

THE ENDANGERED SPECIES ACT AND ITS IMPACT ON AGRICULTURAL PRODUCERS

HEARING BEFORE THE SUBCOMMITTEE ON CONSERVATION, CREDIT, RURAL DEVELOPMENT, AND RESEARCH OF THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS SECOND SESSION

JULY 26, 2004
GREELEY, CO

Serial No. 108-37



Printed for the use of the Committee on Agriculture
agriculture.house.gov

U.S. GOVERNMENT PRINTING OFFICE

95-743 PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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MONDAY, JULY 26, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
SUBCOMMITTEE ON CONSERVATION, CREDIT,
RURAL DEVELOPMENT, AND RESEARCH,
Greeley, CO.

The subcommittee met, pursuant to call, at 2:00 p.m., in the Weld County Court House, Greeley, Colorado, Hon. Frank D. Lucas (chairman of the subcommittee) presiding.

Members present: Representative Musgrave.

Staff present: Ryan Weston, subcommittee staff director; Claire Folbre, and Andy Johnson.

OPENING STATEMENT OF HON. FRANK D. LUCAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. LUCAS. This hearing of the Subcommittee on Conservation, Credit, Rural Development, and Research to review the Endangered Species Act and its impact on agricultural producers will come to order, and we will turn to opening statements.

I would like to thank everyone for coming to this hearing to review the impact on agriculture of the Endangered Species Act. Good afternoon to you all and thank you for, once again, being here.

I would like to thank Congresswoman Musgrave for hosting the subcommittee hearing for this very important subject. Congresswoman Musgrave is well-aware of the challenges facing agriculture. The prolonged droughts in Colorado and other areas of the United States has made it very tough on producers the past few years.

Bringing common sense solutions to complex issues is sometimes more difficult than it should be. We are here today to discuss the impact that the Endangered Species Act, ESA, has had on agricultural producers. We want to hear about the problems that ESA has sometimes created. And, more importantly, we want to know what can be done to make ESA work fairly for producers.

The testimony provided by witnesses today is excellent. I was very pleased reading over it. Everyone has done a thorough job listing problems and possible solutions. It is always easy to point out the faults, but sometimes it's quite difficult to come up with good ways to work to cure them. The need to preserve and protect plants

and animals is not very controversial. Therefore, the basis behind ESA is not a bad idea.

The controversial aspect, though, is trying to figure out the appropriate way to preserve and protect those plants and animals. The implementation and funding of ESA never seems to work quite as it was intended.

Most of ESA seems straightforward enough. Using the best possible data, the Government has to determine if a species should be listed as endangered or threatened under ESA. This is one of the aspects being reviewed by Congress right now. If there is no data available, it's sometimes hard to determine if a species is really at risk.

Once we determine the appropriate data sets and science to determine if something should be listed, what should we do next? Sometimes critical habitat is designated for species. Is the habitat necessary to save the species? There has been much debate regarding the appropriate amount of habitat and whether the designation actually helps restore the species numbers.

Even more important habitat is determined by sound plans for recovery. We need to set clear goals regarding how the Government can work with landowners, and I stress "work with landowners," to enable species to replenish its population. We also need to make it clear to landowners that if a species recovers to a predetermined level, that it be delisted.

There are currently 16 species listed as endangered in Colorado and another 15 listed as threatened. Producers spend most of their lives trying to make plants and animals live and grow. We can find ways to fairly compensate and/or work with producers to save listed species and allow producer operations to remain as viable agricultural operations.

We don't intend to have to list farmers and ranchers as endangered just because they have listed species on their property. With that, I look forward to all of the testimony today. And I turn to my colleague, Congresswoman Musgrave, for her opening comments.

**OPENING STATEMENT OF HON. MARILYN N. MUSGRAVE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF COL-
ORADO**

Mrs. MUSGRAVE. Well, thank you, Mr. Chairman. I especially thank you for your willingness to bring this subcommittee hearing to the heart of Colorado's Fourth Congressional District. It is here in the heart of the American West, where we can best glimpse how the Endangered Species Act and its implementation plays out for average Americans.

In congressional districts such as Colorado's fourth, districts which are largely rural and agricultural, we can see clearly how this very well-intentioned act has gone awry. We will also see how the act affects our life in largely urbanized corridors, and we will hear about the undue strain that this Statute has put on areas such as Colorado's growing Front Range.

Indeed, the Endangered Species Act was well-intentioned when it was passed 30 years ago. Sadly, it has become the supreme Federal land use tool of the small minority of agenda-driven interest groups, who will use it to stop not just growth but almost anyone

whose daily life and work depend on the land and the water and the proper and sensible stewardship of those resources.

Nobody doubts for a minute the importance of conserving species and looking out for those species that are in decline. However, under the Endangered Species Act, as it is currently written and administered, dealing with species decline and pursuing ultimate recovery have become secondary to confronting untold litigation and enormous regulatory burdens. At the end of the day, it is difficult to determine if anything good has been done for the species this act was meant to protect.

Fortunately for all of us, innovative things are occurring here in Colorado, and today's panel will be able to tell you of positive progress in the endangered species field.

My former colleague, who was speaker of the House when I was serving in the [Colorado] House of the Representatives, Russell George, will outline the proactive approach undertaken by Governor Bill Owens aiming at species recovery and delisting. Russell knows the ESA well, having served as the director of Colorado's Division of Wildlife for 3½ years before being appointed by our Governor to his current position as the executive director of the Colorado Department of Natural Resources this last January.

Jean Stetson, representing the Colorado Cattlemen's Association, will tell us of the ESA and its direct effect on Colorado's livestock industry. Jean is particularly well-suited for this task, having learned ESA policies through her service as a ranching representative on Colorado's Wolfward Group, advising the State Department of Natural Resources on agricultural concerns related to links reintroduction and serving as a leader and expert in the greater sage grouse for Moffat County and the ranching community.

Dr. Alan Foutz is here. He is my constituent from Apron, Colorado, in Washington County. He will give us the particulars of ESA's impact on Colorado's farmers.

Of course, we know that agricultural producers are truly our first and foremost conservationists. And I'm sure Dr. Foutz will remind us of that in many ways.

Jim Sims has been doing incredible heavy lifting in alerting the business community of the work which needs to be done to preclude ESA listing of the greater sage grouse. This is of particular concern throughout the West. And the U.S. Fish and Wildlife Service is reviewing a listing petition for this species, even as we meet here today.

Finally, William Palmer will tell us of the good work of the Rocky Mountain Bird Observatory, especially their practical species conservation efforts in protecting the bird species mountain plover, which the Fish and Wildlife Service decided not to list primarily because of the work of the private and nonprofit sectors and State and local governments pooling their resources to affect conservation measures for this species.

It is a pleasure having this panel of experts here today, Mr. Chairman. And I know the subcommittee will be well-served and well-educated by their comments. Thank you.

Mr. LUCAS. Thank you, Congresswoman.

Let me state again for the record as we officially invite our witnesses to the table: Mr. Russell George, executive director, Colo-

rado Department of Natural Resources, Denver, Colorado; Ms. Jean Stetson, co-chairman, Endangered Species Committee, Colorado Cattlemen, Craig, Colorado; Mr. Alan Foutz, president of the Colorado Farm Bureau, from Centennial, Colorado; Mr. James T. Sims, executive director, Western Business Roundtable, Golden, Colorado; and Mr. William Palmer, Executive Director, Rocky Mountain Bird Observatory, Brighton, Colorado.

With that, Mr. George, please begin.

**STATEMENT OF RUSSELL GEORGE, EXECUTIVE DIRECTOR,
COLORADO DEPARTMENT OF NATURAL RESOURCES, DEN-
VER, CO**

Mr. GEORGE. Thank you, Mr. Chairman, and may I say welcome to Colorado and to Greeley today. Mrs. Musgrave, nice to see you again. Thank you both for coming here and setting up this hearing to draw attention and invite comments and information on this very important Federal act that we all have a great deal to do with.

This invitation we take as an opportunity for you to hear what we have to say about how the act works and how it should work. I suspect before we are done today, you will find all of us have some ideas about what to do about that.

You have my statement already delivered to your staff, and I would ask that be made a part of the record. I am going to take the few minutes I have to address you by trying to summarize as succinctly as I can what is more elaborately set out in that statement. I am hoping that the summary will give rise to questions. And I will be happy to attempt to address those at the appropriate time.

Let me start by stating what we believe is the right approach for any State, and that is the Colorado approach, as articulated by Governor Bill Owens. He asks us, what can we do and should we be doing at the State level to recover directly an endangered species? The key to this is recover, generally lost in the debate.

He does not ask us "How do we use the Endangered Species Act to control land use?" He asks simply and pointedly, "What do we do to recover threatened endangered species?" Everything you will hear from me today will focus on that point.

Today I think there are three flaws in the Endangered Species Act. The first is its record. It has a very poor record of recovering species. I think the statistics are we have recovered 30 or delisted 30 species out of the 1,300 or so that have been listed, 30 out of 1,300, a very poor record.

State participation has not been encouraged over most of the years until recently, a good sign of going the right direction.

Species can be recovered in a more proactive and citizen-friendly manner without listing. The act has a tendency to drive away co-operators, rather than to invite them.

The Fish and Wildlife Service has much authority for enforcing this act, as you know. The ESA administration priority seems to be more aimed at managing what goes on the list, not so much what comes off the list due to recovery.

Part of this, I think what I will call misdirected priority for the Fish and Wildlife Service, is not at their own making but is in response to the huge number of petitions and lawsuits that are filed

against the Fish and Wildlife Service for about anything they undertake. That kind of litigious activity has to drain away their staff efforts and their resources from the more important task of working on recovery, to defending the Statute as they must.

So Colorado's emphasis, then, will be and has been fostering and nurturing public and private partnerships for conservation and recovery of the species. We have found time and again that this approach works better without listing than after the Federal jurisdictional layers lay over the top and has some control over everything we do and every decision we make.

We have some very significant examples with our work in Colorado that I have outlined in detail in the statement that I want to walk through. Some of these are success stories. Some of these remain as challenges. But what we have learned from both the successes and the challenges are some very important on-the-ground, site-specific, species-specific things that we haven't been doing right or that we can do better.

Let me start with the black-tailed prairie dog. The National Wildlife Federation filed a petition claiming that 90,000 acres is all the occupied habitat that could be found for the black-tailed prairie dog. This was brought forth as the best available science at the time, which, as you know, is the standard under the act.

Could that be 5 minutes already?

Mr. LUCAS. Continue.

Mr. GEORGE. With your indulgence, could I just have a few more minutes?

Mr. LUCAS. Continue.

Mr. GEORGE. And when I have gone too far, Mr. Chairman, if you could say?

Mr. LUCAS. Please proceed.

Mr. GEORGE. I don't want to impinge upon the time of the others. The long and short of the black-tailed prairie dog is this. The best available science of 90,000 acres was very poor science indeed. The Colorado Division of Wildlife immediately stepped up, went out on the ground to see what the real facts were.

The first evidence we got in 2000 by land survey was that 217,000 occupied acres was probably more accurate. We were able to follow that up 2 years later with an aerial survey, which told us that 636,000 acres was probably more accurate.

Unfortunately, the National Wildlife Federation continues to challenge the science. The Fish and Wildlife Service did act upon the petition at the 90,000-acre number and found that the listing was warranted but precluded. Hopefully, now that they have this additional science, when they make their decision next month, they can determine delisting is appropriate.

Preble's Meadow jumping mouse is a very important issue for Wyoming and Colorado. It was listed in 1998. The science then consisted solely of a subspecies designation based on comparison of three individual mouse samples.

Since that time, Dr. Ramey from the Denver Museum of Science and History has conducted a very elaborate genetic study and has determined that the Preble's Meadow jumping mouse is really part of a much larger grouping called the Bear Lodge jumping mouse.

So the numbers originally thought to exist that warranted listing are simply not true. It is not a separate subspecies.

The State of Wyoming and a group of Colorado citizens filed for delisting of the mouse at the end of last year based upon this new science. That process is in motion now. Public comments are being taken now, and a decision, I think, is forthcoming, clearly another case of the best available science has oftentimes either been no science or not very good science.

In the meantime, since that listing in 1998, of course, citizens, landowners, businesses, local governments spent hundreds of millions of dollars up and down the Front Range of Colorado to attempt to accommodate this listed species.

Black-footed ferret, last remaining population was found in Wyoming in the late 1970's. Since then, through the cooperation of many groups and people, a captive breeding program has successfully produced 2,200 individual ferrets.

The reintroduction program initiated in 1999, Colorado has three such sites. We think this is a success story in the making. Recovery goal now is when we have 1,500 ferrets producing in the wild by 2010, that species will have been recovered and can be taken off the list.

A fairly unique Colorado story is the Canada lynx. The Colorado Division of Wildlife stepped up and said, "We will undertake to reintroduce and recover the Canada Lynx in Colorado." Colorado at its own expense went to Canada and engaged contract trappers to bring individuals into Colorado. In 1999 and 2000, we brought in 55. In the years 2003 and 2004, we brought in another 71 individuals.

Happily, in 2003, we discovered reproduction. We had 16 kittens born in the wild in southern Colorado. Again this year, we found more reproduction, another 30 kittens. We can't tell you how exciting this is when you can see this kind of success.

The biologists tell us that we will require recruitment, that term meaning that we need reproduction from those that had been born in Colorado, before we can say we have a viable population. Within a couple of years, if we have the same success we are seeing now, we should be well on our way towards saying we have recovered the lynx species in Colorado.

One of the problems we have with the way the system works is the Endangered Species Act is not precise about setting forth the requirement of recovery goals. We still don't know what will be adequate recovery goals so that we can say, "This species is now recovered in Colorado and can be delisted." So we are working on that, and we will probably appeal to you to help us accomplish that goal.

The mountain plover I think others will talk more about. That is a real success story. Again, this was one where we were saying, "We can do this on the ground with all our partners. Don't list it because we think listing will actually make this harder to do." And we moved out ahead and were able to accomplish enough progress that the Fish and Wildlife Service correctly agreed with us that the mountain plover recovery is working without the necessity of a listing.

The native Colorado river fish program is one of those that shows again some of the expense and delay and perhaps waste that can occur when you don't have recovery goals. For 15 years, we've waited and worked to recover the four fish on the Colorado River, not knowing when the end would come.

In recent years, through a good deal of pressure by Governor Owens and others, we now have recovery goals from the Fish and Wildlife Service. So we can see the end is in sight. One of the things that Colorado did to show we meant business was we built, at our own expense, a native aquatic fish hatchery in Alamosa, in the southern part of the State. We have been rearing endangered species for the opportunity to return to the wild to augment and recover.

I appreciate the extra time. Let me wind up finally saying that Colorado would like to see these changes, improvements in the Endangered Species Act.

As I have already alluded to, we think that the act should formulate and publish recovery goals at the time of the listing, not some time later. If there is enough science to say that a species requires listing, then that science also ought to be sufficient to say, "And if this is what is wrong with the species, here's how we will know when we have recovered the species," hand in hand at the front end. Then we all know how to respond and set our own targets, set our own budgets, and do what we can to help recover the species.

The second thing we would ask you to work with us on is to amend the standard of best available scientific and commercial information because, as we know, oftentimes the best available is not much or not good enough. So that it would be amended to require the science be peer-reviewed to show that it really is adequate science under the very rigid standards of scientific method and other applicable formulas.

Thank you, Mr. Chairman and Mrs. Musgrave. I will be available questions.

[The prepared statement of Mr. George appears at the conclusion of the hearing.]

Mr. LUCAS. Thank you, Mr. George.

Mrs. Stetson.

STATEMENT OF JEAN STETSON, CO-CHAIRMAN, ENDANGERED SPECIES COMMITTEE, COLORADO CATTLEMEN, CRAIG, CO

Ms. STETSON. Good afternoon, chairman. I appreciate the opportunity to appear here today to provide some of my experience with the Endangered Species Act and its effect on agricultural producers.

The Stetson family has been cattle ranching in northwest Colorado for three generations. Our ranching operations have experienced firsthand the burdens and the challenges of the Endangered Species Act.

In northwest Colorado, producers are not just dealing with the impacts of a single species but, rather, several species of concern. We have the greater sage grouse, the black-footed ferret, leopard frogs, endangered fish, now the white-tailed prairie dog, and the wolf is moving in from Wyoming.

Each species brings with them their own set of rules, regulations, costs, and time. Most agricultural producers I know are very limited on time and money. However, the agricultural producer must take time to be involved in the processes that come with endangered species issues because if you are not involved, the species management requirements you are handed are often impossible and unrealistic. When we become involved, we can at least try to help drive the process and make the expectations more manageable.

