

**POTENTIAL EFFECTS OF MISSOURI
RIVER SPRING RISES ON CROP
INSURANCE POLICIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON
GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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**POTENTIAL IMPACT OF MISSOURI RIVER
SPRING RISES ON CROP INSURANCE
POLICIES**

TUESDAY, FEBRUARY 28, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL FARM
COMMODITIES AND RISK MANAGEMENT,
COMMITTEE ON AGRICULTURE,
Jefferson City, MO.

The subcommittee met, pursuant to call, at 8:02 a.m., at the Missouri State Capitol Building, Jefferson City, MO, Hon. Jerry Moran (chairman of the subcommittee) presiding.

Present: Representatives Graves and Etheridge.

Also present: Representatives Hulshof, Akin, Emerson, and Skelton.

Staff present: Tyler Wegmeyer, subcommittee staff director; and Clark Ogilvie.

OPENING STATEMENT OF HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. MORAN. Good morning, everyone. The Subcommittee on General Farm Commodities and Risk Management will come to order.

We are here to review the potential impact of Missouri River spring rises on crop insurance policies. And I'd like to thank everyone for being here today and coming and telling us their story. I appreciate very much the hospitality extended to and Kansas me by the folks of Missouri. It's my pleasure to be here, and we look forward to hearing from you and gaining some insight into what farmers in this river basin may face.

We're here in large part because we were invited by the Missouri congressional delegation of Mr. Skelton and Mr. Hulshof in particular, and although they are not members of this subcommittee, they have been very valuable, and we were delighted to come to their part of Missouri to see if we could assist them in representing their constituents.

My name is Jerry Moran. I'm a Member of Congress from Kansas. I live in Hays, Kansas, and enjoyed the drive to Missouri yesterday.

Mr. Etheridge of North Carolina is seated to my right. He is the ranking democratic member. Already, his southern voice—I've told him that despite the fact that I'm a neighbor to Missouri, he will be better received by all of you than I, as you will notice when you hear him speak.

We have three distinguished panels of witnesses today. It's important for us to stay on time. We have votes in Washington, DC late this afternoon, so we have a flight to catch, but we do want to take the time necessary to get a picture of what the challenge may be to Missouri agriculture.

We recognize that crop insurance is an integral part of farming. Most farmers consider it as the centerpiece of their risk management planning and would not think of risking their livelihood without that coverage that crop insurance provides. The program is generally working for the vast majority of American farmers and our subcommittee's goal is to see that it continues to improve and expand and assure a food supply that is safe and secure and a stable rural economy.

This subcommittee spends most of its year—we have jurisdiction over all farm programs—so we will spend most of our year talking about, listening to, and exploring a new farm bill. Before we got started on that task, we wanted to make sure we were here in Missouri to talk about crop insurance. I know we'll hear the concerns about crop insurance coverage in case of a flood caused by raised water in the Missouri River, and we hope to get a clear understanding of farmers' concerns, as well as clarity from the administration, Corps of Engineers and risk management agencies as to what effect that spring rise might have on crop insurance policies.

Again, I thank our witnesses, and I now turn to my distinguished colleague from North Carolina, Mr. Etheridge.

OPENING STATEMENT OF HON. BOB ETHERIDGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. ETHERIDGE. Thank you, Mr. Chairman. It's a privilege for me to be back in Missouri after a number of years. Let me thank you for agreeing to hold the hearing here for our colleagues in Missouri, whom we hold in very high esteem in Washington for their leadership, even though, as the chairman said, they are great supporters, but especially Ike and Kenda do a lot of things. And Ike is one of the people we look to for leadership and responsibility when it comes to military matters.

This morning, though, we're here, and I wish we weren't here for the circumstances we're here, but I will review the actions or possible inaction of certain Federal agencies and how they will affect the lives of countless farm families here in Missouri. The testimony we will hear later, we will learn that possibly 775,000 acres of cropland in this State could possibly be at risk.

And I'm not talking about the risk associated with planning of the 500-year flood plan. Being a farmer myself, a farmer understands the risks. They took those chances if they do that before they planted. I'm talking about risks associated with finding out 2 months ago that their crop insurance policies may not provide them with the kind of production security that they need.

As you said, Mr. Chairman, the purpose of this hearing is to hear from RMA and the Army Corps of Engineers and various State folks in Missouri about the planned spring pulses from the Davenport Dam can affect the crop insurance policies that so many farmers in this area rely upon. We'll hear more about the potential

risk that pulses pose and, hopefully, we can find a way to deal with it.

I want to commend you, though, for, again, holding the oversight hearing. I think it's important that we get out where people are. This hearing will allow us to satisfy our responsibilities to ensure that the farm programs that we enact are serving their purposes and for the intent that we intended.

I follow your leadership in looking into this matter, and hope and trust that we receive more oversight hearings in the coming year. I look forward to the testimony this morning, and the questions that will follow, so we can get some answers that will help solve some of these problems.

Thank you, Mr. Chairman.

Mr. MORAN. Mr. Etheridge, thank you very much.

The Chair would request other Members to submit their opening statements for the record, so that the witnesses will hear their testimony and ensure we will have time for questions.

[The prepared statements follow:]

PREPARED STATEMENT OF HON. SAM GRAVES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Thank you Mr. Chairman. And thank you for having this hearing on the Missouri River, I appreciate you bringing the subcommittee out to Missouri to get a first hand look at the disaster a spring rise causes my State. Hopefully, with the knowledge we gain today, we can propose a better solution that will no longer pit one species over another, yet offer a solution that will benefit all stakeholders.

As you are all well aware I am very opposed to a spring rise. We have a policy here that attempts to benefit a fish while ignoring the interests of the farmers and other stakeholders reliant on the river. I don't understand the thought behind this policy. Why can't a solution be made that would benefit both instead of pitting one against the other?

Also, we all have been informed late last year by the USDA that a farmers crop insurance will not cover any destruction caused by a spring rise. The reason they gave us was that crop insurance only covers crops that are destroyed by a natural occurring event." They go on to explain that a Federal mandated "spring rise," that happens to be planned twice this year in March and May to increase to spawning habits of an endangered fish, will not be covered because its "man-made." So if I understand this correctly, a Federal mandate to artificially create a rise in water levels with the potential to flood the over 1 million Missourians in the MO River flood plain will not be covered under the USDA's crop insurance policy? That is absolutely ridiculous and that policy desperately needs to be reconsidered.

Thankfully, as a member of the Agriculture Committee I will have an opportunity to look into this issue closer and remedy the situation. I look forward to hearing my colleague's thoughts on this issue, and to what the panel has to say. Thank you.

PREPARED STATEMENT OF HON. KENNY C. HULSHOF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Good morning, and to Chairman Moran, Ranking Member Etheridge and everyone else from out of State, welcome to Missouri. Gentlemen, I thank you for agreeing to have this hearing today in Jefferson City. To anyone here who might not be familiar with these two men, they are personal friends of mine and are most certainly friends to agriculture.

I also must thank State Representative Steve Hobbs who has arranged for us to use this hearing room today and Speaker Ron Jetton for his help in this matter.

Congressman Ike Skelton and I requested this hearing for three reasons, (1) to publicly ask the Risk Management Agency how they will address damages caused by the spring rise, (2) allow producers and landowners to formally express their concerns, and (3) to provide my constituents and other Missourians a chance to hear straight answers about a situation that could directly impact their farms and their financial future.

Let me begin by saying that I have never, and will never, support a spring rise, or any other policy that increases the flooding risk to farms in order to possibly ben-

efit a fish. And in my estimation, the best way to alleviate the crop insurance problem we are faced with is to halt all efforts to enact a spring rise.

Those of us opposed to a spring rise have always made the common-sense assumption that the Risk Management Agency would serve as a safety net for those adversely affected by the spring rise, providing crop insurance coverage to those harmed by this Government action. Initial reports that the Risk Management Agency planned not to cover these damages were disturbing. And though I appreciate the agency's willingness to engage on this issue, I strongly feel that those who farm along the river must be given the certainty that flood damage associated with spring rise will be covered by crop insurance.

To me, and the majority of people in this room, a crop insurance plan that would not cover these damages defies logic. Common sense and basic fairness dictate that crop insurance should cover flood damages caused by a spring rise. From the perspective of a farmer, it adds insult to injury for the Federal Government to cause a flood and then refuse to cover crop damages associated with the Government's actions.

Our time here this morning is short, and I wish to leave as much time as possible for the witness so I will conclude by posing a few questions which I hope to have answered during the course of today's hearing.

First, I am unsure if the Corps knew before November 2005 that crop damages caused by spring rise would be ineligible for compensation under the Federal crop insurance program. If they did, why was this information not made public?— If they did not, it raises the legitimate question what other ill-effects of the spring rise have not been considered or publicized?

I have the same concerns with the Risk Management Agency. Did the agency know about the spring rise prior to last year?— And if they did, did they do anything to alert the Corps to the problems that it might cause so that this information could be considered as part of the debate on the spring rise?

I raise these issues not to put anyone on the spot; I raise these issues because these are legitimate concerns brought to my attention by my constituents. But I also raise these issues to illustrate a larger point. The proposed spring rise is bad policy that will have unforeseen negative consequences, and thus, is a policy that is not ready for implementation.

With that, I thank Chairman Moran once again and I yield back my time.

PREPARED STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

First, let me thank Congressman Jerry Moran of Kansas and Congressman Bob Etheridge of North Carolina for agreeing to hold this hearing in Jefferson City. Their being here highlights the importance of the issues we are about to discuss not only to the State of Missouri but to the Nation. I welcome them and all other members of the subcommittee, including my friends, Congressman Kenny Hulshof, Congresswoman Jo Ann Emerson, Congressman Todd Akin, and Congressman Sam Graves, to the Fourth Congressional District.

Let me take a moment to extend a special thank you to my good friend, Congressman Kenny Hulshof from Columbia, Missouri, in the Ninth Congressional District. He and I have worked closely on river and agricultural issues, and it has been a pleasure to partner with him again in this effort.

Mr. Chairman, today's hearing will provide an important opportunity for the United States Congress to perform legislative oversight over two executive branch agencies—the U.S. Army Corps of Engineers and the U.S. Department of Agriculture—both of which have implemented policies that may harm the farmers I am privileged to represent.

Today, we will have the chance to hear why the administration has charted this course. We will also hear from Missourians who would be impacted by the Government's decisions. It is my hope that this hearing will provide a forum for representatives of the administration to adequately clarify their positions to Congress and to the American people. I look forward to hearing the testimony from every witness and will work with my colleagues to determine whether any legislative remedies will be necessary at the end of the day.

Before going further, I want to make clear that the issues surrounding the spring rise and crop insurance are only one aspect of a much larger discussion regarding river policy. For a long time now, we in Missouri and other downstream States have strongly advocated on behalf of our farmers and other interests to ensure federal policies do not harm the American people we represent. I pledge to continue that fight, which is ongoing. This hearing, however, is a unique venue for Members of Congress with legislative oversight over risk management to hear from you directly

on the spring rise and crop insurance issues. Congressman Hulshof and I felt it was critical not to let this opportunity escape.

Just a few hundred feet from where we sit in the State Capitol, the Missouri River is winding its way through the countryside, dividing Cole County in my district from Callaway County in Mr. Hulshof's district. Looking north and east from here, you will see vast acres of fertile soil stretching across the Missouri River valley—acres that are filled with row crops each year.

That river valley is home to our neighbors and friends who farm the land. The farms along the river produce abundant yields that contribute greatly to Missouri's economy. Each year, farmers there face tremendous economic risks associated with the swiftly moving waters of the Missouri River—waters we all saw rise to historic levels in 1993 and which frequently rise each spring with little warning. Producers rely on crop insurance to cover their losses, if necessary.

Because the river is so vital to the Show-Me State, I always keep a close eye on how the Corps of Engineers plans to manage the river each year. When the Corps released its 2006 operating plan, I was sorely disappointed to see two Government sanctioned spring rises—in March 2006 and again in May 2006—included in the proposal. These spring rises are bad for midwestern agriculture.

To add insult to injury, the U.S. Department of Agriculture's Risk Management Agency has announced it will not insure risks associated with the Corps' Government sanctioned releases. The Corps' actions may cause flooding when combined with springtime storms and melting snow.

Given the RMA's mission is to "promote, support, and regulate sound risk management solutions to preserve and strengthen the economic stability of America's agricultural producers" and to "provide crop insurance to American producers," the agency should not exclude farmers' potential crop losses from insurance coverage under this scenario. Further, the Federal Crop Insurance Act provides the Secretary of Agriculture quite a bit of leeway when assessing which losses can be covered by the federal crop insurance program.

Again, thank you all for being here today. I welcome all of you to Jefferson City and look forward to hearing from each of you.

PREPARED STATEMENT OF HON. JAMES M. TALENT, A U.S. SENATOR FROM THE STATE OF MISSOURI

Mr. Chairman, thank you for holding this hearing today and welcome to Missouri. I am sorry that I can not be with you in Jefferson City.

As you know, the Missouri River is the longest river in the United States and the U.S. Army Corps of Engineers operates the Missouri River to serve several congressionally-authorized purposes including flood control, navigation, irrigation, hydro-power, water supply, recreation and fish and wildlife.

The Missouri River is complicated to manage even when water is plentiful, but it is extremely complex when flows are limited. This debate has spawned many court cases and legislative battles. For decades, I have been fighting on behalf of the downstream interests against the spring rise, which brings us here today.

The spring rise is extremely dangerous in that water released from the lowest reservoir (Gavins Point) takes about ten days to reach the confluence with the Mississippi River. Between the release point and St. Louis, there are no locks and dams that could slow the water's progress. In fact, twice in June of 2005, during a terrible drought season, the Missouri river rose 9 feet in a period of 18 hours. During spring months, the lower basin receives significant rainfall and the additional flows will reduce drainage from highly productive cropland and increase the probability of flooding. The floodplain includes 1.4 million acres of farmland, 30,400 homes and 5,345 buildings worth an estimated \$17 billion.

Additionally, I question the science behind the spring rise. Even the United States Geological Survey admits that little is known about the essential life history needs of the pallid sturgeon and flow is just one of many factors that impacts spawning. Other variable stimuli thought to be associated with the spawning event including: temperature, photoperiod, and physiological conditions. Clearly, the spring rise is unjustified and premature. More time is necessary to evaluate the alternative measures underway and more time is necessary for the USGS and other agencies to form a baseline of analysis to evaluate biological response to the various approaches.

I have always opposed the spring rise. Under the 2006 Annual Operating Plan recently released by the Corps, farmers are now facing not one, but two spring rises; a March rise and a May rise.

For generations, local farmers, residents and businesses have depended on the river for their lives and livelihoods. The two spring rises proposed by the Fish and Wildlife Service put their livelihood at risk. Missourians understand they have a

special responsibility to be good stewards of the River and to use its resources in an environmentally-sensitive way, and I certainly agree. However, I do not believe that needs of Missouri farmers and the Missouri economy should play second fiddle to a fish.

Furthermore, the Risk Management Agency recently announced that those landowners flooded under this proposed plan, shall not be eligible for crop insurance benefits because it is a man-made disaster, rather than a "naturally-occurring event." It is outrageous that producers would not get the compensation that they need and deserve. I will continue to work with my colleagues and stakeholder groups to ensure that farmers who fall victim to spring rise flooding are compensated.

I continue to oppose the management of the Missouri River which has shifted the primary purpose of the upstream dams and reservoirs towards recreational and environmental goals at the expense downstream interests such as: flood control, navigation and water availability for community public water supply and power generation. This dangerous alignment of priorities on the Missouri River will also have an immediate impact on the livelihood of farmers and landowners along the river as well as the economy of the State of Missouri.

Again, I thank you for your interest in this important issue.

Mr. MORAN. I would ask consent of the subcommittee that Mr. Skelton and Mr. Hulshof be allowed to testify and ask questions of our witnesses. If there is no objection, that is so ordered.

Mr. GRAVES. Mr. Chairman, I do not object at this point. I wish to make two points where you warm the cockles of Missourians' hearts. You pronounce the State of Missouri correctly. You call it Missouri. And you also wear a Missouri University tie, and for a Kansan, that's first class, so thank you.

Mr. MORAN. I do know my audience, sir. I married a Missourian, and the pronunciation, I'm told, is still in dispute, but I appreciate knowing, at least according to you, I pronounce it correctly.

Mr. Graves, of the sixth district of Missouri, is a member of this subcommittee. We're delighted to have him here, and we have joined by Mr. Akin, as well, and so I would ask unanimous consent to allow the other Members of Congress to join us here and be able to ask questions of the witnesses. Without objection, so ordered.

