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10 Motion for *Pro Hac Vice* Admission Filed Herewith

11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF ARIZONA**  
14

15	_____ )	
16	WILDEARTH GUARDIANS and the REWILDING )	
17	INSTITUTE, )	No. _____
18	Plaintiffs, )	
19	vs. )	COMPLAINT FOR
20	UNITED STATES FISH AND WILDLIFE SERVICE, )	DECLARATORY AND
21	and )	INJUNCTIVE RELIEF
22	UNITED STATES FOREST SERVICE, )	
23	Defendants. )	
24	_____ )	

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## INTRODUCTION

1  
2 1. More than 30 years after first receiving protection under the Endangered  
3 Species Act (“ESA”), 16 U.S.C. §§ 1531 et seq., the Mexican gray wolf (*Canis lupus*  
4 *baileyi*) remains the most endangered mammal in North American and the most endangered  
5 wolf in the world. Systematically persecuted by the federal government during a century-  
6 long predator control campaign undertaken on behalf of livestock interests, the Mexican  
7 wolf was extirpated from the United States by 1970. Now, ten years after being  
8 reintroduced to Arizona and New Mexico, the Mexican wolf is again the subject of  
9 government persecution driven by livestock interests. The U.S. Fish & Wildlife Service  
10 (“FWS”) has released approximately 99 Mexican wolves into a designated recovery area  
11 since 1998. These wolves have bred and successfully raised pups. However, today only  
12 approximately 50 wolves remain in the wild. This is because while FWS releases wolves  
13 with one hand, it simultaneously removes them with the other. To date, FWS has killed or  
14 removed approximately 70 wolves to appease public lands livestock operators permitted by  
15 the U.S. Forest Service (“Forest Service”) to graze cattle within the wolf recovery area.  
16 FWS’s program of both releasing and removing wolves has become commonly known as a  
17 “put and take” strategy, and has entirely failed to move the Mexican gray wolf from the  
18 edge of extinction in the wild.

19 2. The ESA places a duty on both FWS and the Forest Service to “conserve,”  
20 i.e., recover, the Mexican gray wolf. However, instead of abiding by this legal requirement,  
21 both agencies are pursuing wolf and land management plans that are contributing to the  
22 wolf’s demise. For the last two years, FWS has implemented a wolf management measure  
23 known as Standard Operating Procedure 13 (“SOP 13”). SOP 13 requires FWS to kill, or  
24 trap and forever return to captivity, any wolf that interferes with Forest Service permitted  
25 cattle three times within one calendar year. FWS’s use of SOP 13 has precluded, and  
26 continues to preclude, the conservation and recovery of the Mexican gray wolf subspecies  
27 in violation of ESA § 10(j), 16 U.S.C. §1539(j). Similarly, the Forest Service, in its  
28 capacity as the principal land manger of the 4.4 million acre Mexican wolf Blue Range

1 Wolf Recovery Area (“BRWRA”), prioritizes livestock grazing over wolf recovery. Rather  
2 than working to avoid wolf-livestock conflicts, the Forest Service relies solely on FWS’s  
3 wolf removal campaign to “solve” wolf and livestock conflicts. Additionally, the Forest  
4 Service has failed to develop an independent conservation program for the Mexican gray  
5 wolf in violation of ESA § 7(a)(1), 16 U.S.C. § 1536(a)(1). Because the actions and/or  
6 omissions of FWS and the Forest Service with respect to the Mexican gray wolf are  
7 arbitrary, capricious, and not in accordance with the ESA, each agency has violated, and is  
8 violating, the Administrative Procedures Act (“APA”), 5 U.S.C. § 706.

9 3. Through this lawsuit, WildEarth Guardians and the Rewilding Institute seek a  
10 declaration that FWS is managing the wild population of Mexican gray wolves in a manner  
11 that fails to further the conservation of this subspecies, as well as a declaration that the  
12 Forest Service has unlawfully refused or unreasonably delayed developing and  
13 implementing a program to conserve the Mexican gray wolf in the BRWRA. WildEarth  
14 Guardians and the Rewilding Institute further seek an order enjoining FWS from continuing  
15 to implement SOP 13, as well as an order compelling the Forest Service to develop and  
16 implement a conservation program for the Mexican gray wolf.

### 17 **JURISDICTION AND VENUE**

18 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
19 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief); and 16 U.S.C. §§  
20 1540 (c) and (g) (action arising under the ESA’s citizen suit provision).

