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S.A.C.P.A.

**Southern Arizona Cattlemen's
Protective Association**

Public Comments Processing
Attn: FWS-R2-ES-2013-0056
Division of Policy and Directives Management
U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275
Leesburg Pike, Falls Church, VA 22041-3803

December 23, 2014

Dear Sirs and Madams:

The following comments are submitted by the Southern Arizona Cattlemen's Protective Association (the Arizona Cattle Growers' Association affiliate in Pima, Pinal and Santa Cruz counties), by James K. Chilton, Jr. and by the Chilton Ranch & Cattle Company.

We strongly recommend that the Mexican Wolf Final Environmental Impact Statement (EIS) and the proposed Record of Decision be rejected for a panoply of reasons, some of which are set forth in the paragraphs that follow. One over-arching reason for rejection is that the EIS misrepresents the cost to ranchers, farmers and rural production-agriculture-reliant communities of wolf introduction and range expansion. Ranchers and farmers in the introduction regions and businesses serving and supplying the production agriculture economy in the targeted rural zones are already damaged in the current wolf management area; more will be severely impacted by the proposed increased number of wolves and by the proposed geographic expansion of the Mexican Wolf 10(j) program. A summary of cost-of-wolf-introduction reports put out by the University of Arizona and New Mexico State University indicates that, in addition to the direct damage to Arizona and New Mexico rural economies, there is substantial multiplier negative effect of wolf damage throughout the national economy. There is no indication that supposed "compensatory recreational economic activity" has resulted from the presence of wolves in their current introduction area. In fact, state Game and Fish departments warn of the loss of revenue from hunters (hunting is a the real additional contributor to these rural economies) from wolf predation. Moreover, in areas where wolf populations have fully recovered, for example, Michigan's upper peninsula, wolves are perceived as detrimental to tourism. According to one Michigan news source,

Several local governments in the western U.P. have approved resolutions that say "overpopulation of wolves is threatening the tourism, recreation and business industries in the Western U.P." and "this situation has become a public safety issue for our citizens."¹

One of the purposes of the National Environmental Policy Act of 1969, (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970) is "**To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.**"

Wolf Depredation Cost Study

The following economic analysis was available to be presented at the Hereford, Winkelman, Whitewater Draw, Pima, Willcox-San Simon and Apache joint Natural Resource Conservation Districts Coordination Meeting with Sherry Barrett, U.S. Fish and Wildlife Service (FWS) on September 24, 2014. However, Ms. Barrett said she had to leave the meeting prior to its conclusion. Even though Ms. Barrett was asked to stay until the meeting ended, she left prior to Pima Natural Resource Conservation District Supervisor Jim Chilton's opportunity to present the following data and information:

The Kerna et al. (2014), University of Arizona study² estimated the number of "small entity livestock operations" (those meeting the Small Business Administration's definition as having gross revenues of \$750,000 or less) in Arizona and New Mexico counties

¹ Martin, Tim, "Residents say Michigan's wolves 'becoming more comfortable around people' as hunt is scheduled" May 19, 2013,

negatively affected by the FWS "Alternative 1" Mexican Wolf Experimental Population Area (MWEPA). Consequently, the information in this study is focused on "small entity" ranches and does not include large ranches with more than \$750,000 in gross revenues or gross sales.

These small ranches are disproportionately adversely impacted and unlawfully damaged by the expansion of the wolf program. Therefore, the data and information in this communication, supported by the university study of actual impacts, is directed as documenting the FWS avoiding the law with respect to **The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.) as amended; 43364-43366**. In addition, the economic analysis derived from the University of Arizona study contradicts and disagrees with the FWS in-house-produced, economic impact section of the final Environmental Impact Statement (EIS). **We assert that an in-house paper, omitting any representation of the economic impact on small entities of a program that allocates greater power and financial security to the author's agency, is clearly a case of conflict of interest. The ethics and standards of science certainly require that the reviewer not be an interested party. This is also evidence of the FWS's intentional disregard for the Regulatory Flexibility Act regulations under which this rule must operate. In a meeting with Small Business Administration officials, (transcript attached), the officials pointed out the history and pattern of that disregard by the FWS.**

Small ranches that sold beef cattle or calves in Arizona and New Mexico in 2012

The number of small ranches that sold beef cattle or calves in Arizona and New Mexico in 2012 was 8,311 with a market value of beef cattle sold of **\$1,125,158,000 (\$1.125 billion)**. The gross sales of sheep products within the current and proposed MWEPA areas, and even within Arizona and New Mexico, are absent in this analysis even though the evidence is that wolves find it irresistible to kill sheep, not necessarily to eat the sheep, but to gratify an instinct for killing.

The \$1,125,158,000 in Arizona and New Mexico cattle sales is a significant contributor to local, county and state production. In fact, the production of beef on sustainable ranch land--most in production for more than a century and some pre-dating the US Declaration of Independence--creates new wealth each year by producing a new economic good from a renewable natural resource. New wealth production resulted in \$1,125,158,000, which was in turn spent by ranchers in 2012 and thus became income for others. New Mexico State University agricultural economists (including Dr. Jerry Holechek) indicate that a positive multiplier of 2.4 is justifiable for new wealth creation through beef cattle production (In economic theory there are negative multiplier effects as well as positive multiplier impacts). As a consequence, the actual national impact of the beef industry in Arizona and New Mexico that is subject to wolf introduction is approximately **\$2.7 billion**. This multi-century historic economic underpinning of ranching communities also provides an un-tabulated aspect of cultural wealth as well as constituting the foundation of many western towns and counties.

Average Calf Crops Before and After the Introduction of Wolves

Maintaining a high annual average calf crop is of paramount importance to ranchers' survival and profitability. Each ranch has an economic break-even point that must be attained in order to meet all ranch expenses. In the Blue Range Mexican Wolf Release Area, before wolf reintroduction, the average calf crop was approximately 89%. The following table shows pre-wolf introduction ranch average calf crops on twenty-one ranches compared with an average calf crop on the same ranches after wolves were introduced by the FWS in the 1990s:

² Ashley Kerna, George Frisvold, Trent Teegerstrom, and Russell Tronstad, "The Contribution of the Beef Industry to Arizona's Economy: State and County Profiles," May 2014, University of Arizona Department of Agricultural Economics http://ag.arizona.edu/arec/pubs/beefindustryeconcontrib/contrib_beef_industry_to_az_econ_no_covers.pdf; accessed 12/26/2014 at 11:33 AM

Ranch	Pre-Wolf Average Calf Crop	Calf Crop with Wolf
		Present
AA	93%	85%
B	89%	70%
BB	99%	95%
C	97%	90%
D	96%	83%
E	100%	88%
F	95%	50%
H	90%	82%
I	89%	47%
K	94%	67%
L	80%	50%
M	96%	91%
N	74%	40%
O	94%	73%
P	92%	86%
Q	60%	60%
S	86%	71%
T	95%	85%
V	60%	60%
X	85%	85%
Y	98%	95%
Average	89%	74%

After the introduction of wolves, the average calf crops on the same ranches surveyed fell by **15%**. Some ranches were affected more than others, and a few did not notice any change. But no ranch saw an increased calf crop after the wolf presence, according to a May 7, 2011 professional study by Alexander J. Thal, Ph.D., Southwest Center for Resource Analysis, with the assistance from Tylor Brown, Jess Carey, and reviewed by Nick Ashcroft, Ph.D., NMSU. **Clearly, a 15% drop in gross sales of beef within wolf release Zones 1, 2 and 3 would prove to be devastating to the gross sales income of individual ranchers and to local economies where ranches are a major economic factor in terms of businesses, taxes and culture.**

Significant impact on the Annual Economy Resulting from a 15% Calf Crop Decrease

Annual Rancher Gross Sales 15% Decrease ($\$1,125,158,000 \times 15\%$) = **\$168,773,700**

Cost to National Economy of a 15% Decrease ($168,773,700 \times 2.4$)= **\$405,056,880**

For every wolf depredation that is found and confirmed, the evidence is that seven head of cattle killed by wolves are never found since most ranches in Arizona and New Mexico have thousands of acres in each pasture and the pastures are mostly forested, rugged, and/or mountainous. In addition, wolves often consume an entire cow or calf in a few hours. Furthermore, any remains of a depredation that wolves do not consume, other carrion feeders eat almost immediately.

Cost of the Wolf program over a 30-Year Period

Ranchers' losses - projected over 30 years (30yr x \$168,773,700) = **\$5.1 Billion**

Cost to National Economy over 30 years (30yr x \$405,056,880) = **\$ 12.2 Billion**

It is clear that the FWS proposed expansion of the wolf introduction area is significant and will devastate ranchers and farmers in the MWPEA. We now know the true economic impact of wolf introduction: destruction of the economic viability of "small entity" ranchers.

Additional Ranch and Farm Costs Due to the Presence of Wolves

Individual ranchers and farmers will not only suffer calf crop percentage losses, but also incur significant extra operational costs due to the presence of wolves. Specifically, the additional costs include:

1. Lost production capacity with the death of mature breeding, producing animals skilled at negotiating the home range; (This loss is not just the initial loss; it has to recognize that a replacement heifer is one less to sell and she will take probably two years to produce a calf; the loss of a cow is not a one-year loss.)
2. Veterinary costs for wound treatment associated with wolf attacks;
3. Loss in average weight of sale calves due to wolf harassment;
4. Cost of extra ranch hands needed to search for wolf depredations mostly in forested, rugged, mountainous pastures that cover thousands of acres. For every wolf depredation that is found the evidence is that seven three to eight head of cattle killed by wolves are never found;
5. The cost in time and money required to report wolf kills, wait for agency response, and to spend what may be hours riding to and from wolf kill sites with federal agents detailed to verify the kill;
6. Cost of moving cattle to unscheduled pastures (this procedure also undermines the scientifically-designed planned pasture rotation system) to try to avoid or minimize wolf attacks;
7. Cost of diversion of ranch work time required to drive school kids to and from remote school bus stops--rather than allowing them to walk-- to ensure the children's safety from potential wolf attacks; and,
8. Cost of work deferred and production delayed resulting from the time diverted to documenting and advocating for loss compensation due to wolf kills.

Wink Crigler, a rancher in the Springerville, Arizona area, has testified that the direct additional cost of managing her ranch in the presence of wolves is approximately \$98,000 per year. This figure includes loss of producing cows, loss of calf crop, loss of market-product weight due to wolf harassment and the cost of gathering and trucking her cattle to wolf-free winter pasture on out-of-state farms where she has to pay for forage she has already produced on her own wolf-invaded range. Wink Crigler is just one example of a descendant of Arizona and New Mexico ranch pioneers trying to conserve her multi-generation family heritage while suffering tremendous economic losses due to the current FWS program. **The proposed expansion seeks to inflict the same damage--like spreading Ebola--on additional ranches and rural communities.**

Compared with the real cost of wolf presence, the hopelessly inadequate and unmanageable wolf compensation program offered by the FWS is totally unrealistic. It proposes a compensation rate that would barely cover the cost of procedures required to apply for the money.

