Supplement to The Hunting Report Newsletter

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"SERVING THE HUNTER WHO TRAVELS"

"Hunting provides the principal incentive and revenue for conservation. Hence it is a force for conservation."

Special To The Hunting Report

World Conservation Force Bulletin

by John J. Jackson, III

SPECIAL REPORT

News…News… News
The Very Latest On That Argali Suit

Conservation Force has filed an intervention in the argali lawsuit that was filed by animal rightists against the US Fish and Wildlife Service. The intervenors are the Government of Mongolia, the Foundation for North American Wild Sheep (FNAWS), the Grand Slam Club/OVIS (which have recently merged into one nonprofit organization of 3,433 sheep hunters) and Conservation Force itself on behalf of its more than 50 supporting organizations, such as the International Sheep Hunters Association, the International Foundation for the Conservation of Wildlife and the British Columbia Wild Sheep Society, plus a number of individuals.

The individual intervenors include three renown biologists, Dr. Raul Valdez, Dr. Bart O'Gara, and Dr. James Teer, who have long worked with Conservation Force on sheep issues. Five individual hunters are named as intervenors as well, Douglas C. Stromberg, Ron Bartels, Ben Seale, Clark S. Ullom, and Lee G. Lipscomb. A special thanks is owed to all of the intervenors for their participation in this case.

Of course, the Foundation for

North American Wild Sheep has an incomparable record of "putting sheep back on the mountain." The intervention gives it credit for being the "Ducks Unlimited" of sheep hunting. Its thousands of members do more argali and international wild sheep hunting and expend more on argali conservation and hunting than all others combined. Through its auction system, it has made significant and direct contributions to argali conservation in Mongolia, Tajikistan and Kyrgyzstan, the three countries in issue in the litigation. FNAWS also had filed a comment in 1993 opposing the uplisting of argali in those three countries as endangered. Its Board of Directors unanimously agreed to FNAWS' intervention in cooperation with Conservation Force. Both FNAWS, its leading affiliates and Grand Slam Club/OVIS are supporters of Conservation Force. Yours truly is providing all the legal representation *pro bono*.

Though these exemplary sheep organizations have taken the lead for strategic purposes on behalf of the hunting and conservation community, we need the whole hunting community to support the defense.

The antis' suit has three purposes, two of which can affect all hunters who travel. First, it aims to stop all argali trophy imports, either by having them all listed as "endangered," or attacking the fulfillment of the

information requirements of the Special Rule governing argali imports. Second, it wants the court to rule that the issuance of import permits for threatened species taken outside the country should be as limited as the hunting of threatened species within the USA - i.e., permits should be issued only when a population is above carrying capacity and there is no other way to relieve it. Third, it wants the court to rule that all permit applications of all threatened species must be pre-published in the Federal Register and open to public comment, which is how "endangered" species permit applications have long been treated.

Our intervention states that we cannot expect huntable populations of argali to continue to exist in the future if the Endangered Species Act is used to block the revenue and conservation incentives that arise from the hunting of importable argali. Generally, hunters will not bear the high price of the hunt if they cannot return with their trophy. The collection of the trophy is a significant part of the hunt that is so important that hunters will not bear the costs and risks without it. Hunters cannot in good conscience shoot an argali when the trophy is wasted. The import of the trophy for personal display reflects the respect and high regard held by the hunter for both the hunt and the game species. It honors the hunt and the argali. A successful hunt is expected to be celebrated, which is what a trophy does. The import of the trophy assures that it is forever a permanent part of the life of the hunter, hence the high prices that mean so very much to the conservation of the species.

DATELINE: US WEST

News Analysis

Update On Nonresident Hunters' Rights Cases

The two nonresident hunters' rights cases are both on appeal in different federal appellate circuits. The cases, one in Wyoming and the other in Arizona, now present somewhat different interests and issues. The Wyoming case entitled *Wyoming Outfitters and Guides Association, et al. v. Wyoming Game and Fish Commission, et al.*, 00-8066, is the one I am personally handling. We filed a 14,000-word brief in the federal 10th Circuit Court of Appeals in Denver in March. The state filed its brief in response, and we filed the final reply brief in May. The decision is expected this year.

The plaintiffs are nonresident elk and deer hunters who have booked hunts or purchased them at conservation auctions and then not been able to draw a license. Their outfitters and the outfitters association, WYOGA, are also plaintiffs because of their for-profit commercial interest and their part in the interstate hunting industry.

Nine forms of discrimination are separately alleged to violate both the Dormant Commerce Clause and the Equal Protection Clauses of the US Constitution. For example, the discrimination against nonresident hunters includes the fact that there is no quota on residents, who can purchase an unlimited number of elk licenses across the counter, while nonresidents must separately enter a draw for a very limited number of licenses. That is a difference in issuance method, as well as in the number of licenses given out.

