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SENATOR MIKE ROUNDS FIELD HEARING

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Taken at
THE JOURNEY MUSEUM
222 New York Street
Rapid City, South Dakota
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A P P E A R A N C E S

SENATOR ROUNDS

First Panel

SHAUN McGRATH, Region 8 Administrator, U.S. Environmental Protection Agency

NOREEN WALSH, Regional Director, Mountain-Prairie Region, Fish and Wildlife Service

Second Panel

LARRY RHODEN, rancher and former state senator

JEFF LAGE, president, South Dakota Home Builders Association

MYRON WILLIAMS, South Dakota Cattlemen's Association

CHUCK CLAYTON, president, Prairie Pothole Consulting on behalf of the Izaak Walton League of America

DENISE PARKER, volunteer, Humane Society of the United States

P R O C E E D I N G S

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3 SENATOR ROUNDS: Good morning, everyone. One
4 bit of housekeeping, I would remind all of the
5 witnesses that are going to be testifying today that
6 the mics that are there in front of them are hot all
7 the time and they are very sensitive, so just be
8 aware of that.

9 Good morning, ladies and gentlemen. The
10 Environment and Public Works Subcommittee on
11 Superfund, Waste Management and Regulatory Oversight
12 is meeting today to conduct a field hearing entitled
13 "Oversight of the Impact of U.S. Environmental
14 Protection Agency and Fish and Wildlife Service
15 Regulations on Citizens' Private Property Rights."

16 I would like to thank our witnesses for being
17 with us today, and I look forward to hearing your
18 testimony.

19 Throughout this Congress, this subcommittee has
20 conducted systematic oversight of the federal
21 regulatory process to make certain federal
22 regulations are promulgated in a transparent, open
23 process with adequate public participation. We have
24 held hearings conducting oversight on various
25 aspects of the rule-making process including the

1 adequacy of the science the agencies rely on when
2 promulgating regulations, the increasing number of
3 unfunded mandates agencies impose on state and local
4 governments, and the impacts these regulations have
5 on small businesses and state and local governments.

6 Today we will continue our oversight and hear
7 testimony about how the Environmental Protection
8 Agency and Fish & Wildlife Service regulations
9 affect citizens' private property rights. We will
10 hear about how increasing regulations affect
11 citizens' ability to use, develop and prosper while
12 working their land. We will also hear from the
13 agencies as to how they work with the public to
14 assist the public in understanding regulations, as
15 well as offering suggestions as to how this
16 relationship between the agencies and the public can
17 be improved, and how the regulatory process can be
18 improved to minimize the impact of regulations on
19 private land.

20 According to the American Action Forum, since
21 taking office the Obama Administration has finalized
22 2,865 regulations. These regulations have cost the
23 American people nearly \$810 billion since 2009. Of
24 these finalized regulations, 168 of them have come
25 from the Environmental Protection Agency and have

1 cost American taxpayers \$312 billion, nearly half of
2 the total cost of all regulations finalized by this
3 Administration.

4 Not only are the costs of these regulations
5 passed on to all citizens, but landowners who bear
6 the burden of complying with many of these
7 regulations have limited resources to comply with
8 these costly and complicated regulations.

9 In 2015, the EPA moved forward with finalizing
10 the Waters of the U.S. Rule, or WOTUS, broadly
11 expanding the Clean Water Act, which would give the
12 EPA unprecedented authority over significant land
13 masses not currently subject to EPA jurisdiction.

14 This rule creates significant hurdles to normal
15 agricultural operations. And despite EPA's claims
16 that the rule will have minimal economic impact, the
17 final rule is contrary to the comments of
18 agricultural groups, the Small Business
19 Administration and numerous state governors and
20 attorneys general.

21 Although the Sixth Circuit issued a nationwide
22 stay on the rule, we have heard evidence that the
23 U.S. Army Corps may be moving forward with
24 implementing the WOTUS rule. However, the U.S.
25 Court system should not be the primary backstop

1 against overly burdensome rules.

2 If the EPA worked more closely with landowners,
3 states and agricultural groups throughout the
4 rule-making process, the end result would be better
5 rules that minimize the impact and costs on private
6 landowners and American businesses while still
7 achieving the goal of environmental protection.

8 The U.S. Fish and Wildlife Service is
9 responsible for implementing and enforcing the
10 Endangered Species Act. The Endangered Species Act,
11 or ESA, was enacted by Congress in 1973 with the
12 goal of protecting and recovering endangered and
13 threatened species and their habitats. There are
14 currently 1,226 species listed as endangered and 367
15 listed as threatened in the United States under the
16 Endangered Species Act, and approximately half of
17 the listed species have 80 percent of their habitat
18 on private land. While the Fish and Wildlife
19 Service attempts to work with landowners to
20 encourage voluntary species management and
21 conservation, the ESA continues to impede
22 landowners' ability to utilize and develop their
23 land by imposing significant restrictions on what
24 landowners can do on their own land.

25 Adding to the regulatory maze that landowners

1 face is the confusion caused by the myriad of
2 lawsuits that can change or stop a regulation from
3 being implemented based on a court's ruling. These
4 lawsuits simply add more confusion to an already
5 complex regulatory process. While lawsuits
6 challenging the WOTUS rule resulted in a nationwide
7 injunction, it was also a lawsuit that has led the
8 Fish and Wildlife Service to review the potential
9 listing of more than 250 species for consideration
10 on the Endangered Species List.

11 It is landowners, not the Federal Government,
12 who are the best stewards of their land. However,
13 more often than not, federal agencies impose
14 burdensome, complicated regulations and dictate to
15 landowners what they believe is the best way to
16 conserve our land and our resources.

17 Rather than creating an adversarial
18 relationship, agencies should strive to work in
19 cooperation with landowners towards the shared goal
20 of environmental conservation.

21 Again, I'd like to thank our witnesses for
22 being with us here today, and I look forward to
23 hearing your testimony.

24 Our witnesses joining us on the first panel for
25 today's hearing are Mr. Shaun McGrath, Region 8

1 Administrator, U.S. Environmental Protection Agency;
2 and Ms. Noreen Walsh, Regional Director,
3 Mountain-Prairie Region, Fish and Wildlife Service.

4 Welcome to both of you, and thank you for being
5 here.

6 We will now turn to our witnesses,
7 Administrator Shaun McGrath, for five minutes.

8 And, Administrator McGrath, you may begin.

9 MR. SHAUN McGRATH: Thank you, Mr. Chairman. I
10 appreciate the opportunity to testify today on how
11 the EPA helps stakeholders understand federal
12 environmental laws and regulations, including
13 opportunities for public input, feedback and
14 education.

15 As the Regional Administrator for EPA Region 8,
16 I will be focusing my remarks on how the EPA engages
17 stakeholders in the region regarding current and
18 proposed environmental regulations.

19 The agency uses a variety of outreach tools to
20 educate the public and to learn about specific
21 questions and concerns from stakeholders. This
22 information informs and greatly enhances the
23 agency's rule-making process and outcomes by helping
24 ensure that regulations comport with the public
25 health and environmental priorities of local, state

1 and tribal stakeholders.

2 As an example, the Clean Water Rule was
3 developed jointly by the EPA and the Army Corps of
4 Engineers in response to several Supreme Court
5 decisions regarding the scope of the Clean Water
6 Act, Members of Congress, state and local officials,
7 industry, agriculture and environmental groups, and
8 the public asked for a rule-making.

9 In developing the Clean Water Rule, EPA, in
10 conjunction with the Army Corps, conducted a
11 multi-year engagement effort that included hundreds
12 of meetings with stakeholders across the country and
13 evaluated over 1 million public comments
14 representing perspectives from all sides. Our
15 regional office in Denver held over 50 meetings and
16 calls with agricultural producers and leaders in all
17 of the Region 8 states, including South Dakota.
18 These discussions provided the agency with an
19 understanding of the unique issues facing farmers,
20 while providing producers with an understanding of
21 how the scope of the Clean Water Act would and would
22 not affect their operations.

23 As a result, the agency's final rule reflected
24 the valuable input received from throughout the
25 region and through similar efforts throughout the

1 country.

2 EPA is fully complying with the order issued by
3 the U.S. Court of Appeals for the Sixth Circuit by
4 staying implementation of the Clean Water Rule and
5 implementing the prior regulations consistent with
6 the best science and the law.

7 The agency also conducts outreach on Clean
8 Water Act issues to the agricultural community
9 through our partnerships with states in the Clean
10 Water Act Nonpoint Source Program. Currently, EPA
11 is supporting the South Dakota Department of
12 Environment and Natural Resources in several efforts
13 to provide outreach and information including: A
14 project that is helping to educate ranchers across
15 the state that result in sustainable management
16 practices for grass resources and livestock
17 operations; a small grants program through the South
18 Dakota Discovery Center to support local nonpoint
19 source information and education efforts; and six
20 active watersheds projects across the state that are
21 focused on watershed restoration and outreach to
22 local landowners on conservation practices that can
23 improve water quality and economic sustainability.
24 Two of those projects, the Belle Fourche and the
25 Spring Creek projects, are just down the road from

1 us here in Rapid City.

