RESOLUTION 009-2014

REQUEST 10-J RULE PROPOSAL STAY

WHEREAS, The U.S. Fish and Wildlife Service (USWS), Interior has proposed to change the ESA 10-J Rule that governs the management of the Mexican Gray wolf program; referenced as (50 CFR Part 17 [Docket No. FWS–R2–ES–2013–0056;FXES11130900000C2–134–FF09E32000] RIN 1018–AY46 Endangered and Threatened Wildlife and Plants; Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf), and the related Environmental Impact Statement (EIS); and,

WHEREAS, the new 10j rule proposal by the USFWS is based on its scientific research record, which is flawed by scientific misconduct, falsification by acts of omission; and,

WHEREAS, the Catron County Commission submitted to the U.S. House Resources Committee its report, entitled, US Fish and Wildlife Service Misconduct in the Mexican Gray Wolf Non-Essential, Experimental Recovery Program and Consequent Significant Negative Human Impacts, that demonstrates misconduct and the lack of science by the Service in the decision making process; and,

WHEREAS, The EIS social and economic impact analyses, required by the National Environmental Policy Act (NEPA), lacks the necessary high scientific standards required when the health, safety and welfare of American citizens can be significantly and negatively impacted; and,

WHEREAS, According to USFWS, John Olson, USFWS impact analyses will not reflect full disclosure of the true impacts to residents of Catron County. Mr. Olson stated on August 30, 2013 to Catron County Wildlife Investigator, that the USFWS does not have the time or money to contact the individuals impacted by the wolves in the Mexican Wolf Recovery Area. Mr. Olson stated the USFWS will hold public meetings, instead, in far off cities such as Albuquerque, NM and Phoenix AZ; several hundred miles from the wolf recovery area. Mr.

Reserve, NM 87830
Olson was asked how the Service could have a true and complete assessment of the social and economic impacts if the USFWS does not contact the people most affected by Mexican Wolf recovery. Mr. Olson stated, “Good point”. Furthermore, the USFWS stated at their workshop on August 8, 2013, that their affects analysis will not even be conducted at the county level. NEPA requires that the impact analysis must be conducted in scope and scale to the appropriate geographic area affected by the USFWS proposed action; and,

WHEREAS, the Catron County Commission finds and determines that the U.S Fish and Wildlife Service (USFWS) actions to address Mexican Gray wolf threats to human settlement, households and residents of the County are not effective in reducing and eliminating these threats to human populations. Furthermore, without adequate social and economic analyses of the wolf impacts in the affected area, it is impossible for the USFWS to mitigate the significant adverse effects that can result from their proposed rule. Furthermore, without full disclosure of the social and economic impacts, it will be impossible for the County Commission to carry out its legal responsibilities to protect the health, safety and welfare of its residents; and,

WHEREAS, Catron County Commission has a fiduciary responsibility under New Mexico’s Constitution and statutory police powers to protect the health, safety and welfare of its residents; and, the County reserves the right to take whatever actions necessary to do so; and,

WHEREAS, the actions of USFWS increasingly compromise the Catron Commission’s ability to fully carry out its sworn duties to protect the health, safety and welfare of its residents; and,

WHEREAS, the USFWS has announced that they cannot determine how many wolves will be introduced into Arizona and New Mexico in the proposed 10-J Rule. The USFWS will not complete the assessment to determine viable and sustainable populations until after the proposed 10-J Rule and EIS is completed; and,

WHEREAS, Catron County Commission has determined that such actions by the USFWS is putting the cart before the horse: how can this federal agency determine the impacts on rural communities, such as further livestock losses and increasing safety threats to families and children, when the USFWS does not know how many wolves will result from their 10-J rule change; and,

WHEREAS, U.S. Fish Wildlife Service is in the process of conducting the 10-J Rule EIS in a piecemeal fashion at an enormous cost to the American taxpayers when federal agencies does piecemeal EISs. Refer to the Exhibit attached to this resolution for court cases in which federal courts have ruled that such piecemeal EISs are against federal law.

THEREFORE BE IT RESOLVED, Catron County Board of Commissioners does hereby requests that the U.S. House of Representatives Natural Resources Committee issue a
stay to stop the current 10-J Rule proposal process, including the Environmental Impact Statement, until scientific and management standards are reached; and,

BE IT FURTHER RESOLVED, Catron County Board of Commissioners requests that the U.S. House of Representatives Natural Resources Committee require the U.S. Fish and Wildlife Service proposed 10-J Rule and Environmental Impact Statement only proceed when it has an accurate estimate of the number of wolves that they plan to release into the Mexican Gray wolf areas and on the rural people of Arizona and New Mexico; and,

BE IT FURTHER RESOLVED, Catron County Board of Commissioners further requests that the U.S. House of Representatives Natural Resources Committee to investigate the U.S. Fish and Wildlife Service scientific and management conduct and hold the agency to high scientific standards, especially when putting apex predators in human settlement areas and exposing our children to unacceptable risks.

