IN THE COURT OF APPEALS OF THE STATE OF OREGON

CASCADIA WILDLANDS an Oregon non-profit corporation;
CENTER FOR BIOLOGICAL DIVERSITY, a California non-profit corporation; and
OREGON WILD, an Oregon non-profit corporation,
Petitioners,

v.

DEPARTMENT OF FISH AND WILDLIFE, an agency of the State of Oregon; and
FISH AND WILDLIFE COMMISSION, an agency of the State of Oregon,
Respondents,

and

OREGON CATTLEMEN'S ASSOCIATION, and
OREGON FARM BUREAU FEDERATION,
Intervenor-Respondents,

and

WALLOWA COUNTY, a political subdivision of the State of Oregon,
Intervenor-Respondent.

Court of Appeals No. A161077

ORDER GRANTING RECONSIDERATION; VACATING ORDER OF DISMISSAL

Petitioners seek reconsideration of the Appellate Commissioner's order dismissing the judicial review as moot. The petition is granted; on reconsideration, the order of dismissal is vacated and the judicial review is reinstated.

Petitioners seek judicial review of an order of the Department of Fish and Wildlife and the Fish and Wildlife Commission ("respondents") delisting the gray wolf from the state's endangered species list. On March 14, 2016, Governor Brown signed House Bill 4040 into law. HB 4040 states in pertinent part:

> "The administrative rule amendment adopted by the State Fish and Wildlife Commission on November 9, 2015, to remove Canis lupus, commonly known as the gray wolf, from the state lists of threatened species or endangered species established pursuant to ORS 496.172 (2), is ratified as satisfying the elements of ORS 496.176 and approved."

The legislature declared an emergency and HB 4040 became effective on its passage.

Respondents filed with the court notice of probable mootness, asserting that the enactment of HB 4040 likely rendered the judicial review moot. Petitioners did not respond to that notice, and the Appellate Commissioner dismissed the appeal as moot.

On reconsideration, petitioners argue that HB 4040 has no effect on this judicial review, or, alternatively, that HB 4040 violates the Separation of Powers Doctrine and, therefore, is unconstitutional.

The issues presented by this judicial review and by HB 4040 are complex matters of public importance. Without deciding what, if any, effect HB 4040 has on this judicial review, the court determines that the issues of possible mootness and the validity of HB 4040 are more appropriately decided by a department of the court following full briefing. Therefore, petitioner's motion for reconsideration is granted and the order of dismissal is vacated. The court directs the Appellate Court Administrator, when this judicial review is submitted for decision, to include with the parties' briefs the petition for reconsideration, respondents' respective responses to the petition, and petitioner's reply.

Petitioner's opening brief is due 49 days from the date of this order.

07/05/2016
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ERIKA L. HADLOCK
CHIEF JUDGE, COURT OF APPEALS

c: Nicholas Stanton Cady
Daniel R Kruse
Carson L Whitehead
Caroline Lobdell
Scott Horngren
Dominic M Carollo
Benjamin Gutman
Damien M Schiff

ej