

Stephanie M. Parent OSB #92590
Pacific Environmental Advocacy Center
10015 S.W. Terwilliger Blvd.
Portland, OR 97219
(503) 768-6736
parent@lclark.edu

Brian B. O'Neill MN # 82521
boneill@faegre.com
Richard A. Duncan MN # 192983
rduncan@faegre.com
Elizabeth H. Schmiesing MN # 229258
eschmiesing@faegre.com
Anne E. Mahle MN # 312861
amahle@faegre.com
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
612-766-7000

Attorneys for Plaintiffs

REC'D *03 OCT 01 10:46USDC-ORP

CV '03 - 1348 BR 1

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

Defenders of Wildlife, Sierra Club,
American Lands Alliance, Animal
Protection Institute, Center for Biological
Diversity, Forest Watch, Hells Canyon
Preservation Council, Help Our Wolves
Live ("HOWL"), The Humane Society of
the United States, Klamath Forest Alliance,
Klamath-Siskiyou Wildlands Center,
Minnesota Wolf Alliance, Oregon Natural
Resources Council, Public Employees for
Environmental Responsibility ("PEER"),
RESTORE: The North Woods, Sinapu, and
the Wildlands Project,

Plaintiffs,

Civil No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

vs.

Gale Norton, Secretary of the Interior,
United States Department of the Interior and
Steven Williams, Director, United States
Fish and Wildlife Service,

Defendants.

Plaintiffs Defenders of Wildlife, Sierra Club, American Lands Alliance, Animal Protection Institute, Center for Biological Diversity, Forest Watch, Hells Canyon Preservation Council, Help Our Wolves Live (“HOWL”), The Humane Society of the United States, Klamath Forest Alliance, Klamath-Siskiyou Wildlands Center, Minnesota Wolf Alliance, Oregon Natural Resources Council, Public Employees for Environmental Responsibility, RESTORE: The North Woods, Sinapu, and the Wildlands Project, for their complaint against defendants Gale Norton, Secretary of the Interior, United States Department of the Interior, and Steven Williams, Director, United States Fish and Wildlife Service, state and allege:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief. Plaintiffs seek a declaration from this Court that the United States Department of the Interior, through the United States Fish and Wildlife Service (“FWS”), violated the Endangered Species Act, 16 U.S.C. §§ 1531-1544 and the Administrative Procedure Act, 5 U.S.C. §§ 553-559, 701-706, in developing, promulgating, and implementing the April 1, 2003, Final Rule To Reclassify and Remove The Gray Wolf From the List of Endangered and Threatened Wildlife in

Portions of the Coterminous United States (“Final Rule”). Plaintiffs also seek injunctive relief that will remand the Final Rule to FWS, thus preventing its implementation.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201 as this action presents cases and controversies under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* and the Administrative Procedure Act, 5 U.S.C. §§ 553-559, 701-706.

3. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. §§ 705 and 706.

4. Venue is proper in the United States District Court for the District of Oregon pursuant to 28 U.S.C. § 1391(e)(1) and 16 U.S.C. § 1540(g)(3)(A) because a substantial part of the events giving rise to the claim occurred in Oregon.

PARTIES

5. Plaintiff Defenders of Wildlife (“Defenders”) is a non-profit charitable organization incorporated in 1947 in the District of Columbia, and having its principal place of business in Washington, D.C. Defenders is dedicated to preserving wildlife and emphasizing appreciation and protection for all species in their ecological role within the natural environment. Defenders has approximately one million members and supporters across the United States. Defenders’ members enjoy, appreciate, and benefit from the presence of endangered species and have had a long-standing, nationwide interest in wolf conservation. Defenders’ members enjoy and benefit from researching and observing wolves

in the wild. Defenders' members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

6. Plaintiff Sierra Club was founded in 1892, and is the nation's oldest grass-roots environmental organization. Headquartered in San Francisco, California, it has more than 700,000 members nationwide. The Sierra Club is dedicated to the protection and preservation of the natural and human environment, including the protection and recovery of endangered species such as the gray wolf. The Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. Sierra Club members research, observe, and enjoy the gray wolf in the wild. Sierra Club members are harmed by the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

7. Plaintiff American Lands Alliance, formally the Western Ancient Forest Campaign ("American Lands"), represents citizens nationwide who are working to protect wildlife and wild places. American Lands' mission is to protect forest, grassland, and aquatic ecosystems; preserve biological diversity; restore landscape and watershed integrity; and promote environmental justice in connection with those goals. American Lands has been actively involved in the effort to preserve and protect ecosystems that provide sustainable wolf habitat. American Lands' members are engaged in observing and tracking wolves in their ecosystems – including researching the impact of wolves on overall ecosystem health. American Lands accomplishes these goals by strengthening grassroots conservation

networks; providing strategic communications, advocacy and other assistance to local conservation groups; and by helping to improve communications among those groups and other segments of society. American Lands is headquartered in Washington, DC, with offices across the country. American Lands' members are harmed by the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

8. Plaintiff Animal Protection Institute ("API") was founded in 1968 and is a non-profit organization with more than 85,000 members and supporters that advocate for the protection of animals from cruelty and exploitation. API's animal protection work includes monitoring and studying the impacts of agency actions on animals, including wolves and other carnivores. API regularly submits comments to government agencies concerning proposed actions that will affect animals. API publishes a magazine and maintains a website for its members and the general public, and it regularly disseminates information concerning the treatment of wild animals, including information about government decisions that affect animals. Defendant's decision to downlist the gray wolf directly injures API and its members by depriving them of the opportunity to view these wolves in their natural setting. API's members enjoy wildlife viewing, specifically viewing wolves, as well as taking pictures and being able to freely appreciate wolves in the wild. Furthermore, API's members are injured by the Defendants' failure to analyze adequately the scientific basis for its determination that gray wolves have been recovered.

