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Comments: Stefani Spencer Acting Deputy Supervisor, Nez Perce-Clearwater National Forests 903 3rd Street Kamiah, Idaho 83536 Via Email: Stefani.spencer@usda.gov Leanne Marten Regional Forester, Forest Service Region 126 Fort Missoula Road Missoula, Montana Via Email: Leanne.marten@usda.gov RE: 2022 IDFG Sheep Collaring Project (Salmon and Red River Ranger Districts) Dear Regional Forester and Acting Deputy Forest Supervisor, We are writing to express our deepening concern over the Forest Service repeatedly authorizing helicopter intrusions in designated Wilderness without formal NEPA review, repeatedly allowing immediate implementation of these projects in an apparent attempt to avoid judicial review, and repeatedly allowing state agencies to segment project proposals in an apparent attempt to avoid comprehensive analysis of the full scope and impact of helicopter-assisted wildlife programs in Wilderness. The latest iteration of this problem is described below. We urge your immediate attention and response to this matter. On February 1, 2022, the Forest Service notified the public that it would be considering a proposal by Idaho Department of Fish and Game (IDFG) to capture and collar bighorn sheep via helicopter in the Wild and Scenic Salmon River Corridor, including portions of the Gospel-Hump and Frank Church-River of No Return (RONR) Wildernesses. The notice requests public comment by March 1, 2022, but it also indicates project activities would begin in March 2022 in areas outside of the RONR Wilderness, including the Gospel-Hump Wilderness and the Wild and Scenic River Corridor. There would be a 30-day delay within the RONR Wilderness. It appears the Forest Service intends to categorically exclude the project from formal NEPA review in an Environmental Assessment or an Environmental Impact Statement. We are writing to request that the Forest Service drop the Wilderness and Wild and Scenic River portions of the project. If the Forest Service is unwilling to do so, we request the Forest Service undertake formal NEPA review of the project, including reasonably foreseeable future helicopter proposals in Wilderness and the Wild and Scenic River Corridor that will likely be required as an extension of this project or of IDFG's broader bighorn management plans. Short of those commitments, we request the Forest Service delay project implementation within the Wild and Scenic River Corridor, within the Gospel-Hump Wilderness, and within the RONR Wilderness to allow time for meaningful judicial review of the decision. A categorical exclusion is not appropriate for this project. We intend to address this problem more thoroughly in our comment letter, but given the Forest Service's intention to authorize project implementation in March (immediately after receiving public comment), we are flagging the issue in advance. The project will degrade two designated Wildernesses and a Wild and Scenic River Corridor by authorizing activities generally prohibited in those areas. It threatens violation of the Wilderness Act and its implementing regulations, see 16 U.S.C. [sect] 1133(b); 36 C.F.R. [sect] 261.16, as well as the Frank Church River of No Return Wilderness Management Plan, see USDA Forest Service, Frank Church -River of No Return Management Plan with May 22, 2009 Errata at 2-65. Because the Forest Service is categorically excluding the project, the 4-page project description is bereft of any consideration of alternatives. Additionally, the project appears to be another instance of the Forest Service "allow[ing] the IDFG to get away with slicing its long-term helicopter collaring project(s) into a one-year sliver of a project to mitigate the cumulative impacts." See *Wilderness Watch v. Vilsack*, 229 F.Supp.3d 1170, 1180 (D. Idaho 2017). Further, immediate implementation of helicopter projects in Wilderness is not appropriate. The Forest Service has been the subject of at least three federal court orders requiring the Forest Service to allow enough time for judicial review between project authorization and implementation. As here, those cases involved helicopter-assisted wildlife manipulation projects in designated Wilderness. In a 2010 order, a federal court in Idaho put the Forest Service on notice that, should it ever again approve helicopter operations in the RONR Wilderness, the agency "would be expected to render a final decision enough in advance of the project so that any lawsuit seeking to enjoin the project could be fully litigated" before helicopter operations commence. *Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F.Supp. 2d 1264, 1270 (D. Idaho 2010). In 2016, the Forest Service ignored the Court's 2010 order and authorized immediate implementation of another helicopter-assisted wildlife project. *Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170, 1175 (D. Idaho 2017) (noting the agency ignored the Court's prior directive in the present case); see also Order on Motion to Reconsider at 1-2, Wilderness

Watch v. Vilsack, 229 F. Supp. 3d 1170 (ECF No. 61) ("Ignoring a prior directive of the Court, the Forest Service allowed the project to begin immediately, preventing plaintiff environmental groups from being able to timely seek injunctive relief."). Because of the Forest Service's trend of authorizing immediate implementation of helicopter-assisted wildlife projects that preclude time for judicial review, and because the agency ignored a prior court order warning the agency against this behavior, the Court "enjoin[ed] the Forest Service from approving any future helicopter projects without delaying implementation for 90-days to allow affected groups to file challenges to the projects." *Wilderness Watch v. Vilsack*, 229 F.Supp.3d 1170, 1183 (D. Idaho 2017), *aff'd in part*, *Wilderness Watch v. Perdue*, 805 Fed. Appx. 467 (9th Cir. 2020) (upholding injunction for a delay of 30 days of Idaho Department of Fish and Game helicopter-assisted projects in the RONR Wilderness to "ensure[] time for adequate review of any challenges" and noting "[t]he public interests suffers when actions in the wilderness evade judicial review.").³ While the Ninth Circuit limited the injunction to the RONR Wilderness, it is clear that the rationale applies equally to similar scenarios in any designated Wilderness. In 2021, a federal court in Montana ordered the Forest Service to postpone immediate implementation of another helicopter-assisted wildlife project in the Scapegoat Wilderness to a date "sufficiently far in advance to permit this Court to exercise meaningful judicial review." Order re Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction at 2, *Wilderness Watch v. Marten*, No. 9:12-cv-82-DLC (D. Mt. July 24, 2021) (citing *Wilderness Watch v. Perdue*, 805 Fed. Appx. 476, 481 (9th Cir. 2020)). The Forest Service is now repeating the same behavior again. In light of the above, we request that you drop the Wilderness and Wild and Scenic River portions of the project. Alternatively, we urge you to delay project implementation to allow enough time for formal NEPA review with full opportunity for public comment. Short of that, we request the Forest Service delay project implementation to allow sufficient time for judicial review of its project decision. We request your response by February 18, 2022.

Sincerely,
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