

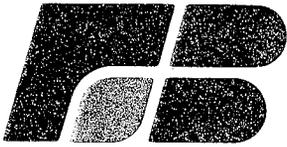
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Comments on Preble's Meadow Jumping Mouse Delisting Proposal

1. 1/31/05 Robert B. Hoff Colorado Springs, CO
2. 2/2/05 Nathan Arentsen Simpson College Progressive Action Coalition
Indianola, Iowa
3. 2/2/05 Maria DeLeon
4. 2/5/05 Miranda Mockrin Graduate Student
Dep. of Ecology, Evolution, and Environmental Biology
Columbia University, NY
5. 2/14/05 B. Scahau Florham Park, NJ
6. 2/10/05 Robert B. Hoff Green Valley, AZ (see 1 above)
7. 2/16/05 Christopher T. Massey Mountain States Legal Foundation
Lakewood, CO
8. 4/8/05 Andrew Martin Dep. Of Ecology and Evolutionary Biology
University of Colorado, Boulder, CO
9. 4/28/05 Pat Devers Department of Fisheries and Wildlife Sciences
Paul Grobler Virginia Polytechnic Institute and State University
Eric Hallerman Blacksburg, VA
Nataniel Hitt,
10. 4/29/05 Melissa I. Young Regulatory Specialist
Colorado Rock Products Association
Centennial, CO
11. 5/2/05 Ken Hamilton Executive Director
Wyoming Farm Bureau Federation
Laramie, WY
12. 5/2/05 Renee C, Taylor Environmental Coordinator
True Ranches
Casper, WY
13. 5/2/05 Jim Bensberg Chairman
Board of County Commissioners of El Paso County, CO
Colorado Springs, CO
14. 5/3/05 John A. Kolanz Office of the City Attorney
City of Greeley

- Greeley, CO
15. 5/3/05 Leah Berkman Denver, CO
16. 5/3/05 Jerry Sonnenberg President
Coloradoans for Water Conservation and Development
Denver, CO
17. 5/3/05 Dr. Tom W. Quinn Associate Professor
Codirector, Rocky Mountain Center for Conservation
Genetics and Systematics
Department of Biological Sciences
University of Denver
Denver, CO
18. 5/3/05 Ken Faux CO
19. 5/3/05 Cheryl Matthews Director
Douglas County
Division of Open Space and Natural Resources
Castle Rock, CO
20. 5/3/05 Mark Maslyn Executive Director, Public Policy
American Farm Bureau Federation
Washington, DC
21. 5/3/05 Dave Freudenthal Governor
State of Wyoming
Office of the Governor
Cheyenne, WY
22. 5/3/05 Dr. Mark Bakeman
Craig Hansen
Dr. Andrew Martin
Dr. Carron Meaney
Dr. Ann Ruggles
Ryon Thomas
23. 5/3/05 Erin Robertson Center for Native Ecosystems, Denver, CO
Jeremy Nichols Biodiversity Conservation Alliance, Denver, CO,
Nichol Rosemarino Forest Guardians, Santa Fe, NM
Brian Brademeyer Native Ecosystem Council, Rapid City, SD
24. 5/3/05 Ann Bonnell 2nd Vice President, Audubon Society of Greater Denver
Polly Reetz Board Member and Conservation Chair
Littleton, CO

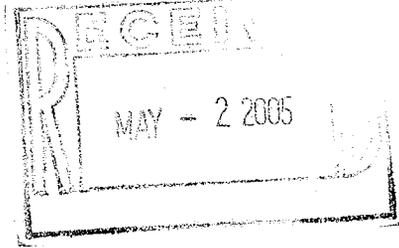
25. 5/3/05 Richard C. Stem Deputy Regional Forester, Resources
Forest Service
Rocky Mountain Region
Lakewood, CO
26. 5/4/05 Guy N. Cameron President
American Society of Mammalogists
27. 5/4/05 Paul Kruse Albany, Converse, Goshen, Laramie, Platte counties, WY
28. 5/4/05 Russell George Executive Director
Department of Natural Resources
State of Colorado
Denver, CO



WYOMING FARM BUREAU FEDERATION

P.O. Box 1348
Laramie, Wyoming 82073 • (307) 745-4835

April 27, 2005



US Fish and Wildlife Service
Field Supervisor
Colorado Field Office
Ecological services
755 Parfet Street, Suite 361
Lakewood, CO 80215

RE: 12- Month Finding on a Petition to Delist the Preble's Meadow Jumping Mouse and Proposed Delisting of the Preble's Meadow Jumping Mouse

Thank you for the opportunity to comment on the 12 month finding and the proposal to delist the Preble's Meadow Jumping Mouse. We are pleased the Service found the petitions warranted further review and subsequently found that the Preble's should be de-listed as a result of a flawed taxonomic identification and new genetic information. We do not support the decision by the Service to delay a final decision on the delisting of the Preble's pending a complete analysis of the conservation status of *Zapus hudsonius campestris*. Nor do we support delaying the delisting of the Preble's so the Service can evaluate the possibility that it is a Discrete Population Segment (DPS) of the *Campestris*.

It is disturbing that the Service states it has not yet considered the information provided in both the petitions, and their own files regarding distribution, abundance and trends as well as the question of Preble's being a DPS of *Campestris* when reaching this decision. The discussion of genetics and taxonomy was only a small part of the information provided in the petition. The distribution, abundance and trends data deserves equal attention as it demonstrates the mouse is doing quite well, examples of this follow:

- ✓ *Zapus hudsonius* exists in greater numbers than ever imagined. While this mouse may be elusive and uncommon, it is not rare and threatened with extinction.
- ✓ The habitat is intact and more broadly distributed than previously described. As provided in the trapping data, the "Preble's" has now been found from Douglas, Wyoming to south of Colorado Springs, and west into Albany County, Wyoming. When the information on the range of the "Preble's" is combined with the range of *Campestris* it is more than doubled. This is clearly illustrated in the modeling effort conducted by the Wyoming Natural Diversity Database (WYNDD) for the Service. In addition, and contrary to, the information in hand at the time of listing, the mouse has been located in virtually all the historic capture sites with the exception of Denver. The loss of the habitat in the greater Denver area cannot be considered significant in light of the vastly expanded range identified since listing.

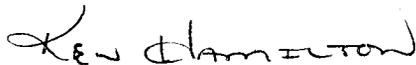
- ✓ Threats to the continued existence of the mouse are significantly reduced from those originally described by the Service. All this information is provided in the files maintained by the Service and reflected in the de-listing petitions. Initially the Service identified agriculture (grazing and haying operations) as a significant threat. Since listing, it has been shown repeatedly that agricultural operations are not a serious threat to the continued existence of the mouse. This is supported by the Service making permanent the 4-d rule.

We are concerned that the Service is inappropriately conditioning the delisting of the Preble's on their review of *Campestris*. If the Service believes there is reason to be concerned about the status of *Z. hudsonius campestris*, it should undertake such an evaluation outside of the review of the merits of the petitions and the status of the former Preble's. The determination of the listing status of Preble's must be made independently of the *Campestris* evaluation. Further, it is difficult to imagine how by more than doubling the range of *Z. hudsonius campestris* we could have negatively affected its conservation status.

The Service stated it will conduct an investigation of the Preble's as a discrete population segment (DPS) of *Campestris*. The Service again has failed to review all of the information provided in the delisting petitions. The petitions contain an expansive discussion of the range of the Preble's relative to *Campestris*. *Zapus hudsonius campestris* (including the former Preble's) is found in the foothills of the mountains from south of Colorado Springs, north through Colorado and Wyoming, into Montana and east into the Black Hills. The USGS report on *Campestris*, prepared for the Service, is flawed in that it does not discuss the connectivity of habitat and known sites of *Zapus hudsonius* captures from the North Platte River up the front of the Big Horn Mountains, into Montana, and east into South Dakota and North Dakota. The insistence that a gap in distribution and potential habitat exists, by taking the straight line from the Black Hills southeast to Converse County and the North Platte River at Douglas, Wyoming, fails to recognize the information that exists. Again, the WYNDD habitat model must be considered. In addition, the USGS report does not mention *Zapus* in the record showing captures near Lake DeSmet, in Johnson County, or on Badwater Creek in western Natrona County, both in Wyoming. The report makes a point of discussing an unsuccessful trapping effort along the east flank of the Big Horns in the summer of 2004 but fails to fully disclose documented capture sites.

It is interesting that there is so much more information on *Zapus hudsonius* in Wyoming and Colorado now than existed at the time of listing and it is never enough. It appears the Service does not want to de-list this mouse regardless of the body of information before it.