21 5. As required by ESA § 11(g), 16 U.S.C. § 1540(g), WildEarth Guardians and  
22 the Rewilding Institute have furnished Defendant FWS, Defendant Forest Service, and the  
23 Secretary of the Interior with written notice of the violations alleged in this Complaint more  
24 than 60 days ago. An actual and present controversy exists between the parties within the  
25 meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

26 6. Venue is properly vested in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A)  
27 and 28 U.S.C. § 1391(e). The Mexican gray wolf is a native inhabitant of Arizona and  
28 currently lives in Arizona. A significant portion of the Mexican wolf BRWRA lies within

1 the State of Arizona. A substantial part of the events or omissions giving rise to the claims  
2 set forth in this Complaint occurred in the State of Arizona. FWS and the Forest Service  
3 each maintain an office in Phoenix, Arizona. WildEarth Guardians maintains an office in  
4 Phoenix, Arizona. WildEarth Guardians has members who reside in Arizona, in the habitat  
5 of the wolf, and in the Phoenix metropolitan area.

## 6 **PARTIES**

7 7. WildEarth Guardians is a non-profit conservation organization recently  
8 created by the merger of three, previously separate non-profit conservation organizations:  
9 Forest Guardians, Sinapu, and the Sagebrush Sea Campaign. WildEarth Guardians'  
10 mission is to protect wildlife, wild rivers, and wild places in the American West. WildEarth  
11 Guardians is dedicated to restoring ecosystem balance through the protection of large  
12 carnivores. Ensuring a healthy and viable wild population of Mexican gray wolves in  
13 Arizona and New Mexico is one of WildEarth Guardians' primary conservation campaigns.

14 8. WildEarth Guardians maintains offices in New Mexico, Colorado, and  
15 Arizona. WildEarth Guardians has approximately 4,600 members, many of whom reside in  
16 Arizona. Members and staff of WildEarth Guardians engage in outdoor recreation, wildlife  
17 viewing, and other activities throughout the Southwest in general, and in the BRWRA in  
18 particular. WildEarth Guardians' members and staff have scientific, aesthetic, recreational,  
19 and conservation interests in the preservation of the Mexican gray wolf and its habitat  
20 within the BRWRA. The survival, conservation, and recovery of the Mexican gray wolf in  
21 the wild are important aspects of these individuals' enjoyment of the BRWRA, as they  
22 enjoy watching and listening for wolves and observing signs of their presence.

23 9. WildEarth Guardians consistently participates in FWS's endangered species  
24 management on, and the Forest Service's grazing administration of, the BRWRA.  
25 WildEarth Guardians has requested that FWS suspend implementation of SOP 13 unless  
26 and until cursory reintroduction objectives have been met. WildEarth Guardians has  
27 submitted scoping comments on FWS's proposed revisions to the Mexican wolf ESA §  
28 10(j) Rule. WildEarth Guardians has met with various FWS officials in order to express

1 concern over poor wolf management and to suggest other, conservation-minded alternative  
2 approaches. WildEarth Guardians has submitted comments and administrative appeals  
3 regarding various Forest Service grazing management decisions that may increase the  
4 potential for wolf-livestock conflicts. WildEarth Guardians has met with Forest Service  
5 officials in order to express concern over poor grazing management and to suggest other,  
6 conservation-minded alternative approaches.

7       10. WildEarth Guardians files this lawsuit on behalf of itself and its adversely  
8 affected members. The members and staff of WildEarth Guardians are injured by the  
9 actions and/or omissions of FWS and the Forest Service that flow from these agencies'  
10 failures to conserve the Mexican gray wolf as required by federal law. Unless and until  
11 WildEarth Guardians' requested relief is granted, the members and staff of WildEarth  
12 Guardians will continued to be harmed by FWS's and the Forest Service's actions and/or  
13 omissions with respect to the Mexican gray wolf.

14       11. The Rewilding Institute is a non-profit, conservation think tank dedicated to  
15 science-informed protection and restoration of biological diversity at landscape and  
16 continental scales in North America. A primary focus of the Rewilding Institute is the  
17 restoration and conservation of ecologically effective populations of top predators. Such  
18 top predators include the Mexican gray wolf, which formerly inhabited vast areas in the  
19 Southwest and is currently being restored to portions of Arizona and New Mexico. The  
20 Rewilding Institute employs David Parsons, FWS's former Mexican Wolf Recovery  
21 Coordinator (1990-1999), as its Carnivore Conservation Biologist. Ensuring a healthy and  
22 viable wild population of Mexican gray wolves in Arizona and New Mexico is one of the  
23 Rewilding Institute's primary conservation endeavors.

24       12. The Rewilding Institute consistently participates in FWS's endangered  
25 species management on, and the Forest Service's grazing administration of, the BRWRA.  
26 The Rewilding Institute has formally endorsed a letter prepared by WildEarth Guardians  
27 requesting FWS suspend further implementation of SOP 13 unless and until cursory  
28 reintroduction objectives have been met. The Rewilding Institute has submitted

1 comprehensive scoping comments on FWS’s proposed revisions to the Mexican wolf ESA  
2 § 10(j) Rule. The Rewilding Institute has met with various FWS officials in order to  
3 express concern over poor wolf management and to suggest other, conservation-minded  
4 alternative approaches. The Rewilding Institute has submitted comments and  
5 administrative appeals regarding various grazing management decisions that may increase  
6 the potential for wolf-livestock conflicts. The Rewilding Institute has met with Forest  
7 Service officials in order to express concern over poor grazing management and to suggest  
8 other, conservation-minded alternative approaches.

