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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN DIEGO  
11

12 CALIFORNIA CATTLEMEN'S ASSOCIATION )  
and CALIFORNIA FARM BUREAU )  
13 FEDERATION, )  
14 Petitioners and Plaintiffs, )  
15 v. )  
16 CALIFORNIA FISH AND GAME )  
COMMISSION, )  
17 Respondent and Defendant. )  
18

No. \_\_\_\_\_

**VERIFIED PETITION  
FOR PEREMPTORY  
WRIT OF MANDATE  
AND COMPLAINT FOR  
DECLARATORY RELIEF  
(CODE CIV. PROC.  
§§ 1060, 1085, 1094.5;  
GOV'T CODE § 11350(a))**

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28



**PARTIES**

**Petitioners & Plaintiffs**

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2  
3 1. Petitioner and Plaintiff California Cattlemen’s Association is a non-profit  
4 trade organization representing California’s ranchers and beef producers in  
5 legislative, regulatory, and judicial matters. The Association has 34 county affiliates  
6 and approximately 2,400 members, including more than 1,700 cattle producers. The  
7 Association’s mission is to support and protect ranching throughout the state from a  
8 variety of threats, including overreaching environmental regulation.

9 2. Petitioner and Plaintiff California Farm Bureau Federation is a  
10 non-governmental, non-profit, voluntary membership California corporation. Its  
11 principal mission is to protect and promote agricultural interests, including those of  
12 ranchers and others in the livestock industry, throughout California. Its mission also  
13 includes the search for solutions to the problems of the farm, the farm home, and the  
14 rural community. The Farm Bureau is California’s largest farm organization,  
15 comprised of 53 county Farm Bureaus currently representing more than 48,000  
16 agricultural, associate, and collegiate members in 56 counties. The Farm Bureau  
17 strives to protect and improve the ability of farmers and ranchers engaged in  
18 production agriculture to provide a reliable supply of food and fiber through  
19 responsible stewardship of California’s resources.

20 3. The Cattlemen and the Farm Bureau participated in all stages of the  
21 administrative process leading up to the gray wolf’s listing, submitting several  
22 comments. See Exhibit 1, which is a true and correct copy of the Letter of Margo  
23 Parks, Associate Director of Government Relations, California Cattlemen’s  
24 Association, to Jim Kellog, President, California Fish and Game Commission (not  
25 dated), and which is hereby incorporated fully herein by reference; Exhibit 2, which  
26 is a true and correct copy of the Letter of Jack L. Rice, Office of the General Counsel,  
27 California Farm Bureau Federation, to Jim Kellogg, President, California Fish and  
28 Game Commission (Sept. 21, 2012), and which is hereby incorporated fully herein by

1 reference; Exhibit 3, which is a true and correct copy of the Letter of Noelle G.  
2 Cremers, Director, Natural Resources and Commodities, California Farm Bureau  
3 Federation, *et al.*, to Eric Loft, Department of Fish and Wildlife (May 6, 2013), and  
4 which is hereby incorporated fully herein by reference; Exhibit 4, which is a true and  
5 correct copy of the Letter of Noelle G. Cremers, Director, Natural Resources and  
6 Commodities, California Farm Bureau Federation, to Michael Sutton, President,  
7 California Fish and Game Commission (Apr. 15, 2014), and which is hereby  
8 incorporated fully herein by reference; Exhibit 5, which is a true and correct copy of  
9 the Letter of Kirk Wilbur, Director of Government Relations, California Cattlemen's  
10 Association, to Michael Sutton, President, California Fish and Game Commission  
11 (Apr. 16, 2014), and which is hereby incorporated fully herein by reference; Exhibit 6,  
12 which is a true and correct copy of the Letter of Kirk Wilbur, Director of Government  
13 Relations, California Cattlemen's Association, to Michael Sutton, President,  
14 California Fish and Game Commission (June 4, 2014), and which is hereby  
15 incorporated fully herein by reference; Exhibit 7, which is a true and correct copy of  
16 the Letter of Kirk Wilbur, Director of Government Relations, California Cattlemen's  
17 Association, *et al.*, to Michael Sutton, President, California Fish and Game  
18 Commission (Oct. 6, 2014), and which is hereby incorporated fully herein by  
19 reference; Exhibit 8, which is a true and correct copy of the Letter of Kirk Wilbur,  
20 Director of Government Relations, California Cattlemen's Association, *et al.*, to Jack  
21 Baylis, President, California Fish and Game Commission (Nov. 24, 2015), and which  
22 is hereby incorporated fully herein by reference; and Exhibit 9, which is a true and  
23 correct copy of the Letter of Kirk Wilbur, Director of Government Relations,  
24 California Cattlemen's Association, *et al.*, to Jack Baylis, President, California Fish  
25 and Game Commission (Dec. 8, 2015), and which is hereby incorporated fully herein  
26 by reference.