9. Plaintiff Center for Biological Diversity (the "Center") is a non-profit organization dedicated to protecting and restoring imperiled species and ecosystems. The

Center has over 7,500 members and has been continually involved in recovery efforts for the Mexican gray wolf over many years. Its founders were among those who sought to compel the Fish and Wildlife Service in the early 1990s to develop a reintroduction plan for the Mexican gray wolf, leading to the current reintroduction effort in the Gila and Apache National Forests. The Center's staff and members have attended a multitude of public hearings and forums in which reintroduction and management of wolves have been the subject. The Center has contributed ideas, suggestions and proposals in writing to various federal and state officials involved in Mexican gray wolf recovery. The Center's members observe and enjoy viewing gray wolves in the wild. In addition, the Center maintains a web page devoted to Mexican wolves and has put on dozens of slides shows about this subspecies for members of the public in Arizona, New Mexico, Texas, and Oregon. The Center's members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

10. Plaintiff Forest Watch is a 6,500 member regional conservation group based in Vermont and founded in 1994. Its mission is to protect and restore wild forests, self-sustaining ecosystems, and native wildlife in northern New England. Forest Watch is an active member of the Coalition to Restore the Eastern Wolf ("CREW"), has sponsored various educational programs on wolf recovery, and works to defend the habitat that will allow future wolf recovery in the Northeast to occur. Forest Watch's members study wolves and participate in wolf tracking and monitoring programs in New England and southern Canada. Forest Watch's members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

11. Plaintiff Hells Canyon Preservation Council (“HCPC”) is a nonprofit corporation of approximately 2,400 members based in rural La Grande, Oregon. Founded over thirty-five years ago, HCPC has involved itself in federal public land management issues and decisions affecting the Hells Canyon, Wallowa, and Blue Mountain ecosystems of northeast Oregon as well as parts of Idaho and Washington. HCPC’s members use and enjoy these ecosystems for recreational, economic, and spiritual purposes through activities including hiking, camping, hunting, fishing, wildlife viewing, and photography. HCPC’s members track wolves in eastern Oregon and western Idaho, monitoring their dispersal from Idaho and Montana. HCPC’s mission is the protection and restoration of native ecosystem health within this geographic area, of which the gray wolf is an integral part. HCPC has and will continue to advocate for wolf protection and recovery through its work efforts, including its appointed position on the Oregon Wolf Advisory Committee, the body charged by the State of Oregon with guiding the Oregon Fish and Wildlife Commission’s development of an Oregon wolf management plan. HCPC’s members are harmed by implementation of the FWS’s Final Rule on the status of the gray wolf because its implementation will result in the presence of fewer wolves in the coterminous United States.

12. Plaintiff Help Our Wolves Live (“HOWL”) is a non-profit charitable organization incorporated in 1971 in Minnesota. HOWL is an advocacy group whose purpose is to work for the protection and preservation of the gray wolf and other endangered species. HOWL’s members enjoy observing and monitoring Minnesota’s wolf population. HOWL uses education and science to discourage misuse and cruelty to wild species caused

by humans. HOWL's members are harmed by the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

13. Plaintiff The Humane Society of the United States ("HSUS") is a non-profit charitable organization incorporated in 1954. HSUS is the largest animal protection organization in the world, with over 7 million members. HSUS's mission is to promote the humane treatment of animals and to foster respect, understanding and compassion for all creatures. HSUS regularly submits comments to government agencies concerning proposed actions that will affect animals. HSUS publishes a magazine and maintains a website for its members and the general public, and it regularly disseminates information concerning the treatment of wild animals, including information about government decisions that affect animals. HSUS has been an active advocate for wolf protection and recovery throughout its history. HSUS members study and observe gray wolves in the wild and have attended meetings of state and federal agencies and other interested parties concerning the wolf situation throughout the United States. Defendants' decision to downlist the gray wolf directly injures HSUS and its members by depriving them of the opportunity to view these wolves in their natural setting. HSUS members enjoy studying, photographing, and viewing all wildlife in its natural habitat, including wolves, and place a great importance on their ability to freely appreciate the wolves in the wild. Furthermore, HSUS members will be injured by the Defendants' failure to analyze adequately the scientific basis for its determination that gray wolves have been recovered. HSUS members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

14. Plaintiff Klamath Forest Alliance (“KFA”) is a non-profit corporation headquartered in the small town of Etna, California. KFA’s mission includes promotion of sustainable ecosystems and sustainable communities in Northern California and Southern Oregon. KFA has approximately 300 activists and supporters, most of whom work and live in or near the Klamath Mountains and study and recreate in the Klamath Basin. KFA has been involved with gray wolf recovery issues for a number of years. KFA members have attended meetings of state and federal agencies and other interested parties concerning dispersal of the Idaho wolves into Eastern Oregon. KFA’s members have studied and looked for the gray wolf in preparation for the wolf’s return to areas of Oregon and northern California. KFA’s members are harmed by FWS’s Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

15. Plaintiff Klamath-Siskiyou Wildlands Center (“KS Wild”) protects and restores the outstanding biological diversity of the Klamath-Siskiyou Ecoregion of southwest Oregon and northwest California. KS Wild has 500 members and uses environmental law, science, education, and collaboration with other groups and agencies to help build healthy ecosystems and sustainable communities. KS Wild is concerned with all endangered species in the region, including those that have been extirpated, in particular the gray wolf. KS Wild works in coalition with other regional groups through the Pacific Alliance for Wild Wolves (“PAWWs”) to educate the public about the ecological importance of wolf recovery in the Pacific Northwest. KS Wild’s members research and observe wolves in the wild in other portions of the country and work to ensure the maintenance of suitable wolf ecosystems in the Klamath-Siskiyou region. The recovery of the wolf to portions of its range were there is

suitable habitat is critically important to KS Wild's membership of nearly 500 people. KS Wild's members are harmed by the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

