

FILED

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12 **MONTANA FIRST JUDICIAL DISTRICT COURT**
13 **LEWIS AND CLARK COUNTY**

14 WILDEARTH GUARDIANS and PROJECT
COYOTE, a project of the Earth Island Institute,

15
16 Petitioners,

17 v.

18 STATE OF MONTANA, by and through the
MONTANA DEPARTMENT OF FISH,
19 WILDLIFE, AND PARKS and the MONTANA
20 FISH AND WILDLIFE COMMISSION,

21 Respondents,
22

Case No. BDV 2022-896
MICHAEL F MCMAHON
PRESIDING JUDGE

**VERIFIED PETITION AND
APPLICATION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Relying on an outdated and scientifically-deficient wolf management plan, the Montana
2 Department of Fish, Wildlife & Parks and the Montana Fish & Wildlife Commission have
3 authorized the killing of 456 wolves this coming winter, constituting roughly 40% of the state's
4 wolf population. Respondents' actions violate the Constitution of the State of Montana and the
5 Montana Administrative Procedure Act. Petitioners seek a writ of mandate compelling
6 Respondents to comply with state law before allowing the further killing of wolves in Montana,
7 through hunting and trapping and declaratory and injunctive relief requiring Respondents to fulfill
8 their obligation to manage the Montana wolf population for the benefit of all citizens. Petitioners
9 also seek an injunction preventing the state from allowing wolf killing in and around federally
10 owned land, including Yellowstone National Park and Glacier National Park.

11 THEREFORE, Petitioners WildEarth Guardians and Project Coyote, a Project of the Earth
12 Island Institute, through their undersigned counsel, as and for their Petition against Respondents,
13 allege as follows:

14 **JURISDICTION & VENUE**

15 1. This Court has original jurisdiction over this action pursuant to Article II, Sections
16 8 and 16 and Article VII, Section 4 of the Montana Constitution and §§ 2-3-114 and 3-5-302,
17 MCA.

18 2. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to §§
19 27-8-101, *et seq.* (declaratory relief), MCA; § 2-4-506 (declaratory relief), MCA; §§ 27-19-101,
20 *et seq.*, (injunctions), MCA; and §§ 27-26-101, *et seq.* (writ of mandate), MCA; as well as the
21 general equitable powers of this Court. As to declaratory relief, this Court "shall have the power
22 to declare rights, status, and other legal relations," and this is "whether or not further relief is or
23 could be claimed" in this action. *See* Section 27-8-201, MAPA.

24 3. Venue in this action is proper pursuant to §§ 25-2-126(1) and 25-2-117, MCA.
25 This is an action against the State of Montana, against officers and agencies of the state in their
26 official capacities, and one or more members of Petitioners' organizations reside in Lewis &
27 Clark County.

PARTIES

Petitioners

4. Petitioner WILDEARTH GUARDIANS (“Guardians”) is a non-profit organization whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has offices in Montana, Arizona, Colorado, Idaho, New Mexico, Oregon, and Washington, and approximately 197,000 members and supporters nationwide, including a number of whom live and/or regularly recreate in Montana. Guardians is located at 301 N. Guadalupe, Suite 201 in Santa Fe, New Mexico, but also has an office in Missoula, Montana with four full-time staff who also live in Montana. For over 30 years, Guardians has worked to restore and protect imperiled native carnivores, including gray wolves. Guardians works to protect wolf habitat in Montana and across the West, promote coexistence and fight lethal wolf “management,” educate the public about the importance of wolves to maintaining healthy natural ecosystems, and advocate for protecting these iconic animals under state and federal law, including through listing under the federal Endangered Species Act (“ESA”). The further destruction of wolves in Montana due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of WildEarth Guardians and its staff, members, and supporters.

5. Petitioner PROJECT COYOTE is a project of the Earth Island Institute, a non-profit corporation that serves as a hub for grassroots campaigns dedicated to conserving, preserving, and restoring the ecosystems on which civilization depends. Project Coyote’s mission is to promote compassionate conservation and coexistence between people and wildlife through education, science, and advocacy. Project Coyote is based at 655 Redwood Highway in Mill Valley, California. It has more than 62,000 members nationwide, including 345 members in Montana. The further destruction of wolves in Montana due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of Project Coyote and its staff, members, and supporters.

1 **Petitioners' Interests**

2 6. Petitioners are “interested persons” within the meaning of § 2-4-102(5)(a), MCA,
3 as the organizations and their members participated in the public review process for the Montana
4 Wolf Conservation and Management Planning Document¹ (“2002 Wolf Plan”), as well as the
5 2021-22 and 2022-23 seasonal wolf hunting and trapping quotas, which were set in accordance
6 with the 2002 Wolf Plan.

7 7. Petitioners and their members, supporters, and staff have a long-standing interest
8 in the gray wolf and routinely advocate for gray-wolf protection in Montana. They expended
9 organizational resources to actively participate in the development of wolf policy in Montana,
10 including participating in the development of the 2002 Wolf Plan, testifying at Commission
11 hearings related to wolf matters, submitting comments to Respondents regarding the 2021-22 and
12 2022-23 wolf hunts, and assisting in the development of the quota for the 2021-22 and 2022-23
13 wolf hunts.

14 8. Many of Petitioners’ members, supporters, and staff live in or near areas occupied
15 by wolves in Montana, including Lewis and Clark County, and all seven wolf harvest districts
16 where wolves will be trapped this winter, or they visit these areas for hiking, camping,
17 photography, birdwatching, observing wildlife, and other recreational and professional pursuits.
18 Petitioners’ members, supporters, and staff gain aesthetic enjoyment from observing, attempting
19 to observe, hearing, seeing evidence of, and studying wild wolves, including observing signs of
20 wolves in these areas, and observing ecosystems enhanced by these animals. The opportunity to
21 possibly view wolves, or signs of wolves, in these areas is of significant interest and value to
22 Petitioners’ members, supporters, and staff, and increases their use and enjoyment of Montana’s
23 public lands, including Yellowstone National Park, Grand Teton National Park, and Glacier
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27 ¹ Full citation: “Montana Wolf Conservation and Management Planning Document” (2002) 1 Rocky
28 Mountain Wolf Recovery Annual Reports 23, available at
<https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wildlife-reports/wolf/mt-wolf-conservation-and-management-plan.pdf>.

1 National Park. Petitioners' members, supporters, and staff have engaged in these activities in the
2 past and have specific plans to continue to do so in the future.

3 9. Petitioners' members and supporters are adversely impacted by the threat that wolf
4 hunters and trappers pose to their companion animals and other companion animals in Montana.
5 Petitioners' members and supporters also have an interest in the health and humane treatment of
6 animals, and some members of Petitioner Project Coyote work to rehabilitate sick and injured
7 wildlife, including wildlife that are injured, but not killed by Montana hunters and trappers.
8 Petitioners' members, staff, and supporters have engaged in these activities in the past and intend
9 to do so again in the immediate future.

