

Celeste K. Miller, ISB # 2590  
McDevitt & Miller LLP  
420 West Bannock  
P.O. Box 2564-83701  
Boise, Idaho 83702  
Tel: 208-343-7500  
Fax: 208-336-6912  
ck@mcdevitt-miller.com

Peter M.K. Frost, applicant, *pro hac vice* (OR Bar # 911843)  
Western Environmental Law Center  
1216 Lincoln Street  
Eugene, Oregon 97401  
Tel: 541-359-3238  
Fax: 541-485-2471  
frost@westernlaw.org

Melissa Hailey, applicant, *pro hac vice* (CO Bar # 42836)  
Antonio Bates Bernard Professional Corporation  
3200 Cherry Creek Drive South, Suite 380  
Denver, Colorado 80209  
Tel: 303-733-3500  
Fax: 303-733-3555  
mhailey@abblaw.com

Attorneys for Plaintiff WildEarth Guardians

Timothy J. Ream, applicant, *pro hac vice* (CA Bar # 283971)  
Center for Biological Diversity  
351 California Street, Suite 600  
San Francisco, California 94104  
Tel: (415) 632-5315  
tream@biologicaldiversity.org

Attorney for Plaintiffs Center for Biological Diversity, Friends of the  
Clearwater, and Western Watersheds Project

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

Center for Biological Diversity, Western  
Watersheds Project, Friends of the  
Clearwater, WildEarth Guardians,

Plaintiffs,

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

v.

C.L. “Butch” Otter, Governor of Idaho, 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 capacities,

Defendants.

## INTRODUCTION

1. Plaintiffs Center for Biological Diversity et al. respectfully file this suit challenging the actions of Defendants C.L. “Butch” Otter *et al.* (“State Defendants”), who have allowed, and continue to allow, the trapping of wildlife in the range of the Canada lynx (*Lynx canadensis*), a species of cat listed as threatened with extinction under the Endangered Species Act (“ESA”). 16 U.S.C. §§ 1531-1544. Trapping in lynx habitat in Idaho has resulted in, and is reasonably likely to continue to result in, the illegal “take” of lynx under the ESA. State Defendants have violated, and remain in violation, of the ESA by authorizing trapping that has a reasonable probability to take lynx in the absence of an Incidental Take Permit (“ITP”) or other authorization from the U.S. Fish and Wildlife Service (“Service”) that would authorize any such takes. Plaintiffs seek a declaratory judgment that State Defendants are violating the ESA and an injunction ordering State Defendants to bring into compliance with the ESA their authorization of trapping in lynx habitat in Idaho.

## JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540, and because this case involves a federal question. 28 U.S.C. § 1331. On February 27, 2012, WildEarth Guardians gave State Defendants notice of their intent to sue under the ESA for authorizing trapping in lynx habitat. On April 7, 2014, Center for Biological

Diversity, Western Watersheds Project, and Friends of the Clearwater gave State Defendants notice of their intent to sue under the ESA for authorizing trapping in lynx habitat. On April 18, 2014, WildEarth Guardians gave State Defendants amended notice of their intent to sue under the ESA for authorizing trapping in lynx habitat. More than 60 days have elapsed since State Defendants received these notices. The relief Plaintiffs seek is authorized by the ESA and by the Declaratory Judgment Act. 16 U.S.C. § 1540; 28 U.S.C. § 2201.

3. Venue is proper in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e), and the acts complained of herein occurred in this district.

### **PARTIES**

4. Plaintiff Center for Biological Diversity is a non-profit organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center is based in Tucson, Arizona with additional offices in Alaska, California, Minnesota, Nevada, New Mexico, New York, Oregon, Washington, and the District of Columbia. The Center has long advocated on behalf of the Canada lynx and sought to strengthen protections for it and its habitat. Over 20 years ago, in 1994, the Biodiversity Legal Foundation, an organization which later merged with the Center, petitioned the Service to list the contiguous U.S. population of Canada lynx under the ESA. As the result of a pair of lawsuits brought by the Biodiversity Legal Foundation and additional plaintiffs, the lynx was listed under the ESA in 2000. In 2008, the Center filed an ESA section 9 lawsuit on behalf of lynx in the District of Minnesota that resulted in restrictions on the types of traps, snares and bait that can be used in lynx habitat in that state. In 2013, in response to a pair of lawsuits involving the Center and other conservation groups, the Service proposed critical habitat for Canada lynx, including in Idaho.

