

TRACKING THE ADC: RANCHERS' BOON, TAXPAYERS' BURDEN, WILDLIFE'S BANE

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Driving toward Malheur Lake in the Great Basin of southeastern Oregon, I saw a coyote. I stopped the car, opened the door, and walked toward him.

It was another crucifixion in the West, a hide hung on a barbed-wire fence with a wrangler's prayer: Cows are sacred. Sheep, too. No trespassing allowed. The furred skin was torn with ragged edges, evidence that it had been pulled away from the dog-body by an angry hand and a dull knife.

Standing in the middle of the High Desert, cumulus clouds pulled my gaze upward. I thought about Coyote Butte, a few miles south, how a person can sit on top between two sage-covered ears and watch a steady stream of western tanagers fly through during spring migration; yellow bodies, black wings, red heads.

And how a few miles west near Foster Flats, one can witness dancing grouse on their ancestral leks, even in rain, crazy with desire, their booming breasts mimicking the sound of water.

Down the road, I watched a small herd of pronghorn on the other side of the fence, anxiously running back and forth parallel to the barbed wire, unable to jump. Steens Mountain shimmered above the sage flats like a ghost.

My eyes returned to Jesus Coyote, stiff on his cross, savior of our American rangelands. We can try and kill all that is native, string it up by its hind legs for all to see, but spirit howls and wildness endures.

Anticipate resurrection.¹

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¹ TERRY TEMPEST WILLIAMS, *Redemption*, in *AN UNSPOKEN HUNGER* 143, 143-44 (1994) (reprinted with permission of author).

I. INTRODUCTION

The environmental costs of cattle grazing on public lands in the western states are devastating. The litany of ecological horrors resulting from this activity has been well documented,² but perhaps the most disturbing aspect of this federally funded folly is the carnage of wildlife in the name of protecting cattle.³

Approximately thirty-five million federal dollars are spent each year by the Animal Damage Control Program (ADC) of the United States Department of Agriculture (USDA) to destroy predator animals that supposedly kill livestock.⁴ However, 1.4 million blackbirds and 364,000 starlings were among the 2.2 million animals the ADC killed in 1992.⁵ The agency also killed fifty black bears that year which were allegedly damaging trees.⁶ Other victims of this sanctioned massacre include badgers, beavers, dove, egrets, mountain lions, muskrats, raccoons, wolves, and over 100,000 coyote each year.⁷

The ADC uses appalling methods to slaughter coyote, including burning them alive in their dens.⁸ Non-target animals are routinely found in leghold snares or dead from eating poisoned baits set for predators, and members of endangered species occasionally fall to the ADC gun.⁹

Funding for this program is excessive and irresponsible, costing far more than if the government directly compensated ranchers in the western states at market rates for all the livestock allegedly lost to predators.¹⁰

This article first reviews the history of the Animal Damage Control Act and the reasons for its continued existence. It goes on to discuss the horrifying activities carried out by the ADC. The article shows how the ADC takes unnecessary steps to protect cattle grazing on federally subsidized ranch lands for the benefit of ranchers who are already collecting excessive federal assistance. The article next discusses the flagrant economic travesty of running such a program. Serious ethical questions, such as whether or not we are morally obliged to consider the welfare of these target animals, are then evaluated. Finally, changes in the ADC, as proposed by the animal welfare group Predator Project and by the ADC itself,

² See LYNN JACOBS, *WASTE OF THE WEST: PUBLIC LANDS RANCHING* (1991).

³ See WILDLIFE DAMAGE REV. (TUCSON, AZ), *WASTE, FRAUD, AND ABUSE IN THE U.S. ANIMAL DAMAGE CONTROL PROGRAM 3-4* (1994) [hereinafter *WASTE*].

⁴ RANDALL O'TOOLE, *AUDIT OF THE USDA ANIMAL DAMAGE CONTROL PROGRAM 19* (Cascade Holistic Economic Consultants, Research Paper No. 31, 1994). For the Fiscal Year 1995, ADC actually spent \$41,244,709.87. *ANIMAL DAMAGE CONTROL'S ANNUAL REPORTING: FISCAL YEAR 1995*, Table 1A at 15 (1996).

⁵ Donald G. Schueler, *Contract Killers*, *SIERRA*, Nov./Dec. 1993, at 70, 73; *ADC Program's Fiscal Year 1992 Budget and Animal Kill Figures*, PREDATOR PROJECT NEWSL. (Predator Project, Bozeman MT), Summer 1993, at 16-17.

⁶ Ted Williams, *Beyond Traps and Poison*, *AUDUBON*, Mar./April 1994, at 34 [hereinafter *Traps*].

⁷ O'TOOLE, *supra* note 4, at 16; Schueler, *supra* note 5, at 73.

⁸ JACOBS, *supra* note 2, at 260.

⁹ *WASTE*, *supra* note 3, at 16-18.

¹⁰ O'TOOLE, *supra* note 4, at 27.

are contemplated. The conclusion reached is that although the ADC should be terminated immediately, Congress will likely continue funding the program.

