

Lon J. Dale, Esq.  
Milodragovich, Dale, Steinbrenner  
& Nygren, P.C.  
P.O. Box 4947  
Missoula, MT 59806-4947  
(406) 728-1455/fax (406) 549-7077  
LON@bigskylawyers.com

Grant Parker, Esq.  
Rocky Mountain Elk Foundation  
5705 Grant Creek  
Missoula, MT 59808  
(406) 523-4524/fax (406) 523-0211  
grant@rmef.org

Attorneys for *Amicus Curiae* Rocky Mountain Elk Foundation

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DEFENDERS OF WILDLIFE, et al.)

Plaintiffs,

v.

KEN SALAZAR, et al.

Defendants.

GREATER YELLOWSTONE  
COALITION,

Plaintiff,

v.

KEN SALAZAR, et al.

Defendants.

Case No: CV-09-77-M-DWM

Case No: CV-09-82-M-DWM

(Consolidated)

ROCKY MOUNTAIN  
ELK FOUNDATION'S  
AMICUS CURIAE BRIEF IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	1
INTRODUCTION.....	3
ARGUMENT.....	10
I. THE GRAY WOLF IS NO LONGER AN ENDANGERED SPECIES ENTITLED TO PROTECTION UNDER THE ENDANGERED SPECIES ACT AND WOLVES SHOULD BE MANAGED BY THE APPROPRIATE STATE AGENCIES.....	10
A. Reintroduction Of The Gray Wolf Into The Northern Rocky Mountains Has Been Successful.....	10
1. The Gray Wolf Continues To Thrive In The Northern Rocky Mountains And Target Levels Set By The U.S. Fish & Wildlife Service Have Been Exceeded.....	10
2. The Current Northern Rocky Mountain Wolf Population Possesses The Requisite Genetic Diversity To Sustain The Population.....	12
3. Wolves Must Be Managed And Should Remain Delisted From The Endangered Species List.....	14
4. The Gray Wolf Is Not At Risk For Extinction.....	16
B. The Northern Rocky Mountain Elk Population Needs Effective State Management Of Wolves.....	17
1. Some Northern Rocky Mountain Elk Sub-Populations Have Been Impacted Since the Reintroduction And Expansion Of the Gray Wolf Population.....	17
2. Hunting Provides A Valid Wildlife Management Tool .....	18

C.    Wolf Management Protects Human Beings.....	19
II.    THE REQUESTED PRELIMINARY INJUNCTION SHOULD BE DENIED.....	21
CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE.....	25

## **TABLE OF AUTHORITIES**

### **Supreme Court Cases**

<i>Chevron, U.S.A., Inc. v. NRDC, Inc.</i> , 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).....	21
<i>Baldwin v. Montana Fish and Game Commission</i> , 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed. 2d 354 (1978).....	8
<i>Hughes v. Oklahoma</i> , 441 U.S. 322, 337, 99 S.Ct. 1727, 60 L.Ed. 2d 250 (1979).....	6-7
<i>National Cable &amp; Telecom. Assn. v. Brand X Internet S.</i> , 545 U.S. 967, 125 S.Ct. 2688 (2005).....	22

### **Federal District Court Cases**

<i>Ninilchik Traditional Council v. U.S.</i> , 227 F.3d 1186, 1194 (9 <sup>th</sup> Cir. 2000) .....	21-22
--	-------

### **Statutes and Legislative Materials**

74 Fed. Reg. 15123, 15135 (April 2, 2009).....	7-8, & 16, 19
--	---------------

### **Other Sources**

<u>Another Mouth To Feed</u> , <i>Montana Outdoors</i> , Dickson, Tom, Sept/Oct (2009).....	18
<u>The Company of Wolves</u> , Steinhart, Peter, 1995,.....	14
<u>Decade of the Wolf</u> , Smith, Douglas, W. & Ferguson, Gary, 2006.....	14-15
<u>The Gray Wolf: Out of the Woods?</u> , <i>Scientific American</i> , Harrison, Emily, January 15, 2009.....	11-12

