



# Texas Public Policy Foundation

September 24, 2019

Dear Rep. Gosar:

Thank you for the invitation to participate in today's Congressional Western Caucus Endangered Species Act roundtable discussion. My name is Robert Henneke, and I serve as the general counsel and litigation director for the Texas Public Policy Foundation. The Foundation is a non-profit, nonpartisan research organization founded in 1989 and dedicated to promoting liberty, personal responsibility, and free enterprise through academically-sound research and outreach.

The Endangered Species Act is flawed because it punishes private property owners through enforcement, rather than incentivizing conservation. By reputation, the ESA has led to a mentality among landowners of "shoot, shovel, and shut-up." This is a blunt way to describe how property owners feel compelled to destroy species and habitat to avoid onerous federal regulation. Long term reform of the ESA must transform the Act from a punitive regime to one that incentivizes conservation.

Until then, we must limit the Act to powers allowed the federal government by the people through the United States Constitution and its Article I, Sec. 8 limited, enumerated powers. I represent Texan John Yearwood – a decorated combat Vietnam veteran – in his pending lawsuit challenging the constitutionality of the Endangered Species Act to regulate his family's land because of an obscure cave-arachnid species that only exists in central Texas. Mr. Yearwood enjoys giving back to his community by allowing youth groups to camp on his property free of charge, but the ESA makes him civilly and criminally liable for any inadvertent "take" of the species or its potential habitat that occurs on his property. Camping on a ranch in Texas isn't "commerce...among the several states," yet the Act claims authority under the Commerce Clause to regulate his private property. It's time to recognize that the Constitution does not afford the Fish & Wildlife Service authority to regulate Mr. Yearwood's fifth-generation ranch because of an obscure species that is neither interstate, nor commercial. If it is necessary to regulate to protect this species, it should be solely the purview of state or local government, not federal.

In our lawsuit on behalf of the Texas General Land Office, independent, third-party appraisals show that land managed by Texas to fund public education has lost over thirty percent in value because of identification of golden-cheeked warbler habitat. Yet, the most recent science shows that the warbler is nineteen-times greater and its habitat is five-times greater than when the bird was listed over twenty-five years ago. Environmental groups fight in opposition to delisting this species that science shows has recovered.

The vision of the Endangered Species Act has been lost. It is the proper role of Congress to reform the Act to limit its powers as allowed by the Constitution and to provide for an end to regulation when a species has recovered. In the meantime, we must support this Administration's worthwhile regulatory reforms seeking to return the Act to the limited authority granted by statute. I thank the Western Caucus for its focus on this important property rights issue and the opportunity to comment on behalf of my clients and the Texas Public Policy Foundation.

Sincerely,

A handwritten signature in black ink that reads "Robt Henneke". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Robert Henneke  
General Counsel and  
Director, Center for the American Future  
Texas Public Policy Foundation