



LETTERS

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Victory in Wolf Saga is at Risk

Editor's note: The following is an excerpt from a letter written by Cheyenne attorney Harriet Hageman to members of the Wyoming Wolf Coalition and Wyoming citizens.

Dear Wolf Coalition members:

We reported to you in March that the Federal Defendants in the above-referenced actions have voluntarily withdrawn their appeal to the Tenth Circuit Court of Appeals. We were a bit surprised by the agencies' move in that regard, but now believe that we have uncovered the reasoning behind it.

1. Judge Johnson's decision has now "gone final," in favor of Wyoming's Wolf Management Plan, and has the full force and effect of law.

2. There are troubling efforts afoot in Congress that are designed to reverse this important victory for Wyoming, to "undo" Judge Johnson's decision, and to nullify the rights of all States to manage their wildlife resources.

The purpose of this letter is to describe those activities, and to issue a call to action for all of you who have fought this battle over the last several decades.

Troubling efforts brewing in Congress

I am writing to you with great disappointment, as I fear that our victory in the wolf saga is now at risk. Once again it appears that politics may prevail over science and good public policy.

Wyoming's Wolf Management Plan and our victory before Judge Johnson are now at risk as the direct result of an amendment that has been introduced by Representative Mike Simpson, a Republican from Idaho, and Senators John Tester and Max Baucus, Democrats from Montana. The amendment would either be added to the "continuing resolutions" that have been in the news lately (to keep the federal government running as the House and Senate seek to hammer out the 2011 budget), or to the budget bill itself.

The purpose of the Simpson/Tester/Baucus amendment is as simple as it is troubling – it is designed to delist the wolf populations in Idaho and Montana, as well as parts of Oregon, Utah and Washington, while the remainder of the States – including Wyoming – are left to fend for themselves. Most importantly, however, the very wording of the proposed amendment appears to be designed to nullify Judge Johnson's decision in its entirety.

Mr. Simpson's amendment works by reinstating

the USFWS's 2009 Final Rule (the one rejected by Judge Molloy in Montana). There are two sections of the 2009 Rule that are important here, both of which would become law if the Simpson/Tester/Baucus amendment passes. As you remember, the first portion of that Rule approved the then-existing Montana and Idaho Wolf Management Plans, both of which allowed the States to assume management authority over their wolves (although with federal permission and involvement). The second part of the 2009 Final Rule rejected Wyoming's Wolf Management Plan, stating that "the Wyoming portion of the range represents a significant portion of range where the species remains in danger of extinction because of inadequate regulatory mechanisms."

Considering the language of the 2009 Rule, if Congressman Simpson and Senators Tester and Baucus were to be successful in including their proposed language as part of either a short-term "continuing resolution," or the 2011 budget, and such bill passes both the U.S. House and the Senate, we can fully expect that the federal agencies and the environmental groups will argue that Judge Johnson's decision has been congressionally nullified. Even more troubling is the fact that their amendment includes language that is intended to then block Wyoming from challenging the statute: "Such reissuance [of the Final Rule] shall not be subject to judicial review." To state that this is a real and immediate threat to Wyoming's ability to assume management of the wolf population is an understatement.

You may ask: "why would Simpson, Tester and Baucus seek to impose a rule from 2009 when, from the States' rights standpoint, and from the standpoint of wolf management, Judge Johnson's decision is much more favorable to every State in the Union?" I have asked the same question, and none of the answers are favorable.

The actions of Representative Simpson and Senators Tester and Baucus are beyond troubling, and should be cause for concern for anyone who seeks to protect our wildlife populations, our livestock producers, and our States' rights. Perhaps as significantly (and of grave concern), there are four groups that have endorsed Congressman Simpson's efforts, and appear to be willing to sacrifice Wyoming's interests:

- National Rifle Association (NRA)

- Safari Club International (SCI)

- Congressional Sportsmen Foundation (CSF)

- Boone and Crocket

By supporting only limited delisting in just a few of the affected States, these four so-called sportsmen groups have essentially sold out everyone else that has been affected by this issue. While these groups also support all of the wolf delisting bills, including some very good legislation (discussed below), their actions in supporting HR 1 (with Congressman Simpson's amendment) has allowed the Representatives and Senators to "race for the bottom," to take the weakest stand possible on the issue.

While these groups publicly claim that they support delisting in all western States, as well as in Wisconsin, Michigan and Minnesota, their actions are counterproductive. Their support of the amendment described above will likely undermine other pending wolf litigation that will protect all States. Their actions will also have a more dire outcome: the important victory that is represented by Judge Johnson's decision, and that resulted from years of hard-fought battles and the investment of tens of thousands of dollars, could be lost. This does not hurt only Wyoming, but will hurt every State in the nation that seeks to manage its own wildlife without the federal agencies' unlawful (and often-times destructive) micro-management out of Washington, D.C.