<u>Greater Yellowstone elk suffer worse nutrition and lower birth rates due to wolves</u> , <i>Montana State University News Service</i> , July 15, 2009.....	17-18
<u>Managing Wolves With A Sharp Ax</u> , <i>Bugle</i> , Geist, Valerius, Sep/Oct 2009.....	20-21
<u>Northern Rockies wolf report for 2008 available</u> , U.S. Fish & Wildlife Service, March 18, 2009.....	10-11
<u>Real Solutions &amp; Who Will Pay For Them</u> , <i>Bugle</i> , Herring, Hal, Sept/Oct 2009.....	18-19
RMEF Comments.....	6
<u>Wolves, Elk, Science And Human Values</u> , <i>Bugle</i> , Bangs, Ed, Sept/Oct 2009.....	12-13, 15-17
<u>Wolf Attacks On Humans: Myths vs. Fact</u> , <i>Bugle</i> , Landers, Rich, Sept/Oct 2009.....	20
<u>Wolf Recovery in North America</u> , <i>U.S. Fish &amp; Wildlife Service</i> , January 2007.....	16

## INTRODUCTION

The Rocky Mountain Elk Foundation, Inc. ("RMEF") is a Montana non-profit corporation, with its headquarters located in Missoula, Montana. The Mission of the Elk Foundation is to ensure the future of elk, other wildlife and their habitat. <http://www.rmef.org>.

RMEF is a premier wildlife conservation organization supported largely by hunters throughout North America. RMEF has a membership of approximately 150,000, with over 10,000 members in Montana and more than 5,000 members in Idaho. RMEF's members include hunters, ranchers and other conservationists in Montana and Idaho.

The average RMEF member spends at least 45 days per year hunting, fishing, hiking and camping. In the course of enjoying Montana and Idaho's outdoors, RMEF members have had numerous encounters with wolves, as well as a great diversity of other wildlife. Our members are well informed, and have exhibited strong support for the two state's management of wolves.

The RMEF strongly supports the efforts of the U.S. Fish & Wildlife Service, and the States of Montana and Idaho to delist the Northern Rocky Mountain gray wolf distinct population segment.

Since RMEF was created in 1984, it has permanently protected and enhanced more than 5.6 million acres of North America's most vital habitat for elk and other wildlife. This work includes land acquisitions, exchanges, conservation easements and improving habitat quality through stewardship projects such as prescribed burns, thinning, weed treatments, planting native vegetation, removing old barbed-wire fence and installing wildlife-friendly fence. Since 1985, the foundation has helped support more than 224 research projects across 30 states and invested more than \$3.2 million to expand the understanding of elk habitat use, nutrition, disease, genetics, population dynamics, predation, habitat management, reintroduction and economics.

In Montana, RMEF has permanently protected more than 164,000 acres of key wildlife habitat valued at more than \$100,000,000, and contributed more than \$3,000,000 to help enhance more than 436,000 additional acres over the past 25 years. In Idaho, RMEF has permanently protected more than 27,000 acres of prime elk country valued at over \$28,000,000, and contributed more than \$2,000,000 to help enhance the habitat on over 315,000 acres since 1984.

For the last-quarter century, RMEF and its members and volunteers have made a profound and enduring contribution to habitat protection and

enhancement efforts and wildlife research in Idaho, Montana and throughout North America. These efforts, together with those of Montana Fish Wildlife & Parks, the Idaho Department of Fish and Game, and many other partners, have helped conserve habitat and sustain the health of elk herds and other wildlife species, including grizzly bears, black bears, mountain lions and wolves.