27 4. The Cattlemen, the Farm Bureau, and their members are concerned  
28 about the impact that the gray wolf's presence in this state, coupled with its listing,

1 | will have on members' livestock. The impact to livestock encompasses the direct  
2 | effects of inadequately managed wolves eating bulls, cows, calves, and other  
3 | domesticated animals. The impact also includes the indirect effects attributable to  
4 | the mere presence of wolves. Such presence creates chronic stress in livestock, which  
5 | increases their susceptibility to disease and reduces the quality of their meat. *See*  
6 | Exh. 1 at 1; Exh. 5 at 3. *See also* Cal. Dep't of Fish & Wildlife, Conservation Plan for  
7 | Gray Wolves in California, Part I, at 11 (Dec. 2016) (Wolf Conservation Plan)  
8 | (“[T]here is a reasonable concern over predictable depredation of domestic animals,  
9 | primarily livestock, by wolves as the population expands.”); *id.* Part II, at 106 (“[T]he  
10 | economic impacts of gray wolves to individual [livestock] producers could be  
11 | significant.”).

12 |         5. The Cattlemen and the Farm Bureau contend that there are better ways  
13 | than through the gray wolf's listing to protect the wolf while preserving the  
14 | livelihoods of California ranchers. The Cattlemen and the Farm Bureau have been  
15 | active participants in the Stakeholder Working Group, established by the California  
16 | Department of Fish and Wildlife to produce a California Wolf Management Plan. *See*  
17 | Exh. 4 at 3; Exh. 5 at 1-2. But the wolf's listing will undercut any value such a plan  
18 | might otherwise have by substantially limiting the Department's management  
19 | discretion and foreclosing various livestock protection measures that the Association's  
20 | and the Farm Bureau's members might otherwise pursue. *See* Exh. 4 at 3; Exh. 5 at  
21 | 2; Exh. 7 at 7. For example, prior to the listing, the wolf was considered a nongame  
22 | mammal, such that it could be managed in a way that minimizes injury to livestock  
23 | and other property. *See generally* Fish & Game Code §§ 4150, 4152. In contrast, after  
24 | the listing, such action is generally prohibited, *see id.* § 2080, and it is not clear  
25 | whether any meaningful depredation protection ever will be available, *see* Wolf  
26 | Conservation Plan, Part I, *supra*, at 25 (“Additional statutory authority will likely be  
27 | necessary to provide mechanisms for resolving depredation by wolves on livestock.”);  
28 | Cal. Dep't of Fish & Wildlife, Meeting Report, Stakeholder Working Group, Meeting

1 on Wolves in California 7 (Sept. 9, 2014) (“We do not have experience with taking  
2 a . . . listed species for public safety or for private property damage . . .”).  
3 Exacerbating these management difficulties is the fact that “recommended” non-  
4 lethal management techniques generally are ineffective over the long term. *See* Cal.  
5 Dep’t of Fish & Wildlife, Meeting Report, Stakeholder Working Group, Meeting on  
6 Wolves in California 23 (Dec. 18, 2014) (observing that fladry, *i.e.*, “a line of rope from  
7 which is suspended strips of fabric or colored flags that will flap in a breeze,” is “not  
8 intended for use over long periods of time in the same location because wolves may  
9 become habituated, which will reduce its effectiveness”). And some management  
10 measures are flatly prohibited. *See* Cal. Dep’t of Fish & Wildlife, Meeting Report,  
11 Stakeholder Working Group, Meeting on Wolves in California 9 (June 25, 2014)  
12 (noting that a listing makes “chasing down a wolf or interfering with a  
13 den . . . definitely problematic”).

