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March 1, 2006

Via E-Mail: rtfanning@worldnet.att.net
Mr. Robert Fanning, Jr.
75 Bridger Meadow Lane
Emigrant, MT 59027

Via First Class U.S. Mail
Friends of the Elk
c/o Bill Hoppe, President
Jardine Road
Gardiner, MT 59030

Re: Friends of the Northern Yellowstone Elk Herd Delisting Petition Response

Dear Robert and Bill:

Pursuant to your request, I have reviewed the Friends of the Northern Yellowstone Elk Herd ("Friends") petition to delist the Northern Rocky Mountain grey wolf and the U.S. Fish and Wildlife Service ("FWS") response thereto. In short, while the FWS did make a procedural error in responding to the Friends' petition, I do not believe that this error provides a basis to successfully sue the FWS or to have the grey wolf delisted as a matter of law. Rather, the FWS is currently considering delisting the Northern Rocky Mountain grey wolf. The Friends, as well as other members of the public, have until April 10, 2006 to comment on the proposed delisting. Thus, I strongly recommend that the Friends substantively comment on the proposed delisting before the deadline. Once all the comments are received and the FWS makes a final decision on delisting, you can respond appropriately. In fact, in my opinion, unless the Friends substantively comment, the Friends will not have standing to litigate if the wolf is not delisted.

The specific responses to your questions are discussed below:

Question:

Did the FWS specifically act on and dismiss the Friends' petition to delist?

Answer:

Despite the language used and as a practical matter, I believe that the FWS did specifically act on the Friends' petition and did not specifically dismiss it. The October 26, 2005 Federal Register notice responds to a petition dated October 5, 2001 from the Friends of the Northern Yellowstone Elk Herd, as well as a petition dated July 13, 2005 from State of Wyoming. 70 FR 61770-71 (October 26, 2005). The Notice states that the Friends' "petition failed to present a case

for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Therefore, the remainder of this finding focuses on the Wyoming Petition.” Id. at 61771. However, in substance, the FWS appeared to be responding to both petitions concurrently, since both petitions requested removing the gray wolf from the list of threatened and endangered species.¹ Specifically, the FWS found that, given the “collective weight of evidence,” there was “substantial scientific and commercial information presented” to indicate that delisting may be warranted and initiated a 12-month status review.” Id. at 61774.

This view is further supported by the FWS’s October 17 News Release, which states, “After evaluating two recent petitions asking the Service to remove the northern Rocky Mountain population of the gray wolf from the Federal list of threatened and endangered species, the U.S. Fish and Wildlife Service has concluded that substantial information exists indicating that delisting of this population may be warranted.” Thus, nothing in the press release indicates that the Friends’ petition was dismissed.

Finally, regardless of whether the FWS actually did or did not dismiss the Friends’ petition, in the end, FWS did what the Friends wanted it to do, i.e., issue a favorable finding, stating that delisting may be warranted and initiating a status review. Thus, regardless of what exact petition was acted upon, I believe the outcome would have been the same. Under federal regulations, if the Secretary finds that a petition presents substantial information that may warrant delisting, she is required to “commence a review of the status of the species concerned and shall make, within 12 months of receipt of the petition” a finding on whether the petition is warranted. 50 C.F.R. § 424.14(b)(3). Although the letter from Mr. Hagener cites incorrectly to the Federal Register and lists the date as October 26, 2006, rather than the correct date of October 26, 2005, he is correct in stating that the Friends (and every one else) will not have standing to sue until after the 12-month time period is completed.

Question

Is any specific notice required to the Friends once their petition was filed?

Answer

Yes. Under the federal regulations, the Secretary is required to publish her findings on a petition to delist in the Federal Register, “and so notify the petitioner.” 50 C.F.R. § 424.14. The problem is, however, that, although the Friends did not get actual notice, the FWS is acting favorably

¹ Actually, the Wyoming petition specifically requested revising the listing status for the gray wolf “by establishing the northern Rocky Mountain DPS” and “concurrently remov[ing] the gray wolf in the northern Rocky Mountain DPS from the Federal list of threatened and endangered species.” 70 F.R. 61771. The Friends’ petition simply sought to remove “the gray wolf from designation of endangered under the ESA.” According to the Federal Register notice, the Friends later clarified this to mean only the gray wolf in Idaho, Montana and Wyoming. Whether it is called a DPS or not, both the Wyoming petition and the Friends’ petition reach the same result.

