

Laying down the law

Only as a last resort, wildlife gets its day in court.

By Franz J. Camenzind, *Alliance Executive Director*

Since the 1970s, significant environmental decisions have been guided by specific laws, such as the National Environmental Policy Act of 1969 and Endangered Species Act of 1973, which can be applied with various levels of rigor. Usually governmental decisions are reasonable and based upon the best available information, and likely impacts are either mitigated for or avoided by altering proposed activities. It's a good policy, one that fits our form of governance and one that should protect the environment and individual interests alike.

But sometimes things don't work out in a way we think is reasonable. It's then that we make appeals to decisions, and when that's no longer possible, we're left with one last choice: Going to court. A decision by the Board of Directors of the Conservation Alliance to litigate is

always viewed as the last resort and its consequences are measured.

Lately it seems that we've entered into more court cases than usual and some would argue that "there the Alliance goes again, they're against everything." From our point of view, we go to court because we are *for* preserving the incomparable natural values we have in the Jackson Hole region.

We are *for* protecting the many species that call this home. (And for some, this is one of the last places they can call home.) We are *for* protecting into perpetuity the very backbone of this region – the wildlife, the wild landscape, and the economic, cultural and spiritual systems that have developed around this one fundamental fact: Jackson Hole is like nowhere else on earth. This is what the Conservation Alliance stands for. And if it means going to court as a last resort to protect this last of the best places, so be it. ■



Franz J. Camenzind

WOLVES GET REPRIEVE:

The Conservation Alliance and several other groups recently won a significant victory in our efforts to protect wolves.

The U.S. Fish and Wildlife Service removed Rocky Mountain gray wolves from Endangered Species Act protection in March. But on July 18, U.S. District Judge Donald Molloy granted our request for an injunction and reinstated protection for wolves in Wyoming, Montana and Idaho while our lawsuit challenging the delisting works its way through the courts.

In his injunction ruling, Molloy said the

federal government had not met its own standard for wolf recovery, and that wolf-control laws in the three states were "more than likely to eliminate any chance for genetic exchange to occur." Such exchange is needed to ensure healthy wolf populations.

It's unknown if the federal government will appeal Molloy's decision, but meanwhile, no more wolves can be killed as predators in Wyoming, and the three states have all postponed plans to establish wolf-hunting seasons this fall.

For more information, visit www.jhalliance.org/issueswolves.htm. ■

WOLVERINE WARNINGS: On July 8, Earthjustice attorneys, on behalf of the Conservation Alliance and eight other conservation organizations, filed a 60-day notice of intent to sue the U.S. Fish and Wildlife Service for its recent decision not to give wolverines in the lower 48 states protection under the Endangered Species Act.

For more than a decade, various groups have tried every procedural means to get Endangered Species Act protection for this imperiled, reclusive, snow-dependent mountain predator. Fish and Wildlife's latest decision not to list the wolverine was based primarily on the reasoning that since healthy populations still persist in Canada, the wolverine is not imperiled as a species. This outsourcing to other countries of our responsibility for wildlife protection is a disturbing turn of events in environmental

and resource protection. If this logic had been followed in the past, species such as the bald eagle, grizzly bear, wolf and peregrine falcon might have disappeared in the lower 48 states simply because their numbers have remained healthy in Canada. If this trend gets established, our grandchildren may have to visit Canada or Alaska to enjoy what used to be here in the Northern Rockies.

It's estimated that fewer than 500 wolverines remain scattered in small, fragmented populations in Idaho, Montana, Washington



Courtesy Wildlife Conservation Society

and Wyoming. The largest member of the weasel family, and known for its strength and aggressiveness, the wolverine is a very snow-dependent scavenger that roams in the highest elevations of northwestern Wyoming's Teton, Gros Ventre and Absaroka mountains. Ongoing research by Wildlife Conservation Society biologists suggests that only two adult females live in the

ELK REFUGE FEEDLINE

APPEALED: What began nearly a century ago as a very well-intended public effort to keep Jackson Hole's elk from starving during harsh winters has now turned into a debate of federal proportions.

