

NO. 03-35478

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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WESTERN WATERSHEDS PROJECT;  
IDAHO CONSERVATION LEAGUE,

Plaintiffs/Appellees,

v.

SAWTOOTH NATIONAL FOREST; BILL LEVERE,  
Sawtooth National Forest Supervisor; UNITED STATES FOREST SERVICE;  
UNITED STATES FISH AND WILDLIFE SERVICE,

Defendants/Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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**BRIEF *AMICUS CURIAE* OF STATE OF IDAHO  
IN SUPPORT OF FEDERAL APPELLANTS**

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## I. INTEREST OF *AMICUS CURIAE* STATE OF IDAHO

In 1994, the United States Fish and Wildlife Service (“USFWS”) promulgated rules governing the reintroduction of wolves into Idaho. *Establishment of a Nonessential Experimental Population of Gray Wolves*, Final Rule, 59 Fed. Reg. 60,266 (Nov. 22, 1994) (codified at 50 C.F.R. § 17.84(i) (2002)). The Reintroduction Regulations designated wolves as a special nonessential experimental population to allow “flexible management practices by agencies and the public to resolve potential conflicts” between wolves, humans and livestock. *Id.* at 60,268. The regulations, carefully crafted with input from states, tribes, and the public, determined that wolf-livestock conflicts were to be resolved by removing problem wolves rather than removing livestock from public lands. The USFWS specifically found that “[n]o changes from the standard livestock grazing practices already being used on federal grazing leases are envisioned.” *Id.* at 60,277.

In the present case, Appellees Western Watersheds Project and the Idaho Conservation League (“WWP”) have brought suit against the United States Forest Service (“Forest Service”) for failure to conduct a substantial impairment evaluation under the Sawtooth National Recreation Area (“SNRA”) Organic Act and for failure to conduct a NEPA analysis in a timely manner on grazing allotments within the SNRA. WWP injunctive relief, the closure of eight Forest

Service grazing allotments within the SNRA. The district court granted WWP's request for an injunction but instead of granting the remedy requested, prohibited a non-party, the USFWS from enforcing the Reintroduction Regulations on federally-managed land within the SNRA during 2002. The injunction was renewed for the 2003 grazing season and was extended to privately-owned land within the SNRA.<sup>1</sup>

The State of Idaho is especially interested in issues relating to the resolution of wolf-livestock conflicts, since the State is slated to assume responsibility for wolf management upon the delisting of the reintroduced wolf populations.<sup>2</sup> The district court's curtailment of wolf management options, for Forest Service

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<sup>1</sup>The pending expiration of the current injunction on November 1, 2003, does not render this appeal moot. The Forest Service has been ordered to complete NEPA and Organic Act compliance for the allotments in group 2 before the 2004 grazing season and for group 3 before the 2005 grazing season. ER20, at 7. The district court has joined the USFWS and has shown its willingness to grant injunctions prohibiting the USFWS from enforcing its regulations. Thus, the mootness exception is applicable because the act of issuing additional injunctions is "capable of repetition, yet evading review" until the Forest Service completes its compliance for all of the SNRA allotments. *See Spencer v. Kemna*, 523 U.S. 1, 17 (1998).

<sup>2</sup> The notice of proposed rulemaking for the delisting of the nonessential experimental population of wolves notes that the "State of Idaho has already completed its gray wolf management plan" and that once Montana and Wyoming have completed their plans, the USFWS would be able to propose the delisting of wolves. *Removing the Western Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife*, Advance Notice of Proposed Rulemaking, 68 Fed. Reg. 15,879, 15,881 (Apr. 1, 2003). In addition, during the 2003 Idaho Legislative Session, the legislature provided the statutory mechanism for the transition from federal management of wolves to state management. 2003 Sess. Laws 302 (Idaho 57th Leg.) (codified at Idaho Code § 36-715).

procedural violations, will potentially affect future state management of wolf populations. The State also has a specific interest in wolf management within the SNRA. As an owner of grazing lands within the SNRA, the State is directly impacted by the injunctions that have been extended to wolf depredations on private lands. Finally, the State has a strong interest in supporting economic stability in Idaho's rural areas, especially those where wolves have migrated. The livestock industry is an integral component of Idaho's rural economies and has suffered due to the reintroduction of wolves. The Reintroduction Regulations have provided certainty for the livestock industry by setting forth specific regulations for the resolution of wolf-livestock conflicts. Such certainty has been placed at risk by the district court's decisions. The growing uncertainty of how wolf-livestock conflicts will be managed is likely to result in a growing antagonism to the reintroduction program.

