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news release

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ADMINISTRATION'S NEW ASSURANCE POLICY TELLS LANDOWNERS: "NO SURPRISES" IN ENDANGERED SPECIES PLANNING

The Clinton Administration today announced a significant change in policy that will give more economic certainty to landowners involved in reconciling endangered species conservation with land use development.

Landowners who have endangered species habitat on their property and agree to a Habitat Conservation Plan (HCP) under the Endangered Species Act will not be subject to later demands for a larger land or financial commitment if the Plan is adhered to even if the needs of the species changes over time. The term of an HCP can be as long as several decades.

"A Deal is a Deal"

"We're telling landowners that a deal is a deal," Babbitt said. "This "No Surprises" policy says if, in the course of development or land use, you invest money and land into saving species, we won't come back ten years from now and say you have to pay more or give more."

"The key issue for non-federal landowners is certainty," said Babbitt. "They want to know that if they make a good faith effort to plan ahead for species conservation, and do so in cooperation with the relevant agencies, then their plan won't be ripped out from under them many years down the road."

"We'll work with state, municipal and private landowners to set the rules," said Babbitt. "This assurance policy makes it clear that we won't change those rules in the middle of the game."

"This is a good example of how the Department of Commerce as represented specifically by its National Oceanic and Atmospheric Administration (NOAA) is working with other federal agencies to make the Endangered Species Act work more effectively," said Secretary of Commerce Ronald H. Brown.

(more)

"While the Habitat Conservation Plans may not be appropriate in every case, where used, they will provide certainty for businesses that need to address long-term planning and at the same time provide the flexibility needed to meet the long-term needs of various species," said NOAA's Undersecretary for Oceans and Atmosphere at Commerce, Dr. James Baker, who participated in the press conference today with Babbitt.

NOAA's National Marine Fisheries Service (NMFS) and the Interior Department's Fish and Wildlife Service are the two federal agencies responsible for enforcing the Endangered Species Act. As such, they are also empowered to approve HCPs.

"The assurances offered by this new policy should stimulate greater use of habitat conservation planning to reconcile development and conservation conflicts," said Michael Bean, of the Environmental Defense Fund.

"Successful habitat conservation plans are win-win situations -- economic activity continues and our heritage is protected for future generations to enjoy," said John Sawhill of The Nature Conservancy.

Positive Reaction in the Business Community

"This new initiative may resolve the business community's most intractable concerns about the Endangered Species Act," said Jim Whalen, a spokesperson for the Alliance for Habitat Conservation, a group of major landowners holding more than 70,000 acres in San Diego County,

"A major impediment to property owner participation in a Habitat Conservation Plan is the fear that, after the costs and resource management restrictions of the Plan are accepted, the rules will change and the entire matter will be reopened," said Don Christiansen, Chairman of the Western Urban Water Users Coalitions. "This policy sets an important new direction by which the key federal agencies are committing to stand by their agreement. In the West, we value that commitment."

The Western Urban Water Coalition's support is significant because it represents 18 major water utilities from seven Western states serving more than 30 million water users. Included are systems serving Denver, Salt Lake City, Phoenix, Las Vegas and other Nevada cities, Portland, Seattle, Los Angeles, San Francisco and numerous other California cities.

"Private forest landowners need stability and certainty to make the long term investments necessary to manage private forestlands," said Charley Bingham, Weyerhaeuser Company's Executive Vice President. "We commend the Secretaries for advancing ideas that will help provide stability for forest

landowners who develop and implement habitat conservation plans." Weyerhaeuser is currently developing an HCP for spotted owls in Oregon and pioneering a multi-species HCP in Washington.

"Since the inception of the Natural Communities Conservation Plan (NCCP) concept, we have been working with representatives of the Fish and Wildlife Service to develop assurances for landowners which are commensurate with their commitments to habitat protection," said Richard Broming, Vice President of the Santa Margerita Company, a major southern California developer. "This action goes a long way toward providing those assurances and potentially leads to the successful negotiation of our NCCPs."

(Under California law, the NCCP process is similar to the HCP process under federal law. NCCPs currently in the drafting stage are designed to meet both state and federal endangered species requirements, thereby allowing for development in areas where threatened or endangered species occur.)

"Lack of certainty has been a major obstacle to large scale private conservation planning," said Monica Florian, Senior Vice President for the Irvine Company. "The concepts outlined in this policy announcement are an important show of good faith that the government intends to live by its commitments in approved NCCPs."

Landowner Concerns Led to Actions

At a June 14 press conference, the two Departments announced a series of policies aimed at improving the Endangered Species Act's effectiveness while enhancing its flexibility for businesses and private landowners.

Babbitt and Baker said today's announcement was spurred by private, state and municipal landowners, who have complained that, despite their willingness to work with the federal government to protect species on their land, the federal government had been reluctant to assure them in return that an HCP would not be reopened or changed at any time.

In the past, landowners have feared being informed at a later date that despite their earlier good-faith conservation efforts, the demand for additional protection measures for species would halt planned development and land use or result in additional restrictions and require more private funding. Babbitt said today's announcement gives landowners an incentive to get involved in an HCP planning effort by assuring them that the federal government will stick by its deal with the HCP permittees who abide by their conservation commitments in good faith.

The new policy assures that landowners participating in a single- or multi-species HCP will not be subject to additional restrictions or costs at a later time, even if unlisted species adequately covered under the terms of an HCP are subsequently listed as endangered or threatened. If extraordinary circumstances subsequently indicate the need for additional action to protect such species, the new policy states that the obligation for additional action shall not rest with an HCP permittee.

HCP's are authorized under section 10(a) of the Endangered Species Act as a means of reconciling endangered species conservation and habitat protection with private land development that might otherwise be impossible without violating the Act. An HCP requires a landowner to develop a long-term, private conservation program for listed species affected by development or land use, and involves private financial contributions to help implement the plan.

Landowners participating in and abiding by the plan are covered by an incidental "take" permit, which gives them immunity from prosecution if a threatened or endangered species is accidentally killed or harmed during construction or land use activities within the boundaries of the HCP.

More HCPs as a Result

"This new policy will be good for the endangered species program because it will encourage developers to make substantial commitments to HCP's," Babbitt said. "At the same time, it will be good for the private landowners because they will be assured that they will have time to complete significant development projects or to manage their lands with certainty for years to come, without the possibility of facing additional costs or restrictions for endangered species protection."

Under the new policy, if additional mitigation measures are subsequently deemed necessary to provide for the continued existence of a species in the wild, the primary obligation for such measures shall not rest with an HCP permittee who has been complying in good faith with his or her obligations under an HCP.

If NMFS or the U.S. Fish and Wildlife Service concludes that extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee, such mitigation shall be limited to modifications within Conserved Habitat areas or to the HCP's operating conservation programs for the affected species. Additional mitigation requirements shall not apply to the payment of additional financial compensation or to parcels of land available for development or land use under the original terms of the HCP without the consent of the HCP permittee.

"Our point is a simple one," said Babbitt. "If we've made a deal, and if it's being implemented according to the criteria set forth in that plan, we're not going to be asking for more money or more land."

NMFS and the U.S. Fish and Wildlife Service will have the burden of demonstrating that extraordinary circumstances exist, using the best scientific and commercial data available. The agency findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.

The Fish and Wildlife Service has completed a draft handbook, "Policy and Guidelines for Habitat Conservation Planning and Processing of Incidental Take Permits." This new handbook will serve as a guide for Service employees engaged in the negotiation of HCPs. The Service intends to provide an opportunity for public comment on the draft handbook. The policy announced today will be included in that draft handbook, and will therefore be available for public comment.

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