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By Email and Overnight Delivery

Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250
agsec@usda.gov
Tom.Vilsack@osec.usda.gov

Leanne Marten
Regional Forester
Northern Region
U.S. Forest Service
26 Fort Missoula Road
Missoula, MT 59804
Leanne.Marten@usda.gov

Meryl Harrell
Deputy Under Secretary
Natural Resources and Environment
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250
Meryl.Harrell@usda.gov

Mary Farnsworth
Regional Forester
Intermountain Region
U.S. Forest Service
324 25th Street
Ogden, UT 84401
Mary.Farnsworth@usda.gov

Chris French
Acting Deputy Under Secretary
Natural Resources and Environment
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250
Christopher.French@usda.gov

Glenn Casamassa
Regional Forester
Pacific Northwest Region
U.S. Forest Service
1220 SW 3rd Avenue
Portland, OR 97204
Glenn.Casamassa@usda.gov

Vicki Christiansen
Chief
U.S. Forest Service
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250
Victoria.Christiansen@usda.gov

Re: Petition for Regulatory Protection of Wilderness Character in Response to Idaho and Montana's New Wolf Laws and Wolf-Removal Programs

Dear Secretary Vilsack and Agriculture Department officials,

This is a petition for regulatory action by the U.S. Forest Service pursuant to 5 U.S.C. § 553(e) and 7 C.F.R. § 1.28. I am writing on behalf of the Center for Biological Diversity,

Defenders of Wildlife, Friends of the Clearwater, Humane Society of the United States, Humane Society Legislative Fund, International Wildlife Coexistence Network, Montana Wildlife Federation, Sierra Club, Western Watersheds Project, Wilderness Watch, and Wolves of the Rockies (“Petitioners”). Petitioners request that the U.S. Forest Service take regulatory action to prevent degradation of wilderness character in congressionally designated wilderness areas. Without prompt Forest Service action, implementation of newly enacted legislation in Idaho and Montana, together with certain ongoing state management practices, will degrade wilderness character in these areas by authorizing direct and intentional predator-control actions aimed at eliminating or reducing wolf populations through, among other things, commercial activity.

Specifically, Petitioners request that the Forest Service undertake a rulemaking to enact new measures to safeguard wilderness character against degradation resulting from these Idaho and Montana wolf-killing laws and activities, as required by the Wilderness Act, 16 U.S.C. § 1133(b). Further, pending completion of the requested rulemaking, Petitioners request that the Forest Service utilize its other administrative authorities, including the authority to issue orders imposing closures and restrictions pursuant to 36 C.F.R. § 261.50, to prevent wilderness degradation resulting from these enactments.

These requested regulatory actions are essential to fulfill the Forest Service’s duty to protect wilderness character in these areas. The Wilderness Act vests the Forest Service with the responsibility to preserve the wilderness character of wilderness areas in the National Forest System. 16 U.S.C. § 1133(b). Numerous wilderness areas located in the national forests of Idaho and Montana now face an imminent threat of degradation caused by implementation of those states’ wolf-killing laws and practices. The new Idaho and Montana laws establish aggressive new programs and tools for direct and intentional wolf removal and reduction of wolf populations at a level not seen in Idaho and Montana since the days of wholesale wolf persecution early in the last century. Further, these laws build on a recent record of state and private efforts to intentionally reduce wilderness wolf populations that portends an expansion of such efforts under the new laws and a resulting campaign against wolves occupying wilderness. As the Forest Service’s own wilderness experts have repeatedly recognized, such direct and intentional wolf-control activities would severely degrade these areas’ wilderness character by purposefully manipulating wildlife populations in defiance of the Wilderness Act’s mandate that such wildernesses constitute “an area where the earth and its community of life are untrammelled by man.” *Id.* § 1131(c). Further, these new laws directly target wolves, an iconic species whose presence in wilderness areas the Forest Service itself has identified as a key feature of their wilderness character. In addition, by authorizing or expanding new, commercially driven wolf eradication efforts, including hiring of private contractors and subsidization of private wolf hunting and trapping, these state programs threaten to introduce “commercial enterprise” into wilderness areas in violation of 16 U.S.C. § 1133(c). Were the Forest Service to allow these impacts on wilderness character, it would violate the agency’s wilderness-management duty under the Wilderness Act.

To respond to this threat, Petitioners request that the Forest Service utilize its authorities as soon as possible to enact, at a minimum, the following regulatory protections against degradation of wilderness character:

1. New measures to prohibit wolf hunting and trapping activities by private contractors in congressionally designated wilderness areas.
2. New measures to prohibit wolf hunting and trapping activities by private individuals obtaining, seeking, or intending to seek reimbursement from any person, firm, or club for expenses incurred in such hunting and trapping activities, or seeking or intending to sell any part of hunted or trapped wolves.

Petitioners further request that the Forest Service apply these prohibitions to, at a minimum, the following congressionally designated wildernesses within the National Forest System in Idaho and Montana that host wolves threatened by the Idaho and Montana's wolf-killing authorizations and programs:

Idaho

- Cecil D. Andrus-White Clouds Wilderness
- Frank Church-River of No Return Wilderness
- Gospel-Hump Wilderness
- Hells Canyon Wilderness
- Hemingway-Boulders Wilderness
- Jim McClure-Jerry Peak Wilderness
- Sawtooth Wilderness
- Selway-Bitterroot Wilderness

Montana

- Absaroka-Beartooth Wilderness
- Anaconda Pintler Wilderness
- Bob Marshall Wilderness
- Cabinet Mountains Wilderness
- Gates of the Mountains Wilderness
- Great Bear Wilderness
- Lee Metcalf Wilderness
- Mission Mountains Wilderness
- Rattlesnake Wilderness
- Scapegoat Wilderness
- Selway-Bitterroot Wilderness
- Welcome Creek Wilderness

In sum, the regulations requested by Petitioners are necessary to ensure that each of the affected wilderness areas will continue to function as "an area where the earth and its community of life are untrammelled by man," free of "commercial enterprise," as Congress intended. 16 U.S.C. §§ 1131(c), 1133(c). The Forest Service should take prompt action to issue the requested regulations.