## **II. STATEMENT OF THE CASE**

In 2001, WWP filed its Complaint naming the Sawtooth National Forest, the forest supervisor of the Sawtooth National Forest and the Forest Service as Defendants. Even though the Complaint focused on wolf-livestock conflicts and the resulting lethal control and removal of wolves from the SNRA, WWP did not allege any violations by the USFWS or that the Reintroduction Regulations

violated the law.<sup>3</sup> In fact, the Complaint alleged that the Defendant Forest Service was violating the law by not evaluating whether livestock grazing in the SNRA was causing substantial impairment of wolves and by the Forest Service's failure to complete NEPA in a timely manner. ER1, at 10-13. The relief requested by WWP was for the Forest Service to comply with the law. *Id.* at 14. On June 25, 2002, WWP moved for "immediate interim relief to close eight (8) SNRA allotments in order to prevent further impairment of wolves in violation of the SNRA Organic Act." Pls.' Mot. Interim Relief at 3.

The district court did not grant the request for a grazing prohibition on Forest Service grazing allotments. Instead, the district court enjoined the USFWS from enforcing the Reintroduction Regulations on federally-managed lands, even though WWP had not suffered injury from any USFWS actions. Specifically, USFWS was prohibited from lethal take or relocation of wolves. ER23, at 2. The district court clarified on April 2, 2003 that the injunction was extended to prohibiting the USFWS from enforcing the Reintroduction Regulations on privately-owned land. ER20, at 4. The district court erred in all of these decisions.

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<sup>3</sup> The time for challenging the 1994 Reintroduction Regulations has long since passed. In addition, it is unlikely that Plaintiff Idaho Conservation League would have challenged the Reintroduction Regulations since they are on record as supporting them. See *Wyoming Farm Bureau Fed'n v. Babbitt*, 199 F.3d 1224, 1229 (10th Cir. 2000). The Reintroduction Regulations clearly state that when there is a conflict between livestock and wolves, wolves are to be removed.

This Court should reverse the injunctive decisions that prohibit USFWS from enforcing the Reintroduction Regulations.

### III. SUMMARY OF ARGUMENT

The district court stated that it had not “addressed the ‘propriety of the Wolf Control Rules.’” ER16, at 2. The district court in fact addressed the propriety of the Reintroduction Regulations because it found, in essence, that the regulations were causing harm to wolves. By granting WWP’s request for an injunction, the district court had to make a finding that wolves and/or WWP members were likely to suffer irreparable harm from the Reintroduction Regulations. The Reintroduction Regulations do allow lethal control and relocation of problem wolves, but this is not considered harm under the USFWS regulations. The district court abused its discretion by preliminarily enjoining *unchallenged* and *unchallengeable* regulations.

The Reintroduction Regulations were implemented in 1994 and prior to their implementation received exhaustive review through a Congressionally-mandated Environmental Impact Statement (“EIS”) process. After the review, the USFWS found that overall conservation of wolves was best promoted by reducing conflicts between wolves and humans. To that end, it struck a careful balance that allowed wolves to be controlled or relocated in the event of wolf-livestock conflicts. Thus,

control or relocation cannot be deemed “harm” for purposes of a preliminary injunction analysis.

WWP also cannot meet its burden of demonstrating that the balance of hardships tip in its favor. Although individual wolves have been controlled or moved, the population as a whole has recovered. On the other side of the equation, ranchers may suffer additional depredations by wolves because the preliminary injunction prohibits USWFS from enforcing the Reintroduction Regulations. The district court also failed to factor in the public interest. The State of Idaho and its citizens allowed reintroduction to occur based upon assurances from the federal government, through the reintroduction rule, that the conflict between wolves and livestock would be managed. Almost nine years of understanding and reliance on the Reintroduction Regulations by the State of Idaho and its citizens has been undermined by the preliminary injunction.

Finally, it was an error to extend the enforcement exclusion to private land. The regulations governing private land within the SNRA focus on how development of structures might impact SNRA values, not on how grazing on private land will impact values. Even if there were an argument that grazing on private land would impact wildlife values, wolves did not inhabit the SNRA in 1972 so were not within the scope of values that Congress envisioned when it passed the SNRA Organic Act.

