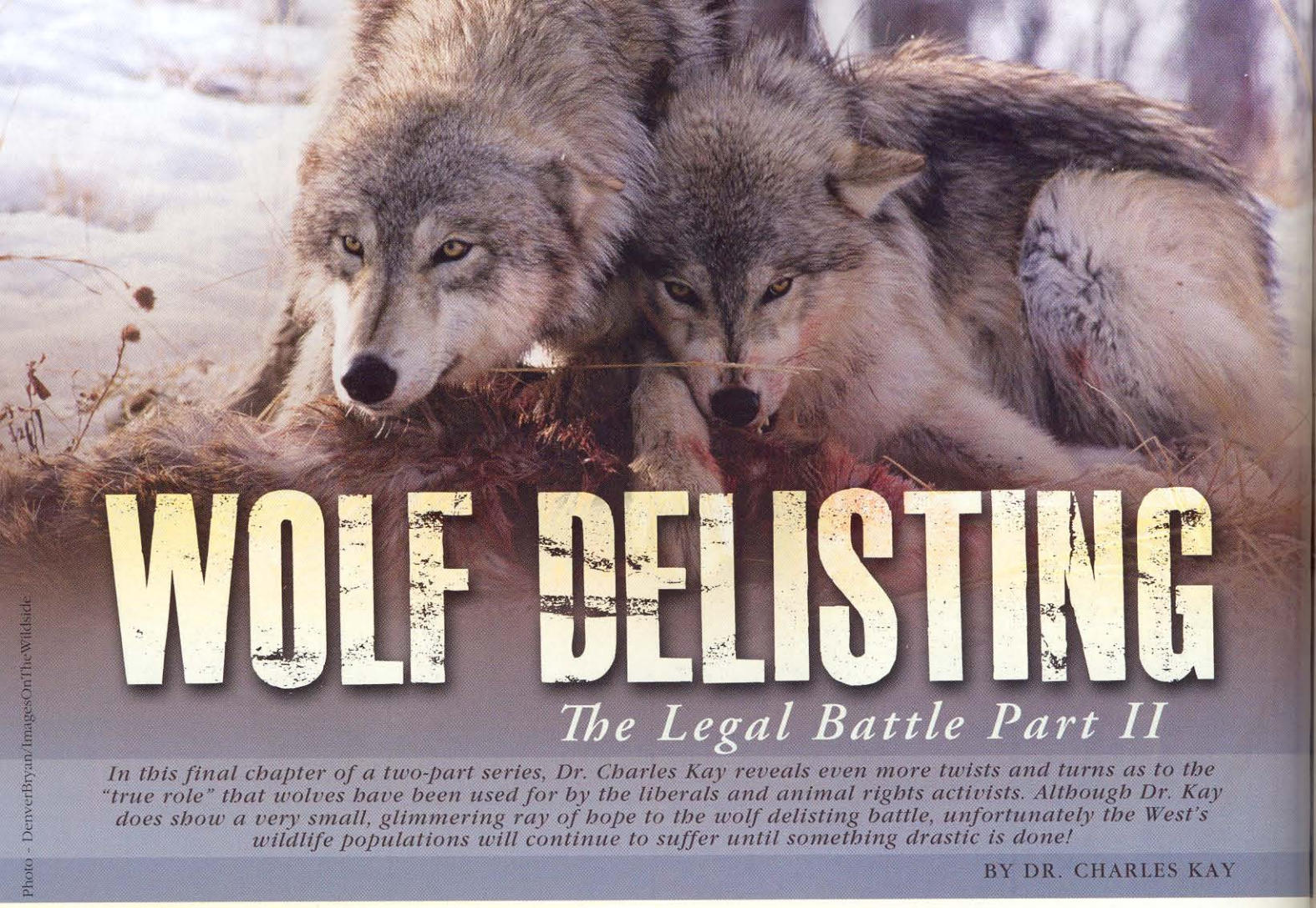

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WOLF DELISTING

The Legal Battle Part II

In this final chapter of a two-part series, Dr. Charles Kay reveals even more twists and turns as to the "true role" that wolves have been used for by the liberals and animal rights activists. Although Dr. Kay does show a very small, glimmering ray of hope to the wolf delisting battle, unfortunately the West's wildlife populations will continue to suffer until something drastic is done!