RMEF has provided thoughtful analysis and commentary on the history, re-introduction, management, biology and delisting of wolves through its flagship publication, *Bugle* magazine. RMEF has devoted well over 100 pages of *Bugle* to the wolf issue, including feature articles in the September/October, 2000, July/August, 2005, September/October, 2005, May/June 2007, and September/October, 2009 issues. These articles, by authors such as Ed Bangs, Valerius Geist, Hal Herring and many others, paint a picture of wolves, their prey, and humans that have been significantly impacted by wolves. Since wolves were reintroduced, RMEF has funded 24 projects, spending over \$250,000 on research involving wolf predation. RMEF also leveraged additional funding by cooperators in an amount of \$1.8 million for this research.

In addition, on November 28, 2008, the Elk Foundation, together with nineteen other wildlife conservation organizations, submitted comments in



response to the U.S. Fish and Wildlife Service's Proposed Rulemaking to delist the Northern Rocky Mountain distinct population segment of gray wolves. These organizations represent millions of American conservationists. A copy of these comments is attached as Exhibit 1, RMEF Comment. These comments also form the basis for RMEF's formal policy on wolf reintroduction and delisting.

The Elk Foundation's support of delisting and the management of wolves by state wildlife management agencies is consistent with the tremendous success of wildlife conservation in North America generally known as the "North American Wildlife Conservation Model." A series of articles on the North American Wildlife Conservation Model ran in *Bugle* magazine from May/June 2004 through November/December 2005. <http://www.rmef.org/NewsandMedia/PubsTV/Bugle/>. See also articles available from Orion, The Hunter's Institute at <http://www.huntright.org/heritage/conservation.aspx>.

A fundamental tenet of the North American Wildlife Conservation Model is that wildlife is a public resource. The U.S. Supreme Court has recognized the importance of state management of wildlife when it recognized, "the State's interests in conservation and protection of wild animals as legitimate local purposes similar to the States' interests in

protecting the health and safety of their citizens,” *Hughes v. Oklahoma*, 441 U.S. 322, 337, 99 S.Ct. 1727, 60 L.Ed. 2d 250 (1979).

State wildlife agencies, supported largely by revenue from hunters and anglers, working together with landowners and non-profit organizations such as the Elk Foundation, have been instrumental in helping rebuild and maintain healthy wildlife populations. The Montana Department of Fish, Wildlife and Parks and the Idaho Department of Fish and Game, have been involved in successful restoration and management of wildlife for more than a century, a period that has seen dramatic increases in species such as elk, mule deer, bighorn sheep, pronghorns, grizzly bears, black bears, mountain lions and wolves. RMEF believes that the wildlife management agencies of Montana and Idaho are best positioned to manage wolf populations, together with other wildlife populations, in their respective states.

Another core element of the North American Wildlife Conservation Model is the importance of science as the basis for implementing wildlife policy. The U.S. Fish and Wildlife Service established scientific goals in 1994 for the Reintroduction of Wolves in the Northern Recovery Area. The numerical and distributional goals were met in 2000. These goals have been exceeded for eight consecutive years, and the temporal goals were

met in 2002. 74 Fed. Reg. 15123, 15135 (April 2, 2009). The science based managers (the U.S. Fish & Wildlife Service, Montana Fish, Wildlife & Parks, the Idaho Department of Fish and Game and Tribal Governments), have succeeded in vastly exceeding the science-based viability criteria established for recovery of the Northern Recovery Area wolf populations. Montana Fish Wildlife & Parks, and Idaho Department of Fish and Game are in the best position to maintain wolf populations in accord with the biological and cultural carrying capacity of their habitats. See 74 Fed. Reg. at 15151, supra. (“[t]he Service agrees that a recovered wolf population is best managed by the respective States and Tribes”).

In *Baldwin v. Montana Fish and Game Commission*, the U.S. Supreme Court upheld Montana’s right to charge more for non-resident hunting licenses, while recognizing that, “the animal’s preservation depends upon conservation.” 436 U.S. 371,374, 98 S.Ct. 1852, 56 L.Ed. 2d 354 (1978), citing *Montana Outfitters Action Group v. Fish & Game Comm’n*, 417 F. Supp., 1005 at 1007 (Mont. 1976). The Court went on to recognize that, “[i]f the elk is to survive as a species, the game herds must be managed.” *Id.* It is important to provide the state wildlife management agencies the ability to manage all of the wildlife species in its jurisdiction in

order to balance the conservation and stewardship of the different species and the habitats on which they depend.

