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# Wolves, Politics, and the Nez Perce: Wolf Recovery in Central Idaho and the Role of Native Tribes

## ABSTRACT

*The gray wolf recovery effort in the northern Rocky Mountains is perhaps the most successful effort to promote the recovery of an endangered species. Despite the success, wolf recovery is a highly controversial symbol of a larger debate over public lands policy in the West. This article examines the politics of gray wolf recovery and explains why Idaho refused to take part, thus allowing the Nez Perce Tribe to assume primary management of the recovery effort. The second part of the article explores the challenge and opportunity that wolf recovery presented for the tribe. The conclusion speculates on the policymaking implications of native tribes playing an expanded role in the management of natural resources.*

In January 1995, after an absence of over fifty years, the gray wolf was returned to the wilderness of central Idaho. Four years later, some 120 wolves now call the area home and the gray wolf recovery effort, which also includes Yellowstone National Park and northern Montana, is perhaps our most successful attempt to promote the return of a species to areas that were once part of its natural range. Yet wolf recovery, despite the rhetoric, controversy, and years of bitter struggle, was never about saving a species facing imminent extinction. Rather, wolf recovery and the debate that surrounded it are symbolic of the ongoing battle over the future direction of natural resource policy in the American West. On one level, this battle encompasses the long-running struggle between the federal and subnational governments for control and direction of public lands policy. A related issue is whether programs like wolf recovery are establishing a precedent for proactive, species recovery plans that may lead to use restrictions and an incremental tightening of access to federally administered lands. Lastly, wolf recovery highlights the question of which set of values should shape public lands policies. For many, the recovery effort is a potent symbol, "a line in the sand" dividing old West from new, of a

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highly contested shift to ecological values and away from extractive, utilitarian values.<sup>1</sup>

Although the recovery effort in central Idaho is a sizable part of the wolf recovery program in the northern Rocky Mountains, it has not drawn the same attention as efforts in Yellowstone National Park.<sup>2</sup> Moreover, there has been limited exploration of what lessons may be drawn from the gray wolf recovery experience and how this exercise in policymaking may explain in part the complexities of land use politics in the West. This article explores the political struggle between Idaho and the federal government over the direction and management of wolf recovery and examines why the state refused to take part in the recovery program, thus allowing a third actor, the Nez Perce Tribe, to assume a role Idaho would not.

The involvement of the Nez Perce should be of special interest for a number of reasons. First, it is an example of the expanding role tribal governments are playing in the management of both tribal and regional natural resources. Second, there has been limited study of the institutional capacity of native tribes to manage natural resources and participate in collaborative regional management arrangements. Third, Nez Perce involvement in the recovery effort offers an opportunity to explore some important questions: What values and goals do tribal governments add to the contentious mix of issues, ideas, and interests that currently shape natural resource policy? What are the implications for state and federal policymakers of tribal governments playing a more prominent role? Will it add complexity to an already fractious process, or will it help move the current debate in new directions?

This article is an initial exploration of these questions. The first part outlines the politics of wolf recovery and examines the positions of the various actors and their attempts to protect their interests in any recovery plan. The second part focuses on the role of the Nez Perce and examines the challenge and opportunity that wolf recovery presented for the tribe. The conclusion considers some of the lessons learned from the Idaho experience and the possible implications for natural resource policymaking.

## THE POLITICS OF WOLF RECOVERY

By the 1930s, the gray wolf, a species once native to most of North America, had been extirpated from the western United States. The demise

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1. Renee Askins, *Releasing Wolves from Symbolism*, HARPER'S, Apr. 1995, at 16.

2. The return of the wolf to America's premier national park has generated a great deal of public interest and has been the subject of numerous articles and books. See, e.g., HANK FISCHER, *WOLF WARS: THE REMARKABLE INSIDE STORY OF THE RESTORATION OF WOLVES TO YELLOWSTONE* (1995); THOMAS MCNAMEE, *THE RETURN OF THE WOLF TO YELLOWSTONE* (1997).

of the wolf was linked directly to human settlement practices, especially the conversion of native habitat to agriculture, the concomitant decline of ungulate populations, and extensive, wide-ranging predator control (*i.e.*, extermination) programs. In 1973 the gray wolf, then found in the continental United States only in northern Minnesota, was listed as endangered under the Endangered Species Act (ESA).<sup>3</sup> In addition to legal protections that prohibit certain actions that may cause harm, the ESA requires federal agencies to take positive steps to promote the recovery of listed species through the development and implementation of plans for the conservation and survival of endangered and threatened species.<sup>4</sup> Although the U.S. Fish and Wildlife Service (USFWS) appointed a team to develop a gray wolf recovery plan for the northern Rocky Mountain area shortly after the official listing, it was August 1987 before a final version, the *Northern Rocky Mountain Wolf Recovery Plan (NRMWRP)*, was approved and released.<sup>5</sup>

The primary goal of the NRMWRP was to remove the wolf in the northern Rocky Mountains from the endangered list. The plan called for recolonization in central Idaho and northwestern Montana through a natural dispersal of wolves from southern Alberta and British Columbia—in essence, allowing wolves to reoccupy areas of their previous range.<sup>6</sup> In a third target area, Yellowstone National Park, recovery was to be achieved through the reintroduction of wolves captured elsewhere.<sup>7</sup> To mitigate opposition from landowners and the livestock industry, a central element of the NRMWRP was a recommendation to designate reintroduced wolves as a non-essential experimental population.<sup>8</sup> The experimental designation would permit greater control than allowed under the ESA, in general, and provide federal agencies the management flexibility—a euphemism for killing wolves in certain circumstances—to limit depredation problems and assure landowners reintroduction would not disrupt or preclude future management and development options. Lastly, the plan called for implementation of a research and monitoring program to track the progress of recovery efforts, collect information for future management decisions, and

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3. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (1994).

4. An endangered species is one in imminent danger of extinction throughout all or a significant portion of its range, while a threatened species is one that is likely to become endangered within the foreseeable future. *See* 16 U.S.C. § 1533 (1994).

5. *See* U.S. FISH AND WILDLIFE SERV., NORTHERN ROCKY MOUNTAIN WOLF RECOVERY PLAN (1987) [hereinafter USFWS].

6. *See id.* at v.