14 6. Thus, the members of the Cattlemen and the Farm Bureau are  
15 beneficially interested in the gray wolf listing’s legality. The Cattlemen and the Farm  
16 Bureau are well positioned to represent these members’ interests, in light of the  
17 organizations’ missions to protect and enhance the California livestock industry.  
18 Because of the organizations’ close involvement in the administrative process leading  
19 up to the wolf’s listing, and given the equitable relief that they seek, the direct  
20 participation of the organizations’ members in this lawsuit is unnecessary.

21 7. As set forth herein, the Commission has violated its important public  
22 duty to list only those species legally eligible for listing under the California  
23 Endangered Species Act. Without this action of the Cattlemen and the Farm Bureau,  
24 other persons beneficially interested in the legality of the gray wolf’s listing would be  
25 unable to vindicate that interest, because of their inability to comment adequately on  
26 the listing, as well as the burden of litigation’s time and cost. The Cattlemen and the  
27 Farm Bureau are ably positioned to represent the public interest in this action, given  
28 their long-standing objections to the listing and its development. Finally, the

1 organizations' lawsuit will confer a broad and important benefit on the public and will  
2 inure to the public interest by establishing important limitations on the Commission's  
3 listing power that in turn safeguard the public from regulatory overreach. For the  
4 same reasons, the Cattlemen and the Farm Bureau are ably positioned to represent  
5 the public interest in ensuring that the Commission discharge its responsibilities  
6 under the Act in a legal manner.

### 7 **Respondent and Defendant**

8 8. The California Fish and Game Commission is an agency of the state  
9 established by the California Constitution. *See* Cal. Const. art. IV, § 20(b). The  
10 Legislature has delegated to the Commission the power, among other things, to  
11 determine whether a species merits protection under the California Endangered  
12 Species Act. *See* Fish & Game Code § 2070. The Commission is responsible for the  
13 listing of the gray wolf as an endangered species under that Act.

### 14 **JURISDICTION AND VENUE**

15 9. The Court has jurisdiction of this petition for writ of mandate and  
16 complaint for declaratory relief pursuant to Sections 1060, 1085, and 1094.5 of the  
17 Code of Civil Procedure, and Section 11350(a) of the Government Code.

18 10. The Cattlemen and the Farm Bureau are non-profit corporations. Their  
19 principal places of business are within the County of Sacramento. Therefore, the  
20 direct and associational injuries to the Cattlemen and the Farm Bureau that flow  
21 from the Commission's listing of the gray wolf will be felt in the County of  
22 Sacramento. Consequently, the cause of action arises in the County of Sacramento  
23 and may be brought there. *See* Code Civ. Proc. § 393(b). An action against the State  
24 or its agencies may be brought in any county where the Attorney General maintains  
25 an office, if the matter also could be brought in the County of Sacramento. *See id.*  
26 § 401(1). The Attorney General maintains an office in the County of San Diego.  
27 Therefore, venue is proper in the Superior Court for the County of San Diego. For the

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1 same reason, this action is properly filed in the Central Division of this Court. *See*  
2 L.R. 1.2.2.

### 3 GENERAL ALLEGATIONS

4 11. The gray wolf (*canis lupus*) is the largest member of the dog family.  
5 Depending on the subspecies and the sex, the gray wolf varies from 40 to 175 pounds  
6 in weight, from 4.5 to 6.5 feet in length, and from 27 to 32 inches in height. The gray  
7 wolf is an “apex carnivore” that preys on elk, moose, bison, and deer. *See* Cal. Dep’t of  
8 Fish & Wildlife, A Status Review of the Gray Wolf (*Canis lupus*) in California 7  
9 (Feb.5, 2014) (Status Review). The gray wolf also consumes livestock and family pets.  
10 Cal. Dep’t of Fish & Game, Gray Wolves in California 13 (Dec. 2011) (“[W]olves kill  
11 livestock, including sheep, cattle, goats, horses, llamas, livestock guard dogs, and  
12 domestic pets.”).

