

RATS, LIES, AND THE GAO

*A Critique of the General Accounting Office Report
on the Role of the Endangered Species Act
in the California Fires of 1993*

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RATS, LIES AND THE GAO

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"For a moment the lie becomes truth."

-- F. M. Dostoevski

The Brothers Karamazov

Around 11:30 p.m. on October 26, 1993, high winds downed a powerline in Riverside County, California. Sparks erupted and a fire started. The flames burned over 25,000 acres and consumed 29 of the estimated 300 homes in their path. 19 of the homes destroyed were in habitat designated as "preserve study areas" for the Stephens' kangaroo rat (k-rat).² The problem was that the federal government had effectively prohibited people from disking³ soil to clear firebreaks in preserve study areas, and virtually all manner of land use was halted in k-rat habitat.

Ever since early 1989, the U.S. Fish & Wildlife Service (FWS) had advised residents of Riverside County that disking in k-rat habitat would likely violate the Endangered Species Act (ESA). To protect the k-rat from people, the FWS prevented people from protecting themselves and their property from fire. The rodents as well as the human residents of western Riverside County, lost in the California Fire.

"Great story. But it turns out not to be true," writes Jessica Mathews.⁴ Defenders of the ESA have taken the extreme and untenable position that there could be no correlation between preventing people from clearing firebreaks and the burning of their homes. The vigorous efforts by environmentalists to discredit the fire victims and their voice in the property rights movement are inappropriate. They cite a recent report by the General Accounting Office (GAO) to support their contention that the loss of homes was not related to the ESA, but that conclusion is invalid. Not only have the GAO's conclusions been overstated by ESA defenders, but its report is so replete with inaccuracies and misrepresentations that the probity of its investigation is in serious doubt.

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² The Stephens' kangaroo rat (*Dipodomys stephensi*) was listed as an endangered species in 1988. There are three other species in the same genus (with 56 subspecies) in California, and 22 closely related species with hundreds of subspecies elsewhere in the U.S.

³ Disking is a mechanical process, whereby an implement (usually pulled and powered by a tractor) cuts into and overturns soil. As a result of this process flammable vegetation is buried underneath soil.

BACKGROUND

The ESA's destructive role in the California Fire gained national attention, from the *Wall Street Journal* to ABC's prime time newsmagazine "20/20" and countless radio programs, newspapers and magazines. Several Senators, Congressmen and workaday property owners pointed to the fire in Riverside County as powerful proof that the ESA is in critical need of reform. The ESA disallows people from protecting their own property, even from fire, if doing so might "harm" or "harass" a k-rat or any other member of a species listed as threatened or endangered under the Act.⁵ The implications of the law's provisions were painfully evident to those 29 families who lost their homes.

Millions of Americans learned about the impact of the ESA through the k-rat story. As people watched and listened to fire victims tell their stories on national television, the victims' anger was palpable. Much of that anger was directed at the ESA and the federal bureaucrats who implemented it in Riverside County. The California Fire's destruction showed the lay public that the ESA can give wildlife more rights to land than landowners. And perhaps for the first time in the ESA's twenty year history, this indictment was given voice on prime time network television. Media coverage ignited searing doubts about the Act's perverse priorities and strict regulations, thus fueling the firestorm of controversy that has engulfed the ESA this year.

THE GAO REPORT

The k-rat story has fueled the growing opposition to excessive environmental regulation. Thus it was only a matter of time before that story was challenged by the ESA's supporters. The primary challenge came on July 14, 1994, when several members of Congress released a report that they had requested from the GAO. The report has been widely cited as exonerating the ESA from complicity in the fire's destruction.

The National Wildlife Federation, for example, claims the GAO report "demonstrates conclusively" that the ESA "had nothing whatever to do with" the tragedy, but instead shows that critics of the ESA "will go to almost any lengths [sic] of distortion, fabrication, and manipulation of the truth to gut America's most important conservation law."⁶

Equally celebratory and no less vociferous were dozens of other environmental special interests, which rushed to announce that "without a doubt," the ESA had been "completely

⁵ Section 11 of the ESA states that a person who violates the Act "to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species" will not be penalized. No such exemption is given for defense of property, only defense of life, and only when bodily harm is threatened directly by a member of a listed species.

⁶ William W. Howard, "Media Advisory from the National Wildlife Federation," July 14, 1994.

vindicated." Any claim to the contrary was dubbed a "myth," part of a "selfish agenda" to "spread lies."⁷ This is evident, The Wilderness Society tells us, because "the report is quite clear on the role the Stephens' kangaroo rat and the prohibition on disking... played in the loss of 29 homes: *none*." According to The Wilderness Society, "this unequivocal conclusion was reached after the GAO interviewed state, county, and independent fire experts."⁸

While it is true that GAO investigators spent approximately three days interviewing local fire officials, that does not mean the GAO accurately reported those conversations. Nor does it mean that the GAO's conclusion is supported by the evidence. Any honest and informed survey of the available evidence would show that the ESA contributed to the fire's destructiveness. Indeed, on key points of contention the GAO ignored crucial facts and misrepresented its sources in order to exonerate the ESA.

Yet, despite all the rhetoric suggesting otherwise, the GAO did admit: "No evidence is available to conclusively determine the specific cause for the loss of each of the 29 homes destroyed in the California Fire."⁹

From this one is supposed to infer that such evidence could be found, if it existed. But in fact, fire officials say that too many variables exist to *ever* isolate the specific cause of a wildfire's destruction, save the cause of the fire itself. Thus, from the outset, it appears the GAO designed an investigation to conclusively determine something that could not be conclusively determined.¹⁰

But the GAO went further. Its report absolved the ESA, even though its search seems inconsistent with this finding. Only so much is known about how the investigation was actually conducted, but the Riverside County residents interviewed by the GAO were

⁷ Endangered Species Coalition, "Just Released GAO report clears The Endangered Species Act of responsibility for destruction caused by the 1993 California Wildfires," Press Statement, July 14, 1994.

⁸ Pamela Eaton, "Times exploits others' misfortune for political points" (letter), *The Washington Times*, July 27, 1994.

⁹ U.S. General Accounting Office, *Endangered Species Act: Impact of Species Protection Efforts on the 1993 California Fire*, GAO/RCED-94-224, July 8, 1994, p. 9.

¹⁰ The GAO's probity in conducting its investigation is in serious doubt. For instance, after spending a couple of weeks with FWS personnel, GAO's investigators were packed up and ready to leave Riverside County -- *without ever having spoken with local fire officials or fire victims*. It was only after being cajoled by an official with the California Department of Forestry and Fire Protection that the GAO investigators decided to question local fire officials and fire victims, those most likely to refute the GAO's conclusion. (based on a telephone interview with a CDF official who requested anonymity) Ironically, GAO relies on many of these same people for support of its conclusion -- even though what they claim to have told the GAO actually undermines its conclusion.

optimistic, as the GAO's lead investigator appeared to be taking copious notes. Unfortunately, very little of what these people told the investigator made it into the report. Significant bits of countervailing evidence were offered, by both fire victims and fire officials, yet these accounts were either given no weight or not mentioned at all.

Most unsettling are the numerous objections to that which did appear. Apparently, not only did the GAO discount or overlook many crucial elements, much of what did appear in the report was grossly misrepresented, according to those interviewed by the author of this report. That goes for fire victims, as well as fire officials.

