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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO EASTERN DIVISION**

WILDEARTH GUARDIANS, CASCADIA
WILDLANDS, and BOULDER-WHITE
CLOUDS COUNCIL,

Plaintiffs,

v.

JOE KRAAYENBRINK, in his official
capacity; UNITED STATES BUREAU OF
LAND MANAGEMENT, a federal agency;
CHARLES A. MARK, in his official capacity;
and UNITED STATES FOREST SERVICE, a
federal agency,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, arising under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and alleging violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h.
2. Plaintiffs WildEarth Guardians, Cascadia Wildlands, and Boulder-White Clouds Council (collectively “Plaintiffs” or “Guardians”) seek a declaration that Defendant United States Bureau of Land Management’s (BLM) authorization of the special recreation permit for the Idaho for Wildlife “Predator Hunt Derby” (“Derby” or “killing contest”) violated federal law and was otherwise arbitrary and capricious.
3. Plaintiffs seek a declaration that Defendant United States Forest Service’s failure to require a special use permit for the killing contest violated federal law and was otherwise arbitrary and capricious.
4. Plaintiffs additionally seek injunctive relief to redress the injuries caused by these violations of law.
5. By initiating this action, Plaintiffs seek to: (1) obtain a declaration that the BLM’s authorization of the special recreation permit for the killing contest violates NEPA and the APA; (2) compel BLM to prepare an environmental impact statement to consider in its review of whether to issue a special recreation permit for the killing contest; (3) vacate the Decision Notice authorizing the BLM’s special recreation permit for the killing contest; (4) order BLM to prepare new NEPA analysis to analyze and discuss the direct, indirect, and cumulative impacts of the proposal; (5) enjoin the BLM from issuing a special recreation permit for the killing contest until this Court determines that the violations of law set forth herein have been corrected; (6) obtain a declaration that the Forest Service’s failure to require a special use permit for the killing contest

violates the APA; and (7) enjoin the Forest Service from allowing the killing contest on Forest Service lands until they have issued a special use permit for the killing contest and completed any required environmental review pursuant to NEPA.

6. Should Plaintiffs prevail, Plaintiffs will seek an award of costs, attorneys' fees, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), 2201 (injunctive relief), and 2202 (declaratory relief). The current cause of action arises under the laws of the United States, including the APA and NEPA. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. § 706.

8. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The Environmental Assessment that is challenged through this action was prepared by the BLM's field office in Salmon, Idaho. The Forest Service official who determined that a special use permit was not required for the killing contest is headquartered in Salmon, Idaho. Salmon, Idaho is located in Lemhi County.

9. This case is properly filed in the Eastern Division of the U.S. District Court for the District of Idaho pursuant to District Local Rule Civ. 3.1 because the decisions at issue in this action were made in Lemhi County, Idaho.

PARTIES

10. Plaintiff WILDEARTH GUARDIANS is a non-profit organization headquartered in Santa Fe, New Mexico. WildEarth Guardians is dedicated to protecting and restoring the West's wild places, rivers, and wildlife, including gray wolves, coyotes, and other carnivores. WildEarth Guardians has more than 65,000 members and supporters and maintains offices in New Mexico, Colorado, Montana, Arizona, Utah, Oregon, Wyoming, and California. WildEarth Guardians brings this action on its own behalf and on behalf of its adversely affected members. WildEarth Guardians and its members are injured and adversely affected by BLM's failure to comply with federal environmental laws. WildEarth Guardians and its members are injured and adversely affected by the Forest Service's failure to require a special use permit for the killing contest.

11. Plaintiff CASCADIA WILDLANDS is a non-profit organization headquartered in Eugene, Oregon. Cascadia Wildlands has more than 12,000 members and supporters throughout the United States, including members who reside in Idaho. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands brings this action on its own behalf and on behalf of its adversely affected members. Cascadia Wildlands and its members are injured and adversely affected by BLM's failure to comply with federal environmental laws. Cascadia Wildlands and its members are injured and adversely affected by the Forest Service's failure to require a special use permit for the killing contest.