13 12. The gray wolf species can be found throughout North America and  
14 Eurasia. On a range-wide basis, the gray wolf is not in danger of extinction. *See* U.S.  
15 Fish & Wildlife Serv., *Removing the Gray Wolf (Canis lupus) From the List of*  
16 *Endangered and Threatened Wildlife*, 78 Fed. Reg. 35,664, 35,678 (June 13, 2013)  
17 (“We have found no substantial evidence to suggest that gray wolves are at risk of  
18 extinction throughout their global range now or are likely to become so in the  
19 foreseeable future.”).

20 13. It is commonly accepted that the gray wolf species comprises many  
21 subspecies. *See id.* at 35,669. Although there is debate over the precise contours of  
22 the wolf’s taxonomy, the administrative record for the wolf’s listing demonstrates the  
23 existence of three still-extant subspecies in the United States: the Northwestern wolf  
24 (*canis lupus occidentalis*), the Great Plains wolf (*canis lupus nubilus*), and the  
25 Mexican wolf (*canis lupus baileyi*). *See* Status Review at 7-8.

26 14. Some evidence exists that what are commonly denominated the Great  
27 Plains wolf and the Mexican wolf once were present in California. *See* Status Review  
28 at 8. There is no evidence, however, that what is commonly denominated the

1 | Northwestern wolf ever dwelt in the state. *See id.* at 8-10. In any event, by the late  
2 | 1920s, all gray wolf individuals (of whatever arguable subspecies) had been extirpated  
3 | from California. Cal. Fish & Game Comm'n, Notice of Findings & Notice of Proposed  
4 | Rulemaking 5 (Oct. 2015) (Notice of Findings).

5 |       15. In the mid-1990s, the United States Fish and Wildlife Service introduced  
6 | gray wolves into Idaho. U.S. Fish & Wildlife Serv., *Establishment of a Nonessential*  
7 | *Experimental Population of Gray Wolves in Central Idaho and Southwestern*  
8 | *Montana*, 59 Fed. Reg. 60,266 (Nov. 22, 1994). That wolf population ultimately  
9 | expanded into Oregon. Notice of Findings at 5. The administrative record for the  
10 | wolf's listing demonstrates that these wolves are a part of the Northwestern wolf  
11 | subspecies. *See* Status Review at 8.

12 |       16. In December, 2011, a gray wolf from the Oregon population—known as  
13 | OR-7—crossed the border into California. Subsequently, OR-7 re-crossed the border  
14 | repeated times over a several-month period. Notice of Findings at 5-6. (By June,  
15 | 2014, however, OR-7 had mated and settled down in southwestern Oregon. *Id.* at 6.)

16 |       17. In March, 2012, following OR-7's initial sortie into the state, a group of  
17 | environmental organizations petitioned to list the gray wolf as an endangered species  
18 | under the California Endangered Species Act. *See* Cal. Reg. Notice Register 2012,  
19 | No. 15-Z, at 494. *Cf.* Fish & Game Code § 2071 (authorizing interested persons to  
20 | petition the Commission to list species).

21 |       18. In August, 2012, the Department determined that the petition may be  
22 | warranted. *See* Cal. Dep't of Fish & Game, Evaluation of the Petition to List the Gray  
23 | Wolf 4 (Aug. 1, 2012). *Cf.* Fish & Game Code § 2073.5 (requiring the Department to  
24 | recommend to the Commission, within 90 days of receipt of a petition, whether the  
25 | same presents sufficient information to indicate that the petitioned action may be  
26 | warranted).

27 |       19. At its October, 2012, meeting, the Commission agreed and designated  
28 | the gray wolf as a candidate species. *See* Cal. Reg. Notice Register 2012, No. 44-Z, at

1 1610. *Cf.* Fish & Game Code § 2074.2(e) (requiring the Commission to determine  
2 whether the petition presents sufficient information to indicate that the petitioned  
3 action may be warranted and, if so, directing that the species be considered a  
4 “candidate” for listing); *id.* § 2085 (applying the full protections of the Act to candidate  
5 species).

