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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WILDERNESS WATCH, FRIENDS OF THE CLEARWATER, and WESTERN WATERSHEDS PROJECT, Plaintiffs, v. 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, Defendants.	Case No. 4:16-cv-12-BLW **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT [ECF No. 21] and RESPONSE IN OPPOSITION TO CROSS-MOTIONS FOR SUMMARY JUDGMENT [ECF Nos. 27, 35]**

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INTRODUCTION

The summary judgment arguments advanced by Federal Defendants and Defendant Moore underscore the need for judicial intervention to protect wilderness character and restore the rule of law in the Frank Church-River of No Return Wilderness.

The administrative record indicates that this case arose because the Idaho Department of Fish and Game ("IDFG") "said that they are going to land helicopters in the wilderness whether [the U.S. Forest Service] issue[s] them a permit or not" and the Service responded by permitting an unprecedented helicopter intrusion in the River of No Return Wilderness "to avoid the issue of having to take the state to court." FS1489 (email from regional planning director). Defendants' summary judgment filings do not dispute this account and, to the contrary, evidence continuing disarray in the defendants' positions regarding their respective authorities in the River of No Return Wilderness—and the resulting threat of further IDFG action to degrade wilderness character absent judicial intervention. The Forest Service assures that "[a]ny future proposed actions by IDFG in the Frank Church Wilderness must be consistent with mandates in [the] Wilderness Act and the Central Idaho Wilderness Act to preserve wilderness character," and that "additional environmental analysis and agency decisionmaking will occur" in advance of such actions. Fed. Br. 9, 16 (ECF No. 27-1). Yet Defendant Moore claims statutory authority for IDFG to conduct apparently unlimited helicopter landings at "off-airstrip locations" within the wilderness, states that IDFG engaged in the federal permitting process at issue in this case only "[a]s a matter of comity," and asserts that any future IDFG actions to kill wolves using locational data from the unpermitted wolf collars installed by IDFG "do not need the prior approval of a federal agency to proceed or continue." Moore Br. 4, 13, 17 (ECF No. 35). Accordingly, Plaintiffs' requested injunctive relief is necessary to ensure that the Service's unlawful decision

in this case does not enable IDFG to inflict even more harm to the River of No Return Wilderness through unilateral state action to eliminate wilderness wolf packs.

Such relief is also necessary to restore the rule of law in wilderness management. Among the few consistencies between the positions taken by Federal Defendants and Defendant Moore is that both misconstrue the Wilderness Act, 16 U.S.C. §§ 1131-36, to allow state wildlife-management actions that degrade wilderness character. Fed. Br. 12-14; Moore Br. 6-8. Further, both defy this Court's construction of the Wilderness Act in Wolf Recovery Foundation v. U.S. Forest Service, 692 F. Supp. 2d 1264, 1270 (D. Idaho 2010), which held that future helicopter use in the River of No Return Wilderness would add to the "disruption and intrusion" of wilderness values, face a "daunting review," and "be extraordinarily difficult to justify." Federal Defendants go so far as to urge that reliance on Wolf Recovery Foundation is "improper[]," Fed. Br. 17, based on this Court's statement that its published opinion in that case "would have no precedential value" because of its narrow focus "on the very specific circumstances" at issue, Wolf Recovery Found., No. CV 09-686-E-BLW, 2010 WL 2898933, at *1 (D. Idaho July 21, 2010). Plaintiffs read that statement to mean that the Court's denial of a preliminary injunction against the Service's authorization for IDFG's helicopter-assisted wolf collaring in 2010 did not amount to a general stamp of approval for further wilderness helicopter landings—not as a license for the Service to disregard this Court's rulings. But in any case the agency's argument emphasizes the need for renewed judicial action to ensure that the River of No Return Wilderness is governed by the Wilderness Act rather than the Service's perceptions of expediency in capitulating to IDFG's unfounded demands.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE JUSTICIABLE BECAUSE THIS COURT CAN GRANT EFFECTIVE RELIEF

Plaintiffs' claims are justiciable notwithstanding IDFG's completion of winter 2016 wildlife collaring operations in the River of No Return Wilderness because injunctive relief remains available and necessary to mitigate ongoing harm from the Forest Service's unlawful authorization of those operations. Even assuming for the sake of argument that this were not so, the mootness exception for actions that are "capable of repetition yet evade review" applies.

In asserting that "Plaintiffs' case is moot because the challenged activities have been completed," Fed. Br. 8; accord Moore Br. 2, defendants ignore that "completion of activity is not the hallmark of mootness." Neighbors of Cuddy Mountain v. Alexander, 303 F.3d 1059, 1065 (9th Cir. 2002). To the contrary, "a case is moot only where no effective relief for the alleged violation can be given," including relief "to help mitigate the damage caused by" the challenged action. Id. at 1065-66; accord Ore. Nat. Res. Council v. U.S. Bureau of Land Mgmt., 470 F.3d 818, 821 (9th Cir. 2006); Cantrell v. City of Long Beach, 241 F.3d 674, 678-79 (9th Cir. 2001); Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 368-69 (9th Cir. 1989). Because Plaintiffs here request injunctive relief that would mitigate the ongoing harm to their interests from the Service's unlawful decision, see Pls.' Br. 28-31 (ECF No. 21-1), this case is not moot.[1]

The cases cited by Federal Defendants are not to the contrary. Each involved a determination of mootness where, unlike in this case, the plaintiffs did not seek or the court

[1] Federal Defendants assert without explanation that "there is no substantial adverse effect on Plaintiffs' interest" and that Plaintiffs' claims of threatened ongoing harm are "simply not supported by the facts." Fed. Br. 10. Such unsubstantiated assertions are inadequate to carry defendants' "heavy burden" in establishing mootness, Karuk Tribe of Cal. v. U.S. Forest Serv., 681 F.3d 1006, 1017 (9th Cir. 2012) (en banc) (quotation omitted), and ignore Plaintiffs' documented interest in the River of No Return Wilderness, including the wolves of the Middle Fork Zone that face an ongoing threat due to the challenged action, see Pls.' Br. 26-30.

could not provide any relief that could mitigate the harm from the defendants' unlawful action. See Fed. Br. 9. Feldman v. Bomar held that a procedural challenge to agencies' decision to exterminate an invasive pig population from Channel Islands National Park was mooted by the agencies' completion of the extermination program because, "[n]ow that the pigs have been killed, Appellants have suffered whatever harm could conceivably result from the challenged agency action." 518 F.3d 637, 643 (9th Cir. 2008) (citation omitted). The court distinguished cases such as this one that are not mooted by completion of the challenged action because "'the violation complained of may have caused continuing harm and … the court can still act to remedy such harm by limiting its future adverse effects.'" Id. (alteration in original) (quoting Nw. Envtl. Def. Ctr. v. Gordon, 849 F.2d 1241, 1245 (9th Cir. 1988)). In Sierra Club v. Penfold, the court rejected plaintiffs' argument that the prospect of future mitigation could save their claims from mootness based on plaintiffs' stipulation with the defendants that mitigation was not required. 857 F.2d 1307, 1318 (9th Cir. 1988).[2] And in Nevada v. United States, the court held that the Interior Department's rescission of its moratorium on settlement of federal lands in Nevada mooted Nevada's challenge to the moratorium policy where the state sought only an injunction against the Department's hypothetical adoption of a similar policy in the future. 699 F.2d 486, 487 (9th Cir. 1983).