I. THE PETITIONERS

The Petitioners are conservation organizations whose missions include protecting congressionally designated wilderness areas administered by the U.S. Forest Service and conserving the wolf populations that inhabit them. Petitioners therefore constitute “interested person[s]” who have “the right to petition for the issuance” of an administrative rule under 5 U.S.C. § 553(e). Petitioners include the following:

The **Center for Biological Diversity** (the “Center”) is a non-profit environmental organization dedicated to protecting endangered species and wild places through science, policy, education, and environmental law. The Center has a long-standing history of advocating for wolves in the west, including in Idaho and Montana. The Center submits this petition on its own behalf and on behalf of its members and staff, with an interest in protecting the wolf and its habitat.

Defenders of Wildlife is a non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities. Defenders has more than 1.8 million members and on-line activists across the nation, including 9,591 in Idaho and 7,246 in Montana. Over the last four decades, Defenders has played a leading role in the recovery of wolves across the country. Defenders supported the U.S. Fish and Wildlife Service’s decision to list gray wolves as a single species under the ESA in 1978. Defenders subsequently assisted with the restoration of gray wolves to the northern Rocky Mountains in the 1990s and hosted training workshops and annual interagency wolf management conferences for state, tribal, and federal agencies in that region from 1999 to 2013. Defenders led a Wolf Compensation Trust from 1987 through 2011, reimbursing more than \$1.4 million to ranchers in the region for livestock losses due to wolves. In 1998, Defenders created a Proactive Carnivore Conservation Fund, which assists ranchers with implementation of nonlethal, proactive methods to reduce or prevent livestock losses to wolves. Today, Defenders continues to assist with conflict prevention projects in partnership with multiple landowners and county, state, tribal and federal agencies.

Friends of the Clearwater is a grassroots advocacy group dedicated to protecting the public wildlands, wildlife, Wilderness, and watersheds in the Clearwater Basin and the immediate surrounding areas. Friends of the Clearwater was established in 1987 and has since worked to protect wolf populations in the region, including by opposing efforts by the Idaho Department of Fish and Game to reduce the wolf population in the Frank Church-River of No Return Wilderness through professional trapping activities.

The **Humane Society of The United States** (“HSUS”) is the nation’s largest animal protection organization. Founded in 1954, HSUS is a non-profit organization headquartered in Washington D.C., with regional offices throughout the United States. On behalf of its members and supporters in the Northern Rockies and nationwide, HSUS works to promote the humane treatment of all animals and the protection and recovery of threatened and endangered species and their habitats. In furtherance of this mission, HSUS has consistently advocated for gray wolves through participation in federal and state regulatory processes, legislative advocacy, litigation, and public outreach and education.

Humane Society Legislative Fund (“HSLF”) is a Washington D.C.-based 501(c)(4) animal-protection organization and separate affiliate of HSUS. HSLF’s mission is to ensure that animals have a voice before federal and state lawmakers by advocating for measures to eliminate animal cruelty and suffering, to educate administrative and elected officials, as well as the public on animal welfare issues, and to elect humane candidates to public office. HSLF has a long history of advocating for the protection of wildlife—especially threatened and endangered species and native carnivores—in Congress and before federal agencies.

The **International Wildlife Coexistence Network** provides expert interdisciplinary assistance, training, collaboration, and shared research to enable communities around the globe to coexist with wildlife. Its primary field program, the Wood River Wolf Project, is based in central Idaho’s rugged Sawtooth Challis National Forest where the organization tests and implements nonlethal deterrents to help sheep producers protect an average of 20,000 on public grazing lands annually since 2007. This project’s average loss of 5 sheep (0.02) to wolves is the lowest loss rate in the state where wolves and major livestock operations overlap. The project relies on stable wolf packs to effectively implement successful livestock and wildlife protections.

The **Montana Wildlife Federation** (“MWF”) is Montana’s oldest and largest wildlife conservation organization. MWF traces its roots back to 1936 when hunters, anglers and other conservationists joined landowners to address the loss of Montana’s natural lands, healthy waters and abundant wildlife. The decades of westward expansion prior to the 1930s left wildlife populations decimated throughout North America, and Montana was no exception. That year the first North American Wildlife Conference was held in Washington D.C. and wildlife conservation was thrust into the limelight. The National Wildlife Federation, Montana Wildlife Federation, and many other state wildlife organizations were formed. Since then, MWF has championed scientific wildlife management and fought to conserve the great natural resources found in this state and wildlife populations have rebounded. This legacy is maintained through MWF’s dedicated staff and volunteers.

Sierra Club is a national nonprofit organization headquartered in Oakland, California, and with 67 chapters nationwide. Sierra Club has more than 832,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club has approximately 3,866 members in Idaho and 3,281 members in Montana. Sierra Club has a longstanding commitment to the restoration of healthy wolf populations throughout the United States. Sierra Club has long engaged in both advocacy and litigation to ensure legal protections for gray wolves.

Western Watersheds Project is a regional non-profit conservation organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. Western Watersheds Project is headquartered in Hailey, Idaho, with staff in Boise, Idaho, and in other western states. Western Watersheds Project staff, members, volunteers, and supporters engage in administrative and legal advocacy, public education, and scientific study aimed at protecting and enhancing riparian areas, water quality, fisheries, wildlife habitat, and other natural resources and ecological values of western watersheds,

including those in congressionally designated wilderness areas. Western Watersheds Project’s wilderness-protection work has included litigating the Forest Service’s 2010 authorization for the Idaho Department of Fish and Game to utilize helicopters for the purpose of collaring wolves in the Frank Church-River of No Return Wilderness, the Forest Service’s role in Idaho’s 2013-14 wolf-trapping activities in the River of No Return, and the Forest Service’s 2016 authorization for helicopter-assisted elk collaring in the River of No Return to facilitate Idaho’s aggressive wildlife-management objectives for the wilderness.

Wilderness Watch is a non-profit conservation organization whose sole mission is the preservation and proper stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. To that end, since 1989 Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education, and litigation to promote sound stewardship of federal wilderness areas and Wild and Scenic River corridors. Wilderness Watch has offices in Idaho and Montana, and it has a long history of advocacy to protect designated wilderness in both states, including advocacy to preserve wilderness as untrammled, secure habitat for wolves and other predators. This work has largely focused on resisting Idaho’s efforts to target wolves in wilderness. For example, Wilderness Watch litigated the Forest Service’s 2010 authorization for Idaho Department of Fish and Game to utilize helicopters for the purpose of collaring wolves in the Frank Church-River of No Return Wilderness. It litigated the Forest Service’s role in Idaho’s 2013-14 wolf-trapping activities aimed at exterminating wolf packs in the Frank Church-River of No Return Wilderness. And, more recently, it litigated the Forest Service’s 2016 authorization of Idaho’s intensive helicopter-assisted collaring project aimed at justifying its plan to kill the majority of wolves in the Middle Fork Zone of the River of No Return Wilderness. Wilderness Watch is deeply concerned about Idaho’s escalating war on wolves and the implications for both wolves and wilderness in Idaho, Montana, and elsewhere.