10 10. Petitioners, as well as their members, supporters, and staff, are dedicated to
11 ensuring the long-term survival and recovery of the gray wolf throughout the contiguous United
12 States, and specifically in Montana, and to ensuring that Respondents comply with all applicable
13 state and federal laws related to the survival and recovery of the gray wolf in Montana. In
14 furtherance of these interests, Petitioners' members, supporters, and staff have worked, and
15 continue to work, to conserve wolves in Montana, the Northern Rocky Mountains, and the
16 contiguous United States.

17 11. The interests of Petitioners' members, supporters, and staff have been, and will
18 continue to be, injured by Respondents' authorization of wolf hunting and trapping in Montana.
19 The interests of Petitioners' members, supporters, and staff have been, and will continue to be,
20 injured by Respondents' failure to comply with their obligations under the Montana Constitution,
21 the Montana Administrative Procures Act ("MAPA"), state wildlife statutes, and agency
22 regulations in continuing to authorize the hunting and trapping of wolves in Montana at
23 unsustainable levels.

24 12. The relief requested by Petitioners here, if granted, would redress, at least in part,
25 the injuries of Petitioners' members, supporters, and staff. The relief requested by Petitioners, if
26 granted, would require Respondents to comply with the requirements of the Montana
27 Constitution, state wildlife statutes, agency regulations, and MAPA before setting a quota or
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1 allowing further hunting or trapping of wolves. The relief requested by Petitioners, if granted,
2 would reduce the number of gray wolves killed by Montana hunters.

3 **Respondents**

4 13. Respondent STATE OF MONTANA is the sovereign trustee over public trust
5 resources within its domain, including water, public lands, the atmosphere, and fish and wildlife.
6 As sovereign trustee, Montana is charged with protecting public trust resources from substantial
7 impairment and alienation for the benefit of present and future Montanans. Montana has a
8 constitutional duty to maintain a clean and healthful environment for present and future
9 generations. Montana, through its legislature and governor, enacted the wolf hunting and trapping
10 statutes and policy mandates challenged in this petition.

11 14. Respondent MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS
12 (“MFWP”) is a department of the State of Montana created by the state legislature to “supervise
13 all the wildlife, fish, game and nongame birds, waterfowl, and the game and fur-bearing animals
14 of the state.” Section 87-1-201(1), MCA. MFWP “shall enforce all the laws of the state regarding
15 the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and
16 game and nongame birds within the state” and has the “exclusive power” to spend for the purpose
17 of “protection, preservation, management, and propagation” of those species. *Id.* at § 87-1-201(2),
18 (3). With respect to the gray wolf, MFWP must “manage wildlife, fish, game, and nongame
19 animals in a manner that prevents the need for listing” under the Montana Nongame and
20 Endangered Species Conservation Act of 1973, § 87-5-107, MCA, or under the federal ESA, § 16
21 U.S.C. 1531, et seq., and in a manner that assists in the maintenance or recovery of the species.
22 *Id.* at § 87-1-201(9)(a)(i), (ii). According to its own rules, MFWP “is dedicated to the
23 conservation of wolf populations within the state of Montana . . . and will implement conservation
24 and management strategies to make sure that wolves continue to thrive and are integrated as a
25 valuable part of Montana's wildlife heritage.” Admin. R. Mont. 12.9.1301.

26 15. Respondent MONTANA FISH AND WILDLIFE COMMISSION
27 (“Commission”) sets the policies, including regulations, for “the protection, preservation,
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1 management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species,
2 and endangered species of the state and for the fulfillment of all other responsibilities of the
3 department related to fish and wildlife as provided by law.” Section 87-1-301(1)(a), MCA. By
4 legislative mandate, the State of Montana has delegated near-total control of wolf population
5 management to the Commission with the express goal of reducing the wolf population in the state
6 to a “sustainable level” of not less than the number of wolves “necessary to support at least 15
7 breeding pairs.” *Id.* at § 87-1-901, et seq.

8 GENERAL ALLEGATIONS OF FACT

9 Montana’s Public Trust Doctrine

10 16. The “Public Trust Doctrine” is an ancient doctrine recognizing the principle that
11 certain natural and cultural resources belong to the people, and that the government must protect
12 and maintain these resources for future generations. Cultural and natural resources subject to the
13 Public Trust Doctrine are referred to as “public trust resources” or “trust resources,” and the
14 government entities with responsibility for managing trust resources are referred to as “trustees.”

15 17. During Montana’s territorial period (1864-1889), the territorial courts recognized
16 that Montana water is public property, and therefore a trust resource, under common law. *Barkley*
17 *v. Tieleke*, 2 Mont. 59, 63 (1874); *see also Mettler v. Ames Realty Co.*, 61 Mont. 152, 159, 201 P.
18 702, 704 (1921) (explaining that “the corpus of running water in a natural stream is not the subject
19 of private ownership . . . Such water is classed with the light and the air in the atmosphere. It is
20 *publici juris*, or belongs to the public.”).

21 18. Although it has common law roots, Montana’s Public Trust Doctrine has been
22 formally recognized by several provisions of the Montana Constitution. Mont. *See* MONT.
23 CONST. art. IX, § 3(3) (“All surface, underground, flood, and atmospheric waters within the
24 boundaries of the state are the property of the state for the use of its people[.]”); Mont. Const., art.
25 II, § 3 (“All persons are born free and have certain inalienable rights . . . includ[ing] the right to a
26 clean and healthful environment...”); Mont. Const., art. IX, § 1(1) (“The state and each person
27 shall maintain and improve a clean and healthful environment in Montana for present and future
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1 generations.”); *see also* *Mont. Coal. for Stream Access, Inc. v. Curran*, 210 Mont. 38, 45, 682
2 P.2d 163, 167-168 (1984) (recognizing that the common law and constitutional origins of the
3 state Public Trust Doctrine include protection of recreational uses).

4 19. Montana’s Public Trust Doctrine has expanded from an initial focus on navigable
5 waters, to include a responsibility to preserve and protect fish, wildlife, and habitat. *See Rosenfeld*
6 *v. Jakways*, 67 Mont. 558, 562, 216 P. 776, 777 (1923) (“[T] the ownership of wild animals is in
7 the state, held by it in its sovereign capacity for the use and benefit of the people generally[.]”);
8 *Galt v. State Dep’t of Fish, Wildlife and Parks*, 225 Mont. 142, 146-47, 731 P.2d 912, 915 (1987);
9 *Mont. Coal for Stream Access, Inc. v. Currant*, 210 Mont. 38, 682 P.2d 163 (1984); *Mont. Trout*
10 *Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 2011) 77, 255 P.3d 179 (allowing
11 a conservation group to file an objection to a water rights allocation under the Public Trust
12 Doctrine even though the conservation group’s goal was to generally enhance the amount of
13 water available for fish habitat or recreational use).

