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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING,  
Plaintiff,

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

vs.

UNITED STATES DEPARTMENT OF  
INTERIOR, et al.,  
Defendants,

GREATER YELLOWSTONE  
COALITION, et al.,  
Defendant-Intervenors

Civ. Action No.: 04-CV-0123

**MOTION FOR LEAVE  
TO SUBMIT SUPPLEMENTAL  
BRIEFING REGARDING  
OREGON COURT RULING**

WYOMING WOOL GROWERS	)
ASSOCIATION, et al.,	)
Plaintiffs,	)
	)
vs.	)
	)
UNITED STATES DEPARTMENT OF	)
THE INTERIOR, et al.,	)
Defendants,	)
	)
SIERRA CLUB and NATURAL	)
RESOURCES DEFENSE COUNCIL	)
Defendant-Intervenors.	)
_____	)

Defendant-Intervenors Sierra Club and Natural Resources Defense Council hereby request leave to submit a short supplemental brief to address jurisdictional issues arising in this case as a result of the Oregon district court's recent decision in Defenders of Wildlife v. Secretary of Interior, Civ. No. 03-1348-JO (D. Ore. Jan. 31, 2005).<sup>1</sup> Defendant-intervenors' proposed supplemental brief is attached to this motion.

Pursuant to Local Civil Rule 7.1(b)(1)(A), undersigned counsel has conferred with counsel for Plaintiffs and Plaintiff-Intervenors, all of whom oppose this motion. Defendant-Intervenors Greater Yellowstone Coalition, et al. do not oppose this motion. Undersigned

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<sup>1</sup> Plaintiff State of Wyoming submitted a copy of the Defenders of Wildlife decision to this Court on February 1, 2005.

counsel further left a telephone message for counsel for Federal Defendants but was unable to obtain their position on this motion prior to filing.

The reasons this motion should be granted are as follows:

1. Merits briefing in this case seeking review of determinations by the defendant Interior Department concluded with the filing of plaintiff State of Wyoming's reply brief on January 25, 2005.
2. After the conclusion of merits briefing, on January 31, 2005, the United States District Court for the District of Oregon issued its Opinion and Order in Defenders of Wildlife v. Secretary of Interior, Civ. No. 03-1348-JO (D. Ore. Jan. 31, 2005). In that decision, the Oregon court vacated and enjoined the U.S. Fish and Wildlife Service's April 1, 2003 final rule creating a Western Distinct Population Segment of the gray wolf under the Endangered Species Act, 16 U.S.C. § 1531 et seq. See Defenders of Wildlife, Civ. No. 03-1348-JO, slip op. at 24-28, 34-35.
3. As set forth in Defendant-Intervenors' supplemental brief, attached hereto, the Oregon court's ruling provides further reason why this Court lacks jurisdiction over Plaintiffs' claims in this case.
4. In sum, the Oregon court's ruling raises jurisdictional issues that could not have been brought to this Court's attention during the prior merits briefing. The Court should allow Defendant-Intervenors to file the attached short supplemental brief to assist this Court in resolving the important jurisdictional issues in this case.

Accordingly, for the foregoing reasons, Defendant-Intervenors Sierra Club and Natural Resources Defense Council respectfully request that the Court grant them leave to file the attached short supplemental brief.

Respectfully submitted this 3rd day of February, 2005,

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STATE OF WYOMING,	)	Civ. Action No.: 04-CV-0123
Plaintiff,	)	
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TIMOTHY J. MORRISON, MARIE A.	)	<b>SIERRA CLUB AND NATURAL</b>
FONTAINE, and TIM FRENCH, in their	)	<b>RESOURCES DEFENSE</b>
official capacity as the Board of County	)	<b>COUNCIL'S SUPPLEMENTAL</b>
Commissioners of the County of Park,	)	<b>BRIEFING REGARDING</b>
State of Wyoming,	)	<b>OREGON COURT RULING</b>
Plaintiff-Intervenors,	)	
vs.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
INTERIOR, et al.,	)	
Defendants,	)	
	)	
GREATER YELLOWSTONE	)	
COALITION, et al.,	)	
Defendant-Intervenors.	)	

WYOMING WOOL GROWERS	)
ASSOCIATION, et al.,	)
Plaintiffs,	)
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THE INTERIOR, et al.,	)
Defendants,	)
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SIERRA CLUB and NATURAL	)
RESOURCES DEFENSE COUNCIL	)
Defendant-Intervenors.	)
_____	)

