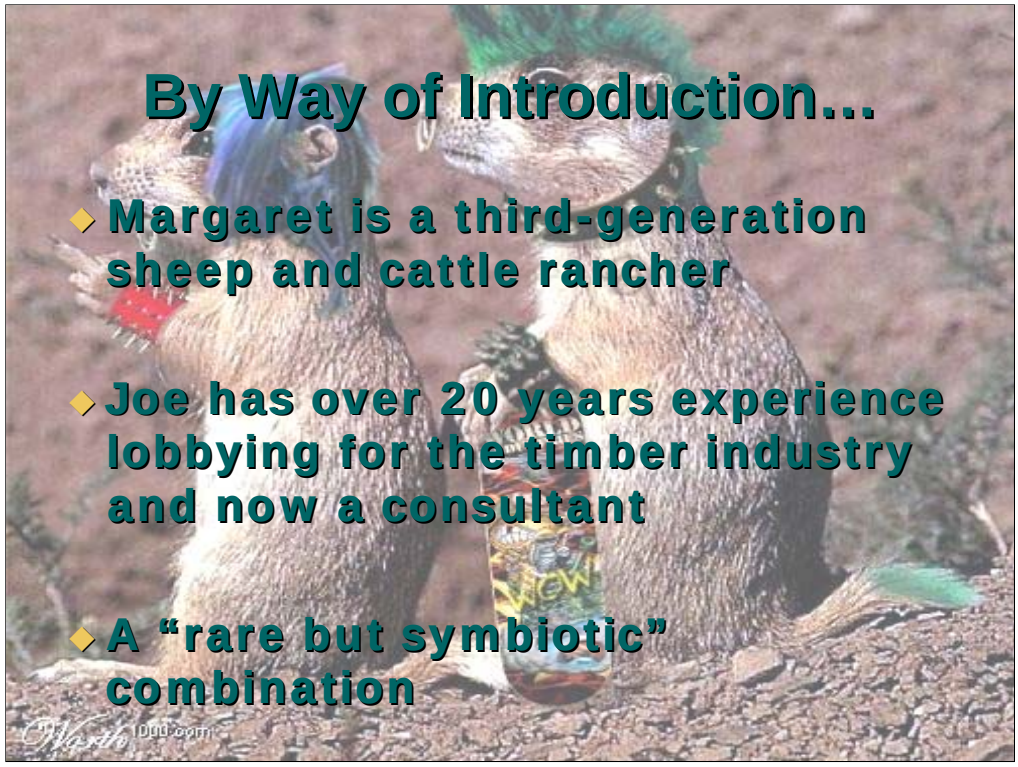
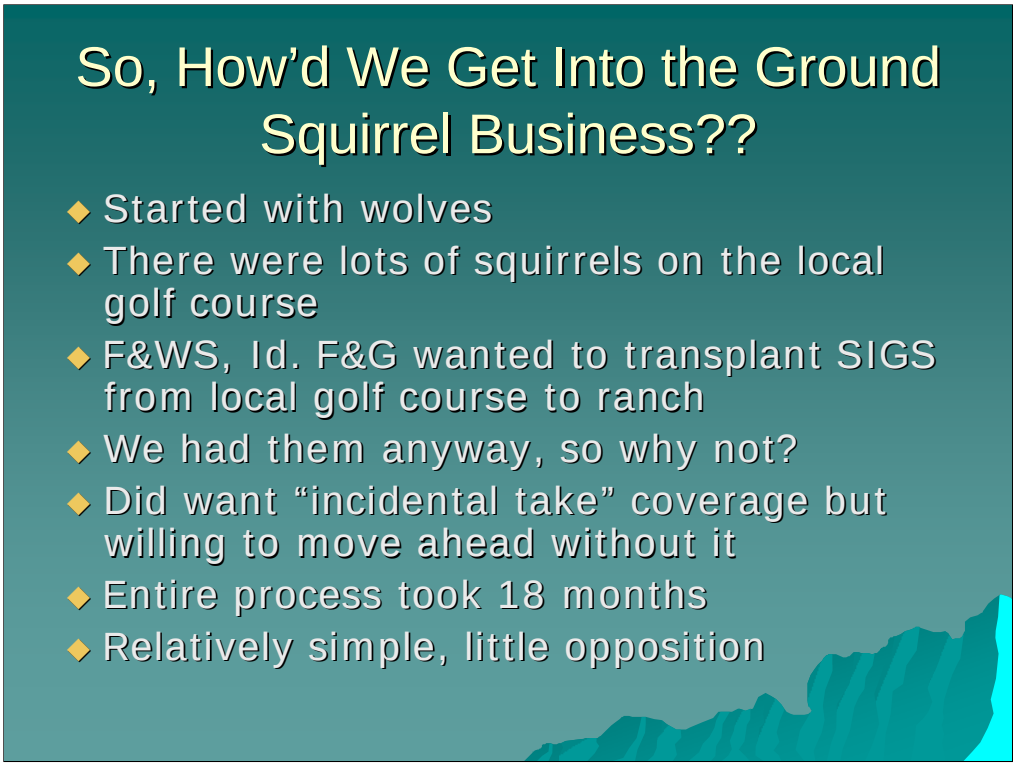
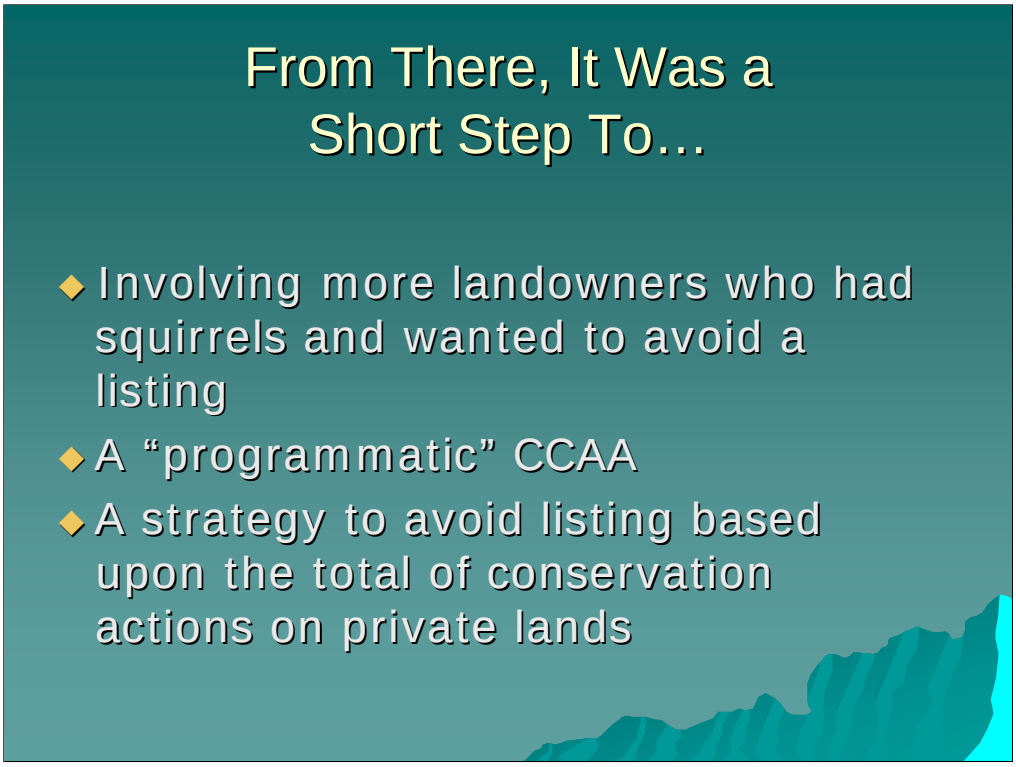
Thank you for having us. This is probably a first—a husband/wife team on ESA issues. Margaret's Dad, Phil, is here and he is getting to be more of an ESA expert than he ever thought, so we have kind of an ESA Hat Trick, with the three of us.



