

**Written/Fax/E-mail Comments, Public Hearings on  
11/7/07 Revised Proposed Rule for the Preble's Meadow  
Jumping Mouse**

**Updated 2/14/08**

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U.S. FISH AND WILDLIFE SERVICE  
Mountain-Prairie Region  
134 Union Boulevard  
Lakewood, Colorado 80228  
December 10, 2007

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PUBLIC HEARING RE:  
U.S. FISH AND WILDLIFE SERVICE PROPOSAL TO REVISE THE  
ENDANGERED SPECIES ACT LISTING FOR THE  
PREBLE'S MEADOW JUMPING MOUSE

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Reporter's Transcript



**BUSBY JACKSON & LA FERA**  
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1 P R O C E E D I N G S

2 (The hearing commenced at 6:06 p.m.)

3 MS. LINNER: Good evening again. Most of you  
4 were here before, but my name is Susan Linner. I'm the  
5 Field Supervisor of the Fish and Wildlife Service,  
6 Colorado Ecological Services Field Office, and we are  
7 the office that has the lead for the Preble's Meadow  
8 Jumping Mouse and the decisions regarding its listing  
9 status. We have another representative of our office  
10 here, Pete Plage, who's a field biologist.

11 We're here to hear testimony on the proposal  
12 regarding the listing status of the Preble's Meadow  
13 Jumping Mouse, and it's our intent that any final action  
14 resulting from this proposal be as accurate and  
15 effective as possible. And towards that end, we seek  
16 the best scientific and commercial data available.

17 We will base the final determination, in part,  
18 on testimony received today, as well as all other  
19 comments received during the public comment period.

20 Under the Endangered Species Act, the Fish and  
21 Wildlife Service proposes to amend the current listing  
22 of the mouse to specify over what portion of its range  
23 the subspecies is threatened. We found that the best  
24 scientific and commercial data available demonstrates  
25 that the Preble's Meadow Jumping Mouse is a valid

1 subspecies and should not be delisted based upon  
2 taxonomic revisions; the subspecies is not threatened  
3 throughout all of its range; and the portion of the  
4 current range of the subspecies located in Colorado  
5 represents a significant portion of the current range  
6 where the Preble's Meadow Jumping Mouse is likely to  
7 become endangered within the foreseeable future, and the  
8 subspecies in that portion of its range should retain  
9 its threatened status.

10           Generally, during this comment period, we are  
11 seeking information, data, and comments concerning the  
12 biology of the mouse, including all new survey results  
13 or studies that may show distribution, status,  
14 population size or trends, life history information, and  
15 current and foreseeable threats in relation to the five  
16 Endangered Species Act listing factors, and information  
17 on how land management practices may affect the mouse's  
18 status in the future.

19           We are also requesting comments on our  
20 analysis and conclusions regarding the conservation  
21 status of the Preble's Meadow Jumping Mouse throughout  
22 all of its range, in particular information relative to  
23 the long-term security of the existing populations of  
24 the subspecies in Wyoming.

25           We also request comments on our analysis and

1 conclusions relating to a significant portion of its  
2 range, including the contribution of both Wyoming and  
3 Colorado portions of the range, to the status of the  
4 subspecies and the areas where protections should or  
5 should not remain in place.

6 Finally, we are requesting comments concerning  
7 the Sustainable Ecosystems Institute report, evaluation  
8 of scientific information regarding Preble's Meadow  
9 Jumping Mouse, which is available on our Web site, and  
10 any other information concerning the taxonomic status of  
11 the Preble's Meadow Jumping Mouse.

12 Any decision on the proposed action will take  
13 into consideration the comments presented here or any  
14 other relevant information that we receive by  
15 January 22nd, 2008. Such communication could lead to a  
16 final regulation that differs from or a withdrawal of  
17 the proposal.

18 Thank you.

19 Now I'd like to introduce Laurie Henry, who's  
20 our hearing officer for the evening. She's going to  
21 provide you with some ground rules for the hearing, and  
22 then we'll start with the speakers.

23 HEARING OFFICER HENRY: Thank you. Good  
24 evening, everyone. My role is to conduct this hearing  
25 in order that we receive your comments accurately into

1 the record -- we are on the record -- and to allow as  
2 many as of you as possible an opportunity to comment on  
3 the revised proposed delisting rule for the Preble's  
4 Meadow Jumping Mouse.

5 I am not a Fish and Wildlife Service employee,  
6 and I am not involved in a decision-making role  
7 regarding this issue.

8 If you have not already signed in or if you  
9 have questions, you will find the registration table  
10 just outside this room, with the Fish and Wildlife  
11 Service staff to assist you and answer your questions.

12 This is a public hearing under Section 4 of  
13 the Federal Endangered Species Act, As Amended. Notice  
14 of the public hearing was published in the Federal  
15 Register on November 7th, 2007, beginning on Page 62992.

16 The comment period ends at the close of  
17 business on Tuesday, January 22nd, 2008.

18 After review and consideration of your  
19 comments and all other information gathered during this  
20 comment period, the Service will make a final  
21 determination on the proposal no later than June 30th,  
22 2008.

23 The purpose of this hearing is to receive your  
24 comments on the proposal. Comments on all aspects of  
25 the proposal are very important and will be carefully

1 considered. Because of the importance of your comments,  
2 it is necessary that we follow certain procedures here  
3 this evening.

