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**On behalf of**

**Tri-State Generation and Transmission Association, Inc.  
And  
The National Endangered Species Act Reform Coalition (NESARC)**

**Testimony**

**Before the Committee on Resources Subcommittee on Water and Power  
United States House of Representatives**

**“The Impacts of the Endangered Species Act on Rural Communities”**

**May 4, 2005**

Chairman Radanovich, Ranking Member Napolitano and members of the House Subcommittee on Water and Power,

I appreciate the opportunity to appear before this subcommittee today to share Tri-State Generation and Transmission Association’s and the National Endangered Species Act Reform Coalition’s views regarding the impact of the Endangered Species Act on rural communities and the people who live there.

My name is Mac McLennan, and I am the Vice President of External Affairs for Tri-State Generation and Transmission Association, a not for profit wholesale power supply cooperative that provides electricity to forty-four member distribution cooperatives in Colorado, Nebraska, Wyoming and New Mexico. As Vice President, I oversee Tri-State’s government relations, communications and external association activities. Tri-State is based in Westminster, Colorado, and has facilities and employees throughout the region. Tri-State and its member systems provide electric service to nearly one million electric customers, primarily located in rural communities. Tri-State is also one of the largest customers of hydroelectricity generated by the Bureau of Reclamation and the Army Corps of Engineers in the interior West.

I also serve as Chairman of the National Endangered Species Act Reform Coalition (NESARC). NESARC is a broad based coalition of more than 100 member organizations representing millions of individuals across the United States that are dedicated to updating and improving the Endangered Species Act (ESA).

Mr. Chairman, my family and I, along with all of our Tri-State members, live in the communities that we serve. We understand fully the needs of these communities, including the vital role that these communities play in the economic development and livelihood of rural America. I also understand the important role utilities play in supplying the power necessary to meet the growing demand in the western states. I have a deep appreciation and respect for our land and water resources, and I believe we can and must find ways to do a better job of recovering endangered species while protecting the economic viability of rural communities.

As a utility that serves consumers who are impacted in numerous ways, Tri-State has been very involved for more than a decade in efforts to find solutions and develop legislative improvements that ensure we have an Endangered Species Act that actually achieves its goal, recovery of endangered species. In the last decade, we have learned a lot about what is successful and what is not in the recovery of endangered species. In the last year, Tri-State, along with other members of NESARC, has spent countless hours dissecting the Endangered Species Act and identifying the issues that need to be addressed to ensure we do a better job of recovering species. We have identified the following issues as those most critical to the recovery of endangered species while continuing to protect the economic vitality of not only our rural communities by all communities impacted by the Endangered Species Act.

We need to make sure that our efforts are focused on efforts that truly update and improve the ESA, including measures in the Act that would:

- Expand and encourage voluntary conservation efforts
- Increase funding for voluntary State and local programs
- Give states the option of being on the front line of species conservation
- Establish realistic recovery goals
- Encourage voluntary prelisting measures
- Improve habitat conservation planning procedures and codify “No Surprises”
- Ensure an open and sound decision making process
- Find ways to remove the litigation bottleneck

The Endangered Species Act is more than 30 years old and has recovered less than one percent of the more than 1,300 species listed as threatened or endangered in the United States. At the same time, the Act has negatively impacted rural communities throughout the country. There are improvements that can be made to the Act that will provide new tools and find better, faster and more efficient ways to protect and recover species.

First, it is important to establish realistic recovery objectives. In order to enhance and improve efforts for species conservation, objective and quantifiable recovery goals should be set to serve as guideposts for voluntary conservation efforts. Once the recovery objective is met, the species must be delisted or down listed. It is important to incorporate voluntary conservation efforts in this process by creating new avenues for private property owners to participate proactively in species recovery. These efforts could include creating a habitat reserve program, tax incentives, loan or grant programs, and other initiatives that encourage landowners to voluntarily participate in species conservation efforts.

It is imperative that States and local entities have a greater role in facilitating landowner/operator compliance with the Act and, ultimately, the recovery of species in order to remove the restrictions of the ESA. States have significant financial resources, research capabilities, and coordination abilities that can allow for better planning of species management activities. Further, States are often better situated than federal agencies to develop and maintain cooperative efforts between stakeholders to protect and manage the local resources and species. This is of particular importance to rural communities, who have the best understanding of their specific potential for protecting and enhancing species. Federal funding priorities should be refocused away from bureaucratic decisions and to active conservation measures that ultimately support voluntary programs and State-led initiatives, including the establishment of dedicated funding streams supporting voluntary conservation efforts and State/local initiatives.

