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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 WILDEARTH GUARDIANS,)
18)
19 Plaintiff,)

Case No. _____

20 vs.)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

21 UNITED STATES DEPARTMENT OF)
22 AGRICULTURE, ANIMAL AND PLANT)
23 HEALTH INSPECTION SERVICE,)
24)
25 Defendant.)

26 **INTRODUCTION**

27 1. This is an action for declaratory and injunctive relief challenging the
28 continuing failure of the Defendant, United States Department of Agriculture (“USDA”),
Animal and Plant Health Inspection Service (hereinafter “APHIS” or “Wildlife Services” or
“Agency”), to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C.

1 4321 *et seq.*, and the Wilderness Act, 16 U.S.C. § 1131 *et seq.*, for its “Wildlife Services”
2 program.¹

3 2. Every year, our nation’s most majestic animals, including wolves, coyotes,
4 and mountain lions, are poisoned, trapped and gunned down by Wildlife Services, a
5 program within the USDA. Family pets and federally protected species are also injured or
6 killed by the Agency’s indiscriminate killing methods. In 1994, Wildlife Services, then
7 called “Animal Damage Control,” issued a programmatic environmental impact statement
8 called “Animal Damage Control,” issued a programmatic environmental impact statement
9 (“PEIS”) under NEPA for its ongoing national program, which was much smaller in size and
10 scope than the program is today.² The PEIS analyzed the biological and environmental
11 impacts of Wildlife Services’ wildlife killing activities on only 17 target species, based on
12 kill data for fiscal year 1988. Fast forward to 2010, when Wildlife Services killed over 5
13 million animals, representing a total of approximately 300 species – far more target and non-
14 target species than were considered in the PEIS. Today, Wildlife Services spends
15 approximately \$126 million annually to kill millions of animals, in contrast to the \$26 million
16 spent in 1988.
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19 3. Wildlife Services continues to rely on this woefully outdated and inadequate
20 PEIS for its national wildlife killing activities, including its activities in the State of Nevada.
21 However, this PEIS fails to take into account recent reports on the risks and inefficiencies of
22 Wildlife Services’ activities, dramatic changes in public perceptions and values pertaining to
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24 ¹ Wildlife Services is a program or component of APHIS, within the USDA. As all of
25 the allegations in this Complaint relate to the Wildlife Services program, which functions as a
26 semi-autonomous agency, the Defendant will hereinafter be referred to as “Wildlife
Services.”

27 ² In 1997, APHIS revised and reissued this PEIS to correct certain errors, but the 1997
28 PEIS did not contain new environmental analysis.

1 wildlife, and new biological and scientific information. In recent years, Wildlife Services
2 has received criticism from other governmental agencies, including a series of audits in 2004-
3 2006 by the USDA's Office of Inspector General, which sanctioned Wildlife Services for its
4 unsafe handling of toxins that could be used in biological warfare. In 2007, Wildlife Services
5 admitted that it had experienced a "wake of accidents" that involved its aerial gunning
6 program, its hazardous chemicals inventory, and more. Nevertheless, the internal culture of
7 this killing agency continues as a "semi-autonomous bureaucracy whose function in many
8 localities bears scant relationship to real need and less still to scientific management," as
9 described in a famous 1964 report to Congress dubbed the "Leopold Report."
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11 4. Herein, Guardians challenges Wildlife Services' continued reliance upon its
12 1994 PEIS to kill native carnivores and other wildlife. The analysis in that PEIS is based
13 primarily on studies from the 1970's and 1980's. Significant new information and scientific
14 studies bearing on the biological, ecological, and economic facets of Wildlife Services'
15 national program and activities have been published over the past 18 years, which must be
16 considered in a supplemental or new environmental analysis. Guardians presented this new
17 information to Wildlife Services several times over the past few years, including sending a
18 formal demand for updated NEPA analysis to the Agency on February 17, 2009. The
19 American landscape has been substantially altered by rapid human population growth and the
20 subsequent modification of wildlife habitat in the past two decades, while the Wildlife
21 Services' program has expanded. Nevertheless, Wildlife Services refuses to supplement or
22 revise its PEIS, and continues to rely on this insufficient and outdated environmental analysis
23 of its national activities, in violation of NEPA.
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1 5. In addition, Guardians challenges Wildlife Services' Final Environmental
2 Assessment and Finding of No Significant Impact for its program in Nevada, issued on June
3 22, 2011. This Environmental Assessment is flawed and failed to adequately and fully
4 consider the impacts of the removal of carnivores, including coyotes and mountain lions, on
5 carnivore populations, prey populations, non-target species, and their ecosystems. Instead,
6 the Environmental Assessment relied upon and tiered to the outdated and insufficient analysis
7 in its PEIS. Wildlife Services violated NEPA by failing to analyze the direct, indirect,
8 cumulative and site-specific environmental impacts of leghold traps, padded-jaw leghold
9 traps, cage traps, aerial hunting, shooting, calling and shooting, neck snares, denning, and
10 toxic chemicals that will be used to kill wildlife in Nevada. The Environmental Assessment
11 also lacked scientific integrity and failed to include a credible cost-benefit analysis of this
12 program, in violation of NEPA. Moreover, because the widespread killing of native
13 carnivores such as coyotes, mountain lions, and other wildlife in Nevada may have a
14 significant impact on the environment, Wildlife Services must prepare a full Environmental
15 Impact Statement for its Nevada program and update its programmatic environmental
16 analysis, to comply with NEPA.

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20 6. Finally, Guardians challenges Wildlife Services' decision to use lethal and
21 nonlethal methods, immobilization, frightening devices, aerial hunting, leghold traps, cage
22 traps, shooting, dogs, foot snares, neck snares, and toxic chemicals in Wilderness Areas in
23 Nevada, where these methods use motor vehicles, motorized equipment, the landing of
24 aircraft, or other forms of mechanical transport, in violation of the Wilderness Act. Using
25 helicopters to shoot and kill animals in Wilderness Areas is illegal and contrary to wilderness
26 values. Wildlife Services must withdraw its decision to kill native carnivores in Wilderness
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1 Areas, where its actions violate the Wilderness Act.

2 7. Because Wildlife Services violated and continues to violate NEPA and the
3 Wilderness Act, Guardians hereby seeks declaratory and injunctive relief from this Court.

4 **JURISDICTION AND NOTICE, AND VENUE**

5 8. This Court has jurisdiction over Guardians' claims herein pursuant to 28
6 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346(a)(2) (United States as defendant), and 5
7 U.S.C. §§ 701 *et seq.* (Administrative Procedures Act).

9 9. The requested declaratory relief is authorized by 28 U.S.C. § 2201(a). The
10 requested injunctive relief is authorized by 28 U.S.C. § 2202. 28 U.S.C. § 2412 (Equal
11 Access to Justice Act) authorizes this Court to award Guardians its costs and attorneys' fees.

12 10. There exists now between the parties an actual, justiciable controversy within
13 the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

14 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)
15 because a substantial part of the events or omissions giving rise to the claims herein occurred
16 within this district; Guardians has members who reside in this district; and this case includes
17 a challenge to Defendants' activities in Nevada.

18 12. This action is properly assigned to the Las Vegas Division of this court
19 because a significant part of Defendants' actions challenged by Guardians herein occurs in
20 that division.

21 **PARTIES**

22 13. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation
23 organization, headquartered in Santa Fe, New Mexico. Guardians is dedicated to protecting
24 and restoring wildlife, wild rivers, and wild places. Guardians has approximately 4,500
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1 members and over 10,000 activists across the United States, many of whom live, work, and
2 recreate in areas affected by Wildlife Services' activities, including Wilderness Areas.

