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## “SERVING THE HUNTER WHO TRAVELS”

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*“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

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#### Update On The Argali Case

**T**he anti-hunters *Motion for Reconsideration* in the *Argali* Case has been briefed by all parties and awaits the trial court’s decision. The anti-hunters’ case was dismissed on the basis that they do not have standing because the judgment they prayed for would not redress their alleged injury, *i.e.*, a prohibition against trophy importation would neither stop the hunting in a foreign land or benefit the species. The U.S. attorney responded to the *Motion for Reconsideration* to make it clear that they fully agreed with the court’s decision dismissing the case, even though the Secretary of Interior and Director of Wildlife had not filed the motions challenging the standing of those that brought the suit. This was timely because the anti-hunters have since argued in their request for reconsideration that the government must not have agreed with the intervenors and the court that the anti-hunters did not have standing.

The anti-hunters argue that had the government agreed, the government itself would have filed its own motion challenging the standing of those that

brought the suit.

Conservation Force filed an opposition to the *Motion for Reconsideration*. We cited the sworn statements from the record that we built that supported the Court’s decision. Conservation Force had literally loaded the record with affidavits from irrefutable



authorities. Part of our response follows so that the hunting community can better understand the precedent that is being set and credit those individuals and organizations that contributed to its success.

“Their opinion that the argali in the

three countries would be better off if imports were stopped...is self-serving speculation and wholly untrue.... To the contrary, all nine of FNAWS’ sworn declarations contradict Plaintiffs’ speculation. See below. The foremost authorities in the world have sworn the opposite of Plaintiffs’ speculations. Raymond Lee is the President of the foremost wild sheep conservation organization in the history of the world. That cannot be disputed and has not been. As the President of FNAWS, he has sworn that, “[a] judgment favoring the plaintiffs will not redress their alleged interest. It would adversely impact argali.” *Sworn Declaration No. 9, FNAWS, et al. Opposition to Plaintiffs’ Motion for Summary Judgment*. That is it in a nutshell.

The President of FNAWS has sworn that FNAWS itself will not have the means or the incentive to any longer invest in Argali conservation if Plaintiffs succeed. “FNAWS has funded over 35,000,000 in wildlife enhancement projects. Its own revenue to do that comes from and is dependent upon the permitting that Plaintiffs want

stopped.” In his sworn declaration President Lee further stated that:

**Declaration Number 1**

“The revenue received from these advertisements, booth rentals, raffles and auctions of the Asian permits allows FNAWS to fund wild sheep programs throughout the world. In 2002, FNAWS funded over 2,000,000 in wild sheep projects.... If hunting programs in Asia are eliminated, the funding available for these wildlife conservation programs would also be eliminated. FNAWS funding has been used for surveys, research, anti-poaching programs, habitat improvements, management infrastructure, planning efforts, and workshops. FNAWS has a long history of supporting wildlife management efforts in developing countries. We have found that when hunting and hunting revenue is restricted, wildlife populations decline. However, when hunting, and the hunt-related jobs for locals are promoted, wildlife populations grow. It has been our experience that with proper management, regulated hunting has been a boon to both wildlife and to local communities..... When hunting is eliminated, the lack of revenue for scientific management dooms wildlife to a downward spiral from huntable, to threatened to endangered. We encourage you not to take this proven pathway to defeat. The revenue from U.S. hunting interest is both indispensable and irreplaceable.

FNAWS is an intervenor-defendant in the above captioned suit because a judgment favorable to plaintiffs would all but eliminate the existing conservation programs for argali in the three countries in issue. It would eliminate the source of the conservation funding generated within FNAWS for such purposes..... Throughout its 25-year history FNAWS has been active in conservation efforts for Argali sheep. FNAWS has returned revenue derived from the Convention auction of Argali hunting permits to Kyrgyzstan, Mongolia and Tajikistan for conservation efforts. In 1993, 1994, and 1995, FNAWS assisted the Mongolian Government to develop expertise needed to design on-the-ground management plans, including population survey

programs. This year, local communities benefited economically from the sale of a special Mongolia Minister’s Altay Argali permit, a strong deterrent to would-be poachers. FNAWS has been active internationally for years. This international involvement set the stage for FNAWS to intervene in a lawsuit brought against the US Fish and Wildlife Service by a number of animal rights organizations. The suit intends to stop the only existing funding program that is essential to the continued survival and propagation of Argali sheep. Animal rights organizations persist in obstructing wildlife conservation funding programs and hunter’s rights worldwide.... This is a sworn statement that FNAWS cannot and will not fund the conservation anymore if the Plaintiffs succeed. It also characterizes the Plaintiffs as anti-hunters, not conservation organizations. The record is replete with evidence that Plaintiffs’ real motive is to stop hunting. That evidence is also uncontradicted. According to the Fund for Animals own literature: The Fund for Animals became known nationwide as a leading opponent of sport hunting.... While many wildlife advocacy organizations are primarily concerned with endangered species, The Fund for animals believes that every individual wild animal deserves protection from... death - whether that animal’s species is endangered or thriving.... The Fund for Animals is unilaterally opposed to the recreational killing of wildlife. (Fund for Animals literature in Sworn Declaration No. 7 attachments, FNAWS, et al. Opposition to Plaintiffs’ Motion for Summary Judgment. Ditto the Animal Legal Defense Fund, which states that its goal is “to eradicate hunting whenever and wherever we can.” (Sworn Declaration No. 7 attachments, supra.) The pretense that the Plaintiffs want hunting to conserve more Argali is not a forthright representation to this Court.”

