

Endangered earth

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Fall 2005

Kill this Bill

**Atrocious anti-ESA attack passes House;
Center steps up fight to stop bill in Senate**

On September 29, in a 229-193 vote falling largely along party lines, the U.S. House of Representatives passed a bill to bulldoze the Endangered Species Act.

Congress's most vocal Endangered Species Act opponent, Rep. Richard Pombo (R-Calif.), authored the bill (H.R. 3824) under the misleading title "Threatened and Endangered Species Recovery Act of 2005."

To the contrary, Pombo tailored his bill to suit the best interests of developers, not the imperiled plants and animals whose recovery—and very survival—depend on the Act.

For instance, Pombo's legislation, better dubbed the "Extinction Bill":

- Eliminates existing and future protection of "critical habitat"—so vital to species recovery that eliminating it cuts the heart out of the Endangered Species Act.

- Exempts the use of dangerous pesticides—like those that nearly drove the bald eagle extinct four decades ago—from Endangered Species Act review.

- Discards the Act's mandate to use the "best available science" and instead allows the administration's politically appointed Secretary of the Interior to determine what science should

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"count" in decisions affecting endangered species.

- Pays off developers to not violate the law. Under Pombo's bill, developers who claim they would lose profits to environmental protections would have their "foregone" profits reimbursed — by taxpayers. This is like paying polluters to not illegally dump poisons in our rivers, and would drain millions of dollars from already severely underfunded endangered species programs and wildlife refuges.

The only thing more scandalous about this bill than its language is the lightning speed with which it passed the House. Pombo rushed the bill through his committee and to the House floor just days after making the text public.

With the nation's eyes turned to the devastating aftermath of Hurricanes Katrina and Rita, he managed to sneak this shocking and complex legislation through a hasty House vote with virtually no debate.

Fortunately, the bill is unlikely to see such smooth sailing in the Senate. Kill this bill *continued on back page...*



Photo by Robin Silver

America would no longer have its national symbol—the bald eagle—were it not for the safety net of the Endangered Species Act. The Act helped bring the majestic bird back from the brink of extinction after the pesticide DDT nearly wiped out bald eagle populations four decades ago.



ADVOCACY SPOTLIGHT

Lisa Belenky, *Conservation Attorney*

Incredible Shrinking Habitat

Toad's tale tells larger story of administration's failure to protect endangered species habitat

When the arroyo toad was added to the federal endangered species list in 1994, it had already lost nearly 75 percent of its California stream habitat.

Five years later, its intact habitat remained unprotected—despite an Endangered Species Act requirement that the U.S. Fish and Wildlife Service (USFWS) designate sufficient “critical habitat” to promote the toad’s conservation and recovery.

So in 1999, the Center took the toad’s case to court to compel the agency to meet its legal obligation to map out protected habitat. A settlement led the agency to propose 478,000 acres of critical habitat for the arroyo toad in June 2000—which dwindled to the final designation of only 182,000 acres of habitat.

Despite this 62 percent reduction in acreage, some developers were reluctant to relinquish even an inch. In November 2001, the Building Industry Legal Foundation and other developer groups filed suit challenging the 182,000-acre habitat designation.

Administration gone AWOL

Because the federal government is entrusted with the responsibility to both establish and enforce endangered species protections, one might have expected the government to defend the toad by blocking the developers’ bid to strike down its critical habitat.

2 But under the Bush administration, federal agencies have been conspicuously absent when industry takes

aim at endangered species. The administration has habitually stepped out of development’s path, appeasing its industry friends and abandoning its responsibility to uphold wildlife protection laws.

Because the government refused to defend the toad, the Center stepped in to argue that the critical habitat designation should stand. Unfortunately, the developers’ case resulted in a court order withdrawing all habitat protections for the arroyo toad and instructing USFWS to review the critical habitat boundaries.



Photo by Jim Rorabaugh

Arroyo toad

In April 2004, the agency issued its second proposal—this time recommending only 139,000 acres of critical habitat. Incredibly, the agency’s final decision in April 2005 slashed this proposed acreage by 92 percent, designating only 12,000 acres for the toad. (See map, “The Arroyo Toad’s Incredible Shrinking Habitat.”)

The administration justified its meager designation, which excluded large swaths of prime arroyo toad habitat, by claiming that protecting a larger area would cause “economic harm.”

On August 24, the Center took the arroyo toad’s cause back

to the courts, filing suit against USFWS for failing to designate sufficient critical habitat to conserve and recover the species.

Healthy toad habitat means healthy streams

The arroyo toad lives in and around streams in coastal and desert watersheds from Monterey County in central California to Baja, Mexico. The toad relies on upland vegetation for foraging, as well as sandy streambeds that experience the periodic flooding needed to redistribute sediment for breeding, burrowing and estivation.

Periods of estivation can last for weeks or months in hot spring and summer months. The toad emerges nightly in early spring, but reduces its activity as temperatures soar, emerging only one night out of every seven to 10 days.

Unfortunately, naturally flowing streams and surrounding upland habitat are fast disappearing from central and southern California. The major causes of arroyo toad habitat decline are increased development, dams, water extractions and other water-related projects.

Direct threats to the toad’s survival also include off-road vehicles tearing up streambeds and riparian habitat, gravel mining, suction dredge mining, livestock grazing, non-native predators and invasive plants, and roads and campgrounds adjacent to streams.

