

Legal panel addresses Wolf Seminar

By Suzy Noecker, Wyoming Farm Bureau Federation (Written May 2006)

Reviewing the lawsuits that have surrounded the introduction of the gray wolf into Wyoming and the management of the wolf since introduction was undertaken by a panel of three lawyers and one landowner. Rick Krause of the American Farm Bureau Federation was joined by Steve Lechner, Managing Attorney for Mountain States Legal Foundation, Harriet Hageman of Hageman Brighton Law Office in Cheyenne and Jim Urbigkit, Sublette County ranch owner who filed his own suit to stop the introduction of wolves.

The early litigations

Rick Krause has been coming to Wyoming for the last twelve years to talk about wolves. He was counsel, along with Steve Lechner of Mountain States Legal Foundation, for the three state Farm Bureaus (Idaho, Wyoming and Montana) that filed suit to stop the introduction of wolves into Yellowstone Park. These organizations began working to stop introduction in the 1980's.

“Contrary to popular belief, the first wolf lawsuit was not in 1994 as a lot of people think; but was actually filed in 1991 by the Defenders of Wildlife and the National Wildlife Federation and the usual suspects. It was filed in Washington D.C. District Court. The lawsuit asked for relief because the Rocky Mountain Wolf Recovery Plan called for reintroduction of wolves as a way to recover the wolf population; and the groups wanted the court to order the Fish and Wildlife Service to reintroduce wolves to the Rocky Mountain areas. AFBF and Mountain States Legal Foundation intervened in the case which began our association on the wolf issue about 15 years ago. We were able to convince the court that recovery plans are not mandatory documents; recovery plans are blueprints that are not court enforceable. That principle continues on today,” said Krause.

“Now we fast forward to 1994, at the time that wolf introduction was being considered, there were a number of considerations out there. First of all, the good information that has been presented here at this conference – the documentation of losses, etc. – we didn't have any of that stuff. We were operating from basically a scientific void in terms of impacts in this area. We had previous impacts from the 1800's, but that was not very useful information from our standpoint. From a scientific standpoint, we were operating with hypotheses. Secondly, this was a political issue. This was an issue where Fish and Wildlife Service and Department of the Interior were hell-bent on reintroducing wolves. They had too much invested in the process by this time to let it go. They had not listened to the concerns of farmers and ranchers; the so-called protections they had put in place in the draft proposal were very inadequate. Before you could do anything to a wolf- you had to catch it in 'mid-bite'; actually in the act of killing sheep or cattle. As long time producers told us and testified in court they had never seen anything like that happening. Wolves just don't do that in the presence of humans. We understood that litigation was inevitable,” stated Krause.

The lost holiday

“Fish and Wildlife conveniently published the final rules on Tuesday, November 22, 1994. Rick and I got started working and we worked all through Thanksgiving. On Friday morning I drove up to Cheyenne and filed the complaint,” said Steve Lechner. We raised three major claims; 1) the original subspecies of wolf that occurred in Yellowstone had been extirpated, 2) on the species level we sought to show that wolves already occurred in

Yellowstone; so Canadian wolves could not be introduced under 10j of the ESA, 3) that the experimental population would not be wholly separate geographically due to the naturally occurring population of wolves in Montana just 60 mile north of the park. We briefed the issues; FWS briefed the issues, and Judge Downes held a hearing on December 21 to 23, 1994. At that hearing many of the Farm Bureau members testified and predicted what would happen. What they predicted is what you all heard yesterday about the depredation, the stress to livestock, the weight loss; the witnesses all testified to that. The FWS even testified; and their documents showed that yes wolves would kill livestock; however FWS witnesses promised the judge that the wolves would not leave the park for a year. Based on that representation; that the wolves would not leave the park for a year and unfortunately the judge also relied on Defenders of Wildlife's Compensation Program where they promised to compensate ranchers for all their losses; the judge denied the injunction to stop reintroduction because the Farm Bureaus hadn't proven by clear and unequivocal evidence that immediate, irreparable injury would occur," said Lechner. "It was an almost impossible standard. There was no way to know which ranch would be hit first; where the wolves would run to when released. Interestingly though, the judge did not want to address the legal merits of our arguments. Over the two and a half days we were in the hearing with Judge Downes, it was clear he understood there was something seriously wrong with what the FWS was trying to do by sticking Canadian wolves on top of existing wolves. Instead he based his ruling on lack of proof of immediate, irreparable injury and allowed the introduction to go forward with a ruling on January 3, 1996. Two days later on January 5, environmental groups filed suit to remove the experimental designation from the wolves to be introduced into Yellowstone," said Lechner.

The first kill by an introduced Canadian wolf occurred about two weeks after introduction near Salmon, Idaho when wolf B-13 killed a calf. B-13 was found dead next to the calf.