9 13. Defendant FWS is the agency of the Department of Interior that is directly  
10 responsible for carrying out the ESA. FWS is required by law to further the conservation of  
11 the Mexican gray wolf within the BRWRA.

12 14. Defendant Forest Service is the agency of the Department of Agriculture that  
13 is directly responsible for management of the Apache and Gila National Forests, which  
14 make up the vast majority of the BRWRA. The Forest Service is required by law to utilize  
15 its resources to carry out a conservation program for the Mexican gray wolf within the  
16 BRWRA.

## 17 **LEGAL BACKGROUND**

### 18 **A. The Endangered Species Act**

19 15. The essential purpose of the ESA is conservation of species. The specific  
20 purposes of the ESA are “to provide a means whereby the ecosystems upon which  
21 endangered species and threatened species depend may be conserved, [and] to provide a  
22 program for the conservation of such endangered species and threatened species...” 16  
23 U.S.C. § 1531(b). “It is...declared to be the policy of Congress that all Federal...agencies  
24 shall seek to conserve endangered species...and shall utilize their authorities in furtherance  
25 of the purposes of [the ESA].” *Id.* § 1531(c)(1). To “conserve” means “to use and the use  
26 of all methods and procedures which are necessary to bring any endangered species or  
27 threatened species to the point at which the measures provided pursuant to this chapter are  
28 no longer necessary.” The ESA’s definition of “species” includes any subspecies. *Id.* §

1 1532(16). Within the context of the ESA, conservation and recovery are virtually  
2 synonymous. A species is eligible for delisting from the ESA when it is no longer  
3 endangered, i.e., when it has been restored to “all or a significant portion of its range.” Id.  
4 §1532(6).

5 16. The Secretary of the Interior executes the policies and procedures set forth in  
6 the ESA through FWS, which is the federal agency ultimately responsible for the  
7 management of terrestrial threatened and endangered species. See 50 C.F.R. § 402.01(b).  
8 In order to further the conservation of a threatened or endangered species, ESA § 10(j)  
9 allows FWS to authorize the release of any population of such species into an area of  
10 historic habitation but outside of that species’ current range. See 16 U.S.C. §  
11 1539(j)(2)(A). For each population released pursuant to ESA § 10(j), FWS must by  
12 regulation determine whether that population is “experimental” and whether it is “essential  
13 to the continued existence” of the species. 16 U.S.C. § 1539(j)(3). FWS has labeled *every*  
14 population of endangered species ever reintroduced pursuant to ESA § 10(j) as  
15 “experimental, nonessential” (“ENE”).

16 17. FWS has more flexibility in managing ENE populations than it does in  
17 managing naturally occurring populations. However, the exact parameters of FWS  
18 management flexibility vary from one ENE population to the next. Although ENE  
19 populations are afforded lesser protections under the ESA than those afforded to naturally  
20 occurring populations of the same species, these alterations are meant only to encourage  
21 reintroduction and to secure the restoration of listed species to their native ecosystems. See  
22 H.R. Rep. No. 97-597 (1982), reprinted in 1982 U.S.C.C.A.N. 2807, 2833. FWS may  
23 reintroduce members of a listed species under ESA § 10(j) only if so doing will “further the  
24 conservation of such species.” 16 U.S.C. § 1539(j)(2)(A). The conservation standard of  
25 ESA § 10(j) limits the scope of FWS’s otherwise wide management flexibility to include  
26 only those practices that actually promote conservation.

27 18. The ESA duty to conserve does not rest solely with FWS. ESA § 7(a)(1)  
28 makes clear that FWS shares conservation responsibility with all other, non-Interior federal

1 agencies. “All other Federal agencies shall, in consultation with and with the assistance of  
2 the Secretary, utilize their authorities in furtherance of the purposes of [the ESA] by  
3 carrying out programs for the conservation of endangered species...” *Id.* § 1536(a)(1). The  
4 duty to develop and implement conservation programs is both mandatory and substantive.

5 19. While Section 7(a)(1) does not dictate *how* agencies are to carry out their  
6 conservation programs, proper conservation must, by definition, have a significant impact  
7 on the restoration of the species at issue. Every non-Interior federal agency must place  
8 conservation above competing interests and its primary mission.

