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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA
11 TUCSON DIVISION

12)
13 Defenders of Wildlife; Center for)
14 Biological Diversity; Western Watersheds)
15 Project; New Mexico Audubon Council;)
16 New Mexico Wilderness Alliance;)
17 University of New Mexico Wilderness) Case No: _____
18 Alliance; The Wildlands Project; Sierra)
19 Club; Southwest Environmental Center;) **COMPLAINT FOR DECLARATORY**
20 and Grand Canyon Wildlands Council,) **AND INJUNCTIVE RELIEF**
21)
22 Plaintiffs,)
23)
24 vs.)
25)
26 Benjamin Tuggle, Director, Region 2, U.S.)
27 Fish And Wildlife Service; Dale Hall,)
28 Director, U.S. Fish And Wildlife Service;)
Dirk Kempthorne, Secretary, U.S.)
Department of The Interior; U.S. Fish and)
Wildlife Service,)
Defendants.)
_____)

24 **INTRODUCTORY STATEMENT**

25
26 1. This case alleges violations of the National Environmental Policy Act
27 (“NEPA”), 42 U.S.C. § 4321 *et seq.*, Administrative Procedure Act (“APA”), 5 U.S.C. §
28 701 *et seq.*, and Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, in relation

1 to the U.S. Fish and Wildlife Service's ("FWS") approval of an October 31, 2003
2 Memorandum of Understanding ("MOU") transferring management responsibility for
3 the federal Mexican gray wolf endangered species reintroduction project within the
4 states of Arizona and New Mexico to an interagency Adaptive Management Oversight
5 Committee ("AMOC"). This case further alleges violations of NEPA, the ESA, and the
6 APA in relation to federal actions taken under the auspices of that MOU, including the
7 adoption of "Standard Operating Procedure 13.0" ("SOP 13") on October 10, 2005, a
8 punitive and inflexible "three strikes" rule requiring Mexican gray wolves to be killed or
9 permanently removed from the wild if they are determined to have depredated on
10 domestic livestock three times within a calendar year, regardless of the wolf's
11 importance to the success of the reintroduction project or ultimate recovery of the
12 species, its genetic value, or other extenuating circumstances.

13 2. Despite the fact that both the AMOC MOU and SOP 13 have significant
14 legal ramifications and on-the-ground environmental effects, FWS conducted no
15 environmental analysis under NEPA before approving either. Subsequent to the
16 creation of AMOC and adoption of SOP 13, the frequency of management killing or
17 removal of wolves has dramatically increased, causing the Mexican gray wolf
18 reintroduction effort to significantly falter. For example, population numbers of wolves
19 in the wild have declined the last three out of four years and the number of breeding
20 pairs decreased by approximately 50 percent between 2006 and the latest count as of the
21 end of 2007. As a consequence, the wild population is now far below projected
22 reintroduction levels, and the reintroduction effort's ultimate success is increasingly
23 threatened.

24 3. FWS's approval of the AMOC MOU and of SOP 13 both constitute final
25 agency action pursuant to the APA. 5 U.S.C. § 551(13). Under § 706(2) of the APA,
26 because FWS's actions were arbitrary and capricious, an abuse of discretion, and
27 otherwise not in accordance with law, plaintiffs respectfully request that the Court hold
28 the AMOC MOU and SOP 13 unlawful and set aside those agency actions.

1 than 5,000 active members in the state, and has a long history of advocating on behalf of
2 the Mexican gray wolf in Arizona and New Mexico.

3 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a New Mexico
4 non-profit corporation with its primary office in Tucson, Arizona, dedicated to the
5 preservation, protection, and restoration of biodiversity, native species, and ecosystems.
6 The Center was founded in 1989, and has more than 35,000 members. The Center has
7 worked extensively on Mexican gray wolf recovery in Arizona and New Mexico.

8 9. Plaintiff WESTERN WATERSHEDS PROJECT is a non-profit
9 membership organization dedicated to protecting and conserving the public lands and
10 natural resources of watersheds in the American West. WWP is supported by over
11 1,400 members, volunteers, and supporters, located in Idaho and around the United
12 States. WWP, as an organization and on behalf of its members, volunteers, and
13 supporters is active in seeking to protect and improve the ecological health of western
14 watersheds through restoration, including restoration and recovery of imperiled species.
15 WWP has an office in Tucson, Arizona and the recovery of the Mexican gray wolf is
16 one of the foremost objectives for this regional office.

17 10. Plaintiff NEW MEXICO AUDUBON COUNCIL represents the four
18 National Audubon Chapters in New Mexico with over 4,000 members. Its members are
19 deeply committed to preserving birds and other wildlife and restoring natural
20 ecosystems and their habitats for the benefit of humanity and the earth's biological
21 diversity. For over three years the Mexican Gray Wolf has been one of New Mexico
22 Audubon Council's highest-priority conservation issues. Its members have been
23 advocates on behalf of the Mexican Wolf since before they were re-introduced into New
24 Mexico and Arizona.

25 11. Plaintiff NEW MEXICO WILDERNESS ALLIANCE is a non-profit
26 grassroots environmental organization dedicated to the protection, restoration, and
27 continued enjoyment of New Mexico's wildlands and Wilderness areas. The primary
28 goal of the New Mexico Wilderness Alliance is to ensure the protection and restoration

1 of all remaining wild lands in New Mexico through administrative designations, federal
2 Wilderness designation, and on-going advocacy. With over 6000 members, NMWA is
3 the largest state-based conservation organization working to protect federal public lands
4 in New Mexico. The Mexican gray wolf and its full recovery is part of NMWA's core
5 mission to protect the wildest public lands and the wildlife that depends on these lands.

