

2. Catron County, New Mexico, encompasses almost 7,000 square miles, and has a population of approximately 3,500 people. Nearly two-thirds of the county consists of federal land, most of which falls within the Gila National Forest. Catron County thus makes up a substantial portion of the BRWRA. The Catron County Commission (“the Commission” or “Defendant”) has long been vocally opposed to the reintroduction and recovery of Mexican gray wolves in the BRWRA.

3. On February 7, 2007, Defendant Commission adopted Catron County Ordinance No. 001-2007, and on or about April 18, 2007, on information and belief, the Commission amended Ordinance No. 001-007. The Ordinance authorizes county officials to kill or otherwise injure federally protected Mexican gray wolves in ways, and for reasons, strictly prohibited by the ESA and the Section 10(j) rule for the Mexican wolf. Since adopting this anti-wolf ordinance, the Defendant Commission has acted pursuant to its purported authority. Such actions include twice seeking to permanently remove alpha members of the Mexican gray wolf Durango Pack, demanding that FWS either kill or permanently cage these animals, authorizing and directing a county official to stalk and attempt to trap these wolves, and encouraging public fear of, and hostility towards, Mexican gray wolves by posting signage warning of “dangerous” wolves within the county. At Defendant Commission’s direction, a county official has actively attempted to capture the Durango Pack alpha breeding pair by setting one or more traps for these animals, which subsequently remained on the ground for at least one week’s time.

4. By adopting and implementing Catron County Ordinance 001-2007, Defendant Commission has both authorized the unlawful “take” of an endangered species and attempted to “take” an endangered species in violation of the ESA. Furthermore, because Catron County

Ordinance 001-2007 authorizes actions otherwise prohibited by federal law, the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, § 3 cl. 2, preempts its application.

5. For these violations of the ESA and the United States Constitution, Forest Guardians and Sinapu seek a declaration that Catron County Ordinance No. 001-2007 is invalid. Forest Guardians and Sinapu further seek an order enjoining the Commission from taking any further action pursuant to the purported authority of Catron County Ordinance No. 001-2007.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), § 2201 (declaratory relief), and § 2202 (injunctive relief); 16 U.S.C. §§ 1540(c) and (g) (action arising under the ESA's citizen suit provision).

7. As required by the ESA, 16 U.S.C. § 1540(g), Forest Guardians and Sinapu have furnished both Defendant Commission and the Secretary of the Interior with written notice regarding the violations alleged in this Complaint more than sixty days ago. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

8. Venue lies in the district of New Mexico pursuant to 28 U.S.C. § 1391(b). Defendant Commission resides in the district of New Mexico, Defendant Commission's office is located within the district of New Mexico, and all events giving rise to the claims in this Complaint occurred within the district of New Mexico.

PARTIES

9. Forest Guardians is a non-profit conservation organization with offices in Santa Fe, New Mexico and Denver, Colorado. Forest Guardians' mission is to preserve and restore native wildlands and wildlife in the American Southwest through fundamental reform of public policies and practices. Forest Guardians is dedicated to the preservation of biodiversity and

natural systems within our National Forests. Achieving success for the Mexican gray wolf reintroduction and recovery efforts within the BRWRA is one of Forest Guardians' highest organizational priorities. Forest Guardians has approximately 2,500 members, most of whom live in New Mexico and Arizona. The members and employees of Forest Guardians engage in, and will continue to engage in, outdoor recreation, wildlife viewing, and other activities throughout the southwest in general, and in the BRWRA in particular. The existence of a healthy, viable Mexican wolf population in Catron County and throughout the BRWRA is an important part of these individuals' aesthetic and recreational enjoyment. A healthy Mexican wolf population can also restore native ecosystems in the BRWRA, as occurred when reintroduced Northern Rockies gray wolves flourished in Yellowstone. Forest Guardians' members and employees have scientific, aesthetic, recreational, and conservation interests in Mexican gray wolf recovery and the preservation of suitable habitat for the wolf within the BRWRA. As a result, members and employees of Forest Guardians are injured by the actions of Defendant Commission, which have caused an imminent and foreseeable risk of harm to the Mexican gray wolf.