16. Plaintiff Minnesota Wolf Alliance ("MWA"), is a non-profit organization founded in Minneapolis in November of 1997. It is a grassroots membership organization comprised of over 4,000 individual members from across the United States as well as from as far away as Poland, Russia, and Australia. MWA is dedicated to protecting the wolf in the state of Minnesota, the United States, and the world. Minnesota has the largest wolf population in the lower 48 states, as well as the single largest protected wolf population in the entire world, and MWA works to ensure that this population, as well as other populations of wolves, remain protected, as they are a precious resource for future generations. MWA's members participate in wolf awareness, wolf walks, and seek to keep the public informed about the wolf's status. MWA's members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

17. Plaintiff Oregon Natural Resources Council Fund ("ONRC"), headquartered in Portland, Oregon, is a non-profit corporation with over 7,000 members. ONRC's mission is to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy. This includes restoring fully- functioning forest ecosystems with a full complement of native species such as the gray wolf. ONRC has a long history of involvement with federal conservation efforts involving threatened and endangered species. Many of ONRC's members regularly enjoy and will continue to enjoy educational and recreational activities in gray wolf habitat, including hiking, camping, and observing wildlife. ONRC's members

research and seek to observe the gray wolf in the wild. The interests of ONRC and its members in gray wolf conservation have been harmed by defendants' decision to change the protected status of the wolf and ONCR's members are concerned that this decision will allow federal defendants to permit activities that harm gray wolves and the interests of ONRC because its implementation will result in the presence of fewer wolves in the coterminous United States.

18. Plaintiff Public Employees for Environmental Responsibility ("PEER") was founded in 1992 and is a national non-profit alliance of local, state, and federal resource professionals, dedicated to upholding environmental laws and values. PEER's members often stand as the front line protector of the public interest and the last line of defense against private exploitation of the public trust. PEER's membership is over 10,000 and it has long been involved in the wolf conservation programs. Its members engage in sound scientific research on the gray wolf and work to implement management practices that protect and conserve the gray wolf throughout the United States. In addition, PEER's members actively promote their findings with respect to the status of the wolf in the United States. PEER's members are harmed by FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

19. Plaintiff RESTORE: The North Woods ("RESTORE") is a regional conservation organization dedicated to preserving and restoring wildlife and wilderness in New England. Founded in 1992, RESTORE has approximately 1,500 members and operates offices in Maine and Massachusetts. More than a decade ago, RESTORE launched the first grassroots campaign to promote wolf recovery in the Northeast. Toward that end, the

organization has been involved with public education, advocacy, regional planning, and coalition building. RESTORE's members participate in wolf research and tracking programs in the northeastern United States. RESTORE's members are injured by implementation of the FWS's Final Rule regarding the status of the gray wolf because its implementation will result in the presence of fewer wolves in the coterminous United States.

20. Plaintiff Sinapu is a membership organization with a regional focus on restoring carnivores such as wolves to the Southern Rocky Mountains. Founded in 1991, Sinapu has nearly 1,000 members. Sinapu carries out its mission via public education and outreach, collaborative scientific research, policy research and advocacy, and litigation. Sinapu's overarching aim is to effect the restoration of healthy ecological function throughout the Southern Rocky Mountains by restoring top-level carnivores; integral to achieving this aim is the restoration and protection of healthy, interconnected wild habitat. Sinapu's members engage in research of wolves in the wild and are harmed by the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

21. Plaintiff Wildlands Project ("Wildlands") was founded in 1990 and has grown to a membership of 4,000. Wildlands' mission is to protect and restore the natural heritage of North America through the establishment of a connected system of wildlands. Wildlands aims to do this through the recovery of whole ecosystems and landscapes in every region of North America. As part of its efforts to stem the disappearance of wildlife, Wildlands has worked to ensure the restoration of wolves in the Southern Rockies and the Northeastern United States and has participated and played a critical role in the Southern Rockies Wolf

Restoration Project and CREW. Wildland's members research, monitor, and track gray wolves in the wild. In addition, Wildlands engages in education efforts on the necessity of ecologically effective populations of native species such as the wolf and how those populations positively impact their habitat. Wildlands' members are harmed by implementation of the FWS's Final Rule because its implementation will result in the presence of fewer wolves in the coterminous United States.

22. Defendants Gale Norton, Secretary of the Interior, United States Department of the Interior and Steven Williams, Director of the United States Fish and Wildlife Service ("FWS"), are charged with the administration of the Endangered Species Act. The defendants are responsible for ensuring the continued viability of species listed as endangered or threatened under the ESA. They are sued in their official capacities.

STATUTORY AND REGULATORY BACKGROUND

The Endangered Species Act 16 U.S.C. §§ 1531 et seq.

23. The Endangered Species Act ("ESA") was enacted in 1973 for the purpose of, among other things, providing a means whereby "the ecosystems on which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species" 16 U.S.C. § 1531(b).

24. In enacting the ESA, Congress stated its policy that, "all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter." 16 U.S.C. § 1531(c)(1).

25. Section 4 of the ESA, 16 U.S.C. § 1533, requires the Secretary of the Interior (“Secretary”) to list species of wildlife or plants endangered or threatened with extinction. 16 U.S.C. § 1533(c)(1). The Secretary’s regulations with regard to listing, and the lists of the species themselves, may be found at 50 C.F.R. Part 17.

26. An “endangered species” is “any species which is in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. §1532(6).

27. For purposes of listing or changing the listing status of a species, a significant portion of a species’ range includes areas where the species was once present, regardless of the species’ current presence in such areas.

28. The Secretary is required to determine whether any species is endangered or threatened due to any of the following factors:

1. the present or threatened destruction, modification, or curtailment of its habitat or range;
2. overutilization for commercial, recreational, scientific, or educational purposes;
3. disease or predation;
4. the inadequacy of existing regulatory mechanisms; or
5. other natural or manmade factors affecting its continued existence.

16 U.S.C. §1533(a).

29. The Secretary is required to make any changes to the listing status of a species in accordance with the five factors listed in 16 U.S.C. § 1533(a). 16 U.S.C. § 1533(c)(2)(B).

30. The Secretary is required to make determinations regarding the listing or change in listing of species utilizing “the best scientific and commercial data available.” 16 U.S.C. §§ 1533(b)(1)(A); 1533(c)(2); 50 C.F.R. § 424.11(d).

