STABILIZING RURAL ELECTRICITY SERVICE THROUGH COMMON SENSE APPLICATION OF THE ENDANGERED SPECIES ACT

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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OVERSIGHT HEARING ON "STABILIZING RURAL ELECTRICITY SERVICE THROUGH COMMON SENSE APPLICATION OF THE ENDANGERED SPECIES ACT"

Wednesday, May 4, 2005
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:23 p.m., in Room 1324, Longworth House Office Building, Hon. George Radanovich [Chairman of the Subcommittee] presiding.

STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. Good afternoon and welcome to the Subcommittee on Water and Power. I apologize for the late start of the hearing. Usually, we like to get started right on time, but we did have some votes on the Floor of the House and it took us a bit to get going. So we are on our way, and again, I want to thank everybody for being here for this hearing.

I want to especially welcome members of the National Rural Electric Cooperative Association who are here with us today. I thank you for your dedication to the idea of protecting endangered species and strengthening your communities. I know you are very busy with your Congressional visits, so I appreciate the fact that you are here.

When Congress passed the Endangered Species Act in 1973, everybody agreed on the need to protect and preserve our nation's rare species. Thirty-two years later, the belief hasn't changed. The only difference is that in 1973, everybody thought the Act would finally solve the problem, but today, many question whether the Endangered Species Act has even remotely lived up to its recovery goals.

The Federal Government has spent billions of taxpayer dollars, reduced water deliveries to communities, made electricity more expensive, and lined the pockets of many lawyers, and yet the Act has a one percent rate of success at best.

To make matters worse, the ESA has real impacts on real people. In the 1990s, for example, California levees weren't properly maintained because the elderberry beetle bush was there, the suspected

habitat of the endangered elderberry bark beetle. When massive floods came and the levees disintegrated, three people died as a result.

In the case of an endangered silvery minnow in New Mexico, Federal judges ruled that the Act could take water away from those who had paid for it. In response, Albuquerque's Democratic mayor claimed that, quote, "the fringe environmental community, which wants to take away the city's destiny, wants to take water from the mouths of our children," unquote. At the time, New Mexico Governor Bill Richardson pledged to protect New Mexico from, quote, "this grievous imbalance in the Endangered Species Act."

Today, we will focus on the power side of the equation. The ESA has tremendous impact on the electricity backbone of the nation, particularly out West. In siting new transmission lines, in relicensing hydroelectric projects, and in generating power, the ESA impacts almost every facet of how consumers get electricity.

Almost a quarter of the Bonneville Power Administration's costs are related to ESA fish costs. That is not surprising, given that the agency, which was created by Franklin Delano Roosevelt, was forced to spend $3.8 million per fish in last summer's spill program mandated for endangered salmon. As you can see from the exhibit on display there, the numbers speak for themselves. That is a very expensive salmon, $3.85 million per fish.

The percent of the Western Area Power Administration's cost for ESA hovers in the double digits, as well. Since these costs are passed directly to consumers, or customers, excuse me, it is safe to say that when many in the West turn on their light switches, the ESA meter is literally running.

Today, we will hear from the best and the brightest rural utility managers who truly care about restoring species, but see the daily, firsthand impacts on their customers and the uncertainty of the future.

We are not just here to talk about costs, though. The ESA was designed to achieve real results. Today's hearing is about improving the ESA for the mutual benefit of species and people. In many cases, the ESA is viewed as a zero-sum game where either species benefit at the expense of people or vice-versa. There is no reason why a new and improved ESA can't help make species protection and people's needs more compatible. For example, spending nearly $4 million per fish or tearing down dams when alternative, less costly means can accomplish the same end result or even better does not make common sense.

Strengthening our critical habitat designation process, putting independent peer review science in major ESA decisions, or modernizing efforts like our Committee Chairman Richard Pombo is doing right now, are the right steps to be taken at the right time. We can do better for species and people, and that is the goal of this and future hearings.

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George Radanovich, Chairman, Subcommittee on Water and Power

When Congress passed the Endangered Species Act in 1973, everyone agreed on the need to preserve our Nation's rare species. Thirty two years later, that belief

hasn't changed. The only difference is that, in 1973, everyone thought the Act would finally solve the problem, but today many question whether the Endangered Species Act has even remotely lived up to its recovery goals.

The federal government has spent billions of taxpayer dollars, reduced water deliveries to communities, made electricity more expensive and lined the pockets of many lawyers, yet the Act has a 1% rate of success at best. In the world I grew up in, a 1% rate does not meet the definition of success—most people would be fired from their jobs if they happened to be this "successful."

To make matters worse, the ESA has real impacts on real people. In the 1990's, California levees were not properly maintained because of an endangered beetle. When massive floods came and the levees disintegrated, people died as a result. In the case of the endangered silvery minnow in New Mexico, federal judges ruled that the Act could take water away from those who have paid for it. In response, Albuquerque's Democratic Mayor exclaimed that "the fringe environmental community, which wants to take away the City's destiny, wants to take water from the mouths of our children." At the time, New Mexico Governor Bill Richardson pledged to protect New Mexico from "this grievous imbalance in the ESA."

Today, we will focus on the power side of the equation. The ESA has a tremendous impact on the electricity backbone of the Nation, particularly out West. In siting new transmission lines, in relicensing hydroelectric projects, and in generating power, the ESA impacts almost every facet of how consumers receive electricity. Almost a quarter of the Bonneville Power Administration's costs are related to ESA fish costs. That's not surprising, given that the agency was forced to spend $3.8 million per fish in last summer's spill program mandated for endangered salmon. The percent of the Western Area Power Administration's ESA costs hovers in the double digits as well. Since these costs are passed directly to customers, it's safe to say that when many in the West turn their light switches on, the ESA meter is literally running. Today, we will hear from the best and the brightest rural utility managers who truly care about restoring species but see the daily, firsthand impacts on their customers and the uncertainty of the future.

We are not here to just talk about costs, though. The ESA was designed to achieve real results. Today's hearing is about improving the ESA for the mutual benefit of species and people. In many cases, the ESA is viewed as a "zero-sum" game where either species benefit at the expense of people or vice-versa. There's no reason why a new and improved ESA can't help make species protection and the people's needs more compatible. For example, spending $3.8 million per fish or tearing down dams when alternative, less costly means can accomplish the same end result or even better does not make sense.

Strengthening our critical habitat designation process as championed by our Subcommittee colleague, Dennis Cardoza; putting independent peer review science in major ESA decisions like our other Subcommittee colleague Greg Walden wants to do; or quarterbacking the ESA modernization effort like our full Committee Chairman Richard Pombo is doing are the right steps at the right time. We can do better for species and people, and that's the goal of this and future hearings.

Mr. RADANOVICH. I welcome our witnesses today and would like to especially welcome a good friend of mine from the district, Steve Boyd from the Turlock Irrigation District. Steve, welcome to the hearing. I am glad you are here to testify.

I now recognize the distinguished Ranking Minority Member, Grace Napolitano, for any statement she may have. Grace?

STATEMENT OF HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chair. Thank you for holding these very important hearings today and I do look forward to better understanding how hydroelectric power has affected economic and natural resource values around the country and how we can all work together to address the various needs and concerns that I am sure are going to be voiced by our panelists.

As we work toward reaching a consensus on recovery efforts and the management of our natural resources, it is of ultimate importance to acknowledge that the fish population existed long

before the multi-purpose dams that we constructed throughout the West.

We should also keep in mind that under the treaties negotiated with the United States in 1855, Indian tribes have fishing rights. Later today, you will hear a Federal obligation to restore salmon to healthy numbers discussed in greater detail, I am sure, from Olney Patt, Executive Director of the Columbia River Inter-Tribal Fish Commission. While we have all directly and indirectly benefited from inexpensive hydroelectric power, it has not come without costs.

According to an April 10, 2003, Congressional Research Service report, wild salmon in the Columbia River Basin in the 1800s were estimated to number as much as 60 million returning adults each year. Today, less than one-tenth of that number of wild salmon are seen returning up and down the coast of the Pacific Northwest. Human activities, including hydropower generation and other activities that result in habitat loss, are believed to be responsible for much of the decline.

In addition to fish and wildlife and electricity, the Federal power systems are also operated for the benefit of flood control, irrigation, navigation, and recreational benefits. These other uses can change the timing and amount of water available for power generation and also reduce the amount of power that the Federal power system produces.

Last July, GAO, the Government Accountability Office, found that diverting water for irrigation purposes results in about $180 million per year in foregone revenues for Bonneville Power Administration. I expect we will hear today about how the ESA, enacted in 1973, is responsible for the high utility rates throughout the West. In preparation for this hearing, my staff asked the Congressional Research Service to look into this question and they found that the ESA cost in post-Power Marketing Administrations' operating expenses ranged from zero to 17 percent. CRS was careful to point out—and we have a copy of that report and we will make sure that the panel has it, and if anybody else wants a copy of it—that agencies—they are careful to point out that the agencies do not separate cost for ESA listed species from other expenses such as compliance and with the Grand Canyon Protection Act or activities for non-ESA listed fish, so it is impossible to attribute an exact price.

Even though Bonneville Power Administration has the highest percentage of ESA cost of all Power Marketing Administrations, the utility rates in Bonneville's service territory are among the lowest in the country. In 2003, the average price nationwide per kilowatt hour was 7.4 cents. Yet the average prices were 5.7 in Washington State, 6.2 per kilowatt hour in Oregon, and 5.2 in Idaho.

Mr. Chairman, I ask unanimous consent to insert into this hearing for the record the Congressional Research Service memorandum, a breakdown of utility rates nationwide, the GAO report I mentioned, and the Columbia River Inter-Tribal Fish Commission's Energy Report for the Columbia River, and a July 1998 letter from the Department of Commerce to Columbia River Inter-Tribal Fish Commission discussing the treaty rights of the Indian tribes.

We all use energy and we all must realize the importance of hydroelectric power, but we must also remember that Power Marketing Administrations and utilities do not own the rivers. They belong to all of us.

I appreciate the witnesses being here today and traveling from throughout the country to participate in this hearing and I look forward to their testimony.

Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Grace. I ask unanimous consent that the items you had just discussed are in the record. There being no objection, so ordered.

Mrs. NAPOLITANO. Thank you.

Mr. RADANOVICH. You are welcome.

[The CRS report submitted by Mrs. Napolitano follows:]

CONGRESSIONAL RESEARCH SERVICE

Memorandum April 29, 2005

TO:	House Committee on Resources
FROM:	Pervaze Sheikh, Analyst in Environmental and Natural Resources Policy, Resources, Science, and Industry Division
	Larry Parker, Specialist in Energy Policy, Resources, Science, and Industry Division
SUBJECT:	Endangered Species Costs for Power Marketing Agencies

This memorandum responds to your request for a table and explanation of costs agencies have attributed to requirements of the Endangered Species Act (ESA; P.L. 93-205; 16 U.S.C. §§1531 et seq.) for Power Marketing Administrations (PMA), including the Bonneville Power Administration (BPA), Western Area Power Administration (WAPA), Southeastern Power Administration (SEPA), and Southwestern Power Administration (SWPA). The information used to create this table was derived from information provided by each of the PMAs (see attached) and from the FY2006 Department of Energy Congressional Budget Request for Power Marketing Administrations. This memo summarizes the ESA costs for each of the PMAs and then provides a table comparing costs among PMAs, and analyzing the costs in terms of operating expenses, revenues, and power marketed.[1]

If you have any further questions, please contact Pervaze Sheikh at 7-6070, Larry Parker at 7-7238, or Kyna Powers at 7-6881.

SEPA ESA Costs.[2] SEPA attributes no costs to requirements under the ESA for FY2005. According to SEPA, no specific habitat requirements have been indicated for species listed under ESA, and therefore, no costs to maintain any listed species have been incurred. SEPA does contend that costs have been incurred for non-endangered species, including costs for maintaining fish spawning habitat and flow regimes for aquatic species, among others.

SWPA ESA Costs.[3] SWPA attributes $2.2 million in costs to requirements under the ESA for FY2005. According to SWPA, costs of $385,000 are attributed to additional energy purchases resulting from operations for endangered species (e.g., flow modifications). Approximately $1.8 million, 82% of the total costs, are attributed to the reduced value of off-peak energy generation due to ESA requirements (i.e., revenue was lost because energy was produced and sold at off-peak rates instead of at peak rates).

WAPA ESA Costs.[4] WAPA attributes approximately $106.6 million in costs to requirements under the ESA for FY2005.[5] However, WAPA notes that it does not

[1] For more information see, CRS Report RL32798, Power Marketing Administrations: Proposals for Market-Based Rates, by Kyna Powers.

[2] Statement provided by Southeastern Power Administration (April 22, 2005) attached.

[3] Statement provided by Southwestern Power Administration (April 27, 2005) attached.

[4] Statement provided by Western Area Power Administration (April 29, 2005) attached.

[5] Note that the $106.6 million estimate of ESA costs contrasts with the $39.7 million estimate provided by WAPA in response to questions requested by Congressman Calvert at a House Re-

Continued

track costs by "specific legal and regulatory mandates, but rather more generally, as applicable to environmental objectives." Further, WAPA contends that their numbers are conservative, and that "it is difficult to estimate the lost generation and other costs specifically associated with ESA compliance."[6]

BPA ESA Costs. BPA attributed approximately $494 million in costs to requirements under the ESA for FY2005.[7] The BPA includes direct program costs for fish and wildlife projects for ESA-listed species, reimbursable costs to the U.S. Army Corps of Engineers and Bureau of Reclamation for operation and maintenance costs for ESA-listed species, capital repayment to the U.S. Treasury for constructing hatcheries and fish passage projects, power purchases to supply customer demand when fish operations prevent electricity generation, and opportunity costs when water is spilled over the dam (i.e., not used for power generation) for ESA-listed species.[8] BPA states that operational costs (e.g., foregone revenue and power purchases) for ESA listed species (totals $339 million) include some "relatively small costs for non-ESA-listed fish operations that are difficult to separate out."[9] This uncertainty in separating costs for ESA-listed species was also expressed by WAPA.

Analysis of ESA Costs. Based on the agency estimates discussed above, CRS has calculated several perspectives on ESA costs to PMAs, including the ESA costs as a percentage of operating expenses, gross revenue, and power marketed (Table 1). ESA costs as a percentage of PMA operating expenses ranged from 0 to 17%, similar to ESA costs as a percentage of revenue, which ranged from 0% to 15%. BPA had the highest percentage of ESA costs to revenue generated and operating expenses. CRS used these data to determine ESA costs per kilowatt-hour of power marketed to provide perspective on the contribution of ESA costs to the cost of power marketed. Values ranged from 0 cents to 0.59 cents per kilowatt-hour of power marketed. Once again, BPA was the highest with the costs representing about 20% of BPA's current priority firm rate.[10]

CRS-4

Table 1. Estimated ESA Costs in Relation To Operating Expenses, Gross Revenues, and Power Marketed.

PMA	Estimated ESA Costs (million$) as provided by Agencies	Estimated FY2005 Operating Expenses (million$)	Estimated FY2005 Gross Revenues (million$)	Power Marketed (Gigawatt-hours; GWH)	ESA Costs as Percentage of Operating Expenses	ESA Costs as Percentage of Revenue	ESA Costs per Kilowatt-hour (KWH) of power marketed
Southeastern	$ 0	$39	$231	7,887	0	0	0
Southwestern	$2.2	$32	$123	5,479	7%	2%	0.04 cents
Western	$39.7-$106.6	$718	$962	31,721	6%-15%	4%-11%	0.13-0.33 cents
Bonneville	$494	$2,947	$3,346	84,008*	17%	15%	0.59 cents

Source: DOE Budget Request for FY2006. ESA cost estimates provided by agencies directly to CRS or through congressional testimony. Percentage and kilowatt-hour calculations by CRS.

* Calculated based on estimated 2005 resource data provided in Bonneville Power Administration, *BPA Fast Facts*, available at [http://www.bpa.gov/corporate/About_BPA/], accessed April 29, 2005.

[The map submitted for the record by Mrs. Napolitano, "Average Revenue per kWh for All Sectors," prepared by the Energy Information Administration, U.S. Department of Energy, follows:]

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sources Subcommittee on Water and Power Hearing on Feb. 25, 2004 (attached). We have included both estimates in calculations presented in Table 1.

[6] Statement provided by Western Area Power Administration (April 29, 2005) attached.

[7] The estimated ESA costs include $462 million in costs that directly benefit ESA-listed species, $5 million that indirectly benefit ESA-listed species, and $27 million that represent funding of Corps operations and maintenance costs related to ESA-listed species. For further information see, Bonneville Power Administration, How Bonneville Power Administration Funds Fish and Wildlife Efforts, available at [www.bpa.gov], accessed April 29, 2005.

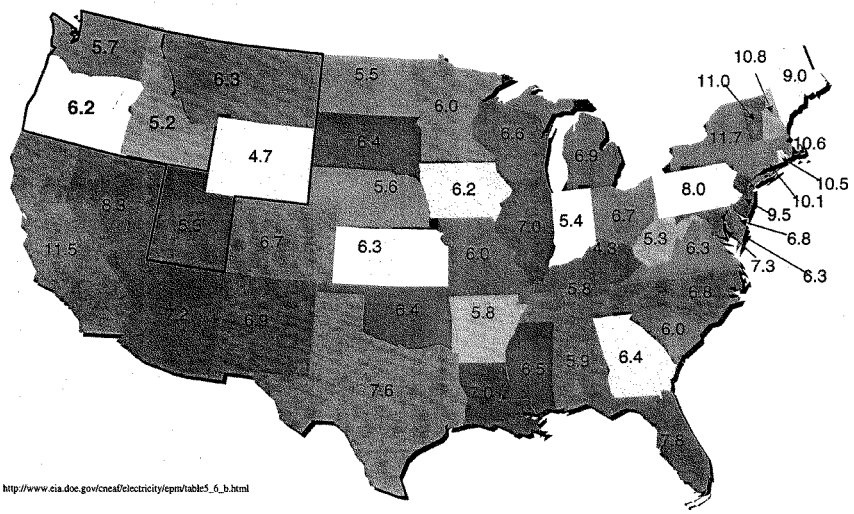
[8] Ibid.

[9] Ibid.

[10] Rate data from Bonneville Power Administration, BPA Fast Facts, available at [http://www.bpa.gov/corporate/About—BPA/], accessed April 29, 2005.

Average Revenue per kWh for All Sectors

2003 estimates; U.S. Average 7.4 cents per kWh



[NOTE: The U.S. General Accounting Office (GAO) report entitled "Bonneville Power Administration: Better Management of BPA's Obligation to Provide Power Is Needed to Control Future Costs," dated July 2004, submitted for the record has been retained in the Committee's official files.]

[The July 1998 letter from the Department of Commerce to the Columbia River Inter-Tribal Fish Commission, submitted for the record by Mrs. Napolitano follows:]

UNITED STATES DEPARTMENT OF COMMERCE
THE ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE
WASHINGTON. D.C. 20230

JULY 21, 1998

Mr. Ted Strong
Executive Director
Columbia River Inter-Tribal Fish Commission
729 N. E. Oregon, Suite 200
Portland, OR 97232

Dear Ted:

I am writing in response to your September 29, 1997 letter to Will Stelle describing your view of the federal trust responsibility to the four Columbia River Treaty Tribes and the relationship between this federal responsibility and the Endangered Species Act (ESA). My response to you has been coordinated with all the federal agencies involved in the salmon recovery effort and concurred in by the President's Council on Environmental Quality.

It is our policy that the recovery of salmonid populations must achieve two goals; 1) the recovery and delisting of salmonids listed under the provisions of the ESA; 2) the restoration of salmonid populations, over time, to a level to provide a sustainable harvest sufficient to allow for the meaningful exercise of tribal fishing rights. We see no conflict between the statutory goals of the ESA and the federal trust responsibility to Indian tribes. Rather the two federal responsibilities complement one another. Unfortunately, in light of the long-term decline of salmonid populations, we cannot achieve either goal within a short time frame. It is important that we achieve a steady upward trend toward ESA delisting in the near term, while making river and land management improvements for the long-term.