10. Sinapu, named after the Ute word for wolves, is a non-profit organization based in Boulder, Colorado. Sinapu is dedicated to the restoration and protection of native wildlife, such as wolves, lynx, pumas, black bears, and coyotes in the Southern Rockies and connected high plains and deserts. Most of Sinapu's 1,000 members live in and around the Southern Rockies and American Southwest. Sinapu's members and employees have visited, and will continue to visit, the BRWRA in and around Catron County, New Mexico. These members and employees regularly and repeatedly use the BRWRA for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. Sinapu's members and employees hike,

backpack, and camp in the Gila National Forest, especially now that the federal government has restored wolves to the region. Sinapu’s members and employees support the Mexican gray wolf recovery program. These members and employees derive scientific, recreational, conservation and aesthetic benefits from the existence of Mexican wolves in the wild. As a result, members and employees of Sinapu are injured by the actions of Defendant Commission, which have caused an imminent and foreseeable risk of harm to the Mexican gray wolf.

11. Defendant Board of County Commissioners for the County of Catron is that group of elected officials charged with administering the Catron County government. The Catron County Commission is comprised of three members, each of whom is the Commissioner from one of the three Catron County Districts. Among its various duties, the Catron County Commission adopts ordinances pursuant to its police powers.

LEGAL BACKGROUND

A. The Endangered Species Act

12. “As it was finally passed, the [ESA] of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any nation...The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost. This is reflected not only in the stated policies of the Act, but in literally every section of the statute...[T]he plain language of the Act, buttressed by its legislative history, shows clearly that Congress viewed the value of endangered species as ‘incalculable.’” Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).

13. The ESA is designed to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. §

1538(a)(1)(B). As such, the ESA constitutes a comprehensive approach to wildlife protection, which imposes three main duties upon the Secretary of the Interior. ESA § 7(a)(1) imposes the duty to conserve. 16 U.S.C. § 1536(a)(1). ESA § 7(a)(2) imposes the duty to consult. 16 U.S.C. § 1536(a)(2). ESA § 9 imposes the duty to protect. 16 U.S.C. § 1538(a). The Secretary executes these duties through FWS, which is the federal agency ultimately responsible for the management of terrestrial threatened and endangered species. 50 C.F.R. § 402.01(b).

14. In order to further the conservation of a threatened or endangered species, ESA § 10(j) allows FWS to authorize the release of any population of such species into an area of historic habitation but outside of that species' current range. 16 U.S.C. § 1539(j)(2)(A). Although the purpose of ESA § 10(j) is to promote the expeditious recovery of listed species, populations reintroduced pursuant to Section 10(j) are often afforded lesser protections under the ESA than those afforded to naturally occurring populations of the same species. The level of protection given to a Section 10(j) population largely depends on its designation. For each population released pursuant to ESA § 10(j), FWS must by regulation determine whether that population is "experimental" and whether or not it is "essential to the continued existence" of the species. 16 U.S.C. § 1539(j)(3). When, as in the case of the Mexican gray wolf, FWS labels a reintroduced population of an endangered species as "experimental, nonessential," the agency may alter the extent to which the ESA § 9 "take" prohibitions apply to that particular population. The agency sets forth these altered prohibitions in a Section 10(j) rule.