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on the petition to delist and is at least considering delisting. Thus, you have a technical violation of a regulation for which there is no remedy. This is particularly true since the Friends still have time to comment on the delisting proposal by April 10, 2006.

In determining an appropriate remedy for a violation of the Endangered Species Act (“ESA”) notice requirement, the courts have generally first looked at whether the notice violation was prejudicial. See Idaho Farm Bureau Federation v. Babbitt, 58 F.3d 1392, 1405 (9th Cir. 1995) (finding that, although the ESA requires that the FWS provide each county in which the species proposed for listing is believed to occur with actual notice, that error was harmless where the county commissioners did, in fact, know about the listing decision and provided comments); Gerber v. Norton, 294 F.3d 173 (D.C. Cir. 2002) (finding that, where the agency did not provide the plaintiff with a meaningful opportunity to comment by withholding a document used to make the final decision, the error was prejudicial). “Failure to provide notice and comment is harmless when the agency’s mistake had no bearing on the procedure used or the substance of the decision.” Idaho Farm Bureau Federation, 58 F.3d at 1405. Again, the fact that the FWS is considering delisting and the Friends have not missed the comment period would make this “harmless error.”

Question:

Is there any support for the proposition that the failure to procedurally respond to the Friends’ petition would mean that the wolf must be delisted as a matter of law?

Answer:

Although normally a regulation is invalid if not promulgated in accordance with law, in some circumstances the regulation can be left in place while the agency corrects its procedural flaw. See Idaho Farm Bureau Federation, 58 F.3d at 1405; Endangered Species Committee, 852 F. Supp. at 41. “[W]hen equity demands, the regulation can be left in place while the agency follows the necessary procedures.” Idaho Farm Bureau Federation, 58 F.3d at 1405.

The remedy the Friends appear to desire for this procedural violation is the immediate delisting of the gray wolf. There are two reasons why this cannot or will not happen. First, assuming that the “regulation” that the Friends is to challenge is the October 26, 2005 decision denying its petition (assuming that there was an actual denial of its petition), the regulation that would have to be set aside would be the decision to deny its petition. In this case, I believe that the decision denying the petition would simply be remanded to the agency for the agency to reconsider its decision to deny the petition. For example, in Moden v. United States Fish and Wildlife Service, the court found that the agency’s decision to deny a petition to delist two species of sucker fish was erroneous because the agency had not adequately explained its decision and the decision did not appear to be supported by the administrative record. 281 F. Supp. 2d 1193, 1205 (D. Or. 2003). However, rather than delisting as a matter of law, the court remanded the case to the agency to either more adequately explain its decision or to proceed to a status review. Id. at 1196. Although this case did not involve a failure to give notice, I believe that the remedy, if the regulation was vacated, would be the same. Just as the FWS’s failure to adequately justify its decision in Moden did not

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entitle the plaintiffs to have the sucker fish immediately delisted, so too I believe that the failure to give the Friends notice would not entitle them to have the wolf immediately delisted.

Even if the immediate delisting of the wolf was an available remedy for a procedural violation, the court will still take into consideration equitable concerns when fashioning a remedy. Court cases discussing this issue have looked at the harm that would result to the species by vacating the regulation while the agency corrected its procedural violations. See Idaho Farm Bureau Federation ; Home Builders Ass'n of Northern California v. United States Fish and Wildlife Service, 268 F. Supp. 2d 1197 (E.D. Cal. 2003); Endangered Species Committee. In cases involving listing decisions, where the error has only been procedural, and has not involved other major substantive violations, the courts have left the decision in place in the interest of conserving the species while the agency remedied its procedural violations. See generally Idaho Farm Bureau Federation, 58 F.3d 1392; Endangered Species Committee, 852 F. Supp. 32. I cannot imagine that a court, particularly one in the Ninth Circuit, would grant a petition to delist, thereby removing the gray wolf from the protections afforded by the ESA, simply due to a procedural violation, when, as was the case in Idaho Farm Bureau Federation, the court could simply require the FWS to allow Friends to submit data, information, and comments for the FWS's consideration.

Question

Was Montana Fish, Wildlife and Parks accurate in its readings of two Montana state statutes, or did the statutes require Montana Fish, Wildlife and Parks to take some action?

