

HEARING ON THE ENDANGERED SPECIES ACT

FIELD HEARING BEFORE THE COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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HEARING ON THE ENDANGERED SPECIES ACT

MONDAY, OCTOBER 26, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Clovis, New Mexico.

The Committee met, pursuant to notice, at 9 a.m. in the Clovis Room, Holiday Inn, 2700 East Mabry Drive, Clovis, New Mexico, Hon. Richard Pombo presiding.

Mr. REDMOND. [presiding] I would like to begin by thanking all of the folks here on the east side of the state for coming out and some folks up from the south for the endangered species hearing today, and I want to welcome all of you to Clovis, if you're not originally from the Clovis area.

And I want to recognize folks that are in the audience with us today. We have State Representative Anna Crook of the 64th District. And we also have State Rep Bobbie Mallory in District 67.

And am I overlooking anyone? Do we have any mayors or county commissioners?

Mr. SCHULER. I'm John Schuler, Clovis City Commissioner.

Mr. REDMOND. John, good to have you with us. And any other elected officials?

Well, I want to thank the elected officials for coming because the Endangered Species Act has an impact, not only on the farms and ranches and businesses, but it also has an impact on—on where you are as an elected official and how you exercise—you execute your responsibilities as elected officials, so I want to thank you all for—for coming.

And we also have Brian Thomas. Brian works for Congressman Mac Thornberry.

And—but, anyway, without—without any further delays, I'm going to welcome Congressman Richard Pombo, my colleague from California, who has held almost 30 hearings across the—across the country.

It's inevitable that there will be changes coming with the Endangered Species Act. There—You know, basically, people across the country are finding problems with it, the way that it's implemented on a regulatory basis. And I think it's always important, for those of us that represent you in Washington, that we come out to the field and we hear what you want us to say and do and write in our bills in Washington, DC. That's what representative government is all about; and, so, we're here listening to the people of the east side.

We received some criticism about having the hearing over here and—from some folks in Santa Fe. And, you know, my response was, “What is wrong with hearing from the people from the east side? They have a voice, and they’re American citizens, and they’re taxpayers and have every right to be heard.”

So, I’ll turn it over to Congressman Pombo.

Mr. POMBO. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on the Endangered Species Act. We will limit the opening statements of the members of the Committee so that we can get to the testimony from our witnesses here today.

I would like to thank Congressman Redmond and those of you here for the opportunity to bring the House Resources Committee to the State of New Mexico. I look forward to listening and learning more from you about how the Endangered Species Act is being implemented and in force in the southwestern region of the United States.

The chairman of the Committee, Congressman Don Young, the Congressman from the State of Alaska, sends his best regards and his regrets that he could not be here today. He asked me to chair this field hearing for him.

In 1995, when a new majority claimed Congress, I, along with some of you in this room, had great expectations that we would be able to amend the Endangered Species Act and implement common sense approaches to species protection similar to those that the 1973 Act envisioned when they originally adopted the law.

Congress believed that this law would be used to prevent the extinction of species. It never dreamed that it would be turned into a tool used by a small minority of people to impose Federal land and water use controls on rural America. Congress could never have foreseen the resulting widespread rural economic and social dislocations caused by such manipulation of the 1973 law.

Some of the individuals that claim to be guardians of our environment turned down this Committee’s offer to testify today. The staffs of this Committee and Congressman Redmond worked hard to get witnesses from the conservation community for the hearing. Written invitations and followup phone conversations were sent to the Forest Guardians, the Southwest Center for Biological Diversity, The National Audubon Society, and The Earth Justice Legal Defense Fund. Curiously, none of these groups has provided witnesses for today’s hearing.

Nevertheless, I fully expect harsh criticism by some for not having a balanced hearing. Let the record state that this Committee made every attempt to provide all possible interested parties with the opportunity of coming before it today.

But this lack of response is not a total surprise. For the last 4 years, those of us on this Committee have worked to draft legislation in a common sense approach that would protect species and the rights of our citizens. Unfortunately, instead of sitting down with Congress to discuss the future of protecting the nation’s species, the Clinton Administration has chosen to stand in the way of genuine efforts that would have brought about change.

The ESA has been law since 1973. Currently, there are over 1,100 domestic species protected under the law. The time is long

overdue for the administration to work cooperatively with Congress to fix the ESA. It is outdated and many people believe broken. It is broken for the people, and it is broken for wildlife. It only succeeds at punishing those who do the most to provide habitat for wildlife—rural America.

We are here this morning to listen to your ideas on what we can do to improve the current Endangered Species Act. I strongly believe that as this country begins to enter the 21st century, we must find a more balanced way to accomplish the goals of this outdated species protection act. Surely we can reduce the regulatory burdens of average Americans, small businesses, and state and local governments while still protecting our natural resources.

I expect today's hearing to assist in this endeavor. As Congressman Redmond mentioned, I have had close to 30 hearings on the Endangered Species Act over the past 4 years. About half of those have been field hearings. The effort that we have made is to bring Congress to the people and to listen to those who normally don't have an opportunity to testify before Congress.

When we are back in Washington, DC, we listen to the folks that have professional lobbyists, to the folks that have staff attorneys. They have access to us, they have access to the Committees, and they testify on a consistent basis. The folks that don't have that opportunity are the people who live out here and work for a living and don't have the opportunity to run to Washington and testify before a hearing every chance. So we have made a very real effort to reach out to rural America and to the folks that have not had an opportunity to testify in the past.

As well, there has been some criticism on this particular hearing about the—the lack of scientists and—others that are testifying here today. I can tell you that this Committee has heard from over 50 scientists, biologists, professors, folks that are self-proclaimed experts on the Endangered Species Act. Some have testified to status quo. Others have testified that they would like to see changes. But there has been no lack of input from the scientific community into the problems that currently exist with the Endangered Species Act and possible changes that they would like to see made in that.

With that, I would like to offer Congressman Redmond a chance to say any additional comments he has at this point. I would like to call up our first panel to testify. The Honorable Walter Bradley, who I believe his designee is going to testify, Honorable Stuart Ingle, Mr. Hoyt Pattison, and Mrs. Karen—Karen Budd-Falen, if you would join us up here at the witness table.

I would like to thank you for joining us today. Committee rules allow you 5 minutes for an oral presentation each. The oral presentation is basically the part that you summarize from your full testimony. Your full testimony will be included in the record. But if you could try to limit it to 5 minutes, we would appreciate that.

If you're not familiar with the lights that are in front of you, green means go, yellow means hurry up, and red means stop, similar to your traffic lights.

So, if you would like to begin, identify yourself for the record, and you may proceed.

STATEMENT OF HON. WALTER BRADLEY, LIEUTENANT GOVERNOR, STATE OF NEW MEXICO, SANTA FE, NEW MEXICO, AS READ BY MR. DENNIS ROCHE

Mr. ROCHE. My name is Dennis Roche. I'm here presenting the testimony of Lieutenant Governor Walter Bradley from the State of New Mexico.

Mr. POMBO. Thank you. Welcome.

Mr. ROCHE. Good morning, Mr. Chairman and Congressman Redmond and welcome to New Mexico. Mr. Chairman, I also thank you for the opportunity to speak on behalf of the executive branch of the State of New Mexico. I will keep my testimony short and straight to the point.

I have been Lieutenant Governor of New Mexico for 3 years and 11 months. As an ombudsman for New Mexico, I have been overwhelmed with the amount of constituent concerns I've received pertaining to the infringement and unbalance the Endangered Species Act has on private property rights, state sovereignty, and states' waters.

The purpose of this testimony is to provide the concerns that the executive branch of New Mexico has with the Endangered Species Act. As you are all aware, New Mexico has been negatively impacted by the abuse and misuse of the ESA. For example, payment in lieu of taxes revenues, or PILT, generated from the use of U.S. Forest Service resources have been dramatically reduced. I don't have to explain to this Committee the critical need for these revenues to local governments for infrastructure purposes.

Payments to counties have been affected by decisions relating to the spotted owl. Recently legislation was proposed to overcome this impact and stabilize payment to the states. Mr. Chairman, rural New Mexico is being hit hard, and hardworking families who have been lawfully making a living off the land for generations are being devastated. It won't be too long before urban areas become aware and are affected by the ESA.

As Lieutenant Governor, I have a responsibility to the taxpayers of New Mexico. These people are concerned with what is occurring in our state. Let me make it clear. I am not against preserving a clean environment. I like to have clean water to drink. I enjoy the scenery when I travel throughout the state. I want children who are our future to enjoy what I have enjoyed.

However, I believe that there are—that there needs to be a balance in the ESA, and decisions must be based on best available scientific data, not on unquestionable data or no data, as what appears to be happening today.

As I stated earlier, private property rights, state sovereignty, and water are major concerns to the New Mexico executive branch. As for private property rights, the ESA allows Federal Government or citizen litigants to take property owners to court without evidence that these actions will cause a taking. The current ESA has no provisions for takings.

Language should be incorporated to allow property owners to enter into agreements with the Secretary of Interior identifying activities and any potential takings. Also, property owners should be compensated as required by the Fifth Amendment of the United States Constitution.

The encroachment of state sovereignty is also a major concern. Under the current ESA, states are often excluded from the listing process even though within state's borders there may be threatened and endangered species. As for the development of recovery plans, states have no role. States should be recognized and allowed to participate in all plans or activities such as recovery plans.

Water in western states and specifically in New Mexico is critical. Nowhere in the ESA does it acknowledge state law regulation, rules, or any interstate compact covering the appropriation, use, or diversion of waters.

Presently in New Mexico the Corps of Engineers and the Bureau of Reclamation are proposing an environmental impact statement. The purpose of this EIS is to comply with the ESA for the Upper Rio Grande Basin and its rivers.

Mr. Chairman, New Mexico receives approximately 80 percent of its water from this area. New Mexico is currently seeking a Joint-Lead status as allowed under the National Environmental Protection Act. Because this Act, or NEPA, is being implemented, and only because of this, an economic impact analysis is required as well as the impacts on the human environment.

I would like the Resources Committee to know that New Mexico fully intends to become involved in this process. By becoming involved, the state will make sure that all data being analyzed will be sound. The question now is, what are some of the solutions to the concerns that have been identified?

First of all, if any amendments to the ESA are going to take place, all states must be an integral player. It is our belief that states are more aware and knowledgeable of how to manage resources, species and habitat. The ESA should not act as a tool for zoning and land use.

Second, state water laws, compacts, diversions and appropriations are being ignored. Language must be incorporated into the ESA acknowledging states' requirements and sovereignty regarding water.

Mr. Chairman and Members of the Committee, New Mexico met with these Federal entities on October 16th, 1998. An article was brought to their attention that came out of the Albuquerque Journal a couple of weeks ago.

And stop here.

Mr. POMBO. No, go ahead and continue.

Mr. ROCHE. Thank you.

An article was brought to their attention that came out of the Albuquerque Journal several weeks ago. The title of the article is "Forum May Not Stop River Compact Suits." In this article, Forest Guardians' Executive Director, John Talberth, states, "Based on what I've heard today, there are certain aspects of litigation I think we should go forward with more quickly." The Federal response to this article at the meeting was that they all had resolved—they had resolved all issues with the Forest Guardians.

Mr. Chairman, Members of the Committee, New Mexico has been there and has seen it. The Federal agencies meet with the environmental organization, cut deals, and then go out and do Environmental Impact Statements after the fact. As a result, the human

environment is significantly impacted as well as the economy at both the state and local level.

Environmental extremists, Mr. Chairman, are actually targeting operations of Federal dams, irrigation works, and a lot more in western states. And as I stated earlier, only because NEPA is being implemented will an economic impact analysis be conducted as well as an analysis on the human environment.

The ESA should include provisions in addressing and analyzing the human environment and economic impacts. However, another provision should be added stating that decisions made should minimize the human environment and economy.

The ESA must acknowledge state sovereignty, responsibility and obligation on water laws, rights and compacts. I believe that an impact analysis on the economy and human environment should be required under the ESA. We have got to find a balance between protecting species, habitat, our economy, and most importantly human beings.

Thank you again, Mr. Chairman and Members of the Committee, to allow the executive branch of New Mexico to address their concerns here this morning.

Mr. POMBO. Thank you.

[The prepared statement of Hon. Bradley may be found at end of hearing.]

Mr. POMBO. Mr. Ingle?

**STATEMENT OF HON. STUART INGLE, NEW MEXICO STATE
SENATOR, PORTALES, NEW MEXICO**

Mr. INGLE. Thank you, Mr. Chairman. If you will look at—notice my testimony here, I double-spaced it, and it's only, just barely, slightly over three pages because I know you get a lot to read and so do I.

I'll just speak off the cuff a little bit about some of the problems I think we have, and we've got a lot of folks here in the audience that are in—are in and share those problems.

You know, in New Mexico, we are a state that in many instances—

Mr. REDMOND. Use the mike.

Mr. INGLE. Is this better?

In New Mexico, we are a state that has varying types of climates. We have a—we have a lot of forests in New Mexico. We have a desert region. We have some regions that are even more desert like.

The thing about environmental laws that I have noticed, like many laws that are written, you have a law that is written and then the—and then the department makes regulations that are actually—actually, basically, the law itself. It's difficult, I know, for Congress to pass very specific laws, but I think we need to be careful, as we do in the state—in the state legislature, of trying to pass laws where regulations can basically not just be written solely and as something that can dictate all policies and all laws.

I think we need to look at the environmental things by region. There are certain regions of the United States that may have certain environmental situations, but the regulation very often is used

and will make things a very difficult situation in a group of states where the regulation wasn't even meant to exist.

We've got people here that have farmed and ranched in New Mexico for generations, people here from Taos, New Mexico, who have been there for many years. They have not abused that land. They never intend to abuse the land. The land is the only asset they have, and they will continue to take care of this land.

And I think very often people in the environmental situation often think that landowners are about abusing things, abusing the land and abusing the animals and taking advantage of everything that is wonderful in nature. Well, you can't do that anymore, if you ever did.

I know years ago the—all the Buffalo population of the United States was, you know, done away with in 20 years. Well, we don't have that situation anymore. Nothing in the United States, I believe, faces that kind of just wholesale slaughter or things being done away with.

We have people in the United States and generations of people that want to look and keep things well for the next generation, for their children, because beauty is something we all look at very closely and very deeply now. And I don't think it's anything that we're going to do away with by carelessness.

But laws and regulations also often mean the loss of land, the loss of any profitability the land has; and, yet, the man that has the land and his family get nothing. Because by the time everything is decided, he has been without the use of his land so long that it just basically has no value. It has no saveability except to someone for a useless industry, and they often don't have any money for that.

Mr. Chairman, Members of the Committee, I—I think these are things primarily that we just need to try to watch for. And I understand, Mr. Pombo, you're in the farming and ranching industry yourself, and you're certainly aware that it's not exactly a cup of tea right now. And many people here are in that, too.

You know, in this state we've suffered a tremendous amount of drought in this area. We also make so much grain in the United States anymore that it sells for 1949 prices, and those are things you can't fix by law or regulation.

But when you have laws and regulations that are just put into effect without the real knowledge and caring about the people that are in the industry, those are the things that we need to watch for. And as you said, those people are never in Washington to testify. They're out trying to make a living.

Mr. Chairman, Members of the Committee, thank you very much.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Ingle may be found at end of hearing.]

Mr. POMBO. Mr. Pattison?

**STATEMENT OF MR. HOYT PATTISON, NEW MEXICO
INTERSTATE STREAM COMMISSION, CLOVIS, NEW MEXICO**

Mr. PATTISON. Thank you, Mr. Chairman, Congressman Pombo and Congressman Redmond. We're proud to have you here today,

and it's a pleasure and an opportunity to appear before you up here as a representative for Mr. Richard Cheney, who is the chairman of the New Mexico Interstate Stream Commission.

I am also a member of the Interstate Stream Commission. I'm a farmer and an engineer. I live north of Clovis, right here in Curry County. I would like to call your attention to some of the history of the Endangered Species Act that perhaps will be of interest to you and the other members of the Committee.

When the Endangered Species Act was passed and signed into law in 1973, a House report observed that, quote, There are 375 species of animals imminently threatened throughout the world. The report specifically observed, "It is beyond our capability to acquire all the habitat which is important to those species without at the same time dismantling our own civilization."

Those were prophetic words. Now there are over a thousand species alone right here in the United States, as you pointed out, Mr. Chairman, that—and these include 33 insect species. The U.S. Fish and Wildlife Service and other Federal bureaucracies seem intent on dismantling our civilization by way of this law.

The—as currently written, the Endangered Species Act allows application of sloppy science to bad law, endangering state's rights and private property rights, flying in the face of the Constitutional guarantees.

To be specific, right here in eastern New Mexico, we have the Pecos River and the Pecos bluntnose shiner which is supposedly an endangered species. The Bureau of Reclamation has threatened to take over the operation of Sumner Dam in the Pecos river between that and Carlsbad so that 35 cubic feet per second of water can be released at certain times during the year to provide habitat for the Pecos bluntnose shiner.

This, Mr. Chairman and Members of the Committee, will take out of use, through evaporation and seepage, 3,000 acre feet. Now, this will impact greatly the delivery of water to Texas that New Mexico is obligated by the Pecos Compact and U.S. Supreme Court to deliver to Texas every year. And if we fail to do so, the—a priority call must be instituted on the Pecos River and this, if carried to its extreme extent, could impact that area of the State of New Mexico and its economy over \$200 million because of this priority call.

If we take 3,000 acre feet out of our deliveries to the state line, we could conceivably be in a deficit position and not have delivered to Texas the water required by this compact.

Mr. Chairman, Members of the Committee, you have a copy of the written testimony. The other part that I would like to touch on has to do with the San Juan River and a similar situation there where the State of New Mexico is going to be required to expend \$2 million out of a total of \$172 million that is embodied in a bill presently in the U.S. Senate. I don't believe it has been passed; and, hopefully, it won't be. But that will require recovery of species that were poisoned by the same people that are trying to recover them at this present time in the 1960's.

I would like to touch on one other item. It has been said that here in eastern New Mexico we don't have any endangered species problems, only fear and apprehension and anger. Well, that's abso-

lutely probably true; but, it's not true that we don't have any endangered species problem.

One of those has to do with the black-tailed prairie dog. We have these in—by the thousands in this part of the state, and they have been asked by certain environmental groups to be declared threatened. There is not any way, Mr. Chairman, Members of the Committee, that this animal is a threatened or even endangered species. They exist right now, here today, right here in the city of Clovis and probably in every municipality in the State of New Mexico.

The only reason they don't cover the 250 million acres that was originally their habitat, as is pointed out in the article in the Albuquerque Journal on August 1 of 1998 is that this area grows wheat and feed and corn and livestock, and feeds are an issue. Therefore, it is an absurdity that this is an endangered specie.

Mr. Chairman, what do we do about this? Do they just go ahead and unfettered declare the prairie dog to be an endangered species? What recourse do we have? The playing field needs to be balanced if you folks choose to reauthorize an Endangered Species Act.

Thank you.

Mr. POMBO. Thank you, Mr. Pattison.

[The prepared statement of Mr. Pattison may be found at end of hearing.]

Mr. POMBO. Mrs. Budd-Falen?

STATEMENT OF MS. KAREN BUDD-FALEN, COUNSEL, NEW MEXICO CATTLE GROWERS ASSOCIATION, CHEYENNE, WYOMING

Ms. BUDD-FALEN. Thank you. My name is Karen Budd-Falen. I am both a fifth generation rancher and an attorney who is this—today is representing the New Mexico Cattle Growers Association.

In the letter you sent asking the New Mexico Cattle Growers to participate at this hearing, you asked if the Endangered Species Act was working and what affect it had on New Mexico. In addition to the effect that the Act has had on farmers and ranchers, it seems like the Endangered Species Act really is the litigation tool of choice for the environmentalists.

Let me give you one easy example. Between 1993 and 1998, 75 cases were filed in the Federal District Court for the District of Arizona solely involving the Endangered Species Act. Of those 75 cases, 67 were filed by environmental groups, mostly the Forest Guardians and the Southwest Center for Bio Diversity.

In just 5 years, when all those cases were said and done, the U.S. Government agreed to pay the environmental groups, either voluntarily or through stipulated settlements, over \$5,329,659.50 in litigation fees and costs to environmental groups. This is in addition to the economic harm that it has caused New Mexico ranchers and farmers.

So, what is happening is the Federal Government, through the Equal Act and the Justice Act, is paying environmental groups to sue the Federal Government to stop land use.

Certainly if the Endangered Species Act were working and were working correctly, the Federal Government would be spending this \$5 million on species protection rather than on paying attorney fees

and costs to environmental groups to litigate over the Endangered Species Act.

That amount of litigation alone should show the Committee that the Endangered Species Act, in its current form, is not working. Otherwise, the Act would be implemented, and the species would be protected.

If you want to look at individual economic costs, let me give you an example. On behalf of the New Mexico Cattle Growers, I represented 19 grazing permittees on the Arizona and New Mexico border whose grazing allotments were being cut between 40 and 85 percent on a 1-year's—or on a year's reduction for the renewal of grazing permits because of Endangered Species Act concern.

So, the Forest Service wrote several environmental impact statements reviewed by the Fish and Wildlife Service under Section Seven of the Endangered Species Act, wherein between 40 and 85 percent of the grazing permits were cut, fences were agreed to be built around private water rights, and livestock was moved away from water in areas where there is not a lot of water. The—There were three counties that were specifically affected, two in Arizona and one in New Mexico.

In addition to the loss of the ranchers, which were not calculated in the formulas, the county tried to determine if there was any economic loss to local governments. But the loss of those 19 ranches—or with reduction of those 19 ranches, the county, in and of itself, lost \$10 million in economic loss the first year because of those reductions.

The county then went and looked at what happened to farmers and ranchers when their livelihoods were reduced between 40 and 85 percent. What the county found out is that the first thing that ranchers cut was medical costs. If you don't have enough money, the first thing you stop doing are going to doctors when you're sick.

The second thing that was lost for the ranchers in terms of their own economic livelihood was food and supplies. In this area, 60 percent of the money made by ranchers goes back into the ranch in terms of—of operation repairs such as maintenance of fences or hiring help or whatever. That's where the loss came from, was that 60 percent that the money put back into maintaining the Federal land.

A \$10 million economic loss in three counties is a significant loss, and that was because of the Forest Service's decision to reduce those grazing allotments. The saddest thing in all of that was when you actually sat down and looked at the Forest Service documents making the reduction. The Forest Service documents listed a total of nine threatened or Endangered species that it claimed to be caring for which was the reason for the reduction.

But when you actually sat down and looked at the effects, either the species were extirpated, which means that there weren't any endangered species on the allotments, which happened with the Mexican gray wolf and with the jaguar, or the species that were present on the allotment, including Southwest willow flycatcher, bald eagle, peregrine falcon, Mexican spotted owl, Apache trout, Loach minnow, razorback sucker, the Forest Service documentation themselves either said there was no adverse effect from livestock

grazing on the species or that the effects occurred from something else.

So, these ranchers suffered between a 40 and 85 percent reduction in their grazing permits and their cattle weren't affecting the species in the first place. That's the kind of real life stories that are being—that are occurring in New Mexico because of the Endangered Species Act.

Clearly, it's an Act that is broken and needs to be fixed by Congress.

Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Ms. Budd-Falen may be found at end of hearing.]