15. The ESA § 10(j) rule for the Mexican gray wolf, codified at 50 C.F.R. § 17.84(k), alters the normal Section 9 prohibitions mainly as they relate to defense of property. The defense of property exceptions to the ESA § 9 prohibitions for the Mexican gray wolf are highly detailed and narrow in scope. These exceptions state that any unauthorized person who takes a

Mexican gray wolf in defense of property within the BRWRA may avoid liability for take only if the following provisions are met:

a. On private land and/or tribal reservation land, livestock owners or their agents may take (including kill or injure) any wolf actually “engaged in the act of killing, wounding, or biting livestock,” provided that evidence of livestock freshly wounded or killed by wolves is present; and further provided that the take is reported to FWS’s Mexican Wolf Recovery Coordinator or a designated representative of FWS within 24 hours. See 50 C.F.R. §§ 17.84(k)(3)(v) & (vi).

b. On public lands, livestock owners or their agents may be issued a permit to take wolves actually engaged in the act of killing, wounding, or biting livestock. Before such a permit is issued, however, the following conditions must be met: livestock must be legally present on the grazing allotment; six or more “breeding pairs” of Mexican gray wolves must be present within the BRWRA; previous loss or injury of livestock on the grazing allotment, caused by wolves, must be documented by FWS or its authorized agent; agency efforts to resolve the problem must be completed; evidence of livestock freshly wounded or killed by wolves must be present; and the take must be reported to FWS’s Mexican Wolf Recovery Coordinator or a designated FWS representative within 24 hours. See 50 C.F.R. § 17.84(k)(3)(vii).

c. On all BRWRA lands, take by livestock guarding dogs, when used in the traditional manner to protect livestock on public, tribal, and private lands, is permitted. See 50 C.F.R. § 17.84(3)(viii).

16. Beyond these defense of property provisions, 50 C.F.R. § 17.84(k) also alters the normal Section 9 “take” prohibitions as they apply to unauthorized persons in the following ways:

a. “Unavoidable and unintentional take” is not prohibited so long as: such take is non-negligent and incidental to a legal activity, such as military training and testing, trapping, driving, or recreational activities; and the take is reported to FWS’s Mexican Wolf Recovery coordinator or another FWS designated representative within 24 hours. See 50 C.F.R. § 17.84(k)(3)(i).

b. “Harassment” is not prohibited so long as: wolves that are harassed are within 500 yards of people, buildings, facilities, pets, livestock, or other domestic animals; the harassment is opportunistic and noninjurious to the wolf; and the harassment is reported within 7 days to FWS’s Mexican Wolf Recovery Coordinator or other designated FWS representative. See 50 C.F.R. § 17.84(k)(3)(ii).

17. Intentional taking of any wolf within the Mexican Wolf Experimental Population Area, except as described above, is prohibited. 50 C.F.R. § 17.84(k)(3)(xiii).

18. With the exception of wolf take by a guard dog, every action constituting permissible take by non-agency personnel in 50 C.F.R. § 17.84(k) requires coordination with FWS’s Mexican Wolf Recovery Coordinator or designated FWS representative. Under no circumstance does 50 C.F.R. § 17.84(k) allow wolves to be taken for causing non-physical harm.

19. As with all “experimental, nonessential” populations of endangered species, the Section 9 “take” prohibitions remain applicable to the Mexican gray wolf to the extent that those prohibited acts do not comply with the species’ Section 10(j) rule. Any action constituting “take” within the meaning of ESA § 9, which is not otherwise permitted by 50 C.F.R. § 17.84(k), is a violation of Section 9, and is thus unlawful.

20. The heart of FWS’s duty to protect endangered species is found at ESA § 9(a)(1)(B), which declares it unlawful for any person to “take” an endangered species. 16 U.S.C.

§ 1538(a)(1)(B). To “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or *attempt to engage in any such conduct.*” 16 U.S.C. § 1532(19) (emphasis added). The ESA “take” prohibition is prospective as well as retrospective, and “is defined in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.” Defenders of Wildlife v. Administrator, EPA, 882 F.3d 1294, 1300 (8th Cir.1989). Causing an imminent threat of future harm to an endangered species constitutes an unlawful “take” under the ESA. See, e.g., Forest Conservation Council v. Rosboro Lumber Co., 50 F.3d 781 (9th Cir.1995).