Answer

I believe that Montana Fish, Wildlife and Parks ("FWP") is accurate in its readings of the laws. HB 283 directed the attorney general to analyze state delisting options in coordination with the FWP, but did not require FWP to submit a delisting petition. HB 283 also directed the attorney general to "prepare a proactive legal opinion for possible litigation scenarios." However, this bill provides no time frame for when this opinion has to be accomplished. Although the bill, as originally introduced, would have required FWP to remove the gray wolf from the state endangered species list outside the boundaries of Yellowstone National Park, and would have required the attorney general to initiate a lawsuit against the FWS for damages associated with wolf reintroduction, this language was deleted from the bill as finally passed.

HJ 29 does not direct FWP to do anything, and is basically just a statement of what Montana believes are its rights and a statement urging the Montana Congressional delegation to obtain federal funding for the damage wolves have caused in Montana. I also looked at SJ 4, which is cited in HJ 29, to see if it directed FWP to do anything. This law only encouraged FWP to reclassify the wolf under state law once it is delisted under the ESA and requested FWP to address livestock depredations upon delisting.

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CONCLUSION

In sum, while I agree that there is a procedural violation, I do not think the Friends has an adequate remedy for it at this point. In order to keep the Friends' options alive however, I strongly urge the Friends to prepare substantive comments on the FWS delisting Federal Register notice and to submit those comments by the required deadline. Note that these comments must raise ALL issues the Friends believe are relevant to the FWS decision. If an issue is not raised in the comment period, it cannot be brought up on litigation at a later point.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Karen Budd-Falen

Karen Budd-Falen
BUDD-FALEN LAW OFFICES, LLC

KBF:nec



U.S. Fish & Wildlife Service

The Mountain-Prairie Region

NEWS RELEASE

**U.S. Fish and Wildlife Service
134 Union Boulevard
Lakewood, Colorado 80228**

October 17, 2005

Chris Tollefson 202-208-1456
Sharon Rose (303) 236-4580

SERVICE CONCLUDES THAT DELISTING THE GRAY WOLF IN THE NORTHERN ROCKY MOUNTAINS MAY BE WARRANTED

The U.S. Fish and Wildlife Service has found that two petitions asking the Service to remove the northern Rocky Mountain population of the gray wolf from the Federal list of threatened and endangered species present substantial information to indicate that delisting of this population may be warranted.

Today's finding is made in response to two petitions – a 2001 petition from the Friends of the Northern Yellowstone Elk Herd, Inc., and a July 19, 2005, petition from the Office of the Governor of the State of Wyoming and the Wyoming Game and Fish Commission.

The Service's positive initial 90-day finding will be followed by a more complete

12-month status review of all available data on the Rocky Mountain population. The review will consider whether the population meets the criteria for delisting as a Distinct Population Segment (DPS) under the Endangered Species Act.

This finding does not alter the Service's 2003 conclusion that the State of Wyoming's existing regulatory mechanisms are inadequate to protect the gray wolf population within its borders in the event that the wolf is delisted. We will review this issue during the

12-month status review and continue to work with the State of Wyoming to ensure that the State's statutes and wolf management plan contain adequate protections for the gray wolf.

Today's finding was not affected by recent litigation involving challenges to the Service's 2003 reclassification of gray wolf populations from endangered to threatened throughout much of the species' current range in the United States, including the northern Rocky Mountains. The Service is still evaluating its legal options after recent court decisions invalidated that reclassification, and has made no decision on whether to appeal those rulings.

-FWS-

Bill & Peggy Hoppe

From: "Robert Fanning Jr." <rtfanning@worldnet.att.net>
To: <bphoppe@ycsi.net>
Sent: Thursday, March 16, 2006 11:32 AM
Subject: Fw: Allen Schallenberger Dr. Chris Servheen Grizzly comments March 15, 2006(I'd appreciate your ideas on need changes. I must mail this on Mar. 17th)

Robert T Fanning Jr.
P.O. Box 7 Pray, Montana 59065
Phone 406-333-4121
Fax 406-333-4144
E-mail: rtfanning@worldnet.att.net
Web: <http://www.nextrightthingranch.com>

— Original Message —

From: Robert Fanning Jr.
To: Allen/Dixie Schallenberger
Sent: Thursday, March 16, 2006 11:31 AM
Subject: Re: Allen Schallenberger Dr. Chris Servheen Grizzly comments March 15, 2006(I'd appreciate your ideas on need changes. I must mail this on Mar. 17th)

