

Animal Law: Wildlife and Endangered Species on Public and Private Lands – The Tipping Point

Friday, September 9, 2016



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The issues discussed herein are intended as illustrative of the types of issues which can arise in the course of representation and are not intended to address, nor do they address the broad range of substantive issues which could potentially arise in the scope of such representation.

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Presenter Biographies

Animal Law: Wildlife and Endangered Species on Public and Private Lands-The Tipping Point

Presenter Biographies

Judith L. Durzo, co-founder and CLE Liaison of the State Bar Animal Law Section, earned her J.D., *cum laude*, from the University of New Mexico Law School in 1985. Over the years, her practice has included civil rights, torts and business litigation, nonprofit corporations and mediation and arbitration. She is an administrative hearing officer for medical/legal, employment and gaming cases. Durzo has more than 26 years of nonprofit experience as a board member, founder, organizer, incorporator and advisor for several environmental and animal oriented nonprofits. Her practice now focuses on various aspects of animal law, from dog bites to animal rights.

Guy Dicharry Jr. is a lawyer (UNM, J.D., 1988) and registered nurse (Louisiana State University, B.S.N., 1979). For 20 years, his law practice was focused almost exclusively on medical malpractice litigation on behalf of patients. From 2008–2013 he was an emergency room staff nurse. His current law practice is limited to professional malpractice, legal issues arising out of wildlife management and the management and use of public lands, as well as some pro bono representation of homeowners in foreclosure. He is the current chair of the State Bar Animal Law Section.

Ruth S. Musgrave has worked in wildlife and conservation law and policy for more than 25 years. In 1990, she founded the Center for Wildlife Law at the Institute of Public Law at the UNM School of Law, and served as director until it closed in August 2011. She managed numerous projects concerning wildlife and biodiversity law, including training, youth civics education, facilitation, legal and policy research, drafting legislation and policy analysis. Musgrave was project manager and lead author of the *Federal Wildlife and Related Laws Handbook* and the *State Wildlife Laws Handbook*, and was editor of the *Wildlife Law News Quarterly* and online “Wildlife Law News Weekly Alerts” from 1993 to 2011. She is a graduate of UNM School of Law and has been a visiting associate professor and an adjunct professor teaching wildlife law, biodiversity and the law, advocacy, and intellectual property law. Musgrave is a trustee of a charitable trust and sits on the board of directors of several wildlife organizations. She is president of Wildlife Policy Consulting Associates in Olympia, Wash. She currently works with the Washington, D.C.,-based National Caucus of Environmental Legislators as its conservation and climate adaptation advisor.

Ray Powell is a native New Mexican and a veterinarian. He received his doctorate in veterinary medicine from Tufts University with an emphasis in wildlife medicine in 1985. He received his bachelor’s degree in anthropology and biology, and a master’s degree in botany and plant ecology from the University of New Mexico. Powell served as the elected State Land Commissioner for three terms. In between terms, Powell worked with world-renowned scientist and humanitarian Dr. Jane Goodall and the Jane Goodall Institute for Wildlife Research Education and Conservation. Powell also served as special assistant to Governor Bruce King on environment, health and natural resource issues and served as the executive director of the Valles Caldera National Preserve.

John Crenshaw, president, New Mexico Wildlife Federation, is a native New Mexican. Crenshaw grew up on cattle ranches in New Mexico and Colorado. A journalism major at N.M. Highlands University, he was a reporter/photographer for the *Santa Fe New Mexican* and other news outlets before joining state government as associate editor of *New Mexico Magazine*. He transferred to the Game and Fish Department in 1974 for what became a career in wildlife conservation, starting as

editor of *New Mexico Wildlife* magazine and eventually becoming chief of the Public Affairs Division. After retiring, he joined the New Mexico Wildlife Federation in 2012 and became its president in 2014. He now devotes considerable time as a volunteer lobbyist in the Legislature and to other NMWF activities.

Chris N. Parish was raised in a small farming/ranching and oil town in south-central California near the historical range of the remnant California condor population in the southern San Joaquin Valley. After a brief yet impactful introduction to the wildlife of the desert foothills, he moved on to further his education at Northern Arizona University on an athletic scholarship, obtaining a B.S. in Biology with emphasis on Fish and Wildlife Management. Through time, education and reflection of the vast gap between the people of the land and conservation-oriented groups i.e. academics, scientists etc., it became obvious that he would strive to bridge the gap between lay people and the scientific/management communities. After working on the Black Footed Ferret Reintroduction Program for the Arizona Game and Fish Department, he transferred to the Flagstaff Regional Office as Condor Project Coordinator in 1997. Since fall 2000, he has been directing the condor project's field effort for The Peregrine Fund, continuing his passion for effectively conveying products of scientific inquiry to target audiences in an effort to recover a species. In 2012, Chris returned to Northern Arizona University in pursuit of a Ph.D. in the Earth Sciences and Environmental Sustainability Program. Parish and his wife Ellen, have two daughters, Emma and Anna. They can sometimes be found together exploring the wilds of the four corners region while tracking condors, hunting, fishing or hiking.

Mike Phillips has served as the executive director of the Turner Endangered Species Fund and coordinator of the Turner Biodiversity Divisions since he co-founded both with Ted Turner in June 1997. Phillips received his M.Sc. in Wildlife Ecology from the University of Alaska (Fairbanks) in 1986 and his B.Sc., Ecology, Ethology, Evolution from the University of Illinois (Champaign) in 1980. Prior to that, Phillips had worked for the U.S. Fish and Wildlife Service and National Park Service since 1981. During his employment with the federal government Phillips served as the leader of historic efforts to restore red wolves to the southeastern U.S. and gray wolves to the Yellowstone National Park. He also conducted important research on the impacts of oil and gas development on grizzly bears in the Arctic National Wildlife Refuge, predation costs for gray wolves in Alaska, black bear movements in northeastern North Carolina, and dingo ecology in Australia. Throughout his career as a conservation biologist Mike has focused on the recovery of imperiled species, integration of private land in conservation efforts, and socio-political aspects of natural resource use and management. In 2013 Dr. E. O. Wilson nominated Mike for the prestigious 2014 Indianapolis Prize. Mike has authored hundreds of project reports and over 65 publications including peer-reviewed technical articles, book chapters, conference proceedings, government reports, popular articles, and one book. Mike is an accomplished speaker and has delivered over 200 public presentations for conservation organizations and professional conferences, including several invited plenary, keynote, and banquet presentations.

The Coveting of Federal Public Land in the 21st Century

TRANSFER OF FEDERAL PUBLIC LANDS IN NEW MEXICO

The Enabling Act for Statehood (1910)
The New Mexico Constitution (1911)
The Coveting of Federal Public Lands (2013 and beyond)

ENABLING ACT FOR NEW MEXICO

Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310

Sec. 2

And said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said state:

"that the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof".

The "disclaimer" clause

The next clause of Section 2:

and to all land lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States.

The "extinction of title" clause

NM Constitution Article XXI: Compact with the United States

Section 2 Control of unappropriated or Indian lands; taxation of federal government, nonresident and Indian property.

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The Property Clause, Art. IV, Sec. 3, 2nd clause:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;"

A Summary of the Basis and Legal Theory of Public Lands Transfer Efforts in New Mexico

- Enabling acts are compacts, analogous to contracts between the United States and the individual states
- The Disclaimer Clause of each enabling act has two parts.
- "Forever disclaim all right and title" is only part of the equation.
- The clause "until the title shall have been extinguished" is interpreted as a mandate that title shall be extinguished by the United States and vested in the state.
- Creates a "duty to dispose" of federal public lands

Source: Public Lands and the Federal Government's Compact-Based Duty to "Dispose": A Case Study of Utah's H.B. 148 -- THE TRANSFER OF PUBLIC LANDS ACT" 2013 BYU LAW REVIEW 1133 (2013); Donald J. Kochan, Chapman University School of Law.

The Center for Self-Government in the West proposed the following in a presentation at UNM Law School in 2014.

"Forever Disclaim Right and Title To"

- Read as a whole, the plain language of the Enabling Act reflects
 - Not just a duty on the part of [the state] to give clean title to the federal government (i.e. "forever disclaim all right and title")
 - But also a duty on the part of the federal government to timely dispose of the public lands ("until the title thereto shall have been extinguished by the United States")
- **This is a contract: Western States have fulfilled their end. Federal Government has not.**

Source: PowerPoint presentation, Center for Self-Government in the West, June 2014.

Does the clause "until the title thereto shall have been extinguished by the United States" create a duty on the part of the US to convey public lands to the states?

Does the term "forever disclaim" really mean "forever"?

In New Mexico's Enabling Act, the extinction of title clause reads as follows:

"and that until the title of such Indian or Indian tribes shall have been extinguished"

- Different than the language in other Enabling Acts

The 9th Circuit decided that there is no agreement, compact or contract.

United States did not need the disclaimer clause to gain title to the public lands in Nevada. The United States already had title to those lands through the Treaty of Guadalupe Hidalgo, and the disclaimer clause was merely a recognition of the preexisting United States title, as opposed to a grant of title from Nevada to the United States.

Congress' power under the Property Clause to administer its own property is virtually unlimited. The United States retains title to the public lands within states such as Nevada not due to "any agreement or compact with the proposed new State," but rather "solely because the power of Congress extend[s] to the subject."

U.S. v. Gardner, 107 F.3d 1314, 1320 (CA-9 NV 1996)

The 9th Circuit cited long-standing Supreme Court precedent in support of its decision.

Coyle v. Thomas Smith, 221 U.S. 559, 574 (1911)

It may well happen that Congress should embrace in an enactment introducing a new state into the Union legislation intended as a regulation of commerce among the states, or with Indian tribes situated within the limits of such new state, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. **But in every such case such legislation would derive its force not from any agreement or compact with the proposed new state, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject,** and therefore would not operate to restrict the state's legislative power in respect of any matter which was **not plainly within the regulating power of Congress.**

- *In a single paragraph, the Supreme Court identified Congressional power to regulate interstate commerce, Indian tribes, and the public lands of the United States in addition to federal supremacy over state law unless "not plainly within the regulating power of Congress."*

Transfer proponents included the following language in the 2016 Republican Platform:

The federal government owns or controls over 640 million acres of land in the United States, most of which is in the West.

It is absurd to think that all that acreage must remain under the absentee ownership or management of official Washington. **Congress shall immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states.** We call upon all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole.

Source: "Republican Platform 2016" at page 21.
[https://prod-static-ngop-pbl-s3.amazonaws.com/media/documents/DRAFT_12_FINAL\[1\]-ben-1468872234.pdf](https://prod-static-ngop-pbl-s3.amazonaws.com/media/documents/DRAFT_12_FINAL[1]-ben-1468872234.pdf)

Compare "Republican Platform 2012" at page 18

New Mexico and the Effort To Transfer Federal Public Lands: Multiple Approaches

First Session of the 51st New Mexico Legislature -- 2013

HB292 Introduced by Rep. Yvette Herrell and Sen. Richard Martinez:
"The Transfer of Public Lands Act"

Defined the following as "not public lands" for the purpose of the act:

- Private lands
- National Monuments (designated as of January 1, 2013)
- Wilderness areas (designated as of January 1, 2013)
- Fort Bayard, Fort Bliss, Fort Wingate, VA Facility at Fort Bayard, Holloman AFB
- Federal property within a municipality
- Tribal lands

Source:

<https://www.legis.nm.gov/Legislation.nsf/00000000-0000-0000-0000-000000000000?OpenDocument>

New Mexico orders the United States to take action.

SECTION 4. TRANSFER OF PUBLIC LANDS

A. On or before December 31, 2015, the United States shall

- (1) extinguish title to public lands; and
- (2) transfer title to public lands to the state

HB 292 also contemplated the sale of the transferred lands and division of proceeds.

B. If the state transfers title to any public lands with respect to which the state receives title under Paragraph (2) of Subsection A of this section, the state shall:

(1) retain five percent of the net proceeds the state receives from the transfer of title; and

(2) pay ninety-five percent of the net proceeds the state receives from the transfer of title to the United States.

Amounts retained by the state under B(1) are to be deposited into the permanent school fund.

SECTION 5. PUBLIC LANDS TRANSFER TASK FORCE.

Created a 16-member task force:

Who's on the task force?

- 4 members of the NM Legislature (2 House, 2 Senate; majority party appointments)
- 9 appointees to executive branch agencies
- Commissioner of Public Lands
- president of land grant council
- executive director of New Mexico Association of Counties

Co-chairs of the task force:

- Commissioner of Public Lands
- Secretary of Energy, Minerals, Natural Resources

Sunset: The public lands transfer task force is terminated on July 1, 2016.

Public Lands Task Force -- Duties

- Draft legislation creating a Public Lands Commission
 - No guidelines for membership on the PLC.
- Draft legislation establishing actions that shall be taken "to preserve and protect the state's rights"
 - "related to the United States' duty to have extinguished title to public lands"
 - Note: The bill treated as fact the argument that the U.S. had a duty to extinguish title to public lands.
- Draft legislation to administer the process
 - United States extinguishing title to public lands
 - State to receive title for the public lands
- Draft legislation to modify the TPL Act
- Draft legislation making a determination or a process for determining rights or uses related to easements, geothermal resources, grazing, land grants, mining, natural gas, oil, recreation, rights of entry, special uses, timber, water, or other resources (natural or not).

Tasks for the Public Lands Commission:

- Administer transfer of title to public lands
- Address the management of:
 - public lands
 - multiple uses of public lands
 - sustainable yield of natural resources on public lands
 - open spaces on public lands
 - access to public lands

House Agriculture and Water Resources Committee reported HB 292 "without recommendation" to House Health, Government and Indian Affairs Committee

Second Session of the 51st New Mexico Legislature -- 2014

HB 102

Introduced by Rep. Yvette Herrell

Proposed the creation of a "Transfer of Public Lands Task Force"

Sunset provision: Sections 1 (Task Force) and 2 (Land Grants) of the act are repealed effective July 1, 2017

Different approach compared to 2013:

- No demand that the United States extinguish title to public lands
- Did not impose a deadline for transfer of federal public lands
- Did not assume the existence of a duty on the part of the U.S. to transfer

Task Force Composition

- (1) four members of the legislature, one appointed by the speaker of the house of representatives, one appointed by the minority floor leader of the house of representatives, one appointed by the president pro tempore of the senate and one appointed by the minority floor leader of the senate;
- (2) the commissioner of public lands or the commissioner's designee;
- (3) the secretary of Indian affairs or the secretary's designee; and
- (4) three members appointed by the governor.

Changes from 2013 bill

- Fewer members on the commission
- Majority and minority appointments from legislative branch
- Reduced presence of executive branch department secretaries
- Staffing provided by Legislative Council Service and State Land Office

The work of the task force – subsection G

During the 2014 and 2015 interims, the task force shall study and determine whether to prepare proposed legislation to be introduced in the second session of the fifty-second legislature in 2016 regarding:

- Transfer federal lands to the state
 - Task Force to propose HB 292 (2013)?
- Transfer state and federal lands to Indian nation, tribes, pueblos
- Transfer of state and federal lands to state's land grants
- Possible land exchanges between the state and the federal government

Questions:

What laws are already in place governing these exchanges/transfers?
How do "land exchanges" differ from "extinction of title" transfers?

For Fiscal Impact Report on HB 102, go to:

<https://www.milehighgov/Sessions/14-Regular/hrs/HB102.PDF>

Action postponed indefinitely after committee assignment.

First Session of the 52nd New Mexico Legislature -- 2015

HB 291 Introduced by Rep. Yvette Herrell

- Proposed a 17-member New Mexico Federal Land Management Study Commission
 - The commission shall function from the date of its appointment until December 31, 2016.
- \$100,000 appropriation
 - FIR for HB 102 (2014) estimated a minimum of \$100,000 for one FTE
 - Also, FIR estimated more money would be needed.
- Promoted as a bill to study transfers of multiple types of lands to and from various entities
 - No demand or deadline for the federal government to extinguish title
 - Did not assume a duty on the part of the U.S. to transfer

Introduced after the 2014 election cycle with a new Republican majority in the House

- House committees were renamed, reorganized, with expanded jurisdictions
- HB 291 assigned to House Government, Election, and Indian Affairs Comm.
- Withdrawn
- Reassigned to House Agriculture, Water, and Wildlife Comm.
- Received "Do Pass as amended"-- 9 yes, 1 no
 - Amendment: \$100,000 appropriation removed from bill
- First transfer bill to receive "Do Pass" from House Committee.
- House Judiciary Committee action postponed indefinitely

Composition of the Federal Land Management Study Commission

(1) four members of the legislature, two from the house of representatives, appointed by the speaker of the house of representatives, and two from the senate, appointed by the committees' committee, or if the appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee;

- Majority party control of appointments from each legislative chamber

(2) Commissioner of Public Lands;

(3) - (9): heads of executive branch agencies;

(10): president of the Land Grant Council;

(11): executive director of New Mexico Association of Counties;

(12): Three members of the public appointed by the governor, no more than two from same political party.

Commission shall meet regularly and study

- Options for the transfer of federal lands to the states
 - HB 292 (2013)?
- Options for the transfer of state and federal lands to the Indian nations, tribes, and pueblos
- Options for the transfer of state and federal lands to the state's land grants
- Possible land exchanges between the state and the federal government

Questions:

- If legal mechanisms for transfer already in place, what study is needed?
- Specific land exchanges - if warranted - would need to be discussed
- How do "land exchanges" differ from "extinction of title" transfers?

Once transferred, who manages New Mexico public land?

The commissioner of public lands shall select, locate, classify and **have the direction, control, care and disposition of all public lands**, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law

NM Const. XIII.2 Duties of land commissioner.

For an extensive discussion of the powers, duties, and limits on the State Land Commissioner's authority to dispose of State Trust Lands: State ex rel King vs. Lyons, 2011-NMISC-004. Also, the case contains a detailed analysis and historical perspective of the Enabling Act for New Mexico

The official policy of the New Mexico State Land Office regarding State Trust Lands

STATE TRUST LANDS ARE OFTEN MISUNDERSTOOD IN TERMS OF BOTH THEIR CHARACTER AND THEIR MANAGEMENT. THEY ARE NOT PUBLIC LANDS, BUT ARE INSTEAD THE SUBJECT OF A PUBLIC TRUST CREATED TO SUPPORT THE EDUCATION OF NEW MEXICO'S CHILDREN.

