

## ORAL ARGUMENT NOT YET SCHEDULED

No. 14-5300

(Consolidated with 14-5311, 14-5312, 14-5313, 14-5314, 14-5315)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DEFENDERS OF WILDLIFE, *et al.*,*Plaintiffs-Appellees/Cross Appellants*

v.

SALLY JEWELL, *in her official capacity as Secretary of the United States  
Department of the Interior, et al.*,*Defendants-Appellants/Cross Appellees*

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On Appeal from United States District Court for the District of Columbia, Case  
No. 1:12-cv-01833-ABJ, Judge Amy Berman Jackson

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**WYOMING WOLF COALITION-2013'S AMICUS CURIAE BRIEF IN  
SUPPORT OF APPELLANT STATE OF WYOMING SEEKING  
REVERSAL OF THE DISTRICT COURT DECISION**

John A. Sheehan  
CLARK HILL PLLC  
601 Pennsylvania Avenue, NW  
North Building, Suite 1000  
Washington, DC 20004  
(202) 572-8665  
Fax: (202) 572-8687  
[jsheehan@clarkhill.com](mailto:jsheehan@clarkhill.com)

Harriet Hageman  
HAGEMAN LAW, P.C.  
222 East 21<sup>st</sup> Street  
Cheyenne, WY 82001  
(307)-635-4888  
Fax: (307) 635-7581  
[hhageman@hagemanlaw.com](mailto:hhageman@hagemanlaw.com)

*Attorneys for amicus curiae*

## CORPORATE DISCLOSURE STATEMENT

The Wyoming Wolf Coalition-2013 (WWC-2013) membership includes the following Wyoming counties, agricultural organizations, conservation groups, sportsmen organizations, and outfitters and guides: (1) Park County; (2) Hot Springs County; (3) Weston County; (4) Washakie County; (5) Wyoming Farm Bureau Federation; (6) Converse County Farm Bureau; (7) Sportsmen for Fish and Wildlife Wyoming; (8) Sportsmen for Fish and Wildlife-Big Horn Basin Chapter; (9) Sportsmen for Fish and Wildlife- Teton County; (10) Cody Country Outfitters & Guides Association; (11) Predator Management District of Niobrara County; (12) Wyoming Association of Conservation Districts; (13) Meeteetse Conservation District; (14) Sportsmen for Fish and Wildlife Idaho; (15) Sportsmen for Fish and Wildlife Montana; (16) Sportsmen for Fish & Wildlife Utah; (17) Wild Sheep Foundation; (18) Big Game Forever; (19) Montana Outfitters and Guides Association; (20) Big Horn County; (21) Goshen County Predator Management District; (22) Fremont County Wolf Coalition; (23) Wyoming Stock Growers Association; and (24) Wyoming Outfitters & Guides Association. In accordance with Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, WWC-2013 hereby states that none of its members has a parent corporation and no publically-held company has a 10% or greater ownership interest in any of WWC-2013's members.

Wyoming Farm Bureau Federation (WFBF) is a voluntary non-profit corporation duly organized under the laws of the State of Wyoming, with its principal place of business in Laramie, Wyoming. The WFBF represents the educational, economic, and social interests of more than 2,800 agricultural producers and 10,000 overall members throughout the State of Wyoming, including many members who reside, farm, and ranch within Northwestern Wyoming, specifically around the Yellowstone area. Many WFBF members use private, State, and federal lands within the Yellowstone area to graze livestock and for recreation and aesthetic activities. The WFBF has been an active participant in the legal and administrative proceedings related to introduction and the ongoing management of the gray wolf population in Yellowstone, Wyoming and Central Idaho.

Converse County Farm Bureau (CCFB) is a voluntary non-profit corporation duly organized under the laws of the State of Wyoming, with its principal place of business in Douglas, Wyoming. The CCFB represents the educational, economic, and social interests of local agricultural producers in and around Converse County. The CCFB and its members have significant and legally protectable interests in the proper management and control of the gray wolf population. The gray wolf population has substantially impacted the interests of the CCFB members by killing, injuring, threatening, and harassing their livestock and domestic animals.