#### IV. ARGUMENT

##### A. **WWP IS NOT ENTITLED TO A PRELIMINARY INJUNCTION BECAUSE IT HAS NOT MET ITS BURDEN OF SHOWING HARM, THAT THE BURDEN OF HARDSHIPS TIP IN ITS FAVOR, OR THAT PUBLIC INTEREST FACTORS WEIGH IN ITS FAVOR.**

In order for WWP to be granted a preliminary injunction, it must demonstrate either ““(1) a combination of probable success on the merits and the possibility of irreparable harm; or (2) that serious questions are raised and the balance of hardships tips in [its] favor.”” *Brown v. California Dept. of Transp.*, 321 F.3d 1217, 1221 (9th Cir. 2003) (quoting *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001)). These two alternatives ““are not separate tests but the outer reaches of a single continuum.”” *Stuhlberg Int’l Sales Co., Inc. v. Brush*, 240 F.3d 832, 840 (9th Cir. 2001) (quoting *International Jensen, Inc. v. Metrosound U.S.A.*, 4 F.3d 819, 822 (9th Cir. 1993)). This Court has made clear that under either of the alternatives “the district court must consider the public interest as a factor in balancing the hardships when the public interest may be affected.” *Caribbean Marine Serv. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citations omitted).

##### 1. **USFWS Enforcement of the Reintroduction Regulations Is Not Harm; The District Court Therefore Abused its Discretion in Granting the Injunction.**

The grant of a preliminary injunction requires *a combination* of success on the merits and the possibility of irreparable harm. While the district court ruled in

favor of WWP on two of its claims,<sup>4</sup> for the reasons stated in the Federal Appellants' Opening Brief, WWP is unlikely to succeed before this Court. Assuming *arguendo* that WWP has a possibility of success on the merits, it must still demonstrate "a minimal showing of harm to justify the preliminary injunction" for the 2003 grazing season. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1124 (9th Cir. 2002). WWP did not and cannot make this showing of harm.

WWP states that it has shown that "substantial impairment' of wolves has occurred, and is continuing, on the SNRA due to wolf-livestock conflicts and [USFWS] 'control' actions." Pls.' Reply Br. Supp. Mot. Interim Relief at 1, CR69. Further, WWP states that "numerous wolf depredations of livestock have occurred, leading directly to wolf control actions that have substantially impaired wolf populations on the SNRA." *Id.* at 2. WWP is in essence arguing that a preliminary injunction should be granted because USFWS enforcement of the Reintroduction Regulations is harming wolves. This is an incorrect interpretation of "harm." The USFWS, with authority under the ESA, has determined that the lethal control measures or the relocation of individual problem wolves is not harm as long as the population is recovering.

The ESA was passed in 1973 for the purpose of conserving endangered and

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<sup>4</sup> It is important to note that the district court ruled that the Forest Service had violated procedure. WWP had no claims against the USFWS nor alleged that the USFWS was in violation of any law or regulation, but the injunction was issued against USFWS.

threatened species. 16 U.S.C. § 1531(b) (2000). Conserving means “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” *Id.* § 1532(3). Reintroduction was such a measure but it was used sparingly because of public opposition to potential land-use restrictions. S. Rep. No. 97-418, at 32 (1982) (Letter from J. Craig Potter, Acting Assistant Secretary of Interior, to Robert T. Stafford, Chairman, Sen. Com. On Env't. & Public Works). To address the public’s concerns over reintroduction, Congress added section 10(j) to the ESA in 1982 which provided the statutory framework for the introduction of experimental populations. 16 U.S.C. § 1539(j). The standard for threatened species was to be applied to the conservation of experimental populations and the regulations were to be promulgated under section 4(d) of the ESA. *See id.* § 1533(d).

In preparation for the Reintroduction Regulations, the USFWS went through an exhaustive process in determining the standards for wolf reintroduction. At Congressional direction, the “[USFWS] Service formed and funded an interagency team to prepare the [Wolf Reintroduction] EIS. The team participants were the National Park Service; Forest Service; States of Wyoming, Idaho, and Montana; USDA Animal Damage Control; and Wind River and Nez Perce Tribes. 59 Fed. Reg. at 60,268. In addition to the interagency team, 34 scoping issue sessions

attended by 1,800 people were held to determine the issues to be addressed in the EIS. *Id.* An additional 30 sessions, attended by 2,000 people were held and “5,000 comments were received on methods for managing reintroduced wolves.” *Id.* Over 160,200 comments were received on the draft EIS. *Id.*

