

# EXAMINING THE IMPACTS OF THE ENDANGERED SPECIES ACT ON SOUTHERN NEW MEXICO

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## OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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Monday, June 7, 2004, in Carlsbad, New Mexico

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## **OVERSIGHT FIELD HEARING ON “EXAMINING THE IMPACTS OF THE ENDANGERED SPECIES ACT ON SOUTHERN NEW MEXICO.”**

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**Monday, June 7, 2004  
U.S. House of Representatives  
Committee on Resources  
Carlsbad, New Mexico**

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The Committee met, pursuant to call, at 8:00 a.m., at the Pecos River Village, Carousel Building, Carlsbad, New Mexico, Hon. Richard W. Pombo presiding.

Present: Representatives Pombo and Pearce.

The CHAIRMAN. If I could have everybody take their seats, please. Good morning.

The oversight hearing by the House Committee on Resources will come to order. The Committee is meeting today to hear testimony on the Endangered Species Act. Thank you for the opportunity to bring the Committee to southern New Mexico. I look forward to listening and gaining greater insight from the witnesses today on how the Endangered Species Act is impacting families in everyday operations and businesses in this region of the country.

I'd like to now turn it over to my colleague, and the host of today's hearing, Congressman Steve Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. And I'm going to introduce what we're going to do first, and then we'll just walk straight through it. The posting of the colors is going to occur by Boy Scout Troop 288, and then we'll be following that with the Pledge of Allegiance led by Chief Connie Riley. Then Jeff Herring is going to sing God Bless the USA, and Reverend Robert L. Smith will do an opening prayer.

So if I can have you all please rise for the posting of the colors.  
[Singing of God Bless the USA.]

Reverend SMITH. Let us pray.

Father God, we come to you right now as humble as we know how. We come first, Lord, to thank you with uplifted heads for being in the land of the free. Father God, we want to say thank you for all of the blessings that you've bestowed upon us. You've kept us and you've sustained us.

And we thank you for all the lands that you've given us, the beasts of the fields and the birds in the air. And we thank you, Lord, and we pray that we have the mind and wisdom, that Thou will give us the mind and wisdom to sustain all you have given us.

And we ask that you would look on those that have made it possible that we be free, the soldiers that are fighting overseas. Lord, we pray for them and for their families, that Thou will keep them and bless them. But most of all, that we as a nation, Lord, would always have our mind near to Thee, that has all power. And most of all, Lord, also that Thy will be done, not our will, but Thy will.

These and many other blessings that we ask in the name of Jesus, Amen.

Mr. PEARCE. You all can take your seats, and I'm going to do a short flag presentation. If I could get Mr. Berg and Reverend Smith and the Boy Scout troop right up here, I think we are going to announce them, and if the Chairman would pass the flags out to them. These are flags that have been flown over the Capitol. And we think it is very special when we have people help us in our process. We just want to recognize those things, so thank you all.

Let's give them a big round of applause.

We have Mayor Forrest here. Mayor, would you like to make a comment or two before we get started?

Mayor FORREST. I think everybody has heard enough speeches. I just want to thank you and the Chairman, Richard Pombo, for being here. We really appreciate having these hearings.

And I notice people here that are opposed to the endangered species. We just had an oil well blow out here a month ago, here in Carlsbad, and I've been to those committee meetings and I've watched the oil and gas people and the community have come together and working out a solution. And I think one of the best things that ever happened to this community, we're able to sit down and work our problems out.

And I think today is another good example of you having this hearing, giving both sides a chance to talk about the issues, talk about the problems. And you know, as mayor of Carlsbad, we're very blessed with potash, with oil and gas, and healthcare and tourism. We've got so many good things going for us.

But the biggest asset this city has is this beautiful river. And we have seen over the last two or 3 years what happened in the drought. Down in Otis, the Prices having to give up 6,000 acres of irrigated land. It is a very big problem. I think we can work it out. We'll all work together. And I just want to thank you and the Chairman for having this hearing here today.

Mr. PEARCE. Thank you, Mayor, and thank you for having us here in town.

The CHAIRMAN. Thank you. And I thank all of those who participated in the opening of our hearing here today. As we begin, I'd say that under Committee Rule 4(g), the Chairman and the Ranking Minority Member can make opening statements. If other members have other statements, they can be included in the hearing record.

Also, under House Rules, there is a prohibition on the display of signs or any comment from the audience during the process of the hearing. This is an official Congressional hearing, and the decorum must be maintained in accord with the Rules of the House.

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

The CHAIRMAN. The Endangered Species Act has given wildlife very little to cheer about as we stagger blindfolded into its 30th anniversary. Since its inception, nearly 1,300 species have been listed as threatened or endangered. Yet, only seven domestic species listed under the ESA have ever been recovered in 30 years. Not one of those species was recovered as a result of the ESA alone. Their removal from the ESA is to be linked to other vital conservation measures and human intervention.

Sadly, that is the history of the Endangered Species Act. Born of the best intentions, it has failed to live up to its promise. Species are more threatened today because of its serious limitations. Thirty years of the same prescription has failed. Moreover, despite the evidence, some maintain that we can only use one treatment, the one prescribed 30 years ago.

But for the last 30 years, the ESA has remained a law that checks species in, but never checks them out. It has been a failing form of managed care. Specifically, the diagnosis and treatment aspects of the law are fatally flawed. They are ambiguous, open to arbitrary personal judgment, and do not rely on sound science or peer-reviewed research. Known as listing and critical habitat respectively, these key elements of the Act are responsible for the misdiagnosis of species as endangered or threatened and the application of a one-size-fits-all solution.

When a species is listed for protection, treatment comes in the form of critical habitat designations, which forbid the use of lands by or for anything but the species. Critical habitat is one of the more perverse shortcomings of the Act. It has been interpreted to mean that if an animal is determined to be in trouble, there is only one viable option, to designate the critical habitat and let nature take its course.

Rampant environmental litigation has undermined the already-broken system at the expense of species recovery. In fact, there have been so many lawsuits that the Federal critical habitat program went bankrupt last year. Litigation has left the United States Fish and Wildlife Service with limited ability to prioritize its species recovery programs and little or no scientific discretion to focus on those species in the greatest need of conservation.

The Administration acknowledges that court orders and mandates often result in leaving the Fish and Wildlife Service with almost no ability to confirm scientific data in its administrative record before making decisions on listing and critical habitat proposals. In the wake of this decade-long trend, the current Administration, supported by the previous Clinton Administration, recognize that critical habitat designations provide the majority of listed species and proposed to be listed species little, if any, additional protection.

Congress intended for this law to be used to recover species and to increase the number those in need before triggering Federal regulation. To merely prevent the extinction of the species is not a long-term measurable success. Congress never dreamed that it would turn into a tool used by vocal and well-funded special

interest groups seeking to impose court-ordered Federal land and water use controls on the majority of Americans.

Celebrating these failures—as many are doing in this 30th anniversary of the Act—is not how we should mark this occasion. Instead, we must begin to improve it for the 21st Century. As we are doing here today by closely examining its implementation in southern New Mexico, Congress must focus on legislative reforms that foster the science, technology, and innovation that have made America successful in other endeavors.

I realize the amendment and reauthorization of the Endangered Species Act has dragged on since it expired in 1993. This is not for lack of trying, and Congress has come close to reaching agreement a number of times. But unfortunately, some groups would rather play politics and benefit from the current state of dislocation under the Act than have to agree on what is best for the species.

The House Committee on Resources is here today as a result of the hard work of my colleague and good friend, Congressman Steve Pearce. We are before you today to hear from you and receive your ideas on what we, as your elected representatives in Washington, can do to improve the implementation of the Endangered Species Act.

Again, thank you for having us, and I would like at this time to recognize Mr. Pearce.

[The prepared statement of Chairman Pombo follows:]

**Statement of The Honorable Richard W. Pombo, Chairman,  
Committee on Resources**

Good morning. I would like to call this hearing on the Endangered Species Act to order. Thank you for the opportunity to bring the House of Representatives Committee on Resources to southern New Mexico.

I look forward to listening and gaining greater insight from the witnesses today on how the ESA is impacting families and every day operations and businesses in this region of the country.

The Endangered Species Act has given wildlife very little to cheer about as we stagger blindfolded into its 30th anniversary. Since its inception, nearly 1,300 species have been listed as threatened or endangered. Yet, only seven domestic species listed under the ESA have ever been “recovered” in 30 years. Not one of these species was “recovered” as a result of the ESA alone. Their removal from the ESA is to be linked to other vital conservation measures and human intervention.

Sadly, that is the history of the Endangered Species Act. Born of the best intentions, it has failed to live up to its promise, and species are more threatened today because of its serious limitations. Thirty years of the same prescription has failed. Moreover, despite the evidence, some maintain that we can only use one treatment—the one prescribed 30 years ago. But for the last 30 years, the ESA has remained a law that checks species in, but never checks them out. It has been a failing form of managed care.

Specifically, the “diagnosis” and “treatment” aspects of the law are fatally flawed. They are ambiguous, open to arbitrary personal judgment and do not rely on sound science or peer-reviewed research. Known as “listing” and “critical habitat” respectively, these key elements of the Act are responsible for the misdiagnosis of species as endangered or threatened and the application of a one-size-fits-all solution.

When a species is listed for protection, treatment comes in the form of critical habitat designations, which forbid the use of lands by or for anything but the species. Critical habitat is one of the most perverse shortcomings of the Act. It has been interpreted to mean that if an animal is determined to be in trouble, there is only one viable option—to designate critical habitat and “let nature take its course.”

Rampant environmental litigation has undermined the already-broken system at the expense of species recovery. In fact, there have been so many lawsuits that the federal critical habitat program went bankrupt last year. Litigation has left the United States Fish and Wildlife Service with limited ability to prioritize its species



recovery programs and little or no scientific discretion to focus on those species in greatest need of conservation.

The Administration acknowledges that court orders and mandates often result in leaving the Fish and Wildlife Service with almost no ability to confirm scientific data in its administrative record before making decisions on listing and critical habitat proposals. In the wake of this decade long trend, the current Administration, supported by the previous Clinton Administration, recognize that critical habitat designations provide the majority of listed species and proposed to be listed species little if any additional protection.

Congress intended for this law to be used to recover species and to increase the number of those in need before triggering federal regulation (restrictions). To merely prevent the extinction of a species is not a long-term measurable success. Congress never dreamed that it would turn into a tool used by vocal and well-funded special interest groups seeking to impose court ordered Federal land and water use controls on the majority of Americans.

Celebrating these failures—as many are doing this 30th anniversary of the Act—is not how we should mark this occasion. Instead, we must begin to improve it for the 21st century. As we are doing here today by closely examining its implementation in southern New Mexico, Congress must focus on legislative reforms that foster the science, technology and innovation that have made America successful in other endeavors.

I realize amendment and reauthorization of the Endangered Species Act has dragged on since it expired in 1993. This is not for a lack of trying and Congress has come close to reaching agreement a number of times. But unfortunately, some groups would rather play politics and benefit from the current state of dislocation under the Act then have to agree what is best for the species.

The House Committee on Resources is here today as a result of the hard work of my colleague and good friend, Congressman Steve Pearce. We are before you today to hear from you and receive your ideas on what we as your elected representatives in Washington, can do to improve the implementation of the Endangered Species Act.

Again, thank you for having us and I would at this time like to recognize Mr. Pearce.

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#### **STATEMENT OF THE HON. STEVAN PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO**

Mr. PEARCE. Thank you, Mr. Chairman, for coming to New Mexico and coming to Eddy County to look at impacts that we have on the Endangered Species Act. You know, there are a lot of people who say that we should just dismantle and rescind that act, and I will tell you that it's not politically possible, nor is it necessarily desirable. I think there are a couple of good outcomes that have come from that act, but we must achieve some balance.

For me, this hearing continues a hearing we had a couple of weeks ago in Washington, and the last testifier of the day, after about four and a half hours of testimony, the last woman just burned her testimony into my mind. She said that, My politics are green, and she said that, I come from—I think it was San Jose, California, and she said, We're as green a city as exists in the United States.

And she said the Endangered Species Act is blocking everything we want to do. And she said now here in my time I'm seeing people with green policy. Just open the dad gum beach, basically, is what it said. My wife has cautioned me against repeating bumper stickers exactly. So when the people who really support an issue begin to say that we need some balance in it, I believe that we need to look cautiously at the changes that we need to make.

Another compelling testimony we had about 6 months ago was when the loggers and the pulp woodworkers, the Paper of America came, a strong union group, and they told us how many mills had

been closed, and they said just give us our jobs back. Our friends on the other side of the aisle in that committee meeting said, but you don't understand, you can have jobs in tourism. You can have jobs in the hospitality industry. And these fine union workers—and I mean, these were the heart of Americans out here working in very difficult conditions to cut timber and to bring it to market—said, we don't want those jobs. We want our jobs in the industry back. So we continue to hear the difficulties that the Act causes.

Mr. Chairman, if there is no—I've got a longer, more complete statement I would like to submit for the record. But also if we could include in the record a copy of the videotape from this morning's rally for people who fight this fight for judicious implementation of the Endangered Species Act, and if we could include that in the record, I would appreciate that.

The CHAIRMAN. Without objection

[NOTE: The videotape submitted for the record has been retained in the Committee's official files.]

Mr. PEARCE. Thank you. I was just in a meeting Saturday up in Cloudcroft. We were being told there that Georgia-Pacific had come in and wanted to put a chipping plant in this district, but they needed certainty from the Forest Service that they could provide small-diameter logs in a number adequate to sustain their production. They were willing to bring 85 jobs here almost immediately. The Forest Service has been working for 3 years to try to determine how much timber they can cut. And they said, We still don't know. We'll get back with you.

Georgia-Pacific left the state and said, When you-all get some knowledge, give us a call back. Right now, we're in danger of losing the two mills over in Alamogordo. They need 12 million board feet a year from the Forest Service out of a million acres of land, and the Forest Service can't give them an answer. I don't think it's always the Forest Service's complete fault. I think they are bound by litigation and they are bound by internal policies. But it just is an example to me how badly flawed some of our decisionmaking processes are when we cannot get answers, when we cannot create and have jobs for people to work on.

As I look at the Scott Able fire, a very hot fire that burned because we have basically too many trees in the forest, that fire burned. And we had, earlier this year, a rain. The estimates from an official Saturday was that we had 3 million years of topsoil washed away in the Scott Able fire. When we choose not to manage our resources, when we choose to allow the fuel load to buildup and then burn—and it's not a question of if they are going to burn, but when our forests are going to burn—then we have catastrophic damage that will take a long time.

Many times the policies that we're implementing do not prove to be environmentally sound. They prove to be what an environmental group wins in court.

I was also at the meeting on Saturday and found that the estimate is that we have the equivalent, when we looked at the tree load in just the southern district of New Mexico, that we've got the equivalent of 500,000 families, because each tree uses a certain amount of water. And when you compare the number of trees and equate it over to the amount that one family uses in water, we

realize that a second deep problem is occurring from the tree load in our forests, and that is that water in the Pecos River and the water in our aquifers is impeded to such an extent that it affects our way of life. It affects even our ability to continue to have communities and to have agriculture and to have just a culture here when we need the water that's being used by too heavy and too dense a population of trees in our forests.

When I look at the price of oil, you simply have to say that we make our choices here. Right now we're over asking the Saudi Arabians if they'll increase production by a million to a million and a half barrels of oil a day to try to get the price down so that the price of gasoline is not close to \$3 at the pump. In 1995, the House and the Senate passed a bill which would have allowed drilling in ANWR. President Clinton vetoed that bill, and today, had that bill gone through, we would have been piping one and a half million barrels a day, almost exactly what we're asking for the Saudi Arabians to produce. We would be somewhat more dependent today than what we are as a result of the choices that we make in our environment and in all of life are going to end up coming together and impacting us in economic ways. It's up to us, the people, to decide what those ways are.

As we talk about our resources, New Mexico is rich with resources. We've got timber. We've got mining. We've got oil and gas. We have to ask ourselves which of those resources are available and accessible? And that ends up being an economic—has an economic outcome.

So, Mr. Chairman, I'm going to submit my full statement, but I wanted to make these comments to really put into perspective what we're going to talk about, in my opinion, at this field hearing today. We've got a good panel that really has been interdicting, has been dealing with the on-the-ground effects of this Endangered Species Act for years.

I think these, given the testimony that you took a couple of weeks ago in Washington, I think that this testimony will again give us information about the things that we can do that make common sense that will bring balance into a bill that we need to have. We need to be protecting species, but we do need to be considering the human aspects.

So, Mr. Chairman, I thank you for coming to Carlsbad. I thank you for coming to New Mexico.

[The prepared statement of Mr. Pearce follows:]

**Statement of The Honorable Stevan Pearce, a Representative in Congress  
from the State of New Mexico**

Thank you, Mr. Chairman, for coming to New Mexico to learn about the impact of the Endangered Species Act.

If there are no objections and with your permission, I'd like to include in the record a copy of the videotape from this morning's rally.

Mr. Chairman, our nation's economy is driven by natural resources that are available on federal lands. Americans cannot heat their homes, enhance their businesses, or feed their families without affordable natural resources. America, and particularly the West, has been blessed with an abundance of federal lands from which natural resources are available. Federal lands grow our food, provide wood to build and furnish our homes and minerals that become products we use every day. We also get a large percentage of our energy supply from federal lands.

New Mexico, in particular, is an important producer of food and energy for our nation, and the unreasonable application of the ESA is having a disastrous impact

on how we are able to live our lives and provide for our families. For example, the ESA has had a devastating effect on the production of fruits, vegetables, livestock and oil and gas in New Mexico. Land and water New Mexican's have used for hundreds of years is now off-limits to them because of the ESA. For example, livestock grazing is being drastically curtailed, in some instances solely because of the ESA. Another example is the water that took New Mexico decades to store as a hedge against drought is being taken for fish with no regard for the impacts to humans. My bill, H.R. 2603, would return the water rights to the states and the rights holder, and has broad support in the state.

Federal lands support a wide variety of activities that are important to New Mexico's culture and heritage. Many descendants of the Mexican land grants hold family parcels on federal lands that are used to raise cattle and pass on the traditions and family values from generation to generation. We cannot allow the unintended consequences of the ESA to stop our heritage.

As much as these federal lands benefit the citizens of the United States, if we lock them up by denying access, we will lose most if not all of the benefits they provide. We must ensure full and fair access to federal lands today and in the future.

New Mexico in particular is blessed with an abundance of natural resources. For example, oil and natural gas annually contributes about \$1 billion into New Mexico's general revenue fund. This is one-quarter of the state's annual budget. The Permanent Fund revenue from our natural resources pays for about 90 percent of all school buildings and other capitol investments, which saves taxpayers an average of \$800 each.

Mr. Chairman, I believe we can continue to access our federal lands to enjoy the cultural and economic values we share and need. We can do this through balance and responsibility. However, under the current interpretation and enforcement of the ESA is skewed with little or no balance, and that is unacceptable.

I applaud your willingness to come to Southern New Mexico to gain firsthand knowledge you can use as we begin to make commonsense changes to balance the ESA. No one wants to see a species go extinct, yet we must not sacrifice our heritage or our economic prosperity for the sake of over-regulation.

Current regulations and laws are the culprit to why we have gasoline over \$2 per gallon, and to why we are losing jobs overseas. Without real reform of the ESA we will continue to be held hostage by high gasoline and energy costs.

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The CHAIRMAN. Thank you.

I'd like to recognize our panel.

The CHAIRMAN. We have Ms. Alisa Ogden, Mr. Tom Davis, Jeff Harvard, Ms. Joanna Prukop, Joe M. Stell, and Jon Tully. Before I began the testimony, if I could have you all stand. As a rule of the Committee, we swear in all of our witnesses.

[Witnesses sworn.]

The CHAIRMAN. Thank you very much. You can be seated. Let the record show they all answered in the affirmative.

Welcome to the hearing. I appreciate all of you making the effort to be here and to prepare testimony for the hearing this morning. Under Committee Rules, your oral statements are limited to 5 minutes. Your entire written testimony will be included in the record. The lights that are up here on the table, it works like a stoplight. Green means go, yellow means hurry up, and red means stop. So if when you see the red light come on, I'd appreciate it if you'd try to wrap up your testimony. But again, your entire written testimony will be included in the official record.

