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THE ISSUES AFFECTING RURAL COMMUNITIES IN THE SOUTHWEST: NATIONAL FOREST MANAGEMENT AND THE ENDANGERED SPECIES ACT

OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Monday, September 20, 2004, in Thatcher, Arizona

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OVERSIGHT FIELD HEARING ON ISSUES AFFECTING RURAL COMMUNITIES IN THE SOUTHWEST: NATIONAL FOREST MANAGEMENT AND THE ENDANGERED SPECIES ACT

Monday, September 20, 2004
U.S. House of Representatives
Subcommittee on Forests and Forest Health
Committee on Resources
Thatcher, Arizona

The Subcommittee met, pursuant to call, at 9:00 a.m., at Eastern Arizona College, 615 North Stadium Avenue, Thatcher, Arizona, Hon. Greg Walden [Chairman of the Subcommittee] presiding.

Present: Representatives Walden, Flake and Renzi.

Also Present: Representative Pombo.

Mr. WALDEN. Thank you, Mr. Mayor. We appreciate your town's hospitality as well as that of Eastern Arizona College.

STATEMENT OF THE HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

The Subcommittee is meeting today to hear testimony on Issues Affecting Rural Communities in the Southwest—National Forest Management and the Endangered Species Act.

Before we hear from our witnesses I would first like to thank Congressman Renzi for requesting this important hearing and for hosting it in his district. He is an active member of this Committee and this Subcommittee and is an extraordinarily important voice for Southwest Arizona on the issues affecting this region and certainly our national forest.

I would also like to thank Chairman Pombo, who is here today, for approving this hearing and also for taking time out of his very busy schedule to attend the hearing.

And, of course, it is an honor, too, to have with us Congressman Jeff Flake, who I understand attended Eastern Arizona College at one point in his collegiate career.

It is vital that the Committee meet in sessions such as this away from Washington, D.C., where we can truly begin to understand the implications that Federal laws and policies have on rural communities. One law in particular, the Endangered Species Act, is of special concern to this Committee. It is a 30-year-old law that is not only wreaking havoc on the economic vitality of rural

communities but it is also doing miserably in achieving the intent for which it was created, the recovery of species.

Since the Endangered Species Act was enacted, only seven domestic species have been recovered—seven. Given the enormous public and private costs and foregone revenues that the ESA has inflicted, this level of accomplishment is simply unacceptable. Today we will hear testimony concerning species such as the Mount Graham red squirrel, the Mexican spotted owl, the willow flycatcher and others to see how the ESA functions in practice, on the ground and in communities.

In preparing for this hearing, several questions come to mind: How does the ESA affect the management of Federal lands? How does catastrophic wildfire affect critical habitat? What is the ESA's impact on private landowners? How much does it cost local governments? How should the Act be reformed to make it both less costly and more successful?

We hope to address these and a number of other questions today but not just in relation to the ESA. We also hope to learn how other Federal land management laws and policies are impacting local landscapes and economies. For example, we want to see how Forest Service and BLM policies and decisions are affecting forest and range conditions and local jobs. Finally, we want to get a measure of the net impact that all these laws and policies, laid one on top of the other, are cumulatively having on the people that live and work in the rural Southwest part of our country.

To help ensure that we are hearing from as many people as possible, we have paper in the back for individuals who are not testifying today to give us their thoughts. So please put your name and address with your comments, and we will add your input into the Committee records.

[The prepared statement of Mr. Walden follows:]

Statement of The Honorable Greg Walden, Chairman, Subcommittee on Forests and Forest Health

I'd first like to thank Congressman Renzi for requesting this important hearing and for hosting it in his district. I'd also like to thank Chairman Pombo, not only for agreeing to this hearing, but for making time in his busy schedule to attend. It is vital that the Committee meet in settings such as this, away from the spin of Washington D.C., where we can truly begin to understand the implications that Federal laws and policies have on rural communities.

One law in particular, the Endangered Species Act, is of special concern to this Committee. This thirty-year-old law is not only wreaking havoc on the economic viability of rural communities, but it is also doing miserably in achieving the intent for which it was created—- the recovery of species. Since the ESA was enacted, only seven domestic species have been recovered. Given the enormous public and private costs—-and foregone revenues—-that the ESA has inflicted, this level of accomplishment is unacceptable. Today we will hear testimony concerning species such as the Mount Graham red squirrel, the Mexican spotted owl, the willow flycatcher, and others, to see how the ESA functions in practice, on the ground and in communities.

In preparing for this hearing, several questions have come to my mind. How does the ESA affect the management of federal lands? How does catastrophic wildfire affect critical habitat? What are the ESA's impacts on private landowners? How much does it cost local governments? How should the Act be reformed to make it less costly and more successful?

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Finally, we want to get a measure of the net impact that all these laws and policies, laid one on top of the other, are cumulatively having on the people that live and work in the rural southwest.

Mr. WALDEN. At this point, I would now recognize the Chairman of the full Resources Committee, The Honorable Richard Pombo of California, for any statement he may have. Mr. Chairman.

STATEMENT OF THE HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. POMBO. Well, thank you, Mr. Chairman. It is nice to be back in Arizona and to have an opportunity to hear from people in this part of the country.

One of the goals that I set out when I became Chairman of the Resources Committee was to get the members of the Committee out of D.C. as often as possible and have them go to places like this, where people may not have had the opportunity to testify before, and they are the ones that are actually at the forefront of the implementation of so many different laws. I have always thought it was extremely important for Members of Congress from different parts of the country to hear from people in rural America so that they can understand what the impact is and what is working and what is not working. Because when you get back in Washington, you get inside the Beltway and you have that mentality that everything that is happening is important there. And a lot of times it just doesn't work.

I know in my own district—I represent a district in California—and right now every square inch of my district is critical habitat for one endangered species or another, and that has had an impact on everything that we do in my district. I know, in having the opportunity to talk to Congressman Renzi about what was happening in his area, I felt it was important that we bring the Committee here and have an opportunity to hear from local people and those that are responsible for implementing the law.

So I thank Congressman Renzi for inviting us down here, for the work that he has done on the Committee. He has—from the day he got there, he has been an extremely valuable part of the Resources Committee and our efforts to bring a little common sense to what some of these Federal laws are doing.

So, with that, I yield back, Mr. Chairman.

Mr. WALDEN. Thank you, Mr. Chairman.

Mr. WALDEN. I am now honored to recognize our colleague, Mr. Renzi, for any statements he may have.

Mr. RENZI. Thank you.

Mr. WALDEN. While I know he appreciates the applause, it is my job to not let you do that. So from here on out—

STATEMENT OF THE HON. RICK RENZI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. RENZI. Thank you, Mr. Chairman.

Good morning to everyone, everyone who turned out and took time away from their busy schedules and their families and their

community activities today to engage in the great debate and to really show a great show of force as far as this valley is concerned. I love being with you down here, and it is a pleasure and honor to be with you this morning.

I would like to thank Chairman Richard Pombo, who has been a great friend and mentor; Chairman Greg Walden, who has taken time and flew all the way in from Oregon; and Jeff Flake, who has been a good friend and coach in the House of Representatives. This hearing today is very important to all of us. It takes on the Endangered Species Act, and it looks at, also, the issues as it relates to our forests and in particular Mount Graham.

I want to thank Mayor Rivera for your kindness and hospitality, Dr. Mark Bryce for your hospitality, and thank you so much for this wonderful facility and making it available for us here today, Jay Lauten for your prayer this morning that you offered up to heaven on behalf of our community. You know how to pray, and I am grateful to be around you and thank you for your prayer this morning.

We have got with us excellent panels and witnesses today. We have got Arizona House Speaker Jake Flake, Mark Herrington, two great rural leaders. We have got testimony from some great Arizonans in Jan Holder and Buddy Powell, who has been up on Mount Graham Observatory for several years. Our Federal witnesses today, Harv Forsgren, who is the Forest Service regional director in Albuquerque, and Dale Hall with the Fish and Wildlife.

Now we spoke about really focusing in on the Endangered Species Act, and the reason we asked to come here and to bring and to hear from the people about the Endangered Species Act is because the Endangered Species Act has hurt the people of this community. It has driven out our sustainable forest industries. We live in the largest ponderosa pine forest in the world, and we have no lumberjacks, no timber mills. We have got to find a way to embrace both the idea of helping to sustain the Endangered Species Act but at the same time taking into consideration the human impact on our communities and our economies.

It was with best intentions in 1973 that the Endangered Species Act was put together. But it now is fraught with litigation, to the point where it has bankrupted the Forest—the Fish and Wildlife and their critical habitat program budget. It has bankrupted the very budget that Congress sets aside in order to protect the species. So in order to continue and find ways to balance and to work in a holistic approach, we have got to work to reform the Endangered Species Act.

We have in Congress—my team and I are proud to have sponsored two pieces of legislation, one, H.R. 2933, which was introduced by a Democratic Congressman, Dennis Cardoza of California, which requires the Fish and Wildlife Service to designate critical habitat in concurrent establishment of a recovery plan. And then it has also been my honor to cosponsor Chairman Greg Walden's legislation, H.R. 1662, which is the Sound Science For Endangered Species Plan Act, which requires that we set a standard for the scientific and commercial data which is used to take action under the Endangered Species Act. In other words, common sense. In other

words, human impact, making sure that we balance with peer science review.

Greg Walden authored that Act, and it is an honor to have him and the Committee here today.

Again, welcome everyone to the beautiful Gila Valley. Thank you all for turning out.

Thank you, Mr. Chairman, for allowing me the time.

Mr. WALDEN. Thank you for your leadership on these and other issues.

Mr. WALDEN. I am now honored to recognize for an opening statement Mr. Jeff Flake.

STATEMENT OF THE HON. JEFF FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. FLAKE OF ARIZONA. Thank you, and I won't take long. I want to get to the witnesses. But the real purpose for me being here after 23 years here at school was to check with Mrs. Flam and see if I could raise that English grade from a C to something else. I am afraid that my time may have run out on that.

But I do appreciate being here. I love everything about this area. I love the swimming hole up on Mount Graham, which may explain why I got a C in English. But this a great area. It is good to be here.

It is also, as Congressman Renzi mentioned, the Endangered Species Act has wreaked havoc on a lot of communities around. And it not only affects the rural communities like Thatcher and Safford, but it also affects those who live in the cities as well, the rate payers, the SRP who are forced now to pay I think between 15 and $20 million increased rate so that alternative habitat can be found or created for the willow flycatcher. We need to determine is there, sound science which actually determines whether that will do any good or not or are we simply imposing costs on rate payers.

Also, as Rick mentioned, we—with the forest communities up here, we had the Rodeo-Chediski fire 2 years ago, and literally no salvage timber has been harvested. The timber is just going to waste and actually creating more of a problem, and we still can't get in because of cumbersome regulations.

I think all of us have legislation in that regard. I certainly have some that I have introduced, but, boy, we need hearings like this where we hear from people outside the Beltway about the real effects of the Endangered Species Act. So I commend the Chairman—both Chairmen here of the Subcommittee and the full Committee for getting this hearing done and commend Congressman Renzi for requesting it. Thank you.

Mr. WALDEN. Thank you. Appreciate your comments.

Mr. WALDEN. Indeed, one of the focuses of this Subcommittee is to look at what happens after a catastrophic event like a fire; and I share your commitment to trying to fix the problems there.

We had the Biscuit fire in southern Oregon and northern California. It burned half a million acres. That was three summers ago now, and they still haven't been able to get out any dead timber, and it makes no sense to me.

Well, having said that, I would like to introduce our witnesses on our first panel. We have Mr. Harv Forsgren, Regional Forester,

accompanied by Jeanine Derby, the Forest Supervisor, Region 3, USDA Forest Service; and Mr. Dale Hall, Regional Director, accompanied by Steve Spangle, who is the State Supervisor for Ecological Services, Region 2, U.S. Fish and Wildlife Service.

Let me remind the witnesses that under our Committee Rules you must limit your oral statements to 5 minutes, but your entire statement will appear in the record.

Mr. WALDEN. So, with that, I am delighted to recognize Mr. Forsgren for his statement.

Harv, welcome. Thank you for being here.

STATEMENT OF HARV FORSGREN, REGIONAL FORESTER, REGION 3, USDA FOREST SERVICE, ACCOMPANIED BY JEANINE DERBY, FOREST SUPERVISOR

Mr. FORSGREN. Thank you.

Chairman Walden, Chairman Pombo, members of the Subcommittee, thank you for the invitation to be here to discuss some of the management challenges we face here in the Southwest.

I am Harv Forsgren, Regional Forester for the Southwestern Region; and Jeanine Derby, Forest Supervisor of the Coronado National Forest here in your backyard, is accompanying me today.

At the outset, Mr. Chairman, I want to thank you and members of the Committee for your leadership and passage of the Healthy Forest Restoration Act. That legislation, in combination with the stewardship contracting authority that was previously provided by Congress, is making a significant positive difference on the ground here in addressing our forest health issues.

As Regional Forester, I am focusing our resources and efforts on in three areas: first, on the restoration of the ecological health of our forest and rangelands; second, on helping communities to protect themselves from the risk of catastrophic fire; and, third, to contribute to the economic vitality of these local communities. Here in the Southwest those three objectives are inseparably connected.

The most significant challenge that we face here in the Southwest is captured by one startling statistic: Of the 21 million acres of national forest system land, more than 80 percent are at moderate to high risk of catastrophic fire. That we also refer to as uncharacteristic wild fire. And I say uncharacteristic not because fire hasn't been an important component of this landscape. It indeed has. But I say uncharacteristic because current forest conditions result in fires that burn uncharacteristically hot and large, damaging our watersheds, threatening our communities and damaging our economies.

Restoring the health of our forest will require active management as well as the careful reintroduction of natural fire. The picture that I painted of these challenges may seem daunting. Nevertheless, I am very optimistic about the opportunity for success.

One reason for my optimism is the President's Healthy Forest Initiative. The administrative, regulatory and legislative actions resulting from this effort have given our land managers more effective tools. That is borne out in our accomplishments. Over 200,000 acres of fuel reduction work was accomplished in the region this year. About two-thirds of the expenditures and about 40 percent of the acres treated were within the wild land urban interface.

I am also optimistic because of our successful award of the Nation's first large-scale stewardship contract. The White Mountain Stewardship Contract provides for treatment of 5,000 to 25,000 acres a year over the next 10 years. The project will reduce the risk of catastrophic fires while improving forest health, while reducing treatment costs and while providing local jobs. Given the scale of the issue here in the Southwest, we cannot effectively restore forest health without additional private sector involvement.

Finally, I am optimistic because of the collaborative work being accomplished through our State foresters and the willingness of communities across the Southwest to help themselves and to support our efforts. We are successfully taking on this challenge in an environment that is dotted by listed species. There are 48 threatened or endangered species on national forest system lands in the region.

I commend Dale Hall, our Regional Director of the Fish and Wildlife Service. He has made good on his commitment to me to protect listed species without placing communities in harm's way. When threatened or endangered species may be affected by our fuels reduction work, the Fish and Wildlife Service has made consultation a top priority. The Service has also consistently adhered to its policy that we complete emergency consultation on fire operations only after the risk to human life or improved property has been—or has subsided.

My written testimony highlights several major programmatic consultations that we have completed with the Fish and Wildlife Service over the past few years that have enabled us to meet our responsibilities under the Endangered Species Act in a streamlined fashion while meeting our own multiple-use mission. For brevity's sake, allow me to highlight just one of those examples of this cooperative approach.

In 2001, we completed the batch consultation to expedite hazardous fuel reduction projects in the wild land urban interface areas to protect human life and property and natural resources, including rare species habitats. This consultation covered WUI, 1.9 million acres of WUI, and has enabled very streamlined consultation when we get down to specific project proposals.

These outstanding working relationships at the regional level extend to our local field offices as well, and I will use the nearby Coronado National Forest as an example. This year the 30,000 acre Nuttall fire complex threatened summer homes in the Mount Graham International Observatory. Throughout the fire suppression effort, the forest worked with the Fish and Wildlife Service to minimize damage to habitat of the listed Mount Graham red squirrel. However, this work did not impede fire suppression efforts; and, thankfully, there was no loss of human life or significant loss of property.

The Forest Service has worked with the Service over the last decade to conduct numerous field reduction projects. The Pinalenos Ecosystem Restoration Project would cover an additional 5.5 thousand acres of dense stands of ponderosa pine and mixed conifer. Fifteen thousand three hundred acres of prescribed burns around the base of Mount Graham to reduce the risk of wild fires starting there and running up the mountain are currently being planned.

Other projects target completion of firewise treatments around the Turkey Flats and Columbine summer homes, the Bible Camp, the Heliograph Peaks electronic site and ongoing maintenance needs that we have to protect the Mount Graham International Observatory. We anticipate continued outstanding support and cooperation for Fish and Wildlife Service.

In closing, I would like to reiterate my appreciation to the Committee and pledge our continued commitment to address the health issues of forests here in the Southwestern Region. In doing so, we will work with all who have a stake in the management of our national forest and grasslands.

This concludes my prepared remarks, and I would be happy to answer any questions that you have may have.

[The prepared statement of Mr. Forsgren follows:]

Statement of Harv Forsgren, Regional Forester, Southwestern Region, Forest Service, U.S. Department of Agriculture

Chairman Walden and Members of the Subcommittee:

Thank you for the opportunity to be with you today to discuss the management challenges of the forests and rangelands in the Southwestern Region. I am Harv Forsgren, Regional Forester for the Southwestern Region of the Forest Service. With me today is Jeanine Derby, Forest Supervisor of the Coronado National Forest.

At the outset, Mr. Chairman, I want to thank you and other members of this Committee for your leadership in passage of the Healthy Forests Restoration Act of 2003. This law combined with stewardship contracting is having significant positive effects here in the Southwest and especially for rural communities that face risk from wildfires.

Regional Overview

The Southwestern Region encompasses over 21 million acres of National Forests and Grasslands in Arizona, New Mexico and the panhandles of Texas and Oklahoma. Our statutory mission is to manage these lands for multiple-use while sustaining health, diversity, and productivity. Here in Arizona, the Forest Service manages about 11 million acres of forest and rangelands for a multitude of purposes including livestock grazing, mining, and utilization of forest products, recreation, wildlife, and watershed protection.

As Southwestern Regional Forester, I am focusing our resources and efforts in three areas:

- Restoring the ecological functionality of forests and rangelands;
- Helping communities protect themselves from the threats of wildfire; and
- Contributing to the economic vitality of local communities.

These three priorities are inseparably connected. In the Southwest, the ability to accomplish work in order to improve health of our forests is dependent upon the economic vitality of local communities—specifically the presence of infrastructure to utilize the biomass that must be removed from those forests to restore their health.

The most significant land health challenge we face in the Southwest is captured by one startling statistic: Of the 21 million acres of National Forest System lands in the Southwestern Region, more than 80 percent of that acreage is at moderate to high risk of uncharacteristic wildfire. I say "uncharacteristic" not because fire is an unnatural feature of our forests—it is not. Historically, about 85 percent of the landscape burned very frequently, but at low intensity.

Rather, I use the word "uncharacteristic" because the current condition of our forests results in fires that are unnaturally large and intense. These fires can severely damage our watersheds. They can alter soils, reducing their ability to capture and hold moisture, accelerate erosion and deteriorate water quality. These fires destroy important wildlife habitats and remnant old growth stands, and hurt visual quality. As we have seen in Arizona and around the nation these fires can also destroy lives, property and local economies.

Due to effective fire suppression for most of the last century, our ponderosa pine forests that were once open and park-like, supporting between 50 and 200 trees per acre, are today a dense tangle of up to 2,000 trees per acre. Our forests are literally being choked to death.

Our long-term drought is making matters worse. Drought-stressed trees are unable to fend off attacks from insects. The Southwest's landscape is now blanketed

by hundreds of thousands of acres of red—then brown—pinyon and ponderosa pine trees killed by insects, further adding to the fire danger.

Restoring the health of our forests and rangelands, and securing the associated benefits for future generations will require both active management and naturally occurring wildfire. Simply stated, we need to thin our forests by reducing the total biomass, remove the excess number of trees and carefully reintroduce fire into our forests.

Restoring Forest and Rangeland Health

The picture I have painted of the challenges we face in restoring forest and grassland health may seem daunting. Nevertheless, I'm very optimistic about our opportunity for success.

One reason for my optimism is the President's Healthy Forest Initiative. This is one of the most important conservation initiatives to come along in my career. The administrative, regulatory and legislative actions resulting from this effort have given our land managers more tools. Given the geographic scale of the "forest health" issue in the Southwest, however, we cannot effectively address our forest health issues without additional private sector involvement.

The Consolidated Appropriations Resolution, 2003 (PL-108-7) contains stewardship contracting authorities that will help facilitate industry investment in infrastructure needed to utilize the small-diameter materials that are choking our forests.

As you may know, Mr. Chairman, in early August the Southwestern Region awarded the nation's first large-scale stewardship contract on the Apache-Sitgreaves National Forests in Arizona. The award was made to Future Forests Limited Liability Corporation, a local company based in the White Mountains.

The White Mountain stewardship contract is significant since between 5,000 and 25,000 acres will be treated each year over the 10-year term of the contract. Most of the areas to be treated are in the wildland-urban interface where there is high risk of catastrophic fires. This contract allows for the costs of removal of small trees, residue wood and slash to be exchanged for the value of the excess trees that are removed. The smaller trees and wood fiber will result in uses such as biomass power generation and the manufacture of wood pellets. The larger trees will be used for lumber. Overall the goals of this contract are to reduce the risk of catastrophic wildfires, improve forest health, reduce treatment costs and increase jobs in the local communities.

As additional stewardship contracts are developed, we expect they will encourage more private sector use for wood fiber and more jobs for local communities. We will still need to meet the full suite of applicable laws, regulations and policy. We will still need to fund treatments from appropriated funding, that won't pay for themselves and in the Southwest that will be the rule rather than the exception. And we will still need to carefully prioritize treatments based on their relative costs and benefits because we know we can't treat every acre.

Stewardship contracting coupled with the Healthy Forests Restoration Act and other tools provided in the President's Healthy Forest Initiative will enable us to accomplish much in the future. For all of this work, it is critically important to work collaboratively with local communities and other government agencies.

I also want to announce that through August, we have completed most of our fuels reduction projects for Fiscal Year 2004 and there is still active mechanical thinning and burning being conducted throughout the Region. About $27 million in hazardous fuels funds were used to treat nearly 160,000 acres on the region's national forests in 2004.

About 40 percent of the treatments were in the wildland-urban interface, known as WUI. Other projects where secondary fuels reduction occurred, such as wildlife habitat burns and timber sales, have accounted for nearly 43,000 more acres being treated. This accounts for over 200,000 acres of fuels reduction work accomplished in the Region this year.

About two-thirds of our hazardous fuels funding goes toward treating wildland-urban interface projects because reducing fuels near communities is generally more costly. But that makes sense, because the WUI is where the most risk lies. And completing WUI treatments also reduces the risks and costs of completing backcountry burns. There are two forests in the Region, the Tonto National Forest here in Arizona with low elevation burning and the Gila National Forest in New Mexico with aggressive back-country burning, that rack up large amounts of non-WUI restoration at low cost.

The Region's State and Private Forestry program also distributes funds to the State Foresters who then direct grants to entities that do on-the-ground thinning on public and private lands. About $4.9 million were distributed in Fiscal Year 2004

for these programs. In addition, about $1.9 million in other funds go to the State Forester Offices for various programs. As an example, over $600,000 went for assistance to volunteer fire departments for training and purchasing equipment.

Communities are also helping themselves. Citizens have taken action through the FIREWISE program, which helps people who live or vacation in fire-prone areas educate themselves about wildland fire protection. Homeowners are learning how to protect their homes with a survivable space and how to landscape their yard with fire resistant materials. A consortium of wildland fire agencies that includes the Forest Service, the Department of the Interior, and the National Association of State Foresters sponsor the program.

Our Work with the U.S. Fish and Wildlife Service

There are 48 threatened or endangered species that occur on national forest system lands in the Region. An additional three species are currently proposed for listing in the Region. I want to highlight three of the major programmatic consultations we have done with the U.S. Fish and Wildlife Service (FWS) over the past few years to meet our responsibilities under the Endangered Species Act (ESA) in a streamlined fashion.

In 2001, FWS completed a batched consultation with the Region designed to expedite projects to reduce fuels adjacent to WUI areas in order to protect life, property, and natural resources, including rare species habitat. This consultation included 283 WUI projects on 1.9 million acres in the Region and has resulted in streamlined reviews of the projects as site-specific plans are completed.

A Grazing Team composed of biologists from the FWS and the Forest Service meets regularly to consult on permit issuance for grazing allotments on the national forests. Grazing guidance criteria were developed jointly between FWS and Forest Service and were first finalized in 2002 and revised in 2004. The grazing guidance criteria were developed to help biologists make "effects" determinations and avoid adverse effects to listed species and designated critical habitat. The criteria enable us to propose and address endangered species issues on grazing allotments scheduled for permit issuance and to streamline ESA compliance.

In April 2003, we began working with the FWS to reinitiate consultations first done in 1996 and 1997 as programmatic biological opinions for the Region's 11 Forest Plans. The FWS is now using information we recently provided to address Mexican spotted owls and 58 other candidate, listed or proposed species and/or proposed or designated critical habitat. The action area includes the Region's 11 national forests and adjacent lands. The end goal is to address all currently listed species and others that may be listed in the future to ensure ESA programmatic requirements are met while National Forests within the Region complete revisions to their Forest Plans.

I will use the nearby Coronado National Forest as the example for our more localized work with the FWS. This year the nearly 30,000-acre Nuttall Complex Fire threatened summer homes and the Mount Graham International Observatory in the Pinaleno Mountains. Thankfully, there was no loss of human life or property except for relatively minor damage at the Heliograph lookout and electronic site. There were effects on the Mount Graham red squirrel. Throughout the fire suppression effort, the Forest worked with the FWS to minimize potential damage to squirrel habitat. However, this work did not impede in any way the fire suppression operations.

The Forest has worked with the FWS over the last decade to conduct numerous fuel reduction projects in the Pinaleno Mountains. These fuels treatments also included consideration of the traditional and religious significance of Mount Graham to the Apache peoples who share the view that the ecological conditions on the mountain should more closely resemble those of the 1870s.

Plans are underway for several continuing projects that would further reduce fuels. The Pinaleno Ecosystem Restoration Project would cover an additional 5,500 acres in dense stands of ponderosa pine and mixed conifer. Another project would do additional FIREWISE treatments around several sites such as the Turkey Flats and Columbine recreation residence tracts, the Bible Camp and the Heliograph Peak electronics site. Finally, ongoing maintenance treatments close to the Mount Graham International Observatory would continue.

Prescribed burns around the base of Mount Graham, to reduce the risk of wildfires starting and moving uphill, have been completed on 8,200 acres and another 15,300 acres are in planning now.

In summary, the Coronado National Forest has not been hampered in firefighting or doing fuels reduction work by the FWS. If it's a wildfire, the FWS policy is clear that, per the 2001 Secretarial memorandum on endangered species and fire, "no emergency response is to be delayed or obstructed because of Endangered Species

Act considerations." We complete emergency consultation on fire operations only after the risk to human life or improved property has subsided. The Regional Director for the FWS has made good on his commitment to protect listed species without placing people in harm's way. When threatened and endangered species are involved for fuels reduction work, the FWS has made consultation a priority.

Conclusion

In closing, we will continue to address the health of the forests and rangelands in the Southwestern Region during this period of severe drought. To be successful, we must continue to work with all who have a stake in the management of the national forests and grasslands. I believe restoring forest and rangeland health is especially important for many of our rural communities—to help protect them and to provide jobs. This concludes my prepared remarks. I will be happy to answer any questions you may have.

Mr. WALDEN. Thank you very much, Mr. Forsgren.

Now I would like to welcome Mr. Hall for your comments. Thank you for being here.

STATEMENT OF DALE HALL, REGIONAL DIRECTOR, REGION 2, FISH AND WILDLIFE, U.S. DEPARTMENT OF THE INTERIOR

Mr. HALL. Thank you, Mr. Chairman, members of the Subcommittee. I am Dale Hall. I am the Regional Director for the Fish and Wildlife Service in Albuquerque, New Mexico. Our region covers Arizona, New Mexico, Texas, and Oklahoma.

In Arizona, we have nine National Wildlife Refuges that cover 1.7 million acres, seven fisheries offices that are hatcheries and fisheries assistance offices, and three ecological services offices. And ecological services is our function that deals with endangered species and other habitat type issues.

There are 59 species in Arizona that are listed under the Endangered Species Act, and we take our challenge seriously on managing for the species. However, wildlife, human and public safety, and healthy forests have to be managed together in unison or we won't get there. If we do not do it, recognizing all aspects, then we won't make it.

For the past 15 years, there has been a lot of controversy, a lot of court suits, a lot of differing opinions coming from courts to try and direct the Fish and Wildlife Service on how to operate, so much so that our budgets have been focused mainly on meeting court decisions or providing court information or following court directives on listings or critical habitat determinations.

Because we expect now to be sued, no matter what our decision is, we have taken the position that we are going to do what we think is correct, what we think Congress intended, and we would rather defend that in court than to try and guess what a judge is going to say. And we believe that Congress intended that the Endangered Species Act be operated in a recovery mode, working with the people on the land to make that happen.

There are 18 sections of the Endangered Species Act. Only one section deals with prohibitions, that is section 9. All other sections direct us and advise us to work with people to get the job done. So we are trying to do that, even though we recognize that each time we do we are probably going to be sued for the way that we did it.

