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Cascadia Wildlands v. Woodruff

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***Cascadia Wildlands v. Woodruff*, No. 3:15-cv-05132-RJB, ___ F. Supp. 3d ___, 2015 WL 9217160, 2015 U.S. Dist. Lexis 169054 (W.D. Wash. Dec. 17, 2015).**

Erick Valencia

Predator management has long been a source of contention among the general public, and few predators have had a more polarizing effect on the public than wolves. *Cascadia Wildlands v. Woodruff* is yet another example of the tension between conservationists and private interests. In this case, Wildlands opposed the federal government’s FONSI and EA regarding Wildlife Services’s involvement in assisting the WDFW to implement its Wolf Conservation and Management Plan. The district court determined that Wildlife Services had acted arbitrarily and vacated Wildlife Services’s FONSI and EA.

I. INTRODUCTION

In *Cascadia Wildlands v. Woodruff*, the United States District Court for the Western District of Washington faced a question about the propriety of Wildlife Services’s¹ involvement in Washington’s management of the gray wolf without preparing an Environmental Impact Statement (“EIS”).² Upon request by the Washington Department of Fish and Wildlife (“WDFW”), Wildlife Services prepared to assist in gray wolf management by issuing an Environmental Assessment (“EA”).³ The EA discussed three possible options for Wildlife Services’s involvement in wolf management in Washington: taking no action; eliminating Wildlife Services’s current program; or taking the Proposed Action Alternative, which Wildlife Services ultimately adopted.⁴

Plaintiffs, *Cascadia Wildlands* and several other conservation groups, sought to enjoin Wildlife Services from conducting wolf management in Washington.⁵ Plaintiffs put forth three primary arguments: first, that Wildlife Services failed to consider a reasonable range of

1. Not to be confused with the United States Fish and Wildlife Services, Wildlife Services is a division of the United States Department of Agriculture, Animal and Plant Health Service.

2. *Cascadia Wildlands v. Woodruff*, No. 3:15-cv-05132-RJB, ___ F. Supp. 3d ___, 2015 WL 9217160, at *1 (W.D. Wash. Dec. 17, 2015).

3. *Id.*

4. *Id.*

5. *Id.*

alternatives;⁶ second, that Wildlife Services did not take a hard look at the effects lethal wolf removal would have on the gray wolf population, the ecology, or non-target species protected under the Endangered Species Act;⁷ and third, that Wildlife Services should have issued an EIS.⁸ The court granted partial summary judgment to Cascadia Wildlands and to Wildlife Services, ultimately vacating the EA and the Finding of No Significant Impact (“FONSI”).

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 20, 2015, Wildlife Services issued an EA and a FONSI regarding its involvement with the WDFW’s management of gray wolves in Washington.⁹ The WDFW found itself unable to adequately manage the level of conflict between gray wolves and livestock, and requested Wildlife Services’s assistance in carrying out its duties.¹⁰ To that end, the WDFW and Wildlife Services entered into a Cooperative Services Agreement prior to issuing the EA, whereby Wildlife Services would assist in wolf management upon the WDFW’s request.¹¹ The EA’s purpose was to evaluate Wildlife Services’s options to assist the WDFW, the United States Fish and Wildlife Service (“USFWS”), and tribal governments in the management of conflicts with gray wolves in Washington.¹² Cascadia Wildlands sued to enjoin Wildlife Services from engaging in gray wolf management in Washington.

III. ANALYSIS

Wildlife Services first challenged Plaintiffs’ standing, arguing they could not show injury, causation, nor redressability.¹³ First, Plaintiffs argued that Wildlife Services failed to consider all reasonable alternatives required by NEPA.¹⁴ Second, Plaintiff’s argued that Wildlife Services failed to take a hard look at the environmental impact of its involvement in wolf management.¹⁵ Finally, Plaintiff argued Wildlife Services should

6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. *Id.* at *3.
 11. *Id.* at *1.
 12. *Id.*
 13. *Id.* at *2.
 14. *Id.* at *4.
 15. *Id.* at *5.

have prepared an EIS because its involvement in wolf management would significantly affect environmental quality.¹⁶