2 Outreach to the agricultural community is a top
3 priority for the region. Agriculture is a major
4 industry in every EPA Region 8 state. And
5 consequently, Region 8 partners with states, tribes
6 and agricultural associations conducting annual
7 meetings with the state agriculture commissioners,
8 periodic joint meetings with state agriculture and
9 environmental directors, annual meetings with State
10 Agriculture Department and Tribal Pesticide Program
11 Directors, and periodic Webinars.

12 We also work with interested states,
13 legislative officials and agricultural associations
14 to customize specific events. Recent examples
15 include a one-week outreach tour on spill
16 prevention, control and countermeasure requirements
17 organized with the South Dakota Farm Bureau in which
18 we conducted training, clarified misconceptions and
19 answered producer questions in eight towns across
20 South Dakota.

21 EPA's Water Security Division conducted a
22 multi-stakeholder water preparedness and resiliency
23 workshop in the City of Pierre in July of 2014. And
24 additionally, beginning in 2014, EPA Region 8
25 initiated a replicable drought resilience project in

1 the upper Missouri River Basin to demonstrate how to
2 leverage federal and state resources in the
3 development and implementation of watershed drought
4 resiliency plans.

5 While my testimony provides just a snapshot of
6 our public outreach activities, I hope that these
7 examples of the engagement activities that the EPA
8 delivers regionally and in South Dakota provide
9 insight into our commitment to engage in meaningful
10 outreach with all of our stakeholders.

11 I'd like to close by emphasizing that EPA's
12 permitting and rule-making actions include important
13 requirements for public participation to ensure
14 meaningful feedback and input on agency actions, and
15 we take these requirements seriously, not just
16 because they're required but because they help us
17 make more effective rules that more closely align
18 with the priorities of the public and interested
19 stakeholders.

20 And with that, I look forward to your
21 questions, Mr. Chairman.

22 SENATOR ROUNDS: Thank you, sir. And I would
23 be remiss if I didn't thank you for being here,
24 Shaun. We go back quite a ways back to western
25 governor days. And I know that you were working

1 with the State of South Dakota at that time as a
2 liaison between western governors in South Dakota.
3 So you know the West; you grew up out here. And you
4 live in Colorado, Boulder. And I think you were
5 mayor of Boulder, as a matter of fact.

6 MR. SHAUN McGRATH: Yes, sir.

7 SENATOR ROUNDS: And I appreciate you changing
8 your travel plans to make this meeting out here as
9 well. Thank you.

10 MR. SHAUN McGRATH: Sure.

11 SENATOR ROUNDS: We will now turn to our next
12 witness, Regional Director Noreen Walsh, for five
13 minutes.

14 Director Walsh, you may begin.

15 MS. NOREEN WALSH: Thank you. Good morning,
16 Chairman, and thank you for the opportunity to
17 provide this testimony here today.

18 The Service's mission is working with others to
19 conserve fish, wildlife and their habitat for the
20 continuing benefit of the American people.

21 Collaboration with private landowners is integral to
22 what we do, and our primary tool is the Partners for
23 Fish and Wildlife Program.

24 Since 1987, the Partners Program has offered
25 voluntary habitat projects to benefit both wildlife

1 and over 50,000 landowners. Every dollar invested
2 through this program leverages over \$8 in total
3 project funding and generates \$15 in economic
4 returns.

5 But numbers and dollars don't tell the true
6 story of the Partners Program. Our core values
7 include open communication and building trust, and
8 we place a high premium on streamline delivery and
9 quick adaptation to landowner needs. For example,
10 during the drought conditions of 2012 and '13, we
11 expedited funding for over 200 new livestock water
12 developments to help South Dakota landowners
13 maintain healthy grasslands and their cows during
14 that difficult time. Because the Partners Program
15 is based on finding mutual interests, it often
16 results in parties exploring additional voluntary
17 conservation opportunities, including conservation
18 easements.

19 The Dakotas are the heart of the most
20 productive habitat for waterfowl in the United
21 States, and voluntary easements are an important
22 conservation tool. Under our easement terms,
23 landowners are paid to keep wetlands and grasslands
24 on their property, yet they are able to farm the
25 wetlands when they are dry, graze grasslands without

1 restriction and hay grasslands after the nesting
2 season.

3 Each of these voluntary easements represents a
4 unique and valued relationship with a South Dakota
5 landowner that starts one on one, usually with
6 coffee around a kitchen table discussing what kind
7 of options may or may not work for that individual.
8 We work hard to maintain those relationships. We
9 feel confident that this program works for
10 landowners because there is high interest. We have
11 a backlog of over 700 South Dakota landowners who
12 are interested in participating when funding becomes
13 available.

14 Private landowners are also vital partners in
15 administering the Endangered Species Act. Many of
16 our activities under the ESA involve working
17 cooperatively with landowners to help ensure that
18 species do not need the protection of the ESA.

19 In the case of the sage grouse, we worked with
20 ranchers in western states to develop Candidate
21 Conservation Agreements with Assurances. These
22 agreements conserve sage grouse while ensuring
23 viable ranching operations, with no future
24 regulatory restrictions, even in the event of a
25 future ESA listing for this species.

1 Within recent years, the Service listed under
2 the ESA two butterflies historically found in native
3 grasslands of the Dakotas. We worked closely with
4 individual landowners to address their concerns.
5 One butterfly was listed as threatened, allowing us
6 to use the flexibilities inherent in the ESA, and
7 therefore routine operations such as fence and
8 corral construction, noxious weed control and haying
9 after July 15th are not impacted at all.

10 As we evaluated areas for ESA critical habitat
11 designation as required by the law, we held public
12 and individual meetings with landowners. We
13 listened very carefully. In the end, we excluded
14 from critical habitat any private lands that already
15 had an ongoing conservation effort and whose owners
16 did not want their lands designated as critical
17 habitat.

18 In South Dakota and across the nation, the
19 Service is working hard with people to accomplish
20 our conservation mission, because our conservation
21 mission is for people, including the next generation
22 of farmers, ranchers and landowners.

23 I have been fortunate to visit South Dakota
24 many times, and I have found much in common with the
25 landowners that I have visited with, including

1 deeply held values for family and a concern for
2 future generations.

3 Three weeks ago I hosted a meeting in Aberdeen
4 for Fish and Wildlife Service leadership from all
5 across the nation. We visited with several
6 landowners during that meeting. We heard good
7 advice about building relationships between the
8 agency and landowners, and we heard genuine
9 appreciation for our voluntary conservation
10 programs. We heard a landowner express excitement
11 that a listed butterfly was found on her property
12 because that meant that she had healthy grasslands.
13 And lastly, we heard an urging for the Service to
14 continue to help landowners ensure that prairie
15 grasslands remain on the landscape, supporting
16 future generations of both people and wildlife.

17 Thank you for the opportunity to provide these
18 comments today.

19 SENATOR ROUNDS: Thank you for your testimony,
20 Director Walsh.

21 I will begin my questions for this panel, and
22 then we'll move to the next panel.

23 First of all I just, once again, want to thank
24 both of you for being with us here today.

25 Mr. McGrath, do you feel that the current

1 process is sufficient for involving the public in
2 the rule-making process and that the public comments
3 are fully considered when the agency is promulgating
4 regulations?

5 MR. SHAUN McGRATH: Thank you, Senator. Yes,
6 in my experience, and I've been through the rule
7 making of both the Clean Water Rule and the Clean
8 Power Plan as a couple of examples where there
9 really is a very directive outreach effort to
10 propose a rule, to provide public comment
11 opportunities, to have hearings, public meetings.
12 And the feedback, the input that we receive as a
13 result of that process really does have an impact on
14 what is ultimately proposed in the final rule.

15 SENATOR ROUNDS: The reason why I ask the
16 question, if you take a look at the huge number of
17 critical comments the agency has received and the
18 number of lawsuits challenging EPA regulations, it
19 seems to be a testament to the flaws in the
20 regulatory process. How do you believe the EPA can
21 better engage the public? And do you believe that
22 more substantive, and I mean more direct and
23 thorough public engagement, could result in fewer
24 lawsuits, less adversity between the EPA and the
25 public and regulations that are more accommodating

1 to private landowners' rights?

2 MR. SHAUN McGRATH: Senator, I --

3 SENATOR ROUNDS: I mean, the number of lawsuits
4 are significant when it comes to, in particular,
5 WOTUS and the Clean Power Plan.

6 MR. SHAUN McGRATH: And I don't dispute that.
7 The challenge, of course, is regardless of what the
8 proposal is going to read, there's always going to
9 be the threat of lawsuits. It's very difficult in
10 these kinds of environmental regulations to propose
11 something that is going to please everybody and be
12 able to avoid lawsuits. So -- but I don't dismiss
13 the spirit of your question, which is how can we
14 engage, do more active engagement with the public to
15 inform, as reasonable as an approach as we're able
16 to. And I can assure you that the agency is very
17 much willing to engage and provide those
18 opportunities for input. And, again, we do take to
19 heart the feedback that we get.

20 SENATOR ROUNDS: Let me just look at just a
21 couple of specifics. And perhaps -- and if you're
22 not up to speed on them, just tell me and we'll move
23 on.

24 MR. SHAUN McGRATH: Sure.

25 SENATOR ROUNDS: But when it comes to Atrazine,

1 it's a vital tool in a producer's toolbox for
2 controlling small seeded grounders in grasses. The
3 EPA is currently reviewing its registration. Has
4 your office communicated with or solicited feedback
5 from producers, ag organizations and State
6 Departments of Ag regarding this review and what
7 impact it may have for them?