Following the first introduction, the Farm Bureau's decided to pursue the lawsuit to have it decided on its merits. The Farm Bureau suit was consolidated by the District Court with the suits brought by the National Audubon Society, Predator Project, SINAPU, Gray Wolf Committee and Cat and Jim Urbigkit. While the parties sought differing remedies; the suits were all based on the illegality of introducing Canadian wolves into an existing wolf population. Unfortunately, this action was held up by the Fish and Wildlife Service who took six months to produce the administrative record upon which the original decision was made. The decision on this suit was not given until December 1997. When the decision came back, Judge Downes had decided that the Canadian wolves were illegally introduced on top of already existing wolves; the introduced wolves were not experimental because they were not wholly separate geographically and also ruled that the experimental rules were unlawful in Idaho because they downlisted existing wolf populations from endangered to non-essential, experimental populations. He ordered removal of the wolves and then stayed his decision, because removal would be almost impossible since the promise by the Fish and Wildlife Service that reintroduced wolves would be collared and easy to remove had been broken.

Wyoming's wolf management plan goes to court

Harriet Hageman is counsel to the Wyoming Wolf Coalition which consists of 27 different organizations and local governments throughout Wyoming who filed a lawsuit a couple of years ago. "We filed a motion to consolidate our lawsuit with the state lawsuit. Like the state, we challenged the FWS rejection of the Wyoming Management Plan. Like the state, we challenged the FWS refusal to properly control and manage the gray wolf population

numerically and geographically; but we added one other claim that the state did not bring. And that claim is based on NEPA,” said Hageman.

“What we argued was this - you (FWS) had two options when you brought wolves into Wyoming; you could allow them to come down naturally; allow for a natural migration in which event they have full ESA protection or you could do an introduction. Under that introduction, however you had to do a NEPA analysis; you had to evaluate the impact on the environment – you had to do an EIS to bring those wolves into YNP. But if you are going to reject the Wyoming Plan and you’re rejecting the Wyoming Plan for the reason that it does not protect wolves throughout the state of Wyoming – you need to do another EIS. If you had to do one to introduce them into YNP; you have to do one to introduce them into the rest of the state. That was all we were asking. All we want is we want from the FWS is finally; 11 years after introduction to tell us what the impacts have been – and they fight us tooth and nail,” state Hageman.

Harriet directed the final part of her statement to representatives of the U.S. Fish and Wildlife Service representatives present at the seminar. “This is the commitment that I want today. This is a solution; not the solution, but one of the answers – one of the ways we can get the information out there that we need. We need a commitment from the people who represent this part of the United States in terms of the FWS to say that you will go back to Washington D.C. and you will say Mr. New Secretary, we need to know what’s going on – we need to know what the impacts are. And here’s another significant reason why. We’ve talked about potential programs in Utah. We’ve talked about potential programs in Colorado where they will be introducing wolves into those states. What’s so shocking to me is that we have a government that has developed, created, enforced, imposed a program on us to bring predators into our state that changes the face of our environment in such a dramatic way and we’ve never fully looked at the impacts of it. We’ve never looked at who is impacted. We’ve never looked at who losses. And before there should be any discussion about moving them into Colorado or Utah or Washington or Oregon or any other state, there needs to be a full analysis of what we’ve seen so far,”

Wyoming Attorney General, Pat Crank followed up on some of the remarks made by Harriet Hageman concerning the lawsuit filed by the state of Wyoming in support of Wyoming’s Wolf Management Plan. “Last July in response to the District Court decision, Wyoming, in conjunction with the Wyoming Game and Fish Department filed a petition to delist,” said Pat.

Harriet makes a valid point when she says originally when these animals were reintroduced into Wyoming; they did draw three concentric circles around Yellowstone with protection in Yellowstone and as you went out beyond those circles there was no protection. We pointed out to the FWS that our wolf management plan in Wyoming is exactly consistent with the plans that were drawn up that led to the introduction of this predator into Wyoming. So we have this petition; I expect the decision from FWS by July 15. If they don’t decide it by July 15, we will file a lawsuit, because at that stage we clearly have a final agency action that is challengeable in a U.S. District Court. If they decide it contrary to our desires and move forward with delisting; we will file a lawsuit, and challenge that decision,” continued Crank.

“Everything the FWS did in our lawsuit was to avoid review by the District Court. They didn’t come in and say ‘we made a decision; go ahead and look at it judge and tell us what you think.’ They said ‘Judge, you cannot review our decision, because we have not made a decision.’ So, on a technicality they avoided a review of the decision they had made regarding Wyoming’s wolf management plan. Now with the petition, and their decision come July 15,

they can no longer avoid that decision, and we will focus on the administrative record,” said the Attorney General.

Jim Urbigkit, Sublette County Farm Bureau President, and his wife Cat brought a lawsuit that was eventually rolled into the lawsuit brought by the three state Farm Bureaus. Their lawsuit sought to stop wolf introduction based on the fact that wolves already occurred in Wyoming. “Pursuit of de-listing is a dangerous game. In Minnesota they recovered the wolves, and were not allowed to de-list them and adopt a sane management plan because of a court decision supporting a lawsuit requesting that those wolves be protected as a source population for wolves in adjacent states. You delist these wolves and we lose our non-essential, experimental population status, the environmentalists have already promised a lawsuit in Colorado requesting that they be the source population for recovery of wolves in Colorado and Utah. Until there is federal legislation promising that we do not wind up as a source population; there should be no effort to delist these wolves or grant management to the state of Wyoming,” said Urbigkit.