31. The Secretary shall make any alteration in listing with respect to an endangered or threatened species “*solely* on the basis of the best scientific and commercial information regarding a species’ status, without reference to possible economic or other impacts of such determination.” 50 C.F.R. § 424.11(b) (emphasis original).

32. A species may be delisted or downlisted only if the best scientific and commercial data available indicate that it is neither endangered or threatened because the species has either become extinct, or recovered, or in the case of downlisting, that the best available scientific and commercial data warrants its designation as threatened based on the five Section 4(a)(1) listing factors. 50 C.F.R. § 424.11(d).

33. Section 3 of the ESA defines “conserve,” “conserving,” and “conservation” as “to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” 16 U.S.C. § 1532(3).

34. The ESA requires the Secretary to review all programs administered by her and utilize those programs in furtherance of the Act’s purposes. The ESA also mandates that the Secretary shall carry out programs “for the conservation of endangered and threatened species.” 16 U.S.C. § 1536(a)(1).

35. Every federal agency is required to “insure that any action funded, authorized, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species.” 16 U.S.C. § 1536(a)(2).

36. FWS defines jeopardize the continued existence of a species as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02.

37. The ESA requires the Secretary to develop and implement recovery plans for listed species. 16 U.S.C. § 1533(f).

38. The Secretary is required under Section 4’s recovery plan mandate to “give priority to those endangered species or threatened species . . . that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.” 16 U.S.C. § 1533(f)(1)(A).

39. Each recovery plan shall include “a description of site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species.” 16 U.S.C. § 1533(f)(1)(B)(i).

40. “The principle goal of the U.S. Fish & Wildlife Service . . . is to return listed species to a point at which protection under the Act is no longer required.” 50 C.F.R. § 424.11(d)(2).

41. The FWS has defined “recovery” to mean the “improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.” 50 C.F.R. § 402.02.

42. Recovery of a species is “not attained until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” 51 Fed. Reg. 19,926 at 19,935 (1986).

43. A species may be delisted on the basis of recovery only if the best available scientific and commercial data indicate that it is no longer endangered or threatened based on a review of the five Section 4(a)(1) factors. 50 C.F.R. § 424.11(d)(2).

44. The Secretary has promulgated a policy whereby the Secretary may establish distinct population segments (“DPSs”) for endangered and threatened species for the purposes of listing, delisting, or reclassifying a species under the ESA. 16 U.S.C. § 1532(16); 61 Fed. Reg. 4,722, 4,725 (1996) (“DPS Policy”).

45. Under the DPS Policy, the Secretary is to consider three elements in any decision regarding the status of a DPS under the ESA. These three elements apply in the same fashion regardless of whether the action is the creation, delisting, or reclassification of a DPS. The elements are:

1. Discreteness of the population segment in relation to the remainder of the species to which it belongs;
2. The significance of the population segment to the species to which it belongs; and
3. The population segment’s conservation status in relation to the Act’s standards for listing (i.e., is the population

segment, when treated as if it were a species, endangered or threatened?)

61 Fed. Reg. 4,722, 4,725 (1996).

46. The FWS DPS Policy defines a population segment as being discrete if it satisfies either of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.
2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exists that are significant in light of section 4(a)(1)(D) of the Act.

61 Fed. Reg. 4,722, 4,725.

47. Under the ESA, “any person may commence a civil suit on his own behalf . . . to enjoin any person, including the United States and any other governmental instrumentality or agency . . . alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof.” 16 U.S.C. § 1540(g)(1)(A).

48. All plaintiffs have provided FWS and the Secretary with 60-day notice letters pursuant to 16 U.S.C. § 1540(g)(2)(a) indicating that they intended to bring suit absent a revocation of the Final Rule by FWS.

The Administrative Procedure Act, 5 U.S.C. §§ 553-559, 701-706

49. The APA, 5 U.S.C. §§ 553-559, 701-706, provides for judicial review of agency action, such as the FWS’s Final Rule. A reviewing court shall hold unlawful and set

aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FACTS

50. The wolf once ranged throughout most of the North American continent. Prior to European contact, the total wolf population in North America — including the gray wolf, the red wolf, and the Mexican gray wolf — may have been as high as 400,000 individuals. These numbers, however, did not persist as human agricultural and industrial development spread throughout much of the North American continent. Increased development was accompanied by widespread persecution of wolves by humans.

51. By the beginning of the eighteenth century and into the twentieth, private citizens and local and state governments authorized and funded bounties intended to exterminate the wolf throughout the United States. Surviving wolf populations in the eastern half of the United States were largely eliminated by such bounties, and by the 1970s, the only wolves in the eastern United States consisted of just under a thousand wolves in northeastern Minnesota.

52. In the western United States, these early bounties did not succeed in completely exterminating wolves. As a result, in 1915, Congress appropriated \$125,000 for the United States Department of Agriculture's Bureau of Biological Survey to kill wolves and other predators. Professional hunters, primarily utilizing poison, eliminated gray wolf populations from the American West by the 1930s. Many, if not all, of the last individual wolves in the West were killed in the 1940s by personnel from the Biological Survey's successor agency, FWS. In addition, the federal government maintained a wolf control

program in the border regions to prevent the return of wolves from Mexico and Canada to the coterminous United States.

53. In the 1950s, FWS exported American personnel and poisons to the border regions of Canada and Mexico in an effort to replicate its wolf control program in these regions. The success of these efforts greatly reduced the number of wolves appearing within the United States' border region.

54. Throughout these decades during which an organized federal program eliminated wolves over many tens of thousands of square miles, the federal government denied that such was the intent or the likely outcome of its activities. In 1928, the Bureau of Biological Survey officially announced that it would not exterminate any species. Despite this announcement, because of the Bureau's activities, wolves were already extirpated from most of the United States. With the Bureau's continued efforts, within a few years, all viable, self-sustaining wolf populations in the West had been eliminated entirely. FWS reiterated these denials, while at the same time maintaining a program in the American West that continued to eliminate wolves and offered them no sanctuary in the United States or Mexico.