Sincerely,



Ken Hamilton
Executive Vice President

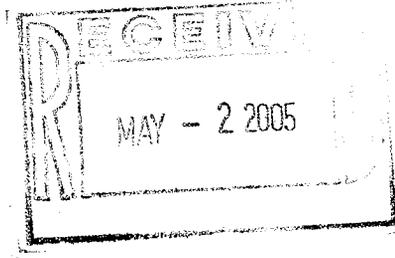
Cc Board
NER
AFBF
WDA

TRUE RANCHES

895 WEST RIVER CROSS ROAD

April 29, 2005

US Fish and Wildlife Service
Field Supervisor
Colorado Field Office
Ecological services
755 Parfet Street, Suite 361
Lakewood, CO 80215



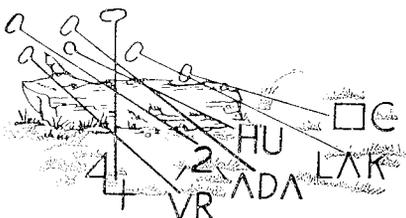
P.O. DRAWER 2360
CASPER, WY 82602
(307) 237-9301
FAX (307) 266-0373

RE: 12- Month Finding on a Petition to Delist the Preble's Meadow Jumping Mouse and Proposed Delisting of the Preble's Meadow Jumping Mouse

Thank you for the opportunity to comment on the 12 month finding and the proposal to delist the Preble's Meadow Jumping Mouse. We are pleased the Service found the petition warranted for further review and subsequently found that the Preble's should be de-listed as a result of a flawed taxonomic identification and new genetic information.

We are concerned the Service failed to consider the volumes of information provided both in the body of the petitions and in their own files when reaching this decision. The discussion of genetics and morphology was only a small part of the information provided in the petition. The Distribution, Abundance and Trends data deserves equal attention as it demonstrates the mouse (what ever it is called) is not at risk.

- (1) *Zapus hudsonius* exists in greater numbers than ever imagined. While this mouse may be elusive and uncommon, as compared to *Peromyscus* or *Microtus*, it is not rare and threatened with extinction;
- (2) The habitat is intact and more broadly distributed than previously described. As provided by the successful trapping data the mouse now has been found from Douglas, Wyoming to south of Colorado Springs, and west well into Albany County, Wyoming. When the information on the range of the mouse formerly known as Preble's is combined with the range of *Campestris* it is more than doubled. The mouse has been located in virtually all of the historic capture sites with the exception of Denver. The loss of the habitat in the greater Denver area cannot be considered significant in light of the vastly expanded range identified since listing.
- (3) Threats to the continued existence of the mouse are significantly reduced from those originally described by the Service. All this information is provided in the files maintained by the Service and reflected in the de-listing petition. Initially the Service identified agriculture (grazing and haying operations) as a significant threat, since listing it has been shown repeatedly



RANCHES

DOUBLE FOUR
Wheatland
ROCK RIVER
Rock River
ADA
Cheyenne

LAK
Newcastle
Chalk Bluffs
Cheyenne
VR
Glenrock
HU
Iron Mountain

FARMS

Wheatland
Newcastle

FEEDLOTS

Wheatland
Newcastle

that agricultural operations are not a serious threat to the continued existence of the mouse. This is supported by the Service making permanent the 4-d rule.

In addition, the Service is inappropriately conditioning the delisting of the Preble's on their review of *Campestris*. If the Service believes there is reason to be concerned about the status of *Z. hudsonius campestris* it should undertake such an evaluation out side of the review of the merits of the petition and the status of the former Preble's. The determination of the listing status of Preble's must be made separately. It is difficult to imagine how, by more than doubling the range of *Z. hudsonius campestris*, we could have negatively affected its conservation status. The concern expressed by a couple of the peer reviewers (Hafner and Riddle) of the Ramey et al study is not reason for delaying action on the subject at hand, the delisting of the "Preble's".

Further, the Service stated in the Federal Register notice that it will conduct an investigation of the Preble's as a discrete population segment (DPS) of the *Campestris*. The Service, again, has failed to review all of the information provided in the delisting petitions. The petitions provide an expansive discussion of the range of the Preble's relative to *Campestris*. *Zapus hudsonius campestris* (including the former Preble's) is found in the foothills of the mountains from south of Colorado Springs, north through Colorado and Wyoming, into Montana and east into the Black Hills. This is documented in the petition and supported by the trapping efforts conducted in Montana in 2004. This trapping information is provided in the comments submitted by the State of Wyoming relative to this 12 month petition finding and proposed rule.

The proposal to de-list is hollow when the Service fails to recognize the information before it. The Service has made it clear it considers the Preble's a DPS of *Campestris* and is acting to suspend the delisting of the Preble's pending a complete status review of *Campestris*. This is inappropriate. The USGS report on *Campestris*, prepared for the Service, is flawed in that it does not discuss the connectivity of habitat and known sites of *Zapus hudsonius* captures from the North Platte River up the front of the Big Horn Mountains, into Montana and east into South Dakota and North Dakota. The insistence that a gap in distribution and potential habitat (constituting discreteness) exists by taking the straight line approach from the Black Hills to Converse County, Wyoming and the North Platte River at Douglas fails to recognize the information that exists and has been presented on numerous occasions. The USGS report does not mention *Zapus* captured near Lake DeSmet, in Johnson County or on Badwater Creek in western Natrona County, both in Wyoming. The report makes a point of discussing an unsuccessful trapping effort along the east flank of the Big Horns in the summer of 2004 but fails to fully identify all known capture sites.

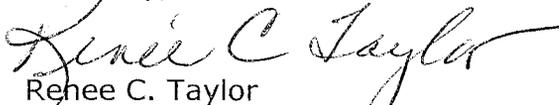
Regarding the Ramey et al examination of the literature for evidence of ecological differences between the subspecies, and the request by the Service for additional information about *Campestris*, we provide the following. We were wildly successful in capturing *Zapus* (Preble's) in southeast Wyoming in 1999 and then conducted a

very abbreviated trapping effort for *Campestris* east of Newcastle, Wyoming in 2002. The reports from both trapping events, while not published, are available at the USFWS/WFO and Wyoming Game and Fish offices. Our search pattern for suitable habitat for *Campestris* was the same as that used for Preble's, it again proved to be quite successful.

It is interesting that there is so much more information on *Zapus hudsonius* in Wyoming and Colorado now than existed at the time of listing and it is never enough. The Service hangs their proverbial hat on statements from a few of the peer reviewers of the Ramey report that additional study is needed to support the Ramey et al findings. How much more would be enough. It has become evident that the Service does not want to de-list this mouse regardless of the body of information before it.

Two additional comments. First, the "Preble's" should be synonymized with *Z. hudsonius campestris* and it should be known by the common name provided by E. Preble which is the Prairie Meadow Jumping Mouse NOT the Bear Lodge Jumping Mouse. Second, the State of Wyoming petition was the first one filed, therefore the Coloradans for Water Conservation and Development petition should be considered as a comment to the Wyoming petition.

Sincerely,


Renee C. Taylor
Environmental Coordinator

EL PASO COUNTY
**OFFICE OF THE BOARD
OF
COUNTY COMMISSIONERS**

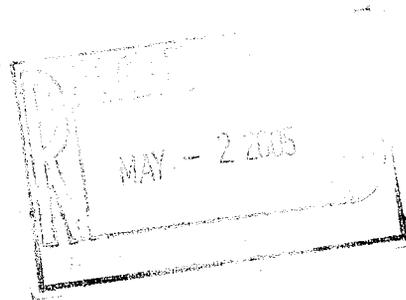
27 EAST VERMIJO AVENUE
COLORADO SPRINGS, COLORADO 80903-2208
(719) 520-6444 FAX (719) 520-6397
Web Address: <http://www.elpasoco.com>



COMMISSIONERS

Jim Bensberg	District 5 (Chairman)
Sallie Clark	District 3 (Vice Chair)
Wayne Williams	District 1
Douglas Bruce	District 2
Dennis Hisey	District 4

April 25, 2005



Ms. Susan Linner
Field Supervisor
Colorado Fish and Wildlife Office
Ecological Services
755 Parfet Street #361
Lakewood CO 80215

RE: Comments on the 12-Month Finding on the Petition to Delist the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) and Proposed Delisting of the Preble's Meadow Jumping Mouse (Fed. Reg. Vol.70 No. 21/ February 2, 2005).

Dear Ms. Linner:

Please consider this letter and the attached Resolution as El Paso County's official comments in response to the February 2, 2005 (Federal Register Volume 70, Number 21), 12-Month Finding on the Petition to Delist the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) and Proposed Delisting of the Preble's Meadow Jumping Mouse.

The Board of County Commissioners of El Paso County supports the U.S. Fish and Wildlife Service's (Service) proposed delisting of the Preble's meadow jumping mouse (PMJM), and we encourage the Service to make an expeditious decision. We support a decision to delist the PMJM based on the new scientific information from the recent genetic studies by the Denver Museum of Nature and Science, in which Dr. Rob Roy Ramey concludes that the PMJM is not a subspecies, but should instead be synonymized with *Z.h. intermedius* and *Z.h. campestris* to be named the Prairie meadow jumping mouse (*Z.h. campestris*).