3 14. Guardians' top priorities include carnivore protection and ending Wildlife
4 Services' unnecessary and unlawful slaughter of wildlife across the United States. Guardians
5 has demonstrated a longstanding interest in and concern for the wildlife resources that
6 Wildlife Service continues to destroy. Guardians actively participates in the public NEPA
7 process for Wildlife Services' program and activities, both in Nevada and nationwide.
8 Guardians regularly comments on Wildlife Services' nationwide activities and educates the
9 public on the agency's killing of wildlife, including publishing a report to President Obama
10 and Congress in 2009, "War on Wildlife: The U.S. Department of Agriculture's 'Wildlife
11 Services.'"
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14 15. Guardians' members engage in outdoor recreation, wildlife viewing, bird-
15 watching, and other activities in areas affected by Wildlife Services' activities and have
16 concrete plans to continue doing so. They regularly spend time enjoying wildlife and
17 advocating for wildlife protection. Guardians' members use and enjoy the wildlife and other
18 natural resources in Nevada and nationwide, including Wilderness Areas impacted by
19 Wildlife Services' activities, for many health, recreational, scientific, spiritual, educational,
20 aesthetic, and other purposes. Wildlife Services' violations of law described herein cause
21 harm to native carnivores, birds, and their ecosystems that Guardians' members enjoy.
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24 16. Guardians' members are concerned about the impacts of carnivore removal on
25 carnivore populations, prey populations, non-target species, and their ecosystems. They are
26 concerned about the impacts of poisoning birds on bird populations, non-target species, and
27 their ecosystems. Guardians' members are also concerned about the toxicants and traps used
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1 by Wildlife Services, placing them and their pets at risk. They often walk or engage in
2 outdoor recreation in areas where they, their loved ones, or their pets may be at risk, due to
3 M-44s³, traps, and other harmful toxics and devices.

4 17. Guardians brings this action on behalf of itself and its adversely affected
5 members, including staff. Guardians and its members have a substantial interest in this
6 matter. They have been and will continue to be adversely affected and aggrieved by Wildlife
7 Services' failure to comply with NEPA and the Wilderness Act. These are actual, concrete,
8 and particularized injuries caused by Wildlife Services' violations of law, as set forth herein.
9 The requested relief will redress Guardians' and its members' injuries.

10 18. Defendant USDA ANIMAL AND PLANT HEALTH INSPECTION
11 SERVICE is an agency or instrumentality of the United States, within the USDA, whose
12 Wildlife Services program is responsible for carrying out carnivore eradication and wildlife
13 killings on behalf of the federal government in Nevada and nationwide.

16 **BACKGROUND: HISTORY OF WILDLIFE SERVICES**

17 19. In 1931, Congress passed the Animal Damage Control Act, which authorized
18 the Secretary of Agriculture to "promulgate the best methods of eradication, suppression, or
19 bringing under control" a whole host of species, including "mountain lions, wolves, coyotes,
20 bobcats, prairie dogs, and gophers" for the benefit of agribusiness. As a result, the
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22 ³ M-44s are spring-loaded devices, topped with smelly baits that lure carnivores. When
23 a carnivore tugs on the M-44, a spring shoots a pellet of sodium cyanide into the animal's
24 mouth. When the cyanide pellet mixes with moisture, it turns into a deadly vapor. Sodium
25 cyanide morphs into hydrogen cyanide gas, which is easily absorbed by the lungs. Death is
26 rapid. Sodium cyanide is acutely toxic to both birds and mammals, and M-44s kill hundreds
27 of non-target species (e.g., bears, badgers, kit and swift foxes, bobcats, ringtail cats, javelinas,
28 beavers, hawks, and pets) and thousands of target species (particularly coyotes and striped
skunks) each year. By their very nature, M-44s are indiscriminate. As a result, M-44s pose a
danger to pets and humans.

1 government initiated massive poisoning and trapping campaigns that greatly diminished
2 America's wildlife, from rodents to birds to native carnivores. By the 1940s, this federal-
3 wildlife-killing agency had contributed to the extirpation of species such as wolves and
4 grizzly bears from the Lower 48 states.

5 20. In 1964, Secretary of the Interior Stewart L. Udall's Advisory Board on
6 Wildlife and Game Management issued the "Leopold Report" to Congress (named for its
7 chairman, Dr. A. Starker Leopold, son of pioneering ecologist Aldo Leopold). The Leopold
8 Report described the killing agency as a "semi-autonomous bureaucracy whose function in
9 many localities bears scant relationship to real need and less still to scientific management."
10 It noted the agency's penchant for indiscriminate wildlife killing through the use of traps and
11 poisons, particularly Compound 1080. According to the Leopold Report, the American
12 populace especially favored native carnivores. The public's sentiment in favor of carnivore
13 protection, however, was ignored by the agency and by decision makers, who continued to
14 respond to agribusiness pressures.
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17 21. In 1971, a second report was issued to the U.S. Department of Interior and
18 Council on Environmental Quality, from a panel chaired by Stanley A. Cain. The 207-page
19 "Cain Report" lamented that the government's wildlife-killing program "contains a high
20 degree of built-in resistance to change" and that monetary considerations that favored the
21 livestock industry served to harm native wildlife populations (Cain et al. 1971). The Cain
22 Report called for substantive changes to wildlife management regimes by changing personnel
23 and control methods, valuing "the whole spectrum of public interests and values," and
24 asserting protections for native wildlife. Citing the Cain Report, in 1972, Richard Nixon
25 banned the toxicants Compound 1080, sodium cyanide, strychnine and thallium by federal
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1 agents on public lands. However, by the mid-1980s, Compound 1080 and sodium cyanide
2 had returned to use under the Ford and then Reagan Administrations.

3 22. In 2004, 2005 and 2006, the USDA's Office of Inspector General ("OIG")
4 released audits revealing that APHIS was not in compliance with the Bioterrorism
5 Preparedness and Response Act. OIG's 2004 audit showed that Wildlife Services' aircraft
6 (used to shoot wildlife from the air) were not secured and could potentially be used in
7 terrorist attacks. In the 2005 audit, the OIG found that APHIS had not secured "dangerous
8 biological agents and toxins." Sodium cyanide and Compound 1080 are particularly
9 dangerous, as they can be used in chemical warfare and are extremely toxic to humans. In
10 the 2006 audit, the OIG found that APHIS was not complying with regulations concerning
11 the security of toxins, that it had not secured access from unauthorized persons, that
12 individuals using toxicants did not have adequate training, and that inventories had not been
13 maintained to prevent the illegal possession (theft), transfer or sale of these toxicants. The
14 OIG selected 10 of 75 sites to visit, and none were in compliance with the Bioterrorism
15 Preparedness and Response Act.

16 23. In November 2007, Wildlife Services itself admitted that it had experienced a
17 "wake of accidents" that involved its aerial gunning program, its hazardous chemicals
18 inventory, and more. The aerial gunning program, for instance, caused ten fatalities and 28
19 injuries to federal employees and contractors. In March 2008, the Environmental Protection
20 Agency issued a notice of warning letter to Wildlife Services for its illegal and unsafe
21 placement of M- 44s that resulted in the injury of a U.S. Fish and Wildlife Service biologist
22 and the death of his hunting dog.

23 24. Despite dramatic changes in public perceptions and values pertaining to
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1 wildlife, public calls for change, and reports such as those by the Leopold and Cain
2 committees and the OIG, fundamental reforms of Wildlife Services have not occurred, nor
3 has APHIS re-evaluated the impact and effectiveness of its federal wildlife killing program.
4 Rather, Wildlife Services continues to operate under a modified version of the Animal
5 Damage Control Act of 1931, and continues to rely on outdated and poorly developed
6 environmental analyses from almost two decades ago.
7

8 **LEGAL FRAMEWORK**

9 The National Environmental Policy Act (“NEPA”)

10 25. NEPA is our “basic national charter for protection of the environment.” 40
11 C.F.R. § 1500.1. Among the critical purposes of NEPA are to “insure that environmental
12 information is available to public officials and citizens before decisions are made and actions
13 are taken,” and to “help public officials make decisions that are based on understanding of
14 environmental consequences ...” Id. § 1500.1(b)-(c). “Public scrutiny [is] essential to
15 implementing NEPA.” Id.
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18 26. To accomplish these purposes, NEPA requires all federal agencies to prepare a
19 “detailed statement” regarding all “major federal actions significantly affecting the quality of
20 the human environment.” 42 U.S.C. § 4332(C). This statement is known as an
21 Environmental Impact Statement (“EIS”).
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23 27. NEPA requires federal agencies to analyze the environmental impact of a
24 particular federal action before proceeding with that action. See 42 U.S.C. § 4332(2)(C).

