

1 C.D. Michel – SBN 144258
2 Anna M. Barvir – SBN 268728
3 Tiffany D. Chevront – SBN 317144
4 MICHEL & ASSOCIATES, P.C.
5 180 E. Ocean Blvd., Suite 200
6 Long Beach, CA 90802
7 Telephone: (562) 216-4444
8 Facsimile: (562) 216-4445
9 Email: cmichel@michellawyers.com

10 Attorneys for Amicus California Rifle
11 and Pistol Association, Incorporated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CALIFORNIA CATTLEMEN’S
ASSOCIATION and CALIFORNIA FARM
BUREAU FEDERATION,

Plaintiffs-Petitioners,

v.

CALIFORNIA FISH AND GAME
COMMISSION,

Defendant-Respondent.

Case No.: 37-2017-00003866-CU-MC-CTL

**[PROPOSED] AMICUS BRIEF OF
CALIFORNIA RIFLE AND PISTOL
ASSOCIATION, INCORPORATED, IN
SUPPORT OF PLAINTIFFS CALIFORNIA
CATTLEMEN’S ASSOCIATION AND
CALIFORNIA FARM BUREAU
FEDERATION**

Hearing Date: December 14, 2018
Hearing Time: 9:00 a.m.
Judge: Hon. Eddie C. Sturgeon
Department: C-67

Action Filed: January 31, 2017

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1 **CORPORATE DISCLOSURE STATEMENT**

2 As required by California Rules of Court 8.200(c), the California Rifle and Pistol
3 Association, Incorporated, discloses that it has no parent corporations. Because it has no stock, no
4 publicly held company owns 10% or more of its stock.

5 The only counsel appearing before this Court on behalf of the California Rifle & Pistol
6 Association, Incorporated, is Michel & Associates, P.C., C.D. Michel, Anna M. Barvir, and
7 Tiffany D. Chevront, 180 East Ocean Boulevard Suite 200 Long Beach, California 90802.

8
9 Date: August 16, 2018

MICHEL & ASSOCIATES, P.C.

10 s/ Anna M. Barvir
11

Anna M. Barvir
12 Attorneys for Amicus California Rifle and
13 Pistol Association, Incorporated
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1 **IDENTITY OF THE AMICUS CURIAE**

2 The California Rifle and Pistol Association, Incorporated is a non-profit entity classified
3 under section 501(c)(4) of the Internal Revenue Code and incorporated under California law, with
4 headquarters in Fullerton, California. Contributions to CRPA are used for the direct benefit of
5 Californians, and benefit a wide variety of constituencies throughout California, including gun
6 collectors, hunters, target shooters, law enforcement, competition shooters, and those who choose
7 to own a firearm to defend themselves and their families.

8 CRPA seeks to: raise awareness about unconstitutional laws, defend and expand the legal
9 recognition of its members’ rights protected by the Second Amendment, promote firearms, self-
10 defense, and hunting, protect hunting rights, enhance marksmanship skills of those participating
11 in shooting sports, defend against unconstitutional and potentially harmful laws, and educate the
12 public about firearms and firearm safety.

13 In this amicus brief, CRPA represents the interests of tens of thousands of CRPA members
14 who reside in the State of California. CRPA and the individuals whose interests are represented
15 by the CRPA are and will be impacted by any ruling the Court makes concerning the listing of
16 endangered species in an arbitrary manner. In addition to their standing as citizens and taxpayers,
17 those members’ interests include their desire to support wildlife management in the state using the
18 North American Model of Wildlife Conservation (a nationally accepted standard of wildlife
19 management) and lawful hunting which helps protect healthy animal populations within the state.

20
21 Date: August 16, 2018

MICHEL & ASSOCIATES, P.C.

22 s/ Anna M. Barvir

23 Anna M. Barvir
24 Attorneys for Amicus California Rifle and
25 Pistol Association, Incorporated
26
27
28

1 **CALIFORNIA RULES OF COURT 8.882(d) STATEMENT**

2 Amicus California Rifle and Pistol Association, Incorporated, has requested leave to file
3 with this Court.

4
5 Date: August 16, 2018

MICHEL & ASSOCIATES, P.C.

