



WOLVES: Judge upholds Congress' delisting rider

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The same Montana judge who ruled last year that the Interior Department had illegally removed federal protections for gray wolves in Montana and Idaho decided yesterday that Congress did not overstep its bounds when it essentially tossed his decision in April.

The ruling by U.S. District Judge Donald Molloy means a controversial policy rider to a spending bill that delisted wolves under the Endangered Species Act in the states will stand, for now, and that regulated hunting of the predators will begin as soon as next month.

But in a harshly worded decision, Molloy warned that his ruling was constrained by the previous decision of an appeals court, not on the principles of the case.

"The way in which Congress acted in trying to achieve a debatable policy change by attaching a rider to the [2011 funding bill] is a tearing away, an undermining and a disrespect for the fundamental idea of the rule of law," Molloy wrote.

Wolves, which number nearly 1,700 in Montana, Idaho and Wyoming, were ordered delisted in April when Sen. Jon Tester (D-Mont.) inserted a provision into Congress' 2011 continuing resolution. The

measure reinstated the Fish and Wildlife Service's 2009 delisting rule, which exempted Wyoming, essentially overturning Molloy's ruling in August 2010 that the agency had illegally delisted the species along state lines.

While plaintiffs in the case have not decided whether to file an appeal, observers noted that Molloy's ruling offers a blueprint for a potential challenge before the 9th U.S. Circuit Court of Appeals.

"If I were not constrained by what I believe is binding precedent from the Ninth Circuit, and on-point precedent from other circuits, I would hold [the rider] is unconstitutional because it violates the Separation of Powers doctrine articulated by the Supreme Court," Molloy wrote.

Montana wildlife officials approved a wolf hunt last month that would allow 220 wolves to be killed before the end of the year, which would reduce the population by as much as one-fourth (Greenwire, July 28). Idaho recently approved a hunt that would allow an unlimited harvest of wolves.

Tester issued a statement last night praising Molloy's decision.

“Returning Montana’s wolves to Montana management was the right thing to do, and we did it in a responsible way with utmost respect to existing law and to our Constitution,” he said. “Now that the court has agreed, it’s time to move forward with Montana’s wolf management plan for the sake of our livestock, our wildlife and for better management of wolves themselves.”

Kevin Anderson, president of Safari Club International, which moved to intervene in the case in support of the delisting plan, said he is cautiously optimistic that the ruling means regulated wolf harvests will move forward.

“Judge Molloy made the correct decision in ruling against the constitutional challenges to Congress’ legislative fix to the delisting of the Northern Rocky Mountain wolf population,” he said in an emailed statement. “SCI members will be among the many residents of Montana and Idaho who will participate in the states’ upcoming wolf harvests to help with ongoing management of these now delisted predators.”

Plaintiffs in the case, which included the Center for Biological Diversity, the Western Watersheds Project, WildEarth Guardians, Cascadia Wildlands, the Alliance for the Wild Rockies and Friends of the Clearwater, have not decided whether to appeal the decision, said Bill Snape, senior attorney for the CBD.

“That’s obviously something we’re studying very closely,” he said of Molloy’s decision and whether it opens the door to an appeal. “Back in the 19th century and early 20th century, this type of action by Congress would have been unconstitutional.”

He noted that courts began taking a different approach in the middle part of last century.

Molloy said his decision hinged on whether Congress had actually changed the underlying law or whether it had interfered in pending litigation. Molloy said the law was changed by exempting the northern Rocky Mountain gray wolf distinct population segment from the range concerns articulated under ESA.

“James Madison is rolling over in his grave,” Snape said.