14 **Montana’s History with Gray Wolves**

15 20. The 2002 Wolf Plan recounts the story of the gray wolf in Montana, including its
16 near-extirpation and later actions to reintroduce the species in Central Idaho and Yellowstone
17 National Park. *See* 2002 Wolf Plan, p. 3-5 (recounting the gray wolf’s decline and subsequent
18 efforts to protect and reintroduce the species). According to the plan, wolves were widespread
19 throughout Montana at the time of European settlement. *See* 2002 Wolf Plan at 3. Early trappers
20 and explorers, including Lewis and Clark, recorded wolf sightings and encounters in their diaries.
21 *Id.* The first statewide bounty law passed in 1884, and with it, the start of wolf eradication in
22 Montana. *Id.* In that first year, 5,450 wolf hides were presented for payment. *Id.* Only three
23 Montana counties failed to report a bounty payment for wolves from 1900-1931. *Id.* By 1936,
24 wolves were extirpated from Montana, although they were occasionally observed and killed in the
25 1950s and 1960s. *Id.* No breeding pairs were known in Montana in the 1970s, and the occasional
26 wolves killed in Montana had likely dispersed from their packs across the border in Canada. 2002
27 Wolf Plan at 4.

1 21. In 1973, the gray wolf won protection under the newly enacted ESA, 16 U.S.C. §
2 1531, *et seq.*, sparking a federal recovery plan and management effort that lasted for decades. As
3 part of a recovery plan targeting the Northern Rocky Mountains, in 1995 and 1996, the U.S. Fish
4 and Wildlife Service (“USFWS”) reintroduced 66 wolves from Alberta and British Columbia into
5 the wilderness areas of Central Idaho and Yellowstone National Park, formally named the Central
6 Idaho Recovery Area and Greater Yellowstone Recovery Area. 2002 Wolf Plan at 4. Just five
7 years later, in 2000, the USFWS documented 9 breeding pairs in the Central Idaho Recovery Area
8 and 13 breeding pairs in the Greater Yellowstone Recovery Area. That same year, the USFWS
9 documented 8 breeding pairs of wolves within Montana’s borders. 2002 Wolf Plan at 4.

10 22. MFWP developed the 2002 Wolf Plan to account for the eventual recovery of gray
11 wolves in the state. The 2002 Wolf Plan was intended to govern wolf management in the state
12 when federal ESA protections were lifted and MFWP and the Commission assumed management
13 responsibility for the species. Under the 2002 Wolf Plan, MFWP committed to monitoring the
14 state gray wolf population using physical, “non-invasive methods,” such as track counts, howling
15 surveys, observation report summaries, remote photography, and profiling of genetic material
16 obtained passively from hair or scat samples. 2002 Wolf Plan at 30. The 2002 Wolf Plan details
17 MFWP’s plans to conduct track surveys to confirm presence or absence of wolves during periods
18 of snow cover, when such surveys are most accurate, and in conjunction with USFWS and the
19 U.S. Forest Service. *Id.* It also commits to several additional wolf management objectives and
20 goals, including prioritizing non-lethal methods of management “to avert or resolve a wolf
21 conflict without killing the wolf or wolves” involved in wolf-human conflicts if there are fewer
22 than 15 wolf packs. *Id.* at 26

23 23. Citing the success of recovery efforts in the Northern Rocky Mountains, including
24 Yellowstone National Park and Glacier National Park, USFWS removed ESA protections for gray
25 wolves in Idaho and Montana in 2009, thereby turning wolf management in those areas over to
26 the states. *See* 74 Fed. Reg. 15,123, 15,148 (Apr. 2, 2009). Even though the rule was declared
27 unlawful by a federal court, it was codified by a Congressional rider on a 2011 budget bill. *See*
28 Department of Defense and Full-Year Continuing Appropriations Act of 2011, H.R. 1473, 112th

1 Cong. § 1713 (2011); *Def. of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010). As a
2 result of the federal delisting, Montana has maintained regulatory authority over wolf
3 management in the state for the past 11 years, and until 2021, the state’s wolf population seemed
4 relatively stable.

5 **Montana’s Statutory Mandates**

6 24. In 2021, newly inaugurated Montana Governor Greg Gianforte signed a series of
7 bills designed to reduce the estimated state wolf population of 1,150 to just 15 breeding pairs. *See*
8 Section 87-1-901, MCA. The first new law mandated that the Commission “establish by rule
9 hunting and trapping seasons for wolves with the intent to reduce the wolf population in this state
10 to a sustainable level, but not less than the number of wolves necessary to support at least 15
11 breeding pairs.” *See* Mont. Sen. Bill 314 (2021), codified at § 87-1-901, MCA.

12 25. The second bill mandated that MFWP allow the use of snares for trapping wolves.
13 *See* Mont. House Bill 224 (2021), codified at § 87-1-901, MCA.

14 26. The third bill gave the Commission authority to extend the wolf trapping season.
15 *See* Mont. House Bill 225 (2021), codified at § 87-1-304, MCA.

16 27. The fourth bill allowed private parties to reimburse costs incurred by wolf hunters
17 and trappers. *See* Mont. Sen. Bill 267 (2021), codified at § 87-6-214(1)(d), MCA.

18 28. Collectively, this petition refers to these laws as the “2021 Wolf Laws.”

19 29. On August 21, 2021, the Commission adopted four regulations implementing these
20 new laws, following a public process during which the Commission received more than 26,000
21 public comments, most of which opposed aggressive wolf hunting and trapping. Admin. R. Mont.
22 12.9.1301-1305. Among other provisions, these regulations provided that trappers could use both
23 neck snares and leg snares to trap wolves, allowed the use of bait for wolf hunting and trapping,
24 allowed nighttime hunting on private lands with spotlights, and set a “bag limit” of 20 wolves for
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1 each hunter and trapper.² *Id.* The Commission also eliminated the wolf-hunting and trapping
2 quota in the hunting and trapping zones located just north of Yellowstone National Park.

3 30. Collectively, this petition refers to regulations as the “2021 Wolf Regulations.”

4 **Montana’s 2002 Wolf Plan**

5 31. Recent statutory developments notwithstanding, Respondents must manage the
6 wolf as a “species in need of management until the department and commission determine that the
7 wolf no longer needs protection” and can be managed “as a game animal or furbearer.” Section
8 87-5-131(2), MCA. Respondents have not made such a determination.

9 32. Respondents carry out their statutory duty to manage the wolf population in
10 accordance with a wolf management plan, the most recent of which was developed and adopted in
11 2002, as well as seasonal hunting regulations adopted pursuant to that plan. *See* Admin R. Mont.
12 12.9.1303. The 2002 Wolf Plan requires that “MFWP will undertake a thorough, formal review
13 after the first five years [post the delisting of wolves in Montana]” and that “[t]he wolf
14 management program will be subsequently reviewed at least every five years.” 2002 Wolf Plan at
15 vi.

16 33. The 2002 Wolf Plan further provides that:

17 Upon delisting and with adequate funding secured, MFWP will
18 implement the Wolf Conservation and Management Plan. This plan
19 will guide MFWP managers and others responsible for the planning
20 and policy decisions that affect wolf management in Montana. It will
21 also guide decision-making at the field level. MFWP personnel will
22 use this plan to prioritize field activities, manage time/budgets,
23 formulate wolf management recommendations, and coordinate with
24 personnel of other state and federal agencies.

25 2002 Wolf Plan at 73.