6 12. Plaintiff UNIVERSITY OF NEW MEXICO WILDERNESS ALLIANCE
7 is a campus organization composed of undergraduate and graduate students of the
8 University of New Mexico. The organization is dedicated to the protection, restoration
9 and continued enjoyment of New Mexico's wildlands and Wilderness areas. The
10 group's dual missions are to educate the students of University of New Mexico about
11 conservation issues and develop and sustain a constituency in support of these issues.
12 UNM Wilderness Alliance was formed in 2005 and has an all-volunteer staff.
13 Throughout its history, the organization has been engaged in advocacy for the
14 university's mascot, the Mexican gray wolf, also known as the "lobo."

15 13. Plaintiff THE WILDLANDS PROJECT is an international, non-profit
16 organization the mission of which is to protect North America's native animals and
17 plants by working with land managers, local communities, and other partners to create a
18 science-based network of connected wildlife habitat. Headquartered in Titusville,
19 Florida, Wildlands Project maintains a full-time field office in Portal, Arizona and has
20 approximately 1,000 members in Arizona and New Mexico where it advocates for
21 Mexican gray wolf protection as a key programmatic element.

22 14. Plaintiff SIERRA CLUB is a national nonprofit organization of
23 approximately 1.3 million members and supporters dedicated to exploring, enjoying,
24 and protecting the wild places of the earth; to practicing and promoting the responsible
25 use of the earth's ecosystems and resources; to educating and enlisting humanity to
26 protect and restore the quality of the natural and human environment; and to using all
27 lawful means to carry out these objectives. The Sierra Club's concerns encompass
28 protection of threatened and endangered species and restoration of such species to their

1 historic ranges. The Club's particular interest in this case and the issues which the case
2 concerns stem from the Club's and Grand Canyon Chapter's ongoing work to protect
3 and help restore the Mexican Gray wolf population. The Grand Canyon Chapter of the
4 Sierra Club has approximately 13,000 members in the state of Arizona.

5 15. Plaintiff SOUTHWEST ENVIRONMENTAL CENTER is a non-profit
6 conservation organization that works to protect and restore native wildlife and their
7 habitats in the Southwestern borderlands, through education, advocacy and on-the-
8 ground restoration projects. Established in 1991 and headquartered in Las Cruces, New
9 Mexico, SWEC has approximately 2000 members, mostly in southern New Mexico.
10 Ensuring the successful recovery of the Mexican Wolf to the Southwest is a major focus
11 of SWEC's work.

12 16. Plaintiff GRAND CANYON WILDLANDS COUNCIL represents 500
13 members. Its members are deeply committed to protecting and restoring all native
14 species in natural patterns of abundance and distribution in the Grand Canyon
15 Ecoregion. Wolf recovery is part of the Council's core mission in this ecoregion, which
16 sweeps from the high plateaus of Utah down across the Mogollon Rim in Arizona and
17 over to the headwaters of the Little Colorado River in New Mexico. A key factor to
18 reaching these goals is Mexican Gray Wolf recovery—one Mexican gray wolf already
19 attempted to disperse to just south of Flagstaff. These wolves are essential to wolf
20 recovery in the area that includes the South Rim of Grand Canyon National Park, a
21 World Heritage Site, from which gray wolf is extirpated.

22 17. All plaintiffs have long-standing interests in the preservation and recovery
23 of Mexican gray wolves in Arizona and New Mexico because they and their members
24 place great value on the species, and because the presence of Mexican gray wolves is
25 essential to the healthy functioning of the Southwestern desert, forest, and grassland
26 ecosystems in which they evolved. During the decade since Mexican gray wolves were
27 reintroduced into the Southwest, plaintiffs have actively sought to conserve and recover
28 the species through a broad diversity of efforts including public education, livestock

1 compensation programs, outreach to residents and elected officials within the
2 reintroduction area and throughout the Southwest, scientific analysis and advocacy, and
3 legal efforts.

4 18. The members of each plaintiff wildlife conservation organization use
5 public land in the Southwestern deserts, forests, and grasslands for a variety of pursuits.
6 For example, members of plaintiff groups have recreational interests in these public
7 lands, including hiking, camping, backpacking, cross-country skiing, birding and other
8 wildlife viewing. Members of plaintiff groups also use the public lands for scientific,
9 educational, and professional purposes, and many of the groups' members, as well as
10 their organizational professional staff and volunteers, have been involved in, and
11 personally invested in, the Mexican gray wolf reintroduction effort since its planning
12 stages in the early 1990s. Members of the plaintiff groups seek to view wolves and
13 signs of wolf presence in Arizona and New Mexico, and also seek to hear wolves in
14 their natural environment, and defendants' challenged actions have reduced their
15 opportunities to do so. The decisions will cause irreparable harm to Mexican gray
16 wolves and the natural ecosystems in Arizona and New Mexico where the wolves are
17 now found. The legal violations alleged in this complaint cause direct injury to the
18 aesthetic, conservation, recreational, scientific, educational, and wildlife preservation
19 and conservation interests of members of the plaintiff organizations.

20 19. Defendant BENJAMIN TUGGLE is the Southwest Regional Director
21 (Region 2) with U.S. Fish and Wildlife Service. Defendant Tuggle is sued in his
22 professional capacity.

23 20. Defendant DALE HALL is the Director of the U.S. Fish and Wildlife
24 Service. Defendant Hall is sued in this professional capacity.

25 21. Defendant DIRK KEMPTHORNE is Secretary of the U.S. Department of
26 the Interior. In that capacity, Secretary Kempthorne has supervisory responsibility over
27 the U.S. Fish and Wildlife Service. Defendant Kempthorne is sued in his professional
28 capacity.