HOW TO BUILD A FIRE

The ESA prevented people from doing what they could to protect themselves from the risk of fire. It also prevented fire officials from doing their job, which is to protect the public. As Richard Wilson, Director of the California Department of Forestry and Fire Protection (CDF), points out: "There's an inherent conflict between preserving wildlife habitat and fire safety" in California.¹¹ Director Wilson believes that conflict can be resolved, as do the other state fire officials we interviewed. But under the ESA as it has been applied in Riverside County, public safety has been forced to take a back seat to preserving wildlife habitat.

A chronology of key events and policy developments sheds new light on the regulatory context from which the fire arose.

Forget Public Safety

- Southern California, including Riverside County, is an historically fire-prone region of the country.
- California's annual fire season is generally considered to begin in May and end in November.
- California state law requires that all flammable vegetation be removed within a minimum of 30 feet around structures by clearing the ground down to bare, mineralized soil. The state regulation extends to 100 feet from structures. A Riverside County ordinance *requires* clearing up to 100 feet.
- Every April, the Riverside County Fire Department (which is operated under contract by CDF) issues weed abatement notices. Property owners are notified

¹¹ Telephone interview with Richard Wilson, Director, California Department of Forestry and Fire Protection, August 1, 1994.

of their responsibility to abate flammable vegetation as directed. The County removes such vegetation where it is not the responsibility of private landowners, or in the event landowners abdicate their responsibilities.

- In March 1989, the County drafted its Weed Abatement Notice (with a "warning" from the FWS), which recommended that flammable vegetation should be "mowed with light equipment during daylight hours rather than disked so as to avoid destruction of the endangered species or its habitat" (*see Appendix I*).
- In April 1989, the County apprised the FWS of "the increased fire hazards related to mowing rather than disking property," (thus refuting GAO's claim that local officials never apprised the FWS of the increased risks)¹² and requested that the no-disking prohibition be limited "to those areas in which there is a substantial risk of destroying the [k-rat] or its habitat." The FWS did not respond (*see Appendix II*).
- In 1990, the FWS warned the County that it "could be considered a responsible party if any [k-rats were] taken subsequent to issuance of a public weed abatement notice." The FWS also warned the County that the extant biological surveys "can be misleading," suggesting that k-rats could be found anywhere in its historic range of over 500,000 acres, and that relying on the current maps was risky (*see Appendix III*).
- The FWS further warned: "disking within the historic range and in potential habitat of this species puts the County and land owner at risk of violating Section 9 of the [ESA]...Civil and criminal penalties can be levied against responsible parties." The significance of this letter is that people were potentially liable anywhere in the western third of the county, regardless of whether or not the area was identified habitat (*See Appendix III*).
- Under threat of federal penalty, the County capitulated to the no-disking rule from the outset, despite their judgement that disking is a much more effective means of fire prevention and control than mowing.¹³

Ignore Private Costs

- The ESA prohibits anyone from "taking" listed species, such as the k-rat. To take means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Criminal penalties

¹² GAO report, p. 7.

¹³ Wilson interview and telephone interview with Mike Harris, Riverside County Fire Chief, July 1994.

can be as high as one year in jail and/or as much as \$100,000 per violation for individual citizens.¹⁴

- On May 13, 1992, Michael Rowe informed his neighbors that their property had been posted as an "extreme fire hazard," which concerned Mr. Rowe whose house was within a few yards of his neighbors' property line (*see Appendix IV*).
- On June 5, 1992, the FWS warned Mr. Rowe "of the potential presence of the [k-rat] and...nesting birds protected under the Migratory Bird Treaty Act." Disking a firebreak in his neighbors' field was strongly discouraged. The FWS warned that if "you take endangered species or migratory birds you are liable for both State and Federal prosecution." The FWS suggested "mowing the site and removing debris rather than discing," even though mowing would "take" nesting birds just as surely as disking would (*see Appendix V*).
- On June 11, 1992, the Riverside County Fire Department issued Mr. Rowe's neighbors, Cindy and Andy Domenigoni, a Notice to Abate: "You are hereby notified and required to abate the flammable vegetation from your property" (*see Appendix VI*).
- On July 1, 1992, the FWS informed the Domenigonis that a June 5 survey showed k-rats "were still found to occupy the area (proposed fire break area) adjacent to [Mr. Rowe's] property. "Due to the presence of this federally endangered species," the FWS explained, "*discing of the firebreak would harm this species*" (emphasis added). "As this area is within a proposed Preserve for [k-rats], incidental take under the current permit is not authorized" (*see Appendix VII*).
- Then, the FWS appealed to the very same fire officials whom it had bullied into the no-disking policy: "[A]ccording to the California Department of Forestry, mowing will create an adequate firebreak" (*see Appendix VII*).
- Under threat of federal penalty, almost everybody capitulated to the no disking rule -- everybody but Mr. Rowe, and a few others who risked violating the law to save their homes.¹⁵

¹⁴ Section 9 of the ESA (harass and harm are defined at 50 C.F.R. Sect. 17.3 [1990]).

¹⁵ Ike C. Sugg, "California Fires -- Losing Houses, Saving Rats," *The Wall Street Journal*, November 10, 1994.

NOW THAT'S A FIRE

When the California Fire came roaring over a nearby hilltop on the Domenigoni's property around 1 a.m. on October 27, 1993, Michael Rowe cut through the Domenigoni's fence, jumped on his tractor and *disked* a firebreak to protect his property. He saved his home. CEI reported his harrowing story in the *Wall Street Journal*, as did ABC News on "20/20." But the GAO discredited Mr. Rowe by claiming he confessed afterwards that disking the firebreak was irrelevant.

According to the GAO, Mr. Rowe "acknowledged that the wind direction shifted as the fire came close to his property and that the fire shifted its path and proceeded to destroy other homes."¹⁶ Mr. Rowe is outraged: "I never said that; the wind was blowing right at me."¹⁷ Mr. Rowe says that he had a garage full of ash, facing the direction from which the fire came to prove it. Indeed, the fire hit his firebreak, burned along the edge of it where there was something to burn, and then around the edge of the disked area.

Yet, the GAO went even further, claiming that Mr. Rowe actually "stated that the changing wind direction was likely as important as disking in saving his home."¹⁸ Mr. Rowe cannot believe that a federal agency charged with the responsibility of ferreting out the truth could claim that he actually made that statement. "I do not see how the GAO's mistake could have been an honest one," he says.¹⁹ Mr. Rowe's veracity has been corroborated by a witness to the conversation with the GAO investigator.

The fire's direction did change, but only after it hit his firebreak. When the wind began to shift the fire had already passed the firebreak, which allowed it to burn toward Mr. Rowe's home from an unprotected direction. Luckily, it was only a glancing blow. He lost a shack, an automobile and several dozen trees. Because he deterred the fire by disking, and stayed to fight it as it burned around the edge of his yard and past his property, he saved his house.

Once an analyst has a logistical lay of the land, he or she must wonder why a fire that was burning from the north and northeast direction would be blocked by a firebreak that stretched from north to south. The answer is that Mr. Rowe also benefitted from a small, disked field that he had harvested well before the fire arrived. (Mr. Rowe's 20 acre hilltop ranch is in the Lake Skinner Study Area, but has not been designated as occupied habitat, while the Domenigoni's property across the fence where he disked has been so designated.)

¹⁶ GAO report, p. 10.

¹⁷ Telephone interview with Michael Rowe during the week of July 18, 1994.

¹⁸ GAO report, p. 10.

¹⁹ Rowe interview.