Another fact is, the nonresident elk draw has been capped at 7,200 elk for 14 years even though the elk population has more than doubled and is currently 25 percent above management objective. Resident groups are adamant against giving nonresident hunters more licenses, however. They are even against providing nonresidents booked with licensed outfitters the same treatment as residents, or "set-asides" as in other western states.

At the threshold, the trial court dismissed the outfitters on the basis they did not have standing because they could not prove the discrimination caused a <u>direct</u> injury to them-

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selves. Then the trial court dismissed the nonresident hunters on the basis their recreational activity was not interstate commerce, thus not protected under the Dormant Commerce Clause of the US Constitution. The trial court incorrectly held that the Commerce Clause claim could only be based on the commercial attributes of the outfitters that it dismissed.

On appeal, we are arguing that the outfitters do have standing because they are in fact injured by the discrimination against their clients and that they themselves are also the target of local animosity for their representative connection to nonresidents, who are stereotyped to be wealthy outsiders. We are arguing that nonresident recreational hunters and their outfitters are component parts of an enormous interstate hunting industry that amounts to one of every seven hunters and that provides most conservation revenue in the western states and which is therefore protected by the Dormant Commerce Clause. We are also arguing that the outfitters should not have been dismissed and also that recreational hunting, like recreational camping in a recent US Supreme Court case, are a covered activity because of its interstate travel component. We are arguing that "two million out-of-state recreational hunters choke the highways and airports during the hunting season, traveling from state to state and purchasing preparatory supplies from all parts of this nation."

"In many western states, nonresident hunters contribute more funding of wildlife conservation per capita and per class than all others though they use just a fraction of the resource."

In *Camps Newfoundland v. Maine*, 520 U.S. 564 (1997), the US Supreme Court held that nonresidents' interstate travel to camp and to enjoy the outdoors purely for recreation constituted "articles of commerce" in the "stream of commerce." Therefore, discriminatory protectionism favoring residents over nonresident outdoor recreationists was illegal. Significantly, the Wyoming trial court held that the Equal Protection Amendment was not violated because it was legitimate for the state to prefer its own citizens over others to ensure and award their support of the state's conservation programs. On appeal, we are arguing that such a purpose for discrimination is not independent and legitimate. As in the *Terk* case, which we won in New Mexico, we are arguing that the intentional discrimination against a minority class (recreational nonresident hunters) to get the support of

those being favored (resident hunters) is neither "independent" of the discrimination itself nor a "legitimate" rationale. It has to be both to pass the Equal Protection Amendment test. Any and all discrimination could be justified on the basis that those being treated more favorably may be more supportive of the governing body that favors them over others, but such a justification is not "independent" of the rationale for the discrimination. It is one and the same.

The case is the best ever developed that bears directly on the equality of recreational hunting rights of nonresidents, yet it remains a "long shot" because of the centuries of American legal jurisprudence against nonresidents. We have handled this case for you, the hunter who travels. In many western states, nonresident hunters contribute more funding of wildlife conservation per capita and per class than all others though they use just a fraction of the resource.

The case has proven to be a major undertaking by yours truly. I have provided more than 1,000 hours of *pro bono* legal services. When divided into 40-hour work weeks, it equals half a year of free legal services spread over a two and one-half year period. Though I have given Conservation Force full credit for the immense effort from its inception, Conservation Force has only received a few hundred dollars in financial contributions for a campaign providing hundreds of thousands of dollars of legal services!

The second case arises in Arizona and is on appeal in the federal 9th Circuit Court of Appeals. That suit is being handled by James Scarantino engaged by US Outfitters. Most issues and plaintiffs have been voluntarily dropped from the claim. Though the case still bears our name, *Conservation Force, et al. v. Duane Shroufe, et al.* (Commissioners), 0017082, Conservation Force was asked by counsel to voluntarily withdraw to narrow the issues and expedite the case, which we did. The plaintiffs initially included an array of interests including recreational hunters and outfitters, but no longer does. US Outfitters was dismissed from the case by the Court at an early stage in the proceedings. The court's dismissal of the outfitters' interest on standing was not appealed.

When initially filed, that case included claims under both the Equal Protection Amendment and the Dormant Interstate Commerce Clause of the US Constitution. When the trial court dismissed the Commerce Clause claim, the plaintiffs' counsel also voluntarily dropped all the claims under the Equal Protection Amendment. He strategically narrowed the appeal to a claim by a few individuals who hunt for the sole purpose of acquiring elk antlers for selling them interstate for profit. Though the original claim included

recreational hunting, the appeal explicitly excludes it. It's now only a claim by nonresident commercial antler harvesters who claim the discrimination in licensing of nonresidents is impinging on their livelihood from interstate antler sales.