25 28. The EIS is the cornerstone of NEPA. An EIS is required for all “major
26 Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. §
27 4332(2)(C). The Council on Environmental Quality (“CEQ”) defines “major federal action”
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1 to include “actions with effects that may be major and which are potentially subject to
2 Federal control.” 40 C.F.R. § 1508.18 (emphasis added). The requirement to prepare an EIS
3 is broad and intended to compel agencies to take seriously the potential environmental
4 consequences of a proposed action.

5 29. Whether an agency action is “significant” enough to require preparation of an
6 EIS requires “considerations of both context and intensity.” 40 C.F.R. § 1508.27. The
7 context of the action includes factors such as “society as a whole (human, national), the
8 affected region, the affected interests, and the locality.” Id. § 1508.27(a). Intensity “refers to
9 the severity of the impact” and requires several factors to be considered, including “[t]he
10 degree to which the effects on the quality of the human environment are likely to be highly
11 controversial”; [t]he degree to which the possible effects on the human environment are
12 highly uncertain or involve unique or unknown risks”; [w]hether the action is related to other
13 actions with individually in- significant but cumulative significant impacts”; and [t]he degree
14 to which the action may adversely affect an endangered or threatened species or its habitat
15 that has been determined to be critical under the Endangered Species Act of 1973.” Id. §
16 1508.27(b).
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20 30. When it is unclear whether agency action will significantly impact the human
21 environment, agencies are required to prepare an Environmental Assessment (“EA”) to
22 determine whether an EIS is required. See 40 C.F.R. § 1501.4(b).
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24 31. An EA must take a “hard look” at the potential consequences of the proposed
25 action and provide enough evidence and analysis for determining whether to prepare an EIS
26 or a “finding of no significant impact.”

27 32. NEPA regulations allow for “tiering” of environmental reviews, when
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1 appropriate. Tiering is the process of incorporating by reference coverage of general matters
2 in broader environmental impact statements, such as national program or policy statements,
3 into subsequent narrower environmental analysis, such as site-specific statements. See 40
4 C.F.R. § 1508.28. Although tiering to a previous EIS may be permissible, the previous
5 document must actually discuss the impacts of the project at issue.
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7 33. Whether in an EA or EIS, an agency must adequately evaluate all potential
8 environmental impacts of the proposed action. See 42 U.S.C. § 4332(2)(C). To meet this
9 obligation, the federal agency must identify and disclose to the public all foreseeable impacts
10 of the proposed action, including direct, indirect, and cumulative impacts. See id. § 4332(2);
11 see also 40 C.F.R. §§ 1508.7-1508.8.
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13 34. Direct impacts are caused by the action and occur at the same time and place.
14 See 40 C.F.R. § 1508.8(a). Indirect impacts include indirect effects on water and other
15 natural systems that are caused by the action and are later in time or farther removed in
16 distance than direct effects. See id. § 1508.8(b). Cumulative impacts must be analyzed in
17 light of other past, current, and reasonably foreseeable future projects, including projects
18 undertaken by other agencies or persons. See id. § 1508.7.
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20 35. In determining the scope of the required NEPA analysis, an agency must
21 consider not only the proposed action, but also three types of related actions: “connected
22 actions,” “similar actions,” and “cumulative actions.” See 40 C.F.R. § 1508.25(a).
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24 36. An EA must take a “hard look” at the potential consequences of its actions and
25 provide enough evidence and analysis for determining whether to prepare an EIS or a finding
26 of no significant impact. If the agency decides the impacts are not significant, it must supply
27 a convincing statement of reasons why.
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1 37. Whether preparing an EIS or EA, accurate scientific analysis is essential to
2 implementing NEPA. See 40 C.F.R. § 1500.1(b). NEPA’s implementing regulations require
3 that the agency “shall identify any methodologies used and shall make explicit reference by
4 footnote to the scientific and other sources relied upon for conclusions,” and shall ensure the
5 scientific accuracy and integrity of environmental analysis. Id. § 1502.24.

6 38. The agency must disclose if information is incomplete or unavailable and
7 explain “the relevance of the incomplete or unavailable information to evaluating reasonably
8 foreseeable significant adverse impacts.” 40 C.F.R. § 1502.22(b)(1). If there is incomplete
9 or unavailable relevant data, the environmental analysis must disclose this fact. Id. §
10 1502.22. The agency must also directly and explicitly respond to dissenting scientific
11 opinion. Id. § 1502.9(b).

12 39. An agency’s EA or EIS must include a cost-benefit analysis of economic,
13 technical and environmental costs and benefits of the particular action. See 40 C.F.R. §
14 1502.23.

15 40. An EA or EIS that relies on misleading economic information or fails to
16 include all relevant costs in its economic analysis violates NEPA, because it cannot fulfill
17 NEPA’s purpose of providing decision-makers and the public a valid foundation on which to
18 judge proposed projects.

19 41. After preparing an EIS, an agency may not simply rest on the original
20 document. The agency must gather and evaluate new information that may alter the results of
21 its original environmental analysis, and continue to take a hard look at the environmental
22 effects of its planned actions. See Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557
23 (9th Cir. 2000).

1 42. NEPA requires an agency to prepare a supplemental NEPA analysis when
2 “[t]he agency makes substantial changes in the proposed action that are relevant to
3 environmental concerns; or...[t]here are significant new circumstances or information
4 relevant to environmental concerns and bearing on the proposed actions or its impacts.” 40
5 C.F.R. § 1502.9(c)(1).
6

7 43. Review of a federal agency action under NEPA is governed by the
8 Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.* Under the APA, courts must
9 “hold unlawful and set aside agency action, findings, and conclusions found to be – arbitrary,
10 capricious, an abuse of discretion, or otherwise not in accordance with law,” or “without
11 observance of procedure required by law.” *Id.* § 706(2)(A), (D). The court shall also
12 “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).
13

14 The Wilderness Act

15 44. Congress adopted the Wilderness Act in 1964 “for the permanent good of the
16 whole people,” in order to “secure for the American people of present and future generations
17 the benefits of an enduring resource of wilderness.” Pub. L. 88-577 (1964); 16 U.S.C. §
18 1131.
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20 45. The Wilderness Act established a National Wilderness Preservation System
21 composed of congressionally designated wilderness areas. *See* 16 U.S.C. § 1131(a). The
22 Wilderness Act defines “wilderness” as “an area where the earth and its community of life
23 are untrammelled by man . . . retaining its primeval character and influence. . . which is
24 protected and managed so as to preserve its natural conditions and which (1) generally
25 appears to have been affected primarily by forces of nature, with the imprint of man’s work
26 substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and
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1 unconfined type of recreation,” and possesses other characteristics. Id. § 1132(c).

2 46. The Wilderness Act directs that federal agencies “shall be responsible for
3 preserving the wilderness character” of lands designated as wilderness, and administer those
4 lands for “such other purposes as it may have been established as also to preserve its
5 wilderness character.” 16 U.S.C. § 1133(c).

6 47. The Wilderness Act addresses “use of Wilderness Areas,” and expressly
7 provides that “there shall be . . . no use of motor vehicles, motorized equipment or
8 motorboats, no landing of aircraft, no other form of mechanical transport” in Wilderness
9 Areas, except as may otherwise be specifically provided by law or “as necessary to meet
10 minimum requirements for the administration of the area for the purpose of this Act.” 16
11 U.S.C. § 1133(c).

12 48. Where the use of aircraft was established in a wilderness area before the
13 wilderness designation, such use “may be permitted to continue subject to such restrictions as
14 the Secretary of Agriculture deems desirable.” 16 U.S.C. § 1133(d)(1).

15 **FACTUAL ALLEGATIONS**

16 1994/1997 Programmatic Environmental Impact Statement for 17 APHIS’s “Animal Damage Control Program,” now Wildlife Services

18 49. On June 18, 1990, APHIS released a draft EIS for its “Animal Damage
19 Control Program,” which considered thirteen program alternatives and evaluated the
20 associated environmental impacts with each alternative. See 55 Fed. Reg. 24,597 (June 18,
21 1990). APHIS accepted public comments through October 1, 1990. See 55 Fed. Reg. 35,700
22 (August 31, 1990).

