

Lauren M. Rule (ISB # 6863)
ADVOCATES FOR THE WEST
PO Box 1612
Boise ID 83701
(208) 342-7024
(208) 342-8286 (fax)
lrule@advocateswest.org

Laurence ("Laird") J. Lucas (ISB # 4733)
PO Box 1342
Boise ID 83701
208-424-1466 (phone and fax)
llucas@lairdlucas.org

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WOLF RECOVERY FOUNDATION, and	)	No. 09-cv-686-BLW
WESTERN WATERSHEDS PROJECT	)	
	)	FIRST AMENDED
Original Plaintiffs,	)	COMPLAINT
	)	
and	)	
	)	
THE WILDERNESS SOCIETY, GREAT OLD	)	
BROADS FOR WILDERNESS, IDAHO	)	
CONSERVATION LEAGUE, WINTER	)	
WILDLANDS ALLIANCE, WILDERNESS	)	
WATCH, and SIERRA CLUB,	)	
	)	
Co-Plaintiffs On Third Claim For Relief	)	
	)	
v.	)	
	)	
U.S FOREST SERVICE and USDA APHIS	)	
WILDLIFE SERVICES,	)	
	)	
Defendants.	)	

INTRODUCTION

1. This First Amended Complaint joins several conservation groups deeply concerned about protecting the wilderness values of the Frank Church-River of No Return Wilderness from the helicopter landings authorized by the Forest Service, under which the Idaho Department of Fish and Game (IDFG) intends to dart and collar wolves beginning the week of February 22, 2010 in the Frank Church Wilderness.

2. These groups – The Wilderness Society, Great Old Broads for Wilderness, Idaho Conservation League, Winter Wildlands Alliance, Wilderness Watch, and the Sierra Club – are solely joining the Third Claim for Relief, as set forth below, in order to seek injunctive relief from the Court prohibiting the planned IDFG helicopter landings in the Frank Church, based on the Forest Service’s violations of the National Environmental Policy Act (NEPA), the Wilderness Act, and the 1980 Central Idaho Wilderness Act, as alleged below; and to prevent irreparable harm to Plaintiffs’ members who will be in areas of the Frank Church Wilderness at the time of the IDFG operations and are threatened with irreparable harm by those operations.

3. In the First Claim for Relief, original Plaintiffs Wolf Recovery Foundation and Western Watersheds Project also challenge the Forest Service’s violations of the Sawtooth National Recreation Area (SNRA) Organic Act and NEPA in authorizing livestock grazing that is continuing to cause “substantial impairment” of wolves, other fish and wildlife, and recreational values in the SNRA, contrary to this Court’s ruling in 2002 that wolves within the SNRA of central Idaho are wildlife protected by the SNRA Organic Act; and that livestock grazing is a secondary use that may not “substantially impair” wolves or other wildlife in the SNRA. *See Western Watersheds Project et al. v. Sawtooth National Forest*, No. 01-cv-389-E-BLW, Docket No. 50 (June 13, 2002).

4. In the Second Claim for Relief, original Plaintiffs Wolf Recovery Foundation and Western Watersheds Project also challenge the ongoing wolf killing and other wolf control actions undertaken by defendant APHIS Wildlife Services, an agency within the U.S. Department of Agriculture (USDA), which continues to eradicate wolves and wolf packs throughout central Idaho, including in and around the SNRA, without any current or valid environmental analysis under NEPA; and is thus acting unlawfully.

5. Because the Forest Service and APHIS Wildlife Services are thus violating the Wilderness Act, NEPA, the SNRA Organic Act, and other federal statutes, Plaintiffs seek declaratory and injunctive relief from this Court.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the SNRA Organic Act, 16 U.S.C. § 460aa *et seq.*, NEPA, 42 U.S.C. § 4321 *et seq.*; the Wilderness Act, 16 U.S.C. § 1131 *et seq.*; the Equal Access to Justice Act, 28 U.S.C. § 2214 *et seq.*; and other federal laws and regulations. An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

7. Venue is proper in this Court pursuant to 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; many of the Plaintiffs reside in this district; and the public lands and resources in question are located within Custer County and other counties in this district.

8. The Federal Government has waived sovereign immunity in this action

pursuant to 5 U.S.C. §§ 552 & 702.

PARTIES

9. The “Original Plaintiffs” in this action are:

A. WOLF RECOVERY FOUNDATION, which is an Idaho non-profit organization, located in Pocatello, Idaho. The Wolf Recovery Foundation was founded more than two decades ago to foster our heritage of wild wolf communities by advocating their presence forever in places where they have been extirpated, including central Idaho. The Wolf Recovery Foundation accomplishes its mission through public representation, information and outreach, networking with the agencies, organizations, tribes and universities, and through diverse workshops, conferences and special events.