II. A BRIEF HISTORY OF ANIMAL DAMAGE CONTROL

The Animal Damage Control Program (ADC) of the United States Department of Agriculture (USDA) began with an 1885 USDA survey concerning crop damage caused by birds.¹¹ In response to the survey, the Division of Economic Ornithology and Mammology was created in 1886.¹² One of the missions of the new Division was to "educate farmers about birds and mammals . . . so that the destruction of useful species might be prevented."¹³ Thus, the original goal of what has become the ADC was to "protect wildlife, not to destroy it."¹⁴

In 1905, the United States Forest Service (USFS) began working with the Division (then renamed the USDA Division of Biological Survey) to find ways to control wolves and coyotes.¹⁵ Ranchers, who were now paying fees to graze livestock on federal lands, prompted this action by the Forest Service by complaining about their cattle and sheep being killed by predator animals.¹⁶

In 1915, Congress for the first time appropriated funds for experiments and demonstrations of predator control, establishing an "Eradication Methods Laboratory."¹⁷ This "laboratory" was moved from its original home in Albuquerque, New Mexico, to Denver, Colorado, in 1921, and eventually became known as the Denver Wildlife Research Center.¹⁸

In 1930, the opposition of the American Society of Mammologists to the activities of the ADC, and western ranchers' concern over that opposition, led Congress to pass the Animal Damage Control Act of 1931.¹⁹ This Act directed the Secretary of Agriculture to:

[D]etermine, demonstrate, and promulgate the best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squir-

¹¹ ANIMAL AND PLANT HEALTH INSPECTION SERVICE, U.S. DEP'T OF AGRIC., ANIMAL DAMAGE CONTROL PROGRAM: FINAL ENVIRONMENTAL IMPACT STATEMENT, Vol. 2, at 1-8 (1994) [hereinafter ADC EIS]; O'TOOLE, *supra* note 4, at 2.

¹² ADC EIS, *supra* note 11, at 1-8.

¹³ *Id.*, quoted in O'TOOLE, *supra* note 4, at 2.

¹⁴ O'TOOLE, *supra* note 4, at 2.

¹⁵ ADC EIS, *supra* note 11, at 1-9; O'TOOLE, *supra* note 4, at 2.

¹⁶ ADC EIS, *supra* note 11, at 1-9; O'TOOLE, *supra* note 4, at 2.

¹⁷ ADC EIS, *supra* note 11, at 1-9; O'TOOLE, *supra* note 4, at 2.

¹⁸ ADC EIS, *supra* note 11, at 1-9; O'TOOLE, *supra* note 4, at 2.

¹⁹ ADC EIS, *supra* note 11, at 1-9; O'TOOLE, *supra* note 4, at 2; Animal Damage Control Act of 1931, Pub. L. No. 71-776, ch. 370, 46 Stat. 1463, 1469, amended by Act of Dec. 13, 1931, Pub. L. No. 102-237, § 1013 (d), 105 Stat. 1901, 7 U.S.C. §§ 426-426b (Supp. 1997).

rels, jack rabbits, and other animals injurious to agriculture . . . and to conduct campaigns for the destruction or control of such animals. . . .²⁰

With this charge to control predators on public lands, the Biological Survey soon eliminated wolves from almost every state, although coyotes proved more troublesome.²¹ In 1939, President Franklin D. Roosevelt consolidated all wildlife programs under the Fish and Wildlife Service of the Department of Interior.²²

In 1964, an Interior predator and rodent control committee issued a report which charged the ADC program with "indiscriminate, nonselective, and excessive predator control."²³ Criticism of ADC activities increased in 1971, when environmental author Jack Olsen harshly critiqued ADC activities in a book analyzing predator control methods.²⁴ The trend toward curbing ADC excesses continued, and in 1972, President Richard Nixon banned the use of poisons for predator control.²⁵ President Ford partially rescinded the ban in 1975,²⁶ allowing the use of sodium cyanide in M-44s (a device triggered when an animal eats the attached bait, releasing the compound into the animal's mouth and killing it in a matter of minutes).²⁷

Curbs in ADC's activities resumed in 1979, when Interior Secretary Cecil Andrus issued a new policy emphasizing nonlethal controls of predators.²⁸ Ranchers and western senators opposed this policy and asked the President to transfer the program back to the U.S. Department of Agriculture.²⁹ Soon after his election, Ronald Reagan's Secretary of Interior, James Watt, rescinded the Andrus policy, and Reagan himself revoked Nixon's 1972 Executive Order.³⁰ In 1986, ADC was returned to the USDA and placed under its Animal and Plant Health Inspection Service (APHIS),³¹ receiving a major funding increase in the process.³²

²⁰ Animal Damage Control Act of 1931, Pub. L. No. 71-776, ch. 370, 46 Stat. 1468, 1469, amended by Act of Dec. 13, 1991, Pub. L. No. 102-237, § 1013 (d), 105 Stat. 1901, 7 U.S.C. §§ 426-426b (Supp. 1997).

²¹ O'TOOLE, *supra* note 4, at 2.

²² BEN D. DEEBLE AND FELICE STADLER, ANIMAL DAMAGE CONTROL: HOW YOUR TAX DOLLARS SUBSIDIZE AGRI-BUSINESS BY KILLING AND HARASSING AMERICA'S WILDLIFE 6 (Environmental Clinic Program, University of Montana, 1993).

²³ ADC EIS, *supra* note 11, at 1-10, quoted in O'TOOLE, *supra* note 4, at 2.

²⁴ O'TOOLE, *supra* note 4, at 2, referring to JACK OLSEN, SLAUGHTER THE ANIMALS, POISON THE EARTH (1971).

²⁵ Pat Wolff, *Poisons on Public Lands*, PREDATOR PROJECT NEWSL. (Predator Project, Bozeman, MT), Fall 1993, at 9. On Feb. 8, 1972, Nixon signed Executive Order 11643, which cancelled the registrations of Compound 1080, strychnine, sodium cyanide, and thallium sulfate. *Id.*

²⁶ *Id.* In 1975, western ranchers convinced President Ford to permit sodium cyanide use in experimental M-44 devices, and the next year he authorized the re-registration of sodium cyanide. *Id.*

²⁷ WASTE, *supra* note 3, at 14-16 (explaining the effects of M-44 devices on wildlife).

²⁸ ADC EIS, *supra* note 11, at 1-11; O'TOOLE, *supra* note 4, at 3.