When the wolf program began in the 1990s, the recovery plan set a goal of 100 wolves in the Blue Range Wolf Recovery Area. At that point, the numbers were considered adequate to sustain a wolf population and would justify ceasing further introductions. Now, with full knowledge of the damage already inflicted, the FWS proposes to greatly increase the target numbers; the clear effect--hidden to no one-- is more wolves, more depredation, further damage to rural economies and another step toward obliteration of a unique American cultural heritage.

In addition to its failure to recognize and analyze the aforementioned costs, the FEIS has entirely failed to examine the downward pressure on cattle prices and a significant impact on the competitive position of Arizona and New Mexico livestock producers that will predictably result from the proposed expanded 10(j) rule. On page 4-38, the FEIS made a generalized statement:

“Primarily, ranch operations are affected by market prices that they cannot control and that are difficult to predict as they have historically been very cyclical.”

As a general statement this is true. As any visit to any cattle auction will quickly show, however, significant differences between individual cattle dictate wide variations in cattle prices at a single auction. As will be explained, the proposed 10(j) rule expansion will negatively impact prices of all cattle sold from the expanded MWEPA; therefore, the rule could significantly depress cattle prices statewide in both states. It will place Arizona’s and New Mexico’s entire livestock industry at a significant competitive disadvantage as compared to livestock raised on lands east of the 100th meridian, which can support enough cattle per acre that wolf-proof fencing is economically viable. In other words, buyers will regard beef from Arizona and New Mexico, as well as other Western states with expanding wolf populations, increasingly inferior in quality and discount beef from the Western states accordingly. This could ultimately cause a major shift in the national cattle supply as Western ranchers leave the industry and cattle prices soar elsewhere due to a dramatically reduced supply of the highest quality beef. It may even cause a shift in international markets if American beef becomes substantially more expensive than foreign beef.

Live beef cattle sales from a producer’s ranch are just one step in a market distribution chain that typically includes a feedlot, a meatpacking house, a retailer and a retail consumer. Anything that would predictably drive costs up or prices down for anyone in that downstream distribution chain will predictably be discounted by cattle buyers when the rancher sells his or her cattle. Wolf-relevant variables upon which cattle buyers differentiate prices include the following:

- Breed: Cattle breeds such as polled (genetically hornless) Angus, Charolais or Hereford, which have naturally rich and flavorful fat marbling, sell for the highest prices. Angus is presently in the highest demand. Breeds with less marbling sell at lower prices. Corriente cattle represent the low price end with almost no fat marbling. Despite the advertised health benefits of lean beef, consumers nevertheless prefer to buy well-marbled beef. A recent study in Arizona showed price differentials between Angus and Hereford steers of \$.19 per pound, for example, although Hereford is considered a premium breed. Ranchers in “wolf country” may be pressured to shift their herd genetics to cattle that have horns, for example, to enable calves a better natural defense against wolf predation. They will pay for such decisions in lower market prices based on breed discrimination.
- Horns: Buyers discount cattle with horns because they bruise each other in shipping and when confined in close proximity to each other. Bruised meat is cut out and a waste product generally at the packing plant; to a packer it can mean the difference in selling a high priced steak versus a lower weight of lower priced hamburger; therefore buyers significantly discount cattle with horns. Horns can be humanely removed, but require extra handling and expose the rancher to harassment from animal rights activists. In addition, horned breeds may drive up workers’ compensation insurance premiums while driving labor efficiency downward.

- Disposition: Wolves make cattle nervous and “jumpy.” Calves raised by nervous mothers tend to remain nervous throughout their lives. Buyers discount nervous cattle because with or without horns they represent a danger to workers and working animals, and increase the probability of bruised meat cutouts at the packing facility. In addition, stress darkens the meat permanently, which is undesirable at the retail meat counter, resulting in cattle with that producer’s brand being sold at lower prices.

Faulkner et al. (2014) showed that un-vaccinated steers are discounted at \$.07/ pound and un-vaccinated heifers are discounted at \$.10 per pound. Stress severely compromises an animal’s immune system. If a calf has a stressful experience within two weeks of a vaccine or booster, the vaccine may not take effect. Stress in a calf on a producer’s ranch, therefore, can result in disease, loss of “antibiotic free” certification, antibiotic withdrawal periods during which the animal cannot legally be sold, veterinary costs and/or even death at the ranch or in the distribution chain--more likely at the feedlot--due to diseases contracted after an apparently healthy but stressed animal is transferred from the wide open spaces into a more confined environment and exposed for the first time to new pathogens for which its vaccination was rendered ineffective. For this reason, many ranchers are adopting low-stress handling procedures. Add wolves to a cattle herd and the herd will become injuriously stressed with an economic cost that may end up being realized not immediately but by the rancher’s customers, resulting in a future “buyer’s discount” on cattle with that producer’s brand.

- Certified Preconditioning: Faulkner et al. (2014)³ stated, “*Calves that were in a process-verified program (PVP) showed to have more value as well. Angus and Angus-cross steers that were sold as PVP were the most valuable among their contemporary group, bringing \$1.75/lb (P<0.01). This was significantly greater than vaccinated steers (\$1.66/lb) and steers that received no vaccinations (\$1.60/lb).*”

Properly preconditioned calves therefore demand a significant price premium. They are vaccinated, with booster shots 2 weeks later, against at least 4 specific viruses and 7 specific forms of clostridial bacteria. Tissue-friendly vaccines (some vaccines leave permanent scar tissue) are administered subcutaneously (just under the skin, not in the muscle) with a needle of a minimum diameter and length, and exclusively within a specific region of the neck that produces the cheapest cut of meat on the entire animal. PVP cattle are *never* vaccinated in the hip, because the area surrounding the puncture wound will form gristle and need to be cut out of an otherwise highly valuable steak. PVP cattle are either polled or dehorned, and bulls are castrated prior to sale. Cattle are handled with extreme gentleness, slowly and using low-stress techniques (no running, loud noises, no whips, no electric prods, and *most important, NO predator-like herding protocol*, in order to prevent stress and injury, which is necessary for vaccines to be effective. In addition, certified preconditioned calves are held 30-45 days after weaning, which eliminates separation anxiety when the calf is sold and transferred into an unfamiliar environment.

Wolf presence maximizes cattle stress. Cattle that are sold with wolf-scarred hips and hocks and docked tails will therefore be substantially discounted in price, due in part to the expectation of reduced disease immunity in shipping and at the feedlot, and dark meat and waste cutout at packing facilities. If a sterile vaccine needle can ruin a steak, just imagine what a filthy wolf’s tooth can do. No doubt a victimized beef animal, if still salable, probably was also given antibiotics to help it heal. Cattle that can be certified as “antibiotic free” demand a price premium. Cattle in the expanded MWEPA will be much less likely to qualify for that premium.

Summary

The wolf program, based on the evidence, needs to be terminated since the significant economic impact on farmers and ranchers is already known and unconscionable. Historic small family producers will

³ Influencing the Value of Feeder Calves,” Dan B. Faulkner, Daniel D. Kiesling, Colt W. Knight and Mariana J. Hudson, “Factors School of Animal and Comparative Biomedical Sciences The University of Arizona, Proceedings, Arizona Cattlemen’s College, Arizona Cattlemen’s Association Convention, July 17, 2014, Chandler, AZ

suffer unsustainable damages. We--multi-generation agricultural producers of America-- are used to the vagaries of the weather and the variations in the market and can manage for those; family ranchers and farmers cannot be expected to handle a direct, "red in tooth and claw" attack funded and advanced by our own federal government. This is a violation of basic fairness and places our producers in a position where they will bear all the costs of the Rule and the general American public will have no idea of its costs. The FWS must pass the costs to society at large. Without doing so, our producers will not be afforded one of the most basic tenets of American law: the doctrine of Equal Justice Under the Law.

We also find it ironic that the same people who object to any deviation from humane practices in a stockyard are content to have our livestock ripped apart, calves eaten out of the cow's womb, maimed and bleating sheep, dogs and horses with huge, wolf-tooth wounds, and children waiting in cages for the school buses in rural wolf territory. This is the real wolf.

Over a multi-year period, only the largest ranches and farmers with other sources of income could continue to be asked to literally throw their domestic animals--cows, sheep, horses, dogs--to the wolves. The injustice of this federal demand should weigh as much as the serious economic cost. Such large agricultural producers as have the means to survive could be negatively impacted by as much as \$5.1 billion while the national economy could be negatively impacted by as much as \$12.2 billion within a generation with this foreseeable damage falling disproportionately on rural Western communities. Additionally, the nation would face losing a historic culture--not by accident or foreign conquest or moral failing--but as victims of a violent assault by their own government.

If the FWS does not reject the current proposed wolf program expansion and does continue forcing unwilling ranching families to offer their livestock as a sacrifice to the agency's goals, then, at the very least, the following Resolution of the Arizona Association of Natural Resource Conservation Districts and the Resolution of the Pima Natural Resource Conservation District should be considered in order to develop a fair compensation program that would at least address the economic impact if not the emotional damage of seeing wantonly maimed and slaughtered animals, the care of which is our calling.

The following is the Arizona Association of Natural Resource Districts Resolution

Livestock Disaster Program (Predator Species Introduction) recommendation for a predator compensation Program

Healthy and productive rangelands are a key factor in natural resource conservation. Predator reintroductions on our rangelands are increasing as a result of the Endangered Species Act. The costs associated with these reintroductions are borne almost exclusively by the livestock industry. When these costs become burdensome, resource conservation is the first to suffer.

The 2014 Farm Bill includes language to help compensate livestock producers for excessive livestock mortality due to reintroduced predator species. The loss of productive capacity is much greater than the loss of an animal. Stress related factors such as weight loss, lower conception rates, and lack of future production contributes to costs most producers cannot financially sustain.

Therefore, be it resolved that NACD aggressively work within the Farm Bill framework to institute a livestock insurance/compensation program wherever predators have been reintroduced that fairly compensates for predation losses, livestock production losses, and increased costs that are outside of industry averages as a direct result of re-introduced predator presence.

The following is a Resolution adopted by the Pima Natural Resource Conservation District

Predator Depredation on Domestic Livestock

Whereas, the United States Fish and Wildlife Service (Service) has determined that the Endangered Species Act requires the Service to expand the current Blue Range 10(j) wolf conservation area in Arizona and New Mexico, that covers most of the land mass of each state, and protect other predators such as bears and jaguars;

Whereas, the Service does not establish a cap on Mexican Wolf numbers even though once wolves reach a critical mass, experience documents that wolf numbers will increase exponentially;

Whereas, ranchers and farmers, forced by the government to accept wolves and other predator species on their ranches, have had and will continue to experience serious depredations;

Whereas, depredations are in fact a taking of private property, both direct and indirect, resulting from the deliberate establishment of predators by the federal government with concomitant prohibition upon effective defense by their owners of victimized privately-owned domestic animals, and therefore such directly premeditated damage should, in all fairness, be reimbursed by the federal government.