12. Plaintiff BOULDER-WHITE CLOUDS COUNCIL (BWCC) is a non-profit organization headquartered in Ketchum, Idaho. BWCC was founded in 1989, to protect as Congressionally-designated Wilderness, the 550,000-acre Boulder-White Cloud Mountains in central Idaho. The Boulder-White Clouds lie mostly within the Salmon-Challis National Forest as well as adjoining

BLM lands managed by the Challis Field Office. BWCC's mission has since expanded to other nearby areas including the Lost River Range, Pasimeroi, Lemhi and Pioneer Mountains on the Salmon-Challis National Forest and BLM lands. BWCC also works on issues relating to mining, grazing, timber, recreation, and imperiled species (with particular emphasis on wolves). With 800 supporters, BWCC works to educate its members, the public-at-large, and the media, on why preserving the Boulder-White Clouds and surrounding mountain ranges is important, for current and future generations of humans and wildlife. The Boulder-White Cloud Mountains are the largest, unprotected roadless area left on Forest Service lands in the Lower 48 states. The headwaters of the famous Salmon River is near Galena Summit, and the Salmon River flows along the western and northern edge of the White Cloud Mountains. BWCC's supporters fish and raft on the Salmon River, which flows through the towns of Stanley, Challis, and Salmon. All along the River corridor and the adjoining Salmon-Challis Forest and BLM lands, BWCC and its supporters hike, mountain bike, ride horses and ATVs, gather mushrooms, cut firewood, explore old mine ruins, rock hound, cross country ski, snowmobile, and especially enjoy observing and photographing wildlife. BWCC brings this action on its own behalf and on behalf of its adversely affected members. BWCC and its members are injured and adversely affected by BLM's failure to comply with federal environmental laws. BWCC and its members are injured and adversely affected by the Forest Service's failure to require a special use permit for the killing contest.

13. The aesthetic, recreational, scientific, educational, and other interests of Plaintiffs and their members have been and will continue to be adversely affected and irreparably injured if the BLM and Forest Service continue to act as alleged in this complaint. These are actual, concrete, particularized injuries caused by the BLM's and Forest Service's failure to comply with

mandatory duties under the APA and NEPA. The relief sought in this case would redress these injuries.

14. Plaintiffs' members, staff, and supporters are dedicated to ensuring the long-term survival and recovery of carnivore populations, including populations of the gray wolf and coyote, in Idaho and throughout the western United States. They have significant interests in observing, photographing, and otherwise enjoying gray wolves, coyotes, and other carnivores in and around Salmon, Idaho, and across the western United States. Plaintiffs' members, staff, and supporters live near Forest Service and BLM land in Idaho that will be open to the killing contest. Plaintiffs' members, staff, and supporters regularly recreate on the Salmon-Challis National Forest and BLM land managed by BLM's Salmon Field Office and enjoy the opportunity to view wildlife on those lands, including gray wolves and coyotes.

15. Defendant JOE KRAAYENBRINK is sued in his official capacity as Manager for the Idaho Falls District of the Bureau of Land Management. Mr. Kraayenbrink signed the Decision Record and Finding of No Significant Impact that are challenged in this complaint. Mr. Kraayenbrink is the federal official responsible for applying and implementing the federal laws and regulations at issue in this complaint.

16. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT (BLM) is an agency of the United States and is a division of the United States Department of the Interior. The BLM is charged with managing public lands and resources in Idaho in accordance and compliance with NEPA, the APA, and other federal laws and regulations. The BLM is the federal agency responsible for applying and implementing the federal laws and regulations at issue in this complaint.

17. Defendant CHARLES A. MARK is sued in his official capacity as Forest Supervisor for the Salmon-Challis National Forest. Mr. Mark made the determination that a special use permit was not required for the killing contest. Mr. Mark is the federal official responsible for applying and implementing the federal laws and regulations at issue in this complaint.

