



IDAHO
**WATER
USERS**
ASSOCIATION

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July 12, 2018

The Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso:

On behalf of the Idaho Water Users Association (IWUA), I write to express our gratitude for your efforts to improve the Endangered Species Act (ESA) through the proposed “Endangered Species Act Amendments of 2018.” This is a vital step in the process to improve the ESA by increasing transparency and regulatory certainty, and by reauthorizing the Clean Water Act (CWA or Act). This legislation builds on the principles developed by the Western Governors’ Association (WGA) through a bipartisan multiyear effort. We appreciate the leadership of Chairman Barrasso and members of the Committee on the issue of ESA reform.

IWUA is a non-profit corporation formed in 1937. Although originally named the Idaho State Reclamation Association, IWUA was subsequently renamed to reflect the broader-based mission of serving all water users of the State. IWUA represents approximately 300 canal companies, irrigation districts, water districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals – all dedicated to the wise and efficient use of Idaho’s water resources. The purpose of IWUA is to promote, aid and assist the development, control, conservation, preservation and utilization of Idaho’s water resources.

The original intent of the ESA – stated in the Act itself – was to encourage “the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards.” The authors of the ESA clearly believed that the Act should be applied in a way that would foster collaboration and efficiency, in an incentive-driven manner. Unfortunately, over time, implementation of the ESA is now driven by litigation and sometimes inappropriate interpretation by Federal agencies.

We are pleased to see the Committee re-assess the original intent of the ESA, which emphasized a paradigm where species conservation could be achieved in cooperation with state and local interests, including farmers and ranchers, instead of at the expense of agriculture, which is

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happening in several Western states under current interpretation of the Act. IWUA has long maintained that amendments to the ESA are necessary. At its recent Annual Convention, IWUA members reaffirmed this by adopting Resolution 2018-5 (Endangered Species Act). A copy of this Resolution is attached.

IWUA supported the efforts of the WGA to create an inclusive and bi-partisan dialogue about modernizing the ESA process through the Species Conservation and Endangered Species Act Initiative (Initiative) and we are encouraged to see this discussion continuing at the national level. WGA led a robust process for engaging stakeholders in a transparent and constructive manner. A series of Initiative workshops, webinars and questionnaires, have enabled states, including Idaho, to share best practices in species management, promote the role of states in species conservation, and explore options for improving the efficacy of the ESA. Workshops and webinars were designed to foster a dialogue on how to improve implementation of the ESA and better incentivize species conservation efforts to avoid the need to list a species in the first place.

Each of these ideas, and others, are reflected in the proposed bill. We strongly support the improved state-federal consultation provision relating to conservation and recovery of wildlife included in the draft. The bill also encourages conservation activities through regulatory certainty. Finally, the proposed bill includes practical improvements to the ESA that will strengthen conservation decision-making through increased transparency, optimize conservation through resource prioritization, and authorize studies that will improve transparency of management decisions and ultimately, improve conservation. For these reasons, IWUA supports the draft "Endangered Species Act Amendments of 2018."

Thank you for your leadership on this critical issue and please know that IWUA stands ready to work with you to advance these important discussions.

Please do not hesitate to contact me at paul@iwua.org if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Arrington", written over a horizontal line.

Paul L. Arrington, Executive Director

Cc: Matt Leggett
Andrew Harding
Sam Eaton, Office of the Governor of the State of Idaho
Andrew Earl, Office of Senator Mike Crapo
Casey Attebery, Office of Senator Mike Crapo
Ayla Neumeyer, Office of Senator Jim Risch
Craig Quarterman, Office of Congressman Mike Simpson
Nikki Watts, Office of Congressman Mike Simpson
Brad Griff, Office of Congressman Raul Labrador

IWUA Resolution 2018-5: Endangered Species Act

WHEREAS, The Federal Endangered Species Act is clearly designed to support maintaining endangered or threatened species through artificial propagation; and

WHEREAS, Special interest groups use the Act to obstruct beneficial water resource projects; and

WHEREAS, The appropriate federal agencies do not adequately or appropriately administer the act; and

WHEREAS, Recovery plans for threatened and endangered species is a federal obligation but can be delegated to or developed in cooperation with states.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports revision and amendment and implementation by the Administration of the Endangered Species Act of 1973 to:

1. Require that when a species is listed, the lead federal agency simultaneously publish a recovery plan that identifies the actions necessary for recovery, the cost of recovery, the probability of recovery if actions are taken, the activities that are subject to Section 7 Consultation as a result of the listing, the reasonable and prudent alternatives needed to avoid jeopardy, if any, and the potential economic impacts of recovery.
2. Require that the agency specify only reasonable and prudent alternatives contained in approved recovery plans if alternatives are needed to avoid jeopardy;
3. Require the agency to prepare and publish a detailed decision document containing all data concerning the designation of a species, sub-species, critical habitat, finding of jeopardy or recovery plan;
4. Require the agency to include economic considerations as well as scientific data in a determination of the value of listing a species for either threatened or endangered status;
5. Provide that cooperative agreements between federal, state, local, agencies and water supply entities shall be deemed a substitute for listing conservation or recovery plans;
6. Protect only those sub-species which are significantly different genetically from the primary species;
7. Require periodic reviews of designated critical habitat and species listing to determine if such designations are still appropriate, but the Secretary of Interior and Secretary of Commerce should not be permitted to designate by regulation waters to which the United States exercises sovereignty as critical habitat that would impact non-federal waters or entities;

8. Require that where land or water resources are needed for recovery of listed species the federal government be responsible for providing the habitat in accordance with Section 5 of the Act and applicable state laws; however, no provision or program of the Endangered Species Act shall be construed or applied to authorize a taking or deprivation of any state created interest in water or water rights;
9. Provide exemptions for operation and maintenance and emergency repair of existing water facilities; and
10. That when petitioned by an affected State Legislature or Governor the agency take immediate steps to review, document and, where appropriate, rescind its previous action in administration of the Endangered Species Act of 1973 as amended.