7. *See id.*

8. *See id.* The experimental population designation was created by Congress in a 1982 amendment to the ESA, Endangered Species Amendment Act of 1982, 16 U.S.C. § 1539 (1994).

measure the effect on ungulate populations.<sup>9</sup> To reclassify the wolf and remove it from the endangered list, the plan mandated the establishment of ten breeding pairs for three years in all three recovery areas.<sup>10</sup>

Even with the multiple compromises contained in the plan, in particular management flexibility—premised on the somewhat tortured logic that to promote wolf recovery it would be necessary to lessen their legal protection—there was strong opposition to any recovery effort. In Idaho the opposition was well entrenched and led forcefully by the state legislature, which in 1988 enacted legislation that expressly prohibited the Idaho Department of Fish and Game (IDFG) from participation in most wolf recovery efforts, including the expenditure of funds for such activities.<sup>11</sup> This action illustrated, in part, the institutional realities structuring the politics of wolf recovery in Idaho. The legislature could prohibit the participation of state officials in any recovery program but could not prevent federal agencies from proceeding with such a program. Nor could the legislature change the fact that the largest roadless areas in the continental United States are located in Idaho, including three designated wilderness areas: Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. Thus, any gray wolf recovery program for the northern Rocky Mountains, both by design and default, had to include a major effort in Idaho. Federal wildlife officials faced a comparable dilemma. They did not need Idaho's permission to implement a recovery plan on federally administered land. Yet the reality was that any recovery effort would be fraught with political difficulty, most notably congressional approval, without some degree of local participation or, at least, acquiescence.

### The Search for Alternatives

In May 1990, then Idaho Senator James McClure introduced an alternative recovery plan that sought to break a growing political impasse and address some of the major criticisms by state and local officials of the NRMWRP.<sup>12</sup> The McClure plan differed from the NRMWRP in several

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9. See USFWS, *supra* note 5, at vi.

10. See *id.* at v.

11. IDAHO CODE § 36-715(2) (Supp. 1998).

12. Northern Rocky Mountain Gray Wolf Restoration Act of 1990, S. 2674, 101st Cong. The National Wildlife Federation, in prepared testimony on the McClure plan, sketched a picture of the political impasse: "Despite our efforts to direct wolf recovery along a rational course, political pressure from some interest groups and some members of Congress have paralyzed those agencies charged with managing wolf recovery under the Endangered Species Act." *Hearings on S. 2674 Before Senate Comm. on Energy and Natural Resources*, 101st Cong. 983, 118 (1990) (statement of Thomas M. France, National Wildlife Federation).

respects. First, in an attempt to speed-up the recovery process, it called for wolves to be transplanted into both Yellowstone and central Idaho.<sup>13</sup> Second, it proposed much smaller recovery zones—in Idaho, for example, the area was reduced from 12,000 to 2,600 sq. miles.<sup>14</sup> Third, the plan defined recovery more narrowly (three breeding pairs in two of three recovery zones) and called for state governments to have exclusive responsibility for wolf management outside the designated zones.<sup>15</sup>

As is the case with most political compromises, the McClure proposal was criticized from all sides. Despite the attempt to draft a plan more palatable to the livestock industry and landowners, both opposed the plan—the industry because of concern about possible economic loss and landowners because of potential limits on future development.<sup>16</sup> These arguments, however, were couched somewhat disingenuously as criticisms of the proposed management plan and not of recovery *per se*, although no recovery would have meant no management problems. Strong opposition came from Idaho, along with Wyoming and to a lesser degree Montana, over the effects on livestock and the costs states would incur in managing any federal plan.<sup>17</sup> Environmental organizations contended there already existed a process for wolf reintroduction, and the delisting provisions were unnecessary and threatened to undermine the standards of the ESA.<sup>18</sup>

In the face of such criticism, the McClure plan failed to garner substantial support. Instead, Congress, hoping that more study might prove a solution to the political deadlock, approved the creation of a Wolf

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13. The proposal to reintroduce wolves into central Idaho was a surprise to recovery advocates. See FISCHER, *supra* note 2, at 151.

14. Northern Rocky Mountain Gray Wolf Restoration Act of 1990, S. 2674, 101st Cong.

15. See, CARLA WISE ET AL., IDAHO FOREST, WILDLIFE, AND RANGE POLICY ANALYSIS GROUP, NO. 4, WOLF RECOVERY IN CENTRAL IDAHO: ALTERNATIVE STRATEGIES AND IMPACT 25 (1991).

16. See *Hearings on S. 2674 Before Senate Comm. on Energy and Natural Resources*, 101st Cong. 983, 118, 140-44 (1990) (statement of George Bennet, Idaho Cattle Association, et al.).

17. Although Idaho, Montana, and Wyoming opposed wolf recovery, they differed substantially on management issues and willingness to participate in management and monitoring efforts. For a detailed discussion, see Timothy B. Strauch, *Holding the Wolf By the Ears: The Conservation of the Northern Rocky Mountain Wolf in Yellowstone Park*, 27 LAND AND WATER L.R. 33 (1992); WOLF MANAGEMENT COMMITTEE, 101ST CONG., A REPORT TO CONGRESS: REINTRODUCTION AND MANAGEMENT OF WOLVES IN YELLOWSTONE NATIONAL PARK AND THE CENTRAL IDAHO WILDERNESS AREAS (1991); U.S. FISH AND WILDLIFE SERV., DRAFT ENVIRONMENTAL IMPACT STATEMENT: THE REINTRODUCTION OF GRAY WOLVES TO YELLOWSTONE NATIONAL PARK AND CENTRAL IDAHO 2-4 (1993) [hereinafter DEIS (1993)].

18. See, e.g., *Hearings on S. 2674 Before Senate Comm. on Energy and Natural Resources*, 101st Cong. 983, 128-32 (1990) (testimony of Hank Fischer, Defenders of Wildlife). Beyond the concern the plan would undermine the ESA, there was on the part of environmental organizations a natural revulsion at allowing wolves to be killed for being wolves and a long-standing animosity towards an often bitter opponent, the livestock industry; See, MCNAMEE, *supra* note 2, at 46.

Management Committee (WMC) to develop a recovery plan for central Idaho and Yellowstone.<sup>19</sup> The committee report, presented in May 1991, combined elements of the NRMWRP and the McClure plan and called for the relocation of wolves from Canada, a change in status to experimental non-essential, and for states to have primary oversight and responsibility for management.<sup>20</sup> These recommendations were supported by officials from Wyoming, Montana, and Idaho, who obviously favored state oversight and argued the "removal of the endangered status for the wolf in the tri-state area will accelerate recovery goals by reducing opposition."<sup>21</sup>

Even as state officials called for local control, however, the Idaho legislature passed a memorial to Congress that reiterated its strong opposition to reintroduction and recovery.<sup>22</sup> The recommendations of the WMC also had the support of the powerful livestock industry. This support reflected the often conflicting combination of symbolic and practical politics that has characterized gray wolf recovery. The industry opposed publicly any recovery, and was backed by state officials and local members of Congress. On the national level, though, there was growing support in Congress, among major environmental organizations, and from the general public for a proactive recovery effort. Consequently, for opponents of recovery the recommendations of the WMC represented the "lesser of two evils." They could accept a plan that included a change in status allowing for flexible management or face a slow process of natural recolonization with wolves having full protection under the ESA.