A. *Standing*

The court first discussed the issue of standing raised by Wildlife Services.¹⁷ The court concluded that Cascadia Wildlands had adequately met the first element of standing—injury—because it had adequately alleged that if Wildlife Services assisted the WDFW in wolf management, its enjoyment of certain geographic areas would suffer.¹⁸ The WDFW required assistance in implementing its Wolf Conservation and Management Plan, so, presumably, Wildlife Services’s involvement would increase the number of wolf removals.¹⁹

Next, Wildlife Services argued that the causation element of standing was not met because its assistance was merely redundant and meant to carry out the WDFW’s requests.²⁰ The court, however, found that the Cooperative Services Agreement between the two agencies provided Wildlife Services with considerable discretion about proper removal methods, therefore causing Plaintiffs’ injuries.²¹

Finally, the court determined that Plaintiffs’ injuries were redressable.²² Focusing again on the level of discretion that Wildlife Services would retain in wolf management decisions, the court found that fewer gray wolves would be removed without Wildlife Services’s assistance.²³ Furthermore, the court concluded that Wildlife Services could narrow the scope of its involvement in wolf management or issue an EIS that took Wildlife Services’s discretion into account.²⁴ Finding Plaintiffs had standing, the court dismissed Wildlife Services’s cross-motion for summary judgment on this issue.²⁵

16. *Id.* at *6.

17. *Id.* at *2.

18. *Id.*

19. *Id.*

20. *Id.* at *3.

21. *Id.*

22. *Id.* at *4.

23. *Id.* at *3-4.

24. *Id.* at *4.

25. *Id.*

B. Reasonable Range of Alternatives

Next, the court addressed Plaintiff's first claim of error. Cascadia Wildlands argued that Wildlife Services failed to fulfill its requirements under the National Environmental Policy Act ("NEPA") to "[r]igorously explore and objectively evaluate all reasonable alternatives."²⁶ As previously mentioned, Wildlife Services considered three options: no action; eliminating the current program; or the Proposed Action Alternative.²⁷ Plaintiffs argued these considerations were insufficient, and that Wildlife Services should have also considered restricting lethal removal methods to solely private land.²⁸ However, the court held that Plaintiffs had not met their burden of proving that the proposed alternative was viable because they had not put forward an explanation as to why it would advance wolf conservation.²⁹

C. Impacts of the Proposed Action and its Alternatives

Plaintiffs' second claim of error argued that Wildlife Services had failed to take a hard look at the effect lethal wolf removals would have on the gray wolf population, the ecosystem, and non-target animals subject to Endangered Species Act protection.³⁰ The NEPA requires agencies to take a hard look at the environmental effects of proposed actions.³¹ A hard look means to consider "all foreseeable direct and indirect impacts."³²

The court found that Wildlife Services failed to take a hard look in two of three required areas. First, the court determined that it did not take a hard look at wolf removal's effects on gray wolf populations.³³ Instead, Wildlife Services relied on the WDFW, the USFWS, and certain tribes to determine the effect because they were responsible for determining the number of wolves to remove.³⁴ According to the court, Wildlife Services should have made an independent determination about the effects of its involvement because of its considerable discretion in

26. *Id.* (quoting 40 C.F.R. § 1502.14(a) (2015)).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at *5.

31. *Id.* at *4 (citing *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233 (9th Cir. 2005)).

32. *Id.* (quoting *N. Alaska Envtl. Ctr. v. Kempthorne*, 457 F.3d 969, 975 (9th Cir. 2006)).

33. *Id.* at *5.

34. *Id.*

determining whether and what type of removal was appropriate.³⁵ Furthermore, the court determined that the WDFW's Wolf Conservation and Management Plan was not binding on Wildlife Services, despite Wildlife Services's assurances that it would conduct lethal removal pursuant to the Management Plan.³⁶

Second, the court concluded that Wildlife Services did not take a hard look at the future ecological effects of lethal wolf removal.³⁷ Wildlife Services chose not to consider ecological effects because it assumed that if it did not remove wolves, the WDFW would remove them or hire a private party to do so.³⁸ The court found this argument to be logically inconsistent because Wildlife Services had removal decision.³⁹ Furthermore, the Management Plan assumed the same number of wolf removals regardless of Wildlife Services's involvement, and would remain unchanged and mandatory.⁴⁰