Ms. Ogden, could we begin with you, if you're ready.

#### **STATEMENT OF ALISA OGDEN, CARLSBAD, NEW MEXICO**

Ms. OGDEN. Sure. Mr. Chairman and members of the Committee, on behalf of the agriculture industry and all New Mexicans, I thank you for holding a field hearing in New Mexico on this issue

so vital to our livelihoods and futures, and for the opportunity to testify before you.

I am Alisa Ogden. I'm a fifth-generation rancher and third-generation farmer on the lands my family settled south of Carlsbad and Loving. My mother's family established our ranch south of Carlsbad in 1890, and my father's father moved to the Loving area in 1917 to farm in the newly developed irrigation district. In 1981, I returned home to manage the family ranch.

By 1988, my father was ready to retire, so my brother Craig and I became partners in the management of the family farm. We have continued to operate the farm since that time. In addition, I am a single mother of a 10-year-old son, active in my church, philanthropic organizations, as well as agricultural organizations.

I am here today representing southern New Mexico's agricultural industry, including the New Mexico Cattle Growers Association. And at this time, I'd like to thank Caren Cowan, who is the executive director of the New Mexico Cattle Growers Association, for helping me in my testimony and for the information.

In theory, the Endangered Species Act has its place in the attempt to keep a variety of species from extinction. In reality, it has become our worst nightmare come true. The human factor has been completely ignored in the decisionmaking process. In addition, the use of sound science is not encouraged in determining what species are in need of protection or the best method in protecting them.

Too many times personal agendas have taken precedence over commonsense decisions in regards to many species. The ESA has had tremendous impact on the financial well-being and resources of agricultural organizations as well as to individual producers like me. New Mexico's livestock industry has spent well in excess of half a million dollars in attorney fees alone in attempting to protect agricultural producers and their rights during the past 7 years. Despite winning a landmark case on critical habitat designation in 2001, we have had to continue to sue the U.S. Fish and Wildlife Service on the same issue time and time again just to obtain compliance with Federal law.

Even more frustrating is the fact at the Federal level, the Fish and Wildlife Service has chosen to apply the precedent only in the 10th Circuit Court of Appeals, where the case was decided, and this case was on a southwestern Willow flycatcher. Since 2001, we have won the same case two more times on other species, which are the Arkansas shiner and the spokedace and loach minnow. Given that New Mexico has some 44 endangered, threatened, or candidate animal species and 13 plant species, this could be a pretty costly process for producers and their trade groups as well as the Federal government.

The ESA is particularly harsh on New Mexico and other western states because of land ownership patterns. New Mexico is over 60 percent government owned and made up of a patchwork of private, Federal, and state lands. Most of our livestock operations contain two, if not all three types of land ownership.

While some say that the ESA does not impact private land use, they are wrong. If your ranch is made up primarily of Federal lands, Bureau of Land Management or Forest Service, you are not allowed to use the Federal portion of that ranch, and that makes

the private portion useless as a livestock operation. Some people in southern New Mexico have become almost full-time unpaid employees of the Fish and Wildlife Service in an attempt to develop a working plan to address the lesser prairie chicken, a candidate species, and keep it from being listed as endangered.

At this point in time, this small bird threatens to destroy the ranching and oil and gas industries in this area, which, in turn, will destroy our rural economy and our families. And if trying to deal with the lesser prairie chicken weren't enough, the working group was recently told that they must also consider the sand dune lizard. And to add insult to injury, last month a beetle was added to their list of concerns.

We have hardly begun to address the northern Aplomado falcon. Nearly 2 years ago, the New Mexico Cattle Growers Association attempted to work proactively with the Fish and Wildlife Service in the development of a 10J experimental nonessential rule that would provide some level of comfort for landowners and Federal land users in restoring the bird to the region. Unfortunately, budgetary concerns have limited progress on the proposal and environmental elitist groups are threatening litigation to force the declaration of critical habitat.

There are few on this earth who care for and appreciate animals in our environment more than those of us in production agriculture. We choose to live frugal lives on the land with our animals and the wildlife because we value all they have to offer us—a life filled with a wealth that money and material possessions can never provide. But we cannot survive under the oppressive Federal mandates of the ESA.

However, we are not unwilling to be part of the solution.

New Mexico agriculture came together 2 years ago to identify potential fixes to the ESA that would protect species and our families, and what resulted is the attached 17-item list that has been adopted by the Western States Soil and Conservation Districts.

The 2002 Klamath Basin disaster comes to mind for all farmers when the worst case scenarios are imagined. Overreaction to a water situation ruined the livelihoods of many people, not just those in farming. Closer to home, a minnow, the Pecos blunt-nose shiner, has had a great effect on determining whether and even if water stored in reservoirs on the Pecos River will be delivered for use by farmers in the Carlsbad Irrigation District.

In this desert area, there is much data on the most efficient delivery of water from the reservoirs upriver. Every drop counts in these short water years. It is vital to use the most efficient water delivery possible. The Fish and Wildlife Service has tried to have an impact on that delivery, and many times a great deal of water would have been lost for use by the farmers if CID had followed Fish and Wildlife desires.

For our farm, that means less water to use to produce our crops. We do not have supplemental water wells and depend solely on water delivered by the CID. Water is our make-or-break factor. Without the water delivered by CID, we cannot survive as farmers. With all that Mother Nature sends our way, we do not need short-sighted governmental regulations to battle, also.

A lot of blood, sweat, and frustrations have kept these lands together. Most of the time nature was a factor we had no control over. We plugged on through and persevered. Every person involved in production agriculture expects the weather to throw some curves. It is the curves thrown to us by our government that may be what, after all these years, defeats us.

Thank you, once again, for your time and interest, and I hope that together we can create a law that achieves the noble goal of species protection without harming people like my family and me.

[The prepared statement of Ms. Ogden follows:]

#### **Statement of Alisa Ogden, Carlsbad, New Mexico**

Mr. Chairman and members of the Committee, on behalf of the agricultural industry and all New Mexicans, thank you for holding a field hearing in New Mexico on this issue so vital to our livelihoods and futures, and for the opportunity to testify before you.

I am Alisa Ogden. I am a fifth-generation rancher and third-generation farmer on the lands my family settled south of Carlsbad and Loving. My mother's family established our ranch south of Carlsbad in 1890 and my father's father moved the Loving area in 1917 to farm in the newly developed irrigation district. In 1981, I returned home to manage the family ranch. By 1988, my father was ready to retire, so my brother Craig and I became partners in the management of the family farm. We have continued to operate the farm since that time. In addition, I am a single mother of a 10-year-old son, active in my church, philanthropic organizations, as well as agriculture organizations.

I am here today representing Southern New Mexico's agricultural industry, including the New Mexico Cattle Growers' Association (NMCGA).

In theory, the Endangered Species Act (ESA) has its place in the attempt to keep a variety of species from extinction. In reality, it has become our worst nightmare come true. The human factor has been completely ignored in the decision making process. In addition, the use of sound science is not encouraged in determining what species are in need of protection or the best method in protecting them. Too many times, personal agendas have taken precedence over common sense decisions in regards to many species.

The ESA has had tremendous impact on the financial well being and resources of agricultural organizations as well as to individual producers like me. New Mexico's livestock industry has spent well in excess of half a million dollars in attorney's fees alone in attempting to protect agricultural producers and their rights during the past seven years. Despite winning a landmark case on critical habitat designation in 2001, we have had to continue to sue the U.S. Fish & Wildlife Service (FWS) on the same issue time and time again just to obtain compliance with federal law. Even more frustrating is the fact that at the federal level, the FWS has chosen to apply the precedent only in the 10th Circuit Court of Appeals, where the case was decided. Since 2001 we have won the same case two more times on other species.

Given that New Mexico has some 44 endangered, threatened or candidate animal species and 13 plant species, this could be a pretty costly process for producers and their trade groups as well as the federal government.

The ESA is particularly harsh on New Mexico and other Western states because of land ownership patterns. New Mexico is over 60 percent government-owned and made up of a patchwork of private, federal and state lands. Most of our livestock operations contain two, if not all three types of land ownerships. While some say that the ESA does not impact private land use, they are just wrong. If your ranch is made up primarily of federal lands, Bureau of Land Management (BLM) or U.S. Forest Service (USFS), and you are not allowed to use the federal portion of that ranch, the private portion is useless as a livestock operation.

Some people in Southern New Mexico have become almost full-time unpaid employees of the FWS in an attempt to develop a working plan to address the lesser prairie chicken, a candidate species, and keep it from being listed as endangered. At this point in time, this small bird threatens to destroy the ranching and oil and gas industries in this area, which will in turn destroy our rural economy and our families. And if trying to deal with the lesser prairie chicken weren't enough, the working group was recently told that they must also consider the sand dune lizard. To add insult to injury, last month a beetle was added to their list of concerns.

We have hardly begun to address the Northern Aplomado Falcon. Nearly two years ago the NMCGA attempted to work proactively with the FWS in the development of a 10J experimental-nonessential rule that would provide some level of comfort for landowners and federal land users in restoring the bird to the region. Unfortunately, budgetary concerns have limited progress on the proposal and environmental elitist groups are threatening litigation to force the declaration of critical habitat.

There are few on this earth who care for and appreciate animals and our environment more than those of us in production agriculture. We chose to live frugal lives on the land with our animals and the wildlife because we value all they have to offer us— a life filled with a wealth that money and material possessions can never provide. But we cannot survive under oppressive federal mandates like the ESA.

However, we are not unwilling to be a part of the solution. New Mexico agriculture came together two years ago to identify potential fixes to the ESA that would protect species AND our families. What resulted is the attached 17-item list that has been adopted by the Western States Soil Conservation Districts.

The 2002 Klamath Basin disaster comes to mind for all farmers when the worst case scenario is imagined. Overreaction to a water situation ruined the livelihood of many people, not just those in farming. Closer to home, a minnow, the Pecos Blunt-nose Shiner, has had a great effect on determining when, and even if, water stored in reservoirs on the Pecos River will be delivered for use by farmers in the Carlsbad Irrigation District (CID). In this desert area, there is much data on the most efficient delivery of water from the reservoirs upriver. Every drop counts and in these short water years, it is vital to use the most efficient delivery of water possible. The FWS has tried to have an impact on that water delivery, and many times, a great deal of water would have been lost for use by the farmers in the district if CID had followed FWS desires.

For our farm, that means less water to be used to produce our crops. We do not have supplemental water wells and depend solely on water delivered by the CID. Water is our make or break factor, without the water delivered by CID, we cannot survive as farmers. With all that Mother Nature sends our way, we do not need shortsighted governmental regulations to battle also.

A lot of blood, sweat and frustrations have kept these lands together. Most of the time, nature was the factor we had no control over. We plugged on though and have persevered. Every person involved in production agriculture expects the weather to throw some curves. It is the curves thrown to us by our government that may be what, after all these years, defeats us.

Thank you once again for your time and interest. I hope that together we can create a law that achieves the noble goal of species protection without harming people like me and my family.

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## **NEW MEXICO'S PROFESSIONAL AGRICULTURAL PRODUCERS SUGGESTED CHANGES TO THE FEDERAL ENDANGERED SPECIES ACT OF 1973 AND ALL REVISIONS**

### **The Endangered Species Act must:**

1. Provide full compensation to individuals for current and long-term "takings". Take into consideration cost-benefit analysis and mitigate for all adverse economic, social and cultural needs of the human element. (change Section 4(b)(2) of ESA)
2. Consider and evaluate cumulative effects in accordance with the National Environmental Policy Act (NEPA) for recovery planning and designation of critical habitat. Single species management does not consider ecosystem needs and may be detrimental to the well being of other organisms. (add to Section 4)
3. Focus on species recovery instead of single species listing. Listing should be incentive based rather than regulatory. (add to subsection (c) of Section 4 and a new statement to Section 4)
4. Define; "science" and "peer review". Ensure that non-governmental, non-bias peer review is mandatory prior to the listing of any species.
5. Be revised so the citizen lawsuit provision requires the loser of any lawsuit pertaining to the ESA be totally responsible for all alleged costs to the Government, defendants and interveners. (revise Section 11(g))
6. Require appropriate bonding by any petitioner for a proposed listing of a species. Bond to be forfeited if a species is determined not warranted to be listed. Financial burden of any listing must be borne by the petitioner whether individual, organizational, or governmental. (add to Section 4(b))



7. Ensure agency regulations conform to ESA law. (ex.: adhere to critical habitat provisions)
8. Transfer recovery planning from the United States Fish and Wildlife Service (USF&WS) to the States. (add to Section 4(f) and Section 6)
9. Transfer critical habitat designation responsibilities from the USF&WS to the States. Confine critical habitat to realistic peer reviewed boundaries. (amend Section 4(b)(2) and Section 6)
10. Codify applicant status to make clear that permit applicants (consists of any individual seeking a Federal permit or license) are provided the opportunity of direct involvement in the Section 7 process. (amend Sections 6 and 7(a) and (d))
11. Not prevent implementation action of any project or activity prior to completion and formal approval of a Recovery Plan. (amend Section 7(a))
12. Reserve and limit Section 7 consultation to land management planning level documents. (add to Section 7(a))
13. Eliminate the proposed listing of any sub-species. (amend Section 3(16))
14. Not allow taxpayer funds to be utilized to sue the Government or others. (add to Section 1(c)(4) as new policy, and amend Section 11(9)(g))
15. Change the criminal penalty law to a civil violation. (Section 11)
16. Codify the delisting process. (add new subsection under Section 4)
17. Revise the "taking" definition to protect private and states' property rights in conformance with the United States Constitution. (Section 3(19))

The CHAIRMAN. Thank you. Mr. Davis.

**STATEMENT OF TOM DAVIS, MANAGER,  
CARLSBAD IRRIGATION DISTRICT**

Mr. DAVIS. Again, thanks, Chairman Pombo, for having a field hearing here in Carlsbad and giving us local folks, who have had some experience with the Endangered Species Act, a voice. I'm the manager of the Carlsbad Irrigation District and have been since 1987. Prior to that, I worked for the U.S. Forest Service. I had a rather fast-paced career on track with the Forest Service.

But in those days, being younger, I was somewhat idealistic, and one of the reasons I left the Forest Service is because of just some of the things you said. It was no longer an agency that did sound resource management. It was an agency totally driven by lawsuits resulting from the Endangered Species Act. And it was very unfortunate, but over time, a lot of people that are good resource managers left the Forest Service or became so frustrated they were of no use to the Forest Service. And that goes for a lot of other government agencies, Bureau of Reclamation, Bureau of Land Management, so forth.

You see a map here in front of me. The heavy line on that map outlines the basin of the Pecos River in New Mexico. The bottom of that map is the Texas state line. The Pecos River originates in the high country just outside of Santa Fe, New Mexico, in what's known as the Pecos Wilderness. It runs in a south-southeasterly direction through New Mexico and Texas, and culminates into its confluence with the Rio Grande just above Lake Amistad just north of Del Rio.

All the water that you see in the reservoirs that are depicted on that map are stored for the use of the Carlsbad Irrigation District, and we've been in existence in one form or another since before the turn of the century.

Some of these reservoirs that you see are second-generation reservoirs, they've replaced reservoirs that were built over 100 years ago that have filled with silt or were no longer functional and

stable as flood control structures and irrigation storage structures because of their construction during those times. And we've constructed more modern reservoirs of which we are very, very protective of keeping the storage capacity available in those reservoirs, because we realize that in today's climate, it's very difficult, if not impossible, to build new reservoirs, as you're experiencing out there in the central valley in some of your upland watersheds. So we're very protective of preserving that storage so that our reservoirs will last another 100 years, 150 years. We don't see any likelihood of building new ones.

Just quickly to get through what we do here and our inter-relationship with Endangered Species Act. We store water in those reservoirs and we try for efficiency of storage and delivery of water, delivery of water to keep our water stored in the upper reservoirs as long as possible, because there is less evaporation loss in the upper reservoirs as there are down in the reservoirs near this area.

All of our farmland begins here in Carlsbad and runs southeasterly down the valley toward the state line of Texas, and we deliver with flood irrigation through open, concrete-lined canal systems. So in today's world, we are not very efficient. But in the type of the low quality water, the high saline water that we deal with on the Pecos, this is the only system, irrigation system that we can function. We can't sprinkle with saline water, obviously, you kill plants.

So we're a gravity-flow flood control system, and we move water from the upper reservoirs you see to the lower reservoirs, and have since the 1930s, in block releases. We release a tremendous amount of water for a short period of time down the river to the lower reservoirs, and that's the most efficient way. If we start trickling that water down river, we lose 60, 70, 80 percent of the water, depending on the release. Even with our block release, we lose 25 percent of the water. And we've operated the river in that respect since the first upstream reservoir was built in Sumner, Sumner Reservoir, just above the village of Fort Sumner. It was completed in 1937. We've operated the river since then in that fashion.

The Pecos bluntnose shiner was listed in 1987 as a threatened species, and it's a small minnow, very similar to the silvery minnow on the Rio Grande. And it is very difficult to identify even with experienced biologists because there are several minnows that look very similar; their reproductive habits are very similar; the physiological requirements are very similar.

And, in fact, when the Pecos bluntnose shiner population is counted, they are counted as a percentage of the whole. They don't even count them separately. So it's a very complex, difficult issue to get a handle on.

And I see that I'm out of time, so I want to make a few quick statements, just philosophical about the Endangered Species Act. After having been involved with it since its inception in 1972, I was just a young man recently out of college at that time, in fact, it was one of my first years on the job. And I've seen the attempts to make it reasonable, to make it functional, to reauthorize it, and I applaud you in your efforts, Chairman Pombo. I have followed very closely some of the things you're attempting to do.

But let me just quickly take some of our personal experiences here on the Pecos. You know, we've done everything possible since

1992 to cooperate with the Fish and Wildlife Service biologists in our operation of the dam, and let me say this. It was immediately assumed after the listing that the dam was the problem. The fact of the matter on the Pecos, all the water flowing into Santa Rosa Dam and into Sumner Dam is bypassed through Sumner Dam 24 hours day.

All those base flows are bypassed through the dam. So the river is actually operating as if the dams weren't there. We only store flood control. We only store flood flows in the reservoir. The base flows pass through. But it was automatically assumed by those implementing the Act that the dam was the problem.

And we have made every possible effort for the last 12 years to cooperate with different release scenarios and different operation to benefit the minnow. We were told within the last 3 months that actually the minnow population is less now than it was 12 years ago when we began trying to cooperate. So what's the point?

Also, within the last 6 years, the Interstate Streams Commission, who has a stake in this effort because they have to satisfy the compact needs of the State of Texas, hired a private biology firm, who employed some nationally recognized fish biologists, who did their own study over about a 5-year period on the Pecos. They found a lot of things different than what Fish and Wildlife Service biologists had led us to believe; that the minnow, the habitat requirements are somewhat different than we were led to believe. They actually occupy different reaches of the river and different microecosystems within the river. And they've even found the minnow in reaches of the river we were told that they couldn't live in.

So where does that leave a layman like myself that doesn't understand much, but has really attempted to cooperate? We don't really know what the shiner's real situation is. I mean, that's my opinion. No one really knows. No one knows what the populations were 300 years ago and no one knows what the populations are today. I'm of that opinion.

So all we've been able to do here through 12 years of intense cooperation—and I think this is common throughout the west, and I know this is the theme that Alisa expressed and you expressed it—but in my opinion, all we've done here is spend millions of dollars and fretted and fought to try to preserve our water and make it more available to our farmers, at the same time doing these different scenarios to try to learn what benefits the minnows, and we find that the minnows, there are less of them now than there were.

This is common throughout the west. The Endangered Species Act, in any opinion, has done that. All we've done is crippled the western economies. We haven't necessarily benefited any species. Look at the delisting. We've delisted very few species, and those that we have delisted, some megamoney species like the bald eagle, American alligator, grizzly bear, in my opinion, that has come about as a result of different attitudes as far as enforcement of not killing those animals than it has been on not cutting timber so they can have better habitat.