Plaintiff Western Watersheds Project (“Project”) is a non-profit conservation group headquartered in Idaho, with offices and staff in Idaho, Arizona, California, Montana, Oregon, Wyoming, and Utah. The Project is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. The Project, which has over 1200 members, is concerned with and active in seeking to protect and improve the wildlife habitat, wilderness values, and other natural resources and ecological values of watersheds throughout

the West, including in Idaho. Project staff and members use lynx habitat in Idaho for recreation, scientific study, and aesthetic purposes, and will continue to do so in the future. The Project actively monitors ecological conditions in Idaho and reviews and comments on agency wildlife management decisions, including those at issue in this case, and publicizes adverse ecological effects of trapping lynx. Trapping in lynx habitat impairs recreational, aesthetic, and scientific interests of Project members.

5. Plaintiff Friends of the Clearwater (“Friends”) is a non-profit conservation group dedicated to protecting and preserving the native biodiversity of the Clearwater Bioregion. Its office is in Moscow, Idaho. Friends has over 800 members. Friends’ members include biologists, outfitters, recreationists, and researchers who observe, enjoy, and appreciate Idaho’s native wildlife, including lynx, and the quality of habitat for lynx, including wilderness and roadless areas where they are found. Friends’ members will continue to use areas inhabited by lynx. Friends’ members are harmed by State’s allowances of trapping in lynx habitat, because it has and will likely continue to lead to the take of lynx.

7. Plaintiff WildEarth Guardians is non-profit conservation group with offices in Santa Fe, New Mexico; Denver, Colorado; Missoula, Montana; Portland, Oregon; and Tucson, Arizona. Guardian’s mission is to protect and restore wildlife, wild places, and wild rivers in the American West. This mission encompasses ensuring the long-term survival and recovery of lynx in Idaho, including protecting individual lynx from take. Guardians has over 4,500 members, many of whom live in or visit Idaho. Guardians’ members have been, and continue to be, injured by State Defendants’ authorization of trapping in lynx habitat because such members have professional, educational, inspirational, personal, aesthetic, and recreational interests in the survival and recovery of lynx, and the past and likely continued take of lynx in Idaho from trapping diminishes and otherwise generally harms those interests. State Defendants have caused these injuries, and the Court can redress them.

8. Defendant C.L. “Butch” Otter is the Governor of Idaho. He is named and sued in his official capacity. Governor Otter is responsible for, among other things, implementing state wildlife and trapping laws, and appointing state officials who oversee and implement those laws.

9. Defendant Virgil Moore is the Director of the Idaho Department of Fish and Game (“IDFG”). He is named and sued in his official capacity. Mr. Moore is responsible for, among other things, implementing and changing state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

10. Defendant Brad Corkill is a member of the Idaho Fish and Wildlife Commission. Mr. Corkill is sued in his official capacity. Mr. Corkill is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

11. Defendant Fred Trevey is a member of the Idaho Fish and Wildlife Commission. Mr. Trevey is sued in his official capacity. Mr. Trevey is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

12. Defendant Bob Barowsky is a member of the Idaho Fish and Wildlife Commission. Mr. Barowsky is sued in his official capacity. Mr. Barowsky is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

13. Defendant Mark Doerr is a member of the Idaho Fish and Wildlife Commission. Mr. Doerr is sued in his official capacity. Mr. Doerr is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

14. Defendant Randy Budge is a member of the Idaho Fish and Wildlife Commission. Mr. Budge is sued in his official capacity. Mr. Budge is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

15. Defendant Kenny Anderson is a member of the Idaho Fish and Wildlife Commission. Mr. Anderson is sued in his official capacity. Mr. Anderson is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

16. Defendant Will Naillon is a member of the Idaho Fish and Wildlife Commission. Mr. Naillon is sued in his official capacity. Mr. Naillon is responsible for, among other things, promulgating state wildlife and trapping laws and policies, and managing and oversight of state officials who oversee and implement those laws and policies.

