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FILED

MAR 27 2023

ANGIE SPARKS, Clerk of District Court
By **K KRESGE**, Deputy Clerk

13 **MONTANA FIRST JUDICIAL DISTRICT COURT**
14 **LEWIS AND CLARK COUNTY**

15 WILDEARTH GUARDIANS,PROJECT
16 COYOTE, a project of the Earth Island Institute,
17 FOOTLOOSE MONTANA, and the GALLATIN
18 WILDLIFE ASSOCIATION,

18 Petitioners,

19 v.

19 STATE OF MONTANA, by and through the
20 MONTANA DEPARTMENT OF FISH,
21 WILDLIFE, AND PARKS and the MONTANA
22 FISH AND WILDLIFE COMMISSION,

22 Respondents,

Case No. BDV-2022-896

**FIRST AMENDED VERIFIED
PETITION AND APPLICATION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Relying on an outdated and scientifically-deficient wolf management plan, the Montana
2 Department of Fish, Wildlife & Parks and the Montana Fish & Wildlife Commission authorized
3 the killing of 456 wolves during the 2022-2023 wolf hunting and trapping season, reflecting a
4 state goal to eliminate roughly 40% of the state’s wolf population in one year. Respondents’
5 actions violate the Montana Constitution and the Montana Administrative Procedure Act.
6 Petitioners seek a writ of mandate compelling Respondents to comply with state law before
7 allowing the further killing of wolves in Montana and declaratory and injunctive relief requiring
8 Respondents to fulfill their obligation to manage the Montana wolf population for the benefit of
9 all citizens. Petitioners also seek an injunction preventing the State from allowing wolf killing in
10 and around federally owned land, including Yellowstone National Park and Glacier National
11 Park. Finally, Petitioners seek court orders striking down § 87-1-901, MCA because it is
12 unconstitutional as applied and § 2-4-102(b)(iv), MCA because it is unconstitutional as applied
13 and on its face.

14 THEREFORE, Petitioners WildEarth Guardians, Project Coyote, a Project of the Earth
15 Island Institute, Footloose Montana, and the Gallatin Wildlife Association through their
16 undersigned counsel, as and for their First Amended Petition against Respondents, allege as
17 follows:

18 **JURISDICTION & VENUE**

19 1. This Court has original jurisdiction over this action pursuant to Article II, Sections
20 3, 8, and 16 and Article VII, Section 4 of the Montana Constitution and §§ 2-3-114 and 3-5-302,
21 MCA.

22 2. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to §§
23 27-8-101, *et seq.* (declaratory relief), MCA; § 2-4-506 (declaratory relief), MCA; §§ 27-19-101,
24 *et seq.*, (injunctions), MCA; and §§ 27-26-101, *et seq.* (writ of mandate), MCA; as well as the
25 general equitable powers of this Court. As to declaratory relief, this Court “shall have the power
26 to declare rights, status, and other legal relations,” and this is “whether or not further relief is or
27 could be claimed” in this action. *See* Section 27-8-201, MAPA.
28

1 Montana. The further destruction of wolves in Montana due to the challenged actions will
2 adversely affect the substantial recreational, aesthetic, and conservational interests of Project
3 Coyote and its staff, members, and supporters.

4 6. Petitioner Footloose Montana is a non-profit corporation located in Missoula,
5 Montana made up of Montanans who enjoy hiking, fishing, hunting, skiing, boating, and
6 recreated on Montana’s public lands and waterways. Footloose Montana and its members and
7 supporters are steadfastly dedicated to protecting wildlife living on Montana’s public lands.
8 Founded in 2007 after hearing too many stories about dogs being horribly injured or killed by
9 legal traps on public lands, Footloose Montana fights to end all recreational trapping on public
10 lands. Footloose Montana achieves its mission through research and education, earned and paid
11 media, statewide workshops, working with the legislature and federal officials, strategic alliances
12 and a determination to make co-existence with wildlife central to Montana’s wildlife management
13 policy. Footloose Montana has participated and will continue to participate in every public
14 process hosted by the State of Montana concerning the legislation, regulation, and policy of
15 hunting and trapping wildlife, including wolves.

16 7. Petitioner Gallatin Wildlife Association (“GWA”) is a local, all volunteer wildlife
17 conservation organization dedicated to the preservation and restoration of wildlife, fisheries,
18 habitat and migration corridors in Southwest Montana and the Greater Yellowstone Ecosystem,
19 using science-based decision making. Founded in 1976, GWA remains a registered non-profit
20 organization with its principal place of business in Bozeman, Montana. GWA recognizes the
21 intense pressures on Montana wildlife from habitat loss and climate change and advocates for
22 science-based management of public lands for diverse public values, including but not limited to
23 hunting and angling. GWA’s efforts benefit the community by focusing on wildlife issues through
24 emails, newsletters and outreach events. GWA regularly meets with other wildlife organizations
25 and non-governmental organizations on wildlife issues and with our Congressional Delegation to
26 inform and provide comment on the most pressing issues of wildlife management, including wolf
27 management, of the day.

1 **Petitioners’ Interests**

2 8. Petitioners are “interested persons” within the meaning of § 2-4-102(5)(a), MCA,
3 as the organizations and their members participated in the public review process for the Montana
4 Wolf Conservation and Management Planning Document¹ (“2002 Wolf Plan”), as well as the
5 2021-22 and 2022-23 seasonal wolf hunting and trapping quotas, which were set in accordance
6 with the 2002 Wolf Plan.

7 9. Petitioners and their members, supporters, and staff have a long-standing interest
8 in the gray wolf and routinely advocate for gray-wolf protection in Montana. They expended
9 organizational resources to actively participate in the development of wolf policy in Montana,
10 including participating in the development of the 2002 Wolf Plan, testifying at Commission
11 hearings related to wolf matters, submitting comments to Respondents regarding the 2021-22 and
12 2022-23 wolf hunts, and assisting in the development of the quota for the 2021-22 and 2022-23
13 wolf hunts. Petitioners will participate in future hearings related to wolf management, including
14 regarding the seasonal wolf hunting and trapping rules for the 2023-2024 wolf season and future
15 seasons, even though the Commission is not obligated to consider and respond to their comments
16 as part of its decision-making.

17 10. Many of Petitioners’ members, supporters, and staff live in or near areas occupied
18 by wolves in Montana, including Lewis and Clark County, and all seven wolf harvest districts
19 where wolves will be trapped this winter, or they visit these areas for hiking, camping,
20 photography, birdwatching, observing wildlife, and other recreational and professional pursuits.
21 Petitioners’ members, supporters, and staff gain aesthetic enjoyment from observing, attempting
22 to observe, hearing, seeing evidence of, and studying wild wolves, including observing signs of
23 wolves in these areas, and observing ecosystems enhanced by these animals. The opportunity to
24 possibly view wolves, or signs of wolves, in these areas is of significant interest and value to
25

26
27 ¹ Full citation: “Montana Wolf Conservation and Management Planning Document” (2002) 1 Rocky
28 Mountain Wolf Recovery Annual Reports 23, available at
<https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wildlife-reports/wolf/mt-wolf-conservation-and-management-plan.pdf>.

1 Petitioners’ members, supporters, and staff, and increases their use and enjoyment of Montana’s
2 public lands, including Yellowstone National Park, Grand Teton National Park, and Glacier
3 National Park. Petitioners’ members, supporters, and staff have engaged in these activities in the
4 past and have specific plans to continue to do so in the future.

5 11. Petitioners’ members and supporters are adversely impacted by the threat that wolf
6 hunters and trappers pose to their companion animals and other companion animals in Montana.
7 Petitioners’ members and supporters also have an interest in the health and humane treatment of
8 animals, and some members of Petitioner Project Coyote work to rehabilitate sick and injured
9 wildlife, including wildlife that are injured, but not killed by Montana hunters and trappers.
10 Petitioners’ members, staff, and supporters have engaged in these activities in the past and intend
11 to do so again in the immediate future.

12 12. Petitioners, as well as their members, supporters, and staff, are dedicated to
13 ensuring the long-term survival and recovery of the gray wolf throughout the contiguous United
14 States, and specifically in Montana, and to ensuring that Respondents comply with all applicable
15 state and federal laws related to the survival and recovery of the gray wolf in Montana. In
16 furtherance of these interests, Petitioners’ members, supporters, and staff have worked, and
17 continue to work, to conserve wolves in Montana, the Northern Rocky Mountains, and the
18 contiguous United States.