B. WESTERN WATERSHEDS PROJECT (“WWP”), which is a regional, membership, not-for-profit conservation organization with over 1,400 members dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP is headquartered at the Greenfire Preserve in Custer County, Idaho; and has offices or staff in Idaho, Montana, Wyoming, Arizona, California, and Utah. WWP members and staff have frequently seen wolves on and around the Greenfire Preserve, which is located in the East Fork Salmon River drainage; and have been irreparably harmed by the killing of East Fork wolves that has occurred in recent years.

10. The “Co-Plaintiffs On Third Claim For Relief” are:

A. THE WILDERNESS SOCIETY, which was formed in 1935 by Aldo Leopold, Bob Marshall and several other of the most highly respected conservationists of their day. The Wilderness Society is a national non-profit conservation organization, having more than 200,000 members nationwide, including over 1,300 in Idaho. Passage

of the Wilderness Act in 1964 – originally drafted by former executive director Howard Zahniser – represented the culmination of more than twenty years of effort by The Wilderness Society to achieve federal protection for Wilderness areas. Since that time, The Wilderness Society has continued to play a leading role in efforts to expand and complete the Wilderness system – including the designation of the Frank Church-River of No Return Wilderness, accomplished by passage of the Central Idaho Wilderness Act in 1980 – and to ensure sound management of existing Wilderness Areas and other public lands. The Wilderness Society engages in a broad range of activities, including economic, scientific, and policy research, promotion of conservation efforts, education and publications, and advocacy. The Wilderness Society has a field office and staff in Boise.

B. GREAT OLD BROADS FOR WILDERNESS, which is a national, non-profit organization dedicated to increasing, preserving and protecting wilderness and roadless public lands of America using the voices and activism of elders. Formed in 1989, Great Old Broads now has over 3000 members in all 50 states, who believe that wild places are valuable in their own right, whether we can still get into them or not. Great Old Broads' primary goal is to assure that there will still be remote, untrammelled places left not just for our own grandchildren, but for those of all species.

C. IDAHO CONSERVATION LEAGUE, which is an Idaho non-profit membership conservation organization with over 9,500 members. Idaho Conservation League and its staff and members are dedicated to protecting and conserving Idaho's wilderness and wild places, as well as its wildlife, clean water, and quality of life, through citizen action, public outreach, education, advocacy, and litigation, among other

efforts. Idaho Conservation League, through the efforts of its staff and members, has long been active in promoting the designation and proper management of the Frank Church-River of No Return Wilderness.

D. WINTER WILDLANDS ALLIANCE, which is a national non-profit organization dedicated to promoting and preserving winter wildlands and a quality human-powered snow sports experience on public land. Formed in 2000, Winter Wildlands Alliance (“WWA”) is the first and only national advocacy organization working on behalf of skiers, snowshoers, snow boarders, winter hikers, and other non-motorized winter recreationists to address national issues that impact winter wildlands. WWA represents the interests of 37 member groups and their 27,000 constituents, plus WWA’s own 1,300+ individual members. WWA is headquartered in Boise, Idaho.

E. WILDERNESS WATCH, which is a non-profit organization founded in 1989 to provide citizen oversight to ensure that the wilderness character of the lands in the National Wilderness Preservation System and Wild and Scenic Rivers System is protected and not allowed to diminish over time. Wilderness Watch has members throughout the country, including many in Idaho. Wilderness Watch has been actively involved in management issues concerning the Frank Church-River of No Return Wilderness for more than 20 years through submission of numerous comment letters, administrative appeals, litigation, and innumerable meetings and discussions with the US Forest Service.

F. SIERRA CLUB, which is a nationwide conservation organization with more than 600,000 members, including at least 2,300 in Idaho. The Sierra Club was founded in 1892 by John Muir, and is America’s oldest, largest, and most influential

grassroots environmental organization. The mission of the Sierra Club is: “To explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.” The Sierra Club was active in promoting the establishment of the Frank Church-River of No Return Wilderness; and it has an office and staff in Boise, Idaho.

11. Plaintiffs, and their staff and members, use and enjoy the wildlife, public lands, and other natural resources in central Idaho, including the SNRA and Frank Church Wilderness, for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes. Plaintiffs, and their staff and members, are also deeply committed to the protection and recovery of wolves in central Idaho, and other places; and they spend considerable time on the public lands searching for, observing, studying, and enjoying wolves for a range of aesthetic, spiritual, scientific, emotional, recreational, and other reasons.

12. The Original Plaintiffs’ interests are directly harmed by Defendants’ actions as challenged herein; and the interests of the “Co-Plaintiffs On Third Claim For Relief” are directly harmed by the Forest Service’s decision challenged in the Third Claim for Relief. Unless the relief prayed for herein is granted, Plaintiffs as well as the public will suffer irreparable harm and injury to their interests.

13. Defendant UNITED STATES FOREST SERVICE is an agency or instrumentality of the United States, under the U.S. Department of Agriculture, and is statutorily charged with managing the National Forests and other public lands at issue here, including the SNRA and Frank Church-River of No Return Wilderness (both of

which are located wholly or partially in Custer County, Idaho).