4 If you want to present comments at this  
5 hearing, please register at the table outside this room.  
6 I will call speakers in the order that they registered.  
7 When you register, indicate any organization that you  
8 are representing in your comments today.

9 Any delegated members of Congress, governors,  
10 or their representatives, or official representatives of  
11 Indian tribes may be our first speakers and will be  
12 given five minutes each. State and local elected  
13 officials will follow, with five minutes also. And then  
14 members of the public will be also given five-minute  
15 slots for the remainder of the hearing. In order to  
16 give as many people as possible the opportunity to  
17 speak, strict adherence to time limits is necessary by  
18 all speakers.

19 When you are called to present your comments,  
20 please come forward to the microphone in front. Please  
21 begin your presentation by stating your full name; spell  
22 it for the record, spell both your first and last name;  
23 and indicate if you represent an organization.

24 If you are reading your comments, please take  
25 care to read them slowly enough for the court reporter

1 to understand. Also, if possible, the reporter would  
2 appreciate a written copy of the comments you read.  
3 Your comments or questions are being recorded by the  
4 reporter, to preserve them for the record. Please keep  
5 in mind that the reporter will not record any statements  
6 from the audience or statements which are made to the  
7 audience. Comments must be made directly into the  
8 microphone, facing the front of the room.

9           Instead of presenting oral comments here  
10 today, or in addition to oral comments, you may submit  
11 comments in writing. Written comments may be submitted  
12 to the staff at the registration table, or they may be  
13 mailed to the following address, which is also available  
14 at the registration table outside the room. The address  
15 is U.S. Fish and Wildlife Service, P. O. Box 25486, EFC,  
16 MS-65412, Denver, Colorado 80225.

17           Comments also may be submitted by fax,  
18 courier, e-mail, or over the Internet. Details on these  
19 methods are available in the proposed rule. Written  
20 comments will be given the same considerations as oral  
21 comments presented here.

22           We appreciate everyone's cooperation in  
23 minimizing distractions. We cannot allow questions,  
24 comments, applause, cheers, or demonstrations. The  
25 hearing is scheduled to adjourn at 8:00 p.m.

1           Our first speaker tonight will be Kurt (sic)  
2 Holsinger.

3           MR. HOLSINGER: Good evening. I'm Kent  
4 Holsinger on behalf of the Coloradans for Water  
5 Conservation & Development.

6           The Coloradans for Water Conservation &  
7 Development were one of the delisting petitioners on the  
8 Preble's Mouse. We strongly oppose the revisions to the  
9 proposed rule to delist. I believe it was not based on  
10 the best scientific/commercial data available, and  
11 question how the Service has distinguished between  
12 Colorado and Wyoming populations, what are alleged to be  
13 the same mouse, in such a proposed revision to this  
14 rule.

15           Thank you.

16           HEARING OFFICER HENRY: Thank you. Our next  
17 speaker is Erin Robertson.

18           MS. ROBERTSON: My name's Erin Robertson;  
19 E-r-i-n, R-o-b-e-r-t-s-o-n. I'm a senior staff  
20 biologist for Center for Native Ecosystems. We will  
21 submit technical comments in writing, but I wanted to  
22 take a few minutes to talk generally here as well.

23           I wish we were here to talk about delisting  
24 because the mouse had been recovered throughout its  
25 range. I think that has gotten lost in this debate.

1 There are tons of good reasons to conserve Front Range  
2 streams; and if we were doing that, the Service wouldn't  
3 have to come up with creative ways to take it off the  
4 Endangered Species list.

5 The mouse is not the only species at risk.  
6 Greenback cutthroat trout, Ute Ladies' Tresses orchids,  
7 and Colorado butterfly plant are also already protected  
8 under the Act because of the loss of healthy Front Range  
9 streams.

10 Here in the arid West, conserving our water  
11 sources is a sensible investment. And for our own water  
12 quality, for wildlife habitat, and for recreational  
13 opportunities, we should treat our streams like the  
14 irreplaceable resources they are. Building in a  
15 floodplain is a generally bad proposition. So it seems  
16 like we should be able to show the restraint necessary  
17 to avoid driving our streamside wildlife to extinction.

18 However, even with the protection of the Act,  
19 the Service has permitted the loss of 800 stream acres  
20 of occupied mouse habitat. Evidently, we need continued  
21 legal protection to ensure that the Front Range doesn't  
22 forever lose the mouse, which provides a link to its Ice  
23 Age past.

24 I live in Louisville, and much of my family's  
25 drinking water comes from South Boulder Creek. I find

1 it reassuring that South Boulder Creek is healthy enough  
2 to continue to support the mouse.

3            Luckily, the Service is proposing to retain  
4 protections in Colorado. And the Service has reaffirmed  
5 that the mouse is unique and rare. This is progress.  
6 But it is unfortunate that the Agency continues to bow  
7 to political pressure by proposing delisting in Wyoming.  
8 The Agency is still reeling from its admission that it  
9 illegally allowed a political appointee to drive its  
10 previous mouse delisting efforts and to slash the  
11 mouse's critical habitat designation in half.

12            This new analysis should be an important  
13 opportunity to regain the Agency's scientific integrity;  
14 however, the Service has proposed to delist along a  
15 political boundary, even though its own research found  
16 that the mouse remains rare in the South Platte  
17 watershed in Wyoming.