19 13. The interests of Petitioners’ members, supporters, and staff have been, and will
20 continue to be, injured by Respondents’ authorization of wolf hunting and trapping in Montana.
21 The interests of Petitioners’ members, supporters, and staff have been, and will continue to be,
22 injured by Respondents’ failure to comply with their obligations under the Montana Constitution,
23 the Montana Administrative Procedures Act (“MAPA”), state wildlife statutes, and agency
24 regulations in continuing to authorize the hunting and trapping of wolves in Montana at
25 unsustainable levels.

26 14. Petitioners, as well as their members, supporters, and staff, have suffered
27 constitutional injuries and will continue to suffer constitutional injuries as a result of MFWP and the
28 Commission’s statutory exemption from the MAPA rule-making process under § § 2-4-

1 102(b)(iv), MCA. The statutory exemption, which applies to “seasonal rules adopted annually or
2 biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the
3 publication of the rules,” injures Petitioners because it deprives them of their right to public
4 participation under Article II, Sections 8 of the Montana Constitution.

5 15. The relief requested by Petitioners here, if granted, would redress, at least in part,
6 the injuries of Petitioners’ members, supporters, and staff. The relief requested by Petitioners, if
7 granted, would require Respondents to comply with the requirements of the Montana
8 Constitution, state wildlife statutes, agency regulations, and MAPA before setting a quota or
9 allowing further hunting or trapping of wolves. The relief requested by Petitioners, if granted,
10 would reduce the number of gray wolves killed by Montana hunters.

11 **Respondents**

12 16. Respondent STATE OF MONTANA is the sovereign trustee over public trust
13 resources within its domain, including water, public lands, the atmosphere, and fish and wildlife.
14 As sovereign trustee, Montana is charged with protecting public trust resources from substantial
15 impairment and alienation for the benefit of present and future Montanans. Montana has a
16 constitutional duty to maintain a clean and healthful environment for present and future
17 generations. Montana, through its legislature and governor, enacted the wolf hunting and trapping
18 statutes and policy mandates challenged in this petition.

19 17. Respondent MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS
20 (“MFWP”) is a department of the State of Montana created by the state legislature to “supervise
21 all the wildlife, fish, game and nongame birds, waterfowl, and the game and fur-bearing animals
22 of the state.” Section 87-1-201(1), MCA. MFWP “shall enforce all the laws of the state regarding
23 the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and
24 game and nongame birds within the state” and has the “exclusive power” to spend for the purpose
25 of “protection, preservation, management, and propagation” of those species. *Id.* at § 87-1-201(2),
26 (3). With respect to the gray wolf, MFWP must “manage wildlife, fish, game, and nongame
27 animals in a manner that prevents the need for listing” under the Montana Nongame and
28

1 Endangered Species Conservation Act of 1973, § 87-5-107, MCA, or under the federal ESA, § 16
2 U.S.C. 1531, et seq., and in a manner that assists in the maintenance or recovery of the species.
3 *Id.* at § 87-1-201(9)(a)(i), (ii). According to its own rules, MFWP “is dedicated to the
4 conservation of wolf populations within the state of Montana . . . and will implement conservation
5 and management strategies to make sure that wolves continue to thrive and are integrated as a
6 valuable part of Montana's wildlife heritage.” Admin. R. Mont. 12.9.1301.

7 18. Respondent MONTANA FISH AND WILDLIFE COMMISSION
8 (“Commission”) sets the policies, including regulations, for “the protection, preservation,
9 management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species,
10 and endangered species of the state and for the fulfillment of all other responsibilities of the
11 department related to fish and wildlife as provided by law.” Section 87-1-301(1)(a), MCA. By
12 legislative mandate, the State of Montana has delegated near-total control of wolf population
13 management to the Commission with the express goal of reducing the wolf population in the state
14 to a “sustainable level” of not less than the number of wolves “necessary to support at least 15
15 breeding pairs.” *Id.* at § 87-1-901, et seq.

16 **GENERAL ALLEGATIONS OF FACT**

17 **Montana’s Public Trust Doctrine**

18 19. The Public Trust Doctrin is an ancient doctrine recognizing the principle that
19 certain natural and cultural resources belong to the people, and that the government must protect
20 and maintain these resources for future generations. Cultural and natural resources subject to the
21 Public Trust Doctrine are referred to as “public trust resources” or “trust resources,” and the
22 government entities with responsibility for managing trust resources are referred to as “trustees.”
23 The Public Trust Doctrine, with its origin in Roman civil law, is an essential element of North
24 American wildlife law. The Doctrine establishes a trustee relationship of government to hold and
25 manage wildlife, fish, and watersways for the benfeit of the resources and the public.

26 20. During Montana’s territorial period (1864-1889), the territorial courts recognized
27 that Montana water is public property, and therefore a trust resource, under common law. *Barkley*
28

1 *v. Tieleke*, 2 Mont. 59, 63 (1874); *see also Mettler v. Ames Realty Co.*, 61 Mont. 152, 159, 201 P.
2 702, 704 (1921) (explaining that “the corpus of running water in a natural stream is not the subject
3 of private ownership . . . Such water is classed with the light and the air in the atmosphere. It is
4 *publici juris*, or belongs to the public.”).

5 21. Although it has common law roots, Montana’s Public Trust Doctrine has been
6 formally recognized by several provisions of the Montana Constitution. *See* Mont. Const., art.
7 IX, § 7 (“The opportunity to harvest wild fish and wild game animals is a heritage that shall
8 forever be preserved to the individual citizens of the state.”); Mont. Const., art. IX, § 3(3) (“All
9 surface, underground, flood, and atmospheric waters within the boundaries of the state are the
10 property of the state for the use of its people[.]”); Mont. Const., art. II, § 3 (“All persons are born
11 free and have certain inalienable rights . . . includ[ing] the right to a clean and healthful
12 environment. . .”); Mont. Const., art. IX, § 1(1) (“The state and each person shall maintain and
13 improve a clean and healthful environment in Montana for present and future generations.”); *see*
14 *also Mont. Coal. for Stream Access, Inc. v. Curran*, 210 Mont. 38, 45, 682 P.2d 163, 167-168
15 (1984) (recognizing that the common law and constitutional origins of the state Public Trust
16 Doctrine include protection of recreational uses).

17 22. Montana’s Public Trust Doctrine has expanded from an initial focus on navigable
18 waters, to include a responsibility to preserve and protect fish, wildlife, and habitat. *See Rosenfeld*
19 *v. Jakways*, 67 Mont. 558, 562, 216 P. 776, 777 (1923) (“[T] the ownership of wild animals is in
20 the state, held by it in its sovereign capacity for the use and benefit of the people generally[.]”);
21 *Galt v. State Dep’t of Fish, Wildlife and Parks*, 225 Mont. 142, 146-47, 731 P.2d 912, 915 (1987);
22 *Mont. Coal for Stream Access, Inc. v. Curren*, 210 Mont. 38, 682 P.2d 163 (1984); *Mont. Trout*
23 *Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 2011) 77, 255 P.3d 179 (allowing
24 a conservation group to file an objection to a water rights allocation under the Public Trust
25 Doctrine even though the conservation group’s goal was to generally enhance the amount of
26 water available for fish habitat or recreational use).

27 23. There can be no doubt that Montana manages its wildlife in trust for all Montanas.
28 *Geer v. Connecticut*, 16 U.S. 519, 529 (1896) (citations omitted) (overruled on other grounds).

1 Indeed, the U.S. Supreme Court pronounced, more than one century ago that, “[t]he wild game
2 within a State belongs to the people in their collective sovereign capacity.” *Id.* “It is not the subject
3 of private ownership except in so far as the people may elect to make it so; and they may, if they
4 see fit, absolutely prohibit the taking of it, or traffic and commerce in it, if it is deemed necessary
5 for the protection or preservation of the public good.” *Id.*

6 24. Numerous Montana cases recognize “the right of the States to control and regulate
7 the common property in game ... ,” including Montana. *Id.* at 528; *see, Rosenfeld v. Jakways*, 67
8 Mont. 558, 562-563, 216 P. 776, 777 (1923) (“The ownership of wild animals is in the State, held
9 in its sovereign capacity for the use and benefit of the people. The State may prohibit or regulate
10 harvest, grant or withhold the right to hunt, and if granted, do so upon the terms and conditions it
11 sees fit to impose. The State exercises these rights “in virtue of its police power.”)

