

# **Committee on Resources**

## **Full Committee**

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### **Testimony**

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**Testimony on H.R. 701, *The Conservation and Reinvestment Act of 1999* and H.R. 798, *The Resources 2000 Act*  
by Javier Gonzales,  
NACo Second Vice President and Commissioner,  
Santa Fe County, New Mexico  
On behalf of the  
National Association of Counties  
Before the U.S. House of Representatives  
Committee on Resources**

**March 9, 1999**

**Washington, D.C.**

**Testimony on H.R.701, *The Conservation and Reinvestment Act of 1999* and H.R. 798, the *Resources 2000 Act*  
On behalf of the National Association of Counties (NACo) by  
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Santa Fe County, New Mexico**

Mr. Chairman and members of the Committee, my name is Javier Gonzales. I am a Commissioner from Santa Fe County, New Mexico and I am here today representing the National Association of Counties (NACo), in my capacity as Second Vice President.

NACo is pleased to testify on behalf of these important bills that, if enacted, will have very positive effects on our Nation's counties and communities. These bills present an exciting opportunity because of the genuine support from such a broad range of interests and the fact that the Administration, the U.S. Senate and this Committee have very similar proposals. It is important to note the bipartisan nature of these proposals and the distinct possibility that something will be done in this arena in this Congress. Each bill uses OCS revenue as the source for funding the distribution proposed by this legislation, and each has similar uses in mind. I need not remind you that the potential budget pitfalls are significant and creative solutions need to be found.

Today I will focus my remarks primarily on the Conservation and Reinvestment Act of 1999, (CARA), but will comment on H.R. 798 during my remarks.

At our recent Legislative Conference, our Board of Directors adopted a resolution in support of the concepts embodied in the CARA legislation. Our resolution states: "NACo strongly supports the principles of the Conservation and Reinvestment Act of 1999 (CARA '99) that would reallocate Outer Continental Shelf (OCS) oil and gas revenues to the LWCF, a coastal state revenue sharing program, add funding to the Urban Park and Recreation Recovery (UPARR) program and establish an innovative procedure for adding funding for the Payments In Lieu of Taxes (PILT) program, in addition to annual appropriated funds. NACo will

advocate a change in the "stateside" program to allow counties to directly apply for LWCF grants and provide authority for innovative and flexible methods for utilization of these grants such as a leasing program, rather than outright purchase of land that removes them from tax roles."

We also have another resolution, one that was passed in July 1998, supporting OCS revenue sharing with coastal states, and one of our key principles for reauthorization of the Endangered Species Act parallels H.R. 701's section on Habitat Reserve Program. We believe it is clear why NACo supports the approaches in this legislation.

Let me take this opportunity to comment on some of the issues surrounding this legislation.

First, NACo is very pleased that the authors have chosen to recognize the significant impact OCS development can have on coastal counties and have taken steps to assure that any shared revenue from OCS development is shared with coastal counties.

Second, the bill acknowledges the need to fund the stateside portion of the LWCF and would assure that counties would share the revenues set aside of the states. It would be preferable to have counties be able to utilize their share of the Fund without having to work within the mandated structure of a state plan, but we believe an acceptable approach can be worked out during deliberations on the bill. We also believe we need to look at innovative approaches, such as conservation leasing to meet the goals of the LWCF without removing land from the tax roles.

Third, the innovative approach to adding money to the PILT program in Titles I and II should be applauded and the authors should be commended for recognizing the need to fund the PILT program at reasonable levels. Let me share with you some interesting facts from a soon-to-be-released PILT study by the federal government:

- Overall PILT payments are about \$1.31 per acre LESS than the property taxes that would be generated. PILT entitlement lands in the sample counties would have generated an average of \$1.48 per acre if taxed by the county, but PILT payments only amount to an average of 17 cents, only 11 percent of the potential tax bill.
- To fully fund PILT another \$100 million would have to be added to the \$125 million currently appropriated.
- To achieve overall PILT/tax equivalency another \$696 million would have to be added to full funding of the PILT program, and even then 18 percent of the counties would not be equivalent.
- In the case of the East, taxes would exceed PILT payments by over 1,000 percent.
- Counties in the Interior West responded that moderate or substantial costs were imposed by the presence of federal lands, particularly in the areas of search and rescue, law enforcement and road maintenance.
- The presence of federal lands in a county provide virtually no direct fiscal benefits (other than PILT and existing revenue sharing programs) to counties.