Further, Federal Defendants' assertion that there is no basis for meaningful relief in this case because "additional environmental analysis and agency decisionmaking will occur" before IDFG may conduct future helicopter landings in the River of No Return Wilderness is a non sequitur. Fed. Br. 9. Plaintiffs request an injunction requiring the destruction of all data

[2] See also West v. Sec'y of Transp., 206 F.3d 920, 926 n.5 (9th Cir. 2000) (distinguishing Sierra Club on this basis and holding construction of highway interchange did not moot NEPA challenge to interchange project's approval because court could order interchange removed).

obtained from the radio collars placed on elk and wolves in implementing the challenged decision and specifically prohibiting IDFG from using those data to facilitate its wolf-killing plans in the wilderness, see Pls.' Br. 25; Pls.' First Amd. Compl. 40 (ECF No. 11); neither will be achieved by future Forest Service environmental review. More fundamentally, there is reason to question whether the promised federal review will occur before IDFG makes additional helicopter intrusions in the River of No Return Wilderness given IDFG's insistence that it requires no federal authorization to land helicopters in the wilderness. See Moore Br. 17 (stating IDFG agreed to "USFS authorization for helicopter landings away from airstrips" in the wilderness only "[a]s a matter of comity"); FS1489 (Service stating IDFG "has basically said that they are going to land helicopters in the wilderness whether we issue them a permit or not").

Even assuming for the sake of argument that Plaintiffs' claims were moot, which they are not, the exception from the mootness doctrine for actions that are capable of repetition yet evade review applies. See Pls.' Br. 9-10. Federal Defendants' only response to this argument is to repeat their promise that future IDFG helicopter operations in the wilderness will be preceded by "additional environmental analysis" and therefore "Plaintiffs will have an opportunity to challenge any future actions." Fed. Br. 11. Again, that promise rings hollow given IDFG's rejection of federal authority over its helicopter operations in the River of No Return Wilderness. Further, the Service made an identical promise to this Court to secure dismissal on mootness grounds of a challenge to its 2009 authorization of helicopter landings and wolf collaring in the wilderness. See Pls.' Second Mot. for Judicial Notice, Ex. 1 at 15 (Federal Defendants' summary judgment brief in Wolf Recovery Foundation arguing repetition/evasion exception inapplicable because "any future helicopter landings in the [River of No Return Wilderness] could not be authorized without additional environmental analysis" and "Plaintiffs will have an

opportunity to challenge any future actions"). Despite that assurance—and this Court's explicit instruction that it expected the Service to issue any such future helicopter authorizations "enough in advance of the project so that any lawsuit seeking to enjoin the project could be fully litigated," Wolf Recovery Found., 2010 WL 2898933, at *1—the Service issued an eleventh-hour authorization for immediate helicopter operations in this case and now seeks to exploit its disregard of this Court's instruction to shield that authorization from review.[3]

Ultimately, defendants do not dispute that the challenged authorization is inherently too short-lived to be fully litigated before its expiration, satisfying the evasion requirement of the repetition/evasion exception. Shell Offshore v. Greenpeace, 709 F.3d 1281, 1287 (9th Cir. 2013); see Fed. Br. 10-11. Nor do they dispute that future IDFG helicopter operations in the River of No Return Wilderness are reasonably foreseeable, see Pls.' Br. 10; Fed. Br. 10-11, satisfying the exception's repetition requirement. Shell Offshore, 709 F.3d at 1287; Alaska Ctr. for the Envt. v. U.S. Forest Serv., 189 F.3d 851, 856 (9th Cir. 1999) (holding "capable of repetition" requirement is satisfied where there is "some indication that the challenged conduct will be repeated") (citation omitted). Accordingly, even if the Court were to find that Plaintiffs' claims are moot, which they are not, the repetition/evasion exception applies.

[3] Federal Defendants insinuate that Plaintiffs were dilatory in seeking relief given Plaintiffs' awareness by December 14, 2015, with further notice on January 4, 2016, that the Forest Service was preparing to approve IDFG's project. See Fed. Br. 11 n.4. The upshot of this critique is not clear since Plaintiffs could not initiate litigation until the Forest Service issued a final decision. 5 U.S.C. § 704. That final decision issued January 6, 2016, FS15139-48, and Plaintiffs filed their complaint the next day, ECF No. 1. Plaintiffs did not receive notice of Federal Defendants' refusal to revoke or suspend the decision pending injunction proceedings until January 8, 2016, and were prepared to file a motion for a temporary restraining order or preliminary injunction on this Court's next business day. Preso Decl. ¶¶ 4-5 (ECF No. 21-2). In the weeks preceding the Forest Service's final decision, Plaintiffs attempted to resolve their concerns through the agency's pre-decisional objections process, and, failing that, consulted with Service officials and counsel concerning the timing of the agency's impending decision and subsequent project implementation with the goal of avoiding emergency injunction proceedings. See FS15135-36.

II. THE FOREST SERVICE VIOLATED THE WILDERNESS ACT

Defendants' attempts to justify the Forest Service's decision under the Wilderness Act betray a fundamental misunderstanding of Congress's mandate for wilderness protection and the primacy of the federal policy choice reflected in that mandate. Defendants' arguments equally betray the irrationality of the Service's determination that IDFG's helicopter-assisted elk collaring project constitutes the minimum necessary intrusion on wilderness character.

A. The Forest Service Cannot Subordinate the Wilderness Act's Preservation Mandate to State Wildlife-Management Interests

Defendants misrepresent the role Congress assigned to the Forest Service as federal steward of the River of No Return Wilderness and the limitations Congress placed on state management prerogatives in federally protected wilderness areas. See Fed. Br. 1, 12-14; Moore Br. 6-9. Contrary to defendants' vision, the Wilderness Act's preservation of default state wildlife jurisdiction in wilderness areas does not amount to a "free pass" for state wildlife-management actions that degrade wilderness character.

Congress made clear its "overarching purpose" in the Wilderness Act: to provide for the administration of wilderness areas "'in such a manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character.'" High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630, 648 (9th Cir. 2004) (quoting 16 U.S.C § 1131(a)) (emphasis in original). Though the Act recognizes several valid uses of wilderness, including recreation and scientific research, see 16 U.S.C. § 1133(b), "it simultaneously restricts their use in any way that would impair their future use as wilderness." High Sierra Hikers, 390 F.3d at 648 (emphasis in original). In other words, the Act recognizes multiple public purposes for wilderness but makes its "overarching purpose" of preserving wilderness character dominant. Id. Indeed, if this were not so there would be little

purpose to establishing a National Wilderness Preservation System separate from the rest of the National Forest system.[4]

Defendants wrongly insist that Congress established this wilderness-preservation mandate only to unravel it in § 1133(d)(7), which preserves "the jurisdiction [and] responsibilities of the several States with respect to wildlife and fish in the national forests."[5] This "savings clause" merely embodies Congress's decision not to preempt wholesale the states' traditional responsibilities for regulating hunting and fishing and engaging in related management activities to the extent consistent with wilderness preservation. See 110 Cong. Rec. 17,429 (July 30, 1964) (statement of Rep. Aspinall) (under Wilderness Act, "the jurisdiction of the States over hunting and fishing is specifically preserved") (Ex. 1); H.R. Rep. No. 88-1538, at 3618 (1964) (stating hunting and fishing permitted under Wilderness Act "to the extent not incompatible with wilderness preservation") (Ex. 2). Thus, while "Congress did not intend to displace entirely state regulation and management of wildlife" in wilderness areas, it did preempt state authority where state law conflicts with federal law or "stand[s] as an obstacle to the accomplishment of the full purposes and objectives of the Federal Government." Wyoming v.