21. The “take” prohibition applies to individual citizens and government officials. 16 U.S.C. § 1538(g). The term “person” includes “any officer, employee, agent, department, or instrumentality...of any State, municipality, or political subdivision of a State...[or] any State, municipality, or political subdivision of a State...” 16 U.S.C. § 1532(13).

22. Liability for “take” may be vicarious. The ESA “not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking. [A] governmental third party pursuant to whose authority an actor directly exacts a taking...may be deemed to have violated the provisions of the ESA.” Strahan v. Coxe, 127 F.3d 155, 163 (1st Cir.1997). See also, e.g., Loggerhead Turtle v. County Council of Volusia Co., 148 F.3d 1231 (11th Cir.1998), cert. denied, 526 U.S. 1081 (1999).

B. The United States Constitution

23. Federal law will preempt any state or local law that authorizes actions otherwise prohibited by the ESA. The Supremacy Clause of the United States Constitution provides that the “Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.” U.S. Const. art. VI, § 3 cl. 2.

24. Congress included an express preemption provision in the ESA: “Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter *but not less restrictive* than the prohibitions so defined.” 16 U.S.C. § 1535(f) (emphasis added). In addition, the Section 10(j) rule for the Mexican gray wolf expressly states that “the [ESA], Mexican wolf experimental population rule, and other Federal authority preempt[s] any conflicting local ordinances.” 63 F.R. 1752-01, 1755 (1998).

C. Limited County Powers

25. While Catron County’s police power can be properly and necessarily exercised to protect and safeguard public health, safety, and/or general welfare, county ordinances passed pursuant to such police power are subject to preemption by the state or federal government. See N.M.S.A. § 4-37-1 (1978). Specifically, N.M.S.A. § 4-37-1 provides that, “All counties are granted the same powers that are granted municipalities *except for those powers that are inconsistent with statutory or constitutional limitations* placed on counties...The board of county commissioners may make and publish any ordinance to discharge these powers *not inconsistent with statutory or constitutional limitations* placed on counties (emphasis added).” Catron County may not properly promulgate an ordinance pursuant to its police powers if that ordinance is inconsistent with state or federal law or the state or federal constitution.

STATEMENT OF FACTS

A. The Mexican Gray Wolf

26. The Mexican gray wolf (*Canis lupus baileyi*) is a genetically distinct, endangered subspecies of the gray wolf species (*Canis lupus*), which is native to most of North America north of Mexico City. Mexican wolves numbered in the thousands before European settlement,

and historically occurred over portions of New Mexico, Arizona, Texas, and the Republic of Mexico. The “lobo” declined as a result of concerted federal eradication efforts undertaken on behalf of American livestock interests.



27. FWS listed the Mexican gray wolf as endangered in 1976, and quickly began planning for its recovery. By the time FWS prepared for Mexican gray wolf reintroduction, only five Mexican wolves could be captured alive (from Mexico) for an emergency captive breeding program.

28. FWS issued a recovery plan for the Mexican gray wolf in 1982. This recovery plan sets forth an objective of conserving and ensuring the survival of the Mexican gray wolf through maintaining a captive breeding program and re-establishing two viable, self-sustaining populations through reintroduction. FWS designated the BRWRA as the location for the first such population.

29. Pursuant to the Mexican Wolf Recovery Plan, FWS released 11 captive-reared Mexican gray wolves into the BRWRA on March 29, 1998.

30. Since the recovery program’s inception, FWS has worked with certain federal, state, and tribal partners in undertaking Mexican wolf reintroduction and management. Such partners include the USDA Forest Service, USDA Wildlife Services, the Arizona Game and Fish Department, the New Mexico Department of Game and Fish, the New Mexico Department of Agriculture, and the White Mountain Apache Tribe. Together, these entities are collectively

undertaking wolf recovery efforts in the BRWRA. Although it has many partners in wolf management, FWS retains ultimate responsibility for Mexican gray wolf recovery.