9 20. The duty to conserve under ESA § 7(a)(1) applies equally to all endangered  
10 species – even those listed as ENE under ESA § 10(j). *See* 16 U.S.C. § 1539(j)(2)(C)(i)  
11 (expressly stating that Section 7(a)(1) is unaffected by a Section 10(j) designation). Agency  
12 compliance with ESA § 7(a)(1) is actually *more* important for an ENE population than for  
13 its naturally occurring counterpart. This is because the ENE designation removes or lowers  
14 other ESA protections. While each Section 10(j) population has its own management  
15 parameters, *all* ENE populations lose the security of interagency consultation to guard  
16 against substantive jeopardy found at ESA § 7(a)(2), 16 U.S.C. § 1536(a)(2), as well as the  
17 full force of the protective take prohibitions found at ESA § 9(a)(1)(B), 16 U.S.C. §  
18 1538(a)(1)(B). The Mexican gray wolf’s ENE status also precludes the possibility of a  
19 critical habitat designation, which would otherwise be afforded under ESA § 4, 16 U.S.C. §  
20 1533(a)(3)(A). The loss of these protections makes Section 7(a)(1) compliance with regard  
21 to this ENE population paramount to upholding the essential purpose of the ESA.

22 21. ESA § 7(a)(2) requires that each federal agency consult with FWS to ensure  
23 that their actions are “not likely to jeopardize the continued existence” of non-ENE  
24 endangered species. 16 U.S.C. § 1736(a)(2). Although Section 7(a)(2) interagency  
25 consultations are normally factually probing and protective of endangered species, an  
26 agency must only “confer” with FWS when it undertakes an action within an area inhabited  
27 by an ENE population. Importantly, an interagency “conference” regarding an ENE  
28 population will *always* result in a “not likely to jeopardize” (“NLJ”) finding. This finding

1 is not based on any sort of analysis, but is instead a direct consequence of the ENE  
2 designation. Thus, ESA § 7(a)(2) offers no opportunity for meaningful analysis of how  
3 non-Interior federal actions may be hindering the conservation of an ENE population.  
4 Rather, the proper – and only – ESA avenue for ensuring that the actions of non-Interior  
5 agencies actually promote the conservation of ENE populations is through Section 7(a)(1).

6 22. ESA § 9(a)(1)(B) declares it unlawful for any person to “take” an endangered  
7 species. 16 U.S.C. § 1538(a)(1)(B). To “take” means to “harass, harm, pursue, hunt, shoot,  
8 wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” *Id.* §  
9 1532(19). The ESA take prohibition applies to both individual citizens and government  
10 officials, including those of FWS. *See id.* § 1538(g). Although the Section 9 take  
11 prohibition is normally quite capacious, FWS typically narrows the scope of prohibited acts  
12 when reintroducing ENE populations under ESA § 10(j). This narrowed scope, which  
13 allows FWS to engage in otherwise prohibited actions with respect to an ENE population, is  
14 where FWS derives its greater management flexibility over reintroduced populations.  
15 Although FWS is afforded wide latitude in managing ENE populations, the Section 10(j)  
16 conservation standard tempers FWS’s management flexibility. ESA § 10(j) requires that  
17 FWS’s implementation of the altered Section 9 take prohibitions for any ENE population  
18 contributes towards the eventual delisting of the species.

19 **B. The Administrative Procedures Act**

20 23. Judicial review of administrative decisions involving the ESA is governed by  
21 Section 706 of the Administrative Procedures Act (“APA”). APA § 706(1) empowers  
22 citizens to petition the Court to compel agency action unlawfully withheld or unreasonably  
23 delayed. APA §§ 706(2)(A) and (C) – (E) empower citizens to petition the Court to set  
24 aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in  
25 accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of  
26 statutory right; without observance of procedure required by law; and/or unsupported by  
27 substantial evidence.

28 24. As demonstrated below, FWS has violated APA §§ 706(2)(A) and (C) – (E)

1 by failing to manage the ENE population of Mexican gray wolves in a manner that furthers  
2 the conservation of the subspecies in violation of ESA § 10(j). Also as demonstrated  
3 below, the Forest Service has violated APA §§ 706(2)(A) and (C) – (E) by unlawfully  
4 refusing or unreasonably delaying the development and implementation of a conservation  
5 program for the Mexican gray wolf as required by ESA § 7(a)(1).

## 6 STATEMENT OF FACTS

### 7 A. The Endangered Mexican Gray Wolf

8 25. The Mexican gray wolf is the smallest,  
9 rarest, and most genetically distinct subspecies of the  
10 gray wolf species (*Canis lupus*). The Mexican wolf  
11 once roamed by the thousands across portions of  
12 Arizona, New Mexico, Texas, and the Republic of  
13 Mexico. The Mexican wolf declined, and was  
14 eventually exterminated, as a direct result of concerted



Photo by Joel Sartore/Wild Canid Center

15 federal eradication efforts undertaken on behalf of American livestock interests. By 1970,  
16 the Mexican wolf had been completely eradicated from the United States and suffered a  
17 similar fate in Mexico by the early 1980s. The Mexican gray wolf was then, and currently  
18 remains, the most endangered mammal in North America.

