

GRANT COUNTY RESOLUTION NO. R-14-48

**A RESOLUTION IN SUPPORT OF PASSAGE OF THE 21ST CENTURY
ENDANGERED SPECIES TRANSPARENCY ACT, HR 4315, UPDATING THE
ENDANGERED SPECIES ACT IN THE AREAS OF TRANSPARENCY AND
SPECIES RECOVERY**

WHEREAS, New Mexico counties have been inundated by expanded and new listings of endangered species; and

WHEREAS, the impacts to New Mexico counties of these listings include significant detriment to the County's custom, culture, historic land uses and on the social, economic and human resources of the County; and

WHEREAS, the existence of proposed ESA listings are completely unknown to the counties prior to publication of proposed listings, which relegates Counties to the position of the General Public in spite of the fact that the agencies tout the idea the Counties are entitled to cooperating agency status; and

WHEREAS, Cooperating Agency status is a complete fiction, Counties are routinely denied any meaningful participation in the EA or EIS process, are blocked from participation on the ID team to design the EA or EIS, and have no input on the identification, or selection of alternatives to be considered in the environmental process; and

WHEREAS, the full brunt of the detrimental impacts that are attendant to environmental planning are felt directly and dramatically at the local government level including adverse impacts to the custom, culture, historical land uses and on the social, economic and human resources of the County; and

WHEREAS, the tactics used by groups to force these listings include an intentional effort preclude participation by counties in the initial planning of any recovery effort and are not consistent with other federal acts; and

WHEREAS, facing current economic conditions, New Mexico counties believe that transparency and accountability must be paramount in any proposed recovery process.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Grant County hereby requests our New Mexico Congressional Delegation to SUPPORT HR 4315 passed by the United States House of Representatives on July 29, 2014 and further requests that all bills brought before Congress that will benefit New Mexico counties by adding transparency, accountability and that further modernize the Endangered Species Act be favorably voted for.

PASSED AND ADOPTED by the Grant County Board of Commissioners on this 28th day of August, 2014.

BOARD OF GRANT COUNTY COMMISSIONERS:


Brett Kasten, Chairperson


Gabriel Ramos, Member


Ron Hall, Member

ATTEST:


Robert Zamarripa, Grant County Clerk

JULY 23, 2014

RULES COMMITTEE PRINT 113-55

**TEXT OF H.R. 4315, 21ST CENTURY ENDANGERED
SPECIES TRANSPARENCY ACT**

**[Showing the texts of H.R. 4315, H.R. 4316, H.R. 4317, and
H.R. 4318 as reported by the Committee on Natural Re-
sources, with modifications.]**

1 SECTION 1. SHORT TITLE.

**2 This Act may be cited as the “Endangered Species
3 Transparency and Reasonableness Act”.**

**4 SEC. 2. REQUIREMENT TO PUBLISH ON THE INTERNET THE
5 BASIS FOR LISTINGS.**

**6 Section 4(b) of the Endangered Species Act (16
7 U.S.C. 1533(b)) is amended by adding at the end the fol-
8 lowing:**

**9 “(9) The Secretary shall make publicly available on
10 the Internet the best scientific and commercial data avail-
11 able that are the basis for each regulation, including each
12 proposed regulation, promulgated under subsection (a)(1),
13 except that, at the request of a Governor or legislature
14 of a State, the Secretary shall not make available under
15 this paragraph information regarding which the State has
16 determined public disclosure is prohibited by a law of that
17 State relating to the protection of personal information.”.**

1 **SEC. 3. DECISIONAL TRANSPARENCY AND USE OF STATE,**

2 **TRIBAL, AND LOCAL INFORMATION.**

3 (a) REQUIRING DECISIONAL TRANSPARENCY WITH
4 AFFECTED STATES.—Section 6(a) of the Endangered
5 Species Act of 1973 (16 U.S.C. 1535(a)) is amended—

6 (1) by inserting “(1)” before the first sentence;

7 and

8 (2) by striking “Such cooperation shall include”

9 and inserting the following:

10 “(2) Such cooperation shall include—

11 “(A) before making a determination under
12 section 4(a), providing to States affected by
13 such determination all data that is the basis of
14 the determination; and

15 “(B)”.

16 (b) ENSURING USE OF STATE, TRIBAL, AND LOCAL

17 INFORMATION.—

18 (1) IN GENERAL.—Section 3 of the Endangered
19 Species Act of 1973 (16 U.S.C. 1532) is amended—

20 (A) by redesignating paragraphs (2)
21 through (21) as paragraphs (3) through (22),
22 respectively; and

23 (B) by inserting after paragraph (1) the
24 following:

JULY 23, 2014

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13 except that, at the request of a Governor or legislature
14 of a State, the Secretary shall not make available under
15 this paragraph information regarding which the State has
16 determined public disclosure is prohibited by a law of that
17 State relating to the protection of personal information.”.

1 “(2) The term ‘best scientific and commercial data
2 available’ includes all such data submitted by a State, trib-
3 al, or county government.”.

8 SEC. 4. DISCLOSURE OF EXPENDITURES UNDER ENDAN-
9
GERED SPECIES ACT OF 1973.

10 (a) REQUIREMENT TO DISCLOSE.—Section 13 of the
11 Endangered Species Act of 1973 (87 Stat. 902; relating
12 to conforming amendments which have been executed) is
13 amended to read as follows:

14 "SEC. 13. DISCLOSURE OF EXPENDITURES

15 "(a) REQUIREMENT.—The Secretary of the Interior,
16 in consultation with the Secretary of Commerce, shall—
17 "(1) not later than 90 days after the end of
18 each fiscal year, submit to the Committee on Nat-
19 ural Resources of the House of Representatives and
20 the Committee on Energy and Natural Resources of
21 the Senate an annual report detailing Federal Gov-
22 ernment expenditures for covered suits during the
23 preceding fiscal year (including the information de-
24 scribed in subsection (b)); and

1 “(2) make publicly available through the Internet
2 a searchable database of the information described in subsection (b).