Sportsmen for Fish & Wildlife, Wyoming (SFW-Wyoming) is a non-profit corporation duly organized under the laws of Wyoming. SFW-Wyoming's mission is to protect the heritage of hunting, fishing and trapping, and to ensure the proper management and protection of wildlife. SFW-Wyoming's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. All SFW-Wyoming members have been substantially impacted by the introduction of the gray wolf, both from an economic standpoint and a quality of life standpoint, due to the gray wolf population's destruction of the big game herds in parts of Wyoming. The exploding and unmanaged gray wolf population in Wyoming has severely impacted the interests of SFW-Wyoming and its members by significantly reducing the ungulate population, including moose, elk, deer, and antelope, as well as other wildlife species.

Sportsmen for Fish & Wildlife, Bighorn Basin Chapter (SFW-Bighorn Basin) is group of sportsmen and women dedicated to protecting and improving wildlife habitat, support quality wildlife management programs, and protection of family traditions of hunting, fishing, and trapping. SFW-Bighorn Basin is a chapter of the SFW-Wyoming. SFW-Bighorn Basin's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. All SFW-Bighorn Basin members have been substantially impacted by the

introduction of the gray wolf, both from an economic standpoint and a quality of life standpoint, due to the gray wolf population's destruction of the big game herds in parts of Wyoming.

Sportsman for Fish and Wildlife - Teton County Chapter (SFW-Teton County Chapter) is a group of sportsmen and women dedicated to promoting the protection and enhancement of wildlife habitat, the quality of wildlife management programs and America's family heritage of hunting, fishing and trapping. SFW-Teton County Chapter members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. All SFW-Teton County Chapter members have been substantially impacted by the introduction of the gray wolf, both from an economic standpoint and a quality of life standpoint, due to the gray wolf population's destruction of the big game herds in parts of Wyoming. Many members of the Teton County Chapter are impacted by the population increase of the gray wolf and its threat to native wildlife herd populations.

Cody Country Outfitters and Guides Association (CCOGA) is a non-profit corporation organized under the laws of the State of Wyoming. CCOGA represents the interests of approximately forty-five (45) members involved in the outfitting and guiding business. CCOGA's members use private, state, and federal lands within the Yellowstone area for hunting, outfitting, guiding, recreation and aesthetic

activities. CCOGA and its members work to protect the heritage of hunting, fishing and trapping, and to ensure the proper management and protection of wildlife. The exploding and unmanaged gray wolf population in Wyoming has severely impacted the interests of CCOGA and its members by significantly reducing the ungulate population, including moose, elk, deer, and antelope, as well as other wildlife species.

Wyoming Association of Conservation Districts (WACD) is a non-profit corporation duly organized under the laws of the State of Wyoming. It consists of thirty-four (34) conservation districts located throughout the State of Wyoming. Those individual conservation districts are responsible for developing and implementing comprehensive plans for water and land related issues, including engineering operations, range management, methods of cultivation, and other works to control erosion and prevent flooding. The Wyoming conservation districts are tasked with, among other things, stabilization of ranching and farming operations; preservation of natural resources; protection of the tax base; preservation of wildlife; protection of public lands; and protection and promotion of the health, safety, and general welfare of the people of the State of Wyoming.

Sportsmen for Fish & Wildlife, Idaho (SFW-Idaho) is a non-profit corporation duly organized under the laws of Idaho. SFW-Idaho's mission is to promote the

protection and enhancement of wildlife habitat, assist in providing quality wildlife management programs, educate the public about the role hunters play in wildlife conservation, and perpetuate the family tradition of hunting and fishing. SFW-Idaho's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. SFW-Idaho's members are conservation-minded sportsmen who regularly participate in the regulated harvest of wildlife in the State of Wyoming, including the harvest of wolves and species that are impacted by the failure to adequately manage wolf populations.

Montana Sportsmen for Fish & Wildlife (SFW-Montana) is a non-profit corporation duly organized under the laws of Montana. SFW-Montana's mission is to preserve, protect and enhance Montana's hunting, fishing and trapping rights while protecting Montana's rural heritage. SFW-Montana's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. SFW-Montana's members are conservation-minded sportsmen who regularly participate in the regulated harvest of wildlife in the State of Wyoming, including the harvest of wolves and species that are impacted by the failure to adequately manage wolf populations.