6 20. In February, 2014, the Department completed its status review of the  
7 gray wolf. The agency concluded that the species should not be listed under the  
8 California Endangered Species Act. Status Review at 32. The agency explained that  
9 “the gray wolf is not currently facing or enduring any threat in California at this  
10 time.” *Id.* at 31. *Cf.* Fish & Game Code § 2074.6(a) (requiring the Department to  
11 produce a full status review of the candidate species within 12 months of the  
12 candidate species determination).

13 21. In June, 2014, notwithstanding the Department’s recommendation, the  
14 Commission voted 3 to 1 to proceed with the listing of the gray wolf as an endangered  
15 species. The Commission therefore directed the Department to produce revised  
16 findings supporting the decision.

17 22. At its October, 2014, meeting, the Commission formally adopted findings  
18 (voting 2 to 1) to support its decision to proceed with the listing of the gray wolf. The  
19 Commission then commenced the rule-making process under the California  
20 Administrative Procedure Act to add the gray wolf to the list of protected wildlife. *See*  
21 Cal. Reg. Notice Register No. 44-Z, at 1855 *Cf.* Fish & Game Code § 2075.5(e)  
22 (requiring the Commission to pursue rule-making under the Administrative  
23 Procedure Act after having determined that listing is warranted).

24 23. At its December, 2015, hearing, the Commission, by a vote of 3 to 1,  
25 formally adopted the regulation to list the gray wolf, based solely on OR-7’s  
26 intermittent presence in the state. *See* Fish & Game Comm’n, Meeting Outcomes,  
27 Item 30, at 7 (Dec. 9-10, 2015). In October, 2016, the Commission submitted the  
28 listing regulation to the Office of Administrative Law for its review under the

1 California Administrative Procedure Act. *Cf.* Gov't Code § 11349.1(a) (requiring the  
2 Office of Administrative Law to review all proposed regulations).

3 24. The Office having approved the listing by inaction, the regulation was  
4 then submitted to the Secretary of State's Office in November, 2016, and went into  
5 effect January 1, 2017. *See* Cal. Reg. Notice Register No. 49-Z, at 2103. *Cf.* Gov't  
6 Code § 11343 (generally requiring all regulations to be filed with the Secretary of  
7 State).

8 25. Since the Commission's October, 2014, finding, evidence has emerged  
9 of a breeding pair of wolves and several wolf pups having traveled to Siskiyou  
10 County near the California-Oregon border, and another pair of wolves having traveled  
11 to Lassen County. *See* Cal. Dep't of Fish & Wildlife, Gray Wolf,  
12 <https://www.wildlife.ca.gov/conservation/mammals/gray-wolf>. The Commission's  
13 listing decision does not take account of this evidence, which was adduced after the  
14 Commission had closed the administrative record at its June, 2014, hearing. *Cf.* Fish  
15 & Game Code § 2075.5(c) (generally forbidding the reopening of the record once the  
16 public hearing on the proposed listing has been closed).

17 **FIRST CAUSE OF ACTION FOR**  
18 **PEREMPTORY WRIT OF MANDATE**  
19 **(Code Civ. Proc. § 1094.5)**

20 26. All of the preceding paragraphs are reincorporated as if set forth fully  
21 herein.

22 27. The Commission's decision that the environmental groups' petition to list  
23 the gray wolf is warranted is a quasi-adjudicative action, subject to judicial review.  
24 *See* Fish & Game Code § 2076.

25 28. The Cattlemen, the Farm Bureau, and their members have no plain,  
26 speedy, and adequate remedy, in the ordinary course of law, available to them to seek  
27 review of the Commission's actions challenged herein. *See* Code Civ. Proc. § 1086.  
28 The only means by which review of the Commission's decision may be had is through  
writ of mandate, declaratory judgment, or other equitable relief.

