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Wolf Center; David R. Parsons; and Wolf
Conservation Center*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

_____)	
Defenders of Wildlife; Center for Biological)	No. _____
Diversity; Endangered Wolf Center; David)	
R. Parsons; and Wolf Conservation Center,)	
)	
Plaintiffs,)	
)	
v.)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
Sally Jewell, Secretary of the Interior; and)	
United States Fish and Wildlife Service,)	
)	
Defendants.)	
)	
)	
_____)	

INTRODUCTION

1. This case challenges the failure of the United States Fish and Wildlife Service (“FWS” or “Service”) to prepare a long overdue, legally required recovery plan for one of the most endangered mammals in North America—the Mexican gray wolf (Canis lupus baileyi)—as required by the Endangered Species Act (“ESA” or “Act”), 16 U.S.C. § 1533(f).

2. The Mexican gray wolf—the “lobo” of Southwestern lore—is the most genetically distinct subspecies of wolf in the Western Hemisphere, uniquely adapted to environments in Mexico and the American Southwest. Like wolves elsewhere across the United States, this smaller wolf subspecies was driven to near extinction as a result of human persecution and government predator-control efforts in the early to mid-20th century. Once reduced to only seven individuals in a captive breeding program, the Mexican gray wolf was reintroduced into the wild by FWS in 1998 pursuant to the ESA.

3. Unfortunately, the reintroduced population has not flourished. This is in significant part because FWS has imposed numerous restrictions on the Mexican gray wolf reintroduction program that continue to impede efforts to bring this rare species back from the brink of extinction. Under FWS’s management, introduction of captive Mexican gray wolves into the wild remains infrequent, allowing genetic problems for the species to mount even as more genetically diverse wolves languish in captive breeding facilities. When FWS has authorized releases of captive animals, it has limited such releases to an inadequate “primary recovery zone” in eastern Arizona—a limitation that prevents new releases of needed animals in high-quality, unoccupied habitat. Further,

FWS does not permit Mexican gray wolves to colonize lands beyond recovery-area boundaries; any wolves that establish territories outside the small core recovery area are captured and removed from the wild or relocated. FWS also has liberally authorized the killing and removal of Mexican gray wolves that come into conflict with domestic livestock, regardless of those wolves' genetic significance to the population. As a result, the reintroduced Mexican gray wolf population consisted of only 83 individuals at the end of 2013. By FWS's own estimation, the reintroduced population "is not thriving" and remains "at risk of failure." Southwest Region (Region 2), U.S. Fish & Wildlife Serv., Mexican Wolf Conservation Assessment 11, 14, 62, 78 (2010) [hereinafter 2010 Conservation Assessment].

4. At the root of these problems is FWS's persistent failure to complete a scientifically grounded, legally valid recovery plan for the Mexican gray wolf subspecies. The ESA requires a recovery plan to organize and coordinate efforts to safeguard endangered species from extinction and restore them from their imperiled state. FWS released a document styled as a "Recovery Plan" for the Mexican gray wolf in 1982, but FWS itself admitted that the 1982 document was "far from complete" and did not fulfill the ESA's requirement for recovery planning and was intended only as a temporary, stopgap measure. Mexican Wolf Recovery Team, Mexican Wolf Recovery Plan 1 (1982) [hereinafter 1982 "Recovery Plan" document]. Indeed, the 1982 document does not address many of the critical issues that continue to imperil the Mexican gray wolf, and does not even lay out a comprehensive recovery program. Accordingly, while styled as a recovery plan, the 1982 document is so deficient that, for all intents and purposes, there is

no recovery plan for the Mexican gray wolf as that term is defined by the ESA. Thus 32 years after issuing the deficient 1982 document and 38 years after the subspecies' initial listing under the ESA, FWS still has not completed a legally compliant recovery plan for this critically imperiled subspecies.

5. The agency's failure in this regard is particularly notable because FWS has three times since 1982 initiated recovery planning processes for the Mexican gray wolf but each time halted these processes before completion. Most recently, FWS in 2010 pulled together a recovery team including many of the world's top wolf scientists to develop a recovery plan consistent with the best available scientific information. However, when that team produced a draft recovery plan in 2012 that called for establishing additional Mexican gray wolf populations in the wild, FWS abruptly canceled the next scheduled recovery team meeting and effectively suspended the recovery planning process.

6. Since then, the need for a scientifically grounded, legally valid recovery plan for the Mexican gray wolf has only grown more urgent. The window of opportunity to salvage the Mexican gray wolf's genetic integrity is closing as more genetically diverse captive animals die or age beyond their breeding years, and as the captive population becomes inexorably adapted to captivity rather than the wild. Further, despite the absence of a recovery blueprint to guide wolf management, FWS is proceeding to revise the rules that govern management of the reintroduced Mexican gray wolf population. The proposed revisions not only fail to take essential steps needed to facilitate Mexican gray wolf recovery, they continue to institutionalize management

shortcomings that have hindered Mexican gray wolf recovery to date. In short, the guidance of a scientifically grounded, legally valid recovery plan for the Mexican gray wolf is needed to organize, coordinate, and prioritize FWS's management actions for this subspecies, and time is of the essence.

7. FWS's repeated refusals to complete a recovery plan for the Mexican gray wolf, despite receiving expert guidance from top minds in the field, demonstrates the need for judicial intervention to enforce compliance with federal law. FWS's failure to prepare a legally required recovery plan for the Mexican gray wolf violates section 4(f) of the ESA, 16 U.S.C. § 1533(f), and constitutes agency action unlawfully withheld and unreasonably delayed under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1). Accordingly, this Court should order FWS to complete a scientifically grounded, legally valid recovery plan for the Mexican gray wolf. The Plaintiffs hereby request that this Court require FWS to complete a draft plan within six months of the Court's judgment, and a final recovery plan within six months thereafter.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question) and 16 U.S.C. § 1540(c), (g) (ESA), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02, 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706 (APA). Plaintiffs bring this action pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g), which waives Defendants' sovereign immunity. Alternatively, Defendants' sovereign immunity is waived pursuant to the APA, 5 U.S.C. § 702.

9. Plaintiffs provided Defendants with notice of Plaintiffs' intent to sue on September 10, 2014, as required by 16 U.S.C. § 1540(g)(2). Defendants have not responded to Plaintiffs' notice letter.

10. Venue is proper in this District pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Additionally, Plaintiff Center for Biological Diversity is based in Tucson, Arizona, and Plaintiff Defenders of Wildlife has an office in Tucson in which it conducts much of its work on the Mexican gray wolf.

11. This case should be assigned to the Tucson Division of this Court because the Mexican gray wolf occurs within the counties of this Division and Plaintiffs Defenders of Wildlife and Center for Biological Diversity maintain their main Arizona offices in Tucson. L.R. Civ. 77.1(a), (c).

PARTIES

12. Plaintiff Defenders of Wildlife ("Defenders") is a national non-profit conservation organization headquartered in Washington, D.C., with offices throughout the country, including a Southwest office in Tucson, Arizona. Defenders has more than 392,000 members, including more than 12,000 members in the southwestern states of Arizona and New Mexico. Defenders is a science-based advocacy organization focused on conserving and restoring native species and the habitat upon which they depend, and has been involved in such efforts since the organization's establishment in 1947. Over the last three decades, Defenders has played a leading role in efforts to recover the Mexican gray wolf in the American Southwest.