## ARGUMENT

### I. THE GRAY WOLF IS NO LONGER AN ENDANGERED SPECIES ENTITLED TO PROTECTION UNDER THE ENDANGERED SPECIES ACT AND WOLVES SHOULD BE MANAGED BY THE APPROPRIATE STATE AGENCIES

#### A. Reintroduction Of The Gray Wolf Into The Northern Rocky Mountains Has Been Successful

##### 1. The Gray Wolf Continues To Thrive In The Northern Rocky Mountains And Target Levels Set By The U.S. Fish & Wildlife Service Have Been Exceeded

Despite the doomsday scenarios postulated by the Plaintiffs herein, the U.S. Fish & Wildlife Service, the best source of information on the subject of species protection as it relates to wolves, has stated that the goals of restoring the wolf population in the Northern Rocky Mountains have been achieved in excess. In its March 18, 2009 report, the U.S. Fish & Wildlife Service stated the following:

"The gray wolf population in the Northern Rocky Mountains (NRM) continues to thrive. The U.S. Fish and Wildlife Service (Service) and its federal, state and tribal partners estimated at the end of 2008 there were 1,645 wolves in 217 packs in Montana, Idaho, and Wyoming. At least 95 of those packs contained at least 1 adult male, 1 adult female, and 2 pups on December 31, 2008, meeting the recovery goal description of a breeding pair.

\* \* \*

The NRM wolf population is simply a 400 mile southern extension of a population of over 12,000 wolves in British

Columbia and Alberta. There are essentially nearly contiguous wolf packs from Jackson, Wyoming and Boise, Idaho north through Canada and Alaska to the Arctic Ocean.

\* \* \*

The NRM wolf population has exceeded its minimum recovery targets every year since 2002. Resident wolf packs currently occupy most of the suitable habitat within 110,000 square miles of western Montana, central and northern Idaho and northwestern Wyoming, so there appears to be little unoccupied suitable habitat left for many additional wolf packs.

\* \* \*

More evidence that the current wolf population has saturated its suitable habitat in the NRM is evident by the record level of livestock conflicts and wolf control in 2008. Last year was a record for livestock damage with at least 214 cattle, 355 sheep, 28 goats, 21 llamas, 10 horses and 14 dogs confirmed killed by wolves.”<sup>1</sup> See Exhibit 2, Northern Rockies wolf report for 2008 available, U.S. Fish & Wildlife Service, March 18, 2009. emphasis added.

All of the available scientific evidence proves unequivocally that the target wolf populations have been met in the Northern Rocky Mountains. In a recent Scientific American article, it was noted that:

“FWS (Fish & Wildlife Service) biologists respond that their job is to ensure that the wolf is no longer in danger of extinction, not to restore the species to every place it could live. “The Endangered Species List is not a tool for other agendas. The act mandates that if a species doesn’t need protection anymore, you must remove it.” insists Ed Bangs, wolf recovery

---

<sup>1</sup> As has been the case, the number of actual livestock kills was much higher than the number of confirmed fatalities. Id.

coordinator for the West. L. David Mech, wolf expert and senior research scientist with the U.S. Geological Survey, agrees that the gray wolf is no longer at risk of extinction in the lower 48 states. "When recovery goals were planned, certain numbers were set that would signify recovery. I see no evidence that those numbers were too low." Mech believes the genetic diversity and population growth rate in these numbers are sufficient for maintaining viable populations." See Exhibit 3, The Gray Wolf: Out of the Woods?, Scientific American, Harrison, Emily, January 15, 2009.