El Paso County's Environmental Services Department has reviewed both of Dr. Ramey's reports, Testing the Taxonomic Validity of Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*), and Testing the Uniqueness of *Z.h. intermedius* and *Z.h. campestris*, as well as the peer reviews of the reports. Based on our staff's analysis of these, we believe the reports answer many of the major questions related to the taxonomy of the PMJM. Dr. Ramey's reports provide important insight into the genetic relationships of *Z.h. preblei*, *Z.h. intermedius* and *Z.h. campestris*. We also believe that Dr. Ramey's analysis is based on

Ms. Susan Linner
Page 2
April 25, 2005

accepted scientific methods and utilizes the appropriate markers and procedures to study the genetic relationship between *Z.h. prebeli*, *Z.h. intermedius* and *Z.h. campestris*. We urge the service to carefully consider the analysis and conclusions presented in Dr. Ramey's reports as well as the peer reviews of these reports when making any decision to delist the PMJM.

The El Paso County Environmental Services Department has also reviewed Dr. Ramey's conclusions regarding the development of a Distinct Population Segment for PMJM. Based on our staff's recommendations we suggest that the Service closely review Dr. Ramey's conclusions and resulting peer reviews prior to the establishment of a Distinct Population Segment related to this species.

Since 1998, El Paso County has actively pursued the development of a Regional Habitat Conservation Plan (RHCP) for the PMJM with its local government partners the City of Colorado Springs, Colorado Springs Utilities, the Town of Palmer Lake, and the Town of Monument. To develop this RHCP, El Paso County and its partners have expended a great deal of public resources in terms of staff and consultant time, money, and effort understanding the science related to the PMJM. El Paso County and its partners have conducted numerous conservation efforts related to the PMJM. Specifically, El Paso County and its partners have conducted an exhaustive review of the existing literature regarding the ecology of the PMJM and developed a protocol by which potential PMJM habitat could be identified throughout El Paso County. El Paso County and its partners also have conducted numerous trapping and data collecting activities over the last several years. In addition, El Paso County and its partners have developed an extensive Geographic Information System database that can be used to advise citizens regarding PMJM-related issues. Finally, the database developed from the above work has allowed El Paso County and its partners to develop sound, biologically-based conservation strategies for the PMJM, which will be incorporated in the RHCP.

El Paso County and its partners currently are in the final, and likely the most expensive, phases of developing the RHCP, which includes National Environmental Policy Act compliance. As you can see from the above investment of local government resources, El Paso County has a vested interest in the Service's decisions regarding delisting. In order to potentially save the County, its partners, and their citizens additional costs, we the Board of County Commissioners strongly urge the Service to expedite its decision to delist the PMJM based on the recent genetics studies by Dr. Ramey, absent other credible scientific information to the contrary.

Ms. Susan Linner
Page 3
April 25, 2005

Should the U.S. Fish and Wildlife Service determine to address the establishment of a Distinct Population Segment and/or conduct a status review of *Zapus hudsonius campestris*, El Paso County strongly urges the Service to address these matters in a separate notice and proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Bensberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jim Bensberg, Chairman
Board of County Commissioners of El Paso County

C: Mike Bonar, Natural Resources Manager
M. Cole Emmons, Assistant County Attorney
Kirsta Scherff-Norris, Colorado Springs Utilities
Lisa Ross, P.E., City of Colorado Springs

Enclosure



RESOLUTION NO. 05-154

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

**A RESOLUTION TO APPROVE A COMMENT LETTER SUPPORTING DELISTING
OF THE PREBLE'S MEADOW JUMPING MOUSE AND AUTHORIZE FILING THE
SAME WITH THE U.S. FISH AND WILDLIFE SERVICE**

WHEREAS, the Board of County Commissioners of the County of El Paso ("Board") has the authority granted to it under the provisions of Section 30-11-107(1)(e), C.R.S., to represent the County and have the care of the management of the business and concerns of the County in all cases where no other provisions are made by law; and

WHEREAS, on May 13, 1998 the United States Fish and Wildlife Service ("Service") listed the Preble's meadow jumping mouse ("PMJM") as a threatened species under the Endangered Species Act; and

WHEREAS, since 1998, El Paso County along with the City of Colorado Springs, Colorado Springs Utilities, the Town of Palmer Lake, and the Town of Monument have worked diligently to develop a Regional Habitat Conservation Plan (RHCP); and

WHEREAS, listing of the PMJM has required local government agencies and private owners to incur a great deal of expense including, but not limited to, staff and consultant time, money, education, conservation efforts, trapping and data collecting in order to comply with the Service's requirements under the Endangered Species Act; and

WHEREAS, new scientific information based on a genetics study performed by Dr. Ramey as set forth in his report, Testing the Taxonomic Validity of Preble's Meadow Jumping Mouse, along with peer review reports, indicates that the PMJM is not a valid subspecies, and based on data error and taxonomic revisions, suggests that the PMJM should be delisted; and

WHEREAS, the Service published in the *Federal Register* a notice requesting Comments on a 12-month Finding on a Petition to Delist the Preble's Meadow Jumping Mouse and Proposed Delisting of Preble's Meadow Jumping Mouse. (Vol. 70, No. 21 pg. 5404); and

WHEREAS, the County, through its various departments, as well as private landowners in the County and others doing business in the County may have, or do have, future and/or ongoing projects that would be benefited by the delisting of PMJM; and

WHEREAS, the listing of the PMJM has delayed public works projects, jeopardized human lives, and effectively confiscated both public and private land; and

WHEREAS, the Board desires to seek delisting of the PMJM, and in furtherance of the delisting, approves a comment letter supporting the delisting of the PMJM to be sent to the Service.

NOW, THEREFORE BE IT RESOLVED that the Board of County Commissioners of the County of El Paso hereby endorses the formal comments attached hereto as Exhibit A and incorporated herein by this reference, and directs that said formal comments be filed with the Service.

BE IT FURTHER RESOLVED that Jim Bensberg, Chairman, or Sallie Clark, Vice-Chair, of the Board of County Commissioners is hereby authorized to execute this Resolution and an original of comments in the same form as those contained in Exhibit A attached hereto on behalf of the Board of County Commissioners.

DONE THIS 25th day of April 2005, at Colorado Springs, Colorado.

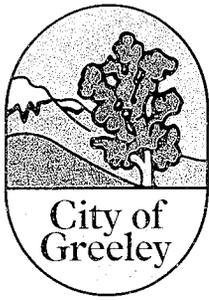
**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

ATTEST:

By: 
Deputy County Clerk

By: _____

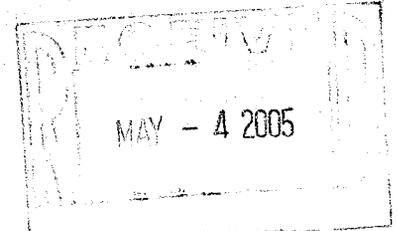

Jim Bensberg, Chairman



OFFICE OF THE CITY ATTORNEY

1100 10th Street, Suite #401, Greeley, Colorado 80631 • (970) 350-9757 • FAX (970) 350-9763

May 3, 2005



Via Telefax & U.S. Mail

Ms. Susan C. Linner
Field Supervisor
Colorado Field Office, Ecological Services
755 Parfet Street, Suite 361
Lakewood, CO 80215

Re: Proposed De-Listing of Preble's Meadow Jumping Mouse

Dear Ms. Linner:

The United States Fish and Wildlife Service ("USFWS" or the "Service") has recently proposed to remove the Preble's meadow jumping mouse from the List of Endangered and Threatened Wildlife under the Endangered Species Act ("ESA"). 70 *Fed. Reg.* 5404 (February 2, 2005). The proposal is based on the Service's review of all available data, which indicates that the Preble's is not a discrete taxonomic entity, but rather a less genetically diverse population of Bear Lodge meadow jumping mouse, or *Z.h. campestris*. The Service also stated that it would analyze whether the Preble's portion of *Z.h. campestris* qualifies as a "Distinct Population Segment" ("DPS") in need of protection. USFWS specifically requested information on the taxonomic classification and conservation status of the Preble's and the Bear Lodge meadow jumping mouse.

Greeley has not generated independent scientific information regarding the taxonomic classification or conservation status of the Preble's or Bear Lodge meadow jumping mouse. Nevertheless, because the legal status of the Preble's will directly impact the City's future efforts to secure drinking water sources for its citizens, Greeley submits the following comments on the Service's proposal.

Greeley has initiated its long-planned expansion of the City's Milton Seaman Reservoir, which is located on the North Fork of Cache la Poudre River ("North Fork"). Greeley is coordinating the permitting of its expansion with Fort Collins' permitting of that city's expansion of Halligan Reservoir, which is located upstream of Milton Seaman on the North Fork. The expansions will help ensure adequate future water supplies for both cities, as well as for various other participating Northern Colorado entities. The cities also hope to achieve certain secondary environmental benefits on the North Fork and main stem of the Cache la Poudre River.

S E R V I N G O U R C O M M U N I T Y • I T ' S A T R A D I T I O N

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost effective service.

Ms. Susan C. Linner
May 3, 2005
Page 2

In June 2003, USFWS designated critical habitat for the Preble's, which included the entire segment of the North Fork from existing Milton Seaman Reservoir to the dam for existing Halligan Reservoir. Greeley filed suit in August 2003 challenging such designation. The City believes that the North Fork above Milton Seaman Reservoir contains only scattered marginal Preble's habitat, and remains concerned that the designation will unnecessarily hamper reservoir expansion efforts, while providing no meaningful corresponding benefit for the mouse.