Sportsmen for Fish & Wildlife, Utah (SFW-Utah) is a non-profit corporation duly organized under the laws of Utah. SFW-Utah's mission is to promote the

protection and enhancement of wildlife habitat, assist in providing quality wildlife management programs, educate the public about the role hunters play in wildlife conservation, and perpetuate the family tradition of hunting and fishing. SFW-Utah's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. SFW-Utah's members are conservation-minded sportsmen who regularly participate in the regulated harvest of wildlife in the State of Wyoming, including the harvest of wolves and species that are impacted by the failure to adequately manage wolf populations.

Wild Sheep Foundation is an international non-profit corporation with corporate headquarters in Cody, Wyoming. Wild Sheep Foundation's mission is to enhance wild sheep populations, promote professional wildlife management, educate the public about wild sheep and the conservation benefits of hunting, encourage fair chase hunting, and protect sportsmen's rights - while keeping administrative costs to a minimum. Wild Sheep Foundation's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. Wild Sheep Foundation's members are conservation-minded sportsmen and sportswomen who regularly participate in the regulated harvest of wildlife in the State of Wyoming.

Big Game Forever is a national non-profit corporation with corporate

headquarters in Utah. Big Game Forever's mission is to support state authority to protect wildlife populations through regulated harvest of wolves and other predator populations and to protect sportsmen's rights. Big Game Forever's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women in Wyoming and across America. Big Game Forever's members are conservation-minded sportsmen who regularly participate in the regulated harvest of wildlife in the State of Wyoming.

Montana Outfitters and Guides Association (MOGA) is a non-profit corporation duly organized under the laws of Montana. MOGA's mission is to ensure opportunities for the outfitted public to experience, enjoy and learn about Montana and its natural resources. MOGA also works to ensure that our wildlife, fish and other natural resources continue to exist. MOGA is dedicated to preserving opportunities for both nonresident and residents to recreate in Montana, including opportunities for hunting, floats and fishing. MOGA's members include landowners, outfitters, retail merchants, lawyers, doctors and others, all of whom are avid sportsmen and women. MOGA's members are conservation-minded sportsmen, guides and outfitters that participate in the regulated harvest of wildlife in the state of Wyoming, including the harvest of wolves and species that are impacted by the failure to adequately manage wolf populations.

The Fremont County Wolf Coalition is made up of the Board of County Commissioners for the County of Fremont, the Fremont County Cattlewomen, the Fremont County Farm Bureau, and certain individuals. These organizations and persons are involved in County governance, livestock production and/or wildlife management. They are interested in wildlife management, and are concerned about wildlife depredation by the gray wolf in Wyoming. The members of the Fremont County Board of Commissioners seek to intervene in this case in order to protect the interests of the residents of the County, to ensure that there is a balanced approach to wildlife management, and to protect the other important industries in the County (including, for example, outfitting and guiding, livestock production, and tourism). The Fremont County Wolf Coalition members use private, state, and/or federal lands to graze livestock and for recreation and aesthetic activities.

Wyoming Stock Growers Association (WSGA) is a non-profit trade association representing the interests of Wyoming cattle producers. The WSGA was formed in 1872 under the Territorial Laws of Wyoming and incorporated under State law upon statehood. The WSGA represents the interest of approximately 1,200 members throughout the State of Wyoming, including many members who reside, farm, and ranch within Northwestern Wyoming, specifically in the Yellowstone area. Many WSGA members use private, state, and federal lands within the

Yellowstone area to graze livestock and for recreation and aesthetic activities. The WSGA has been an active participant in the administrative proceedings related to “reintroduction” and the ongoing management of the gray wolf population in Yellowstone and Wyoming.

The Members of the Wyoming Outfitters & Guides Association believe that outfitting is a business venture that depends upon access to wildland resources, including good hunting and fishing for success; and that, those engaged in such business are obligated not only to promote the conservation and restoration of wildlands, fish and wildlife, but to provide the public with high quality facilities and professional services so they may enjoy these resources. They pledge themselves and their organization to full cooperation with the management and sustainable use of their wildlands and renewable wildlife resources. They further pledge themselves to aid the governing agencies to promulgate and enforce all rules and regulations; and to formulate controlling regulations over all outfitters in the state of Wyoming. They are interested in wildlife management, and are concerned about wildlife depredation by the gray wolf in Wyoming.

