

*Sent via electronic mail to jay.inslee@gov.wa.gov*

Governor Jay Inslee  
416 14<sup>th</sup> Avenue SW  
Olympia, WA 98504

July 23, 2020

**RE: Appeal of the Washington Fish and Wildlife Commission's Denial of Rulemaking to Amend WAC 220-440-040 and 220-440-080 to Require Use of Nonlethal Techniques to Reduce Livestock-Wolf Conflict**

Dear Governor Inslee:

The Center for Biological Diversity, Cascadia Wildlands, Western Watersheds Project and WildEarth Guardians ("Petitioners") hereby appeal the Washington Fish and Wildlife Commission's ("Commission") June 26, 2020 denial of our petition to amend the existing rules to enact certain requirements pertaining to non-lethal deterrence measures and the lethal removal of wolves in response to chronic predation.

Petitioners filed the petition for rulemaking with the Commission on May 11, 2020 ("Petition"). The Petition addresses concerns related to the failure of the Washington Department of Fish and Wildlife ("Department") to properly manage wolves based on the 2011 Wolf Management Plan ("Plan"). It also discusses the 2017 Wolf-Livestock Interaction Protocol's ("Protocol") lack of requirements for either the Department or livestock operators, as well as other management and policy failures that has led to repeated killing of wolves for the last eight years. The Petition sets forth clear requirements for the use of non-lethal deterrence measures to ensure their efficacy and addresses areas where livestock-wolf conflict occurs year after year.

Since the eradication of the Wedge Pack in 2012, wolf management in Washington has been a sordid affair. The protocols and policies formulated by the Department's handpicked Wolf Advisory Group ("WAG") have led to the same inadequate outcomes every year. Poor facilitation of the group has emphasized process over outcome and allowed for conversations that drag on and fail to accomplish anything. The makeup of the group favors industry and does not properly represent or give a voice to those who use the outdoors for wildlife viewing and other non-consumptive uses or the conservation community. The members representing industry are permitted by the Department to strong arm the group causing delay or complete inaction.<sup>1</sup>

We suspect that all of this was, in part, what led to your Sept. 30, 2019 letter to the Department asking for changes to the gray wolf recovery program to "significantly reduce the need for lethal

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<sup>1</sup> The Petition, attached as Exhibit A, provides a more comprehensive history of wolf management in Washington.

removal of this species.” **Almost ten months later the Department has provided nothing but empty promises.**

The WAG’s inability to make meaningful changes to the Protocol has created the current situation. As of July 22, 2020, there have once again been multiple conflicts between livestock and wolves in northeast Washington, and the Department has already taken up a helicopter to attempt to kill members of the Togo pack. Injured calves have been left on open pastures with festering wounds. In several cases preventive measures were not used or the effective deterrent was not deployed. Several incidents indicate ineffective range riding or none at all.

**Codifying requirements for effective use of non-lethal deterrence and issues of chronic conflict is an important step in ending this constant cycle fraught with public outcry and death.**

On behalf of our many thousands of members, we call on you to reverse the Commission’s denial of our Petition, and to direct the Commission and Department to promulgate necessary, legally enforceable rules to protect this state endangered, ecologically significant species that is part of Washington’s natural wildlife heritage. New rules would provide the conservation community, livestock owners and the Washington public with the transparency and accountability they deserve from a state agency.

This appeal is filed pursuant to the requirements of RCW 34.05.330(3).

**I. A Rulemaking is Necessary to Set Clear Binding Standards That Require Use of Non-Lethal Methods and Limit Lethal Control**

New rules will provide specifics to livestock operators as to what is required of them in each circumstance, transparency to the public as to when a kill order can be considered, and accountability from the Department to the public whose wildlife they manage in public trust.

Furthermore, notice and comment rulemaking will give a forum for voices that are not being heard by the WAG. This includes scientists, experts in the field, conservation groups who have been working on wolf management for decades, and livestock operators who have worked diligently and successfully to coexist with wolves.

A rulemaking process is also necessary to ensure wolf management is based on scientific management principles, rather than politics and the interests of the livestock industry.

The rule requires use of appropriate, customized non-lethal deterrents to ensure proper deployment of meaningful preventive measures. This is necessary because the Department has repeatedly authorized kill orders without demonstrating that non-lethal deterrents were in place. The rule also clarifies that tax dollars should not be used to kill endangered wolves in instances where livestock operators refuse to implement non-lethal measures. Further, the rule outlines requirements for proactive measures in areas of repeated conflict. Implementing common sense, preventive solutions will give both wolves and livestock the best chance of survival.

**II. The Commission’s Denial of the Rulemaking Petition is Not Based on a Clear Understanding of the Rulemaking Process, Facts or Science**

*a. The Commission did not appear to understand the requirements of the rulemaking process*

In the conference call on June 26, 2020, during the discussion that lead up to its petition denial, several commissioners made statements indicating they might not understand important components of the rulemaking process. For example, commissioners discussed that having any rules in place would take away all flexibility in decision-making from the Department. (Ex. K at 14, 16; 57:42, 1:06:18).<sup>2</sup> To the contrary, a primary benefit of a rulemaking process is that the Department would apply its expertise in helping draft a proposed rule and the public would have the ability to comment on the proposed rule. Furthermore, the rule can be drafted to include any needed flexibility.