My experience with the Endangered Species Act began in July 1998. Our ranch became very concerned about the impacts of the greater sage grouse. I became the spokesperson for our ranch regarding the sage grouse issues because, ironically, my husband was already too busy representing our ranch in the plan that was being written for the recovery of the endangered fish in the Yampa River.

Our ranching operations, along with many other operations in the area, rely on the Yampa for irrigation and stock water. There was concern that requirements that were being set forth in this plan would affect the ability to use our water that we use for irrigation. He could not be in two places at once, so we split responsibilities.

Our concern with the grouse began when we received information in a BLM permit that was requiring the herding of our cattle away from grouse nesting areas. The BLM also wanted a vegetative condition that was desirable for nesting sage grouse, and they wanted us to maintain residual grass cover of at least 6 inches high in the spring. They also wanted us to start a rotation grazing pattern in this pasture so there was not the opportunity to go to another pasture.

These requirements alarmed us. We could not afford a herder. It's not part of the tradition to herd cattle like you do sheep, and we questioned whether the vegetative requirements were reasonable for the types of grasses that are on our range. We decided it was important to get involved in the grouse planning process at the local level to make sure that the ranching interests were truly represented.

And I just want to echo the approach that was made there, as he suggested, was not one of calling you up or saying we need to work this out. It was a directive that was given to us, and I think that an approach to get agricultural producers involved in this process would be much better if you could approach it from a team perspective.

I have spent too many hours to count in the 6 years of meetings for the sage grouse. I have been trying to stress the importance of data, science, and a common sense approach. As a result of the sage grouse concerns, our ranch changed grazing rotations, and we've hired a range consultant to help us monitor our range and gather data to make sure that we had accurate information regarding the vegetation. We did not want to risk changes to our permits that were not based on data and science.

If this was all not enough, there is yet another endangered species that has very recently been alarming us: the wolf. Wolves are moving in out of the Yellowstone area, and they are coming to

northwest Colorado, and that will affect every rancher in that part of the country that does business.

What will the costs be? Can we afford the extra time and management that will come with yet another endangered species? Wolf proponents suggest that it is up to the rancher to adopt new husbandry techniques that help minimize the potential of wolf depredation. The burden is again on the producer. How can we protect our livestock? How can we possibly have the time and the manpower to patrol thousands and thousands of acres to protect our livestock?

So many of the operations in northwest Colorado require large amounts of land because of the arid climate and the range conditions. We must use our range resources very carefully. For instance, our grazing rotation over the year comes to a 64,000-acre rotation, and ours is one of the smaller operations up there.

The wolf issues will take more of our already precious time, money, and resources. I am currently representing the livestock industry on the Colorado Wolf Management Working Group because I am fearful that if we do not truly manage the wolf, the wolf will have a negative impact on the livestock producers.

These are just a few of the species that my ranch operation is having to deal with. Other operations, as he mentioned, are the lynx. I know producers that have had sacrifices to depredation as well as problems with forest permit renewals, things like that because of the lynx.

The mountain plover, the black-tailed prairie dog, the Preble's Meadow jumping mouse, and the burrowing owl.

The Endangered Species Act is now 30 years old. The act has done very little of what it was intended to do. As Mr. George mentioned, 1,300 species have been placed on the list, and less than 30 have been recovered. The act has resulted in regulatory and financial burdens that have been placed on the people who are out on the land trying to make a living and on the people who care for the land every day.

It is time to change the focus of the Endangered Species Act. We need to stop using it as a tool for land use control. We need to reduce the regulatory burdens and truly promote species recovery; encourage win-win projects, projects that will benefit the species, the land, and the people out on the land trying to make a living.

An example of that is the project that we did on our ranch to increase water conservation. We went from flood irrigation to a pivot. We increased conservation. We increased production of our hay crop. We left water in the river for the endangered fish. And we also created better habitat for the grouse that use our hay fields to raise their chicks.

Treat the people who work and care for the land as partners. These partnerships need to encourage the sustainability of agricultural operations. Farming and ranching operations are often the key components in species recovery programs. Farms and ranches maintain open space, and that open space is important for diversity of wildlife habitat. Condominiums will not help species recovery. It is time to promote cooperation and true conservation.

Thank you for your time and consideration.

[The prepared statement of Ms. Stetson appears at the conclusion of the hearing.]

Mr. LUCAS. Thank you, Ms. Stetson. And the Chair would note, customarily we operate under the 5-minute rule for comments and questions, but on topics of this nature, where testimony is this straightforward and well-composed and where we have one panel, the Chair is more than willing to indulge this kind of bright witnesses.

Mr. Foutz, please.

STATEMENT OF ALAN FOUTZ, PRESIDENT, COLORADO FARM BUREAU, CENTENNIAL, CO

Mr. FOUTZ. Good afternoon, Mr. Chairman. My name is Alan Foutz. I want to welcome you here today. I want to particularly welcome Congresswoman Musgrave here today. She and I don't get to see each other very often, but it is a pleasure to see you here. I did see you last week, I guess, but we don't get to do that very often.

I am the president of Colorado Farm Bureau. It is our State's largest agricultural organization. I currently farm about 1,200 acres in Washington County, Colorado of wheat, sunflowers, and millet.

I really do appreciate the opportunity to spend some time with you today regarding the Endangered Species Act and the effects that it has on agriculture. You have my written testimony. I will be very brief on my oral testimony, but certainly I would invite you to go to look at our written testimony.

In our opinion, in Colorado, the Endangered Species Act is one of the pieces of legislation that needs reform in a much-urgent fashion. That reform will have a huge and critical impact on how our farmers and ranchers do business in the future.

The U.S. Fish and Wildlife Service and National Marine Fisheries Service simply in the past have not used sound scientific bases for imposing regulations and restrictions on our operations.

In addition, farmers and ranchers many times simply do not have an opportunity to participate in discussions where ESA decisions are being made. The agencies determine how private lands containing these species and the habitat of these species are going to be managed without much input, if at all, from the landowner.

To alleviate these problems, we feel strongly that independent scientific peer review be required for ESA decisions. We also recommend that affected landowners be considered as primary stakeholders in this process and be given ample opportunity to provide comments, and then have those comments considered in all of the recovery plans and listing plans as they are made.

The current system simply is not working. As has been stated here, there is something on the order of over 1,300 species that have been listed. Somewhere between 15 and 30 have been removed from that list because of recovery. It is simply not working. We strongly believe that we need to have a new approach if we are going to make the Endangered Species Act work both for people and for species.

Farmers and ranchers are not opposed to saving endangered species. We are opposed, however, to the arbitrary land use regula-

tions that are imposed by species habitat protection and the harsh and often unreasonable penalties that accompany any activity that is contrary to some administrative fiat.

For these reasons, Colorado Farm Bureau and the American Farm Bureau believe that endangered species protection can be more effectively achieved by providing incentives to private landowners rather than imposing land use restrictions and penalties. Desired behavior is always more apt to be achieved by providing a carrot, rather than a stick. As it now currently stands, there is no carrot in the Endangered Species Act.

As agricultural producers, we want to be proactive in finding common sense, practical solutions to saving threatened or endangered species. We believe that voluntary, cooperative conservation programs are one of the best options available right now to help conserve species and conserve habitat. We are pleased that this committee and the administration has interest in finding out and learning more about some of the kinds of programs.

In order to ensure these cooperative programs that are developed are grounded through legislation and not enacted through regulation, we believe all ESA cooperative-based programs should: No. 1, be voluntary with the landowner.

Number 2, we feel that they should focus on providing active species management and innovative improvement measures, as opposed to passive management through restrictions and regulations on land use; No. 3 that we not focus on sales of lands or purchases of easements in order to provide for that habitat; No. 4, that we incorporate the removal of existing regulatory disincentives, such as land use restrictions. Safe harbor and no-surprise agreements should be explored whenever appropriate in any of these agreements. Number 5, we need to recognize that plans should be locally developed.

Number 6, we need to be flexible with the landowner. Landowners can develop creative solutions for ESA issues, and they need to be recognized and used. And I've said, not tongue in cheek, but I've said many times for farmers and ranchers do produce abundant food. We can produce whatever the consumer wants. If we're allowed, we can produce endangered species, just help us pay for it and help us make a living doing it, and we'll produce all that this nation wants.

We believe that if we are given an opportunity and the proper support, farmers and ranchers can do a better job of enhancing listed species than the Government does. As experienced practical land managers who may have observed the species for a number of years, we bring a working knowledge that Government scientists simply do not have. I'm going to expound on that in just a few minutes.

More importantly, we can offer day-to-day management of the species that, again, the Government simply cannot do. Such programs will result in better management and greater chance for recovery of the species than is provided under the current law.

We also believe that with the proper incentives and with the respect for private property rights of the participants and their neighbors, farmers and ranchers will be willing to participate in these kinds of programs.

In closing, just let me give you a story, one that happened in this State. And I know Congresswoman Musgrave was involved in this with several others sitting at these tables today. And that was the mountain plover issue.

Several years ago, this came to my attention. I wasn't yet president of the Colorado Farm Bureau, but it came to our knowledge that a petition had been sent to the U.S. Fish and Wildlife Service that asked that the mountain plover be listed.

The U.S. Fish and Wildlife Service contacted Colorado Farm Bureau, contacted me. We had a meeting in Akron, Colorado in the basement of the Masonic Temple. The Fish and Wildlife Service was there. There were many local landowners there. We sat down in that meeting room.

The first question that was asked of the landowners, growers, and ranchers in that areas was, "This is what the language of the listing is. Can you live with this? Number 1, if you own grass, you will have to burn it by March 15 of every year. Number 2, can those of you who are farming not do anything in your fields from March 15 through July 15?" That was the original listing language.

Well, I'm sure you can well-imagine the furor that created at that particular time. Colorado Farm Bureau, along with Rocky Mountain Bird Observatory, along with the Division of Wildlife and some other agencies began to come together and see what we couldn't do.

Those of us who farmed and ranched in that eastern area of Colorado had been seeing these birds. We knew where they were at. But current science said that they were in grasslands in northern Colorado, in the Pawnee grasslands. Guess what. They weren't finding them there.

It is interesting that those who want to list all of these things assume that everything in development in nature stopped 100 years ago. These birds were smart. They knew where they were protected. And they ended up on our farmlands, and they were being protected.

We asked that a 3-year study be done. We worked very closely through the Fish and Wildlife Service. They agreed to allow us to do the study, a 3-year study. Colorado Farm Bureau put in several thousand dollars to help facilitate that study. The Rocky Mountain Bird Observatory, Division of Wildlife participated. Colorado State University participated. And we found that, in fact, there were a lot of mountain plover in eastern Colorado on cultivated lands.

When that 3-year study was over with, the Fish and Wildlife Service decided that if there was some way that we could continue to work and maintain that population, a listing would not necessarily have to take place. And we now have landowners working with Rocky Mountain Bird Observatory and the Division of Wildlife, making sure that we provide that habitat for the particular species and preclude the listing of that bird.

That is not done without a cost because that means that in the spring of the year, I need to have somebody go out into my fields and flag nests, do all of these kinds of things. And then I have to work around those nests and do all of my operations around nesting sites.

That doesn't come cheap. When you are out in those fields, it is hard to see these little birds. So all of these issues are not without cost, but we are able to do it.

This was a tremendous program that we think has some real viability for other listings in the State. Secretary of Interior Gale Norton was very closely involved with that. She has decided that this was the kind of a program that she would like to try to use on other species. But that's how together, cooperatively we can save these things.

It was an issue that was borne out of desperation on my part because I saw my whole operation disappear in one year. And yet out of that, I think all of us have come away from this process not only saving the species, but saving our agricultural system at the same time.

It can be done. It can be done in a much better way than what currently is stated in the Endangered Species Act. We would simply ask that you consider these things as you go back to your domain and work on making changes to that with forward thinking.

[The prepared statement of Mr. Foutz appears at the conclusion of the hearing.]

Mr. LUCAS. Thank you, Mr. Foutz.

Mr. Sims, whenever you are ready.

**STATEMENT OF JAMES T. SIMS, EXECUTIVE DIRECTOR,
WESTERN BUSINESS ROUNDTABLE, GOLDEN, CO**

Mr. SIMS. Good afternoon, Chairman Lucas, Congresswoman Musgrave, and staff here at the subcommittee. My name is Jim Sims. Thank you again for showing the national leadership that you both are showing in bringing this hearing to Colorado and in other hearings that I know the subcommittee will be doing on this issue.

I represent a very, very broad range of interests through two organizations: the Western Business Roundtable and the Partnership for the West. In our organizations, we have members in agriculture, coal, hard rock mining, timber, oil and gas, financial services, construction, legal services, chemicals, manufacturing, engineering services, private property rights, small business owners, education officials, pro-growth coalitions, and many others. We are a very, very broad set of interests. I greatly appreciate the opportunity to testify here today.

Mr. Chairman, I'm here today to say that the Endangered Species Act is dead, but long live the Endangered Species Act. What I mean by that is that the Endangered Species Act is dead is that it is broken, outdated, anachronistic law that is operating barely on life support. It discourages innovative environmental conservation. It confiscates, effectively, private property. It denies folks their livelihoods and their businesses. It costs our economy many billions of dollars each year with little positive benefit. It prevents well-meaning folks at Fish and Wildlife from doing the real work of trying to help species flourish.

And, most importantly, I think it fails miserably at one of the central goals that Congress intended when it wrote the law 30 years ago, and that it is recovering species to health.

Others have and I know in your subcommittee's hearings you will hear many more specific testimonies about the failings of the law, but I will simply point to one statistic. Over the 30 years of this law's existence—and this is its 30th anniversary—the ESA has clocked greater than a 99.9 percent failure rate in recovering threatened species, and I would ask any of the members here of the subcommittee or, frankly, anyone in the audience if anyone can point to any single Federal law that has registered such a breathtakingly consistent record of failure over that period of time. I don't think there is one.

ESA is kind of like a doctor who tells me that my 3-year-old has a potentially life-threatening illness. And his treatment regimen is this. He wants to put her in the hospital. He wants to give her no active treatment, no medications, no therapy, no even visits to her bedside. And he says, "Listen, we are going to let nature take its course, and hopefully things will work out." Well, does that sound like a rational approach? Would anyone in this room follow that advice if a doctor said, "This is what we want to do with your child?" I don't think so, but that is exactly what ESA does through its critical habitat designation.

Now, the act does do two things very, very well. Number 1, it effectively transfers control of large swaths of land throughout the West and, really, throughout the country from private landowners and from States and counties who control those lands to the control of unelected Federal bureaucrats and, in some cases, environmental extremist groups.

Number 2, frankly, it provides a very, very good living for a relatively small group of trial attorneys and professional environmental groups who use a series of never-ending lawsuits to warp this well-intentioned law for their own purposes.

Now I also said, Mr. Chairman, at the outset of my remarks, that long live the Endangered Species Act. What I mean by that, and how do I square that with such a damning indictment of this law? What I mean is the American people overwhelmingly support having a law on the books that protects endangered species. I don't think this act is going to be repealed. I don't think it is going to be gutted. I don't think it will be eviscerated, not certainly in our lifetimes.

But at the nexus of these two statements I think is the challenge that faces you in Congress and other national leaders. And that is how to fix this act. The American people want an act. We want one that works. How do we make it work? How do we modernize it after 30 years? How do we bring it up to date for the 21st century so that it really works for species and works for the people who live with those species? I have several suggestions for reform.

Number 1, why don't we require sound, peer-reviewed science as we look through our listing decisions, rather than simply the best available science? Look, we have laws like the Safe Drinking Water Act, the Marine Mammal Protection Act, a variety of laws that affect the Food and Drug Administration, the Department of Education, the Department of Labor, and the Department of Commerce, just to name a few. All of those require the science that goes into their decision-making process be peer-reviewed. Why doesn't ESA?

Of course, if it did, we probably wouldn't see listing mistakes, such as happened in the case of what I call the mouse formerly known as Preble's, and you heard about that today.

What about this? What about updating the act to incentivize stewardship on private lands, rather than relying on the punitive approach of the act?

In the case of the greater sage grouse, which Congresswoman Musgrave made reference to, which is currently under listing review, I think we would see a lot more folks and private landowners coming to the table interested in preserving that species on their land, rather than trying to fight the listing.

As it stands now, how do you think many landowners would react when they find that they have some greater sage grouse on their lands and they understand the listing is in the works? Do you think that their instinct is to pick up the phone and call Fish and Wildlife and say, "Hey, we have sage grouse. What do we do?"

