

**TESTIMONY BEFORE THE  
SENATE ENVIRONMENT AND PUBLIC WORKS  
SUBCOMMITTEE  
ON FISHERIES, WILDLIFE AND WATER**

**AUGUST 23, 2004**

**WYOMING OIL AND GAS CONSERVATION COMMISSION  
HEARING ROOM**

**CASPER, WYOMING**

**PRESENTED BY:**

**RANDALL LUTHI**

**WYOMING HOUSE OF REPRESENTATIVES**

**MAJORITY FLOOR LEADER**

**GOOD MORNING. I AM RANDALL LUTHI, A MEMBER OF THE WYOMING HOUSE OF REPRESENTATIVES. WELCOME TO WYOMING. AS SENATOR THOMAS CAN CERTAINLY TELL YOU FROM HIS CAMPAIGNS ACROSS THIS STATE; THIS IS A WONDERFUL STATE FULL OF PEOPLE WHO ARE FRIENDLY, COOPERATIVE, PROUD OF OUR COWBOY AND PIONEER HERITAGE, RECOGNIZE THE IMPORTANCE OF THE ROLL WYOMING PLAYS IN SUPPLYING NATURAL RESOURCE ENERGY TO THE REST OF THE NATION, ADAMANT IN PROTECTING OUR WILDLIFE, BOTH THE TWO AND FOUR LEGGED VARIETIES, AND IN GENERAL DO NOT GIVE A DAMN OF HOW YOU DO IT BACK IN YOUR HOME STATES OR WASHINGTON, DC. WHAT YOU DO, HOWEVER, IS AN ENTIRELY DIFFERENT MATTER.**

**THAT IS WHY I AM BEFORE YOU THIS MORNING. I WILL OFFER MY THOUGHTS CONCERNING THE ENDANGERED SPECIES ACT. IT'S ORIGINAL HEADY GOAL OF SUCCESS FULL OF HOPE AND PROMISE TO IT'S PROFOUND FAILURE.**

**FOR YOUR INFORMATION, I AM A NATIVE OF FREEDOM, WYOMING, WHICH IS A SUBURB OF ETNA AND AFTON, WYOMING. KNOWING THAT YOU MAY NOT BE WELL ACQUAINTED WITH WYOMING GEOGRAPHY, I AM LOCATED APPROXIMATELY 60 MILES SOUTH OF GRAND TETON NATIONAL PARK ON THE WESTERN EDGE OF WYOMING. THIS IS PRIME AGRICULTURAL, WILDLIFE AND TOURISM COUNTRY. IN TERMS OF DISTANCE, I DROVE FOR APPROXIMATELY 6 HOURS TO PARTICIPATE IN THIS**

**HEARING.**

**I AM FINISHING MY FIFTH TERM IN THE WYOMING HOUSE OF REPRESENTATIVES AND AM HONORED WITH BEING THE MAJORITY FLOOR LEADER. I'M A GRADUATE OF THE UNIVERSITY OF WYOMING AND THE UNIVERSITY OF WYOMING LAW SCHOOL. I WORKED AS A LEGISLATIVE AIDE FOR SENATOR ALAN SIMPSON IN WASHINGTON, DC AND AS A LEGAL COUNSEL IN THE DEPARTMENT OF INTERIOR, WHERE I HAD SOME EXPERIENCE WITH THE ESA AND STATE APPROVAL PLANS. I ALSO WAS MEMBER OF THE FEDERAL GOVERNMENT'S LEGAL TEAM ON THE EXXON VALDEZ OIL SPILL. I FINISHED MY DC CAREER AT THE GENERAL COUNSEL'S OFFICE AT NOAA, SPECIALIZING IN NATURAL RESOURCE ISSUES. I RETURNED TO WYOMING TO RUN MY FAMILY'S RANCH AFTER THE DEATH OF MY FATHER.**

**I AM CERTAINLY NOT AN EXPERT ON THE ESA, FOR IF I WERE, I WOULD NOT BE A SMALL COUNTRY LAWYER, WITH A RANCHING AND FARMING HABIT. A HABIT THAT REQUIRES I GO TO THE OFFICE EVERY DAY IN ORDER TO FINANCE THAT HABIT. IF I WERE AN EXPERT ON THE ACT, I WOULD LIKELY BE IN A COASTAL LAW FIRM, ACTIVE IN LITIGATION TO EITHER SUPPORT OR ATTACK THE FEDERAL GOVERNMENT'S ACTIONS, BECAUSE THAT IS WHAT THE ACT HAS PRODUCED, A GENERATION OF LITIGATION, WITH NO END IN SIGHT. THE ACT ESTABLISHES IMPOSSIBLE TIME FRAMES, A EXTREMELY LOW THRESHOLD FOR PETITIONS AND LACKS**

