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GILA COUNTY
BOARD OF SUPERVISORS
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September 16, 2014

The Honorable Sally Jewell
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240
feedback@ios.doi.gov

The Honorable Daniel Ashe
Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, NW, Room 3359
Washington, D.C. 20240
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Re: Lack of compliance of the U.S. Fish and Wildlife Service *Proposed Revision of the Nonessential Experimental Population of the Mexican Wolf* process with the requirements of ESA under 50 CFR § 17.81 (d).

Dear Secretary Jewell and Director Ashe:

Gila County has been a stakeholder in the efforts to develop and implement landscape scale forested ecosystems restoration; watersheds restoration; endangered and threatened fauna and flora protection; and, natural resources management for the last two decades. Gila County is actively involved as stakeholder, cooperating agency and coordinating local government in federal and state projects such as, among others, the Collaborative Forest Landscape Restoration Program (CFLRP); the Western Watershed Enhancement Partnership (WWEP); the Mexican Gray Wolf Recovery Program (MGWRP); and, numerous state or local scale natural resources management projects and natural resources-based economic development initiatives.

Gila County is uniquely affected by the Proposed Revision of the 10(j) rule establishing the Mexican wolf in Arizona-New Mexico as a nonessential experimental population due to the fact that a large part of the proposed Zones 1, 2 and 3 of the proposed expansion of the Mexican Wolf Experimental Population Area (MWEPA) would be located within the county.

The U.S. Fish and Wildlife Service's recently published the *Proposed Revision of the Nonessential Experimental Population of the Mexican Wolf* and the *Draft Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis Lupus Baileyi)*.

The regulation proposed to be promulgated does not, to any extent, represent an agreement between the Service, the affected State and local government agencies and persons holding an interest in the land which will be affected by the revision of the experimental population. Although the Service went through the minimum required motions (notices, limited public meetings, limited IPT meetings, etc.) no real good faith attempt has been made by the Service to develop an agreement between the Service, the affected state and local government agencies, and persons holding an interest in the land which will be affected by the revision of the experimental population rule.

Specifically, to date, the Service actions, or lack thereof, do not represent a genuine good faith attempt to develop an agreement, or even to actually work with the state and tribal agencies, local governments, and stakeholders. On one hand, as a Cooperating Agency in the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf, Gila County has expended a substantial amount of time and money to provide personnel, expertise, comments, and travel funds to attend Mexican Wolf EIS Interdisciplinary Planning Team (IPT) meetings and Mexican wolf public hearings; review and comment on relevant Federal Register documents; review and comment on draft proposed 10(j) rule and draft EIS chapters; and research of numerous scientific and socioeconomic documents. On the other hand, the Service's actions have been limited to only three cooperating agencies IPT meetings that have been one-way downloads of predecisional determinations by Service personnel with virtually no opportunity for Gila County or other cooperating agencies and stakeholders to provide effective input into the proposed 10(j) rule and the analysis process.

The Mexican Wolf EIS Development Meeting held on August 8 and 9, 2013, and the Mexican Wolf EIS Cooperating Agencies IPT Meetings held on December 10, 2013 and April 15, 2014 did not allow adequate time on the agendas, and virtually any time at all in the actual conduct of the meetings, for anything except Service personnel reciting to cooperating agencies decisions they had already made in regard to Mexican wolf management and the proposed revision of the 10(j) rule. The August 8 & 9, 2013 meeting had only 1.5 hours out of 16 hours, set aside on the agenda to receive input from cooperating agencies. Less than 45 minutes were actually dedicated to that purpose in the actual meeting. The remainder of the agenda was filled with Service personnel projecting endless PowerPoint slides depicting decisions already made by the Service for the proposed revision of the 10(j) rule. The December 10, 2013 meeting had no time at all listed on the agenda for cooperating agencies input. The April 15, 2014 agenda had only 1 hour allocated at the very end of the day for cooperating agencies interventions, to be divided between all State, Tribal and local government agencies of both Arizona and New Mexico, resulting in only a few minutes for each cooperating agency to speak in a superficial 'round robin' format.

Any attempt by individual cooperating agencies or groups of cooperating agencies at any time during the meetings to substantially address any issue was forcibly halted and dismissed by the Service under

pretense of needing to follow the agenda or respect the timetable. At the end of the April 15, 2014 meeting when cooperating agency members voiced their continued and growing frustration over the one-sided meetings, the Service's Mexican Wolf Recovery Coordinator who chaired the meeting explicitly stated that cooperating agencies had been invited to Albuquerque to be told what the Service had done to date; that the cooperating agencies IPT meetings were meant to be informative, not deliberative; and, once again, that the tight agenda and schedule did not allow for discussion of the Service presentations. When Gila County suggested that in such case more cooperating agencies IPT meetings were needed, the Service retorted that the tight timeline to meet the January 2015 deadline did not allow for any additional meeting.