And with that, we'll begin. Mr. Cieslik is with the U.S. Army Corps of Engineers, and we will take your testimony first, followed by Mr. Gould of the U.S. Department of Agriculture Risk Management Agency. Thank you very much.

STATEMENT OF LARRY CIESLIK, DEPUTY DIRECTOR OF PROGRAMS, MISSOURI RIVER, AND CHIEF, WATER MANAGEMENT DIVISION, MISSOURI RIVER BASIN, NORTHWESTERN DIVISION, U.S. ARMY CORPS OF ENGINEERS, OMAHA, NE

Mr. CIESLIK. Thank you, Chairman Moran and members of the subcommittee. My name is Lawrence Cieslik, and I'm the Deputy Director of Programs and the Chief of Missouri River Basin Water Management for the Northwestern Division of the U.S. Army Corps of Engineers. I worked for the Corps for nearly 32 years, and have been in my current position since 1997.

I have a degree in civil engineering from the University of Nebraska, and I'm a registered professional engineer in the State of Nebraska. The Northwestern Division Commander, Brigadier General Greg Martin, regrets that he could not be here today, and has asked me to represent him at this hearing.

The Corps operates the Missouri River mainstem reservoir system to serve congressionally authorized project purposes of flood

control, navigation, hydropower, irrigation, recreation, water supply and water quality of fish and wildlife. The Corps' goal is to best serve these authorized purposes, while complying with all applicable laws, including the Endangered Species Act, or the ESA, while fulfilling our responsibilities to the federally recognized Native American Indian tribes.

The Corps has been consulting with the U.S. Fish and Wildlife Service under the ESA since the early 1990's on the operation of the Missouri River system, the bank stabilization and navigation project, and the Kansas River projects. In November 2003, the Fish and Wildlife Service provided the Corps a biological opinion, which concluded that the Corps' operation of these projects jeopardized the continued existence of the interior least tern, piping plover and pallid sturgeon, three animals protected under the ESA.

As a result of the additional information and the listing of critical habitat for the piping plover. In 2003 the Corps and the Service re-initiated ESA consultations. In their 2003 amended buyout, the U.S. Fish and Wildlife Service concluded that the corporate actions jeopardized the continued existence of the endangered pallid sturgeon. In the 2003 amended buyout, the U.S. Fish and Wildlife Service provided a reasonable and prudent alternative for RPA to jeopardy.

This RPA includes a requirement for a bimobile spring pulse from Gavins Point Dam. Intense efforts continue by the Corps, with the assistance of the U.S. Fish and Wildlife Service, the USGS, the State's and other Natural Resources experts to restore the physical habitat for the pallid sturgeon in the Missouri River below Gavins Point. This restoration work will provide habitat for young sturgeons to develop and survive. However, under the 2003, amended buyout, habitat creation does not substitute for changes in river management to provide the flow conditions that promote sturgeon reproduction.

The 2003 amended buyout requires the Corps to implement the bimobile spring fall releases no later than the spring of this year. However, the buyout also allows consideration of the existing hydroclimatic conditions, such as drought, in the decision on whether or not to implement the bimobile spring pulses in any given year. The bimobile spring pulse releases are designed to cue the pallid sturgeon spawning by partially restoring some semblance of the river's natural hydrography characterized by spring pulses at times when major snow melt occurs first in the plains and then in the mountains. Spawning and recruitment will be key to the recovery of self-sustaining sturgeon populations in Missouri.

The Missouri River basin is currently experiencing an extended river drought and system storage is at unusually low levels. The Corps has taken these low levels into account in developing the criteria for this year's bimobile spring pulse release plan as allowed for the buyout, along with taking input from the public regarding the risks associated with the spring pulse releases.

The plan for this year is presented in the Corps 2005-06 annual operating plan or AOP of the Missouri River system. This plan was developed based on the requirements of the 2003 amended buyout, intense analysis of hydrologic data, input from the spring pulse ple-nary group, which was comprised of more than 50 basin stakehold-

ers, tribal consultations and public comments received on the draft AOP.

This collaborative process was facilitated by the U.S. Institute for Environmental Conflict Resolution, and included representatives from the U.S. Fish and Wildlife Service, the Corps, tribal representatives, basin states and a wide range of stakeholders. These discussions were key in the identification of a bimobile spring pulse plan for 2006 that greatly reduces the potential for negative impacts, as compared with the plan identified in the 2003 amended buyout.

One key change was the reduction of the peak of the spring pulses from 1 to 2 weeks, down to 2 days. This not only saves water and system storage, which is very important during the current extended, but also reduces the duration of the higher river stages downstream. The plenary group discussions and extensive discussions with the U.S. Fish and Wildlife Service also helped the Corps identify exactly how to adjust the magnitude of the May spring pulse, in response to current hydroclimatic conditions.

During the drought, these adjustments substantially reduce or eliminate the spring pulses. We believe that the bimobile spring pulse plan presented in this year's AOP complies with the requirements of the buyout while being responsive to hydroclimatic conditions. The Corps understands the farmers' concerns over the potential for flooding of crop land during the bimobile spring pulse releases and their concern over crop insurance benefits during those releases. The bimobile spring pulse plan includes criteria specifically designed to minimize the risk of downstream flooding and crop damage.

First, the Corps and U.S. Fish and Wildlife Service agreed that the established downstream flow limits would not be changed under the 2006 AOP, providing similar downstream fluid control during the spring releases as has been provided in previous years.

Second, the Corps agreed, at the request of the downstream agricultural interests, to integrate the National Weather Service's precipitation forecast into its daily Missouri River operational forecast during the spring pulse period and will adjust releases accordingly.

And third, the Corps will integrate estimated actual rainfall from the U.S. Weather Service weather radar information into its forecast during its spring pulse releases. These measures, along with the reduced duration and magnitude of the pulses, will reduce the potential for downstream flooding of crop land. It is important to note that because system storage is low due to the current extended drought, that releases for navigation in 2006 will be 6,000 cubic feet per second lower than normal, thus resulting in lower peak flows during the spring pulses. All of this information has been discussed with USDA and the Risk Management Agency to help bolster their understanding of the spring pulse operations for 2006.

In conclusion, the Corps remains committed to operate the Missouri River mainstem system to serve the congressionally authorized project purposes, fulfill our tribal trust and treaty obligations, and comply with all applicable law, including the ESA. We are convinced that this can best be accomplished in a sustained collaborative process that includes the entire spectrum of basin interests.

Working together as a team, Federal, tribal, State and local agencies and stakeholders, we can identify solutions that benefit the basin as a whole.

Thank you for the opportunity to represent General Martin at this hearing today.

Mr. MORAN. Thank you very much for coming and making your testimony.

Our next witness is Mr. Eldon Gould, the Administrator of the Risk Management Agency at the U.S. Department of Agriculture. Mr. Gould, welcome.

Mr. Gould was just appointed by President Bush to serve in this capacity, and although we thought your appearance before our subcommittee in March in Washington, DC would be our first opportunity to hear you, we're delighted you're here today and it's nice of you to come to Missouri and explain from the Risk Management Agency your position.

So, thank you, sir, and welcome to your new position.

STATEMENT OF ELDON GOULD, ADMINISTRATOR, RISK MANAGEMENT AGENCY, U.S. DEPARTMENT OF AGRICULTURE

Mr. GOULD. Thank you for that kind introduction. Mr. Chairman and members of the subcommittee. My name is Eldon Gould, and I'm Administrator of the Risk Management Agency, U.S. Department of Agriculture. I assumed this position in November of last year. I'm a lifelong farmer in northern Illinois with the 1,500-acre corn, soybean and wheat farm.

My task here today is to explain the role of the Federal Crop Insurance Program as it relates to the Missouri River pulse releases. We have been working on this issue beginning last year and in consultation with members of the Missouri congressional delegation and some of their constituents on an ongoing basis.

The RMA administrates the Federal crop insurance program on behalf of the Federal Crop Insurance Corporation. The agency has a unique partnership with 16 private insurance companies that are responsible for the sale and service of various insurance policies.

As you're aware, the U.S. Army Corps of Engineers has scheduled two spring pulses or water releases from the Gavins Point Dam on the Missouri River in an effort to mimic the natural river rise and encourage spawning of the endangered pallid sturgeon. This is being done to comply the requirements of the Endangered Species Act.

There is concern among producers along the Missouri River, and thus, among their elected representatives, that these pulses of water might cause flooding or excess moisture conditions for farms along the river. The Department of Agriculture has recently responded in writing to queries from Senators Bond and Talent, and Representatives Emerson, Hulshof, and Skelton on this matter. We also responded earlier to [Missouri] Attorney General Jay Nixon and the Missouri Corn Growers Association. We take all of your concerns very seriously.

As I have stated, Mr. Chairman, I am a producer myself, and one of my goals as Administrator of RMA is ensure that RMA is doing everything it can, within its legislated authority, to assist the farmer and rancher. To that end, the agency has been consulting exten-

sively with the Corps since we learned of the planned water pulse events. Having sought out the facts, we believe that we have examined all aspects of the issue.

As you are aware, crop insurance payments are made on production losses that are due to acts of nature, such as weather events, including drought, hurricane, freeze, disease and excess moisture. These causes of loss are manifested in the Federal Crop Insurance Act, and specifically stated in the crop insurance policies. These proposed pulses of water by the Corps are not an act of nature, but instead, are a requirement of Federal law. Therefore, in the unlikely situation that there are any losses attributable to those releases, those losses cannot be covered under the crop insurance policies. However, any losses attributable to natural causes, such as excessive rain, will be covered.

The planned March pulse of water will result in the increase of 1 to 1½ feet in river stage at the peak of the pulse. The Corps has informed us that the potential May spring pulse, given the drought conditions in the basin, will cause a 1½ to 3 feet rise in the river downstream, and this will not cause a rise above a normal navigable river level.

We have communicated with the Assistant Secretary of the Army for Civil Works, the Honorable John Paul Woodley, Jr. He has given RMA assurances as to the Corps' flexibility to administer these releases with strong consideration given to flooding potential. The Corps has routinely released water from reservoirs into the Missouri River system in past years to meet various mandates without affecting the crop insurance coverage. We have no reason to believe that would not continue in the future.

Based on the Corps' analysis of the current conditions of the Missouri River system, neither RMA nor the Corps anticipate that these upcoming releases will cause damage to crops or crop land along the Missouri River system. I can assure members of this subcommittee and their constituents that any crops insured with a Federal crop insurance policy that suffer losses specifically attributable to natural causes, such as excessive rain, will be covered in accordance with the terms of the policy, irrespective of these releases by the Corps.

In closing, Mr. Chairman, I would like to reassure you and members of this subcommittee that RMA is fully aware of your concerns and those of your constituents. We have high regard for Assistant Secretary Woodley and the members of the U.S. Army Corps of Engineers and like to thank them for their continued cooperation in the examination of this matter. We will remain in close consultation with the Corps to minimize any potential risks to producers along the Missouri River.

We thank you for the opportunity to participate in this important hearing and look forward to responding to your questions.

Mr. MORAN. Mr. Gould, thank you very much.

Mr. Cieslik, would you outline for us the basis by which you reached the conclusion that there will not be crop losses due to the singular release?

Mr. CIESLIK. If you look at the magnitude of the spring pulses, they alone would not cause the river to exceed bank full or cause interior drainage problems if there was not excess tributary inflow

due to rainfall occurring on the Missouri River. So they in themselves would not cause the flooding. So I guess the answer that we gave folks was tied to the question of whether or not the spring pulse releases in themselves would cause this flooding.

Even in normal times, when we are providing flows for navigation, we do have overbank flooding. As everyone knows, it's a problem, but it's always associated with some kind of natural rainfall event either on a tributary or right on the Missouri River. So the spring pulse would not be different. On days like today when it's dry and the sun is shining, there's not a problem. The problem occurs with or without the spring pulses when we get unusually large rainfall events in the lower basin.

Mr. MORAN. Mr. Gould, you indicated that the Risk Management Agency feels comfortable that no flooding will with the release pulse that the Army Corps of Engineers intends to discharge the water. And Mr. Cieslik just indicated there be will not be farm ground flooding unless there was some other cause which appears to be natural.

With that, therefore, can we reach the conclusion that if farm ground is flooded, that crop insurance would cover that damage?

Mr. GOULD. Well, I would say given those assumptions, that the Army Corps' release of the pulses would not cause flooding, then obviously, if there is flooding, it's going to be affected by some natural cause. One would expect that that's excess rainfall, so if it is excess rainfall, then the damage would be covered under the term of the policies.

Mr. MORAN. Thank you, Mr. Gould.

I now recognize the gentleman from North Carolina Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman.

Mr. Gould, let me go back to that question to get a clear understanding. In your testimony, you said that crop losses could be attributable to excess rain will be covered.

Mr. GOULD. Correct.

Mr. ETHERIDGE. How does RMA determine whether the rain is excessive? And to add to that, if flooding occurs with rain, it is automatically considered excessive, as you just said, correct?

Mr. GOULD. Correct.

Mr. ETHERIDGE. Do you measure by the number of inches that fall or do you know how that's done or do the river levels or ground saturation play a role in it? I guess I would like to know what RMA goes by to determine what excessive rain is, so that we will know we are going to be covered, because I guess that is critical point.

Mr. GOULD. Well, that's a key question. The only problem is I don't have a key answer. I don't know exactly how that procedure is done. I would say that insurance companies are in the business of responding to complaints and adjusting to them on an ongoing basis and I know there is procedure to do that, but having not been exposed or working in that area of the industry, I cannot reply specifically how that's done. I'm sure we can get the answer and get that back to you.

Mr. ETHERIDGE. If you would, I'd appreciate it. I think that's one of the key questions the farmers here would like to know. I cer-

tainly would like to know, because I think it affects any part of the country. In testimony that's going to be given later, it is argued that RMA has covered losses stemming from other floods in the past. Has RMA covered previous losses due to the flows and other projects, to your knowledge.

And if so, what's the difference between those and flood, as it's being termed? And if not, can you explain why people believe RMA has covered such losses in the past?

Mr. GOULD. As I understand, and obviously, I was not there so I'm going on what I was told and informed that one covered losses from flooding before the flooding was caused by excess moisture, heavy rainfall, even though it was upstream from the river. And as I understand it, that's the basis that was used to pay for those crop losses.

Mr. ETHERIDGE. OK. Let me ask one final question, and then I'll turn it over to my colleagues.

How much flexibility do you or the Secretary have to cover losses that are contributable to the policies, or is this pretty much set in stone in the law? Are there flexibilities that are available to the Secretary or RMA, or is it going to take legislative action?

Mr. GOULD. Well, essentially, there is some confusion about that language in the statute. It says something to effect of at the Secretary's discretion. We've looked at that language very carefully and counsel has determined that that language refers only to the further clarification of natural disasters. So, again, the key sentence or key verbiage in the statute is natural occurring losses or, in this case, I think most of us are concerned about excess moisture or excessive rainfall.

Mr. ETHERIDGE. OK. Thank you, Mr. Chairman.

Mr. MORAN. The Chair will recognize the gentleman from Missouri, Mr. Graves.

Mr. GRAVES. I have a couple of questions. My biggest concern, just so everybody knows, I'm completely against the spring rise and have been from the beginning. Interior drainage has more importance than anything. Once you raise the river, you raise the river and back up all the tributaries that flow into it, and a lot of those, we don't have the protection of low moisture along the tributaries.

And my question, I guess to both of you is, was that taken into account, was that studied when it comes to interior drainage? And the same thing. How do you determine if it was spring rise for natural occurrence when already backed water up again. Again, folks know if you back that water up, the floodgate's closed and you're not going to let water and if you have interior, whatever the case may be, that water won't get out. It's going to you. I don't know if you took that into account or that was studied.

Mr. CIESLIK. Sir, the Corps of Engineers definitely took that into account. As you know, we've been studying this issue since the early 1990's, and we're well aware of the interior drainage problems. Myself and the leadership of the Corps of Engineers have been out on the ground with farmers for many years. They've shown us the sites, they've explained to us the probably. We understand, and that is one of the key reasons why we worked with U.S. Fish and Wildlife Service to maintain the downstream plans for 2006.

And, of course, we have the benefit of being in a drought, so to speak, in this regard, and the fact that we're low on navigation releases so there is more room, if you will, to put in a spring pulse before we get up to those critical elevations that close those drain structures. So in one sense, even though the drought has had some very definite negative impacts throughout the basin, in this regard it helps us in the fact that the river is lower. We're allowed to adjust the latitude of the spring pulse in May for the drought conditions, so we're able to reduce the magnitude down to a level which will be probably around 10,000 cubic feet per second in May, if indeed it occurs at all.