8 MR. SHAUN McGRATH: So, Senator, you're
9 absolutely correct, it is under registration review,
10 and that process does require, as we're looking at
11 the ecological risk assessment, does require that
12 there be a public comment period. And so there will
13 be opportunity for that engagement. I can, though,
14 take the question back to my folks and provide more
15 specific information of what that engagement
16 entails.

17 SENATOR ROUNDS: I'm just curious: What is the
18 EPA's process for informing and working with State
19 Departments of Ag when a pesticide violation occurs
20 within the state?

21 MR. SHAUN McGRATH: So, Senator, we work
22 closely with our state partners, and so there is
23 coordination that happens. It depends on the case,
24 of course. But often with enforcement where the
25 state has delegated responsibilities, then they

1 would be the lead, and we would be doing oversight
2 of the enforcement program of the state.

3 Where the state doesn't have the delegation,
4 then the EPA would be in the lead. But, again, we
5 would inform the state, work with them to agree that
6 it was appropriate.

7 SENATOR ROUNDS: Director Walsh, in your
8 testimony you noted the number of permanent
9 conservation easements that the Service enters into
10 with landowners. Does the Service provide other
11 conservation options for landowners who do not want
12 the burden of placing their land with a lifetime
13 easement that is passed down through the
14 generations? Do you have other options out there
15 available? And do you provide information to
16 landowners who might want shorter term leases or
17 shorter term easements?

18 MS. NOREEN WALSH: Thank you, Senator. We do.
19 We provide, through the Partners for Fish and
20 Wildlife Program that I mentioned, the ability to
21 enter into contracts as short as ten years or as
22 long as 30 years on habitat improvement projects.

23 But also very importantly, our Partners for
24 Fish and Wildlife Program biologists who visit with
25 landowners, as they sit down with an individual

1 landowner are able to represent to that landowner
2 not only the service programs that are available but
3 those programs through USDA, through NRCS, through
4 South Dakota Game, Fish & Parks or private entities
5 like the Nature Conservancy or Pheasants Forever.
6 So they do their best job to understand the
7 landowners' needs and objectives for their property
8 and point them in the direction of the program that
9 would fit those needs the best.

10 SENATOR ROUNDS: You also point out the
11 Partners Program as one of the most successful
12 collaborative conservation programs between the
13 Service and landowners, partly attributed to the
14 lack of red tape and the ease of the program. How
15 do you eliminate the usual bureaucratic red tape in
16 the Partners Program? And should this program be a
17 model to replace other more burdensome regulations?

18 MS. NOREEN WALSH: Thank you, Senator. We've
19 worked very hard in the Partners Program over its
20 30-year history to keep the agreement and the
21 paperwork, the paperwork that we send landowners, to
22 be very streamlined and very clear. And so it
23 starts one on one with sitting down with that
24 landowner understanding what they are interested in
25 and making sure that it's clearly articulated in

1 what is less than a ten-page agreement that they end
2 up signing.

3 SENATOR ROUNDS: I notice that you had
4 mentioned your work with regard to two butterfly
5 species. And there's been some success in reducing
6 the impact a listing has to landowners such as the
7 steps the Service was taking or has taken in regards
8 to the Dakota skipper and the, I'm going to
9 mispronounce this but it's the poweshiek skipperling
10 butterfly?

11 MS. NOREEN WALSH: Yes.

12 SENATOR ROUNDS: However other species that
13 should be delisted such as the gray wolf remain
14 embroiled in lengthy legal battles. Why is there
15 such a difference in the approaches to these two
16 species, and how can the Service eliminate the
17 inconsistencies that exist among the listings?

18 MS. NOREEN WALSH: Thank you, Senator. The two
19 butterflies that I mentioned were both recently
20 listed in 2015, so they're very early onto the list
21 and very early in developing a recovery program for
22 those species. Because we were able to work so
23 closely with landowners as we made those listing
24 decisions and the critical habitat decision, I think
25 we have a very good foundation for working with

1 private landowners where these butterflies mostly
2 reside to work on recovery actions that will help
3 get them off the list.

4 The poweshiek skipperling isn't found in South
5 Dakota anymore and is in a pretty precarious state.
6 Recovery may be a ways off for that.

7 In the case of the gray wolf species listed for
8 a lot longer, that I think some people find very
9 charismatic and other people find very problematic.
10 So while the Service has firmly believed that the
11 gray wolf in the northern Rocky Mountains and in the
12 western Great Lakes are biologically recovered and
13 do not need to be on the list anymore, we have faced
14 litigation over those decisions. In both cases
15 we're appealing that litigation and hopeful that we
16 will again have them off the list.

17 SENATOR ROUNDS: Do you find any difference
18 between the way that you approached the work
19 concerning the butterflies in the way that you
20 approached it with landowners? Was it different
21 than the way that it's been done previously with
22 other species?

23 MS. NOREEN WALSH: With the butterflies that
24 primarily exist on private land, we made a very, I
25 would say, extraordinary effort to work through our

1 landowner contacts to reach out individually to
2 those landowners who might have butterflies on their
3 property and to discuss one on one with them. And
4 we certainly have found over time that the ability
5 to have staff in the field to get to those people
6 and have those conversations one on one makes all
7 the difference in the world in how we can work with
8 private landowners.

9 SENATOR ROUNDS: And I think it comes to bear
10 that nearly 1,600 species that are listed under the
11 ESA, only 66 have been delisted, and some of these
12 not due to recovery but due to extinction or an
13 error in data that required a listing revision.
14 This is a pretty dismal success rate, and it seems
15 to make the ESA a rather failed program at this
16 point, or at least at the very least a program in
17 desperate need of reform, especially considering the
18 huge burden imposed on landowners when species are
19 listed. I'm just curious your thoughts with regard
20 to, you've been with it and you've followed it, if
21 there were changes that you would make in the way
22 that this process works, the first one or two that
23 would come to mind, what would they be?

24 MS. NOREEN WALSH: Thank you, Senator. We have
25 delisted 31 species due to recovery. We have

1 prevented the extinction of 99 percent of the
2 species that have been listed, so we consider that
3 the first step on the road to recovery.

4 But as we move forward to delist even more
5 species to bring them to the point where they don't
6 need the protections of the act, my experience has
7 been and I think the experience across our agency
8 has been that we need to have the time and the
9 resources to work with individuals to not only help
10 them understand why species get listed in the first
11 place and what their recovery needs are but to
12 figure out how we can tailor those to their
13 constraints. So we have developed many programs for
14 conservation on private land that are respectful of
15 those concerns and looked for those win/win
16 solutions and what we need as we move into the
17 future to really be able to focus on those programs.
18 And the Partners Program is one of those.

19 SENATOR ROUNDS: And I think that's one that
20 has had some success.

21 I want to go to one specific program just as a
22 difference between the way that it worked for you
23 and the one that doesn't seem to be working. And
24 can you explain the work that the Service has done
25 regarding the black footed ferret and why it appears

1 that millions of taxpayer dollars have been spent
2 over the past 30 years to conserve a species that
3 has shown little increase in population.

4 MS. NOREEN WALSH: Yes, thank you, Senator. I
5 think that the black footed ferret is a species that
6 is firmly on the road to recovery but it is not
7 there yet. And so as I know that you and others are
8 aware, one of the greatest impediments to the
9 recovery of this species is Sylvatic Plague, an
10 introduced disease that the species didn't have to
11 contend with historically but now has to contend
12 with. And so one of the things that we are working
13 on most, with the most significance in this road to
14 recovery for the ferrets is developing a vaccine, an
15 oral plague vaccine that could be administered much
16 more efficiently to prairie dogs than the current
17 approach of dusting individual prairie dog burrows
18 with insecticides. We've done some small scale
19 testing that has shown a lot of success with that,
20 and we are moving this season to larger scale
21 testing of this oral plague vaccine. We're very
22 hopeful that having that tool passed through this
23 experimental phase of being able to use it on the
24 ground will prevent the kind of catastrophic
25 die-offs of prairie dog towns that take ferret

1 populations that have increased and bring them back
2 down.

3 SENATOR ROUNDS: Now, before we go on, I
4 just -- I want to work my way through this because I
5 can tell you right now that that will be the
6 headline, if we don't verify or work our way through
7 this a little bit, that the U.S. Fish and Wildlife
8 Service is planning on vaccinating large numbers of
9 prairie dogs across the United States, and there's
10 going to be a lot of discussion about where you're
11 going to get the money to do that kind of a program
12 and so forth. So I'm going to let you qualify just
13 a little bit as to where this is at before this is
14 hung out to dry real quick, okay?

15 MS. NOREEN WALSH: Thank you.

16 SENATOR ROUNDS: Yes.

17 MS. NOREEN WALSH: So we're in an experimental
18 phase right now, and we'll have to finish that
19 experimental phase before we use it as a widespread
20 tool. But to put it in context, I would tell you
21 that the recovery plan for the black footed ferret
22 contemplates having 3,000 total adult ferrets across
23 the entire Great Plains and contemplates needing
24 only one-tenth of 1 percent of existing prairie dog
25 habitat that exists now. So recovery for the ferret

1 involves a very small proportion of prairie dog
2 habitat.