14. Defendant APHIS WILDLIFE SERVICES is an agency or instrumentality of the United States, also under the U.S. Department of Agriculture, which is responsible for carrying out wolf eradication and killings on behalf of the federal government in central Idaho and elsewhere.

STATEMENT OF FACTS

Wolves in Central Idaho.

15. Central Idaho is a special place, as those of us lucky enough to live or visit here know well. One of the wildest regions remaining in the continental United States, central Idaho features rugged mountain ranges and world-class streams and rivers. A wide variety of wildlife make their home here, including deer, elk, moose, bears, bighorn sheep, salmon, steelhead – and wolves.

16. Congress has recognized the remarkable natural values of central Idaho by, among other actions, designating the Sawtooth National Recreation Area and the Frank Church-River of No Return Wilderness Area. As alleged further below, the SNRA and Frank Church Wilderness have special management requirements and mandates imposed by Congress, which Defendants have violated in their actions complained of herein.

17. The gray wolf (*Canis lupus*) was historically an integral part of the central Idaho landscape and ecology, until wolves were persecuted by European settlers and nearly exterminated within the last century.

18. Because of this human persecution, the gray wolf was listed as a protected species under the Endangered Species Act (ESA) for several decades, until it was recently removed from ESA protection.

19. In the mid-1990's, the federal government launched a Northern Rockies wolf reintroduction program, which included releasing gray wolves in and around the Frank Church Wilderness in central Idaho. The federal government carried out the wolf reintroduction program pursuant to a rulemaking under Section 10(j) of the ESA, which called for removal or destruction of wolves that depredate domestic livestock.

20. As this Court held in the prior litigation referenced above, however, the EIS for this 10(j) rulemaking was a programmatic document that did not evaluate the SNRA Organic Act's requirement that wildlife not be "substantially impaired" due to livestock grazing in the SNRA. *See Western Watersheds Project et al. v. Sawtooth National Forest*, No. 01-cv-389-E-BLW, Docket No. 50 (June 13, 2002).

21. Because of the State of Idaho's refusal to cooperate with the wolf reintroduction program, the Nez Perce Tribe contracted with the federal government to manage the wolves reintroduced in central Idaho.

22. Under the Nez Perce Tribe's wolf management program, the Tribe successfully trapped and collared more than thirty wolves in and around the Frank Church-River of No Return Wilderness Area, without using helicopters. This experience is well known to both the Idaho Department of Fish and Game (IDFG) and federal management agencies, including the Forest Service and APHIS Wildlife Services.

23. Over the last fifteen years or so, wolf populations have increased in parts of central Idaho, including the Frank Church Wilderness. Sighting wolves has become a

popular activity for Idaho residents and visitors alike, particularly in areas around Stanley and Ketchum; and represents a new source of economic vitality for the region.

24. The federal government, however, has continued to destroy individual wolves and wolf packs in and around the SNRA, as result of alleged livestock depredations. The number of wolf killings due to conflicts with livestock has greatly increased over the past five years compared to previous years. APHIS Wildlife Services has been the wolf-killing arm of the federal government, responsible for many wolf killings in and around the SNRA.

25. The Original Plaintiffs are informed and believe, and allege thereon, that APHIS Wildlife Services has caused the killings of individual wolves and/or destruction of virtually every wolf pack that has used the SNRA since the wolf reintroduction program occurred in the mid-1990's.

26. Packs located in or around the SNRA that have had wolves killed include, but are not necessarily limited to the following: Stanley Basin, White Cloud, Whitehawk, Pass Creek, Buffalo Ridge, Galena, Phantom Hill, and Basin Butte packs, as well as B283 and other individual wolves.

27. APHIS Wildlife Services seeks to avoid public disclosure, scrutiny or accountability for its actions. It typically undertakes wolf killing operations without any public notice, and seeks to preclude the public from learning of its operations.

28. Yet its actions have dramatic impacts on central Idaho wolves, and on Plaintiffs and the public. Available information indicates that APHIS Wildlife Services has shot or otherwise killed potentially hundreds of wolves in central Idaho in recent years, including in and around the SNRA.

29. In one of the most recent examples of this agency's rogue behavior, APHIS Wildlife Services used a helicopter – which hovered close to the ground on the outskirts of Stanley, Idaho – to gun down several wolves in the Basin Butte pack during the Thanksgiving holiday week this year. Stanley residents and visitors had no advance notice of this wolf killing operation, which occurred just outside of town and frightened many residents and visitors with the gunfire.

30. As a result of this action, one of the most beloved – and most watched – wolf packs in and around the SNRA has now been eliminated or destroyed by the federal government, causing irreparable harm to the Original Plaintiffs and the public.

31. The killing of central Idaho wolves by APHIS Wildlife Services is in addition to the hunting of wolves under current IDFG management, as well as other wolf killings by private parties (both reported and unreported). The Idaho Fish and Game Commission has designated the Sawtooth zone as the region in Idaho for the heaviest legal wolf hunting this year, allowing 55 wolves to be lawfully hunted there in a season that extends until the end of March 2010.