Virtually all of Defendant-Intervenors/FNAWS’ Sworn Declarations are to the same indisputable effect. If the revenue is cut off, both the incentive and means would be less, not more. If the bar is raised too high, it is a disin-

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centive to those that must pay, which is what the Plaintiffs really want! This is confirmed by each of Intervenor – FNAWS, et al.’s sworn declarations.

“If importation into the U.S. was stopped, I believe many Americans will still hunt there....However, what will happen is that the market price will fall, thereby reducing conservation revenues. (Not increase as Plaintiffs speculate).”

**Declaration No. 2**

*Gretchen Stark, who “opened sport hunting in Mongolia 47 years ago” stated that: “If argali are completely protected from international hunters (listed as endangered), they will no longer have value in the eyes of herdsman....If these argali are forbidden to foreign hunters, there will be no reason for Kyrgyzstan not to allow herders to graze domestic sheep on argali winter range.... Listing can only result in serious damage to argali populations, as it already has in China (where they are listed as endangered.)*

The plaintiffs’ suit will not benefit their alleged interest.

**Declaration No. 3**

*Dr. Bart O’Gara, FNAWS Opposition to Plaintiffs’ Motion for Summary Judgment:*

“At hunters’ conventions, the auction of argali hunts for the benefit of the three countries mentioned above would not exist but for the importations of those argali trophies....(The Plaintiff’ motion for reconsideration does not address this loss of means for the three countries to carry out conservation). If U.S. hunters are prevented from importing argali sheep... then the funds for argali conservation in those countries will be significantly reversed and practically eliminated... should the plaintiffs be successful in this suit, our organization’s argali conservation effort in Mongolia, Kyrgyzstan and Tajikistan will lose funding and be discontinued....Many of the argali would still be taken by others...without the U.S.-generated

conservation revenue for argali... if the plaintiffs prevail, the opposite of what they are seeking will occur. The suit will not advance their alleged interest.”

**Declaration No. 4**

*Dennis Campbell, President of Grand Slam Club/OVIS: “[F]unds generated by the hunting industry are important in controlling poaching, predation, habitat loss, other forms of human intervention, and in monitoring wildlife numbers and its welfare.....Without the provision for financial support by hunters, we can expect argali numbers to decline in the republics of Mongolia, Kyrgyzstan and Tajikistan. This is the prospect if import of hunting trophies by U.S. hunters is stopped by the plaintiffs in the pending suit.”*

**Declaration No. 5**

*Dr. James Teer, Past President of the Wildlife Society and Retired Chairman of Texas A&M Wildlife Management Department:*  
“Populations of argali wild sheep in

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## New Nonresident Hunting Rights Development

■ Another nonresident hunting license case has become important. It’s a new federal Wyoming case that could potentially lead to a U.S. Supreme Court review of the underlying “Commerce Clause” issue. The ongoing cases revolve around the “Commerce Clause” issues of whether or not interstate hunting is protected commerce; and, second, whether the practices of the Western states are discriminatory

The case is one filed by a Florida attorney in his own name. *Schutz v. State of Wyoming*. In May, it was summarily dismissed by the Wyoming federal court that dismissed Conservation Force’s Wyoming Outfitter and Guide Association case against the State of Wyoming a few years ago. The court dismissed the case for the same reasons it has in the past. The court again held that nonresident hunting is not protected interstate commerce and that Wyoming’s licensing practices are not discriminatory.

The new Wyoming case has been appealed to the Tenth Circuit Federal

Appellate Court in Denver, Colorado. If that appellate court upholds the lower trial judge’s decision, then there will exist a conflict between the Ninth and Tenth Circuits on the “Commerce Clause” issue. That will greatly increase the likelihood that the U.S. Supreme Court would accept writs (agree to review the case) to resolve the conflict that would exist between the two circuits. The appellate court in the Ninth Circuit in San Francisco reviewed a similar case from Arizona last year and sent it back to the trial judge with instructions that nonresident licensing is protected interstate commerce and that the common disparity against nonresidents in licensing is legally “discrimination.” That places the burden of proof on the state to justify the discrimination that is then given the “strictest scrutiny” by the court. That Arizona case was sent back to Arizona for trial on the merits and is slowly proceeding. *Conservation Force v. Manning*, 301 F.3d 985. Arizona and many other states had asked

