

1 INTERIM RESOLUTION 2013-006

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3 URGING THE UNITED STATES CONGRESS TO PROTECT PRIVATE PROPERTY
4 RIGHTS AND SUPPORT LOCAL BUSINESS AND LOCAL GOVERNMENT BY
5 ENSURING THAT THE TRUE COSTS OF LISTING SPECIES, WITH SUBSEQUENT
6 DECLARATIONS OF CRITICAL HABITAT, UNDER THE ENDANGERED SPECIES
7 ACT ARE KNOWN BY THE AFFECTED TAXPAYERS.
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9 WHEREAS, On September 9, 2011, a United States District Court Judge
10 for the District of Columbia signed off on a settlement between the Center
11 for Biological Diversity and the United States Department of Justice wherein
12 the department agreed that three hundred seventy-four (374) species in the
13 southern and southeastern United States likely deserved listing under the
14 Endangered Species Act of 1973; and
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16 WHEREAS, this settlement was the result of confidential mediation about
17 which the affected states knew virtually nothing until the settlement was
18 signed by the judge; and
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20 WHEREAS, this settlement mandates the simultaneous consideration of
21 critical habitat for all of the three hundred seventy-four (374) species that
22 are listed under the Endangered Species Act of 1973; and
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24 WHEREAS, "critical habitat" is a specific geographic area that contains
25 features essential for the conservation of a threatened or endangered
26 species; and
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28 WHEREAS, designating critical habitat requires the performance of a
29 cost-benefit analysis to ensure that the costs of critical habitat to
30 landowners is outweighed by the benefit to the listed species; and
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32 WHEREAS, the United States Fish and Wildlife Service, in order to
33 ensure that the costs of critical habitat are always outweighed by the
34 benefit to the listed species, changed its rules in 2013 to measure only the
35 costs incurred in consultation between the service and other federal
36 agencies, such as the United States Environmental Protection Agency; and

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WHEREAS, this regulatory sleight-of-hand ensures that critical habitat, along with all of its detrimental effects on private property rights, will likely be declared with every listing; and

WHEREAS, the service recently introduced two new rule changes for consideration that would allow the extension of critical habitat not only to those lands where the species might be found or that might be its historical habitat but also to those lands that might conceivably support the species; and

WHEREAS, these new rule changes also make it far easier for the service to require consultation by landowners, thereby lowering the legal threshold necessary to find adverse modification of any critical habitat zone; and

WHEREAS, by lowering this threshold, the service also opens landowners to greatly increased chances of litigation; and

WHEREAS, the Obama Administration, through the instrumentality of the service, intends to take extreme measures to save species it deems to be endangered—even at the expense of citizen property rights; and

WHEREAS, these new regulations appear to be crafted to neuter private property rights in the South and Southeast in preparation for the mass listing of species all across the South and Southeast with huge swaths of private property then being taken as critical habitat; and

WHEREAS, these new regulations appear to be designed to provide environmentalist groups with complete latitude to enforce these listings and designations of critical habitat through litigation, thereby allowing the service to dodge responsibility for the draconian effects on private property of these designations; and

WHEREAS, legislation has been proposed that would stop this attack on private property rights by requiring a full and honest appraisal of the

1 effects of a listing and designation of critical habitat under the Endangered
2 Species Act of 1973,

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4 NOW THEREFORE,

5 BE IT RESOLVED BY THE INTERIM SENATE COMMITTEE ON CITY, COUNTY, AND LOCAL
6 AFFAIRS; THE INTERIM HOUSE COMMITTEE ON CITY, COUNTY, AND LOCAL AFFAIRS; THE
7 INTERIM SENATE COMMITTEE ON AGRICULTURE, FORESTRY, AND ECONOMIC DEVELOPMENT;
8 AND THE INTERIM HOUSE COMMITTEE ON AGRICULTURE, FORESTRY, AND ECONOMIC
9 DEVELOPMENT OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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11 THAT each member of the United States Congress should support
12 legislation to require a full and honest appraisal of the effects of a
13 listing and designation of critical habitat under the Endangered Species Act
14 of 1973 to stop the attack on private property before it becomes settled law
15 and thereby almost impossible to repeal.

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17 BE IT FURTHER RESOLVED that the interim Senate Committee on City,
18 County, and Local Affairs; the interim House Committee on City, County, and
19 Local Affairs; the interim Senate Committee on Agriculture, Forestry, and
20 Economic Development; and the interim House Committee on Agriculture,
21 Forestry, and Economic Development oppose the United States Fish and Wildlife
22 Service's proposed rules changes regarding critical habitat and adverse
23 modification.

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25 BE IT FURTHER RESOLVED that upon adoption of this resolution, the
26 Secretary of the Senate shall mail a copy of this resolution to each member
27 of the United States Congress.

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29 Respectfully submitted,

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33 Senator Missy Irvin
34 District 18

1 By: JLL/JLL

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