

February 27, 2006

Senator James M. Inhofe
Chairman
Committee on Environment and Public Works
453 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Inhofe:

The U.S. Supreme Court's contentious decision in *Kelo v. New London* has brought the need to protect private property rights to the forefront of America's civic debate. Citizens from coast-to-coast recognize the vital importance of being secure in the ownership and use of their homes, small businesses and family farms.

As you and your colleagues consider proposed changes to the Endangered Species Act, we hope you do so with a clear understanding of the crucial role that secure property rights plays in saving threatened and endangered species.

As you know, the ESA has failed miserably in its stated purpose: Recovering threatened and endangered species. In the three-decade history of the Act, less than one percent of the species listed as either endangered or threatened have recovered.

Failure comes at a steep price under the ESA. Not only have species populations suffered, but the Act has cost billions of dollars and deprived landowners of the use of their land and, often, their savings.

The Endangered Species Act has failed not because it isn't strong enough, expansive enough, or funded enough, but because its incentives are wrong.

Today, private landowners live in fear of the ESA. Those who harbor endangered species on their property or merely own land suitable for such species can find themselves subject to severe land use restrictions. To avoid such restrictions and the losses in property values that accompany them, many decide to preemptively "sterilize" their land to keep rare species away. Such preemptive sterilizations benefit no one – least of all the species the ESA was established to protect.

By one estimate, up to 90% of all endangered species' habitat is found on private property. As such, punishing landowners for good stewardship can have extremely negative consequences for endangered and threatened species.

This perverse, anti-wildlife, incentive within the ESA would be all-but-eliminated if the

ESA is brought in line with the Fifth Amendment of the U.S. Constitution, which states that private property should not be taken for public use without just compensation. Property owners who have their property taken or who are denied the productive use of it due to federal species recovery efforts deserve 100% of fair market value in compensation for losses. If property owners receive this compensation, and are secure in their belief that they can be good environmental stewards without risking (at-times ruinous) financial losses, species will benefit.

Also, as a matter of simple fairness, law-abiding American landowners should be able to learn, within a reasonable time, whether a proposed use of their property would run afoul of the Endangered Species Act. Under the current ESA, after landowners apply to the Department of Interior for permission to use their property, they can be forced to wait years for a response – years during which they often are unable to use land they legally own, and on which they pay taxes.

This injustice could be prevented by establishing a time limit within which the Department of Interior must issue final decisions.

Secure property rights are a fundamental cornerstone of our liberty and are integral to our nation's prosperity. Happily – if we as a nation would just recognize it – if we honor these fundamental rights in the ESA, endangered species will benefit.

So that it will work better for wildlife and people, the Endangered Species Act should be reformed to respect the Constitution. We urge you to keep this in mind as you begin your important work.

Sincerely,

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