Defendant-Intervenors Sierra Club and Natural Resources Defense Council (“Sierra Club”) hereby address an opinion issued on January 31, 2005 by the U.S. District Court for the District of Oregon, as it directly affects this Court’s jurisdiction over these consolidated cases. The Oregon court struck down a 2003 Interior Department regulation that created the gray wolf Western Distinct Population Segment (“DPS”), and that further down-listed the DPS from endangered to threatened status under the Endangered Species Act, 16 U.S.C. § 1531 et seq. (“ESA”). As a result, the gray wolf Western DPS, which is at issue in this case, no longer exists. Thus, regardless of its assessment of the Wyoming wolf management plan at issue in these cases, the U.S. Fish and Wildlife Service (“FWS”) cannot move forward with its previously existing process to delist wolves in the Northern Rockies.

Because the Oregon court has sent FWS back to “square one” in the ongoing delisting process, this case is necessarily unripe. Alternatively, this case is moot because there is no

longer any DPS to propose for delisting even if FWS were ordered to “approve” the Wyoming plan. For these reasons, in addition to all of the reasons set forth in Sierra Club’s previous briefing, this case is not properly before this Court.

### **BACKGROUND**

In this action, the State of Wyoming and the Wyoming Wool Growers, et al. (“Wolf Coalition”) challenge FWS’ assessment of the Wyoming Wolf Plan on grounds that FWS has arbitrarily delayed the delisting process for wolves in the Western DPS. Thus, Plaintiffs seek an order requiring FWS to “approve” the Wyoming Plan and move forward with a delisting proposal for the Western DPS. See Opening Brief By Appellant State Of Wyoming (“Wy. Br.”) at 47 (“[T]his Court should remand this matter to the Federal Defendants with directions to approve the Wyoming Plan and to propose a rule to delist the gray wolf in the Western DPS no later than two months after the date of the Court’s order and judgment.”) (emphasis added); see also Wolf Coalition’s Opening Brief For Declaratory Judgment And Injunctive Relief Related To Rejection Of The Wyoming Wolf Plan at 41 (requesting a remand order directing FWS to approve the Wyoming plan).

However, on January 31, 2005, the Oregon district court invalidated the Interior Department regulation that established the Western DPS, and held that FWS could not reduce protections for wolves within the Western DPS without applying the ESA’s statutory listing criteria to the status of wolves outside of the core wolf population in the Northern Rockies. See Defenders of Wildlife v. Secretary Of Interior, No. 03-1348-JO, slip op. at 30, 34-35 (D. Or. Jan. 31, 2005) (“Op.”).

**A. The 2003 DPS Rule**

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, 68 Fed. Reg. 15,804 (Apr. 1, 2003). The Rule divided wolves in the lower-48 states into three DPS: Eastern, Western, and Southwestern. The Western DPS was defined to include the wolf's current and historic range in Washington, Oregon, California, Nevada, and parts of Idaho, Montana, Utah, and Colorado. See 68 Fed. Reg. 15,862. Based on the status of wolves in Montana, Idaho, and Wyoming, the rule down-listed all wolves throughout the entire Western DPS (excluding the non-essential experimental populations in the Yellowstone and central Idaho regions) from "endangered" status to "threatened" status under the ESA. See id. at 15,804.

**B. The Oregon Court's Ruling**

Various conservation organizations challenged the 2003 Rule in the District of Oregon alleging, inter alia, that FWS violated the ESA in reducing protections for wolves throughout the species' entire western range based solely on recovery gains in the Northern Rockies. The district court ruled in their favor, holding that the wolf DPS "appears to be a tactic for downlisting areas the FWS has already determined warrants listing, despite the unabated threats and low to non-existent populations outside of the core areas." Op. at 28. Accordingly, the Court "enjoined and vacated" the 2003 Rule "because it does not comply with the ESA and the DPS Policy." Id. at 34. Thus, the Oregon court vacated the Western DPS for gray wolves.



Given that there is no longer a gray wolf Western DPS to be delisted, the fundamental predicate to the delisting process at issue in this case — including FWS’ assessment of the Wyoming plan — is no longer in place.

## **ARGUMENT**

The Oregon court’s decision, to which both the government and the State of Wyoming were parties, confirms that these consolidated cases should be dismissed. On the one hand, the question whether the Wyoming plan is adequate to support a delisting proposal is unripe because it is unclear what wolf population, if any, can or will be proposed for delisting. On the other hand, this case is moot because it is no longer possible to redress Plaintiffs’ alleged injuries from delays in the previously existing delisting process.