Wolves of the Rockies (“WotR”) is a non-profit grassroots organization working to ensure that a viable, healthy population of gray wolves occupy their native historic lands in the Rocky Mountains. WotR works to educate people with facts about wolves and wolf behavior to counter the negative image created by some commercial interest groups, fictional entertainment, and extremism. WotR advocates for wolves through speaking at government and public forums to ensure accurate data and sound science are being utilized in decision making. WotR also works in cooperation with government agencies and like-minded organizations to promote acceptance of wolves, the benefit of wolves, and the impact of wolves in the ecosystem, and seeks to promote non-lethal measures to help diminish human conflict with wolves.

II. THE WILDERNESS ACT MANDATES PRESERVATION OF WILDERNESS CHARACTER

The Wilderness Act serves to protect our nation’s wildest landscapes in their “natural” and “untrammled” condition. 16 U.S.C. § 1131(a), (c). To that end, it charges the responsible federal agency—the Forest Service with respect to wilderness areas in the National Forest System—with preserving the “wilderness character” of these unique landscapes. *Id.* § 1133(b). (“each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area”); High Sierra Hikers Ass’n v. Blackwell, 390

F.3d 630, 646 (9th Cir. 2004) (“The agency charged with administering a designated wilderness area is responsible for preserving its wilderness character.”).

As defined by Congress, a central feature of “wilderness character” is an environment that is not controlled or defined by humans and instead reflects natural conditions: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man,” that “generally appears to have been affected primarily by the forces of nature” and “retain[s] its primeval character and influence.” 16 U.S.C. § 1131(c); see also 36 C.F.R. § 293.2(a) (Wilderness Act implementing regulation requiring Forest Service to ensure that, in wilderness areas, “[n]atural ecological succession will be allowed to operate freely to the extent feasible”). Thus, the Wilderness Act sets forth a “broad mandate to protect the forests, waters and creatures of the wilderness in their natural, untrammelled state.” Wilderness Soc’y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1061-62 (9th Cir. 2003) (en banc) (citing 16 U.S.C. § 1131).

In much of the Northern Rocky Mountains region, a key element of untrammelled wilderness character is the presence of wolves. The Forest Service itself has recognized “the importance of wolf recovery to enhancement of wilderness character.” Wolf Recovery Found. v. U.S. Forest Serv., 692 F. Supp. 2d 1264, 1266 (D. Idaho 2010) (quoting Forest Service decision memorandum). Indeed, the Forest Service deemed this factor so essential to wilderness character that promoting wolf recovery justified otherwise-prohibited helicopter intrusions in the Frank Church-River of No Return Wilderness in Idaho for the purpose of gathering wolf population data following a 1995 reintroduction of this species to the area. Id.; cf. 16 U.S.C. § 1133(c) (prohibiting “use of motor vehicles” in wilderness “except as necessary to meet minimum requirements for the administration of the area for the purpose” of wilderness preservation). The U.S. District Court for the District of Idaho agreed with the Forest Service, holding that this recovery program “to restore the wilderness character of the area by returning the wolf” gave rise to the “very unique circumstance” in which the Wilderness Act would permit using helicopters for the purpose of administering a wilderness area. Wolf Recovery Found., 692 F. Supp. 2d at 1268. Accordingly, the presence of wolves and wolf packs is central to wilderness character in locations where this species has reclaimed portions of its historic range, and the Forest Service has explicitly so determined.

Moreover, designated wilderness areas historically have provided important protection for wolves against human persecution. Recent scientific research documented that wolf populations sustained less human-caused mortality and illegal mortality, as well as higher annual survival, in wilderness areas as compared to surrounding, non-wilderness landscapes. See S.M. Barber-Meyer et al., The Importance of Wilderness to Wolf (*Canis lupus*) Survival and Cause-Specific Mortality over 50 Years, 258 Biological Conservation 1 (2021) (attached as Exhibit 1). Consistent with this scientific research, the U.S. Fish and Wildlife Service’s 2009 decision to remove the wolf population in Idaho and Montana from the list of threatened species under the Endangered Species Act relied on an assumption that wilderness areas would serve as a “stronghold for wolf breeding pairs and source of dispersing wolves,” thereby ensuring “a robust wolf population” under post-delisting management. 74 Fed. Reg. 15,123, 15,132 (2009). Thus,

wolves both define wilderness in many respects and historically have found an important refuge against human persecution in wilderness areas.

In service of preserving wilderness character, the Wilderness Act prohibits various non-wilderness activities in wilderness areas. See 16 U.S.C. § 1133(c). These include use of motor vehicles such as helicopters, as discussed above, and also any “commercial enterprise.” Id. In this context, a commercial enterprise means “a project or undertaking of or relating to commerce.” Wilderness Soc’y, 353 F.3d at 1061. The Wilderness Act thus reflects “a mandate of preservation for wilderness and the essential need to keep commerce out of it,” and this is so “regardless of the form of commercial activity.” Id. at 1061-62. While the Act allows commercial services to be performed in wilderness areas “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas,” 16 U.S.C. § 1133(d)(6), the provision of such services must align with the Act’s over-arching wilderness-preservation mandate and the Forest Service may not elevate “recreational activity over the long-term preservation of the wilderness character of the land,” High Sierra Hikers Ass’n, 390 F.3d at 647.

III. NEW IDAHO AND MONTANA ENACTMENTS THREATEN WOLVES IN WILDERNESS AREAS

During their 2021 legislative sessions, the states of Idaho and Montana enacted new legislation that dramatically expands these states’ mandates and available methods for killing wolves and reducing wolf populations. Given that many wolves in Idaho and Montana occupy designated wilderness areas throughout some or all of the year, implementation of these new state enactments threatens imminent and major impacts on wilderness wolf populations. Indeed, some portions of these new measures build on prior or ongoing state programs that have already taken a toll on wilderness wolf populations and, therefore, wilderness character.