26 34. Despite the requirement that the 2002 Wolf Plan be reviewed every five years,
27 Respondents have never updated it or engaged in a formal review, even though the science of
28 wolf conservation and carnivore ecology has developed significantly since 2002.

² *See* <https://npr.brightspotcdn.com/cb/4f/9f265a37491e93059c10d1d5e958/montana-wolf-hunting-regulations-2021-2022.pdf>

1 35. In 2021 and 2022, Respondents used a method of modeling wolf populations in
2 Montana, commonly referred to as iPOM, that experts have shown is unreliable and incapable of
3 detecting important changes in the wolf population. According to MFWP, iPOM “purports to
4 eliminate the need for intensive field-based monitoring” but “still provide a means to reliably
5 estimate wolf abundance.”³

6 36. The iPOM model does not appear in the 2002 Wolf Plan, which requires other
7 methods of tracking wolf populations. Nevertheless, Respondents disregarded the provisions of the
8 2022 Wolf Plan to use the iPOM model to estimate Montana’s wolf population according to the
9 availability of suitable wolf habitat and opportunistic hunter observations, rather than on-the-
10 ground track counts or observations by trained biologists. Such estimates of suitable habitat
11 almost certainly result in a significant over-estimate of the actual wolf population in Montana.⁴

12 37. According to a peer-reviewed scientific assessment completed by a professor at
13 Montana State University, the iPOM model uses inadequate data and unreliable methods at each
14 step of its analysis (e.g. estimation of area occupied by wolves, territory size, and pack size) as
15 well as the modeling as a whole, compounding uncertainty in each step by combining poor data
16 with poor methodology. *Id.* The study’s author concluded: “I am aware of no examples other than
17 the Montana iPOM suggesting that population size can be estimated reliably in the absence of
18 direct demographic data and/or population counts.” *Id.*

19 38. Respondents cannot make scientifically sound predictions about the impact of wolf
20 hunting and trapping on the sustainability of wolf populations without accurate population data, at
21 a minimum. If Respondents reviewed and updated their wolf planning document to include an
22 analysis of the integrity of the new wolf population model, analyzed data, and made public
23 employed methods, that would provide an opportunity for scientists and members of the public to
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26 ³ S. N. Sells et al., “Improving estimation of wolf recruitment and abundance, and development of an
27 adaptive harvest management program for wolves in Montana. Final Report for Federal Aid in Wildlife Restoration
28 Grant W-161-R- (Montana Fish, Wildlife and Parks, Helena, Montana, 2020).

⁴ See Dr. Scott Creel, “Methods to estimate population sizes of wolves in Idaho and Montana,”
Distinguished Professor of Letters and Science, Department of Ecology, Montana State University, available at
https://wildlifecoexistence.org/wp-content/uploads/2022/04/Creel-Wolf-Report_FINAL.pdf.

1 contribute to the discussion, providing Respondents with better information to allow them to
2 accurately estimate wolf populations and fulfill their mandate to sustainably manage wolves.

3 **Montana's Recent Wolf Hunts**

4 39. According to MFWP estimates based on the population methods set forth in the
5 2002 Wolf Plan, wolf populations remained steady in Montana between 2012 and 2019,
6 stabilizing at approximately 190 packs and 1,150 individual wolves.⁵ Hunters and trappers killed
7 an average of 242 wolves per year between 2012 and 2019, and 327 wolves in 2020.⁶

8 40. The National Park Service has determined that wolves in Yellowstone's northern
9 range spend an estimated 5% of their time outside the park. In the fall, these wolves follow
10 migrating elk out of the park or leave their birth pack and enter Montana in search of a mate or
11 new territory. Many of the wolves that leave the park from the northern range enter Montana
12 Wolf Management Unit ("WMU") 313 and WMU 316, which are adjacent to the park's northern
13 boundary and located within hunting Region 3. Prior to 2021, those two units each had a quota
14 that limited the number of wolves that could be killed.⁷

15 41. Similarly, prior to 2021, MFWP assigned a quota to WMU 110 in Region 1,
16 adjacent to Glacier National Park, to limit the number of Glacier National Park wolves killed
17 during seasonal hunts. WMU 110 is located in the North Fork of the Flathead River Basin, which
18 is some of the best available habitat for wildlife in North America.

19 42. The 2021 Wolf Laws and 2021 Wolf Regulations eliminated the quotas in WMU
20 110, WMU 313, and WMU 316. Abolishing the quotas led to a significant increase in the killing
21 of Yellowstone wolves compared to previous years. As the table below shows, in WMU 313 and
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25 ⁵ Montana Fish, Wildlife & Parks, 2021 Hunting Season-Quota Change Supporting Information, at 2.

26 ⁶ Inman, B., K. Podruzny, T. Parks, T. Smucker, M. Ross, N. Lance, W. Cole, M. Parks, S. Sells, and Sw.
27 Wells. 2020. Montana Gray Wolf Conservation and Management 2020 Annual Report, Montana Fish, Wildlife &
28 Parks. Helena, Montana, p. 21 available at <https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wolf/annual-wolf-report-2020.pdf>.

⁷ Natl. Park Serv., News Release: Three Yellowstone wolves killed in Montana during first week of
Montana's hunting season (Sept. 27, 2021), available at
<https://www.nps.gov/yell/learn/news/21028.htm>.

1 316 more Yellowstone National Park wolves were killed during the 2021-22 hunting season than
2 in the five previous seasons combined.⁸

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4 **Yellowstone Wolves Killed by Unit and Season**

Wolf Hunt Season	WMU 313	WMU 316	Total
2016-2017	3	3	6
2017-2018	0	2	2
2018-2019	1	1	2
2019-2020	2	0	2
2020-2021	2	0	2
2016-2021 (with quota)	8	6	14
2021-2022 (no quota)	18	3	21

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13 43. Also in 2021, Respondents set wolf quotas in seven regions that allowed for the
14 hunting and trapping of 450 wolves, with the following quotas in each region (collectively, the
15 “2021 Wolf Quota”):

- Region 1: 195 wolves
 - Region 2: 116 wolves
 - Region 3: 82 wolves
 - Region 4: 39 wolves
 - Region 5: 11 wolves
 - Region 6: 3 wolves
 - Region 7: 4 wolves
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21 44. In the middle of Montana’s 2021-22 wolf trapping season, on December 16, 2021,
22 Yellowstone National Park Superintendent Cameron H. Sholly wrote to Montana Governor Greg
23 Gianforte advising him that “in the span of less than three months, at least 12 Yellowstone
24 National Park wolves have been killed within Montana’s wolf management units 313 (Gardiner)

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28 ⁸ Data source: <https://www.nps.gov/aboutus/foia/upload/YELL-Montana-Wolf-Mangement-Documents-January-7-2022.pdf>.

1 and 316 (Cooke City) just north of the park boundary.”⁹ Superintendent Sholly asked the
2 governor to close WMU 313 and 316 “due to the extraordinary number of Yellowstone wolves
3 already killed” and the “high probability of even more park wolves being killed in the near
4 future.” Superintendent Sholly explained that the state’s data shows “little to no wolf-related
5 depredation incidents occurring in northern Yellowstone” and also shows that the elk population
6 in northern Yellowstone is at the population objectives set by MFWP.”