BY DR. CHARLES KAY

As explained in the last issue of MuleyCrazy, Wyoming was not included in the U.S. Fish and Wildlife Service's (USFWS) second, or 2009, attempt to delist wolves in the northern Rockies. This allowed Wyoming to file a third delisting lawsuit, but this time, in the Wyoming federal court of Judge Alan B. Johnson, not Judge Molloy in Missoula, (who had sided with Earthjustice in the first two delisting cases). Wyoming was supported in its lawsuit against the federal government by sportsmen organizations and livestock producers. Again, based on the administrative record and legal briefs filed by both sides, Judge Johnson held a hearing early in 2010 before issuing a final ruling in November of that year.

Unlike Molloy, Judge Johnson blasted the USFWS for not delisting wolves in Wyoming. According to Judge Johnson, the federal government acted arbitrarily and capriciously, which in layman's terms means that there was absolutely no basis in fact, science, or law to support the USFWS's decision not to delist wolves in Wyoming. After all, the federal government had sent Wyoming's state wolf management plan to eleven independent experts for review and ten agreed that Wyoming's plan adequately protected wolves. Judge Johnson, however, only remanded the delisting decision back to the USFWS for reconsideration. He did not delist wolves.

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So, we have one federal judge, Molloy, saying one thing and another federal judge, Johnson, saying the exact opposite. Moreover, there has been a second study on genetic connectivity among wolves in Montana, Idaho, and Wyoming done by the same authors, who did the initial study relied upon by Judge Molloy. This time, however, the study was conducted differently and this time all the wolves were shown to be genetically connected! That is to say, Molloy's first ruling is not worth the paper it is printed on, nor according to a different federal judge, is Molloy's second. Again, a liberal federal judge, Molloy, based legal decisions on his personal opinions, not facts, science, or the law. Any normal person would have seen the light, but not Molloy.

Now that the wolves in the northern Rockies have been shown to be interbreeding, Molloy has held a hearing to determine if all the wolves in Montana, Idaho, and Wyoming should be given FULL ESA PROTECTION. Recall what I said in the first part of this series on the 10j, nonessential population rule under

which the USFWS released wolves in Idaho and Yellowstone? Well, there is a section in the 10j regulations that non-essential populations must be "wholly separate geographically" from other populations of the same species under Endangered Species Act (ESA) protection. Thus, wolves in western Montana north of Interstate 90 that have always had full endangered status because they moved down from Canada by themselves, are now in contact with the 10j non-essential wolves the federal government released in Idaho and Yellowstone, which is most likely illegal!

Again, as explained in the first part of this series, under 10j, wolves that kill livestock are easier to control, plus a state can ask the USFWS for permission to institute predator control if the state can show that wolves have decimated specific ungulate herds. Both Montana and Idaho have now applied under 10j to begin wolf control in problem areas. But if every wolf is connected and the 10j rule no longer applies, the states will not be able to protect elk and deer herds being decimated by wolves. It will also become more difficult to eliminate livestock depredating wolves, the number of which, continue to grow and grow.

This, though, is not the worst of it. Under an earlier ruling from a federal court in Oregon, wolves must be restored to their full historic range, which includes most of the United States. Moreover, in a delisting lawsuit over wolves in the Great Lakes region, a federal district judge in Washington D.C. ruled that distinct population segments (DPS), in and of themselves, are illegal and that only entire species can be listed or delisted under the ESA. Based on this and other legal precedents, the Center for Biological Diversity, (one of the litigants in the northern Rockies delisting lawsuits), has said it will sue the USFWS to develop a wolf recovery plan for the ENTIRE UNITED STATES. According to the Center for Biological Diversity, "wolves now live in only five percent of their historical range. We need wolves … everywhere." What can be clearer than they want wolves "everywhere"? You say you live in Texas, California, the Midwest, or back East and that wolves are someone else's problem? Well think again! What is to stop some liberal federal judge, like Molloy, from mandating wolves everywhere? Not a single thing!