3 SENATOR ROUNDS: So what you're saying -- and
4 this is the reason why I ask: We've been out to
5 places where when you protect prairie dogs or you
6 set them in a position to where they are supposed to
7 be left alone and not managed, most ranchers will
8 tell you they don't mind having a few dogs around
9 but they want them managed. And the problem you've
10 got is if you don't manage them, they multiply. And
11 pretty soon either you have a drought like we had
12 back in 2002 to 2006 and we saw what it did to the
13 Conata Basin down here, and it literally turned it
14 into a moonscape. It was unbelievable what had
15 happened.

16 And then they would migrate. And in doing so
17 they became a real pest. And then they got to the
18 point where they were migrating out to where the
19 different dog towns were actually connecting. And
20 when the plague hit, it moved right on through the
21 entire population. And that didn't do the black
22 footed ferret any good at all.

23 So what you're suggesting is that you would be
24 able to maintain -- I'm not trying to put words in
25 your mouth, but what you're suggesting is you could

1 maintain and would look at smaller populations or
2 pockets of prairie dogs rather than very large towns
3 like what we're looking at today in the management
4 for the black footed ferret? Is that a fair
5 statement?

6 MS. NOREEN WALSH: Very close, I think. We
7 consider there to be three very important prongs to
8 get to recovery. One of them is provide incentives
9 for landowners who might be willing to host prairie
10 dogs on their property.

11 The other one is the disease that we talked
12 about.

13 But the third one is boundary control around
14 the areas where we do have ferrets and prairie dogs.
15 Because we recognize that even if an individual
16 landowner is willing to host these two species, his
17 or her neighbors may not be, and so providing
18 boundary control for prairie dogs around the
19 boundary of those properties is an important prong
20 of recovery. And I would just mention that USDA
21 APHIS has been a very important partner with us in
22 ensuring that we can do that.

23 SENATOR ROUNDS: Thank you.

24 Mr. McGrath, is there anything that you wanted
25 to add before we --

1 MR. SHAUN McGRATH: No. Thank you.

2 SENATOR ROUNDS: Okay, great. Thank you very
3 much.

4 First of all, I just want to say thank you to
5 both Administer McGrath and Director Walsh for
6 taking the time to be here with us today.

7 I'd now like to dismiss the first panel and
8 invite our witnesses on the second panel to come on
9 up.

10 And while the second panel is coming up, I'd
11 like to submit for the record the statement of the
12 South Dakota Farm Bureau. And I believe Wanda
13 Blair, the vice president of the South Dakota Farm
14 Bureau, has joined us in the audience for today's
15 hearing. And I'd like to thank her for taking the
16 time to attend our hearing as well.

17 We really do appreciate it. Thank you.

18 So our witnesses joining us here today for the
19 second panel are Mr. Larry Rhoden, Mr. Jeff Lage,
20 Mr. Myron Williams, Mr. Chuck Clayton and Ms. Denise
21 Parker.

22 Come on up.

23 First of all, let me just begin by saying thank
24 you very much for taking the time today to come on
25 out and to do this.

1 I'm just going to work my way through the line
2 very similar to what we did with our first panel.
3 I'll introduce each of you and then ask you to give
4 an opening statement. And when we're done, we'll
5 move right on through it, and then I've got a series
6 of questions that we'd like to ask. I think I'll
7 begin with Mr. Clayton.

8 You're the first in line over here on this
9 side.

10 Mr. Clayton is the president of Prairie Pothole
11 Consulting on behalf of the Izaak Walton League of
12 America.

13 And after Mr. Clayton, Ms. Denise Parker,
14 volunteer of the Humane Society for the United
15 States. Thank you for being here today.

16 Mr. Larry Rhoden, rancher and former state
17 senator and a good friend, I might add. We've
18 worked together when I was governor and also when I
19 was in the legislature.

20 Mr. Jeff Lage, president of the South Dakota
21 Home Builders Association.

22 I think I'm saying that correct, am I not?

23 MR. JEFF LAGE: It's getting really close.

24 SENATOR ROUNDS: Lage?

25 MR. JEFF LAGE: Lage.

1 SENATOR ROUNDS: Lage? I'll get it right yet.
2 And Mr. Myron Williams, South Dakota
3 Cattlemen's Association. And I appreciate you
4 coming out today as well.

5 Turn to our first witness, Mr. Chuck Clayton.
6 Mr. Clayton, you may begin.

7 MR. CHUCK CLAYTON: Well, Chairman Rounds and
8 Senator Markey, staff, and members of the
9 Subcommittee, I appreciate the opportunity to
10 testify today concerning the importance of
11 conserving and restoring streams, wetlands and other
12 water resources that are essential to the economy,
13 outdoor recreation and public health in South Dakota
14 and across the nation.

15 I am Chuck Clayton. I'm the past president of
16 the Izaak Walton League of America, and I live in
17 Huron, South Dakota.

18 Healthy streams and wetlands are vital to
19 hunting and angling, communities and the outdoor
20 recreation economy.

21 Wetlands and streams provide vital fish habitat
22 and duck habitat, for wildlife. For example,
23 prairie pothole wetlands through the northern plains
24 and southern Canada support about 50 percent of the
25 North American duck population. And in a good year

1 when we have the water and the grass, as much as 70
2 percent.

3 Ducks that hatch and grow to adulthood in these
4 wetlands are harvested throughout the United States
5 every fall.

6 However, following two confusing U.S. Supreme
7 Court decisions (SWANCC in 2001 and Rapanos in 2006)
8 and subsequent agency guidance, many streams and
9 wetlands increasingly are at risk of being polluted
10 or drained and filled. According to the U.S.
11 Environmental Protection Agency, 117 million people
12 in the United States get their drinking water from
13 one of these at-risk streams. In South Dakota --
14 it's one in three Americans. And in South Dakota
15 309,000 residents are served by these streams for
16 their public drinking water, and that's consistent
17 with the national.

18 In the most current Status and Trends of
19 Wetlands report by the U.S. Fish and Wildlife
20 Service concludes that wetland loss increased by
21 140 percent during a time period of 2004 to 2009,
22 the years immediately following those two Supreme
23 Court decisions, compared with the previous
24 assessment period in 1998 to 2004. From 2008 to
25 2012 South Dakota has lost 12,640 acres of wetlands

1 to agricultural land use conversion, the most of any
2 other state according to Lark, et al., University of
3 Wisconsin, a Madison study in 2015.

4 Each year nearly 47 million Americans head into
5 the field to hunt and fish. They support jobs,
6 manufacturing and the overall economy. These
7 directly support 1.5 million American jobs, and it
8 ripples through the economy to more than \$2 billion
9 a year is generated from this. According to the
10 Fish and Wildlife Service, in 2011 270,000 resident
11 and non-resident hunters took to the fields in South
12 Dakota and spent nearly \$597 million. And also more
13 than 260,000 anglers spent more than \$203 million.
14 Pheasant hunting in the prairie pothole region
15 attracted 80,000 out-of-state hunters in 2010,
16 according to the Game, Fish and Parks.

17 When we think about the value of outdoor
18 recreation, think about the economy that this
19 tourism brings to South Dakota, it's our second
20 largest industry, with an estimated annual positive
21 economic impact of over \$2 billion according to the
22 Department of Revenue in South Dakota.

23 Natural wetlands are also arguably one of the
24 most cost-effective protections against flooding for
25 communities large and small. The National Weather

1 Service said that the 30-year average for flood
2 damage is 8.2 billion annually. Water cannot be in
3 two places at one time. If it's not in seasonal or
4 temporary wetlands and naturally functioning streams
5 in wetlands, it'll be in your basement or in a
6 business.

7 What the Clean Water Rule, WOTUS, as the
8 Senator called it, will and will not do: The Clean
9 Water Rule adopted by the Army Corps of Engineers
10 and the EPA in 2015 identified waters that are not
11 and are covered by the Clean Water Act. It narrows
12 the historic scope of Clean Water Act jurisdiction.
13 It clearly defines the limits of tributaries. It
14 draws a bright line physical and measurable
15 boundaries on covering adjacent and nearby waters.
16 It preserves and enhances existing exemptions for
17 farming, ranching, forestry and other land uses.
18 The exemptions from the Clean Water Act are
19 maintained and enhanced.

20 Since 1977, the Clean Water Act has included
21 404 exemptions for farming, for construction, for
22 farm and stock ponds, irrigation ditches,
23 maintenance of ditches and roads. Under the
24 language of the Clean Water Act, discharges
25 associated with a broad range of activities are

1 already exempt, and have been for 30 years. These
2 statutory exemptions can only be modified by
3 Congress. The agencies are bound by them and they
4 cannot change them.

5 For the first time in regulation, explicitly
6 excludes specific types of waters from the
7 definition of "Waters of the United States." The
8 following are among those types of waters: Prior
9 converted cropland; many drainage ditches provided
10 they are not excavated in a tributary; artificially
11 irrigated areas; artificial, constructed lakes and
12 ponds, including farm stock ponds and irrigation
13 ponds; erosional features such as gullies, rills and
14 other ephemeral features; puddles; groundwater,
15 including groundwater draining from drain tile is
16 exempted. When you consider the context of the
17 existing statutory exemptions for certain
18 discharges, the final rule more clearly identifies
19 the waters not covered under the Clean Water Act and
20 incorporates exemptions that had previously not been
21 in the regulation.