NACo is the only national organization advocating for additional funding for the PILT program, and we appreciate this attempt to do something about this shortfall.

NACo, through its Large Urban County Caucus, applauds the inclusion of funding for the Urban Parks and Recreation Recovery Act (UPARR). Parks and open space are important factors in improving the quality of life in America's urban counties. We believe improving our parks and preserving and acquiring additional

open space will assist our efforts to attract new economic opportunities for our counties. The synergism created by inclusion of this provision helps bring together urban, suburban and rural counties in support of this legislation. It also brings to the debate on resources other interest groups, such as The U.S. Conference of Mayors, that have not traditionally been involved with legislation of this type.

NACo also supports the additional funding for the Pittman-Robertson Act, but we believe counties should play a larger role in the allocation and utilization of the disbursements.

On other matters, NACo is confident that this legislation does not adversely effect private property rights without due process and local involvement. This is an important consideration as this bill moves through the process. We believe there are adequate protections built into the bill to preclude an incentive for opening new areas for OCS oil and gas development. While supporting this bill approaches, NACo will make every effort to assure there are no unfunded mandates or requirements that would effectively preclude counties from participating and enjoying the benefits of this legislation.

H.R. 798, the *Resources 2000 Act*, has a role to play in the consideration of legislation in this area, however, we do not believe it is as "county friendly" as the CARA proposal and it attempts to fund a much broader array of programs that could reduce the amount of money available for counties to meet local needs. It also does not make any provision to assist the PILT program, which again is very important to the hundreds of counties nationwide that receive payments from this program. Title VIII speaks to the concept of incentives for the conservation and recovery of endangered species, as mentioned in our resolution on the subject, however, we would defer judgment at this time on the specifics of the Title.

I would like to take this opportunity to touch on specific provisions of H.R.701. Title I, Section 103 (a)(2) addresses the issue of incentives for new OCS development, the Committee may want to be even clearer in its intent. We applaud Section 103(a)(3) for its innovative approach to adding money for the PILT program. Section 103(e) assures that counties will benefit from OCS revenue sharing and we believe this is a critical element of the bill. In Section 105(a) dealing with state plans, the role for counties needs to be strengthened and expanded and subsections (b) and (c) need further review and fine tuning. Section 202 (a) needs clarification where it refers to the utilization of any excess revenue above \$900 million where the excess would be available without further appropriation to the PILT program or the Migratory Bird Act of 1935, but does not make clear what entity decides where the money shall be allocated. I specifically wanted to note that the legislation in Section 202(b)(1) requires that 2/3 of the federal LWCF be spent east of the 100<sup>th</sup> Meridian. Many county officials in the west would wholehearted support this requirement because, as you well know, the bulk of the federal lands inventory is in the west. I wanted to reiterate our concern about mandates and Section 202(g) may present some concern. Section 205 establishing a *voluntary* Habitat Reserve Program is consistent with the principles of NACo's resolution on reauthorization of the Endangered Species Act. Section 205(c) specifically limits lands eligible for the program to no more than 25% of the land or water of any county at any one time unless a determination is made that exceeding that level would not adversely affect the local economy of the county. While in concept this is a good idea, the provision allows a *state agency* to make the economic determination rather than the local county commission. This needs to be changed. My final comment about the specifics is that counties need a larger role throughout Title III.

Mr. Chairman, this concludes my testimony. I have attached copies of the relevant policy resolutions adopted by the NACo Board of Directors. I would like to thank you, and members of the Committee for your interest in the needs and concerns of America's counties. We stand ready to work with the Committee, the Senate and the Administration to hammer out an acceptable bill that will set the tone for conservation in the 21<sup>st</sup> Century.

Thank you Mr. Chairman for the opportunity to testify on this important legislation.