It's resulted more from an enforcement thing that it has habitat manipulation. And the west can't continue to exist economically out here if we keep living with the pressures of this Endangered Species Act. I have a lot of other comments, and I realize I'm out

of time. But I appreciate the opportunity, and my full written testimony is available to staff. Thank you.

[The prepared statement of Mr. Davis follows:]

**Statement of Tom W. Davis, Manager,  
Carlsbad Irrigation District, Carlsbad, New Mexico**

I am Tom W. Davis. Since 1987 I have been the Manager of the Carlsbad Irrigation District. For the sixteen years prior to my current employment, I was employed by the U.S. Department of Agriculture Forest Service in the field of natural resources management. I have a B.S. degree from Oklahoma State University.

The Carlsbad Irrigation District is authorized to store 176,500 acre feet of water in four reservoirs on the Pecos River. These are proceeding from the northern most reservoir and moving downstream: Santa Rosa, Sumner, Brantley and Avalon. CID delivers water through a gravity flow canal system to 25,055 acres of agriculture lands scattered throughout the valley southeast of Carlsbad, NM. In order to minimize evaporation losses of the stored water, the water is kept in upstream reservoirs as often and as long as possible. The stored water is moved from upstream reservoirs to downstream reservoirs as efficiently as possible by making block releases. That is, the water is released at the maximum river channel capacity of 1,400 cubic feet per second which is about 2,800 acre feet in a 24-hour period. Historically, these releases lasted 15 to 20 days. These high flow releases minimized evaporation and stream bank losses. This release practice has been used since Sumner Dam was built in 1937.

CID only impounds the flood flows in Santa Rosa and Sumner from March through October each year. The natural base flows above these reservoirs are passed through Sumner for diversion by the Fort Sumner Irrigation District. So, for eight months of the year, the Pecos River flows below Sumner Dam unimpeded by Santa Rosa or Sumner Dams. The river flows as if the dams weren't there.

The Pecos Bluntnose Shiner was listed a threatened species to be protected under the Endangered Species Act in 1987. Critical habitat for the shiner was designated in the 70-mile reach of the river below the village of Fort Sumner. The river is wide and meandering with a sandy bottom throughout this reach. This is believed to be preferred habitat for the shiner.

Immediately after listing the shiner as threatened, the U.S. Fish and Wildlife Service biologists took the position that the historical operation of Sumner Dam was responsible for reducing the shiner population to a threatened status even though the base flow of the Pecos River is released through Sumner Dam. It seemed to me that it was predetermined that the dams were the cause of the shiners demise.

Since 1992, the CID has cooperated to the extent possible with the U.S. Fish and Wildlife biologists requests to experiment with different operation scenarios at Sumner Dam that might benefit the shiner. Currently, we are governed by a three-year Biological Opinion that expires in 2006 that outlines the release operations of Sumner Dam. Yet we are told by the biologist that despite the modifying of normal release operations and meeting target flows through the critical habitat, the shiner population is still declining.

If it is true that the population is in decline, one could raise several questions. The operation or existence of Sumner Dam may not be the paramount influence on shiner survivability. Their population could be more influenced by other factors. It could be that we don't know enough about the shiner population numbers over a long period to accurately understand and measure both past and present population numbers or population trends. Maybe we don't understand enough about the shiners habitat needs to manage for its survival, not to mention de-listing.

My point is that we are not making any progress after 12 years of manipulating the system and spending millions of taxpayer's dollars to study and to meet the shiners supposed needs.

Is it possible the shiner is doomed? Thousands of other species have become extinct without the influence of humans. Is it possible the shiner is cyclic and there are as many today as there were 300 years ago? Is it possible the shiner should have never been listed? I could continue on with these possibilities.

A private firm who employ nationally recognized fish biologists was hired by the New Mexico Interstate Stream Commission to make an independent review of the literature and study of the shiner in the Pecos River. They have, after extensive sampling, concluded that the shiner has different habitat preferences, different populations and survivability than was published by U.S. Fish and Wildlife biologists. They have also found shiners in reaches of the river where we were told they could not survive.

So, what is the shiner's real situation? No one knows!

This is the very same situation that implementation of the Endangered Species Act presents throughout the west.

Very expensive attempts at implementing the ESA to improve the plight of listed species have in nearly all instances been unsuccessful. The cost to local economies throughout the west is in the millions. Yet, the benefits to the listed species are negligible. Just review how few have been de-listed.

No civilized nation desires to sit by while species go extinct. There is no doubt, our nation has spent more and tried harder to deal with the problem than anyone throughout the history of mankind. But it is not working. We are just spending money and crippling economies.

We must make a change for the better.

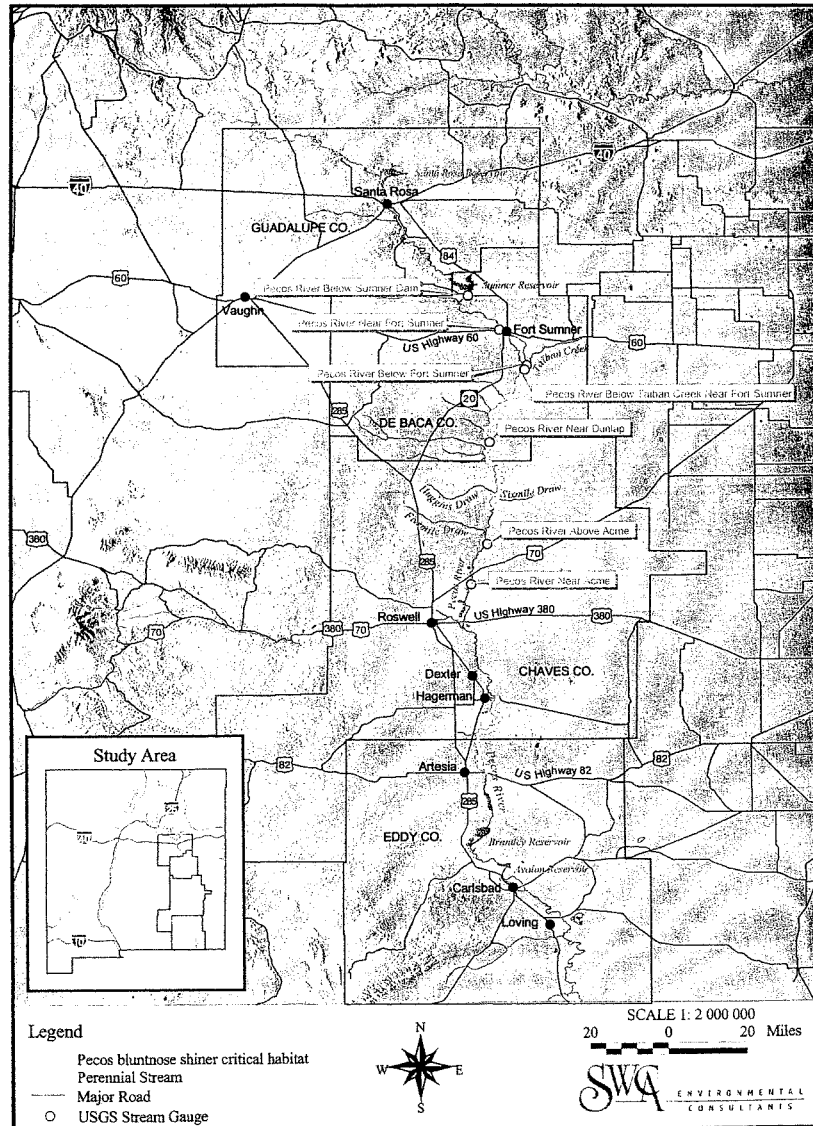
I hope the American people can support Congress in making the necessary changes to the ESA so that it will serve the needs of our economy and society at the same time in finding a way to actually benefit species that may be in jeopardy.

There are throughout the west a number of people who have much more experience than I do and who have been impacted by implementation of the ESA. Due to our experience we have many ideas on how to make positive changes in the Act.

If Congress is sincere in making the ESA truly functional, they need to draw on the experiences of westerners who continue to struggle to implement the Act and at the same time, preserve their livelihoods. These field hearings may be one method where Congress can gain exposure to those in the west who can be helpful in suggesting positive changes.

Thank you for the opportunity to comment.

[A map attached to Mr. Davis' statement follows:]



The CHAIRMAN. Thank you.  
Mr. Harvard.

**STATEMENT OF JEFF HARVARD, PAST PRESIDENT,  
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO**

Mr. HARVARD. Chairman Pombo and Representative Pearce, I am Jeff Harvard, president of Harvard Petroleum Corporation. I'm one of those unpaid staff members that is on the stakeholders group for the lesser prairie chicken, the sand dune lizard, and whatever else

they decide to throw at us. And I'm here today to discuss the impact of the Endangered Species Act on the oil and gas industry in southeastern New Mexico.

Without question, the current ESA has had and is having a tremendous negative impact upon our industry. Companies large and small are questioning whether it is worth it to continue fighting the unrelenting wave of restrictions and regulations due to species after species being proposed for listing.

The current Endangered Species Act is a failure that has to date not saved a single species and is in need of immediate change, as you're well aware of. It must be changed because events are coming together to potentially drive ranching and oil and gas in southeastern New Mexico to the point of extinction. While many would question this, you can look at the lumber industry and see that the threat is real.

Good riddance, many would say, they are destroying the environment. But what happens when these same people have to pay double or triple the cost for gasoline, food, power, heating and cooling, clothing, building materials, and et cetera? I wonder how they would like that environment?

Science fiction is drowning out real science. Today, perception and opinion are called truth. The adage of saying something often enough makes it factual and true is all too prevalent in these times. The lesser prairie chicken, the sand dune lizard, and the Aplomado falcon are some of the species that are being used to remove access to public lands in southeast New Mexico. This loss of access leads to a loss of production, loss of production leads to a loss of revenue to the Federal and state governments, and costs us, the taxpayer.

Ranching and oil and gas are faced with continual pressure to remove more and more lands from leasing, and severely restrict grazing in the name of preserving habitat. In the case of the lesser prairie chicken, this is occurring even though more birds have been sighted during that time when the habitat is in very poor shape because of a sustained drought.

There has been very little, if any, peer-reviewed science that pinpoints oil and gas activity as causing a reduction in the chicken or the lizard population. Regardless of credible science, lands continue to be withheld from leasing and continued regulations and restrictions continue to be imposed in RMPs.

I'm a member of the lesser prairie chicken workgroup, and we've been working for over a year trying to address real tangible opportunities and ideas to help the chicken. One of those ideas is a reintroduction of the species of the prairie chicken down on the WIPP site. And Chris is here today. She has a large ranch and her family has a large ranch that they are willing to work and use for that reintroduction.

That idea was really kind of not received well within many of the regulatory agencies in the group. However, they are proceeding anyway. I would encourage you and Representative Pearce to seriously hear them and as they seek funding to pursue this endeavor. We'll get you some additional information on that.

One of the other species that we're hearing about lately is the Aplomado falcon. And in relation to the Otero Mesa discussion, the

environmental community is claiming that the Otero Mesa area is prime habitat for the falcon and must be protected. The problem is that according to an August 1992 U.S. Fish and Wildlife report, suitable habitat should have 19 trees per one acre, as well as many other criteria.

Otero Mesa does not meet these criteria. From 1990 to 1999, there have been only nine falcon sightings in New Mexico. In 2001 no nests have been verified in the United States since 1952. BLM officials indicated that there was one nesting discovered a few years ago near Deming but it was unsuccessful.

So what should be done? The legal authorization for the ESA expired over 10 years and Congress has done nothing but provide funding ever since. It would be very difficult to refuse to reauthorize the Endangered Species Act, but it is possible to go back to the original 1969 Act by removing sections 4, 7, 9, and 11(g). This is one way to stop the abuses of the Endangered Species Act.

Recently, news media has been reporting on the large amount of leased land that has not been developed. The major reason for this is the regulatory restrictions caused by the Endangered Species Act. Without access to the land to explore for new reserves, our nation's producing capability will decline at an even greater rate while our demand for oil and gas continues to increase.

The inescapable conclusion is higher prices for all commodities due to pervasive need for energy in those areas. Our nation's need for more energy will demand an increase in the importation of foreign oil and gas and weaken our economy with greater trade deficits. Recent events have proven time after time that many of these foreign countries are very unstable and do not look kindly upon our great nation.

Everything reasonably possible must be done to ensure that our nation has the resources that it needs. The oil and gas industry in southeastern New Mexico has been providing a continuous source of energy for this nation for over 80 years with little or no impact on all species. Our industry is committed to improving our operation to minimize any impact on the environment. We continue to meet with and work with the various groups to identify ways that we can help threatened species. But the Endangered Species Act must be changed to more accurately reflect the needs and responsibilities of this state and this nation. Thank you.

[The prepared statement of Mr. Harvard follows:]

**Statement of Jeff Harvard, Past President,  
Independent Petroleum Association of New Mexico**

Chairman Pombo and Distinguished Committee Members,

I am here today to discuss the impact of the Endangered Species Act ("ESA") on the oil and gas industry in southeastern New Mexico. Without question, the current ESA has had and is having a tremendous negative impact on our industry. More and more time and energy is being drained from our everyday business activities to identify, analyze, evaluate, discuss and address ESA issues. I personally am spending more than 25% of my time dealing with ESA issues and I am getting tired. The playing field is continually moving; rules and regulations are continually changing. I am not alone in my sentiment that it is getting to the point where it is not worth the hassle. Companies large and small are questioning whether it is worth it to continue fighting the unrelenting wave of restrictions and regulations due to species after species being proposed for listing.

The current Endangered Species Act is a failure that has not saved a single species and is in need of immediate change before it does any more mischief. It must



be changed because events are coming together to potentially drive ranching and oil and gas in New Mexico to the point of extinction. While many would question this, you can look at the lumber industry and see that the threat is real. Good riddance many would say. "They are destroying the environment." But what happens when these same people have to pay double or triple the cost for gasoline, food, power, heating and cooling, clothing, building materials, etc. Or, worse yet, not have any of these necessities. How loud would the cry be if the trade deficit doubled and this nation was held hostage by foreign nations that have made their dislike of the United States clear. I wonder how they would like that "environment".

The cartoon below from the 6/2/04 Albuquerque Journal speaks volumes about the issue we are examining today. Science fiction is drowning out real science. Science of old, where something was studied, data collected and unbiased truths were discovered and reported has been replaced with political science where a pre-determined outcome or opinion is identified and data, if any, is manipulated to reach the political truth desired. Today, perception and opinion are called truth. The adage of "saying something often enough makes it factual and true" is all too prevalent in these times.

It is very apparent that groups trying to list species under the Endangered Species Act are assaulting the financial support of New Mexico, the very existence of local ranchers and oil and gas operators, and threatening our national security. Five years ago a group of environmental foundations decided there should be an ANWR in every state. Two key weapons that they are using are NEPA and the ESA. While NEPA is not the subject of this hearing, it is important to understand that the motivation behind these groups is to obstruct and remove lands from any multiple use and return them to wilderness.

The Lesser Prairie Chicken, the Tiger Beetle, the Sand Dune Lizard, the Black Tailed Prairie Dog, the Aplomado Falcon, the Roswell Springsnail, the Koster's Tryonia, the Pecos Assiminea and Noel's Amphipod are all species that are being used to remove access to public lands. This loss of access leads to a loss of production that leads to a loss of revenue that causes a greater deficit due to the necessity of importing more foreign oil and gas and other commodities resulting in a serious national security problem. Below are examples of the impact from each of these species.

#### *Lesser Prairie Chicken and Dune Sagebrush Lizard*

The limited chicken population in New Mexico is on the edge of the historic range and therefore subject to greater increases and decreases in population due to natural forces (drought, predation and disease) rather than human activity. However, because SE New Mexico has the most federal land in the five states with chicken habitat it has become a main targeted area to "save the chicken". Industry members have been meeting with various workgroups to identify ways to assist the chicken population for years. For over 20 years the BLM has been imposing timing stipulations that restrict drilling and workover activity for up to a quarter of the year in much of Lea, Eddy and Chaves Counties. These restrictions for chicken mating were imposed and not removed even though many of the areas had no chicken sightings or activity.

Environmental groups recently filed a petition with BLM to create an Area of Critical Environmental Concern in the middle of the oil field in southeastern NM. The ACEC includes over 343,000 acres and proposes to restrict any grazing and drilling for oil and gas to protect chicken habitat.

For over a year a government promoted shinnery oak habitat workgroup that includes regulatory agencies, environmentalists, ranching, and oil and gas has been working very hard to identify ideas and plans to help the prairie chicken and the dune sagebrush lizard. After a year's work on ways to help the chicken and lizard and keep it from being listed, we were disturbed to hear a BLM representative tell the group that there may not be anything we can do about a listing because of the Tiger Beetle that hasn't been addressed yet and also the prairie dog. The industry was also just informed that, contrary to what we were led to believe, the Carlsbad and Roswell districts are amending their RMPs relating to oil and gas and endangered species even though the workgroup has not completed its document. Ranching and oil and gas are faced with continual pressure to remove more and more lands from leasing and severely restrict grazing in the name of preserving habitat. This is occurring even as it appears that more and more birds have been sighted during a time when the habitat is in very poor shape due to the sustained drought.

We also have another problem because the reported habitat conditions for the chicken are different than the lizard. In the case of both species, specific science is lacking concerning the affect of oil and gas activity. There has been very little, if any, peer-reviewed science that pinpoints oil and gas activity as causing a reduction

in the chicken or lizard population. Regardless of credible science, lands continue to be withheld from leasing, stipulation restrictions continue to be imposed and RMPS amended.

Concerning the Dune Sagebrush Lizard, producers have been required by the Carlsbad office to move sand dunes and to limit the number of wells in a section to 13, because Charlie Painter, NMG&F biologist, thinks that is the most that should be allowed. But there are questions about where habitat really exists. The 1994 Distribution field report found dune sagebrush lizards in 51% of the habitat the researchers considered suitable. A concentration of areas along the Lea-Eddy County line were considered to be very good habitat but contained no lizards. Conversely, the lizard was observed at 100% of the evaluated sites considered not to be potential habitat in dune grassland. On a March 30, 1994 telephone conference, Dr. Rob Gordon of Environmental Issues Council said that habitat is only suitable if the lizard lives there.

#### *Aplomado Falcon*

In 2002, The Carlsbad BLM Office removed 82,014 acres of minerals south of Hope, NM, some of which were nominated for leasing by oil and gas producers in the January and April sales. Questions were raised on this withdrawal and Leslie Theiss, Carlsbad Field Manager, explained the withdrawal in a letter dated April 16, 2002 to the members of the BLM/Industry Working Group. The oil and gas industry asked for a description of the economic impacts statement required by Executive Order 13212.

Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 requires BLM to manage land for multiple use and sustained yield. Multiple use and sustained yield do not exist when the two major users and income producers on federal lands are restricted or denied operations due to the Aplomado Falcon which has only nested once in southern New Mexico for over 50 years. USF&W in a Section 10j under the ESA notice said the bird ranges from near the Mexican border south to Argentina. Additionally the letter says that data needs to be collected on habitat quality before consultation begins. The BLM was protecting an area that has not been established as habitat. BLM finally relented and leased the area, but with stipulations.

The Aplomado Falcon is also prominent in the Otero Mesa discussion. The environmental community is claiming that the Otero Mesa area is prime habitat for the falcon and must be protected. The problem is that according to USFWS in August 1992, suitable habitat consists of inter-tree distances of 30m (avg.), tree densities of 19 trees/40 ha (avg.), tree height of 9 m (avg.), and 92% ground cover at 0.7m off the ground and 70% at 0.5m. This does not sound at all like the Otero Mesa. In 2001, no nests had been verified in the U.S. since 1952, when a nest was reported near Deming, NM. From 1990 to 1999 there have been only 9 falcon sightings in NM. BLM officials indicated that there was one nesting discovered a few years ago near Deming but it was unsuccessful due to assumed egg predation.

#### *Roswell Springsnail, Koster's Tryonia, Pecos Assiminea and Noel's Amphipod*

A number of snails in and around the Pecos River have been listed and as a result oil and gas activities have been restricted. BLM is holding APDs because the drilling of wells might develop a leak that might get into the water table and might reach the Bitter Lakes Refuge. Bill Radtke, supervisor at Bitter Lakes, said, at the first snail meeting in October 1996, that the biggest threat to the snails is the dropping water table. In the handouts from this October meeting, there was a list, citing "Wilson 1981", of the major existing sources of potential ground water contamination in New Mexico and the only oil and gas activity listed is oil or gas refining. The only refinery is downstream some 40 miles south of Bitter Lakes.