13. Plaintiff Center for Biological Diversity (the “Center”) is a nonprofit organization dedicated to the preservation, protection and restoration of biodiversity, native species and ecosystems. The Center was founded in 1989 and is based in Tucson, Arizona, with offices throughout the country. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively involved in species and habitat protection issues and has more than 50,000 members throughout the United States and the world. The Center has advocated for recovery of the Mexican gray wolf since the organization’s inception, and maintains an active program to protect the subspecies and reform policies and practices to ensure its conservation. The Center brings this action on its own institutional behalf and on behalf of its members. Many of the Center’s members and staff reside in, explore, and enjoy recreating in Southwestern landscapes, including those occupied by the Mexican gray wolf.

14. Founded in 1971, Plaintiff Endangered Wolf Center is a non-profit organization dedicated to preserving and protecting Mexican gray wolves and other endangered canids through carefully managed breeding, reintroduction, and educational programs. The Endangered Wolf Center, located near St. Louis, Missouri, has been a cornerstone of FWS’s Mexican gray wolf recovery program since its inception. The Endangered Wolf Center became home to the last Mexican gray wolf female captured in the wild, and she bore several litters at the facility. In all, more than 170 Mexican gray wolves have been born at the Endangered Wolf Center, and a number of those wolves have been released into the wild through FWS’s reintroduction program. All Mexican

gray wolves alive today can trace their roots back to the Endangered Wolf Center. The Endangered Wolf Center also conducts ground-breaking research to help with the management of this critically imperiled species both within captive breeding facilities and in the wild.

15. Plaintiff David R. Parsons is a professional wildlife biologist. He holds a Bachelor of Science degree in Fisheries and Wildlife Biology from Iowa State University and a Master of Science degree in Wildlife Ecology from Oregon State University. A career wildlife biologist with FWS, Mr. Parsons served as the Service's first Mexican Wolf Recovery Coordinator from 1990-1999. In that capacity, he led the agency's efforts to reintroduce the Mexican gray wolf to the American Southwest. Now retired from FWS, he continues to further large carnivore conservation through his roles as Carnivore Conservation Biologist at The Rewilding Institute; an advisor to various conservation organizations on carnivore conservation science and policy; and a member of the Stakeholder Subgroup of the most recently assembled Mexican Wolf Recovery Team.

16. Founded in the 1990s, Plaintiff Wolf Conservation Center is a non-profit environmental education organization committed to conserving wolf populations in North America through science-based education programming and participation in federal Species Survival Plan programs for critically endangered wolf species. As a participant in the Mexican Wolf Species Survival Plan program, the Wolf Conservation Center strives to maintain the genetic diversity remaining in the captive Mexican gray wolf population and serves as one of the few breeding facilities for Mexican gray wolves eligible for release into the wild. Several Mexican gray wolves have been released to

their ancestral homeland from the Wolf Conservation Center facility in South Salem, New York.

17. All Plaintiffs have a long-standing interest in the preservation and recovery of the Mexican gray wolf in the American Southwest because individual and organizational Plaintiffs and their members place a high value on Mexican gray wolves as a subspecies and because the presence of these wolves promotes the healthy functioning of ecosystems. Plaintiffs actively seek to protect and recover the Mexican gray wolf through a wide array of actions including public education, scientific analysis, and advocacy. Plaintiffs Endangered Wolf Center and Wolf Conservation Center both serve as members of the Mexican Wolf Species Survival Plan (“SSP”) Program. The Mexican gray wolf SSP is a bi-national cooperative conservation program, overseen by the Association of Zoos and Aquariums, that manages the species’ breeding so as to maintain a healthy, genetically diverse, and demographically stable population. The primary purpose of the SSP is to re-establish a wild, self-sustaining Mexican gray wolf population through the captive breeding of wolves for reintroduction, research, and public outreach.

18. Plaintiffs and/or Plaintiffs’ members use public land in the American Southwest, including lands in the Blue Range Wolf Recovery Area, the Gila, Cibola, and Apache-Sitgreaves national forests, and other nearby public lands, for recreational pursuits, including hiking, fishing, camping, backpacking, hunting, horseback riding, wildlife viewing (including wolf watching), and aesthetic enjoyment. Some of Plaintiffs’ members work in industries, such as tourism, that depend on the opportunity to view

Mexican gray wolves. Plaintiffs and/or members of Plaintiffs have viewed and have planned concrete efforts to view Mexican gray wolves and signs of wolf presence in the wild in Arizona and New Mexico, and without a scientifically sound, legally compliant recovery plan to guide wolf conservation efforts, their opportunity to do so will remain in jeopardy. The absence of a scientifically grounded, legally valid recovery plan has resulted in a Mexican gray wolf population that, sixteen years after reintroduction, “is not thriving” and remains “at risk of failure.” 2010 Conservation Assessment, at 11, 14, 62, 78. That risk, and the related ongoing problems with the Mexican gray wolf recovery program described in this complaint, represent a direct threat to the interests of all Plaintiffs. In particular, the absence of a legally-compliant recovery plan is a direct threat to the success of the missions of Plaintiffs Endangered Wolf Center and Wolf Conservation Center because recovery cannot take place in captivity alone; the Mexican gray wolf captive breeding program is not infinitely sustainable, and is already being threatened by ongoing loss of founder genome equivalents, an aging population, lack of space, and the inevitable selection for traits more suited to captivity than the wild. Accordingly, the legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, economic, recreational, scientific, educational, and wildlife preservation interests of the Plaintiffs and/or Plaintiffs’ members.

19. Plaintiffs’ aesthetic, conservation, economic, recreational, scientific, educational, and wildlife preservation interests have been, are being, and, unless their requested relief is granted, will continue to be adversely and irreparably injured by Defendants’ failure to comply with federal law. These are actual, concrete injuries,

traceable to Defendants' conduct that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

20. Defendant Sally Jewell is the United States Secretary of the Interior. In that capacity, Secretary Jewell has supervisory responsibility over the United States Fish and Wildlife Service. Defendant Jewell is sued in her official capacity.

21. Defendant United States Fish and Wildlife Service is a federal agency within the U.S. Department of the Interior. FWS is responsible for administering the ESA with respect to terrestrial wildlife species and subspecies including the Mexican gray wolf.

THE ENDANGERED SPECIES ACT

22. The ESA, 16 U.S.C. § 1531 et seq., is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” Tenn. Valley Auth. v. Hill, 437 U.S. 153, 180 (1978). Congress passed this law specifically to “provide a program for the conservation of ... endangered species and threatened species” and to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b). “Conservation,” under the ESA, means to recover such species from their imperiled status. See id. § 1532(3).

23. To receive the full protections of the Act, a species must first be listed by the Secretary of the Interior as “endangered” or “threatened” pursuant to ESA section 4. Id. § 1533. The ESA defines an “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range.” Id. § 1532(6). A

“threatened species” is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Id. § 1532(20). The term “species” is defined to include “any subspecies of ... wildlife.” Id. § 1532(16).

24. The ESA establishes a congressional policy that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the ESA].” Id. § 1531(c). The statute requires all federal agencies to “carry ... out programs for the conservation of endangered species and threatened species.” Id. § 1536(a)(1).

25. To effectuate this policy, once a species is listed as “endangered” or “threatened,” the ESA requires that “[t]he Secretary shall develop and implement plans (hereinafter in this subsection referred to as ‘recovery plans’) for the conservation and survival of [such listed] species ..., unless he finds that such a plan will not promote the conservation of the species.” Id. § 1533(f).