Instead, what most people do—and they won't say this for the record—is they shoot, shovel, and shut up. That is a well-known phrase, but it happens. And that is what people quietly are telling us in the sage grouse campaign. They hope they don't find these birds because if they do, they may not be there the next day. That obviously doesn't work in the current act.

What if we added provisions to the act that stretched out the time frame between the time of the new listing and the time that we start the critical habitat designation that is listed in the Cardosa bill that the House Resources Committee passed last week?

What I think that would do would be to give more time to stakeholders to come to the table after the species is listed, the sound science shows it is required, come to the table, environmental groups, landowners, State and local officials, industry, et cetera, and work out conservation plans so that when we get to the critical habitat process, we may need to avoid that. We all know that process does not work very well.

I think we should also look to give States to have the chance to play more active roles in the development of those plans. We should look I think at the option of requiring species recovery goals to be set prior to a species being listed.

Finally, I think, most importantly, we should add provisions to the act that place the focus more on species recovery than on the bureaucratic stranglehold of the critical habitat process. I think that would replace a failed strategy critical habitat with one that works very, very well. That is locally-driven conservation plans.

If you look at, as has been referred to, just how bad the current act is with species recovery, I have summarized some of the statistics that come right to Fish and Wildlife. They're in the handout over on the table for people to look at, but I will summarize in two sentences what they say.

That is, the ESA has not been responsible on its own for the recovery of a single species. We removed about 30 species from the list over 30 years. About 14 or 15 were removed because of data errors or they went extinct. Sixteen have been recovered. And some folks have looked at those 16 and said, "Did the ESA on its own help recover any of these species?" And the answer was no.

So, in effect, if you look at the success or failure of the act with regard to species recovery, it has a zero percent rate of success over 30 years.

That is astonishing. In summary, the act can be fixed, we believe. It can be modernized. It can be brought up to date with technologies and sciences of the 21st century. But achieving success on this will require bipartisan support, bipartisan consensus.

We were pleased to see, just last week, the House Resources Committee passed out a bill sponsored by a Democrat and one sponsored by a Republican, and both bills passed with pretty strong bipartisan support. We certainly hope that continues. We will, of course, work with you and your colleagues in this historic reform effort.

Thank you very much.

[The prepared statement of Mr. Sims appears at the conclusion of the hearing.]

Mr. LUCAS. Thank you, Mr. Sims.

Mr. Palmer.

**STATEMENT OF WILLIAM PALMER, EXECUTIVE DIRECTOR,
ROCKY MOUNTAIN BIRD OBSERVATORY, BRIGHTON, CO**

Mr. PALMER. Chairman Lucas, Congresswoman Musgrave, thank you. I've submitted a formal testimony. With your permission, I would like to summarize that.

I am William Palmer, and I'm the executive director of the Rocky Mountain Bird Observatory. We are a nonprofit organization. Our mission is the conservation of birds and their habitats throughout the Rocky Mountains and Great Plains. We achieve our efforts through monitoring or bird counting, determining bird population trends, research, outreach, and education. It is primarily the outreach component that we talked about today.

The part of our outreach program works with producers is called the Prairie Partners Program, and it has been in existence for 5 years. In this program, we work with landowners and resource professionals to conserve all types of prairie birds. We literally have knocked on doors. We have met people in restaurants. We have conducted bird inventories. We provide technical assistance. We talk to people wherever we can talk to them.

But by far, the most effective thing that we do is to conduct workshops to bring together landowners and State and Federal professionals to discuss wildlife economic diversification and partnership opportunities.

Several people have mentioned the Rocky Mountain Bird Observatory, and I appreciate that very much. But one of the things that I want to point out to you is the interest that was in this kind of work that we do. Since 2002, for 2 years, we have conducted 26 workshops in four States: Montana, Colorado, New Mexico, and Nebraska.

Some of those workshops have been in urban areas, where people from towns have come out, meet land owners, and really understand some of the problems and complications and challenges that are facing the land owners. In those 2 years, almost 1,000 people—and we'll hit 1,000 people this summer, I'm sure—have attended these workshops.

We also produce and distribute outreach tools. We have prepared a brochure called *Sharing Your Land with Short Grass Prairie Birds* that tells landowners about some of the birds and some of the specifics of those birds. We've distributed 10,000 copies of that.

We produced a small pocket guide to prairie birds. It's a small thing farmers can stick in their pocket, they can put in their tool box, their tractor, they can put in their pickup. In 2 years, we have distributed 28,000 of those. People love this material. They want to know what they have.

We have also developed and distributed hundreds of what we call stock tank ladders. These are escape mechanisms for a bird that gets trapped in a stock tank. He will be able to climb out and get away.

The number of people that we have talked to since this program has been innovated is some 700 people. We keep contact with some 700 people through our database. And that represents more than a million acres. We think that is pretty impressive.

Several people have talked about mountain plover. I would like to add to that a little bit. We consider it to be an extremely successful program that works on behalf of landowners, professionals, and groups like the Rocky Mountain Bird Observatory.

We have produced a video to help farmers and landowners identify mountain plovers to determine their preferred habitats, to learn about conservation opportunities. We've distributed 270 copies of this video. In addition to that, numerous organizations have shown it at meetings, such as the Farm Bureau. They are showing it at some of their meetings.

We know a lot about mountain plovers and their preferences. And we know that they prefer cultivated lands, as Mr. Foutz said, over the Pawnee grasslands. Our work has shown by these numbers a tremendous interest in the willingness of landowners to work with us, but they need some help. They need to know what is out there and how to do it.

One of the things that we have done is created a toll-free number. And if a landowner thinks that they have a mountain plover on their property, during nesting season, they will call us, and we'll send out a technician to go out and confirm that it is a plover. If it is a nesting plover, we will put a flag up to show the landowner where the nest is. That will prevent them from running over the nests with farm equipment.

We have taken about 20 landowners. This is a relatively new program. We have put about 25,000 acres into this service. Not only are we doing this in Colorado, but I would like you to know that we are doing it in Nebraska and other places and hope to expand to the Great Plains.

We are committed to the voluntary conservation of mountain plover on private lands. The Division of Wildlife, Colorado Division of Wildlife, has funded our outreach efforts through 2008, so we're very happy about that.

We are going to continue to work with private landowners to conserve prairie bird species. We believe that once regulatory mandates are a part of the process, private landowner cooperation declines. Only with full private landowner cooperation can birds such as the mountain plover be conserved.

Non-public conservation efforts have become a model effort proactively and voluntarily with a group of diverse stakeholders and species conservation. There have been a lot of people involved in this mountain plover success story, and we are very pleased to have been a small part of it. But the real contribution was made by the landowners who are going to preserve these birds.

Thank you.

[The prepared statement of Mr. Palmer follows appears at the conclusion of the hearing.]

Mr. LUCAS. Thank you.

Mr. Palmer, it appears that Rocky Mountain Bird Observatory is a model of how things should be done to repopulate. In your observation and your experience, is it possible, perhaps, for other organizations to work in the same general way the group works, or is it just a different matter? Is it simpler to save birds than perhaps fish or flowers? Your opinion?

Mr. PALMER. Mr. Chairman, thank you.

I thought about that question quite a bit. And I think that the model the Rocky Mountain Bird Observatory has put forth is a model that could be applied anywhere with any species.

Mr. LUCAS. Based on your experiences, you believe that there is a willingness out there among producers to cooperate that have that kind of information and the kind of assistance that you're providing, for not just birds but perhaps everything else, too?

Mr. PALMER. With everything, yes, sir. I think that is exactly true. Producers, farmers, landowners want to keep in business. And they're willing to. As Mr. Foutz said, they can produce endangered species, but they need knowledge. They need information, and organizations such as ours can provide it.

Again, I firmly believe that this is the success that we have had. If you look at the numbers of people who have participated with this in 2 years, I think it is the wave of the future. It is a win-win situation for everybody.

Mr. LUCAS. Turning to you, Mrs. Stetson, along that line, between the time that the ESA first became relevant in your ranch until now, have you been able to find or were you initially able to find initial advice you needed, the sound advice to be able to move forward or, if not then, have you been able to accomplish that now?

Ms. STETSON. Yes. We were able to find the advice. It wasn't as readily available in the format that he suggested. We had to actively seek this information.

I was listening to what he was saying. I think that there is a willingness on the part of the producers to be proactive in this manner. However, it has to be done in a non-threatening manner. Unfortunately, there are always—forgive me—agendas, no matter what branch of government you are in, if it's the BLM, the Forest Service, no matter where it is.

The willingness of a producer to come forward has to be done in a manner so that if the agenda is one person is going to say, "Ha. She has grouse up there. I'm going to get her cows off there," then I'm afraid to do it. If it's done in such a way where they're going to come to me and say, "OK. We're glad that you came to us. Let's work through this and come up with a win-win solution," of course, we're very willing to do that.

But the problem I see is that you never quite know what you are dealing with until sometimes it is too late. And you just don't know the type of people that you are going to be going to and how they are going to react to the information that you are going to give them. And I don't know how you will get over that hurdle, but that is very real concern.

Mr. LUCAS. You mentioned requirements proposed on your rangeland. What is your average rainfall?

Ms. STETSON. I don't know the answer to that question. As far as the residual height that we were required to leave, it wasn't reasonable for—

Mr. LUCAS. The reason I asked that is I live 500 miles south and east of you. We get about 24 inches of rain a year. That 6-inch requirement would be a challenge.

Ms. STETSON. Yes.

Mr. LUCAS. I suspect you probably get less than that annual rainfall.

Ms. STETSON. And I did find out in digging through the requirements that were set forth by specialists such as Connelly and Brown on the sage grouse there was a section in the book that said that this was just a suggestion.

And if you dig deeper, you would find that they recommend that all areas have their own range people evaluate the grass and find out what was acceptable and reasonable for that type of grass in that area before setting any standards.

As a group, in the sage grouse group, we have moved forward and are coming down to do research and some things and trying to find out what is reasonable and acceptable for sage grouse habitat in Moffat County because we didn't feel like the cookie cutter approach was working, so we were trying to find out the correct data.

Mr. LUCAS. From a range management perspective, literally every soil type, every adjustment in range, the side of the slope you're on makes so much difference.

Ms. STETSON. That's right.

Mr. LUCAS. Very true.

Mr. Foutz, your comments about the carrot and stick are so very much to the point. As Mr. Sims pointed out, the original act passed 30 years ago. My goodness, Richard Nixon was the President and signed it into law. Look how long he has been gone.

Is it fair to say that if we were able to make the kind of adjustments that numerous of you have discussed in this manner. We'll focus on sound science, the ability to verify the science that the decisions were based on, if we could come up with a way to make this more of a carrot, as opposed to a stick, that we might see a greater level of participation by your membership, a desire to, as you said, produce more of those endangered species, so to speak?

Mr. FOUTZ. Well, I can certainly only speak for my members and my organization. But I do feel, and I do find that as I talk with that membership, that they are all concerned about the species, just the same as everybody else is. They like getting up in the morning and walking out in the yard and seeing the deer or bird or whatever it might be there just as much as anyone else.

And so to answer your question, yes. There is an interest on our growers and our members to have those species around if it is at all possible. There may be some where it is simply not possible, economically possible to do that either. We have to have the problems with that, just as on the other side.

I think from the standpoint of our members, yes. They are as interested in preserving as many species as can be economically and viably be preserved on a given piece of land. I certainly am.

One of the greatest things at noon is to shut the tractor off, which we don't get to do anymore. At noon, sit down behind a tractor wheel, and watch the birds and listen and see what is going on and see what is happening. That's why I live out there.

Mr. LUCAS. Mr. George, what kind of effect does it have on the State of Colorado's budget, these efforts that obviously you and your department are trying to go through to be more effective and proactive in working these issues? What is the cost to the State? Which, obviously you're willing to rise to the occasion to meet, but—

Mr. GEORGE. If we're going to do anything, it costs money. That is given. The problem with the act, one of the significant problems—and this is going to apply to almost any Federal statute that causes a change, behavior change, contact, or activity—it costs somebody something. The Endangered Species Act has not drawn adequate funds with it, as we all know.

In the case of the four endangered fish in the Colorado River, the benefit there flows from the power revenues, the Federal power revenues, coming from Glen Canyon Dam, and that's been hundreds of millions of dollars.

What would have happened in the Colorado River had that source of revenue not been available is that there would not have been other funds available, and we would have essentially shut off private diversion of water from the Colorado River. Fortunately, that has not occurred. Everything has worked to avoid that.

Other species where we haven't had that source of revenue, then the State has had to find it. And we haven't had it. In the case of statewide species conservation, Colorado legislature less than 10 years ago set up a species conservation fund, funded \$5 million of general fund, as I recall, and then \$5 million severance tax dollars. These are the only funds available through the Colorado legislature. That money is gone. The Division of Wildlife has tried to parcel it out to do the numbers of things we have done.

Where we are now with that fund gone—and, of course, Colorado's general fund crisis is similar of any other State's because of the downturn in revenue stream, tax revenues, States everywhere in the last few years—the one source Colorado has left is the lottery funds.

We have a lottery program in Colorado. Half of that money is made available through Great Outdoors Colorado. A fourth of that comes to the Division of Wildlife. That is the seed money we then use to reach out wherever we can to find matching money.

There has been some growing success with the Department of the Interior's landowner incentive program. We have been able to put some significant money on the ground in Colorado for acquisition of easements and otherwise to underwrite the activity that

needs to be done. We see the stormcloud looming, that we have so much more to do. And I don't know where the money is going to come from to do it.

So what happens under the circumstance, as we know, is that when conduct must change because of Federal law, if the Federal Government cannot or does not fund the cost of changing that conduct, someone else is going to pay, either pay in not doing what had been done before, which probably earned a living for somebody, that earning a living is now gone, there is an enormous price to pay there that spins all through our local communities, as we know.

So we don't have an answer to all of that. And we have kind of stayed away from that whole discussion today, but maybe that is for another day. We have focused more on, because we want to do the job, here is how we can change the law to help it. All of that we are very serious about.

But it is only a portion of the problem. The States have stepped up to the plate where they could. Businesses on the Front Range, the 100 or more million dollars that have been invested in changing activity on the ground because of the Preble's Meadow jumping mouse have been funded by local governments out of their own revenues and by businesses. It's a cost of doing business. And that's the way the cost evolves.

Of course, we will do what we have to do. The American ingenuity is always at play, and we will do it. But is that fair? Is that the right way? And will we be as successful if we continue to sort of pay for this by default?

Mr. LUCAS. Mr. Sims, you obviously are well-informed about the efforts to try modernize the Endangered Species Act, and the efforts you alluded to bipartisan in nature. We have made real progress.

I have been a member of the body for 10½ years now. The very first time there was an endeavor to try and accomplish some of these things, those of us who were supportive were, in the mid-nineties, basically were laughed out of the chamber to the point now where a couple of good bills have cleared committee. And that's not just a committee dominated by one perspective. It is a committee that you clearly have to have a good bill to win over all side of these issues.

I am just pleased that you are so well-informed and hope you would agree with me that we have some good legislative efforts underway to benefit everyone and all of the efforts of ESA.

Mr. SIMS. Mr. Chairman, I would just make one observation that I think that there has—and I hope you agree with this and Congresswoman Musgrave I think would, too—I think there has been a political sea change in the Congress on this issue; whereas, even a couple of years ago, a lot of observers would have guessed that an ESA reform bill, even bipartisan, wouldn't go anywhere. I think it has changed.

I think part of that is that members and interest groups and others that have been pushing this see that the path to success is not appeal of the act, is not wholesale change. It's improving the act. It's modernizing the act.

I think that the American people when they are presented with the case or the question "Should the Congress improve and modernize a law that doesn't seem to work and has been around for 30 years and never been tinkered with? Should that happen?" I think they will overwhelmingly respond positively to that, and I think members of Congress will as well. That's my hope.

Mr. LUCAS. Thank you.

Mr. SIMS. That is my hope.

Mr. LUCAS. The Chair turns to the gentlelady for her questions.

Mrs. MUSGRAVE. Thank you, Mr. Chairman.

I just might go right back to Mr. Sims and your comments that you made. They were very bleak in regard to species being recovered. Did you say that you thought that you thought that none of the recovery efforts were responsible to the ESA?

Mr. SIMS. It's amazing, Congresswoman Musgrave, but if you look at the numbers—and these come from Fish and Wildlife—we have about 1,265 species over 30 years that have been listed as threatened or endangered. There are 39 other species that were listed or delisted during that period of time and some, frankly, because they were mistakes.