1 26. In determining whether a proposed action may significantly affect the
2 environment, NEPA requires that both the context and intensity of that action be
3 considered. 40 C.F.R. § 1508.27. In considering context, “[s]ignificance varies with
4 the setting of the proposed action.” *Id.* Consideration of intensity, on the other hand,
5 “refers to the severity of the impact,” including impacts on “[u]nique characteristics of
6 the geographic area such as proximity to park lands . . . wetlands . . . or ecologically
7 critical areas,” “[t]he degree to which the action may establish a precedent for future
8 actions with significant effects or represents a decision in principle about a future
9 consideration,” and “[w]hether the action is related to other actions with individually
10 insignificant but cumulatively significant impacts.” *Id.*

11 27. The CEQ regulations also provide that each federal agency shall identify
12 in its NEPA procedures those classes of actions that normally do not require either an
13 EIS or an EA. 40 C.F.R. § 1507.3(b)(2)(ii). These “categorical exclusions” are actions
14 that do not individually or cumulatively have a significant effect on the environment. If
15 an agency action falls within one of the defined categorical exclusion categories, no EIS
16 or EA is required, unless one or more “extraordinary circumstances” apply. These
17 circumstances are also to be defined in the agency’s NEPA procedures. 40 C.F.R. §
18 1508.4.

19 **B. The Endangered Species Act**

20 28. The Endangered Species Act was enacted to “provide a program for the
21 conservation of ... endangered species and threatened species,” and to “provide a means
22 whereby the ecosystems upon which endangered species and threatened species depend
23 may be conserved.” 16 U.S.C. § 1531.

24 29. The Secretary of the Interior, through FWS, is responsible for
25 administering many provisions of the ESA with respect to terrestrial species, including:
26 the determination of whether any species is an endangered species or a threatened
27 species, *id.* § 1533(a)(1); the designation of critical habitat for listed species, *id.* §
28 1533(a)(3)(A); the issuance of protective regulations for the conservation of threatened

1 species, as well as experimental populations of listed species, *id.* § 1533(d), § 1539(j);
2 the development and implementation of Recovery Plans, *id.* § 1533(f); acquisition of
3 lands to conserve fish, wildlife, and plants, *id.* § 1534; review and oversight of agency
4 efforts to further the purposes of the ESA and consultation on the effects of their actions
5 on listed species; *id.* § 1536(a); and the assessment of civil penalties and prosecution of
6 criminal violations of the ESA. *Id.* § 1540(a)-(b).

7 **FACTUAL ALLEGATIONS**

8 **A. The Mexican Gray Wolf and Its Extermination from the American** 9 **Southwest**

10 30. The Mexican gray wolf, or “lobo,” (*Canis lupus baileyi*) is the smallest of
11 North American gray wolves and the southernmost subspecies of what was historically
12 the most wide-ranging species of North American mammals. Adult wolves weigh 50 to
13 90 pounds, average 4'6" to 5'6" in total length, reach 26" to 32" in height at the shoulder,
14 and vary in color. *Reintroduction of the Mexican Wolf Within Its Historic Range in the*
15 *Southwestern United States, Final Environmental Impact Statement* (December 1996)
16 (“EIS”) at iv.

17 31. The Mexican gray wolf historically ranged in deserts, forests, and
18 grasslands throughout much of Arizona, New Mexico, and Texas southward into large
19 portions of northern and central Mexico. The Mexican wolf is believed to have
20 occurred most commonly above 4,500 feet in elevation within pine forests and oak and
21 piñon-juniper woodlands interspersed with grasslands. *Id.* at 1-3.

22 32. The basic social unit in gray wolf populations is the pack, commonly
23 consisting of five to 15 individuals with strong bonds to each other. Mexican gray wolf
24 packs are typically smaller—prior to government eradication efforts, the Mexican wolf
25 was found in groups with as many as eight animals, and one scientist has estimated their
26 pack size as between five and six individuals. Central to the pack are the dominant
27 (alpha) male and female. *Id.* at A-1.

28

1 33. The gray wolf was “the primary predator of large ungulates in most of
2 North America,” and “[n]o other predator in the western United States replaces its
3 ecological role.” *Id.* at A-2. The natural prey of the Mexican wolf consisted of mule
4 and white-tailed deer, elk, javelina, and to a lesser extent, pronghorn, bighorn sheep,
5 jackrabbits, cottontails, and small rodents. Studies by the Interagency Field Team of the
6 reintroduced Mexican gray wolves show that, despite their small size, about 85 percent
7 of their diet is comprised of elk.

8 34. Although domestic livestock were introduced to North America as early as
9 the 16th century, it is estimated that there were fewer than 1 million in the western
10 United States in 1850. In the 1870s and 1880s, however, with most Native American
11 tribes largely subjugated and displaced from their ancestral homelands, bison
12 eliminated, and transportation (especially railroads) and communication modernized,
13 livestock became an immense and booming business. The 1870 estimate of 4-5 million
14 cattle in the western United States skyrocketed to 35-40 million cattle by 1884, with
15 forests, deserts, and grasslands all intensively utilized for domestic livestock production.
16 As a result, the Mexican gray wolf’s prey base of native wildlife was largely displaced
17 in many areas, and reports of wolf depredations on livestock increased.

18 35. Consequently, the Mexican gray wolf was the target of a systematic
19 extermination effort by private livestock associations. These associations, as well as
20 states and local county governments, offered bounties on wolf scalps.