26. Each recovery plan must include, to the maximum amount practicable, “a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species; objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal and to achieve intermediate steps toward that goal.” Id. § 1533(f)(1)(B)(i)-(iii).

27. FWS’s internal recovery planning guidelines provide that final recovery

plans “should be completed within 2.5 years of listing.” Nat’l Marine Fisheries Serv. & U.S. Fish & Wildlife Serv., Interim Endangered and Threatened Species Recovery Planning Guidance, Version 1.3 1.5-2 (June 2010) [hereinafter “Recovery Planning Guidance”]. See also 59 Fed. Reg. 34,272 (July 1, 1994) (setting forth interagency policy of developing draft recovery plans within 18 months of listing, and a final recovery plan within 12 months of the draft plan’s completion).

MEXICAN GRAY WOLVES IN THE AMERICAN SOUTHWEST

28. Mexican gray wolves are believed to be “the only surviving descendants of the first wave of gray wolves to colonize North America during the Pleistocene Epoch.” Letter from Michael A. Mares, Ph.D., President, Am. Soc’y of Mammalogists, et al., to the Honorable Dan Ashe, Director, U.S. Fish & Wildlife Serv., Re: Recovery Planning for the Mexican Wolf (June 20, 2012). Mexican gray wolves historically inhabited Mexico and the southwestern United States, including portions of Arizona, New Mexico, and Texas. It appears that the subspecies also ranged into southern Utah and southern Colorado. The subspecies is one of the most genetically, morphologically, and ecologically distinct lineages of wolves in the Western Hemisphere. The Mexican gray wolf is also one of the most endangered mammals in North America.

29. The recent history of the Mexican gray wolf has been likened to “a melodrama of persecuted fugitives to rival Les Misérables.” Caroline Fraser, For Wolves on the Brink, a Hobbled Recovery Plan, Yale e360 (Oct. 25, 2012), http://e360.yale.edu/feature/for_wolves_on_the_brink_a_hobbled_recovery_plan/2585/. Largely at the behest of the livestock industry, the U.S. Biological Survey effectively

exterminated the subspecies from the southwestern United States by the mid-1900s. In 1950, FWS (the institutional successor to the Biological Survey) launched a similar campaign in Mexico. According to FWS, the last known wild Mexican gray wolf in the United States was killed in 1970. It is believed that the subspecies was completely extinct in the wild by the mid-1980s.

30. Between 1977 and 1980, five Mexican gray wolves—four males and one female—were captured in Mexico. These wolves were placed in a captive breeding program and became known as the “McBride” lineage. Two other already-existing captive lineages, the “Aragón” and “Ghost Ranch” lineages, were also certified as genetically pure Mexican gray wolves in 1995. All individuals alive today come from a founding stock of seven of these captive Mexican gray wolves: three McBride wolves, two Aragón wolves, and two Ghost Ranch wolves.

THE MEXICAN GRAY WOLF REINTRODUCTION PROGRAM

31. In 1998, after a near thirty-year absence of Mexican gray wolves from the landscape, FWS released eleven captive-reared Mexican gray wolves under ESA section 10(j) as a “nonessential experimental” population into the Blue Range Wolf Recovery Area (“BRWRA”) in east-central Arizona and west-central New Mexico. See 16 U.S.C. § 1539(j) (the “10(j)” provision for “experimental” populations); 63 Fed. Reg. 1752 (Jan. 12, 1998) (rule for the establishment of a 10(j) population of Mexican gray wolves in Arizona and New Mexico). As described by FWS in the 1982 “Recovery Plan” document, the original, stopgap objective of the reintroduction effort was to achieve “a viable, self-sustaining population of at least 100 Mexican wolves” in the wild. 1982

“Recovery Plan” document, at 23. To date, the reintroduction program has fallen well short of that target. At the end of 2013, the wild Mexican gray wolf population was neither viable nor self-sustaining and numbered only 83 individuals. At its current size and level of genetic variation, the Mexican gray wolf population is “considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature.” U.S. Fish & Wildlife Serv., Draft Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) Ch. 1, at 20-21 (July 16, 2014) [hereinafter DEIS].

32. Several factors contribute to the limited success of the reintroduction effort. Many are attributable to the actions—and failures to act—of FWS itself. Specifically, lacking a completed recovery plan to guide Mexican gray wolf conservation, FWS has failed to respond to mounting genetic issues, inappropriately limited the geography in which Mexican gray wolves can be released and can reside, excessively removed wolves from the wild, and failed to effectively respond to an extremely high level of illegal wolf mortality. It has also proposed to modify the existing nonessential experimental population designation for the wolf, again without a completed recovery plan to guide that action. FWS’s steadfast refusal to complete a legitimate, legally compliant recovery plan for the Mexican gray wolf that would provide a blueprint for the actions that are needed, and the actions that must be prohibited, to successfully bring this species back from the brink of extinction violates the Endangered Species Act.

Genetic Problems

33. The genetic challenges to Mexican gray wolf recovery largely stem from

the small number of individuals that remained in existence when conservation efforts for this subspecies began, but FWS has compounded the resulting genetic problems by failing to take actions that are necessary to capitalize on the subspecies' remaining genetic diversity.

34. The extremely small number of founders (i.e., the Mexican gray wolves from which all individuals living today descend) in the captive breeding population has raised significant concerns about the long-term genetic health of the Mexican gray wolf subspecies. As FWS explains, “[t]he small number of founders upon which the existing Mexican wolf population was established has resulted in pronounced genetic challenges, including inbreeding (mating of related individuals), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and loss of adaptive potential (the ability of populations to maintain their viability when confronted with environmental variations).” DEIS, Ch. 1, at 4.

35. When two individuals mate, their offspring receive two “alleles” (or forms of a gene) for a given trait, one from each parent. While all populations carry some harmful alleles, they are usually rare and not detrimental to an individual if he or she carries only one such allele. However, in a small, closely-related population, more individuals may carry the same harmful alleles. Thus, when related individuals mate, they have a higher chance of passing on two harmful alleles (one from each parent) to their offspring. If an offspring receives two harmful alleles, that individual may exhibit reduced survival, reproduction, body size, and/or disease resistance. With enough inbreeding, harmful alleles may become fixed in the population—that is, the non-harmful

forms of certain alleles may disappear from the population, leaving the overall population with a reduced level of fitness that ultimately affects population viability.

36. Inbreeding was a concern with the McBride lineage, which was founded by only three individuals. Indeed, by the mid-1990s, McBride pups had inbreeding levels “similar to ... offspring from ... full sibling or parent-offspring pairs.” 78 Fed. Reg. 35,664, 35,704 (June 13, 2013). In 1995, the captive breeding program integrated the Aragón and Ghost Ranch lineages—both of which were also highly inbred—into the McBride lineage in an attempt to increase the overall genetic diversity of the founder population. After this integration of the three lineages, specific breeding protocols and genetic goals were established to inform Mexican gray wolf pairings.

