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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

WildEarth Guardians; New Mexico Wilderness  
Alliance; and Friends of Animals,

Plaintiffs,

v.

Daniel Ashe, in his official capacity as Director

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

of the United States Fish and Wildlife Service;  
United States Fish and Wildlife Service; Sally  
Jewell, in her official capacity as Secretary of  
the Interior; United States Department of the  
Interior,

Defendants.

## **INTRODUCTION**

1. Plaintiffs WildEarth Guardians, New Mexico Wilderness Alliance, and Friends of Animals (collectively “Guardians”) respectfully file this civil action for declaratory and injunctive relief against Federal Defendants Daniel Ashe, in his official capacity as Director of the United States Fish and Wildlife Service; the United States Fish and Wildlife Service; Sally Jewell, in her official capacity as Secretary of the Interior; and the United States Department of the Interior (collectively “Service” or “Defendants”). This suit alleges violations of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

2. The Service has violated, and continues to violate the ESA, NEPA, and the APA through the promulgation of its final revised rule governing the management of the Mexican gray wolf as a non-essential experimental population, its ESA Section 10(a)(1)(A) permit, as well as the associated final Environmental Impact Statement and Record of Decision.

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 16 U.S.C. § 1540 (ESA). An actual, present, justiciable controversy exists between Guardians and the Service.

4. This Court has the authority to review the Service’s actions and/or inactions complained of herein and grant the requested relief pursuant to 16 U.S.C. § 1540(g) (ESA citizen suit provision), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202

(injunctive relief), and 5 U.S.C. § 705 & 706 (APA). The Service's sovereign immunity is waived pursuant to the ESA, 16 U.S.C. § 1540(g) and the APA, 5 U.S.C. § 702.

5. Guardians sent notice of its intent to sue the Service as required by the ESA. More than sixty days have elapsed since Guardians sent notice of its intent to sue the Service. More than sixty days have elapsed since the Service received Guardians' notice of intent to sue.

6. Venue in this court is proper pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to Guardians' claims occurred in this District. WildEarth Guardians has an office within this District. WildEarth Guardians has members who reside within this District. New Mexico Wilderness Alliance has members who reside within this District. Friends of Animals has members who reside within this District.

7. This case is properly filed in the Tucson Division of this District pursuant to L.R. Civ. 77.1(a) because the Mexican gray wolf resides within the counties that comprise this Division, the Service conducts Mexican gray wolf management activities within the counties that comprise this Division, WildEarth Guardians maintains an office with staff in Tucson, Arizona, and Plaintiffs have members who reside and recreate within the counties that comprise this Division.

### **PARTIES**

8. Plaintiff WILDEARTH GUARDIANS is suing on behalf of its organizational, staff, and members' interests. WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the

American West. WildEarth Guardians has more than 66,000 members and supporters including many who reside and recreate in the states of Arizona and New Mexico.

WildEarth Guardians' staff and members regularly recreate throughout the Mexican Wolf Experimental Population Area. WildEarth Guardians' staff and members regularly recreate throughout the Blue Range Wolf Recovery Area. WildEarth Guardians' staff and members recreate in these areas for the purposes of hiking, recreation, bird watching, observing wildlife including Mexican gray wolves, spiritual rejuvenation, photography, and other recreational and professional pursuits. WildEarth Guardians' staff and members have engaged in these activities in the past, and intend to do so again in the near future.

WildEarth Guardians staff and members have a procedural interest in ensuring that all Service activities comply with all applicable federal statutes and regulations. For many years, Guardians has advocated for the restoration of the Mexican gray wolf to its historic range.