In Idaho, the legislature passed and the governor signed Senate Bill (“SB”) 1211 (attached as Exhibit 2). Idaho SB 1211 includes a number of new provisions expanding the circumstances and methods for killing wolves in Idaho that individually and cumulatively threaten to impact federal wilderness areas, including:

- Authorizing employment of private contractors to kill wolves, including through a provision allowing retention of private contractors by the state’s Wolf Depredation Control Board, see Idaho SB 1211 §§ 1, 5 (amending Idaho Code §§ 22-5304, 36-1107) (2021);
- Providing for killing of wolves by “any method utilized for the take of any wild canine in Idaho” (e.g., coyotes), id. § 3 (amending Idaho Code § 36-201);
- Allowing individuals to purchase an unlimited number of wolf tags that will be valid for hunting, trapping, and snaring in any hunting unit with an open wolf season at the time a wolf is killed, see id. § 4 (amending Idaho Code § 36-408);
- Providing that wolves may be “disposed of” by any federal or state agency, private contractor, Idaho political subdivision, or agency of another state in response to concerns about wolf predation on livestock or domestic animals, even

if wolves are not “molesting or attacking” such animals, id. § 5 (amending Idaho Code § 36-1107);

- Providing that wolves may be “disposed of” by the same entities, including private contractors, in response to so-called “depredations” on wildlife populations, at any time when the wolf population “has exceeded the recovery goals of the Idaho wolf conservation and management plan,” id. § 5 (amending Idaho Code § 36-1107).

Regarding the latter provision, Idaho’s Wolf Conservation and Management Plan sets a recovery goal of 15 wolf packs in the state, amounting to approximately 150 wolves, while Idaho asserts that there are more than 1,500 wolves in the state. See Idaho Legis. Wolf Oversight Comm., Idaho Wolf Conservation & Management Plan, as amended by 56th Idaho Leg., 2nd Sess., at 5, 18 (2002) (attached as Exhibit 3); Idaho Dep’t of Fish & Game, Idaho Wolf Population Remains Stable between 2019 and 2020 Despite Higher Mortality (Feb. 8, 2021) (attached as Exhibit 4). Accordingly, this provision alone threatens to allow killing of more than 1,300 wolves in Idaho—including through employment of private contractors—in response to nothing more than normal wolf behavior in preying upon species such as elk and deer for food.

Montana’s new wolf laws are scattered across a number of separate enactments that individually and cumulatively present a major new threat to the wolf population in that state as well. Key provisions include:

- Montana House Bill (“HB”) 224, attached as Exhibit 5, amending Montana Code § 87-1-901 to mandate that wolf trapping seasons must allow for the use of snares by the holder of a trapping license;
- Montana HB 225, attached as Exhibit 6, amending Montana Code § 87-1-304 to extend the wolf trapping season from the first Monday after Thanksgiving until March 15 of the following year;
- Montana SB 267, attached as Exhibit 7, amending Montana Code § 87-6-214 to grant persons, firms, or clubs the ability to give wolf hunters or trappers payments to reimburse costs incurred in hunting or trapping wolves; and
- Montana SB 314, attached as Exhibit 8, amending Montana Code § 87-1-901 to require state wildlife officials to establish hunting and trapping seasons “with the intent to reduce the wolf population in this state to a sustainable level, but not less than the number of wolves necessary to support at least 15 breeding pairs”; to allow unlimited killing of wolves by the holder of a single hunting or trapping license; and to allow baiting in conjunction with hunting or trapping of wolves.

As in Idaho, the latter provision mandating management to achieve a population reduction opens the door for a major escalation in wolf killing, given that SB 314 sets a population floor at 15 breeding pairs, or approximately 150 wolves, while Montana asserted that the state held 146 packs and 833 wolves in 2019 (the most recent estimate). See Mont. Fish Wildlife & Parks, Montana Gray Wolf Program: 2019 Annual Report, at 7 (2020) (attached as Exhibit 9).

In sum, the new wolf laws in Idaho and Montana authorize major population reductions; sanction expanded killing methods, longer seasons, and unlimited bag limits to effectuate that authorization; and introduce a new level of financially supported wolf eradication efforts through private contracting for wolf killing in Idaho and private reimbursement for wolf-killing expenses in Montana.

These new laws present a major new threat to wolf populations in congressionally designated wilderness areas in these states. First, as specified above, wolves are present for all or some of the year in numerous wilderness areas in Idaho and Montana. Because implementation of these states' new wolf laws is likely to be targeted at areas where wolves are located, implementation efforts will inevitably impact wolves in wilderness areas.

Moreover, substantial evidence and recent experience indicate that wolves in wilderness areas are likely to be a particular focus of eradication efforts under the new legislation. Idaho's Department of Fish & Game ("IDFG") has issued an Elk Management Plan that calls for restoring elk population levels last achieved in the 1990s, before wolves were reintroduced in the Frank Church-River of No Return Wilderness and Yellowstone National Park and subsequently expanded to other areas of Idaho. To achieve that goal, the Elk Management Plan directs IDFG to "aggressively manage elk and predator populations," including through killing "[more than] 75% of wolves and then maintain[ing] lower wolf numbers annually for 3-5 years" in areas that are not meeting IDFG's elk-management objectives. IDFG, Idaho Elk Management Plan 2014-2024, at 49-50 (2014) (attached as Exhibit 10). Where IDFG has determined that "elk populations are not meeting objectives and predation is identified as a primary limiting factor," the Elk Management Plan directs IDFG to conduct "predator management activities," which are agency-implemented wolf-removal projects designed to supplement wolf killing achieved through recreational wolf hunting and trapping. Id. at 50.

Pursuant to the Elk Management Plan, IDFG in 2014 developed a Predation Management Plan for the Middle Fork Zone of the Frank Church-River of No Return Wilderness that identifies wolf predation as a factor limiting that area's elk population and calls for exterminating 60% of the area's resident wolves, followed by successive years of agency wolf-killing to maintain the population at that depressed level over the long term. See IDFG, Predation Management Plan for the Middle Fork Elk Zone, at 10-11 (Feb. 2014) (attached as Exhibit 11). IDFG took initial action to achieve that objective during the winter of 2013-14, when it hired a professional trapper to eradicate as many resident wolf packs as possible in the Middle Fork Zone of the Frank Church-River of No Return Wilderness. IDFG suspended that action in response to a lawsuit and emergency injunction motion filed by wilderness advocates, including some of the Petitioners here, but not before its hired trapper had killed nine wolves constituting the wilderness area's Golden Creek Pack.