Be it resolved, that Pima Natural Resource Conservation District ranchers and farmers, and all ranchers and farmers in Arizona, New Mexico and other similarly affected states, should be compensated through the U.S. Farm Bill for direct and indirect predator depredations and harassment. Compensation procedures and conditions could be similar to those in existing Farm Bill programs including such programs as crop insurance, drought insurance and other programs. Specifically, the Farm Bill should guarantee ranchers and farmers the difference between a normal calf and lamb crop percentage and the actual depredated crop at weaning time. In addition, compensation must be paid for indirect costs of predator harassment of domestic animals such as weight loss by livestock or failure to gain—appropriate data-supported university research has already established the averages—and other costs, including lost production by depredated females during the years required for a replacement female to produce her first offspring, costs that would not have been incurred except for predator presence.

Be it further resolved, that agricultural producers engaged in domestic livestock husbandry must be compensated in amounts sufficient, without detailed cumbersome bureaucratic procedures, to ensure they are truly made whole after predator depredation and are fully compensated for predator presence.

Be it further noted, that even the complete implementation of the above would not compensate for the emotional damage resulting from seeing the suffering of those defenseless domestic livestock attacked, ripped open and eaten alive by vicious predators protected by the federal government acting as accessories to the depredations.

The following is a Resolution adopted by the Winkelman Natural Resource Conservation District

The FWS has no expertise in managing wildlife. The Arizona Game and Fish Department (AGFD) has extensive expertise. FWS has proven it cannot be trusted to manage the Mexican wolf in an honorable fashion, therefore it should surrender management to the AGFD according to the policy of the Winkelman NRCD:

Winkelman Natural Resource Conservation District (NRCD)) Policy Recognizing the Expertise of Arizona Game and Fish Department (AGFD)

Since the formation of the Winkelman NRCD, the District has worked closely with Arizona Game and Fish Department on issues and conflicts relating to both game and non-game species. In this relationship the District has acknowledged the expertise of the AGFD as the managers in Arizona of both classes of animals. We have also noted the deference given to the AGFD by the federal agencies for the same expertise.

The AGFD has acknowledged and consulted the District for its local expertise in other natural resource issues within the District and as such we have developed a complementary and respectful relationship where those issues coincide.

Arizona statute defines wildlife, both resident and migratory, native or introduced to be property of the AGFD (ARS 17-102) and provides for the AGFD to cooperate with the Arizona-Mexico Commission and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to the quality of life, trade and economic development (ARS 17-231,A,9).

The AGFD is empowered to investigate property damage from wildlife and is empowered to relieve that damage through special permits if necessary (ARS 17-239 A,B,C,D) and persons may seek judicial review for damages by wildlife under Arizona law (ARS 17-239 E).

Arizona law identifies the AGFD as the agency to investigate, document, quarantine and destroy wildlife in order to prevent the spread of infectious, contagious or communicable diseases in wildlife that may pose a health threat to animals or humans (ARS 17-250 A 1,2,3).

Therefore, it is the policy of the Winkelman District to recognize the Arizona Game and Fish Department as the best agency in Arizona to manage its wildlife including threatened and endangered species.

Past comments included by reference

By reference, we include in these comments all previous comments submitted by the Southern Arizona Cattlemen's Protective Association, James K. Chilton, Jr. and Chilton Ranch & Cattle Company relating to Mexican Wolves, their introduction, the uncertainty of their genetic purity, and their management. In addition, included by reference are (Kerna et al. 2014), Faulkner et al. (2014), and the *THE REAL WOLF, The Science, Politics, and Economics of Co-Existing with Wolves in Modern Times*, by Ted B. Lyon & Will N. Graves, 2014.

Conclusion

The direct and indirect costs of the Mexican Wolf Program will bankrupt many ranchers and farmers, force large numbers of ranchers to try to sell their ranches (the evidence is that wolf infested ranches cannot be sold as cattle production units, but must instead be offered for home development) and cause rural producers to suffer the emotional and psychological loss of their pets and livestock being killed or severely wounded by wolves. As a consequence, the FWS should choose the No Action Alternative as the alternative that limits the harm they are causing to the current level; we do, however, advocate termination of the entire Mexican Wolf Program in Arizona and New Mexico.

Sincerely,

James K. Chilton, Jr.
Master of Science in Economics and
President of the Southern Arizona Cattlemen's Protective Association
Box 423, 17691 W. Chilton Ranch Road
Arivaca, Arizona 85601

Winkelman NRCD

Bill Dunn, Chairman
Gary Vincent, Supervisor
Steve Turcotte, Supervisor
Francie Meyer, Supervisor
Walt Meyer, Advisor

Whitewater Draw NRCD

Fred Davis, Chairman
Frank Krentz, Supervisor

Hereford NRCD

Rachel Thomas, Vice Chairman
Lucinda Earven, DVM, Supervisor
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Cindy Coping, Chairman
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Mary Darling, Consultant, Cochise County, City of Sierra Vista and NRCDs

Representative Ann Kirkpatrick's Office

Zak Royse

American Stewards of Liberty

Margaret Byfield, Consultant to NRCDS *by teleconference*
Dan Byfield, Consultant to NRCDS *by teleconference*

Jess Carey, Catron County Wildlife Investigator. *by teleconference*
Ted DeSpain, Ranch Real Estate

Small Business Administration, Office of Advocacy

Kia Dennis, Assistant Chief Counsel *by teleconference*
Yvonne Lee, Regional Advocate

Note: Due to technological limitations in transcribing digital recordings, errors may exist in the transcription of statements made by meeting attendees which do not

accurately reflect actual statements made during the meeting. This is due to the fact that corrections were made for grammar or confusing phrasing found in normal speech.

Bill Dunn: I'll call meeting to order. It is 10:00. This is a joint meeting of the six districts that are coordinating with the USFWS on the expansion of the wolf 10j rule of the Mexican wolf. We need to see who has a quorum. I am calling the Winkelman meeting to order and we do have a quorum. Pima?

Cindy Coping: We do not have a quorum.

Bill Dunn: Apache is not here. Hereford and Willcox?

Rachel Thomas: Hereford NRCD does not have a quorum.

Larry Parker: Nor does Willcox.

Bill Dunn: As most of you know, the districts are subdivisions of state government with special expertise in natural resource affairs within their bounties and they've been charged by the legislature to protect the waters and streams within their districts and all those plants and animals that depend on them which means all the natural resources. This is a publicly noticed meeting and we have to abide by the open meeting laws of Arizona.

So with that, can we go around and introduce everybody so everybody knows who we are? My name's Bill Dunn. I am the chairman of the Winkelman District. Would you like to –

Yvonne Lee: Good morning everyone. I am Yvonne Lee with the Small Business Administration, Office of Advocacy and I will do a little bit more introduction in my office later.

Steve Turcotte: Steve Turcotte at Winkelman NRCD.

Francie Meyer: Francie Meyer, Winkelman NRCD.

Walt Meyer: Walt Meyer, advisor of Winkelman NRCD.

Cindy Coping: Cindy Coping, chairman of Pima NRCD.

Zak Royse: Zak Royse, Rep. Ann Kirkpatrick's Office.

Ted DeSpain: I am Ted DeSpain I am from the ranch.

Pat King: Pat King, advisor to Pima NRCD.

Larry Parker: Larry Parker, supervisor at Wilcox NRCD.

Richard Searle: Richard Searle, supervisor, Cochise County supervisor.

Lucinda Earven: Lucinda Earven, Hereford NRCD supervisor.

Gary Vincent: Gary Vincent, Winkelman Natural Resource Conservation District supervisor.

Rachel Thomas: Rachel Thomas, Hereford NRCD , Vice Chairman.

Mary Darling: Mary Darling, natural resource consultant to both Cochise County and the NRCD.

Bill Dunn: Is there anyone on the conference call that would, could speak up?
Let us know who is there.

Margaret Byfield: Dan and Margaret Byfield.

Kia Dennis: Kia Dennis, Office of Advocacy, Small Business Administration.

Bill Dunn: Good morning, Kia. Could you hear everything okay?

Kia Dennis: It sounds like some people are a little bit further away from the mic than others. I did not get everyone's name but I can hear you.

Bill Dunn: I am the closest one to the microphone. Please let us know if you are not hearing a speaker and we will stop and get him closer to the microphone.

Kia Dennis: Will do.

Bill Dunn: Who is coming in? We have Fred Davis, Frank Krentz from the Whitewater Draw and John Ladd from Hereford. Fred, are you going have a quorum? That is a no. Okay. We are just now getting started. So we have one quorum at the present time. If other people come in, we may have some quorum from some other districts. Yvonne, I am going turn this over to you and Kia to make some introductory remarks and tell us about SPA and where we are in this Fish and Wildlife Service action.

Yvonne Lee: Good morning again, I am Yvonne Lee. I am the Region 9 advocate with the Small Business Administration, Office of Advocacy. Our office was established as an independent entity within SPA back in 1976 by congress specifically to represent the interest of small business within federal government. Our job is to amplify your voice and concerns whenever there are policies and regulations being considered and developed from federal agencies.

We have three primary functions. The first one is outreach and that is done by the regional advocates. There are two of us around the country. Our job is to reach out to small businesses to introduce to you what we do and how we can really hear your concerns and really again amplify. We do not speak for you, we speak with you so whatever we hear, we share with the administration, congress, and federal agencies and other policy makers. The second area that we work on is economic research. We have a team of researchers. Their job is to look at studies and data collection on anything that impact the state of US economy.

The topics are very varied. It can run from lending studies, how small businesses get loans to older, small business owners, how would they prepare their retirement for the future. So again, it is very, very wide range. The third area, that is why we are here, is we have a team of inter-agency affairs attorneys. Their job is to work with federal agencies on a regular basis on regulatory matters. The congress has passed a Regulatory Flexibility Act which enabled the Office of Advocacy to serve as a watchdog to make sure that whenever regulations are being developed, these agencies have to look at the impact those regulations may have on small business and if so, they need to consider alternatives.

Ms. Kia Dennis who is on the call, she works out at Washington Headquarters. She is in charge of among other portfolios the official wildlife service regulations. So she is on the call and I am going turn it over to her to introduce herself more detail and more importantly explain to you why we are here today.

Kia Dennis:

Yvonne did a good job of discussing what the office does generally. As she mentioned, I am the attorney that deals with the Fish and Wildlife Service portfolio and it is my job to work with them to try to help them achieve their goal while at the same time minimizing impacts that regulations and their actions have on small businesses. I would like to add a couple things to Yvonne's comment and the first to see that we do not give legal advice despite the fact we are attorneys.

I want to make that clear. We cannot counsel you as to which or any legal action may or may not want to take or decide to take. We can talk to you about some things, some options that are available to the public for making sure their concerns and their comments get through to the various different agencies at any sort of legal action or legal strategy with me to pursue with a private attorney. The other thing that I need to mention is that we, our office does enforce the RFA. We do not have the power to force an agency not do a rule or go back on its rule.