21 36. In 1915, the U.S. Bureau of Biological Survey (a predecessor to today’s
22 U.S. Fish and Wildlife Service) initiated an official federal effort to eradicate the
23 Mexican gray wolf. This federal program, which included salaried federal hunters, was
24 far more efficient and deadly than earlier efforts by the livestock industry and local
25 governments. After only 15 years of “trapping, shooting, and poisoning of adults, and
26 ‘denning’ of pups (dragging them out of dens and killing them), very few Mexican
27 wolves remained” by 1930. *Id.* at 1-5.

28

1 37. The last killings of the original population of Mexican gray wolves by
2 federal control agents occurred around 1970, and prior to the reintroduction of the
3 species into national forest lands in east-central Arizona in 1998, no wolves had been
4 confirmed to exist within the United States since the early 1970s. In 1996, FWS
5 identified the Mexican wolf as “one of the rarest land mammals in the world.” *Id.* at iv.

6 **B. The Reintroduction of the Mexican Gray Wolf to the American**
7 **Southwest and Accompanying NEPA Process**

8 38. Following passage of the Endangered Species Act in 1973, the Mexican
9 gray wolf was listed as an endangered species on April 28, 1976. Subsequent to listing,
10 five wolves (four males and only one female) were trapped between 1977 and 1980 in
11 Mexico and translocated to the United States in order to initiate an emergency captive
12 breeding program. Subsequently, two other pairs, from genetically distinct founders,
13 were certified as pure Mexican gray wolves—making all “lobos” in captivity and in the
14 wild descendents from three lineages.

15 39. In 1982, FWS and the Director of the Mexican wildlife agency jointly
16 adopted a Recovery Plan for the Mexican wolf pursuant to the ESA (“Recovery Plan”).
17 While acknowledged as not sufficient in themselves for full recovery, in the interim the
18 “prime objectives” of the Recovery Plan were to maintain a captive breeding program
19 and to re-establish a “viable, self-sustaining population of at least 100 wolves in the
20 middle to high elevations of a 5,000-square mile area within the [Mexican wolf’s]
21 historic range,” by releasing the captive wolves into areas in the southwestern United
22 States. FWS noted that while “[r]ecover programs for the gray wolf are underway
23 elsewhere in the United States, [] they involve less rare subspecies,” and thus “[e]xperts
24 have rated recovery of the Mexican wolf subspecies as the highest priority of all such
25 programs.”

26 40. In order to fulfill the prime objective of the Recovery Plan that the species
27 be reintroduced into the wild, and as an interim step toward recovery, FWS initiated a
28

1 NEPA process. Scoping meetings were held in 1991 and 1992, followed by preparation
2 and release of a draft environmental impact statement on June 8, 1995.

3 41. The preferred alternative identified in the draft environmental impact
4 statement was to reintroduce Mexican wolves, as a “nonessential, experimental”
5 population pursuant to section 10(j) of the ESA, 16 U.S.C. § 1539(j), into the White
6 Sands Wolf Recovery Area or the Blue Range Wolf Recovery Area. *Reintroduction of*
7 *the Mexican Wolf Within Its Historic Range in the Southwestern United States, Draft*
8 *Environmental Impact Statement* (June 1995) (“DEIS”) at v.

9 42. A fundamental principle guiding the reintroduction effort was that “FWS
10 and the cooperating agencies shall use a flexible, adaptive, management approach.”
11 DEIS at v.

12 43. The final EIS, released December 20, 1996, clarified the proposed
13 alternative in the DEIS to specify that Mexican wolves would be reintroduced into the
14 Blue Range Wolf Recovery Area. EIS at 2-5. The Blue Range Wolf Recovery Area
15 includes portions of national forests and wilderness areas in eastern Arizona and
16 western New Mexico. Releases of wolves, however, were limited to the “primary”
17 recovery area within the Apache National Forest in Arizona, despite the fact that there
18 exist larger expanses of remote land with less domestic livestock within the Gila
19 National Forest in New Mexico. Subsequent to reintroduction of Mexican gray wolves
20 into the Blue Range Wolf Recovery Area in 1998, the White Mountain Apache Tribe
21 has allowed wolves which stray from that area onto the Fort Apache Indian Reservation
22 to remain on tribal land. The EIS established a target population goal of 102 wolves by
23 the ninth year of the reintroduction. Of great biological importance to any sustainable
24 population, the final EIS projected that by the end of the ninth year there would be 18
25 breeding pairs.

26 44. In addressing “control of problem wolves,” such as wolves that
27 consistently depredate on domestic livestock, the EIS provided little detail, but directed
28 that such control be done “with the greatest degree of management flexibility . . .

1 *consistent with wolf recovery.*” EIS at 2-16 (emphasis added). Similarly, in
2 conformance with the ESA, the EIS directs that removals of Mexican gray wolves from
3 the wild must only occur when “consistent with wolf recovery.” *Id.*

4 45. The EIS required that an “interagency management plan” be developed to
5 direct agency actions in relation to the reintroduction project. *Id.*

6 46. The broad delegation of FWS’s statutory duties and responsibilities over
7 the reintroduction project to the AMOC, and the AMOC’s implementation of the project
8 through “standard operating procedures,” rather than the provisions of the interagency
9 management plan, was not addressed or analyzed during the reintroduction NEPA
10 process.

11 47. On April 3, 1997, the Department of the Interior issued its Record of
12 Decision on the final EIS, selecting the preferred alternative to “reintroduce captive-
13 raised Mexican wolves in eastern Arizona within the designated Blue Range Wolf
14 Recovery Area.” 63 Fed. Reg. 1,752, 1,753 (Jan. 12, 1998).