22 The Clean Water Rule is critically important to
23 safeguarding our nation's water resources, hunting
24 and angling traditions and the outdoor recreation
25 economy. The final rule provides more clarity. The

1 rule is based on overwhelming science and common
2 sense.

3 Thank you, Senator.

4 SENATOR ROUNDS: Mr. Clayton, thank you very
5 much for your testimony and for being here today.

6 We will now hear from Ms. Denise Parker.

7 Ms. Parker, you may begin.

8 MS. DENISE PARKER: Senator Rounds, Senator
9 Markey's staff and members of the subcommittee, I
10 appreciate the opportunity to appear before you on
11 behalf of the Humane Society of the United States
12 and as a citizen of the State of South Dakota
13 concerning the importance of the Endangered Species
14 Act and how the loss of adequate funding to maintain
15 a strong ESA would have a disastrous impact on
16 endangered species that call South Dakota home or
17 use South Dakota as a migratory corridor, in
18 particular the gray wolf.

19 I am Denise Parker. I come to you as a proud
20 South Dakotan, a resident of Lead in the beautiful
21 Black Hills. I am a Navy veteran having served 26
22 years on active duty. In the last ten years I have
23 expanded my knowledge on the environment through the
24 Yellowstone Institute under the tutelage of some of
25 America's foremost biologists, naturalists and

1 environmentalists. I can tell you that some of my
2 most memorable experiences in the wild have been
3 encounters with gray wolves. One such experience
4 was sharing a sighting of a mother wolf and her pups
5 through a spotting scope with a foreign visitor
6 whose only common language with me was the
7 realization of what we were witnessing was something
8 few in the world could say they had ever
9 experienced, a wild wolf in its natural habitat.
10 This experience could never have been possible were
11 it not for the existence of the Endangered Species
12 Act.

13 Recognizing that extinction is irreversible,
14 the United States did in 1973 what no other country
15 had done before, we established the Endangered
16 Species Act. The act reflected the resolve of a
17 society mature enough to guarantee a future for the
18 rest of creation. America continues to stand behind
19 that guarantee that says all creatures are
20 important, not just for this generation but
21 generations to come. Now 43 years later, the act
22 itself has become under endangered by different
23 entities that want free rein to dig, blast, kill,
24 extract and pollute wherever they see fit. They
25 want to dismantle the act through the members of

1 Congress. Yet according to a national poll recently
2 conducted, it shows 90 percent of American voters do
3 support the ESA. The act is based on common sense,
4 proven science and balanced solutions that offer
5 flexibility to communities, private landowners and
6 government agencies.

7 Today the gray wolf is protected under the ESA
8 in all of South Dakota. Currently there is no known
9 established population of gray wolves in South
10 Dakota. What is known is that single wolves have
11 been sighted and in several cases killed traversing
12 through South Dakota. This suggests that these
13 wolves are utilizing parts of South Dakota as a
14 corridor migrating in search of a mate or other
15 friendly wolves.

16 In 2012 a gray wolf was shot in Custer County.
17 DNA testing showed that wolf came from the Great
18 Lakes Region. Also in 2012 a radio collared wolf
19 was found to be from Yellowstone National Park and
20 was hit and killed on the Pine Ridge Reservation.
21 Of alarming importance is the fact that the South
22 Dakota Department of Game, Fish and Parks has no
23 management plan for the gray wolf, either now or in
24 the event of the loss of federal protections under
25 the ESA.

1 Additionally, our state legislature amended
2 existing laws to list the wolf as a varmint. Were
3 the gray wolf to lose federal protections, wolves
4 could be shot on sight. In fact, one of our elected
5 state legislators openly professes and encourages
6 the doctrine of "shoot, shovel and shut up," even as
7 the wolves are in a protected status. Certainly
8 this type of behavior does not provide conservation
9 minded South Dakotans with a feeling that our
10 interests have meaning when it comes to the
11 seriousness of the ESA.

12 Partnerships are critical in the efforts to
13 conserve endangered species. The U.S. Fish and
14 Wildlife Service has developed many tools and
15 incentives under the ESA to protect the interests of
16 private landowners. These programs are elaborated
17 on in my submitted written testimony. All of these
18 programs built into the ESA are meant to help, not
19 harm or impede private landowners in any way.

20 In closing, sir, the science is clear,
21 delisting wolves prematurely will have a
22 catastrophic effect not only for the survival of the
23 species but for the ecosystems that depend on them.
24 Delisted populations are left to the devices of
25 state management plans. South Dakota has none for

1 the gray wolf.

2 The American people need the assurances made to
3 us 43 years ago that all species are critical to our
4 environment in its whole. Do not allow disassembly
5 of a program that is working. A properly and
6 adequately funded ESA remains the most important law
7 our nation has ever passed to protect imperiled
8 species for our children and generations to come.

9 Thank you, sir, and I would be happy to answer
10 any questions.

11 SENATOR ROUNDS: Thank you, Ms. Parker, for
12 your testimony today.

13 At this time we will turn to Mr. Larry Rhoden.

14 Mr. Rhoden, you may begin.

15 MR. LARRY RHODEN: Thank you, Senator. Well,
16 Ms. Parker has made my comments -- distracted me
17 slightly, and so I will resist the temptation to
18 respond to the previous testimony and stick with the
19 subject at hand.

20 Thanks for the opportunity to come before this
21 committee this morning and testify on the impact of
22 federal regulations on private property rights of
23 South Dakota farmers and ranchers.

24 My name is Larry Rhoden. I ranch with my
25 family near Union Center in western South Dakota.

1 I've also served in the South Dakota Legislature and
2 was a member of the Ag and Natural Resources
3 Committee during my tenure there.

4 The topic of today's hearing is an important
5 conversation, and farmers and ranchers are on the
6 front lines in dealing with mandates and
7 overreaching policies coming from the EPA. I've
8 always been a staunch defender of private property
9 rights and there's no question that the impact of
10 federal regulations is real. Federal requirements,
11 whether from the U.S. Environmental Protection
12 Agency, the Department of Labor or the Fish and
13 Wildlife Service can and do have an immediate
14 on-the-ground impact on how farmers and ranchers
15 manage their land and how they tend and harvest
16 their crops and ultimately on the profitability and
17 sustainability of their operations.

18 Make no mistake, private property ownership
19 comes with rights, and the landowners understand
20 that. We also understand that along with those
21 rights comes great responsibility of stewardship of
22 the land. Farmers and ranchers are self-driven to
23 protect the land and water because our livelihood
24 depends on it. As a western South Dakota rancher, I
25 do a great deal to keep waters clean and safe

1 because it's essential to our survival. Farmers and
2 ranchers throughout the country exhibit that
3 stewardship through effective management practices
4 such as pasture rotation, creating and maintaining
5 wildlife habitat, buffer strips, water quality
6 protection and much, much more. The notion that a
7 government agency would know better how to manage
8 water than the people actually living on the land
9 and depending on water availability and quality for
10 our livestock as a natural resource is simply
11 outrageous.

12 The only thing hindering farmers and ranchers
13 from doing what they already know to do in order to
14 protect our water resources is the EPA. And we know
15 the EPA is targeting areas that are not even close
16 to qualifying as waterways, in spite of what we may
17 have heard. Waters of the U.S. is an infringement
18 of property rights and our ability to do what we
19 need to to run our operations.

20 The WOTUS rule creates risk and uncertainty for
21 farmers and ranchers and others who depend on their
22 ability to work the land. The definition of
23 tributary has been broadened to include landscape
24 features that may not even be visible to the human
25 eye or that existed historically but that are no

1 longer present.

2 Farmers face enforcement action and severe
3 penalties under WOTUS for using the same safe,
4 scientifically sound and federally approved crop
5 protection tools that they've used for years.
6 What's more is the WOTUS language is disturbingly
7 vague, leaving farmers and ranchers at risk for
8 wrong interpretation and ultimate consequences. The
9 obscurity in definitions and qualifications of
10 WOTUS are confusing and the maps are difficult to
11 understand. How is a rancher supposed to know what
12 is or isn't a "Water of the U.S."? Many of the
13 areas seldom, if ever, run water, yet we have very
14 little way of knowing what is under the control of
15 WOTUS.

16 We have diligently cared for the land for
17 generations, and all of a sudden we may be subject
18 to federal jurisdiction. There's also the threat of
19 prosecution and penalties for normal practices such
20 as cleaning out dams or building fences or even
21 driving on land under EPA jurisdiction.

22 The WOTUS rules are oppressive and intimidating
23 to ranchers and private property owners. EPA is out
24 of line when increasingly complicated regulations
25 cause angst among landowners who don't even know

1 what to comply with.

2 I wanted to part from the rest of my testimony
3 because I have one last point I wanted to make, and
4 I think it's crucial for this conversation. I
5 wanted to direct it to Mr. McGrath.