12 25. Other states have recognized wildlife as a public trust resource, including the
13 States of Wisconsin and Missouri. According to the Wisconsin Supreme Court, “wild animals,
14 including migratory birds, within the State, so far as it can be said such animals and birds are the
15 subject of ownership, are owned by the state in its sovereign capacity in trust for the benefit of the
16 people of the state[.]” *State v. Herwig*, 17 Wis. 2d 442, 446, 117 N.W.2d 335 (1962). Similarly,
17 the Missouri Supreme Court has recognized that wildlife are trust resources, which effectively
18 extended the common law doctrine beyond navigable waters where it had traditionally been
19 applied. *Hill v. Mo. Dep’t of Conservation*, 550 S.W.3d 463 (2018) (upholding the Missouri
20 Department of Conservation’s authority to regulate captive cervids because captive cervids are
21 part of the wildlife trust as that term is understood in Missouri law).

22 26. Montana has delegated trustee responsibility to protect, preserve, manage, and
23 propagate the State’s wildlife to MFWP. Section § 87-1-201, MCA; *see also* § 87-5-107, MCA.
24 The Commission works to set the policies and regulations for the same. § 87-1-301, MCA.

25 **Montana’s History with Gray Wolves**

26 27. The 2002 Wolf Plan recounts the story of the gray wolf in Montana, including its
27 near-extirpation and later actions to reintroduce the species in Central Idaho and Yellowstone
28

1 National Park. *See* 2002 Wolf Plan, p. 3-5 (recounting the gray wolf’s decline and subsequent
2 efforts to protect and reintroduce the species). According to the plan, wolves were widespread
3 throughout Montana at the time of European settlement. *See* 2002 Wolf Plan at 3. Early trappers
4 and explorers, including Lewis and Clark, recorded wolf sightings and encounters in their diaries.
5 *Id.* The first statewide bounty law passed in 1884, and with it, the start of wolf eradication in
6 Montana. *Id.* In that first year, 5,450 wolf hides were presented for payment. *Id.* Only three
7 Montana counties failed to report a bounty payment for wolves from 1900-1931. *Id.* By 1936,
8 wolves were extirpated from Montana, although they were occasionally observed and killed in the
9 1950s and 1960s. *Id.* No breeding pairs were known in Montana in the 1970s, and the occasional
10 wolves killed in Montana had likely dispersed from their packs across the border in Canada. 2002
11 Wolf Plan at 4.

12 28. In 1973, the gray wolf won protection under the newly enacted ESA, 16 U.S.C. §
13 1531, *et seq.*, sparking a federal recovery plan and management effort that lasted for decades. As
14 part of a recovery plan targeting the Northern Rocky Mountains, in 1995 and 1996, the U.S. Fish
15 and Wildlife Service (“USFWS”) reintroduced 66 wolves from Alberta and British Columbia into
16 the wilderness areas of Central Idaho and Yellowstone National Park, formally named the Central
17 Idaho Recovery Area and Greater Yellowstone Recovery Area. 2002 Wolf Plan at 4. Just five
18 years later, in 2000, the USFWS documented 9 breeding pairs in the Central Idaho Recovery Area
19 and 13 breeding pairs in the Greater Yellowstone Recovery Area. That same year, the USFWS
20 documented 8 breeding pairs of wolves within Montana’s borders. 2002 Wolf Plan at 4.

21 29. MFWP developed the 2002 Wolf Plan to account for the eventual recovery of gray
22 wolves in the state. The 2002 Wolf Plan was intended to govern wolf management in the state
23 when federal ESA protections were lifted and MFWP and the Commission assumed management
24 responsibility for the species. Under the 2002 Wolf Plan, MFWP committed to monitoring the
25 state gray wolf population using physical, “non-invasive methods,” such as track counts, howling
26 surveys, observation report summaries, remote photography, and profiling of genetic material
27 obtained passively from hair or scat samples. 2002 Wolf Plan at 30. The 2002 Wolf Plan details
28 MFWP’s plans to conduct track surveys to confirm presence or absence of wolves during periods

1 of snow cover, when such surveys are most accurate, and in conjunction with USFWS and the
2 U.S. Forest Service. *Id.* It also commits to several additional wolf management objectives and
3 goals, including prioritizing non-lethal methods of management “to avert or resolve a wolf
4 conflict without killing the wolf or wolves” involved in wolf-human conflicts if there are fewer
5 than 15 wolf packs. *Id.* at 26.

6 30. In 2003, MFWP issued its Amended Record of Decision and Environmental
7 Impact Statement (2003 EIS) in which MFWP analyzed and adopted certain amendments to the
8 2002 Wolf Plan under the Montana Environmental Policy Act (MEPA), § 75-1-102(3)(a), MCA.
9 *See* 2003 EIS, available at [https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wolf/wolf-](https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wolf/wolf-plan-2003.pdf)
10 [plan-2003.pdf](https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wolf/wolf-plan-2003.pdf) (selecting Alternative 5 on an interim basis until the gray wolf was delisted at
11 which point Alternative 2 would spring into effect). The 2003 EIS largely mirrors the 2002 Wolf
12 Plan, but it includes some important amendments related to how MFWP will monitor and manage
13 “boundary packs” that range across state borders, including a provision that such packs “shall not
14 be counted by more than one state.” *Id.* at Table 2. MFWP did not amend Admin R. Mont.
15 12.9.1303 to incorporate the 2003 EIS. Because the 2003 EIS adopts the 2002 Wolf Plan, this
16 petition refers to these collective decision-making/planning documents as the 2002 Wolf Plan.

17 31. Citing the success of recovery efforts in the Northern Rocky Mountains, including
18 Yellowstone National Park and Glacier National Park, USFWS removed ESA protections for gray
19 wolves in Idaho and Montana in 2009, thereby turning wolf management in those areas over to
20 the states. *See* 74 Fed. Reg. 15,123, 15,148 (Apr. 2, 2009). Even though the rule was declared
21 unlawful by a federal court, it was codified by a Congressional rider on a 2011 budget bill. *See*
22 Department of Defense and Full-Year Continuing Appropriations Act of 2011, H.R. 1473, 112th
23 Cong. § 1713 (2011); *Defs. of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010). As a
24 result of the federal delisting, Montana has maintained regulatory authority over wolf
25 management in the state for the past 11 years, and until 2021, the state’s wolf population seemed
26 relatively stable.

1 **Montana’s Statutory Mandates**

2 32. In 2021, newly inaugurated Montana Governor Greg Gianforte signed a series of
3 bills designed to reduce the estimated state wolf population of 1,150 to just 15 breeding pairs. *See*
4 Section 87-1-901, MCA. The first new law mandated that the Commission “establish by rule
5 hunting and trapping seasons for wolves with the intent to reduce the wolf population in this state
6 to a sustainable level, but not less than the number of wolves necessary to support at least 15
7 breeding pairs.” *See* Mont. Sen. Bill 314 (2021), codified at § 87-1-901, MCA.

8 33. The second bill mandated that MFWP allow the use of snares for trapping wolves.
9 *See* Mont. House Bill 224 (2021), codified at § 87-1-901, MCA.

10 34. The third bill gave the Commission authority to extend the wolf trapping season.
11 *See* Mont. House Bill 225 (2021), codified at § 87-1-304, MCA.

12 35. The fourth bill allowed private parties to reimburse costs incurred by wolf hunters
13 and trappers. *See* Mont. Sen. Bill 267 (2021), codified at § 87-6-214(1)(d), MCA.

14 36. The fifth bill removed the Commission’s authority to establish a no-hunting zone
15 in an area immediately adjacent to a national park. *See* § 87-1-304(7), MCA.

16 37. Collectively, this petition refers to these laws as the “2021 Wolf Statutes.”

17 38. On August 21, 2021, the Commission adopted four regulations implementing these
18 new laws, following a public process during which the Commission received more than 26,000
19 public comments, most of which opposed aggressive wolf hunting and trapping. Admin. R. Mont.
20 12.9.1301-1305. Among other provisions, these regulations provided that trappers could use both
21 neck snares and leg snares to trap wolves, allowed the use of bait for wolf hunting and trapping,
22 allowed nighttime hunting on private lands with spotlights, and set a “bag limit” of 20 wolves for
23 each hunter and trapper.² *Id.* The Commission also eliminated the wolf-hunting and trapping
24 quota in the hunting and trapping zones located just north of Yellowstone National Park.

25
26
27
28 ² *See* <https://npr.brightspotcdn.com/cb/4f/9f265a37491e93059c10d1d5e958/montana-wolf-hunting-regulations-2021-2022.pdf>

1 39. MAPA exempts from the definition of a rule subject to notice and comment
2 rulemaking procedures, any “seasonal rules adopted annually or biennially relating to hunting,
3 fishing, and trapping when there is a statutory requirement for the publication of the rules.” § 2-4-
4 102(11)(b)(iv), MCA.