37. Unfortunately, while the captive breeding facilities have more recently managed the Mexican gray wolf breeding program to preserve as much genetic diversity as possible, much of the genetic potential of the founding stock has been lost. The loss of genetic potential is the result of the small number of founder wolves, the fact that “[t]he Mexican wolf captive breeding effort ... was not managed to retain genetic variation until several years into the effort,” and the failure of the reintroduction program to facilitate the rapid expansion of a genetically diverse wild Mexican gray wolf population. DEIS, Ch. 1, at 19. Today, “[t]he captive breeding population is estimated to retain only 3.01 founder genome equivalents, suggesting that more than half of the alleles (gene variants) from the seven founders have been lost from the population.” 78 Fed. Reg. at 35,705. In other words, despite the fact that the founding stock for the current population consisted of seven individual wolves, the captive Mexican gray wolf population today retains the

genetic material of only approximately three individual founders. Unless and until FWS makes changes to its reintroduction program—changes that could be developed and institutionalized through a legally compliant recovery plan—such genetic challenges will continue to mount.

38. The wild population is in even worse genetic shape than the captive population. According to FWS, the wild population “has poor representation of the genetic variation remaining in the captive population. The wolves in the experimental population have Founder Genome Equivalents (FGE) that are 33 percent lower than found in the captive population and the estimated relatedness ... of these animals suggest that on average they are as related to one another as ... full siblings are related to each other.” DEIS, Ch. 1, at 19. FWS has acknowledged that “[w]ithout substantial management action to improve the genetic composition of the [wild] population, inbreeding will accumulate and ... alleles will be lost much faster than in the captive population.” 78 Fed. Reg. at 35,706.

39. The social structure of wolf packs makes genetic problems flowing from inbreeding all the more likely in the reintroduced Mexican gray wolf population. Generally speaking, each wolf pack has only one breeding pair that reproduces annually. Thus, the effective gene pool is even smaller than the overall population size would suggest because not all reproductively mature, wild individuals are breeding. At the end of 2013, FWS counted only five breeding pairs of Mexican gray wolves in Arizona and New Mexico. This contrasts starkly with expectations: FWS’s 1996 Final Environmental Impact Statement (“FEIS”) on reintroduction projected 18 breeding pairs by 2006.

40. As would be expected in the present circumstances, there is already “evidence of strong inbreeding depression in the reintroduced [Mexican gray wolf] population,” including reduced litter size and reduced pack size. 78 Fed. Reg. at 35,706. In other words, inbreeding has reduced the reintroduced Mexican gray wolves’ ability to survive and reproduce. FWS has emphasized that “[h]igher levels of genetic variation within the experimental population are critically important to minimize the risk of inbreeding and support individual fitness and ecological and evolutionary processes.” DEIS, Ch. 1, at 19. Unless rectified, the current “level of inbreeding depression may substantially reduce the viability of the population” and “limit the ability of future Mexican wolf populations to adapt to environmental challenges.” 78 Fed. Reg. at 35,706. That is, inbreeding may result in a Mexican gray wolf population that suffers from both a genetically based reduction in survival and reproduction potential, and—again because of its genetic limitations—a reduced ability to respond to environmental changes.

41. To maximize genetic potential and prospects for recovery, FWS must commit to an active program of releasing genetically diverse wolves into the wild, capitalizing on the genetic potential now available in the captive population before it is further depleted. Such releases, if managed properly, would promote “[r]apid expansion of the population ...[,] further promot[ing] maintenance of genetic diversity.” 2010 Conservation Assessment, at 60. Rapid expansion is critical because it will allow the released wolves to reproduce and express the full spectrum of remaining genetic potential—something they are unable to do in captivity due to constraints on the number of breeding facilities and holding space. In addition to minimizing the loss of genetic

potential, it is critical to release more wolves into the wild in a timely fashion because “[i]f captive Mexican wolves are not reintroduced to the wild within a reasonable period of time, ... physical ... or behavioral changes resulting from prolonged captivity could diminish their prospects for recovery.” 63 Fed. Reg. at 1755. As FWS itself said in 2010, “[t]he longer ... threats [to the Mexican gray wolf] persist, the greater the challenges for recovery, particularly as related to genetic fitness and long-term adaptive potential of the population.” 2010 Conservation Assessment, at 78.

42. Nevertheless, the agency has failed to take appropriate action given the urgent nature of the genetic challenges facing the reintroduced Mexican gray wolf population. FWS has acknowledged that, “[o]ver the entire 16 year course of the Reintroduction Project we have not been able to conduct the number of initial releases [of captive wolves into the wild] ... sufficient to establish or maintain adequate genetic variation in the experimental population.” DEIS, Ch. 1, at 20. The consequences of such a failure to act are likely to be dire. As FWS has explained, “[w]ithout an increase in the number of initial releases and without a better release success rate, the number of effective migrants [(i.e., migrants that actually breed and pass along their genes)] per generation needed to improve the genetic fitness of the Mexican wolf experimental population will not be achieved and the negative effects of inbreeding depression will continue—potentially ... result[ing] in additional reduction in genetic variation, leading to decreased fitness and lower survival rates and ultimately causing an extinction vortex for the experimental population of Mexican wolves.” Id. Ch. 1, at 23-24.

43. In short, time is of the essence for the survival, conservation, and recovery

of the Mexican gray wolf based on genetic issues alone, and FWS's management actions to date have not provided a response commensurate with the urgent nature of this problem. FWS's inadequate response reflects the absence of a recovery plan to organize and prioritize the agency's action.

Excessive Removals, Insufficient Releases & Illegal Mortality

44. The genetic impediments to recovery described above are being exacerbated by extremely high levels of Mexican gray wolf take and removal from the wild. Under the ESA, to "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). One of the reasons FWS reintroduced Mexican gray wolves as an ESA section 10(j) nonessential, experimental population was to "enable ... the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with 'endangered' status. This includes allowing limited 'take' ... of individual wolves" 63 Fed. Reg. at 1754. FWS deemed such "[m]anagement flexibility" necessary "to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting" and "to obtain ... needed State, Tribal, local, and private cooperation." Id. FWS believed such "flexibility [would] improve the likelihood of success" of the reintroduction program and, ultimately, Mexican gray wolf recovery. Id.

45. Unfortunately, as the past sixteen years have demonstrated, this management flexibility has not resulted in a successful reintroduction program. Instead, the reintroduction effort currently teeters on the brink of failure and the subspecies'

recovery prospects remain in jeopardy. Since reintroduction began, agency removal of Mexican gray wolves from the wild has exacted a heavy toll on the Blue Range population. Overall, FWS has engaged in 160 removals of Mexican gray wolves from the reintroduced population since 1998. Of these, FWS has killed or ordered the killing of twelve wolves and consigned twenty-four once-wild wolves to permanent captivity. The remaining 124 instances of removal were temporary removals, meaning those wolves remained theoretically eligible for translocation. However, some temporarily removed wolves, “while eligible for translocation, have been removed from consideration for future release.” U.S. Fish & Wildlife Serv., *Outcomes of Mexican Wolf Management Removals from the Blue Range Population, Arizona and New Mexico, 1998-2013* (Dec. 31, 2013). Such removal of Mexican gray wolves from the wild “[has] the same practical effect on the wolf population as mortality if the wolf is permanently removed.” 2010 Conservation Assessment, at 61. Indeed, FWS has identified “[t]he high number of wolf removals ... as a contributing factor hindering the population’s growth.” Id. at 55.