6 Because as I talk to farmers and ranchers, they
7 feel a great deal of disdain and they feel very
8 convinced that the EPA is out of touch. And you
9 commented about the lengths you go to to communicate
10 with the people. I can speak for myself as a
11 legislator for 14 years, having served on the ag
12 committee, chaired the senate state ag committee,
13 was past national president of state ag and rule
14 leaders, and in those -- in that period of time I've
15 never once been approached by the EPA and asked for
16 input or invited to a meeting. I've carried and
17 passed resolutions specifically addressed and sent
18 to the EPA mapping out our concerns. If I feel that
19 out of touch and unapproachable by the EPA, how much
20 more so is the average citizen of South Dakota going
21 to feel that anything they say is going to fall on
22 deaf ears? And all we want to do is provide
23 common-sense solutions and approaches to some of the
24 problems that you may perceive as real that may not
25 be.

1 So with that, Mr. Chairman, thanks again for
2 the opportunity to testify before this committee. I
3 look forward to answering questions at the
4 appropriate time.

5 SENATOR ROUNDS: Larry, thank you for your
6 testimony.

7 We will now turn to our next witness, Mr. Jeff
8 Loge -- Lage, I'm going to get it right yet, for his
9 statement.

10 Mr. Lage?

11 MR. JEFF LAGE: Chairman Rounds, I appreciate
12 the opportunity to discuss the impact of regulation
13 on the home-building industry and housing
14 affordability.

15 My name is Jeff Lage. I am co-owner of Lage
16 Construction, a small business based in Rapid City,
17 South Dakota. And I am also the president of the
18 South Dakota Home Builders Association and represent
19 some 1,900 members, several who are here in the
20 audience.

21 Home building is one of the most regulated
22 activities in the country. Surprisingly, government
23 regulation can account for up to 25 percent of the
24 cost of a single-family home. Unfortunately, the
25 added cost of regulation prevents many families from

1 realizing the American dream of home ownership.
2 Most important to these -- most important to these
3 compliance efforts is a permitting system that is,
4 or a permitting system that is consistent,
5 predictable and timely.

6 Unfortunately, the EPA finalized a rule that
7 falls well short of providing the clarity and
8 certainty the construction industry needs. This
9 rule will increase federal regulatory power over
10 private property and will lead to increased permit
11 requirements, litigation and lengthy delays. The
12 expansion of the government's authority will not
13 improve water quality because much of the rule
14 improperly encompasses water features that are
15 already regulated at the state level.

16 Under this rule the ability to sell, build or
17 expand real estate projects will suffer notable
18 setbacks, including added costs and delays.
19 Currently it takes an average of 788 days and almost
20 \$300,000 to obtain an individual permit and 313 days
21 and close to \$30,000 for a streamlined nationwide
22 permit. These costs are passed on to homeowners,
23 and even relatively small price increases can price
24 low to moderate income home buyers out of the
25 market.

1 In addition to Clean Water Act challenges,
2 builders face repercussions when the proposed land
3 development or construction activity occurs where
4 endangered species exist or in an area that the ESA
5 designated as critical habitat.

6 The Fish and Wildlife Service's critical
7 habitat rule changes the purpose of establishing
8 critical habitat from supporting a specie's survival
9 to supporting its recovery. This concept conflicts
10 with Congress' intention that the critical habitat
11 be limited to areas that are essential to the
12 specie's continued existence, meaning its survival.

13 The rule significantly expands both the size of
14 future critical habitat designations and the
15 magnitude of the impact on the homebuilding
16 industry, while creating confusion and uncertainty.
17 It will empower the government to regulate vast
18 areas of land, much of which is not occupied by the
19 species and is not essential for the specie's
20 survival. The ESA does not allow for such expansive
21 designations.

22 The Fish and Wildlife Service's goal is to
23 establish critical habitat in unoccupied areas that
24 could potentially, potentially serve as habitat.
25 The dusky gopher frog offers an excellent example of

1 the expanded scope of critical habitat. 1,555 acres
2 of private land was designated as unoccupied
3 critical habitat for the frog. However, the frog's
4 habitat requires specific physical or biological
5 features for its survival and this land would have
6 to be substantially altered in order to potentially
7 support the frog's habitat. These elements needed
8 to support the frog are absent, and the only way to
9 make the land suitable is through controlled burns
10 and revegetation, which the government admits it
11 cannot mandate on privately held land. Yet the land
12 will still be regulated as critical habitat. Where
13 does the regulatory authority stop?

14 This rule will cause significant project
15 delays, costly project modifications and additional
16 requirements when building in a critical habitat
17 designated area. In some cases the project cannot
18 proceed, resulting in the loss of the landowner's
19 investment.

20 It is extremely difficult to be a homebuilder
21 in this current regulatory environment. Regulations
22 add to the cost of any home and increase the time it
23 takes to build it. Protecting our nation's natural
24 treasures is important, however my business cannot
25 continue to thrive, grow or thrive in this

1 atmosphere. We must work together to find an
2 appropriate balance so that South Dakotans can raise
3 their families in safe and affordable homes while
4 also enjoying our state's natural resources.

5 Thank you, Chairman Rounds.

6 SENATOR ROUNDS: Mr. Lage, thank you for your
7 testimony.

8 At this time we'd like to invite Mr. Myron
9 Williams to deliver his testimony.

10 MR. MYRON WILLIAMS: Thank you, Senator.

11 Good morning. My name is Myron Williams. I
12 ranch and farm near Wall. I'm a cow/calf producer,
13 background feeder, and I raise wheat, corn and
14 alfalfa.

15 Thank you, Senator Rounds, and other committee
16 members, for allowing me to testify today on the
17 impacts of the Environmental Protection Agency's
18 WOTUS rule and the U.S. Fish & Wildlife's
19 implementation of the Endangered Species Act.

20 First to address the Waters of the U.S. Rule,
21 let's be clear, everyone wants clean water. Farmers
22 and ranchers rely on clean water to be successful in
23 our businesses, but expanding the federal regulatory
24 reach of the EPA and Army Corps of Engineers does
25 not equal clean water. If this final rule is fully

1 implemented it could conceivably impact every aspect
2 of my operation by potentially regulating every
3 tributary, stream, pond and dry streambed on my
4 land. What's worse is the ambiguity in the rule
5 that makes it difficult, if not impossible, to
6 determine just how much my operations will be
7 affected.

8 We are pleased the courts saw fit to impose a
9 stay on the implementation of the WOTUS rule and
10 hope, Senator, you and Congress will require the EPA
11 to go back to the drawing board and engage with
12 farmers and ranchers and other stakeholders to seek
13 viable solutions before any new rules are
14 formulated.

15 Regarding the Endangered Species Act (ESA),
16 many in my area are familiar with the burdens this
17 can bring thanks to the reintroduction of the black
18 footed ferret in the Conata Basin which you
19 referenced in your opening testimony. I explained
20 the seriousness of the prairie dogs to you one day
21 in Wall, and you had the viability to come look at
22 the situation and sent Secretary Larry Gabriel to
23 establish these buffer zones which are still
24 functioning today and protecting adjacent private
25 property. Between that and the plague, the prairie

1 dogs have been controlled.

2 But we are losing the battle on the black
3 footed ferret. After 30 plus years and many
4 millions of dollars, there are 75 ferrets that can
5 be accounted for. And my question to you is: Is
6 this a viable project? Is it worth the estimated
7 600,000 per surviving ferret when the national debt
8 is \$19 trillion?

9 Today the number of species listed on the
10 Endangered Species list is 2,226 with only about
11 half of those, 1,156, having recovery plans in
12 place. In the history of the ESA, only 66 species
13 have been delisted. This means we spend millions
14 and millions of taxpayer dollars on a program that
15 has roughly a 1.4 percent success.

16 There was an article in last week's Tristate
17 News on the grizzly bear and its relocation and how
18 that problem is working and the problem it's causing
19 landowners with losses to livestock which they have
20 no control over. And the same with the gray wolf
21 program, many other states have tried to develop a
22 program but been fought by the environmental
23 community to not delist it.

24 We want to continue to do our part for wildlife
25 and the environment, but the "sue and settle"

1 tactics of the so-called environmental organizations
2 have turned the good intentions that was created by
3 the EPA and Fish and Wildlife decades ago into a
4 farce. Today these two important government
5 agencies are frequently pawns that must either do
6 the bidding of radical environmentalists or face
7 costly lawsuits than waste valuable time, human
8 resources and taxpayer dollars.

9 Nobody depends on the conservation of our
10 natural resources more than family farms and
11 ranches, many of which are multi-generational
12 businesses like mine that hope to continue for many
13 generations in the future. In order for that to be
14 possible, we urge Congress to stop the regulation by
15 bureaucracy and halt the onslaught of costly and
16 burdensome rules that don't achieve measurable
17 results.

18 We look forward to continuing to work with
19 Congress to ensure that we have the ability to do
20 what's best, produce the world's safest, most
21 nutritious, abundant and affordable protein while
22 giving consumers the choice they deserve. Together
23 we can sustain our country's excellence and
24 prosperity.

25 I appreciate the opportunity to visit with you

1 today and thank you for your time.

2 One comment I would make, if nobody even
3 thought about it, but during the '70s when those
4 regulations were in place, we had built the
5 interstate system before that. Today, Senator, I
6 don't think we'd have in there an interstate system.
7 We would not have dams on the Missouri River, and we
8 wouldn't have any pipelines.

9 Thank you for your time.

10 SENATOR ROUNDS: Mr. Williams, thank you for
11 your testimony today.

12 At this time I will begin questioning. Time
13 constrains the total number of questions that I can
14 ask, but I would like to work my way through a
15 series of them and see where it goes.