Mr. POMBO. I thank all of you for your testimony. Mrs. Budd-Falen, in your testimony you talk about in excess of \$5 million that was paid—paid out. Was that money used for habitat recovery or—

Ms. BUDD-FALEN. No, your Honor. That was litigation fees and costs paid directly to environmental groups. Not a drop of that money went to endangered species or protection of endangered species or recovery plans or anything. That was litigation money that went to lawyers.

Mr. POMBO. So, you're telling the Committee that all this money went to attorneys and none of it went to recovering habitat or recovering endangered species?

Ms. BUDD-FALEN. That's exactly what I'm telling the Committee. Those were—the fees and costs were filed in court documents and paid directly to the attorneys representing environmental groups.

Mr. POMBO. That is, according to your testimony, is in excess of a million dollars a year?

Ms. BUDD-FALEN. That is correct, Your Honor.

Mr. POMBO. Not bad work if you can get it, huh?

Ms. BUDD-FALEN. I'm litigating on the wrong side.

Mr. REDMOND. No, you're not.

Ms. BUDD-FALEN. No, you're right. I am litigating on the right side.

Mr. POMBO. You mentioned the Forest Service allotments and grazing allotments, and you said that, in your testimony, that they had to fence off water rights, that they had to fence off access to water. I know a little bit about the cattle industry. If you don't have water, what is the rest of the ground worth?

Ms. BUDD-FALEN. Absolutely nothing. And the problem is, is what they're doing with the fencing decision, is they are fencing—this is a very dry area. There is only a few streams and rivers that run through the area. It's also very steep.

And, so, in terms of drilling water or putting a pump in a water source and pumping the water up a hill is incredibly expensive. And the Forest Service has told the permittees that they either build and maintain the fences, which are incredibly expensive, or they say you don't turn out your livestock.

And then they'll go to the permittees and say, "Well, this benefits you because we're not kicking you off of your allotment. So, we're not eliminating your use of the allotment, but you don't have any water to put your cows on when your cows are in the allotment."

And, so, they really are eliminating use. It just sounds better.

Mr. POMBO. Now, the Forest Service is building the fences or— or the cattlemen are expected to build the fences?

Ms. BUDD-FALEN. In some cases, the Forest Service is building. In some cases, they are telling the cattlemen, “You don’t have to build a fence; but, until the fence is built you cannot turn your cows into the pasture.”

Mr. POMBO. Are there any of the cattlemen that have gone ahead and built a fence?

Ms. BUDD-FALEN. Yes.

Mr. POMBO. There are?

Ms. BUDD-FALEN. Yes.

Mr. POMBO. And that—that fact was reflected in their lower rent then, right?

Ms. BUDD-FALEN. No.

Mr. POMBO. No?

Ms. BUDD-FALEN. No, the grazing fees that are paid by the cattle owner are paid regardless of who builds the fence. What happens, though, is it increases the maintenance cost, because in no case has the Forest Service or the environmental groups or anyone else pushing this decision agreed to do the maintenance on these fences.

And, so, the—the maintenance cost of 60 percent that the rancher pays to maintain the allotments already now increases because they have to pay them—they have to pay those additional costs. The Forest Service does not bear the brunt of any of these costs.

Mr. POMBO. The—All of you testified that there was questionable science that was used in some of these cases. Can any of you give me an example of what you would consider questionable science or that was used in any of these endangered species cases on a listing? Mr. Pattison?

Mr. PATTISON. Thank you, Mr. Chairman.

Mr. POMBO. Speak into the mike.

Mr. PATTISON. In the case of the poisoning of the fish in the San Juan River so that it would become a so-called blue ribbon trout fishing area in the 1960’s, the Fish and Wildlife Service and the—I believe the New Mexico Game and Fish Department might have been in on it, too, they had decided at that time, through the science available to them, that that was a necessary action.

Now the whole input of the \$172 million that is trying to be used for recovery of these same species is counter to what was thought in 1973. And those—some of those species aren’t even native to New Mexico. So, that is a perfect illustration of the lack of sound science in trying to recover those species.

Up in Colorado, those—some of those same species exist and can be further enhanced and propagated without the financial impact on New Mexico and Arizona and California that is brought about by this action on the San Juan.

Now, the sound science would indicate that a thorough investigation would have been made as to the total habitat of these varieties of fishes, and that a note would be made of the areas where they thrive now. But, because of the environmental actions of certain groups, they pick the spot on the river where they have been poisoned in the past and they say that, “Well, they need to be re-

covered.” So, that is a perfect illustration, I believe, of a lack of use of sound science.

Mr. POMBO. One of the criticisms that I’ve heard on the Endangered Species Act is that it is not implemented evenly across the country. There are some cases where it is much more aggressively implemented or that the recovery plans that are adopted are much more aggressive in certain parts of the country than there are in others.

You brought up the prairie dog as possibly being listed as endangered or threatened under the Act.

Mr. PATTISON. Yes, Mr. Chairman. The black-tailed prairie dog has been a native of North America since who knows how long. And back before the vast prairies of the central United States were broken up and used for farming, its habitat included all of that area in particular spots.

And it has been said that there were 250 million acres and black-tailed—black-tailed prairie dogs inhabited almost all of this area, and now it’s reduced to one million acres; therefore, it should be declared a threatened species.

However, there isn’t any way that their original habitat will ever be restored; or, if it were, the United States and a lot of the rest of the world would starve because of lack of wheat in the production—agricultural production of those vast acres.

Mr. POMBO. I would caution you when you say there is no way. If they implemented a recovery plan similar to what they’ve done in California with the California spotted owl and the Northern spotted owl, any area where you would find potential habitat for the prairie dog, you would have to stay out of it, develop a habitat recovery plan for that particular area.

I believe that, right now, any place in our forests which have been harvested for hundreds of years where there is a spotted owl nest, you can’t build within a thousand feet of that nest. And if they had a similar recovery plan for your plains, you would not be able to go farm anywhere near that.

It may sound somewhat odd to you looking across it, but we thought it was very odd when they offered that to us for the recovery of the spotted owl in California, so—

Mr. PATTISON. Mr. Chairman, I believe that if that should occur and the black-tailed prairie dog were to be declared an endangered species, not just a threatened species, but an endangered species, and all of the farming through this vast area would be ordered to be shut down, that that would be probably the best thing that would have happened as far as the Endangered Species Act was concerned, because you would have Congress then seeing how impossible this Act is and it would be repealed. Because people would feel it firsthand in the grocery store.

Mr. POMBO. Thank you, Mr. Pattison.

Mr. REDMOND. I have a few questions. My first question is to Senator Ingle. As an elected official who represents a large agricultural district and is a farmer yourself, what do you hear from your constituents about the Endangered Species Act?

Mr. INGLE. Basically, Congressman, what I hear is basically a lot of the things we’ve heard this morning. It seems to me that they’re—we’re concentrating—or the efforts are concentrated more

on litigation than they are on actually conserving any of the species.

You know, there is ways that you can—you can conserve some species, if that's what—if that's indeed what the Act is designed to do, which it is. And there are—there is some merit to some of that. But it seems to me that the lawsuit or the litigation comes first, and then that is an effort then to basically eliminate any use that the—the owner had for the land, so basically that's the way that that Act was accomplished.

It doesn't—doesn't help the owner at all. It just seems—basically where his land is of no real use. Falen here on the end spoke, I thought, very well of what happens in the Forest Service lands. You can use the land if you do all this work on it; but, in desert areas and things like that, often you cannot—you—that's why it's a Forest Service, because basically much of this land can't actually be bought by private people that can make—make the actual land work and pay for itself. That's why we have so darn much of it in New Mexico, not only statewide but Federal.

But, by the same token, these folks have taken care of this land and made some use of it and paid taxes through their income and things from it. The Environmental Protection Act basically just eliminates the whole source of any income off anything.

And whether the species are there is not a litigation itself to stop the use of it, and that's the danger that I see in so much of this. And there is another example of the prairie dog thing. We're certainly not short of those little guys and never will be. They are—they are a survivor. Some animals in this—this—this state weren't.

We're spending a lot of money now trying to reintroduce a gray wolf in certain areas of the state. We're having an awful hard time. They've been out of circulation for so long, that it's a little bit tough to get over somebody bringing your food and having to hunt it down yourself.

And not that I'm against them being introduced, but there are certain species that have—have come through, you know, the growth of man, and we can't stop the growth of man here. So, basically, I think we need to look out more—and if we're going to preserve something, let's try to preserve it.

Let's not try to just let it stop and litigate everything that comes along. And then the litigation is—as all of us know, once the suit is filed it may be years before the—the action is actually taking place, and perhaps your case is thrown out, perhaps it's put off for another hearing and you've got another 2 years. But it's—I think those are the things we need to be very careful of.

Mr. REDMOND. OK. My next question is to Mr. Pattison. Environmentalist Sam Hitt recently said the Endangered Species Act had little impact in the Clovis area. Is this correct?

Mr. PATTISON. I believe that's probably because of the fact that Mr. Hitt has been here very little and doesn't know what our problems are. And if he were land commissioner, it would mean that he would have to be educated a great deal before he could take care of his office.

No, it's not correct. The prairie dog, and the reason I brought it up, is one of the endangered species, so-called, or threatened species that they haven't used any science at all. Not just false science

or sloppy science, they haven't used any science at all in ascertaining the—the habits and the existence and the reproduction and so forth of this prairie dog.

You can see them right now today within the city limits of Clovis, and you can do the same thing in Albuquerque and Santa Fe and Las Cruces and almost, if not all, of the municipalities or villages in the State of New Mexico.

Mr. REDMOND. Thank you. For Ms. Budd-Falen, have you discovered any data which indicates that the livestock industry adversely affects the populations of the endangered species? You gave us an example of the economic impact in three counties, approximately \$10 million. But the question here is, you know, is the livestock, are they adversely affecting the population of the endangered species?

Ms. BUDD-FALEN. That's—to me, that's one of the most frustrating things about it. The environmentalist community makes this look like it's an either/or situation type, either humans or animal species; and that—that is absolutely not the case.

The case that I talked about over on the Arizona-New Mexico border, the Forest Service and the Fish and Wildlife Service jointly found that grazing had no effect on the list of threatened or endangered species that they were concerned about, no effect at all. This was grazing currently occurring on those allotments in the riparian area, cattle walking into the streams and taking a drink.

We had a court hearing on this several months ago. They testified that actually more harm came to the species from driving up and down the roads checking on the cattle than actually occurred by the cattle in the streams themselves.

And, so, it's not a question of cattle or endangered species or humans or endangered species. Species are resilient. Cattlemen can—can work and change. They don't have to have their livelihoods eliminated.

The facts are that on the species that the Fish and Wildlife Service and the Forest Service were concerned about in Arizona and New Mexico, every single determination came out not likely for it to adversely affect the species.

Mr. REDMOND. I would like to make an assignment to each of those that are testifying this morning on Panel I. When Congress addresses the issue of the Endangered Species Act, it's inevitable that we'll have to be very clear in our definition of "threatened" and "endangered." It's not just a matter of the—you know, the implementation of regulations. It's the—you know, what definition is being used for "threatened" and "endangered."

And I would like for each of those who testified to take a crack at it. If you were writing the law, how would you define "threatened" and "endangered"?

Thank you. That's all I have, Mr. Chairman.

Mr. POMBO. I just had a couple more questions I wanted to ask. There was a recent statement that there is no straight-line connection between the Endangered Species Act and the livestock industry, and I was wanting to ask Ms. Budd-Falen about that statement and if she agrees with it.

Ms. BUDD-FALEN. I absolutely disagree with that statement. One of the straight-line impacts that I talked about was that when the

grazing allotments in Arizona and New Mexico were reduced between 40 and 85 percent because of endangered species, that, in one single year, resulted in a \$10 million loss to local economies and it resulted into a loss to the ranchers themselves, and what got cut was spending for medical, for medical supplies and for going to doctors.

That was a direct, straight-line impact from—from an Endangered Species Act decision to the ranchers and farmers themselves. So, I think that it is clear that there is a direct impact. I know that Sam Hitt's article talked about that there was no impact and that these people weren't affected. That's not true.

For example, I represent some other ranchers and farmers whose water rights, which have been declared private property in the State of New Mexico, have been directly taken. This is water for farms and for ranches. Most of these water rights were developed before the Federal lands were even created, back when Mexico still had this land and before the signing of the Guadalupe-Hidalgo Treaty. These right have been directly taken from them because of the Endangered Species Act.

There has been no analysis of whether this taking has occurred, the costs, or any of that. We've recently filed suit to try, under the Fifth Amendment of the Constitution, to try to force the Federal Government to at least recognize the problem with taking—direct taking of private property under the ESA.

Mr. POMBO. OK. Thank you. I want to thank the panel for your testimony. If there are any further questions for this panel, they will be presented to you in writing. And if you can answer those in writing for the Committee, they will become part of the official record, and I would appreciate that.

But thank you very much. You're excused.

I would like to call up the second panel, Dr. John Fowler, Mr. Bud Eppers, Mr. Manuel Pacheco, and Mr. Bill Moore.

Thank you very much. I think you heard the explanation of the 5-minute rule. I—if you're almost finished, I usually let you go ahead and finish. But if you could try to stick to that, I would appreciate it.

Dr. Fowler, if you're ready, you can begin.

STATEMENT OF DR. JOHN FOWLER, PROFESSOR OF AGRICULTURAL ECONOMICS, NEW MEXICO STATE UNIVERSITY, LAS CRUCES, NEW MEXICO

Dr. FOWLER. Good morning, Mr. Chairman, distinguished Committee Members. I greatly appreciate the opportunity to be here this morning.

I am a professor of Agricultural Economics at the New Mexico State University in the State of New Mexico, and I have responsibilities involving a team of scientists called the Range Improvement Task Force, and we have been working in this arena of resource management for many, many decades. We greatly appreciate the opportunity to share some of our experience with you and the Committee members this morning.

I am a strong supporter of the original intent of the Endangered Species Act. I believe that continuity of the genetic pool, bio diversity, and species richness are essential elements to long-term well

being of our society and our productivity. However, that's where the support stops.

The application and implementation of the Endangered Species Act that we have seen in the State of New Mexico goes beyond any semblance of reasonableness, any semblance of common sense, and any semblance of professionalism. The hard-handedness of the agency assigned to implement this, the U.S. Fish and Wildlife Service, their lack of experience in the field—in 20 years I have yet to find the U.S. Fish and Wildlife Service biologists in the field. We have yet to have them interact with the people they are directly impacting. This travesty needs to be corrected.

Private landowners, Mr. Chairman, are the key to the successful implementation and change of the Endangered Species Act. They are the individuals that understand where the species are. They are the individuals that understand how they move, how they interact with one another, and how coexistence can be implemented. And, yet, these people cringe at the very thought and mention of threatened and endangered species because of the way it's implemented on the ground. This has to be rectified, Mr. Chairman.

Another major area of the Endangered Species Act, this has become a dominant use policy. As soon as the mention of endangered species comes up, all other types of management are thrown to the side. All of our relevant legacy of data and information is cast aside. And the only principle that they used is that of the endangered species. It becomes the tail wagging the dog. Our management is cast aside and oftentimes without the proper scientific credibility.

We've been teaching for 20 years how sound biology, economics, and institutional constraints need to be equal legs on the triangle of management. Not a single spot of law, but an encompassing three-dimensional effort for management for the short term as well as the long term involving the people, the politics, and the physiology. This is lost with the Endangered Species Act.

The Endangered Species Act uses a principle called a precautionary principle. If there is any hint of endangered species, then by all means, before you find out about this species, remove and reclassify the species and change everything before you might have any impact.

A classic example is the snail darter. Years ago, in the Tennessee valley, Federal projects were stalled, prevented, local impacts were implemented, and then all of a sudden, lo' and behold, other populations were discovered, and the consequences were already done.

We have done this on 18 of the 22 species currently being nominated for a list that were presented by Secretary Babbitt. There were mistakes in science in 18 of the 22 classifications. This is inexcusable. The damage that was done was done a priori, it was done premature, and we have allowed this to happen.

I have presented in my testimony to you, Mr. Chairman, seven examples of the implementation of the Endangered Species Act in New Mexico. The analysis tries to—to show not only the direct impacts to the agricultural industries, but also the supporting infrastructure and how they are impact affected.

For the purpose of brevity, I would like to have this introduced for the record.

Mr. POMBO. Without objection, it will be included.

Dr. FOWLER. Thank you, Mr. Chairman.

Even with this analysis that we did, it did not include reductions in wealth. It did not include equity and capital losses associated with this Act. In addition, it does not include intangible losses associated with loss of way of life, loss of hope, despair, increased suicide, increased divorce. All these are the cumulative impacts of the Endangered Species Act that are being forced upon our citizens, Mr. Chairman.

We need a comprehensive cumulative analysis of this Act. In addition to those—the analysis on the separate seven species, I have also included a summary of the ideas developed by a multi-agency, multi-disciplinary team done in 1993, nearly 6 years ago, that speaks and addresses how do you get good science? How do you list a species? How do you develop a recovery plan before they're implemented?

So, procedurally, I believe these are just as germane today as they were in 1993, and I also would like to present that to the chairman as a matter of record. Thank you very much, Mr. Chairman.

Mr. POMBO. Thank you.

[The prepared statement of Dr. Fowler may be found at end of hearing.]

Mr. POMBO. Mr. Eppers.

**STATEMENT OF BUD EPPERS, CHAIRMAN, NEW MEXICO
PUBLIC LANDS COUNCIL, ROSWELL, NEW MEXICO**

Mr. EPPERS. Thank you, Mr. Chairman, and we appreciate you bringing the Committee on Resources, the oversight hearing to New Mexico where you've already stated the people that are most affected have an opportunity to have input into the process.

I represent over 4,500 Federal and state trust land permittees throughout the State of New Mexico. We graze on intermingled private, state, and Federal land. Most all of our operations range from small to large family business livestock production operation.

In preparing this testimony, this Committee necessitates review of the effectiveness of the Endangered Species Act since it was adopted and signed into law. Dr. Fowler already mentioned the snail darter. The desert tortoise is another example where a gold mining company desired to harvest the gold out of the hilly terrain on the California-Nevada border. A requirement for getting that permit to mine, they were forced to go and acquire private property and set up a desert tortoise research center before they could be given a permit to mine their gold.

In a 1,500 acre development location near Las Vegas, Nevada, they were required to physically remove all desert tortoises from their proposed development land, and they removed over 870 tortoises at a cost in excess of \$40,000 per turtle.

The Southwestern willow fly catcher, not listed by the U.S. Fish and Wildlife Service, but afforded protection by a Federal judge, threatens historical water and grazing rights throughout the southwest. Cattle grazing is being eliminated by fencing in riparian

areas on forested land and BLM is quickly developing similar management practices.

The list goes on and on, and in every case there is not one shred of peer reviewed, scientific documentation supporting listing and protection.

Recently, the Fish and Wildlife Service told a staff person of Congressman Skeen that there were less than 400 pairs of the Southwestern willow flycatchers left in the entire world. This is absurd when recent studies indicate there is at least that many or more on the Gila River in southwestern New Mexico.

One of the things that you asked for was recommendations of how the Endangered Species Act might be amended or changed. I would like to offer several recommendations for consideration by the Committee as you consider reforming the ESA.

First, the ESA is not—cannot claim victory in restoring or preventing a single species from becoming extinct, and it should be repealed in its entirety. Its purpose at this time is to eliminate consumptive uses of the land for extortion of developers and miners.

The Committee should seriously consider whether the Federal Government should play a role in endangered species or let the states address identification, listing, habitat requirements, or reintroduction. With the exception of just a very few species, states have management responsibility for wildlife within their borders. Even in migratory species, the states could do a better job in management than the Federal Government and at a lower cost.

Congress should establish a blue ribbon committee of range, timber, and wildlife professionals from land grant universities. They should be charged with reviewing any and all available data on the current status of each species under Federal agency management. They should request and review all management techniques used to protect and restore species populations, and then they should report back to Congress with a progress report on each species with any recommendation for management changes to expedite recovery or withdraw the species from protection.

Federal agencies should only be given management responsibility for migratory species. Species that can walk or crawl across state boundaries should not be managed by other than state agencies in cooperation with the neighboring state.

Listing of a threatened or endangered species should only occur after substantial and verifiable and peer reviewed evidence exists. Land grant university scientists should concur unanimously.

Citizen suits should be prohibited. One of the worst travesties of the ESA is the ability of environmental groups to bring before a favorable judge a request for a listing, critical habitat designations, and management restrictions. The judiciary is not the proper setting for addressing the endangered species issues.

Conditions for listing should include mitigation of the impact on rural communities, economies, historic land uses, and management production on private, state trust, and Federal land.

And, by all means, to protect private property, Executive Order 12630 should be enacted into law with the Justice Department Implementation Guidelines serving as the regulations for compliance. General appropriation to the Endangered Species Act should be eliminated, and a possible funding source for federally listed spe-

cies could be a voluntary contribution provided for on the individual income tax forms.

I appreciate and thank the Committee on Resources for coming to New Mexico and holding hearings on such an important issue.

And I would just like to call your attention, you've asked the question about the news release by Sam Hitt. I would just like to say that in eastern New Mexico alone there are a number of threatened or proposed species, the Pecos pup fish, the bluntnose shiner, the sand lizzard, Arkansas River shiner, lesser prairie chicken, black-tailed prairie dog, and Pecos sunflower. And if these—these species aren't important to eastern New Mexico, Mr. Hitt doesn't know what he is talking about.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Eppers may be found at end of hearing.]

Mr. POMBO. Mr. Pacheco?

**STATEMENT OF MANUEL PACHECO, NORTHERN NEW MEXICO
STOCKMEN'S ASSOCIATION, TAOS, NEW MEXICO**

Mr. PACHECO. Thank you, Mr. Chairman, Mr. Redmond—Congressman Redmond.

I think that to fully understand my remarks you need to understand my roots and my background. I'm a descendant of the Pachecos that have been here since 1598, and on my mother's side, from the Ortizes that have been here since 1693. Historical records show that we've been in ranching since early 1700.

Besides ranching, I started working at varied businesses since I was 16 years old. I became a public schoolteacher, a central district school administrator. I did work for the agency for international development. I have been a consultant to some lawyers. I've organized many organizations, and I served my country in the U.S. Naval Forces. I've also served on the National Public Lands Council under Secretary of Interior, Manuel Lujan and President George Bush.

I am currently a board member of Northern New Mexico Stockman, also the P.A.J.E. Corporation, a New Mexico wide agricultural business related organization, and also vice president of El Llano Ditch in Colorado.

The Endangered Species Act, although well intended, has been a total failure. According to the National Wildlife Federation, in 25 years with billions of dollars spent, of 1,119 species listed, 6 species were delisted as recovered and 6 have become extinct.

The Mexican wolf reintroduction has left no survivors but spent millions. The Southwestern willow flycatcher, probably the only scientific study with qualified biologists using U.S. Fish and Wildlife Service protocol, was done on the U-Bar Cow Ranch in the Gila River. In July 1994, it had a high of 64 pairs. In might be noted that in the west the only other pairs found were 38 in the Keru River in California in a county that has no cows.

From 1994 through 1998, along the Gila, they have counted up to 186 pairs, so they've been growing in numbers, all in cow country. Remember that.