18. Defendant UNITED STATES FOREST SERVICE (USFS or Forest Service) is an agency of the United States and is a division of the United States Department of Agriculture. The Forest Service is charged with managing public lands and resources in Idaho in accordance and compliance with NEPA, the APA, and other federal laws and regulations. The Forest Service is the federal agency responsible for applying and implementing the federal laws and regulations at issue in this complaint.

STATUTORY AND REGULATORY BACKGROUND

The National Environmental Policy Act

19. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

20. NEPA aims to “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321.

21. The Council on Environmental Quality (CEQ) promulgated uniform regulations that implement NEPA. These regulations are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500-1508.

22. NEPA requires that environmental information be made available to public officials and citizens before decisions are made and before actions are taken. 40 C.F.R. § 1500.1(b). The

information must be of high quality, and the agency must ensure the “scientific integrity of the discussions and analyses in environmental impact statements.” *Id.* § 1502.24. The purpose of these requirements is to ensure that the public has information that allows it to question, understand, and, if necessary, to challenge the decision made by the agency.

23. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that *may* significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1).

24. An EIS is a “detailed written statement” that “provide[s] full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §§ 1502.1, 1508.11.

25. When it is not clear whether or not an action will significantly affect the environment (and thus require preparation of an EIS), the regulations direct agencies to prepare an Environmental Assessment (EA) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is “a concise public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9(a). An EA “shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 C.F.R. § 1508.9(b).

26. The NEPA regulations require the agency to consider ten “significance factors” in determining whether a federal action may have a significant impact and thus require an EIS. 40 C.F.R. § 1508.27. Among other factors, the agency must consider the beneficial and adverse

impacts of the project, the effect on public health and safety, unique characteristics of the geographic area, the degree to which the action may establish a precedent for future actions, the degree to which possible effects are highly controversial, uncertain, or involve unique or unknown risks, cumulatively significant effects, the degree to which the action may adversely affect an endangered or threatened species or its habitat, and whether the proposed action will violate any laws or standards of environmental protection. *Id.* If the agency's action may be environmentally significant according to any of the criteria, the agency must prepare an EIS. *Id.*

27. The agency implementing the project, not the public, has the burden of demonstrating that significant adverse effects will not occur as a result of the proposed project. 40 C.F.R. § 1508.13.

28. An adequate EA must consider both direct and indirect environmental impacts of the proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the same time and place as the proposed project. *Id.* § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. *Id.* § 1508.8(b).

29. NEPA additionally requires the agency to assess the cumulative effects of its proposed action on the environment. 40 C.F.R. § 1508.7. Cumulative effects are the effects resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. *Id.* Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.*

30. For an agency's decision to be considered reasonable, a decision record and finding of no significant impact must contain sufficient analysis to show the agency's decision is reasonably supported by the facts. The agency must show a rational connection between the facts found and

the decision made. If the agency fails to consider important aspects of the problem in its EA, its decision is arbitrary and capricious.

The Administrative Procedure Act

31. The APA confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. § 702. Upon review, the court shall “hold unlawful and set aside agency actions . . . found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

Applicable BLM Regulations

32. BLM’s regulations require a special recreation permit for any commercial or competitive use of BLM lands. 43 C.F.R. § 2932.11(a).

33. Use of BLM land is commercial if any person, group, or organization attempts to make a profit or receive money from participants in recreational activities occurring on public lands led, sponsored, or organized by that person, group, or organizations; anyone collects a fee or receives other compensation that is not strictly a sharing of actual expenses; or there is paid public advertising to seek participants. 43 C.F.R. § 2932.5.

34. Competitive use of BLM land includes any organized, sanctioned, or structured use, event, or activity on public land in which two or more contestants compete and participants register, enter, or complete an application for the event or there is a predetermined course or area designated for the event. 43 C.F.R. § 2932.5.

35. The BLM may also require a special recreation permit for recreational uses of special areas; noncommercial, noncompetitive, organized group activities; use of areas where recreation use is allocated; or use of special areas. 43 C.F.R. § 2932.11(b).

