My name is Roger Kelley and I come here today representing Continental Resources, Inc. based in Oklahoma City, Oklahoma, and with operations in Oklahoma, Texas, Montana, North and South Dakota, Montana, Colorado and Wyoming. I also represent the Domestic Energy Producers Alliance (DEPA), an organization which represents independent producers with operations within the domestic US, as well as service companies which provide exploration and production services to these companies and state independent oil and gas trade associations.

The Endangered Species Act (ESA) is of particular interest to Continental and DEPA, as this is one legislative action that has the greatest potential to restrict and impede private land use in the United States. The original intent of the act as written was to protect plant and animal species from extinction and to ultimately recover those species from being either threatened or endangered of becoming extinct. Since its inception in 1973, the USFW has listed some 1400 + or - species as either threatened or endangered. And since that time, only about 1% of those species that have been thus listed have been actually recovered from that status. Therefore, as measured by the original intent of the act, one might conclude that the ESA has been somewhat of a failure.

Recently, environmental groups have sued the FWS for their failure to review and list more candidate species under the threatened or endangered status. The result of this

Law suit was a consensus style agreement between the Wild Earth Guardians (WEG) and the FWS to place an additional 251 candidate species on the list to be considered for endangered or threatened status by sometimes during the year 2017. So rather than recover the over 1400 species that have already been listed, the FWS agreed to add another 251 species to the list in 2011 and with another provision to add 10 or so more species every year from that time forward. No mention was made of the five year review that is required for the previously listed species and that I understand is not being conducted. The time to consider the conservation efforts necessary for these species as well as the science behind the decision to list or not to list has thus become significantly shortened by the court order.

The evidence that has been presented thus far might lead one to ask, what is being done for the poor species. Are we really interested in protecting these species, or are we just using these critters to fight against farmers, ranchers, developers, energy producers, or anyone else that might be engaged in some sort of activity that involves the private use of the land that they either own or have otherwise contracted to use?

Continental has recently been involved in efforts to consider the proposed listing of the Lesser Prairie Chicken (LPC) in the five state region involving Texas, Oklahoma, New Mexico, Kansas and Colorado. The LPC was one of the 251 species involved in the WEG v FWS consensus agreement. A small group of independent producers pooled our efforts and worked with the 5 state LPC-Interstate Working Group (IWG) which

Consists of the directors of the wildlife conservation agencies from these same states. The IWG worked on and developed a Range-wide Management Plan (RMP) for the conservation of the LPC. Our oil and gas working group worked concurrently and also developed a Candidate Conservation Agreement with Assurances (CCAA), a voluntary conservation plan that works in concert with the RMP to provide industry specific conservation measures for the LPC. The CCAA was developed for the purpose of demonstrating sufficient conservation to keep species from being listed as either threatened or endangered.

This oil and gas LPC - CCAA was patterned after the New Mexico CCAA for the LPC and the DSL, which agreement had been previously approved by the FWS. We presented our first draft of the CCAA to the FWS for their review in December of 2012. In January of 2013, the FWS responded with questions, to which the group promptly responded with answers via a conference call. The next discussion we had with FWS over this proposed agreement was in their offices in Washington D.C. in March of 2013. At that meeting, we were told by senior officials at the FWS that owing to the time constraints placed on the FWS by the court order, the Service was not going to have the time or the resources (or the inclination) to review the agreement we had submitted. When asked about the potential for a six month extension, we were told that they were considering the extension in that time assessment.

So rather than take the time to consider conservation measures and efforts that would be accomplished at the state level to recover this critter from threatened status, the FWS assured us that the bird would be listed and our only hope for relief would be a Section 4d incidental take agreement that would work in conjunction with the RMP post listing, or rather after the LPC is listed as threatened. Now much has transpired since this meeting and currently we have a 5 State RMP that may or may not be approved, an oil and gas CCAA that is undergoing FWS and NEPA review, but that we have been told by the FWS that this CCAA will nevertheless have no affect on the listing decision, i.e. it will not be considered in this decision.

Now the point of this story I have told here today is that the FWS appears to have given more deference to the WEG, CBD, and other environmental groups than it has to the state wildlife conservation agencies. They would rather work closely with activist groups who have stated openly that they are not interested in the science, but are rather more concerned with stopping the development of fossil fuels...with no regard to jobs or the economy. The underlying assumption in these efforts is that the FWS can do a better job managing these critters than the states that have been managing them for decades. Would it not hold that the FWS should be looking to the states as their allies and competent companions in these efforts rather than work against them as the have heretofore done, both politically and professionally.

I would ask that we look more closely at ways to more closely consider the science behind all these efforts and make sure that we have all of the facts before moving forward with an action that may have dire economic impacts and that may add little or no significant benefit to the wildlife of our nation.

So with regard to the questions that was presented in anticipation of this hearing:

- How is ESA success defined?

  - The ESA has become a game to see how many species can be listed and how much habitat can be designated along with those listings to stop whatever land use activity has been targeted

- How do we measure ESA progress?

  - Again, ESA progress is currently defined as a numbers game. How many species can we get listed and how much private land use can we get under Federal control?

- Is the ESA working to achieve its goals?

- This answer depends upon which goals you use to measure success. If it is a numbers game with no regard for the species, then the goals are on target. If we are concerned with using credible science to conserve species, then we have lost that purpose.

- Is species recovery effectively prioritized and efficient?

- No, one percent recovery is not a track record that exudes success.

- Does the ESA ensure the compatibility of property and water rights and species protection?

- No. How can the ESA be balanced when the process is driven by “sue and settle” lawsuits where many stakeholders are precluded from participation, and the scientific rationale for listing is driven by what has been referred to as “the tyranny of the lone biologist.”

- Is the ESA transparent, and are decisions open to public engagement and input?

- The ESA is selectively transparent. The current state of affairs resulting from the court settlement has created an environment of misguided priorities. Instead of

- Looking for the credible science, and consequently the welfare of the species, all are forced to comply with a different agenda which does not have this same concern as a goal. The time for public engagement and input is subject to the whims of the court order (the result of a somewhat clandestine negotiation between the FWS and whatever environmental groups are involved)rather than the public stakeholders

- Is litigation driving the ESA? Is litigation helpful in meeting ESA goals?

  - Yes. And No.

- What is the role of state and local government and landowners in recovering species?

  - The state and local governments and landowners find themselves at odds with the FWS rather than being partners in the conservation effort as they should be. These are the parties (or the stakeholders) that have the most at risk and can lend

the most wisdom to the effort. The federal is not the de-facto expert in all matters just because they are the Federal government.

- Are changes to the ESA necessary?

  - Yes, major statutory, rule-making and legal challenges must be pursued in order to address a process that is secret, unwieldy and very misguided.

Continental and DEPA appreciate the opportunity to present this testimony and would welcome any questions.