Wolf Biology and the Wolf's Place Within A Healthy Ecosystem

55. Gray wolves are the largest member of the dog family *canidae*. The average female wolf weight ranges from 80-85 pounds, and males average from 95-100 pounds. Given the wide range of the wolf – from the Arctic to Mexico – there is considerable variation in size and pelt color across its range.

56. Wolves are mobile animals and can travel up to 120 miles in a day, although they usually travel between 10 to 15 miles per day. Wolves' acute hearing and exceptional sense of smell enable them to adapt well to their surroundings and locate prey.

57. Wolves prey primarily on wild ungulates such as deer, elk, moose, caribou, bison, and musk oxen. When necessary, they also eat smaller prey such as snowshoe hare, beaver, rabbits, opossums, and rodents. Some wolves also occasionally prey on livestock, although this is generally not their preferred food and often occurs in circumstances in which natural prey species have been eliminated or greatly diminished.

58. Wolves are social animals and wolf pups are dependent upon viable family units, or packs, for their survival. Wolf packs range in size from 4 to 20 members. The pack usually consists of a dominant pair, their pups, and several other subordinate or young animals. The dominant female and male are the pack leaders, breeding, tracking and hunting prey, choosing den sites, and establishing the pack's territory. The bond between the breeding pair is often permanent, thereby contributing to overall pack and population stability.

59. Wolf pups often remain with their parents for at least the first year of life, while they learn to hunt. During their second year of life, some pups – called sub-adults – spend periods of time away from the pack and often return in the autumn to spend their second winter with their birth pack.

60. By the time wolves are two years old, some wolves leave the pack permanently to find mates and territories of their own. This process is called dispersal. The ability of wolves to disperse is essential to the viability of wolf populations by providing for genetic

interaction over a large area. Some wolves have been known to disperse up to 500 miles, although generally wolves travel a shorter distance before running into a suitable mate.

Dispersing wolves play an integral role in wolf recovery, as it is through dispersers that new packs are created and the population of wolves expands into new regions.

61. Wolves that do not disperse are called “biding” or “non-dispersing” wolves. Biding wolves play an integral role in wolf stability and maintenance of long-term wolf territories they inherit in a functioning ecosystem.

62. The longevity of a wolf depends greatly on its experiences in the first years of life. Biologists have determined that only one or two of every five wolf pups born live to the age of 10 months, and only about half of the remaining wolves survive to the time of dispersal. Adult wolves, unlike pups, have fairly high rates of survival absent human caused mortality. A seven-year old wolf is considered fairly old, and the maximum life span of a wolf is about 12 to 13 years.

63. The ecological benefits of wolf populations have long been seen in northern Minnesota and Wisconsin. In addition, the ecological benefits of an increased wolf population can be seen in the central Idaho and the Yellowstone National Park region. Since the reintroduction of wolves into these regions, the health of the entire ecosystem has improved. One benefit resulting from the reintroduction of gray wolves is that the grazing behavior of elk and other ungulates has changed along the region’s waterways, allowing for an expansion of canopy cover, which provides habitat, food, and shelter for populations of beaver and songbirds and simultaneously enhances the rivers’ and streams’ abilities to provide healthy trout habitat.

64. Another benefit accrues to scavenger species such as bears, badgers, eagles (and many others), which are provided a more reliable food source on a year-round basis from the “leftovers” of wolf kills. Foxes are still another beneficiary, because they are killed by coyotes, which in turn are killed by wolves, and after the reintroduction of wolves to Yellowstone National Park, fox numbers increased.

65. The totality of these and other benefits from wolves constitutes the trend toward conservation of ecosystems that is one of the fundamental purposes of the ESA.

Federal Wolf Protection

66. The gray wolf was one of the first species to receive federal protection under the conservation laws that served as precursors to the Endangered Species Act. The eastern timber wolf subspecies of the gray wolf was first classified as an endangered species on March 11, 1967 under the Endangered Species Preservation Act of 1966. 32 Fed. Reg. 4001 (1966). After passage of the Endangered Species Act in 1973, various subspecies of wolves were protected under that Act: i.e., the Eastern Timber Wolf (*canis lupus lycon*) in August 1974; the Northern Rocky Mountain wolf (*canis lupus irremotus*) in 1973 (38 Fed. Reg. 14678); the Mexican gray wolf (*canis lupus baileyi*) in 1976 (41 Fed. Reg. 17740); and the Texas gray wolf (*canis lupus monstrabilis*) also in 1976 (41 Fed. Reg. 24064)).

67. Eventually, FWS moved away from protection of wolves at the subspecies level and determined to make listing decisions at the species level. On March 9, 1978, FWS listed the entire species of wolves, *canis lupus*, as endangered throughout the coterminous 48 states and Mexico, with the exception of Minnesota, where wolves were listed as threatened. 43 Fed. Reg. 9607 (1978). FWS, however, remained committed to making recovery plan and

management decisions with a recognition that subspecies distinctions were important to overall wolf recovery. Id.

68. Protection under the ESA ensured that even in states where state law continued to provide for bounties and permitted the hunting of wolves, all wolves would receive protection. Some of these state laws remain in effect and would govern wolf management after downlisting and eventual delisting of the wolf from the ESA. Importantly, ESA protection also provided the first barrier in over half a century to unrestrained federal killing of wolves.

69. Under the protection afforded by the ESA, the wolf population in northeastern Minnesota grew and wolves dispersed into northern Wisconsin and Michigan. This dispersal resulted in an increase in wolf packs throughout the upper Great Lakes region. Currently, there are approximately 2,500 individual wolves in Northeastern Minnesota, 335 to 354 in Wisconsin, and 321 in Michigan. Each of these three states have wolf management plans that are in place and have been approved by FWS.

