

EXPEDITE
 No hearing set
 Hearing is set
Date: Aug. 31, 2018
Time: 9:00 a.m.
Judge/Calendar:
Hon. Carol Murphy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

CENTER FOR BIOLOGICAL DIVERSITY
and CASCADIA WILDLANDS,

Petitioners,

v.

WASHINGTON DEPARTMENT OF FISH
AND WILDLIFE; KELLY SUSEWIND, in
his official capacity as Director of the
Washington Department of Fish and Wildlife;
and LISA WOOD, in her official capacity as
the SEPA Coordinator of the Washington
Department of Fish and Wildlife,

Respondents.

No. 18-2-04130-34

**BRIEF OF PROPOSED *AMICUS CURIAE*
CONSERVATION NORTHWEST IN
SUPPORT OF THE WASHINGTON
DEPARTMENT OF FISH AND
WILDLIFE'S OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Proposed *amicus curiae* Conservation Northwest respectfully submits this brief in support of the Washington Department of Fish and Wildlife's opposition to Petitioners the Center for Biological Diversity and Cascadia Wildlands' Motion for Preliminary Injunction.

As a conservation organization that has been intimately involved in Washington's wolf conflict for more than a decade—including having staff that served on the Department's

1 Wolf Working Group from 2007 to 2011, and staff that have served on the Department’s
2 Wolf Advisory Group (“WAG”) since 2013—Conservation Northwest has a both a unique
3 perspective that will assist the Court in deciding the issues raised by the Motion, and a vested
4 interest in seeing the Department’s 2017 Wolf-Livestock Interaction Protocol upheld. As set
5 forth below and in the Declaration of Conservation Northwest Policy Director Paula Swedeen
6 submitted herewith, Petitioners’ motion ignores both the significant public and stakeholder
7 involvement giving rise to the 2017 Wolf-Livestock Interaction Protocol, as well as the
8 adverse public impact Petitioners’ motion would have on the significant progress achieved by
9 the Department—and the trust that has been built among all interested stakeholders—over the
10 past decade. Petitioners’ motion should be denied and the Department should be permitted to
11 continue to operate within the 2017 protocol while Petitioners’ claims are heard on the merits.

12 **II. EVIDENCE RELIED UPON**

13 Conservation Northwest’s *amicus curiae* brief relies upon the Declaration of Paula
14 Swedeen, Ph.D. in Support of Amicus Brief of Conservation Northwest in Support of the
15 Washington Department of Fish and Wildlife’s Opposition to Motion for Preliminary
16 Injunction (“Swedeen Declaration”).

17 **III. ARGUMENT**

18 The public interest would not be served by an injunction prohibiting the Department
19 from applying the 2017 Wolf-Livestock Interaction Protocol in a consistent and predictable
20 fashion while Petitioners’ claims are decided, which would have disastrous consequences not
21 only for the Department’s enforcement of its own protocols, but also for the wolf recovery
22 efforts that Petitioners seek to promote.

23 As set forth in great detail in Dr. Swedeen’s Declaration, the 2017 Wolf-Livestock
24 Interaction Protocol is the product of an intensive, interdisciplinary public process. At the
25 risk of distracting from the explanation set forth in Dr. Swedeen’s cogent and informative

1 declaration (and at the risk of adding to the already-voluminous amount of briefing before the
2 Court), certain aspects of that process bear emphasizing.

3 The 2017 Wolf-Livestock Interaction Protocol replaced a prior 2014 protocol that was
4 adopted without explicit agreement from the entire WAG and was widely criticized by many
5 in the conservation and the ranching community. Swedeen Declaration at ¶¶ 18-19. The
6 intensity of disagreement and animosity over this protocol, and in particular one lethal
7 removal event undertaken by the Department, reached a fevered pitch and required the
8 Governor's intervention. *Id.* at ¶ 18. As a result of the vocal opposition to that protocol
9 among the WAG and others, the Department hired Francine Madden, a human-wildlife
10 conflict transformation specialist, to assess the wolf conflict and recommend next steps. *Id.* at
11 ¶ 19. Ms. Madden conducted a detailed assessment of the issues surrounding the 2014
12 protocol and broader conflict surrounding wolf recovery, including roughly 100 stakeholder
13 interviews, and was hired by the Department on a two-year contract to work to find solutions
14 that the entire WAG and as many other groups as possible could support. *Id.* Ms. Madden
15 did an exceptional job of building mutual trust and respect among the various stakeholders,
16 and improving the Department's transparency and involvement of WAG as a citizen advisory
17 group in implementing its 2011 plan, which had already gone through SEPA review and been
18 adopted by the Fish and Wildlife Commission. *Id.* at ¶ 20. It also laid the groundwork for the
19 WAG to reconsider its recommendations to the Department regarding the conditions under
20 which lethal removal would be considered to stop repeated livestock depredations. *Id.* at ¶ 22.