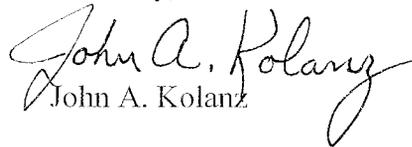
Delisting the Preble's will eliminate the associated critical habitat designation and will allow the City to dismiss its lawsuit against the Service. The ESA requires the Service to base its decision to list or delist a species on the best available scientific and commercial data. In this case, USFWS has determined that such data indicates that the Service erred in listing the Preble's as a threatened subspecies in May 1998. Since its listing, conservation of the Preble's has consumed considerable public and private resources. Greeley believes that the Service must direct such limited resources to species most needing conservation. Failure to do so undermines the effectiveness of the Act and compromises its public support.

Given the concerns underlying Greeley's legal challenge to the critical habitat designation for the Preble's, the clear statutory requirement to base listing decisions on best available scientific and commercial information, and the common sense appeal of directing limited resources at today's most critical conservation needs, Greeley supports the Service's proposal to delist the Preble's meadow jumping mouse. The City encourages USFWS to finalize its proposal promptly.

While Greeley has not generated independent scientific support for the Service's proposal to delist the Preble's, the City would likely seek its own independent analysis of any future proposal by USFWS to list the Preble's portion of *Z.h. campestris* as a DPS. Since such listing is beyond the scope of the current proposal, Greeley makes no comment on its appropriateness at this time.

Thank you for the opportunity to comment on this proposal.

Sincerely,


John A. Kolanz

cc: Jon G. Monson, P.E.

University of Denver
Department of Biological Sciences
2190 E. Iliff Ave.
Denver, Colorado 80210

FAX COVER SHEET

DATE: May 3, 2005

TO: US Fish + Wildlife
Field Supervisor

PHONE: (303) 275-2370
FAX: (303) 275-2371

FROM: Leah Berkman

PHONE: 773 (303) 230-8178
FAX: 303-871-3471

Number of pages including cover sheet: 3

Message:

Attn: Field Supervisor

Re: 12-month finding on a petition
to delist the Preble's meadow
jumping mouse and proposed
delisting

May 3, 2005

RE: Preble's Mouse Delisting: FR Doc. 05-2020

Field Supervisor
US Fish and Wildlife Service-Colorado Field Office
Ecological Services
755 Parfet Street Suite 361
Lakewood, CO 80215
Fax: (303) 275-2371

Dear Field Supervisor,

I believe delisting of the Preble's meadow jumping mouse from the Endangered Species Act is unwarranted at this stage of our understanding of the mouse's taxonomic position. Specifically, this decision by the Fish and Wildlife Service (FWS) is a mistake for the following four reasons:

1. The Fish and Wildlife Service discounts previous scientific studies and bases its decision on the opinion of one paper, Ramey *et al.* (2004). A thorough description of Krutzsch (1954), Hafner *et al.* (1981), Riggs *et al.* (1997) and Jones (1981, unpublished) appeared in the federal document it is never stated in the document why the FWS has discounted these results which indicated the Preble's meadow jumping mouse is distinct. The FWS states only that Ramey *et al.* (2004) criticized and in the case of Jones (1981) data, discounted these studies. Because the FWS fails to state why they discounted this scientific information it appears that the opinion of the FWS is driven strictly by the conclusions of Ramey *et al.* In fact, the Service States:

"...we view Ramey *et al.* (2004) as the best scientific and commercial information available..."

Thus, the FWS is relying solely on the conclusions of one study which were supported by only a slim majority of reviewers, 3 of whom were not completely supportive. The FWS reported many valid criticisms of this paper all of which suggested not using Ramey *et al.* (2004) to make a taxonomic decision. The FWS is making a large logistical error in endorsing the conclusions of only one questionable study and discounting many others which say the contrary.

2. Ramey *et al.* (2004) didn't use a sufficient amount of genetic markers to declare the Preble's meadow jumping mouse genetically indistinct. The paper included an analysis of 355 positions of the control region which constitutes only 30% of this highly variable region. This in turn comprises about 2% of the mitochondrial genome in which there are other variable regions. And lastly the 355 base pairs of sequence are a tiny fraction of the organism's entire genome. If other variable markers such as AFLPs (Amplified Fragment Length Polymorphisms) and nuclear microsatellites indicated gene flow between *Z. h. luteus* and *Z. h. preblei*, then the delisting may be warranted. However, this information isn't available.

3. Using the lack of information as proof of a particular conclusion is biased and unethical. Both Ramey *et al.* (2004) and FWS itself committed this gross scientific error in reasoning.

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The FWS stated, "based on the lack of genetic, morphological or published ecological evidence for genetic distinctiveness between the Preble's and Bear lodge meadow jumping mouse, these species should be synonymized"

The federal document stated Ramey *et al.* (2004) "found no published ecological evidence for discreteness between Preble's and Bear lodge meadow jumping mouse. Ramey *et al.* (2004) asserts that this lack of published information supports his conclusion that these species should be synonymized."

4. In delisting the Preble's jumping mouse, the FWS would not be erring on the side of environmental protection. This would be contrary to the Service's mission:

"to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people"

Instead, the benefit of the doubt would go to those who stand to gain from the mouse's delisting. If the true mission of the fish and wild is to conserve and protect, then the burden of proof should fall to those who stand to gain from the delisting. Ramey *et al.* (2004) is clearly not sufficient proof.

In summary, I believe the FWS is making this decision based on the flawed conclusions of only one researcher. To make this decision shows that the Fish and Wildlife Service would rather err on the side of those who stand to benefit from less environmental protection rather than the American People as a whole.

Sincerely,

Leah Berkman

2500 S. York St #411
Denver, CO 80210

leah_berkman@hotmail.com
(773) 230-8178



Jeani Frickey Saito
<jfrickey@earthlink.net>
05/03/2005 12:55 PM

To FW6_PMJM@fws.gov
cc
bcc
Subject Preble's mouse comments

I am m submitting these comments on behalf of Jerry Sonnenberg,
President of Coloradans for Water Conservation and Development. I have
also sent a copy via fascimile. Please let me know if you have any
problems opening the attached document.



CWCD PMJM delisting comments.pdf
Jeani Frickey Saito
JFS Public Affairs Group, LLC
1301 Pennsylvania Street
Suite 900
Denver, CO 80203
(303) 813-9290 phone
(303) 860-0175 fax
jfrickey@earthlink.net



P.O. BOX 8258
DENVER, CO 80203
(303) 813-9290 PHONE
(303) 860-0175 FAX

May 3, 2005

Field Supervisor
Colorado Field Office, Ecological Services
755 Parfet Street, Suite 361
Lakewood, Colorado 80215

To Whom It May Concern:

The Coloradans for Water Conservation and Development (“CWCD”) hereby submits comments in support of the proposed rule by the U.S. Fish and Wildlife Service (FWS) to remove the Preble’s jumping meadow mouse (the “mouse”) from the List of Endangered and Threatened Wildlife under the Endangered Species Act (“ESA”).¹

CWCD was organized in 2003 by a number of rural and urban business interests including the Denver Metro Chamber of Commerce, Colorado Concern, Colorado Association of Home Builders, National Association of Industrial and Office Properties, Colorado Apartment Association and the Colorado Farm Bureau. On December 17, 2003, CWCD filed a petition to delist the mouse. The State of Wyoming filed a similar petition to delist the mouse on the same day.

I. The FWS Should Immediately Issue A Final Delisting Rule

The ESA imposes specific deadlines on the Secretary for acting on a proposal to list a species. The FWS must provide notice of the proposed regulation at least 90 days prior to the effective date of the regulation.² In other words, the FWS could choose to publish a final delisting rule as soon as possible.

The Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities (the “Interagency Policy”) emphasizes the importance of the states in conserving species prior to listing decisions. Prior to making listing decisions, the Interagency Policy directs the FWS to: utilize the expertise and solicit the information of

¹ 70 Fed Reg. 5404 (February 2, 2005).

² 16 U.S.C. Section 1533(b)(5)(A).

State agencies in determining whether listing is warranted.³ The states of Colorado and Wyoming ardently support immediately delisting Preble's.

It is improper for the FWS to consider nuclear DNA results, threats to all species of jumping mice and whether the mouse qualifies as a DPS within the scope of the proposed delisting.⁴ Such consideration may rise to the significance of a violation of the Administrative Procedures Act ("APA").⁵ Rather, the FWS must first address those issues presented to it in the delisting petitions. Only after a final delisting of the mouse, and in a separate rulemaking, may the FWS propose to consider these issues.

II. Distribution, Abundance and Trend Data Merit Delisting

As the FWS stated, at the time of listing, "the primary threat to the Preble's was habitat loss and degradation caused by agricultural, residential, commercial and industrial development."⁶ But additional survey work on the mouse resulted in the discovery of significant additional populations.⁷

Even apart from the improper classification of the mouse as a subspecies, the distribution, abundance and trends data alone merits delisting the Preble's meadow jumping mouse (the "mouse"). Historically, the listed mouse was found in 14 hydrologic units in eastern Colorado and southeastern Wyoming. When it was listed, the U.S. Fish and Wildlife Service (the "FWS") could find the mouse in only nine hydrologic units. Since the listing, the mouse has been found in 17 hydrologic units, including all that were historically occupied and three where it had never been known to occur.