The fire burned to the edge of his field, but not across it. In other words, Mr. Rowe's house was protected by cleared, mineralized soil on the northern side.

That also would have been the case on the eastern side of his house (where Rowe cleared his last-minute firebreak) had his neighbors been allowed to farm their two fields that the fire burned across. Unfortunately, the Domenigonis had fallowed those fields, to conserve the soil's productivity by resting it, the year before the k-rat was listed. Not long after the k-rat was listed in 1988, the FWS told the Domenigonis they could not farm their fields, which comprise approximately 800 acres. Thus, the fields had lain fallow since 1987 and were ready to burn (*see Appendix VIII*).

Given the California Fire burned in late October, after the harvest season, those fields would have been cleared of vegetation, had the FWS allowed the owners to farm it. They did not. So rather than having an effective fire break of over one full square mile, there was an 800 acre tinderbox instead. The fields contained brush from two to four feet deep, positioned in between the fire's origin and most of the homes that burned. Those that were closest to the Domenigoni's over-grown property, like Mr. Rowe's home, were most in jeopardy. More than half a dozen homes bordering that field burned down.

It doesn't take a rocket scientist to implicate the ESA in this tragedy, but the GAO report failed to even *mention* this critical element in the fire's destruction. Equally deplorable was the GAO's assertion that the Domenigonis were "offered assistance [by the FWS] in removing the vegetation by alternative methods. But the offer of assistance was not accepted, and no weed abatement was performed in that location before the California Fire."²⁰ In fact, this is untrue; either the FWS lied to the GAO or else the GAO is lying to Congress.

The only "assistance" that the FWS offered the Domenigonis was a laundry list of things to do in lieu of disking, as the family had done for five generations. The FWS recommended mowing, an implausible suggestion. Not only was it ludicrous to imagine mowing an 800 acre carpet of dense, four foot deep vegetation, but doing so would have exacerbated -- not mitigated -- the risk of fire by sparking off rocks. "You can't mow that kind of vegetation," says Riverside County Fire Chief Harris.²¹

The FWS suggested mowing nonetheless. The Domenigonis were told to wet the field before and after mowing it, despite the fact that the Domenigonis possess neither a mower nor a water truck. Thus, the "assistance" offered by FWS amounted to this: buy or lease a mower; buy or lease a water truck; wet the 800 acre field; mow it; wet it again; and then remove the clippings, presumably by hand. (*see Appendix IX*) The FWS went so far as to even suggest "vacuuming" (*see Appendix II*)

²⁰ GAO report, p. 7.

²¹ Harris interview, July 27 1994.

As the rapid combustion of the Domenigonis' fields made clear, the ESA's prohibitions played a critical role in fueling the fire's destructiveness. The GAO made much of the fire's ferocity: "fanned by winds of up to 80 miles per hour, the fire covered 12,000 acres in the first six hours and destroyed most of the 29 homes...the fire repeatedly jumped many potential barriers... includ[ing] highways, paved and gravel roads, cleared agricultural fields, and the San Diego Canal."²² As if the fire jumped everything in its path, the GAO failed to mention those things the fire did not jump.

In the first six hours (from 11:30 pm to 5:30 am), the Domenigonis' field burned, as did at least seven houses adjacent to the field. In the first six hours, Michael Rowe disked a 100 foot wide firebreak on the edge of that field and saved his home. Yes, in the first six hours the fire did jump highways and the San Diego Canal (which is nothing more than a ditch roughly 200 ft. wide). But after it did, the fire came to one of the few fields the Domenigonis were allowed to farm, and burned around it. This was fortunate for the Domenigonis, who on horseback had herded 100 head of cattle into the field at 2:30 am. The fire approached and surrounded them, but did not take their lives or any of their cattle.

They stayed there until dawn -- in a triangular shaped, seven acre field that provided a less than 500 foot firebreak. The GAO mentioned none of this. However, the GAO did claim that "clearing a 100- to 1,000-foot area around a home would likely have made no difference in the early hours of the fire."²³ Yet, Michael Rowe's firebreak was just under 100 feet, and a firebreak less than half of what the GAO claims was irrelevant actually saved the Domenigonis' lives.

GAO PLAYS WITH FIRE

Much of what the GAO concludes is premised on statements purportedly made by local fire officials. According to Mike Harris, the Riverside County Fire Chief, the GAO's investigators repeatedly posed this question: "could you prove that a given house burned down because the area wasn't disked; i.e., that the prohibition was the only contributing factor?"²⁴ Of course not, he answered: "it would have been incorrect for us to have said that was the sole factor," says Chief Harris. "Had they asked, 'did the no-disking rule contribute to the loss of homes,' we would have responded 'yes.'" But the GAO never asked that question.

This failure to probe for the truth is one of the major problems with the GAO's report, according to Chief Harris. "It portrays this idea that fire behavior is a single element

²² GAO report, p. 8.

²³ GAO report, p. 9.

²⁴ Harris interview, July 27, 1994.

concept and that's just not true," says Harris, who claims he pointed this out to the investigators more than once. "There are simply too many variables to isolate one as the sole factor," he says, "but that was the question they asked us." The GAO's report notwithstanding, Chief Harris says that "the prohibition on disking definitely contributed to the loss of homes."²⁵

After asking fire officials whether there were data to conclusively determine the specific reason why each of the 29 homes burned down, the GAO exceeded the boundaries of that question to conclude: "[W]e believe, *on the basis of the experience and views of fire officials and other experts*, that the loss of homes during the California Fire was not related to the prohibition of disking in areas inhabited by the Stephen's kangaroo rat" (emphasis added).²⁶ Chief Harris disagrees, emphatically: "That's ludicrous...it's just not an accurate statement."²⁷

Elsewhere in the report, the GAO again predicates its conclusion on the premise that Chief Harris and those in his department agree: "The professional views and judgments of county fire department officials and other experts...were that the loss of homes during the fire was not related to the prohibition of disking as a weed abatement method."²⁸ Yet again Chief Harris reiterates his objection: "that conclusion does not accurately reflect the position of the fire department." According to Chief Harris, "there is a wide space between the questions they asked us and the conclusions they drew from what we said."²⁹

There is clearly a pattern here. But when confronted with the fact that the GAO based its conclusion on what he and his staff purportedly said, Chief Harris is generous. He cautiously surmises that the GAO's investigators "must have heard things differently than how we stated them." In other words, the GAO appeals to the authority of local fire officials to corroborate a conclusion that those officials did not and do not support. It appears that they, too, view the conclusion as untenable.

²⁵ Harris interview, July 27, 1994.

²⁶ GAO report, p. 9.

²⁷ Harris interview, July 29, 1994.

²⁸ GAO report, p. 9.

²⁹ Harris interview, July 29, 1994.

DIRT DOESN'T BURN

The GAO reports that the County Counsel, the fire department and the FWS "agreed" that "mowing with light equipment would provide adequate firebreaks around homes."³⁰ They agreed in much the same way that taxpayers "agree" with the IRS -- under threat of federal penalty. As the GAO itself reports, there were "concerns within the fire department about the disking prohibition at the time of its development," but that Chief Harris "accepted" it for fear of "litigation if disking was used," and "his belief that mowing...would be better than no weed abatement."³¹

Anything is better than nothing; but the question is what method of weed abatement is best at lowering the risk posed by fire hazards. Richard Wilson, Director of the California Department of Forestry and Fire Protection, explains: "disking is the best tool...it's just a simple fact. If you mineralize the soil you eliminate the carrier of fire...mowing doesn't work."³² As early as 1989, there is documented evidence that fire officials were well aware of the increased fire hazards from mowing instead of disking (*see Appendix II*).

Chief Harris says that "over the years, we've proven empirically if you have clearance you have a substantially better chance of your home being saved."³³ By eliminating fuel for fire, not only does disking prevent cleared areas from burning but it slows the fire down. As Director Wilson points out, it "gives your fire people the opportunity to do something."³⁴ Yet the GAO reports that "swirling showers of burning embers were driven by winds of up to 80 miles per hour. Such fires go where they want, and weed abatement techniques become moot."³⁵

Director Wilson disagrees: "that's not true; we have burning embers in all kinds of fires...the point is, if it's disked you have a much better chance of stopping it...disking is a much more effective way to protect structures [than mowing]."³⁶ Chief Harris explains that mowing leaves fuel, which "still carries fire to the edge of the house."³⁷

³⁰ GAO report, p. 2.

³¹ GAO report, p. 7.

³² Wilson interview, August 1, 1994.

³³ Harris interview, July 29, 1994.

³⁴ Wilson interview.

³⁵ GAO report, p. 10.

³⁶ Wilson interview.

³⁷ Harris interview, July 29, 1994.

Disking is better than mowing for the obvious reason that fire needs fuel to burn: mowing leaves fuel -- in the form of low-cut grass, weeds, and roots -- while disking eliminates such combustible vegetation. No one to my knowledge has argued that none of the 29 homes would have been destroyed if Riverside County residents were allowed to disk. Certainly no one at CDF or the Riverside County Fire Department expressed that view. In all likelihood, homes would have been lost anyway. But as Chief Harris surmises, "probably not as many."

The GAO states that "data from the fire department" revealed that, out of the 29 homes destroyed by the fire, "23 showed no evidence of any type of weed abatement before the fire."³⁸ Chief Harris is puzzled: "I do not know how the GAO made that determination."³⁹ Indeed, unless an area was disked before the fire came, it seems implausible that a burned area with tall grass would look any different from a burned area with mowed grass. When a fire like the one in Riverside County burns vegetation, it burns it down to the ground. Even the GAO reports that disking was not considered a legal option. Therefore, while the GAO implies that prior weed abatement measures would be discernible, there seems to be no rhyme or reason for thinking this.

PUTTING OUT THE FIRE

According to the GAO report, the expert opinions of state and local fire officials constituted the basis for its conclusion that the no-disking rule "was not related" to the destruction of homes. "I didn't feel that it [the GAO report] accurately represented the position of the fire department," says Chief Harris. "I think clearly the report is geared to say that the regulations for k-rats and their impact on public safety had no bearing on the outcome of the fire," Chief Harris concludes, "but I don't believe that is a correct statement."⁴⁰

One of Chief Harris's major "disappointments with the GAO report is that it seems to deal exclusively with the liability issue." He refers to the federal government's liability for what happened, and implies that the GAO report seems designed to exculpate the FWS. Most of all, says Chief Harris, "I don't appreciate them [the FWS] dictating to me the proper way to protect public safety."⁴¹ While the GAO report does not characterize the FWS's strong-arm tactics as dictation, it does leave the reader with the clear understanding that fire

³⁸ GAO report, p. 9.

³⁹ Harris interview, July 29, 1994.

⁴⁰ Harris interview, July 29, 1994.

⁴¹ Harris interview, July 27, 1994.

officials and landowners faced potential prosecution if they disked in occupied or potential k-rat habitat. (The GAO did get at least one thing right.)

In the early days after the fires, the FWS actually denied the fact that the ESA had prevented people from doing what they could to protect themselves and their property from the risk of fire. Indeed, an FWS official told "20/20's" John Stossel that the FWS had never prohibited people from disked firebreaks.⁴² Too many threatening letters from the FWS to fire officials and property owners have been made public for the government to maintain that story (*see Appendices III, V & VII*). So, FWS switched its story, and began blaming local fire officials.

Soon after the fires, FWS official Peter Stine told "Front Page" (a Fox network program) that local fire officials had agreed to the no-disking policy, and only voiced their concern after the fires had done their harm. This spin control tactic went to the top of the FWS power structure.

Mollie Beattie, Director of the Fish & Wildlife Service, testified before Congress that "those policies had been approved by the local Fire Department."⁴³ Ms. Beattie further stated: "the policies of the Fish and Wildlife Service were checked through with the local Fire Departments. From what we knew these were as fire safe policies as anything that could be had."⁴⁴ In "retrospect," Ms. Beattie supposed that this might not have been the case. "But given that we have the approvals of the local Fire Departments, I am not sure how anyone would have known that."⁴⁵

As has been established in this paper, the FWS has no ground whatsoever on which to assert that the capitulation of fire officials was purely voluntary. "I don't think anyone in the fire service would agree that we have accepted willingly the regulations that have come down from [the FWS] that are in conflict with sound public safety measures," objects Chief Harris. "We simply want to say 'we told you this was going to happen and now that it has happened, let's fix it.'"⁴⁶ Indeed, the FWS was apprised as early as 1989 of the increased risk of fire damage, as a result of the no-disking policy (*see Appendix II*).

⁴² Telephone interview with John Stossel, ABC News, week of November 15, 1993.

⁴³ Mollie Beattie, Director of the U.S. Fish and Wildlife Service, Testimony before the House Committee on Appropriations' Subcommittee on Interior, April 25, 1994.

⁴⁴ Beattie testimony.

⁴⁵ Beattie testimony.

⁴⁶ Harris interview, July 29, 1994.

Now that the heat has been turned up on the FWS and its implementation of the ESA, the FWS is saying that disking is okay.⁴⁷ If disking does not reduce fire hazards, this reversal of policy would not be necessary. If disking would violate the ESA before the fires, then it is still illegal. The law hasn't changed, but the politics have. Defenders of the ESA are rewriting history so as to avoid rewriting the law. The GAO report is part of that agenda. The GAO report is not unlike the earlier efforts by FWS officials to spin-control the firestorm of controversy over the ESA, and is only the latest in what has become a pattern of official lies -- to defend the indefensible prohibitions of the ESA.

⁴⁷ GAO report, pp. 2-3.

RATS, LIES, AND THE GAO

Appendices

BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

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GLEN E. STEPHENS*
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JOHN D. WAHLIN*
MICHAEL D. HARRIS*
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800 EAST TAHQUITZ WAY
POST OFFICE BOX 2710
PALM SPRINGS, CALIFORNIA 92263
TELEPHONE (619) 325-7264
TELECOPIER (619) 325-0365

GORDON COLOGNE, OF COUNSEL
JAMES B. CORISON, OF COUNSEL
RICHARD A. OSHINS, OF COUNSEL
ADMITTED IN NEW YORK, NEVADA,
WASHINGTON, D.C. COURT OF CLAIMS

OFFICES IN
RIVERSIDE (714) 486-1450
RANCHO MIRAGE (619) 565-2611
ONTARIO (714) 999-6564
SAN DIEGO (619) 437-4815

*A PROFESSIONAL CORPORATION

March 31, 1989

VIA TELECOPIER

Mr. Ted Pfeiffer
Riverside County Fire Dept.
210 W. San Jacinto
Perris, CA 92370

RE: Kangaroo Rat Notice

Dear Mr. Pfeiffer:

I spoke to Peter Stine at the United States Fish and Wildlife Service regarding the proposed kangaroo rat warning to be included in the Weed Abatement Notice. He has given an o.k. to the the following language:

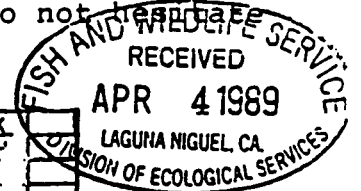
"This Notice does not authorize the violation of the Federal Endangered Species Act, the California Endangered Species Act, or any of the regulations implementing such acts. The United States Fish and Wildlife Service recommends that any area requiring weed abatement which is inhabited by endangered or threatened species, such as the Stephens' Kangaroo Rat, should be mowed with light equipment during daylight hours rather than being disked so as to avoid destruction of the endangered species or its habitat".

Should you have any questions regarding the inclusion of this warning in your Weed Abatement Notice, please do not hesitate to contact me.

Sincerely,

BEST, BEST & KRIEGER

Daniel E. Olivier



Handwritten initials and a grid table with initials like NMK, WGF, RJP, J.S.

DEO/ks

cc: Ms. Karen Watts
Mr. Peter Stine

Appendix II

BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

ARTHUR L. LITTLEWORTH*
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600 EAST TAHQUITZ WAY
POST OFFICE BOX 2710
PALM SPRINGS, CALIFORNIA 92263
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TELECOPIER (619) 325-0325

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RICHARD A. OSBORN, OF COUNSEL
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OFFICES IN
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RANCHO MIRAGE (919) 888-2811
ONTARIO (714) 888-8894
SAN DIEGO (619) 457-4918

*A PROFESSIONAL CORPORATION

April 18, 1989

Mr. Peter Stine
U.S. Fish and Wildlife Service
24000 Avila Road
Laguna Niguel, CA 92656

RE: Riverside County Weed Abatement Program

Dear Mr. Stine:

This is a follow up to our telephone conversation on April 12, 1989 regarding the proposed weed abatement program in western Riverside County. You will recall that because of the increased fire hazards related to mowing rather than disking property, we would like to limit mowing activities to those areas in which there is a substantial risk of destroying the Stephens' Kangaroo Rat or its habitat. In order to avoid destruction of the Stephens' Kangaroo Rat or its habitat, the Fire Department, in conjunction with the Planning Department of the County of Riverside, are working together to identify all lands involved in the weed abatement program which lie within the known occupied habitat of the Stephens' Kangaroo Rat. The Fire Department is using the maps produced by Dr. Michael O'Farrell as the primary source of information regarding the location of the Stephens' Kangaroo Rat. In addition, the Fire Department is working with the Planning Department of the County of Riverside to identify other areas within the weed abatement area known to be occupied by the Stephens' Kangaroo Rat which are not included in Dr. O'Farrell's maps.

All areas known to be occupied by the Stephens' Kangaroo Rat as identified by Dr. O'Farrell's maps or other available information, will receive special treatment under the weed abatement program. In such areas, regardless of whether the areas

Appendix I

BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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SAN DIEGO (619) 457-4815

*A PROFESSIONAL CORPORATION

March 31, 1989

VIA TELECOPIER

Mr. Ted Pfeiffer
Riverside County Fire Dept.
210 W. San Jacinto
Perris, CA 92370

RE: Kangaroo Rat Notice

Dear Mr. Pfeiffer:

I spoke to Peter Stine at the United States Fish and Wildlife Service regarding the proposed kangaroo rat warning to be included in the Weed Abatement Notice. He has given an o.k. to the the following language:

"This Notice does not authorize the violation of the Federal Endangered Species Act, the California Endangered Species Act, or any of the regulations implementing such acts. The United States Fish and Wildlife Service recommends that any area requiring weed abatement which is inhabited by endangered or threatened species, such as the Stephens' Kangaroo Rat, should be mowed with light equipment during daylight hours rather than being disked so as to avoid destruction of the endangered species or its habitat".

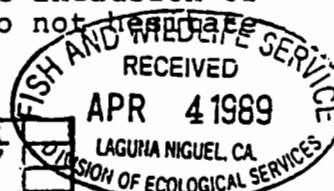
Should you have any questions regarding the inclusion of this warning in your Weed Abatement Notice, please do not hesitate to contact me.

Sincerely,

BEST, BEST & KRIEGER

Daniel E. Olivier
Daniel E. Olivier

Table with 2 columns and 6 rows containing initials: NMK, WGP, RAS, RJL, JFS, JFS



DEO/ks

cc: Ms. Karen Watts
Mr. Peter Stine

File: _____

Appendix II

BEST, BEST & KRIEGER

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*A PROFESSIONAL CORPORATION

April 18, 1989

Mr. Peter Stine
U.S. Fish and Wildlife Service
24000 Avila Road
Laguna Niguel, CA 92656

RE: Riverside County Weed Abatement Program

Dear Mr. Stine:

This is a follow up to our telephone conversation on April 12, 1989 regarding the proposed weed abatement program in western Riverside County. You will recall that because of the increased fire hazards related to mowing rather than disking property, we would like to limit mowing activities to those areas in which there is a substantial risk of destroying the Stephens' Kangaroo Rat or its habitat. In order to avoid destruction of the Stephens' Kangaroo Rat or its habitat, the Fire Department, in conjunction with the Planning Department of the County of Riverside, are working together to identify all lands involved in the weed abatement program which lie within the known occupied habitat of the Stephens' Kangaroo Rat. The Fire Department is using the maps produced by Dr. Michael O'Farrell as the primary source of information regarding the location of the Stephens' Kangaroo Rat. In addition, the Fire Department is working with the Planning Department of the County of Riverside to identify other areas within the weed abatement area known to be occupied by the Stephens' Kangaroo Rat which are not included in Dr. O'Farrell's maps.

All areas known to be occupied by the Stephens' Kangaroo Rat as identified by Dr. O'Farrell's maps or other available information, will receive special treatment under the weed abatement program. In such areas, regardless of whether the areas

LAW OFFICES OF
BEST, BEST & KRIEGER

Mr. Peter Stine
Page Two
April 18, 1989

are adjacent to structures or are larger pieces of vacant property, the County will include in its weed abatement notices or weed abatement citations the following warning:

"Your property is in an area known to be inhabited by the Stephens' Kangaroo Rat, an endangered species. In order to avoid a potential violation of the Federal Endangered Species Act, the California Endangered Species Act, or any of the regulations implementing such acts, all portions of your property requiring weed abatement should be mowed with light equipment (i.e. wheeled tractors or hand equipment) during daylight hours rather than being disked so as to avoid the possible destruction of the Stephens' Kangaroo Rat or its habitat. Additionally, in order to enhance fire prevention, the fire department recommends removal of all cut weeds through weed catching equipment or vacuuming."

In weed abatement areas which are not within O'Farrell's mapped areas or otherwise known to the County to have Stephens' Kangaroo Rats, the warning will not be included in the notices and disking will be allowed. As we have discussed, however, there should be little risk of destruction of the rat or its habitat from disking in these areas, not only because of the apparent absence of rats, but also because these areas have generally been disked for the past four or five years as part of the weed abatement program. I have discussed this program with Bill Havert at the Sierra Club. He informed me that he understood the objectives of the County and stated no objections to the program as outlined above.

If the Fish and Wildlife Service, or the Department of Fish and Game, has any objections to the program as outlined above, I would request that I be notified in writing of such objections within five (5) days of the date of this letter.

