

**Western Governors' Association
Endangered Species Act Executive Summit**

PANEL 2 -- ESA and State Water Management

Bios

Liz Birnbaum

American Rivers

Ms. Birnbaum is Vice President for Government Affairs at American Rivers, having previously acted as Director of Government Affairs. Before coming to American Rivers in 2001, she worked for two years in the Solicitor's Office of the Department of the Interior, serving as Associate Solicitor for Mineral Resources and as Special Assistant to the Solicitor. Prior to her work at DOI, Ms. Birnbaum spent several years on the Democratic staff of the House Committee on Resources (also called the Committee on Natural Resources and the Committee on Interior and Insular Affairs), working for Chairman and Senior Democratic Member George Miller. Previously, Ms. Birnbaum began her work on river issues and natural resources law at the National Wildlife Federation as counsel to that organization's water resources program. She holds a law degree from Harvard Law School and an undergraduate degree in linguistics from Brown University.

Stephen Snyder

Attorney and Special Master, New Mexico

Stephen E. Snyder is an attorney, mediator and conflict management consultant who specializes in water resources and other natural resource issues. Steve was a senior partner of the Denver based firm of Holme Roberts & Owen, where he specialized in complex natural resource and other litigation. In 1996 Steve left his firm to return to New Mexico (where he was born and raised) to establish a private practice as an attorney, mediator and consultant.

Steve is presently serving as the Special Master in the Pecos and Lower Rio Grande water rights adjudications in the New Mexico state courts. As part of his consulting practice, Steve has (i) worked with the Idaho Department of Water Quality to design a workshop on Use Attainability Analysis; (ii) worked with the Western Governors' Association to develop a workshop on effluent dependant waters; (iii) conducted an assessment for the Natural Resources Law Center of the University of Colorado Law School of the failed mediation efforts in the Klamath; (iv) presented workshops on alternative dispute resolution and complex case management for judges and special masters who are presiding over water rights adjudications throughout the Western United States; (v) provided mediation training for the mediators in the Lower Rio Grande water rights adjudication; and (vi) provided negotiation training for the stakeholders in the Klamath Basin water rights adjudication. Steve has taught courses in negotiation strategies, mediation and alternative dispute resolution as an adjunct professor at the Universities of New Mexico and Denver.

Jack Troyer**U.S. Forest Service**

Jack grew up in Western Colorado in the rural environment of a peach farm near the small community of Palisade. He attended Colorado State University and graduated in the field of Watershed Management. In 1969, he began what has been a 35-year Forest Service career, beginning as a hydrologist and planner in California. He later served as a District Ranger for 9 years on the San Juan and White River NF's in Colorado. In 1986, he was the Resources staff officer on the Shoshone NF in Wyoming, and from 1988-1991, he served a coordination role in the Greater Yellowstone Area as an interagency team leader. Jack then became Forest Supervisor of the Chequamegon and Nicolet NFs in Wisconsin until March of 1997 at which time he was appointed Deputy Regional Forester for the Intermountain Region of the Forest Service. He was promoted in April of 2002 to the Intermountain Regional Forester position.

Karl Dreher**Idaho Water Resources Department**

Mr. Dreher is a licensed professional engineer with more than 30 years of experience in developing and managing water resources covering a broad spectrum of disciplines including interstate negotiations, legislative interaction, water rights, water law, water policy, water treatment, environmental issues, planning, program/project management, construction management, personnel management, contract negotiations, hydraulic analysis and design, structural analysis and design, and permitting for projects. Mr. Dreher has been involved with water resource projects in various countries throughout the world and has served as a consultant to a number of public as well as private organizations involved in the development and management of water resources.

Currently, Mr. Dreher is serving his third term as the Director of the Idaho Department of Water Resources. Appointed by the Governor of Idaho, Mr. Dreher is the senior executive responsible for all aspects of the Department's multi-office based services to the people of Idaho. With a \$25 million annual budget, the Department of Water Resources has about 200 employees.