The New Mexico Oil Conservation Division wrote EPA and said there are no proven cases of water pollution resulting from oil and gas activities in New Mexico. The Roswell water basin is connected to the Refuge. The water on the Refuge is not fit for drinking and is more saline than the ocean. It has become more saline since the 1940s. Since the river has a higher saline content and the wells in the area are lower in saline content and used for irrigation and drinking, the Refuge must be recharged by the Pecos. Therefore, these facts indicate that contamination from drilling wells is not a problem so there is no basis to indicate that the oil and gas activity north of Roswell poses a threat to the snails. Regardless, the BLM continues to prohibit drilling near the refuge.

#### *The ESA has been a failure.*

The Endangered Species Act must be changed because it has been a complete failure. Further, the damage caused by regulatory restrictions and land withdrawals is incalculable.

Dr. Michael Coffman wrote the following August 2, 2003:

"For three decades, environmental purists have actively promoted the pantheistic notion that plant and animal life rank higher on the species hierarchy than people. Their "return-to-the-wild" agenda argues that human life activities are the enemy of plant and animal species, and only through their efforts to halt growth and shut down people's normal and necessary life endeavors will Mother Earth smile again.

Federal environmental regulations like the ESA have destroyed the lives of tens of thousands of people, closed entire communities, and confiscated hundreds of millions (if not billions) of dollars of private property, all in the name of protecting the environment. Michael Kelley of the Washington Post Writers Group describes the brutality of the ESA in the July 11, 2001, issue of MSNBC:

"The Endangered Species Act...has been exploited by environmental groups who have forged from it a weapon in their agenda to force humans out of lands they wish to see returned to a pre-human state."

Of the sixty species that have been de-listed and supposedly 'recovered,' twelve were actually extinct, thirty were incorrectly listed in the first place or had data errors, twelve were recovered due to actions resulting from other laws or private efforts (not the ESA), and the balance were de-listed due to management of U.S. Wildlife Refuges. The ESA has not been responsible for recovering even a single species."

The Partnership for the West noted that the Endangered Species Act, in its 30-year history, has had a 99 percent failure rate in restoring species to health. On the other hand, the Partnership said, the ESA "has a high rate of success as a tool to confiscate private property, discourage private conservation efforts that actually conserve species and habitat, devastate rural communities, curb economic growth and destroy jobs."

*What should be done?*

There must be action right now to revise the current Endangered Species Act. The first Endangered Species Act was passed in 1966 in response to Rachel Carson's book *Silent Spring*. The Act directed all federal agencies to identify native fish and wildlife threatened with extinction. Federal agencies were provided money by Congress to purchase habitat for endangered species and to protect the species. In 1969 the ESA was amended to also protect invertebrates. The last change occurred in 1973 and this is the Act commonly referred to in the media. The 1973 Act added Section 4 that said species will be listed without reference to possible economic or other impacts. In 1978 the Supreme Court held that a listed species must be protected at whatever cost. Section 7 of the EAS prohibits any federal action that will jeopardize a listed species or substantially modify its habitat. Section 9 prohibits the taking of a listed species and defines a take to include actions that will annoy to such an extent as to significantly disrupt essential behavior patterns. It is this section that has cost the federal government, actually us, the taxpayer, millions of dollars in takings lawsuits.

The definition of "taking" must change. The U.S. Supreme Court legitimized this convoluted interpretation on June 29, 1995 in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*. In doing so, the Court ruled that the word "take" included altering the habitat of an endangered species thereby allowing the government to take private land for an endangered species without paying for it.

Writing for the Heritage Foundation on November 18, 1998, Alexander Annett notes that: "Because of the Supreme Court ruling, the ESA empowers the federal government to regulate any land that is thought to provide "suitable habitat" for an endangered species without proof of death or injury to an identifiable animal that was caused by the landowners." As evidenced in Klamath Falls, zealous bureaucrats can impose arbitrary and capricious habitat recovery plans on private property that instantly strips the value often their life savings from a landowner.

The Federal Government should be required to pay for takings of private property. The ESA costs multiple billions of dollars annually, but the landowners who happened to have the last critical habitat needed by a species shoulders most of that cost. This is neither fair nor just when the reason the species is endangered results primarily from nature and secondarily from the actions of society as a whole. The only solution is for federal agencies to pay just compensation to landowners adversely affected just as the U.S. Constitution supposedly requires.

Paying for the huge costs of implementing the ESA would expose the real cost to the taxpayers footing the bill, forcing the USFWS and other agencies to prioritize what species must receive protection to allow for their recovery, while putting less emphasis on those species that are not in real jeopardy.

The legal authorization for the ESA expired in October 1992 and Congress has done nothing but provide funding since. It would be very difficult to refuse to reauthorize the ESA, but it might be possible to go back to the 1969 Act. That could

be done by taking out Sections 4, 7, 9 and 11g. This is one way to stop the abuses of the ESA.

Other suggestions to make the ESA workable would be to use only a biological and numerical definition of endangered species. Only a pure species can be classified, no sub-species or distinct populations. Only those species with total numbers indicating a threat can be listed.

Socio-economic impacts must be on an even or greater par than all other considerations. Sec. 11 on penalties at (g) citizens' suits must come out. One alternative is to allow any citizen to counter sue those filing citizens' suits and the loser pays. Species, to be listed, must exist in more than one state. Half of the 1082 species listed do not. Finally, put into law the 1997 Bennett v. Spear Supreme Court case. It found that the best scientific and commercial data must be used to designate critical habitat and to make the decision to list. Federal agencies, currently, list and designate critical habitat without any science or with only studies that have not been peer reviewed.

We recognize that it takes time to get bills through, but we are faced with the local BLM offices changing rules overnight. It seems that they hear about a new study or theory on the prairie chicken or lizard and the next day it is a rule. Recently the news media has been speaking about the large amount of leased land that has not been developed. A major reason for this is regulatory restrictions caused by the Endangered Species Act. Without access to land to explore for new reserves our nation's producing capability will decline at an even greater rate while our demand for oil and gas continues to increase. The inescapable conclusion is higher prices for all commodities due to the pervasive need for energy in most all business areas. Our nation's need for more energy will demand an increase in the importation of foreign oil and gas and weaken our economy with greater trade deficits. Recent events have proven time after time that many of these foreign countries are very unstable and do not look kindly upon our great nation. It will be years before any possible supplemental energy source may become valid. Everything reasonably possible much be done to ensure that our nation has the resources it needs.

The oil and gas industry in southeastern New Mexico has been providing a continued source of energy to this nation for over 80 years. Past experience and improved present practices show conclusively that we can drill and produce oil and gas safely, with little or no impact to all species. Time has proven in many areas (offshore platforms, the Alaskan pipeline, etc) that the existence oil and gas activity has improved many habitats rather than destroyed it as was originally claimed. Our industry is committed to improving our operations and minimizing any impact on the environment. We continue to meet and work with the various groups to identify ways that we can help threaten species. But the Endangered Species Act must be changed to more accurately reflect the needs and responsibilities of this nation.

Thank you.

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The CHAIRMAN. Thank you.  
Ms. Prukop.

**STATEMENT OF HON. JOANNA PRUKOP, ENERGY, MINERALS  
AND NATURAL RESOURCES DEPARTMENT**

Ms. PRUKOP. Good morning, Mr. Chairman, Congressman Pearce. Thank you for the opportunity to provide the state's perspective on the Endangered Species Act.

My dad was a farmer and a rancher. He recognized that understanding signs in nature would help him understand his business and how to manage his lands. I learned from him, as others here have learned, that nature serves as an environmental barometer, as an indicator of what's going on in our world. Understanding what was going on around him helped Dad make good decisions about how to manage his land and how to deal with the challenges presented by the environment he worked in. He knew that there were many things you cannot control and he knew that he had to learn to work with Mother Nature to accomplish his farming and ranching goals.

Here in the Pecos River basin, endangered fish are not the problem. They are only an indicator, a symptom. Rather, it is management of water that is the fundamental issue. Impacts of fish species are symptoms that the ecosystem is not functioning naturally, and it is easy to see that the impacts on wildlife of this sort are related to the problems of downstream delivery of water. The loss of fish species is a sign of what humans are doing to change the natural water systems. They tell us that we are damaging the infrasystem, damage that extends far beyond the species itself into the lives of everyone affected.

In striving for the balance we all wish to attain between environmental concerns and the needs of humanity, we must be thoughtful in making quality of life decisions and careful in understanding long-term economic impacts in the region.

We believe the ESA is a very important law, one that is important to habitat protection and species conservation in the United States. It's appreciated and supported by many Americans, including many New Mexicans. Like others here have said this morning, it would be very hard to repeal it. Many Americans would come forward to voice their opinions about that.

However, after 30 years, much has been learned and approaches to implementation of the ESA have evolved to address the complexities of managing endangered and threatened species. The use of habitat conservation plans and safe harbor initiatives has been two examples of that. We need to continue this effort to improve the Act in a manner that achieves species conservation and habitat protection while allowing for managed growth.

We advocate thoughtful careful review of the ESA, just as many of our natural laws have been reviewed and have evolved over time. However, Congress must be careful not to make wholesale changes that will undermine the initial intent and purpose of the law. On this, it seems there is potential for the agreement across a wide spectrum of interests.

The best pathway is to work together in ways that will conserve habitat, while, for example, observing private property rights. Methods that emphasize incentives for landowner participation in listed species conservation, actually such as the lesser prairie chicken here in New Mexico, are one example of an ESA model that needs to be continued and expanded upon.

The U.S. Fish and Wildlife Service web site lists 42 species as threatened or endangered in New Mexico, 29 animals and 13 plants. New Mexico currently has several wildlife species considered as candidates under the ESA including the lesser prairie chicken, the black-tailed prairie dog, the sand dune lizard, the yellow-billed cuckoo, and the Texas hornshell mussel.

In the Pecos River basin we currently have two federally listed species, the Pecos bluntnose shiner and the Pecos gambusia, and one candidate mullosk, the Texas hornshell. We also have four invertebrate species that are proposed for Federal listing.

In New Mexico, we have three federally threatened plant species on the Pecos River basin, the Pecos sunflower, gypsum wild buckwheat, and Sacramento Mountain thistle, and one endangered plant known as Kuenzler's cactus.

In the State of New Mexico, the state agencies and Federal agencies work cooperatively with other interested parties to seek innovative and workable solutions to solving ESA issues. Partnerships between agencies and private landowners and groups have also been very important in implementing ESA projects.

The recovery of the lesser prairie chicken has been mentioned. Through the cooperative work, the state management plan that has been developed now includes better survey and habitat information than it has in the past, better protection and improvement work by Federal and private landowners, and better management of Game Commission-owned property specifically intended for the lesser prairie chicken.

We also have an example in the black-tailed prairie dogs.

Through their working group, the implementation of a management plan will likely lead to removal of the prairie dog as a candidate species within the next few years.

Another example is the Pecos sunflower that I mentioned.

Here in this state a couple of landowners are working with state agencies to repopulate that species in appropriate habitat. The Gila trout recovery team in the Gila National Forest has also been very successful. The Gila recovery team that has been in place for more than 20 years, and today populations have been restored and it's possible that within the next few years, they will actually be fished for again.

In terms of other successes, we know that we have some new funding sources for ESA available that we can work with, including the Landowner Incentive Grants, Private Stewardship Grant Program, the Highlands Plains Partnership, and increased funding to certain portions of Farm Bill. We also have some new regulatory programs under section 10 of the ESA that have developed—that have been developed for landowners that involve both pre-listing and a post-listing species, such as the Candidate Conservation Agreements with Assurances system for landowners and the Habitat Conservation Plans.

Regarding economics in New Mexico, it's essentially always the case that expenditures to recover a listed species are far greater than the expenses to promote conditions that preclude their listing. So we advocate for earlier work.

As I wrap up here, in terms of what needs improvement and implementation of the Act, we would like to get more conservation benefit from putting more effort into maintaining an appropriate list of species that would be protected under the ESA versus the time spent on determination of critical habitat designations, which recently have been regularly challenged in court and have led to a lot of money and time being spent to redo them.

We need to adequately identify issues related to ESA statutory language and requirements versus issues related to ESA implementation. Recovery teams should be used more effectively to actually lead to on-the-ground implementation of recovery plans. And Congress and the Administration should do more to support habitat conservation planning.

More recommendations in terms of improvements to the ESA itself are that we feel the doom and gloom regarding the ESA is exaggerated. The law has been underfunded, understaffed, and in

some cases poorly administered. But the mere fact that species like the peregrine falcon have been removed from the endangered species list and the American bald eagle has had nationwide recovery shows that it can work.

In terms of improving the Act itself, we should acknowledge that the ESA is about listed species and listing species, not avoiding species listing. Again, once you list the species, the likelihood of success of recovery is very low. Hence, we need additional legislation to manage species that are identified at some stage prior to actual endangerment such as while an identified species is at risk.

We also believe the ESA must be amended to foster and ecosystem management approach to conservation. It must be included in this—this concept must be included in the purpose and statement of the Act and fleshed out in the regulations. The Act should provide stronger conservation in conjunction with private interests. It should provide provisions to reward landowners who self-report and self-serve the species.

We need greater Federal incentive for state conservation efforts, and we need to provide the opportunity for states to be involved in developing the biological opinions that the U.S. Fish and Wildlife Service submits.

In conclusion, we appreciate the opportunity to appear here today and address the issues raised by so many people here in New Mexico. We feel the reauthorization of the Act is a very high priority for New Mexicans and all American citizens. We support the continued effort to look at it and try to figure out ways to improve it.

We also strongly support more adequate funding for the Act and a stronger role for states. We are willing and capable partners in working with Federal agencies and others who are concerned about this act, and we would appreciate hearing from you in the future in terms of how we might continue to participate and collaborate on reauthorization of the Act. Thank you very much.

[The prepared statement of Ms. Prukop follows:]

**Statement of The Honorable Joanna Prukop, New Mexico Cabinet  
Secretary, Energy, Minerals and Natural Resources Department**

*Welcome and Introduction—the need for balance and a systems approach*

Mr. Chairman, Congressman Pearce, distinguished Committee members, thank you for the opportunity to provide the State's perspective on the Endangered Species Act (ESA) in Southeastern New Mexico.

My dad, Philip Prukop, was a farmer and rancher. He recognized that understanding signs in nature would help him understand his business. I learned from him as others here have learned that Nature serves as an environmental barometer—as an indicator of what's going on in our world. Understanding what was going on around him helped Dad make good decisions about how to manage his land and how to deal with the challenges presented by the environment he worked in. He knew that there were many things he could not control and he knew he had to learn to work with Mother Nature to accomplish his goals.

Here in the Pecos River Basin of Southeastern New Mexico endangered fish are not the problem—they are only an indicator, a symptom. Rather, it's management of water—the river itself—and other surface waters and groundwaters that make up the system that feeds the Pecos River.

Impacts to fish species are symptoms that the ecosystem is not functioning naturally, and when investigated, it's easy to see that impacts to wildlife of this sort are related to the problems of downstream delivery of water. The loss of fish species is a sign of what humans are doing to change natural water systems. These signs tell us that we are damaging the ecosystem, damage that extends far beyond the species

itself and into the lives of everyone affected. An important concept I'll expand upon later as we discuss how to make the Endangered Species Act more effective involves conservation of systems, as opposed to single-species or single-issue management.

Another point to remember as our discussions proceed is that in striving for the balance we all wish to attain between environmental concerns and the needs of humanity, we must be thoughtful in making quality of life decisions and careful in understanding long-term economic impacts in the region.

We believe the ESA is a very important law—one that is important to habitat protection and species conservation in the United States, and appreciated and supported by many Americans, including many New Mexicans.

After 30 years of implementation much has been learned, and approaches to implementation of the ESA have evolved to address the complexity of managing endangered and threatened species on public and private lands. Examples for private lands include the use of Habitat Conservation Plans and "safe harbor" initiatives. We need to continue this effort to improve the Act in a manner that achieves species conservation and habitat protection while allowing for managed growth.

We advocate thoughtful, careful review of the ESA. However, Congress must be careful not to make wholesale changes that will undermine the purpose of the law.

On this, it seems there is potential for agreement across a wide spectrum of interested parties. The best pathway is to work together in ways that will conserve habitat while, for example, observing private property rights. Methods that emphasize incentives for landowner participation in listed species conservation (as with the lesser prairie-chicken in New Mexico, see below) are one example of an ESA model that needs to be continued and expanded upon.

#### *The ESA in New Mexico Today*

The U.S. Fish and Wildlife Service Web site lists 42 species listed as threatened or endangered in New Mexico (29 animals, 13 plants) under the Endangered Species Act. Subtracting those species that are considered extirpated from New Mexico, or those listed twice due to the existence of an experimental population designation (e.g., Mexican wolf), there could be considered to be 22 threatened or endangered animals present or occasional in New Mexico.

New Mexico currently has several wildlife species considered as candidates under the ESA including: the lesser prairie chicken, the black-tailed prairie dog, sand dune lizard, yellow-billed cuckoo and Texas hornshell mussel.

At the state level, there are 118 species listed as threatened (70) or endangered (48) under the New Mexico Wildlife Conservation Act (WCA). Twenty-four of these are also listed under the Endangered Species Act (2 of the species listed under the WCA would currently be considered irregular in New Mexico, therefore don't appear on the ESA list for New Mexico).

In the Pecos River Basin, we currently have two federally listed fish species—the Pecos bluntnose shiner and the Pecos gambusia; one candidate mollusk—the Texas hornshell; and four invertebrate species that are proposed for federal listing. Other fish species listed at the state level for this area are: the blue sucker, gray redbreast, Mexican tetra, Pecos pupfish, bigscale logperch and the greenthroat darter. Two state-listed reptiles (the plainbelly water snake and western river cooter) also occur in the Pecos River.

There are three federally listed threatened plant species in the Pecos River Basin of Southeastern New Mexico: the Pecos sunflower, gypsum wild buckwheat and the Sacramento Mountain thistle; and one endangered plant known as Kuenzler's cactus.

#### *Effective use of ESA in New Mexico*

The State of New Mexico and its agencies have worked cooperatively with Federal agencies and other interested parties to seek innovative and workable solutions to solving ESA issues in New Mexico.

Partnerships between agencies and private landowners and groups have also been very important in implementing ESA projects. As an example, ESA partnerships working on recovery of the lesser prairie chicken include a southeast New Mexico working group comprised of state and federal agencies, industry representatives, and the conservation community to discuss potential conservation actions. This group has been in place for 18 months, working to develop specific guidelines that could be implemented through Bureau of Land Management (BLM) plans, regulations, stipulations, etc. Through such cooperative work the state management plan now includes better survey and habitat information, habitat protection and improvement work by federal and private landowners, and better management of Game Commission-owned properties specifically intended for the lesser prairie chicken. Both state Wildlife Partnership Funds and federal Partners for Fish and Wildlife



projects have been applied on private ranches in New Mexico to benefit lesser prairie chickens.

In another example involving a candidate species in several western states, multi-party (public and private stakeholders) black-tailed prairie dog working groups have developed state management plans, including in New Mexico, where multiple co-operators have signed a Memorandum of Understanding (MOU) to support the plan of the New Mexico working group. This effort has promoted the availability of various incentive programs for private landowners interested in maintaining prairie dogs. Implementation of state management plans will likely lead to removal of the prairie dog as a candidate species within the next few years.

Another example of public-private collaboration in New Mexico involves a threatened plant species. The Pecos sunflower occurs in the Pecos River drainage at Santa Rosa and the Roswell/Dexter region. It is a wetland species associated with springs and seeps (not the river proper). Its largest population is at Bitter Lake National Wildlife Refuge where it is managed by the U.S. Fish and Wildlife Service (USFWS). Most other populations are on private lands, but a few are on BLM and Bottomless Lakes State Park. The greatest threats to this species are salt cedar encroachment and aquifer depletion (drying habitats). On a very positive note, two ranchers with state trust land springs (one near Fort Sumner and another near Bottomless Lakes) have volunteered to re-establish Pecos sunflower on their ranches. The State Land Office (SLO) and the State Forestry Division of the Energy, Minerals and Natural Resources Department have assisted these ranchers by successfully seeding Pecos sunflower in suitable habitats on their ranches.