18            The Agency also relies on a brand-new Bush  
19 administration interpretation of the Act that, among  
20 other things, directs the Service to ignore a species'  
21 historical range. Instead, the Service should direct  
22 its time and energy toward finalizing and implementing  
23 the recovery plan. It makes no sense for mice to lose  
24 protections once they jump across the state line.

25            The Service has adopted a permanent special

1 rule that allows landowners to do everyday actions, like  
2 rodent control and ongoing agriculture activities, so  
3 residents, farmers, and ranchers have little to nothing  
4 to do to accommodate the mouse. The Act mostly protects  
5 against major changes to the streams the mice inhabit.

6 Conserving habitat in Wyoming will play an  
7 important role in eventually recovering the mouse,  
8 especially since this represents the higher elevation  
9 and higher latitude sites, which may become essential in  
10 the face of climate change. Anyone can see that the  
11 mouse has not stopped development along the Front Range.  
12 Hopefully, it will help development occur a bit more  
13 thoughtfully along the stream reaches inhabited by the  
14 mouse.

15 It's important to remember that conserving  
16 clean water and open space provides significant economic  
17 benefits, including increasing nearby property values.  
18 Conserving the mouse and our Front Range streams just  
19 makes good, common sense. The Service should move  
20 forward with recovery. The past four years have been  
21 wasted, stalled out, on desperate attempts to getting  
22 around protecting the mouse. Now we should do what is  
23 biologically required to avoid its extinction.

24 Thank you.

25 HEARING OFFICER HENRY: Thank you. Our next

1 speaker is Mark Johnston.

2 MR. JOHNSTON: Good evening. My name's Mark  
3 Johnston. It's M-a-r-k, J-o-h-n-s-t-o-n. I'm deputy  
4 director of the El Paso County Environmental Services  
5 Department, and I've been asked to read some comments  
6 into the record on behalf of the El Paso County  
7 government this evening.

8 El Paso County appreciates this opportunity to  
9 provide comment to the public record regarding the  
10 November 1st revised proposed rule for the Preble's  
11 Meadow Jumping Mouse.

12 Regarding the delisting across the Preble's  
13 entire range, El Paso County reiterates its position and  
14 incorporates this here reference of the written comments  
15 of April 25th, 2005, and May 1st, 2006. El Paso County  
16 continues to support delisting of Preble's Meadow  
17 Jumping Mouse in both Wyoming and Colorado.

18 In addition, El Paso County reiterates its  
19 concern that significant voluntary preservation measures  
20 implemented along the Front Range in general, and in  
21 El Paso County specifically, have not been taken into  
22 account in the delisting process. Although the county  
23 supports the proposed delisting in Wyoming, we are  
24 concerned that the same rationale is not being applied  
25 to the preservation measures along the Front Range.

1           El Paso County and several interests have an  
2 active conservation easement program that have preserved  
3 numerous acres of riparian habitat in El Paso County for  
4 perpetuity. Additionally, El Paso County has acquired  
5 and will continue to seek opportunities to preserve  
6 riparian habitat for open space and wetlands enhancement  
7 opportunities. However, these preservation measures  
8 appear to have less merit to the Fish and Wildlife  
9 Service than the lack-of-development rationale being  
10 applied in Wyoming.

11           El Paso County urges the Fish and Wildlife  
12 Service to consider the preservation measures that have  
13 taken place in El Paso County as well as the rest of the  
14 Front Range, and move to delist the Preble's across the  
15 entire range of Wyoming and Colorado.

16           The Board of County Commissioners will provide  
17 additional written comments prior to the January 14,  
18 2008, deadline.

19           Thank you for consideration.

20           I've also been asked by the Board of County  
21 Commissioners to submit a letter from Robert Hoff that  
22 was submitted to the board, and I'll be putting that in  
23 the record as well.

24           Thank you.

25           HEARING OFFICER HENRY: Thank you. Our next

1 speaker will be Jeremy Nichols.

2 MR. NICHOLS: Good evening. My name's Jeremy  
3 Nichols. It's J-e-r-e-m-y, N-i-c-h-o-l-s. And I'm here  
4 also on behalf of Center for Native Ecosystems. Erin  
5 Robertson definitely covered our major concerns here. I  
6 just want to add a few important points regarding this  
7 proposal.

8 We appreciate the Service's realization that  
9 the mouse continues to warrant conservation here in  
10 Colorado. The pressures of development on open space  
11 and streamside habitats are immense, and they show no  
12 signs of slowing down anytime soon.

13 We are a little confused about the Service's  
14 decision to strip the mouse of protection in Wyoming.  
15 Seems to fly in the face of the best available science.  
16 Seems to fly in the face of reasoned conservation. If  
17 Wyoming, the Wyoming population, is a part of the  
18 Preble's Meadow Jumping Mouse, we should be protecting  
19 that population as well, to ensure the overall  
20 conservation of the species.

21 With regards to open space and the value of  
22 open space here in the Colorado Front Range, Erin was  
23 right on: Open space has been found to increase nearby  
24 property values by 5 to 20 percent. That's a huge  
25 benefit that citizens along the Front Range reap.

1           Now, the Preble's isn't the only way that we  
2 protect open space, but it's been a very important tool,  
3 in a very important way, to bring people's attention to  
4 the value of open space and streamside habitat here in  
5 Colorado. And responsible development does protect  
6 open space, it does safeguard streamside habitats for  
7 wildlife and for future generations.