During the EIS process, USFWS considered and rejected other alternatives that would have been more restrictive regarding lethal control and the relocation of wolves. For example, Alternative 2, natural recovery of wolves, was rejected because “[n]o action means that less management flexibility will be available to resolve local concerns about livestock depredations, predation on big game herds and potential loss of hunting opportunity, and land use restrictions on public land.” ER5, at 4. Alternative 5 was also rejected, even though it would have resulted “in fewer wolves being killed.” *Id.* at 5. The Record of Decision (“ROD”) states that “[a]ll efforts to minimize harm were undertaken in the selected alternative.” *Id.* The ROD then goes on to explain how the selected alternative would minimize harm to livestock, big game, impacts to private and public land use, local economies and grizzly bears. *Id.*

After the final EIS was signed, the USFWS published the reintroduction rules, held hearings, advertised in newspapers, and the final rule was published in 1994. 59 Fed. Reg. at 60,269. The preamble to the final rule explains that “selective removal [of problem wolves] contributes to overall conservation of the

species.” *Id.* at 60,276-77. Accordingly, the Reintroduction Regulations provide that livestock producers “legally using public land . . . may harass any wolf in an opportunistic manner . . . and noninjurious . . . manner at any time.” 50 C.F.R.

§ 17.84(i)(3)(i). Permittees on grazing allotments may be issued permits to kill or injure wolves that are found killing, wounding, or biting livestock. *Id.*

§ 17.84(i)(3)(ii). The Reintroduction Regulations do not authorize the USFWS to reduce livestock grazing in the reintroduction areas but instead specifically provide that conflicts between wolves and livestock are to be resolved by taking<sup>5</sup> or removing wolves. *Id.* § 17.84(i)(3)(vii).

The record is clear that lethal control or relocation of wolves received exhaustive review. The USFWS, the agency with the authority to manage wolf-livestock conflicts, determined that relocation or lethal control under the Reintroduction Regulations is not considered harm or injury, but rather promotes the overall conservation of wolves. WWP therefore cannot demonstrate the minimal level of harm necessary to obtain a preliminary injunction.

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<sup>5</sup> Prior to six or more breeding pairs, “[a]uthorized take includes, but is not limited to non-lethal measures such as: aversive conditioning, nonlethal control, and/or translocating wolves. . . . When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized.” 50 C.F.R. § 17.84(i)(3)(vii). By granting the preliminary injunction prohibiting relocation or lethal take of wolves, the district court has changed the Reintroduction Regulations and improperly substituted its judgment for that of the agency.

**2. Because the Balance of Hardships Does Not Tip in WWP's Favor, the District Court Abused Its Discretion in Granting the Preliminary Injunction.**

WWP fails to demonstrate the balance of hardships tip in its favor when successful recovery of wolves is analyzed in conjunction with the hardships suffered not only by livestock owners, but by the overall wolf population. One of WWP's members stated that he and "other WWP members whom I know well, are deeply involved and interested in the recovery of wolves in central Idaho, and in the return of wolves to the SNRA. My interests, and those of other WWP members, have been harmed and injured by the constant killing of wolves." Marvel Decl. ¶ 12, CR72. Mr. Marvel's statement, however, fails to appreciate that immediate removal of problem wolves "reduces the opportunity for other wolves to feed on or learn to depredate on livestock," thereby "reduc[ing] the total number of wolves that might be taken in response to livestock depredations." 59 Fed. Reg. at 60,277. Thus, the control measures in the Reintroduction Regulations promote, rather than hinder, the recovery of wolf populations,<sup>6</sup> as demonstrated by USFWS' current review of state management plans as part of the

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<sup>6</sup> From January to December of 2002, USFWS estimated 263 wolves were living in the state of Idaho. USFWS, Rocky Mountain Wolf Recovery 2002 Annual Report, at 22.

delisting evaluation.<sup>7</sup> USFWS, Weekly Gray Wolf Recovery Status Report, 8/22-8/28/2003, at <http://www.wolfcenter.org>. WWP's myopic focus on individual wolves loses sight of the fact that the successful recovery of wolves requires the removal of problem wolves--the very activity which WWP now asserts is causing them harm. WWP cannot claim the balance of hardships tip in its favor when the recovery of wolves has taken place in conjunction with the enforcement of the Reintroduction Regulations.