Applicable Forest Service Regulations

36. The USFS's regulations provide that "[a]ll uses of National Forest System lands, improvements, and resources . . . are designated 'special uses'" that require permits. 36 C.F.R. § 251.50.

37. The only "special uses" that do not require a permit are: (1) those uses authorized by regulations governing sharing use of roads; (2) grazing and livestock use; (3) the sale and disposal of timber, special forest products, and minerals; (4) noncommercial, non-group (fewer than 75 people) recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding; (5) noncommercial, non-group (fewer than 75 people) activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades; (6) uses, other than noncommercial group uses, with nominal effects on National Forest Service lands, resources, or programs; (7) uses, other than noncommercial group uses, regulated by another state or federal agency in a manner that is adequate to protect National Forest Service lands and resources and avoid conflict with National Forest System programs or operations; and (8) routine operation or maintenance activities within the scope of a statutory right-of-way for a highway, so long as not the activity is not in a congressional designated wilderness. 36 C.F.R. § 251.50(a), (c), (e).

38. All other Forest Service uses are "special uses" that require a permit, including but not limited to commercial uses (including uses whose primary purpose is the sale of a good or service, regardless of whether the use is intended to produce a profit), recreation events (defined as recreational activities for which an entry or participation fee is charged), and noncommercial group uses (involving a group of 75 or more people, either as participants or spectators). 36 C.F.R. §§ 251.50-51.

39. Travel on Forest Service roads requires a permit when the travel is for the purpose of engaging in a noncommercial group use or a recreation event. 36 C.F.R. §§ 251.50.

FACTS

40. Salmon, Idaho is situated in Lemhi County, which consists of approximately 90% federal public lands. The federal public lands surrounding Salmon, Idaho contain some of the wildest roadless lands in the federal public lands systems. The Salmon-Challis National Forest includes approximately 1.3 million acres of the Frank Church-River of No Return Wilderness Area (the second largest Wilderness in the lower 48); the Wild and Scenic Salmon River, breathtaking scenery, and countless rugged and remote peaks and river bends. The public lands administered by the BLM in the Salmon area include a portion of the Boulder-White Clouds Mountains, one of the largest unprotected roadless areas in the United States. These public lands and the wildlife they sustain are beloved not only by Plaintiffs, but by people from across the world who come to Idaho to see its splendors, to hike, to watch wildlife, take photographs, raft wild and scenic rivers, ride horses, and fish and hunt. Tourism in Idaho is a \$3.4 billion industry, employing 26,000 Idahoans.

41. Idaho for Wildlife has proposed an annual predator killing contest on public lands surrounding Salmon, Idaho on January 2-4, 2015, to recur for five years. The event is a commercial event in which: 1) participants are required to register and encouraged to pay an entry fee or donate, 2) monetary prizes are awarded to those with the highest body counts and the largest dead animal; and 3) the sponsors organize for furbuyers to be available to buy the furs of animals killed in the competition. Prizes for youth participants, in 10-11 year old and 12-14 year old categories, are also advertised. Last year's advertisement for the Derby stated that it will take place on public lands and private lands with permission. This year, the sponsors approached both

BLM and USFS to use the public lands these agencies administer for this contest and with expressed intentions to sponsor the event for the next 5 years. The Derby begins in Salmon, Idaho.

42. The Derby invites participants to register online or in person in Salmon, Idaho on the evening of January 1, 2015, followed by three days of killing as many wolves, coyotes, skunks, weasels, jackrabbits, raccoons, and starlings as possible on private and public lands. The contest concludes in Salmon, Idaho on January 4, 2015.

43. This Contest occurs in the middle of the holidays on the weekend following New Years Day. During this time, many families have time off work, can recreate on public lands, and head out to test out new skis, snowshoes, sleds, snowsuits, and snowmobiles. The Derby concentrates shooters on public lands in three ways—in time, in place, and in purpose—to shoot as many coyotes, wolves, and other carnivores as possible in the three-day timeframe in competition for cash prizes.