32. According to IDFG and other information available to the Original Plaintiffs, in the Sawtooth zone there have been at least 28 wolves killed in APHIS Wildlife Services “control” actions this year, plus 35 wolves killed lawfully by hunters, 4 others killed illegally, 3 more killed by “other” causes, and 5 more killed by unknown causes. Many more wolves in central Idaho also have been hunted or killed in control actions this year.

The Sawtooth National Recreation Area.

33. The Sawtooth National Recreation Area (SNRA) encompasses about 778,000 acres of public lands in central Idaho, near the town of Stanley (in Custer County). The SNRA was established in 1972; and it is administered by the Forest Service as part of the Sawtooth National Forest.

34. In the SNRA Organic Act, Congress mandated that the Forest Service administer SNRA lands “in a manner that will best provide (1) the protection and conservation of the salmon and other fisheries; [and] (2) the conservation and development of scenic, natural, historic, pastoral, wildlife and other values, contributing to and available for public recreation and enjoyment.” 16 U.S.C. § 460aa (Public Law 92-400; 86 Stat. 612).

35. The SNRA Organic Act expressly makes grazing and other extractive activities on the SNRA secondary to these primary SNRA values, providing that such activities may only proceed “insofar as their utilization **will not substantially impair** the purposes for which the recreation area is established.” *Id.* (emphasis added). *See also* 36 C.F.R. § 292.17(a) (Forest Service regulations for SNRA, adopting SNRA Organic Act).

36. Despite these legal commands, the Forest Service continues to authorize livestock grazing across the SNRA, irrespective of the many resource harms that grazing has caused, and continues to cause, to wildlife, fisheries, recreation and other primary values for which the SNRA was established.

37. In the prior SNRA litigation, as referenced above, this Court ruled that wolves constitute “wildlife” that are among the primary values for which the SNRA was established; and that grazing is a secondary value that cannot be allowed to substantially impair the primary

SNRA values (including wildlife). *See Western Watersheds Project et al. v. Sawtooth National Forest*, No. 01-cv-389-E-BLW, Docket No. 50 (June 13, 2002). Based on these rulings, the Court entered interim relief prohibiting federal agencies from undertaking wolf control measures due to livestock conflicts in the SNRA during 2002. *Id.*, Docket Nos. 79 & 93.

38. That litigation was resolved by settlement among the parties, under which the Forest Service committed to undertake NEPA analysis of grazing on numerous SNRA allotments, and to include analysis of whether grazing causes “substantial impairment” of wolves or other wildlife in the SNRA.

39. The Forest Service subsequently completed an Environmental Impact Statement (EIS) for the Upper and Lower East Fork allotments, located in the East Fork Salmon River drainage; and a separate EIS for the four “North Sheep” allotments, including the Smiley Creek and Baker Creek headwaters areas.

40. In subsequent litigation brought by WWP, this Court, per Judge Winmill, held that the North Sheep EIS and associated grazing authorizations were arbitrary, capricious, and contrary to law under NEPA and NFMA. *See Western Watersheds Project v. USFS*, 2006 WL 292010 (D. Idaho 2006). The Court remanded for the Forest Service to prepare a supplemental EIS to rectify the legal violations.

41. However, the Supplemental EIS that was subsequently issued by the Forest Service for the North Sheep allotments remains defective, and is currently being challenged by WWP in other litigation pending before this Court. *See Western Watersheds Project v. United States Forest Service*, No. 09-cv-629-BLW (D. Idaho).

42. Despite the Court’s prior rulings in these cases, the Forest Service continues to authorize livestock grazing across much of the SNRA irrespective of the

adverse impacts such grazing causes to fisheries, wildlife, and recreational uses of the SNRA – the primary values for which the SNRA was established.

43. Moreover, even though the Court expressly rejected the argument that grazing is a primary SNRA value, the Forest Service continues to treat livestock grazing that way – and is allowing private parties to graze livestock on federal lands in and around the SNRA in ways that have caused, and will continue to cause, “conflicts” with wolves as well as other wildlife and fisheries resources. Rather than exclude livestock from the SNRA, as the Forest Service is statutorily authorized and even mandated to do in order to protect primary SNRA values, the agency has issued term grazing permits and annual grazing authorizations that allow domestic sheep and cattle grazing to proceed in and near known wolf denning sites and other areas frequented by wolves. The agency has refused to require livestock operators to adopt management techniques needed to prevent wolf/livestock conflicts and depredations, thus ensuring that wolves will be killed by APHIS Wildlife Services in and around the SNRA as a result of such conflicts.

