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YOU ARE HEREBY SUMMONED to answer the Plaintiffs in this action, which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiffs' attorney within twenty-one (21) days

after the service of this Summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

WITNESS my hand and seal of said Court this 28 day of October, 2020


Clerk of Court



PARK OF THE CLERK
OF THE COURT
IN THE CITY

BY Pamela Reisenauer
CLERK

**IN THE MONTANA SIXTH JUDICIAL DISTRICT COURT
PARK COUNTY**

) Case No. DV 20-165

AMENDED COMPLAINT

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Plaintiffs Outdoor Heritage Coalition (“Coalition”) and William H. Hoppe, by and through their attorneys, for their Complaint against Defendants Montana Fish, Wildlife & Parks (“FWP”), and FWP Commission Members Tim Aldrich, Pat Byorth, Richard Stuker, Logan Brower, and Shane Colton, allege the following:

SUMMARY OF THE CASE

A. Background

1. Article II, § 3 of the Montana Constitution, addressing Inalienable Rights, provides that “[a]ll persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”

2. In 2003, the Montana Legislature proposed Constitutional Amendment 41, a ballot measure to recognize a constitutionally-protected right to hunt in Montana. The People of Montana adopted the Amendment in 2004, which is codified as Mont. Const. Art. IX, § 7.

3. Article IX, § 7 states: “The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.”

4. Hunting is one of Montana’s strongest economic drivers. Montana Fish, Wildlife & Parks estimates that spending by big game hunters alone contributes \$324 million dollars to the state annually.¹

5. In 2009, under the authority of the Endangered Species Act of 1973, as amended (“ESA”), the U.S. Fish and Wildlife Service identified a distinct population segment of the gray wolf in the Northern Rocky Mountains (“NRM”), including Montana, and revised the List of Endangered and Threatened Wildlife by removing gray wolves within NRM boundaries. 74 Fed.

¹ Montana Fish, Wildlife & Parks, THE ECONOMICS OF BIG GAME HUNTING IN MONTANA, <https://www.arcgis.com/apps/Cascade/index.html?appid=0fa1de4222074cdeb7dbf0710ecb2ee0> (last visited July 7, 2020).

Reg. 15123-01 (April 2, 2009). (The term “gray wolf” throughout refers to delisted gray wolves within NRM boundaries.) Final delisting of the gray wolf occurred in 2011.

6. Mont. Ann. Code § 87-5-131 granted the state’s Department of Fish, Wildlife & Parks (“FWP”) authority to develop a Wolf Conservation and Management Plan (“CMP”) following the U.S. Fish and Wildlife Service’s determination that the gray wolf no longer requires protection as an endangered or threatened species. The same statute authorizes FWP to issue regulations managing the gray wolf as (1) a game animal or fur-bearer and (2) as a threat to livestock. *Id.* at (2) - (3).

7. The Montana Wolf Conservation and Management Plan was approved by FWS in 2004.²

8. In addition to the CMP, FWP has issued extensive regulations governing the harvest of gray wolves as game animals or as fur-bearers.³ *See also* Mont. Admin. R. 12.9.1301-1305.

9. In 2015, the Montana Legislature codified Mont. Ann. Code § 87-1-107, entitled “Right to Harvest—Legislative Intent,” providing that “[t]he legislature, mindful of its constitutional obligations under Article II, section 3, of the Montana constitution ... and Article IX, section 7 ... has enacted the laws of this title pertaining to the lawful means of hunting, fishing, and trapping ... as adequate remedies for the preservation of the harvest heritage of the individual citizens of this state.”

² *See* Montana Fish, Wildlife & Parks, MONTANA WOLF CONSERVATION AND MANAGEMENT PLAN <http://fwp.mt.gov/fishAndWildlife/management/wolf/management.html> (last visited July 7, 2020) (providing a history of the development of the Management Plan).

³ *See, e.g.*, Montana Fish, Wildlife & Parks, 2019 WOLF HUNTING AND TRAPPING REGULATIONS, <http://fwp.mt.gov/fwpDoc.html?id=85371> (last visited July 7, 2020) (“2019 Regulations”).

