

U.S. House Committee on Natural Resources
"Legislative Hearing on H.R. 1314, H.R. 1927, H.R. 4256, H.R. 4284, H.R. 4319, H.R. 4866"
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(ORAL STATEMENT)

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Thank you for the opportunity to testify before you today on behalf of the Western Coalition of Arid States [WESTCAS] and the Texas Water Conservation Association [TWCA]. Both groups appreciate the opportunity to present testimony in support of H.R. 1314.

WESTCAS is a coalition of mostly highly technical water and wastewater professionals from districts, cities, towns, and professional organizations in the arid-West states of Arizona, California, Colorado, Nevada, New Mexico, and Texas.

TWCA is the leading organization in Texas dedicated to conserving, developing, protecting, and using water resources of the State for all beneficial purposes. The membership encompasses the full spectrum of water use and interests from throughout the Texas.

Pertinent to this hearing, both WESTCAS and TWCA support cooperation on two critical goals—protection of threatened and endangered species and responsible and timely development and conservation of our water resources. There is no doubt that attempting to reach these goals can and does result in conflict. Members of both associations would assert that conflict results in delay—and in both cases, the protection of a critical species and provision for and conservation of adequate water resources, delays can be detrimental and even destructive.

Recognizing this, we support the changes to ESA settlement procedures that will provide an opportunity for such stakeholders to be informed of pending ESA complaints and to opt to be at the table.

Let me summarize my concerns with the present citizen lawsuit procedures that I believe can be improved by HR 1314. In 2011, a settlement was reached between the

US Fish and Wildlife Service and two environmental groups. The FWS had failed to meet certain statutory deadlines associated with the filing of petitions to list hundreds of species. The settlement requires FWS to issue endangered or threatened rulings on 757 species by 2018. This goal is being achieved through an accelerated work plan to make these complex decisions. However, the settlement that initiated the process used to reach these agreements took place out of the public arena, with little or no involvement from potential stakeholders (affected parties). The result is that while local stakeholders were left out of the process they are still faced the responsibility of defending against proposed listings that have the potential to harm their communities.

H.R. 1314 seeks to address this situation, without limiting FWS's regulatory authority or preventing it from litigating a case to resolution, in two ways:

- 1) Require the Secretary to publish notice of complaints filed within 30 days of being served with that complaint; and,
- 2) Provide affected parties (stakeholders) with a reasonable opportunity to intervene in a consent decree or settlement agreement filed pursuant to section 11(g)(1)(C).

With regard to notice, it is impossible for stakeholders to become involved in a process which they may not even know exists. However, a failure to meet this 30-day notice should not in itself be a basis for a legal action.

Importantly, H.R. 1314 also provides affected parties with a reasonable opportunity to intervene in a lawsuit or action brought under Section 11(g)(1)(C). States, counties and stakeholders can participate in the process. It is also provides that until the end of the intervention, parties to the suit may not motion for consent decree or to dismiss the suit under a settlement agreement.

Another provision of this legislation bars the practice of having the Federal government pay the legal fees of the plaintiffs in a settlement action.

In my written remarks, I cited a number of examples that time does not allow me to detail; however, the Dunes Sagebrush Lizard, and the extraordinary efforts of stakeholders including landowners, oil and gas industry, agriculture, academia and a variety of state and federal agencies got involved and produced a comprehensive conservation plan. In June 2012, FWS announced a decision not to list the DSL due in

large part to the conservation plan but also, and importantly, the effort to obtain additional data; data that was unknown when the DSL was proposed for listing. The lessons learned with DSL support the benefit of local and State government notification in ESA settlement procedures.

The State of Texas has been impacted by the 2011 settlement that identified 22 species for possible designation as endangered or threatened. Others will speak to the Lesser Prairie Chicken, but I want to comment on a couple of water-related species. Specifically, the water habitat needs of the Georgetown Salamander and now the Jollyville Plateau Salamander, added in 2013, can impact the ability of local governments to issue the building permits and construct water treatment facilities that might threaten this species. These restrictions will impact the local economy of the Cities of Georgetown and Austin, and much of Williamson and Travis County areas, which are among the fastest growing areas of Texas and the nation.

It was a surprise for the State and local governments and businesses to discover in mid-2011 that species had been identified for listing and that the protections being sought potentially involved steps that would undermine key areas of the economy including energy exploration, agriculture and construction. All of these communities would have benefited had they known these discussions were about to produce the settlement of 2011.

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

Thank you again for this opportunity to testify regarding HR 1314 and the benefits it would bring to the ESA Settlement procedures.