[4] Federal Defendants rely on Service plans and guidance stating that scientific research is a legitimate wilderness activity. See Fed. Br. 13, 15, 20. But encouragement of wilderness-dependent research does not amount to approval for unprecedented helicopter intrusion and extensive wildlife collaring. See, e.g., FS3396 (plan encouraging wilderness research conducted "in a non-obtrusive manner consistent with preserving the wilderness character"). Further, although the Service suggests its wilderness management plan relegates the agency to mere wilderness monitoring, Fed. Br. 1, the plan calls on the Service to control third-party actions that degrade wilderness by harming wildlife. See, e.g., FS3345-46 (restricting fish stocking and control of "problem animals").

[5] The Central Idaho Wilderness Act's savings clause is identical to and expressly adopts the Wilderness Act's savings clause, P.L. 96-312, 94 Stat. 948, § 7(c), 96th Cong. (1980), and "it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." Smith v. City of Jackson, 544 U.S. 228, 233 (2005) (citation omitted). Thus, Defendant Moore's reliance on the Central Idaho Wilderness Act to argue that Congress granted Idaho unique authority in wilderness wildlife management is misplaced. Moore Br. 6-8.

United States, 279 F.3d 1214, 1234 (10th Cir. 2002) (interpreting substantively identical savings clause in National Wildlife Refuge statute) (citation and footnote omitted); accord Nat'l Audubon Soc'y v. Davis, 307 F.3d 835, 854 (9th Cir. 2002).

Federal Defendants purport to acknowledge that the Wilderness Act overrides state authority when state actions conflict with or frustrate the Act's purpose but nonsensically assert that "there is no conflict here" because "the Forest Service must balance the ideals of wilderness with practical limitations." Fed. Br. 13. This assertion cannot be reconciled with the statutory framework and the Forest Service's own acknowledgment that IDFG's helicopter-assisted wildlife collaring operations and predation management plans degrade wilderness character. See High Sierra Hikers, 390 F.3d at 648; FS11754-56, 14758-59. Further, as this Court explained in interpreting legislation governing a wilderness study area, which incorporated the Wilderness Act's mandate to preserve wilderness character, Congress's framework for wilderness preservation does not call for the Forest Service's traditional balancing of competing land-management interests; instead, Congress made preservation of wilderness character "the primary duty of the Forest Service, and it must guide all decisions as the first and foremost standard of review for any proposed action." Greater Yellowstone Coal. v. Timchak, No. CV-06-04-E-BLW, 2006 WL 3386731, at *6 (D. Idaho Nov. 21, 2006). In any event, Federal Defendants cannot credibly argue that the political expediency of capitulating to IDFG's demands is a legitimate interest the Service is at liberty to "balance" against its overriding duty to preserve wilderness character. 16 U.S.C. § 1133(b); see FS1489 (Service official: "We are trying to avoid the issue of having to take the state to court about landing helicopters in the wilderness without proper authorization").

Defendant Moore takes Federal Defendants' mistaken position regarding state primacy in wilderness wildlife management even further, claiming, as noted above, that IDFG is free to conduct whatever helicopter-assisted wildlife collaring—and wolf-killing—operations it pleases in the River of No Return Wilderness. Indeed, under Defendant Moore's view, nothing would stop IDFG from using helicopters and radio collars to eradicate all wolves from the River of No Return Wilderness. See Moore Br. 4 (asserting that "the collection of radiocollar monitoring data and their use in hypothetical future state actions related to wolves, do not need the prior approval of a federal agency to proceed or continue"), 12-13 (asserting state aircraft landings outside airstrips in the wilderness constitute an "established use" exempt from Wilderness Act prohibitions), 17 (stating IDFG acquiesced in federal permitting for helicopter operations in this instance merely "[a]s a matter of comity"). For the reasons stated supra, these extreme assertions of state authority are irreconcilable with the Wilderness Act and Central Idaho Wilderness Act. Further, they cannot be reconciled even with Federal Defendants' position and so cannot support the challenged Forest Service decision in this case. SEC v. Chenery Corp., 318 U.S. 80, 95 (1943). More fundamentally, such rhetoric underscores the threat that, absent corrective direction from this Court, IDFG will continue to degrade the River of No Return Wilderness through helicopter intrusions and large-scale killing of the area's wolves while the Forest Service continues to acquiesce or sit on the sidelines.

Defendants' attempts to undermine the Wilderness Act's preservation mandate by citing the exception for continuation of established aircraft uses in the Wilderness Act and Central Idaho Wilderness Act are equally misguided. Moore Br. 6-8, 12-13; Fed. Br. 14. Both provisions allow continued landing of aircraft where this use has become established prior to wilderness designation, "subject to such restrictions as the Secretary of Agriculture deems

desirable." 16 U.S.C. § 1133(d)(1); see P.L. 96-312 § 7(a)(1). But as the legislative history of the Central Idaho Wilderness Act confirms, Congress intended only to preserve existing access to established airstrips; there is no indication of congressional intent to allow unconfined aircraft landings throughout the wilderness. See S. Rep. No. 96-414, at 21 (Nov. 14, 1979) ("The Wilderness Act gives the Secretary the discretion to allow for the continued landing of aircraft at backcountry airstrips within designated wilderness areas where this use has become established.") (emphasis added) (Ex. 3). The legislative history also demonstrates that this narrow exception was intended to ensure continued public recreational access to the especially remote River of No Return Wilderness, not to canonize Idaho's ability to use aircraft for wildlife management. See id. at 20 (expressing concern that, without preservation of existing motorized access, "few people could see and enjoy this splendid wilderness" given its "vastness"). Defendant Moore's contrary reading—i.e., that the aircraft-landing provision gives IDFG carte blanche to make unlimited helicopter landings at unlimited "off-airstrip locations," Moore Br. 13—would nullify the statutory mandate that the River of No Return Wilderness shall be managed "in accordance with the provisions of the Wilderness Act." P.L. 96-312, § 4(c); see also H.R. Rep. 96-1126 at 10 (June 24, 1980) (Central Idaho Wilderness Act conference report: "Lands within the [wilderness] boundary are to be managed under the provisions of the Wilderness Act") (Ex. 4); Wolf Recovery Found., 692 F. Supp. 2d at 1268 (helicopters "are antithetical to a wilderness experience"). Further, Defendant Moore's reading is inconsistent with the Service's own position in making the challenged decision that landings at established airstrips are generally permitted by the governing legislation, while off-airstrip landings are permitted only when necessary to satisfy minimum administration requirements. See FS5476,

11724. Once again, any contrary position advanced by the defendants in this litigation cannot be relied upon to sustain the agency's decision. Chenery, 318 U.S. at 95.