5 40. MFWP and the Commission adopted each of the substantive regulatory changes to
6 the wolf hunting and trapping regulations pursuant to this exemption, even though the substantive
7 changes impact wolf hunting far beyond the “season” for which the wolf hunting rules applied.

8 41. Because of this exemption, the Commission did not respond to or address any of
9 the 26,000 public comments opposing the Commission’s extraordinary liberalization of the wolf
10 hunting methods that would be allowed in Montana. The Commission considered these changes
11 in a single meeting and voted to adopt the changes after deliberation among Commission
12 members only. The public, including Petitioners, did not have a meaningful opportunity to
13 participate in their government’s decision-making process on such important and significant
14 changes to wolf management in Montana as required by Article II, Section 8 of the Montana
15 Constitution.

16 **Montana’s 2002 Wolf Plan**

17 42. Recent statutory developments notwithstanding, Respondents must manage the
18 wolf as a “species in need of management until the department and commission determine that the
19 wolf no longer needs protection” and can be managed “as a game animal or furbearer.” Section
20 87-5-131(2), MCA. Respondents have not made such a determination.

21 43. Respondents carry out their statutory duty to manage the wolf population in
22 accordance with a wolf management plan, the most recent of which was developed and adopted in
23 2002, as well as seasonal hunting regulations adopted pursuant to that plan. *See Admin R. Mont.*
24 *12.9.1303.* The 2002 Wolf Plan requires that “MFWP will undertake a thorough, formal review
25 after the first five years [post the delisting of wolves in Montana]” and that “[t]he wolf
26 management program will be subsequently reviewed at least every five years.” 2002 Wolf Plan at
27 vi.
28

1 44. The 2002 Wolf Plan further provides that:

2 Upon delisting and with adequate funding secured, MFWP will
3 implement the Wolf Conservation and Management Plan. This plan
4 will guide MFWP managers and others responsible for the planning
5 and policy decisions that affect wolf management in Montana. It will
6 also guide decision-making at the field level. MFWP personnel will
7 use this plan to prioritize field activities, manage time/budgets,
8 formulate wolf management recommendations, and coordinate with
9 personnel of other state and federal agencies.

10 2002 Wolf Plan at 73.

11 45. Despite the requirement that the 2002 Wolf Plan be reviewed every five years,
12 Respondents have never updated it or engaged in a formal review, even though the science of
13 wolf conservation and carnivore ecology has developed significantly since 2002.

14 46. In 2021 and 2022, Respondents used a method of modeling wolf populations in
15 Montana, commonly referred to as iPOM, that experts have shown is unreliable and incapable of
16 detecting important changes in the wolf population. According to MFWP, iPOM “purports to
17 eliminate the need for intensive field-based monitoring” but “still provide a means to reliably
18 estimate wolf abundance.”³

19 47. The iPOM model does not appear in the 2002 Wolf Plan, which requires other
20 methods of tracking wolf populations. Nevertheless, Respondents disregarded the provisions of the
21 2002 Wolf Plan to use the iPOM model to estimate Montana’s wolf population according to the
22 availability of suitable wolf habitat and opportunistic hunter observations, rather than on-the-
23 ground track counts or observations by trained biologists. Such estimates of suitable habitat
24 almost certainly result in a significant over-estimate of the actual wolf population in Montana.⁴

25 48. According to a scientific assessment completed by a professor at Montana State
26 University, the iPOM model uses inadequate data and unreliable methods at each step of its
27 analysis (e.g. estimation of area occupied by wolves, territory size, and pack size) as well as the

28 ³ S. N. Sells et al., “Improving estimation of wolf recruitment and abundance, and development of an
adaptive harvest management program for wolves in Montana. Final Report for Federal Aid in Wildlife Restoration
Grant W-161-R-1,” (Montana Fish, Wildlife and Parks, Helena, Montana, 2020).

⁴ See Dr. Scott Creel, “Methods to estimate population sizes of wolves in Idaho and Montana,”
Distinguished Professor of Letters and Science, Department of Ecology, Montana State University, available at
https://wildlifecoexistence.org/wp-content/uploads/2022/04/Creel-Wolf-Report_FINAL.pdf.

1 modeling as a whole, compounding uncertainty in each step by combining poor data with poor
2 methodology. *Id.* The study’s author concluded: “I am aware of no examples other than the
3 Montana iPOM suggesting that population size can be estimated reliably in the absence of direct
4 demographic data and/or population counts.” *Id.*

5 49. Respondents cannot make scientifically sound predictions about the impact of wolf
6 hunting and trapping on the sustainability of wolf populations without accurate population data, at
7 a minimum. Respondents’ have violated and will continue to violate their duties as trustees of
8 wildlife trust resources to manage the gray wolf population for the benefit of all citizens by
9 relying on iPOM to develop the wolf population estimate. If Respondents reviewed and updated
10 their wolf planning document to include an analysis of the integrity of the new wolf population
11 model, analyzed data, and made public employed methods, that would provide an opportunity for
12 scientists and members of the public to contribute to the discussion, providing Respondents with
13 better information to allow them to accurately estimate wolf populations and fulfill their
14 constitutional mandate to sustainably manage wolves for the benefit of all people—not just
15 consumptive users like hunters and trappers.

16 **Montana’s Recent Wolf Hunts**

17 50. According to MFWP estimates based on the population methods set forth in the
18 2002 Wolf Plan, wolf populations remained steady in Montana between 2012 and 2019,
19 stabilizing at approximately 190 packs and 1,150 individual wolves.⁵ Hunters and trappers killed
20 an average of 242 wolves per year between 2012 and 2019, and 327 wolves in 2020.⁶

21 51. The National Park Service has determined that wolves in Yellowstone’s northern
22 range spend an estimated 5% of their time outside the park. In the fall, these wolves follow
23 migrating elk out of the park or leave their birth pack and enter Montana in search of a mate or
24 new territory. Many of the wolves that leave the park from the northern range enter Montana

25 _____
26 ⁵ Montana Fish, Wildlife & Parks, 2021 Hunting Season-Quota Change Supporting Information, at 2.

27 ⁶ Inman, B., K. Podruzny, T. Parks, T. Smucker, M. Ross, N. Lance, W. Cole, M. Parks, S. Sells, and Sw.
28 Wells. 2020. Montana Gray Wolf Conservation and Management 2020 Annual Report, Montana Fish, Wildlife &
Parks. Helena, Montana, p. 21 available at <https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wolf/annual-wolf-report-2020.pdf>.

1 Wolf Management Unit (“WMU”) 313 and WMU 316, which are adjacent to the park’s northern
2 boundary and located within hunting Region 3. Prior to 2021, those two units each had a quota
3 that limited the number of wolves that could be killed.⁷

4 52. Similarly, prior to 2021, MFWP assigned a quota to WMU 110 in Region 1,
5 adjacent to Glacier National Park, to limit the number of Glacier National Park wolves killed
6 during seasonal hunts. WMU 110 is located in the North Fork of the Flathead River Basin, which
7 is some of the best available habitat for wildlife in North America.

8 53. The 2021 Wolf Statutes and 2021 Wolf Regulations eliminated the quotas in
9 WMU 110, WMU 313, and WMU 316. Abolishing the quotas led to a significant increase in the
10 killing of Yellowstone wolves compared to previous years. As the table below shows, in WMU
11 313 and 316 more Yellowstone National Park wolves were killed during the 2021-22 hunting
12 season than in the five previous seasons combined.⁸

13 54. Also in 2021, Respondents set wolf quotas in seven regions that allowed for the
14 hunting and trapping of 450 wolves, with the following quotas in each region (collectively, the
15 “2021 Wolf Quota”):

- 16 • Region 1: 195 wolves
- 17 • Region 2: 116 wolves
- 18 • Region 3: 82 wolves
- 19 • Region 4: 39 wolves
- 20 • Region 5: 11 wolves
- 21 • Region 6: 3 wolves
- 22 • Region 7: 4 wolves

23 55. In the middle of Montana’s 2021-22 wolf trapping season, on December 16, 2021,
24 Yellowstone National Park Superintendent Cameron H. Sholly wrote to Montana Governor Greg
25 Gianforte advising him that “in the span of less than three months, at least 12 Yellowstone
26 National Park wolves have been killed within Montana’s wolf management units 313 (Gardiner)

27 ⁷ Natl. Park Serv., News Release: Three Yellowstone wolves killed in Montana during first week of
28 Montana’s hunting season (Sept. 27, 2021), available at
<https://www.nps.gov/yell/learn/news/21028.htm>.

⁸ Data source: [https://www.nps.gov/aboutus/foia/upload/YELL-Montana-Wolf-Mangement-Documents-
January-7-2022.pdf](https://www.nps.gov/aboutus/foia/upload/YELL-Montana-Wolf-Mangement-Documents-January-7-2022.pdf).