31. As part of its flexible wolf management scheme pursuant to the Mexican wolf Section 10(j) rule, FWS and its partners have adopted and implemented 26 Standard Operating Procedures (“SOPs”). Importantly, SOP 13 allows FWS and other authorized personnel to permanently remove Mexican wolves from the wild for committing livestock depredations. SOP 13 is a “three-strikes” rule, in that it authorizes the permanent removal of “nuisance” or “problem” wolves, including any Mexican wolf that commits three livestock depredations within one year. “Permanent removal” means either lethal or non-lethal control. “Lethal control” is typically accomplished by aerial gunning. “Non-lethal control” is typically accomplished by placing the target animal in permanent captivity. Since the adoption of SOP 13, FWS and its partners have permanently removed approximately 17 Mexican gray wolves from the BRWRA on behalf of public lands livestock permittees.

32. FWS’s numerous wolf removals have made recovery goals unattainable. Recovery goals set for the wild Mexican wolf population included 18 breeding pairs and a total of 102 individuals by 2006. By the end of last year, only 8 breeding pairs and an estimated 59 individual wolves were living in the wild. As of the end of June 2007, managers could locate just 26 wolves through radio telemetry. These wolves are dispersed amongst 11 packs and five single wolves. Current estimations of wild breeding pairs are as low as three to four.

B. Catron County Ordinance No. 001-2007

33. On February 7, 2007, Defendant Commission passed Catron County Ordinance No. 001-2007. Sections 2, 5, and 6 of the Ordinance authorize the Catron County Wolf Investigator (“CWII”), at Defendant Commission’s direction, to “harass,” “trap,” “pursue,”

and/or “permanently remove” Mexican gray wolves within the BRWRA without any coordination with FWS.

a. Section 2 mandates that “the CWII will respond” to “incidents involving habituated wolves in proximity to humans or human use areas” by “hazing/harassing, guarding, and/or trapping” the wolf or wolves involved without making any attempt to contact or coordinate with FWS.

b. Section 5 requires permanent wolf removal through lethal means when the county finds evidence of physical and/or psychological effects from a wolf and FWS refuses county-requested wolf removal. This section instructs the CWII to notify Defendant Commission of any and all such instances of “habituated wolves” in proximity to human use areas “if evidence of physical and/or psychological effects is/are present on a human” so that Defendant Commission can vote to approve a demand letter to FWS and the New Mexico Department of Game and Fish for the “immediate removal of the identified wolf from the Mexican Gray Wolf Recovery Program.” If FWS declines to “remove” the implicated wolf or wolves within 24 hours, Defendant Commission “shall direct the CWII to remove the animal immediately . . .”

c. Section 6 authorizes permanent wolf removal through lethal means when, where there is no evidence of physical effects from a wolf, FWS refuses county-requested wolf removal. This section instructs the CWII to notify Defendant Commission of any and all such instances of “habituated wolves” in proximity to human use areas even if “evidence of physical effects on a human is not visible,” so that the Commission can issue a demand letter for the “immediate removal of the identified wolf from the Mexican Gray Wolf Recovery Program.” If three such incidents involving the same wolf occur, each of which is reported through a demand

letter, and each of which goes unanswered by FWS, *i.e.*, FWS declines to “remove” the implicated wolf within 24 hours of each reported incident, Defendant Commission may seek permanent removal of the wolf through lethal means.

34. Defendant Commission has appointed Jess Carey as the acting CWII. In this capacity, Jess Carey works as an agent of Defendant Commission, and is charged with executing the terms of the ordinance concerning wolf removal at the Commission’s discretion.

35. Catron County Ordinance No. 001-2007 expressly repeals “Resolution 036-2007 Emergency Wolf-human Incident Protective Measures.” In addition, the Ordinance states that its terms “shall remain in effect until the immediate and long term threats [from wolves] are abated.”

