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## Wolf advocates file suit to stop delisting

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Wolf advocates file suit to stop delisting

By ROB CHANEY of the Missoulian missoulian.com | Posted: Friday, May 6, 2011 5:30 am | (64)

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A trio of wolf advocates claim Congress violated the separation of powers doctrine when it removed gray wolves from Endangered Species Act protection and blocked future court review.

"We will not allow the fate of endangered species to be determined by politicians serving special interests," said Michael Garrity, director of the Alliance for the Wild Rockies. "These decisions must be based on science, not politics, and Congress has never before removed species from the endangered species list by political fiat."

AWR was joined by Friends of the Clearwater and WildEarth Guardians in the lawsuit filed in U.S. District Court in Missoula. On Thursday afternoon, the Center for Biological Diversity filed a nearly identical claim. Both lawsuits allege Congress unconstitutionally blocked further court review of its decision in the legislation delisting wolves on April 15.

All but WildEarth Guardians were part of a coalition of 14 environmental and conservation groups that successfully sued the government over the 2009 decision to delist gray wolves. That decision, written by U.S. District Judge Don Molloy, found the federal government illegally handed wolves over to state control

in Montana and Idaho while keeping Wyoming wolves under federal supervision.

In April, Montana Sens. Jon Tester and Max Baucus and Idaho Rep. Mike Simpson inserted a two-sentence amendment into the 2011 budget bill reinstating that 2009 delisting decision and requiring the move "shall not be subject to judicial review."

"Most Montanans understand that Jon's provision doesn't explicitly repeal a judicial ruling, nor does it even change the Endangered Species Act," Tester spokesman Aaron Murphy said in a Thursday email. "It simply restores an approved, science-based decision that allowed Montana to responsibly manage its wolves like any other recovered species. Before Jon's provision, one state was holding Montana hostage through a technicality in the Endangered Species Act, and the law was never supposed to do that. So Jon fixed this unprecedented problem with a responsible solution that doesn't remove wolves from the Endangered Species Act altogether - as some lawmakers want to do."

The 19-page complaint argues that Congress can't tell a court what laws it can or can't consider.

"As a legislative enactment designed to affect the outcome of a particular pending case, without amending the underlying statute involved, the budget rider violates the separation of powers doctrine contained in the U.S. Constitution and is therefore unconstitutional," attorneys Rebecca Smith and Jay Tutchtton wrote. They ask the judge to declare the budget rider unconstitutional, to return gray wolves to federal Endangered Species Act protection, and to award attorneys' fees.

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**AWR and Friends of the Clearwater** refused to join 10 other members of the wolf coalition that offered a settlement with the government last month. The proposal would have allowed the 2009 decision to stand in return for greater scientific monitoring of wolf populations and a pledge to craft a better delisting rule in the near future. Those two groups in Thursday's lawsuit objected to the settlement, saying it gave away the victory they'd won in court.

Molloy refused to back the settlement, noting that his decision was being appealed to the 9th U.S. Circuit Court of Appeals and he had another case before him on state requests for special permission to kill endangered wolves. The congressional members successfully attached their amendment shortly afterward.

"The rider goes against a bedrock principle of our democracy: checks and balances between branches of government," WildEarth Guardians representative Nicole Rosmarino said in an email. "Legislators can't pick off specific court decisions they don't like. That's not fair for the wolf, and it's certainly not good for our democracy."

Other groups warned a new lawsuit would reopen old wounds.

"We strongly supported the legislative solution, and here we are under the cusp of getting the wolves back under some kind of management," said Tim Aldrich, president of the Montana Wildlife Federation. "More litigation just delays the answers. I fear more perhaps for the Endangered Species Act being damaged by furthering this discussion in this way. Some of those people are being alienated if people keep pushing this

litigation."

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