19 26. FWS listed the Mexican gray wolf subspecies as endangered on April 28,  
20 1976. The gray wolf species in North America south of Canada was listed as endangered on  
21 March 9, 1978, except in Minnesota where it was listed as threatened. The 1978 listing rule  
22 remains in effect today. In that rule, FWS “offer[s] the firmest assurance that it will  
23 continue to recognize valid biological subspecies for purposes of its research and  
24 conservation programs.” 43 Fed. Reg. 9607, 9610. FWS has continued to expressly  
25 recognize the Mexican gray wolf subspecies in this regard.

26 27. Mexican wolf conservation began when, between 1977 and 1980, FWS  
27 trapped the last known remaining Mexican wolves (four males and one pregnant female)  
28 from Durango and Chihuahua, Mexico. With these five animals, FWS launched an

1 emergency captive breeding program. All known Mexican wolves alive today are  
2 descendent of captive breeding.

3 28. Pursuant to ESA § 4(f)(1), 16 U.S.C. § 1533(f)(1), FWS issued a Recovery  
4 Plan for the Mexican wolf in 1982. The primary objective of this plan is to conserve and  
5 ensure the survival of the subspecies by re-establishing a viable, self-sustaining wild  
6 population of at least 100 Mexican wolves in their historic range. The numeric objective  
7 set forth in the Recovery Plan is not a recovery goal for delisting the Mexican wolf from the  
8 ESA. Rather, the 100 wild wolf threshold is the first benchmark of recovery progress.

9 29. FWS further specified this benchmark in its 1996 Final Environmental Impact  
10 Statement for Reintroduction of the Mexican Wolf Within its Historic Range in the  
11 Southwestern United States (“EIS”). In this EIS, FWS predicted that by the ninth year  
12 following the initial wolf releases (by the end of 2006), there would be 102 Mexican gray  
13 wolves and 18 breeding pairs in the wild. A “breeding pair” is an adult male and an adult  
14 female wolf that have produced at least two pups during the previous breeding season that  
15 survived until December 31 of their birth year. The EIS clarifies that FWS will use the  
16 “greatest degree of management flexibility” granted through discretionary rule provisions to  
17 mitigate potential impacts of the BRWRA Mexican wolf reintroduction project to achieve  
18 “the least impact on private activity *consistent with wolf recovery.*” EIS, at 2-16 (emphasis  
19 added).

20 30. In 1998, FWS established an experimental, nonessential (“ENE”) population  
21 of Mexican wolves for reintroduction. 63 Fed. Reg. 1752. FWS also designated 4.4  
22 million acres of National Forest land as the Blue Range Wolf Recovery Area (“BRWRA”).  
23 Approximately 95% of the BRWRA is public land. The BRWRA consists of the entire  
24 Apache and Gila National Forests in east-central Arizona and west-central New Mexico.  
25 The Forest Service permits livestock to graze the vast majority of these two National  
26 Forests. The BRWRA is the site of current Mexican wolf reintroduction and recovery  
27 efforts.

28 31. FWS set forth the management parameters for the Mexican wolf ENE

1 population in the Mexican gray wolf Section 10(j) Rule, 50 C.F.R. § 17.84(k). The  
2 function of 50 C.F.R. § 17.84(k) is to give FWS greater management flexibility over the  
3 wild Mexican wolf population. The purpose of such flexibility is to further the  
4 conservation of the Mexican gray wolf subspecies. “Based on the best available  
5 information, the Service finds that reintroduction of an experimental population of Mexican  
6 wolves into the subspecies’ probable historic range will further the conservation of the  
7 Mexican wolf subspecies...” 50 C.F.R. § 17.84(k)(2).

8 32. 50 C.F.R. § 17.84(k)(3)(ix) authorizes FWS to lawfully “take” a wolf from  
9 the ENE population in a manner consistent with a FWS approved management plan, special  
10 management measure, or valid FWS issued permit. Such take may include capture and  
11 translocation of wolves that conflict with livestock. FWS authorized take of Mexican  
12 wolves pursuant to 50 C.F.R. § 17.84(k)(3)(ix) is discretionary. Neither 50 C.F.R. §  
13 17.84(k) nor ESA § 10(j) requires FWS to take or otherwise remove Mexican wolves from  
14 the wild because of conflicts with livestock. Both 50 C.F.R. § 17.84(k) and ESA § 10(j) do,  
15 however, require FWS to further the conservation of the Mexican gray wolf. “The  
16 provisions on allowable take and harassment of wolves are *narrowly drawn* so that they are  
17 *only to be used in ways that enhance wolf recovery.*” 63 Fed. Reg. 1752, 1758 (emphasis  
18 added).

19 33. FWS began the Mexican wolf reintroduction effort with the release of 11  
20 captive-reared wolves into the BRWRA on March 29, 1998. Despite the population’s ENE  
21 designation, reintroducing Mexican wolves to the BRWRA is not an experiment. *Id.* at  
22 1757. Rather, reintroduction is the first step toward recovery of the Mexican gray wolf in  
23 the wild.