Additionally, more populations of the mouse are now known to exist than at any time before. At the time of listing, the mouse was documented at only 29 sites. Today, it has been found at no fewer than 126 sites. In short, the distribution, abundance and trends data on the mouse demonstrates ample populations throughout an expansive range. Even if the mouse was a valid subspecies, the alleged threats to the species do not occur over a significant portion of its range and are not supported by current distribution, abundance and trend information.

III. *Z.h. Preblei* Indistinguishable from *Z.h. Campestris* and *Z.h. Intermedius*

Despite the fact that the initial listing of the mouse as a threatened species was based on limited and subjective information, it seems that the Service has demanded essentially perfect science to delist the mouse. The "best science available" principle has guided listing and delisting decisions in the past and should be applied to the case of the mouse.

³ 59 Fed. Reg. 34275 (1994).

⁴ See 70 Fed. Reg. 5404, 5405 (Feb. 2, 2005).

⁵ 5 U.S.C. Section 706(2)(A).

⁶ 70 Fed. Reg. 5404, 5405 (Feb. 2, 2005).

⁷ Even if Preble's numbers were in decline, annual fluctuations in population (up to 50%) do not necessarily equate to the need to list a species. See 69 Fed. Reg. 64889, 64892 (Nov. 9, 2004) (Where the FWS issued a negative 90-day Finding on the petition to list the white-tailed prairie dog).

The FWS cannot ignore available biological information,⁸ particularly if the ignored information is the most current.⁹ Moreover, the FWS must “utilize the best scientific data available, not the best scientific data possible.”¹⁰

It is exceptional to note that the FWS ignored completely the statements of the very scientist who labeled *Z.h. preblei* as a separate subspecies, Dr. Philip H. Krutzsch. In 1954, Dr. Philip H. Krutzsch created three new subspecies: *Z.h. intermedius*, *Z.h. campestris*, and *Z.h. preblei*. Supported by the scientific standards of the day, this distinction was based upon subjective differences in the color of the pelts and measurements of the skulls (only three adult specimens of mice in the case of *Z.h. preblei*). Dr. Krutzsch, professor emeritus of the University of Arizona, in a March 31, 2004 letter¹¹, said, “[T]he study [Ramey *et al.* (2004)] clearly invalidates *Z.h. Preblei* and demonstrates its relationship to *Z.h. campestris* . . .” Krutzsch also pointed out that this kind of analysis could help ensure that science drives the decision-making process under the ESA rather than an agenda or a particular point of view.

The mouse currently referred to as *Z.h. preblei*, is indistinguishable not only from *Z.h. campestris* in western South Dakota, northeastern Wyoming and southeastern Montana, but also from *Z.h. intermedius* in North Dakota, eastern South Dakota, Wisconsin, Iowa, Illinois and Indiana, and perhaps parts of Nebraska. This should come as no surprise. As previously mentioned, Dr. Krutzsch subjectively created the three subspecies based upon apparent minor differences in a handful of specimens. The only data that seems to distinguish between the three alleged subspecies is the 1954 work of Dr. Krutzsch. Now, even he disagrees with the conclusions of his earlier work.

The FWS cannot ignore the best available science: that there are no ecologic, taxonomic, morphometric nor genetic differences between *preblei*, *campestris* and *intermedius* such that the three purported subspecies should be synonymized, as they once were, as the prairie jumping mouse.

There is ample precedent for delisting the mouse on taxonomic, morphometric and genetic grounds.¹² For example, the FWS determined not to list the western sage grouse on February 7, 2003 and the eastern sage grouse on January 7, 2004 based, in large part, on non-peer reviewed genetic work that suggested these were not subspecies of sage

⁸Congressional Research Service, *Endangered Species: Difficult Choices* (February 4, 2003) citing *Connor v. Burford*, 848 F. 2d 1441 (9th Cir. 1988)

⁹Congressional Research Service, *Endangered Species: Difficult Choices* (February 4, 2003) citing *Southwest Center for Biological Diversity v. Babbitt*, 926 F. Supp. 920 (D.C. Ariz. 1996).

¹⁰*Id.* citing *Building Industry Ass’n of Sup. Cal. V. Norton*, 247 F. 3d 1241, 1246-1267 (D.C. Cir. 2001), *cert. denied* 2002 U.S. LEXIS 479).

¹¹ Read during testimony before the U.S. House Resources Committee on Resources on April 28, 2004

¹² Other species delisted due to data error include: the Mexican duck, Indian flap-shelled turtle, Bahama swallowtail butterfly, Purple-spined hedgehog cactus, Tumamoc globeberry, spineless hedgehog cactus, Cuncate bidens and Umpqua River trout. Philip Kline, *Grizzly Bear Blues: A Case Study of the Endangered Species Act’s Delisting Process and Recovery Planning Requirements*, 31 *Envtl. L.* 371 (2001) note 67.

grouse.¹³ Genetic and taxonomic work that concluded the Lloyd's hedgehog cactus was not a distinct subspecies led to its delisting.¹⁴ Genetic analysis that demonstrated the plant named the Chiricahua dock was indistinct from the rumex led to the withdrawal of that proposed listing.¹⁵ The FWS delisted the Dismal Swamp southeastern shrew when an analysis demonstrated that more common shrews were genetically indistinct from the listed species.¹⁶ The FWS delisted the Truckee barberry, a California plant, because recent work by plant taxonomists indicates that this species is not distinct from a common variety of barberry. "Only those species needing ESA protection should have it," the FWS said.¹⁷

FWS Improperly Considered DOW-Solicited Reviews

The FWS should not consider the reviews solicited by the Colorado Division of Wildlife ("DOW"). First, the State of Colorado ardently supports delisting the mouse. Second, the majority of the reviewers solicited by DOW fail to meet the standards required in the Interagency Policy To Clarify The Role Of Peer Review In Endangered Species Act Decisions.¹⁸ Finally, some of the reviewers may not have been qualified to review genetic or taxonomic work. It should be noted the reviewers that were critical of the work seemed to be the least qualified to review it.

In the unfortunate event that the FWS does consider reviews that violate its own standards, and those of the ESA, it must distinguish between scientific scrutiny and opinion. For example, comments cited by the FWS such that Ramey et al. (2004) is, "a small piece of the puzzle . . .," that the "overall tone of the manuscript lacks objectivity," or that "the report should conclude that no differences were detected . . ." should clearly be separated from legitimate critique as to method, data or approach.¹⁹

While there is no doubt that these are fine scientists, ecologists and biologists in their own right, there is a reason that independent peer view with appropriate subject matter expertise is required. It is unacceptable, and contrary to the ESA and its implementing regulations and policies, for the FWS to rely on these reviews.

¹³ See 69 Fed. Reg. 2148 (April 21, 2004).

¹⁴ Press Release, U.S. Fish and Wildlife Service, Lloyd's Hedgehog Cactus Removed from Endangered Species List at <http://news.fws.gov/NewsReleases/r2/A11C3CC4-AC20-11D4-A179009027B6B5D3.html> (June 24, 1999).

¹⁵ Press Release, U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service Concludes that a Southwestern Plant is not Threatened, at <http://news.fws.gov/NewsReleases/r2/A11C3D1D-AC20-11D4-A179009027B6B5D3.html> (August 9, 1999).

¹⁶ Press Release, U.S. Fish and Wildlife Service, Dismal Swamp Southeastern Shrew No Longer Needs Endangered Species Act Protection, at <http://news.fws.gov/NewsReleases/r4/01B3D1E7-F31D-11D4-A17F009027B6B5D3.html> (March 3, 2000).

¹⁷ Press release, U.S. Fish and Wildlife Service, California Native Plant Removed from Endangered Species List, at <http://news.fws.gov/NewsReleases/r1/8C1FA35E-10B6-43AC-BEE844A7B126A162.html> (October 1, 2003).

¹⁸ 59 Fed. Reg. 34270 (July 1, 1994).

¹⁹ See 70 Fed. Reg. 5408.

IV. “Preble’s” Not a Distinct Population Segment (“DPS”)

The FWS would violate its Policy Regarding the Recognition of Distinct Population Segments Under the Endangered Species should it determine that the mouse is a DPS.²⁰ Congress directed the Secretary to exercise the authority with regard to DPSs “sparingly and only when the biological evidence indicates that such action is warranted.”²¹

To recognize a DPS, the FWS must find a population is discrete, significant and meets the factors for listing under Section 4 of the ESA.²² In regards to discreteness, a distinct population must be distinguishable from other representatives of its species.²³ Were discreteness not required, the ESA would be unmanageable.²⁴

The mouse fails the criterion for discreteness. To be discrete a population must be separated by international boundaries or “markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors.”²⁵ There are no such factors here.

The DPS Policy provides, “[Q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation.”²⁶ In this case, genetic, taxonomic and morphological work demonstrate just the opposite: that *Z.h. preblei* is not separate from the other alleged subspecies mentioned above.

