

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING,)

Petitioner,)

WYOMING WOLF COALITION,)

Petitioner-Intervenors,)

vs.)

Civil No. 09-CV-0118-J

UNITED STATES DEPARTMENT OF THE)

INTERIOR; UNITED STATES FISH &)

WILDLIFE SERVICE; KEN SALAZAR, in his)

official capacity as Secretary of the United)

States Department of the Interior; ROWAN)

GOULD, in his official capacity as Acting)

Director of the United States Fish and)

Wildlife Service, and STEPHEN GUERTIN,)

in his official capacity as the Regional Director)

of the Mountain-Prairie Region of the United)

States Fish and Wildlife Service,)

Respondents.)

BOARD OF COUNTY COMMISSIONERS)

of the COUNTY OF PARK, STATE OF)

WYOMING,)

Petitioner,)

vs.)

Civil No. 09-CV-0138-J

UNITED STATES DEPARTMENT OF THE)

INTERIOR; UNITED STATES FISH &)

WILDLIFE SERVICE; KEN SALAZAR, in his)
official capacity as Secretary of the United)
States Department of the Interior; ROWAN)
GOULD, in his official capacity as Acting)
Director of the United States Fish and)
Wildlife Service, and STEPHEN GUERTIN,)
in his official capacity as the Regional Director)
of the Mountain-Prairie Region of the United)
States Fish and Wildlife Service,)
Respondents.)

ORDER ON INITIAL PRETRIAL CONFERENCE

On August 4, 2009, an initial pretrial conference was held in the above-entitled consolidated matters before the Honorable William C. Beaman, United States Magistrate Judge for the District of Wyoming. Counsel participating were Affie Burnside Ellis, and Jay A. Jerde, Cheyenne, Wyoming, and James F. Davis, Cody, Wyoming for petitioners; Carol A. Statkus, Cheyenne, Wyoming, Michael R. Eitel, Denver, Colorado, and Margot Zallen, Colorado, for respondents United States; and Kara Brighton and Magdalene M. Allely, Cheyenne, Wyoming, for petitioners-intervenors.

Jurisdiction and Venue —

The Court has jurisdiction over both the parties and the subject matter of this action, and venue is properly in the United States District Court for the District of Wyoming. Proper

service of process has been accomplished on all parties, and no parties are erroneously joined in or omitted from the action.

Consent to Trial by Magistrate Judge —

The parties are all aware of the provisions of 28 U.S.C. 636(c) and U.S.D.C.L.R. 73.1(b), and acknowledge that this case will proceed before the District Judge assigned hereto, and not before the Magistrate Judge located in Cheyenne, Wyoming. However, the parties are not precluded from consenting to trial before a Magistrate Judge anytime prior to the trial date.

Claims and Defenses —

On July 21, 2009, District Judge Alan B. Johnson consolidated these two cases, 09–CV–0118–J and 09–CV–0138–J. Petitioners State of Wyoming and the Board of County Commissioners of the County of Park, State of Wyoming seek review of the final agency action taken by respondents when the promulgated and adopted a final rule establishing a northern Rocky Mountain distinct population segment (“NRM DPS”) for the gray wolf under the Endangered Species Act (“ESA”) and delisting that same NRM DPS under the ESA. Notice of this final rule was published in the Federal Register on April 2, 2009. 74 Fed. Reg. 15123–15188 (Apr. 2, 2009). Petitioners contend that in adopting this final rule, respondents have violated the Administrative Procedure Act (“APA”) and the ESA. Petitioners ask the Court to (1) declare that in promulgating the rule, respondents

have violated the APA and the ESA by rejecting the State's wolf management scheme as inadequate and by failing to delist the gray wolf throughout the entire Wyoming portion of the NRM DPS; (2) vacate the final rule to the extent the gray wolf population remains on the list of threatened and endangered species in any part of the Wyoming portion of the NRM DPS; (3) issue a mandatory injunction ordering respondents to amend the final rule to delist the gray wolf in the entire Wyoming portion of the NRM DPS and to complete this rulemaking process no later than three months after the date of this Court's written order deciding the merits of this case; (4) award the petitioners' their reasonable fees, costs, and expenses including attorney fees incurred as a result of this litigation; and (5) grant petitioners such further and additional relief as this Court may deem just and proper. Alternatively, should the Court find no violation of the APA or the ESA, petitioners ask the Court to issue a mandatory injunction requiring respondents to manage the gray wolf population in Wyoming so that no more than fifteen breeding pairs of wolves exist in Wyoming each calendar year.

The Members of Wyoming Wolf Coalition have been granted intervention as petitioners-intervenors in petitioner Wyoming's case, 09-CV-118-J. Petitioners-intervenors allege that respondents' refusal to properly manage and control the gray wolf population in Wyoming has caused, and will continue to cause, damage to the interests of Wyoming Wolf Coalition members, including the loss of large numbers of livestock to the

wolves and loss of a significant amount of Wyoming's wildlife populations, including elk, moose, deer, bighorn sheep, and antelope. Petitioners-intervenors join petitioners in alleging that the respondents' adoption and promulgation of the final rule violates the APA and the ESA.

No response has yet been filed.

Administrative Record —

On July 31, 2009, respondents submitted a Notice of Filing of the Administrative Record.

Appellate Briefs -

Appellant-Petitioner Deadline - November 9, 2009

Appellee-Respondent Deadline - December 14, 2009

Appellant-Petitioner Reply - January 15, 2010

A federal district court sitting in review of an agency action must sit as a court of appeals including governing itself by referring the to Federal Rules of Appellate Procedure.

Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1580 (10th Cir. 1994).

The Appellant-Petitioner shall file a brief in accordance with Federal Rules of Appellate Procedure 28 and 31, on or before November 9, 2009.

The Appellee-Respondent shall file a brief in accordance with Federal Rules of Appellate Procedure 28 and 31, on or before December 15, 2009. The Appellant-Petitioner

shall file a reply brief in accordance with Federal Rules of Appellate Procedure 28 and 31, on or before January 15, 2010.

Oral Argument – January 29, 2010

Oral arguments are set for 9:00 a.m. on January 29, 2010, in Cheyenne, Wyoming before the Honorable Alan B. Johnson.

Settlement Possibilities —

The settlement possibilities of this case are considered by the Magistrate Judge to be poor.

Dated this 6th day of August, 2009.

/s/ William C. Beaman
United States Magistrate Judge