

**Testimony of  
Bill Owens, Governor of Colorado  
And  
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On behalf of  
The Western Governors' Association  
Before the Fisheries, Wildlife and Water Subcommittee  
Senate Environment and Public Works Committee**

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Chairman Chaffee, Senator Clinton, Members of the Subcommittee. We present this written testimony today on behalf of the Western Governors' Association (WGA). The Western Governors' Association is a bipartisan, independent, nonprofit organization representing the governors of 18 states and three U.S.-Flag islands in the Pacific. Through our Association, the Western governors identify and address key policy and governance issues in natural resources, the environment, human services, economic development, international relations and public management. We appreciate the opportunity to share with you the Western Governors' perspectives on the Endangered Species Act (ESA).

Western Governors commend you for taking up this very important, but admittedly difficult issue. Our states and communities must deal with the impacts of proposals to list species and management decisions made under the ESA on a daily basis. That is why the Western Governors have long advocated that Congress review and update the Act as well as provide sustained levels of funding for the program. We strongly believe in the principles and goals of the ESA. The intent of the ESA remains a laudable goal. Yet the tools authorized by the current Act have become outdated and are incomplete. We, therefore, appreciate the opportunity to work with the Committee to help you build a bipartisan consensus for a few targeted, common-sense enhancements to the Act.

Let us reiterate that last point – we strongly believe that the ESA can only be reauthorized through legislation developed in a consensus fashion that results in broad bipartisan support. Our predecessors, and in some cases our predecessors' predecessors recognized this simple fact in the early 1990s when the Western Governor's Association (WGA) and others embarked on a collaborative process to find common ground on this issue among a diverse set of stakeholders. The debate was so acrimonious in the beginning that it had to be temporarily called off. Soon however the parties were back at the table and negotiations began to bear fruit. Senators Dirk Kempthorne and John Chafee embraced this process and introduced comprehensive reauthorization legislation (S. 1180) based upon these proposals. At the time, WGA strongly supported S. 1180 and actively sought its passage.

Reauthorization of the ESA continues to be a high priority of the Western Governors. In continuation of the collaborative efforts of the past the WGA hosted an Endangered Species Act Summit in December 2004 at which we brought together a very diverse set of stakeholders to discuss ways in which the Act could be improved. We quickly realized that finding common ground on a comprehensive reauthorization of the Act would be difficult and elusive. However,

it also became fairly obvious that we had the beginnings of a consensus around four broad principles which, with some further discussion and effort, might form the basis of a deal to improve species conservation. We submitted these proposals in a letter to the Committee this past February. The four proposals were:

- **Require recovery goals for listed species.** Western Governors believe that recovery and, ultimately delisting of species covered by the ESA should be the highest priority of the Act. Federal funding for ESA activities should be prioritized to reflect this priority. We believe that the best way to accomplish this goal is to require the Fish and Wildlife Service and NOAA-Fisheries to publish quantifiable recovery goals, in consultation with the affected state(s), for threatened or endangered species at the time of the listing decision to provide for objective recovery criteria that both state and federal agencies may work toward in the recovery process. In cases where quantification of recovery goals is not initially feasible, the services should be required to publish a plan, including a timeline, describing the steps the federal agencies will take in identifying measurable goals.
- **Enhance the role of state governments in recovering species.** The Endangered Species Act can effectively be implemented only through a full partnership between the states and the federal government. One way to accomplish this partnership would be to authorize the delegation of authority for the development of conservation plans on a voluntary basis to states that choose to accept such delegation, and agree with the appropriate Secretary(s) to perform them in accordance with specified standards. Authority should also be given to the appropriate Secretary to provide grants for the additional administrative costs to the state.
- **Ensure the use of good science in ESA decisions.** Given the broad implications that may arise when ESA actions are taken, significant decisions must be made using objective, peer-reviewed science. Peer review of listing, recovery and de-listing decisions by acknowledged independent experts is important to ensure the public that decisions are well-reasoned and scientifically based. Peer review committees should be agreed upon by the Fish and Wildlife Service, NOAA-Fisheries and the state. State agencies also have expertise and other institutional resources such as mapping capabilities, biological inventories and other important data that should be employed in developing endangered species listing and recovery decisions.
- **Incentives for conservation are essential.** Western Governors believe that providing economic incentives for landowners to participate in conservation efforts is likely to achieve more efficient and cost-effective results and may lead to more rapid conservation.

