



Lawsuit could stop wolf hunt

Molloy to rule on congressional delisting rider

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By KATHERINE WUTZ

Even as Idaho hunters purchase tags in anticipation of the 2011-2012 wolf season, the status of that hunt is in jeopardy as wolf advocates challenge the species' delisting in federal court.

Conservationists from the Center for Biological Diversity, Eugene-based Cascadia Wildlands and the Western Watersheds project appeared in U.S. District Court in Missoula, Mont., on Tuesday to challenge a congressional rider that ordered the Rocky Mountain gray wolf removed from federal protection.

The budget rider ordered the U.S. Fish and Wildlife Service to reissue a 2009 rule that removed wolves from federal protection in Montana and Idaho, a rule that 9th District Judge Donald Molloy determined was illegal in a 2010 decision.

Molloy's decision restored wolves to federal protection, but Congress' move in April negated Molloy's decision and protected the service's rule from further judicial review.

Wolf advocates argue that Congress violated the separation of powers by overturning a judicial decision.

"Congress can't tell the agency to do something the courts have deemed illegal, unless Congress actually amends the law," said Collette Adkins Giese, staff attorney for the Center for Biological Diversity.

Government lawyers argued last week that the rider does, in fact, amend the Endangered Species Act by making wolves an exception. The rider does not directly refer to the act, however, and only makes reference to the service's 2009 rule, leading to wolf advocates' crying foul.

Giese argued that while Congress undeniably has the authority to amend laws, and could have passed any number of bills that would have excluded gray wolves from federal protection, the budget rider was an "end-around" to accomplish the same goal without the votes.

"They're Congress; they make the laws," she said. "Congress can amend the [Endangered Species Act] and take responsibility for whatever political implications result from that, but that's not what they did here."

The rider was authored by Rep. Mike Simpson, R-Idaho, and Sen. Jon Tester, D-Mont. Simpson is

currently debating an appropriations bill on the floor of the House of Representatives and was not available for comment, but spokeswoman Nikki Watts said the congressman stands behind the budget rider despite conservationist opposition.

"We maintain that Congressman Simpson's language blocks courts from further review of the rule that delists wolves in Idaho and Montana," she said. "We expect Judge Molloy to agree, but will continue to watch it closely."

Molloy said on Tuesday that he expected to make a decision "shortly," though no specific deadline was set. Giese said she expected the decision to take a matter of weeks rather than the months Molloy took to deliberate his August 2010 decision that relisted gray wolves under federal protection.

Garrick Dutcher, program manager for Ketchum-based Living with wolves, said he wasn't certain Molloy would side with wolf advocates in this case because of the specific legal issue. That said, he added he wasn't sure a ruling in favor of the Center would be good for wolves.

"[There's] a lot of hatred toward wolves," Dutcher said. "I have hope that [the ruling] might work, but we might end up with more dead wolves and more poaching."

If Molloy rules that Congress's rider was unconstitutional, wolves would be restored to federal protection and wolf hunts in Idaho and Montana would be canceled, according to Giese.

Calls to the Idaho Department of Fish and Game attorneys to determine the impact of this suit on the wolf hunt were not returned by press time. Niels Nokkentved, department spokesman, said any impact was uncertain at this point.

"What's likely to happen is that no matter what, [the decision] would be appealed, but that's only speculation," he said.

Currently, there are about 1,700 wolves in Idaho, Montana and Wyoming. While wolves have been removed from federal protection in Idaho and Montana, Fish and Wildlife officials are still negotiating with state officials in Wyoming to develop a plan that would allow wolves in that state to be removed from federal protection.

Molloy's 2010 decision is also being challenged by the Department of the Interior in the 9th District Court of Appeals. No immediate ruling is anticipated in that case.