But it is going to take partnerships in order to do that, and one of the things I would like to highlight in my oral comments—and

I thank you for entering my written comments in full. I would like to highlight some of the things that have been done on the ground with people who do care.

I would like to start with my colleague, Harv Forsgren, and echo his comments that we, along with Elaine Zielinski, the State Director of the Bureau of Land Management in this State, have dedicated ourselves to making sure our staffs work as one staff to accomplish all the jobs that are there.

Laws are not just passed for an agency. I have responsibility to help Harv Forsgren manage the forests and help Elaine Zielinski manage the prairies and the grasslands as much as they have responsibility to help us all manage the Endangered Species Act, and he has been particularly honorable in keeping that commitment.

But we also work with other people. The private sector is really important to us. And I would like to give just a couple of quick examples.

The Malpai Borderlands Group down on the border is a private citizens group of ranchers that are trying to work to ensure the viability of their ecosystem. The Altar Valley Conservation Alliance is another group of ranchers and private citizens just west of here in Tucson that are dedicating themselves to try to figure out how to make sure that their long-term survival is there and that listed species are not an issue. And we have worked with them very well in trying to move forward and giving 4(d) rules that allow management down on the Malpai, for example, for the Chiricahua leopard frog that do not impact the ranchers. We do appreciate those kinds of partnerships and believe that that is the way that it has to be done.

We also work with Mr. Forsgren and Ms. Zielinski on allotment grazing permittees on Federal lands. We had some question when I first got here 3 years ago. It was raised to my attention that there were questions about when to consult, when not to consult among the permittees and the permittees being involved in the process. Mr. Forsgren arrived at about the same time, and we recommitted to do those standards, and we did so with the grazing community involved. We let them comment on them. The Arizona and New Mexico Cattle Growers Association were involved to help us understand how to leave the landscape the way that it should look.

Biological opinions in the past have been saying: Here is how you should management. That in my opinion was inappropriate. Our job is to try and advise the Federal agencies on what the landscape should look like after something is done and then recognize the expertise of the agency and the allottees in reaching that objective, and I believe that it has been very beneficial in helping us move along in that direction.

In fire management, we make recommendations in a wildfire, and that is it. Those recommendations are not binding. The incident commanders know that, and we know that public safety, property and human life, come first. They suppress the fire and then, after everything is over, if there is endangered species issues, we consult after the fact.

In getting to the point where we can get to thinning and get to the burns that this forest evolved in, we are working with them to make sure that healthy forests is the objective. I cannot stress

strong enough, and I want to say this as often as I can, unhealthy forests and catastrophic wildfires have no benefit for listed species or anything else that lives in the forest. We all need to be looking at the density of the forest, at the health of the life that lives in the forest, and fire was the driving component over time, the ecological driver that helped these species evolve. We need cool fires, though, not crown fires; and with densities of 200 to 400 trees per acre in a forest that evolved with 20 to 40, we are just asking for the trouble to be there.

I recognize that Mr. Forsgren gets only a certain amount of money and he can only do so much in a year, but we are working with him as much as we can to get to that objective.

From a policy or directive standpoint, of course, we have the National First Plan that was put together in 2000. In 2001, the Secretary of the Interior put out a Secretarial Order that said no endangered species issue shall stand in the way of containing and controlling a catastrophic wildfire. In 2002, the Healthy Forests Initiative came along, and we like that because it helps us get to the healthy forests that we also need and want.

A lot of the conflicts that come about there in the courts are distrust. I think there are factions of the public that do not think that they can trust the Forest Service or the Fish and Wildlife Service for that matter to go in and thin. They think it is supposed to be some boondoggle for the timber community. When in fact, if we do not do that, there will be no timber to cut.

Then in 2004, just last January, we came out with joint regulations to streamline section 7 consultation on fire activities. That allows Harv Forsgren to make the determination that a species may be affected but not likely adversely affected without having to come back to us. If it is a fire activity that needs to take place, they can make the determination; and we have modified the regulations to where the BIA, the BLM, the National Park Service, the Fish and Wildlife Service and the Forest Service, all land managers can make that kind of determination.

We have—Mr. Forsgren brought up some of the batch consultations that we have done, so I will skip over some of that. But I do want to point out one issue on the Mexican spotted owl. We had critical habitat designated for the Mexican spotted owl. We were sued. A judge said that we did not do enough because we excluded Forest Service plans from the designation of critical habitat. We said the Forest Service had plans in place to manage the lands, that they already had the protection necessary. The court did not agree with us, ordered us to go back and designate critical habitat.

We have now done so. But, in doing that, we excluded 135,000 acres of wooded areas because, A, areas up next to communities are not necessary to the conservation of the species; and, B, the economics associated with potential fire was just unacceptable. And we are already being challenged on excluding that 135,000. I suppose the challengers believe that structures and buildings are critical habitat for the owl, but we will have to figure out how to argue that in court.

The last thing I would like to point out is that last week the Secretary of the Interior signed a memorandum of agreement with California, Nevada, Arizona, and interior agencies on the lower

Colorado River, a multispecies conservation plan. This has been a 7-year effort to give coverage to water users for 50 years. So for 20 million people and 50 years worth of certainty on water usage. And in that plan—we expect to issue the permit in January—it will give protection and conservation efforts for 27 listed species over a 50-year period. We are very proud of the way that that one has worked out with our partners in the States and in the water users' community.

With that, Mr. Chairman, I will conclude my oral comments; and I am ready to answer questions if I can.

Mr. WALDEN. Thank you very much, Mr. Hall, for your testimony.

[The prepared statement of Mr. Hall follows:]

Statement of Dale Hall, Regional Director, Southwest Region, U.S. Fish and Wildlife Service, U.S. Department of the Interior

Mr. Chairman, and Members of the Subcommittee, thank you for the opportunity to testify on behalf of the Department of the Interior (Department) regarding the Endangered Species Act (ESA) and forest management. I am Dale Hall, Regional Director for the Southwest Region of the U.S. Fish and Wildlife Service (Service), headquartered in Albuquerque, New Mexico.

The Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Southwest Region of the Service includes the states of Arizona, New Mexico, Texas, and Oklahoma. Within the State of Arizona, the Service manages 9 National Wildlife Refuges, encompassing over 1.7 million acres, 3 National Fish Hatcheries, 3 Fishery Resources Offices, a fish health center, and 3 Ecological Services Field offices.

One of the Service's responsibilities is the implementation of the Endangered Species Act, which, in Arizona, is done primarily by the Phoenix Ecological Services Field Office and sub- offices in Flagstaff and Tucson. Currently, Arizona supports approximately 59 species listed as threatened and endangered under the ESA. While conserving America's wildlife for the public is an important Service responsibility, we are keenly aware of the need to assure balance between wildlife conservation, fire management, and healthy forests. Most importantly, we place public safety above all else.

It is because of our recognition of this need for balance that we have successfully forged cooperative relationships with many other federal agencies, state and local governments, tribes, and private landowners for the sake of contributing to effective forest management and species conservation. We have implemented streamlined processes so that balance can be achieved without unnecessary delay.

Our efforts to reach out to concerned partners in the Southwest have been met with professionalism and a commitment to success. For example, Harv Forsgren, Regional Forester for the Southwestern Region, and I have committed to work together, and our relationship has been invaluable in forging agreements so that our staffs may work as one to serve the public. In addition, private efforts like those of the Malpai Borderlands Group and the Altar Valley Conservation Alliance in Southern Arizona demonstrate what private landowners can do when they are given a chance and are respected as the land stewards they truly are. Forest grazing permittees have worked openly and honestly with the Forest Service and us to achieve the landscape outcome we believe is important for healthy ecosystems. As such, our biological opinions have changed from directing how grazing will occur to what the landscape should look like after annual grazing is complete. The grazing community has responded positively to this change. We have come to recognize that we cannot do the job alone and that the future depends on effective partnerships.

The ESA is flexible when there are issues of human health and safety, including catastrophic wildfires. The role of the Service is to offer recommendations to minimize the effects of the emergency response action on listed species or their critical habitats, not to stand in the way of the response efforts. This flexibility ensures that protecting life and property always comes first. Through these actions, short-term negative impacts to listed species are minimized, and the long-term benefits of reducing the risk of catastrophic wildfire are ensured. I cannot overemphasize the importance of using prescribed fire and forest thinning as the main security measures to prevent catastrophic wildfires. Listed species and their habitats suffer significant

adverse impacts when catastrophic crown fires occur. Simply stated, there is no benefit to listed species from unhealthy forests.

A major component of successful forest management has been the implementation of the National Fire Plan. Since its approval in 2000, the Service has worked within the framework of the plan and its implementation to reduce the risks of catastrophic wildland fires and to restore fire-adapted ecosystems. The ESA has not inhibited forest managers from completing work necessary to implement the plan. Rather, the Service coordinates closely with local, state, and federal agencies in fire risk reduction efforts, such as thinning projects, non-native plant removal, and prescribed fire. This proactive coordination reduces the time required to carry out Fire Plan initiatives.

Multiple Departmental policies have been implemented in order to assure the protection of human health and property and effective management of our national forests. These include a 2001 Secretarial memorandum on endangered species and fire, which states that no emergency response is to be delayed or obstructed because of ESA considerations. Rather, incident commanders assign resource advisors or technical experts (such as employees of land management agencies or Service biologists) to a fire. The resource advisors do not have the authority to prohibit any fire operations, but the Service works closely with the resource advisors and provides recommendations to minimize effects to sensitive resources, including listed and proposed species, and their habitat. After the risk to human life or property has subsided and suppression is accomplished, we complete emergency consultation on fire suppression activities under the emergency consultation provisions of the ESA. These provisions allow fire managers to proceed with fire suppression and conduct Service consultations after the emergency response is completed.

More recently, as part of the Healthy Forest Initiative, the Service, in cooperation with NOAA-Fisheries, the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, and the National Park Service, issued the Joint Counterpart Endangered Species Section 7 Consultation Regulations to streamline consultation on proposed projects that support the National Fire Plan. These regulations provide an alternative process for completing Section 7 consultation for agency projects that authorize, fund, or carry out actions that support the National Fire Plan. This alternative consultation process eliminates the need to obtain written concurrence from the Service for those National Fire Plan projects that the action agency determines are "not likely to adversely affect" any listed species or designated critical habitat.

Our Arizona Ecological Services Field Office has worked diligently on numerous projects requiring interagency consultation. Since 2001, it has consulted on nearly 125 projects involving wildfires or fire projects in Arizona. Fifty wildfires were covered by emergency consultation procedures, allowing fire managers to proceed with fire suppression and concluding the consultations afterwards. The remaining consultations were undertaken to address prescribed fires, forest thinning, and fire planning actions.

As Members may be aware, the Nuttall Complex Fire, on Mt. Graham, consumed over 29,000 acres and threatened the endangered Mt. Graham red squirrel, the threatened Mexican spotted owl, the International Observatory, private summer homes, and forest administrative sites. Prior to the fire, the Service worked through a Section 7 consultation to assist the Forest Service in implementing numerous fuel reduction projects. We strongly recommended immediate fuel removal and provided additional conservation recommendations to the Forest Service with the understanding that human safety takes priority. During the fire, the Service maintained regular contact with the Coronado National Forest regarding fire suppression effects to threatened and endangered wildlife during the firefighting operation and post-fire work. In short, under most circumstances, the conservation needs of listed species are consistent with management practices that are designed to sustain healthy forests.

The Service strives to facilitate and expedite consultations on thinning treatments and other fire-related projects. In 2001, we completed a batched consultation with the Forest Service on projects that would reduce fuel loads adjacent to wildland-urban interface areas in order to protect life, property, and natural resources, including rare species' habitats. This consultation included 283 Wildland/Urban Interface projects on 1.9 million acres in Arizona and New Mexico and has resulted in streamlined reviews of the projects as site-specific plans are completed.

Another example of coordination is the recent designation of critical habitat for the Mexican spotted owl. On August 30, we published the final rule to designate critical habitat for the Mexican spotted owl. In the final rule, we excluded 157 Wildland Urban Interface (WUI) project areas, encompassing 134,397 acres on Forest Service lands in Arizona and New Mexico (under Section 4(b)(2) of the ESA) because of human health and safety concerns related to possible delays of fuels

reduction treatments. Our economic analysis concluded that some projects proposed within the WUI may be delayed because of the Recovery Plan recommendation that fuel treatments occur during the non-breeding season; therefore, we excluded these areas from the final designation. In light of the expansive nature of the owl's historical habitat, it was determined that these WUI acres did not provide significant benefits to the recovery of the species.

Effective and successful forest management also requires interagency cooperation on grazing issues. A grazing team has been assembled with biologists from the Service and the Forest Service at both the regional and field office levels. The Grazing Team meets regularly to consult on permit issuance for grazing allotments on National Forests in Arizona and New Mexico and has used the grazing guidance criteria developed jointly between the 2 agencies with input from grazing permittees to make effects determinations. The criteria allow the Forest Service to perform an endangered species triage of grazing allotments scheduled for analysis, thereby streamlining ESA compliance.

Successful implementation of the ESA goes beyond our interagency work and requires the involvement of private landowners, states, tribes, and other stakeholders. Within Arizona, the Service actively works with partners through voluntary Habitat Conservation Plans, Safe Harbor Agreements, Candidate Conservation Agreements, the Partners for Fish and Wildlife Program, and the Landowner Incentive program. For example, I am very pleased to note that last week Department of the Interior Secretary Gale Norton announced the signing of a memorandum of agreement for the Lower Colorado River Multi-Species Habitat Conservation Plan. This unprecedented cooperative effort among the states of Arizona, California, Nevada, area tribal governments, and the Department of the Interior agencies will provide long-term incidental take coverage for Federal and non-Federal existing and future water and power projects on the Lower Colorado River. These projects provide water to 20 million people in the three states, support important agricultural areas, and produce a significant amount of hydropower. By working together, the partners have fostered trust and understanding among disparate groups and enabled a comprehensive evaluation of the effects of water and power projects on native species. Once completed in January 2005, this Habitat Conservation Plan and Section 7 consultation will enable the future use of these resources for the benefit of people for a 50-year period, while providing significant conservation for 27 native aquatic, riparian, and terrestrial plants and animals, well beyond that which could have been developed under separate plans.

In conclusion, the Service shares the goal of effective forest management. We will continue to work cooperatively with all involved entities to ensure the continued survival of our nation's wildlife, the protection of human life and property, and the continued existence of healthy forests. Mr. Chairman, this concludes my statement, and I would be happy to answer any questions that you or Members of the Committee might have

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Mr. WALDEN. For our Committee, we will have two rounds of questions for our panelists. We will each have 5 minutes.

Mr. Hall, I want to go right back to the issue of the Mexican spotted owl. Mixed confer forests in the Southwest are now losing Mexican spotted owl habitat to drought stress, to insect attacks and, of course, to catastrophic wildfire. How are these climatic realities being evaluated in the current critical habitat designations and what is the practical effect of designating critical habitats in areas that are not likely to be sustainable?

Mr. HALL. Well, we are addressing it in critical habitat proposals from the standpoint that a judge basically told us we had to do more than we had before. And critical habitat in my experience over the years—and I have been associated with the designation of more than 30 million acres of critical habitat in the United States and have seen very little value come from that designation.

Mr. WALDEN. Why is that?

Mr. HALL. Because the basic section 7 consultation on jeopardy, no jeopardy, covers almost everything that you would want to look at from a habitat standpoint. Most of our jeopardy opinions, when

they do occur, occur due to habitat loss. When we work with people like the Forest Service and BLM, we are working with them to improve the habitats all the time; and the extra layer of regulation associated with critical habitat in my opinion does not have a payoff.

We have been able to work through anything that was necessary without ever having to touch the critical habitat aspect of the listed species; and if we are going to get to the point where we have healthy forests, then the Forest Service has to have the ability to go out and do as the national fire plan says. First, do controlled burns, prescribed burns, do thinning in the forests, do rehab after wildfires, and do road and culvert reconstruction. We have to allow people to do that. And, quite frankly, every additional rule that is in place is another opening for another lawsuit.

Mr. WALDEN. What happens, from your perspective, in terms of wildlife habitat and survival of these various species when after a fire recovery efforts are litigated to the point that the stand just stands there and rots and the snags fall over and become more fuel on the ground. Does that help or hurt in terms the survivability of the species?

Mr. HALL. After a catastrophic wildfire, it devastates everything. And that is a crown fire. That is when it is not on the lower level anymore, just taking care of fuels and putting natural fertilizers back in the system, the potash and the different things that help the understory to grow. It gets up and it just destroys the whole forest. Well, there is no habitat then.

Our efforts have to be very expeditious in going in for salvage harvest so that we can plant new trees and not waste that timber, because a lot of it is not going to live. It is just sort of wasted staying there.

As an example, on the Rodeo-Chediski fire we cleared from the endangered species standpoint the salvage operation in 23 days. Yet the courts took it on other challenges because of whatever reason—and Forsgren can talk about those—there just seems to be this idea that if all of us are working together and everyone is actually benefiting that there has got to be something wrong with this picture.

Mr. WALDEN. But from the standpoint of the species recovery, are we better to get out the burned dead timber before it reburns? Because often don't these areas reburn?

Mr. HALL. Oh, absolutely.

Mr. WALDEN. And does that not do more damage to the habitat and further sterilize the soils?

Mr. HALL. Absolutely. The hotter the fire, the more sterilization takes place in the soil and the harder it is for seeds to come back and regerminate and do things. So we need to quickly refurbish a burned area so that we can get the natural habitat back.

Mr. WALDEN. Thank you.

Mr. Forsgren, we passed the Healthy Forest Restoration Act. The President signed it into law.

Mr. WALDEN. And is trying to get it fully implemented and used out here. I am curious to know what you see in this region for implementation in 2005, how many acres you think you will be able to treat. And further, how can this Committee evaluate and put in

place accountability standards region by region to make sure that the Act is fully being utilized for its intent?

Mr. FORSGREN. As I mentioned, this past year, across Arizona and New Mexico, we were able to treat about 200,000 acres of hazardous fuels. I would expect in 2005, we will be 20 or 25 percent above that level as we continue to further focus the resources available to do that job. And we are not only using hazardous fuels dollars to do that, but we are using our wildlife habitat improvement dollars and our watershed improvement dollars. Because as Director Hall has indicated, the health and function of these systems is dependent upon the health of these forests. And all of the animals and fish and wildlife and plants that evolve in these systems is dependent on a healthy functioning system. So we are refocusing our energies and will increase or accomplishments.

Now, in terms of what we might do in terms of stepping up accountability, I think that there has been a good focus on ensuring that the additional resources are being directed toward work on the ground. There is a clear focus from Congress, a clear indication of intent there. The Department, the agency has taken that up and I think we have continued to make commitments to you in terms of ramping up our accomplishments.

I think the thing that we have got to watch in that is that we continue to make that progress, but that we focus on treating the right acres with the right prescription for the right outcome. And so there's a little bit of a catch-22 here that we need to continue the pressure to increase treatments. But not just to get acres—

Mr. WALDEN. Right.

Mr. FORSGREN.—but to treat the right acres with the right prescription for the right results. And I think your continued oversight will help us accomplish what we are trying to accomplish.

Mr. WALDEN. My time has expired. I now recognize the Chairman of the full Resources Committee, Mr. Pombo, for 5 minutes.

Mr. POMBO. Thank you. Mr. Forsgren, hearing you say that, it brings back the entire debate that we went through under Healthy Forests. We kept pushing to allow as much flexibility on the local level as we possibly could and there were others that more or less wanted to dictate within the legislation what you could or couldn't do. And that was a big part of the whole debate as we went through that.

Because I know Mr. Walden and I both felt that sitting in Washington, D.C., you did not have any idea which acres needed to be treated, but somebody out here actually on the ground would have a better idea on how to do that. So hearing you say that really brings back a lot of what the debate was about.

Mr. Hall, I would like to ask you about the Mount Graham red squirrel. What kind of habitat has your agency determined that the squirrel needs for recovery?

Mr. HALL. Well, one of the things—I will give him a second to think about it. Steve Spangler is our State supervisor who knows more of the details about those things—but one of the things that is actually said in the recovery plan, that in order to get recovery, there has to be an ongoing and sustained fire management

program. And using fire to control—using cool fires to control hot fires. But Steve, do you know the actual biological—

Mr. WALDEN. Mr. Spangler, if you will come up to the table there and use the microphone.

Mr. SPANGLER. The squirrel prefers the older spruce fir forests near the top of the mountain. And I think the key to protecting that—

Mr. WALDEN. Could you—you need to bring his chair up.

Mr. POMBO. Just bring your chair up.

Mr. WALDEN. That is fine.

Mr. SPANGLER. The squirrel prefers the older spruce fir forests at the top of the mountain. That habitat is naturally fire prone with a lot of dead and downed material, older trees, deteriorating trees. And I think the key, particularly on habitat as Mr. Forsgren said earlier, is to treat near the bottom of the mountain and work up toward that habitat to protect against fires running up into it.

Mr. POMBO. So in order—in order to recover this species, there has to be some kind of active management going on within that forest?

Mr. SPANGLER. Yes, there does.

Mr. POMBO. The idea of locking it up and saying, OK, this is habitat and we are not going to touch it, would that be detrimental to the recovery?

Mr. SPANGLER. I believe that no management is poor management. I think there are treatments that have to be done. They have to be done carefully and they have to be well planned. You have to make sure that you retain those habitat components essential to the squirrel but they do not just make a living off of dead trees and if they burn up the squirrel is not going to be there.

Mr. POMBO. One of the issues that we end up dealing with a lot is that we will hear people like you that are out on the ground saying that we can't just leave it alone, because that—that does not recover the species. We need to have active management. We need to be out there. You know, part of the way I believe this is all supposed to work is it is supposed to be a collaboration, a consultation between Forest Service and BLM and Fish and Wildlife Service with everybody working toward the same goal in terms of recovery of that particular species.

And a lot of times when we get into these debates in Washington, it comes down to well, if you want to be out there, then you are just destroying the forests and we should just leave it all alone. And what I am hearing—what I am hearing you say is that that makes it harder for us to recover that species.

Mr. SPANGLER. Yeah, I don't believe that hands-off management is either appropriate or possible now. The things have changed since pre-European settlement days. The forests I think have to be managed virtually every acre out there.

Mr. POMBO. When you look at recovery, you have a number of endangered species. And when you look at recovery on forest-based species, do you look at it in terms of what is best for all of these different species and how do we manage this forest as a whole to recover all of these endangered species? Or are you looking at it in terms of just the red squirrel or just the spotted owl? When you

are developing your management plans and recommendations you make to Forest Service accident or BLM, how do you look at that?

Mr. HALL. We look at it from a holistic standpoint, an ecosystem standpoint. As I said earlier all of the species that are native to that forest evolved over time and that forest the way they are operated, burning—I don't know 3 to 5 years—I guess you could get somebody smarter than me to tell you, but it is a whole lot more frequent than it is now. And if we manage to have a healthy system, we believe that all the species should benefit from that. And you can remember back in the early '90s when it was the species of the day kind of thing. You take care of this one but oh, by the way, you have have got to take care of this one.

We have made some mistakes in the past, but hopefully we have learned from them. Now we are trying to really—I would echo that what is good for endangered species, listed species is exactly what Mr. Forsgren's priorities are. Healthy—a healthy forest system. An economic use of the material. And I forgot what the third one was. But when he read them off I said I agreed with all three of those.

Mr. POMBO. Finally, let me ask you this. When you are developing recovery plans and management plans in consultation with Forest Service, how do you look at the public use of the public lands in terms of any commercial activity, recreational activity? One of the things that I am always concerned about is that you look at it only from one direction instead of how do we develop a recovery management plan that has as little impact on the public use of our public lands so that there is continued recreational activities, there are continued commercial activities to sustain surrounding communities? I mean, those are two things that I do not believe are mutually exclusive. I believe you can have a healthy economy in an area and protect endangered species. That you do not have to make a decision that is one or the other.

Mr. HALL. I think we agree completely with you on that. And when we put together a recovery team and they are advisory, they do not get to make the decision, but we try to pull people together that represent different aspects of those uses. And I guess I would say that we look at some uses as some of the public would call it a use, as really being a management assistance tool. If we need thinning in the forest and there is a company out there that can make money off of it, our objective is to thin the forest and to have a healthier system while they are making some revenue from that. And that kind of transcends, it goes from one end of the spectrum to someone to might just be going out to bird watch. And when we have these recovery teams together, we want the debate, and more important than the debate I guess, the recognition of each member of that team that someone else has a legitimate viewpoint that needs to be considered. And what we strive for in getting to recovery plans is that all of those viewpoints have been heard and they have had an impact on what the recovery plan looks like so hopefully to accommodate the kinds of things that you are talking about.

Mr. POMBO. Thank you. Thank you, Mr. Chairman.

Mr. WALDEN. The Chair now recognizes the gentleman from Arizona, Mr. Flake for 5 minutes.

Mr. JEFF FLAKE. I thank the Chairman. I appreciate the testimony thus far. The question, and you touched on it Mr. Hall with private entities coming in. In your view, is there any way we can treat the number of acres that we have to treat to get to some kind of sustainability without involvement of the private sector that way? Without some profit being derived out of the forests?

Mr. HALL. Not only do I think that we can't, it probably wouldn't be appropriate to staff up the Forest Service or BLM or the Fish and Wildlife Service to do the things that could be done by the private sector.

Mr. JEFF FLAKE. Getting back to what we are going to have to do to get to that sustainability point, can you, Mr. Forsgren or whomever, give some kind of idea of the total, the net forest growth in the region? Or is it being—is it growing faster than it is removing or dying or being burned in this sense? Are there more trees now than there were 10 years ago and what do we need to do to get to a point? How many acres would we have to treat as opposed to what we are treating right now?

Mr. FORSGREN. Let me answer the first part of your question first. We are growing far more biomass than we are removing through fire, through harvest, through mortality. In fact if you were to compress all of that biomass into a solid cube and put it over a football field, we are growing a cube of wood that would extend a mile and three-quarters into the sky across New Mexico and Arizona every year, in excess of what we are removing.

So in treating 200,000 acres, that is a tremendous increase over what we have historically done but it is the tip of the iceberg in terms of what needs to be done. And as you look at that work, most of that work right now is being done by just paying to cut down and dispose of that material. Material that has potential value. And only when we get to the point where we capture what economic value is in that material are we going to be able to step that up by a factor of perhaps 5 from where we are at today that we need to be to keep up with the ecological challenge we face in the southwest with the health of our forest.

Mr. JEFF FLAKE. Let me get back to that. You are saying involving the private sector and actually having someone derive a profit we can increase by a factor of 5 the number of acres treated.

Mr. FORSGREN. We would need to increase by a factor of 5. Right now we do not have the infrastructure here. We do not have the economic uses of that fully developed. But, for example, with the technology that we have now and the uses that are available now. And I will use the White Mountain Stewardship Contract as an example, we are able to reduce the treatment costs by about one-half. So for the same Federal dollar, we are doubling the amount of acreage that we are able to treat. We need to get beyond that doubling. But as we provide sustainable supplies and material, industry will come in here to make use of that largely small diameter material and we should move that closer to that three or four times better buy for the dollar.

Mr. JEFF FLAKE. So even given that most of the mills are closed, that the industry is gone, in some of these areas we could still increase or we could double the number of acres treated?

Mr. FORSGREN. We can today with the existing businesses, the white Mountain Stewardship Contract as you know was successfully bid on by a consortium of local businesses that make use of that material for the products they produce, whether it is energy or wood pellets or dimensional lumber. And then by capturing that material we have cut in half the cost to the taxpayer of that important restoration work.

Mr. JEFF FLAKE. Mr. Hall, in the minute I have left, with the willow flycatcher we are creating new habitat to allow, as everybody knows, the willow flycatcher is nesting in areas that have been drawn down at Roosevelt Lake and other areas, so we create alternative habitat for when the lake level might rise. What kind of science are we using? Is it just a best guess that they might leave those nests and go somewhere else? And what evidence do we have that it will actually help the species or just impose costs?

Mr. HALL. Well, I think with the southwest willow flycatcher first of all, inside the lakes whether it is Roosevelt Lake or Horseshoe Lake, it does not matter which one you are talking about, we accept as normal that the lake will draw down, fill up, draw down and fill up. When we worked with the salt river project at their request on a section 10 permit, we simply said, look, let's take advantage of when the reservoir—if it is down, it is creating some birds for us, it is not harming water operations at all and it helps to offset, then let's let it create some birds.

And then what we want to do for the southwest willow flycatcher throughout the southwest is to move it out of the reservoirs up on to the riverine systems, the riparian zones that it actually did evolve in. But salt cedars choked up those zones so fast and so densely that we have got significant efforts to go and remove salt cedar, replace it with cotton wood willow or some other native species, mesquite or something else. But in the meantime, we need that kind of help to keep the species from getting in worse conditions. Because all of those efforts are sort of for naught if we can't help move it forward. And the salt river project, I think was a very good partner in working with us on that. And we continue to work with them on others.

Mr. JEFF FLAKE. Thank you.

Mr. WALDEN. The Chair now recognizes the gentleman from Arizona, Mr. Renzi, for 5 minutes.

Mr. RENZI. Thank you, Mr. Chairman. Harv and Dale, thank you both for your testimony. Y'all know that we just survived a pretty strong fire up in here. That Nuttall Complex fire. A lot of these local folks did a great job pulling together in the community and firefighters did a great job pushing back and really showed the unity of this community to overcome that catastrophic event. It was a fire that started on the western slope and grew up and—I'm sorry, on the eastern slope and hit the wind coming from the west which sparks that fire up near the Scopes and it was able to get our girls and boys, our firefighters up in there to attack that fire.