8           We support protecting the Preble's, to  
9 continue to promote responsible development, to continue  
10 safeguarding open space and streamside habitats.  
11 There's no reason to strip the mouse of protections here  
12 in Colorado, and we support the Service's realization of  
13 that matter.

14           I guess we'll see what happens. Again, we  
15 would strongly urge the Service to reconsider its  
16 decision to strip the mouse of protection in Wyoming,  
17 and give the full species the protection it really  
18 deserves.

19           Thank you.

20           HEARING OFFICER HENRY: Thank you. We have  
21 called all the names of the registered speakers. If  
22 there is anyone else who would like to speak this  
23 evening, please register at the registration table, and  
24 we will call you to the microphone in a few minutes.

25           We have no additional speakers. The hearing

1 will remain open until 8:00 p.m. We will take a recess  
2 until we register additional speakers. Please take  
3 advantage of this opportunity to visit with our staff  
4 and managers.

5 We are off the record.

6 (A recess was taken from 6:27 p.m. to  
7 7:50 p.m.)

8 HEARING OFFICER HENRY: I will reconvene the  
9 meeting. And we're on the record.

10 There are no additional speakers registered,  
11 and it is now 8:00 p.m. On behalf of the U.S. Fish and  
12 Wildlife Service, we appreciate the time and effort you  
13 took this evening to present your comments. They have  
14 been very informative and will be fully considered in  
15 coming to a final decision.

16 The hearing is closed. We are off the record.

17 (The hearing adjourned at 7:50 p.m.)

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1 STATE OF COLORADO )  
2 ) ss.  
3 CITY AND COUNTY OF DENVER)

4 I, CARLA D. CAPRITTA, do hereby certify that I  
5 am a Registered Shorthand Reporter within and for the  
6 State of Colorado; that I was personally present at the  
7 hearing conducted in the above-captioned matter at the  
8 time and place hereinabove set forth; that I steno-  
9 graphically recorded all proceedings had, and that the  
10 above and foregoing is a true and correct transcription  
11 of my stenotype notes, so taken as aforesaid.

12 In witness whereof, I have hereunto set my  
13 hand this 4th day of January, 2008.

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17 Carla D. Capritta  
18 Carla D. Capritta, R.P.R.  
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U.S. FISH & WILDLIFE SERVICE

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RE: PROPOSED RULE TO AMEND THE LISTING  
FOR THE PREBLE'S MEADOW JUMPING MOUSE

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TRANSCRIPT OF PUBLIC HEARING

Transcript of Public Hearing proceedings in the above-entitled matter before the U.S. Fish & Wildlife Service commencing on the 12th day of December, 2007, at 6:00 p.m., at the First Interstate Conference Bank Center, 1405 16th Street, Wheatland, Wyoming.

ORIGINAL

## P R O C E E D I N G S

(Public comment proceedings commenced  
6:00 p.m., December 12, 2007.)

MS. LINNER: My name is Susan Linner. I'm  
the Field Office Supervisor of the U.S. Fish & Wildlife  
Service's Colorado Ecological Services Office. Our  
office's jurisdictional area includes all of Colorado, and  
we are the lead Fish & Wildlife Service Office for actions  
regarding the Preble's meadow jumping mouse.

And I'm here with other Service representatives  
including Pete Plage, biologist in our field office; and  
Scott Hicks, who is the Wyoming Ecological Services  
Assistant Field Office Supervisor, to hear your testimony  
on the proposal regarding the listing status of the  
Preble's meadow jumping mouse. It is our intent that any  
final action resulting from this proposal be as accurate  
and effective as possible, and towards that end, we seek  
the best scientific and commercial data available. We  
will base a final determination in part on testimony  
received today as well as on all other comments received  
during the public comment period.

Under the Endangered Species Act, the U.S. Fish  
& Wildlife Service proposes to amend the current listing  
of the Preble's jumping mouse to specify over what portion  
of its range the subspecies is threatened. We have found

1 that the best scientific and commercial data available  
2 demonstrates that the Preble's meadow jumping mouse is a  
3 valid subspecies and should not be delisted based upon  
4 taxonomic revision; the subspecies is not threatened  
5 throughout all of its range; and the portion of the  
6 current range of the subspecies located in Colorado  
7 represents a significant portion of the current range  
8 where the Preble's meadow jumping mouse is likely to  
9 become endangered within the foreseeable future, and the  
10 subspecies in that portion of its range should retain its  
11 threatened status.

12 Generally during this comment period we are  
13 seeking information, data and comments concerning the  
14 biology of the mouse, including any new survey results or  
15 studies that may show distribution, status, population  
16 size or trends, life history information, current and  
17 foreseeable threats in relation to the five Endangered  
18 Species Act listing factors, and information on how land  
19 management practices may affect the mouse's status in the  
20 future.

21 We also request comments on our analysis and  
22 conclusions regarding the conservation status of the  
23 Preble's meadow jumping mouse throughout all of its range,  
24 in particular information relative to the long-term  
25 security of existing populations of the subspecies in

1 Wyoming.

2 We request comments on our analysis and  
3 conclusions regarding the significant portion of its  
4 range, including the contribution of both Wyoming and  
5 Colorado portions of the range to the status of the  
6 subspecies and the areas where protections should or  
7 should not remain in place.