24 **B. FWS Has Failed to Meet the Conservation Standard of ESA § 10(j)**

25 34. From 1998 to 2003, FWS directed the Mexican wolf recovery effort without  
26 any official cooperating agencies. During that time period, FWS’s progress toward the  
27 numerical recovery benchmark for wolf population growth closely tracked early agency  
28 projections. FWS had predicted that by the end of 2003, 55 individuals and ten breeding

1 pairs would inhabit the BRWRA. At the close of that year, 55 individual wolves and three  
2 breeding pairs did actually inhabit the BRWRA.

3 35. FWS changed course in 2003 when it decided to share management authority  
4 over the ENE population with five other entities. These entities are: the Arizona Game and  
5 Fish Department; the New Mexico Department of Game and Fish; the White Mountain  
6 Apache Tribe; the Forest Service; and the federal predator control agency, USDA APHIS  
7 Wildlife Services. Together, these five entities along with FWS are known as the Mexican  
8 wolf Adaptive Management Oversight Committee (“AMOC”). The formation and purpose  
9 of the AMOC is formalized in a 2003 Memorandum of Understanding (“MOU”). The  
10 stated purpose of the MOU “is to establish a framework for adaptively managing the  
11 Mexican wolf reintroduction project in and around the Blue Range Wolf Recovery Area to  
12 contribute toward recovery, including downlisting and delisting.” Since its inception,  
13 however, the AMOC has failed to contribute toward the recovery or conservation of the  
14 Mexican gray wolf.

15 36. Pursuant to the MOU, FWS has delegated authority to the AMOC to develop  
16 and approve Standard Operating Procedures (“SOPs”) for managing the ENE population.  
17 In October of 2005, the AMOC formally adopted Standard Operating Procedure 13 (“SOP  
18 13”). SOP 13 states in relevant part that, “Wolves known or likely to have committed three  
19 depredation incidents within a period of 365 days shall be permanently removed from the  
20 wild as expeditiously as possible ...i.e. ‘3 strikes and out...’” “Permanent removal”  
21 includes live capture methods as well as lethal take. “Regardless of the means, a wolf  
22 subject to a permanent removal order shall never be returned to the wild in Arizona or New  
23 Mexico after it is removed.” Wolf removals under SOP 13 are punitive and mandatory.  
24 SOP 13 *requires* permanent removal of each offending wolf regardless of important  
25 biological factors such as wolf population numbers, genetic value, and reproductive status  
26 (breeding pair member, pregnancy, and/or the presence of dependent pups). There is no  
27 cap on wolf removals built into SOP 13. SOP 13 itself places no maximum on the number  
28 of wolves that will be permanently removed from the BRWRA. FWS has set no cap on

1 wolf removals via any other means.

2 37. Since the first implementation and subsequent adoption of SOP 13, Mexican  
3 wolf removals have spiked. (FWS began implementing SOP 13 months before its formal  
4 adoption.) From 1998 to 2004, FWS removed only 25 wolves from the BRWRA for  
5 conflicts with livestock. Since 2005, FWS has removed 45 Mexican wolves from the  
6 BRWRA under SOP 13 for conflicts with livestock.

7 38. Since the beginning of 2005, permanent wolf removals under SOP 13 have  
8 undone all progress towards recovery. FWS had predicted that, by the close of 2006, its  
9 conservation and recovery efforts would yield 102 individual wolves and 18 breeding pairs  
10 in the BRWRA. They did not. At the close of 2007, just 52 individual wolves and four  
11 breeding pairs remained in the wild – fewer wolves than were documented at the end of  
12 2003. Since FWS changed management course by choosing the AMOC structure in 2003,  
13 the wild Mexican wolf population has suffered a net loss of three individuals and no net  
14 gain in breeding pairs. Currently, the population is approximately 50% short of meeting the  
15 numeric recovery benchmark for individual wolves. Currently, the population is  
16 approximately 83% short of meeting the population growth model estimation for breeding  
17 pairs. Currently, the population is more than one year overdue for meeting any benchmark  
18 for recovery.

19 39. FWS instituted the SOP 13 Mexican wolf removal campaign despite warnings  
20 from experts that the population was possibly already in trouble. In 2001, a panel of non-  
21 agency wolf experts led by internationally recognized wolf ecologist Dr. Paul Paquet  
22 conducted a mandatory 3-Year Review of the Mexican gray wolf reintroduction and  
23 recovery effort. In the course of the 3-Year Review, Dr. Paquet found that frequent  
24 recaptures and re-releases of Mexican wolves were potentially interfering with pack  
25 formation and establishment and maintenance of home ranges. Dr. Paquet also found that  
26 survival and recruitment rates for Mexican wolves were far too low to ensure population  
27 growth and persistence. Dr. Paquet concluded that without dramatic improvement in these  
28 vital rates, the population would fall short of predictions for upcoming years.

