

Federal Wolves – State Rights, an Update



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January 4, 2023

Early in 2022 a federal court in Oakland California ruled that Canadian Grey Wolves, imported from Canada by the federal government, needed more protection so that their numbers could increase. Evidentially the lower 48 states need more wolves. If the powers of the federal government are limited to those powers delegated by We the People to the government through the Constitution, where did the federal government get the power to introduce wolves into the several States? And how do we figure out how many wolves are enough? See *Defenders of Wildlife vs. United States Fish and Wildlife Service*, Case No. 21-cv-00344 JSW, Northern District of California.

However, for those of us who live in the “Central Rocky Mountain States” (Idaho and Montana), our state governments are in control of the wolf populations, not the federal government. Back in 2011, management of the newly introduced Canadian Grey Wolves was perpetually tied up in court. Wolf numbers were exploding in Idaho, where I was a member of the Legislature. We had a wolf emergency on our hands.

That year, 2011, I authored House Bill 343, which would have given our governor authority to declare a wolf emergency. After HB 343 passed both the House and the Senate, but before the bill arrived at the governor’s office for his signature, Congress took the wolves off of the Endangered Species List,

but only for the “Central Rocky Mountain States”. Congress did this by attaching a paragraph to an appropriations bill with the wolf language included. Once the wolves were removed from the Endangered Species List, management of the Idaho wolf population transferred from the federal government to our state government. The same was true for Montana as Idaho and Montana were part of the same “wolf study.” When management of our wolf population became our responsibility, we no longer needed to declare an emergency, we just needed to get to work managing wolves.

The goal of HB 343 was to use emergency powers to allow our state government to manage the wolves that the federal government introduced into our state. Congress evidently did not want the show down that HB 343 was going to create. Congress went even further and restricted the jurisdiction of the federal courts from hearing any cases challenging the this action by Congress. See United States Constitution Article III, Section 2, Clause 2 “...with such exceptions, and under such regulations as the Congress shall make.”

Given what the federal court just did regarding wolf management, it is worth revisiting my article Federal Wolves – States Rights as a case study as to how states can asserts their rights and powers in dealing with the federal government.

The original article follows:

Today (April 16, 2011) there are many issues that confront our political institutions. We are living in interesting times. For state governments the big issues are balancing budgets and federal government encroachment. And for the state of Idaho, the face of federal government



encroachment is that of a Canadian Gray Wolf.

Under the authority of the Endangered Species Act, in the mid-70's Washington D.C. bureaucrats began to contemplate the introduction of wolves into parts of the so called lower 48 states. The reason that this was even a possibility was because the original settlers of the country, who had lived with wolves, decided to get rid of them. Such people will tell you that wolves are a menace, and dangerous on top of that.

Over the objections of the Idaho Legislature, the governor of Idaho, and Idaho's congressional delegation, in 1995 the federal Fish and Wildlife Service introduced 35 Canadian Gray Wolves into central Idaho. A like number of wolves were introduced into Yellowstone Park in Wyoming, just across the Idaho border.

The plan was to protect this population of Gray Wolves such that their numbers would increase to 300 and at least 30 breeding pairs across the three state region of Idaho, Montana and Wyoming. The Idaho Legislature, with a gun to its head, agreed to this scheme in a 2002 Wolf Management Plan it ratified; while at the same time passing a resolution stating that its real desire was to remove the wolves from Idaho all together. The DC bureaucrats were going to introduce the wolves no matter what the state of Idaho wanted; and the negotiated 2002 Wolf Management Plan reflected Idaho's effort to at least have a say in the process.

Idaho is really not anti-wolf. We liked our Idaho Timberwolves. At the time of the federal wolf introduction, Idaho had about 80 Timberwolves, and they were increasing in number. The Idaho Timberwolf weighed about 85 pounds at maturity. It ran in packs of two. It survived off of small game. And they were very skittish around humans. At least two members of our House of Representatives saw these Timberwolves prior to the introduction of the Canadian Gray Wolf by the federal government. We could have managed the Idaho Timberwolf

back to so-called recovery levels



The Canadian Gray Wolf was introduced as a “nonessential experimental” species as defined by the Endangered Species Act. The ESA only allows the introduction of an “experimental species” when the original native species is extinct. But the Idaho Timberwolf was not

extinct; we had about 80 of them. These Timberwolves were documented by recognized experts. No problem for the federal government, they just solved that dilemma by lying. Consequently, the introduction of the Canadian Gray Wolf into Idaho was based on fraud.

