

**ORAL STATEMENT OF  
TOM BUCHANAN  
TO THE  
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE  
REGARDING  
“A PERSPECTIVE ON THE ENDANGERED SPECIES ACT’S IMPACTS  
ON THE OIL AND GAS INDUSTRY”**

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I’m Tom Buchanan from Jackson County, Oklahoma, in the southwestern part of the state. I have farmed for twenty-seven years and manage the Lugert-Altus Irrigation District.

The Lugert-Altus Lake was constructed by the Bureau of Reclamation during World War II. It first provided water to farmers in 1946. The District covers 48,000 acres of farmland with about 330 landowners. Our biggest crop is cotton. The gross receipts from the District are approximately 48 million dollars annually.

Today I would like to address how the Endangered Species Act affects the oil and gas industry, which then affects farming. Farmers appreciate God’s creatures as much as anyone. However, the ESA impacts our operations by increasing input costs and threatening our water supplies.

Oklahoma ranks second in the nation for production of natural gas, fourth in the nation in wheat and cattle production, and fifth in the nation for pecan production. Our state has been called the state of “soil and oil.” However, high prices for oil and gas have negative impacts on production agriculture. Natural gas is the most costly component used in manufacturing nitrogen fertilizer. Fertilizer prices have more than doubled over the past 15 years, with no reprieve in sight. A recent Energy Information Administration outlook forecasts benchmark natural gas prices rising by 9.2 percent in 2007 and increasing another 3.7 percent in 2008. World demand for fertilizer grew by 13 percent between 2001 and 2005, according to The Fertilizer Institute. Next year, Oklahoma farmers will face even steeper bills to fertilize crops.

The ESA is yet another factor attributing to the high cost of fertilizer by slowing down natural gas production. The American Burying Beetle, listed as endangered under the ESA has delayed and impeded oil and gas production in Oklahoma.

Another species of concern in Oklahoma is the Arkansas River shiner, a “threatened” minnow found in two of our largest rivers. The Oklahoma Farm Bureau Legal Foundation, along with twenty other organizations, worked with the U.S. Fish and Wildlife Service to refine critical habitat for the shiner. The Canadian River Municipal Water Authority had a 154 mile section of the Canadian River excluded from critical habitat based upon its management plan. The OFB Legal Foundation is working to finalize a voluntary conservation management plan for the shiner, in order to remove sections of the Cimarron and Canadian Rivers from critical habitat. These organizations have been proactive about preserving the shiner to protect their own water supplies. After the Klamath Basin crisis, many fear the needs of endangered species trump the needs of the humans.

To illustrate the extensive impact of the ESA, Oklahoma’s essential industries could be adversely impacted by the listing of a species that lives thousands of miles from here. The Fish and Wildlife Service has proposed listing polar bears as a threatened species, based solely on projected impacts of global warming.

Under the ESA, any activity “authorized, funded or carried out” by a federal agency that might contribute to global warming (such as permits for livestock or oil and gas production) would be subject to consultation with the Fish and Wildlife Service to make sure that the proposed activity would not jeopardize the continued existence of polar bears. Consultations can take 90-120 days to complete and result in permit delays. Because the Service is required to consider the “cumulative effects” of all actions, even those activities with little impacts, such as one Oklahoma livestock facility, could be denied a permit or have its terms substantially altered because of possible impacts to polar bears.

Under the ESA, taking does not have to be direct, but can also constitute indirect impacts to species that might affect their breeding, feeding and sheltering. Livestock and oil and gas producers could conceivably be liable for “taking” polar bears, if they contribute to global warming.

Another concern to agriculture is the federal regulatory reach of the Clean Water Act or CWA. Water is essential to agriculture production. The scope of federal jurisdiction is important to farmers and ranchers because jurisdictional determinations directly impact agricultural activities, have the potential to interfere with the use of private land and, if applied too broadly, impede our ability to produce food and fiber. As currently drafted, S. 1870 and H.R. 2421 not only expand the geographic scope of CWA jurisdiction but sweep many agricultural activities into the regulatory reach of CWA simply because such activities maybe conducted near some ditch, swale, wash, erosion feature or ephemeral stream that would be deemed a “water of the United States.”

The 1972 conference report of the CWA states “Congress intends the term ‘navigable waters’ be given its broadest possible constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes.” It is one thing to give a term like “navigable waters” broad meaning and quite another to statutorily eliminate it or give it no meaning what so ever. Deleting “navigable waters” from the CWA significantly changes — rather than clarifies — original Congressional intent.

America’s agricultural productive capacity is unprecedented in the world’s history. It allows our farmers and ranchers to meet the demands of our nation’s growing population while maintaining the most affordable, safest food supply in the world. Farmers have made great strides in improving our environment, which is in better condition than any other time in our lives. The ESA continues to be a problem, while at the same time Congress is considering CWA legislation that would burden production agriculture further with unprecedented regulation.