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FILED

U.S. DISTRICT COURT
DISTRICT OF WYOMING

MAR 23 2005

Betty A. Griess, Clerk
Cheyenne

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING,

Plaintiff,

and

TIMOTHY J. MORRISON, MARIE A.
FONTAINE, and TIM A. FRENCH,
in their official capacity as the Board
of County Commissioners of the
County of Park, State of Wyoming,

Plaintiff-Intervenors,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR; UNITED STATES
FISH & WILDLIFE SERVICE;
GALE NORTON, in her capacity as the
Secretary of the United States Department of the
Interior; STEVEN WILLIAMS, in his official
capacity as the Director of the United States
Fish & Wildlife Service,

Defendants,

and

GREATER YELLOWSTONE
COALITION, NATIONAL WILDLIFE
FEDERATION, JACKSON HOLE
CONSERVATION ALLIANCE,
PREDATOR CONSERVATION

Case No. 04-CV-0123-J

ALLIANCE, and WYOMING OUTDOOR
COUNCIL,

Defendant-Intervenors.

WYOMING WOOL GROWERS
ASSOCIATION; WYOMING STOCK
GROWERS ASSOCIATION; WYOMING
FARM BUREAU FEDERATION;
WYOMING ASSOCIATION OF
CONSERVATION DISTRICTS; ROCKY
MOUNTAIN FARMERS UNION;
WYOMING COUNTY COMMISSIONERS
ASSOCIATION; BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY
OF CAMPBELL; BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY
OF LINCOLN; BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
SUBLETTE; BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY
OF WASHAKIE; WYOMING ASSOCIATION
OF COUNTY PREDATORY ANIMAL BOARDS;
FREMONT COUNTY PREDATORY
ANIMAL BOARD; TETON COUNTY
PREDATORY ANIMAL BOARD;
CONVERSE COUNTY PREDATORY
ANIMAL BOARD; WYOMING OUTFITTERS &
GUIDES ASSOCIATION; GREEN RIVER
VALLEY CATTLEMEN'S ASSOCIATION;
UPPER GREEN RIVER CATTLE
ASSOCIATION; WYOMING BUSINESS
ALLIANCE;
CODY COUNTRY OUTFITTERS AND
GUIDES ASSOCIATION;
FOUNDATION FOR NORTH AMERICAN
WILD SHEEP; JACKSON HOLE OUTFITTERS
AND GUIDES; ROCK SPRINGS DISTRICT 4
GRAZING BOARD; SPORTSMEN FOR

Case No. 04-CV-0253-J

FISH & WILDLIFE, WYOMING;
SPORTSMEN FOR FISH & WILDLIFE,
PARK COUNTY; SPORTSMEN FOR
FISH & WILDLIFE, TETON COUNTY;
SPORTSMEN FOR FISH & WILDLIFE,
LINCOLN COUNTY;
and SPORTSMEN FOR FISH
& WILDLIFE, UTAH,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR; UNITED STATES
FISH & WILDLIFE SERVICE;
GALE NORTON, in her capacity as the
Secretary of the United States Department of the
Interior; STEVEN WILLIAMS, in his official
capacity as the Director of the United States
Fish & Wildlife Service; RALPH
MORGENWECK, in his official capacity as
the Regional Director of Region Six for the
United States Fish & Wildlife Service

Defendants,

and

SIERRA CLUB and NATURAL RESOURCES
DEFENSE COUNCIL,

Defendant-Intervenors.

ORDER PURSUANT TO FED. R. CIV. PRO. 60(a)

In order to correct clerical errors in the Memorandum Opinion and Order issued

March 18, 2005, the Court will file a Corrected Memorandum Opinion and Order pursuant to Fed. R. Civ. Pro. 60(a). The following changes were made:

Page #	Action taken
30, Fn. 16	<p>Changed language from: "While the decision of the Federal Agencies may be forgone, this Court's review of that decision is not." To: "While the Plaintiffs and Plaintiff-Intervenors may believe that the Federal Agencies response to a petition to delist is forgone, this Court's review of that decision is not."</p>
33, Fn. 18	<p>Corrected citation from: "<i>See Gibbs</i>, 214 F.3d 483, 493." To: "<i>See Gibbs v. Babbitt</i>, 214 F.3d 483, 493 (4th Cir. 2000), <i>cert. denied</i> 531 U.S. 1145 (2001)."</p>
34	<p>Changed language from: "This argument suffers..." To: "These arguments suffer..."</p>
34-35	<p>Changed language from: "and thus reviewable..." To: "and is not reviewable"</p>
35	<p>Changed from: "As the Court..." To: "As the Supreme Court..."</p>
37	<p>Deleted comma after "agency to propose"</p>
40	<p>Changed from: "As the Court..." To: "As the Supreme Court..."</p>
43	<p>Changed language from: "complaint really are..." To: "complaints are broad..."</p>

43, Fn. 20	<p>Changed language from: "By their very nature the gray wolf preys on other animals for survival, and at times the gray wolf preys on livestock. This result is fully contemplated by the regulations, namely that there will be depredations. 50 C.F.R. § 17.84(i)(3)(ii). How these depredations are mitigated, however, is left to the expertise and sound discretion of the FWS."</p> <p>To: "By their very nature the gray wolf preys on other animals for survival, and at times the gray wolf will prey upon livestock. This eventuality is fully contemplated by the regulations. 50 C.F.R. § 17.84(i)(3)(ii). How these depredations are mitigated, however, is left to the authority, expertise and sound discretion of the FWS."</p>
45	Inserted paragraph break at "In <i>SUWA</i> ..."
46	Changed language from: "they must establish..." To: "the Plaintiff-Intervenors' must establish..."
49	Changed cite from "490 U.S. at 373" to " <i>Marsh</i> , 490 U.S. at 373."
52	<p>Changed language from: "The Plaintiffs assert that FWS is attempting to commandeer the legislative processes of Wyoming by demanding that Wyoming change its wolf management plan to comport with the ESA."</p> <p>To: The Plaintiffs assert that FWS is attempting to commandeer the legislative process by demanding that Wyoming change its wolf management plan to comport with the ESA."</p>


57	<p>Changed language from: "Wyoming is under not mandate to..."</p> <p>To: "Moreover, Wyoming is under no Federal mandate..."</p>
58, Fn. 22	Deleted: "--a course of action that Wyoming has not taken."
61	<p>Deleted: "Wyoming urges the Court to apply <i>New York's</i> analysis of constraints to the National Legislature contained in the Guarantee Clause, which cites:</p> <p style="padding-left: 40px;">Under each, Congress offers the States a legitimate choice rather than issuing an unavoidable command. The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate. The twin threats imposed by the first two challenged provisions of the Act -- that New York may miss out on a share of federal spending or that those generating radioactive waste within New York may lose out-of-state disposal outlets -- do not pose any realistic risk of altering the form or the method of functioning of New York's government. Thus even indulging the assumption that the Guarantee Clause provides a basis upon which a State or its subdivisions may sue to enjoin the enforcement of a federal statute, petitioners have not made out such a claim in these cases.</p> <p><i>New York</i>, 505 U.S. at 185-186.</p>

62	<p>Changed language from: "The Federal Defendants argue that assuming a claim is justiciable under the Guarantee Clause and in order to make a valid claim, the offending behavior must fundamentally restructure the form of the state government. The Federal Defendants point out that Wyoming is actually complaining about the effect that the ESA has on constraining its authority to regulate listed species and thus is more properly styled under a Tenth Amendment claim, and thus should be dismissed."</p> <p>To: "The Federal Defendants argue that in order to make a valid claim under the Guarantee Clause, the offending behavior must fundamentally restructure the form of the state government. The Defendants assert that no such action has taken place here. The Federal Defendants also point out that Wyoming is actually complaining about the effect that the ESA has on constraining its authority to regulate listed species and is more properly styled under a Tenth Amendment claim, and thus should be dismissed."</p>
65, Fn. 24	Corrected citation form.
66	Deleted: "Theses mandates complained of by Wyoming are not mandatory."

67	Changed language from: "The complaints filed here are not cognizable under the limited jurisdiction of this Court." To: "The complaints filed here are not cognizable under the limited jurisdiction of this Court under the APA and the Constitution. "
68, Fn. 25	Corrected citation form.

It is so **ORDERED**.

Dated this 22^d day of March, 2005.



ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE