



The Foundation for
Environmental and
Economic Progress

May 21, 2003

The Honorable Richard Pombo
Chairman, House Resources Committee
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Pombo:

On behalf of the Foundation for Environmental and Economic Progress (the Foundation), I am writing to express the Foundation's support of H.R. 1662, the *Sound Science for Endangered Species Act Planning Act of 2003*. The Foundation is a coalition of diverse companies that own land and conduct land-based, development operations in 44 states across the nation. The Foundation was formed in 1989 to address federal environmental programs that effect the use of land, particularly wetlands and endangered species.

The Foundation supports the Endangered Species Act (ESA) reforms called for by H.R. 1662, including the requirement that the Secretary of the Interior set standards for the scientific and commercial data that is used to make decisions under the ESA. Several significant court decisions across the country showcase the need for reform in the way in which the U.S. Fish and Wildlife Service (FWS) implements the ESA: *Arizona Cattle Growers Ass'n v. U.S. Fish and Wildlife Service*, 273 F.3d 1229 (9th Cir. 2001) (finding that prior to issuing incidental take statements under ESA § 7, FWS must establish that the species is present and that take will occur); *New Mexico Cattle Growers Ass'n v. U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001) (invalidating the FWS's limited economic impact analysis in critical habitat designations); and *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001) (invalidating FWS's regulatory definition of "adverse modification").

Federal implementation of the ESA should also recognize the primary authority of States over land and water resources. The Foundation supports H.R. 1662's requirement that the Secretary of the Interior actively solicit and consider information from the States in the § 7 consultation process. Additionally, Foundation members also support the provision that gives applicants the opportunity to submit comments during the consultation process.

Thank you for your support and for your leadership on issues related to the Endangered Species Act. We look forward to working with you to help pass this important piece of legislation.

Sincerely,

Virginia S. Albrecht
Director of Government Affairs
& General Counsel