EDUCATION

B. S. in Civil Engineering – 1971, Colorado State University

M. S. in Civil Engineering – 1973, Colorado State University

LICENSES AND REGISTRATIONS

Professional Engineer – Colorado and Idaho

PANEL 2 -- ESA and State Water Management

Breakout Abstracts

S. Elizabeth Birnbaum

- I. Aquatic species are 5 times more likely to be endangered than terrestrial species
 - a. In the West, this is largely due to water flow amounts and timing
 - b. The listings represent the breakdown of aquatic ecosystems
 - c. This situation can be treated as a threat – of federal interference with state water management – or an opportunity – to reevaluate water management and maintain river ecosystems

- II. Take the threat of federal ESA listings as an opportunity to improve state water management
 - a. There are huge political pressures to over-allocate rivers
 - i. Over-allocation has many impacts beyond endangering species
 1. Loss of recreational and commercial fisheries
 2. Loss of clean water
 3. Loss of special places
 - ii. Though institutional safeguards exist, few have been used
 1. Water waste standards
 2. Public trust doctrine
 3. Adjudication
 - b. Outside pressure can create the political conditions for better water management

- III. Better water management can achieve most of the goals suggested for this discussion
 - a. Advance identification of rivers in trouble reduces listing
 - i. Work with federal agencies
 - ii. Address candidate species
 - b. Demonstrated water management efforts can contribute to federal/state cooperation
 - c. Better state water management will lead to greater deference to state water law

- IV. Water management principles are well-known, but could have dramatic effects on sustaining river ecosystems
 - a. Dramatically different systems have been adopted overseas

- b. Within the framework of western water law, can still have huge improvements
 - i. Metering
 - ii. Managing groundwater/surface water together
 - iii. Improved irrigation practices
 - iv. Stormwater management
 - v. Dam operations

V. Conclusion

It's a major challenge to look on endangered species as an opportunity rather than a huge interference with state water management. But improved water management offers enormous benefits in addition to addressing species issues.

Steve Snyder

I. Introduction

A. In response to a request by the Departments of Interior and Commerce, the National Academy of Sciences formed, through its National Research Council, a committee to evaluate the strength of scientific support for the two biological opinions that led to the cut off of irrigation water in the Klamath in the summer of 2001. The Departments also requested that this committee make recommendations concerning strategies for recovery of the listed species in the Klamath.

B. In its February 2002 Interim Report and its October 2003 final report, the Klamath NRC Committee concluded that there was "no substantial scientific support" for those portions of the Biological Opinions that required that lake and river levels be maintained at specified levels to protect the listed species. In other words, the Committee concluded that there was no "substantial scientific support" for the decision that led to the cut off of irrigation water in 2001.

C. In its October 2003 final report the Committee also made numerous recommendations for species recovery that, if adopted, would bring about a major transformation in land and water management practices. Those recommendations included the elimination of unauthorized take, measures to stimulate non-government recovery efforts, an extensive program of research and monitoring, removal of one (and possibly more) dams, removal of numerous agricultural diversions, and changes in grazing and agricultural practices.

D. Some of the most hotly contested issues under the ESA involve scientific questions the answers to which involve substantial amounts of uncertainty. The impact of water levels on the listed species in the Klamath is an example of one of those issues. Asking a prestigious and independent scientific body--such as a National Academy of Science Committee--to answer contested scientific questions is one potential approach for resolving conflicts over such questions. One way for evaluating the effectiveness of this

approach is to examine the impact of the Klamath NRC Committee on the conflict in the Klamath.

II. The Impact of the NRC Report on the Klamath Conflict

A. The Committee's conclusion that there was "no scientific support" for the Listing Agencies minimum water level determinations has:

1. Been used by opponents of the ESA to bolster their claims that the Listing Agencies practice "junk science" and to lend credence to efforts to incorporate "sound science" amendments into the ESA.
2. Been attacked by environmental and tribal interests for a failure to recognize that, where scientists have no clear answer to a question, the Precautionary Principle requires that decisions be made in favor of species protection.
3. Provided "political cover" that enabled the Bureau of Reclamation to credibly turn the focus of its restoration efforts away from water level maintenance to a variety of other options such as water banks, lease/purchase of water rights and an annual pulse flow

B. The Committee's Report did not resolve the conflict over the "minimum water level" question in the Klamath.

1. Not surprisingly, stakeholder groups either embraced or rejected the Report, depending upon whether the Report supported or conflicted with their preexisting views.
2. Perhaps more surprisingly given the prestige of a National Academy of Science Committee, the scientific community has not embraced the report. For example, an independent committee appointed by Oregon's Governor rejected the Committee's minimum water level determinations
3. The Report has stimulated a healthy scientific debate about water level and species recovery questions in the Klamath

C. The Committee's wide ranging recommendations concerning strategies for species recovery:

1. Drew attention to the fact that focusing exclusively on changes in the flow regimes of the Klamath Project would not be sufficient to bring about a recovery of the species

2. Drew attention to the facts that (i) effective recovery programs require significant intergovernmental cooperation and (ii) no institutional arrangements exist for facilitating such cooperation
3. Has the potential for setting in motion political and social forces that could led to recovery actions (such as dam removal and changes in grazing practices) that would have been unthinkable prior to the Report.