8 Finally, we request comments concerning the  
9 Sustainable Ecosystems Institute report titled Evaluation  
10 of Scientific Information Regarding Preble's Meadow  
11 Jumping Mouse which is available on our website as  
12 identified in the Federal Register notice, and other  
13 information concerning the taxonomic status of Preble's  
14 meadow jumping mouse.

15 Any decision on the proposed action will take  
16 into consideration the comments presented here or any  
17 other relevant information received by the Service by  
18 January 22nd, 2008. Such communication could lead to a  
19 final regulation that differs from or a withdrawal of the  
20 current proposal. Thank you.

21 And now I'm going to turn things over to Scott  
22 Hicks, who is going to act as our hearing officer for the  
23 evening, and he's going to provide you with some ground  
24 rules for the hearing.

25 MR. HICKS: So we are now on the record,

1 so good evening and welcome to this public hearing.

2 Again, my name is Scott Hicks and my role is to  
3 conduct this hearing in an order -- in order that we  
4 receive your comments accurately into the record and to  
5 allow as many of you as possible an opportunity to comment  
6 on the revised proposed delisting rule for the Preble's  
7 meadow jumping mouse.

8 I am the Deputy Field Supervisor for the Fish &  
9 Wildlife Service in Wyoming. Tonight I'm serving as the  
10 hearing officer for this public hearing.

11 My office assists the Colorado Fish & Wildlife  
12 Service Office regarding the Preble's meadow jumping mouse  
13 in Wyoming, but neither Susan Linner nor myself are final  
14 decision makers for this rule.

15 If you have not already signed in, or if you  
16 have any questions, you will find a registration table  
17 just outside the room with Fish & Wildlife staff to assist  
18 you and answer your questions.

19 This is a public hearing under Section 4 of the  
20 federal Endangered Species Act as amended. Notice of the  
21 public hearing was published in the Federal Register on  
22 November 7th, 2007, beginning on page 62 ,992. The  
23 comment period ends at the close of business on Tuesday,  
24 January 22nd, 2008.

25 After review and consideration of your comments

1 and all other information gathered during this comment  
2 period, the Service will make a final determination on the  
3 proposal no later than June 30th, 2008.

4 Again, the purpose of this hearing is to receive  
5 your comments on the proposal. Comments on all aspects of  
6 the proposal are very important and will be carefully  
7 considered. Because of the importance of your comments,  
8 it is necessary that we follow certain procedures here  
9 this evening.

10 As we previously mentioned, if you want to  
11 present comments at this hearing, please register at the  
12 table outside this room, and I will call speakers in the  
13 order they were registered. When you register, please  
14 indicate any organization that you are representing in  
15 your comments today.

16 If there are any delegated members of Congress,  
17 governors or their representatives or official  
18 representatives of Indian tribes, they will be our first  
19 speakers and will be given five minutes each.

20 I believe tonight, since we only have a limited  
21 number of speakers, we will have five minutes each for all  
22 of the speakers.

23 State and local officials will follow, again  
24 with five minutes each, and then members of the public  
25 will also be given five minutes each. In order to give as

1 many people as possible the opportunity to speak, strict  
2 adherence to time limits is necessary by all speakers.

3           When you're called to present your comments,  
4 please come forward to the front and please begin your  
5 presentation by stating your full name, spell it for the  
6 record, and indicate if you are -- if you represent an  
7 organization. If you are reading your comments, please  
8 take care to read them slowly enough for the court  
9 reporter to understand. Also, if possible, the reporter  
10 would appreciate a written copy of the comments you read.

11           Your comments or questions are being recorded by  
12 the reporter to preserve them for the record. Please keep  
13 in mind that the reporter will not record any statements  
14 from the audience or statements which are made to the  
15 audience. Comments must be made directly toward the court  
16 reporter and facing the front of the room.

17           Instead of presenting oral comments here today  
18 or in addition to oral comments, you may submit comments  
19 in writing. Written comments may be submitted to the  
20 staff at the registration table or they may be mailed to  
21 the following address which is available at the  
22 registration table just outside this room, and the address  
23 is the U.S. Fish & Wildlife Service, P.O. Box 25486,  
24 DFCMS-65412, Denver, Colorado, 80225.

25           Comments may also be submitted by fax, courier,

1 e-mail or over the Internet. Details on these methods are  
2 available in the proposed rule. Written comments will be  
3 given the same consideration as oral comments presented  
4 here.

5 We appreciate everyone's cooperation in  
6 minimizing distractions. We can't allow questions,  
7 comments, applause, jeers or demonstrations. The hearing  
8 is scheduled to adjourn at 8:00 p.m.

9 I would like to take this opportunity to thank  
10 the people who helped register people for the hearing  
11 tonight as well as our court reporter.