Similarly, Defendant Moore's invocation of the Central Idaho Wilderness Act's limited exceptions for jet boats, mining, hydro projects, and the like, Moore Br. 6-7, overlooks the basic points that IDFG's activities in this case do not fall within those exceptions and the Act equally provides that, apart from specified exceptions, the River of No Return Wilderness is to be managed "in accordance with the provisions of the Wilderness Act." P.L. 96-312, § 4(c). This is not a "utopian vision" of "ultra-purist wilderness ideology," Moore Br. 6, 7; it is what the law says.

B. The Forest Service's Necessity Determination is Arbitrary and Unlawful

Defendants also fail to rehabilitate the Service's irrational determination that IDFG's helicopter-assisted elk collaring project is necessary to satisfy minimum requirements for preserving the River of No Return's wilderness character. Pls.' Br. 10-19.

First, defendants do not dispute that IDFG's elk-collaring project advances IDFG's predation management plans—which call for killing the majority of wolves in the Middle Fork Zone to boost elk numbers. See Fed. Br. 16; see also FS14761 (Forest Service: elk collaring "monitor[s] the effects of wolf control"); FS11015-16 (IDFG predation management plan). Yet Federal Defendants make no attempt to explain how the Service may approve a project that advances such plans consistent with the Wilderness Act. See Fed. Br. 15-16. As the Service admits, IDFG's plans for "managing the balance between the reintroduced wolf population and the elk population in the Middle Fork Zone" to suit the state's preferences constitute an impermissible "trammeling action … that negatively impacts both the untrammeled and natural qualities of wilderness character." FS14756, 14759. Federal Defendants defy logic in arguing

that the Service may ignore the harmful impact of IDFG's predation management plans on wilderness character in determining that an elk-collaring project that advances those plans is necessary to administer the River of No Return as wilderness. 16 U.S.C. § 1133(c); see FS11822 (Service stating IDFG's predation management plans are "beyond the scope" of its analysis in approving elk-collaring project). At a minimum, the Service unlawfully "failed to consider an important aspect of the problem." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

Federal Defendants' responses to this argument fail. They first assert that any use of the radio-collar data to advance IDFG's predation management plans is "beside the point" because "[a]ny future proposed actions by IDFG in the Frank Church Wilderness must be consistent with mandates in [the] Wilderness Act and the Central Idaho Wilderness Act to preserve wilderness character." Fed. Br. 16. This assertion is meaningless given IDFG's position that professional extermination of wilderness wolf packs is consistent with the Wilderness Act and its assertion that the State requires no federal authorization to undertake such actions. FS11015 (IDFG predation management plan asserting that killing majority of Middle Fork wolves through use of professional trappers on foot or horseback is "consistent with the federal wilderness designation"); Moore Br. 4. Federal Defendants then suggest that radio-collar data may not actually be used to advance IDFG's wolf-killing plans unless those data prove that wolves are responsible for declining elk numbers in the wilderness. Fed. Br. 16. But IDFG has already attributed "[s]ignificant portions of this decline" to what it terms "excessive predation" by wolves, FS3, and moreover has not waited on supporting radio-collar data either to develop or implement its predation management plans, FS10856 (elk management plan); FS11015 (predation management plan); Pls.' Br. 5 & n.2. Nor do those plans—or Defendant Moore's

brief—suggest that IDFG will hold off in the manner posited by Federal Defendants. FS10856 (calling for "aggressive[]" wolf removal whenever elk numbers "are below objectives").

For his part, Defendant Moore argues that, in objecting to IDFG's plans for manipulating the balance of wolves and elk in the wilderness, Plaintiffs hypocritically disregard "the human intervention of wolf reintroduction." Moore Br. 8-9. But as this Court has recognized, wolf reintroduction was necessary to restore the wilderness character of the River of No Return Wilderness. Wolf Recovery Found., 692 F. Supp. 2d at 1268; accord FS14759. That action does not justify—and, indeed, militates against—IDFG's plans to substantially reverse that restoration by killing the majority of wolves now occupying the Middle Fork Zone of the wilderness to advance IDFG's hunter-driven objectives for the elk population. Ultimately, Defendant Moore's belated assault on the wolf reintroduction is irrelevant to this litigation under Chenery, 318 U.S. at 95, because the Service has defended that reintroduction and acknowledged that IDFG's management plans, by contrast, impermissibly degrade wilderness character, see Wolf Recovery Found., 692 F. Supp. 2d at 1266 (quoting Service decision document stressing "the importance of wolf recovery to enhancement of wilderness character"); FS14758-59 (Service acknowledging that IDFG elk and predation management plans degrade wilderness character).

Second, even setting aside the Service's arbitrary refusal to consider that IDFG's elk-collaring project advances management plans that degrade wilderness character, Federal Defendants fail to identify any legitimate necessity for IDFG's project under the Wilderness Act. They criticize Plaintiffs for not acknowledging one of the Service's stated project objectives, namely, "to determine the minimum action necessary to administer the [River of No Return] Wilderness for wilderness purposes." Fed. Br. 15 (citing FS14518). But this is just a statement of the Service's task in deciding to approve or reject IDFG's elk-collaring proposal, see

FS14518, not an explanation why IDFG's project is necessary to preserve wilderness character. Federal Defendants then assert that IDFG's project is necessary because elk declines in the Middle Fork Zone could reflect degradation of natural conditions, Fed. Br. 14-15—a hypothesis advanced by the Service without any supporting evidence, see FS14525. This contention fails to grapple with Plaintiffs' argument that the narrow statutory exception for necessary aircraft landings cannot reasonably be interpreted to encompass a fishing expedition for data that "may" enable the agencies to take corrective action for natural conditions that "may" hypothetically be degrading, see id.; Pls.' Br. 14-16. Under Federal Defendants' interpretation, the Service could justify approving any helicopter-assisted research project in the wilderness simply by asserting that it might turn up useful data related to natural conditions.[6]

Further, as Plaintiffs explained, IDFG itself asserted that at least ten years of helicopter operations would be required to generate data that could explain the causes of elk decline, undermining the Service's stated rationale. Pls.' Br. 15 (citing IDFG's "MRDG" analysis supporting project proposal). In response, Federal Defendants state that "the MRDG relied on by the Forest Service did not analyze a 10-year proposal," citing the Service's own analysis of IDFG's proposal. Fed. Br. 18. However, the Forest Service's disregard of IDFG's statements in