Livestock owners, on the other hand, do have the balance of hardships tipping in their favor. The Wolf Recovery Coordinator asserts that the potential for wolf depredations on livestock is high, especially because of requirements to feed wolf pups. ER22, at 2, 4, 5. He also asserts that non-lethal techniques have limited effectiveness and once the wolves become habituated to the techniques, the wolves begin their livestock depredations again. *Id.* at 8. WWP may argue that ranchers are compensated for their losses; however, a recent study reveals that "confirmed livestock losses may be a fraction of actual losses under some circumstances." ER22, at 1. In addition, while the impact on the livestock industry as a whole may not be great, "a few individual, small livestock producers can be greatly impacted." *Id.* at 22.

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<sup>7</sup> The USFWS website indicates that the wolf management plans for Idaho, Wyoming and Montana will be sent out in mid-September for peer review. The USFWS sees peer review as the next logical step in the delisting evaluation process.

Because WWP cannot demonstrate that the balance of hardships tip in its favor, the district court abused its discretion by issuing an injunction prohibiting the USFWS from enforcing the Wolf Reintroduction Regulations.

**3. The District Court Failed to Adequately Weigh the Public Interest When It Granted WWP's Request for a Preliminary Injunction.**

This Court has determined that if a preliminary injunction may affect the public interest, this factor should also be a part of the preliminary injunction analysis. *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). This factor is considered separately. *Id.* at 931. “‘The public interest inquiry primarily addresses impact on non-parties rather than parties.’ [Sammartano v. First Judicial Dist. Court, 303 F.3d 959, 974 (9th Cir. 2002).] It embodies the Supreme Court’s direction that ‘in exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.’” *Id.* at 931-32 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).

In the current case, the public interest is embodied in the Reintroduction Regulations’ carefully crafted bargain, in response to extensive public comment, that allowed wolves to be reintroduced and recovered while providing certainty to the states and private landowners as to how wolf livestock conflicts would be managed. When the final reintroduction rule was published, the accompanying

commentary stated that “public opinion surveys, public comments on wolf management planning, and the positions taken by elected local, State, and Federal government officials indicate that wolves should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by wolf recovery activities.” 59 Fed. Reg. at 60,270. The USFWS then noted that relocation and take of wolves responded to these concerns. *Id.*

The district court has disrupted the bargain between the public, the states, and USFWS. The redress provisions that address public concerns have essentially been removed because the USFWS can no longer relocate or control wolves. The injunction effectively erodes public support for the reintroduction program and puts the recovery of wolves at risk. It is not in the public interest to have the recovery of a species put at risk because of an injunction. It is also not in the public interest to have the public distrust federal agencies because the agencies cannot honor their lawfully-made commitments that are clearly stated in unchallenged regulations. The consideration of the public interest along with the lack of harm precludes granting of the preliminary injunction.

**B. THE DISTRICT COURT ERRED IN EXTENDING THE INJUNCTION TO PRIVATE LAND IN THE SNRA**

In addition to enjoining the USFWS from enforcing the Reintroduction Regulations on federally-managed land, the district court in its April 2, 2003 Memorandum Decision and Order extended the injunction to private lands within

the SNRA. ER20, at 4. The district court erred in extending the injunction to depredations by wolves on private land.

The rationale provided by the district court for extending the injunction to private land was that the Secretary of Agriculture drafted the regulations for use of private land within the SNRA<sup>8</sup> and that the use of private land could not detract from the SNRA values. The SNRA Organic Act was read too narrowly by the district court. The Organic Act, in keeping with the purpose of scenic values focuses on development of private property, not livestock grazing on private property.<sup>9</sup> Section 460aa-3, which governs private land, states:

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<sup>8</sup> Although the district court does not explicitly state that use of private land within the SNRA is equal to livestock grazing on private land, it is implicit from the context of the controversy regarding conflicts between livestock and wolves within the SNRA.

<sup>9</sup> That development and its impact on scenery were concerns is reflected in the Forest Service's preliminary guidelines for the proposed SNRA. "The Department's objectives agree substantially with the findings of a special interagency study of the Sawtooth area concluded in 1965 and with the views expressed by numerous citizens and organizations at subsequent public meetings. High in priority among these objectives are: the maintenance of the impressive scenic beauty and other recreational values of the area; the protection and enhancement of the Salmon River fisheries, especially the protection of the salmon spawning areas; and the avoidance of further extension of incompatible developments along public highways." Final Draft, *Preliminary Information and Guidelines to be Considered for Establishing Standards of Uses for Privately Owned Property Within the Proposed Sawtooth NRA Which Will Generally Further the Purposes of Such Recreation Area as Set Forth in H.R. 6957 and S. 1407*, Attached to Letter from Richard L. Harris, Assistant Regional Forester, to Challis and Sawtooth Forest Supervisors (Apr. 10, 1972) (on file with Idaho Attorney General).