12 Are there any questions related to the  
13 procedures or ground rules before we continue?

14 At this point we're ready for our first speaker,  
15 so if Mr. Jerry M. Kennedy would come forward, Albany  
16 County Commissioner. Did you want to --

17 MR. KENNEDY: I don't need to speak. Dan  
18 Kirkbride will be presenting our stuff.

19 MR. HICKS: Okay. So Mr. Dan Kirkbride  
20 from the Platte County Commissioners.

21 MR. KIRKBRIDE: I am Dan Kirkbride, Platte  
22 County Commissioner. D A N, K I R K and bride as in a  
23 wedding. I'm testifying today on behalf of county  
24 commissioners who are elected representatives from Albany,  
25 Converse, Goshen, Laramie and Platte Counties in southeast

1 Wyoming.

2           This area has a combined population of 146,628,  
3 and encompasses a geographic land mass of over 9.93  
4 million acres which includes 100 percent of the critical  
5 habitat for the Preble's meadow jumping mouse that  
6 originally was designated in our state. The counties have  
7 actively participated throughout the U.S. Fish & Wildlife  
8 decision making on the Preble's mouse, and we appreciate  
9 tonight's hearing on the proposed rule to remove it from  
10 the list of endangered and threatened wildlife under the  
11 Endangered Species Act.

12           The USFWS is to be commended on a well-written  
13 rule that comprehensively details the standards the  
14 Service used to evaluate the populations of the Preble's  
15 mouse and then applies the scientific data against those  
16 standards. Representatives of the counties have reviewed  
17 the information submitted as part of the administrative  
18 record, and it is clear that potential threats that were  
19 identified for the Preble's mouse are far less severe in  
20 Wyoming than they are in the southern portion of the  
21 identified range. The Service's projections are uniform  
22 in their conclusions that in Wyoming these threats will  
23 not increase in their severity to reach a significant  
24 level of concern. Thus, the two different management  
25 approaches the Service proposes are well justified.

1           The proposed rule is consistent with our own  
2 indicators and projections that we routinely rely on which  
3 is that "a low projected human population growth is  
4 predicted for the four Wyoming counties -- Albany,  
5 Converse, Laramie and Platte -- occupied by the Preble's  
6 meadow jumping mouse."

7           Moreover, potential future threats are  
8 counterbalanced by voluntary protections that landowners  
9 have already taken to continue to ensure that the Preble's  
10 mouse and its habitat are effectively protected in the  
11 state of Wyoming.

12           The counties will continue to educate and work  
13 with our departments and private landowners within our  
14 borders to design projects in a way that reflects both  
15 good conservation practices and sound economics.

16           The exhaustive process that the USFWS used  
17 throughout its decision making, including the Interagency  
18 Cooperative Policy for Peer Review and Endangered Species  
19 Act Activities, which utilized selected peer reviewers for  
20 their expertise in genetics, systematics (sic), and small  
21 mammals is commendable. It is another example of  
22 thoroughness that the Service used to carry out the  
23 mandates of the law.

24           However, this process has vividly demonstrated  
25 one of the key weaknesses in the Endangered Species Act as

1 it currently exists. Once the petition to list was filed,  
2 the Service was forced to base its decision "solely on the  
3 basis of the best scientific and commercial data  
4 available" which subsequently proved to be inadequate.

5 This was proved by the rule which indicated  
6 that, "At the time of listing, data confirming the  
7 presence of the Preble's meadow jumping mouse was  
8 available only for a few sites in Wyoming. Since listing,  
9 additional data has verified that the subspecies is  
10 widespread in the North Platte River Basin with  
11 distribution across at least four drainages.

12 And once the Preble's was listed, the problem  
13 was compounded by the necessity to designate critical  
14 habitat. Once the listing was made, many of the private  
15 landowners in our counties were prevented from utilizing  
16 their own property. Planned construction projects were  
17 postponed and, in some cases, even canceled. Historic  
18 conservation practices were suspended and management plans  
19 had to be rewritten.

20 Because the ESA has no mechanism for  
21 reimbursement of these costs, private landowners were  
22 forced to absorb them, regardless of the ultimate  
23 decisions under the Act. These costs will continue to  
24 mount unless the Preble's is delisted. Already in some  
25 cases the financial burden has been staggering.

1           However, this scenario is not unique to the  
2 mouse. Studies have shown that nationally a significant  
3 percent of critical habitat is found on privately owned  
4 land, and this is just one example in a long line. It is  
5 regrettable that those who are least able to bear these  
6 costs -- the landowners -- are forced to do so.

7           We appreciate that the USFWS attempted to work  
8 within the constraints of the law to lessen this burden by  
9 exempting certain agricultural activities in the critical  
10 habitat designation, but that only lowered the cost to our  
11 communities. This exemption also was limited. As stated  
12 in the proposed rule: "Exemption does not apply to new  
13 agricultural activities or to those that expand the  
14 footprint or intensity of the activity."

15           It has discouraged potential buyers from  
16 purchasing property in the critical habitat area, further  
17 driving down land values in a state already struggling  
18 with the effects of long-term drought. In Wyoming, even  
19 though the agricultural sector's traditional practices  
20 were ultimately vindicated in the proposed rule which  
21 states that, "We now believe that agricultural operations  
22 that have maintained practices supportive of Preble's  
23 meadow jumping mouse populations are consistent with  
24 conservation and recovery of the subspecies," the bell  
25 cannot be unrung.

1           And yet there's no one more qualified to  
2 recommend management options and even make the decisions  
3 than the owners who know the land best because they live  
4 on it every hour of every day.

5           The counties have worked hard to provide  
6 information that will assist the Service in its decision  
7 making. Once the species was listed, the counties began  
8 working with the University of Wyoming to identify and  
9 quantify both the direct and indirect costs of the  
10 critical habitat designation.

