



## *Western Wildlife Conservancy*

---

1021 Downington Av., Salt Lake City, Utah 84105 801-468-1535 lynx@xmission.com

---

March 11, 2017

Uinta-Wasatch-Cache National Forest  
Supervisor's Office  
c/o Pamela Manders  
857 W. South Jordan Pkwy  
South Jordan, UT 84095

Re: UDWR mountain goat capture and collar via helicopter in wilderness

To whom it concerns:

1. The proposed action is for the Utah Division of Wildlife Resources (UDWR) to make up to 60 helicopter landings in three Wasatch Mountain wilderness areas in the fall of 2017 in order to capture and collar approximately 20 Rocky Mountain goats (*Oreamnos americanus*) and approximately 10 Rocky Mountain bighorn sheep (*Ovis Canadensis*), and to take tissue samples from them. The wilderness areas where helicopter landings would take place are the Twin Peaks Wilderness, Lone Peak Wilderness, and Mount Timpanogos Wilderness – roughly the high mountainous area stretching between Provo Canyon on the south and Big Cottonwood Canyon on the north.

2. The stated “purpose and need” of the project is for UDWR to be able to monitor the movements of the sheep and goats from data transmitted by the collars, as well as learn what diseases they may have from the tissue samples. UDWR personnel believe that the information the project will allow them to acquire will better enable them to manage both species in the wildernesses and surrounding habitats of the Wasatch Mountains.

3. The Wilderness Act of 1964, as amended, is the governing document pertaining to wilderness management. It expressly prohibits aircraft landings and installations inside wilderness areas “except as necessary to meet minimum requirements for the administration of the area.” See 16 U.S.C. § 1133(c). The proposed helicopter landings would violate this prohibition unless they fall under the exception. Collars installed on goats and sheep in the wilderness would also violate the prohibition because they are considered installations.



4. The U.S. Forest Service is the managing agency in this case. Thus, the Forest Service (FS) must determine whether the proposed action is “necessary to meet minimum requirements” for the administration of the three wilderness areas for wilderness character, i.e., in order to preserve or enhance their wilderness character. The comments below from eight concerned conservation organizations are intended to help the Forest Service answer this question.

5. The following passage is from *Wolf Recovery Foundation v. United States Forest Service*, (692 F.Supp.2d 1264 (2010)) is helpful for evaluating the UDWR proposal.

‘The plaintiffs allege that this special use permit violates the Wilderness Act because it is not “necessary to meet minimum requirements for the administration of the area.” See 16 U.S.C. § 1133(c). Courts have construed this phrase “narrowly.” See *High Sierra Hikers Ass’n v. U.S. Forest Service*, 436 F.Supp.2d 1117 (E.D.Cal. 2006). Under this language, the court in *High Sierra* banned the construction of small dams that would restore fishing in a wilderness area. *Id.* The court reasoned that recreational fishing was “not an integral part of the wilderness nature of the area” and thus the building of small dams to enhance fishing was not “necessary” for administration of the area, i.e., necessary for maintaining the area as a wilderness. *Id.* at 1137.

Similarly, the “acquisition and use of a large passenger van for transporting tourists cannot reasonably be squeezed 1268\*1268 into the phrase “necessary to meet minimum requirements of administration.” See *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1093 (11th Cir.2004). To constitute “administration of the area,” the activity must further the wilderness character of the area: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man.” See 16 U.S.C. § 1131(c).’

6. In *Wolf Recovery Foundation v. U.S. Forest Service*, from which the above passage is excerpted, the presiding federal judge ruled in favor of the FS for permitting Idaho Fish and Game to land helicopters in a wilderness area in order to collar wolves. While acknowledging that proposed helicopter flights into on the Frank Church River of No Return Wilderness of central Idaho were inconsistent with wilderness values, the judge nevertheless ruled that their purpose, which was to capture and collar gray wolves (*Canis lupus*) in order to better understand the animal in that habitat, furthered wilderness values: “Ultimately, the Court was persuaded that the unique value of that particular study, coupled with the relatively small number of landings and short duration of the project, outweighed concerns over the disruption to wilderness values.” (692 F.Supp.2d 1264)

7. So, the question in this case is whether the value of the research that UDWR proposes to undertake in the three Wasatch Mountain wilderness areas is of sufficiently unique value for enabling the FS to better manage those wilderness areas for wilderness character, that, coupled with the relatively small number of proposed landings and short duration of the project, the project is legally permissible.