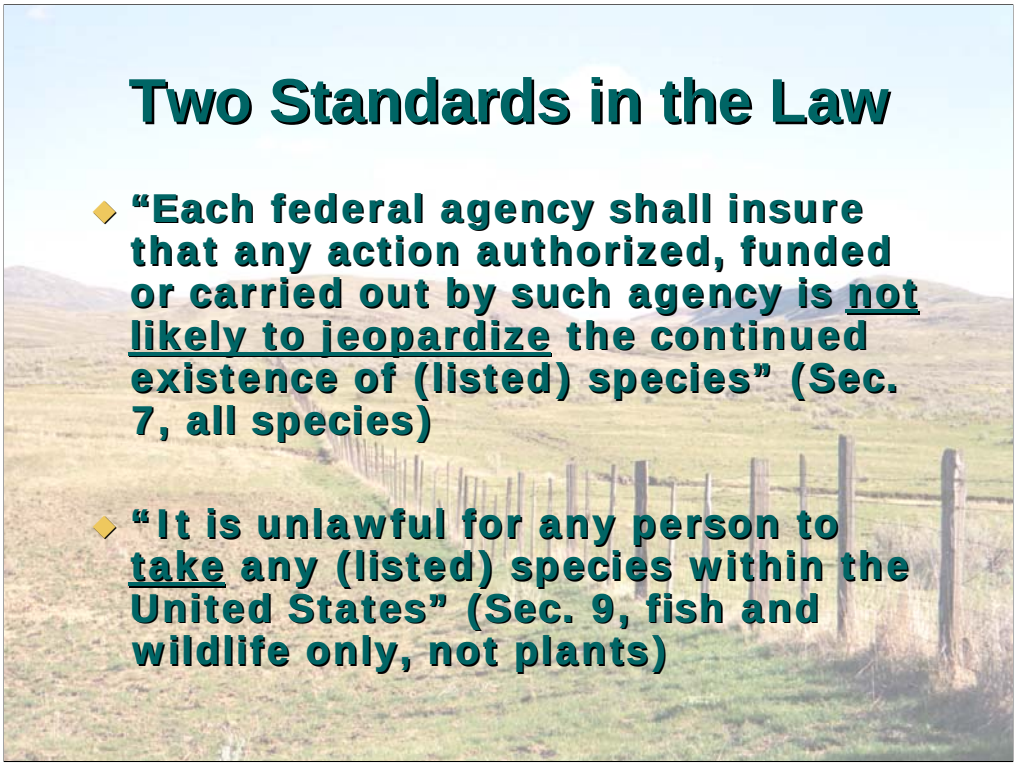
Just to save Margaret the trouble, I’ll introduce use both.



My job is to talk about S. Idaho ground squirrels, and lots of people wonder "why?". Here's how we got there.



So, once we did it, that opened other possibilities for the points on the slide. Actually, that's all for squirrels right now. We'll return to the subject, but first probably everyone could benefit from a short remedial course in the ESA. Trust me, it will make the rest of what I have to say and much of this conference easier.



Generally, there are two standards the affect natural resource decisions.

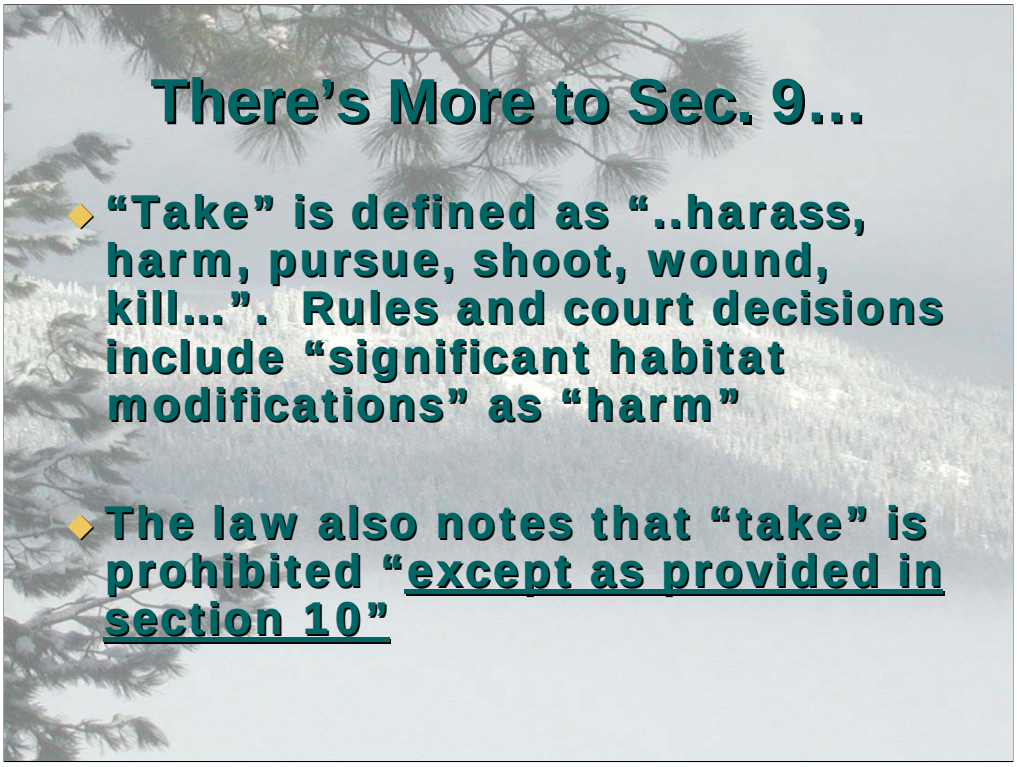
The first applies only to federal agencies and is called the "non-jeopardy" standard. Federal agencies meet this through formal consultation with either the Fish and Wildlife Service or NOAA Fisheries, depending upon the species.