Protecting the arroyo toad’s habitat from these threats reaps benefits for many other native riparian and aquatic species and

helps preserve intact functioning ecosystems. Humans benefit, too, from the preservation of water quality, soil structure and open space.

Voodoo economics

Unfortunately, this administration doesn't concern itself with the benefits—tangible or intangible—of protecting wildlife habitat. But over-calculating the costs of designating critical habitat has become a favorite tool for excluding lands from protection. The administration has used the same “voodoo economics” to slash habitat protections for the western snowy plover, steelhead trout, Pacific salmon, Peirson's milk-vetch, and other threatened and endangered species.

The administration claimed that costs outweighed benefits for protecting most of the acreage excluded from the arroyo toad designation. Not surprising, since this administration has blatantly disregarded the value that the majority of Americans assign to preserving a legacy of wildlife and wild places.

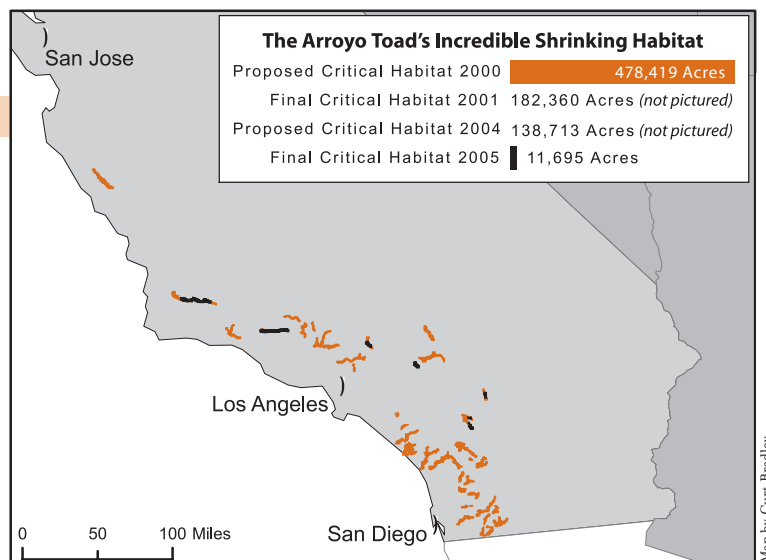
USFWS failed to consider clear, long-term benefits of protecting the toad's habitat, such as cleaner drinking water and preservation of open space, while wildly inflating projected costs. In short, the “economic analysis” the agency relied on is better described as “junk economics.”

Ultimately, USFWS even disregarded its own science in favor of economic arguments—a practice not uncommon under an administration so driven by profit over preservation. In the agency's own recovery plan for the arroyo toad, USFWS estimated that at least 35 self-sustaining populations of the toad throughout its range would be required to consider the species recovered. Ultimately, the agency designated only six widely dispersed segments of arroyo toad critical habitat—which, according to its

own biologists, is insufficient for recovery.

Latest chapter unfolds

The goal of the Endangered Species Act is recovering threatened and endangered wildlife, not fencing off small areas and creating mini-zoos to stave off extinction. Protecting a mere three percent of the critical habitat originally proposed for the arroyo toad—a species whose habitat was already severely diminished by the time it became officially “endangered”—falls far short of ensuring survival or recovery of the species. The Center hopes to end this disturbing trend of selling out wild lands to industry. By challenging the administration's failure to protect habitat the toad and other plants and animals need to survive, the Center also hopes to restore the spirit of a strong Endangered Species Act. ■



Editor's Note: On September 29, the U.S. House of Representatives passed a bill authored by long-time Endangered Species Act foe Richard Pombo that cuts the heart out of the Act's protections for imperiled plants and animals. Supported by the Bush administration, the bill would eliminate “critical habitat” protection altogether and introduce a taxpayer-subsidized program rewarding developers who plan the most ecologically harmful projects for the most sensitive habitat. See cover story, this issue.

Toad “haplessly” drawn into national debate

The arroyo toad recently shared the national media spotlight with President Bush's controversial Supreme Court nominee John Roberts.

The toad played a role in a 2003 legal opinion by Roberts that is widely regarded as indicative of the new chief justice's stance on the federal government's broad regulatory powers, including its authority to uphold cornerstone environmental laws.

Those laws, including the Clean Air Act, Clean Water Act and Endangered Species Act, all rest on a constitutional clause giving the federal government power to regulate interstate commerce. That “commerce clause” also underlies the federal government's authority to protect wildlife and other natural resources.

In 2003, a Washington D.C. Circuit Court of Appeals ruling

upheld that authority to enforce the Endangered Species Act in order to protect arroyo toad habitat from a San Diego area construction project. Roberts disagreed with the ruling and argued that it should be re-examined. In an infamously worded opinion he asked whether “a hapless toad that, for reasons of its own, lives its entire life in California” merited federal protection under the commerce clause.

Unfortunately, the arroyo toad cannot “reason” to live elsewhere than the unique stream habitat where it evolved, and is not concerned with the ever-shifting political boundaries humans draw upon the land. The toad is only “hapless” in the dramatic loss of its habitat to encroaching development and other threats.

For more information on the Center's campaign to protect the toad, visit www.haplesstoad.org.

PROGRAM NEWS...

Glen Canyon grazing abuses challenged

In July, the Center filed suit in federal district court to stop livestock grazing abuses of the ecological and cultural resources of Glen Canyon National Recreational Area (GCNRA).

GCNRA is a special place to many of our members and serves as important habitat for imperiled species.