2. The Current Northern Rocky Mountain Wolf Population Possesses The Requisite Genetic Diversity To Sustain The Population

Plaintiffs' requested relief is largely dependent on the misguided notion that the current Northern Rocky Mountain wolf population does not possess the requisite genetic diversity to sustain its population. Ed Bangs strongly disagrees. As noted above, Ed Bangs has served as the Northern Rocky Mountains Wolf Recovery Coordinator for the U.S. Fish & Wildlife Service since 1988. Mr. Bangs is undoubtedly closer to this issue than any of Plaintiffs' constituents litigating from afar and is uniquely qualified to render opinions on the subject of wolf conservation and management. Prior to his current assignment, Mr. Bangs worked on the Kenai National Wildlife Refuge in Alaska as a wildlife biologist for the U.S. Fish & Wildlife Service from 1975-88.

Mr. Bangs recently authored an article entitled, Wolves, Elk, Science and Human Values, where he proclaims the success of the wolf recovery

project in the Northern Rockies is dependent on delisting the species and initiating state management: "I don't think that the program will be a complete success until wolves are managed by the states and tribes in the same manner as they have successfully conserved mountain lions, elk and dozens of other species and wildlife." See Exhibit 4, Wolves, Elk, Science And Human Values, Bugle, Bangs, Ed, Sept/Oct 2009, p. 79.

Moreover, Mr. Bangs has verified that the subject wolf population has attained sufficient genetic diversity to sustain itself. He states the following in his recent article:

The best science clearly shows that wolves in the northern Rockies are **fully recovered and no longer need ESA protection** if Montana and Idaho do as they have promised and manage wolves as a valued part of their states' natural wildlife heritage into the future. In December 2008, there were at least 1,645 wolves in the northern Rockies in about 217 packs. At least 95 packs had successfully raised two or more pups and were classified as breeding pairs. At least another 500 pups were born in April 2009.

Despite last year's U.S. District court ruling to the contrary, **the population is highly genetically diverse** because wolves from so many different Canadian packs were reintroduced. On top of that, wolves simply have phenomenal natural dispersal abilities, and suitable wolf habitat lies in relatively close proximity across southwestern Canada, northwestern Montana, central Idaho and northwestern Wyoming. **Radio telemetry monitoring and genetic analysis prove that naturally dispersing wolves have bred with resident wolves amongst all three recovery areas and Canada. Id. at 80. emphasis added.**



3. Wolves Must Be Managed And Should Remain Delisted From The Endangered Species List

The Company of Wolves was written by Peter Steinhart. Mr. Steinhart was a columnist for Audubon and is the author of Tracks in the Sky, Two Eagles and California's Wild Heritage. In his book, The Company of Wolves, he describes the need to manage wolves by quoting L. David Mech, wolf expert and senior research scientist with the U.S. Geological Survey who says, "In a pluralistic world, I believe we have to manage most of our wildlife. We can't have bison running through wheat fields. We have to manage bison when they're in areas where they cause damage. **And we have to manage wolves.**" See Exhibit 5, The Company of Wolves, Steinhart, Peter, 1995, p. 104. emphasis added.

Similarly in Decade of the Wolf, authors Douglas W. Smith and Gary Ferguson opine:

With the end of this first phase of the wolf cycle, **the time has come to remove these animals from the endangered species list.** Delisting is, after all, an indication that there are enough wolves in the system to allow more flexible management options---which could potentially include recreational harvests outside the park---without endangering the population. From a biological standpoint, this is unquestionably the case. That said, the plan under which wolves were reintroduced calls for Montana, Idaho and Wyoming to take over management of the species after federal managers achieve restoration, so long as each state has a solid plan for protecting the population in the years to come. See

Exhibit 6, Decade of the Wolf, Smith, Douglas, W. & Ferguson, Gary, 2006, p.171. emphasis added.