[6] Federal Defendants' only overture toward a limiting principle is to assert that helicopter-assisted research is legitimately necessary in this case because "calf recruitment is low enough as to be inadequate to maintain elk populations." Fed. Br. 14 (quoting FS5531); see also id. at 3, 19. However, the source of that statement is IDFG's predation management plan, which states that "[t]he most recent mid-winter estimate of less than 13 calves per 100 cows is inadequate to maintain a population given observed cow elk survival rates. Female and juvenile elk survival rates appear inadequate to stabilize or provide growth of the elk population, preventing it from reaching management objectives …." FS11010 (emphasis added). Thus, this Forest Service rationale effectively—and illegally—adopted IDFG's hunter-driven elk objectives at the expense of the Wilderness Act's mandate to preserve wilderness character. Cf. High Sierra Hikers, 390 F.3d at 648 (holding that, although Wilderness Act stresses importance of public enjoyment of wilderness areas, "it simultaneously restricts their use in any way that would impair their future use as wilderness") (emphasis original). To the extent the Service is suggesting that the Middle Fork elk population is at risk of extirpation, its position lacks support in the record.

support of the project proposal the Service analyzed does not nullify IDFG's statements and, indeed, only underscores the irrationality of the Service's decision. Federal Defendants also claim that a single year of data could dispel concerns over degradation of natural conditions if the data document increased elk survival and recruitment compared to 2011 levels. Fed. Br. 19. But this ignores IDFG's statement that it could not obtain "representative variability in survival data" during even five years of more intensive collaring operations. FS28. Further, Federal Defendants' proffered justification for a single-year collaring effort does not appear in the record and their litigation argument cannot be relied upon to sustain the agency's decision. Burlington Truck Lines v. United States, 371 U.S. 156, 168-69 (1962) (agency decision may not be sustained based on counsel's "post hoc rationalizations").

Third, defendants fail to justify the Service's refusal even to consider the research proposal put forth by the Aldo Leopold Wilderness Research Institute and the Service's rejection of elk collaring outside the wilderness as alternatives to IDFG's proposal. Fed. Br. 22-23; Moore Br. 5-6. As to the Leopold Institute study, Federal Defendants admit that it could have provided "valuable insight to the elk population in the [River of No Return] Wilderness." Fed. Br. 22. Their argument that the Service properly dismissed this study out of hand because "it would not result in specific data to understand poor juvenile recruitment in the wilderness and whether there is a direct nexus to wilderness character," id., is at odds with the assessment of the Service's wilderness experts, who asserted that the Leopold Institute's proposed investigation of factors contributing to changing elk numbers would give the agencies "better confidence in the decisions they needed to make" in wilderness management, FS12146. In any event, defendants' arguments about the relative merit of the Leopold Institute study and IDFG's proposal are irrelevant because the Service did not rely on them; instead, it dismissed the Leopold Institute

study as "outside the scope" of the agency's analysis because it differed from IDFG's proposal. Compare FS11828 (Service discussion of Leopold Institute study) with Fed. Br. 22-23; Moore Br. 5-6; see Humane Soc'y v. Locke, 626 F.3d 1040, 1050 (9th Cir. 2010) (holding defendants' post hoc rationalizations for agency decision are "not part of [the court's] review" and "serve only to underscore the absence of an adequate explanation in the administrative record itself"). Also, while Federal Defendants accuse Plaintiffs of "grossly mischaracteriz[ing]" the record in asserting that the Service halted the Leopold Institute study because of objections from IDFG, Fed. Br. 22-23; see Pls.' Br. 17, the agency's own correspondence establishes that the Service scuttled the study due to concerns over "relationship building" with the state, FS12145-46.

Federal Defendants' response regarding the alternative of collaring elk in non-wilderness zones—which focuses on the effectiveness of collaring elk just outside the River of No Return Wilderness boundary—misses the point. Fed. Br. 23-24. Plaintiffs never suggested that IDFG should attempt to gather data on elk that use the Middle Fork Zone by collaring those animals just outside the wilderness boundary, as Federal Defendants suggest, id., but instead argue that the Service failed to demonstrate that collaring and studying elk in other non-wilderness areas of Idaho with similar habitat, predator populations, and hunting pressure as the Middle Fork Zone would not yield any useful data for understanding elk population dynamics in the wilderness, Pls.' Br. 18. In response to Plaintiffs' argument, Federal Defendants simply cite the Service's unexplained and unsupported statement that non-wilderness zones "are not representative" of unspecified "distinctions regarding elk population vital rates related to unique conditions" in the River of No Return Wilderness. Fed. Br. 23-24 (quoting FS5). Again, this superficial rejection of an alternative that would not degrade wilderness character is inadequate to demonstrate that IDFG's project is "necessary" for administering the River of No Return as wilderness. 16 U.S.C.

§ 1133(c); Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d 1024, 1037 (9th Cir. 2010).[7]

III. THE FOREST SERVICE VIOLATED NEPA

Federal Defendants also fail to justify the Service's decision under NEPA. The Service's decision not to prepare an EIS is contrary to regulation, precedent, and its own analysis in its less-rigorous EA. And its failure to consider a reasonable range of alternatives to IDFG's intrusive research project violated NEPA's core requirement. See Pls.' Br. 19-24.

A. The Forest Service Arbitrarily Failed to Prepare an EIS

IDFG's collaring of sixty wild elk with the aid of 120 helicopter landings—combined with its killing of nine wolves in the Middle Fork Zone in 2013-14, the admittedly foreseeable continuation of IDFG's helicopter operations in years to come, and other past and foreseeable actions in the River of No Return Wilderness—will "significantly affect[]" the wilderness environment, triggering the need for an EIS. 42 U.S.C. § 4332(2)(C). In deciding to forego an EIS, the Service irrationally evaluated the regulatory factors for determining "significant" effects, see 40 C.F.R. § 1508.27, and failed to provide a "convincing statement of reasons why potential effects are insignificant," rendering its decision arbitrary and unlawful, Save the Yaak Comm. v. Block, 840 F.2d 714, 717 (9th Cir. 1988) (quotation omitted).

Plaintiffs identified at least four applicable regulatory factors indicating significant environmental effects and the attendant need for an EIS, Pls.' Br. 20-22, and Federal Defendants' responses are unavailing.

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[7] Director Moore does not address this issue but argues that Plaintiffs err in labeling radio telemetry collars on wildlife "installations" under 16 U.S.C. § 1133(c). Moore Br. 9-12. The Service itself characterized radio collars on elk as "installations" and recognized their adverse impact on wilderness character. FS11755; Pls.' Br. 11. Director Moore's contrary position cannot be relied upon to sustain the Service's decision. Humane Soc'y, 626 F.3d at 1050.

To defend the Service's dismissal of "cumulatively significant impacts" to the wilderness from IDFG's project and all other reasonably foreseeable actions, 40 C.F.R. § 1508.27(b)(7), as well as the project's effects on a wilderness area with "[u]nique characteristics," id. § 1508.27(b)(3), Federal Defendants cite the Forest Supervisor's conclusion in the agency's "Finding of No Significant Impact," or "FONSI," that foreseeable effects on the wilderness will be insignificant. Fed. Br. 25-27 (quoting FS14528-29). In so doing, they fail to grapple with the inconsistency between the Forest Supervisor's conclusion and the Service's analysis in the EA, in which the agency determined that the foreseeable continuation of IDFG's helicopter-assisted elk-collaring operations in future years threatens "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" and determined that "direct and indirect impacts to wilderness character resulting from the proposed action would be major." FS11756-57 (emphasis added). Contrary to Federal Defendants' position, the agency cannot simply paper over inconvenient analysis in its EA by adopting contrary, unsupported conclusions in its FONSI. See Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214 (9th Cir. 1998) (affirming that the EA "is where the Forest Service's defense of its position [not to prepare an EIS] must be found") (citing 40 C.F.R. § 1508.9).

