

Wildlife Damage Management/National Environmental Policy Act: U.S. District Court (D. Idaho) Addresses Whether EIS Required



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The United States District Court (“D. Idaho”) addressed in a June 22nd Memorandum Decision and Order (“Order”) a National Environmental Policy Act (“NEPA”) issue raised in connection with a U.S. Department of Agriculture (“USDA”) APHIS Wildlife Services decision to expand its operations to kill or remove predators to game animals and protected species. See *Western Watersheds Project v. APHIS Wildlife Services*, 2018 WL 3097016.

Western Watersheds Project (collectively “WWP”) and other organizations alleged that the National Environmental Policy Act (“NEPA”) was violated by Wildlife Services failure to prepare an Environmental Impact Statement (“EIS”).

Wildlife Services is a USDA agency tasked with removing certain predators from areas and aiding in population control of certain wild animals. It offers three types of wildlife damage management assistance; technical assistance, direct control assistance, and research assistance.

Direct control assistance was the issue in this case. It consists of field activities performed by the Wildlife Services.

Responding to requests from ranchers, Wildlife Services decided to expand its predator removal operations. In considering whether to expand operations, Wildlife Services prepared a draft Environmental Assessment (“EA”). The document included plans for removal and studies to support the agency’s conclusions as to the best way to reduce the predator population. The draft EA was then distributed to other agencies and the public.

Upon the submission of the draft, Wildlife Services received hundreds of complaints from agencies such as the Idaho Department of Fish and Game (“IDFG”), the Bureau of Land Management (“BLM”), and the Forest Service. The complaints mainly involved Wildlife Services preferred removal method (killing the predators). The agencies objections focused on the objectivity, ineffectiveness of Predator Damage Management (“PDM”) and the environmental impacts that such action would cause, and the lack of site specific studies.

As to objectivity, BLM argued that the draft failed to consider other approaches to PDM. IDFG argued that the draft considered only one perspective (i.e., the PDM perspective). It argued there were other solutions. The Forest Service argued that Wildlife Services was only portraying one side and cherry picking

the scientific papers they chose to use for support. Wildlife Services responded by stating that they collaborate with scientists from all across the world that are published in peer reviewed literature.

For the ineffectiveness of PDM, the BLM argued that there was no guarantee the Wildlife Services' actions would have their intended impact. The Forest Service argued that the effectiveness and efficiency of PDM is controversial in the scientific community and that the Wildlife Services failed to consider best known science on PDM. Wildlife Services responded, claiming that previous studies show the effectiveness of PDM.

As to environmental impacts, the BLM argued that the Wildlife Services, again, ignored science and that a more balanced discussion was needed within the EA draft. The Forest Service argued that Wildlife Services conclusion on their proposed environmental impact was unsubstantiated and broad. Wildlife Services responded, claiming that the studies the other agencies referred to were inapplicable because the studies only examined areas where the predators were totally removed from the area. Wildlife Services proposal was to reduce the population, not eliminate the predator.

For the lack of site specific studies, the BLM argued there needs to be more site specific analyses included that examine the effects of predator removal in the given area. The Forest Service argued that the draft lacked specificity because there was no discussion of predator removal at a below state scale. Meaning the draft only discussed studies as they relate to Idaho in general rather than the proposed areas where PDM would take place. Wildlife Services responded to this argument by stating the predator removal would only be for short period of time, but the BLM countered, stating that the time and period of which PDM take place is only one component of these studies.

WWP filed suit alleging NEPA was violated because of a failure to prepare an EIS. They argued the EIS would require Wildlife Services to study these complaints in greater depth.

NEPA requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed EIS. However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment. Courts will determine the meaning of "significantly" by reviewing the context and intensity of the proposed action.

As opposed to an EIS, which is a much more detailed document, the EA provides sufficient evidence and analysis for determining whether a finding of no significant impact for an EIS should be prepared. Neither an EA nor an EIS need be prepared if a particular federal action falls within the scope of a NEPA categorical exclusion. Categorical exclusions are promulgated by the federal agencies and are described actions which have been determined to not involve significant environmental impacts.

NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EA or EIS in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard.

In addressing whether an EIS should have been prepared, the Court focused on intensity. This is the severity of the impact which is examined through three factors. These factors are whether the action is controversial, highly uncertain, and involves unique lands.

The Court determined that the Wildlife Services actions were controversial and highly uncertain because there are various scientific studies that support both sides. The explanations offered by the Wildlife Services were deemed unconvincing. The Court explained that there were many uncertainties within the Wildlife Services proposal because they refused to collect site-specific information and their own data was an inadequate basis to evaluate environmental impacts. Further, Wildlife Services refused to respond to specific studies that the complaining agencies offered for support of their opinions. Ultimately, the Court determined that inadequate data affected all the Wildlife Services conclusions. As for the unique lands

factor, Wildlife Services predicted a high probability that it will conduct operations on unique lands within five years.

The Court concluded that Wildlife Services inadequacy to respond to the other agencies concerns triggered the three intensity factors to require an EIS. Therefore, the Plaintiff's motion for summary judgement was granted.

A [copy of the opinion](#) can be found here.