6 s/ Anna M. Barvir
7 _____
8 Anna M. Barvir
9 Attorneys for Amicus California Rifle and
10 Pistol Association, Incorporated
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1 **INTRODUCTION**

2 In 2014, buckling under the pressure of animal rights groups, the California Fish and
3 Game Commission irresponsibly and arbitrarily voted to place the gray wolf on the endangered
4 species list in California. And it did so without the support of the California Department of Fish
5 and Wildlife (“CDFW”), the best available science, or the requirements for listing a species.
6 Indeed, it ignored CDFW findings that there were no known populations of gray wolves in
7 California at the time of the listing, and that various factors for listing an endangered population
8 were not present in California as they related to the gray wolf.¹ Instead of giving deference to the
9 CDFW’s findings, as it should have, the Commission ignored the experts and rejected the
10 department’s conclusion that there was then no need to classify the gray wolf as an endangered
11 species. Worse yet, the Commission directed CDFW staff to *rewrite* their report to present a false
12 narrative in favor of listing the gray wolf.

13 Ultimately, the Commission illegally expanded its authority and abdicated its
14 responsibility to protect other wildlife and the natural balance of species within the state. Listing
15 the gray wolf, without scientific support has lasting consequences that could destroy the delicate
16 balance of wildlife in the state and open the door to additional arbitrary listings of species that
17 would otherwise not be considered. The improper listing of the gray wolf should be reversed.

18 **I. AGREEMENT WITH PLAINTIFFS’ PRIMARY ARGUMENT**

19 Plaintiffs argue that by arbitrarily listing the gray wolf in California, there will be damage
20 to livestock and other domesticated animals due to the inadequate management of wolf
21 populations, which left unchecked, can grow quickly with an adequate food supply and a lack of
22 depredation programs. They contend that there are more effective ways to control and preserve
23 any gray wolves who may, in the future, become established in California through a proper wolf
24 management plan. CRPA supports the Plaintiffs’ primary argument. For, when a wolf population
25 grows, and livestock and domestic animals become scarce, wolves will begin to decimate other
26

27 ¹ In enacting CESA, the Legislature found that certain species of wildlife are “threatened with
28 extinction because their habitats are threatened with destruction, adverse modification, or severe
curtailment, or because of overexploitation, disease, predation, or other factors.” (Fish & Game
Code, § 2051, subd. (b).) See also Cal. Code Regs., tit.14, § 670.1, subd. (i)(1)(A) & (B).)

1 sensitive prey populations to sustain the pack. These interests, along with ensuring that the
2 Commission follows a sound, science-based process for listing species as endangered in the state,
3 serves a broad public interest for all California citizens.

4 **II. THE COMMISSION ARBITRARILY PLACED THE GRAY WOLF ON THE ENDANGERED**
5 **SPECIES LIST, DEVIATING FROM STATE LAW AND NATIONALLY RECOGNIZED**
6 **STANDARDS FOR WILDLIFE PRESERVATION**

7 California law requires endangered species determinations be made “on the basis of the
8 best scientific and commercial data available . . . after conducting a review of the status of the
9 species and after taking into account those efforts.” (Fish & Game Code, § 2074.6.) The specific
10 determination falls to the administrative body, but there are “certain minimal standards of
11 rationality” to which a court must hold an agency in their determinations. (*Meaning of Species*, p.
12 45, fn. 80.) Indeed, while courts generally grant states deference in making their determinations
13 (*Chevron U.S.A., Inc. v. Natl. Res. Def. Council* (1984) 467 U.S. 837, 844), a court will overturn
14 an agency decision that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
15 accordance with the law.” (5 U.S.C., § 706(2)(A); *United States v. Bean* (2002) 537 U.S. 71, 77;
16 *Gardner v. U.S. Bureau of Land Mgmt.* (9th Cir. 2001) 638 F.3d 1217.) To avoid the arbitrary and
17 capricious designation, a listing must be: (1) within the scope of the authority conferred; and (2)
18 reasonably necessary to effectuate the purpose of the statute. (*Pulaski v. Cal. Occup. Safety &*
19 *Heath Stds. Bd.* (1999) 75 Cal.App.4th 1315; Govt. Code, § 11350, subd. (b)(1).)

