An Overview of State Wildlife Governance Today

A talk delivered at the Wildlife for All Summit
By Kevin Bixby, Southwest Environmental Center
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I think we can safely say that everyone in this room is passionate about wild animals. Some of us are on the utilitarian end of the spectrum and like to hunt and fish. Others—probably the majority in this room as they are a majority in the general public--prefer to simply watch wild creatures as they live their lives apart from humans. But we are all what Dave Foreman likes to call "cannots" referring to that quote from Aldo Leopold, "There are some who can live without wild things, and some who cannot." We are all "cannots."

And we are here today because the wild things that we love need us. They need us because a big, essential part of our collective conservation capacity in this country is not working. State wildlife management is in crisis, and it is up to us "cannots" to fix it. How we do that is what we'll be talking about for the next two days. I'm excited to see so many dedicated, talented and experienced wildlife advocates in the room, and I am confident that by the end of this gathering, we will have come up with some solid ideas about what needs to happen and how we're going to get it done.

There was a time when conservation groups were largely missing in action from the state arena. The federal level offered better points of entry to influence public land management, through hooks such as NEPA, FLPMA and NFMA. And of course, as many of you know from firsthand experience, the Endangered Species Act (ESA) offers an extremely powerful tool for shaping federal wildlife policy, to a point. But only to a point.

But times are changing. More groups are engaging at the state level on wildlife issues, and I think that is a good thing. It makes sense for several reasons. For starters, states have primary legal jurisdiction over most wildlife species within their borders, according to conventional legal doctrine. Compared to the federal arena, there are fewer key political actors, and so it is easier to gain access and develop relationships with them. This is really true in a state like New Mexico that only has about two million people. Most of the state legislators from my county are on my phone contact list, and I've shared beers or coffee with a good number of them.

And for all its power, the ESA is limited in its potential to drive ecologically meaningful recovery of species on the scale most of us want to see. The goal of the ESA is to eliminate the imminent threat of extinction and delist, which means turning management over to the states. That should be reason enough for developing a state game, not to mention that the ESA is under attack like never before in D.C. Over 300 bills have been introduced since 2011 to dismantle critical protections under the law. The reality is the federal government is an unreliable ally when it comes to wildlife conservation, and we cannot afford to ignore the states.

I know there are many activists here today, working on a variety of wildlife issues in your states, from killing contests in Vermont, to predator policies in California, to wolf management in Wisconsin, to bear hunting in Florida, to cougar control in Colorado, etc. My organization, the Southwest Environmental Center, works on a number of similar issues here in New Mexico. One of the reasons for convening this gathering was to share information about successful campaigns in the various states and lessons that might be applicable to other states. We'll have a chance to do that during the first panel, and throughout the conference.

All of the various issues we work on in our states are important, and we need to keep pushing on them, but I encourage you all to see them for what they are: symptoms of a system of wildlife governance that is fundamentally broken, and is broken to a greater or lesser degree in every state.

Let's dig a little deeper at what is wrong with state wildlife governance today.

Our current system of state wildlife management was developed as a necessary and appropriate response to prevent the imminent extinction of game animals due to the unrelenting and unregulated slaughter of wildlife that took place in this country after the civil war. And this is a good point to acknowledge the critical role played by sportsmen, in the leadership they showed in getting the system in place, but also in the billions of dollars they have contributed to the maintenance of the system ever since.

But that system has failed to keep pace with new threats to wildlife, modern ecological understanding, changing public attitudes towards wildlife, and norms of good governance.

Our current state wildlife policies and institutions focus mainly on providing sport hunting and fishing opportunities, and discount non-consumptive uses and intrinsic values of wildlife. The emphasis is on producing a harvestable surplus of desired game species under an agricultural-based model, rather than a holistic, ecological focus on preserving biodiversity and ecosystems.

Predators are devalued, and often viewed as competitors with human hunters for desired ungulate game species. This institutional bias against predators combines with strong anti-carnivore attitudes held by livestock operators to produce aggressive hunting and trapping policies targeted at predators such as wolves, bears, cougars and coyotes.

But the status quo is not sustainable. It is under threat from both external and internal forces. With crisis, comes opportunity for change.

The chief threat to state wildlife management today stems from the basic fact that the number of hunters and anglers is declining. From 1996 to 2016, the percentage of Americans 16 and over who hunted fell from about seven percent to less than five percent, while for anglers it dropped from 17 percent to 14 percent. Over that same time period, the percentage of Americans 16 and over who reported engaging in wildlife viewing rose to one-third.