The mouse also fails the standard for significance. “The principal significance to be considered in a potential DPS will be the significance to the taxon to which it belongs.”²⁷ But the mouse is not significant to the taxon: a species that covers approximately one-half of the North American continent. The populations and range of the mouse has been shown to have increased dramatically since the time of listing. This data effectively multiplies the range and population of the mouse throughout ten states and into Canada. The range of the taxon of jumping mice is much larger than even that. The court in National Association of Home Builders v. Norton, for example, held that the FWS decision that Arizona pygmy-owl was a distinct population segment was arbitrary and capricious because the population was not significant to the species as a whole.²⁸

By comparison, there is no evidence that suggests the mouse listed as *Z.h. preblei*: inhabits a unique ecological environment, exhibits behavioral differences or is genetically distinct from two adjacent subspecies. There are no apparent natural barriers like those described in the cases of the Washington grey squirrel nor the Lower Kootenai River

²⁰ 61 Fed. Reg. 4722 (Feb. 7, 1996).

²¹ Senate Report 151, 96th Congress, 1st Session.

²² See Policy Regarding the Recognition of Distinct Population Segments Under the Endangered Species Act, 61 Fed. Reg. 4722 (Febr. 7, 1996).

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ 340 F.3d 835 (9th Cir. 2003).

burbot, that separate *Z.h. preblei* or *Z.h. campestris* from *Z.h. intermedius*. In fact, the FWS' own model demonstrates that the potentially suitable habitat for the mouse is connected throughout the range of the three alleged subspecies, and the FWS has historically accepted "potentially suitable habitat," as identified in this model, as the standard for the identification of potential mouse habitat for Section 7 and Section 10 consultations. There is no evidence of an unsuitable habitat void between the historical ranges of the three alleged subspecies of mice. In fact, the USGS information review found a "relatively close proximity of these subspecies in the Northern Plains." Even if the mouse is treated as isolated from other populations of meadow jumping mice, post-listing surveys have shown it to be widespread and ubiquitous.

As noted, *Z.h. preblei*, *Z.h. intermedius* and *Z.h. campestris* are genetically indistinct for the sequences examined, morphologically indistinct, and should be synonymized, as they once were, as the prairie jumping mouse. The range of the prairie jumping mouse covers approximately ten states and at perhaps at least one Canadian province. The DPS Policy is meant to "avoid[s] the inclusion of entities that do not require its protective measures."²⁹ Such is clearly the case here.

Even if the mouse, by some stretch of reason, could be considered discrete and significant, it would still have to merit listing under Section 4(a) of the ESA.³⁰ As previously mentioned, ample population, abundance, range and trend data clearly demonstrate that the mouse does not merit listing under the ESA and that alleged threats to its existence occur in only an insignificant portion of its range.

While some may argue that the mouse is somehow significant because of its habitat, all species play roles of significance to the environment and the FWS has recognized it has no authority to designate a potential DPS as significant on the basis of its role in the ecosystem in which it occurs.³¹

V. Habitat Still Protected

In its lengthy June 1, 2004 comments to the FWS in favor of delisting the mouse, the State of Colorado outlined extensive habitat conservation efforts underway, and ongoing, on the Front Range. The State of Colorado has spent nearly \$8 million on the mouse since the 1998 listing. More importantly, the State cited Great Outdoors Colorado ("GOCO") estimates that over one-quarter of a billion dollars has been spent on land acquisition and preservation on Colorado's Front Range during the last decade. Numerous preservation projects and HCPs in Larimer, Boulder, Jefferson, Douglas and El Paso counties have been undertaken with riparian habitat identified as a priority (see Appendix A).

²⁹ See 68 Fed. Reg. 11574.

³⁰ *Id.*

³¹ See Policy Regarding the Recognition of Distinct Population Segments Under the Endangered Species Act, 61 Fed. Reg. 4722 (Feb. 7, 1996).

Delisting will do nothing to erase existing land acquisitions or conservation easements. Given strong public support for open space along the Front Range, neither will delisting inhibit new land acquisition and preservation efforts. Despite widespread expectation that the mouse listed as “Preble’s” will be delisted, on December 1, 2004, increased lottery proceeds from powerball helped GOCO issue an unprecedented \$60 million awards package for land preservation, parks and trails in Colorado.³² Nearly \$23 million was spent on land acquisition within the range of the mouse.³³ The package included \$11.6 million to preserve 55,400 acres in Larimer County for an immense combined conservation zone of 144,000 acres, \$6.3 million for preservation of over 2,000 acres in Douglas County and \$5 million for the purchase of 730 acres in Jefferson County.³⁴

In addition to the considerable land conservation efforts on Colorado’s Front Range, numerous city and county land use codes and development standards prohibit development of habitat which includes wetlands, riparian areas or even grasslands (see Appendix B).

The data cited represent just part of the regulatory measures in place to protect the mouse. With this information, it is difficult to conceive how the habitat of the combined subspecies of meadow jumping mice could be threatened. On the contrary, as the recent USGS information review stated, “it is likely that habitat suitable for *Z. hudsonius* (meadow jumping mice) is becoming increasingly available across western parts of the Great Plains with the westward expansion of riparian forests and mixed-grass prairie.”

The FWS must focus its efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. See Final Listing Priority Guidance for Fiscal Year 2000. 64 Fed. Reg. 57114 (Oct. 22, 1999). The order by which species are processed for listing is based primarily on the immediacy and magnitude of the threats they face. *Id.* at 57116.

The FWS should focus on species that do not have the benefit of the distribution, abundance and trends of the mouse nor the extensive regulatory protections already in place. In sum, resources should be prioritized to species that are truly threatened and endangered.

VI. Localized Threats Insignificant to the Mouse

Given the wide distribution of the species and large blocks of habitat, the present or threatened destruction, modification, or curtailment of the species’ habitat or range due to agricultural, residential, commercial and industrial development is not a factor that threatens or endangers the mouse over all or a significant portion of its range.

³² Kim McGuire, “Larimer project is big winner in grants from state,” Denver Post (Dec. 2, 2004).

³³ *Id.*

³⁴ *Id.*

The mouse likely inhabits ten states with a combined land mass of 769,733 square miles.³⁵ Even assuming that only one-third of that area equates to habitat, the mouse could easily range over more than one-quarter of a million square miles—an area larger than the Northeastern United States.

All U.S. cities and towns occupy only 3 percent of the nation's land.³⁶ Localized threats to such a far-ranging species are insufficient to merit listing. The mouse generally inhabits riparian areas that are often unsuitable for development. Finally, the significant regulatory mechanisms discussed herein (irrespective of the listed status of the mouse) prohibit residential, commercial and industrial development in riparian habitat.

The FWS has previously determined that localized impacts are insufficient to warrant listed status. For example, based upon the discovery of only eleven additional sites, the FWS considered localized impacts from mining and road construction insignificant to the Rydberg milk-vetch such that delisting occurred.³⁷ Similarly, in the 12-month finding for the black-tailed prairie dog, the FWS noted that urbanization represents a locally substantial loss of occupied habitat, but in a range-wide context it is not significant. The FWS further stated, given population estimates in Colorado and elsewhere, urbanization cannot be considered a threat at present or in the foreseeable future, either in Colorado or range-wide.³⁸

VII. Conclusion

On December 17, 2003, the State of Wyoming, and the Coloradans for Water Conservation and Development, filed petitions to delist the alleged subspecies. In a June 1, 2004 letter to the FWS, the State of Colorado called for “immediate delisting” in light of expansive population and range data and the aforementioned genetic and taxonomic analysis that demonstrated *Z.h. preblei* was indistinct from *Z.h. campestris*. The scientist that described these subspecies in 1954, Dr. Philip H. Krutzsch, has recanted his findings as to *Z.h. preblei*. As previously mentioned, new genetic and taxonomic evidence indicates even *Z.h. campestris* is indistinct from *Z.h. intermedius*.

The FWS has had over one year to review its files, the data supplied by the petitioners and new scientific information. Additional time is not necessary. Moreover, the Service has agreed to abide by the ESA's strict timelines in return for court-ordered stays in litigation over the 31,000 acres designated as critical habitat for the mouse.

The FWS cannot ignore the available biological information before it--particularly the most recent information. Moreover, the FWS “must utilize the best scientific ... data available, not the best scientific data possible.”³⁹ Here, the best available science clearly

³⁵ Available at <http://quickfacts.census.gov/qfd/index.html>.

³⁶ U.S.D.A. 1997 Natural Resources Inventory.

³⁷ 54 Fed. Reg. 37941, 37942 (Sept. 14, 1989).

³⁸ 69 Fed. Reg. 51217 (Aug. 18, 2004).

³⁹ *Id.* citing Building Industry Ass'n of Sup. Cal. V. Norton, 247 F. 3d 1241, 1246-1267 (D.C. Cir. 2001), *cert. denied* 2002 U.S. LEXIS 479).

indicates that *Z.h. preblei* is not a valid subspecies nor a DPS, that threats do not rise to the level of significance to merit listing, and that existing regulatory mechanisms are more than adequate to protect a prairie jumping mouse that inhabits ten States and perhaps at least one Canadian Province. The Service has declined to list, has withdrawn proposed listings, and has delisted other species based upon far less data and analyses than that supporting the petitions to delist the mouse.