- 1) how many Habitat Conservation Plan acres were purchased outright or put into conservation easements over the past 30 years for Grizzly bears and other "large Endangered Species"?
- 2) What is the exact number of acres, the cost per acre for acquisition, and certified appraised value dollar value of that acreage now.
- 3) were those acres taken off county tax rolls? (if so what financial restitution has been made?)
- 4) how many more are needed for HCP?
- 5) What is "enough", when will it "stop"?
- 6) What is the accrued tax benefits to the super rich for the past 30 years who participated in this program of conservation easements
- 7) please provide a map as to lands owned by Mt. FWP and those set aside in HCP conservation easements.
- 8) Please provide a map of those lands targeted for future acquisition by out right purchase or conservation easement.
- 9) How many federal dollars have been routed into Montana for H.C.P. from the DOI through the "Cooperative Endangered Species Fund" and "The Land and Water Conservation Fund".
- 10) Please explain to the people of Montana how these monies have benefited their economy, property rights, custom, culture, and heritage.

Robert T Fanning Jr.
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Web: <http://www.nextrightthingranch.com>

— Original Message —

From: Allen/Dixie Schallenberger
To: Robert Fanning Jr.
Sent: Thursday, March 16, 2006 11:03 AM
Subject: Allen Schallenberger Dr. Chris Servheen Grizzly comments March 15, 2006(I'd appreciate your ideas on need changes. I must mail this on Mar. 17th)

Allen Schallenberger
53 Elser Lane
Sheridan, MT 59749-9604
March 15, 2006

Draft Copy 2

3/16/2006

Bill & Peggy Hoppe

From: "Robert Fanning Jr." <rtfanning@worldnet.att.net>
To: "Allen/Dixie Schallenberger" <exprnzm@3rivers.net>; ""Taylor Brown"" <Taylor@northernbroadcasting.com>
Sent: Tuesday, March 14, 2006 2:10 PM
Subject: Fw: Wolf Liability

:
>
>> From: "Jim Beers" <jimbeers7@earthlink.net>
>> Date: Sat Mar 11, 2006 2:29:16 PM US/Eastern
>> To: "Will Graves" <will52@earthlink.net>
>> Subject: Wolf Liability
>> Reply-To: "Jim Beers" <jimbeers7@earthlink.net>
>>
>> Will,
>>
>> Can you forward this to Val and the guy in Finland and anyone else you
>> think can use it?
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>> Thanks, Jim
>>
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>> LIABILITY - From Indonesian Troops to Saskatchewan Wolves
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>> Headline: "Exxon Mobil 'vicariously liable'". Washington Times, A15, 10
>> March 2006.
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>> "Jakarta, Indonesia - Exxon Mobil Corp. said yesterday it will appeal the
>> ruling by a US judge allowing villagers to sue the oil giant for reputed
>> abuses by Indonesian troops at facilities it operated in Aceh province."
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>> Whatever the actions or lack of actions by an oil company operating in a
>> dictatorship, the fact that a US Court allows former Indonesian villagers
>> to sue in a US Court based on "vicarious liability" is disturbing. Why?
>> Because there is more than enough "liability" both "vicarious" and direct
>> here at home to keep both US and Canadian Courts busy. I am speaking of
>> wolves and the legal responsibilities of Federal, State, and Provincial
>> governments for the havoc and death they are wreaking throughout North
>> America and will increasingly wreak in the days and years ahead.
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>> Wolves are killing all manner of dogs wherever they encounter them.
>> Wolves are killing all manner of livestock regularly. Wolves are
>> reducing big game herds and steadily eliminating annual surpluses of such
>> wildlife and thereby hunting seasons and hunting license revenue. Wolves
>> are causing increasingly restricted and stressful rural living for the
>> elderly, parents leaving children at winter bus stops, and visiting
>> grandchildren; thereby reducing rural residency and rural economies.

3/16/2006

>> Other effects go unmentioned such as when fewer dogs are use for hunting,
 >> fewer hunting licenses are sold and less money is spent in rural
 >> economies and for sporting goods.

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>> All of the above represent losses of property both private (dogs, stock,
 >> rural land values, etc.) and public (hunnable wildlife populations,
 >> "user-pays" fish and wildlife agencies). Rural economies are hobbled as
 >> "Critical Habitats" (for other "Endangered Species"), Wilderness, Road
 >> Closures, and elimination of natural resource management programs couple
 >> with wolf epidemiology to take their toll. Additionally, the loss of
 >> "domestic tranquility" (a primary Constitutional charge to the US Federal
 >> government) and the mental stress caused throughout rural areas inhabited
 >> by wolves are also losses caused by wolves.

