

Committee on Resources

Witness Testimony

Testimony of

CINDY DOMENIGONI

Before the Committee on Resources

May 20, 1996

Mr. Chairman, for allowing me to appear before you today. I also want to thank you for allowing Mr. Rowe to accompany me to provide additional information for you. Our family owns a 2,500 acre cattle ranch and grain farm in Winchester, California. Our son is the fifth generation to work the land that my husband's ancestors settled over one hundred and twenty years ago.

I come before you today, with a rising amount of frustration, a good bit of indignation, and a healthy amount of anger. As I have testified on two previous occasions, our farm has been seriously impacted by the "endangered" listing of the Stephens' kangaroo rat. We have been stopped from farming parts of our land. We nearly lost our lives and all of our cattle in a devastating fire exacerbated by these prohibitions. And now, after simply standing up and telling our story, we have been unjustly attacked, impugned, and essentially called liars.

What is most enraging to me is that, the Department of Interior has been using my tax dollars to spread misinformation about our story and to question our character.

Since I have provided testimony on the ESA before, I will briefly outline the impacts of the Endangered Species Act on our farm operation and our lives, and then speak to the government's added insults to our injury.

I. Impact of the Endangered Species Act on Our Farm

In 1990, without our knowledge or consent, over 1,600 acres of our ranch were placed in a reserve "study area" as part of a Habitat Conservation Plan for the Stephens' kangaroo rat, under section 10 (a) of the Endangered Species Act. We later discovered private biologists illegally trespassing on our ranch. These biologists then returned with a U.S. Fish and Wildlife Service biologist and an armed law enforcement officer. We were later informed that our planned preparation of over 800 acres of our farm for grain planting would constitute an illegal "take" of the kangaroo rats that they said were found inhabiting our fields.

Because our property is in a reserve "study area" we are not allowed any incidental take. We would only be able to legally take kangaroo rats if we went through a very expensive and lengthy "Boundary Modification" process, asking for the removal of this designation from our property. The Riverside County Habitat Conservation Agency, California Department of Fish and Game, and the U.S. Fish and Wildlife Service would all have to sign off, allowing our property out of the study area, after we had paid for extensive surveys, a per acre "processing fee," and a flat fee for the privilege of requesting that our property have this designation that we never asked for, removed. Our Boundary Modification application has been pending for over three years.

As a result of shutting down our ability to farm that property, we incurred over \$75,000 in lost income for each of the three years that we were unable to grow grain there. We have also spent over \$175,000 on legal fees, biological surveys, and other related costs. Our costs total over \$400,000 in lost income and direct costs because of the impact of the Endangered Species Act. These costs do not include thousands of dollars in damages to our fences and equipment that occurred during the California Fire of October 1993.

II. USFWS's Smear Campaign

After this disastrous fire of 1993, I was interviewed as part of the GAO investigation into the effects ESA prohibitions had on the damage caused by the fire. We had hoped that the GAO would take a fair, objective look at the information

we provided them. However, it later become apparent that the GAO was not interested in finding out the truth about what happened in Riverside county. Rather, the GAO was more interested in providing the defenders of the ESA status quo with a false "study" they could wave in front of the media and call it the definitive word on the fire whose publicity had so damaged the mythical image of the Endangered Species Act.

As if this was not enough, we have since found that the GAO report is being used to attack our family personally, and to attempt to portray those who lost their homes in this tragedy as either misguided or untruthful. Who are exaggerating the ESA's exacerbating effect on the damage caused by the fire.

Last year, I was shocked to learn that I was targeted in a smear campaign waged by the U.S. Fish and Wildlife Service against individuals who have spoken up about injury they had suffered from implementation of the Act. We received a document titled, "Facts about the Endangered Species Act." One whole chapter in it is devoted to casting me and ESA victims who have had the courage to speak out in public as liars.

In the first portion of this document, the Service trumpets the "success stories" of species they claim owe their recovery to the Act. This portion of the "Fact" sheet proudly lists names and contact telephone numbers for Service personnel, and state wildlife agency personnel. It would have taken us one telephone call to get additional information about these "Endangered Species Act Success Stories."