8. In this connection, we must be careful to distinguish the wolf collaring project from other types of intrusion into wilderness that have been ruled incompatible with wilderness values: In 'High Sierra Hikers Ass'n v. U.S. Forest Service, (cited in the excerpt from Wolf Recovery Foundation v. U.S. Forest Service), the court banned the construction and maintenance of small dams that would restore fishing in a wilderness area, reasoning that recreational fishing was "not an integral part of the wilderness nature of the area" and thus the building of small dams to enhance fishing was not "necessary" for administration of the area, i.e., necessary for maintaining the area as a wilderness.'

9. We have concerns regarding the proposition that the proposed project would be of unique value for enabling the FS to better manage the wilderness areas in question for their wilderness character. We do not see how this might be so. We do not see how the proposal is more like wolf collaring than like dam building for the purpose of enhancing recreational fishing. Indeed, it seems to us that the opposite is true. Therefore, we believe the challenge for the FS, before permitting the proposed project, is to make a sufficiently strong case that the reverse of what we believe is actually true.

10. In this connection, we note that the missions of the two agencies (FS and UDWR respectively) are quite different. The mission of UDWR is to manage the two species of ungulates that it wishes to study (Rocky Mountain goats and sheep), while the mission of the FS is to manage the wilderness areas where these species reside to preserve or enhance their wilderness character. Thus, the FS must articulate a plausible explanation for how data or information that can be expected to be obtained from the project, concerning animal movements and diseases, will enable it to better manage the three wilderness areas to preserve or enhance their wilderness character.

11. It is an important fact that in *Wolf Recovery Foundation v. United States Forest Service*, the proposal was to land helicopters in a wilderness in order to collar wolves. The gray wolf was native to that ecosystem, though it had been missing for many decades, and its return via reintroduction plus the subsequent rapid growth of the wolf population, represented the return of an important apex predator to a system of which it was historically an integral part. It had a role in the ecology of the system. One can understand how being able to track the movements of collared wolves would not only assist Idaho Fish and Game with its management goals, but might also enable the FS to better manage the area for its wilderness character. For example, knowing where wolves dened could help the FS discourage backcountry use near den sites, so as to minimize conflict between humans and wolves, thereby to allow wolf families to rear pups successfully. The opportunity for wilderness visitors to observe wolves in the wild and to hear them howl might also be considered an important aspect of wilderness character. The documented movements of wolves in the wilderness might also enable the FS to better monitor



their effects on the wilderness ecosystem. Is there anything comparable to this in the present case?

12. The management goal of UDWR with respect to both Rocky Mountain Bighorn Sheep and Rocky Mountain goats is to provide (1) hunting opportunities for hunters and (2) wildlife viewing opportunities for people who visit the wilderness areas and who enjoy observing these animals in the wild. This is explicitly stated in the management plans for both species. For example, UDWR's statewide management plan for Rocky Mountain bighorn sheep states:

Objective 1: Increase bighorn sheep populations within the state as conditions allow and bring all populations to at least the minimum viable level of 125 bighorns.

Objective: Maintain or improve sufficient bighorn sheep habitat to allow herds to reach population objectives.

Objective 2: Increase public awareness and expand viewing opportunities of bighorn sheep.

Similarly, the UDWR statewide management plan for Rocky Mountain goats states:

Mountain goats are managed as a once-in-a-lifetime species in Utah.

In addition to hunting, viewing mountain goats is one of the most exhilarating and memorable experiences available to users of high alpine areas in Utah.

The Division plans to continue this management approach, while also establishing new mountain goat populations where possible. This will allow the Division to expand both hunting and viewing opportunities for mountain goats while ensuring their long-term viability in Utah.