Another difference found in this study is that the established literature that the Federal agencies have been following is contrary to what they state. The placement of nests have been high, the vegetation of preference different. Why then do they go and fence thousands of miles of river without any science being done as to its effect? What a waste of money.

The Carson National Forest spent a million dollars trying to locate Mexican spotted owls. They found one in the Jicarilla reservation. Imagine what that money could do if it was spent on resource improvement.

It must be said that among scientists and biologists there are differences in approaches to saving species. We, the Northern New Mexico Stockmen, believe that by saving species and improving range, you can do it by putting your money and your effort on the ground. Historically, our families have protected the area for over 400 years.

Those that do not subscribe to common sense take actions like those that happened in Vail, Colorado. In Colorado, the extremists started to burn out development. We're afraid—and I come from an area where there is five ski areas, and I've seen plans from this new Santa Fe ring—pretty soon you're not going to be able to go camp, recreate, ski, or use the lands that we have used before it was an idea of the United States, before there was a country of Mexico, and for 150 years under our country that we have fought, died, and served.

Why are we not equal at least to the plants and animals that they're trying to save? We have civil rights under the Treaty of Guadalupe-Hidalgo, under the Constitution of New Mexico, under the 14th and 5th Amendments of the United States Constitution. Why are they being taken away from us by radicals that take no risk?

Mr. POMBO. Thank you.

[The prepared statement of Mr. Pacheco may be found at end of hearing.]

Mr. POMBO. Mr. Moore?

STATEMENT OF BILL MOORE, NEW MEXICO DEPARTMENT OF AGRICULTURE, LAS CRUCES, NEW MEXICO

Mr. MOORE. Honorable Congressmen, let me begin by thanking you for the opportunity to provide my perspective on the Endangered Species Act. I would like to draw from my professional training and experience as a wildlife biologist and discuss with you briefly the lack of science that I am seeing personally in ESA implementation.

I would like to focus on the Southwestern willow flycatcher, a species which has already been mentioned a couple of times here today. In my professional opinion, the majority of the controversy over this species' protection and livestock grazing could be alleviated through more objective evaluation and application of the scientific information.

In addition, Federal agencies' failure to comply with procedural requirements of the ESA have contributed greatly to the current crisis facing New Mexico's livestock industry. This failure to comply with statutory responsibilities has forced Federal agencies into a

reactionary mode, investing resources to address what should be frivolous lawsuits. In an effort to quickly attain procedural compliance with the ESA and stave off unfavorable court rulings, these agencies are implementing sweeping management actions which would not be necessary if a more proactive approach, i.e., timely attention, to these issues had been taken.

The U.S. Fish and Wildlife Service published a final rule listing the flycatcher as endangered in 1995. The final rule not only provides Federal protection, but it is also supposed to justify the Fish and Wildlife Service's decision to list the species. This justification is supposed to be based upon the best available scientific and commercial information available.

However, in my review of the final rule and the literature cited within it, I found errors in the way that the literature was represented. These errors are being incorporated into Federal land management decisions and also into litigation to the unjustified detriment of livestock producers. That's the first point I would like to make today.

A good example of this is the alleged relationship between livestock presence and cowbird brood parasitism. Just very quickly, brown-headed cowbirds have been shown to affect flycatcher populations. Nobody disputes that. The cowbird lays its eggs in nests of flycatchers and flycatchers end up raising baby cowbirds or no babies at all, essentially.

The Fish and Wildlife Service has taken the position that livestock presence is responsible for cowbird presence. In other words, if you remove all livestock, then the cowbirds are going to go away. And that line of reasoning is already being used in New Mexico to remove some livestock from some Federal permits.

When I reviewed the scientific literature cited in the final rule, I found what could best be described as a correlation. Livestock and cowbirds both present in an area, and that's it. But somehow the Fish and Wildlife Service has turned that into a cause and effect relationship, i.e., cowbirds are present because livestock are present.

I believe this is a very fatal flaw in scientific research which leads to unsubstantiated and sometimes grossly erroneous conclusions. To put it in some less scientific terms, one could likely find a statistically significant relationship between increased ice cream sales and increased crime rates. However, I don't think anybody looking at the issue objectively would automatically conclude that increased ice cream sales resulted in an increase in crime rates; but, that's essentially what the Fish and Wildlife Service is doing in this particular situation.

My second point is that Federal agencies need some accountability. Special interest groups are having a field day suing agencies because these agencies, by their own admission, cannot meet the procedural requirements of the ESA. Why not?

Privately the Federal agencies blame one another. In the meantime, lawsuits continue to be filed and the only people who suffer any repercussions are the livestock producers who are dependent upon that Federal grazing permit to stay in business.

A good example of this is the Forest Service's decision earlier this year to remove livestock from a couple hundred miles of streams

in western New Mexico and northern New Mexico. That decision was not made based upon recently collected field data indicating degraded riparian conditions. The decision was made because the Forest Service, by its own admission, was out of procedural compliance with the ESA, that is despite the fact that the Forest Service had over 3 years to come into compliance.

The Forest Service made that decision in order to avoid the possibility of a court injunction. There was no scientific data which led to that decision, no matter what you read in the newspapers.

Special interest groups are utilizing the ESA to create what has been described—let me back up. Litigation has got to be removed as the central driving force behind ESA implementation. Every Federal agency decision made in regards to the flycatcher, every single decision going back to the original petition to list has come about as a direct result of a lawsuit or the threat of a lawsuit.

As a result of being produced in a crisis mode, the biological integrity of decisions is suffering. Special interest groups are utilizing the ESA to create what has been described as a legal train wreck. These groups have been very explicit in stating their objective is to rid our public lands of all cattle grazing.

Unless Federal agencies somehow find a way to meet their requirements or the ESA sees some substantive changes, the present ESA and all of its procedural requirements has and will continue to be a very effective tool in achieving these groups' political—and I stress—not biological agenda.

In the meantime, the ESA will continue to be used to achieve a political agenda, and we will continue to argue how ineffective the Act is at recovering species.

I know I've covered a lot of ground here very quickly; but, everything which I discussed is outlined in greater detail in my written testimony which I've already submitted to your staff. And, once again, I thank you for this opportunity.

Mr. POMBO. Thank you for your testimony.

[The prepared statement of Mr. Moore may be found at end of hearing.]

Mr. POMBO. Thank you for your testimony. I thank the entire panel. I would like to start with Dr. Fowler. To open up your testimony, you talked about your wish to preserve biodiversity and to use good science in the decisions that are being made. Do you believe that good science is being used in—in the current implementation of the Act?

Dr. FOWLER. That is explicitly accurate.

Mr. POMBO. What is driving it? Why would the agencies, which are required to use good science, that by their own admission claim that they are using the best available data, what—what would be driving them to use science that is not peer reviewed, that is not accurate, that may be biased or politicized?

Dr. FOWLER. Well, that's a very encompassing question, Mr. Congressman. We have in the west example after example of where moves are made before data recovery plans are completed, before the blueprint for recovery is being finished. Example after example of where they've jumped the gun either for political reasons, or as Mr. Moore has described, they've been forced with these actions.

We are seeing a transition from consumptive use to non-consumptive use. We are seeing where the—in the west, there are rights associated with water rights that are clouding the title of the Federal Government and the U.S. Forest Service lands, and Bureau of Land Management lands, and we are seeing where the easiest way, the most—quickest way to remove these clouds of title are through a surrogate such as endangered species so they will get in-stream water flows.

They can retain water for endangered species at all levels of the river system, and that the Federal Government can retain these rights. I do believe there is some very, very clandestine motives that aren't immediately obvious to everybody, and that we are falling directly into this mood of transferring ownership from the private sector to the Federal sector.

Mr. POMBO. I've often believed that with the number of the species that I've seen, I've had the opportunity to go around the country quite extensively and look at some of the endangered species problems that they've had, and it appears that with a lot of the problems, that there are—there is another agenda associated with a particular listing.

Mr. Moore said something about removing cattle, and the other two gentlemen, by removing cattle from the public lands as being part of the agenda out west. We had people that have admitted that if it wasn't for the spotted owl, they would have had to have created one in order to get the loggers out of our forests.

Do you believe that the Federal Government, that the Endangered Species Act, the way it's being implemented today, is susceptible to that kind of manipulation of the Act?

Dr. FOWLER. Yes, sir, I do. Johanna Wald, Natural Resource Defense Council, I believe has testified on your Committee, if we cannot price livestock off the western range, we will policy or litigate them off. It's—you know, we are falling exactly into the line that has been prepared for us. This is not an accident.

Mr. POMBO. The—getting back to your original comment about bio diversity and the importance of maintaining bio diversity, I would assume that is part of your training, is to—to understand the importance of bio diversity in this country and, in fact, throughout the world.

Having said that, do you believe that there is any way that man can stop species from becoming extinct?

Dr. FOWLER. Yes, I do. I believe man has a direct impact on species, both negatively and positively. You know, it's no accident that 75 percent of endangered species are located on private land. Individuals, who through generations, know how to nurture species. They do not rape, pillage, and plunder in the short run if they're going to be there for generations.

It's common knowledge that a mid-seral state type is often more conducive to more species richness than all the way to an excellent condition. Trying to manage for the infinity is usually moving toward a single species. Whereas, if you'll keep in a lower seral state, you'll have more species richness, not only in vegetation, but also all the interrelationships between the animals, insects, arthropods, et cetera, that co-mingle.

So, attempting to go to excellent condition is the wrong move. We are going beyond the optimality position. And management, Mr. Chairman, is the key to success. People are the key to success. They're not the problem. They have the knowledge through time or those species wouldn't be there, and we just haven't recognized that.

We have to get back to the people who know how to work the land. And we are moving as fast away from that as possible, Mr. Chairman. And that is the wrong—absolutely the wrong direction.

Mr. POMBO. A final question that I would like to ask you, if we changed the incentives that are currently in the Act so that instead of the Endangered Species Act being seen as a negative by property owners and property managers, but instead as a positive, say that there were tax incentives for creating habitat, that there were awards and rewards that were available if you increase the amount of habitat and consequently the number of endangered species on your property, do you think that would be an effective tool in managing the recovery of endangered species versus the fear that many property owners have today?

Dr. FOWLER. I think that would be a major start forward, Mr. Chairman. The agricultural industry, No. 1, is—is a stable industry throughout the west. Other industries come and go, have peaks and troughs, but agriculture, in general, through time, has been a stable industry. And this industry responds to price. They have always and will always respond to price. That's the very nature of the individuals.

You give them a positive signal on a product, and they will produce it, and that includes endangered species. We have not given them the correct signal. As a matter of fact, we've given them the reverse signal.

Mr. POMBO. Thank you. Mr. Redmond?

Mr. REDMOND. Thank you, Mr. Chair.

Dr. Fowler, a couple of questions on your—on your testimony. You said that in—And this is—Maybe I didn't—This is for clarification purposes. I'm not sure I understood this.

You said that in your 20 years, you've not seen a field worker from Fish and Wildlife out in the field dealing with the endangered species; is that correct?

Dr. FOWLER. That is correct.

Mr. REDMOND. Can you clarify—I mean, what—what—what do you mean “out in the field”? Are you talking about out in the streams and the forests, or are you talking about at the university or in the field office? What—what do you mean by “out in the field”?

Are you—are you indicating that they're sitting somewhere behind a desk in Santa Fe or in Washington making these decisions without coming out and physically being present in those communities? Can you describe that for me? I didn't—

Dr. FOWLER. Yes, sir.

Mr. REDMOND. I didn't clearly understand that.

Dr. FOWLER. Oftentimes, in my role as coordinator of the Range Improvement Task Force, we get on the ground with individuals on allotments in the forests, in the rangelands, in the riparian areas;

and, during those times there is usually an interaction between the industry and the agency.

And the agencies that are represented there are the U.S. Forest Service and Bureau of Land Management. And it's their biologists that are on the ground. Those people then feed the U.S. Fish and Wildlife Service and because of Section Seven of the Endangered Species Act, they have been put in the driver's seat as the only biologists of record.

You cannot get those people out of Albuquerque.

Mr. REDMOND. So—so, what you're saying is that we get the scientists from the university, we get the scientists from the Forest Service; but, the scientists who are directly responsible for the implementation through the Fish and Wildlife will not and have not historically been in the field?

Dr. FOWLER. That is correct, Mr. Congressman.

Mr. REDMOND. You spoke about data being cast aside. Can you describe the kind of data that you're speaking about?

Dr. FOWLER. I was referring to a case brought up earlier by the panel, Mr. Pattison, who was speaking to the Pecos bluntnose shiner. And, here, that species was studied starting in 1991, and they have been looking at the impacts of the current irrigation regime on the bluntnose shiner. And it was a 5-year study that was continued for three more.

And at the end of the 5 years, an additional two, 7 years, there was a tenfold recovery in these species itself. Rather than that being accepted as a positive success, what we're seeing now is a change to a recommendation for a continuous in-stream flow of 35 cubic feet per second for this fish when the last 7 years of data would contradict that need, as an example. After years of study, once again this agenda, Mr. Chairman, is not being met. And the data was cast aside.

Mr. REDMOND. Mr. Chairman, may I request that that data be entered into the record for this hearing?

Mr. POMBO. Without objection.

[The information referred to may be found at end of hearing.]

Mr. REDMOND. Thank you. And I personally would also like to have a copy of that, Dr. Fowler, not only for the Committee, but also for my personal use, as well.

I just want to make one comment before—before I hand the microphone back. And there is terminology being used that I think that we need to very clearly delineate and understand what we're talking about.

One of the terms today was that there is good science and bad science. As one who holds a master's degree in philosophy and the focus of my research is philosophy of science, there is no such thing as good science or bad science. There is science.

The Latin word for science means certain knowledge, and what we have here is, we don't have bad science, we have ignoring science. We have people, professionals in the field, whether they're with Fish and Wildlife, whether they're with another agency, that are ignoring the data such as what Dr. Fowler is talking about here.

It is not scientific to discard data. That's not science. That is not a part of the scientific method, never has been, never will be. And

so what we have is, we don't have bad science, we have people that are ignoring science.

And I would like to—and the reason I'm stating this on the record is that it's very important that we collect all data that is relative to the issue and we acknowledge that as relevant data that will bring us to the conclusion of science, the certain knowledge on these issues.

Mr. POMBO. I wanted to—I thought of another question I wanted to ask Dr. Fowler before I move on. In your testimony, you talked about, I believe you said, 22 species that have been mentioned recently by the secretary for delisting. We've had the opportunity, and I believe the figure is now up around 30, that depending on which press release you read, I think if you put them all together you're up around 30 now that have been proposed for delisting or down listing.

In doing an analysis of the species, I believe it was six of those species are extinct and should never have been put on the list. The vast majority of the species were errors and miscountings, things that were not species that got listed as separate species. I do not believe that there is a single species on the list that you can say was a recovery of the Endangered Species Act or as a result of the Endangered Species Act.

Do you have any information that would be contrary to that, because the Committee has looked into this, Committee staff has looked into this. And if you do have that, I would—I would like to have that.

Dr. FOWLER. I personally do not, Mr. Chairman. We do have a Ph.D., in wildlife biology, and I will inquire of him and make the information from him directly available to the Committee.

Mr. POMBO. Yeah, if—if you or the university or any of the—the other scientists that you work with have any information about any of those species that could be as a result of the Endangered Species Act, we would like to find a recovery where the Act actually worked so that we could use that as a model. And we have had a very difficult time finding any where they actually worked and a species was recovered because of anything that was done under the Endangered Species Act.

[The information referred to may be found at end of hearing.]

Mr. POMBO. The—Mr. Moore, you—you seem fairly confident that livestock grazing and the Southwestern willow flycatchers can co-exist. Do you have any direct evidence of that, scientific evidence of that, that you could present to the Committee?

Mr. MOORE. Yeah, you're—you're basically looking at two controversies whenever you're talking about conflicts between livestock grazing and flycatcher viability. The first is the cowbird brood parasitism issue which I discussed briefly. In addition to the scientific data not supporting that relationship, we also have field data showing that where livestock and flycatchers were both present, cowbird brood parasitism rates were insignificant on the flycatcher populations.

The second prevailing assumption that's going through a lot of Federal documents right now is that livestock grazing will destroy flycatcher habitat. I would like to bring up an area that has already been brought up a couple of times; and, that's the U-Bar

Ranch, which is a privately owned and privately managed ranch in western New Mexico.

This single ranch contains—Depending upon whose numbers you use, that ranch contains one-third to one-half of the known Southwestern willow flycatcher population in the world. In addition to that, this ranch also grazes several hundred head of livestock.

One thing that I found kind of interesting in a report that I read recently on this issue, a report done by Forest Service biologists who did a study last year and they looked at two areas in riparian habitat where flycatchers were nesting. One area, they excluded livestock grazing; another area, they didn't exclude livestock grazing.

There was no statistical significant—There was no statistically significant difference between those two populations. In fact, if you just look at the raw numbers, nesting success in the area where livestock were not excluded was actually 10 percent higher. But, like I say, that's not a statistically significant difference.

Mr. POMBO. You said that, in your testimony, that the science was gathered. Just for the record, who did this particular study?

Mr. MOORE. It would be Stoleson and Finch. I think it is Scott Stoleson and Deborah Finch, U.S. Forest Service, Rocky Mountain Forest and Range Experiment Station.

Mr. POMBO. So, was it federally funded?

Mr. MOORE. Yes, that was a Federal study.

Mr. POMBO. And has Fish and Wildlife used that information in determining the proper recovery plan?

Mr. MOORE. No, that's—that goes back to something which Dr. Fowler mentioned, all of this—all these decisions are being made; yet, the Fish and Wildlife Service hasn't come out with a recovery plan yet for this species.

All these decisions are being made, individuals are being hurt, but nobody has sat down to take a look at the science and said, "OK. What do we need to do to recover this species?" That hasn't happened yet. The Fish and Wildlife—

Mr. POMBO. The enforcement actions aren't taking place?

Mr. MOORE. Yes, that's correct. The Fish and Wildlife Service has got a policy that states very explicitly that it will develop recovery plans for species within two and a half years of listing. Southwestern willow flycatcher recovery plan is already a year overdue, and it's probably going to be at least another year before we will even see a draft.

Mr. POMBO. You made another statement that I'm curious about. You said that on this particular ranch was one of two places of known populations of—of this particular flycatcher. When were they discovered on this particular ranch?

Mr. MOORE. There is some studies going back from probably the mid-eighties that knew that those flycatchers were out there; but, they've not been intensively studied since probably about 1994 on.

Mr. POMBO. And have other scientists gone out to other ranches to see if they had populations of flycatchers?

Mr. MOORE. No, I don't think you're going to see that happening.

Mr. POMBO. I'm always curious when they say that these are the "only known populations," because until they found them there,

they didn't know they existed there. So, how do they know they're not somewhere else?

But it—I see that come up often in data that we get from reports from the Forest Service and Fish and Wildlife, that these are the only known population and they're the only ones left in the world and so on. And I always wonder how they know that.

But, Mr. Eppers, in your testimony, you talk quite extensively about the states having jurisdiction in managing wildlife within their borders. Do you feel that the State of New Mexico is competent to handle endangered species recovery?

Mr. EPPERS. Well, I certainly do, Mr. Chairman, because they already have the mechanism in place. They have the conservation services division set up, state listed species. They're already involved in the management of endangered species in conjunction with the management of other—a multitude of other wildlife species, and I think that they could handle it much better than what the feds have demonstrated they can do up-to-date.

Mr. POMBO. The way the Act is currently being implemented gives little or no opportunity for state involvement in the recovery of species, let alone private individuals involved in it.

And just for my own knowledge, amongst the cattlemen, amongst the property owners, are they typically more willing to work with the state officials or with Federal officials in terms of trying to recover these species in property management?

I know you had some state listed species, and, you know, there is some differences there. Amongst the general population, how is the feeling toward the state agencies? Is it generally positive or is it negative?

Mr. EPPERS. I think with any—anything related to endangered species you have a certain amount of fear from the landowners that an action can require them to lose their ability to manage their land.

But that has not been that prevalent within the state agency. They have been involved in working, I think to some degree, with landowners; and, at least we find them out in the field occasionally.

As Dr. Fowler has already indicated, you don't find the Fish and Wildlife Service out in the field. We can communicate with the Forest Service and BLM, State Game and Fish Department personnel; but, we don't have the opportunity to visit with the Fish and Wildlife Service or the—any of the other Federal agencies involved with endangered species.

Mr. POMBO. Amongst the other suggestions that—that you have made, you seem very confident that the current implementation of the Act has not worked and, in fact, should be repealed. Do you think that there is a need to have an Endangered Species Act to protect species?

Mr. EPPERS. I find it very hard to support the Endangered Species Act as it has been managed in the past and is presently being managed. I cannot see any relevance to the improvement of any species as a result of the Endangered Species Act. The species that they always refer to as being recovered or propagated under the Endangered Species Act have all occurred under other Federal Acts, not the Endangered Species Act, the bald eagle, alligators in Florida, et cetera, et cetera.

I—there again, I think that the people on the ground within the states have the ability to recognize if the species is threatened or endangered; and, if they do, they have the means and the availability, especially here in New Mexico with a Range Improvement Task Force team and the scientists that sit on that team to address and come up with a way to protect that species and enhance or recover the population.

Mr. POMBO. Thank you. I just—to finish up with this panel—You have additional—OK.

Mr. REDMOND. Mr. Moore, earlier Dr. Fowler was mentioning the precautionary principle. Based on the information that you have testified here this morning to, the—this—in this hearing, that the Southwestern willow flycatcher, based on the information that you have, has reproduced itself more in the presence of cattle as opposed to the absence of cattle; is that correct? Do I understand that correctly?

Mr. MOORE. Well—

Mr. REDMOND. I know you said it was a minor statistical deviation, but it's still a statistical deviation?

Mr. MOORE. Yeah, just looking at the raw numbers, I believe it was in the area where livestock were not excluded, nesting success was 61 percent. In the area where livestock was excluded, nesting success was 51 percent.

Mr. REDMOND. OK. So, what that does is, that calls into question the precautionary principle, because the precautionary principle says “do not intervene,” presupposing that if intervention should occur, the damage would be done. When, in this case, by not intervening, causes damage.

So, it brings into question the whole policy decision regarding the precautionary principle. Is that—would that be—

Mr. MOORE. I wouldn't dispute that a bit. As a matter of fact, I would agree with that 100 percent that there just—there seems to be this over—overriding, prevailing assumption that we have to take this better safe than sorry approach, whether or not science is directing our actions or not.

Mr. REDMOND. Right. And in this case, you know, the idea is, that if we touch it, it could get—it could be harmed; where, in reality, if we don't touch it, it will be harmed.

So, I think that as we discuss, Mr. Chairman, in the future however the Endangered Species Act, when it is amended—when it is amended that we take into consideration not only a clearly defined definition for threatened species and endangered species, but also the role of the precautionary principle policy, because we may be doing species harm by not intervening, and this is one example.

Oh, I've got one more for Mr. Eppers. You mentioned something about possible funding for Federal listed species could be voluntary contributions provided for on an individual basis on the income tax form. So, you could either vote, you know, to put the dollar in the Presidential election, or you could vote to save the willow flycatcher?

Mr. EPPERS. Certainly.