The second applies to non-federal agencies or private landowners. That standard is "no take" and so much of what the ESA entails lies in the definition of these two terms.

The distinction between the two is important.

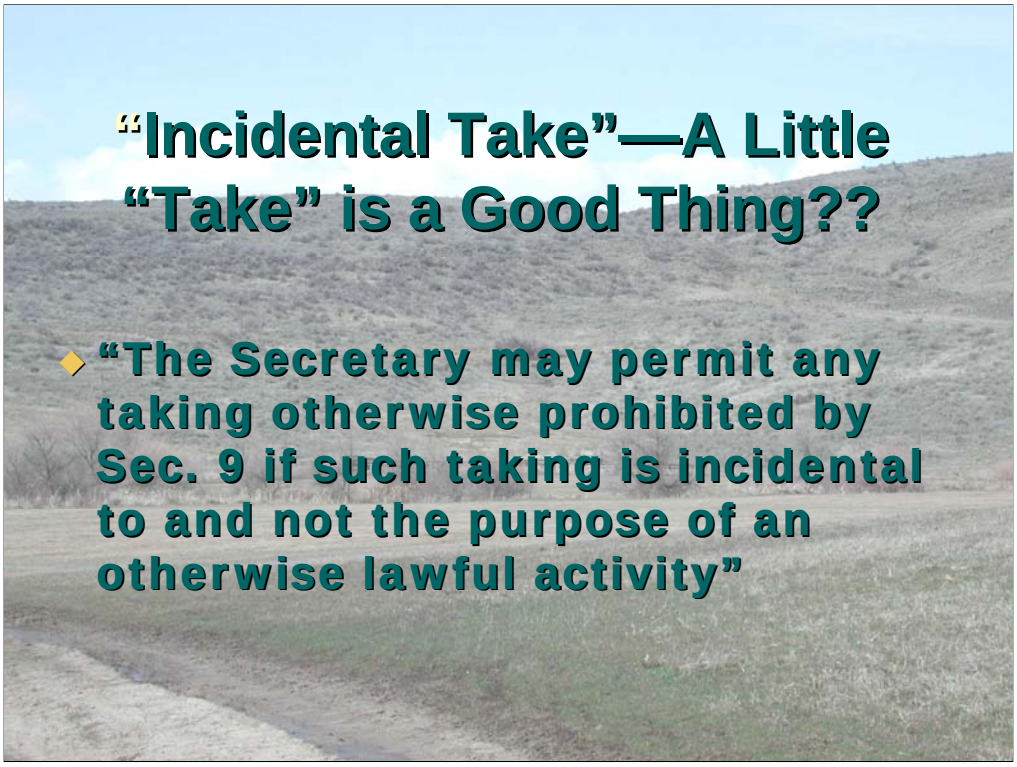
So, clearly, the federal agencies have a more difficult standard to meet. Most of the controversies over ESA implementation have their root in agency determinations that some action—continuing to operate dams, provide irrigation water or allow logging—will "jeopardize" a species or adversely modify its habitat.

Private landowners seemingly get away with everything just short of murder—or do they….



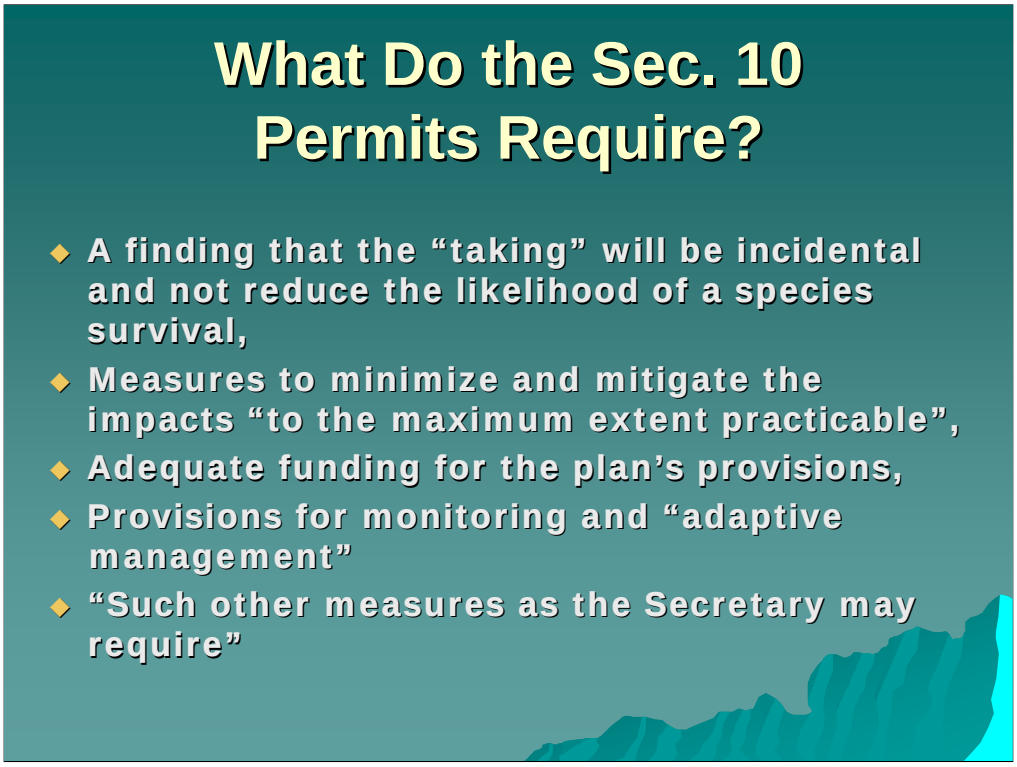
…Not really, because "take" can include, according to some court cases, such otherwise normal actions as habitat modifications. So, taken broadly, Sec. 9 prohibits habitat modifications if they would "take" a listed species.