9. Plaintiff NEW MEXICO WILDERNESS ALLIANCE is suing on behalf of its organizational, staff, and members' interests. New Mexico Wilderness Alliance is a non-profit environmental organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's native wildlife, wild lands and wilderness areas. New Mexico Wilderness Alliance has approximately 4,000 members, including members in New Mexico and Arizona. As part of its work on maintaining healthy ecosystems in the southwestern United States, for the past several years New Mexico Wilderness Alliance has worked on issues affecting the area's endangered wildlife, with a particular emphasis on the Mexican gray wolf. New Mexico Wilderness Alliance's wildlife work has included

urging the agencies responsible for both federal land and wildlife management to increase protection for endangered species. With respect to the Mexican gray wolf, this has consisted of interactions with both the U.S. Fish and Wildlife Service and the United States Forest Service. New Mexico Wilderness Alliance also actively comments on the Mexican gray wolf recovery program and makes a concerted effort to improve the wolf's habitat through participation in the land use planning process for national forest lands. New Mexico Wilderness Alliance comments on proposed actions which may affect the wolf, issues updates, newsletters and alerts to all its members, and engages the public in administrative processes affecting the wolf. New Mexico Wilderness Alliance also organizes backpacking trips and hikes in the Greater Gila area for its members, and many of its members enjoy the area on their own and strive to experience wolves firsthand. New Mexico Wilderness Alliance's members intend to continue their use and enjoyment of lands in the Greater Gila region for this purpose in the future.

10. Plaintiff FRIENDS OF ANIMALS is suing on behalf of its organizational, staff, and members' interests. Friends of Animals ("FoA") is a non-profit organization incorporated in the state of New York since 1957. FoA seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. FoA engages in a variety of advocacy programs in support of these goals. FoA has nearly 200,000 members worldwide. Many of FoA members are interested in protecting, studying, and observing wolves in the wild.

11. FoA has a long history of advocating for wolves. FoA has featured articles condemning wolf hunts and highlighting wolves' intelligence and social bonds in its

quarterly journal, ActionLine, and its website, friendsofanimals.org. FoA has also been involved in legal battles to protect our nation's wolves. FoA, along with other animal protection and conservation organizations, challenged the decision of the U.S. Fish and Wildlife Service to strip gray wolves in the Great Lakes region of protection under the Endangered Species Act. FoA moved to intervene in the case *Alliance for the Wild Rockies v. Salazar*, challenging the constitutionality of Section 1713 of the Department of Defense and Full-Year Continuing Appropriations Act of 2011, P.L. 112-10, which directed FWS to reinstate the 2007 wolf delisting rule removing Endangered Species' Act Protection for certain gray wolves. FoA also co-sponsored a Citizens' Wolf Hearing in Denver, Colorado, to give citizens an opportunity to voice their opinion over the U.S. Fish and Wildlife Service's rules regarding gray wolves, including Mexican gray wolves.

12. Plaintiffs' members, staff, and supporters are dedicated to ensuring the long-term survival and recovery of the Mexican gray wolf throughout its historic range.

13. Plaintiffs' members, staff, and supporters live and recreate in or near areas occupied by Mexican gray wolves, the Mexican Wolf Experimental Population Area, and/or the Blue Range Wolf Recovery Area for the purposes of hiking, backpacking, camping, observing wildlife such as the Mexican gray wolf, bird watching, and other recreational and professional pursuits.

14. Plaintiffs' members, staff, and supporters enjoy observing, attempting to observe, and studying Mexican gray wolves in the wild, including signs of the Mexican gray wolf's presence in or near areas occupied by Mexican gray wolves, the Mexican Wolf Experimental Population Area, and/or the Blue Range Wolf Recovery Area.

15. Plaintiffs' members, staff, and supporters derive aesthetic, recreational, scientific, inspirational, spiritual, educational, and other benefits from these activities and from working to protect and restore Mexican gray wolves in Arizona and New Mexico.

Plaintiffs' members, staff, and supporters have an interest in knowing that Mexican gray wolves are still present in Arizona and New Mexico.

16. The interests of Plaintiffs' members, staff, and supporters, as well as the organizational interests of Plaintiffs, have been and are being, and unless the requested relief is granted, will continue to be harmed by the Service's actions and/or inactions challenged in this Complaint. If this Court issues the relief requested, the harm to Plaintiffs' members, staff, and supporters' interests will be redressed and/or alleviated. If this Court issues the relief requested, the harm to Plaintiffs' organizational interests will be redressed and/or alleviated.

17. Defendant DANIEL ASHE is sued in his official capacity as the Director of the United States Fish and Wildlife Service. As Director, Mr. Ashe is the federal official with responsibility for all Service officials' actions and/or inactions challenged in this complaint.

18. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this complaint.

19. Defendant SALLY JEWELL is sued in her official capacity as the Secretary of the Interior. As Secretary, Ms. Jewell is the federal official with responsibility for all Service officials' actions and/or inactions challenged in this complaint.



20. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal department responsible for applying and implementing the federal laws and regulations challenged in this complaint.

### FACTS

21. The Mexican gray wolf (*Canis lupus baileyi*) is the smallest, rarest, and most genetically distinct subspecies of gray wolf. Although once freely and widely roaming across the southwestern United States and Mexico, the Mexican gray wolf was purposefully eradicated from the United States. By the early 1970's, there were no more Mexican gray wolves in the wild in the United States.

22. The Mexican gray wolf was first placed on the federal list of threatened and endangered species on April 28, 1976. The original listing for Mexican gray wolf was then subsumed by the Service's 1978 listing of *Canis lupus* as endangered pursuant to the ESA. From 1978 to 2015, the Mexican gray wolf was listed as an endangered species as part of the broader listing as endangered for *Canis lupus*.

23. Beginning in 1977, a joint program between the United States and Mexico captured the few remaining Mexican gray wolves in the wild in Mexico to begin a captive breeding program. Seven Mexican gray wolves captured in Mexico made up the founding stock for the captive breeding program. In 1996, the Service prepared a Final Environmental Impact Statement ("FEIS") for the plan to reintroduce a wild population of Mexican gray wolves into the southwestern United States. The 1996 plan had an initial goal of producing a population of 100 Mexican gray wolves in the wild by 2005.

24. In 1998, the Service promulgated a rule creating a non-essential experimental population of Mexican gray wolves as a subspecies of the listed entity, *Canis lupus*. The 1998 final rule reiterated the goal of 100 Mexican gray wolves in the wild by 2005.

25. In March 1998, the Service released the first Mexican gray wolves from the captive breeding program into the wild. The first release included eleven Mexican gray wolves. The Service did not meet its goal of 100 Mexican gray wolves in the wild by 2005.

26. Mexican gray wolves currently exist in the wild only where they have been reintroduced. If the only population of Mexican gray wolves in the wild—the current population in the United States—died, there would be no populations of Mexican gray wolves in the wild anywhere in the world. Seventeen years after the initial reintroduction of Mexican gray wolves into the wild in the United States, the population is not thriving. The current population of wild Mexican gray wolves is at risk of failure. The current population of wild Mexican gray wolves lacks genetic diversity. The current population of wild Mexican gray wolves lacks heterozygosity. The current population of wild Mexican gray wolves suffers from inbreeding. The current population of wild Mexican gray wolves is at risk of loss from illegal killing. The current population of wild Mexican gray wolves is at risk of loss from legal killing.

27. As of February 2015, there were only 109 Mexican gray wolves in the wild in the United States. 2015 was the first year that the wild Mexican gray wolf population in the United States exceeded 100 wolves. The original goal of 100 Mexican gray wolves in the wild is inadequate to establish a viable self-sustaining population. A single population of

Mexican gray wolves is inadequate to establish a viable self-sustaining population. A minimum of three interconnected subpopulations is required to establish a viable self-sustaining population of Mexican gray wolves. Each subpopulation must have at least 200 animals to establish a viable self-sustaining population. At least two of the subpopulations must occur outside of the MWEPA to establish a viable self-sustaining population. The metapopulation, with three interconnected subpopulations, must have a minimum of at least 750 Mexican gray wolves to establish a viable self-sustaining population. A metapopulation is a group of distinct, geographically separated populations of the same species that are connected through dispersal of individual members of the distinct, geographically separated populations. The Revised 10(j) rule does not allow for the establishment of three interconnected subpopulations of Mexican gray wolves. The best available science requires the establishment of three interconnected subpopulations, each with at least 200 Mexican gray wolves, as part of a metapopulation of at least 750 Mexican gray wolves to establish a viable, self-sustaining population of Mexican gray wolves in the wild.

28. The MWEPA can support approximately 534 Mexican gray wolves. No peer-reviewed analyses of the MWEPA's carrying capacity contradict this estimate.

