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Testimony Before the U.S. House of Representatives

House Natural Resources Committee

Oversight Field Hearing on

**“State and Local Efforts to Protect Species, Jobs, Property, and Multiple Use Amidst a
New War on the West.”**

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Good morning, Chairman Hastings, and Members of the Committee. Thank you to Representative Lummis for inviting me to speak to you this morning. I am Meghan O'Toole Lally and I am a fifth generation sheep and cattle rancher. I raise sheep and cattle on our family ranch, located on the Wyoming-Colorado border, along with my parents and brother. I serve as a Supervisor on the Little Snake River Conservation District and have been appointed to the Wyoming Environmental Quality Council.

We pride ourselves on our management of our property, as well as our private, state and federal leases. The Ladder Ranch is under Conservation Easement with the Nature Conservancy in Wyoming and Colorado Cattlemen's Land Trust in Colorado. The ranch has also been designated as an Important Bird Area by the Wyoming Audubon Society.

This summer, my daughter Siobhan and I were gathering cattle in the forest. A Sage Grouse and several of her chicks flew up in front of us. The mother grouse proceeded to act as a decoy. She acted hurt and flew in the opposite direction of her chicks. Siobhan asked me what the mother grouse was doing. I explained that she was trying to draw us away from her chicks, so that they may survive, if we were predators. I love being able to see these neat birds and give these lessons to my children.

When I was a kid growing up on the ranch we would see Mule Deer, elk, Pronghorn Antelope, Golden and Bald Eagles, Sage Grouse, as well as squirrels, rabbits and other small birds daily on the bus ride to school. I had no idea, until I left the Valley that everyone did not have the same wildlife experiences growing up. My children continue to have those same experiences today.

The Endangered Species Act is broken. Right now there are 630 animal species and 854 plant species that have been listed as threatened or endangered in some form. There are another 74

species that have been proposed for listing and 168 candidate species. Of those only 1 per cent have been delisted. Obviously we are doing something wrong. Listing hundreds of species without adequate science and without a plan for recovery beyond “all human activity is bad” will not improve our track record. There are two types of groups working on the problems in the West. The hopefuls and the hatefuls. The hopefuls are trying to work toward collaborative solutions that meet everyone’s needs. The hatefuls want to litigate and derail the process. The problems are numerous; solutions exist that are working, if they can be expanded to a national scale.

The Candidate Conservation Agreement with Assurances (CCAA) concept is a good one for landowners who enter into it willingly with their eyes wide open. However, The CCAs and CCAAs that I am aware of have taken 10 years to even get the applications processed. Very few exist at all. Many people who were interested in the program decided not to participate because they expose themselves to litigation and regulation with no legal, court tested guarantees. Until landowners can enter into agreements with the Fish and Wildlife Service without fear of being sued or the rules and regulations changing midstream, most landowners will not be willing to commit to provide habitat for and protect threatened or endangered species.

Litigation by hateful groups threatens the procedural rules set by the rulemaking process. Sue and Settle has been used by the Center for Biological Diversity (CBD) to force the candidate listing of 168 species. Contrary to CBD stated insistence on a procedurally correct, transparent process on the part of federal agencies, Sue and Settle is an opaque process that is not subject to public comment or review.

In Wyoming, we have experienced hateful groups filing the same or similar lawsuits in several venues. They choose which venue they would like their lawsuit to be heard. Then the other suits are dropped. This happened recently in the current round of Grey Wolf litigation.

When decisions are made for listing, habitat needs, or species needs, it is imperative that the Fish and Wildlife Service use peer reviewed science to make decisions. When the agency uses ideas and hunches to make decisions it could have wide ranging impacts that have no positive effect on the target species. If there is any question as to the validity of the science, the National Academy of Science needs to be consulted.

When it became apparent that hateful groups were using Big Horn sheep to remove domestic sheep grazing from public lands in the west, Wyoming decided it needed to be proactive. The State formed the Wyoming State-Wide Big Horn/Domestic Sheep Interaction Working Group. It included people representing all interested parties, including Wyoming Wool Growers, Wyoming Game and Fish Department, the Wild Sheep Foundation, environmental groups, sheep producers and others. The stated goal of the group was “to maintain healthy bighorn sheep populations while sustaining an economically viable domestic sheep industry in Wyoming.”

The Wyoming Plan, as it is known, is a model for how to address domestic sheep/Big Horn sheep management in the west. It was adopted in 2004. It allowed areas where Big Horn sheep would be the priority and there would be no domestic sheep. There were also areas for domestic sheep grazing. Several of our sheep grazing permits are in that area. Recently, Biodiversity Conservation Alliance (BCA) sued the Forest Service over a small herd of Big Horn sheep located near our grazing permit. This herd was deemed non-essential by the Game and Fish and the Working Group. The herd was reintroduced in 1977. The grazing permits in that area predate that time by several decades. There are several other permittees who could also be impacted by the decision that any possible contact by domestic sheep to a Big Horn sheep means the loss of a permit. Biodiversity Conservation Alliance used that same law firm that is used by Western Watersheds for their litigation in Idaho.