Although the WMC report sought to strike a politically acceptable compromise, the change in status proved to be its undoing in Congress. In July 1991, the WMC's recommendations were rejected in the House, which then voted to fund an environmental impact statement (EIS) under the terms outlined in the NRMWRP. In November, following a conference committee agreement on funding, USFWS and the National Parks Service (NPS), in consultation with the U.S. Forest Service (USFS), were directed to prepare a draft environmental impact statement (DEIS) on wolf reintroduction in central Idaho and Yellowstone.<sup>23</sup> Four years after the release of the

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19. The WMC was established by an amendment to the 1991 Interior Appropriations bill, Pub. L. No. 101-512 § 218, Nov. 5, 1990. The committee was comprised of representatives of the USFWS, National Park Service, U.S. Forest Service, livestock industry, and hunting interests; directors of wildlife agencies in Idaho, Montana, and Wyoming; and two wolf recovery advocates.

20. See WOLF MANAGEMENT COMMITTEE, *supra* note 17, at 12-13. The ESA provides for cooperative state-federal agreements allowing state management of endangered species. See 16 U.S.C. § 1535 (1994).

21. *Wolf-Management Idea Brings Howls*, IDAHO STATESMAN, Apr. 11, 1991, at 3C.

22. H.J. Mem'l No. 6, 51st Leg., 1st Sess. (Idaho 1991).

23. See H.R. REP. NO. 102-256, at 16 (1991).

NRMWRP, and almost twenty years after the gray wolf was listed as endangered, federal agencies finally had authorization to proceed with a recovery attempt.

### Returning Wolves to the Northern Rocky Mountains

The first half of 1992 saw federal agencies conduct the required public consultation and participation phase of the environmental impact process. This phase was used to develop and identify a variety of recovery alternatives. In June 1993 the Fish and Wildlife Service released a DEIS that narrowed the alternatives to five: the WMC proposal (state oversight to manage and implement recovery plans), no wolf (change laws and prevent recovery), reintroduction with full ESA protections, natural recovery (encourage wolf populations to expand naturally), and the proposed alternative (reintroduction with experimental non-essential status).<sup>24</sup> Three of the alternatives had little support and served primarily a straw-man purpose. The WMC alternative and its provision to give states the primary role had been rejected once already, while the no wolf and reintroduction with full protection alternatives were untenable politically. Thus, the choice was between the natural recovery option, favored by those opposed to any change in protection, and the proposed reintroduction with a change in status.

The proposed alternative identified two areas (central Idaho and Yellowstone) for reintroduction and offered something to both sides in the debate over wolf recovery. It included the non-essential designation that allowed for management of wolf populations to minimize potential negative effects on livestock and property.<sup>25</sup> The proposal to repopulate the target areas with captured wolves would accelerate the rate of recovery and facilitate a monitoring program designed to limit potential depredation problems—*i.e.*, reintroduced wolves would in theory be easier to track as they reestablished themselves in the recovery areas. Moreover, reintroduced wolves would quickly reach the threshold (10 breeding pairs established in each of the three recovery areas for three consecutive years) necessary for removal from the endangered list—a goal, though for different reasons, of supporters and opponents of recovery. Finally, because of its shorter time frame for recovery, a reintroduction plan held the promise of some form of resolution to a long and bitter political struggle.

While the EIS process developed possible alternatives, events in other venues continued to shape the political context of wolf recovery. The

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24. See DEIS (1993), *supra* note 17, at xix.

25. See *id.* at 2-4.



wolves themselves, oblivious to the anguished political debate over their future, were creating facts on the ground. During the early 1990s wolves were sighted with increasing frequency and in greater numbers throughout the northern Rocky Mountains. In Montana new packs and den sites were identified, in Idaho the number of sightings continued to grow, and there was evidence that wolves were to be found, albeit rarely, in the Yellowstone area. The increased frequency of sightings across a greater range put pressure on federal officials to complete and approve a recovery plan and raised questions about the endangered status of the wolves, whether reintroduced or natural migrants.<sup>26</sup> Further, as wolves returned to their former range there was growing public acceptance and support for recovery efforts, as indicated by comments received during the DEIS process.<sup>27</sup> In Idaho, specifically, a public opinion survey released in March 1992 reported that 72 percent of Idahoans favored having wolves in the state's wilderness areas.<sup>28</sup> The broad public support for the wolf's return and the continued process of natural recolonization meant that recovery was moving beyond a question of *if*, to *when* and *how*.

Despite the public support, there was still strong opposition to recovery. In February 1992 the Idaho legislature restated that the Department of Fish and Game could not enter into a cooperative agreement with federal agencies concerning wolves unless expressly authorized, although it was given permission to participate in the DEIS process.<sup>29</sup> In something of a contradictory move, the legislature crafted a draft state wolf-management plan, a requirement for participation in the federal recovery program.<sup>30</sup> Included in the initial Idaho plan, however, were provisions that forbid wolf reintroduction and designated them as a threatened species, which would have permitted wolves to be killed if attacking or harassing livestock.<sup>31</sup> Idaho's continued opposition to recovery and its position on reintroduction led federal officials to explore other options for local management.<sup>32</sup> An emerging alternative was the Nez Perce Tribe,

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26. The 1982 amendment to the ESA states that it applies only if species that are reintroduced outside their current range are wholly separate geographically from non-experimental populations. See 16 U.S.C. § 1539(j)(1) (1994).

27. See FISCHER, *supra* note 2, at 148.

28. See JOHN FREEMUTH, BOISE STATE UNIVERSITY SURVEY RESEARCH CENTER, PUBLIC OPINION ON WOLVES IN IDAHO: RESULTS FROM THE 1992 IDAHO POLICY SURVEY (1992).

29. See IDAHO CODE § 36-715(4) (Supp. 1998).

30. Prior to approving a federal-state cooperative agreement, the Secretary of the Interior must determine that a state conservation plan is adequate under the ESA. See 16 U.S.C. § 1535(c)(1) (1994).

31. See H.B. 858, 51st Leg., 2nd Sess. (Idaho 1992).

32. A state program is considered adequate if, among several requirements, the state has established a conservation plan acceptable under the ESA for species deemed to be endangered or threatened and a state agency is authorized to establish programs for

which was eager to participate in the recovery effort and whose historic territory included much of the designated recovery area.