44. As a result, as noted above, virtually all wolf packs that have inhabited the SNRA to date – since the wolf reintroduction program began some 15 years ago – have been eradicated or had individual wolves killed due to livestock conflicts. Moreover, wolf packs around the SNRA – including packs that inhabited the East Fork Salmon River area, where WWP manages the Greenfire Preserve (and on which the wolves were frequently seen by WWP staff, members and supporters) – have been destroyed or decimated by APHIS Wildlife Services as well.

45. Along with the now-legal hunting administered by IDFG, the result of these federal actions is the continued persecution and elimination of wolves that

successfully become established in the central Idaho region, outside the designated Wilderness Areas. Not even the SNRA is available as a refuge for these persecuted central Idaho wolves.

The Frank Church-River of No Return Wilderness.

46. Congress adopted the Wilderness Act in 1964 “for the permanent good of the whole people,” in order to “secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” Pub. L. 88-577 (1964); 16 U.S.C. § 1131.

47. The Wilderness Act defines “wilderness” as “an area where the earth and its community of life are untrammelled by man . . . retaining its primeval character and influence. . . which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation,” and possesses other characteristics. 16 U.S.C. § 1132(c). Section 4(b) of the Act directs that federal agencies “shall be responsible for preserving the wilderness character” of lands designated as wilderness, and administer those lands for “such other purposes as it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(c).

48. Section 4 of the Wilderness Act addresses “use of Wilderness Areas,” and expressly provides that “there shall be . . . **no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport**” in Wilderness Areas, except as may otherwise be specifically provided by law

or “as necessary to meet minimum requirements for the administration of the area for the purpose of this Act.” 16 U.S.C. § 1133(c) (emphasis added).

49. The River of No Return Wilderness was Congressionally-designated through the Central Idaho Wilderness Act in 1980, subject to these provisions of the Wilderness Act, Pub. L. No. 96-312 (1980); and later renamed the Frank Church-River of No Return Wilderness, in recognition of the leading role played by Idaho Senator Frank Church in securing its protection.

50. At 2.3 million acres, the Frank Church Wilderness is the largest contiguous area of protected wilderness in the lower 48 states. Together with the adjacent Gospel Hump Wilderness and surrounding roadless national forest land, it is the core of a 3.3 million acre roadless area. It is separated from the Selway-Bitterroot Wilderness, to the north, by a single dirt road (the Magruder Corridor). The wilderness contains parts of several mountain ranges, including the Salmon River Mountains and the Bighorn Crag. The ranges are split by steep canyons of the Middle and Main Forks of the Salmon River.

51. The Middle Fork Salmon River itself is one of the world’s most highly prized wilderness rivers, offering whitewater rafting, fishing, hiking, and abundant wildlife viewing opportunities; and was designated as one of the original wild and scenic rivers in the 1868 Wild and Scenic Rivers Act. Particularly during winter, big game populations (elk, deer, moose, bighorn sheep) congregate in lower elevation areas and suitable winter habitats along the Middle Fork Salmon River corridor and tributaries; as well as along the Main Salmon River upstream and downstream from the confluence with

the Middle Fork. Because of this, wolves are also found along the Middle Fork and other areas in the Frank Church Wilderness where the big game concentrations occur.

52. Under the Wilderness and Central Idaho Wilderness Acts, aircraft landings are strictly prohibited in the Frank Church-River of No Return Wilderness, except at designated landing strips that were in regular use at the time of the Wilderness designation; or as may be “necessary to meet minimum requirements for the administration of the area” for its wilderness character. *Id.*; 16 U.S.C. § 1133(c) & (d)(1).

53. Plaintiffs are informed and believe, and alleged thereon, that shortly after the wolf reintroduction program began in central Idaho, the U.S. Fish and Wildlife Service considered a proposal to use helicopters within the Frank Church Wilderness to dart and collar wolves for purposes of monitoring wolf populations there. After meetings with the U.S. Forest Service, APHIS Wildlife Services, and others – at which federal agency personnel, including wilderness managers, expressed opposition to this proposal and also determined that an EIS would have to be prepared under NEPA to evaluate the proposal – the Fish and Wildlife Service determined not to pursue the use of helicopters in wilderness; and so advised the other agencies.

54. In 2005 and again in 2006, after it entered into an agreement with U.S. Fish and Wildlife Service to become the lead agency for managing wolves in Idaho, IDFG requested that the Forest Service issue special use permits authorizing it to use aircraft (mainly helicopters) within the Frank Church and Selway-Bitterroot Wilderness Areas, for purposes of shooting wolves with tranquilizing darts and then inspecting and

collaring them. IDFG asserted that such use of motorized equipment in the wilderness areas was necessary for research and wolf management.

55. Again, the Forest Service received substantial opposition to this proposal, including from Plaintiffs' members and other members of the conservation community, and from its own staff and former staff. Ultimately, the Forest Service did not approve the IDFG request; and advised IDFG that NEPA would require preparation of an Environmental Assessment (EA) or an EIS to assess any such use of helicopters in wilderness.

