

Marianne Dugan  
OSB # 93256  
Internet e-mail address mdugan@mdugan.com  
259 E. 5th Ave., Ste 200-D  
Eugene, OR 97401  
(541) 338-7072  
Fax no. (866) 650-5213

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

GOAT RANCHERS OF OREGON, an unincorporated  
association dba in Oregon; CENTER FOR BIOLOGICAL  
DIVERSITY, an Arizona nonprofit corporation;  
BIG WILDLIFE, an Oregon nonprofit corporation;  
KLAMATH SISKIYOU WILDLANDS CENTER,  
an Oregon nonprofit corporation; UMPQUA  
WATERSHEDS, an Oregon nonprofit corporation;  
CASCADIA WILDLANDS PROJECT, an Oregon  
nonprofit corporation; and MOUNTAIN LION  
FOUNDATION, an Oregon nonprofit corporation,

Plaintiffs,

v.

DAVID E. WILLIAMS, in his capacity as Oregon Wildlife  
Services State Director, Wildlife Services/USDA Animal  
and Plant Health Inspection Service (APHIS); and USDA  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
(APHIS),

Defendants.

CASE NO.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF (NEPA  
and APA)**

## **INTRODUCTION AND SUMMARY**

1. In this action, plaintiffs challenge the U.S. Department of Agriculture's Animal and Plant Health Inspection Service's Wildlife Services' ("Wildlife Services," "WS," or "agency") decision to implement the killing of over 200 cougars in the State of Oregon pursuant to the Oregon Department of Fish and Wildlife's ("ODFW") Cougar Management Plan ("CMP") (assisting ODFW in its goal of killing over 2000 cougars). Specifically, defendants violated the National Environmental Policy Act ("NEPA") by failing to prepare an Environmental Impact Statement ("EIS") or an adequate Environmental Assessment ("EA") and associated Finding of No Significant Impact ("FONSI") that (1) met the stated purpose and need of the agency's implementation of the CMP, (2) addressed all potentially significant environmental impacts of the agency's implementation of the CMP, and (3) analyzed an adequate range of alternatives.

2. This civil action seeks declaratory and injunctive relief under the Administrative Procedure Act (APA), 5 U.S.C. § 551-706. The claims arise from defendants' violations of NEPA, 42 U.S.C. §§ 4321-4370(d), and its implementing regulations, 40 C.F.R. §§ 1500-1508.

3. This action is brought pursuant to the right of review provision of the APA, 5 U.S.C. § 702.

4. Plaintiffs seek:

- a. An order declaring that defendants have failed to comply with NEPA;
- b. An order enjoining defendants from undertaking activities unless and until defendants comply with NEPA and the APA;
- c. An award of plaintiffs' reasonable attorney's fees and costs associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;
- d. Such additional and further relief as the Court deems just and equitable.

The requested relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the plaintiffs.

### **JURISDICTION, VENUE, AND BASIS FOR RELIEF**

5. This Court properly has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), and 28 U.S.C. § 1361 (action to compel an officer of the United States to perform her duty). Judicial review is authorized by 5 U.S.C. § 706 because plaintiffs are adversely affected within the meaning of the relevant statute.

6. The decision giving rise to this complaint was made by the Portland office of Wildlife Services. Venue is properly vested in this Court by 28 U.S.C. § 1391(e), as a substantial part of the events and omissions giving rise to plaintiffs' claims occur in this judicial districts, and the defendants reside and operate here.

7. Declaratory relief is appropriate under 5 U.S.C. § 703 and 28 U.S.C. § 2201. Injunctive relief is appropriate under 5 U.S.C. §§ 703 and 705 and 28 U.S.C. § 2202.

### **PARTIES**

8. Plaintiff Goat Ranchers of Oregon is an incorporated association of farmers and ranchers (registered as a dba in the State of Oregon) who believe that a strong agricultural economy begins with smart land stewardship policies. Living and working in the rural-wildlands interface, its members' livelihoods depend on sound decisions made by lawmakers that impact their communities and farms. Through organizing and advocacy, Goat Ranchers of Oregon works to make Oregon a better place for farmers and ranchers to do business.