**THE REQUIREMENT OF CREDIBLE SCIENCE. COUPLE THOSE SHORTCOMINGS WITH THE DISMAL RECORD OF SUCCESS, IT IS CLEAR THE THE LITIGATION TRAIN WILL ONLY GATHER MOMENTUM.**

**I MENTIONED EARLIER THAT WYOMING IS FULL OF DEDICATED AND COOPERATIVE CITIZENS THAT CAN USUALLY FIND AN ACCEPTABLE BALANCE BETWEEN PROTECTING AND ENHANCING THE ENVIRONMENT AND THE DEVELOPMENT OF VITAL NATURAL RESOURCES. THE LAND SURROUNDING THIS BUILDING IS A PRIME EXAMPLE OF THAT COOPERATION AND DEDICATION. IT IS THIS ATTITUDE THAT I WOULD ENCOURAGE YOU TO INCORPORATE IN THE ENDANGERED SPECIES ACT. I ENCOURAGE THE MORE FEDERAL RECOGNITION OF PRIVATE PROPERTY AND STATES' RIGHTS. I RECOMMEND THAT THE THRESHOLD BE RAISED FOR BEING ABLE TO PETITION THAT A SPECIES BE LISTED AND THAT THE FEDERAL GOVERNMENT SHARE MORE OF THE ACTUAL COST OF IMPLEMENTING THE ACT.**

**A LOOK AT THE ACT'S RESULTS TELLS A REMARKABLE STORY. ACCORDING TO THE THREATENED AND ENDANGERED SPECIES SYSTEM (TESS) WEB PAGE, AS OF AUGUST 12, 2004, 1265 SPECIES OF PLANTS AND ANIMALS ARE CURRENTLY LISTED AS ENDANGERED OR THREATENED IN THE UNITED STATES. THIS BREAKS DOWN TO 519 ANIMALS AND 746 PLANTS. PETITIONS FOR SUCH LISTINGS FAR EXCEED THE NUMBER OF ACTUAL LISTINGS. FOR EXAMPLE, AT THIS TIME THE FISH AND WILDLIFE SERVICE**

**IS CURRENTLY EVALUATING 344 PETITIONS. NOW, LET'S LOOK AT THE SUCCESS RATE. AGAIN, ACCORDING TO TESS, A TOTAL OF 39 SPECIES HAVE BEEN DELISTED. OF THAT PALTRY TOTAL OF 39 SPECIES, ONLY 16 WERE DELISTED BECAUSE THEIR POPULATIONS RECOVERED. OTHERS WERE REMOVED BECAUSE OF ERRONEOUS INFORMATION, WHICH RESULTED IN THEIR MISTAKEN LISTING; OR A TAXONOMIC REVISION; EIGHT SPECIES ARE EXTINCT OR BELIEVED TO BE EXTINCT. A THREATENED SPECIES HAS A BETTER CHANCE OF WINNING THE LOTTERY OR A SWEEPSTAKES THAN RECOVERING UNDER THE ESA.**

**I WOULD NOT HOLD UP THE ESA AS A POSTER BOY FOR SUCCESS FOR FEDERAL LEGISLATION. CLEARLY REVISIONS NECESSARY. THE REVISIONS THAT I RECOMMEND ARE A RESULT OF THE IMPLEMENTATION OF THE ACT WITHIN THE STATE OF WYOMING, PARTICULARLY DEALING WITH GRIZZLY BEAR AND GRAY WOLF.**

**IT IS DIFFICULT TO FIND A RESPECTED BIOLOGIST THAT DOES NOT BELIEVE THAT THE GRIZZLY HAS RECOVERED IN SUFFICIENT NUMBERS TO BE DELISTED. I SERVED ON THE TEAM THAT DRAFTED THE STATES RECOVERY AND MAINTENANCE PLAN SEVERAL YEARS AGO. THE PLAN PRETTY MUCH ADOPTED THE RECOMMENDATIONS OF THE FEDERAL FISH AND WILDLIFE SERVICE. HOWEVER, THE BEAR REMAINS LISTED, WITH NO SURE END IN SIGHT.**