1 and 316 (Cooke City) just north of the park boundary.”⁹ Superintendent Sholly asked the
2 governor to close WMU 313 and 316 “due to the extraordinary number of Yellowstone wolves
3 already killed” and the “high probability of even more park wolves being killed in the near
4 future.” Superintendent Sholly explained that the state’s data shows “little to no wolf-related
5 depredation incidents occurring in northern Yellowstone” and also shows that the elk population
6 in northern Yellowstone is at the population objectives set by MFWP.”

7 56. Montana’s 2021-22 wolf hunting and trapping season closed on March 15, 2022.
8 According to MFWP, hunters and trappers killed 273 wolves, with hunters killing 148 wolves and
9 trappers killing 125. The Commission closed Region 3, which borders Yellowstone National
10 Park, on February 17, 2022, after hunters reported 82 wolf kills. *Id.* In total, hunters killed 85
11 wolves in Region 3, representing one-third of all the wolves killed in the state.¹⁰ Montana hunters
12 killed 21 wolves that park biologists identified as Yellowstone wolves, including the entirety of
13 the beloved Phantom Lake Wolf Pack, representing roughly one-fifth of the Yellowstone wolf
14 population.¹¹

15 57. On August 25, 2022, the Commission voted on changes to the seasonal wolf
16 hunting and trapping rules for the 2022-23 wolf hunting and trapping season. The Commission
17 eliminated all WMUs except WMUs 313 and 316, which were combined into new WMU 313,
18 and switched to managing wolf kills by trapping districts. The Commission did not alter or amend
19 the 2021 Wolf Regulations, which are rules of general applicability not exempted from judicial
20 review in the same way that seasonal hunting regulations are exempt. *See* Section 2-4-
21 102(11)(b)(iv), MCA (seasonal hunting rules adopted annually or biennially are not “rules” under
22 the state APA); *Mont. Outfitters v. State*, 2006 Mont. Dist. LEXIS 780, *7-8 (MAPA does not
23 apply to cougar hunting rules).

25 ⁹ A true and correct copy of the letter Superintendent Sholly wrote to Governor Gianforte is available on *The*
26 *Daily Montanan*’s website at [this link](https://dailymontanan.com/wp-content/uploads/2022/01/12-16-21-Governor-Montana-Final-Letter-Wolves.pdf): <https://dailymontanan.com/wp-content/uploads/2022/01/12-16-21-Governor-Montana-Final-Letter-Wolves.pdf>.

27 ¹⁰ *See, e.g.*, <https://thewesternnews.com/news/2022/aug/12/wolf-report-shows-stable-population-numbers-through/#:~:text=In%20the%20past%20season%2C%20a,harvest%20in%20Montana%20was%20299.>

28 ¹¹ *See* National Park Service: Yellowstone National Park Wolf Restoration homepage, available at <https://www.nps.gov/yell/learn/nature/wolf-restoration.htm>

1 58. On August 25, 2022, the Commission set an overall wolf hunting and trapping
2 quota of 456 wolves, including the following quotas in each district:

- 3 • Trapping District 1: 195 (bordering Glacier National Park)
- 4 • Trapping District 2: 116
- 5 • Trapping District 3: 82 (WMU 313 is within this district, but those wolves do not
6 count toward this quota)
- 7 • Trapping District 4: 39
- 8 • Trapping District 5: 11
- 9 • Trapping District 6: 3
- 10 • Trapping District 7: 4
- 11 • WMU 313: 6 (bordering Yellowstone National Park)

12 59. For the 2022-23 season, MFWP again used iPOM to assess the wolf population.
13 Once again, the iPOM method of wolf population modeling and assessment was not subject to
14 peer review, open to public review and comment, or analyzed as an amendment to the wolf
15 population estimate methodologies authorized by the 2002 Wolf Plan before MFWP relied on it
16 for the 2022-23 season. Nevertheless, MFWP used iPOM to determine there were 1,160 wolves in
17 Montana ahead of the 2022-23 wolf hunting and trapping season, an increase over the 2021
18 population despite the death of nearly 300 wolves during the prior season.

19 60. If 1,160 was an accurate count of the Montana wolf population, then the 2022-23
20 seasonal hunting and trapping regulations authorized the killing of 40% of the state population. In
21 reality, the population of wolves in Montana is likely much lower, so MFWP actually authorized
22 a much larger decrease in the wolf population, which will cause long term harm to the viability
23 and sustainability of wolves in Montana.

24 61. The 2022-23 wolf hunting season opened to archery on September 3, to general
25 hunting on September 15, and to trapping on November 28, 2022.

26 62. Upon the closure of the 2022-2023 wolf season, Montanans had killed 258 wolves,
27 including six in Trapping District 1 and six in WMU 313 This represented 22% of the Montana
28 wolf population, using the over-estimate of the 2022 wolf population of 1,160 wolves developed
by MFWP with iPOM. If MFWP was wrong—and the iPOM did not provide an accurate estimate
of the wolf population—then the impact to the wolf population was much greater.

1 63. Already, researchers are discovering significant declines in hunter success rates
2 despite Montana’s extreme liberalization of hunting methods, which indicates that the wolf
3 population is much lower than the iPOM is showing. For example, during the 2022-2023 season,
4 hunters and trappers killed under-shot the state’s goal of killing 40% of the population by 18%,
5 despite the state’s rules permitting the killing of 20 wolves per hunting license, night hunting with
6 scopes, bating, trapping and snaring on all Montana lands all over an extended hunting season.

7 **The Killing of Non-Target Species on Federal Lands**

8 64. According to a 2018 MFWP report, snares and leghold traps captured a reported
9 349 non-target animals from 2012 to 2017.¹² At least 45% of those trappings resulted in the
10 animals’ death. *Id.* Of those that survived, 33% were reported to have been injured. *Id.* Since
11 these numbers largely predate widespread wolf-trapping in Montana, most of those non-target
12 captures were the result of traps set for coyotes, but 10% were attributed to wolf traps. *Id.*

13 65. Mountain lions and domestic dogs are particularly prone to incidental capture. Of
14 the 99 mountain lions that were caught in traps or snares from 2012 to 2017, 67% were killed or
15 euthanized. *Id.* Dogs were trapped 148 times over that six-year span. *Id.* Seven of them died. *Id.*

16 66. Other non-targeted animals caught in traps or snares included protected Canada
17 Lynx, wolverines, grizzly bears, bobcats, elk and deer. *Id.*

18 **MFWP’s Response to this Lawsuit**

19 67. On January 12, 2023, Governor Greg Gianforte directed MFWP to “collaborate
20 with the citizens of Montana to form a new Wolf Plan.” The directive neither included any
21 procedural requirements regarding the development of the “new Wolf Plan,” nor a single deadline
22 related to the development of the update to the plan.

23 68. On March 23, 2023, MFWP opened its “public scoping” on a “proposed action to
24 develop a new wolf plan,” which would update the “2002 Wolf Plan” and “2003 EIS,” which
25 MFWP admitted was more than twenty years old and had never been updated. MFWP will host

26
27 ¹² See MFWP, “Incidental Captures of Wildlife and Domestic Dogs in Montana, 2012-2017, p. 2 (June
28 2018), available at <https://myfwp.mt.gov/getRepositoryFile?objectID=87485>

1 two public hearings for this scoping effort on April 4 and 11, 2023. On information and belief,
2 MFWP has not announced any other information about its intent to comply with the Governor’s
3 directive, whether by describing the complete process it will deploy to ensure public participation
4 or with respect to a timeline for completion. In other words, Governor Gianforte’s directive does
5 not have the force and effect of law and is largely irrelevant for the purpose of this lawsuit.

6 **FIRST CAUSE OF ACTION**
7 **(Violations of the Montana Administrative Procedure Act and the Montana Constitution)**

8 69. Petitioners hereby incorporate by reference all preceding paragraphs in their
9 entirety.

10 70. MAPA defines “rule” as an “agency regulation, standard, or statement of general
11 applicability that implements, interprets, or prescribes law or policy or describes the organization,
12 procedures, or practice requirements of an agency.” Section 2-4-102(11)(a), MCA.

13 71. Prior to the adoption, amendment, or repeal of any rule, the agency must give
14 written notice of the proposed action and allow for a public comment period during which
15 interested persons may present their views on the proposed action. Sections § 2-4-302, *et seq*,
16 MCA.