23 50. On January 14, 1993, APHIS released a supplement to the draft EIS for its
24 Animal Damage Control Program. See 58 Fed. Reg. 8,252 (January 14, 1993). (58 FR
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1 8252, Docket No. 92-190-2). APHIS accepted public comments on this supplement through
2 April 28, 1993. See 58 Fed. Reg. 16,520 (March 29, 1993).

3 51. In April 1994, APHIS issued the Final EIS for its Animal Damage Control
4 Program. This is a programmatic environmental impact statement (“1994 PEIS”). The 1994
5 PEIS addressed the function, methods of operation, and locations of the Animal Damage
6 Control Program and the biological, sociocultural, economic, and physical impacts of
7 reasonable alternatives to the program. See 59 Fed. Reg. 23,683 (May 6, 1994) (advising the
8 public of the availability of the final EIS).
9

10 52. In October 1997, APHIS revised and reissued its 1994 PEIS for its Animal
11 Damage Control program, to correct certain errors (hereinafter the “1994/1997 PEIS”).
12

13 53. The 1994/1997 PEIS did not contain new environmental analysis. APHIS did
14 not accept public comments on the 1994/1997 “revised” PEIS.

15 54. The 1994/1997 PEIS is APHIS’s most recent programmatic analysis of how
16 its taxpayer-funded, nationwide “Animal Damage Control Program” (now known as its
17 “Wildlife Services” program) impacts human health and the environment.
18

19 55. In 1997, APHIS’s Animal Damage Control Program was re-named “Wildlife
20 Services.”

21 56. In February 2009, Guardians published “War on Wildlife,” a Report to
22 President Obama and Congress, which discusses the inadequacies of the 1994/1997 PEIS.
23 Guardians sent this report to Wildlife Services on or about September 30, 2009, with a letter
24 requesting that the agency conduct a new environmental analysis under NEPA for its
25 operations in the State of Nevada.
26

27 57. On or about February 17, 2009, Guardians sent a letter to Wildlife Services
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1 requesting that, pursuant to NEPA, Wildlife Services must immediately supplement its
2 1994/1997 PEIS. This letter explained the reasons that supplementation was warranted,
3 necessary, and required by law.

4 58. On or about February 23, 2009, Wildlife Services responded to Guardians'
5 request for supplementation. In its letter, Wildlife Services stated that agency officials would
6 study and consider Guardians' comments during ongoing evaluation of the agency's
7 environmental management program. However, Wildlife Services did not agree to
8 supplement or revise its 1994/1997 PEIS.
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10 59. As of the date of filing this Complaint, Wildlife Services has not
11 supplemented and/or revised its 1994/1997 PEIS.
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13 60. The data, science, and analysis in the 1994/1997 PEIS are outdated.

14 61. The 1994/1997 PEIS used data primarily from fiscal year 1988 to evaluate
15 how the Wildlife Services program would affect species, people, and the environment.
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17 62. Wildlife Services relied upon references dated 1992 and earlier for its
18 1994/1997 PEIS, including those sources for which Wildlife Services based its chemical
19 methods risk assessment. The 1994/1997 PEIS includes references to scientific papers as old
20 as 1936.

21 63. The 1994/1997 PEIS analyzed the biological and environmental impacts of its
22 Animal Damage Control Program on only 17 target species, including badgers, beavers,
23 black bears, bobcats, coyotes, gray foxes, mountain lions, nutria, opossums, porcupines,
24 black-tailed and Gunnison's prairie dogs, raccoons, red foxes, striped skunks, the "blackbird
25 group," cattle egrets, and starlings. Wildlife Services based its analysis on total harvest and
26 kill data for fiscal year 1988.
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1 64. Since 1988, Wildlife Services has harmed far more species, both target and
2 non-target, than the 17 species analyzed in the 1994/1997 PEIS. In 2010, Wildlife Services
3 killed, according to the agency's count, 5,008,928 animals, representing a total of
4 approximately 300 species.

5 65. The 1994/1997 PEIS lacked adequate analysis of how its Animal Damage
6 Control Program might harm non-target species, including domestic pets and endangered
7 wildlife. New information and data are available regarding the harm to non-target species
8 caused by Wildlife Services' program, including harm and death to domestic pets and
9 endangered wildlife.
10

11 66. Wildlife Services' cost-benefit analysis in its 1994/1997 PEIS is at least
12 twenty-two years old. The loss data and livestock value data presented in the tables in
13 Chapter 4 of the 1994/1997 PEIS are from fiscal year 1990. The data presented in the
14 1994/1997 PEIS on expenditures and funding sources is from fiscal year 1988.
15

16 67. In fiscal year 1998, Wildlife Services received approximately \$26,454,831
17 from federal and "cooperator" sources for its "Animal Damage Control" expenditures. In
18 contrast, in fiscal year 2010, Wildlife Services received \$126,495,487 from federal and
19 cooperator sources for its expenditures, or a 378% increase in funding since the 1994/1997
20 PEIS.
21

22 68. Guardians' February 17, 2009 request to Wildlife Services that it supplement
23 and/or revise its 1994/1997 PEIS included 66 pages of discussion and new information
24 bearing on the biological, ecological, and economic facets of Wildlife Services' activities,
25 which must be considered by the Agency. Guardians' letter included new scientific research,
26 studies, and other information relevant to environmental concerns and bearing on the impact
27
28

1 of Wildlife Services' program, which were provided to the Agency.

2 69. Scientific understanding regarding the ecological role of wolves, mountain
3 lions, coyotes, and other carnivores has changed since the 1994/1997 PEIS. New information
4 and research on carnivores and the effects of their removal have been collected, compiled,
5 and analyzed since the 1994/1997 PEIS. This new information and data must be considered
6 in a new or supplemental PEIS.
7

8 70. The evaluation and risk assessment in the 1994/1997 PEIS for toxicants
9 (chemical methods) is based upon chemicals used by the Agency from 1988 to 1991. In the
10 past twenty years, new information and research regarding these toxicants has been
11 developed. Assumptions and facts used to develop the risk assessment for toxicants in the
12 1994/1997 PEIS have also changed. This new information and data must be considered in a
13 new or supplemental PEIS.
14

15 71. Since the 1994/1997 PEIS, Wildlife Services' employees have repeatedly
16 logged incidents of unsafe handling, use, and storage of toxicants. Wildlife Services' use of
17 these toxics, including M-44s and DRC-1339⁴, has resulted in injury to Wildlife Services'
18 employees and the public, and resulted in injury and death to domestic animals and federally
19 protected species. This new information and data must be considered in a new or
20 supplemental PEIS.
21

22 72. Since the 1994/1997 PEIS, there have been many fatal and injurious accidents
23

24 ⁴ DRC-1339 is a deadly avian toxin frequently used by Wildlife Services. For
25 example, in 2007, Wildlife Services killed 2,145,074 birds with this biological agent. DRC-
26 1339 is slow-acting and highly toxic to target species." Death takes one to three days after
27 ingestion. DRC-1339 kills target species such as blackbirds, but also poisons other species
28 unintentionally through two processes: 1) directly: grain-eating birds consume the toxicant
and die; and 2) indirectly: avian predators or scavengers eat dead or dying birds that have
been poisoned by DRC-1339.

1 resulting from aerial gunning (shooting animals from planes or helicopters) conducted
2 pursuant to Wildlife Services' national program. This new information and data must be
3 analyzed in a new or supplemental PEIS.

