

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,	)	Civil No. _____
	)	
Plaintiff,	)	
	)	PETITION FOR REVIEW
vs.	)	OF AGENCY ACTION
	)	
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE ANIMAL AND PLANT	)	
HEALTH INSPECTION SERVICE;	)	
JANET L. BUCKNELL, in her official capacity	)	
as Deputy Administrator of the Animal and	)	
Plant Health Inspection Service,	)	
	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

1. WildEarth Guardians (“Guardians”) brings this lawsuit against Defendants U.S. Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) and Janet L. Bucknall, the Deputy Administrator for APHIS’s Wildlife Services program.<sup>1</sup> Wildlife Services continues to kill predators and numerous other native wildlife species without supplementing stale environmental analyses that rely upon decades-old science for its so-called “Predator Damage Management” in New Mexico. In so doing, Wildlife Services is violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4347; the implementing Council on Environmental Quality (“CEQ”) regulations, 40 C.F.R. §§ 1500–1508; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706.

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<sup>1</sup> Wildlife Services is a program or component of APHIS, within the USDA. As all the allegations in this Complaint relate to the Wildlife Services program, which functions as a semi-autonomous agency, Defendants will hereinafter be collectively referred to as “Wildlife Services.”

2. Every year, Wildlife Services—a program within the USDA—poisons, traps, and guns down several of our nation’s most majestic animals, including wolves, bears, coyotes, and mountain lions in a futile attempt to save livestock and other “resources.” Funded with millions of taxpayer dollars, and without modern scientific support, this program uses cruel and often archaic methods to capture and kill wildlife from their native ecosystems, largely at the behest of livestock producers. Across New Mexico, Wildlife Services uses fixed-wing aircraft and helicopters to aerially shoot coyotes; body-gripping traps, neck snares and leghold traps to kill mountain lions, black bears, bobcats, badgers, coyotes, skunks, and swift and gray foxes; gas cartridges and poisons to exterminate coyotes, foxes, and prairie dogs in their dens; sodium cyanide M-44 devices to kill canines like foxes and coyotes; and other poisons to eliminate native birds like ravens. Family pets and federally-protected endangered and threatened species have been and will continue to be accidentally injured or killed by the agency’s indiscriminate killing methods.

3. Despite its extensive activities, Wildlife Services has never prepared an Environmental Impact Statement (“EIS”) disclosing the breadth of environmental impacts from its New Mexico wildlife killing programs to the public as NEPA requires. Instead, it continues to operate in the state under outdated Environmental Assessments (“EAs”) that rely on studies mostly dating back to the 1970s and 80s, but in some instances much earlier.

4. NEPA, however, requires supplemental analysis when “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” emerge. 40 C.F.R. § 1502.9(d)(1)(ii).<sup>2</sup> More than 14 years have passed

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<sup>2</sup> The CEQ regulations cited herein were recently revised and became effective on September 14, 2020. *See* 85 Fed. Reg. 43304 (July 16, 2020) (Update to the Regulations Implementing the Procedural Provisions of the NEPA, Final Rule). There was little substantive change, however,

since Wildlife Services analyzed the environmental impacts of its New Mexico Predator Damage Management (“PDM”) Program in finalized NEPA documents. Also, more than 9 years have passed since Wildlife Services separately analyzed the environmental impacts of its New Mexico Aquatic Rodent Damage Management (“ARDM”) program. New information and circumstances relevant to its wildlife killing programs, such as new scientific publications on the ineffectiveness of lethal predator control and the negative cascading ecological consequences of removing keystone species from their native ecosystems, require that Wildlife Services prepare supplemental NEPA analyses.

5. Through this Complaint, Guardians seeks a declaration that Wildlife Services’ ongoing authorization and implementation of its wildlife killing programs in New Mexico violates federal law and is otherwise arbitrary and capricious. Guardians additionally seeks injunctive relief to redress the injuries caused by these violations of the law. Should Guardians prevail, it will seek an award of costs, attorneys’ fees, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. §§ 701 *et seq.* (Administrative Procedure Act). It has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 701–706.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the agency’s violations of law occurred and continue to occur in this district

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to the “supplemental NEPA analysis” regulation at issue here. *Compare* 40 C.F.R. § 1502.9 (1978) to 40 C.F.R. § 1502.9 (2020).

and injury to Guardians and its members occurred and continues to occur in this district.

Guardians also maintains an office in this district.

### **PARTIES**

8. Plaintiff WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians has been headquartered in Santa Fe, New Mexico for more than 30 years, with numerous staff members currently working and residing in New Mexico. Guardians also has more than 188,000 members and supporters across the West, including thousands of members and supporters who reside in and/or visit the State of New Mexico. Guardians has a long history of working to protect and restore native wildlife species across the West in general and New Mexico in particular, including Mexican gray wolves, mountain lions, black bears, coyotes, beavers, and prairie dogs. Guardians operates a wildlife program with campaigns focused on native carnivore protection and restoration, and on reining in the controversial, cruel, and destructive practices of Wildlife Services including the use of poisoning, trapping, and aerial gunning.

9. Guardians’ staff, members, and supporters are dedicated to ensuring that Wildlife Services complies with all applicable federal laws. Wildlife Services’ wildlife killing program in New Mexico, along with its associated 2006 Environmental Assessments and Findings of No Significant Impact for Predator Damage Management Program (“2006 EA/FONSI”) and 2011 EA/FONSI for the New Mexico Aquatic Rodent Damage Management Program, adversely impact Guardians’ interests in New Mexico’s wildlife that could be killed by Wildlife Services—intentionally or unintentionally—including Mexican gray wolves, black bears, coyotes, mountain lions, bobcats, foxes, raptors, ravens, skunks, prairie dogs, and others. Guardians also has

members and supporters who are adversely affected by the threat that Wildlife Services poses to companion animals in New Mexico.

10. Guardians' members and supporters live and recreate in or near areas in New Mexico where implementation of Defendants' wildlife killing program occurs for the purposes of hiking, observing wildlife, and other recreational and professional pursuits. Guardians' members and supporters enjoy observing, attempting to observe, photographing, and studying wildlife, including signs of those species' presence in these areas. The opportunity to possibly view wildlife or their signs in these areas is of significant interest and value to Guardians' members and supporters, and it increases the use and enjoyment of public lands and ecosystems in New Mexico. Guardians' members and supporters have regularly engaged in these activities in the past, and they intend to continue to regularly do so in the upcoming months.

11. Guardians' members and supporters have a procedural interest in ensuring that Wildlife Services' activities comply with all applicable federal statutes and regulations. Guardians has worked to reform Wildlife Services' activities throughout the United States, including in New Mexico. Guardians and its members and supporters have an interest in preventing Wildlife Services from being involved in lethal wildlife damage management, particularly predator control, and promoting the use of more effective and proactive nonlethal alternatives that foster communities' coexistence with wildlife.

12. In sum, the interests of Guardians' members and supporters have been, and will continue to be, injured by Wildlife Services' wildlife-killing activities in New Mexico and its failure to comply with NEPA in implementing its Predator Damage Management Program and Aquatic Rodent Damage Management Program.

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