In all three cooperating agencies IPT meetings, Gila County and the majority of other counties serving as cooperating agencies voiced incredulity, annoyance and concerns about the lack of opportunity to discuss issues and provide expertise, and directly questioned the compliance of the proceedings with the requirement under 50 CFR § 17.81 (d) and NEPA. Gila County specifically observed that the counties had demonstrated an inordinate amount of civic leadership and political courage in signing the required Cooperating Agency Memorandum of Understanding (MOU), in the face of steep and vocal opposition, and that the Service was making a mockery of the ESA and NEPA requirements and processes, by 'checking cooperative boxes' in lieu of making a genuine attempt to develop agreement with the affected State agencies, local governments and stakeholders. When the Arizona Cooperating Agencies Alternative was submitted at the April 15, 2014, which itself required Gila County and other counties to vehemently insist and force-fit this item in the meeting agenda, the Service only allowed 15 minutes for submission and refused to allow discussion of the alternative, despite the fact that this was a cooperating agencies alternative submitted during a cooperating agencies meeting; that it represented a good faith effort by the Arizona counties, supported by the Arizona Game & Fish Department to develop a viable public policy solution that met the ESA recovery requirements (proposed three-fold increase of the Mexican wolf population, and proposed nine-fold expansion of the MWEPA, etc.); and, that it afforded the Service a unique opportunity to develop a regulation that would represent an agreement between the Service, the affected State agencies, local governments and stakeholders having a direct interest in the land which is affected by the revision of the Mexican wolf experimental population rule, exactly as intended under 50 CFR § 17.81 (d).

At all three cooperating agencies IPT meetings, the Service PowerPoint presentations were provided to the cooperating agencies prior to the meeting, and cooperating agencies were required to come prepared. Time did not need to be used for virtually entire days on four different days by the Service to read slides that the cooperating agencies had already read prior to the meetings. Time should have been used to develop the information, answer questions, provide clarification in an interactive format, seek resolution of points of concern, discuss the contribution of the cooperating agencies alternative, explore the synergies and divergences between the cooperating agencies alternative and the proposed action, and forge agreement. Instead, none of this happened. The meetings were a pro-forma exercise of going through the motions of the ESA and NEPA requirements without the Service intending to actually meet their substantial meaning. In addition, rather than being used, as intended, for an earnest and honest attempt to find agreement, the written comments on the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf, Preliminary Draft EIS Chapters 1 & 2 and the Implementation Management Plan Outside the MWEPA, submitted by Gila County and numerous cooperating agencies, counties, and other stakeholders were marginalized, or completely ignored, in the Service scoping document provided to the cooperating agencies at the April 15, 2014 meeting.

It was the expectation of Gila County, when it signed the Cooperating Agencies MOU that this resources and political capital investment would result in the utilization of the county jurisdiction by law and special expertise to actively participate in the NEPA process at the earliest possible time; participate in the scoping process; and assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement of which each cooperating agency has special expertise. As agreed to in the Cooperating Agencies MOU, Gila County made available staff resources and designated representatives to represent it on the Interdisciplinary Planning Team. Gila County has met its Cooperating Agencies MOU obligations to ensure a productive working relationship with the Service in the development of an agreement with the Service as required under 50 CFR § 17.81 (d). Factually, Gila County has far exceeded its Cooperating Agencies MOU obligations by co-developing and co-submitting with other counties an Arizona Cooperative Agencies Alternative that objectively fulfills the ESA Mexican wolf recovery mandate, and arguably laid out the framework of an agreement between the Service, the affected State and Federal agencies, local governments, and persons holding an interest in the land. Gila County also provided information, data and supporting analyses, comments, and resources for the development of proper NEPA documentation in the EIS; timely review of the first two chapters of the EIS; and timely comments on the various Federal Register publications. Gila County helped collect socioeconomic data to the maximum extent possible afforded by the limited amount of information shared by the Service about their plans for the revision of the Mexican wolf reintroduction plan and rule in Arizona, despite being hampered by the Service steadfast refusal to communicate a wolf target population despite numerous and insistent requests by the cooperating agencies. Gila County further requested to be included in; attempted to provide special expertise in order to assist the Service for; and attempted to participate in discussions about data assessment and technical reports, alternatives selection, evaluation of the effectiveness of alternatives, environmental impact analysis, etc. but to no avail. All along the proposed revision to the nonessential experimental population of the Mexican Wolf, the Service has unilaterally rewritten alternatives, chastised cooperating agencies and stakeholders for attempting to submit their own alternatives, discouraged and ignored input from cooperating agencies and stakeholders, and unilaterally made decisions outside of the NEPA process on major federal actions that have significant adverse effects on the environment.