Source: New Mexico State Land Office web site home page
<http://www.nmstatelands.org>

FURTHER READING AND RESOURCES

Keifer, RB and Ruple, JC: "The Transfer of Public Lands Movement: Taking the 'Public' Out of Public Lands," University of Utah S.J. Quinney College of Law, Wallace Stegner Center for Land Resources, and the Environment, Stegner Center White Paper No. 2015-1
Electronic copy available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2555922

Keifer, RB and Ruple, JC: "A Legal Analysis of the Transfer of Public Lands Movement," University of Utah S.J. Quinney College of Law, Wallace Stegner Center for Land Resources, and the Environment, Stegner Center White Paper No. 2014-2
Electronic copy available at: <http://ssrn.com/abstract=2516004>

U.S. v. Gardner, 107 F.3d 1314 (9th Cir. 1996), Thorough discussion of legal basis of United States' title to Nevada public lands beginning with the Treaty of Guadalupe-Hidalgo in 1848

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Transfer of Federal Public Lands in New Mexico

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It is absurd to think that all that acreage must remain under the absentee ownership or management of official Washington. **Congress shall immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states.** We call upon all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole.

Source: "Republican Platform 2016" at page 21.

[https://prod-static-ngop-pbl.s3.amazonaws.com/media/documents/DRAFT_12_FINAL\[1\]-ben_1468872234.pdf](https://prod-static-ngop-pbl.s3.amazonaws.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf)

Compare, "Republican Platform 2012" at page 18.

**New Mexico and the Effort
To Transfer Federal Public Lands:
Multiple Approaches**

First Session of the 51st New Mexico Legislature -- 2013

HB292 Introduced by Rep. Yvette Herrell and Sen. Richard Martinez
“The Transfer of Public Lands Act”

Defined the following as “not public lands” for the purpose of the act:

- Private lands
- National Monuments (designated as of January 1, 2013)
- Wilderness areas (designated as of January 1, 2013)
- Fort Bayard, Fort Bliss, Fort Wingate, VA Facility at Fort Bayard, Holloman AFB
- Federal property within a municipality
- Tribal lands

Source:

<https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=292&year=13>

New Mexico orders the United States to take action.

SECTION 4. TRANSFER OF PUBLIC LANDS.

- A. On or before December 31, 2015, **the United States** shall:
- (1) extinguish title to public lands; and
 - (2) transfer title to public lands to the state.

HB 292 also contemplated the sale of the transferred lands and division of proceeds.

B. If the state transfers title to any public lands with respect to which the state receives title under Paragraph (2) of Subsection A of this section, the state shall:

(1) **retain five percent of the net proceeds** the state receives from the transfer of title; and

(2) **pay ninety-five percent of the net proceeds** the state receives from the transfer of title to the United States.

Amounts retained by the state under B(1) are to be deposited into the permanent school fund.

SECTION 5. PUBLIC LANDS TRANSFER TASK FORCE

Created a 16-member task force

Who's on the task force?

- 4 members of the NM Legislature (2 House, 2 Senate; majority party appointments)
- 9 appointees to executive branch agencies
- Commissioner of Public Lands
- president of land grant council
- executive director of New Mexico Association of Counties

Co-chairs of the task force

Commissioner of Public Lands

Secretary of Energy, Minerals, Natural Resources

Sunset: The public lands transfer task force is terminated on July 1, 2016.

Public Lands Task Force -- Duties

- Draft legislation creating a Public Lands Commission
 - No guidelines for membership on the PLC.
- Draft legislation establishing actions that shall be taken “to preserve and protect the state’s rights” . . . “related to the **United States’ duty to have extinguished title to public lands**”
 - Note: The bill treated as fact the argument that the U.S. had a duty to extinguish title to public lands.
- Draft legislation to administer the process
 - United States extinguishing title to public lands
 - State to receive title for the public lands
- Draft legislation to modify the TPL Act
- Draft legislation making a determination or a process for determining rights or uses related to easements, geothermal resources, grazing, land grants, mining, natural gas, oil, recreation, rights of entry, special uses, timber, water, or other resources (natural or not).

Tasks for the Public Lands Commission:

- Administer transfer of title to public lands
- Address the management of:
 - public lands
 - multiple uses of public lands
 - sustainable yield of natural resources on public lands
 - open spaces on public lands
 - access to public lands

House Agriculture and Water Resources Committee reported HB 292 "without recommendation" to House Health, Government and Indian Affairs Committee.

Second Session of the 51st New Mexico Legislature -- 2014

HB 102

Introduced by Rep. Yvette Herrell

Proposed the creation of a “Transfer of Public Lands Task Force”

Sunset provision: Sections 1 (Task Force) and 2 (Land Grants) of the act are repealed effective July 1, 2017.

Different approach compared to 2013:

- No demand that the United States extinguish title to public lands
- Did not impose a deadline for transfer of federal public lands.
- Did not assume the existence of a duty on the part of the U.S. to transfer.

Task Force Composition

- (1) four members of the legislature, one appointed by the speaker of the house of representatives, one appointed by the minority floor leader of the house of representatives, one appointed by the president pro tempore of the senate and one appointed by the minority floor leader of the senate;
- (2) the commissioner of public lands or the commissioner's designee;
- (3) the secretary of Indian affairs or the secretary's designee; and
- (4) three members appointed by the governor.

Changes from 2013 bill

- Fewer members on the commission
- Majority and minority appointments from legislative branch
- Reduced presence of executive branch department secretaries
- Staffing provided by Legislative Council Service and State Land Office.

The work of the task force – subsection G

During the 2014 and 2015 interims, the task force shall study and determine whether to prepare proposed legislation to be introduced in the second session of the fifty-second legislature in 2016 regarding:

- Transfer federal lands to the state
 - Task Force to propose HB 292 (2013)?
- Transfer state and federal lands to Indian nation, tribes, pueblos
- Transfer of state and federal lands to state's land grants
- Possible land exchanges between the state and the federal government

Questions:

What laws are already in place governing these exchanges/transfers?

How do “land exchanges” differ from “extinction of title” transfers?

For Fiscal Impact Report on HB 102, go to:
<https://www.nmlegis.gov/Sessions/14 Regular/firs/HB0102.PDF>

Action postponed indefinitely after committee assignment.

First Session of the 52nd New Mexico Legislature -- 2015

HB 291 Introduced by Rep. Yvette Herrell

- Proposed a 17-member New Mexico Federal Land Management Study Commission
 - The commission shall function from the date of its appointment until December 31, 2016.
- \$100,000 appropriation
 - FIR for HB 102 (2014) estimated a minimum of \$100,000 for one FTE.
 - Also, FIR estimated more money would be needed.
- Promoted as a bill to study transfers of multiple types of lands to and from various entities
 - No demand or deadline for the federal government to extinguish title.
 - Did not assume a duty on the part of the U.S. to transfer.

Introduced after the 2014 election cycle with a new Republican majority in the House.

- House committees were renamed, reorganized, with expanded jurisdictions.
- HB 291 assigned to House Government, Election, and Indian Affairs Comm.
- Withdrawn
- Reassigned to House Agriculture, Water, and Wildlife Comm.
- Received “Do Pass as amended” -- 9 yes, 1 no.
 - Amendment: \$100,000 appropriation removed from bill
- First transfer bill to receive “Do Pass” from House Committee.
- House Judiciary Committee: action postponed indefinitely

Composition of the Federal Land Management Study Commission

- (1) four members of the legislature, two from the house of representatives, appointed by the speaker of the house of representatives, and two from the senate, appointed by the committees' committee, or if the appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee;
 - Majority party control of appointments from each legislative chamber.
- (2) Commissioner of Public Lands;
- (3) – (9): heads of executive branch agencies;
- (10): president of the Land Grant Council;
- (11): executive director of New Mexico Association of Counties;
- (12): Three members of the public appointed by the governor, no more than two from same political party.

Commission shall meet regularly and study

- Options for the transfer of federal lands to the states
 - HB 292 (2013)?
- Options for the transfer of state and federal lands to the Indian nations, tribes, and pueblos
- Options for the transfer of state and federal lands to the state's land grants
- Possible land exchanges between the state and the federal government

Questions:

- If legal mechanisms for transfer already in place, what study is needed?
- Specific land exchanges – if warranted -- would need to be discussed.
- How do “land exchanges” differ from “extinction of title” transfers?

Once transferred, who manages New Mexico public land?

The commissioner of public lands shall select, locate, classify and **have the direction, control, care and disposition of all public lands**, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law.

NM Const. XIII.2 Duties of land commissioner.

For an extensive discussion of the powers, duties, and limits on the State Land Commissioner's authority to dispose of State Trust Lands: State ex rel King vs. Lyons, 2011-NMSC-004. Also, the case contains a detailed analysis and historical perspective of the Enabling Act for New Mexico.

The official policy of the New Mexico State Land Office regarding State Trust Lands.

HOME AFFILIATED WEBSITES EMPLOYEE ACCESS JOB OPENINGS NEW MEXICO SUNSHINE PORTAL EMPLOYEE LOOKUP GET EMAIL UPDATES

STATE TRUST LANDS ARE OFTEN MISUNDERSTOOD IN TERMS OF BOTH THEIR CHARACTER AND THEIR MANAGEMENT. THEY ARE NOT PUBLIC LANDS, BUT ARE INSTEAD THE SUBJECT OF A PUBLIC TRUST CREATED TO SUPPORT THE EDUCATION OF NEW MEXICO'S CHILDREN.

The New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe NM 87501 // P.O. Box 1148, Santa Fe, NM 87504 // 505-827-5760 // 505-827-5766 (Fax)

Source: New Mexico State Land Office web site home page
<http://www.nmstatelands.org>

FURTHER READING AND RESOURCES

Keiter, RB and Rupple, JC; “The Transfer of Public Lands Movement: Taking the ‘Public’ Out of Public Lands,” University of Utah S.J. Quinney College of Law; Wallace Stegner Center for Land, Resources, and the Environment; Stegner Center White Paper No. 2015-1.
Electronic copy available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2555922

Keiter, RB and Rupple, JC; “A Legal Analysis of the Transfer of Public Lands Movement,” University of Utah S. J. Quinney College of Law; Wallace Stegner Center for Land, Resources, and the Environment; Stegner Center White Paper No. 2014-2
Electronic copy available at: <http://ssrn.com/abstract=2516004>

U.S. v. Gardner, 107 F.3d 1314 (C.A. 9 NV 1996). Thorough discussion of legal basis of United States’ title to Nevada public lands beginning with the Treaty of Guadalupe-Hidalgo in 1848.

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Public Land Grab Efforts: Recent Federal and State Legislation and Its Impact on Wildlife

Public Land Grab Efforts:
Recent State and Federal
Legislation and Its Impact on
Wildlife

"This movement is well organized. It's well funded.
And it's serious as a snakebite." -- Paul-er Lyle

New Mexico State Fair - Animal Fair Section
September 9, 2016
Ruth Musgrave, NCEU Conservation and Climate Advisor
Rmusgrave@nmsu.edu

Federal Lands in the U.S.

U.S. Fish and Wildlife Service
National Park Service
Bureau of Land Management
Forest Service
Department of Defense

Who Manages Federal Public Lands?
Five Main Agencies

Department of Agriculture -

- Forest Service (FS)

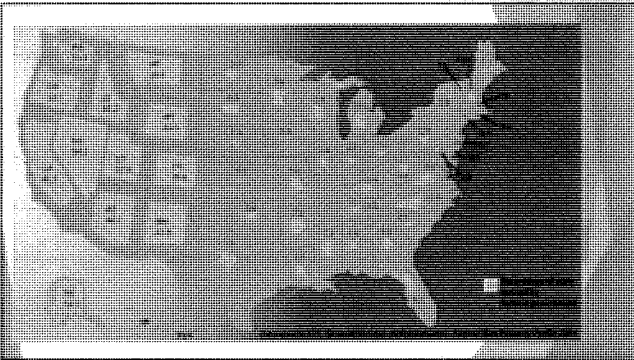
Department of the Interior -

- Bureau of Land Management (BLM)
- National Park Service (NPS)
- U.S. Fish and Wildlife Service (FWS)

Department of Defense (DOD)

What are Our Public Lands?

- ▶ National Forests - 154 total
- ▶ BLM Lands - with National Conservation Areas, Wilderness Study Areas
- ▶ National Wildlife Refuges - over 560 - 47 m visits each year
- ▶ National Parks (28 different kinds of designations, all considered National Parks - the National Monuments, Memorials, Historic Sites, etc.) In 1909, the National Park System was defined in law as, "any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational or other purposes."
- ▶ National Monuments - 120 total - Antiquities Act (NPS, FS, FWS or BLM)
- ▶ Wilderness Areas - 680 managed by NPS, BLM, FS or FWS
- ▶ National Recreation Areas - 12 total - managed by NPS or BLM
- ▶ Wild and Scenic Rivers - more than 200 total
- ▶ National Seashores/Lakeshores - 10 total
- ▶ National Trails - Scenic, Historic, and Recreation



Wildlife on Public Lands

- ▶ Public lands are often the last best habitat for wildlife displaced by habitat loss and mismanagement
- ▶ Wildlife faces threats from development of natural habitat and loss of migration corridors, loss of water sources and water quality, climate change, invasive species, and wildfires

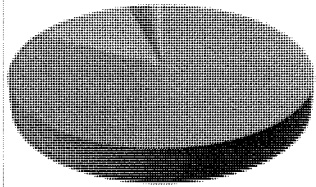
BLM Lands - 258 m acres mostly in 11 western states & Alaska

- ▶ More than 3,000 species of fish and wildlife, including sage-grouse, desert tortoise, Sonoran pronghorn, northern spotted owl, Pacific salmon and steelhead, grizzly bear, caribou, bald and golden eagles
- ▶ Hundreds of species are at risk, including 245 plants and animals listed as threatened or endangered under the Endangered Species Act
- ▶ Most BLM lands are managed for multiple uses on behalf of the American public, including energy development, grazing, mining, recreation and wildlife conservation

Defenders of Wildlife www.defenders.org

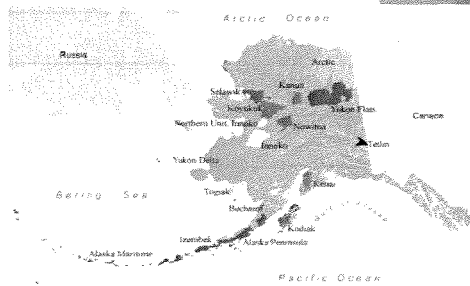
Where is the Wildlife: Sage Grouse

Land Ownership in Greater Sage-Grouse Occupied Range

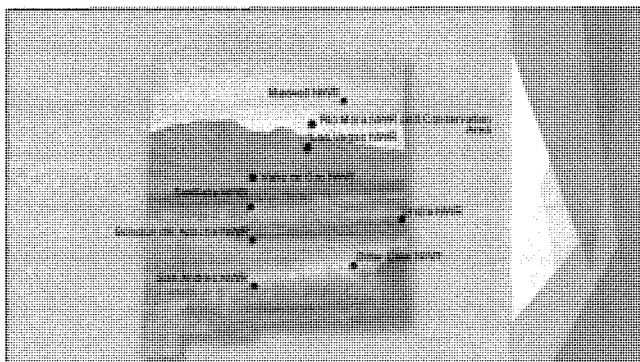


APR 2015 BY: JESSICA W. HARRIS, M.S.

Where is the Wildlife: National Wildlife Refuges



U.S. NATION, 2015



What is the Public Lands Takeover Movement?

- ▶ **The Movement:** In states and in Congress, legislation is being proposed and passed to move federal public lands into state ownership. The effort is gaining momentum.
 - ▶ Past and current efforts include: AK, AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY
 - ▶ Eastern state bills: AR, NH, TN, VA
 - ▶ Congress: many riders and bills moving forward
- ▶ **It's Unpopular:** Polls show that citizens by a wide margin oppose such transfers.
- ▶ **The Land Belongs to American Citizens:** America's lands are not the states' to "take back." Federal lands belong to, and are paid for by, all the people of America.
- ▶ **It's Expensive:** Public land transfers would have massive long term economic, environmental, employment, and quality of life impacts
- ▶ **It's Unconstitutional:** State laws demanding "return" of federal public lands to the state are unconstitutional on both the federal and state levels.

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Who is Behind Public Land Grab Efforts?

- ▶ **American Legislative Exchange Council:** Pushing and financially supporting state legislator efforts to demand that the federal government give ownership or control of federal lands to the states.
 - ▶ ALEC's 2014 Resolution Demanding that Congress Convey Title of Federal Public Lands to the States
- ▶ **Utah Rep. Ken Ivory:**
 - ▶ Founded American Lands Council (ALC) nonprofit. Sole purpose to promote state takeovers.
 - ▶ Pushed state laws in 2012 demanding return of federal lands to Utah, using ALEC's Disposal and Taxation of Public Lands Act model law.
 - ▶ Awarded ALEC's "Legislator of the Year Award" in 2014.
- ▶ **Congress:** powerful members of Congress such as Sens. Cruz, Murkowski, Inhofe are already pushing bills forcing federal land sell-offs or "give-backs"
- ▶ **RNC 2016 Platform, also 2014:** Resolution in Support of Western States Taking Back Public Lands

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Why Transfer Public Lands?

Exploit Resources?

- ▶ Private industry such as Koch Brothers want to exploit public lands
- ▶ Utah 2014 economic report states that a federal lands transfer would be profitable only if:
 - ▶ State assumes "an aggressive approach to managing its mineral lease program;"
 - ▶ Oil and gas prices remain high and stable; and
 - ▶ State oil and gas royalty revenue share rises from 50% to 100% (loss to American taxpayers of over \$100 m/yr.)
- ▶ "Western state trust lands traditionally have been managed for natural resource extraction — including timber, oil and gas." — Lincoln Institute of Land Policy

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State Trust Lands: Duty of Maximum Return

- The state owes a duty of undivided loyalty and good faith to the trust beneficiaries, and lands must be administered in the interest of those beneficiaries.
- The state has a duty to obtain a maximum return to the trust estate from the trust property under its control, subject to its duty to preserve the trust estate and cannot use the trust property to convey special benefits to third parties at the expense of the trust.
- The state must balance its duty to protect the corpus of the trust in a manner that bears a reasonable relationship to the risk of loss.
 - update: www.westernstates.org
- Federal lands operate under comprehensive laws that provide for the conservation and/or protection of wildlife - state lands do not

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Why Transfer Public Lands? cont.

