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Attorneys for Federal Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

DEFENDERS OF WILDLIFE, NATURAL
RESOURCES DEFENSE COUNCIL,
SIERRA CLUB, HUMANE SOCIETY OF THE
UNITED STATES, CENTER FOR BIOLOGICAL
DIVERSITY, JACKSON HOLE
CONSERVATION ALLIANCE, FRIENDS OF
THE CLEARWATER, ALLIANCE FOR THE
WILD ROCKIES, OREGON WILD, CASCADIA
WILDLANDS PROJECT, WESTERN
WATERSHEDS PROJECT, and WILDLANDS
PROJECT,

Plaintiffs,

v.

H. DALE HALL, U.S. Fish and Wildlife Service
Director; DIRK KEMPTHORNE, Secretary of the
Interior; and the UNITED STATES FISH AND
WILDLIFE SERVICE,

Defendants,

and

Case No. cv-08-56-M-DWM

**FEDERAL DEFENDANTS' MOTION
FOR VOLUNTARY REMAND AND
VACATUR**

SAFARI CLUB INTERNATIONAL; SAFARI)
CLUB INTERNATIONAL FOUNDATION;)
THE NATIONAL RIFLE ASSOCIATION OF)
AMERICA; STATE OF MONTANA; MONTANA)
DEPARTMENT OF FISH, WILDLIFE, AND)
PARKS; STATE OF IDAHO; GOVERNOR C.L.)
"BUTCH" OTTER; IDAHO FISH AND GAME)
COMMISSION; IDAHO DEPARTMENT OF)
FISH AND GAME; IDAHO OFFICE OF SPECIES)
CONSERVATION; STATE OF WYOMING;)
SPORTSMEN FOR FISH AND WILDLIFE;)
MONTANA STOCKGROWERS ASSOCIATION,)
INC.; MONTANA FARM BUREAU)
FEDERATION; WESTERN MONTANA FISH)
AND GAME ASSOCIATION, INC.; MONTANA)
SHOOTING SPORTS ASSOCIATION, INC.;)
FRIENDS OF THE NORTHERN)
YELLOWSTONE ELK HERD; WYOMING)
STOCK GROWERS ASSOCIATION, INC.,)

Defendant-Intervenors.)

Federal Defendants H. Dale Hall, Dirk Kempthorne, and the United States Fish and Wildlife Service ("USFWS") (collectively "Defendants") hereby move the Court for a voluntary remand and vacatur of the *Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife*, 73 Fed. Reg. 10514 (Feb. 27, 2008) ("Final Rule"), in order to reconsider the rulemaking in light of the Court's July 18, 2008 opinion and order granting Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 104). As explained fully in the accompanying memorandum, the ability to remand and vacate the Final Rule lies well within the Court's equitable powers. Vacatur of the Final Rule would return northern Rocky Mountain gray wolves to the *status quo* before the Final Rule went into effect, thereby placing wolves back on the list of endangered and threatened species. On remand, the USFWS intends to conduct further rulemaking and render new determinations regarding the appropriate designation and status of gray wolves in the northern Rocky Mountains.

Pursuant to Local Civil Rule 7.1(j)(1), the undersigned counsel has conferred with counsel for all parties on Federal Defendants' Motion for Voluntary Remand and Vacatur and has been

authorized to represent the parties' positions on the motion as follows:

- Plaintiffs do not oppose the motion.
- Defendant-Intervenors State of Montana and Montana Department of Fish, Wildlife and Parks support the motion.
- Defendant-Intervenors State of Idaho, Governor C.L. "Butch" Otter, Idaho Fish and Game Commission, Idaho Department of Fish and Game, and Idaho Office of Species Conservation take no position on the motion.
- Defendant-Intervenor State of Wyoming takes no position on the motion until it has the opportunity to review the filing.
- Defendant-Intervenors Safari Club International, Safari Club International Foundation, and the National Rifle Association of America take no position on the motion at this time.
- Defendant-Intervenors Montana Stockgrowers Association, Inc.; Montana Farm Bureau Federation; Western Montana Fish and Game Association, Inc.; Montana Shooting Sports Association, Inc.; Friends of the Northern Yellowstone Elk Herd; and Wyoming Stockgrowers Association, Inc., take no position on the motion until they have the opportunity to review the filing.
- Defendant-Intervenor Sportsmen for Fish and Wildlife takes no position on the motion at this time.

Accordingly, for the reasons set forth in the accompanying memorandum, Defendants ask that the Court grant their Motion for Voluntary Remand and Vacatur.

Respectfully submitted this 22nd day of September, 2008,

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YELLOWSTONE ELK HERD; WYOMING
STOCK GROWERS ASSOCIATION, INC.,

Defendant-Intervenors.

Case No. cv-08-56-M-DWM

**[PROPOSED] ORDER GRANTING
FEDERAL DEFENDANTS' MOTION
FOR VOLUNTARY REMAND AND
VACATUR**

This Court, having reviewed Federal Defendants' Motion for Voluntary Remand and Vacatur and any opposition thereto, hereby GRANTS the Motion and ORDERS as follows:

(1) The *Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife*, 73 Fed. Reg. 10514 (Feb. 27, 2008) ("Final Rule") is hereby remanded to the United States Fish and Wildlife Service;

(2) The Final Rule is hereby vacated; and

(3) The northern Rocky Mountain gray wolf is returned to the list of endangered and threatened species with each of its component populations having the same status under the Endangered Species Act as that population had prior to the issuance of the Final Rule.

Dated _____, 2008

DONALD W. MOLLOY, District Judge
United States District Court