In this regard, the Forest Supervisor's attempt to distance himself from the EA's finding of major impacts by claiming that the term "major" was used in the EA only "to compare alternatives," and not to characterize "the overall magnitude of effects to wilderness character," is not persuasive. FS14528; Fed. Br. 27. To support this theory, the Forest Supervisor cited the table on page 3-7 of the EA, FS14528, but that table does not state or imply that "major" impacts mean only impacts that are "major" in relative terms compared to another alternative, FS11750.

Instead, the cited page defines "major" impacts as impacts that "are generally high intensity, long-term or permanent in duration, at a regional or extended scope." Id. (emphasis added).

Federal Defendants' response regarding the precedential impact factor, 40 C.F.R. § 1508.27(b)(6), misses the point. Federal Defendants assert that the Service's challenged authorization will have no precedential impact, and therefore its effects are insignificant, because "any future proposals from IDFG for elk collaring would be considered on their own merit." Fed. Br. 26 (citations omitted); see FS14529 (FONSI). But this abstract promise does not meaningfully address the regulatory factor at issue where the Service admits that IDFG proposals for continued wilderness helicopter operations are foreseeable and the record reveals no reason to speculate that the Service might evaluate those proposals differently. See Daniel R. Mandelker, NEPA Law and Litigation § 8:35:20 (2015 ed.) ("[T]he failure to prepare an impact statement is precedential if the agency or other decision makers would be able to rely on this decision to make the same decision on future actions"); Anglers of the Au Sable v. U.S. Forest Serv., 565 F. Supp. 2d 812, 832 (E.D. Mich. 2008) (rejecting FONSI for oil and gas drilling authorization where Service failed to evaluate precedential impact of decision on its review of future drilling proposals in the area, notwithstanding that subsequent authorizations would require their own NEPA review). Indeed, if an agency could negate the precedential impact of its decision simply by observing that future proposals for similar projects would be "considered on their own merit," the regulatory factor would be meaningless.

Finally, as discussed, the Service's authorization violates the Wilderness Act, which itself renders the decision's environmental effects significant. 40 C.F.R. § 1508.27(b)(10). At a minimum, this factor alone and in combination with the other three discussed above raises "substantial questions" about the decision's significance, triggering NEPA's EIS requirement.

Ocean Advocates v. U.S. Army Corps of Eng'rs, 402 F.3d 846, 864 (9th Cir. 2004) (quotation omitted); id. at 865 (EIS may be required where a single regulatory significance factor applies).

B. The Forest Service's Alternatives Analysis Violated NEPA

Regarding the Service's inadequate consideration of alternatives, Federal Defendants fail to rehabilitate the Service's definition of the "purpose and need" for the challenged authorization, in which the Service impermissibly permitted IDFG's objectives to "define the scope of the proposed project" in a manner that "necessarily and unreasonably constrain[ed] the possible range of alternatives" analyzed in the EA. Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt., 606 F.3d 1058, 1070, 1072 (9th Cir. 2009) ("NPCA"); see Pls.' Br. 23-24. Federal Defendants argue that the Service properly confined its purpose and need to respond to IDFG's proposal for helicopter-assisted elk collaring because the agency must "take into account the needs and goals" of permit applicants. Fed. Br. 29 (quotation omitted). But "[r]equiring agencies to consider [third-party] objectives … is a far cry from mandating that those [third-party] interests define the scope of the proposed project." NPCA, 606 F.3d at 1070. To satisfy its NEPA obligations, the agency must also consider the relevant statutory framework, see id. at 1070-71, which in this case requires the Service to reject proposed helicopter operations in the wilderness unless there are no alternatives that would satisfy minimum requirements for administering the area as wilderness, 16 U.S.C. § 1133(c).

Ultimately, Federal Defendants seek to have it both ways, claiming in their Wilderness Act argument that IDFG's proposal constituted only one purpose of the project, with the other being to satisfy the Service's own wilderness-management responsibility by researching potential degradation of natural conditions, Fed. Br. 14-15, while simultaneously claiming in their NEPA argument that the Service could reasonably reject any alternative research method

that differed from IDFG's proposal, id. at 29-31; see FS11828 (Service rejecting Leopold Institute study because it is not what IDFG proposed). That position and the Service's unreasonably circumscribed alternatives analysis violate NEPA.

IV. DEFENDANTS FAIL TO DISPEL THE NEED FOR INJUNCTIVE RELIEF TO PROTECT PLAINTIFFS' INTEREST AND THE WILDERNESS

Defendants fail to dispel Plaintiffs' need for a permanent injunction to mitigate the damage caused by the Service's legal violations. Plaintiffs request an injunction pursuant to this Court's well-established authority to limit the "future adverse effects" of the Service's unlawful action by preventing that action from enabling further degradation of the wilderness character of the River of No Return Wilderness pursuant to IDFG's aggressive wildlife-management plans. Nw. Envtl. Def. Ctr., 849 F.2d at 1245. Specifically, Plaintiffs request an injunction (1) requiring Defendant Moore to destroy all data received from the unlawfully installed elk and wolf collars because such data support IDFG's plans, and (2) specifically prohibiting Defendant Moore from utilizing any information obtained from the collars to facilitate IDFG's wolf-killing plans in the River of No Return Wilderness. See Pls.' Br. 30-31.

Although Defendants oppose Plaintiffs' request for relief, they do not dispute the points justifying the requested injunction. Federal Defendants offer no dispute that implementing IDFG's wolf-killing plans in the River of No Return Wilderness would inflict cumulative, irreparable harm on Plaintiffs' interest and wilderness character—nor could they given the Service's finding that "wolf populations in the [River of No Return Wilderness] are a critical component of the natural quality of wilderness character for the area." FS14759. Further, Federal Defendants admit that "IDFG may use the collected data to inform implementation of its existing management plans (including predation management)." Fed. Br. 16.

For his part, Defendant Moore does not disavow IDFG's stated intention to kill 60% of the wolves in the Middle Fork Zone of the wilderness, FS11015-16, nor contest that locational data obtained from the radio collars at issue may be used for that purpose. IDFG's Rachael declaration also confirms that the illegally placed radio collars now enable IDFG to track three separate wolf packs in the Middle Fork area. Rachael Decl. ¶ 14 (ECF No. 35-4). Instead of disputing these points, Defendant Moore and IDFG's declarants state that any future wolf-killing action in the River of No Return Wilderness is "hypothetical," Moore Br. 3-5, because none of the collared packs is presently "the subject of any current or pending IDFG management action," Rachael Decl. ¶ 14.