36. On March 7, 2007, Defendant Commission sent a letter to FWS announcing the passage of Catron County Ordinance 001-2007. In that letter, the Commission requested an incidental take permit for a special management measure to remove wolves that are “habituated to humans, human residences, or other facilities.” Defendant Commission also stated that the County would like to submit an application for a permit for “take” of Mexican wolves in accordance with 50 C.F.R. § 17.32(a)(2).

37. On April 24, 2007, FWS responded to the Commission’s letter. In its April 24th letter, FWS declined to honor both of Defendant Commission’s requests. FWS stated that under 50 C.F.R. § 17.84, it “may authorize personnel to take a Mexican wolf in the non-essential experimental population in a manner consistent with a Service-approved management plan or special management measure,” but that “[t]here is no application to become an authorized agent of the Service.” FWS also stated that because Defendant Commission’s “request for take...involves the removal of nuisance wolves[, which] would be considered direct, intentional

take,” the Commission’s request could not be honored.

38. On April 26, 2007, Defendant Commission held its first vote pursuant to Section 5 of Catron County Ordinance No. 001-2007. The Commission voted unanimously to declare the then-pregnant alpha female of the Durango Pack, labeled AF924 by FWS, a “threat to human safety.”

39. Also on or about April 26, 2007, the Commission sent a “Notice of Finding of Imminent Danger” to FWS concerning AF924. In this Notice, Defendant Commission demanded that FWS immediately remove AF924 from the BRWRA. This Notice and Demand cites to no incident of human or livestock conflict that would require removal under FWS’s Mexican gray wolf federal management scheme.

40. FWS declined to remove AF924 as requested in Defendant Commission’s April 26, 2007 Notice and Demand. While any efforts the Commission may have undertaken in an attempt to remove AF924 pursuant to this Notice and Demand remain unknown, it is clear that AF924 was not injured, trapped, or killed by any person pursuant to this Notice and Demand.

41. On or about June 9, 2007, pursuant to Ordinance No. 001-2007, Defendant Commission had signage posted in Catron County warning the public of “dangerous” wolves in the area.

42. On June 18, 2007, Defendant Commission sent its second Notice and Demand to FWS. This letter declares that both AF924 and her mate, AM973, the Mexican wolf Durango Pack alpha male, pose an “imminent danger” within the county. This letter further demands that the FWS “immediately remove” this breeding pair from the BRWRA.

43. After FWS took no action to remove either AF924 or AM973 pursuant to its June 18, 2007 Notice and Demand, Defendant Commission directed the CWII to stalk and set one or

more traps for this breeding pair.

44. On or about June 30, 2007, the CWII, acting pursuant to Defendant Commission's direction, did stalk and set one or more traps in an attempt to capture AF924 and/or AM973. These traps were left on the ground for approximately seven to 14 days. The CWII's attempt to capture the Durango Pack breeding pair was unsuccessful.

FIRST CLAIM FOR RELIEF

45. Each and every allegation set forth in this Complaint is incorporated herein by reference.

46. The terms of Catron County Ordinance No. 001-2007, as adopted by Defendant Commission, authorize activities deemed unlawful by 50 C.F.R. § 17.84(k) and ESA § 9(a)(1)(B), 16 U.S.C. § 1538(a)(1)(B). By authorizing the CWII, through the passage of Catron County Ordinance No. 001-2007, to engage in, or attempt to engage in, activities regarding one or more Mexican gray wolves that constitute the unlawful and unauthorized "take" of an endangered species, the Commission has violated ESA § 9(a)(1)(B), 16 U.S.C. § 1538(a)(1)(B). Furthermore, unlawful and unauthorized future "take" is reasonably foreseeable and likely to occur as a result of the existence and continued implementation of Ordinance 001-2007.

47. Forest Guardians and Sinapu are injured by Defendant Commission's violation of the ESA.

48. Forest Guardians and Sinapu are authorized by the citizen suit provision of the ESA to bring this action and obtain injunctive relief to remedy the Commission's ongoing violation of the Act caused by its past and continuing authorization of activities that are contrary to law. 16 U.S.C. § 1540(g)(1)(A).