46. Wolves that are killed or permanently removed from the wild are no longer able to genetically enrich the reintroduced population. Nevertheless, to date, FWS has shown little regard for the genetic import of individual wolves in authorizing take or removal. For example, in November 2007, FWS permanently removed the alpha male from the Aspen pack—then the most genetically valuable pack in the reintroduced population. In December of that year, it permanently removed the Aspen pack’s alpha female and a yearling female, and temporarily removed several pups. As FWS has recognized, “[t]he ability of management to address inbreeding depression in the Blue

Range population is constrained by regulatory and discretionary management mechanisms that do not incorporate consideration of genetic issues yet result in limitation or alteration of the genetic diversity of the population. ... The ... Mexican Wolf SSP has recommended that until the representation of the Ghost Range and Aragon lineages has increased and demographic stability is achieved in the wild population, careful consideration of genetic diversity should be prioritized during decisions to permanently remove wolves.” 2010 Conservation Assessment, at 60. Nevertheless, “[t]he Service has not developed any specific protocols to promote genetic fitness in the population in response to recent research and professional recommendations.” Id.

47. In addition to killing and removing Mexican gray wolves, including genetically valuable animals, FWS has drastically reduced releases of captive wolves and translocations of captured-but-release-eligible wolves since 2006. Only four new wolves from the captive breeding pool have been released into the wild since 2008. According to FWS’s own 2010 progress report, “lack of appropriate initial releases and successful translocations from captivity” contributed to “[f]ewer known adult wolves available for pair formation.” U.S. Fish & Wildlife Serv., Mexican Wolf Recovery Program: Progress Report #13, Reporting Period: January 1-December 31, 2010 29. As a result, new genetic material is not being infused into the reintroduced population, further imperiling Mexican gray wolf recovery.

48. Compounding the problems of excessive take and removal and insufficient releases of Mexican gray wolves by FWS is an extremely high level of illegal wolf killing by members of the public. This high level of illegal mortality calls into question

FWS’s assertion that, without the management flexibility afforded to the agency through “[d]esignation of the released wolves as [a] nonessential experimental [population] . . . , intentional illegal killing of wolves likely would harm the prospects for success.” 63 Fed. Reg. at 1755. In fact, even with the agency’s desired management flexibility, intentional, illegal wolf killing has undermined the reintroduction program. From 1998-2013, there were 55 documented illegal killings of Mexican gray wolves, and such killings make up the majority of wolf mortalities since the reintroduction program began.

49. Further, available information indicates that at least 50 additional wolves—including, in some instances, pairs of wolves repeatedly located together—have simply “disappeared,” likely illegally killed. Such illegal mortalities, in conjunction with agency removals of wolves, have proven demographically destabilizing and genetically deleterious and hinder the reintroduced Mexican gray wolf population’s prospects for success.

50. Given the high level of illegal killing, the excessive level of authorized take and insufficient level of releases of captive animals are yet more examples of impediments to Mexican gray wolf recovery that could be addressed through a scientifically grounded, legally compliant recovery plan.

Wolves’ Inability to Roam

51. Even for Mexican gray wolves that are released or born into the wild and that persist, the road to recovery is daunting. To date, FWS has confined the wolves to an ecologically arbitrary geography, which prevents the Service from most effectively staging releases and growing the population.

52. For example, FWS has imposed a requirement that captive Mexican gray wolves that are released into the wild for the first time may be released only into a small “primary recovery zone” within the BRWRA (specifically within the Greenlee County, Arizona portion of the BRWRA). This primary recovery zone constitutes only 16 percent of the BRWRA as a whole. This restriction has impeded FWS’s ability to release wolves, including genetically valuable wolves, “where they are most needed, that is, in high-quality habitat lacking wolves or for replacement of lost mates and genetic enhancement.” Anthony Povilitis et al., The Bureaucratically Imperiled Mexican Wolf, 20 Conservation Biology 942, 942 (2006). FWS has “observed ... negative population effects of the regulations that restrict initial release” and has acknowledged that “[r]evisions to the 1998 Final Rule ... are needed because ... under the current regulations we will not be able to achieve the necessary population growth, distribution and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population.” DEIS, App. F, at 1; id. Ch. 1, at 16.

53. In addition to release restrictions, FWS does not permit wolves to establish territories wholly outside the BRWRA boundary. When wolves attempt to establish territories outside this ecologically arbitrary boundary, FWS seeks to capture and relocate them. This boundary restriction “does not allow for natural dispersal movements from the BRWRA or occupation of the [larger Mexican Wolf Experimental Population Area (“MWEPA”)].” 78 Fed. Reg. 35,719, 35,727 (June 13, 2013). This limitation hinders Mexican gray wolf recovery by preventing natural wolf behavior, i.e., wide-ranging dispersal to find unoccupied territories with sufficient prey, denning sites, and other basic

life necessities. If wolves are not allowed to disperse more widely, it is highly unlikely that a viable, self-sustaining population will ever be established. In fact, recent research suggests that “viability of the existing wild population is uncertain unless additional populations can be created and linked by dispersal.” Carlos Carroll et al., Developing Metapopulation Connectivity Criteria from Genetic and Habitat Data to Recover the Endangered Mexican Wolf, 28 Conservation Biology 76, 84 (2014) (emphasis added). Such distinct, spatially separated populations of the same species that are connected by dispersal are referred to as “metapopulations.”

54. Experts have long counseled and FWS has acknowledged that the long-term conservation of the Mexican gray wolf will likely ““depend on establishment of a metapopulation or several semi-disjunct but viable populations spanning a significant portion of [the species’] historic range.”” DEIS, Ch. 2, at 6 (citation omitted). As FWS explains, “[f]or a species that has been extirpated from so much of its historic range, explicit effort must be made to recreate redundancy” (where “redundancy refers to the existence of redundant, or multiple, populations spread throughout a species’ range”). 2010 Conservation Assessment, at 68, 72 (emphasis omitted).

55. Generally speaking, well-connected metapopulations are better able to withstand less favorable demographic rates (e.g., birth rate, fertility rate, life expectancy) and catastrophic environmental events (e.g., wildfire, disease outbreak) than are isolated populations. This is because (1) connectivity facilitates gene flow as individuals move among populations, which reduces the severity and effects of inbreeding, and (2) the existence of multiple populations helps to ensure that the species is not wiped out if a

catastrophic event decimates one of the populations. A well-connected metapopulation is especially important for the recovery of the Mexican gray wolf, which right now exists in the United States as one extremely small, isolated, and genetically-threatened population.

56. FWS recognized the need for a metapopulation early on in its management of Mexican gray wolves. Even the inadequate 1982 “Recovery Plan” document provided that an appropriate interim objective for Mexican gray wolf conservation would be to establish at least a second population. FWS reiterated this objective in the 1996 FEIS for Mexican gray wolf reintroduction into the Blue Range, where the Service stated that “[f]ull recovery of the Mexican wolf subspecies likely will require additional reintroduction projects elsewhere,” U.S. Fish & Wildlife Serv., Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States: Final Environmental Impact Statement 1-1 (Nov. 1996) [hereinafter 1996 FEIS] (proposing reintroduction of a nonessential experimental population). The Service acknowledged this objective again in the 2014 DEIS for the proposed revision to the nonessential experimental population of the Mexican gray wolf, where it stated that “[t]he dispersal of Mexican wolves between subpopulations may be an important part of recovery,” DEIS, Ch. 1, at 31. FWS has admitted that meeting the 1982 document’s 100-wolf objective “alone would not allow de-listing; other populations would need to be reestablished elsewhere in accordance with criteria ... developed in the revision of the Mexican Wolf Recovery Plan.” 1996 FEIS at 5-42.