I'd like to mention one more example in New Mexico of a recovery effort to illustrate the successful use of the recovery team concept. The Gila Trout Recovery Team has been in place for more than 20 years. From the very beginning with this species there was a long-term commitment of state and federal wildlife agencies, land managers (primarily Forest Service, especially Gila National Forest) and others to save this species, our New Mexico state fish. Once the recovery plan was drafted, the recovery team remained in place and was very active in managing the recovery of this species. There was also general support for this effort in both the conservation and angling communities. Today populations have been restored sufficiently to be able to withstand some habitat impacts such as wildfire. The USFWS is currently working on a downlisting package, with a special rule to allow for some angling for this species under state management.

#### *General "successes" and opportunities to build on experiences from ESA*

Some "new" funding sources have been put in place that ESA efforts can take advantage of, especially for conservation on private lands. Examples include state Landowner Incentive Grants, the federal Private Stewardship Grant Program, the High Plains Partnership, and increases in funding to Farm Bill conservation title programs.

"New" regulatory programs under ESA Section 10 have been developed for landowners, both pre-listing (e.g., Candidate Conservation Agreements with Assurances) and post-listing (e.g., Habitat Conservation Plans).

All of the above programs can be beneficial, but agencies do not have existing infrastructure to successfully administer these new tools. So federal funding mechanisms must be pursued and secured.

USFWS has become more receptive to partnering with state agencies in recent years. In New Mexico, the state collects much of the biological field data on endangered species that may be figured into Section 7 consultations, etc. The downside, however, is the continuing decreases in ESA Section 6 funding to states. States lack sufficient agency staff to participate directly in biological opinions and other related ESA activities.

Unlike with wildlife, the ESA does not protect threatened or endangered plants or their habitats on private, municipal, or state trust lands unless the activities of those landowners are federally funded or require a federal permit. Most threatened and endangered plant species management in southeastern NM occurs on federal lands. The ESA has been effective in avoiding direct impacts to these plants on federal lands, which is important and can be considered successful implementation. If federal land populations are safe, then private land populations usually do not need to be an emphasis for recovery, unless they are critical to the species. Land use projects on federal lands have been modified because of these species, but we do not know of an instance where a project has been stopped because of a threatened or endangered plant. Incentive programs for private landowners, such as grants for habitat improvement or purchase of conservation easements, need to be funded to support the ESA so that recovery plans can be implemented with willing landowners.

The ESA Habitat Conservation Plan provisions have been successful. They provide certainty and flexibility for states, landowners, and federal agencies. It's the kind of forward thinking that will protect species over the long term, instead of the reactive approach that is less successful and that creates last-minute surprises for landowners and the private sector. Habitat Conservation Planning efforts need continued refinement, such as a legal requirement that plans be consistent with species recovery and set measurable recovery-based biological goals. Review by independent scientists and allowing for greater public involvement in plan development should also be a part of the process. As with other aspects of implementing the ESA these efforts need additional support and funding.

*The Economics of the ESA in New Mexico*

Regarding economics of the ESA, it is essentially always the case that expenditures to recover a listed species are far greater than expenses to promote conditions that avoid listing to start with. Also, if people objectively consider the true long-term economic cost of altering landscapes in ways that put species at risk, the actual cost of resource extraction would be higher than the costs we have historically considered. This is the argument of short-term economic gain versus longer-term economic implications of unwise resource use or management. This relates to who pays: the current generation or subsequent generations. Many types of resource use are possible in the face of at risk species and judicious conservation of habitat systems. The conflict generally comes when there is near-term income motivation fueling the resource use that views any appreciable environmental considerations as reducing the bottom line.

In New Mexico, we believe the positive impact has outweighed negative impacts, and in cases like the Pecos River and management of fish species, maintenance of surface flows has likely had positive economic impact (e.g., to sport fishing and government funds paid for water leasing, etc).

*What needs improvement*

We would likely get more conservation benefit from focusing efforts on listing actions as opposed to critical habitat designation. Such listing actions would be: completion of findings on proposed rules, review and determination of petitions, review of candidate species for which "warranted but precluded" determinations were made, completing listing, down-listing and de-listing packages. In other words, putting more effort into maintaining an appropriate list of species that would be protected under the ESA, versus time spent on determination of critical habitat designation, which recently have been frequently challenged in court and have had to be redone multiple times (e.g., Mexican spotted owl).

Given these statements, however, we do not support H.R. 2933—The Critical Habitat Reform Act of 2003—because it would create unattainable standards and eliminate the habitat protections that endangered species need to recover. The recommended changes ignore the need for species sustainability and habitat conservation—making the endangered species designation available only to those species perilously close to extinction.

We also do not support H.R. 662 and S. 2009—Sound Science for the Endangered Species Act Planning Acts. By requiring government agencies to "give greater weight" to some kinds of science over others, it seeks to restrict the use of important methods that scientists currently use to assess species' protection. Using the "best available science" is a laudable goal, making value judgments about science is not. It's also important to mention that just as science is needed to implement endangered species protections, industry and other developers must also share the burden of using science to determine how best to carry out their activities in an environmentally compatible manner.

We need to adequately identify issues related to ESA statutory language and requirements versus issues related to ESA implementation within the USFWS and the Department of Commerce.

We need greater federal incentives for state conservation efforts to avoid listing.

We should establish reasonable rewards for landowners who self-report and self-convert listed species.

We must adequately fund ESA recovery efforts so there can be an effective test of what the ESA is supposed to do. Thus far, the ESA has not adequately addressed recovery. Funding of recovery programs shows positive association with species improvement, but funding for recovery on a per species basis has substantially diminished since 1980.

Recovery teams often disband after recovery plans are written, leading to no direct oversight or recovery implementation. There are excellent models of recovery

teams being actively involved in management such that successful recovery was accomplished. This approach needs to be replicated.

The Administration and Congress should do more to support Habitat Conservation Planning. It should recognize the ESA on military and other public lands. Unfortunately, the Administration and Congress have under-funded ESA implementation, and states and landowners are growing increasingly frustrated with the law itself instead of with the way it is being implemented.

#### *The Need for More Collaboration*

There is reason for the federal agencies to reach out to the stakeholders in the ESA debate. Private landowners, environmental groups, and others all belong at the table. This is the essence of collaborative conservation.

Here in New Mexico, we can tout a few successes in that regard. For instance The Nature Conservancy has done some very important habitat protection on private land, while working with agencies and other landowners cooperatively. Additionally, Senator Domenici's efforts to get Middle Rio Grande stakeholders into collaborative programs to protect the Rio Grande silvery minnow are promising. These efforts take a long time, especially in complicated western situations involving habitat and water rights. But they are worthwhile—and they are much more constructive than the court battles that create long-term hostility among potential allies.

In our state, a variety of state agencies have been involved in ESA management challenges in the Pecos River Basin. The New Mexico Interstate Stream Commission (ISC) has provided technical assistance in the form of hydrologic modeling to calculate ESA depletions and offsets using an innovative integrated groundwater and surface water model—this kind of collaboration should continue.

In addition, the New Mexico Department of Game and Fish (NMDGF) and the ISC have undertaken a significant state investment in biologic research to determine the habitat needs of the fish in the Pecos River, in conjunction with federal agencies and stakeholders. This work resulted in the identification of flow regimes that would be most successful in achieving recovery of listed fishes. The ISC also worked with other agencies, individuals and groups to take other actions to aid with ESA compliance including: the bypass of inflow water through Sumner Reservoir, establishing a fish conservation pool in Sumner Reservoir, pumping water from the Lynch Ranch to maintain flows in critical habitat, and a water leasing and forbearance program with the Fort Sumner Irrigation District.

In another example on the Pecos River, a Cooperative Conservation Plan was developed by State and Federal agencies for the Pecos pupfish in lieu of federal listing.

Additionally, current efforts by state agencies (ISC and NMDGF) to establish a Conservation Agreement in lieu of federal listing of four invertebrate species are moving forward. These four invertebrate species, if listed, could adversely impact New Mexico's efforts to implement a long-term compliance plan to the Pecos River Compact, so precluding listing is of paramount importance.

#### *Recommended Improvements to the ESA in New Mexico*

The gloom and doom regarding the ESA is exaggerated. The law has been underfunded, understaffed, and in some cases poorly administered—but the mere facts that species like the peregrine falcon are being removed from the endangered species list and the bald eagle is recovered nationwide are indications that the ESA is working in very big ways.

Here are some ways to make the ESA more effective:

- Acknowledge that the ESA is about listed species and listing species, not avoiding species listing. The ESA is designed to protect threatened and endangered species, but is not designed to prevent species from becoming threatened or endangered. Once a species is actually listed, the likelihood of success in recovering the species is very low. Hence, additional legislation is needed to manage species that are identified at some stage prior to actual threat or endangerment, e.g., as in “species at risk.”
- The ESA must be amended to foster an ecosystem management approach to conservation of species and preservation of habitat. A mechanism to address ecosystem management issues (conservation of systems) must be included as a statement in the “purpose” section of the Act and then be fleshed out in the regulatory steps. Such an approach should incorporate protections for candidate and proposed species. This does not, however, imply that any individual species should ever be discounted.
- The Act should provide stronger habitat conservation provisions in conjunction with private interests.

- The ESA should include provisions to reward landowners who self-report and self-serve listed species, i.e., emphasize incentives for landowner participation in listed species conservation (e.g., tax incentives).
- We need greater federal incentives for state conservation efforts to avoid listing.
- We should provide the opportunity for USFWS biological opinions re: ESA to be written jointly with state agencies.

#### *Closing Remarks*

We appreciate the opportunity to appear, and to hear the issues raised by people here in New Mexico.

Reauthorization of the ESA is a high priority in New Mexico. We support continuance of the ESA and strongly support reforms that make it more effective in achieving the original intent of the Act.

We also strongly support adequate funding of federal ESA implementation programs.

We support a stronger role for states in working as collaborators with the federal government and others to achieve ESA goals in an effective and timely manner. However, the State of New Mexico cannot afford for the Federal Government to abdicate its responsibility by weakening the ESA and its funding levels and burdening states with compliance.

We are willing and capable partners in the reform of the ESA. We anticipate hearing from you in the future and welcome future collaboration.

Thank you.

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#### ENDANGERED SPECIES ACT PERSPECTIVES (1966-2003) INSIGHT FOR J. PRUKOP TESTIMONY

- 1966—End. Species Preservation Act (1st federal End. Spp legislation)
- 1967—1st federal listing of endangered species (13 mammals, 36 birds, 3 reptiles, 3 amphibians, 22 fishes)
- 1969—End. Spp. Conservation Act (additional protection of species worldwide) required U.S. to convene global convention (led to CITES)
- 1973—Convention on International Trade in End. Spp of Wild Fauna and Flora (CITES) signed
- 1973—Endangered Species Act (ESA) signed 28 December (PL-93-205)
- 1973—ESA implements Convention of Nature Protection and Wildlife Preservation in Western Hemisphere (signed in 1940)
- 1976—1st invertebrates listed (6 butterfly species)
- 1977—1st plant species listed (San Clemente Island Indian paintbrush and San Clemente Island broom)
- 1978—ESA reauthorized and amended (PL-95-632) allowed economic impact assess of critical habitat, priority system for listing, required critical habitat with listing, specified public notice and hearing requirements prior to listing, cooperative agreements with states
- 1978—1st Recovery Plan (Kirtland's Warbler)
- 1979—Exempted Tellico Dam project from ESA to allow completion, increased and extended funding authorizations through September 1982
- 1980—Provided for listing regulations
- 1981—Defined "harm"
- 1982—ESA reauthorized allowed development of HCPs, critical habitat designation with listing made discretionary, restricted listing to biological and trade information without economic assessment, experimental population designation
- 1983—1st Habitat Conservation Plan (HCP)—San Bruno elfin butterfly (California)
- 1985—1st delisting (Brown Pelican on Atlantic Coast and part of Gulf Coast)
- 1986—Section 7 regulations provided
- 1988—ESA reauthorized. Numerous clarifications including definition of "person" to include municipal corporations, enforcement re: import/export of listed plants, added "warranted but precluded" category, required recovery plan criteria, status report to Congress biannual, public review of new/revised recovery plans, 5-year monitoring of candidate and delisted species, and many others
- 1989—Listing guidelines provided
- 1990—Recovery guidelines provided
- 1992—ESA authorization expires and is continued through annual appropriations
- 1994—Draft HCP and Section 7 guidelines, No Surprises Policy, greater emphasis on Joint interagency ESA policies, initiation of policy adjustments to minimize landowner stimulus to harm wildlife habitat as means to avoid ESA implications

- 1995—1st Safe Harbor agreement approved, U.S. Supreme Court defines “harm” to include modifying or destroying habitat if it includes taking a listed species
- 1996—Listing priority guidelines developed, Final HCP guidelines provided, Distinct Vertebrate Population Segments Policy recognized
- 1997—Safe Harbor Policy and Candidate Conservation Agreements Policy drafted
- 1998—Final Section 7 Guidelines, No Surprises Rule issued
- 1999—Final Safe Harbor Policy issued, Final Policy for Candidate Conservation Agreements with Assurances, Regulations for Safe Harbors and CCAs
- 2000—Improved coordination of ESA section 7 consultation for FERC licensing of hydro projects
- 2001—Endangered Species Planning Act gives greater weight to use of scientific or commercial data that is tested or peer-reviewed and increases consideration of information from states, landowners, and affected others
- 2003—Conservation Banking Guidance to offset adverse impacts to listed species, Draft Candidate Conservation Agreements Handbook, Policy for Evaluation of Conservation Efforts (PECE) when making listing decisions

#### FEDERAL AND STATE PROTECTED AQUATIC WILDLIFE IN THE PECOS RIVER VALLEY, NEW MEXICO

MAY 2004

- Currently, there are 7 protected fish species within the mainstem Pecos River, NM. One, the Pecos bluntnose shiner, is state and federally protected, and the remainder (blue sucker, gray redbreast, Mexican tetra, Pecos pupfish, bigscale logperch, and greenthroat darter) are state protected. Two state-listed reptiles (plainbelly water snake, western river cooter) occur in the Pecos River. Several other state and federally listed species occur within springs, tributaries, sinkholes, and other off-channel habitats of the Pecos River basin. Greater potential for regulation of habitat will occur if the yellow-billed cuckoo (found in salt cedar and other riparian vegetation in the Pecos drainage), which is currently a Candidate for listing under the Endangered Species Act, becomes federally listed.
- Repatriation of Rio Grande silvery minnow to Pecos River has been identified as a recovery item.
- Almost all ESA-related concerns driven by efforts to manage the Pecos bluntnose shiner and Section 7 consultations.
- Major players in water issues are the Carlsbad Irrigation District, Fort Sumner Irrigation District, U.S. Bureau of Reclamation (USBR), U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, New Mexico Interstate Stream Commission (NMISC), and the Pecos Compact Commission.
- Major issues are maintenance of Pecos River surface flows for the Pecos bluntnose shiner, delivery of full water allocation to districts, and meeting inter-state delivery obligations.
- From ESA Biological Opinions in 1991 through late 90s, an inter-agency Memorandum of Understanding (MOU) (including the New Mexico Department of Game and Fish) provided for research and water management. All water obligations were met and surface water for the Pecos bluntnose shiner was maintained. the Pecos bluntnose shiner status was stable and the system was functioning to benefit all constituents (including fish). NMISC offered, but chose not to be signatory to MOU.
- MOU program was not perfect, but was working (1991-1998). Hydrological and biological research provided info for improved water and fish management, intra- and inter-state water obligations were met. Annual meetings for coordination of fish, water, agricultural needs were held. NEPA process for operation of Pecos reservoirs by USBR was initiated in late 90s. Co-leads on the NEPA process, including NMISC, were adamant about creating a new structure of biological and hydrological teams for the EIS. Confusion and disarray regarding integration of previously-collected information and possible river management options occurred.
- NMISC and its consultants refused to acknowledge the credibility and reliability of research accomplished over a 9-yr period and broad range of flows that identified habitat associations and biology of Pecos River fishes, particularly the Pecos bluntnose shiner. NMISC contracted work to duplicate and refute previous research. Work done by NMISC during 2 years of drought and did not refute and in some ways confirmed previous work.
- NM's difficulty in meeting inter-state compact obligations is a consequence of over-appropriation in NM, and not because of the Pecos bluntnose shiner. Short-

falls to TX occurred before the Pecos bluntnose shiner listed and any effort made to provide for it.

- Drought of past 3-4 years has complicated river and water management.
- During past 3-4 years, river has dried in substantial reaches, causing substantial loss of the Pecos bluntnose shiner and other fishes. Some drying is probably inevitable, but lack of cooperation and coordination, such as occurred during MOU period, likely exacerbated drying (extent and duration).
- Considerably more info on hydrology of system (e.g., water transport efficiencies) is available, and this has contributed to improved management.
- Under the MOU, maintenance of winter flows improved water quality (reduced salinity) in Brantley—less water was needed for irrigation in some years. Maintenance of more consistent flows may also benefit sport fish.
- Although debated, maintenance of surface flow for the Pecos bluntnose shiner “cost” <1,000 ac-ft/year during drought and USBR paid for this water.
- Water leasing to maintain wet channel for the Pecos bluntnose shiner financially benefited FSID farmers.
- Many farmers in Roswell Basin believe maintenance of surface flows helped recharge aquifer.
- ESA has had no demonstrated negative economic impact (granted, compliance aggravates some) and maintenance of surface flows has likely had positive economic impact.
- Continued, broad-scale eradication of salt cedar on the Pecos to “produce” more water in the river could create a regulatory situation with yellow-billed cuckoo on the Pecos similar to southwestern willow flycatcher on the Rio Grande.

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#### NEW MEXICO’S THREATENED AND ENDANGERED PLANT SPECIES

- There are eight federally listed plants in southeastern New Mexico:
  - Kuenzler’s cactus\*
  - Gypsum wild-buckwheat\*
  - Pecos sunflower\*
  - Sacramento Mountain thistle\*
  - Sacramento prickly poppy
  - Todsens’ pennyroyal
  - Sneed’s pincushion cactus
  - Lee’s pincushion cactus
- \*Found in the Pecos River Basin
- Kuenzler’s cactus (endangered) occurs in grasslands and savanna in the Guadalupe and Sacramento Mountains on BLM, U.S. Forest Service, state trust, and private lands. Its habitats on federal lands have been excluded from prescribed fire treatments, but have not curtailed or excluded livestock grazing. There is presently very little oil and gas development within Kuenzler’s cactus habitat, so this is has not been a conflict. ESA has protected this cactus only on federal lands. Recent surveys by EMNRD, USFS, and BLM have found this cactus to be more widespread than thought when listed. It could easily be down-listed to threatened.
- The Gypsum wild-buckwheat (threatened) exists in only three populations on relatively small gypsum outcrops on BLM and state trust land near Carlsbad. There are no conflicts with grazing, and oil and gas development can easily avoid impacting these small areas. The ESA has successfully protected this species from oil and gas development impacts without curtailing these activities, or causing any economic loss.
- The Pecos sunflower (threatened) occurs in the Pecos River drainage at Santa Rosa and the Roswell/Dexter region. It is a wetland species associated with springs and seeps (not the river proper). Its largest population is at Bitter Lake National Wildlife Refuge and is managed by USF&WS at that location. Most other populations are on private lands, but a few are on BLM land and at Bottomless Lakes State Park. Its greatest threats are salt cedar encroachment and aquifer depletion (drying habitats).
- Two Ranchers with state trust land springs (one near Fort Sumner and another near Bottomless Lakes) have volunteered to re-establish the Pecos sunflower on their ranches. The SLO and the EMNRD have assisted these ranchers by successfully seeding Pecos sunflower in suitable habitats on their ranches. This species can be recovered, but ESA needs to provide more grants to the state and landowners for habitat improvement and purchase of conservation easements.
- The Sacramento Mountain thistle (threatened) is a wetland species that occurs on springs around the Cloudcroft area—which is part of the Pecos River basin.