56. In 2009, following the delisting of wolves from the ESA, IDFG again requested permission from the Forest Service to carry out a program of using helicopters to locate, shoot with tranquilizing darts, and collar wolves in the Frank Church Wilderness. According to a public statement issued by IDFG, the agency contends that "[f]ourteen years of efforts to trap and collar wolves in wilderness areas on foot and by horseback have proved largely unsuccessful," and hence use of helicopters to hover above the ground and land in the wilderness are needed to carry out wolf collaring operations in the Frank Church Wilderness.

57. As noted above, however, the Nez Perce Tribe – which managed wolves in Idaho for a decade after the reintroduction started, when the State of Idaho refused to do so – has successfully trapped and collared dozens of wolves in and around wilderness areas without need for helicopter use.

58. The Forest Service approved the IDFG request in a December 2009 Decision Memo, based on a "categorical exclusion" and "minimum requirements decision guide" which both repeated IDFG's assertions that past efforts to trap and collar

wolves in wilderness were unsuccessful, and hence use of helicopters was deemed necessary. Pursuant to the Decision Memo, the Forest Service issued a special use permit in January 2010, authorizing IDFG to undertake the proposed helicopter landings in the Frank Church-River of No Return Wilderness during the period mid-January to April, 2010, to dart and collar wolves in the Wilderness.

59. As the Administrative Record reflects, the Forest Service determined the approve the IDFG proposal as early as August 2010; and then issued a “scoping notice” about the IDFG proposal, in response to which it received numerous emails and written comments from the conservation community – including many of the Plaintiffs here – as well as its own present and former staff, which opposed the IDFG proposal and underscored the Forest Service’s legal obligation to comply with the mandates of the 1964 Wilderness Act and 1980 Central Idaho Wilderness Act and disallow IDFG’s proposed use of helicopters to dart and collar wolves in the Frank Church Wilderness.

60. Despite this controversy and the precedent that its action may establish, the Forest Service refused to prepare either an EA or EIS under NEPA; and premised its approval of the IDFG proposal on the assertion that past efforts to trap and collar wolves in wilderness have been unsuccessful, when that is not the case.

61. In approving the IDFG request through the Decision Memo and associated documents, the Forest Service did not fully or accurately disclose the Nez Perce Tribe’s past trapping and collaring of wolves in wilderness; nor did it assess other alternatives for monitoring wolf populations in wilderness, which may include use of howl boxes, reports of wolf numbers and locations from members of the public, and other techniques.

62. In refusing to prepare either an EA or EIS over the IDFG proposal, the Forest Service violated its duties under NEPA to fully explore and assess highly controversial actions, and to examine publicly all reasonable alternatives to the proposed action.

63. Moreover, the Forest Service did not evaluate, in any public NEPA document, whether using helicopters to conduct “research” on wolf populations is actually necessary for administration of the Frank Church Wilderness; when in fact it is not. To the contrary, wolves are an integral part of the wilderness area now, and essential to the proper ecological functioning of the wilderness; and IDFG’s proposal does not further those values.

64. Pursuant to the Forest Service’s December 2009 Decision Memo and January 2010 special use permit, IDFG is now authorized to operate helicopters in the Frank Church Wilderness for purposes of locating wolves, hovering over them so that shooters can dart wolves, and landing within wilderness for purposes of collaring and measuring wolves. According to representatives of the Forest Service and IDFG, such wolf collar helicopter operations will commence in the week of February 22, 2010.

65. Such use of helicopters to hover above the ground and land in wilderness threatens to cause irreparable harm to Plaintiffs and other members of the public, including by destroying their wilderness experiences.

66. The Original Plaintiffs are informed and believe, and allege thereon, that the Forest Service will continue to authorize livestock grazing in the SNRA during 2010 and future years that will perpetuate livestock “conflicts” with wolves in and around the

SNRA, thus resulting in further wolf killings and persecution by APHIS Wildlife Services, as seen in the past.

67. Based on the large number of wolves already killed in the Sawtooth region under IDFG's hunting regulations and control, and by private parties and/or APHIS Wildlife Services due to livestock depredation or other reasons, it is evident that wolves are now "substantially impaired" in the SNRA and will continue to be so for the foreseeable future, unless the Court intervenes to prevent further illegal actions by Defendants.

68. Accordingly, Plaintiffs pray for entry of injunctive and declaratory relief to prevent further irreparable harm and unlawful actions by Defendants, as requested below.

FIRST CLAIM FOR RELIEF
BROUGHT ON BEHALF OF ORIGINAL PLAINTIFFS OVER
FOREST SERVICE'S VIOLATIONS OF SNRA ORGANIC ACT
AND NEPA IN AUTHORIZING SNRA GRAZING

69. The Original Plaintiffs reallege and incorporate by reference the preceding paragraphs.

70. This First Claim for Relief is brought on behalf of the Original Plaintiffs only, and challenges the Forest Service's violations of the SNRA Organic Act and NEPA in continuing to authorize domestic livestock grazing upon the SNRA that has caused, and will continue to cause, substantial impairment of wolves and other wildlife on the SRNA.