We have had about 1,304 that have gone on the act as listed endangered species. Sixteen of them by Fish and Wildlife's own statistic will have been recovered. And the other 14 or so went extinct or they were put on by mistake.

The question is, and it was looked at by the National Wilderness Institute. They did a study in 1997, and they asked, "How has the Endangered Species Act and the mechanisms of the ESA we're calling species recovery?"

And while you can say that the act has recovered or helped recover 16 species, if you look at those species and say, "Did the act by itself, the mechanisms of ESA, lead to recovery?" the answer was no in every single case.

Now, the act obviously played a role, I think. I would like to think it played some role in those recovery success stories, but in stories like the peregrine falcon or the bald eagle, which I think will be delisted in the next year or so, what really helped recover those species were things that were done outside of the act.

We banned DDT. That was one of the biggest parts of the success story of the bald eagle. We bred California condors, something ESA doesn't really encourage, but people went in and did that kind of active conservation effort. That is what led to success.

If the ESA could be changed to encourage active conservation measures, it would be changed at the outset to provide carrots to private landowners to do active things, I think it would work a lot better. It just doesn't do that now.

Mrs. MUSGRAVE. Thank you very much.

Mr. Palmer, how would you advise the Fish and Wildlife Service to allocate their resources and administer ESA?

Mr. PALMER. Wow.

Mrs. MUSGRAVE. Big question, I know. I think the remarks you made just show the cooperation and the success that you have had. So just as much detail as you want. How a better job could be done?

Mr. PALMER. Well, thank you.

I think one of the things that has to be done is what several people here have mentioned, and that is good science. We really need to be monitoring these species to determine their long-term trends, population trends, so that we don't come to the edge of a problem.

Some of the work that we do in monitoring bird species throughout the West here, it may take 30 years before you can really figure out, statisticians tell us it may take 30 years before you can really figure out if that trend is increasing or decreasing. A lot of people see the decline in one year, and they become very concerned. So we need long-term science. We need to be working on that right now.

We are doing some of that. Some of that is happening, but I think there needs to be more of that. Put money into keeping species delisted, rather than trying to get them off of the list, I think is key.

First I would tell you that I spent 20 years in government—so what I am going to say I will preface with that—in a regulatory agency. One of the things that I think helps the success of the Rocky Mountain Bird Observatory is that we are not regulatory people. There tends to be a little hesitation when landowners meet regulatory people. I see you smiling, Congresswoman, but it's true. I've been on both sides of that. So I think that working with nonprofits and other groups like ours is a really effective tool.

Third, one of the things that we are able to do is, because we are nonprofit, I think through the entire Rocky Mountains and Great Plains, we are able to cross State boundaries and work with different State agencies. We are able to work with feds. We are able to work with foundations. And all of those people, all of those different groups, come together. And we are able to leverage dollars against dollars and get a greater result than any single agency funding us.

I mentioned the little booklet that we have given away 27,000 of. That is funded by numerous State and Federal agencies, by Boy Scouts, by our memberships. Our foundations believe in what we are doing.

So it is pretty interesting that groups like ours—and I will use this as a model only, but we are able to cross boundaries in putting dollars together to form really broad-based partnerships.

Mrs. MUSGRAVE. Mr. Sims?

Mr. SIMS. Would you mind if I add something regarding numbers because I don't want to be accused of just presenting one side of the case?

Those who feel strongly about the act will paint a different picture with numbers. They will say, "Look, the act in 1,300 species, very very few have gone extinct. Therefore, the success rate of the ESA is very high with regard to preventing species from going extinct. And that's what the numbers say."

I would just add—it begs two questions. And that is, one, at what cost are we preventing these species from going extinct? What is cost of putting them all in the hospital, in the intensive care unit, for years and years and never checking them out? And, two, how can you check them out? How can we get to the point where they become successes, which is delistings?

I want to add that because my friends will say, "Wait a minute. You're not talking about one part of the success of the act." And it is successful in keeping species from going under.

Mrs. MUSGRAVE. Well, if we already make changes and if that sea change that you spoke about is taking place, the public needs to be informed about the success, about the cost. And those are important things.

Dr. Foutz, you talked about incentive programs, landowner incentive programs. The thing that comes up in my mind is confidentiality. Could you address that, please?

Mr. FOUTZ. Congresswoman Musgrave, I would really like to address that question because that is a huge issue. It is a huge issue for our members.

As we found out over the last 20–25 years as these programs, whatever program, Government program, it might be, takes place and begins to form, and all of a sudden, we begin to see a lot of paperwork sitting in somebody's office, we have found out through experience that confidentiality and personal information becomes a real issue.

We are actively involved in four or five lawsuits right now on confidentiality with USDA and some other agencies on personal information that people have access to through the Information Act. That is a real issue.

We feel that if these programs are going to be effective, if they are going to be effective, particularly if they are voluntary programs, and our members sign onto those programs, that there needs to be confidentiality of their personal data and the data that takes place on their farm and ranch.

We're not talking about aggregated data over an area. We're talking about personal information that takes place on my farm or about me personally, and that should be kept confidential.

So that is a real concern. That needs to be addressed. And somewhere as we develop these incentive programs, we need to make sure that the language is there, that there is a level of confidentiality about individual people and about individual farming practices. Some of that is proprietary.

Mrs. MUSGRAVE. Thank you very much. I wonder also—you said that in one point in your testimony that farmers and ranchers would need some financial help. Could you comment on grants made to States and who would oversee those and how it would be handled?

Mr. FOUTZ. Well, there are a lot of different ways that one could look at financial help. Obviously, grants would be one way to do that. I guess if we were looking in terms of grants on some incentive program, I would hope that the granting process would be such that there would be local involvement on the panel that would be reviewing the grants, that landowners would be involved in that process somewhere and would be able to view that grant and see if it was going to be, in their minds, successful. I think a lot of local control needs to take place there.

But there is a bigger issue there, Congresswoman, and I think it is this. I don't know that there necessarily need to be Government grants as long as there is an economic incentive for farmers

and ranchers to save species or to be involved in species restoration.

I make a living farming. Today I make a living growing food for people. I guess I have to be very honest and say if society thinks that growing or saving a particular species is more important than me growing food, then somewhere there needs to be an economic value attached to that. And if there is an economic value attached to that such that I can raise a family and do all of the things that I like to do and want to do, then that is how the program ought to run.

It ought to be a way for society to say if the mountain plover is so important in society, then let's figure out some way that we can allow Alan Foutz to grow the plover and be able to derive an economic benefit from that particular activity, like we do when we are growing food.

And I think that is the answer somehow. I don't know that I can sit here today and give you a specific program on how that might be accomplished, but for me that is the answer. And it is an answer that society has to decide what is important. If food is important, that is one thing, but certainly if growing species is more important than growing food, then let's figure out how we can do that.

Now, that doesn't necessarily mean that the two are incongruous, they can't grow together. And we need to recognize that and be able to work that into the equation also.

But in some cases it does because in some cases, habitat protection may not always be in conjunction with what I am doing on my farming operation. The other side of that is, it very well might be because of my farming operation and the habitat that I have there today is why I have a particular species there.

So there is a wide range in here, but we can set up programs. I mean, we are good at that. And that helps me. There is no question about that. But I think the overall issue is that society needs to determine if in fact, if species restoration or species maintenance is as important as food production. Somehow we need to figure out how to compensate me for that production or that conservation of that species.

Mrs. MUSGRAVE. Thank you.

I guess Mrs. Stetson was really listening very closely to that answer. You probably thought you couldn't take one more endangered species habitat on your operation. Could you comment on what you needed that you did not get from a Government agency when you were facing yet another endangered species issue on your operation? What would have helped you in all of this?

Ms. STETSON. I think what would have helped us was some of the approach. I think so much of what ag producers spend their time doing is defending or feel like they have to defend themselves.

I think that an approach that would have helped would have been to have come to us and maybe start gathering data together, saying, "We have these concerns about our permit. Let's see how we can work your operation to operation to rotate your cattle so that they aren't affecting our safe grouse during nesting time."

And that is actually how we ended up working that solution. And we have to do some rewriting of the permits, coming in and out at

different times, starting different allotments to try to alleviate the situation.

I think a lot of what you need, it's more of an approach and a willingness to try to work with the operator on the ground rather than from an agency taking a top down approach and taking a textbook and saying, "This is what they say the grouse needs. This is what this operator is going to do. And this is how we are going to fix the problem" without ever consulting the operator.

Mrs. MUSGRAVE. And the height of the grass at a certain time of year or——

Ms. STETSON. Exactly and when you're counting, and if this is the only allotment that you have to work in, then we have got to come up with a different solution. If you have got several allotments to choose from and you can start over at A and B and leave C until later to alleviate the situation, then maybe that will work. They just really need to do hands-on common sense and include the producer in their concerns and help the producer to come up with a solution.

Too often it's top down and they dictate what they think the outcome is going to be and this is how you arrive at this point, instead of trying to involve the producer and make it a win-win situation for the species and the producer.

Mrs. MUSGRAVE. Thank you very much.

Russell George, I remember when Gene Adkins first carried legislation in regard to this, trying to find some of the problems that we have when a species is about to be listed and it's to our advantage to keep it from being listed and the efforts that were taken then.

Do you have any plans for working on delisting species in Colorado?

Mr. GEORGE. Certainly. And the Colorado list, the State list of species of concern has eighty or more individual species on it. We are probably working on half a dozen or a few more than that and have no resources, whether it be funds or personnel to really do very much for anything else.

So it's almost a fire drill approach. Whatever seems to be most at risk at any given time is where our attention is placed. That is not acceptable. That is simply not good enough.

In those early days that you and I remember when we were working together at legislature, there was then a willingness for the State to step up and do what they could.

What worries me as the years have gone by is that the Endangered Species Act, the way it has been used by so many as a land control and land use control device has given the whole issue of the Endangered Species Act and species conservation efforts such a bad name that now when we go to the legislature and talk about "Can't we replenish the species conservation fund so that we can expand these efforts?" there is such a negative feeling about it that we can't get past the discussion of that ugly Federal statute over to the discussion of "Here is what we need to do. Here is what we would like to do. Here are the sources of funds we have identified. Could we have the appropriation authority to do it?" We seem to be stuck right there.

That is kind of a little bit different twist on where we are, but critical that we get past it. So a good part of our analysis that brings us here with you today is how do we undo some of that to recover the act itself resurrected from the death that Jim tells us about.

Can it be done? It should be done. I've got to believe virtually everyone cares about wildlife and cares about survival of species. I have yet to run into somebody in all of my travels who says it is OK for that species to go extinct. Quite the opposite is true. Everyone is saying, "How do we keep that species from becoming extinct?" Getting from there to the right combination of private acts and public laws has really gone backwards on us.

So as part of your work in the subcommittee and the help that we hope that we can provide to you in doing this is that we need to fix the Endangered Species Act so that we move it away from this malfunction that we have observed.

If we can do that, and I believe we can—some of these reforms that we have all talked about, some as you reminded us were occurring in committees in Washington last week, all of which I think is going in the right direction. If we could restore the correct purpose, the original purpose and, therefore, the image, then it is going to be much easier for us to find the dollars we need to do to guide more efforts into these projects.

And I tell you, it will make a big difference when we get out on the ground because when we go on the ground today, people say, "I don't want anything to do with the Endangered Species Act. I cannot deal with the Federal Government and the way that act imposes itself onto our conduct." We have to get past that. We have heard very often from the landowner representative. We cannot do this without the private landowners' cooperation. They want to help, but they also want to survive. Right now we're at a very dangerous place.

There is also this whole discussion about all the public lands in the West. In the States, we are the States' wildlife managers for all of wildlife on public and private land. So we have an obligation. So we're now trying to figure out how do we improve the relationship with our Federal land management, primarily Forest Service and Bureau of Land Management in Colorado.

I am happy to observe that in recent years, we have begun to see a trend on the part of the Forest Service and the BLM to listen to the States to bring us in as cooperative partners in whatever we're doing, and to try to make these decisions together. That is a real positive. Those Federal officials who are wanting to go in the right direction also need some protection from the Endangered Species Act, which at the moment hamstringing them.

So it has all got to be tied together. I think the citizens of Colorado, and I'm sure our neighboring States, are more than willing to spend the dollars and do what they have to do. We've got a little bit of work to do on the at before we can get them to do that.

Mrs. MUSGRAVE. Good comments. Thank you.

Mr. LUCAS. Thank you, Congresswoman.

And I would be remiss if I, first of all, didn't thank the panel for their efforts and their thoughtful testimony and their very good answers to the questions today as well as you for inviting me to come

to Greeley today to have a hearing on this topic that is of great importance to us all.

And I would note not only do we share jurisdiction of resources on the Endangered Species Act but before long, you and I will be in the process of working on the next farm bill. And we invest a substantial amount of Federal resources in conservation programs that are cost share incentives for producers out there, whether it is CRB or WRB or EQUIP or WHIP or Farmland Protection or GRB. And clearly we need to bear all of these things in mind, Marilyn, as we put those programs together, things that help producers in their day-to-day work.

With that and without objection, the record of today's hearing will remain open for 10 days to receive additional testimony, material and supplemental written responses from witnesses to any question posed by a member of the panel. This hearing of the Subcommittee on Conservation, Credit, Rural Development, and Research is adjourned. Thank you folks very much.

[Whereupon, at 3:25 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**U.S. House of Representatives, Committee on Agriculture, Subcommittee on
Conservation, Credit, Rural Development, and Research**

Field Hearing, Weld County Courthouse, Monday, July 26, 2004, Greeley, Colorado

**Statement of Russell George, Executive Director,
Colorado Department of Natural Resources**

Chairman Lucas, Congresswoman Musgrave and committee members, it is an honor to join you today to speak about something that increasingly demands our attention and our time – the Endangered Species Act. Colorado, and my department in particular, have a unique and interesting story to tell about our encounters with the Act and Colorado's effort to deal with endangered species in a proactive way. We hope to shed some light on the Act, its implementation, its shortcomings, and ways we believe it can be improved to accomplish the end goal of the Act, which is species recovery.

In Colorado we have taken a new and different approach. Early in his first term, Governor Bill Owens determined that the numerous complaints he had received in his office regarding endangered species issues had very little to do with the species themselves and almost everything to do with the overt restrictions and regulatory straightjacket of the Endangered Species Act. Species conservation is an issue upon which we can all agree, and it serves as the underpinning of the Act – it is how we get to that ultimate end that is the issue. In aiming toward that end, we have asked the essential question: What does it take to recover threatened and endangered species, and what is the most effective and expeditious way to affect that recovery?

Governor Owens took a look at the Endangered Species Act and saw three fatal flaws:

- 1) The Act and the listing procedure that goes along with it were doing an abysmal job of recovering species – of the 1300 species listed, only 30 have been recovered, or otherwise removed from the list.
- 2) The participation of the states, while acknowledged in the Act, receives very little recognition or encouragement from the federal government, in spite of the fact that states have always been recognized as having primary jurisdiction over species and species recovery. The experience and intuition of state wildlife managers and biologists, who are closest to the situation, has largely been ignored.
- 3) Species can be recovered so much easier without listing. Listing has more of a chilling effect on the participation of landowners and those closest to the

ground, and our efforts should be directed toward encouraging private and individual participation in species recovery, not driving it away.

The United States Fish and Wildlife Service (USFWS), often cited as the villain in endangered species matters, should be commended for doing their best under the worst of circumstances. Working on a limited budget, the USFWS is faced with the task of constantly reprioritizing. But its focus is in the wrong place. At a recent seminar attended by my staff, we were surprised to learn that species recovery was the USFWS' **dead last** priority. To use the worn out phrase, we ask: "Is something wrong with this picture?"

Yet such a circumstance becomes more understandable when you see the USFWS utterly barraged by litigants demanding listing of any number of species, and using the courts to affect their purpose. The USFWS is in such a mad scramble to keep species off the list at the front end that recovery is all but forgotten on the back end. And now its procedure for managing candidate species has been legally challenged and overruled. The USFWS is in a no-win situation from the start, and the only winners are the agenda-driven litigants who use the Endangered Species Act as the strongest of the federal land-use restriction tools. The losers, sadly, are the species.

The participation of states is welcomed throughout Section 6 of the Act, but the Section is largely ignored in practice. The USFWS pointed Colorado toward using that part of the law when Colorado sought to augment its reintroduced lynx population in 2002. It's good, it encourages proactive partnerships between states and the federal government, and it's where the future of endangered species recovery lies.