²⁹ ADC EIS, *supra* note 11, at 1-11; O'TOOLE, *supra* note 4, at 3.

³⁰ ADC EIS, *supra* note 11, at 1-11 to 1-12; O'TOOLE, *supra* note 4, at 3.

³¹ ADC EIS, *supra* note 11, at 1-12.

³² O'TOOLE, *supra* note 4, at 3.

Today, ADC receives funds from state and local governments, as well as from private entities such as stockgrowers' associations.³³ Ironically, western ranchers attempt to espouse a philosophy of conservative "rugged individualism" when they are given below-cost grazing fees,³⁴ a wool-growers' subsidy,³⁵ and approximately \$550 each as an annual predator control subsidy from the federal government.³⁶

Not only does ADC's slaughter of western wildlife continue unabated, experts argue that predator losses remain constant in spite of the millions of ADC dollars spent on control.³⁷ Accordingly, opposition to ADC funding and activities continues to grow. Several environmental organizations have made resistance to the ADC the focus of their activities, most notably Predator Project³⁸ and Wildlife Damage Review.³⁹ These two organizations have effectively exposed many of the inexplicable activities of the ADC, and led some Congressional representatives to question the wisdom of continuing to fund such an agency.⁴⁰

No realistic observer of the ADC expects Congress to terminate the organization's activities in the foreseeable future, although a strong economic argument can be made for doing so. As critics suggest, "[t]he only reason that the program continues is political: ADC is pork barrel. Although ADC's constituency is tiny—fewer than 30,000 ranchers enjoy most of the benefits of the livestock program—Congress finds it easier to maintain wasteful programs than to cut any of them. . . ."⁴¹

Politics-as-usual must explain the continued funding of ADC. The folly of some of the Agency's behavior, coupled with the nonjustifiable economics behind its function, might otherwise lead reasonable citizens to doubt the wisdom of allowing this organization to continue operating at the taxpayers' expense. Let us consider examples of ADC conduct and spending, and briefly examine subsidized western ranching (the *raison d'être* for the ADC), then turn to a fundamental economic analysis of this agency's operations.

III. ADC FOLLIES

How wisely does the ADC spend federal funds? "In one notorious case, ADC trappers—working on public lands—spent almost 500 hours

³³ *Id.*; See also DEEBLE, *supra* note 22, at 23-28.

³⁴ See generally JACOBS, *supra* note 2.

³⁵ WASTE, *supra* note 3, at 6.

³⁶ O'TOOLE, *supra* note 4, at 4.

³⁷ See WASTE, *supra* note 3, at 22.

³⁸ Predator Project, P.O. Box 6733, Bozeman MT 59771.

³⁹ Wildlife Damage Review, P.O. Box 85218, Tucson AZ 85754.

⁴⁰ See *infra* part V.

⁴¹ O'TOOLE, *supra* note 4, at 1. As the report further explains in a rudimentary discussion of special interest politics in the nation's capitol, "[t]ogether, the legislators, bureaucrats, and special interests that benefit from a program form an 'Iron Triangle' that is difficult to break. Each leg of the triangle has a different goal, but they can all achieve their goals in the same way: by spending tax-dollars or deficit-dollars on programs that benefit the special interests." *Id.* at 5.

killing 56 wild animals, including 28 coyotes, a deer, several skunks, badgers, porcupines, and foxes—plus a hog-nosed snake . . . in response to a rancher's claim that a coyote had killed one lamb worth \$83.⁴² This type of conduct by ADC agents is all too typical in spite of agency claims that "control of animals is 'species specific'—a euphemism that means the killing is wholesale, without regard to whether individual coyotes [the overwhelmingly primary target of all ADC predator control activities] are taking livestock or not."⁴³ Thousands of nontarget animals are killed each year by traps, snares, and poisons. Beyond that, the agency intentionally kills bobcats and foxes to protect sheep, even though sheep growers do not consider them a serious problem.⁴⁴

Because these two predators are not inclined to attack sheep, the real reason for the killing of these furbearing animals is perhaps that in several states the ADC is allowed to defray part of its costs by selling fur pelts.⁴⁵

ADC was banned from operating on New Mexico state trust lands for not agreeing to check its traps frequently enough, but the state still licenses ranchers to use sodium cyanide guns (M-44s).⁴⁶ Many of these M-44s have been found inches from roadways, where they are sure to kill a large number of nontarget, even domestic, animals.⁴⁷ Also, few of the placements are accompanied by legally required postings to warn people of the danger.

Animals caught in ADC snares and traps often suffer for several days before the trappers return.⁴⁸ In 1992, ADC killed 246,181 animals in traps, often using the steel leghold trap that has been declared "inhumane" by the American Veterinary Medical Association and banned in nearly 70 countries.⁴⁹

The ADC was barred from New Mexico by then land commissioner Jim Baca for refusing to check leghold traps every 48 hours.⁵⁰ In frustration over the ADC's intransigence, Baca declared: "It has become apparent that ADC has outlived its usefulness as a federal agency. This agency which uses public funds to destroy wildlife for private industry, has shown it is nothing more than an anachronism in this day and age."⁵¹

Baca soon left that post to become head of the U.S. Bureau of Land Management (BLM), a position to which he was presumably appointed because of his responsible stewardship over New Mexico lands.⁵² He was serving in that capacity when the Humane Society of the United States

⁴² Schueler, *supra* note 5, at 72.

⁴³ *Id.* at 73 (quoting Curt Mullis, New Mexico State Director, Animal Damage Control).

⁴⁴ APHIS statistics show that in 1992, ADC killed 10,601 foxes and 1,243 bobcats. *Id.*

⁴⁵ JACOBS, *supra* note 2, at 276-77; Schueler, *supra* note 5, at 73.

⁴⁶ WASTE, *supra* note 3, at 15, 26-27.