**Attachments:****RESOLUTION to Re-allocate Stateside Funding for the Land and Water Conservation Fund**

**Issue:** Support for additional funding for the Land and Water Conservation Fund (LWCF) and for other purposes.

**Adopted Policy:** NACo strongly supports the principles of the Conservation and Reinvestment Act of 1999 (CARA'99) that would reallocate Outer Continental Shelf (OCS) oil and gas revenues to the LWCF, a coastal state revenue sharing program, add funding to the Urban Park and Recreation Recovery (UPARR) program and establish an innovative procedure for adding funding for the Payments In Lieu of Taxes (PILT) program, in addition to annual appropriated funds. NACo will advocate a change in the "stateside" program to allow counties to directly apply for LWCF grants and provide authority for innovative and flexible methods for utilization of these grants such as a leasing program, rather than outright purchase of land that removes them from tax roles.

**Background:** The Federal Land and Water Conservation Fund was created in 1965 to provide matching funds to encourage and assist local and state governments in urban and rural areas to develop parks and ensure accessibility to local outdoor recreation resources.

In the past several years Congress has diverted Land and Water Conservation monies to programs unrelated to parks, conservation and recreation. This action has resulted in total elimination of state grant programs to assist counties to meet the needs of our rapidly increasing populations, and has created a backlog of upgrades, renovations and repairs to outdoor recreation facilities.

Past benefits to counties have been accessing, through a grant process, dedicated monies to provide important economic, social, personal and resources benefits to our citizens. Outdoor recreation reduces crime by providing positive alternatives and experiences for our citizens. Millions of state and county dollars have been invested in outdoor recreation and have been matched by local funds in the form of donated labor and materials and community force accounts.

**Fiscal/Urban/Rural Impacts:** Coastal state counties, both urban and rural, would receive substantial payments from the OCS revenue sharing program should this legislation be passed. Urban counties would benefit from additional funds for the UPARR program, rural public land counties would benefit from additional funds for PILT and all counties would potentially benefit from LWCF grants.

Adopted by: NACo Board of Directors

February 28, 1999

**Resolution in Support of OCS Coastal Impact Assistance**

**Whereas**, the coastal regions of the united states are fragile environmentally and under intense pressure from storms and natural disasters, population growth and, in some counties and states, from onshore support activities that are necessitated by the development of the nation's oil and natural gas resources on the federal outer continental shelf; and

**Whereas**, each year the federal government receives billions of dollars in revenues from the development of oil and natural gas resources on the federal outer continental shelf, a capital asset of this nation; and

**Whereas**, the federal government does not share directly with the coastal states or counties a meaningful share of these revenues, while the federal government share with states 50% of the revenues from onshore federal mineral development; and

**Whereas**, at least a portion of the revenues from this capital asset of the national should be reinvested in infrastructure and environmental restoration in the coastal regions of this nation; and

**Whereas**, states and counties that host onshore activities in support of offshore federal OCS mineral development should receive a share of these revenues to offset state and county impacts of this development; and

**Whereas**, the OCS policy committee of the united states department of the interior has recommended that all states and the territories should receive a portion of these revenues as an automatic payment annually pursuant to a formula based on proximity to offshore production, miles of shoreline and population; and

**Whereas**, members of congress representing coastal states are preparing federal legislation to enact the proposal to share a portion of federal OCS revenues with all coastal states and the territories:

**Therefore, Be it resolved**, that the national association of counties (NACo) commends the members of congress that are pursuing this initiative and the OCS policy committee for their recommendations; and

**Be it further resolved**, that NACo supports federal legislation to share a meaningful portion of federal OCS mineral revenues with all coastal states, their counties and territories pursuant to the formula recommended by the OCS policy committee.

Adopted by: NACo Board of Directors

July 21, 1998

## **RESOLUTION ON THE ENDANGERED SPECIES ACT REAUTHORIZATION**

**Issue:** Provide for increased participation in the listing and recovery of endangered species by local officials and increase flexibility and innovation in responding to the need to recover species.