As you know, the difference between minimum service navigation and full service navigation is about 6,000 CFS, so in a drought like this we're talking about fairly modest difference between what you would see in full navigation and a May pulse. Now, that doesn't mean that's always the case in normal times when you go up to full service navigation. Obviously, it's going to be more of a concern.

There is also a concern, I must admit, with the downstream flow limits. When we get to more normal times, they will tend to shut off the spring pulses. You may not see that as a problem, but the folks that want the frequency of the spring pulses for the pallid sturgeon see that as a problem. And so that's going to be an ongoing discussion.

And I said we're working with the plenary group to try to address these issues. We're actually going to go out and collect a whole bunch of data on the drainage structures in Missouri and all the way up and down the river in Nebraska, Iowa, Kansas, and we're going to try to figure out exactly how a change in those downstream flow limits will impact the drainage problem.

So we've heard the agricultural interests. We're working on the issue. We think we've taken the steps we can to minimize the impact in the short term, and are working to minimize the impact on the long term.

Mr. GOULD. Thank you, Mr. Graves. As I understand your question, you're concerned that if we have increased excess moisture caused by the release of the pulses, and then excessive rain, what happens then?

Mr. GRAVES. Well, if you got water backed up in the interior drainage because of a pulse or spring rains comes down and if you get rains that we're going to have that causes flooding, is it because the flood or is it because of the rain.

Mr. GOULD. Well, I would say in that case, we could determine that cause on the Corps data, but I think if the ground is just sort of wet and we get excess moisture, then I would think that is going to be caused mostly by excessive rainfall or excess moisture. And obviously, if we get the situation where it's a little bit in between and there are maybe instances where the crops or the ground does not flood but there is excess moisture, then you get into preventive planning scenario and, again, the policy has some provisions for that.

Mr. GRAVES. Is that spelled out in the handbook, sort of wet.

Mr. GOULD. I suspect it's a little more technical than that.

Mr. GRAVES. That's what worries me. I guess it's the big unknown and it worries me to death to hear things like that.

Mr. GOULD. Well, I planted 42 crops of corn. I understand the concern when conditions are not right and it's always a problem when you go or don't go. Is it good enough today or is it going to be better tomorrow or is it going to be worse tomorrow? And I think that's a serious issue for farmers and I relate to that.

And, again, I don't know the technicalities of how we administrate preventive planning, but we've been doing it for a lot of years and a lot of acres of crop land, and I'm sure there's methodologies that are sound and we'll continue to do so.

Mr. MORAN. Thank you, Mr. Graves.

The Chair will recognize the very distinguished gentleman from Missouri, Mr. Skelton.

Mr. SKELTON. Mr. Chairman, thank you very much. And, again, thank you for being with us today and a special thanks to Mr. Etheridge. Kenny Hulshof and I both appreciate you holding this hearing.

Mr. Gould, Mark Twain of Missouri once said, the more you explain it to me, the more I don't understand it. I have to tell you I'm having quite a bit of difficulty understanding your response to Mr. Etheridge's question. When you said that the crop losses attributable to excessive rain will be counted if flooding occurs with rain is automatically excessive. And your answer was you'd get back to us. That's one of the two purposes of this hearing, Mr. Gould.

Let me give you a hypothetical, if I may. On the Armed Services Committee, we deal in national security. Suppose a terrorist were to bomb one of the dams up river, and as a result of that, at the same there was rain, and there was extensive flooding here in the State of Missouri. Would that be covered by the Risk Management Agency?

Mr. GOULD. Obviously, that's a very extreme example.

Mr. SKELTON. Just answer my question.

Mr. GOULD. Right. In that case, I'm assuming we would be covering the loss that is attributed to by the rainfall and not by unnatural causes. Again, we have to keep coming back to the key verbiage in the policy where we have a duty to pay losses on natural losses.

Mr. SKELTON. The key verbiage in the law gives the Secretary leeway; am I correct?

Mr. GOULD. I'm sorry, but I probably do not agree with you. As we've checked with our counsel and scrubbed that language—

Mr. SKELTON. I'm a country lawyer, too, and I can read the English language. It says, "as determined by the Secretary". That's obviously discretionary and gives him leeway, does it not?

Mr. GOULD. Our interpretation from our counsel indicates that that discretion refers to further definition of natural causes. And that is—unfortunately, we've looked at that language very carefully, but again, it refers to a further definition, further refinement of natural causes.

Mr. SKELTON. Well, I hate to prolong, but, Mr. Gould, we're looking forward to your written answer to Mr. Etheridge's question regarding what is considered extensive.

Mr. Cieslik, I have a question for you. The Corps of Engineers canceled the March spring rise; am I correct?

Mr. CIESLIK. Sir, it hasn't been finally determined.

Mr. SKELTON. You put out a news release.

Mr. CIESLIK. Sir?

Mr. SKELTON. Did you not put out a news release.

Mr. CIESLIK. The March pulse determination is tomorrow. The 36½ million acre feet preclude level is staked on one March. I will tell you that the system storage rate right now stands at 36.3 million acre feet below preclude level, so it looks unlikely we will have the March pulse.

Mr. SKELTON. You did put out a news release; am I correct?

Mr. CIESLIK. I don't believe so. That's been canceled, sir.

Mr. SKELTON. How did Associated Press report this?

Mr. CIESLIK. Sir, they asked me a question yesterday, and I told them it was unlikely. It has not been canceled, but they asked me personally the question and I said it was unlikely. I have not read the article yet, may have been a misquoting, but I told him exactly what I'm telling you today, sir.

Mr. SKELTON. I find it interesting that occurred a day before this hearing. Thank you.

Mr. MORAN. Thank you, Mr. Skelton.

My friend and colleague, a gentleman from Missouri, Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. It's not often that welcome Kansas here in Missouri. But I see you're sporting your Missouri tiger tie and I do welcome you.

Mr. Gould, if you'd pull the microphone up there, let's bring this down to brass tacks. And unforeseen thunderstorm that dumps 8 inches of rain and causes flooding will be covered by crop insurance, but a premeditated flood cost to Missouri taxpayers by the Government they fund will not be covered; is that correct?

Mr. GOULD. If you take both of those extremes, that is the way the policy reads, that it would cover natural occurring events.

Mr. HULSHOF. Is that fair?

Mr. GOULD. I have an opinion, but it would be my personal opinion. But I think you have to realize that all of Federal crop insurance, the whole basis of crop insurance is insuring natural causes of loss. And that as tough as it may be, it may not be fair and it may not be equitable, but that's the basis of Federal crop insurance and that's what the policies are rated on.

And there is other problems across the United States that are not exactly the same, but are caused by manmade events, so the water releases or drought caused by water being taken to another use, other than agriculture, the thing we have to continue to look at—and again, it may not be fair—that is, cover natural losses.

Mr. HULSHOF. Mr. Gould, I'm like you. I'm a farmer, and I farm about 700 acres in Mrs. Emerson's district. There are a lot of farmers that are here that are farmers in the Missouri River bottoms. Given that stance, what encouragement can we give to farmers to purchase crop insurance? We revamped the crop insurance program some years ago with Congress, and the idea was that we want farmers to provide their own risk management.

Is this policy one that you truly believe is going to encourage farmers along the lower river valley to purchase crop insurance?

Mr. GOULD. Well, I think so. Again, it looks like the risk of damage due to the release of the spring pulses is minimal, and so if there going to be losses, it's going to be caused by a natural occurring event and so, therefore, it would seem that if a farmer has bought crop insurance for the risk of flooding or preventive planning, he would continue to do so.

Mr. HULSHOF. It looks to be minimal. Mr. Cieslik has said this year. I can't believe we're being thankful there's a drought. But even as we meet here today, in Omaha, Mr. Cieslik, as you know, there's discussion about the planning of the 2007 spring rise. In fact, some have called for the rise next year to be twice the strength and 10 times the duration.

Mr. Cieslik, let me ask you a question about this.

The Corps did an economic impact analysis, did they not?

Mr. CIESLIK. Yes.

Mr. HULSHOF. Didn't the study take into account the fact that crop insurance would not be able to compensate on this issue.

Mr. CIESLIK. No, sir. The first time we were informed that was and issue was last November, during our annual operating plan meetings.

Mr. HULSHOF. And that was first instance that the Corps of Engineers learned that this policy was—this decision was made.

Mr. CIESLIK. That this was an issue, yes, sir.

Mr. HULSHOF. I want to associate myself with my friend and colleague from the sixth district on the spring rise, but time doesn't permit me to engage in a discussion about the spring rise. Let me put this question to you. Somebody along the way decided the pallid sturgeon was worth saving. The reservoirs hold 36-and-a-half million acre feet, but not up to 33 million acre feet. Isn't the 36½ million acre feet a fairly line?

Mr. CIESLIK. The 36½ million acre feet came about by looking at what the likelihood would be of having the spring pulse this spring. The Fish and Wildlife Service indicated to us that they wanted to see the spring pulse, obviously, occur in 2006, that there hadn't been a spring pulse in many, many years attributable to the mainstem reservoir system. So we talked in great detail with them about what this level should be.

The plenary group strongly suggested 40 million acre feet, but looking at our data, it was apparent that 40 million acre foot preclude level was probably higher than we were going to reasonably expect in 2006, so the Fish and Wildlife Service could only accept 36½ million acres.

Mr. HULSHOF. Thank you.

Mr. MORAN. Thank you, Mr. Hulshof.

My colleague and friend from Missouri Mrs. Emerson.

Mrs. EMERSON. Thank you, Mr. Chairman. And welcome from another Missourian. I will pose my question to both of you, if I could. In my congressional district, which is downstream on the Mississippi River, anything in excess on the Missouri River obviously comes down my way.

But anyway, when that whole project is put into place and farmers lose the ability to produce the variety of crops than usual, then the Corps must pay for the difference between, oh, let's say, profitability of corn production as compared to soybean. And one specific

example would be the St. Johns project down in my district, where land is to be flooded during the late spring, and so the Corps is now being forced to buy easements up to certain elevations. And since the land can't now be used for high value production, my question to you, then, is, if you take—in this particular instance, on the Missouri, if you take away the value from the farmers, who is going to be pay the difference, the Corps, RMA, who?

Mr. CIESLIK. The Corps of Engineers has no authority that I know of to compensate agricultural interests for flood damage. The mainstem reservoir system provides a vastly better flood control situation than was in place prior to this system being built. A lot of farmland that is farmed all along the Missouri flood plain could only be farmed economically with the Missouri River mainstem in place. We've saved billions upon billions of dollars of flood damage along the Missouri River.

When we operate for navigation, when we operate for water supply, any project purpose, there are residual flood damages that we can't control. We don't have perfect control over the river, because there is literally hundred of thousands of square miles of uncontrolled drainage area. We are not required, to my knowledge, to compensate people for that residual flood control that we don't have.

Basically the spring pulse is also required by Federal law through the Endangered Species Act, so like navigation water supply, there will be residual flood damage associated with this uncontrolled drainage area.

Mrs. EMERSON. Do you have any comment, Mr. Gould?

Mr. GOULD. Only to further reiterate what I have already mentioned; that is, if we get into a situation where there is excess rainfall or preventive planning, those issues are covered under Federal crop insurance and—as described in our policies.

Mrs. EMERSON. OK. Let me just ask you, Mr. Cieslik, a quick question. What was done with the public comments that were gathered on the whole Missouri issue, and what process does comments play.

We had a constituent drive all the way from Nebraska to southeast Missouri for this, and they do not believe that any of the comments that they made were taken into account. So can you please tell me?

Mr. CIESLIK. Yes. Specifically, we took comments on this year's plan and, also, a longer-term plan that's going to be included in the master manual for the spring pulses. And if you look back in history, we have been taking comments on the spring rises since 1994.

I think that the answer I would give your constituent is that the changes we've made, the reduction and duration of the spring pulses, the reduction of the magnitude during drought, the retention of the downstream flow limits, using the precipitation forecast and actual precipitation in you runoff forecast to further protect downstream lands.

This is all a result of the common we've received, not only in the short-term here in the last year, but also over the last 15 years on master annual review. Frankly, there is only so far we can go. The biological opinion requires that we have a spring pulse in 2006 or at least a plan for a spring pulse in 2006 and we think we've done

as much as we can, working with U.S. Fish and Wildlife Service to address the impacts of the folks that told us about it along the river.

Mrs. EMERSON. Mr. Cieslik, I assure you that my constituents believe that you all have put the interests of the pallid sturgeon and piping plover far above the interests of farmers and southwest Missourians throughout the State.

Mr. CIESLIK. Yes, ma'am.

Mr. MORAN. Thank you. Mrs. Emerson is certainly part of the agriculture community, a member of Congress who cares about farmers and ranchers and is a member of the Committee on Appropriations' Subcommittee on Agriculture, and we appreciate your input.

Mrs. EMERSON. Thank you, Mr. Chairman.

Mr. MORAN. The Chair recognizes the gentleman from Missouri Mr. Akin.

Mr. AKIN. Thank you, Mr. Chairman, for allowing me to sit in and join, even though I'm not actually on your subcommittee. And just first of all, for the record, I have a statement that I'd like to submit, if that would be OK.

Mr. MORAN. Without objection, so ordered.

Mr. AKIN. And then, also, to say I think it's probably obvious that I'm also opposed to the spring rise and don't make any—one of the things we talk about the Government sometimes is common sense. I guess I'm kind of wondering about the fact that we're sitting. First of all, we tax our citizens to build some dams, because we want to control water flow. And then now that we've taxed them, we built the dams, we turn around and we're going to do this spring rise thing.

And I guess the question I have is, I thought the purpose of the dams originally was to prevent conditions that could lead to flooding, and also to help aid navigation. Somehow, the spring rise doesn't seem to constructive to either of those purposes for which people were taxed. So I guess I'm wondering the—sort of the common sense of the policy to start with.

And the second thing was the—there is an insurance policy that we have to protect people's crops in case of these different hazards, which are—some people call them acts of God or a whole lot of rain. But then to contribute to that ourselves and say, but we're not going to cover when we're the ones that engineered it, that somehow seems contrary to common sense as well.

I guess, last of all, the gray area here, we've got the spring rise coupled with a heavy rainfall. You've been questioned at some length on that. I think you could be pretty precise in saying, this is where we think the law is. But really, what I'm hearing the answer is, you're saying, well, we're just going to leave that to a court someday in case it happens.

And I share the same concerns here. We may be OK this year, we may be OK next year, but sooner or later this is going to happen, and for us to put something in the situation where we're, well, now we've got a big mess on our hands, something that we in a sense created and we have to go to some court to figure that out, that somehow doesn't seem to be very sensitive to the taxpayers, to your citizens in any of those regards, and I'd be happy if you want to respond to that.

Mr. CIESLIK. Sir, if I could be in on the common sense associated with the requirements of the Endangered Species Act, the Endangered Species Act requires Federal agencies to ensure that their actions don't jeopardize the continued existence of federally listed endangered species. It sets up the U.S. Fish and Wildlife Service as the biological experts in that regard, so their job is to advise Federal agencies like the Corps on the biology of the situation.

It's incumbent upon the Corps of Engineers, then, to go and look at impacts to stakeholders, to the authorized purposes for which we're charged. And so, we have to try to wicker in that common sense into the equation. We have to listen to the constituents, as Mrs. Emerson alluded to. Listen to the concerns, listen to the impacts, and then go back to the biological experts and say, what can we do?

But obviously, there is a limit to what their science tell them that can be done to get that common sense answer. But that's the best answer I have on that issue.

Mr. AKIN. That, I think, gets back to the whole question of the Endangered Species Act and whether that's maybe that's common sense. Maybe we need to take a look at that. Thank you.

Mr. MORAN. Thank you, Mr. Akin.

Mr. Skelton has follow-up question, and then we'll turn to the next witness.

Mr. Skelton?

Mr. SKELTON. Boils down, Mr. Cieslik, in your opinion, speaking for the United States Army Corps of Engineers, which has priority, the Flood Control Act of 1944, which causes the Corps to have emission of navigation and fluid control, or the Endangered Species Act.

Mr. CIESLIK. Sir, I'll refer to the Eighth Circuit Court opinion recently that indicated there could be a situation where the requirements of the Endangered Species Act would force the Corps of Engineers to be in violation of the 1944 Flood Control Act, but I will refer to that decision also that said the current master manual did not reach the threshold. And I guess it's our contention that at this point, with this spring pulse plan that we have, that we are in compliance with ESA and in compliance with the 1944 Act. But I think the Eighth Circuit Court of Appeals recognized that there is a threshold where you would hit that situation that you refer to.

Mr. MORAN. Mr. Gould, thank you very much. I look forward hearing further from you at our hearing in March in Washington. Mr. Cieslik, thank you for your comments.

