

PROPERTY RIGHTS FIRST!

September 12, 2005

The Honorable Richard W. Pombo
Chairman, Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Pombo:

When the Supreme Court declared in its *Kelo v. New London* decision that governments can forcibly take private property from the politically unconnected and redistribute it to the politically connected, Americans cried foul. Such blatant disregard for property rights and the Fifth Amendment sent shockwaves throughout the nation.

As you know, property rights abuse in this country is nothing new.

For over three decades, the Endangered Species Act has run roughshod over the Fifth Amendment and individual property rights. You correctly stated that the ESA “has become the preeminent law of the land as well as the preeminent burden to property owners.”

We agree.

By almost every objective evaluation the ESA has been a colossal failure. It has cost billions of dollars, ruined countless lives, and stolen endless acres of private property—all of this while failing to recover species. Until the federal government fully recognizes Americans’ constitutional right to private property, this failure will continue unabated.

It is in this regard that we are extremely disappointed to learn that efforts to fix the ESA do not address the Act’s most critical fault.

For instance, offering to only compensate landowners for their losses if federal regulation devalues their property by 50 percent or more is wholly insufficient. This would not fix the ESA, nor would it obey the Fifth Amendment, which states: “Nor shall private property be taken for public use without just compensation.”

Moreover, such a weak acknowledgement of property rights would still create a perverse incentive for landowners to rid their land of species and habitat for fear of crippling federal regulations and restrictions. Clearly, this is not good for property owners or species.

One solution could be to repeal the current ESA and replace it with a voluntary program in

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which property owners can engage in species recovery efforts on a term-limited contractual basis with the federal government. Such an approach would eliminate the perverse incentive previously mentioned, and most important, respect the landowner's constitutional right to his property. An additional alternative might be to exempt private property from the ESA.

Another so-called reform measure to the Act is even more alarming. This is a plan to create an authority within the Endangered Species Act to regulate "invasive species." Such a provision would be disastrous.

Creating an authority to regulate invasive species would give obstructionists countless more opportunities to devalue property and seize private land. Indeed, such organizations have openly coveted invasive species regulations for some time, and property rights advocates have fought them at every turn.

Invasive species provisions, in any form, must never be included in the ESA.

Property rights are a fundamental cornerstone of our liberty. The Endangered Species Act should respect the Constitution. Until this happens, the Act will continue to be a scourge to property owners and a failure to species.

Sincerely,

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