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**U P D A T E**

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**August 6, 2003**

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**Rep. Cardoza introduces critical habitat reform legislation.** Democratic Representative Dennis Cardoza (CA) introduced on Friday, July 25<sup>th</sup>, H.R. 2933, the Critical Habitat Reform Act, a bill intended to improve methods employed by the Fish and Wildlife Service (FWS) to designate a species' critical habitat. The bill would streamline the Service's procedures by requiring FWS to establish a recovery plan for a species at the same time it designates critical habitat. Currently, the Service designates critical habitat before developing a recovery plan. The bill was introduced with 11 Democratic and 6 Republican cosponsors and was referred to the House Resources Committee for consideration.

**NESARC sends letter to Interior Secretary regarding *Silvery Minnow* decision.** NESARC voiced its opposition to the Tenth Circuit Court of Appeals decision on the *Silvery Minnow* in a recent letter to Interior Secretary Gale Norton. The letter urges that she undertake all actions necessary to reverse the decision that has jeopardized the water supplies of the City of Albuquerque and water users in the Middle Rio Grande and San Juan Chama River basins. Letters also are being sent to members of Congress citing the *Silvery Minnow* decision as a "wake-up call" for the need for ESA reform. Copies of the letters will be available on the NESARC website at <http://www.nesarc.org/nortonletter.pdf>

**FY 2004 appropriations bill includes *Silvery Minnow* "fix."** Senator Pete Domenici (R-NM) and Representative Heather Wilson (R-NM) have included language in the House and Senate versions of the FY 2004 energy and water appropriations bill (H.R. 2754; S. 1424) that would have the effect of prohibiting the implementation of the water reallocations directed by the *Silvery Minnow* decision. While this language addresses the immediate crisis created by the *Silvery Minnow* decision, the underlying flaws in the ESA remain, and there is a growing recognition by Congress that broader ESA reform is needed. H.R. 2754 has been passed by the full House of Representatives, while S. 1424 awaits floor consideration.

**N.M. Governor reveals closed-door talks about Minnow issue.** Gov. Bill Richardson (D-NM) has revealed that confidential negotiations to resolve the standoff over the silvery minnow have been going on for weeks. Richardson said he brought together state officials, environmentalists, the city of Albuquerque, the Middle Rio Grande Conservancy District and the Rio Chama Acequia Association in late June. He said that, if a solution could be reached through negotiations, he hoped New Mexico's delegation would help implement it in Congress. The federal government is not involved in the negotiations, but the groups involved hope the agencies will sign on to a settlement if the other parties can agree to a resolution.

**Court battles continue in Missouri River flow.** The federal judge assigned to sort out contradictory court orders on how the Army Corps of Engineers must run the Missouri River ruled in favor of environmentalists this week, upholding a D.C. District Court decision requiring the agency to lower flow levels to protect three species listed as threatened or endangered under the ESA. The ruling stated that, while several courts have

issued contradictory decisions on how much water the Corps must release from its Missouri River dams, only one of the rulings is currently in effect -- D.C. District Judge Gladys Kessler's July 12 order requiring the agency to drop water levels on a stretch of the river between Yankton, S.D., and St. Louis. But, the federal judge did not impose the penalties that previously threatened the Corps for failing to comply with the order. The rift continues between conservation groups that maintain that the river should ebb and flow more naturally, and barge and farming interests that say the Corps has an obligation to provide enough water for barges.

**Farmers and ranchers testify on ESA problems.** The House Small Business Committee's Rural Enterprises, Agriculture and Technology Subcommittee received testimony from farmers, ranchers and landowners recently that focused on reforming the ESA to facilitate alternate conservation measures to critical habitat designations and eliminate decision-making without the use of sound science. Craig Manson, Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior, repeated his previous statement that the ESA is "broken," and called for changing the way in which critical habitat is designated. The high number of critical habitat lawsuits has crippled FWS, which has announced it expected to exhaust its \$6 million budget for critical habitat designations by the end of last month. House Resources Committee Chairman Richard Pombo (R-CA) also testified before the Committee, calling for ESA reforms to provide incentives for landowners to protect species.

**Federal judge orders new plan for Klamath water.** The Administration must revise its irrigation plan for the Klamath River Basin after a federal judge ruled last month that it violates the ESA. The U.S. District Judge called portions of the Administration's plan for irrigating farmland "arbitrary and capricious," and said the 10 year plan did not adequately provide for the endangered sucker fish and threatened coho salmon. Farmers, environmentalists and federal officials have been at odds over water use in the Klamath Basin for the past three summers. Administration officials expressed satisfaction with the ruling, particularly because the judge indicated that water deliveries this year would not be affected.

**Interior awards state grants to aid endangered species.** The Interior Department awarded \$70 million in grants earlier this month to 29 states to help railroads, utilities, oil and gas entities and environmental groups find alternative habitat for endangered species threatened by development. Funded through the Cooperative Endangered Species Conservation Fund and authorized by Section 6 of the ESA, the grants will enable States, working in partnership with private landowners, conservation groups and other agencies and organizations to initiate conservation planning effort and to acquire and protect habitat to support the conservation of threatened and endangered species. The Section 6 grant programs include the \$6.6 million Habitat Conservation Planning Assistance Grants Program, the \$51.1 million Habitat Conservation Plan Land Acquisition Grants Program, and the \$12.7 million Recovery Land Acquisition Grants Program. The three programs were established to help reduce potential conflicts between the conservation of threatened and endangered species and land use and development.

**Federal appeals court says no protection for northern goshawk.** A federal appeals court upheld the FWS view that the *northern goshawk* doesn't need federal protection throughout the West. The 3-0 decision by the Ninth U.S. Circuit Court of Appeals came after 13 years of extensive litigation in which environmentalists wanted the government to list the large raptor, usually found in the western United States, as endangered or threatened. The decision upholds a U.S. District Judge ruling from 2001 which said that FWS officials did not "arbitrarily and capriciously" reject a petition by several environmental groups to list the goshawk.