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NANCY SWEENEY
 CLERK DISTRICT COURT
 FILED BY DEPTA PAASO
 2012 NOV 30 A 11: 50

**MONTANA FIRST JUDICIAL DISTRICT COURT
 LEWIS AND CLARK COUNTY**

HELENA HUNTERS AND ANGLERS ASSOCIATION, a non-profit organization; FRIENDS OF THE WILD SWAN, a non-profit organization; MONTANA ECOSYSTEM DEFENSE COUNCIL, a non-profit organization; GEORGE WUERTHNER, an individual; NATIVE ECOSYSTEMS COUNCIL, COUNCIL, a non-profit organization; GEORGE WUERTHNER, an individual; NATIVE ECOSYSTEMS COUNCIL, a non-profit organization; ALLIANCE FOR THE WILD ROCKIES, a non-profit organization; SWAN VIEW COALITION, a non-profit organization; WILDEARTH GUARDIANS, a non-profit organization, and FOOTLOOSE MONTANA, a non-profit organization,

Plaintiffs,

v.

JOE MAURIER, in his official capacity as Director of Montana Fish, Wildlife and Parks; MONTANA FISH, WILDLIFE AND PARKS, an agency of the state of Montana; BOB REAM, in his official capacity as chairman of Montana Fish, Wildlife and Parks Commission; and MONTANA FISH, WILDLIFE AND PARKS COMMISSION, a regulatory entity of the state of Montana,

State-Defendants.

Cause No. BDV-2012-868

**ORDER ON MOTION
 FOR TEMPORARY
 RESTRAINING ORDER**

1 Pending before the Court is Plaintiffs' request for a temporary restraining
2 order suspending Defendants' proposed wolverine trapping season scheduled to begin
3 on December 1, 2012. The Court notes that a hearing on a preliminary injunction is
4 scheduled for January 10, 2013.

5 Defendants have established a quota of five wolverines to be trapped for
6 the Montana wolverine trapping season beginning on December 1, 2012. Based on the
7 information provided by Plaintiffs, it appears that the population of wolverines in
8 Montana is unclear. There is a possibility that there could be a population of only 35
9 wolverines in the tri-state area of Montana, Idaho, and Wyoming. Further, the United
10 States Fish and Wildlife Service has indicated that wolverines are "warranted for
11 listing under the Endangered Species Act." Action by the federal agency could occur
12 in February 2013, listing wolverines as endangered.

13 A temporary restraining order is an order of the court requiring a party to
14 refrain from a particular act. Section 27-19-101, MCA. A temporary restraining order
15 restrains a party pending trial on the merits and is issued after notice and a hearing.
16 BLACK'S LAW DICTIONARY 800 (8th ed. 1999). The district court is vested with
17 the discretion to determine whether a temporary restraining order should issue and this
18 decision will not be overturned except in instances of manifest abuse. *Sweet Grass*
19 *Farms, Ltd. v. Bd. of County Comm'rs*, 2000 MT 147, ¶ 20, 300 Mont. 66, 2 P.3d 825;
20 *Porter v. K & S P'ship*, 192 Mont. 175, 181, 627 P.2d 836, 839 (1981).

21 The Montana Code provides for the issuance of a in the following cases:

- 22 (1) when it appears that the applicant is entitled to the relief
23 demanded and the relief or any part of the relief consists in restraining
24 the commission or continuance of the act complained of, either for a
25 limited period or perpetually;
- (2) when it appears that the commission or continuance of some
act during the litigation would produce a great or irreparable injury to the
applicant;

1 (3) when it appears during the litigation that the adverse party is
2 doing or threatens or is about to do or is procuring or suffering to be
3 done some act in violation of the applicant's rights, respecting the subject
4 of the action, and tending to render the judgment ineffectual;

5 (4) when it appears that the adverse party, during the pendency of
6 the action, threatens or is about to remove or to dispose of the adverse
7 party's property with intent to defraud the applicant, an injunction order
8 may be granted to restrain the removal or disposition;

9 (5) when it appears that the applicant has applied for an order
10 under the provisions of 40-4-121 or an order of protection under Title 40,
11 chapter 15.

12 Section 27-19-201, MCA.

13 The Montana Supreme Court determined that the "subsections of this
14 statute are disjunctive, 'meaning that findings that satisfy one subsection are
15 sufficient.' Consequently, only one subsection need be met for [a temporary restraining
16 order] to issue." *Sweet Grass Farms*, ¶ 27 (citations omitted) (quoting *Stark v. Borner*,
17 226 Mont. 356, 359-60, 735 P.2d 314, 317 (1987)). "An applicant for a [temporary
18 restraining order] must establish a *prima facie* case or show that it is at least doubtful
19 whether or not he will suffer irreparable injury before his rights can be fully litigated."
20 *Id.*, ¶ 28 (quoting *Porter*, at 181, 627 P.2d at 839. "In deciding whether an applicant
21 has established a *prima facie* case, a court should determine whether a sufficient case
22 has been made out to warrant the preservation of the property or rights in status quo
23 until trial, without expressing a final opinion as to such rights." *Id.* "'Status quo' has
24 been defined as 'the last actual, peaceable, noncontested condition which preceded the
25 pending controversy.'" *Id.* (quoting *Porter*, at 181, 627 P.2d at 839).


A temporary restraining order does not resolve the merits of the case, but
rather prevents further injury or irreparable harm by preserving the status quo of the
subject in controversy pending an adjudication on its merits. *See Four Rivers Seed Co.*
v. Circle K Farms, Inc., 2000 MT 360, ¶ 12, 303 Mont. 342, 16 P.3d 342 (citing
Knudson v. McDunn, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995)). The Court has the

1 duty to balance the equities and minimize potential damage when considering an
2 application for a temporary restraining order. *Id.* (citing *Porter*, at 180, 627 P.2d at
3 839).

4 Balancing the equities presented by the parties, there appears to be no
5 harm to the Defendants whatsoever if the wolverine season is suspended until the
6 Court can more carefully consider the parties' arguments. In an affidavit presented by
7 George Pauley, Defendant's Wildlife Management Section supervisor, it appears that
8 the wolverine trapping season presents only "recreational harvest opportunities." In
9 other words, the wolverine trapping season is not designed to prevent wolverine
10 depredation on other species, domestic livestock, or humans. Balancing the loss of a
11 "recreational harvest opportunity" against the possible damage to a potentially
12 endangered species, the Court finds the equities lie in favor of issuing a temporary
13 restraining order. The Court further finds that it is at least doubtful whether or not the
14 plaintiff will suffer irreparable injury before their rights can be fully litigated.

15 Based on the above, the Court hereby issues a Temporary Restraining
16 Order enjoining Defendants, and each of them, from authorizing the trapping, snaring,
17 or killing of wolverines in Montana until this Court can hold a hearing on a preliminary
18 injunction. The Department shall hereby take all necessary and appropriate steps to
19 notify the public (and all trapping permit holders) that the wolverine trapping season in
20 Montana is temporarily suspended pending resolution of Plaintiffs' motion for a
21 preliminary injunction. This Court will reevaluate this Order after the conclusion of
22 the preliminary injunction hearing currently scheduled for January 10, 2013 at 1:30pm.

23 DATED this 30 day of November 2012.

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JEFFREY M. SHERLOCK
District Court Judge

1 pc: Matthew K. Bishop/Shiloh Hernandez
2 Rebecca Jakes-Dockter/Zach Zipfel

3 T/JMS/helena hunters v maurier order.wpd

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