Unfunded mandates are negatively affecting wildlife agencies. The federal government regularly hands down unfunded mandates on endangered species management that the state wildlife agencies then have to try to implement. These mandates affect the management of other species within the state, which may endanger them in the future. It also strains the budgets of these agencies. The states then need to make up the money poured into these mandates. Many times this may result in increase in license fees to make up the shortfalls.

By restricting the legal historic activities that can take place on private property; I believe that the Endangered Species Act is being used to perform an illegal takings of that private property.

Right now the federal government is increasing the amount of red tape and analysis of habitat projects before they can be implemented on the ground. It used to take 3-6 months to get a project approved, funded and on the ground. Now the agencies are saying that we need to plan on at least a year for all of the extra analysis for even simple projects. There is a historic irrigation ditch on our ranch, dug by hand and with mules at the turn of the century by my great-grandfather. We are slowly piping the ditch, for efficiency and also to preserve the integrity of the ditch. We had a federal archeologist tell us we may not be able to continue to pipe the ditch without archeological analysis because it is a historic structure.

In Section 2(a) (5), the Endangered Species Act states that “The Congress declares and finds that—in encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation’s international commitments and to better safeguarding, for the benefit of all citizens, the Nation’s heritage in fish, wildlife, and plants.”

This clearly indicates an intention by the adopters of the Endangered Species Act that incentives should be used to encourage the preservation of species. I believe that the adage that “you catch more bees with honey than with vinegar” needs to be the aim of the Fish and Wildlife Service. In that spirit I offer the following solutions.

I believe that collaborative processes are a great tool for increasing the success of the implementation of the Endangered Species Act. The Wyoming Plan is an example of a win-win plan for everyone. Without the Wyoming Plan, constant litigation would be the future between the Big Horn Sheep advocates and the domestic industry. The Game and Fish would not be able to expand the habitat for the Big Horn sheep and the State of Wyoming would lose an industry which contributes to the economy of the state. However, under the plan, the Game and Fish has an avenue to introduce Big Horn Sheep to other parts of the state, which will increase the overall numbers of Big Horn Sheep.

There needs to be acknowledgement that in order to preserve these endangered or threatened species or preclude listing at all that work needs to be done on the ground immediately, not two or three years from now. Water developments, fence mitigation, sage brush treatments, and fish passages or barriers are all examples of important habitat work that could be done now to preserve endangered species habitat. Simplifying the paperwork from dozens of pages to a reasonable application, allowing ground level managers to make decisions, and increasing the number of technicians on the ground to get the work done would streamline the process and make it easier to get work done in a timely manner.

There is a group within the Fish and Wildlife Service called Partners for Fish and Wildlife. The Partners for Fish and Wildlife helps to fund habitat work on private lands. They already have the infrastructure and relationships with landowners to get effective habitat work done for endangered species. They have projects on the ground all over the country doing work to preserve habitat for toads in Nevada, Sage Grouse in Wyoming, and the Mountain Plover in Colorado, as well as many others. The Partners for Fish and Wildlife is uniquely positioned to fulfill the direction of the Endangered Species Act for the Fish and Wildlife Service to manage the designated endangered species.

Some producers - working with local conservation groups – have expressed interest in adding endangered species habitat enhancements to water projects. Examples include habitat improvements to recharge basins and riparian areas near ditches, hedge rows on fields, etc. Others have sought add native habitat improvements specifically to open up access for local endangered species. However, the restricted application of safe harbor rules by government agencies has forced many proponents to abandon their efforts.

Recognition that if a species exists and thrives on a property—public or private—the practices that currently occur on that property will not harm and possibly protect that species. Sage grouse are vulnerable to predators. Areas where people run sheep tend to have heavy predator control. Based on my own observations, there are many thriving Sage Grouse leks within our lambing areas. I believe that the predator control that takes place on our lambing grounds has helped to keep the sage grouse in those areas healthy.

Tools exist within the Endangered Species Act itself. Habitat Conservation Areas, Safe Harbor provisions, Section 6 cooperative agreements with the states, and 75-90% match for any work done by the states for endangered species management and habitat improvement.

The Endangered Species Act is an important part of saving animals from becoming extinct. However, it is being used as a hammer to destroy livestock grazing in the west. Not only does this affect the public lands management, it also affects the economies and culture of the communities where it is applied.

The purposes of the Endangered Species Act “are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species”

It clearly states that the original intent of the Endangered Species Act was a good one. Saving species from extinction is important. However, it has been hijacked by the hateful groups to attack industries and people

I love seeing the Sage Grouse dance and watch the chicks follow their mothers through the brush. I also want my children to have the same opportunities to see these birds. I am doing everything I can to preserve the habitat for the Sage Grouse. However, I can see by listing the Sage Grouse under the Endangered Species Act, it may actually cause a reduction in Sage Grouse Habitat and people on the ground doing everything they can to coexist with them.

Thank you for this opportunity to present testimony to you.