

## U.S. House Committee on Natural Resources

"Legislative Hearing on H.R. 1314, H.R. 1927, H.R. 4256, H.R. 4284, H.R. 4319, H.R. 4866"

Tuesday, September 9, 2014

J. Tom Ray, PE, D.WRE

Water Resources Program Manager

Texas Water Conservation Association (Federal Affairs Committee Chair)

Western Coalition of Arid States (Federal Liaison)

Thank you for the opportunity to testify before you today on behalf of the West Coalition of Arid States [WESTCAS] and the Texas Water Conservation Association [TWCA]. Both groups appreciate the opportunity to present testimony in support of H.R. 1314, which is legislation to establish a procedure for approval of certain settlements with regard to endangered species.

WESTCAS is a coalition of approximately 75 water and wastewater districts, cities, towns, and professional organizations focused on water quantity and water quality in the arid-West states of Arizona, California, Colorado, Nevada, New Mexico, and Texas. Its mission is to work with relevant Federal and State water quality and quantity agencies to promote scientifically-sound laws, regulations, and policies that support adequate supplies of water in the Arid West, recognizing the unique hydrologic and water resources conditions of the arid-West and in a manner that protects public health and the environment of the arid West.

TWCA is the leading organization in Texas developed to conserving, developing, protecting, and using water resources of the State for all beneficial purposes. The membership encompasses the full spectrum of water use or interests: groundwater users, irrigators, municipalities, river authorities, navigation and flood control districts, industrial users, drainage districts, utility districts, and general/environmental interests. Each of these categories is represented on the TWCA Board of Directors.

TWCA serves as a leader and advocate for water users:

- Acting in an advisory capacity to encourage and inform Congress, the Texas Legislature, and governmental agencies at all levels charged with responsibility for water resources;
- Stimulating public awareness of water conservation, quality, quantity and other activities at the state and national levels; and,
- Providing unique opportunities for professional growth and recognition in the field of water resources.

Specific to this hearing, both WESTCAS and TWCA support cooperation on two critical goals—protection of threatened and endangered species throughout the US and responsible and timely development and conservation of our water resources. There is

no doubt attempts to reach these goals can result in conflict. Members of both associations would assert that conflict results in delay—and in both cases, the protection of a critical species and provision and conservation of adequate water resources, delays can be destructive. I would point out that TWCA and WESTCAS members are leaders in water conservation, reclamation, and innovative means to preserve our available water supplies. Recognizing this, we support the changes to ESA settlement procedures that will provide an opportunity for such stakeholders to be at the table. I have worked with water resources management in Texas for over 35 years, I have seen the emerging recognition that goals of water supply development and management must be co-equally pursued with the protection and recognition of needs for all the other resources that constitute our environment.

In Texas and the arid West, TWCA and WESTCAS are dedicated to pursuing sound, scientific solutions, managing our water supplies and our water quality of those supplies in a responsible manner. Member of the Committee, I would suggest that if all parties (stakeholders) are notified through their respective local governments and given the opportunity to be present and to participate in the ESA Settlement discussions that first, those stakeholders would participate and second, there would be benefits that will potentially overcome the delays that result from the outcomes of the present procedures.

Let me summarize my concerns. In 2011, a settlement was reached between the US Fish and Wildlife Service and two environmental groups. This settlement was the result of lawsuits launched by the two environmental groups charging that the FWS had failed to meet certain statutory deadlines associated with the filing of petitions to list hundreds of species. The settlement requires FWS to issue endangered or threatened rulings on 757 species by 2018. This goal is being achieved through an accelerated work plan to make these complex decisions. The process used to reach these agreements took place out of the public arena behind closed doors, with little or no involvement with potential stakeholders. Yet the species identified for possible listing have the potential to impact the lives and job opportunities for millions of Americans.

The result is that FWS is obligated to make determinations for hundreds of species in just a few years. Given the complexities involved in determining whether a species is endangered or threatened, it is not surprising that the Service and its staff have literally been overwhelmed. This fact encourages additional lawsuits by plaintiffs encourage further settlements with regard to species protection. Additional legal action can result in delays in needed projects or economic progress and in actions to protect species.

These are examples of instances where the Fish and Wildlife Service settled with a plaintiff and decided the dates by which they would make determinations regarding designations for endangered and threatened species. This is the so-called “closed door” aspect of the settlements, which H.R. 1314 seeks to address, which has received so much attention from those in Congress and from local stakeholders. By engaging in

closed door agreements with environmental groups the Fish and Wildlife Service ceded its own species priority setting process to outside parties agreeing to take they're marching orders from work plans created by environmental groups which were then, in turn, approved by a Federal Judge. The result is that while local stakeholders were left out of the process they still faced the responsibility of defending against proposed listings that have the potential to harm their communities. There are even cases where the Fish and wildlife Service had already entered into conservation agreements with locals only to have the 2011 settlement upend the timeframes for conservation or the study of a listed species.