9. Plaintiff Center for Biological Diversity ("the Center") is a non-profit corporation dedicated to the preservation, protection, and restoration of biodiversity, native species, ecosystems, and public lands throughout the United States. The Center has over 35,000

members, including members who reside in Oregon. The Center, its staff and members, have an interest in ensuring the conservation of the cougar. Center members and staff have a particular interest in ensuring that cougars be allowed to play their very important role of regulating ungulate populations, thereby maintaining the health and diversity of western ecosystems. The Center's members and staff regularly use lands and intend to continue to use lands throughout the western United States, including the habitat and potential habitat of the cougar, for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. The Center's members derive scientific, recreational, health and aesthetic benefits from the cougar's presence in the wild.

10. Plaintiff Big Wildlife is a project of the Earth Island Institute, a California non-profit public benefit corporation with at least 175 members in Oregon. Big Wildlife maintains an office in Williams, Oregon, and is dedicated to the protect of wildlife through the enforcement of environmental laws and the attendant prevention of unlawful killings and trappings of wild animals, including the cougars at issue here.

11. Plaintiff Klamath Siskiyou Wildlands Center (hereinafter "KS Wild") is an Oregon nonprofit corporation that fights for the protection of the ecological riches of southwest Oregon and northwest California, with particular emphasis on the Rogue River, Siskiyou, and Klamath National Forests, as well as the Medford and Coos Bay Districts of the Bureau of Land Management (BLM). KS Wild has approximately 1400 dues-paying members. These members are interested in and support KS Wild's work to protect wildlife and wildlife habitat. KS Wild's members regularly spend both personal and professional time watching wildlife and advocating for wildlife protection. KS Wild has demonstrated a longstanding interest in and concern for the wildlife resources ODFW is proposing to destroy. The members of KS Wild regularly use the

affected areas on a recreational basis and strongly desire to do so in the future. Since KS Wild has legally-protected interests (as an organization and in a representational capacity on behalf of its members) in the recreational, scientific, ecological, emotional, and/or spiritual attributes in the ecosystems and wildlife at issue in this case, KS Wild has interests in the welfare of the cougars at issue in this case.

12. Plaintiff Umpqua Watersheds (Umpqua) is a nonprofit 501(c)(3) corporation organized under the laws of Oregon dedicated to the protection and restoration of the watersheds of the Umpqua Basin in Douglas County, Oregon. Umpqua works to accomplish this mission through a diverse statement of purpose to monitor the activities of federal, state, and local agencies charged with the responsibility of forest management within the public lands at issue in this action, and to advocate sound stewardship of public lands and resources with emphasis on sustainability of life systems. Umpqua seeks to improve communication with public agencies, private landowners and industry, and to educate the public in the interest of informed consent and the public's right to participate in decisions that affect the management of their natural resources. Additionally, Umpqua coordinates educational research projects and presentations that give a broader knowledge to the public. Umpqua currently has approximately 450 supporters who receive its quarterly newsletter. Umpqua and its supporters actively participate in governmental decision making processes with respect to the public lands at issue in this complaint, and rely on information provided through the NEPA process to increase the effectiveness of their participation. The interests of Umpqua and its supporters in the lands at issue in this complaint will be irreparably harmed if defendant continues to violate NEPA and the APA.

13. Plaintiff Cascadia Wildlands Project Plaintiff ("CWP"), headquartered in Eugene,

Oregon, is a non-profit public interest conservation organization with a dues-paying membership of 600. The CWP and its members participate in government decision-making to protect and restore the ecosystems and its associated species in the Cascadia bioregion through outreach, education, advocacy and litigation. In this vein, the CWP works to ensure protection measures for top-level carnivores, including the grey wolf and cougar and has closely followed the management plans for both species.

14. Plaintiff Mountain Lion Foundation was founded in 1986, and is a national nonprofit corporation dedicated to saving America's lion, *Puma concolor* (a term which includes mountain lion, Cougar, Florida panther, and catamount). With more than 10,000 supporters from every state and inhabited continent, a few hundred of which reside in Oregon, the Foundation headquarters are located in Sacramento, California. The Foundation works in the fourteen states where known viable populations of *Puma concolor* still cling to existence. The Foundation has longstanding programs that help citizens live responsibly with mountain lions rather than killing them indiscriminately, whether or not those lions have conflicted with humans.