4 73. Since the development of the 1994/1997 PEIS, the Office of Inspector General
5 ("OIG") has conducted several audits regarding Wildlife Services' use of toxicants. The OIG
6 audits are significant new information, which raise issues concerning bioterrorism, poisoning
7 of non-target species, and the safety of the human environment, which the 1994/1997 PEIS
8 did not contemplate. This new information and data must be analyzed in a new or
9 supplemental PEIS.
10

11 74. Based upon new information relevant to the environmental, economic, and
12 public safety concerns and consequences of its continuing Animal Damage Program, Wildlife
13 Services must supplement its 1994/1997 PEIS with new environmental analysis and
14 information. In the alternative, Wildlife Services must do a new environmental analysis of its
15 national program and activities that considers this new information. Such information
16 includes, but is not limited to, new information on: the critical ecological role of carnivores;
17 current statistics on livestock predation, costs and benefits of wildlife killing operations, and
18 the proven ineffectiveness of large scale carnivore control; the proven ineffectiveness and
19 growing unacceptability of trapping; the dangers of lead poisoning and other toxicants; the
20 detrimental effects of aerial gunning; anthropogenic harms to threatened, endangered, rare, or
21 sensitive species; the national security hazards presented by the Agency's use and misuse of
22 toxicants; incidence of animal-vehicle collisions and disease; human overpopulation and the
23 extinction crisis; climate change; non-lethal alternatives; and changing social attitudes
24 towards wildlife and ecological degradation.
25
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1 75. Actions currently undertaken by Wildlife Services in furtherance of its
2 national program exceed the scope of the Animal Damage Control Program analyzed in the
3 1994/1997 PEIS.

4 76. Wildlife Services kills far more species and numbers of animals than
5 considered in its 1994/1997 PEIS, the costs and benefits of its program have changed, the
6 scope of its program has changed, and the need for its program has changed.

7 77. Wildlife Services failed to gather and evaluate new information that may alter
8 the results of the original environmental analysis in the 1994/1997 PEIS, in violation of
9 NEPA.

10 78. Wildlife Services failed to continue to take a hard look at the environmental
11 effects of its national program, in violation of NEPA.

12 79. Wildlife Services must prepare a new or supplemental PEIS because new
13 information and changes to the Wildlife Services program will affect the quality of the
14 human environment in a significant manner and to a significant extent not already
15 considered. Wildlife Services' failure to prepare a new or supplemental PEIS for its national
16 program in light of these changes and new information is arbitrary, capricious, and not in
17 accordance with NEPA.

18 Environmental Assessment, Decision Notice and Finding of No Significant Impact
19 for Wildlife Services' "Predator Damage Management Program" in Nevada

20 80. Wildlife Services supervises the Nevada Division of Resource Protection,
21 which is a division of the Nevada Department of Agriculture. The two entities form the
22 Nevada Wildlife Services Program ("NWSP").

23 81. On or about September 30, 2009, Guardians sent a letter to Wildlife Services,
24 requesting that the agency conduct a new environmental analysis under NEPA for its
25
26
27
28

1 operations in the State of Nevada. Guardians' September 30, 2009 letter incorporated by
2 reference and included Guardians' February 17, 2009 letter regarding supplementation of the
3 1994/1997 PEIS. This September 30, 2009 letter also incorporated by reference and included
4 Guardians' February 2009 "War on Wildlife" report.

5 82. Guardians' September 30, 2009 letter states: Wildlife Services "continues to
6 rely on the 1994/1997 PEIS, which is both too narrow in scope and woefully outdated to
7 support its programs. Because NEPA and its implementing regulations require federal
8 agencies to develop adequate environmental analyses and to supplement those analyses in
9 either of these circumstances, Guardians asserts that [Wildlife Services] must immediately
10 revamp its Animal Damage Control PEIS and all Nevada analysis, and cease all activities
11 carried under this PEIS unless and until it complies with federal law."

12 83. On or about December 17, 2009, Guardians sent a follow-up letter to Nevada
13 Wildlife Services, which supplemented the September 30, 2009 letter with new information
14 concerning sage-grouse and predation.

15 84. In November of 2010 Wildlife Services issued a draft EA for Predator
16 Damage Management ("PDM") in Nevada.⁵

17 85. On or about January 18, 2011, during the public comment period, Guardians
18 submitted comments on the draft EA.

19 86. Guardians' January 18, 2011 comment letter incorporated by reference and
20 included Guardians' September 30, 2009 letter, explaining why the agency must conduct new

21 ⁵ Although Wildlife Services refers to its program in Nevada as a "Predator Damage
22 Management" program, Wildlife Services kills many species of animals in Nevada, including
23 feral cats, feral dogs, coyotes, common ravens, mountain lions, striped skunks, spotted
24 skunks, bobcats, raccoons, badgers, black bears, kit fox, gray fox, red fox, ringtails, weasels,
25 and minks.

1 environmental analysis for its operations in the State of Nevada. Guardians' January 18,
2 2011 comment letter incorporated by reference and included Guardians' February 17, 2009
3 letter regarding supplementation of the 1994/1997 PEIS. Guardians' comment letter also
4 incorporated by reference and included Guardians' February 2009 "War on Wildlife" report.

5 87. On June 22, 2011, Wildlife Services issued its Final EA for PDM in Nevada
6 ("Nevada EA").
7

8 88. The Nevada EA evaluated five alternatives. According to Wildlife Services,
9 Alternative 5, the proposed action, is similar to the current Nevada program with a greater
10 emphasis on sage grouse and big game protection, and less emphasis on livestock protection.
11

12 89. Wildlife Services issued a Finding of No Significant Impact ("FONSI") and
13 Decision Notice for PDM in Nevada. Jeffrey Green, Regional Director for the Western
14 Division of Wildlife Services, signed the FONSI, which is dated June 22, 2011.

15 90. The Final EA, FONSI, and Decision Notice constitute final agency action for
16 purposes of the APA.
17

18 91. In the FONSI, Wildlife Services determined, based on the analysis in the EA,
19 that there will not be a significant impact, individually or cumulatively, on the quality of the
20 human environment as a result of the proposed action, and that an EIS need not be prepared.

21 92. Wildlife Services chose Alternative 5, the proposed action, to implement a
22 modified version of its existing Nevada program. The Decision Notice authorizes
23 implementation of Alternative 5 for Wildlife Services' program in Nevada.
24

25 93. According to Wildlife Services, the purpose of its PDM program in Nevada is
26 to minimize loss or the risk of loss to livestock, crops, property, natural resources, and game
27 species from predation by responding to all public requests with technical assistance or direct
28

1 control. Consequently, the purpose of Wildlife Services' program in Nevada – removing
2 native carnivores and other wildlife from the environment to change the environment for
3 other species, such as sheep and large game – is to significantly affect the environment.

4 94. However, Wildlife Services did not prepare an EIS regarding the
5 implementation of its program in Nevada.

6 95. As of September 30, 2009, NWSP had agreements for conducting its activities
7 on over 2.2 million acres of private lands, 19.6 million acres of BLM lands, .6 million acres
8 of USFS lands, and .1 million acres of other public lands.

9 96. The Nevada EA incorporated by reference and relied upon environmental
10 analysis from the 1994/1997 PEIS.

11 97. The Nevada EA tiers to the 1994/1997 PEIS.

12 98. The Nevada EA is not sufficient to cover the scope of Wildlife Services' work
13 in Nevada. Wildlife Services failed to consider how connected actions, similar actions, and
14 cumulative actions by its own agency, the State, and others may impact the environment.
15

16 99. In its Nevada EA, Wildlife Service failed to take a hard look at the direct and
17 indirect effects of killing carnivores, including the social ecology of carnivores, the social
18 chaos caused by their removal, and the effects of carnivore removal on ecosystems.
19

20 100. The presence of carnivores increases biological diversity and improves the
21 functionality of the ecosystems in which they live. Carnivores modulate prey populations
22 and make them more vigorous. Medium and large carnivores contribute to biological
23 diversity (species richness) and ecosystem function through trophic cascades from predation
24 events.
25

26 101. Wildlife Services failed to consider the direct and indirect effects of killing
27
28

1 coyotes. In the short term, killing coyotes results in significant environmental impacts,
2 including causing coyotes to compensate for their losses by changing breeding and
3 immigration strategies, meso-predator release, and the decline in biological diversity when
4 coyotes are removed from their ecosystems.