D. The Report opened a dialogue about the proper role of science, professional judgment and the precautionary principal under the ESA:

1. In its Report, the Committee distinguished between decisions based on professional judgment and decisions based on scientific hypothesis testing. Professional judgment involves the application of knowledge gained in a variety of past circumstances to an existing situation. The problem with professional judgments, the Committee argued, is that “application of knowledge from one set of circumstances to another is problematic” and frequently leads to erroneous decisions.
2. Decisions based on the scientific method require hypothesis testing. However, a hypothesis testing approach requires a very high burden of proof and often the information required for a hypothesis testing approach is scant or nonexistence.
3. The Committee concluded that in circumstances where hypotheses testing is not possible decisions must be based on professional judgment for lack of a viable alternative. The problem with the Listing Agencies decisions about the water level in the Klamath, the Committee noted, was that sufficient scientific data was available, the data did not support the Agencies’ water level determinations and the Agencies failed to give adequate weight to that data.
4. Professional judgment as a paradigm for making decisions says nothing about who should bear the risk if the decision is wrong. For example, if we are uncertain about whether a certain minimum water level is necessary to protect the species, what should we do? Should we require that the water level be maintained and impose needless social and economic hardships on the community if we turn out to be wrong. Or should we allow the water level to recede and run the risk of species extinction if we turn out to be wrong. The question of who bears the risk--consumptive users of water or the species--is not a scientific question. It is a question of values. Thus, how that question gets answered depends on the values of the person(s) who has the power to authoritatively answer the question.

III. Recommendations

An investigation of a disputed scientific issue by a prestigious neutral panel of experts selected by a neutral appointing authority is a useful way for “unfreezing” the sources of resistance to change that impair meaningful progress on ESA issues. However, the effectiveness of a neutral panel can be undermined if it is employed in ways that create the potential for exacerbating the conflict. For that reason, I recommend that the Western Governors Association and the Western States Water Council convene a working group consisting of scientist, relevant state and federal agencies and private stakeholder groups to answer the following question:

What are the best ways for making water management decisions about ESA issues that involve matters of substantial scientific uncertainty?

Jack Troyer, Intermountain Regional Forester, USDA Forest Service

Introduction - Water may be the single most valuable resource produced on National Forest System (NFS) lands. The quote, often attributed to Mark Twain, “whiskey is for drinking; water is for fighting,” is as true today as it was in the 1800’s - we just have lots more experience with the latter.

National Forests and Water - National Forests were established under the Organic Administration Act of 1897 to improve and protect the forests within their boundaries, or for the purposes of securing favorable conditions of water flows and to furnish a continuous supply of timber. The Multiple Use Sustained Yield Act supplemented but did not derogate the purposes set forth in the Organic Act, adding that National Forests shall be administered for the purposes of outdoor recreation, range, timber, watershed, wildlife and fisheries. Congress directed that water within the boundaries of National Forests may be used under the laws of the state where the National Forest are situated and under the laws of the United States and the rules and regulations established there under (16 U.S.C. 481). Congress recognized that the multitudes of resources that comprise the National Forests are intertwined and interdependent when they specified that they be administered in a “coordinated and harmonious” way.

Guiding Principles - Given these various laws, rules, and regulations, the Forest Service has adopted the following guiding principles for achieving those aims with respect to soil, water, and fisheries resources.

- We recognize and respect the authority of states to allocate water available for appropriation. We respect valid, existing water rights and will manage water resources on NFS lands to minimize impacts adversely affecting the exercise of such rights.
- We will manage National Forest Systems lands and facilities to secure favorable conditions of water flows suitable for multiple uses.

- We will maintain, protect and restore watersheds (soil, water and aquatic resources) as appropriate through adaptive management.
- We recognize and respect the authority of States to manage water quality under the Clean Water Act. We will assume greater responsibility for achieving state water quality goals on NFS lands. The extent and process will be determined through mutual, written agreement.
- We will cooperate with States, other Federal agencies, Tribal governments, stakeholders and holders of valid water rights to provide mutually beneficial programs for restoring, maintaining, and utilizing water resources.
- We will utilize a forest planning process to help integrate implementation of each of the above principles, and the sustainable production of goods and services.