It gets worse. Under the original agreement Idaho was to have 100 wolves with 10 breeding pairs (our share of the three state total of 300 wolves with 30 breeding pairs). That goal was achieved in about 2002. Today, nine years later the Canadian Gray Wolf is still listed as “endangered”. The wolf issue has been tied up in endless lawsuits promoted by the environmentalists. Demonizing the wolf opposition and litigating on the issue has proved to be a money making machine for these left of center folks. Each time the environmental advocacy groups file a pro-wolf lawsuit, they rake in the bucks and contribute to the mismanagement of the wolf introduction process.

Unlike the Idaho Timberwolf (which is now probably extinct having been either wiped out by or assimilated into the Canadian Gray Wolf population) the Canadian Gray Wolf weighs about 140 pounds at maturity. We have some close to 180 pounds running around the state at the moment. The Canadian Gray Wolf runs in packs of up to twenty wolves. For every one animal they kill to eat, these Canadian wolves kill about three more just for the fun of it. The biologists call it “sport-reflex

killing” or “lustful killing”. The Canadian Gray Wolf is a killing machine.

For those who are willing to take an honest look at the wolf issue, the fact that wolves are a menace and are also dangerous to humans is undebatable. There is over five hundred years of recorded history of wolf – human conflicts in Europe and Asia. Worldwide, wolf attacks continue today and occasionally humans are killed. These facts are denied by the environmentalists.

But potential attacks by wolves on humans and their destruction of property in the form of livestock depredations, which harms the ranching and farming communities, is only a secondary problem. The most significant problem is a more latent one, yet more dangerous. It is that of communicable diseases carried by the wolves. Given what wolves do for a living, it is easy to understand that they could be carriers of disease. And these diseases can be contracted by humans, pets, livestock and other big game animals.

A recent study revealed that 63 percent of all wolves examined in Idaho were carriers of the hydatid disease caused by tapeworms. These tapeworms end up in the feces of wolves and can be spread to humans by direct contact with a wolf or by becoming airborne when the feces dries. The hydatid disease will develop cysts in humans, and when those cysts attack the organs it can be fatal. Once infected, it can take up to twenty years for the disease to develop.

Any Idahoan who hikes in the woods, has wolves frequent their property, or who hunts wolves and handles the carcass could get the disease. And this is just one disease of dozens that the wolves in Idaho carry. These diseases could also be spread to domestic dogs who then spread the disease to humans.

In 2002, the Idaho Legislature agreed to manage a population of one hundred wolves. We now have somewhere between 800 to

2,000 wolves. The wolf population is out of control. And experts predict unacceptable consequences to the people of Idaho and their livestock, pets and the big game resources of the state. As the Canadian Gray Wolf consumes itself out of its natural food sources, it will turn to those areas inhabited by people for something to eat. There are already areas of Idaho where the big game numbers are so diminished that the big game herds are now in what is called a "predator pit", a condition where the number of animals left in a herd are not enough to sustain that herd given the depredation rate unless there is aggressive human management.

Today, wolves are increasingly visiting areas occupied by humans. They have been seen numerous times within the city limits of small towns. Wolf kills have been found as close as three miles from the Statehouse located in Boise. The experts say that wolves are becoming habituated to the rural and urban fringe areas of Idaho. When this occurs, the experts tell us to expect the worst.

Idaho has an emergency. And according to the Idaho Constitution, the first and foremost duty of the state government is found at article I, section 1, "All men... have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property, pursuing happiness and securing safety." Both the legislative and executive branches of state government are empowered to declare an emergency.

For some of those who live in rural Idaho today, all of those rights referred to in article I, section 1 of Idaho's state Constitution is now at risk, or has already been completely taken away. Those who have wolves frequent their neighborhoods have lost the quiet enjoyment of their property and are physically at risk. Idaho has an emergency, and we need to reduce the number of wolves in Idaho.

