

Testimony of

**Jose J. Varela Lopez**

On behalf of the

**New Mexico Cattle Growers' Association**

Before the

**U.S. House of Representatives Committee on Natural Resources**

Subcommittee on Public Lands and Environmental Regulation

**Oversight Hearing on**

**"Threats, Intimidation and Bullying by Federal Land Managing Agencies, Part II"**

On July 24, 2014

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Chairman Bishop, members of the Committee, thank you for the opportunity to come before you today. My name is Jose Varela Lopez. I live on my family ranch southwest of Santa Fe, New Mexico. I am the 14th generation of my family to do so and I pray daily that I will not be the last.

I am president of the New Mexico Cattle Growers' Association, the executive director of the New Mexico Forest Industry Association, the immediate past chairman of the New Mexico Soil & Water Conservation Commission, vice chairman of the Santa Fe - Pojoaque Soil & Water Conservation District and a former Santa Fe County Commissioner.

We are here today to talk about the bullying and abuse of citizens at the hands of the federal government. Unfortunately, this is a story that is all too familiar ranging from the IRS scandal, the mistreatment of veterans, the failure to protect dignitaries in foreign lands, the protection of private information, the collapse of security on the Mexican border, and most recently the failure of the CDC to protect their employees.

You can add to that the treatment of Americans by the U.S. Forest Service, the U.S. Fish & Wildlife Service, the Bureau of Land Management, the U.S. Army Corps of Engineers and others. I am not here to tell you that every employee of these agencies is rogue, but I can tell you that the agencies are permeated with employees that wantonly violate the rights of the rural citizens of this country and their small businesses, entities that provide economic stability to the majority of the counties in our great nation.

As Cattle Growers' President, we are dealing daily with individual and collective efforts to remove families like mine from the land. The worst part is that we have no recourse.

New Mexico has been a hot spot not only for catastrophic wildfires resulting from the lack of management by federal agencies but also for species listings which affect natural resource users.

Endangered species "protection" is the biggest culprit. At the moment the Fish & Wildlife Service is considering critical habitat for the lesser prairie chicken, the New Mexico meadow jumping mouse and two varieties of garter snakes. Expansion of the Mexican wolf habitat is expected as early as tomorrow. We have had 764,000 acres in New Mexico and Arizona recently designated critical habitat for the jaguar although only a few male jaguars have been sighted in the U.S. over the last 60 years. We are awaiting listings and designations for the Canadian lynx and the wolverine even though those species do not exist in our state.

Additionally, the Fish & Wildlife Service is taking their power to a whole new level directing their employees in Region 8 **NOT** to follow the current law, but rather to direct their resources to a program created by a secretarial order issued in December 2010. We have not yet located similar orders for the rest of the nation, but are confident they are out there.

But that is just half the story. New Mexico has been a hot bed for special land use designations. The most recent transgression is the Organ Mountains/Desert Peaks National Monument encompassing some 550,000 acres in the southern part of the state bordering Mexico. Add that to the recent Rio Grande del Norte National Monument of

250,000 acres and the Rio Mora National Wildlife Refuge and Conservation Area of 800,000 acres.

There are also proposed designations for a national monument on Otero Mesa of up to a million acres, the La Bajada National Monument of about 130,000 acres, Hondo/Columbine Wilderness at 60,000 acres, Pecos Wilderness expansion of approximately 120,000 acres and the transfer of the 89,000 acre Valles Caldera National Preserve from a multiple use property to the National Park Service.

Add to that existing wilderness designations and wilderness study areas of 2.8 million acres and 4.6 million acres of inventoried roadless areas, areas of critical environmental concern, special management areas and national conservation areas.

In my own case, the BLM has been buying up private lands near my family ranch within the boundaries of an Area of Critical Environmental Concern that they designated as part of their Resource Management Plan. They now refer to our ranch as an in-holding, meaning that we are now surrounded by federally managed land and ostensibly the next "willing sellers". What this designation has done is de-valued our land and effectively prohibits any type of future development on the ranch that is not consistent with the BLM's Area of Critical Environmental Concern. My takings protest to their headquarters was to no avail.

Each of these listings and designations provide the opportunity for federal overreach and the violation of our rights as citizens. And there is no recourse. Federal agents are literally taking the food out of the mouths of rural families and Americans as a whole.

If I believe my civil or constitutionally guaranteed rights are violated by a local or state agent, I have the right to my day in court where a judge and/or a jury have the opportunity to hear both sides of the story. If those agents have crossed the line, they are held personally liable. Not so with federal agents.

Under current law, federal land management employees hold the same immunity from the law as diplomats, and are above any law. That is patently inequitable, can be discriminatory and violates the humanitarian ethics we strive to live by. There is no accountability for those who use the power of their employment against people like me.

A report done by the U.S. Department of Agriculture in June of 2013 documents the fact that U.S. Forest Service employees in Regions 2 and 3 routinely violate the civil rights of allotment owners in New Mexico and Colorado. The report states that a detailed Corrective Action Plan must be developed within 60 days of receipt of the report. As of today, to my knowledge, nothing has happened.