Mr. MORAN. We now turn to our second panel, which consists of Wayne Bryan, who's the deputy chief counsel for the Missouri attorney general's office. He is here on behalf of Missouri Attorney General Jay Nixon; and Mr. Fred Ferrell, who is the director of the Missouri Department of Agriculture. Thank you for letting us come to your hometown.

Mr. Ferrell, I believe we'll begin with you.

**STATEMENT OF FRED FERRELL, DIRECTOR, MISSOURI
DEPARTMENT OF AGRICULTURE, JEFFERSON CITY, MO**

Mr. FERRELL. I say good morning to you, Mr. Chairman, and members of the subcommittee, welcome to Missouri.

My name is Fred Ferrell, director of the Missouri Department of Agriculture. As I come before you this morning, I'm appreciative of your attention to the policies set forth by USDA's Risk Management Agency, known as RMA, regarding potential crop damage caused by spring pulses set forth by the U.S. Army Corps of Engineers.

This department I am charged to lead has the following mission statement: Serving, promoting and protecting the agricultural producers, processors and consumers of Missouri food, fuel, and fiber products. Agriculture is Missouri's largest industry, represented by approximately \$6 billion in farmgate production last year. Our State is a national leader in beef, hay, turkey and swine production. However, our most important agriculture ranking is that we're second in the number of farms and farm families. This ranking is the one that I'm proudest of and the one I will fight the hardest to preserve.

Agriculture is a challenging business, not unlike other industry sectors. However, I cannot name another industry with a greater level of risk adversity. In Missouri, as in many other States, our farmers are reeling from the effects of a devastating drought, as well as ever-increasing input costs and land values. These factors are just a few examples of issues out of our immediate control that place pressure on the diminishing profit margins of our constituents.

Despite these pressures, the Federal Government decided to place another critical issue on the backs of the Missouri's bottomland farmer through the implementation of the 2005-06 Annual Operating Plan that calls for two spring pulses on the Missouri River in March and May 2006. In the AOP, the Corps refers to the plan as adaptive management, one tool to preclude jeopardy to the pallid sturgeon. I'm here this morning to tell you that Missouri's bottomland farmers will be the ones placed in jeopardy by the unnecessary experiment to which Missouri remains fundamentally opposed.

To make matters worse, RMA has made clear that any losses in crop production associated with the Corps' proceedings cannot be covered by Federal crop insurance policies. RMA states: "Given the U.S. Army Corps of Engineers confidence that flooding is not expected to occur as a result of the releases, USDA does not anticipate that there will be any losses attributable solely to these releases."

This statement is very disturbing to me. Missouri officials have advised at every occurrence that in the lower river basin, a natural spring pulse takes place each and every year.

The effects of adding another 1 to 3 feet of water to our farmland at a time when extra water is not needed could be devastating. Crops could very well be destroyed, or at a minimum, costly delays in planting could be created, leading to lower yield at harvest time. These lower yields equate to a depressed farm income which, in turn, hurts our communities and our State's economy.

The Missouri River's bottomlands are home to some of the most fertile and productive crop land in our State, with river corridor counties contributing one over \$1 billion to Missouri's economy. This does not take into account the ripple effected created by sup-

porting industries such as transportation, livestock, grain handlers and countless others.

I recently returned from Washington, DC, where the annual mid-year National Association of State Departments of Agriculture meeting was held. I'm here to inform you that NASDA support Missouri's opposition to the spring pulse on the Missouri River. At my request, NASDA president Carlton Courter of Virginia sent letters to RMA and the Federal Crop Insurance Board of Directors, advising that any crop losses caused by a Corps decision to intentionally flood the Missouri River should be covered by RMA. This action is significant, as NASDA as a whole represents many constituencies and interest groups.

To conclude, I again want to thank you, Chairman Moran and subcommittee members for hosting this hearing in Jefferson City. I trust in your ability and judgment to do everything in your power to ensure that our farmers, the most efficient in the world, are not subjected to further undue harm.

Thank you.

Mr. MORAN. Mr. Ferrell, thank you on behalf of Missouri agriculture.

Mr. Bryan.

**STATEMENT OF WILLIAM BRYAN, DEPUTY CHIEF COUNSEL,
MISSOURI ATTORNEY GENERAL'S OFFICE, JEFFERSON CITY,
MO**

Mr. BRYAN. Thank you. I submitted a written statement for the record, and if it pleases the Chair, I will summarize it this morning.

Mr. MORAN. That is welcome news, sir.

Mr. BRYAN. I regret that Missouri Attorney General Jay Nixon can't be with us this morning, but he did want to me to welcome you to Jefferson City, Missouri and thank you for your time and your concern on this important issue.

On November 23, Attorney General Jay Nixon first questioned the impact that an artificial spring rise may have on the crop insurance coverage paid for by Missouri farmers. The specific question we asked was, will the Risk Management Agency exclude from coverage losses caused or contributed to by the spring pulses described in the Corps draft Annual Operating Plan for 2006?

Surprisingly, despite 15 years of study by the Federal Government, it appeared to us that no responsible Federal agency had ever considered this important question. Without Attorney General Nixon's initiative, it's quite possible that the agencies never would have considered how the Corps' proposal disrupts the farmers' safety net.

There are three important considerations this committee should take into account. First, the spring pulses are expressly intended to mimic nature. Whenever a Federal action has a purpose to imitate a natural occurrence in order to satisfy the Endangered Species Act, we believe it's well within the Secretary's discretion to determine that that is a natural occurrence for crop insurance purposes.

Second, if we assume that the spring pulses are not natural occurrences because they are caused by intentional releases of water

from Federal dams, as Mr. Hulshof indicated, it simply isn't fair for the right hand to do what the left hand is trying to ensure to take that coverage away from Missouri farmers.

Most importantly, actual flooding isn't our only concern. This misbegotten policy is a problem for the farm economy, even if there is no actual flood. This is a starting point. In the future, with the revisions of the master manual, we have grave concern over what will happen next year and the years to come.

And in addition, the mere prospect that there are uninsured losses could occur has a potential effect of the farmer today. Our smallest producers may be affected in their ability to get credit and plant a crop at all. At a minimum, it will make farming more financially difficult for our smallest producers.

Again, despite 15 years of study, the Corps has not taken the potential consequences of the farm safety net into account. This is something that we've seen time and again. The Corps has carefully studied water conservation, power generation, navigation and even the reproduction of minnows to support fishing in the Dakotas, but it has never adequately considered the impact of this operation on agriculture. This failure is but one more example of the Corps' institutional blind spot regarding agriculture.

Accordingly, although we remain convinced that the spring pulse plan is wrong for many reasons, the Corps certainly should not implement the plan without mending the farm safety net and fully considering this issue in a fair and open way. If, as these Federal agencies contend, the spring pulse experiment is an action under the Endangered Species Act to benefit the Nation as a whole, then the burden should be borne by the nation, and not by Missouri bottom farmers alone.

Thank you, Mr. Chairman.

Mr. MORAN. Mr. Bryan, the attorney general's Office has examined the crop insurance contracts. Do you agree with the law outlining—we've heard a lot about the Secretary's discretion. Did you reach a conclusion as to legally if there is coverage by crop insurance through the Risk Management Agency?

Mr. BRYAN. Yes, we did. We examined the policies and the basic provision, with the assistance of our Department of Insurance, here in Missouri. And we also looked at the law. When we wrote the letter, we fully expected to hear that it was within the discretion afforded the Secretary to cover these losses, because we were trying to replicate a natural event.

There didn't seem to be any difference to us between an actual natural event and one we were trying to replicate to protect endangered species. So we thought that these losses would be covered.

Mr. MORAN. Thank you for whatever role the Missouri Attorney General played in bringing this issue to light. I think it's an important one and it may be very much broader than just what happens in Missouri in 2006, with the anticipated—well, we hope the drought comes to an end in the near future. The consequences may be entirely different in a future year.

And with other instances in the central valley of California, Clamet Falls, there is just seems to be there are serious—and Mr. Skelton's point about terrorist attacks, things that probably have not been well thought out as to who might be responsible for the

consequences of manmade disasters. So thank you very much for your testimony here today. Thank you for being with us.

I yield to Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Welcome, gentlemen. Mr. Bryan, good to see you after Saturday at the association meeting. I appreciate your comments.

Mr. Ferrell, as always, you're doing a great job for Missouri agriculture. I guess really I have just a comment to follow what Mr. Bryan had to say.

The fact is that the Missouri River already has, on 600 miles of the river, a natural spring rise. And yet, we have not seen a discernible improvement in the habitat of the pallid sturgeon. In fact, the hundred miles below the Gavins Point Dam is the only place along the Missouri that doesn't have a natural spring rise.

And after my testimony and your comments Saturday, I was reminded by one of the scientists in the room that the Mississippi River, Mrs. Emerson, along that 1,000-mile stretch of the Mississippi, there is a natural spring rise and yet there has been no discernible improvement for the habitat of the pallid sturgeon.

And so I only say that, again, I recognize our previous panel is still in the room. The signs—this is a science experiment, and it's our farmers and river stakeholders on the Missouri river bottom are the ones that are going to be adversely affected. And I finally, as I finish my rant, Mr. Chairman, we've heard from the previous panel that only acts of God shall be covered as far as crop insurance.

And I respectfully submit, and meaning no disrespect to anyone in the room, that we know individuals within the Federal Government who often deem themselves to be the equal to the Almighty. Perhaps we should consider that, as far as the coverage of crop insurance.

Mr. MORAN. Thank you, Mr. Hulshof.

Gentlemen, ranking member, Mr. Etheridge.

Mr. ETHERIDGE. Mr. Bryan, I know the farmers in Missouri greatly appreciate the leadership in this area and, No. 1, bringing the problems to the attention of the Corps, RMA and to this commission. And you have touched on this, but do you still feel there are legal avenues for the farmers to the State to address this problem.

Mr. BRYAN. If it comes to it, there are legal avenues available to farmers. We've looked at whether the State could take action to protect our farmers, and I think that we'll have a problem doing that, because it's not likely we'll be able to show an injury to the State and have standing in Federal court to do this. So I think it would be incumbent on individual farmers to pursue their insurance to get this paid, and that's unfortunate. We'll try to do that, but I'm not confident we can.

Mr. HULSHOF. Thank you. I'll hand the balance of my time to Mr. Skelton.

Mr. SKELTON. Thank you so much, Mr. Etheridge.

Mr. Bryan, being a small town and country lawyer in Lexington, in reading the section 508.81, the verbiage, as determined by the Secretary. Does that mean anything to you regarding giving the Secretary leeway in granting relief to the Missouri farmers?

Mr. BRYAN. Yes. Yes, I concur with your assessment. That is an indication of discretion, and it can help the Secretary define what is a natural occurrence. I think it does provide some leeway here.

Mr. SKELTON. If those words were not there, what would the law mean?

Mr. BRYAN. If those words were not there, then it would seem to be a mandate from Congress to the Secretary on how to do his job with job without his input, his discretion.

Mr. SKELTON. But the words are there; are they not?

Mr. BRYAN. That's correct.

Mr. SKELTON. Thank you.

Mr. MORAN. The Chair recognizes the gentlewoman from Missouri Mrs. Emerson.

Mrs. EMERSON. Thank you, Mr. Chairman, and thank you all from us for being here. And my question to Mr. Bryan is going to be same as yours, Mr. Chairman, so I will not repeat it, but I do have a question for Director Ferrell, and I want to ask you about potential losses from flooding, but I kind of want to do it in a different way, if you will indulge me.

The potential of Government-induced flooding has kind of brought to mind the whole takings clause of the fifth amendment. And I understand the Supreme Court has set a significant bar in finding inverse combinations from temporary flooding, but this particular clause of the fifth amendment is that this is the same, as far as the disagreement. As a matter of fact, as Justice Black has so openly stated, if I might quote, "at the heart of the taking lies the premise the Government should not force some people alone to bear burdens which in all fairness and justice should be borne by the public as a whole."

And I think that's a pretty good description of the situation we find ourselves in today. Clearly we have Government action with the release of water. As in most things, timing is key in farming as well. So, Director Ferrell, can you shed some light to all who would work under the potential economic impact for the soybean or corn farmer, who has to either delay planting for a few weeks because of this manmade flood or even replant due to the flood, the potential economic loss.

Mr. FERRELL. Before I answer that, Congresswoman, I would like to add that I spent 25 years as chairman of the Farm Credit Board, which does risk assessments every spring. And with a considerable amount of our farmers located in the bottom land, one of the requirements we had, based on a person's viability, was the fact of if you should carry crop insurance.

Now, as a tool, if crop insurance is denied them, that will affect not only their insurability, but their ability to get a loan based on agriculture credit, so now we have impaired the very farmers that we have incented to buy the insurance. That is unconscionable that we would take insurance as a tool and use it as a negative for the farmers to be able to secure a loan.

The impact that a spring rise will create is a lot of the times if we don't get a flood, the seep water that comes through the levee delays our planting considerably, and this creates a real impact for us because of the loss of time and time lease and agriculture plan-

ning and soybeans means our renewable will exponentially be lower.

So, as a result, if they hold that river up for us an extended period of time, that creates a severe economic loss to us. Because there is an optimum time to plant soybeans in the State of Missouri that shows from north to south, and if you get out of your window, every day that you miss your planting opportunity of peak time, it costs you a bushel per day. As you move down to the next one, that equates to \$6 per bushel per day.

So the economic loss, it also changes your planting intentions from—if you have your fields slated for corn, now you have to switch to soybean because you ran out of time to be able to plant your crops. I've lived and watched that river, as Representative Hulshof has, and in our farming, dirt's a requirement.

We were living about 5 miles of one another, and I've watched that river my entire life, lived for these corn crops, as was repeated to you before, and I can assure you that the river not only affects the farmers next to it but exponentially the farms that are 15 miles away because of the level of underground water or seep water create a problem for us. So we've got to get that river down for us to be able to plant our crops up and down this river.

And, as I stated to you before, there's a billion dollars' worth of crops along the river bottoms. So this is not just a small issue to the State economy. So insurance, to us, on our farms, is one of our third biggest costs. And when you look at what we pay for insurance, surely it ought to cover us if we have a loss. So our insurance might—

Mrs. EMERSON. Well, I appreciate that, Director Ferrell. And Mr. Chairman this is a taking of property rights without due process, and people, especially our farmers, are going to end up being the endangered species if actions like this are allowed to stand. Thank you very much.

Mr. MORAN. Thank you, Mrs. Emerson.

Mr. Bryan, you heard Mr. Cieslik's testimony about the Endangered Species Act and its role in your management of the Missouri River. Is there, from a legal conclusion, the Corps operating as required by law in regard to meeting the Endangered Species Act and the ultimate release of the pulse.

Mr. BRYAN. That remains to be seen. The Endangered Species Act, it did provide a current summary. It prevented the Corps from taking actions that would jeopardize the pallid sturgeon, but the evidence that not doing this spring pulse would jeopardize the pallid sturgeon is far from conclusive, and it's quite likely that that will be determined by the courts in the future.

Mr. MORAN. Thank you very much. I appreciate this panel's testimony.

Mr. FERRELL. Thank you very much for hearing us today as well as Mr. Bryan.

Mr. MORAN. The committee will now turn its attention to our third panel. Mr. Terry Hilgedick, president of the Missouri Corn Growers Association, Tom Waters, chairman of the Missouri Levee and Drainage District Association, and Mr. Randy Asbury, executive director of the Coalition to Protect the Missouri River.

Mr. Waters, we'll start with you.

STATEMENT OF TOM WATERS, CHAIRMAN, MISSOURI LEVEE AND DRAINAGE DISTRICT ASSOCIATION, ORRICK, MO, ON BEHALF OF THE MISSOURI FARM BUREAU FEDERATION

Mr. WATERS. Thank you. Good morning. My name's Tom Waters. I'm a seventh-generation farmer from Raytown, Missouri. I own a 100-acre family farm in the Missouri River bottoms near Orrick, Missouri. Today I'm proud to represent the Missouri Farm Bureau Federation, the State's largest general agriculture organization.

In addition to being a proud Farm Bureau member, I serve as the chairman of the Missouri Levee and Drainage District Association, where I represent farmers, landowners, businesses, and others interested in the issues surrounding the Missouri River and its tributaries. I'm a member of the Missouri-Arkansas River Basin Association Board of Directors, and serve as president of three local levee and drainage districts, which combined, encompass over 20,000 acres of Missouri River bottom lands.

Mr. Chairman and members of the subcommittee, I want to thank you for this opportunity to provide testimony regarding the Missouri River. The Farm Bureau especially appreciates your willingness to address the impact of the spring rise on our State's farmers and ranchers and has asked me to share my thoughts with you regarding the U.S. Army Corps of Engineers' plans for increasing flows of the Missouri twice during Missouri's spring planting season.

I'm here to talk about intentional flooding. Yes, intentional. Make no mistakes, intentional flooding is what we are all here to talk about. Some refer to it as an increased flows. Some call it habitat enhancement. Some call it a spring rise. But what we are really talking about is intentional flooding.

U.S. Army Corps of Engineers and the U.S. Fishing and Wildlife Service representatives would tell you they do not want to intentionally flood anybody. But don't be so sure. Listen to this exchange between U.S. Attorney James Maysonett and Federal Judge C. Arlen Beam. Keep in mind, Mr. Maysonett is a Federal attorney representing both Fishing and Wildlife Service and the Corps of Engineers.

This exchange look place last year on April 11, 2005 in the case of *American Rivers v. The U.S. Army Corps Engineers*. Again, what we're discussing today is intentional flooding. If you think the spring rise is anything less, pay close attention. This is now the record of Eighth Circuit Court of Appeals in St. Louis.

U.S. Attorney James Maysonett: I think what the record shows is that these are relatively new ideas. The idea is, to wit, for example, operations of Missouri systems dams and reservoirs to intentionally flood. That is, to create a spring rise.

Judge Beam: Step back just a second. You said the spring rise, and I hadn't focused on this, would intentionally flood?

Mr. Maysonett: Yes, Judge Beam, that is correct. That's part of the concept of the spring rise is that historically, the flooding of the river will obviously have a lot of negative effects. Also have positive effects for the endangered species.

Judge Beam: I think that reading the Pitch and Sloan Plan and living through—old enough to live through part of the political ramifications—that if there was anything Missouri River maintained dams were supposed to do is to control flooding. So, if there is a priority somewhere hidden in the statutes, I think it's flood control.

It's become increasingly clear that the course planned for the spring rise would be to now intentionally flood the Missouri River bottom lands.

Apparently the Corps of Engineers and the U.S. Fish and Wildlife Service do not share the same view of this U.S. Circuit Court of Appeals judge. Representatives from both agencies describe this spring pulse as a means to connect the river to the flood plain. They tell us the purpose of the spring pulse is to provide some semblance of a natural hydrography, which historically inundated the flood plain.

The reason the maintained reservoir system was built was to protect against the inundation of the flood plain. In their opinion findings of the April hearing, the Eighth Circuit Court of Appeals clearly stated, the 1944 Flood Control Act has been interpreted to hold flood control and navigation dominant and recreation and fish and wildlife secondary.

The Corps of Engineers' 2006 Annual Operating Plan ignores the court's opinion and includes two opportunities to cause intentional flooding along the river. I fully expect without changes, future and operating plans will include even greater threats to bottom land farmers as the Corps increases flows.

As we debate merits of intentional flooding, let us understand we're not just discussing the economic issue or scientific issue. The issue of intentional flooding one's property or bringing harm to another is a moral issue. I, for one, believe it is morally wrong to ever, ever intentionally cause flooding. Flooding is wrong, regardless of how many scientific data or economic information is presented, it is still, and always will be, morally wrong to flood people.

This spring rise decision strictly boils down to a black-and-white decision about what is right and what is wrong. Much has been said in recent weeks about how crop insurance relates to the spring rise. It is amazing how far the Corps of Engineers would go to implement a spring rise without taking a closer look at crop insurance issues.

Crop insurance is one of the most important tools farmers have to help manage risks to their farming operations. Risks associated with the spring rise and the possibly of crop insurance failing to provide coverage is unacceptable, and it should be better taken into consideration by the Corps of Engineers.

It's my hope this hearing will shed some light on the dangerous direction the Corps of Engineers is taking in planning to intentionally flood the lands along the Missouri River. I'm grateful for Congressmen Hulshof and Skelton, that they've seen the need for this hearing, and thank you for this opportunity to share my thoughts. On behalf of the Farm Bureau, I appreciate your time and willingness to serve as representatives in Congress.

Mr. MORAN. Mr. Waters, thanks very much.

Mr. Asbury.

**STATEMENT OF RANDY ASBURY, EXECUTIVE DIRECTOR, THE
COALITION TO PROTECT THE MISSOURI RIVER**

Mr. ASBURY. Mr. Chairman and members of the subcommittee on General Farm Commodities and Risk Management, and ladies and gentlemen of our distinguished Missouri congressional delegation.

I am Randy Asbury, executive director for the Coalition to Protect the Missouri River. CPR represents a diverse group of agricultural, investigational, utilities, industrial and business-related entities, all of which are Missouri River stakeholders. We support responsible management of Missouri River resources and the maintenance of congressionally authorized purposes of the river, including flood control and navigation.

A serious problem has created the need for this crop insurance hearing this morning, and it is called the manmade spring rise. As the foundational issue of that which confronts us in today's hearing, I would like provide some history regarding the manmade spring rise.

In 1990, the U.S. Army Corps of Engineers conducted its first consultation with the U.S. Fish and Wildlife Service on the effects of its Missouri River operations on endangered and threatened species, pursuant to the Endangered Species Act.

In 2000, the Corps again consulted with the Fish and Wildlife Service in producing the 2000 Biological Opinion that concluded that the Corps' proposed river operations for 2000 were likely to jeopardize two birds, and most notably for today's discussion, the endangered pallid sturgeon. The pallid sturgeon is described as a prehistoric-looking fish that purportedly needs a manmade spring rise to act as a spawning cue.

Ironically, a naturally-occurring spring rise resulting from rain events and snow melt is almost annually found on the lower 600 miles of the Missouri River. The manmade spring rise, on the other hand, would occur as water is artificially released from Gavin's Point Dam, the lowest dam on the Missouri River mainstem system, onto water already in the river channel below Gavin's Point Dam because of poor operations and lower national precipitation events.

Its purpose, according to the Fish and Wildlife Service, would be to provide a more natural hydrography that is supposedly more to the liking of the Sturgeon. The 2000 Wildlife and Corps opinion includes a reasonable and prudent alternative for the pallid sturgeon that recommended manmade spring rise designed to avoid jeopardy for the sturgeon.

The Corps again consulted with the Fish and Wildlife Service in November 2003, creating an amendment to the 2000 Biological Opinion. That Opinion concluded that jeopardy would result for the Sturgeon and proposed that new reasonable and prudent alternatives that again mandated the manmade spring rise. Consequently, we find ourselves on the brink of not one, but two manmade spring rises to occur in March and May of this year.

The stakeholders we represent have steadfastly opposed manmade spring rises since the early 1990's, as the plan is based on inadequate and unproven science, has not been properly analyzed for its socioeconomic impact, and generally ignores downstream interests. Because poor science forms the basis of the manmade spring rise mandate, the Missouri River has become an experiment-driven river. The haphazard nature of the experiment-driven river produces unreliability and socioeconomic hardship.

The United States Geological Survey scientists have confirmed that pallid sturgeons are spawning in the Missouri River without

a spring rise, manmade or natural. Given that revelation, the issues discussed today and precipitated by the artificial spring rise are unnecessary when we know that USGS scientists point to factors such as temperature and photoperiod as more advantageous to Sturgeon spawning than a manmade spring rise.

Moreover, the August 2005 Eighth Circuit Court ruling affirmed flood control as the dominant function of the Flood Control Act of 1944 of the Missouri River Mainstem Reservoir system. The court also stated that, “. . . it follows that if future circumstances should arise in which Endangered Species Act compliance would force the Corps to abandon the dominant Flood Control Act purposes of flood control, the Endangered Species Act would not apply.”

The spring rises have the distinction of becoming an experiment without a conclusion. No baselines exist to gauge the success or failure of the experiment; therefore, we can arguably anticipate their failing and larger rises released in the future in the name of science. Larger rises almost certainly expose our producers to adverse economic risk by overtopping of levees and interior drainage problems. Such occurrences would cause us to seek Federal compensation packages to make all with crop losses whole, regardless of whether they had crop insurance.

In the meantime, we continue to work with the administration to address this insurance issue. Moreover, we continue to evaluate the \$85 million proposed by the administration for ESA recovery of the river. We have serious reservations regarding those funding levels for experiments not based on sound and independent science. I appreciate the opportunity to express the frustration we face having to address issues that arise from the ill-conceived manmade spring rise. Thank you.

Mr. MORAN. Thank you.

Mr. Hilgedick, from the Missouri Corn Growers Association, welcome.

**STATEMENT OF TERRY HILGEDICK, ON BEHALF OF THE
MISSOURI CORN GROWERS ASSOCIATION**

Mr. HILGEDICK. Thank you, Mr. Chairman. My name is Terry Hilgedick. I will be presenting testimony on behalf of the Missouri Corn Growers Association. I proudly serve as president of the organization and am here representing over 15,000 Missouri corn farmers.

My family farm is just 12 miles from here in a small river town known as Hartsburg. I therefore bring a rather unique perspective to the issue that perhaps bureaucrats can't correct. One-hundred percent of our farm lies in the fertile Missouri River Valley. We endured a severe drought in the year 2005. We went 60 days without rain. Many days there were over 100-degree temperatures during the most critical time for crop development. Yet we collected zero dollars from the USDA Federal Crop Insurance. You make ask yourself, why do those guys carry crop insurance?

Flood risk, and flood risk alone is the only reason we carry it. It is imperative that we have coverage for our number one peril prior to March 15. RMA has said that they will go up and down the basin after the flood event and make the thousands of deter-

minations of what policyholders are covered and what policyholders are not.

That is a Pandora's Box that should never be opened. That is like buying homeowner's insurance on your house when fire is not covered, yet your agent winks and nods at you and says, it probably won't burn, and if it does, maybe we can work something out later. The battle over the spring rise has been raging for 15 years and counting. I would back up and refer to Mr. Cieslik's comments on duration for the rise and magnitude. He was referring to the 2006 rise. And as Congressman Hulshof pointed out, the 2007 and beyond rises are much more severe and much more aggressive.

I have personally testified in opposition on eight different occasions through the years. The State of Missouri has opposed the spring rise for all of the 15 years to date and will continue to do so. I submit to you that the spring rise is as out of our control as any weather event. Therefore, it should be covered as any weather event. The language cited by J.B. Penn in his letter dated February 1, 2006 reads, "The release of water by the Corps is not a covered cause of loss because it does not qualify as a naturally-occurring event." I find his choice of words particularly ironic, given that the Corps of Engineers consider the spring rise as an attempt on their part, on behalf of the pallid sturgeon, to mimic naturally-occurring flows that has not occurred for many years.

Yet RMA has covered the non-natural flows, according to the Corps, for many years with crop insurance. Why did they cover them? Because RMA deemed them as natural. It is a clear example of Government agencies having a game of Three Card Monte, playing with farmers' money. The obvious intent of the natural-occurring language is to deal with fraudulent practices by the insureds. This issue has absolutely nothing to do with fraud by anyone.

One of my neighboring farmers posed a question to me the other day. I pose it to you today. I agreed to purchase crop insurance as a prerequisite to participating in USDA commodity price support programs. If I have only partial coverage for my perils, through the actions of the USDA and other agencies, am I therefore out of compliance? Can USDA breach a contract with growers when the grower does nothing wrong?

You may be asking yourself, what is at risk here? According to data compiled by the Missouri State FSA office, there are 910,513 acres in the 500-year floodplain in Missouri alone. I believe that 85 percent of those acres are in crops. The remaining 15 percent would be in roads, towns, trees, or otherwise uncropped. Therefore, approximately 774,000 acres of crops in Missouri are at risk. I estimate \$300 per acre in grower exposure. Increased risk exposure to Missouri agriculture alone due to RMA's position total \$232,200,000 per year in increased risk.

As Harry Truman once said, you know you add a million here and a million there, and you've got a lot of dollars. Pretty soon, you add a few hundred million on top of a few hundred million for a lot of dollars. It is important to reiterate that this data only covers acres in Missouri. Iowa acreage, Kansas and Nebraska data was not available to the Missouri FSA office.

Gentlemen and Mrs. Emerson, it's obvious that farmers in the Missouri River valley just like me are being put into an impossible

position. The level of risk we are being asked to withstand is unconscionable. The inflexibility of the U.S. Fish and Wildlife, U.S. Army Corps of Engineers, and USDA through this whole process has been monumental, not to mention disappointing.

The financial distress caused by an uninsurable flood event will rob equity from families it took generations to build. Many operations will fail under the strain. All for the definitions of natural, insurable, and endangered. RMA staff told me on February 1 how difficult this decision was for them. My response to them at that time and to you today is, for as hard as it was for them to make the decision, it's a thousand times harder for me to live by it.

Members of the committee, I thank you for your time and your efforts. I encourage you to do the right thing on this issue. Thank you.

Mr. MORAN. Mr. Hilgedick, thank you very much. I want to explore with you something in your testimony that catches my attention, and it's the language you cite from Under Secretary Penn, and it's followed by the sentence that, "yet RMA has covered the non-natural flows, according to the Corps, for many years." I want to make I understand what you're telling us. Is there examples of where this type of release has been covered by crop insurance policies in the past.

Mr. HILGEDICK. There is. My family has endured floods in 1947, in 1951, in 1967 twice, in 1973 twice, in 1986, in 1993 and 1995.

Mr. MORAN. Is the only difference today the purpose for which the water is being released.

Mr. HILGEDICK. You've hit it right on the head with that comment. A rise and release is a release whether it's a for the endangered species or whether it is for other purposes. It's the same water flowing down the river.

Mr. MORAN. In the past, the releases on the Missouri—and I come from a part country where we wish we had a river. The releases in the past have been for navigation, general management of flood control of the river and the river basin. And if that was the purpose today, we wouldn't be having this hearing.

If it was clear the Corps was releasing the water for purposes of navigation or for flood control upstream, up river and there was flooding that occurred on farm ground in Missouri, no question but what crop insurance policy would cover that release—the damages caused by that release?

Mr. HILGEDICK. In the 70 or so years that the river has been operated for flood control and navigation, that question, to me has, never been asked. It is obvious that when you bring in the spring rise, we never had this debate until the spring rise entered into the equation. The spring rise has brought about the discussion that exactly that you're touching on, has brought forth a perceived man-made rise.

Mr. MORAN. The light may be slow for me to come on here, but the question that now appears to me is I was focusing upon an intentional release causing flood damage. That's not really the case. All releases are intentional.

Mr. HILGEDICK. That's exactly right.

Mr. MORAN. The issue for what purpose is the intentional release occurring, and that has a different result at RMA based upon that purpose; that's what I'm hearing.

Mr. HILGEDICK. That's correct. And I would respond and qualify it a bit in that the Corps cites weather forecasts, in terms of deciding whether they release, those forecasts last week that had our highs for the day in the 40's. As we take off our coats at 75 today, I urge you to think back on that, because they're relying on the same sort of models that were 30 degrees off five days ago, and they're expecting to throw those forecasts out for 14 days. And that's unacceptable.

Mr. MORAN. This question may have been better directed towards the Director of Agriculture, but do—your testimony, Mr. Hilgedick, was about the number of farmers and the value of the potential losses. Do we know what percentage of farmers are covered in this basin? Maybe this is Farm Bureau question as well: Is crop insurance prevalent for all the farmers in the river basin and what level of coverage do they have.

Mr. WATERS. Well, first of all, I know, a lot of farmers, their financial institution tells them they will take crop insurance or they won't get their loans. I think that's another issue that the bankers need some assurances here as well. And that's something I don't think's been brought up yet today. Most farmers do carry crop insurance. Crop insurance is tied to all those other Federal programs.

However, in the Missouri River bottoms, the price for that crop insurance is much more because they do farm in the river bottoms, which premiums are a lot more in the river bottoms, so it does cause some of those farmers to take a lesser amount of coverage, and so—and that's just because of the potential for flooding, and so it's kind of ironic that they pay more because of the risks of flooding and then hear that that part of the insurance may not cover them. So that's where we're concerned.

Mr. MORAN. Thanks.

Let me turn to the gentleman from North Carolina.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Thank you, gentleman, for being here. The uncertainties of whether crop insurance would cover the loss is a severe result. And it's been a part of everybody whose been in there. What impact does that have on your financial picture, your ability to plant, for all farmers to obtain credit or financing? I think that's a critical piece today with the tremendous cost of a farm.

Mr. HILGEDICK. That's a very good question. As a grower myself, our fixed costs are fixed. Our variable costs, whether we grow corn or soybeans, are very similar. The price of fertilizer is the same this year as it was in the past. The price of seed is the same this year as it was in the past. Our cost for doing other sorts of business, whether it be insurance, whether it be equipment or whatever, those continue to escalate.