B. Adaptive Management

10. Montana's Wolf Conservation and Management Plan ("CMP") "is based on principles of adaptive management."⁴ *See also* Mont. Admin. R. 12.9.1302 (defining "adaptive management").

11. The gray wolf adaptive management plan is designed "to recognize gray wolves as a native species and a part of Montana's wildlife heritage, to approach gray wolf management similar to other wildlife species such as mountain lions, to manage adaptively, and to address and resolve conflicts."⁵

12. Specifically, if the "statewide number of wolves exceeds 15 breeding pairs," the FWP, under the CMP, may adopt a harvest season as part of the adaptive management framework. Mont. Admin. R. 12.9.1301. "If there are fewer than 15 breeding pairs, the department will allow only conservative management of the gray wolf populations so that the number of breeding pairs does not go below 10 but may still approve lethal control." *Id.*

13. As of 2017, the last date for which gray wolf population information is available, the Montana gray wolf population far exceeds the 15 breeding pair minimums of the state plan: "At December 31, 2017, the minimum number of verified packs statewide was 124, the minimum number of wolves was 633, and there were at least 63 breeding pairs."⁶

⁴ Montana Wolf Management Advisory Council, MONTANA WOLF CONSERVATION AND MANAGEMENT PLANNING DOCUMENT, p. 21, <http://fwp.mt.gov/fwpDoc.html?id=31237> (last visited July 7, 2020).

⁵ Montana Fish, Wildlife & Parks, 2018 WOLF HUNTING AND TRAPPING REGULATIONS, p. 1, <http://fwp.mt.gov/fwpDoc.html?id=92853> (last visited July 7, 2020) ("2018 Regulations").

⁶ Montana Fish, Wildlife & Parks, 2017 WOLF CONSERVATION AND MANAGEMENT, p. 12 <http://fwp.mt.gov/fwpDoc.html?id=85740> (last visited July 7, 2020).

C. *Harvest Quotas*

14. FWP regulations divide Montana into Wolf Management Units (“WMUs”). Each WMU has season dates and other local restrictions. A copy of the Montana WMUs is attached as **Exhibit A**. Two WMUs, 313 and 316, are adjacent to the northern boundary of Yellowstone National Park. 2019 Regulations, p. 9. In an area adjacent to a national park, FWP cannot prohibit the hunting or trapping of wolves “unless a wolf harvest quota established by the commission for that area has been met.” Mont. Code Ann. § 87-1-304 (7).

15. WMUS 313 and 316 have harvest quotas limiting the number of wolves harvested each season and bag limits controlling how many wolves each permit holder may take. For 2019, WMUs 313 and 316 impose a harvest quota of two and a bag limit of one. 2019 Regulations, p. 8 – 9. Once the harvest quota is reached, the season closes for that WMU. *Id.*, p. 2.

16. For 2020, FWP intends to retain the harvest quota and bag limit for WMUs 313 and 316.⁷

17. Animal rights activists from all across the country have deluged FWP and the Commission with comments against the harvesting of wolves in WMUs 313 and 316 specifically.⁸

18. The harvest quotas for WMUs 313 and 316 serve no legitimate purpose set forth by the CMP or by the principles of adaptive wildlife management. Instead, harvest quotas for

⁷ February 13, 2020 Montana Fish and Wildlife Commission Agenda Item Cover Sheet, <http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?coversheet&topicId=56739996>, (last visited July 7, 2020).

⁸ See, e.g., Fish and Wildlife Commission Meeting Agenda for February 13, 2020, <http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?meetingId=54675218> (last visited July 7, 2020) (providing links to hundreds of comments received against harvesting wolves in WMUs 313 and 316).

WMUs 313 and 316 seem to be established by FWP in response to comments received from individuals and groups opposed to harvesting wolves.