4 “(b) INCLUDED INFORMATION.—The report shall include—

6 “(1) the case name and number of each covered
7 suit, and a hyperlink to the record or decision for
8 each covered suit (if available);

9 “(2) a description of the claims in each covered
10 suit;

11 “(3) the name of each covered agency whose actions gave rise to a claim in a covered suit;

13 “(4) funds expended by each covered agency
14 (disaggregated by agency account) to receive and respond to notices referred to in section 11(g)(2) or to prepare for litigation of, litigate, negotiate a settlement agreement or consent decree in, or provide material, technical, or other assistance in relation to, a covered suit;

20 “(5) the number of full-time equivalent employees that participated in the activities described in paragraph (4); and

23 “(6) attorneys fees and other expenses
24 (disaggregated by agency account) awarded in covered suits, including any consent decrees or settle-

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23 preceding fiscal year (including the information de-
24 scribed in subsection (b)); and

1 ment agreements (regardless of whether a decree or
2 settlement agreement is sealed or otherwise subject
3 to nondisclosure provisions), including the bases for
4 such awards.

5 “(c) REQUIREMENT TO PROVIDE INFORMATION.—

6 The head of each covered agency shall provide to the Sec-
7 retary in a timely manner all information requested by the
8 Secretary to comply with the requirements of this section.

9 “(d) LIMITATION ON DISCLOSURE.—Notwith-
10 standing any other provision of this section, this section
11 shall not affect any restriction in a consent decree or set-
12 tlement agreement on the disclosure of information that
13 is not described in subsection (b).

14 “(e) DEFINITIONS.—

15 “(1) COVERED AGENCY.—The term ‘covered
16 agency’ means any agency of the Department of the
17 Interior, the Forest Service, the National Marine
18 Fisheries Service, the Bonneville Power Administra-
19 tion, the Western Area Power Administration, the
20 Southwestern Power Administration, or the South-
21 eastern Power Administration.

22 “(2) COVERED SUIT.—The term ‘covered suit’
23 means any civil action containing a claim against the
24 Federal Government, in which the claim arises under

1 this Act and is based on the action of a covered
2 agency.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
4 in the first section of such Act is amended by striking the
5 item relating to such section and inserting the following:
“Sec. 13. Disclosure of expenditures.”.

6 (c) PRIOR AMENDMENTS NOT AFFECTED.—This sec-
7 tion shall not be construed to affect the amendments made
8 by section 13 of such Act, as in effect before the enact-
9 ment of this Act.

10 SEC. 5. AWARD OF LITIGATION COSTS TO PREVAILING PAR-

11 TIES IN ACCORDANCE WITH EXISTING LAW.

12 Section 11(g)(4) of the Endangered Species Act of
13 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to
14 any” and all that follows through the end of the sentence
15 and inserting “to any prevailing party in accordance with
16 section 2412 of title 28, United States Code.”.

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2 settlement agreement is sealed or otherwise subject
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20 Southwestern Power Administration, or the South-
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23 means any civil action containing a claim against the
24 Federal Government, in which the claim arises under

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Status: Passed the House on July 29, 2014 with a bipartisan [vote of 233-190](#). Awaits consideration by the Senate.

- This legislation is a common-sense bill that focuses on sensible and specific updates to the Endangered Species Act in the areas of transparency and species recovery.
- The Endangered Species Act (ESA) was created four decades ago in 1973 to preserve, protect, and recover key domestic species. Since that time, over 1,500 U.S. domestic species and sub-species have been listed. However, today the law is failing to achieve its primary purpose of species recovery and has only a **2 percent** recovery rate.
 - Congress last renewed the ESA in 1988 long before iPhones, iPads, and the World Wide Web. This means it has been **26 years** since any improvements have been made.
 - This legislation helps update the ESA to the 21st Century by making the law more effective for both species and people. Even the Obama Administration's Director of the U.S. Fish and Wildlife Service said that there could be "opportunities to make incremental improvements" to the ESA.
 - Specifically this legislation would:
 - Require data used by federal agencies for ESA listing decisions to be made publicly available and accessible through the Internet, while respecting state data privacy laws and private property. (Sec. 2 reflects the text of H.R. 4315 as reported)
 - Require the federal government to disclose to affected states data used *prior* to an ESA listing decision and it would require the "best available scientific and commercial data" used by the federal government to incorporate data provided by states, tribes, and local county governments. (Sec. 3 reflects the text of H.R. 4317)
 - Require the U.S. Fish and Wildlife Service to track, report to Congress, and make available online the federal taxpayer funds used to respond to ESA lawsuits, the number of employees dedicated to ESA litigation, and attorneys' fees awarded in the course of ESA litigation and settlement agreements. (Sec. 4 reflects the text of H.R. 4316)
 - Prioritize species protection and protect taxpayer dollars by placing reasonable caps on attorneys' fees to make the ESA consistent with existing federal law. For example, the federal government limits the prevailing attorneys' fees to \$125 per hour in most circumstances, including federal suits involving veterans, Social Security, and disability. But under the ESA, attorneys are being awarded huge sums, in many cases, at a rate much as \$600 per hour. (Sec. 5 reflects the text of H.R. 4318)
 - The U.S. Chamber of Commerce, the American Farm Bureau Federation, the National Rural Electric Cooperative Association and many others support this common sense bill.

Fact Sheets:

- [Background on the Endangered Species Act](#)

Infographics:

Report Card

Student Endangered Species Act
 Student Planning Committee