Prelisting measures should also be incorporated into species conservation efforts. State and local governmental agencies as well as private landowners should be encouraged to develop and implement species and habitat programs for species that are being considered for listing. Too often the ESA is hurriedly invoked without consideration of other state, local and private efforts that can and will do a better job of protecting and improving species populations. In determining whether listing of a species is necessary, the existing Act only provides for a limited consideration of State programs that protect species and does not allow the Secretary to consider voluntary programs implemented by private landowners that also protect and enhance species and their habitat.

The critical habitat designation process under the ESA must also be strengthened. It is important that designations are supported by sound decision-making processes, take into account existing habitat protection measures, and rely on timely field survey data. Additionally, the Habitat Conservation Planning (HCP) process should be streamlined so that rural communities are not unfairly negatively impacted by the delays and costs of getting approval. Landowners also deserve regulatory certainty when involved in conservation efforts. As such, the "No Surprises" policy must be codified in ESA and cover all commitments by private parties to voluntary protection and enhancement of species and habitat.

Finally, it is important that an open and sound decision-making process exist in all aspects of species recovery and conservation. The process must allow for full public participation, better data collection, and independent scientific review to support decisions made on listings, critical habitat designations and recovery efforts.

To bring these issues closer to home, I would like to share with you several examples of endangered species issues that have affected Tri-State and our member systems during the past several years and how these examples illustrate potential ways to improve the ESA.

Recently, the U.S. Fish and Wildlife Service decided not to list the Greater Sage Grouse as an endangered species. A decision to list the Sage Grouse could have had disastrous consequences for both the species and for the rural residents making a living on the land. Eleven states and two Canadian provinces, more than 70 local working groups and the private sector were engaged in an active voluntary program to conserve the Sage Grouse when a lawsuit was filed compelling the Fish and Wildlife Service to make a listing decision. Fortunately, the voluntary measures had progressed sufficiently and the Service determined that listing was not warranted. However, had the Service been forced to make the determination several years sooner, the result could have been much different and would have jeopardized a very active cooperative conservation program that is showing positive results. The ESA can be improved by encouraging voluntary conservation efforts, by increasing funding for voluntary programs, and by encouraging prelisting measures.

Several years ago, as a result of a petition to list, the U.S. Fish and Wildlife Service listed the Preble's Meadow Jumping Mouse as endangered based on a fifty-year old study which concluded that the mouse was a separate and distinct subspecies eligible for protection under the ESA. Subsequent studies, including DNA testing and actual skull measurements have concluded that there is no basis for the determination that the Preble's Meadow Jumping Mouse is a distinct subspecies, and that in fact it is identical and is the same species as the Bear Lodge Jumping Mouse. In addition, population studies subsequent to the listing decision have indicated that the actual population estimates are actually 400 percent greater than the original estimates. Since the listing in 1998, millions of dollars have been spent to protect a species that may have been listed in error, and the Fish and Wildlife Service has estimated that \$100 million would be spent over the next decade in species protection to meet the requirements of the law. The Fish and Wildlife Service is currently evaluating the new data to determine if the 1998 decision was made in error. The Endangered Species Act can be improved by ensuring an open and sound decision-making process, by requiring better data collection and independent scientific review to support both the listing and recovery decisions.

More than fifteen years ago, the Upper Colorado River Recovery Program was initiated when the Governors of Colorado, Utah and Wyoming, the Secretary of the Interior, and the Administrator of the Western Area Power Administration signed a cooperative agreement to recover four endangered fishes in the Upper Colorado River, upstream from Lake Powell. Environmental interests, water users and power customers have joined with the state and federal agencies to participate in the recovery of the species. Following extensive data collection and environmental studies, it was determined that sufficient information existed to proceed with development of recovery goals. The U.S. Fish and Wildlife Service approved final basin-wide recovery goals for the endangered humpback chub, bonytail, Colorado pikeminnow, and razorback sucker in August 2002. The recovery goals were developed over several years with collaborative input from public, private and tribal stakeholders, and scientists from the Colorado River Basin. In spite of the extensive process and the positive results being achieved for the species, the recovery goals are now the subject of a legal challenge by environmental groups outside of those involved in the recovery process. These types of legal challenges divert time and energy from efforts to recover the species and consideration should be given to appropriate changes to improve the ESA so as to reduce these burdens.

Mr. Chairman, in closing, I would like to thank you for holding this hearing today and commend the Committee for its leadership in efforts to update the Endangered Species Act. We must continue to find ways to improve the laws that families, businesses and local governments must abide by while protecting the values those of us in the West live by and follow.