20 In its initial report to the Commission, the CDFW noted that “based upon the best
21 scientific information available to the Department, listing the gray wolf as threatened or
22 endangered was *not warranted*.” (AR0002814, italics added.) The Commission dismissed the
23 “best scientific information available” and listed the gray wolf anyway. While the Commission is
24 empowered to make its own determination based on the available science, it is expected to
25 “accord *substantial deference* to the recommendation of the [CDFW]’s staff.” (*Central Coast*
26 *Forest Assn. v. Fish & Game Commn.* (2018) 18 Cal.App.5th 1191, italics added.) And it is not
27 free to ignore the intent of CESA—to protect *native* species.

28 The Commission’s decision to list the gray wolf, however, deviates from state law and
nationally recognized standards for wildlife preservation in three profound ways. First, it is not

1 based on any verifiable evidence that the species is native to California. Second, it was based on
2 the presence of a single wolf and not on a distinct population of gray wolves, separate and apart
3 from other breeding populations. And third, rather than treat hybrids as a threat to the potentially
4 endangered species, the Commission protected them, thus diluting authenticated populations.
5 Listing a *non-native* species without resort to the best available science is beyond the authority of
6 the Commission. Nor is it reasonably necessary to effectuate the purposes of CESA. For these
7 reasons, the placement of the gray wolf on the California Endangered Species list is arbitrary and
8 capricious, and it should be reversed.

9 **A. Because There Is No Proof that Gray Wolves Are Native to California, the
10 Commission Exceeded Its Authority When It Listed Them**

11 Under California Fish and Game Code section 2062, a “*native species* or subspecies of
12 bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct
13 throughout all, or a significant portion, of its range due to one or more causes, . . . will be
14 protected or preserved.” (Italics added.)² The key word here is “*native*,” meaning that state law
15 authorizes only the listing of those species of wildlife indigenous to California. Because there is
16 no verifiable evidence that gray wolves are a native species, the Commission unlawfully exceeded
17 its authority when it added gray wolves to the California Endangered Species list.

18 While wolves, and their 24 recognized sub-species, were once distributed throughout the
19 United States and Canada, there is very little verifiable evidence of what, if any, species of gray
20 wolf historically inhabited California. Most accounts that gray wolves were once present in the
21 state are anecdotal and lack proof of the precise species observed. (Cal. Dept. of Fish and
22 Wildlife, Conservation Plan for Gray Wolves in California Part II (Dec. 2016) pp. 19-22
23 <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=135026&inline>> (hereafter CDFW Wolf
24 Plan).) While there is a lack of evidence regarding which subspecies of gray wolf may have been
25 present in California at the time of the listing, experts seeking to determine what sort presence
26 wolves have had generally look to three subspecies: the Mexican wolf (*C.I. balieyi*); the northern

27 ² The Federal Endangered Species Act of 1973 defines even more broadly than the California
28 Endangered Species Act, including “any species which is likely to become an endangered species
within the foreseeable future throughout all of a significant portion of its range.” (16 U.S.C., §
1532 (20); 50 C.F.R., § 17.3.)