57. FWS’s current management of the reintroduced Mexican gray wolf population not only fails to prescribe a metapopulation approach to recovery, it

effectively precludes the establishment of a metapopulation. Specifically, the agency's extant policy of removing wolves that attempt to establish territories outside the BRWRA boundary impedes the natural establishment of any other population in the region. The policy further obstructs the Blue Range population's ability to connect with other reintroduced populations, including a fledgling population recently reintroduced in Mexico. FWS's refusal to permit wolves to range freely and establish territories outside the BRWRA, in conjunction with the agency's refusal to establish a metapopulation, are actively hindering—if not outright precluding—the recovery of a viable, self-sustaining, wild Mexican gray wolf population. Again, the development of a legally compliant recovery plan reflecting the best available science would allow FWS to implement release, range, and metapopulation measures that would promote Mexican gray wolf recovery.

THE LACK OF A LEGITIMATE RECOVERY PLAN

58. The absence of a legitimate agency blueprint for Mexican gray wolf recovery underlies the ongoing challenges facing the subspecies' recovery program. Accordingly, those challenges could be resolved through the production and implementation of a scientifically based and legally valid recovery plan to guide and drive Mexican gray wolf management decisions, such as scheduled releases to promote genetic diversity, necessary limitations on wolf removals by FWS and the public, and delineation of appropriate geographic areas to facilitate wolf recovery. In many respects, the primary underlying impediment to Mexican gray wolf recovery has been, and continues to be, the lack of such a plan—a fact FWS has repeatedly acknowledged. The

stopgap approach to Mexican gray wolf conservation outlined by FWS in the 1982 “Recovery Plan” document was “far from complete,” and was intended to provide guidance only through September 30, 1984. 1982 “Recovery Plan” document, at 1, 20. Yet more than 30 years after this expiration date, and despite FWS’s continued recognition of the need for a valid and effective recovery plan, the Service still has developed nothing beyond its original stopgap approach to guide its Mexican gray wolf conservation efforts.

59. As FWS has noted, without a valid recovery plan “to organize, coordinate and prioritize the many possible recovery actions, [a recovery] effort may be inefficient or even ineffective.” Recovery Planning Guidance, at 1.1-1. The Mexican gray wolf reintroduction effort has been “inefficient or even ineffective,” because the Service’s 1982 “Recovery Plan” document lacks the fundamental scientific basis necessary to “organize, coordinate and prioritize” Mexican gray wolf recovery actions, as well as fundamental requirements such as established criteria that would signify full recovery and support eventual delisting.

60. The 1982 document was drafted without ESA-required recovery and delisting criteria because, at the time of the document’s drafting, “the status of the Mexican wolf was so dire that the recovery team could not foresee full recovery and eventual delisting.” 78 Fed. Reg. at 35,726. As a result, the document’s authors sought only “to ensure the immediate survival of the Mexican wolf.” 2010 Conservation Assessment, at 22. They thus grounded the document in the maintenance of a captive breeding program and a stopgap measure of re-establishing in the wild “a viable, self-

sustaining population of at least 100 Mexican wolves.” 1982 “Recovery Plan” document, at 23.

61. Despite its stopgap nature, that 100-wolf measure has continued to serve as FWS’s sole guidepost for the Mexican gray wolf reintroduction effort. As FWS has stated, aside from the 100-wolf objective, “the gray wolf recovery effort in the Southwest operates without any guidance in terms of the number and distribution of wolves considered adequate for recovery and delisting.” 2010 Conservation Assessment, at 7.

62. Yet the 100-wolf objective is admittedly an inadequate guidepost. In this regard, the Service “recognize[s] that the reestablishment of a single experimental population of Mexican wolves is inadequate for recovery and ... [is] fully cognizant that a small isolated wolf population such as the experimental population now occupying the BRWRA can neither be considered ‘viable’ nor ‘self-sustaining’—regardless of whether it grows to a number of ‘at least 100.’” DEIS, Ch. 1, at 17. FWS has further “acknowledge[d] that this [100-wolf] population target is ... insufficient for recovery and delisting of C. l. baileyi, as the subspecies would still be in danger of extinction with a single population of this size.” 78 Fed. Reg. at 35,695(emphasis added).

63. Moving beyond the stopgap 100-wolf objective is crucial for Mexican gray wolf recovery. The Service recognized this as recently as July of this year, when it again forecasted the need for both a metapopulation and a legitimate recovery plan for this subspecies. FWS’s July 2014 DEIS provides that “[e]stablishment of a numerical objective for the size of the experimental population of Mexican wolves may be an important part of recovery planning in which the experimental population would function

as a subpopulation to a viable and self-sustaining metapopulation of Mexican wolves.” DEIS, Ch. 2, at 10. “However,” the DEIS continues, “full recovery is beyond the scope of this EIS and setting this population objective now would be premature.” Id.

64. This recent statement by FWS is just the latest chapter in a long saga of agency delay and obstruction in addressing the need for a Mexican gray wolf recovery plan. Since 1982, FWS has convened three recovery teams in an effort to develop a legitimate recovery plan. Three times, FWS has charged those teams with the task of drafting a recovery plan that reflects the best available scientific information. Three times, FWS has failed to issue such a plan.

65. In the first attempt, FWS in 1995 produced a draft recovery plan to supersede the 1982 “Recovery Plan” document. It was never finalized.

66. The FWS Southwest Region convened another recovery team in 2003, but indefinitely suspended that recovery planning process in 2005.

67. FWS initiated the most recent recovery planning effort in 2010 at the direction of the current director of the Service’s Southwest Region. The Southwest Regional Director charged a Science and Planning Subgroup of the agency’s Mexican Wolf Recovery Team with developing a recovery plan consistent with the best available scientific information. That subgroup included an interdisciplinary team of prominent scientists, including Recovery Team leader and wolf biologist Peter Siminski; wolf biologists Dr. Douglas Smith, Michael K. Phillips, and Dr. Jorge Servin; population biologist Dr. John Vucetich; conservation biologist Dr. Carlos Carroll; human dimensions expert Dr. Kirsten Leong; geneticist Dr. Richard J. Fredrickson; and carnivore biologist

Carlos Lopez.

68. The Science and Planning Subgroup drafted a plan that proposed, based on the best available science, a minimum of three interconnected subpopulations, each of at least 200 animals, as part of a metapopulation of at least 750 Mexican gray wolves. However, within two weeks of the release of a May 7, 2012, draft recovery plan containing this recommendation, FWS's Southwest Regional Director cancelled an upcoming recovery team meeting and effectively suspended the recovery planning process.

69. FWS's attempts to explain the suspended status of Mexican gray wolf recovery planning have met with a skeptical response from the recovery team itself. Just over a year after FWS's May 2012 suspension of the recovery planning process, several members of the Stakeholder Subgroup of the Mexican Wolf Recovery Team wrote a letter to the FWS Southwest Regional Director regarding the ongoing delay in recovery planning. They stated their "understanding that the science subteam has continued to meet, has completed an exhaustive amount of modeling, and has now prepared a third draft of the recovery plan." Letter from Eva Lee Sargent, Ph.D., Dir., Southwest Program, Defenders of Wildlife, et al., to Benjamin Tuggle, Ph.D., Regional Dir., Southwest Region, U.S. Fish & Wildlife Serv. (July 23, 2013). The members requested that a meeting be scheduled where the Science and Planning Subgroup could provide "a full and complete briefing ... on their work." Id.