GCNRA contains more than a million acres that typify the beauty of the Colorado Plateau and its diversity of plant and wildlife species, riparian areas, awe-inspiring vistas, and rich cultural resources from ancestral Puebloan and Fremont cultures.

The Center teamed up with Great Old Broads for Wilderness and partners at the University of Denver Law Clinic to bring this suit against the Department of the Interior's Gale Norton, the Bureau of Land Management, and the National Park Service, who cooperatively manage grazing in the recreation area. The suit asserts that the agencies have failed to complete a legally-required analysis of resource damage, and that the public has been left out of the process permitting livestock grazing at Glen Canyon.

Our lawsuit also contends that the agencies know better. For example, the Park Service recognized ongoing livestock impacts and developed a grazing management plan six years ago to help protect the area's resources. However, that plan was never implemented, and damages have been

allowed to continue.

The Center intends to end these abuses and provide Glen Canyon the protection it deserves.

Old-growth logging halted at Grand Canyon, Giant Sequoia

In separate victories, the Center helped halt two public lands timber sales that were not what they seemed. One sale



Sequoia logging at Saddle Project site

would have logged as many as 40,000 old-growth ponderosa pines—some up to 40 inches in diameter and hundreds of years old—in the Kaibab National Forest on the Grand Canyon's North Rim. A second sale targeted trees in Giant Sequoia National Monument, home to two-thirds of the world's largest trees.

The Jacob-Ryan timber sale in the Kaibab National Forest began as a sensible effort to remove small, fire-prone trees, but culminated in a senseless attempt at industrial-scale logging of prime wildlife habitat. Goshawks, whose population in the North Kaibab Ranger District has declined from an estimated 260 breeding pairs historically to as low as seven in recent years, would be particularly hard hit by old-growth logging.

The Center appealed the Forest Service's plan,

persuading the agency to withdraw the project. Unfortunately, we have learned that Kaibab Forest Supervisor Michael Williams intends to use legal technicalities to pursue old-growth logging in the area.

In California, the Center and its partners intervened in the Saddle Project timber sale, which aimed to log 2,000 acres within Giant Sequoia National Monument. The Forest Service argued that logging was necessary to prevent fires. But a federal judge questioned the agency's sincerity and science—noting they had sat out five years of unfavorable timber prices before beginning logging once prices climbed favorably.

The Saddle Project was approved in 1999, before the area became part of the national monument. The Bush administration pushed to “grandfather” the project anyway and began logging in July 2005. The judge ordered a temporary injunction halting the logging, which cut hundreds of trees in just four weeks.

The Center and other groups were represented in this case by the Sierra Club, John Muir Project, and Earthjustice.

New measures to save raptors from turbines not enough

In 2003, the Center appealed permit renewals for windpower turbines at Altamont Pass in eastern Alameda County, California. More than 1,000 birds of prey are killed by turbines at the pass each year,

including rare golden eagles and burrowing owls.

In September 2005, the County renewed the permits with new conditions for reducing bird kills—an improvement over original permits, but not including all the measures conservationists and the state attorney general's office had requested.

Altamont companies must permanently shut down the most lethal two percent of turbines, shut down all turbines each winter (season of highest bird kills and least power generation), retrofit electrical lines to prevent electrocutions, and remove non-operational turbines. Although most Altamont companies have operated eight years without implementing such measures, seasonal and permanent turbine shutdowns will phase in over another five years.

The County approved accelerating a re-powering program replacing all existing turbines with fewer and larger new turbines within 13 years. Re-powering will also locate turbines in less



Altamont wind farm

risky areas and raise turbine blades above most bird flights, changes hoped to significantly lower bird deaths.

The County also refused to allow companies to opt out of compensation for massive bird kills by claiming financial hardship. The wind industry has never

paid compensation, though a recent Center financial analysis shows companies can well afford it.

Unfortunately, under new permit conditions, turbines will likely continue to kill more than 500 raptors annually for the next five years.

Meanwhile, a 2004 Center lawsuit against Altamont windpower companies alleging that ongoing bird kills are unlawful and unfair business practices continues to move forward, with a state court recently denying industry motions to dismiss the case.

Domestic sheep grazing policy harms Sierra Nevada bighorns

This summer, the Center's Deserts Program helped expose a controversial wildlife management policy harmful to endangered Sierra Nevada bighorn sheep. The controversy's main source is the U.S. Forest Service's (USFS) unwise decision to permit domestic sheep grazing within bighorn recovery areas of the Humboldt-Toiyabe National Forest in California's Sierra Nevada.

The bighorn's recovery plan calls for large "buffer zones" between domestic sheep and bighorns. Because domestic sheep are known to transmit deadly diseases, they must be kept away from bighorns.

But it is the Forest Service's public lands grazing favoritism that forced the California Department of Fish and Game to consider killing or trapping bighorns that get too close to domestic

sheep, to try and prevent deadly disease outbreaks.

Together with Friends of the Inyo, we are advocating alternatives, such as grazing permit buyouts or only permitting domestic sheep grazing far from bighorn herds.

The Center is also calling for better monitoring of bighorn herds, and working to compel the administration to designate critical habitat for bighorn recovery.

Victories place amphibians above pesticides

In two separate cases, the Environmental Protection Agency (EPA)



Barton Springs salamander

must now consult with the U.S. Fish and Wildlife Service on the effects of pesticides on two endangered species: the Barton Springs salamander in Texas, and the California red-legged frog.