We will bring your concerns to them and make sure they are heard and advocate for you and stress the importance of listening to your ideas in different ways that the agency might achieve their goals without imposing upon small businesses. Ultimately, agency has a secretary or administrator and at the end of the day, the final decision lies with that secretary or administrator not with our office.

So with that, I will turn the meeting back over to Bill and I am happy to answer any questions and engage in dialogue today.

Bill Dunn:

Our next deal is issues and concerns and Richard, Mary, do you want to, and Cindy, I guess we would just jump into the issues and data that you guys have really been working on.

Mary Darling: Cindy, do you want to start with the information you gathered? I have sent that to Yvonne and to Kia and so people in this room have them. This is Mary Darling, Kia.

Cindy Coping: The tables?

Mary Darling: And yes, the tables show a significant impact to one sector of small business and then we can talk about the domino effect as ranchers go out of business. All the other small businesses had become affected and there are several different avenues of those effects and Margaret Byfield and Dan Byfield are on the phone and they can talk to some of those that are indirect but very significant including hospitals, schools, fire districts. Small businesses go under the taxes, and ways to support all the infrastructure, all the services increase or those services do not have the capability to function properly.

So we want to talk about the full realm of impacts because none of those were covered in the EIS except for general incorrect analysis of some ranching items. So we will start with Cindy.

Cindy Coping: The official wildlife stated in their rules will if any significant effect anticipated on the ranching land techniques in the proposed rules rule zone. That is in the final EIS. I think it would help to enlighten you what kind of cost is really involved. It is not just a direct predation. There is failure to conceive calves, people reporting 30 percent of their normal calving weight. Gestation period of the cow is nine months. You basically get one calf out of a cow in a year.

A lot of times breeding is done at one time to keep the calves together and that also prevents predation. The stress on the cattle can prevent calves from putting on weight. A calf is normally sold at 500 lbs. You might come up to the sale date and these are run by contracts and a lot of cases where you deliver a contract, the calves might be underweight by a certain percent. I cannot tell you exactly how much but they are not up to their full weight so that costs you.

There are veterinarian expenses from attacks. Cattle with scars on are necessarily going to be less, they are going to take less price. Bruising of the knee is cut out of the packer. If you have bred all the horns off your cattle and now you have to breed cattle with horns so they can defend their calves. Those cattle would either have to be de-horned all the way which you get into humane treatment issues with the left wing. You end up not de-horning, and there is a lot of bruising in the truck. That is the kind of outcome, your packer will give you a lower price.

There are, just all kinds of issues. There is handling. They can become jumpy and nervous. That is dangerous, that is, appreciable means of harm. Carcass disposal, I just read last night a rancher in Michigan that is particularly henpecked by wolf predation more than its neighbors. Now they are coming after him on humane treatment issues because he did not clean up the carcasses of the cattle that the wolves killed – so he is being fined as if he is the perpetrator of his inhumane action.

There is a psychological trauma that is consistent with being victimized by acts of violence. It is an act of violence. Posttraumatic stress disorder in cattle and humans. There have been some anecdotes, studies on children in the Blue Range wolf reintroduction area who have had their pets literally torn to shreds in front of them. Had it not been for that pet being there, that child might have been taken, too. So it is the sense that affects them. The schools are responsible for the safety of the children so they are incurring added cost to ensure safety of their children.

You have got a situation where you are losing genetics. You may have to go to a different breed. The breeds take different price tags. A nice Angus, Black Angus would take your highest price if you are now to start breed horns back into your cattle, taking more price at market. So there are a lot of costs. Catron County did a study in 2011. Catron County is a little bit unique because ranching is part of their economic base, 17 out of the 20 counties, it is part of their economic base for the U of A researchers.

What they did is they have assigned a specialist to go investigate on predations and keep reports and to do studies. On 2011, they

did a study that showed 172 calves lost to wolf predation and what they included in their report was calves that were lost also in the production process so it includes predation and reduction in calf crops. Between 2007 and 2011, they lost 4,688 calves, results in the loss of 15 percent calf crop per year. It is unsustainable. Four ranchers already went out of business.

In the Fish and Wildlife story, it is completely different. Catron County's saying that their total direct estimated cost in 2010 was \$5 million. Fish and Wildlife is saying annually there are 1.3 cattle killed per Mexican wolf living in the wild and the total market value of predation losses since the beginning of the program in 1998 is just under a million dollars. That is about one fifth of what Catron County says they lost in just the last 10 years. Fish and Wildlife say there is an average of 62 predations per year compared to this Catron County study that said there is 1,172 a year. Again, real mismatch on numbers, on who is reporting the numbers.

Fish and Wildlife is saying that 58.4 percent of the entire cattle herd including dairies and feedlots is owned by 5 percent of the ranches. This is irrelevant to the economic importance of the number of small businesses that are. They are throwing in a lot of irrelevant information. Fish and Wildlife defines a small ranch as less than or equal to 52 head. Medium ranch is 150. Large ranch is 263. In our analysis, we looked at the SBA guideline of a small entity in this industry is less than \$750,000.00 revenues and then would be roughly around 750 calves sold a year but the statistics, the national agricultural statistics do not account for that level so we bumped it down to 500 so we decided small business itself less than 500 a year. That is dramatically different than what Fish and Wildlife is using in their analysis.

The SBA guidelines talk about significant impact. In the regulatory guide it says economic impact is not have to completely erase profit or be significant. The implementation of the rule might reduce the ability of the firm to make future capital investment thereby severely harming its competitive ability. Other measures may be used to illustrate, One of those was that it eliminates more than 10 percent of the business' profits. We used that significant

impact of 10 percent as our guideline. We looked at ranchers that would be significantly impacted by predation of one calf or two calves or five calves and determine that the vast majority of the ranchers, about 96 to 98 percent of all the ranches in the counties that are affected by this proposed rule are small entities by the SBA's definition.

If one calf is predated, a cattle operation with 10 calves would be significantly impacted. A cattle operation with 20 calves would be significantly impacted after two predations. It does not take a lot predation and most of the entities would fall into that area. A substantial number which I come up with what is a substantial number and looked at the fact that in the existing blue range wolf production area where they already have the wolves there since 1998, the 120 beef cattle ranches, 96 percent of 116 of them are small entities.

Seventy six percent would suffer greater than 10 percent loss within the first five predations. Of the 116 small ranches, 50 of them which is 42 percent have already suffered at least one death loss due to wolf predation. Originally the Fish and Wildlife, the original draft was that there would be no upper limit on wolf reintroductions. What we saw the initiative in the upper peninsula is they started out with the same recovery goal of 100 wolves. Now they have something like 700 wolves there and they filled up every available habitat, suitable habitat in the whole upper peninsula so they cannot translocate problem wolves because of nowhere to put them that is not already occupied. They are actually shooting wolves and a third of the wolf shooting is to protect human safety.

Last year I think they shot something like 79 wolves. We were seeing that as a possibility of happening here. Between the draft EIS and final EIS, the agency has negotiated with the Game and Fish Department. They say they are going to cap this at 350 wolves but our experience with Fish and Wildlife is they do not live up to their promises and they conceal numbers. They do not keep records. If they do not keep records, they can assume that they happened. Catron County has called the bluff on this in a

number of cases that was documented that the numbers are being deprecated.

There is a numbers scheme going on here and that is where we stand on the area. Is there anything else I did not cover?

Mary Darling: That is excellent. Is Jess Carey on the phone yet?

Bill Dunn: Jess, are you on there? Guess not.

Cindy Coping: Jess Carey is the Catron County wolf investigator. One thing I wanted to say, there is another cost in here. Since my PowerPoint's not compatible with the projector, I spared you the gory pictures but these wolves generally it appears to me, I have not had personal experience, I pay a lot of attention to it. The wolves attack an animal from the rear and then they eat the soft tissue, the anus, the reproductive organs, the udder and then they may go off and attack another animal.

They kill for sport. They do not necessarily eat everything they kill. What I wanted to show you was pictures of animals that were still standing without their back end eaten off. There is a video on YouTube where Jess Carey has a calf that is down calf and she is still breathing. She is in labored breathing. He picks up her leg and it is just a cavern inside and his comment was that I am only leaving her alive to document this. I am going put her down as soon as I am done turning off my camera.

So there is something that Dr. George Rule wrote that he showed me and he made a very good point. This is the first time in the history of mankind that the government has forced humans to violate the unwritten contract between shepherds and herdsman and his domestic livestock. Domestic livestock have been bred throughout the centuries. Their defenses had been [inaudible]. We bred them gentle cattle to keep our costs down. Now we have to start bringing in cattle but it seems like it is a, there is something morally wrong in the mind of a person who raises livestock that they cannot defend their livestock against the – so that is all I really have to say..

Mary Darling: Do you have that PowerPoint in a format that you could send that to Yvonne and to Kia?

Cindy Coping: I do.

Mary Darling: I think that would be helpful for their background information.

Yvonne Lee: I think some of the charts are already in the files that you sent me.

Mary Darling: In the Excel spreadsheet but she had some additional information so I think that would be good to get into the record. Richard, do you have some information that you want to provide at this point or would you like to wait?

Richard Searle: I think, I'll talk about the broader picture of where we are at as of right now. So as the SBA, you can get an understanding of where we are at and where we are going and where we possibly could use the signals from the SBA. I have been looking in this crystal ball for eight months and the picture keeps changing and I think the picture we have today is not the same picture that we had four months ago. As entities, we will be challenging the US Fish and Wildlife Service on the plans, as a NEPA challenge right now because we feel like they have made serious mistakes in this NEPA document.

One of the areas that deficiency is in the economic impact through the areas and I think Cindy got into the nitty gritty of it but basically US Fish and Wildlife were using national numbers and national and statewide averages and saying smaller areas, small counties will not have any impact. In all reality, one of our counties, you can take all of our ag production, whether it is crops or whether it is livestock and when you put it on a national basis, it is insignificant but for our state and for our local communities, it is very significant. It is anecdotal right now but there is mentions of Catron County and we know there are businesses, ranch businesses that have gone out of production because of this.

Not only does it reduce the local tax base but it affects other property values. When they put their property for sale, it does not bring the same price that it would have if they did not have this

predation going on or this risk. Just driving through Catron County who is taking the big brunt of the current wolf program, you are seeing restaurants close. You are seeing other businesses, guides, recreational are going out of business. It is all linked together so there is a lot of impact right now in the current area and the concern that the groups that are at this table today who are currently not impacted by the wolf is the concern that the US Fish and Wildlife Service is not taking into full impact or context what this impact will be to our areas as the wolf is expanded.

Yvonne Lee: Excuse me. I just want to make sure that Kia has been able to hear everything. Kia, were you able to hear all the comments so far?

Kia Dennis: Yes.