70. Under the ESA's protections wolves began to naturally recolonize areas of northwestern Montana in the 1980s. These wolves originated in packs along the United States – Canadian border and moved into northwestern Montana as part of the natural dispersal process. These wolves began breeding in this region, establishing – for the first time in fifty years – a small number of wolf packs in the western portion of the coterminous United States.

71. In 1995 and 1996, under Section 10(j) of the ESA, FWS reintroduced wolves to western Wyoming (Yellowstone National Park) and central Idaho. This wolf

reintroduction has resulted in the re-establishment of a wolf population in this portion of the Northern Rocky Mountains for the first time in nearly a century. The population of wolves that were introduced under Section 10(j) is considered an experimental population by FWS and as such it is regulated in a different manner than wolves in other portions of the country.

72. Similarly, in 1998, FWS, acting pursuant to Section 10(j) of the ESA, reintroduced the Mexican gray wolf to southeastern Arizona and southwestern New Mexico. This small and tenuous population of the Mexican gray wolf comprises the progeny of the last five Mexican gray wolves known to have existed in the wild. These five wolves were captured in Mexico between 1977 and 1980 for an emergency cooperative breeding program between the United States and Mexico because this unique subspecies had been reduced to an extremely small number. No other wolves have been identified in the wild in Mexico and the subspecies is believed to have been entirely eliminated from the wild prior to the current reintroduction. Like the population of wolves reintroduced into central Idaho and Wyoming, the Mexican wolves are an experimental population for purposes of FWS's regulations.

73. Currently, there are approximately 3,600 gray wolves in the coterminous United States, living in eight states. This number falls far short of the hundreds of thousands of wolves that once lived throughout the coterminous United States.

74. Even today, with the full protection of the ESA intact "human actions, both legal and illegal, intentional and accidental, remain the primary cause of gray wolf deaths" in the western United States. 65 Fed. Reg. 43480. This is also true in the eastern United States. In the West, many of these human-caused deaths stem from the FWS's own liberal use of lethal control mechanisms under Section 10(j) of the ESA for the experimental populations in

Idaho, Montana, and Wyoming, and unintended deaths also stemming from control actions authorized under Section 10(j) in Arizona and New Mexico. Further, this liberal use of lethal control has taken place in violation of the FWS's own policy to first exhaust all feasible non-lethal control methods.

75. Human-caused wolf mortality is also a problem in the Great Lakes states of Minnesota, Wisconsin, and Michigan. For example, FWS estimates that approximately 25% - 30% of Minnesota's wolf population dies as a result of human-caused mortality – not including authorized lethal control measures. Likewise, the 2002 figures for Wisconsin show a similar trend. In 2002, 28 wolves out of a population of 335 to 354 were found dead. Of these 28, 11 wolves were illegally shot and 9 were hit by motor vehicles.

76. Since 1999, at least three gray wolves have migrated from Idaho into the Hells Canyon-Wallowa and Blue Mountains regions of northeast Oregon. All three have been killed or deported. Wolves are expected to continue to migrate to northeast Oregon from the current federal recovery area in central Idaho, and are suspected by scientists and wildlife managers to already exist at some level. Plaintiffs' members have located signs of wolf presence in northeast Oregon, and the U.S. Fish and Wildlife Service has received over seventy reports of wolf sightings in this area since 1999. Some of the wolves entering Oregon, however, have been either illegally killed by humans or killed by motor vehicles. The status of the other individuals is unknown. Despite past confirmed migrations into Oregon and suggestions of wolf presence, no viable wolf populations, individual wolves, or breeding pairs are currently recognized in the State.

77. In addition, there have been reported sightings of wolves in northern Washington. These wolves are most likely dispersing into northern Washington from southern British Columbia.

78. Similarly, in the northeastern United States, there have been wolf sightings. For example, in 1993 a bear hunter shot and killed a gray wolf in northern Maine. In the winter of 2000, a coyote hunter in upstate New York shot and killed an animal that was much larger in size than a typical coyote. FWS took this animal for testing and the results are still unknown. In January 2002, a wolf was trapped in southern Québec, just 15 to 25 miles from the United States border.

The 2000 Proposed Rule

79. On July 13, 2000, FWS published a proposed rule regarding the status of the gray wolf in the coterminous United States ("Proposed Rule"). 65 Fed. Reg. 434550. The Proposed Rule set forth FWS's proposals with respect to the gray wolf throughout the 48 coterminous United States. The Proposed Rule was published in the Federal Register and FWS solicited public comment. Id.

80. The Proposed Rule established four distinct population segments of gray wolves. They were: the Northeastern DPS (comprising Maine, New Hampshire, Vermont, and New York); the Western Great Lakes DPS (comprising Michigan, Wisconsin, Minnesota, and North and South Dakota); the Western DPS (comprising Washington, Oregon, Montana, Idaho, Wyoming, Utah, Colorado, northern New Mexico and northern Arizona); and the Southwestern DPS (comprising the southern two-thirds of Arizona and New Mexico and western Texas, as well as part of Mexico).

81. Through the Proposed Rule, FWS sought to delist the gray wolf in the following states, which were not included in any DPS: Massachusetts, Connecticut, Rhode Island, California, Nevada, Iowa, Illinois, Indiana, Ohio, Nebraska, Kansas, Missouri, Oklahoma, parts of Texas, Arkansas, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky. In these states, wolves would receive no protection under the federal Endangered Species Act, despite the presence of suitable gray wolf habitat in some of them, the possibility that dispersing wolves may enter these regions, and the fact that many of these states were once part of the historic range for this species.

82. In addition, the Proposed Rule downlisted the gray wolf's status from endangered to threatened in the following states: Wisconsin, Michigan, New York, New Hampshire, Vermont, Maine, Wyoming, Idaho, North and South Dakota, Montana, Washington, Oregon, Colorado, Utah, parts of northern New Mexico, and northern Arizona.

83. The Proposed Rule did not change the status of wolves in the Southwestern DPS or in the experimental populations of central Idaho and the Yellowstone National Park region of Wyoming.