1 timber wolf (*C.I. occidentalis*); and the plains wolf (*C.I. nubilis*). It is suspected that OR-7, a wolf
2 that has entered and exited California through Oregon on numerous occasions, is of the non-
3 native northern timber wolf subspecies. (*Id.* at p. 16.) OR-7 was the only wolf known to have
4 been in transit within the boundaries of California at the time of the listing. Indeed, it was the only
5 wild wolf known to have any type of presence in California at that time. And it is thought to be
6 from British Columbia and Alberta, Canada populations. (Cal. Dept. of Fish & Wildlife, Report to
7 the Fish and Game Commission, Status Review of the Gray Wolf (*Canis lupus*) in California
8 (2014), p. 5 [AR0011176].) “Thus, the most recent wolf to occupy California, and the wolves
9 most likely to colonize California in the future may be of a different subspecies than wolves
10 historically inhabiting the state.” (*Ibid.*)

11 Without evidence of which species of gray wolves historically inhabited California, if they
12 inhabited the state at all, the Commission could not possibly have determined whether the gray
13 wolf is a species native to California (even though the petition for listing directed the CDFW to
14 focus on the species level and not the subspecies level). (Cal. Dept. of Fish and Wildlife, mem. to
15 Comr. Mastrup, Feb. 5, 2014, p.3 (hereafter Mastrup mem.) [AR0011098].) Listing the gray wolf
16 without this data exceeds the authority of the Commission under the California Endangered
17 Species Act. The Commission’s listing of the gray wolf is thus illegally based on the presence of
18 a non-native species and must be set aside as a clear abuse of discretion.

19 **B. Because There Is No Distinct Population of Gray Wolves, Separate and Apart**
20 **from Other Breeding Populations, the Commission Wrongly Listed the Gray**
21 **Wolf**

22 When the state considers the listing of any species on its endangered species list, it must
23 look to the question of “distinct populations” and the isolation of those reproductive groups. (U.S.
24 Fish & Wildlife Serv., Lower 48-State and Mexico Gray Wolf (*Canis Lupus*) Listing Five Year
25 Review: Summary and Evaluation (2012) p.10 (hereafter Listing Five Year Review).) Listing of
26 endangered species can be difficult because the California Endangered Species Act does not
27 define “distinct population.” So, courts have looked to responses to petitions for listing of
28 potential endangered species. In 1990, for instance, the National Marine Fisheries Service held
that “isolation of a population does not have to be absolute, but it must be strong enough to permit

1 evolutionarily important differences to accrue in different population units.” (Gleaves, et al., *The*
2 *Meaning of Species Under the Endangered Species Act* (1992) 13 Pub. Land L.Rev. 25, 42-43
3 (hereafter *Meaning of Species*), citing 45 Fed. Reg. 10, 543 (1991).) Thus, once a distinct
4 breeding population is recognized, the question becomes whether it is of “substantial importance”
5 to the genetics of the species. (*Ibid.*) One of the many issues that scientists look to in making this
6 determination is whether the population is distinct from other populations and whether it occupies
7 a distinct habitat. (Listing Five Year Review, pp. 10-11.) This type of framework is necessary for
8 the protection of individual species because it

9 provides a focal point for accomplishing the major goal of the Act—to conserve
10 genetic diversity of species and the ecosystems they inhabit. At the same time, it
11 allows discretion in the listing of populations by requiring that they represent units
12 of real evolutionary significance to the species.

13 (Waples, Definition of “Species” Under the Endangered Species Act: Application to Pacific
14 Salmon (1991) p. vii.)

15 To initiate the distinct-population analysis, scientists must first designate a breeding
16 population. For the gray wolf, a breeding population is “at least two breeding pairs of gray wolves
17 that each successfully raise at least two young annually for 2 consecutive years.” (59 Fed. Reg.
18 60252, 60266 (Nov. 22, 1994).) This represents the minimum standard for a wolf-breeding
19 population. (Listing Five Year Review, p. 11.)³ Given that OR-7, the *only* gray wolf that was
20 dispersing into California at the time of the listing, is from an Oregon pack that is already
21 identified, there were no breeding populations within California at the time of the determination
22 to list. Thus, the Commission wrongly ignored the essential requirement that it identify a distinct
23 breeding-pair population that would be eligible for listing.

24 What’s more, the Commission rejected the standard practice of establishing a strategic
25 management plan, based off a set population threshold, *before* listing a species as endangered.
26 (Cal. Fish & G. Commn., Miscellaneous Policies, Planning < [http://www.fgc.ca.gov/policy/
27 p4misc.aspx](http://www.fgc.ca.gov/policy/p4misc.aspx)> (as of Aug. 13, 2018).) California did not have a strategic plan in place until
28 December 2016, nearly two years *after* the Commission initially voted to list the gray wolf.