H.R. 1314 seeks to address this confusion by establishing a procedure to approval settlements with regard to endangered species. The chief benefit would be to stop the practice of closed-door agreements that can lead to huge cost impacts despite the fact that important stakeholders such as State and local governments and businesses have been excluded from the discussion. This provides a path that will help avoid economic damages and job losses as well as help forestall overreach by both environmental groups and the Federal government.

We support HR 1314's requirement that all complaints filed with regard to endangered and threatened species which provides that the Secretary must publish within 30 days all complaints filed against it. This involves wide dissemination of the complaint within the Federal community and among stakeholders at the State and County levels of government. It is impossible for stakeholders to become involved in a process which they may not even know exists. We also strongly support the provision in this legislation that prohibits the failure of the Secretary of the Interior to meet a deadline to be used as the basis for a designation. Failure to meet deadlines for determinations regarding hundreds of species should not be an excuse for designations that may not reflect the best available science and which may threaten serious local impacts.

In addition to requiring the Secretary to publish complaints filed in association with a species, H.R. 1314 also includes a path that allows States or counties to participate in the review process. The Secretary of the Interior must provide States and counties where the species that are the subject of the lawsuit occur are provided with notice of proposed covered settlements, and consult with the States to make sure it gives notice to the right counties. These provisions are an important of ensuring that local affected stakeholders play a meaningful role in the complete review and listing process.

Yet another provision of this legislation bars the practice of having the Federal government pay the legal fees of the plaintiffs in a covered settlement. This will help end the practice of taxpayer dollars being used to subsidize suing the Federal government. H.R. 1314 limits the use of taxpayer dollars in paying litigation costs in any proposed covered settlement to any party. This would prevent a repeat of the 2011 settlement where the two plaintiffs were awarded legal fees in addition to the

settlement designating hundreds of species for potential listing and also an accelerated work plan to expedite the process.

The kind of severe land use restrictions that are often associated with an endangered or threatened designation can often play havoc with the local economies of local communities, states, or entire regions. This is particularly the case with States like Texas and throughout the Arid West, which are only accelerated by other conditions such as drought and population growth.

The State of Texas has been impacted by the 2011 settlement that identified 22 species for possible designation as endangered or threatened. There has been a great deal of publicity with regard to three of these 22 species including the San Dune Lizard, the Lesser Prairie Chicken, and the Georgetown Salamander. The possible listing of the Sand Dune Lizard threatened energy exploration, and in consequence the entire regional economy of portions of West Texas and Eastern New Mexico. Issues associated with protecting the Lesser Prairie Chicken include controls over drilling rigs and wind turbines, which are mainstays of the economy of West Texas and much of the 5 state area of the Prairie Chicken's habitat. Williamson County, just north of Austin, is one of the fastest growing areas of Texas. The Georgetown Salamander and its need for water habitat impacts the ability of local governments to issue the building permits that might threaten this species but which also threaten the local economy of the City of Georgetown and much of Williamson County.

It was a surprise for the State and local governments and businesses to discover in mid-2011 that species had been identified for listing and that the protections being sought potentially involved steps that would undermine key areas of the economy including energy exploration, ranching, and construction. All of these communities would have benefited had they known these discussions were about to produce the settlement of 2011. The discussions on the three Texas species that have gone on for the past three years have triggered an exhaustive effort by the Texas Congressional Delegation, the State of Texas, numerous counties and local governments, and the energy and ranching communities, all directed towards listing agreements that all parties could live with.

In the end, this resulted in the Sand Dune Lizard not being designated as endangered while the Lesser Prairie Chicken and the Georgetown Salamander were both listed as threatened. These designations were achieved only after extensive interaction among all parties that resulted in major habitat protection practices being adopted by the City of Georgetown, Texas regarding protecting the water sources of the Georgetown Salamander. Energy exploration and production companies and ranchers also agreed to new land use policies protecting the Sand Dune Lizard and the Lesser Prairie Chicken that should offer major new protections for both species. This progress could have been achieved in a much less chaotic and convoluted manner had the protections of H.R 1314 been in place which would have notified the State and local stakeholders at

the beginning of the negotiation phase that produced the settlement of 2011 as opposed to once the agreement had been made between the FWS and the environmental groups.