But, as our experiences in Colorado prove, government agencies can't recover species without significant partnerships with private land owners. Colorado has encountered tremendous success enlisting the participation of landowners who recognize the value in promoting species and enhancing recovery. Ranchers and farmers who are closest to the land recognize the value in preserving and maintaining habitat wherever and whenever they can, and sometimes that habitat is nothing more than plowed ground awaiting planting. Listing a species does nothing to encourage private conservation, and in fact more often than not, hinders private conservation actions. Fostering and nurturing these public/private partnerships is an essential element to any effective recovery program.

Keeping these issues in mind, I would like to walk you through some of the species-specific experiences we have had in Colorado.

Black-tailed Prairie Dog

In 2000, the National Wildlife Federation (NWF) filed a petition with the USFWS to list the black-tailed prairie dog as a threatened species. In their petition, the NWF cited 90,000 acres of occupied prairie-dog habitat in the entirety of eastern Colorado. Many of

us cynically thought that the acreage was prairie dog habitat in the eastern half of one county, yet the NWF initially prevailed with the USFWS and received a “warranted but precluded” designation for the species, meaning that the USFWS found that the species was warranted for listing but that other species took higher priority.

Wildlife managers were shocked and appalled that a creature known to be so prolific throughout the American prairie could even be considered for listing. But, as we dug through our records, we realized that little had been done to inventory the occupied habitat of the species, and that the NWF was, in fact, using the “best available science,” which is the standard used by the USFWS in considering a listing under the Endangered Species Act. Colorado immediately put together a ground inventory of occupied habitat and found 217,000 occupied acres, followed the next year by an aerial inventory which determined that Colorado had 636,000 of occupied black-tailed prairie dog habitat. Joining forces with ten other states, the multi-state grasslands working group now has recommended to the USFWS that the black-tailed prairie dog not be listed. The USFWS has yet to make a determination on removing the species from its listing as “warranted but precluded,” and expects to do so in August, 2004.

The remaining aggravation in this saga is simply that the NWF cannot let go of their initial position. It is still trying to disprove our data gathered from the aerial survey by the Colorado Division of Wildlife. Incidents like this make it apparent that some radical environmental groups prefer to use the Act as a way to control land use policies, rather than to actually recover species in real trouble.

Preble’s Meadow Jumping Mouse

This particular mouse finds its habitat in riparian zones in numerous counties on the Front Range of Colorado, stretching from Fort Collins on the north to Colorado Springs on the south. The USFWS listed the species in 1998 as a threatened species based primarily on the research of the biologist who designated the mouse as a separate subspecies, based on the testing of **three** samples.

In 2003, the State of Wyoming and the USFWS jointly contracted with Dr. Rob Ramey, a biologist from the Denver Museum of Nature and Science, to subject the Preble’s to genetic testing. Dr. Ramey’s study, released at the end of last year, concluded that the Preble’s was in fact part of the “Bear Lodge” jumping mouse subspecies found stretching from South Dakota through northwestern Wyoming and into Montana. Furthermore, additional trapping data showed there was a fourfold increase in the distribution of the mouse since its listing in 1998. Wyoming and a private group of citizens in Colorado proceeded with a delisting petition of the mouse in 2003.

Colorado supports the delisting of the mouse, based on the compelling results of the genetics study and additional trapping data. We assisted the delisting petitioners by setting in place a peer review panel, whose review and results are now in the hands of the USFWS for its consideration, in addition to all of the rest of the delisting data. Colorado set up the peer review panel in order to have the most defensible review possible,

believing science should be analyzed not on a pre-determined outcome or a particular point of view, but with a focus on the scientific method, correct processes, proper hypothesis, and defensible conclusions as the foundation of the delisting action.

Colorado has included additional information in its submission to the USFWS demonstrating that Colorado state, county, and municipal governments have put a great deal of infrastructure, easements, open space, and some moderate local regulation in place to accommodate the Preble's Mouse independent of federal oversight.

Our lesson from the Preble's episode takes us back to the ESA's scientific definition – "the best scientific and commercial data available." In this case, what was available at the time of listing carried the day, but Colorado landowners, businesses, and taxpayers have spent countless millions of dollars to accommodate this mouse based on what now appears to be, at best, bad data. In fact, the biologist who designated the Preble's as a separate subspecies in 1954 recently recanted his findings after reviewing the Dr. Ramey's genetics study.

Black Footed Ferret

The Black Footed Ferret was considered all but extinct in the late 1970's when a population of the species was discovered on a ranch in Meeteetse, Wyoming. Ferrets were trapped and moved to a breeding facility in 1985, and the USFWS initiated a captive breeding program in 1987. Between 1987 and 1997, captive breeding efforts have produced approximately 2,200 ferrets, and much has been learned about ferret behavior, nutrition, disease and reproduction. In 1996, the USFWS put together a recovery team, which has lead to an active reintroduction program starting in 1999.

Colorado has three reintroduction sites in the northwestern part of the state located predominantly on Bureau of Land Management lands. Recovery goals were set early on in the process at 1,500 ferrets established in the wild by the year 2010.

The black-footed ferret recovery program is a model for cooperation between the USFWS and the states. While it is too early to determine the success of reintroduction efforts, it is clear this is a model program of intergovernmental cooperation and has brought the species back from near-extinction. Future delisting could ultimately give the USFWS a model of how the Act can work to effect species recovery based on cooperation with states, and the early establishment of recovery goals.

Canada Lynx

The introduction of the Canada Lynx in Colorado is one of Colorado's great endangered species success stories.

Colorado initially started reintroducing lynx brought down from Canada in 1999 and 2000, before the species was listed as threatened under the ESA. In those two years, 55 lynx were released. Despite some early mortality in the first years, Colorado has

stepped up its reintroduction efforts, putting 71 additional animals in the wild in 2003 and 2004. The species have responded dramatically, having bred in 2003 and 2004, producing 16 and 30 kittens respectively. Colorado biologists have seen exciting trends in the breeding, noting females from both early and recent releases who have given birth to kittens, and noting that some females have given birth in both years consecutively. The population is settling into its range now, and biologists eagerly anticipate lynx recruitment (reproduction in the new generation).

Colorado's experience with the Canada Lynx is a success story because of these successful reintroduction efforts. Colorado was able to craft a state-directed conservation agreement under Section 6 of the ESA. This agreement allowed the state to proceed with reintroduction while recognizing and mitigating the difficulties faced by individuals and businesses whose operations and livelihoods were placed in question by the potential regulatory burden that accompanied the presence and continued reintroduction of a threatened species. The agreement allows for Colorado to proceed with its reintroduction efforts and provides for conservation measures to be followed by ranchers and small game hunters. The agreement also allows for moderate "incidental take" coverage for ranchers who may accidentally harm or kill a lynx while protecting their livestock, and to small game hunters who may mistake a lynx for a bobcat. Colorado meets with ranchers and ski industry officials as well to assure communication between the state and those who interface with the species most often on the ground.

However, as much as Colorado has enjoyed success with its Canada lynx reintroduction program, the federal government has yet to provide the state with concrete goals for the species recovery. This example illustrates the challenge and the opportunity at hand: states are ready, willing, and—in some cases—moving ahead of the federal government to recover species. However, the ESA does not give the states and their partners a roadmap to achieve species recovery and delisting. Colorado's lynx recovery program has been in place for 5 years, and the state has yet to receive a quantitative measure for what recovery means.

Mountain Plover

The Mountain Plover stands as one of the great species conservation success stories in Colorado, based on an unprecedented undertaking by numerous partners to develop sound, defensible data. The decision by the USFWS not to list the species developed out of the hard work of a public/private conservation alliance consisting of the Colorado Division of Wildlife, the Colorado Farm Bureau, the Rocky Mountain Bird Observatory (RMBO), Prairie Partners, the Nature Conservancy, the USFWS, and the U.S. Forest Service. These parties joined together with a host of private agricultural landowners to put together a memorandum of understanding to allow the voluntary participation of landowners to affect a comprehensive conservation effort for the species.

The conservation effort was created with landowner incentives in mind. Projects include our centerpiece effort wherein landowners can call an 800 number to request the RMBO to come out and flag plover nests on agricultural ground before plowing,

education seminars (and a video) made available throughout Colorado's eastern plains to bring landowners up to speed on best management practices to enhance plover conservation, intensive research on plover nesting habits, and research into preferred habitat by the plover (the birds seem to prefer ground which has been burned over, plowed or grazed down first before nesting).

Due to this conservation effort, biologists are now observing more birds that we are now counting because we have the cooperation of the private landowners and access to their lands to do the bird counts. The occupied range of nesting plovers in Colorado is far more extensive than previously thought, and we have now learned that the rate of fledging success on cultivated fields is to a small degree higher than on native short grass prairie.

The combined efforts of landowner volunteers, non-profit organizations, and state and local government in partnership with the federal government created the right mixture of hard science, conservation techniques, and education to make voluntary species conservation occur in such a comprehensive manner that a listing was precluded. It is a classic case where conservation occurs precisely because there is no overhanging regulation by the ESA. In fact, Secretary of the Interior, Gale Norton, has stated that the plover model is one that should be used on all species of concern. Once again, landowners recognized the value in effecting conservation ahead of any ESA regulation at all.

Native Colorado River Fish

Native fish in the Upper Colorado River have been subject to an extensive multi-state recovery effort since the late 1980s. Colorado, Utah, Wyoming, and New Mexico are putting vast amounts of time, effort and money toward this elaborate program, which funds infrastructure, water allocation, stocking, monitoring, and a full program staff to effect recovery. Intricate flow recommendations have been implemented through coordinated reservoir operation and water shortages during drought have been shared equitably among all users.

What this program lacked until 2002 was recovery goals to serve as a roadmap. Colorado advocated strongly for these goals, and now that we have goals by which we can measure program success, we now see that we're making headway toward recovery of the endangered fish species.

One component of our multi-state fish recovery program to which Colorado is a great contributor is the ability to breed fish species in our native species hatchery in Alamosa, Colorado. Not only is the hatchery contributing native fish to be released in the Upper Colorado River, but the hatchery also grows fungus-free boreal toads (a candidate species) and a variety of state-listed minnows from Colorado's eastern plains. The hatchery is another example of how Colorado is making the investment to promote species recovery with homegrown solutions, thereby precluding preemption by the Endangered Species Act.

The Upper Colorado Endangered Fish Recovery Program has worked remarkable success. Based on the aforementioned recovery goals, one of the species (the humpback chub) will likely be considered for downlisting by 2007. The species are slowly being recovered, all the while allowing for over 750 water diversion/depletion projects to move forward without a single lawsuit.

The Endangered Species Act – Suggested Improvements

Colorado has observed the Endangered Species Act from many different angles. We are cognizant of the numerous proposals before Congress, and those circulated among interest groups and trade organizations. From our perspective, there are two core areas where the Act could be improved.

First, the statute should require the formulation and publication of recovery goals to accompany any species listing proposal. Our experience with the Upper Colorado Endangered Fish Recovery Program, where it took fifteen years to develop recovery goals, and the Canadian lynx—where our recovery program has been in place for five years, yet we still don't have recovery goals—tells us that goals should be published right up front. This has the effect of putting the roadmap to recovery in place should a listing occur, and provides an additional benefit to endangered species in promoting their recovery first and foremost after a listing decision.

Secondly, we urge Congress to amend the standard of “best available scientific and commercial information” to require that the science be peer-reviewed. This will lead to much better decisions than what ultimately put the Preble's Meadow Jumping Mouse on the list and what nearly caused a listing of the prolific Black-tailed Prairie Dog.

Species recovery and conservation should be the focus and goal - something to be advocated for on an aggressive timeline, funded, and actively pursued as the end goal. It cannot be just an ancillary benefit that may or may not occur.

Focusing on recovery is not merely a way to get people out from under the federal regulatory thumb, or just a means for recovering endangered species so people can continue to live and work and raise a family in an area largely owned by the federal government. Rather, at the end of the day, it is simply the right thing to do for the environment. After all, recovering endangered species was, and is, the goal of the Endangered Species Act - an objective that Colorado is achieving through strong, creative and common-sense action.

Good afternoon, Chairman Lucas and distinguished members of this Subcommittee. My name is Jean Stetson. I appreciate the opportunity to be here today to provide some of my experience with the Endangered Species Act and its effect on agricultural producers.

The Stetson family has been cattle ranching in Northwest Colorado for 3 generations. Our ranching operations have experienced first-hand the burdens and the challenges of the Endangered Species Act. In Northwest Colorado, producers are not just dealing with the impacts of a single species, but rather several species of concern. We have the greater sage grouse, the black footed ferret, leopard frogs, endangered fish, white tailed prairie dogs and now the wolf. Each species brings with them their own set of rules, regulations, costs, and time. Most agricultural producers I know are very limited on time and money. However, agricultural producers must take the time to be involved in the processes that come with endangered species issues because, if you are not involved, the species management requirements you are handed are often impossible and unrealistic. When we become involved, then we can at least try to help drive the process and make expectations more manageable.

My experience with the Endangered Species Act began in July of 1998 when our ranch became very concerned about the impacts of Greater Sage Grouse. I became the spokesperson for our ranch regarding sage grouse because my husband was already involved in the process of representing our ranch and the livestock industry in a plan that was being written for the recovery of endangered fish in the Yampa River. Our ranching operations, along with many other operations in the area, rely on the Yampa River for irrigation and stock water. There was concern that requirements in the fish recovery plan would affect our water usage. He could not attend both sets of meetings, so we split the responsibilities.

Our concern with the grouse began when we received information in a BLM permit renewal that was requiring the herding of our cattle away from grouse nesting areas. The BLM wanted a vegetative condition that was desirable for nesting sage grouse and wanted us to maintain residual grass cover of at least 6 inches high in the spring. The BLM was also requiring that we use this pasture first in the pasture rotation pattern.

In addition to the grouse, the BLM also had some concerns about the leopard frog being present and the impacts that grazing the riparian area may have on the leopard frog. Thankfully, the leopard frog did not become a concern.

These requirements alarmed us. We could not afford a herder and we questioned whether the vegetative requirements were reasonable for the types of grasses that are on our range. We decided it was important to get involved in the sage grouse planning process to make sure that our interests were represented fairly.

I have spent too many hours to count in 6 years of meetings for the sage grouse and stressing the importance of data, science and a common-sense approach when trying to implement these plans. As a result of the sage grouse concerns, our ranch changed grazing rotations and hired a range consultant to help us monitor and gather data on our

BLM permits so that we would have accurate information regarding the vegetation. We did not want to risk changes to our permits that were not based on data and science.

If all this was not enough, there is yet another endangered species that has very recently been alarming us. The wolf. Wolves are moving south out of the Yellowstone area. Last spring, wolves killed cattle about 20 miles northwest of Baggs, Wyoming. Baggs is just 10 miles from the northern Colorado state line. The wolves are coming to Northwest Colorado and this will affect how every rancher does business. What will the costs be? Can we afford the extra time and management changes that will come with yet another endangered species? Wolf proponents suggest that it is up to the rancher to adopt new husbandry techniques that help minimize the potential of wolf depredation. The burden is on the producer. How can we protect our livestock? How can we possibly have the time and manpower to patrol thousands and thousands of acres to protect our livestock? So many of the operations in Northwest Colorado require large amounts of land because of the arid climate and range conditions. We must use our range resources very carefully. The wolf issues will take more of our already precious time, money and resources. I am currently representing the livestock industry on the Colorado Wolf Management Working Group because I am fearful that if we do not truly manage the wolf, the wolf will have a negative impact on the livestock producers.

The Endangered Species Act is now 30 years old. The act has done very little of what it was intended to do: restore populations of species at risk of becoming extinct. In its history, over 1,300 species have been placed on the list as endangered, and less than 30 have been removed from the list. This Act has resulted in regulatory and financial burdens that have been placed on the people who are out on the land trying to make a living and on the people who care for the land.

It is time to change the focus of the Endangered Species Act. Reduce the regulatory burdens, and truly promote species recovery. Encourage win – win projects; projects that will benefit the species, the land, and the people out on the land trying to make a living. Promote common sense adaptive management and the use of good science. Treat the people who work and care for the land as partners. These partnerships need to encourage the sustainability of agricultural operations. Farming and ranching operations are often key components in species recovery programs. Farms and ranches maintain open space and that open space is important for a diversity of wildlife habitat. Condominiums will not help species recovery. It is time to promote cooperation and true conservation.

Thank you for your time and consideration.