This experience with IDFG's commissioning of a private contractor to kill wolves in a congressionally designated wilderness area in response to elk predation—and IDFG's maintenance to this day of a Predation Management Plan that calls for doing more of the same—demonstrates that such methods are likely to be employed again and can be highly effective at quickly and efficiently eliminating wolves and even entire wolf packs from a wilderness. Further, IDFG maintains separate Predation Management Plans to boost elk populations beyond

naturally sustained levels in other areas harboring federal wilderness lands—the Sawtooth and Lolo-Selway areas—and those plans also provide for hiring of private contractors to remove wolves. See IDFG, Predation Management Plan for the Sawtooth Elk Management Zone, at 16-17 (2014) (attached as Exhibit 12) (“[T]ools that may be considered include ... hiring professional trappers to target wolves in high wolf-use areas during winter.”); IDFG, Predation Management Plan for the Lolo and Selway Elk Zones, at 8 (2011) (attached as Exhibit 13) (“IDFG may authorize agency control actions on predators where hunter harvest does not sufficiently reduce predation impacts.”).

Against this backdrop, Idaho’s legislature has now given explicit new authorization for further eradication efforts by private contractors in response to perceived impacts on elk and other species that are naturally preyed upon by wolves. Further, Idaho has enacted an entirely new provision for retention of private contractors by the state’s Wolf Depredation Control Board, thereby expanding the potential scope of wolf eradication efforts by private contractors. These provisions clearly indicate that additional professional wolf-control activities by private contractors are likely.

While Montana has not explicitly authorized such private contracting, its new provision allowing reimbursement of costs incurred by private individuals for wolf hunting and trapping efforts—amounting to a modern-day wolf “bounty” that may be available to a much broader section of the public than those who would be eligible to serve as private contractors for wolf removal—threatens to inflict similar impacts. This reimbursement provision opens the door in Montana for privately funded wolf-killing efforts in Montana paralleling those previously allowed in Idaho that have already inflicted a toll on wilderness wolf populations. Indeed, wolves within wilderness areas have been a particular target of such efforts.

For instance, in 2019 the IDFG awarded a \$20,000 grant to a private organization known as the Foundation for Wildlife Management to fund a year-long “program to reimburse hunters and trappers for expenses incurred during the process of legal wolf harvest.” Cooperative Agreement between the Foundation for Wildlife Mgmt. and the Idaho Dep’t of Fish & Game, at 1 (Aug. 2019) (attached as Exhibit 14). As the application for these grant funds made clear, the geographic focus for wolf-killing activities under the Foundation’s reimbursement program included designated state elk-management units overlapping the Selway-Bitterroot and Gospel-Hump Wilderness Areas (hunting units 12, 15, 16A, 17, 19, and 20). See id., Attachment B at 2. Further, the application sought to justify the requested grant by asserting that “[a]ggressive predator management is required to bring elk populations back to the peak levels of the mid 1990’s with exploration of opportunities to increase wolf hunter, trapper, and outfitter client effectiveness as a key part of the strategy.” Id.¹

¹ A recent media report indicates that this same organization, the Foundation for Wildlife Management, has recently established its first Montana chapter to take advantage of the new Montana legislation allowing private reimbursement of wolf-killing costs, with the objective to “entice others to take to the woods to trap or hunt wolves in an effort to reduce their numbers.” Ed Moreth, New Group Aims to Help Reduce Wolf Population, Sanders County Ledger (May 27, 2021) (attached as Exhibit 15).

In sum, the Idaho reimbursement program explicitly aims to provide a financial incentive for “aggressive predator management” to restore elk populations to mid-1990s levels—i.e., before wolf reintroduction and the restoration of natural predator-prey interactions in the region—with a particular emphasis on inflicting such aggressive wolf-killing impacts in wilderness areas. *Id.* Now Montana’s legislature has paved the way for an equivalent reimbursement program in that state. Further, both states have broadened the arsenal of permissible wolf-killing methods and tools and extended seasons and bag limits in a manner that will enable such state- and privately subsidized hunting and trapping efforts to inflict even greater harms on wolves and wilderness.

IV. IMPLEMENTING IDAHO AND MONTANA’S WOLF-KILLING AUTHORIZATIONS IN WILDERNESS AREAS WILL DEGRADE WILDERNESS CHARACTER

Implementing these aggressive Idaho and Montana wolf-killing enactments and measures on wilderness lands will degrade wilderness character in contravention of the Wilderness Act.

As discussed, the Wilderness Act establishes a “broad mandate to protect the forests, waters, and creatures of the wilderness in their natural, untrammled state.” *Wilderness Soc’y*, 353 F.3d at 1061-62 (emphasis added). The new legislative enactments in Idaho and Montana threaten to trammel the wilderness by converting natural wolf predation on other wildlife species into a justification for eradication and employing private contractors and subsidized citizens to carry out direct and intentional eradication efforts through a variety of lethal methods and tools. Simply put, wilderness areas in Idaho and Montana cannot fulfill Congress’s mandate to serve as “an area where the earth and its community of life are untrammled by man,” and one reflecting “natural conditions,” 16 U.S.C. § 1131(c), if they are subjected to aggressive state-authorized efforts to intentionally eliminate or reduce wolf populations for the purpose of inflating populations of elk and other prey species beyond naturally sustainable levels and, indeed, to levels not seen since wolves reclaimed their historical role in the region’s ecology. That kind of artificially engineered wildlife environment is the antithesis of a wilderness under the Wilderness Act; it is a trammled and unnatural area, not an untrammled and natural one.

The Forest Service’s wilderness specialists have already reached this conclusion in a variety of wilderness management analyses. In “Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System,” a 2015 publication of the U.S. Forest Service Rocky Mountain Research Station, leading wilderness managers from four federal agencies, including the Forest Service, affirmed the fundamental principle that the “untrammled” quality of wilderness character “means that wilderness is essentially unhindered and free from the intentional actions of modern human control or manipulation.” Peter Landres et al., Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System, U.S. Forest Serv., Rocky Mountain Research Station,, at 10-11 (2015) (“Keeping It Wild 2”) (attached as Exhibit 16). Accordingly, while traditional “[s]ubsistence or sport hunting that is allowed in wilderness areas is not considered an intentional manipulation that degrades” the untrammled nature of wilderness, the converse is true of hunting that “is authorized or managed to intentionally alter natural wildlife abundance or distribution, or predator-prey relationships.” *Id.* at 78. For this reason, actions intentionally aimed at

“removing” wildlife, “direct manipulation” of wildlife, and “[i]ndirect manipulation of fish and wildlife, such as changing hunting regulations with the goal of decreasing predator populations within the wilderness” trammel the wilderness and degrade wilderness character. Id. at 103.