The Commission failed to consider any positive aspects of undergoing a rulemaking process and simply lauded the status quo despite the clear issues that lack a current solution.

*b. Agency staff's presentation to the Commission with their recommendation to deny the Petition contained false and misleading information*

Donny Martorello, the Department's Wolf Policy Lead, made a presentation to the Commission during the June 26, 2020 call. Mr. Martorello's presentation to the Commission stated that the WAG provides more robust public-involvement opportunities than would a rulemaking. (Ex. P at 26; Ex. Q at 3). Petitioners strongly disagree with this statement. The WAG typically meets in person, for two full weekdays, with no opportunity to call-in, in locations all over the state, with very little notice of meeting dates or agenda items and no legal requirements pertaining to public comment. Even very interested parties find it difficult to attend these meetings, and it is nearly impossible for people without cars or flexible work schedules. Even if they can participate, the agency is not required to respond to the public's comments and the WAG can choose to completely ignore them. The agenda is often changed at whim and the public -- who often attend for specific agenda items -- is given no prior notice of these changes. This is not an appropriate substitute for a formal rulemaking with a notice and comment process required by law.

*c. The Commission failed to address the concerns brought forward by the Petition*

Pursuant to WAC 82-05-040 when a petition for rulemaking is denied the agency must provide in writing a reason for that denial and specifically address the concerns stated in the petition. But neither the Commission's discussion of the denial during the June 26, 2020 conference call or the written denial letter (Ex. M) addresses the concerns stated in the Petition.

Instead, the Commission justified its denial of the Petition by stating that the Department is doing a good job with wolf management. That finding is contradicted by the public outrage, dead wolves, dead cattle and constant stream of lawsuits. The Department can do better, and this state deserves better. The Commission failed to consider that a rulemaking will ensure clarity,

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<sup>2</sup> Petitioners have transcribed the June 26, 2020 Commission conference call and citations contain both a reference to that document as well as the timestamp for the audio recording produced by the Department available at: [https://wdfw.wa.gov/sites/default/files/about/commission/meetings/2020/06/audio/20200626\\_a.mp3](https://wdfw.wa.gov/sites/default/files/about/commission/meetings/2020/06/audio/20200626_a.mp3)

transparency and accountability, and thereby ensure improvement in the state's wolf management.

*d. The Commission ignored the science and supplemental materials provided to it in denying the Petition*

Petitioners provided the Commission with several pieces of supplementary material on both June 2 and June 25, 2020 (see attached Exs. B-H), including internal Department notes, important components of a court record and other relevant documents. Petitioners described the contents of these documents and highlighted specific areas of importance. Among other things, these records contain notes from Department staff that show politics – not science – drive the Department's wolf management decisions. The documents also show how the Department's decisions run counter to its own protocol, the Wolf Plan and the opinion of its experts.

Mr. Martorello and the Commission ignored most of these documents, and commissioners asked only one pertinent question on the documents and barely referenced any of the materials provided. It is concerning that the Commission would deny the Petition without review of the pertinent information. Instead, commissioners rushed to deny the Petition even though two weeks remained before their response deadline, during which they could have done further research and made an informed decision.

Petitioners also provided the Commission with the annual wolf reports from both the Department and the Oregon Department of Fish and Wildlife (“ODFW”) between the years 2011 and 2019. (Exs. D and G). These documents demonstrate the difference in outcomes between Oregon's codified rule and Washington's current management strategy. These reports show that Oregon has far fewer wolves being killed despite having a similar number of wolves in the state. (Ex. D) However, during the June 26, 2020 commission meeting, when commissioners asked what explains the difference between the Oregon and Washington numbers, Mr. Martorello could offer no reasoned explanation. (Ex. K at 11; 43:41). Furthermore, commissioner Barbara Baker stated that she would like a presentation so she could better comprehend the difference in management. (Ex. K at 14; 56:01).

These questions and uncertainty should have led to further examination of the facts, not a speedy denial of the Petition.

*e. The Commission ignored the voices of the citizens of Washington when making its decision*

The Commission received 1,449 comments from Washington residents in support of the Petition and its request for enforceable rules on wolf management. (Exs. L and O) Not once during the June 26, 2020 meeting was this support mentioned or considered. The Commission also received public testimony in support of the Petition at its June 12 and 13 meeting. (Exs. I and J) No Washington residents testified in opposition to the Petition at this public hearing. The Commission should have considered these voices in making the final determination on the Petition.

### **III. Conclusion**

It is for the above stated reasons as well as those supplied in the Petition that Petitioners urge you to reverse the Commission's denial of the Petition and direct the Commission to immediately commence a rulemaking process to codify rules on lethal removal and areas of chronic conflict. Without this necessary progress ineffective and controversial wolf management will continue – with no clarity, no protection for our wolves or livestock and no voice for those of us who so passionately care about this issue.

Sincerely,

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