71. Despite the prior litigation and settlement referenced above, the Forest Service has no current comprehensive and adequate analysis of whether and how its SNRA livestock grazing authorizations may be causing or facilitating livestock/wolf

conflicts and depredations, thus resulting in elimination of SNRA wolves and wolf packs.

72. The Forest Service's challenged grazing authorizations include the term grazing permits it has issued within the last six years for SNRA allotments, to the extent not already subject to other litigation before this Court; and its 2010 and future annual grazing authorizations, which will continue to allow domestic livestock grazing to occur in and around the SNRA in ways that will foreseeably result in continued conflicts between wolves and livestock and thus further wolf eradication efforts by APHIS Wildlife Services or others.

73. By failing to adequately study these likely impacts and changed circumstances (including the delisting of wolves and heavy hunting of Sawtooth wolves approved by IDFG), the Forest Service has violated NEPA and the SNRA Organic Act.

74. The Original Plaintiffs are substantially prejudiced and harmed by the Forest Service's challenged SNRA grazing authorizations and legal violations as alleged herein, and will suffer irreparable harm absent judicial relief.

75. Defendant Forest Service's challenged actions herein are arbitrary, capricious, an abuse of discretion, and contrary to law, and hence must be reversed and remanded by this Court pursuant to the APA, 5 U.S.C. § 706(a)(2).

WHEREFORE, the Original Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF
BROUGHT ON BEHALF OF ORIGINAL PLAINTIFFS OVER
APHIS WILDLIFE SERVICES' VIOLATIONS OF NEPA
IN CARRYING OUT WOLF ERADICATIONS
IN CENTRAL IDAHO

76. The Original Plaintiffs reallege and incorporate by reference the preceding paragraphs.

77. This Second Claim for Relief is brought on behalf of the Original Plaintiffs only, and challenges APHIS Wildlife Services' violations of NEPA in carrying out continued and future wolf killings and other eradication or "control" activities within central Idaho, without any current and legally valid environmental analysis as required by NEPA.

78. APHIS Wildlife Services has not fully provided documents sought under the Freedom of Information Act relating to its current NEPA coverage for wolf control activities in central Idaho. Accordingly, the Original Plaintiffs lack all information necessary to fully understand the scope of APHIS Wildlife Services' NEPA documentation.

79. From publicly available documents and conversations with agency staff, however, the Original Plaintiffs are informed and believe, and allege thereon, that APHIS Wildlife Services has not prepared any current and legally adequate EIS for its current wolf killings and other wolf control activities, as required by NEPA; and that the agency is relying on one or more long-outdated EAs and/or "categorical exclusions" to supposedly provide NEPA coverage for its activities, when in fact those documents are not legally adequate to satisfy the agency's NEPA duties.

80. The Original Plaintiffs are further informed and believe, and allege thereon, that APHIS Wildlife Services has never addressed, in any public NEPA EA or EIS, the delisting of wolves under the ESA along with the effects of IDFG-sanctioned hunting and other wolf killings upon the wolf populations and packs in central Idaho; nor has APHIS Wildlife Services assessed the impacts of its wolf eradication activities in "substantially impairing" wolves in violation of the SNRA Organic Act.

81. The Original Plaintiffs are substantially prejudiced and harmed by APHIS Wildlife Services' past and foreseeable future actions to kill individual wolves and destroy wolf packs in central Idaho, including in and around the SNRA; and will suffer irreparable harm absent judicial relief.

82. Defendant APHIS Wildlife Services' challenged actions herein are arbitrary, capricious, an abuse of discretion, and contrary to law, and hence must be reversed and remanded by this Court pursuant to the APA, 5 U.S.C. § 706(a)(2).

83. Moreover, a present and actual controversy now exists between the Original Plaintiffs and Defendant APHIS Wildlife Services over its legal obligations to comply with NEPA in its central Idaho wolf control activities, including with respect to foreseeable future wolf killings in and around the SNRA and other parts of central Idaho. Accordingly, the Court may properly enter declaratory relief under these circumstances with respect to APHIS Wildlife Services' legal obligations under NEPA.

WHEREFORE, the Original Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF
BROUGHT ON BEHALF OF ALL PLAINTIFFS OVER
FOREST SERVICE'S VIOLATIONS OF LAW IN
APPROVING HELICOPTER ACTIVITIES WITHIN
FRANK CHURCH-RIVER OF NO RETURN WILDERNESS

84. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

85. This Third Claim for Relief is brought on behalf of the Co-Plaintiffs On Third Claim for Relief as well as the Original Plaintiffs, to challenge the Forest Service's December 2009 Decision Memo and January 2010 special use permit, through which the Forest Service has approved IDFG's proposed use of helicopters to hover and land within the Frank Church-River of No Return Wilderness for purposes of darting and

collaring wolves.