Please feel free to contact me or Karin Watts at the County Counsel's Office with any questions or comments regarding the program or any of the matters set forth in this letter. Thank you for your cooperation and attention to this matter.

Sincerely,

BEST, BEST & KRIEGER


Daniel E. Olivier

DEO/ks

cc: Mr. Fred A. Worthley, Jr.
Mr. Bill Havert
Karin Watts, Esq.
Mr. Travis Wytten



United States Department of the Interior

FISH AND WILDLIFE SERVICE

FISH AND WILDLIFE ENHANCEMENT
SOUTHERN CALIFORNIA FIELD STATION
Laguna Niguel Office
Federal Building, 24000 Avila Road
Laguna Niguel, California 92656

July 5, 1990

Paul Smith
Fire Captain Specialist
Riverside County Fire Department
210 West San Jacinto Avenue
Perris, California 92370

Dear Mr. Smith:

As of June 21, 1990 the Fish and Wildlife Service (Service) has not received the environmental assessment regarding Riverside County Fire Department's weed abatement program. On June 20, 1990 during a drive-through of the Riverside County (County), numerous parcels which had been recently disked (i.e. within 1 month of observation), were observed by Service personnel.

The Service would like to emphasize that the County could be considered a responsible party if any Stephens' kangaroo rat (Dipodomys stephensi) was taken subsequently to issuance of a public weed abatement notice. We would also like to emphasize that use of the maps generated by Michael O'Farrell and Curt Uptain for the Department of Fish and Game (Distribution and abundance of the Stephens' kangaroo rat) can be misleading. Though they are very helpful in identifying where many population concentrations occurred during the survey, they were unable to survey the entire County. In many instances Stephens' kangaroo rats have been found outside of the areas mapped by O'Farrell and Uptain.

Therefore, diskings within the historic range and in potential habitat of this species puts the County and land owner at risk of violating Section 9 of the Endangered Species Act (Act). Section 9 prohibits the "taking" of a listed species without necessary authorization. Civil and criminal penalties can be levied against responsible parties.

The term "take" in the Endangered Species Act (Act) as defined includes the terms "harm" and "harassment". "Harm" in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral

Mr. Paul Smith

2

patterns, including breeding, feeding or sheltering (50 CFR 17.3).

"Harass" in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

Based on our knowledge of the biology of this species and the affects of disking on habitat which supports this species, it is likely that a "taking" would occur if occupied habitat were to be disked. Site specific information needs to be acquired prior to disking or another non invasive means of fire suppression need to be incorporated. These measures (e.g. mowing, grazing) need to be compatible with the continued existence of the Stephens' kangaroo rat.

The Service believes that the County needs to assume a more responsible role in regards to the impacts potentially incurred to the Stephens' kangaroo rat due to their weed abatement program. We look forward to assisting your agency in identifying areas where the Stephens' kangaroo rat occur. If you should have further questions contact Arthur Davenport at (714) 643-4270.

Sincerely,



FOR Brooks Harper
Office Supervisor

cc: CDFG/Long Beach, Attn. Bruce Eliason/Environmental Services)
USFWS Law Enforcement, Gardena, (ATTN: Special Agent Diane
Petrola)
1-6-90-TA-533

Appendix IV

Michael F. Rowe
P.O. Box 507
Winchester, Calif. 92596
(714) 926 2444

May 13, 1992

Mr. Francis Domenigoni
33011 Holland Rd
Winchester, Calif. 92596

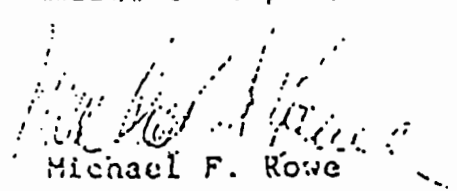
Re. 33976 Sidney Circle
Winchester, Calif.

Dear Mr Domenigoni

The County Of Riverside has recently posted the Rawson Road area as an extreme fire hazard area. You are the owner of property immediately to the north and to the east of my property, designated above.

In that my property contains structures as well as field crops, adjacent to your ownership, I am hereby requesting that you provide an appropriate fire break along our common property line by removal [discing] of the weed growth.

Be advised that should you not provide this fire protection to my property, I will have no choice except to trespass upon your property and remove the dangerous hazard which these weeds present. Due to the seriousness of this situation your immediate response is strongly suggested.


Michael F. Rowe



United States Department of the Interior



FISH AND WILDLIFE SERVICE
FISH AND WILDLIFE ENHANCEMENT
SOUTHERN CALIFORNIA FIELD STATION
Carlsbad Office
2730 Loker Avenue West
Carlsbad, California 92008

June 5, 1992

Mr. Michael F. Rowe
P.O. Box 507
Winchester, California 92596

Dear Mr. Rowe:

The Fish and Wildlife Service (Service) would like to advise you of the potential presence of the federally listed endangered Stephens' kangaroo rat (Dipodomys stephensi) and also the potential presence of nesting birds protected under the Migratory Bird Treaty Act on the Domenigoni property in the vicinity of your proposed fire break.

It is my understanding that Mr. Davenport of my staff, and Special Agent Petrula of the Division of Law Enforcement, spoke with you regarding potential endangered species conflicts relating to your proposed fire break. I would further like to notify you that there could be an impact on nesting migratory birds. I am providing the following information on the Endangered Species Act and the Migratory Bird Treaty Act to provide you with clarification of these federal laws.

The Endangered Species Act states that ". . . it is unlawful for any person subject to the jurisdiction of the United States to . . . take any such species within the United States. . . ." (16 USC 1538(a)(1)(B)).

"Person" is defined by the Endangered Species Act (Act) as an individual, corporation, partnership, trust, association or any private entity; or any officer, employee, agent, department or instrumentality of the Federal Government, of any state, municipality or political subdivision of a state; or any other entity subject to the jurisdiction of the United States. "Take" as defined by the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt to engage in any such conduct. It should be noted that the Act provides for both civil and criminal penalties.

Furthermore, "take" in the Act as defined includes the terms "harm" and "harassment". "Harm" in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such action may include significant habitat modification or degradation where it actually kills or injures wildlife by

Mr. Michael F. Rowe

2

significantly impairing essential behavioral patterns, including breeding, feeding or sheltering (50 CFR 17.3).

Additionally, "harass" in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The Migratory Bird Treaty Act states that ". . . it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill. . . any migratory bird, any part, nest, or egg of any such bird. . ." (16 USC 703). "Take" means to pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to pursue hunt, shoot, would, kill, trap, capture or collect. "Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 CFR 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird. . . .

Be advised that should you take endangered species or migratory birds you are liable for both State and Federal prosecution. The Service is forwarding this information to other appropriate agencies for their information and review.

It is my understanding that you have been unwilling to cooperate with the Service in resolving this matter in a legal manner. Potential methods exist to reduce fire hazards without taking endangered species or nesting migratory birds. An example would include mowing the site and removing debris rather than discing. I would like to emphasize that the Service appreciates your concern and we remain willing to work with you to resolve any conflicts.

If you have any questions or would like additional information, please contact Art Davenport of this office at (619) 431-9440. Special Agent Petrula can be contacted at (310) 297-0062.