### FACTS

17. The Canada lynx is a forest carnivore. Lynx have large feet and long legs that distinguish them among cat species. Lynx can travel in deep snow characteristic of the boreal and western montane and subalpine regions of North America. In winter, lynx prefer mature, moist multi-storied coniferous forests stands with high horizontal cover. In summer, lynx generally remain in their winter ranges, but may broaden their ranges to include young regenerating forests used by hares.

18. Lynx prey primarily on snowshoe hare (*Lepus americanus*). Lynx foraging and denning habitat selection is closely tied to the distribution and quality of snowshoe hare cover and forage habitats. Lynx home range size and population densities vary with abundance of prey. Lynx population densities are usually less than 0.25 lynx per square mile. In western North America, lynx home range sizes have been estimated as 15 to as many as 300 square miles. Lynx are highly mobile and can travel distances such as 60 miles daily. Lynx may disperse at any time of the year. Lynx kittens generally stay with their mothers for their first year while she teaches them to hunt.

19. Snow conditions also determine the distribution of lynx. Lynx are adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats or coyotes. Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx.

Bobcats and coyotes cannot hunt efficiently in fluffy or deep snow and are at a competitive disadvantage to lynx.

20. In Idaho, lynx can occur in montane and subalpine coniferous forest habitats at least as low as 4,000 feet elevation. In Idaho, lynx occur as far south as the northern Salmon River and Lemhi mountains. In Idaho, lynx occur east and south on the Yellowstone Highlands and Caribou Range. Several lynx occurrences are known from the Coeur d'Alene River, St. Joe River, and St. Maries River basins in Idaho.

21. Lynx occur in Adams County in Idaho. Lynx occur in Bear Lake County in Idaho. Lynx occur in Benewah County in Idaho. Lynx occur in Blaine County in Idaho. Lynx occur in Boise County in Idaho. Lynx occur in Bonner County in Idaho. Lynx occur in Bonneville County in Idaho. Lynx occur in Boundary County in Idaho. Lynx occur in Butte County in Idaho. Lynx occur in Camas County in Idaho. Lynx occur in Caribou County in Idaho. Lynx occur in Clark County in Idaho. Lynx occur in Clearwater County in Idaho. Lynx occur in Custer County in Idaho. Lynx occur in Elmore County in Idaho. Lynx occur in Franklin County in Idaho. Lynx occur in Fremont County in Idaho. Lynx occur in Idaho County in Idaho. Lynx occur in Jefferson County in Idaho. Lynx occur in Kootenai County in Idaho. Lynx occur in Latah County in Idaho. Lynx occur in Lemhi County in Idaho. Lynx occur in Madison County in Idaho. Lynx occur in Nez Perce County in Idaho. Lynx occur in Shoshone County in Idaho. Lynx occur in Teton County in Idaho. Lynx occur in Valley County in Idaho.

22. In 2000, the Service listed the Canada lynx in the contiguous United States – including in Idaho – as threatened with extinction under the ESA. On February 25, 2009, the Service designated critical habitat for lynx. The Service deems lynx critical habitat as essential to the survival and recovery of lynx in the contiguous United States. The Service designated as critical habitat only those areas deemed “occupied” by lynx. The Service believes “occupied” lynx habitat means lands mapped as lynx habitat and where there are at least two verified lynx observations or records since 1999 or there is evidence of lynx reproduction.