17 72. MAPA requires that state agencies adhere to numerous procedural safeguards in
18 promulgating or amending rules, including requirements that it give notice of the scope of a
19 proposed rule, allow a preliminary public hearing and comment period, submit the draft rule to
20 legislative reviews committee for review, issue written notice of the rule proposal, conduct a
21 public hearing to allow comment on the proposal, submit the final draft rule to the governor for
22 approval, and submit the rule for legislative review before promulgation. *See generally* Mont.
23 Code Ann. Tit. 2, Chap. 4.

24 73. Unless a rule is adopted in substantial compliance with these procedures, the rule
25 is not valid. Mont. Code Ann. § 2-4-305(7).

26 74. MAPA applies to wolf policies with general applicability. *See* § 2-4-
27 102(11)(b)(iv), MCA (seasonal hunting rules adopted annually or biennially are not “rules” under
28

1 MAPA); *Mont. Outfitters v. State*, 2006 Mont. Dist. LEXIS 780, *7-8 (MAPA does not apply to
2 cougar hunting rules).

3 75. The 2002 Wolf Plan is a wolf policy with general that is classified as a rule under
4 MAPA. *See* § 2-4-102(11)(a), MCA.

5 76. Respondents have violated MAPA by constructively amending the 2002 Wolf Plan
6 to allow the use of a new wolf population model, iPOM, without going through the notice and
7 comment rulemaking required by MAPA. *See* § 2-4-302(1)(a), MCA.

8 77. Respondents have also violated the Montana Constitution right of participation by
9 constructively amending the 2002 Wolf Plan to allow the use of a new wolf population model,
10 iPOM, without affording the public “such reasonable opportunity for citizen participation in the
11 operation of the agencies prior to the final decision as may be provided by the law.” Mont. Const.
12 Art. II, § 8.

13 78. This Court has authority to issue a declaratory judgment invalidating the use of the
14 2002 Wolf Plan, as constructively amended to allow for the use of iPOM, to set wolf hunting and
15 trapping quotas on the grounds that its application or threatened application interferes with the
16 rights of Petitioners. Sections §§ 2-3-114, 2-4-506, MCA.

17 **SECOND CAUSE OF ACTION**
18 **(Writ of Mandate, Violation of the Montana Constitution)**

19 79. Petitioners hereby incorporate by reference all preceding paragraphs in their
20 entirety.

21 80. In developing policies and taking other actions, agencies must respect their own
22 procedural rules and regulation as a guardrail to ensure the proper application of delegated
23 legislative authority to the executive branch and to protect the constitutional separation of powers.
24 *See generally Morton v. Ruiz*, 415 U.S. 199 (1974). To this end, the courts retain the authority to
25 check agency policymaking for procedural compliance and for arbitrariness, and an administrative
26 agency must comply with its own administrative rules. *Mont. Solid Waste Contrs. v. Mont. Dep't.*
27 *of Pub. Serv. Reg.*, 338 Mont. 1, 161 P.3d 837 (2007).
28

1 81. Indeed, administrative agencies enjoy only those powers specifically conferred
2 upon them by the legislature. Mont. Const. Art. III, Part III, § 1; *Bick v. State Dep't of Justice,*
3 *Div. of Motor Vehicles*, 224 Mont. 455, 456-57, 730 P.2d 418, 419 (1986).

4 82. Respondents carry out their statutory duty to manage the wolf population in
5 accordance with the 2002 Wolf Plan. *See* Admin R. Mont. 12.9.1303. The 2002 Wolf Plan
6 requires that “MFWP will undertake a thorough, formal review after the first five years [post the
7 delisting of wolves in Montana]” and that “[t]he wolf management program will be subsequently
8 reviewed at least every five years.” 2002 Wolf Plan at vi.

9 83. The 2002 Wolf Plan further provides that:

10 Upon delisting and with adequate funding secured, MFWP will
11 implement the Wolf Conservation and Management Plan. This plan
12 will guide MFWP managers and others responsible for the planning
13 and policy decisions that affect wolf management in Montana. It will
14 also guide decision-making at the field level. MFWP personnel will
 use this plan to prioritize field activities, manage time/budgets,
 formulate wolf management recommendations, and coordinate with
 personnel of other state and federal agencies.

15 2002 Wolf Plan at 73.

16 84. Respondents have a mandatory, non-discretionary duty to review the 2002 Wolf
17 Plan every five years, but Respondents have not reviewed or updated the plan since its adoption
18 more than twenty years ago.

19 85. In failing to follow their own rules and procedural safeguards, Respondents have
20 acted in excess of their delegated authority in violation of the separation of powers enshrined in
21 the Montana Constitution.

22 86. Absent judicial intervention, Respondents will continue to allow the hunting and
23 trapping of wolves with licenses issued pursuant to the 2002 Wolf Plan in violation of their own
24 rules.

25 87. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of
26 law, as no other branch of government has acted to guarantee Respondents’ compliance with the
27 Montana Constitution.

28

1 88. Under § 27-19-101, MCA, this Court may issue an injunction requiring
2 Respondents to perform a particular act.

3 89. Under § 27-26-102, MCA and at common law, a writ of mandamus may be issued
4 by this Court “to compel the performance of an act that the law specially enjoins as a duty
5 resulting from an office, trust, or station.” The writ must be issued in all cases in which there is
6 not a plain, speedy, and adequate remedy in the ordinary course of law. *Id.*

7 **THIRD CAUSE OF ACTION**
8 **(Declaratory Relief Regarding the Affirmative Duties of**
9 **Public Trustees and Wildlife Trustees)**

10 90. Petitioners hereby incorporate by reference all preceding paragraphs in their
11 entirety.

12 91. Montana manages its wildlife in trust for all Montanans. *Geer v. Connecticut*, 16
13 U.S. 519, 529 (1896) (citations omitted) (overruled on other grounds); *see also Baldwin v. Fish &*
14 *Game Comm’n*, 436 U.S. 371, 388 (1978) (“The elk supply, which has been entrusted to the care
15 of the State by the people of Montna, is finite and must be carefully tended in order to be
16 preserved.”) Indeed, the U.S. Supreme Court pronounced, more than one century ago, that “[t]he
17 wild game within a State belongs to the people in their collective sovereign capacity.” *Greer*, 16
18 U.S. at 529. “It is not the subject of private ownership except in so far as the people may elect to
19 make it so; and they may, if they see fit, absolutely prohibit the taking of it, or traffic and
20 commerce in it, if it is deemed necessary for the protection or preservation of the public good.”
21 *Id.*

22 92. The Public Trust Doctrine is enshrined in the Montana Constitution. Mont. Const.,
23 art. IX, § 7 (“The opportunity to harvest wild fish and wild game animals is a heritage that shall
24 forever be preserved to the individual citizens of the state.”); Mont. Const., art. IX, § 3(3) (“All
25 surface, underground, flood, and atmospheric waters within the boundaries of the state are the
26 property of the state for the use of its people[.]”); Mont. Const., art. II, § 3 (“All persons are born
27 free and have certain inalienable rights ... includ[ing] the right to a clean and healthful
28 environment...”); Mont Const., art. IX, § 1(1) (“The state and each person shall maintain and

1 improve a clean and healthful environment in Montana for present and future generations.”); *see*
2 *also Curran*, 210 Mont. at 45-49, 682 P.2d at 167-168 (recognizing that the common law and
3 constitutional origins of the state Public Trust Doctrine include protection of recreational uses).

4 93. Respondents have a positive duty as public trustees to manage wildlife, including
5 gray wolves, for the benefit of the public interest as a matter of constitutional law. At a minimum,
6 this requires that Respondents, as trustees, use transparent, scientifically defensible, peer-
7 reviewed data and methodologies to estimate the wolf population before making reasoned
8 decisions about wolf management to ensure the preservation, rather than diminishment or imperil
9 the trust asset.

10 94. The 2021 Wolf Statutes and any seasonal wolf hunting regulations developed in
11 accord with those statutes violate the Public Trust Doctrine and the wildlife trust as enshrined in
12 the Montana Constitution by prohibiting Respondents from exercising the discretion conferred
13 upon them and requiring them to provide for a wolf hunting and trapping season regardless of the
14 facts, the science, and contrary to their best professional judgment.

15 95. Respondents violated their constitutional and statutory responsibility to conserve
16 and manage state wildlife for current and future generations, by using iPOM to develop wolf
17 population estimates, against which wolf management quotas are set, regardless of the facts,
18 science, and best professional judgment of experts regarding the effect it would have on the state
19 wolf population.

20 96. The public has authority to enforce the Public Trust Doctrine, including with
21 regard to wildlife trust resources. *See generally, Mont. Trout Unlimited v. Beaverhead Water Co.*,
22 2011 MT 151, 361 Mont. 77, 255 P.3d 179; *see also Held v. Montana*, Order on Motion to
23 Dismiss, Case No. CDV-2020-307 (Mont. Lewis & Clark Cty., Aug. 4, 2021).