Sell? Many cite strong evidence that "transferring" public lands is code for ultimate sale to private interests for industry development.

- Land trusts granted to states by the federal government historically have been quickly sold off, especially 1776-1891.
- "NY has sold the vast majority of state trust lands and the remainder is used solely to generate revenue." Barkcountry Hunters & Anglers report
- GOP 2014 Resolution asks Congress to "reconsider whether parts of the federal government's enormous landholdings...could be better used for ranching, mining, or forestry through private ownership."

Bills and budget plans have been also introduced in Congress that explicitly seek to privatize significant amounts of federal land: [update]

- Disposal of Excess Federal Lands Act (HR 435) to sell "excess" public lands
- House Budget Committee's 2015 resolution "...selling unneeded acreage in the open market."
- Amendment from Sen. Ted Cruz (R-TX) to require in states with >50% federal lands, to transfer "excess" lands to states or sell them off at auction.

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Western States Have Sold One-Third of State-Grant Lands

- New Mexico** received a federal land grant of 13.5 million acres when it became a state, and it has 9 million left. It has sold one-third of its state-grant lands to private interests.
- Arizona** received 10.5 million acres and has 9.3 million left. It has sold 11.4% of its state-grant lands to private interests.
- Utah** received 6 million acres and has 3.4 million acres left. It has sold 43% of state-grant lands to private interests.
- Montana** received 5.7 million acres and has 5.2 million left. It charges fees for all recreation on state-grant lands.
- Colorado** received 4.6 million acres and has 3 million acres left: a 37.5% sell-off.
- Idaho** received 3.7 million acres and has 2.4 million acres left: a 35% sell-off.
- Oregon** received 3.5 million acres and has 1.6 million acres left: a 54% sell-off.
- Nevada** traded its 3 million-acre federal grant for the right to handpick 2.1 million acres of its most productive lands. It has since sold almost 2 million of those acres: a 93% sell-off. source: R. Newburg, RMEF

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Economic Impacts of Public Lands: Department of Interior

- Lands managed by the Department of Interior contributed **\$360 billion** to the U.S. economy in 2014, supporting **2 million jobs**
- DOI lands hosted about **423 million recreation visits** in 2014
- Visits alone contributed \$42 billion and supported about 375,000 jobs
- **New Mexico**: over 4,200 recreation jobs in 2015
- **Utah**: 17.5 million recreational visits to DOI lands, \$7 billion spent
- **Nevada**: 14 million rec. visits, supporting nearly 28,000 jobs

Source: U.S. Department of the Interior 2014 Fiscal Economic Report

Headwaters Economics | 2015-2016

Economic Impacts: National Parks

Federal lands including National Parks provide a large source of income for states, municipalities and businesses

- **Direct Jobs**: The National Park Service employs over 21,000 people and oversees 221,000 volunteers who contribute about 6.4 million hours of service. Source: National Parks Conservation Association
- **Indirect Jobs**: National Parks are economic engines for local communities, supporting **252,000 jobs**. Source: U.S. Department of the Interior
- **Recreational Spending**: Park visitors spent **\$12.95 billion** in local gateway regions: 48% spending on lodging and meals; 21.4% on gas and local transportation; 9.7% on recreation and entertainment; 8.1% on groceries; 12.7% on other retail purchases. Source: National Park Service

Headwaters Economics | 2015-2016

Income & Growth Higher Near Protected Federal Lands

- Western non-metropolitan counties with +30% federally protected land such as national parks, monuments and wilderness **increased jobs by 345%** over the last 40 years.
- Similar counties with no protected public lands increased employment by 83%.
- Per capita income in western counties with 100,000 acres of protected public lands averaged **\$4,360 higher** in 2010 than in similar counties with no protected public lands.
- Western job growth was almost entirely in services industries - health care, real estate, high-tech, finance and insurance - with 19.3 million net new jobs. Many service industries choose to be near public lands.
- **Quality of life** near protected federal lands is considered higher, as are **property values**.

Source: Headwaters Economics report

Headwaters Economics | 2015-2016

Retirees: A Growing Economic Force in the West

- "Proximity to protected public lands is a factor in retirees' decisions of where to move and which communities will benefit from these new residents."
- Americans +55 have twice the average net migration rate to Western counties with more protected federal land (1970-2010)
- Federal protected lands attract retirees, who bring retirement income, investment income, retail and health sector boosts
- Greatest migration near public lands is ages 55-64, who are more likely to be active and involved in outdoor recreation

Headwaters Economics

www.headwaters.org

Sleeping Giant: Outdoor Recreation Industry Jobs



www.outdoorindustry.org/advocacy/trade/jobs

Economic Impacts of Outdoor Recreation: State Examples

- **New Mexico Outdoor Recreation Generates:**
 - \$6.1 BILLION in consumer spending
 - 68,000 direct New Mexico jobs
 - \$1.7 BILLION in wages and salaries
 - \$458 MILLION in state and local tax revenue
- **Colorado:**
 - \$13.2 BILLION in consumer spending
 - 125,000 direct jobs
 - \$4.2 BILLION in wages and salaries
 - \$994 MILLION in state and local tax revenue
- **Montana:**
 - \$5.8 BILLION in consumer spending
 - 64,000 direct jobs
 - \$1.5 BILLION in wages and salaries
 - \$403 MILLION in state and local tax revenue

www.outdoorindustry.org

Potential Economic Impacts of State Takeovers: Costs + Losses

State management of Federal lands could be prohibitively costly:

- States would lose tens of millions/yr in "Payments in Lieu of Taxes" for federal lands
- UT report: "Immediate impact... would be the loss of approx. \$149.8 m in federal payroll," and loss in "contribution to UT's gross state product [of] almost \$200 m"
- ID independent economic study: Efforts to transfer public lands would cost ID more than \$2 billion over 20 years. Conservation Economics Institute
- AZ Gov. Brewer's public lands bill veto: the cost to AZ of owning federal lands would be at least \$1 m/acre/year
- To ensure states' ability to fund conservation programs needed for these lands, there would need to be a massive increase in state funding
 - Ex.: "Significantly increase funding for the LeRoy McAllister Critical Land Conservation Fund to provide resources for State-led conservation efforts to protect agricultural lands, wildlife habitat, watershed protection, and other culturally or historically unique landscapes." UT Public Lands Policy Coordination Office

www.legis.utah.gov

Economic Pressures of Maintaining Public Lands: Fire

The Federal Government spends billions maintaining federal lands:
Ex. \$200-300 million per year on UT federal lands counting wildfire costs
The Federal government spends \$3.5 billion per year just on wildfires:

Figure 2 - Total Wildfire Expenditure in USFS and DWR FY2013

Wildfire Expenditure	Fire Suppression	Fire Prevention	Wildfire Detection	Other
BLM \$Billion	\$1.8 \$Billion	\$1.2 \$Billion	\$402.4 Million	\$145.4 Million

For some states, fire suppression alone outspends state law enforcement:

Figure 4 - Federal Fire Suppression Cost FY2001 and FY2012

State	FY21 (2001) Suppression Expenditure	FY22 (2012) Suppression Expenditure	FY22 State Law Enforcement Expenditure for Law Enforcement
ARIZONA	\$ 170 million	\$ 66 million	\$ 201 million
COLORADO	\$ 27 million	\$ 20 million	\$ 190 million
IDAHO	\$ 45 million	\$ 100 million	\$ 140 million
MONTANA	\$ 40 million	\$ 100 million	\$ 40 million
NEVADA	\$ 17 million	\$ 55 million	\$ 65 million
NEW MEXICO	\$ 160 million	\$ 360 million	\$ 100 million
UTAH	\$ 140 million	\$ 340 million	\$ 140 million
WYOMING	\$ 30 million	\$ 100 million	\$ 40 million

Economic Impact of Takeovers: Ranching

- AZ Gov. Brewer's veto of public lands bill: grazing fees would have to rise prohibitively
- Federal grazing rates: 2014 was \$1.35 per animal unit month (AUM) for BLM lands; \$1.35 per head month (HM) for Forest Service lands
 - 18,000 grazing permits and leases on BLM land
 - 8,000 permits on Forest Service land
- State grazing rates: NM charges \$3.21/AUM; MT charges \$11.41/AUM, plus competitive bidding
- Private grazing rates: \$20-30/AUM and higher
- "The fact is most Montana ranchers would be opposed to this transfer. Grazing rates on state land in Montana are about 10 times higher than those of the federal government and the difference will be taken right out of the pockets of hard-working Montana ranching families. That's a cold, hard fact." - Ryan Zinke, April 2014

www.statelegis.com

Economic Pressure of Maintaining State-Owned Lands: Parks

Even before considering federal land takeovers, many states cannot fund the upkeep of their current state parks. Parks have closed or had services and maintenance reduced.

- ▶ California: Three years ago the state almost had to close 70 state parks for lack of funding.
- ▶ Washington: State Parks' funding from General Fund fell 50% between 2008 and 2013.
- ▶ New York: In 2010 nearly all of the state's parks and historic sites were closed due to a budget shortfall. Many maintenance and conservation programs were disrupted.

If long term closures or service cutbacks go into effect, maintenance and conservation programs are disrupted, and gains made by conservation programs can be irreversibly set back.

THE PEOPLE'S LAND MOVEMENT

Environmental Impacts of Potential State Takeovers

- ▶ Most river and stream headwaters in the West are on public lands. Watersheds could be degraded or lost as sources of drinking water, agriculture, fish and wildlife, and commercial and private uses.
- ▶ Private industries gaining title or access through sale, lease or gift of public land, would degrade and foul the land, air, and water as federal lands are developed solely for corporate profit.
 - ▶ Industries such as oil and gas have already damaged federal lands, and will likely have little to no oversight on state or private lands.
 - Environment America
- ▶ ALEC pushed complete exploitation as early as 1995, and considers as a model Utah's language providing for opening public lands to drilling, mining, exploration and logging, even in National Parks.
- ▶ Only 21% of Western voters agree that "we can trust companies to act responsibly to protect your state's land, water and wildlife on their own, without laws and regulations that require them to do so."

THE PEOPLE'S LAND MOVEMENT

Legality of Public Land Transfers

State bills and laws such as Utah's that demand "return" of federal lands are **unconstitutional** on state and federal levels:

State Law: All Western states have provisions in their state Enabling Acts and/or Constitutions stating "That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof."

Federal Law: The U.S. Constitution Property Clause, Art. IV, Sec. 3, Clause 2 gives Congress authority to regulate and dispose of federal land. the U.S. Supreme Court has described Congress's power to legislate under this Clause as "without limitation."

THE PEOPLE'S LAND MOVEMENT

More Arguments for and Against Legality

- U.S. Constitution Supremacy Clause, Article VI: The Constitution and federal statutes are supreme over state law...anything in the constitution or the laws of any state to the contrary notwithstanding
 - Preemption by comprehensive land management federal laws such as Federal Land Policy Management Act (FLPMA) and National Forest Management Act (NFMA)

But....

- "Coordination" movement? FLPMA and NFMA contain clauses directing BLM to "coordinate the land use inventory, planning, and management activities" with states, local governments and tribes as well as with their own management programs to "provide for meaningful public involvement" when developing rules and plans.
- Tenth Amendment to U.S. Constitution - Powers not delegated to the U.S. by the Constitution are reserved to the states
- U.S. Constitution Enclave Clause - Article I, Sec. 8, Clause 17

See www.blm.gov

Legality of Land Grabs per Ammon Bundy

"The federal government does not have authority to come down into the states and to control its land and resources. That is for the people to do, and that is clearly stated in Article 1, (Section) 8, (Clause) 17 of the Constitution."

The Enclave Clause grants the federal government:

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings..."

- The Supreme Court has consistently interpreted the Enclave Clause not as curtailing federal control of public land, but protecting it.
- "The clause essentially makes (a particular federally owned) land area an enclave, by giving it a different set of rules for jurisdiction." - Deb Donahue, professor of public lands law at the University of Wyoming. When it comes to the West, Donahue says the reference to "needful buildings" has been extended to recreation areas and national parks. - High Country News, Feb. 2016

See www.blm.gov

Legality of Land Grabs per Legal Scholars

- Enclave Clause application in New Mexico:

- *Alison v. Boeing Laser Technical Servs.* 689 F.3d 1234 (10th Cir. Aug. 10, 2012) - NM State common law does not apply to a federal enclave such as military base
- *Romos v. C. Ortiz Corp.* CV No. 15-980 *MV/CG* (D.N.M.), May 20, 2016 - Removal to federal court in lawsuit based on allegations that state personal injury law applies on federal enclaves.

See www.blm.gov

Opposition to Public Land Takeovers

Hunting and fishing organizations oppose - concerns over wildlife habitat impacts and reduced access

- Backcountry Hunters and Anglers "100% against the transfer, or sale, of our federal public lands."
Our Public Lands. Not for Sale
- National Wildlife Federation and its state affiliates: "For decades we have consistently opposed the liquidation, disposal, or transfer of our federal public lands."
- Rocky Mountain Elk Foundation "is concerned about the continuing rhetoric and political posturing surrounding the wholesale disposal, sale or transfer of federal land holdings, and stands in opposition to such potential action."
- Field & Stream and Outdoor Life editorials opposing
- Virtually all sportsmen (98%) visited public lands last year

THE OUTDOOR VOICE OF THE WEST

Opposition to Land Transfers cont.

Outdoor Recreation, Businesses, Towns oppose - loss of revenue, stability, access

- Cities and counties such as Aspen CO, Jackson WY, Teton County WY
- Businesses for Montana Outdoors - 100 recreation companies
- Outdoor Alliance: "efforts in some Western states to transfer large portions of Federal public lands to State ownership will likely result in impediments to recreation access."

Veterans Groups oppose -

- Op ed: "Transferring our public lands is the same as auctioning off our freedom"
- Veterans Voice: "It is an insult to the men and women of the Armed Forces, "selling off our public lands is an unpatriotic act..."
- Huts for Vets
- Stacy Bare, ex-Marine: "This is what we fought for; this is our land."

THE OUTDOOR VOICE OF THE WEST

Public Opposes State Land Seizures: 2015 Polls

- 2015 polls of 3 Western states: Voters' **top priority** is protection and conservation of public lands, over economic gain.
- A majority of citizens are opposed to public land takeovers, as are sportsmen.
- Protecting public lands for **future generations** is a top priority in every Western state. Republicans, Democrats and Independents select it most often as the highest priority - true for all age groups and ethnic backgrounds.
- 68% Western voters feel that **public lands belong to all Americans**, not just to states.
- **Loss of habitat** for fish and wildlife is a serious concern for 69% of Western voters. 69% also support stronger BLM measures for sage grouse habitat.
- 79% of sportsmen say **access** to public lands for recreation is very important.
- 95% of citizens in the West visit public lands regularly.

THE OUTDOOR VOICE OF THE WEST

Types of Public Land Takeover Legislation in States

- ▶ Demands to federal government to turn over federal lands
- ▶ Studies/commissions/task forces on feasibility of taking over public lands
- ▶ Resolutions supporting takeover of public lands
- ▶ "Catastrophic fire" determination - takeover by county sheriff (ALEC bill)
- ▶ Increased state management, control of and/or income from federal lands
- ▶ Interstate compacts to support effort to take public lands
- OR PUBLIC LAND SUPPORT BILLS...
- ▶ Resolutions/memorials in support of public lands
- ▶ Resolutions against state takeovers
- ▶ Public Lands Days
- ▶ "Kids Outdoors" programs and funding

Leader of Public Lands Takeovers: Utah

- ▶ UT has about 30 m acres federal lands
- ▶ 2012: HB 148 passed Transfer of Public Lands Act (TPLA) - Demands federal government to transfer public lands to the state by 2015 or be sued
- ▶ TPLA's demand includes Grand Staircase-Escalante Nat'l Monument
 - ▶ Grand Staircase fossil fuels worth hundreds of billions
 - ▶ One of the major goals of the TPLA is to exploit this area
- ▶ UT would not be required to pay fair market value—or any value at all—for the transfer of public lands under the TPLA
 - ▶ UT would pay only if it later sells the lands, but is not required to sell
 - ▶ If sold, 95% net profit would go to the U.S. and 5% to state school fund
 - ▶ But if the state leased the land or its minerals, it would pay nothing

Utah

- ▶ 2013: HB 122 authorized a study and economic analysis of the transfer of public lands (taxpayer cost \$450,000)
- ▶ 2014: HB 151 created a "Commission for the Stewardship of Public Lands"
 - ▶ HB 164 authorized an "Interstate Compact on State Transfer of Public Lands" to coordinate political and legal challenges across states
- ▶ 2015: Numerous bills on public land control and seizure efforts
 - ▶ HB 132 - Adds financing provisions to Compact
 - ▶ HB 303 - Executive land exchanges must have legislative approval
 - ▶ SB 105 introduced - Requires AG to demand public land determination (tried to call their bluff)

Utah Public Lands Bills: 2016

- Commission for the Stewardship of Public Lands and Private Donations for Public Lands Litigation: HB 287
- Utah Public Land Management Act: HB 276
- Concurrent Resolution Approving the Test and Training Range Land Exchange: SCR 008
- Public Lands Wildfire Study: HB 464
- Constitutional Defense Restricted Account Amendments: HB 270
- Concurrent Resolution on Utah Public Lands: HCR 16 (died)

► All passed and were signed by the Governor except HCR 16

Source: Center for Western Priorities

Utah

- Litigation over the land demand could cost millions in taxpayer funds, with a "high probability of being declared unconstitutional." - *UT Legislative Research and General Counsel*
- "Why are huge tracks of Utah owned by the federal government? Many of these public lands could be - and should be - administered by the state. States should be allowed to sell these **defederalized** lands to private entities." - *U.S. Rep. Stewart (R-UT)*
- Utah's **Enabling Act** states: "That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof."
- The Utah Constitution "forever disclaims any interest in public lands within the state's boundaries." (Art. 3, Sec. 1, Second Clause)
- Utah Legislature approved \$14m funding to sue the federal government
- Utah AG Reyes plans to move forward with litigation: "When it comes to litigation, we have one shot." - Kochs help fund law firm

Source: Center for Western Priorities

2016: Not a Great Year for Land Grab Bills

Source: Jesse Prentice Dunn, Center for Western Priorities

Source: Center for Western Priorities

Montana

- ▶ 30 m acres federal lands
- ▶ Independent Study: Would cost Montana \$367 m to manage the federal lands - after factoring in potential revenue
- ▶ 2013: SJ 15 passed, required "Interim study on public land management" (final draft report issued for approval by the legislative committee in Sept. 2014)
- ▶ U.S. Sen. Tester and former Secretary of State Bob Brown signed the "Sportsmen's Creed," a pledge to protect public lands and access to them. They urged the public to do the same.
- ▶ 2015: No public lands bills passed, though 7 were introduced - 2 would have prohibited sale of federal land or future sales of land granted to state
 - ▶ HJR 19 was a resolution **against** efforts to take over federal lands

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Montana

- ▶ Sen. Jennifer Fielder requested several dozen bills on federal land takeover and management - 2015
- ▶ The MT GOP platform calls for takeover of federal lands: "We support the granting of federally managed public lands to the state, and development of a transition plan for the timely and orderly transfer."
- ▶ Montana's **Enabling Act** states: "That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof."