The hierarchy of the Forest Service and the BLM is such that it seems nearly impossible for there to be justice for natural resource users. In the case of the Forest Service there

is no recourse. A district ranger is generally the prosecution, judge, jury and executioner. Decisions go up the chain of command, but are rarely overturned.

The BLM does provide at least some way to appeal to higher levels, but allotment owners go to those higher levels at their own peril because retaliatory action at the field level is a real and constant threat.

In closing, our government agencies are punishing natural resource users through unnecessary land use designations and restrictions, prompted mainly by radical environmental groups. This preservationist mentality is making it difficult if not impossible for renewable resource users to make a living, and is in effect extinguishing the customs and culture of our country's land based people. Besides, how do you preserve a renewable resource?

Thank you for your time and attention. We look forward to working with you to resolve these issues so our families can continue to feed ourselves and the rest the world.

**A list of all lawsuits or petitions filed by you against the federal government in the current year and the previous four years, giving the name of the lawsuit or petition, the subject matter of the lawsuit or petition, and the federal statutes under which the lawsuits or petitions were filed.**

**Case Name and Description**

**Approximate Date Filed**

***Federal Court Cases***

Valley Meat LLC. v. Vilsack et. al. and HSUS,  
U.S. District Court NM  
Civ. No. 12-cv-1083

02/13

Represent Intervenor New Mexico Cattle Growers Association et al against U.S. Department of Agriculture Food Safety and Inspection Service relating to delay of a grant of inspection.

Front Range Equine Rescue et al., v. Vilsack et al.,  
U.S. District Court NM  
1:13-cv-00639-MCA-RHS

09/13

Represent Intervenors New Mexico Cattle Growers Association supporting U.S. Department of Agriculture Food Safety and Inspection Service relating to grant of inspection.

Front Range Equine Rescue et al., v. Vilsack et al.,  
10<sup>th</sup> Circuit Court of Appeals  
13-2187

11/13

Represent Intervenors New Mexico Cattle Growers Association et al supporting U.S. Department of Agriculture Food Safety and Inspection Service relating to grant of inspection.

WildEarth Guardians v. New Mexico State Game Commission,  
10<sup>th</sup> Circuit Court of Appeals  
13-2001

02/12

Represented Intervenors New Mexico Cattle Growers Association et al supporting New Mexico Game Commission in opposing claims of “take” of Mexican wolves for allowing lawful trapping pursuant to New Mexico state law.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Pacific Southwest Region  
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In Response Reply To:  
FWS/R8/AES

MAY 20 2014

## Memorandum

To: Regional Director, Pacific Southwest Region  
Sacramento, California

From: Assistant Regional Director, Ecological Services

Subject: Ecological Services Workload Prioritization /s/ Michael Fris

Consecutive years of reduced funding for the Ecological Services Program have had a meaningful impact in Region 8. Workload associated with sections 4, 7, and 10 of the Endangered Species Act (ESA) is greater than our resources can address. To compound this problem, we anticipate the demand for ESA permitting, listing, and recovery work will increase in the coming years as the housing market improves, natural resource needs increase, and listing petitions rise. We expect this increase in workload to occur while renewable energy permitting remains a high priority for the Administration and Department of Interior. Given decreased staff resources and budgets, it behooves us to craft a strategy for prioritizing workload. Ultimately, we need a long-term strategy which may entail shifting resources throughout our region to ensure that staffing is commensurate with our priority assignments. As we formulate this long-term strategy, this memorandum will guide deployment of our resources in the short term.

Regionally, our top priorities include Department of Interior initiatives, preservation of health and human safety, and workload required to meet our legal mandates. Our highest priorities also include continued implementation of Landscape Conservation Cooperatives and the surrogate species concept. Specific priorities encompass Tribal trust responsibilities, Klamath water operations projects (including the hydroelectric settlement agreement), the Desert Renewable Energy Conservation Plan, the Bay-Delta Conservation Plan, the Central Valley Project Operations and Criteria Plan, issues of national security, projects related to flood prevention, projects related to fire risk reduction, and communicating with the public through external affairs. While these priorities comprise our regional focus, they do not provide the fine-scale sideboards to determine how offices should prioritize projects, and they do not all apply to each office within Region 8. Thus, each office will need to prioritize its own workload within their specific geographic priorities, and using surrogate species as the measure of success.

Among the remaining workload, we will focus on projects with a high conservation benefit. Whenever possible, we will place the highest priority on projects where big conservation gains can be achieved with relatively little effort through the solid work of our partners. When conservation value and programmatic priority are equal, projects will enter a queue to be addressed on a first-come, first-served basis. Streamlined, programmatic approaches (landscape scale) will be prioritized ahead of individual projects.



Action agencies and applicants can reduce permit processing timeframes by producing well-prepared biological assessments and habitat conservation plans. For priority projects we cannot accomplish due to budget shortfalls, reimbursable dollars may enable us to hire temporary or term employees to work on the project from start to finish. Reimbursable dollars should only be accepted when a project would otherwise be a priority, but would go unfunded due to budget shortfalls.