15 **C. The Mexican Gray Wolf 10(j) Rule**

16 48. Concurrent with its NEPA process for the proposed Mexican wolf
17 reintroduction, FWS issued a proposed rule on May 22, 1996 under section 10(j) of the
18 ESA, 16 U.S.C. § 1539(j), to classify the reintroduced wolves as a “nonessential
19 experimental population.” 61 *Fed. Reg.* 25,618. Congress added section 10(j) of the
20 ESA to address “agencies’ frustration over political opposition to reintroduction efforts
21 perceived to conflict with human activity.” *Wy. Farm Bureau Fed’n v. Babbitt*, 199
22 F.3d 1224, 1231 (10th Cir. 2000). Under section 10(j), “considerable management
23 flexibility [was] incorporated into the final [Mexican gray wolf] experimental rule to
24 reduce potential conflicts between wolves and the activities of governmental agencies,
25 livestock operators, hunters, and others.” Final Rule, *Establishment of a Nonessential*
26 *Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico*, 63 *Fed*
27 *Reg.* 1752, at 1755. The designation as “experimental non-essential” did not mean that
28 the reintroduction is a mere experiment, or that the Mexican gray wolf is not near

1 extinction. *Id.* at 1757. The entire rationale for affording more flexibility was to
2 “improve the likelihood of successfully recovering the species.” *Id.*

3 49. The final 10(j) rule predicted that approximately 14 family groups
4 released over a period of five years would be sufficient to achieve the goal of reaching a
5 population of 100 wild wolves. The rule also provided specific definitions for key terms
6 and concepts; for example, “breeding pair” is defined as “an adult male and an adult
7 female wolf that have produced at least two pups during the previous breeding season
8 that survived until December 31 of the year of their birth.” *Id.* at 1771.

9 50. Like the reintroduction EIS, the 10(j) rulemaking process did not analyze
10 or address the formation of the AMOC, stating only that FWS “is exploring additional
11 avenues of communication and cooperation with local governments and other
12 stakeholders in the implementation of Mexican wolf reintroduction.” *Id.* at 1753. The
13 10(j) rule also repeated the statement made in the reintroduction NEPA process that a
14 “Service-approved interagency management plan [] would be developed” that would
15 direct the reintroduction project efforts. *Id.* at 1760; *see also* 50 C.F.R. §
16 17.84(k)(3)(ix).

17 **D. The 1998 Mexican Wolf Interagency Management Plan**

18 51. On March 27, 1998, FWS approved the 1998 Mexican Wolf Interagency
19 Management Plan (“Interagency Management Plan”). The Interagency Management
20 Plan was to be reviewed annually, and in accordance with the reintroduction EIS and
21 10(j) rule, it directed that an Interagency Management *Advisory* Committee was to
22 “meet regularly to *assist* with improving the content and implementation” of the plan.
23 The Interagency Management Plan specifically provided that the state game agencies
24 and local counties were “cooperating agencies,” and that the FWS Mexican Wolf
25 Biologist had lead responsibility for all field activities, including control actions.

26 52. The Interagency Management Plan provided the following statement in
27 bold: “DECISION DELEGATION: All decisions regarding the capture, relocation, or
28 lethal taking will be made by the Mexican Wolf Recovery Leader,” a FWS official.

1 U.S.D.A. Wildlife Services and Arizona Game and Fish Department personnel were
2 authorized to take such actions in “emergency situations.” Interagency Management
3 Plan at 5.

4 53. Under the Interagency Management Plan, the Interagency Management
5 Advisory Committee’s role is defined to include *advising* the FWS Mexican Wolf
6 Recovery Leader on issues related to wolf reintroduction, and participating in the annual
7 review of the interagency plan. *Id.* at 41.

8 54. Under the Interagency Management Plan, the “disposition of a problem or
9 nuisance wolf will be a discretionary call by the USFWS Mexican Wolf Recovery
10 Leader or his designee, based on the wolf’s sex, age, reproductive status, the status of
11 wolf recovery in the recovery area, the number and seriousness of the offense, and
12 whether it occurred in the primary or second recovery zone.” *Id.* at 18.

13 55. The Interagency Management Plan directed that future MOUs or
14 agreements “be consistent with this Plan.” *Id.* at 8.

15 **E. The Mexican Gray Wolf Reintroduction Project: 1998-2004**

16 56. The first eleven Mexican gray wolves were released into the Apache
17 portion of the Apache-Sitgreaves National Forests in March 1998.

18 57. During the first six years of the reintroduction project—before the
19 establishment of AMOC and approval and implementation of SOP 13—wolf numbers
20 grew fairly steadily. According to FWS data, actual population numbers by year were:
21 1998—4 wolves; 1999—15 wolves; 2000—22 wolves; 2001—26 wolves; 2002—42
22 wolves; and 2003—55 wolves. As of the end of 2003, Mexican gray wolf population
23 numbers were on target with population projections established in the reintroduction
24 EIS.

25 58. Under the 10(j) rule, FWS committed to “evaluate Mexican wolf
26 reintroduction progress and prepare periodic progress reports, detailed annual reports,
27 and full evaluations after 3 and 5 years that recommend continuation, modification, or
28 termination of the reintroduction effort.” 50 C.F.R. § 17.84(k)(13).

1 59. In accordance with the 10(j) rule, FWS initiated a three-year review of the
2 reintroduction project in 2001. FWS retained Dr. Paul C. Paquet, one of the world’s
3 leading wolf experts, to lead the review process. The three-year review process was
4 completed in June 2001. In the review, Dr. Paquet and his team of experts
5 recommended that FWS continue the reintroduction project, but make several
6 modifications to the 10(j) rule. Paquet, *et al.*, *Mexican Wolf Recovery: Three-Year*
7 *Program Review and Assessment* (June 2001) (“Three-Year Review”).