15. Because of their longstanding and abiding concrete interest in mountain lion welfare, because of their past observations and their desire to observe mountain lions in the future, because of their organizational purposes and goals, and for other reasons, the plaintiffs would sustain injury to their interests if the defendants are allowed to implement cougar killing in the absence of an adequate analysis of the action's environmental impacts.

16. The interests of plaintiffs and their members would sustain further injury because defendants' actions will harm wildlife in the State of Oregon and could adversely affect their personal safety, and the peace and quiet that they otherwise enjoy on potentially impacted lands.

17. Defendant David E. Williams is the Oregon Wildlife Services State Director, for

COMPLAINT - PAGE 6

the federal Wildlife Services/USDA Animal and Plant Health Inspection Service (APHIS), and the head of the Portland Wildlife Services office which prepared the EA and made a decision not to prepare an EIS for the decision to slaughter cougars at issue in the case. Defendant Williams is responsible for ensuring that actions taken by the Portland Wildlife Services office comply with and implement the APA and NEPA regarding major federal actions undertaken by the defendants.

18. Defendant APHIS is the federal agency which issued the decision which is being challenged.

## **RELEVANT STATUTES AND REGULATIONS**

### **National Environmental Policy Act and the APA**

19. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. § 1500.1. Among the critical purposes of the statute are to "insure that environmental information is available to public officials and citizens before decisions are made and actions are taken," and to "help public officials make decisions that are based on understanding of environmental consequences . . ." Id. § 1500.1(b)-(c). "Public scrutiny [is] essential to implementing NEPA." Id.

20. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). This statement is known as an Environmental Impact Statement ("EIS").

21. An EIS must describe (1) the "environmental impact of the proposed action," (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented," (3) alternatives to the proposed action, (4) "the relationship between local short-

term uses of man's environment and the maintenance and enhancement of long-term productivity," and (5) any "irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332.

22. NEPA requires that when an agency proposes to undertake an "action" -- which includes activities that "are potentially under federal control," such as "new and continuing activities, including projects and programs entirely or partially financed, assisted, conducted, regulated, or approved by federal agencies," as well as "federally assisted activities," 40 C.F.R. § 1508.18 -- the agency "must first determine whether the action is one that normally requires" the preparation of an EIS pursuant to NEPA and the Council on Environmental Quality ("CEQ") regulations implementing NEPA. 40 C.F.R. § 1501.4(a).

23. If the agency is not certain whether an EIS is required, it must prepare an Environmental Assessment ("EA") to determine whether an EIS is necessary. 40 C.F.R. § 1501.4. The EA must discuss the need for the proposal, evaluate alternatives that would cause less adverse environmental impacts, and provide sufficient evidence and analysis to support the agency's determination as to whether the proposed action will significantly affect the environment. Id.

24. Whether an agency action is "significant" enough to require preparation of an EIS requires "considerations of both context and intensity." 40 C.F.R. § 1508.27. The context of the action includes factors such as "society as a whole (human, national), the affected region, the affected interests, and the locality." Id. § 1508.27(a). Intensity "refers to the severity of the impact" and requires several factors to be considered, including "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial"; [t]he degree to which the possible effects on the human environment are highly uncertain or involve



unique or unknown risks"; [w]hether the action is related to other actions with individually insignificant but cumulative significant impacts"; and [t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." *Id.* § 1508.27(b).

25. Review of a federal agency action under NEPA is governed by the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.* Under the APA, courts must set aside agency decisions found to be "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A).

### **SUMMARY OF FACTS**

26. In April 2006, the Oregon Department of Fish and Wildlife ("ODFW") adopted the Oregon Cougar Management Plan ("CMP"), which seeks to reduce the State's cougar population from an estimated 5100 cougars to 3000 cougars (41%).

27. The CMP authorized the ODFW to use USDA Wildlife Services to implement the cougar killing program by means of hunting and trapping.