SECOND CLAIM FOR RELIEF

49. Each and every allegation set forth in this Complaint is incorporated herein by reference.

50. The Commission's actions as set forth herein exceed the scope of those activities allowed by either 50 C.F.R. § 17.84(k) and ESA § 9(a)(1)(B), 16 U.S.C. § 1538(a)(1)(B). By voting to have one or more Mexican gray wolves permanently removed from the BRWRA, and by ordering the removal of the wolf or wolves under the purported authority of Catron County Ordinance No. 001-2007, Defendant Commission has engaged in, or attempted to engage in, activities regarding one or more Mexican gray wolves that constitute the unlawful and unauthorized "take" of endangered species in violation of ESA § 9(a)(1)(B), 16 U.S.C. § 1538(a)(1)(B).

51. Forest Guardians and Sinapu are injured by Defendant Commission's violation of the ESA.

52. Forest Guardians and Sinapu are authorized by the citizen suit provision of the ESA to bring this action and obtain injunctive relief to remedy Defendant Commission's ongoing violation of the ESA caused by its past and continuing activities, which are contrary to law. 16 U.S.C. § 1540(g)(1)(A).

THIRD CLAIM FOR RELIEF

53. Each and every allegation set forth in this Complaint is incorporated herein by reference.

54. Catron County Ordinance No. 001-2007 is preempted by federal law pursuant to the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, § 3 cl. 2. Because the terms of this ordinance authorize activities otherwise proscribed by federal law, Catron

County Ordinance No. 001-2007 is superceded by the terms of the ESA and its implementing regulations, and thus has no validity.

55. Forest Guardians and Sinapu are injured by Defendant Commission's enactment of Catron County Ordinance No. 001-2007 contrary to the federal constitution and laws.

56. Forest Guardians and Sinapu are authorized by 28 U.S.C. § 2201 to obtain a declaration that Catron County Ordinance No. 001-2007 is invalid per the United States Constitution. Forest Guardians and Sinapu are further authorized by 28 U.S.C. § 2202 to obtain an injunction barring the Commission from authorizing or taking any further actions pursuant to the purported authority of Catron County Ordinance No. 001-2007.

PRAYER FOR RELIEF

WHEREFORE, Forest Guardians and Sinapu respectfully request that this Court enter judgment providing the following relief:

(1) A declaratory judgment that Defendant Commission is violating Section 9(a)(1)(B) of the ESA by authorizing and directing the CWII to take, or attempt to take, one or more Mexican gray wolves;

(2) A declaratory judgment that Defendant Commission is violating Section 9(a)(1)(B) of the ESA by taking, or attempting to take, one or more Mexican gray wolves;

(3) A declaratory judgment that the terms of Catron County Ordinance No. 001-2007 are superceded by the terms of the ESA and 50 C.F.R. § 17.84(k), and that the ordinance itself is therefore invalid;

(4) An order enjoining Defendant Commission from continuing to violate the ESA by continuing to authorize and direct the CWII or any other person to engage in activities that cause, or attempt to cause, the unlawful and unauthorized take of Mexican gray wolves;

- (5) An order enjoining Defendant Commission from continuing to violate the ESA by continuing to vote for and direct activities that cause, or attempt to cause, the unlawful and unauthorized take of Mexican gray wolves;
- (6) An order enjoining Defendant Commission from taking any further action pursuant to the purported authority of Catron County Ordinance 001-2007;
- (7) An order awarding Forest Guardians and Sinapu the costs incurred in pursuing this action, including attorneys' fees, as authorized by 16 U.S.C. § 1540(g)(4), and other applicable provisions;
- (8) An order granting such other and further relief as the Court may deem just and proper;
- (9) The retention of jurisdiction to insure that the terms of the decree are carried out;
- (10) Such temporary, preliminary, or permanent injunctive relief as specifically prayed for by Plaintiffs hereinafter.

Dated this 25th day of July 2007.

Respectfully submitted,

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