Pesticide use throughout the United States is authorized by the EPA. Under the Endangered Species Act, the agency is required to consult with USFWS to ensure pesticide use does not harm imperiled species. However, the EPA completely failed to address the effects of pesticides it authorizes on these two federally protected species.

In coalition with Save our Springs Alliance, the Center reached a legal settlement in August requiring the EPA to consult

with USFWS on the impacts of pesticide use on the Barton Springs salamander, which survives only in a spring-fed swimming hole in Austin, Texas.

Six pesticides of concern to human health and the salamander have been found in the Barton Springs aquifer, in particular the controversial pesticide atrazine.

In California, a federal judge ruled in September that the EPA violated its duty to determine if 66 pesticides, used in or near red-legged frog habitat, were harming the species.

Mark Twain elevated this frog to fame in his short story, "The Celebrated Jumping Frog of Calaveras County." The frog is now only found in about a quarter of its historic habitat.

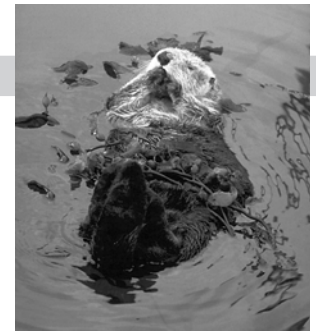
Amphibians' thin skin leaves them particularly sensitive to environmental contaminants and pesticides. Globally, they are declining more rapidly than any other species group, sometimes even when they have plenty of healthy habitat.

Alaskan otters gain ESA protection

Alaskan sea otters finally received federal protection in August when the U.S. Fish and Wildlife Service listed the Aleutian otters as threatened under the Endangered Species Act.

The Center petitioned the agency to list the otter five years ago, then filed suit in 2003 to force the agency to stop dragging its feet to save the rapidly declining species.

Since 1980, the Alaskan sea otter population has



Sea otter

crashed by two-thirds, down from estimates of 128,000 to just 42,000. Biologists are uncertain of the cause for such a drastic decline.

Alaskan otters occupy a range spanning from the west side of Cook Inlet to the Alaskan Peninsula and Kodiak Island, west through the Aleutian Islands. They eat sea urchins, abundant in their range. The otters may be an indicator of ecosystem decay in the Bering Sea.

Protection of the otters under the Act will include biological investigations into why their populations are crashing, as well as identification of critical habitat for the species.

Judge orders new habitat for sturgeon

In response to a lawsuit by the Center for Biological Diversity and Ecology Center, a U.S. district judge ordered the U.S. Fish and Wildlife Service to re-designate critical habitat for the Kootenai River white sturgeon—including all areas essential to the conservation of the species.

Like other white sturgeon, the Kootenai River sturgeon is a long-lived species that can grow to impressive size. A white sturgeon caught in Kootenai Lake weighed 350 pounds and was believed to be 85 to 90 years old. Sturgeon have been around for more than 250 million years. Despite their earthly longevity,

Photo by Wyman Meiner, USFWS

PROGRAM NEWS...

sturgeon species around the world are endangered.

Kootenai River white sturgeon have not successfully spawned since completion of Libby Dam in

in filing suit to protect the caribou's beleaguered habitat from increasingly heavy snowmobile traffic. The suit seeks to protect critical winter feeding and calving areas within 450,000 acres of high-elevation forests near Priest Lake, Idaho by restricting snowmobile use in key areas.

Historically, caribou herds roamed swaths of temperate rain forest from Idaho's Clearwater River region north to British Columbia, but hunting and habitat loss to old-growth logging dramatically diminished those herds.

In aerial surveys for the past five years, an average of three caribou per year have been sighted south of the Canadian border. Those caribou belong to a herd of 30 that once migrated between Idaho and British Columbia, but is increasingly staying north of the border. Estimates of Canadian caribou are as high as 1,670.

Technological advances have made snowmobiles lighter, more powerful, and able to travel farther into caribou recovery areas. Scientists are unsure why caribou numbers remain low, but the coalition believes increasingly invasive snowmobile use is the largest manageable threat to caribou south of the border.

Despite its own research indicating that winter snowmobile traffic is harmful to caribou, the U.S. Forest Service continues to encourage increased snowmobile use in caribou habitat.

Caribou are shy animals, weighing up to 400 pounds. Hooves that expand to the size of dinner plates make caribou specially adapted to

negotiating deep mountain snowfields. But snowmobiles both scare caribou and create compacted trails that unnaturally draw other wildlife—including predatory cougars—into caribou habitat.

Plaintiffs in this lawsuit include Selkirk Conservation Alliance, Northwest Ecosystem Alliance, Defenders of Wildlife, Idaho Conservation League, and Inland Empire Lands Council.



Woodland caribou

Photo by Jon Nickles, USFWS

■ ■ ■ ■ ■ Suspect science sidelines Miami blue protection

In June, the Center took the first legal steps to fight the U.S. Fish and Wildlife Service's decision to deny Endangered Species Act protection for the imperiled Miami blue butterfly. The agency acknowledged in May that the butterfly merits protection, but declined to add it to the federal list of endangered species citing lack of funding.

Starving endangered species programs of funding, then claiming those programs are broken, has become a common strategy of the Bush administration in its efforts to undermine the Endangered Species Act. So has employing junk science to serve its political agenda.

USFWS argued the Miami blue is a low priority for protection because biologists had failed to reintroduce the butterfly to its former range.