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Colorado

- ▶ 26 m acres national forests, parks and other federal lands
- ▶ 95% of Coloradans visited federal public lands in 2014
- ▶ 20% of CO state trust lands are open for hunting but generally no other recreation
- ▶ 2014: SB 14-091 would have required the federal government to transfer title to all agricultural lands to the state
- ▶ 2015:
 - ▶ Compromise bill **enacted** - Rep. KC Becker's HB 1225 - State resources earmarked for county and local governments to participate, through existing laws, in how local federal lands are managed
 - ▶ SB 15-039 would have established concurrent and taxing authority over federal lands
 - ▶ SB 15-232 would have created a commission to study land transfers

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Colorado

- ▶ "[i]t is time that the Western attorneys general join together and fought back against the federal government, and we took back that land."
- CO Attorney General *Coffman*
- ▶ "Shifting the burden for maintaining and protecting those lands to the state would be expensive and irresponsible. Transferring ownership of this land would threaten sportsmen's access, fire protection, and would shift millions of dollars of cost to state taxpayers."
- CO Governor *Hickenlooper*
- ▶ Colorado's Enabling Act states "that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying with in said Territory..."

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Arizona

- ▶ **2012:**
 - ▢ SB 1332 passed, demands Congress turn all public lands over to the state or it will begin taxing them in 2015. **Vetoed** by Gov. Jan Brewer, stated that it was unconstitutional and would cost the state more than it could afford.
 - ▢ Proposition 120 to turn public lands over to AZ - citizens defeated in November **2012** by a vote of 68% to 32%.
- ▶ **2014:** County Supervisors voted to "develop a comprehensive report on the options to transfer public lands to private hands instead of receiving Payment in Lieu of Taxes to the county."

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Arizona

- ▶ Proposition 122 passed **November 2014** - State can opt out of federal laws that voters or state legislature deem unconstitutional.
 - ▢ "...allowing the state to restrict the state and all local governments from using any personnel or financial resources to enforce, administer or cooperate with a federal action or program that is not consistent with the Constitution of the U.S." - AZ Sec'y of State *Bennett*
- ▶ **2015:**
 - ▢ HB 2658 "Federal Lands Transfer Study Committee" - signed by Governor
 - ▢ HB 2318 "Transfer of Public Lands Compact" - vetoed
 - ▢ HB 2176 "Federal Land Relinquishment, Payments" - vetoed
 - ▢ HCM 2005 "Federal Lands: Devolution to AZ" - urges Congress to dispose of lands
- ▶ **2016:** Four public lands bills died, including ALEC public nuisance bill

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Idaho

- ▶ 2013: HCR 21 passed - created "Federal Lands Interim Committee" to "study all aspects of the process of the state acquiring title to and control of public lands currently controlled by the Federal Government."
- ▶ HCR 22 passed - demands that the federal government turn public lands over to the state
- ▶ Independent study determined that ID would lose \$2 billion over next 70 years if it assumes liability and responsibility of managing federal lands
- ▶ 2015: Five public lands bills introduced
 - ↳ SCR 126 passed, requests funding increase for federal lands not included in a transfer
 - ↳ HB 265 to join UT's interstate compact was defeated

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Idaho

- ▶ 2016: Four public lands bills introduced, ALEC Catastrophic Public Nuisance Abatement bill, S 1338, passed and was signed into law
- ▶ Idaho has over 34 m acres federal land
- ▶ Lawrence Denney, strong advocate of land transfers is Secretary of State, which grants him a seat on the Idaho Land Board. The Board "continues to auction lands at popular recreation areas."
- ▶ "We cannot take back something that we never owned."
- ID Attorney General Warden
- ▶ Idaho's **Enabling Act** states: "And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof..."

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New Mexico

- ▶ About 1/3 of New Mexico is federal land
- ▶ 2013 bills that did not pass:
 - ↳ SB 404 and HB 292 to transfer public lands to the state
 - ↳ SM 93 to study the transfer of public lands
 - ↳ SJM 53 and 56 to study the transfer of public lands
- ▶ 2014 bills that did not get out of committee:
 - ↳ HB 102 to create a public lands transfer task force
 - ↳ SB 256 to study transfer of public lands
 - ↳ SM 47 to study transfer of public lands
- ▶ These bills would have cost state taxpayers \$75,000 to \$500,000

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New Mexico

- ▶ 2015: Three bills introduced to study federal land management, public lands revenues - none passed.
- ▶ 20 state and regional sportsmen's organizations sent a letter to the Governor and Legislature asking them to oppose any and all legislation that seeks to transfer federal public lands to the state - or to waste any state funds studying the idea.
- ▶ New Mexico's **Enabling Act** states: "That the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof."



WE WANT YOU!
Sportsmen's rally -
Keep our public lands
in public hands!
State Capitol, Santa Fe
2 p.m. Thursday, Jan. 29
(609) 676-2020 - www.nmwildlife.org

© 2015 New Mexico Sportsmen's Alliance

New Mexico State Land Office Web Site:

"STATE TRUST LANDS ARE OFTEN MISUNDERSTOOD IN TERMS OF BOTH THEIR CHARACTER AND THEIR MANAGEMENT. THEY ARE NOT PUBLIC LANDS..."

- ▶ NM Land Commissioner Dunn actively supports federal land transfers

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Nevada

- ▶ 2013: AB 227 "Nevada Land Management Task Force" passed
 - ▶ Unlike other "task forces," costs paid by the counties from which the 17 members were appointed
 - ▶ Final report from the task force issued August 2014
- ▶ 2015 session:
 - ▶ SJR1 Urges Congress to transfer title to public lands to the State in accordance with the report of the NV Land Management Task Force
 - ▶ SJR2 Urges Congress to require sharing federal receipts from commercial activity on public lands within State and its counties
 - ▶ Two other bills introduced to prohibit feds from owning land or water rights, give law enforcement powers to state

© 2015 Nevada Land Management Task Force

Nevada

- ▶ Nevada has 48 m acres federal land, mostly BLM
- ▶ Nevada AG Laxalt supports public land seizures
- ▶ Nevada's **Enabling Act** states: "That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States."

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Wyoming

- ▶ 2013: HB 228 passed "Creating a task force to investigate possible legal recourses to compel the federal government to relinquish ownership and management of federal lands."
- ▶ 2015:
 - ▶ SF 56 "Study on Transfer of Public Lands" signed by Governor - authorizes \$100,000 to study state mgt. of public lands
 - ▶ HB 209 "Transfer of Federal Lands" did not pass
- ▶ 2016 session: Three bills introduced, all died
- ▶ Gov. Mead wants a pilot project: State manages a piece of federal land for number of years
- ▶ Wyoming's **Constitution** states: "The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof."

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Oregon

- ▶ 53% of Oregon is federal land
- ▶ 2013: SJM 10 would have endorsed the transfer of 1.6 m acres of BLM forest land in Western Oregon to a "logging trust" to generate revenue for counties. It did not pass.
- ▶ 2015: Four bills introduced, all urging transfer of public lands to State
 - ▶ SJM 77 HJM 13 "Urging President and Congress to transfer federal lands"
 - ▶ HB 3240 "Relating to federal lands; declaring an emergency"
 - ▶ HB 3444 "Transfer of Public Lands Act"
- ▶ "Our public lands are our greatest national asset." -Corvallis Gazette-Times

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Washington, Alaska bills

Washington 2015 bills - did not pass:


- ▶ HB 1192 "Concerning the transfer of public lands to the state"
- ▶ SB 5405/HB 1262 "Creating a task force to examine federal land ownership in the State"
- ▶ 2016 session: 3 bills introduced, none passed

Alaska 2015 bill:

- ▶ HB 115 "Relating to transfer of public land...to the state and to the disposal of that land"
- ▶ 2016 session: HB 155 on "Alaska Sovereignty" did not pass

State Measures in Support of Public Lands

- ▶ New Mexico 2016: SM 11 Recognition of Public Lands Legacy
 - ▶ outdoor recreation economy in New Mexico generates \$458 m in tax revenue, \$6.1 billion in consumer spending, 68,000 jobs
 - ▶ nation's and New Mexico's founders' foresight and wisdom be honored by protecting a public lands legacy that is vital to the state and national economies and to the health and well-being of the residents of New Mexico
 - ▶ Mentions NM's Enabling Act
- ▶ Colorado Public Lands Day 2016: SB 21
 - ▶ Introduced with broader language, but narrowed to a proclamation of a Public Lands Day
- ▶ Ohio 2015: HR 120 Recognizing National Public Lands Day



Updates from Congress: 2015 Land Transfers

Last year -

- ▶ Oak Flat A2 land trade to mining company - Oak Flat in central Arizona is sacred land to the San Carlos Apache tribe, but Congress traded it away last year to facilitate a huge copper mine for international mining giant Rio Tinto. The mine would destroy Oak Flat where native people have held religious and coming-of-age ceremonies for generations and leave behind a massive crater -- wiping out streams, springs and wildlife habitat.
- Center for Biological Diversity
- ▶ Alaska land trade: 70,000 acres to Sealaska Corp for logging Tongass National Forest

Update from Congress: Other Bills Being Considered- 2015-16

- ▶ HR 1931 "American Land Act" Directs Secretaries of Interior and Agriculture to sell certain Federal land, proceeds to go to deficit reduction
- ▶ HR 1484 "Honor the Nevada Enabling Act of 1864 Act" Directs Secretaries to convey certain federal lands to Nevada to fulfill Enabling Act
- ▶ HR 435/S 361 "Disposal of Excess Federal Lands Act" Directs Interior to sell certain lands in AZ, CO, ID, MT, NE, NV, NM, OR, UT and WY previously identified as suitable for disposal
- ▶ HR 866/S 496 "Federal Land Freedom Act" Allows states to control development and production of all forms of energy on all available Federal land
- ▶ Senate Energy Bill amendments:
 - Lee 42: sale of all public lands identified in 1997 report
 - Hoeven 45: state permitting of federal mineral development
 - Lee 60: exclusive state permitting of fracking on federal lands

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Is There a State Land Grab by Congress?

Commissioner Dunn Opposes Federal Land Grab in Senate Energy Bill: "A Slap in the Face to New Mexico's School Children" Santa Fe, NM (April 27, 2016)

"Following a review and analysis of the Energy Policy Modernization Act of 2016, I am strongly opposed to a portion of this legislation as sponsored by U.S. Senator Lisa Murkowski (R-AK) and supported by U.S. Senator Tom Udall (D-NM) and U.S. Senator Martin Heinrich (D-NM).

The Senate energy bill seeks to designate 21,420 acres within the Rio Grande del Norte National Monument northwest of Taos, New Mexico, for the purpose of creating the Cerro del Yuta Wilderness and Rio San Antonio Wilderness areas. President Obama's 2013 designation of Rio Grande del Norte has already impacted 38,788 acres of State Trust Lands, which were originally set aside by Congress in the Enabling Act of 1910 for the benefit of public schools, universities, hospitals and other important institutions in New Mexico.

The Senate's new wilderness area designation encompasses 1,280 acres of State Trust Lands. With low oil prices already impacting revenues from State Trust Lands, the designation of these new wilderness areas will only add insult to injury and further reduce revenues in support of New Mexico's school children. In total, the federal government has set aside 162,000 acres of State Trust Lands in recent years for national monuments, wilderness study areas and conservation agreements for threatened species in New Mexico."

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[Energy Bill passed House, is in conference]

Pres. T. Roosevelt on the 1908 Grand Canyon national monument designation:

"Short-sighted men ... in their greed and selfishness will, if permitted, rob our country of half its charm by their reckless extermination of all useful and beautiful wild things ... The 'greatest good for the greatest number' applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole, including the unborn generations, bids us to restrain an unprincipled present-day minority from wasting the heritage of these unborn generations."

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Questions?

Ruth Musgrave: rmusgrave@comcast.net

Resources:

- NCSL Article on "Bipartisan Path" for public lands:
<http://www.ncsl.org/research/environment-and-natural-resources/this-land-is-whose-land.aspx>
- Poll results - New Mexico public lands:
http://www.americanpubliclands.com/wp-content/uploads/2014/10/New_Mexico1.pdf
- Article and spreadsheet on 2016 Public Lands bills in Western states: <http://westernpriorities.org/2016/06/01/new-analysis-outside-of-utah-efforts-to-seize-american-public-lands/>
- Public Lands NCCL web site (2015): www.ncellands.org
- American Public Lands web site - www.americanpubliclands.com
- Center for Western Priorities - www.westernpriorities.org

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Panel Discussion and Q & A: A Closer Look at the Issues

Support for Rule of Law and Collaboration in Public Land Management

Number: 2016-09

WHEREAS, federal and state lands are held in the public trust for the enjoyment and use of the general public; and

WHEREAS, armed militants' criminal seizure of Malheur National Wildlife Refuge in January 2016 was the latest in a series of violent or potentially violent disputes over public land ownership and management authorities; and

WHEREAS, the occupiers threatened government workers and private citizens; misused and destroyed public property; desecrated Native American sites and artifacts; deprived the public of its rightful use of federal lands; and obstructed critical refuge management operations; and

WHEREAS, the conspirators defied the rule of law while citing misinterpretations of the United States' and Western states' constitutions as justification; and

WHEREAS, while alleging that federal properties are mismanaged, some elected officials create self-fulfilling rationales for giving them away by starving management agencies of funding, as federal resource management spending has declined from approximately 2.5 percent of federal budget authority in 1977 to less than 1 percent today; and

WHEREAS, aligning fees for consumption of National resource commodities more closely with those of state and private entities could bolster funding for resource management; and

WHEREAS, land transfer proponents unjustifiably single out legitimate challenges in land management as additional rationale for massive land transfers to private or state control; and

WHEREAS, acts of support and incendiary rhetoric by elected officials purport to legitimize militants' criminal actions, further inflaming anti-government extremists; and

WHEREAS, taxpayers are paying the more than \$6 million the Malheur National Wildlife Refuge seizure cost the U. S. Fish and Wildlife Service, plus millions more in costs to other agencies; and

WHEREAS, confrontations at Malheur National Wildlife Refuge and at Bunkerville, Nevada in 2014 threaten to inspire similarly explosive disputes that would jeopardize lives, hamper resource management, endanger public properties, impose additional significant unnecessary expenses for agencies, and prevent lawful use of those properties.

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, at its Annual Meeting assembled June 16-18, 2016 in Estes Park, Colorado, hereby condemns such criminal acts in pursuit of public lands disposal or as challenges to federal laws, and supports law enforcement agencies in the apprehension and vigorous prosecution of persons who commit such acts; and

BE IT FURTHER RESOLVED that perpetrators of such criminal acts be held liable for costs those acts impose on taxpayers; and

BE IT FURTHER RESOLVED that government officials who encourage or further such criminal acts be held to account through public censure, and by criminal prosecution if applicable; and

BE IT FURTHER RESOLVED that the National Wildlife Federation supports full funding of land and resource management agencies so they can perform all of their statutory responsibilities; and

BE IT FURTHER RESOLVED that the National Wildlife Federation supports collecting fair value for consumptive use of our Nation's resources, and directing the revenues toward enhanced land and resource management; and

BE IT FINALLY RESOLVED that federal, state and local government officials and private stakeholders be encouraged to emulate successful examples of collaborative public lands management as an effective way to prevent and resolve conflict.