70. FWS responded with a letter in September 2013 stating that, in effect, another meeting was not possible in the near-term because the science subgroup was

“currently finalizing Vortex [modeling] simulations to support recovery criteria and the modeling appendix to the draft recovery plan.” Letter from Joy E. Nicholopoulos, Acting Regional Dir., U.S. Fish & Wildlife Serv., to Eva Lee Sargent, Ph.D., Dir., Southwest Program, Defenders of Wildlife (Sept. 11, 2013). Upon seeing this letter, however, one of the Science and Planning Subgroup members expressed “surprise ... [at] the Service’s recent response ... to Dr. Sargent’s query about the status of Mexican wolf recovery planning.” Email from Mike Phillips, to Sherry Barrett et al. (Sept. 15, 2013).

According to Science and Planning Subgroup member Michael Phillips, a prominent wolf biologist, the Science and Planning Subgroup had “been ready since immediately following the Director’s briefing in March [2013] to complete work to finalize our recommendations to the Service concerning recovery criteria and recovery region.” Id. Nevertheless, FWS has not scheduled the meeting requested by the stakeholder subgroup members or otherwise moved forward with completion of the suspended recovery planning process. In short, recovery planning for the Mexican gray wolf appears to be indefinitely suspended.

2013 PROPOSED RULES

71. Although FWS has not acted on the Science and Planning Subgroup’s apparent willingness and readiness to finalize its recommendations for Mexican gray wolf recovery planning, the agency recently has advanced other administrative actions concerning Mexican gray wolf management. However, such actions have lacked the guidance that would be provided by a scientifically grounded, legally compliant recovery plan. Accordingly, while offering some prospect of improvement over the status quo,

FWS's proposed actions still fail to take the essential steps needed to facilitate Mexican gray wolf recovery and in some respects would continue to institutionalize or even exacerbate management shortcomings that have hindered Mexican gray wolf recovery to date. Again, the lack of a valid recovery plan is at the root of these problems.

72. Specifically, FWS recently moved forward with a proposed rulemaking to revise the existing nonessential experimental population designation of the Mexican gray wolf and several provisions of the associated 10(j) rule. See generally 78 Fed. Reg. 35,719 (June 13, 2013); 79 Fed. Reg. 43,358 (July 25, 2014). On June 13, 2013, FWS issued two proposed rules relating to gray wolves' status under the ESA. In the first rule, FWS proposed to "remove the gray wolf from the List of Endangered and Threatened Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies." 78 Fed. Reg. at 35,664. In coordination with this proposed rule, FWS issued a second proposed rule that would "revise the existing nonessential experimental population designation of the Mexican gray wolf (Canis lupus baileyi) under section 10(j) of the Endangered Species Act of 1973" and revise, in several respects, the section 10(j) rule itself. 78 Fed. Reg. at 35,719. In response to public comments received on the draft rule and a Preliminary Draft EIS, FWS released a revised proposed rule on July 25, 2014. See generally 79 Fed. Reg. 43,358. In these rulemaking proposals, FWS concluded that it had to modify the 10(j) rule to "help [the agency] enhance the growth, stability, and success of the nonessential experimental population." Id. at 43,359.

73. However, despite the recommendations to the contrary by FWS's own hand-picked Science and Planning Subgroup, FWS in these rules again proposed

restrictions that would prohibit Mexican gray wolves from establishing a metapopulation—an essential element of Mexican gray wolf recovery. Specifically, FWS proposed to remove any Mexican gray wolf “that can be identified as coming from the experimental population that disperse[s] to establish territories in the areas outside the MWEPA”—including, significantly, any wolves that may attempt to disperse north of Interstate 40. DEIS, Ch. 1, at 31. Such wolves would be maintained in captivity, translocated to suitable habitat within the MWEPA, or transferred to Mexico. This restriction threatens to preclude wolves in the Blue Range population from ever naturally establishing other populations, or connecting with other Mexican gray wolf populations should they be established.

74. The Science and Planning Subgroup specifically identified two regions—the Grand Canyon ecoregion and northern New Mexico/southern Colorado—as having sufficient habitat to host the necessary two additional core populations that would be required to recover the Mexican gray wolf. FWS’s proposed restriction on wolf dispersal north of I-40 would both prevent natural recolonization of and dispersal among populations in these areas. By including this provision, the new rule would preclude the establishment of a metapopulation and actively prevent Mexican gray wolves from recovering.

75. Furthermore, the proposed rule would remove protections from wolves traveling north from Mexico, which currently are protected as fully endangered and not experimental. That provision in the proposed rule, and the absence of mandatory proactive measures to prevent depredations in the region, will likely result in

management actions blocking connectivity between the BRWRA experimental wolf population and the nascent and vulnerable Mexican gray wolf population in Mexico.

76. While FWS has acknowledged that a metapopulation is critical for recovery and stated that consideration of a metapopulation will be part of the recovery planning process, that process has been indefinitely suspended for three years with no signs of resumption; in the meantime, the Service proposes to continue active obstruction of metapopulation establishment.

77. FWS also proposes in the new rule to liberalize the agency's already-too-lenient regulatory provisions authorizing take of reintroduced Mexican gray wolves. As explained above, even the current level of take has contributed to the ongoing "risk of failure" of the reintroduction program. Further, such take is often conducted without due regard for the genetic significance of the individuals taken—something the reintroduced population can ill afford.

78. To justify liberalizing the take authorization, FWS's proposed rule relied on the same faulty reasoning the agency relied upon in designating the population as nonessential experimental in the first instance—namely, that the agency "expect[s] that modifying the provisions governing the take of Mexican wolves will reduce the likelihood of indiscriminate, illegal killing of wolves and will substantially lessen the overall risk of human caused wolf mortality." Mexican Wolf Recovery Program, Southwestern Reg'l Office, U.S. Fish & Wildlife Serv., Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) and the Implementation of a Management Plan, Preliminary

Draft, Chapter 1 and 2 35 (Aug. 2, 2013). However, as the past sixteen years of the Mexican gray wolf reintroduction program have demonstrated, liberal take rules have not prevented excessive illegal mortality or enhanced Mexican gray wolf recovery in the wild. To the contrary, illegal killing has been the single largest source of mortality for the reintroduced Mexican gray wolf population, in some years resulting in population declines of 10% or more. Further, recent research suggests that FWS has its logic backward, and that broad public authorizations for lethal control of predators, including wolves, is linked to reduced public tolerance for those predators on the landscape.

79. In sum, FWS is proceeding with the pending ESA section 10(j) rulemaking—a rulemaking whose effects will likely persist for years, if not decades—without any of the guidance that a scientifically accurate and legally valid recovery plan would provide. FWS is doing so despite its own acknowledgement that a legally valid recovery plan should “provide the foundation for a revision to the 10(j) rule, both in terms of boundaries and management.” Letter from Benjamin Tuggle, Regional Dir., Southwest Region, U.S. Fish & Wildlife Serv., to Robert R. Woodhouse, Chairman, Ariz. Game & Fish Comm’n (Dec. 9, 2011). Further, FWS has had numerous opportunities to complete a valid recovery plan in advance of the ongoing 10(j) rulemaking, including most recently when FWS indefinitely suspended recovery planning in 2012. Lacking such a foundation, FWS proposes to continue erecting barriers (e.g., precluding the establishment of a metapopulation and allowing excessive take) that will impede the full recovery of the reintroduced Mexican gray wolf population that the Endangered Species Act requires. By crafting rules that will direct Mexican gray wolf management for the

foreseeable future before completing a valid recovery plan that would provide the necessary scientific blueprint for any such measures, FWS has put the cart before the horse and fundamentally frustrated the statutory scheme for species recovery established by Congress in the ESA.