These carefully worded statements offer cold comfort given that IDFG (1) stands by its official management plan calling for the killing of 60% of the Middle Fork wolf population; (2) may at any time develop and carry out a "management action" to implement this plan, which would be aided significantly by the illegally placed radio collars; and (3) claims unlimited discretion to "proceed or continue" with wolf killing in the River of No Return Wilderness without "prior approval of a federal agency." Moore Br. 4. The resulting threat to wilderness wolf populations—and wilderness character—is only compounded by the Service's persistent unwillingness to fulfill its statutory duty by prohibiting wilderness-degrading actions. See FS14758-59; Pls.' Br. 5 n.2 (discussing Service's unwillingness to prevent IDFG's 2013-14 wolf killing); FS1489 (Service permitted challenged helicopter activity because IDFG "said that they are going to land helicopters in the wilderness whether we issue them a permit or not"); see generally 16 U.S.C. § 1133(b) (providing that Service is "responsible for preserving the wilderness character" of wilderness areas it administers).

In these circumstances, the requested injunction is the only mechanism available to prevent the Service's unlawful action from inflicting further harm to Plaintiffs' interest and the wilderness character of the River of No Return Wilderness through wolf-killing activities by Defendant Moore that exploit data from the illegally installed collars. As set forth below, defendants' arguments offer no reason for this Court to deny such relief.

A. The Eleventh Amendment Does Not Shield Defendant Moore From This Court's Equitable Authority to Vindicate Rights Afforded by Federal Law

Defendant Moore invokes Idaho's sovereign immunity as a shield against this Court's equitable authority to enjoin him from exploiting the fruits of the Service's unlawful conduct in a manner that would inflict further harm on the River of No Return Wilderness. Moore Br. 2-5.[8]

Such reliance is misplaced. "It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." Shaw v. Delta Air Lines, 463 U.S. 85, 96 n.14 (1983) (citing Ex parte Young, 209 U.S. 123, 159-60 (1908)). Plaintiffs seek only injunctive relief against Defendant Moore. Further, this Court has equitable authority to mitigate the harm caused by the Service's action "by limiting its future adverse effects." Nw. Envtl. Def. Ctr., 849 F.2d at 1245; see Neighbors of Cuddy Mountain, 303 F.3d at 1066. That equitable authority may properly extend to injunctive relief against state actors where, as here, such relief is essential "to preserve the integrity of federal remedies." S. Carolina Wildlife Fed'n v. Limehouse, 549 F.3d 324, 330 (4th Cir. 2008) (citation omitted); see Fund for Animals v. Lujan, 962 F.2d 1391, 1397 (9th Cir. 1992) (recognizing that state actors may be enjoined under NEPA "if their proposed action cannot proceed without the prior approval of a federal agency") (citation omitted). The alternative, i.e., that Defendant Moore may capitalize on the Service's

[8] Although Defendant Moore does not cite the Eleventh Amendment, his citation of the Eleventh Amendment discussion in Natural Resources Defense Council v. California Department of Transportation, 96 F.3d 420, 421 (9th Cir. 1996), indicates that he relies on that provision.

unlawful action, including by utilizing the access it afforded to illegally collar wolves in the wilderness and then exploiting the wrongly-obtained radio telemetry data to inflict further harm on the wilderness—with this Court powerless to stop him—would "eviscerate the federal remedy" for the Service's illegal conduct and frustrate the federal policy choice embodied in the Wilderness Act. S. Carolina Wildlife Fed'n, 549 F.3d at 331 (citation omitted).

Defendant Moore's contrary arguments are erroneous. Defendant Moore questions his joinder as a defendant, see Moore Br. 3, but a non-federal entity who receives a federal permit is properly joined as a defendant in an action challenging that federal authorization where the plaintiff could not otherwise "obtain complete relief." Nat'l Wildlife Fed'n v. Espy, 45 F.3d 1337, 1344-45 (9th Cir. 1995) (ranch purchasers properly joined as defendants in conservationists' challenge to agency transfer of ranch without easements to protect wetlands because "[p]laintiffs cannot obtain complete relief unless the [purchasers] are prevented from harming the wetlands"); accord Sierra Club v. Hodel, 848 F.2d 1068, 1077 (10th Cir. 1988) (county properly joined in conservationists' action against federal agency to prevent despoiling of wilderness study areas because plaintiffs "cannot hope for complete relief if the County is not enjoined from construction during the pendency of the APA action against the federal defendants"), overruled on other grounds by Vill. of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970 (10th Cir. 1992).

Defendant Moore next argues that he is not subject to injunction because IDFG's "collection of radiocollar monitoring data and their use in hypothetical future state actions related to wolves … do not need the prior approval of a federal agency to proceed or continue." Moore Br. 4. However, as discussed, the Wilderness Act and Central Idaho Wilderness Act do not give Defendant Moore carte blanche to take wilderness-degrading actions in the River of No

Return Wilderness. Further, Defendant Moore ignores the fact that IDFG's collection of radio-collar data and ability to use those data to support wilderness wolf killing are direct consequences of the unlawful federal agency decision challenged in this case. Just as this Court could have enjoined Defendant Moore from proceeding with helicopter landings under the Service's unlawful authorization, see Fund for Animals, 962 F.2d at 1397, this Court may enjoin Defendant Moore to mitigate the harmful consequences of that authorization "by limiting its future adverse effects," Nw. Envtl. Def. Ctr., 849 F.2d at 1245.

Defendant Moore nevertheless suggests that "federal agency action is absent" because "radiocollaring of four wolves or hypothetical IDFG actions related to wolves are not the subject of the federal agency decision that Plaintiffs challenge." Moore Br. 5. But this again overlooks the key point that IDFG was in a position to radio collar wolves and is now in a position to harmfully exploit the resulting data only because of the federal agency decision Plaintiffs challenge. More fundamentally, Defendant Moore should not be permitted to assert the unauthorized nature of IDFG's collaring of four wolves in implementing the challenged decision as a defense against this Court's equitable authority.

B. Defendants' Equitable Arguments Are Meritless

Defendants' remaining arguments offer no basis to deny Plaintiffs' request for relief. Federal Defendants argue that a Wilderness Act or NEPA violation "itself does not create irreparable harm," Fed. Br. 33—but Plaintiffs do not contend that it does. Rather, Plaintiffs presented six pages of argument and 16 declarations to document concrete irreparable harm to their interest in the wilderness character of the River of No Return Wilderness and a threat of further harm through IDFG's use of collaring data to facilitate wilderness wolf killing. Pls.' Br. 25-31. Federal Defendants nevertheless assert, without explanation, that "Plaintiffs have not

pointed to any evidence in the Administrative Record that their interests would be harmed by the Project." Fed. Br. 33. However, the record reflects the Service's conclusion that wilderness wolf populations "are a critical component of the natural quality of wilderness character for the area" and that IDFG's wolf-killing program "is a trammeling action … that negatively impacts both the untrammeled and natural qualities of wilderness character." FS14759 (quoted in Pls.' Br. 29). The record further establishes that "radio collars fitted on captured animals are installations and evidence of modern civilization" that "adversely affect the undeveloped character of the wilderness." FS11755 (quoted in Pls.' Br. 27).[9]