D. The Role of Wolves in the Decline of Elk Populations

19. In 2003, the Montana legislature enacted Mont. Code Ann. § 87-1-217, entitled “Policy for management of large predators—legislative intent.” Section 87-1-217(1) provides: “(1) In managing large predators, the primary goals of the department, in the order of listed priority, are to: (a) protect humans, livestock, and pets; (b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; an (c) preserve citizens' opportunities to hunt large game species.”

20. Definitions provided in Mont. Code Ann. § 8-1-217 (6) include elk among “large game species” and wolves among “large predators.”

21. The right of Montana citizens to harvest elk and other large game species is among the most important principles guiding the management of large predators.

22. The imposition of harvest quotas has increased the gray wolf populations in WMUs 313 and 316.

23. As a consequence, gray wolf populations in WMUs 313 and 316 have significantly reduced the numbers of large ungulates, including elk, available for harvest by hunters, contrary to the policy established by Mont. Code Ann. § 8-1-217.⁹

⁹ See, e.g., *Elk-Yellowstone*, <https://www.nps.gov/yell/learn/nature/elk.htm>, (last visited October 15, 2020); *Wolf Reintroduction Changes Ecosystem in Yellowstone*, <https://www.yellowstonepark.com/things-to-do/wolf-reintroduction-changes-ecosystem>, (last visited October 15, 2020) (“Researchers have also determined that wolves, in the recent absence of hard winters, are now the primary reason for elk mortality.”)

E. *Plaintiff William H. Hoppe*

24. William H. Hoppe is a fourth-generation outfitter and a fifth-generation Montanan living in Park County. He is a licensed outfitter with nearly 40 years of experience.

25. Hoppe outfitted elk hunters in Park County, in WMUs 313 and 316, until 2009 when the introduction of the gray wolf to WMUs 313 and 316 decimated the elk population.

26. The elk population has not recovered.

27. The imposition of quotas on the harvest of gray wolves in WMUs 313 and 316 have exacerbated the injury to Hoppe's business, leaving him incapable of outfitting for elk hunters in the territory he has worked for 40 years.

28. As a consequence, Hoppe had to abandon the areas where he conducted his outfitting business in WMUs 313 and 316, and to lease a ranch in the Little Belt Mountain Range just outside of Martinsdale, Montana.

JURISDICTION AND VENUE

29. This Court has original jurisdiction under Mont. Code Ann. § 3-5-302. This court has specific power to render declaratory judgments under Mont. Code Ann. § 27-8-201.

30. Venue is proper under Mont. Code Ann. § 25-2-125.

PARTIES

31. Plaintiff Outdoor Heritage Alliance is a domestic non-profit corporation organized for the public benefit in the state of Montana and having a registered address of 24131 Rd 20 N, Gildford, Montana 59525. The purpose of the Coalition is to operate for charitable, educational and scientific purposes and in particular advocate for the science-based regulation and harvest of wildlife and natural resources.

32. Plaintiff William H. Hoppe is a licensed outfitter in Park County residing at 172 Jardine Road, Gardiner, MT 59030.

33. Defendant Montana Fish, Wildlife & Parks is an agency organized under Title 87 of Montana Laws to “supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.” Mont. Code Ann. § 87-1-201(1).

34. Defendant Montana Fish and Wildlife Commission is a commission organized under Title 87 of Montana Laws empowered to “set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department related to fish and wildlife as provided by law” and to “establish the hunting, fishing, and trapping rules of the department” Mont. Code Ann. § 87-1-301(1)(a)-(b).

35. Defendant Department of Fish, Wildlife, and Parks, is governmental department of the State of Montana.

36. Defendants Tim Aldrich, Pat Byorth, Richard Stuker, Logan Brower, and Shane Colton are Fish & Wildlife Commissioners serving Districts 1-5 respectively.

FIRST CAUSE OF ACTION
Violation of Montana Constitution Article IX, § 7

1. Plaintiffs re-allege the allegations contained in the previous paragraphs.

2. This cause of action is brought under Mont. Code Ann. § 27-8-201, known as the “Uniform Declaratory Judgments Act.”

3. Article IX, § 7 of the Montana Constitution provides “[t]he opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state.”