In short, the two management objectives for both species are to provide as many animals as possible for hunting and viewing. Undoubtedly, UDWR's interest in being permitted to land helicopters in Wasatch Mountain helicopters is meant to help them achieve these objectives.

13. This introduces the question of how working to achieve these objectives is necessary to help the FS manage the wildernesses for wilderness character. So far as we can see, hunting goats and sheep has nothing at all to do with managing wilderness areas for wilderness character – especially so long as there are predators to eliminate the weaker and non-reproductive members of herds, which itself is a natural part of what goes on in wilderness and which therefore might even be considered essential to wilderness character. In this case, there are resident mountain lions and golden eagles, both of which prey on young sheep and goats. Enhancing wildlife hunting opportunities is not demonstrably necessary for filling the role of the natural predators, and would seem to be much more like recreational fishing so far as wilderness management goes: it is not an integral part of the wilderness nature of the three wilderness areas.



14. A case might be made for the opportunity to view wild animals, such as Rocky Mountain bighorn sheep in their natural habitats as an important aspect of a wilderness experience – just as the opportunity to hear wolves howl or watch them take down an elk would be. But there are Rocky Mountain bighorn sheep in the wilderness areas for people to view; while on the other hand, Rocky Mountain goats are not native to Utah, having first been introduced to the state by UDWR in 1968 via transplant from Olympic National Park in Washington. Undoubtedly, they are wonderful animals and a delight to watch, but there is no evidence that they are native to the state. And this means that, unlike the bighorn sheep, they are not native to Wasatch Mountain wilderness areas. Consequently, it is hard to see how viewing them in the wilderness areas, however much enjoyment it might bring to hikers, is important to the wilderness character of the wilderness areas. In short, being able to observe non-native species in a wilderness seems to clearly not be integral to the wilderness character of the areas in question.

15. Furthermore, while the opportunity to view wild animals in their natural habitat is a wilderness value, wilderness *character* is essentially about *wildness*, not the recreation opportunity to view mountain goats or bighorn sheep or any other species.

16. Here it is worth noting the very interesting fact that UDWR believes the goats and sheep are not reaching herd objectives set by the agency. Since 1999, the mountain goat population in the three wildernesses has declined by 40%. (About 90 % of the mountain goats in the national forest, inclusive of the wilderness areas, are found inside the wilderness areas). Also, since reintroduction of bighorn sheep to the forest (which were translocated from Canada), the herd has, in the language chosen by UDWR, become “stagnant.” Expressed less tendentiously, it has stopped growing. It is patently unscientific to assume that the population ought to be bigger than it is. To the contrary, the fact the population has declined since the advent of bighorn sheep suggests strongly that the habitat has reached carrying capacity for the sympatric species. Indeed, this assumption would explain why only 37% of the bighorn sheep on the forest are found within the wilderness areas. It is entirely plausible, even probable from an empirical point of view, that competition for forage between the two species is causing a degree of habitat partitioning between them by pushing bighorns into sub-optimal habitat outside the wilderness areas. It also offers an entirely plausible explanation for the concomitant decline in the number of mountain goats inside the wilderness areas. Indeed, UDWR acknowledges the points about competition and partitioning in its mountain goat management plan:

“Mountain goats and Rocky Mountain bighorn sheep typically occur in broadly similar habitats, at similar elevations, and consume many of the same forages. Thus, the potential exists for competition between these two species, particularly when seasonal habitat overlap occurs (Hobbs et al. 1990, Laundre 1994, Gross 2001). However, even where both are present, resource partitioning appears to minimize conflicts (Laundre 1994). Specifically, there is enough disparity in site selection, seasonal use, and forage preference such that range overlap



does not result in as much direct competition as expected when each species' habitat requirements are considered separately." (Underline added to emphasize that, while partitioning might reduce competition, it does not eliminate it, and thus having both species occupy the same habitat – a habitat that they have not both occupied at least since the last ice age – would of course result in a reduction in the herd size of at least one of the species, probably both.)