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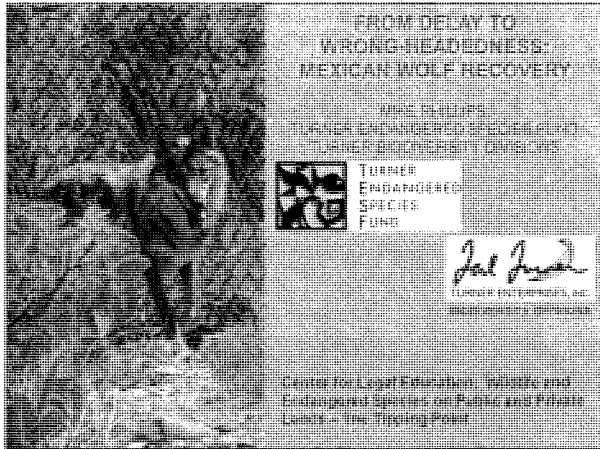
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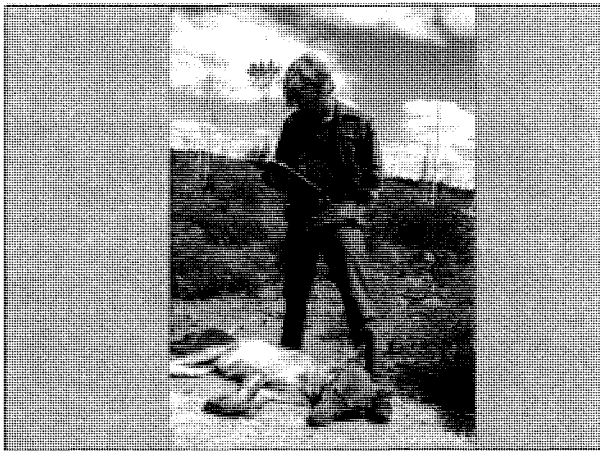
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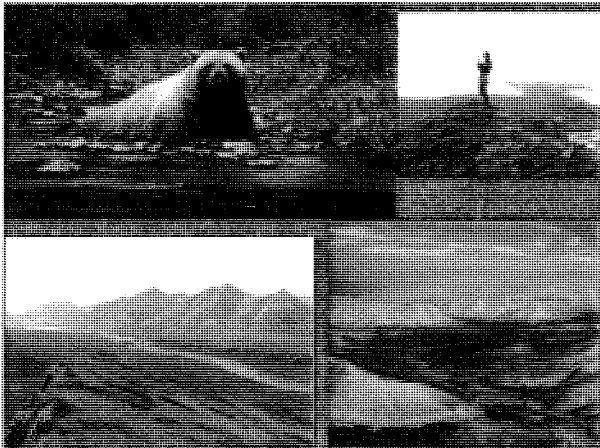
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From Delay to Wrongheadedness: Mexican Wolf Recovery

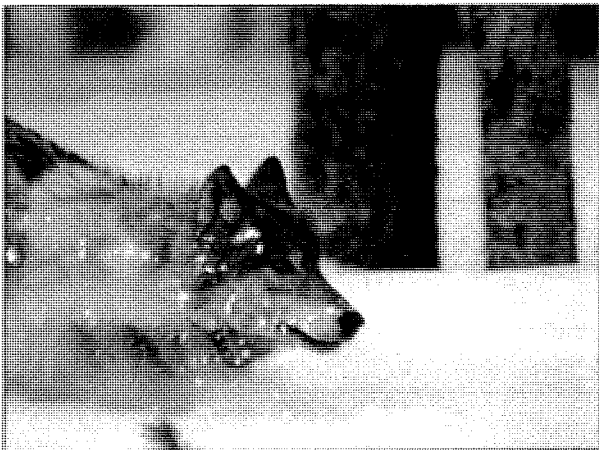


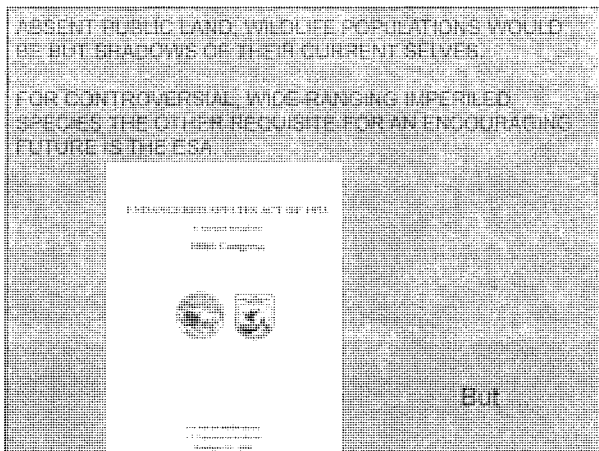












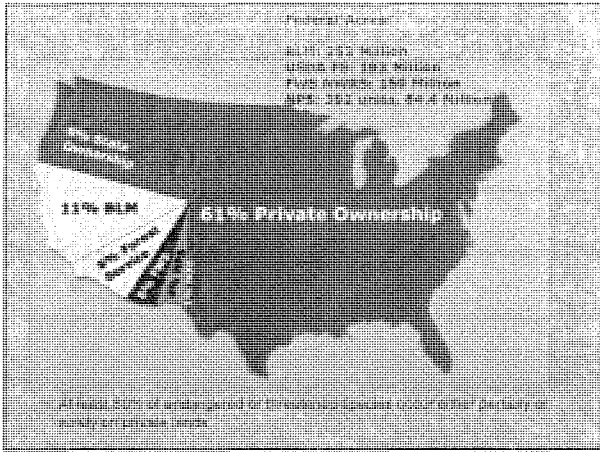
















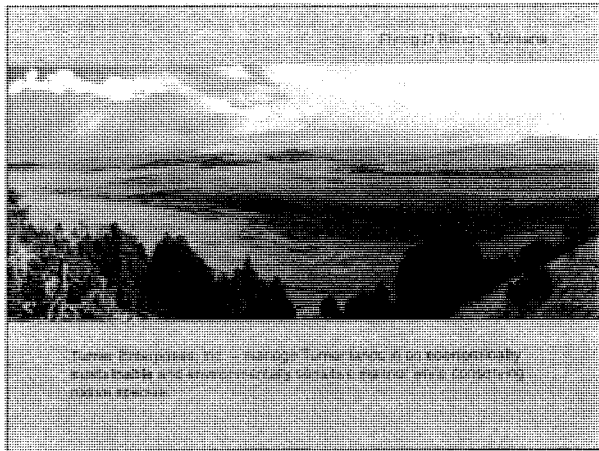



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Conserve biological diversity by ensuring the persistence of imperiled species and their habitats with an emphasis on private land.




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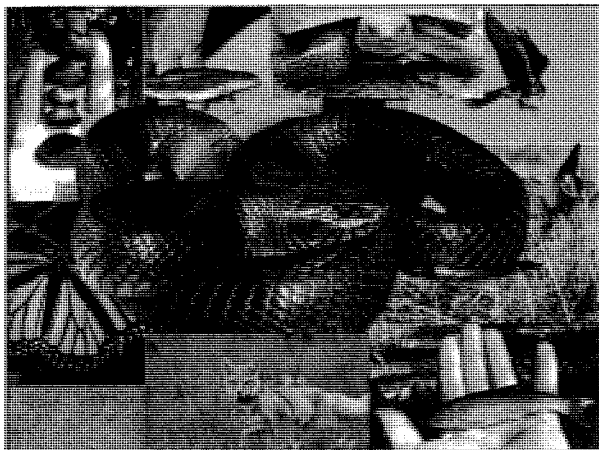
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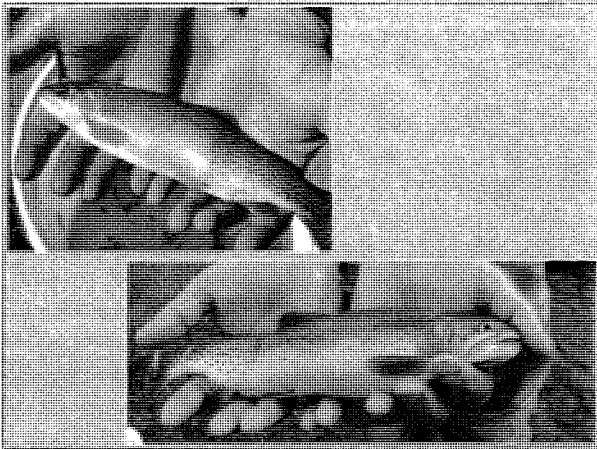


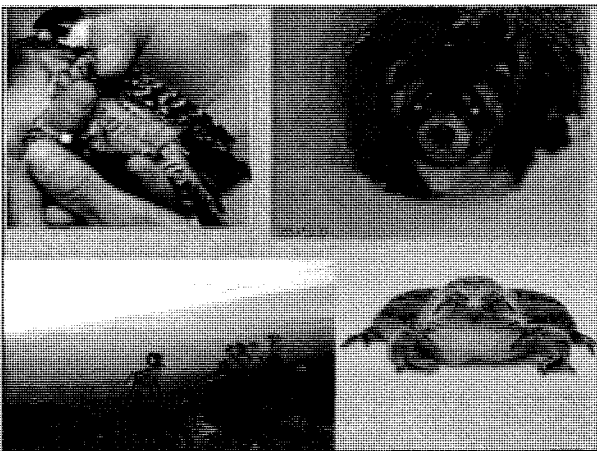
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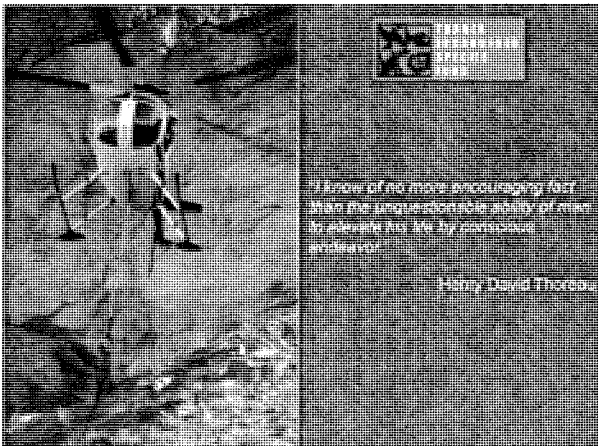
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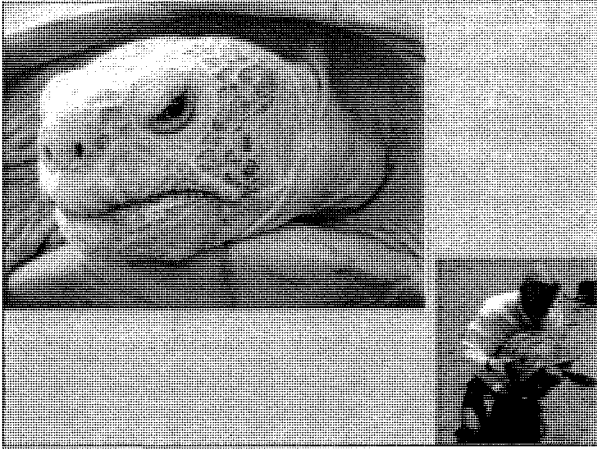
- * carnivores
- * plant-pollinator complexes
- * species with historical ranges that include Turner properties
- * dissemination of credible scientific and policy information about conservation of biological diversity