the U.S. Supreme Court to review and reverse the San Francisco appellate court, but the U. S. Supreme Court denied the request without reasons. If the Denver appellate court decides the issues differently in the new Wyoming decision being appealed, the U.S. Supreme Court is expected to be more receptive to a request for review because of the conflict. If the Denver appellate court, like the San Francisco appellate court, reverses the trial court’s decision from Wyoming, then there will be two circuits covering the whole West providing “Constitutional” protection for nonresidents. Attorney Jim Scarantino, who won the Arizona case in San Francisco’s Ninth Circuit, has filed an amicus brief in the appeal of this new Wyoming case in Denver, the Tenth Circuit. The International Association of Fish and Wildlife Agencies and many western states are also expected to file amicus briefs as they have historically done to defend their practices. Both sides, in this case think that they will win.

Mongolia, Kyrgyzstan and Tajikistan will be deleteriously impacted if hunting of wild sheep is prohibited.... They lack the monetary means to correct socioeconomic conditions, and wildlife conservation is one of their lowest priorities. Wildlife conservation programs are supported only if wildlife enterprises are able to generate funds to support... programs...(The chicken comes before the egg.) Government economists view rangelands as best suited for producing livestock.... In many cases, wild ungulates are viewed as being competitive with livestock and no effort is made to ensure sustainable populations of wildlife.... [T]he curtailment of argali hunting will be a great detriment to sustainable wildlife programs... because government agencies will not be able to justify support for wildlife programs if wildlife has no value.”

**Declaration No. 6**

*Dr. Raul Valdez, who literally wrote the book:*

“The programs needed are sheep surveys, predator control, expanding habitat, and most important of all in my opinion, game wardens of high quality to control any type of poaching. I myself have funded one argali population survey and another soon to occur with money from U.S. hunters. This would not be possible but for U.S. hunters being able to import their trophies....None of this can happen without the capital the U.S. sporthunter brings to the country.... I will also state that the demand for Argali hunting will continue to grow regardless of any U.S. denial of import permits. The difference is that the American sporthunters are the ones who further the argali conservation in the proper way. If U.S. import permits are denied U.S. hunters, the harvest would be the same, or more, as European hunters would still be hunting and the poaching would continue and eventually grow more prevalent because of the reduction of the conservation revenue of U.S. hunters. There are also some U.S. hunters who would go if only to harvest a particular species, even if they could not take the trophy home. It is a fact that the coun-

tries that have these type trophies have set their quotas low so the herd population would not be in any immediate or future danger. Without conservation groups such as FNAWS, ISHA, OVIS and SCI spearheading and taking the opportunity to help with such programs not only in Central Asia but all over the world, there would be no sheep to hunt today or in the future.....To



take away the U.S. sporthunter from the world of the Marco Polo Sheep based on the premise that those animals are endangered would be, to say the least, a punishment to the animals and the countries who harbor them. It will not spare the argali from being taken. U.S. trophy import permit denial would harm the perpetuation and recovery of argali.... Marco Polo Sheep are not

endangered in Kyrgyzstan, Tajikistan or Mongolia because of the conservation revenue and incentives derived from regulated hunting. That renewable resource is being replenished yearly. Withstanding an all-out war, those sheep will multiply and divide into numbers that would stagger the imagination because of their high rate of reproduction. If you keep the U.S. Sport Hunters coming and keep the revenue coming so the programs can continue without problems, you will have sheep forever in those countries you are debating about. If the plaintiffs prevail, the opposite will occur.... If you bar the import of these sheep to the United States you will take away the capital that it takes to run those programs.

**Declaration No. 7**

*Booking Agent, Harv Hollek:*

“If imports of argali are not allowed... the respective countries’ hunting quotas will be taken anyway by other hunters, though the price will decrease, as will the important conservation revenue almost wholly derived from U.S. hunters and their conservation organizations.... A U.S. court cannot stop the hunting because the hunting quota will be filled by others, but it can obstruct the conservation program of the three nations. It would eliminate indispensable and irreplaceable conservation revenue for argali from U.S. sources.... the quota would remain the same, however, the conservation revenue would decrease. With less revenue the big loser would be the sheep programs.... If the importation of Argali is stopped, these programs will also stop... the loser will be the sheep.

**Declaration No. 8**

*Booking Agent/Outfitter, Pat Frederick:*

“The sources of most of the funds for Argali are the hunters, brokers and hunters’ conservation organizations in the USA. The denial of permits acts as a disincentive to those three contributors, as well as reduces the market price and revenue of the managing foreign governments.”

Please continue your support of Conservation Force through the appeal – *John J. Jackson, III.*

**Conservation Force Sponsor**

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International Foundation for the Conservation of Wildlife