"Wolves are only a tool to further other agendas, such as the elimination of livestock grazing and hunting."

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In the final analysis, it is clear that wolf recovery, from its very beginning, has had virtually nothing to do with wolves, or science. Instead, wolves are only a tool to further other agendas, such as the elimination of livestock grazing and hunting.

Then too, there is a federal law called the Equal Access to Justice Act (EAJA), which allows Earthjustice and other environmental litigants to recover their legal costs, including attorney fees, if they prevail in federal court. What this means is that our tax dollars were not only used to release wolves over state objections, but that you and I have also had to pay Earthjustice's and its plaintiffs' legal fees for their work to keep wolves on the endangered species list! Talk about adding insult to injury! In just one of the delisting lawsuits discussed in the first part of this series, Judge Molloy ordered $263,090 to be paid to the Humane Society of the United States (HSUS), while in 2007, HSUS received $280,000 for a similar case to keep wolves on the endangered species list in the Great Lakes region.

In addition, HSUS and other anti-hunting organizations have filed hundreds of similar lawsuits against the federal government. No one knows exactly how much money these groups took in under the EAJA, because federal courts are not required to keep centralized records, but estimates run to several hundred million dollars each year. One account indicates that more than four billion dollars were paid out between 2003 and 2007. No wonder Earthjustice and others keep suing, and suing, and suing! By setting these lawsuits up to lose, the USFWS ensures that its friends in the pro-wolf community are well funded, with taxpayer money of all things!

In the final analysis, though, it is clear that wolf recovery, from its very beginning, has had virtually nothing to do with wolves, or science. Instead, wolves are only a tool to further other agendas, such as the elimination of livestock grazing and hunting. All one has to do is to look at the stated objectives of the groups that have sued over wolf delisting. The Humane Society of the United States (HSUS), for example, has emphatically stated that its aim is to eliminate hunting, not only in the U.S., but around the world. HSUS is not affiliated in any way with local humane societies. Instead, HSUS's objective is to outlaw all use of animals. Do you have a dog or cat as a pet? Not if HSUS has its way! How about seeing-eye dogs? Absolutely not! Do your children have goldfish or guppies? That too would be outlawed! HSUS is opposed to any and all use of animals, so fishermen can find something else to do too! Want a good steak? Or bacon and eggs for breakfast? Move to another country!

According to their website, the goal of the Western Watersheds Project, one of the pro-wolf litigants, is to eliminate livestock grazing on all public lands. This group also wants your private land, but they seldom mention that part of their agenda. Another pro-wolf litigant is the Wildlands Project, which recently changed its name to the Wildlands Network. All they want to do is to DEPOPULATE half the United States and then let nature take its course! As I have explained elsewhere, not only are the views of these and similar groups com-

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Before wolves were released in Yellowstone National Park, the elk count on the northern range stood at 19,000 animals. This past winter, only 4,635 elk were counted. During the same period, late season elk permits outside the Park fell from over 4,000 each year to zero.

pletely contrary to the principles on which our country was founded, but they, for the most part, are also illegal and unconstitutional. Unless, of course, one can find a liberal federal judge, like Molloy, to rule otherwise. After all, in our system, federal law supersedes state law, if the two conflict, which is what Earthjustice and pro-wolf advocates have counted on from the very beginning. Namely that the Endangered Species Act (ESA) trumps everything!

As litigation over wolf delisting drags on and on, wolf numbers grow and grow, with no end in sight. More importantly as wolf numbers increase, deer and elk herds decline, as do hunting and related economic opportunities. According to Dr. David Mech's declaration in the first delisting lawsuit the actual, or true, number of wolves is DOUBLE official estimates. The official estimate is now over 1,600, which means that as you read this, 3,200 wolves roam the northern Rockies. TEN TIMES the number agreed to in the Final EIS. Although this is not the place to review the history of the ESA, it is obvious that the present legal mess will never be resolved unless the ESA is changed or repealed. A new group has been formed to do just that, at least as relates to wolves. Big Game Forever in cooperation with a host of other sportsmen's organizations and livestock associations tried to have Congress pass a simple, one page law, exempting gray wolves, throughout the U.S., from the ESA.

