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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

**CENTER FOR BIOLOGICAL DIVERSITY,
WESTERN WATERSHEDS PROJECT,
FRIENDS OF THE CLEARWATER,
WILDEARTH GUARDIANS;**

Plaintiffs,

v.

**IDAHO GOVERNOR C.L. "BUTCH"
OTTER, in his official capacity; VIRGIL
MOORE, Director of the Idaho Department
of Fish and Game, in his official capacity;
BRAD CORKILL, FRED TREVEY, BOB
BAROWSKY, MARK DOERR, RANDY
BUDGE, KENNY ANDERSON, AND WILL
NAILLON, members of the Idaho Fish and
Game Commission, in their official capacity;**

Defendants.

Case No. 1:14-CV-00258-BLW

**DEFENDANTS' JOINT ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Pursuant to F.R.C.P. 8, Defendants, Governor C.L. “Butch” Otter, Idaho Department of Fish and Game (IDFG) Director Virgil Moore, and the individual members of the Idaho Fish and Game Commission (collectively “Defendants”) hereby answer Plaintiffs’ Complaint for Declaratory and Injunctive Relief, referring to headings and the paragraphs as numbered in said Complaint, as follows:

INTRODUCTION

1. The allegations in Paragraph 1 constitute Plaintiffs’ introduction and characterization of their lawsuit and claims for relief, for which no answer or response is necessary. Defendants deny the general allegation that Defendants have violated, or are in violation of the Endangered Species Act (ESA) as related to the take of lynx.

JURISDICTION AND VENUE

2. Paragraph 2 states legal conclusions and characterizes federal statutes, which speak for themselves, and need not be admitted or denied. Defendants admit that WildEarth Guardians, Center for Biological Diversity, Western Watersheds Project, and Friends of the Clearwater sent notices of intent to sue to Defendants through letters dated as alleged in Paragraph 2.

3. Paragraph 3 states legal conclusions for which no answer or response is necessary.

PARTIES

4, 5, and 7. Paragraphs 4, 5, and 7 (Plaintiffs’ Complaint did not contain Paragraph 6) consist of narrative describing Plaintiff organizations, their interests, and alleged harm to those interests. Defendants have incomplete knowledge concerning the characterizations in these Paragraphs and cannot admit or deny the narrative set forth therein. To the extent that the

Paragraphs allege Plaintiffs have suffered legally cognizable, actual or imminent injury, and that Defendants have caused such injury, Defendants deny such allegations. Defendants deny any allegations that they have violated federal laws. The remainder of the Paragraphs constitutes argument that need not be admitted or denied.

8. Defendants admit that C.L. “Butch” Otter is Governor of Idaho, that the Idaho Constitution vests the Governor with supreme executive power of the state, and that he has statutory authority to appoint members of the Idaho Fish and Game Commission, which is responsible for administering Idaho’s wildlife policy under Title 36 of Idaho Code. Appointments to the Commission are subject to confirmation by the Idaho State Senate. Defendants deny that Governor Otter has statutory authority to appoint the director of IDFG.

9-16. Defendants admit that Virgil Moore is Director of IDFG. Defendants admit that the Director is responsible for implementing wildlife and trapping laws and policies and managing and overseeing IDFG employees who also implement those laws and policies. Defendants admit the following individuals are members of the Idaho Fish and Game Commission: Brad Corkill, Fred Trevey, Mark Doerr, Kenny Anderson, and Will Naillon. Defendants admit that Randy Budge and Bob Barowsky were members of the Idaho Fish and Game Commission on the date of filing of the Complaint on June 30, 2014, which was the final day of the terms of their respective appointments pursuant to Idaho Code § 36-102(d)(1). Defendants aver that Governor Otter appointed their successors today, July 29, 2014. Defendants admit that the Idaho Fish and Game Commission has authority to administer state wildlife policy, to set seasons and adopt rules as provided in Title 36 of Idaho Code, and to appoint the director of IDFG. Defendants deny that the Director or members of the Commission have authority to change or promulgate state wildlife and trapping laws.

FACTS

17. Defendants admit the allegations in Paragraph 17.

18. Defendants admit the allegations in Paragraph 18, with the exception of allegations regarding population densities as they apply to Idaho, which at the southern periphery of the range of lynx, has estimated lynx densities considerably less than Plaintiffs allege, and a significant portion of Idaho contains habitat unsuitable for lynx and has no recent verified reports of lynx presence.