At the center of the storm is the recent decision by the U.S. Fish and Wildlife Service to continue its artificial wintertime feeding of elk and bison on the National Elk Refuge, in spite of overwhelming evidence that doing so will increase the already high incidence of the bacterial disease brucellosis. Brucellosis is thought to have been brought into the region by domestic cattle early in the 20th century. There is no cure for the disease, and vaccines are only about 60 to 75 percent effective in keeping cattle safe, and less than half as effective in protecting elk and bison.

Although the disease causes some infected cow elk to abort their first pregnancy (resulting in about a 6 percent annual drop in births), it's not particularly debilitating to an elk population that remains above desired management levels. The larger problem is political. Because brucellosis can be transmitted between elk, bison, domestic cattle and people, the U.S. Department of Agriculture has for decades wanted to eliminate the disease from the entire country. With what is acknowledged to be the last reservoir of the disease in the country, Jackson Hole's elk and bison have become a target in this government effort.



A recently completed environmental analysis of the refuge concluded that continuing to crowd elk and bison on winter feedlines will perpetuate the very conditions that enable the disease to flourish in our environment. For the Conservation Alliance and three other conservation organizations, the larger worry is the threat of chronic wasting disease (the wildlife equivalent of mad cow disease) entering the Greater Yellowstone elk herds. CWD is a 100 percent fatal disease that has no vaccines or means for live testing, nor are there any known cures. Like brucellosis, its transmission between animals is greatly enhanced when elk spend time in crowded conditions.

Because the U.S. Fish and Wildlife Service's decision ignores its own admission that winter feeding enhances the spread of brucellosis – and would do the same for CWD – we believe that the decision to continue feeding goes directly against their own mission to maintain healthy wildlife populations and habitats. Our organizations, represented by attorneys from

Scabies and hoof rot are two more diseases exacerbated by crowded feedline conditions, and not only on the National Elk Refuge.

In July, while denying requests for expanding three state-run elk feedgrounds on Forest Service land, Bridger-Teton National Forest Supervisor Kniffy Hamilton reauthorized six feedgrounds for 20 years. The Alliance had asked for year-to-year terms instead.

Earthjustice, recently filed a suit in federal district court in Washington, D.C., asking that Fish and Wildlife's final recommendation be dismissed, and that the gradual phasing out of winter feeding be adopted as the preferred management action on the refuge.

Much to their credit, the National Elk Refuge is already increasing its production of native forage on the refuge and is working closely with Grand Teton National Park and Bridger-Teton National Forest officials to enhance winter forage production throughout the valley. The goal is to reduce the number of elk and bison, spread them out on native range and thereby greatly lessen the impacts of contagious diseases. We recognize that phasing out wintertime feeding will require a comparably phased reduction in elk numbers – by perhaps one-third, along with a reduction of the bison herd to about 500 animals. We support these efforts and are focused on protecting our iconic herds by eventually ending winter feeding of elk and bison. No court date has yet been set to hear the merits of our case. ■

Tetons between Teton Pass and Yellowstone National Park. Adult males cover much larger home ranges, and it's thought that two or three males call the entire Jackson Hole area their home. Research indicates that there are no more than six wolverines in the entire state of Wyoming. Threats to the wolverine include habitat loss brought on by encroaching development, expanding winter recreational uses, and the looming impacts of climate change that could shrink mountain snow packs.

Earlier this year, Fish and Wildlife officials conceded that if nothing is done, the U.S. portion of the wolverine population will be at risk of extinction. Their decision to ignore this information gave the Alliance and other concerned conservation organizations no other option but to begin legal action to bring much needed protection to this "rarest-of-the-rare" mountain dweller. If Fish and Wildlife doesn't reverse its decision not to protect wolverines under the Endangered Species Act by the end of the 60-day notice period in early September, the groups intend to challenge that decision in federal district court. ■

GRIZZLY LAWSUIT STILL PENDING:

In 2007, the U.S. Fish and Wildlife Service removed the "threatened" status from the Northern Rocky Mountain grizzly bear population. The Alliance along with six other conservation organizations

filed a lawsuit last year in federal district court asking that the decision be reversed. The suit claims that delisting is premature due to grossly inadequate protection of occupied grizzly habitat, and threats facing prime food sources such as white-bark pine nuts, cutthroat trout and army cutworm moths. Earthjustice attorneys are currently preparing legal briefs for the court. ■