³ Courts have also upheld this definition. Indeed, the Ninth Circuit held that “lone wolves, or dispersers, do not constitute a population.” (*United States v. McKittrick* (9th Cir. 1998) 142 F.3d 1170, 1175.)

1 Because the Commission listed the gray wolf before a definable population threshold was
2 determined, it impulsively ignored the need for a proper management plan and regional data
3 before making a listing determination.

4 To be sure, when a state considers listing a species, there is some discretion afforded to
5 the agency authorized to make the listing determination. But an agency abuses its discretion if it
6 “has not proceeded in the manner required by law, the order or decision is not supported by the
7 findings, or the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd.
8 (b).) Here, the Commission abused its discretion when listing the gray wolf because there was no
9 distinct population, *or any established population*, at the time of listing. And the Commission
10 ignored CESA’s historical purpose of providing needed protection to *existing* populations, in
11 favor of shielding a wolf population that may be re-establishing itself in the state. (Mastrup mem.,
12 p. 4 [AR0011099].) The use of CESA in this way runs afoul of determining distinct populations
13 through scientific methods.

14 **C. California’s Listing of the Gray Wolf Ignores Nationally Recognized**
15 **Standards of Wildlife Conservation Which Exclude Hybrid Animals**

16 Hybridization is the interbreeding of individuals from distinct genetic lineages. (Allendorf,
17 et al., *The Problem with Hybrids: Setting Conservation Guidelines* (2001) 16 Trends Ecoly. &
18 Evol. 11, p.613.) Many wildlife experts are concerned with the lasting effects that hybridization
19 can have on endangered populations. As such, the generally accepted approach is to exclude
20 hybrid animals from endangered listings because they are not complete specimens of the species
21 being protected. (Haig & Allendorf, *Chapter 12* in *The Endangered Species Act at Thirty:*
22 *Volume 2: Conserving Biodiversity in Human-Dominated Landscapes* (2006).) Indeed, the
23 Federal Endangered Species Act excludes hybrids from protection. (16 U.S.C § 1532.) And given
24 that California has adopted most of the federal act, it too should be cautious of combining hybrids
25 with sensitive populations. But here, the Commission bent to the will of activists and ignored the
26 issue of hybridization, disregarding the possible detrimental impact on future populations in both
27 California and throughout the natural range of the gray wolf.

28 A study in the journal, *Evolutionary Applications*, shows that hybridization between

1 wolves and domestic dogs affects wild wolf populations on a scale larger than once believed.
2 (Pilot, et.al., *Widespread, Long-Term Admixture Between Grey Wolves and Domestic Dogs*
3 *Across Eurasia and Its Implications for the Conservation Status of Hybrids* (Jan. 15, 2018)
4 Evolutionary Applications <<https://onlinelibrary.wiley.com/doi/full/10.1111/eva.12595>>.) This
5 could have a significant impact on currently protected populations because the Fish and Game
6 Code speaks to the distinct populations of pure-blooded authenticated species to be placed on the
7 endangered species list, *not to hybrids*.⁴ And according to the CDFW Conservation Plan for
8 Wolves in California Part II, many conservationists are concerned that hybrids threaten to cause
9 “sensitive populations to lose specific adaptations which make them unique as a distinct taxon.”
10 (CDFW Wolf Plan, p. 151.) Until this science can be further explored, the CDFW has determined
11 hybrids to be a “potential threat” to authenticated wolves. (*Ibid.*)

12 But the Commission ignored the CDFW’s warnings about the impact of hybridization on
13 the wolf population in California. It did not consider whether the gray wolf spotted coming into
14 California was a hybrid. It failed to include any species authentication in its analysis for listing the
15 gray wolf. And it did not even look at the blood percentages of the wolves traversing the borders
16 of the state until *after* the deadline for submission of scientific data. In short, at the time of the
17 listing, the Commission had no way of knowing if the wolf identified as crossing into California
18 was a wolf or a wolf-hybrid. Yet, the Commission moved forward with the listing even though
19 listing a hybrid deviates from national standards for wildlife conservation.