### The Final Steps and Idaho's Last Stand

The summer of 1994 saw the release and approval of the final environmental impact statement (FEIS) on gray wolf recovery.<sup>33</sup> The FEIS approved the preferred alternative put forward in the DEIS and called for state agencies to oversee wolf reintroduction.<sup>34</sup> With the release of the FEIS, Idaho officials confronted the challenge of developing a management plan acceptable to a number of varied interests.<sup>35</sup> The principal task for the Idaho Department of Fish and Game and a skeptical legislature was to craft a wolf recovery plan that met the demands of the livestock industry for protection and compensation against potential livestock depredation. This demand had to be balanced against the requirement that any plan must meet the protection standards of the ESA. Following approval of the FEIS, IDFG moved quickly to finalize a plan that, with legislative approval, would allow the state to play the lead role in managing wolf recovery.<sup>36</sup> The development of a state management plan was driven by the realization the Fish and Wildlife Service was prepared to begin the capture and release of wolves into central Idaho (originally scheduled for late 1994) without state involvement.

The Department of Fish and Game released a draft Idaho Wolf Recovery and Management Plan in November 1995.<sup>37</sup> The plan, developed with the advice of an advisory board created to monitor recovery efforts (Wolf Oversight Committee), called for the state to assume the lead role.<sup>38</sup>

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conservation of resident endangered or threatened species. See 16 U.S.C. § 1535(c)(1)(A-E) (1994). For a discussion, see Strauch, *supra* note 17, at 77.

33. See Endangered and Threatened Wildlife and Plants, 59 Fed. Reg. 60,266 (1994) (codified at 50 C.F.R. pt. 17).

34. See U.S. FISH AND WILDLIFE SERV., FINAL ENVIRONMENTAL IMPACT STATEMENT: THE REINTRODUCTION OF GRAY WOLVES TO YELLOWSTONE NATIONAL PARK AND CENTRAL IDAHO (1994) [hereinafter FEIS (1994)].

35. See IDAHO CODE § 36-715(4) (Supp. 1998) (authorizing IDFG to begin formal preparation of a state recovery plan in April 1994).

36. Although IDFG believed it should be the lead player in implementing wolf recovery plans in Idaho, the Department did acknowledge a cooperative role for affected tribes. See Idaho Department of Fish and Game, *Comments on Draft Environmental Impact Statement*, in FEIS (1994), *supra* note 34, at 5-49 [hereinafter IDGF (1993)].

37. IDAHO DEPARTMENT OF FISH AND GAME, DRAFT IDAHO WOLF RECOVERY AND MANAGEMENT PLAN: PLANNING PERIOD 1994-2004 (1994) [hereinafter IDFG (1994)].

38. The Wolf Oversight Committee was established in 1992. See IDAHO CODE § 36-715(4) (Supp. 1998). It includes members of the relevant legislative oversight committees and citizen members appointed by the Directors of the Idaho Department of Agriculture, Department of Fish and Game, and Animal Damage Control Board. See IDFG (1994), *supra* note 37, at 14.

The plan included a proposal to monitor big game populations in areas where wolves were to be released and for active management that would see wolves removed from the endangered species list with numbers low enough to minimize the effects on livestock and game, though sufficient enough to prevent a possibility of relisting.<sup>39</sup> As with previous state plans, a point of contention was language allowing wolves on private land to be killed in certain circumstances—a provision not consistent with the approved federal recovery plan. Idaho's recalcitrance served to solidify a primary role for the Nez Perce. According to a tribal official, Idaho's opposition "allowed the tribe to move from the back to the front of the room."<sup>40</sup> As a result, even as the legislature debated the draft plan, USFWS and Nez Perce representatives expanded and accelerated discussions to include a possible state-wide management role for the tribe.<sup>41</sup> On another front, state legislators, in conjunction with the Idaho congressional delegation, made a last-minute effort to block the release of wolves and asked U.S. Interior Department Secretary Babbitt to suspend reintroduction activities.<sup>42</sup> Concurrently, a number of rural members argued for a more forceful approach and urged then Idaho Governor Batt to use the National Guard or State Police to prevent the release of wolves.<sup>43</sup>

In mid-January 1995 the first group of relocated wolves was released into central Idaho. The release of the wolves, and the imminent arrival of more (bringing the total to fifteen), turned the Idaho legislature's debate over a state management plan into a largely symbolic continuation of the legal maneuvering and political posturing that has consistently characterized wolf recovery.<sup>44</sup> The management plan was rejected by the Idaho House, and in a separate action a House committee voted to approve a revised plan with conditions incompatible with the approved recovery plan—the contentious provision to allow wolves on private land to be killed in certain circumstances and a new demand for federal compensation

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39. See IDFG (1994), *supra* note 37, at 2.

40. Interview with Nez Perce Tribe Personnel, in Lapwai, Idaho (July 9, 1998).

41. The IDFG, obviously, had in mind a more limited role for the Tribe: "The Department will keep the Tribe apprised of planned wolf management activities and research efforts and results. The Department will consult with the Tribe in conducting wolf control activities within Ceded area, and will cooperate to the maximum, practicable extent possible in monitoring radio-tagged wolves and other wolf-related activities." IDFG (1994), *supra* note 37, at 20.

42. See *Call Off the Wild: Legislators ask Batt Stop Wolves at Border*, IDAHO SPOKESMAN REV., Jan. 11, 1995, at B2.

43. See *id.*

44. Twenty additional wolves were captured and released in January 1996. See CURT MACK & KENT LAUDON, NEZ PERCE TRIBE, DEPARTMENT OF WILDLIFE MANAGEMENT ANN. REP. 1995-98, IDAHO WOLF RECOVERY PROJECT: RECOVERY AND MANAGEMENT OF GRAY WOLVES IN IDAHO (1998).

for livestock losses.<sup>45</sup> In approving a plan known to be unacceptable to federal officials, Idaho legislative leaders could pursue several tactical political objectives. First, it allowed legislators to maintain the support of the politically important livestock industry, which argued the adoption of a state plan would undermine industry lawsuits filed against reintroduction. Second, legislators knew, as did the industry, that if they failed to approve a state plan the Fish and Wildlife Service was prepared to turn management over to the Nez Perce, a local actor and therefore more acceptable to state interests than USFWS.<sup>46</sup> For its part, the livestock industry supported Nez Perce management because, according to a spokesman, "[M]y state can be active in attempting to change the Endangered Species Act and fight the invasion of our sovereignty."<sup>47</sup> Finally, the legislature could blame federal officials for the impasse and therefore sustain the principle that the recovery effort ignored local concerns and infringed on state sovereignty.