As far as what we can do on our end to defray some of the increased risks, there's not a lot we can do. We can't quit. We can't not plant. That's what we do for a living. So that's probably the way I would address that, and in terms of financing, it's very real. When you lose in a flood—my daddy used to say that it took 3 years to recover from a flood as a grower.

You lose year 1, and then you're going to spend the next 3 years recovering, so then you've lost four years of your useful life of working. So then you're 4 years closer to retirement, and you're back to where you were at year zero.

Mr. ETHERIDGE. Well, I'll agree with that.

Mr. WATERS. One the other things that we've noticed is there is an increasing amount of cash rent that's being paid. Farmers are forced to farm more and more acres because the margin becomes less and less. And as farm ground doesn't always come up for sale, they're reaching out and having to pay cash rent, and some of these cash rent prices are ever increasing, and so to help with that—I mean, as that cash rent price increases, the risk that that farmer has increases, and so crop insurance plays a big part in helping offset that risk as the cash rent prices increase.

Mr. ETHERIDGE. Final question: After hearing the testimony and comments of Mr. Gould earlier, do you feel more confident your property rents now?

Mr. HILGEDICK. No, sir. No.

Mr. ASBURY. I'd like to add one thing with respect to that. One thing I think needs to be recognized today is that the focus of most of the testimony has been about the year 2006. Congressman Hulshof made a point earlier that we need to take into consideration and focus on, and I believe it's this: 2006 is a relatively minor year with respect to the magnitude of releases and the duration of releases that we would see as a result of the spring rise.

But we have seen groups such as the Missouri River Natural Resources Committee, which is comprised of seven State game and park agencies in the Missouri River basin proposed levels for 2007 and beyond that could cause interior drainage problems as a result of the release alone, not in connection with an excessive rain event. With that in mind, there's a situation that we could see occur in the future, where the manmade portion of the release could be the sole problem that would occur, not in coincidence with the manmade event.

Therefore, we're not facing the situation where, even with that, we're discussing the definitions of excessive. We're discussing there only what could occur as a result of the release itself, and in that light, would not be covered by crop insurance, according to Mr. Gould's statement earlier.

Mr. ETHERIDGE. OK. Thank you, gentlemen. I hereby yield, Mr. Chairman.

Mr. MORAN. Thank you.

Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Along that line, Mr. Asbury, we've been talking in terms of overtopping the levees, in essence. Now, in 2006, I come in 36.3 or 4 million acre feet, and there may be, it's being reported, one single pulse this spring. Considering the 2007 possibilities, and you've alluded to that—and thank you for being here. Are you going to Omaha right after this.

Mr. ASBURY. Another meeting tomorrow.

Mr. HULSHOF. Another meeting tomorrow. Should the Corps be allowed to do 2007 rise, what estimate of crop damage, again, either from overtopping or, as you alluded to, the drainage issue, what's the worst-case scenario?

Mr. ASBURY. I can't put a specific number on that, Mr. Hulshof. I'm not sure of the answer to that, but the one thing I do recognize is that interior drainage problems occur before overtopping of the levee. And I guess as I read the latest USDA response to Senator Talent, my greatest concern within that letter was the fact that I didn't even see that interior drainage problems were potentially addressed.

With some of these potential releases that could occur in the future as a result of the proposals and recommendations of Missouri River scientists, we again could see the situation where an interior drainage problem would occur without excessive rainfall and possibly even without anything other than the normal tributary inflow as a result of normal rainfall here in the spring.

What is going to happen if that case occurs is the situation where overtopping of the levee likely would not occur. But interior drainage problems still could occur. They are going to be more prevalent, because it takes less water to do that and, again, as stated earlier, when those floodgates are shot, that water is held within those fields, and that's where the delayed planting occurs, the potential crop loss and crops dying, et cetera. But as far as putting a specific number on what the potential damage may be, I couldn't do that.

Mr. HULSHOF. Mr. Waters, I appreciate all that you do and have done. Let me ask Mr. Hilgedick a quick question. Terry, two birds, one fish. You've testified eight times, I think. You've probably chased Mr. Cieslik up and down the river. I say that not in a derogatory sense.

When, during those eight public hearings, you testified, you've been very outspoken and passionate because this affects you and your family's farm, and I know your family, and I appreciate you taking on this issue because you speak up about it, because it's your livelihood. When during those eight hearings that you personally attended did the issue come up that your crop insurance would not cover these losses?

Mr. HILGEDICK. Well, I have fond memories of testifying with Congressman Hulshof right here under the bridge a few years ago. We had an interesting day, but the crop insurance issue has just peeked up this last fall—November, December meetings when they foreposted those meetings for input, never before in the 15 years prior to that had it ever occurred in any hearing that I was at, nor did it ever occur at any hearing that I'd heard of.

Therefore, it is a brand-new issue. How it surfaced, I'm not really sure, but it did come out of RMA, and it is very disappointing. If ever there were insult to injury, this is it, and we're sitting right here in the middle of it, right here in Missouri, but I would post that fact to all these others.

Mr. HULSHOF. So, in other words, we've had you, people in this room, for 10-plus years, people have been fighting this issue, especially on the lower Missouri River valley where we are fighting this spring rise. Dozens and dozens of hearings that have been required by law, the Army Corps of Engineers have held, the Fish and Wildlife Service seeking input, hearing testimony like yours and contrary testimony, after all of those hearings, this issue of substantial economic loss because crop insurance isn't going to pick up the

weakest cost of flooding. This flooding, intentional flooding simply first arises last fall in November and December; is that right?

Mr. WATERS. That is correct.

I just wanted to make one comment because I think it's important. Being in meeting after meeting after meeting on the Missouri River for the last 10-plus years, and it's not the first time we've heard about crop insurance. We have heard about crop insurance in the respect that it's a safety net for the farmers, so that if it did flood, they have crop insurance.

It wasn't until November, in Kansas City last year, that a representative for RMA stood up and said, wait a minute. Crop insurance won't cover manmade events, so always before, when we talked about crop insurance, it was always with the idea that that was something that we had in our back pocket, in our sleeve, that if the worst did happen, we would be covered. We found out different.

Mr. MORAN. Thank you.

Mr. Skelton.

Mr. SKELTON. Mr. Chairman, back in October, Kenny Hulshof held a meeting of members of the Missouri Agriculture. At that time, it was described to us as—sadly, I might say—sadly, as a perfect storm. One of the most expensive harvests in generations: High in fuel costs, high fertilizer cost, increased transportation costs—and which, of course, were associated with the two hurricanes, Katrina and Rita, severe drought conditions.

So, Mr. Waters, with that background, from what Mr. Hulshof and I have learned, how does this unfortunate perfect storm which you're describing impact your farm and the farmers you represent at the Farm Bureau as it relates to the spring rise and the crop insurance issue that has been described today.

Mr. WATERS. Well, I think the key thing to remember is when the water is released from Gavins Point Dam in South Dakota, it takes ten to eleven days to reach St. Louis. And so within that ten to eleven days is when that perfect storm could occur. If—well, I can tell you, for example, last year, last spring in May, twice. The first time, the river jumped up 12 feet in less than 4 days, and then again later that same month, it jumped up almost 13 feet in 2 days.

And so if the water is released on May 1, and there is no forecast of rain, everything looks nice, they release the extra water. All of a sudden, we get a rain below Gavins Point. The river jumps up, and then, if they've already added an additional 3 feet, then instead of a 12-foot jump, we have a 15-foot jump, or instead of a 13-foot jump, we have a 16-foot jump. Those create those conditions you're talking about, about the perfect storm.

And as Mr. Hilgedick referred to, the National Weather Service, they're good, but they're not 10 days' good. And so, in May 2005, prior to the river jumping up, there was never more than a 30 percent chance of rain in all of those days leading up to those 12-foot rises. It would be nice to say we could predict the weather 10 days out, but we just can't, and that's where the perfect storm can be created.

Mr. SKELTON. Thank you. Mr. Chairman, let me take this opportunity—and I know Mr. Hulshof feels the same—but I appreciate

you and Mr. Etheridge coming from Kansas City and North Carolina and joining us Missourians in this great city to join us and my neighbor, Mrs. Emerson, and be with us as well is beautiful. Thank you so much.

Mr. MORAN. Mr. Skelton, I appreciate you and Mr. Hulshof inviting Mr. Etheridge and I and the subcommittee to be here. It's easy for us to see the partisanship that occurs in our nation's capital, but I can assure you that we can take great hope by the cooperation we've just seen between Mr. Hulshof and Mr. Skelton, Mr. Etheridge and I, working together and joined by other members of the committee, trying to find solutions to problems that American farmers face, and so I appreciate the way we've been treated today in Missouri, and I appreciate very much the way that you and Kenny have worked with us to see that good things come from this hearing.

Final questions from Mrs. Emerson.

Mrs. EMERSON. Thank you, Mr. Chairman. And I will say that it's very gratifying to be able to work on agricultural policy, because it is not partisan. It's a breath of fresh air.

Now, I just have a question. I also want to thank you so much being here, to Mr. Hilgedick. I want to ask you, what does the policy mean to the next generation of farmers? Sometimes they're required to purchase insurance, and now, if all of your losses won't be covered, are the banks going to give some of our young producers the money they need to produce crops?

Mr. HILGEDICK. Entry into farming has never been more difficult than it is, and probably it will only grow in difficulty over time, when you've got such a huge capital expense in a crop, and you have such uncertainty associated with that crop, and that uncertainty has recently grown. Therefore, a banker would have to have a lot of security, a lot of assurances that something is not going to go horribly bad, and without crop insurance for this risk, that becomes a little harder to provide the bank with.

And I might add one more comment: Mr. Skelton mentioned the perfect storm and now crop increase on the farm and profitability is in decline. I have a saying once in a while that says, when the river is low, you have a thousand problems. You have high fertilizer, you could have higher cost for land, you have all start of things to deal with. But when the river's high, you have one problem, and that's a flood. And that problem has just gotten a little harder to deal with. So how am I supposed to?

Mrs. EMERSON. Well, I appreciate that, and I think that young farmers face so many challenges these days, it only exacerbates it. Perhaps, Mr. Chairman, it makes the means more difficult for us to pass on this very, very important profession to the next generation.

Mr. MORAN. I appreciate very much the testimony of this panel and thanks very much for joining us. We are soon to conclude this hearing, but the issue I think has been resolved, so more work can be done. Mr. Hilgedick and Mr. Waters and Mr. Asbury, maybe a few more meetings to go to. I wouldn't be surprised.

A couple of requests for Mr. Gould. Mr. Gould, would you get to me the Department's interpretation of that phrase, "as determined by Secretary", kind of the background of how you reached your con-

clusion as to what that phrase means and the statute? And also, I'd like to have my understanding of this issue about purpose behind the discharge of water better understood, and I'd like to know what the Department of Agriculture and RMA's position is.

Is this really an issue behind the purpose of discharge of water that crop insurance would apply, it would be covered if this water was being released for the purposes of flood control or navigation along the Missouri River, and why is this an issue today but hasn't been an issue in the past, as to whether or not crop insurance would cover losses by crops inundated by water? And so if we could continue to work to provide this subcommittee with those answers, I'd appreciate it.

Senator Talent has submitted testimony for the record. He is unable to be with us in Jefferson City today. Without objection, I'd ask that his testimony be made part of the record of today's hearing. With no objection, so ordered.

Anything else, Mr. Etheridge?

Mr. ETHERIDGE. No, thank you.

Mr. MORAN. Without objection, then, the record of today's hearing will remain open for 30 days to receive additional material and supplementary written responses from witnesses to any questions posed by a member of this panel, and I would also suggest that if there are those in the audience who would like to submit written testimony, the subcommittee would welcome that within the next 10 days.

With that, the Subcommittee on General Farm Commodities and Risk Management is adjourned.

[Whereupon at 9:58 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF RANDY ASBURY

Mr. Chairman and members of the Subcommittee on General Farm Commodities and Risk Management, Congressman Skelton, Congressman Hulshof. Good morning. I am Randy Asbury, executive director of the Coalition to Protect the Missouri River. CPR represents a diverse group of agricultural, navigational, utility, industrial and business-related entities all of which are Missouri River stakeholders. We support responsible management of Missouri River resources and the maintenance of congressionally authorized purposes of the river including flood control and navigation.

Gentlemen, a serious problem has created the need for this crop insurance hearing this morning and it is called the "manmade" spring rise. As the foundational issue of that which confronts us in today's hearing, I would like to provide some history regarding the "manmade" spring rise.

In 1990, the U.S. Army Corps of Engineers conducted its first consultation with the U.S. Fish and Wildlife Service on the effects of its Missouri River operations on endangered and threatened species pursuant to the Endangered Species Act.

In 2000, the Corps again consulted with the USFWS producing the 2000 Biological Opinion that concluded that the Corps' proposed river operations for 2000 were likely to jeopardize two birds and, and most notably for today's discussion, the endangered pallid sturgeon.

The pallid sturgeon is described as a prehistoric-looking fish and purportedly needs a "manmade" spring rise to act as a spawning cue. Ironically, a "naturally" occurring spring rise resulting from rain events and snowmelt is almost annually found on the lower 600 miles of the Missouri River.

A "manmade" spring rise on the other hand, would occur as water is artificially released from Gavins Point Dam—the lowest dam on the Missouri River Mainstem system—onto water already in the river channel below Gavin Point Dam because of Corps' operations and/or natural precipitation events. Its purpose according to the

USFWS would be to provide a more “natural” hydrograph that is supposedly more to the liking of the sturgeon.

The 2000 Biological Opinion included a Reasonable and Prudent Alternative for the pallid sturgeon that recommended a “manmade” spring rise designed to avoid jeopardy for the sturgeon.

The Corps again consulted with the USFWS in November 2003 creating an amendment to the 2000 Biological Opinion. That opinion concluded that jeopardy would result for the sturgeon and proposed a new RPA that again mandated a “manmade” spring rise. Consequently, we find ourselves on the brink of not one—but two—“manmade” spring rises to occur in March and May.

The stakeholders we represent have steadfastly opposed “manmade” spring rises since the early nineties, as the plan is based on inadequate and unproven science, has not been properly analyzed for its socio-economic impacts and generally ignores downstream interests.

Because poor science forms the basis of the “manmade” spring rise mandate, the Missouri River has become an experiment-driven river. The haphazard nature of an experiment-driven river produces unreliability and potential economic hardship!

United States Geological Survey scientists have confirmed that pallid sturgeons are spawning in the Missouri River without a spring rise—“manmade” or natural. Given that revelation, the issues discussed today and precipitated by the artificial spring rise are unnecessary when we know that USGS scientists point to factors such as temperature and photoperiod as more advantageous to sturgeon spawning than a “manmade” spring rise.

Moreover, the August 2005 Eighth Circuit Court ruling affirmed flood control as a dominant function of the Flood Control Act of 1944 for the Missouri River Mainstem Reservoir System. The Court also stated that, “It follows that if future circumstances should arise in which [Endangered Species Act] compliance would force the Corps to abandon the dominant FCA “purpose of flood control”, the ESA would not apply.”

The spring rises have the distinction of becoming an experiment without a conclusion. No baselines exist to gauge the success or failure of the experiment, therefore, we can arguably anticipate their failing and larger rises released in the future in the name of “science”. Larger rises almost certainly expose our producers to adverse economic risk by overtopping of levees and interior drainage problems. Such occurrences would cause us to seek a Federal compensation package to make all with crop losses whole regardless of whether they had crop insurance.

In the meantime, we continue to work with the administration to address this insurance issue. Moreover, we continue to evaluate the \$85 million proposed by the administration for ESA recovery on the river. We have serious reservations regarding those funding levels for experiments not based on sound and independent science.

I appreciate the opportunity to express the frustration we face with having to address issues that arise from the ill-conceived “manmade” spring rise.

STATEMENT OF LAWRENCE J. CIESLIK

Thank you, Chairman Moran and members of the Subcommittee on General Farm Commodities and Risk Management for providing me the opportunity to speak today. My name is Lawrence Cieslik and I am the Deputy Director of Programs Director and Chief of the Missouri River Basin Water Management Division for the Northwestern Division of the U.S. Army Corps of Engineers. I have worked for the Corps for nearly 32 years and have been in my current position since 1997. I have a Bachelor’s degree in Civil Engineering from the University of Nebraska and am a Registered Professional Engineer in the State of Nebraska. The Northwestern Division Commander, General Gregg Martin, regrets that he could not be here today, and has asked me to represent him at this hearing.

The Corps operates the Missouri River Mainstem Reservoir System to serve the congressionally authorized purposes of flood control, navigation, hydropower, irrigation, recreation, water supply, water quality, and fish and wildlife. The Corps’ goal is to best serve these authorized purposes while complying with all applicable laws, including the Endangered Species Act or ESA, while fulfilling our responsibilities to federally recognized Native American Tribes.