However, the director of the reintroduction program, an internationally-respected entomologist and University of Florida professor, said his team has established 12 breeding colonies at Everglades and Biscayne national parks that have successfully reproduced in the wild for several generations.

Dr. Thomas Emmel charges that the administration's assessment is false and knowingly downplayed the reintroduction program's success to make saving the butterfly appear too costly and difficult.

The blue-winged butterfly, whose natural habitat is the Florida Keys, is most threatened by loss of habitat to development, mosquito spraying and the decline of native ants that protected the butterfly from predators. It was believed extinct after Hurricane Andrew in 1992, until a photographer's sighting in 1999 uncovered 35 Miami blues at Bahia Honda State Park.

The Miami blue has been placed on the federal government's candidate species list, a bureaucratic waiting room where some imperiled plants and animals have lingered for more than 30 years. ■



Miami blue butterfly

Photo by Jaet C. Daniels, Ph.D., University of Florida

Photo by Pete Rust, Idaho Fish and Game



Kootenai River white sturgeon

1974, and their population is yearly growing smaller. They formerly spawned during high spring flows, above Bonners Ferry, Idaho over clean gravels. Since the dam's severe reduction of spring flood intensity, the sturgeon spawn lower in the river, where eggs are deposited on silty sediments and die.

Recovery efforts throughout the 1990s have focused on inducing sturgeon to spawn further upriver, and recently spawning sturgeon were moved by boat above Bonners Ferry. In designating critical habitat for the sturgeon, however, USFWS inexplicably excluded those precise areas of habitat above Bonners Ferry where recovery efforts are targeted.

While maintaining existing critical habitat, the court has ordered USFWS to also include areas with essential spawning habitat.

■ ■ ■ ■ ■ Snowmobiles threaten last U.S. caribou

As few as three animals remain in the entire U.S. population of woodland caribou, making them the most endangered mammal in the United States.

6 In August, the Center joined coalition partners

Hindering—not helping—wild wolves

Feds push more predator controls for Mexican wolf program

A team of independent scientists warned in 2001 that government predator control policies threatened the future of wild Mexican gray wolves. The U.S. Fish and Wildlife Service (USFWS), entrusted to manage the wolf recovery program, didn't listen.

Adding insult to injury, government bureaucrats convened in October 2005 to consider two controversial measures which contradict scientific recommendations for wolf recovery.

The first measure would place a moratorium on releasing captive-bred Mexican wolves to the wild, and limit re-releases of captured wolves. The second measure, called SOP 13, is a rigid predator control policy that would increase government trapping and shooting of wolves.

[The committee's decision on adopting these measures was expected October 14, as this newsletter went to press. Look for the outcome, and our response, at www.biologicaldiversity.org.]

The proposed measures would exacerbate long-standing management problems that have hindered the Mexican wolf's recovery.

The government's aggressive Mexican wolf control program differs starkly from its management of any other endangered species: wolves are trapped for the sole reason of roaming outside the political boundary of their designated recovery area.

Unfortunately, trapping not only unnecessarily plucks wolves from the wild; it can result in severe injuries and stress. [See sidebar, *In Memory of "Brunhilda."*]

A second justification for trapping wolves stems from conflicts with livestock. Most of the Mexican wolf's current range is grazed year-round, so wolves inevitably encounter livestock.

But wolves naturally prey on elk and deer, and studies indicate that most wolves that attack livestock have learned to do so from scavenging on livestock that died of other causes.

The 2001 "Paquet Report," released by independent scientists,

recommended reforms to address these problems, including halting the practice of capturing wolves who roam outside their recovery area.

Furthermore, they recommended that ranchers using public lands be required to take responsibility for removing livestock carcasses or rendering them inedible (by applying lime, for example) before wolves become habituated. Instead, in recent practice, the government's solution is to shoot wolves known to prey on livestock.

The Center has repeatedly urged USFWS to adopt the scientists' suggested reforms. But the agency's then-Southwest director Dale Hall—now the Bush administration's choice to direct the Service nationally—has refused, even stonewalling his own biologists' recommendations.

When the Paquet Report was released in 2001, 27 radio-collared wolves roamed Arizona's Apache and New Mexico's Gila National Forests. Today, only 20 monitored wolves remain in the wild. Six packs with wild-born pups, in addition to other uncollared wolves, may bring the total population up to as high as 60.

Contrast this somber picture with the government's projections when reintroduction began eight years ago: 83 wolves and 15 reproducing packs in the wild by the end of 2005.

The proposed moratorium on wolf releases grew out of private meetings between ranchers and Hall's senior deputies—without input from other citizens or conservation groups. Though a broader public comment process on the reintroduction program is underway, USFWS put both the moratorium and control policy SOP 13 on a separate fast-track for approval, with minimal public scrutiny.

The Center organized robust public response to the moratorium and SOP 13, submitted detailed comments on the ongoing review, and is preparing legal action to ensure Mexican wolf recovery, despite ongoing political shenanigans. ■

In Memory of "Brunhilda"



Seven years ago, the first 11 Mexican gray wolves were reintroduced into the wild. On July 20, 2005, the last of those lobos to roam free was accidentally killed by the U.S. Fish and Wildlife Service.

Named "Brunhilda" after a figure in Norse mythology, the Francisco Pack's wolf number 511 was trapped in June and died of stress and overheating in captivity. Made famous by an image snapped as she first stepped into freedom, Brunhilda became a symbol of wolf recovery.