This same thing occurred in Tucson with the Bullet fire. It occurred that it blew up into the wind and the wind worked to our advantage and we were able to take advantage of it and over a 2-year period we did not do enough to thin the forest up there. And then we had the Mount Lemon Fire. For the lessons learned there

are a lot of leaders in this community who want to see us get in there, thin the forest on Mount Graham.

Harv, I was really taken by your testimony when you said you wanted to see private industry involved, helping to bring back the timber industry. And it is a real part of the Healthy Forest Initiative and the President's plan. But we have got to see and we need to see Mount Graham have a stewardship contract just like we have on the A Bar S and Apache Sitgreaves. We have got the San Carlos Apaches who have their own small timber mill in partnerships with the San Carlos and that mountain we could have a thriving little timber industry back, a reasonable timber industry back here again.

And I would make note that Mark Herrington is going to give testimony today, he is going to talk about the Sky Island proposal. It is an operation we need to really consider. And I would ask to you please consider Mount Graham for a stewardship contract in coordination with the San Carlos Apache.

I read last night, I got in late and read last night. Harv, in your testimony, due to effective fire suppression for the last century, our ponderosa pine forests that were once open and parklike—supporting between 50 and 200 trees per acre—today are a dense tangle of 2,000 trees per acre. You do a great job of focusing not on the diameter of the tree that should be thinned but what the mosaic pattern of the acreage should look like. And it is a real distinction right now in the political debate across America, politicians weighing in and trying to impose diameter caps.

Now we just read an article in the Sacramento Bee, a nice little liberal newspaper out of California that talked about the fact that on the Kaibab, they claim that we are harvesting old growth timber and they say that old growth timber is 12 inches.

So I want to ask you, where are we as far as diameter caps? Where are we on the mosaic pattern and in particular, what do you see for the future of Mount Graham?

Mr. FORSGREN. Well, from our management perspective, diameter caps do not make much sense ecologically. If you look across the southwest today we have more trees in every diameter class up to 26 or 27 inches and the deficit in those largest oldest trees is pretty small compared to what was historically on the landscape. So it is not a matter of we are down to the last big trees here.

We really are trying to focus on the end result and that is the functionality of these systems, because with that functionality comes all the benefits of that society wants of clean water, clean air, healthy fish and wildlife resources as well as a sustainable grazing industry, timber industry, et cetera.

We have great leadership here on the Coronado National Forest and we have a new supervisor that has been here about a year, and Jeanine Derby is working and committed to working closely with the county to address the situation there on Mount Graham. And recently I sat down with Mr. Herrington and looked at what those plans are and are trying to bring their ideas and our ideas closer together so that we could effectively address that situation on Mount Graham, and I am confident that we are going to be successful.

Mr. RENZI. Harv, I am with you. I just put out for everyone's notice here that if we get a fire on the western slope with the wind at its back, we will lose the Scopes, we will lose the 19 sacred sites, the recreational sites. So we have to learn—the Nuttall Complex fire has got to be a fire that we learn from when we get up there and get involved in preventive measures.

Let me switch gears for you. I want to talk about the wolf a little bit. There is talk up in Washington about Yellowstone Park having enough wolves now to where there is a possibility they would be delisted. And if delisted, then the cattlemen and the cattle growers in the area around Yellowstone and the permittee holders would be able to defend their stock immediately on sighting a wolf.

Where are we as far as the wolf introduction program here in southeastern Arizona? The ability for the White River Apaches that want to take over that program, the idea that maybe if the wolf came out off the reservation, then our cattlemen would be able to defend their herds?

Mr. HALL. Well, about a year and a half or so ago, maybe 2 years ago, Duane Shroufe, the director of Arizona Game and Fish, and the then director of Arizona Game and Fish, Larry Bell, and representatives from the white mountain Apache tribe, we got together and discussed how to handle the wolf as a whole. The way I like to describe it to people that do not support the wolf program or do not even like it is, you know, it is more to our advantage now to get recovery so that the states and the tribes can manage than it is to try and argue over how to take them out. They are reaching—as happened in Yellowstone, as happened in the Midwest, and is moving up into the Northwest, those populations reached a plateau where you get significant reproduction, you got to recovery a lot quicker.

When we sat down and discussed that we broke the program into two pieces. One is this field operation for the experimental wolf program. And I agree there that the leads for those programs should be the States and the tribe. And we are constantly working with San Carlos and the other tribes as well. But they actually lead the field operations. Duane Shroufe's people are the lead in Arizona, except on tribal lands. The tribes are the lead in their area and Bruce Thompson is the lead for the field operation in New Mexico. And we talk regularly, but we leave field type decisions to them because the 10(j) population is experimental and nonessential. And if it makes it great, and if it does not, then the regulations aren't there to give it the full protection.

The recovery program, on the other hand, is what the Fish and Wildlife Service should be focusing on, the recovery plan to redo that has not been done since 1982. And I have convened a new recovery team that brings in the impacted audiences that you are talking about. We have ranchers on and other people there. We are working through that to try and figure out the best way to get to that. But today on private land, a rancher that sees a wolf in the act of attacking cattle can still shoot it today on private land.

Mr. RENZI. We can't raise cattle on private land in Arizona. Thank you, Mr. Chairman.

Mr. WALDEN. Thank you. Since we all sort of went over on the 5-minute rule we are going to limit this round to one question and go from there.

Mr. Hall, my question is to you on the Healthy Forest Restoration Act. Part of what we attempted to do was still involve the opportunity for people to challenge government decisions both through appeal and litigation, but streamline that process so that the appeals and litigation do not determine the outcome of the decision just by waiting you out.

What are you seeing in terms of your work when it comes to appeals and litigation and the effect that is having on your agency's ability to actually manage the habitat for the species on the ground? What is happening? How much of your time and energy is devoted to this litigation appeal versus implementing the training and ability your folks have?

Mr. HALL. I do not have an actual percentage breakdown the because it would be difficult to do. So much of our time is staff time. Steve's staff people will work some on working with the people in the field and some on putting together court records. So it is hard to say how much is there, but it is strangling our ability to work to get the real solutions. I told our director at one point if I could take all the endangered species money we have and put it in the private lands program out there working with ranchers and farmers and the land owners to actually making a difference on the land, we wouldn't have an endangered species issue. But we are bogged down meeting court decisions and constant court challenges. And it gets very frustrating to our people on the ground who really want to make a difference.

Mr. WALDEN. Thank you. The Chair now recognizes the gentleman from California, Chairman of the full Committee, Mr. Pombo.

Mr. POMBO. And I will limit it to just one question. Mr. Hall, you talked about designation of critical habitat. Do you know how much land in the State of Arizona has been designated as critical habitat in terms of acres?

Mr. HALL. Actually, I do not. I can get that for you.

Mr. POMBO. And if you could answer for the record as well the amount of land that is currently in public ownership in the State of Arizona, how much land is designated as critical habitat, and if you could give me an idea of how much overlap there is between those two.

Mr. HALL. So the critical habitat and how it is broken down between public and private?

Mr. POMBO. Correct. Thank you.

Mr. WALDEN. Just a question, Harv, do you know, by chance?

Mr. FORSGREN. I do not know offhand either.

Mr. WALDEN. OK. The Chair recognizes the gentleman from Arizona, Mr. Flake.

Mr. JEFF FLAKE. In the interest of time, I will defer to my colleague, Mr. Renzi.

Mr. RENZI. Thank you, Mr. Flake. Harv, in your written testimony that you submitted, I read again you laid out the stewardship contract as being significant. And I thank you all both for it being the first ever large scale stewardship contract awarded in the

Nation. You talked in detail about the fact that between 5,000 and 25,000 acres will be treated per year. Now that kind of surprised me. Over a 10-year period, that flexibility, is that built into the local timber contractors? Do they realize that there could be a downside to 5,000 acres and an upside to 25,000? And why is there such flexibility?

Mr. FORSGREN. Well, really that benefits both parties. The 5,000 is a minimum that we have to guarantee to pay for treatment every year for that 10-year period. So that provides a baseline for our contractors to know that they are guaranteed that. And if we get tied up in litigation and can't offer that or something else, they still get paid for that.

So we have got to manage our risk on the lower end. Can't have too high of a guarantee. On the upper end, though, as we get more efficient in that operation, we want to be able to expand up to 25,000 acres per year. The other way that this benefits the private contractors is it enables them to work with us in the development of task orders so they can ramp up their capability to process this material. If we were to dump 25,000 acres on them with utilization requirements right now it would choke them. So our commitment is to work closely with the successful bidder to ensure that we ramp up their capability so that we with move closer and closer to the 25,000 acres a year than the 5,000 acres a year.

Mr. RENZI. Thank you, Mr. Chairman.

Mr. WALDEN. I want to thank our panel of witnesses for testifying today. We appreciate your comments and your insights and your counsel. And I am sure if we have questions you will be able to get back to us. The record will be kept open. So thank you very much for appearing today.

Mr. WALDEN. I would like to ask our next panel of witnesses to come forward.

Mr. WALDEN. On panel two, we have The Honorable Jake Flake, Speaker of the Arizona House of Representatives; Mr. Mark Herrington, Graham County Board of Supervisors; Dr. Peter Warshall, Peter Warshall and Associates; Ms. Jan Holder, Executive Director of the Gila Watershed Partnership; and Mr. Buddy Powell, Director, Mount Graham International Observatory.

And let me remind our witnesses that under our Committee Rules, you must limit your oral statements to 5 minutes, but your entire statement will appear in the record.

Mr. Flake, maybe you could move one of these microphones down in front of you.

STATEMENT OF THE HONORABLE JAKE FLAKE, SPEAKER, ARIZONA HOUSE OF REPRESENTATIVES

Mr. FLAKE. I am representative of District Five, this district, and this includes five of the 15 counties of Arizona, Navajo, Apache, Graham, Greenlee and Gila. My district includes part of the largest Ponderosa forest in the world. And I am currently serving as speaker of the House.

I am 69 years old and have lived, worked and played in the forest for my entire life. My father was a rancher. My grandfather was a rancher. My great grandfather was a rancher. And I am ranching on some of that same land that they ranched on. I have

owned several grazing permits on the national forest. I have had the opportunity and the privilege of working and riding with many of the grand old cowboys who came to this area around the turn of the century. They have described to me the forests that were here at that time, beautiful trees, evenly spaced in such a way that could sustain them. The land could sustain them; very little underbrush, no carpets of pine needles, good grasses to sustain wildlife and livestock and a sustainable watershed that produced clean runoff, springs, streams of clear water going down to the rivers and lakes. One particular old cowboy named Vern Gillett that I rode with, whose ranch I eventually bought, described the old forest like this: In the early 19th century, during the lightning season, you could get up on a hill in the forest and sometimes see a dozen fires burning around the country. Nobody paid any attention to them since there was not enough fuel to let them burn very hot. The fires would burn along the ground cleaning up the old grasses and pine needles and the underbrush, sometimes pruning the lower branches from off the trees, but not hot enough to top out or kill the bigger trees.

I started riding the country about 1940. By that time, men, in their supposed wisdom, were stopping all fires, and forests were already beginning to clog up into a jungle. There have been efforts to manage and harvest this great renewable natural resource. From the time settlers came into the country, saw mills were set up, and trees were harvested, mostly in an orderly managed manner.

By the late 1950s and early 1960s, Southwest Forest Industries established a paper mill in Snowflake in an effort to harvest the millions of small trees that were growing as a result of suppressing all fires. The logging of these small diameter trees was pivotal to the effective management of the forest. However, even while the paper mill was using the wood pulp at its full capacity, the supply of small trees was vastly outgrowing demand.

Then entered the environmentalists. About that time, the Endangered Species Act was passed in Congress, I might say a good bill that was much needed, but an act that has been terribly manipulated and misused. The ESA became the leverage the environmentalists used to go to the courts to stop the timber and pulp wood sales which also halted the forest-thinning projects that are essential to fire prevention.

Between 1998 and 2002, there were 271 forest health and fuel reduction projects in the Apache forests. Because of threats of appeals and litigation, it has taken up to 4 years just to approve these thinning projects. In this region, there have been over 125 lawsuits filed by environmentalist groups. Why? Because all it takes is a $0.37 stamp to do so.

Our paper mill in Snowflake was running three machines. Even though the supply of wood pulp was there, environmental lawsuits prevented the contracts from being implemented. The mill got to the point where they could not be assured of a reliable supply of wood to keep all three machines running, so they converted one machine to recycled paper. Then another machine was converted. And finally, just a few years ago, the third and last machine was converted to recycled paper. That marked the end of the markup

for small diameter trees. Almost all of our saw mills had also gone out of business because the extreme environmentalists had stopped all contracts for timber sales. Then came the catastrophic fires and with them, a realization that we had to clean the forests. When contracts were prepared and let out, we found that, not only was there no one that would pay for the products, but the Forest Service would have to pay to have those products removed. We now have a thick jungle in our forests. They have been terribly mismanaged.

Also, our much needed watershed produces very little water. The same fire that Mother Nature once used as a tool to keep our forests clean is now the enemy because of the overabundance of fuel. Yet, the extreme environmentalists will not back down. Even after the catastrophic fire, we could not go in and harvest the dead burned trees that were valuable because these radical groups stopped the sale with lawsuits. The Apache Indians, who are not subject to the same regulations, took off thousands maybe even millions of beautiful timber that was dead or dying because of the fire.

Mostly, we have seen the error of our ways and now know that we need to clean the forests or they will burn many of our cities and towns with them. Much progress has been made this past year. Number one, the President's healthy forest act. Number two, a forest health bill that we put through our own legislature that gives tax incentives to businesses that will come in and use forest products. Number three, the 10-year stewardship contracts that have been let out up in the Sitgreaves forest.

Our biggest problem is that the industries that can use the forest products and manage the land effectively will not open new facilities since they are not guaranteed enough material and time to pay back their investment. This is because the radical environmental groups stopped the contracts through lawsuits using the Endangered Species Act as their basis.

Without some private sector incentive to thin and manage our forests, there is not enough money in the U.S. Treasury to clean our rests. There are individuals and companies that want to and will come in and set up much needed industry in and near our forests if they can just be guaranteed the material and the time to pay back their investment. Some are already there, and others are interested in coming in, businesses like saw mills, biomass generation plants, wood-heating pellet companies, OSB plants and woodworking plants.

There are uses for all the products that can and must be harvested from our forests. The initiative and the ingenuity is there. We must reform the Forest Service rules and regulations and Endangered Species Act to the point where they will function the way they were meant to function and not be manipulated and misused by extreme groups through the courts to their benefit.

I would like to close with a thought: Our forests will be harvested. Either we will harvest them through practical common sense, by bringing jobs and good economy to rural Arizona, or Mother Nature will harvest the forest with a catastrophic fire.

[The prepared statement of Mr. Flake follows:]

Statement of The Honorable Jake Flake, Speaker, Arizona House of Representatives

My name is Franklin L. Flake, commonly known as Jake Flake. I am an Arizona State Representative of District #5, which includes five of the 15 counties in Arizona—namely Navajo, Apache, Greenlee, Graham and Gila. My district includes the largest Ponderosa Pine forest of the world. I am also currently serving as Speaker of the Arizona House of Representatives.

I am 69 years old and have lived and worked and played in the forest for my entire life. My father was a rancher, and I have been a rancher for my entire life. I have owned several grazing permits in the national forest. I have had the opportunity and privilege of working and riding with many grand old cowboys who came into this area around the turn of the century. They have described to me the forests that were here at that time, with beautiful trees evenly spaced in such a way that the land could sustain them, very little underbrush, no carpets of pine needles, and good grasses to sustain wildlife and livestock. Also, a sustainable watershed that produced clean runoff, with springs and streams of clear water going down to the rivers and lakes.

Vern Gillett, a grand old cowboy that I rode with and whose ranch I eventually bought, described the old forests like this: In the early 19th century, during the lightening season you could get up on a hill in the forest and sometimes see a dozen fires burning around the country. Nobody paid any attention to them since there wasn't enough fuel to let them burn very hot. The fires would burn along the ground, cleaning up the old grass and pine needles and under brush, sometimes pruning the lower branches off from the trees but not hot enough to top out or to kill the trees.

I started riding the country around 1940. By that time, men in their supposed wisdom were stopping all fires and the forests were already beginning to clog up into a jungle.

There have been efforts to manage and harvest this great renewable natural resource. From the time settlers came into the country, saw mills were set up and trees were harvested, mostly in an orderly, managed manner. By the late 1950's and early 1960's Southwest Forest Industry established a paper mill in Snowflake in an effort to harvest the millions of small trees that were growing as a result of suppressing all fires. The logging of those small diameter trees was pivotal to the effective management of the forest. However, even while the paper mill was using the wood pulp at its full capacity, the supply of small trees was vastly outgrowing demand.

Then entered the environmentalists.

About that time, the Endangered Species Act was passed in Congress, a good bill that was much needed, but an act that has been terribly manipulated and misused. The ESA became the leverage that the environmentalists used to go to the courts to stop the timber and pulp wood sales, which also halted the forest thinning projects that are essential to fire prevention.

Our paper mill in Snowflake was running three machines. Even though the supply of pulp wood was there, environmental lawsuits prevented the contracts from being implemented. The mill got to the point that they couldn't be assured of a reliable supply of wood to keep all three machines running so they converted one machine to recycled paper. Then another machine was converted and finally, just a few years ago, the third and last machine was converted to recycled paper. That marked the end of the market for small diameter trees. Almost all of our sawmills had also gone out of business because the extreme environmentalists had stopped all contracts of timber sales.

Then came the catastrophic fires and with them a realization that we had to clean the forests. When contracts were prepared and let out, we found that not only was there no one who would pay for the products, but the forest service would have to pay to have the products removed.

We now have a thick jungle out in our forests. They have been terribly mismanaged. The same fire that Mother Nature once used as a tool to keep our forests clean is now the enemy because of the over-abundance of fuel. Yet the extreme environmentalists will not back down. Even after the catastrophic Rodeo-Chediski Fire, we could not go in and harvest the dead, burned trees that were salvageable because these radical groups stopped the sales with lawsuits. The Apache Indians, who are not subject to the same regulations, took off thousands of board feet of beautiful timber that was dead or dying because of the fire.

Mostly, we have seen the error of our ways and now know that we need to clean the forests or they will all burn and many of our towns and cities with them. Much progress has been made in the past year: 1) The president's healthy forest act; 2)

The forest health bill that we put through our legislature this year that gives tax incentives to Arizona businesses that will come in and use forest products; 3) The ten-year stewardship contracts that have been let out up in the Apache-Sitgreaves Forest.

Our biggest problem is that the industries that can use the forest products and manage the land effectively will not open new facilities since they are not guaranteed enough material and time to pay back their investment. This is because the radical environmental groups stop the contracts through lawsuits using the endangered species act as their basis.

Without some private sector incentive to thin and manage our lands, there is not enough money in the U.S. Treasury to clean our forests. There are individuals and companies that want to and will come in and set up much needed industry in and near our forests if they can just be guaranteed the material and time to pay back their investment. Some are already there and others have interest in coming in—businesses like small saw mills, biomass generation plants, wood heating pellet companies, OSB plants, and wood working plants.

There are uses for all the products that can and must be harvested from our forests. The initiative and ingenuity is there. We simply must reform the forest service rules and regulations and the Endangered Species Act to the point where they will function the way they were meant to function and not be manipulated and misused by extreme groups through the courts to their benefit.

Our forests will be harvested. Either we will harvest them through practical common sense, by bringing jobs and a good economy to rural Arizona, or Mother Nature will harvest the forest with catastrophic fire.

Mr. WALDEN. Thank you Speaker Flake.

Now, Mr. Herrington, I believe you are next for 5 minutes. And again, your written statements will appear in the record.

STATEMENT OF MARK HERRINGTON, GRAHAM COUNTY BOARD OF SUPERVISORS

Mr. HERRINGTON. Thank you, Mr. Chairman and members of the Subcommittee. On behalf of the citizens of Graham County, welcome and thank you for this opportunity to testify today.

For the record, my name is Mark Herrington, and I appear before you as a member of the Graham County Board of Supervisors, the Vice-Chairman of the Eastern Arizona Counties Organization and the immediate past president of the Coalition of Arizona and New Mexico Counties. Most importantly, though, I am here today as a local citizen and a farmer to tell you about the difficulties our communities face with the Endangered Species Act and the conditions of our forests. This testimony is also submitted on behalf of the. National Association of Counties and its Western Interstate Region.

For your information, Arizona counties support the efforts of the National Endangered Species Act Reform Coalition. In eastern Arizona and western New Mexico, there are 65 animals and 31 plants on the endangered species list. Therefore, the Gila Valley has a vested interest and high priority for the serious reform of the ESA. We believe that the honorable intentions of the current administration are not being implemented on the ground.

This summer, the Nuttall Complex fire burned the north face of Mount Graham causing serious damage to streams, roads, endangered species, forest landscapes, recreational trails, the international telescope site and a vital communication site. Many of the areas that burned have been in serious condition for years, yet restrictions placed upon them by the Endangered Species Act and its rules have either prevented or seriously delayed the much needed

work from being done on Mount Graham. Clearly, the process and the procedure prescribed for treatment, cleanup and healthy management of the forests is not working.

According to Daryl Weech, Columbine cabin owners on Mount Graham are seriously hampered in their efforts to cut dead hazard trees close to cabins because of the rules written under the Endangered Species Act for the red squirrel.

Buddy Powell in his testimony, will refer to the Steward Observatory's continuing frustration with constant delays associated with requests to reduce fire risks around the telescopes, which are located within the red squirrel refugium established under ESA rules. The irony of this refugium, which has closed roads and allows no hiking, camping or other recreational activity, is that most of the trees in it have been killed by insect infestation and almost all the squirrels live outside the protected area.

While common sense suggests that the refugium be abolished and the area opened up for treatment, the dogma of ESA regulation continues to lock up this once pristine area and restrict its traditional uses. In addition, the fuel load approaches 100 tons per acre, which dramatically increases the potential of catastrophic fire and the destruction of the red squirrel, its habitat and the telescope site.

As a result of these delays, Graham County, with the support of other eastern Arizona counties, submitted a proposal to treat up to 19 sites of environmental, historical and economic importance. This modest $1.3 million proposal would provide a much needed boost to accelerate the work of the Coronado National Forest beyond the current 200- or 300-acres-per-year effort.

In addition to the critical conditions on Mount Graham, issues tied to the ESA have magnified the need for accelerated forest restoration and community protection work in other Arizona and New Mexico counties. For example, the eastern Arizona counties, through their nonprofit environmental economic communities organization, have identified $165 million in improvement projects on roadways, private lands, NEPA ready forest lands and Arizona trust lands. Of this amount, at least $80 million is needed to address the most critical public safety and economic recovery needs.

Although there are hundreds of examples that could be given here today, I wish to share two specific examples of the abusive effects caused by the ESA on local agriculture and the everyday lives of its citizens. Ross Bryce, a local area rancher, the father of President Bryce of this college, shared with me this experience with the ESA. As the owner of the Spear Ranch located on the west end of Mount Graham, he and his family had run cattle on the mountain for many years.

He was informed by the Forest Service in 2001 that his allotment would be reduced by 50 percent from 200 to 100 head of cattle because of the presence of the agave plant that makes his ranch allotment potential habitat for the longnose bat. This was done even though the Forest Service stated to him that, as far as they knew, there were no bats present. Since this reduction in 2001, Mr. Bryce has received no compensation despite no evidence of the presence of the longnose bats.

A classic example of the Endangered Species Act and its negative effects on Graham County citizens is the Solomon Bridge project. After the flood in 1993, the road approaches to Solomon Bridge were washed out, necessitating the building of a new 800-foot bridge that property owners on the north side of the Gila River, school buses and farmers regularly used. With funds raised, Graham County started the permitting process to construct the bridge, which was the beginning of a 2.5 year ESA nightmare involving the southwestern willow flycatcher regulations.

From March 1993 to October of 1995, Graham County waited while U.S. Fish and Wildlife personnel conducted mating call surveys for the southwestern willow flycatcher. During those surveys, they stated they thought they heard the flycatcher mating call and held up the construction of the bridge while school buses from Solomon had to reroute 26 miles each way to deliver children to and from class. This resulted in the Solomon School District, the poorest in the area, shortening its school days and changing activity schedules to accommodate a bird that might have been at the bridge construction site.

Farmers were impacted as they were forced to drive heavy farm machinery on the same 26-mile detour to reach fields on the north side of the river. This disrupted traffic on State highways raised farmer fuel cost. The traffic safety hazard on the Eighth Avenue Bridge, which was used as part of the detour, was extremely high. The Congressman has stood with us on the Eighth Avenue Bridge, and he knows exactly what we are talking about.

Finally, in October of 1995, because of mounting public safety and budgetary concerns, the Graham County Board of Supervisors felt compelled to start construction on the Solomon Bridge while the permits were still in process. The bridge was completed in September of 1996. A dedicatory plaque on the bridge's southwest side says, and I quote and it says it all, "This bridge is dedicated to the people of Graham County as an example of how persistence and common sense prevails over bureaucratic red tape." no action was taken against the county.

Representing our local communities and our counties, we declare the right to our livelihoods, our traditions and the preservation of our culture. We call on Congress and the President to change the Endangered Species Act in a way that recognizes these rights. The ESA must be based on sound peer-review science as well as the full recognition of the economic impacts of the law and its implementation. Species recovery plans must be balanced with the community's economic and social needs. In other words, we want a sensible Endangered Species Act, not a runaway train. We earnestly seek some reasonable balance between the protection of species, our lives and our economies. Thank you.

[The prepared statement of Mr. Herrington follows:]

Statement of Mark Herrington, Member, Graham County Board of Supervisors, representing the National Association of Counties

Mr. Chairman and Members of the Subcommittee,

On behalf of the citizens of Graham County, welcome, and thank you for this opportunity to testify today. For the record, my name is Mark Herrington, and I appear before you as a member of the Graham County Board of Supervisors, Vice Chairman of the Eastern Arizona Counties Organization, and immediate past

President of the Coalition of Arizona / New Mexico Counties for Stable Economic Growth. Most importantly, though, I am here as a local citizen and farmer (for 27 years) to tell you about the difficulties our communities face with the Endangered Species Act and the condition of our forests.

This testimony is also submitted on behalf of the National Association of Counties (NACo) and its Western Interstate Region. For your information, Arizona counties (through NACo) support the efforts of the National Endangered Species Act Reform Coalition (NESARC).

In Eastern Arizona and Western New Mexico there are 65 animals and 31 plants on the Endangered Species list. Therefore, the Gila Valley has a vested interest and high priority for the serious reform of the ESA.

We believe that the honorable intentions of the current (Bush) Administration are not being implemented on the ground. This summer, the Nuttall Complex Fires burned the North face of Mount Graham, causing serious damage to streams, roads, endangered species, forest landscapes, recreation trails, the international telescope site, and a vital communications site. Many of the areas that burned have been in serious condition for years, yet restrictions placed upon them by the Endangered Species Act and its rules have either prevented or seriously delayed much needed work from being done on the Mountain. Clearly, the process and procedures prescribed for the treatment, cleanup and healthy management of the Forest are not working.

According to Daryl Weech (the Columbine Cabin Owners President), Columbine Cabin owners on Mount Graham are seriously hampered in their efforts to cut dead hazard trees close to cabins because of rules written under the Endangered Species Act for the Red Squirrel.

Buddy Powell, in his testimony, refers to the Steward Observatory's continuing frustration with constant delays associated with requests to reduce the fire risk around the telescopes, which are located within the Red Squirrel refugium established under ESA rules. The irony of this refugium, which has closed roads and allows no hiking, camping or other recreational activities, is that most of the trees in it have been killed by insect infestation, and almost all of the squirrels live outside of the "protected area". While common sense suggests that the refugium be abolished and the area opened up for treatment, the dogma of ESA regulations continues to lock up this once pristine area, and restrict its traditional uses. In addition, the fuel load approaches 100 tons per acre, which dramatically increases the potential for catastrophic fire, and the destruction of the Red Squirrel, their habitat, and the telescope site.

As a result of these delays, Graham County, with the support of its fellow Counties in Eastern Arizona (Apache, Gila, Greenlee, and Navajo), submitted a proposal to treat as many as nineteen (19) sites of significant environmental, historical, and economic importance. This $1.3 million dollar proposal, while modest, would provide a much needed boost to accelerate the work of the Coronado National Forest beyond its current 200-300 acres per year efforts.

In addition to the critical conditions on Mount Graham, issues tied to the ESA have magnified the need for accelerated forest restoration and community protection work in other Arizona and New Mexico Counties. For example, the Eastern Arizona Counties (Apache, Gila, Graham, Greenlee, and Navajo) through their non-profit Environmental Economic Communities Organization have identified $165 million dollars in ready to implement projects on roadways, private lands, NEPA ready forest lands, and Arizona State Trust Lands. Of this amount, at least $80 million dollars is needed to address the most critical public safety and economic recovery needs. (Note: A copy of this request is attached for the record).

Although hundreds of examples can be given, I wish to share two (2) specific examples of the abusive affects caused by the ESA on local agriculture and the everyday lives of citizens.

Ross Bryce, a local area rancher, shared with me his experience with the ESA. As the owner of the Spear Ranch located on the West end of Mount Graham, he and his family have run cattle on the Mountain for many years. Mr. Bryce was informed by the Forest Service in 2001 that his allotment would be reduced by 50%, from 200 to 100 head of cattle because the presence of the Agaves plant makes his ranching allotment potential habitat for the Longnose Bat. This was done even though the Forest Service stated to him that as far as they knew, there were no bats present.