23. The estimated population of lynx in Idaho has been estimated as low as 100. The Idaho population of lynx is crucial as it provides connectivity with other lynx populations across the American West. Lynx disperse from Canada into Idaho. Lynx disperse from Idaho into Canada. Lynx disperse from Montana into Idaho. Lynx disperse from Idaho into Montana. Lynx disperse from Washington into Idaho. Lynx disperse from Idaho into Washington. Lynx disperse from Colorado into Idaho. Lynx disperse from Idaho into Colorado. The dispersal and interchange of lynx across the United States-Canada border helps maintain lynx populations in the contiguous United States and helps ensure they persist. The dispersal and interchange of lynx across state borders within the contiguous United States helps maintain lynx populations and helps ensure they persist.

24. Lynx have little fear of human scent. Lynx respond to baits and lures. Lynx can be attracted using visual attractants. Lynx can be caught in traps and snares set for other species. Lynx have been caught in traps and snares set for other species. Lynx have been injured and killed as a result of being caught in traps and snares set for other species.

25. In Idaho, it is illegal for anyone to hunt, trap, fish for, or take any wild animal, bird, or fish, without having first procured a license from the State of Idaho. IDFG issues permits, licenses, or other authorizations for trapping in Idaho. In Idaho, there are seven trapping regions, each of which is comprised of certain counties.

26. In Idaho, lynx are classified as a fur-bearing animal. In Idaho, there is no open season for lynx. In Idaho, trapping is allowed for animals such as bobcat, beaver, muskrat, mink, marten, otter, and wolves. In Idaho, animals such as bobcat, beaver, muskrat, mink, marten, otter, and wolves inhabit lynx habitat. In Idaho, trapping is not disallowed in occupied lynx habitat, lynx critical habitat, and habitat for lynx in the state. There are no restrictions on trapping in Idaho to minimize take of lynx.

27. In Idaho, trappers with permits may use leghold or foothold traps, Conibear or other types of body-gripping traps, and snares within lynx habitat. Leghold/foothold traps are designed to capture and hold an animal by the leg, foot, or toe. A leghold/foothold trap's two spring-powered metal jaws shut when an animal steps on the trigger. Conibear traps –



sometimes referred to as “body-crushing” or “killer” traps – are made of two metal rectangular jaws hinged at the side, with a spring affixed to one or both sides. When an animal walks through the center of the rectangles and brushes the trigger, a Conibear trap’s jaws close with a scissor-like action on the animal’s body. A snare is a wire noose attached at one end to a stake or anchor. Snares catch an animal either by the neck, by the midsection of the body, or by the foot or leg. Snares work by tightening around the animal as it struggles. Leghold or foothold traps, Conibear or other types of body-gripping traps, and snares do not discriminate between wildlife species.

28. In Idaho, there are voluntary trapping guidelines to reduce injury and minimize non-target catches such as wolverine and lynx. The guidelines are not mandatory and are not included in the State’s trapping regulations. If a trapper does not follow or otherwise obey the guidelines, the trapper is not liable under Idaho State Law for not complying with, or otherwise violating, the guidelines. If a trapper traps a lynx in Idaho, the trapper is not required under Idaho State Law to report having trapped a lynx unless it dies. If a trapper traps a lynx and the lynx is killed or otherwise dies, the trapper is required under Idaho State Law to report having killed a lynx. Any person taking a bobcat in Idaho must comply with mandatory check and report and pelt tag requirements.

29. In 2012, Idaho State wildlife staff members photographed three lynx in the Purcell Mountains in Idaho. The lynx were photographed in designated critical habitat for lynx.

30. In January 2012, a lynx was caught in a trap in the Salmon-Challis National Forest in Idaho. The trap was a leghold/foothold trap. The lynx was released. It is unknown whether the lynx survived after being trapped. The lynx was identified as a male, and a new individual to the Northern Rocky Mountains lynx DNA database.

31. In December 2012, a lynx was caught in a trap in Boundary County in Idaho. The lynx was caught in a leghold/foothold trap. The lynx was misidentified as a bobcat. The lynx was shot and killed.