**Adopted Policy:** NACo shall petition Congress to amend the Endangered Species Act through its reauthorization process to provide:

1. A recognition that if it is in the national interest to protect species, then it must be a national priority to attempt to forestall listing by aggressively providing for pre-listing incentives to affected governments, public land lessees and private property owners to avoid the negative impacts of the Act by entering into conservation agreements with the Secretary of the Interior.
2. For greater involvement by local governments in planning and management decisions affecting the listing process.
3. For a significant improvement in the scientific review process by including verifiable peer review by a qualified agency other than the U. S. Fish and Wildlife Service.

4. The effects on the economic, social and cultural aspects of human activity, and their communities, must be fully studied, and taken into account in all decisions made pursuant to the Act.
5. Provisions should be adopted to require the U.S. Fish and Wildlife Service to use professionally trained specialists to rescue and remove threatened or endangered species within 120 days whenever it is necessary to maintain, repair and rehabilitate critical structures that provide for human health and safety.
6. Provisions should be included to require previously adopted habitat recovery plans for threatened and/or endangered species that were not developed in consultation with affected county governments, to be reviewed and modified to reflect genuine consultation with the affected county government.
7. A full partnership for the affected state, its local governments, public land lessees and affected private property owners in the post-listing consultation and decision making process, including critical habitat, habitat conservation plans and full-scale recovery plans.
8. Adequate protection of private and public property rights.
9. Prior to a listing, no action shall be taken to restrict or interfere with the use of private or public property without consultation with the affected land owner. Every effort should be made by the Secretary and the affected land owner to establish voluntary agreements for species conservation and habitat protection.

Following a listing, no action shall be taken to diminish the use of property until full consultation has taken place with affected landowners, or lessees, and full compensation is agreed upon between the landowner, or lessee, and the Secretary. If the Secretary refuses to act or limits the compensation to below fair market value, the affected landowner is granted status to pursue due process in the appropriate Federal District Court.

NACo believes that the land and wildlife management agencies must make a full accounting of funds spent since 1985 for mitigation, research, habitat studies and land acquisition, including private fund expenditures, and economic losses from land uses diminished or cancelled by agencies.

**Background:** After 22 years of experience in implementing of the Endangered Species Act, there now appears to be ample evidence of the need for reauthorizing and revising the Act. It should be the policy of the United States to avoid the need for listing threatened and endangered species, by involving all affected parties in pre-listing conservation activities and by providing a range of incentives to those affected parties to enter into conservation agreements to avoid the need for listing. Counties can be involved to a much greater extent in sustaining of species, through the management of lands, and in making decisions which affect their habitat.

The federal government needs better verifiable peer review of the science that leads to listing of species, and the identification of critical habitat. There needs to be greater emphasis on the affects of listing of a species and designation of critical habitat on human individuals, their communities, and on the economic, social and cultural aspects of such a listing and/or designation of habitat. All affected parties should be involved in the post-listing decision and consultation process to assure that all concerns are raised, if not addressed.

The current Act provides too little flexibility for the Secretary of the Interior to utilize creative and innovative management approaches to address the conservation of the species, and does not provide for the full participation of state and local governments in the recovery process. Protection of some species has led to substantial loss of jobs, property loss due to natural disasters, (such as fire, flood, etc.) and economic hardship and reduced county revenues.

In many instances, the burden of protection of species has fallen on private property owners, who have been forced to provide habitat without adequate compensation for use of their land, while the decisions are made in Washington, D.C., and the current Act lacks provisions for a full and complete analysis of proposed listings on the economic, social, and cultural values of humans and their communities. It does not contain provisions for adequately compensating affected private property owners for losses incurred by listing.

Counties depend upon a healthy economy to maintain viable communities and to produce revenues to provide needed services and counties have a strong interest in maintaining community sustainability while protecting natural biodiversity because reputable scientific evidence suggests that long-term stability for those communities that are natural resource dependent is directly related to adequate biodiversity:

**Fiscal/Urban Rural Impacts:** There are substantial costs to counties of all sizes from implementation of recovery plans under the ESA. Changes proposed by this policy would provide more flexibility and potentially reduce costs. More participation by county officials could improve recovery plans and avoid potential economic losses.

Adopted by: NACo Board of Directors

February 28, 1999

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