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Testimony before the United States House Natural Resources Committee hearing on *"Taxpayer-Funded Litigation: Benefiting Lawyers and Harming Species, Jobs and Schools"*

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Chairman Hastings and Committee members, I am Jerry Patterson, the 27th commissioner of the Texas General Land Office. The General Land Office (GLO) was created in 1836 when Texas was an independent Republic. The General Land Office is the oldest state agency in Texas and I have been elected by the people of Texas to oversee it since 2003.

As Commissioner, I am entrusted by the people of Texas to oversee millions of acres of land and mineral rights on behalf of the school children of Texas. I take this fiduciary role very seriously. As chairman of the School Land Board, I help govern the real estate portfolio of the Permanent School Fund (PSF), a \$26 billion trust that benefits every child in Texas.

It is my responsibility to the PSF that brings me here today. I am here to discuss what I see as an exploitation of a loophole and the fleecing of tax payer dollars by a few radical environmental groups.

To be brief and to the point: the U.S. Fish and Wildlife Service is faced with a no-win situation. They are overwhelmed by environmental groups with hundreds of candidate listings that the agency cannot possibly respond to in the statutory timeline specified. They then find themselves in violation of that statute and subsequently sued by these same groups who filed to protect the species. These groups create the problem by purposely overwhelming the agency, knowing that they will be unable to respond, and then dictate an outcome because the agency settles rather than being able to follow the appropriate process, including the study of scientific evidence.

The Endangered Species Act is one of a dozen or more laws passed in the 1970's designed to protect critically imperiled species from extinction as a "consequence of economic growth and development untempered by adequate concern and conservation." It is now being used by a few radical environmental groups to stop economic growth and development without the scientific proof that a species and or its habitat is being harmed or threatened. The statute worked well for more than 30 years until a few years ago. So why are we discussing this today?

A lesson in history is a good place to start. On September 21, 1970, Senator Roman Hruska, Neb., took to the floor of the United States Senate to address what he perceived as an issue. The Nebraska Senator pointed out that in S. 4358-The Clean Air Act, Section 304 "Citizen Suits":

"was predicated on the erroneous assumption that officials of the Executive Branch of the United States Government will not perform and carry out their responsibilities and duties under the Clean Air Act. Never before in the history of the United States has the Congress proceeded on the assumption that the Executive Branch will not carry out the Congressional mandate, hence, private citizens shall be given specific statutory authority to compel such officials to do so. The Hearings of the Public Works Committee do not provide either a factual or legal basis which would justify the adoption of this far-reaching and novel procedure wherein private citizens may challenge virtually every decision made by the officials of the Executive Branch in the carrying out of the numerous complex duties and responsibilities imposed by the Clean Air Act. Mr. President, that involves not only every decision but also every lack of a decision, which the secretary may engage in for the purpose of implementing this Act.

Mr. President, I might add that the agency might not be at fault if it does not Act promptly or does not enforce the Act as comprehensively and as thoroughly as it would like to do. Some of its capabilities depend on the wisdom of the appropriations process of this Congress.

Notwithstanding the lack of capability to enforce this Act, suit after suit after suit could be brought. The functioning of the department could be interfered with, and its time and resources frittered away by responding to these lawsuits. The limited resources we can afford will be needed for the actual implementation of the Act."

The public interest is not served by subjecting officials of the Executive Branch to harassing litigation. How can they perform the complex administrative and enforcement functions required under the Clean Air Act while simultaneously participating as defendants and/or witnesses in litigation? Instead of forcing such officials to act more effectively the institution of the Citizens Suits will more likely lead to paralysis within the regulatory agency. (Congressional Record, page 32925, September 21, 1970)

We find ourselves some 42 years later seeing the wisdom in Senator Hruska's words and how he predicted where we are today. It should be noted that section 304 "Citizen Suits" of the Clean Air Act, also applies to the Endangered Species Act.

Amazingly, these environmental groups are able to afford these suits by exploiting the Equal Access to Justice Act to get their attorneys fees paid. Since 2008, nineteen radical environmental groups have received in excess of \$15 million in attorney's fees under this provision. As crazy as it sounds, these same groups that are suing over a missed deadline are also receiving grants from the agency. Pretty good gig if you can get it!

Listing a species, without adequate scientific data, just to settle a lawsuit is capricious. The impacts of such decision making can be vast. Had the dunes sagebrush lizard been listed, production in the Permian Basin — which provides the US with more than 20% of the daily oil and gas produced in this country — could be hamstrung, particularly if the price per barrel of oil continues to decline, making margins closer to the break even point. The Permanent School Fund — with oil and gas revenues of more than \$4 billion — could see revenue drop by 25 percent or more.

As for the impact to the Texas economy in the area targeted by environmental groups as critical habitat without the benefit of science, encompasses the Permian Basin which provides the US with more than 20% of the daily oil and gas consumed in this country. The mining section is responsible for some 27,000 jobs in counties targeted by environmental groups. And in 2010, the earnings for this sector of the economy accounted for more than \$1.75 billion dollars and accounts for 37% of the regions total. Severance taxes from oil and gas production in the area for the same period are \$265.9 million, more than 22% of the state's total severance taxes for 2010.

On Wednesday, June 13th, the US Fish and Wildlife Service announced a land mark decision to not list the dune sage brush lizard (DSL) as an endangered species. It was heralded as an unprecedented conservation agreement between Texas, New Mexico and the agency. While I applaud the agency for working with stakeholders to come up with a creative solution, this completely overshadows the real issue. Oil and gas operators will be paying fees into a fund to mitigate the impact to habitat of the dunes sage brush lizard, but there is no proof that it is threatened or endangered.

Let me be very clear, I am the first to stand up to save a species that is truly endangered or threatened. But only after a thorough scientific review of the data proving that a threat exists. Trying to satisfy an environmental group's threat of a lawsuit is a waste of energy, time and resources. The FWS should be spending their time doing what they do, evaluating candidate listing requests. I believe that FWS should be given the adequate resources to perform their mission and given the time they need in order to render a complete and thorough decision based on science.

It is interesting to point out that my office also is responsible for our beaches and wetlands along the gulf coast. It takes longer to get a permit from the U.S. Army Corps of Engineers, anywhere from 18 to 36 months to do restoration work on habitat, than it does for the Fish and Wildlife service to render a definitive decision to list a species. Why is that?

Science and real data are vital to saving any species. But proposing such listings simply to settle lawsuits can cost Texas billions and have a lasting impact on future income for funding public education in Texas. It is my recommendation that this committee address the statute, specifically section 304 as Senator Hruska recommended years ago, that is causing this fleecing of our tax dollars and robbing the agencies of their resources to actually do the work they are supposed to do for the people of this great country.

Thank you.