84. With respect to each of the DPSs, the Proposed Rule set forth specific regulations under Section 4(d) of the ESA. These regulations sought to provide "greater management flexibility" with respect to wolves. 65 Fed. Reg. 43480.

85. In the Proposed Rule, FWS specifically envisioned that wolves would be reintroduced into the Northeastern DPS. 65 Fed. Reg. 43485-86. To this end, the Proposed

Rule contained specific guidelines for state and Tribal entities within the Northeastern DPS for developing statewide/Tribal-wide wolf conservation plans. Id.

86. In creating the Northeastern DPS, FWS recognized the existence of “large areas of potentially suitable wolf habitat and prey resources in parts of New England, the possibility that wolves may exist in remote parts of Maine, and the presence of wolf populations in neighboring areas of eastern Canada.” 65 Fed. Reg. 43473.

87. FWS also determined, based on its own Vertebrate Population Policy, that gray wolves “that may exist in Maine are discrete from gray wolves elsewhere in the lower 48 states” and that this population of gray wolves “is significant and will contribute to the overall restoration of the species.” 65 Fed. Reg. 43473.

88. FWS, in proposing a special regulation under Section 4(d) of the ESA for the Northeastern DPS, “intended to promote the restoration and recovery of wolves to one or more states within the Northeastern DPS.” 65 Fed. Reg. 43473.

89. FWS established the four DPSs in the Proposed Rule with an understanding that, “without viable wolf populations in these four geographic areas [the DPSs] the recognized range of the species within the 48 coterminous State would have extensive and significant gaps, possibly broader than the dispersal distance of the species.” 65 Fed. Reg. 43473.

The 2003 Final Rule

90. On April 1, 2003, FWS published its Final Rule to Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the

Coterminous United States (“Final Rule”). This Final Rule appeared in the Federal Register at 68 Fed. Reg. 15804.

91. The Final Rule is consistent with the Proposed Rule in that all federal protection of gray wolves is eliminated in West Virginia, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and eastern Texas and Oklahoma.

92. The Final Rule differs in other fundamental ways from the Proposed Rule.

93. Contrary to the Proposed Rule, FWS retained some protection under the ESA for those wolves that may occur in California, Nevada, Nebraska, Kansas, Iowa, Illinois, Missouri, Indiana, Ohio, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, and Maryland. Under the Final Rule, the status of any wolves in these states is threatened.

94. The Final Rule downlisted the wolf from endangered to threatened in states where there are either no viable wolf populations, or individual wolves, or breeding pairs. These states are: Oregon, California, Washington, Nevada, Nebraska, North Dakota, South Dakota, Kansas, Iowa, Illinois, Missouri, Indiana, Ohio, Pennsylvania, Massachusetts, Rhode Island, Connecticut, New York, Vermont, New Jersey, Delaware, and Maryland.

95. The Final Rule downlists the wolf from endangered to threatened in many states that lack state or tribal mechanisms adequate to protect and ensure the conservation of the wolf and the ecosystems on which it depends, including states with known wolf populations as well as states such as Oregon, Washington, and Maine into which wolves have

dispersed and/or are expected to migrate in the near future. To date, the only states with a funded, finalized state wolf plan are Minnesota and Michigan.

Western DPS

96. The Final Rule downlists wolves in a nine-state Western DPS based on FWS's Northern Rockies Recovery Plan. This Plan, however, was intended only to govern wolf recovery in a specific geographic region covering three states: Montana, Idaho, and Wyoming. The remaining states in the Final Rule's Western DPS do not yet have wolf populations although clear evidence exists of wolf dispersal into some of these states, such as Oregon and Washington.

97. The states comprising the Western DPS have inadequate regulatory mechanisms to protect and conserve the species as it disperses into its former historic range across the western United States.

Eastern DPS

98. The Final Rule eliminated completely the Northeastern DPS. Under the Final Rule, this geographic region is now included within what was the Western Great Lakes DPS under the Proposed Rule. The combined region created in the Final Rule is denominated the Eastern DPS. The Eastern DPS stretches from the Dakotas in the West to Maine in the East. The north-south range of the Eastern DPS stretches from the Canadian border to Oklahoma and Arkansas, following the Mason-Dixon line towards the East.

99. The best scientific and commercial data, however, demonstrates that the wolf populations that occur in Minnesota are discrete from the population of wolves that will disperse into northern Maine, New Hampshire, Vermont, and New York from Ontario and

Québec. As such, these two wolf populations cannot properly be considered to be a single DPS under FWS's DPS Policy because the Eastern DPS, which stretches from the Dakotas in the West to Maine in the East, does not represent a single, discrete population.

Southwestern DPS

100. In the Final Rule, the Southwestern DPS represents an area that encompasses, but is much larger than, the historic range of the Mexican gray wolf. The region within the Mexican gray wolf's historic range is ecologically unique, as is the region included in the Southwestern DPS that lies outside (to the north of) the historic range. These two unique eco-regions within the Southwestern DPS are divided by human developments that serve as substantial barriers to wolf dispersal. The resulting Southwestern DPS therefore, does not represent a single, discrete population.

Intention to Remove All Federal Protection

101. On the same day that FWS issued the Final Rule, it also issued an Advanced Notice of Proposed Rule Making regarding the status of the gray wolf in the Eastern and Western DPS. Through this advanced notice of proposed rule making, FWS stated that it "intends to propose to delist the gray wolf" in the Eastern and Western DPSs, including the non-essential experimental populations in Montana, Idaho, and Wyoming, in the "near future." 68 Fed. Reg. 15876 (April 1, 2003).

102. The promulgation of the Final Rule, coupled with FWS's simultaneous announcement that it planned to delist the wolf in the majority of the United States in the near future, demonstrates that FWS believes that it has completed wolf recovery in the Eastern and Western DPSs.