The decline in the number of hunters and anglers is an existential threat to the status quo, because they provide the largest share of state wildlife agency revenues, directly through the purchase of licenses, and indirectly through federal excise taxes: Pittman Robertson grants derived from an excise tax on guns ammunition, and archery equipment, and Dingell Johnson grants derived from an excise tax on fishing gear and motorboat fuel.

On average, across the U.S., state wildlife agencies derive 59 percent of their budget from these sources—nearly two thirds. For some states, the figure is much higher. In New Mexico, for example, they account for 98 percent of our department of game and fish's revenue.

This "user pay" historical funding arrangement has provided a more or less reliable source of funding historically, but it has also helped create an iron triangle of interests that benefits legislators, agencies, and their primary constituents--hunters and livestock producers--but not necessarily wildlife or the

general public. Agencies promote policies that maximize hunter success and keep agricultural producers happy. Lawmakers are content because they don't have to allocate scarce tax dollars for wildlife management. Satisfied hunters and anglers continue to buy licenses that generate revenue for the agencies, and so the cycle continues.

The triangle is reinforced by agency culture. Agency personnel tend to be hunters and anglers themselves, and share the world view of their hunting and angling "customers."

At the same time as agencies are facing shrinking budgets, they are being asked to take on more responsibilities, to protect nongame and threatened and endangered species, and deal with ever growing threats to wildlife and ecosystems.

Most state agencies are acutely aware of the need to diversify their funding to include sources not tied to consumptive users and gun owners, but face a number of significant obstacles to doing so. Legislators obviously are reluctant to raise taxes, or support dedicated funding streams, the spending of which they can't control. Some sportsmen's groups are likely to oppose new funding sources that give greater voice to non-hunters and threaten their privileged position in the status quo, as happened with the proposed wolf conservation stamp in Montana. And many non-consumptive users are loathe to give more money to state agencies without assurances that they will, in fact, broaden their focus and be responsive to a wider public.

In addition, state wildlife management faces a crisis of representation. All but two states have commissions that oversee their wildlife agencies. In most cases, members are appointed by the governor, often as a political reward, with consent of the legislature. Usually there are no minimal qualifications required. Consumptive users and agricultural representatives tend to dominate. In some states, as in North Dakota, ALL of the seats are explicitly allocated to consumptive users or landowners. The commissions are usually very susceptible to political influence.
I think New Mexico is pretty typical. We like to say that the only requirements to be on our Game Commission are that you have $1000 (for a campaign donation) and a shotgun. All of the commissioners are appointed by the governor, and can be fired at any time by the governor, so guess who calls the shots? The governor. We have one seat (of seven) that is supposed to be reserved for non-consumptive oriented wildlife advocates, but the statutory language is so vague it is meaningless. The seat is currently occupied by an oil and gas industry lawyer.

It is an open question for me whether the commission structure should be reformed or eliminated. If we keep it, we obviously need to make commissions more professional and representative. I don't think we should require every commissioner to be a wildlife expert, but they ought to be serious, ethical people who are committed to the mission of preserving wildlife as a public trust. And they should represent public attitudes towards wildlife in rough proportion to the existence of those attitudes in the general population.

I don't have the answer as to how we do that—in New Mexico we are working on legislation-- but I would caution against accepting positions on stakeholder advisory groups as a substitute for seats on commissions where policy decisions are actually made.

The system is also facing a crisis of legitimacy and relevance. Everyone who, like me, has attended a wildlife commission meeting on a controversial topic where, after hours of public testimony, the majority opinion was ignored, knows what I'm talking about. The more the public is shut out of wildlife policy making, the greater the pressure will be to find alternative channels for making change, such as

ballot initiatives and legislation.

And incidentally, this is why I think that the issue of wildlife killing contests, which are legal in 47 or 48 states, but which an overwhelming majority of the public finds morally repugnant, has such potential for leveraging reform. I think we miss an opportunity if we seek legislative bans on killing contests without coupling the issue to governance reform. In an ideal world, we wouldn't ask our legislators to weigh in on wildlife management issues on a species by species basis. We wouldn't need to, because our wildlife institutions--our commissions and wildlife agencies--would provide venues to adjudicate conflicting uses in ways that were equitable and where the broader public was represented. The fact that killing contests are still legal in most states is Exhibit A that the system is broken.