**WITH THAT LESSON, IT IS NOT SURPRISING THAT WYOMING IS**

**TAKING A DIFFERENT APPROACH TO THE GRAY WOLF. THE RELOCATION OF GRAY WOLVES TO WYOMING WAS ACCOMPLISHED WITHOUT ANY FORM OF STATE APPROVAL, ACCEPTANCE OR JOY. THEY WERE BROUGHT IN ROUGHSHOD OVER THE STATE'S OBJECTION. AT THE TIME, WE WERE TOLD THAT THE FEDERAL LANDS OF YELLOWSTONE AND GRAND TETON WOULD BE AMPLE AREA FOR THE WOLF. THE GRAY WOLF IS NOT A PIPING PLOVER OR A FLY CATCHER, YOU CANNOT LOCATE A DOMINATE PREDATOR INTO AN AREA RICH IN WILDLIFE AND LIVESTOCK WITHOUT SERIOUS CONSEQUENCES. THOSE PRIVATE AND STATE CONCERNS WERE IGNORED BY THE FEDERAL GOVERNMENT. THE FEDERAL ARROGANCE IN THIS MATTER WAS, AND CONTINUES TO BE, ASTOUNDING. HOW DIFFERENT IT WAS WHEN A FEW YEARS A GO A COUPLE OF BEAVER NATURALLY RELOCATED TO THE TIDAL BASIN AND DID WHAT BEAVERS DO. THEY GNAWED ON A FEW CHERRY TREES. THERE WAS NO DELAY IN REMOVING THE BEAVERS TO PROTECT THE TREES. SHOULD WE IN WYOMING BE DESERVE ANY LESS ATTENTION?**

**TO NO ONE'S SURPRISE, THE WOLVES HAVE FLOURISHED. TO DATE, POPULATION ESTIMATES ARE NO LESS THAN 258 WOLVES IN WYOMING. AND THAT IS A VERY LOW ESTIMATE. THE POPULATION CONTINUES TO GROW AT APPROXIMATELY 25% PER YEAR. THE FWS IS NO LONGER SATISFIED THAT THE FEDERAL ENCLAVES CAN FEED THE WOLVES, THEY NOW WANT WYOMING TO MANAGE FOR THE SURVIVAL OF THE WOLVES THROUGHOUT**

**THE STATE. IT A CLASSIC BAIT AND SWITCH.**

**WHAT ARE THE CONSEQUENCES OF THE RELOCATION EFFORT? ALTHOUGH FINDING TWO BIOLOGISTS TO AGREE IS AS DIFFICULT AS FINDING TWO LAWYERS TO AGREE, MOST ESTIMATE THAT A WOLF WILL KILL AN ELK ABOUT EVERY 3 OR 4 DAYS. MOOSE, DEER AND ANTELOPE ARE ALSO PREY SPECIES. DO THE MATH. THAT'S APPROXIMATELY 100 ELK PER YEAR.**

**WYOMING BENEFITS ECONOMICALLY AND ESTHETICALLY FROM WILDLIFE. WITHOUT WILDLIFE, OUR TOURISM INDUSTRY AND A THRIVING HUNTING ECONOMY WILL CRASH. EVERY ELK, DEER OR MOOSE KILLED BY A WOLF LEAVES ONE LESS FOR VIEWING OR HUNTING. WHAT PRICE WILL WYOMING HAVE TO PAY FOR R THE VICARIOUS AND VOYEURISTIC ENJOYMENT OF SOMEONE IN NEW YORK KNOWING THAT WOLVES ARE THRIVING? ACCORDING TO FWS REPORTS, SINCE THE RELOCATION OF THE WOLVES INTO THE STATES OF WYOMING, IDAHO AND MONTANA , TO THE END OF 2003; 301 CATTLE, 804 SHEEP AND 63 DOGS ARE CONFIRMED WOLF KILLS. ALL KNOWN PACKS IN WYOMING HAVE KILLED LIVESTOCK. THE BEST I CAN GLEAN FROM REPORTS FOR 2004, 30 CATTLE AND 134 SHEEP ARE CONFIRMED KILLS. CONFIRMED MEANS BLESSED BY THE FWS, THERE ARE MANY MORE KILLS THAT ARE NEVER FOUND OR CONFIRMED. WHILE THE NUMBERS DON'T SOUND TOO STRIKING WHEN COMPARED WITH THE TOTAL NUMBER OF LIVESTOCK, THEY ARE VERY DEVASTATING IF THEY ARE YOUR**

**CATTLE, SHEEP OR DOGS. THE CONTROL EFFORTS OF THE FWS ARE VERY OFTEN, TOO LITTLE AND TOO LATE. THE ARROGANCE CONTINUES.**