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>> But it is not these catastrophic effects of wolves that is the subject of
 >> this piece, it is rather the liability for homicide and endangering the
 >> life of another. Specifically, I am referring to the liability for the
 >> death of a Mr. Carnegie recently in Saskatchewan and the attack on
 >> Mr.Desjariasis a resident of Saskatchewan. Both men were attacked by
 >> wolves. Mr. Desjariasis was, very fortunately, able to fend off the
 >> wolves due to his strength and determination. Mr. Carnegie was not so
 >> fortunate, he disappeared but the evidence at the scene of his
 >> disappearance left no doubt that wolves had killed him.

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>> Mr. Desjariasis' account is irrefutable. Wolves attacked with the intent
 >> to kill him and probably eat him. End of story. So it not unexpectedly
 >> receives little press coverage outside the local area. Mr. Carnegie's
 >> legacy (since the only witness is gone) is subject to and the victim of
 >> government, University, and environmental organization cover-up,
 >> distortion and lies.

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>> When I first heard of this event, I expected the usual lies to appear in
 >> the reportage that we routinely see in US reporting of predator attacks
 >> on humans. When a cougar attacks or kills a human, it is always the
 >> persons' fault for "not puffing up" or "looking in their eyes" or "being
 >> in their habitat". It is always all our faults for "building in 'their'
 >> habitat" or "limiting their food supply" or "enticing them into our yard
 >> with our dog". Lastly, it is always the fault of Mother Nature or Global
 >> Warming that "forced" them into the town or camp or city or bike path or
 >> whatever.

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>> When a grizzly kills campers all of the above applies plus the old canard
 >> that the girl "was menstruating" or "they had food" or they "camped too
 >> close to the trail".

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>> What has emerged in Saskatchewan is "doubts" about a wolf attack, but if
 >> wolves did attack then it was caused by a "dump" and "inadequate
 >> government environmental enforcement". So the dump "caused" the attack
 >> sort of like the "dog ate my homework". The solution is not wolf control

>> and public education but "more environmental government employees" and
 >> "more environmental enforcement" and more "environmental laws". Like the
 >> carnival customer gambling on which pod covers the pea, we dutifully look
 >> away at the crucial moment as the carnival barker picks up the pea.

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>> In the case of wolves in the late 1900's in North America the lies are
 >> even more outrageous and purposely misleading. "There has never been a
 >> documented attack by wolves" is one of the biggest lies ever told. Sixty
 >> deaths by wolves in India alone in recent years are probably only the tip
 >> of the iceberg. (Does anyone really believe that there is a "Wolf
 >> Central" or "Shark Central" where attacks are reported, much less
 >> recorded?) Russia is replete with scientific, literary, and anecdotal
 >> accounts of hundreds of fatal wolf attacks in the past century and a
 >> half. European Church records, newspapers, and family histories are full
 >> of wolf attacks on children, the elderly, hunters, shepherds, and rural
 >> unfortunates during winters and summers, by both healthy and rabid wolves
 >> right down to the present. American accounts of wolf attacks number in
 >> the hundreds but are all dismissed by animal rights/environmental
 >> propaganda and fund raiser machines manipulating an agenda-driven press.
 >> For instance, one biologist explained why an Alaskan that died in the
 >> 40's from a wolf attack didn't appear as a wolf victim since he died days
 >> later from rabies!

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>> So who is liable for what? Government is liable for introducing,
 >> protecting, and spreading wolves that then cause all the harms mentioned
 >> above, up to and including homicide. Homicide? Yes, homicide. If I go
 >> about telling my neighbors that my pet pit bulls or Dobermans or
 >> wolf/shepherd crosses are benign and friendly and then allow them to run
 >> loose and they attack one neighbor who fortunately fends them off but
 >> then they kill and eat another neighbor, what would you call it? What
 >> would you say should be done with me? I owned the dogs and am
 >> responsible for them. I told lies to everyone about the dogs, thereby
 >> laying the groundwork for people not protecting themselves with weapons
 >> or forcing me to contain them absolutely.

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>> What if I had pictures circulated with one of my daughters holding a pup
 >> and smiling and then accompanied it with all sorts of lies like "they
 >> never attack people" or "they do so much good for our neighborhood by
 >> keeping out deer and howling at night" or "all of you benefit from the
 >> reluctance of burglars to come into our neighborhood". Would you let me
 >> off the hook when the dogs attacked and killed? Would you let me go
 >> unpunished and even let me get some more large dogs to replace those I
 >> "lost"?