⁴⁷ *Id.* at 15.

⁴⁸ *Id.* at 12. For specific, graphic examples of the horrors resulting from leaving large predators in traps unattended for days, see WASTE, *supra*, note 3, at 10-14.

⁴⁹ WASTE, *supra* note 3, at 10.

⁵⁰ Traps, *supra* note 6, at 32.

⁵¹ ADC Foe Nominated to Head BLM!, PREDATOR PROJECT NEWSL. (Predator Project, Bozeman MT), Mar. 1993, at 13.

⁵² *Id.*

sued four BLM districts in Utah for failing to compile proper environmental assessments under the National Environmental Policy Act.⁵³ In response, the BLM suspended all nonemergency control in the districts in question.⁵⁴ However, the next forty-six ADC actions in those districts were considered by district managers to be emergencies, essentially rendering the suspension meaningless.⁵⁵ Baca quickly learned from this and similar incidents that BLM's policies were too firmly entrenched on behalf of the landed gentry to be quickly corrected, even by a well-meaning director. It is no surprise that he resigned recently over "philosophical disagreements" with the Clinton Administration and now works for the Wilderness Society in New Mexico.⁵⁶

In 1992, the ADC killed fifty black bears in Oregon that had allegedly "damaged trees."⁵⁷ The damaged trees were located on a monocultural tree farm that was planted to replace a natural forest that had been removed by landowners South Coast Lumber Company and John Hancock Mutual Life Insurance Company.⁵⁸ The elective execution of fifty bears for allegedly damaging monoculturally farmed trees is difficult to justify and no boon to public relations.⁵⁹

Perhaps the two most egregiously offensive activities of the ADC are aerial sniping and denning. The majority of ADC coyote killing is done from the air, particularly in winter when the animals have no place to hide.⁶⁰ Dick Randall, former hunter for the ADC, once killed forty-two coyotes in six hours, while flying over Wyoming's Adobie Town Rim.⁶¹ Randall claims the predation reports from that year showed that the kill rate of local livestock by coyotes was the same as or slightly higher than usual, in spite of the many predators he and his associates had dispatched from the air.⁶² Looking back on such ADC activity, Randall now calls it "decades of useless slaughter."⁶³

At a 1995 press conference on predator control, Arizona ADC Director Richard Phillips and master trapper Alton Ford both criticized coyote killing.⁶⁴ They shocked the audience by arguing that "trying to wipe out coyotes only leaves more forage for wily survivors, who raise bigger lit-

⁵³ *Traps*, *supra* note 6, at 32; National Environmental Policy Act of 1969 § 102, 42 U.S.C. § 4332 (1994).

⁵⁴ *Traps*, *supra* note 6, at 32.

⁵⁵ *Id.* Baca was furious over the "emergency actions," stating that the ADC had "shown a total disregard for the procedures under which emergency ADC actions are to be carried out." *Id.*

⁵⁶ Mark Dowie, *The Wayward West: With Liberty and Firepower for All*, *OUTSIDE MAG.*, ¶ 18-19 (Nov.1995) <http://web2.starwave.com:80/magazine/121195/11f_lib.html>.

⁵⁷ *Traps*, *supra* note 6, at 34.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ John G. Mitchell, *Uncle Sam's Undeclared War Against Wildlife*, *WILDLIFE CONSERVATION*, Jan./Feb. 1994, at 30, 38.

⁶¹ *Id.* at 33.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *ADC Does Damage Control—Could Be Killed By Farm Bill*, *ANIMAL PEOPLE* (Animal People, Shushan, NY), Dec. 1995, at 1, 14.

ters. And Phillips concluded that killing coyotes just because they live near livestock is a strategic mistake.⁶⁵ Nevertheless, in 1992, ADC killed 4,070 animals, mostly coyote pups, by denning.⁶⁶

There are dozens of forms of denning, all of them gruesome. If possible, the denner simply digs back into the den and strangles the young barehanded, shoots them, or kills them with any implement at his disposal. In another form, a piece of barbed wire is shoved into the back of the den and rotated until it catches on a pup or kitten's fur. Or a hook may be used. The youngster is then fished out and shot or its head is bashed in. In another form of denning, the inside of the den is turned into a blazing inferno with a flamethrower, or filled with poison gas. One form involves smoking the animals out with a smoke bomb or fire and dispatching the choking, blinded pups or kittens with a club or shovel. In still another, dry brush is packed into the den hole and set on fire, and the entrance is covered with a rock. In theory, the animals suffocate from the smoke, but, as Dick Randall relates: "[t]hey'd [sic] often end up scrambling for the cracks of light at the entrance in desperation. You could hear them yowling when they hit the flames. They burned alive."⁶⁷

This activity is financed with federal taxes. It is reasonable to presume that a large segment of the tax-paying public does not want this done just so subsidized ranchers in the western states can have their herds protected from predators, especially when the very techniques of predator control are arguably ineffective.⁶⁸

Another practice of western ranchers is to shoot coyotes and hang them in ominous lines along fenceposts.⁶⁹ It makes quite a dramatic statement, although many doubt whether such displays deter other coyotes from pursuing livestock. The effect is more dramatic upon the observing public. While such morbid endeavors may be worn as a badge of merit amongst a small circle of western ranchers, most people are repulsed by the displays of fallen carcasses.

In spite of its tainted image with the general public, ADC remains the misplaced symbol of salvation to agency "clients." Ranchers tend to take fewer measures to protect their herds from harm when ADC programs are in effect in their area.⁷⁰ As a result, more animals are killed by predators than would be had the ranchers protected their animals better.⁷¹ However, the ADC can parade this high livestock kill rate before Congress as proof the agency needs more funds. ADC in turn uses this increased funding to serve more "clients."⁷² Many experts argue that this federally promoted protection is actually a detriment to livestock growers in the

⁶⁵ *Id.*

⁶⁶ *An Urgent Call to the American People: Your Tax Dollars are Paying for This*, WILDLIFE DAMAGE REV. (TUCSON, AZ), Summer 1994, at 5.