Most of its locations are on the Lincoln National Forest, but one is on the Mes-calero Reservation and another on private land. Its habitats are threatened by spring capture, noxious weeds, and chronic overgrazing by livestock. The plant itself would be seriously imperiled if weed management programs imported the Eurasian musk thistle weevil (*Rhinocyllus conicus*) to the Sacramento Mountains to control the noxious weed, musk thistle. Greenhouse studies have shown this exotic weevil prefers Sacramento Mountain thistle to the musk thistle. The U.S. Forest Service has modified some timber harvests and grazing allotments because of this threatened plant, so there have been some conflicts with land users. It needs long-term monitoring and protection on federal lands—recovery is elusive.

- The Sacramento prickly poppy (endangered) occurs in five canyons on the west escarpment of the Sacramento Mountains, mostly on Lincoln National Forest, but a few on BLM, private land, and there were 2 plants on Oliver Lee State Park five years ago. It grows on disturbed soils, but we have witnessed a steady decline in population during the last 15 years. There are now less than a 1000 individuals left on earth. We cannot figure out why this plant is headed for extinction. Lots of suitable habitat is available. This prickly poppy sometimes grows on roadsides, so it has been a headache for Dept. of Transportation, but has not significantly curtailed other land uses.
- Todsen's pennyroyal (endangered) occurs on gypsum outcrops on the west slope of the Sacramento Mountains and in the San Andres Mountains on White Sands Missile Range. It is entirely confined to Lincoln National Forest, BLM and DOD lands. This is just a rare plant that occurs on steep slopes in pinon-juniper woodland at a few scattered localities. There are presently no serious threats or land use conflicts.
- Sneed's pincushion cactus (endangered) occurs in widely scattered locations from the south end of the Organ Mountains to the Franklin Mountains and over to the Guadalupe Mountains. There are few land use conflicts in its habitats. It is almost entirely on BLM, DOD, and Lincoln National Forest (a few on private land in Texas). Recent surveys and taxonomic studies by EMNRD, BLM, USFS, USF&WS, and NPS have revealed this cactus to be more widespread and less threatened than thought when listed. It could easily be down-listed to threatened or removed from the list altogether.
- There is a variation of Sneed's pincushion cactus (*Escobaria sneedii* var. *leei*) in the Guadalupe Mountains called Lee's pincushion cactus (Threatened). It is confined to one or two ridges on the north end of Carlsbad Caverns National Park and is listed as threatened. There are no land use conflicts since the Park is obliged to protect it. This is a very rare cactus (collectors want it), so will need perpetual consideration by NPS.

Most of these listed plants, the gypsum wild-buckwheat, Sacramento prickly poppy, Sacramento Mountain thistle, Todsen's pennyroyal, and Lee's pincushion cactus, are extremely rare naturally and will always need the protections afforded by the ESA. They will continue to be threatened as long as there are land uses in their habitats, so recovery is not a reasonable expectation.

To see photos or read more about these plants, go to the New Mexico Rare Plants Web site at <http://nmrareplants.unm.edu>. It is maintained by the New Mexico Rare Plant Technical Council was founded in 1999 and works to construct an informative Web site for land managers and the public.

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The CHAIRMAN. Thank you. Mr. Stell.

**STATEMENT OF HON. JOE STELL, STATE REPRESENTATIVE,  
STATE OF NEW MEXICO**

Mr. STELL. Mr. Chairman Pombo and Congressman Pearce, thank you for the opportunity to be here. Also, friends and members of the audience and your staff. My name is Joe Stell. For the record, my mailing address, 22 Caldwell Ranch Road, Carlsbad. Although my mailing address is Carlsbad, I actually live 32 miles out toward El Paso, five miles from the Texas line. And I guess my living so close to Texas and being from southeastern New Mexico, I'm at a little disadvantage in staying within the 5-minute limit because of my rapid speech.

I'm a State Representative for House District 54, which includes a lot of this area and Otero County, including Otero Mesa. I've served as a representative for 18 years, and I've lived in this legislative district for over 75 years. And I graduated from a local high school, have a bachelor's degree, master's degree in school administration, and 50 hours beyond the master's degree.

My wife, Verna, and I, for 56 years, have been involved in ranching in Eddy County over 50 years. I'm a member of the New Mexico Cattle Growers, Farm and Livestock Bureau, Southeastern New Mexico Grazing Association, and other civic and social organizations.

My comments—and this is a disclaimer; I don't represent the Legislature. I'm just speaking from my own personal long-time experience.

The Endangered Species Act is 30 years old December 28, 2003. A total of 1,288 plant and insects and birds, herbs, and mammals are listed as deserving protection. Billions of dollars have been spent on these species, but only a handful of success stories.

Let me interject at this point that I consider myself somewhat of an environmentalist. I love wildlife, deer, birds. As a matter of fact, my wife and I each morning when we eat breakfast have a couple of 35-gallon containers that dispense feed, milo, to be exact, to the birds and doves and quails, rabbits, ground squirrels, and we watch them out our back windows. I put 47 50-pound sacks in those feeders last year. That's probably more money than a lot of environmentalists have paid in their membership dues to their organization. That's just an ad lib comment, by the way.

We also put out feed, supplemental feed, for our cattle in the form of molasses or protein blocks, and so on. And I've noticed that the javelinas—by the way, I saw a javelina that had been run over on the highway, roadkill, this morning, coming in—javelinas, deer, coyotes, all types of wildlife like that supplemental feed for livestock.

And I might mention here, I delineate a little between extreme environmentalists and environmentalists. Some of the extreme environmentalists may be at the source of some of the problem. But anyway, in my personal opinion, the agenda of the more aggressive organizations is to kind of bring the United States into an economic chaos, maybe an economic downfall. It isn't really the protection of the species. It's to maybe put some of the money-making endeavors, agriculture, oil and gas, forestry, out of business.

And as evidence of that, we had the northern spotted owl in the northwest United States put 50,000 people out of jobs up there. Then they came down with the Mexican spotted owl in the Reserve area, started in 1987, and by 1992, it was all over, and Stone Forest Industries had taken their business out of Reserve and out of Catron County.

One individual, Wilfred Estrada, was a typical person.

He had been a logger for 34 years; didn't know how to do anything else. He was put out of work and has not had work since. And other loggers have had the same fate. But those are some human stories that this Endangered Species Act has affected.

Another example, over in Reserve, Catron County, we had a forest fire in 1998, damaged some logging, a huge amount of trees,



timber. The logging people went in there, in conjunction with the forest service oversight, decided maybe some of those dead trees could be salvaged. So at any rate, they let a contract out, and a lawsuit was filed against the logging companies and the forest service for even wanting to take the dead trees out.

Well, anyway, it was primarily a rural problem until the silvery minnow came along and they needed water resources to keep the minnow going. And they proposed to use water from the Rio Grande, that was actually imported water from the Pacific watershed through the San Juan Chama diversion into the Chama River, and then on down to the Rio Grande. And that was a project that was paid for by middle Rio Grande, Santa Fe, Albuquerque, some of the native American tribes, and they wanted to and did use that water to keep the flow of the Rio Grande going even though it was in, quote, private, unquote, water.

The rural problem, that then was perceived to be rural, turned out to be an urban problem because the city of Albuquerque got involved in a lawsuit over that, and had to try and defend their water rights on that San Juan Chama diversion.

Same thing has happened with the Carlsbad Irrigation District. They've had to try to protect their water rights and with a trickle of water coming out of the Fort Sumner Dam that never makes it down to the storage reservoirs of CID. The water seeps into the ground and is made useless. Yet that water is measured and we owe Texas a part of that water that never did get to the diversion point for Texas. That trickle is an indication of the way to let the water go down the stream.

I might mention, ask the question, why does this happen.

Well, the Endangered Species Act, which I think was intended to be a good act and salvage a lot of wildlife that we don't want to see go extinct, but water has long been known in the southwest to be the lifeblood. In the early days before New Mexico was a state, the U.S. Government came in, promised to build dams, reservoirs, and we'll open up the southwest to economic development.

They did that in the case of Elephant Butte Irrigation District, Carlsbad Irrigation District. And both these districts, by the way, have paid off their loans that the Federal government financed in the construction of those dams. And at any rate, with the water being recognized as belonging to the state, which it was at that time, and it belongs to the people to be appropriated for beneficial use, and those water rights have long been established. It's a proprietary right. And yet the Federal government, through the Endangered Species Act, is coming back to reclaim those water rights that have already been issued and adjudicated in a lot of cases. So the Endangered Species Act is creating a litigation type problem.

There is an imbalance, also, in who is paying the price for these endangered species. Your oil, your gas, your agriculture, and your forestry are bigger and heavier stakeholders than the ones that dictate the lawsuits out of Arizona and New York, and wherever they come from.

At any rate, I have some suggestions on how maybe we might overcome that. One of them would be to give more weight to the human factor with the ESA act. Give more concern to the economic impact that the designation of habitat might have on a community

or individual or a company. Put limits on the cost of recovering an endangered species. I've heard in the neighborhood of a million dollars, and I could be wrong. Even 500,000 or 100,000 would be a pretty high cost per wolf, that that program is costing us.

You might also make it more difficult to file a lawsuit and, in the case of water rights, require that the people that are wanting the water for an endangered species to purchase that water legally from a bona fide owner of water rights, and make that water be paid for instead of litigated away from the owner of the water rights.

I see my time has been up for a little while. I'll close by saying thank you again for allowing me to testify before this group. Thank you very much.

[The prepared statement of Mr. Stell follows:]

**Statement of The Honorable Joe M. Stell, State Representative,  
State of New Mexico**

Mr. Chairman, Congressman, Congressman Pearce, Friends and members of the audience, my name is Joe Stell.

My mailing address is 22 Colwell Ranch Road, Carlsbad, New Mexico, 88220. My home is 32 miles southwest of Carlsbad, New Mexico at the base of the Guadalupe Mountains, near Slaughter Canyon.

My home and business phone numbers is (505) 785-2188, when it works.

I am a State Representative for House District 54 of the State of New Mexico. I have served in this position for 18 years at the end of the year, and I will have two more years to serve after the completion of this term.

I have lived in legislative district 54, and in Eddy County New Mexico for 76 years. I graduated from Carlsbad High School and earned a BS degree in Language Arts from University of New Mexico, and an MS degree in School Administration. I have 50 hours of college credit beyond my MS.

My wife of 56 years, Verna, and I have been involved with ranching for 50 years in Eddy County. We are members of NM Cattle Growers and NM Farm and Livestock Bureau and other social and civic organizations.

Today, my comments are from my general experience as a legislator, school administrator, rancher and longtime citizen.

The Endangered Species Act was 30 years old December 28, 2003.

A total of 1,288 plants, insects, birds, herps and mammals are listed as deserving protection. Billions of dollars have been spent with only a handful of success stories.

Let me interject at this point that I consider myself somewhat of an environmentalist. I love wildlife, deer, javelina, quail, doves and other wildlife. My wife and I often watch out our back window while eating breakfast at two thirty-five gallon containers that dispense grain to hundreds of birds, doves, quail, sparrows and numerous other species, rabbits and ground squirrels. The birds ate 47-50 lb. sacks of grain last year. (That's 1 Ton 350 lbs.)

Also, deer, coyotes, porcupines, javelinas and other wildlife enjoy the supplemental feed provided by farmers and ranchers to their livestock.

The extreme environmentalists and environmental groups are creating difficulties in our nation. In New Mexico up until October 2002, 134 lawsuits had been filed since 1995.

It is my personal opinion that the agenda of the more aggressive organizations is to bring the United States into economic downfall. They started with the northern spotted owl in the northwest and shut down logging in the National Forests of the Northwest with the loss of thousands of jobs.

Next, came the Mexican Spotted Owl in the Southwest, and the community of Reserve lost it's logging industry. Wilfred Estrada had worked as a logger 34 years and was put out of work and lost his means of support. Other loggers with similar longevity met the same fate. The environmentalists started trying to shut the industry down in 1987 and by 1992 it was all over, according to Dan Fryor, former logger and Catron County Manager.

In 2001, the U.S. Forest Service awarded a salvage contract for timber in Catron County that had been burned in 1998. An environmental group sued the U.S. Forest Service, even though the fire occurred 3 years before.

It was primarily a rural problem until the urban communities became concerned when the Rio Grande Silvery Minnow required water from the San Juan / Chama

diversion that belonged to the Middle Rio Grande Conservancy District and the City of Albuquerque and others. In regard to the Rio Grande Silvery Minnow, the lawsuits have come at a significant cost to taxpayers. The city residents (IE Albuquerque) must pay higher fees on services to allow for lawyers litigation fees to protect what is already theirs. Members of the Middle Rio Grande Conservancy District, as well as other political subdivisions, have faced the same problem.

The water supply of Carlsbad Irrigation District was similarly affected, as was the Pecos River Compact with the slow release of water from Sumner Dam to provide a constant flow of water for the Pecos River Blunt-Nose Shiner.

And the story goes on. The logging, mining and agricultural industries have all been attacked by the extreme environmentalists by the use lawsuits. When the industries affected don't contribute to the state tax base by paying corporate taxes, and their employees paying personal income taxes, it is a loss of income to the state. Other citizens and companies have to make up the loss by paying higher taxes and fees.

The oil and gas industry is also in the picture with the Dune Sagebrush Lizard and the Aplomado Falcon on Otero Mesa and the Lesser Prairie Chicken in the east central NM. Oil and gas pay approximately 25% of our state budget.

A percentage of interest earned from NM Severance Tax permanent fund goes into the State's general fund. This significant amount saves each taxpayer \$600 to \$700 per year. Ninety plus percent of the money that goes into the severance tax permanent fund comes from the oil and gas industry. Therefore, if oil and gas production is curtailed due to lawsuits from environmentalists or designations of habitat for endangered species purposes, the loss of severance tax will be a hidden cost to the citizens of New Mexico. This is not to say that oil and gas exploration should not be controlled or limited. In many instances, exploration can occur with controls that will not be a detriment to endangered species.

What can be done?

#### **Suggestions:**

1. Adjust (amend) the ESA to give more weight to the human factor (the effect on people).
2. Give more concern to the economic impact that a designation of habitat might have on a community or individual.
3. Put limits on the cost of recovering a species (IE \$500,000.00 per wolf is too much).
4. Make it more difficult to file a lawsuit.
5. In the case of water rights, require the interested parties to buy or lease legal water rights, don't allow confiscation by litigation. The public sector operates under this procedure.

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The CHAIRMAN. Thank you. Mr. Tully.

#### **STATEMENT OF JON R. TULLY, CARLSBAD CITY ADMINISTRATOR**

Mr. TULLY. Thank you, Mr. Chairman Pombo, Representative Pearce. I appreciate the opportunity to be here. My name is Jon Tully. I'm Carlsbad city administrator. I've been employed by the city for 32 years, and I've held the position of administrator for the past 12 years. Prior to that, my experience with the city was in a variety of positions in public safety.

My remarks today are prompted really by a conversation with Representative Pearce. As Representative Stell said, water is the lifeblood of New Mexico. But if you had been in this very spot this past Palm Sunday at about 4:00 in the morning, you would have thought it was anything but the lifeblood for this community.

After two-and-a-half days of virtually unabated rainfall, the tributaries feeding into the Pecos to the north, west, and south converged on Carlsbad and we had a flood event that inundated over 200 homes in the community. Thanks to the grace of God and thanks to a great deal of very professional quick action by

emergency responders, human life was spared and there were not even any serious injuries.

But as with any story, you know, there are many, many human faces, each having their own set of circumstances. And one such is a retired elderly school administrator, a friend of mine for many years, who lives not half a mile from where we're sitting right now, who found himself at about 4:00 in the morning having to evacuate his home because of the rising floodwaters.

He lived in that house for over 40 years, and that had happened previously in 1966. It almost happened, his property was threatened, as were many others, in 1986. So this community breathed somewhat of a collective sigh of relief in 1988 when Brantley Dam was finally completed and commissioned in part as a flood control facility. And even though we knew that the dam had been built in the wrong place, because of the geology of the region, there was a sense, I think, that we were protected largely from the kind of floods that we had had in the past.

And we found on Palm Sunday that that was not the case, that the major tributary, Rocky Arroyo, can contribute, particularly when the other tributaries are—the watersheds are full after days of rainfall, that we still have a serious flood issue in this community.

It probably historically doesn't have a whole lot to do with the ESA. But literally as those floodwaters were receding, Congressman Pearce met with myself and several other representatives of local government and he asked, if I may paraphrase, two questions. What do we need to do right this minute, and what do we need to do in the future to try to prevent these problems?

And we discussed very briefly some thoughts that those of us who work in the government who have dealt with this problem for many years have had, such issues as rechanneling part of Rocky Arroyo into Brantley Dam; reconfiguring the confluence of Dark Canyon at the Pecos River, which is a short distance south of here; and several other projects that have been conceptualized over the years.

But as we began to conceptualize those, almost invariably we arrived at the conclusion that while they were hydraulically and hydrologically possible, while the engineering would be sound, while the cost would be great, but perhaps not an insurmountable obstacle, we could probably never accomplish those projects because of the Endangered Species Act and a variety of impediments that it would place in our path.

Congressman Pearce indicated that things might change, that perhaps we should not give up on the hope of those kind of projects to safeguard the citizens of Carlsbad. In my 30-plus years of public service, it is my experience that well-intended laws—and certainly the ESA is well-intended, as are most of the environmental laws of this country—are too frequently drafted, enacted, codified, and interpreted, enforced, and unfortunately litigated by people who never will be personally confronted with the impediments and complexities of compliance.

And from my perspective as a city administrator, which is a job that takes on a wide variety of daily chores, the rub of the ESA is that the only absolute certainty is that there will be absolute un-

certainty in whether or not you can achieve success in projects such as the rechanneling of Rocky Arroyo.

As you ponder the dilemmas of this law, and I know you will as you consider its reauthorization and its impact on not only southern New Mexico, but other states, certainly the Nation as a whole, I would respectfully ask that you consider the comfort of my old friend, the school administrator, as he steps next time into the waters that are rising in his home, to know that some or other salamander or such and such snail is well protected for future generations while he has not been.

The ESA and other environmental laws of this nation must take on a different perspective, and reason and balance just simply must prevail. Thank you very much.

[The prepared statement of Mr. Tully follows:]

**Statement of Jon R. Tully, Carlsbad City Administrator**

Chairman Pombo, Honorable Members of the Committee, it is my honor and privilege today to appear before you to offer a few very brief comments and observations regarding the impact of the Endangered Species Act on Southern New Mexico.

On April 4th, Palm Sunday in fact, at about 4 A.M., after two-and-a-half days of heavy, virtually unabated rainfall, flood waters of the Pecos River tributaries and watersheds to the north, south, and west converged on the City of Carlsbad, inundating more than 200 homes but, by the grace of God and the quick and professional actions of emergency responder, sparing from death and serious injury the hundreds of residents of those homes.

One of the many victims forced from home in the dead of night was a retired school administrator I have known for many years. His home and others near the lower lake had some 38-years ago been previously flooded when, in August 1966, an almost identical stalled weather system created a disastrous convergence of flood waters of the Pecos River and Dark Canyon. A third flood in June 1986, significantly damaged public property along the river but largely left private homes untouched.

There was then, you might imagine, a collective community sigh of relief upon the completion of Brantley Dam in 1988, which, although built in the wrong location, inspired us to believe its flood-control capacities and capabilities would provide the protection this community needed. Its benefit is undeniable, but because, geologically, it was not possible to locate the dam below a major tributary above Carlsbad, it could not retain the waters of Rocky Arroyo that accounted for the major flood inflows to the north.

At this point, the very valid question on your mind is what does the historical problem of flooding in Carlsbad have to do with the impact of the Endangered Species Act on Southern New Mexico? Actually nothing as far I know—at least in regards to the past; in regards to the future, it may have a tremendous impact—and not a positive one.

