.3d 920, 925 (9th Cir. 2000) (affirming that appropriate injunctive relief to remedy illegal completion of highway project could include "ordering the interchange closed or taken down"). Such data supports IDFG's elk and predation management plans. FS000003-04; FS014761. IDFG has advised that the unlawfully installed collars cannot be removed or disabled remotely. Preso Decl. Ex. 1 at 1. Accordingly, destruction of the data generated by the collars appears to be the only means of ensuring that the Service's unlawful authorization will not serve to facilitate IDFG wildlife management plans that are antithetical to the Wilderness Act.

Second, as an additional necessary step to remedy the Service's unlawful conduct, this Court should prohibit defendant Moore from utilizing any information or knowledge already obtained from the unlawfully installed wolf collars to facilitate wolf killing pursuant to IDFG's Predation Management Plan or any other wolf-killing activity in the wilderness. The Service's unlawful conduct enabled IDFG's unauthorized wolf-collaring activity, and the requested relief is necessary and appropriate to limit the future adverse effects of that conduct by preventing IDFG from using the information and knowledge already gained from the unauthorized wolf collars to implement wolf killing that would degrade the wilderness character of the largest forested wilderness area in the lower-48 states.

### B. This Court May Properly Enjoin Defendant Moore to Remedy the Forest Service's Unlawful Action.

The requested injunctive relief against defendant IDFG Director Moore is well within this Court's equitable authority to remedy ongoing harm from the Forest Service's unlawful conduct. First, defendant Moore is properly joined as a defendant pursuant to the Federal Rules of Civil Procedure to effectuate complete relief. See Nat'l Wildlife Fed'n v. Espy, 45 F.3d 1337, 1344-45 (9th Cir. 1995) (holding that purchasers of property were properly joined under Rule 19 in an

action challenging property transfer by federal agencies); League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency, 558 F.2d 914, 917-18 (9th Cir. 1977) (holding that permissive joinder of developers who received challenged agency approvals was proper).[13]

Second, this Court may enjoin defendant Moore because such relief is necessary to vindicate rights afforded by federal law. "[F]ederal courts have a form of pendent jurisdiction based upon necessity over claims for injunctive relief brought against state actors in order to preserve the integrity of federal remedies." S. Carolina Wildlife Fed'n v. Limehouse, 549 F.3d 324, 330 (4th Cir. 2008) (quotations and alteration omitted); cf. Sierra Club v. Hodel, 848 F.2d 1068, 1096-97 (10th Cir. 1988) (affirming injunction prohibiting county from continuing road construction bordering a wilderness study area pending federal action to protect wilderness character as required by federal law), overruled on other grounds by Vill. of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970 (10th Cir. 1992). Indeed, in the specific context of a NEPA claim, the Ninth Circuit has recognized that "[n]onfederal actors may … be enjoined under NEPA if their proposed action cannot proceed without the prior approval of a federal agency." Fund for Animals v. Lujan, 962 F.2d 1391, 1397 (9th Cir. 1992) (citing Found. on Econ. Trends v. Heckler, 756 F.2d 143, 155 (D.C. Cir. 1985)); accord Citizens for Smart Growth v. Sec'y of Transp., 669 F.3d 1203, 1210 (11th Cir. 2012); S.W. Williamson Cnty. Cmty. Ass'n v. Slater, 243 F.3d 270, 277 (6th Cir. 2001). Accordingly, it is well established that defendant Moore could be enjoined from proceeding under the Forest Service's unlawful authorization if such relief were available, see Fund for Animals, 962 F.2d at 1397; by the same token, defendant

[13] The Eleventh Amendment poses no bar to this Court's jurisdiction over plaintiffs' claim for "injunctive relief against state officials, sued in their official capacities, to enjoin ongoing violations of federal laws." Ctr. for Biological Diversity v. Otter, No. 1:14-CV-258-BLW, 2016 WL 233193, at *7 (D. Idaho Jan. 8, 2016) (citing Agua Caliente Band of Cahuilla Indians v. Hardin, 223 F.3d 1041, 1045 (9th Cir. 2000)); see Ex parte Young, 209 U.S. 123, 159-60 (1908).

Moore may be enjoined to mitigate the harm from implementation of the Forest Service's unlawful authorization "by limiting its future adverse effects," Nw. Envtl. Def. Ctr., 849 F.2d at 1245.