Richard Searle: I have never been known for being too quiet. As this challenge goes forward, we would like information from the SBA as to what assistance, you know, can we challenge a decision by US Fish and Wildlife with the Regulatory Flexibility Act? I mean is this something that we as entities can use on a legal fight? We understand the SBA doesn't do that but can entities use the RFA as a legal challenge besides our current process of challenging the NEPA process?

Kia Dennis: Yes. You would file a lawsuit and have more than just the RFA challenge in that suit but yes, it is a basis, the statute allowed for the, for private individuals to sue on the basis of an RFA violation.

Richard Searle: I guess I am thinking for the people at the table, Arizona and New Mexico Coalition of Counties is preparing a lawsuit at this time to be filed when the final decision is made and this will be a NEPA challenge.

Kia Dennis: I am sorry. Who is that that is filing?

Richard Searle: The Arizona and New Mexico Coalition of Counties will be filing a NEPA challenge and I am sure that the Center of Biological Diversity will be filing a NEPA challenge.

Bill Dunn: Not the same one –

Richard Searle: If you really think about it, we may have different goals but both groups are going to be challenges because neither one of us like the proposal that is coming out. The CPD is going to want to see more wolves in the bigger expanded area. We are wanting to see fewer wolves in a smaller area. Ultimately we are both going to be challenging US Fish and Wildlife and believe it or not, we will probably be both asking for the same thing is that this final decision be thrown out and that we go back and redo the process.

This is the time that also I think we could use the RFA to not only challenge the economic data that the US Fish and Wildlife had been using but it also might be an additional leverage to ask for, if nothing else more compensation because right now, the compensation that is being offered by the US Fish and Wildlife is insignificant. That is one reason businesses are going out of these ranches, these other businesses are going out of business. So there are multiple aspects that we would like to be able to use the RFA.

One of them is A, challenging the decisions for lack of proper information and also to require them if they are to bring this program on is higher compensation or adequate compensation to really fully adjust all the costs that are to the businesses and the communities for this wolf. Also while I have you, this challenge that the coalition will be filing, a lot of you NRCDs will be or can be listed as plaintiffs on this. I did not realize what additional costs are.

I think it does, we leave it up to the legal team as to who is going to be the plaintiffs. Every time you have a plaintiff that also adds costs to the lawsuit, when you have a lawyer that is charging you \$200.00 or \$300.00 an hour to follow-up on the loose ends. I would ask and this is basically coming from Cochise County, that the NRCDs allow their county representative to basically make the decisions for them in this lawsuit. That way our lawyers are not having to spend several hundred dollars following up with – NRCD as how you want to respond to an initiative on an issue.

I would ask that you have the Gila County, Tommie Martin will be available. Graham County, Drew John is available, Cochise

County myself. Pinal County right now you do not, are involved but you know, we will be glad to have Pinal counties' assistance in this, if you want to approach your supervisors.

Bill Dunn: We can. They got deeper pockets than any of the counties that is involved right now.

Richard Searle: This may be a single purpose reason for them to join. We would be more than glad to have their assistance in this but just to, as we move forward for the EIS challenge, this NEPA challenge, I would encourage you as NRCs to figure out who, you know, save all of us a bunch of money if you will allow your county representatives to basically make decisions for you as to how this lawsuit goes forward and keep you in the loop as it is going. Anything else, Mary?

Mary Darling: The important thing to me is as Richard mentioned, the EIS is flawed. Fish and Wildlife Service mentions a Regulatory Flexibility Act and that they should do the analysis but they do not do an analysis. Fish and Wildlife Service states there will be mitigation but they do not know where the funds will come from. What happens is Fish and Wildlife Service has a process for private property owners to obtain incidental permit, incidental tape permits when there is an endangered species on their property and they require mitigation before they will issue the permit. They require a contract, a legal document that guarantees no matter what that the funds are available for mitigation.

For them not to do that themselves is a one-sided way to implement the EIS, to put the burden on small businesses. The small businesses have to constantly mitigate, guarantee their mitigation, pay upfront, do it with a legal contract, be penalized including jail time if they do not mitigate. Yet Fish and Wildlife Service states in this EIS, that either congress will fund some mitigation or if they do not fund mitigation maybe a co-existence council or an environmental group or maybe somebody else will pick up the mitigation cost. They do not know. Yet the analysis also states that one of the reasons Fish and Wildlife Service can say there are no significant impacts is because of their mitigation measures which are not guaranteed.

So they rely on mitigation to reduce impact but they won't guarantee mitigation. Their track record, I believe Jess Carey is on the phone now, their track record has been pathetic and it gets back to what Cindy Coping was saying or what Richard Searle mentioned and there is a very strong feeling Fish and Wildlife Service that if you do not document an impact then not enough people will know it exists to worry about it. Jess has a lot of information about the lack of a documentation of impacts.

There is a system in Fish and Wildlife Service where Fish and Wildlife Service controls all the reporting. So you got the fox guarding the hen house. You have an agency that wants to protect what they call "genetically valuable wolves". So the genetically valuable wolf comes out and has a large number of depredations that had a rule that three strikes, you are out. They just did not report that wolf was the one depredating because they did not want that wolf taken off the ground.

So it is by omission false data. It is very prevalent in the agency and anybody who speaks up against this practice is really discourage from participating and Jess, if you are on the line, I hope you could expand on that. You told me about the process Fish and Wildlife has and it lacks credibility. Is that true?

Jess Carey:

I say yes, that is true and you know, it is, there is so many things that are wrong not only in this recovery program but this EIS and one thing you were talking about, issuing a permit for the removal of an animal. I read in there that you know, before they will issue a "permit" on a grazing permit, there is certain criteria has to be met first and that has to be met first and that is like 100 wolves in this new expanded area and a number of breeding pairs. So you know, I mean what's going happen is they are representing that they are going be issuing permits to remove a depredating wolf or a nuisance wolf, etc. but that does not kick in until certain criteria is met that they have setup and co-mingled in that EIS.

Another thing is speaking to US Fish and Wildlife Service John Oakley, he said that there would be no permits issued on private property but if you read in the EIS, it talks about private property

and issuing on non-government land. So what you have is the thing that could turn out this whole thing is where if you catch a wolf depredating or trying to kill your calf or your cow then they will have to issue you a permit. It is really unclear and the bottom line the wolf recovery people are going take this information and they are going construct their guidelines and their recovery and so on and so forth based off of what's been generated so far and it is also at their interpretation and that is the bad part. Does that make sense?

Mary Darling: Yes. Thank you, Jess. Any questions for Jess?

Cindy Coping: May I just make a comment? In the final EIS, even the depredations that Fish and Wildlife does recognize by their own admission, they gave a table with this number under a million dollars of all the depredations and then \$180.00 something for mitigation and if do the number, by their own admission, they isolated reduced number of depredations. They are paying 18.47 cents on the dollar compensation.

Jess Carey: I was just going say that I think that is page 55 chapter four, table 4-14, they are estimating over a period of time it is going be a loss of \$6,460,840.00. If you read through that thing and you talk about the small business people which equates to the small family ranchers, what's going happen? They are saying there is no significant impact long term but what it does say is this. Under page 53 in the EIS, it says maximum annual impact. We do not expect long term significant adverse economic effects on ranching livestock producers as a whole across the study area. They recognize that individual rancher livestock producers could sustain short term economic loss. The problem is the impacts are disproportional across the county or the recovery area.

But anyway, they are admitting that there is going be significant impact. What they are saying is it is only going be short term. I think that is actually a out and out lie because when they are talking about the next 13 years. If you look at the table on page 55 and you look at the economic impacts on ranching activity. If you look at the number of wolves, okay, right now we've got 46 wolves

in Catron County. We've got 99.9 percent of all the wolves in Catron County.

This year so far, we've had 41 depredation injuries that were confirmed and probable and if you look at this at this graph that they have here or this table, it gives a number of wolves and then it gives a number of depredations per wolf and unconfirmed but if you noticed, it climbs up and then it hits a number of 315 wolves and the losses they are stating that they are 412 and from 2027 on, the number of wolves remain the same and the number of depredations remain the same but you know, how can that be when you know that the wolves are going continue to expand.

They are going continue to grow and the more wolves you have, the more depredations you are going have. How can they say in year 13 that it is going level off and there is not going be any more significant impact which is totally ridiculous?

Richard Searle: It is going to be less if you have fewer cattle operations.

Jess Carey: Exactly.

Richard Searle: And cattle operations if you go out of business, you will have less depredations.

Margaret Byfield: I think just kind of put all this in perspective and really why I think this is important SBA really take a look a hard look at this is that as supervisor pointed out the economic analysis has been done from the state and regional level. Now what's really interesting about that, first up, NEPA requires the opposite. NEPA requires that it be done locally. They have already violated NEPA there but what is really interesting about that is they could study ground zero.

In other words, the current experimental population which they have 14 years of data, they could go in and study the economic impact on the existing experimental population and that would be an accurate analysis. That is what they should be doing because that is comparing apples to apples and they look to expanding it into other areas, they didn't do that. 49:00 In fact they deliberately

did not do that. That from my perspective is arbitrary and capricious on how they have done the full economic study. They deliberately ignored the impact to ground zero in order to broaden out to a regional analysis and when they do their cattle numbers, they do things like include dairy cattle and other types of cattle in their big number which is not in the area of impact for this experimental population.

So it is very deliberate, I think very calculated on how they have done their economic part of this. The other thing that I think is just important to understand from why cattle are so important, why they really should be analyzed in these depredations in particular should be analyzed more accurately. The cow is the rancher's paycheck, we might be used to drawing a salary from a company and that is our paycheck. For a rancher, it is the cow so when they start losing a cow to depredation, calf loss meaning their cattle aren't breeding because of harassment, it is significant.

Especially on a smaller ranching operation, those numbers really matter and it cuts right into their paycheck. The second part of that is when they are squeezed, so is the community. Any community that is a ranching-based community or an agriculture-based community really feels impact. First off there is generally very little leakage outside of the county or the general region from the ranching industry. In other words, they buy their fuel there. They buy their supplies there. Every dollar they make off that cow goes back into that community.

Then there is the human contribution. Your ranching industry is the infrastructure of the area. They are your search and rescue. They are your voluntary fire department. You know, they maintain their own roads for the most part, not always but for the most part, they do a lot of the maintenance that relieves a lot of expense off those counties and cities. They have very, very little impact on the community. They take very little from the community but they give back immensely.

So when you remove them, when you lose a rancher, you are losing more than just the dollar value. You are losing a major part of the infrastructure of that community. That is also part of the

social justice part. Also, when you do remove that dollar, that trickles down into cutting into hospital budgets, cutting into the fire district budget. All of these little special districts that are necessary in order to protect the health, safety, and welfare of the community, they all feel the crunch when one cow is taken.