7 45. Montana’s 2021-22 wolf hunting and trapping season closed on March 15, 2022.
8 According to MFWP, hunters and trappers killed 273 wolves, with hunters killing 148 wolves and
9 trappers killing 125. Through the entire 2021 calendar year, Montana hunters and trappers killed
10 299 wolves.¹⁰ The Commission closed Region 3, which borders Yellowstone National Park, on
11 February 17, 2022, after hunters reported 82 wolf kills. *Id.* In total, hunters killed 85 wolves in
12 Region 3, representing one-third of all the wolves killed in the state.¹¹ Montana hunters killed 21
13 wolves that park biologists identified as Yellowstone wolves, including the entirety of the beloved
14 Phantom Lake Wolf Pack, representing roughly one-fifth of the Yellowstone wolf population.¹²

15 46. On August 25, 2022, the Commission voted on changes to the seasonal wolf
16 hunting and trapping rules for the 2022-23 wolf hunting and trapping season (“2022 Wolf
17 Quota”). The Commission eliminated all WMUs except WMUs 313 and 316, which were
18 combined into new WMU 313, and switched to managing wolf kills by trapping districts. The
19 Commission did not alter or amend the 2021 Wolf Regulations, which are rules of general
20 applicability not exempted from judicial review in the same way that seasonal hunting regulations
21 are exempt. *See* Section 2-4-102(11)(b)(iv), MCA (seasonal hunting rules adopted annually or
22

23
24 ⁹ A true and correct copy of the letter Superintendent Sholly wrote to Governor Gianforte is available on *The*
25 *Daily Montanan’s* website at [this link](https://dailymontan.com/wp-content/uploads/2022/01/12-16-21-Governor-Montana-Final-Letter-Wolves.pdf): <https://dailymontan.com/wp-content/uploads/2022/01/12-16-21-Governor-Montana-Final-Letter-Wolves.pdf>.

26 ¹⁰ *See* <https://npr.brightspotcdn.com/cb/4f/9f265a37491e93059c10d1d5e958/montana-wolf-hunting-regulations-2021-2022.pdf>.

27 ¹¹ *See, e.g.*, <https://thewesternnews.com/news/2022/aug/12/wolf-report-shows-stable-population-numbers-through/#:~:text=In%20the%20past%20season%2C%20a,harvest%20in%20Montana%20was%20299.>

28 ¹² *See* National Park Service: Yellowstone National Park Wolf Restoration homepage, available at <https://www.nps.gov/yell/learn/nature/wolf-restoration.htm>

1 biennially are not “rules” under the state APA); *Mont. Outfitters v. State*, 2006 Mont. Dist. LEXIS
2 780, *7-8 (MAPA does not apply to cougar hunting rules).

3 47. On August 25, 2022, the Commission set an overall wolf hunting and trapping
4 quota of 456 wolves, including the following quotas in each district:

- 5 • Trapping District 1: 195 (bordering Glacier National Park)
- 6 • Trapping District 2: 116
- 7 • Trapping District 3: 82 (WMU 313 is within this district, but those wolves do not
8 count toward this quota)
- 9 • Trapping District 4: 39
- 10 • Trapping District 5: 11
- 11 • Trapping District 6: 3
- 12 • Trapping District 7: 4
- 13 • WMU 313: 6 (bordering Yellowstone National Park)

14 48. For the 2022-23 season, MFWP again used iPOM to assess the wolf population.
15 Once again, the iPOM method of wolf population modeling and assessment was not subject to
16 peer review, open to public review and comment, or analyzed as an amendment to the wolf
17 population estimate methodologies authorized by the 2002 Wolf Plan before MFWP relied on it
18 for the 2022-23 season. Nevertheless, MFWP used iPOM to determine there were 1,160 wolves in
19 Montana ahead of the 2022-23 wolf hunting and trapping season, an increase over the 2021
20 population despite the death of nearly 300 wolves during the prior season.

21 49. If 1,160 is an accurate count of the Montana wolf population, then the 2022-23
22 seasonal hunting and trapping regulations would allow Montana hunters and trappers to kill 40%
23 of the state population this winter. In reality, the population of wolves in Montana is likely much
24 lower, so MFWP is actually authorizing a much larger decrease in the wolf population for the
25 coming season, which could cause long term harm to the viability and sustainability of wolves in
26 Montana.

27 50. The 2022-23 wolf hunting season opened to archery on September 3, to general
28 hunting on September 15, and will open to trapping on November 28, 2022.

As of October 26, 2022, Montanans had killed 28 wolves, including six in
Trapping District 1 and one in WMU 313.

1 **The Killing of Non-Target Species on Federal Lands**

2 52. According to a 2018 MWFP report, snares and leghold traps captured a reported
3 349 non-target animals from 2012 to 2017.¹³ Forty-five percent of those trappings resulted in the
4 animals' death. *Id.* Of those that survived, 33% were reported to have been injured. *Id.* Since
5 these numbers largely predate widespread wolf-trapping in Montana, most of those non-target
6 captures were the result of traps set for coyotes, but 10% were attributed to wolf traps. *Id.*

7 53. Mountain lions and domestic dogs are particularly prone to incidental capture. Of
8 the 99 mountain lions that were caught in traps or snares from 2012 to 2017, 67% were killed or
9 euthanized. *Id.* Dogs were trapped 148 times over that six-year span. *Id.* Seven of them died. *Id.*

10 54. Other non-targeted animals caught in traps or snares included protected Canada
11 Lynx, wolverines, grizzly bears, bobcats, elk and deer. *Id.*

12 **FIRST CAUSE OF ACTION**
13 **(Violations of the Montana Administrative Procedure Act and the Montana Constitution)**

14 55. Petitioners hereby incorporate by reference all preceding paragraphs in their
15 entirety.

16 56. MAPA defines a a "rule" as an "agency regulation, standard, or statement of
17 general applicability that implements, interprets, or prescribes law or policy or describes the
18 organization, procedures, or practice requirements of an agency." Section 2-4-102(11)(a), MCA.

19 57. Prior to the adoption, amendment, or repeal of any rule, the agency must give
20 written notice of the proposed action and allow for a public comment period during which
21 interested persons may present their views on the proposed action. Sections § 2-4-302, *et seq*,
22 MCA.

23 58. MAPA requires that state agencies to adhere to numerous procedural safeguards in
24 promulgating or amending rules, including requirements that it give notice of the scope of a
25 proposed rule, allow a preliminary public hearing and comment period, submit the draft rule to

26 _____
27 ¹³ See MWFP, "Incidental Captures of Wildlife and Domestic Dogs in Montana, 2012-2017, p. 2 (June
28 2018), available at <https://myfwp.mt.gov/getRepositoryFile?objectID=87485>

1 legislative reviews committee for review, issue written notice of the rule proposal, conduct a
2 public hearing to allow comment on the proposal, submit the final draft rule to the governor for
3 approval, and submit the rule for legislative review before promulgation. *See generally* Mont.
4 Code Ann. Tit. 2, Chap. 4.