Land preservation efforts on Colorado's Front Range have been unprecedented in the last decade. On December 1, 2004, GOCO granted nearly \$23 million for land acquisition and preservation within the range of the mouse. This adds to the roughly one-quarter of a billion dollars spent on land preservation efforts in the last decade. Land conservation on the Front Range is certain to continue regardless of the status of the mouse.

Finally, continued listing of the mouse would violate the best available science standard under the ESA, the FWS Policy on Information Standards⁴⁰, and the Data Quality Act. It is now time for the FWS to issue a final rule to delist the "Preble's meadow jumping mouse."

If you require any additional information, please don't hesitate to contact me or Jeani Frickey Saito at (303) 813-9290.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Sonnenberg". The signature is stylized with a large, sweeping initial "J" and "S".

Jerry Sonnenberg
President

⁴⁰ 59 Fed. Reg. 34271 (July 1, 1994)

Appendix A: County Land Use Regulations

County	Land Use Regulations	Open Space Acquisitions
Adams ¹²	<ul style="list-style-type: none"> - National Resources Conservation Overlay (NCRO) District Map includes “important wildlife areas and associated riparian areas.” [3-37-02] - “A site-specific Resources Review to determine whether land is included within the NRCO District is required, prior to review of the first development application for the land.” [3-37-03-02] - “Development in significant wildlife habitat is prohibited except for essential facilities.” [4-10-02-04-02] 	<ul style="list-style-type: none"> - Since 2000 Adams County Commissioners have funded 72 projects to preserve nearly 2,616 acres of open space, rivers and creeks, wildlife habitat, farmland and new park development. - The County recently purchased up to 92 acres for preservation and protection of the South Platte Wildlife Corridor.
Boulder ⁴¹	<ul style="list-style-type: none"> - Development shall avoid significant natural ecosystems or environmental features, including riparian corridors. [4-800] - All land use development applications shall be required to include a wildlife impact report whenever the property is located within a Critical Wildlife Habitat or a Riparian Corridor. [7-1700] - Wildlife impact report shall include an inventory of any Species of Special County Concern, an assessment of the proposed development’s impact and a recommendation regarding whether the proposal can proceed without causing material adverse impact. [7-1700, B] 	<ul style="list-style-type: none"> - Officials in the Parks and Open Space Department have said that approximately 55 percent of the Preble’s mouse habitat in Boulder County is under open space protection. - In January 2004 the Boulder County Commissioners adopted the St. Vrain Trail Master Plan. The project is intended to facilitate riparian habitat and enhancement along the St. Vrain River corridor. According to the Colorado Natural Heritage Program, the corridor contains a “fair” occurrence of Preble’s meadow jumping mice.
Douglas ⁴²	<ul style="list-style-type: none"> - Rural Site Plan provides an administrative site plan process for alternative 35-acre development that considers preservation of open space, 	<ul style="list-style-type: none"> - The Division of Open Space and Natural Resources reports nearly 45,000 acres in acquisitions of open space. Of this, approximately 11,000

¹² Adams County Development Standards and Regulations (January 10, 2005), Adams County Open Space Funded Projects: www.co.adams.co.us/services/department/open_space/funded_projects.html

⁴¹ Boulder County Land Use Code (adopted on October 18, 1994), St. Vrain Corridor Master Plan (adopted January 2004)

⁴² Douglas County Open Space Projects: www.douglas.co.us/Open%20Space/PropertyChart.htm

	<p>rural landscapes, important wetland and riparian areas, and reduces environmental impacts. Criteria for approval consider protection and preservation of riparian areas and critical wildlife habitats. Rural site plans require permanent protection of either 50% or 67% of included land as open space by conservation easement or similar method. [Section 3-A]</p> <p>- Development District is designed, in part, to allow flexibility and promote layout, design, and construction of residential development that is sensitive to the natural land form and environmental conditions, such as riparian areas and wildlife habitat. [Section 15]</p>	<p>acres owned by Douglas County are designated for protection of natural resources and wildlife habitat among other purposes.</p> <p>- In 2000, Douglas County acquired North Willow Creek Ranch, a 694-acre parcel strategically located between Roxborough State Park and the Division of Wildlife's Woodhouse property. The parcel contains mixed grass prairie and riparian habitat along Little Willow Creek and provides a critical link for wildlife movement.</p> <p>- In July 2000 Douglas County purchased the 105-acre Snortland property adjacent to the JA Cattle Ranch which contains a portion of East Plum Creek and associated wetlands. The property provides habitat for the Preble's meadow jumping mouse.</p> <p>-In 2002 Douglas County purchased 475 acres on the Duncan Ranch. West Plum Creek passes through the property, providing habitat for mammals, bird and fish species and is an ideal habitat for the Preble's meadow jumping mouse.</p>
<p>El Paso⁴³</p>	<p>- "It is the policy of the County that no land use be initiated which would... result in the increased destruction of wildlife habitats." [Chapter II, B]</p> <p>- Report shall include: 1) a narrative description of major lakes, streams, topographical features, and wildlife habitats affected by the proposal; and 2) Inspection of the proposal of such features and mitigation techniques, if necessary. [51.6]</p>	<p>- In 2003 the El Paso Parks, Trails and Open Space Master Plan identified Forest Lakes, Monument Branch and Black Squirrel as high priority conservation lands because of the presence of Preble's meadow jumping mice.</p>
<p>Jefferson⁴⁴</p>	<p>-Wildlife habitat shall be preserved as required by the Board. [13.1]</p> <p>- Plans of the area of investigation shall assure that wildlife and vegetation factors affecting the planning, design, and construction of the subdivision are recognized, adequately interpreted and presented for use in the subdivision</p>	<p>- The county and various cities have acquired over 50,000 acres of open space purchased with bond and non-bond funds. In an effort to evaluate which lands should be considered for inclusion into the Master Plan, a set of values have been identified that support the Open Space mission and goals. For example, the City of</p>

⁴³ El Paso County Land Development Code, El Paso Parks, Trails and Open Space Master Plan (2003)

⁴⁴ Jefferson County Land Development Code, Section 13

	development. The plans shall include the following: 1) The wildlife and vegetation habitat conditions which should be preserved or improved within the subdivision; and 2) Solutions and alternatives to preserve and/or improve the wildlife and vegetative habitat. [13.6]	Westminster plans to acquire land near Walnut Creek, in part to protect habitats for species such as the Preble's meadow jumping mouse.
Larimer ⁴⁵	- For proposed developments that will or may have an adverse impact on wildlife and wildlife habitats, an approved wildlife conservation plan is required. [8.4.5] - Criteria for adverse impact will include placement of structures in close proximity to nesting and feeding areas and species reliance on specific, unique habitat features, such as riparian areas. [8.4.6]	- In 2001 the Larimer County Commissioners adopted an Open Lands Master Plan. The plan called for the most important wildlife habitat, river corridors and wetlands to be identified and protected as open space. - With a \$3.1 million contribution from GOCO, Larimer County acquired 6100 acres of the Cherokee State Wildlife Area. The project preserves an important wildlife migration corridor in northern Colorado and protects habitat for the Preble's meadow jumping mouse.

Appendix B: Municipal Land Use Regulations

City	Land Use Regulations	Open Space Acquisitions
Boulder	"The city council finds that it is necessary for the city to ensure protection for wetlands by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetlands. When development is permitted and the destruction of wetlands cannot be avoided, the city council finds that impacts on wetlands should be minimized and mitigation provided for unavoidable losses." [9-12-1 (c)]	The City of Boulder owns and manages more than 43,000 acres of Open Space & Mountain Parks land in and around Boulder.
Colorado Springs	"All development plans submitted for review for property wholly or partially contained within the streamside overlay zone shall be consistent with the recommendations	The Colorado Springs Department of Parks, Recreation and Cultural Services cares for approximately 1,200 acres of open space.

⁴⁵ Larimer County Land Use Code (adopted December 20, 2002), Open Space Master Plan (2001), GOCO information at www.goco.org/program/wildlife.html

	<p>of the design manual and land suitability analysis and shall conform with the following additional review criteria: Has the project been designed to minimize impact upon wildlife habitat and the riparian ecosystem which exists on or adjacent to the site? Does the project design protect established habitat or any known populations of any threatened or endangered species or species of special concern?"</p> <p>[7.3.508 (B)]</p>	
Ft. Collins	<p>- Requires developments to avoid "natural communities or habitats" including: rivers, streams, lakes and ponds, wetlands and wet meadow, native grasslands, riparian forest, urban plains forest, riparian shrubland and foothills forest.</p> <p>- No fewer than 27 pages of standards related to project design, set-backs, buffer zones and other measures designed to protect wildlife, water quality, air quality, open spaces and ecological communities. Any development must also submit proof of compliance to the City with "all applicable federal wetland regulations as established in the federal Clean Water Act."⁴⁶</p>	<p>As of the end of 2003, the City of Fort Collins has conserved 11,472 acres of natural areas and open space worth over \$44 million.</p>
Parker	<p>"Development shall be undertaken in a manner that will preserve the multiple functions and quality of the Town's streams and associated riparian areas, including wetlands. More specifically, it is the intent of these regulations to designate appropriate stream buffers that will... preserve critical wildlife habitat by ensuring that new development protects and sustains significant wildlife populations." [13.10.220]</p>	<p>The Town of Parker currently maintains over 700 acres of open space.</p>

⁴⁶ City of Fort Collins, Division 3.4, Environmental, Natural and Cultural Standards, at Page 70-1.