1 29. The Commission’s listing of the gray wolf went into effect on January 1,  
2 2017. Therefore, this Petition and Complaint challenging the listing is timely. *See*  
3 Code Civ. Proc. § 338(a) (generally requiring an action based upon a liability created  
4 by statute to be filed within three years).

5 30. The Cattlemen and the Farm Bureau have exhausted their  
6 administrative remedies by commenting at every major stage of the listing process  
7 and objecting to the Commission’s actions that are challenged herein. *See* Exhs. 1-9.

8 **A. Illegal Listing of Non-Native Subspecies**

9 31. The California Endangered Species Act authorizes the listing and  
10 protection of—among other things—any “endangered species,” *see* Fish & Game Code  
11 §§ 2070, 2080, which is defined, in relevant part, as “a native species or subspecies  
12 of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of  
13 becoming extinct throughout all, or a significant portion, of its range,” *id.* § 2062.

14 32. The Commission’s listing of the gray wolf is based on the intermittent  
15 presence in the state of a single wolf—namely, OR-7—and the Commission’s  
16 expectation that further wolves from Oregon will travel to California. Notice of  
17 Findings at 5-7.

18 33. The administrative record for the wolf’s listing, relied upon by the  
19 Commission, demonstrates that OR-7 as well as all wolves currently in Oregon are  
20 members of a Northwestern wolf subspecies of the gray wolf species. *See* Status  
21 Review at 8.

22 34. The administrative record for the wolf’s listing, relied upon by the  
23 Commission, demonstrates that the Northwestern wolf is not a subspecies native to  
24 California. Status Review at 8.

25 35. The Commission’s listing of the gray wolf is based on the presence of a  
26 non-native subspecies of gray wolf. The listing is therefore in excess of the  
27 Commission’s listing jurisdiction under the California Endangered Species Act,  
28 because that Act limits listing to native species and subspecies. For the same reason,

1 the Commission’s listing constitutes a prejudicial abuse of discretion. *See* Code Civ.  
2 Proc. § 1094.5(b).

3 **B. Illegal Listing Based on Improperly**  
4 **Constricted “Range” Analysis**

5 36. Under the Act, the determination of whether a species merits listing as  
6 endangered is based on the species’ status “throughout all, or a significant portion,  
7 of its range.” Fish & Game Code § 2062. Therefore, according to the Act’s plain  
8 meaning, the Commission’s listing determination must be made with reference to the  
9 species’ natural, geographic range. The Act does not allow the Commission to ignore  
10 the portions of the species’ range outside of California.

11 37. The Commission’s decision to list the gray wolf was based on its  
12 erroneous interpretation of the Act as requiring an analysis only of the California  
13 portion of the species’ range. Notice of Findings at 3.

14 38. The Commission’s decision is the direct result of its policy of interpreting  
15 the Act’s use of “range” to forbid the consideration of the species’ status outside  
16 California. The Commission has enforced this policy for decades in many listings, but  
17 the agency has not submitted the policy to rule-making under the California  
18 Administrative Procedure Act, Gov’t Code §§ 11340-11361.

19 39. The Commission’s policy constitutes a “regulation” within the meaning  
20 of the California Administrative Procedure Act, because the Commission routinely  
21 applies that policy in many different cases, and because the policy makes specific the  
22 law—namely, the meaning of “range” within the California Endangered Species  
23 Act—that the Commission administers. *See* Gov’t Code § 11342.600; *Tidewater*  
24 *Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996).

25 40. No exemption under the California Administrative Procedure Act applies  
26 to the Commission’s policy. The Commission is not an agency in the judicial or  
27 legislative branch of the state government. *Cf.* Gov’t Code § 11340.9(a). Moreover,

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1 the Commission’s policy is not of the character of any of the other exceptions to the  
2 Act’s rule-making procedures. *Cf. id.* § 11340.9(b)-(i).

3 41. The California Administrative Procedure Act forbids the enforcement of  
4 any regulation that has not been adopted pursuant to the Act’s rule-making  
5 procedures. *See* Gov’t Code § 11340.5(a). Such unvetted rules, known as  
6 “underground regulations,” are ineligible for any judicial deference. *See Tidewater*  
7 *Marine Western*, 14 Cal. 4th at 576-77.