Managing Water Uses on NFS lands and ESA - Managing water uses on NFS lands in accordance with State and Federal law requires the Forest Service to coordinate water resource objectives with State appropriation processes. Water needed to meet Federal land management responsibilities on NFS lands, and the amount of water on NFS lands available for appropriation, shall be identified through cooperative planning efforts involving applicable State, Tribal, and local governments; water right holders; and other interested parties. When a conflict arises, such as a situation when the Forest Service's responsibility to protect and recover Federally listed species conflicts with the administration of a water right, the conflict shall be resolved by Federal and State authorities working in cooperation with water right holders, applicable Tribal and local governments, and other interested parties, and not through a unilateral regulatory action by the Forest Service.

The ESA requires the Forest Service to provide best scientific and commercial data available concerning the impact of the proposed project on listed species or designated critical habitat. Activities or actions that provide immediate benefits to listed species or designated critical habitat, and that do not forgo other future opportunities, should be expedited. In those cases where such actions such as installation of fish screens, metered head gates, and/or overall improvements to the efficiency of water diversion facilities, etc are of direct and immediate benefit to listed species and their habitats, consultation on these activities can and should be completed without resolving other more complex and yet to be resolved issues (e.g., the requiring of, setting of, and/or timing of instream flows). Resolution of more complex and yet to be resolved issues that would require the collection of additional, but currently unavailable data, information, or analysis, should not be allowed to impede or unduly delay the consultation process related to activities that have direct and immediate benefit to listed species and their habitats.

Improving the Efficiency and Effectiveness of the ESA - In working to meet the general goals of the National Fire Plan (NFP), the Healthy Forests Initiative, and the Healthy Forests Restoration Act, field personnel continue to be challenged by the overly burdensome process and procedural requirements that have been developed for

implementation of the ESA. In reviewing these processes and procedures, we believe there are three areas that we could focus on and bring some efficiencies and effectiveness back into the implementation of the ESA while meeting the intent and objectives of the Act. These three areas are:

Clarification of the ESA Section 7 Consultation Handbook - In March 1998, the FWS and NOAA Fisheries finalized their ESA Section 7 Consultation Handbook. This handbook helps guide FS and BLM biologists in making “no effect,” “not likely to adversely affect” (NLAA), or “likely to adversely affect” (LAA) determinations when preparing and consulting on biological evaluations/biological assessments. In looking at the key definitions for no effect, NLAA, and LAA in the handbook, we believe that these definitions and their application to real life situations need clarification. Common sense would tell you that if you cannot meaningfully measure or detect something, then it probably has “no effect.” However, given the handbook definition, it binds the hands of our biologists to conclude that it is a “not likely to adversely affect” situation, and with that conclusion comes more process in order to complete consultation. We feel strongly that these definitions need to be clarified such that it is more aligned with what logic exercised by a prudent person could tell us.

Elimination of Duplication of Regulatory Agency Oversight - In many areas the FS and BLM have land management responsibilities in which we must consult with both the FWS and NOAA Fisheries because listed inland fish and listed anadromous fish or their critical habitat coexist in the same area. This need for dual consultation on the same piece of ground or reach of stream (albeit for different fish species) causes large amounts of process duplication, and in some cases results in consultation outcomes or requirements that are considerably different and possibly mutually exclusive to implement on the ground. Oftentimes these differences are more due to philosophical differences and/or process differences between the FWS and NOAA Fisheries, and not due to the biology of the species. When focusing on who should have jurisdiction over listed fish species, we believe that we could clearly operate more efficiently and effectively by having to consult with one agency or the other – FWS or NOAA Fisheries.

Expansion of the Counterpart Regulation Concept - The intent of the December 3, 2003 Counterpart Regulations are “to streamline consultation on proposed projects that support the NFP.” They eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from FWS and NOAA Fisheries for those NFP actions that the Action Agency determines are “not likely to adversely affect” (NLAA) any listed species or designated habitat. We believe that the concept being advocated in the regulations should apply to all projects that meet the land management objectives of the FS and BLM, and not just those that are considered NFP projects. Non-NFP projects that meet the objectives of our various unit plans are just as valid and important to many of our users and the general public as those that are NFP projects, and therefore should require no more or less process than those NFP projects.