⁶⁷ JACOBS, *supra* note 2, at 260-61.

⁶⁸ Mitchell, *supra* note 60, at 33.

⁶⁹ See, e.g., Schueler, *supra* note 5, at 75; see also WILLIAMS *supra* note 1.

⁷⁰ O'TOOLE, *supra* note 4, at 14-15.

⁷¹ *Id.*

⁷² *Id.*

western states: "Despite ADC's efforts, the effect is greater losses to pre-dation—which to some becomes an argument for more funding."⁷³

It is important not to lose sight of the politico-economic predicate upon which the entire program is founded, namely, the federal subsidation of cattle ranching in the western states, the sine qua non of the ADC. A deeper understanding of the economic realities involved here might be gained by briefly reviewing the circumstances of grazing privately owned cattle on public lands in the western states.

A. *Subsidized Cattle Ranching Is the Heart of the Problem*

Few people understand the ecological costs of cattle grazing on public lands, or that this environmental devastation is subsidized by taxpayers. Why then, does it continue? "In part because most people fail to appreciate fully the ecological damage wrought by stock [cattle]."⁷⁴ Also, in part, because "ranchers are the landed gentry of the West, our self-proclaimed nobility, and they expect to be treated as such."⁷⁵ Thanks to their immensely powerful lobby in Washington, most ranchers get what they expect.⁷⁶

Beyond the direct subsidies granted ranchers through the pricing of grazing permits at one fifth of their market value,⁷⁷ the government spends millions of dollars each year in developing and improving cattle-raising programs and projects.⁷⁸ Millions, if not billions, of dollars are lost to the federal coffers in this process.⁷⁹ However, only three percent of beef produced in the United States is raised on public land, and approximately thirty thousand ranchers hold grazing permits on lands in the western states.⁸⁰ Seventy percent of the land in the eleven western states is grazed and fifty-eight percent of that is publicly owned.⁸¹ Forty-one percent of western land then, approximately 306 million acres, is public domain used to graze livestock, an activity profoundly detrimental to the environment.⁸²

Cattle grazing has reduced the West's naturally lush terrain and damaged native biotic systems by negatively affecting their density and depleting hundreds of native plant species over large areas;⁸³ "livestock grazing is the single greatest cause of desertification in the Western United States."⁸⁴ In the western states, livestock grazing has essentially turned

⁷³ *Id.* at 15.

⁷⁴ George Wuerthner, *Some Ecological Costs of Livestock*, WILD EARTH, Spring 1992, at 10, 13.

⁷⁵ DAVE FOREMAN, CONFESSIONS OF AN ECO-WARRIOR 100-01 (1991).

⁷⁶ Mitchell, *supra* note 60, at 30.

⁷⁷ Jon R. Luoma, *Discouraging Words*, AUDUBON, Sept. 1986, at 86, 98.

⁷⁸ JACOBS, *supra* note 2, at 369.

⁷⁹ *Id.*

⁸⁰ FOREMAN, *supra* note 75, at 99-100.

⁸¹ JACOBS, *supra* note 2, at 21. The eleven states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

⁸² *Id.*

⁸³ *Id.* at 40.

⁸⁴ Wuerthner, *supra* note 74, at 13.

over one hundred million acres of grassland, brushland, and forest to desert.⁸⁵ Perhaps one fifth of western land is naturally desert while another fifth has become "wasted" or "cowburnt" as a result of cattle-grazing.⁸⁶

The toll of western livestock grazing on indigenous animals is catastrophic.⁸⁷ With vegetation substantially reduced by grazing and the remainder often sprayed with insecticides and herbicides, millions of native creatures are doomed.⁸⁸ When one factors in the diseases introduced by cattle-rearing, fences, ranching roads, hunting, and trapping, the loss of wildlife increases exponentially.

The relentless war waged by ranchers and the ADC destroys all types of predators, and the ecological imbalances created by the destruction of natural predators further reduces the native wildlife population in western states.⁸⁹ This slaughter continues unabated, in spite of the fact that the total cost in lost stock is minor in comparison to what the government spends to exterminate predators.⁹⁰

Although livestock grazing on western lands reduces water supplies, increases water pollution, damages watersheds and riparian areas, degrades and destroys vegetation, and harms wildlife, almost no ranching studies suggest removal of livestock from western lands.⁹¹ Instead, most

⁸⁵ JACOBS, *supra* note 2, at 65.

⁸⁶ *Id.* at 61.

⁸⁷ *Id.* at 134. According to Jared Diamond, UCLA physiologist, the destruction of native species in any ecological context can usually be attributed to one or more of the following human factors: overkill of predators by methods such as shooting, burning, strangling, poisoning, dogs, and taxpayer-hired gamekillers (the ADC); habitat destruction; impact of introduced species on native ecology; pollutants; and secondary effects, such as the decline of one species leading to the ecological decline of yet other species. "Livestock ranching is the *only* human activity on Western public land. . . to include all 5 of these influences to a significant degree." *Id.*

⁸⁸ "The spraying of herbicides to kill trees and brush has been a major factor in the decline of big animals. The BLM and western ranchers often spray thousands of acres in a single operation to eliminate the shrubs and brush these animals rely on to survive." JEREMY RIFKIN, *BEYOND BEEF: THE RISE AND FALL OF THE CATTLE CULTURE* 207 (1992) [hereinafter *BEYOND BEEF*].

⁸⁹ JACOBS, *supra* note 2, at 124-39.