PASSED, ADOPTED AND APPROVED this 12th day of September, 2013 in regular session of the Catron County Commission, at Reserve, New Mexico

ATTEST:

M. Keith Riddle, Clerk

BOARD OF COUNTY COMMISSIONERS
CATRON COUNTY, NEW MEXICO

Glyn Griffin, Chairman

Richard McGuire, Member

Van J (Bucky) Allred, Member
Exhibit: Federal Court Decisions Against Piecemeal Environmental Impact Statements

Segmentation under NEPA:

Within a few years after NEPA’s passage, the federal courts recognized the temptation for an agency to use “piecemealing” or “segmentation” practices, which break up projects into smaller parts with less significant effects in an effort to avoid preparing a full-blown environmental impact statement (“EIS”). See, e.g., Alpine Lakes Protection Soc. v. Schlapper, 518 F.2d 1089, 1090 (C.A.9 1975) (“Characterizing any piecemeal development of a project as “insignificant” merits close scrutiny to prevent the policies of NEPA from being nibbled away by multiple increments, no one of which may in and of itself be important enough to compel preparation of a full EIS.”). In addition to avoiding and the need to prepare an EIS, segmentation practices may also reduce the scope of an EIS. See, e.g., Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 298 (D.C. Cir. 1987). Accordingly, federal courts have developed a rule against this practice “to insure that interrelated projects the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions.” Id. See also City of West Chicago, Ill. v. U.S. Nuclear Regulatory Com’n, 701 F.2d 632, 650 (7th Cir. 1983) The Fifth Circuit has articulated a four-part test to determine the appropriateness of segmentation, in which the court evaluates whether the segment “(1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives; and (4) does not irretrievably commit federal funds for closely related projects.” O’Reilly v. U.S. Army Corps of Engineers, 477 F.3d 225, 236 (5th Cir. 2007). The Tenth Circuit has cited this test for approval. Ross v. Federal Highway Administration, 162 F.3d 1046, 1050 (10th Cir. 1998) the courts have opined that a project is not properly segmented if it “has no independent utility, no life of its own, or is simply illogical when viewed in isolation.” One Thousand Friends of Iowa v. Mineta, 364 F.3d 890, 894 (8th Cir. 2004); Stewart Park and Reserve Coalition, Inc. v. Slater, 352 F.3d 545, 559 (2nd Cir. 2003) (same test). In determining the appropriate scope of an EIS, Commission on Environmental Quality regulations require the agency to “consider” connected, cumulative, and similar actions. 40 C.F.R. § 1508.25(a).
September 12, 2013

Jonathan Shuffield  
Policy Director, Congressional Western Caucus  
Congressman Steve Pearce (NM-02)  
1311 ½ Constitution Ave NE  
Washington, DC 20002

RE: Request Transmittal of Catron County’s Resolution for Doc Hastings, Chairman, Committee on Natural Resources, U.S. House of Representatives

Dear Jonathan:

The Catron County Board of Commissioners is submitting the attached resolution, requesting the U.S House Resources Committee to intervene and issue a stay in the proposed ESA 10-J Rule and Environmental Impact Statement regarding the Mexican Gray wolf:

As a follow-up to your suggestions, we have tried to spell out the problems with the continuation if the proposed rule in our attached resolution. Would you please ensure that Doc Hastings, Chairman, Committee on Natural Resources, U.S. House of Representatives, receives a copy of the attached letter and supporting documentation.

Thank you for your consideration and please do not hesitate to contact our County Commission Chair, Mr. Glyn Griffin ((575) 533-6360) if you have questions or comments regarding the contents of this letter and supporting documentation.

We look forward to your support and feedback.

Sincerely,

Glyn Griffin, Chairman

Richard McGuire, Member

Van J. Allred, Member

Reserve, NM 87830
September 12, 2013

Honorable Doc Hastings, Chairman
Committee on Natural Resources, U.S. House of Representatives
U.S. House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Subj: Catron County’s Resolution Requesting the Committee on Natural Resources, U.S. House of Representatives, to Stay the US Fish and Wildlife Service 10-J Rule Proposal

Dear Chairman Hastings:

The Board of Catron County Commission in New Mexico appreciates your committee’s attention and efforts to resolve the many problems associate with the implementation of the Endangered Species Act. We submit the attached resolution, requesting the U.S House Natural Resources Committee to intervene and issue a stay to stop the proposed ESA 10-J Rule and Environmental Impact Statement regarding the Mexican Gray wolf until scientific standards and National Environmental Policy Act requirements are met.

Thank you for your consideration and please do not hesitate to contact our County Commission Chair, Mr. Glyn Griffin ((575) 533-6360) if you have questions or comments regarding the contents of this letter and supporting documentation.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
CATRON COUNTY, NEW MEXICO

Glyn Griffin, Chairman

Reserve, NM 87830
Attachment: Resolution 009-2014 - Request 10-J Rule Proposal Stay

C: Steve Pearce, US House of Representatives
   Suzanna Martinez, Governor of New Mexico
   Don Tripp, New Mexico House of Representatives