5 59. Unless a rule is adopted in substantial compliance with these procedures, the rule
6 is not valid. Mont. Code Ann. § 2-4-305(7).

7 60. MAPA applies to wolf policies with general applicability. *See* § 2-4-
8 102(11)(b)(iv), MCA (seasonal hunting rules adopted annually or biennially are not “rules” under
9 MAPA); *Mont. Outfitters v. State*, 2006 Mont. Dist. LEXIS 780, *7-8 (MAPA does not apply to
10 cougar hunting rules).

11 61. The 2002 Wolf Plan is a wolf policy with general that is classified as a a rule under
12 MAPA. *See* § 2-4-102(11)(a), MCA.

13 62. Respondents have violated MAPA by constructively amending the 2002 Wolf Plan
14 to allow the use of a new wolf population model, iPOM, without going through the notice and
15 comment rulemaking required by MAPA. *See* § 2-4-302(1)(a), MCA.

16 63. Respondents have also violated the Montana Constitution right of participation by
17 constructively amending the 2002 Wolf Plan to allow the use of a new wolf population model,
18 iPOM, without affording the public “such reasonable opportunity for citizen participation in the
19 operation of the agencies prior to the final decision as may be provided by the law.” Mont. Const.
20 Art. II, § 8.

21 64. This Court has authority to issue a declaratory judgment invalidating the use of the
22 2002 Wolf Plan, as constructively amended to allow for the use of iPOM, to set wolf hunting and
23 trapping quotas on the grounds that its application or threatened application interferes with the
24 rights of Petitioners. Mont. Code Ann. §§ 2-3-114, 2-4-506.

25 **SECOND CAUSE OF ACTION**
26 **(Writ of Mandate, Violation of the Montana Constitution)**

27 65. Petitioners hereby incorporate by reference all preceding paragraphs in their
28 entirety.

1 66. In developing policies and taking other actions, agencies must respect their own
2 procedural rules and regulation as a guardrail to ensure the proper application of delegated
3 legislative authority to the executive branch and to protect the constitutional separation of powers.
4 *See generally Morton v. Ruiz*, 415 U.S. 199(1974). To this end, the courts retain the authority to
5 check agency policymaking for procedural compliance and for arbitrariness, and an administrative
6 agency must comply with its own administrative rules. *Mont. Solid Waste Contrs. v. Mont. Dep't.*
7 *of Pub. Serv. Reg.*, 338 Mont. 1, 161 P.3d 837 (2007).

8 67. Indeed, administrative agencies enjoy only those powers specifically conferred
9 upon them by the legislature. Mont. Const. Art. III, Part III, § 1; *Bick v. State Dep't of Justice,*
10 *Div. of Motor Vehicles*, 224 Mont. 455, 456-57, 730 P.2d 418, 419 (1986).

11 68. Respondents carry out their statutory duty to manage the wolf population in
12 accordance with the 2002 Wolf Plan. *See* Admin R. Mont. 12.9.1303. The 2002 Wolf Plan
13 requires that “MFWP will undertake a thorough, formal review after the first five years [post the
14 delisting of wolves in Montana]” and that “[t]he wolf management program will be subsequently
15 reviewed at least every five years.” 2002 Wolf Plan at vi.

16 69. The 2002 Wolf Plan further provides that:

17 Upon delisting and with adequate funding secured, MFWP will
18 implement the Wolf Conservation and Management Plan. This plan
19 will guide MFWP managers and others responsible for the planning
20 and policy decisions that affect wolf management in Montana. It will
21 also guide decision-making at the field level. MFWP personnel will
22 use this plan to prioritize field activities, manage time/budgets,
23 formulate wolf management recommendations, and coordinate with
24 personnel of other state and federal agencies.

25 2002 Wolf Plan at 3.

26 70. Respondents have a mandatory, non-discretionary duty to review the 2002 Wolf
27 Plan every five years.

28 71. Respondents' violated the 2002 Wolf Plan and Rule 12.9.1303 by adopting the
2022 Wolf Quota under the authority the 2002 Wolf Plan without reviewing it. *See* 2002 Wolf
Plan at vi; Admin R. Mont. 12.9.1303.

1 72. In failing to follow their own rules and procedural safeguards, Respondents acted
2 in excess of their delegated authority in violation of the separation of powers enshrined in the
3 Montana Constitution.

4 73. The Court should invalidate the 2022 Wolf Quota as unconstitutional as applied.

5 74. The Court should enjoin Respondents from allowing the hunting and trapping of
6 wolves with licenses issued pursuant to the 2002 Wolf Plan and compel Respondents to review
7 and update the 2002 Wolf Plan, so that they issue future wolf hunting and trapping licenses
8 pursuant to a valid agency rule.

9 75. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of
10 law, as no other branch of government has acted to guarantee Respondents' compliance with the
11 Montana Constitution.

12 76. Under § 27-19-101, MCA, this Court may issue an injunction requiring
13 Respondents to perform a particular act.

14 77. Under § 27-26-102, MCA and at common law, a writ of mandamus may be issued
15 by this Court "to compel the performance of an act that the law specially enjoins as a duty
16 resulting from an office, trust, or station." The writ must be issued in all cases in which there is
17 not a plain, speedy, and adequate remedy in the ordinary course of law. *Id.*

18 **THIRD CAUSE OF ACTION**
19 **(Declaratory Relief Regarding the Affirmative Duties of Public Trustees)**

20 78. Petitioners hereby incorporate by reference all preceding paragraphs in their
21 entirety.

22 79. The Public Trust Doctrine is enshrined in the Montana Constitution. Mont. Const.,
23 art. IX, § 3(3) ("All surface, underground, flood, and atmospheric waters within the boundaries of
24 the state are the property of the state for the use of its people[.]"); Mont. Const., art. II, § 3 ("All
25 persons are born free and have certain inalienable rights ... includ[ing] the right to a clean and
26 healthful environment..."); Mont Const., art. IX, § 1(1) ("The state and each person shall maintain
27 and improve a clean and healthful environment in Montana for present and future generations.");
28

1 *see also Curran*, 210 Mont. at 45-49, 682 P.2d at 167-168 (recognizing that the common law and
2 constitutional origins of the state PTD include protection of recreational uses).

3 80. The public has authority to enforce the Public Trust Doctrine. *See generally, Mont.*
4 *Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 77, 255 P.3d 179; *see also*
5 *Held v. Montana*, Order on Motion to Dismiss, Case No. CDV-2020-307 (Mont. Lewis & Clark
6 Cty., Aug. 4, 2021).

7 81. Respondents have a positive duty as public trustees to manage wildlife, including
8 gray wolves, for the benefit of the public interest as a matter of constitutional law. At a minimum,
9 this requires that Respondents, as trustees, use transparent, scientifically defensible, peer-
10 reviewed data and methodologies to estimate the wolf population before making reasoned
11 decisions about wolf management to ensure the preservation, rather than diminishment or imperil
12 the trust asset.