The waters of the Palm Sunday flood had only just begun to recede when Congressman Pearce met here in Carlsbad to discuss with several representatives of local government, including myself, what assistance we needed now and what we might do in the future. It is in the pursuit of the solutions that the ESA and the plethora of other environmental laws, rules and regulations may adversely affect our ability to implement effective mitigation “channeling a portion of Rocky Arroyo to Brantley Dam, dredging Avalon Dam back to its original 9,000 acre feet storage capacity, or reconfiguring the confluence of Dark Canyon at the Pecos. Such projects have been informally discussed over the years but largely dismissed, not because of engineering, not because of hydrological or hydraulic issues, not even because of cost, but because of the overwhelming environmental obstacles—real and anticipated—that regrettably take the wind out of our sails before we even push off from the dock.

Well-intended laws, such as the ESA, are too frequently drafted, enacted, codified, enforced, interpreted and litigated by those who will never personally confront the practical, real-world impediments and complexities and frustrations of compliance. And therein, from my perspective as a city administrator, lies the rub of the ESA: the absolute certainty that the path forward is uncertain as human needs collide with the seemingly immovable object of the ESA.

As you ponder the dilemmas of the ESA and its impact on Southern New Mexico, I would respectfully ask that you consider the comfort it will be to my old friend the next time he steps into the flood waters rising in his home to know that somebody's salamander or the such-and-such snail are well protected for future generations even if he is not. Reason and balance must prevail.

Thank you

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The CHAIRMAN. Thank you. I want to thank the entire panel for your testimony. I have held a number of hearings throughout the country on the Endangered Species Act and it always amazes me, no matter where I go, that when people talk about some of the stories, the impacts that they have had, and yet we still hear people say that they are anecdotal stories, there is no real impact from the Act, that a lot of it is just—not made up—but just exaggerated, what the impact that the implementation of the Act has on people.

One of the real frustrating things for me, and I'm sure for Congressman Pearce, is that we all know we need an Endangered Species Act. We need some tool that we can use to stop species from becoming extinct, and I don't think there is a lot of debate around that. I think that that is—and you go back in history of the Endangered Species Act into the '40s and '50s, when we were making attempts to stop species like the bald eagle from becoming extinct—but when that tool becomes used to accomplish other things, it is when we begin to run into problems.

And over the last dozen years that I've been in Congress, we've made several attempts at changing the Endangered Species Act and trying to change the way that it's being implemented out in the world, out in the real world, and people that have to deal with it all the time, and that gets, obviously, extremely controversial anytime you talk about changing the Act.

One of the issues that is before us right now is a bill by a congressman out of the State of Oregon, Greg Walden, that deals with the science provisions, and trying to improve or change the level of science that Fish and Wildlife bases its decisions on. Because in my experience, one of the biggest complaints that we get about the Endangered Species Act is that the species doesn't exist where they say it exists.

Mr. Davis, you talked about finding the species in places where they said it couldn't survive, you know, and things like that. Mr. Stell talked about the northern spotted owl, and I have a picture in my office of a spotted owl nesting in a Kmart sign. And at the time that that picture was taken, they said that the only place in the world that the spotted owl could survive was in old growth forests, and somebody brought in this picture of it nesting in a Kmart sign.

If I could, I'd like to have you comment a little bit on the science that's being used, and do it in the aspect of what we're trying to do is to have a higher level, a peer-reviewed research level, of science that's being used before Fish and Wildlife makes their decisions so that their decisions more accurately reflect what's out there.

And if I could have you comment a little bit on that, Ms. Ogden? Do you want to?

Ms. Ogden. I know that there is a—there was a gentleman that lived here in Carlsbad that was doing some scientific research in—

volved with the Endangered Species Act, and because his findings did not support the wishes of the Fish and Wildlife Service, they ignored his report completely and then did not ask him to continue any more, doing any more research for them. I think a lot of times there is agendas out there, and if the science, so to speak, that's been used or the findings don't support what they want to have, then they ignore those.

I think that's where it's very important, as Tom was talking about, that they be independent of the Fish and Wildlife Service or the Forest Service or whatever they are doing. The research that's being done, it needs to be independent, completely independent. I think it's, as best you can, unbiased, because they need to be going out there and finding out what the real facts are, not what the wishes are.

One of the species that was mentioned being listed was the gypsum buckwheat, which just so happens to be on my ranch. And it only grows on gyp fields. Nothing else grows on a gyp field anyway. And BLM went out there with us and they were wanting us to fence off these gyp hills because they said, you know, the cattle are doing damage.

As we went out and did a walking survey of our gyp hills out there, they realized that it was thriving in the bottom of calf trails, well, which is where the cattle walk, but yet this species is thriving there. So they kind of, it was like, oh, well, you know, maybe fencing it off isn't going to make that big of a difference to whether or not this species survives or not.

So what they were trying to do was, you know, they were saying, oh, well, the cattle are doing so much damage where, in reality, the damage to most species is environmental. It has nothing to do with the human factor or the cattle out there or any other animal, but it has more to do with the environment and, in our situation, drought more than wet weather.

And so whenever you're doing science, it has to be extremely unbiased, and you don't have to have an agenda in mind when you're doing the research. You need to go out there as totally unbiased as possible and find out the information and evaluate it.

Mr. Davis.

Mr. DAVIS. Thank you, Chairman Pombo. I hope I can be somewhat objective. I've been around this business so long I'm almost a cynic. It's difficult for me sometimes to figure out—to be positive because everything has been commented on and tried so much in the past.

But I'm somewhat familiar with Congressman Walden's good science proposal and I support that, although I've heard the other side debated. Let me assure you this. The problem is not so much with the Endangered Species Act itself, although it needs some work, I believe, and the good science initiative is one of those things that would be helpful. The problem is the zealots that carry it out, the policy that's been adopted by Fish and Wildlife Service administration, and also the success environmental communities have had in court to get rulings that make things totally unreasonable.

And your comment about the spotted owl was right on target. It's still never been proven for a fact that spotted owls require old

growth forest to survive. And by the same token, it's never been proven in the case of here on the Pecos of what type flows the bluntnose shiner minnow needs to survive. It's totally unknown what the numbers are, what the numbers were 300 years ago, and what the habitat requirements are. Fish and Wildlife Service biologists have one set of those requirements. Independent biologists have another set. Folks like me, who are we to believe?

One of the things, when you pursue this good science and this peer review and someone that are qualified biologists that are totally independent, it's going to be hard to get a situation like that. But you're going to have these environmental groups running to court and saying, but we don't have time to go through that process. We have to do something immediately or these species are going to become extinct in the next 30 minutes, so we don't have time to implement good science. We don't have time to have a broader view of folks to look at the real habitat requirements and the real population numbers and the real population trends.

And in some cases, that can be true. But in most cases in my experience with endangered species management is that very few species are on the brink of extinction within a matter of months or years or even decades. And so we have to be careful in getting caught up in that hysteria about immediate relief. But nevertheless—

The CHAIRMAN. If I could, on that topic, that has been brought up and we've been debating that bill for the last several years. And one of the things that we did in that legislation was we amended it so that it would still give the secretary the authority to do an emergency listing if it was determined that we had to act because the species was on the brink of extinction. The secretary could make an emergency listing. It still required them to then follow that by actually doing the science, but protection could be levied for a species that the secretary or the biologists felt was on the brink of extinction.

You know, the only argument that I've heard brought to the table in opposition to that bill has been that it would slow down the process, which I find somewhat ludicrous that you say to actually do good science, to do the research, to do the work that's necessary for Fish and Wildlife to make their decision, would take too long. So we're just going to list and implement critical habitat and recovery plans without the benefit of actually doing the science.

And in some of your species, some of the things that they've talked about that I've heard about since I got down here, it seems like that is part of the problem, is that they make decisions before they actually have the information.

Mr. DAVIS. That's exactly right. And it appeared that it was somewhat of a biased decision to begin with, in all deference to Secretary Prukop. The dams aren't the problem. The river operates as if the dams weren't there. The base flow is passed through the dams. But I was here when that was done and when the listing was done and the critical habitat was done, and I was daily involved, and it was apparent to me that dams were the target. There was no unbiased approach. The target was the dams, just like the target has been oil and gas, the target has been timber cutting.



And maybe harvesting resources, management resources in many cases, has some impact on endangered species, and I'm sure they could. But when you go in and it appears that the target is to totally shut down any of those processes to benefit an endangered species when, in fact, if there was some better unbiased study done, you would find that the species is maybe not so directly impacted by these activities or maybe not impacted at all.

More species went extinct before the influence of mankind than has went extinct since the influence of mankind. No civilized country wants to make species go away. I mean, we are in a unique position in our country of being able to debate these issues and being able to spend money and crippling our economy to try to save species. But where does it end? We're listing microscopic arthropods for now. Is it going to be bacterias and viruses some day?

It's to the point of ridiculousness. The success is not there yet. And I hope that good science interjection here would benefit the species as much as it would anything else, because what we've done to date hasn't been too successful in benefiting the species.

The CHAIRMAN. Mr. Harvard.

Mr. HARVARD. You spoke earlier about the actions before all the science has been gathered, and we're facing that right now in Carlsbad and Roswell districts. They are amending the resource management plan specifically for oil and gas in relation to the Endangered Species Act.

We were told, when we started this latest stakeholders group to address the lesser prairie chicken and the sand dune lizard, that our efforts would be completed and then would be reviewed by the Bureau of Land Management. They've decided now, we need to start—we're going to go ahead and do whatever we can with what we have, regardless of whether we've finished or not.

That's frustrating—especially for those of us that have spent an inordinate amount of time working with various regulators, environmentalists, ranchers along the river. We've worked very, very hard to try to come up with specific plans. Part of our biggest problem is with the science. What is real? What is really happening? And what is a perception or based upon an adaptation of an analysis of another, quote, similar species?

The sage grouse? We're, you know, basically everything that's—you're well aware of sage grouse here. Everything that's going off the sage grouse is being applied to the lesser prairie chicken. There are, I'm sure, some similarities, but there is a lot of differences here. As I indicated in my testimony, we are in a severe drought in this area, yet for whatever reason—and we don't know—there have been more chickens identified and found, sighted here in the past year.

Why? We don't know. Scientists don't really know. A lot of them argue, want to say, well, no, there is not that many more. They are just moving around a lot more. It's very frustrating when our main concern is that science is being used as a hammer rather than a realistic tool to unbiasedly identify potential problems.

There is no such thing as unbiased science today. I would love to think that there could be, but it's political science is what we're dealing with. And how that can be changed, I really don't know.

But the biggest issue is to try to remove some of the politics out of it, and that's why amending and changing, revising the Endangered Species Act to consider species and protection of species, but also the other factors that are related. You've heard everybody here saying the human factor, the economic factors, those should all be considered. They are science as much as anything, yet they have no basis, it seems like, or very little basis in the evaluation of consideration of species.

There are plenty of examples of problems with science and with the biased position, you're well aware. I really could go on and on, but it would be redundant.

The CHAIRMAN. Mr. Tully.

Mr. TULLY. Well, I guess my thought is that good science sounds a lot like good art, and it's in the eye of the beholder. I don't really have an answer to that question. I don't know. I do know it's difficult, if not impossible, to legislate logic and reason and to include in any piece of legislation the parameters by which decisions will be made, as those decisions are made by those who must deal on a regular basis with the decisionmaking process.

I'm sorry. I don't have a better answer than that.

The CHAIRMAN. Mr. Stell, do you have any comment on that?

Mr. STELL. A quick comment. My memory goes back to the northwest when the argument was used that these are the best scientific knowledge, that the northern spotted owl could only nest in the old growth forest. After that was proven to be incorrect and that the northern spotted owl did, in fact, nest in new growth, it was stated, in so many words, well, we knew that, it was just a ploy to stop the logging.

I think that if the Forest Service operates properly, they can go into a logging area and save those large, old trees, save some of the younger ones, cut in the middle somewhere. You still have an industry and you can still have the habitat for the owl, too. It's going to take some invading activities.

But the best scientific knowledge was well described by my copresenter, Jon Tully. It's in the eyes of the beholder.

The CHAIRMAN. Ms. Prukop, did you want to comment on that?

Ms. PRUKOP. Thank you, Mr. Chairman. I'm actually a wildlife biologist by training, and I know that wildlife management many times is not an exact science itself. It oftentimes bleeds more into an art because of the nature of the beast. What we're working with are very difficult to understand, and we as humans haven't in many respects been smart enough to figure out how Mother Nature put things together.

When you're talking about how a prairie chicken decides to feed and where it decides to have its moving grounds so it can reproduce, or whether or not an isopod in a pipe ends up contributing in some way to mankind's understanding of how we're going to survive on this planet, that's why I think the term has evolved to be often best available science.

And another thing I learned in graduate school is how to lie with statistics. Well, you can also lie with science in terms of how you bias your research because you do, indeed, have a foredrawn conclusion. And I think that that certainly does occur in the scientific

world. And peer review is one way that has evolved over time to get around that.

And as a member of the Wildlife Society, which is a professional organization that wildlife biologist belongs to, we certainly do believe very wholeheartedly in peer review, and use it and are able to, you know, determine who are the acknowledged experts about a particular species or particular habitat type or that kind of thing. So I think I would personally advocate for a more useful mechanism to use to try to get closer to the point in terms of how to recover some of these species.

I do think that, as you're well aware from your long contact with this topic, trust is a huge issue in terms of how do landowners, state agencies, and the U.S. Government work together to get around what we're willing to do to trust each other to see how we can promote the recovery of a species.

I do want to advocate for, as we think about how to use science, we can apply science more effectively, which I think is our goal, if we can learn, indeed, in terms of how to be more flexible and more adaptive, and to, I think as you mentioned, not have one solution for all species, because we deal with a wide variety of species. They have very different needs, very different problems, because the concerns that arise for species across the country, whether you're talking about an insect, a plant, a bird, such as the Aplomado falcon or a fish in the river.

So I think one of the things we need to do is build into the Act, but also then into the interpretation and the implementation of the Act, how to use science in such a manner that we can be more flexible in our thinking in terms of the variety of species that we're trying to recover.

The CHAIRMAN. On the Walden bill, what is it about that bill that you have opposition to.

Ms. PRUKOP. Well, I'm not—I have to admit that I'm not terribly familiar with the specifics of the bill in terms of what's required. I think I have a copy of it here with me. But again, as I mentioned before, coming to agreement on what peer review—who will be used as peer reviewers, what the make up of that kind of a process would be, and then coming to agreement on how to interpret what we get are issues. And again, my fundamental belief is it's all related to trust.

The CHAIRMAN. Maybe you could answer this for the record for me, then, because in listening to what you're saying, I come away with the impression that you would support the Walden bill and what they are trying to do, and yet you've testified in your statement you said that you oppose that bill. And I'm not exactly sure why.

And if you're not prepared to answer that, that's fine.

If you could just give me, for the record, if you could just give me an idea in writing as to what the opposition is to it, because I'm not exactly sure. That's a bill that I've worked on for a number of years and we've tried to address a lot of the concerns that were originally brought out on changing the provisions, the science provisions in the Act. And a lot of things you talk about, we have done in this particular bill. So I'm a little confused as to why you oppose that particular bill at this time.

Ms. PRUKOP. Mr. Chairman, if you would allow me the opportunity to go back and review the bill in detail and, indeed, issue you a written statement and explanation, I'd be very happy to do that, and I'd appreciate that.

The CHAIRMAN. All right, thank you. I'm going to turn it over to Congressman Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. And I've gotten several questions, so I'll just ask that your answer be shorter rather than longer, because the Chairman has a lot of time, and as a freshman, I get less time.

First of all, I have begun to implement one of Joe Stell's suggestions already, giving more weight to the human factor with the receptions and dinners that we have to go to in Washington, and I've adequately attended to giving more weight to my human factor, Mr. Stell. I appreciate that suggestion.

I think that my next question would be to Madam Secretary, on page 1, where your fourth bullet point begins to talk about the impact of fish, or symptoms that the ecosystem is not functioning naturally and the loss of fish species is a sign of what humans are doing to change the natural water systems, and I would gather from that that you would say that that we would be better off as far as those species if we did not have any collection systems up and down the Rio Grande.

Ms. PRUKOP. Not necessarily, Representative Pearce. But one of the things that has frustrated some segments of our citizenry in New Mexico over the years is that New Mexico has no minimum instream flow law. In other words, you can totally dewater a watercourse in our state, which is not the case in many other states where, historically, there had to be some minimum flow left in rivers and streams, and minimum pools left in lakes and that kind of thing.

New Mexico's history, however, is quite different. And since we didn't start out that way, with minimum instream flow as a premise of the way we're going to manage rivers in our state, we are in a situation now where essentially our rivers are over-allocated.

Here in the Pecos River Basin, we have come to understand over time that what happens with the Pecos River is very much related to what happens—

Mr. PEARCE. With your permission, I'd like to scoot back over to the question, then, because—and we'll use the minimum flow concept there—is there any point in your mind at which common sense would dictate that, I mean, that we not do what we're doing? In other words, before you became secretary about 2000, I watched as somewhere between 50 and 80 percent of the water in all of our upstream reservoirs was dumped in a matter of months. It took 50 years to get it in there. It was dumped out in a matter of months to maintain that flow.

And I'm asking, Is there any point at which common sense would say, as soon as we dump our reservoirs, then the flow is going to go to what nature is going to tolerate? Is there a point at which common sense would say, Why are we going to do this? Why are we going to dump it to maintain a flow nature herself would not maintain?

Ms. PRUKOP. I would agree that it would because we've been in a severe drought in New Mexico for the last three or 4 years. It is projected that the drought will, indeed, continue, and that simply exacerbates all of the decisions we're trying to manage here as we look at water management on the Pecos.

Mr. PEARCE. Because the frustration of the farmers is we went ahead and dumped that water, and now it's not available for next year's irrigation season. And with all due respect, when you say—on page 8 when you declare that to be an overblown gloom and doom is exaggerated, when we dump all of the water that is in a storage system for irrigation in order to keep a species alive, and we're dumping it at a rate we cannot sustain because the rain is not there, it does, it is beyond just exaggerated doom and gloom.

It actually, what I see, is an impact that several people have commented on. They were at the risk of losing our industry. And for me, I always wonder if the people implementing decisions are asking these kinds of questions. Because when I sat on the water committee with Representative Stell, Michael Sanchez, the Democrat senator from Valencia, had a tremendous summer session, and they gave us a 2000-year summary of water in New Mexico, and we went—we've been in 200- and 300-year droughts. Sometimes the Rio Grande was completely dry, or stretches of it were completely dry for 10 years at a stretch.

I'm sorry. When we say that we're going to dump all the storage that irrigators by law have access to, these storage reservoirs were built for the irrigators, and the water is turned loose instead for endangered species that nature will not supply that same flow, I worry that the law is being used, the endangered species law is being used in a way that impacts humans very adversely, not minimally adversely.

If we were to, Mr. Tully, we were to look at the impact of the endangered species—not so much the endangered species—I'll just broaden it a little bit into the concept of selling, reclaiming water rights, repurchasing water rights, and taking agriculture out of production in order to comply with certain flow rates, this flow rate that we're talking about mostly is for Texas delivery, but it's also impacted because we're trickling the water out of Sumner Lake and trickling does not surge enough water to get here to make your deliveries, so the Endangered Species Act is being used to trickle water out, we can't get a flow that gets enough water here to deliver, so we have to take agriculture out of production, what's been the effect on the gross receipts tax in the last 20 years along this valley as we take economic agricultural land out of economic production?

Mr. TULLY. Representative Pearce, I don't have those particular figures specific enough to agriculture to be able to answer that question. But when you look back at the figures I've seen, which I certainly can't quote here today, agricultural land has been diminishing over many, many years. And so one would assume that the proceeds and, consequently, the gross receipts from agricultural production would also be decreasing.

The issue that you point here is one of those areas where the Endangered Species Act and, in this case, specifically the Texas/New Mexico Pecos River Compact, collide. And while I'm not going to

say they are totally incompatible, the prudent management of the compact does not suggest that trickling water is the most effective way to meet New Mexico's obligation.

Mr. PEARCE. Thank you. Madam Secretary, again, as the head of the minerals department, I guess I look nationally at the price of natural gas and realize that we had testimony last year in one of our committees that pointed out that when we're at \$5 gas, natural gas, we're competing with Russia and Africa that have 50 cents and 70 cents respectively.