That brings us to Sec. 10, which seemingly then turns around and allows "take". So, when is a law not a law? On one hand we have a "Thou shall not take" mandate, along with some fine print dreamed up by the agencies and the judges that "take" can include messing around with a species habitat. So, based on that, private landowners don't get away with just short of murder. They, too, must protect habitat. But, just when you think you've got that nailed down, here's the possibility for a "get out of jail free" exemption to the whole thing. What's up with that?? To answer that question, we need to take a look at Section 10.



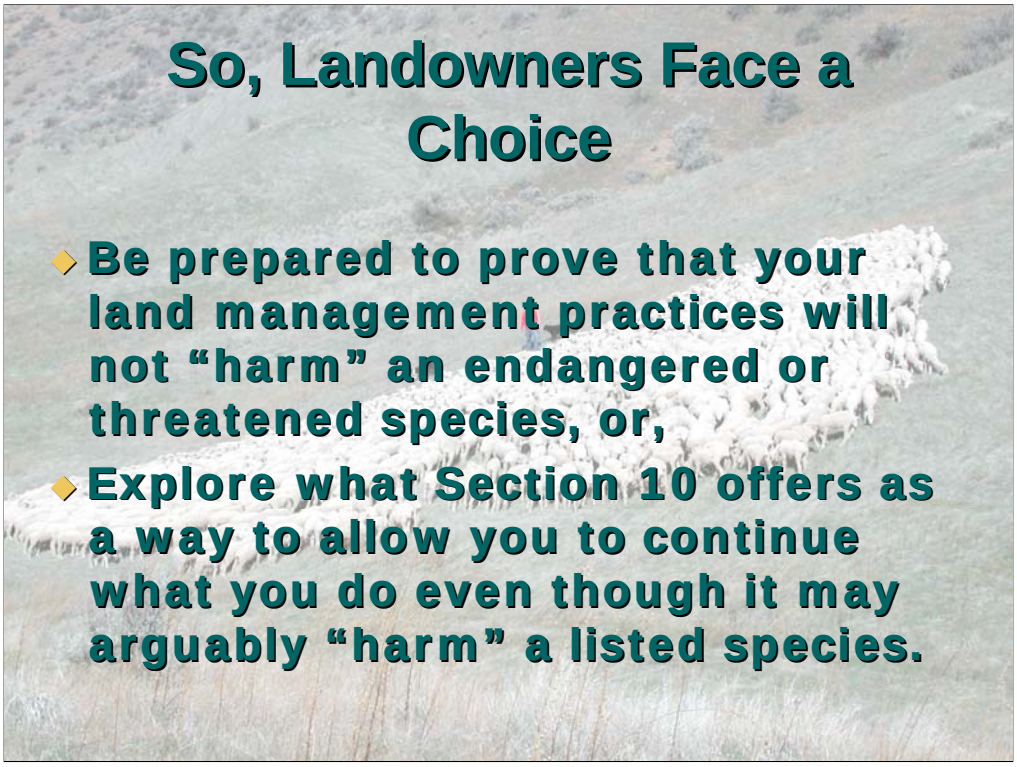
This paves the way for a permit from the Secretary that will allow economic activities to continue so long as they are done in a manner that the Secretary judges has at least a minimal impact on listed species.

This concept—outright prohibition followed by some exception through a permitting process—is a cornerstone of most environmental regulatory statutes. For example, the Clean Water Act prohibits discharges into the waters of the US, unless the discharger obtains an NPDES permit and meets the requirements of it that, basically, minimizes the harmful effects of the discharge.

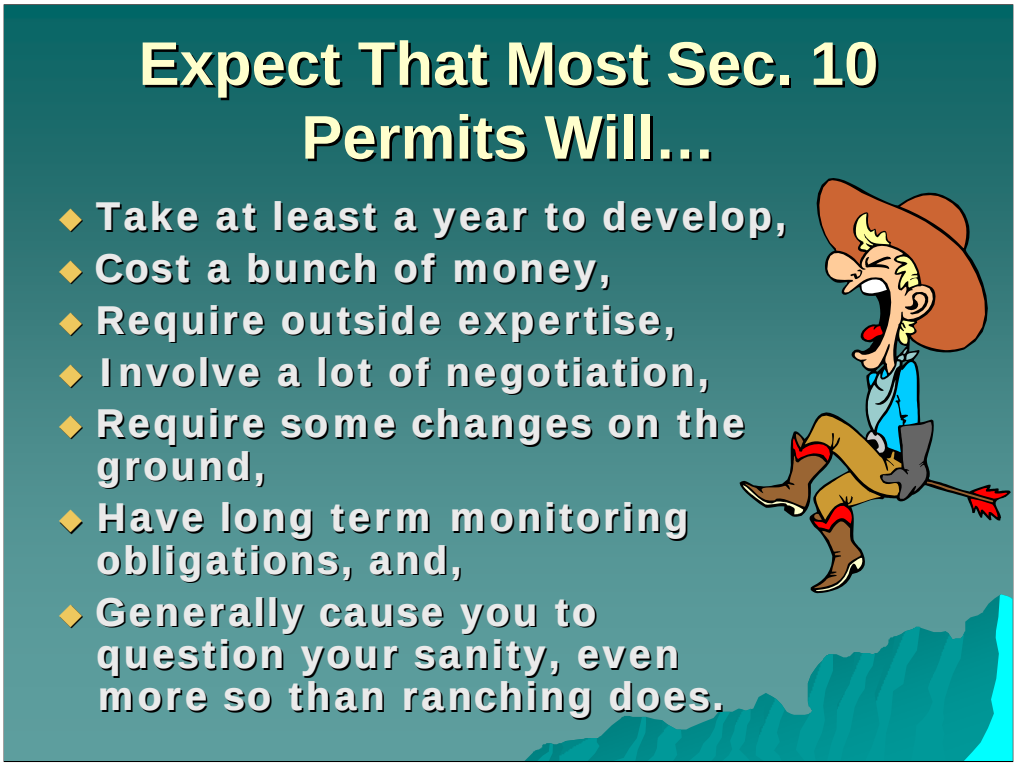


This opens up a great new cottage industry for people like me—convincing landowners they need a permit like this and then getting them to pay us large sums of money to prepare it. Is this a great country or what!