Mr. REDMOND. Well, I'm glad I have a choice. But I guess once the money goes into that fund, you're recommending something like price supports for spotted owls; is that—No, I mean, theoreti-

cally, you know, I think that one—one of the main problems I believe that we're having with the implementation and our desire to save endangered species is that we're taking a heavy-handed central government approach as opposed to an approach that, No. 1, honors the right to private property; No. 2, honors the inevitable market driving forces; and, you know, No. 3, that it is based on sound science and not faulty procedure.

So, I have no problem with recovering a species by using a market approach as opposed to a central government approach, and, so, you're—you're—you have created somewhat of a—of a hybrid here where, yes, it's partially market; but, yes, it's partially Federal.

And so my question is that if we were to have this check-off on our taxes and people who do not live on the land as you do, if they're so concerned about the species that you have to live with, that they should accept some responsibility and this would be a way that they could accept some of that responsibility.

In terms of implementation of that, we're basically looking at something like price supports for spotted owls; is that not correct?

Mr. EPPERS. Yes, it could be considered that, Congressman. And I—I just feel that—that if the people that really have an interest and a desire to protect endangered species want to participate in the process, they could contribute some funding toward that goal.

I think the abuse of the Act as it has been, the vast expenditure of funds that several of the panelists have already identified, really has not helped the endangered species. And if people knew how high the products that they are purchasing in the marketplace today have elevated just because of the Endangered Species Act, it would be quite frightening to them.

You look at our timber industry. It no longer hardly prevails in this country. We're importing our timber. We're importing our oil and gas. We are vast approaching importation of our food supplies.

And if we don't change this thing around, I really fear that—that we're going to be dependent—totally dependent on foreign sources for our necessary needs. And I just think that the people, that if they're really concerned about endangered species, they should put some money into the process.

And it may be a price support for spotted owls, but it—it certainly would help find out just how much public support there is, truly, out there for endangered species.

Mr. POMBO. Mr. Pacheco?

Mr. PACHECO. Gentlemen, I support by some examples. I don't believe in Federal supports for the endangered species, per se. I think that people on the ground do a better job.

Let's look at New Mexico and an example at the Gila Grande, the Caldero location that the government is trying to buy right now, and—and I support that. In New Mexico, at the turn of the century there was no elk. Today we have an overpopulation because people on the ground felt that that species needed to be in New Mexico.

Now the endangered species terrorists say that cows and others are doing damage to the streams, endangering other species. Basically, I showed people on tour at the Gila Caldera that the only ones that wallow in the river eating off the stream were the elk, and we saw groups of 50 to 100 elk in the streams eating off of the banks.

Where were the cows? And that's a cow ranch with over 7,000 head there. Thousands of yards away from the stream. They only go there to drink.

So, again, if you're going to use science, do it like John Fowler—and we've been on the ground together a lot—says, by being on the ground. A lot of people sit on the back and make decisions without ever going and visiting my place, and it's become a money-making, defrauding tool for these groups to pursue money by going after endangered species protection without no science.

Mr. POMBO. Let me ask you this then, in Mr. Eppers' testimony, he talks about, I believe it was in Las Vegas, a developer that paid \$40,000 per turtle to relocate turtles. How many cattlemen in this area would give up grazing cattle for \$40,000 turtles if they could raise turtles instead?

Mr. PACHECO. Let me—Let me put it in the context of the north central New Mexico. We've been harvesting a living in that area for 400 years. We've lived, we've raised families, we've existed and invited everybody to come, and they have and found the purest state of beautiful God's country. You couldn't change our way of living.

You know, we do other things, but cattle business is in our blood. It's—It's our tradition. It's our lifestyle, and we're going to do it till all of us die. I have a son that's in it. I have a grandson that's in it. My parents and grandparents were in it, and we're here to stay.

And we've seen a lot of Santa Fe raid proponents. Sam isn't here because he thought that I would question his motives. Not even the environmental community likes Sam because he is a radical.

Mr. POMBO. I say—I say about the \$40,000 turtles half sarcastically. But we talked about incentives earlier, and I believe very strongly that if there were incentives within the Act for people to create habitat and create more endangered species on their property, that they would do it.

Mr. PACHECO. We're doing that now, Congressman. The New Mexico—North New Mexico Stockmen and our 2,500 members are cooperating with the conservation fund, the extension service, and the Forest service on top of Glorietta Mesa to improve the range which improves a habitat, and that's how the species will truly survive.

You know, the biggest threat to species is urbanization. If you congregate a lot of people in an area, species will go away. They're not dumb. If you protect and improve that range, the way we live, species will flourish.

You know, money isn't everything. I like the way I raised my children and where I raised them. And I think they're going to like the way they raise their children and their grandchildren. After all, we've been here for 225 years under Spain, 25 years under Mexico, and 150 years under the United States. We haven't changed much. But from the outside, people have tried to change us. It just didn't work.

Mr. POMBO. Well, I—I thank the panel very much for your testimony. It was very informative for me and for the Committee.

As we work toward making changes and trying to develop an Endangered Species Act that works for people as well as for wildlife, the testimony we've received here today will be very valuable in that effort.

I will excuse this panel. Thank you very much for your testimony.

Our structured panels have completed their testimony and the questioning. At this point we will begin an open microphone session of ten witnesses who have already signed up to speak. Each witness will be given 2 minutes to speak. A yellow light will come on after 1 minute and a red light at 2 minutes.

I would like to now ask the first five witnesses to be ready to testify and come forward. Caren Cowan, Sharon Lombardi, Lewis Derrick, and John—John C. Williams, and Carl Hahn, if you would come up, please.

STATEMENT OF CAREN COWAN

Ms. COWAN. Mr. Chairman, Congressman Redmond, my name is Caren Cowan. I work for the New Mexico Cattle Growers. I'm a native of the southwest and a private landowner and very concerned about where we're heading with the Endangered Species Act.

You expressed some concern this morning that the environmentalists didn't want to come to this hearing. I would submit to you that the environmentalists are in this room. The radicals didn't want to come to this hearing. So, we need to look at it from that perspective.

Those folks have an agenda which you've alluded here today. Mr. Hitt's own organization has said that cattle are exotic pests that have no place in the State of New Mexico. So, I think that pretty well outlines their agenda very rapidly.

And then they take that a little bit further. Yesterday morning I heard a lady on television talking about the—all the damage that was done in Vail, and it was referred to as eco-terrorism. And she said, "Oh, no, that's not terrorism. Terrorism is when you hurt people. We were just vandalizing." I don't know how any—I don't understand that thought process.

But with that said, I stand before you on behalf of several people on the western side of the state. I talked to you earlier this morning about coming back and perhaps doing a hearing that they can get to. This was an awful long drive for them.

I would like to enter into the record letters that they sent over for your consideration today, and then there is one lady who is actually not a member of Cattle Growers right now, who can't afford to be, who owns a BLM permit over in the Grants area, which is in Congressman Redmond's district.

On the top of the stack that I'm about to give you is a letter that's not dated that she got from the Farmington resource district telling her that her permit has been cut in half. She can only graze from the 10th of October till the 5th of May because of the willow flycatcher.

This lady is single. She has got a family she is trying to raise. She has a sick grandchild. She actually called my office the first time from Ronald McDonald House because her grandchild was in—was hospitalized.

She doesn't know where she is supposed to go with her cows. She has had this permit for 50 years, and these are the questions that we need answered for our people.

Thank you so much for your time, and thank you for being here. We look forward to seeing you again.

Mr. POMBO. Thank you. Without objection it will be included in the record.

[The letters will be kept on file at the Committee Office in 1324 Longwoth Building, Washington, DC.]

Mr. POMBO. Sharon Lombardi?

STATEMENT OF SHARON LOMBARDI

Ms. LOMBARDI. Sharon Lombardi, Executive Director of Dairy Producers of New Mexico. We appreciate you being here, Mr. Chairman and Congressman. We know it's far from Washington and it gives us an opportunity to tell you how we feel.

Dairy Producers of New Mexico is an association of dairy producers in our state. We represent about 90 percent of all the milk produced in the State of New Mexico, and we now are No. 10 in the Nation in milk production.

We want to go on record to say that we are also concerned about the Endangered Species Act. We're concerned about how it impacts our state, our indigenous people, our industry, and our homes.

We know that we need to have a balance; and, this, I know, is going to be hard for Congress to come up with because I know how it is out there with so many people giving input. But we need to have a balance by using good, sound science or by not ignoring science, as our Congressman said, to ensure that we do protect our endangered species, but—but not—but not to take away our personal property rights.

As it was said earlier, it is not between livestock and endangered species or people between the endangered species.

Thank you.

Mr. POMBO. Thank you.

Lewis Derrick?

STATEMENT OF LEWIS DERRICK

Mr. DERRICK. My name is Lewis Derrick. I own a small ranch in southeastern New Mexico east of Dexter and also work for a larger ranch.

I guess there is no common sense in the Endangered Species Act, or that's my opinion. I have the prairie chicken. I have the sagebrush lizard on my property. Well, they say they have to have the cover for the chicken. Then you have to have the dunes—sand dunes that blow out or open for the lizard. They're either going to have to take my cattle off, or they're either going to have to let me overgraze it where I can make the—the sand dune lizard habitat.

I think if they're—the management of the spotted owl may be destroying 100 other species. Are you going to manage one species to destroy 1 or 200 more?

Another common sense approach is the bluntnose shiner and the Arkansas River shiner. Well, the Arkansas River shiner is endangered in the Canadian River. But it's abundant in the Pecos River. And in the Federal Register, it states that the Arkansas River shiner takes over the habitat of the Pecos bluntnose shiner. Well, why don't they take the Arkansas River shiner and put it up in the

Canadian River and it won't be endangered there and then the Pecos bluntnose shiner can have its habitat?

Well, you go into the prairie dog. Well, they're worried about the black-tailed prairie dog, and then they introduce the black-foot ferret, another endangered species, and they predatorize on black-tailed prairie dogs. And then they want to introduce the wolf in the same area. It don't make any sense.

The—also, the Pecos pup fish, they habitize with other species of fish, and I just think there needs to be some common sense out there. And I might raise a prairie chicken for \$40,000 a pair.

Thank you.

Mr. POMBO. John Williams?

STATEMENT OF JOHN C. WILLIAMS

Mr. WILLIAMS. Mr. Chairman, Congressman Redmond, it's a pleasure to be allowed to speak to you today. Thank you again for coming to this region.

My name is John Williams. I'm General Manager for the Canadian River Municipal Water Authority. We operate Lake Meredith on the Canadian River north of Amarillo as a municipal industrial water supply for 11 cities in the Texas Pandhandle and South Plains.

We're definitely in the apprehension category concerning the Endangered Species Act. We've been waiting for the other shoe to drop for about 4 years now with regard to the listing of the Arkansas River shiner.

And as we've watched this process, we've come to believe more and more that the Endangered Species Act is sort of like Alice in Wonderland. If you look at it more and more closely, it becomes curiouser and curiouser.

First of all, the Fish and Wildlife Service, as you've just heard, does not like the fact that species sometimes move from one habitat to another. There is a species of the Arkansas River shiner or a population of the Arkansas River shiner in the Pecos River doing very well. But they want to eliminate or eradicate that population of the species and then regulate the people using the Canadian River to try and restore it somehow or other in that area.

The fact that the litigation is used as a means of managing land and resources to suit the peculiar aims of individual groups seems very curious, and that—that you've heard a lot about and is definitely one of the problems with the Act.

You've heard—heard about the fact that the Service uses—I forget the term that was used before, but I'll call it prospective harm as a means of trying to regulate the species. You have to prove that you're not going to do harm to the species, instead of the service having to prove that you are. It's like dealing with the Internal Revenue Service.

We wanted to take the salt out of the Canadian River in some areas, but they said, "Well, that might harm the Arkansas River shiner." And they made us prove that it wouldn't harm the Arkansas River shiner. So, you're guilty until proven innocent.

So, I certainly hope that you can overhaul the Endangered Species Act. I know there is very little likelihood of being able to repeal it; but, I certainly hope that it can be instilled with some degree

of common sense and some functionality that will actually help endangered species instead of harming people.

Thank you.

Mr. POMBO. Thank you.

Carl Hahn.

STATEMENT OF CARL HAHN

Mr. HAHN. Mr. Chairman, my name is Carl Hahn. I'm involved in banking here in Curry County and I also run cattle.

One thing I would like to start out with is, I can verify Mr. Pattison's observation that the prairie dog is alive and well in Clovis and Curry County. Just last week I was walking into Wal-Mart, and there was one roosting out there on the porch in front of me, so I do know that they are in this area less than a mile away.

I'm not going to sit here and tell you that I'm qualified to talk about all the endangered species, but the one species that I am qualified to talk about that is in danger is the American farmer and rancher. These folks are going through a real tough time. The drought that we've had in various parts of this state this year, low cattle prices and crop prices definitely have an effect and an economic impact on this area.

It's pretty tough when you're trying to sell 58 cent fat cattle and \$2 corn and make things work and compete in the market buying \$30,000 pickups and other items.

One thing I would like to say is, I would appreciate it if you would listen to these folks. They're involved in this every day. They know what is going on out there, and they—anything that's done as far as passing legislation and laws will have an impact on them, thus having an economic impact on them and on our community, as well. So, I would appreciate it if you would look diligently at this and take any consideration into fact that these folks are out making their living and it affects them.

Thank you.

Mr. POMBO. Thank you.

The next five that we have are Karen Mitchell, Bob Frost, Tom Payne, Bobbie Mallory, and Anna Marie Crook.

Carol—Karen, go ahead.

STATEMENT OF KAREN MITCHELL

Ms. MITCHELL. Good morning. My name is Karen Mitchell, and I appreciate the opportunity to visit with you this morning, and I thank you both for being here.

My family has a cow-calf and stocker ranch in northeastern New Mexico which has been in our family in excess of 100 years. The ranch is almost exclusively private property. I appreciate the opportunity to share with you just one way that we have already been impacted by the Endangered Species Act.

Historically, we have attempted to have an open-door policy concerning having individuals, governmental agencies, and state agencies on our property to perform research and just enjoy the open spaces. Since the Endangered Species Act, we are far more cautious about allowing any individuals on our property.

According to current practices for species listing, even the identification of potential habitat can create adverse effects on our oper-

ation. One example is the mandatory fencing of a riparian area. A very real fear under the Endangered Species Act is the ability that our private property rights will be violated; consequently, we close our borders.

We'll be the first to admit that we make mistakes; however, we resent the fact and the ability under the Endangered Species Act for those individuals who are not on the land, have no risk of livelihood, and no risk of lifestyle to mandate our management practices.

Our desire is to preserve our way of life and the environment which we have been entrusted with for generations to come. Our concern is that with the Endangered Species Act, our ability to do this is in grave jeopardy.

Thank you.

Mr. POMBO. Thank you.

Bob Frost.

STATEMENT OF BOB FROST

Mr. FROST. Mr. Chairman, Congressman Redmond, I am Bob Frost. I'm the current President of the New Mexico Cattle Growers Association; but, today I am here as a private landowner here on the east side.

Currently, I am the caretaker and owner of a four-generation ranch where we all work together. Stewardship of this land is very important to me, and—and I am going to pass this on to the following generations.

The land and its natural inhabitants work together well. The Endangered Species Act, when implemented without sound scientific information, has cost ranchers and counties a lot of money. Ranchers and farmers have a tough time already.

Something like the Endangered Species Act, in its present form, cost—could cost us our land. If we have to move cattle off the land, where does the county get its property tax as well as its cattle inventory?

The Endangered Species Act, in some cases, has created takings, and the Constitution says if things are taken, you should be compensated. If you cannot use your land because of the Endangered Species Act, it has been taken. We would rather use our land.

Mr. POMBO. Tom Payne.

STATEMENT OF TOM PAYNE

Mr. PAYNE. Mr. Chairman, Mr. Redmond, thank you so much for the opportunity to speak. My name is Tom Payne. I'm a private lands rancher in central northern New Mexico. Mr. Carl Hahn was just up here a few minutes ago. He is my banker, and he is right, there are some of us out there who are—may well become endangered species.

You know, we produce the food and fiber that feeds and clothes a dynamic, growing nation, and we would appreciate the opportunity to continue to do that. A number of years ago my wife and I acquired a ranch that had not had any livestock on it for a period of 7 years. The land, the vegetation had climaxed within 5 years of becoming a degenerative state. But the upshot of the whole situation was, there was no water on the land because it was mostly

fed by pipelines with sprinklers on those pipelines. There was no wildlife. There was no birds. It was kind of spooky. There were no deer. There were no antelope.

After we acquired the ranch, we put cattle back on it. We put water back in our pipelines. We developed more watering systems. The wildlife has come back. We have a good population of antelope now. We have a good population of deer. We've reintroduced quail, and we have a nice population of tortoises.

Mr. POMBO. And they're for sale, right?

Mr. PAYNE. We can work out a deal on those tortoises.

I said all this to say the rancher is the true steward of the land. We're on the land. We're not going to—We're not going to destroy our only means of making a livelihood.

As Ms. Mitchell also pointed out, we don't let a government official come on our land now. A member of the Soil and Water Conservation District recently made the comment to me that he was required to watch for endangered species anytime he was on the property. Consequently, any improvements that my wife and I do to our property, we will do on our own without any help from anyone.

Thank you. And I wish you both great success in your upcoming election.

Mr. POMBO. Thank you.

Bobbie Mallory?

STATEMENT OF BOBBIE MALLORY, STATE REPRESENTATIVE

Ms. MALLORY. Thank you. Thank you for hosting this meeting, Mr. Chairman and Congressman Redmond.

I'm Bobbie Mallory, the State Representative for six counties on the eastern and northeastern part of the state, and agriculture is the life blood of my district. If agriculture is doing bad, my towns are doing bad.

I'm deeply concerned about the potential effect the Endangered Species—excuse me, Species Act has on the farmers and ranchers in my district and across the State of New Mexico. The threat of the prairie dog and lesser prairie chicken being declared scares me to death.

While visiting Lake Sumner this summer, we had, gosh, the hottest summer I ever remember. We were going through a heavy drought. As a matter of fact, all six of my counties were declared a disaster because of the drought.

And at that particular time, there was the water being drained because of the minnow; and, by the time this water got to Roswell from Lake Sumner, half of it was lost due to the evaporation and seepage. And it really upset me because our farmers and ranchers need that water. We're the third driest state in the nation.

I ask that you all review the Endangered Species Act and make some revisions to it. Thank you very much.

Mr. POMBO. Ann Marie—Anna Marie Crook.

**STATEMENT OF ANNA MARIE CROOK, STATE
REPRESENTATIVE**

Ms. CROOK. Thank you, Mr. Chairman and Congressman Redmond. I really appreciate you coming and hearing from my constituents, from the people around the State of New Mexico.

I'm state representative for the 64th District, which is primarily right here in Curry County. My brothers and I are from a family of third-generation farmers and ranchers, and I think these people, as exemplified, that have testified before you today, are the greatest lovers of our land. They love their land, and they want to protect their land.

I serve on the Water Committee, and as Mr. Pattison stated today, you've heard some of the issues that we have heard and listened to in the water area. I truly appreciate the people that have given their testimony today. I think it's from the heart, and I think it's for the sake of their livelihood that they have told you their problems.

I come from a family, like I said, and we came up in hard times, and they worked hard to protect their land. As you can tell from the looks of me, I have dealt with the prairie dogs on our land for as many years as I am old. We had prairie dog towns when I was a child; and, as those of you that are in the audience, you know what the prairie dog does. You know how much of the land they take to the detriment of the grazing.

I—as again I said, I serve on the Water Committee. We heard the other day from testimony the many issues that we have in regard to water. One of the gentlemen testified that he was in Santa Fe and he saw a map, and it didn't have Tatum, it didn't have some of our eastern cities; and, we're concerned that with the water and the issues that the environment has with them, that this may become a reality.

I do appreciate the time you've taken to come and hear from the people in our area, and I wish you would look at this article up close.

Thank you again for your time.

Mr. POMBO. I thank all of you for your testimony. I would like to recognize Congressman Redmond for any closing comments he may have.

Mr. REDMOND. First, I would like to thank Congressman Richard Pombo from California to be here to represent the House Committee on Resources and for receiving the testimony today. Richard, we appreciate it.

I think representative government works best when representatives are out with the people as opposed to back in the beltway. Both you and I agree we would rather be out here than in the beltway.

A couple—couple closing comments. No. 1 is, I think one of the things we need to realize about the environmental situation challenge that we have before us as Americans, there are some scenarios where we are in crisis, there are other scenarios where we're not yet in crisis but could be, and then there are other scenarios that we just need to maintain what we have and we'll never be in crisis. And we do not have to respond to each of those levels with the same amount of intensity.

When we move toward trying to clean our air, clean our water, and protect the environment in terms of endangered species—and, of course, this is pretty much—this hearing is focused on the Endangered Species Act—is that we need to recognize that there needs to be flexibility to protect the endangered species.

For instance, one person mentioned the minnows in the Rio Grande and how the water was let out of the reservoir in order to protect the minnow; but, yet, by the time the water got there, it was evaporated, for the most part.

Well, to me it makes sense that the water is diverted for agricultural purposes and we use one of the seven fish hatcheries in the State of New Mexico to reproduce the minnow so that if it does die out in that area, we can restock it.

That is going to be different from, you know, the reintroduction of the wolf or, you know, addressing the issue of the flycatcher. Every critter and addressing the need for every critter is going to be different. So, a cookie cutter, one-size-fits-all approach, which is overprotective, is not the way to do it, and so we need to be looking at flexibility and meeting the needs of each one of those—one of those species including the American farmer on the east side of the State of New Mexico. So, No. 1, we need to be looking at flexibility.

The—the next thing that I would like to do is, I gave one of the panels an assignment, and I forgot to mention for the last panel, I would like for, you know, the last panel also, you know, Dr. Fowler, Mr. Eppers, of course, Bud, you were the most in terms of making recommendations, Mr. Pacheco, and Mr. Moore, I would like to hear, not only for myself, but also if you could communicate to the Committee, you know, when we go in and we get ready to overhaul the Endangered Species Act, and we want it to be fair for everyone, as well as the species, that—that you participate.

I mean, this is America and this is where we have a representative, participatory, you know, form of government. And if you don't participate, if you don't help write the law, somebody else is going to do it for you or to you. And that's why I want everybody that's on both of the Committees to get in writing to my office, how should we define endangered? How should we define "threatened"?

Because those are going to be critical in the implementation of any new policy that we have. And if you don't define them, somebody else is going to define them. So, I ask you to—you know, to, you know, bring those—those forward.

I think it's very important that as we move forward in recovery—towards recovery with endangered species, since it was said, you know, many of the extreme environmentalists are right here in this room, there is nobody here that wants to see a species become extinct. There is nobody here that wants to poison the water. There is nobody here that wants our air to be dirty.

But we just don't like the way that the government at this particular time is addressing the problem. Because this is America, we can come in and we can change the way that the—the—that the challenge before us is addressed.

And, so, you're now part of the solution as opposed to part of the problem. And, so, what I would like for you to do is, as you continue to think about this issue, there is three things that I want you to keep in mind, and I think all of them were stated here. If

you have a pencil and piece of paper, you want to write these things down.

That as we move toward saving the endangered species, No. 1, that the policies absolutely must be science based. There is no substitute for accurate, certain knowledge concerning the species.

No. 2, whatever policy is written, it must—and underline “must,” capital letters, italics, exclamation mark—it must honor the right to private property.