The Secretary shall make and publish regulations setting *standards for the use, subdivision, and development of privately owned property* within the boundaries of the recreation area. Such regulations shall be generally in furtherance of the purposes of this subchapter and *shall have the object of assuring that the highest and best private use, subdivision, and development of such privately owned property* is consistent with the purposes of this subchapter and with the overall general plan of the recreation area. Such *regulations shall be as detailed and specific* as reasonably required to accomplish such objective and purpose. (Emphasis added.)

16 U.S.C. § 460aa-3.

The detailed and specific regulations for the SNRA, that private property owners within the SNRA have relied on, divide private land into five land-use categories: designated community, residential, commercial, agriculture and mineral. 36 C.F.R § 292.15(b). The regulations for agriculture focus on buildings, fences, roads and signs and specifically state: “*Only structures* which do not substantially impair or detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area and which are necessary for ranching or dude ranching” are allowed. *Id.* §292.16(g)(1). Agricultural practices are limited to “hay production and pasture and range grazing in a manner which does not degrade water quality or result in accelerated soil erosion.” *Id.* § 292.16(g)(11). The Organic Act and the regulations clearly address Congressional concerns by limiting structure development on private land that might detract from the SNRA values. Tellingly, neither the Organic Act nor the regulations connect grazing on private land to impairing wildlife values within the SNRA. Even if a connection

between grazing on private land and wildlife values can be construed through the SNRA Act and regulations, the wildlife values Congress envisioned did not include wolves. The SNRA was established in 1972 and the regulations for the SNRA were developed in 1974. Wolves did not inhabit the SNRA in either of those years,<sup>10</sup> thus Congress could not have intended that wolves were included in the wildlife values within the SNRA.

The SNRA Organic Act and subsequent rules clearly limit structure development on private land that might impair SNRA values. Grazing, on the other hand, is not limited as long as it does not degrade water or result in too much erosion. The district court erred in extending the injunction to private land because grazing on private land was not envisioned as conflicting with wolves.

## **V. CONCLUSION**

This Court should reverse the injunctions that prohibit the USFWS from enforcing the wolf Reintroduction Regulations on federally-managed and privately-held land in the SNRA.

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<sup>10</sup> Gray wolves were extirpated from the West by the 1930s. A few occasionally dispersed south into Idaho “but failed to survive long enough to reproduce.” USFWS, Rocky Mountain Wolf Recovery 2002 Annual Report, Helena, MT, 2003, at 1.

DATED this 9th day of September, 2003.

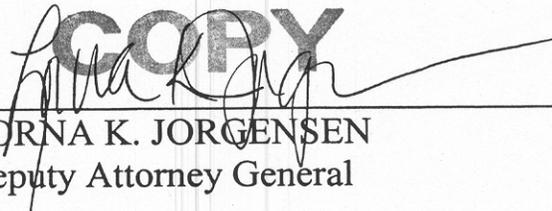
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A handwritten signature in black ink, appearing to read "Steven W. Strack". The signature is written over a large, semi-transparent watermark that says "COPY".

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STEVEN W. STRACK  
Deputy Attorney General

A handwritten signature in black ink, appearing to read "Lorna K. Jorgensen". The signature is written over a large, semi-transparent watermark that says "COPY".

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LORNA K. JORGENSEN  
Deputy Attorney General

**STATEMENT OF RELATED CASES**

Counsel for the **STATE OF IDAHO** is aware of no related cases pending in this Court.

A handwritten signature in black ink, appearing to read "Steven W. Strack", is written over a large, bold, black "COPY" watermark.

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STEVEN W. STRACK  
Deputy Attorney General

September 9, 2003

CERTIFICATE OF COMPLIANCE

PURSUANT TO CIRCUIT RULE 32-1

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\_\_\_\_\_  
STEVEN W. STRACK

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Brief *Amicus Curiae* Of State Of Idaho In Support Of Federal Appellants** were served on this 9th day of September, 2003, by U.S. mail, postage prepaid, on the following counsel of record:

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