Karl Dreher

Case Study, The Lemhi River, Idaho

The conservation plan developed for the Lemhi River Basin is a remarkable example of community-based cooperation and conservation. The Lemhi River Basin is located approximately 775 miles from the Pacific Ocean and was at one time one of the most productive areas for salmon in the Columbia River Basin. In early 1909, the mouth of the Lemhi River was dammed and the anadromous fish runs were almost extirpated. Additionally, the development of irrigated agriculture resulted in the dewatering of many tributaries and reduced water flows in the mainstem. After removal of the dam in 1957, anadromous fish runs began to return to the river; however agricultural development limited access to much of the available tributary habitat for Chinook salmon spawning and rearing and for bull trout.

As Columbia River Basin anadromous fish runs began to decline, ranchers in the Lemhi Basin became concerned that they were losing an important part of their heritage and felt compelled to take action to preserve the Lemhi salmon runs. They sought the assistance of state and federal officials to help develop an anadromous fish recovery plan. The Northwest Power Planning Council (NPPC) *Strategy for Salmon* (NPPC 1992), called for the recovery of salmon runs in the Columbia River Basin, watershed-level planning efforts to effect that recovery, and cooperation between private landowners, government agencies, tribes, and other stakeholders in developing such efforts. These collaborative efforts led to establishment of the Model Watershed Project in Salmon, Idaho in 1993 (which has since expanded to become the Upper Salmon Basin Watershed Project); completion in 1992 of a plan by local irrigators to improve fish passage in the Lemhi River; and the Model Watershed Plan, which identified a range of fish conservation actions for the Lemhi, Pahsimeroi, and East Fork Salmon River Basins. The plan consisted of an assessment of fish habitat conditions within the basin, habitat goals, and prioritized a list of projects to achieve those goals. The central feature of the plan was development of a local solution tailored to the fish habitat needs within the basin. Based on the latter plan, numerous conservation projects have been implemented by local landowners and governmental agencies in these watersheds focusing on fish passage issues, fish screen improvements, protection of riparian habitat, and consolidation or modification of irrigation diversion works. These activities were possible because federal and state agencies worked with the local landowners to craft a local solution rather than imposing a one-size fits all federal solution.

The success of the Lemhi Model Watershed Project was threatened in the spring of 2000 when the combined effects of spring water withdrawals and drought resulted in dewatering of the lower reach of the Lemhi River. NOAA fisheries, which had previously elected not to participate in the Model Watershed Project, unilaterally initiated enforcement action against some local landowners for the death of three salmon caused by dewatering. Local landowners were upset that the enforcement action by NOAA Fisheries ignored the many efforts of the local community to restore fish habitat. The state stepped in and encouraged NOAA Fisheries to work with the local community rather than pursue an enforcement action. Local staff of the Idaho

Departments of Fish and Game and Water Resources played a critical role in bridging between NOAA Fisheries and the local landowners because of the longstanding working relationships and knowledge about site-specific fish issues and water use. As a result, in June 2000 the Upper Salmon Basin Watershed Project developed a Memorandum of Understanding (MOU) with the Idaho Department of Fish and Game, Lemhi Irrigation District, and Water District No. 74, providing for two key commitments by Lemhi River Basin irrigators: (1) season-long maintenance of a minimum of 10 cfs in water flow below a diversion known as L-6 to aid downstream migration by juvenile fish; and (2) “fish flushes” of 35 cfs during the low flow months of June, July, and August to aid upstream migration of adult fish. This was followed on July 18, 2001, by signing of the Lemhi River Basin Conservation Agreement by the signatories to the MOU and by the Idaho Office of Species Conservation, U. S. Fish and Wildlife Service, and NOAA Fisheries.

The conservation agreement was organized around three “implementation tiers,” and addressed additional reaches of the river important to fish. Tier 1 described actions undertaken to conserve resident and anadromous fish in the Lemhi River Basin up to the date of the agreement. Tier 2 identified specific fish conservation activities that would be undertaken under the agreement. And Tier 3 identified actions that would be addressed in a future “long-term agreement” for the Lemhi River Basin, the purpose of which was to establish a process for voluntary compliance with the ESA. The agreement also contained a monitoring plan describing activities to monitor the effectiveness of Tier II measures and to obtain information for use in developing the Tier III long-term plan. The agreement also provided “enforcement discretion” for the take of federally listed fish that might occur in the course of lawful water diversions. The conservation agreement, which was renewed for 2002 and 2003, represented an interim agreement among its signatories that: (1) formalized a commitment among the signatories to develop a long-term fish conservation plan for the Lemhi River Basin; and (2) was intended to govern fish conservation activities in the basin from the time of its effective date to the time of the effective date of the long-term plan required by the agreement.