Applications for these kinds of permits are not for the faint of heart. A simple letter will not do it. In reality, a landowner is entering into a long term contract with the federal government. The landowner agrees to a specific set of actions that, over time, will help assure the survival of a listed species and the government promises that so long as the landowner keeps his end of the bargain, then he will not be held liable for the occasional dead critter, even if it is endangered or threatened. Like most complex, long term contracts, there is a lot of detail and fine print.



Actually, there is a third choice and it is the "default", and, consequently, the path most frequently chosen—"Do nothing and hope for the best". In reality, its not a bad choice, at least statistically. While there are obviously millions of individual grazing, logging, farming and development actions on private lands across the country, there are less than 1,000 Section 10 permits. All the other landowners are taking their chances and that's a fair game plan, since most of their activities won't affect a listed species.

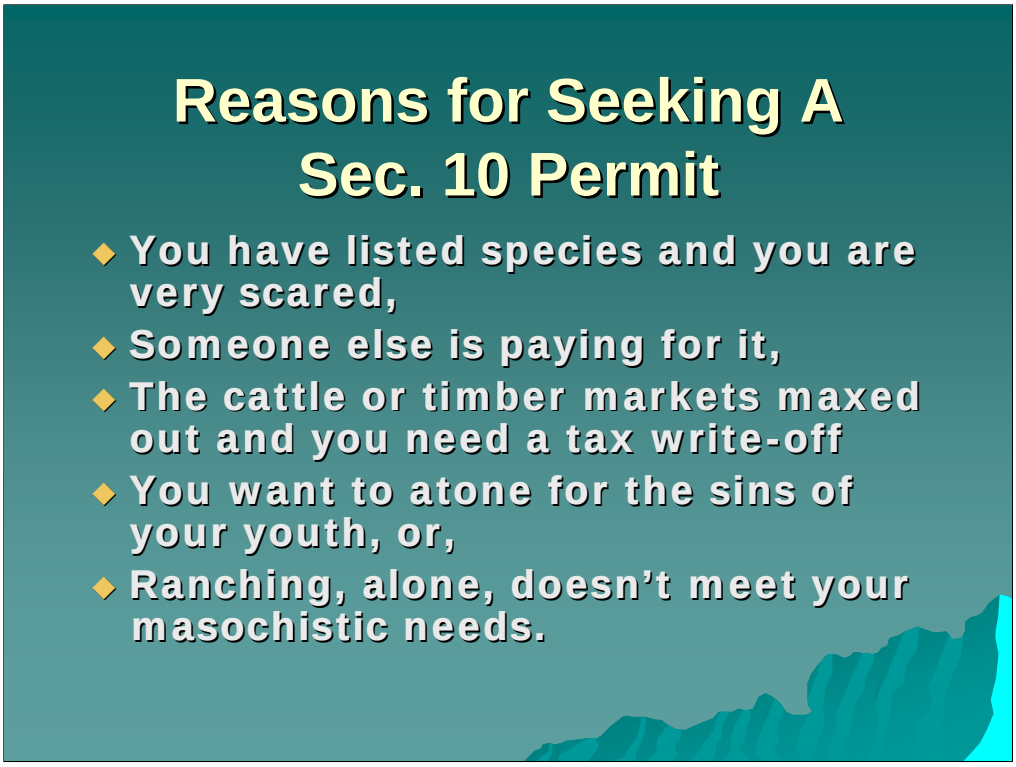


Granted, some situations and the management of some species are more complex than others. S. Idaho ground squirrels, for example, are not a particularly complex species, at least from a Sec. 10 standpoint. However, it would be less than honest to suggest to a landowner that the process for any of them is easy or cheap.

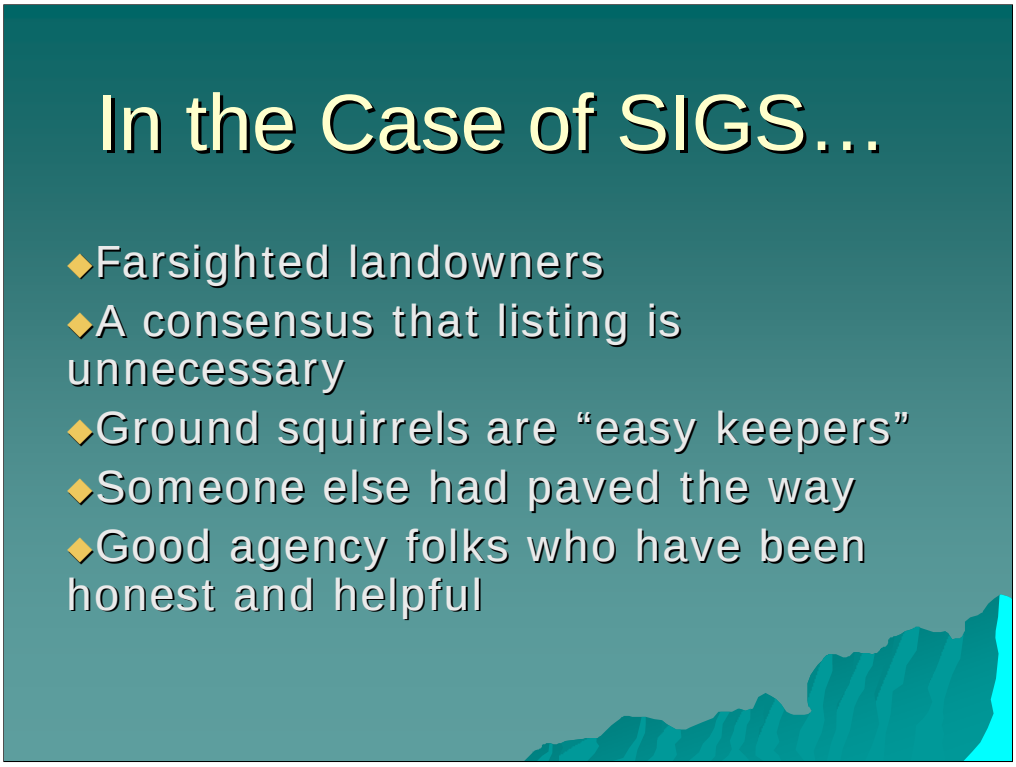
Let's take our example. Three years ago, at the request of the Fish and Wildlife Service, we agreed to transplant some "southern Idaho ground squirrels", a candidate species, from the golf course in Weiser (not a good place for a ground squirrel) to one of the ranches, which was a good place. We started in March of 2001. In exchange for accepting the ground squirrels, we are to get a 'safe harbors' agreement and a section 10 'incidental take' permit, in case the species is ever listed, which is highly likely.