⁹⁰ In 1988, Animal Damage Control spent more than \$29 million killing every conceivable kind of predator, including some endangered species. Wuerthner, *supra* note 74, at 13. Destroyed predators include grizzly bear, black bear, wolves, foxes, coyotes, mountain lions, lynx, bobcat, ocelot, jaguarundi, wild mustangs, burros, prairie dogs, countless rodent species, and golden eagles. The destruction of predators that allegedly threaten livestock, when examined closely, is appalling. Two of the last California condors were killed by poisoned grain set out to eliminate livestock predators. JENNIFER RAYMOND, *Consuming Our Public Land*, *VEGETARIAN VOICE*, Winter 92/93, at 23. The fiscal folly of ADC activities is near-legend: In 1985, Arizona ADC spent roughly one half million dollars to protect livestock, while confirmed losses totaled less than \$60,000. JACOBS, *supra* note 2, at 389. In 1988 ADC spent \$3.2 million in California to kill 32,368 animals, for allegedly causing \$1.4 million (a suspect figure) in poultry, crop, and livestock losses. Michael Satchell & Joannie M. Schrof, *Uncle Sam's War on Wildlife*, *U.S. NEWS & WORLD REP.*, Feb. 5, 1990, at 36.

⁹¹ JACOBS, *supra* note 2, at 154-55. This is not so surprising when one realizes that most grazing studies are funded by government land managing agencies or departments of agricultural universities with land grants. One term for such skewed perspectives is "cow-centric." "[S]everal range researchers at the University of Arizona recently confided that they

studies suggest the adoption of almost any management program, usually taxpayer funded, that protect grazing interests.⁹²

Despite the fact that the cost of grazing cattle on western public lands is immense to both wildlife and the environment, federal (and to some extent state and local) funding continues to pay for the majority of it.⁹³ As environmental author Ted Williams points out: "Although cattle grazing in the West has polluted more water, eroded more topsoil, killed more fish, displaced more wildlife, [and] destroyed more vegetation than any other [land] use, the American public pays ranchers to do it."⁹⁴

Public lands grazing is one of the most extreme subsidies in our economy, indicating the formidable political influence of the ranching industry. The Federal Land Policy and Management Act of 1976 (FLPMA)⁹⁵ states that the government should "receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute. . . ."⁹⁶ In 1978, Congress established a seven year exemption to that policy in the Public Rangelands Improvement Act (PRIA).⁹⁷ The PRIA contains a formula for setting grazing fees,⁹⁸ which essentially bases a rancher's fees on an ability to pay, rather than a competitive commercial basis.⁹⁹ Both the BLM and the USFS, which manage most publicly grazed western lands,¹⁰⁰ set grazing fees far below private market rates according to the PRIA formula.¹⁰¹ Thus, ranchers are awarded for grazing cattle, not for doing so efficiently. The entire economy of cattle grazing on public lands belies our cultural myth of that rugged and independent icon, the cowboy.

Direct subsidies include below-market grazing fees, range development, and ranching administration.¹⁰² Indirect subsidies include agricultural extension service offices, range restoration projects, university range

thought grazing public lands was a bad idea, but that if they didn't produce grazing-promoting studies, they would lose their jobs." *Id.* at 155.

⁹² *Id.*

⁹³ DEEBLE, *supra* note 22, at 13-37.

⁹⁴ Ted Williams, *He's Going to Have an Accident*, AUDUBON, Mar.-Apr. 1991, at 30, 34.

⁹⁵ 43 U.S.C. §§ 1701-1784 (1986 & Supp. 1996).

⁹⁶ *Id.* § 1701(9).

⁹⁷ 43 U.S.C. §§ 1901-1908 (1986 & Supp. 1996).

⁹⁸ 43 U.S.C. § 1905 (1986), replaced by Exec. Order No. 12,548, 51 Fed. Reg. 5935 (1986), codified at 43 U.S.C. § 1905 (Supp. 1996).

⁹⁹ JACOBS, *supra* note 2, at 371; Betsy A. Cody, *Grazing Fees and Rangeland Management*, CONG. RES. SERV., Issue Brief 96006, ¶ 27-28 (Nov. 14, 1996) <<http://www.cnre.org/nle/ag-17.html>> [hereinafter *Grazing Fees and Rangeland Management*].

¹⁰⁰ *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 1.

¹⁰¹ 43 U.S.C. § 1905. See JACOBS, *supra* note 2, at 371, for an explanation of the formula used. Grazing fees on public lands are based on units of measure known as Animal Unit Months (AUMs). An AUM is the amount of forage or browse required to feed a cow and her calf, a horse, or five sheep or goats for one month. *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 27. The PRIA formula takes a base value per AUM and updates that rate annually, using a series of indexes that measure changes in private grazing lease rates, the price of beef, and livestock production costs. This formula keeps the grazing fee per AUM suppressed at a level far below the costs of grazing cattle on private lands. *Id.* at ¶ 30.

¹⁰² JACOBS, *supra* note 2, at 370-401.

programs, range experimental stations, research and testing programs, federal wool incentive payments, livestock disease control, and many others.¹⁰³

Since 1978, the federal charge for grazing private cattle on public lands has run roughly one fifth of the charge for grazing cattle on private land.¹⁰⁴ In the Spring of 1992, with the BLM and USFS under intense pressure to bring fees closer to private grazing rates, the AUM fee was reduced five cents using the PRIA formula (which allows for discounting cost when the market price of beef falls).¹⁰⁵ This typifies the disregard for public sentiment shared by western ranchers and the government agencies that service them.