Since this reduction in 2001, Mr. Bryce has received no compensation, despite no evidence of the presence of Longnose Bats.

A classic example of the Endangered Species Act and its negative affects on Graham County's citizens is the Solomon Bridge project. After the flood of 1993, the road approaches to the Solomon Bridge were washed out, necessitating the building

of a new 800-oot bridge that property owners on the North side of the Gila River, school buses, and farmers frequently used. With funds raised, Graham County started the permitting process to construct the bridge, which was the beginning of a 2 1/2 year ESA nightmare involving the Southwestern Willow Flycatcher regulations.

From March, 1993 to October, 1995, Graham County waited while U.S. Fish and Wildlife personnel conducted mating call surveys for the Southwestern Willow Flycatcher. During those surveys, they stated that they thought they heard the Flycatcher's mating call, and held up construction of the bridge while school buses from Solomon had to reroute 26 miles each way to deliver children to and from class. This resulted in the Solomon School District, the poorest in the area, shortening its school days and changing activity schedules to accommodate a bird that "might" have been at the bridge construction site.

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Finally, in October, 1995, because of mounting public safety and budgetary concerns, the Graham County Board of Supervisors felt compelled to start construction on the Solomon Bridge while the permits were still in process. The bridge was completed in September, 1996. A dedicatory plaque on the bridge's Southwest side says, (and it says it all) "This bridge is dedicated to the people of Graham County as an example of how persistence and common sense prevails over bureaucratic red tape". No action was taken against the county.

Representing our local communities and counties, we declare the right to our livelihoods, our traditions, and the preservation of our culture. We call on the Congress and the President to change the Endangered Species Act in a way that recognizes these rights.

The ESA must be based on sound peer reviewed science, as well as the full recognition of the economic impacts of the law and its implementation. Species recovery plans must be balanced with a community's social and economic needs. In other words, we want a sound, sensible Endangered Species Act, not a run away train. We earnestly seek some reasonable balance between the protection of species, our lives, and our economies.

Thank you

SUMMARY POINTS

IN SUPPORT OF MARK HERRINGTON'S ESA TESTIMONY

Forest and Fire—Graham County [1]

- In 2004, there were 12 wildfires larger than 1,000 acres in size, 4 larger than 10,000 acres, and 1 larger than 100,000 acres in Arizona.
- Since January, 2000, there have been at least 60 fires larger than 1,000 acres in Arizona. Of these, 12 were larger than 10,000 acres, 1 was larger than 100,000 acres, and 1 was almost 500,000 acres (Rodeo-Chediski). Many of these large fires are the result of excessive fire fuels caused in part by delayed thinning and harvest activities that resulted from Endangered Species Act lawsuits and appeals.
- This year's fire on Mt. Graham consumed 29,400 acres, destroyed Mt. Graham Red Squirrel nesting sites, and damaged communication tower equipment and structures. As much as 20% of Mount Graham (under National Forest jurisdiction) may have burned at varying degrees of intensity this year.
- In addition, almost all major recreation trails are closed on the mountain, and there is an urgent need to restore and open them due the heavy dependence of the Gila Valley on recreation and tourism.
- As of today, there is still no announcement for the salvage removal of burned trees along roadways, near structures, or adjacent to recreational sites on Mt. Graham. We are hopeful that the NEPA categorical exclusion process will start soon so that public safety can be protected and a marginal economic benefit can be realized from burned trees near structures and infrastructure.
- Despite the 2004 Mt. Graham fires, as many as 89 cabins and homes, key communication towers, buildings, and power generators, and the world's largest telescope remain at high to extreme risk to loss from future catastrophic wildfire.

[1] Source: Eastern Arizona Counties Organization

- In an August, 2004 study of fire hazard and risk near campgrounds, structures, and infrastructure, it was found that 96% of cabins, 100% of remaining communications structures and infrastructure, and 40% of high use campsites are at high to extreme of loss to catastrophic wildfire.
- Because of Mt. Graham's high wildfire loss potential, Graham County and the Eastern Arizona Counties submitted a modest $974,500 dollar proposal to reduce the catastrophic fire hazard in the most critical interface areas of Mt. Graham. Since then, we have increased our request to $1.3 million to include sites of historical and cultural importance to our pioneer communities, such as Treasure Park, Hospital Flat, Peters Flat, Chesley Flat, and the old Mt. Graham Sawmill sites.

Forest and Fire—Eastern Arizona [2]

- The 119,500 acre Willow fire near Payson threatened a major electrical transmission line and shut down major highways. In fact, the threat of rolling blackouts in Phoenix this year was due in part to the threat of fire to these lines.
- Currently, our five (5) Counties operate under a declared bark beetle, drought, and catastrophic fire risk emergency, with as much as 1 million acres or more at risk of loss.
- Sadly, the Cibecue sawmill on the White Mountain Apache Reservation, in Navajo County, was just closed, resulting in the loss of 73 local jobs. Funding will be requested to retool the Cibecue mill for small diameter trees, so that jobs can be restored.
- Although this sounds expensive, potential property losses if we don't make this investment are over $1billion dollars, and the costs of fighting fires in Eastern Arizona will add to the already hefty $200 million dollar price tag.
- In addition, this initial investment would yield economic benefits to this depressed region of the State as the burned and small fire fuel trees are removed and used for value added product manufacturing and biomass energy. It would be especially worthwhile if the material from Mt. Graham could benefit the San Carlos sawmill.

Salt Cedar [3]

- When construction on the Roosevelt dam to raise the level of Roosevelt Lake (on the Salt River) was nearing completion, the Center for Biological Diversity sued to protect Southwestern Willow Flycatcher habitat. The habitat was salt cedar that had invaded the lake bed when it was lowered to facilitate construction. The results are as follows:
  1. In 1996, the USFWS determined that flooding this population will jeopardize the viability of the flycatcher (USFWS 1996a). To allow fir the refilling of Roosevelt Lake, the Bureau of Reclamation was forced to protect habitat elsewhere. They did this by purchasing habitat on the lower San Pedro River.
  2. To mitigate for "lost" Willow Flycatcher habitat around Roosevelt Lake caused by raising the lake level, the Bureau of Reclamation has spent (sic) $2.1 million from the U.S. Treasury to fence cattle out of riparian areas on 11 National Forest allotments around the lake. (Source: Center for Biological Diversity Website)
- Eradication of salt cedar would result in restoration of native plants systems more desirable as habitat for the Southwestern willow flycatcher and other species. The increase in water flows and quality would benefit listed fish and other species.
- The most cost effective salt cedar control methods are aerial herbicide spraying and biological control through the use of salt cedar beetles after removal efforts are completed. Both methods have encountered high levels of resistance from the environmental community.
- The most significant problem encountered in accomplishing treatment has been obtaining take permits and getting through the Section 7 consultation process. Delays continue to occur in this ESA process for even benign biological control methods.
- In New Mexico on the Rio Grande, treatments must leave a one mile radius around nesting clusters. This leaves a new seed source for repopulating the

[2] Source: Eastern Arizona Counties Organization
[3] Source: Coalition of Arizona-New Mexico Counties for Stable Economic Growth

treated areas. Treatment occurs two months after Southwestern willow flycatchers have already departed on their flights south.

- Due to the increased cost of treatments on federal lands because of the ESA and other environmental protection laws, nearly all treatments in New Mexico and Texas have occurred on Tribal and private lands. This leaves the federal lands as sources of re-infestation of the treated areas.

National Association of Counties Platform on the Endangered Species Act

- NACo believes that the goals of the Endangered Species Act would be better achieved if the Act itself and its administration were reformed. Such reforms should include:
  1. Provisions for pre-listing incentives for affected governments, public land lessees and private property owners to enter into conservation agreements with the Secretary of the Interior.
  2. Greater involvement by local governments in the listing process.
  3. Improvement in the scientific review process, including peer review.
  4. More complete analysis of the socioeconomic effects of actions proposed pursuant to the Act and better incorporation of that analysis in decision making.
  5. A full partnership for the affected State, its local governments, public land lessees and affected private property owners in the post-listing consultation and decision making process, including critical habitat, habitat conservation plans and full-scale recovery plans.
  6. Protection of private and public property rights.
  7. Development of specific, science-based, benchmarks for de-listing threatened or endangered species concurrent with the development of criteria for listing.
- Federal agencies responsible for the protection of species that would be harmed in the course of flood control projects should implement the rescue of these species rather than the local government performing such activities.
- The U.S. Fish & Wildlife Service (USFWS) should not introduce predators into public lands without addressing the diverse interests within each county likely to be affected by the introduction or migration of predators. Any such plan should be submitted for review and comment by the governing bodies of potentially affected counties. NACo requests that the USFWS shall return or destroy any predators from introduced populations that are found outside the introduction area at its expense, and that the USFWS be held liable for any damages from predation while the predators are outside the introduction area.

An Environmental Program of Apache, Gila, Graham, Greenlee, and Navajo Counties
928-337-3804 (fax) 928-337-4476 mmoore@co.apache.az.us

FOREST RESTORATION / INTERFACE FIRE HAZARD REDUCTION
EMERGENCY PROJECT REQUIREMENTS IN EASTERN ARIZONA COUNTIES

Name of Project or Program	Basic Needs	Full Funding
National Forest Lands Treatment:	$47,630,360	$126,290,360[1]
Bark Beetle Emergency Triage:	$ 6,228,750	$ 6,228,750[2]
National Forest County Parternship Restoration:	$ 3,000,000	$ 4,000,000[3]
Economic Action Programs:	$ 5,000,000	$ 10,000,000[4]
Southwest Sustainable Forest Partnership:	$ 1,000,000	$ 1,000,000[5]
Tribal Lands Request:	$ 2,800,000	$ 2,700,000[6]
Mt. Graham Demonstration Proposal:	$ 974,500	$ 1,300,000[7]
Sitgreaves Community Wildfire Protection Plan Treatments:	$ 8,722,650	$
Apache Community Wildfire Protection Plan Treatments:	$ 4,734,285	$ 4,734,285
Total Projects Funding Need:	$80,090,545	$164,976,045

Who: (Anticipated Partners)

White Mountain Apache Tribe
Private Landowners as Identified
White Mountain Natural Resources Center
Working Group
Graham-Greenlee Sustainable Communities Working Group
City of Show Low
Apache-Sitgreaves National Forest
U.S. Bureau of Indian Affairs
Arizona State Land Department
U.S. Bureau of Indian Affairs
National Forest CPR Program
Affected fire districts and departments
San Carlos Apache Tribe
USDA Forest Service
Eastern Arizona Stewardship
City of Safford
City of Pinetop-Lakeside
City of Payson
Greenlee County
Graham County
Gila County
Apache County
Navajo County
Regional Payson Area Partnership
Private Businesses as Identified

Where: National, Tribal, State and Private Forested Lands.

What: Accelerate community forest health and fire hazard reduction activities on National Forest and community interface areas with adjacent private and special use permit public land. A detailed plan binder will be included with the packet.

Why: To resolve the continuing bark beetle, drought, and fire emergency conditions that exist in Apache, Gila, Graham, Greenlee, and Navajo Counties

When: A two (2) year project that commences immediately upon receipt of funding.

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[1] Treat 166,281 acres of NEPA ready projects on Apache-Sitgreaves, Tonto, and Coronado Forests (can be used with Stewardship Contracts)
[2] For emergency triage activities under the five counties' declared state of emergency
[3] Funding request per Dr. David Garrett, Executive Director of the National Forest County Partnership Restoration Program
[4] A copy of funding request details available upon request
[5] Per Herb Hopper, Arizona Coordinator for the Southwest Sustainable Forests Partnership
[6] This request reflects monitoring and continued Rodeo-Chediski Forest Restoration needs. There will a further request to aid the retooling of the Cibecue Sawmill which was recently closed.
[7] $325,500 added to current funding request to address historical / cultural site hazards
[8] Per the approved CWPP plan
[9] Per the approved CWPP plan

Mr. WALDEN. Thank you. Appreciate your testimony. I must ask the audience, again, please, if you would not do that, that is not allowed within our rules. We do appreciate that.

Now we will go to Dr. Peter Warshall. Thank you for being here.

STATEMENT OF PETER WARSHALL, PH.D., PETER WARSHALL AND ASSOCIATES

Dr. WARSHALL. Thank you for inviting me. I am the political brat that was not really invited until the last moment, but thank you for allowing for a contrary opinion to be expressed.

I am a biologist who has worked with the ESA in Arizona for 20 years. I have worked with water rights and rare and sensitive species for 30 years. I own a private consulting firm that has worked with habitat and species conservation both here and through the State Department in Africa and in Latin America and in other countries. And I have done a lot of environmental work for major corporations, including things like Shell Oil and SAS Airlines.

What I would like to do is be a bit of a cheering squad for the ESA and say what has been good about it since we have heard—and I do not disagree with anything, I was an elected official for 10 years—that Mr. Herrington has talked about.

First, there are three myths. The first myth is that the ESA is a major cause of economic decline in the southwest. And by the southwest, I mean south of the Mogollon Rim. Mining has been declining mostly because of price and globalization and substitutes for copper. Douglas and Manuel, Playas, Pima mines all did not close because of the ESA. In addition, the overall view—there are particular instances where the ESA has been a total headache.

And commercial agriculture has not declined because of the ESA, but has declined because urban water rights are given priorities in this State and because the price competition, especially the global price competition on cotton, overwhelms the ability of the farmers to produce a competitive cotton.

Similarly, in ranching—and I belong to a ranching family—it is not the ESA that is causing the decline of ranching. It is housing subdivisions and drought that are mostly impacting it. The Malpai Group in Cochise and Hidalgo Counties, which includes a little less than a million acres, has shown the private sector leadership in counteracting housing subdivisions. They have independently put half of their deeded land into conservation easements. These conservation-friendly actions are in harmony with the ESA and with habitat preservation. And they were completely taken by ranchers opposing housing subdivisions, which is their core goal rather than fighting the ESA.

We have lots more examples where the Grey Ranch introduced blacktail prairie dogs to offset listing. We have Douglas high school programs, and we have Predator-friendly beef. And there is many more on jaguar policy also. We could see the opposite of this where the ranch economy is really being hurt and farming economy in Sierra Vista, which has little to do with the ESA and has to do with the National Conservation Area. It does have to do with the southwest willow flycatcher habitat, which has disappeared there. And

as housing development increases, both the farming and ranch communities are also disappearing.

In timber, I will not talk about north of the Mogollon Rim. In the southwest, the timber industry was pretty much logged out before the ESA had its impacts. As people locally around here know that the 1960s was the last major cuttings on Mount Graham, and the mill closing occurred slightly after that. The spotted owl exists mostly in unloggable canyons in the southwest, not in the north, and has made no major impact. I do not think any environmental group that I know of has opposed logging for the purposes of, not major timber, but for other wood products in this area. I think that almost all conservation groups totally are looking for that combination. I do not think this is a fight.

The second myth is that the congressional and Federal agencies make decisions on the best science. This has been a major problem with me. I was one of the major biologists on the Mount Graham red squirrel, and my answer to this is that the major threat to forests are special-favor politics, compromised biological science, compromised biological scientists who are under great pressure and underfunding. This trio of sins is not the fault of the ESA itself, but the fault is inappropriate political influence that impedes good biological science.

The Mount Graham red squirrel is a perfect example of that. The U.S. Fish and Wildlife service in 1988 prepared a biological opinion based on no data. I testified in Congress at that time, and two U.S. Fish and Wildlife biologists also testified saying that the decision was based on no scientific data but was quote, "predetermined." the scientific ability to do scientific work was completely stripped when the University of Arizona spent over a million dollars and Federal taxpayer money through research and study grants and immunized the ASTRO Project from both the biological opinion and NEPA processes. This has continued, as we have heard.

In 1993, the U.S. Fish and Wildlife service priority very well stated was to minimize fire in all the Mount Graham red squirrel occupied areas. This would have helped the astronomers. And over $100,000was spent by the team. Nothing was done on fire management. There was nothing on salvage. Nothing on mechanical controls. Nothing on sanitation. The conservation groups were not opposed to this kind of work. And still to this day, the recovery team for the U.S. Fish and Wildlife service has no outside biologists, no outside biologists on it. So it is done in-house, without clear understandings of what good science means, which is open transparency.

In both those cases, the ESA got blamed for bad procedures and for special-favor politics. I ask both of you, as congressmen with various bills to consider, will your bill increase or decrease special-favor politics? Will it politicize science, or will give it some independence? Over 400 scientists have written a petition to the executive part of our government asking that pure good science be given a fair hearing.

In some of the bills that have been proposed, there is confusion about what current field work would mean. Does it mean museum work, which has a lot to do with listing species? Interpreting aerial photographs, is that field work or is that interpretative work? Should you use parametric or nonparametric statistics? It may not

be good for Congress to get involved in these details. It may be better to understand and put in a new law to stop special-favor politics. And in my written testimony, I have added how the Endangered Species Act might be prepared for that—changed for that.

Finally, I would like to say that the ESA is not draconian. President Bush, in the recent issue of Nature, the best journal in the world, has pointed to the HCPs, the conservation banking, and there is no one opposed to that. In fact, in the southwest, we have passed even a better plan called the Sonoran Desert Conservation Plan, which is a great plan to work out how you could protect habitat and increase housing development in the right places.

But we have also changed from species to ecosystem management. It has already happened. It is a young law. It is only 31 years old compared to the Homestead Act or the National Forest Act, which are over 100 years old or 70 years old. The ESA is not perfect, but I think it is being worked on very well.

I would finally like to say that I think there is no such thing as a rural community. I have worked in these rural communities, as I say, for 30 years now, and some people really like the Endangered Species Act as the patriot preserving our national heritage. Others like it for ethical reasons, including creationist Christians who see it as a sin to kill off God's creatures or western Apaches who see it as supporting the great spirit or some other people, just respect and love of nature because they like to study it. I have even talked to economic people who feel you should not get rid of endangered species or reduce their protection because of economic opportunity costs. You never know which species is going to increase the tourist industry or be the source of a new medicine.

So, in closing, I would like to say, when I work in Africa, America is loved for the transition of power and change of government without bloodshed. And I also hear that from Africans, and they think America is great on that. The second thing they like is we try to protect our natural heritage. Before we demonize the Endangered Species Act and try to bust it apart, I would like to think we have an international leadership role in showing the rest of the world that we are doing a good job, imperfect—and I could be the person who talked for hours about the imperfections—but a good job as a world leader in telling people that it is worthwhile to protect your species, ecosystems and natural heritage. Thank you.

[The prepared statement of Dr. Warshall follows:]

Statement of Dr. Peter Warshall,
Peter Warshall and Associates, Tucson, Arizona

I would like to thank the Subcommittee and our Congressmen for the opportunity to address the importance of rural communities, forest/range issues, and the Endangered Species Act. As a citizen of both Arizona and the US, I hope to be practical and real in understanding how the ESA has played out in our area.

Compared to Congressional acts that established national forests as the property of all American citizens, and the Homestead Act, that helped foster rural communities, the ESA is still young. It is only thirty-one years old. Its meaning and importance to citizens, courts, Congress, and other government agencies have not been fully realized. Some Americans are concerned how to best protect our national heritage. They are patriotic about common lands such as National Forests and our heritage of unique species and ecosystems. Others feel ethical imperatives to save and protect non-human species. They rest their commitment on God's creation and the sin of letting one of His creations go extinct, or on the Great Spirit, or other deeply American commitments to respect and to learn from Nature. Still others wish to in-

sure that yet unknown economic values of rare and sensitive species (their opportunity costs) will not be lost. (Many unexpected species have become the basis for profitable medicines or tourist revenues.) In Arizona, all these approaches can be found within rural communities and contribute to the support of the ESA.

It is important to dispel various myths about the ESA.

Myth #1: The ESA is a major cause for economic decline in rural areas in the southwest.

Mining has been lost to globalization, reduced quality of ores, substitution for copper by new materials, high U.S. wages compared to lesser developed nations, and, at times, low mineral prices. The mining industry in Arizona began its decline before the ESA had major influence. It was not an issue in the closing of the smelters in Douglas (AZ), San Manuel (AZ) nor Playas (NM) or the reduction of operations at the Pima Mine (AZ). If any laws are to be blamed, the Clean Water and Clean Air Acts (which try to insure minimal off-site damage) can be finger-pointed. In Arizona, the ESA has not been a major driving force in mining decline.

Commercial agriculture has suffered from high water costs, competition between water users, water quality degradation, and global price competition (especially in the cotton markets) much more than the ESA. Competition between urban water users and Native American treaty allocations is much more important than the ESA. Among farmers, the ESA is a small headache compared to crop prices, subsidy politics, water prices, and the priority given to urban water rights.

Ranching is declining throughout Arizona but not because of the ESA. The major threat to ranching is housing subdivision development. Other threats include price competition from imported beef, mad cow disease, increased property taxes, feedlot and meat packing conglomerates, and prolonged drought. To combat housing subdivisions, groups like the Malpai Group have formed in Cochise and adjacent Hidalgo Counties. A group of over 20 ranches, covering a bit less than one million acres, and including deeded, BLM, FS and State lands, the Malpai group has spearheaded conservation ranching and private sector leadership. Its core goal is to slow down and prevent housing developments that threaten rural economies. Over half of the group's deeded land is now in conservation easements, not because of the ESA, but to prevent housing development. The Malpai Group has also developed grass banking and fire management programs to help ranch productivity. Here, private sector rural economics have used conservation-friendly methods to help itself, and indirectly help sensitive and rare species. These private actions help both the goals of the ESA and rural communities.

On one ranch, a private sector initiative, the Grey Ranch and Animas Foundation (Hidalgo County) have returned candidate species, black-tail prairie dogs, to some of their grasslands. Studies have shown that this species can help reduce shrub and tree encroachment. In the past, they were considered pests. Now, a rancher may help keep prairie dogs from being listed. On another ranch, the Magoffins have volunteered to maintain their population of the threatened Chiricahua Leopard frog and have sponsored classes with the Douglas High School. Another rancher is now selling "predator-friendly" beef, guaranteeing consumers that they protect and will not harm mountain lions and wolves. Predator-friendly beef is a new market niche that will help maintain rural life ways and endangered species. The Malpai Group has also stated that they will not shoot endangered jaguars (first seen on a ranch in 1997) even if they kill a cow. These few stories point to the new direction of conservation ranching. Part of the rural community does not see itself opposed to the goals of the ESA. At times (see below), the ESA can be an enormous headache, but the headache usually involves the implementation of the law, not the law itself.

As Mark Twain has said: "Whisky is for drinking; water for fighting." And, in Arizona, water fights include five states, two nations, and a dozen Native American reservations. Rural communities are at a disadvantage because water rights favor urban development and groundwater laws are contentious. The main connection to the ESA has occurred when river flow was needed for endangered fish such as the endangered Humpback chub in the Colorado or the need for cottonwood-willow forests by the endangered southwest willow flycatcher and various fish in the Gila basin. River flow allocations have yet to be adjudicated in the Gila River basin nor finalized for the Colorado. These decades long fights over adjudication are at the heart of the problem, not the ESA. Urban expropriation of rural community water is far more important than the ESA. The ESA is, at times, one player. It may recommend a minimal in-stream flows to help the whole ecosystem and recover a species like the Humpback chub. In the Colorado, these requirements support and are in harmony with a major, local recreational economy. The ESA may recommend scheduling water releases from dams to consider both fish/bird needs as well as many diverse (not rural) downstream users.

It is crucial to understand the context for these ESA recommendations. Arizona has lost over 90% of its cottonwood/willow forests., the major habitat of the will flycatcher. Only about 1% fully functions in a healthy manner. These fish and bird species are "canaries in the mine"—early indicators that water (as much as oil) and water-dependent habitats must be seriously considered in the twenty-first century. This is most apparent in the San Pedro River where every respected hydrologist warns that groundwater is running out and there is a conflict between the federal National Conservation Area and development. We must ask: Does Arizona and New Mexico want one or five per cent of our wetland heritage forests to remain for future generations? How much water should be allocated to public uses paid for by the nation's taxpayers and how much for private development? This question should not be trivialized by calling the ESA a demon. Nor, should issues of water resources management be artificially reduced to ESA issues. Competing surface, conjunctive, in-stream and priority water rights and over-subscription of water will be the defining issue of the southwest in the next twenty years.

In the southwest (as opposed to northern Arizona), the timber industry declined before the ESA had major impacts on harvest rates. For instance, the last lumber mill near Mt. Graham had closed before anyone re-discovered the endangered Mt. Graham red squirrel. The threatened Mexican Spotted Owl has been most entwined in the timber industry in the northern part of Arizona. In the southwest, its nesting in canyons and the much reduced timber prospects have created little conflict. No mills or jobs have been lost on the southwest from this species.

In conclusion, the ESA has not hurt rural economies in the southwest. (It has influenced the timber industry to the north.) It is a myth to claim that the ESA is responsible for rural decline. In fact, the new environmental-friendly tourist industry has been a major savior to some rural communities as the commodity-based economy declines. A fine example of this new rural economy is Portal, AZ. During the Rattlesnake fire in the Chiricahuas, all residents talked to the fire crews (who were not local) about saving south fork of Cave Creek. This riparian forest is the economic heart of Portal that services over 10,000 birdwatchers each year. The fire crews listened and did a good job of directing their fire lines saving both economics and species.

Myth #2: Congress and federal agencies make ESA decisions on the best science.

It is crucial to distinguish between the law itself and the implementation of the law by federal agencies. If we look at actual forest issues in Arizona and New Mexico, it is obvious that the major threat to forests comes from special-favor politics, compromised biological science (and agency biologists), and under-funding of various programs. This trio of sins is vastly more important than any changes in the law and its regulations. These obstacles to good science are NOT faults within the ESA law itself but in the arena of inappropriate political influence.

An Example: The Forests of Mt. Graham

In the southwest, the Mt. Graham red squirrel, southwestern flycatcher, Mexican spotted owl, and various native fish can be found near or in forests. In Arizona, many bitter fights concerning forests have occurred because the biological science needed to implement the law has been inappropriately impeded.

I served as an expert biologist in one such bitter battle over forest health and quality: the Mt. Graham red squirrel and astrophysical development (see Disclosure Document), have written the only peer reviewed article on the subject (Warshall, 1994), and was the team manger on the only comprehensive ground-truthing forest assessment of the upper elevation forests. I will quickly sketch how the best biological science was blocked and distorted.

The Mt. Graham red squirrel was proposed for endangered status by the Arizona Game and Fish Department, not environmentalists. The U.S. Fish and Wildlife Service did not list the squirrel within the time limit required by law. It is not known if this was for political or budgetary reasons. The Sierra Club (1987) threatened a lawsuit and, by June, the squirrel was listed. Ironically, the University of Arizona astronomers should be grateful to the Sierra Club for speeding the process of good biological science.

Two major issues existed for the ESA: how many squirrels existed and how much upper-elevation forest of what qualities existed? In addition, educated guesses had to be made of how stable the forest types might be over the next one hundred years. The more unstable the forest, the larger the protected zone required and the stricter the limitations on forest cutting.

Between 1986 and 1988, the Coronado National Forest, as lead agency, wrote three distinct versions of the Biological Assessment. Each edition had a different

Forest Service biologist as team leader. One team leader retired and another was moved off the project. This led the public to question the integrity of the agency's biological science. Delays occurred, not because of the ESA, but because each edition had a different number and configuration of telescopes in different areas of forest. Each new configuration had to be re-analyzed for its impact on different areas of forest by a new team leader.

In 1988, the Biological Assessment was sent to the U.S. FWS. The agency rejected the Biological Assessment and proposed another project which they had originally rejected (US Congress 1990: 39—55) and in a forest area that had not been previously assessed. This rejected project became the preferred alternative and confused biologists from the Forest Service and university. (I was then a University-hired biologist.) Two biologists requested data on the forest areas that would be impacted. U.S. FWS had no data. The public now thoroughly questioned the integrity of the science.

About June 1988, the University of Arizona made the most controversial decision. They abandoned the standard procedural rules and pursued a strategy to exempt the project from the ESA. They paid Patton, Boggs, and Blow (a Washington lobbying firm) over $1 million with federal taxpayer funds through a research and study grant. The proviso (a rider) was attached to a popular bill (the Arizona-Idaho Conservation Act) and, on the last day of Congress, it passed. By this act, special-favor politics immunized the project from a design based on good biological science and dashed hopes of a credible assessment of forest health and quality. The rider also immunized the astronomical consortium from Section 4 of the ESA, the section that might have reduced telescopes in Critical Habitat. The exemption pushed a local project into national controversy.

In a lawsuit, two U.S. FWS biologists testified that there was no good science behind the telescope site decision and that, contrary to Section 4(3) of the ESA, the decision was based on non-scientific considerations. (Section 4 says the decision should be based "solely on the best scientific and commercial data available.") Congressmen requested an investigation by a U.S. FWS blue-ribbon committee to review the data and application of the law. The team reported even greater and more extensive tampering with the data than an earlier analysis by the GAO. At that point, the astronomical consortium had a decision to make: Should they request a new Biological Opinion based on good science? They did not and a group of over 200 scientists (including some astronomers) protested. Various astronomy departments (Smithsonian, Harvard, NOAA) withdrew from the project.

In short, we see that the ESA was not at fault but that special-favor politics, inter-agency delays, distortion of science, and perhaps agency budgetary limitations created the controversy. Similar refusals to follow biological science have occurred with the listed Alabama flattened musk turtle and, in Texas, with the Concho River snake. Special-favor lobbyists are perhaps the forests worst enemy.