11           Moreover, the discussions that we had as we  
12 worked with the University of Wyoming researchers who  
13 gathered data for the study on the true costs of the  
14 critical habitat designation parallel the findings in the  
15 proposed rule which indicated that, "In Wyoming, given the  
16 small projected increases in the human population, we  
17 expect rural development will continue to have only small  
18 and localized impacts."

19           We can't turn back the clock on this chapter of  
20 our history, but we urge Congress to use the lessons  
21 learned from the mouse process to enact much needed and  
22 long overdue changes to the Endangered Species Act,  
23 changes that effectively protect the truly imperiled  
24 species of this country, but at the same time spread the  
25 costs of this burden in a more equitable manner.

1           In the interests of time, we have chosen tonight  
2 to limit our comments to a few key points. However, we  
3 intend to submit more expansive written comments that  
4 address some of the other points on which the USFWS  
5 invited discussion. Thank you.

6           MR. HICKS: Ron --

7           MR. OPSAHL: I wasn't going to give  
8 comments tonight.

9           MR. HICKS: Mr. Ken Hamilton.

10           MR. HAMILTON: Thank you. My name is Ken  
11 Hamilton, H A M I L T O N. I work for the Wyoming Farm  
12 Bureau Federation, and my comments are going to be brief.  
13 I will -- we will submit written comments later.

14           But I just want to take this opportunity to  
15 thank the Fish & Wildlife Service for this effort to try  
16 and solve some of the problems that the listing of the  
17 Preble's meadow jumping mouse created for agriculture  
18 producers in this state. I think that this is perhaps a  
19 workable process. I think there's some glitches there,  
20 but again, I think that this is one of the things that the  
21 Fish & Wildlife Service has been responsive to and I would  
22 commend you for your efforts. Thank you.

23           MR. HICKS: Thank you.

24           Mr. Duane Short.

25           MR. SHORT: My name is Duane Short,

1 D U A N E, Short, S H O R T. And I'm with Biodiversity  
2 Conservation Alliance out of Laramie.

3 First of all, I would like to, as everyone else  
4 has, thank you for the opportunity to speak here in this  
5 hearing. And we will be submitting written comments  
6 during the comment period.

7 First of all, I would like to say that we feel  
8 that the current interpretation by the present solicitor  
9 in terms of significant portion of range is not the proper  
10 interpretation. And we also would like to remind U.S.  
11 Fish & Wildlife that the Endangered Species Act is law and  
12 that the solicitor's opinion is an opinion and not a  
13 directive, and we would hope that you would consider that  
14 as you move forward with the process.

15 And related to that, we do not believe that  
16 looking at the current range of the species in making a  
17 determination about its status is appropriate. We think  
18 the historical range should always be considered because  
19 as current ranges continue to shrink, that becomes a  
20 whittling-away process over time. And if we're truly  
21 trying to protect these species, we can't continue to look  
22 at whatever the current situation is.

23 That said, I want to read some Preble's meadow  
24 jumping mouse facts. First, Preble's is a rare mouse that  
25 lives in high-quality streamside habitat along the Front

1 Range of Colorado and Wyoming. Preble's is not a problem  
2 mouse. Preble's presence is an indicator that the stream  
3 and streamside it occupies has remained healthy. Preble's  
4 absence is a sign that unhealthy habitat now exists where  
5 it once thrived.

6 Secondly, Preble's needs Endangered Species Act  
7 protection for several reasons. First, because best  
8 available science has determined that Preble's meadow  
9 jumping mouse to be a unique subspecies and one that is in  
10 dire need of protection. Its population numbers and  
11 habitat quality are in decline.

12 And there has been some comment that there are  
13 more mice in Wyoming than previously thought. And I would  
14 like to remind the Service that that is not necessarily a  
15 true indicator of the number of species. For example, in  
16 Cook County, Illinois, the most highly populated county in  
17 the state, there are more tree species identified than any  
18 other county in the state, even the counties that include  
19 a national forest. And the reason for this is that there  
20 have been more studies in that particular area, and in  
21 recent years there have been more studies on Preble's, so  
22 naturally you are more likely to find more specimens.  
23 So -- and we think that should be taken into  
24 consideration.

25 We also believe that Preble's needs Endangered

1 Species Act protection because existing protection  
2 measures offer inadequate protection. In other words,  
3 voluntary measures and so forth cannot be monitored  
4 closely enough and we don't feel that those can qualify as  
5 adequate protection.

6 Also, threats to the mouse and its habitat are  
7 continuing to increase, one of those threats being global  
8 warming. And we don't know the effects precisely, but we  
9 do know drought and this kind of thing can certainly  
10 affect the species.

11 Other threats are declining and diminishing  
12 high-quality streamside habitat, including clean water and  
13 dense vegetation, is a serious threat. And without  
14 protections, some of these streams may not be maintained  
15 in the healthy condition that they're presently in. Other  
16 threats are overgrazing, irrigation diversions and urban  
17 sprawl, as we've seen in Colorado and limited parts of  
18 Wyoming.

19 And probably the biggest threat to the species  
20 is lack of political will and/or private incentive for  
21 protection.

22 Now, the controversy surrounding Preble's, the  
23 Preble's protection under the Endangered Species Act, is  
24 largely due to misinformation, and I would like to point  
25 out some of this misinformation.

1           A genetic study conducted by biased scientists  
2 that would have denied Preble's protection has been  
3 exposed and long since dismissed by the larger scientific  
4 community. Preble's is a unique subspecies needing  
5 protection, period.