Brunhilda's mate and pups were also trapped in June. Injured by a trap, her mate's leg was amputated. Brunhilda's previous litter of five wild-conceived pups died during a stressful bout in captivity, and her original mate was killed by a hit-and-run driver after the pack, trapped from the Arizona wild and released in New Mexico, broke up and roamed individually.

Brunhilda was removed from the wild four times: twice for leaving the Mexican wolf recovery area, and twice for preying on cattle after learning to scavenge on carcasses. Including her pups, she is the fifteenth Mexican wolf to die as a result of government predator control since reintroduction began.

Rebirth of a River

By Renee Guillory and Michelle Harrington

Full flows returned to Fossil Creek for the first time in nearly a century June 18. In a once-in-a-lifetime event, utility company Arizona Public Service (APS) decommissioned its hydroelectric power plants and ceased damming the creek's waters, turning them loose along their natural course.

Center for Biological Diversity staff and members were on hand to witness and celebrate an unforgettable day in restoration history. A great day for Fossil Creek. A great day for rivers around the world.

Vincent Randall, Yavapai-Apache Nation tribal elder and leader:

"Water is a living thing. Whenever you dam up the water, you have stopped its life, its freedom. It stagnates. We can rejoice that the water is free again."

A place to celebrate

The creek threads lush riparian habitat through Fossil Canyon, which rests between the remote towns of Strawberry and Camp Verde. Flowing from Fossil Springs, it greens desert landscapes along the Mogollon Rim north of the rugged Mazatzal Mountains in Central Arizona.

This gorgeous place set the stage for the Center's campout and celebration a couple miles downstream from the dam. Food and bubbling cider, speeches and splashing in the creek, hurrahs and tears of happiness—all had their place in the reveling crowd.

Singer-songwriter and Center member Dana Lyons performed "Drop of Water," his anthem to free-flowing rivers, at the very moment the creek rose noticeably higher, immersing his feet and catching everyone in a rush of pure joy. Past environmental losses and

disappointments were momentarily suspended while the hope of new life became real, and the hard-fought battle for Fossil Creek was won.

Death by diversion

So abundant are the springs at its source that Fossil Creek, which flows into the Verde River, provides up to half the Verde's water during the driest times of the year. After rains in the river's pre-dam heyday, the surrounding desert would shudder with whitewater noise.

Fossil Creek's name comes from the heavy mineral content of its waters, which leave bony deposits in their wake. Travertine pools and waterfalls historically provided (and in places still provide) rare sanctuary for native fish like the Sonoran sucker, desert sucker, speckled dace, longfin dace and roundtail chub.

In 1908 and 1916, to serve the power needs of nearby mining towns, two diversion dams began siphoning a whopping 95 percent of Fossil Creek's waters into Arizona's first hydroelectric power plants. Silenced to a whisper, Fossil Creek itself felt the thirst of the landscape in which it once thrived.

But in the West, booms quickly turn bust. By the 1990s, the plants no

Robin Silver, Center co-founder:

"Today we return the water. This morning we bring Fossil Creek back to life. This is truly historic!"

longer fed greedy mines and provided only about .01 percent of Arizona's power. A window on restoration was opening, and a coalition of

conservation groups launched a vigorous campaign to decommission the plants and restore water to the creek.

A dam's undoing

Mounting public pressure, repeated protests, and the threat of legal action gave the early campaign momentum. But the most poignant turning point for the creek unfolded on a quiet hike.

In 1999, Center co-founder Robin Silver took APS's then-CEO Bill Post on a field trip to Fossil Canyon. The two men share a common history



Renee Guillory gets her feet wet with the Sierra Club's Sandy Bahr and Earthworks' Roger Featherstone.

growing up in Arizona and enjoying the splendor of the state's wild places. That day, they talked about rivers and the toll humans have extracted from them in the desert Southwest. They lamented the loss of more than 90 percent of southwestern rivers. They talked about legacy.

Post gave restoration the green light.

Then followed the more difficult task of bringing all parties to the table to agree on a plan. The conservation coalition, including American Rivers, Center for Biological Diversity, Sierra Club's Grand Canyon Chapter, Arizona Riparian Council, Northern Arizona Audubon Society, and the Nature Conservancy, came together with APS, fish biologists, university scientists, the Yavapai-Apache Nation, and land and wildlife managers.

Fossil Creek Timeline

1900-1902 – Rancher Lew Turner claims Fossil Creek water rights and forms Arizona Power Company.

1908 – Fossil Creek power plants and dam construction begin. More than 95 percent of creek's water diverted via 14-mile flume system starting just a quarter mile from headwater springs. Two hydroelectric power plants built: Childs in 1908 and Irving in 1916.

1949 – Company that would become Arizona Public Service (APS) purchases Fossil Creek dams and hydroelectric generating stations.

1991-1992 – APS files with Federal Energy Regulatory Commission (FERC) for new operating license as old one expires, begins operating on year-to-year license.

1997 – FERC issues draft Environmental Assessment (EA) on proposal to relicense project. Center responds to draft EA with support for decommissioning project, an alternative not adequately addressed in the document.

March 1999 – Center files notice of intent to sue FERC, U.S. Forest Service, U.S. Fish and Wildlife Service, and Department of Interior under Endangered Species Act for jeopardizing continued existence of several native fish populations and bald eagle by continued operation of power plants at Fossil Creek.

November 1999 – APS agrees with negotiating conservation groups to decommission power plants and restore Fossil Creek. In what was to be protest, citizens instead march outside APS headquarters with signs expressing "thanks."