The "Fact" sheet attempts to unjustly cast as lies the stories of many of the people who have been seriously abused by this Act. They obfuscate and mislead the truth by creating several "strawmen" accusations. Under the heading of "The Allegation," they create outlandish charges that the ESA has done or caused things that no one has ever accused the Act of doing, the Service is then able to easily refute these untrue "allegations" that were never actually made.

Yet, also contained in this document were vicious attacks on numerous individual citizens who have had the courage to speak out publicly about the impacts they had suffered. These attacks were couched in the section titled, "The Endangered Species Act: The Rest of the Story." But in this section of the "Fact" sheet, the Service had no contact people, no telephone numbers, no authors or attribution anywhere. The Service obviously thought they would be able to publish this document, and no one would ever wonder where it came from.

Wasn't the Service worried that its distortions of fact, twists of real allegations, and construction of strawmen might cause those they maligned to fight back? Why didn't the Service stand behind this scandalous document? Why isn't it published on government letterhead? I believe the answers are obvious. The Service feared legal liability for printing blatantly false and hurtful accusations about the ESA's victims. I believe the Service also lacked the fortitude to stand up after launching this salvo.

III. The Department of Interior Attempts to Hide From Scrutiny

When we sought to find out the sources of the information used in the document, it took not only numerous unsuccessful phone calls, but also a formal Freedom of Information Act Request ("FOIA"). This FOIA request also required numerous telephone calls, and an additional FOIA Appeal in order to get any of the information that the Service relied on for the "allegations" and "responses" in the "Rest of the Story" section.

We submitted our FOIA request in October 1995. It was followed in December by a denial of our request. We filed an appeal on December 26th. That was answered with a partial reply that is still woefully incomplete. We still have not received all of the information we requested.

In our official request for information, we asked eighteen specific questions, seeking the sources for the statements contained in the document. The first response by the Department of the Interior tried to absolve itself of any responsibility for the statements it made in the "Fact" sheet by stating that the Office of Public Affairs for the Service was, "not the office of record" for the documents they themselves used in making the statements. They improperly refused to supply the papers to us.

We appealed this determination by the Department, and their second answer came on February 14th, still largely incomplete and unresponsive. Of our eighteen questions, the Washington Office of Public Affairs, (the place where the

document was published) referred us to the Regional Director's Office of the Fish and Wildlife Service in Portland Oregon, for nine of our questions. The Regional Director's Office still has not responded. The response then referred to a "pop up card" published by a group of labor interests for three of the questions, then cited the General Accounting Office report on the fire as the source for three more questions. A printing requisition form was the answer for one question, a National Wildlife Federation "document" for another, and, incredibly, they even cited my own Congressional testimony as one "source." We were shocked! Their response to our request for the persons responsible for developing and distributing the publication was a printing requisition sheet, and printing invoice, all referencing "Mark Newcastle, Printing Specialist."

First the Service nearly drives us out of business with its prohibitions stopping us from farming our own land. Then it nearly cost us our lives and our home and our cattle by forcing us to abandon safe fire prevention practices, then they attack us for simply telling what happened. Then, to top it all off, the Service uses my own testimony, and while knowing the true facts of the matter, blatantly and unrepentantly attempts to discredit and impugn my family and me. All the while using my tax dollars to accomplish this.

The most telling aspect of the response to our FOIA request is that the Service apparently has nothing to back up its "responses" that attempt to refute the stories. The information we received in response to our FOIA Appeal indicates that the Service was aware of the true facts. However, it chose to ignore some and misrepresent others in the publication. They also try to create false impressions by glaring omission, such as not mentioning the prohibition placed on us lasted for three years.

We also found out that the document is regularly updated and widely distributed. One of the few documents actually disclosed to us is a printing requisition with instructions for distributing 2,500 copies of the May 1995 edition of the "Fact" sheet from the Washington office. We have since seen that there is a June/July 1995 edition circulating.

I previously testified that the Service prohibited my family from farming 800 acres of land that we have farmed for over 100 years due to the presence of the Stephens' kangaroo rat ("SKR"). The publication attempts to cast doubt on the financial injury my family has suffered by calling it a mere "allegation." The Service has copies of my testimony, and no facts contradicting my testimony, but that didn't stop them from "responding" in the publication.