28. On March 2, 2007, USDA Wildlife Services Portland office issued its Pre-Decisional Environmental Assessment that analyzed its proposed action to kill up to 200 cougars from specific locations identified by ODFW – initially Jackson County, Morrow County's Heppner Wildlife Management Unit, and Malheur County's East Beulah Wildlife Management Area. This proposal is to assist ODFW in its plan to kill 2101 cougars in Oregon.

29. In July 2007 defendants adopted the Pre-Decisional EA as final, adopted the proposed action as described in the EA, and issued a Finding of No Significant Impact.

30. WS's decision to implement the Oregon Cougar Management Plan is a major federal action that requires the completion of an environmental review pursuant to the mandates

of NEPA.

31. Defendants did not prepare an EIS regarding their implementation of the cougar killing program.

32. Defendants analyzed only two alternative actions – the proposed action alternative of implementing the killing of 200 cougars and the "no action" alternative.

33. The EA fails to address valid scientific evidence that contradicts the CMP's cougar population estimate, human complaints, or the need for cougar killing, and does not sufficiently address the impacts of USDA Wildlife Services' cougar removal on cougar populations, prey populations, or their ecosystems.

34. The CMP sets an arbitrary standard for determining when cougars would be killed.

35. It is unclear how ODFW arrived at its estimates for populations, complaints, or killing quotas, but they are not based on a full review of all available science, nor does the agency account for many important factors related to cougar population dynamics.

36. Throughout the EA, Defendant characterizes the project as necessary to reduce human/cougar conflicts, without providing evidence of this need.

37. The efficacy of the planned statewide removal of cougars as a tool for reducing human/cougar conflicts is controversial, largely undocumented, and fundamentally experimental in nature.

38. The EA fails to address valid scientific evidence that contradicts the agency's decision.

39. The CMP EA failed to provide adequate data or analyses to support its conclusion that the proposed implementation of the CMP is warranted.

40. The EA fails to disclose that the project's goal for a reduced cougar population is based on the estimated cougar population in an arbitrarily-selected year (1994), and that there is no sound evidence indicating that the 1994 cougar population is an optimal target.

41. The implementation of the CMP may actually threaten the state's cougar population in ways not contemplated by the EA.

## **COUNT I**

### **Violation of NEPA**

#### **Failure to Adequately Disclose and Analyze Environmental Impacts**

42. Plaintiffs incorporate by reference paragraphs 1 through 42.

43. The National Environmental Policy Act (NEPA) requires federal agencies to analyze the foreseeable environmental impacts, including direct, indirect, and cumulative impacts, of "major federal actions." 42 U.S.C. § 4332(c)(I); 40 C.F.R. 1508.7.

44. NEPA requires the analysis and consideration of cumulative effects which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.25(a).

45. An Environmental Assessment (EA) must "provide sufficient evidence and analysis for determining whether" the project will have a significant impact on the environment. 40 C.F.R. § 1508.9(a)(1).

46. Defendants' EA fails to adequately consider, analyze, and disclose the likely significant and cumulative impacts of the project, in one or more of the following ways:

- a. The EA is based upon incomplete information regarding the potential impacts of the project.

- b. Oregon's CMP – the underlying document upon which defendants based their decision – does not contain accurate cougar population estimates and does not account for many important factors related to cougar population dynamics.
- c. The EA fails to independently and adequately analyze the direct, indirect, and cumulative effects of the removal of cougars, including the impacts on cougar populations, prey populations, and their ecosystems.
- d. The EA relies on an inaccurate and ineffective cougar population model and fails to address the scientific controversy surrounding the cougar population estimate in Oregon.
- e. The EA fails to analyze whether the randomly selected population target of 3,000 cougars (the 1994 cougar population level) is a sustainable and optimal population level.
- f. The EA fails to analyze the efficacy of indiscriminate cougar killing, which is an unproven, controversially, and potentially counterproductive approach of reducing livestock/cougar, pet/cougar, and human/cougar conflicts.

47. Defendants' actions, as described above, are arbitrary, capricious, not in accordance with law, and without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

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

## **COUNT II**

### **Violation of NEPA**

#### **Failure to Prepare an EIS**

49. Plaintiffs incorporate by reference paragraphs 1 through 42.

50. NEPA requires an Environmental Impact Statement (EIS) for any major Federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(c); 40 C.F.R. § 1502.3.