The lack of timely biological science and budgetary faux pas have continued on Mt. Graham. In 1993, the U.S. FWS Recovery Plan set as a high priority (Priority 131), a fire management plan that "minimizes fire in all squirrel occupied areas." If the Coronado National Forest had made such a plan, it might have protected both squirrels and telescopes. The ESA was not a barrier to the plan, which cost an estimated $10,000 in 1993. Nor did neither the Red Squirrel Committee nor the University of Arizona fund any studies on fire management and insect studies. (It spent hundreds of thousands on other study projects.) The Forest Pest Management Team of the USDA did begin studying the spruce beetle in 1992. Recommendations were published for the roundheaded pine beetle but, as far as I know, no recommendations were published for the spruce beetle. The pine beetle recommendations alternatives included salvage, mechanical controls, sanitation/salvage, and insecticides. These methods could have been used for the spruce beetle and insect control would have provided local employment. Nothing was done and telescopes, taxpayer and squirrels suffered (the squirrels, the most). The issue was not the ESA nor the accumulated debris and dead-and-down but the inability of the agency and the U.S. to appropriately study and implement a fire program.

In short, the bad reputation of the ESA may not be deserved. The law, like most laws, is imperfect, has loopholes and needs thoughtful critique (see Recommendations). But, certain politicians and citizens fear that good forestry science will always harmful to their desires. This is wrong. Good biological science needs to be allowed to happen. Good science does not play favorites and can change policy to the likings or dis-likings of any or all constituents. (Good science means peer review, proper methodology, transparency so that scientists outside agencies can review data, and a mechanism to insure that the most accurate data will be considered.)

Special-favor politics is hard to overcome and can sour the ability to do things in timely manner because it fosters suspicion. Stopping special-favor politics does not

require changing the law. It requires whistle-blowers, lawsuits, concerned Congressmen, independent scientists, and an informed press.

Example of Inter-agency Difficulties: Programmatic Fire Plans

In 1995, the Coronado National Forest began a Programmatic Fire Plan. The plan, among its goals, was to have obtained a one-time clearance from the ESA for prescribed burns for private landowners and managers surrounded by federal lands. Without the plan, landowners are required to file for a separate permit for each burn. The process and expense can be so arduous that the burn season is over before the prescribed burn can occur. The burns are to boost the productivity of the rural rancher economy by revitalizing forage, and reduce the opportunities for catastrophic fire and property damage.

In 2004, the fire plan has still not been completed. Ranchers involved with the largest prescribed burn in AZ/NM (the Baker burn of 48,000 acres) had to deal with fourteen agencies in two states. They received easy clearance for Sanborn's long-nosed bat because fire reportedly helps agaves that are a major source of food. They paid for a private survey for threatened Mexican Spotted Owls on the proposed prescribed burn lands in order to speed the process. Nevertheless, a disagreement among the agencies about impacts on the ridge-nosed rattlesnake postponed the burn for two years. The postponement caused ranchers precious time, and money to fund a representative to meetings in two states.

Although the ESA was involved, the delay and its economic consequences stemmed from the Forest Service's inability to complete the fire plan and the inefficiency and inability of the players to work together. There were no environmental groups involved in a major way. The ESA as a law was not at fault.

This inefficiency is, in part, due to lack of adequate Congressional funding and a business-like attitude among the leadership. The most infamous environmental group in the southwest, the Center for Biological Diversity, has won over 80% of its lawsuits concerning the ESA. Most wins have been based on the U.S. FWS inability to complete its job in a timely fashion or do its job correctly. The Center has won on procedural, not science, issues. It is unfortunate that a sound law should be so ridiculed and polarized, when the major problem is not in the wording itself, but the functioning of a government agency.

Myth #3: The ESA is draconian.

In the democratic process, a law is always tested against very specific realities. The ESA must deal with hundreds of forest types and unique species requiring an open-minded learning process. Contrary to those who feel it needs to be discarded that learning process has occurred.

In the last 30 years, the ESA has nurtured the imagination of landowners, public officials and concerned citizens. In a recent Nature, the world's most prominent science journal, President Bush pointed out some of the new "tools" learned to decrease regulatory burdens: habitat conservation plans, conservation banking, voluntary agreements with landowners, and partnerships with states, tribes and non-governmental organizations. We might add safe harbor agreements and land-use plans such as the Sonoran Desert Conservation Plan just passed by Tucson that includes wildlife corridors, some land purchases, and consideration of endangered wildlife. Unfortunately, neither party will confront the bigger problem of special-favor politics.

Although recovery has been difficult, the survival of minimal populations has been very successful. In Arizona, the condor and black-footed ferret have survived near extinction. The southern bald eagle, though in danger once again with no critical habitat, has become the focus of active preservation programs. There is now an active program to monitor and protect jaguars. In Aravaipa Canyon, listed native fish have been protected from invasives by a small dam. Many of the plants listed have received enough attention that their minimal viable populations are secure.

New proposals, in addition to Critical Habitat, to make recovery more effective are needed. Congress has not discovered them nor passed new laws to encourage them. At this point, most work is to be found in the private sector and among NGOs. Wildlife corridors, allowing safe passage of species between protected areas are one of the most exciting conservation projects. It is crucial as global climate change alters the habitats of the southwest. I have included a series of recommendations concerning the ESA in hopes that they may reduce regulatory burdens and lawsuits and speed survival strategies and recovery programs.

Conclusions

The ESA has provides a table for all players to visit, participate and listen. No other law, except NEPA, provides this opportunity for citizen participation and oversight. Since the ESA concerns the ethical values of governance, it is importance to

have a citizen forum. This good news is important and needs to balance the overstated rhetoric that the ESA is either untouchably sacred or the devil incarnate.

The ESA is the only U.S. law that sets aside habitat for heritage species in danger of extinction. I work in Africa, Mexico, and parts of Latin America. In Africa, coworkers always praise America for its ability to peacefully change governments with no bloodshed and assassinations. Then, they praise America for respecting its national heritage and protecting its habitats and species. Most Europeans come to America to see that heritage. In short, support of the ESA has global repercussions and the US, as world leader, should be mindful. The protection of coral reefs or rainforests receives support from the U.S. setting an example and support for the ESA.

Recommendations

The ESA process has been an imperfect framework. Issues of language and meaning, especially concerning Critical Habitat, are real and important. Here are a few recommendations to improve the functioning of the ESA.

A. Before the ESA is deemed satisfied for a particular project, Congress should be required to hold Committee hearings.

In this Arizona controversy and others, no committee hearings were held. Exempting a project from the ESA limits Section 7 (formal consultation) from adding new information, which may be helpful in resolving opposing views. Committee hearings constrain the desire of Congress to by-pass its own laws, show respect for local communities and state agencies, and reduces anger and bitterness.

B. If a Biological Opinion has been "predetermined" or deliberately based on non-biological information, a new BO should be required. The choice should not be discretionary.

C. All BOs should have a section on what data is missing or unavailable and its importance to survival and recovery.

Oddly, from my point of view as a scientist, these are rarely in BOs. Missing forestry data do not favor advocates nor opposition to the ESA. It depends on the circumstances. It does provide the public and line-officer with a better understanding of how sure his/her strategy to protect a species will work.

The 1993, Mt. Graham red Squirrel Recovery Plan, for instance, did not mention insect tree disease as a risk of extinction. This embarrassing omission left the agencies unprepared for the plague that killed over ten thousand trees in Critical Habitat. More emphasis on drought, tree stress and disease, and the prospects for a twenty-year drought might have motivated the agencies to take earlier actions to reduce the catastrophic fires and insect outbreaks that did occur.

D. A finer distinction between "Minimal Viable Habitat" and "Critical Habitat."

To provide more flexibility and less fear of the ESA, a smaller area of minimum viable habitat can be distinguished from critical habit in Section 4. Minimal viable habitat would have a no further destruction designation. It would be for survival, a minimal habitat to buffer decadal set backs from natural causes and provide the support for the population size required to survive. Critical habitat would be the habitat required for full recovery. Critical habitat would consider economic development and how severely the development might retard full recovery. Nevertheless, it could allow some economic development. (This closes the legalistic loophole called "friendly jeopardy.")

The jaguar situation in AZ/NM is perhaps a good illustration. The designation of critical habitat appears pre-mature to many because no male and female have ever been seen (only males). An area would become minimum viable habitat when a pair had been observed. The ecological friendly areas would have the looser designation (the new critical habitat definition). This "modular" approach would allow minimal viable habitat to expand, if jaguar pairs ever showed up.

E. Improved inter-agency deadlines and efficiency

Perhaps the most difficult barrier is accountability and timeliness between agencies. They are, of course, in denial of this problem, a kind of conspiracy of optimism. Some kind of incentive and punishment system for too many law suits because of procedural errors, too many deadlines missed, use of mis-information or avoiding information, and adequate funding available based on more business-like contracts would help.

Mr. WALDEN. Thank you for your testimony.

Again, just for the record, Dr. Warshall, the Democrat minority had 3 weeks to come up with witnesses. We found out you were going to be their witness Friday as well.

So, the hearing we had in Oregon, they produced no witnesses from the environmental community, nor did they attend that one, nor did they attend this one.

Dr. WARSHALL. I was just going to thank you.

I understand that, and I thank the Republican party for allowing me to talk at such a late date.

Mr. WALDEN. Our next witness, Ms. Holder.

Thank you for being here. We look forward to your testimony. Again, your full written testimony will be a part of the record. So if you would like to go ahead, thank you.

STATEMENT OF JAN HOLDER, EXECUTIVE DIRECTOR, THE GILA WATERSHED PARTNERSHIP

Ms. HOLDER. Thank you.

My name is Jan Holder, and I am Executive Director of the Gila Watershed Partnership, but I am also an environmentalist, and I am also a cattle rancher.

I mention that because I like to say that I have the ability to see both sides. But a lot of people here, I think, will probably dislike me for one reason or another. But I really believe that most environmentalists and most agricultural producers want the same things. We want clean water. We want clean air. We want healthy ecosystems, and we want abundant wildlife.

But here is how you can help us. Even though I believe that the Endangered Species Act is important to protect wildlife that sometimes in the past we have inadvertently—but sometimes purposefully—destroyed, but I believe that there are some problems. For one reason, there has been no support for farmers and ranchers to allow them to make the changes necessary to make room for these threatened, endangered and reintroduced species.

Let me give you one good example. In the area where we ranch, the Mexican Gray Wolf was reintroduced. They spent over $7 million reintroducing the wolf, but not 1 cent was spent in educating the local ranchers in how to get along with the wolves that were gone for so long. These ranchers are people that are growing healthy, safe food and supporting the local wildlife, including many threatened and endangered species.

But the very presence of these wolves means a lot of extra work for these ranchers. A lot of these ranchers have had to return to day herding, which they have not done for a long, long time. These ranchers have had to move their cattle a lot more often. They have had to change their calving seasons. They have no idea how to interact with the wolf any longer.

It has increased the ranchers' workload and added expense to their already stretched pocketbooks, which might not be that big of a deal, but most ranchers and farmers these days are stretched so thin that they cannot afford any more work or any more expense.

The situation is similar whether you are talking about something small as the Loach Minnow or as large as the grizzly bear; this situation actually imperils the very wildlife and the habitat that we seek to protect. The problem is that what happens is that these

ranchers, if they become—have any problems economically, a lot of ranchers and a lot of farmers just will not make it.

What will happen is this land that we are seeking to protect will be sold out for vacation homes. Between 1992 and 1997, 16 million acres of agricultural land in the United States were converted to development. In the last 5 years, the conversion rate has more than doubled. The U.S. Population is expected to grow by one-half in the next 50 years, and even more pressure will be placed on our farms and ranches for development. With the traditional uses of this land, development and infrastructure will be added, and agricultural land will become vacation properties. These changes are advancing rapidly. I believe the wildlife habitat and large-scale connectivity will be lost, and wildlife corridors will be forever altered.

So I think we need to consider the economic issues along with the environmental concerns in each and every management decision that we make. It is a three-legged stool, and it will fail unless all three elements are considered equally.

When an environmental impact statement is crafted, I know that the social and economic impacts are considered, but what I have seen is that, in the implementation stage, the biological considerations take center stage, while the local communities are left without the means to cope effectively, and they are not equipped to act proactively. All these people on this land can do is react to the situation as best as they can.

As a cattle rancher and as an environmentalist, what I would like to see is supports and incentives built into the Endangered Species Act to encourage the farmers and ranchers to be good stewards of the land and to help them adapt to the new world. These ranchers are producing healthy and safe food while protecting our wide open spaces. It benefits all of us to keep them on the land.

Thank you.

[The prepared statement of Ms. Holder follows:]

Statement of Jan Holder, Program Manager, Gila Watershed Partnership

My name is Jan Holder. I am an environmentalist. My family actively supported the reintroduction of the Mexican Gray Wolf. I am president of a predator-friendly company that sells product in eleven western states. I am on an advisory board for Defenders of Wildlife. And, I am a cattle rancher. I raise cattle on public lands. I promote and support the economic development of farming and ranching. So, what does that make me? A rancher or an environmentalist? I guess that means that just about everyone here will hate me for one of those two reasons.

By saying this, you may think that I have an overdeveloped sense of irony. Or, a death wish. But it's neither. I believe that most of us here want the same things. Clean water, clean air, healthy ecosystems and abundant wildlife. Being able to have all these things is not a dream. I've seen it happen. There are communities coming together to make things work. And, here's how you can help us.

The Endangered Species Act is important to protect wildlife that we have in the past inadvertently and sometimes purposefully destroyed. But, the Endangered Species Act is another under funded mandate by congress. There were not enough appropriations by congress to allow U.S. Fish and Wildlife to do their job in a timely fashion. There has been no support for farmers and ranchers to allow them to make the changes necessary to "make room" for threatened, endangered or reintroduced species. There has been no money or incentives for them to be good stewards of the land.

As an example, the Mexican Gray Wolf reintroduction has cost taxpayers over seven million dollars to implement. We have spent millions reintroducing the wolf

to our modern environment, but we haven't spent one cent reintroducing the ranching community to the wolf.

Many of the small ranches are good stewards of the land. They are growing healthy, safe food and supporting the local wildlife, including many threatened, endangered and reintroduced species. Our ranch is one of them but we are not the only ones. In Montana, the Madison Valley Ranchlands Group is working collaboratively with the environmental community to reduce the conflict between wolves and livestock. In Blaine County Idaho, the Lava Lake Land and Livestock Company is raising sheep in wolf country and has a growing organic lamb company.

The very presence of wolves means extra work for the people in their vicinity. Many ranchers have returned to day herding in order to protect their herds. They move the cattle more often. Change their calving seasons and locations. It has increased the ranchers work load and added expense to their already stretched pocketbooks. And the situation is similar whether we are talking about something as small as the loach minnow, or as large as the grizzly bear.

This situation imperils the very wildlife and wildlife habitat we seek to protect. Combined with the declining economics of commodity-based agriculture and the continuing drought, many ranchers and farmers will not survive. The result will be a changed landscape, with the riparian ecosystems taxed with additional water demands. Between 1992 and 1997, 16 million acres of agricultural land in the U.S. were converted to development. During the last 5 years, the conversion rate more than doubled from the previous decade. The U.S. population is expected to grow by one-half in the next 50 years, and even more pressure will be placed on our farms and ranches to sell their property for development.

With traditional uses of the land altered, development and infrastructure will be added as agricultural land become vacation properties and "ranchettes." These changes are advancing rapidly and the effect will be devastating, with wildlife habitat and large scale land connectivity forever lost. Habitat for threatened and endangered species will be irreparably harmed and increasingly difficult to protect and manage. Wildlife corridors will be forever altered.

We need to consider the economic and social issues along with the environmental concerns in every management decision we make. It's a three legged stool. It will fail unless all three elements are considered equally. When an Environmental Impact Statement is crafted, the social and economic issues are raised. But in implementation, the biological considerations take center stage, while the local community is left without the means to cope effectively. They are not equipped to act proactively. They can only react to the situation as best they can with limited experience and even more limited resources.

As a cattle rancher and an environmentalist, what I would like to see is: supports and incentives built into the endangered species act to encourage farmers and ranchers to be good stewards of the land. We want to help them learn to coexist with wildlife. These ranchers are producing healthy safe food while protecting our wide open spaces. It benefits all of us to keep them on the land.

Mr. WALDEN. Thank you for your testimony.

Our final witness on this panel, Dr. Powell.

We are delighted to have you with us, and we look forward to your comments, sir.

STATEMENT OF BUDDY POWELL, DIRECTOR, MOUNT GRAHAM INTERNATIONAL OBSERVATORY

Mr. POWELL. Chairman Walden, Chairman Pombo, Congressman Flake.

Mr. WALDEN. You might need to get that microphone a little closer.

Mr. POWELL. Thank you for the opportunity to be here today.

My name is Buddy Powell. I have been employed by the University of Arizona for 19 years. I currently serve as director of Mount Graham International Observatory. Today I will share with you, your colleagues and our citizens my 11 years of experience of working with the Forest Service, trying to get the area around the observatory cleared and protected from catastrophic wildfire.

I will also share with you over 100 Federal court actions and our administrative appeals, mostly based upon the Endangered Species Act, to stop construction of the observatory. The observatory is located near the summit. It is actually on the third lower summit. There are three higher mountain peaks in the area than we are at. It is confined to 8.6 acres out of the over 200,000 acres of land available on Mount Graham. It was established after the Congress passed and President Reagan signed the Arizona/Idaho Conservation Act in 1988 and under a special use permit issued by the U.S. Forest Service in 1989.

The University of Arizona Steward Observatory is the lead agency in providing the observatory with cutting-edge facilities to conduct scientific investigations in astronomy and astrophysics. It is an international project with collaborators from institutions in Germany, Italy, the Vatican and other institutions in the United States.

At this time, the facilities at the observatory are valued at approximately $200 million. One-half of that money has come from the United States, and one-half has come from Europe. We are truly an international collaboration.

I have provided copies of my testimony today, and I also have brought a few that I will leave for the staff of the detailed letters that we have written and received asking for help in protecting the observatory.

We have tried to obtain the authorization to protect the observatory, as I said, but the authorization has been very difficult to obtain. In fact, most of the time, everybody acknowledges it needs to be done, but I am told repeatedly it cannot be done because of the Endangered Species Act.

In 1993, after giving up on oral requests, I began a series of letters to the Forest Service asking for help. The last letter that I wrote—that the University wrote—was 11 years later, asking for help. Protecting the observatory for us, of course, is a very important issue. Bring some—and we are not talking about clear cutting, by the way. We are only talking about implementing what the Forest Service's fire structure expert in Missoula, Montana, had recommended.

We asked that the Forest Service structure specialist from Missoula come out and tell us what needed to be done. This was not our proposal. This was not us. We are not firefighters. We are not Forest Service people. We simply wanted to protect our facilities from catastrophic wildfire.

That was prompted because in 1996, Clark Peak fire burned within 100 yards of the Vatican Advanced Technology Telescope. It clearly sent a strong message to all of us that we were in serious danger and could lose our facilities.

Although we continued to do that, and we continued to ask for help, not until 2002 were we given any opportunity to do anything. In 2002, under a categorical exclusion, the Forest Service did indeed decide that it could permit us to implement some of the stuff recommended by their own fire experts. However, we did not get a copy of that decision until 4 months later, despite our repeated requests.

But now, to be fair, I also have to say that the Forest Service came up, conducted—pulled all of the—there was roughly 100,000 acres or 100,000tons of fuel out in the forest. They pulled it all up next to our building in July, just before the monsoons—for us, the summer thunderstorms—so we spent the July 4th weekend hauling it all away, off forest, because, frankly, it looked to me like they put a bunch of stuff up there. You could not think of a better way to burn a building down.

Having said that, nonetheless, we were appreciative of that. We were pleased to work over the 4th of July weekend to remove that material, because it was the first chance that we have had to actually start implementing something more sensible. And, again, all of these actions were alleged by the Forest Service to be based on the requirements of the Endangered Species Act.

The Nuttall-Gibson fire on July 2nd of this year approached to within one-quarter of a mile of the observatory. Firefighters did a tremendous job of protecting our site, but at substantial cost. Firefighters prepared the site for protection from the oncoming wildfire with rapid thinning, clearing and cleaning of the Forest surrounding the observatory. In 2 days, those firefighters conducted more extensive work around the observatory than I could get accomplished in 11 years.

While the observatory suffered no damage, approximately 90 percent of the red squirrel designated critical habitat was lost to the Nuttall wildfire. In 2003, a Red Squirrel Monitoring Program graduate student conducted a study and determined that only about 20 percent—actually a little bit less than 20 percent—of the squirrels live near the observatory in the designated critical habitat; 80 percent of the population is down in the mixed conifer well below the observatory and below the summit of the mountain.

And my final irony, if I may say so, for me personally is to give you an example of how I feel that the Endangered Species Act was misused to delay construction of the large binocular telescope for 2 years. In 1993, university biologists came to me and requested we relocate the telescope about 600 yards to the east of its initial projected location to minimize impact on the Mount Graham red squirrel. About six squirrels were living in the approved construction site, and none were living at the location preferred by the biologists.

University staff conducted tests of the atmosphere to determine the quality of the site and to determine it was equal to or perhaps slightly better than the approved site. The Forest Service biologists conducted an environmental assessment and found that the proposed site would have less impact on the squirrels.

Based upon what I thought was a win-win situation, that is biology and astronomy, most sciences would win, I requested that the Forest Service issue authorization to let me relocate the telescope to an area where there were no red squirrels, no endangered species.

The Forest Service approved our request, and in December of 1993, the trees were cut and removed. In May 1994, before we could start work because of the snow, a radical activist filed suit alleging location of the LBT was improper. In July of 1994, the U.S. District Court entered a restraining order prohibiting any

further work at the telescope site. After nine separate court actions, on July the 31st, 1995, the 9th Circuit Court of Appeals denied our petition for a rehearing.

We then approached Congressman Jim Kolbe, who in those days—this was in Congressman Kolbe's district as well. Congressman Kolbe introduced legislation to clarify the intent of the Congress that LBT or the new telescope—the large telescope should be constructed where it would have the least impact on the squirrel. The proposed location met the intent of the U.S. Congress.

As a result of Congressman Kolbe's legislative efforts, the U.S. District Court on May 16th, 1996, 2 years later—2 years after we did what we thought was a win-win situation and the right thing to do, based on biology and astronomy—we were granted relief from the judgment by dissolving the injunction against the construction, and work restarted again on the last telescope project.

I and others believe that compliance with the Endangered Species Act should not preclude operation or protection of our observatory based on the limited work we need to do to protect the site. I and other stakeholders simply request that the managers of the National Forest use reasonable implementation of the Endangered Species Act and other laws, implementation that balances the true needs of the species with prudent requests of stakeholders.

We believe that although the Endangered Species Act is important and a well-intentioned law, it is broken, and it needs to be fixed. The Endangered Species Act should be used to protect species from extinction, not as an obstacle to prevent legitimate actions. One constructive step would be to leave the enforcement of ESA to the Federal agencies and not to private individuals to promote their own private agendas.

I thank you for the opportunity to be here with you today.

[The prepared statement of Mr. Powell follows:]

Statement of B. E. Powell, Associate Director, Steward Observatory, and Director, Mount Graham International Observatory, Tucson, Arizona

Thank you for the opportunity to be here today. My name is Buddy Edward Powell and I am employed by the University of Arizona, as the Associate Director of Steward Observatory. I also serve as Director of Mount Graham International Observatory (MGIO). Today, I will share with you and your colleagues my eleven years of experience in working with staff of the U.S. Forest Service to reduce the risk of uncontrollable wildfire at the MGIO. I will also share with you over 100 Federal Court actions and/or administrative appeals, mostly based upon the Endangered Species Act (ESA), filed to stop construction of the Observatory. MGIO is located near Safford, Arizona, and is confined to 8.6 acres of the 200,000 acres of Mount Graham. It was established after the Congress passed and President Reagan signed the Arizona-Idaho Conservation Act of Arizona in 1988 and under a Special Use Permit issued by the U.S. Forest Service in 1989.

The University of Arizona, Steward Observatory, is the lead agency in providing MGIO with cutting-edge facilities to conduct scientific investigations in astronomy. It is an international project with collaborators from institutions in Germany, Italy, the Vatican and the United States. At this time, the facilities at MGIO are valued at approximately $200 million.

The first part of my testimony will summarize the University of Arizona's correspondence with the U.S. Forest Service concerning the need for fuels reduction at MGIO. Attached are brief summaries of twenty-nine documents relating to fuel reduction at the site: the first document is dated July 15, 1993, and the most recent is dated July 1, 2004—eleven years later. I have provided copies of my testimony and supporting documents for you today. My testimony will highlight the contents of some of these documents and try to give you a sense of the frustration we have encountered in trying to take simple measures to protect MGIO from catastrophic

wildfires which have raged throughout the western United States for the past several drought prone years.

MGIO has attempted, over the course of the last decade, to obtain authorization from the U.S. Forest Service to conduct the necessary actions under the National Environmental Protection Act (NEPA) and in compliance with all laws and regulations including the Endangered Species Act (ESA). During this time, such direction and authorization had been difficult to procure, despite the acknowledgement of all parties that MGIO was at great risk of catastrophic loss from wildfire from at least 1993 onward.

The first document (#1 in the listing) from U.S. Forest Service Safford District Ranger, Richard Kvale, in 1993 established the concern of both the U.S. Forest Service and University of Arizona as well as other interested parties in the increased potential for insect infestations and devastating wildfires in the upper elevations of the Pinaleno Mountains (also known as Mt. Graham). At this time the U.S. Forest Service requested comments about the situation. I responded to this request with the first of many letters to the U.S. Forest Service supporting action and requesting that such action include work at MGIO (#2). Until 2002, the U.S. Forest Service did not permit action on its part or the part of MGIO at the observatory site except during the Clark Peak wildfire of 1996.

The Clark Peak Fire of 1996 prompted the first and only U.S. Forest Service approval in over one decade to perform fuels reduction work at MGIO (#4). During this decade, fear of suits under the ESA had paralyzed the USFS with regard to active forest management for forest health or wildfire control. The limited USFS authorization as the result of the Clark Peak Fire allowed removal of all dead and down wood and standing snags in a limited south and west area out to a distance of 50 feet from the site. The Clark Peak fire burned within 100 yards of the Vatican telescope facilities. After this approval and subsequent work, the U.S. Forest Service did not permit any additional work around the MGIO site until 2002. U.S. Forest Service "treatments" occurred in campgrounds and other areas on Mt. Graham through 2004. The University of Arizona continued to support the U.S. Forest Service efforts to reduce fire danger on Mt. Graham but with each U.S. Forest Service action under NEPA, the University requested that MGIO be included in the efforts. The U.S. Forest Service declined to include the observatory site in any of its actions and did not indicate until 2002 that the University should take any steps to submit proposals under NEPA to take action itself.

In 1997 (#6), the U.S. Forest Service requested comments on its Pinaleno Ecosystem Management (PEM) Demonstration Program. I responded to the call for comments by supporting the PEM and once again requesting that proposed work include the MGIO area in order to protect the considerable financial investment and red squirrel habitat (#7). District Ranger George Asmus responded that all areas of the PEM project would remain outside the MGIO and Mt. Graham Red Squirrel monitoring project areas (#8).

Letters in 2000 and 2001 from the University of Arizona, the Vatican Observatory Foundation, owner of the Vatican Advanced Technology Telescope at MGIO, and the Large Binocular Telescope (LBT) Corporation, owner of the LBT under construction at MGIO, reiterated the need for a fuels reduction program around MGIO to protect their investments (#9-10). In 2002, the Arizona Game and Fish Commission added its call to the U.S. Forest Service to take meaningful action on insect infestation, deteriorating forest health and related wildlife impacts and associated high risk of wildfire on Mt. Graham (#14). These and other requests of 2000-2002 (#11-14,17) culminated in a letter (#18) from Richard C. Powell, Vice President of Research at the University of Arizona, to John McGee, Forest Supervisor of the Coronado National Forest, commenting on the cost of conducting an environmental assessment suggested in 2002 by McGee and requesting authorization for appropriate measures to be implemented before the occurrence of a catastrophic wildfire.

In 2002, the University of Arizona requested that Jack Cohen, Fire Scientist at the U.S. Forest Service in Missoula, Montana, visit MGIO and give us recommendations on what should be done to protect the Observatory from wildfires. Mr. Cohen is a well-known expert on structure protection during wildfire events. The result of Mr. Cohen's visit was a Proposed Action submitted by the University of Arizona to the U.S. Forest Service and a Decision Memo from the U.S. Forest Service that allowed MGIO to proceed with limited fuels reduction work under a NEPA Categorical Exclusion (#19-22). MGIO has proceeded with the authorized work during the summers of 2002, 2003 and 2004.

In October 2003, the University again requested authorization for full implementation of the Cohen recommendations by commencing an Environmental Assessment under NEPA (#23 and 24). The University had received a one-year grant from the State of Arizona for fuels reduction work. The University revised this Proposed

Action based on directions in meetings with the U.S. Forest Service and resubmitted the proposal in March 2004. The U.S. Forest Service told the University at different times that it was reluctant to review or respond to this proposal because it wanted to include it with other projects for future consideration. The University responded to these U.S. Forest Service concerns in letters in March and April 2004 (#25-27). The final documents in this listing are the U.S. Forest Service letter in June 2004 from Forest Supervisor Jeannine Derby to Richard C. Powell discussing actions at MGIO and a document clarifying points in that letter (#28 and 29).