Now, the question of access into land becomes very critical. And at what point do you personally balance this need for affordable energy versus what you're willing to do as a cabinet secretary to protect, say, the whichever grouse, the lesser prairie chickens?

Ms. PRUKOP. Well, I think that myself and Governor Richardson are on record as being very supportive of the oil and gas industry in the State of New Mexico when exploration and development is done in an environmentally compatible way. We work with the Bureau of Land Management and with industry in various parts of the state to try to keep New Mexico at the top of oil and gas production in our country.

And as I'm sure you're aware, New Mexico is number one in coal bed methane production in this country, and we have over 28,000 wells up in the Four Corners area of the state and are getting ready to put in approximately another 11,000, again, to produce natural gas for this country, and again, keep New Mexico generating those oil and gas revenues and trying to keep the price of natural gas down.

One of the complexities with natural gas, as I'm sure you're aware, is that most of our electrical plants built these days, especially those in California, are natural gas plants because they are clean burning and air quality is an issue. In the southeastern part of the state, of course, we also have a lot of oil and gas production. And our oil conservation division, which is in the department that I manage, works very cooperatively with industry in the southeastern part of the state to try to get wells permitted and get production going as expediently as possible.

I know that industry has issues with the BLM and to some degree perhaps with my agency, but more so with the Federal government to get permits out on a more timely basis. And I know the Federal government is working to try to expedite that, as is our oil conservation division.

I may as well bring up Otero Mesa, since it was mentioned a couple of times here today. This Administration happens to feel that Otero Mesa is an ecologically unique area that we would like to preserve in ways different than what has been done in the southeastern part of the state. I think anyone here in this room, certainly yourself, Representative Pearce, and Chairman Pombo, have flown over this country and seen what it looks like when you're coming into Carlsbad and see the density of well spacing around this city and around cities like Hobbs. And it's that kind of density that we're trying to preclude from Otero Mesa.

We know that Otero Mesa, two wells were drilled by Threshold in one region, one part of that country, and turned up to be not productive, so they were plugged. We know that Hake Oil drilled

two wells and it looks as though one of them is promising for gas. And although that information has not been widely shared, and understandably so. So we don't know exactly what the resource is in that particular part of Otero and Sierra County.

So my personal perspective is that, yes, I understand a need for oil and gas production in this country, not to mention in this state, and I feel that the degree to which we can do that in an environmentally compatible way is very important, because once we've burned this oil and gas, which is all we have, because the animals that went extinct thousands of years ago that Tom was referring to are not going to be making any more oil and gas in the near future.

I feel that we should be conserving our fossil fuels to the highest degree that we can while supplementing our energy sources with renewables, and I think we can balance production of fossil fuels, particularly out of our Federal fluid minerals in a way that will make them last longer, and I would advocate for that.

Mr. PEARCE. Mr. Chairman, I have a couple of more questions on this round, but in follow-up on that, then if we assume that today's standards of drilling and whatever are the standards and if we understand that we're losing 78,000 chemical industry jobs a month overseas, you're saying that you would not change your standard. I guess that's not quite a good question.

The question is, Is there any point in the loss of industry and jobs at which we change the standard by which we're measuring whether or not we would drill? If we could accelerate the loss of jobs and the impact into the nation's economy, is there any point at which you would feel like that you would judge differently than you've judged currently on the access into the Otero Mesa?

Ms. PRUKOP. You mean in terms of if certain kinds of approaches to energy development cost jobs, and that direct relationship?

Mr. PEARCE. No. You said that you feel like it's an area that you want to protect and claim, and I can accept that. My question is, Do you ever look at the external economy in the world and in the country and evaluate the job losses and the threats to our overall economy? Because I see that high natural gas prices in the five- to ten-dollar range are a threat to our nation's economy. The loss of jobs has accelerated overseas, and going to the areas where natural gas is 50 cents and 70 cents rather than five and ten dollars.

And I'm asking, Is there any point at which the loss of jobs and the loss of infrastructure and the loss of capability to produce our own resources internally in this country would drive you to a different decision, assuming that oil and gas production doesn't change and assuming that the wilderness designation doesn't change or whatever? Do economic impacts ever influence your decision?

Ms. PRUKOP. Certainly they do, and the situation that you just related is very complex, and it's not as simple as whether or not we drill on Otero Mesa. We know, everyone in this room who is an experienced business person or simply a citizen of this country, who has watched our country develop over time, recognizes that there are impacts to industries and way of life that over time cause change, both in terms of the degree and scope of what that practice might be.

Farming and ranching is a perfect example. The small family farm has essentially disappeared because of economics, and many decisions were made, governmentally and otherwise, that affected that evolution. And so evolutions of those kinds occur in every industry.

When you're trying to look at the oil and gas industry and this country's energy needs and how that's tied to what's going on at the global level, I do understand the implication of your question. And yes, economic development and economic opportunity is very important, but so are quality of life choices. So the best answer I can give you to your question is that we need to seek balance.

Mr. PEARCE. I would agree with that.

Mr. Chairman, my last comments are simply that I did fly over Otero Mesa and I happened to have Albert Teimer of the New York Times with me, and he looked down there and said, Am I getting this right? The whole Otero Mesa discussion is over that property down there? That wasn't me, I was just flying along and he was beside me in the airplane. He was less than stunned by the sight.

The second point that I want to make is that, again, going back to the original point that the impacts, the fish species are symptoms that the ecosystems are not functioning naturally and the loss of species, that humans are going to change a natural system, my observation is I was trying to get my staff to come up with absolute figures, but of course, it's impossible. But prior to significant human changes in the environment, 99.5 percent of all species that ever existed have gone extinct, and most of those extinctions, tens of thousands of extinctions, occurred before significant human intervention.

And yes, there have been species that continue to go extinct, but I think to declare that humans are the only and main reasons that species are going extinct tends to get us over on the side of the question that said that we must have total nonhuman intervention, which is where the extremists have taken the issue.

And we've heard the panel discuss about the extremists' interpretations. I don't think any one of us would sit here and watch a species go extinct. But I think the question is what sort of comments do we make about the environment and about human rights, about our property rights, the constitution as it affects property rights, those are questions that this miscasting or perception that humans cause all extinctions drives us away from reality and closer to a position that takes us and pits us against each other. And I don't think that's, in the long-term, profitable.

Mr. Chairman, I would turn it back over to you.

The CHAIRMAN. Well, interestingly listening to this going back and forth on it, because we have—we've kind of developed the thought in this country that we don't want to approve any new development or any human activity unless we can mitigate the environmental impact, unless we don't have an environmental impact from that. That sets us up to fail, because anytime humans do anything, there is an environmental impact. When you walk across on a nature hike, you could scare a mating pair of some endangered species walking across on your nature hike and disrupt the environment by doing that. I mean, anytime we do anything, we have



an impact on the environment. And the goal should be to have as little impact on the environment as we can.

And that has to be where we go with this. You can't say that we're not going to have an impact on the environment. That is an impossible level to maintain. And Mr. Davis talks about the history of this watershed and at what points dams were built. I don't know that much about this watershed and what's happened here. I know a lot about California's. We have endangered salmon. We have a winter run salmon that is listed as an endangered species in California. And yet a lot of the guys, a lot of the biologists have come back and said, Before we had the Shasta Dam, we didn't have a winter run salmon, because there was no water running through that system during the summertime and into the fall in order for the winter run salmon to come up. And yet we are now protecting it as an endangered species and regulating flows coming out of the Shasta Dam based upon that endangered species, which, in essence, was created by human activity.

And I would suspect if you go back over the last hundred years, that human activity on this watershed has changed the species that exist there, and none of us can doubt that, because you build dams, you build irrigation systems, you change what is here.

You talk about the spotted owl in California. We have proven beyond any doubt that it can survive in places other than old growth forests. I wish it was just old growth forests, because then we could still use the rest of the forest. But now we're regulating the entire forest, 30, 35 million acres of forested land in California, based upon activities of the spotted owl. And the result of that has been devastating economically. And yet that can't be our only decision. We have to look at what the environmental impact is, as well.

We've tried, a number of different times and ways, to look at the Endangered Species Act and to try to make some sense out of it and to have it implemented in a way that mitigates as much of our impact on those endangered species as we can, but, at the same time, takes into account that humans are part of the environment, that our activity does have environmental impact, and we have to measure that. We have to consider that.

One of the other major issues that we are dealing with is critical habitat. And right now, the way that the law is operating, the way it is being implemented is that you have a species that is listed as an endangered species, there is a certain time limit in the law for designating critical habitat. There is not a time limit in terms of developing a recovery plan.

So because of lawsuits, because of the way the law is functioning, what is happening is the species are being listed, and many times under what I would consider questionable data that comes in, gets listed as an endangered species, which starts the clock ticking for critical habitat to be designated. Once that critical habitat is designated, it's done with incomplete information, and we're trying to bring that in line in terms of what the recovery plan, where these species exist, what is needed for that species to recover, and then adopt critical habitat. And that is one of the bills that our Committee will be acting on, is dealing with what critical habitat is actually necessary for the recovery of the species.

And that and the science issue are probably the two issues that we need to get our arms around. We need to figure that out. There are people that are going to oppose that legislation. They have opposed every single bill that's been introduced to amend the Endangered Species Act in any way from the very beginning. And they profit from the way the Act is being implemented right now, and that is one of the frustrations I have.

I have yet to talk to any responsible biologist who will tell you that the Act is operating the way that they want it to right now. People who truly care about the environment and truly care about recovering species look at the way the Act is being implemented and say, we've got to do a better job. We can't continue doing this the way that we're doing it. We have to do a better job. We have to change the dynamics of this debate so that we truly can recover species and stop species from becoming extinct. Under the law right now, that's not happening. It's not—you know, it's a series of court cases and administrative decisions which has led us to this point.

The other thing that I always hear is the major problem with the Act is we don't spend enough money on it. And, you know, we are spending right now billions of dollars in public and private money every year under the Endangered Species Act and yet we don't spend enough money on it. The only problem is we need to appropriate more money. And I think that is an extremely shortsighted view. And unless you work for Fish and Wildlife Service and you need more money for your budget, it's a pretty shortsighted view of what's wrong with the Act.

Before I adjourn this hearing, I did want to give Congressman Pearce a chance. I know he had a couple more questions that he wanted to ask, but I do have additional questions that I would like to submit in writing to the panel, because there are some issues that—dealing with science and dealing with critical habitat that I would like you to have a chance to think about and answer for the record, because those are probably the two big issues that we really need to move forward on right now.

And having this opportunity, being out here and listening to you, I think it would benefit the Committee. It would benefit me, but it would benefit the Committee to have the opportunity to have you guys think about that and give us a response. Congressman.

Mr. PEARCE. Thank you, Mr. Chairman.

Ms. Ogden, you had testimony that was pretty much diametrically opposed to the secretary's on whether or not the endangered species was a vital and a real problem. Can you give me some real specifics about how it's impacting your capabilities or whatever.

Ms. OGDEN. The bluntnose shiner. As a farmer—I have two hats, I farm and ranch. So as a farmer, the bluntnose shiner has had a great impact on our water deliveries. As I said in my testimony, because we do not have water wells on our farm, we're in an area where the underground water is of such poor quality that we can't put the underground water on the surface or it would ruin the land.

So we're directly—when there is water in the dams, in the reservoirs, then we're able to farm. When there isn't water, we are unable to farm. Last year farmed on 14 inches of water per acre.

There was a comment saying that that's just about dry land, and yes, it is. So whenever the irrigation system is unable to do the best they know how to do to have the most optimum use of the amount of water because of having to go and jump through the hoops that they've had to jump through for the Fish and Wildlife Service, then it is making those of us in the Carlsbad Irrigation District have less amount of water that we're able to use, you know, to put on our farms and to be able to use to impact.

Last year, I farmed a third of my farm as a result of the drought and the low amount of water, and I can tell you it had a big impact on the economy in this area. It had a big impact on our ability to keep employees. We had to let employees go because we did not—were not able to farm as much. And so it does have a great impact on not just me personally, but other people in this area as far as that goes.

As far as the ranching, the impact has been more broad as far as what we can and can't do. The willow flycatcher, southwest willow flycatcher is a big one, more so in the Socorro area, where they came in and just arbitrarily had a man remove his cattle off of his BLM permit because they thought it was having an impact. And then I since found out that wasn't the case.

But it did take us going all the way to the 10th Circuit Court of Appeals on that situation. And we have spent, you know, over a quarter million dollars. On one case alone, it was \$200,000, just in the agriculture industry, in trying to fight these things. So we're having to, as individual ranchers, we're having to put so much of our money toward the protection of our livelihood because of the impact that the environmental—the Endangered Species Act has had on us.

Our director of Cattle Growers spends, I'd say, 90 percent of her time putting—trying to help put out fires or things with the Forest Service, the Fish and Wildlife Service, all of these things. She is spending more time on litigation to help keep us viable as a ranching industry than on other areas, you know. It's our main focus at every meeting is on the litigation that's come up and what's the impact that it's having on us. And it's having more of an impact than the environment ever would.

As I said, my family settled here in 1890. Why they stopped here, I haven't figured out yet.

Mr. PEARCE. We all may ask that question. Thank you.

Ms. OGDEN. But anyway, the endangered species is what's having the impact on us now.

Mr. PEARCE. Mr. Harvard, you said you're one of the volunteers working on the partnerships. How effective is the partnership on the lesser prairie chicken as far as bringing all the stakeholders together, as far as coming to real solutions that acknowledge the environmental concerns, the industry concerns, the regulatory concerns? How effective is that group?

Mr. HARVARD. Well, it depends on who you ask. Since you're asking me, I think that in some ways it has been very effective. We have come up with some real potential solutions or plans which can help the prairie chicken, and we have been successful in at least trying to educate some of the other members of the realities

associated with oil and gas operation and ranching operations and the necessity of those operations.

I think that—I think it is successful. I think we need to continue working toward—working together with all parties, not just the scientific community. Your question, Chairman Pombo, to us from the science aspect is very important. But I think having on-the-ground input from the actual users and participants in the—you know, in the species or the affected parties of these species is very important.

I've been—it's a frustrating process in many ways because we continue to try to identify real solutions, yet it seems like from the environmental community's standpoint, the solutions are not—the only solution that is acceptable is the removal of land, is the habitat and having no impact at all on that habitat. And as you pointed out, that's not real. That is not acceptable and it's not doable.

But yet trying to get that shift away from the habitat alone to, all right, we have a species here that, for better or for worse, covers a large amount of Federal land, therefore, has the ability to be controlled more actively than some of the other areas. The lesser prairie chicken community, we're on the fringe of the population in this area, yet we're one of the prime areas of consideration for improvement of that habitat.

It's a difficult situation because, as we know, any fringe population is subject to the increases and decreases in population because of many different factors, and the majority of it being nature. Yet man is being called upon and industries are being called upon to come up with specific ideas that will improve, when your impact on that species is minimal in comparison to nature itself.

I would at this point in time, I guess, continue to offer my services and the idea that the stakeholder process is necessary. I hope that we will—that our input will be taken to heart and implemented and not just discounted, like so many other of stakeholder processes. There has been a five-state working group on the prairie chicken for I don't know how many years.

Mr. PEARCE. I think that was my point.

Mr. HARVARD. Yes.

Mr. PEARCE. That if we have conclusions from partnership groups and they are ignored, then how effective is it? That's my question.

Mr. HARVARD. And to answer that question, right now I can't say it's that effective. But from our standpoint, if we don't continue to speak about it, to stand up for what is real, I don't know, then we basically are going to have to go someplace else. And we really don't want to do that.

Mr. PEARCE. Thank you. Mr. Chairman, my last questions are for the secretary. Madam Secretary, you made the comment that the problem with the Endangered Species Act is that it has not had enough money to implement it. When I see that we spent something between half a million and one million dollars per wolf to reintroduce them and we spent, I'm told, hundreds of millions of dollars to have a success on the Gila trout, how much money do we really need, in your opinion? What dollar figure do we need to successfully—to make it where that the money is not the problem.

Ms. PRUKOP. I'm not certain that I can put a dollar figure on that.

Mr. PEARCE. If we would scoot over, then, and tell me one project where the government underfunded and completely ruined the process for the biologists.

Ms. PRUKOP. Because there was not enough money to go forward?

Mr. PEARCE. Because they failed to fund adequately and it was Congress's fault? Or was it the Fish and Wildlife determining where those billions of dollars are spent.

Ms. PRUKOP. I understand that the root of your question is this notion the money that we have allocated, which has been substantial, have we used it effectively? The answer is no, for a couple of reasons. And as we were discussing earlier today, the interpretation of the ESA across the Nation in different regions of the U.S. Fish and Wildlife Service has varied, and the bureaucracies that have been developed in some of those regions and some of the offices, et cetera, that takes a lot of money and has not been effective, and also litigation is pulling money away from on the ground effectiveness.

So wrapped into your question is the notion of how much money are we putting toward it and how much is being effectively used? I would agree with you, because I think what's underlying the question is the fact that a lot of money that we've put toward the Act has not been effectively used, because it's been tied in litigation especially regarding the Chairman's point about critical habitat designation.

So a real answer to your question, sir, would require looking at how money has been spent in the past, how to determine what effective use of money is, and then how to circumvent or find ways to resolve issues such that so much of the funding is not diverted to nonproductive use.

Mr. PEARCE. Thank you. Mr. Chairman, I would just conclude saying thank you for taking your time to come to our district. We see our problems in very minute detail and look at the problems across the whole country, and I don't know exactly what the outcome is. I understand that we're going to have an endangered species bill, and I don't think there is anyone in this room who would not want one.

But I keep hearing the word balance throughout the day, I think it's necessary that we try to find that balance. We just this year made one small incremental change in the Endangered Species Act and for the first time we can consider national defense. For the first time when we create a critical habitat, we can consider national defense.

So that case came up because of the 17 miles of coastline that Camp Pendleton has, 16 and a half miles of that were unusable because of a different variety of endangered species. So the area where we trained for Iwo Jima was shut down, 95 percent was shut down because of the way that we're doing our critical habitat and designating that.

I think that the Chairman has adequately said that we will look carefully at all the options. So thank you, Mr. Chairman, for bringing this discussion to Carlsbad, New Mexico.

The CHAIRMAN. Well, thank you very much. It's been with a lot of hard work and insistence by Congressman Pearce that we were able to come back to New Mexico and take the opportunity to come down here and listen to people that are dealing with the implementation of the Act every day. The effort that this Committee is making to take Congress outside of Washington and have them go out and listen to people, last year we had about 50 hearings like this around the country where members of the Committee went out and listened to people that are dealing with the Act and dealing with other issues that we have before the Committee. I think it's extremely important for Congress to do that and actually get out and listen to the people.

I want to thank the witnesses for your valuable testimony today. It is important, as we move forward with trying to implement our nation's laws, that we have the testimony and the input of people that have to deal with it on the ground. I know when I first got elected, one of the things that surprised me, coming from an ag background, was how many people in Washington understood how farm programs worked, but had no clue what the impact of those programs were on people out in the real world.

And many times in dealing with our nation's environmental laws, it's very similar to that. They understand how the program works, they understand how the Endangered Species Act is supposed to work in terms of the law, but they have no clue what the impact is on real people. And I've made a real effort, with the help of Congressman Pearce, have made a real effort to get members of the Committee out to listen to people that have to deal with it on the ground. So your testimony is extremely important to this Committee. It's important to us in our efforts to move forward on this issue.

I'd also say to the members of the audience who took the time and trouble to be here, thank you for doing that. I know that we were not able to hear from everybody who wanted to have input into this hearing today. I am going to hold the hearing record open for 10 days to allow anyone the opportunity to submit written testimony to the Committee. It will appear as part of the official record of this hearing. So if anybody has additional comments that they would like to make, the hearing record will be held open for 10 days, if you could submit that in writing to the House Resources Committee, or if you can send it to Congressman Pearce's office, he can forward it to the Resources Committee so that it can appear as part of the record.

Again, I want to thank the people of Carlsbad for hosting us here today, the mayor, our Boy Scouts, the reverend for helping with our opening ceremonies here today. Thank you all very much.

If there is no further business before the Resources Committee, I again thank the witnesses, and the Committee stands adjourned.

[Whereupon, at 10:26 a.m., the Committee was adjourned.]