Sincerely,

Brooks Harper

Brooks Harper
Office Supervisor

cc: Diane Petrula, FWS Law Enforcement, Gardena Office

*3 acres of tall brush (3 football fields)
and rocks*

Appendix VI

RIVERSIDE COUNTY FIRE DEPARTMENT
HAZARD REDUCTION OFFICE
3760 10TH STREET
RIVERSIDE, CALIFORNIA 92501
714-275-4788

* NOTICE TO ABATE * 467-090-001

*Neighbors
Property*

Date: 06/11/92

DOMENICONI FREDERICK E & FRANCIS
33011 HOLLAND RD
WINCHESTER CA 92396

By virtue of Section 1 of Riverside County Ordinance No. 695

YOU ARE HEREBY NOTIFIED AND REQUIRED TO ABATE THE FLAMMABLE VEGETATION from your property; described as 467-090-001 taken from the Riverside County Assessor's records which lists you as the owner. by mowing or discing an one hundred (100) foot wide strip of land at the boundaries, and through the parcel so that there shall not be any portion larger than two and one-half (2 1/2) acres which is not enclosed by itself within such a strip, which shall be a firebreak.

If said combustible matter is not removed within THIRTY (30) CALENDAR DAYS, the County Fire Chief, or other duly designated officers may order said matter removed by public employees, private contractor, or other persons, and the cost of said removal shall be levied with an added ADMINISTRATION FEE, and assessed against the property as a SPECIAL ASSESSMENT LIEN, or billed directly to the property owner.

APPEALS INFORMATION

AN APPEAL from this order may be taken by PRESENTING A WRITTEN APPEAL to the Hazard Reduction Office at 3760 10th Street, Riverside, California, 92501 (phone 714-275-4788) WITHIN TWENTY (20) CALENDAR DAYS OF THE POST MARK ON THE NOTICE TO ABATE. The Hazard Reduction Officer shall set the time for hearing before the Board of Appeals, and shall notify the Applicant, in writing, of the hearing date.

If you receive notices on adjacent parcels of property and you wish them abated as one piece of land, contact this office, in writing, prior to the expiration date shown above. If you do not make prior arrangements with us and the work is done, the adjacent parcels will be billed separately for the cost of abatement and administration charges. Also, it is necessary that these arrangements be renewed, in writing, each year.

IF YOU HAVE ANY QUESTIONS PLEASE CALL 714-275-4788.
MONDAY - FRIDAY, 9 TO NOON OR 1 TO 4.

NOTE: IF YOU HAVE THREATENED OR ENDANGERED SPECIES ON THIS PARCEL PLEASE CONTACT THIS OFFICE

READ



United States Department of the Interior

FISH AND WILDLIFE SERVICE
FISH AND WILDLIFE ENHANCEMENT
SOUTHERN CALIFORNIA FIELD STATION
Carlsbad Office
2730 Loker Avenue West
Carlsbad, California 92008

July 1, 1992

Cindy Domenigoni
Domenigoni Brothers Ranch
33011 Holland Road
Winchester, California 92396

Dear Mrs. Domenigoni:

Based on information collected during the site visit by Arthur Davenport of my staff on June 5, 1992, Stephens' kangaroo rats (Diodomys stephensi) were still found to occupy the area (proposed fire break area) adjacent to Mr. Michael F. Rowe's property. Based on information contained in our files, the area of the proposed firebreak was also recently trapped by SJM Biological and the animals were identified as Stephens' kangaroo rats.

Due to the presence of this federally endangered species, discing of the firebreak would harm this species. As this area is within a proposed Preserve for Stephens' kangaroo rats, incidental take under the current permit is not authorized. Alternate solutions to discing in establishing and maintaining firebreaks includes grazing and/or mowing. Mowing is used in other areas where Stephens' kangaroo rats are present. Moreover, according to the California Department of Forestry, mowing will create an adequate firebreak. In the establishment of adequate firebreaks, the timing of mowing and/or grazing should correspond to the time when the seed heads of the grasses are immature. This should decrease the need for maintenance of the firebreaks over time.

If we can be of any further assistance or should you have further questions please contact Arthur Davenport at (619) 431-9440.

Sincerely,

Richard Zembal
Deputy Field Supervisor

cc: CDFG/Long Beach, Attn. Environmental Services
USFWS Law Enforcement, Torrence, (ATTN: Special Agent Diane Petrula)
(1-6-92-TA-229)

Appendix VIII

The following map depicts only the fire's path from where Michael Rowe first observed the fire, approximately 1.5 miles away from his home. The map shows how the fire, traveling from the north and east, encountered the Domenigoni's fields -- which would have served as a huge fire break had the Domenigoni's not been prevented from farming them. Unfortunately, their farming operation was halted, as K-rats had infested the fields. With k-rats and no farming, vegetation accumulated. When the fire came, it raced through what would have been a huge firebreak. Instead of an 800 acre clearing, there was a fuel-loaded tinderbox instead. Most of the 29 homes lost in the fires were south and west of the overgrown property, and would have been better protected but for the ESA.

Map Key:

#1: Michael Rowe's house.

#2: Yshmael Garcia's house (destroyed).

#3: The Domenigoni's two fields, approximately 800 acres. The Domenigoni's fallowed their fields in 1987 because they were practicing sound, responsible soil conservation by giving the ground time to rest and regenerate. One year later, in October 1988, the K-rat was listed as an endangered species. Ironically, the Domenigoni's were punished for their good land stewardship. By fallowing their land they inadvertently provided habitat for the K-rat. As a result of K-rats taking over the fields, the Domenigoni's were prohibited from farming them. During the six years of vegetation build-up, a tinder box replaced what would have been a huge firebreak.

#4: Approximately six homes were lost between where the fire started (which is off the map to the northwest) and the Domenigoni's 800 acres. Most of the 29 homes destroyed were to the south and west of the Domenigoni's 800 acres. Seven of these destroyed homes were from a few yards to less than one half mile from the Domenigoni's overgrown property. Such close proximity to the 800 acres of fire-fuel may have sealed their fate. Had the Domenigoni's 800 acres been farmed, it is unlikely that as many homes would have been lost.