Then you multiply that out to the numbers that we really are talking about. We are talking about major depredations and it becomes a very significant impact but there is a reason Fish and Wildlife Service does not look at it from that viewpoint because then they could not put in their environmental impact statement that there was no significant impact. That is the real injustice that has been done. I think one of the things that would be very useful for us is to learn from SBA what are some of the avenues that we could take.

A specific question, the statute requires that they do the Regulatory Flexibility analysis and they put it out for public review and comments. Of course they haven't done that analysis. They haven't done that study. What are the pressure points that we can use to either delay the finalization of the environmental impact statement until that is done or, and what can we do to force that study to be done?

Kia Dennis:

guess the quick answer is nothing until the final rule comes out and then you sue. One of the deficiencies in the RFA is that it provides for judicial remedy but nothing prior to that so based upon the law, if just the remedy would come at the point of final rule being issued. That is the sort of official. Now you could do what you have been doing and what we've been doing is pressuring them into, trying to pressure them into doing the analysis to basically see the error in their ways and go ahead and do the analysis. I will say that Fish and Wildlife as an agency that resist that sort of pressure to the extreme. I would be shocked and amazed. In six years of doing this, I have never seen them say you know what, you are right, we need to back up and do the analysis.

They always pursue it to litigation. That is unfortunate but I do not want to give you a false sense of the world that you are in. So that sort of, unfortunately the answer to that question. It does seem that

you are on the right track. I want to be clear because there is a lot of talk about the significant element of the RFA and I wanted to be clear as to what Fish and Wildlife services should be looking at when they see the determination of whether or not there is significant economic analysis on a substantial number of small businesses. You are correct in that they shouldn't be looking, they definitely should not be looking nationally at the impact.

But even, more than that, it is not necessarily the impact on the entire area that they need to be looking at. They need to focus on who the rule is going, or in this case it is experimental population, is going to affect. It is not just we are looking at all businesses and in the area that experimental population covered, that would be incorrect. I would say the only concern with the small businesses that are affected so those ranchers, for instance if there are a number of ranchers that are highly unlikely to be affected by this rule, they should not be included in the, if you think of it as a mathematical equation, they should not be included in the denominator.

They should not be included at all. They are not affected by the rules but only those that are affected so that is important to note because we do not want agencies inflating the number of affected persons that they are dividing that total number. Hopefully I am making sense but if not, please let me know. So that should be, they know that and I think someone mentioned that they purposely do certain things to obfuscate the actual costs but I wanted to be clear so that you all know what is required by our office. 57.44

Bill Dunn: Kia, we were successful, I think, reading the final and getting them at least to not count the feedlot cattle and the dairy cattle in Arizona on their final. They took those out for their denominator. Richard Searle has a question for you.

Richard Searle: From what you said about having to do the impact on the businesses that are actually affected, is that in the RFA as part of the act or is there any court cases supporting that requirement?

Kia Dennis: It is not in the act. If you read the act, it is 40 years old now. It doesn't go into detail but we have interpreted it that way and we

have, if you do not have it yet, I can send you our guide to federal agencies or it is on our website. You can go to our website and pull that down, it is public information. We've interpreted it that way and that has carried weight in the courts and several courts have looked at the issue and definitively said you cannot inflate the population. You are looking at the population that is –

Bill Dunn: Can you get us that link?

Kia Dennis: Our general webpage is www.sba.gov.

Bill Dunn: Yeah, we got it over here on this handout.

Kia Dennis: Then you can put the name of the document is The Guide to Government Agencies: How to Comply with the Regulatory Flexibility Act and not several couple hundred pages. It has the act itself, our interpretation and then the cases that interpret the RFA, all the cases, not just the ones related to your issue but any type that the court use as a basis for their findings.

Bill Dunn: I know you have been frustrated by the Fish and Wildlife Service in commenting and what you can do on listings but this is a different critter in that it is not required by the ESA. It is a non-essential experimental population that they are releasing and putting on the ground as a purely, for a lack of a better word, experimental basis. How does that figure into your, how you would pressure them or how you would suggest that we pressure them? 1.01.09

Kia Dennis: It really doesn't change anything. I am treating it the same way I would treat a critical habitat designation. So the different, we cannot by congressional statute be involved in listing decisions. Listing decisions have to be made totally on science without regard to economic but critical habitat designation are supposed to be based in part on the economics and so it is similar to that. It is not a listing. It is not a critical habitat designation but it is close to that so I am treating it in that way. I have for this experimental population to the attention of the desk officer over at OMB.

He was aware of it actually before I brought it to his attention so that is good. They are looking very closely at what Fish and Wildlife is going to do. I'll tell you they are not going to do anything or wouldn't do anything before the commentary closed. They give the agency the agency every opportunity to come to some agreeable decision without them getting involved.

Bill Dunn: Are you constricted by the comment period on how you can affect things?

Kia Dennis: No. I have been working with, talking with them already during inter-agency discussions. We write comment letters. That is sort of a last resort for us when all else has failed. With Fish and Wildlife it happens a little bit more often than with others. There is a possibility that might have happened, but I cannot guarantee. I am not the final decision maker on comment letters that would be our chief counsel.

Mary Darling: We are hoping that the SBA on this one would take action. This is more egregious than anything I have seen in my 30-year NEPA career.

Kia Dennis: I will definitely relay that information up to the management here.

Mary Darling: We appreciate it and so next, what strategies, Yvonne and Kia, should we pursue? Can you list several actions we can take?

Kia Dennis: If you haven't already, you should definitely file public comment. I think the comment period does not close until the 27th.

Mary Darling: Correct, the 27th.

Kia Dennis: So you should definitely file public comment and put as much economic data in your public comment on the, in the public docket as you can. That also reminded me, someone mentioned sending us, us being Yvonne and I, information. I definitely would continue to send information to me but sending information to me is not putting it on the public docket. You need to follow the directions in the federal register announcement for the experimental population.

Bill Dunn: I think that was just to assist you in interacting with –

Kia Dennis: I just want it to be clear. I did not want anyone to think that they send it to me and therefore it went to the public docket. It is very important that goes into public docket because we will tell you that the desk officers are the one that do read that and they tend to be swayed very much so by economic number. They are essentially an economic team so we understand the numbers so I always encourage to put that information on the docket.

Once the public comment period has closed, you might also want to contact the desk officer and ask for a meeting or I would ask for a meeting. He will not grant a meeting until the agency has had opportunity to go through the public comment letter and fashion their response in a draft form which then becomes available to the agency, interested agencies but I would call, once public comment period or email once the public comment period is closed so that the desk officer knows you are interested and you are interested in having that meeting at the appropriate time so that it doesn't, you know, you put a notice and it doesn't go past him because they do read quite a few rules and you do not want to get lost in the shuffle.

So that would definitely be the second stuff in it and once Fish and Wildlife services does send the rule to OMB and you setup a meeting, this meeting is called the 12866 meeting.

Bill Dunn: Would you say that again?

Kia Dennis: 12866. It is the shorthand for the Executive Order 12866 which establishes that the public can request these meetings. It is nothing fancy. It is half an hour with a desk officer to plead your case, to show him you can bring in the documentation, show him why they should care about this, why the numbers are wrong. They then do kind of their own investigation based on your numbers, have, fashion their own questions for Fish and Wildlife services, you know, why the numbers are different, where do you get your numbers from, try to kind of figure out whose numbers should be relied upon and I would say they can put, they have the ability to sort of put quite a bit of pressure on Fish and Wildlife Service or

any agency, not just Fish and Wildlife services. It can be used generally.

Bill Dunn: When would you do that, pronto or after the comment period or what?

Kia Dennis: Once the comment period is closed, they can, they will only meet with you once the final draft is at OMB.

Bill Dunn: So after record of decision then.

Kia Dennis: Yes, that is after OMB, after Fish and Wildlife Service has come to some conclusion then they should send it to OMB as a draft. OMB then reviews it and while there, OMB being reviewed, that is when OMB takes meeting with the public during their review.

Bill Dunn: Just to understand, it would be between the final EIS and the record of decision?

Kia Dennis: Yes. Once the comment period closes, in that time period before it goes final. You can also, you can keep track of when the rule gets to OMB by going to www.reginfo.gov and on their webpage, there is a link. I am pulling it up now so I can tell you –

Bill Dunn: We have got their webpage.

Kia Dennis: Regulation under EO 12866 review in the first box there under the chart and that gives you all the rules that come into OMB. You just keep an eye on that, get there and once it is there then you can give them a ring and say I am kind of interested in this rule. You won't have seen the final. They won't show you that but you go in and you explain based upon the proposed rule, what the problems are in your comment letter. Your argument is a lot stronger with OMB if you have made a comment. Why they should listen to you and change course –

Mary Darling: So Kia, my understanding is that this decision is on such a fast track that the record decision draft was published November 25th and the final decision could come as soon as December 27th.

Kia Dennis: I do not feel it is possible. I have never heard of, you cannot respond to comments on the day that the comment period closes.

Richard Searle: I do not think they intend to –

Kia Dennis: By law, to respond to comment so I cannot – you cannot say never. I mean I suppose it could be done quickly right now on the 27th but you know in theory, they'd work a 24-hour shift and turn it around in a week but I have never seen that happen.

Mary Darling: This is all because of the court date. They have to have everything done before January 15th of 2015.

Kia Dennis: Oh, I see. I am sorry. I guess I wasn't aware that there is a court date. That does actually change the calculus because OMB won't get involved then. If you are under a court order to have a final rule done by then?

Cindy Coping: Court order or court agreement?

Mary Darling: It is a stipulated agreement that nobody else was part of. It was made outside the court as a settlement.

Kia Dennis: I mean that is the problem that we've, needs congressional will to correct actually, that stipulated agreement. That is a different aside. It did not mention a court order. I am looking at it now. I just did a review for court order and I did not see that anywhere in the federal register but if we are in the world where it is a court order then you are already in the **[inaudible]** so what I just said is kind of a moot point now. You are under, they are obligated to do what the court has told them to do and if they have to have a final rule by 15th, then they are going come out with a final rule by the 15th unless granted an extension by court.

Mary Darling: Yes, because I have here on their website it says we will issue final record of decision no sooner than December 27th, 2014.

Kia Dennis: Right, so that means they won't do it before December 27th. They could do it on December 28th but if they are required to do it by

court order by the 15th, they'll do it pretty much on the 15th or thereabouts. They have to.

Bill Dunn: Doesn't that open them up to arbitrated capricious lawsuit?

Kia Dennis: Yes and the answer is yes, it does and then almost certainly if you do not bring suit then I can almost guarantee the Center for Biodiversity will bring suit with that same argument, how could you possibly in 15, you know, 17 days really review and thought about it, the court order, you know, you cannot, these stipulated agreements even though they are party to many of them are horrible ideas and so forth and so on but it does change the calculus because you are already in the world then of being in the judicious system.

Mary Darling: So we do not go to OMB for our –

Kia Dennis: OMB is going tell you there is nothing we can do. The court has ordered them to do this. They have to do the best they can within what the court has ordered them. I can almost guarantee you they'll be sued, somebody will sue, the court should not order me to do this this way and you go from there.