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>> Remember the San Francisco dog that killed the old lady in the apartment
 >> hallway or the lady recently killed in Virginia by such dogs? The owners
 >> were imprisoned and sued and they hadn't additionally conducted public
 >> campaigns to tell everyone how beneficial and benign their charges were
 >> or actively cooperated with groups doing such things.

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>> Government has done and is doing all of the above. And what liability do

>> they have? None. What accountability is there for the growing menace
>> and harm in our midst? None. What does government do when these harms
>> occur? A double arabesque and then pirouettes off stage right to return
>> again once things cool down. Indeed wolves are protected, spread, and
>> used for all sorts of nefarious agendas that cause enormous losses and
>> harms and NO ONE IS LIABLE.

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>> Canadian Provinces and US States were given jurisdiction over and
>> responsibility for all wildlife within their respective boundaries at the
>> Founding of our Nations. In the past century, Federal governments in
>> Ottawa and Washington have hijacked the jurisdiction over group after
>> group of wild animals (migratory birds, marine mammals, endangered
>> species, those found on Federal lands, those found in wildernesses, UN
>> Appendix #, etc.) to one degree or another.

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>> I am not aware of wolves being placed under Federal jurisdiction in
>> Canada. They remain under Provincial authority to the best of my
>> knowledge. In the US the Federal government has declared complete
>> hegemony through Endangered Species chicanery over wolves and destroyed
>> everything but a serf-like role to Federal bureaucrats for State fish and
>> wildlife agencies. Indeed they have launched a true jihad against rural
>> Americans and their way of life to force wolves into every nook and
>> cranny of every State. States are but vassals to Federal royalty
>> regarding wolves. This is all being spurred on by national animal rights
>> and environmental organizations interested in stopping hunting and a wide
>> range of rural pursuits. Also complicit in this shady business are
>> University professors greedy for grants from government and financial
>> support from radical groups and the tenure and recognition that such
>> things create.

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>> US State fish and wildlife agencies, the US Federal government agencies,
>> Canadian Provincial agencies, and the Canadian Federal government
>> agencies have shifted over the past 35 years from realistic management of
>> wolves by realistic, common sensical employees regarding human safety and
>> social impacts to a true pagan worship of wolves as "symbols of
>> wilderness" and "keystone species" of undescribed benefit to an
>> "ecosystem" by employees that are little more than zealots and flacks.
>> This shift has been mirrored in Europe where resurgent wolves are
>> protected and causing great harm from Finland through the Slavic nations
>> to southern Europe thanks in large measure to European Union bureaucrats
>> and politicians in league with environmental and animal rights lobby
>> groups. Recent wholesale attacks in the Ukraine are but a small part of
>> the havoc being wreaked and covered up by compliant press reporting.
>> Russia is being overrun with wolves from the Urals to the Pacific since
>> controls have ceased with the demise of the Soviet Union.

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>> So why is a Provincial government or State fish and wildlife agency or
>> Federal bureaucracy "liable" and not all these others? In a moral sense
>> they are all "liable" and responsible for the harm and death they are
>> bringing to the rest of us. In a legal sense the Provincial fish and
>> wildlife agencies and the US Fish and Wildlife Service are the entities
>> that exercise primary jurisdiction over wolves in Canada and the US.
>> They and their employees are "liable" every bit as much as a General that

>> lies about a foreign threat and causes death and harm or a government
>> engineer that lies about a bridge that collapses or a teaching
>> administrator that lies about children's tests or accomplishments until
>> they are too old or too ignorant to lead full and productive lives.

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>> When these agencies and their employees allow deadly lies to be
>> publicized without refuting them; when these agencies and their personnel
>> condone and even support these lies; when these agencies and their
>> employees enable the spread and protection of wolves by lying to
>> politicians and the public THEY ARE LIABLE in both courts and at
>> Judgment. Perhaps the way to get the attention of national politicians
>> to reintroduce common sense and good government into the world of
>> environmental chimeras is to drag government officials before the courts
>> like Exxon and test their only defense, to wit "I was only following
>> orders".

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>> So maybe the US Court interest in Indonesians and Exxon should be
>> directed at the US Fish and Wildlife Service and wolves and maybe our
>> Canadian cousins should likewise give some thought to wolves, Provincial
>> government liability, and environmental sophistry run > amuck.