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## INTRODUCTION

The WWC-2013 appreciates this opportunity to support the State of Wyoming in this case. The WWC-2013's brief focuses upon the history and background of wolf introduction and recovery, and summarizes the success of those efforts. This historical information is important to understanding the on-the-ground situation that led to the United States Fish and Wildlife Service's ("USFWS" or "Service") conclusion that Wyoming's 2012 Wolf Management Plan (Wyoming Plan) provides an adequate regulatory mechanism for protecting a recovered population. *See* 2012 Delisting Rule (77 Fed. Reg. 55,530), AR 1–76 [JA 60–135].

### **IDENTITY OF *AMICUS*, INTEREST IN THE CASE, AND SOURCE OF AUTHORITY TO FILE**

The WWC-2013 membership includes the following Wyoming counties, agricultural organizations, conservation groups, sportsmen organizations, and outfitters and guides: (1) Park County; (2) Hot Springs County; (3) Weston County; (4) Washakie County; (5) Wyoming Farm Bureau Federation; (6) Converse County Farm Bureau; (7) Sportsmen for Fish and Wildlife Wyoming; (8) Sportsmen for Fish and Wildlife-Big Horn Basin Chapter; (9) Sportsmen for Fish and Wildlife- Teton County; (10) Cody Country Outfitters & Guides Association; (11) Predator Management District of Niobrara County; (12) Wyoming Association of Conservation Districts; (13) Meeteetse Conservation District; (14) Sportsmen for

Fish and Wildlife Idaho; (15) Sportsmen for Fish and Wildlife Montana; (16) Sportsmen for Fish & Wildlife Utah; (17) Wild Sheep Foundation; (18) Big Game Forever; (19) Montana Outfitters and Guides Association; (20) Big Horn County; (21) Goshen County Predator Management District; (22) Fremont County Wolf Coalition; (23) Wyoming Stock Growers Association; and (24) Wyoming Outfitters & Guides Association. These organizations and the citizens and members they represent are on the “front lines” in terms of wolf impacts.

The WWC-2013 requested consent from all parties to file this *amicus* brief. The State of Wyoming and Safari Club International do not oppose this filing. The United States consents to this filing. Rocky Mountain Elk Foundation and the National Rifle Association support this filing. The Humane Society of the United States, Defenders of Wildlife and The Fund for Animals take no position on this filing.

### **HISTORY OF WOLF INTRODUCTION, RECOVERY, AND KEY COMPONENTS OF THE WYOMING PLAN**

Recognizing the reasons for which the State of Wyoming was identified for wolf introduction is critical to understanding the purpose, basis and (perhaps most importantly) the effectiveness of the Wyoming Plan in protecting a recovered population. The USFWS transplanted a total of thirty-one (31) wolves from Canada into Wyoming in 1995 and 1996 solely because Yellowstone National Park

(Yellowstone) is encompassed within Wyoming's borders. The importance of Yellowstone cannot be overstated, as the Service never conceived of nor sought to carry out a "Wyoming-only-excluding-the-National-Parks" introduction and recovery program. The wolves were instead introduced *into Yellowstone* for the purpose of "returning" or "restoring" an allegedly more "natural" predator/prey relationship *to Yellowstone* and the surrounding federal lands, with the remainder of the State being recognized as unsuitable for wolf habitation. *See* 1987 Recovery Plan, AR 6985–7066 [JA 938–45]; 1994 FEIS, AR 7444–7592 [JA 946–1018]; 1994 Final Rule (59 Fed. Reg. 60,252), AR 134–48 [JA 157–71].

The studies leading up to and since wolf introduction confirm the USFWS's purpose for introducing wolves into Yellowstone. The USFWS deliberately limited its EIS analysis to the geographic area in Northwestern Wyoming – excluding the vast majority of the State from even rudimentary or bare-bones consideration or analysis. *See* 1994 FEIS (Chapter III), AR 7537–92 [JA 963–1018]; *see also* AR 7484 [JA 953]. The historical record shows that State-wide management was never contemplated, with all efforts focused on the National Parks (Yellowstone and Grand Teton) and surrounding area (primarily federal lands) in the Northwestern quadrant.

