



December 10, 2013

Representative Doc Hastings
Chairman, House Committee on Natural Resources
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Submission for Record, House Committee on Natural Resources Oversight Hearing on “ESA Decisions by Closed-Door Settlement: Short-Changing Science, Transparency, Private Property, and State & Local Economies,” December 12, 2013

Dear Chairman Hastings:

On behalf of the Thurston County Chamber of Commerce and its 1200 member businesses, thank you for convening this important hearing into how the United States Fish and Wildlife Service’s (“USFWS”) private settlement of the *WildEarth Guardians v. Salazar* multi-district litigation on Endangered Species Act (“ESA”) decisions is impacting private property owners, businesses, and state and local economies. Our community’s experience with the proposed listing of four subspecies of *Mazama* pocket gopher in Thurston County as threatened under the ESA provides a striking example of the flawed agency decision-making process and associated adverse consequences resulting from the artificial timelines in the *WildEarth Guardians* settlement.

Most significantly, the USFWS insists that it must move forward with its final listing decision for the *Mazama* pocket gopher no later than March 31, 2014 because of the settlement deadline, without waiting for the results of ongoing taxonomic studies by the Washington Department Fish and Wildlife (“WDFW”) and the United States Geological Service (“USGS”). The results of these important studies, designed to determine whether the four subspecies of the pocket gopher currently identified are in fact genetically distinct, are due later in 2014. It is likely that this ongoing genetic research will lead to reduction in the number of subspecies of *Mazama* pocket gopher, as similar research has yielded that result with other pocket gopher variants. As one senior researcher at the WDFW has observed,

Subspecies classifications are often not based on rigorous criteria (Wilson and Brown 1953) and, like *T. mazama*, other pocket gopher species have been divided into numerous subspecies. However, more recent taxonomic examinations of pocket gopher subspecies based on both genetic and morphological characteristics have resulted in proposed large reductions of subspecies numbers. For example, Patton and Smith (1990) propose reducing 46 recognized subspecies of *T. bottae* in California to just 15 and Trujano-Alvarez and Alvarez-Castaneda (2007) proposed the reduction of 6 subspecies of *T. bottae* from Baja California Sur to just 2.

Despite USFWS' insistence on moving forward with the ESA listing process under the settlement deadlines, we believe that newly developed genetic research for the Mazama pocket gopher (i.e. the best available science) should be considered before a final decision is reached. Just recently, on November 14, 2013, a similar genetic subspecies study led to a USFWS decision not to list the Gunnison's Prairie Dog. *See* Fed. Reg. Vol. 78, No. 220, at 68,660. In the case of the prairie dog, the USFWS was able to determine that the two subspecies proposed for listing were geographically separated, yet genetically overlapping. The same result could reasonably be expected for the Mazama pocket gopher, directly impacting both the proposed listing and ongoing management of the species. Yet, USFWS appears determined to proceed without it. The Thurston Chamber's October 18, 2013 comments on the proposed rule detailing the scope and potential impact of the pending taxonomic studies on the listing decision, together with supporting documentation, are attached at **Tab "A"** for inclusion in the record.

Making matters worse, neither the USFWS nor the USGS appears willing or able to release preliminary results of the USGS taxonomic study to the public as part of the listing process. As explained in the Chamber's October 18, 2013 comment letter, neither agency would release preliminary results to the Chamber's legal counsel under the Freedom of Information Act ("FOIA") prior to the expiration of the most recent comment deadline on the proposed listing rule. Further, although preliminary results of the USGS study were supposedly due to USFWS on November 15, 2013, the USFWS claimed that it had no such results in response to our counsel's most recent request for them. Copies of the agency's FOIA responses since the comment deadline documenting these results are attached at **Tab "B"** for inclusion in the record.

Finally, the Committee should be aware of the significant resources and effort that the *WildEarth Guardians* settlement timeline for listing the Mazama pocket gopher has cost and continues to cost both the Thurston County community and the federal government. The Thurston County Chamber has been privileged to work with a coalition of public and private partners, including private landowners, local governments, school districts, and the Port of Olympia on this issue. To date, the Chamber and its public and private partners have expended well over \$250,000 in fees, costs, and staff time associated with participation in the listing process. In addition to these costs, the Department of Defense and other federal agencies have invested more than \$12.6 million to acquire and protect properties designed to mitigate impacts of the proposed listing of the gopher and other prairie species in order to allow military training

at Joint Base Lewis-McChord to continue. These staggering amounts do not include USFWS costs associated with the listing process itself, nor do they account for the millions of dollars spent and to be spent by the federal agencies, local governments, and private property owners to develop conservation plans for the species that have been made necessary by the proposed listing. In addition to these concrete costs, the cost of lost development opportunities to Thurston County resulting from the ongoing uncertainty surrounding USFWS listing process and future mitigation requirements is significant, yet unmeasurable. Copies of comments from the Federal Aviation Administration, a recent article by Don Brunnell, President of the Association of Washington Business, and earlier correspondence from the Chamber and its public and private partners to Senators Murray and Cantwell describing the economic impacts of the proposed listing are provided at **Tab "C"** for inclusion in the record.

In closing, there is no question that the *WildEarth Guardians* settlement has left Thurston County to suffer the consequences of USFWS making an arguably self-serving compromise to settle litigation, leading to an artificially hasty decision to propose listing the Mazama pocket gopher under the ESA. This decision may ultimately prove unwarranted once the taxonomy of the species is fully understood, and in the meantime, the economic impacts of the decision on our community have been, and will continue to be, severe. While the Thurston Chamber recognizes and appreciates the value of the ESA and other regulations to protect the environment and the variety of species that inhabit it, we strongly believe that the federal government should not step in to regulate local land use decisions where, as in Washington, stringent state and local regulation already exists for that purpose, and particularly where, as in this case, the agency's decision is neither based on sound scientific principles nor made in a transparent manner.

For all of these reasons, we urge the Committee to continue its efforts to inquire into the impacts of the *WildEarth Guardians* settlement on USFWS listing decisions under the ESA impacting Thurston County and similarly situated communities across the United States. If we can be of further assistance, or if the Committee requires further information, please do not hesitate to contact me directly.

Thank you for this opportunity.

Yours very truly,

A handwritten signature in black ink, appearing to read "David Schaffert". The signature is fluid and cursive, with a large, stylized initial "D" at the beginning.

David Schaffert
President/CEO
Thurston County Chamber of Commerce