In the course of implementing the agreement, the Idaho Department of Water Resources and local irrigators recognized that adjustments to Idaho water law were needed to carry out some of their conservation commitments. Through their efforts and those of the Lemhi Irrigation District’s Board of Directors, legislation subsequently enacted to authorize the Idaho Water Resource Board to appropriate a minimum stream flow right in the Lemhi River and to appoint a local rental committee to facilitate the operation of a water rental pool designed to market natural flow rights in the Lemhi River Basin. Pursuant to the legislation, the local rental committee has the authority to rent natural flow rights, under full season or partial season leases and on a willing buyer and willing seller basis, for the purpose of satisfying the minimum stream flow water right. This approach avoided local conflict, avoided the disruption of state water law, and is the cornerstone for the development of the long-term conservation agreement.

Concurrent with the development of the conservation agreement, the Nez Perce Tribe, the United States, the State of Idaho, and local communities and water users in Idaho have

been engaged in mediation under the Snake River Basin Adjudication (SRBA) to resolve water right claims of the Nez Perce Tribe in the Snake River Basin. As part of SRBA, the Tribe filed water right claims for instream flows to protect its treaty-reserved fisheries, as well as claims to support its consumptive water needs and claims to springs in the area ceded by the Tribe in 1863. After several years of negotiation, the parties have developed a framework or “term sheet” for a proposed settlement agreement. That settlement agreement includes a Salmon/Clearwater component addressing instream flows, fish habitat, and fish passage in the Salmon River and Clearwater River Basins. The parties believe that the requirements of this Salmon/Clearwater component of the agreement will provide benefits for ESA listed species and resolve water and natural resource concerns raised by the Tribe in the SRBA. The Lemhi conservation plan is part of the Salmon/Clearwater component of the Nez Perce term sheet.

Federal agency willingness to work with state and local interests, instead of assuming a federal solution is the best solution, is critical to the development of a long-term agreement. Initially, NOAA fisheries intended to enforce against the few water users who owned the diversion where the three dead fish were found. This action would have created a crisis but no real solution to the dewatering problem. The holders of water rights owning the diversion had some of the earliest priority dates, and the effect of cutting off water delivery to these right holders would have been to reduce the amount of flow coming down to the diversion and would have exacerbated the dewatering problem. Instead, through negotiations with local landowners and the state, the parties crafted a market-based solution for providing instream flows in the lower Lemhi River.

In subsequent low flow years, the Idaho Department of Water Resources water transactions program and the Office of Species Conservation have secured agreements from water right holders not to divert and water bank rentals to supplement migration flows.

Because many of the recovery measures for anadromous fish and bull trout center on changes to water and land management, the Lemhi approach demonstrates that a state-led recovery effort results in meaningful solutions that enjoy community support. This approach fits nicely within the congressional policy directive of the Endangered Species Act “that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.” 16 U.S.C.A. § 1531(c) (2). Section 6 of the ESA expressly contemplates state-led efforts for species conservation through cooperative agreements. Section 6 provides that the Secretary “[I]n carrying out the program authorized by this chapter, ...shall cooperate to the maximum extent practicable with the States.” 16 U.S.C.S. § 1535(a). In furtherance of this policy, “the Secretary is authorized to enter into a cooperative agreement...with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species.” 16 U.S.C.A. 1535(c)(1).

Under the Section 6 Cooperative Agreement that is currently being developed, the State of Idaho, with the assistance of the local land owners, federal agencies, and tribes is developing long term conservation goals and conservation measures that will contribute

to the recovery of anadromous and resident fish in the Lemhi Basin. On an annual basis, the progress of the State will be reviewed by the appropriate Secretary and necessary revisions to the plan will be implemented. This type of basinwide adaptive management approach provides the only real opportunity for meeting the objectives of the ESA. Instead of wasting money on process and litigation, the Lemhi Section 6 plan provides an opportunity for immediate on-the-ground results and the support of the local community.