And, No. 3, that we need to have built into the saving of the endangered species an incentive to save the endangered species as opposed to have an incentive to be against the endangered species.

So, as you draft your proposals and your suggestions for me as we go hopefully into the next Congress and we’re going to—I would like to see—you know, of course, the chairman would know more than I do in terms of scheduling; but, you know, we need to address this as soon as possible, better sooner than later. But those three principles needs to be deeply ingrained.

We need to have a policy that honors New Mexico culture. Mr. Pacheco very eloquently, you know, described that, that, you know, the cattle raising is in our blood for 400 years; and, we are just not going to put that aside.

We’ve co-existed before the willow flycatcher. We want to continually co-exist in the future with the willow flycatcher. We just want to know how we’re going to be able to do that.

The—the last thing I want to say is that you’re here today—and some of the people I’ve seen in other hearings and other meetings—don’t give up. I want you to be continually proactive. You need to be proactive in this, in your proposals. Again, because if you’re not proactive, then you’re going to be reactive.

So, in terms of being proactive, help us to define the parameters of the world and the policy in which you want to live, a policy environment that is good not only for the species but also good for the people who live on the land.

So, again, Mr. Chairman, thank you very much for coming to New Mexico; and, according to House rules, you’ve got to close.

Mr. POMBO. Well, I thank you very much. I can tell you that Congressman Redmond was very persistent in his requests that we do hold this hearing here. He originally mentioned to me several months ago the desire to hold a hearing on the Endangered Species Act in his district. He let me know some of the problems that had happened out here, some of the things that people had sent to him, letters and such about some of the problems that they had. And we tried extremely hard to accommodate that and to bring the Resources Committee out to the people.

Many times there is—there is criticism when we do field hearings, and folks will say that we can do this in Washington. And I would argue that we could not receive this testimony in Washington, DC. Obviously, the majority of folks here could not afford to or probably don’t have the desire to go to Washington, even if they could afford it.

But it is extremely valuable to the Committee and I think to the process to have real people relating to their representatives what some of the real problems that they have are.

There was a final paragraph in Mr. Pacheco's testimony that I would like to read because he didn't get to it.

"Perhaps it was best said by one of my elders in—in Cuba, New Mexico. Pacheco, what are we to do? I have only 30 acres, a good house I built myself. My wife and I raised three children, sent them all through college. I always paid my taxes, owe no money to anyone. I have 30 cows, worked at the saw mill in summers, cut and sold dead wood in the winter. Now what? What does my country want me to do, become homeless, go to Albuquerque and be a burden on everyone else? You have taken his culture and his pride."

I think it was because of that testimony right there that it is—that we point out why it's so important that we come out here, because this testimony cannot be delivered by a lobbyist in Washington or a lawyer in Washington. This has to be delivered by a real person out in the real world, and I appreciate all of you being here and—and the input that you've had into this.

I thank the witnesses for their valuable testimony and the members for their questions. The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing. The hearing record will be held open for 10 days in case anyone would like to provide additional material for the record.

You may send additional material to the Committee on Resources, U.S. House of Representatives, 1324 Longworth House Office Building, Washington, DC 20515.

If there is no further business, the chairman again thanks the members of the Committee and/or witnesses, and this hearing is adjourned.

Thank you very much.

[Whereupon, the committee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. WALTER BRADLEY, LIEUTENANT GOVERNOR, NEW MEXICO

Good morning Mr. Chairman and Congressman Redmond and welcome to New Mexico Mr. Chair. I also thank you for the opportunity to speak on behalf of the Executive Branch of the State of New Mexico.

I will keep my testimony short and straight to the point.

I have been Lt. Governor for New Mexico for three years and eleven months. As an ombudsman for New Mexico, I have been overwhelmed with the amount of constituent concerns I've received pertaining to the infringement and unbalance the Endangered Species Act has on **private property rights, state sovereignty and states' waters.**

The purpose of this testimony is to provide the concerns the Executive Branch of New Mexico has with the Endangered Species Act. As you all are aware, New Mexico has been negatively impacted by the abuse and misuse of the ESA. For example, PILT revenues generated from the use of U.S. Forest Service resources have been dramatically reduced. I don't have to explain to this Committee the critical need for these revenues to local governments for infrastructure. Payments to counties have been affected by decisions related to the spotted owl. Recently, legislation was proposed to overcome this impact and stabilize payment to states. Mr. Chairman, rural New Mexico is being hit hard and hard working families who have lawfully been making a living off the land for generations are being devastated. It won't be too long before urban areas become aware and are affected by the ESA.

As Lt. Governor, I have a responsibility to the taxpayers of New Mexico. These people are concerned with what is occurring in our state. Let me make it clear, I am not against preserving a clean environment. I like to have clean water to drink. I enjoy the scenery when I travel throughout the state. I want children who are our future to enjoy what I have enjoyed. However, I believe that there needs to be a balance in the ESA, and decisions must be based on "best available" scientific data, and not on questionable data, or no data as what appears to be happening today.

As I stated earlier, private property rights, state sovereignty and water are major concerns to the New Mexico Executive Branch.

As for private property rights, the ESA allows Federal Government or citizen litigants to take property owners to court without evidence that these actions will cause a "taking."

The current ESA has no provisions for takings. Language should be incorporated to allow property owners to enter into agreements with the Secretary of Interior identifying activities and any potential takings. Also, property owners should be compensated as required by the Fifth Amendment of the United States Constitution.

The encroachment of state sovereignty is also a major concern. Under the current ESA, states are often excluded from the listing process even though within state's borders there may be T & E species. As for the development of recovery plans, states have no role. States should be recognized and allowed to participate in all plans or activities such as recovery plans.

Water in western states and specifically in New Mexico is critical. Nowhere in the ESA does it acknowledge state law, regulation, rules, or any interstate compact covering the appropriation, use or diversion of waters. Presently in New Mexico, the Corps of Engineers and the Bureau of Reclamation are proposing an Environmental Impact Statement. The purpose of the EIS is to comply with the ESA for the Upper Rio Grande Basin and rivers. Mr. Chairman, New Mexico receives approximately 80 percent of its water from this area. New Mexico is currently seeking a "Joint-Lead" status as allowed under the National Environmental Policy Act. Because NEPA is being implemented and only because of this, an economic impact analysis is required as well as the impacts on the human environment. I would like the Resources Committee to know that New Mexico fully intends to become involved in this process. By becoming involved, the State will make sure that all data being analyzed will be sound.

The question now is, what are some of the solutions to the concerns that have been identified?

First of all, if any amendments to the ESA are going to take place, all states must be an integral player. It is our belief that states are more aware and knowledgeable of how to manage resources, species and habitat. The ESA should not act as a tool for zoning and land use.

Second, state water laws, compacts, diversions and appropriations are being ignored. Language must be incorporated into the ESA acknowledging states requirements and sovereignty regarding water.

Mr. Chair, members of the Committee, New Mexico met with these Federal entities on October 16, 1998. An article was brought to their attention that came out on the Albuquerque Journal a couple of weeks ago. The title of the article is "Forum

May Not Stop River—Compact Suits.” In the article, Forest Guardians Executive Director John Talberth states, “based on what I’ve heard today, there are certain aspects of litigation I think we should go forward with more quickly.” The Federal response to this article at the meeting was that they had resolved all issues with the Forest Guardians.

Mr. Chairman, members of the Committee, New Mexico has been there and seen it. The Federal agencies meet with the environmental organization, cut deals and then go out and do Environmental Impact Statements. As a result, the human environment is significantly impacted as well as the economy at the state and local level.

Environmental extremists, Mr. Chairman, are actually targeting operations of Federal dams, irrigation works and a lot more in western states. And as I stated earlier, only because NEPA is being implemented will an economic impact analysis be conducted as well as an analysis on the human environment. The ESA should include provisions in addressing and analyzing the human environment and economic impacts. However, another provision should be added stating that decisions made should minimize the human environment and economy.

The ESA must acknowledge states sovereignty, responsibility and obligation on water laws, rights, and compacts. I believe that an impact analysis on the economy and human environment should be required under the ESA. We have got to find a balance between protecting species, habitat, our economy and most importantly human beings.

Thank you again Mr. Chairman, members of the Committee to allow the Executive Branch of New Mexico address their concerns.

STATEMENT OF KAREN BUDD FALEN, ESQ., CHEYENNE, WYOMING

My name is Karen Budd Falen. I am both a rancher and an attorney who represents private property owners, ranchers and local governments. Today, I am testifying on behalf of the New Mexico Cattle Growers Association.

The New Mexico Cattle Growers Association (“NMCGA”) is a nonprofit association with approximately 1700 members, including those who either own their ranch in fee simple and those who graze livestock on federally managed (Bureau of Land Management [“BLM”] or United States Forest Service) lands. The vast majority of ranchers who graze their livestock on the BLM or National Forest lands are physically and economically dependent upon the use of those Federal lands for their livelihoods. In many cases, these ranches consist of a small amount of deeded property surrounded by vast tracts of BLM or National Forest lands. Those federally managed lands are often encumbered with private water rights, private improvements and county roads and access rights. These small amounts of private property, the private rights on the Federal lands and the Federal land grazing allotments themselves constitute the ranch. The deeded property of the typical ranch is insufficient to support the ranchers’ herds for an extended period of time. Thus, if a rancher cannot access his BLM or National Forest grazing allotment or his private rights located on that allotment, he must either lease other pasture (if any is even available), purchase alternate forage such as hay (which is extremely expensive), or sell his herd. Any of these options, even for a single grazing season, can force a ranch into bankruptcy. The longer access to allotments and private property within those allotments is denied, the more severe the consequences to each individual rancher and to the rural community dependent upon the multiple use and sustained yield of the National Forest and BLM managed lands.

In specific response to your question, the Endangered Species Act (“ESA”) has had a dramatic and detrimental affect on rural communities and industries in New Mexico. The ESA seems to be the litigation tool of choice for environmentalists. For example, between 1993 and 1998, 75 separate cases were filed in the Federal District Court for the District of Arizona alone. Of those 75 cases, 67 were filed by environmental groups. All of those cases specifically concerned “alleged violations” of the Endangered Species Act. As a result of that litigation the United States Government often voluntarily through stipulated settlements paid approximately \$5,329,659.60 in attorneys fees and costs to the environmental groups.

In response to this litigation, rural ranchers, counties and private property owners have to fight back with litigation and Congressional action of their own. However, in the same time frame described above, representatives of the rural and ranching community have only filed five cases; only one of those cases ended with the payment of approximately \$7,000 to the rural and ranching representatives.

As a result of this litigation, one of the biggest costs to the ranchers and rural communities is their costs of participation in the litigation filed by the environ-

mental groups. In most cases, the Federal Government will not, and in fact cannot, adequately represent the property rights and interests of the rural communities and private property owners when sued by the environmentalists. This is particularly true when environmental groups request the removal of livestock through a preliminary or permanent injunction. For example, in the "Tucson settlement," (the settlement agreement among the Southwest Center for Biological Diversity, Forest Guardians and the Forest Service in the case entitled *Southwest Center for Biological Diversity and Forest Guardians v. Forest Service*, civ. Nos. 97-666 and 97-2562), the livestock industry intervened. Even though a settlement agreement was reached, despite the Court's refusal to sign a stipulated settlement based upon the objections of the NMCGA and Arizona Cattle Growers Association, the livestock industry was allowed to participate. Although at least in the Tucson case, the industries' intervention may not have altered the initial outcome, attempted intervention is better than watching the disruption and destruction of an industry, culture, local economy and way of life.

Although it is my position that the ESA needs reform, frankly the biggest problem with the ESA is the Federal Government's refusal to follow the mandates of the Act. Let me give you some examples:

1. Gila and Apache Sitgreaves National Forests Permittees

One of the biggest problems facing ranchers on Federal lands is the Forest Service's and BLM's refusal to involve grazing permittees and lessees *as applicants* in the Section 7 consultation process under the ESA. In many cases, it is clear that the BLM and Forest Service would rather "cut a deal" with the Fish and Wildlife Service ("FWS") to ensure a no jeopardy opinion, than include the grazing permittees in the consultation process. My assumption is that by excluding the permittees, the FWS and the consulting Federal agency believe that they can insulate both agencies from having to justify their decisions "on the record" with good data.

The failure to provide the grazing permittees with applicant status is a particular problem in the Gila National Forest in New Mexico and the Apache Sitgreaves National Forests in Arizona. Prior to 1995, the Forest Service held the position that the reissuance of regularly-expiring livestock grazing ten year term permits did not require analysis pursuant to the National Environmental Policy Act (NEPA). 42 U.S.C. §§ 4321, *et seq.* However, without the benefit of rulemaking or other formal decision making process, in 1995, the Forest Service changed its policy to one that mandates that term grazing permit reissuance be allowed only upon the completion of NEPA analysis.

In 1995, the ten year term livestock grazing permits for six permittees on the Gila and 13 permittees covering 20 grazing allotments on the Apache-Sitgreaves (A-S) National Forests were set to expire. Pursuant to the new agency policy, the Forest Service completed its alleged NEPA and section 7 consultation process and reissued the permits. The problem is that none of the new permits were reissued with the same terms and conditions as the expiring permits; rather every permit which was evaluated received a direct reduction in livestock grazing of between 40 percent and 85 percent as well as an indirect reduction in livestock grazing mandated by a new terms and conditions with which the permittees will never be able to comply. These severe reductions in permitted grazing numbers and seasons of use, and the host of new terms and conditions will severely impact the economic viability of the permittees' ranches in Arizona and New Mexico. The majority of these reductions were based upon the DRAFT Mexican spotted owl and goshawk utilization guidelines issued by the Forest Service following consultation with the FWS. The permittees were not involved in the implementation of these draft guidelines on their individual grazing permits. Although many of the permittees wrote to the Forest Service requesting "applicant" status and specific involvement in the ESA section 7 consultation process, the Forest Service declined that request, stating that the permittees could only comment on the biological evaluation to the FWS. The permittees were NOT involved in any of the informal discussions or preparation of the biological evaluation or biological opinion. The permittees were simply told that they were bound by the outcome of the process.

Under the ESA, when a Federal agency proposes actions that might impact wildlife, fish, or plant species listed as threatened or endangered under the ESA, the agency must consult with the FWS. The agency proposing the action (the action agency) must consult with the FWS to ensure that the action does not jeopardize the continued existence of threatened or endangered species, or result in the adverse modification of critical habitat. When a proposed Federal action involves a third party who is an applicant for a permit or the holder of a permit issued by the action agency, the action agency must cooperate with and assist the third party in the ESA

consultation process. 16 U.S.C. § 1536(a)(3) and 50 C.F.R. Part 402. By administrative law judge decision, this includes Federal land grazing permittees or lessees.

Under the regulations, to facilitate the ESA consultation process, the action agency and the third party applicant are to prepare a “biological assessment” or “biological evaluation” (hereinafter referred to generally as a “biological assessment”) that identifies the proposed action and any threatened or endangered species in the project area. 16 U.S.C. § 1536(c)(1). Based upon the biological assessment, the action agency and the applicant determine whether the proposed action is likely to adversely affect a listed species or its designated critical habitat. 50 C.F.R. § 402. The action agency and applicant then submit the biological evaluation to the FWS. The FWS reviews the biological evaluation and issues one of two documents: (1) a “concurrency statement” whereby the FWS concurs with the action agency’s finding that the proposed action is not likely to adversely affect listed species or their critical habitat (known as a No-Jeopardy Opinion), or (2) a formal Biological Opinion whereby the FWS fully analyzes the proposed action and its possible impact on listed species or their critical habitat.

During the NEPA grazing analyses, the Gila and Apache-Sitgreaves National Forests engaged in the ESA Section 7 consultation process with the FWS. The FWS and Forest Service reviewed the proposed grazing reductions, and the FWS issued “No Jeopardy” Biological Opinions concurring with the Forest Service’s findings that proposed actions would not likely adversely affect listed species and/or their critical habitat. However, the FWS “No Jeopardy” opinions or concurrent statements were conditioned on compliance with particular mitigation conditions. These mitigation conditions included requirements such as fence construction, exclusion of livestock from certain parts of allotments, restrictions on placement of mineral supplements, and forage utilization standards. The burden to comply with and undertake these mitigation measures falls directly upon the ranching industry. Despite their obvious role in the Forest Service’s proposed grazing actions and the burden imposed by the mitigation measures, the affected permittees (applicants) were not informed of the ESA consultation process, nor did the Federal Government involve or seek the participation of the ranchers in the consultation process. By failing to involve the Plaintiffs in the consultation process, the Defendants and Gila and Apache-Sitgreaves National Forests violated the ESA and agency regulations.

In addition to the affects that these reductions have on the individual ranchers, local governments and communities are also adversely effected by these grazing reductions. At a hearing in Las Cruces, New Mexico earlier this year, Cathy Cosgrove, an economist and range scientist, testified that the specific reductions proposed by the Forest Service in this case had “significant impacts” on the local economy. In fact, her office conducted a study and found that 60 percent of the money that local ranchers spent went toward the cost of maintaining their operations, such as the cost of labor, the cost of fencing, the cost of water troughs, etc. Increasing those costs by forcing ranchers to complete additional fence maintenance or forcing them to develop additional water sources because their livestock can no longer access stream banks substantially cuts into an already slim profit margin. Additionally, the study determined that for the three county economic area, the reductions in the case resulted in a \$10 million economic loss. That loss included a loss of local jobs, as well as a direct loss to the local economy in terms of the available funds local ranchers have to spend for medical care, food and supplies. Again, this is a direct impact because of a reduction in grazing between 40 percent and 85 percent for 19 ranchers on the Arizona and New Mexico border because of alleged ESA concerns.

Although environmentalists may argue that these losses are acceptable to protect endangered species, the record in this case shows that livestock grazing these allotments has not had an adverse effect on any threatened or endangered species in this area. In fact the environmental assessments which propose these reductions affirmatively state that livestock grazing has not had an adverse impact on any threatened or endangered species or their habitats. Thus, these ranchers and their local communities are suffering economic and lifestyle losses without any corresponding benefits to species allegedly protected under the ESA. See Exhibit 1.

2. The “Tucson Settlement” and Subsequent Litigation

In addition to the loss of grazing permits, the ESA can also result in the loss of private property, private property rights and access to private property. This Committee has already held hearings discussing the Forest Service, Forest Guardians and Southwest Center for Biological Diversity settlement agreement in the case of Forest Guardians and Southwest Center for Biological *Diversity v. Forest Service*, civil numbers 97-666/97-2562.

As a result of that settlement, the Forest Service has issued decisions eliminating livestock use in riparian areas and water sources in 13 separate allotments in Ari-

zona and New Mexico. The grazing permittees, either individually or through counsel, appealed each of those decisions through the Forest Service administrative appeals process. Although in each case, the permittees requested a stay of the implementation of those decisions pending a decision on the merits of the permittees' appeals, the Forest Service refused to stay any of the decisions. As a result of those decisions, access to private property has been denied, access to private stock water rights which are recognized as private property has been denied and the use of county roads has been denied to the affected ranchers. As a result of this direct taking of private property, some of the individual permittees have filed suit in the Federal District Court for the District of New Mexico requesting that the decisions be set aside.

3. Recommendations for Reform of the ESA

A. Listing Decisions Must Be Based Upon Scientific Data

Under present court interpretations of the ESA, species can be listed as threatened or endangered without any current scientific study or data. In its present state, all the ESA requires is a "literature search" to determine if there were greater numbers of a species in the past than are presently known. The FWS does not even have to have current population data to list a species. Thus, species can be listed based on estimates and a literature search, no science is involved.

Additionally concerning is that species can also be listed based upon an opinion that the habitat for the species is shrinking, regardless of whether the population numbers are in decline. Thus, a literature search can produce an opinion that the estimated habitat size is smaller now than "in the past," and a species can be listed, again no science is involved. Although the ranching and rural community does not oppose the protection of truly threatened or endangered species, it is imperative that listing decisions be based upon actual science and monitoring data. If the "best scientific and commercial data available" is none, the FWS must gather the necessary data to list, rather than listing species based upon estimates and guesses.

B. Constitutional Principles Must Be Followed

The Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without due process and just compensation. Note that the Founding Fathers did not say that the public or the Federal Government could not take private property, just that private property could not be taken without due process and just compensation. The implementation of the ESA has not followed these mandates. For example, although the Tucson settlement and the decisions implementing it deny private property owners the right to use and access private property (let alone Federal grazing permits), not a single private property owner has been compensated and no hearings or other due process procedures have been conducted. The courts have held that protection of threatened or endangered species is an important public purpose. Thus, the Fifth Amendment mandates that those private property owners bearing this public cost must be compensated.

C. Applicant Status Must be Strengthened

As stated in the section on the section 7 consultation process, private property owners, as well as Federal land grazing permittees and lessees have the right to participate in the decision process. As described by one court, if the action agency will not act as an advocate for the applicant in the consultation process, the agency should "get out of the way" and allow direct consultation between the affected individual and the FWS. While this mandate sounds strong, it is rarely followed by either the Forest Service or the BLM. For example, in the Gila and Apache-Sitgreaves permittees case, the Forest Service biological evaluation proposed fencing, grazing reductions and utilization standards, without ever contacting the affected permittees. Thus, the proposed action itself resulted with the 40 percent to 85 percent reductions in livestock use, even before the FWS prepared its biological opinion. The permittees were never given any chance to review or oppose these reductions before they were presented to the FWS. As a consequence, the FWS issued no jeopardy opinions, accepting the proposed actions of the Forest Service. The Forest Service then issued final decisions to the permittees which, by law, had to be in compliance with the FWS biological opinions. Therefore, even though the process allowed for full permittee participation, in reality, the grazing permittees were never consulted nor included in the process. Certainly those directly affected by the section 7 consultation should be allowed to participate in that process. Any ESA revisions must strengthen that *right* of participation.

On behalf of the NMC GA, I sincerely appreciate the opportunity to present this evidence to you. Should you have any questions, please do not hesitate to contact me.

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Alignment Name	Species Known to occur on Alignment	Species Occurring in Action Area	Species Occurring on Alignment	Critical Habitat located in Action Area	Critical Habitat located on Alignment	Suitable Habitat on Alignment	Suitable Habitat in Action Area	Potential Habitat on Alignment	Potential Habitat in Action Area	Direct Effects (mortality of species occurring on alignment)	Indirect Effects (Grazing)	Special Considerations	Determinations and Effects
1													
2	Beaver Creek, Bobcat, Johnson	1) Mexican Gray Wolf	extrapolated	extrapolated	extrapolated	extrapolated	extrapolated	extrapolated	extrapolated	no adverse effect, due to mitigation standards and enhanced riparian habitat	no adverse effect		no adverse effect, due to mitigation standards and enhanced riparian habitat
3		2) South Western Willow Fly Catcher	n/r	n/r	none**	n/r	n/r	n/r	n/r	species occurring on alignment	extrapolated		no adverse effect, due to mitigation standards and enhanced riparian habitat
4		3) Peregrine Falcon	n/r	n/r	n/r	n/r	n/r	n/r	n/r	not likely to adversely affect	n/r		no adverse effect, due to mitigation standards and enhanced riparian habitat
5		4) Bald Eagle	n/r	n/r	n/r	n/r	n/r	n/r	n/r	no adverse effect in short term, lack of roosting, nesting and perching trees may have adverse effect in long term	n/r		no adverse effect, due to mitigation standards and enhanced riparian habitat
6		5) Mexican Spotted Owl	n/r	set aside*	set aside*	n/r	n/r	n/r	n/r	reduction of prey species	n/r		species not critical habitat adversely affected
7		6) Apache Trout, Loch Leish, Razorback Sucker	n/r	set aside**	set aside**	n/r	n/r	n/r	n/r	Apache Trout and Razorback Sucker not critical habitat. Loch Leish will suffer adverse effect due to disruption of spawning	n/r		Apache Trout and Razorback Sucker not critical habitat. Loch Leish will suffer adverse effect due to disruption of spawning



STATEMENT OF BUD EPPERS, PRESIDENT, NEW MEXICO PUBLIC LANDS COUNCIL

The New Mexico Public Lands Council respectively appreciates the Committee on Resources holding a Hearing in the West, in New Mexico and providing an opportunity for directly impacted individuals and communities the opportunity to testify. We represent more than 4,500 Federal public lands and New Mexico State Trust land permittees and leasees who have livestock production operations throughout New Mexico.