Our statement of the twin goals for salmonid populations listed under the ESA recognizes that the United States, and all federal agencies, stand in a trust relationship with all federally recognized Indian tribes and of the responsibilities that flow from that relationship. The federal trust obligation to Indian tribes is independent of the statutory duties of the federal agencies and informs the way such statutory duties are to be implemented. The United States Supreme Court has described certain characteristics of the trust relationship and the lower courts have implemented the trust in specific situations.[1] Hence, we understand the importance of the federal government's efforts to allocate the conservation burden for salmonids listed under the ESA in such a way that, among other things, it does not discriminate against tribal fishing rights and is implemented in the least restrictive manner. Accordingly, the tribes may reasonably expect, as a matter of policy, that tribal fishing rights will be given priority over the interests of other entities, federal and non-federal, that do not stand in a trust relationship with the United States.

The Secretaries of Commerce and Interior recognized the importance of harmonizing their trust responsibilities with their statutory obligations under the ESA in the Secretarial Order of June 5, 1997. The federal agencies will continue to consult with all affected tribes on a government to government basis as provided for in the President's Memorandum on Government to Government Relations with Native Americans, April 29, 1994, and Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments, May 14, 1998.

The federal agencies will continue to join with the states and tribes to develop a comprehensive approach to the restoration of fish and wildlife resources in a manner that fulfills all obligations under federal law, including the trust obligations to Indian tribes. Toward that end, the federal government continues to support the "Three Sovereigns" process to develop a regional plan for the conservation of listed species and restoration of healthy, sustainable and harvestable populations of salmon.

We look forward to continuing to work with the people of the region, including the Columbia River Treaty Tribes, to accomplish salmon recovery.

SINCERELY,

TERRY D. GARCIA

Mr. RADANOVICH. Any other opening statements? Mr. Walden?

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

Mr. WALDEN. Thank you very much, Mr. Chairman. I want to thank my colleagues, both of you, from California for this hearing and certainly for the CRS report. I was just noting, as I was afraid I was going to see, that Bonneville is the 17 percent one in our region, some $494 million of costs associated that they can pull out, although obviously that is difficult to do, directly related to ESA costs. That comports with some of the data I have seen.

Northwest ratepayers are currently paying about $600 million per year above the electricity costs for both species and habitat work. So it is not all related just to ESA, because this number is a little higher, but clearly—and there is a responsibility to do that, obviously, but I guess the point is the ratepayers are paying a fairly large burden here.

In fact, some estimate that fish restoration costs account for almost 25 percent of the wholesale cost of electricity in the region. And remember, as a result of Enron and all and other embedded

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[1] See, e.g., Seminole Nation v. U.S., 316 U.S. 286 (1942); U.S. v. Mitchell, 463 U.S. 206 (1983); Parravano v. Babbitt, 70 F.3d 539 (9th Cir. 1995), cert. denied, Parravano v. Babbitt, 518 U.S. 1016 (1996); Pyramid Lake Paiute Tribe v. U.S. Dept of the Navy, 898 F.2d 1410 (1990); Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032 (9h Cir. 1985); Joint Board of Control v. United States, 862 F.2d 195 (9'h Cir. 1988); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F. Supp.553 (D. Or. 1977); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1973).

costs, we are seeing rate increases of 46 percent between 2001 and 2004. I know that also affects your ratepayers in California as we trade power in our down time and back and forth.

These are very expensive. We need to make sure we get it right, for the species, certainly, because as a society, we have an obligation to not only protect them from going extinct, but also to enhance their runs. The question is, we need to make those decisions based on sound science and to make sure that we are making the right decisions throughout the process because not everything is the responsibility of the river.

You know, I would share with the Committee, and I don't know if other members have this, but there is a lot of discussion right now about what the sea lions are doing. This was a picture that ran recently. They are now finding sea lions not only at Bonneville Dam, but I heard recently as far east as John Day Dam. These folks are smart. They have decided the best place to eat is right in the fish ladders themselves, and so they have photos of them actually where they count in the fish ladders as the fish go by. Of course, I was talking to a friend of mine the other day prior to the closure of the season who had been out fishing and he said two of his friends had fish on, and by the time they got them in, they had heads. That was all that was left, because the sea lions had eaten the rest.

So we have got some predator issues up and down the river that we didn't have before. We also have a law that precludes dealing with the predators that I think obviously we need to take a look at.

Mr. Chairman, not to consume all the time here, but I did want to welcome two members of the panel today, two very distinguished members who are from Oregon and from my district. First of all is Steve Eldrige. Mr. Eldrige is both a constituent of mine and General Manager and CEO of Umatilla Electric Co-op since December of 1990. He has more than 30 years in the utility business, having started at age ten, obviously.

[Laughter.]

Mr. WALDEN. Steve is currently Chairman of the Governor's Oregon Rural Policy Advisory Committee, Eastern Oregon Telecom, LLC, and the Oregon Rural Electric Co-op Association Government Affairs Committee. He serves on the boards of Pacific Northwest Generating Cooperative, Pacific Northwest Utilities Conference Committee, the Good Shepherd Hospital Board of Trustees, the Northwest Open Access, Network, Oregon Cooperative and Ruralite Services. He also represents UEC on the Bonneville Power Administration Power Function Review Committee, the Oregon Managers Group, the Oregon Development Group, and the Tri-Herm Group. And when he has free time, he comes and testifies before Members of Congress, so we welcome you, Steve.

I am also delighted to welcome Mr. Olney Patt, Junior. He is former Warm Springs Tribal Chairman and has certainly been both an eloquent and forceful voice for tribal issues and fish issues in the Columbia River system. He is currently the Executive Director of the Columbia River Inter-Tribal Fish Commission.

So we welcome both of you gentlemen along with the rest of the panel.

Thank you very much, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Walden.

Mr. Pearce, you had an opening statement?

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

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate your opening comments that dealt with some of the things that we faced in New Mexico.

As I sit here and think about the ESA, I remember one of the hearings we had at the last of the 108th Congress, just three or four months ago. A lady from California said, you know, California is the greenest of the green States. She said, my city is the greenest of the green cities. And, she said, as a city counselor, I am the greenest of the green of the green. And, she said, the doggone ESA is broken and needs to be fixed, and she said it is stopping people from even building on additions to their houses. I think that really summarized for all the frustration that the Nation is beginning to experience from the elements that we have seen.

In addition to the things that you mentioned, Mr. Chairman, we had one circumstance during the last two years in New Mexico where the cooperative wanted to take down a tree that had died and was close to the power lines. They were not permitted to because of Endangered Species Act requirements. That tree eventually fell on the power line. It shorted out and caused a fire of several tens of thousands of acres.

It just continues over and over again that we find the damaging effects of the way the Act is implemented. Not one of us would watch as any species goes extinct, but we have to have some common sense. We have to reach some balance in the way that the law works. And we have to understand the way it is being misused.

Mr. Chairman, I appreciate the Committee hearing on this important subject today. Thank you.

Mr. RADANOVICH. Thank you, Mr. Pearce.

Miss McMorris, you had an opening statement?

STATEMENT OF HON. CATHY McMORRIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Miss MCMORRIS. Thank you, Mr. Chairman. I appreciate the chance to make a statement this morning and appreciate the chance that we are addressing this issue.

The Endangered Species Act has played a major role in the hydro relicensing process of a project in my district. The Ponderey PUD's attempt to relicense the Box Canyon Dam is, in my opinion, an example of the process gone wrong. The Box Canyon project is located on the Ponderey River in Northeast Washington, is owned and operated by the PUD. The project generates up to 60 megawatts of power. It was first licensed in 1952. The PUD applied to FERC to relicense the project in 2000 and the process is still underway.

While the environmental impacts associated with this small project are modest, the application of the hydropower generated in one of the poorest counties in Washington State is great. The largest employer in Ponderey County relies on the power generated by Box Canyon, but because of environmental requirements presently

under consideration by the Federal Government, this project could be deemed uneconomic. The people of the county face not only the prospect of increased rates, but job losses.

Clearly, the issues my constituents are facing in Ponderey County are directly related to our discussion today. The endangered species of significance to Box Canyon is bull trout, which have been listed as threatened. Despite years of scientific research and third-party review that suggests major investments in fish ladders and habitat restoration in the Ponderey River will do little or nothing for bull trout, the Federal Government has recommended that this small project invest more than $70 million over the course of its new license for these very endeavors. To put this into perspective, taken together with other agency recommendations, the cost to operate the project will more than double.

In the case of Box Canyon, even history can help deduce whether the application of the endangered species is going above and beyond its intended purpose. History tells us that bull trout have never existed in most streams within this project's boundary. But still, the Federal Government insists that this small community served by Ponderey PUD find a way to fund efforts to achieve an entirely unrealistic agency goal of 1,000 bull trout per mile of stream. Even though science has told us that the streams in question never have sustained these populations of fish, this has not stopped the Fish and Wildlife Service from insisting on requiring this small utility to spend more than $70 million on bull trout measures.

The utility has not argued, nor would I, that the responsibility does not exist to care for the impacted resource. However, when unjustifiable science is used as a pretext to impose huge costs for questionable benefits, particularly when such costs are squarely on the backs of the ratepayers in rural America, then we must ask these tough questions related to the Act's implementation.

Thank you very much, Mr. Chairman.

Mr. RADANOVICH. Thank you, Miss McMorris.

The Chair welcomes Chairman Pombo to the hearing. Richard, did you want to make any comments?

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

The CHAIRMAN. I will put it in the record.

Mr. RADANOVICH. OK, thank you.

[The prepared statement of Chairman Pombo follows:]

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

I thank Chairman Radanovich for holding this hearing. This is an excellent continuation of our successful hearing in Jackson, Mississippi, this past weekend.

This year, the Resources Committee has focused on providing reliable and affordable energy supplies AND updating and modernizing the Endangered Species Act. This hearing accomplishes both of these objectives.

One-quarter of the electricity costs in the Pacific Northwest are ESA costs. One-sixth of the electricity costs in WAPA's service territory are ESA costs. These costs are directly passed on to consumers.

There is considerable uncertainty in terms of future costs, particularly in the Northwest. When I read that 3.8 million dollars was spent per endangered fish during last year's Bonneville summer spill, it begs the question of why we can't do better.

The ESA was borne of the best intentions, but it's not working:
- 1% "success" rate
- litigation nightmare due court mandates and vague definitions
- lack of independent, peer-reviewed science
- inconsistent implementation
- economic meltdowns and social dislocations like Klamath

We can do better and that's the reason for this hearing.

I thank the witness for their testimony based on their firsthand impacts and how they want to conserve species in their backyards.

Mr. RADANOVICH. I would now like to welcome our panel and invite each one of you to give your testimony. Mr. Steve Eldrige is the General Manager of the Umatilla Electric Cooperative; Mr. Mac McLennan, Tri-State Generation and Transmission Association and the National Endangered Species Act Reform Coalition from Westminster, Colorado; Mr. Chad Smith, Director of the Nebraska Field Office of American Rivers in Lincoln, Nebraska; Mr. Steve Boyd, Department Manager of Communications and Government Relations, Turlock Irrigation District in Turlock, California; Mr. Michael Brown, Dixie Escalante Generation and Transmission Cooperative, Newcastle, Utah; and Mr. Olney Patt, Executive Director of the Columbia River Inter-Tribal Fish Commission in Portland, Oregon.

Gentlemen, welcome to the Subcommittee. You may know that, of course, your written testimony is being submitted, so you are more than welcome in the five minutes that you are given to be extemporaneous, summarize. We are going to try to hold fast to the five-minute rule. There is a clock here in front of you. It has got red and yellow and green lights. It works just like a traffic system. Green means go, yellow means speed up, and red means stop, so if you will just follow those rules. We are going to try to stick to the five-minute rule, if we can.

Is that you, Mr. Patt? I am sorry, I can't see your name tag. We will go through each one of you first and then open up the panel for questions by members on the dais up here afterwards. So, Mr. Patt, if you would like to begin, welcome to the Subcommittee and tell us what you want to say.

STATEMENT OF OLNEY PATT, JR., EXECUTIVE DIRECTOR, COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION, PORTLAND, OREGON

Mr. PATT. Good afternoon, Mr. Chairman, members of the Subcommittee. My name is Olney Patt, Junior, and I am the Executive Director of the Columbia River Inter-Tribal Fish Commission.

The Commission was formed by resolution of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Nation for the purpose of coordinating fisher management policy and providing technical expertise essential for the protection of the tribes' treaty protected fish resources.

The Commission's primary mission is to provide coordination and technical assistance to the member tribes to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries

into perpetuity. I want to thank you for providing me with the opportunity to testify here before you today.

I think it is important for you and the members of the Subcommittee to hear how the tribes feel about the interplay between the Federal obligation to restore salmon to healthy, sustainable runs under the treaties between the tribes and the United States as well as under the Endangered Species Act and the desirable goal of maintaining access to cheap electricity generated by hydropower.

In the Pacific Northwest, we live among a diversity of communities, industries, and cultures. Each one has a stake in the fate of the salmon and shoulders the responsibility for salmon survival. The Endangered Species Act often becomes the focal point of frustration, but we cannot overlook other contributing factors that impact salmon survival while also limiting the river's capacity to generate hydropower. If we try to analyze how the implementation of the ESA affects the cost of rural electricity, we will ignore other uses and users that also affect the cost of rural electricity.

For example, in the current draft of the Northwest Power and Conservation Council's Fourth Annual Report to the Governors on the Fish and Wildlife Program, they state that irrigation is the largest non-power user. Irrigation accounts for net water withdrawals from the Columbia and Snake River system of about 14.4 million acre feet of water annually. According to the Council's analysis, this volume of water, were it left in the river and used to generate hydropower instead of being withdrawn for irrigation, would yield about 625 average megawatts of electricity, that is, averaged across all 12 months, with a value of about $145 million per year.

Therefore, our rural, agriculturally based communities that divert water to nurture and sustain their livelihood also tap into the water supply that could otherwise be funneled through the hydropower system. Should we ignore this cost to the system? That doesn't seem fair when, at the same time, water that is needed to ensure the safe passage of salmon to the ocean is being charged as a cost against the ESA. The ESA did not create the salmon's need for water. It is there to remind us all of the salmon's need for adequate water quantity and quality.

My point is that we are all in this together. While we enjoy the benefits, we must also recognize the consequences and find equitable solutions.

Historically, the tribes relied on salmon to fuel a subsistence economy. It didn't take long for the influx of Western pioneers to take a cue from us, recognizing the economic treasures found by exploiting the abundant Columbia Basin salmon runs. Salmon, along with timber and agriculture, helped the settlers secure an economic foothold in the region. Today, out of these three, salmon is often overlooked in debates on the need to safeguard a natural resource economy. Yet salmon still remains a critical element of a healthy, well-diversified natural resource-based rural economy from small towns in Southeast Alaska to those in the Snake River headwaters of Idaho.

Unfortunately, deep lines have been drawn in the debate of economy versus salmon and the ESA, feeding the mistaken impression that a choice must be made between the two. The misplaced spirit that pits salmon restoration against a healthy economy must be

dispelled and replaced with the reality of the important value that salmon continues to play in our regional economies.

It is not solely the tribes who benefit from a salmon economy. The fisheries programs operated by our member tribes help the non-Indian community satisfy their catch and fuel their own economies. Some communities in the basin can breathe a sigh of relief over this reemerging economy, which diversifies their economic base and pulls in outside dollars.

Along the Salmon River, the mayor of Riggins, Idaho, stated in a February article in the Idaho Statesman that businesses in his town collected more than $10 million in just six weeks during last year's Chinook harvest.

In that same article, the paper also reported on an economic study that estimated that if Idaho could return to the fishing levels and ranges of the 1960s, the State would experience an additional $544 million in annual economic activity. Most of this, $330 million, would be felt in the rural communities. What I feel this study suggests is that the decisionmakers, be they politicians or business people or government agencies operating under the mandate of trust obligations and law, must not underestimate the economic importance of salmon. Rather than making salmon and economy divisive, linking them is a wise investment.

What we need for salmon and what rural economies need in terms of energy costs is certainty. To achieve that certainty, we need to honestly assess the actual costs of hydropower energy development long deferred by energy users but borne by the salmon and the communities and cultures dependent upon healthy, sustainable salmon runs.

The Columbia Basin Fish and Wildlife Authority, a consortium of 13 tribes, four States, and the Federal Fish and Wildlife agencies, has developed a cost estimate for implementation of sub-basin plans developed under the auspices of the Northwest Power and Conservation Council. We believe that the Bonneville Power Administration should build these costs into their next rate case. Under the current rate case, costs were assumed to be an average of $186 million. For the next rate case covering the years 2007 through 2009, the costs should ramp up to an average of $240 million per year. The effect——

Mr. RADANOVICH. Mr. Patt, I am sorry, but the light is red. If you could kind of sum up rather than finishing your whole testimony, it would be appreciated.

Mr. PATT. OK. We are also submitting written testimony——

Mr. RADANOVICH. Yes, certainly.

Mr. PATT.—and we would certainly answer any questions, either at the conclusion of this or in written form.

Mr. RADANOVICH. There will be plenty of questions and your testimony will be fully submitted.

Mr. PATT. Thank you very much.

Mr. RADANOVICH. Thank you.

[The prepared statement of Mr. Patt follows:]

Statement of Olney Patt, Jr., Executive Director, Columbia River Inter-Tribal Fish Commission

Good morning Mr. Chairman, members of the subcommittee. My name is Olney Patt, Jr.; I am the Executive Director of the Columbia River Inter-Tribal Fish

Commission. I want to thank you for providing me with the opportunity to testify before you today. I think it is important for you and the members of the subcommittee to hear how the tribes feel about the interplay between the federal obligation to restore salmon to healthy sustainable runs under treaties between the tribes and the United States, as well as under the Endangered Species Act and the Northwest Power Act, and the desirable goal of maintaining access to cheap electricity generated by hydropower.

The Columbia River Inter-Tribal Fish Commission was formed by resolution of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Nation for the purpose of coordinating fishery management policy and providing technical expertise essential for the protection of the tribes' treaty-protected fish resources. Since 1979, the CRITFC has contracted with the BIA under the Indian Self-Determination Act (P.L. 93-638) to provide this technical support. Since 1985, the Commission, together with the Northwest Indian Fisheries Commission, has also contracted with the BIA under the Indian Self-Determination Act (P.L. 93-638) to implement the tribal co-management responsibilities and obligations under the U.S.-Canada Pacific Salmon Treaty of 1985. The Commission's primary mission is to provide coordination and technical assistance to the member tribes to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

I also serve as one of two tribal representatives on the U.S. Section of the Pacific Salmon Commission. The Pacific Salmon Commission is responsible for implementing the U.S.-Canada Pacific Salmon Treaty, which is designed to ensure the conservation of salmon stocks while fairly allocating harvests between the two countries. I previously served as the elected Chairman of the Confederated Tribes of the Warm Springs Reservation of Oregon.

My testimony today is provided on behalf of the four treaty fishing tribes from the Columbia River basin.

Treaties of 1855. Under treaties negotiated with the United States in 1855,[1] the tribes reserved to themselves several rights, each as a sovereign; among these reserved rights is the right to take fish at all usual and accustomed fishing places. On the Columbia River and its many tributaries, our peoples have exercised this right since time immemorial. Our peoples fished during times of drought and during times of floods, during times of great runs of salmon and during times of low runs of salmon. As they do now, our chiefs and elders watched over the harvest to ensure that the people cherished and protected the gift of salmon from the Creator. It was the expectation of our treaty negotiators then that the tribes would always have access to abundant runs of salmon; it is our expectation now that the United States will honor that commitment and take the steps necessary to protect our trust resource. This reserved right has not been diminished by time and its full exercise has been upheld and affirmed in several U.S. Supreme Court decisions.

Spirit of the Salmon. I want to take this opportunity to note that the tribes, working through the Commission, have developed a framework restoration plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit* or *Spirit of the Salmon*. This plan documents the threats to our fisheries, identifies hypotheses based upon adaptive management principles for addressing these threats, and provides specific recommendations and practices that must be adopted by natural resource managers to guarantee their trust responsibilities and meet their treaty obligations. In this plan, the tribes have identified the need to insure that the burden of conserving these salmon stocks is allocated fairly across those land and water uses responsible for their decline. Consistent with this need, we have identified changes that hatchery programs, forestry, hydroelectric development, irrigation, mining and other development activities must make in their operations to ensure the recovery of salmon stocks and fisheries. The tribes' ultimate goal is to restore a sustainable resource for the benefit of all peoples in the Pacific Northwest. Consistent with meeting this goal, each and every beneficiary of the river must make sacrifices in times of shortage, much as the tribes have voluntarily sacrificed fully exercising their right to fish over the last several decades. The tribes now call upon those who would generate electricity and those who would withdraw water from the rivers to now make that sacrifice, or to provide equivalent mitigation when it is demonstrated that such sacrifice is impossible.

