

March 19, 2014

Mr. Sonke Mastrup, Executive Director
California Fish & Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

Emailed to fgc@fgc.ca.gov and via hand delivery

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COMMISSION MEETING
AGENDA ITEM 2

Barbara West

Comments For Listing the Gray Wolf As Endangered & Re. the Status Evaluation Report dtd. Feb. 5, 2014

Dear Mr. Mastrup:

The Commission is charged with listing a species as threatened or endangered if it determines that the species' continued existence is in serious danger or is threatened by any one or any combination of factors including human-related activities (Cal. Code Regs., tit. 14 § 670.1(i)(1)(A)).

The California Endangered Species Act (CESA) §2062 defines "Endangered species" as a native species or subspecies of a . . . mammal . . . which is in serious danger of becoming extinct throughout all, or a significant portion, of its range"

The Court of Appeal of California for the Third District held that the term "range" as used in CESA §2062 refers to a species' **California** range. (Emphasis added.) (California Forestry Association v. California Fish & Game Commission (2007) 156 Cal. App. 4th 1535, 68 Cal Rptr. 3d 391).

California Department of Fish & Wildlife satellite records show that a radio collared gray wolf known as OR-7 was in California February 5, 2014. He was also here January 11, 12 and 13, 2014. He was also here for the first three months of 2013, all of 2012, and the last four days of 2011. It is self-evident that the intermittent presence of one member of a species could not make that species more "endangered" as that term is defined in §2062 and as interpreted by the Court of Appeal.

Some may argue that listing the gray wolf in California is legally inappropriate because the gray wolf is functionally "extinct" because there is lack of a breeding population in California. First, not all wolves are radio collared, so it is possible to have more than one gray wolf in California and also one or more breeding pairs. Second, more dispersing wolves are expected to enter this state within the next ten years. Third, the CESA does not require a resident breeding population before its protections are to be implemented. Fourth, such an interpretation is in conflict with the fundamental purpose of the law. Rather, the CESA §2052 declares and affirms that "(i)t is the policy of the state to conserve, protect, **restore**, and enhance any endangered species" (Emphasis added.) Webster's dictionary defines "restore" to mean "to bring back into existence." Additionally, in enacting the CESA, the California Legislature declared that endangered species are of "value to the people of this state, and the conservation, protection, and **enhancement** of these species and their habitat is of **statewide** concern." (§2051, subd. (c)). (Emphasis added.)

The gray wolf was extirpated from this state before, and without strong protection, it will be again. With limited exceptions, classifying the gray wolf as a non-game mammal under Fish & Game Code §4150 would mean that the gray wolf could be taken at any time by anyone or in any manner. Commission action under other existing authorities in the Fish and Game Code to prohibit the taking of the gray wolf even for depredation is not the right action because only the CESA speaks to restoration and conservation of a species. Listing the gray wolf is not only legally the correct thing to do, it is pragmatically and policy-wise the best thing to do.

The Commission has a rare opportunity to follow an enlightened path, and to allow for the natural restoration of an extirpated native species. The Commission will never please all of its constituents, and to try to do so will only guarantee failure. Rather, the Commission has the opportunity to fulfill the intent and purpose of the CESA and the desire of the vast majority of the people of this state by approving the petitioned action to list the gray wolf as endangered.

Barbara J. West, esq.