16 I'd like to begin with Mr. Clayton.

17 Mr. Clayton, in your opinion how can the
18 agencies better collaborate with landowners and the
19 recreational community to eliminate the conflicts
20 that have often occurred over the regulatory
21 process?

22 MR. CHUCK CLAYTON: Well, thank you, Senator.

23 The Izaak Walton League of America, both here
24 in South Dakota and also in Washington, D.C. seems
25 to be the ones that -- we don't let the perfect get

1 in the way of the good, and we are known for working
2 between the groups and passing, trying to pass laws
3 and get cooperation from both landowners, sportsmen,
4 builders, everybody. And I think if state agencies,
5 especially ones that deal with things regulated that
6 private landowners own, we would advance our causes
7 a lot more. Oftentimes what happens is in the South
8 Dakota Legislature and in Washington, D.C. all of a
9 sudden this bill pops up by special interest. And
10 one side loves it and the other side hates it and
11 there's nobody in the middle. So if we could have
12 more groups like our own and other sportsmen's
13 groups that would be willing to sit down with
14 landowners and ranchers, farmers and talk, I think
15 it would be a lot better. I used to do that when I
16 was the president of the South Dakota Wildlife
17 Federation and South Dakota Izaak Walton League. I
18 don't see anything wrong with that process.

19 SENATOR ROUNDS: This is off a little bit, but
20 I'm just going to ask anyway. The Conservation
21 Reserve Program was a ten-year program. It seemed
22 to me that it was very good for wildlife and it was
23 a good option for a lot of farmers and ranchers out
24 there. Has your group seen good support for the
25 CRP program?

1 MR. CHUCK CLAYTON: Oh, we support it
2 immensely, but the problem is we had all the push
3 from the input industries that sell feed, seed,
4 fertilizer, tractors, and they didn't want that CRP
5 because that cut into their business. So, as you
6 know, you have this balancing act between all sides.

7 SENATOR ROUNDS: Sure. Landowners have got to
8 decide where they can actually afford to pay for the
9 land they've got and maintain the land they've got.

10 MR. CHUCK CLAYTON: Exactly.

11 SENATOR ROUNDS: Personally I'm a proponent of
12 CRP. I like it.

13 Ms. Parker, I agree with the goals of the
14 Endangered Species Act, but I'm concerned with what
15 appears to be a very low success rate. According to
16 the U.S. Fish & Wildlife Act, there are 1,226
17 species currently listed as endangered. In the
18 history of the ESA only 66 species have been
19 delisted, some of them due to extinction and others
20 due to errors in the organizations that required the
21 removal. The Fish & Wildlife Service has had errors
22 which required that their removal, you know, be
23 ordered from the list. How should the Endangered
24 Species Act be reformed in order to increase the
25 success rate, and how can private landowners become

1 more engaged in conservation in order to prevent a
2 species from being listed?

3 MS. DENISE PARKER: Well, in the case of
4 landowners, I highly recommend, because the
5 Fish & Wildlife Service does have several programs
6 that will work with landowners in various ways to
7 help them to balance as far as if they have an
8 endangered species that's within the confines of
9 their land, I think working with those programs that
10 are already in place that a lot of times landowners
11 are not even aware of.

12 As far as what appears to be a low success rate
13 is -- probably our greatest success rate is that of
14 the removal of the bald eagle. And of course
15 everybody knows how important the Bald Eagle is to
16 our country.

17 Some of the species that are still struggling
18 along are struggling because of the interaction with
19 humans in various areas of our country.

20 I like to look toward South Dakota. I worry
21 about the black footed ferret. I worry about the
22 long eared bat, our dipper which we can oftentimes
23 find in Spearfish Canyon. But it is a matter of
24 working with landowners, the stakeholders and
25 compromising a lot of times. And I don't think that

1 we do enough of that.

2 Certainly the efforts of certain groups to
3 attach riders to unrelated bills in Congress that
4 are seeking to either defund or tie the hands of the
5 U.S. Fish & Wildlife, you know, who works very hard,
6 I mean talk about a balancing act, these folks are
7 under fire all the time. And, you know, their
8 primary mission is not only to conserve wildlife but
9 also work on behalf of all the homeowners -- or the
10 landowners and stakeholders in this.

11 SENATOR ROUNDS: Thank you. I actually have a
12 house on the river, and it's one of the greatest
13 things in the morning to come on out and see whether
14 or not if one of the baldies is sitting on one of
15 the trees behind the house. And it's a marvelous
16 opportunity to see a beautiful bird, and it's
17 something that you get up and you enjoy doing.

18 I do have a question for Mr. Rhoden. And
19 you've testified that the Environmental Protection
20 Agency actually hinders farmers and ranchers from
21 being able to effectively manage and conserve
22 resources on their lands. Can you explain how the
23 EPA is often an obstacle to environmental
24 conservation?

25 MR. LARRY RHODEN: Well, I believe probably the

1 most important factor, especially with WOTUS, you
2 know, we don't know what effect that will have
3 because it's not been implemented yet. What we
4 don't do in western South Dakota -- and I
5 understand, you know, we have two different worlds
6 in South Dakota. The things that affect eastern
7 South Dakota and the management practices are
8 significantly different than in western South
9 Dakota, the topography, but all the more reason for
10 public input and common sense in the way that we set
11 forth rules.

12 One size does not fit all. And when I look at
13 rules that are proposed for western South Dakota
14 under Waters of the United States, it's hard to
15 fathom how we would deal with it as far as what they
16 describe as waterways and how, you know, the
17 criteria they use to describe what constitutes a
18 waterway. And so it's up to the imagination to know
19 what effect that will have. I mean, it goes
20 anywhere from none at all to catastrophic as far as
21 our ability to do with land what we need to do to
22 maintain our operation.

23 I think we lose track of the fact -- you know,
24 I've been on the same place for 57 years. My father
25 put the place together before me when he came home

1 from World War II. My brother is on the original
2 homestead. That is a story that we see repeated all
3 across the state. We want what's best for the land,
4 not because, you know, we're good guys, but we need
5 to sustain that land. We have, you know, the skin
6 in the game in protecting the water quality. Our
7 survival depends upon it. And so -- and all we want
8 to do is make a living and protect the land and
9 fulfill our responsibility to the land.

10 So to have a government agency come along,
11 especially with the type of rules that we've seen
12 that just blow your mind as far as common sense --
13 so I don't have a good answer to your question. God
14 forbid I do in a couple years because it's
15 implemented and now we're dealing with the fallout
16 and the regulations that are being proposed under
17 WOTUS.

18 SENATOR ROUNDS: Thank you. I just have --
19 Larry, I'll just make a point that you were a
20 majority leader when I was governor, and during that
21 time we worked through the issue of regulations
22 then. Any difference between the way you see the
23 process of if you were working with a state agency
24 and the processes we use in South Dakota versus the
25 processes that you've seen in terms of your national

1 affiliations and so forth working with the EPA or
2 the U.S. Fish & Wildlife Service?

3 MR. LARRY RHODEN: Yeah, you know, I -- yeah,
4 pretty dramatic. You know, we worked together on a
5 prairie dog management plan to help, you know, come
6 up with a solution, you know, to back away from the
7 brink, if you will, as far as the danger of having
8 the prairie dog listed as an endangered species.

9 So Eric Bogue was the majority leader in the
10 Senate; I was majority leader in the House, and we
11 carried the companion bills or the same bill. House
12 and Senate prime sponsors worked with your office to
13 develop that management plan and the Department of
14 Agriculture, and it was a long process but it was a
15 good process.

16 During that time we had committee hearings
17 where we invited all South Dakotans, anybody that
18 had a stake in the game to come and testify. So
19 that's a good process. That's the way it should
20 work. We should be able to look the people that
21 it's going to affect in the eye, hear a real-world
22 scenario of how that's going to affect them, work
23 through the process and change and tweak it to
24 represent some common sense and sound logic. And,
25 you know, I think it's a good process. I wish we

1 had more of that at the federal level.

2 SENATOR ROUNDS: Thank you.

3 Mr. Lage, you testified about the fact that
4 project proponents do not have a seat at the table
5 during additional statutory reviews triggered by the
6 Clean Water Act and this puts builders at a
7 disadvantage. Could you explain how builders are
8 placed at a disadvantage and the impact this has on
9 the ability to construct new homes in South Dakota?

10 MR. JEFF LAGE: Well, we have an issue with
11 affordability all over the country. And that's
12 within South Dakota also. You know, when 25 percent
13 of the cost of a home is government regulation, we
14 need to have a bigger seat at the table.

15 People want to experience the, you know,
16 American dream of home ownership. We need to be
17 allowed to participate, face on the table, and put
18 out our concerns rather than writing letters and
19 writing reports and writing details. So we need to
20 get -- we need to be involved. We need to be
21 involved up front.

22 There's some numbers out there that are rather
23 scary when it comes to home construction. And one
24 is, you know, it goes back to affordability again,
25 when you raise the price of a house on a median home

1 a thousand dollars, 234,000 people can no longer
2 qualify to buy that home.

3 And costs, they get passed on. When there's
4 excessive costs, they get passed on through the
5 process. Just like any business, you're going to
6 add whatever cost is at the bottom product.