**ATTACHED ARE COPIES OF PHOTOS THAT SHOW THE REALITY OF THE FEDERAL EXPERIMENTATION ON WYOMING. THESE ARE CONFIRMED WOLF KILLS OR INJURIES OF LIVESTOCK, ELK AND DOGS. THESE KILLS TOOK PLACE ON THE DIAMOND G RANCH, NEAR DUBOIS, WYOMING. AFTER THESE DOGS WERE KILLED, THE REMAINING DOG IS ONLY ALLOWED OUTSIDE THE HOUSE ON A LEASH AND THE OWNERS CARRY A GUN TO PROTECT THE DOG. WYOMING RESIDENTS, THEIR DOGS AND OUR WILDLIFE SHOULD NOT BE HELD HOSTAGE BY THE FEDERAL GOVERNMENT.**

**WYOMING'S RECOVERY PLAN, WHICH ALLOWS A DUAL CLASSIFICATION OF THE WOLF AS A PREDATOR AND TROPHY ANIMAL WAS APPROVED BY A MAJORITY OF THE WOLF EXPERTS SELECTED BY THE DEPARTMENT OF THE INTERIOR. HOWEVER, INTERIOR HAS REJECTED THE PLAN. THIS REJECTION OF THEIR OWN EXPERTS HAVE FORCED US INTO A LAWSUIT. A LAWSUIT, THAT THE FEDERAL GOVERNMENT RECENTLY CLAIMED WYOMING HAS NO RIGHT TO BRING AGAINST THE FEDERAL GOVERNMENT. BUT IF NOT THE STATE, WHO DOES? THIS IS A CASE OF FEDERAL ARROGANCE, NOT A SUPREMACY QUESTION. TO BE CLEAR, DO NOT UNDERESTIMATE THE WILLPOWER OF THE WYOMING LEGISLATURE TO MAINTAIN OUR POSITION THAT THIS IS A STATES' RIGHTS ISSUE, IT IS OUR RIGHT TO CLASSIFY THE WOLF FOR WHAT IT IS, A PREDATOR.**

**PARTICULARLY SINCE EVEN WITH THE PREDATOR AND TROPHY CLASSIFICATION, OUR PLAN PROVIDES FOR ADEQUATE PROTECTION OF THE GRAY WOLF.**

**TO IMPROVE THE SITUATION FOR THE FUTURE, I ENCOURAGE THE COMMITTEE TO FAVORABLY CONSIDER THE REVISIONS RECOMMENDED BY SENATOR THOMAS IN S. 369. I ENCOURAGE YOUR ADOPTION OF THESE AMENDMENTS, NOT ONLY BECAUSE IT IS POLITICALLY WISE THAT I DO SO AS I SIT IN FRONT OF SENATOR THOMAS, BUT ALSO BECAUSE THE REVISIONS WILL IMPROVE THE FEDERAL STATE COOPERATION OF WHICH I SPOKE EARLIER. THE AMENDMENTS WOULD REQUIRE SOUND SCIENTIFIC BIOLOGICAL INFORMATION, SOME OF WHICH MUST BE OBTAINED ON SITE, FOR THE CONFIRMATION OF THE ENDANGERED OR THREATENED STATUS OF A SPECIES AND THAT A RECOVERY PLAN IS FEASIBLE.**

**SOME MAY SAY THAT WILL LIMIT THE POTENTIAL FOR LISTING, BUT IT IS BETTER TO FOCUS ON FEWER SPECIES WITH A GREATER CHANCE OF SUCCESS OF RECOVERY RATHER THAN CONTINUE DOWN THE ROAD OF SHOOTING A SHOT GUN INTO THE AIR AND HOPE YOU GET LUCKY.**

**IN TERMS OF COOPERATION, THE PROPOSED AMENDMENTS REQUIRE BETTER COORDINATION AND COOPERATION WITH THE STATE IN WHICH THE SPECIES IS LOCATED, AND ACTUALLY ASKING THE STATE FOR ITS OPINION OF WHETHER THE LISTING IS NECESSARY. THE ACT ALSO PROVIDES FOR LOCAL PUBLIC HEARINGS, WHICH ALLOW GREATER ACCESS**

**TO THE PROCESS BY THOSE MOST AFFECTED.**

**THE AMENDMENTS ALSO RATCHET UP THE REQUIREMENTS FOR EMERGENCY LISTINGS. FINALLY, THE SECRETARY WOULD BE REQUIRED TO PUBLISH THE NOTICE OF INTENT TO REMOVE A SPECIES FROM THE LIST PROMPTLY, ONCE THE RECOVERY GOALS ARE OBTAINED.**

**OTHER AMENDMENTS I WOULD ENCOURAGE IS A GREATER ROLE FOR THE STATES TO PLAY AND INCENTIVES FROM PRIVATE PROPERTY OWNERS TO COOPERATE IN LIEU OF FORCED USE AND LAND RESTRICTIONS. FINALLY, COST. STATES SHOULD NOT HAVE TO BEAR SO MUCH OF THE FINANCIAL COST WHEN DEALING WITH LISTED SPECIES WITHIN THEIR BORDERS.**