Bill Dunn: Wouldn't that be a strategically good thing to do is ask them and if they say no, there is no time, well then that is just another argument.

Kia Dennis: You should definitely, in your comments, you are setting up a record now. Your comments, you should say all of it. You should say you cannot possibly make this decision, you know, understanding that you are required to do it, it is ridiculous, you cannot be making it in a way that is not arbitrary and capricious. You setup the record, the problem is they have no choice. They have to do it. They've been ordered to do so granted they agreed to it but the fact remains it was stipulated. The court agreed to that stipulated order so they got to do it.

Mary Darling: Should we ask OMB for our 12866 meeting anyway just because we did not know?

- Kia Dennis: Now it won't go to OMB.
- Mary Darling: What if we get a no? Doesn't that help us in court if we get refused because of the settlement?
- Kia Dennis: If it goes to OMB which it probably won't but the time, then you should ask for the meeting and they will make sure you get it. It probably won't with the time constraints and you can talk to OMB about that but it won't necessarily help you in the court because the, it may not help you in the court. You can ask but the EO is an executive order, not a statute.
- Margaret Byfield: I was asking if the Council on Environmental Quality has to sign off on the EIS as well. Are they going to be restricted, too, regardless of what they say Fish and Wildlife can go ahead and issue their record of decision?
- Kia Dennis: I mean ultimately it is Fish and Wildlife unless CEQ is a member of the stipulated agreement which I do not, they usually aren't. Ultimately Fish and Wildlife, to comply with the order, that Fish and Wildlife would put pressure on CEQ to get their review done as soon as possible. It is possible that they'll, this is why I encourage you to put all this on the record in a comment letter as possible that they'll, when they get the comment, they'll say we cannot possibly do this by the court order deadline but ask the court for an extension. They may or may not get it but they may come to the conclusion that it is not feasible and not for potential litigation purposes, not strategically smart to not ask for an extension.
- The point being that it is a possibility that it might get an extension but I do not know. I am, when I say the possibility, it is possible for them to ask. I am not saying if they will but I have any inside knowledge whatsoever about what they are thinking about doing but it is pretty quick. It is the end of the commentary and when they have to turn this around.
- Bill Dunn: This may be out of your purview but what about equal access to justice arguments for both the districts and for those ranchers that are, they are releasing wolves on?
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Kia Dennis: I honestly do not, that would be out of my purview, you know, encourage you to speak to the, maybe the attorneys that you have working on the lawsuit.

Bill Dunn: Okay, is there anyone in the, in federal government that advocates for that, that you know of?

Kia Dennis: I do not know. I'll ask some of my colleagues and see if I can come up with a name or a contact for you. I honestly do not know off the top of my head.

Mary Darling: So what else can we do?

Kia Dennis: At this point, I have kind of exhausted my arsenal. I would definitely write those comment letters. You might even, you need they need a request on extension, they need more time to fully become aware of all the different issues involved here. We are a little bit in the box with the court order deadline.

Mary Darling: That is what Fish and Wildlife Service told me. I received a comment letter yesterday back on my request for a time extension. They said it is out of their hands because of the court order.

Kia Dennis: Well, I mean that is true to some extent. They can ask if they feel that they need more time. It is no guarantee they can get it but they can always ask for more time from the court but it is to some extent now out of their hands because they'd been ordered to do something.

Bill Dunn: Now in the stipulated agreement, I read it and it says that either party can ask for an extension and it specifically says for administrative procedures act, problems.

Kia Dennis: This could fall under that but then you'd be getting Fish and Wildlife Service to admit to administrative procedures act problem. So that would be different. Any party though could ask not just for administrative procedure act problem, they can ask for an extension from the court if they cannot contact a way. I think it is still worthwhile to put in your comment letter, put it on the

record that you have been spending more time and they should ask for an extension. It cannot hurt. If they say no, they say no. You do not lose anything.

Bill Dunn: Okay.

Margaret Byfield: Is anything that congress can do that [inaudible][01:22:13] that really include them from pulling funds or doing anything like that.

Kia Dennis: No, I mean congress, the lawsuit doesn't preclude any events from doing anything congress is you know, ultimately the last word because they could rewrite a whole statute and do away with their ability to do this and then the court would say well, it is moot now. Whatever you say before doesn't matter so congress is absolutely the last word and it certainly, again doesn't hurt to contact the congress person. Just in the time that we are in right now, everyone knows the political climate. We are in the middle of a shift from one congress to a new congress. I do not know that the likelihood of anything coming of that but you are certainly always able and it never hurts to contact your congressman and relay issues.

Margaret Byfield: Years ago, there was an issue and the EIS was, I think it was completed or almost completed and the agency went for more funding to complete it and then the appropriations committee, the congressman who had been informed about this stepped up and asked if they had completed their Regulatory Flexibility Analysis and they said well, no, that would take us another year and he said we will see you in another year. They killed the project but I do not know with the lawsuit is that –

Kia Dennis: The lawsuit, they are two different things. The legislature is a separate branch and always has the right to do, to work its will and the court, if they clearly say you know, are not going provide funding or this is not going happen then that is, you know, the president, they put a bill through and the president signed it and that is the law of the land and the courts are bound by that. Yes, the congress could do something if they chose to do that.

Margaret Byfield: That is the operative word, if they chose to do.

Kia Dennis: Right and that is why I did not mention too much on that. I do not want to give false hopes.

Margaret Byfield: Exactly.

Bill Dunn: Are there claims of any kind, regulatory claims that we can bring to you that will help you or help the small business or the local government?

Mary Darling: To further explain that Kia, we have some –

Kia Dennis: Did I understand it? I cannot hear Mary. I heard the first, the gentleman.

Bill Dunn: She was saying that there are ranchers that have gone out of business because of what already happened in this non-essential rule and now they are expanding it.

Mary Darling: They have filed regulatory takings, paperwork.

Kia Dennis: Yes. For what's happening now under the current experimental population, you can reach out to the SBA ombudsman. We are not the enforcement arm but the ombudsman is an enforcement arm. Again, they cannot force Fish and Wildlife into not be something but they are, the advocates want a rule in place so the current rule is already impacting small businesses and they would be the person that you could talk to and I can send my contacts there is –

Yvonne Lee: I was going mention that, Kia. I'll give them the contact because I was going mention Brian's office to help the ranchers who are going out of business because that would fit into the ombudsman's office so I'll give them the contact.

Kia Dennis: I was going say I could send it to Bill but if you have it then that is great.

Bill Dunn: Margaret, do you have anything else?

Yvonne Lee: If I could just extend on the national ombudsman's office that Kia mentioned. The Office the National Ombudsman is also a separate entity within SBA. Their job is similar to us whereas we work on the proposed regulations, they work on the regulations that are already in place and if those regulations that actually negatively impacted specific businesses, those businesses can contact the national ombudsman who is Brian Castro.

His office will follow up on the complaint to the specific agency so I will give you his contact. In fact, he will be in Arizona next year with advocacy. We are doing another public event so definitely he needs to come and meet with you guys.

Richard Searle: There was a claim that went to the ombudsman of New Mexico several years ago that we basically gave to the gentleman from Phoenix.

Yvonne Lee: That one.

Richard Searle: And it would be nice.

Yvonne Lee: Okay, I need to – both the chief council and the national ombudsman, they, like my boss, he is appointed by the president so the case that you mentioned, I also kind of copy from Mary, that happened about 12 years ago I think so that was a different national ombudsman. I do not know what you can do but the small businesses, they do have a right to file the complaint and the national ombudsman has a responsibility to follow up with the investigation of those complaints.

So I do know Mr. Castro works very closely with the Office of Advocacy and every case that we refer, his office has follow-up on the investigation.

Bill Dunn: What are the possible outcomes of those investigations?

Yvonne Lee: No one knows because it is between the business and the national ombudsman so we are not entitled to know the result unless the business told Mr. Castro that it is okay to share the information with us. So once they file, we do not know what the outcome is.

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- Bill Dunn: It is not subject to FOIA then.
- Yvonne Lee: No, this is private matter.
- Kia Dennis: Each – the problem with ombudsman is it is done individually by the accepted individual so that is not subject to FOIA and we do not get that information unless the business agreed to make us privy to the outcome. I would just give you, also I want to give you the name of my contact here in the national ombudsman office and I'll send her contact. She is very, very good following up and very persistent with these claims so I would send that to Bill so he can pass the information on.
- Cindy Coping: Is there a right way and a wrong way to go about filing? Is there a procedure that a person should follow, how do we find out what that procedure is?
- Yvonne Lee: The ombudsman you'd have to file online. You go to the website and I think Mary can try it now, is the SBA National Ombudsman. They have a form that you can fill out and under the form there is a box that you can check and say I do not want my name to be released or what have you but usually the office will tell you that tends to slow down the communication because then the agency really doesn't have to, put a top priority. After you filled out the form, the ombudsman's office will assign an investigator to follow up with you because you have to list down why you are filing the specific incident like for instance the rancher, he or she went out of business specifically because of how many cows died or whatever it is that has to be specific then his office will contact the relevant agency and say there was this case or whatever, whatever day and we like to, what would you, whatever it is then it is between the ombudsman's office then the relevant agency to work out the facts.
- Usually the ombudsman will contact the petitioner, the business to say this is what we heard back from Fish and Wildlife so that is how they process but again –
- Kia Dennis: I would just add one thing about the ombudsman's office. Once you make a claim, they are going send a letter with the relevant
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information and statutes that are you know, implicated and say here's the claim, here's the problem, what you know, what say you and the agency is required to respond to that so and they will push back. The agency said well, they are wrong and they do not give any backup or any support. The ombudsman will push back and say well, whichever then, which proof, show me why are they wrong so they can be a very strong advocate for you because the agency must respond to them.

Bill Dunn: It sounds like a way to build record, too.

Yvonne Lee: Also the ombudsman issues an annual report on regulatory compliance of every agency so that report goes to congress, and they usually rate them by the way they respond to complaints and inquiries and what have you so some agencies, they can go from a D to an A just because they are working very closely with you know, with response to small business concerns so they are a really good partner to reach out to especially for the ranchers who have documented losses because of a particular regulation.

Mary Darling: So we can get Fish and Wildlife Service an F minus?

Kia Dennis: Again, Fish and Wildlife Service is a little different. We do the same thing every year. I give them does not meet expectation. I wouldn't get my hopes that just because the report comes out publicly that they are not doing what they are supposed to, that that is going force them to change their ways.

Jess Carey: I just wanted to mention here that you know, there is been some ranching families in Catron County that has filed, taking implication assessment under the president's Executive Order 12630 and let's see, we got one here, two, three, four taking implications that were filed and all of them were rejected on these family ranches. All of them are rejected and I do not know how they could do that. Just you know, arbitrarily say that you know, hey, you know, we are not even going look at it.