44. Guardians sought to resolve the issue of allowing the Derby to occur on BLM lands without recourse to the Court by sending letters to the BLM detailing Guardians' concerns and by fully engaging in the public commenting opportunities associated with BLM's NEPA analysis. Guardians obtained information from the USFS regarding its intention to again, as the agency did in 2013, allow the contest without requiring a permit from the sponsors.

45. Contestants will use Forest Service and BLM roads to access Forest Service and BLM lands and drive their kills to Salmon, Idaho.

46. On August 7, 2014, Idaho for Wildlife submitted an application to the BLM for a Special Recreation Permit for the January 2015 killing contest.

47. BLM engaged in NEPA analysis on the question of whether to issue a permit to Idaho for Wildlife for the killing contest.

48. On November 13, 2014, the BLM issued a Finding of No Significant Impact (“FONSI”) and Decision Record on the Environmental Assessment for the “Predator Hunt Derby” and issued a Special Recreation Permit to Idaho for Wildlife for the Derby.

49. The BLM permit allows up to 500 competitors in 2015 and in the four subsequent years of the event.

50. Idaho for Wildlife also submitted an application to the United States Forest Service for a Special Use Permit for the January 2015 killing contest.

51. In a letter dated August 19, 2014, the Forest Service responded to the Special Use Permit application from Idaho for Wildlife for the Derby. The Forest Service determined that no special use permit was required for the killing contest. The Forest Service said: “a permit will not be issued, nor is one needed for the event.”

FIRST CLAIM FOR RELIEF
(NEPA Violation)

BLM Failed to Disclose and Analyze the Direct, Indirect, and Cumulative Effects of the Proposed Action

52. Plaintiffs incorporate by reference all preceding paragraphs.

53. The regulations implementing NEPA require the BLM to disclose and analyze the environmental effects of the proposed action. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” Id.

54. In order to adequately consider the environmental consequences of the proposed action, the BLM must consider the direct, indirect, and cumulative effects of the proposed action on the environment. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25.

55. The Predator Hunt Derby EA and FONSI failed to adequately analyze the direct, indirect, and cumulative impacts of the contest, which involves up to 500 participants competing on public lands to kill as many wolves, coyotes, and other carnivores as possible within 3 days.

56. The BLM concluded that the Derby will cause no measurable increase in hunting, despite this contest's use of prizes to incentivize hunters to kill as many animals over a three-day period as possible, and despite hundreds of participants being expected.

57. The BLM failed to analyze effects to local wildlife populations at the local scale, despite acknowledging that there will be effects at that scale.

58. The BLM incorrectly treats the aggressive state legal limit for wolf harvest as a baseline for analysis of effects to wolves, even though the state's quota is insufficiently protective of the species.

59. The BLM failed to evaluate the potential that contest hunt participants could cross state borders and illegally kill wolves in Wyoming, which are protected from take under the Endangered Species Act.

60. The EA failed to consider the direct, indirect, and cumulative effects of the Derby with wolf hunting in neighboring states.

61. The BLM failed to consider up-to-date science on the effect of killing wolves and coyotes on breeding, degradation incidents, ecological processes, and other factors.

62. The BLM failed to consider the effect of the Derby on social attitudes towards wolves, coyotes, and other carnivores, and in particular the potential for the Derby to fuel intolerance that promotes future killing of the species.

63. The BLM failed to consider in its cumulative effects analysis the fact that this intensive killing event will occur every year for five years, or the effect of this five-year assault when considered with Idaho's aggressive state management.