The AR in this case contains all of the documents related to the Service's wolf introduction program including the viability (and hardiness) of the population; the

rationale and foundation for Wyoming's Plan; and the legal, factual and biological basis for the 2012 Rule. It is a massive compilation of information. While it is not necessary to reiterate the entire history, the following key facts are important for the Court's review:

- The USFWS's 1987 Recovery Plan described the steps necessary for "recovery" of the Canadian gray wolf population in the NRM. 1987 Recovery Plan at iv, AR 6995 [JA 939]. That Recovery Plan remains in effect to this day. *See* 2009 Final Rule (74 Fed. Reg. 15,123), AR 426–91 [JA 278–343]; 2012 Delisting Rule, AR 1–76 [JA 60–135].

- The "Primary Objective" of the Recovery Plan was to "remove the Northern Rocky Mountain wolf from the endangered and threatened species list by securing and maintaining a minimum of ten breeding pairs of wolves in each of the three recovery areas for a minimum of three successive years." 1987 Recovery Plan at 12, AR 7015 [JA 942]. "Delisting" cannot be decoupled from "recovery" as defined. So long as the wolves are "recovered," they are to be delisted.

- "The three recovery areas identified for the Northern Rocky Mountain wolf include northwest Montana, central Idaho, and the Greater Yellowstone Area." *Id.* at v, AR 6997 [JA 940]. The Greater Yellowstone Area (GYA) is geographically-limited and defined (Yellowstone, designated wilderness and adjacent public lands).

*Id.* at 22, AR 7026 [JA 943]. It excludes the majority of land in Wyoming, a fact the District Court recognized. *See Op.* at 32–39 [JA 32–39].

- “Wyoming” does not constitute a “significant portion” of the NRM DPS’s range – the Yellowstone Recovery Area (YRA) does. *See* 1987 Recovery Plan, AR 6985–7066 [JA 938–45]; 1994 FEIS, AR 7444–7592 [JA 946–1018]; 1994 Final Rule, AR 134–48 [JA 157–71]; 2009 Final Rule, AR 426–91 [JA 278–343]; 2012 Delisting Rule, AR 1–76 [JA 60–135].

- The USFWS adopted and implemented “Zone Management” for recovery and long-term management:

For this document there will be three management zones: Zone I will give strong emphasis to wolf recovery; Zone II will be a buffer zone; and Zone III will contain established human activities such as domestic livestock use or developments in sufficient degree as to render wolf presence undesirable. Maintenance and improvement of habitat for wolves are not management considerations in Zone III.

1987 Recovery Plan at 59, AR 7066 [JA 945] (emphasis added). “Zone I” includes “key habitat components in sufficient abundance and distribution on an annual basis to sustain ten breeding pairs of wolves. It should generally be an area greater than 3,000 contiguous square miles with less than 10% private land (excepting railroad grant lands) and less than 20% subject to livestock grazing.” *Id.* at 31, AR 7035 [JA 944]. “Zone II” is a “buffer” zone between Zone I and Zone III: “It should contain some key habitat components but probably not in sufficient abundance and

distribution on an annual basis to sustain a viable wolf population.” *Id.* “Zone III” “contains established human activities such as domestic livestock use or other human activities or developments in sufficient degree to render wolf presence undesirable.” *Id.*

- In 1994, USFWS published its Final Rule for “Establishment of a Nonessential Experimental Population of Gray Wolves in Yellowstone National Park in Wyoming, Idaho, and Montana.” 1994 Final Rule, AR 134–48 [JA 157–71]; *see* 16 U.S.C. § 1539(j). The 1994 Final Rule was evaluated in the FEIS, the title of which confirms the scope of the recovery program: “The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho.” 1994 Final Rule at 60252, AR 134 [JA 157]. The FWS also amended 50 C.F.R. Part 17 and promulgated “Section 10(j) Rules” (50 C.F.R. § 17.84), to establish a nonessential experimental population in the GYA. Reliance on Section 10(j) provided greater management flexibility, and confirmed that survivability of this population was not “essential” to conservation of the species as a whole.

- While the recovery area was limited to the GYA, the nonessential experimental designation applies to all of Wyoming (allowing for greater flexibility in management).