"The promotion of safety of persons and property is

unquestionably at the core of the State's police power...."
***Kelley v. Johnson*, 425 U.S. 238, 247 (1976).**



When the states met in Philadelphia in 1787 to draft the Constitution, they met as individual sovereign states, each of whom possessed all the power of any sovereign government on planet Earth. In the process of drafting the Constitution, they delegated portions of their sovereignty to the federal government through the express language of the Constitution. And just to make it clear as to what the limits of that delegated power was, they included the Bill of Rights the Tenth Amendment of which states, ***"The powers not delegated to the United States by the Constitution, nor prohibited by it to the state, are reserved to the states respectively, or to the people."***

The police power of the sovereign has been retained by the states, and in no way has it been shared with the federal government. And when lives, peoples' safety and the protection of property are at risk, our state government has a duty to exercise its police power and protect Idahoans and their property.

Historically, when both state and federal courts have had to rule on the state's exercise of its police power and that state's authority to declare an emergency, they have handled the issue with kid gloves. The United States Supreme Court said:

"We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the

purposes of government, purposes neither abstractly nor historically capable of complete definition.” *Berman v. Parker*, 348 U.S. 26, 31 (1954).

How can you define an emergency? You can't define it, and the courts know it. There are an infinite number of possibilities of what can constitute an emergency. This gives state governments wide latitude to address an emergency when they find themselves in such a condition.

Worldwide, there are several hundred thousand gray wolves. From a global perspective, the gray wolf is not threatened. Under the Endangered Species Act (ESA), the Canadian Gray Wolf has been categorized as “nonessential – experimental.” This is the lowest category in terms of importance that can be given to a species by the ESA. In any balancing analysis that might be made judicially, something that is “nonessential” is not going to trump the necessity to protect the life and safety of American Citizens.

This being the case, any declaration of an emergency by the Idaho state government would end up in state court if judicially challenged. It is the state courts that have subject matter jurisdiction over the exercise of a state's police power, and the protection of persons and property. Federally, the subject matter jurisdiction of the federal courts is defined at 28 USC 1331 and 1332, and the exercise of a state's police powers is not found there.

“An emergency declaration on the part of a state to protect the life, safety and property of its citizens is simply outside of the subject matter jurisdiction of the federal courts.” So said Dane vonBreichenruchardt, president of the *U.S. Bill of Rights Foundation*.

Mr. vonBreichenruchardt was the architect and legal mind behind the successful *District of Columbia v. Heller*, 554 U.S. 570 (2008) gun rights case where the United States Supreme

Court affirmed our individual right to keep and bear arms. He was also a significant contributor to House Bill 343, Idaho's Wolf Emergency Declaration legislation passed overwhelmingly by the Idaho Legislature in the closing days of its 2011 session.

Anyone who might wish to challenge the exercise of Idaho's police power used to protect Idahoans from the out of control number of Canadian Gray Wolves will have to exhaust their state administrative remedies before they go to court as required by section 3, paragraph 2 of HB343. In doing so, they will need to comply with Idaho's Administrative



Procedures Act and prove that (a) Canadian Gray Wolves are not a carrier of any disease that threatens humans, livestock or other big game animals, (b) there is no potential for human – wolf conflicts, nor (c) livestock – wolf conflicts, (d) the presence of Canadian Gray Wolves does not diminish property values (which would be a constitutional “taking” since these are governmentally introduced wolves) or (e) that the number of big game animals is not significantly impacted by the presence of the Canadian Gray Wolf.

These are federal wolves, as it was the federal government who introduced them into Idaho over our objections. They told the state of Idaho that the wolves would be considered recovered when we had a total of 100 wolves in Idaho. Now we have between 800 and 2,000 wolves and the situation is out of control.

Idaho's wolf emergency is a state issue. And in this situation, the state of Idaho has both a duty and the authority to protect its people and their property. House Bill

343 lays out the facts, the argument and the authority to do so. And the governor can devise a process, outlined in an executive order, that is dignified and methodical in confronting this emergency. Now is the time for Idaho to exercise its sovereign power, expressly retained by states as evidenced by the Tenth Amendment of the United States Constitution.

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