64. The BLM failed to consider the benefits of apex predators like wolves and coyotes on ecosystems.

65. The BLM underestimates the cost of the event to Idaho. Even having underestimated the cost of the event, the BLM acknowledges that the socioeconomic cost of the Derby is greater than its benefit. The BLM has thus failed to accurately disclose and appropriately analyze the socioeconomic effects of the action

66. The BLM's failure to address the direct, indirect, and cumulative effects of the contest on carnivores, ecosystems, and Idaho's economy is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

67. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

SECOND CLAIM FOR RELIEF
(NEPA VIOLATION)

BLM Failed to Consider a Reasonable Range of Alternatives

68. Plaintiffs incorporate by reference all preceding paragraphs.

69. NEPA requires that agencies "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). This provision applies to the

preparation of EAs. *N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008).

70. The EA provides just two alternatives: the applicant's proposed action and no action. The EA fails to raise other reasonable alternatives, such as excluding sensitive areas such as Wilderness Study Areas from the event, limiting the event to a single year to give time for the BLM to analyze the event's effects before reauthorizing it, or eliminating certain types of carnivores from the Derby such as wolves, alpha wolves, or breeding wolves.

71. Defendant BLM's failure to consider a reasonable range of alternatives is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

72. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

THIRD CLAIM FOR RELIEF
(NEPA VIOLATION)

BLM Must Prepare an EIS

73. Plaintiffs incorporate by reference all preceding paragraphs.

74. NEPA requires the Forest Service to prepare an EIS when a proposed major federal action may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C).

75. In determining whether a proposed action may "significantly" impact the environment, both the context and intensity of the action must be considered. 40 C.F.R. § 1508.27.

76. In evaluating intensity, the agency must consider numerous "significance" factors, including, but not limited to, the degree to which the proposed action affects public health or safety, the unique characteristics of the geographic area such as proximity to ecologically critical areas, the degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration, the degree to which

possible effects are highly controversial, the degree to which the action may adversely affect an endangered or threatened species or its habitat, and whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b).

77. If the agency's action may be environmentally significant according to any of the criteria, the agency must prepare an EIS. If the agency's action could have several impacts that cumulatively are significant, the agency must prepare an EIS.

78. The proposed action will significantly threaten public health and safety. Because it is time-limited and promises prizes, the Derby encourages indiscriminate shooting that endangers companion animals and people. The risk is especially high because, on a 3-day holiday weekend, up to 500 contestants will shoot as many as possible of a variety of species of different sizes and different modes and speeds of travel—targeting animals that fly, climb trees, move close to the ground, and those that lope across the ground like dogs. The event will also involve children, who are both vulnerable to injury and a danger to others because of their inexperience. Because the event threatens public health and safety, an EIS must be prepared.

79. The BLM lands in the Salmon area include a portion of the Boulder-White Clouds Mountains, one of the largest unprotected roadless areas in the United States. The BLM lands also include 17 Wilderness Study Areas. The adjacent Salmon-Challis National Forest includes approximately 1.3 million acres of the Frank Church-River of No Return Wilderness Area (the second largest Wilderness in the lower 48) and the Wild and Scenic Salmon River. Given the presence of these ecologically critical areas in and near the planning area, the BLM must prepare an EIS.

80. The event may also have an effect on the regional population of wolves, including Wyoming wolves, which are listed under the Endangered Species Act. The planning area and adjacent areas are also home to Canada lynx, a threatened species under the Endangered Species Act. The nature of the Derby makes it more likely that lynx or other endangered species will be accidentally taken, since hunters are targeting a range of species traveling on the ground and in the air and with different movement patterns. Given the possibility of effects to endangered species, the BLM must prepare an EIS.

81. The event has caused an outpouring of public protest, with over 100,000 comments expressing opposition to the killing contest. The public has provided scientific and other evidence that the Derby will affect carnivore populations. By contrast, the BLM concludes that carnivore populations will not be affected. This controversy mandates preparation of an EIS.

82. This event creates a precedent for other “derbies” targeting carnivores, both in Idaho and beyond. Thus, BLM must prepare an EIS.