8 60. Key findings in the three-year review included the following: frequent
9 recaptures and re-releases of Mexican wolves may be interfering with pack formation
10 and establishment and maintenance of home ranges; survival and recruitment rates are
11 far too low to ensure population growth and persistence; livestock producers using
12 public lands can make a substantive contribution to reducing conflicts with wolves
13 through improved husbandry and better management of carcasses; the relatively small
14 size of the primary recovery zone and the restriction of wolves to that zone are
15 hindering recovery of a self-sustaining and viable population of Mexican wolves;
16 dispersal of wolves outside the recovery area boundaries is required if the regional
17 population is to be viable; and finally, adaptive management is the appropriate
18 operational paradigm, and many wildlife restoration projects are unsuccessful because
19 of a failure to accommodate new information.

20 61. Based on these findings, the three-year review recommended, *inter alia*,
21 that a new Recovery Plan, updating the 1982 Plan, be finalized; that the 10(j) rule be
22 “immediately” modified to allow for direct releases into the Gila National Forest (*i.e.*
23 the secondary recovery zone, New Mexico portion, of the Blue Range Wolf Recovery
24 Area); that the 10(j) rule be “immediately” modified to allow for wolves that are not
25 management problems to establish territories outside of the Blue Range Wolf Recovery
26 Area; and that livestock operators “take some responsibility for carcass
27 management/disposal” to reduce the likelihood of habituated wolves.

28

1 62. In sum, the three-year review’s findings and recommendations largely
2 focused on the ways in which the Mexican gray wolf reintroduction project could be
3 improved so that the species would have a better opportunity to achieve established
4 population targets.

5 63. The three-year review did not find fault with the management structure of
6 the Mexican wolf reintroduction project, the 1998 Interagency Management Plan, or the
7 duties and responsibilities of the Mexican Wolf Interagency Management Advisory
8 Group as defined by that plan.

9 64. Although asked to address whether “the livestock depredation control
10 program has been effective,” the authors of the three-year review concluded that
11 “effective assessment of such a program requires more specific guidance and data than
12 we were provided.” Three-year review at 52.

13 65. Following its completion, FWS took no action to implement the
14 recommendations included in the science-based three-year review. Instead, FWS
15 directed Arizona Game and Fish Department and New Mexico Department of Fish and
16 Game to lead a further “review” of the three-year review. The lead recommendation of
17 this State game agency review, completed in September 2002, was that the State game
18 agencies be given much more expansive powers in relation to the Mexican wolf
19 reintroduction effort, leading to the formation of AMOC.

20 **F. The Adaptive Management Oversight Committee**

21 66. On October 31, 2003, FWS entered into the MOU establishing AMOC
22 with Arizona Game and Fish Department, New Mexico Department of Game and Fish,
23 U.S.D.A. Animal and Plant Health Inspection Service/Wildlife Services (“WS”),
24 U.S.D.A Forest Service (“USFS”), White Mountain Apache Tribe, Arizona Counties of
25 Graham, Greenlee, and Navajo, New Mexico Counties of Catron and Sierra, and New
26 Mexico Department of Agriculture.

27 67. Under the MOU, Arizona Game and Fish Department, New Mexico
28 Department of Game and Fish, WS, USFS, White Mountain Apache Tribe, and FWS are

1 designated as “Lead Agencies” to the AMOC. The MOU directs each lead agency to
2 designate one lead participant and one or more alternates to serve as a “lead participant”
3 in the AMOC. MOU at 6.

4 68. The AMOC MOU directs that a “non-Federal lead” be designated as the
5 “committee chair” for AMOC from Arizona Game and Fish Department, New Mexico
6 Department of Game and Fish, or White Mountain Apache Tribe. Committee chairs
7 serve two year terms, subject to renewal. *Id.*

8 69. By its plain terms, the AMOC MOU fundamentally “redefines” the
9 framework of the Mexican wolf reintroduction project, and the “relationships and
10 responsibilities” between FWS and the cooperating agencies as defined in the EIS, 10(j)
11 rule, and Interagency Management Plan, by elevating state agencies to a leadership,
12 rather than advisory role in the project. *Id.* at 4. This redefinition directly conflicts with
13 the Interagency Management Plan’s direction that future MOUs or agreements “be
14 consistent with this Plan.” Interagency Management Plan at 8.

15 70. Arizona Game and Fish Department had advocated for the creation of
16 AMOC for at least ten years. *See* EIS at 5-24 (comment letter from Arizona Game and
17 Fish Department demanding that “subsequent reintroductions (if any) in the American
18 Southwest shall be determined through a formal Adaptive Management Group”). As
19 discussed previously, FWS, through the reintroduction NEPA process, 10(j) rule, and
20 Interagency Management Plan, instead chose to create the advisory Interagency
21 Management Team.

22 71. Under the MOU, the AMOC is directed to “implement” through the
23 Mexican gray wolf reintroduction project, “the objectives and strategies” of the most
24 fundamental federal decisions and rules governing the project, including: (1) the
25 Recovery Plan; (2) the reintroduction EIS; and (3) the 10(j) rule. MOU, at 7.