We graze year long on intermingled Private, State and Federal land. Over 90 percent of all range improvements which includes fencing of exterior boundaries, interior pasture fences which serve our management needs for livestock water development, storage and distribution systems for proper utilization of forage. Nearly all of our members range from extremely small to large family owned and managed operations. They have been and remain the pillars to numerous small rural communities, school systems and support business.

Preparing this testimony before this Committee necessitates review of the effectiveness of the Endangered Species Act (ESA) since it was adopted and signed into law in 1972. The endangered "Snail Darter" delayed and tremendously increased construction costs for the Teleco Dam and ultimate electricity and water consumers. Endangered and threatened wildlife species more than doubled the costs of the Transalaska Pipeline. The Spotted Owl virtually halted timber harvesting in the Northwestern part of the United States while the Mexican Spotted Owl did the same for the Southwest.

The Desert Tortoise significantly increased the cost of gold mining and livestock grazing in California, Nevada, Utah and Arizona. One situation I am personally familiar with was the request for a mining permit to extract gold from the hilly terrain along the Nevada and California border. As a condition for the granting of the permit by the Bureau of Land Management, Home stake Mine Company was required to purchase private land and fund a Desert Tortoise Research Center before their permit was approved.

Another situation was that home developers adjacent to Las Vegas were required to fund a project to seek and physically remove Tortoises from a 1,500 acre site. During this exercise approximately 870 turtles were removed at a cost in excess of \$40,000 per turtle. Many of these were transported to the New Research Center. Historical livestock grazing use has been modified or curtailed to the extent that many ranchers can no longer afford to stay in business.

The Southwestern Willow Fly Catcher, not listed by the U.S. Fish and Wildlife Service, but afforded protection by a Federal Judge, threatens historical water and grazing rights throughout the Southwest. Cattle grazing is being eliminated by fencing in riparian areas on Forest lands. BLM is quickly developing similar management practices on the public lands. Riparian lands are critical to breeding livestock because they begin growing early in the season and stay green late into the summer. These areas are vital to conditioning cattle for breeding and early reproduction cycles. They are also necessary during extended periods of drought.

The list goes on and on and in every case there is not one shred of peer reviewed scientific documentation supporting a listing and protection. In the case of the Southwestern Willow Fly Catcher (SWFC) a documented study funded by the Phelps Dodge Corporation found that the largest population, in possibly the United States, exists in an area where intensive cattle grazing occurs on private irrigated farm land.

Research in this area has been ongoing for several years and each year increasing numbers are identified. The Fish and Wildlife Service (F&WL) recently told a staff person of Congressman Joe Skeen's that there were only 400 pairs of SWFC left in the entire world and 200 of these were in the Gila River area. How in the world can F&WL back up a statement like this? Have they traveled the world to listen for a SWFC? Cattle are falsely blamed for SWFC population problems, where to my knowledge, not any peer reviewed scientific documentation exists.

It is my understanding the only way you can identify a SWFC is to listen to its voice, as it is very difficult to see them. I am told the experts can tell the difference in the male and female but how do you count them by listening to the voice? There is a lizard in my area of New Mexico that is supposed to be endangered. The only way you can count them is to plant a bucket in the sand hoping they will fall in. When you retrieve the lizard, out of the bucket, you have to count the strips on its belly to tell if this is the endangered one. To count the fish, that are supposed to be endangered, the people that are experts either wade into the river or go by boat, go to a pool and pick the fish up by a net. It is my understanding many fish die by this method. How do they know that there are not hundreds of the endangered fish in the mud or down or up the river in the many pools.

At this time the F&WL Service is asking the Bureau of Reclamation to let out more water on the Pecos river to save two endangered fish. Downstream the farmers will suffer because of the fish and the Pecos River Compact to Texas, as so much water belongs to Texas. Because of this there will not be any irrigation water when the farmer needs it. The fish were protected but the small communities are not. There will not be the crops to sell in the fall. The farmer does not have any money to buy goods therefore the business's will suffer, just as the Owl closed many communities in the Northwest this will happen in New Mexico or other States.

A frog will only come out if there is a large rain. Where do they live in the drought years? In the mud, and if you have ever heard a frog "sing" after a rain you will know they are not endangered. Neither are many of the animals that are listed. There is no proof, yet every day something else is on the list to study. Is this a way to keep an agency funded? The plant, loco weed, will live in the ground for 100 years and only if the conditions are right will blossom and grow. This is scientifically documented. These two examples are not listed as endangered or threatened but I wanted to show how nature protects an animal or plant. How many listed endangered or threatened species are the same.

There are numerous other species that are or have caused extremely serious consequences on land uses or development opportunities. As new species are identified and listed the growing problems will surely increase and prevent all economic activity from continuing to support our rural communities and school systems. Catron County New Mexico is a prime example of the effects of endangered species management. They are one of the largest Counties in New Mexico but with the smallest population. Due to their vast area, 4,414,720 acres, rural communities are heavily dependent upon the economic activity generated by timber, mining, livestock production and recreation. Timber harvesting has for the most part ceased in this County. The mills have closed and labor associated with this industry has had to retrain or move to other locations.

Catron County had 3 schools for the education of their children but today only one continues and it is faced with growing difficulties and declining attendance. If this school is forced to close it is a great distance to have to transport children to other locations.

I would like to offer several recommendations for consideration by the Committee as you consider reforming the ESA. First, since the ESA can not claim victory in restoring or preventing a single species from becoming extinct it should be repealed in its entirety.

The Committee should seriously consider whether the Federal Government should play a role in endangered species or let the States address identification, listing, habitat requirements or reintroduction. With the exception of just a very few species, States have management responsibilities for wildlife within their borders. Even in migratory species the States could do a better job in management than the Federal Government and at a much lower cost.

1. Congress should establish a blue ribbon Committee of range, timber and wildlife professionals from Land Grant Universities. They should be charged with reviewing any and all available data on the current status of each species under Federal agency management. They should request and review all management techniques used to protect and restore species populations. They should report back to Congress with a progress report on each species with any recommendations for management changes to expedite recovery or withdraw the species from protection.

2. Federal agencies should only be given management responsibilities for migratory species. Species that can walk or crawl across State boundaries should not be managed by other than State agencies in cooperation with the neighboring State.

3. Listing of a threatened or endangered species should only occur after substantial verifiable and peer reviewed evidence exists. Land Grant University Scientist should concur unanimously.

4. Citizen suits should be prohibited. One of the worst travesties of the ESA is the ability of the environmental groups to bring before a favorable Judge request for a listing, critical habitat designations and management restrictions. The Judiciary is not the proper setting for addressing the endangered species issue.

5. Conditions for listing should include mitigation of the impacts on rural, communities, economies, historic land uses and managed production on Private, State Trust and Federal lands. Executive Order 12630 should be enacted into law with the Justice Department Implementation Guideline serving as the Regulations for compliance.

6. A possible funding source for Federal listed species could be a voluntary contribution provided for on the individual income tax forms.

I appreciate and thank the Committee on Resources for coming to New Mexico to hold hearings on such an important issue. This completes my statement and I would be happy to stand for question.

ADDENDUM TO THE STATEMENT BY BUD EPPERS

Once again I thank Representatives Richard Pombo, Bill Redmond and Committee Chairman Don Young for holding a hearing in areas affected by the Endangered Species Act (ESA). Most of the testimony presented and statements vocally given were by individuals who could not afford to travel to Washington, D.C.

Representative Pombo asked me if I believed that there should not be an ESA? My prepared testimony indicated that I did not believe the Federal Government should be managing or involved with any other than migratory species. The States should have the responsibility to protect and manage threatened or endangered species within their borders. The Federal Government, in my opinion, has usurped the authority of the States and violated the Constitution of the United States.

The Federal agencies have a dismal record of success in managing endangered species. The only thing that they can take credit for is severely reducing or completely eliminating responsible management of our renewable and non-renewable resources. Also, creating shortages of oil, gas, timber, metals and a rapidly reducing livestock grazing industry.

Their actions have drastically increased the costs of production to the point that we can import oil, metals, lumber, beef, lamb and wool cheaper than we produce it here. This is a situation this nation will suffer from as we become subservient to other governments for our material needs.

No, I do not believe the Federal Agencies should be in the endangered species business. They have failed miserably in demonstrating their ability to do so.

Congressman Redmond raised the issue and Dr. John Fowler addressed it some in his testimony on an incentive based recovery, production or habitat management program. I firmly believe that the Congress should seriously consider this possibility. When one evaluates the hundreds of millions of dollars that has been spent to date with little to no effect, new innovative ideas should be explored. In the case of the \$40,000 plus costs per Desert Tortoise, I would wager that private landowners could restore the population to historical high numbers and if on a bid bases it could be done for much less. Why not try it, nothing else seems to be working.

Defining "threatened" or "endangered" warrants familiarizing ones self with threatened or endangered from what? I have lived on the same land as my family has since 1926. I have had the opportunity to witness numerous changes during my tenure for the past 60 years. It is my strong opinion that weather, disease and predators have had more detrimental impacts on all species than has mankind.

We have witnessed on several different periods in time the increase and decrease in jack rabbits, cotton tails, skunks, coyotes, fox, antelope, deer, quail, dove, hawks, bobcats, snakes, catfish, perch, rats, and mice populations. Jack rabbits, cotton tails and skunks have been impacted more by disease than either drought or predators. Bubonic plague and rabies are the most common diseases responsible. Keep in mind that we have had a predator management program on our ranches all of my life.

Quail, dove and hawks are very susceptible to long periods of inclement weather. Several days of 25 to 35 degree temperatures and persistent drizzle will kill all bird species in this area. During this past winter after up to 3 feet of snow covered the land for nearly 3 weeks we found hundreds of dead birds. Previous population numbers have not returned yet, but they will with time.

Deer and antelope have been mostly affected by extended periods of drought but stomach worms have caused large numbers to weaken and die during excellent range conditions. Predators such as coyotes and mountain lions play a large roll in reducing numbers of both antelope and deer. However, losses are held to a minimum when continuous predator management is conducted.

Changing weather patterns have and are effecting varieties of fish. Livestock ponds and tanks for many years contained several fish species but due to nearly 20 years of less intense rainfall, runoff seldom occurs and consequently these ponds and tanks have dried up and no longer provide habitat for fish. If it were not for water stored above dams and slowly released throughout the year fewer fish would be alive such as the Blunt Nose Shiner, Pecos Pupfish, Pecos Gambusia and others.

Species populations vary greatly over time. When I have witnessed very, very low numbers of some species, over time they continue to regenerate into thriving populations. Based on my personal observations over time any species identified and considered for listing as either threatened or endangered should not be listed until:

1. Data has been collected over a minimum of 15 years by monitoring annually species populations, habitat conditions, climatic conditions, disease problems and predation.
2. Monitoring should be on the same location with all measurements being documented to the extent that can be repeated.
3. Data collected is distributed to qualified professional within the Land Grant Universities for peer review.
4. Any assumptions or recommendations should be distributed to the same qualified professionals for peer review.

Based on the monitoring data and documentation the following is my suggestion for a definition for threatened or endangered species.

Threatened species are species whose population continuously declines over the monitoring period to a level at least 50 percent below the population count at the beginning of the monitoring period.

Endangered Species are species whose populations continuously declines over the monitoring period to a level at least 80 percent below the populations count at the beginning of the monitoring period.

Thank you for allowing me to include this addendum before the record is closed. If I can answer any questions or provide additional explanation please contact me.

STATEMENT OF MANUEL PACHECO, NORTHERN NEW MEXICO STOCKMEN'S
ASSOCIATION, TAOS, NEW MEXICO

Good morning I am Manuel R. "Rudy" Pacheco, a rancher and resident of Taos in the North Central part of New Mexico. My wife, Angelica Maria Martinez de Pacheco and I raised five children, two girls and three boys, all higher education graduates and now professional people. We have seven grandchildren.

To fully understand my remarks, I must explain my roots and part of my background.

We are descendants on my fathers side from the Pacheco's who mapped and surveyed most of northern Spanish America. Entry into New Spain, Territory of New Mexico by the Pachecos was in 1598. Best historically known was Bernardo de Miera y Pacheco who traveled with Father Escalante. On my mother's side direct descendants of Nicolas Ortiz I, Nino Ladron de Guevara, who came to Santa Fe with Diego De Vargas in 1693. Both families were members of several land grants. My wife is a direct descendant of Antonio Martinez the original grantee of the Antonio Martinez y Lucero de Godoi, land grant in Taos county. Historical records show that our families were ranching in New Mexico in the early 1700's. We still run a small operations, one in Taos, the other in Ortiz, Colorado.

Besides ranching I have worked in several varied businesses since the age of 16. After attending college, I became a public high school teacher and later a central office district administrator. After 33 years of service I retired in 1987, but then did consulting work for the New Mexico Department of Education. AID, through departments of UNM and LSU universities. I did some organizing work and consulting for some organizations and attorneys. I have been a taxpayer for over 50 years. I served my country in the U.S. Naval Forces as a medical corpsman in my youth. I've belonged to many civic and social organizations. Service included the National Public Lands Council under Secretary of Interior, Manuel Lujan Jr. and President George Bush. I currently serve as a board member of the Northern New Mexico Stockman. P.A.J.E. corporation a New Mexico wide agricultural business related organization. I am Vice-President of El Llano Ditch company in the county of Conejos Colorado.

The Endangered Species Act, although well intended, to save species, has been a total failure. According to the National Wildlife Federation, in 25 years with billions of dollars spent, one thousand one hundred and nineteen (1,119) species listed as endangered or threatened; six species were delisted and six have become extinct. The Mexican Wolf reintroduction in the Arizona, New Mexico border, has left no survivors, but spent millions. The Southwestern Willow Flycatcher, probably the only scientific study with qualified biologists using established U.S. Fish and Wildlife Service protocol was done on the U Bar cow Ranch in southwestern New Mexico along the Gila River, as reported in the September issue of the Coalition Quivira, a survey of the bird inhabiting the U Bar Ranch was undertaken in May through July 1994, showing a high population of 64 pairs. It should be noted that the second largest population in 1997 was located on the Keru River in California with 38 pairs. Since 1994 surveys conducted yearly at U-Bar Ranch showed that there was 107 pairs in 1995, 138 pairs in 1996, 174 pairs in 1997 and 186 pairs in 1998, all in cow country. The next highest population is 38 pairs where there is no livestock.

Another significantly different from what some established literature has been suggesting, the placement of nests are high and some exceed 70 feet above ground, and the vegetation of preference significantly different. Why then fence thousands of miles of river and insist that a birds habitat is, when no science has been done to substantiate the claims? In the Carson National Forest, a million dollars was spent trying to locate Mexican Spotted Owls, according to staff. They found one in the furthest boundary of the Jicarilla reservation. What a waste of money. Imagine what could be accomplished if that money was spent in resource improvement.

It must be said that among scientists and biologists there is differences as to approaches on saving species. We can say that by improving habitats, we, the Northern New Mexico Stockman are saving species and improving range. Historically, in our four centuries of living in these lands we protected the environment we did that because that is how we survived.

The Northern New Mexico Stockman, the conservation Fund, the Forest Service and the Extension Service are working together on the Valle Grande Grass Bank atop Glorieta Mesa. The Quivera Coalition is demonstrating that there are benefits in reasonable people working together for a common good. Preserve open space, improve habitat and species survive.

There are those that do not subscribe to common sense solutions, but will take radical actions like those that happened in Vail, Colorado recently. Others take to the courts actions that are easy to initiate and do not need scientific validation to set in motion. Federal Agencies, either because they are spending most of their time and energy responding to lawsuits, have become non-productive and roll-over on settlements with extremist groups. The new Santa Fe Ring, the Guardians of the Forests, have found there is easy money, and time spent intimidating Federal agencies with no science in their lawsuits. The fact is, phony environmentalism is a money making enterprise. What a sweet deal, government grants, tax exempt status, private grants from tax exempt organizations, government paying their court costs and legal fees, they don't pay when they lose a lawsuit. I asked the regional forester why is it you don't collect from groups that lose when you win a lawsuit. The answer, the justice department does not wish to do so. We the dumb taxpayers pay for everything, the justice department attorneys and staff, our attorney's, the court costs, and the radicals legal costs.

The affects of the misuse of the Endangered Species Act and now also happening in the Clean Water Act is deep and very harmful. In counties where unemployment range from 10 through 20 percent, some of the poorest in the Nation, there has not been one member in our 2500 plus organization that has not been affected. Our businesses are labor intensive, there are low markets, and profit making is almost impossible. We risk everything! What do the radicals risk, nothing! Its not right. We have for 225 years under Spain, 25 years under Mexico, and now 150 years under the United States have been productive and proud people. The Act has become a tool to deny private property and water rights. Never in our history has there been such an assault on our rights. We have a right to make a living, but without scientific evidence owls, birds, minnows, salamanders, other animals and plants are being used to prohibit us to live off our lands. Just think, before the idea of a country of the United States and long before a nation of Mexico, we were here harvesting a living.

Since 1848 when the Treaty of Guadalupe Hidalgo was signed, which was confirmed by Congress of the United States, affirmed in the Keary Code, and became part of the Constitution of New Mexico in section 5 of Article 2. We have been taken by fraud, denied some rights, this happening in the country where we were born, raised, educated and have made a living and some have died for. The United States Constitution with the adoption of the Fifth and Fourteenth Amendments, made the use of land and water our civil rights. Why then can a few radicals prevent us from using lands we have for 400 years. They have been here 25 years, remnants of the drop-out generation. Why are we being subordinated to plants and animals. We need at least equal treatment. I ask you, who knows and has taken care of the land and water better? Traditional livelihoods are the fiber of our culture. Grazing, harvesting woods, vigas, latias, and using water for crops is what maintains us and made us endure the hardships of our area.

Perhaps it was best said by one of my elders in Cuba, New Mexico. "Pacheco, what are we to do! I have only 30 acres, a good house I built myself. My wife and I raised three children, sent them all through college. I always paid my taxes, owe no one any money. I have 30 cows, worked at the sawmill in the summers, cut and sold dead wood in the winter. Now what? What does my country want me to do. Become homeless go to Albuquerque and be a burden on everyone else." You have taken his culture and his pride.

STATEMENT OF WILLIAM J. MOORE, WILDLIFE SPECIALIST, NEW MEXICO DEPARTMENT OF AGRICULTURE

The Endangered Species Act requires decisions be based on the "... best scientific and commercial data available. ..." My purpose in writing this testimony is to outline deficiencies, which I believe exist in the review and application of the best scientific information available.

My comments focus on the southwestern willow flycatcher (*Empidonax traillii extimus*) and the effect this species is having on the livestock industry in New Mexico. In my professional opinion, the majority of the current controversy over this species' protection and livestock grazing could be ameliorated through a more objective evaluation and application of the scientific information. In addition, Federal agencies failure to comply with the *procedural* requirements of the ESA have contributed greatly to the current crisis facing New Mexico's livestock industry. This failure to comply with statutory responsibilities has forced them into a reactionary mode investing resources to address what should be frivolous lawsuits. In an effort to quickly attain procedural compliance with the ESA and stave off unfavorable court rulings these agencies are implementing sweeping management actions which would not be necessary if a more proactive approach (i.e. timely attention) to these issues had been undertaken.

The southwestern willow flycatcher (flycatcher) was federally listed in 1995 through the publication of the *Endangered and Threatened Species: Southwestern Willow Flycatcher; Final Rule* (final rule) (FWS 1995). At that time the U.S. Fish and Wildlife Service (FWS) estimated the flycatcher's population in the range of 300 to 500 pairs. New Mexico was believed to contain the majority of the population. Biologists believe this population range is still an accurate reflection of the flycatcher's population size (Sogge et al. 1997). However, other statements within the final rule and subsequent management direction are not supported by recent field studies or the scientific literature to which they were originally attributed. A good example is the relationship between the presence of livestock and brown-headed cowbird (*Molothrus ater*) brood parasitism.

Gill (1990) defines brood parasites as, "... birds that relinquish care of their young to foster parents by laying their eggs in the nests of other birds." Obligate brood parasites are those birds which do not attempt to nest and therefore, rely completely on other species to raise their young. The brown-headed cowbird is the only obligate brood parasite in North America (Brittingham and Temple 1983).

Studies have reported the flycatcher being subjected to high rates of brood parasitism from cowbirds (Brown 1988, Harris 1991, Whitfield and Placer 1994). As a result, cowbird brood parasitism is identified as a threat to the continued existence of the flycatcher (FWS 1995).

In New Mexico, more than 230 head of livestock were removed from three Bureau of Reclamation (BOR) grazing allotments. In correspondence to the BOR, the FWS stated,

"The [Fish and Wildlife] Service believes that continued grazing in the ... grazing allotments during the flycatcher's breeding season this year would likely result in 'take' of the species in the form of brown-headed cowbird nest parasitism. ..." In other words, the FWS is asserting the presence of brown-headed cowbirds, and the resultant brood parasitism, is attributable to the presence of livestock.

The FWS has asserted this relationship exists in other documents as well, including biological opinions issued to the Bureau of Land Management (BLM). For example, in the incidental take statement issued to the BLM's Mimbres Resource Area (FWS 1997a), the FWS stated, "The [Fish and Wildlife] Service believes that current management as guided by the MRA RMP [Mimbres Resource Area, Resource Management Plan] may result in the incidental take of the annual reproductive effort of two pair of southwestern willow flycatchers due to cowbird brood parasitism. ... The anticipated take of the willow flycatchers is based on the persistence of grazing in the immediate vicinity and the likelihood of cowbird parasitism. ..." ¹ The biological opinion issued to the Taos Resource Area contains similar language (FWS 1997b). Therefore, if cowbird parasitism occurs, the FWS is assuming livestock grazing on BLM allotments is the facilitator for this activity, and if cowbird parasitism is occurring, the removal or reduction of livestock will result in an appreciable reduction in the brood parasitism rate.

This alleged relationship between the presence of livestock and brood parasitism rates has also been incorporated into litigation. For example, the Forest Guardians,

¹ U.S. Fish and Wildlife Service, N.M. Ecological Services Office. 3/18/97. Memorandum (and attachment) to Bureau of Reclamation, Albuquerque, NM. 4pp.

a Santa Fe based special interest group, has asserted in a Notice of Intent to Sue the Forest Service "... concentrations of livestock on the national forests of the Southwestern Region have led to increased numbers of cowbirds, resulting in cowbird parasitism"² Thus, it appears Federal agencies and special interest groups have accepted that the presence of livestock will indirectly impact flycatcher populations, without qualification, by increasing cowbird brood parasitism rates. However, the question should be asked, "what exactly does the scientific literature report?"