As a further illustration of the Service failure to comply with the requirements of ESA under 50 CFR § 17.81 (d), although compliance with the June 2010 Mexican Wolf Cooperators MOU is not a requirement for the EIS process, it is revealing of the Service lack of attempt at a good faith effort to reach agreement with the affected state and local government agencies. Despite “the primary purpose of this agreement [being] to provide a framework for collaboration that is based in sound science and which enables the Signatories to develop a mutually-agreeable, long-term collaboration in reintroduction of Mexican wolves in Arizona and New Mexico,” the June 2010 MOU Mexican Wolf cooperators have been entirely ignored as a coherent group in the entire proposed revision of the nonessential experimental population of the Mexican Wolf, in as much as no attempt was made by the Service to engage the June 2010 MOU Mexican Wolf cooperators to develop an agreement with the Federal, State and local government signatories, or for any other purpose.

The revision of the nonessential experimental population of the Mexican Wolf 10(j) rule process is fatally flawed. The Service has abrogated its duty to use the best scientific data available and made a number of politically expedient decisions such as suspending the revision of the Mexican Wolf Recovery Plan; refusing to develop population goals for the proposed expanded MWEPA under the proposed 10(j) rule revision; discontinuing the development of a Mexican Wolf Management Plan Outside of the MWEPA; and, ignoring the input of cooperating agencies with special expertise and jurisdiction by law. In its single-minded haste to comply with the consent decree January 12, 2015 deadline, the Service is

directly violating the requirement under ESA that: "Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population" (50 CFR § 17.81 (d)), and the Service is violating a long list of NEPA requirements related to purpose and need (40 CFR § 1502.13); commitment of resources prejudicing selection of alternatives (40 CFR § 1502.2 (f)); connected actions (40 CFR §§ 1502.4 (a), 1508.25 (a) (iii)); cumulative effects analysis (40 CFR § 1508.25 (a) (iii)); scoping (40 CFR § 1501.7 (a)); alternatives selection criteria (40 CFR § 1502.2 (e)); range of alternatives (40 CFR § 1502.2 (e)); cooperating agencies proposals (40 CFR § 1501.6 (a) (2)); environmental impact analysis (40 CFR §§ 1502.1, 1502.14, 1502.15, 1502.16, 1502.22 (a)); mitigation (40 CFR § 1502.14 (f)); consistency review and conflict reduction (40 CFR §§ 1502.16 (c), 1506.2 (d)); etc.

The Service must comply with the ESA requirements and make a genuine attempt to develop an agreement with the affected local government agencies and persons holding an interest in the land which will be affected by the revision of the experimental population rule. This involves completing the revision of the Recovery Plan and nesting the revision of the nonessential experimental population of the Mexican Wolf 10(j) rule within the prime objective of the revised recovery plan, including a clear quantified population objective; complying with the NEPA requirements regarding work with the cooperating agencies; completing a full and fair analysis of the alternative proposed by the Arizona cooperating agencies, and of a reasonably foreseeable required alternative addressing a higher wolf population growth rate, a higher number of wolves, and the distribution of the wolves through and outside of the MWEPA according to domestic prey base availability in addition to wild prey base availability; completing a full and fair analysis of the environmental impacts of a meaningful range of alternatives; and, making a good faith attempt at resolving the inconsistency, reducing the conflicts, and reconciling the proposed action with the local government plans or laws, and the interests of people holding an interest in the land which will be affected.

If the Service believes that this may impact its ability to satisfy the consent decree, Gila County believes that good cause exists for the Service to file for an extension of its compliance deadline. Thank you for your consideration.

Respectfully submitted,

Michael A. Pastor
Chairman, Gila County Board of Supervisors

Date

ATTEST

Marian Sheppard
Clerk of the Board

Date

Bryan Chambers
Deputy County Attorney/Civil Bureau Chief

Date

Cc:

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