26 72. Except for the process of adding signatories, the MOU does not address
27 the voting structure of the AMOC. For example, the MOU does not specify whether
28

1 AMOC management decisions are made by consensus, simple majority vote, or some
2 other decision making structure.

3 73. The MOU does not reserve FWS's ultimate management responsibility
4 and authority for implementation of the Mexican gray wolf reintroduction project and
5 other duties pursuant to the ESA. Instead, the MOU defines FWS's role within the
6 AMOC as providing "guidance" to the reintroduction project. *Id.* at 9. The MOU also
7 replaces the FWS Mexican Wolf Recovery *Leader* with a FWS Mexican Wolf *Field*
8 *Projects Coordinator. Id.*

9 74. The MOU does not reserve that in situations involving conflicts or
10 differences of opinion among AMOC members, that FWS retains sole final reviewing
11 authority over AMOC decisions and the Mexican gray wolf reintroduction project.
12 Instead, the MOU states only that "[c]onflicts between or among the Signatories
13 concerning the Agreement that cannot be resolved at the lowest possible level shall be
14 referred to the next higher level, et seq., as necessary, for resolution."

15 75. The MOU's failure to reserve FWS's ultimate management responsibility
16 and authority for implementation of the Mexican gray wolf reintroduction project or to
17 provide a detailed process for resolving conflicts among AMOC members conflicts with
18 the mandate in the 1998 Interagency Management Plan that FWS has clear authority for
19 all final decisions involving the project.

20 76. These failures also distinguish the AMOC MOU from other interagency
21 cooperative agreements involving wildlife reintroductions. For example, in the
22 proposed reintroduction of grizzly bears to the Bitterroot ecosystem in Idaho, being
23 analyzed at the same time as the Mexican wolf reintroduction, FWS prepared a 1997
24 draft EIS that identified its proposed alternative as a reintroduction project overseen by
25 a "Citizens Management Committee" ("CMC"). In response to extensive public
26 comment that the Committee would represent an unlawful delegation of FWS's duties
27 and responsibilities under the ESA, FWS made "several clarifications/changes ... to the
28 CMC structure and function," such as clear guidance that the final decision on CMC

1 recommendations be made by federal agencies with NEPA compliance where necessary,
2 and creation of a detailed process permitting the Secretary of the Interior to resume lead
3 management responsibility from CMC where the Secretary determines that their
4 decisions are not leading to recovery. *Grizzly Bear Recovery in the Bitterroot*
5 *Ecosystem, Final Environmental Impact Statement* at 2-6. In contrast to the proposed
6 grizzly bear reintroduction, the formation of AMOC was not presented as an alternative,
7 and in fact, was simply not considered during the Mexican gray wolf reintroduction
8 NEPA process.

9 77. In practice, the AMOC has taken actions counter to the reintroduction EIS,
10 10(j) rule, and 1998 Interagency Management Plan, including but not limited to its
11 promulgation and approval of SOP 13. For example, in direct contravention of the
12 definition in the 10(j) rule, AMOC has redefined “breeding pair” to include wolves that
13 have had no pups together, ignoring the biologically and genetically critical requirement
14 that to be a breeding pair the adult wolves must “have produced at least two pups during
15 the breeding season,” and thus exaggerated the reproduction success and overall
16 population stability of the reintroduced Mexican gray wolf population.

17 78. FWS did not conduct any NEPA analysis before forming AMOC pursuant
18 to the MOU.

19 79. None of the actions taken by the AMOC pursuant to the terms of the
20 MOU to “implement” through the Mexican gray wolf reintroduction project, “the
21 objectives and strategies” of (1) the Mexican gray wolf recovery plan; (2) the
22 reintroduction EIS; or (3) the 10(j) rule, have been accompanied by NEPA analysis.

23 **G. The AMOC Standard Operating Procedure 13**

24 80. Subsequent to the MOU, the AMOC delegated itself the authority “to
25 develop and approve SOPs [Standard Operating Procedures] that guide Project
26 cooperators, and especially the IFT [Interagency Field Team] that works on the ground
27 with agencies, landowners, the public and the wolves.” SOP 2.0.

28

1 81. On October 10, 2005 the AMOC approved standard operating procedure
2 13 (“SOP 13”), “Control of Mexican Wolves.”

3 82. Under SOP 13, “wolves known or likely to have committed three
4 depredation incidents within a period of 365 days shall be permanently removed from
5 the wild as expeditiously as possible.”

6 83. The reintroduction EIS and 10(j) rule both contemplated the general
7 proposition that wolves which consistently depredate on domestic livestock could be
8 killed or removed from the wild. However, FWS made clear that this general principle
9 was intended to be implemented in a flexible manner that ensured all management
10 actions were consistent with the overall goal of Mexican gray wolf recovery. For
11 example, the reintroduction EIS specifies that “control of problem wolves will be done
12 with the greatest degree of management flexibility . . . *consistent with wolf recovery.*”
13 EIS, at 2-16 (emphasis added). Similarly, the EIS directs that management removals
14 must only occur when “consistent with wolf recovery.” *Id.*

15 84. In conformance with these final decisions, the 1998 Interagency
16 Management Plan directed that “generally,” wolves “exhibiting a consistent pattern of
17 livestock depredation” would be removed from the wild or killed. As stated further by
18 the Interagency Management Plan, the “disposition of a problem or nuisance wolf will
19 be a discretionary call by the USFWS Mexican Wolf Recovery Leader or his designee,
20 based on the wolf’s sex, age, reproductive status, the status of wolf recovery in the
21 recovery area, the number and seriousness of the offense, and whether it occurred in the
22 primary or second recovery zone.” Interagency Management Plan at 18. In adopting
23 SOP 13, FWS has precluded itself from considering factors that help ensure wolf control
24 actions are consistent with recovery, such as genetic value of involved wolves, the value
25 of involved wolves to their pack, the time of year (denning, etc.) related to depredation
26 incidents, and whether livestock husbandry practices (such as the failure to remove
27 livestock carcasses) contributed to the wolf’s depredation.