The Service's response falsely suggests that I inflated the acreage my family was prohibited from farming. It also fails to disclose that the Service's prohibition against our farming was in place for over three years. The three years we were prevented from farming our 800 acres was when the loss of crop income occurred in the amount of about \$75,000 per year. Yet the Service, in a clear and calculated omission, first asserts that it is not "familiar" with 800 idled acres. They then follow with the statement that the property was allowed to be farmed again, totally omitting the fact that the land was idled for three years.

The next statement in this document is very curious, yet also very revealing. The "Facts" document states that the property was allowed to be farmed again when, "A Service biologist subsequently determined that the land in question was not k-rat habitat."

There are several points I want to make about this statement. First, it is blatantly misleading to use the word "subsequently." This word implies a direct, responsive action, taken in some sort of timely manner, (which was obviously the impression the Service sought to leave with the reader.) However, "subsequently" is not an accurate word to use when it took over three years for the Service to "examine" our property when they found it not to be k-rat habitat.

Second, in the intervening time, (after the Service personnel told us we could not farm the field in 1990) a Service biologist had examined our field, in June 1992. It was examined by a Service biologist after we had pleaded with the agency to allow us to disk a fire break in order to protect the safety of our neighbor, Mr. Rowe.

Mr. Rowe had sent us two letters asking us to remove the vegetation and brush that had built up over the previous five years (two years of fallowing preceded the three year ESA prohibition on the field) we were not farming the property next to his small farm and home. He legitimately feared that, should a fire come, he would be in great danger of losing his home from the amount of fuel that had built up so close to his property.

At that time, (and this is recorded in letters to us and Mr. Rowe from the Service) the biologist had found evidence of Stephens' kangaroo rats. That was the stated reason the Service was prohibiting us from disking the fire break. They told us not to disk the fire break, and they offered their own solution, that we mow a fire break. The Service biologist responded to our protests that the mowing machine would be a hazard itself in that area, (numerous fires are caused by mowers' hot exhausts or their blades striking rocks every year in California) and our position that the left over dead thatch would present an even more severe fire hazard, by telling us to hire a water truck (to wet the brush) and a hand crew to clean up the thatch. Obviously, this biologist had never tried to mow his lawn in the rain, let alone 800 acres.

Third, after the fire in October 1993, my husband and I examined the land ourselves and found no evidence of k-rats on the area that had been cited as occupied habitat for the previous three years by the Service. We then sought to have the Service reexamine the land to tell us if it would be all right for us to farm it again, since there were no k-rats left on the property. After his examination and his verbal go ahead to us, the Service biologist was attributed in our local paper with saying that it wasn't the fire that caused the destruction of the k-rats and their habitat. Rather, while we were under orders not to farm the land by the Service, the brush and weeds in the field had grown too thick for the k-rats' preference, and they had simply left the area, long before the fire occurred.

This attribution was later denied by the Service, for obvious reasons. It shows that in their infinite wisdom, the agency charged with protecting this species had actually caused an area that had been used for farming and for habitat for over a hundred years, to be both unsuitable for the k-rats and unproductive for us.

Obviously, it does not help the Service's reputation as wise stewards and benefactors of endangered species for this statement to stand. That is why they quickly distanced themselves from the statement after it appeared in the paper. Yet, in a typical about face, it appears that they have relied on it to smear us in a twisted manner in this document.

This is evident in the Service response that the land was "subsequently" found not to be k-rat habitat. They are again relying on the examination after the fire in 1993. If their position was that the fire had been the cause of the k-rats' disappearance, they would have to state so in their response.

Further evidence that the Service is reverting back to its position that the land was "not k-rat habitat" is found in the Department of Interior's response to our request under FOIA. In their response to our query about the source of the information for the statement that the Service biologist had found the area not to be habitat, the Department of Interior's FOIA response cites "conversations" with Service personnel in the Carlsbad field office, the Service's base for our area. Yet the "Facts" document never mentions the examination by the Service biologist in June of 1992, where he cited the presence of k-rats as the reason for the prohibition on disking fire breaks. Mention of this examination would reveal to the reader that the property had been inhabited by k-rats, and idled for at least eighteen months. This would not have kept with the impression they desired to leave by choosing to use the word "subsequently" in their response to the fact that they order farming stopped on the property.