Good afternoon. My name is Alan Foutz. I am President of Colorado Farm Bureau, our state's largest agricultural organization, and currently farm 1,200 acres of wheat, sunflowers, and millet in eastern Colorado. I appreciate the opportunity to provide comments to the committee regarding the Endangered Species Act and the affects it has on agriculture. In our opinion, the Endangered Species Act is one of the pieces of legislation most badly in need of reform in existence, and will play a critical role in how our farmers and ranchers do business, if at all, in the very near future.

As many of us know, the Endangered Species Act was signed into law in 1973 with its original purpose being to protect species like the bald eagle and manatee. The Act authorizes the Fish and Wildlife Service and National Marine Fisheries Service to place restrictions on how agricultural producers can use their private property in order to protect plants and animals deemed endangered or threatened. This may include restrictions on clearing land, drawing water, or other activities that might only indirectly affect a species. Today, we have over 1,200 species protected under federal law and list continues to grow. Farmers and ranchers face fines and imprisonment for even the most basic farm practices if federal regulators believe such actions would disturb the endangered species.

The agencies I referenced above often do not have a sound scientific basis for imposing these restrictions. In addition, farmers and ranchers do not have an opportunity to participate in discussions where ESA decisions are being made about the granting of permits or other actions affecting their operations. The agencies are determining how private lands containing species habitat are managed, without input from the landowner.

To alleviate these problems, we feel strongly that independent, scientific peer reviews be required for ESA decisions. We also recommend that affected landowners, local communities, and the general public be given an opportunity to provide comments and have them considered on all draft recovery plans.

The current system is not working. Over 1200 species have been listed, and only 15 have been removed from the list because they have recovered. We strongly believe that a new approach is necessary if we are to make the ESA work for people and species.

Farmers and ranchers are not opposed to saving endangered species. We *are* opposed, however, to the arbitrary land use prohibitions that are imposed by species habitat protection and the harsh and often unreasonable penalties that accompany any activity that is contrary to administrative fiat. For these reasons, Colorado Farm Bureau and American Farm Bureau believe that endangered species protection can be more effectively achieved by providing incentives to private landowners and public land users than by imposing land use restrictions and penalties. Desired behavior is always more apt to be achieved by providing a carrot rather than a stick. There is no "carrot" provided by the Endangered Species Act, as currently written.

As agricultural producers, we want to be proactive in finding common sense, practical solutions to saving threatened or endangered species. We believe that voluntary, cooperative conservation programs are one of the best options available right now to help conserve species and habitat. We are pleased that this committee and the Administration are interested in learning more about these types of programs.

In order to ensure these cooperative conservation programs are grounded through legislation and not enacted through regulation, we believe all ESA cooperative-based programs should: 1.) be voluntary with the landowner. Program participation may attract listed species to the property, impacting neighbors that do not want to participate and a provision must be made to remove any ESA impacts to such neighbors. 2.) Focus on providing active species management and innovative improvement measures, as opposed to passive management through restrictions on land use. 3.) Not focus on sales of lands or purchases of easements. 4.) Incorporate removal of existing regulatory disincentives, such as land use restrictions. In fact, many landowners would more readily accept the removal of ESA land use restrictions instead of incentive payments. Safe Harbor and No Surprises agreements should be explored whenever appropriate. 5.) Recognize plans that are locally developed. People at the local level have more knowledge of the landscape, needs of species, and needs of landowners. 6.) Be flexible with the landowner. Landowners can develop creative solutions for ESA situations and this needs to be recognized. With this being said, different landowners have different needs that could be addressed through different types of incentives and we believe landowners should have a wide variety of incentives to choose from.

Specific regulations might include:

- For the Landowner Incentive Program
 - 1.) Recognize existing and potential state incentive programs. State programs already in existence should be recognized for purposes of providing grants. These programs should not be subject to new criteria for approval by the Secretary.
 - 2.) Incorporate the six characteristics described above as requirements for new state programs. New state programs should include the characteristics described above in order to be eligible for funding under the Landowner Incentive Program.
 - 3.) Provide funding to state programs in the form of grants. Current authorization would provide \$50 million to this program and \$10 million to the Private Incentive Program. Funding levels for the first few years should tilt the opposite way until more states develop incentive programs, and LIP funding should increase in relation to Private Stewardship funding every subsequent year. This would encourage more state programs.
 - 4.) Require that people in states with cooperative conservation programs can only participate through the state program, and are ineligible for individual competitive grants. Since people in states with programs already have a mechanism to fund their projects, they should not be allowed to compete with people from states that do not have a program for scarce Stewardship grants.
 - 5.) Allocate a small portion of the amount targeted to the state programs as seed money for new state programs. A goal of the Landowner Cooperative Conservation Program

should be for states to develop their own incentive programs. A small portion of funds should be set aside to foster those programs.

- 6.) Provide for confidentiality of personal information for program participants. Access to personal information in records and data should be shielded from federal and state Freedom of Information Act requests to prevent possible harassment or citizen suits. Access to privately owned property for purposes of inspection should be restricted to federal or state employees, and only for purposes of administering the agreement.
 - 7.) Report periodically to Congress to build a record of successes. As success stories are achieved, the program might be expanded and more funds might be made available.
- For the Private Landowner Stewardship Program
 - 1.) Eligibility restricted to people from states without incentive programs. People from states that already have a program should not be allowed to compete for scarce Stewardship funds.
 - 2.) Geographically diverse participation, if possible. Participation should be from as broad a geographical spectrum as possible, in order to encourage participation.
 - 3.) Limit amount of grants to individuals, and also to groups. Grants should not be restricted to a few large projects, but should be available to as large a number of people as possible.
 - 4.) Establish a small board composed of FWS, state government, industry and environmental interests—to receive applications and award grants.
 - 5.) Short form application and agreement. Paperwork requirements for grant applications and for program administration should be kept to a minimum.
 - 6.) Provisions for monitoring compliance with the agreement. There should be a mechanism for monitoring for results and landowner and agency compliance.
 - 7.) Provide for confidentiality of personal information for program participants. Access to personal information in records and data should be shielded from federal and state Freedom of Information Act requests to prevent possible harassment or citizen suits. Access to privately owned property for purposes of inspection should be restricted to federal or state employees, and only for purposes of administering the agreement.
 - 8.) Report periodically to Congress to build a record of successes. As success stories are achieved, the program might be expanded and more funds might be made available

Positive incentives might be adopted through creation of a voluntary Critical Habitat Reserve Program (CHRP) administered by the Secretary of Interior. Under the proposal, the Secretary of Interior would enter into contracts with willing landowners and public land users in areas designated as "critical habitat" for a listed species. The private landowner/operator would agree to implement a plan for management of a listed species on his land and retire acres judiciously from uses that conflict with species management activities. Management plans would focus on actions that would enhance the species instead of blanket land use prohibitions.

In return, the Secretary would provide the costs for implementing the CHR program, pay annual rental and management fees to the private landowners for the conversion of private property to CHR use, and provide technical assistance and management training to cooperating landowners.

The program would be voluntary, and must protect the private property rights of both participants and non-participants alike. The program must contain assurances that participants in the CHRP will not be later restricted in the use of their property outside the terms of their voluntary agreements. Participants who enhance species habitat pursuant to their agreements to the point where other listed species might also take up residence should not be restricted because of the presence of these other residents.

The CHR contract would be for a period of no more than five years, to coincide with the periodic species review mandated by the Act. In order not to de-stabilize the economic base of the community, the CHR would be restricted to no more than 25% of the total area of any one county.

The program would also permit the enrollment of land that might already be enrolled in other government conservation programs, and would require consultation between the Secretaries of Interior and Agriculture to ensure harmony between the CHR program and other programs.

We believe that, given the opportunity and proper support from the government, farmers and ranchers can do a better job of enhancing listed species than the government. As experienced, practical land managers who may have observed the species for a number of years, we bring a working knowledge that government scientists do not have. More importantly, we can offer day-to-day management of the species that the government certainly cannot do. Such a program will result in better management and greater chance for recovery of the species than is provided under the current law. We also believe that with the proper incentives and a respect for private property rights of participants and their neighbors, farmers and ranchers will be willing to participate in the program.

In closing, let me give you a perfect example of how a program of this nature can work for everyone. The mountain plover, a small grass-land bird, was initially petitioned for listing in February of 1999. In December of 2002, the Fish & Wildlife Service reopened the comment period to share new information and to provide the public with the opportunity to comment. At the time of the listing, Colorado Farm Bureau was opposed to it being listed largely because all necessary data had not been collected and analyzed. In comments made to the Fish & Wildlife Service, Colorado Farm Bureau stated that listing the mountain plover as a threatened species would be detrimental to agriculture in the State of Colorado due to the fact that over 75% of mountain plover habitat is found on private land. Listing the plover would limit agricultural operations or completely prevent agricultural practices if it were to be listed as threatened.

As I mentioned before, when the first proposal came out to list the plover there was no scientific study comparing mountain plover nest success on non-cultivated grasslands with nest success on cultivated fields. Nearly all of the studies had been done on public lands with little or no study having occurred on private property. In response, Colorado Farm Bureau, along with Division of Wildlife, Rocky Mountain Bird Observatory, and U.S. Fish & Wildlife Service began a 3 year study looking at mountain plovers on

cultivated lands. CFB members participated in the study by providing in-kind access to 300,000 acres of private lands in eastern Colorado. Results of this research identified the importance of crop fields and of cultivated fields for nesting mountain plover. In December of 2002, the Fish & Wildlife Service ultimately reopened the comment period, for the reasons I discussed, and the mountain plover was not listed.

In the spring of 2003, Colorado Farm Bureau made a \$3000 contribution towards a project focusing on outreach mechanisms to heighten awareness for mountain plovers. These outreach measures included a video to educate landowners on the mountain plover and its characteristics and a toll-free hotline that farmers can call to give 72 hour notice of their cultivation plans. A mountain plover team will survey the land before farmers begin discing, planting, or other maintenance activities and flag plover nests.

The Southwestern Willow Flycatcher is yet another species that will benefit from cooperative conservation. The Rio Grande Water Conservation District, in coordination with local landowners and agricultural organizations, has submitted a grant application for a Valley-wide Habitat Conservation Plan for the Southwestern Willow Flycatcher in the San Luis Valley in Southern Colorado. The conservation efforts will be focused on public lands but landowners are also working with local water groups to develop the plan in order to provide for adequate conservation efforts of the flycatcher while still protecting agricultural interests.

This type of success certainly does not have to be limited to the mountain plover. Currently, Colorado Farm Bureau is working proactively to develop wolf and sage grouse management plans. We must work together to save these species and our way of life, as farmers and ranchers.

Thank you for the opportunity to share my thoughts with you today and I will be happy to address any questions the committee may have.

Testimony

**of Jim Sims
Executive Vice President,
Partnership for the West**

Before the
U.S. House of Representatives, Committee on
Agriculture, Subcommittee on Conservation, Credit, Rural
Development, and Research

Field Hearing, Weld County Courthouse
Monday, July 26, 2004
Greeley, Colorado

INTRODUCTION

Good afternoon, Chairman Lucas, Congresswoman Musgrave and Members and staff of the Subcommittee. My name is Jim Sims. I represent a broad range of interests across the West through two organizations: the Western Business Roundtable and the Partnership for the West.

In all, our organizations have active members in the agriculture, coal, hard rock mining, timber/wood products, oil and gas production, financial services, construction, legal services, chemicals, manufacturing, engineering services, transportation, retail service sectors, as well as small business owners and advocates, , conservation, property rights and recreational access advocates, state legislators and county government officials, education officials, pro-growth coalitions, Chambers of Commerce (national and local), grassroots activists and coalitions and think tanks

I greatly appreciate the opportunity to testify here today.

Ladies and gentlemen, I'm here to proclaim that the Endangered Species Act is dead. Long live the Endangered Species Act.

THE ESA IS BROKEN

What I mean when I say the Endangered Species Act is dead is this: ESA is a broken, outdated, anachronistic law that is barely on life support.

- It discourages innovative environmental conservation;
- It confiscates private property;
- It denies folks their livelihoods;
- It costs our economy many billions of dollars per year with little positive benefit; and
- It prevents well-meaning experts at the U.S. Fish & Wildlife Service from doing the real work of helping species flourish.
- And, most important, it fails miserably in the central mission that Congress intended to achieve with its passage: recovering species that are in trouble.

Others have and will testify to ESA's many specific failings. I will simply point you to one statistic: ESA has, over its 30 year history, clocked greater than a 99.9 percent failure rate when it comes to species recovery. Can any of the Members of the Subcommittee name any other law with such an breathtakingly consistent record of failure over such a long period of time?

ESA is like a doctor who puts every one of his patients in the intensive care unit of the hospital, but then never prescribes any active treatment, and never checks any patients out.

Or, put another way, it's like that doctor who tells me that my three-year-old daughter has a potentially life-threatening illness, but then prescribes a treatment regime that involves hospitalizing her with no active treatment, no medications, no therapy and no visitors to her bedside. Would it be rational for me to stand by and support this "let Nature take its course and, hopefully, things will work out" approach? Of course not.

I would like to know if anyone in this room would follow that advice for his children or family.

ESA does not meet its core mission of recovering species. The Act does, however, do two things very well:

(1) It transfers control of vast swaths of land in the West from private landowners and/or states that control the land to unelected federal bureaucrats and environmental extremist groups.

(2) It provides a very, very good living for a relatively small group of trial lawyers and professional environmental extremists who use never-ending lawsuits to warp this well-meaning law to serve their own narrow political agendas.

BUT THE ESA IS ALSO HERE TO STAY

Now, I also said at the outset of my remarks, "Long live the Endangered Species Act." How do I square that with such a damning indictment of this law?

What I mean is this: the American people overwhelmingly support having a law on the books that aims to protect Endangered Species from extinction. This Act is not going to be repealed. It will not be gutted. It will not be eviscerated. At least, not in our lifetimes.

At the nexus of these two statements lies the challenge facing Congress: How do we fix the Act? How do we modernize it after 30 long years? How do we improve the Act so that it works both for species and for the people?

I have several suggestions for reform. But first, let me update the Committee on one specific listing threat that is before us now in the West: the Greater Sage Grouse.

UPDATE ON SAGE GROUSE LISTING CAMPAIGN

Last December, a number of environmental groups filed a petition to list the Greater Sage Grouse as "endangered" under the ESA. This petition was one of several in a series of actions undertaken by these groups – including lawsuits – seeking to add the species to the ESA list.

A listing of the sage grouse under ESA would have incredibly far reaching and negative consequences for most of the American West. Its habitat covers 11 states and more than 110 million acres. If a warranted listing is granted and the critical habitat process gets underway, we could see economic damage wrought on the West on the order of billions of dollars. Virtually no one in the West would be unaffected: farmers, ranchers, energy development, small business, recreational access, hunting and fishing ... the list goes on and on.

LACK OF SCIENTIFIC DATA

One of the problems with this listing process is the lack of scientific data that can provide a clear picture of what's going on with sage grouse populations.

For example, when the "science" contained in the original petition by the environmental groups was subjected to an independent scientific assessment by two internationally renowned Ph.D. sage grouse biologists, they found the following:

"A careful review of this Petition leads to one simple conclusion: This Petition is not accurate and is fundamentally flawed in numerous key areas. Even the proponents of listing the Greater Sage Grouse are unable to support their position with credible scientific data. A petition should be viable, reliable and accurate. There are pockets of truth in the Petition, but they are so intermixed with un-truths, distorted presentations, and lack of knowledge that they are difficult to find and separate out."

In other words, the "science" that effectively convinced the federal government to formally launch this multi-million-dollar listing review was just "bad" science. That listing petition would not even pass muster for publication in a popular science magazine.

SAGE GROUSE POPULATIONS ACTUALLY STABILIZING

Fortunately, a much more rigorous study was recently completed by the Western Association of Fish and Wildlife Agencies, otherwise known as WAFWA. That study shows that while most states' sage grouse populations declined from the mid-1960s until about the mid-1980s they have since not only stabilized in most areas but, in fact, have actually increased in some areas.

For example, review these state-by-state findings:

California

- California has seen steady sage-grouse population increases from 1965-2003 (p. 6-25)
- The proportion of active leks remained relatively stable and high throughout the assessment period, with five-year averages varying from 77 percent to 90 percent between 1965 and 2003 (Table 6.4).

- Although lek size class varied over the assessment period no obvious patterns could be documented, further suggesting a relatively stable population (Fig. 6.4).

Colorado

- Colorado has seen steady sage-grouse population increase from 1987-2003. (p. 6-29)
- The average number of leks censused per five-year period increased by 159 percent from 1965 to 2003. The number of active leks censused was similarly high, ranging from 35 to 114 and increasing by 124 percent over these same periods.
- Greater sage-grouse in Colorado have been generally increasing for about the last 17 years and available information does not suggest a dramatic overall decline in breeding populations over the last 39 years.