5 102. However, killing coyotes does not work as a long-term strategy to benefit
6 domestic livestock. Wildlife Services' lethal coyote control strategies only work for a limited
7 period of time before coyotes have to be killed en masse again, because of repopulation and
8 new migrants moving into unoccupied territory. Wildlife Services failed to take a hard look
9 at whether its program is effective regarding coyotes.
10

11 103. Wildlife Services failed to consider the direct and indirect effects of killing
12 mountain lions. The loss of mountain lions may lead to an increase in mule deer populations
13 that over-graze riparian habitat, leading to the erosion of soil banks and a reduction in both
14 aquatic and terrestrial species abundance. Killing mountain lions reduces numbers of
15 cottonwoods, rushes, cattails, wildflowers, amphibians, lizards, and butterflies. Mountain
16 lions' presence in riparian/wetland ecosystems results in deeper and narrower stream
17 channels, an ecologically healthy condition.
18

19 104. Hunting and carnivore-removal programs may destabilize a mountain lion
20 population, reduce local populations' ability to reproduce, but encourage younger migrants to
21 fill the void, which may cause increased conflicts with humans and livestock.
22

23 105. In the Nevada EA, Wildlife Services erroneously and arbitrarily concludes
24 that its PDM program in Nevada will not have a significant impact on biodiversity.
25

26 106. Wildlife Services failed take a "hard look" at the impacts of its PDM program
27 in Nevada by failing to utilize public comments and the best available scientific information.
28

1 107. The Nevada EA lacks scientific integrity. Wildlife Services relies upon
2 outdated information in its EA and fails to discuss contradictory and more recent evidence on
3 mountain lions, coyotes, and sage grouse.

4 108. Wildlife Services' misrepresentation of information, failure to disclose
5 scientific uncertainty and new scientific authority, and use of outdated science compromises
6 the accuracy and integrity of the Nevada EA and violates NEPA's requirement to "insure the
7 . . . scientific integrity" of environmental analyses. See 40 C.F.R. § 1502.24.
8

9 109. Wildlife Services failed to address valid scientific evidence that contradicts its
10 analysis, decision, and FONSI.

11 110. In the Nevada EA, Wildlife Services failed to discuss whether its PDM
12 program is an effective or economical solution to livestock losses and the protection of game
13 species, and fails to consider new scientific and economic information on these issues.
14

15 111. In the Nevada EA, Wildlife Services failed to discuss the effectiveness of
16 killing coyotes to protect livestock and game. Wildlife Services failed to analyze whether
17 killing coyotes is effective and how long those effects last.
18

19 112. In the Nevada EA, Wildlife Services failed to discuss the effectiveness of
20 killing mountain lions to protect bighorn sheep. Wildlife Services failed to discuss or inform
21 the public of recent studies recommending only limited lion removals to benefit bighorn
22 sheep populations.
23

24 113. In the Nevada EA, Wildlife Services failed to disclose scientific uncertainty
25 and new scientific authority regarding the effects of its activities on sage grouse.

26 114. Coyotes indirectly benefit sage grouse populations because: (1) coyotes
27 control the number of mesopredators (red foxes, badgers, and ravens) that are more likely to
28

1 prey on sage-grouse eggs and their young and (2) a decrease in coyotes may result in the
2 increase of jackrabbits, which compete directly with sage grouse for food and cover, and may
3 lead to an increase in golden eagle populations, the key predator for sage grouse adults. In
4 the Nevada EA, Wildlife Services failed to analyze or discuss this science.

5
6 115. In its Nevada EA, Wildlife Service failed to disclose the scientific uncertainty
7 regarding whether its Nevada program will effectively benefit sage grouse. Wildlife Services
8 failed to disclose or discuss a recent scientific study by C. A. Hagen showing that nest
9 success and adult survival rates are generally high for sage grouse. Therefore, implementing
10 predator control to protect sage grouse is usually unnecessary, except in poor quality habitats.
11 Guardians provided this study to Wildlife Services with a letter outlining its findings on or
12 about December 17, 2009.
13

14 116. The Nevada EA failed to address valid scientific evidence that contradicts
15 Wildlife Service's carnivore population estimates, human complaints, and the need for its
16 program in Nevada, and does not sufficiently address the impacts of killing or removing
17 carnivores on carnivore populations, prey populations, or their ecosystems.
18

19 117. In its Nevada EA, Wildlife Services failed to consider the economic impacts
20 of its program in Nevada. The EA did not contain a credible cost-benefit analysis.

21 118. A credible cost-benefit analysis must consider the ecosystem services
22 conferred by native carnivores, the increase in biological diversity created by carnivores in
23 their ecosystems, and the economic boon that wildlife watching brings to the economy. A
24 credible cost-benefit analysis must consider the cost of Wildlife Services' program in Nevada
25 and the use of taxpayers dollars to kill carnivores compared to the costs of the livestock lost,
26 when most livestock producers lose few sheep or cattle to carnivores. A credible cost-benefit
27
28

1 analysis must include a national accounting of Wildlife Services' program, including all costs
2 of aerial gunning.

3 119. A credible economic analysis would show that the number of livestock lost to
4 carnivores is small when compared to unintended losses due to illness, disease, birthing
5 problems, and weather; that economic losses are rarely equivalent among producers and are
6 highly variable; that carnivore-eradication programs do not result in fewer livestock losses or
7 greater numbers of ungulates; and that the usage of husbandry practices can decrease
8 carnivore-caused livestock mortality.
9

10 120. The Nevada EA is inadequate because it relies upon and/or tiers to the
11 outdated 1994/1997 PEIS, without considering the significant new circumstances and
12 information that are relevant to environmental concerns and bearing on the impacts of
13 Wildlife Services' activities, since the 1994/1997 PEIS, in violation of NEPA.
14

15 121. Wildlife Services failed to analyze and take a hard look at the direct, indirect,
16 and site-specific environmental impacts of leghold traps, padded-jaw leghold traps, cage
17 traps, aerial hunting, shooting, calling and shooting, neck snares, tracking dogs, denning (gas
18 cartridges containing the toxicants sodium and potassium nitrates that are ignited or kill pups
19 in the den using mechanical means) in the Nevada EA. Instead, Wildlife Services relied on
20 its outdated and general analysis in the 1994/1997 PEIS.
21

22 122. In its Nevada EA, Wildlife Service failed to analyze and take a hard look at
23 the environmental impacts of its use of toxicants, including the direct, indirect, and site-
24 specific environmental impacts of M-44s (sodium cyanide) and DRC-1339 on target and non-
25 target species.
26

27 123. M-44s and DRC-1339 may not be used by private individuals or their agents.
28

1 DRC-1339 is a special restricted-use pesticide and can only be used under direct supervision
2 by Wildlife Services employees.

3 124. In the Nevada EA, Wildlife Services failed to disclose how it actually
4 conducts its work, the scope of its work, the plan for its work in future foreseeable actions
5 and connected actions, and for whom it conducts this work in Nevada, in violation of NEPA.
6 Instead, Wildlife Services uses an arbitrary and vague “decision-model process” and fails to
7 explain what its work will entail.
8

9 125. In its Nevada EA, Wildlife Services failed to adequately consider, analyze,
10 and disclose the likely significant impacts of its Nevada program, in violation of NEPA.
11

12 126. In its Nevada EA, Wildlife Services failed to conduct adequate site-specific
13 analysis, and therefore failed to take a hard look at the environmental consequences of its
14 program in Nevada, in violation of NEPA.

15 127. Wildlife Services failed to take a hard look at Alternative 2, the no-action
16 alternative, in violation of NEPA. Instead, Wildlife Services relies upon its 1994/1997 PEIS,
17 which is too outdated and general in scope to replace the proper and legally required
18 environmental analysis for Wildlife Services’ Nevada program.
19

20 128. In fiscal year 2010, funding for Wildlife Services’ activities in Nevada was
21 \$2,806,587, including \$1,530,024 in federal funds.
22

23 129. In the Nevada EA, Wildlife Services failed to take a hard look at the costs and
24 benefits of Alternative 2, in violation of NEPA.