29. In 1982, the Service prepared a recovery plan for the Mexican gray wolf. The 1982 recovery plan recognized the Mexican gray wolf's poor prospects for survival. The Service described the 1982 recovery plan as "far from complete." The 1982 recovery plan recommended a captive breeding program and reintroduction of Mexican gray wolves to the wild. The 1982 recovery plan's goal was to reestablish a viable, self-sustaining

population of at least 100 Mexican gray wolves in a 5,000 square mile area within the Mexican gray wolf's historic range.

30. The 1982 recovery plan is now more than 30 years old. The 1982 recovery plan is functionally and scientifically out of date. The Service began to revise the Mexican gray wolf recovery plan in 2010. The draft revised recovery plan includes recommendations to establish additional wild populations of Mexican gray wolves. In 2012, the Service halted work on a revision to the Mexican gray wolf recovery plan. The 1982 recovery plan has not been revised.

31. In 2007, the Service initiated a scoping comment period for a new rule to govern the reintroduction program for the Mexican gray wolf. The Service developed a scoping report in 2008, but did not develop a new rule at that time. In 2013, the Service initiated a new scoping comment period for the same purpose. On June 13, 2013, the Service proposed a rule to list the Mexican wolf subspecies as endangered as its own species pursuant to the ESA. Also on June 13, 2013, the Service proposed a rule to revise the regulations for the experimental population designation of the Mexican gray wolf.

32. In July 2014, the Service issued a new proposed revision to the regulations for the experimental designation of the Mexican gray wolf and released a draft Environmental Impact statement ("DEIS") for the proposal. The Service released a final "Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*)" in November 2014 ("FEIS").

33. The purpose of the revised 10(j) rule and associated permit was to further the conservation of the Mexican gray wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population. The FEIS failed to consider an alternative that designated the reintroduced population of Mexican gray wolves as essential. Designating the experimental population of Mexican gray wolves as an essential experimental population would meet the purpose of the revised 10(j) rule and associated permit. Designating the experimental population of Mexican gray wolves as an essential experimental population would further the conservation of the Mexican gray wolf. Designating the experimental population of Mexican gray wolves as an essential experimental population was reasonable. The FEIS failed to explain why it did not consider designating the experimental population of Mexican gray wolves as an essential experimental population.

34. The FEIS contained a number of new provisions that were not present in the DEIS. The Service failed to supplement its NEPA analysis and allow for additional public comment on those provisions. Included amongst the changes were: the addition of a population cap of 300-325 wolves in the MWEPA; phased implementation of Mexican gray wolf reintroduction and phased expansion of the geographical boundaries of the MWEPA; and a new provision regarding unacceptable impacts to wild ungulate herds. These changes were substantial. Before the revised 10(j) rule was published, the Service had never placed a population cap on a species listed pursuant to the ESA. The Service had an obligation to supplement its NEPA analysis in light of these changes. The Service had an obligation to allow public comment on these changes to its preferred alternative.

35. On November 17, 2014, the Service issued a “Conference/Biological Opinion for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, the Issuance of a New Research and Recovery Permit for the Mexican Wolf Recovery Program and the Gray Wolf, and Funding Provided to the Mexican Wolf Recovery Program for the Purpose of Implementing the Program” (“Biological Opinion”). The Biological Opinion addressed the impacts of the Revised 10(j) rule and accompanying Section 10(a)(1)(A) permit on Mexican gray wolves.

36. The Biological Opinion included an Incidental Take Statement (“ITS”) allowing for the take, as defined by the ESA, of several species listed pursuant to the ESA, including Mexican gray wolf, gray wolf, jaguar, ocelot, California condor, and Canada lynx. The ITS allows for the incidental take, in the form of harassment, of up to all Mexican gray wolves that disperse outside of the 10(j) geographic boundaries. The ITS allows for the incidental take, in the form of permanent disablement or mortality, of up to three Mexican gray wolves that disperse outside of the 10(j) geographic boundaries. The ITS allows for the incidental take, in the form of harassment, of up to all Mexican gray wolves within the 10(j) geographic boundaries. The ITS allows for the incidental take, in the form of permanent disablement or mortality, of up to three Mexican gray wolves within the 10(j) geographic boundaries. The incidental take allowed by the ITS is in addition to the purposeful or incidental take allowed by the Revised 10(j) rule and associated Section 10(a)(1)(A) permit. The ITS also allows for the take of one gray wolf, one jaguar, one ocelot, one California condor, and one Canada lynx.