13 82. The 2021 Wolf Laws and 2021 Wolf Regulations violate the Public Trust Doctrine
14 as enshrined in the Montana Constitution by prohibiting Respondents from exercising the
15 discretion conferred upon them and requiring them to provide for a wolf hunting and trapping
16 season regardless of the facts, the science, and contrary to their best professional judgment.

17 83. In adopting the 2022 Wolf Quota based on the 2002 Wolf Plan, Respondents
18 violated their constitutional and statutory responsibility to conserve and manage state wildlife for
19 current and future generations, by adopting the 2022 Wolf Quota regardless of the facts, science,
20 and best professional judgment of experts regarding the effect it would have on the state wolf
21 population.

22 84. The Court should declare that the 2021 Wolf Laws, 2021 Wolf Regulations, and
23 2022 Wolf Quota violate the Public Trust Doctrine enshrined in the Montana Constitution.

24 85. The Court should declare that Respondents violated the Public Trust Doctrine and
25 acted contrary to their public trust duties when they adopted the 2022 Wolf Quota because the
26 they based them on an unconstitutional law, and thus violated a Constitutional provision.

27 86. This Court has the power “to declare rights, status, and other legal relations
28 whether or not further relief is or could be claimed.” Mont. Code Ann. § 27-8-201. “No action or

1 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
2 prayed for. The declaration may be either affirmative or negative in form and effect, and such
3 declarations shall have the force and effect of a final judgment or decree.” *Id.*

4 87. The Court should declare that Respondents have a positive duty to manage
5 wildlife, including gray wolves, to ensure a thriving population for the benefit of present and
6 future generations as trustees managing trust resources under the Public Trust Doctrine.

7 **FOURTH CAUSE OF ACTION**
8 **(Federal Preemption, National Parks Organic Act)**

9 88. Petitioners hereby incorporate by reference all preceding paragraphs in their
10 entirety.

11 89. Pursuant to the National Park Service Organic Act (the “Organic Act”), the
12 National Park Service manages and administers the nation’s National Park System, which began
13 with establishment of Yellowstone National Park in 1872 and has since grown to include the
14 “superlative natural, historic, and recreation areas in every major region of the United States and
15 its territories and possessions.” 54 U.S.C. § 100101(b)(1) (2018). Pursuant to a preservationist
16 mandate, the National Park Service is required to “conserve the scenery, natural and historic
17 objects, and wildlife” within the parks and to leave them “unimpaired for the enjoyment of future
18 generations.” *See* 54 U.S.C. § 100101(a)(2018).

19 90. The National Park Service has broad discretion in determining which avenues best
20 achieve the Organic Act’s mandate and does not allow wolf hunting or trapping in the national
21 parks (except on non-federal inholdings within Grand Teton National Park). *Bicycle Trail*
22 *Council of Marin v. Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996); *see also* 36 C.F.R. § 2.2
23 (prohibiting hunting and trapping on park lands unless mandated by federal statute). Accordingly,
24 the National Park Service recognizes that wolves are integral to the each park’s native ecosystem.

25 91. When wolves that occupy territory within the national parks are killed in
26 accordance with state hunting laws because they travel outside park borders, the ecosystems of
27 the national parks are directly and negatively impacted. Killing national park wolves, therefore,
28 harms federal interests.

1 92. The 2021 Wolf Laws, 2021 Wolf Regulations, and 2022 Wolf Quota specifically
2 promote and encourage the killing of wolves in and around Yellowstone National Park and
3 Glacier National Park and mandate the elimination of any protection zone around the national
4 parks to protect park wolves.

5 93. Though the 2022 Wolf Quota reduced the quota within WMU 313 in Trapping
6 District 3 to six wolves, Respondents have taken no steps to ensure the survival of Yellowstone
7 wolves and continue to promote and encourage the killing of wolves in the area.

8 94. In addition, the 2022 Wolf Quota does nothing to protect wolves living in former
9 WMU 110 in Trapping District 1, and borders Glacier National Park where the kill quota is 195
10 wolves, nearly half of the 2022 Wolf Quota for the entire 2022-23 wolf season.

11 95. Under conflict preemption principles, a state law that stands as an obstacle to or
12 substantially interferes with the accomplishment and execution of the full purposes and objectives
13 of a federal law, a regulatory objective is preempted, and thus void. *See Bonito Boats v. Thunder*
14 *Craft Boats*, 489 U.S. 141 (1989) (finding Florida statute preempted due to conflict with federal
15 patent policy when it restricted manufacturers' use of unpatented boat hull design); *Geier v. Am.*
16 *Honda Motor Co.*, 529 U.S. 861, 884-85 (2000) (clarifying that conflict preemption does not
17 require a federal agency's specific expression of preemptive intent and holding that state tort suit
18 premised on mandatory airbag duty was preempted by DOT regulation allowing different kinds of
19 passive restraint devices).

20 96. The 2021 Wolf Laws, 2021 Wolf Regulations, and 2022 Wolf Quota act as an
21 obstacle to or substantially interfere with the National Park Service's ability to fulfill the mandate
22 of the Organic Act.

23 97. The 2021 Wolf Laws, 2021 Wolf Regulations, and 2022 Wolf Quota, as applied,
24 interfere with federal policy in the management and administration of Yellowstone National Park,
25 Grand Teton National Park, and Glacier National Park and are thus preempted by the Organic
26 Act.

27 98. This Court has the power "to declare rights, status, and other legal relations
28 whether or not further relief is or could be claimed." Section 27-8-201, MCA. "No action or

1 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
2 prayed for. The declaration may be either affirmative or negative in form and effect, and such
3 declarations shall have the force and effect of a final judgment or decree.” *Id.*

4 99. The Court should issue a declaratory judgment declaring that the 2021 Wolf Laws,
5 2021 Wolf Regulations, and 2022 Wolf Quota are preempted by the National Parks Organic Act
6 because they serve as an obstacle to and substantially interfere with the National Park Service’s
7 ability to fulfill its mandate.

8 **FIFTH CAUSE OF ACTION**
9 **(Federal Preemption, Federal Public Lands Policies)**

10 100. Petitioners hereby incorporate by reference all preceding paragraphs in their
11 entirety.

12 101. Two federal agencies have authority to manage federal lands in and around the
13 State of Montana: The United States Department of Interior’s Bureau of Land Management
14 (“BLM”) and the United States Department of Agriculture’s Forest Service (“Forest Service”).
15 These agencies manage federal lands within their jurisdictions according to the Multiple-Use
16 Sustained-Yield Act of 1960. 16 USC § 528, et seq.

17 102. According to the National Forest Management Act (“NFMA”), which is
18 administered by the Forest Service and applies to all Forest-Service managed lands,

19 **(a) Development, maintenance, and revision by Secretary as part**
20 **of program; coordination.** As a part of the Program provided for by
21 section 4 of this Act [16 USCS § 1602], the Secretary shall develop,
22 maintain, and, as appropriate, revise land and resource management
23 plans for units of the National Forest System, coordinated with the
24 land and resource management planning processes of State and local
25 governments and other Federal agencies.