In the final rule listing the flycatcher as endangered, the FWS (1995) states, "The association of cowbirds with domestic livestock is detailed in the sources cited in this final rule." Therefore, in addition to other sources, I conducted a very focused review of the literature cited in the final rule (FWS 1995). In that review I found literature cited inappropriately in the final rule (FWS 1995). In addition, I believe much stronger conclusions were made than can be supported by the scientific literature. This has led to some questionable management recommendations and decisions. Following is a brief assessment of my findings on the relationship between livestock presence and flycatcher viability.

In the final rule (FWS 1995), the FWS outlined the relationship between livestock presence and cowbird brood parasitism on flycatchers as follows.

The increase in cowbirds in the Southwest and parasitism of *E. t. extimus* and other birds are generally attributed to the following scenario: The introduction of modern human settlements, livestock grazing, and other agricultural developments resulted in habitat fragmentation. Simultaneously, livestock grazing and other agricultural developments served as vectors for cowbirds by providing feeding areas near host species, nesting habitats (Henna 1928, Gaines 1974, Mayfield 1977).

Brown-headed cowbirds were at one time "... limited to open grasslands of central North America." (Lowther 1993). Some authors have conjectured the cowbirds followed the great herds of bison (*Bison bison*), and fed on the insects stirred up by these herds (Skutch 1996, Lowther 1993, Robinson et al. 1992). The FWS (1995) has concluded domestic livestock are a surrogate for the historic herds of bison. In the final rule (FWS 1995), the FWS states, "Where high parasitism rates are found in *E. t. extimus* nesting locations in areas with no livestock grazing at the nest site, there have been livestock nearby that provide feeding sites in close enough proximity to facilitate cowbird parasitism. In support of this statement, the FWS notes grazing does not occur in the Grand Canyon National Park, but "... open range grazing and an introduced bison herd occur on adjacent lands." (FWS 1995). The FWS (1995) also notes cowbirds concentrate at pack animal corrals within the park.

Such reasoning inappropriately assumes what may be a simple correlation (livestock and cowbirds are present) is a cause and effect relationship (cowbirds are present because livestock are present). This is a fatal flaw in scientific research, which leads to unsupported and sometimes grossly erroneous conclusions. For example, one could likely find a statistically significant relationship between increased ice cream sales and increased crime rates. However, I do not think anyone looking at the issue objectively would automatically conclude increased ice cream sales resulted in an increase in crime rates.

It should also be pointed out rangeland livestock grazing (as is being evaluated in New Mexico) is much different from pack stations. This distinction is not made in the final rule (FWS 1995) or other Federal documents. In addition, modern livestock management practices result in much different "grazing patterns" than those exhibited by historic bison herds.

In the Sierra-Nevada, Rothstein et al. (1980), "... found midday feeding aggregations most often around horse corrals at mountain pack stations. Cowbirds foraged on the ground and seemed to obtain much of their food by probing through and pecking into horse manure." There are factors that invalidate direct application of these findings to rangeland livestock grazing. These factors include: (1) Beyond the obvious fact these are different species, cattle are ruminants, while horses possess a simple monogastric digestive system. This means cattle are much more efficient at digesting and breaking down plant material. Thus, quantities of seeds and other plant material found in horse manure would not be available in cattle feces. (2) Several horses concentrated in a corral are not comparable to stocking rates established on public lands in New Mexico. For example, six or more horses confined in a corral of a few hundred feet are not applicable to a stocking rate of the same number of cattle scattered over a square mile. (3) Horse corrals have a great deal of people and other human activity, which may be contributing to their attractiveness to

² Forest Guardians. 1997. Notice of Intent to Sue (Sec. 11, Endangered Species Act), Issued to the Southwestern Region of the U.S. Forest Service, Region 3, (4/25/97).

brown-headed cowbirds. For example, animals are being fed at these pack stations. Perhaps this feed is an attraction to cowbirds. Bent (1965) quotes Coues (1874) as stating, "... every camp and stock-corral, permanent or temporary, is besieged by the busy birds [cowbirds], eager to glean sustenance from the wasted forage." In short, I do not question the observations made by Rothstein et al. (1980) that cowbirds were clumped at pack stations. However, I do question their applicability to livestock grazing on public lands in New Mexico.

In a second study, Rothstein et al. (1984) found feeding sites most commonly used by the cowbirds in their study include: a small horse pasture and corral, a large horse pasture, two separate bird feeders, and a campground. Note two of the three "types" of feeding areas (bird feeders and campgrounds) are not associated with livestock.

If livestock must be present before cowbirds can be present, then on public land grazing allotments the cowbirds annual arrival would logically coincide with or be shortly after the arrival of livestock. However, Verner and Ritter (1983) did not find a significant difference in cowbird counts conducted before and after the arrival of cattle and horses. Based upon the sighting of a nestling, the authors also concluded cowbirds began laying eggs as much as a month prior to livestock turn-out (Verner and Ritter 1983). Egg production requires a great deal of resources (Gill 1990), and these cowbirds would have very recently migrated. This suggests (in contrast to what is being asserted) the presence of livestock is not required for a stable cowbird food source.

This takes me back to the FWS's statement outlining the asserted relationship between livestock presence and cowbird brood parasitism. As mentioned earlier, in the final rule (FWS 1995), which is the document that justified and provided Federal protection for the flycatcher, the FWS stated:

The increase in cowbirds in the Southwest and parasitism of *E. t. extimus* and other birds are generally attributed to the following scenario: The introduction of modern human settlements, livestock grazing, and other agricultural developments resulted in habitat fragmentation. Simultaneously, livestock grazing and other agricultural developments served as vectors for cowbirds by providing feeding areas near host species' nesting habitats (Havana 1928, Gaines 1974, Mayfield 1977).

Webster's dictionary defines vectors as "an organism that transmits a pathogen." This is a strong indictment against livestock grazing (and other agricultural developments). Therefore, the cited literature should be studies confirming this relationship. However, Hanna (1928) is a 1928 update on the different bird species parasitized by the dwarf cowbird in the San Bernardino Valley. The article does not mention livestock grazing (or other agricultural developments), nor is there any mention of feeding areas utilized by cowbirds. The stated purpose of Gaines (1974) is to compare current breeding bird status within the Sacramento Valley to earlier records. It provides no data to support the FWS's statement. Mayfield (1977) is a summary of the author's work on Kirtland's warblers (*Dendroica kirtlandii*), with emphasis on brown-headed cowbird brood parasitism, but it also fails to provide any data to support the above indictments against livestock grazing. Thus, one must question whether the removal of livestock from BOR grazing allotments at Elephant Butte Reservoir resulted in any appreciable improvement in that flycatcher population. Based upon my review, it does not appear this decision was based on a thorough and objective review of the best scientific information.

Another recent management decision of concern involves the Southwest Region of the U.S. Forest Service. In April of this year the Forest Service committed to removing livestock from over 200 miles of streams under its management authority. This massive decision was not made based on recently collected field data indicating degraded stream conditions. Rather, this commitment was made as part of an out of court settlement agreement with two special interest groups.

The Forest Service, by its own admission, was out of compliance with the procedural requirements of the ESA. Therefore, it made this commitment in order to avoid the possibility of a court injunction. What made this decision even more troubling is the Forest Service and these special interest groups intentionally excluded the affected livestock permittees from these negotiations.

The Forest Service is also taking other steps to prohibit livestock use in potential or occupied flycatcher habitat (63 FR 29692-29695). This is despite data collected by Forest Service biologists which is contrary to the current prevailing assumption that livestock grazing and flycatchers are incompatible.

As was mentioned earlier, biologists familiar with the status of the flycatcher estimate its population at between 300 and 500 breeding pairs (Sogge et al. 1997). Depending upon which end of the range you choose (300 or 500) the U-Bar Ranch in the Cliff-Gila Valley of New Mexico supports approximately *one-third to one-half* of

the known flycatcher population in the United States. 1997 field season estimates range from 150 (Stoleson and Finch 1998) to 174 (Parker and Hull 1997) nesting pairs. The next largest population of flycatchers contains only 38 pairs (Stoleson and Finch 1998). Yet, the U-Bar Ranch has been involved in livestock production for some time and currently supports 400 head of livestock, which are present throughout the flycatcher's breeding season. (Parker and Hull 1994, Hull and Parker 1995, 1996). Stoleson and Finch (1998) summarized this paradox as follows:

Paradoxically, the Cliff-Gila population occurs on a working cattle ranch that includes water diversion for irrigation, leveed river banks for flood control, and floodplain agriculture—all activities identified as potential threats to the existence of the flycatcher by the U.S. Fish and Wildlife Service (U.S. Fish and Wildlife Service 1995).

Stoleson and Finch (1998) found some interesting results in their first year of data collection. For example, nesting success in riparian patches open to livestock grazing (13/21=61 percent) did not differ significantly from patches where livestock were excluded (24/47=51 percent). Overall nesting success was found to be 55.2 percent (n=68). The only other site where nesting success has been found to be greater was in San Luis Rey, California, where intensive cowbird control efforts have been instituted for several years. More significantly, "The density of breeding birds calculated for the site (773 to 1114 pairs per 40 ha) is the highest density ever recorded for non-colonial birds in North America."

Bury and Corn (1995) warn the scientific community against accepting hypotheses which have not been critically reviewed. In my assessment this is at least part of the problem with the current controversy surrounding flycatcher management in New Mexico. There seems to be a consensus in Federal agency documents and decisions, without qualifiers, that livestock grazing will negatively impact flycatcher populations and/or habitat. Yet, as has been pointed out in this testimony, such a blanket approach to management (i.e. total livestock removal) is unwarranted. Livestock and flycatchers can coexist and flourish. If this can occur on private land, as is the case in the U-Bar Ranch example, why cannot it happen on public land? It appears science (sound natural resource principles and practices) is not driving the ESA, as is mandated in the law.

Because Federal agencies have not been able to meet their statutory responsibilities, they are no longer in control of the situation. Instead, special interest groups, through litigation, based upon procedural "technicalities," are dictating management of our Federal lands. This begs the question, why are our Federal agencies seemingly unable to comply with the ESA? I believe there are several factors which need to be addressed.

There needs to be more accountability within and/or by Federal agencies.

The final rule (1995) to list the flycatcher was published in February 1995. The Forest Service had nearly three years to complete its consultation responsibilities. Yet, this task was not accomplished. The FWS has also filed to meet its obligations in a timely manner. The FWS has a policy that clearly states, "the **Service will** ... develop recovery plans within two and a half years after final listing.³ [emphasis original]. However, it has been over three and a half years since the flycatcher was listed and any hopes for a recovery plan are at least another year away.

In private conversations with Federal land management personnel (i.e., BLM and Forest Service), they complain about the amount of time it takes for the FWS to complete a consultation (sometimes years). There are also complaints the FWS is evaluating programs and dictating management without possessing any technical knowledge or experience. For example, the FWS is mandated to evaluate the impacts of livestock grazing. Yet, they have no experience or training in designing or implementing grazing strategies. On the reverse, the FWS complains Federal land management agencies do not have data to verify to its satisfaction that a particular grazing strategy will not impact a species. Therefore, they must err on the side of caution in these recommendations. This lack of trust and efficiency becomes compounded when threats of litigation are allowed to dictate the situation.

- Litigation has to be removed as the central, driving force behind ESA implementation.

Every Federal agency decision made in regards to the flycatcher, beginning with the original petition to list, has come about as a result of a lawsuit or threat of a lawsuit. As a result of being produced in such a crisis mode, the biological integrity of decisions suffer. I believe this is part of the problem with the FWS's interpreta-

³Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act, 59 FR 34272-34273, (7/1/97).

tion and land management agencies' implementation of the "best available scientific and commercial data."

Litigation is not only resulting in less than thorough decisions, but it is also resulting in a waste of time and financial resources. An example of this is the critical habitat designation for the flycatcher. In that designation (62 FR 39129-39147) the FWS noted the designation meets "the technical requirements of the [Endangered Species] Act ..." However, it also stated, "... [the] designation provides little or no conservation benefit despite the great cost to put it in place." (62 FR 39130).

Special interest groups are utilizing the ESA to create what has been described as a "legal train wreck." These groups have been very explicit in stating their objective is to "rid our public lands of all cattle grazing." The present ESA, and all of its procedural requirements, has and will continue to be a very effective tool in achieving these group's political (not biological) agenda. These groups have stated they are planning to continue to sue the FWS to list more species. Therefore, there is no foreseeable end to this train wreck unless the ESA is provided some substantive changes. These changes need to focus on a very fundamental change in the philosophy of how the ESA is implemented.

- The ESA's current punitive, command and control approach to species recovery should be replaced with incentives for species recovery.

Under the current ESA system there are no positive outcomes for farmers and ranchers who discover an endangered species on their property. The U-Bar Ranch provides an excellent opportunity to observe (and learn) how an endangered species can coexist and prosper with diverse land uses. It should be rewarded for its openness and efforts. Instead, at least one special interest group has tried to encourage the FWS to restrict the U-Bar's activities.

Maybe not to the same degree or involving the same species, but I believe there are more U-Bar examples. However, under the current system, it is in the landowner's interest to keep the discovery of an endangered species secret. Under the current system, the best such an individual can hope for is to be left alone. Therefore, why report it in the first place?

New Mexico is considered a public lands state. However, more than 40 percent of it is still in private ownership. In most cases these private lands were selected because they were considered to be the most productive lands for a family to survive upon. As such, these private lands also have some of the best wildlife habitat in the state.

Like any group of people, there are some better than others. However, based upon personal experience, I can honestly say farmers and ranchers care about taking care of the land and the wildlife it supports. The Federal agencies need somehow to foster this view. This means turning endangered species into an asset instead of a liability. Everyone, except those organizations striving for divisiveness, would benefit from such an approach.

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**Richard P. Cheney,
Chairman, New Mexico Interstate Stream Commission/
Hoyt Pattison, Commissioner**

October 26, 1998

When the Endangered Species Act was passed and signed into law in 1973, a House report observed that "there are 375 species of animals imminently threatened throughout the world." The report specifically observed "it is beyond our capability to acquire all habitat which is important to those species without at the same time dismantling our own civilization." Those were prophetic words. Now there are 750 species listed in the United States alone including 33 insect species! The U.S. Fish and Wildlife Service and other Federal bureaucracies seem intent on dismantling our civilization. As currently written, the Endangered Species Act allows the application of sloppy science to bad law, endangering State's rights and private property rights, flying in the face of Constitutional guarantees.

Several endangered species are threatening the ability of New Mexico to administer water under State law and time honored traditions. Two of the most onerous examples are as follows:

Pecos Bluntnose Shiner

History

Pecos bluntnose shiner was listed as a threatened species and critical habitat designated on February 20, 1987. On March 30, 1990, the U.S. Fish and Wildlife Service (Service) wrote to the U.S. Bureau of Reclamation (Reclamation) concerning the impact of Pecos River operations on the threatened and endangered species. On March 1, 1991, Reclamation submitted a biological assessment to the Service and formal Section 7 consultation process was initiated.

On August 5, 1991, the Service issued a biological opinion that the operation of the Reclamation's Pecos River projects is likely to jeopardize the continued existence of the Pecos bluntnose shiner and to adversely modify critical habitat of this species. These

impacts are caused by significantly reducing flows that are necessary to sustain fish, by instantaneously increasing flows from Sumner Dam that flush the shiner from desired habitats, and by instantaneously ceasing flows that strand fish in isolated habitats susceptible to desiccation and where predation by other species is increased.

The August 5, 1991 jeopardy opinion was the result of emptying the Santa Rosa and Sumner reservoirs by the Reclamation that resulted in a dry river bed during the summer of 1989. Even though Pecos bluntnose shiner has been listed as a threatened species since 1987, the Reclamation did not consult the Service prior to those releases in 1989. This has precipitated the current threatening situation to the water user community in the Pecos Valley.

In its biological opinion, the Service listed five reasonable and prudent alternatives (RPAs). One of the RPA was a 5-year research to be carried out by the Reclamation to study the effects of the operation of the Pecos River projects on the bluntnose shiner. The 5-year research period ended in 1996. During the 5-year research period, several different experimental releases such as winter low flow releases and ramp releases were made.

Current Situation

Based on the 5-year research results, in April 1998, the Service and the Department developed a set of "essential components" for compliance with the Endangered Species Act (ESA). These are a set of operational rules for the Pecos River projects. Different rules are developed for different seasons and for dry, normal and wet years. These rules define the rate, duration and timing of releases of water from Sumner Dam. The Service has threatened that if 35 cfs flow is not maintained at Acme during all times, it may result in a jeopardy opinion.

During October 13, 1998 CID Board meeting in Carlisbad, Reclamation requested CID to make releases from Sumner Dam to maintain 35 cfs at Acme gage. CID declined to make such releases. Reclamation then said that if CID did not agree to make required releases for the Bluntnose shiner, it would take over the control of the Sumner Dam operations and make releases for the Bluntnose shiner to avoid a jeopardy opinion.

New Mexico's Concerns

First of all, Service's demand for the 35 cfs release is

preliminary. Its justifications are overdue and remain unpublished. The result is that the scientific basis for requiring 35 cfs has not been presented much less peer-reviewed by other signatories to the MOU. It is likely that other experts might recommend a lesser flow. However, the Service is already enforcing it by threat of a jeopardy opinion.

New Mexico has spent approximately \$60,000,000.00 in the past 10 years purchasing, retiring and leasing water rights to increase flows in the Pecos River in order to comply with the Pecos River Compact deliveries required by a U.S. Supreme Court decision. The additional depletions for the bluntnose shiner operations will deplete the compact water if not offset by Reclamation. The Reclamation's own consultants have estimated that the additional depletions in the basin due to bluntnose shiner releases could amount to between 2,000 and 3,000 acre feet. New Mexico's calculations indicate that the depletion at the state line could be as much as 8000 acre feet. The \$60,000,000.00 has been spent making up an annual shortfall to the State of Texas of 10,000 acre feet. Thus, the depletions for the bluntnose shiner could cost New Mexico between \$20,000,000.00 and \$60,000,000.00 in the next ten years based on past experience. New Mexico must make these deliveries or be held in contempt of the U.S. Supreme Court ruling.

The second situation involves the San Juan River in Northwestern New Mexico. The San Juan River is a part of the Colorado River system and, specifically, the Upper Colorado River Basin compact. The State of New Mexico has yet to develop all the consumptive use apportioned to it. At this time, the State of New Mexico and other entities including the State of Colorado, the Navajo Nation, the Jicarilla Apache Tribe, and the two Colorado Ute Indian Tribes are being held hostage to participate in a so called "recovery implementation program" involving the endangered Colorado squaw fish. In the early 1960's, the U.S. Fish and Wildlife Service in conjunction with the New Mexico Department of Game and Fish poisoned all of the fish in the San Juan River below Navajo Dam, including the Colorado squaw fish, in order to create the San Juan quality trout waters that are now a world famous fishery. Now the same agencies are saying

that the dam caused the demise of the fish. This is a blatant lie. The poison killed the fish. This is a classic example of sloppy science being applied to a bad law.

The implementation program has been determined as the reasonable and prudent alternate to allow the initial phase of the Animas-La Plata Project and other water development projects committed to by the Federal Government to proceed. The initial phase of the Animas-La Plata Project would provide a reliable water supply for the municipal and industrial users in Northwest New Mexico and Southwest Colorado, including uses in partial fulfillment of the Colorado Ute Indian Water Rights Settlement of 1988.

There is a bill in the U.S. Senate to authorize the expenditure of \$172,000,000.00 over the next 12 years to recover these endangered fish. This money is in addition to \$7,000,000.00 already spent. The States must participate in the costs of this program. If the implementation program does not proceed, then it will endanger the following projects:

The Navajo Indian Irrigation Project may not be completed. The Navajo-Gallup water supply project which would provide long term water supply to communities on the Navajo Indian Reservation and to the City of Gallup.

1. The continued operation of the San Juan Chama diversion project which supplies water for municipal, industrial and agricultural uses by Indians and cities in the Rio Grande Basin, including Albuquerque and Santa Fe.
2. Continued operation of the Hammond, Fruitland and Hogback projects which provide for irrigation of Navajo Indian and non-Indian lands along the San Juan River.

The accommodation of other uses of the Navajo Reservoir water supply including the continuation of diversions under contract for use at the San Juan Power Plant, which supplies electricity to several southwestern states, and future development of the supply granted to the Jicarilla Apache Indian Tribe in 1992 in the Jicarilla Apache Tribe Water Rights Settlement Act.

Without participation in the implementation program, the State of New Mexico and the Four Corners area could suffer the loss of

thousands of jobs both on and off reservations. Faced with this type of extortion, the State of New Mexico must endorse the recovery implementation program and agree to expend a minimum of \$2,000,000.00 to assist in the recovery of the fish that were poisoned by the United States Government in the early 1960's.

These fish can be grown in fish hatcheries at Dexter, New Mexico by the thousands and placed in the river at a cost substantially less than the present proposed cost of \$172,000,000.00. It is entirely possible that by re-stocking the river, the operation of Navajo Dam would not have to be altered to accommodate flows that biologists say will be required to sustain the endangered species. It would seem that a reasonable and prudent alternative would be to re-stock the river for a period of time and see if current operating conditions could sustain the fish without expending \$172,000,000.00 in altering the river channel and changing other structures along the river. It would still create jobs for biologists.

Numerous other endangered species threaten the ability of the Interstate Stream Commission and the New Mexico State Engineer to manage the waters of the State of New Mexico in a manner that is consistent with New Mexico Water law and over 400 years of traditional water use.

1998 Field Hearing

Endangered Species Act
Economic Impacts

Testimony Presented to the
Committee on Resources

@Clovis, NM

by

Dr. John M. Fowler

and

Nick Ashcroft Jr.

October 26, 1998

Mr. Chairman and distinguished committee members: I greatly appreciate the opportunity to provide testimony and written statement to the U.S. House of Representatives, Committee on Resources Field Hearing. My name is John M. Fowler and I am a professor of Agricultural Economics at New Mexico State University; I also serve as the coordinator for the Interdisciplinary team of scientists known as the Range Improvement Task Force. My Testimony will focus on the economic impacts of the Endangered Species Act (ESA) in New Mexico.

ESA

As with many Laws and Enactments, the original intent of the ESA is beyond reproach: continuity of genetic pool, biodiversity and species richness are essential to the long-term well being of our environment from which our society benefits. However, the application and local interpretation quickly leave the arenas of sound science and common sense. The quality of the ESA is lost in the often hard-handed administration of the agency assigned to implement the ESA, i.e. U.S. Fish and Wildlife Service (USFWS). To increase knowledge of both agency personnel and citizens directly impacted, the USFWS biologists need to be "in the field" to increase their understanding of the species as well as the needs of the citizens they are directly impacting.

Recovery of many of the listed species in New Mexico requires the participation of the private sector, which is a critical component of habitat recovery. Private landowners are the integral cog in the wheel of habitat management and species recovery. Private landowners need to be honored as conservationists for enhancing an environment conducive to supporting T&E species and not managed by a string of disincentives that make the individual cringe at the words threatened and endangered. Most individuals living on the land know which species occur, where they occur, and how they migrate. However, they are reluctant to share this "best available information" because of the "disincentives" associated with T&E species existing on their allotment or their deeded property.