Seeking to mitigate such an extreme subsidy, the Fair Market Grazing for Public Rangelands Act of 1991,¹⁰⁶ and the Public Rangelands Fee Act of 1991,¹⁰⁷ were introduced in Congress. The latter was defeated in the House. The former, eventually submitted as an amendment to the 1992 Interior Department spending bill, passed the House but was defeated in the Senate by the cattle lobby.¹⁰⁸

Since then, federal grazing fees were lowered again in 1993, further still in 1995, and finally reduced in 1996 to the lowest legally allowable amount.¹⁰⁹ Market prices rose throughout this period, leaving the current federal fee at less than one sixth of the going market rate.¹¹⁰ The most recent effort to raise federal fees, the Public Rangelands Management Act, would have based grazing fees on a three year average of the "total gross value of production for beef cattle for the three years preceeding the grazing year."¹¹¹ The bill passed in the Senate but was defeated by a successful tabling motion in the House in March 1996.¹¹² Western ranchers and their Congressional representatives are apparently vigilant protectors of federal welfare when it accrues to their own benefit.¹¹³

¹⁰³ See JACOBS, *supra* note 2, at 369, for detailed discussion of the indirect federal subsidies granted western cattle ranchers, including funding for cattle-related projects hidden under such names as wildlife water development, access improvement, and open range.

¹⁰⁴ Luoma, *supra* note 77, at 98.

¹⁰⁵ FOREMAN, *supra* note 75, at 100-01.

¹⁰⁶ H.R. 944, 102nd Cong. (1991).

¹⁰⁷ H.R. 481, 102nd Cong. (1991).

¹⁰⁸ JEREMY RIFKIN AND CAROL GRUNEWALD RIFKIN, VOTING GREEN 176 (1992). Rep. Michael Synar (D-OK), who sponsored the Fair Market Grazing for Public Rangelands Act, was subsequently defeated in the 1994 Congressional elections. Some political pundits think his defeat was a direct result of opposing the cattle lobby of the western states.

¹⁰⁹ Betsy A. Cody, *Grazing Fees: An Overview*, CONG. RES. SERV., Rep. No. 96-450ENR, at ¶ 6 (May 21, 1996) <<http://www.cnre.org/nle/ag-5.html>> [hereinafter *Grazing Fees: An Overview*]. The fee would most likely have been reduced below the current rate of \$1.35 per AUM, if not for President Reagan's Executive Order No. 12548, which established \$1.35 as the minimum allowable fee. Exec. Order No. 12,548, 51 Fed. Reg. 5985 (1986), *codified at* 43 U.S.C. § 1905 (Supp. 1996).

¹¹⁰ *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 29-30.

¹¹¹ Public Rangelands Management Act of 1995, S. 1459, 104th Cong. (1996).

¹¹² *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 39.

¹¹³ See generally Luoma, *supra* note 77, at 101 (discussing the rangeland owned by various government representatives and officials).

The federal government subsidizes three percent of the nation's beef production, aiding ranchers in harming the environment and thereby endangering animal inhabitants on millions of acres of public western lands.¹¹⁴ Rendering the equation more unconscionable is the fact that many of the ranchers with grazing permits sublet the grazing range to other ranchers at far higher rates that more closely approximate private grazing fees.¹¹⁵ Because these permits are usually handed down with the land, the resale value of ranches with grazing permits is grossly inflated.¹¹⁶

The extent of subsidization is astonishing. Environmental activist Dave Foreman states the case in simple terms:

[E]xperts estimate that the Forest Service and BLM lose over \$100 million a year on their grazing programs. When erosion, lowered recreational values, loss of biodiversity, and numerous other hidden costs are factored in, the subsidy to the livestock industry grows to gargantuan proportions—very roughly, \$2 billion annually. . . . The proud, independent public-lands rancher as the paragon of the free-enterprise system? Forget it; he's a welfare bum.¹¹⁷

Over 50% of the revenues collected from grazing permits are returned to the ranchers through a Range Betterment Fund which is used to finance continued public grazing,¹¹⁸ so the actual fee private ranchers are paying for the privilege of using western lands is approximately 10% of what the open market would bear.¹¹⁹ In 1985, the BLM and USFS completed a seven-year study of the western public lands grazing program and concluded that the system, as currently operated, amounts to a multimillion-dollar giveaway.¹²⁰

Most western states have ranchland property tax exemptions which collectively save ranchers millions of dollars annually in lowered property taxes.¹²¹ Some ranchers qualify for these exemptions by buying or renting a few cattle to place on their property, further depriving the local government of tax revenues.¹²² Regarding this practice, Lynn Jacobs, environmental author and public lands grazing expert, wrote: "Western county

¹¹⁴ FOREMAN, *supra* note 75, at 99-100.

¹¹⁵ JACOBS, *supra* note 2, at 376-77.

¹¹⁶ *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 36; BEYOND BEEF, *supra* note 88, at 106. A 1984 House Committee on Appropriations report cited one rancher who sold his land "for one million dollars over what he would have received because a permit to graze on public range was attached to his private property." Luoma, *supra* note 77, at 98.

¹¹⁷ FOREMAN, *supra* note 75, at 100.

¹¹⁸ JACOBS, *supra* note 2, at 379; *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 42. Through a Range Betterment Fund, 50% of grazing fee receipts collected from BLM section 3 lands (comprising approximately 90% of BLM grazing lands) go back to the grazing districts from which they came to be allocated by grazing advisory boards for ranching developments. *Id.*; Taylor Grazing Act § 3, 43 U.S.C. § 315b (1986).

¹¹⁹ JACOBS, *supra* note 2, at 379.

¹²⁰ Luoma, *supra* note 77, at 98.

¹²¹ JACOBS, *supra* note 2, at 399-400.