There are two other bills currently pending in Congress – HR 509 and S249, both of which would

return management of wolves to all of the affected States. The Simpson/Tester/Baucus approach not only undermines our ability to get either one of these bills passed, but will likely make it more difficult to obtain any additional Congressional action into the foreseeable future. In other words, the actions of Simpson/Tester/Baucus, along with the NRA, SCI, CFS and Boone and Crocket, have enabled those who seek to prevent the passage of any other bill that would actually provide for legitimate and effective delisting of the wolves.

Passage of the Simpson/Tester/Baucus amendment is not an incremental victory as some would claim. This is not an incremental victory for ensuring that States have the right to manage their own wildlife populations. This is not an incremental victory under the ESA. Judge Johnson's decision was a victory. This effort is designed to take that victory away.

By supporting a weak piece of legislation, these groups have provided several of the Congressional Representatives and Senators to play both sides of the aisle – to argue that they support delisting when such claims suit their political aspirations, and to argue that they fought against delisting when such a position will garner them votes from the so-called "environmental" groups. In other words, this amounts to nothing more than obtaining only the slightest and short-term moral victory for a limited number of people, and at the same time ensuring a very troubling defeat for the citizens of Wyoming and for the States' right to manage wildlife. While we recognize that political compromises are sometimes necessary, I cannot support legislation that is specifically designed to undo Judge Johnson's finding that the Wyoming Wolf Management Plan is biologically and scientifically sound. This is simply not good sci-

ence, good public policy or even good politics.

Alternative solutions

I intend to send this letter to several people that I know in Montana and Idaho. I can understand that some of the citizens of those States may see the Simpson/Tester/Baucus approach as a victory for them. I will encourage them, however, to look closely at the language of the amendment, and to fully understand what their respective State Management Plans allow them to do in terms of real wolf management. While I do not profess to know their Plans as I do Wyoming's, it is my understanding that at least some federal intervention in their wolf-control activities will remain likely. Simply reinstating the 2009 Final Rule will not guarantee that the federal agencies will be prevented from interfering with management decisions in Idaho and Montana, which may lead to years of additional frustration to effectuate real, on-the-ground wolf control.

HR 509 and S249 will provide Idaho and Montana with more flexibility and control over their own wildlife populations.

Finally, I have suggested that the best outcome may be for the FWS to issue a new final rule delisting the NRM DPS by adopting Judge Molloy's decision (regarding splitting the DPS) and Judge Johnson's decision sustaining the Wyoming Wolf Management Plan. Such an outcome is more likely to occur if the federal agencies do not expect Congress to adopt the weakest wolf legislation that has been proposed. By proposing a weak wolf bill, Congressman Simpson and Senators Tester and Baucus may actually be preventing the federal agencies from doing what they should have done as soon as Judge Johnson ruled – delist the NRM DPS.

We fully and wholeheartedly support delisting in Idaho and Montana (and all of the States

where wolves exist). Such delisting, however, cannot be done so that Wyoming is sacrificed at the altar of environmental extremism.

Conclusion

Judge Johnson's decision must stand. We must fight against this effort to use the promise of delisting in Idaho and Montana (and portions of Oregon, Utah and Washington) as a ruse to nullify the most important decision that the States have obtained in the last 17-plus years of wolf battles, as well as the rights of States to control their own destiny in terms of wildlife management.

Please contact the offices of Congressman Simpson, and Senators Tester and Baucus and ask them to support only HR 509 and S249. Please request that they not re-introduce the Wyoming-busting amendment described above.

Please contact Representative Lummis' office and thank her for her strength and continued efforts to fight this battle on your behalf. Please call the offices of Senators Enzi and Barrasso and thank them for their hard work in supporting the right bills on this issue, while fighting against the bad ones. Our Congressional Delegation has stood strong on this issue, and we need to commend them for their efforts on our behalf.

Please contact the NRA, SCI, CFS and Boone and Crocket and ask them to stop their support of an amendment that is specifically designed to undo our important and hard-fought victories. Ask them to instead focus their efforts on passing a solution that protects all of the States that have been plagued by this predator. Ask them to stop throwing Wyoming to the wolves.

Please distribute this letter to anyone you believe could help us to expose what is going on in Congress.

*Sincerely,
Harriet M. Hageman
Cheyenne*

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