The Corps has been consulting with the U.S. Fish and Wildlife Service under the ESA since the early 1990’s on the operation of the Missouri River Mainstem Reservoir System, the Bank Stabilization and Navigation Project, and the Kansas River projects. In November 2000, the USFWS provided the Corps a Biological Opinion which concluded that the Corps’ operation of these projects jeopardized the contin-

ued existence of the interior least tern, piping plover, and pallid sturgeon; three animals protected under the ESA. As a result of additional information and the listing of critical habitat for the piping plover, in 2003 the Corps and USFWS reinitiated ESA consultation. In their 2003 Amended BiOp, the USFWS concluded that the Corps' actions jeopardized the continued existence of the endangered pallid sturgeon. However, in the 2003 Amended BiOp, the USFWS provided a Reasonable and Prudent Alternative, or RPA, to jeopardy. The RPA includes a requirement for a bimodal spring pulse from Gavins Point Dam.

Intense efforts continue by the Corps, with assistance from the USFWS, U.S. Geological Survey, States, and other natural resource experts, to restore physical habitat for the pallid sturgeon in the Missouri River below Gavins Point Dam. This restoration work will provide the habitat for young sturgeon to develop and survive. However, under the 2003 Amended BiOp, habitat creation does not substitute for changes in river management to provide the flow conditions that promote sturgeon reproduction. The 2003 Amended BiOp requires the Corps to implement the bimodal spring pulse releases no later than the spring of this year. However, the BiOp also allows for consideration of the existing hydroclimatic conditions such as drought, in the decision on whether or not to implement the bimodal spring pulse in any given year. The bimodal spring pulse releases are designed to cue pallid sturgeon spawning by partially restoring some semblance of the river's natural hydrograph, characterized by spring pulses at the times when major snowmelt occurs first in the plains and then in the mountains. Spawning and recruitment will be key to recovery of self-sustaining sturgeon populations in the Missouri.

The Missouri River basin is currently experiencing an extended drought, and system storage is at unusually low levels. The Corps has taken these low levels into account in developing the criteria for this year's bimodal spring pulse release plan, as allow for in the BiOp, along with public input regarding the risks associated with the spring pulse releases. The plan for this year is presented in the Corps' 2005–2006 Annual Operating Plan for the Missouri River Mainstem System. This plan was developed based on the requirements of the 2003 Amended BiOp, intense analysis of hydrologic data, input from the spring pulse Plenary Group (composed of more than 50 Basin stakeholders), Tribal consultations, and public comments received on the draft AOP. This collaborative process was facilitated by the US Institute for Environmental Conflict Resolution and included representation from the USFWS, the Corps, Tribal representatives, basin States, and a wide range of stakeholders. These discussions were key in the identification of a bimodal spring pulse plan for 2006 that greatly reduces the potential for negative impacts as compared to the plan identified in the 2003 Amended BiOp. One key change was a reduction of the peak of the spring pulses from 1 to 2 weeks down to 2 days. This not only saves water in System storage, which is very important during the current extended drought, but also reduces the duration of the higher river stages downstream. The Plenary Group discussions, and extensive discussions with the USFWS, also helped the Corps identify exactly how to adjust the magnitude of the May spring pulse in response to hydroclimatic conditions. During drought these adjustments substantially reduce or eliminate the spring pulses. We believe that the bimodal spring pulse plan presented in this years AOP comply with the requirements of the 2003 Amended BiOp while being responsive to hydroclimatic conditions in the basin.

The Corps understands farmers concerns over the potential for flooding of cropland during the bimodal spring pulse releases and their concern over crop insurance benefits during those releases. The bimodal spring pulse plan includes criteria specifically designed to minimize the risk of downstream flooding and crop damage. First, the Corps and USFWS agreed that the established downstream flow limits would not be changed under the 2006 AOP, providing similar downstream flood control during the spring pulse releases as has been provided in previous years. Second, the Corps has agreed, at the request of the downstream farmers, to integrate the National Weather Service's precipitation forecasts into its daily Missouri River operational forecasts during the spring pulse period, and will adjust releases accordingly. And third the Corps will integrate estimated actual rainfall derived from weather radar information into its forecasts during the spring pulse releases. These measures, along with the reduced duration and magnitude of the pulses, will reduce the potential for downstream flooding of cropland. It is also important to note that because System storage is low due to the current extended drought, that releases for navigation in 2006 will be 6,000 cubic feet per second lower than normal, thus resulting in lower peak flows due to the spring pulses. All of this information has been discussed with the USDA and their Risk Management Agency to help foster their understanding of the spring pulse operation for 2006.

In conclusion, the Corps remains committed to operate the Missouri River Mainstem System to serve the congressionally authorized project purposes, fulfill

our Tribal Trust and Treaty obligations, and comply with all applicable law, including the ESA. We are convinced that this can be best accomplished in a sustained collaborative process that includes the entire spectrum of Basin interests. Working together as a team—Federal, Tribal, State, local agencies, and stakeholders—we can identify solutions that benefit the Basin as a whole. Thank you for the opportunity to represent BG Martin at this hearing today.

STATEMENT OF TERRY HILGEDICK

My name is Terry Hilgedick. I will be presenting testimony on behalf of the Missouri Corn Growers Association. I proudly serve as President of the organization and am here representing over 15,000 Missouri corn farmers.

My family farm is just 12 miles from here in a small Missouri River town known as Hartsburg. I therefore bring a rather unique perspective to the issue. 100 percent of our farm lies in the fertile Missouri River Valley. We endured a severe drought in 2005. Sixty days without rain, temperatures over 100 degrees many days during the most critical period for crop yield development. Yet our farm collected 0 dollars from the crop insurance program. You may ask yourself, "Why do they carry crop insurance at all?" Flood Risk—and flood risk alone. It is imperative we have coverage for our No. 1 peril prior to March 15. RMA has said that they will go up and down the basin after the flood event and make the thousands of determinations of what policy holders are covered and what policy holders are not. That is a Pandora's Box that never should be opened. This is like buying homeowner's insurance on your house when fire is not covered, yet your agent winks and says that "it probably won't burn, and if it does maybe we can work something out later."

The battle over the "spring rise" has been raging 15 years and counting. I have personally testified in opposition on eight different occasions. The State of Missouri has opposed the spring rise for all of the 15 years to date, and will continue to do so. I submit to you that the spring rise is as out of our control as any weather event. Therefore it should be covered as any weather event. The language cited by J.B. Penn in his letter dated Feb. 1, 2006 reads "the release of water event." I find his choice of words particularly ironic given that the Army Corps of Engineers consider the spring rise as an attempt on their part, on behalf of the pallid sturgeon, to "mimic a naturally occurring event" that has not occurred for many years. Yet RMA has covered the "non-natural flows" (according to Corps) for many years. Why did they cover them? Because RMA deemed them "natural". It is a clear example of Government agencies having a game of "three card monty" playing with farmer's money. The obvious intent of the "natural occurring" language is to deal with fraudulent practices by the insureds. This issue has absolutely nothing to do with fraud.

One of my neighboring farmers posed this question to me the other day. I pose it to you today. I agree to purchase crop insurance as a prerequisite to participating in USDA commodity price support programs. If I have only partial coverage for my perils, through the actions of the USDA, am I therefore out of compliance? Can USDA reach a contract with growers when the grower does nothing wrong?

You may be asking yourself "What is at risk here?" According to data compiled by Missouri State Farm Service Agency there are 910,513 acres in the 500 year floodplain in Missouri alone. I believe 85 percent of those acres to be in crops. The remaining 15 percent would be in roads, towns, trees, or otherwise uncropped. Therefore 774,000 acres of crops in Missouri are at risk. I estimate \$300 per acre in grower risk exposure. Increased risk exposure to Missouri agriculture due to RMA's position total \$232,200.00. It is important to reiterate that this data only covers acres in Missouri. Iowa, Kansas, and Nebraska data was not available to Missouri FSA.

Gentlemen it is obvious that farmers in the Missouri River Valleys, just like me, are being put into an impossible position. The level of risk we are being asked to withstand is unconscionable. The inflexibility of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and USDA through this whole process has been monumental, not to mention disappointing. The financial distress caused by an "uninsurable" flood event will rob equity from families it took generations to build. Many operations will fail under the strain. All for the definitions of "natural", "insurable", and "endangered". RMA staff told me on February 1st how difficult this decision was for them. My response was "for as hard as it is for you to make the decision, it is a thousand times more difficult for me to live by it."

Members of the committee I thank you for your time and efforts. I encourage you to do the right thing.

STATEMENT OF ROY CLAYCAMP

Chairman Goodlatte and members of the committee, thank you for allowing me the opportunity to appear before you today. I would also like to extend a personal thank you to the honorable Jerry Moran from Kansas' First Congressional District for inviting me to be here with you today.

My name is Roy Claycamp and I am here to speak on behalf of agricultural producers in the State of Kansas. I produce corn, soybeans, wheat and beef on my 1400 acre farm in Seneca, KS.

I believe that the farm bill debate will be influenced in each of four specific areas: the economy, the budget, trade and political interests must all be addressed in the development of this important and complex piece of legislation. Our economic status at the current time would suggest that we simply are not in the situation we were in during the 2002 period. I am fully aware of the budgetary constraints that will be facing Congress as it considers future farm policy. Global trade and the Doha Round of Trade Negotiations will most certainly impact the structure of future farm legislation.

I would like to address a number of issues that should be considered by the committee when writing future farm legislation. It is crucial that Congress allow the 2002 farm bill to operate, without major modification, through its scheduled expiration date with the 2007 crop so that farmers can make responsible investment, cropping and marketing decisions. It is significant that no other commodity or trade organization has proposed changes to the current law. In fact, in its annual meeting in January, American Farm Bureau supported an extension of the current law until a saleable solution can be reached in the Doha Round. Mr. Chairman, as your committee begins consideration on the next farm bill, I believe it is critical for Congress to provide adequate budgetary authority in order to craft an effective and efficient farm bill.

Trade will most certainly play a significant role in the construction of future farming legislation. Congress should consider WTO compliance while debating this issue. Currently, the US farm programs are under constant threat of WTO trade litigation. It is essential that Congress look at ways to comply with WTO regulations regarding trade. Trade-distorting domestic amber box payments may be reduced in exchange for market access and the elimination of export subsidies. Such reduction in US amber box supports should be offset by fully funded green and blue box eligible programs. This could be accomplished through any number of ways including: working lands conservation programs, risk management, the Market Access Program, enhanced crop insurance, revenue assurance or Government programs that increase producer profitability.

The last issue I would like to address is Rural Development. In a recent study AFBF stated "farmers are now more reliant on rural communities than rural rely on farmers." The agricultural community must act to retain and attract youth and young families that are involved in their rural communities and improve the general potential of rural communities to attract and retain business and industry through economic development and economic incentive programs. Many agricultural producers are entrepreneurial by nature, Congress should take action to foster this type of behavior. As we move forward into the future the production of renewable energy will play a significant role in the growth of rural communities. We must address the need for strong leadership programs in rural communities which should include young individuals who are active in their communities. A key to revitalizing rural America is allowing rural residents affordable and reliable access to communications vehicles. This can be done by allowing communication services providers access to funds such as the Universal Service Fund and USDA Rural Development Funds.

Mr. Chairman I recognize that your committee and Congress will face many challenges from many different interests in crafting new farm legislation. I would emphasize that adequate budget authority and the current farm program form a solid foundation for future legislation. I would like to thank you and the members of your committee once again for allowing me to appear before you today.

STATEMENT OF ELDON GOULD

Mr. Chairman, members of the Subcommittee, I am Eldon Gould, Administrator of the Risk Management Agency, United States Department of Agriculture. I assumed this position in November of last year. I am a life long farmer in northern Illinois, with a 1500-acre corn, soybeans and wheat—farm and a 700 sow farrow-to-wean hog operation. My task here today is to explain the role of the Federal crop

insurance program as it relates to the Missouri River pulse releases. We have been working on this issue beginning late last year and in consultation with members of the Missouri congressional delegation and some of their constituents on an ongoing basis.

RMA administers the Federal crop insurance program on behalf of the Federal Crop Insurance Corporation. The agency has a unique—partnership with 16 private—insurance companies that are responsible for the—sale and service of the various insurance policies. Through the private sector delivery system in crop year 2005, RMA provided approximately \$44 billion of protection to farmers on some 370 commodities covering over 80 percent of the planted acreage in the United States. This coverage was offered through 22 plans of insurance and approximately 1.2 million policies that insured about 246 million acres.

As you are aware, the U.S. Army Corps of Engineers has scheduled two spring “pulses” or water releases from the Gavin’s Point Dam on the Missouri River in an effort to mimic the natural river rise and encourage spawning of the endangered pallid sturgeon. This is being done to comply with the requirements of the Endangered Species Act.

There is concern among producers along the Missouri River and thus, among their elected representatives, that these pulses of water might cause flooding or excess moisture conditions for farms along the river. RMA learned of these concerns when producers asked if any losses suffered as a result of the pulses would be covered by the Federal crop insurance program.

The Department of Agriculture has recently responded in writing to queries from Senators Bond and Talent, and Representatives Emerson, Hulshof and Skelton on this matter. We also responded earlier to Attorney General Nixon and the Missouri Corn Growers Association. We take their concerns very seriously.

As I have stated, Mr. Chairman, I am a producer myself and one of my goals as Administrator of RMA is to ensure that RMA is doing everything it can, within its legislated authority, to assist the farmer and rancher and keep rural America and its critical agricultural industry competitive and sound.

To that end, RMA has been consulting extensively with the Corps since we learned of the planned water pulse events to determine, and where possible, minimize the risks to producers due to these releases. Having sought out the facts and evaluated our ability to act, we believe that we can lay these facts before you now with the confidence that we have examined all aspects of this issue in our continued efforts to be of assistance.

As you are aware, Mr. Chairman, crop insurance payments are made on production losses that are due to acts of nature such as weather events, including drought, hurricane, freeze, disease, and excess moisture. These causes of loss are manifested in the Federal Crop Insurance Act and specifically stated in the crop insurance policies. These proposed pulses of water by the Corps are not an act of nature, but due, instead, to the requirements of Federal law. Therefore, in the unlikely situation that there are any losses attributable to those releases, those losses cannot be covered under the crop insurance policies. However, any losses attributable to natural occurrences, such as excessive rain, will be covered.

The planned March pulse of water will result in an increase of one to 1.5 feet in river stage at the peak of the pulse. This is less than the rise that occurs when full service releases are made during non-drought periods. The Corps has informed us that the potential May spring pulse, given the drought conditions in the basin, will cause a 1.5 to 3 foot rise in the river downstream. This will not cause a rise above a normal navigable river level.

We have communicated with Assistant Secretary of the Army for Civil Works, the Honorable John Paul Woodley, Jr. Assistant Secretary Woodley has given RMA assurances as to the Corps’ flexibility to administer these releases with a strong consideration given to flooding potential. The timing and magnitude of the releases will be adjusted by the Corps if weather conditions or river levels suggest the potential for damage to crops along the river.

The Corps has routinely released water from reservoirs into the Missouri River system in past years to meet their various mandates without affecting crop insurance coverage. We have no reason to believe that would not continue in the future. Based on the control of timing and magnitude, and the Corps’ analysis of the current conditions in the Missouri River system, neither RMA nor the Corps anticipates that these upcoming releases will cause damage to crops or cropland along the Missouri River system.

I can assure members of this Subcommittee and their constituents that any crops insured with a Federal crop insurance policy that suffer losses that are specifically attributable to natural causes, such as excessive rain, will be covered in accordance with the terms of the policy, irrespective of these releases by the Corps.

There has been at least one occasion in the past where the Corps was required to release water into the Missouri River system due to excess moisture and the need to mitigate the potential for flooding. In such instances where the Corps' releases were due to a covered cause of loss, (in this case, excess moisture) any crop damage suffered by insured producers in our program from the release was covered under Federal crop insurance.

In closing, Mr. Chairman, I would like to reassure you and the Members of the Subcommittee that RMA is fully aware of your concerns and those of your constituents. We have high regard for Assistant Secretary Woodley and the members of the U.S. Army Corps of Engineers and would like to thank them for their continued cooperation in the examination of this matter. We will remain in close consultation with the Corps to minimize any potential risks to producers along the Missouri River.

Thank you for the opportunity to participate in this important hearing. I look forward to responding to questions on the issue.

ANSWERS TO SUBMITTED QUESTIONS

How will RMA determine or measure excess rain or moisture in deciding whether it can cover flood losses along the river given the involvement of a spring pulse?