24 97. The 2021 Wolf Statutes are unconstitutional as applied and on their face under
25 Article II, Section 3; Article IX, Section 3(3); and Article IX, Section 1 of the Montana
26 Constitution.

27 98. This Court has the power “to declare rights, status, and other legal relations
28 whether or not further relief is or could be claimed.” Mont. Code Ann. § 27-8-201. “No action or

1 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
2 prayed for. The declaration may be either affirmative or negative in form and effect, and such
3 declarations shall have the force and effect of a final judgment or decree.” *Id.*

4 99. The Court should declare that Respondents have a positive duty to manage
5 wildlife, including gray wolves, to ensure a thriving population for the benefit of present and
6 future generations as wildlife trustees managing trust resources under the Public Trust Doctrine
7 and the Montana Constitution, §§ 2-3-114 and 3-5-302.

8 **FOURTH CAUSE OF ACTION**
9 **(Federal Preemption, National Parks Organic Act)**

10 100. Petitioners hereby incorporate by reference all preceding paragraphs in their
11 entirety.

12 101. Pursuant to the National Park Service Organic Act (the “Organic Act”), the
13 National Park Service manages and administers the nation’s National Park System, which began
14 with establishment of Yellowstone National Park in 1872 and has since grown to include the
15 “superlative natural, historic, and recreation areas in every major region of the United States and
16 its territories and possessions.” 54 U.S.C. § 100101(b)(1) (2018). Pursuant to a preservationist
17 mandate, the National Park Service is required to “conserve the scenery, natural and historic
18 objects, and wildlife” within the parks and to leave them “unimpaired for the enjoyment of future
19 generations.” *See* 54 U.S.C. § 100101(a)(2018).

20 102. The National Park Service has broad discretion in determining which avenues best
21 achieve the Organic Act’s mandate and does not allow wolf hunting or trapping in the national
22 parks (except on non-federal inholdings within Grand Teton National Park). *Bicycle Trail*
23 *Council of Marin v. Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996); *see also* 36 C.F.R. § 2.2
24 (prohibiting hunting and trapping on park lands unless mandated by federal statute). Accordingly,
25 the National Park Service recognizes that wolves are integral to each park’s native ecosystem.

26 103. When wolves that occupy territory within the national parks are killed in
27 accordance with state hunting laws because they travel outside park borders, the ecosystems of
28 the national parks are directly and negatively impacted. Packs serve as the functional unit for

1 social apex predator species, like wolves, and when packs experience unnaturally high rates of
2 anthropogenic mortality, their persistence and reproductive success substantially decrease.
3 Therefore, population level impacts do not have to be documented for there to be detrimental
4 impacts to the biological processes of wolves, including to future generations. Pack instability,
5 which results from human-caused mortality, can lead to increased livestock-wolf conflict and
6 scale up to population-level perturbations in some circumstances. For these reasons, researchers
7 studying the impact of Montana’s liberalized hunting regulations recently concluded that those
8 regulations resulted in a 480% increase in anthropogenic mortality to national park wolves, which
9 directly impairs the preservation mandate. Cassidy, K. A., Borg, B. L., Klauder, K. J., Sorum, M.
10 S., Thomas-Kuzilik, R., Dewey, S. R., ... & Smith, D. W. (2023). Human-caused mortality
11 triggers pack instability in gray wolves. *Frontiers in Ecology and the Environment*. Those
12 researchers concluded that “human impacts at the pack level are of concern to agencies and
13 organizations with goals of natural regulation and preservation of biological processes.” *Id.*
14 Killing national park wolves, therefore, harms federal interests.

15 104. The 2021 Wolf Statutes and their implementing rules, regulations, and policies
16 specifically promote and encourage the killing of wolves in and around Yellowstone National
17 Park and Glacier National Park and mandate the elimination of any protection zone around the
18 national parks to protect park wolves.

19 105. Under conflict preemption principles, a state law that stands as an obstacle to or
20 substantially interferes with the accomplishment and execution of the full purposes and objectives
21 of a federal law or regulatory objective is preempted, and thus void. *See Bonito Boats v. Thunder*
22 *Craft Boats*, 489 U.S. 141 (1989) (finding Florida statute preempted due to conflict with federal
23 patent policy when it restricted manufacturers’ use of unpatented boat hull design); *Geier v. Am.*
24 *Honda Motor Co.*, 529 U.S. 861, 884-85 (2000) (clarifying that conflict preemption does not
25 require a federal agency’s specific expression of preemptive intent and holding that state tort suit
26 premised on mandatory airbag duty was preempted by DOT regulation allowing different kinds of
27 passive restraint devices).

1 106. The 2021 Wolf Statutes and their implementing rules, regulations, and policies act
2 as an obstacle to or substantially interfere with the National Park Service’s ability to fulfill the
3 mandate of the Organic Act.

4 107. The 2021 Wolf Statutes and their implementing rules, regulations, and policies, as
5 applied, interfere with federal policy in the management and administration of Yellowstone
6 National Park, Grand Teton National Park, and Glacier National Park and are thus preempted by
7 the Organic Act.

8 108. This Court has the power “to declare rights, status, and other legal relations
9 whether or not further relief is or could be claimed.” Section 27-8-201, MCA. “No action or
10 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
11 prayed for. The declaration may be either affirmative or negative in form and effect, and such
12 declarations shall have the force and effect of a final judgment or decree.” *Id.*

13 109. The Court should issue a declaratory judgment declaring that the 2021 Wolf
14 Statutes and any hunting rules or regulations set in accordance with the 2021 Wolf Statutes are
15 preempted by the National Parks Organic Act because they serve as an obstacle to and
16 substantially interfere with the National Park Service’s ability to fulfill its mandate.

17 **FIFTH CAUSE OF ACTION**
18 **(Federal Preemption, Federal Public Lands Policies)**

19 110. Petitioners hereby incorporate by reference all preceding paragraphs in their
20 entirety.

21 111. Two federal agencies have authority to manage federal lands in and around the
22 State of Montana: The United States Department of Interior’s Bureau of Land Management
23 (“BLM”) and the United States Department of Agriculture’s Forest Service (“Forest Service”).
24 These agencies manage federal lands within their jurisdictions according to the Multiple-Use
25 Sustained-Yield Act of 1960. 16 USC § 528, et seq.

26 112. According to the National Forest Management Act (“NFMA”), which is
27 administered by the Forest Service and applies to all Forest-Service managed lands,

28 **(a) Development, maintenance, and revision by Secretary as part**

1 **of program; coordination.** As a part of the Program provided for by
2 section 4 of this Act [16 USCS § 1602], the Secretary shall develop,
3 maintain, and, as appropriate, revise land and resource management
4 plans for units of the National Forest System, coordinated with the
land and resource management planning processes of State and local
governments and other Federal agencies.

5 --

6 (c) **Required assurances.** In developing, maintaining, and revising
7 plans for units of the National Forest System pursuant to this section,
the Secretary shall assure that such plans—

8 (1) provide for multiple use and sustained yield of the products and
9 services obtained therefrom in accordance with the Multiple-Use
10 Sustained-Yield Act of 1960 [16 USCS §§ 528 et seq.], and, in
particular, include coordination of outdoor recreation, range, timber,
watershed, wildlife and fish, and wilderness; and

11 (2) determine forest management systems, harvesting levels, and
12 procedures in the light of all of the uses set forth in subsection(c)(1),
13 the definition of the terms “multiple use” and “sustained yield” as
14 provided in the Multiple-Use Sustained-Yield Act of 1960 [16 USCS
§§ 528 et seq.], and the availability of lands and their suitability for
resource management.

15 *See NFMA, 16 U.S.C. § 1604.*

16 113. Similarly, according to the Federal Land Policy & Management Act (“FLPMA”),
17 which is administered by BLM and applies to all BLM-managed lands, BLM must manage lands
18 within its jurisdiction according to the following criteria:

19 (1) use and observe the principles of multiple use and sustained yield
20 set forth in this and other applicable law;

21 (2) use a systematic interdisciplinary approach to achieve integrated
22 consideration of physical, biological, economic, and other sciences;

23 (3) give priority to the designation and protection of areas of critical
environmental concern;

24 *See FLPMA, 43 U.S.C. § 1712.*

25 114. The Multiple-Use Sustained-Yield Act provides: “It is the policy of the Congress
26 that the national forests are established and shall be administered for outdoor recreation, range,
27 timber, watershed, and wildlife and fish purposes.” 16 USC § 528.
28

1 115. Each of these federal land management laws require that the federal government
2 manage federal lands for the benefit of multiple interests, including wildlife and members of the
3 public who recreate on federal lands.