- The USFWS chose Yellowstone for introduction because it is under Federal jurisdiction, has high-quality habitat and release sites, was far from natural expansion of packs from Montana, and “[m]ost of the reintroduction area is remote and sparsely inhabited wild lands.” 1994 Final Rule at 60,254, 60,256, AR 136, 138 [JA 159, 161]. The USFWS also viewed wolf restoration *in Yellowstone* as being desirable pursuant to National Park Service (NPS) Policy:

The NPS will strive to restore native species to parks whenever all the following criteria can be met: (1) Adequate habitat exists and a natural population can be self-perpetuating, (2) The species does not pose a serious threat to safety of park visitors, park resources, or persons or property outside park boundaries, (3) The species used in restoration most nearly approximates the extirpated subspecies or race, and (4) The species disappeared, or was substantially diminished, as a direct or indirect result of human-caused change to the species or the ecosystem.

1994 FEIS at 4, AR 7485 [JA 954]. The USFWS expected the GYA to play a large role in recovery and long-term protection and management.

- Wyoming’s designated “trophy game animal” area encompasses the vast majority of “suitable habitat” within the State. *See* 2012 Delisting Rule at 55,530, 55,533, AR 2, 5 [JA 61, 64].

- The recovery goals (as refined), have been met and exceeded every year for over a decade. There were 563 wolves in 34 packs in 2001, with numbers steadily increasing over time. The current (2011) NRM population -- estimated to be 1,774 wolves, with 328 of them in Wyoming – far exceeds federally-established

recovery goals. *Id.* at 55,530, 55,535, 55,539, AR 2, 5, 11 [JA 61, 64, 70]; *see also* Op. at 4 [JA 4]. The USFWS has confirmed that the “safety margins” in the revised recovery goals will assure that the NRM wolf population will “substantially” exceed the “minimum recovery criteria”:

To ensure that the NRM wolf population always exceeds the recovery goal of 30 breeding pairs and 300 wolves, wolves in each State shall be managed for at least 15 breeding pairs and at least 150 wolves in mid-winter. ... Further buffering our minimum recovery goal is the fact that Service data since 1986 indicate that, within the NRM DPS, each breeding pair has corresponded to 14 wolves in the overall NRM wolf population in mid-winter.... (Service *et al.* 2008, Table 4). Thus, managing for 15 breeding pairs per State will result in substantially more than 150 wolves in each state (>600 in the NRM). ....

We further improved, provided additional safety margins, and assured that the minimum recovery criteria would always be exceeded in our 2009 post-delisting monitoring plan. Three scenarios lead us to initiate a status review and analysis of threats to determine if relisting is warranted including: (1) If the wolf population for any one State falls below the minimum NRM wolf population recovery level of 10 breeding pairs of wolves and 100 wolves in either Montana, Idaho, and Wyoming at the end of the year; (2) if the portion of the wolf population in Montana, Idaho, or Wyoming falls below 15 breeding pairs or 150 wolves at the end of the year in any one of those States for 3 consecutive years; or (3) if a change in State law or management objectives would significantly increase the threat to the wolf population. Overall, we believe the NRM wolf population will be managed for over 1,000 wolves including over 300 wolves and 30 breeding pairs in the GYA (in 2008 there were 35 breeding pairs and 449 wolves in the GYA). This far exceeds post-delisting management targets of at least 45 breeding pairs and more than 450 wolves in the NRM.

2009 Final Rule at 15,132–33, AR 435–36 [JA 287–88] (emphasis added). The USFWS’s 2012 Rule confirmed that the NRM population will exceed minimum recovery goals (900 to 1,000 wolves), with the GYA alone likely to support approximately 300 wolves. 2012 Delisting Rule at 55,533, 55,567–78, AR 5, 39–50 [JA 64, 98–109].

The National Parks encompass approximately 3,945 square miles (2,524,800 acres) in Wyoming. The contiguous wilderness areas encompass an additional 3,193 square miles (2,043,520 acres). Wolves will always be classified as “trophy game animals” within the Parks and wilderness areas. *See* AR 12003-47. As quoted above, the Recovery Plan’s “Zone I” was defined as “an area greater than 3,000 contiguous square miles with less than 10% private land (excepting railroad grant lands) and less than 20% subject to livestock grazing.” 1987 Recovery Plan at 31, AR 7035 [JA 944]. Wyoming’s wolves will therefore receive the highest protection possible in a geographic area far exceeding the “Zone I and II” management areas.<sup>1</sup> The Wyoming Plan is also sufficiently flexible to expand if additional habitat is needed to maintain the recovered population.