37. On January 6, 2015, Benjamin Tuggle, Regional Director for Region 2 of the U.S. Fish and Wildlife Service signed the Record of Decision. The Record of Decision selected Alternative 1 from the FEIS as the alternative that the Service would implement. On January 16, 2015, the Service published a final rule designating the Mexican gray wolf as an endangered species pursuant to the ESA. This rule was a change in classification for the Mexican gray wolf. The January 16, 2015 final rule was the first time since 1978 that the Mexican gray wolf, *Canis lupus baileyi*, was listed as an endangered species without being subsumed by the broader endangered listing for *Canis lupus*. Prior to January 16, 2015, no ESA Section 10(j) rule had been promulgated for the Mexican gray wolf while the species, *Canis lupus baileyi*, individually, was classified as an endangered species. Also on January 16, 2015, the Service published a final rule revising the regulations for the experimental population of the Mexican gray wolf pursuant to Section 10(j) of the ESA (“Revised 10(j) Rule”).

38. The Revised 10(j) rule did not make a new determination on the essential nature of the reintroduced population of the Mexican gray wolf. The Revised 10(j) rule set a population cap of 300-325 Mexican gray wolves within the Mexican Wolf Experimental Population Area (“MWEPA”). This population cap was not presented or analyzed in the DEIS. The DEIS states that such a cap would be premature and would not further the conservation of the Mexican gray wolf. The Revised 10(j) rule includes phased process for wolf reintroduction. The phased reintroduction was not presented or analyzed in the DEIS. The phased reintroduction imposes limits on the western boundary of the Mexican gray wolf range. The phased reintroduction delays the initial release and dispersal of

Mexican gray wolves into suitable habitat on the western side of the MWEPA. The phased reintroduction prevents Mexican gray wolves from dispersing into areas within the MWEPA for at least five years.

39. The Revised 10(j) rule and accompanying Section 10(a)(1)(A) research and recovery permit authorize the removal of Mexican gray wolves from the reintroduced experimental population that disperse and establish territories in geographic areas beyond the borders of the MWEPA. The geographical limits of the MWEPA preclude wolves from dispersing north of Interstate 40 in Arizona and New Mexico.

40. The Revised 10(j) rule and accompanying Section 10(a)(1)(A) research and recovery permit authorize the take of Mexican gray wolves if either of the Arizona or New Mexico game and fish agencies determine that Mexican gray wolf predation is having an unacceptable impact to wild ungulate herds. The Revised 10(j) rule increases the amount of allowable take of Mexican gray wolves.

41. The Revised 10(j) rule failed to make a determination on the essential nature of the reintroduced Mexican gray wolf population. The Revised 10(j) rule relied upon the 1998 determination on the essential nature of the reintroduced Mexican gray wolf population. At the time the 1998 10(j) rule was promulgated, the Mexican gray wolf was listed as endangered pursuant to the ESA as a subspecies of the gray wolf. At the time the 2015 Revised 10(j) rule was promulgated, the Mexican gray wolf was listed as endangered pursuant to the ESA. The ESA requires that the Service make a determination on the essential nature of any species reintroduced pursuant to Section 10 of the ESA. A change



in classification of a species requires that a new determination on the essential nature of the reintroduced population be made.

**FIRST CLAIM FOR RELIEF  
VIOLATIONS OF THE ENDANGERED SPECIES ACT AND THE  
ADMINISTRATIVE PROCEDURE ACT**

**COUNT 1**

**FAILURE TO MAKE A DETERMINATION ON THE ESSENTIAL NATURE OF  
THE MEXICAN GRAY WOLF'S EXPERIMENTAL POPULATION TO THE  
SPECIES' CONTINUED EXISTENCE IN THE WILD**

42. Plaintiffs incorporate by reference all preceding paragraphs.

43. Pursuant to Section 10(j) of the Endangered Species Act, 16 U.S.C. § 1539(j), the Service's implementing regulations, and the Service's Policy, the Service may authorize the release of any population of an endangered or threatened species outside the current range of such species. Before doing so, the Service must determine by regulation: (1) that such release will further the conservation of such species, and (2) whether or not such population is essential to the continued existence of the species in the wild. 16 U.S.C. § 1539(j)(2)(A), 1539(j)(2)(B); 50 C.F.R. § 1781(c)(2). This determination must be based on the best available information, including the best scientific and commercial data available. 16 U.S.C. § 1539(j)(2)(B); 50 C.F.R. § 17.81(c)(2).