6           Developers, industry and some agricultural  
7 interests believe and therefore spread the myth that  
8 protecting Preble's will destroy local economies. The  
9 primary impact of protecting Preble's simply requires that  
10 cities, counties and private landowners plan a bit more  
11 carefully for growth and development and land use to  
12 ensure adequate and healthy habitat for the species.

13           And we believe this requirement is really not  
14 that difficult to meet because everyone should already  
15 want to protect streamside habitat and enhance plentiful  
16 and healthy drinking water supply for their families, pets  
17 and even livestock.

18           And also, contrary to developers' and others'  
19 claims, the impact of protecting Preble's involves a quite  
20 limited area of land. We have heard a lot of talk about  
21 the counties involved, but it is not the entire counties  
22 that are involved. It is streamside habitat and that's a  
23 very relatively small area of land that we're talking  
24 about that would be subject to this protection.

25           And then finally, I would like to request that

1 the -- that science and not politics or political  
2 appointees determine the protection needs of Preble's  
3 meadow jumping mouse.

4 And related to my opening comments, the most and  
5 recent best available science clearly indicates a dire  
6 need to protect Preble's from extinction in Colorado and  
7 Wyoming, or, in other words, throughout its entire range.

8 And again, I want to thank you for this  
9 opportunity, and we will be submitting written comments.  
10 Thank you.

11 MR. HICKS: Thank you, Mr. Short.

12 We had someone else register.

13 Mr. Haynes, were you interested in making  
14 comments?

15 MR. HAYNES: Good evening. Thank you for  
16 the hearing, for this opportunity. My name is Taylor  
17 Haynes. I'm a member of the Preble's meadow jumping mouse  
18 recovery team. Never missed a meeting in the 18 months we  
19 met regular.

20 I would support removing Preble's from the  
21 endangered species protection for several reasons. I will  
22 try and be clear.

23 A, as we decided what this mouse should be as  
24 far as hundreds, thousands per stream mile, it became  
25 clear that nobody knew. And so with trapping and studies,

1 lots of mice were caught, very few Preble's, but the  
2 habitat was full of mice.

3 Question, if the habitat in the areas that are  
4 not damaged is full of mice, and we list those areas, what  
5 happens? Well, nothing. It is still full of mice. And  
6 Preble's, if it exists, will exist at its  
7 ability-to-compete level. It is unrelated to what we're  
8 doing unless you're talking about South Platte River  
9 through Denver. We have already done it. If you're  
10 talking about Horse Creek, if you're talking about any of  
11 the creeks in the Medicine Bow, most of that is national  
12 forest.

13 And the creeks on private land are the lifeblood  
14 of those ranches. You cannot afford in any way to damage  
15 that riparian area. So if you happen to have mice, based  
16 on your present operation, you're going to continue to  
17 have mice. The fact that the habitat is full, the fact  
18 that we talked about -- okay, what about places that we  
19 think are good habitat that have no Preble's, have no  
20 mice? Is it scientifically feasible, then, to transplant?  
21 It was decided by the whole team that that's not feasible.

22 Why really aren't there mice in some areas and  
23 yet they're plentiful in other areas? Like, say, Plum  
24 Creek in Colorado Springs is a fairly well-populated area  
25 and there's some mice there.

1           So I would say that based on what we know now,  
2 it can be removed from the endangered species list.  
3 There's quite a bit of confusion as to is this a rare  
4 critter existing initially in the listing papers, say one  
5 per hectare, which would be rare. Is rare the same as  
6 endangered? We really never knew that. And we don't  
7 know.

8           So my input to the recovery team was let's be  
9 sure that habitat is as -- pardon my lack of command of  
10 language -- but let's say pristine or in as much of a  
11 natural state. Once you're at that point, then the things  
12 that would live and thrive there are sort of on their own  
13 to compete.

14           So I would conclude -- that would conclude my  
15 comments and I would take any questions if that's  
16 appropriate.

17           MR. HICKS: Thank you for your comments.  
18 At this point we're not taking questions. Thank you.

19           We have called all of the names of the  
20 registered speakers. If there's anyone else who would  
21 like to speak this evening, please let us know and we will  
22 call you to the front to provide your comments in a few  
23 minutes.

24           Although we have no additional speakers, the  
25 hearing will remain open until 8:00 p.m. We will take a

1 recess until we register additional speakers. Please take  
2 advantage of this opportunity to visit with our staff and  
3 managers.

4 And, to the court reporter, we are off the  
5 record.

6 (Recess taken 6:30 p.m. until 8:00 p.m.)

7 MR. HICKS: It is now 8:00 p.m. On behalf  
8 of the U.S. Fish & Wildlife we appreciate the time and  
9 effort you took this evening to present your comments.  
10 They have been very informative and will be fully  
11 considered in coming to a final decision.

12 The hearing is closed.

13 (Hearing proceedings concluded  
14 8:00 p.m., December 12, 2007.)

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C E R T I F I C A T E

I, JANET DAVIS, a Registered Professional Reporter and Federal Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this 31<sup>st</sup> day of January 2008.

A handwritten signature in cursive script that reads "Janet Davis". The signature is written in dark ink and is positioned above a solid horizontal line.

JANET DAVIS  
Registered Professional Reporter  
Federal Certified Realtime Reporter