1           40. FWS has proceeded with the SOP 13 Mexican wolf removal campaign in the  
2 face of opposition from the scientific community. During its 87<sup>th</sup> Annual Meeting in June  
3 of 2007, the highly respected American Society of Mammalogists adopted a final resolution  
4 pertaining to the management of the ENE population of Mexican gray wolves. In that  
5 resolution, the Society found that FWS's Mexican gray wolf predator control program was  
6 not based on sound scientific research. The Society also found that the rationale for  
7 predator control of Mexican gray wolves differs from that of other endangered wolves  
8 elsewhere because it confines wolves to an arbitrary area and creates conflicts with  
9 livestock. The Society called upon FWS to suspend all predator control directed at  
10 Mexican gray wolves at least until the interim goal of 100 wild wolves has been achieved.  
11 The Society further called on FWS to ensure the recovery and sustainability of populations  
12 of Mexican gray wolves.

13           41. FWS continues to proceed with the SOP 13 Mexican wolf removal campaign  
14 even as FWS fails to meet new recovery progress goals. Although the numeric recovery  
15 benchmarks set forth by FWS in 1998 remain in effect today, FWS has made additional  
16 predictions in population growth since that time. In its 2006 Annual Progress Report for  
17 the Mexican gray wolf reintroduction and recovery project (the most recent of progress  
18 reports), FWS set forth a management objective to increase the population by 10% or  
19 increase the number of breeding pairs by one during the 2007 calendar year. FWS did not  
20 achieve either of these objectives. FWS did, however, remove 19 Mexican gray wolves in  
21 2007 pursuant to SOP 13. As a direct result, the Mexican wolf wild population suffered a  
22 12% decline in individuals and a loss of three breeding pairs.

23           42. FWS maintains that it lacks authority to revoke SOP 13 or suspend its  
24 implementation without the prior approval of the AMOC. FWS did not – nor could it –  
25 replace itself as the agency ultimately responsible for the conservation and recovery of the  
26 Mexican gray wolf by entering into the MOU. Congress charged FWS with carrying out  
27 the reintroduction and recovery of endangered species pursuant to ESA § 10(j). FWS is not  
28 free to delegate its ESA responsibilities to other entities in a manner that leaves it without

1 ultimate control.

2 43. There is no evidence to suggest that the current population of wild Mexican  
3 gray wolves is on a growth trajectory to reach any recovery benchmarks in the foreseeable  
4 future. Certainly, the current population is neither viable nor self-sustaining as was the goal  
5 of the Recovery Plan. This is because the current rate of mortality plus SOP 13 removals  
6 exceeds the rate of new recruitment through releases and reproduction. FWS is not on a  
7 path toward recovery of the Mexican gray wolf in the wild. Thus, FWS is not acting in  
8 order to further the conservation of this subspecies as required by ESA § 10(j).

9 44. FWS has violated APA § 706 by failing to meet the conservation standard of  
10 ESA § 10(j). FWS has acted, and is acting, unreasonably and with clear error of judgment  
11 by adopting and continuing to implement its SOP 13 wolf removal campaign in the face of  
12 a crashing wolf population. FWS has arbitrarily and capriciously overstepped the bounds  
13 of management flexibility and entered into the realm of unlawful endangered species  
14 predator control. FWS's management strategy of killing and trapping its way to recovering  
15 the Mexican gray wolf, as manifested by its adoption and implementation of SOP 13, has  
16 not – and cannot – further the conservation of the subspecies.

17 C. **The Forest Service Has Failed to Meet the Conservation Duty of ESA §**  
18 **7(a)(1)**

19 45. The conservation and recovery of the Mexican gray wolf is being put at risk  
20 not only by FWS's reaction to wolf-livestock conflicts, but also by the Forest Service's  
21 refusal to take responsibility for these conflicts. It is the combination of aggressive wolf  
22 control and apathetic land management policies that have crippled the Mexican wolf  
23 reintroduction and recovery program.

24 46. The Forest Service has authorized, and continues to authorize, nearly  
25 ubiquitous livestock grazing throughout the BRWRA. In so doing, the Forest Service is  
26 fully aware of the magnitude of wolf-livestock conflicts on the BRWRA. The Forest  
27 Service is also fully aware of how these conflicts directly lead to an unsustainable rate of  
28 wolf removals. The Forest Service is simply unwilling to prioritize wolf recovery over

1 livestock grazing in its administration of multiple use policies for the Apache and Gila  
2 National Forests.