83. Defendant BLM’s failure to prepare an EIS is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

84. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

FOURTH CLAIM FOR RELIEF
(APA VIOLATION)

The Forest Service’s Decision That a Permit Was Not Required Was Arbitrary and Capricious, Not in Accordance with Law, and Made Without Observance of Procedure.

85. Plaintiffs incorporate by reference all preceding paragraphs.

86. The Forest Service’s decision that a permit is not required for the killing contest is a final agency action.

87. The Derby is a “special use”—i.e., “a use of National Forest Service lands”—and therefore requires a permit. The only “special uses” that do not require a permit are: (1) those uses authorized by regulations governing sharing use of roads; (2) grazing and livestock use; (3) the sale and disposal of timber, special forest products, and minerals; (4) noncommercial, non-group (fewer than 75 people) recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding; (5) noncommercial, non-group (fewer than 75 people) activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades; (6) uses, other than noncommercial group uses, with nominal effects on National Forest Service lands, resources, or programs; (7) uses, other than noncommercial group uses, regulated by another state or federal agency in a manner that is adequate to protect National Forest Service lands and resources and avoid conflict with National Forest System programs or operations; and (8) routine operation or maintenance activities within the scope of a statutory right-of-way for a highway, so long as not the activity is not in a congressional designated wilderness. 36 C.F.R. § 251.50(a), (c), (e). Because the killing contest does not fall under any of these exceptions, a permit is required.

88. All other Forest Service uses are “special uses” that require a permit, including but not limited to commercial uses (including uses whose primary purpose is the sale of a good or service, regardless of whether the use is intended to produce a profit), recreation events (defined as recreational activities for which an entry or participation fee is charged), and noncommercial group uses (involving a group of 75 or more people, either as participants or spectators). 36 C.F.R. §§ 251.50-51.

89. Travel on Forest Service roads requires a permit when the travel is for the purpose of engaging in a noncommercial group use or a recreation event. 36 C.F.R. §§ 251.50.

90. A commercial use on Forest Service lands requires a permit. 36 C.F.R. §§ 251.50. The killing event is a commercial use because an entry fee or donation is charged. 36 C.F.R. §§ 251.51. The killing event is also a commercial use because the event will award cash prizes to contestants, and contest participants are thus effectively selling their services as carnivore killers. Finally, the killing event is a commercial event because contestants will sell furs from their killed animals to furbuyers. *Id.* Thus, the event's primary purpose is the sale of goods (furs) and services (the killing of carnivores). *Id.* Thus, a permit is required.

91. A recreation event on Forest Service lands requires a permit. 36 C.F.R. §§ 251.50. If the killing contest is not a commercial event, it is a recreation event because it is a recreational activity that requires an entry or participation fee. 36 C.F.R. §§ 251.51. Thus, a permit is required.

92. A noncommercial group use or activity requires a permit. 36 C.F.R. §§ 251.50. If the killing contest is not a commercial event or a recreational event, it is a noncommercial group use or activity because it involves a group of 75 or more people (either as participants or spectators). 36 C.F.R. §§ 251.51. Thus, a permit is required.

93. The Forest Service unlawfully made its decision that a special use permit was not required for the killing contest without observing the regulatory procedures in 36 C.F.R. § 251.54 for reviewing such proposed uses.

94. The Forest Service's determination that the killing contest does not require a special use permit is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2).

95. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PLAINTIFFS PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that the Bureau of Land Management violated the National Environmental Policy Act, the Administrative Procedure Act, and associated implementing regulations in granting a special use permit to Idaho for Wildlife for the killing contest;
2. Vacate the killing contest's Environmental Assessment, Decision Notice, and Finding of No Significant Impact;
3. Enjoin the Bureau of Land Management from allowing the killing contest on Bureau of Land Management lands until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;
4. Declare that the United States Forest Service violated the Administrative Procedure Act in failing to require a special use permit for the killing contest;
5. Enjoin the United States Forest Service from allowing the killing contest on Forest Service lands until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;
6. Award Plaintiffs their costs of suit and attorneys fees; and
7. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 13th day of November, 2014.

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