17. This is significant for several reasons: (1) It would easily explain why the bighorn sheep herd has stabilized at a lower number than UDWR hoped for; (2) it would at least partially explain why the mountain goat population has declined by 40% since the mountain sheep were reintroduced; (3) it is an unnatural situation and hence arguably contrary to the wilderness character of the wilderness areas to have both of these species attempt to occupy the same habitat to which only one of them is native; and (4) it is a situation that might foster disease transmission between members of the two species. In fact, both species are recognized vectors for contagious ecthyma, respiratory pneumonia and Johne's disease, all of which can be fatal to infected animals. This likely limits the potential size for both herds (bighorn and goat).

18. UDWR wants to take tissue samples from both sheep and goats in part to identify any diseases that might be present. We have no quarrel with them wanting to do that, but we fail to see why landing helicopters in wilderness areas is necessary for doing it, since they can always examine the carcasses of sheep and goats killed by hunters. Furthermore, and more importantly for present purposes, we do not see how such information can be necessary for the FS to be able to manage the areas for wilderness character. The question of whether it is the *minimum* requirement for doing so doesn't even arise if it is not necessary in the first place.

19. If UDWR feels that it is important, for its own management purposes, to obtain tissue samples from sheep and goats in the wilderness areas, it can sample dead animals brought in by hunters and/or send personnel in on foot or horseback to dart the animals. This second option would no doubt be difficult to do, but it could be done; and it would not pose a problem so far as wilderness management is concerned. Forest Service policy provides guidance on this point: *"Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness."* (FSM 2320.6)

20. UDWR's other stated purpose for its proposal, is to fit captured sheep and goats with collars that will allow UDWR personnel to track the movements of the animals. We have no problem with UDWR wanting to track the movements of the animals, perhaps to see which parts of the habitat they use during different seasons. But again, what has this got to do with the Forest Service's statutory duty to manage the wildernesses for wilderness character? Is this



kind of knowledge something that the FS needs to acquire in order to preserve or enhance the wilderness character of the wilderness areas? We do not see how this can be so.

21. Finally, we note that UDWR fails to explain how they might use whatever information they could hope to gain from the proposed research project in order to meet the agency's twin objectives of providing a maximum number of sheep and goats for hunting and viewing. In the total absence of any information regarding this, it is not possible to know whether UDWR will want to do a follow-up study, or several of them, in which case we are concerned that ultimately there may be a request for many more studies tiered off the one being proposed. And obviously, this would severely complicate the issue so far as managing the wildernesses for wilderness character is concerned. It would open a whole new can of worms, as it were. Until UDWR explains how findings from the proposed study might influence future management decisions (including possibly the desire for further intrusive research in the wilderness areas), neither the FS nor the public can accurately assess the impacts to wilderness character that this proposal might bring in its train if it is approved.

For the reasons stated above, the signatories to this letter are opposed to UDWR's proposal and we urge the Forest Service to deny it.

Please notify us when a decision has been made and inform us of objection opportunities.

Sincerely,

Kirk Robinson, PhD  
Executive Director  
Western Wildlife Conservancy  
1021 Downington Ave.  
Salt Lake City, UT 84105  
801-468-1535      lynx@xmission.com

Kim Crumbo, Western Conservation Director  
Wildlands Network  
3275 Taylor Avenue  
Ogden, UT 84403

Allison Jones  
Executive Director  
Wild Utah Project





824 S 400 W # B117  
Salt Lake City, UT 84101

Carl Fisher  
Executive Director  
Save Our Canyons  
68 Main St #400  
Salt Lake City, UT 84101

Mark Clemens  
Chapter Manager  
Utah Chapter, Sierra Club  
423 West 800 South, Ste A103  
Salt Lake City, UT 84101-4803

Jason Christensen  
Manager, Yellowstone to Uintas Connection  
PO Box 280  
Mendon, Utah 84325

Brian Perkes  
Executive Director  
Voices of Wildlife  
1042 E Fort Union Blvd # 341  
Midvale, UT 84047

George Nickas  
Executive Director  
Wilderness Watch  
PO Box 9175  
Missoula, MT 59807