In the realm of Section 10 permits, this is not a complex deal. Everyone wanted it to work and work as fast as possible—us, Fish and Wildlife Service, Fish and Game—and it will ultimately come about. But at the end of a year of fairly intense effort by all parties, I have about 70 hours involved, Fish and Game probably 100 and the Fish and Wildlife Service at least 200 or 300. We needed to draft a plan, a NEPA document (EA) for the plan and a complex set of GIS based maps. We finished all that, but it took at least 18 months. I think we finally got the permit in September of 2002—and this is with all parties having shoulder to the wheel and no controversies.

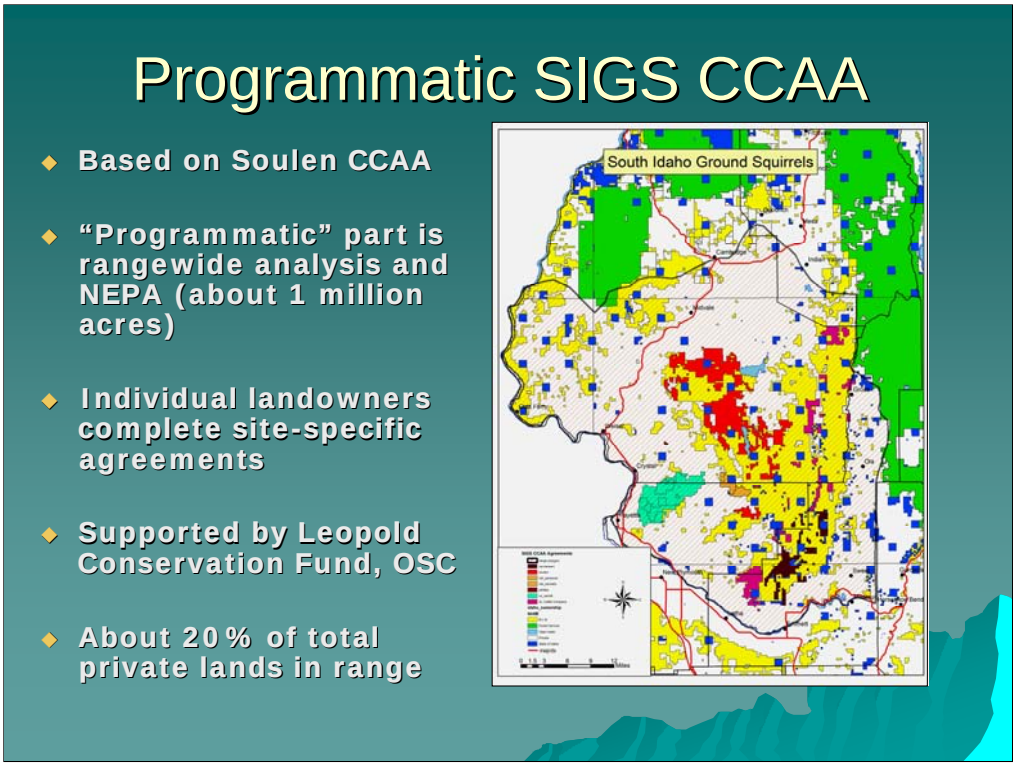
I will leave the process for a more complex HCP over a large ownership and with a lot of public attention and controversy to your imaginations.



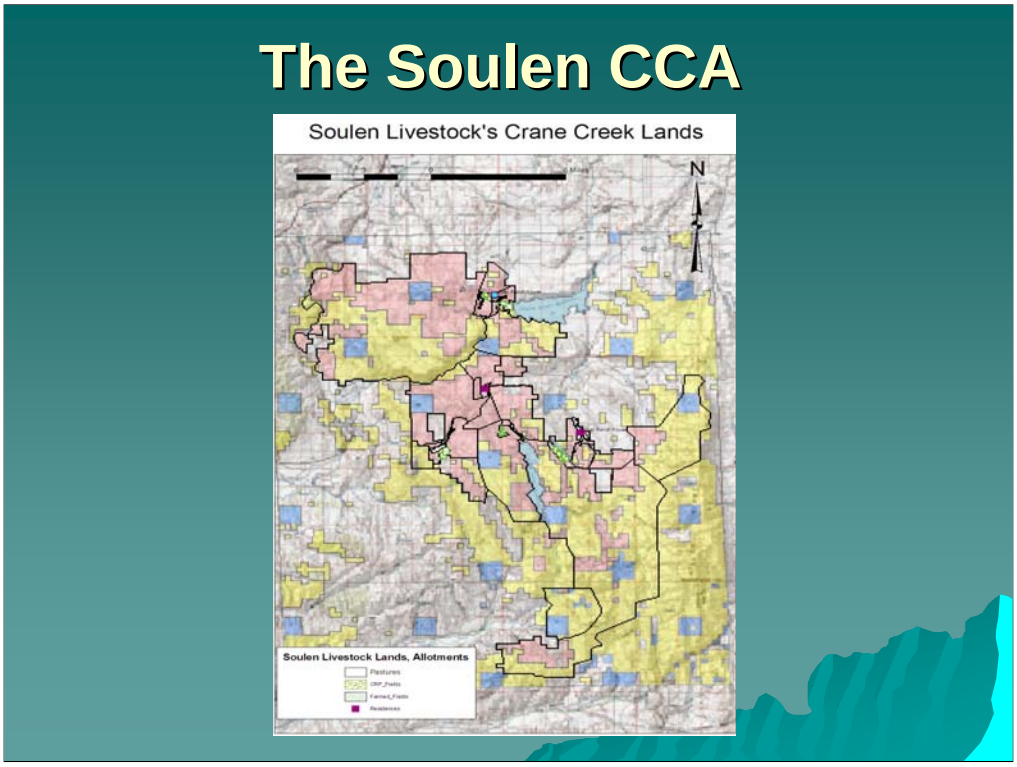
So, why would anyone want to seek a Sec. 10 "incidental take" permit? The reasons on the screen are not bad ones.