Based on limited staff resources, we anticipate that we will not be able to meet regulatory timeframes with some degree of frequency. This includes ESA section 7 timeframes for issuing biological opinions (135 days) and timeframes for issuing ESA section 4 findings (e.g., 90-day findings and 12-month findings). Finally, there are a number of items we simply won't be able to do. These items are discussed below, by Ecological Services Program.

### **Section 7 and Section 10**

Our primary focus will continue to be Departmental and agency priorities, as well as projects where we foresee having the biggest conservation benefit. Departmental and agency priority projects include the DRECP, high-profile renewable energy projects, Klamath, BDCP, and OCAP as well as projects necessary for health and human safety or national security and those for which we have court-ordered or settlement obligations. Among section 10 projects, we will prioritize those regional HCP development efforts for which we think the applicants are committed to expeditiously completing the plan and which are most promising in terms of positive conservation outcomes. Our section 7 priorities will focus on those projects that are designed with species conservation in mind and projects where we can achieve the greatest conservation outcome for the resources expended in working on the project. We will pursue programmatic consultations if there are expected long-term conservation and workload benefits.

To focus our efforts and attention on priorities, we foresee rarely or not doing Safe Harbor Agreements, general technical assistance, and CCAAs and CCAs. We will step away from the lead role on most intra-Service consultations for non-Ecological Services programs. Those programs have been delegated the authority to complete their own section 7 consultations; we are committed to providing those programs with the tools they need to support their own determinations.

As the economic recovery continues, we anticipate that HCP and consultation workload associated with urban development will increase. We must be prepared to prioritize projects. We will not be able to complete all projects in a timely manner. Sometimes our partners have assisted with funding, which helps us complete these requests in a more timely manner (streamlined MOU with FS, agreements with Caltrans and the Corps). To enable Federal land management agencies to reduce the risk of catastrophic wildfire, we will continue to engage these partners on fire-related consultations. We have recently reaffirmed our commitment to the Streamlined Consultation process in the Northwest Forest Plan area, and will continue to seek consensus and efficiencies in these consultations.

## **Listing and Recovery**

Our primary (and perhaps only) focus will be on meeting court-ordered and settlement deadlines for findings, including findings for reclassifications. We will also put resources toward completing litigation-driven recovery plans, and for other recovery plans we will continue to implement our work activity guidance for FY13-FY17, ensuring that the pace of plan development is commensurate with staffing levels. Recovery implementation will be focused on critically imperiled species and will be primarily in the form of Service staff working with partners to identify and fund recovery actions.

With few exceptions, we do not plan to carry out the following activities: uplisting rules, downlisting rules, post-delisting monitoring plans, petition responses, CNORs, non-MDL findings and proposed rules, or recovery plan revisions. Five-year reviews will not be done, although abbreviated reviews may be completed if sufficient resources are available.

## **Contaminants**

Our main priority will be maintaining spill response planning and preparedness capabilities with our field offices as well as our Federal and State partners. Another priority will be to ensure new case development and support in our Natural Resource Damage Assessment & Restoration (NRDAR) program. For restoration activities of our on-going existing NRDAR cases, implementation and support will continue as these funds are non-appropriated and derived from settlements.

With the exception of our current On-Refuge Investigation program activities, all contaminant investigation activities are no longer being implemented (unless funding/support is provided to us from our partners or stakeholders). In addition, technical assistance provided on contaminant issues to other Service Programs (i.e., Consultation, Recovery, Listing, Refuges, Fisheries, etc.) will be significantly reduced. Some technical assistance may be provided on a case-by-case basis for high-priority issues, and in such cases cost-sharing with the requesting program will be sought. . Specific Service issues that will be affected include:

- Clean Water Act regulatory reviews (water quality standards, TMDLs, etc.)
- Listing support reviews (five-factor analyses, 90-day reviews, delisting, etc.)
- Mining-related NEPA reviews
- Pre-acquisition Environmental Site Assessments (Level II and Level III)
- Recovery support reviews (recovery plans, 5-year reviews, etc.)
- Refuge Pesticide Use Proposal reviews
- Refuge Cleanup reviews (EECAs, PASIs, etc.)

## **Conservation Planning Assistance**

We will continue to focus our efforts on Departmental and agency priorities, including the Secretarial Determination for the Klamath settlement agreement, and water operations associated with the Klamath hydroelectric facilities and the Central Valley Project Improvement Act. Our

field offices have been and will continue to rely on reimbursable funding from our Federal partners for work on Fish and Wildlife Coordination Act reports. It is imperative that these funds be sufficient to fully support staff, and we will prioritize projects based on the amount of funds, Departmental and agency priorities, and conservation benefit. We will continue work on FERC reviews insofar as the available funding allows, which will likely entail stepping away from involvement with some FERC projects (except Klamath).

We will not or rarely be reviewing and commenting on other agencies NEPA documents, unless we have agreed to be a Cooperating or Participating agency. Our involvement with Bald and Golden Eagle Act permitting will be minimal, and will largely depend on the priority given to individual projects.

cc:  
R8 All ES Project Leaders