COUNT I

(Violations of the ESA and its Implementing Regulations, Policies, and the APA)

103. The plaintiffs restate and reallege the foregoing allegations.

104. The Final Rule violates Section 4 of the ESA by, among other things:

- a) downlisting wolves from endangered to threatened in the Eastern and Western DPSs despite the complete absence of wolves from a number of the states and the absence of a viable population in others while these states also contain present and/or historic wolf habitat. 16 U.S.C. § 1533(a)(1);
- b) downlisting wolves from endangered to threatened in states in the Eastern and Western DPSs from which the wolf has been extirpated or severely reduced where such downlisting is contrary to the best scientific and commercial data regarding wolf recovery. 16 U.S.C. §§ 1533(b)(1)(A); 1533(c)(2);
- c) downlisting wolves from endangered to threatened in the Eastern and Western DPSs in the absence of adequate regulatory mechanisms, including state management plans that will protect adequately existing populations of wolves, individual wolves, as well as those wolves attempting to recover historic habitat through ongoing dispersal. 16 U.S.C. § 1533(a)(1)(B), (D), and (E);
- d) downlisting the wolf from endangered to threatened, when a continuing threat of the destruction, modification, or curtailment of

the wolves' range in the Eastern and Western DPSs persists. 16

U.S.C. § 1533(a)(1)(A);

- e) downlisting the wolf from endangered to threatened in the Eastern and Western DPS when “man-made factors affecting the continued existence” of the wolf and its overall recovery persist. 16 U.S.C. § 1533(a)(1)(E).
- f) creating three DPSs that are not based on the best scientific and commercial data available. 16 U.S.C. § 1533(b)(1)(A); 61 Fed. Reg. 4725 (requiring determinations regarding DPSs to comply with Section 4 of the ESA); and
- g) failing to consider, develop, and implement recovery plans for wolves in states with no wolf populations despite the existence of significant areas of viable wolf habitat in those states and/or evidence of confirmed wolf dispersal into those areas. 16 U.S.C. §§ 1531(b); 1533(f)(1)(A).

105. The Final Rule violates Section 7 of the ESA by, among other things:

downlisting the wolf from endangered to threatened on this record throughout the Eastern and Western DPSs, an action that does not conserve the wolf, as required by Section 7(a)(1) of the ESA. 16 U.S.C. § 1536(a)(1);

106. The Final Rule violates the ESA's implementing regulations by:

- a) failing to use the best scientific and commercial data in downlisting the gray wolf from endangered to threatened in the Eastern and Western DPSs. 50 C.F.R. § 424.11;
- b) failing to use the best scientific and commercial data in the delineation of the three DPSs. 50 C.F.R. § 424.11; and
- c) downlisting the gray wolf from endangered to threatened despite the fact that threats to the viability of the gray wolf and its habitat still exist and therefore, the wolf has not met its downlisting recovery targets and has not recovered throughout the entire Western and Eastern DPS's. 50 C.F.R. § 424.11(d).

107. The Final Rule violates FWS's DPS Policy in the following ways:

- a) creating three DPSs that are not based upon a discrete population in relation to the remainder of the species. 61 Fed. Reg. 4722, 4725.
- b) creating three DPSs that include more than one area that is ecologically significant. 61 Fed. Reg. 4722, 4725.
- c) creating three DPSs that do not reflect the relevant wolf population segment's conservation status in relation to the Act's standards for listing. 61 Fed. Reg. 4722, 4725.

108. The Final Rule is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the APA because, among other things:

- a) it arbitrarily and capriciously downlists the gray wolf in violation of the ESA in the Eastern and Western DPSs when the best scientific

and commercial data indicates that absent the protections of the ESA, the human activities that contributed to the listing of the wolf will resume;

- b) it arbitrarily and capriciously eliminated the Northeastern DPS from the Final Rule;
- c) it arbitrarily and capriciously expanded the range of the Southwestern DPS northward from the boundaries set forth in the Proposed Rule; and
- d) it has arbitrarily and capriciously abandoned wolf recovery throughout most of the United States, despite the best scientific and commercial data demonstrating that wolf recovery programs help to conserve and restore the ecosystems on which wolves depend, in furtherance of the ESA's purpose.


RELIEF REQUESTED

WHEREFORE, plaintiffs seek a judgment from this Court against defendants as follows:

1. A declaration that the Department of the Interior and the Fish and Wildlife Service were arbitrary and capricious in issuing the Final Rule To Reclassify and Remove The Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Coterminous United States (April 1, 2003) ("Final Rule"), because this Final Rule violated the Endangered Species Act;
2. A declaration that the Final Rule violated the Endangered Species Act;

3. An injunction preventing the FWS from implementing any aspect of the Final Rule;
4. An order vacating the Final Rule and remanding it to the Fish and Wildlife Service;
5. An order that the plaintiffs herein recover their costs, including reasonable attorneys' fees, incurred in connection with this action, as provided for under the Endangered Species Act, 16 U.S.C. § 1540(g)(4), and the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable law; and
6. Such other and further relief as the Court may deem just and proper.

Dated: October 1, 2003


Stephanie M. Parent, OSB # 92590
Pacific Environmental Advocacy Center
10015 S.W. Terwilliger Blvd.
Portland, OR 97219
(503) 768-6736
(503) 768-6642 (facsimile)
parent@lclark.edu

Brian B. O'Neill, MN # 82521
boneill@faegre.com
Richard A. Duncan, MN # 192983
rduncan@faegre.com
Elizabeth H. Schmiesing, MN # 229258
eschmiesing@faegre.com
Anne E. Mahle, MN # 312861
amahle@faegre.com
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000
(612) 766-1600 (facsimile)

Attorneys for Plaintiffs Defenders of
Wildlife, Sierra Club, American Lands
Alliance, Animal Protection Institute, Center
for Biological Diversity, Forest Watch, Hells
Canyon Preservation Council, Help Our
Wolves Live (“HOWL”), The Humane
Society of the United States, Klamath Forest
Alliance, Klamath-Siskiyou Wildlands
Center, Minnesota Wolf Alliance, Oregon
Natural Resources Council, Public
Employees for Environmental Responsibility
 (“PEER”), RESTORE: The North Woods,
Sinapu, Wildlands Project.

M1:1000018.01