But, in the case of S. Idaho ground squirrels, these reasons probably had more relevance.



So, back to our squirrel agreement. The brightly colored areas on the map illustrate those brave landowners who have stood up and taken the oath of ground squirrel protection. In total, their lands comprise maybe 20% of the total private lands within the range of the critter. Fortunately, these landowners won't have to do much, because, as I noted earlier, these guys are "easy keepers". They appear to love cows, sheep, humans and most dogs (all of which qualify them for "critter sainthood", in my book). Our responsibility as humans is to promise not to shoot them, poison them, nor allow our friends and neighbors to do so and to let a bunch of pretty nice and well-groomed kids from the U of I and BSU on the place to study them and maybe transplant them. It is not a big deal, but the implications of the ESA are and I personally want to commend Jim Little, Aggie Brailsford, my father-in-law and his family, the OX Ranch, Charles Phillips and Richard Robertson for agreeing to be part of this experiment. If it works—and I believe it will—this will be the first time in the history of the ESA that the collective actions of private landowners will be judged sufficient to keep a critter off the T&E list. That is a huge step.

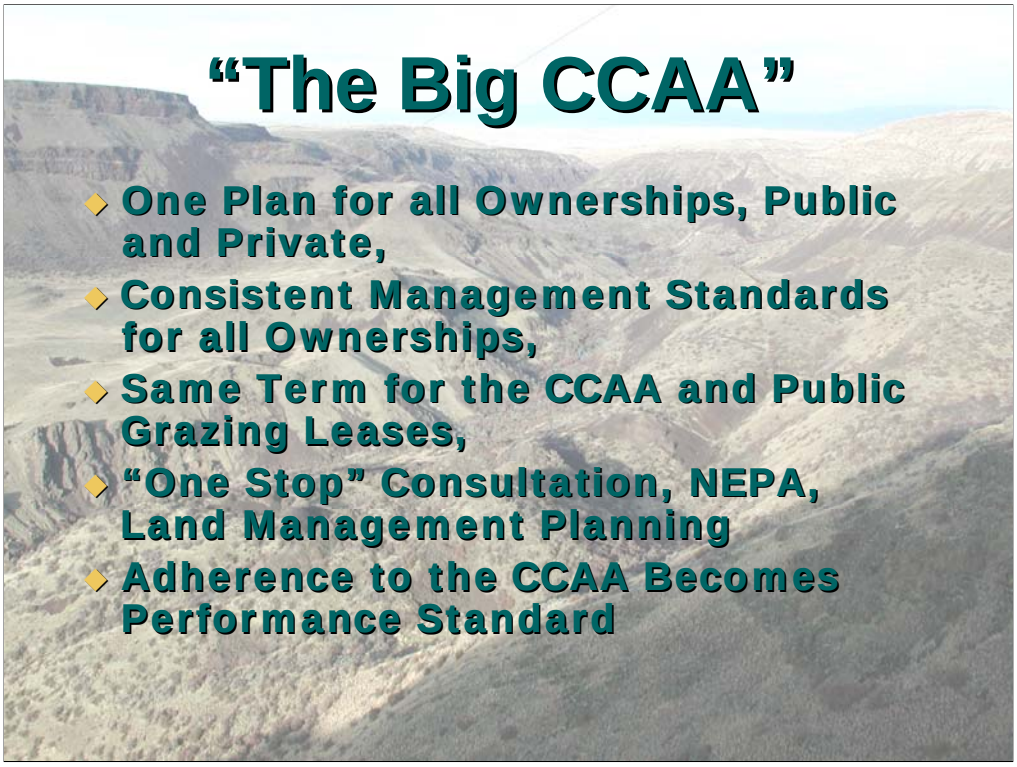


Well, that all led to harder drugs. This is Margaret's family's Crane Creek lands. One winter night, Margaret and I contemplated the whole situation. There is some possibility that wine was involved in this.

What we realized is that we graze over a large area where there are four landowners, but one land manager (us). There are no fences, no property lines, no real way to distinguish what goes on with the "red" land versus the "yellow" or "blue" except through the general permit requirements and, more importantly, what we do to manage the herds and vegetation. Wildlife, while abundant, is a happy coincidence, not the result of very many conscious actions.