Idaho

- Idaho has seen steady sage-grouse population increase from 1993-2003 (p.6-32).
- An average of 74 to 319 leks were censused in five-year periods from 1965-69 through 2000-03. From 1965 to 2003, the average number of leks censused in 5-year periods increased by 331 percent. The number of active leks censused was similarly high, ranging from 69 to 245 and increasing by 255 percent over these same periods.

Montana

- Montana has seen steady sage-grouse population increase from 1994-2003 (p. 6-35).
- The number of leks counted increased and then remained relatively stable until the late 1990s (Table 6.8). By 2000, monitoring efforts increased substantially when the average number of leks counted during 2000-03 increased by 146 percent over the average number of leks counted in 1995-99 (Table 6.8). Overall, the number of active leks monitored followed the same increasing pattern as total number of leks (Table 6.8).

Nevada

- Nevada has seen steady sage-grouse population increase from 1965-2003 (p. 6-41).

- By 2000, monitoring efforts increased substantially when the average number of leks counted during 2000-03 increased by 146 percent over the average number of leks counted in 1995-99 (Table 6.8). Overall, the number of active leks monitored followed the same increasing pattern as total number of leks (Table 6.8).

North Dakota

- The average number of leks counted per five-year period increased by 42 percent from 1965 to 2003. Over these same five-year periods, effective monitoring was relatively stable with an average of 14 to 21 active leks censused (Table 6.9).
- North Dakota did not employ a standard monitoring scheme of multiple counts spread over a four to six week period. Instead, all counts were conducted in about a one-week period during mid-April and observers attempted to count all leks > two times (Sith 2003). However, this approach was consistently applied over the last 40 years.

Oregon

- Oregon has seen steady sage-grouse population increase from 1994-2003 (6-44).
- Oregon has had a long-term extensive monitoring program for sage-grouse and has identified 377 leks in the state. We used 1965-2003 as our assessment period. The average number of leks counted per five-year period increased by 750 percent from 1965 to 2003 (Table 6.10).
- However, recent brood survey data from Oregon indicates that average production from 1985 to 2003 has steadily increased (average = 1.55 chicks per hen), and indicates a 37 percent reduction in production from the long-term average.

Saskatchewan

- Saskatchewan has seen steady sage-grouse population increase from 1994-2003 (p. 6-47).
- Similarly, population trends indicated by average and median males per lek also decreased from 1985-89 to 2000-03 but increased somewhat from 1994 to 2003. Average and median males per active lek also showed similar trends (Table 6.11). Monitoring data were only sufficient to examine change in lek size from 1994 to 2003. Over that period, the population did not change significantly ($r^2 = 0.30$ $P = 0.10$) (Fig. 6.24).

South Dakota

- South Dakota has seen steady sage-grouse population increase from 1996-2003 (p. 6-49).
- Smith (2003) also concluded that South Dakota sage-grouse populations underwent a steady decline from 1973 to 1997, with recovery from 1997 to 2002.

Utah

- Utah has seen steady sage-grouse population increase from 1965-2003 (p. 6-52).
- Utah has had a long-term extensive monitoring program for sage-grouse and has identified 254 leks in the state. Although the average number of leks monitored in the 1970-75 period increased by >160% over the average number censused in 1965-70, we were still able to use 1965-2003 as our assessment period. The average number of leks counted per five-year period increased by 289% from 1965-70 to 2000-03 (Table 6.13). The number of active leks monitored followed the same increasing pattern as total number of leks (Table 6.13).

Wyoming

- Wyoming has seen steady sage-grouse population increase from 1971-2003 (p. 6-58).
- The proportion of active leks remained relatively stable over the assessment period, ranging from 63 percent to 78 percent from 1965 to 2003 (Table 6.15).

Washington

- Washington has identified 62 leks and has had a long-term monitoring program in place. Thus, we used 1965-2003 as the assessment period. The average number of leks counted per five-year period increased substantially over the assessment period (Table 6.14). In 1965-69, an average of 3 leks per year were censused but by 2000-03, an average of 47 leks per year were counted, an increase of >1400 percent. The average number of active leks counted per five-year period also increased by >500 percent.

It is noteworthy that this stabilization trend coincides very closely with the onset of a wide range of sage grouse habitat conservation efforts launched by both Western states and by industry.

MORE GAPS IN THE SCIENCE KNOWLEDGE BASE

While there is good news in the findings of the WAFWA report, there are also many gaps in our scientific knowledge that this report notes – knowledge gaps that seriously question whether or not we have enough fact-based science to make an informed decision on this listing. For example, as noted in WAFWA's recent analysis:

- "... there has been no definitive range-wide assessment of sage-grouse populations and habitats." (p. 1-1).
- "...we still lack baseline information across much of the sagebrush biome against which to evaluate population and habitat changes." (p. 1-5)
- However, because data collected in the 1940s and 1950s is highly variable (Fig. 6.41) and may have been collected in a somewhat haphazard fashion, there is no means of assessing the true magnitude of the population change.
- At least 60 percent of states do not adequately sample harvest numbers (pg 6-7). From 1965 to 1979, most agencies indicated populations were stable to increasing, in general disagreement with population data obtained for the WAFWA report (pps. 6-65).
- "Although [it has] been argued that the past distribution of sage-grouse was defined by the presence of sagebrush-dominated habitats, the quantity of sagebrush in a given habitat type is not always known and/or consistent." (p. 6-15).
- "Given the uncertainty in abundance estimates for breeding season populations, expecting any state to adequately determine size of any population of greater sage-grouse in fall may not be realistic." (p. 9-6).
- "...the role diseases and parasites play in population declines across their range is essentially unknown. This fact, coupled with the emergence of new infectious diseases and the increasing numbers of small, isolated populations of greater sage-grouse that may be more vulnerable to population level effects, suggests this field deserves further study." (p. 10-3)

- "...the number of sage-grouse in western North America is probably much greater than the previous estimate." (p. 13-5)
- "Livestock grazing influences sagebrush habitats although we do not know the full extent of that influence." (p. 13-9)
- All state and provincial fish and wildlife agencies monitor sage-grouse breeding populations annually, but different approaches are employed. (Table 6.1).
- Although most agencies indicated that they attempted to replicate counts of leks over several weeks (i.e., counting individual leks or lek routes >three times), at least two agencies attempt to complete all counts within a one-week period and one only counts leks once during this time. In addition, some states provided data indicating leks were censused at inappropriate times (late February, early to mid-March, mid-May). Eight (62 percent) agencies indicated gaps in their databases since initiating monitoring efforts and five (38 percent) reported relatively continuous databases. Eleven of 13 (85 percent) agencies reported changing inventory methods over the years.
- All states with a hunting season conducted harvest surveys, but the states employed seven different techniques for obtaining harvest information.
- An evaluation of lek data indicated that some leks were counted incorrectly, because observers collected data too early or late in the breeding season, in poor weather and/or later in the morning.
- In any case, leks that are censused in most states and provinces are probably not a random sample of available leks and thus data obtained from these leks may be biased.
- Although numerous wings are collected in many states and the wings subsequently classified in "wing-bees", numbers may be insufficient to characterize populations, depending on the number of administrative units used for analysis.
- Seven different techniques are used among the 10 agencies that administer hunting seasons and a variety of information is obtained from these techniques. This information varies tremendously among states.
- Despite available information, censusing methods may differ markedly among some agencies and even among years within agencies (Connelly et al. 2003). Rather than using multiple counts over several weeks, some agencies have used single counts, or multiple counts in a one-

week period. In other cases, lek counts appeared to have very low priority and were not done at all in some years. These inconsistencies confound attempts to make comparisons of population trends among states and provinces.

- Because of the problems with lek count data previously discussed, no method currently available is free from biases or thought to give a highly accurate assessment of trends.
- There may be substantial variation among states and populations with regard to the definition of a lek. A biologist in one area might define an expansive group of 100 males as a single lek, while a biologist from a different area might interpret the same group as two leks based on their separate concentrations on two adjacent activity centers.

In addition, the WAFWA report appears to understate the amount of acreage subject to federal control on oil and gas development. They map the locations of producing, pending, and abandoned wells in the five areas of the EPCA report and note that 74percent of wells in the Powder River Basin and 77percent in the Montana Thrust Belt are on private land (pg 7-42). This grossly underestimates the actual area subject to federal controls, which is approximately 68 percent of the Wyoming portion of the Powder River Basin and virtually the entire Montana portion.

STATE-BASED CONSERVATION PLANS

However, on the positive side of this campaign's balance sheet, there is excellent news to report. As a result of this listing threat, the West has rallied as never before in a unified campaign to launch sage grouse conservation programs. It is our view that, in the end, these efforts will be seen as more than adequate to meet the perceived threats to this species.

The governors of all 11 Western states with sage-grouse habitat are crafting and implementing comprehensive conservation efforts aimed at preserving this species. For example:

- Of the 11 states and two Canadian Provinces with sage-grouse populations, nine have completed sage-grouse conservation plans. Montana recently completed its draft plan. Colorado and Oregon are on a fast track to completing their plans with the local working group in one critical habitat area finalizing their plan, and North and South Dakota will complete their plans sometime in the summer of 2004. Idaho has a completed plan but is in the process of revising it. California

has been working with the State of Nevada on a joint plan up to this point, but is developing its own work plan for its population of sage-grouse.

- Western States and Provinces are expected to have a total of more than 70 Local Working Groups (LWGs) in various phases of planning, implementing and monitoring progress by winter 2006.
- There are 23 LWGs scheduled to have completed conservation plans by the summer of 2004. Range-wide coverage of conservation plans are expected by winter 2008. In seven states, conservation efforts have begun and are taking place whether or not a statewide plan is complete: WA, UT, OR, NV, MT, ID and CA. In addition, federal land managers in Wyoming and Colorado are working with state Game and Fish officials to develop a wide range of development stipulations aimed at helping to conserve sage grouse populations and habitat.
- The breadth and depth of state and local conservation plans is truly impressive. A broad-cross section of these efforts can be found in the Western Governors' Association's (WGA) recent report to USFWS, entitled: "Conserving the Greater Sage Grouse — A Compilation of Efforts Underway on State, Tribal, Provincial and Private Lands."

PRIVATE SECTOR CONSERVATION EFFORTS

Landowners and others in the private sector are engaging in multi-party efforts on sage-grouse conservation across the West. Many of these are detailed in the WGA's recent report "Conserving the Greater Sage-Grouse." In addition:

- Energy development companies are working range-wide to implement conservation measures both on a voluntary basis and in conjunction with federal land managers. A detailed assessment of these efforts, due to be submitted to USFWS in August 2004, will document a wide array of conservation efforts.
- In recent years, Resource Management Plans developed as part of energy development on federal lands are increasingly focused on factors such as noise restrictions near leks, as well as noxious weed management, outreach and education, recreational disturbance of sage-grouse, etc. These plans provide for lek surveying and clearances, as well as conservation efforts including lek avoidance, seasonal prohibitions and project "visiting hours" to limit or eliminate disturbance to the bird.

FEDERAL LAND MANAGER CONSERVATION EFFORTS

Federal land managers are also devising strong conservation efforts.

- The Bureau of Land Management, which manages approximately 52 percent of sage brush habitat, is working on a comprehensive Sage Grouse Habitat Strategy to serve as a framework to address the conservation of sage-grouse habitats on BLM-managed lands.
- The U.S. Department of Agriculture's private-lands conservation programs provide many opportunities for accomplishing the goals developed for Sage-grouse conservation. The programs provide incentives for private landowners to develop or set aside lands that can be utilized to create or enhance Sage-grouse habitat. These programs include the Grassland Reserve Program (GRP), Conservation Reserve Program (CRP), Wildlife Habitat Incentives Program (WHIP), Environmental Quality Incentives Program (EQIP), Wetlands Reserve Program (WRP), and the Farmland Protection Program (FPP). In the West, CRP lands are locally important to sage-grouse and Sharp-Tailed Grouse conservation.

FUNDING EXISTS FOR CONSERVATION EFFORTS

Funding for conservation efforts also exists from a variety of sources to implement the conservation efforts of the state and federal governments. For example, the BLM maintains a lengthy document on its sage-grouse web pages entitled "Funding Availability for Partners in Sage Grouse Conservation Efforts." (see http://www.blm.gov/nhp/spotlight/sage_grouse/Sage_Grouse_Funding_Availability_for_Partners.pdf). This describes just some of the funding that may be available to protect sage-grouse from such sources as FWS, BLM, the Department of Agriculture, the Forest Service, Department of Defense, Department of Energy, State Fish and Game Agencies, and nongovernmental organizations.

In addition to partnering with government at various levels, Westerners including farmers, ranchers, miners, drillers and others who live and work on the land continue to fund ongoing research as well as conservation efforts. Without them, many of the studies, lek rehabilitation projects, lek mapping, disease control programs and other efforts critical to the sustainability of the sage grouse would end, imperiling the sage grouse and losing an opportunity to

know vastly more about this hallmark of the West and the sagebrush sea it inhabits.

We believe that when the Fish & Wildlife Service takes into account all that is being done – or is planned for the future – in sage grouse conservation efforts, they will agree with us that the best outcome for the bird is to let state and local leaders continue leading conservation plans, not affect a federal takeover of the Endangered Species Act.

ESA REFORMS: SOUND SCIENCE

This listing struggle helps to highlight several areas where the Endangered Species Act could be modernized, updated and improved.

For example, why don't we require that sound, peer-reviewed science be used to make listing decisions rather than simply the "best available science?" Unlike laws such as the Safe Drinking Water Act, the Marine Mammal Protection Act, and a host of laws that affect the Food and Drug Administration, the Department of Education, and the Department of Labor, and the Department of Commerce (to name a few), the ESA currently has no peer review requirement. The absence of peer review explains the overwhelming record of inaccurate data - and data errors - under the ESA. Peer review is a standard scientific safeguard, but has somehow never been integrated into Washington's solution for recovering endangered species.

A reform measure passed with bipartisan support in the House Resources Committee last week, sponsored by Rep. Greg Walden, would be a step in the right direction.

What would the practical outcome of this reform be? For one, it is highly likely that Fish and Wildlife would not have decided to go forward with its listing Greater Sage Grouse review based on the environmentalists' listing petition.

For another, it is likely that the "mouse formally known as Preble's" would not have been mistakenly listed, as it obviously was. The so-called "Preble's Meadow Jumping Mouse" was a creature of fiction invented by a biologist in 1954. This biologist has since recanted and agreed there "Preble's" does not exist. It is genetically identical to a more common mouse than likely ranges throughout two-thirds of the North American continent. The Coloradans for Water Conservation and Development and the State of Wyoming have petitioned to remove the Preble's from the ESA. But that was not before entities such as the State of Colorado spent upwards of \$8 million on the

mouse formerly known as Preble's. The State of Colorado also estimates that Great Outdoors Colorado projects alone account for over one-quarter of a billion dollars spent on land preservation and acquisition along Colorado's Front Range. This astounding price tag is not entirely the result of the Preble's listing, but it indicates that big-business land trusts and environmental groups have a huge stake in the listing.

ESA REFORMS: STEWARDSHIP INCENTIVES

What about updating the Act to incentive stewardship on private lands, rather than relying on the highly punitive approach of the ESA? Well, in the case of the sage grouse, we would likely see a whole lot of interest by private landowners in preserving any sage grouse populations and grouse habitat on their lands both to: (a) partake in the incentives program; and (2) to help avoid the failure of an eventual ESA listing.

As it stands now, how do you think that many private landowners would react if they found out they had sage grouse on their lands as a potential ESA listing was being considered? Do you think they would make an immediate call to their local Fish & Wildlife Service office to report these sage grouse, or do you think they would be inclined to shoot, shovel and shut up? I can tell you that the latter is what the law now encourages.

ESA REFORMS: CRITICAL HABITAT DESIGNATION REFORM

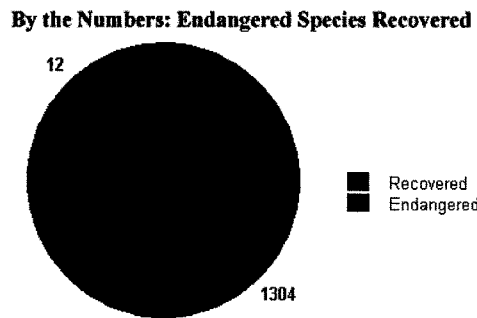
What if we added provisions to the Act that stretched out the timeframe between a warranted listing of a species and the onset of the critical habitat designation? It would give state and local interests more time to get to the table with a broad range of stakeholders and work out effective conservation programs. That would help avoid the need for the failed critical habitat process, and would result in a much better outcome for the stressed species and its human neighbors.