As for Defendant Moore, he offers no argument concerning Plaintiffs' injury from IDFG's use of collaring data to facilitate wolf killing in the River of No Return Wilderness, but instead attempts to turn the tables by asserting that Plaintiffs are hypocritical in claiming harm from radio collaring of wildlife. Moore Br. 14-16. But even Defendant Moore does not claim that his assertions actually amount to an equitable defense, see Moore Br. 16 (disclaiming estoppel defense), and in fact his misguided arguments offer no defense at all. He appears to suggest that two plaintiffs at least implicitly supported wilderness wolf-collaring because they recently criticized IDFG's program for monitoring wolves following the species' delisting under the Endangered Species Act. Id. at 14. But the cited critique makes clear that these plaintiffs took issue with IDFG's adoption of a "convoluted counting methodology" that generously extrapolates total wolf numbers from observed individuals, and in so doing were endorsing a recent scientific study that similarly criticized IDFG's methodology for estimating wolf numbers. See Trever Decl. Ex. A at 6 (ECF No. 35-6). Thus, these plaintiffs' critique focused on

[9] To the extent Federal Defendants intend to suggest that this Court's remedial considerations are limited to the administrative record, see Fed. Br. 33, that is wrong for the reasons stated in response to their motion to strike Plaintiffs' Vucetich declaration (ECF No. 38).

extrapolation methodology, not inadequate collaring, and in no way called for radio collaring of wolves in the River of No Return Wilderness.[10]

Defendant Moore also accuses Plaintiffs of "selective" claims of harm from wildlife collaring in wilderness, Moore Br. 15, but cites to one plaintiff's (and plaintiffs' counsel's) stated interest in a radio-collared wolf that completed an extraordinary journey from Oregon to California—and happened to traverse certain wilderness areas along the way—and a plaintiff's support for a Forest Service decision to reduce sheep grazing in a case that did not address any authorization to collar wildlife. See Moore Br. 15. These statements hardly manifest Plaintiffs' endorsement of agency programs to promote radio collaring wildlife within wilderness.[11]

More fundamentally, as the Service has acknowledged, "radio collars fitted on captured animals are installations and evidence of modern civilization" that "adversely affect the undeveloped character of the wilderness," FS11755, and Plaintiffs' interest therein. Whether that impact contravenes "the congressional purpose behind" the Wilderness Act, thereby warranting injunctive relief, Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1177 (9th Cir. 2002) (citation omitted), depends in any given case on whether their use is "necessary to meet minimum requirements for the administration of" an area as wilderness, 16 U.S.C. § 1133(c); Wolf Recovery Found., 692 F. Supp. 2d at 1267-68. That may have been the case with respect

[10] Defendant Moore goes even further astray by citing statements from an organization that is not even a plaintiff, see Moore Br. 14 (citing Trever Decl. Exs. B & C), and straining to extract support from a plaintiff comment letter that criticized IDFG for utilizing ecological information from Alaska to infer conditions in Idaho's Lolo and Selway regions, see id. (citing Trever Decl. Ex. D at 6-7). None of these statements—by plaintiffs or otherwise—even addressed wildlife collaring, much less endorsed wildlife collaring in wilderness.

[11] Defendant Moore also deems it "curious[]" that plaintiffs' Vucetich declaration did not discuss Dr. Vucetich's use of radio telemetry in a long-running moose-wolf study in Isle Royale National Park, which is a wilderness. Moore Br. 15 & n.8. However, Dr. Vucetich's declaration offered no testimony at all concerning the propriety of radio collaring within wilderness. See Vucetich Decl. (ECF No. 21-24).

to "the radiocollared status of the 35 wolves released in the Frank Church Wilderness in 1994 and 1995." Moore Br. 15; Rachael Decl. ¶¶ 7-9; cf. Wolf Recovery Found., 692 F. Supp. 2d at 1268 (recognizing "the importance of wolf recovery to enhancement of wilderness character") (quotation omitted). It is not so, however, with respect to the radio collaring in this case, which serves to facilitate IDFG's plans to "aggressively manage elk and predator populations" in the River of No Return Wilderness for the purpose of inflating the elk population, including by killing 60% of wolves in the Middle Fork Zone, FS14668; FS11015-16; see Fed. Br. 16 (admitting IDFG may use radio-collar data to inform these plans). These objectives are antithetical to the very definition of wilderness in the Wilderness Act, 16 U.S.C. § 1131(c); FS14758-60, and Plaintiffs have never endorsed wildlife collaring for any such purpose.

Defendants also contend that "an injunction requiring destruction of the data obtained from the elk collars is contrary to the public interest," Fed. Br. 35, because those data "are scientifically valuable," Moore Br. 17. These contentions are belied by IDFG's more candid record statement that 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," FS28, which is corroborated by Dr. Vucetich's testimony, Vucetich Decl. ¶ 3. Although Defendant Moore now submits declarations offering conclusory assertions about the value of the radio-collar data, see Gould Decl. ¶ 15; Rachael Decl. ¶ 15, they fail to explain IDFG's earlier record statement to the contrary or rebut Dr. Vucetich's specific testimony. [12] In any case,

[12] The data's value is also undermined by defendants' failure to pursue the non-invasive Leopold Institute study, which would have been a "vital" first step in developing an effective research program. Vucetich Decl. ¶¶ 6-9. Defendant Moore claims this is not so because IDFG already reviewed the "state of the science of elk-predation dynamics" in the Lolo Zone. Moore Br. 5-6; Gould Decl. ¶ 8. Yet, at the same time, "IDFG hypothesizes that elk survival rates and predator-prey interactions (e.g., predation rates and vulnerability) are different inside the [River of No Return Wilderness] than outside of it." FS5. Defendant Moore cannot have it both ways.

neither the Service nor Defendant Moore suggests any legitimate public interest or benefit in utilization of radio-collar data to implement IDFG's wilderness wolf-killing plans.

Finally, defendants claim Plaintiffs' requested injunction would harm "intergovernmental relations," Moore Br. 16, by impairing the Service's "ability to cooperate with state wildlife agencies," Fed. Br. 35. But the record reveals no such intergovernmental cooperation. Rather, the record reveals a game of brinksmanship in which IDFG told the Service "that they are going to land helicopters in the wilderness whether we issue them a permit or not" and the Service ultimately yielded by issuing a permit "to avoid the issue of having to take the state to court about landing helicopters in the wilderness without proper authorization." FS1489. In so doing, the Service prioritized acquiescence to IDFG over compliance with this Court's direction that the Service "must proceed very cautiously … 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, and this Court's admonition that 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 ensue, Wolf Recovery Found., 2010 WL 2898933, at *1. These circumstances do not warrant judicial deference to intergovernmental cooperation, but rather judicial intervention to protect wilderness character and restore the rule of law in management of the River of No Return Wilderness.

CONCLUSION

For the foregoing reasons and those stated in Plaintiffs' Brief (ECF No. 21-1), Plaintiffs respectfully request that this Court grant Plaintiffs' motion for summary judgment, deny Federal Defendants' and Defendant Moore's cross-motions for summary judgment, and issue Plaintiffs' requested injunctive relief.

Respectfully submitted this 6th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2016, I caused the foregoing document to be served via this Court's ECF system on the following:

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