ULIVE AVE

Fire

NORTH ↑

HOLLAND

NEWPORT RD

DOMINION

RESERVOIR

Burned area

70

#3

WASHINGTON ST

RD ELYCHOLAN

125

LAKE

SKINNER

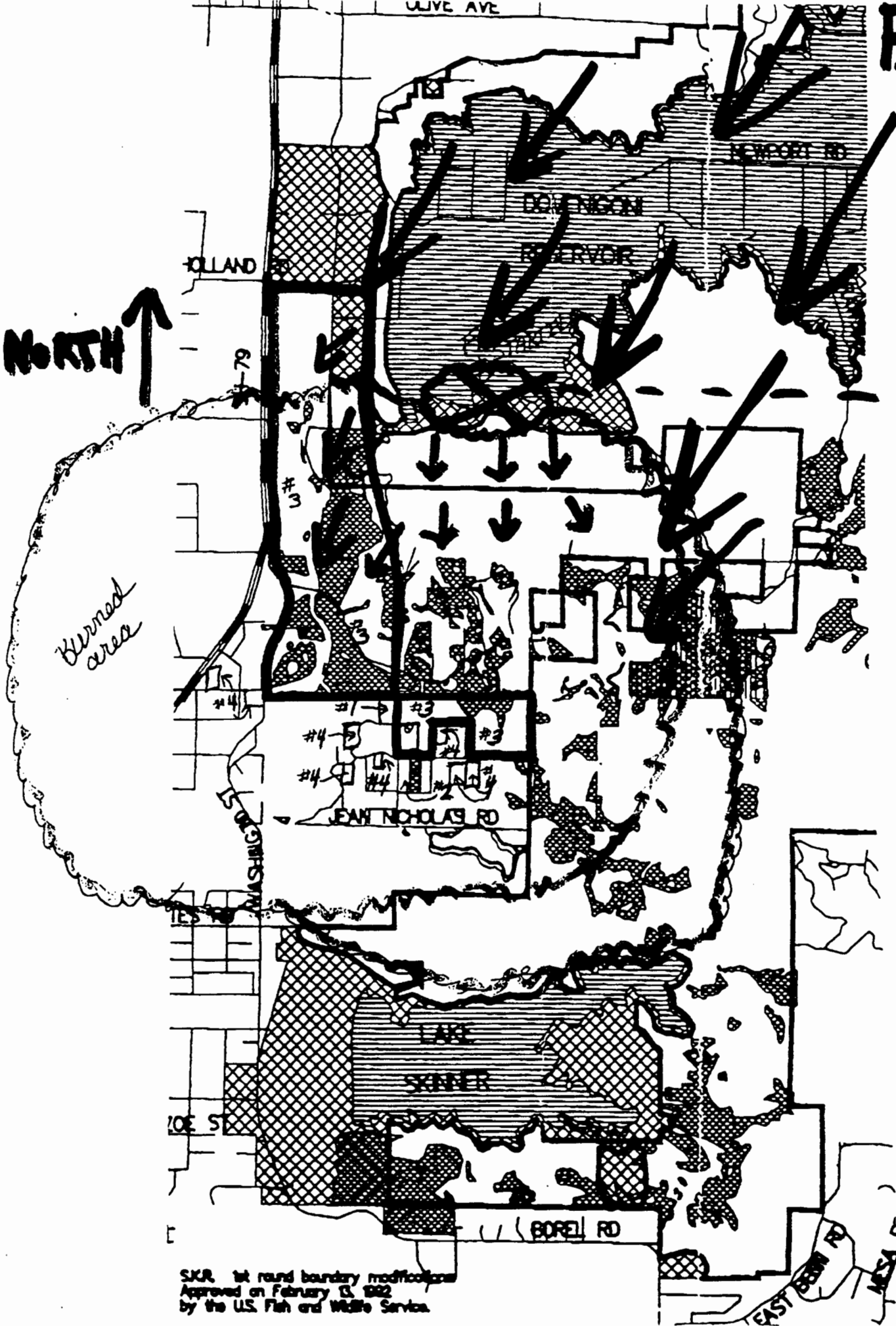
106 ST

BORELL RD

EAST BERN RD

— Where Michael Rowe first saw the fire

SKR 1st round boundary modifications
Approved on February 13, 1992
by the U.S. Fish and Wildlife Service.



Appendix IX

DOMENIGONI BROS. RANCH
33011 Holland Road
Winchester, CA 92596
(909) 926-1763

RE: COMMENTS ON REPORT OF THE GENERAL ACCOUNTING OFFICE AND REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

To: The Honorable Max S. Baucus, Chairman, and Members of the Senate Committee on Environment and Public Works, and The Honorable Gerry E. Studds, Chairman, and Members of the House of Representatives Committee on Merchant Marine and Fisheries

We would appreciate the opportunity to add this to the testimony presented by Mr. Garcia. Upon reading the report by the GAO on the Winchester fire in October 1993 we felt it necessary to respond since we were included specifically within the report as the "agricultural property owner". We felt the need to respond as the information within the report is not truly factual and consists of inaccuracies and needs clarification.

Our ranch has been in existence for 115 years and 5 generations. Shortly after the listing of the Stephen's Kangaroo Rat we were prohibited from farming parts of our ranch that had been historically farmed (approximately 800 acres). Our cultural practices and historic farming methods have always included disking firebreaks not mowing.

The type of terrain, flat to rolling hills with rock outcroppings makes disking the safest, most practical, preferred method. Disking cuts vertically through the dense, coarse, desert shrubs, turning the vegetation into the ground. Mowing is not a realistic alternative. Mowers are designed to cut grass and lawns. The blades on a mower are much smaller and they spin horizontally at high speeds. As a result, in our terrain, mowers are more likely to spark on rocks and ignite the dry chapparal. Additionally, mowing leaves the roots and stubs of cut vegetation intact and requires more frequent clearing.

First of all, to correct some inaccuracies in the reports.

On June 5, 1992 a Fish & Wildlife Service (U.S.F.W.S.), field representative came to the property and walked over about a 200 yard area of a 440 acre parcel of our ranch. He concluded that he felt there were kangaroo rats in the area and that only mowing would be acceptable. We informed him that our cultural, historic practices were to disk a firebreak and that this had been the technique used in this area for generations. Furthermore, we were equipped to disk, not mow. We have approximately 11 1/2 miles of fence line. The ranch does not have the equipment necessary for mowing. We attempted to explain the hazards of mowing and the costs even if it were feasible.

The Fish & Wildlife person recommended:

1. Before mowing wet the vegetation
2. Then mow it
3. Then wet it again
4. Then rake up the clippings
5. Remove the clippings

The report makes it sound as though the U.S.F.W.S. went to great lengths to assist us in finding an alternative to disking. This recommendation was the only assistance we were offered regarding this situation.

This method was not only infeasible, but economically unjustified. In order to create a firebreak in compliance with the U.S.F.W.S. recommendation, we would have to acquire a mower and a water truck with tank, hire a crew (in addition to the ranching crew) to mow, water, rake up the cut vegetation, all the while working under the stringent prohibition against farming much of our land, to offset the added cost.

The report incorrectly casts us as property owners who defied a weed abatement order issued by the County Fire Department and therefore got what we deserved. On page six, the last sentence states, "the county fire department issued the agricultural property owner a weed abatement notice to remove the vegetation from the area in question." We never received a notice from the fire department on the area that we had been prohibited from disking as the result of the presence of Stephens Kangaroo Rat (SKR). We did however, receive a notice on the adjacent property and we complied by disking a firebreak.

We were asked to disk a firebreak by one of our neighbors, who was concerned about the safety of his family. We had been unable to disk the firebreak on our property bordering his land, as our family had for many years, because of the SKR prohibitions. We approached the U.S.F.W.S. in an attempt to get the necessary permission to disk the firebreak, and were given the "assistance" described above. You will recall that our neighbor was the property owner who saved his home by disking a firebreak himself as the fire storm burned out of control.

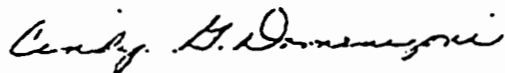
On page nine, the last sentence states, "clearing a 100 - 1,000 foot area around a home would likely have not made a difference". My husband and I, at around 2:30am the morning of the fire, were able to save on horseback 100 head of cattle in a disked 500 foot wide area. We remained in the area until dawn with the cattle while the fire was around us.

During our interviews with the representative of the GAO, these items and many other comments were made which have either been distorted or not included in the report. This report creates a false sense of comfort with the true workings of the Endangered Species Act.

The GAO as an investigative arm of Congress should not be driven by a political agenda which leads to financial and personal ruin of so many Americans.

We urge you to amend the Endangered Species Act as necessary, so that we achieve a true balance without victimizing people and eroding our property rights.

Respectfully yours,



Cindy G. Domenigoni
Representative
DOMENIGONI FAMILY

The Competitive Enterprise Institute

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For more information contact:

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