ESA REFORMS: A RENEWED FOCUS ON SPECIES RECOVERY

What if we added provisions to the Act that placed the focus more on species recovery rather than on the bureaucratic straightjacket of the critical habitat process? For one, we would be replacing a failed strategy – critical habitat – with one – locally driven conservation efforts – that has proven successful. In the case of the sage grouse, we could be spending our time working to develop region-wide conservation plans that worked rather than spinning our wheels in a defensive campaign to head off a federal takeover of those plans.

Just how bad is the current Act with regard to species recovery. Look at the facts:

- According to the USFWS, there are currently 1265 species in the United States that are listed under the ESA as threatened or endangered. An additional 39 species were listed and de-listed over the last 30-years, for a grand total of 1304 species in the Act's history.



- Only 16 of these 1304 species have been recovered, according to USFWS data on de-listed species. (See original data here: http://ecos.fws.gov/tess_public/TESSWebpageDelisted?listings=0)
- In the 30 years since ESA was enacted, this law has achieved a .01 percent rate of success. USFWS statistics showing that only 30 percent of species are "stable" and only 9 percent are "improving" does not brighten the picture.
- Furthermore, numerous qualified studies assert that none of the species listed by the USFWS to have been "recovered" in the United States may reasonably be claimed to have recovered as a result of the ESA. The fact is that the few recovery success stories are not even attributable to regulatory protections under the ESA, but unrelated factors such as bans on DDT and other organochlorides.
- For example, the National Wilderness Institute, in a 1997 report, "Conservation Under the Endangered Species Act, A Promise Broken," (see: http://resourcescommittee.house.gov/issues/more/esa/nwirpt_1997.pdf) states that "there is no case which required the ESA to bring about the improvement of a species" and in at least four of the claimed

recovery cases there was “little demonstrable change in the species’ condition attributable to anything other than data error.”

In short, the ESA has failed to recover species, which was the intent of the law. Clearly, if our goal is to “save” species, then subjecting it to this broken law is not the way to go.

ESA REFORMS: GREATER STATE AND LOCAL INPUT

What if we gave states a chance to play more active roles in state and local-based innovation and collaboration that recover species? Again, we would have a system where state and local leaders – those closest to the land, the species and its habitat – would be running more effective conservation efforts than federal bureaucrats who answered to bosses thousands of miles away.

ESA REFORMS: REQUIRING SPECIES RECOVERY GOALS

What if we required that species recovery goals be set prior to a species being listed? That would seem to make good sense, especially since the primary goal of a listing is to help a species recover. If stakeholders don’t know what goal to shoot for species recovery efforts, how can they gauge success or even be encouraged to try? We end up with a situation like we have in Colorado, where a state has taken the initiative to launch the nation’s first-ever state-sponsored endangered species fish hatchery. But, in spite of all of that work, when Colorado goes to DC and asks, “when have we raised enough endangered fish so that the fish is no longer endangered and can be de-listed,” no one can tell them.

I’m amazed that the State of Colorado continues to labor in this effort, given that there seems to be no light at end of the tunnel.

SUMMARY

Of course, I would submit that those who blindly pay homage to this Act really don’t want species to be recovered and de-listed. If that were the case, they would lose that which they most covet – the heavy hammer of critical habitat designation.

Finally, in conclusion, let me say this: the Endangered Species Act can be fixed. It can be modernized. It can be brought up-to-date with the 21st

Century. It can be made to focus on actual recovery of troubled species, while also protecting private property rights and local economies.

But achieving success in this effort will require bipartisan agreement and bipartisan support. We were very pleased to see the bipartisan consensus that emerged in last week's actions by House Resources Committee, which was led in large measure by the Committee's Chair, U.S. Rep. Richard Pombo (R-CA). We certainly hope that continues. And, we look forward to working closely with you and your colleagues in this historic reform effort.

Thank you very much.

ROCKY MOUNTAIN BIRD OBSERVATORY MOUNTAIN PLOVER CONSERVATION EFFORTS

INTRODUCTION

Rocky Mountain Bird Observatory is a non-profit 501 (c) (3) conservation organization founded in 1988. Our mission is the conservation of Rocky Mountains and Great Plains birds and their habitats through research, monitoring, education, and outreach. We work with state and federal agencies, private partners, and landowners to build capacity for conservation. We are committed to the conservation of birds through cooperative, voluntary partnerships with all stakeholders.

Rocky Mountain Bird Observatory currently employs 23 full-time staff, approximately 70 seasonal employees, and 200 volunteers who work throughout the region to help us fulfill our mission. We are nationally recognized for leadership in bird conservation and currently conduct projects in nine western states and Mexico.

BACK GROUND

Rocky Mountain Bird Observatory has been an effective avenue to deliver Mountain Plover conservation efforts. We are a non-regulatory organization that works through voluntary partnerships for conservation. We have been working with private landowners through our Prairie Partners Program for more than five years to build partnerships with landowners and resource professionals throughout the Great Plains to benefit prairie bird conservation. These efforts have included knocking on landowner doors to share information on prairie birds, conducting bird inventories on private lands, and providing landowners technical assistance with the birds and wildlife their lands support.

As part of our outreach efforts, we have put on landowner-based workshops to bring together state, federal, and private landowners in a comfortable ranch setting to see and discuss wildlife, habitat, economic diversification, and partnership opportunities. Prairie Partners has implemented twenty-six workshops since 2002 in Montana, Wyoming, Colorado, New Mexico, and Nebraska. Workshops have focused on raising awareness and providing technical resources and information for landowners and resource professionals to incorporate birds into their management and monitoring efforts. Workshops have also been implemented to help bridge the gap between urban and rural publics by providing urban residents with the opportunity to experience working ranches and talk with producers about production and challenges facing agriculture today. Nine hundred and fifty people including resource professionals, private landowners, urban residents and children have attended workshops.

Prairie Partners has also developed several outreach tools to help raise awareness for prairie birds including, "*Sharing Your Land with Shortgrass Prairie Birds*," a manual of which more than 10,000 copies have been distributed to partners throughout the Great Plains to familiarize people with the shortgrass prairie, basic bird biology, and 12 bird species of conservation concern including identification, habitat, and management practices that encourage these species. Other materials include our "*Stewardship Resource Guide*" for Colorado and Nebraska that serves as an at-your-fingertips resource

for private landowners to learn about the different partnership organizations and programs that are available for conservation. Our most popular outreach tool has been our "*Pocket Guide to Prairie Birds*," which covers more than 80 species including several species of conservation concern and is conveniently sized to take in the field. Landowners and resource professionals like the condensed version versus a regular bird guide since it concentrates on species they are likely to see, is easy to use, and convenient to take in the field. To date, we have distributed more than 28,000 copies of this guide to landowners and resource professionals throughout the Great Plains.

Prairie Partners has also gone beyond outreach to work with willing landowners and partners to enhance habitat on private lands through incentive programs. We have also developed stock tank ladders in conjunction with our partners as a simple tool to benefit wildlife species and encourage landowner involvement in conservation. We have delivered hundreds of stock tank ladders to private landowners in eastern Colorado.

Rocky Mountain Bird Observatory's Prairie Partners Program has contacted hundreds of resource professionals and private landowners throughout the Great Plains. We currently have more than 700 landowners in our database representing more than one million acres of wildlife habitat. We use the database to keep in touch with our partners and keep them apprised of upcoming activities and opportunities. We are also working with state and federal partners as well as private landowners to enhance habitat on more than 22,000 acres of land in Nebraska, Wyoming, South Dakota, Colorado, and Texas. The impacted acres are nested within more than 100,000 acres of habitat. The success of our program is made possible in large part from our landowner partners as well as state, federal and other non-governmental agencies.

Prairie Partners strongly believes awareness is the critical first step toward bird conservation and uses a diversity of tools to help increase this awareness. Rocky Mountain Bird Observatory and its Prairie Partners Program is dedicated to voluntary partnerships for conservation and thus has been well received by private landowners.

MOUNTAIN PLOVER

In 2002 Rocky Mountain Bird Observatory's Prairie Partners Program cooperated with the Colorado Division of Wildlife, Colorado Farm Bureau, The Nature Conservancy, U.S. Geological Survey, Colorado State University-Colorado Natural Heritage Program, and U.S. Fish and Wildlife Service for Mountain Plover conservation. Conservation efforts included development of a video geared toward private landowners to help raise awareness for Mountain Plovers including identification, preferred habitats, and conservation opportunities on private lands.

- To date, 270 copies of this video have been distributed to federal, state, and private partners including landowners
- Organizations that were sent videos included the Colorado Farm Bureau, Colorado Division of Wildlife, Natural Resources Conservation Service, Wheat Growers Association, and the Rocky Mountain Farmers Union.

- Hundreds of landowners and resource professionals have viewed the video through outreach activities of Rocky Mountain Bird Observatory and partner organizations.

In 2003, Rocky Mountain Bird Observatory also partnered with the Colorado Division of Wildlife, Nebraska Game and Parks Commission, U.S. Geological Survey, and Colorado State University-Colorado Natural Heritage Program to initiate a nest conservation project on cultivated lands.

- Preliminary results from Mountain Plover nest research conducted by the Colorado Division of Wildlife, U.S. Geological Survey, Colorado Farm Bureau, and Colorado State University-Colorado Natural Heritage Program indicated nesting success on cultivated lands was higher than on prairie sites. Reduced predation on cultivated lands is likely a factor in this increased success.
- Depending on the timing and the implements being used to work the land, however, nests may be susceptible to loss or damage during routine agricultural activities.
- Discussions with landowners indicated their willingness to conserve nests on cultivated fields. However, due to the cryptic nature of nests, assistance with nest location was needed.
- In 2003, we established a toll-free number for landowners working their ground during the Mountain Plover nesting season. The number was also operated in 2004. Landowners call the number, 1-877-4PLOVER, 48-72 hours before working their ground so an RMBO technician can locate and mark any nests in the fields and provide a map of nest locations to the landowner. Landowners only need to miss the nest by inches in order to conserve it.
- To spread the word about this opportunity, we sent press releases to local newspapers and radio stations along with information packets to partner organizations. The information packets included an introductory letter on the project, the Memorandum of Understanding, Mountain Plover awareness sheet, and the toll-free number business card. We sent over 300 packets to private, state, and federal partners. Also, we distributed more than 1,500 toll-free Mountain Plover business cards across eastern Colorado and western Nebraska.
- We increased efforts in 2004, with all Natural Resources Conservation Service and Colorado Division of Wildlife offices receiving information packets. Landowners also helped spread the word with neighbors and friends by distributing materials and explaining the program. Colorado Farm Bureau presidents on the eastern plains also received packets of information including the Mountain Plover video from their regional office and their regional representatives helped spread the word through local meetings.
- We also gave presentations to landowners through workshops and local grazing association meetings. We also presented and shared information at professional meetings.

- In 2003, six landowners in Colorado representing 14,065 acres of cultivated ground called the toll-free number, plus an additional six landowners representing 2,370 acres in Nebraska.
- In 2004, 13 landowners in Colorado allowed field clearing representing 22,311 acres. Most participants were new from last year. Half of the participants from last year planned to call this year but due to drought conditions were unable to call the hotline.
- Participation in Nebraska also increased to 16 landowners representing 8,240 acres of land.
- One hundred and twenty-three adult and juvenile Mountain Plovers were observed while clearing fields in Colorado and Nebraska. Technicians identified and marked 28 nests. Eighty percent of nests in Nebraska were successful and up to 75% were successful in Colorado. Inclement weather including flooding and hail impacted our ability to determine fate of some of our nests in Colorado.
- Rocky Mountain Bird Observatory is also working with partner organizations to fill the gap in information that exists on Mountain Plover abundance and distribution in western Nebraska and eastern Colorado. In 2004, surveys were also expanded to the San Luis Valley in south-central Colorado to begin to get a better handle on the population there. Survey methodology is still being adapted for this low-density semi-colonial species. Eighty-eight landowners in Colorado and Nebraska allowed Mountain Plover surveys on their land to help with these efforts.
- In 2004, a Memorandum of Understanding was also developed between the Colorado Division of Wildlife, U.S. Fish and Wildlife Service, and willing landowners to further encourage participation in Mountain Plover conservation efforts. Landowners who signed the Memorandum of Understanding are exempt from incidental take of Mountain Plover during routine cultivation activities during the Mountain Plover nesting season provided they sign the Memorandum of Understanding and call the toll-free number in advance of cultivation activities. This is a new effort and 20 landowners in Colorado signed the agreement, many of whom were unique to those participating in the toll-free number for field clearing. Thus more than 30 landowners in Colorado are interested and voluntarily working toward Mountain Plover conservation. The Memorandum of Understanding is currently being reviewed with more landowner input to further encourage landowner participation in Mountain Plover conservation.
- Involvement in the toll-free number has increased from 2003 to 2004 in both Colorado and Nebraska. Participants more than doubled from twelve in 2003 to twenty-nine in 2004. Our number of participants in 2004 is conservative since at least three landowners in Colorado planned to call the hotline but drought conditions and scheduling impeded them. The total number of acres cleared for Mountain Plover nests increased from 16,635 acres in 2003 to 30,551 acres in 2004. Participation on behalf of landowners is expected to increase. It takes a few key landowners

participating to help encourage other landowners to come onboard. The Conservation Reserve Program took a few years to take hold and now thousands of acres have been enrolled in this program.

- Outreach efforts have increased landowner awareness and even though many have not called the hotline they know what to look for and are more familiar with the species and simple measures they can take for conservation.
- We are making government agencies and private partners in New Mexico, Wyoming, and Montana aware of Mountain Plover conservation efforts in Colorado and Nebraska to encourage their participation. As a result, proactive voluntary efforts are being initiated throughout the breeding range of the Mountain Plover.

Rocky Mountain Bird Observatory and its partners are committed to the voluntary conservation of Mountain Plovers on private lands. Outreach efforts and the toll-free number for nest marking are funded by the Colorado Division of Wildlife through 2008. Landowner participation in these efforts is key to the long-term conservation and recovery of this species. By involving landowners at the forefront they become an active part of the solution. The majority of Mountain Plover habitat is under private ownership thus private landowners are the stewards and critical partners in these efforts. Through continued and expanded cooperation, we will fill gaps in information about the species, increase awareness about its conservation needs, and directly conserve nests to benefit its long-term conservation and recovery.

For species such as Mountain Plover that occur on private lands, voluntary participation by landowners is clearly the key to species conservation. Once regulatory mandates become a part of the process, landowner input and willingness to participate in conservation efforts declines. Without landowner cooperation, conservation and recovery is limited. Our success with Mountain Plover conservation demonstrates the effectiveness of proactive, collaborative, and voluntary efforts. Mountain Plover conservation efforts have become a model of how to work proactively and voluntarily with diverse stakeholders for species conservation.

To: Frank Lucas, Chairman
Ag Sub-committee on Conservation, Credit Rural Development and Research-Field
Hearing.

Re: Review of the Endangered Species Act and its impact on agricultural Producer's.

We are sorry we were unable to send a representative to the recent hearing held in Greeley Colorado on the above subject matter. The Ginseng Board of Wisconsin represents all Ginseng Growers in the State of Wisconsin.

Our understanding is that the wild ginseng was the target for protection when CITIES was originally drafted. What is unknown to us is how cultivated ginseng got included in provisions of this treaty.

There are several negative effects to us that raise and export cultivated Ginseng (*Panax Quinquefolius*). 85% of cultivated Ginseng grown is exported to Asia. Currently for Wisconsin this translates to approximately 400,000 to 500,000 pounds.

Large lot sales are not an issue here, but being included in the Treaty in effect acts as a trade barrier to us in that small lots, (ex: for international travelers who are taking a "gift of health" back to their families), must be accompanied by a Personal Effects Certificate issued by U.S. Fish & Wildlife.

Many of our producers sell Ginseng as value added products like capsules and teas. Within the U.S. that is not a problem but it does prevent international sales via the Internet. In this context it acts as a trade barrier.

A cultivated crop such as ours being included in an act to protect endangered species doesn't seem practical. As recent as 8 years ago our industry was responsible for producing 2.5 million pounds of cultivated Wisconsin Ginseng.

We appreciate the opportunity to voice our interest in having cultivated Ginseng removed from the CITES Treaty. We look forward to answering any questions you may have.

Thank You
Merle 'Butch' Weege
Secretary
Ginseng Board of Wisconsin