The Forest Service’s national wilderness program leader reached the same conclusion in the specific context of addressing Idaho’s program for intentional wolf control within wilderness lands in that state. In a 2015 analysis prepared by the Forest Service’s Washington Office Director for Wilderness and Wild and Scenic Rivers in response to IDFG’s 2013-14 wolf-removal program in the Frank Church-River of No Return Wilderness, the Director concluded:

The wolf populations in the [wilderness] are a critical component of the natural quality of wilderness character for the area. Direct and intentional control of wolf populations in the [wilderness] is a trammeling action (i.e., management action that intentionally controls or manipulates any aspect of an ecosystem) that negatively impacts both the untrammeled and natural qualities of wilderness character.

Memorandum from Susan Spear, Director, Wilderness and Wild & Scenic Rivers, Wilderness Issues related to Idaho’s Management of Wolves and Elk in the Frank Church-River of No Return Wilderness, at 2 (July 2015) (attached as Exhibit 17).² In other words, “the State sending an employee into the wilderness specifically for the purpose of trapping wolves to achieve the [State’s] population objective ... is in conflict with the Wilderness Act and Forest Service policy because it is a direct control measure.” Id. at 3.

These conclusions are consistent with wilderness management direction set forth in the Forest Service Manual, which establishes an objective for the Forest Service to “[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist,” and states the agency’s policy to “[d]iscourage measures for direct control (other than normal harvest) of wildlife and fish populations.” U.S. Forest Serv., Forest Service Manual § 2323.31(1), 2323.32(3). In fact, the Manual approves predator control in wilderness areas only in limited circumstances where authorized by a Regional Forester “on a case-by-case basis where control is necessary to protect federally listed threatened or endangered species, to protect public health and safety, or to prevent serious losses of domestic livestock.” Id. § 2323.33c. Even then, the Manual provides that the agency should “[o]nly approve control projects when strong evidence exists that removing the offending individual(s) will not diminish the wilderness values of the area.” Id.

The Forest Service’s wilderness analyses and management direction demonstrate that implementation in wilderness areas of Idaho’s new legislative scheme for dispatching private contractors to kill wolves, including pursuant to the state’s new authorization to “dispose[] of” wolves to address purported wolf “depredations” on other wildlife populations, Idaho SB 1211 §§ 1, 5, represents precisely the direct and intentional control of wildlife populations that

² Although this memorandum is labeled a draft, the Forest Service confirmed that it was “used as final.” U.S. Forest Serv., Index of Additional Documents for Administrative Record, Wilderness Watch v. Vilsack, Case No. 4:16-CV-12-BLW (D. Idaho) (attached as Exhibit 18).

degrades wilderness character in contravention of the Wilderness Act. In addition, this scheme defies Forest Service management direction by targeting entire packs or even broader components of the wolf population, rather than an “offending individual” whose removal is deemed necessary to protect listed species or public health and safety or to prevent serious losses of livestock. Forest Service Manual § 2323.33c.

For much the same reason, implementation in wilderness areas of Idaho’s existing and Montana’s new authorization for subsidizing private citizen expenses incurred in hunting or trapping wolves would degrade wilderness character. Like Idaho’s provision for hiring private contractors to conduct wolf eradication, these authorizations seek to escalate the level of wolf hunting and trapping beyond that achievable through the unsubsidized individual choices of private hunters and trappers. Further, they seek to do so for the direct and intentional purpose of accomplishing a heightened level of wolf killing as part of an over-arching objective for wolf-population reduction to artificially inflate numbers of elk and other traditional game species. When implemented within wilderness, such “[i]ndirect manipulation of fish and wildlife [by] changing hunting regulations with the goal of decreasing predator populations” constitutes a trammeling action. Keeping It Wild 2, at 103; see Forest Service Manual § 2323.31(1) (establishing objective for wilderness wildlife populations to be governed by “natural selection and survival rather than human actions”).

Moreover—and wholly apart from their impact on the untrammelled and natural qualities of wilderness character—implementing these new state enactments in wilderness areas would contravene the Wilderness Act because they would introduce “commercial enterprise” into the wilderness in violation of 16 U.S.C. § 1133(c). Wolf-eradication activity by a private contractor hired to remove wolves in a wilderness area under Idaho’s new law constitutes “a project or undertaking of or relating to commerce” under the plain meaning of that phrase, because the “primary purpose and effect” of such activity is commercial—the contractor is performing the service of removing members of a particular species from the wilderness in exchange for financial payment. Wilderness Soc’y, 353 F.3d at 1061, 1065; see also Alaska Wildlife Alliance v. Jensen, 108 F.3d 1065, 1069 (9th Cir. 1997) (holding that commercial fishing in wilderness violates Wilderness Act). By the same token, hunting and trapping of wolves for the purpose of selling pelts or other parts of hunted or trapped individuals in a commercial market for such products offends the Wilderness Act by introducing “commercial enterprise” into wilderness. See U.S. Dep’t of Interior, Bureau of Land Management Manual § 6340, at 1-63 (2012) (“Because of the Wilderness Act prohibition on commercial enterprises . . . , [hunting and trapping] can be undertaken in wilderness for personal use only. Sale of wildlife products gathered from wilderness is prohibited.”).