Hydropower development. Our ability to fully exercise our reserved right to take fish at all usual and accustomed fishing places has been compromised by a

[1] Treaty with the Yakama Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

combination of state and federal decisions and management actions that were focused not on the salmon, but rather on other developments and uses of the Columbia River. Predominant among these developments is what we know as the Federal Columbia River Power Supply System, a series of eight hydroelectric power generating dams built by the Army Corps of Engineers (four dams on the main stem of the Columbia River, four dams on the lower Snake River), two large hydroelectric dams built by the Bureau of Reclamation on the upper reaches of the Columbia, cutting off access to about a third of the historic salmon spawning habitat, and several more hydropower dams built within the basin under license from the federal government. While there are other developments that have impacted the salmon, such as irrigation, dredging, mining, forestry, etc., NOAA Fisheries has acknowledged that the majority of the salmon losses due to development activities are a result of dams, with up to 90% of the juvenile salmon lost to dam mortality during their downstream migration.

Current hydropower operations. It now appears that in the Pacific Northwest we will, as was the case in 2001, find ourselves once again in an extremely low water year. So, once again, the tribes fear that the salmon will be set up to lose in favor of preventing an energy or water crisis. The potential for an energy or water crisis does not lower the standard by which the United States must strive to meet to honor its obligations to the tribes and to the salmon; in fact, a drought increases the burden of the U.S. and its agencies to ensure that the salmon resource is protected from further injury and loss. This obligation is reinforced by the ESA, and is consistent with the obligation to treat salmon equitably with power generation under the Northwest Power Act.

To honor its commitment now means that the U.S. must ensure that there is water in sufficient quantity and quality in the Columbia River to ensure the safe passage of out-migrating juveniles as well as for adult salmon returning upriver to spawn. It is not the current water conditions standing alone that are affecting tribal resources in the Columbia River basin. The real problems are management decisions made and actions taken by the federal and state agencies that have over subscribed the capacity of the system. It is these decisions and actions that put the long-term viability of the salmon resource in jeopardy. It is those decisions that set up a conflict between consumers of cheap hydropower and those that are dependent upon a healthy salmon resource.

In the tribes' view, an energy crisis or water crisis are very real problems but they are short-term in nature. The true crisis, with long-term implications, has already been declared in the Columbia River where numerous salmon populations are in danger of being lost to this and future generations. The region—as sovereigns—and with Congress' support and aid, must distinguish between managing for short-term inconveniences and preventing the realization of the true potential for long-term losses. Due to state and federal reactions to current water conditions, a heightened state of emergency has been created for our shared salmon resource.

Common Sense Hydropower Management. With regard to the hydroelectric power system, the tribes continue to believe that the four dams in the lower Snake River must be breached to ensure the restoration of salmon in that basin. It is clear from the scientific data collected over years of study that breaching is the only sure course to salmon restoration. We are spending hundreds of millions of dollars on techno fixes each year to keep these dams in place. Most recently, the Corps of Engineers has begun to place removable spillway weirs at these dams—in essence, a giant water slide for outmigrating juvenile salmon. The tribes are concerned that this techno fix, like others before it, will not improve the long term survival of salmon.

By removing these dams sooner, rather than later, we provide certainty to the system as to the amount of available power. These dams are run of the river and provide less than five percent of the power marketed by the BPA. By removing these dams, we speed the recovery of salmon runs returning to the Snake River, reducing the long term costs by eliminating both the costs of techno fixes and over time, the annual costs of mitigation for the operation of these four dams.

We continue to believe that in lieu of dam breaching, a very aggressive program of increased flows through the reservoirs and spills at the dams must be pursued by the federal agencies to increase the survival of outmigrating juvenile salmon. Based on the overwhelming amount of information available from research conducted over the last 30 years, the tribes do not believe that transporting fish in barges provides benefits anywhere near the equivalent of adequate flows and spill.

In the interim, we advocate for adequate flow levels and for spilling water—and juvenile salmon—over the dams, not because we believe they are the answer to salmon recovery, but because they are the only two management actions at our disposal. They will lessen what promise to be unusually lethal impacts of the

hydropower system at a time when salmon stocks in the Snake and upper Columbia River are at dangerously low levels. This cannot be considered enhancement but, at best, damage control.

We know that during years with favorable river conditions (high flow and spill rates), smolt-to-adult returns (SARs) for upriver stocks that must navigate the several dams on the river compare most favorably with SARs for downriver control stocks, those that have no dams blocking their path to the ocean. We know that flow augmentation lessens the impacts of reservoirs and that spill lessens the impacts of dams.

We now know that we would need many millions of acre-feet to approach flow levels even close to the historic hydrograph. Yet, getting back to the historic hydrograph isn't enough. Because the reservoirs behind the dams act to slow water velocity several fold, for flow, we would need to increase average precipitation several fold to compensate for the presence of reservoirs. Even in normal years, this would be impossible.

The tribes, and many others, believe that the flow augmentation targets proposed by the federal agencies in the Biological Opinion are inadequate. Yet, the safest avenue for fish, providing for spill over the dams, is now subjected to drastic curtailment or complete elimination in order to provide water for power generation.

Water is an extremely limited resource and the rivers throughout the region are already over-allocated under current management. While these waters serve other important uses and users, they are fundamental habitat for salmon. Salmon need these waters for instream flows. Our treaties, and the Federal and State trust responsibility to the tribes under our treaties, as well statutory obligations under the Endangered Species Act and the Clean Water Act, are there to protect these resources.

In the Pacific Northwest, we live among a diversity of communities, industries and cultures. Each one has a stake in the fate of the salmon and shoulders the responsibility for salmon survival. The Endangered Species Act often becomes the focal point of frustration but we cannot overlook other contributing factors that impact salmon survival while also limiting the river's capacity to generate hydropower. If we try to analyze how the implementation of the ESA affects the costs of rural electricity, we will ignore other river uses and users that also affect the cost of rural electricity.

For example, in the current draft of the Northwest Power and Conservation Council's 4th Annual Report to the Governors on the Fish and Wildlife Program, they state that irrigation is the largest non-power user: irrigation accounts for net water withdrawals from the Columbia and Snake River system of about 14.4 million acre-feet of water annually. According to the Council's analysis, this volume of water, were it left in the river and used to generate hydropower instead of being withdrawn for irrigation, would yield about 625 average megawatts of electricity (that is, averaged across all 12 months) with a value of about $145 million per year. Therefore, rural, agriculturally based communities that divert water to nurture and sustain their livelihood also tap into the water supply that could otherwise be funneled through the hydropower system. Should we ignore this cost to the system? That doesn't seem fair when, at the same time, water that is needed to ensure the safe passage of salmon to the ocean is being charged as a cost against the ESA.

The ESA did not create the salmon's need for water, it is there to remind us all of the salmon's need for adequate water quantity and quality. A sufficient level of water is simply not available for all the uses being proposed by the various user groups, especially during low water years. States should consider providing, and the federal government should consider supporting, funding incentives for setting or amending instream flows to levels higher than the current flows where necessary to ensure that these flows are adequate to meet the needs of fish. My point is that we are all in this together: while we enjoy the benefits, we must also recognize the consequences and find equitable solutions.

The tribes are concerned that in low water years the states takes actions that favor irrigation needs exclusively over the needs of fish, thereby not honoring obligations to rebuild naturally spawning stocks of anadromous fish as required under U.S. v. Oregon, the Chinook rebuilding program of the U.S.-Canada Pacific Salmon Treaty, and the Northwest Power Act. Obviously, a state's action in reducing instream flow levels will not benefit salmon. Every cubic second foot of water available for instream purposes is more valuable in a drought year than in a year of normal runoff.

In addition, a decision to allow has a cumulative impact: further reducing instream flows reduces the volume of water available for hydroelectric production and for spill for salmon and will adversely affect the region's interest in both these instream uses.

What we need for salmon, and what rural economies need in terms of energy costs, is certainty. To achieve that certainty, we need to honestly assess the actual costs of hydropower energy development long deferred by energy users but borne by the salmon and the communities and cultures dependent upon healthy sustainable salmon runs. The Columbia Basin Fish and Wildlife Authority, a consortium of 13 tribes, 4 states, and the federal fish and wildlife agencies, has developed a cost estimate for the implementation of subbasin plans developed under the auspices of the Northwest Power and Conservation Council.

We believe that the Bonneville Power Administration should build these costs into their next rate case. Under the current rate case, costs were assumed to be an average of $186 million. For the next rate case, covering the years of 2007 through 2009, the costs should ramp up to an average of $240 million per year. The effect of including these costs on the hydroelectric power rates is minimal: for the average household that gets all of its power from BPA, building these costs in the power rate would mean an increase of about one dollar per month. BPA only provides about forty percent of the power in the Pacific Northwest, so most homes would see smaller monthly increases in power costs.

Again, we must also look at the full suite of benefits of implementing the Council's fish and wildlife restoration programs through an increase in BPA rates: fiscal obligations of the federal government to carry out these activities on behalf of the tribes, and under the ESA, would be borne by those benefiting from power rates that are about 67% of the national average, fully funding these efforts would immediately create thousands of jobs in rural and tribal communities, the end result of restoration actions would be sustainable fish and wildlife populations that annually generate several hundred million dollars for regional economies. Almost all of the work would be in eastern Washington and Oregon, Idaho and Montana.

Conclusion. The salmon resource, and with it, tribal rights reserved under treaties with the United States must not be the last priority of the list of considerations reviewed by the Congress in determining the appropriate costs to be borne by the federal and federally-licensed hydropower dams. To alleviate this burden, the tribes ask that Congress ensure that other river users are bearing their fair share of the conservation burden. To achieve regional and national salmon restoration goals, we believe that Congress should encourage the BPA to charge rates adequate to cover necessary costs of the implementation of subbasin plans, or else ensure that adequate funding is available through federal appropriations. In considering the effect that salmon restoration costs may have on rural electricity users, we note that the average power cost regionally will still be substantially below the national average. We believe that certainty in available funding, and certainty in associated costs, allows for good regional planning.

We would also ask for your support of a National Tribal Energy Bill, which will foster expedited energy resource development on tribal lands and provide the Northwest tribes the opportunity to help alleviate the burden of energy reliance on the Columbia and Snake rivers by the rapid development of new cost effective power supplies to serve Northwest loads.

[NOTE: Attachments submitted for the record by Mr. Patt have been retained in the Committee's official files.]

Mr. RADANOVICH. Mr. Brown, welcome to the Subcommittee. You may begin.

STATEMENT OF MICHAEL W. BROWN, BOARD PRESIDENT, DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION, NEWCASTLE, UTAH

Mr. BROWN. Thank you, Mr. Chairman. I appreciate your giving me the opportunity to testify before the Subcommittee today.

Before I start into my testimony, I would like to commend you and Chairman Pombo for your work on updating and improving the Endangered Species Act. Updating this 30-year-old law is a monumental undertaking, and on behalf of the co-op members I represent, I would like to express our appreciation for your efforts so far.

As you noted, my name is Mike Brown. I am a farmer and a rancher. I live in Southwestern Utah on my farm. The closest

community to me is Enterprise, Utah, with a population of approximately 1,400. It is approximately 12 miles away from my farm.

I am the President of the Board of Directors of Dixie Escalante Rural Electric Association, an electric cooperative serving approximately 10,000 customers in Southwestern Utah and Northwestern Arizona.

Although we agree with the spirit of the ESA and its desire to protect threatened and endangered species, Dixie Escalante Cooperative has borne a heavy burden in complying with its rigid application in Southwest Utah. With the Subcommittee's indulgence, I would like to share some of the experiences we have had with the ESA in our service territory.

The development of additional transmission capacities has been one of those experiences. Dixie's construction budget for critical transmission lines and substation has been significantly increased by the endangered and threatened species present in the small geographic area Dixie—in Southern Utah, they call it Dixie—serves. The endangered and threatened species we deal with include the dwarf-bear poppy, Southwestern willow flycatcher, Virgin River Chub, woundfin minnow, Shivwitz milk-vetch, California condor, desert tortoise, Siler pincushion cactus, bald eagle, Mexican spotted owl.

One example of these impacts is evident in the construction of a 138-kilovolt transmission line needed to serve our area. This project route followed an existing power line corridor across public lands administered by the BLM and privately owned land. The project is located within the Red Cliffs Desert Tortoise Reserve, which is a 129,000-acre area that was designated as critical desert tortoise habitat by Fish and Wildlife Service in the early 1990s.

Before the project was approved for construction, an environmental assessment was conducted to identify any impacts to the area. Due to the endangered and threatened species in the area, Dixie was required to perform the following tasks.

Instead of using utility trucks, Dixie used a helicopter to set 24 poles because the restrictions and impact mitigation from using vehicles were exhaustive. To use a helicopter for setting the poles, Dixie was required to conduct an amended environmental assessment for noise, dust, air quality, recreation, public health, and safety considerations.

Due to the restrictions of blasting holes for the poles, Dixie was required to contract with a third party with special equipment to pressure dig the pole holes. Dixie was required to keep any open-ended poles or holes covered that they may not allow any tortoise to enter and get trapped.

Dixie was required to wash all vehicles upon entering the reserve each time to keep any plant species seeds that didn't already exist on the reserve from being introduced to the reserve.

Our construction schedule had to be adjusted to meet the endangered and threatened species inactive time, which is from December 1 to February 15. This required Dixie to build during the winter, with additional crews and significant overtime due to the shortened construction timeframe.

Dixie was required to reclaim areas used by any mobile travel, which included raking by hand and reseeding all disturbed areas.

A consultant was hired to complete an environmental assessment for the project.

Actual costs to construct the project were $781,863. The cost for the environmental additions were $325,594. The total cost of the project was a little over $1.1 million. Costs for the environmental additions increased the total project cost by 42 percent. I would like to add that because Dixie Escalante is a rural electric cooperative, these costs were directly absorbed by our customers, many of whom live in economically depressed areas.

Thank you, Mr. Chairman, for allowing me to share some of the experiences we have had in complying with the ESA. The heavy burden of complying with this 30-year-old law has not only complicated the delivery of electricity to rural areas, but has also increased the energy costs for the 10,000 member customs of our very rural electric co-op. We appreciate your efforts and Chairman Pombo's efforts in improving this important but outdated law.

I look forward to answering any questions you might have about our experiences in Southwest Utah.

Mr. RADANOVICH. Thank you, Mr. Brown, for your valuable testimony.

[The prepared statement of Mr. Brown follows:]

Statement of Michael W. Brown, President,
Dixie Escalante Rural Electric Association

Thank you Mr. Chairman, I appreciate your giving me the opportunity to testify before the subcommittee today. Before I start into my testimony I'd like to commend you and Chairman Pombo for your work on updating and improving the Endangered Species Act. Updating this 30 year old law is a monumental undertaking and on the behalf of the coop members I represent I'd like to express our appreciation for your efforts so far.

As you noted, my name is Mike Brown. I am a farmer/rancher and I live in southwest Utah. The nearest community, Enterprise, Utah, population 1400, is 12 miles from my home.

I am president of the Board of Directors of Dixie Escalante Rural Electric Association, an electric cooperative serving approximately 10,000 customers in Southwestern Utah and Northwestern Arizona.

Although we agree with the spirit of the ESA in its desire to protect threatened and endangered species, Dixie Escalante Cooperative has borne a heavy burden in complying with its rigid application in Southwest Utah. With the subcommittee's indulgence, I'd like to share some of the experiences we've had with the ESA in our vast service territory.

The development of additional transmission capacity has been one of those experiences. Dixie's construction budget for critical transmission lines and substations has been significantly increased by the endangered and threatened species present in the small geographical areas Dixie serves. The endangered and threatened species we deal with include:

- Dwarf-Bear Poppy
- Southwestern Willow Flycatcher
- Virgin River chub
- Woundfin minnow
- Shivwitz Milk-Vetch
- California Condor
- Desert Tortoise
- Siler Pincushion Cactus
- Bald Eagle
- Mexican spotted owl

One example of these impacts is evident in the construction of a 138kV Transmission line. This project route followed an existing power line corridor across public lands administered by the BLM and privately owned land. A portion of the project was located within the Red Cliffs Desert Tortoise Reserve, which is a 129,000-acre area that was designated as critical desert tortoise habitat by the Fish & Wildlife Service in the early 1990's.

Before the project was approved for construction, an Environmental Assessment was conducted to identify any impacts to the area. Due to the endangered and threatened species in the area, Dixie was required to perform the following tasks:

- Instead of using utility trucks, Dixie used a helicopter to set 24 poles because the restrictions and impact mitigation from using vehicles were exhaustive. To use the helicopter for setting poles Dixie was required to conduct an amended Environmental Assessment for noise, dust, air quality, recreation, public health and safety considerations.
- Due to the restrictions of blasting holes for poles, Dixie was required to contract with a third party with special equipment to pressure dig the pole holes.
- Dixie was required to keep any open-ended poles or holes covered that may allow Tortoise's to enter and get trapped.
- Dixie was required to wash all vehicles upon entering the reserve each time, to keep any plant species seeds that didn't already exist on the reserve, from being introduced to the reserve.
- Our construction schedule had to be adjusted to meet the endangered and threatened species inactive time, which is from December 1, to February 15. This required Dixie to build during the winter with additional crews and significant overtime due to the shortened construction time frame.
- Dixie was required to reclaim areas used by any mobile travel, which included raking by hand and reseeding all areas disturbed.
- A consultant was hired to complete an environmental assessment for this project.
- Engineer's original estimated cost to construct this project was $787,962.00
- Actual costs to construct the project — $781,863.00
- Costs for environmental additions — $325,594.00
- Total cost of project — $1,107,457.00

Costs for environmental additions increased the total project cost by 42%. I would like to add that because Dixie Escalante is a rural electric cooperative, those costs were directly absorbed by our customers, many of whom are living in economically depressed areas.

Dixie Escalante is only one of 10 rural electric cooperatives providing electricity in Utah. Similar experiences exist with other co-ops not only with Threatened and Endangered Species, but with Sensitive Species.

Garkane Energy, a rural electric cooperative serving central and southern Utah along with parts of Northern Arizona. Garkane is currently in the process of re-licensing a small hydro-electric facility that has been in operation for nearly 60 years. This process requires that the Forest Service issue a use permit. The use permit requires Garkane to conduct a study of the Goshawk—a sensitive species. The Goshawk study must be for two consecutive years only between the months of May, June & July. Thus any Forest Service Use Permit is at least a two-year process. Moreover, if a nest is found in the area maintenance can only be done after September and before March—during the winter months—at an elevation on the Boulder Mountain that is 9000 plus feet.

Remarkably, this hydro facility has operated for sixty years in an area rich with all types of local plants and animals. It is not being modified only re-licensed. Again, the costs of studies required are borne directly by the customers of the cooperative.

Thank you, Mr. Chairman, for allowing me to share some of the experiences we've had in complying with the ESA. The heavy burden of complying with this 30 year old law has not only complicated the delivery of the electricity to rural areas, but has also increased the annual energy bills for the 10,000 member/customers of our very rural electric coop. We appreciate your efforts and Chairman Pombo's efforts in improving this important, but outdated law and I look forward to answering any questions you might have about our experiences in Southwest Utah.

Mr. RADANOVICH. Next is Mr. Steve Boyd with the Turlock Irrigation District. Steve, welcome to the Subcommittee.

STATEMENT OF STEVEN BOYD, DEPARTMENT MANAGER, COMMUNICATIONS AND GOVERNMENT RELATIONS, TURLOCK IRRIGATION DISTRICT, TURLOCK, CALIFORNIA

Mr. BOYD. Thank you. Mr. Chairman, members of the Committee, I appreciate the opportunity to speak to you regarding the Endangered Species Act. I will try to summarize our submitted testimony and then answer any questions you may have.

The Turlock Irrigation District was organized in 1887 and holds the distinction of being the first publicly owned irrigation district formed in the State of California. Following closely behind, the Modesto Irrigation District was formed, and together, the two districts gained the most senior water rights on the Tuolumne River.