32. In January 2014, a lynx was caught in a trap in the Cabinet Mountain range in Idaho. The lynx was trapped in a cage trap. A cage trap is a large cage that includes a cage door that shuts when it is triggered. The cage trap was baited. The lynx was not killed in the trap. The lynx was released with a radio collar, so it can be tracked.

33. The best available evidence reveals that the amount of reported take of lynx from trapping and snaring is less than the amount of actual take of lynx.

34. In the last 14 years, the Idaho Department of Fish and Game has issued an increasing number of trapping licenses. For 2001-2002, the Department issued 647 trapping licenses. For 2005-2006, the Department issued 1001 trapping licenses. For 2010-2011, the Department issued 1222 trapping licenses. For 2012-2013, the Department issued 1943 trapping licenses.

### **CLAIM FOR RELIEF**

#### **Violation of ESA § 9**

35. Plaintiffs reallege all previous paragraphs.

36. Section 9 of the ESA prohibits any person from taking an endangered species. 16 U.S.C. § 1538(a)(1)(B). FWS has extended the prohibition on take to lynx as a threatened species. 50 C.F.R. § 17.31(a). The ESA defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). The ESA defines a “person” to include any “officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State.” 16 U.S.C. § 1532(13). The ESA prohibits a person not only from taking listed species, it also prohibits a third party from authorizing or allowing a person to conduct an activity that results in the take of a listed species. State officials and agencies that authorize, allow, permit, or license activities that have resulted in take of threatened species and are reasonably likely to continue to result in take of threatened species have violated and are in violation of the ESA. State Defendants have violated, and are in violation, of the ESA by authorizing trapping in lynx habitat in Idaho because that authorization has caused, and is reasonably likely to continue to cause, the incidental take of Canada lynx.

## REQUEST FOR RELIEF

For the reasons stated herein, Plaintiffs respectfully request that the Court grant the following relief:

- A. Declare that State Defendants have violated, and continue to violate, Section 9 of the ESA;
- B. Declare that State Defendants must obtain an Incidental Take Permit before allowing any lawful trapping in lynx habitat;
- C. Enjoin State Defendants from violating the ESA by ordering them to bring Idaho's trapping scheme into compliance with federal law;
- D. Award Plaintiffs their costs and expenses of litigation, including reasonable attorneys' fees pursuant to 16 U.S.C. § 1540(g), or any other provision; and
- E. Grant such other relief that this Court deems necessary, just, or proper.

Dated: June 30, 2014.

Respectfully submitted,

/s/ Celeste K. Miller  
Celeste K. Miller, ISB # 2590  
McDevitt & Miller LLP  
420 West Bannock  
P.O. Box 2564-83701  
Boise, Idaho 83702  
Tel: 208-343-7500  
Fax: 208-336-6912  
[ck@mcdevitt-miller.com](mailto:ck@mcdevitt-miller.com)

/s/ Peter M.K. Frost  
Peter M.K. Frost, applicant, *pro hac vice*  
Western Environmental Law Center  
1216 Lincoln Street  
Eugene, Oregon 97401  
Tel: 541-359-3238  
Fax: 541-485-2471  
[frost@westernlaw.org](mailto:frost@westernlaw.org)

/s/ Melissa Hailey

Melissa Hailey, applicant, *pro hac vice*  
Antonio Bates Bernard Professional Corp  
3200 Cherry Creek Drive South, Suite 380  
Denver, Colorado 80209  
Tel: 303-733-3500  
Fax: 303-733-3555  
[mhailey@abblaw.com](mailto:mhailey@abblaw.com)

Attorneys for Plaintiff WildEarth Guardians

/s/ Timothy J. Ream

Timothy J. Ream, applicant, *pro hac vice*  
Center for Biological Diversity  
351 California Street, Suite 600  
San Francisco, California 94104  
Tel: (415) 632-5315  
[tream@biologicaldiversity.org](mailto:tream@biologicaldiversity.org)

Attorney for Plaintiffs Center for Biological  
Diversity, Friends of the Clearwater, and  
Western Watersheds Project