



ENDANGERED SPECIES LAW AND POLICY

Gray Wolf Listing Under California Endangered Species Act Upheld in California Superior Court

By Crescent Cheng on January 30, 2019

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On January 28, 2019, the Superior Court for San Diego County upheld the California Fish and Game Commission's ("Commission") 2015 decision to list the gray wolf (*canis lupus*) under the California Endangered Species Act ("CESA"). (*Cal. Cattlemen's Assn. v. Cal. Fish & Game Com.* (Super. Ct. San Diego County, 2019, No. 37-2017-00003866-CU-MC-CTL).)

CESA defines an "endangered species" as "a native species or subspecies of bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease." (Cal. Fish & G. Code, § 2062.)

According to the administrative record, gray wolves historically inhabited most of the United States, including much of California, until they were extirpated from California almost 100 years ago. In December 2011, a lone gray wolf known as OR-7 dispersed from northeastern Oregon's gray wolf population and was observed crossing the Oregon-California border in both directions multiple times. The California Department of Fish and Wildlife ("Department") projected that gray wolves from Oregon might attempt to establish a breeding population in California in the



foreseeable future, but recommended to the Commission that the intermittent presence of an individual gray wolf in California did not warrant listing under CESA. After the Department's recommendation, the Commission received evidence that OR-7 was traveling with a female mate and at least two gray wolf pups on the California-Oregon border, and that it was highly likely they had been traveling together within California. As we reported here, the Commission rejected the Department's recommendation, and voted to list the gray wolf under CESA.

United States Fish and Wildlife Service photo of gray wolf OR-7

Agriculture and ranching groups (California Farm Bureau Federation and California Cattlemen's Association, respectively) challenged the listing decision on the basis that the gray wolf did not meet the criteria for listing set forth in section 2062; specifically, the groups argued that the listing was improperly based on the presence of a non-native subspecies of gray wolf, that the intermittent presence of a single wolf did not warrant a finding that the gray wolf's range included California, and that the gray wolf was not at risk of extinction throughout its entire range, which extended beyond California. The court disagreed, holding that section 2062 permits the listing of native *species* in addition to native *subspecies*, and that furthermore, the Commission's scientific finding that OR-7 possessed some genetic markers of a native California subspecies (*canis lupus nubilus*) was entitled to deference. The court also held that the Commission could reasonably find that listing was necessary to protect the gray wolf from extinction in California based on the intermittent presence of OR-7, the female gray wolf, and the wolf pups, along with the possibility that a breeding population might be established in California in the foreseeable future. Finally, the court followed the California Third District Court of Appeal's holding in *California Forestry Association v. California Fish & Game Commission* (2007) 156 Cal.App.4th 1535, 1540, that the term "range" as used in section 2062 refers to a species' California range, not its total range, and therefore the gray wolf was eligible for listing based on the risk of extinction within California.