FIRST CAUSE OF ACTION
(Violation of Endangered Species Act § 4(f), 16 U.S.C. § 1533(f))

80. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 79.

81. The ESA mandates that “[t]he Secretary shall develop and implement [recovery] plans ... for the conservation and survival of endangered and threatened species ... unless he finds that such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f)(1).

82. Each recovery plan must include, to the maximum amount practicable, “objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list.” Id. § 1533(f)(1)(B)(ii).

83. FWS prepared a document styled as a “Recovery Plan” for the Mexican gray wolf in 1982. However, this interim document—which “did not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the Act”—was intended to provide guidance only through September 30, 1984. 78 Fed. Reg. at 35,726. The only substantive guidance provided by this document was to establish a captive breeding program and “a viable, self-sustaining population of at least 100 Mexican wolves.” 1982 “Recovery Plan” document, at 23.

84. Despite the incomplete and invalid nature of the 1982 document, FWS

continues to rely on it to guide the agency's Mexican gray wolf reintroduction and recovery efforts. FWS does so despite the agency's admission that "a single experimental population of Mexican wolves is inadequate for recovery" and that even a population of 100 wolves—the stopgap objective established in the 1982 document—would leave the subspecies "in danger of extinction." DEIS, Ch. 1, at 17; 78 Fed. Reg. at 35,695.

85. FWS has not made an ESA section 4(f) finding that a legally compliant recovery plan would not promote the conservation of the Mexican gray wolf. To the contrary, FWS "continues to acknowledge the need to develop objective and measurable recovery criteria in a revised recovery plan" for the subspecies. 2010 Conservation Assessment, at 109. See also id. at 10 ("failure to develop an up-to-date recovery plan results in inadequate guidance for the reintroduction and recovery effort."); id. at 31 ("Objective and measurable recovery criteria are still needed to provide context for the subspecific Mexican wolf reintroduction and recovery effort within remaining gray wolf listed range"). The agency has also found that "[t]hreats hindering the biological progress of the [reintroduced Mexican gray wolf] population and success of the recovery program include ... lack of an up-to-date recovery plan." Id. at 78. The longer that this threat persists, "the greater the challenges for recovery, particularly as related to genetic fitness and long-term adaptive potential of the [Mexican gray wolf] population." Id.

86. FWS has declared that "it is time to shift the focus of the [Mexican gray wolf] recovery program ... toward pursuit of full recovery." Id. at 79. Yet the agency has failed to take the first step required to live up to this hortatory pronouncement—

preparation of a scientific blueprint for full recovery. The preparation and implementation of a scientifically sound, legally valid recovery plan would promote the conservation and full recovery of the Mexican gray wolf. Conversely, FWS's continued failure to develop a scientifically sound, legally compliant recovery plan threatens to affirmatively impede the conservation and full recovery of the Mexican gray wolf by failing to correct ongoing inadequate management practices and by facilitating FWS's efforts to alter Mexican gray wolf management in a manner that would continue to preclude essential recovery measures that have been identified by FWS's own scientific recovery teams. FWS's action in three times initiating a recovery planning process but each time terminating that process before completing a statutorily required plan demonstrates that judicial action is needed to effectuate compliance with the congressional mandate set forth in the ESA.

87. FWS's refusal to develop and implement a scientifically grounded and legally valid recovery plan for the Mexican gray wolf violates the plain requirements of Section 4(f) of the ESA, 16 U.S.C. § 1533(f).

SECOND CAUSE OF ACTION
(Agency Action Unlawfully Delayed or Unreasonably Withheld Under
Administrative Procedure Act, 5 U.S.C. § 706(1))

88. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 87.

89. Under the APA, a reviewing court has the authority to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

90. Completion of a recovery plan for the Mexican gray wolf under the ESA constitutes a discrete action that FWS is required to take pursuant to 16 U.S.C. § 1533(f).

91. Agency policy provides that FWS should complete a final recovery plan within two and half years of a species' listing under the ESA.

92. Thirty-eight years after the Mexican gray wolf's listing under the ESA and 32 years after a temporary, incomplete "Recovery Plan" document was drafted, FWS has failed to produce a legally compliant recovery plan for the Mexican gray wolf, which is one of the most endangered mammals in North America.

93. Despite the production of several nearly complete draft recovery plans by three separate recovery teams, FWS has failed to finalize and issue a legitimate recovery plan for the subspecies.

94. This delay is unlawful and unreasonable because FWS is not operating under a legally valid recovery plan and has not determined that such a plan would not promote the conservation of the Mexican gray wolf. To the contrary, FWS has repeatedly acknowledged that a scientifically grounded, legally valid recovery plan would promote the conservation of the Mexican gray wolf subspecies, and that the lack of such a plan threatens recovery.

95. This delay is further unlawful and unreasonable given the dire genetic circumstances facing the Mexican gray wolf, the closing window of opportunity to address those genetic circumstances through necessary recovery actions, and the ready availability of scientific information that would, were it implemented via a valid recovery plan, foster Mexican gray wolf recovery.

96. This delay is also unlawful and unreasonable given FWS's continued reliance on the incomplete and expired 1982 "Recovery Plan" document in its recently

proposed revision to the 10(j) rule for the Mexican gray wolf. Without the guidance that a scientifically grounded and legally valid recovery plan would provide, FWS's proposed rulemaking includes measures that would impede full recovery of the Mexican gray wolf subspecies.

97. Finally, this delay is unlawful and unreasonable because FWS's own conduct demonstrates that the agency has had sufficient time and resources available to conduct recovery planning for the Mexican gray wolf and that recovery planning could be expeditiously completed. FWS has three times initiated such recovery planning but has never yet completed a scientifically grounded and legally compliant recovery plan, despite having received a draft recovery plan in 2012 from the Science and Planning Subgroup of the agency's own Mexican Wolf Recovery Team. FWS has not offered a rational reason for its failure to complete the recovery planning process.

98. FWS's continued failure to prepare a legally sufficient recovery plan constitutes "agency action unlawfully withheld or unreasonably delayed" under the Administrative Procedure Act ("APA"). 5 U.S.C. § 706(1).

REQUEST FOR RELIEF

THEREFORE, Plaintiffs respectfully requests that this Court:

1. Declare FWS in violation of ESA § 4(f), 16 U.S.C. § 1533(f), and the APA, 5 U.S.C. § 706(1);
2. Order FWS to prepare and implement a scientifically based, legally valid recovery plan for the Mexican gray wolf, with a draft plan required within six months of the Court's judgment, and a final recovery plan required within six months thereafter;

3. Retain continuing jurisdiction over this matter until FWS fully remedies the violations of law identified herein;

4. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation, pursuant to 16 U.S.C. § 1540(g) and/or 28 U.S.C. § 2412(d); and

5. Grant Plaintiffs such additional relief as the Court may deem just and proper.

DATED this 11th day of November, 2014,

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