20 **III. LISTING THE GRAY WOLF MAY LEAD TO OVERPOPULATION OF PREDATORS THAT**
21 **WILL PREY ON THE STATE’S UNGULATE POPULATION AND UPSET THE DELICATE**
22 **BALANCE OF WILDLIFE PRESERVATION IN CALIFORNIA**

23 **A. Wolf-Ungulate Interactions in California Will Negatively Impact Other**
24 **Delicate Species**

25 Wolves have been known to dramatically reduce prey populations—the damage caused
26 being directly related to the density of prey groups in the territory. (CDFW Wolf Plan, p.77.) The
27 presence of other predators also has an impact on the prey resources necessary to sustain a

28 ⁴ Authenticated species are identified by analysis of “DNA sequences in both mitochondrial
and nuclear regions of the [subject] species’ genomes.” (CDFW Wolf Plan, p. 151, referring to
Wayne et al., *Molecular Systematics of the Canidae* (1997) Syst. Biol. 46:622-653.)

1 growing wolf population. And California is a territory where potential wolf populations would be
2 in competition for prey with other large predators such as mountain lion, bear, and coyotes.

3 California has a vulnerable ungulate population,⁵ and more specifically a vulnerable elk
4 population. In the recent draft California Elk Conservation and Management Plan, the CDFW
5 noted that “mountain lions are believed to be the primary predator of adult elk” while “black bears
6 and coyotes will prey on elk calves.” (Cal. Dept. of Fish and Wildlife, Elk Conservation and
7 Management Plan (Nov. 2017) p.37 (hereafter Elk Management Plan).) When the gray wolf
8 began crossing the northern border into California, the CDFW became concerned with the impact
9 on elk herds because wolves prefer elk in their diet and “wolves alone or in combination with
10 other predators could significantly affect elk populations and possibly extirpate local populations
11 of elk.” (*Ibid.*) As the reintroduction of wolves into Arizona and New Mexico has proven, wolves
12 prefer elk even when the populations of mule and white tail deer are more plentiful. (CDFW Wolf
13 Plan, p. 78.) California’s elk population is smaller than other states which causes great concern
14 for the state as it anticipates the impact of growing populations of wolves.

15 California also has declining deer and other ungulate populations that the state has been
16 fighting to restore since the early 1800s. More recently, “combined deer population estimates for
17 the deer hunt zones in the areas of potential wolf occupation range have been in a declining
18 trend.” (CDFW Wolf Plan, p. 87.) Studies have found that predation is the primary cause of
19 mortality for deer in North America. (Forrester, T. D. and H.U. Wittmer, *A Review of the*
20 *Population Dynamics of Mule and Deer and Black-Tailed Deer Odocoileus Hemionus in North*
21 *America* (2013) Mammal Review 43(4) pp. 292-308.) But the CDFW has identified four
22 significant impacts of the proliferation of wolves in California, including: (1) reduction in
23 survival of adult female deer; (2) reduction in elk or deer herds; (3) reduction in calf/cow ratios;
24 and (4) reduction in allocated game tags in areas occupied by wolves. (Elk Management Plan, p.
25 37.) Other states have already identified reduction in hunting tags as the first effort to protect
26 ungulate populations ravaged by predators, but even this can have lasting consequences as well

27
28 ⁵ Ungulate is defined as a hoofed, typically herbivorous four-legged mammal. (CDFW Wolf
Plan at p. 74, fn. 14) For the purposes of this brief, ungulates refer to native elk, deer, pronghorn,
and bighorn sheep.

1 because hunting provides much needed wildlife management funds in most states.