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<sup>1</sup> Wyoming’s “predator” area generally equates to Zone III, which is, by definition, “undesirable” for wolf presence. 1987 Recovery Plan at 31, AR 7035 [JA 944]. The USFWS long ago concluded that Wyoming’s predator classification will not affect maintenance of a recovered population.

Maintaining a recovered population is “hard-wired” into Wyoming’s Plan and USFWS’s recovery goals. At least fifteen (15) breeding pairs will be managed for and protected within Wyoming (the same as Idaho and Montana), with at least ten (10) pairs protected outside of Yellowstone/GYA. The *total* number of protected breeding pairs remains well above recovery goals.

### WYOMING DISTRICT COURT LITIGATION

On November 18, 2010, Wyoming Federal District Court Judge Johnson issued his “Order Setting Aside Agency Decision in Part and Remanding Agency Decision in Part,” finding that the Service’s rejection of Wyoming’s then-current Plan was arbitrary and capricious. *Wyoming and Wyoming Wolf Coalition v. United States*, 09-CV-118J, 2010 Westlaw 4814950 (D. Wyo. 2010). The Court concluded that the USFWS violated the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) (ESA) by rejecting Wyoming’s dual classification (trophy/predator status). *Id.* at \*45. Judge Johnson acknowledged that “[i]n its regulatory plan, Wyoming has committed to manage for at least 15 breeding pairs and at least 150 wolves in mid-winter to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 wolves per state.” *Id.* He further noted that the USFWS “seeks to maintain wolf recovery levels at a level in excess of the minimum recovery levels outlined in the 1987 recovery plan and 1994 FEIS. It does not offer reasoned

explanations why the entire state of Wyoming must be designated as a trophy game area when more than 70% of suitable wolf habitat is in the GYA and northwestern Wyoming.” *Id.* at \*42.

Judge Johnson found that Wyoming’s management approach is biologically sound, properly implements “zone management,” and protects a recovered wolf population. He rejected claims that Wyoming must provide a buffer upon a buffer, instead concluding that so long as the Plan met the recovery goals, it complied with the ESA “regulatory mechanism” requirements. He remanded the matter back to the USFWS to revisit the issue of whether the proposed size of the trophy game management area in northwestern Wyoming is sufficient to meet and maintain recovery goals. *Id.* at \*45.

The USFWS followed Judge Johnson’s remand instructions. Wyoming modified its Wolf Management Plan to address his concerns. The District Court here erred in rejecting their actions in that regard.

### **ARGUMENT**

The current dispute does not challenge the recovery goals (thirty breeding pairs/300 wolves for the NRM DPS). There is no challenge to the recovery goals for individual States (ten breeding pairs/100 wolves for Wyoming). This dispute

instead centers on whether Wyoming's commitment to protecting the population at or above the recovery goals violates the ESA.

The District Court ignored the foregoing history of wolf introduction and recovery, thereby essentially constructing a firewall between such introduction and recovery on the one hand, and the viability of the Wyoming Plan on the other. The question of "why" the wolves were brought into Wyoming was relevant at the time of their introduction, and remains relevant today – especially in light of the District Court's recognition that "the species has recovered" and "the species is not endangered or threatened within a significant portion of its range." Op. at 2 [JA 2]. The District Court's description of the Wyoming Plan as nothing more than "nonbinding promises" is inaccurate, contrary to the history of wolf recovery, the purpose for which that Plan was developed, and the ESA.

The District Court improperly focused upon whether Wyoming's Plan provides an "enforceable buffer" exceeding recovery goals. That focus does not make sense in light of the fact that the "enforceable buffer" is provided by federal agencies (NPS and USFS), which are themselves bound to protect a recovered population. The District Court, in other words, ignored the most important aspects of recovery, the overwhelming success of the program (with the wolf population being over 5X the recovery goals), Wyoming's legal *requirement* to protect a

recovered population, and the fact that the “buffer” provided encompasses the most “suitable” habitat with the most stringent protections (National Parks and wilderness lands).