In late January, the Nez Perce Tribal Executive Committee approved the tribe's participation in the wolf recovery program. The following week the Idaho House voted down the revised state management plan, with some members contending the issue had "little to do with wolves and lots to do with state sovereignty."<sup>48</sup> Nez Perce and USFWS representatives, meanwhile, moved to complete discussions on cooperative management of the recovery effort. The tribe finalized a management plan that "operates within the broad guidelines of the Final EIS," and serves as the umbrella document for the Idaho wolf recovery effort.<sup>49</sup> In March 1995, following Fish and Wildlife Service approval of the tribal management plan, the two sides reached a five-year agreement to give the tribe responsibility for tracking and monitoring the wolves, disseminating public

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45. See *Wolf Management Plan Finally Clears Committee*, LEWISTON TRIB., Jan. 20, 1995, at 2C. An Idaho demand for federal compensation had been raised several times. See, e.g., IDFG (1994), *supra* note 37, at 29; FEIS (1994), *supra* note 34, at 5-49. Federal government denial of liability for depredation, however, had been firmly established through a series of court decisions dating back to 1950. For a thorough examination of court rulings on this issue, see Brian N. Beisher, *Are Ranchers Legitimately Trying to Save Their Hides or are They Just Crying Wolf — What Issues Must Be Resolved Before Wolf Reintroduction to Yellowstone National Park Proceeds?*, 29 LAND AND WATER L. REV. 417, 443 (1994).

46. As one legislator put it, "[I]f we don't give oversight to this, they're going to give oversight to the Nez Perce." *With Wolves On the Way, Idaho Needs a Plan*, IDAHO SPOKESMAN REV., Jan. 9, 1995, at A6-A7.

47. Michael R. Wickline, *Wolf Management Deal Unlikely*, LEWISTON TRIB., Jan. 18, 1995, at 7C.

48. *Lawmakers Kill State Plan for Dealing With Wolf*, IDAHO SPOKESMAN REV., Feb. 2, 1995, at A1, A6.

49. MACK & LAUDON, *supra* note 44, at 2.

information, and carrying out educational activities, with USFWS providing funding and maintaining oversight.<sup>50</sup>

## THE NEZ PERCE: CHALLENGE AND OPPORTUNITY

### Challenge

For the Nez Perce Tribe, one of the "highest priorities" is to support environmental assessment activities for projects on tribal lands.<sup>51</sup> As a result, the tribe was an active member of the gray wolf EIS advisory team and a participant in the planning for wolf recovery. In its public comments on the DEIS, the tribe made it clear it wanted to be a participant in program management and indicated that no matter what alternative was chosen, the tribe "should be 'a' or 'the' major player in Wolf Recovery."<sup>52</sup> An expanded role for the tribe is rooted in part in the Indian Self Determination Act, which calls for "effective and meaningful" participation of native tribes in the planning, conduct, and administration of federal programs and services for native people.<sup>53</sup> A prominent role for the Nez Perce is also grounded in the Treaty of 1855, which ceded to the United States the title to lands occupied and claimed by the tribe.<sup>54</sup> Because a large proportion of these ceded lands are within the designated wolf recovery zone, with part of the affected area lying within the boundaries of the Nez Perce reservation, the tribe has a sizable interest in how the recovery effort affects activities in these areas.

One of the principal challenges facing the Nez Perce was to overcome a bias towards federal and state agencies as managers of land and wildlife resources—an area where native tribes have not generally been recognized as a primary actor. More directly, the tribe had to assume a management responsibility that the state, with much greater resources, was expected to shoulder. In meeting this challenge, an initial goal for the tribe was to establish an extensive tracking and control program to provide information necessary to limit potential human/wolf conflict. A second goal was to conduct research on the effects of wolf reintroduction on

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50. *See id.*

51. A continuing goal for the Nez Perce is to protect and preserve the natural resources of their homeland. The tribe seeks to "maintain a harmonious and delicate balance in the use and management of nature's gifts." Nez Perce Tribe Executive Committee, *Traditional Values* (visited Mar. 1999) [http://www.tks.net/nptec/traditional\\_values.html](http://www.tks.net/nptec/traditional_values.html) (address being relocated to <http://www.nezperce.org>).

52. Nez Perce Tribal Executive Committee, *Comments on Draft Environmental Impact Statement*, in FEIS (1994), *supra* note 34, at 5-58 [hereinafter Nez Perce TEC].

53. *See* 25 U.S.C. §§ 450-58 (1994).

54. *See* Treaty with the Nez Perce, June 11, 1855, U.S.-Nez Perce, 12 Stat. 957.

livestock operations in and near the recovery zones. This type of research enables tribal wildlife officials to inform ranchers when wolves move into the local area and serves to counter claims that recovery will devastate the industry. As part of the research effort, the tribe issues a weekly report on the location of wolves and disseminates it to local news outlets, law enforcement officials, livestock industry organizations, and county extension agents. In meeting these tracking and research goals, the tribe has sought to confirm for other actors (federal and state officials and livestock interests) its commitment to a thoughtful, scientifically sound monitoring program. "The tribe," said one official, "wanted to demonstrate we were technically competent and scientifically capable."<sup>55</sup>

The third goal was the creation of a public information and education program on the wolf, the recovery effort, and Nez Perce cultural traditions. These activities are supported by the Wolf Education and Research Center (WERC), a non-profit organization established to promote the return of wolves to the northern Rocky Mountains. In January 1992, WERC proposed building a wolf education facility on Forest Service land in central Idaho.<sup>56</sup> The proposal was opposed by the livestock industry on the grounds the center and its plan to have a resident wolf pack would provide the public an unnatural or artificial view of wolf behavior. The industry also contended the center would be a fund-raising tool to support wolf recovery efforts. After a tentative approval, the Forest Service reversed its position and requested an environmental assessment of the proposed project, which WERC argued was beyond its resources. Denied permission to build on USFS land without an assessment and unlikely to find available state or private land, WERC turned to the Nez Perce. In 1994 the tribe and the center agreed to build a facility on tribal land near Winchester, Idaho. The facility opened in June 1997 and offers interpretative exhibits and an opportunity for the public to view a wolf pack. It also provides an opportunity to experience Nez Perce history and tribal culture. Further, staff and Nez Perce tribal representatives draw on the center's resources to provide a variety of educational activities for schools and community organizations throughout the region.

The second principal challenge for the Nez Perce, as might be expected, has been to secure stable, long-term funding of the recovery program. The tribe proposed initially that a funding plan be based on its status as a sovereign nation. It argued that to promote flexibility and adaptive management the federal government could enter into a "government-to-government" agreement on a one-time appropriation to establish a trust fund for recovery funding:

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55. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

56. See MACK & LAUDON, *supra* note 44, at 6.

Such a fund, handled through the Tribe could be used as matching money to improve ungulate habitat on public as well as private lands, if needed. Budgets and work plans could be overseen by a wolf recovery team made up of agencies and tribes. This system would increase efficiency and responsiveness to the needs of the resources. Waste in spending would be reduced, savings encouraged because next year's funding would depend on last years spending. Future research and monitoring of wolves could be funded from this trust fund beyond the point of official recovery, to protect the tax payers investment in America's Wildlands of Central Idaho.<sup>57</sup>

The trust fund proposal was an attempt to address two potential unknowns. First, the costs of monitoring and educational activities were uncertain. Federal officials could estimate expected costs, influenced in part by agency budget considerations, yet actual costs would become known only after wolves were released and monitoring and tracking commenced. Second, a one-time appropriation would insulate the recovery program and the tribe from the uncertainty and political vagaries of the congressional appropriations process.