86. The Forest Service's December 2009 Decision Memo and January 2010 special use permit violate NEPA, as well as the 1964 Wilderness Act and the 1980 Central Idaho Wilderness Act for multiple reasons, including but not limited to the following:

A. The Forest Service failed to accurately represent the success of past efforts to trap and collar wolves in and around wilderness areas, and in so doing misled the public and violated NEPA;

B. The high degree of controversy and precedential impact of the Forest Service decision require full evaluation of likely environmental impacts and alternatives under NEPA; and the adverse environmental impacts of the proposed actions will significantly harm wilderness character, wildlife, and Plaintiffs as well as the public, thus again requiring full evaluation of impacts and alternatives under NEPA;

C. The approved use of helicopters to hover and land within the Frank Church Wilderness to capture and collar wolves violates the express mandates of the Wilderness Act and the Central Idaho Wilderness Act because such actions are not necessary to meet the minimum requirements to protect and preserve the area's wilderness character; and

D. The approved use of helicopters to hover and land with the Frank Church Wilderness to capture and collar wolves violates the express mandates of the Wilderness Act and the Central Idaho Wilderness Act, as well as the 2003 Frank Church Wilderness management plan, because such actions are not the "minimum tool" necessary for wolf monitoring or research.

87. Plaintiffs are substantially prejudiced and harmed by the Forest Service's unlawful decision authorizing helicopter landings in the Frank Church Wilderness as alleged herein, and will suffer irreparable harm absent judicial relief.

88. Defendant Forest Service's challenged actions herein are arbitrary, capricious, an abuse of discretion, and contrary to law, and hence must be reversed and remanded by this Court pursuant to the APA, 5 U.S.C. § 706(a)(2).

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

I. Based on the foregoing allegations and legal violations, the Original Plaintiffs respectfully pray that the Court grant them relief as follows:

A. Adjudge and declare that the Forest Service has violated NEPA, the SNRA Organic Act, and/or their implementing regulations, in continuing to authorize livestock grazing in the SNRA under terms and conditions that have caused, and will continue to cause, substantial impairment of wolves and other primary wildlife and recreation values for which the SNRA was established;

B. Reverse and set aside the Forest Service's current SNRA grazing authorizations challenged herein as being arbitrary, capricious, an abuse of discretion, and/or contrary to law, pursuant to the judicial review standards of the APA, 5 U.S.C. § 706(2);

C. Adjudge and declare that APHIS Wildlife Services has violated and continues to violate NEPA and its implementing regulations in carrying out past and foreseeable wolf control actions in central Idaho, including the killing of individual wolves and wolf packs in and around the SNRA;

D. Adjudge and declare that such actions are arbitrary, capricious, an abuse of discretion, and/or contrary to law, pursuant to the judicial review standards of the APA, 5 U.S.C. § 706(2); and

E. Enter such temporary, preliminary, and/or permanent injunctive relief as may be prayed for hereafter by the Original Plaintiffs, including but not limited to:

(1) enjoining livestock grazing within the SNRA that threatens to cause future conflicts between wolves and wildlife; and/or

(2) enjoining APHIS Wildlife Services from further killing or persecution of central Idaho wolves, at least until it has complied with NEPA.

II. In addition, based on the foregoing allegations and legal violations, the Original Plaintiffs and Co-Plaintiffs On Third Claim For Relief further pray that the Court grant them the following relief:

A. Adjudge and declare that the Forest Service has violated NEPA, the 1964 Wilderness Act, the 1980 Central Idaho Wilderness Act, and/or their implementing regulations, in its December 2009 Decision Memo and January 2010 special use permit approving IDFG's proposed use of helicopters to dart and collar wolves in the Frank Church-River of No Return Wilderness;

B. Reverse and set aside such actions as being arbitrary, capricious, an abuse of discretion, and/or contrary to law, pursuant to the judicial review standards of the APA, 5 U.S.C. § 706(2); and

C. Issue immediate injunctive relief to prohibit the IDFG wolf collaring helicopter actions in the Frank Church Wilderness.

III. All Plaintiffs further request:

A. An award of their reasonable costs, litigation expenses, and attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq., and/or all other applicable authorities; and/or

B. Such further relief as the Court deems just and proper in order to provide Plaintiffs with adequate relief and protect the public interest.

Dated: February 2, 2010

Respectfully submitted,

/s/ Laird J. Lucas
Laurence ("Laird") J. Lucas
Lauren M. Rule
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2010, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent an electronic notice of filing to the following counsel of record:

Deborah Ferguson
Assistant U.S. Attorney, District of Idaho
Deborah.Ferguson@usdoj.gov

Kathryn M. Liberatore
U.S. Department of Justice
Kathryn.Liberatore@usdoj.gov

Beverly Li
U.S. Department of Justice
Beverly.Li@usdoj.gov

Kathleen Trever
Deputy Attorney General
Idaho Dept. of Fish and Game
kathleen.trever@idfg.idaho.gov

/s/
Laird J. Lucas