RMA will work closely with approved insurance providers in the event of flooding if both a spring pulse and a significant amount of rainfall occur. Consistent with how these determinations are made for both insurable and uninsurable causes of loss in other situations, all available information will be used, including but not limited to, all weather information pertinent to the situation such as rainfall received, timing of such rainfall events, comparisons to normal expected rainfall, river levels prior to the flooding, timing of any release by the U.S. Army Corps of Engineers (Corps), and the amount of water released and expected rise created by the release. This information will be used in assessing whether the excess precipitation caused insurable crop damage. RMA and the Corps are committed to working together, to every extent possible, to share information to assist in making these determinations.

Any crops insured with a Federal crop insurance policy that suffer losses specifically attributable to natural causes, such as excessive precipitation, will be covered in accordance with the terms of the policy, irrespective of releases by the Corps.

It was suggested by some that the only difference in this whole debate is specifying the exact cause of the release. The MO Corn growers allege that the Corps releases water for navigation purposes all the time, for years, and in essence suggested that RMA covered flood losses for this activity but now will not cover losses for a Corps release due to a spring pulse, thus noting they see no difference. What is RMA's response to this?

RMA, by its legislative authority contained in the Federal Crop Insurance Act, can only insure or reinsure losses that result from drought, flood or other designated natural disaster. Each crop insurance policy issued under the authority of the Federal Crop Insurance Act contains specific causes of loss that are insurable for the specific commodity.

RMA is aware the Corps routinely releases water from the reservoirs into the Missouri River system to meet their various mandates, including for navigation purposes, without affecting crop insurance coverage. Such releases are done in the course of normal river operations, and are not events for which RMA would pay flood losses solely for this activity nor is RMA aware that losses have been paid when they resulted from Corps releases for navigational purposes only. For every loss, including Missouri River flooding, RMA requires its approved insurance providers to verify that the cause of loss was due to a natural cause.

However, if there were weather events that might otherwise have caused flooding, then those events would be covered causes of loss, just as any unusual or significant weather event would be a covered cause regardless of a spring rise whether for navigational purposes or other environmental reasons like the pallid sturgeon.

RMA is aware there has been at least one occasion in the past where the Corps was required to release water into the Missouri River system due to excess moisture up stream and the need to mitigate the potential for flooding. In such instances where the Corps' releases were due to a covered cause of loss, (in this case, excess moisture) crop damage suffered by insured producers was covered under Federal crop insurance.

Please respond with FCIC's (USDA) position as to the latitude and authority as contained within the Act regarding "as determined by the Secretary."

Section 508(a) of the Federal Crop Insurance Act states in part: "To qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other natural disaster (as determined by the Secretary)."

The phrase "as determined by the Secretary" cannot be read without taking into consideration the context of the part of the sentence to which this parenthetical statement is attached, which clearly refers to natural disasters. Further, it is a basic tenet of statutory construction that one cannot interpret a provision in such a manner as to render any words in the provision meaningless. Each word must be given meaning. To allow coverage for occurrences caused by the actions or decisions of man would render the word "natural" meaningless.

Therefore, the latitude and authority to determine naturally occurring insurable causes of loss for specific commodities is generally broad. However, the language in the Act specifying drought, flood, or other natural disaster does not give the Secretary the latitude nor the authority to define natural to include actions of other Federal, State or local governing authorities or any action or outcome that may be manmade. The Secretary's discretion is to determine which natural disasters will be covered in addition to the named perils of flood and drought. The Secretary exercises this discretion by specifying through regulation for each crop insurance policy those natural causes that may be covered loss events and thus insurable.

The entire foundation of the crop insurance program is predicated on insuring, and therefore rating, for random acts of nature, and not for decisions, actions or legal mandates that can be rendered without regard to the integrity and actuarial soundness of the crop insurance program and its contractual participants that include the approved insurance providers, reinsurers and producers.

STATEMENT OF TOM WATERS

Good afternoon. My name is Tom Waters. I am a 7th generation farmer from Ray County Missouri. I own and operate our family farm in the Missouri River bottoms near Orrick, Missouri. Today, I am proud to represent the Missouri Farm Bureau Federation, the State's largest general agriculture organization. In addition to being a proud Farm Bureau member, I serve as Chairman of the Missouri Levee and Drainage District Association, where I represent farmers, landowners, businesses and others interested in issues surrounding the Missouri River and its tributaries. I am a member of the Missouri-Arkansas River Basins Association Board of Directors and serve as President of three local levee and drainage districts, which combined encompass over 20,000 acres of Missouri River bottomland.

Mr. Chairman and members of the subcommittee, I want to thank you for this opportunity to provide testimony regarding the Missouri River. Farm Bureau especially appreciates your willingness to address the impacts of the Spring Rise on our State's farmers and ranchers and has asked me to share my thoughts with you regarding the United States Army Corps of Engineers plans for increasing flows on the Missouri River twice during Missouri's spring planting season.

I am here to talk about intentional flooding. Yes, intentional. Make no mistakes; intentional flooding is what we are all here to talk about. Some refer to it as increased flows. Some call it habitat enhancement. Some call it a spring rise. But what we are really talking about is intentional flooding.

The US Army Corps of Engineers and the US Fish and Wildlife Service representatives will tell you they do not want to intentionally flood anybody. Don't be so sure! Listen to this exchange between United States Attorney James Maysonett and Federal Judge C. Arlen Beam. Keep in mind; Mr. Maysonett is the Federal Attorney representing both the Fish and Wildlife Service and the Corps of Engineers. This exchange took place last year on April 11, 2005, in the case *American Rivers v. U.S. Army Corps of Engineers*.

Again, what you will be discussing today is intentional flooding. If you think the spring rise is anything less, pay close attention. Listen now to the record from the 8th Circuit Court of Appeals in St. Louis.

U.S. Attorney James Maysonett

I think what the record shows is that these are relative new ideas. The idea that you would, for example, operate the Missouri system of dams and reservoirs to intentionally flood. That is to create a spring rise.

The Honorable C. Arlen Beam:

Step back just a second. You said the spring rise, and I hadn't focused on this, will intentionally flood?

U.S. Attorney James Maysonett:

Yes, Judge Beam, that is correct. That's part of the concept of the spring rise is that historically the flooding of the river will obviously have a lot of negative effects, also have positive effects for these species.

The Honorable C. Arlen Beam

I think that reading the Pick and Sloan plans and living through, old enough to live through part of the political ramifications, if there was anything the Missouri River mainstem dams were supposed to do is to control flooding, so, if there's a priority somewhere hidden in the statutes I think it's flood control.

It has become increasingly clear the Corps' plan for a Spring Rise will be designed to intentionally flood Missouri River Bottomlands. Apparently, the Corps of Engineers and US Fish and Wildlife do not share the same view of this US Circuit Court of Appeals Judge.

Representatives from both agencies describe the spring pulse as a means to connect the river to the floodplain. They tell us the purpose of the spring pulses is to provide some semblance of the "natural hydrograph" which historically inundated the floodplain.

The reason the mainstem reservoir system was built was to protect against the inundation of the floodplain. In their opinion following the April hearing, the 8th Circuit Court of Appeals clearly stated:

the 1944 Flood Control Act has been interpreted to hold flood control and navigation dominant and recreation, fish and wildlife secondary.

They went on to say:

If, due to extreme conditions, the Corps is faced in the future with the unhappy choice of abandoning flood control or navigation on the one hand or recreation, fish and wildlife on the other, the priorities established by the Flood Control Act would forbid the abandonment of flood control or navigation.

To make itself even clearer the court said,

If it follows that if future circumstances should arise in which the ESA compliance would force the Corps to abandon the dominant Flood Control Act purposes of flood control or downstream navigation, the ESA would not apply.

The Corps of Engineers' 2006 Annual Operating Plan ignores the court's opinion and includes two opportunities to cause intentional flooding along the river. I fully expect without changes, future Annual Operating Plans will include even greater threats to bottomland farmers as the Corps increases flows.

As we debate the merits of intentional flooding, you must understand we are not just discussing an economic issue or a scientific issue. The issue of intentionally flooding one's property or bringing harm to another is a moral issue. I, for one, believe it is morally wrong to ever, ever, intentionally cause flooding.

Flooding is wrong. Regardless of how much scientific data or economic information is presented, it is still and always will be morally wrong to flood people. The Spring Rise decision truthfully boils down to a black and white decision about what is right and what is wrong. Intentionally harming others is wrong.

We have seen homes flooded. We have seen entire communities relocated due to flooding. Flooding can take away more than property or things that can be replaced. People who lose their homes or people who have lost the life of a loved one also lose a part of their heart, part of their soul. No amount of money or compensation can repair that type of damage, especially if, it is caused by a man-made flood.

Much has been said in recent weeks about how crop insurance plays into the spring rise. It is amazing the Corps of Engineers would go this far to implement a spring rise without taking a closer look at the crop insurance issues. Crop insurance is one of the most important tools farmers have to help manage risk within their farming operations. The risks associated with the spring rise and the possibility of crop insurance failing to provide coverage is unacceptable and should be better taken into consideration by the Corps of Engineers.

It is my hope this hearing will shed some light on the dangerous direction the Corps of Engineers has taken with their plan to intentionally flood lands along the Missouri River. I am grateful Congressmen Hulshof and Skelton have seen the need for this hearing and thank you for this opportunity to share my thoughts. On behalf

of Farm Bureau, I appreciate your time and willingness to serve as Representatives in Congress. I'd be happy to answer any questions you may have at this time.

STATEMENT OF WILLIAM BRYAN

My name is William Bryan. I am here on behalf of Missouri Attorney General Jay Nixon. Attorney General Nixon regrets that he is unable to be here this morning, but he wanted me to welcome the subcommittee members to Jefferson City and thank them for their time and concern.

On November 23, 2005, Attorney General Nixon first questioned the impact that an artificial spring rise may have on the crop insurance coverage paid for by Missouri farmers. The specific question we asked was, "will the Risk Management Agency exclude from coverage losses caused or contributed to by the 'spring pulses' described in the Corps' draft Annual Operating Plan for 2006?" Surprisingly, despite years of river management studies by the Federal Government, apparently no responsible agency had ever contemplated this important question. Without Attorney General Nixon's initiative, it is quite possible that the agencies never would have considered how the Corps' proposal disrupts the safety net for our farmers.

There are three important considerations this committee should take into account. First, the spring pulses are expressly intended to mimic nature. They should be considered "natural occurrences" since that is their purpose.

Second, if we assume that the spring pulses are not "natural occurrences" because they are caused by intentional releases of water from Federal dams, then it is simply wrong for the Federal Government to impose this uninsured risk on our farmers. If the dams did not exist, our farmers' losses would be covered by crop insurance.

Third, this misbegotten policy is a problem for the farm community even if there is no actual flood.

As part of our legal evaluation of the Corps' plan, we reviewed the standard provisions of the basic crop insurance policy. In our opinion, the basic provisions should be construed to cover losses caused or contributed to by the Corps' "spring pulses." After all, the very purpose of the "spring pulse" plan is to emulate natural events. When the purpose of a Federal action is to imitate a natural occurrence to satisfy the Endangered Species Act, it should be regarded as a natural occurrence for crop insurance purposes. Although there is disagreement over whether the Corps' plan truly does that a question for another day given the RMA's mission to preserve and strengthen the economic stability of America's agricultural producers through sound risk management, we were confident that the RMA would interpret the basic provisions and the law to cover any losses that may arise.

While our confidence was boosted by the fact that the Corps' intent was to mimic nature, it was further bolstered by the fact that this was a Federal initiative sponsored by the Corps and the U.S. Fish & Wildlife Service. Surely the left hand of the Federal Government wouldn't deny insurance coverage for losses caused by the right hand's efforts to recreate a natural event on the grounds that the event was not natural. Of course, our optimism was misplaced. The RMA expressly rejected our interpretation and told us that any losses caused or contributed to by the "spring pulses" would not be covered by crop insurance.

The Corps could have acted swiftly to protect the farm community from this unintended consequence of its plans. Instead of taking responsible action to right this wrong, however, the Corps tells us the risk of flooding is small. Nevermind that the Corps has not yet published a single study that proves this rank speculation. Most importantly, actual flooding isn't our only concern. The mere prospect that uninsured losses could occur has the potential to affect a farmer's ability to get credit, and that affects his ability to farm. Even without the slightest flooding, the Corps' emasculation of the crop insurance program could take land out of production and reduce farm income. At a minimum, it will make farming even more financially difficult, especially for our smaller producers.

Today, despite 15 years of study, the Corps has not taken the potential consequences on the farm safety net into account. It has carefully studied water conservation, power generation, navigation, and even minnow reproduction in the reservoirs, but it has never adequately considered the impacts of its operations on agriculture, and this failure is but one more example of the Corps' institutional blind spot regarding agriculture. Accordingly, although we remain convinced that the spring pulse plan is wrong for many reasons, the Corps certainly should not implement that plan without mending the farm safety net. And it is my understanding that the Corps has no intention of addressing this problem.

If, as these Federal agencies contend, the spring pulse experiment is an action under the Endangered Species Act to benefit the Nation as a whole, then the burden

should be borne by the Nation, not by river bottom farmers alone. The best way to do that is to treat damages caused by a Federal experiment intended to replicate natural conditions as losses due to “natural occurrences” under the crop insurance basic provisions. Until agreement can be reached on that interpretation—which seems unlikely—or suitable legislative changes made, the Corps should follow its master manual and let Mother Nature provide the spring rise.

STATEMENT OF FRED FERRELL

Good morning Chairman Moran and members of the subcommittee. My name is Fred Ferrell, director of the Missouri Department of Agriculture. As I come before you this morning, I am very appreciative of your attention to policies set forth by USDA’s Risk Management Agency (RMA) regarding potential crop damage caused by spring pulses set forth by the U.S. Army Corps of Engineers.

This department I am charged to lead has the following mission statement: serving, promoting, and protecting the agricultural producers, processors, and consumers of Missouri’s food, fuel and fiber products. Agriculture is Missouri’s largest industry, represented by approximately \$6 billion in farmgate production last year. Our State is a national leader in beef, hay, turkey, and swine production. Our most important agricultural ranking is that we are second in the number of farms and farm families. This ranking is one that I’m the proudest of and one that I will fight the hardest to preserve.

Agriculture is a challenging business, not unlike other industry sectors. However, I cannot name another industry with a greater level of risk adversity. In Missouri, as in many other states, our farmers are reeling from the effects of a devastating drought, as well as ever-increasing input costs and land values. These factors are just a few examples of issues out of our immediate control that place pressure on the diminishing profit margins of our constituents.

Despite these pressures, the Federal Government has decided to place another critical issue on the backs of Missouri’s bottomland farmers through the implementation of the 2005-06 Annual Operating Plan (AOP) calling for two spring “pulses” on the Missouri River in March and May 2006. In the AOP, the Corps refers to the plan as “adaptive management...one tool to preclude jeopardy to pallid sturgeon.” I am here this morning to tell you that Missouri’s bottomland farmers will be the ones placed in jeopardy by this unnecessary experiment in which Missouri remains fundamentally opposed.

To make matters worse, RMA has made clear that any losses in crop production associated with the Corps’ proceedings cannot be covered by Federal crop insurance policies. RMA states: “Given the U.S. Army Corps of Engineers confidence that flooding is not expected to occur as a result of the releases, USDA does not anticipate that there will be any losses attributable solely to the releases.” This statement is very disturbing to me. Missouri officials have advised at every occurrence that in the lower River basin, a natural spring “pulse” takes place each and every year.

The effects of adding another one to three feet of water to our farmland at a time when extra water is not needed could be devastating. Crops could very well be destroyed, or at a minimum, costly delays in planting could be created, leading to lower yields at harvest time. These lower yields equate to depressed farm income, which in turn, hurts our communities and our State’s economy.

The Missouri River’s bottomlands are home to some of the most fertile and productive cropland in our State, with river corridor counties contributing over \$1 billion to Missouri’s economy. This does not take into account ripple effects created by supporting industries such as transportation, livestock, grain handlers, and countless others.

I recently returned from Washington DC, where the annual mid-year National Association of State Departments of Agriculture (NASDA) meeting was held. I want to inform you that NASDA supports Missouri’s opposition to the spring “pulse” on the Missouri River. At my request, NASDA President Carlton Courter of Virginia sent letters to the RMA and the Federal Crop Insurance Board of Directors advising that any crop losses caused by a Corps decision to intentionally flood the Missouri River should be covered by the RMA. This action is significant, as NASDA as a whole represents many constituencies and interest groups.

To conclude, I again want to thank you, Chairman Moran and subcommittee members, for hosting this hearing in Jefferson City. I trust in your ability and judgment to do everything in your power to ensure that our farmers—the most efficient in the world—are not subjected to further undue harm.

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