8 42. In *California Forestry Association v. California Fish & Game*  
9 *Commission*, 156 Cal. App. 4th 1535 (2007), the Third District Court of Appeal ruled  
10 that the California Endangered Species Act’s use of “range” is ambiguous. *See id.* at  
11 1549. The court held that the Commission’s interpretation of “range” was reasonable,  
12 and therefore merited deference. *See id.* at 1550-52. But the court did not address  
13 whether the Commission’s interpretation constitutes an underground regulation, and  
14 thus did not decide whether, without deference, the Commission’s interpretation  
15 would prevail. *Cf. People v. Knoller*, 41 Cal. 4th 139, 155 (2007) (“An opinion is not  
16 authority for propositions not considered.”) (quoting *Kinsman v. Unocal Corp.*, 37 Cal.  
17 4th 659, 680 (2005)).

18 43. The most reasonable interpretation of the California Endangered Species  
19 Act’s use of “range” is that the Commission must look to the entire species’ range, not  
20 just its California portion. *Cf. Watts v. Oak Shores Cmty. Ass’n*, 235 Cal. App. 4th  
21 466, 476 (2015) (“The ‘golden rule’ for statutory interpretation is that where several  
22 alternative interpretations exist, the one that appears the most reasonable prevails.”).

23 44. Because the Commission’s listing of the gray wolf is based on an illegally  
24 narrow interpretation of “range,” the listing is in excess of the Commission’s  
25 jurisdiction, and constitutes a prejudicial abuse of discretion, because the Commission  
26 has not proceeded in the manner required by law, the listing is not supported by the  
27 Commission’s findings, and the findings are not supported by the evidence.

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1 **C. Illegal Listing Based on “Intermittent Presence”**

2 45. The Commission determined that the gray wolf’s listing is warranted  
3 based on OR-7’s “intermittent” presence in the state. Notice of Findings at 5-6.

4 46. The Commission acknowledges that it cannot list a species that does not  
5 have an active range within the state. But a species cannot have an active, *i.e.*,  
6 occupied, range in the state unless members of the species use that range with  
7 sufficient regularity that members of the species are likely to be present during any  
8 reasonable span of time. *See Ariz. Cattle Growers’ Ass’n v. Salazar*, 606 F.3d 1160,  
9 1165 (9th Cir. 2010) (holding that, under the federal Endangered Species Act, 16  
10 U.S.C. §§ 1531-1544, an area is not occupied by the species unless the species “uses  
11 [the area] with sufficient regularity that it is likely to be present during any  
12 reasonable span of time”); U.S. Fish & Wildlife Serv. & Nat’l Marine Fisheries Serv.,  
13 *Implementing Changes to the Regulations for Designating Critical Habitat*, 81 Fed.  
14 Reg. 7414, 7421 (Feb. 11, 2016) (observing that the areas “occupied by the species”  
15 which make up its range do not include areas occupied “solely by vagrant  
16 individuals”). *Cf. San Bernardino Audubon Soc’y v. City of Moreno Valley*, 44 Cal.  
17 App. 4th 593, 603 (1996) (because the California Endangered Species Act was  
18 modeled on the federal Endangered Species Act, construction of the latter “must be  
19 given great weight” when interpreting the former).

20 47. The record on which the Commission based its decision does not  
21 substantiate anything more than an intermittent presence by one member of the  
22 gray wolf species.

23 48. Because the Commission’s listing of the gray wolf is based on legally  
24 insufficient evidence, the listing is in excess of the Commission’s jurisdiction. It also  
25 constitutes a prejudicial abuse of discretion, because the Commission has not  
26 proceeded in the manner required by law, the listing is not supported by the  
27 Commission’s findings, and the findings are not supported by the evidence.

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4. For any other relief that the Court determines to be warranted.

DATED: January 31, 2017.

Respectfully submitted,

DAMIEN M. SCHIFF  
ANTHONY L. FRANÇOIS

By s/ Damien M. Schiff  
DAMIEN M. SCHIFF

Attorneys for Petitioners and Plaintiffs