The ESA has transformed the multiple use management of federal agencies to a "Dominant Use"

perspective that is inconsistent with "Sustained Yield". Managing for subspecies, or in some cases individuals, rather than healthy ecosystems is likely to adversely effect other species to their detriment and may result in their becoming listed.

Sound Science

Listing: There are numerous places in the ESA where increased reliance upon scientific data and analysis are necessary. The process of listing a species uses the concept of the "Precautionary Principle" to the upper limit. If there is any shred of doubt, then list the species in the most restrictive category possible regardless of the economic consequences of the action. How many times do we have to repeat the same error? The listing of the infamous Snail Darter is a classic example where major federal projects were forestalled and then additional populations were discovered after the economic and social damage was complete. The same story holds for the 18 of the 22 species reclassified from endangered to threatened. A press release by the National Wilderness Institute citing USFWS Director Jamie Rappaport Clark on August 14, 1998 stated she was "personally embarrassed" in a list of species that Secretary Babbitt touted as successes which mistakenly included species the USFWS "...believe(s) to be extinct and those for which new scientific information has become available concerning their taxonomy or abundance...".

Governmental agencies should delay these critical decisions until data indicate the need, or until time is spent in acquiring the necessary population trend data. The credibility of the program and consequences of faulty decisions dictate thoroughness in discovery and completeness in investigation.

Recovery Plans: Recovery plans must be prepared after exhaustive literature searches and sufficient primary data is collected. It is inexcusable to recommend management plans and practices for T&E species before these Recovery Plans are completed as is currently occurring in the case of the Southern Willow Flycatcher. Wide scale fencing of riparian areas for Southern Willow Flycatcher habitat, while being appropriate for some riparian areas, is just as likely to be a worst case scenario for other areas. This is not sound science; a recovery plan has not been developed; a habitat "blue print" has not been constructed and through "out-of-court settlements" management is being universally implemented before it is known how to protect and who or what to protect from. The economic consequences on the individual, while not larger than the social welfare function of the nation as a whole, must be considered. The individual should not shoulder the whole burden for the benefit of society.

Circumstances associated with the Northern Goshawk highlight an additional problem with the ESA. An Agency (USFS) and a special interest group resulted in a policy and management changes being formulated even though the species has never been listed as either threatened or endangered. Management strategies that help prevent a species from being listed are certainly a positive step. However, making wide scale management changes without undergoing peer review process simply to prevent a species from being listed short-stops the scientific process. In addition, this does nothing but encourage additional side-room agreements to be struck that have not undergone the scrutiny of sound science.

ESA Economic Impacts

In lieu of performing a comprehensive review and analysis of all species threatened and endangered, which has just been expanded in October of 1998 to include an additional 44 "imperiled" plants, seven examples will be examined. The examples encompass endangered fish and birds which potentially have the largest impact with regards to land area. The examples include Bureau of Land Management (BLM), USFS and private land impacts as well as an analysis of an endangered plant, the Knowlton's Cactus. The analysis includes both direct and indirect impacts of reductions in forest, range and cropland products and their associated reductions in supporting industries. The analysis does not include reductions in wealth and equity nor capital losses. In addition, intangible losses such as: with way of life, loss of hope, despair, increased suicide, increased divorce etc. associated with the accelerated decline of rural communities and their infrastructure are not included. It is the cumulative impacts of all of the above that is the real cost of the ESA; they demand attention but are beyond the scope of what can be presented today.

Pecos Bluntnose Shiner: (*Notropis simus pecosensis*)

The Pecos Bluntnose Shiner is an example to further support the idea that ESA listings often need additional scientific support. This fish was listed as threatened by the USFWS in 1987. It was found in the plains river portion of the Pecos River located below the dam at Fort Sumner and above Roswell, New Mexico. This portion of the Pecos River is typified by wide, shallow, sandy and wandering braided stretches.

In 1991 the USFWS issued a jeopardy opinion that the traditional irrigation operations of the Carlsbad Irrigation District (CID) "might jeopardize the continuing existence and habitat" for the fish.

Based on the lack of data, a memorandum of understanding was developed between the New Mexico Department of Game and Fish (NMDGF), Bureau of Reclamation (BoR), USFWS, and the CID. It was agreed that a five year study would be conducted to determine the Management parameters for the Pecos Bluntnosed Shiner and the impacts on its habitat. At the end of the five year period (1995), an extension of three years was added to gather more information. It was determined that the population had increased 10 fold since the start of the study without any change in the operations of the CID.

Two years into the three year extension, the NMDGF demanded irrigation releases from Fort Sumner which were to occur at 15 day intervals with no water releases for 14 days between releases. This also included no irrigation releases for the months of July and August. The NMDGF insisted on a minimum flow of 35 cubic feet per second with no variance. This was forced on the BoR and the CID with the threat that the NMDGF would encourage the USFWS to dictate an endangered "taking" of the species if compliance was not met. This also occurred in spite of the fact that minimum in-stream flows are:

- To be supported by scientific fact,
- To be established by law enacted by the New Mexico State government,

- To be permitted by the State Engineer.

The impacts from this 35 cubic feet per second release are likely to be substantial. The release involves 120 miles of the Pecos River beginning at the Fort Sumner Dam. This rate of release amounts to 80 acre feet per day lost from storage at Fort Sumner Dam. Management demands this 80 acre feet per day release for 140 days to take place during the non-irrigation period. This will result in a 60% depletion of the storage water at the dam creating an 11,200 acre feet depletion during the non-irrigation season. Expected river loss of water from evaporation and stream bank seepage of the release from Fort Sumner is 50%. This will result in increased salinity of the river water and deteriorated water quality delivered to the Brantley Dam and downstream users. The impacts of increased salinity to other aquatic species have not been revealed.

The Bureau of Reclamation is obligated to make up water loss to the CID by water purchased from other suppliers, thus depleting those reserves. The projected cost of annual replacement, without return to the US taxpayer, is expected range between 6 to 7.5 million dollars. The annual impact from decreased water quality and quantity to the over 400 irrigators on 25,000 acres of irrigated land of the CID will be reduced crop yields, increased production costs, and impaired habitat quality of other species from increased salinity. Impacts will be magnified by the private costs of pumping ground water.

Rio Grande Silvery Minnow: (*Hybognathus amarus*)

The Rio Grande Silvery Minnow (RGSW) was listed as endangered in 1994. It is claimed to have been extirpated from all of its range with the exception of the reach of the Rio Grande from Cochiti of north-central New Mexico to Elephant Butte of mid-central New Mexico. The Upper Rio Grande Basin consists of the Rio Grande headwaters in Colorado to Fort Quitman, Texas just below El Paso, Texas which is essentially the entire central length of the state of New Mexico. The agencies involved with this minnow project are the Bureau of Reclamation (BOR), the Corp of Engineers (COE), and the Middle Rio Grande Conservation District (MRGCD). The Elephant Butte Irrigation District (EBID) is not involved in the project but will eventually be affected. The MRGCD is the supplier of irrigation water to 11,000 irrigators on approximately 67,000 acres with related flood control and drainage services from most of the region between Cochiti and Elephant Butte.

Estimated expenditures and water releases related to the Endangered Species Act Recovery Plan for minnow habitat by the three agencies show considerable current expense. Future total costs required to implement actions are not known. The recovery plan will be reviewed annually and evaluation is planned for the year 2004. Known estimated RGSW expenditures by agency are as follows:

<u>Agency and Project</u>	<u>Estimated Current Totals</u>	
MRGCD		
To improve habitat water metering:	\$300,000 to date	\$500,000 by completion
Conveyance system upgrading expressly dedicated to improve delivery of water to "critical" reaches:		
Drain extension	\$ 792,000	\$ 792,000
Right-of-way	@\$100,000 per year for 10 years	\$1,000,000
15 Crossing upgrades	@\$ 30,000	\$ 450,000
Unit 7 drain upgrade	\$ 260,000	\$ 250,000
Siphons under two rivers	@\$ 500,000 each	\$1,000,000
(Recently completed by BoR)		
Annual legal fees and administration costs related to minnow estimated at 5% of MRGCD annual budget	\$500,000	\$500,000
MRGCD current known estimated total		\$4,492,000

Other future estimated costs of performing Recovery Plan for MRGCD as estimated by US Fish and Wildlife Service

(in thousands of dollars) not including capital project costs or total cost of water releases:*

<u>Year</u>	<u>Habitat</u>		<u>Public</u>		<u>Adaptive</u>	<u>Total</u>
	<u>Restoration</u>	<u>Reestablishment</u>	<u>Information</u>	<u>Management</u>		
2000	960.	485.	35.	135.		1,615.
2001	990.	685.	35.	135.		1,845.
2002	830.	500.	10.	125.		1,465.
2003	475.	250.	10.	125.		860.
2004	<u>475.</u>	<u>200.</u>	<u>10.</u>	<u>125.</u>		<u>810.</u>
	3,730.	2,120.	100.	645.		6,595.
Non-irrigation						
<u>related water releases for minnow</u>			<u>Estimated cost range (\$50 to \$300 acre-foot)</u>			
54,000 acre feet (1998)			\$2,700,000 to \$16,200,000			

*Table source September 28, 1998 Draft Rio Grande Silvery Minnow Recovery Plan, Region 2, US Fish & Wildlife Service, Page V.

<u>Agency and Project</u>	<u>Estimated Current Totals</u>
BoR and CoE	
Low Flow Conveyance Channel and Rio Grande Floodway	\$1,500,000
City of Albuquerque Drinking Water Supply Project	\$ 150,000
City of Santa Fe Water Management and Restoration Strategy	\$ 150,000
El Paso-Las Cruces Regional Sustainable Water Project	<u>\$2,500,000</u>
Total	\$4,300,000

Projected Budget for System Operations Review

<u>Year</u>	<u>BoR</u>	<u>CoE</u>	<u>Total</u>
1999	\$177,000	\$450,000	\$627,000
2000	\$322,000	\$450,000	\$772,000
2001	\$633,000	\$400,000	\$1,033,000
2002	<u>\$537,000</u>	<u>\$400,000</u>	<u>\$937,000</u>

Totals	\$1,699,000	\$1,700,000	\$3,369,000
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The sum total of these current expenditures and projected future budget is 18.75 million in federal and state expenditures that are not included in USFWS annual budget. In addition, the lost revenues from water release that were previously used for irrigation of crops of 54,000 acre feet valued conservatively at \$50/acre ft. to a high of 300/acre ft. result in a foregone opportunity of \$1.7 to \$16.2 million annually in direct agriculture revenues.

Knowlton Cactus: (*Pediocactus knowltonii*)

The Knowlton cactus was listed in 1979 as an endangered species with a historic range in New Mexico and Colorado. The San Juan County interim plan (EPS 1991) proposed protecting the cactus by precluding use of selected pesticides. The economic impacts of this restricted use was studied by L. Allen Torell and John P. Townsend in "The economic impact of protecting the Knowlton cactus under the Endangered Species Act". The study compared two separately defined areas to protect the species; an area defined by the USFWS and a smaller BLM designated area call the Reese Canyon Research Natural Area (RNA). Current productive uses for these areas include oil and gas production and livestock grazing. The USFWS designated area included 176,000 acres which contain 1,504 oil and gas wells, and 18 grazing allotments. The BLM RNA included 2,560 acres containing 18 oil and gas wells, and 2 grazing allotments.

Uses of pesticides in the designated areas include weed control around oil pads and structures, sagebrush control, and noxious weed control. Direct impacts due to the limitation of pesticide totaled \$487.4 million to the range livestock, natural gas and petroleum sectors. These direct impacts caused indirect and induced impacts of \$197.3 million and losses of 3,193 jobs and \$225.6 million in household income. Whereas the Reese Canyon RNA would only cause economic losses of \$842,00 total, 4 jobs and \$464,700 in household incomes.

This study further demonstrated that "eliminating the chemical control alternative for noxious weeds will contribute to the spread of noxious weeks in New Mexico". Noxious weeds also seem to have a competitive advantage and would be able to out compete fragile endangered species.

The human population of northern New Mexico is primarily comprised of Hispanics and Native Americans populations with rural lifestyles and numerous livestock operations with BLM permits. In San Juan county there are 67 extra-small cattle ranches (<50 head) and 8 small cattle ranches (50-99 head) out of the total 79 cattle ranches. In this county, 7 of the 8 sheep ranches are classified as extra-small or small. All 9 combination ranches (sheep and cattle) are classified as small or extra-small (data provided by BLM records). This shows that impacts upon the livestock operations in northern New Mexico, due to endangered species, could substantially affect minority agriculture within New Mexico.

Mexican Spotted Owl: (*Strix occidentalis lucida*)

The Mexican Spotted Owl was listed as a threatened species under the 1973 Endangered Species Act on March 16, 1993. "The Mexican Spotted Owl is threatened by destruction and

modification of habitat caused by timber harvest and fires, increased predation associated with habitat fragmentation, and lack of adequate protective regulations. (Federal Register, Tuesday, March 16, 1993). Listing of the Mexican Spotted Owl has caused turmoil over the economic losses associated with major logging reforms and adjusted grazing on USFS lands. The logging industries, rural communities, counties and the state of New Mexico have been severely impacted due to these reforms. For example, if the USFS sold the same quantity of timber in 1997 that it had sold in 1998, the value of the timber at 1997 price would be \$6.5 million. Timber sold by the USFS has been reduced by 84% in New Mexico since 1986 primarily due to the Mexican Spotted Owl.

Critical habitat for the Mexican Spotted Owl was designated in June of 1995. Proposed critical habitat for New Mexico includes 2.3 million acres, mostly on USFS lands. "Due to several Federal court orders, the USFWS amended the List of Threatened and Endangered Wildlife (50 CFR 17.11) to remove critical habitat designations for the Mexico Spotted Owl, spikedace (*Meda fulgida*), and loach minnow (*Rhinichthys cobitis*), pursuant to the Endangered Species Act of 1973, as amended (Act)." [Federal Register: March 25, 1998 (Volume 63, Number 57)].

Northern Aplomado Falcon: (*Falco femoralis septentrionalis*)

The Northern Aplomado Falcon was listed as an endangered species in 1986. The BLM in New Mexico has identified 779,200 acres (BLM data 1998) that do not meet the biotic standards required by the Aplomado Falcon. The 779,200 acres constitutes 57% of the total 1.4 million acres in New Mexico that do not meet the standard or 6% of the total BLM land in the state. Assuming that the BLM management decision is to remove livestock from these identified acres, that would result in a removal of 82,837 AUMs. These removed AUMs from federal land would be a loss of AUMs within the New Mexico economy. A loss of 82,837 AUMs would have a direct negative impact to the range cattle industry of \$3.4 million and an indirect impact to other industries of \$4.1 million. The total annual economic loss to the state of New Mexico is estimated to be a loss of \$7.6 million in economic activity, 97 jobs, and \$2 million in personal income (NMSU input-Output Model 1998).

Northern Goshawk: (*Accipiter gentilis atricapillus*)

In 1982 the Southwest Region of the USFS listed the goshawk as a "sensitive species". The goshawk was listed "because of concerns over the effects of timber harvesting." In the fall of 1990 the Northern Goshawk Scientific Committee was established to develop a credible management strategy to conserve the goshawk. This scientific committee made management recommendations for all forest types. These recommendations include; prescribed burning, removing understory trees and minimizing road densities. The committee also recommended that "wildlife and livestock utilization of grasses and forbs should average 20% by weight and not exceed 40% in any area, and shrub utilization should average 40% by weight and not exceed 60% in any area."

A reduction of forage utilization on USFS lands will have a significant impacts upon the ranching industry, rural communities and the state of New Mexico. If herbaceous utilization is

changed from 50% to 20% there is a 60% reduction in forage grazed. Removal of 60% of domestic ungulates from the USFS lands results in an annual total loss of \$38 million in economic activity, 338 jobs and personal income losses of \$5.9 million. If forage utilization is changed from 50% to 40% there is a 20% reduction in herbaceous grazed. Removal of 20% of domestic ungulates from the Forest Service lands results in an annual total loss of \$12.7 million in economic activity, 112.6 jobs, and personal income losses of \$1.9 million. These calculations assume that the entire forest implements these reductions in utilization and that non-domestic ungulate populations remain at 1997 levels. The economic impacts would increase as wild ungulates increase and domestic ungulates are removed. These losses are not only on the agriculture industry, but distributed to all support industries and their employees in the state of New Mexico.

The Northern Goshawk Scientific Committee found that while forest management (e.g. timber harvest and fire suppression) has changed the vegetation characteristics throughout much of the western United States, the goshawk continues to be well-distributed throughout its historic range. The Service found no evidence that the goshawk population is declining in the western United States, that habitat is limiting the overall population, that there are any significant areas of extirpation or that a significant curtailment of the species' habitat or range is occurring....Therefore, the Service finds that listing the northern goshawk in the contiguous United States west of the 100th meridian as threatened or endangered is not warranted because the best available information does not indicate that it is in danger of extinction or likely to become so in the foreseeable future. [Federal Register: June 29, 1998 (Volume 63, Number 124)].

Therefore, pre-listing activities have already affected the economy of New Mexico and its communities for a species that is not threatened or likely to be threatened with extinction.

Southwestern Willow Flycatcher: (*Empidonax traillii extimus*)

Recovery Process: Management procedures are currently being adopted by the USFS and BLM for the recovery of the southwestern willow flycatcher such as the fencing of riparian areas. However, the USFWS Draft Recovery Plan for the southwestern willow flycatcher will not be completed until 1999. Management changes are taking place at this time prior to completion of the National Recovery Team's management recommendations. Therefore, the management changes currently being implemented by the USFS and BLM may not be consistent with recommendations to be developed in the final version of the Southwestern Willow Flycatcher Recovery Plan.

The federal expenditures for fencing and the adverse impacts to the range livestock industry are premature and do not have the benefit of a desired habitat blueprint for species recovery. These actions do little to develop credibility in managerial decisions.

Summary

Long term scientific data is critical in all phases of ESA from listing through recovery and eventual delisting. The philosophy of the "precautionary principle" has needlessly jeopardized the credibility of the Act and its implementation. The same precautionary principle should be used to consider the economic consequences on individuals and their local infrastructure. It is the commutative effect of all the species by all of the agencies for the entire state of New Mexico both warranted and unwarranted that is overwhelming. The first major step necessary to rectify this situation is to recognize that "PEOPLE ARE THE SOLUTION NOT THE PROBLEM."

Specific recommendations were developed by a multi-agency multi-disciplinary group of natural resource professionals facilitated by the Extension Wildlife Specialist of the Range Improvement Task Force at New Mexico State University in 1993. Their considerations are just as germane today as then and I have included them in their entirety.

CONSIDERATIONS FOR IMPROVING THE ENDANGERED SPECIES ACT (ESA)

A summary of ideas developed at a
multi-agency, multi-disciplinary
meeting of natural resource
Professional on February 16, 1993
in Albuquerque, New Mexico

Facilitator
Dr. James E. Knight, Extension Wildlife Specialist
New Mexico State University

Listing Process

- Must use solid scientific evidence and eliminate emotionalism, personal opinions, subordinate agendas and political pressures.
- Must use the best scientific information and the information must be sufficient.
 - A decision is better delayed rather than make a bad one based on insufficient information.
- Listing must occur only after an unbiased scientific committee has approved evidence including population data, distribution, data analysis process and appropriate conclusions.
 - Review should be similar to peer review necessary to publish research in a scientific journal.
 - A 5- person review committee should be selected by a panel of representatives of the Secretary of Commerce, Secretary of Agriculture, Secretary of Interior, National Academy of Science and the National Council of Governors.
 - Review committee should be different for each proposed listings.
 - Review committee should be selected not principally for their expertise in endangered species but for their ability to be unbiased and for their ability to provide a rigorous scientific review.
 - Review committee will determine only: 1) Sufficient evidence to list, or 2) Not sufficient evidences to list.
- Recovery plan must be an integral part of the process. Protection under the ESA should not begin until after a recovery plan is prepared detailing how the species should be protected.

- Until protection under ESA begins, the species can still be managed through existing regulations, policies and practices of the land management agencies and the U.S. Fish and Wildlife Service.
- Recovery plan should be prepared by a committee including public and private sources.
- Recovery plan must include designation of critical habitat. "Non-designation" is not an option
- Recovery plan must include consideration of economic impacts.
- Recovery plan must consider extinction as an option.
 - An actual decision should be made: to recover or not to recover.
- Recovery plan must provide for local input, private input and public input.
- Positive economic incentives should be part of the recovery plan.
 - Provide a tax credit for having an endangered species on your land.
 - Consider an industry-landowner fund to provide incentives.
 - Recovery plan could include purchase of a conservation easement, plus an annual incentive, plus an incentive for successful management.

Prioritize Species

- The ESA should be directed toward protection of species not subspecies.
 - Well-distributed population of endangered species will eliminate rationale to protect subspecies.
 - Many subspecies are only differentiated by coloration or geographic location.
 - Endangered species management should be directed toward viable populations of full species.
- ESA should be limited to protection of vertebrates and plants.
 - Ecosystem management would address concerns associated with insects, arthropods, isopods etc.
 - The effect of protecting insects, fungi, bacteria and even viruses will be unreasonable and weaken other species protection.

- U.S. Fish and Wildlife Service should prioritize endangered species based on expected survival, time for expected recovery, potential for long term survivability and other appropriate criteria.
- At the present time priorities are often based on visibility of the species or other non-biological considerations.
- Consider cause of endangerment - natural vs. human caused. No extraordinary measures should be taken for "naturally" endangered species.
- Funding should be provided beginning with high priority species.

Ecosystem Approach

- Impose a tax on binoculars, film, bird seed, bird feeders etc. to create a Non-game Protection and Management Fund similar to Pittman-Robinson and Dingell-Johnson.
 - Could be accomplished by amending the 1980 Fish and Wildlife Conservation Act or a new Fish and Wildlife Diversity Funding initiative.
- Develop an Endangered Species Stamp similar to the Migratory Waterfowl Stamp to fund endangered species programs.
- Develop partnerships with industries to fund specific recovery efforts.
- A reasonable bond should be posted by non-government agencies or individuals asking for a listing. bond would be forfeited if request is determined to be unwarranted.

Other Suggestions

- States should take over management of non-migratory endangered species in their state.
- All groups entering into an agreement with the U.S. Fish and Wildlife Service to re-introduce a species must also assume responsibility of resultant problems, example: wolves and cattle.
- The "God Squad", a committee embodied to determine if an endangered species should go unprotected by ESA, should be headed by an individual not responsible for the Fish and Wildlife Service. (Committee is presently headed by Secretary of Interior).
 - A panel headed by Department of Justice or National Academy of Science would be more appropriate.
- In the event the ESA does not change, Congress should direct the Fish and Wildlife

Service to comply with original and amended intent of ESA rather than allow agency policies and regulations to dominate the program.

- Each Federal Agency should be in charge and held accountable for its endangered species program rather than the U.S. Fish and Wildlife Service having final approval.
- The U.S. Fish and Wildlife Service needs to shift attitudes from a "be in control" situation to more of a mutually shared attitude with agencies, individuals and industries.