The status quo serves not just the small minority of Americans who hunt and fish, but also a narrow demographic. People who fish and—especially—who hunt tend to be older, whiter and disproportionately male compared to the general population.

The system also faces pressure from external political forces which are becoming increasingly radical. Right wing groups like the NRA, U.S. Sportsmen's Alliance, Sportsmen for Fish and Wildlife, and Safari Club have conflated an extreme gun rights agenda with hunting rights, making every discussion about hunting a battlefield in the culture wars. The sportsmen's community is constantly being exhorted to maintain a united front against extreme animal rights activists, which presumably includes anyone who is not a hunter who would like a voice in wildlife policy decisions, i.e. many of us "cannots" in this room.

State wildlife management also faces a crisis of authority. The threats to wildlife have never been greater. Energy development, climate change, expanding human populations, and urban development are some of the challenges that require bold responses to preserve the public wildlife trust, but most state wildlife agencies lack regulatory authority to intervene to prevent habitat loss. In some states, perhaps most, the agencies lack full legal authority even to regulate the direct take of all wildlife species. In New Mexico, state law only gives the department authority over about 50-60% of vertebrate species, excluding taxa such as coyotes, prairie dogs, and most bats, rodents and native fishes, and virtually all invertebrates.

In the face of all these internal and external threats, some state wildlife agencies have embraced change, while others are doubling down to preserve the status quo by putting resources into recruiting new hunters. There is a bill currently in Congress to amend the Pittman Robertson Act to allow Pittman Robertson funds to be used by states for so called "3-R" programs: recruit, retain and reactivate hunters.

So if the current system is broken, how do we fix it? What would the ideal system of state wildlife governance look like? The answer will vary in detail by state, but I think we can agree on the broad outlines: decision-making that reflects the full range of public attitudes and values towards wildlife and is transparent and accountable, is based on good science, and ensures the survival of wildlife for the future. It turns out that the public trust doctrine might do a pretty good job of describing the ideal system, and we'll hear more about that after lunch today.

However we decide to go forward, I urge you to think big. What is really at stake is our relationship to the natural world. I remind you that our current situation here in 21st century post-industrial America is not the norm. We have to take the long view. We are at a point in time along the slow, 50,000-year (or so) long holocaust of wildlife at the hands of humans that has been going on since Homo sapiens left Africa. When humans first arrived in the Americas 15,000 years or so ago, they encountered an amazing

abundance and variety of wildlife that had never seen humans before, creatures like giant ground sloths, mastodons, dire wolves and saber toothed cats, and and then proceeded to wipe 80% of the megafauna out. Then came Europeans, and another wave of wildlife decimation occurred, as detailed in Peter Matthiesen's definitive history, *Wildlife in America*. More recently, the onslaught against wildlife in the decades after the Civil War propelled by market hunting and manifest destiny resulted in the slaughter of millions of bison, pronghorn and other species that have mostly not returned to the landscape, as well as concentrated private and public efforts to eliminate large predators everywhere. The world we live in today is a depauperate shadow of what it once was with respect to wildlife.

In his book *Predatory Bureaucracy: The Extinction of Wolves and Transformation of the West*, Michael Robinson tells about an astonishing encounter between a British adventurer George Frederick Ruxton and a wolf in Colorado around the year 1846 that reveals how quickly our view of what is normal can change. Ruxton was camped alone in winter in the mountains and made a fire to keep warm. When he awoke in the night to check the fire, he was surprised to see a wolf laying next to him, warming itself by the embers. He was surprised, but only somewhat so, since wolves were still a common sight and considered more a nuisance than a threat. Ruxton rolled over and went back to sleep.

Those days are long gone. Decades of persecution and widespread hunting have made wolves and many other species extremely wary of people. I'm lucky enough that I've been to the game parks of East Africa where animals will come right up to your vehicle without fear, and I know that what we consider normal in the way humans and interact in the U.S. is not some immutable reality. It is the result of decisions made by many people over many years about which wildlife is valued, and for what purposes.

Fundamentally, it is about justice. Who gets to make those decisions? I think we would all agree, no matter what kind of world we prefer, that those decisions should be made by all the people, and not just a narrow segment of our society.

So we know what is wrong with the status quo, and we have a general idea of how we want to change it. How do we get from here to there? That is the work before us. We won't come up with all the answers over the next two days, but I hope, and I have confidence, that we will identify some concrete next steps to launch the coordinated campaign we need to transform state wildlife governance and protect all wildlife, for everyone, in every state, forever.

Thank you.