The Nuttall-Gibson Fire on July 2, 2004 approached to within one quarter mile of MGIO. Firefighters did a tremendous job of protecting the site but at substantial cost. Firefighters prepared the site for protection from the oncoming wildfire with rapid thinning, clearing and cleaning of the forest surrounding MGIO. In two days, these people conducted more extensive work around MGIO than the University and its partners were allowed to conduct for eleven years. At Mr. Cohen's last site visit (August 2004) he reiterated that if MGIO had been allowed to proceed with controlled, long-term manicuring of the area around MGIO out to a minimum distance of 150-200 feet, such uncontrolled, extensive work would not be needed to protect the facilities from catastrophic wildfire.

While MGIO suffered no damage, approximately ninety percent of the red squirrel designated critical habitat was lost to the Nuttal wildfire this year. In 2003 a Red Squirrel Monitoring Program study indicated that only about twenty percent of the red squirrel population is in the spruce-fir forest at the elevations of MGIO while eighty percent live in the mixed conifer below the Observatory.

For me personally, perhaps the final irony is how ESA was misused to delay construction of the Large Binocular Telescope for two years. In 1993, University biologists came to me and requested we relocate the LBT about 600 yards to the east of its initially projected location to minimize impact on the Mount Graham Red Squirrel. About six squirrels were living in the approved construction site and none were living at the location preferred by the biologists. University staff conducted tests of the atmosphere to determine the quality of site and determined it was equal to or perhaps slightly better than the approved site. USFS biologists conducted an Environmental Assessment and found the proposed site would have less impact on the squirrel. Based upon the results of the studies, we concluded it was a "win-win situation" and we requested USFS approval to relocate the LBT. USFS approved our request and in December 1993 the trees at the new site were cut and removed. In May 1994, radical activists filed suit alleging location of LBT was improper. In July 1994, U.S. District Court entered a restraining order prohibiting any further work on the LBT. After nine separate Court actions, on July 31, 1995, the 9th Circuit Court of Appeals denied our petition for a re-hearing. Congressman Jim Kolbe introduced legislation to clarify the intent of the U.S. Congress that LBT should be constructed where it would have the least impact on the Mount Graham Red Squirrel, and the proposed location met the intent of the U.S. Congress. As a result of Congressman Kolbe's legislative efforts, the U.S. District Court on May 16, 1996, two years later, granted relief from the judgment by dissolving the injunction against construction, and work was restarted on the LBT.

I and others believe that compliance with the Endangered Species Act should not preclude operation or protection of MGIO based on the limited work we need to do to protect the site and on the results of the monitoring studies of the squirrel. I and other stakeholders simply request that the managers of the national forests use reasonable implementation of the Endangered Species Act and other laws; implementation that balances the true needs of the species with prudent requests of stakeholders. We believe that although the Endangered Species Act is important and a well-intentioned law, it is broken and needs to be fixed. The Endangered Species Act should be used to protect species from extinction, not as an obstacle to prevent legitimate actions. One constructive step would be to leave enforcement of ESA to the Federal agencies and not permit its use by private individuals to promote private agendas.

Thank you for this opportunity to testify before your Subcommittee today.

[Attachments to Mr. Powell's statement follow:]

1. Annotated Listing of Documents Concerning Mt. Graham International Observatory Fuels Reduction Requests 1993-2004
2. Summary of Legal Activities, Mount Graham International Observatory (1988-Present)

ANNOTATED LISTING OF DOCUMENTS CONCERNING MT. GRAHAM INTERNATIONAL OBSERVATORY

FUELS REDUCTION REQUESTS

1993-2004

1. July 15, 1993 letter from Richard Kvale, U.S. Forest Service (USFS) Safford District Ranger, to Buddy Powell, Associate Director of Steward Observatory. Discussion of decreasing potential for increased insect infestations and devastating wildfire in the upper elevations of the Pinaleno Mountains, and requesting comments.
2. August 5, 1993 letter from Buddy Powell to Richard Kvale. Support for USFS actions proposed in July 15, 1993 letter but requesting that treatment be developed and implemented by USFS to reduce the risk of uncontrollable wildfire at the Mt. Graham International Observatory (MGIO).
3. August 21, 1994 letter from Richard Kvale to Gerry Perry, Regional Supervisor Arizona Fish and Game Department. Enclosing and agreeing with the urgency of a letter from Henri Grissino-Mayer of the University of Arizona (UA) Tree Ring Laboratory about wildfire on Mt. Graham. "We are very close to a catastrophic fire in the Pinaleno Mountains." Business as usual can no longer continue.
4. April 28, 1996 letter from Richard Kvale to John Ratje, Operations Manager of MGIO. USFS approval to remove all dead and down wood and standing snags at a distance of 50 feet from the south and west aspects of the telescope site. [During Clark Peak Fire.]
5. May 6, 1996 letter from Ted Moore, Incident Commander and Tom Skinner, District Ranger, to John Ratje. Thank you for helping protecting MGIO during the Clark Peak Fire.
6. April 17, 1997 letter from George Asmus, USFS Safford District Ranger to Steward Observatory. Announcement of treatment areas for the Pinaleno Ecosystem Management (PEM) Demonstration Program: near summerhouses close to campgrounds, Columbine Work Center and Columbine Visitor Information Stations. Request for comments.
7. May 13, 1997 letter from Buddy Powell to George Asmus. Support of April 17, 1997 letter about fuels reduction in Pinaleno Mountains—including a formal request that "USFS implement a corrective treatment program to reduce the unnaturally large accumulation of dead fuel in the Observatory area." Comments on the need to protect this considerable investment and the red squirrel habitat.
8. September 21, 1998 letter from George Asmus to Buddy Powell. Details revision of proposed PEM area and treatments. All areas remain outside MGIO and the Mt. Graham Red Squirrel (MGRS) monitoring project areas.
9. December 11, 2000 letter from Buddy Powell to George Asmus. Support for the Alternative 1 of the Environmental Assessment, Pinaleno Ecosystem Management Demonstration Project and request to expand the fuel reduction treatments to include the area around the Mt. Graham International Observatory (MGIO).
10. December 15, 2000 letter from Chris Corbally, Vice Director Vatican Observatory Research Group, to George Asmus. Support for Alternative 1 of the Environmental Assessment, Pinaleno Ecosystem Management Demonstration Project around the telescopes into the plan.
11. October 24, 2001 letter from Buddy Powell to George Asmus. Request to conduct a wildfire reduction treatment program in the forest near the Mt. Graham Observatory. With attached pictures of forest around MGIO in 1999 and 2001.
12. November 6, 2001 letter from John P. Schaefer, Chairman of the Board of the Large Binocular Telescope (LBT) Corporation to Gale Norton, Secretary of the U.S. Department of Labor. Concern about the alarming condition of the forest on Mt. Graham and request that the USFS act on University of Arizona requests from 2000 and 2001 to conduct a wildfire reduction treatment program in the forest surrounding MGIO.
13. November 7, 2001 from Richard C. Powell, Vice President of Research, University of Arizona to George Asmus, Safford District Ranger. Concern about the fire danger on Mt. Graham and enclosing the Buddy Powell letter of October 24, 2001 to George Asmus.
14. December 17, 2001 letter from Duane L. Shroufe, Director Arizona Game and Fish Department to John McGee, Forest Supervisor, Coronado National Forest, USFS. Concern about the ongoing insect infestation, deteriorating

forest health and associated high risk of wildfire on Mt. Graham. Request for immediate attention to resolving important habitat and wildlife problems on Mt. Graham and active intervention to reduce insect infestation and fire hazard on Mt. Graham. Attachments to this letter include: a duplicate sent to David Harlow, Field Supervisor, Arizona Ecological Services, U.S. Fish and Wildlife Service; a memorandum from Duane L. Shroufe to the Arizona Game and Fish Commission detailing the update provided to the Commission on December 7, 2001.

15. January 4, 2002 letter from John M. McGee to Richard C. Powell, Vice President of Research, University of Arizona. Response to R.C. Powell letter of November 7, 2001 expressing concern about the fire danger on Mt. Graham and enclosing the Buddy Powell letter of October 24, 2001 to George Asmus. Advises the University to develop a proposal and conduct an environmental assessment with oversight and approval by USFS.
16. January 28, 2002 letter from Acting Regional Director of U.S. Department of Interior Fish and Wildlife Service to John Schaefer, Board Chairman of LBT Corporation. Response to November 6, 2001 letter to Gale Norton that the area around MGIO is not under consideration and that future contact is to be made to David Harlow, Field Supervisor, or Sherry Barrett, Assistant Field Supervisor.
17. May 2, 2002 letter from members of the Arizona Game and Fish Commission to Senator John McCain. Concern about USFS lack of meaningful action on insect infestation, deteriorating forest health and related wildlife impacts and associated high risk of wildfire on Mt. Graham.
18. June 5, 2002 letter from Richard C. Powell, Vice President for Research, University of Arizona, to John McGee. Estimate of cost and time frame of environmental assessment suggested by McGee, and requesting that USFS to at least authorize appropriate protective measures to be implemented before a catastrophic wildfire has begun.
19. June 11, 2002 letter from John McGee to Richard Powell. Comment about June 10 meeting and agreement that University's values at risk on Mt. Graham are substantive and important, and supports collaboration for protection.
20. July 26, 2002 letter from Richard C. Powell, Vice President for Research, University of Arizona. Acknowledgment of USFS comments on Fuel Reduction Proposal, appreciation for initial work of USFS in MGIO area (2-3 July 2002), and request for completion of work outlined in proposal draft of 7/9/02.
21. October 15, 2002 transmittal from Richard Powell to John McGee. Field Notes/Proposed Action Agreement—Mt. Graham International Observatory Fuels Reduction.
22. November 4, 2003 transmittal from Jerry Conner, USFS, to Anna Spitz, Steward Observatory. Transmittal of Decision Memo dated July 2, 2002 allowing removal of dead and down debris around MGIO.
23. December 9, 2003 memo to Richard Powell from Buddy Powell concerning letter from Susan Kozacek, Acting Forest Supervisor Coronado National Forest. Memo commenting on errors in Forest Supervisor's letter of October 15, 2003 (attached).
24. March 2, 2004 transmittal of Proposed Action from Anna Spitz to Teresa Ann Ciapusci, Program Leader, USFS. Transmittal of revised Proposed Action to conduct an Environmental Assessment to conduct long-term fuels reduction work around MGIO.
25. March 26, 2004 letter from Anna Spitz to Jeannine Derby, Forest Supervisor, Coronado National Forest. Response to Ciapusci statements that the delay in responding to UA Proposed Action is that USFS is considering MGIO Proposed Action only with others, and request to expedite UA request to conduct an Environmental Assessment.
26. April 9, 2004 letter from Anna Spitz to Jeannine Derby. Notice to proceed with work under Decision Memorandum after obtaining approval of Safford District. Request for expeditious review of Proposed Action.
27. April 25, 2004 letter from Buddy Powell to Jeannine Derby. Response to McAllister (Coronado Forest Fire Officer) statement that USFS is reluctant to review UA Proposed Action due to concerns that UA is nearing a request for an Environmental Impact Statement. UA restates earlier assurances that this is not the case, and once again requests that USFS take action on the Proposed Action.
28. June 18, 2004 letter from Jeannine Derby to Richard Powell. Comments on Spitz and Powell letters from April 2004 and actions at MGIO for fuels reduction.

29. July 1, 2004 transmittal from Anna Spitz to Richard Powell. Transmittal of commentary on Derby letter of June 18, 2004 to clarify misstatements.

Summary of Legal Activities
Mt. Graham International Observatory
(1988-Present)

November 18, 1988	President Ronald Reagan signs *Arizona-Idaho Conservation Act of 1988* (AICA).
January 5, 1989	U.S. Forest Service (USFS) issues *Record of Decision and Forest Plan Amendments* following release of *Final Environmental Impact Statement* in November 1988.
February 13 and 15, 1989	Arizona Wildlife Federation, Wayne Woods and the Coalition for the Preservation of Mt. Graham file an administrative appeal of the USFS *Record of Decision and Forest Plan Amendments*. USFS denies appeal.
March 20, 1989	Additional opposition to Mt. Graham International Observatory (MGIO) submits an appeal for a stay to USFS regarding authorization to proceed. USFS denies appeal on April 7, 1989.
April 7, 1989	USFS approves *Management Plan for MGIO* and issues *Special Use Permit*.
April 26, 1989	Arizona Wildlife Federation, Wayne Woods and the Coalition for the Preservation of Mt. Graham request a stay (similar to March 20, 1989 appeal to USFS regarding authorization to proceed). USFS denies appeal on May 19, 1989.
May 11, 1989	Arizona Wildlife Federation, Wayne Woods and the Coalition for the Preservation of Mt. Graham and Sierra Club Legal Defense Fund request a stay. USFS denies appeal on May 23, 1989.
June 21, 1989	Sierra Club *et al.* files a Complaint for Declaratory and Injunctive Relief in Washington, D.C. The appeal is denied on June 29, 1989.
July 20, 1989	Arizona Board of Regents on behalf of the University of Arizona files Motion to Intervene and to Dismiss in Washington, D.C.
July 20, 1989	Sierra Club voluntarily dismisses the Washington, D.C. lawsuit without prejudice.
July 27, 1989	Mt. Graham Red Squirrel, Sierra Club, National Audubon Society, National Wildlife Federation, Arizona Wildlife Federation, Maricopa Audubon Society, Tucson Audubon Society, Yuma Audubon Society, Northern Arizona Audubon Society, Defenders of Wildlife and Wayne Woods [Mt. Graham Squirrel *et al.*] file a complaint against U.S. Department of Agriculture (USDA), USFS, Secretary of the Interior and USFS in U.S. District Court in Tucson, Arizona. The Complaint lists nine claims against USFS and U.S. Fish and Wildlife Service (USFWS) for Injunctive and Declaratory Relief.
August 22, 1989	Arizona Board of Regents files Motions to Intervene and to Dismiss in Tucson, Arizona.

August 22, 1989	Mt. Graham Squirrel *et al.* files a Motion for Preliminary Injunction to preclude construction of the access road. The motion is denied August 30, 1989.
August 31, 1989	Mt. Graham Squirrel *et al.* appeals to the 9th Circuit Court of Appeals regarding denial of their Request for a Preliminary Injunction.
September 6, 1989	Mt. Graham Squirrel *et al.* files an Emergency Motion for an Injunction Pending Appeal before the 9th Circuit Court of Appeals. The motion is denied September 15, 1989.
November 13, 1989	Mt. Graham Squirrel *et al.* files an Emergency Motion for Reconsideration of the order granting the stay of injunction pending appeal. The motion is denied November 20, 1989.
November 21, 1989	Arizona Board of Regents files a Motion to Dismiss Mt. Graham Squirrel *et al.* 9th Circuit Court of Appeals appeal because road work is essentially complete. Construction is voluntarily halted for the winter season on November 27 with the access road 97% completed. The motion is denied January 5, 1990.
November 27, 1989	U.S. District Court evidentiary hearing is held on Mt. Graham Squirrel *et al.*'s Motion for Preliminary Injunction before Judge Alfredo Marquez.
March 26, 1990	U.S. District Court hearing is held on Mt. Graham Squirrel *et al.*'s Motion for Preliminary Injunction before Judge Marquez. The Court places a 120 day injunction on construction to allow Congress time to review the AICA legislation. Construction halts.
April 17, 1990	Arizona Board of Regents files Emergency Motion for a Stay of the Injunction with the 9th Circuit Court of Appeals. The Court remands the case U.S. District Court for clarification of the basis for the injunction (April 26, 1990).
May 15, 1990	9th Circuit Court of Appeals grants the Arizona Board of Regents' Motion for a Stay of the 120 day injunction pending appeal. Construction resumes.
May 26, 1990	Mt. Graham Squirrel *et al.* files a Motion for Reconsideration of the Order granting the stay of injunction pending appeal. The motion is denied June 26, 1990.
June 4, 1990	U.S. District Court grants summary judgment in favor of the Arizona Board of Regents on seven of nine Mt. Graham Squirrel *et al.* claims listed in complaint filed on July 27, 1989.
June 12, 1990	Mt. Graham Squirrel *et al.* appeals the summary judgment to 9th Circuit Court of Appeals and then withdraws appeal on July 18, 1990.
June 28, 1990	Mt. Graham Squirrel *et al.* files a Motion for Continuance pending outcome of the "biological update". The Arizona Board of Regents opposes the motion. The U.S. District Court denies the motion on July 3, 1990.

July 10, 1990	Mt. Graham Squirrel *et al.* files a motion regarding the remaining two claims to stay the litigation or dismiss without prejudice. The Arizona Board of Regents opposes the motion. The U.S. District Court grants the Motion to Stay the litigation.
August 2, 1990	Mt. Graham Squirrel *et al.* refiles the Appeal of the Summary Judgment in the 9th Circuit Court of Appeals.
August 24, 1990	USFS authorizes construction to begin on the Submillimeter Telescope.
August 27, 1990	Mt. Graham Squirrel *et al.* files Motion for a Temporary Restraining Order, Preliminary Injunction Hearing and for Injunction Pending Appeal based on reconsultation claims. The U.S. District Court denies motions on August 28, 1990.
September 4, 1990	Mt. Graham Squirrel *et al.* files Emergency Motion for an Injunction Pending Appeal based upon reconsultation claims before the 9th Circuit Court of Appeals. The Court consolidates all three appeals before the 9th Circuit and grants the injunction pending appeal on September 18, 1990.
September 20, 1990	The 9th Circuit Court of Appeals grants the Arizona Board of Regents' emergency petition to the 9th Circuit for rehearing and suggestion for Rehearing *en banc*.
September 28, 1990	The 9th Circuit Court of Appeals reverses the September 18, 1990 Order for Injunction Pending Appeal.
October 1, 1990	Mt. Graham Squirrel *et al.* files Emergency Petition for Rehearing before the 9th Circuit Court of Appeals. The petition is denied.
December 13, 1990	9th Circuit Court of Appeals holds the hearing of consolidated appeals in Pasadena, California.
April 9, 1991	9th Circuit Court of Appeals remands the Mt. Graham Squirrel *et al.* claim that the monitoring program is inadequate to the U.S. District Court for evidentiary hearing and orders Mt. Graham Squirrel *et al.* to file an application for a temporary restraining order.
April 16, 1991	Mt. Graham Squirrel *et al.* files Application for a Temporary Restraining Order and files a Motion for a Preliminary Injunction.
May 17, 1991	U.S. District Court rules that the monitoring program is adequate and denies the petition for a temporary restraining order.
May 31, 1991	Apache Survival Coalition files with Arizona Corporation Commission as a non-profit corporation.

July 19, 1991	USFS files motions to dismiss the remaining two of nine Mt. Graham Squirrel *et al.* claims for summary judgment.
August 19, 1991	Apache Survival Coalition files complaint in U.S. District Court in Phoenix seeking withdrawal of *Special Use Permit*, preliminary and permanent injunction stopping construction and an order requiring compliance with applicable federal laws.
August 30, 1991	Robin Silver files suit against U.S. General Accounting Office (GAO) for violations of Endangered Species Act.
October 16, 1991	U.S. District Court denies Mt. Graham Squirrel *et al.* Motion for Preliminary Injunction, rules in favor of the Arizona Board of Regents and federal defendants on the remaining two claims and denies Arizona Board of Regents' motion for summary judgment.
October 21, 1991	U.S. District Court holds hearing of Silver against the GAO.
October 31, 1991	Mt. Graham Squirrel *et al.* requests reconsideration of October 16, 1991 decision in favor of Arizona Board of Regents and federal defendants. Court denies reconsideration on November 15, 1991.
December 11, 1991	9th Circuit Court of Appeals rules on consolidated appeals in favor of MGIO project: no further consultation of federal agencies is required prior to construction of first three telescopes. Further, the Court finds that Congress intended the AICA to balance astrophysical and biological interests, and U.S. District Court should determine the merit of Request for Preliminary Relief resulting from alleged road closure violations.
January 7, 1992	Mt. Graham Squirrel *et al.* Appeals U.S. District Court's denial of reconsideration to 9th Circuit Court of Appeals.
February 10, 1992	Apache Survival Coalition files Motion for Partial Summary Judgment on the grounds that Title VI of the AICA violates the U.S. Constitution by infringing on the separation of powers.
March 30, 1992	USFS files Motion for Summary Judgment and requests that both its motion and the motion of the Apache Survival Coalition for partial summary judgment be heard together on June 5, 1992.
April 10, 1992	U.S. District Court denies Apache Survival Coalition's motion for a preliminary injunction as well as its motion for a temporary restraining order which was filed just before the hearing.
April 15, 1992	Apache Survival Coalition appeals the District Court's denial of injunction and restraining order to the 9th Circuit Court of Appeals.

May 6, 1992	U.S. District Court denies Apache Survival Coalition's request for additional discovery, including an on-site inspection.
May 27, 1992	U.S. District Court grants Arizona Board of Regents and federal defendants motions for summary judgment and granted judgment in favor of university and federal defendants.
June 5, 1992	A hearing is scheduled in U.S. District Court on both parties' motions for (partial) summary judgment.
July 1, 1992	Apache Survival Coalition appeals court's rulings in favor of university and federal defendants.
April 8, 1994	9th Circuit Court of Appeals rules in favor of Arizona Board of Regents and federal defendants upholding the U.S. District Court's determination.
May 25, 1994	Mount Graham Coalition of Washington, D.C. files suit alleging location of the Large Binocular Telescope (LBT) is improper.
June 10, 1994	Arizona Board of Regents on behalf of the University of Arizona intervenes in Washington, D.C.
June 16, 1994	Apache Survival Coalition suit is transferred to U.S. District Court in Tucson, Arizona.
July 2, 1994	U.S. District Court enters temporary restraining order prohibiting any further work on Mt. Graham for the LBT.
July 25, 1994	All parties file motions for summary judgment.
July 28, 1994	U.S. District Court rules against federal defendants and Arizona Board of Regents entering permanent injunction against further LBT work on Mt. Graham pending further environmental studies.
August 1, 1994	Arizona Board of Regents appeals to 9th Circuit Court of Appeals asking for stay of U.S. District Court order pending appeal and expedited consideration of that request.
August 1, 1994	Arizona Board of Regents files an emergency motion with the 9th Circuit Court of Appeals requesting stay of U.S. District Court's injunction pending appeal.
August 8, 1994	9th Circuit sets oral argument on Arizona Board of Regents' emergency motion for August 24, 1994 in San Francisco, California.
November 16, 1994	Appeal argued before the 9th Circuit Court of Appeals.

April 24, 1995	9th Circuit Court of Appeals affirms U.S. District Court Order concluding that the AICA does not provide the USFS with the authority to locate the LBT at a site other than that indicated in the 1988 biological opinion prepared by the USFWS without complying with the requirements of the ESA and NEPA.
June 5, 1995	Intervenor (Arizona Board of Regents) files Petition for Reconsideration with Suggestion for Rehearing *en banc* because the majority decision raises a conflict with other decisions of the Court (9th Circuit).
June 30, 1995	USFS files a Petition for Rehearing and suggestion for Rehearing *en banc* is filed.
July 31, 1995	9th Circuit Court of Appeals denies Petition for Rehearing.
May 16, 1996	Intervenor's Rule 60(b) Motion for Relief from Judgement Ordering Injunction Against Construction.
August 28, 1996	Mt. Graham Coalition, *et al.* (Plaintiffs-Appellants) file Motion for Voluntary Dismissal (lack of funds as cause).
June 17, 1996	Apache Survival Coalition, Ola Cassadore Davis, Franklin Stanley, Vincent E. Randall and Wendsler Nosie, Sr., Plaintiffs, file Complaint for Declaratory and Injunctive Relief against USA, John McGee, Richard N. Kvale, Defendants, for approving the modification and amendment of the *Special Use Permit* issued to the UA, and authorizing construction of LBT proposed for relocation on Peak 10477.
June 26, 1996	U.S. District Court denies the preliminary injunction against further construction of MGIO.
July 7, 1996	Plaintiffs file Motion for Reconsideration of order denying emergency motion for a temporary restraining order.
July 9, 1996	U.S. District Court denies Motion for Reconsideration.
September 5, 1996	Apache Survival Coalition, Ola Cassadore Davis, Franklin Stanley, Vincent E. Randall and Wendsler Nosie, Sr., Plaintiffs-Appellants, appeal denial of Complaint for Declaratory and Injunctive Relief against USA, John McGee, Richard N. Kvale, Defendants-Appellees, and Arizona Board of Regents, Intervenor-Defendant-Appellee.
July 2, 1997	9th Circuit Court of Appeals affirms U.S. District Court decision dismissing request for preliminary injunctive relief.
September 17, 1999	Mt. Graham Coalition *et al.* File an Administrative Appeal of Forest Service Permit for construction of power line from valley to MGIO.

October 19, 1999	USFS denies Administrative Appeal of Forest Service Permit.
June 30, 2000	Mt. Graham Coalition, Apache Survival Coalition, Apaches for Cultural Preservation, David Hodges, Ola Cassadore Davis and Wendsler Nosie, Sr., Plaintiffs file Complaint for Declaratory and Injunctive Relief against John McGee, Eleanor Townes, and US Forest Service, Defendants, in U.S. District Court District of Arizona. The Complaint seeks to stop the construction of a power line to bring power from the valley to MGIO.
December 22, 2000	US Forest Service files Answer to the Complaint.
January 5, 2001	Arizona Board of Regents on behalf of the University of Arizona files Motion under Rule 24 to Intervene as a Defendant.
January 5, 2001	Arizona Board of Regents on behalf of the University of Arizona. Files Memorandum of Points and Authorities in Support of Motion to Intervene.
January 5, 2001	Answer of Intervenor – Defendant State of Arizona Board of Regents on Behalf of University of Arizona.
April 6, 2001	Order granting Motion to Intervene by the Arizona Board of Regents on Behalf of the University of Arizona.
April 23, 2001	State of Arizona Board of Regents Motion for Extension of Page Limit.
May 3, 2001	Federal Defendant's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction.
May 15, 2001	U.S. District Court Hearing on Declaratory and Injunctive Relief – Judge Marquez issues order in favor of Defendants (USFS)-Intervenor (Arizona Board of Regents) on all points including temporary restraining order.
June 14, 2001 July 13, 2001	Plaintiffs file appeal with 9th Circuit Court of Appeals. 9th Circuit Court of Appeals denies plaintiffs-appellants' motion to stay the District Courts' May 21, 2001 order; motion for waiver of bond on appeal denied as moot; briefing schedule established previously will remain in effect.
September 10, 2001	Plaintiffs-Appellants file brief with 9th Circuit Court of Appeals.
September 24, 2001	National Trust for Historic Preservation in the United States files Amicus Curiae brief with 9th Circuit Court of Appeals.
November 15, 2001	Appellee Board of Regents files Motion to Dismiss Appeal as moot with 9th Circuit Court of Appeals.
November 20, 2001	Appellee John McGee (USFS) files Answering Brief of Federal Appellees with 9th Circuit Court of Appeals.

November 20, 2001	Appellee Board of Regents files Brief with 9th Circuit Court of Appeals.
December 5, 2001	Appellants file Response to Appellee-Intervenor Board of Regents Motion to Dismiss Appeal as Moot.
December 5, 2001	Federal Appellee files Response to Appellee Board of Regents Motion to Dismiss Appeal as Moot.
May 20, 2002	Appellants file Reply Brief with 9th Circuit Court of Appeals.
December 2, 2002	9th Circuit Court of Appeals affirms the District Court's finding that the Plaintiff-Appellants' claim was moot.

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Mr. WALDEN. Mr. Powell, thank you for your testimony and thanks to all the panel members for their testimony.

Given our time constraints, we will have one round of questions for our—my colleagues here.

Mr. Powell, I want to go right back to what you were talking about, this problem that you ran into with the Endangered Species Act and ability to move the site 600 yards. I believe that is the issue Dr. Warshall refers to as special-favor politics, going to the Congress and getting Mr. Kolbe to intercede.

Mr. POWELL. Yes.

Mr. WALDEN. Do you want to address that point?

Mr. POWELL. Mr. Chairman, if I may, the University and the Forest Service conducted an environmental impact statement. After that was done and published, the Forest Service asked us to consider other things. Now, regardless of what Dr. Warshall testified to earlier, the University did not spend $1 million at Fontainebleau to get lobbying done.

Congressman Kolbe was very interested in seeing what he felt needed to be done for his legislative district to get accomplished. Congressman Kolbe and Senator McCain, aided by Senator Domenici, were the ones who decided this needed to be done, and they led the effort to get it done. Otherwise, they were told we would wait another 5 years before we could start work.

Mr. WALDEN. OK. I want to go to another point, and that is this issue of the Endangered Species Act. I know from my own experience in my own district, the water was cutoff to the farmers and ranchers in the Klamath Basin in 2001. It was done so based on the biological decisions of the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

Water was cutoff for the whole season. We had farmers who went bankrupt. We had farmers who committed suicide. It was a terrible tragedy for about 1,200 farm families.

Now, I take exception to Dr. Warshall, because when we got the National Academy of Sciences Resource Committee to do independent peer review, they came back and said those decisions were not based on the science that was available, and, indeed, keeping the lake level high in Klamath Lake actually correlated with the years when you had the highest fish kill, and flowing warm water

down the river actually could imperil the Coho Salmon they were entrusted to protect, which was what led me to H.R. 1662, the legislation this Committee has held numerous Committee hearings on and approved, requiring independent peer reviews of list, delist, consultations or recoveries, and giving higher recognition in the process to peer-reviewed, independent, no-conflict science.

My question for each of you on the panel is that a position that you find would strengthen or, as some groups say, gut the Endangered Species Act?