Finally, the court noted that Wildlife Services properly addressed the impact wolf removal would have on non-target species under the Endangered Species Act.⁴¹ However, according to the court, Wildlife Services's failure to take a hard look at two major issues meant it should have conducted an EIS.⁴² The court, therefore, granted summary judgment for Plaintiffs on this issue.⁴³

D. Environmental Impact Statement Requirement

Lastly, Plaintiffs claimed that Wildlife Services was required to prepare an EIS rather than a FONSI and an EA.⁴⁴ The NEPA requires an EIS be prepared for "all major Federal actions significantly affecting the quality of the human environment."⁴⁵ In order to determine whether an action "significantly" affects environmental quality, the action must be considered in different contexts, such as on the national level, the local level, and the affected region.⁴⁶ Furthermore, the intensity of the impact

35. *Id.*

36. *Id.*

37. *Id.* (citing *Sierra Forest Legacy v. U.S. Forest Serv.*, 652 F. Supp. 2d 1065, 1086 (N.D. Cal. 2009)).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at *6.

44. *Id.*

45. *Id.* (quoting 42 U.S.C. § 4332(C) (2012)).

46. *Id.* (citing 40 C.F.R. § 1508.27 (2015)).

must be considered using several factors:⁴⁷ first, whether the proposed action was highly controversial; second, the degree of uncertainty surrounding the action's possible effects; third, whether there are unique geographic characteristics in the area; fourth, the action's potential adverse effect on threatened or endangered species; and fifth, the action's cumulative impacts.

First, the court addressed whether Wildlife Services's involvement in wolf management would be highly controversial.⁴⁸ An action is highly controversial when there is significant dispute over the size, nature, or effect of the action, not mere opposition.⁴⁹ The court concluded the action was highly controversial because of the significant disagreement over the effectiveness of removal in relieving depredation and uncertainty surrounding the effect of Wildlife Services's considerable discretion in following the Management Plan.⁵⁰

Second, the court agreed with Plaintiff's argument that the degree of scientific dispute warranted further study of the efficacy of lethal wolf removal in reducing livestock depredation.⁵¹ The court found that there was further uncertainty in the effects of Wildlife Services's involvement because it was unknown whether the WDFW would require assistance in areas other than lethal wolf removal.⁵²

Third, the court rejected Plaintiffs' argument that the proposed action could affect ecologically sensitive areas such as threatened or endangered species' habitat.⁵³ Plaintiff was required to show an action's "proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas."⁵⁴ The court concluded that Plaintiffs made general references to the possibility that the action could affect ecologically sensitive areas but provided no specific information about unique geographic characteristics.⁵⁵

Fourth, the court held that Wildlife Services's involvement in gray wolf removal would not have a significant enough impact on other endangered species such as Canada lynx and grizzly bears to require preparation of an EIS.⁵⁶

47. *Id.*

48. *Id.*

49. *Id.* (citing *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1193 (9th Cir. 1988)).

50. *Id.*

51. *Id.* at *7.

52. *Id.*

53. *Id.*

54. *Id.* (quoting 40 C.F.R. § 1508.27(b)(3) (2015)).

55. *Id.*

56. *Id.*

Finally, the court addressed the cumulative impact of the proposed action. Cumulative impact considers “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁵⁷ The court concluded that Wildlife Services’s impact on wolf conservation and population management might be significant given its discretion and shared responsibility with the WDFW.⁵⁸ Given the intensity of impact and the latitude Wildlife Services was given in wolf management decisions, the court concluded that an EIS should have been prepared.⁵⁹

IV. CONCLUSION

Ultimately, the court vacated the Wildlife Services’s decision to issue a FONSI and EA, finding it arbitrary and capricious.⁶⁰ The court noted that had Wildlife Services’s discretion been narrowly circumscribed, a FONSI and an EA might have sufficed.⁶¹ The court left the decision of whether to renegotiate its contractual obligations or prepare an EIS up to Wildlife Services.⁶² On February 11, 2016, Wildlife Services appealed the decision to the United States Court of Appeals for the Ninth Circuit.⁶³

57. *Id.* (quoting 40 C.F.R. § 1508.7).

58. *Id.*

59. *Id.* at *8.

60. *Id.*

61. *Id.*

62. *Id.*

63. *See* *Cascadia Wildlands v. Woodruff*, No. 16-35102 (9th Cir. appeal filed Feb. 11, 2016).