### C. The Balance of Equities and Public Interest Support an Injunction

Finally, the balance of equities and the public interest support the requested injunction. As to the balance of equities, plaintiffs seek injunctive relief to prevent the Forest Service's unlawful action from advancing IDFG's plans that call for "aggressively manag[ing]" elk and wolves in the River of No Return Wilderness, FS014633-FS014634, a purpose that is antithetical to and cannot override the central mandate of the Wilderness Act, see 16 U.S.C. §§ 1131(c), 1133(b).

No countervailing interests outweigh this congressionally protected interest in preserving wilderness character. As for any argument that the data collected by IDFG pursuant to the Forest Service's unlawful action may help "IDFG and the Forest Service … better understand the condition of the elk population" and thereby "take action to reduce or reverse future declines," FS014525, that objective—even if it were not impermissibly hypothetical—is not meaningfully served by the single year of wildlife collaring authorized by the Forest Service. As explained in the accompanying Declaration of John A. Vucetich, Ph.D., one of the nation's leading experts on wolf-prey relationships, the research authorized by the challenged decision is "too brief and involves too few radio-collared animals to adequately understand cause-specific mortality or causes of decline in that elk population" and therefore "will not help" the Forest Service and IDFG "make better decisions pertaining to the management of elk and their predators." Vucetich Decl. ¶ 3. Indeed, consistent with Dr. Vucetich's testimony, IDFG admitted that data from even five years of more intensive collaring "would have limited utility in providing IDFG with the

information needed to manage elk populations over the long-term." FS000028; see Vucetich Decl. ¶¶ 3-5, 9 (discussing inadequacy of approved data collection). Though IDFG Director Moore claimed in a letter accompanying IDFG's proposal that the first year of collaring is necessary to test logistical assumptions and the results "will have substantial stand-alone value," FS000002, that conclusory statement is belied by IDFG's own project analysis, quoted above, and the Vucetich declaration. Any asserted injury to defendants from plaintiffs' requested relief is also undermined by the Forest Service and IDFG's termination of the Leopold Institute's non-invasive study, which could, at a minimum, have provided a review of existing science that is "vital" to developing an effective research program. Vucetich Decl. ¶¶ 6-9; see also Pennsylvania v. New Jersey, 426 U.S. 660, 664 (1976) (per curiam) (litigant cannot "be heard to complain about damage inflicted by its own hand").

The Forest Service's course of conduct in responding to IDFG's plans for aggressive wildlife management in the River of No Return Wilderness also bears on this Court's equitable balancing. This Court's rulings in Wolf Recovery Foundation provided clear direction to the Service as to the high substantive threshold for any further authorization of helicopter intrusions in the River of No Return Wilderness and an appropriate procedure to allow time for litigation of a challenge to any such authorization prior to project implementation. As this Court said, "[t]he Forest Service must proceed very cautiously here because the law is not on their side if they intend to proceed with further helicopter projects in the [River of No Return] Wilderness." Wolf Recovery Found., 692 F. Supp. 2d at 1270. Instead of following this Court's direction, the Service apparently acquiesced to IDFG's assertions of unilateral authority to take actions within the wilderness that degrade wilderness character. As stated in an October 2015 email by the

Forest Service's Director of Planning and Financial Resources for the Intermountain Region that sought to explain the Service's haste in authorizing the challenged project:

> The State has basically said that they are going to land helicopters in the wilderness whether we issue them a permit or not. We are trying to avoid the issue of having to take the state to court about landing helicopters in the wilderness without proper authorization and having the state argue that the landings are part of their mandated wildlife management practices and they can take whatever measures they need to manage the wildlife resource. The[y] need to start the collaring by mid-January at the latest, and we doubt that they will wait that long.

FS001489. As evidenced by this conduct, an injunction is needed to ensure that the requirements of the Wilderness Act, not the Service's undue and unfounded regard for IDFG's assertions of authority, govern management of the River of No Return Wilderness.

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

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

390 F.3d at 643.

## CONCLUSION

For the foregoing reasons, Plaintiffs Wilderness Watch, Friends of the Clearwater, and Western Watersheds Project respectfully request that this Court grant their motion for summary judgment and issue their requested injunctive relief.

Respectfully submitted this 4th day of March, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of March, 2016, I caused the foregoing document to be served via this Court's ECF system on the following:

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