Kia Dennis: I do not know. My guess is that it is not a direct taking by the federal government. The government isn't taking property to use it for public purposes.

Jess Carey: Right.

Kia Dennis: But I see your argument but I am assuming that is what they are saying in the first reason so why it is not a taking –

Jess Carey: These people lost their ranches due to wolf depredations. These wolves are you know, they do not belong to the state. They do not belong to the public. The federal rules, the federal regulate it. They prosecute people for illegal taking so on and so forth and they will not become you know, basically property of the state until the US Fish and Wildlife Service turns them over for state management. So these are federal wolves.

Francie Meyer: I am a supervisor with the Winkelman NRCD and I would like to go back please to this process of filing a complaint with the ombudsman. I am failing to understand what good that would do for an individual if an individual producer, rancher, I call it producer, should file a complaint and then it is up to the agency to, we will say here, the Fish and Wildlife Service to respond on such a fail list would, knowing exactly how their response would be, I mean they say things that are patently false and get away with it. What, if you know, they have their ways of refuting your claims then what happens? I mean really what's the process after that?

I can see building a case, that information being useful in building the case but is there any other usefulness for that because the individual is really victimized in this whole process. There is a lot of work, expense involved and being that poor rancher who is been victimized and it is hard to see the benefit of that, I mean we are very fatalistic about it. I can understand that feeling but what would it be, added benefit be for a producer to file a complaint with the ombudsman?

Yvonne Lee: If I could just –

Kia Dennis: If the ombudsman doesn't process, doesn't end in a satisfactory agreement then the next step would have to be to sue. The idea behind the ombudsman's office is to not get to that step, to save the public money on issues where problems can be solved hopefully

between, with a little bit of intervention from the ombudsman but if there is no satisfactory outcome through that process then the next step would be to sue.

Yvonne Lee: If I may just share a previous experience.

Yvonne Lee: Our office helped about 20 food importers recently to file complaints before the national ombudsman. It was after the years of their frustrated experience trying to relay the regulatory frustrations with another federal agency because federal agencies are really massive and they never heard back from them basically, just went into a dark hole. After working with the national ombudsman, each one of them filed a form which is very simple. You can just download it. You just have to document whatever you have and I assure you, this national ombudsman, his office looks at every one of the forms, the petitions and again as Kia said, they do not have the power to force other agencies to do anything but the very fact that they can go on your behalf to these agencies and say hey, I received this regulatory complaint, here are the facts, you know, take a look at it.

Whether they respond or not, it adds to your voice and in these particular 20 food importers, every one of them got a written response that they, for the last 15 years had never gotten a response so even though the particular cases were not resolved to their liking but the fact that they knew that the agency now know what the problems are and more importantly now they have a direct communication between the Washington person and the food importers.

So it took a long time for advocacy to encourage these folks to go to the ombudsman but you know, as Kia said, we cannot guarantee success because we do not have that power to tell people exactly what they need to do but we really believe that if your voice is being amplified by one or two other people, it gets heard louder instead of no one hears you. So again the form is really simple to fill out. It takes like 10 minutes just to send it in.

Kia Dennis: I would say that I am aware of successes. Again, I am only privy to the outcomes that the individuals will allow to be known to be.

I do not want to give the impression that the ombudsman's office is not successful. I am privy to many of the successes that they have had and businesses have come away quite happy with the big decisions that the agency has made after the ombudsman has stepped in so it is not, again not guaranteeing that any outcome for anyone but it is not the case that they are not effective.

Mary Darling: Are there any endangered species cases where they have been effective? I know there is a big manatee case years ago that involved the SBA and regulatory flexibility.

Kia Dennis: I am not aware of any critical, it would be critical habitat designation and I am not aware of any critical habitat designations that make it to the ombudsman's office. Critical habitat and ESA have their own, some system setup in that they are the section seven complication. So generally issues get resolved there and what doesn't get resolved there usually goes to court so it doesn't mean that there aren't any. I would be surprised however, just given the nature of the ESA as the ombudsman gets many of the complaints.

Bill Dunn: We have here Zak Royse from Rep. Kirkpatrick's office who up until now the wolves have been holy in her district. Is there anything that you can say to him that he could take to the representative that might, I do not know what committee she is on.

Zak Royse: OOC when they get re-assigned, right now transportation infrastructure.

Kia Dennis: Well, I would be happy to have a conversation with him at some other point. We have to be a little bit careful about congressional contacts that we are forbidden from lobbying and so we would have to setup something and have our congressional, our legislative attorney on the line for that, too.

Bill Dunn: Okay. Anybody got anything else?

Rachel Thomas: What if rancher A filed a complaint, a claim and then goes to Fish and Wildlife then there are chance that Fish and Wildlife comes down on that rancher.

Kia Dennis: Are you talking about filing an ombudsman claim? You can file anonymously. The ombudsman will know who you are but they will not tell Fish and Wildlife your name.

Yvonne Lee: Because you have a right to choose to list your name or have the ombudsman forward your name. The problem is they need to tell the Fish and Wildlife the specific case so either way they will know what ranch they are but the ombudsman has always told the petitioners that if there is any kind of retribution, let them know because –

Kia Dennis: To the extent they can now try to, they won't mention your name as they try to forward the complaint without any identifying information to the extent they can. Sometimes the case, he cannot make the complaint without letting Fish and Wildlife know who the person is. Even if you leave out the name and address, I mean they'll be able to figure it out but to the extent that it is possible, they will protect your identity.

Fred Davis: This is kind of abstract from SBA but I recently read about a congressional investigation in the Fish and Wildlife. There is an ombudsman from Washington who did quite a bit of stuff investigating them and found out they are not using peer reviewed science, all kinds of stuff. My question is do they have the power to do something? There is this committee that investigated US Fish and Wildlife, have any power, any regulatory power over them or do they have to go back to the entire congress?

Kia Dennis: I am not familiar with the committee so I do not, I cannot really answer that.

Bill Dunn: Doc Hastings, ESA Natural Resource Committee.

Kia Dennis: So now the oversight committee for that agency and they have oversight powers. They can write legislation and influence budget for the agency.

Richard Searle: It is a very scathing report on their behavior.

Kia Dennis: Was this a recent report?

Bill Dunn: Yes. Just recently there is an article here posted on December 16th about it so it just came out just for that apparently, that is two days ago. I am trying to see the name of it but it is under the house committee, Doc Hastings.

Kia Dennis: I'll find it.

Bill Dunn: Yeah, sure.

Kia Dennis: Thank you.

Bill Dunn: It is called Under the Microscope: An Examination of Questionable Science and Lack of Independent Peer Review in Endangered Species at Listing Decisions, house committee on natural resources. Anybody got anything else? I guess we want to thank you for coming and meeting with us. I guess we've got some work to do on this regulatory flexibility act, see how we can help ourselves and we may be contacting you some more.

Kia Dennis: Absolutely, anytime.

Bill Dunn: Okay.

Mary Darling: So Kia, just one other quick thing and that is for everybody in the room, what you told me was the more detailed the economic data, the more facts you have, the better. Is that correct?

Kia Dennis: Absolutely.

Mary Darling: Anything else like any other advice?

Kia Dennis: Numbers – as much economic data, number, concrete that you can provide would be helpful. What you want to do is show, you are basically unfortunately doing the analysis that Fish and Wildlife Service should have done to the extent that you can. That is really, and just show that they are incorrect. Another way to do that is to really have the numbers.

- Mary Darling: We have them.
- Walt Meyer: Some of the ranchers in New Mexico have been on those ranches for years. Some of them go back 100 years or so. On your economic analysis, how would you evaluate all the years' investment over that time period? How would you analyze that?
- Bill Dunn: Many generations.
- Walk Meyer: Many generations.
- Kia Dennis: Right. You know, I do not know and I am sure an economist probably could do, would be better person to ask that question to. They may know how to do that, how to show that. It seems intuitive to me that there is some value to that but I do not know how to go about showing that other than to say it in a narrative, showing it numbers-wise other than just to say in narratively.
- Fred Davis: Isn't that advantageous to repeat someone else's economic data in your comment or just report –
- Kia Dennis: **Absolutely. I should be clear. It is advantageous for everybody to write their own comment letter with their own economic information as well as any economic information, other economic information that they have access to even if it is the same information, the same thing's being said in the comment letter. In this case, it is volume. You want to show that there are scores of small businesses that are going be affected and it is better to have multiple comment letters saying the same thing than to have one with 30 signatories.**
- Francie Meyer: What about, my husband and I ranch on our own historic family ranch in Pinal County, Arizona and what about, we've never been impacted by wolves but if we were, I mean is there any value to estimating what the impact of one, two, three depredations on our
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cattle by future wolves would be? Is there any credibility to that kind of thing?

Kia Dennis: Absolutely. Comment letters should come from people who are currently being affected, who anticipate an increase and economic, who anticipate that they are going to be affected even further and then it should also come from those who've never been affected but now believe that they are going to be affected or could be affected but increase in population and that is very important. I am glad the question was asked. It is very important because that is the incremental increase there.

Those who have never been affected but now believe that they are going to be as important, it is not more important than those who are currently affected and not going to be any affected further.

Jess Carey: On that question there, I think it is very vital that all the people in areas that is going to be included in this wolf expansion document their historic losses prior, before wolves are present and that way you can compare them to after the wolves show up and our findings over here are that the losses have increased significantly compared to historic losses.

Kia Dennis: That information is very important and especially to the extent that it contradicts EPA, I am sorry, Fish and Wildlife services' projections in the proposal.

Bill Dunn: Okay, anyone else got anything? Well, thank you for joining us. If anyone else has anything, I guess we will adjourn. Can I have a motion to adjourn?

Yvonne Lee: I just want to thank Bill and Mary for inviting Advocacy to hear your concerns. Bill was kind enough to drive me around yesterday to look at the areas and I want to thank you for taking the time to join us, too but as our chief counsel, Dr. **Sargen** said, your voice is very, very important to the work of advocacy and we just want to thank you for taking the time to come out in the rain but we do not just want to show up once and you do not see us again and I hope that we will continue to work together. I know that there are a lot of other environmental concerns so we just want to maintain

contact with you and again, thank you very much for taking the time out and Kia, if you have any final words to say.

Kia Dennis: No, I just want to second Yvonne's thanks and encourage you to write those comment letters and to feel free to contact me if you have any further questions or thoughts or if anything should come up.

Bill Dunn: Kia, will you be writing comments on this action?

Kia Dennis: Yeah, I mean as I mentioned, I am not the final authority on when the comments are published or not.

Bill Dunn: Okay, can we provide you any information?

Kia Dennis: Yes, continue to, I know Mary sent me some information. Please continue to send me the information and rest assure that whether or not the final decision is made to publish a public comment letter, we are in contact with Fish and Wildlife Service and OMB about this issue and we will continue to advocate on your behalf and I will keep you in the loop to extent that I can share information with you, I would do that.

Fred Davis: Move to Adjourn.

Bill Dunn: Meeting adjourned.