26 **(c) Required assurances.** In developing, maintaining, and revising
27 plans for units of the National Forest System pursuant to this section,
28 the Secretary shall assure that such plans—

(1) provide for multiple use and sustained yield of the products and
services obtained therefrom in accordance with the Multiple-Use
Sustained-Yield Act of 1960 [16 USCS §§ 528 et seq.], and, in
particular, include coordination of outdoor recreation, range, timber,
watershed, wildlife and fish, and wilderness; and

1
2 (2) determine forest management systems, harvesting levels, and
3 procedures in the light of all of the uses set forth in subsection(c)(1),
4 the definition of the terms “multiple use” and “sustained yield” as
5 provided in the Multiple-Use Sustained-Yield Act of 1960 [16 USCS
6 §§ 528 et seq.], and the availability of lands and their suitability for
7 resource management.

8
9 *See NFMA, 16 U.S.C. § 1604.*

10 103. Similarly, according to the Federal Land Policy & Management Act (“FLPMA”),
11 which is administered by BLM and applies to all BLM-managed lands, BLM must manage lands
12 within its jurisdiction according to the following criteria:

- 13 (1) use and observe the principles of multiple use and sustained yield
14 set forth in this and other applicable law;
15 (2) use a systematic interdisciplinary approach to achieve integrated
16 consideration of physical, biological, economic, and other sciences;
17 (3) give priority to the designation and protection of areas of critical
18 environmental concern;

19 *See FLPMA, 43 U.S.C. § 1712.*

20 104. The Multiple-Use Sustained-Yield Act provides: “It is the policy of the Congress
21 that the national forests are established and shall be administered for outdoor recreation, range,
22 timber, watershed, and wildlife and fish purposes.” 16 USC § 528.

23 105. Each of these federal land management laws require that the federal government
24 manage federal lands for the benefit of multiple interests, including wildlife and members of the
25 public who recreate on federal lands.

26 106. The 2021 Wolf Laws, 2021 Wolf Regulations, and 2022 Wolf Quota act as an
27 obstacle to or substantially interfere with the ability of BLM and the Forest Service to fulfill the
28 mandate of the Multiple-Use Sustained-Yield Act, NFMA, and FLPMA because these state laws
and regulations promote and encourage the indiscriminate trapping of wildlife on federally-
managed lands without regard to the safety of the public or the effect on non-target wildlife
species.

107. The 2021 Wolf Laws, 2021 Wolf Regulations, and 2022 Wolf Quota are so
extreme in their promotion of killing wildlife on federal lands that they interfere with federal

1 policy in the management and administration of public lands managed pursuant to the Multiple-
2 Use Sustained-Yield Act, NFMA, and FLPMA and are thus preempted by the Multiple-Use
3 Sustained-Yield Act, NFMA, and FLPMA.

4 108. This Court has the power “to declare rights, status, and other legal relations
5 whether or not further relief is or could be claimed.” Section 27-8-201, MCA. “No action or
6 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
7 prayed for. The declaration may be either affirmative or negative in form and effect, and such
8 declarations shall have the force and effect of a final judgment or decree.” *Id.*

9 109. The Court should issue a declaratory judgment declaring that the 2021 Wolf Laws,
10 2021 Wolf Regulations, and 2022 Wolf Quota are preempted by the Multiple-Use Sustained-
11 Yield Act, NFMA, and FLPMA because they serve as an obstacle to and substantially interfere
12 with the ability of BLM and the Forest Service to fulfill their mandates.

13 PRAYER FOR RELIEF

14 110. WHEREFORE, Petitioners pray for entry of judgment as follows:

- 15 1. For a writ of mandate directing Respondents to conduct a review and update of
16 the 2002 Wolf Plan through a formal notice and comment rulemaking process
17 as required by MAPA and the Montana Constitution, Art. II, § 8;
- 18 2. For a writ of mandate directing Respondents to review any amendments to the
19 2002 Wolf Plan through a formal notice and comment rulemaking process as
20 required by MAPA and the Montana Constitution, Art. II, § 8;
- 21 3. For a preliminary and permanent injunction prohibiting Respondents from
22 allowing the hunting and trapping of wolves with licenses issued pursuant to
23 the 2002 Wolf Plan and compelling Respondents to review and update the
24 2002 Wolf Plan before issuing any additional wolf hunting licenses.
- 25 4. For a declaratory judgment:
 - 26 a) invalidating the use of the 2002 Wolf Plan to set seasonal wolf hunting
27 and trapping regulations on the grounds that the rule’s application or
28

1 threatened application interferes with the rights of petitioners under the
2 Montana Constitution, Art. II, § 8 and Mont. Code Ann. §§ 2-3-114, 2-
3 4-506;

- 4 b) declaring that the 2021 Wolf Laws, 2021 Wolf Regulations, and 2022
5 Wolf Quota violate the Public Trust Doctrine enshrined in the Montana
6 Constitution;
- 7 c) declaring that Respondents violated the Public Trust Doctrine and acted
8 contrary to their public trust duties when they adopted the 2022 Wolf
9 Quota based on an unconstitutional rule and in violation of a
10 constitutional provision;
- 11 d) declaring that Respondents have a positive duty to manage wildlife,
12 including gray wolves, to ensure a thriving population for the benefit of
13 present and future generations as trustees managing trust resources
14 under the Public Trust Doctrine;
- 15 e) declaring that the 2021 Wolf Laws, 2021 Wolf Regulations, and 2022
16 Wolf Quota are preempted by the National Park Organic Act because
17 they serve as an obstacle to and substantially interfere with the National
18 Park Service's ability to fulfill its mandate;
- 19 f) declaring that the 2021 Wolf Laws, 2021 Wolf Regulations, and 2022
20 Wolf Quota are preempted by the FLMPA and NMFA because they
21 serve as an obstacle to and substantially interfere with the ability of
22 BLM and the Forest Service to fulfill their mandate; and

23 5. For costs of suit;

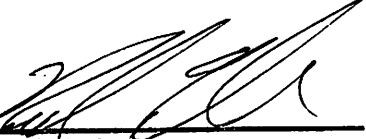
24 6. For an award of attorneys' fees; and

25 7. For other legal or equitable relief that the court deems just and proper.
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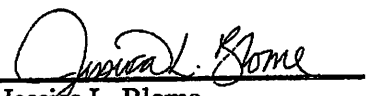
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Dated: October 27, 2022.

MORRISON SHERWOOD WILSO DEOLA, PLLP

By: 
Rob Faris-Olsen

GREENFIRE LAW, PC

By: 
Jessica L. Blome
Pro hac vice application pending

Attorneys for Petitioners WildEarth Guardians and Project Coyote, a project of the Earth Island Institute

VERIFICATION

I, Lizzy Pennock, declare as follows:

I am the Carnivore Coexistence Advocate for Petitioner WildEarth Guardians in the above-captioned action, and I live in Montana. I have read the foregoing Verified Petition and Application for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof.

The statements made therein are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I affirm under penalty of perjury that the foregoing is true and correct.

Dated: 10-27-2022

By: 