The ESA, however, mandates that species recovery programs are allocated funding by annual appropriation.<sup>58</sup> With regard to funding, tribal officials note that while USFWS has "responsibility for all the bills," it has consistently underfunded the recovery effort in central Idaho. As a consequence, the tribe has been forced to turn to the Bureau of Indian Affairs (BIA) and other organizations for extra funding support. The funding shortfall is caused in part by the rugged mountainous terrain of central Idaho—the largest of the three recovery areas and, unlike Yellowstone, essentially roadless. This has required all monitoring in the Idaho recovery area to be aerial, a significantly more expensive activity.<sup>59</sup> In 1997 the tribe was forced to scale-back monitoring due to a lack of funds. At the urging of Idaho officials, however, and with some persuasion from members of Congress, USFWS agreed to provide an additional \$100,000 to support enhanced monitoring efforts during the 1997–1998 fiscal year.<sup>60</sup>

The Idaho request for additional funding, announced in December 1997, reflects the state's pragmatic approach to the recovery program. To mitigate depredation problems and minimize potential conflicts with

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57. See NEZ PERCE TEC, in FEIS (1994), *supra* note 34, at 5-58.

58. See 16 U.S.C. § 1535(d)(1) (1994).

59. See MACK & LAUDON, *supra* note 44, at 6.

60. *Feds Will Provide \$100,000 More for Wolf Monitoring*, LEWISTON TRIB., Dec. 13, 1997, at 5A.

humans requires accurate and timely information on the number of wolves and their location. As a consequence, even though opposed to reintroduction and unwilling to take part in a recovery program designed by federal officials, the state has sought to insure monitoring activities are continued in an effective manner. As a Nez Perce official observed, "The state has demanded the federal government and the tribe do a good job of management."<sup>61</sup> Whether the monitoring program can continue to keep pace as wolves multiply and disperse across a greater area is unknown. Tribal officials are hopeful the Fish and Wildlife Service will continue to provide additional funding to support adequate aerial monitoring.

Currently, government leaders in Idaho, recognizing the reality of the wolf's return, are taking some tentative steps to prepare for a potential removal of the gray wolf in the northern Rocky Mountains from the endangered species list. An initial step was a 1997 *Memorandum of Understanding* among Idaho, Wyoming and Montana on the collaborative development of a management plan for the post-delisting period. The three states have agreed to cooperate on wolf research, public information activities, and to monitor the effects of recovery on game populations.<sup>62</sup> As part of this process, the state legislature agreed to extend the life of the WOC and to allow some expenditures on wolf-related planning to further the development of collaborative management activities.<sup>63</sup> State officials have also expressed concern at the perceived effects of wolves on large game populations. The governor and WOC, noting that as "wolf numbers climb to higher levels, it will be nearly impossible to manage wolves or prey species" without accurate information, have requested the Fish and Wildlife Service fund an independent study by IDFG of the threat wolves pose to ungulate populations.<sup>64</sup>

Whether these efforts will lead to a new Idaho management plan is uncertain. Although the *Memorandum of Understanding* calls for a coordinated management plan by January 2000, an IDFG official noted, "There is little to be gained by creating a new management plan prior to delisting."<sup>65</sup> Rather, the Department can avoid lingering political fall-out "and wait until delisting, when the wolf could be listed as threatened or

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61. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 20, 1998).

62. *Memorandum of Understanding Among the States of Montana, Idaho, and Wyoming Concerning Monitoring and Management of a Recovered Wolf Population in the Central Rocky Mountain Region*, Aug. 19, 1997.

63. See IDAHO CODE § 36-715(4)(a) (Supp. 1998). In 1999, the Legislature extended the life of the WOC to Dec. 31, 2001. S. 1105, 55th Leg., 2nd Sess. (Idaho 1999).

64. Dan Gallagher, *State Leaders Want to Be More Involved in Wolf Program*, IDAHO SPOKESMAN REV., Aug. 22, 1998, at B6.

65. Telephone interview with IDFG Personnel in Boise, Idaho (June 30, 1998).



possibly as a game species and managed similar to lions and bears."<sup>66</sup> The possible delisting of wolves, however, confronts Idaho policymakers with a dilemma. Before the state can assume responsibility for wolf recovery management, it must approve a management plan, subject to a five-year period of monitoring by USFWS, that includes measures to prevent wolf numbers from falling below the delisting thresholds. Yet approval of a management plan and official delisting would likely end federal funding of wolf management. Idaho would then have to assume the costs of a wolf recovery effort it opposed bitterly. This somewhat ironic outcome is not, of course, supported by state legislators: "If they think we're going to raise taxes to pay for wolves we didn't want in the first place, well, maybe that's what it will take to get the public to tell the Fish and Wildlife Service to take a flying leap."<sup>67</sup>

Still to be determined is the relative roles of the Nez Perce and IDFG following delisting. The tribe wants to continue an active role, yet acknowledges the Department of Fish and Game may eventually assume many of the functions and activities associated with managing wolf populations. Regardless of the tribe's status post-delisting, Nez Perce officials view wolf recovery as a success for the tribe in a number of ways. They see a parallel between the wolf's future and their own: "Both are optimistic. Wolf recovery furthers the recovery of the tribe and it has been a great confidence boost to ask what's next."<sup>68</sup>

## Opportunity

The wolf recovery program presents the Nez Perce the opportunity to pursue a number of distinct yet intertwined objectives. First, the tribe, similar to many environmental organizations, was eager to restore the biodiversity and ecological balance of the northern Rocky Mountain ecosystem.<sup>69</sup> The return of the wolf would be a major step in achieving a more natural balance between predator and large ungulate populations in central Idaho. Second, the Nez Perce saw a chance to recapture an element of tribal cultural heritage that was diminished, if not lost, by the extermination of the wolf. Like many Native Americans, the Nez Perce have a special affinity with the wolf, with which they share a similar history of being persecuted and being forced into ever-smaller habitats.<sup>70</sup> Restoring the gray

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66. *Id.*

67. *Idaho Wolf Recovery Both Good News, Bad News*, IDAHO SPOKESMAN REV., Jan. 29, 1999, at B2.

68. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

69. See NEZ PERCE TEC, in FEIS (1994), *supra* note 34, at 5-57.

70. See Stephen Lyons, *Pack Mentality*, IDAHO SPOKESMAN REV., Mar. 1, 1998, at E1, E5; Curt Mack, *The Wolf's Return to Central Idaho*, INTERNATIONAL WOLF, Winter 1997, at 5.

wolf to its historic range would allow the tribe to "rekindle its cultural ties to the wolf."<sup>71</sup> For the Nez Perce, having the wolf back in the spiritual places of their ancestors would lead to a tremendous uplift in cultural and spiritual values: "The value of having the wolf physically part of Tribal culture once again is unmeasurable."<sup>72</sup>

Under the terms of the Treaty of 1855, the Nez Perce were guaranteed the privilege of hunting on open and unclaimed land within the ceded area. For tribal officials, this Treaty, and those of 1863 and 1868, established a set of responsibilities and relationships that structure natural resource management not only on ceded land, but throughout the region. The treaties between native tribes and the United States government, noted one official, represent cumulatively the "first organic act."<sup>73</sup> Further, from its perspective the tribe is "the manager of treaty resources available to the Nez Perce Tribe found on Federal Lands within the Ceded Area of the Nez Perce Tribe."<sup>74</sup> The tribe's management of its treaty resources, however, is circumscribed by the fact that most of the resources in the ceded areas are on land administered by USFS or the Bureau of Land Management (BLM). Thus, policy decisions, like wolf recovery, that may affect use or access to the ceded areas, have significant potential consequences for Nez Perce cultural and economic activity: "[A]ll activities and their impacts, which occur on Forest Service and BLM lands have become increasingly important to the Tribe and its future management role. Because Treaty reserved resources are vital to the Nez Perce Tribe, co-management of these resources by the Tribe and other Federal Agencies is absolutely necessary."<sup>75</sup> In wolf recovery, the tribe saw a chance to further the principle of co-management and to demonstrate the value of such arrangements: "We wanted to show that cooperative arrangements work."<sup>76</sup> Perhaps more important, wolf recovery is an opportunity to play an expanded and enhanced role in the management of local and regional natural resources: "The tribe has had to elbow its way into the management of natural resources. We've worked long and hard to position the tribe to take part in resource management activities."<sup>77</sup> In assuming management of wolf recovery the tribe was creating a place for itself and demonstrating it had the expertise, according to one official, "to determine its own goals and objectives and to chart its own course."<sup>78</sup>

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71. Mack, *supra* note 70, at 6.

72. NEZ PERCE TEC, in FEIS (1994), *supra* note 34, at 5-58.

73. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

74. NEZ PERCE TEC, in FEIS (1994), *supra* note 34, at 5-60.

75. *Id.* at 5-57.

76. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

77. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 20, 1998).

78. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

Although wolf recovery presented a number of challenges for the Nez Perce, the tribe possesses substantial institutional capacity in the area of natural resource management. Its resource management departments employ approximately 300 people and are guided by a determination to meet "the demands of modern society while providing cultural protection and economic stimulus."<sup>79</sup> The tribal forestry program seeks to manage forest resources in a sustained yield fashion, and through the Nez Perce Forest Products Enterprises, which includes a lumber yard and wood products plant, the tribe maintains logging, marketing, and reforestation programs associated with tribal timber sales.<sup>80</sup> The water resources department works to advance and defend the tribe's water rights and protect water quality, while the wildlife department, in addition to managing wolf recovery, seeks to develop management plans for species of special concern, enhance habitat, and monitor large ungulate and other game populations in ceded areas and on reservation lands.<sup>81</sup> Lastly, the tribe's fisheries department has recovery programs for salmon and other species that include monitoring, hatchery, and habitat restoration activities. The department also supports Nez Perce participation in the Columbia River Inter-Tribal Fish Commission, where the tribe has played a significant role in region-wide, inter-governmental cooperative efforts to restore salmon runs throughout the Columbia Basin.

Wolf recovery offers the Nez Perce an opportunity to promote restoration of an important element of tribal culture and to continue active participation in the management of not only treaty resources but also a state-wide program. As a consequence, the recovery effort serves to enhance the tribe's growing prominence in natural resource management circles.

## CONCLUSION

Even as wolf numbers multiply, and delisting moves closer to reality, the symbolic political posturing that characterizes gray wolf recovery continues. In addition to Idaho's continued reluctance to assume management responsibility for the wolf, the Idaho House passed legislation

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79. Nez Perce Tribe Executive Committee, *Traditional Values* (visited Mar. 1999) [http://www.tks.net/nptec/traditional\\_values.html](http://www.tks.net/nptec/traditional_values.html) (address being relocated to <http://www.nezperce.org>).

80. Nez Perce Tribal Executive Committee, *Nez Perce Tribal Economic Development* (visited Mar. 1999) <http://www.tks.net/nptec/econdevelop.html> (address being relocated to <http://www.nezperce.org>).

81. Nez Perce Tribal Executive Committee, *Traditional Values: Wildlife Management* (visited Mar. 1999) [http://www.tks.net/nptec/traditional\\_values.html](http://www.tks.net/nptec/traditional_values.html) (address being relocated to <http://www.nezperce.org>).

in February 1998 that would require federal agencies to receive state permission before reintroduction of animal species.<sup>82</sup> Such legislation, though of limited practical effect, reflects Idaho's continued unhappiness with the precedent of federal agencies crafting species recovery plans that override the decisions of local and state officials—a concern that continues with the state's strong opposition to the reintroduction of grizzly bears.

Of much greater long-term consequence, in December 1997 a federal district judge in Wyoming ruled the wolf recovery plan illegally reduced the protection afforded to wolves under the ESA and ordered the removal of reintroduced wolves and their offspring.<sup>83</sup> The decision originated in suits filed in 1995 by the livestock industry and some environmental groups that contended the reintroduction of an experimental population occurred within the existing range of the species and thus violated section 10(j) of the ESA.<sup>84</sup> The decision, although stayed pending appeal, was roundly criticized by a number of environmental organizations, including the Wildlife Federation, which contended: "No one would throw out a masterpiece that was painted on flawed canvas. Why would you exterminate thriving wolves to ensure that one of them had a bit more protection under the law?"<sup>85</sup> The Nez Perce joined the federal government and environmental organizations in an appeal and argued the ruling is "inconsistent with the fundamental principles of administrative law and is certainly unfair to the wolves."<sup>86</sup> For its part, the Fish and Wildlife Service contends, in a brief filed before the 10th Circuit Court of Appeals, the wolf recovery was rational and well founded and that in interpretation of the

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82. H.B. 616, 54th Leg., 2nd Sess. (Idaho 1998) (died in committee).

83. *Wyoming Farm Bureau Federation v. Babbit*, 987 F. Supp. 1349 (D. Wy. 1997) (finding that the blanket treatment of all wolves in the recovery area as experimental effected a de facto delisting of naturally occurring wolves that violated the ESA).

