

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”;<sup>1</sup> 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

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22 <sup>1</sup> “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.conservationnw.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  
2 worked on in my career.

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

17 Finally, the WAG process has demonstrated the importance of relationships and  
18 trust across urban and rural stakeholders and communities. Coming to agreement  
19 among conservations groups, ranchers, hunters, and Department staff over  
20 improved commitment to and implementation of non-lethal measures and  
21 conditions under which the Department could consider using lethal removal of  
22 wolves as a management tool is no small feat, especially in light of the high level  
23 of political polarization among these groups at the present time. I believe that  
24 sticking with the agreements made by the group, and allowing the Department to  
25 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.

Swedeen Declaration at ¶¶ 30-32.

#### IV. CONCLUSION

An injunction prohibiting the Department from continuing to implement the 2017  
Wolf-Livestock Interaction Protocol during the pendency of Petitioners' claims would not  
serve the public interest because it would undermine the trust and consistency upon which the  
Protocol's success is built. To be clear, Conservation Northwest does not like to see wolves  
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  
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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:

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

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

20 *s/ Lauren Beers*  
21 Lauren Beers