Our most significant renewable resource is the powerhouse located at the new Don Pedro Reservoir on the Tuolumne River. Under our Federal Energy Regulatory Commission, or FERC, license, the Turlock Irrigation District operates and maintains the 204-megawatt power plant at Don Pedro. In the 30-plus years since its completion, the power plant at Don Pedro remains a significant source of low-cost energy and provides the operational flexibility needed to meet the demands of our 93,000 electric retail customers.

As part of that FERC license, the District and other interested parties entered into an agreement in 1995 to enhance and restore the Chinook salmon fishery in the Tuolumne River. Acknowledging our role in habitat improvement, we became the project manager for the Tuolumne River Restoration Project. In partnership with several agencies, the District is managing and directing a series of projects on the Tuolumne with a total cost of $25 million. This effort will improve the river channel and fishery condition on a 27-mile stretch of the Tuolumne River on a corridor below Don Pedro Reservoir.

It is important to note that working to boost the salmon population on the Tuolumne required operational adjustments to the complex river system. These adjustments have a significant fiscal impact on power operations. Like most of California, the district's peak electrical demand occurs during hot summer afternoons. Water released for the fishery is not available to generate electricity to meet that peak demand. As Don Pedro is the district's cleanest, most cost effective form of power generation, this has an impact on our customers' rates.

The 1995 agreement demonstrates that a common sense approach to environmental issues can yield significant results. Impractical implementation of environmental solutions can lead to wildly different results. For example, just three years after the District penned the agreement to rehabilitate the Chinook salmon on the Tuolumne, National Marine Fisheries, or NMFs, listed steelhead as a threatened species in Central Valley. This listing sent the District and other agencies to court to protest the listing as not being founded in sound scientific study. It needs to be noted here that the only difference between a rainbow trout, which is not listed, and the threatened steelhead is the fact that at some point in its lifespan, the steelhead makes a journey from fresh water to seawater.

River re-operation for a fish that may or may not decide to make that trip is not scientifically acceptable. Although the rainbow trout may have always existed in the river, there is no record of a sustainable steelhead population on the Tuolumne in modern times. Based on that 1995 agreement, the river is being managed for the salmon and would require further re-operation to maintain a listed species population of steelhead. As the District and others believed the listing to be unlawful, we went to court for relief. The district

prevailed and the courts ordered the steelhead listing must be reviewed by the Federal agencies for accuracy.

Mismatched application of the ESA can work against our efforts on river restoration. Re-operation of the reservoir and river system to create a new environment for steelhead has significant impacts. Currently, there is a $10 to $20 per megawatt hour price differential between on-peak and off-peak wholesale electric rates. Multiplying that cost by the hundreds of thousands of megawatt hours Don Pedro generates each year indicates the severity of the issue. The loss of clean, on-peak hydroelectric energy also forces more reliance on energy created with fossil fuels, which are a limited resource with environmental consequences of their own.

Further erosion of our renewable generation capabilities leave ratepayers exposed to market volatility, less system reliability, and more reliance on natural gas. Additionally, investment in the restoration of the Tuolumne for salmon would be placed at risk. There is no evidence to suggest that operating the river for two species would complement either one. It could be detrimental to one or both.

Implementation of the ESA has to take into account local and regional impacts and weigh results accordingly. To be managed to its fullest capability, each resource must be examined against other resources. A rifle shot approach to these issues will not be successful and will ultimately drive up costs to consumers while limiting real environmental benefits. Thank you.

Mr. RADANOVICH. Thank you, Mr. Boyd.

[The prepared statement of Mr. Boyd follows:]

Statement of Steven Boyd, Communications and Government Relations Department Manager, Turlock Irrigation District

Organized in 1887, the Turlock Irrigation District holds the distinction of being the first publicly owned irrigation district formed in the State of California. Following closely behind, the Modesto Irrigation District was formed, and together, the two Districts gained the most senior water rights on the Tuolumne River. In 1923, TID became the first irrigation district in California to distribute the electricity it generated on a retail basis to homes, farms and businesses in a defined service area that then measured 307 square miles.

As a tributary to the San Joaquin River, the Tuolumne River originates high in the Sierra Nevada Mountains, flows down and across the Central Valley before merging with the San Joaquin River. Today, irrigation water from the Tuolumne flows through 250 miles of District owned canals and supports an agricultural economy valued over at $2 billion in Stanislaus and Merced counties.

TID has a rich history of developing and paying for the water and electric resources needed to meet its growing customer demands. With a peak electrical system demand of about 450 megawatts, the electric energy needs of our customers are met through a variety of short and long-term contracts as well as our own diverse generation resources. Recently the District began construction of a 250-megawatt natural gas fired power plant. The facility, located within our service territory, will help meet the electrical needs of our customer base for the next decade.

As long time advocates of clean, renewable power the District constructed seven environmentally sensitive small hydroelectric generation plants on irrigation canals. The District has also made significant investment in renewable geothermal generation in Northern California. Our most significant renewable resource is the powerhouse located at New Don Pedro Reservoir. The reservoir, containing 2,030,000 acre-feet of water when full, is the sixth largest body of water in California. Built with Modesto Irrigation District and completed in 1971, the facility will be completely paid for by our ratepayers in July of this year.

Under its Federal Energy Regulatory Commission (FERC) license, the Turlock Irrigation District operates and maintains the 204-megawatt power plant at Don Pedro. In the over 30 years since its completion, the power plant at Don Pedro

remains a significant source of low cost energy and operational flexibility needed to meet the demands of our 93,000 electric retail customers.

As a part of that FERC license the District and other interested parties entered into an agreement in 1995 to enhance and restore the Chinook salmon fishery in the Tuolumne River. As principle steward of the river, the District has long supported a common sense approach to projects that protect the environment for future generations to enjoy.

Acknowledging its role in habitat improvement, TID became the project manager for the "Tuolumne River Restoration Project." In partnership with more than a dozen state and federal agencies, the District is managing and directing a series of projects on the Tuolumne with a total cost of $25 million. This effort will improve the river channel, riparian and fisheries conditions within a 27-mile stretch of the Tuolumne River corridor below Don Pedro Reservoir. The individual projects vary in scope from eliminating sand and gravel aggregate mining pits to creating conservation easements for riparian habitat on floodplain benches. All of the proposed improvements are intrinsically linked to a comprehensive, long-term state and federal effort to restore ecological health and improve water management for beneficial uses in California.

Much of the work will correct the negative effects of the intensive land and mining development dating back to the California Gold Rush. Gold mining and latter day rock and gravel excavation operations reduced the low flow and bank full channel capacity, and changed the river channel conditions. Large mining pits created by huge gold dredges within and along the river harbor predatory fish such as bass that feed on juvenile salmon. Over time, the mining operations also reduced the amount of riparian habitat necessary for salmon migration and support of the terrestrial species along the river corridor. Even though the District was not responsible for the damage done to the river because of mining, it has worked to restore the river to a more natural state. Although characterized as a restoration project, the work could be more accurately described as a rehabilitation of the river.

Since the inception of the various projects on the river, the restoration efforts have received much technical and environmental praise. The National Hydropower Association honored the District with Outstanding Stewardship of American Rivers Award for 2005. Also, American Rivers, a non-profit environmental organization, recently acknowledged that work done on the river has led to a significant improvement in the wild salmon habitat. It is clear that efforts to restore the Tuolumne are achieving measurable success and the District is proud to be a part of a sound scientific approach to improving the Chinook salmon fishery.

The Tuolumne River has an annual runoff of nearly 2 million-acre feet over a 1900-acre watershed. It is important to note that working to boost the salmon population in the Tuolumne also required operational adjustments to the complex river system. These adjustments have a significant fiscal impact on power operations. Water released for the Chinook does not necessarily coincide with the power needs of District customers. Like most of California, the District's peak electrical demand occurs during hot summer afternoons. Water released for the fishery is not available to generate electricity to meet that peak demand. As Don Pedro is the District's most cost-effective form of power generation, this has an impact on our customers' rates.

The 1995 agreement is an example that a common sense approach to environmental issues can yield significant results. If all stakeholders have equal footing and employ real science as the basis for decision-making, positive change can be made that benefits all involved. Without this equal footing, impractical implementation of environmental solutions can lead to wildly different results. For example, just three years after the District penned an agreement to rehabilitate the Chinook salmon on the Tuolumne, National Marine Fisheries (NMFs) listed the "steelhead" as a threatened species in the Central Valley. This listing sent the District and other agencies into court to protest the listing as not being founded in sound scientific study. To understand this issue it must be noted that the only difference between a rainbow trout (not listed) and the "threatened" steelhead is the fact that at some point in its lifespan the steelhead makes the journey from freshwater to seawater.

River re-operation for a fish that may or may not make that change is not scientifically acceptable. Although rainbow trout may have always existed in the river, there is no record of a sustainable steelhead population on the Tuolumne in modern times. Due to the 1995 agreement the river was being managed for the salmon and would require further re-operation to maintain a "listed" species population of steelhead. As the District and others believed the listing to be unlawful they went to court to find relief. The District prevailed and the courts ordered that the steelhead listing must be reviewed by the federal agencies for accuracy.

The listing will be dissolved by July of this year if NMFs cannot support the listing in a new "proposed listing" document. NMFs has submitted its proposed listing, but has not responded to the District's comments. Failure to address our issues in the listing will lead all parties back to court on this matter.

The Turlock Irrigation District has always supported the use of sound science to sustain fishery enhancement. A full time aquatic biologist on staff for over 20 years ensures that river operations are maximized to promote and enhance a healthy salmon fishery. However, mismatched application of the Endangered Species Act can work against our efforts to date on river restoration. Due to the fact there is no science to support that steelhead actually inhabited the Tuolumne, use of the ESA to force the District to create an environment to sustain steelhead is not appropriate. Re-operation of the reservoir and river system to create this new environment has significant impacts. Not the least of which would be the fiscal impact to our ratepayers. Currently there is a $10-20 price differential per megawatt hour between on peak and off peak wholesale electric rates. Multiply that loss by the hundreds of thousands of megawatt hours Don Pedro generates, and the fiscal impact is obvious. The loss of clean hydroelectric energy on peak also forces more reliance on energy created with fossil fuels. Fossil fuels are a limited resource with environmental consequences associated with their use.

Further erosion of our renewable generation capabilities leaves ratepayers exposed to market volatility, less system reliability and more reliance natural gas. Considering California's resource picture may not meet demand this summer in some areas and the fact that the state Legislature has set a priority on non-natural gas resources, this doesn't add up. Additionally, our customers' investment in the restoration of the Tuolumne for salmon would be placed at risk. There is no evidence to suggest that operating the river for the two species would complement either species. It could, in fact be detrimental to one or both.

It is because of issues such as the listing of steelhead through the ESA that the District is in support of Congressman Dennis Cardoza's bipartisan work on the Critical Habitat Reform Act. The District believes that proper scientific study is needed before any species is listed as endangered or threatened. Without sound research, the restoration of one listed species could threaten another. In the 30 years since the ESA's passage only 7 of 1300 listed species have been de-listed. The question remains as to whether this can be counted as "success."

The District also supports Chairman Radanovich's efforts on hydro re-licensing reform language. Turlock Irrigation District could be vulnerable to unreasonable interpretations of the ESA when moving through the FERC re-licensing process. The Energy bill passed in the House contains language that would put agencies like TID, at the very least, on equal footing in the process when it comes to mitigation efforts.

These efforts constitute a step forward in the process of creating a more common sense approach to ESA administration. Implementation of the ESA has to take into account local and regional impacts and weigh results accordingly. Each resource, in order to be managed to its fullest capability, must examine how it impacts the use of other resources. Water for fish may mean more natural gas consumption to meet energy needs, which could in turn impact air quality. A rifle shot approach to these issues will not be successful and will ultimately drive up costs to consumers with no real environmental benefit attached.

Mr. RADANOVICH. Next is Mr. Chad Smith of American Rivers. Mr. Smith, welcome to the Committee. Please begin.

STATEMENT OF CHADWIN SMITH, DIRECTOR, NEBRASKA FIELD OFFICE, AMERICAN RIVERS, LINCOLN, NEBRASKA

Mr. SMITH. Thank you, Mr. Chairman, members of the Subcommittee. I appreciate the opportunity to be here today. I come before you as a lifelong Nebraskan, hunter, angler, and conservationist. I grew up duck hunting and catfishing on the Platte River in central Nebraska and those experiences have grown into a passion for hunting and fishing that stands to this day.

At the same time, I have been a consumer of some of the best and cheapest rural electric power in the country and today utilize power in my home in Lincoln, Nebraska, generated on the Missouri River through the Lincoln Electric System. Thus, I have a personal

stake in assuring that the Missouri River provides hunting, fishing, and other recreational opportunities for my family, but also continues to serve as a source of affordable electric power.

In the Missouri River Basin, it is clear to me that we can have our cake and eat it, too. We can improve the health of the Missouri River, boost local economies by tying them to a healthy river, and also support traditionally and Congressionally authorized uses of the river, like power production.

In 2004, the U.S. Army Corps of Engineers completed a 15-year process of revising dam management guidelines, or the master manual for the Missouri River. The presence of endangered and threatened species on the river was one of the key drivers of this process and much of the discussion focused on restoring more natural flows to the Missouri to prevent extinction of these species. Now that the Corps has completed the master manual, it is time to assess how this new manual addresses the needs of these species, but more importantly, whether or not it also addresses the needs of people in the basin through river uses like power production.

Hydropower production accounts for the largest share of the traditional economic benefits generated by the Missouri River in each year, with annual benefits totaling nearly $700 million. Thus, power production is an extremely important use of the river and potential impacts on that must be carefully and clearly evaluated as management changes are developed and implemented.

According to the Corps, dam operations incorporating more natural flows would actually provide a two percent increase in the average annual hydropower benefits of the system. These flow changes were also found to increase the monthly average hydropower peaking capacity and the marketable capacity for the Western Area Power Administration in both the summer and winter seasons. Thus, in general, restoring more natural flows to the Missouri will result in an overall positive impact on the production of hydropower in the system. This conclusion was found to be accurate in a 2002 report on the Missouri River hydropower by hydropower economist David Marcus, which I have attached with my written testimony.

However, the Corps' final Environmental Impact Statement also suggests that lower summer flows might result in a loss of firm power revenue on the Missouri River system of up to $30 million. That number is debatable, as this estimate is based on energy prices from January 2001, when energy prices skyrocketed due to the California energy crisis.

Using more typical current prices from a timeframe like June 2002, the prediction of revenue loss falls from roughly $30 million to around $3 million. That translates into about a 1.5-cent per month increase for the typical residential consumer.

In addition, the analysis used by the Corps in the Environmental Impact Statement to determine possible reductions in firm power revenue fails to consider several items that would likely result in positive economic benefits. Flow restoration would increase and would result in an increase of marketable capacity, which I mentioned earlier. Flow restoration would reduce hydropower losses during extreme climatic events, like drought, thus resulting in

positive insurance value. And there is intra-system flexibility to do different things at the six big dams on the river to allow the Corps and the Western Area Power Administration to overcome some of this firm power loss potential.

Another issue related to power production is the presence of coal-fired and nuclear generating plants along the lower Missouri whose generating plants operate under permits with thermal requirements for intake and return water. Power plant representatives continue to voice a concern about these thermal permits with low summer flows, both due to drought and also implementation of flow changes for fish and wildlife.

Basin state agency leaders and Environmental Protection Agency staff are now taking a serious look at this thermal issue and are hoping to determine if any regulatory flexibility would be acceptable to help solve this problem. Other means of dealing with thermally heated return water, like using managed wetlands or building cooling towers, are now being routinely discussed by basin stakeholders, including the power companies, and we are trying to find the best solutions to meet both the basin's power demands and the needs of the endangered species present in the Missouri River Basin.

One final item relating to power production and the Missouri River management is worth noting. The basin is now experiencing one of the worst droughts on record and system storage is at an all-time record low. The river's six Federal reservoirs are holding very little water. It is expected that the storage will be so low next year that the Corps will have to cease navigation on the lower river. Despite these conditions, the Corps is still operating the dams in 2005 to support downstream navigation.

Despite the overwhelming value of power benefits compared to that of navigation, water is still being moved down the system for a very minor navigation industry to the detriment of power production and other river uses. It is my hope that the stress of this serious drought will help bring an evaluation of this policy and that the collaborative processes now beginning in the Missouri River Basin will help us better balance the river's uses.

In conclusion, power production and endangered species can peacefully exist on the Missouri River. Power is a key use of the Missouri and it must be addressed as a priority as dam operation changes are implemented on the Missouri.

Thank you for the opportunity to testify today and I look forward to answering your questions.

Mr. RADANOVICH. Thank you, Mr. Smith.

[The prepared statement of Mr. Smith follows:]

Statement of Chadwin Smith, Director, Nebraska Field Office, American Rivers

Introduction

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present testimony on the Endangered Species Act and its role in Rural Electricity Service in the Missouri River basin. I am Chad Smith, Director of the Nebraska Field Office for American Rivers. American Rivers, founded in 1973, is the leader of a nationwide river conservation movement. American Rivers is dedicated to protecting and restoring healthy natural rivers, and the variety of life they sustain, for the benefit of people, fish, and wildlife. We are supported by over 40,000 members nationwide and maintain offices in ten locations around the country, including the

Nebraska Field Office in the Missouri River basin. From my home state of Nebraska, I direct American Rivers' work on the Missouri River, Platte River, and its burgeoning work on other specific rivers and important water policy issues in the Great Plains and Western United States.

Since 1998, I have led American Rivers' *Voyage of Recovery* Campaign in the Missouri River basin. This Campaign is a multi-year effort to restore and protect the rivers of Lewis and Clark, including my work on the Missouri and Yellowstone Rivers and the work of my colleagues in our Northwest Regional Office on the Columbia and Snake Rivers. Convening the Missouri River Conservation Caucus and working with many other partners throughout the basin, American Rivers is playing a leading role in issues related to habitat restoration, flow restoration, fish and wildlife recovery, increasing the economic health of the basin through increased river recreation and tourism, and river governance and management reform.

More than that, I come before you as a lifelong Nebraskan, hunter, angler, and conservationist. My roots are in the Platte River in Nebraska. I grew up duck hunting and catfishing on the Platte in central Nebraska, and those experiences have grown into a passion for hunting and fishing that stands to this day. At the same time, I have been a consumer of some of the best and cheapest rural electric power in the country, and today utilize power in my home generated on the Missouri River through the Lincoln Electric System. Thus, I have a personal stake in assuring that the Missouri River provides hunting, fishing, and other recreational opportunities for my family, but also serves as a continued source of electric power for the basin.

After working on Missouri River management issues for over eight years, it is clear to me that we can have our cake and eat it too—we can improve the health of the Missouri River, boost local economies by tying them to a healthy Missouri, and also support "traditional" and Congressionally authorized uses of the river like power production. It is true that threatened and endangered species do exist on the Missouri, that these species are the subject of ongoing and intense debate, and that management changes directed at these and other species may have positive and/or negative impacts on river uses like power production. But, working together with river stakeholders, state and federal agencies, and Congress, we can find solutions to these challenges and ensure a healthy river and strong power production for future generations.

The health of the Missouri River is in dire straits, and the river is simply not the destination of choice of most people in the Missouri River basin. Most have turned their backs on the Missouri, and it is not living up to its economic potential or providing the kind of quality of life benefits we expect from a big river system. Further, management inequities are exacerbating the effects of the very severe drought we are now experiencing in the basin and threaten to harm river uses like power production.

Often, the Endangered Species Act (ESA) is invoked as a tool of last resort to prevent the continued decline in health of a natural system like the Missouri River. The focus is often on one or a few species, and those species receive much of the attention in the public policy debate. But, endangered and threatened species are mere indicators of greater problems in an ecosystem, and reflect the management changes necessary to help not just particular endangered species, but ultimately all of the native species that inhabit the ecosystem and the people that depend on that ecosystem as well.

Over the past 15 years, the U.S. Army Corps of Engineers (Corps) spent millions of federal taxpayer dollars analyzing potential changes in the operation of six large mainstem dams on the Missouri River. This process was part and parcel of the Corps' attempt to update and revise the Missouri River Master Water Control Manual (Master Manual), the guidebook used to operate the river's federal dams. As a part of that analysis and before completing the Master Manual revision in 2004, the Corps evaluated dam reform options that incorporate more natural flows on the Missouri.