21 The Department and the WAG began work to replace the 2014 protocol in earnest in
22 February of 2016. Swedeen Declaration at ¶ 23. The process leading to the creation of the
23 WAG's first draft of a protocol alone included consideration of relevant scientific literature;
24 the field experience of the Department's conflict specialists and wolf biologists; the logistical
25 considerations of ranchers; conservation groups' and the public's interests in a recovered

1 population and humane treatment of individual animals; and several meetings with other wolf
2 conservation groups (including both Petitioner groups). *Id.* at ¶¶ 23-24.

3 The initial recommendations that came out of the WAG’s 2016 process were then
4 transformed by Department staff to into a draft protocol, which was then sent back to the
5 WAG for additional comment and refinement. Swedeen Declaration at ¶ 25. A new set of
6 protocol recommendations was agreed to by consensus in May 2016 and adopted into a
7 protocol by WDFW for the 2016 grazing season. The 2017 Wolf-livestock interaction
8 protocol was created as a revision to 2016 protocol. That second-round process for 2017
9 included two meetings with extensive public comments (and, again, comment from the
10 Petitioners); a review of published literature on the subject; the field experience of
11 Department biologists; consideration of ranchers’ economic and operational concerns; and
12 observations from conservation interests about improving coverage of so-called “range
13 riders”;¹ improvements to the quality of documenting how non-lethal measures are
14 implemented; changes to apply lethal control in an incremental manner to avoid needing to
15 remove entire packs; and consideration of individual animal welfare. *Id.* at ¶¶ 25-27. The
16 WAG’s second set of consensus recommendations was *again* sent to the Department in March
17 of 2017, and then was *again* sent back to the WAG for additional comment and input before it
18 was formally adopted by the Department. *Id.* at ¶ 28.

19 Because this extensive public process has included input from all affected
20 stakeholders, it has taken into account the perspectives of all affected groups, and has buy-in
21 from the WAG, a citizen advisory group with diverse stakeholder representation—buy-in that

22 ¹ “Range riders” are specialized ranch workers that keep track of both cattle and wolf locations and
23 behavior in order to take advantage of wolves’ aversion to human presence; to detect and remove sick
24 and injured livestock before they become an attractant to wolves; and to physically haze wolves away
25 from livestock if they get too close or look like they are trying to prey on livestock. Swedeen
Declaration at ¶ 9. A more detailed description of Conservation Northwest’s range rider program can
be found at: <https://www.conservacionnw.org/our-work/wildlife/range-rider-pilot-project/>.

1 does not always come out of the SEPA process. And it has worked. Conservation Northwest
2 staff have been told by ranchers and community leaders that the existence of a protocol that
3 the WAG agreed to, coupled with the Department following through on implementation, has
4 made it easier for more ranchers to undertake high-quality deterrence measures. Swedeen
5 Declaration at ¶ 29. Data from WDFW and from the number of ranchers that Conservation
6 Northwest serves plus a new grant program from Department of Agriculture on the uptake of
7 various forms of non-lethal measures corroborates these anecdotes. Specifically, between
8 2013 and 2015 there was an average of less than 40 ranchers utilizing formal payment
9 programs either through the State or non-profits. *Id.* From 2016-2018, those numbers have
10 averaged slightly *over 60*. *Id.* WDFW conflict specialists have also reported to Conservation
11 Northwest that the number of ranchers employing non-lethal measures without some form of
12 contract or payment is higher, and that now the demand for cost-share funds exceeds the
13 availability of funding. *Id.* Conservation Northwest has also received more requests for
14 range rider coverage than it has funds to supply. *Id.* While it may seem paradoxical—
15 especially coming from a conservation organization—Conservation Northwest sincerely
16 believes that allowing lethal removal to be a tool in the Department’s toolbox increases the
17 uptake of non-lethal measures across the landscape and decreases overall conflict between
18 wolves and humans. *Id.* As Dr. Swedeen states in her declaration:

19 I have been involved in many public processes on agency decisions, as an agency
20 staff person responding to SEPA comments, as a citizen providing comments
21 through formal SEPA and NEPA processes, and as a professional representing
22 environmental organizations. I have never been involved in a process that has
23 taken as much time, care, and consideration of technical, biological, social, and
24 economic factors to implement a recovery plan (or any other type of
25 environmental decision), let alone one that has already undergone formal agency
decision-making through SEPA. In my opinion, The Washington Department of
Fish and Wildlife, through its WAG process, is implementing reasoned public
involvement in a more in-depth manner than any other process I have been
involved in. I am unaware of any other state agency with wolves that goes to the
lengths that WDFW has gone to in order to implement recovery actions that
vastly different stakeholder groups can live with and that are resulting in a

1 growing population. Wolves are also the most controversial species I have
worked on in my career.