These are, admittedly, limited and modest goals. Certainly, there are other potential improvements to the Act that Congress could and should consider. However, the Western Governors not only believe these four to be the most critical, but we also strongly believe them to be achievable. As a nation, we need to change the paradigm we are currently under and we need to do it soon. The Act has become too contentious; the parties too litigious; there is too little

collaboration and trust between stakeholders; and conservation efforts have suffered as a result. Public confidence can be restored only through successful, constructive actions that result in the recovery of species. In other words we believe that, if adopted, these four principles could be the proverbial mustard seed that paves the way for possible future enhancements to the Act that build upon that success.

### **Enhancing the State Role in Species Conservation**

Preventative conservation is at the heart of our recommendations and that is why our states are actively engaged in developing state and multiple state conservation plans to restore declining species like the sage grouse before they need the protections of the Act. States have broad trustee and police powers over fish and wildlife, including those species found on federal lands within their borders. States also have significant scientific expertise and resources at our disposal that could be better utilized to meet our common species conservation goals.

The ESA is premised on a strong federal-state partnership, but Congress and the agencies need to provide expanded and more meaningful opportunities for states to comment, participate, or take the lead on many of the decisions required under the Act. In addition, the federal agencies responsible for enforcing the ESA are straining under the weight of an ever increasing number of listed species, and they are failing to recover species to the point at which they can be de-listed. Unless massive new resources are allocated to them, soon the federal agencies will be so overwhelmed as to be completely ineffective (some might argue that we have already reached that point). Reaching out to states and other stakeholders in a collaborative and cooperative manner is possibly the only alternative to dramatically expanding the size and resources available to those agencies. It follows, therefore, that the Act can be effectively implemented only through a full partnership between the states and the federal government. We stand ready, willing and able to take on a greater role and responsibility for this effort. We are committed to success and expect to be held accountable, but we must be given the proper tools and resources to do the job.

### **Focus on the Recovery of Species**

We acknowledge that the Act has been relatively successful in keeping species from going extinct. That in itself is a laudable achievement. However, staving off total disaster is simply not enough. It may be, as Winston Churchill once remarked “the end of the beginning” but it is not nearly “the beginning of the end.” The central focus of the Act must be the recovery of species. We believe that the best way to achieve this goal is to require the Fish and Wildlife Service and NOAA-Fisheries to publish quantifiable recovery goals at the time of the listing decision. This would give the federal agencies, states and other stakeholders objective recovery criteria that all may work towards during the recovery process. We fully appreciate the fact that our understanding of a particular species and its recovery needs may change over time. However, it is unrealistic to expect states and private entities to engage in good faith collaborative conservation efforts if the federal agencies are continually and unexpectedly raising the bar on them. A trusting and mutually beneficial relationship must be established before collaborative conservation efforts can truly bear fruit. Therefore, we must give federal agencies, states and

private landowners a relatively hard recovery target in order to ensure their active participation and to focus their efforts.

### **Use of Science**

Bad decisions undermine public confidence in, and support for the Act. They also direct resources away from other more urgent conservation efforts. That is why we support peer review of the most critical decisions required by the Act. Peer review is standard practice in academia, even before publication of a scholarly article in the most obscure journal. We fail to see why some oppose even a cursory attempt to seek peer review before major federal decisions, which often have profound effects on land use and other economic activities, are made. We believe that peer review, undertaken in an expeditious and transparent manner, would help enhance public confidence in the process and will better ensure that resources are directed to those species that have the greatest need. However, we also understand that it may not be necessary to pass legislation requiring a formal peer review process. If this process can be enhanced through rulemaking or another administrative means we would be supportive of that effort.

### **Landowner Incentives and Funding**

Lastly, we cannot overlook the importance of private landowners in the cause of species conservation and protection. The good news is that numerous private landowners across the country are already engaged in voluntary conservation activities. In exchange for their trust and commitment we must ensure that they receive the economic assistance and incentives they need to continue these important efforts. Congress can play an enormous role in this matter by properly funding the various conservation programs, like those contained in the Farm Bill, for instance; and ensuring that these programs are administered smoothly and reliably. Other incentives Congress may want to address further is to encourage the use of conservation easements. Or, perhaps Congress may choose to examine ways to provide regulatory certainty to landowners who engage in voluntary conservation activities. While economic assistance is needed and greatly appreciated, the most important incentive that private landowners desire in exchange for willingly participating in conservation efforts is the removal of, or prevention of land use restrictions.

### **Conclusion**

In closing, Mr. Chairman and Ranking Member, the Western Governors appreciate having the opportunity to present this testimony. We firmly believe in the goals of the ESA, and appreciate the opportunity to work with the Committee to help you build a bipartisan consensus for a few targeted, common-sense enhancements to the Act.