25 130. In the Decision Notice and FONSI, Wildlife Services arbitrarily concludes
26 that Alternative 2 would “likely result in the greatest overall negative environmental impact
27 since if professional and accountable assistance is not available to resolve livestock or other
28

1 resource conflicts, the effects of private actions to resolve damages is likely to have increased
2 negative consequences.” However, this conclusion is inconsistent with the extent of Wildlife
3 Services’ activities in Nevada and the ability of private actors to replace those activities.

4 131. Wildlife Services failed to take a hard look at Alternative 3, the non-lethal
5 alternative, and predetermined continuance of its lethal control program, in violation of
6 NEPA.
7

8 132. The most expedient, economical, and long-term solution to the small number
9 of livestock depredation problems in Nevada is to employ non-lethal methods such as guard
10 animals and night sheds.
11

12 133. However, in the Nevada EA, Wildlife Services dismisses the non-lethal
13 alternative as not being viable by asserting that non-lethal methods have been or are being
14 used, without site-specific support for this assertion.
15

16 134. In the Nevada EA, Wildlife Services failed to take a hard look at the costs and
17 benefits of Alternative 3, in violation of NEPA.
18

19 135. Wildlife Services failed to take a hard look at Alternative 4, the nonlethal
20 before lethal alternative, in violation of NEPA. Instead, Wildlife Services relies upon its
21 1994/1997 PEIS, which is too outdated and general in scope to replace the proper and legally
22 required environmental analysis for Wildlife Services’ Nevada program.
23

24 136. In the Nevada EA, Wildlife Services failed to take a hard look at the costs and
25 benefits of Alternative 4, in violation of NEPA.
26

27 137. Wildlife Services arbitrarily and wrongly determined in the FONSI that there
28 will not be a significant impact, individually or cumulatively, on the quality of the human
environment as a result of the proposed action, and that an EIS need not be prepared.

1 138. Wildlife Services must prepare an EIS because the effects of its PDM program
2 in Nevada on target species, non-target species, and their ecosystems may be significant.

3 139. NEPA requires that Wildlife Services prepare a full EIS for its program in
4 Nevada. Without this detailed assessment, it is impossible for Wildlife Services, or the
5 public, to adequately evaluate the likely impacts of Wildlife Services' program and wildlife-
6 killing activities in Nevada.
7

8 140. Wildlife Services' PDM activities in Wilderness Areas would continue under
9 Alternative 5, the Agency's selected alternative to implement its program in Nevada. PDM
10 may increase in Wilderness Areas under the chosen alternative to protect some big game
11 species.
12

13 141. By selecting Alternative 5 in its Decision Notice for PDM in Nevada, Wildlife
14 Services authorized the killing of carnivores in Wilderness Areas and Wilderness Study
15 Areas in Nevada, as set forth in Paragraphs 143 through 146.
16

17 142. As authorized by Wildlife Services in its Decision Notice, PDM may occur on
18 any Wilderness or Wilderness Study Area in Nevada.

19 143. Under Wildlife Services' new program in Nevada, PDM methods in
20 Wilderness Areas under the jurisdiction of the Bureau of Land Management ("BLM"), are
21 authorized to include: nonlethal, immobilization, frightening devices, lethal, leghold traps,
22 cage traps, aerial hunting, shooting, dogs, foot snares, and neck snares.
23

24 144. Under Wildlife Services' new program in Nevada, PDM methods in
25 Wilderness Study Areas under the jurisdiction of the BLM are authorized to include:
26 nonlethal, immobilization, frightening devices, lethal, leghold traps, cage traps, aerial
27 hunting, shooting, dogs, foot snares, and neck snares.
28

1 145. Under Wildlife Services' new program in Nevada, PDM methods in
2 Wilderness Areas under the jurisdiction of the United States Forest Service are authorized to
3 include: nonlethal, immobilization, frightening devices, lethal, leghold traps, cage traps,
4 aerial hunting, shooting, dogs, foot snares, neck snares, DRC-1339, and M-44s.

5 146. Under Wildlife Services' new program in Nevada, Wildlife Services will
6 conduct PDM in Wilderness Areas in Nevada to benefit bighorn sheep species, mule deer,
7 pronghorn antelope, elk and sage grouse.
8

9 147. Under Wildlife Services' new program in Nevada, Wildlife Services will
10 conduct aerial hunting in Wilderness Areas in Nevada to kill carnivores for the benefit of
11 bighorn sheep species, mule deer, pronghorn antelope, elk, and sage grouse.
12

13 148. Wildlife Services failed to evaluate, in any public NEPA document, whether
14 using lethal and nonlethal methods, immobilization, frightening devices, leghold traps, cage
15 traps, aerial hunting, shooting, dogs, foot snares, neck snares, DRC-1339, and M-44s is
16 necessary for administration of any Wilderness Area in Nevada, or would impair such
17 Wilderness Areas.
18

19 149. Wildlife Services failed to evaluate, in any public NEPA document, whether
20 using lethal and nonlethal methods, immobilization, frightening, leghold traps, cage traps,
21 aerial hunting, shooting, dogs, foot snares, neck snares, DRC-1339, and M-44s in Wilderness
22 Study Areas in Nevada would impair suitability of those study areas for preservation as
23 Wilderness Areas.
24

25 150. The Nevada EA arbitrarily and erroneously concluded that NWSP and
26 Wildlife Services continue to have "no impact" on special management areas, including
27 Wilderness Areas and Wilderness Study Areas.
28

1 151. Wildlife Services' PDM program is not necessary for administration of any
2 Wilderness Area in Nevada and is harmful to the wilderness character of these areas.

3 152. Wildlife Services' decision to use aircraft to fly, shoot from, and land in
4 Wilderness Areas in Nevada violates the Wilderness Act.

5 153. Wildlife Services' decision to use lethal and nonlethal methods,
6 immobilization, frightening devices, leghold traps, cage traps, aerial hunting, shooting, dogs,
7 foot snares, neck snares, DRC-1339, and M-44s in Wilderness Areas in Nevada violates the
8 Wilderness Act, where these methods use motor vehicles, motorized equipment, aircraft, the
9 landing of aircraft, or other forms of mechanical transport.
10

11 154. Wildlife Services' decision to use lethal and nonlethal methods,
12 immobilization, frightening devices, leghold traps, cage traps, aerial hunting, shooting, dogs,
13 foot snares, neck snares, DRC-1339, and M-44s in Wilderness Areas in Nevada benefit
14 bighorn sheep species, mule deer, pronghorn antelope, elk and/or sage grouse in Wilderness
15 Areas in Nevada violates the Wilderness Act.
16

17 **FIRST CLAIM FOR RELIEF**

18 *Violations of NEPA Within the Meaning of the APA, 5 U.S.C. § 706(2)(A), (D).*

19 *Failure to Supplement the 1994/1997 PEIS*

20 155. Guardians incorporates the allegations in all preceding paragraphs of this
21 Complaint as if set forth in full herein.

22 156. Wildlife Services must supplement its 1994/1997 PEIS or prepare a new EIS
23 for its national PDM program because the scope of its work has changed substantially since
24 the 1994/1997 PEIS.

25 157. Wildlife Services must supplement its 1994/1997 PEIS or prepare a new EIS
26 for its national PDM program because there are significant new circumstances or information
27
28

1 relevant to environmental concerns and bearing on the impacts of its continued PDM
2 program.

3 158. Wildlife Services violated and continues to violate NEPA by failing to gather
4 and evaluate new information that may alter the results of its original environmental analysis
5 in the 1994/1997 PEIS, in violation of NEPA.

6 159. Wildlife Services violated and continues to violate NEPA by failing to
7 continue to take a hard look at the environmental effects of its national PDM program.

8 160. Wildlife Services violated and continues to violate NEPA by failing to
9 supplement its 1994/1997 PEIS or prepare a new EIS for its national PDM program.

10 161. Wildlife Services violated and continues to violate NEPA by continuing to
11 rely on its 1994/1997 PEIS for its PDM activities, in Nevada and nationwide.

12 162. Wildlife Services violated and continues to violate NEPA by tiering to its
13 1994/1997 PEIS in its environmental analyses, in Nevada and nationwide.