Similarly, private hunters and trappers pursuing wolves in wilderness with the support of, or aim of obtaining, financial reimbursement under Idaho’s reimbursement program or Montana’s new enactment for the same would be engaging in an exchange of services for compensation that is prohibited under the Wilderness Act. See 16 U.S.C. § 1133(c); Wilderness Soc’y, 353 F.3d at 1062 (holding that Wilderness Act bars commercial enterprise “regardless of the form of commercial activity”). In this regard, it is irrelevant if such hunters and trappers would obtain payment only outside wilderness lands after concluding their wolf-removal activities, given that “substantial and essential parts” of the transaction—specifically, the hunting

and trapping of wolves and incurring of wolf-killing expenses for which reimbursement would be sought—would occur within wilderness. Wilderness Soc’y, 353 F.3d at 1066. Nor does it matter that such hunters and trappers would be receiving reimbursement for expenses rather than making a profit from their activities. See id. at 1065-66 (rejecting argument that nonprofit status of entity stocking fish in wilderness to enhance commercial fishing rendered its activities non-commercial). Because the primary purpose and effect of these reimbursement schemes are to provide commercial support for increased wolf-killing efforts, activities taken in wilderness areas under this scheme run afoul of the Wilderness Act’s prohibition on commercial enterprise. See id. at 1065; 16 U.S.C. § 1133(c). For this reason too, implementing the Idaho and Montana enactments in wilderness areas degrades wilderness character in violation of the Wilderness Act.³

V. THE FOREST SERVICE HAS THE DUTY AND AUTHORITY TO PREVENT DEGRADATION OF WILDERNESS CHARACTER RESULTING FROM IDAHO AND MONTANA’S ENACTMENTS AND PROGRAMS

Although the Forest Service has often deferred to the states’ traditional role in managing wildlife on federal public lands within the National Forest System, the Forest Service has both the duty and the authority to take affirmative steps to regulate hunting and trapping activities where, as here, such action is necessary to ensure compliance with federal law and achievement of federal objectives.

Regarding the agency’s duty, as discussed above, the Forest Service serves as the steward of wilderness areas within the National Forest System on behalf of the American people, and in that capacity has a statutory obligation to preserve the wilderness character of such areas, including their untrammeled and natural conditions that are threatened by Idaho and Montana’s wolf-killing enactments and programs. See 16 U.S.C. § 1133(b); High Sierra Hikers Ass’n, 390 F.3d at 646.

Regarding the Forest Service’s authority to take regulatory action to preserve wilderness character against degradation caused by implementation of these state actions, it is well established that “the ‘complete power’ that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there.” Kleppe v. New Mexico, 426 U.S. 529, 540-41 (1976). Moreover, this authority applies to enable protection of federal interests and vindication of federal objectives notwithstanding the existence of contrary state wildlife laws. See Hunt v. United States, 278 U.S. 96, 100 (1928) (holding that the Forest Service had authority to kill deer to protect vegetation in Kaibab National Forest despite Arizona’s claim this federal action violated state game laws; “[T]he power of the United States to thus protect its lands and property does not admit of doubt, the game laws or any other statute of the state to the contrary notwithstanding”) (citations omitted); Nat’l Audubon Soc’y, Inc. v. Davis, 307 F.3d 835, 854 (9th Cir. 2002) (holding that “Congress has the authority under the Property Clause to preempt state action with respect to” management of wildlife on federal public lands).

³ Nor could such commercial support for wolf removal be approved as “necessary” for “realizing the recreational or other wilderness purposes of the areas,” 16 U.S.C. § 1133(d)(6), given that this activity degrades wilderness character and is therefore inconsistent with “wilderness purposes.”

Further, several established sources of regulatory authority vest the Forest Service with power to take the protective actions requested here by Petitioners. First, the Forest Service’s 1897 Organic Act authorizes the agency to “make such rules and regulations ... as will insure the objects of such reservations [i.e., National Forests],” including rules and regulations “to regulate their occupancy and use.” 16 U.S.C. § 551. Regarding the “objects” of the National Forests, *id.*, Congress in the Wilderness Act stated that “[t]he purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests ... are established and administered.” 16 U.S.C. § 1133(a). Accordingly, Organic Act rules and regulations to “insure the objects” of the National Forest System may include those needed to preserve wilderness character as required by the Wilderness Act. See, e.g., 36 C.F.R. § 293.2 (Forest Service wilderness management regulation promulgated pursuant to 16 U.S.C. § 551).

Second, and more specifically, Congress in the Federal Lands Policy and Management Act authorized the Secretary of Agriculture to “designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law.” 43 U.S.C. § 1732(b). As a federal district court has ruled, this provision affords the Secretary “the power to halt [a] wolf hunt” conducted by state authorities. Alaska v. Andrus, 429 F. Supp. 958, 962 (D. Alaska 1977), aff’d on other grounds, 591 F.2d 537 (9th Cir. 1979).

Further, the Forest Service has authority to promulgate interim measures to protect wilderness character from degradation pending completion of an administrative rulemaking. Under 36 C.F.R. § 261.50(a), “the Chief, each Regional Forester, ... and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction.” Such “[a]n order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in” 36 C.F.R. Part 261, Subpart B, “or any portion thereof.” *Id.* The prohibitions authorized in Part 261, Subpart B include those targeting “[h]unting or fishing,” *id.* § 261.58(v), and “[e]ntering or being in” a wilderness area, *id.* § 261.57(a). These provisions therefore authorize the Forest Service to issue interim orders to prevent degradation of wilderness character resulting from Idaho and Montana’s wolf-killing enactments and programs until more permanent administrative rules can be promulgated to accomplish this purpose.

In exercising these authorities to achieve federal wilderness-management objectives, the Forest Service faces no obstacle from the Wilderness Act’s savings clause in 16 U.S.C. § 1133(d)(7). That provision states that “[n]othing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.” 16 U.S.C. § 1133(d)(7); see also 36 C.F.R. § 293.10 (same regarding agency regulations). As the Idaho federal district court concluded in the precise context of rejecting Idaho’s claim to regulatory primacy over the Forest Service in, among other things, authorizing wolf control in a wilderness, “[w]hile this language preserves a State’s right to manage wildlife in the Wilderness Area, Congress did not mean to eviscerate the primacy of federal authority over the Wilderness Area.” Wilderness Watch v. Vilsack, 229 F. Supp. 3d 1170, 1181 (D. Idaho 2017) (quotations and citation omitted), aff’d in part, rev’d in part on other grounds, Wilderness Watch v. Perdue, 805 Fed. Appx. 476 (9th Cir. 2020). Instead, this statutory language reflects only “Congress’s intent for ‘ordinary principles of conflict preemption to apply,’” and, “to the

extent that actual conflict persists between state and federal policies, state law is preempted” by federal law. Nat’l Audubon Soc’y, 307 F.3d at 854 (interpreting similar language in National Wildlife Refuge System Improvement Act and quoting Wyoming v. United States, 279 F.3d 1214, 1234 (10th Cir. 2002), which interpreted the same language); see also Meister v. U.S. Dep’t of Agric., 623 F.3d 363, 378-79 (6th Cir. 2010) (rejecting argument that the Wilderness Act’s savings clause precluded Forest Service from closing wilderness area to hunting authorized under state law).