Ed Bangs believes the gray wolf's best chance for survival is to provide for effective local management of the species by the appropriate state agencies. He writes:

"But the science is clear: wolf populations are in outstanding condition and no longer warrant the protections of the ESA. I believe the brightest future for wolf conservation lies with professional state and tribal wildlife managers. Regulated public harvest can be one of the most important conservation tools for managing recovered wildlife populations. Hunting helps manage for healthy populations of wolves in Alaska and Canada. See Exhibit 4, Wolves, Elk, Science And Human Values, supra, p. 82.

Mr. Bangs supports the management initiatives of Idaho and Montana as effective tools to prevent the collapse of the gray wolf in the northern Rockies and has every confidence in their abilities based on past success:

Montana and Idaho have been managing wolves in their states since 2005 under cooperative agreements with the USFWS. They make all the decisions and conduct all the fieldwork for wolf monitoring, research, control of problem wolves and public outreach. State wardens participate in federal law enforcement investigations. Montana and Idaho have the professional expertise, field staff and equipment, as well as a proven track record of success. They will continue to do a great job of wolf conservation without ESA protection. The states' success at managing and conserving mountain lions, black bears, elk, deer, moose, etc. is beyond question. Id.

\* \* \*

Harvest by hunters will be limited to highly regulated fair-chase hunting (i.e. no aircraft or snow machines). Hunting for wolves during the fall big game hunting seasons in the northern Rockies will certainly not threaten the wolf population. But it will help reduce conflicts between wolves and humans. The boldest wolves in the most open and accessible areas are the ones most likely to be killed. Those are the same wolves that are most likely to attack livestock and be killed in agency actions. Id. at 81-82.

#### 4. The Gray Wolf Is Not At Risk For Extinction

In 2007, the U.S. Fish & Wildlife Service reported that there are between 50,000 and 60,000 gray wolves living in Canada, 6,000 to 7,000 in Alaska, 3,949 in Michigan, Minnesota and Wisconsin (the Great Lakes Region) and 1,302 in the northern Rocky Mountains. See Exhibit 7, Wolf Recovery in North America, *U.S. Fish & Wildlife Service*, January 2007, p. 2. The United States, as a whole, has more than 9,000 wolves, including 6,000-7000 in Alaska, which are increasing in number in all of their ranges. Id. at 2. By the end of 2008, the Northern Rocky Mountain gray wolf population had grown to 1,639 wolves. 74 Fed. Reg. at 15135, supra. From 1995 to 2008, the Northern Rocky Mountain wolf population has grown at an appropriate average annual rate of 22 percent. Id. The point here is that the gray wolf, as a species, is not threatened with extinction if a small number of them are killed in Montana and Idaho. In fact, problem wolves have recently been killed by professional wildlife managers at public

expense. Having hunters participate in the managed harvesting of wolves under state regulation will help provide a sustainable wolf management program. Moreover, Ed Bangs, the wildlife biologist closest to the wolf population over the past decade and a half states, "Resident wolf packs occupy nearly all suitable habitat within 110,000 square miles of Montana, Idaho and Wyoming, so there really isn't much more room for additional wolf packs without lots more livestock damage. There were a record number of problems in 2008. See Exhibit 4, Wolves, Elk, Science And Human Values, *supra* at 80.

B. The Northern Rocky Mountain Elk Population Needs Effective State Management Of Wolves

1. Some Northern Rocky Mountain Elk Sub-Populations Have Been Negatively Impacted Since the Reintroduction And Expansion Of the Gray Wolf Population

According to the Montana State University News Service, certain elk populations are in a state of serious decline since wolves were reintroduced to the Rocky Mountain region:

"The decline in the Greater Yellowstone's elk population since the reintroduction of wolves in 1995 has been greater than was originally predicted. In the three winters prior to the reintroduction of wolves, elk on Yellowstone's northern range numbered roughly between 17,000 and 19,000. In the three winters prior to 2008, annual elk counts had declined to between 6,738 and 6,279. See Exhibit 8, Greater Yellowstone elk suffer worse nutrition and lower birth rates due to wolves, Montana State University News Service, July 15, 2009, p.1.