2 I would also observe that the WAG process has allowed for genuine dialogue and
3 improved substantive understanding of the complex issues involved in
4 management decisions involving wolf recovery. While SEPA is important from a
5 procedural perspective and is in my opinion intended to also improve
6 understanding of the impacts of decisions, it does not by itself allow for the kind
7 of true democratic, face-to-face dialogue that the WAG has created. The types of
8 comments that come through SEPA often do not carry the depth of understanding
9 and connection to the issues that have emerged from the discussions that I
experienced as a participant of the WAG. As described above, I think that
10 decision-making we undertook was built upon an improved understanding of the
11 perspectives of all stakeholders involved, and that this improved understanding
12 has resulted in better implementation and deployment of non-lethal deterrence
13 methods than would likely have occurred under a standard public comment and
14 rule-making format.

15 Finally, the WAG process has demonstrated the importance of relationships and
16 trust across urban and rural stakeholders and communities. Coming to agreement
17 among conservations groups, ranchers, hunters, and Department staff over
18 improved commitment to and implementation of non-lethal measures and
conditions under which the Department could consider using lethal removal of
wolves as a management tool is no small feat, especially in light of the high level
of political polarization among these groups at the present time. I believe that
sticking with the agreements made by the group, and allowing the Department to
implement those decisions, as long as they are otherwise in accordance with
federal and state law, is important to maintaining trust across these different
groups, and important to the social underpinnings of successful long-term wolf
recovery and persistence. I believe that granting an injunction to the petitioners
will cause damage to the improvements in social acceptance of wolves in
Washington and could set back the work that members of the WAG have done,
along with the Department, to work towards meeting the needs of all
Washingtonians who have an interest in robust native wildlife populations and in
the ability of human communities to co-exist with wildlife with a minimum of
conflict.

19 Swedeen Declaration at ¶¶ 30-32.

20 IV. CONCLUSION

21 An injunction prohibiting the Department from continuing to implement the 2017
22 Wolf-Livestock Interaction Protocol during the pendency of Petitioners' claims would not
23 serve the public interest because it would undermine the trust and consistency upon which the
24 Protocol's success is built. To be clear, Conservation Northwest does not like to see wolves
25 killed. But where good faith efforts at proactive non-lethal measures do not work, we support

1 the Department in conducting lethal removal when we are confident that such actions are
2 consistent with agreements negotiated in good faith with good public process, informed by
3 research findings, when the action is needed to stop continued damaging incidents of
4 livestock loss, and when the removal action will not ecologically impair recovery.
5 Conservation Northwest believes this is one such case, and we request that the Court deny
6 Petitioners' motion.

7 DATED this 29th day of August, 2018.

8 CORR CRONIN LLP

9
10 *s/ Kelly H. Sheridan*
11 Kelly H. Sheridan, WSBA No. 44746
12 1001 Fourth Avenue, Suite 3900
13 Seattle, WA 98154-1051
14 (206) 625-8600 Phone
15 (206) 625-0900 Fax
16 ksheridan@corrcronin.com
17 *Attorneys for Proposed Amicus Curiae*
18 *Conservation Northwest*
19
20
21
22
23
24
25

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies as follows:

3 1. I am employed at Corr Cronin LLP, attorneys for Amicus Conservation
4 Northwest.

5 2. On August 29, 2018, I caused a true and correct copy of the foregoing
6 document to be served on the following parties in the manner indicated below:

7 ***Attorneys for Petitioner:***

8 Claire Loeb Davis, WSBA No. 39812
9 LANE POWELL PC
10 1420 Fifth Avenue, Suite 4200
11 Seattle, WA 98111
davisc@lanepowell.com

12 ***Via Email and Hand Delivery***

***Attorneys for Respondent State of
Washington, Department of Fish and
Wildlife:***

Joseph E. Shorin III, WSBA No. 19705
Senior Assistant Attorney General
ATTORNEY GENERAL OF
WASHINGTON
1125 Washington Street SE
Olympia, WA 98504
josephs@atg.wa.gov

14 ***Via Email***

15 I declare under penalty of perjury under the laws of the state of Washington that the
16 foregoing is true and correct.

17 DATED this 29th day of August, 2018 at Seattle, Washington.

18 *s/ Lauren Beers*
19 Lauren Beers