Dr. WARSHALL. We were only talking about the southwest, and I happened to agree with you that the Klamath region was handled horribly. So that is not—I mean, I was trying to keep my testimony only to everything south of Mogollon Rim, because that is what the title of this—

Mr. WALDEN. Right.

Dr. WARSHALL. There are lots of other issues up north, as I tried to point out, and timber industries that are much more difficult than what occurred south of the Mogollon Rim.

I do not disagree with your desire to have good science. I am in no way opposed to it.

I think, though, that one thing that gets confused for scientists—and I am not talking about environmental—is that the whole issue of how to do conservation biology is changing very rapidly. It is a very new field.

So I would hate to see legislation get into the position where it dictated certain rules for how conservation biology should be done only to find out that, 2 years later, someone has a new technique, be it aerial photography, be it infrared photography, be it GPS.

We did not—the squirrel would have been helped greatly if we had had GPS in 1984. We would have known where the squirrels are. We did not even have that available until the 1990s. So my concern was not—my concern was about saying too specifically that, for instance, what is a model?

I was afraid, in fact, the exact opposite would happen, that you would be brought to court, and you would be in court for years, because people were saying, this is not really a model, or this really is a model, or this really is current field work, or this is current museum work on listing, and that we would be back in the same horrible situation that we get into with postponements of listings right now.

But the big picture, I think what you are trying to do is wonderful.

Mr. WALDEN. Thank you.

Mr. Flake, your comments for peer review on the Endangered Species Act?

Mr. FLAKE. On the what?

Mr. WALDEN. On requiring peer review of the science used to make these decisions in the Endangered Species Act. Another set of eyes?

Mr. FLAKE. I do not—I do not have any comment on that.

Mr. WALDEN. All right.

Mr. Herrington?

Mr. HERRINGTON. We definitely support your position on independent peer review. In fact, we believe that, had that been part

of the consideration of the Razorback Sucker in the Gila River, that we would not have that designation today had that been done.

Mr. WALDEN. All right.

Ms. Holder, do you have a comment?

Ms. HOLDER. I do not have any comments.

Mr. WALDEN. Whether or not to have peer review in the ESA?

Ms. HOLDER. I believe that peer review is very important on the ESA. That is one of the arguments that I see from both sides, is that the science has not been—I mean, everybody seems to be arguing about the science. I guess what really concerns me more than anything, though, is really the fact that the economics and social issues are not being addressed at the same time.

Mr. WALDEN. Right.

Ms. HOLDER. Ninety-nine percent of the time, when I go to meetings, and they are discussing threatened, endangered or reintroduced species, that seems to be the only thing that is important. I really do believe that the science is only one part of it.

Mr. WALDEN. I do not disagree. I can show you a district of mine that never got out of the last recession because we lost all of the timber jobs. Our economy is threatened every day over ESA listings and various management, or mismanagement, or lack of management on our Federal lands. So I do not disagree with that.

I am trying to take this one little piece here in the ESA and say, let us give greater weight to the science that has been independently peer reviewed by scientists who have no conflict, and yet I get attacked that I am gutting the Endangered Species Act.

Mr. Powell, do you have any comment as a scientist, peer review?

Mr. POWELL. I would like to remind us all today that if it is science, true science, we do not have the answers. If it is engineering, I can design a bridge for you, that is not science.

If it is true science, we need to take the best minds that we can get, get the best data that we can obtain and see if that data will lead us to a solution that makes sense. What we have got to do is stop one or two people expressing a scientific opinion based on—not fact—I am not sure what it is based upon.

Frankly, I work with scientists, every day, day in and day out. Scientists are very investigative people. They want to do the right thing. They want to help, and we have got to bring good minds to bear and stop one or two rogue people in some Federal agency from dictating what science is. An example is, the university has always opposed the critical habitat for the Mount Graham red squirrel. We simply opposed it because we kept saying there has been no science. The people making these decisions do not have a clue, and it should be stopped. I am very pleased to see that you and your Committee, Subcommittee, are doing what you are doing today, and I thank you for that.

Mr. WALDEN. Thank you, and I way overshot my time.

I now recognize the Chairman of the full Committee, Mr. Pombo.

Mr. FLAKE. Could I just comment on that?

I just do not know what constitutes peer review. I would rather see it coming to something like practical review. I do not know if that constitutes peer review. We entered into a Savory grazing method some years ago, where it is high-density, short-duration grazing.

The BLM came in to see what that would do to some endangered plants. They actually got on their hands and knees and crawled over sections of ground, on hands and knees, to find a little endangered cactus that I did not even know existed and thought well, if the cattle are bunched where it is a high-density, short-duration, will they disturb that little cactus? They found one that had been stepped on and uprooted by cattle.

Had we been on straight BLM land, we probably would have been stopped. But because they were the minority, it was not—I think we have got to get some practicality into it. I do not know if peer review does that or not, but I would like to see a practical review.

Mr. WALDEN. Thank you.

The Chair recognizes the Chairman.

Mr. POMBO. Thank you.

Ms. Holder, I read your statement. I enjoyed it quite a bit. In fact, I think I probably could have written it. And I know I have probably given the same speech many times in reviewing that I come from a fifth-generation cattle family. And I grew up on a ranch where I believed that we were good environmentalists and that we were conservationists and that we cared about our ranch, because it had been in my family for five generations. And there is an attachment there that you cannot explain unless you have been through it.

The one part of your testimony I found interesting was talking about changing the incentives that exist in the Act and putting more emphasis on working with ranchers and private-property owners in order to enlist them in recovering the species.

I introduced that bill in 1995. There was not a single environmental group that supported that, including the ones mentioned in your testimony. That was an awakening, somewhat, for me, to go through that. I can tell you that the reason I got involved in politics to begin with was not because I felt the Endangered Species Act was doing a terrible job in recovering species; it was because I felt it was being misused and abused to accomplish other agendas.

When I look at all the hearings that I have held across the country—and I have had, I probably have been at somewhere between 50 and 75 field hearings in different places around the country—and the one thing that I hear over and over and over again everywhere I go is not that we do not care about this endangered species, whether it is a squirrel or a spotted owl or what have you, it is, they are using this to accomplish another goal that has nothing to do with recovering that species. And that is what the people get mad about.

You know, Dr. Warshall, in your testimony, you know, a lot of the things that you have in here, I have proposed. I mean, in terms of your recommendations, every time I have proposed them, I get accused of trying to gut the Act, because there is a huge disconnect between people who are out here on the ground trying to do something and the people back there.

Because a lot of these national groups, they do not want a solution. They do not want to solve the problem. They thrive on the

conflict. If they settle the conflict, then there is no more reason for them to exist, and that is a big part of the problem.

You know, in a perfect world, I mean, if, legislatively, if we were able to just lay this out there and do what we all believe is the right thing to do, and that is to stop species from becoming extinct to the best of our ability and to have us be good stewards or better stewards of the environment of the ecosystem that we have, we could do that. We really could.

I mean, if you look at Congressman Walden's bill, if you look at Congressman Cardoza's bill, that is an honest attempt at trying to fix what some of the problems are in the Endangered Species Act.

If it is all about saving endangered species, we can reach a point of consensus where the scientific community, the private-property owners, the cities and counties across the country could reach a point where we could all survive, and we could do a better job of recovering species, have less conflict with property owners. We could do that.

But in order to accomplish that, you have got to take those that profit from this conflict out of the equation. That is the problem that I have had for the last 12 years I have been in the House of Representatives is trying to take those who profit from this conflict out of it, because they have an incentive in keeping this going.

You know, you talk about science, we could have better science. I do not care if you are coming from the environmental side or the property owners' side, nobody likes what Fish and Wildlife is doing, their decisions, they are basing on—the science they are basing their decisions on right now. Nobody likes that. I mean, it is a horrible way of trying to move forward. If we were able to sit down and work out a science bill that improves the level of science that decisions are being made on, we could get there.

You talk about using the political process because of the Endangered Species Act. I will tell you why that happens, and it happens on both sides. It is because the Act has become the preeminent law of our country. There is not a single function of the Federal Government that takes precedence over the Endangered Species Act.

I would challenge you to name any that take precedence over the Endangered Species Act. I do not care if it is national defense. I do not care if it is the survival of us as a nation. There is nothing that takes precedence over the Endangered Species Act.

And because of that, people have turned to Congress and said, either grant us a special favor to get around this law, which the Department of Defense has had to do, or people will come and say we do not want growth outside of our community, we do not want any new dams built, we do not want any more timber harvests, we do not want any more mining, whatever their issue of the day is.

The easiest thing in the world for them to do is find an endangered species that will stop it. I have seen it happen in my district. I have seen it happen all over the west, and we are beginning to see it happen on the East Coast now. The law has become that effective. It really has very little to do with recovering endangered species, and that is what drives me crazy with this thing.

You know, if my ranch is so important as survival of an endangered species, then buy it from me. You know, take it. Either work out a deal with me so that I manage it to recover that species, or

just buy it from me. But do not restrict my activities to the point where I cannot make a living on it anymore.

I said I am fifth generation. I would love for my kids to have the opportunity to do what I am doing. But this is not happening under the way the law is being implemented. Yes, I am determined to change it. Because it is not about me and what is going to happen in the few years—whatever years I have got left on this earth—but it will affect my kids and my grand kids. I care about that, and I will continue to fight to change this.

I yield back, Mr. Chairman.

Mr. WALDEN. The Chair recognizes the gentleman from Arizona, Mr. Flake.

Mr. FLAKE OF ARIZONA. Thank you, Mr. Chairman.

Before I ask a question, I just want all of those who are in attendance to know that the Chairman of the full Committee and the Chairman of the Subcommittee are working hard, as you can see now, to bring some kind of resolution to this and to move forward in a way that benefits both endangered species and the economic health of communities and people's way of life. And I am a new guy at this. I am going to be entering my third term, but I have seen it. I have been on the Resources Committee my entire time there, and it is a joy to watch these gentlemen lead these committees and do it in a way to make sure that everybody's goals are met.

Just a question for Speaker Flake, with regard to the tax incentives at the State level, have we seen any activity from private companies that might benefit from those incentives?

Mr. FLAKE. The first one right now is being worked out with biomass, and they are calling it a co-gen plant in Snowflake, Arizona, next to the Euro Fresh Tomato Plant where they will use biomass to fund the plant and to heat during the wintertime the tomato plant. That is in that stage right now. Now that the new stewardship contract that has been let out by the Forest Service, I think we will see a lot of tax incentives that the State has offered with that. That is in the infant stage right now, but I think we will see a lot from these stewardship contracts.

Mr. FLAKE OF ARIZONA. Dr. Warshall, with regard to—to take an example of what is being proposed by some of the environmentalists, diameter cap, is that something you support?

Dr. WARSHALL. What I would like to see—I listened to that very carefully. There is a big difference in the Southwest—and I am going to speak as a Southwesterner—between ponderosa pine and spruce fir forests. And depending on the kind of the forests and its age structure—and that is what you are talking about—that the diameter is a reflection of age structure, it depends on the species that you are trying to protect.

On the Mount Graham red squirrel, we are trying to get a canopy closure of 80 percent. If you can get that canopy closure to protect the squirrel because it is at its southernmost place and tends to be fried with global change, then do it with whatever diameters you need to get the 80 percent.

The goal is not a diameter cap. I agree with you there. But there is an ecological goal, and the goal is closed canopy forests. And it varies with the Mexican spotted owl, varies with all the fish to keep the temperatures of the rivers at a certain level. So there

shouldn't be any one rule, because there are too many kinds of forests.

Mr. FLAKE OF ARIZONA. But you use as mechanisms to achieve you goal diameter caps?

Dr. WARSHALL. Only in particular forests for particular reasons.

Mr. FLAKE OF ARIZONA. Doesn't that go completely against your call for sound science? Because I don't know of any science that says 21 inches, is it? That is more of a political statement than it is science.

Dr. WARSHALL. The science should define the multi-stemmed diameters depending on the species and the kind of forest. And that—I mean, this is a long discussion, because it is forest by forest. And a forest down south here is different from a forest up in Flagstaff. So that is the difficulty of the Endangered Species Act, is that everything is so specific. It is true for ranching as you change grasses. It is true for forestry. And how to reconcile the specific habitats that endangered species live in, be it Southwest flycatchers, and how to reconcile that with a cookie-cutter kind of law is very difficult. And I am—it is a really long conversation, and I think it can be done. One of the problems has been interagency cooperation and the amount of time it takes to get good scientists involved.

Mr. FLAKE OF ARIZONA. Thank you. And I appreciate this hearing. I appreciate the testimony of Speaker Flake. I mean, that is something I have lived. And probably the worst thing about the Endangered Species Act is that it made ranchers like me into politicians, and that is probably unforgiving. But I really appreciate being here and hearing the testimony, and it has been a great group.

And with that, I yield back.

Mr. WALDEN. The Chair recognizes our host and the gentleman from Arizona, Mr. Renzi.

Mr. RENZI. Thank you, Mr. Chairman. I appreciate your testimony, very intriguing, and the time you have spent with us.

Dr. Warshall, you made a comment on the cotton prices and competition, and since this valley is vital to the Nation in producing cotton, I would offer to you this. In your statement, when you say that price competition is what has driven out the cotton farmer—

Dr. WARSHALL. One of the things.

Mr. RENZI.—I would offer to you that with China being subsidized and their cotton being subsidized by the government and that them being allowed to dump that cotton on the world market, that that is not real competition and that our cotton farmers and ranchers can compete with anybody in the world given fair and level playing fields. I think you would agree with that.

Dr. WARSHALL. I agree with that.

Mr. RENZI. In looking at your comments and listening to the testimony, I get the feeling that you actually favor thinning the forest in a healthy, holistic approach and you actually do favor thinning in the refugium?

Dr. WARSHALL. I think most of the thinning has been done, but I haven't been up there since the last fire. So I would have to walk the forest to see what my feelings were at this point, because I haven't been there since the last big fire.

Mr. RENZI. The thinning we have heard is 2,300 acres in and around the mountain, not so much in the refugium. The natural thinning process of beetle kill or the fire, which is what we are told in testimony by Mr. Powell, has destroyed almost 90 percent, is that correct, Mr. Powell?

Mr. POWELL. That is correct.

Mr. RENZI. Would you favor thinning in the refugium if the conditions were acceptable for thinning?

Dr. WARSHALL. The recovery team needs to be reorganized because there is no outside biologists on it. So it is going to become a political football unnecessarily because the U.S. Fish and Wildlife Service has refused to allow outside viewing of the data.

Second, I have no problem with thinning after I see what the proposal was and after I have walked it myself.

Mr. RENZI. Do you have a problem thus thinning outside the refugium?

Dr. WARSHALL. It is being done along Swift Trail in order to stop the upward mobility of fire.

Mr. RENZI. It is being done in such a miniscule manner.

Dr. WARSHALL. We don't disagree on that. I think it could be done better, but you have to include outside scientists, because the Mount Graham controversy is the most bitter controversy in all Arizona. The amount of distrust that has been thrown into that controversy needs extra special attention by the Forest Service and Fish and Wildlife Service.

Mr. RENZI. More bitter than the wolf?

Dr. WARSHALL. Up there. It is squirrels and wolves. I am no judge of that.

Mr. RENZI. Mark, thank you for your testimony. Peter, thank you. And I needed to hear it. And I didn't realize that the school children had suffered as much. In the end, the kids in the communities are the ones who suffer when adults don't seem to get along.

Since I am a Congressman here and we have a local office run by Keith, you mentioned the Spearhead Ranch. Mark, what is the current status of the Spearhead Ranch in the allotment that has been cut back? Do you have an update for us?

Mr. HERRINGTON. It is the Spear Ranch, Congressman. And shortly after the permit was cut in half, the Forest Service then told Mr. Bryce that he could only graze the upper reaches of that allotment in the winter, which further cut his permit in half. Ultimately now, the decision by the Forest Service based on the agave and the possibility that a bat would like to reside there, no longer can he graze cattle at all in the upper reaches of that permit, only horses. So that is the current situation.

So, essentially, how the Endangered Species Act had no effect at all upon this man, upon his family, upon his livelihood is beyond me. Because, obviously, his son went to town and got a job because the ranch was no longer viable at all.

Mr. RENZI. We are looking at introducing legislation called the Cattlemen Bill of Rights that will compensate cattlemen when the Federal Government cuts their allotment and uses the Endangered Species Act as a sword to do that or when the Federal Government comes in and does a land exchange and pulls our permittees off. And we are hopeful we can get comments from the panelists here.

Mr. Chairman, I want to thank you for the time and thank all the panelists today.

Mr. WALDEN. I want to thank you, too, for coming down here. There has been a lot of information we garnered from this panel and the prior panel, and hopefully we can provide some help. I want to thank Mayor Rivera and President Bryce; and I want to thank our staff as well, Doug Crandall and Ryan Yates, and their work in pulling together the hearing and thank the Committee members.

Mr. Renzi, if you have any follow-up comments you would like to make.

Mr. RENZI. I want to thank Chairman Walden, Chairman of our Forest Health Subcommittee. Chairman Pombo from California is a great leader and Congressman Flake who came down from Phoenix.

The purpose here was not to gut the Endangered Species Act—I mean, even Dr. Warshall admits that it is flawed—and to find reform and to find ways to live in a holistic approach with species and particularly to preserve the fragile rural economies particularly of this district. And I want to thank the Mayor and Dr. Bryce and all the community for turning out. I want to thank over nine local and State law enforcement agencies who are involved today. This couldn't have been done without you, and I am thankful for your kindness and support.

The motive, again, was to bring Washington to the district, to allow people firsthand to see an official congressional hearing and to participate in a great debate.

And I want to make reference to some of the schools and classes who showed up today. Duncan High School came with their teacher, Paul Moore. Thatcher High School with Ramone Morales came. Thatcher Middle School with their teacher Dennis Martin. Pima High School came with Callem Norton. Bowie High School came with Mike Castillo. Triumph Learning Center came with Brian Lightner. Conchee Elementary School, hundreds of miles away, came down with their teacher Estella Sample. And Discovery Plus Academy came with their teacher Donna Bolinger.

Here it is in the community, allowing you all to speak truth to the representatives in Washington, to allow us to hear firsthand the dramas and the needs of the land and the species. I want to thank everyone who came out today and spent the whole two-and-a-half hours with us. Each of you are true patriots.

Thank you, Mr. Chairman.

Mr. WALDEN. The Members may have additional questions for the witnesses. We ask that you please respond to these in writing.

The hearing record will be open for 10 days for these responses as well as the members of the public who may be here today or may be viewing this in some manner. Our record does remain open. We do solicit your input as well, and there should be some paper and pencils in the back where you can provide written comment. Or if you want to do more than that, you can go to the Committee's Web site as well to do that.

If there is no further business before the Subcommittee, I want to thank the members of the Subcommittee and our witnesses; and the Subcommittee stands adjourned.

[Whereupon, the Subcommittee was adjourned.]

[The following information was submitted for the record:]

- National Association of Conservation Districts, Statement submitted for the record
- Parker, Dennis, Attorney at Law, Patagonia, Arizona, on behalf of Eddie Johnson and the Johnson Ranch, Letter submitted for the record
- Pope, Irwin, Peridot, Arizona, News release submitted for the record
- Schneberger, Laura, Gila Livestock Growers, Winston, New Mexico, Letter submitted for the record
- Zybach, Bob, Corvallis, Oregon, Letter submitted for the record

[A statement submitted for the record by the National Association of Conservation Districts, follows:]

Statement submitted for the record by the National Association of Conservation Districts

The National Association of Conservation Districts (NACD) is the nongovernment organization that represents the nation's 3,000 conservation districts and the more than 16,000 men and women—district officials—who serve on their governing boards. Conservation districts are local units of government established under state laws to carry out natural resource management programs at the local level. Conservation districts work with a number of federal, state and local agencies and organizations to provide technical, financial and other assistance to millions of landowners and operators to help them manage and protect the nation's land, water and related natural resources. Conservation districts provide the linkage for delivering many federal, state and other local natural resource programs at the local level.

Nonindustrial private forests (NIPF) cover more than 350 million acres in the US-nearly 90 percent of our private forest land acreage and about 45 percent of all forest lands. These lands contribute significantly to the quality and quantity of our water, air, wildlife habitat, recreational resources and timber supplies.

According to the U.S. Forest Service, approximately 75 percent of all listed species occur to some extent on privately owned lands-much of that being the nation's private forest lands. Thus, private landowner participation in endangered species conservation is critical to successful species recovery.

While the original intent of the Endangered Species Act (Act) act was to provide a means to protect ecosystems that serve as habitat for threatened and endangered species with the ultimate goal of conserving those species, it is an extremely complex and often confusing law subject to broadly divergent interpretations. Even those charged with overseeing the law often find it confusing and difficult to administer-permit application, critical habitat and recovery plan review involve cumbersome and time-consuming processes.

In some cases, administration of the Act, we believe, has encroached on property rights to a far greater degree than Congress intended. In the case of agriculture, in some cases it can bring an operation virtually to a halt without considering management options that could bring a producer's activities into harmony with the needs of a species. We do not believe this was the intent of the framers of the Act.

Several amendments to the Act have been made to offer relief to landowners such as exemptions under certain circumstances from altering habitat or allowing limited takings if the landowner carries out mitigation and enhancement activities. However, these exemptions are rarely granted; and, the mitigation and enhancement activities required are often so stringent as to effectively exclude smaller landowners from meeting the requirements to obtain an exemption.

Conservation districts strongly support protecting and conserving the diversity of plant and animal species and believe that it is essential to do so to maintain a balanced and healthy ecosystem. However, we believe there are better ways to achieve this than through a strict and burdensome regulatory process. A comprehensive approach, emphasizing total resource management will help to ensure habitat protection for all species and minimize the need to list additional species. Protection measures for threatened and endangered species must consider not just the target

species themselves but also the social and economic values of private enterprise and respect for private property rights.

In several areas of the country voluntary conservation and management activities are underway that are resulting in increases in populations of endangered or threatened species or those potentially in jeopardy. In Washington State, for example, the Foster Creek Conservation District in Douglas County is spearheading an effort begun in 2000 to develop and implement a Habitat Conservation Plan (HCP) for the county. The goal of the plan is to help the Douglas County agricultural community into compliance with the Endangered Species Act. Conservation district leaders have been working with key federal agencies responsible for administering the Act-the U.S. Fish and Wildlife Service and NOAA Fisheries-to bring the plan into reality. As a result, the county has gained valuable information about its local wildlife resources, taken a leadership role in bringing stakeholders together and will have a draft plan in place early next year.

With adequate financial and technical assistance made available to help landowners and operators undertake voluntary, comprehensive, ecosystem-based habitat management activities such as the efforts described above, much can be done to conserve species in a positive manner and not only preclude the need for listing of species, but also to help recover species that are already at risk.

The Administration and Congress appear to be receptive to suggestions for changes in current policy and rule making responsibilities relative to the Endangered Species Act to emphasize and strengthen the positive aspects of America's forestry-based industries. Both the legislative and rule-making processes for the ESA need to take into consideration the economic impacts of its requirements. Conservation districts are ready and willing partners in such efforts.

We appreciate the opportunity to provide our views on forestry and the Endangered Species Act.

[A letter submitted for the record by Dennis Parker, Attorney at Law, Patagonia, Arizona, on behalf of Eddie Johnson and the Johnson Ranch, follows:]

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SEPTEMBER 20, 2004

Mr. Doug Crandall, Director
Subcommittee on Forests and Forest Health
U.S. House of Representatives
Committee on Resources
1337 Longworth House Office Building
Washington, D.C. 20515

Re: Issues Affecting Rural Communities in the Southwest—National Forest Management and the Endangered Species Act: The Forest Service, Southwest Willow Flycatchers, and the Johnson Ranch—A Case Study of Endangered Species Act and Private Citizen Abuse

Dear Director Crandall,

I am an attorney representing Mr. Eddie Johnson and the Johnson Ranch. However, the tragic story I am about to tell begins before I became an attorney. While this story actually begins with the fundamentally flawed listing of the Southwestern Willow Flycatcher under the Endangered Species Act a decade ago, for the purpose herein it begins when, as an independent biological consultant, I conducted surveys for these flycatchers on the Johnson Ranch for Mr. Johnson in 2002.

At that time, Mr. Johnson had been prevented from using two key pastures on his ranch—the Lower Chalk and Yearling pastures—by the Tonto National Forest for nearly five years because "potential" habitat for these flycatchers had already been identified within them. It apparently mattered not to the Tonto that the exclusion of livestock from these pastures on the mere basis of "potential habitat" identification was unlawful based on the 9th Circuit Court of Appeals' decision in Arizona

Cattle Growers' Association (2001). Neither did it seem to matter to the Tonto that these flycatchers had not been known to inhabit any area within either of these pastures prior to 2002. Instead, the Forest Service used policy making in the attempt to get around the Court's decision altogether. The Forest Service did so by quietly developing a "Grazing Guidance Criteria" for its Southwest Region.

Dated April 15, 2002, this "criteria," among other things, excluded all livestock presence from potential, non-potential and occupied flycatcher habitat—within two miles of occupied flycatcher habitat if an "agency approved" cowbird trapping program was in place, and within five miles of occupied habitat if such wasn't. The reason given by the Forest Service for this draconian restriction on Mr. Johnson's and other National Forest livestock permittees' livelihoods was the Forest Service's baseless claim of increased threat of cowbird parasitism posed to these flycatchers by the mere presence of livestock within 2-5 miles of their occupied habitat.

To facilitate this draconian restriction, the Forest Service intentionally omitted all studies regarding these flycatchers, cowbird parasitism, and livestock presence conducted after 1996 by its own Rocky Mountain Research Station. Those studies, conducted on the U Bar Ranch in New Mexico over the last 8 years, revealed that the largest known population of Southwestern Willow Flycatchers actually occurs smack dab in the midst of a working cattle ranch—where rates of reproductive success rates for these flycatchers are the highest known and rates of cowbird parasitism on these flycatcher are the lowest known for this species!

Back in 2002, however, very few Forest Service livestock permittees even knew about Region 3's "Grazing Guidance Criteria," let alone its institutionalized bias regarding livestock grazing and willow flycatchers. This is because the Forest Service had adopted this criteria as an agency policy—without any input whatsoever from the regulated public (National Forest livestock permittees) that would be substantially and negatively impacted by it—in direct violation of the Administrative Procedure Act. To make matters worse, by the Spring of 2002, the U.S. Fish & Wildlife Service had adopted its own agency policy of actively restricting where private, permitted flycatcher surveyors could conduct surveys for the presence of these birds. This was the situation I walked into when, fresh out of law school and prior to taking the bar, I contracted with Mr. Johnson to survey for the presence of Southwestern Willow Flycatchers on his ranch.

Located in the picturesque setting of central Arizona along the Verde River and Horseshoe Lake, the Johnson Ranch spans elevations from Saguaro forest at its headquarters to high, conifer clad peaks. High calf crops were the norm on the Johnson Ranch due to diligent management of the range, abundant water, and its long-acclimated core cow herd. By the spring of 2002, however, ongoing drought in Arizona was entering its sixth year and Horseshoe Lake had receded to nothing more than the narrow ribbon of the Verde River running through the middle of its huge but now totally dry lakebed.

At the dry upper end of the now dry lake, young Goodding Willows and Fremont Cottonwoods had come in by the thousands in an area that before the drought would have been deeply submerged under what would normally have been part of the lake. These stands of cottonwood and willow were only able to colonize this area of Horseshoe Lake because of the drought, and by the spring of 2002, willow flycatchers began colonizing this area as well. As I was soon to learn, however, the presence of flycatchers in this area was of serious concern not only to the Johnson Ranch, but to other entities as well.

In the spring of 2002, these other entities, particularly the Salt River Project, the Bureau of Reclamation, the Fish & Wildlife Service, the Forest Service and the Arizona Game and Fish Department were deeply concerned by the possibility of flycatchers colonizing Horseshoe Lake. These collaborative entities were also surveying this area of the Johnson Ranch's Lower Chalk pasture because if the flycatchers were actually occupying habitat that would normally be submerged under Horseshoe Lake, then Salt River Project's ability to operate Horseshoe Dam would be substantially and expensively affected because of the mitigation that the Project would have to provide as a result.

While the flycatchers were in fact found to be occupying this area by both the Salt River Project et al. and myself, incredibly, the locations of these birds were mapped by the former as being upstream of the high water mark of the lake. My surveys, however, established that these mapped locations were inaccurate and that the flycatchers were in fact actually occupying habitat within what would normally be part of the upper end of Horseshoe Lake. Moreover, my surveys revealed that while there were no flycatchers upstream of this area on the Johnson Ranch, these flycatchers were in fact occupying habitat below Horseshoe Dam—at the Forest Service's Mesquite Campground—an area that the aforementioned collaborators had not even bothered to survey at all.

As I was to eventually learn, this news was not well received by either the Salt River Project or its government agency collaborators. In short order, I was threatened with the possible loss of my ability to conduct future flycatcher surveys by the Fish & Wildlife Service for not coordinating my surveying efforts with that agency. Apparently, the Fish & Wildlife Service viewed my surveys as duplicative and in violation of its rules regarding the conducting of flycatcher surveys. Upon informing the Service that my surveys were subject to prior contractual arrangement and after promising to coordinate my surveys with this agency in the future, the Service apparently concluded that the official letter of admonishment it had already sent me in this matter was sufficient.

My 2002 surveys had revealed, however, more than the locations of these birds. These surveys had also revealed that both areas of flycatcher presence at Horseshoe Lake were vulnerable to loss: at the upper end of Horseshoe Lake by inundation and the threat of stochastic wildfire posed by the tremendous build-up of fuels brought about by arbitrary, Forest Service imposed livestock exclusion for nearly five years, and below the dam by the threat of stochastic flooding should the drought end, the lake fill, and the Salt River Project be forced to release substantial amounts of water from the lake.