Accordingly, the savings clause does not limit the Forest Service’s authority to enact measures that are essential to achieve the over-arching purpose of the Wilderness Act. See Wyoming, 279 F.3d at 1231 (stating that such savings-clause language must be viewed in light of the statutory scheme “in its entirety, mindful of congressional purposes and objectives”). A contrary conclusion that “the [federal government] lacks the power to make a decision regarding the health of wildlife on [federal public lands] when a State, for whatever reason, disagrees with that decision proves too much.” Id. at 1233.

VI. THE FOREST SERVICE SHOULD CARRY OUT ITS DUTY TO PROTECT WILDERNESS CHARACTER BY ENACTING THE REQUESTED MEASURES AS SOON AS POSSIBLE

As the foregoing demonstrates, Idaho and Montana’s wolf-killing authorizations present an imminent threat to the wilderness character of congressionally designated wilderness areas on National Forest System lands in those two states. The Forest Service has both the duty and the authority to safeguard wilderness character against this threat. The Forest Service should promptly proceed to carry out that duty by exercising its regulatory authority in the manner requested by Petitioners.

First, the Forest Service should promulgate new measures to prohibit wolf hunting and trapping activities by private contractors in congressionally designated wilderness areas. An interim order prohibiting such activity, followed by a regulation doing the same, can be simply framed in the same manner as existing Forest Service regulations prohibiting use of motor vehicles or landing of aircraft in wilderness areas. See 36 C.F.R. § 261.18.

Second, the Forest Service should promulgate new measures to prohibit wolf hunting and trapping activities by private individuals obtaining, seeking, or intending to seek reimbursement from any person, firm, or club for expenses incurred in such hunting and trapping activities. Similarly, the Forest Service should prohibit wolf hunting and trapping by those seeking or intending to sell any part of hunted or trapped wolves. Because this activity may be more difficult to identify once hunting and trapping activities are under way in wilderness, and because reimbursement for hunting and trapping expenses or sale of wolf parts would likely follow completion of activities that degrade wilderness character, it may be necessary to consider implementing a permit system or other pre-clearance system to ensure that commercially driven hunting and trapping activities do not degrade wilderness character. If this proves impracticable, it may be necessary for the Forest Service to entirely prohibit wolf hunting and trapping in affected areas unless and until Idaho and Montana adopt wolf-management frameworks that are consistent with maintaining wilderness character in designated wildernesses.

In conclusion, because time is of the essence to prevent degradation of wilderness character due to Idaho and Montana's wolf-killing enactments, Petitioners request a response to this petition at the earliest possible time. See 5 U.S.C. § 555(b) ("With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it."). Petitioners also request an opportunity to meet with responsible Department of Agriculture and Forest Service officials to address the reasons justifying this Petition and the nature and scope of appropriate regulatory responses to Idaho and Montana's wolf-killing measures. Please advise me of your decision regarding this Petition as soon as possible so that I can determine what, if any, further actions may be required to ensure adequate protection for the irreplaceable wilderness lands at issue.

Sincerely yours,



Timothy J. Preso

cc: **By Email and First-Class Mail**

Matthew Anderson
Forest Supervisor
Bitterroot National Forest
U.S. Forest Service
1801 North First Street
Hamilton, MT 59840
Matthew.Anderson3@usda.gov

Chad Benson
Forest Supervisor
Kootenai National Forest
U.S. Forest Service
31374 U.S. Highway 2
Libby, MT 59923
Chad.Benson@usda.gov

Tawnya Brummett
Forest Supervisor
Boise National Forest
U.S. Forest Service
1249 S. Vinnell Way, Suite 200
Boise, ID 83709
Tawnya.Brummett@usda.gov

Jim DeMaagd
Forest Supervisor
Sawtooth National Forest
U.S. Forest Service
370 American Ave
Jerome, ID 83338
Jim.Demaagd@usda.gov

Mary Erickson
Forest Supervisor
Custer-Gallatin National Forest
U.S. Forest Service
P.O. Box 130
10 E Babcock Ave
Bozeman, MT 59771
Mary.Erickson@usda.gov

Cheri Ford
Forest Supervisor
Beaverhead-Deerlodge National Forest
U.S. Forest Service
420 Barrett St.
Dillon, MT 59725
Cheri.Ford@usda.gov

Linda Jackson
Forest Supervisor
Payette National Forest
U.S. Forest Service
500 North Mission Street
McCall, ID 83638
Linda.Jackson@usda.gov

Chuck Mark
Forest Supervisor
Salmon-Challis National Forest
U.S. Forest Service
1206 S. Challis Street
Salmon, ID 83467
Chuck.Mark@usda.gov

Sara Mayben
Acting Forest Supervisor
Helena-Lewis and Clark National Forest
U.S. Forest Service
2880 Skyway Drive
Helena, MT 59602
Sara.Mayben@usda.gov

Tom Montoya
Forest Supervisor
Wallowa-Whitman National Forest
U.S. Forest Service
1550 Dewey Avenue, Suite A
Baker City, OR 97814
Tom.Montoya@usda.gov

Carl Petrick
Forest Supervisor
Idaho Panhandle National Forests
U.S. Forest Service
3232 West Nursery Road
Coeur d'Alene, ID 83815
Carl.Petrick@usda.gov

Cheryl Probert
Forest Supervisor
Nez Perce-Clearwater National Forests
U.S. Forest Service
903 3rd Street
Kamiah, ID 83536
Cheryl.Probert@usda.gov

Kurt Steele
Forest Supervisor
Flathead National Forest
U.S. Forest Service
650 Wolfpack Way
Kalispell, MT 59901
Kurt.Steele@usda.gov

Lisa Timchak
Forest Supervisor
Shoshone National Forest
U.S. Forest Service
808 Meadow Lane Avenue
Cody, WY 82414
Lisa.Timchak@usda.gov

Carolyn Upton
Forest Supervisor
Lolo National Forest
U.S. Forest Service
24 Fort Missoula Road
Missoula, MT 59804
Carolyn.Upton@usda.gov