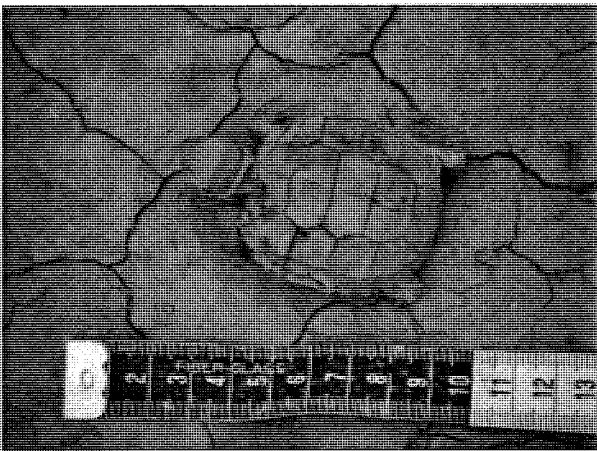




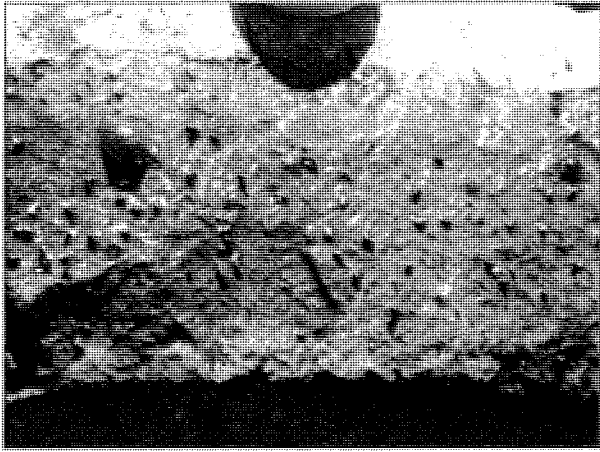


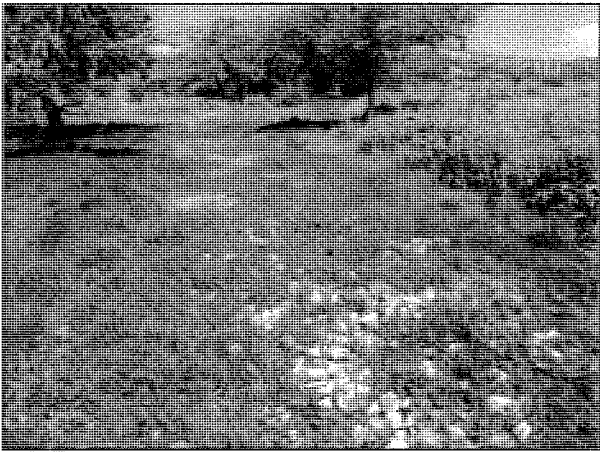






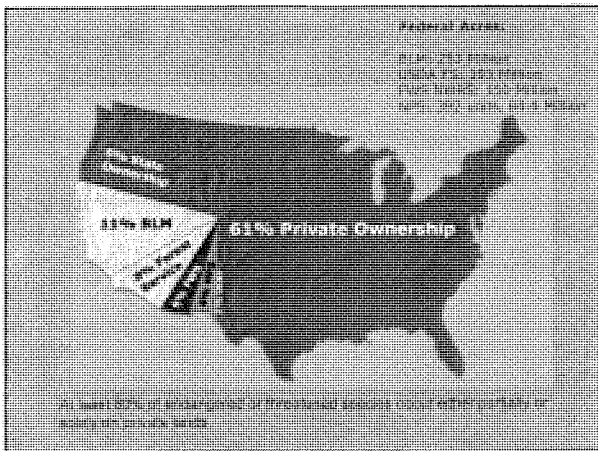


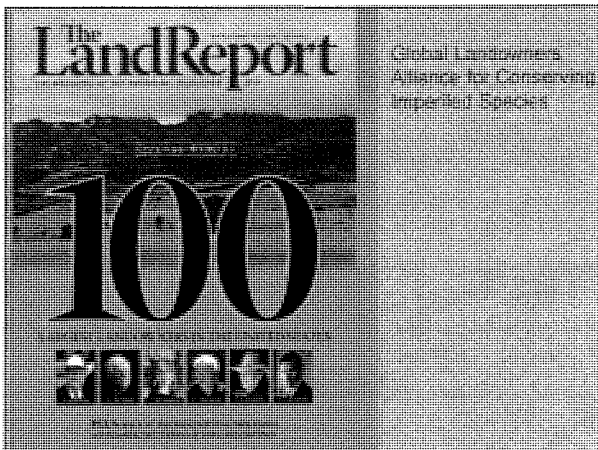


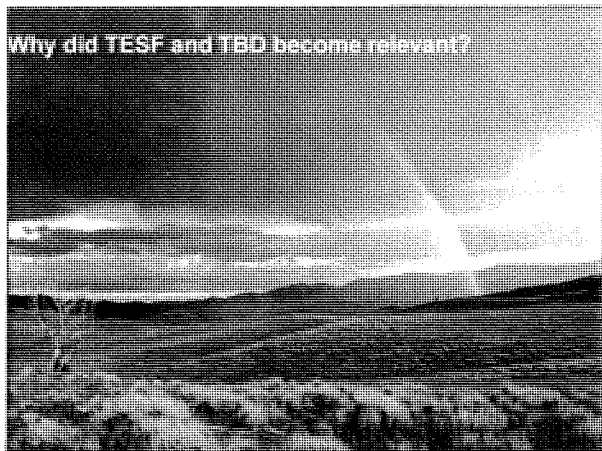


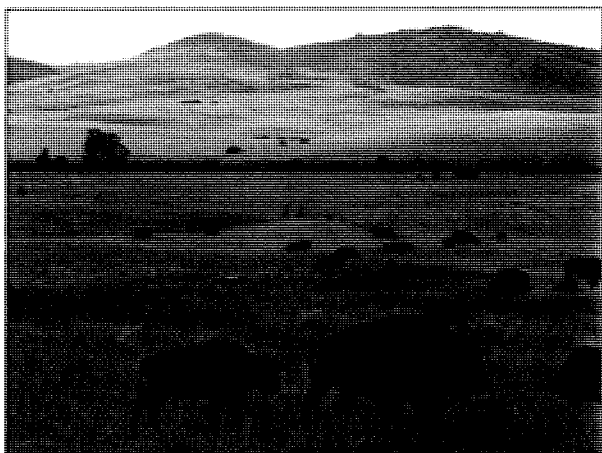




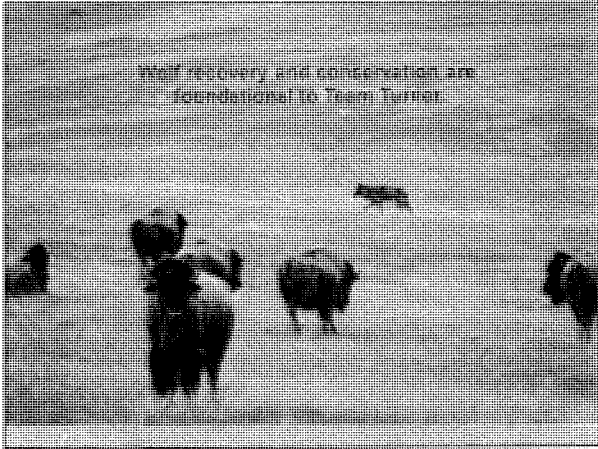


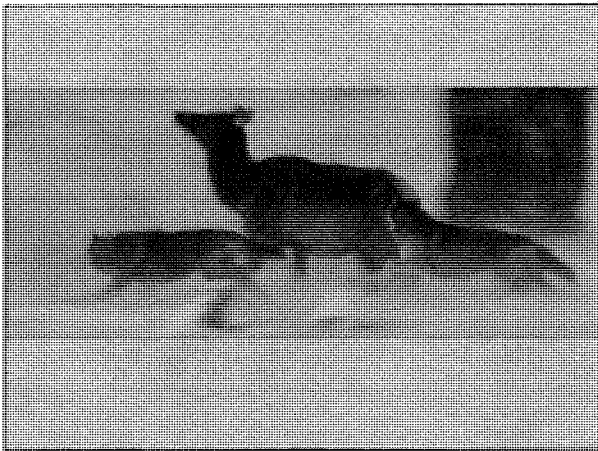


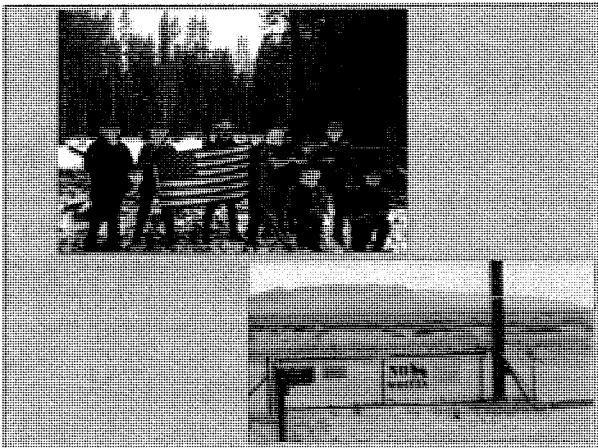


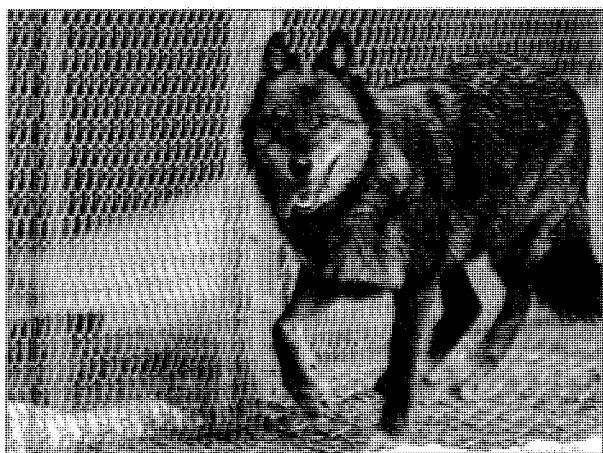


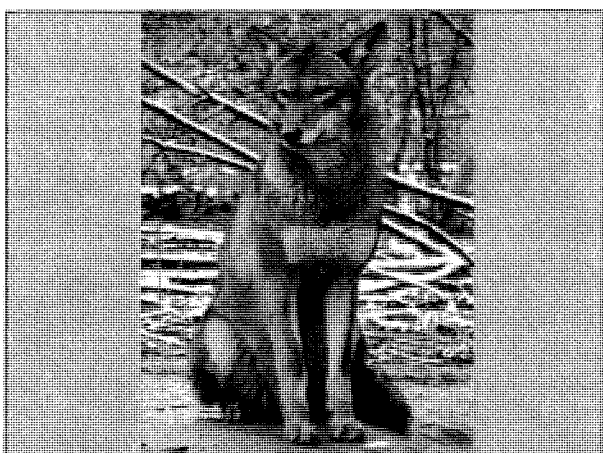


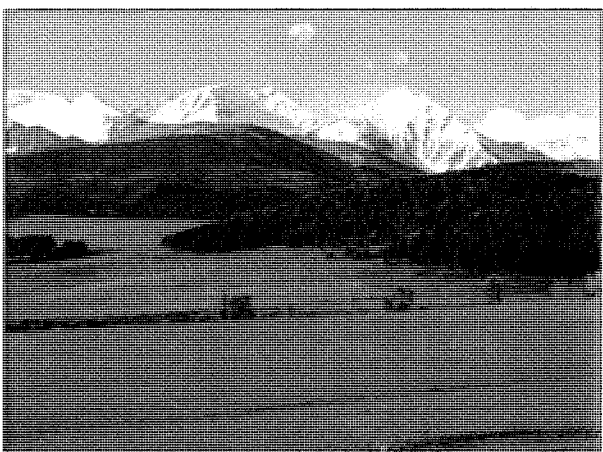


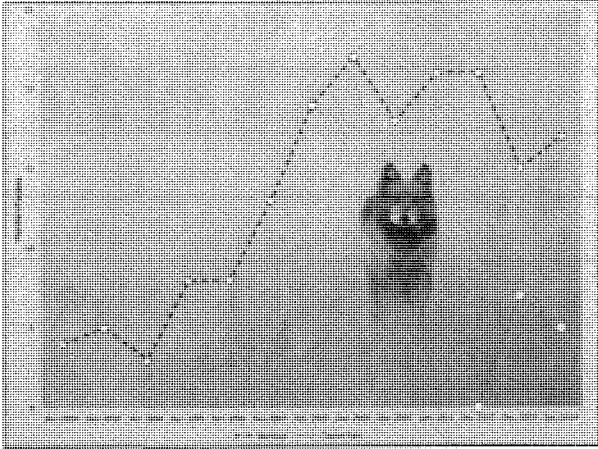


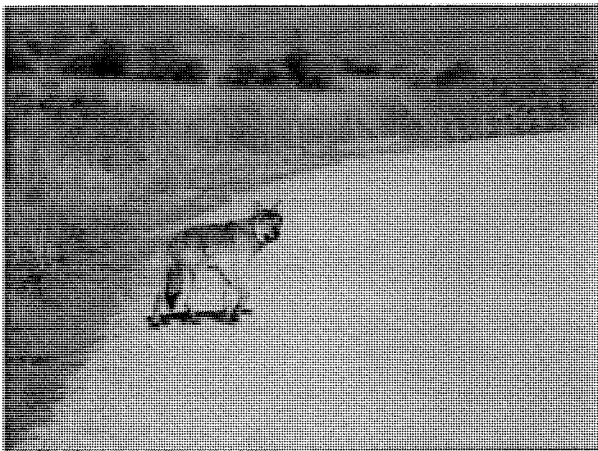






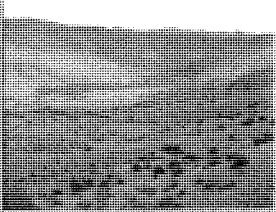









Llanero Ranch is the only source of
 breeding stock, owned by
 Mexican and American ranchmen.




Proposed developing a Mexican Wolf
 Management Center at El Estero de
 Ventana, which would significantly improve
 the prospects of recovery.



Published important articles that document recovery
 outlined three goals for recovery
 Only non-governmental organization to ever be permitted to establish the only
 long-term recovery plan

Member of every recovery team since 1985




1982

FROM DELAY TO
 WRONG-HEADEDNESS:
 MEXICAN WOLF
 RECOVERY

Prime Objective of Recovery Plan

In formulating a recovery-plan objective for any subspecies of *C. Lupus*, one
 must realistically view, not only the causes of the wolf's past endangerment,
 but also present trends toward ever-increasing human needs --- whether real or
 perceived --- for space and for the renewable and nonrenewable resources present
 or producible in wolf habitat. Having taken this realistic view, the Mexican
 Wolf Recovery Team sees no possibility for complete delisting of the Mexican wolf.

Section 4(g) of the Endangered Species Act of 1973 requires that recovery plans
 be developed and implemented "for the conservation and survival of endangered and
 threatened species...." The team feels that conserving and ensuring the survival
 of the Mexican wolf is the most that can be achieved today and has worded its
 prime objective accordingly: "To conserve and ensure the survival of *Canis
 Lupus baileyi* by maintaining a captive breeding program and re-establishing a
 viable, self-sustaining population of at least 100 Mexican wolves in the middle
 to high elevations of a 5,000-square-mile area within the Mexican wolf's
 historic range."



DELAY...

1995 Mexican Wolf Recovery Team
Southwestern District Population Segment Recovery Team

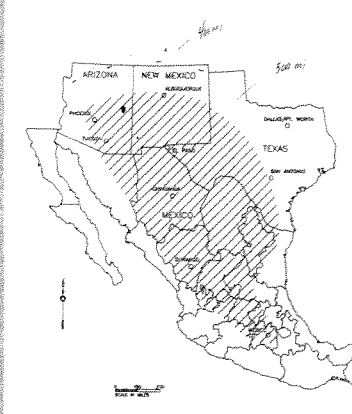
2011 Mexican Wolf Recovery Team

2015 Mexican Wolf Recovery Workshop Group

THIRTY-FOUR years and counting to develop a recovery plan for a subspecies of one of the world's most understood species

What does such glacial progress with recovery planning suggest about a likely implementation schedule?

1996 Mexican Wolf Recovery Team established a historic range for the subspecies that included the Blue Range Wolf Recovery Area.



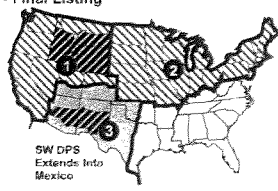
The Southwestern Distinct Population Segment recovery team determined that the Mexican wolf was the most suitable source stock for the region.

This determination is essential to recovery in a manner that fits the spirit and intent of the ESA.

Map 3 - Final Listing

- ① Western Distinct Population Segment
- ② Eastern Distinct Population Segment
- ③ Southwestern Distinct Population Segment (includes Mexico)

SW DPS Extends Into Mexico



BILLARD CODE 4316-05-C

The 2014 Mexican Wolf Recovery Team defined recovery as we did so in an exemplary manner:

1. raised significant sums of money to offset the cost of original analyses; and
2. published salient conclusions or committed to preparing manuscripts for submission to peer-reviewed journals.

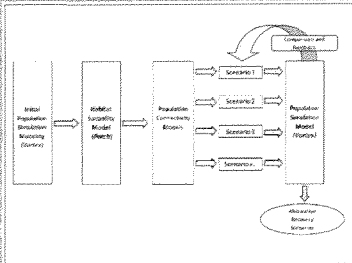


Context of Recovery Criteria

- The subspecies is listed in the wild (excepting the small population in the Blue Range); consequently, recovery will require reintroductions to restore populations.
- The subspecies is characterized by pronounced genetic challenges.
- Captivity has very real and growing potential to compromise the capacity of captive-born animals to survive in the wild.
- Wolf recovery in the SW faces geopolitical expertise of support and opposition.
- Insufficient federal or state-level "historical range" to support recovery.

Methods and Techniques to Develop Recovery Criteria

- Population Viability Analysis - Vortex
- PATCH/HEXSIM/GIS
- Scientific theory
- Literature and data from wild and captive wolf populations
- Expert opinion and normative judgments
- Full team input

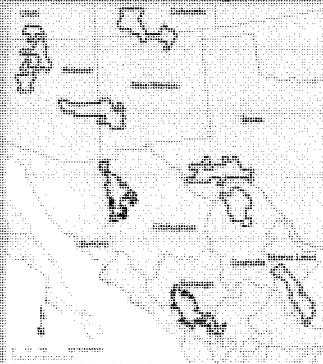


How many wolves and what degree of connectivity for delisting?

Options:

- "All Populations Equal" ($250 \times 3 = 750$)
 - 3 populations of equivalent size
- "Flexibility" ($1200 \times 3 = 750$)
 - 3 populations of a combined size of 250 with each of the 150 animals between any two populations
- "Mexico Counts" ($750 + 100 = 850$)
 - Either of above options plus a fourth population of 100
- One effective natural migrant per generation

Core Area of Study of Habitat Suitability



Core Area Comparisons

AREA	% PUBLIC LAND	PREY DENSITY (DEPU)	CATTLE DENSITY
Southern Rockies	64.4	7.6	3.4
Grand Canyon	54.9	4.1	1.4
Blue Range	66.1	5.6	1.6
West Texas	0.07	~3	2.7
Chihuahua/Sonora	<1	2.2	4.3
Durango/Zacatecas	<1	2.2	9.3
Coahuila	<1	0.60	4.3
Nuevo Leon	7.2	0.23	6.3

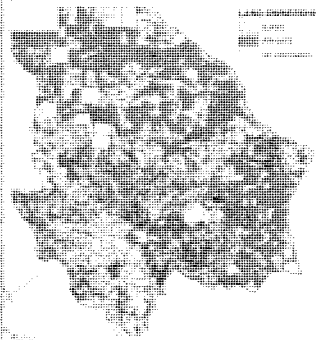
Challenges in Mexico

Low or unknown prey density, no ECR

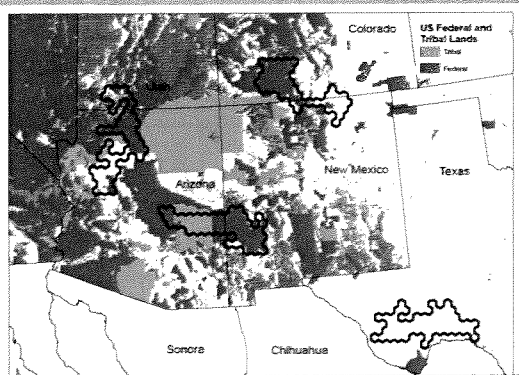
90% private ownership, often as deer ranches

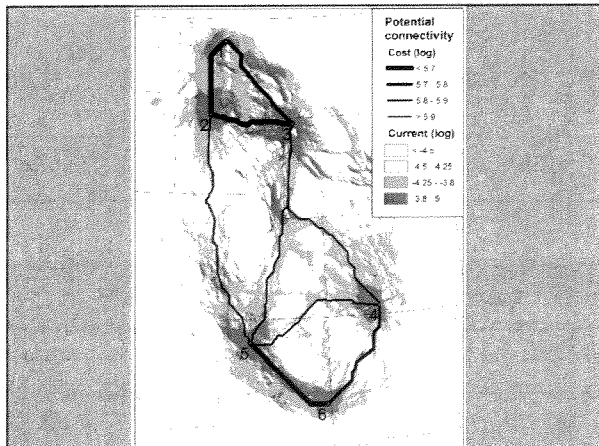
High caracal densities

Municipalities have much control in Mexico



3 Core US Populations





Conclusions

Natural and effective dispersal between populations is essential and possible

Suitable habitat in "historical range" is insufficient for recovery so recovery efforts must be concentrated in the United States

(To say nothing about the lack of US statutory authority in a foreign country).

The 2015 Mexican Wolf Recover Team Workshop Group came to exist because of high-level political pressure that criticized members of the 2011 recovery team and their work.

The principal point of attack concerned the Mexican wolf's historic range, an agenda of advocacy and personal financial gain.



November 13, 2015

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Daniel Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, NW Room 3351
Washington, DC 20240

Dear Secretary Jewell and Director Ashe:

We, the undersigned Governors of the States of Arizona, Colorado, New Mexico, and Utah, fully vetted by state, tribal and local governments and key stakeholders, we do not support recovery of the Mexican wolf across regions and landscapes that are not part of the subspecies' historical range.



November 13, 2015

The Service's apparent abandonment of efforts targeting recovery in Mexico is illustrated by its selection of scientist to lead the population modeling effort. Each of the scientists proposed to participate in the Vortex modeling is known for an affiliation with an advocacy position regarding the recovery of the Mexican wolf and some even have a financial interest in the subspecies' recovery. The scientists selected by the Service come to the workshop with an agenda of establishing populations of Mexican wolves north of I-40. This suggests that the

Honorable Sally Jewell
Honorable Dan Ashe
November 13, 2015
Page 4

Mexican wolf recovery, but, recovery of the Mexican wolf cannot and will not be achieved if the Service does not recognize that the majority of Mexican wolf recovery must occur in Mexico. Our four States cannot accept a recovery model that shoulders us with ninety percent or any majority of the recovery range ignoring the fact that only ten percent of the subspecies' historical range lies in the United States--across portions of southern Arizona, New Mexico, and Texas. Mexico must play a significant role in recovery planning and must be home to the lion's share of on-the-ground Mexican wolf recovery. This would not be unprecedented as other bi-national efforts between the United States and Mexico have shown promise.

Our States oppose the expansion, release, and occupancy of Mexican wolves north of I-40 in the States of Arizona and New Mexico and into Utah and Colorado. Available science does not suggest that areas north of I-40 were historically occupied by Mexican wolves. The Service

Sincerely,

Doug Ducey
Governor of Arizona

John Hickenlooper
Governor of Colorado

Susana Martinez
Governor of New Mexico

Gary Herbert
Governor of Utah

January 7, 2016

Dr. Benjamin Tuggle
Regional Director, Southwest Region
500 Gold Ave SW
RM 8020
Albuquerque, NM 87102

Dear Dr. Tuggle:

On behalf of the four Southwestern State Wildlife Management agencies, I wanted to thank you for your letter of January 6, 2016. There was concern from both Mexican and state representatives that the data used to examine habitat suitability in Mexico is not the best available science, and needs to be

Yours in Conservation,

Gary D. Veyna, Director
Arizona Game and Fish Department

1/9/16
Date

Alexander Sandoval, Director
New Mexico Department of Game and Fish

1/7/16
Date

Bob Brunsford, Director
Colorado Parks and Wildlife

1-7-16
Date

Greg Bledsoe, Director
Utah Division of Wildlife

1/7/16
Date

*Colorado Parks and Wildlife Commission
Resolution - 16-01
Regarding Introduction/Reintroduction of Wolves*

DRAFT RESOLUTION

WHEREAS, The former Colorado Wildlife Commission adopted two resolutions regarding the active introduction/reintroduction of wolves to Colorado (dated January 1982 and September 15, 1989), and

WHEREAS, Colorado is not part of the historic range of the Mexican wolf (*Canis lupus baileyi*); the historical range of this subspecies of the gray wolf is restricted to Mexico and the southwestern United States, and

COLORADO PARKS & WILDLIFE

Mexican Wolves in Colorado, More Than Political

May 23, 2016

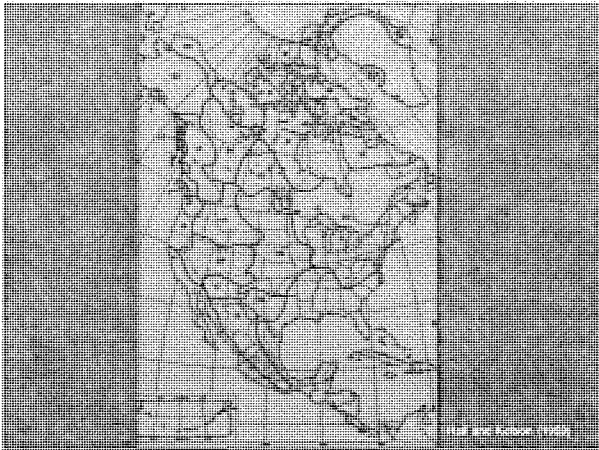


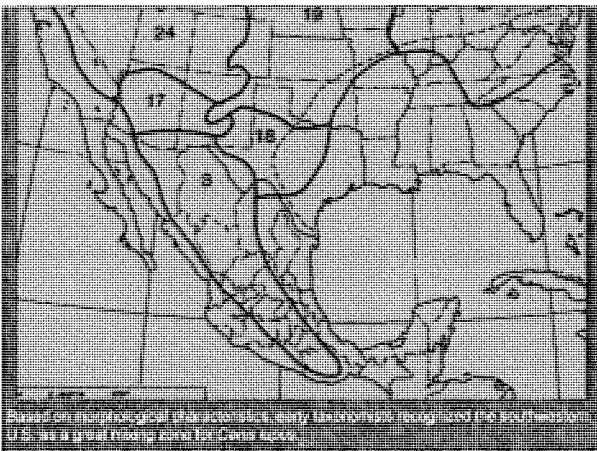
On April 23, 2016, the *Denver Post* published a Guest Commentary on Mexican wolves by the Defenders of Wildlife and Earthjustice. The commentary characterized the recent debate about introducing endangered Mexican wolves into Colorado as political and not based on science. To be sure, the proponents of wolf reestablishment are passionate, but too often that passion overshadows objectivity and neglects consideration of the full range of legitimate viewpoints and consequences of an active wolf introduction program. We say "introduction" and not "reintroduction" because the best available science does not support the contention that the Mexican wolf was the wolf historically common to Colorado.