Evidence proving the facts I have provided is contained in the paper titled, "Fire Protection, the Public and the Endangered Species Act." The report was compiled by the Golden State Resource Management Group, and contains the letters from the Service citing the presence of the k-rats in June of 1992, and the news article attributing the Service biologist with stating that the k-rats had left before the fire in 1993. I asked that this report be entered in the record of proceedings when I testified at a hearing of the Endangered Species Task force held in Riverside, California in April 1995.

The Service's publication also targets other property owners like me, who have testified before Congress and who were interviewed by the GAO.

IV. Top Fire Official Disagrees with GAO Findings

The Service selected statements from the GAO report that deflect criticism of its irresponsible prohibition against disking of fire breaks instituted as one of its Stephens' kangaroo rat protection measures.

As a result of the Service's prohibition on disking, and the fact that their alternative of mowing was in itself dangerous,

likely to cause a fire, and also totally impractical. Brush in the fields where we were stopped from farming became overgrown and few fire breaks were accomplished at all in the habitat protection area. The ones who had level land with few rocks to cause sparks from a fast moving mower blade, and chose to use the Service's alternative, were left with an incomplete and ineffective fire break.

Riverside County Fire Chief Mike Harris also testified before the Task Force in Riverside. There he stated that, "Both California state law and Riverside County ordinances require the removal of flammable vegetation to bare mineral soil around all homes and improvements. The intent of these laws is to break the unobstructed travel of fire from a wildland area into the structures or from the structures into the habitat. These laws and ordinances have proven effective over the years at providing a reasonable and prudent level of public safety." [emphasis added]

Fire Chief Harris continued, discussing the Service's prohibition on disking fire breaks, stating:

There were three major impacts from these actions:

1. The fire service lost a very valuable public protection tool.
2. The regulations caused confusion on the part of government officials and the public, leading in some cases to inaction.
3. The lack of proper hazard reduction contributed to the loss of homes and other improvements during the California fire." [emphasis added]

Chief Harris continued, "The General Accounting Office's report on the California fire concluded that the lack of hazard reduction activities had no impact on the losses caused by the California fire. I do not agree with their conclusions."

Later, during the question and answer period of the Task Force hearing, Chief Harris discussed another Riverside County fire that occurred in 1993, about one week after the California fire, under similar weather and wind conditions. However, Chief Harris noted that there were some significant differences between this fire, the Repplier fire and the California fire. First, there was a "much higher fuel loading" on the Repplier fire. Second, there were no (ESA) prohibitions on hazard reduction clearance, (disked fire breaks were allowed, and present). And third, there were only four homes lost in the Repplier fire, significantly fewer than were lost in the California fire were the disking prohibition was in place (even though many more homes were at risk in the path of the Repplier fire).

For those homeowners who followed the Service's edict and mowed their fire breaks, Chief Harris provided a stark visual picture of the difference in the effectiveness of mowed fire breaks versus disked fire breaks:

"I can make a quick example here, if we assume this piece of paper is a structure and we provide a [disked] fire break so the direct flame impingement is out here somewhere, [Harris placed his hand several inches away from the paper] you do not have to be a rocket scientist or the fire chief to figure out that that is [sic] less potential for loss of this home than if you put that flame right here." [Harris at this point placed his hand in contact with the paper he was using to symbolize a home with a only mowed firebreak having direct contact with flames from a wildfire.]

The fire chief also agreed with the other residents and us in that, had our 800 acres been actively farmed at the time of the fire, the fire's intensity would have been greatly reduced.

Included with my testimony are two maps depicting the habitat protection area, our property (including the areas we were not allowed to farm), Mike Rowe's residence, the origin of the fire, and its direction of travel that first night. Also depicted on these maps are representations of each of the 29 homes that were destroyed. We were not able to show you where all of the 107 other destroyed structures were located. I hope each of you will take a few moments to examine these maps, and I request that these maps be entered in the record.

V. Maps and Photos Clearly Show Impact of Regulations

While examining these maps, keep in mind that the 800 acres that were subject to the farming prohibition, would have been either grazed off grain stubble, or completely denuded of any vegetation at all. That area might have been disked

completely at that time of year, in preparation for the next year's crop planting.