4. An actual and justiciable controversy exists between the Parties regarding whether harvest quotas in WMUs 313 and 316 unconstitutionally limit the right of citizens of Montana to harvest gray wolves.

5. An actual and justiciable controversy exists between the Parties regarding whether harvest quotas in WMUs 313 and 316 unduly increase gray wolf predation on elk population and thereby decrease the quantity of elk available for harvest, which unconstitutionally limits the right of citizens of Montana to harvest elk.

6. Plaintiffs seek a declaratory judgment from the court confirming that harvest quotas established by Defendants in WMUs 313 and 316 should be struck down as violations of Article IX, § 7 and the rights afforded therein.

SECOND CAUSE OF ACTION
Violation of Montana Constitution Art. II, § 3

7. Plaintiffs re-allege the allegations contained in the previous paragraphs.

8. This cause of action is brought under Mont. Code Ann. § 27-8-201, known as the “Uniform Declaratory Judgments Act.”

9. Article II, § 3 of the Montana Constitution protects certain inalienable rights of the citizens of Montana, such as “pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways.”

10. Pursuant to Mont. Ann. Code § 87-1-107, the right to harvest implicates both Articles IX, § 7 and II, § 3.

11. An actual and justiciable controversy exists between the Parties regarding whether Harvest quotas in WMUs 313 and 316 unconstitutionally limit the inalienable right of citizens of Montana to harvest gray wolves.

12. An actual and justiciable controversy exists between the Parties regarding whether harvest quotas in WMUs 313 and 316 unduly increase gray wolf predation on elk population and thereby decrease the quantity of elk available for harvest, which unconstitutionally limits the inalienable right of citizens of Montana to harvest elk.

13. Plaintiffs seek a declaratory judgment from the court confirming that harvest quotas established by Defendants in WMUs 313 and 316 should be struck down as violations of Article II, § 3 and the rights afforded therein.

THIRD CAUSE OF ACTION
Arbitrary and Capricious Agency Action

14. Plaintiffs re-alleges the allegations contained in the previous paragraphs.

15. This cause of action is brought under Mont. Code Ann. § 27-8-201, known as the “Uniform Declaratory Judgments Act.”

16. An actual and justiciable controversy exists between the Parties regarding whether 2020 harvest quotas for WMUs 313 and 316 serve any legitimate purpose set forth by the CMP or by the principles of adaptive wildlife management.

17. An actual and justiciable controversy exists between the Parties regarding whether the views and desires of persons who oppose the lawful harvest of wolves in Montana are a relevant factor for the determination of harvest quotas under the principle of adaptive wildlife management or the purposes set forth in the CMP.

18. An actual and justiciable controversy exists between the Parties regarding whether 2020 harvest quotas for WMUs 313 and 316 have a maladaptive effect in elk populations, contrary to sound principles of wildlife management.

19. An actual and justiciable controversy exists between the Parties regarding whether 2020 harvest quotas for WMUs 313 and 316 are contrary to the legislative policy for the management of large predators established in § 87-1-217.

20. Plaintiffs seek a declaratory judgment from the court confirming that FWP and the Commission's decision to impose a harvest quota on WMUs 313 and 316 is arbitrary and capricious and constitutes a clear error of judgment.

WHEREFORE, Plaintiffs request the following relief:

1. An order declaring that harvest quotas on WMUs 313 and 316 violate Montana Constitution Article IX, § 7; and
2. An order declaring that harvest quotas on WMUs 313 and 316 violate Montana Constitution Article II, § 3; and
3. An order declaring that the agency's current harvest quotas for WMUs 313 and 316 are arbitrary and capricious; and
4. An order declaring that harvest quotas for WMUs 313 and 316 should be struck down.
5. An order granting Plaintiffs reasonable attorneys fees and costs,
6. Any other relief this Court deems just and equitable.

DATED: October 22, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew G. Monforton". The signature is fluid and cursive, with the first name "Matthew" and last name "Monforton" clearly distinguishable.

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EXHIBIT A