14 163. Wildlife Services' actions in failing to comply with NEPA and its
15 implementing regulations as set forth above are arbitrary, capricious, an abuse of discretion,
16 not in accordance with law, or without observance of procedures required by law, within the
17 meaning of the APA, 5 U.S.C. § 706(2)(A), (D).

18
19
20
21 **SECOND ALTERNATIVE CLAIM FOR RELIEF**

22 *Violations of NEPA Within the Meaning of the APA, 5 U.S.C. § 706(1).*

23 *Failure to Supplement the 1994/1997 PEIS*

24 164. Guardians incorporates the allegations in all preceding paragraphs of this
25 Complaint as if set forth in full herein.

26 165. Wildlife Services must supplement its 1994/1997 PEIS or prepare a new EIS
27 for its national PDM program because the scope of its work has changed substantially since
28

1 the 1994/1997 PEIS.

2 166. Wildlife Services must supplement its 1994/1997 PEIS or prepare a new EIS
3 for its national PDM program because there are significant new circumstances or information
4 relevant to environmental concerns and bearing on its continued PDM program.

5 167. As of the date of filing this Complaint, Wildlife Services has not
6 supplemented or revised its 1994/1997 PEIS.

7 168. Wildlife Services violated and continues to violate NEPA by failing to
8 supplement its 1994/1997 PEIS or prepare a new EIS for its national PDM program.

9 169. In the alternative to Guardians' First Claim for Relief, Wildlife Services'
10 failure to prepare a new or supplemental EIS for its national program is agency action
11 unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).
12
13

14 **THIRD CLAIM FOR RELIEF**

15 *Violations of NEPA Within the Meaning of the APA*

16 *Failure to Adequately Disclose and Analyze Environmental Impacts in the Nevada EA*

17 170. Guardians incorporates the allegations in all preceding paragraphs of this
18 Complaint as if set forth in full herein.

19 171. Wildlife Services violated NEPA by failing to take a hard look and by failing
20 to adequately consider, analyze, and disclose the likely significant impacts of its Nevada
21 PDM program, in violation of NEPA.

22 172. Wildlife Services violated NEPA by failing to consider the economic impacts
23 of its PDM program with a credible cost-benefit analysis.

24 173. The Nevada EA lacks scientific integrity. Wildlife Services violated NEPA
25 by misrepresenting information, by failing to disclose scientific uncertainty and new
26 scientific authority, and by relying upon outdated science regarding the potential impacts of
27
28

1 its PDM program in the Nevada EA.

2 174. Wildlife Services violated NEPA by failing to independently and adequately
3 analyze the direct, indirect, cumulative, and site-specific effects of the removal of carnivores,
4 including coyotes and mountain lions, on carnivore populations, prey populations, non-target
5 species, and their ecosystems.

6 175. Wildlife Services violated NEPA by failing to analyze the direct, indirect,
7 cumulative, and site-specific environmental impacts of leghold traps, padded-jaw leghold
8 traps, cage traps, aerial hunting, shooting, calling and shooting, neck snares, and denning, M-
9 44s, and DRC-1339 in the Nevada EA.

10 176. The EA is inadequate and violates NEPA because it relies upon and/or tiers to
11 the outdated and insufficient 1994/1997 PEIS, despite substantial changes to its program and
12 significant new circumstances or information that are relevant to environmental concerns and
13 bearing on the impacts of Wildlife Services' activities in Nevada.

14 177. Wildlife Services violated NEPA by failing to adequately study and assess the
15 environmental impacts of its Nevada program, by failing to analyze the effectiveness of the
16 program, and by failing to consider changed circumstances and new information, since the
17 1994/1997 PEIS.

18 178. Wildlife Services violated NEPA by failing to take a hard look at Alternatives
19 2, 3, and 4, and predetermining the continuance of its lethal control program.

20 179. Wildlife Services violated NEPA by failing to take a hard look at the costs and
21 benefits of Alternatives 2, 3, and 4 for its Nevada program, in violation of NEPA.

22 180. Wildlife Services' actions in failing to comply with NEPA and its
23 implementing regulations as set forth above are arbitrary, capricious, an abuse of discretion,
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1 not in accordance with law, or without observance of procedures required by law, within the
2 meaning of the APA, 5 U.S.C. § 706(2)(A), (D).

3 **FOURTH CLAIM FOR RELIEF**

4 *Violations of NEPA Within the Meaning of the APA*
5 *Failure to Prepare EIS for PDM Program in Nevada*

6 181. Guardians incorporates the allegations in all preceding paragraphs of this
7 Complaint as if set forth in full herein.

8 182. Wildlife Services violated NEPA by preparing only an Environmental
9 Assessment for its Nevada PDM program and by issuing a “Finding of No Significant
10 Impact,” for that program, because the Nevada PDM program may significantly affect the
11 environment.

12 183. Wildlife Services violated NEPA by failing to prepare a full EIS for the
13 Nevada PDM program, because the Nevada PDM program may significantly affect the
14 environment.

15 184. Wildlife Services’ actions in failing to comply with NEPA and its
16 implementing regulations as set forth above are arbitrary, capricious, an abuse of discretion,
17 not in accordance with law, or without observance of procedures required by law, within the
18 meaning of the APA, 5 U.S.C. § 706(2)(A), (D).

19 **FIFTH CLAIM FOR RELIEF**

20 *Violations of the Wilderness Act*

21 185. Guardians incorporates the allegations in all preceding paragraphs of this
22 Complaint as if set forth in full herein.

23 186. Wildlife Services’ decision to use lethal and nonlethal methods,
24 immobilization, frightening, leghold traps, cage traps, aerial hunting, shooting, dogs, foot
25 snares, neck snares, DRC-1339, and M-44s in Wilderness Areas in Nevada violates the
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1 Wilderness Act, where these methods use motor vehicles, motorized equipment, the landing
2 of aircraft, or other forms of mechanical transport. 16 U.S.C. § 1133(c).

3 187. Wildlife Services' decision to use aerial gunning and to land aircraft in
4 Wilderness Areas violates the Wilderness Act. 16 U.S.C. § 1133(c).

5 188. Wildlife Services' actions in failing to comply with the Wilderness Act as set
6 forth above are arbitrary, capricious, an abuse of discretion, not in accordance with law, or
7 without observance of procedures required by law, within the meaning of the APA, 5 U.S.C.
8 § 706(2)(A), (D).
9

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff WildEarth Guardians requests that this Court enter judgment
12 providing the following relief:
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14 A. A declaration that Wildlife Services violated and continues to violate NEPA
15 by failing to supplement its 1994/1997 PEIS and by failing to conduct new environmental
16 analysis for its national program;
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18 B. An order vacating Wildlife Services' 1994/1997 PEIS, any decisions
19 thereunder, and any decisions that rely upon or tier to Wildlife Services' 1994/1997 PEIS;

20 C. An order enjoining Wildlife Services from taking any further action to
21 implement its PDM program anywhere in the United States unless and until defendants have
22 complied with NEPA by supplementing its 1994/1997 PEIS, or by issuing a new PEIS;
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24 D. A declaration that Wildlife Services' Nevada EA and FONSI violate NEPA
25 and that Wildlife Services must prepare an EIS for Wildlife Services' PDM activities in
26 Nevada;
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1 E. A declaration that Wildlife Services' PDM activities in Wilderness Areas in
2 Nevada violate the Wilderness Act, where those activities use motor vehicles, motorized
3 equipment, the landing of aircraft, or other forms of mechanical transport;

4 F. An order enjoining Wildlife Services from taking any further action to
5 implement its PDM plan in Nevada unless and until Wildlife Services has complied with
6 NEPA and the Wilderness Act;

7 G. An order retaining jurisdiction over this matter until such time as Wildlife
8 Services complies with NEPA and the Wilderness Act;

9 H. An order awarding Guardians its costs of litigation, including reasonable
10 attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
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12 J. Such other and further relief as the Court deems just and proper.
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15 Respectfully submitted this 30th day of April, 2012,
16

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*Application for Pro Hac Vice to be filed
(will comply with LR IA 10-2 within 45 days)*

Attorneys for WildEarth Guardians

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