The District Court acknowledged that most of Wyoming is unsuitable for wolf habitat and that such areas are not a “significant portion of the species’ range. . . .” Op. at 36, 37 [JA 36, 37]. The District Court did not err in making these findings, but only in later ignoring them when deciding that Wyoming must protect a “buffer” population exceeding recovery goals. The District Court, by finding that Wyoming is *required* to manage for more than ten breeding pairs and 100 wolves *outside of Yellowstone*, ignored the most important aspects of the entire recovery program – that it was designed to “return” wolves to Yellowstone, and that Yellowstone was *the* target for wolf propagation. Wyoming is not responsible for providing a “buffer” above recovery goals, as such buffer is provided by the federal agencies (on National Park and on Forest Service lands).

Wyoming is required to protect ten breeding pairs and 100 wolves. 2012 Delisting Rule at 55,537, AR 9 [JA 68]. Wyoming’s Plan represents an enforceable commitment to meet that obligation – a fact that neither the opposing side nor the District Court can dispute. The District Court should have recognized that no further commitment is necessary, especially once it acknowledged that the federal lands

provide the necessary “buffer” to ensure protection of a recovered population in Wyoming. Despite understanding the importance of Yellowstone in providing the buffer “in excess of” the recovery goals, the District Court proceeded to ignore that buffer, and incorrectly ruled that Wyoming must develop a Plan that likewise ignores all of the wolves protected within the boundaries of the Yellowstone/GYA. That decision cannot stand.

The District Court decision to require Wyoming to provide a “cushion” upon a “cushion,” forces Wyoming to protect a larger population than the other States, while ignoring the Yellowstone population and the wolves protected within the federal enclaves (the core recovery area). The District Court reached this decision despite the fact that the wolves have “recovered” from a biological standpoint, and will remain protected by Wyoming and the responsible federal agencies.

The District Court has succumbed to the same circular reasoning that has plagued Wyoming over the last ten years – a belief that Wyoming must protect a larger population of wolves *outside of Yellowstone* simply because of the fact that the Yellowstone is located within the State’s boundaries. That approach is illogical and must be set aside.

## CONCLUSION

The regulatory redundancies contained in Wyoming's Plan, coupled with the USFWS's "post-delisting monitoring plan," make it virtually impossible for the wolf population to fall below the "numerical component of the recovery goal" of 15 breeding pairs and 150 wolves. Wyoming's Plan is focused upon the protection and preservation of a recovered wolf population. Wyoming's Plan meets each of the delisting criteria found in 16 U.S.C. § 1533(a)(1) of the ESA. The "best scientific and commercial data available" support implementation of Wyoming's Plan and USFWS's decision to delist the wolf population.

Wyoming must balance its mandate to protect and preserve a recovered wolf population, with its duty to protect and preserve the prey upon which the wolves feed. Wyoming must consider the impact that wolves have on private property, particularly livestock. Wyoming must consider the impact that wolves have on other wildlife, particularly elk and moose populations. Wyoming must consider the economic well-being of all industry groups and local governments. After balancing these various interests, Wyoming developed and adopted a Management Plan that was properly tailored and based on sound science. The USFWS recognizes the soundness of that Plan. This Court should defer to that conclusion and reverse the District Court's decision.

DATED this 23rd day of September, 2015.

*/s/ John A. Sheehan*

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John A. Sheehan  
D.C. Bar # 403838  
CLARK HILL PLLC  
601 Pennsylvania Ave., NW  
North Building, Ste. 1000  
Washington, D.C. 20004  
Telephone: (202) 572-8665  
Facsimile: (202) 572-8687

Harriet M. Hageman  
HAGEMAN LAW P.C.  
222 E. 21<sup>st</sup> Street  
Cheyenne, Wyoming 82001  
Telephone: (307) 635-4888  
Facsimile: (307) 635-7581

*Attorneys for Amicus WWC-2013*

**CERTIFICATE OF COMPLIANCE WITH FEDERAL  
RULES OF APPELLATE PROCEDURE 29 and 32(a)**

I hereby certify that this brief complies with Fed.R.App.P. 29(d), in that it is no more than 3,500 words, which is one-half (1/2) the maximum length authorized by this Court's May 22, 2015 Order (authorizing the State of Wyoming not to exceed 7,000 words).

I further certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionately spaced font.

*/s/ John A. Sheehan* \_\_\_\_\_

John A. Sheehan

**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

*/s/ John A. Sheehan*

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John A. Sheehan