Despite statements in the GAO report such as "the entire U.S. Army could not have stopped this fire," with just a few yards of disked firebreaks, and our normal agricultural practices, many of the homes could have been saved. I must remind you that my husband and I were out during the height of the fire, herding our cattle out of its path, and into safer pastures. We were able to survive the fire burning all around us, as we huddled with our horses and our cattle in a tiny seven acre field that we had farmed that year. Had the entire 800 acres been farmed as well, others might have been more fortunate with their own homes and property.

Bear in mind that in the nearly one hundred and twenty years this area has been farmed, we had never had as large or as damaging a fire as this one. The fires in the past had always been contained to minimal acreage burned, and minimal damage due to the patchwork landscape effect from our agricultural practices.

Because he was fortunate enough to have warning and a ready tractor, Michael Rowe saved his house by cutting the fence between our properties and disking a fire break before the fire made its way to his home. Yes, he was fortunate, his home stands today. His home is standing because of the action he took, not the "capriciousness" of the fire or the "shifting winds" in the GAO's version of events.

I have also brought photographs of the area as it looked this past December 1995. Because of the fire and the Service's newly found flexibility that allows us to disk fire breaks, you will see good sized disked fire breaks in these photos of our property and Mr. Rowe's property. You can see that our field has only an inch or two of widely spaced grain stubble that has been grazed by our cattle. This is hardly enough fuel to keep a fire burning at all, much less the raging inferno that occurred in 1993.

Another photo shows our farmed property, and some vacant property owned by the Riverside County Habitat Conservation Agency, as part of the Stephens kangaroo rat reserve area, which also burned in the fire. As you can see, in just two short years the growth of brush and the amount of dead, flammable vegetation is already enormous. You can just imagine what the area that we are now able to farm was like after having more than five years growth of this brush on it.

VI. Congress Must Take Action

Clearly, the Service has attempted to capitalize on the GAO report's conclusions by absolving themselves of any wrongdoing, holding up this misleading red herring, all the while calling it the oracle from on high. They have used it to add repeated insult to injury to myself, my family, Mr. Rowe, and the rest of the victims of this terrible tragedy. Yet they continue to backstab and impugn honest citizens seeking redress of these government wrongs. Their lack of remorse is evident in their blatant disregard for the facts, even when the facts are in their possession as in this case. They make up lies and distortions, create favorable impressions for themselves through glaring omissions, and then thumb their nose at the people who try to find the source of their information through the processes set up by Congress for gaining access to information.

The Service's publication is another indication that, despite its rhetoric, the Department of the Interior is not interested in working to implement the ESA in a manner that "avoids train wrecks" between species regulations and property owners. Quite the contrary, it appears the Department works very hard to deny the wreck ever happened. Without Congressional remedy to the Endangered Species Act, the Service will continue to issue edicts, citing the Act as its authority, with no regard for the legitimate interests of safety, health, the privacy of individuals, and their Constitutionally guaranteed rights.

It is incumbent upon Congress to investigate the abuses caused by the publication of this document, "Facts About the Endangered Species Act." Why isn't it attributed to the Department or the Service? Who wrote it? Why aren't there contact persons mentioned in the "Rest of the Story" section of the document? Why did the Service make up phony allegations in order to easily refute them, thus casting suspicion on the whole of the story? Why did the Service ignore the true facts when it had them in its possession? How many other people are being abused by their government a second or third time by this document?

This last point is the most important point to me. I sit before you today, just one of the people whose character has been assassinated by the mistruths published in this document. Michael Rowe, accompanying me, is another. Mrs. Rector, also testifying, is another. How many more people discussed in this document have been so seriously abused and mischaracterized?

That is why it is imperative that you initiate an investigation into these issues surrounding this document today. Your action in doing so will be a first step in righting this egregious wrong by our government. I hope you will see to it that the light of day floods every dark corner that hides the truth about this. The document is nothing more than a thinly veiled effort to undermine the sensible reforms and redirection you are attempting to achieve in reauthorizing the Endangered Species Act for both the species it seeks to protect, and the people it affects every day.

It is also an example of the one of the many ways that the U.S. Fish and Wildlife Service is abusing the broad authority given it under the Act. We urge you to stay the course in reforming the Act to reign in the abuses and give strict guidance to the agencies responsible for enforcing this law. You must change the specter of fear landowners now have of both the federal agents and the presence of the species that cause landowners to have to deal with them. That is the only way the Endangered Species Act will ever change from a disaster and a failure, to a true success story. Thank you.

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