7 So we just need to be able to have a more
8 upfront, face-to-face, accept what's going on. Home
9 building is one of the major factors for the
10 country.

11 SENATOR ROUNDS: I noticed, if I could, in
12 terms of nationally, in your testimony you talked a
13 little bit about this, but the vague definitions
14 that you referred to in the Waters of the U.S. could
15 result in the Agency interpreting regulatory terms
16 in an overly broad manner that could greatly expand
17 the Agency's regulatory authority. Do your members
18 across the country have concerns that different EPA
19 Regional Offices could interpret in different ways
20 leading to a patchwork of varying Clean Water Act
21 permitting issues and regulations? And I'm just
22 curious if you want to expand on that a little bit.

23 MR. JEFF LAGE: Yeah, that is a major concern
24 across the country. And, like you said, there's too
25 much interpretation in the law.

1 I'm going to give you an example. I live in a
2 subdivision south of Rapid City. We use our ditches
3 to move our water. In theory, it could be
4 interpreted anything that could possibly hold water
5 or run water at any time could be impacted. Our
6 utilities are in the ditches. So if we need to do
7 utility work, hook up to a water hydrant, hook up or
8 dig up a water line, we would possibly have to get a
9 permit, depending on the interpretation of those
10 theories. And, you know, it just puts so much
11 burden. You don't know whether you can even mow
12 your own ditch in front of your yard because it
13 could potentially hold water.

14 I think it should be -- I mean, this is huge to
15 every American that owns property. You are being
16 told what you can do with your property. And you're
17 taking away private property rights, by the
18 government. You're not getting compensated for it.
19 You just have to play by their rules. Like, you own
20 a piece of property, Here's what you can do with it;
21 here's what you can't do with it. You can't touch
22 that because it could have water in it. You know,
23 it's just complete overreach of the Federal
24 Government.

25 SENATOR ROUNDS: Mr. Williams, in your

1 testimony you mentioned that under WOTUS rule you
2 may be required to obtain federal permits for normal
3 ag operations. Your concern with the additional
4 costs this could impose on your operation, how would
5 you manage it, and how do you see this actually
6 impacting? Are you thinking of the core permits or
7 getting the core permits, or are there specifics
8 that you found out about already that you're
9 concerned with? Could you expand a little bit
10 about --

11 MR. MYRON WILLIAMS: I guess I haven't found
12 out about it specifically, but what we've been told,
13 going by our major organizations, Farm Bureau and
14 other ones, the Housing Association, that they're
15 going to be there. I haven't experienced it myself,
16 but I know of people personally that have gotten in
17 trouble, thought they had the right permits and all
18 of a sudden they were looking at \$44,000-a-day fine.
19 That's the scary part is the interpretation of what
20 the Agency said is okay, and then if we're going to
21 forget that, I guess I don't trust. I guess I feel
22 that that's an area that's pretty vague. And we
23 need it to be isolated.

24 I think we were a lot better when it was
25 Navigable Waters of the United States, not All

1 Waters of the United States. But I think that's a
2 key word.

3 SENATOR ROUNDS: You also testified about your
4 concerns with the black footed ferret and the amount
5 of taxpayer dollars that have been spent aimed at
6 the conservation of the species. Can you tell us
7 your experiences with the conservation of this
8 species and the impact that it's had on your land?

9 MR. MYRON WILLIAMS: Well, it has worked on the
10 federal land user, and that's where the Conata Basin
11 is is on federal lands.

12 SENATOR ROUNDS: Down in the Badlands?

13 MR. MYRON WILLIAMS: Badlands, yes, but it's
14 also owned by the Forest Service. And it's in
15 cooperation with it. It joins the Badlands National
16 Park. So those two agencies are trying to grow the
17 ferret population, but they're such a critical
18 species that they think the best way to establish
19 that species is to give it more room and more acres
20 so that limits the amount of control they can do.

21 And limiting that control, those things are
22 migrating. I live 5 miles from the nearest dog
23 town, and we have them on a private section of our
24 place that I eradicate three or four times a year.
25 They migrate. They're just like hitchhikers, you'll

1 see them come up on gravel roads in the spring of
2 the year looking for a place to go. And they find
3 them. They've got GPS. They find places to go.
4 And they're a residual little critter. They
5 devastate a pasture. And there's nothing wrong with
6 having some of them, but I think there's a number.

7 And just, you know, the idea of it -- I've been
8 doing this for 30 years. I mean, shouldn't they in
9 some way draw the line in the sand and say, Well, I
10 guess this didn't work? I mean, I would. If I was
11 in business and failed that long, somebody would put
12 me out of business.

13 SENATOR ROUNDS: I want to thank all of the
14 panel for being here today.

15 I come away with this: I know the landowners
16 here. I've been on their places or I've been around
17 their places, and I know that they're pretty proud
18 of them, the work they do in terms of conservation
19 efforts.

20 I also respect what our association
21 representatives have brought in here in terms of
22 their interests in just seeing that the endangered
23 species be protected and their interest in
24 conservation as well.

25 I was born, as my dad continues to remind me,

1 on the opening day of pheasant season. And he
2 reminded me the other day that I still owe him a
3 pheasant hunt that I had cost him.

4 And I think when we talk about the economic
5 opportunities of having clean water and clean land,
6 that's critical. The issue I think more than
7 anything else seems to be how we come up with the
8 appropriate national policies that can be
9 implemented at the local level when you have so many
10 differing types of local needs and accepted
11 practices.

12 We've heard over a period of several different
13 committee meetings or different inquiries that there
14 is a difference between one location and another in
15 terms of how they are interpreted.

16 The Corps of Engineers, we've had testimony
17 from one farm group in our last meeting that they
18 were actually still implementing WOTUS in terms of
19 ag practices and changing from one ag practice to
20 another ag practice, and that was clearly not the
21 intent of the law when it was created.

22 So I think as much as anything, when we do
23 these subcommittee meetings and hearings, we're
24 looking not only to try to ferret out those areas
25 that we see specific problems on, but we also are

1 trying to determine whether or not the processes
2 that we use can be improved.

3 And most certainly for those of us that have
4 had experience at the local level, we've seen where
5 the rule-making process in South Dakota can actually
6 work, and it's one in which the legislative body has
7 the final say as to whether or not that rule
8 actually goes in and becomes effective.

9 At the federal level we haven't had that. In
10 fact, where 41 states have a rules review process in
11 place similar to South Dakota's, at the federal
12 level one of the most frustrating parts, and I think
13 our folks here from the U.S. Fish & Wildlife and
14 from EPA have probably heard the frustration of
15 not -- although there is testimony provided, the
16 same folks that make up the rule in the first place
17 take the testimony, and then those same folks that
18 wrote the rule in the first place decide whether or
19 not the rule gets changed or whether it doesn't get
20 changed. And to change on the part of Congress,
21 anything happening actually takes an act of Congress
22 to become effective. So what you've got is -- the
23 default position is is that a rule being proposed by
24 an unelected organization, an agency, then becomes
25 effective unless the organized elected body,

1 Congress, can get 60 votes in the United States
2 Senate, or if the President disagrees, a two-thirds
3 vote of both the House and the Senate in order to
4 stop a rule or modify a rule.

5 That's different than what the states do where
6 there's a rules review process that slows the
7 rule-making process down to the point where you have
8 modifications made. Because in many cases the
9 agencies do want the rule to go into effect, but
10 they do it with the blessing of a congressional
11 committee or a legislative committee. That does not
12 occur at the federal level. And I think that's one
13 of the major changes that we have to look at is the
14 rules-making process and whether or not Congress
15 should have an active role in the rule making before
16 it becomes effective, other than going through the
17 onerous process of actually writing the legislation,
18 passed by both the House and the Senate and passed
19 by or, and also signed by the President.

20 On only two occasions that I'm aware of has the
21 rule -- or the congressionally directed current
22 process been effective in actually changing a rule
23 since at least the 1990s. And when you think about
24 the fact that we have over a million federal
25 regulations on the books today and we're creating

1 them at the rate of over 3,000, close to 3,500 more
2 per year, you suddenly realize that the true
3 legislative body at the federal level today are the
4 agencies and not Congress.

5 And I think what we're hearing today are some
6 of the frustrations but also the desires that these
7 processes put in place actually work. Because when
8 you have over -- you know, the vast majority of the
9 land in the United States is actually operated by
10 private landowners, you start to realize that you've
11 got to have cooperation of landowners and acceptance
12 by landowners if you really want the Endangered
13 Species Act to work and if you really want a
14 Navigable Waterways process to be accepted by folks
15 who actually live and work on the land.

16 So with that, I just want to take this
17 opportunity to thank all of our witnesses for being
18 here today. You all add to this discussion, and it
19 is greatly appreciated.

20 The hearing record will be open for two weeks,
21 which brings us to Tuesday, September 13th.

22 And with this, this hearing is adjourned.

23 Thank you.

24 (The hearing concluded at 12:35 p.m.,
25 August 30, 2016.)

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON) ss.

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I, CINDY K. PFINGSTON, hereby certify that the foregoing pages numbered from 1 to 72, inclusive, constitute a full, true and accurate record of the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 19th day of September, 2016.

CINDY K. PFINGSTON
Registered Professional Reporter

My commission expires:
February 4, 2022

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