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>> Jim Beers

>>

>> 11 March 2006

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> No virus found in this incoming message.

> Checked by AVG Free Edition.

> Version: 7.1.375 / Virus Database: 268.2.1/279 - Release Date: 3/10/2006

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**AGREEMENT FOR VOLUNTEER SERVICES
BETWEEN
MONTANA FISH, WILDLIFE AND PARKS
AND
THE TURNER ENDANGERED SPECIES FUND**

The purpose of this Volunteer Services Agreement between the Turner Endangered Species Fund and the Montana Department of Fish, Wildlife and Parks is to ~~further the recovery and~~ ~~conservation of the Gray Wolf (Canis lupus)~~ in Montana, a federally listed species pursuant to the federal Endangered Species Act of 1973. Recovery and conservation of the gray wolf is to be advanced through cooperative efforts that are authorized by Montana Department of Fish, Wildlife and Parks, with the Turner Endangered Species Fund's biologist who is volunteering with Montana Fish, Wildlife and Parks performing assigned duties, sometimes with minimal supervision.

The Turner Endangered Species Fund agrees while this agreement is in effect to:

1. The Turner Endangered Species Fund will provide a full-time biologist to volunteer with Montana Fish, Wildlife and Parks. In addition, the Turner Endangered Species Fund will provide office space and other routine administrative support for the biologist who is assigned to volunteer with Montana Fish, Wildlife and Parks and will provide additional support as is practical.
2. The Turner Endangered Species Fund's biologist who is volunteering with Montana Fish, Wildlife and Parks will work with private landowners to reduce and resolve livestock-wolf related conflicts, monitor wolf pack status and trends, and to conduct wolf management actions when and where appropriate.
3. The Turner Endangered Species Fund's biologist who is volunteering with Montana Fish, Wildlife and Parks will work as necessary to complete the assigned duties. Weekend, evening and holiday hours may be required.
4. Montana Fish, Wildlife and Parks will not compensate for the above-described work monetarily. The Turner Endangered Species Fund will be responsible for the biologist's salary, benefits, insurance and all other personal services related expenses as a result of the biologist being employed by the Turner Endangered Species Fund and volunteering with Montana Fish, Wildlife and Parks.
5. A volunteer does not replace any regular department employee, and in no way does this agreement establish an employer/employee relationship for minimum wage and overtime compensation purposes.

The Department of Fish, Wildlife & Parks agrees while this agreement is in effect to:

1. Provide administrative support to ensure that Turner Endangered Species Fund is properly permitted to perform assigned duties.
2. Recognize Turner Endangered Species Fund's volunteer biologist as a normal member of the Montana Fish, Wildlife & Parks wolf recovery and conservation team.

- 3. Provide logistical and financial support in the form of a vehicle, fuel, vehicle repair/maintenance, and basic field operating costs for Turner Endangered Species Fund's volunteer biologist assigned to work with Montana Fish, Wildlife & Parks per this Agreement. Financial support will be provided through the federally funded cooperative agreement between Montana Fish, Wildlife & Parks and the US Fish and Wildlife Service.
- 4. Authorize properly licensed volunteer to operate department motor vehicles for the performance of the work described in this agreement.
- 5. The person supervising the volunteer for Montana Fish, Wildlife & Parks under this agreement will be:
 Kurt Alt, Region 3 Wildlife Manager, Wildlife Division
 Montana Department of Fish, Wildlife & Parks
 Telephone: (406) 994-6935
 Fax: (406) 994-4060
 Email: kalt@mt.gov

This Volunteer Services Agreement shall remain in effect for an initial five (5) year term beginning on the acceptance date hereof, and may be extended thereafter by the written agreement of the Turner Endangered Species Fund and Montana Fish, Wildlife and Parks. Turner Endangered Species Fund and/or Montana Fish, Wildlife and Parks may each terminate this Agreement at any time, upon sixty (60) days written notice to the other. This Volunteer Agreement may be revised or modified at any time; however, any revision or modification must be approved by the Montana Fish, Wildlife and Parks and accepted by Turner Endangered Species Fund in writing.

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS:

Don Childress 9/20/05
 Wildlife Division Representative Date

M.A. Wall 9/19/05
 MDFWP Legal Review Date

TURNER ENDANGERED SPECIES FUND:

Mike Phillips 9-29-05
 Representative Date