"Thomas W. Quinn"
<tom.quinn@du.edu>
05/03/2005 01:49 PM

To <FW6_PMJM@fws.gov>
cc
bcc
Subject Preble's Meadow Jumping Mouse - comment from Tom Quinn

I have put my comments within this email (below) and attached an identical copy as a word file.

Cheers,

Tom W. Quinn
Associate Professor
Codirector, Rocky Mountain Center for Conservation Genetics and Systematics
Dept. of Biological Sciences
University of Denver
Denver, CO 80208
(303) 871-3466

Quinn lab: <http://www.du.edu/~tquinn/new/MAIN.LAB/MAIN.LAB.htm>
RMCCGS: <http://www.rmccgs.usgs.gov>

Comments from

Dr. Tom W. Quinn
Dept. of Biological Sciences
University of Denver
Denver CO 800208

I write to comment on the proposed delisting of the Preble's Meadow Jumping Mouse by the FWS. I have been using molecular genetic methods to study population genetics of vertebrates for 25 years. I have studied numerous genes and the control region within mtDNA and coding and noncoding regions within the nuclear genome. The comments below are entirely based on my interpretation of the statements made in the Federal Register; I do not have the other references in hand at this time, although I am familiar with some aspects of those studies. This is not a comprehensive listing of difficulties that I see with some of the interpretations of the meanings of relevant studies, but highlights a subset of my greater concerns. I see that previous reviewers have raised many of these and more.

Having reviewed the related descriptions and comments made in the Federal Register 70: 5404 – 5411, I am distressed to hear that delisting is even being considered before proper genetic assessment has been made. It puzzles me that the FWS would consider such action based on the most recent genetic assessment that surveys a single locus in the mitochondrial genome and that does not include the numerous nuclear loci available for study. Historically the mtDNA genome has been the source of data for many population studies, in part because it is a very simple genome to work with and in part because it evolves rapidly and hence tends to have several

“variants” or “haplotypes” that aid in the resolution of patterns of gene flow. However, more recently the nuclear genome has become much more “accessible” as techniques have been refined, and as rapidly evolving areas such as microsatellites have been discovered. These areas similarly aid in the resolution of patterns of gene flow, but with the important difference that they are found within the nuclear compartment and allow a much more thorough evaluation of genetic distinctiveness (or lack thereof) to be made. While there are some things said in *Ramey*’s report that are critical of the less rigorous methods that were used by (some) past scientists, this often reflects the state of biological investigation at the time rather than the care intended by the participating researchers. The same could be said of an assessment made of the status of the Preble’s meadow jumping mouse based solely on mtDNA...it was great in its time, but we now have more rigorous methods, namely nuclear markers. Numerous publications by Avise and others have outlined the advantages of such markers, and the potential problems with relying on mtDNA alone. Among those is the danger of introgression of mtDNA into a subspecies masking a difference in nuclear markers and the danger of using a single maternally inherited locus (mtDNA) to assess population differentiation. Such a study of the nuclear genome is needed to make any legitimate conclusions about the subspecies status, as pointed out by several of your earlier reviewers. I also understand that such a study is currently being executed by the author of the recent mitochondrial study (*Ramey*). Presumably since *Ramey* is extending the original mitochondrial study to include nuclear loci, he himself recognizes its importance, and this makes the reversal of a longstanding taxonomic designation in advance of that dataset entirely premature, and a waste of resources since the assessment will need to be revisited when the nuclear dataset is in hand. Hence without even going into the interpretation of the mtDNA dataset, the timing of such a reversal remains baffling.

It also concerns me that reviews of *Ramey*’s work were split, and yet the FWS seems to be favoring those views that propose that this work convincingly demonstrates that this is not a subspecies. If the FWS retains the current taxonomic designation, the populations under scrutiny are preserved, and further data can be used to clarify whether this is in error or not. If however, as is proposed in this article of the Federal Register, the listing is reversed, the populations under debate may be exterminated before the nuclear (or other) data are fully assessed. Then the taxonomic debate becomes entirely academic (though, if the nuclear dataset led to contrary interpretations of the taxonomic status of the Preble’s meadow jumping mouse “post extinction” it would be a wonderful textbook example for future generations of the severe consequences of neglect in collecting data with the best level of resolution available).

Another concern rests with the discussion of statistics. Statistics is a wonderful tool, and is an excellent way to provide some consistency for moving forward when a null hypothesis is disproved. However, in this case it seems that some of the issues involve a null hypothesis that is NOT disproved. When a null hypothesis is not disproved, it means either that the null hypothesis is correct, or that the power of the test was insufficient to reveal that it is incorrect. Unfortunately, discerning which of these two interpretations is the correct one is nearly impossible, and at minimum requires intensive assessment of the “power” of the original experimental design and of the statistical methods used. For example, too low of a sample size would make such results expected, as would inadequate geographic sampling. I don’t see a discussion of the “power” of the morphological measurements done by *Ramey* included in the

Federal Register comments and this leads me to wonder if they are being assessed. This seems especially important in cases such as this where one researcher's results lead to a different conclusion than another's. One of the better ways to resolve contrasting conclusions is to place it before the scientific community at large (i.e. to publish the results in a scientific journal) and allow those with particular insight to come forward. I am particularly struck by the statement (page 5402) that "They found no published ecological evidence for discreteness between Preble's and the Bear Lodge meadow jumping mouse. Ramey et al. asserts that this lack of published information supports his conclusion that these subspecies should be synonymized". This is just one example that I find related to these statistical concepts.

Also, on page 5407 it is stated that Ramey et al. did in fact find three of the nine skull measurements taken were significantly different between the Bear Lodge meadow jumping mouse and the Preble's meadow jumping mouse. Two of these did not match those characters described by Krutzsch as being different. If this is interpreted as being a more solid study than that done by Krutzsch, it simply shifts the significant morphological differences to a different set of characters, and I don't understand why this alters any of the accompanying conclusions (unless the interpretation is that both studies are simply generating random "noise").

I am also concerned about what criteria the FWS uses for subspecies designation. Some different definitions are given and cited, but I am especially curious as to whether the observation made by Ramey et al. that "most of the genetic variation was within subspecies (64 percent) rather than among these subspecies (37 percent)" carried any weight in the related discussions of their data. I haven't looked into the meaning of these values as it bears on the question at hand, but since it is mentioned, I'm sure the FWS and Ramey et al. have. How does this figure compare to that of other firmly established subspecies (by the FWS criteria??). If this is relevant to the discussion, in what way; what is the relationship between this value and subspecies. If it is being used in some way, what is the scientific justification for it, and on what (who's) criteria is some "cutoff" being designated as meaningful? Similarly, I would point out that reciprocal monophyly of haplotypes is an easily defined condition whose relationship to the subspecies definition remains entirely unresolved by the scientific community.



Prebles comment.doc

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Fauxden@aol.com
05/03/2005 02:46 PM

To FW6_PMJM@fws.gov
cc
bcc
Subject Public Comment re: Preble's Delisting

To Whom It May Concern;

As a thirteen year old I became an Eagle Scout, as a twenty-seven year old I worked as an Army Infantry Officer (via Project Transition) with the NPS at Rocky Mountain National Park. I am an active user of public lands and consider myself ecologically sensitive. I have always packed it out, left nothing but footprints and (as a former neighbor of Ansel Adams) took nothing but pictures.

I feel there is a crisis in the administration of public policy as regards the ESA. There are too many public lands and national treasures that fall under the jurisdiction of the DOI, NPS and F&WS in dire need of funding. The amount of available tax dollars siphoned off to handle litigation, staffing of response to environmental groups attorneys and related issues vs. the true needs of growing protection of truly sensitive land and even breaking even on infrastructure issues in Federal land is appalling.

Protecting species such as Preble's Meadow Jumping Mouse (for which little "best science" can be used as an argument) appear to be simply a method for those who care little for the best use of available funding, but prefer to pick every fight they can as a strategy of slowing any type of development. In the case of this mouse, that includes water projects that may in fact add to wetlands habitat that could benefit a variety of plant & animal species.

As a former elected official in an area heavily impacted by the regulations involving PMJM, I can state the following without reservation. Those who are informed of the cost of issues related to PMJM, such as improvements to a local reservoir, public safety in changes to interstate highway access and even the availability of service businesses are amazed at what is felt to be misuse of funds and a great idea (ESA) run amok. They are not opposed to protecting the environment but rather the methods and rationales used to spend millions on results that are suspect.

Sincerely,

Ken Faux
303-807-2739