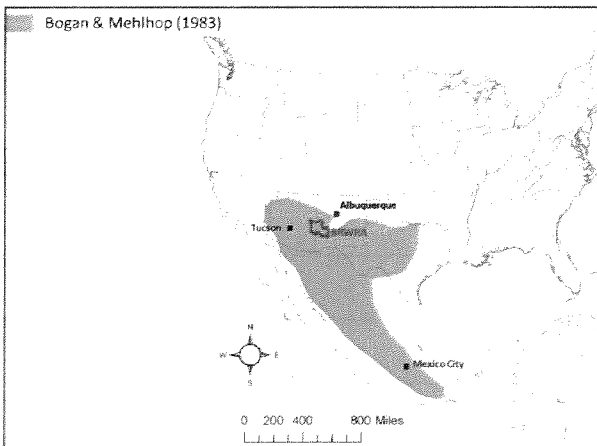
Finally, the authors conveniently ignore the potential ramifications of introducing an endangered subspecies into Colorado, especially when Colorado is outside of the historic range of the subspecies. Extreme actions like the one they propose erode public support for the entire Endangered Species Act (ESA). We fail to understand the logic of advocating for the introduction of an endangered animal outside of its normal range when such an action does not appear necessary. It also concerns us that such advocacy has the potential to

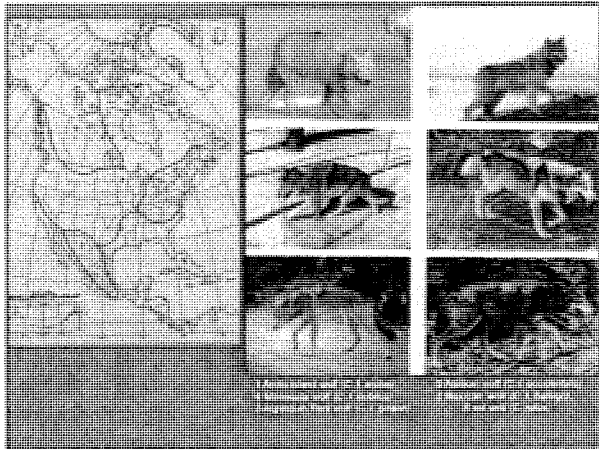
The Geography of Mexican Wolf Recovery

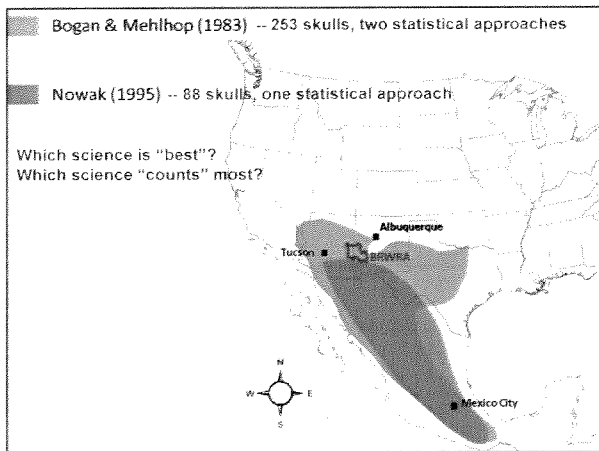


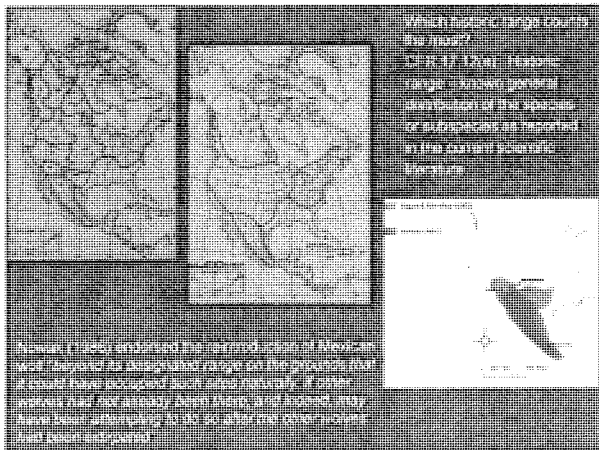


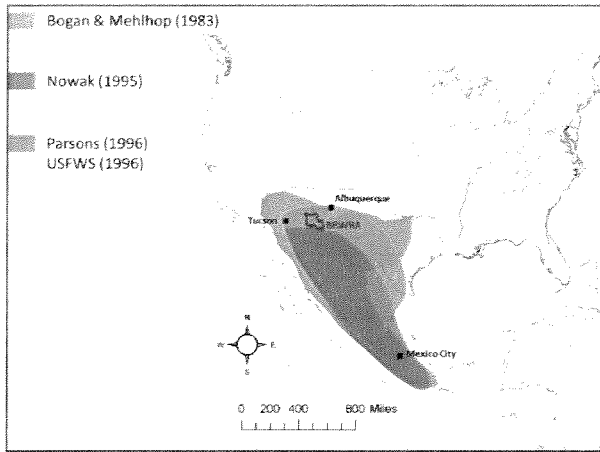


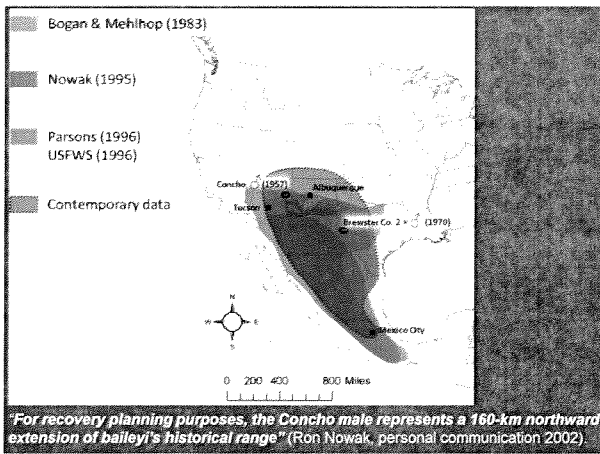




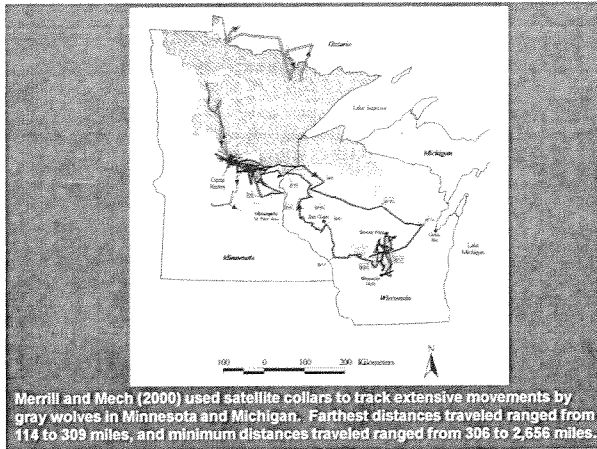


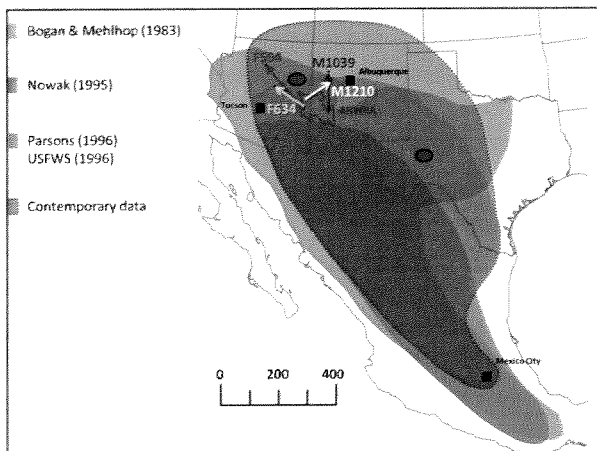


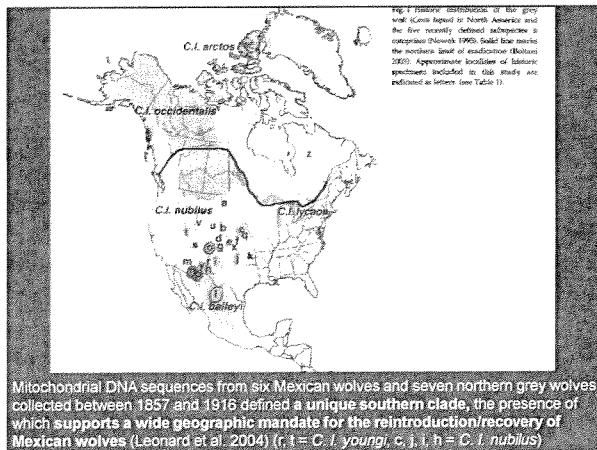










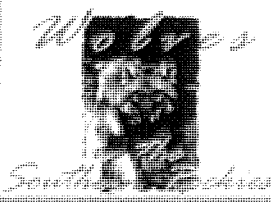


Molecular Genetics

- Recent genetic studies of Mexican specimens date to the wolf's spread to northwestern and northeastern Utah, indicating that historically the reproductive interactions between G. l. baileyi and more northern subspecies of Canis lupus extended across regional and continental scales.
- These studies suggest that weak spatial patterns of intraspecific differentiation between wolf groups were the norm across large parts of the North American continent rather than pronounced differentiation as indicated by some data on a map.

Southwestern Gray Wolf DPS Recovery Team


- Habitats and prey in the southern Rockies are similar to those existing in the present range of Mexican wolf where the subspecies is persisting in an "island economy".
- The ecological impacts of Mexican wolves in the southern Rockies would be identical to those generated by wolves during the ecoregion's ecological history (i.e., Mexican wolf not an exotic).
- Mexican wolf is closest geographic source.
- Mexican wolf is most in need of conservation assistance.
- Historical range poorly and inconsistently understood.



Which wolves are appropriate for reintroduction to the Southern Rocky Mountains?

For several reasons, the Mexican wolf is the most appropriate wolf to use in reintroductions to the southern Rocky Mountains.

Phil Hedrick, Bob Wayne,
D. & P. Parnell, August 2011

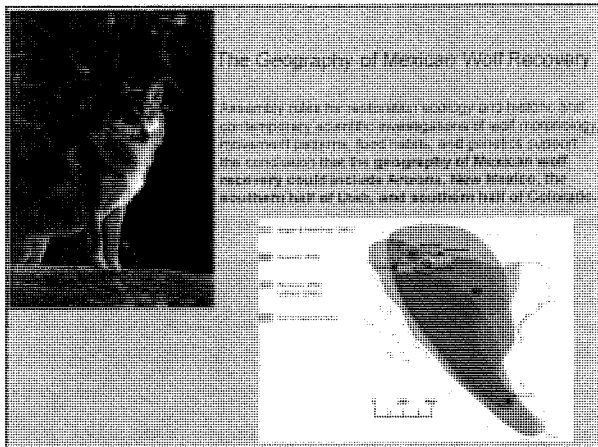


Statement endorsed by: Dave Mack,
Tom Nadeau, Steve Feltz, Ed Burgin,
Brian Kelly, and Mike Phillips

Is the Mexican wolf ecologically unique?

After conducting the first ecological field study of the Mexican wolf, McBride (1980: 13) concluded: *"While it might appear that wolves are attracted to certain vegetative associations, they are actually responding to the availability of prey."*

The Mexican wolf, like gray wolves throughout the world, is such an ecological generalist that its past does not justify needlessly restricting its future.



WRONG-HEADED ACTIONS that contradicted a direct and certain path to Mexican wolf recovery

1. Center for Biological Diversity's efforts to retain at the sub-specific level

WRONG-HEADED ACTIONS that contradicted a direct and certain path to Mexican wolf recovery

1. Center for Biological Diversity's efforts to resist at the sub-specific level
2. USFWS decision to resist at the sub-specific level

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 4. City --
- * assumption that an enlightened and deeply informed view of biogeography would prevail

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4. My...
5. assumption that an enlightened and deeply informed view of biogeography would prevail
6. underestimation of the importance of state opposition
7. assumption that the language of CRN would mean less than an enlightened and deeply informed view of biogeography and experience from previous wolf restoration efforts

§17.81 Listing.

(a) The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historic range, absent a finding by the Director in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed).

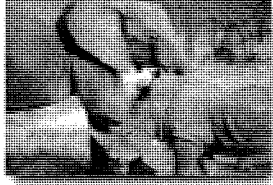


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Blood Ivory: Wildlife Tracking in the U.S.

Blood Ivory: Wildlife Trafficking in the U.S.



New Mexico State Bar CLE Animal Law Section
September 9, 2016

Ruth Musgrave, Esq.

President, Wildlife Policy Consulting Associates
NCEL Conservation Advisor

Introduction and What Will be Covered

- Definition of Wildlife trafficking
- How wildlife trafficking has developed
 - Financial and cultural reasons
 - What species are impacted
- International efforts
 - Treaties and policies
 - Enforcement strategies
 - Why enforcement is failing
- Federal efforts
 - New federal strategies
 - Congressional action – pro and con
- State efforts
 - Why states need to get involved
 - What state laws are in effect
 - Who is the opposition and are there compromises

Copyright © 2011 Wildlife Trafficking Unit

What is wildlife trafficking

- Term generally is used to mean illegal sale of wildlife parts, products or dead or live specimens
- Pertains especially to elephant ivory and rhino horn
- Why is it important?
 - Illegal trafficking in wildlife products ranks only behind drugs, arms and human trafficking - \$12-20 billion/year
 - Organized crime now involved, with sophisticated weapons and methods
 - Terrorist groups fund attacks through ivory trafficking – Al Shabaab, Lord's Resistance Army, Al Qaeda, etc.
 - Now a matter of national and international security
 - Over 1,000 rangers in Africa have been killed in past 10 years
 - Trafficking feeds major corruption across the world

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Cultural Reasons for Illegal Wildlife Trade

- CHINA
 - Medicinal
 - Symbol of wealth and success
 - Chinese government/officials distributing
- RELIGION
 - Filipino and other Christians "don't see ivory, they see God" – NatGeo
 - Religious Catholic icons most treasured: ivory – sold outside Vatican
- STATUS
 - Horn knife handles
 - Gun handles
- OTHER
 - Antiques
 - Musical instruments
 - Art

Photo by J. G. Appleby/Photography 123

Biggest Markets for Ivory and Rhino Horn

- China is number one
- United States is second?
- Also Thailand, Vietnam, Philippines
- Biggest ivory markets in U.S.:
 - New York
 - California
 - Hawaii
 - Coastal ports

Corruption, smuggling, mislabeling and disguising age of ivory is rampant

Photo by J. G. Appleby/Photography 123

Why the Explosion in Ivory Products?