19. Defendants admit the allegations in paragraph 19.

20. Defendants admit the allegation in Sentence 1, with the clarification that in a significant portion of Idaho there is no recent verified record of lynx presence. Defendants construe “occur” to correlate to regular presence. Defendants deny the allegations in Sentences 2 and 3. Defendants have insufficient information to admit or deny the allegation in Sentence 5, and deny the allegation on that basis.

21. Defendants construe “occur” to correlate to regular presence. Defendants admit that individual lynx occur in Boundary County. Defendants have incomplete information as to lynx occurrence in Adams, Bonner, Clearwater, Idaho, Kootenai, Latah, Madison, Nez Perce, Shoshone, and Valley Counties, and deny the allegations on that basis. Defendants deny that lynx occur in Franklin and Jefferson Counties. Defendants have no reliable evidence of lynx occurrence since 2000 in Bear Lake, Benewah, Blaine, Boise, Bonneville, Butte, Camas, Caribou, Clark, Custer, Elmore, Fremont, or Teton Counties, and deny allegations on that basis. Defendants admit there has been one verified report of a lynx in Lemhi County since 2000.

22. Defendants admit the U.S. Fish and Wildlife Service listed the Canada lynx in the contiguous United States, including Idaho, and aver that on February 25, 2009, the Service

revised the critical habitat designation, with approximately 50 square miles in the northeast corner of Boundary County included in the designation. The statutory or regulatory definitions of what constitutes critical habitat, the contents of the Service's critical habitat designation, and the Service's definition of "occupied" lynx habitat speak for themselves, and to the extent Plaintiffs' characterizations of them are inconsistent with such definitions, Defendants deny such allegations.

23. Defendants have incomplete information as to the small numbers of lynx that may be present in Idaho, and deny the allegation of Sentence 1 on that basis. Defendants are aware of no credible evidence that lynx in Idaho are crucial to providing connectivity with other lynx populations across the American West, and no credible evidence of a persistent, breeding population in Idaho, and deny the allegation in Sentence 2 on that basis. Defendants admit that lynx may occasionally disperse from Canada to Idaho. Defendants are aware of no credible evidence that lynx disperse between Montana and Idaho or between Washington and Idaho, or from Idaho into Colorado, and deny related allegations on that basis. Defendants have information that an individual or a few individual lynx released in Colorado traveled to or through Idaho on northward travel routes, but do not have information that "dispersal" is a regular occurrence from Colorado to Idaho, and deny the allegation on that basis. Defendants are aware of no credible evidence that Idaho is contributing to the stability or persistence of lynx populations in adjacent states or Canada, and deny related allegations on that basis.

24. Defendants are aware of no credible evidence supporting the allegation that lynx have little fear of human scent, and deny that allegation on that basis. Defendants admit the remaining allegations in Paragraph 24.

25. Sentence 1 is a conclusion of law, and need not be admitted or denied; Idaho avers that the licensing requirements of Idaho Code § 36-401 for hunting, trapping, and fishing in Idaho pertain to state-managed species, and Idaho has statutory exceptions to licensing requirements. Defendants admit the allegation in Sentence 2. Defendants admit that IDFG has seven administrative regions consisting of certain counties, and that trapping seasons are grouped according to these regions in the season brochure.

26. Defendants admit that the Idaho Fish and Game Commission rules classify Canada lynx as a furbearing animal and that there is not open season for the harvest of lynx. Defendants admit that in portions of Idaho, animals such as bobcat, beaver, muskrat, mink, marten, otter and wolves inhabit habitat that may be suitable for lynx. Defendants admit that trapping is not disallowed in critical habitat for lynx as designated by the U.S. Fish and Wildlife Service, and that trapping is not disallowed in Idaho where there is habitat that may be suitable for lynx. Defendants deny the allegations in Sentence 6; for example, Idaho has requirements for breakaway mechanisms or stops on all snares to reduce non-target catches and to allow release of non-target catches.

27. Defendants admit that trappers licensed in Idaho may use the types of traps listed in Sentence 1 in areas where habitat may be suitable for lynx. Defendants admit that leghold/foothold traps are designed to hold the animal by the foot. Defendants admit that leghold/foothold traps have one or two springs to power jaws that shut when an animal steps on the pan. Defendants do not refer to conibear traps as body-crushing or “killer” traps, and deny the related allegation in Sentence 4 on that basis. Defendants admit that conibears are made of two metal rectangular jaws hinged at the side, with a spring affixed to one or both sides. Defendants deny that conibears are designed for target animals to walk through, but admit the

remainder of Sentence 5. Defendants admit Sentence 6. Defendants admit snares are intended to catch animals at the neck and deny allegations regarding snaring by the foot, on the basis that Idaho does not allow foothold snares. Defendants admit Sentence 8. Defendants deny Sentence 9, as traps and snares discriminate among wildlife species based on factors such as size, placement, and pan tension.