51. Defendants violated NEPA by preparing only an Environmental Assessment for the project, and by issuing a "Finding of No Significant Impact" for the project, because the project may significantly affect the environment.

52. Defendants' implementation of the CMP is large in both geographic and temporal scale. Cougars have large territories and defendants' actions may in fact impact cougar populations in California, Idaho, Nevada and Washington, although those states were not consulted in developing the plan. Defendants' cougar killing under the CMP does not have any specified end date.

53. Defendants' implementation of the CMP fails to assess likely impacts to the long-term environmental health of the Pacific Northwest.

54. The cumulative effect of defendants' implementation of the CMP on state and regional cougar populations, wildlife and other elements of the environment, may be significant, especially when combined with the effects of other county, state, and federal culling and hunting activities.

55. Defendants' implementation of the CMP may significantly impact habitat of plants and animals listed under the Endangered Species Act (ESA) including the Canada lynx, the grey wolf, and the Gentner's fritillaria (*Fritillaria gentnerii*).

56. Additionally, other species not currently listed under the ESA but of concern such as the Pacific fisher (which is "warranted" for listing under the ESA but "precluded" due to the

government's other listing priorities), and Kincaid's Lupine (*Lupinus sulphureus* ssp. *kincaidii*), a candidate plant species, may be significantly impacted.

57. There is a high degree of scientific controversy and uncertainty regarding the impact of the CMP on cougar population dynamics; research directly contradicts defendants' conclusion that cougar demographics will not be impacted. Such a failure to adequately assess the available science means that the cumulative impacts were not adequately considered.

58. These actions were taken not in accordance with law, without observance of procedures required by law, and are arbitrary and capricious within the meaning of the APA. 5 U.S.C. § 706.

59. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act.

### **COUNT III**

#### **Violation of NEPA**

##### **Failure to Analyze an Adequate Range of Alternatives**

60. Plaintiffs incorporate by reference paragraphs 1 through 42.

61. In both an EA and EIS, NEPA requires the agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 102(2)(E).

62. Further, agencies "shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives, which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a).

63. By analyzing only the preferred action alternative of conducting cougar removal assistance and a "no-action" alternative (which arbitrarily presumes ODFW will fully implement the CMP if defendants do not participate), the EA fails to consider an adequate range of alternatives.

64. Defendants have unduly narrowed the EA's purpose and need for reducing human-cougar conflicts in order to make lethal hunting of cougars the only alternative that meets the agency's stated purpose.

65. These actions were taken not in accordance with law, without observance of procedures required by law, and are arbitrary and capricious within the meaning of the APA. 5 U.S.C. § 706.

66. Plaintiffs are entitled to recover their costs, disbursements and attorney's fees pursuant to the EAJA.

## **COUNT IV**

### **Violation of NEPA**

#### **Failure to Meet Purpose and Need**

67. Plaintiffs incorporate by reference paragraphs 1 through 42.

68. NEPA requires the statement of purpose and need in an NEPA document to reflect the purpose and need "to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13; 40 C.F.R. § 1508.9(2)(b).

69. Defendants failed to address the entirety of the body of scientific literature that directly disputes defendants' allegations that implementation of the CMP is necessary due to an alleged overabundance of cougars in the state.

70. The Finding of No Significant Impact is arbitrary, capricious, not in accordance

with law, and without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

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

### **RELIEF REQUESTED**

Plaintiffs seek an order:

1. Declaring that defendants failed to comply with NEPA and the APA;
2. Enjoining defendants from taking any further action to remove cougars from the environment under the CMP unless and until defendants have complied with NEPA and the APA;
3. Awarding plaintiffs their reasonable attorney fees and costs incurred in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
4. Granting plaintiffs such additional relief as the Court deems just and equitable.

DATED this 22nd day of January 2008.

Respectfully submitted,

---

Marianne Dugan, OSB # 93256  
259 E. 5th Ave, Suite 200-D  
Eugene, OR 97401  
(541) 338-7072  
Fax (866) 650-5213  
mdugan@mdugan.com