The above mentioned Montana State University article was based on studies performed by Scott Creel, an ecology professor at Montana State University and lead author on the study which appears in the Proceedings of the National Academy of Sciences. Id. Creel's study establishes a link between increased wolf populations and low calving rates among, elk, which is having a deleterious effect on certain elk populations. Id. at 2. A wolf can kill 11 to 35 elk each year. In some areas with high densities of wolves, significant declines in elk populations have been documented. See Exhibit 9, Another Mouth To Feed, *Montana Outdoors*, Dickson, Tom, Sept/Oct (2009). Providing state wildlife agencies the ability to manage wolves along with other wildlife species is important.

## 2. Hunting Provides A Valid Wildlife Management Tool

Adopting the Plaintiffs' view is akin to trading one species for another, which should be rejected on its face. Furthermore, since the gray wolf has been successfully reintroduced into the Rockies, the equities favor the hunters who have shouldered the lion's share of funding for wolf recovery while many Plaintiffs and like organizations have paid next to nothing to support their cause. For example, for more than 80 years, the money from the 1937 Pittman Robertson Act taxes on firearms and ammunition has paid for the restoration of the big game herds of the United States after

their near-extinction in the late 19<sup>th</sup> century. See Exhibit 10, Real Solutions & Who Will Pay For Them, *Bugle*, Herring, Hal, Sept/Oct 2009, p. 71. Without those herds to serve as prey, there could never have been a successful wolf reintroduction. Id. It is hunting license money that now helps pay for the state wildlife biologists to manage wolves, and for the habitat and winter range purchases that support them and their prey. Id. The Fish & Wildlife Service has found that hunting has not threatened wolf populations, and in fact provides a, “valuable, efficient, and cost-effective tool to help manage wildlife populations.” 74 Fed. Reg. at 15147, supra. It is inequitable for Plaintiffs and likeminded groups to support the overpopulation of the gray wolf at the expense of the elk and other ungulates when it is hunters and landowners that are ultimately responsible for providing the financial wherewithal to save the big game herd which provide the food supply for the wolves to survive in the first place. Since the wolves are clearly on the path to continued survival, the equities favor a balanced system in which hunters can continue their time honored practice in the Rockies.

### C. Wolf Management Protects Human Beings

Recent data suggests the strong possibility that the proliferation of an unchecked wolf population will increase the threat wolves pose to humans.

Kenton Joel Carnegie, a twenty-two year old man, was killed by wolves in Saskatchewan, Canada in 2005. See Exhibit 11, Wolf Attacks On Humans: Myths vs. Fact, *Bugle*, Landers, Rich, Sept/Oct 2009, p. 64. Valerius Geist is a professor emeritus of environmental science at the University of Calgary. He contends that wolves slowly and steadily have been becoming more familiar with humans, and cites Carnegie's killing to support his stance that future attacks are inevitable. Id. "Wolves will explore humans as alternative prey, even if there is no food shortage, if they continually come in close contact with humans and habituate," Geist says. "Habituated wolves will eventually attack, as the next step in exploration, in making the unknown known. This is a principle of exploratory behavior applicable to all animals, not only to wolves." Id. emphasis added. According to Ed Bangs, feeding wolves, or failing to provide any negative conditioning essentially transforms wolves into large dogs, and "that's not where we want to go. Id.

The killing of Mr. Carnegie is not an isolated incident. According to Geist, two wolves in June 2000 severely injured a camper on Vargas Island just off the coast of Vancouver Island. These wolves became even tamer before the attack, as they nipped at the clothing of campers, licked their exposed skin and ate hotdogs from their hands. See Exhibit 12, Managing

Wolves With A Sharp Ax, Bugle, Geist, Valerius, Sep/Oct 2009, p. 60 "Our observations here suggested that wolves, attracted to habitations by the scarcity of prey, shift to dogs and livestock, but also increasingly, though cautiously, explore humans, before mounting a first, clumsy attack." Id.