As might be expected, there was fierce opposition from pro-wolf advocates and their allies in the Democratically controlled Senate. So instead of doing the right thing and removing all gray wolves from the Endangered Species List, Congress compromised and attached a two sentence rider to a continuing budget resolution to keep the federal government funded. That rider, which has been signed by the President, does not actually remove wolves from federal protection, but only reinstates the U.S. Fish and Wildlife Service's 2009 delisting rules that Judge Molloy had declared illegal in the second delisting lawsuit. In addition, the Congressional rider mandates that the 2009 wolf delisting rules "shall not be subject to judicial review." Congress also specifically stated that the wolf rider, "... shall not abrogate or otherwise have any effect on the order and judgment issued..." in the Wyoming delisting lawsuit. So according to the 2011 Congressional wolf rider, wolves in Montana, Idaho, and small parts of Utah, Oregon, and Washington State are to be returned to federally approved, state management, while wolves in Wyoming will be under ESA protection until the Wyoming case is finally resolved.

As could be predicted, pro-wolf advocates have decried Congress' behind-the-back foray into ESA matters, while sportsmen have claimed at least a partial victory for scientific management and an end to the legal mess. However, a careful reading of the 66-page, 2009 delisting rules, which are now the law of the land, raises a number of red flags. For instance, there is a mandatory five-year, post-delisting, monitoring period, and if during that time, Montana and Idaho fail to meet

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specific wolf population objectives, wolves will be put back on the Federal Endangered Species List. In addition, there is nothing in the Congressional rider to prevent pro-wolf advocates from filing new lawsuits under the contention that the 2009 delisting rules are not being followed. Nothing at all.

Even if federal protection for wolves ended, would that settle the wolf issue and keep it out of court? Sadly, I think not. Just look at Alaska. Wolves in that state have never been under federal protection, yet Alaska has repeatedly been sued by Defenders of Wildlife and a number of like-minded organizations over predator management. Moreover, when pro-wolfers have failed in court, they have turned to the state initiative process, which has forced sportsmen and the state of Alaska to spend millions of dollars both in court and in fighting various anti-hunting initiatives. Millions of dollars not spent on wildlife or habitat management. Predators in Alaska are presently killing 20 times more moose each year than all the state's subsistence and sport hunters combined, yet pro-wolf advocates have done everything they can to protect predators.

As I noted back in 1993 and as Dr. David Mech and others confirmed in their legal declarations in the northern Rockies first delisting lawsuit, hunting and trapping alone cannot significantly reduce wolf or other predator populations. But every time Alaska has moved to institute more aggressive predator management, the state has been sued. The state has won some court cases, but at most only 10% of Alaska has seen even a temporary reduction in wolves. That is, there has been no wolf control on 90% of Alaska but that is not enough for wolf-advocates. They want wolves totally protected, everywhere! Alaska is still in court.

Before wolves were released in Yellowstone National Park, the elk count on the northern range stood at 19,000 animals. This past winter, only 4,635 elk were counted. During the same period, late season elk permits outside the Park fell from over 4,000 each year to zero. According to Dr. Mark Hebblewhite, who is now at the University of Montana, "wildlife managers ... must come to terms with the truth that maintaining prewolf ungulate harvesting regimes may be a FANTASY in post-wolf landscapes" (emphasis added). When I told the truth in my 1993 article on what the federal government did not want the public to know about wolf recovery, the U.S. Fish and Wildlife Service tried to have me removed from my university position. Later, when Utah Congressman Jim Hansen arranged for me to publicly debate the Superintendent of Yellowstone, the President of the United States intervened, and I got canceled. Now, we all know why.

Even if federal protection of wolves is eliminated, the court battles, unfortunately, will not end, unless there are major changes to our legal system, such as repealing the EAJA, limiting the ability of non-effected parties to sue, and reforming statutes governing non-profit organizations and foundations, among others. We might also want to consider a constitutional amendment setting term limits for federal judges or mandating that federal judges stand for non-partisan elections at fixed intervals, just like many state and local judges already do.

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