Natural flow restoration has been called for by an independent panel of the National Academy of Sciences, the U.S. Fish and Wildlife Service (Service), and all of the fish and wildlife management agencies from the states in the Missouri River basin. The Corps itself found that restoring more natural flows to the Missouri River will actually result in an annual net economic benefit of at least $8.8 million for the basin, including a roughly 2% increase in average annual hydropower benefits.

Further, the economic options presented by a Missouri River that once again actually looks and acts like a river are endless. By making the Missouri River a destination for hunters, anglers, boaters, campers, hikers, and families, communities up and down the river can tap into limitless economic possibilities associated with outdoor recreation and tourism. Coupled with ongoing power production, agricultural

practices in the floodplain, and other "traditional" uses, the Missouri River can truly become an economic engine for our basin.

The presence of endangered and threatened species on the river has been one of the key drivers in the past few years of discussions about how best to change river management. Now that the Corps has completed the Master Manual revision process, it is time to assess how the new Master Manual addresses the needs of these species, but more importantly whether or not it also addresses the needs of people in the basin through river uses like power production. We now need to focus on how to deal with potential impacts of flow restoration, ensure no single person or group is unfairly given the burden of management changes, and begin implementing a new vision for the Missouri River and the valley through which it flows.

Missouri River ESA Issues and the Master Manual Revision

Like all rivers, the driving force behind the mighty Missouri River was its "natural hydrograph"—the seasonal rise and fall of water. The Big Muddy experienced rising flows in the spring and early summer from melting snow and rain. Higher flows were followed by declining flows during the late summer and throughout the fall.

Today, these seasonal fluctuations are gone, replaced by stable flows largely to support commercial barge traffic. Fish and wildlife, people, and local communities have paid the price. Three native Missouri River species are on the brink of extinction, and more than 50 native species are listed by basin states or the federal government as rare, threatened, or endangered. Recreation on the river is given little priority in management decisions.

In November 2000, the Service released its Final Biological Opinion on Missouri River dam operations. That biological opinion came on the heels of at least two previous similar opinions and again concluded that the interior least tern, piping plover, and pallid sturgeon were likely to go extinct on the Missouri River if the Corps failed to change dam operations. The Service proposed several elements of a "reasonable and prudent alternative" intended to assist the recovery of those species. Key elements included:

- Increasing flows from Gavins Point Dam and Fort Peck Dam in the spring ("spring rise") when water conditions permit, and reducing Gavins Point Dam flows each summer; this would not amount to a restoration of pre-dam conditions but would provide a semblance of the Missouri's natural rise and fall of water levels.
- Restoration of river and floodplain habitat.
- Reservoir unbalancing.
- Adaptive management of the river system.
- Intensive biological monitoring.

The Service's recommended changes were designed to prevent the extinction of three endangered and threatened species, but also would benefit all native Missouri River fish and wildlife and thereby the many outdoor enthusiasts wanting to enjoy the river.

In its January 2002 report on the Missouri River titled The Missouri River Ecosystem: Exploring the Prospects for Recovery, the National Academies of Science concluded that:

> "Degradation of the Missouri River ecosystem will continue unless some portion of the hydrologic and geomorphic processes that sustained the pre-regulation Missouri River and floodplain ecosystem are restored—including flow pulses that emulate the natural hydrograph."

According to river biologists, the Service's recommended flow changes mimic key elements of the Missouri's historic flow patterns, including higher flows through mid-June and lower flows from mid-July through August. Federal, state, and university biologists note that this timeframe encompasses the spawning period of most Missouri River native fishes, including pallid sturgeon, smallmouth bass, channel catfish, and paddlefish, and nest initiation by interior least terns and piping plovers.

In 2003, the Service amended its Biological Opinion. Some of the specific recommendations related to flow changes were altered, but the amended opinion retained the central tenet of the necessity and urgency of restoring more natural flows to the river. In 2004, the Corps completed the Master Manual revision process that roughly incorporates the flow recommendations of the Service's 2003 amended Biological Opinion. Both the amended opinion and the new Master Manual were upheld in the summer of 2004 through ongoing federal litigation, so flow changes such as the Service's 2006 spring rise recommendation are now being formulated for implementation through a basin-wide collaborative process.

According to the Corps' own detailed analysis in the Environmental Impact Statement accompanying the new Master Manual, these moderate changes in dam

operations can be made to improve the river's health and boost local economies through increased recreation and tourism, while protecting "traditional" uses of the river like hydropower, navigation, floodplain farming, and flood control. There will certainly be challenges in protecting these uses as flow changes are implemented, but through collaboration these challenges can be solved and the river can be rejuvenated for the use and enjoyment of the basin.

Missouri River Power Production

By all accounts, hydropower production accounts for the largest share of the traditional economic benefits generated by the Missouri River each year, with annual benefits totally nearly $700 annually. Thus, power production is an extremely important use of the river, and potential impacts on that use must be carefully and clearly evaluated as management changes are developed and implemented. Impacts on power resulting from the restoration of more natural flows on the Missouri received detailed analysis by the Corps during the Master Manual revision process, and power continues to be a priority issue in discussions about how best to implement flow restoration options.

According to the Corps, dam operations incorporating the flow changes recommended by the Service in the 2000 Biological Opinion provide a 2% increase in the average annual hydropower benefits over the old Master Manual water management plan. These flow changes were also found to increase the monthly average hydropower peaking capacity and the marketable capacity for the Western Area Power Administration (WAPA) in both the summer and winter seasons. Thus, in general, restoring more natural flows to the Missouri River will result in an overall positive impact on the production of hydropower on the Missouri River system. This conclusion was found to be accurate in a 2002 report on Missouri River hydropower by noted hydropower economist David Marcus (attached).

However, the Corps' Final Environmental Impact Statement (FEIS) suggests that lower summer flows might result in a loss of firm-power revenue on the Missouri River system of up to $29.9 million. According to David Marcus' evaluation, this estimate is inaccurate because the firm-power revenue loss figures are based on an analysis completed by WAPA that is rooted in energy prices from January 2001, when energy prices were at an all-time record high due to the California energy crisis. Using more typical current prices from June 2002 (when Mr. Marcus completed his evaluation), the prediction of revenue loss falls from roughly $30 million to around $3 million. Even for customers who buy 100% of their electricity from WAPA, flow modification would only increase costs from 1.7 cents per kWh to 1.74 cents, or about 2 percent. Customers buying only 10 percent of their electricity from WAPA might experience a 0.1 percent increase.

The price of retail electricity also includes the cost of transmission, distribution, marketing, metering, and billing, none of which would be affected by Missouri River flow changes. This means that retail price increases due to flow changes would be even less than those for WAPA firm power customers. Without factoring in the positive impacts of increased capacity, the average rate increase for the region if flow changes were implemented would be about 1.5 cents per month for a typical residential customer.

The original WAPA analysis ignores the value of increased marketable capacity on the Missouri River system that would come from restoring more natural flows to the river. If this were factored in, it is likely that flow changes could result in positive economic impacts of $8 million to $16 million annually. Also, the FEIS fails to discuss the fact that under an alternative incorporating more natural flows, the loss of hydropower during extreme drought and flood events is reduced as compared to both the old and new Master Manual. Not factoring this "insurance value" during extreme events into the analysis likely contributes to an overestimation of the negative impacts of implementing flow changes.

The estimated revenue loss resulting from the implementation of flow changes can also be mitigated by opportunities to increase summer revenues at other Missouri River projects such as Ft. Peck Dam. For example, flat releases out of Ft. Peck during the summer of 2001 were marketed to offset power shortages due to drought in the Columbia Basin, generating substantial revenue for WAPA. This occurred while average releases during the summer of 2001 out of Gavins Point Dam were 23,000 cfs. This type of intra-system activity can be used to help offset any potential negative impacts of restoring more natural flows to the Missouri.

Another issue related to power production is the presence of generating plants along the lower river, both nuclear and coal-fired. In both cases, the generating plants have maximum ambient temperature requirements for river water intake, as well as maximum temperature requirements for discharge of thermally-heated water back into the Missouri River. Power plant representatives continue to voice

a concern with low summer flows (both due to drought and due to potential lower summer flows for fish and wildlife purposes) relating to the constraints of currently permitted thermal levels.

This is an example of a potential impact to a traditional use of the Missouri due to water management changes that needs to be quickly and fully addressed. Solutions do seem readily available to deal with these challenges, and the basin is starting to put a priority on dealing with potential power production problems. For example, research done by the Nebraska Game and Parks Commission, the University of Nebraska, and others in the 1970s determined that existing thermal discharges in the summer were not having significant biological impact on the Missouri River. This suggests that even if low flows did result in some thermal impacts, current temperature limits on return water could potentially be modified, or permit variances could be granted, allowing power plants to operate fully without causing significant negative impacts on the ecology of the Missouri River. Basin state agency leaders and Environmental Protection Agency staff are now taking a serious look at this issue and are hoping to determine what, if any, regulatory flexibility would be acceptable to help solve this problem.

Further, other means of dealing with thermally-heated return water, like pumping this water first into created wetlands where temperature problems could be abated or building cooling towers, are now being routinely discussed by power companies, water suppliers, the EPA, the Corps, and other basin stakeholders to develop the best solutions to meeting the basin's power demands but also upholding the requirements of the ESA and ensuring the long-term ecological health of the Missouri River.

One final item relating to power production and Missouri River management is worth noting. The basin is now experiencing one of the worst droughts on record, and system storage is at an all-time record low. The river's six federal reservoirs are holding very little water, and it is expected that storage will be so low next year that the Corps will have to cease navigation entirely on the lower Missouri. Despite these conditions, the Corps is still operating the river's dams in 2005 to support downstream navigation, only shortening the season by about 60 days in the late fall. This policy is further reducing the ''head'' behind the river's dams, which reduces generating capacity. Despite the overwhelming value of power benefits (about $700 million a year) compared to that of navigation (estimated by the National Academies of Science to be about $3million a year), water is still being moved down the system for a very minor navigation industry to the detriment of power production and other river uses. Thus, the new Master Manual has not solved this long-standing inequity. It is my hope that the stress of this serious drought will help bring about an evaluation of this policy and that the collaborative processes now being developed in the basin will result in a management system on the Missouri that better balances all the river's uses.

Conclusion

Power production and endangered species can peacefully co-exist on the Missouri River. Power is a key use of the Missouri River, and it must be addressed as a priority as dam operation changes are implemented on the river. The needs of threatened and endangered species on the Missouri must be met, but those needs can be fulfilled at the same time as power production is sustained on the river for the basin's power consumers. It is important to place a priority on addressing the concerns of power producers on the Missouri related to drought and other potential flow management changes, and for the collaborative processes now underway in the basin to help find workable solutions to power production challenges that result from dam operation changes.

I would like to thank the Subcommittee for the opportunity to provide my oral and written testimony on the interaction between Rural Electricity Service and the Endangered Species Act in the Missouri River basin. If any Members of the Subcommittee have further questions, I would be happy to respond in writing, or can be reached by telephone at (402) 423-7930 or e-mail at csmith@americanrivers.org.

Mr. RADANOVICH. Next is Mr. Mac McLennan. Mr. McLennan, welcome to the Subcommittee. You may begin.

STATEMENT OF ROBERT "MAC" McLENNAN, VICE PRESIDENT, EXTERNAL AFFAIRS, TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., WESTMINSTER, COLORADO, ON BEHALF OF THE NATIONAL ENDANGERED SPECIES ACT REFORM COALITION

Mr. MCLENNAN. Thank you, Mr. Chairman. If it appears that I am pasty white and a little bit nervous, it is not because I am staring this way. It is because I have a whole bunch of bosses behind me this way.

[Laughter.]

Mr. MCLENNAN. Chairman Radanovich, Ranking Member Napolitano, members of the Subcommittee, I appreciate the opportunity to appear before you at the Subcommittee today to testify on behalf of Tri-State Generation and Transmission and the National Endangered Species Act Reform Coalition regarding the impact of endangered species on rural communities and the folks who live there.

My name is Mac McLennan. I am the Vice President for External Affairs for Tri-State, which is the wholesale electric provider of electricity to 44 rural electric cooperatives who serve the rural communities in Colorado, Wyoming, Nebraska, and the State of New Mexico. Tri-State is also one of the largest customers of hydroelectricity generated by the Bureau of Reclamation and the Army Corps of Engineers in the interior West.

In my spare time, I also serve as the Chairman of the National Endangered Species Act Reform Coalition, or NESARC. NESARC is a broad-based coalition with more than 100 member organizations representing millions of individuals across the U.S. that are dedicated to updating and improving the Endangered Species Act.

Mr. Chairman, my family and I, along with all of our members, many of whom are here in the audience today, live in the communities that we serve. Tri-State, along with NESARC, has been very involved for more than the last decade in efforts to find solutions and develop legislative improvements that ensure we have an Endangered Species Act that actually does what it says, which is to recover the species.

While my written testimony reflects eight specific recommendations for improvement, let me just use a couple of examples to drive home the point that our recommendations need to be focused on efforts that truly update and improve the ESA.

For example, I just learned yesterday that one of our members, Gunnison Electric, based in Colorado, is faced with the possible listing of the Gunnison sage grouse. That is currently being discussed. If the Gunnison sage grouse is listed, it could force this small $30 million cooperative to spend more than $15 million to move lines, underground lines, and change its maintenance practices, an unlikely or nearly impossible task. However, if we can improve the Endangered Species Act to provide for expanded voluntary efforts, increase the funding for local initiatives, enhance prelisting considerations, we might save the species and protect the community, much like in the greater sage grouse decision that just came down without actually listing the grouse.

With respect to changes to open and enhance the decisionmaking or sound decisionmaking process, let me use this example. In 1998,

as a result of a petition to list, the U.S. Fish and Wildlife Service listed the Preble's Meadow jumping mouse as endangered based on a 50-year-old study which concluded that the mouse was a separate and distinct subspecies eligible for protection under the ESA. Subsequent studies, including DNA testing and actual skull measurements, have concluded that there is no basis for the determination that the mouse is a distinct subspecies. However, since listing in 1998, millions of dollars have been spent, including consideration to change the siting of electric lines, changes in maintenance practice, and the ability to access our facilities in any number of other things have impacted electric cooperatives and the members who live there, all for a species that may have been listed in error.

The Endangered Species Act can be improved by requiring better data collection, independent scientific review for both the listing and recovery decisions. We might have avoided this expensive listing. We thank Congressman Walden for the work he has done at this point, too, in trying to address this.

To address the issue of what I would call the litigation bottleneck in the establishment of recovery objectives, let me use this example. More than 15 years ago on the hydro side, we developed the Upper Colorado River Recovery Program to recovery four endangered fish in the Upper Colorado River, which at this point is a significant cost, millions to the customers in our region. Having said that, environmental interests, the water users, the power customers joined with both State and Federal agencies to participate in the recovery of the species.

Following extensive data collection and environmental studies, we have determined that sufficient information existed to proceed with the development of recovery goals. Recovery goals were developed over several years with collaborative input from the public, private, tribal stakeholders, and scientists from the basin. In spite of all that work and extensive process and the positive results that are being achieved and the certainty that those goals at one point provided, the recovery goals are now the subject of a legal challenge by environmental groups outside of those who were involved in the process, creating significant uncertainty and a challenge about whether or not we will actually be able to meet the goals necessary.

These types of legal challenges divert time and energy from the efforts to recover the species and consideration should be given to appropriate changes to improve the Endangered Species Act so as to reduce these burdens.

Mr. Chairman, in closing, I would like to thank you for holding this hearing today, commend the Committee for its leadership on efforts to update the Endangered Species Act. We have to find ways to improve the laws that families, businesses, local governments must abide by while protecting the values of those who live in the West and follow those. There are improvements that can be made and we can do it better, faster, with better tools and more efficiently than we do today. Thank you.

Mr. RADANOVICH. Thank you, Mr. McLennan. We appreciate your testimony.

[The prepared statement of Mr. McLennan follows:]

Statement of Robert "Mac" McLennan, Vice President, External Affairs, on behalf of Tri-State Generation and Transmission Association, Inc., and The National Endangered Species Act Reform Coalition (NESARC)

Chairman Radanovich, Ranking Member Napolitano and members of the House Subcommittee on Water and Power, I appreciate the opportunity to appear before this subcommittee today to share Tri-State Generation and Transmission Association's and the National Endangered Species Act Reform Coalition's views regarding the impact of the Endangered Species Act on rural communities and the people who live there.

My name is Mac McLennan, and I am the Vice President of External Affairs for Tri-State Generation and Transmission Association, a not for profit wholesale power supply cooperative that provides electricity to forty-four member distribution cooperatives in Colorado, Nebraska, Wyoming and New Mexico. As Vice President, I oversee Tri-State's government relations, communications and external association activities. Tri-State is based in Westminster, Colorado, and has facilities and employees throughout the region. Tri-State and its member systems provide electric service to nearly one million electric customers, primarily located in rural communities. Tri-State is also one of the largest customers of hydroelectricity generated by the Bureau of Reclamation and the Army Corps of Engineers in the interior West.

I also serve as Chairman of the National Endangered Species Act Reform Coalition (NESARC). NESARC is a broad based coalition of more than 100 member organizations representing millions of individuals across the United States that are dedicated to updating and improving the Endangered Species Act (ESA).

Mr. Chairman, my family and I, along with all of our Tri-State members, live in the communities that we serve. We understand fully the needs of these communities, including the vital role that these communities play in the economic development and livelihood of rural America. I also understand the important role utilities play in supplying the power necessary to meet the growing demand in the western states. I have a deep appreciation and respect for our land and water resources, and I believe we can and must find ways to do a better job of recovering endangered species while protecting the economic viability of rural communities.

As a utility that serves consumers who are impacted in numerous ways, Tri-State has been very involved for more than a decade in efforts to find solutions and develop legislative improvements that ensure we have an Endangered Species Act that actually achieves its goal, recovery of endangered species. In the last decade, we have learned a lot about what is successful and what is not in the recovery of endangered species. In the last year, Tri-State, along with other members of NESARC, has spent countless hours dissecting the Endangered Species Act and identifying the issues that need to be addressed to ensure we do a better job of recovering species. We have identified the following issues as those most critical to the recovery of endangered species while continuing to protect the economic vitality of not only our rural communities by all communities impacted by the Endangered Species Act.

We need to make sure that our efforts are focused on efforts that truly update and improve the ESA, including measures in the Act that would:

- Expand and encourage voluntary conservation efforts
- Increase funding for voluntary State and local programs
- Give states the option of being on the front line of species conservation
- Establish realistic recovery goals
- Encourage voluntary prelisting measures
- Improve habitat conservation planning procedures and codify "No Surprises"
- Ensure an open and sound decision making process
- Find ways to remove the litigation bottleneck

The Endangered Species Act is more than 30 years old and has recovered less than one percent of the more than 1,300 species listed as threatened or endangered in the United States. At the same time, the Act has negatively impacted rural communities throughout the country. There are improvements that can be made to the Act that will provide new tools and find better, faster and more efficient ways to protect and recover species.

First, it is important to establish realistic recovery objectives. In order to enhance and improve efforts for species conservation, objective and quantifiable recovery goals should be set to serve as guideposts for voluntary conservation efforts. Once the recovery objective is met, the species must be delisted or down listed. It is important to incorporate voluntary conservation efforts in this process by creating new avenues for private property owners to participate proactively in species recovery. These efforts could include creating a habitat reserve program, tax incentives, loan or grant programs, and other initiatives that encourage landowners to voluntarily participate in species conservation efforts.

It is imperative that States and local entities have a greater role in facilitating landowner/operator compliance with the Act and, ultimately, the recovery of species in order to remove the restrictions of the ESA. States have significant financial resources, research capabilities, and coordination abilities that can allow for better planning of species management activities. Further, States are often better situated than federal agencies to develop and maintain cooperative efforts between stakeholders to protect and manage the local resources and species. This is of particular importance to rural communities, who have the best understanding of their specific potential for protecting and enhancing species. Federal funding priorities should be refocused away from bureaucratic decisions and to active conservation measures that ultimately support voluntary programs and State-led initiatives, including the establishment of dedicated funding streams supporting voluntary conservation efforts and State/local initiatives.