28. Defendants admit Sentence 1. Defendants admit guidelines are not mandatory, but deny the remainder of Sentence 2, as the guidelines are published in the brochures proclaiming trapping seasons and summarizing trapping rules. Defendants admit Sentence 3. Defendants deny Sentence 4, as trappers are required to report all non-target catch. Defendants admit Sentences 5 and 6.

29. Defendants admit that digital images of lynx have been taken at three remote camera locations in the Purcell Mountains in areas designated as critical habitat by the U.S. Fish and Wildlife Service. Defendants lack sufficient information to admit or deny the allegation as to whether these images involve three different individual lynx; IDFG's project biologist has indicated these may be of images of the same individual lynx.

30. Defendants admit the allegations in Sentences 1, 2 and 3, with the clarification that the lynx was caught in a trap set by an individual other than Defendants. Defendants deny the allegations in Sentence 4, as IDFG employees released the lynx alive with no serious injuries. Defendants admit the allegations in Sentence 5.

31. Defendants admit the allegations in Paragraph 31, with the clarifications that the trap was set by an individual other than Defendants; the individual informed IDFG of the misidentification, shooting and killing of the lynx; and the state prosecuted the individual for unlawful take of lynx, and the individual pled guilty.

32. Defendants admit that in January 2014, a lynx was caught in a trap set by an individual other than Defendants in the Cabinet Mountain Range in Idaho, that the lynx was not killed, and that the lynx was released with a radio collar so that it can be tracked. Defendants deny that the lynx was caught in a cage trap and the related allegations to the use of a cage trap in this instance.

33. Defendants deny the allegations in Paragraph 33 as applied to the take of lynx in Idaho. Defendants lack sufficient information to admit or deny the allegations in Paragraph 33 as to the take of lynx outside of Idaho.

34. Defendants admits the allegations in Paragraph 34, with the clarifications that the number of trapping licenses issued has not increased every year for each of the last 14 years, and the number of trapping licenses issued in 2012-2013 totaled 2,057.

CLAIM FOR RELIEF

Violation of ESA § 9

35. Defendants incorporate by reference all preceding paragraphs.

36. Paragraph 36 seeks to characterize the requirements of the Endangered Species Act, which Act speaks for itself and need not be admitted or denied. Defendants deny allegations in Paragraph 36 that Defendants have violated or are in violation of the ESA related to the take of Canada lynx. The Paragraph otherwise constitutes argument and need not be admitted or denied.

The remaining Paragraphs of the Complaint comprise the prayer for relief to which Defendants need not reply. To the extent a response is deemed necessary, Defendants deny that Plaintiffs are entitled to any relief whatsoever.

GENERAL DENIAL

Each and every allegation in the Complaint not specifically admitted is hereby denied.

AFFIRMATIVE DEFENSES

1. Some or all of the Plaintiffs lack standing with respect to their claims, and the Court should dismiss such parties and claims for lack of subject matter jurisdiction.
2. The allegations contained within this Complaint fail to state a claim upon which relief can be granted.
3. Some or all of the Defendants are immune from suit under the Eleventh Amendment of the U.S. Constitution.
4. The actions and authorities of some or all of the Defendants are not sufficient to invoke liability under § 9 of the Endangered Species Act.
5. Defendants reserve the right to assert such affirmative defenses as may be applicable during the course of this litigation.

DEFENDANT'S PRAYER FOR RELIEF

Having fully answered, Defendants respectfully request that judgment be entered in Defendants' favor, and that costs and such other relief as the Court may allow be awarded to them.

Respectfully Submitted this 29th day of July, 2014.

/s/ Samuel J. Eaton
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Legal Counsel
Governor's Office of Species Conservation
Attorney for Governor Otter

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

/s/ Kathleen E. Trever
Kathleen Trever
Deputy Attorney General
Attorney for IDFG Director Moore
And Members of the Idaho Fish and
Game Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July, 2014, I filed the foregoing Answer, on behalf of Governor Otter, Director Moore and Idaho Fish and Game Commissioners, electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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