28

1 85. SOP 13 runs directly counter to the overriding principles of flexibility and
2 recovery required by the reintroduction EIS and record of decision, 10(j) rule, and
3 Interagency Management Plan. Instead, SOP 13 establishes hard rules for wolf removal
4 and/or lethal control regardless of their impact on wolf recovery. Under SOP 13’s
5 inflexible approach, AMOC is not permitted to take into consideration other factors
6 which may have contributed to or caused the initial wolf-livestock conflict and, in
7 practice, has not taken such considerations into account.

8 86. By its plain language, SOP 13 neither contemplates nor allows an analysis
9 of the wolf’s importance to recovery or any other factor. There is no consideration that
10 Defenders of Wildlife compensates livestock producers at 100 percent of fair market
11 value for livestock killed on public or private lands and at 50 percent for probable kills.
12 Nor does SOP 13 recognize any limit on the number of removals. In response to written
13 inquiries, Defendant Tuggle has declined to state whether FWS would suspend SOP 13
14 to avoid a complete second extirpation of the Mexican gray wolf in the wild.

15 87. Instead, SOP 13 requires FWS to “issue a permanent removal order”
16 *within 24 hours* of a third livestock depredation, and removal efforts must began *on the*
17 *day of issuance*. SOP 13 at 10 (emphasis added).

18 88. SOP 13 thus fundamentally redefines one of the most important and
19 central facets of the Mexican gray wolf reintroduction project—the framework for
20 removing or killing wolves that are alleged to have depredated on domestic livestock.

21 89. SOP 13 is also directly counter to direction in the 1998 Interagency
22 Management Plan’s requirement that future MOUs or agreements “be consistent with
23 this Plan.” Plan, at 8. Indeed, the preamble paragraph to SOP 13 states that it
24 supersedes the Interagency Management Plan.

25 90. In practice, the implementation of SOP 13 has resulted in management
26 removals of Mexican wolves that are counter to the requirements of the reintroduction
27 EIS, final 10(j) rule, and 1998 Interagency Management Plan.

28

1 of decision, final 10(j) rule establishing the nonessential experimental population of
2 Mexican wolves, the 1998 Interagency Management Plan, and Defendants' overriding
3 ESA obligation to recover the species in the wild. This claim for relief is brought
4 pursuant to the judicial review provisions of the APA, §§ 701-706.

5 112. By approving these decisions which are hindering the Mexican wolf's
6 recovery in the wild without providing a reasoned explanation for their departure from
7 established agency policy and practice, Defendants' actions are arbitrary, capricious, an
8 abuse of discretion, not in accordance with law and/or constitutes agency action
9 unlawfully withheld or unreasonably delayed under the APA, 5 U.S.C. § 706(1) & (2),
10 which has caused or threatens serious prejudice and injury to Plaintiffs' rights and
11 interests.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

14 A. Order, declare and adjudge that Defendants have violated NEPA and the
15 APA by failing to conduct NEPA analysis of their decision or decisions to establish the
16 Adaptive Management Oversight Committee through a Memorandum of Understanding,
17 as alleged herein;

18 B. Order, declare and adjudge that Defendants have violated NEPA and the
19 APA by failing to conduct NEPA analysis of their decision or decisions to approve SOP 13
20 and to remove Mexican gray wolves from the wild pursuant to SOP 13, as alleged herein;

21 C. Order, declare and adjudge that Defendants have unlawfully delegated their
22 statutory duty and responsibility pursuant to the ESA to implement the objectives and
23 strategies of the most central facets of the Mexican gray wolf recovery and
24 reintroduction program, in violation of the ESA and the APA, as alleged herein;

25 D. Order, declare and adjudge that Defendants have violated the ESA and APA
26 by approving decisions, including the AMOC MOU and SOP 13, that are counter to the
27 reintroduction environmental impact statement and record of decision, final 10(j) rule
28 establishing the nonessential experimental population of Mexican wolves, and the 1998

1 Interagency Management Plan, without providing a reasoned explanation for its
2 departure from established agency policy and practice, as alleged herein;

3 E. Order Defendants to cease their violations of law, specifically by vacating
4 Standard Operating Procedure 13 and the Adaptive Management Oversight Committee
5 Memorandum of Understanding, and prohibiting further management removals of Mexican
6 gray wolves taken pursuant to the terms of SOP 13;

7 F. Remand Defendants' decision approving the Adaptive Management Oversight
8 Committee Memorandum of Understanding, and directing Defendants to amend the MOU
9 so that: (1) FWS's ultimate management responsibility and oversight over the AMOC is
10 clearly stated, and that it is further clarified that FWS is solely responsible for making final
11 decisions in relation to the Mexican gray wolf reintroduction project; (2) the voting structure
12 of AMOC is clearly defined and stated; (3) a meaningful process is specifically provided to
13 address conflicts between AMOC members; and (4) a provision for the dissolution of
14 AMOC and return of management responsibility to FWS in the event such conflicts cannot
15 be resolved, or in the event that the reintroduction project is significantly out of compliance
16 with the interim goal of establishing a self sustaining population of 100 Mexican gray
17 wolves in their historic range, as stated in the 1982 Recovery Plan, is included in the MOU;

18 G. Award Plaintiffs their reasonable costs, litigation expenses, and attorneys fees
19 associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412
20 et seq., and all other applicable authorities; and

21 H. Grant such further and other relief as the Court deems just and proper.

22
23 Respectfully submitted this 30th day of April, 2008,

24
25 _____
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