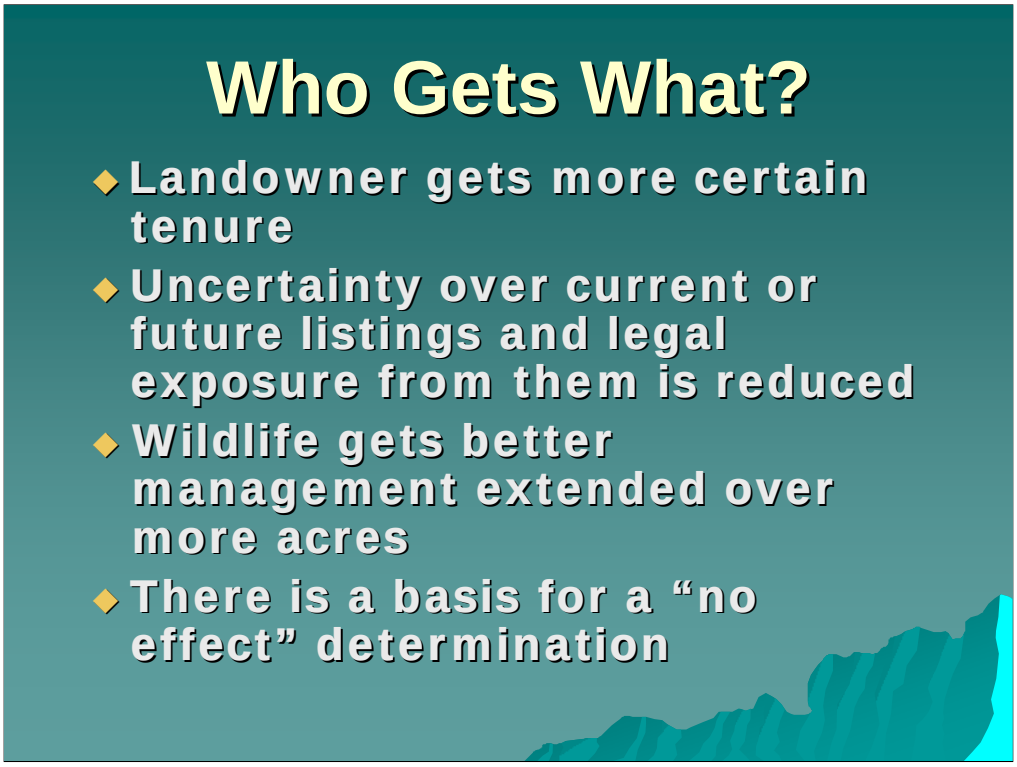
So, remembering the map, there are a lot of issues that derive from our use of these lands.

We began to think about how to resolve the issues and take advantage of the opportunities and, as a result, we developed a concept that we've come to call…

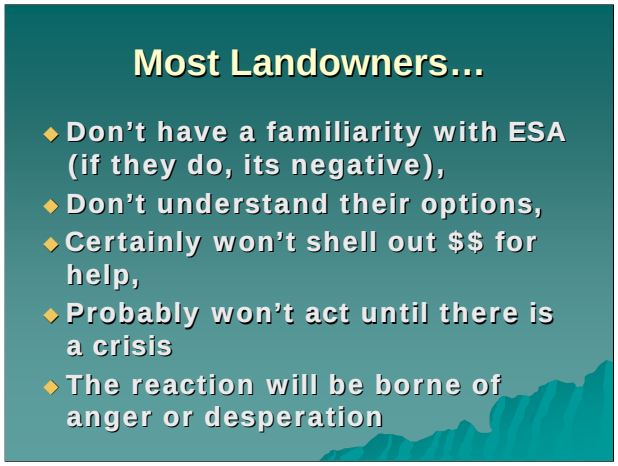


And so a vision began to take form and substance, and we said, what if….

Well, the next morning, it still sounded like a pretty good idea and off we went. F&WS funded the project, two years worth of students from the U of I College of Natural Resources conservation biology and range students did much of the needed scientific work and we now have a draft of a plan that, once completed, will be the first of its kind in the nation.



Once this is all done, here's what will happen. Look at number three. On Crane Creek, where the map is, Soulen Livestock has 43,145 acres of fee lands. We graze, however, on and additional 5,435 acres of state lands and 45, 281 of BLM. So, through our proposal, we can affect right at 94,000 acres. That's a lot of ground squirrels!



So, what have we learned from all of this? First, it is important that everyone looks through the same lands that most landowners view the ESA. Although these are all cast as negatives, they should not be interpreted as antagonistic toward wildlife or as shortcomings within the landowner community. But the realities are that most landowners love the wildlife on their lands and feel they do a pretty good job of managing it without too much help. Their experience with the ESA generally shows up in a letter from the BLM or Forest Service telling them of pending changes in their allotment because of a listed or candidate species or they read of a lawsuit based on the ESA. They probably don't understand what might be done to ward off potential ESA problems and are not likely to spend any money finding out. In short, they all have many other jobs and wildlife management usually is one of the lower priority ones. Like a tractor that breaks down, wildlife management gets their undivided attention only when it threatens progress for the rest of the operation.

The ESA poses a lot of issues for private landowners as well as those who graze on public lands. We began to address some of those through our efforts with S. Idaho ground squirrels, but we need to take what we learned there and apply it to more difficult issues like sage grouse, where, incidentally, there is some interest in our area in doing a programmatic CCAA like we're doing for squirrels. That, I think, makes a lot of sense.

Margaret and her family would like to stay in the livestock business, but in order to do that there must be some assurances that the public land upon which we rely has to be available with reasonable management provisions. If the public land is not available, then the 50,000 acres of private lands loses its value for livestock and we look elsewhere for ways to capitalize on it. Realistically, the ESA and the lawsuits that inevitably accompany land management decisions for listed species likely poses the greatest threat to our continued ability to operate on public lands. So, if we can nail down what is necessary to both conduct our operations in a way the doesn't jeopardize wildlife or plants that might be listed and then minimize the legal exposure, we have done good—both for wildlife and for our ability to maintain the twenty or so livelihoods that this operation supports.

We're not to the point yet where we can expect many landowners to pay for a CCA or HCP. They're expensive, too. So we need to look at Farm Bill programs, among others, as sources of funding for this work, particularly in the initial phases.

Landowners will work with those they trust. In fact, that is how we found the landowners who were willing to enroll their lands as part of the SIGS programmatic CCAA. Some landowners are used to working with and trust different people and organizations. I personally know one landowner who only trusts one individual in Idaho Fish and Game. A retired FS employee mostly trusts a biologist from F&WS. Some landowners work with the local SCD or NRCS. Some have forest lands and trust the state forestry department. The Nature Conservancy has excellent relationships with some landowners but would never make it past the dog in the yard for others. It is vital that all these agencies and organizations be "cross-trained" to be able to intelligently discuss ESA options with the landowners who do trust them.

Finally, among the many, many things I have learned about sheep from Margaret and Phil, there is a reason why some sheep have bells. Usually, you can catch those because they are pretty tame and once you do, then you can lead them where you want them to go. All the others follow along. Initial efforts need to focus on identifying and working with opinion leaders and early adapters.

So, I commend ICIE for having this conference and it will be interesting to hear various viewpoints on how those who are here propose to address the ESA.

Thanks for having me. I will be happy to answer any questions.