2 Placing the gray wolf on the endangered species list without concern for California's
3 already-struggling ungulate populations is irresponsible, and it violates established policy in terms
4 of wildlife protections for existing species. Wolves quickly multiply and will undoubtedly impact
5 the delicate natural balance of ungulates in the state. The Commission clearly shirked its duty to
6 protect the native species of California when it listed the gray wolf outside of its state wildlife
7 management policy.

8 **B. Other States Also Provide Scientific Support Demonstrating that the**
9 **Reintroduction of Wolves Can Upset the Balance of Prey in the Areas Where**
10 **Wolves Occupy Territory**

11 In Oregon, almost every single species of deer and elk is on the decline. (Or. Dept. of Fish
12 & Wildlife, Wolf Conservation and Management Plan (Apr. 2017) pp. 59-64.) With the addition
13 of wolves dispersing into Oregon, members of the public have expressed concerns over declining
14 deer and elk populations, as well as falling survival rates of calf elk and fawn mule deer. (*Id.* at p.
15 56.) While the full impact of the introduction of wolves is unknown, emerging wolf populations
16 in Oregon will be competing for prey with growing populations of other alpha-predators,
17 including cougar, black bear, and coyote. (*Ibid.*)⁶ And these predators prefer to prey on the young,
18 which in turn influences the movements of ungulate populations in and out of supporting territory
19 and impacts the survival of ungulate populations.

20 The Montana Wolf Management Plan is clear that wolf populations do in fact impact
21 game populations like deer, elk, and moose. (Montana Fish Wildlife & Parks, *Wolf Conservation*
22 *FAQ: The Prey: Deer, Elk & Moose* < [http://fwp.mt.gov/fishAndWildlife/management/wolf/](http://fwp.mt.gov/fishAndWildlife/management/wolf/wolfConservationFAQ.html)
23 [wolfConservationFAQ.html](http://fwp.mt.gov/fishAndWildlife/management/wolf/wolfConservationFAQ.html)> (as of July 31, 2018).) "Research in Montana and elsewhere has
24 shown that predation may influence deer, elk and moose populations through changes in the
25 survival of young, the death of adult animals, or a combination of both." (*Ibid.*) Montana has even
26 considered "reducing the size of the wolf population in a localized area" where the prey-predator
27 populations become unbalanced. (*Ibid.*)

28 The State of Washington estimates that 200 wolves take approximately 2,520 elk and

⁶ While no complete numbers are known as to the coyote population in the state, it is thought to be prosperous as well. (*Ibid.*)

1 4,180 deer per year. (Wash. Dept. of Fish & Wildlife, Wolf Conservation and Management Plan
2 for Washington (July 2011) pp. 96-116.) There are currently only an estimated 5,000-6,000 elk in
3 California. (Elk Management Plan, p. 18.) And deer populations continue to decrease. Should
4 wolves fully repopulate the state, California's already suffering ungulate populations could not
5 support the levels of predation witnessed in Washington. Ultimately, Washington and other states
6 are testing grounds for how the introduction of wolves will affect California ungulate populations.
7 And they are sending warnings which are being ignored by the Commission. Because listing the
8 gray wolf may lead to the overpopulation of these non-native predators and decimate native
9 ungulate populations, the Commission betrayed its statutory duty to protect all native species in
10 the state. Its decision to list the gray wolf should be reversed as an abuse of discretion.

11 **CONCLUSION**

12 Placing the gray wolf on the California Endangered Species List was not supported by the
13 scientific data available to the Commission when the determination was made. The Commission
14 had no verifiable proof that gray wolves were native to California or that there was any
15 established population in the state whatsoever. What's more, the Commission ignored the risks of
16 hybridization and declining native ungulate populations when it arbitrarily listed the gray wolf.
17 The Commission thus exceeded its authority under CESA when it listed this non-native species
18 without the support of the "best available evidence," and the listing was contrary to law. For these
19 reasons, we ask this Court to rule in favor of Plaintiffs.

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21 Date: August 16, 2018

MICHEL & ASSOCIATES, P.C.

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23 s/ Anna M. Barvir

Anna M. Barvir

24 Attorneys for Amicus California Rifle and Pistol
25 Association, Incorporated
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