Permitting the appropriate state management of the current wolf population will keep wolf numbers in check while simultaneously conditioning them to stay away from higher human population densities. No family wants to be the first in the Northern Rocky Mountains to lose a small child so that members of the respective Plaintiff organizations can increase their chances of hearing a wolf howl.

## II. THE REQUESTED PRELIMINARY INJUNCTION SHOULD BE DENIED

Wolf population numbers are robust. The U.S. Fish & Wildlife Service, the most informed authority on the subject, has concluded that target levels to sustain a genetically viable Northern Rocky Mountain wolf population have been met. This Court should defer to the scientific expertise of the Fish & Wildlife Service. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 865, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) (deference afforded to agency's construction of a statutory scheme), (*Ninilchik Traditional Council v. U.S.*, 227 F.3d 1186, 1194 (9<sup>th</sup> Cir. 2000)(court deferred to the Federal Subsistence Board in matter regarding subsistence hunting of moose,



noting that “[s]uch deference is especially appropriate here as the challenged decision implicates substantial agency expertise.”), (*National Cable & Telecom. Assn. v. Brand X Internet S.*, 545 U.S. 967, 969, 125 S.Ct. 2688 (2005)(applying *NRDC v. Chevron* analysis, noting that, “*Chevron* requires a federal court to defer to an agency’s construction, even if it differs from what the court believes to be the best interpretation, if the particular statute is within the agency’s jurisdiction to administer, the statute is ambiguous on the point at issue, and the agency’s construction is reasonable.”)

If this Court grants the requested relief and prevents the planned, controlled wolf management hunts in Idaho and Montana, the wolf population will continue to grow and state wildlife agencies will continue to be limited in their ability to manage all wildlife species. The short-sighted approach taken by the Plaintiffs herein, if successful could ultimately harm the wolf population they claim they are trying to save. State management of the wolf population will best provide effective controls to preserve the appropriate ecological balance. Idaho and Montana wildlife management agencies should have all available tools to manage the public’s wildlife resource. Anything less will pave the way for gray wolves to find their way back to the endangered species list.

## **CONCLUSION**

For the last-quarter century, the RMEF has made profound and enduring contributions to habitat protection and enhancement efforts, as well as wildlife research, in Idaho, Montana and throughout North America. These efforts, together with those of Montana Fish Wildlife & Parks and the Idaho Department of Fish and Game, and many other partners, have helped conserve habitat and sustain the health of elk herds and other wildlife species, including grizzly bears, black bears, mountain lions and wolves. Because all of the appropriate targets for Rocky Mountain wolf repopulation have been met, the RMEF strongly supports the efforts of the U.S. Fish & Wildlife Service, and the States of Montana and Idaho to delist the Northern Rocky Mountain gray wolf distinct population segment.

Only effective state management of the current wolf population can provide the proper ecological and biological balance necessary so that all Rocky Mountain wildlife, including wolves and elk can coexist. Therefore, the RMEF respectfully requests that this Court deny the relief sought by Plaintiffs and place the power to manage the current wolf population in the experienced hands of the appropriate state agencies.

DATED this 28th day of August, 2009

/s/ Lon J. Dale

\_\_\_\_ Lon J. Dale, Esq.  
Milodragovich, Dale, Steinbrenner  
& Nygren, P.C.

Grant Parker, Esq.  
Rocky Mountain Elk Foundation

Attorneys for Amicus Curiae Rocky  
Mountain Elk Foundation

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2), I certify that the foregoing brief contains 4,155 words as determined by the word count function of Microsoft Word.

Dated: August 28, 2009

/s/ Lon J. Dale  
Lon J. Dale, Esq.  
Milodragovich, Dale, Steinbrenner  
& Nygren, P.C.

Attorneys for Amicus Curiae  
Rocky Elk Mountain Foundation