

9th Circ. Backs Limits On Montana Wolf Trapping

By **Madeline Lyskawa**

Law360 (April 24, 2024, 4:33 PM EDT) -- A split Ninth Circuit panel on Tuesday largely affirmed a lower court's order limiting wolf trapping and snaring in Montana over concerns it could impact grizzly bears, but directed the court to reconsider its "overbroad" geographic scope and limitations on state officials' research.

The majority opinion held that the Montana district court applied the proper preliminary injunction standard and did not abuse its discretion in finding there were serious questions going to the merits that Montana's recreational wolf trapping and snaring regulations would cause the unlawful take of threatened grizzly bears in violation of the Endangered Species Act.

The panel, as a result, affirmed the time limitations of the injunction secured by environmental groups the Flathead-Lolo-Bitterroot Citizen Task Force and WildEarth Guardians, but held it was geographically overbroad and needlessly prevents the state from trapping and snaring wolves for research.

U.S. Circuit Judge Richard C. Tallman, in his dissent, argued that the injunction should be vacated in its entirety, saying the groups failed to establish a reasonably certain threat of imminent harm to the grizzly bear population as a result of wolf trapping regulations sufficient to warrant a preliminary injunction.

"While I agree with the majority that plaintiffs established a serious question on the merits, the evidence of record establishes that plaintiffs failed to show a reasonably certain threat of imminent harm to grizzly bears should Montana's wolf regulations remain in force," Judge Tallman said.

The litigation between the environmental groups and the state of Montana dates back to September, when the groups filed their complaint in Montana federal court, alleging the state's laws authorizing recreational wolf and coyote trapping and snaring allow for the unlawful taking of grizzly bears in violation of the ESA.

Under the prevailing law at the time, the Montana Fish and Wildlife Commission authorized the snaring of wolves and extended the length of the wolf trapping and snaring season, with the floating start date in the state's occupied grizzly bear habitat ranging from the Monday after Thanksgiving until Dec. 31, U.S. Circuit Judge Mark J. Bennett, who penned the panel's majority opinion, said.

U.S. District Judge Donald W. Molloy quickly granted in part the groups' motion for a preliminary injunction in late November, limiting wolf trapping and snaring in certain parts of Montana between Jan. 1, 2024, and Feb. 15, 2024, when it is reasonably certain that almost all grizzly bears will be in dens, Judge Bennett said. The state's interlocutory appeal ensued shortly thereafter.

Montana has since argued on appeal that Judge Molloy erred in granting the preliminary injunction because he improperly considered new arguments submitted by the groups in their reply brief and applied the wrong preliminary injunction standard, Judge Bennett said. The state further maintained that there is no reasonable certainty of irreparable harm, and that the injunction is temporally and geographically overbroad, the judge said.

Rejecting most of the state's arguments, Judge Bennett began by saying because the record shows Montana had an opportunity to respond to the groups' submissions on appeal, the panel found the district court did not abuse its discretion by considering new arguments. The district court also applied the proper preliminary injunction standard by correctly determining that the Ninth Circuit

considers whether a party seeking an injunction demonstrates serious questions going to the merits, Judge Bennett said.

"Fairly read, the record reflects a genuine scientific and factual debate over whether Montana's 2023 recreational wolf trapping and snaring regulations will cause the unlawful 'take' of grizzly bears," the judge said.

Judge Bennett further said "it was plausible for the district court to find a reasonably certain threat of imminent harm to grizzly bears should Montana's wolf trapping and snaring season proceed as planned," given the groups' evidence that 40% of grizzly bears in Montana would be active during the trapping season and would be highly attracted to the wolf traps.

As for the injunction's scope, the judge said Montana failed to persuade the panel that the district court abused its discretion in regard to the time limitations, but agreed that the injunction is geographically overbroad by encompassing more than half the state and including expansive areas outside the occupied grizzly range, remanding the issue for the district court to "expeditiously reconsider."

"We also agree with defendants that the injunction is overbroad for another reason: it prevents the state from trapping and snaring wolves for research, which usually occurs during the summer," Judge Bennett said.

In response to the majority's opinion, Mike Bader, a consultant to the Flathead-Lolo-Bitterroot Citizen Task Force, maintained in the groups' press release on Wednesday that "the science clearly shows bears are entering dens later and emerging earlier exposing them to threats from baited traps and snares."

"The state of Montana cannot be entrusted with management responsibility for grizzly bears because they are acting irresponsibly towards carnivores and predators," Bader continued.

A spokesperson for the Montana Department of Fish, Wildlife and Parks said in a statement to Law360 on Wednesday that the state agency agrees the geographic area of the injunction was too broad, and is focused on continuing the case back in the district court.

U.S. Circuit Judges Richard C. Tallman and Mark J. Bennett and District Judge Robert S. Lasnik sat on the panel for the Ninth Circuit.

The groups are represented by Timothy M. Bechtold of the Bechtold Law Firm PLLC.

Montana is represented by Sarah M. Clerget, Alexander R. Scolavino III and Kevin Rechko of the Montana Department of Fish, Wildlife and Parks.

The case is Flathead-Lolo-Bitterroot Citizen Task Force et al. v. State of Montana et al., case number 23-3754, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Patrick Reagan.