84. The decision originated in separate suits by the Farm Bureau and the Audubon Society, which now supports the recovery plan and has asked the Tenth Circuit Court of Appeals to allow the Society to align itself with those agencies and organizations appealing the removal order. See *Audubon Now Supports Wolf Plan*, IDAHO SPOKESMAN REV., Aug. 24, 1998, at B4. One environmental organization that continues to oppose the recovery plan is Earthjustice Legal Defense Fund, which has argued that reintroduced wolves should have been declared endangered instead of experimental; See, FISCHER, *supra* note 2, at 155; Bruce Weide & Pat Tucker, *Be Careful What You Wish for the Wolves*, HIGH COUNTRY NEWS, Apr. 13, 1998, at 6. To argue that the reintroduced animals should have been considered endangered overlooks the fact that, without a change in status, it was unlikely that wolf recovery would have received the political support necessary to authorize a reintroduction program, in which case there would be no reintroduced wolves of any status.

85. Bill Loftus, *Conservationists Appeal Wolf Recovery Ruling*, LEWISTON TRIB., Dec. 31, 1997, at 5A.

86. Bill Loftus, *Tribe Joins Challenge of Judge's Wolf Ruling: Nez Perces, Conservation Groups Say Transplanted Wolves Should Not be Removed*, LEWISTON TRIB., 25 June 1998, at 1C.

ESA and its application to wolf reintroduction the Service was entitled to deference.<sup>87</sup>

Although wolf recovery proponents suggest that full endangered status may be the result of the appeal process, a more likely outcome is a compromise where reintroduced wolves are redesignated as threatened with the standards for delisting left unchanged. Such an outcome has advantages for both sides. It precludes the possible removal of reintroduced wolves. This will meet the concerns of recovery supporters and allow the livestock industry to avoid a possible public relations nightmare resulting from any removal effort. At the same time, wolf recovery advocates will have to accept lessened protections, while opponents have to acknowledge the inevitability of the wolf's return.

The gray wolf recovery effort illustrates some of the strengths and weaknesses, the good and bad, of the Endangered Species Act. On the positive side, the gray wolf recovery effort has proved a remarkable success in promoting species recovery. Few, if any, of the projected negative consequences—road closures, widespread restrictions in hunting, or large livestock losses—have materialized. Currently, some 120 wolves are found in central Idaho (over 100 in the Yellowstone area) and the Fish and Wildlife Service is assessing whether to begin officially the three-year delisting countdown.<sup>88</sup> The recovery plan for the northern Rocky Mountains was copied in large part in wolf recovery plans for New Mexico and Arizona, and the proposed grizzly reintroduction in central Idaho. The gray wolf recovery effort, moreover, marks the first time a native tribe has taken the lead role in the reintroduction of an endangered species. As a result, the Nez Perce management program has become a positive model for other tribes interested in participating in species recovery programs. Gray wolf recovery demonstrates that if various actors—environmental organizations, extractive industries, government officials, and public land user groups—are willing to compromise, the ESA is not as rigid as critics on both sides claim, but flexible enough to allow for cooperative solutions to endangered species challenges.

While the recovery effort demonstrates the potential for much needed flexibility in interpretation and implementation of the ESA, it also highlights the tendency for endangered species policy to be determined largely in the courts instead of the legislative arena. That ESA policy decisions, or non-decisions, end-up the subject of an almost inevitable legal challenge is in itself not surprising. It is a common political tactic to change the arena of debate or reconfigure the scope of the conflict. In the case of

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87. See *Judge Wolf Ruling Wrong, Agency Says*, IDAHO SPOKESMAN REV., Nov. 29, 1998, at B1, B2.

88. See MACK AND LAUDON, *supra* note 44, at 12.

ESA policy, however, the result is often decisions where political compromise gives way to a narrow, technical interpretation of endangered species law, as in the order to remove reintroduced wolves. While this may serve a specific set of interests—*e.g.*, land owners attempting to protect perceived property rights or environmental organizations arguing that species protection should outweigh other concerns—it is likely to ill-serve the pursuit of broadly conceived public policy goals.

The controversy over wolf recovery is a microcosm of the larger debate over land use policy in the West. It is a debate that often tends to paralyze the policy process and trap it in a stifling set of political constraints and entrenched expectations that make consensus difficult, if not impossible. A prominent feature of this debate is bitter disagreement over the set of values that should guide public lands policy. The extractive values embodied in the timber, mining, and livestock industries have long-dominated land use policy in the West. Yet this dominance is waning as an evolving set of ecological values moves into the ascendant.<sup>89</sup> At the moment, however, the values of the "old" and "new" West are in rough balance politically, with no clear winner on the immediate horizon. The clash of competing values is exacerbated and given shape by the lack of a clear oversight structure for public lands policy. Instead, as wolf recovery illustrates, there is a complex and contentious process where federal, state, tribal, and local officials struggle for influence and control. Because the question of who should manage is so often contested, it is difficult to decide how the public lands should be managed.

Native tribes are perhaps singularly positioned to ease us beyond the seemingly intractable disagreement over values and the long-running intergovernmental struggle for primacy. On one level, native tribes can bring a combination of scientific wisdom and historical tradition to the debate over land use policy. Nez Perce officials contend that native tribes possess a longer historical perspective and sense of permanence. As one official noted, "We can't relocate."<sup>90</sup> Moreover, as a third level of government, native tribes have a vested stake in the success of collaborative management arrangements. Finally, in many instances native tribes, as exemplified by the Nez Perce, hold a set of values that straddles the divide between extractive and ecological. A tribal official observed, for example, "the tribe looks to the land for spiritual and physical sustenance."<sup>91</sup> In essence, it incorporates a cultural respect for the natural environment and

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89. See, *e.g.*, Brent S. Steel & Nicholas P. Lovrich, *An Introduction to Natural Resource Policy and the Environment: Changing Paradigms and Values*, in PUBLIC LANDS MANAGEMENT IN THE WEST 3, 3 (Brent S. Steel ed., 1997).

90. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 9, 1998).

91. Interview with Nez Perce Tribe Personnel in Lapwai, Idaho (July 20, 1998).

a practical realization that the development of natural resources can provide sizable economic benefits for the tribe. This balance between extractive and ecological values is a stark contrast to the false dichotomy that characterizes the long-running debate between industry and environmental interests, where economic development and environmental protection are often portrayed as mutually exclusive. Neither state nor federal, and with a set of values both extractive and ecological in orientation, native tribes occupy a unique position in the debate over land use policy. As a consequence of this unique position, native tribes may bring to the table a broader, perhaps more nuanced, understanding of possible alternatives that may help move the debate in new directions.