4 116. The 2021 Wolf Statutes and any implementing rules, regulations, and policies as
5 an obstacle to or substantially interfere with the ability of BLM and the Forest Service to fulfill
6 the mandate of the Multiple-Use Sustained-Yield Act, NFMA, and FLPMA because these state
7 laws and regulations promote and encourage the indiscriminate trapping of wildlife on federally-
8 managed lands without regard to the safety of the public or the effect on non-target wildlife
9 species.

10 117. Montana’s wolf killing statutes, regulations, and policies are so extreme in their
11 promotion of killing wildlife on federal lands that they interfere with federal policy in the
12 management and administration of public lands managed pursuant to the Multiple-Use Sustained-
13 Yield Act, NFMA, and FLPMA and are thus preempted by the Multiple-Use Sustained-Yield Act,
14 NFMA, and FLPMA.

15 118. This Court has the power “to declare rights, status, and other legal relations
16 whether or not further relief is or could be claimed.” Section 27-8-201, MCA. “No action or
17 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
18 prayed for. The declaration may be either affirmative or negative in form and effect, and such
19 declarations shall have the force and effect of a final judgment or decree.” *Id.*

20 119. The Court should issue a declaratory judgment declaring that the 2021 Wolf
21 Statutes and any hunting rules or regulations set in accordance with the 2021 Wolf Statutes are
22 preempted by the Multiple-Use Sustained-Yield Act, NFMA, and FLPMA because they serve as
23 an obstacle to and substantially interfere with the ability of BLM and the Forest Service to fulfill
24 their mandates.

25 **SIXTH CAUSE OF ACTION**
26 **(Declaratory Relief, Montana Constitution’s Right of Public Participation)**

27 120. Petitioners hereby incorporate by reference all preceding paragraphs in their
28 entirety.

1 121. The Montana Constitution affords the public a constitutional right to participate in
2 government decision making: “The public has the right to expect governmental agencies to afford
3 such reasonable opportunity for citizen participation in the operation of the agencies prior to the
4 final decision as may be provided by law.” Mont. Const. art. II, § 8.

5 122. The Montana Legislature has exempted “seasonal rules adopted annually or
6 biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the
7 publication of the rules” from the notice-and-comment rulemaking procedures set forth in MAPA.
8 *See* § 2-4-102(11)(b)(iv).

9 123. MFWP must “publish” its annual and biennial rules setting seasonal hunting,
10 fishing, trapping, and land use regulations by distributing a pamphlet to the public at all
11 “department offices and through all license providers.” § 87-1-202, MCA.

12 124. MFWP and the Commission have broadly interpreted this exemption to give
13 decision makers the right to announce seasonal hunting rules for gray wolves that have long-term
14 consequences for gray wolf management, across seasons, *e.g.* night hunting, liberalized snaring,
15 and baiting.

16 125. MFWP and the Commission consistently, across years, announce the gray wolf
17 seasonal hunting rules just days before the Commission meeting during which the Commission
18 will consider adopting the rules for the following season. That season usually commences within
19 a few weeks of the Commission’s final determination to adopt the rules.

20 126. MFWP and the Commission hold public comment at the meeting in which the
21 Commission adopts seasonal wolf hunting rules, but the Commission is not required to respond
22 to, address, or consider public comments, including from scientists and wolf management experts.

23 127. During the 2022 Commission meeting, the Commission received more than 26,000
24 written and oral comment opposed to the many liberalized methods of hunting wolves the
25 Commission was to consider. The Commission completely ignored public comments and adopted
26 the rules anyway.

27 128. The Montana Constitution requires citizen participation in the operation of
28 agencies “prior to the final decision.” Mont. Const. art. II, § 8. MFWP and the Commission’s

1 pattern and practice of providing an illusory public comment period prior to adopting wolf
2 hunting rules violates this provision.

3 129. Section 2-4-102(11)(b)(iv), MCA is unconstitutional as applied because it gives
4 MFWP and the Commission authority to make decisions about gray wolf management in the form
5 of annual hunting regulations without providing “a reasonable opportunity for citizen
6 participation in the operation of the agencies prior to the final decision.”

7 130. This Court has the power “to declare rights, status, and other legal relations
8 whether or not further relief is or could be claimed.” Section 27-8-201, MCA. “No action or
9 proceeding shall be open to objection on the ground that a declaratory judgment or decree is
10 prayed for. The declaration may be either affirmative or negative in form and effect, and such
11 declarations shall have the force and effect of a final judgment or decree.” *Id.*

12 131. The Court should issue a declaratory judgment declaring that § 27-8-201, MCA is
13 unconstitutional as applied to the setting of wolf seasonal hunting and trapping regulations
14 because MFWP and the Commission promulgate rules with long-term consequences, effecting
15 gray wolf management across seasons, without providing any opportunity for citizen participation
16 in the operation of the agency prior to its final decision in violation of Article II, Section 8 of the
17 Montana Constitution.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioners pray for entry of judgment as follows:

- 20 1. For a writ of mandate directing Respondents to conduct a review and update of
21 the 2002 Wolf Plan through a formal notice and comment rulemaking process
22 as required by MAPA and the Montana Constitution, Art. II, § 8;
- 23 2. For a writ of mandate directing Respondents to review any amendments to the
24 2002 Wolf Plan through a formal notice and comment rulemaking process as
25 required by MAPA and the Montana Constitution, Art. II, § 8;
- 26 3. For a preliminary and permanent injunction prohibiting Respondents from
27 allowing the hunting and trapping of wolves with licenses issued pursuant to
28

1 the 2002 Wolf Plan and compelling Respondents to review and update the
2 2002 Wolf Plan before issuing any additional wolf hunting licenses.

3 4. For a declaratory judgment:

- 4 a) invalidating the use of the 2002 Wolf Plan to set seasonal wolf hunting
5 and trapping regulations on the grounds that the rule's application or
6 threatened application interferes with the rights of petitioners under the
7 Montana Constitution, Art. II, § 8 and Mont. Code Ann. §§ 2-3-114, 2-
8 4-506;
- 9 b) declaring that the 2021 Wolf Statutes violate the Public Trust Doctrine
10 enshrined in the Montana Constitution and is therefore unconstitutional
11 as applied;
- 12 c) declaring that Respondents violated the Public Trust Doctrine and acted
13 contrary to their public trust duties when they adopt seasonal wolf
14 hunting quotas based on an unconstitutional rule and in violation of a
15 constitutional provision;
- 16 d) declaring that Respondents have a positive duty to manage wildlife,
17 including gray wolves, to ensure a thriving population for the benefit of
18 present and future generations as trustees managing trust resources
19 under the Public Trust Doctrine and the Montana Constitution;
- 20 e) declaring that the Montana's gray wolf management policies are
21 preempted by the National Park Organic Act because they serve as an
22 obstacle to and substantially interfere with the National Park Service's
23 ability to fulfill its mandate;
- 24 f) declaring that Montana's gray wolf management polices are preempted
25 by the FLMPA and NMFA because they serve as an obstacle to and
26 substantially interfere with the ability of BLM and the Forest Service to
27 fulfill their mandate;
- 28

5. For an order striking down § 2-4-102(b)(iv), MCA as unconstitutional as applied and on its face because it violates Mont. Const. art. II, § 8; and
6. For costs of suit;
7. For an award of attorneys' fees; and
8. For other legal or equitable relief that the court deems just and proper.

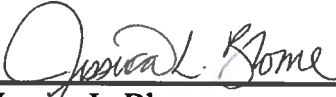
Dated: March 27, 2023.

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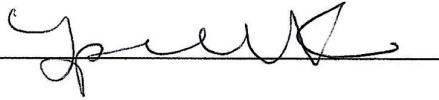
VERIFICATION

I, Lizzy Pennock, declare as follows:

I am the Carnivore Coexistence Attorney for Petitioner WildEarth Guardians in the above-captioned action, and I live in Montana. I have read the foregoing First Amended Verified Petition and Application for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof.

The statements made therein are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I affirm under penalty of perjury that the foregoing is true and correct.

Dated: 3-27-2023 By: 

1 **CERTIFICATE OF SERVICE**

2 I hereby certified that on the 27th day of March 2023, a true copy of the foregoing
3 document was served via U.S. Mail, postage prepaid, and email upon the following:

4 State of Montana - Department of Fish, Wildlife, and Parks
5 Sarah Clerget
6 Alexander Scolavino
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11 By:  _____

12 Amy Kirscher
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