Prelisting measures should also be incorporated into species conservation efforts. State and local governmental agencies as well as private landowners should be encouraged to develop and implement species and habitat programs for species that are being considered for listing. Too often the ESA is hurriedly invoked without consideration of other state, local and private efforts that can and will do a better job of protecting and improving species populations. In determining whether listing of a species is necessary, the existing Act only provides for a limited consideration of State programs that protect species and does not allow the Secretary to consider voluntary programs implemented by private landowners that also protect and enhance species and their habitat.

The critical habitat designation process under the ESA must also be strengthened. It is important that designations are supported by sound decision-making processes, take into account existing habitat protection measures, and rely on timely field survey data. Additionally, the Habitat Conservation Planning (HCP) process should be streamlined so that rural communities are not unfairly negatively impacted by the delays and costs of getting approval. Landowners also deserve regulatory certainty when involved in conservation efforts. As such, the "No Surprises" policy must be codified in ESA and cover all commitments by private parties to voluntary protection and enhancement of species and habitat.

Finally, it is important that an open and sound decision-making process exist in all aspects of species recovery and conservation. The process must allow for full public participation, better data collection, and independent scientific review to support decisions made on listings, critical habitat designations and recovery efforts.

To bring these issues closer to home, I would like to share with you several examples of endangered species issues that have affected Tri-State and our member systems during the past several years and how these examples illustrate potential ways to improve the ESA.

Recently, the U.S. Fish and Wildlife Service decided not to list the Greater Sage Grouse as an endangered species. A decision to list the Sage Grouse could have had disastrous consequences for both the species and for the rural residents making a living on the land. Eleven states and two Canadian provinces, more than 70 local working groups and the private sector were engaged in an active voluntary program to conserve the Sage Grouse when a lawsuit was filed compelling the Fish and Wildlife Service to make a listing decision. Fortunately, the voluntary measures had progressed sufficiently and the Service determined that listing was not warranted. However, had the Service been forced to make the determination several years sooner, the result could have been much different and would have jeopardized a very active cooperative conservation program that is showing positive results. The ESA can be improved by encouraging voluntary conservation efforts, by increasing funding for voluntary programs, and by encouraging prelisting measures.

Several years ago, as a result of a petition to list, the U.S. Fish and Wildlife Service listed the Preble's Meadow Jumping Mouse as endangered based on a fifty-year old study which concluded that the mouse was a separate and distinct subspecies eligible for protection under the ESA. Subsequent studies, including DNA testing and actual skull measurements have concluded that there is no basis for the determination that the Preble's Meadow Jumping Mouse is a distinct subspecies, and that in fact it is identical and is the same species as the Bear Lodge Jumping Mouse. In addition, population studies subsequent to the listing decision have indicated that the actual population estimates are actually 400 percent greater than the original estimates. Since the listing in 1998, millions of dollars have been spent to protect a species that may have been listed in error, and the Fish and Wildlife Service has estimated that $100 million would be spent over the next decade in species protection to meet the requirements of the law. The Fish and Wildlife Service is currently evaluating the new data to determine if the 1998 decision was made in error. The Endangered Species Act can be improved by ensuring an open and sound

decision-making process, by requiring better data collection and independent scientific review to support both the listing and recovery decisions.

More than fifteen years ago, the Upper Colorado River Recovery Program was initiated when the Governors of Colorado, Utah and Wyoming, the Secretary of the Interior, and the Administrator of the Western Area Power Administration signed a cooperative agreement to recover four endangered fishes in the Upper Colorado River, upstream from Lake Powell. Environmental interests, water users and power customers have joined with the state and federal agencies to participate in the recovery of the species. Following extensive data collection and environmental studies, it was determined that sufficient information existed to proceed with development of recovery goals. The U.S. Fish and Wildlife Service approved final basin-wide recovery goals for the endangered humpback chub, bonytail, Colorado pikeminnow, and razorback sucker in August 2002. The recovery goals were developed over several years with collaborative input from public, private and tribal stakeholders, and scientists from the Colorado River Basin. In spite of the extensive process and the positive results being achieved for the species, the recovery goals are now the subject of a legal challenge by environmental groups outside of those involved in the recovery process. These types of legal challenges divert time and energy from efforts to recover the species and consideration should be given to appropriate changes to improve the ESA so as to reduce these burdens.

Mr. Chairman, in closing, I would like to thank you for holding this hearing today and commend the Committee for its leadership in efforts to update the Endangered Species Act. We must continue to find ways to improve the laws that families, businesses and local governments must abide by while protecting the values those of us in the West live by and follow.

Mr. RADANOVICH. Next is Mr. Steve Eldrige, General Manager of the Umatilla Electric Cooperative. Steve, welcome to the Subcommittee. You may begin.

STATEMENT OF STEVEN ELDRIGE, GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER, UMATILLA ELECTRIC COOPERATIVE, HERMISTON, OREGON

Mr. ELDRIGE. Thank you very much for this opportunity. We have had two major ESA events over the past 25 years, spotted owl and salmon—coastal salmon, Puget Sound salmon, Columbia River, and Snake River salmon.

The development of the Pacific Northwest followed very much along the lines of most of the country. We logged and cleared areas for the cities that now reside there. We dammed streams for irrigation, drinking water, and so on. We fished. And I think in that time, maybe we had a greater appreciation that all wealth comes from the earth, perhaps more than we do now.

The end result is that modern society has overwhelmed the natural environment which preexisted us. It hasn't destroyed it, but it has radically changed it. So it is kind of obvious, isn't it?

Well, in the Pacific Northwest, it is only Bonneville's customers that are paying for recovery of Columbia and Snake River salmon, not all of society. They bear the sole weight of this cost.

Because the Pacific Northwest hasn't grown as fast as other areas, our hydropower is predominately the source for the energy that we have. In fact, the Pacific Northwest has less hydropower than the State of California, but we haven't used it. We haven't gone beyond it like other parts of the country have.

The energy from the Federal dams are marked by Bonneville Power Administration. There are about 7,000 average megawatts, and it is sold at cost to customer-owned utilities, such as Umatilla Electric.

In 1980, the Northwest Power and Conservation Act was passed and it set in motion that two representatives of each of the Pacific Northwest States would form a council, the States of Oregon, Washington, Idaho, and Montana, and they had two charges, this planning power council, and that was that they would provide an adequate, reliable, economic power supply and that they would enhance, mitigate, and protect Pacific Northwest salmon.

In ten years' time, we have spent $1 billion on salmon and then the listings for salmon, steelhead, bull trout, Kootenai white sturgeon began. Today, there are 15 listed species endangered or threatened the customers of Bonneville Power alone are paying for. We have provided $6.6 billion for recovery of these fish. Next year, the budget for Bonneville will be $700 million. And if I read the GAO report for the U.S. Fish and Wildlife, that is three times their budget, their annual budget.

By now, we have de-rated the Federal system by 1,000 megawatts of firm renewable energy. It does comprise—fish cost does comprise 28 percent of our wholesale power bill. Most cooperatives in Oregon's retail rates are over seven cents a kilowatt hour. Yet we do not know yet when salmon will be recovered and we do not know what will constitute salmon recovery.

Only about half of the citizens of the Pacific Northwest, the customers of BPA, are bearing this economic burden because the rest of the people buy their energy from someone else.

So what is to be done? The ESA law must be refined so that it gives much better policy direction than it does now. Marine mammals—we have 100 sea lions at the base of Bonneville Dam, the lowest dam on the Columbia River, about 100 miles from the Pacific Ocean. They are eating over two-and-a-half percent of the available salmon. We are pretty sure they are targeting female salmon, stripping the egg sacs and leaving the rest to just float to the bottom. They have figured out how to get into the fish ladders. Now, in history, sea lions went as far as Sligo Falls. That is not going to help us recover the salmon. What we doing to try to discourage this is make loud noises in the water. It hasn't worked so far.

Then we have the Migratory Bird Treaty Act. We have created the largest concentration of Caspian terns at the mouth of the Columbia, and it is on a manmade island, Rice Island, created by spoils from the Corps of Engineers. We have been unable to do much about that. After years of trying, millions of dollars, litigation, we have cajoled about half of them to move on. So instead of eating ten percent of migrating juvenile salmon, millions and millions of fish, they are down to five percent, but they still remain and we can't move them on.

A single judge should not be able to substitute their judgment for that of Federal agencies unless there is clearly defined grounds to do so. ESA costs must be borne by all who have contributed to the listing. ESA must have performance standards to meet before additional funds are expended. We have spent $300 million in scientific studies, and yet we still have not defined recovery.

The ESA must recognize what the environmental conditions actually are, not what groups wish they were. We have spent the last 25 years trying to turn the clock back. We have made our dams

look like waterfalls. We have tried to augment flows by emptying storage reservoirs and moving the water velocity just a tiny fraction of what the rivers moved pre-dam. It has no effect, just huge expense. We cannot go back to Lewis and Clark.

In closing, we want recovery of salmon, too, and we must meet our treaty obligations. But we do not believe that this has to be accomplished with a blank check, nor do we believe salmon recovery should be the never-ending story. Thank you.

Mr. RADANOVICH. Thank you, Mr. Eldrige. I appreciate your testimony.

[The prepared statement of Mr. Eldrige follows:]

Statement of M. Steven Eldrige, General Manager and CEO, Umatilla Electric Cooperative

Introduction:

Steve Eldrige has been the General Manager and CEO of Umatilla Electric Cooperative (UEC) since December of 1990 and has over 30 years of electric utility experience. Steve is currently Chairman of the Governor's Oregon Rural Policy Advisory Committee, Eastern Oregon Telecom, LLC, and the Oregon Rural Electric Cooperative Association Government Affairs Committee. He serves on the Boards of Pacific Northwest Generating Cooperative, Pacific Northwest Utilities Conference Committee, the Good Shepherd Hospital Board of Trustees, Northwest Open Access Network Oregon Cooperative—now known as LS Networks, Inc., and Ruralite Services. Steve also represents UEC on the Bonneville Power Administration Power Function Review Committee, Oregon Managers Group, Oregon Development Group, and the Tri-Herm Group.

Testimony:

Salmon and steelhead of the Pacific Northwest have a storied history. For many years, these runs fed the region's Native Americans before European trappers, explorers and settlers arrived. The early settlers found that salmon runs were not reliable enough in all areas to be the sole food supply and began to encourage farming, but when the salmon arrived they were in prodigious numbers. Lewis and Clark made note of salmon, novelist Zane Grey wrote of salmon and steelhead, and fishing economies through the early twentieth century were robust. (Figure 1).

Early documents show that by the mid to late 1800's, commercial harvest of salmon reached 50 million pounds. Actual harvest may have been far greater since regulations during this period were minimal, at best. Salmon harvest peaked in 1890 then declined at about the same rate for the next 80 years. The Pacific Northwest, as with much of the west, was formed as we know it today in the period from Lewis and Clark through World War II. Development included: Tributaries were dammed without fish passage for irrigation, recreation, and drinking water; forests were logged to make room for the cities of Portland, Seattle and Spokane; land was cleared for farming and timber harvested to meet lumber demands throughout the world. More than 10 million people make their home where no more than 50,000 Native Americans once co-existed with nature.

Figure 2 illustrates harvest declining as the region developed, including construction of federal dams on the Columbia River. By 1933, when the first Columbia River dam was constructed at Rock Island, several hundred miles from the Pacific Ocean, salmon harvest had declined by more than 50%. When the last Columbia River dam closed at John Day in 1968, salmon harvest had declined to one-seventh of their historic peak. Salmon runs which were estimated at 15 to 8 million fish in the 1800's, had fallen to 1.5 million in 1968. 757,339 salmon and steelhead were counted passing Bonneville dam in 1969. No one argues with the truism that modern society is the overwhelming factor affecting the balance of nature. Not just the dams, or the cities and the millions of people; not just the freeways or logging or farming; not just one of these human activities, but all of them comprise modern society.

Dams on the lower Snake River (Figure 4) were constructed between 1962 and 1975. By 1980, salmon and steelhead numbers entering the Columbia River were 1-2.3 million fish, with 455,706 fish counted passing Bonneville Dam. Table 1 is a chronology of salmon related events over the past 200 years.

In 1978 the National Marine Fisheries Service (now known as NOAA) and the U.S. Fish and Wildlife Service, had begun review of the upper Columbia River and Snake River salmon and steelhead for potential Endangered Species Act (ESA)

listing. In 1980, the Northwest Electric Power Planning and Conservation Act (Northwest Power Act) became federal law. The Northwest Power Act created the Northwest Power Planning Council which was comprised of two representatives from each of the Northwestern States—Oregon, Idaho, Washington, and Montana. The Power Planning Council had two directives from the Power Act. First, they were to assure an adequate, reliable, economic power supply; and second the Power Planning Council was to protect, mitigate, and enhance regional salmon runs.

The Council's original salmon goal was to increase salmon and steelhead runs to 5 million fish. Runs of 5 million fish were believed to be of a size to forestall any ESA listings. By 1986, runs had increased to 3.2 million, but then fell to 1.3 million in 1990. $982,500,000 was spent during the period from 1978 through 1990, funding provided solely by Bonneville Power Administration customers to enhance, protect, and mitigate regional salmon and steelhead.

Snake River sockeye salmon, which Idaho had made a concentrated effort to eradicate in order to build a premier trout fishery, were listed in ESA in 1991. Snake River spring, summer and fall Chinook were listed in ESA in 1992. At the present time, eight runs of salmon, five runs of steelhead, Kootenai River white sturgeon and bull trout throughout the Columbia River Basin are listed. After these first listings, the Power Planning Council adopted strategies which amounted to an effort to return the Columbia River, as much as possible, to pre-dam conditions (i.e. fast water and cold temperatures compared to now).

Spring and summer spill,[1] along with flow augmentation[2], became operating policies of the hydroelectric system. Spill is intended to assist juvenile salmon and steelhead in getting past the dams and thereby reducing mortality rates. Augmentation is meant to decrease juvenile salmon and steelhead mortality by increased river velocity. The basis for these spill and augmentation policies is that salmon were in abundance before the dams were constructed, at a time when the rivers flooded each spring and ran as nature provided.

Spilling water is so that dams are made to look like waterfalls. Proponents of spill assert that any increased spill, no matter how slight, is inherently good for salmon and steelhead. This philosophy also led the Council to set flow targets at levels which cannot be met. (Figure 6). Since these flow targets cannot be achieved, any further withdrawals cannot be allowed (above Bonneville Dam only). Because one more drop of water withdrawn makes the augmentation short fall one drop of water greater. The flow augmentation currently in place cannot be met, yet it remains in place. Spring and summer spill have very slight benefit to salmon and steelhead, but are enormously costly. Many believe that more salmon and steelhead benefits are available at much lower cost than the current spill programs.

In 2004, it was proposed, after all listed fish impacts had been mitigated, to reduce spill and save $30 million. However, a federal judge said, "no", so the water was spilled at a cost of $30 million with no measurable benefit to listed salmon.[3]

Since listing began (through 2004) $5.3 billion has been expended for regional salmon and steelhead. Bonneville Power Administration in 2005 will provide $700 million more for salmon and steelhead recovery efforts. This means that since 1978 through the current budget period, Bonneville's rate payers would have provided nearly $7 billion for salmon and steelhead. Currently, 28% of our wholesale power bill is made up of fish and wildlife costs. New spending of an additional $300 million per year will soon be proposed. Even though we have 15 species of listed fish, we do not know what will constitute recovery, there is no end in sight.

In 2004, 100 sea lions were stationed directly below the Bonneville Dam, feasting on returning adult salmon. In fact, sea lions appear to target female salmon, strip out the egg sack and leave the rest. These sea lions, who are protected by the Marine Mammal Protection Act, have even figured out how to enter the fish ladders (see photographs below Figure 5). Sea lions are not endangered and should not receive the same protective status as listed salmon—they should be dealt with effectively.

Another predator of salmon and steelhead is the Caspian tern. The world's largest concentration of Caspian terns nest at the mouth of the Columbia River on a man-made island of dredging spoils. After years of cajoling, litigation, and $2.4 million, Caspian terns are beginning to nest elsewhere, lowering their consumption from

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[1] "Spill" occurs when water which could go through turbines to generate electricity is instead sent through the spill way, generating no electricity.

[2] Flow augmentation occurs when water stored in reservoirs is used to augment natural river flows.

[3] The two strategies of spill and augmentation have caused the loss of 1,000 average megawatts of firm, renewable energy. (1,000 average megawatts of energy is sufficient to provide electricity to more than 730,000 homes each year).

10% of migrating juvenile salmon to 5%. The Migratory Bird Treaty Act protects the Caspian tern.

Our experience with Endangered Species Act (ESA) issues leads us to the following recommendations:

- Recovery of the species must be defined at the beginning of an ESA listing;
- Recovery actions must be modified by better information;
- Recovery actions must meet performance standards;
- The cost of recovery actions must be paid for by everyone, not just segments of society;
- Other federal laws must be integrated with the ESA;
- Recovery plans must consider the entire life cycle of the listed species;
- Non selective harvest of endangered or threatened species must not be allowed; and
- Recovery plans must have certainty of compliance.

Figure 1:

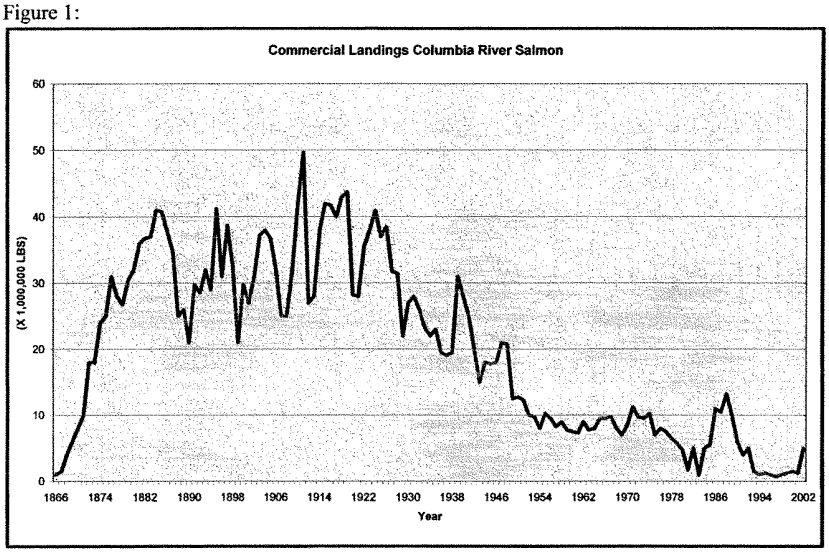


Figure 2:

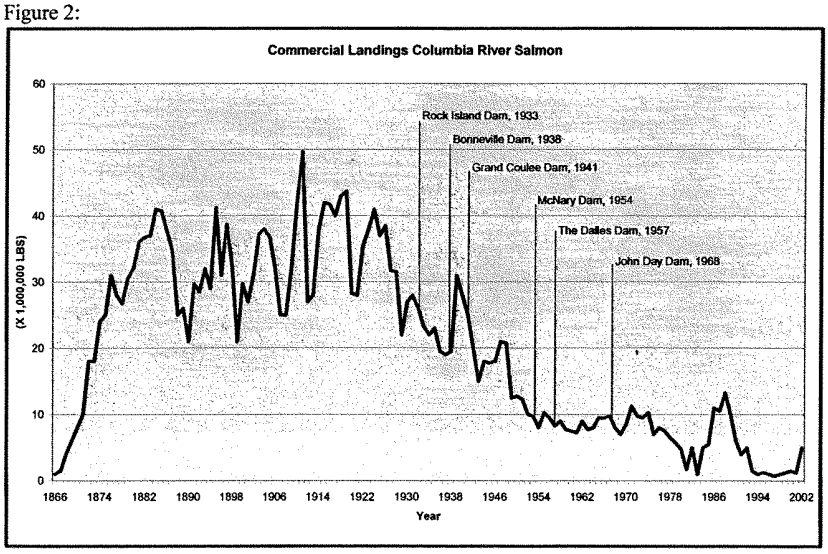


Figure 3:

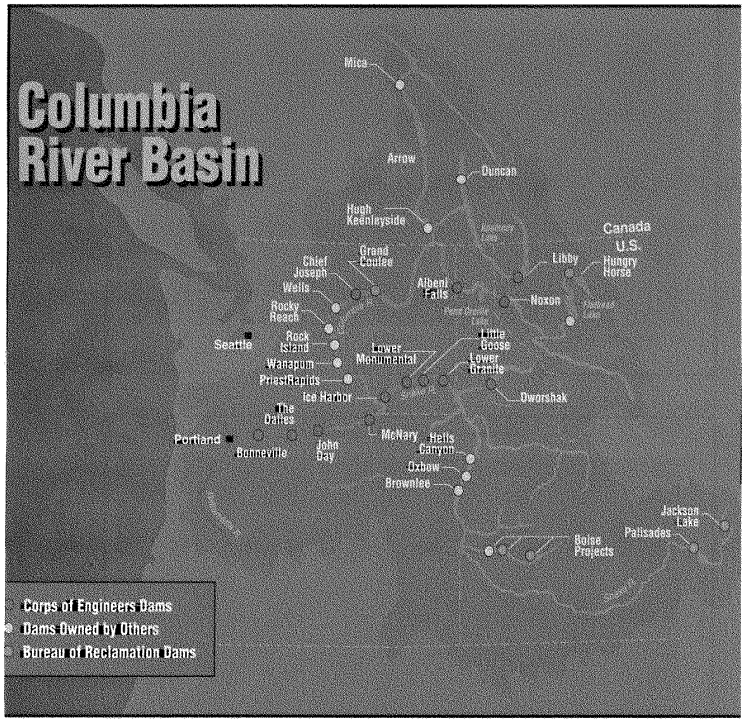
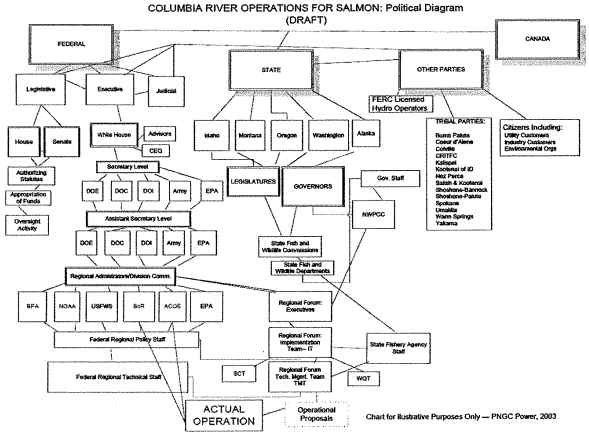


Figure 4:



Overarching Federal Laws:

- NW Power Act
- ESA Listings
- Marine Mammals Protection Act
- Migratory Bird Treaty Act
- Federal Court

Figure 5:

Total Estimated Salmon and Steelhead Entering the Columbia River and Passing Bonneville Dam, 1938-2002*

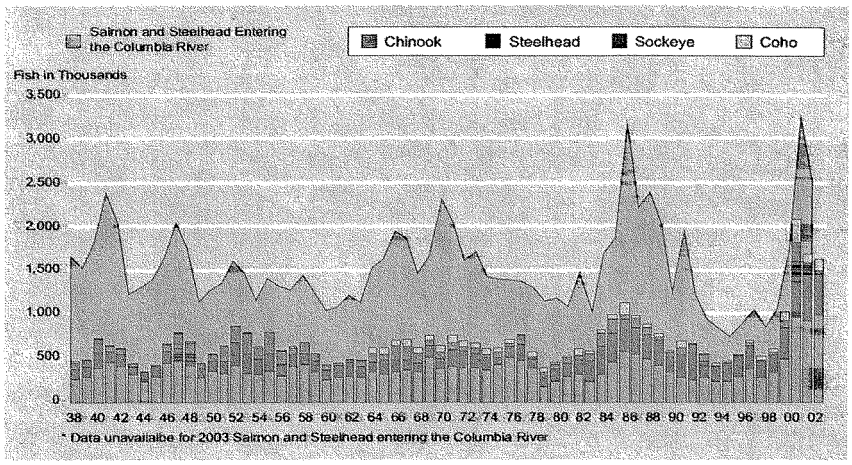
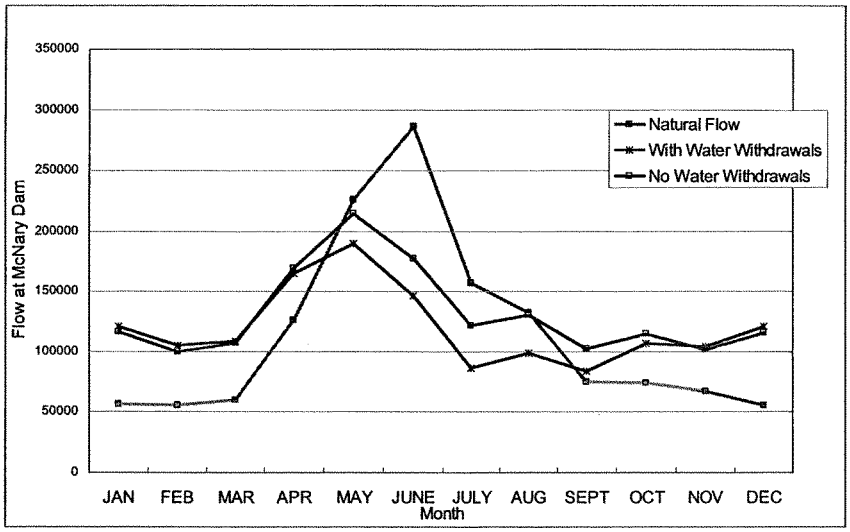


Figure 6: NMFS (NOAA Fisheries) Flow Targets
Low-Water Condition, Average Monthly Flows at McNary Dam



The above graph depicts river flows at the McNary Dam, on the Columbia River, with low water-year conditions. Under the NMFS Biological Opinion, the NMFS "target flows" cannot be met, either with or without existing water withdrawals from the Greater Columbia River Basin region. Nor can the target flows be met under "natural flow" conditions, where river system dams and water storage reservoirs would be eliminated. The flows cannot be met, because the flows exceed the physical hydrological conditions of the river basin.

The flow targets were developed in 1994-95 largely based on a tribal "flow Proposal," relying on data and analyses prepared by NMFS in 1981, but are now no longer recognized by NOAA Fisheries as being applicable to current water management regimes. New data and analyses are significantly improved, with different water management implications.

Nevertheless, tribal groups, environmentalists, and some state agencies refuse to acknowledge the hard science pointing toward changes to the "flow Targets," and

will force NOAA Fisheries into new litigation if the agency attempts to revise the Targets.

In effect, there is no desire by key parties to adopt the best available science for management purposes.

Table 1:

The Salmon Recovery Issue:
A Chronological Outline

Pre-1800's	American tribes harvest 18-24 million pounds of salmon and steelhead annually.
1823	First commercial harvesting of salmon by white settlers.
1870's	Hatcheries are first constructed in the Columbia Basin to enhance fish runs that had been severely depleted by over fishing. Nearly 80 anadromous fish hatcheries have been built by the federal government in the Columbia Basin.
1871	First regulations to restrict fishing are enacted.
1879	Fishwheels are first used on the Columbia to enhance other traditional forms of harvesting. The wheels used the river current to catch and deposit thousands of salmon in boxes with a minimum of effort. Seventy-six fishwheels were in operation by 1899, with some fishwheels able to catch as many as 100,000 pounds of salmon each year. As fishing regulations tightened, fishwheels were banned in 1926.
1883	Commercial harvest of Chinook salmon in the Columbia River peaks.
1890	Chinook runs continue to decline and canneries turn to smaller species of fish.
1911	Sunbeam Dam is completed, creating an almost complete blockage to upstream passage of Chinook and sockeye. Attempts to ladder the dam in 1919-1920 failed when the fish ladder collapsed.
1914	Sockeye access to Alturas Lake is blocked by the Breckinridge Irrigation Diversion.
1920	Annual fish harvest on the Columbia River is 34 million pounds. Commercial harvest of Chinook continues to decline steadily.
1934	Part of Sunbeam Dam is dynamited to allow fish passage, although a partial barrier remains.
1937	The Bonneville Dam is dedicated by President Roosevelt to provide access to reasonable power for residents throughout the Northwest. Between the dam's completion in 1938 and 1970, an additional 15 dams were erected on the Columbia River. Currently, the Columbia and its tributaries are home to more than 190 dams.
1954	Stanley Lake is poisoned and a barrier to prevent adult salmon from returning is installed. Pettit Lake is poisoned and a barrier installed in 1961. Yellow Belly Lake is poisoned and still toxic in 1963 when a barrier is installed.
1968	The Army Corps of Engineers begins a program to collect juvenile fish at several dams on the Columbia and transport them down the river. During 1986, the Corps transported 13.5 million fish by barge and truck.
1970-1980	Commercial catch of salmon and steelhead from the Columbia River declines from 12 million pounds to 1.2 million pounds in 1983.
1973	Endangered Species Act is passed by Congress to protect species of plants and animals which the government decides are in trouble and possibly on the verge of extinction. The Act requires federal agencies to develop programs to help threatened or endangered species.
1974	The right of Tribal fishermen to keep half of the salmon and steelhead passing the Bonneville and McNary dams in the lower Columbia River, was decided February 12, 1974 by Judge George Hugo Boldt in United States vs. Washington, known as the Boldt Decision. (In 1979 the U.S. Supreme Court overturned the Boldt Decision, but upheld the general principle as well as the 50/50 salmon and steelhead allocation to Tribes).
1978	The National Marine Fisheries Service (NMFS) and the U.S. Fish & Wildlife Service begin a review of upper Columbia River and

	Snake River salmon and steelhead for potential listing as threatened or endangered species.
1980	96th Congress passes several key legislative measures aimed at protecting the salmon resource. The most far-reaching effort was the Northwest Electric Power Planning and Conservation Act, more commonly known as the Northwest Power Act. Through the act, the Congress created the Northwest Power Planning Council composed of representatives appointed by governors in Idaho, Montana, Oregon, and Washington. One of their two charges is to protect, mitigate, and enhance regional salmon runs.
1980-1990	BPA and Northwest utilities invest $1 billion, directly and through revenues lost, to provide added water flows to facilitate fish passage at dams. Among the results is an increase in the number of adult salmon and steelhead returning to the Columbia River: an increase that brought returns from 2.5 million to 2.8 million.
1981	The Northwest Power Planning Council created the Columbia River Basin Fish & Wildlife program as the first step toward protecting salmon runs. Their first goal was trying to double the then current run from 2.5 million to 5 million.
1987	Over 155 million hatchery fish are released into the Columbia Basin.
March 1990	The Shoshone-Bannock Indian Tribes of southeastern Idaho file a petition with the National Marine Fisheries Service to protect Snake River sockeye by listing them as an endangered species.
June 1990	Oregon Trout and several environmental groups petition NMFS to list wild Snake River Chinook and lower Columbia River wild coho as threatened or endangered.
October 1990	The Salmon Summit is initiated by Oregon Senator Mark Hatfield. Thirty Northwest representatives of state and federal agencies, Indian tribes, conservation groups, irrigators, fishing interests, and utilities meet to come up with a comprehensive recovery plan for the petitioned salmon which could be presented to NMFS for consideration.
1991	Snake River sockeye salmon listed as endangered species.
Nov. 1991	NMFS proposes three salmon stocks for listing as endangered species including the Snake River sockeye, spring-summer Chinook, and fall Chinook.
Dec. 1991	NMFS lists sockeye salmon as an endangered species. The status of the other proposed stocks are pending.
1992	Snake River fall, spring and summer run Chinook listed as threatened species.
Feb. 1992	A seven member team is appointed by NMFS to develop the Sockeye Salmon Recovery Plan. The team includes five fisheries scientists, a hydraulic engineer, and a hydropower engineer. Their target date for releasing the plan is July 1992.
1994	Kootenai River white sturgeon listed as endangered species.
1997	Snake River Basin and Upper Columbia River steelhead listed as threatened species.
1998	Lower Columbia River steelhead and Columbia Basin bull trout listed as threatened species.
1999	Lower Columbia River and Upper Willamette River Chinook listed as threatened species; Upper Columbia River spring run Chinook listed as endangered species; Columbia River chum listed as threatened species; and Upper Willamette and Mid-Columbia steelhead listed as threatened species.
2004	Lower Columbia River coho listed as threatened species.
Dec. 2004	The Pacific Northwest spent $7 billion in salmon recovery efforts. Over the past 25 years $7 billion has been spent on salmon/steel head enhancement. Annual spending has reached $700 million, all paid by Bonneville Power Administration customers
Jan. 2005	A determination as to when a species, such as salmon and steelhead, is no longer endangered remains to be defined. Harvest rates of endangered species continue as recovery remains undefined. The indiscriminate gillnetting by both Tribes and non-Tribes continues.

Mr. RADANOVICH. I appreciate the testimony of all the witnesses. I will begin with some questioning.

I would like to ask—before I begin, though, I do want to ask unanimous consent to enter into the record the testimony of Mr. Allen Short, General Manager of the Modesto Irrigation District. There being no objection, so ordered.

[The statement of Mr. Short submitted for the record follows:]

Statement submitted for the record by Allen Short,
General Manager, Modesto Irrigation District, Modesto, California

Chairman Radanovich and Members of the Subcommittee, thank you for the opportunity to express my views with regard to the Endangered Species Act.

My name is Allen Short. I am General Manager of the Modesto Irrigation District. The District was established in 1887 in order to provide irrigation water to the farmers in our portion of California's Central Valley. Since 1923, MID has also been providing electricity to its customers, and since 1940 has been the sole provider of retail electric service within MID's boundaries. Today, MID provides electric service to more than 108,000 electric service accounts. MID also provides 30 million gallons of treated water per day on a wholesale basis to the City of Modesto to meet the needs of its municipal and industrial customers.

As I noted, MID is the retail electric utility for the Modesto area. Though our electric power supply is quite diverse, one of the mainstays of our portfolio is Don Pedro Dam, a hydropower facility first licensed by the Federal Power Commission (now the Federal Energy Regulatory Commission, or "FERC") in the 1960s. Since the completion of Don Pedro Dam in 1970, MID and TID—the co-licensee—have worked diligently to ensure that the fishery below the dam remains healthy and vibrant. MID has conducted numerous—and expensive—studies to ensure the survival of Chinook salmon in the Tuolumne River. In the early 1990s, MID and TID filed at FERC a report summarizing the first 20 years of those studies. That report led to a re-evaluation of the fishery flows and management of the River. As a result of that process, the District reached an agreement with the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and numerous environmental groups, on a series of actions designed to enhance Chinook salmon populations. Those actions included additional flow releases, habitat restoration projects and additional monitoring and studies. Though each of these actions was intended to benefit salmon, they also had a beneficial effect on other species as well.

MID also participated in a historic agreement that provides further benefits to salmon in the Tuolumne River, as well as the San Joaquin River and the San Francisco Bay - San Joaquin Delta Estuary (the "Delta"). MID is a party to the Vernalis Adaptive Management Program. That program, among other things, calls for additional water releases to be made on the Merced, Tuolumne and Stanislaus Rivers. These pulse flows are timed, and coordinated, in a manner that helps "push" outmigrating salmon out of the tributaries to enhance their chances of survival as they make their way to the ocean to mature. The Vernalis Adaptive Management Plan also calls for various experimental flows and studies to determine optimal flows, and coordination with various pumping activities in the Delta.

I believe that the goals of the Endangered Species Act are, for the most part, laudable. Often, we cannot evaluate the importance of a species until it has been eradicated from a particular area, or become entirely extinct. Thus, it is important that we take steps to ensure that the survival of a species is not jeopardized by our neglect.

In addressing my comments, I wish to note that my experience with the ESA is focused primarily on aquatic species in the Central Valley of California. I know that there is a great deal of controversy regarding the ESA and its application to terrestrial species—insects, birds and mammals. Indeed, many of the criticisms of the ESA pertain to such species. However, I wish to focus on my experiences with the manner in which the ESA has been utilized with regard to anadromous fish species in Central California.

One of the hallmarks of the ESA is that listing determinations be based on the best available science. Frequently, there is little scientific data available on which to base a listing. For example, in listing steelhead in the San Joaquin River and its tributaries, Modesto and Turlock Irrigation Districts submitted evidence showing that if a steelhead population had ever existed on the Tuolumne River, it had been extinct for more than 100 years before the listing was proposed. Nevertheless, steelhead were listed as threatened on the Tuolumne River.

I am also concerned that the lack of scientific data is often purposeful. For many years, resource agencies and environmental groups have noted the occasional presence of large rainbow trout in the Tuolumne River. MID and TID offered to conduct genetic testing to determine the origins of these fish, and whether they were in fact anadromous (i.e., steelhead). The California Department of Fish and Game refused to allow the Districts to conduct the necessary scale sampling. Instead, CDFG conducted that sampling themselves, and have results of genetic analyses performed on those samples. However, despite repeated requests, CDFG has declined to make the results of their analyses available to the Districts, have not published their findings, and have not provided their scientific data to the National Marine Fisheries Service to assist the Service in its efforts to determine whether listing of steelhead is warranted.

Recently, the National Marine Fisheries Service published a draft rule proposing to list green sturgeon as threatened in the San Joaquin River and its tributaries. This listing is proposed despite the fact that "no green sturgeon have ever been documented in the San Joaquin River upstream of the Delta or in the Stanislaus, Tuolumne, and Merced Rivers." (Proposed Rule, 70 Fed.Reg. 17386, 17389 (April 6, 2005).) What, then, is the basis for including these areas in considering the listing? The presence of other species that enjoy similar habitat indicate that a self-sustaining population green sturgeon "may have been possible."

These are but a few of the instances that lead me to believe that often the problems with the ESA are not necessarily in the Act's structure, but in its implementation. Listing of a species as threatened or endangered can have far reaching economic consequences for those who have, or wish to construct, projects near resources occupied by endangered species. While it is certainly desirable to ensure that species be listed when appropriate, it is not desirable to list species on less than scientific data; listings should be based only on sound scientific data that indicates that a species is both present, and endangered or likely to become endangered absent the protections of the Act.

Likewise, with regard to designating critical habitat, such determinations should be made, as the Act requires, both on the basis of scientific data and after considering factors including the economic consequences of such a designation. We are particularly concerned about the potential impacts of listing steelhead in the Tuolumne River. As the data and evidence showed, there has not been a self-sustaining population of steelhead in the Tuolumne River for more than a century. Yet, if steelhead are listed, MID and TID will be expected to release significant quantities of water to reduce temperatures in the river downstream of Don Pedro Dam. Those releases will be at significant cost, both in terms of power generation in a state in which resources are expected to be stretched to capacity even in this year of abundant hydropower generation, but in terms of water deliveries to meet the needs of permanent agricultural crops, including trees and vines.

Mr. RADANOVICH. Mr. Boyd, I am aware of the work for habitat restoration that you and Turlock Irrigation District have done on the Tuolumne River. Can you go into it? Give me an idea, with your experience in that, how can ESA and the relicensing process be improved for energy and wildlife purposes? Can you compare your experience with having known that, how the law can be improved to make it more environmentally friendly but also more cost effective?

Mr. BOYD. I will certainly try. As you mentioned, much of the river restoration work done is being done jointly with the Turlock Irrigation District and the Modesto Irrigation District. Prior to the appearance of either district, that river was used for gold dredging and gravel aggregate mining operations and part of that restoration is repairing work that was done prior to—or damage that was done to the river prior to our existence.

We heard earlier about the Box Canyon relicensing. Don Pedro will be up for relicensing in 2016 and it is our fear that the issues I outlined with the steelhead could become an issue in that relicensing process, even though at this point we don't believe they are an endangered species.

The work you have been doing with the hydro relicensing reform language is extremely helpful in that it gives us equal footing with other stakeholders on the river that did not exist prior to that, and so we are very hopeful that the relicensing language that was just passed out of the House in the energy bill will be helpful when we come up for relicensing in 2016.

Mr. RADANOVICH. Thank you, Mr. Boyd.

Mr. Brown, you mentioned that in your little community, there is a long list of endangered species that you are having to deal with. Could you repeat those again, or do you have it in front of you, or can you dig them out?

Mr. BROWN. I have them right here. Dwarf-bear poppy, Southwestern willow flycatcher, Virgin River chub, Woundfin minnow, Shivwitz milk-vetch, California condor, desert tortoise, Siler pincushion cactus, bald eagle, and Mexican spotted owl.