September 2000 – APS and conservation groups agree on paper to return water to Fossil Creek by Dec. 31, 2004, with restoration scheduled for completion by Dec. 31, 2009.

March 2004 – Final Environmental Assessment released with full analysis of decommissioning and restoration.

October 2004 – FERC signs order surrendering license and clearing decommissioning. Native fish restoration project begins.

June 18, 2005 – Full flows return to Fossil Creek. A desert river is reborn.

Wedding these discussions with public actions in support of restoration, the campaign to rescue the river eventually prevailed. A new chapter in the life of Fossil Creek had begun.

The future of Fossil Creek

Bringing water back to the creek

was the most difficult step toward Fossil Creek's restoration. Now, as the dam, diversion infrastructure and power plants become history, the creek's future will depend partly on nature, partly on human intervention.

Last winter, native fish populations got a boost



Dana Lyons' "Drop of Water" seemed to summon the rising waters.



Center Executive Director Michael Finkelstein and long-time member Sarah Snell.

when biologists removed non-natives from the creek and installed a fish barrier to help keep them out for good. Native fish that once thrived in the creek will be re-introduced. Travertine deposits should naturally form as the mineral-laden water recreates an aquatic wonderland. Native vegetation

will be replanted in disturbed areas. But "just add water" will be the key to the creek's green rebounding.

Retaining this legacy for future generations requires protecting the water and the area. The springs are in the heart of a designated Wilderness Area, but the rest of the creek is left out. We hope to change that soon: this

Andrew Fahlund, American Rivers:

"The rebirth of Fossil Creek is an excellent symbol and a benchmark for the resurrection of our environment, our communities and even ourselves."

summer Arizona Senator John McCain answered the call of conservation groups and announced a bill to designate Fossil Creek as a Wild and Scenic River.

That designation would link protection of the springs with the 40-mile stretch of the Verde River that is currently Arizona's only contribution to the U.S. Wild and Scenic River system. The Center will alert our members when the Fossil Creek bill needs your vigorous support.

For now, we celebrate the unique second chance given a desert river as a result of sustained action and a rare collaboration to let nature prevail.

The dismantled dam that long broke the creek's flow joins the rubble of some 600 other U.S. dams that have been breached in the past century. At last, at least one surviving river of the Southwest is celebrated foremost for its place in a healthy ecosystem and its sustenance of the plants and animals that depend on it. At last, Fossil Creek runs free.

Michelle Harrington directs the Center's Rivers Program and Renee Guillory is a freelance writer and long-time conservation advocate.

Rallying to Save an Endangered Act

Because enemies of the Endangered Species Act have made destroying the law one of their top priorities this year, we've made defending it ours.

The Center has been working with a strong national coalition to rally support for the Act. But we're particularly proud of the waves made by our own dedicated staff.

Endangered Species Act policy strategists Kieran Suckling and Brian Nowicki were joined this year by a Center representative in Washington, D.C., Melissa Waage. Melissa kicked up a lobbying whirlwind in D.C., closely charting political currents, identifying key votes, and orchestrating a full-force coalition effort to educate members of Congress.

As one of our coalition partners attested, Melissa brought smarts and momentum to the campaign: "I don't think a lot of the D.C. action would have happened without her . . . or, it would have happened, but it wouldn't have been so well coordinated and powerful. You have a rock star on your hands!"

Back at Center headquarters, new Executive Director Michael Finkelstein turned his years of success as a media guru for other organizations into a powerhouse editorial campaign for the Endangered Species Act. Building on a model he used to generate hundreds of editorials to save Alaska's Tongass National Forest, Michael hired Communications Director Bryan O'Neal to drum up support for the Act from editorial boards nationwide.

Bryan's work spearheaded a tremendously successful campaign, garnering more than 100 editorials supporting the Endangered Species Act in newspapers from coast to coast. A handful of those editorials are quoted on these pages.

By turning up the national spotlight on the fight to save the Endangered Species Act, and educating media and members of Congress about legislation attacking the Act, the Center has

laid the groundwork to see that the "Extinction Bill" dies in the Senate.

We've also been joined by allies across the country who are making powerful statements in support of a strong Endangered Species Act.

"The law, and our environment, deserve far better than the guerilla warfare with which the opponents of the Endangered Species Act have tried to undermine it."

~New York Times, July 5, 2005

Together with the coalition, the Center and our members have placed more than 60,000 signatures on an Endangered Species Act Legacy Pledge—letting members of Congress know their constituents want strong protections for our nation's endangered fish, plants and wildlife.

"The bill creates serious new obstacles to endangered species protection, dramatically weakens the role of science and creates loopholes wide enough to accommodate fleets of bulldozers."

~Seattle Post Intelligencer, September 29, 2005

In concert with our coalition efforts, more than 280 scientists signed a letter to Congress opposing legislation to weaken the Endangered Species Act and testifying to the Act's importance in light of unprecedented extinction rates worldwide.

"We know too well that extinction is irreversible," the scientists' letter reads. "But we also believe that our society can address this issue if we have the will to do so—and one important tool for tackling the loss

of species is a strong Endangered Species Act, vigorously enforced."

"The Pombo bill would... sign a death warrant for creatures that have only recently been pulled back from the brink of extinction. The only species that will prosper and multiply under this law are developers indifferent to wildlife and biological diversity."