The brief explicitly states that the District Court erred when it treated "plaintiffs' activities as 'recreational hunting' when the undisputed evidence shows that they (those appealing) are engaged solely in commercial activity . . ." "The nonresidents (remaining in case) are not 'recreational hunters.' They have no interest in harvesting the animals except to derive profit from the activity . . . it is their business and their livelihood." This change will no doubt surprise the state and may prove to be a winning strategy and may advance the underlying jurisprudence by getting the appellate court to apply more recent US Supreme Court Commerce Clause cases to the issuance of hunting licenses to some nonresidents.

It most certainly is a simpler case. Nevertheless, it no longer applies directly to the right of nonresident hunters hunting for recreation, or to their hunting brokers, outfitters and guides who are commercially dependent upon the licensing of nonresident recreational hunters. The case barely relates to the original filing. It is an interesting turn of events that we thought you should know.

And Finally....

BC Wildlife Federation Rebuffs Politicians

■ In an unanimous decision, the Board of Directors of the British Columbia Wildlife Federation (BCWF) voted to inform the provincial ministers that for the first time in over 46 years they will be the first provincial ministers responsible for Fish and Wildlife who will not be invited to speak at the group's annual general meeting. The BC Wildlife Federation is the largest and longest standing voluntary conservation organization in the province. Make no mistake, its members and affiliate organizations are outraged at the politically motivated closure of grizzly bear hunting on the eve of the election, and they hold the ministry politicians in absolute disdain.

The President of the BCWF, Ivar Larson, recently stated, "Political intervention and pandering to the agenda of animal rights groups has destroyed the credibility and integrity of scientific wildlife management in British Columbia by agreeing to the closure of the hunting of grizzly bears." "This particular government crossed the line when they moved their political agenda forward against the advice of senior Ministry of Environment staff and the Grizzly Scientific Advisory Panel by imposing a three-year moratorium on the hunting of grizzly bears." "This meddling in reliable scientific wildlife management through political interference has sounded an alarm bell throughout the province and indeed Canada and the world. The high esteem in which the province's scientifically based wildlife conservation program was held provincially, nationally and internationally is now lost."

Meanwhile, knowledgeable and respected experts in British Columbia believe that the existing grizzly population estimate of 10,000 to 13,000 bear is conservative. The population may be in the range of 16,000 to 18,000 bear and increasing. Regardless, no basis has been shown for the antis' estimate of 4,000 to 6,000 bears.

I was recently in British Columbia and spoke with ministry politicians. What I heard appalled me. One described the UK-based EIA (Environmental Investigative Agency) as a "stakeholder" in British Columbia. Another thought the EIA was a responsible and respected "environmental organization" that should be consulted and included in policymakers' circle. Another person at the political level told me that neither grizzly bear or other wildlife management was any longer governed by biology. He advised the Guides and Outfitters Association of British Columbia to wake up to the reality that the use and management of wildlife in the province from here out will be a moral determination governed by the balance of public sentiment of what is right and wrong!

Doesn't all this raise the interest of animals to the same level as humans? We are not sure if animals informally have been given rights in British Columbia on par with humans, or even greater rights; or whether they have just been politically used by an outgoing political party to the long-term detriment of the species feigned to be protected.

By the time you read this, there should be a new BC political party in office that has promised to reopen grizzly hunting. Nevertheless, the fight is far from over. – *John J. Jackson, III.*

Conservation Force Sponsor

The Hunting Report and Conservation Force would like to thank International Foundation for the Conservation of Wildlife (IGF) for generously agreeing to pay all of the costs associated with the publishing of this bulletin. IGF was created by Weatherby Award Winner H.I.H Prince Abdorreza of Iran 20 years ago. Initially called The International Foundation for the Conservation of Game, IGF was already promoting sustainable use of wildlife and conservation of biodiversity 15 years before the UN Rio Conference, which brought these matters to widespread public attention. The foundation has agreed to sponsor *Conservation Force Bulletin* in order to help international hunters keep abreast of hunting-related wildlife news. Conservation Force's John J. Jackson, III, is a member of the board of IGF and Bertrand des Clers, its director, is a member of the Board of Directors of Conservation Force.

International Foundation for the Conservation of Wildlife

MEMO

To: Jim Young, Print N Mail
From: Leonardo Mocci, The Hunting Report
Re: June 2001 Issue of Conservation Force Supplement
Date: May 25, 2001

Jim,

Here's the June 2001 issue of the Conservation Force Supplement to be inserted in The Hunting Report. Don't forget to insert John Jackson's picture on page 2. Please fax "blue lines" for approval A.S.A.P.

Print run is 4,750 (Print run, 4,564, John Jackson, 25 and 161 overs). Ship overs to us as usual.

Please call me if you have any questions.

Leonardo

P.S. Please make sure that John Jackson gets his 25 copies.