Mr. RADANOVICH. In your water agency, how many people does it serve, 1,400 that you mentioned in your little town, or——

Mr. BROWN. It is a power cooperative, so we serve about 10,000 customers.

Mr. RADANOVICH. About 10,000?

Mr. BROWN. Yes.

Mr. RADANOVICH. Is the Kanab amber snail in your area at all?

Mr. BROWN. No, that is actually in our neighbor co-op area. They serve in that North rim of the Grand Canyon and around Kanab, so they deal with that, the amber snail.

Mr. RADANOVICH. OK. Thank you.

Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. Patt, yesterday, the Committee, as you can see, issued a press release with, among other things, the discussion of the Bonneville summer spill last year, and in this press release, according to the BPA estimates, the spills would result in 20 returning adults from this population yearly. The cost, as you can see, of $3.85 million per targeted fish. Could you comment on the chart?

Mr. PATT. Yes. To come to that figure, Bonneville made some assumptions. One of those assumptions is that all of the water in the river belongs to BPA for power production. There are many preexisting responsibilities, including treaties that were signed in 1855 with Lower Columbia River tribes protecting their right to harvest fish on the Columbia River. Those fish have plummeted from approximately 25 million at treaty time, which is our starting point—that is the other thing.

Determining a starting point is very important in this. We have seen in the past, at least in the recent past, that there has been some complacency seeping into the process, where we have hit some peaks, some fairly high peaks on the fish runs where people feel that these fish are recovered when we have been saying all along that they are nowhere close.

But to put that amount on there—unfortunately, we had to deal with this last year and it is very unproductive. We were discussing spill options with Bonneville Power while at the same time trying to put out this fire, which is, again, based on some very faulty assumptions.

Bonneville Power put forward some spill options last year. We were discussing those spill options. When they finally came to the table with their final proposal, it was completely different and it proposed spilling water in the upper basin to save fish, only to grind them up in lower river turbines, which is, at least intuitively, that is just the opposite of what you would do.

So the tribes did not have their feet dug in on this whole proposal for spill. We discussed some spill options with BPA. But unfortunately, at the same time, we were fighting the public relations battle based on these faulty numbers.

Mrs. NAPOLITANO. Thank you, sir.

Could you address or comment if you feel that the ESA budget is an issue, since the Fish and Wildlife Service in 2003 indicated it would need $153 million to address current backlog listings and critical habitat obligations, and that would help determine whether or not they could be listed. Yet there is only $18.1 million in the budget for that. Does anybody want to address that?

Mr. SMITH. I will just say, I mean, that is one of the key issues, I think, in trying to think about how Endangered Species Act is applied and whether or not there are some credible reforms that need to be made, which I think—I know we can all agree there probably are, but funding is a major issue. For an agency like the Fish and Wildlife Service or the National Marine and Fisheries Service to have the money they need to do the research and monitoring to develop the best critical habitat evaluations, recovery programs, I think that is something that Congress would be very helpful with. You know, when you are working on a shoestring budget, you may not get the best things done you need to do.

And so in the short time, I think we all know the difficulties in talking about Endangered Species Act reform. But in the short term, finding some money to make sure we are doing the best we can under the existing law could be a big help.

Mrs. NAPOLITANO. Thank you, sir.

Mr. Eldrige, I read with great interest your statement, and I was listening intently to some of your key points. But what is the key factor responsible for BP's recent power rate increases? Am I correct, it is not the Endangered Species Act but it is Bonneville's open-ended obligation to bid the next provider of wholesale power to the region. GAO's report, and you submitted it for the record, on page 22 indicates that your costs rose dramatically as the agency purchased large amounts of power at an average price much higher than the cost of power from the Federal Power System. Could you comment on that, please?

Mr. ELDRIGE. So is your question whether or not the ESA has caused a rate increase?

Mrs. NAPOLITANO. Yes.

Mr. ELDRIGE. It has contributed. Like I say, right now, fish costs are 28 percent of our wholesale cost. The energy emergency on the West Coast a couple of years ago, we were buying energy on the market. We were short. Bonneville went long in a volatile market. Fish costs that year cost $1.5 billion because of this 1,000 megawatts that were lost. So there are many factors. Fish and wildlife is one of them, and a significant one on an ongoing basis.

Mrs. NAPOLITANO. But not the total cost?

Mr. ELDRIGE. Oh, of course not.

Mrs. NAPOLITANO. Thank you. Thank you, Mr. Chair. I will wait for the next round.

Mr. RADANOVICH. Thank you, Grace.

I have just been notified that we are going to have a series of votes at about 3:30, so we are going to try to do our best—I believe they will be the last votes of the day—to wind this hearing down before we have to leave. We will take it down to the last five minutes of voting time once the votes take off.

Mr. Walden?

Mr. WALDEN. Thank you very much, Mr. Chairman. Again, I appreciate the testimony from all of our witnesses. These are difficult issues and your counsel and your guidance is helpful.

Mr. Patt, you indicated during the discussions with Bonneville that there was some flexibility when it comes to the summer spill option. Can you elaborate on that? I am sure we probably could agree that that is going to keep coming back as an issue in the region and I would be curious to know your take on what we should do from henceforth and the effect of summer spill.

Mr. PATT. OK. I could give you a very detailed document that shows what was proposed. I do remember a couple of those. One was 24-hour spill at a slightly lesser level at John Day Dam, which we have never had before. Another was the use of a corner collector that was designed to bypass fish around the turbines at Bonneville Dam, but it was designed to be used in conjunction with approximately 50,000 CFS spill. Otherwise, what it did is it just attracted predators. It spilled the fish into a back eddy without the spill. With the spill, it washed them downstream.

Mr. WALDEN. I see.

Mr. PATT. Those are two of the options that we were considering last year. There was another one, I believe at Ice Harbor. I could provide that document to you.

Mr. WALDEN. Yes. That would be good.

Mr. PATT. But there are a number of options that we were considering last year, but——

Mr. WALDEN. As I say——

Mr. PATT.—the actual proposal came back very, very different and we just weren't able to propose it. Going back to the 2001 spill, our concern with that was that it was done without monitoring and evaluation in place. So it is difficult to track the actual impacts of that spill curtailment in 2001. However, the five-year-old fish that would have been a part of that brood year were absent from the 2004 return, so I think that is a very strong indicator.

Mr. WALDEN. I see. Let me ask perhaps you and Mr. Eldrige both, what should we do about this continuing problem of predators, whether it is the Caspian terns on Rice Island, which weren't native to Rice Island. As I think Mr. Eldrige pointed out, it is a manmade island from dredge tailings. And yet they are consuming an inordinate amount of the little fish going down river. And then the increasing predation of the sea lions, given that there are Federal laws involved with both of these. Maybe I could start with Mr. Eldrige and then Mr. Patt. Maybe you can respond, as well. I am just curious. Should we do anything or let nature work its way? Of course, nature didn't have fish ladders.

[Laughter.]

Mr. ELDRIGE. I think that we should take action, and blowing whistles and buzzers isn't going to do it. We all know animal behavior. When they find an easy source of food, they are not going to leave.

Virgil from Yakima Nation made a suggestion at the last Bonneville meeting I happened to be at that I think is a terrific idea, and that is that there are tribes in Alaska that use sea lions. Ask them to come down and harvest these sea lions for their own use, lower the numbers, and ultimately, we have got to keep them out of the fish ladder, but I think that we have to be forceful and not what we are doing now.

Mr. WALDEN. All right. Mr. Patt, do you have a comment on that?

Mr. PATT. Yes. I believe the presence of the sea lions this year was caused by a number of things. One was the absence of their normal prey, which is smelt. The smelt run didn't materialize this year, so they zeroed in on salmon and even sturgeon.

We are working under the Marine Mammal Protection Act. The Columbia River Inter-Tribal Fish Commission has drafted a letter from its commissioners to the States of Oregon and Washington asking them to seek a Section 120 permit under the Marine Mammal Protection Act to take actions to deal with the problem. That includes the entire suite of options, including noise deterrence, hazing, and so forth. What we are very interested in is streamlining that process.

The first option that was brought forth at Bonneville Dam were pretty much the options that didn't work at Ballard Locks in Washington. However, next year, since this sea lion presence is pretty limited in duration, usually from March up until about the middle of May when they leave of their own volition, usually, you go through those options and they are gone. I think it has to be ratcheted so that next year, those animals that are causing the problem—and teaching the behavior to other sea lions—can be dealt with.

We have talked to the Corps of Engineers about devising a sea lion exclusion structure at the mouths of the Bonneville fish ladders.

Mr. WALDEN. I know my time is up. To the extent to which you do make recommendations, any of you on these topics, if you could share those, at least with me and maybe other members of the Committee, it would be helpful as we work on these issues.

Thank you very much, Mr. Chairman. Thank you.

Mr. RADANOVICH. Thanks, Mr. Walden. I appreciate that.

Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. Patt, you mentioned the stock of fish on the Columbia at the time of the treaty was about 25 million. What do you reckon the population is now?

Mr. PATT. I believe the total runs now are about 2.5 million. In 1988, the Northwest Power Planning Council, as it was called then, had come up with their goal of doubling the run within 15 years, and that has been 17 years ago and the runs are still approximately the same now.

Mr. PEARCE. And I notice on one page in your testimony, you recommend that the dams be breached, that we tear the dams down in order to guarantee your rights to——

Mr. PATT. The tribes, along with the Federal Government, are in a process that we would call aggressive non-breach. From the tribes' point of view——

Mr. PEARCE. Your testimony, Mr. Patt, says that we believe—"the tribes continue to believe that the four dams on the lower Snake must be breached to ensure the restoration of salmon in that basin." Do you stand by that comment in your testimony?

Mr. PATT. At the end of the current regime that we are in right now. And the Federal Government is in agreement with that. That measure would result in a recovery of Snake River fall Chinook.

Mr. PEARCE. Mr. McLennan, you make several suggestions in your testimony about things that should be done. How workable are the agencies, the Interior agencies that you deal with? In other words, do they make agreements and stick to them, or do they make agreements and then change them later? What is the working relationship out in the field with the Interior Department different agencies?

Mr. MCLENNAN. So far, Congressman, we have good—and I will use the Colorado River example. While it is difficult for everyone in this process, we have been able, I think, to come together with the agencies that we work with to develop programs to recover the species. It is certainly not an easy working relationship in the whole process in that everyone has a different set of obligations in terms of what you are trying to protect as you move forward.

But I guess from the agency side, we have found them to work with us with respect to trying to figure out how we get there. In fact, in parts of it, we found even what I would call the folks who were inside the room from environmental interests, water interests, and others helpful in moving that process. Part of the issue, and this is what I raised in my testimony, is that we have folks who are outside of this process, which complicates—makes the problem actually larger.

Mr. PEARCE. And when the folks outside the process come in, do they get the same access to change the process as you all who have been laboring in the process?

Mr. MCLENNAN. They have chosen at this point to use the court system to go to an outside judicial review to have someone else determine outside the process whether we are going down the right path or not.

Mr. PEARCE. Mr. Eldrige, do you have any comments on the same sort of questions?

Mr. ELDRIGE. Well, yes. I think one of the biggest problems is there is no certainty of the process. I think everyone that wants to be involved has to be engaged, be a part of the solution, and once that is reached, support it. Right now, we run to court, and in the Northwest, we have a number of activists that don't have the history and we change these very hard worked on plans.

Mr. PEARCE. Mr. Boyd, do you find that the outside activists have any regard for cost in any matter of this? I think you testified that one of your systems, one of the participants in your system was tagged with a fairly large cost. Do you find that these large

costs—or Mr. Brown, I am sorry—do you find that there is any concern for costs as we discuss recommendations?

Mr. BROWN. I guess in my experience, and, of course, I don't sit out there on the day to day battles, being a director and having another job, but taking this process of getting the line through the turtle preserve where there was already an existing 138 line, we started that process and we really had a need to have the power within a year. We were experiencing a lot of growth. We had a 69-KV line. We needed to upgrade to 138. So we started the process.

You have a local committee that you meet with on the habitat that you have to go through besides the BLM and those people. That process, we thought would take a year. It took us two years to get through and they made us look at options of trying to go around, through residential areas and other places, as opposed to just going across the corridor.

So I guess my answer would be, yes, I do see some outside costs that come when outside groups are put in. We have the same problem with the Forest Service, too. Sometimes they are—it is not like they won't deal with us, but they are very slow and very unresponsive when we ask them to do something. It takes a long time to get things done.

Mr. PEARCE. Thank you all for your participation. Mr. Chairman, thank you.

Mr. RADANOVICH. Thank you, Mr. Pearce.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

Mr. McLennan, you had mentioned that you had been actively working for alternatives and you touched on some very quickly. Can you be a little more specific about the alternatives that you feel would be helpful in protecting the endangered species but doing so in a reasonable way?

Mr. MCLENNAN. Congressman, let me lay out—I referenced them in my written testimony and I will just walk through them quickly in the interest of time.

One of the things we clearly need to be able to do is we need to be able to expand and encourage voluntary conservation efforts in a way that what we want to end up with at the end of the day, particularly for local landowners and any number of others who are local businesses or impacted, we want to get to a position where they are encouraged, incentivized, and actually want to participate in the recovery of species. I would argue today we have a program which forces what I will call the three S's, and you guys have heard it in this Committee before—shoot, shovel, and shut up—versus an Act that actually encourages finding ways so that people will want to recover the species.

So one is we have to find measures that actually encourage voluntary conservation methods——

Mr. GOHMERT. OK, I guess that is my question. You say we have got to find ways, and that was my question to you rather than your question to me. What are those ways?

Mr. MCLENNAN. Incentivize both locally and at the individual members' level, incentivize them in some fashion, whether you use a tax credit methodology, whether you use—one of the things you

need to guarantee to them, that there are no surprises to them if they, in fact, encourage or participate in a program.

One is move some of the decisionmaking, if you will, to the State and locale so that those people who are closest to the ground can actually participate in this development rather than having everything come from Washington.

Establish recovery goals. I think Mr. Eldrige referred to it in the Bonneville situation. We have been fortunate in some areas that we actually have some programs that have recovery goals. Those are huge issues toward going to get to the point where someone will actually participate.

If you were to give me the choice to say, I know at the end of the day that I need five fish per mile and that is recovery and that I can do certain activities associated with that, create hatcheries and do a number of other things that allow you to be able to get to your end goal, you will find that people participate, versus what we do today, which is go to them and tell them that we have a problem. You are going to spend lots of money and you don't know where the end game is. No one wants to participate in that process because there is no end to that process.

There are a number of other things, as well——

Mr. GOHMERT. About incentives you talk about, I guess you are saying provide tax incentives for saving or protecting species rather than just ordering it?

Mr. MCLENNAN. Find ways to use tax incentives, use other methods, if you will, and Congress certainly looks at those in terms of any number of ways that we can incentivize people——

Mr. GOHMERT. So we should give sea lions some tax incentive to go get food stamps and redeem them for free fish somewhere. I mean, I am looking for hard and fast ways that we can make this more efficient without being the typical slow-moving, stupid government. We are looking for effective ways, and I would be interested in the written testimony of anyone, written proposals, things we can do to use more common sense.

I read somewhere that a spotted owl pair had been found mating in a K-mart sign. Should we put K-mart signs on the Endangered Species List because of the K-mart financial problems?

[Laughter.]

Mr. GOHMERT. I mean, I am looking for hard solutions to these tough questions. We want to protect the environment, have species around for years to come, but not be ridiculous as a government, charging where 28 percent of the cost, as I understood you to say, Mr. Eldrige, is for saving the fish that we may not be saving. So anyway——

Mrs. NAPOLITANO. Would the gentleman yield?

Mr. GOHMERT. Let me just ask, any written proposals that you can submit to us, anybody in the audience, any written proposals, hard things we can do. Please don't say, you guys find a good way. We are asking you for solutions. That is why you are here. Thank you very much. I yield back my time.

Mrs. NAPOLITANO. Thank you for yielding. I am going to dovetail into your statement, and that is creating tax incentives. That is the jurisdiction of the Ways and Means Committee, so maybe they might be interested in taking some of that, a look at it.

But I wanted to ask Mr. McLennan, on page 4, you state the Act does not allow a Secretary to consider voluntary programs, something we were just talking about. Yet there are States like Georgia, South Carolina, Texas, and Louisiana already have active State-administered programs to protect some of the endangered species. Are you aware of those?

Mr. MCLENNAN. Right now, Congresswoman Napolitano, you are right. There are places where people have taken the initiative. There is considerable uncertainty with respect to whether or not it is going to make a difference, i.e., whether or not you are going to get in the middle of a program and it is going to be deemed to be, by some judge, not to be available.

So those folks—and we have several programs, as an example, in Colorado where the State has and others are looking at and we have local working groups looking at specifically how do you take some of those responsibilities. But I will argue to you today, they are doing that at risk.

Mrs. NAPOLITANO. Well, there is nothing in law that prohibits the States from doing it right now, at this point.

Mr. MCLENNAN. I will look into specifically what you are asking about, nothing in law. But at this point, it has always been a Federal obligation to determine how you deal with endangered species because of the impacts.

Mrs. NAPOLITANO. OK, but that is not the question. It is the States right now have the ability to do something on their own.

Mr. MCLENNAN. They have the ability to do things on their own, but it is at risk that it will be an unsuccessful program.

Mrs. NAPOLITANO. That is your opinion, sir. Thank you very much.

Thank you, Mr. Chairman.

Mr. RADANOVICH. All right. I want to thank the witnesses for your valuable testimony and the members here for their questions.

Members of the Subcommittee may have some additional questions, and if so, we would ask that you promptly respond to these questions in writing. The hearing record will be held open for ten days for these responses.

If there is no further business before the Subcommittee, I again thank the members of the Subcommittee and our witnesses and the Subcommittee stands adjourned. Thank you very much for your participation.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned.]

A statement submitted for the record by The Honorable Barbara Cubin follows:]

Statement of The Honorable Barbara Cubin, a Representative in Congress from the State of Wyoming

Mr. Chairman:

Those of us blessed enough to live in the American West are bound together by such things as our love for the outdoors and the recreational opportunities we enjoy. Unfortunately, another tie that often binds us is the unfair application of federal laws like the Endangered Species Act (ESA).

Too many citizens are shut out of their public and private lands because of unfair applications of the ESA without even having the opportunity to provide local input. It seems more taxpayer dollars end up being spent litigating these issues in courts instead of helping species actually recover. This is simply wrong. ESA designations

should be based on field-tested and peer-reviewed science, common-sense input from landowners, and take into account local economic data.

The regulatory and cost burden this broken law places on our nation's rural power providers is equally as problematic, as the cost of compliance is inevitably passed on to local power customers. From the citing of new transmission to the everyday operation of our hydropower facilities, ESA regulations are a constant looming obstacle to energy efficiency.

We would not likely be holding this hearing today if there was any proof that the ESA was a successful tool in species recovery. However, when less than one percent of the total number of species listed as threatened or endangered have ever been recovered or de-listed, the ESA as currently written has proven nothing more clearly than its own need for responsible, common-sense reform.

I look forward to hearing testimony from our panel today regarding those aspects of the ESA that affect their ability to provide efficient, affordable energy to their consumers. I am also interested in what reform measures to the Act would help them accomplish this goal more effectively. It is this kind of "on-the-ground" input that will be essential in this Committee's efforts toward making the ESA a workable law for our nation.

Thank you Mr. Chairman for holding this important hearing and I yield back the balance of my time.

The information submitted for the record listed below has been retained in the Committee's official files:

- U.S. Army Corps of Engineers report entitled "Energy Impacts of re-operating the Missouri River Dams," by David Marcus, Energy Economist, Berkeley, California, dated June 2002;
- Patt, Olney, Jr., Letter dated April 28, 2005, to Dr. Jeffery P. Koenings, Director, Washington Department of Fish and Wildlife, Olympia, Washington, and Lindsay A. Ball, Director, Oregon Department of Fish and Wildlife, Salem, Oregon, and news articles entitled "Tribes ask Oregon and Washington for Action on Sea Lion Problem," "Tribes ask permission to kill sea lions eating salmon at Bonneville Dam" and "Tribes press states to ask for power to kill sea lions" submitted for the record; and
- The Yakama Nation Comments on Bonneville Power Administration's Power Function Review, dated April 28, 2005.

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