~Houston Chronicle, October 10, 2005

Responsible corporations like Aveda are also getting involved. This year, the company's annual "Earth Month" focused on threats to endangered plants and the Endangered Species Act itself. Working alongside conservation groups including the Center, Aveda gathered 170,000 signatures on a petition to Congress and President Bush supporting the Endangered Species Act.

"...the law has brought back from near oblivion in the lower 48 states the bald eagle, the peregrine falcon, and the American alligator. It will no longer serve that purpose if Congress pulls its teeth."

~Boston Globe, July 8, 2005

California Senator Dianne Feinstein recently introduced a resolution to mark March 8, 2006 "Endangered Species Day." Feinstein is working to gather co-sponsors in Congress for the resolution, intended to raise awareness about enduring

threats to endangered species. The Center is one of many conservation and science organizations actively supporting the resolution.

"Hundreds of native plant and animal species, from the lordly bald eagle to lowly darters, could disappear from the American landscape unless their habitats continue to be protected from the two-legged predator stalking the wilds of Capitol Hill."

*~Atlanta Journal-Constitution,
October 5, 2005*

On the local level, a few forward-thinking cities and counties are passing their own resolutions supporting the Endangered Species Act. Kudos go to San Francisco, Santa Cruz and Marin Counties, California; Pima County, Arizona; and Ashland, Oregon for blazing this trail. As we went to press, more cities and counties in California, New Mexico, Colorado and other states were following suit. The Center and our partners are working to help communities launch local resolutions.

"Pombo's proposal would fix the landmark federal law in the same way that a chop shop fine-tunes a stolen car."

*~Eugene Register Guard,
September 21, 2005*

Keeping our nation's most important environmental laws in place takes know-how, tenacity and persistence—but it also takes the generosity of our donors. The Center owes our deepest thanks to some of

our most dedicated supporters for raising more than \$100,000 this summer in support of our efforts to save the Endangered Species Act. Our board members led the way, kicking off the special campaign with their own gifts and making time in their hectic schedules to inspire others to give. Thanks to all who helped make our campaign a success!

"Humans need this act as much as plants and animals do."

*~Los Angeles Times,
July 16, 2005*

To learn more about how you can make a difference by contacting your members of Congress, writing a letter to the editor, launching a local resolution in your own community, and financially supporting the Center's campaigns, please visit our website at www.biologicaldiversity.org.

Endangered earth

Endangered Earth is the quarterly newsletter of the Center for Biological Diversity, a 501(c)3 nonprofit organization dedicated to protecting endangered species and wild places through science, advocacy, education and environmental law. Contributions are tax-deductible.

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Or visit the "join us" page on our secure server: www.biologicaldiversity.org

On occasion, we trade our mailing list with organizations that share our mission. If you would prefer that your name not be exchanged, please contact us.

CENTER FOR BIOLOGICAL DIVERSITY

BECAUSE LIFE IS GOOD.

Desert Trips Fall 2005 *Join us and get active!*

Nov 19-20, Desert National Wildlife Refuge, NV. Explore threats to refuge from proposed sprawl city in Coyote Springs Valley and water pumping.

Dec 3-4, Sonoran Desert National Monument, AZ. Discuss current planning efforts, solutions to threats facing the monument, and how you can get involved.

Dec 10-11, Shavers Valley, CA. Learn more about protecting the area from proposed sprawl city near Joshua Tree National Park and designated wilderness.

Members, public and media welcome. All trips will have a car-camp base, with optional day or overnight hikes. For more information or to reserve your spot, contact Daniel Patterson at 520.623.5252 ext. 306, or dpatterson@biologicaldiversity.org.



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Kill this bill *continued from front page*

Senate, which is expected to take it up any time in the next few months. Sen. Lincoln Chafee (R-RI), who heads up the Senate subcommittee overseeing environmental issues, has come out against any bill that “guts” the Endangered Species Act. In addition, many Senators appear to be approaching the bill with cooler heads than their House counterparts.

Over the summer, the Center and our partners succeeded in forcing Pombo to retreat from an earlier draft of his bill. We obtained a leaked copy of that draft, which exposed Pombo’s ultimate intent. It contained a clause—removed from the final draft of the bill that passed the House in September—that would have repealed the Act in its entirety in 2015.

Though Pombo failed to garner the support he needed to keep that clause alive, his current bill is no less damaging. However, it is hardly surprising, coming from a Congressman who this year has also led attempts to weaken the National Environmental Policy Act, to speed

oil drilling off U.S. shores and in the Arctic National Wildlife Refuge, and to sell off 15 of America’s national parks to balance the federal budget.

In preparation for the reemergence of his appalling Extinction Bill this fall, the Center educated key members of the House about the bill’s threats to America’s most imperiled species. We also generated a detailed legislative analysis of the full bill as soon as it was available, and distributed our findings to Congress, other conservation groups, and news media nationwide.

We have been working hard for months to inform Senators exactly what’s at stake in this fight to uphold endangered species protections. And with the help of our members, we have been urging Senators on both sides of the aisle to kill this bill and preserve a strong Endangered Species Act. ■

For more on the work of the Center and our partners to build strong

support for the Act—and more ways you can become involved—please turn to page 10 of this issue.

What You Can Do

Show Congress that this issue is important to Americans and that their constituents—you—are paying attention to their votes:

1. Contact your U.S. Representative to let them know how you feel about their vote on H.R. 3824.
2. Contact your U.S. Senators and urge them to support the Endangered Species Act.

For your Representative’s vote, contact information for your members of Congress, talking points, and more ways you can help, visit: www.biologicaldiversity.org