**THANK YOU FOR THIS OPPORTUNITY TO PRESENT THIS TESTIMONY. I AM CERTAINLY AVAILABLE FOR ADDITIONAL QUESTIONS.**



CALF ATTACKED BY WOLVES



CALF KILLED

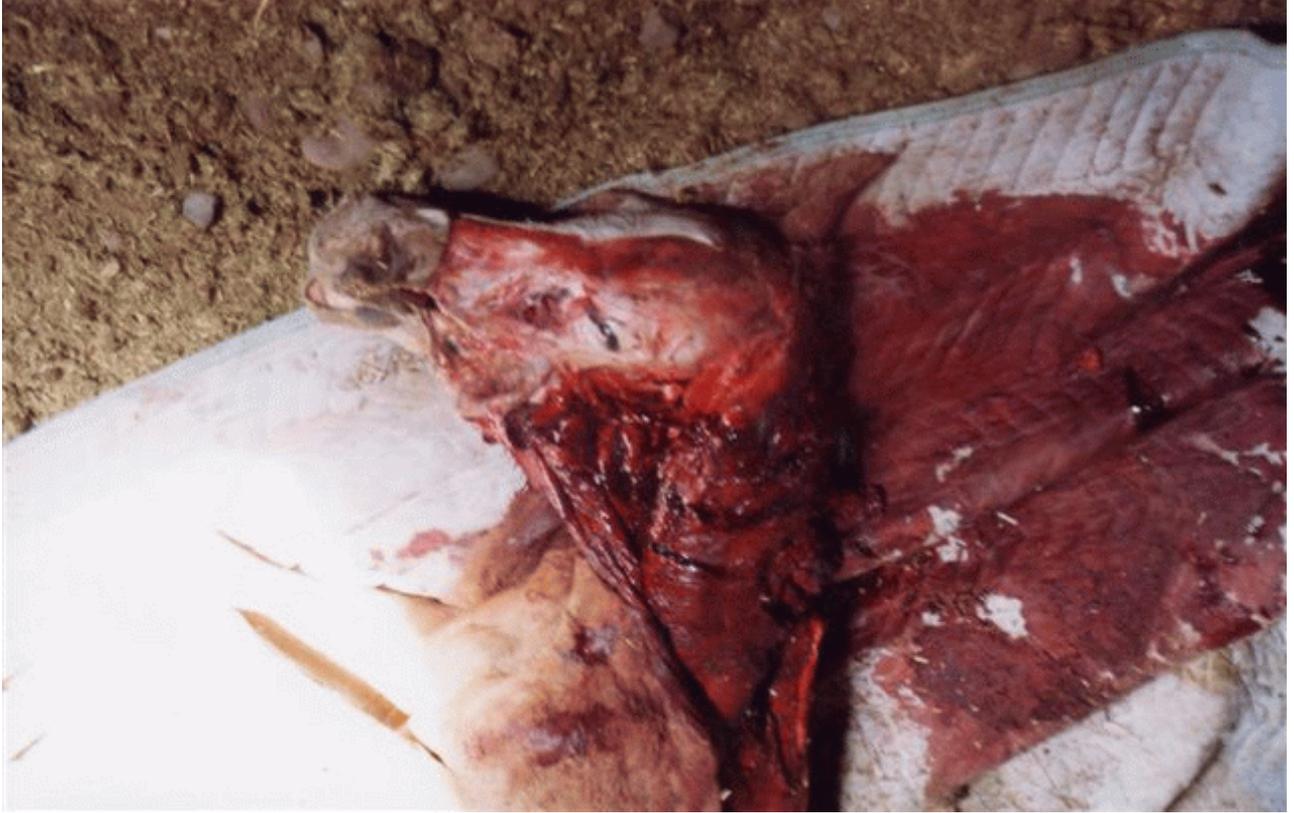
BY WOLVES. SKINNED BACK TO SHOW TRAUMA.



CALF KILLED SPRING OF 2004, APPROXIMATELY 200 YARDS FROM HOUSE



FAMILY DOGS KILLED BY WOLVES



ELEVEN DAY OF COLT KILLED BY WOLVES. SKINNED TO SHOW TRAUMA.



ELK INJURED BY WOLVES. TAKEN MAY OF 2004.



RED CALF KILLED BY WOLVES. MAY OF 2004.



SADDLE HORSE KILLED BY WOLVES