3 47. Leading experts have recognized the Forest Service’s potential role in aiding  
4 the wolf recovery effort. In the 3-Year Review of the Mexican wolf reintroduction and  
5 recovery program, Dr. Paul Paquet acknowledged that that while wolf-livestock interactions  
6 are unavoidable in the BRWRA, they do not have to be detrimental. “Livestock producers  
7 using public lands can make a substantive contribution to reducing conflicts with wolves  
8 through improved husbandry and better management of carcasses.” Mexican Wolf  
9 Recovery: Three-Year Program Review and Assessment, at 54. All livestock producers on  
10 the Apache and Gila National Forests are doing business in the BRWRA at the discretion  
11 and direction of the Forest Service. Hence, the Forest Service has the authority to mandate  
12 by contract the terms of its permittees’ grazing practices.

13 48. Yet the Forest Service does not require its permittees to institute improved  
14 animal husbandry practices or better management of livestock carcasses. In fact, the Forest  
15 Service does nothing to contribute to the conservation of the Mexican gray wolf. At no  
16 time since wolves were released into the BRWRA in 1998 has the Forest Service utilized its  
17 authorities in furtherance of the purposes of the ESA by carrying out a conservation  
18 program for the Mexican gray wolf.

19 49. The Forest Service’s membership in the AMOC is not a conservation  
20 program. To the extent that the Forest Service has participated in the AMOC at all, such  
21 participation has not promoted conservation. As described above, the AMOC has managed  
22 the Mexican wolf ENE population in such a way as to *hinder* the subspecies’ recovery – not  
23 promote it. Within the context of the ESA, conservation means recovery to the point of  
24 delisting. Actions that have no significant impact on the conservation of a species are not  
25 conservation measures, much less conservation programs.

26 50. The Forest Service has violated APA § 706 by failing to meet its conservation  
27 duty under ESA § 7(a)(1). Permanent wolf removals directly resulting from conflicts with  
28 Forest Service permitted livestock are precluding the attainment of recovery benchmarks

1 for the only wild population of Mexican gray wolves. Yet, the Forest Service has  
2 unlawfully refused or unreasonably delayed developing and implementing a program for  
3 the conservation of this endangered subspecies.

#### 4 **FIRST CLAIM FOR RELIEF**

5 51. Each and every allegation set forth in this Complaint is incorporated herein by  
6 reference.

7 52. FWS's adoption and continued implementation of SOP 13 does not "further  
8 the conservation" of the Mexican gray wolf subspecies as required by ESA § 10(j), and is  
9 thus arbitrary and capricious, contrary to law, in excess of statutory authority, without  
10 observance of procedure required by law, and unsupported by substantial evidence under  
11 APA §§ 706(2)(A) and (C) – (E).

#### 12 **SECOND CLAIM FOR RELIEF**

13 53. Each and every allegation set forth in this Complaint is incorporated herein by  
14 reference.

15 54. The Forest Service's failure to develop and carry out a program in  
16 consultation with FWS for the conservation of the Mexican gray wolf is a direct violation  
17 of ESA § 7(a)(1), and therefore constitutes agency action unlawfully withheld or  
18 unreasonably delayed in violation of APA § 706(a)(1) and/or is arbitrary and capricious,  
19 contrary to law, in excess of statutory authority, without observance of procedure required  
20 by law, and unsupported by substantial evidence under APA §§ 706(2)(A) and (C) – (E).

#### 21 **PRAYER FOR RELIEF**

22 WHEREFORE, WildEarth Guardians and the Rewilding Institute respectfully  
23 request that this Court enter judgment providing the following relief:

24 (A) A declaratory judgment that Defendant FWS is violating APA §§ 706(2)(A)  
25 and (C) – (E) by arbitrarily and capriciously implementing Standard Operating Procedure  
26 13 when such continued implementation does not further the conservation of the Mexican  
27 gray wolf as required by ESA § 10(j);

28 (B) A declaratory judgment that Defendant Forest Service is violating ESA §

1 7(a)(1) and APA §§ 706(2)(A) and (C) – (E) by arbitrarily and capriciously failing to utilize  
2 its authorities in consultation with FWS in order to carry out a conservation program for the  
3 Mexican gray wolf as required by ESA § 7(a)(1);

4 (C) An order enjoining Defendant FWS from implementing Standard Operating  
5 Procedure 13;

6 (D) An order compelling Defendant Forest Service to develop and implement in  
7 consultation with FWS a conservation program for the Mexican gray wolf;

8 (E) An order awarding WildEarth Guardians and the Rewilding Institute the costs  
9 incurred in pursuing this action, including attorneys’ fees, as authorized by the ESA citizen  
10 suit provision, 16 U.S.C. § 1540(g), the Equal Access to Justice Act (“EAJA”), 28 U.S.C. §  
11 2412, and other applicable provisions;

12 (F) An order granting such other and further relief as the Court may deem just  
13 and proper; and

14 (G) The retention of jurisdiction to insure that the terms of the decree are carried  
15 out.

16  
17 Dated April 30, 2008.

18  
19 Respectfully submitted,

20  
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Motion for *Pro Hac Vice* Admission Pending