### **I. THE OREGON DECISION FURTHER CONFIRMS THAT THIS CASE IS NOT RIPE**

The Oregon decision further confirms that Plaintiffs’ have failed to challenge any agency action that is ripe for review. In determining ripeness, this Court must consider, among other factors, “whether the [challenged agency] action has or will have a direct and immediate impact upon the plaintiff” and “whether the resolution of the issues will promote effective enforcement and administration by the agency.” Coalition for Sustainable Resources v. U.S. Forest Serv., 259 F.3d 1244, 1250 (10th Cir. 2001). In the wake of the Oregon court’s ruling, both of these factors establish that this case is unripe.

First, given that FWS has been sent back to the drawing-board with regard to its Western DPS designation, Plaintiffs can no longer argue that rejection of the Wyoming plan

is responsible, much less directly or immediately responsible, for stalling the delisting process for the Western DPS and precluding state management of wolves. Even if FWS had approved the Wyoming plan, the agency cannot move forward with its Western DPS delisting process in the wake of the Oregon court decision. Thus, the challenged rejection of the Wyoming plan is not responsible for any direct and immediate impact on Plaintiffs. Instead, any injury from delays in delisting flows from FWS' obligation to comply with the ESA pursuant to the Oregon court's order.

Second, it would impede FWS' ability to administer the wolf recovery program in compliance with the ESA if this Court issues a ruling on the adequacy of the Wyoming plan before FWS has even decided how to proceed with delisting in light of the Oregon court's order. Indeed, given that the Western DPS no longer exists, it is entirely uncertain what the criteria for FWS' approval of the Wyoming plan would be — *i.e.*, what population of wolves must the Wyoming plan and other applicable regulatory mechanisms be adequate to protect? Under these circumstances, the policy concerns underlying constitutional ripeness doctrine are at their apex. “Premature adjudication” of the Wyoming plan would necessarily “entangle” this Court in an “abstract disagreement” over the Wyoming plan without regard for the actual course of delisting that FWS may now pursue, and would fail to “protect the agenc[y] from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967).

For these reasons, in addition to the reasons already stated in the Sierra Club's Response Brief, Plaintiffs' claims are unripe.

**II. THIS CASE IS MOOT BECAUSE IT IS IMPOSSIBLE TO PROVIDE PLAINTIFFS MEANINGFUL RELIEF FOR THEIR ALLEGED INJURIES**

Because FWS can no longer move forward with the delisting proposal that Plaintiffs are seeking, this case is moot. "It has long been settled that a federal court has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." Church of Scientology of California v. United States, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). Thus, in determining whether a case is moot, the Tenth Circuit has explained that "[t]he crucial question is whether granting a present determination of the issues offered will have some effect in the real world." Utah Animal Rights Coalition v. Salt Lake City Corp., 371 F.3d 1248, 1256 (10th Cir. 2004) (quotations, alterations, and citations omitted).

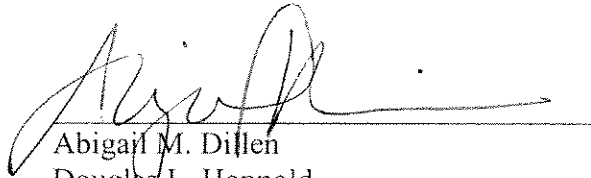
Here, determination of the legal issues raised by Plaintiffs would have no "real world" effect because the Oregon court decision has stalled the delisting process indefinitely, regardless of FWS' assessment of the Wyoming plan. Id. Since plaintiffs cannot obtain relief in this lawsuit for their alleged injuries, which flow from FWS' delay in delisting wolves in Wyoming as a constituent part of the Western DPS, this case should be dismissed as moot. "When events occur that prevent the ... court from granting any effective relief, an issue is moot." Neighbors For Rational Development v. Norton, 379 F.3d 956, 965 (10th

Cir. 2004); see also Church of Scientology, 506 U.S. at 12 (“If an event occurs while a case is pending ... that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the [case] must be dismissed.”) (internal quotations and citations omitted).

### CONCLUSION

For all of the foregoing reasons, and the reasons set forth in their Response Brief, Defendant-Intervenors Sierra Club and Natural Resources Defense Council respectfully request that this Court dismiss these consolidated cases.

Respectfully submitted this 3rd day of February, 2005,



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