44. The Service's January 16, 2015 Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf failed to make a determination as to whether the experimental population is, or is not, essential to the continued existence of the species in the wild.

45. The Service’s failure to make a determination on the essential nature of the Mexican gray wolf experimental population in the Revised 10(j) rule violates Section 10 of the ESA, 16 U.S.C. § 1539, the ESA’s implementing regulations, 50 C.F.R. § 17.81, and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

**COUNT 2**  
**FAILURE TO UTILIZE THE BEST AVAILABLE SCIENCE**  
**AND INFORMATION**

46. Plaintiffs incorporate by reference all preceding paragraphs.

47. Pursuant to the Endangered Species Act, the Service’s implementing regulations, and Service policy, the Service must utilize the best available science and information in promulgating regulations and otherwise implementing the requirements of the Act. 16 U.S.C. § 1536(a)(2); 16 U.S.C. § 1539(j)(2)(B); 50 C.F.R. § 17.81(c)(2); 50 C.F.R. § 402.14(d).

48. The Service’s January 16, 2015 Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf and associated Section 10(a)(1)(A) permit violate Section 10 of the ESA, 16 U.S.C. § 1539, the ESA’s implementing regulations, 50 C.F.R. § 17.81, and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Revised 10(j) Rule and associated Section 10(a)(1)(A) are not based on the best available information and science in several respects, including, but not limited to: the non-essential/essential

nature of the reintroduced population; the MWEPA population cap; geographic restrictions and delayed implementation of the expansion of the MWEPA; and the revisions allowing for permissible take of Mexican wolves.

49. The Service’s November 17, 2014 Conference/Biological Opinion is not based on the best available information and science in several respects, including, but not limited to: the non-essential/essential nature of the reintroduced population; the MWEPA population cap; geographic restrictions and delayed implementation of the expansion of the MWEPA; and the revisions allowing for permissible take of Mexican wolves, and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

**COUNT 3**  
**FAILURE TO PROVIDE FOR THE CONSERVATION OF THE SPECIES**

50. Plaintiffs incorporate by reference all preceding paragraphs.

51. Pursuant to the ESA, regulations related to an experimental population must provide for the conservation of the species. 16 U.S.C. §§ 1539(a)(1)(A), (d), (j)(2)(C); 16 U.S.C. § 1533(d). To provide for the conservation of the species means to take measures that lead to the recovery of the species such that ESA protections are no longer required. 16 U.S.C. § 1532(3).

52. The Service’s January 16, 2015 Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf and associated Section 10(a)(1)(A) permit violate Section 10 of the ESA, 16 U.S.C. § 1539, Section 4 of the ESA, 16 U.S.C. §

1533(d), the ESA's implementing regulations, 50 C.F.R. § 17.81, and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Revised 10(j) Rule and associated Section 10(a)(1)(A) permit do not provide for the conservation of the Mexican gray wolf in several respects, including, but not limited to: the non-essential/essential nature of the reintroduced population; the MWEPA population cap; geographic restrictions and delayed implementation of the expansion of the MWEPA; and the revisions allowing for permissible take of Mexican wolves.

53. The Service's failure and/or refusal to provide for the conservation of the Mexican gray wolf violates Section 10 of the ESA, 16 U.S.C. § 1539, 16 U.S.C. § 1539, Section 4 of the ESA, the ESA's implementing regulations, 50 C.F.R. § 17.81, and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

**SECOND CLAIM FOR RELIEF  
VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT AND  
THE ADMINISTRATIVE PROCEDURE ACT**

**COUNT 1  
FAILURE TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES**

54. Plaintiffs incorporate by reference all preceding paragraphs.

55. The Service's November 2014 Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of

the Mexican Wolf (*Canis lupus baileyi*) and January 2015 Record of Decision fail to consider a reasonable range of alternatives.