To address these threats to the flycatchers, the Johnson Ranch proposed to create protected habitat for these flycatchers along its nearly 2 and one-half miles of irrigation ditches and returns on its private land. Additionally, the Johnson Ranch proposed the renovation of decadent habitat well upstream of the high water mark of Horseshoe Lake, at Eister Flat within the Lower Chalk pasture, for inhabitance by these flycatchers. Finally, the Johnson Ranch also proposed that currently occupied habitat below the Dam at the Mesquite Campground within the ranch's Davenport pasture be protected to withstand stochastic flooding. At all areas other than Eister Flat, livestock grazing was proposed as a tool to minimize the threat of habitat loss to stochastic wildfire. This proposal was flatly rejected by the Forest Service. Indeed, only one line officer in the Regional Forester's office, Mr. Dave Stewart, actually went on record in throwing his support behind this proposal.

Instead, the Forest Service ordered the removal of all of Mr. Johnson's cattle from the Sears-Club / Chalk Mountain Allotment, allegedly because of the drought. Moreover, by early February of 2003, District Ranger Delvin Lopez of the Tonto National Forest's Cave Creek District was relying exclusively on the flycatcher/livestock/cowbird information contained in the Forest Service's April 15, 2002, "Grazing Guidance Criteria" for justification of his continuing, permanent exclusion of Mr. Johnson's livestock from the Lower Chalk and Yearling Pastures of Mr. Johnson's Sears-Club / Chalk Mountain Allotment. Concurrently, District Ranger Lopez was relying on this same information to prepare an Environmental Assessment of livestock grazing on the Sears-Club / Chalk Mountain Allotment for purposes of grazing permit renewal. In fact, Mr. Lopez was only days away from releasing his draft Environmental Assessment for public review under NEPA when Mr. Johnson put a halt to the process by filing a Data Quality Act Request for Correction of the information contained in the grazing guidance criteria on March 25, 2003. (see attachments)

Over a year later, on April 20, 2004, the Forest Service ultimately rejected Mr. Johnson's DQA petition without ever addressing its merits! According to the Forest Service, it didn't have to do so because it never intended to, or actually did, "disseminate" the Grazing Guidance Criteria at issue to the public. In other words, the Forest Service's provision of this criteria to Mr. Johnson's agents did not count as "dissemination" to the "public" because we were "an extremely limited number of individuals." Moreover, its provision of this same criteria to both the Arizona and New Mexico Cattlegrowers Associations didn't count as "dissemination" to the "public" either because the Forest Service does not view these associations as "related to a community or aggregate of people!" Finally, the Forest Service refused to address the merits of Mr. Johnson's petition because, even though this information was relied on specifically by the District Ranger to exclude Mr. Johnson's livestock from substantial areas of his ranch, it was merely "advisory" information and "not intended to," and did "not provide, allotment management direction!" (see attachment).

Epilogue

In May of 2004, the Forest Service adopted a "revised" grazing guidance criteria for Region 3, thus rendering Mr. Johnson's further appeal of the 2002 grazing guidance criteria moot. No mention of the Forest Service's own studies regarding livestock, willow flycatchers and cowbirds is contained in this new criteria either, and the restrictions now "recommended" in regard to such remain draconian in nature.

In 2003, none of the government entities associated with the Salt River Project, or the Salt River Project itself, willingly conducted surveys for willow flycatchers

below Horseshoe Dam at the Forest Service's Mesquite Campground. Instead, these collaborators surveyed across the river from the campground—including Mr. Johnson's private land which they surveyed without his permission—despite the fact that the precise locations of these birds on the west side of the river were known to them based on my 2002 report to the Fish & Wildlife Service.

When queried by Mr. Johnson as to why they hadn't surveyed the Mesquite Campground, Mr. Paul Cherrington of the Salt River Project replied that they didn't do so because my survey work was viewed as lacking credibility by the government agencies with whom the Project was associated. Mr. Johnson responded to this weak excuse by demanding that the Forest Service verify, on-the-ground, whether or not these flycatchers were present at the Mesquite Campground. Mr. Tod Willard, District Biologist for the Tonto National Forest's Cave Creek District, immediately met with me at the Mesquite Campground. Mr. Willard verified that the flycatchers were in fact there in 2003.

My credibility, and by association, that of the Johnson Ranch, was thus vindicated. The same, however, cannot be said for either the Salt River Project or its government agency collaborators.

In 2003, Salt River Project allowed Horseshoe Lake to fill, inundating occupied willow flycatcher habitat. Not so much as a squeak was heard from the Project's government agency collaborators. In 2004, with the lake once again dry, it was found to the amazement of many that the trees which comprise this habitat were, nevertheless, still alive.

Currently, livestock remain unlawfully excluded from the Lower Chalk and Yearling pastures by the Tonto National Forest for over seven years now. Occupied flycatcher habitat remains unprotected and as vulnerable as ever to destruction, while Mr. Johnson's ranch continues to remain totally de-stocked. This is but one of many sad and tragic examples of the current nature of National Forest management and the federal Endangered Species Act.

Sincerely,

Dennis Parker,
Attorney Representing
Mr. Eddie Johnson and
the Johnson Ranch

[A news release submitted for the record by Irwin Pope, Peridot, Arizona, follows:]

Apache Survival Coalition, P.O. Box 1237, San Carlos, AZ 85550
www.MountGraham.org

News Release, Sept. 20, 2004

APACHES HIT CONGRESSMAN RENZI FOR SPURRING DESECRATION OF SACRED MOUNTAIN

Safford, Sept. 20, 2004. Apache Survival Coalition Chairperson Ola Cassadore Davis declared that Congressman Renzi's anti-endangered species Congressional Field Hearing showed his support of unprincipled developers like the University of Arizona astronomers-at the expense of Apache religious life and Apache family values. Cassadore Davis condemned Renzi's efforts to remove endangered species protections from the Mt. Graham Red Squirrel and to thin and clear-cut the summit forest surrounding UA's observatory. She said: "How would Congressman Renzi like to have the hair on the top of his head thinned and parts of his hair chopped out. That's a pretty sacred place to him, I would guess. But he disrespects places that are sacred to us. Renzi should see the fire on top of Mt. Graham in July as a warning from God."

Cassadore Davis continued: "Congressmen like Renzi would sacrifice sacred places in order that developers can destroy the forests, rivers, mountains and special places of this country. The reason our endangered fish and wildlife animals are now endangered is because unscrupulous developers backed by people like Renzi. Renzi and the astronomers on Mt. Graham look up at the stars but they don't look down at their feet to see what they have destroyed on the earth beneath them."

The Apache elder continued: "Mt. Graham is an example of that sort of uncaring destruction. White biologists tell us our sacred mountain is unique. It has more vegetation life zones than any other mountain in North America, and that its forest at the summit is the southernmost spruce-fir forest in North America. We Apache also know this place is unique. It has been spiritually a part of us for centuries.

But people like Renzi don't care about anything except the money that can be made from those places."

"Look at the severely endangered animal like the Mt. Graham Red Squirrel, now down to just a few hundred individuals before the recent fire. Congressman Renzi and Congressman Kolbe and others want to make them go extinct so UA build a city of telescopes on the mountain. If it hadn't been for the squirrel, UA would have by now built a city of telescopes all over the summit of this sacred mountain."

Raleigh Thompson, retired San Carlos Apache Tribal Council member said: "This disregard for people and animals is the way the White Man has treated Indians since the 19th century. Dzil NCAA Si An (Mt. Graham) has been part of our tribal homeland for centuries. It was also part of the original reservation land given to us in 1871. But when early settlers and squatters came into our rich lands, they convinced the federal government to take Dzil NCAA Si An away from us. They wanted it for its water, lumber and other resources. They took our fertile Gila River valley from us too, a place where the reports of the early federal Indian Agents said we grew corn and other crops for as far "as the eye could see." Congressmen just like Renzi have since 1871, on five separate occasions, dismembered about two thirds of our original Apache reservation's acreage."

"No wonder we are poor. They stole the best parts of our land. Congressmen like Renzi don't care if we go extinct any more. than they care if the Mt. Graham Red Squirrel goes extinct. As long as Congressmen like Renzi are around to serve rich and powerful developers by attacking the country's cultural and environmental protection laws, endangered species problems will continue. How would Renzi like us to go to his Church and set up a rodeo or casino beside it or put an Indian crafts shop on top of his Church's high altar? What he is doing to our mountain and its endangered red squirrel is no different."

San Carlos Apache elder Erwin Rope observed: "While the $200,000,000 taxpayer financed telescope project creates some temporary jobs, it creates very few permanent jobs. According to the official Forest Service/Arizona Department of Transportation studies, it will only create 33 Tucson jobs and 30 Safford jobs at most. That is an extremely inefficient and wasteful way for anybody to help local communities."

Mike Davis, Apache Survival Coalition member and Native American stated: "We Indians respect and honor the intent of our Great Spirit,—for animals to live on this planet. It is wrong to abandon endangered animals that need our help as desperately as the Mt. Graham Red Squirrel."

For info: Ola Cassadore-Davis, tel. (928) 475-2543, fax (928) 475-2074; Raleigh Thompson (928) 475-2595, Erwin Rope 928 475-5680, Mike Davis 928 475-2543.

For more info see: www.MountGraham.org

For the "Record of Apache Opposition 1989 to 2001" see: http://www.mountgraham.org/pdf/
RecordofApacheOpnositiontoMtGrahamobservatory,l989to2O01.pdf

[A letter submitted for the record by Laura Schneberger, Gila Livestock Growers, Winston, New Mexico, follows:]

Statement of Laura Schneberger, Gila Livestock Growers, Winston, New Mexico

Hybridism is a problem in reintroduction of predator species especially so in canine species. Yet the Agencies pretend the problem is non-existent or worse that it will have no bearing on pure species or critical habitat.

While FWS claims that ranchers have no standing over claims that hybridism will harm them and that we will not suffer injury, the truth is far different. For example, if male Mexican wolves are breeding with female coyotes as is scientifically documented and happening now in the red wolf program and Adirondack wolf populations, and confirmed in the studies of biologists and geneticists in violation of the ESA. That in writing reintroduction and recovery plans the agencies simply ignore or downplay this wide spread documented problem everyone from every walk of life suffers injury. Seldom is any scientific analysis or planning developed to deal with a hybrid swarm issue since the agencies simply will not admit it happens more regularly than their current thinking permits. People aren't the only species affected by this arbitrary discounting of facts, a predator reintroduction carried out with no or poor planning causes irreparable harm to and loss of the habitat allocated to the endangered animal. This action or non-action on the part of federal agencies is fraudulent implementation of the ESA.

The FWS does not agree with (rancher and citizen groups) that the Mexican wolf/coyote hybrids that potentially exist in the wilds of the BRWRA will inflict lasting

damage to the original gene pool of the Mexican wolves that exist in the wild and create a super coyote species that will breed with any future released Mexican wolves thereby destroying the habitat for pure Mexican wolves. However, proof exists in the red wolf program and the agency has no plan for hybrid free zones as they do in the red wolf reintroduction. Hybrids potentially have the capacity to inflict much higher wildlife and livestock depredation than FWS has previously estimated or ranchers can now count and attribute to pure Mexican Wolves.

While normally, wolves chase coyotes away from their territory or attack and kill them. Dispersing males that are seeking mates will actively breed and create hybrid pups with female coyotes. FWS have consistently ignored this well documented concern in their EIS and EA. Nor have they made any genuine attempt to address these concerns in light of recent hybridization of the Pipestem litter of 2002. FWS has made no attempts to determine the extent of hybridization of wolves with coyotes in the BRWRA especially in areas not saturated with pure wolves where numerous wolf-like animals have been sited and documented but not investigated by USFWS.

Robert K. Wayne, biology professor, University of California at Los Angeles elaborates. When the picking's poor, a male wolf will mate with a female coyote. Their offspring live and reproduce. Apparently, male coyotes don't mate with female wolves. At least, their offspring don't survive.

However, the existing documentation on the Pipestem hybrid litter proves that female wolves can and will breed with other canines and produce surviving litters. The Pipestem female was firmly mated with a male Mexican wolf at the time of the hybrid conception. However, the, male wolf was apparently not with her when she was in heat instead, cavorting some 5 miles away from the female during breeding season. FWS has made no move to capture coyotes in this area and DNA test them for Mexican Wolf genes. There is no other reason that a male wolf would leave its mate during breeding season unless;

A. She was already pregnant.

B. It was attracted by other females (dogs, coyotes or wolf hybrids) in heat.

Brian Kelly USFWS Mexican wolf recovery coordinator has stated in a public meeting in Catron County that he believed there to be hybrid wolves in the area frequented by the Pipestem wolves. Ranchers in the area reported sighting feral dogs at the time breeding season was occurring. FWS never fully investigated the hybrids, feral dogs or the offspring of coyotes in the range of the Pipestem male. They made no attempt to determine if the male wolf was creating hybrid coyotes at the same time the female was creating a hybrid litter of pups.

FWS is notified when wolves are sighted in areas out of the BRWRA and to the far east of the Blue Range Wolf Recovery area and they do little to investigate the sightings of wolf-like creatures.

FWS has not verified the existence of these animals as pure Mexican wolves, even when there is photographic evidence that show they are not coyotes or dogs and have wolf-like characteristics, never seen in the wild before the reintroduction program began. FWS has been known to fly over the area and then state that no collar signal was picked up. There is nothing more done about these sightings than an occasional flight and or a phone call. These mystery animals are usually seen in mid to late winter but not as much in summer months. About the time period when young wolves would disperse and hunt for mates. Whether these are purebred juvenile Mexican wolves dispersing from the Arizona population; individual animals from the 16 missing but documented and collared wolves; or are hybrid wolves is still not verified. FWS seems to not want to know what they are. There have been sightings of both collared wolves and uncollared wolves in the mid and eastern Sierra County area. I can only imagine the extent of the mystery wolf syndrome west of the reintroduction area.

Mystery wolf sightings in my area include Roberts ranch Winston NM Sept 2004, Animas Creek July 2004 Scales canyon Black Range July 2004, Datil area Catron County late winter 2004; Percha Creek in Sierra County winter 2002, Datil Area of Catron County 2001, Winston area of Sierra County 2002; Magdalena area of Soccorro County and the Winston area of Sierra County. Zuni mountains fall 2002; FWS did very little to confirm or deny the sightings.

Of all the current wild-conceived and wild-born pups trapped and DNA tested, NONE, have been trapped east of the AZ line. FWS claims 9 have been trapped and tested, in reality, very little effort is made to comply with the EIS and trap young wolves for collaring and vaccination. Including the Pipestem litter, 14 pups have been DNA tested since the hybrid litter was discovered. Of those 14, 5 were hybrids. Of those 14, the 5 hybrid pups were not in an area already saturated with Mexican Wolves.

The 9 non-hybrids were trapped in a Mexican Wolf saturated area of Eastern AZ in the Blue Mountains. FWS no longer make a real effort to trap and identify young wolves and have not done so for at least 3 years. Trapping of the 9 supposedly pure young wolves was the result of FWS trying to stop depredation on cattle not to trap young wolves for vaccination testing and collaring that the EIS states will happen. Wolves and wolf like creatures are not investigated, or trapped east of the Arizona line.

In fact, if ranchers had not insisted on the removal of the Pipestem wolves for livestock depredations, the hybrid pups would still be in the wild. Very little is being done to determine if pure Mexican wolves are expanding across the BRWRA even though many wolf sightings have been reported to the agency.

Interaction between solitary wolves and coyotes is becoming prevalent. Prior to her death, MW 592 was caught sharing a calf carcass with a group of coyotes. Though it was not breeding season she was once again a lone wolf and apparently ought out companionship. There have been sightings on the San Carlos reservation of coyotes and wolf like animals running together.

In New Mexico, the Gapiwii pups from 2003 have yet to be confirmed as Mexican wolves. They had a set of firmly bonded Mexican wolf parents but were living in the vicinity of other canines including ranch dogs and frequented the ranch to harass the dogs. The Alpha male of the Gapiwii pack was recently killed and the female as well as her 02 offspring have been seen running with a large dog-like animal that is not a wolf. Jan and Feb 03 brought about breeding season. The Gapiwii female has since found a new mate and has a litter of 2004 pups, however, no one really knows what they are and the male she is now running with was not with her during mating season, but the dog was.

There are 16 missing purebred wolves. Collared and uncollared that FWS cannot find. There are at least 8 2003 litters that have not been trapped and identified as pure wolves. There are at least 6 litters from 02 that have yet to be tested and identified as pure Mexican wolves. The FWS is allowing lost wolves to colonize the BRWRA and beyond with no confirmation that they have mated with pure wolves. The program has very nearly or already reached the reintroduction goal of 100 animals and yet will not count or investigate.

After removal from the wild in early 03, Francisco alpha female F 511 was confirmed to be pregnant with wild-conceived pups. The pups were confirmed as having been born in a den at Ladder Ranch wolf pens however all signs of life disappeared from the den early. FWS claims not to know what happened to the pups. When questioned as to whether the adults in the den and pen had their scat analyzed to determine if the pups were consumed FWS said no, the scat was not analyzed. Still no pups, they mysteriously disappeared. (Were they hybrids?) FWS, Wildlife services and NMDG&F all seem to have visually confirmed that Francisco F 11 was running with a larger wolf-like animal before recapture of the pack in the winter of 02&03. This large animal is still being seen in and around the San Carlos Reservation and the 4 Drag ranch.

Private Property and Economic Losses

Where in the law is it written that the party that caused economic loss is the sole determining factor that can quantify what economic loss is?

Rancher's livestock depredation statements have been collected since the beginning of the Mexican wolf reintroduction. Losses are based on years of depredation numbers, pre-wolf compared to current depredation and losses after wolf reintroduction. The declarations represent decades of professional experiences with livestock depredation and compared to their more recent experiences with wolves interfering in livestock operations. These are professional assessments not layperson opinion. Many of the declarants have college degrees in such subjects as animal husbandry, range conservation, pre-veterinary medicine. Darcy Ely, one of the declarants, is getting her masters by implementing a livestock depredation tagging study.

FWS employees are not experts in the field of livestock attacks or depredation and cannot even legally confirm a depredation, yet; FWS has the final word on determining whether property losses are within the numbers they set in their EIS.

FWS employee, John Oakleaf, Mexican wolf coordinator did a depredation study from 2001 confirms that rancher #s are more accurate than FWS published EIS predictions of losses based on 100 wolves. But even though it is the best available science it isn't being looked at as far as incorporating new information into the current rule.

While Defenders of Wildlife have come no where near compensating for all Mexican wolf depredations they have, at times, compensated for unconfirmed cases of livestock depredation when the evidence was clear and irrefutable but still did not meet confirm standards of FWS. Yet now it is becoming apparent that the depreda-

tion compensation program was merely a front to convince the public that ranchers would have some protection. See letter A from DOW as evidence that DOW does not intend to follow through on obligations to property owners to compensate for endangered predator losses beyond a certain time period.

Wildlife Services the only government entity that is allowed to confirm property losses, have testified publicly that smaller calves are seldom found or if found are seldom confirmable even though they are often killed. FWS does not recognize this inconsistency in their current depredation tally. Small calves will only meet rigid confirmation standards if found immediately with a wolf pack eating it. Even then it is difficult to get a confirmation.

Gary Ely of the 4 Drag ranch in eastern AZ tallied livestock losses from 2002 that were astronomical compared to the 01 losses. In late 02 and early 03 the wolf pack responsible for depredating on his ranch were removed from the 4 Drag area for (management purposes) After their removal, Gary's 03 calf crop increased dramatically and was once more near the pre wolf numbers. The only factor attributable to the severe losses was the fact that the Francisco pack frequented the ranch for the duration of 02. Gary and his wife have implemented a tagging study to confirm their livestock kills beyond USFWS methods they are being assisted by Wildlife Services.

Setting standards and regulations that force other agencies to comply with FWS goals at their expense:

USFWS have implemented the standards necessary to confirm a livestock kill. However, only APHIS, Wildlife services employees are allowed to investigate and confirm a livestock kill. They are forced to use USFWS standards. Where in law is it written that the USFWS can implement standards to determine a livestock kill and then step away from the responsibility of investigating and confirming kills within those stringent standards thereby sanitizing themselves and staying free of criticism.

There is a conflict of interest in allowing FWS to promulgate regulations that force another agency to implement stringent depredation standards when FWS have no professional interest or expertise in livestock related mortality due to predation. This inconsistency is the reason that most wolf caused livestock mortality is not confirmed and compensation is not granted to the owner of the private property and FWS livestock depredation figures remain so low.

- The ESA needs private property protection provisions added to the act.
- The ESA needs compensation provisions incorporated into the act. Leaving third party's to contribute to the general fund and disallow any further solicitation of funds from the public for compensation of losses by predators.

Undue financial Influence on federal programs:

The new and improved Mexican wolf recovery team is made up of at least 60% lifetime wolf scientists and activists, about 35% government employees and representatives and 5% sportsmen and agriculture and affected interest. Many of the scientists and activists are funded privately and many of them are funded by the same private entity. In this case, several of the scientists that make up the Technical team for the new recovery plan receive paychecks or grant money from the Turner endangered species fund. The USFWS lists the Turner Endangered Species Fund as a primary contributor to the program; the leader of the tech team is the Turner fund executive director. The public and agricultural interests are far and away outnumbered by special interest and have virtually no input. At this point, economics is a factor that has not been brought into the plan at all even though the recovery is expanding to include other reintroduction areas. The activists on the team, that file USFWS friendly lawsuits also receive grants from the Turner Endangered species fund. This is a clear conflict of interest and far from the intent of congress when this law was enacted. With a private entity using a checkbook to steer a federal program, private affected citizens have little input and recourse for poor and biased decision-making that only results in social upheaval not the recovery of legitimately endangered species.

Defenders of Wildlife is another example of steering a program through checkbook, DOW is a huge corporate Environmental organization. If they do not like the way you manage your cattle or the way you feel about the wolf program they will withhold reimbursement for dead livestock. If they get tired of offering payment for property loss they simply send you a letter telling you to sell out and move that cattle are no longer a feasible business in a predator filled area. See letter A.

The ESA should be altered to put all private funding into the general budget of the interior department and allow the interior secretary to decide which programs

need funding first and how to implement compensation for property losses without strings attached.

To allow wealthy individuals and powerful non government organizations to fund federal programs allows them undue influence on how those programs are carried out and allow them to prescribe a plan for how best to economically affect a community with a listing, a lawsuit, a predator reintroduction, even a public comment. When a Non Government organization makes endangered species comments on a private businessman operating on private or federal land the agencies have gotten used to giving into their demands simply because of the funding they provide or the lawsuit they might file. Many of my Livestock owners have seen their herds drastically cut or their operating ability severely curtailed. They have had to fence off water rights they own and should have access to in this dry period. Many landowners have had property devalued simply due to a letter over a potential species affect. So many times these actions are simply due to one letter from a Non Government organization, or worse, a plan authored by a consensus group made up of people all funded in one way or another by the same checkbook.

To recap my ESA issues, since I get a bit long-winded at times providing examples, they are as follows.

1. ESA does not apply to hybrids Agency personnel should not be allowed to ignore or protect hybrids or subspecies that they themselves have created through faulty application of planning.
2. Agency personnel shall not be allowed to implement rulemaking that sets standards other agencies must bear the entire cost and responsibility for carrying out.
3. ESA recovery plans shall not be allowed to accept funding directly from private or non government sources such contributions should be put into the primary FWS or better yet interior department budget, not allowing private entities to earmark funding for individual plans this smacks of corruption and helps no legitimate ESA program.
4. Special interest groups should not be allowed to control planning.
5. ESA needs comprehensive private property protection language.
6. ESA needs comprehensive compensation program.
7. ESA needs requirement that Personnel follow their own regulations plans and analysis or risk funding losses.

I apologize for basing all of my comments on one species, however, when faced with a major predator reintroduction and then recovery, the implications of bad law become very obvious. I believe my comments can also be applied to any other species and still be just as accurate and meaningful.

Thank you for the opportunity to present this testimony.

[A letter submitted for the record by Bob Zybach, Corvallis, Oregon, follows:]

Statement submitted for the record by Bob Zybach, Corvallis, Oregon

Congressman Walden:

During the public hearing in Sisters you requested ideas and suggestions for a national policy to address the management of federal resources during the aftermath of catastrophic events, such as the 2003 B&B Complex wildfire. Although my background is in reforestation and fire history, rather than policy, I think this combination of attributes can provide both a theoretical and practical perspective to my suggestions, listed below. Also, I believe the timeliness, high visibility, political history, and homogenous land ownership patterns (mostly federal) of the B&B Complex provides an ideal opportunity for testing such suggestions.

The need for a national "aftermath policy" can be readily illustrated with the inertia surrounding management of snags that resulted from catastrophic forest fires that have occurred on federal lands in western Oregon since 1987. Despite the expenditures of hundreds of millions of dollars and lessons that should have been learned from the Silver Complex before it, more spotted owl and old-growth habitat was lost in a matter of days, and more snags have remained unharvested for years, as a result of the 2002 Biscuit Fire. Contrast these results with those obtained by the State of Oregon in the management of snags that resulted from the catastrophic Tillamook Fires of the 1930s and 1940s, where we now have the beautiful and productive Tillamook State Forest.

From the time of the Tillamook Fires until federal forest management policies began to shift from proactive management to passive guardianship in the late

1980s, there were no catastrophic forest fires in western Oregon. From the time of the Silver Complex until the present, numerous resource managers and forest scientists have predicted an increased likelihood of greater numbers, area, and severity of catastrophic wildfires in western Oregon caused by this shift in management policies; and their predictions have come true. Yet no detailed plans have been made for the occurrence of these events. When the Kalmiopsis Wilderness and much of the Siskiyou Forest was transformed in a matter of weeks to a sea of smoking snags in 1987, planning started from square one: new environment; new plan. When the Biscuit Fire burned through the same areas 15 years later, the process was the same: a new planning process was once again initiated for the "new" environment, and activity proceeded at a crawl, hampered at every turn by regulated process or litigation. Contrast this with the Warm Springs' approach to the management of this year's Log Springs Fire, as described by Mr. Brunoe at the hearing.

Wildfire is not prescribed fire, and is not—by comparison—a particularly safe, efficient, economical, beneficial, or aesthetically pleasing method of "returning fire to the environment." If we are not going to log or use prescribed fire to reduce woody fuels, we must do something else with the surplus materials that continue to build in our forests, or continue to face the adverse effects of future wildfire events. Whether the effects of these events are moderated or not, however, they will continue to occur—and the need for some form of national policy to deal with them will continue to exist. The hurricanes currently affecting Florida provide additional evidence of the need for a federal aftermath policy for other types of catastrophic events, not just wildfires, and in other areas of the country, not just Oregon.

I think the establishment of a national "aftermath policy" along the lines described in the following paragraphs would help to resolve several of these problems, whether measured socially or ecologically. Some of these suggestions incorporate the general process described by Mr. Brunoe; where public outreach is constant and near consensus is achieved before events occur, so that resource managers can proceed quickly and with confidence when they do occur, as illustrated by the Log Springs example. Others are more dependent on emerging technologies that just now are making it possible to share vast amounts of information quickly and cheaply with the general public, resource managers, scientists, teachers, and students. All are based on a certain amount of practical experience and common sense.

A national aftermath policy should be implemented immediately at the presidential declaration of catastrophic event or other national emergency occurring in the US, particularly an event or emergency affecting federal lands or resources. The purpose of the policy would be to protect lives, protect national security, and protect the environment. Actions during and immediately following the onset of declared catastrophes or other emergencies would be prioritized according to the following options:

1. The highest priority would be given to actions intended to help maintain human health and safety.
2. The next priority would be given to actions that maintain open communication and transportation networks, particularly those related to national security and humanitarian relief.
3. Third priority would be given to immediate actions intended to maintain and restore desired environmental conditions. Local resource managers, under guidelines established by a continuing public review process, would initiate actions as needed. Management objectives could reasonably be described in the form of "desired future conditions" and listed in 10 and 20-year increments for a projected period of 50 or 100 years. Such desired conditions could be continuously determined and updated through the findings of established long-term learning experiments, comprehensive public outreach, and meaningful discussions involving the interested public, scientists, resource managers, and others with a vested interest in local environmental resources. Scales of desired conditions would vary from stand-level (acres) to landscape-level (tens of thousands of acres). This process is very similar in concept, but different in scale and methodology, than the process described by Mr. Brunoe at the hearing.
4. When needed, the NEPA process would be initiated as quickly as possible with the issuance of a scoping letter that included a current listing and description of issues and long-term objectives. These would continue to be identified and updated during the course of ongoing learning, outreach, and communication processes just described.
5. Digital photo-grids would be systematically established and photographically recorded immediately and over a period of years on all public lands affected by the events, and in other affected locations where they were not an intrusion on privacy. The principal purposes of the photo documentation would be to efficiently establish baseline information regarding environmental changes attrib-

uted to the event, and to monitor the results of actions taken in response to those changes. The documentation would also serve many forms of long-term learning studies as well as be easily distributed to interested individuals and organizations.

6. Lessons learned via this process would be formally assimilated at periodic intervals and used to adjust existing plans and address following events of similar magnitude or consequence.

I am hopeful that some portion of these suggestions may prove helpful in expediting and otherwise improving the current methods we are using to deal with catastrophic events on federal lands. I believe that better learning and communication processes, coupled with more efficient and better defined management options, should lead to healthier, more aesthetically pleasing, and more productive forests for future generations.

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