- Convention on International Trade in Endangered Species (CITES) listed African Elephant in February 1976
- CITES listing:
 - Appendix I (1990): except populations of Botswana, Namibia and Zimbabwe (Appendix II, 1997) and South Africa (Appendix II, 2000)
- 2008 - CITES approved sale of 102 tons stockpiled ivory by 4 African nations
- Floodgates opened:
 - Caused 100,000 elephants poached between 2010 and 2012
 - Impossible to tell new from old ivory
 - Value skyrocketed: ivory now worth \$2,000/lb
 - Chinese government officials got involved
 - Organized crime, terrorist, murder of rangers

Photo by J. G. Appleby/Photography 123

Trafficking = Endangered Species Devastation

- Elephants
 - 96 killed per day for tusks
 - Population plummeting
 - Tourism devastated
- Rhinos
 - All 5 species threatened with extinction for horns
 - Black rhinos critically endangered
 - Northern White rhinos are effectively extinct
- Lions – down to as few as 10-20,000 from 500,000
- Tigers – extinct in Laos, Cambodia, Viet Nam, only 3,200 left in wild
- Pangolins – most heavily poached animal in the world
- Leopards, Cheetahs and Jaguars – all declining
- Marine animals
 - Sea turtles – all species listed under ESA
 - Sharks – down 90%
 - Rays – nearly all species declining

Source: WWF, IUCN, and others

International Efforts to Protect Wildlife

Wildlife treaties - last 120 years:

- Regulate wildlife harvest and over-exploitation
- Also: Protect species
- Newest: Protection of habitat



- U.S. participation requires signing treaty
 - President can negotiate and sign
- Ratification requires advice and consent of 2/3 Senate (U.S. Const. Art. II Sec. 2)
- U.S. enabling legislation also required
- Federal agency usually Administrative Authority

Source: U.S. State Department

Wildlife Law Treaty: CITES


Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – 1973

- Most important wildlife treaty: International trade in rare species
- Levels of trade restriction: Appendix I, II or III
- U.S. first to ratify in 1974
- Enabling legislation: Endangered Species Act, Multinational Species Conservation Acts

Source: U.S. State Department



CITES – Upcoming Considerations at CoP17

- Upcoming Conference of the Parties (CoP17): September 24 – October 5, 2016 in South Africa 
- U.S. Fish and Wildlife – "The U.S. will call for the closure of domestic ivory markets and seek increased protections for pangolins, African grey parrots, and nautilus, among others at CoP17."
- Kenya will call for total ban on ivory trade, including trophies
 - 12% Kenya's income is from tourism
 - Live elephant is worth 73 times a dead one
 - April 2016 - Kenya burned \$170m of ivory and horn

updated 1/2016, www.cites.org

CITES Standing Committee progress a.o January 2016

- The Standing Committee considered the progress made by 19 Parties requested to develop and implement **National Ivory Action Plans (NIAPs)**.
- The Committee agreed that China (including Hong Kong SAR of China), Kenya, the Philippines, Thailand and Viet Nam have 'substantially achieved' the implementation of the activities outlined in their NIAPs, and commended these countries for the progress made.
- The determination of whether these Parties remain of 'primary concern' in the elephant poaching and illegal ivory trade chain was deferred until CoP17, when the updated results of the CITES programme **Monitoring the Illegal Killing of Elephants (MIKE)** and the analysis of the **Elephant Trade Information System (ETIS)** will be available
- www.cites.org press release

updated 1/2016, www.cites.org

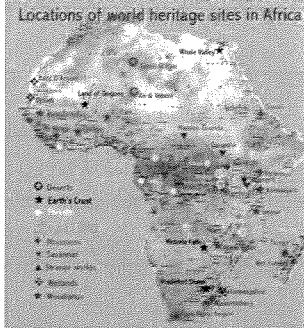
World Heritage Convention

Convention for the Protection of World Cultural and Natural Heritage (1972)

- World-renowned natural and cultural areas such as Great Barrier Reef and Galapagos Islands
- Several U.S. National Parks
- One criteria for inclusion: "threatened species of outstanding universal value"
- 45 African natural World Heritage Sites

updated 1/2016, www.cites.org

World Heritage Sites: Africa



Non-Treaty International Wildlife Conservation Devices

- International Union for Conservation of Nature and Natural Resources (**IUCN**)
 - Founded 1948, 200+ nation members, 900+ NGOs
 - Responsible for development of CITES, many other wildlife treaties
 - Keeps the "Red List" of species threatened with extinction
 - Estimates over 1/3 of all species threatened with extinction

Source: IUCN, 2012. <http://www.iucn.org>



Other: Multilateral Environmental Agreements (MEAs or IEAs)

- Usually developed under the UN
- Can be treaties, but also less formal agreements to work on specific issues
- Often used in U.S. because of difficulty in getting Senate to ratify treaties

Source: IUCN, 2012. <http://www.iucn.org>

Wildlife and Public Lands in Africa

- Wildlife is (supposed to be) protected in National Parks
- Conservation reserves, especially outside National Parks, help to extend wildlife habitat and provide wildlife corridors for migration
- South Africa is allowing private management of game reserves
- Kenya does not allow trophy hunting – but poaching for bush meat and trafficking is rampant
- Ranger challenges:
 - Poachers murder them, but also dangers in the field – wild animals, etc.
 - Corruption is sometimes forced when they are threatened with their lives or families
 - No insurance
 - Technology and weapons overwhelmed by poachers' devices
 - "It is their hearts that keep them going"
 - US implementation plan is helping

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Enforcement of Treaties and Int'l Agreements is Difficult

- Compliance is voluntary – sovereign nations
- Nations can refuse to accede or register objections to provisions (reservations)
- Many lack enforcement mechanisms
- Int'l Court of Justice rarely used
- "Sleeping" or "silent" treaties
- Looming issue: Defunding and watering-down of U.S. enabling legislation

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Strategies for Enforcement: U.S.

Lacey Act (16 USC 3371-3378): Prohibits commerce in fish and wildlife in violation of treaty or foreign law

Also allows enforcement of state wildlife laws

- Very important: U.S. = biggest market for wildlife trade, 2nd in ivory trade
- The major enforcement mechanism within the U.S. for international wildlife protection

• See Anderson, Robert, *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 Public Land and Resources Law Review 27, 1995

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Strategies for Enforcement: International Police

- **INTERPOL – International Police Organization**
 - World's largest international police organization
 - 190 member nations
 - Provide targeted training, expert investigative support, data, secure communications channels
 - State Department currently assisting
- **ICCWC – International Consortium for Combatting Wildlife Crime**
 - Support for wildlife law enforcement
 - Consortium: CITES, INTERPOL, World Bank, World Customs Org.



Enforcement Strategies: Information

TRAFFIC - wildlife trade monitoring network

- IUCN and WWF
- Works with CITES
- Solutions to trade issues



World Conservation Monitoring Center

- Under UN Environment Program
- Collects, collates global biodiversity information
- Assistance for decision-makers on biodiversity
- Is a partner in IBAT (Integrated Biodiversity Assessment Tool) for business

TRAFFIC is a joint project of WWF and IUCN

Recent Progress in China?

Feb. 2015 - China imposed one-year ban on carved ivory imports

May 2015 – China crushed 660 kg ivory

June 2015 – China pledged to end processing and sale of ivory (no timeline) *but calls on U.S. to do the same*

Sept. 2015 - China/U.S. announced cooperative effort to curb trafficking

June 2016 – Hong Kong banned import and export of ivory

Surveys show progress in Chinese attitudes:

- 95% residents agree that the "Chinese government should impose a ban on the ivory trade to help stop the poaching of elephants in Africa."
- 95% residents surveyed who don't consume rhino horn agree that the Chinese government should take stricter action to prevent rhino horn consumption
- Even 87% of rhino horn consumers agree with stricter regulations

Survey source: WildAid, March 2015

TRAFFIC is a joint project of WWF and IUCN

Federal Government - Recent Actions

- ESA Listing: African Elephants listed as Threatened in May 1978 (all ivory before May 1978 is "pre-Act ivory")
- Then listed as Endangered: 56 Fed. Reg. 11392 (Mar. 18, 1991)

2013:

- President Obama issued Executive Order 13648 on July 1, 2013, committing the United States to increased efforts to stop the trade in "blood ivory."

2014:

- February 11, 2014 - Obama administration announced "National Strategy for Combating Wildlife Trafficking" and a proposal to ban all U.S. commercial trade in elephant ivory.
- February 2014 - the U.S. Fish and Wildlife Service issued an order announcing the steps it would take to implement that ban - Director's Order 210
- February 26, 2014 - U.S. House of Representatives Foreign Affairs Committee held a hearing: "International Wildlife Trafficking Threats to Conservation and National Security"

Source: U.S. Fish and Wildlife Service

Federal Actions, cont. 2015-16

2015:

- February 2015 - White House produced an Implementation Plan for the National Strategy: To support global anti-poaching efforts, strengthen the capacity of partner countries to counter wildlife trafficking, designate major wildlife trafficking countries, and for other purposes
- September 2015 - United States and China announce a cooperative effort to take comprehensive action to curb wildlife trafficking, including significant restrictions on the import of ivory as hunting trophies and halting the domestic commercial trade of ivory

2016:

- June 2, 2016 - U.S. Fish and Wildlife Final Rule, 50 CFR Part 17.40(e)
 - Outlaws interstate trade, NOT intrastate trade

Source: U.S. Fish and Wildlife Service

State Efforts to Restrict Ivory, Rhino and Other Endangered Wildlife Trade

- Why states need restrictions
- Where trade is heaviest
- State bills that passed
- Other state efforts
- Opposition - stakeholders
 - Musicians
 - NRA - guns and knives
 - Antique dealers
 - Trophy hunters

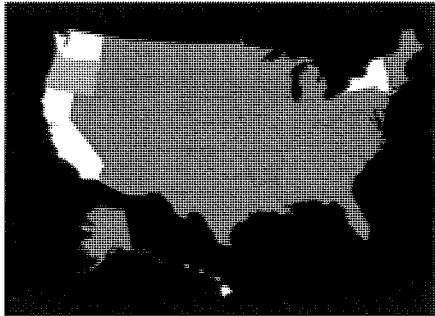
Source: U.S. Fish and Wildlife Service

Why States Need Restrictions

- Federal government does not restrict intrastate trade
- U.S. is one of largest markets for ivory, horn, endangered species
- *China will not ban ivory until it sees the U.S. take stronger stands*
- Many Chinese dealers purchase ivory from United States and vice-versa
- Why does it matter? People find pleasure in animals/future generations/loss of hope/cascade of extinctions/large megafauna loss impacts ecosystem health, tourism/planetary change

Source: WWF, 2014

States with Wildlife Trafficking Laws – a.o Summer 2016



Source: WWF, 2014

First State: New Jersey S 2012 passed 2014

Near total ban on sale of ivory and horn. Exceptions –

A person may sell, offer for sale, purchase, barter, or possess:

- (1) Asian elephant ivory, or an Asian elephant ivory product made wholly or in part of Asian elephant ivory, that was legally obtained prior to 1975;
- (2) African elephant ivory, or an African elephant ivory product made wholly or in part of African elephant ivory, that was legally obtained prior to 1990;
- (3) ivory from, or an ivory product made wholly or in part of, hippopotamus, mammoth, narwhal, walrus, or whale ivory that was legally obtained prior to the effective date of this act; or
- (4) rhinoceros horn or rhinoceros horn product that was legally obtained prior to the effective date of this act.

Also allows inheritance, museum, scientific, agency possession/transfer

Source: WWF, 2014

Political Strategy in New Jersey's Ban

Former Marine/attorney Asm. Raj Mukherji co-sponsored the bill, made these points:

- Bipartisan issue: National security at stake
- Illegal trade fuels terrorism which is destabilizing the African continent
- Rangers being murdered by terrorist poachers
- Organized crime involved in transport and sale in the U.S.
- Huge enforcement and corruption problems in Africa, internationally
- "Bad guys" make newer ivory look old, so can't tell the difference
- Guns, knives, antiques: not a taking, can transfer/gift/donate/inherit

Source: NJ Assembly

"Gov. Christie Signs Bipartisan Legislation to Crack Down on Black Market Ivory Trafficking," Press Release, Aug. 5, 2014:

"...The economic penalties associated with this legislation will have a direct, severe effect on those in illegal possession of ivory," said [GOP co-sponsor] Senator Christopher Bateman. "Ivory trafficking is at the highest rate ever recorded; we must work with other states to crack down on organized crime connected with ivory sales."

"By signing this bill into law, Governor Christie is closing loopholes in ivory commerce prohibitions that allowed New Jersey to foster the blood ivory trade and poaching profits for terrorist organizations such as Al Qaeda-affiliated, the Lord's Resistance Army, Janjaweed, and others," said Assemblyman Raj Mukherji. "[T]hese measures will directly contribute to protecting these magnificent species while chopping away at a major funding source for terrorists. . . ."

<http://www.state.nj.us/governor/news/news/552014/approved/20140805c.html>

Source: NJ Assembly

New York's Law Partners with New Jersey

AB 10143/SB 7890 - August 11, 2014: New York Governor Cuomo signed into law. Prohibits the sale, offer for sale, purchase, trade, barter, and distribution of elephant and mammoth ivory and rhino horn

- Exceptions: bona fide antiques comprised of less than 20% ivory with documented proof of provenance;
- musical instruments containing ivory if the seller provides historical documentation demonstrating provenance and showing the item was manufactured no later than 1975;
- transfers to legal beneficiaries or heirs of trusts or estates;
- transfers for bona fide educational and scientific purposes.
- Violations involving more than \$25,000 worth of ivory = class D felony, fines up to \$5,000 or double the amount gained from the crime, whichever is higher, and 1-7 years jail.

Source: NY State Assembly

Washington State: I -1404

- Bill introduced in 2014 but weakened to the point it was killed
- Initiative 1404 – Passed in 2015 by over 70% majority in every county
 - Includes ten species: Elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, shark, ray
 - Exceptions:
 - bona fide **antique**, with historical documentation evidencing provenance and showing not less than 100 years old, and species part or product is less than 15% by volume of such an antique;
 - distribution is for a bona fide **educational or scientific purpose**, or to or from a museum;
 - to a legal **beneficiary** of an estate, trust, or other inheritance;
 - part or product is less than 15% by volume of a **musical instrument** (ie string instruments and bows, wind and percussion instruments, and pianos); or
 - sale, offer for sale, purchase, trade, barter for, or distribution is expressly **authorized by federal law or permit**.
- Governor Inslee requested \$500k for enforcement in 2016 - got \$0

State Bar of WA - Wildlife Trafficking & I-1404

California: AB 96

- Sponsored by Speaker Toni Atkins, "96" symbolic of elephants killed each day. Signed by Gov. Jerry Brown Oct. 4, 2015
- Closes loophole that allowed sale of ivory obtained before 1977
- Study showed up to 90% ivory sold in LA was illegal
- AB 96 exemptions to ban:
 - Federal law expressly authorizes
 - Musical instruments < 20% volume and proof that mfg'd no later than 1975
 - Bona fide antique if < 5% volume and proof that not less than 100 years old
 - Educational or scientific purposes
 - (Does not exempt guns and knives)
- Lawsuit filed to enjoin new law: *Ivory Education Institute v. California*, Dec. 2015 California Superior Court - Institute alleges federal preemption, violation of dormant Commerce Clause, and takings

State Bar of WA - Wildlife Trafficking & I-1404

Hawaii: SB 2647

- 2013 - SCR 149 passed unanimously urging residents and businesses not to buy or sell illegal ivory
- June 23, 2016 - SB 2647 restricting wildlife trafficking signed by Gov. Ige
- Includes many species:
 - Elephant
 - Rhino
 - Mammoth
 - Tiger
 - Lion, Cheetah, Jaguar, Leopard
 - Hippopotamus
 - Shark and Ray
 - Sea Turtle
 - Walrus
 - Narwhal
 - Whale
 - Monk Seal
- Hawaii is 3rd largest market of ivory in the U.S., 89% illegal or unknown origin

State Bar of WA - Wildlife Trafficking & I-1404

Exceptions to Hawaii Wildlife Trade Ban:

1. Bona fide antique
2. Educational, scientific or museum purpose
3. Distributed to legal beneficiary or heir
4. Less than 20% volume of gun, knife or musical instrument
5. Sale is expressly authorized under federal law
6. Activity is authorized under state constitution for native peoples

Reprinted from Hawaii Wildlife Trade Ban

Relevant Case Law Upholding State Restrictions on Sale of Animal Parts

- *Asian American Rights Committee v. Brown*, (2012 WL 11891478 (Cal. Sup.)) - A state prohibition on the sale of shark fins in California was challenged as a "taking" in violation of the U.S. Constitution. The court found that no taking occurs if the product can still be possessed or non-commercially transferred, so that eliminating commercial trade alone does not constitute a taking, as it is still legal to possess, use, display, inherit and donate ivory.
- *Chinatown Neighborhood Assn. v. Harris*, 794 F.3d 1136 (9th Cir. 2015) The 9th Circuit Court of Appeals upheld a district court decision ruling that the state shark fin ban did not discriminate, interfere with commerce, or preempt federal fisheries laws.

State Ban of 2006 Upholds Restriction on Sale

Recent Congressional Action/Efforts

H.R.2494 - Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 ("Global Anti-Poaching Act"): To support global anti-poaching efforts, strengthen the capacity of partner countries to counter wildlife trafficking, designate major wildlife trafficking countries, and for other purposes.

- Passed House in November 2015
- On Senate calendar as of May 2016

S 1769/HR 697 - African Elephant Conservation and Legal Ivory Possession Act of 2015: Raw or worked ivory may be imported or exported under that Act and the Endangered Species Act of 1973 if: (1) the ivory is for a museum; (2) the ivory was lawfully importable into the United States on February 24, 2014, regardless of when it was acquired; or (3) the worked ivory was previously lawfully possessed in the United States.

- Currently not moving

S 2012 - Energy Policy Modernization Act of 2016: House amendments dramatically limit the U.S. Fish and Wildlife Service's ability to regulate the importation and exportation of ivory; amends the ESA to allow for the continued importation of sport-hunted elephant trophies (sec.2104).

- Bill passed as amended in House, House appointed conferees 5/26/16

Reprinted from H.R. 2494 - Anti-Poaching Act

Conclusion/Observations

- African Elephants will be extinct in 10-15 years
- Rhinos are already nearly extinct
- CITES nations, U.S. starting to make a difference
- State wildlife law: More important than ever, but too many exemptions provide loopholes
- Public pressure is key: National bans and boycotts, publicity, NGO pressure, voter pressure on state legislators and Congress
- Wildlife trafficking's ties to security, terrorism, stability, organized crime are serious
 - UN Secretary General to UN Security Council: "Elephant poaching is a grave threat to peace and security in Central Africa"

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Resources and Materials for CLE “Blood Ivory: Wildlife Trafficking”

New Mexico State Bar, Sept. 9, 2016

Federal Actions:

Executive Order 13648 - July 3, 2013: <https://www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking>

National Strategy for Combatting Wildlife Trafficking, Feb. 2014: <https://www.fws.gov/home/feature/2014/trafficking/national-strategy-wildlife-trafficking.pdf>

National Strategy’s Implementation Plan, Feb. 2015: <http://www.state.gov/documents/organization/237592.pdf>

U.S. Fish and Wildlife Service Director’s Order 210: <https://www.fws.gov/policy/do210.htm>; amendments a.o July 2016: <https://www.fws.gov/policy/do210a03.pdf>

U.S. Fish and Wildlife Service Final 4(d) Rule on Trafficking, June 6, 2016: https://www.federalregister.gov/articles/2016/06/06/2016-13173/endangered-and-threatened-wildlife-and-plants-revision-of-the-section-4d-rule-for-the-african?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov

State Bills:

New Jersey ivory ban bill - S 2012: http://www.njleg.state.nj.us/2014/Bills/S2500/2012_R1.PDF

New York ivory ban bill - A10143: http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A10143&term=2013&Summary=Y&Text=Y

Washington Initiative 1404: http://sos.wa.gov/assets/elections/initiatives/FinalText_784.pdf

California AB 96: <https://legiscan.com/CA/text/AB96/id/1264519/California-2015-AB96-Chaptered.html>

Hawaii SB 2647: http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=2647

State Wildlife Trafficking Bills in Sessions a.o 3.15.16: <http://ncel.net/wp-content/uploads/2016/03/State-Ivory-Ban-Bills-list-a.o-3.15.16.docx>

Lawsuit to enjoin CA law: *Ivory Education Institute v. California*, filed Nov. 25, 2015: <http://www.ivoryeducationinstitute.org/wp-content/uploads/IVORY-COMPLAINT-FINAL.pdf>

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Closing Panel Discussion and Q & A

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