56. NEPA requires agencies proposing major Federal actions significantly affecting the quality of the human environment to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(C)(iii). The alternatives analysis of NEPA is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires that the Service “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. 1502.14(a).

57. Members of the public repeatedly asked the Service to consider an alternative that would designate the newly listed Mexican wolf species as an “essential experimental” population, rather than a nonessential experimental population under ESA § 10(j). As the sole population of Mexican wolves occurring in the wild, the loss of the experimental population will appreciably reduce the likelihood of the survival of the species in the wild. This alternative was reasonable. This alternative would have met the purpose and need for the proposal. The FEIS fails to explain why this alternative was not reasonable. The FEIS fails to explain why the Service did not consider this alternative. The FEIS fails to explain why the Service considered but declined further consideration of this alternative.

58. Here, the Service states the purpose of the proposed action “is to further the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population.”

59. Pursuant to the ESA, conservation means “to use and 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 [the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). “To further the conservation of the Mexican wolf” means to bring the species to the point at which the species is no longer in need of the protections provided by listing under the ESA. When a species no longer needs the protection afforded by the ESA, it is recovered. Service regulations define “recovery” as “improvement in the status of the listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the [ESA].” 50 C.F.R. § 402.02.

60. The Service failed to consider an alternative that would designate the newly listed Mexican wolf species as an “essential experimental” population, rather than a nonessential experimental population under ESA § 10(j). An alternative that would designate the newly listed Mexican wolf species as an “essential experimental” population, rather than a nonessential experimental population under ESA § 10(j) was reasonable. An alternative that would designate the newly listed Mexican wolf species as an “essential experimental” population, rather than a nonessential experimental population under ESA § 10(j) would have met the purpose and need.

61. The Service failed to consider a reasonable range of alternatives as required by NEPA, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

**COUNT 2**  
**FAILURE TO PREPARE A SUPPLEMENTAL NEPA ANALYSIS**

62. Plaintiffs incorporate by reference all preceding paragraphs.

63. NEPA requires the Service to supplement its environmental analysis if “[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns.” 40 C.F.R. § 1502.9(c)(1)(i). NEPA requires supplementation to ensure adequate opportunity for interested persons to comment on the proposed action. 40 C.F.R. § 1503.1. A supplemental NEPA analysis is required if the Service makes substantial changes to the action alternatives before a decision is made. A supplemental NEPA analysis is required if the Service makes substantial changes to the action alternatives after the final opportunity for public comment has closed.

64. The Service made several material and substantial changes to the proposed action in the FEIS, including, but not limited to: (1) the Service added a population cap of 300-325 wolves in the proposed action after the draft EIS denied that such a cap would be included in the proposed action; (2) the Service added a phased implementation and management plan to the proposed action that was not disclosed in the draft EIS; and (3) the Service added a definition regarding unacceptable impacts to wild ungulate herds that was not included in the draft EIS.

65. The Service’s failure to prepare supplemental NEPA analysis violates NEPA and is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

### **PLAINTIFFS’ REQUEST FOR RELIEF**

Plaintiffs respectfully request that this court:

1. Issue a declaratory judgment that the Service's revised Section 10(j) rule for Mexican gray wolf, the associated Section 10(a)(1)(A) permit, the Final Environmental Impact Statement, and Record of Decision violate the law as described in this complaint;
2. Set aside and remand the challenged portions of the Service's revised Section 10(j) rule for Mexican gray wolf, the associated Section 10(a)(1)(A) permit, the Final Environmental Impact Statement, and Record of Decision to the Service for further analysis and action consistent with the law and this Court's memorandum opinion and order;
3. Issue such injunctive relief as Plaintiffs may subsequently request;
4. Retain continuing jurisdiction of this matter until the Service fully remedies the violations of law described in this complaint;
5. Award Plaintiffs their costs, attorneys' fees, and other expenses pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g), and the Equal Access to Justice Act, 28 U.S.C. § 2412;
6. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 2nd day of July, 2015.

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