

ADVOCACY POSITION STATEMENT

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ENDANGERED SPECIES ACT

Chairman Hastings and members of Congress, I am pleased to come before you today to speak about the Endangered Species Act (ESA), to share my experience and personal opinion which I believe I share with a lot of other public employees who respect the conservation values of the ESA yet endure its unintended consequences as we fulfill the essential duties of delivering much needed public services.

The Act's original goal was to provide a program for the conservation of threatened and endangered species (plants and animals) and the habitats in which they are found. This goal can only be reached with cooperation of state and local governments as well as the support of the public. Under the law (ESA), only federal agencies have an affirmative duty to promote conservation and the recovery of protected species. Yet over time, the ESA has become much more process oriented than results oriented and in the process has had a profound impact on the various construction permits for private and public projects states and local governments' issue.

Quite often State and local governments will issue construction permits not fully knowing whether ESA compliance is required and they then pass the responsibility to the permitted entity to comply with all other relevant federal regulations such as ESA. This is because the ESA program does not reward local government's proactive approach of protecting threatened and endangered species in the planning process.

We have found this to be true in particular as an ESA report is required any time developments are impacting wetlands.

In 1994 City of Logan recognized that its general development plan along 1000 West industrial corridor (from 300 S to 1800 N) would impact some wetlands. The City proactively developed a special area management plan (SAMP) and delineated all wetlands in the area and identified those wetlands that were not suitable for fill and wetlands that could be mitigated if there was no practical alternative to avoid the discharge of fill material. The City also took the initiative of obtaining a general permit for the SAMP and established a wetland mitigation bank to compensate any losses of wetland. In other words, we did everything that was required to mitigate for a small disturbance of wetlands.

However, in 2005 the general permit expired and the US Army Corps of Engineers (USACE) refused to renew it and since then, an individual permit is required for every site development in the area. This also entails requiring site specific threatened, endangered, or sensitive animal and

plant species habitat report for every proposed project which impacts wetlands. As a result of this action many projects are delayed or prohibited, costs are increased, and property owners are frustrated.

Recently, a seasonal plant with a very short growing season called the Ladies'-tress Ute or *Spiranthes diluvialis* was spotted in Mendon (Cache County), Utah and because it is spotted in Cache County a survey is now required before a permit can be issued anywhere in the County. This particular species is best surveyed or identified in August. If a developer/development misses the opportunity to survey in August they have to wait until the following year to get a permit. Utah has a very short construction season and this plant reduces the season to one month.

The question is how we can reform the ESA to build partnership between the regulatory agencies, the states and local governments, and the public. I suggest the congress consider the following:

1. Modify the ESA and include provisions that will give states and local governments the option of developing an approved endangered species special area management plans that will meet the requirements and goals of the ESA, and authorize them to issue permits as they see it fit with little or no federal government oversight. The management plan must also balance preservation, development, socio-economic, and the need to build partnership between the federal, state, local, and property owners.
2. The federal agencies must also consult with state, local governments, and property owners before new species are listed as threatened or endangered, and Congress should considers compensation for loss of use or profit due to the impact of the Act.
3. Increase public awareness and education through the permitting process.