¹²² *Id.* at 399. In Pima County, Arizona, for example, the owner of property worth over \$3 million paid less than \$100 in property taxes, although he had very few cattle on the land. Had he not been granted a ranchland exemption, his taxes would have been about \$53,000. *Id.*

governments are being bilked of hundreds of millions of property tax dollars annually because of rangeland exemption laws. The public, as usual, makes up the foregone revenue."¹²³ Welfare ranchers have relied on public ignorance of the realities of public lands grazing to maintain their subsidized scheme. The situation is changing, however. Larry Tuttle, director of the Oregon office of the Wilderness Society, foresaw the hard political rain about to fall when he said, "[t]he next great environmental issue is going to be grazing and the desertification of public land."¹²⁴

Department of Interior Secretary Bruce Babbitt has been promising rangeland reform since he took office, but the entrenched political clout residing in the senators from Western states has successfully resisted any serious reform.¹²⁵ It appeared for a while that Babbitt had convinced President Clinton to stay the course in raising grazing fees on federal lands until Clinton traded away his leverage in return for the western senators' votes on the NAFTA treaty.

With the determined efforts of dedicated groups such as Wildlife Damage Review¹²⁶ and the Predator Project,¹²⁷ however, the taxpayers whose ransoms fill the general coffers, may someday take the welfare ranchers and their ADC¹²⁸ off the public dole.

One would expect the new mood of fiscal responsibility reflected in the 1994 Congressional elections to bode well for such a possibility, but it would be naive to underestimate the realpolitik that perpetuates welfare ranching and the ADC. Various proposed new farm bills, for example, advocate the elimination of ADC, but that agency "still has powerful friends, including western [s]enators of both major parties . . ."¹²⁹ A rudimentary examination of ADC economics serves to strengthen the argument for terminating that agency.

B. The Simple Analytics and Economics of Animal Control

Economics offers a useful framework for analyzing animal control policy. It allows us to identify the "optimal" number of wildlife kills, given the relevant costs and benefits of reducing the wildlife population. Specifically, the "optimal" number of kills occurs when the benefits and costs of an additional kill are equal. Put differently, and more bluntly, we have killed too few wild creatures if the benefit of an additional kill (the marginal benefit) exceeds the additional cost (or marginal cost). Conversely, we have killed excessively when the marginal cost exceeds the marginal benefit.

It is entirely possible, of course, that the optimal number of kills is zero, or very close to zero, wherein the marginal cost might exceed the

¹²³ *Id.* at 400.

¹²⁴ *Id.* at 545 (quoting Larry Tuttle, Director, The Wilderness Society, Oregon office).

¹²⁵ *Grazing Fees and Rangeland Management*, *supra* note 99, at ¶ 12.

¹²⁶ *Supra* note 39.

¹²⁷ *Supra* note 38.

¹²⁸ "That's A-D-C. Aid to Dependent Cowboys." Mitchell, *supra* note 60, at 79.

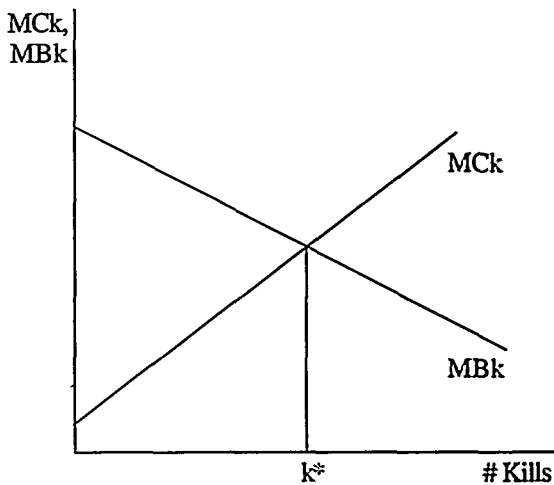
¹²⁹ *ADC Does Damage Control-Could Be Killed by Farm Bill*, *supra* note 64, at 1.

marginal benefit for any and all wildlife kills. This is partly an empirical question and partly a philosophical matter of assigning value to the animals' right to exist. Fortunately, we are able to say things of a qualitative nature without knowing the answers to all of the empirical and philosophical questions.

Let us begin the analysis by assuming that the wildlife subject to "control" in this case are coyotes living in close proximity to sheep and cattle. The marginal benefit of the kill (MBk) is the value of the livestock saved—the sheep and cattle not destroyed because one less coyote exists. The marginal cost of a coyote kill (MCk) includes hunting costs and the value of the coyote itself.¹³⁰

Figure One, below, illustrates that the optimal number of kills will be achieved only if MBk and MCk are correctly estimated. If some of the relevant costs and benefits are either inflated or underestimated, non-optimal kills result.

FIGURE 1

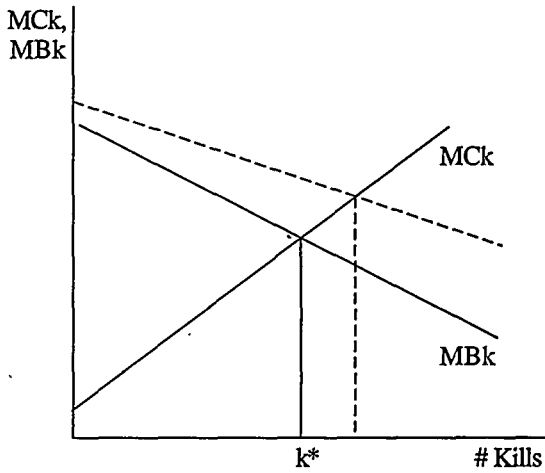


When both MBk and MCk are correctly estimated, the "optimal" number of kills (k^*) results.

¹³⁰ Presumably coyotes do have value. They are a vital part of the ecosystem, and may have other "existence value" quite apart from any direct human interaction with them. See Holmes Rolston III, *Values Gone Wild*, in *ESSAYS IN ENVIRONMENTAL ETHICS* 118, 126 (1986).

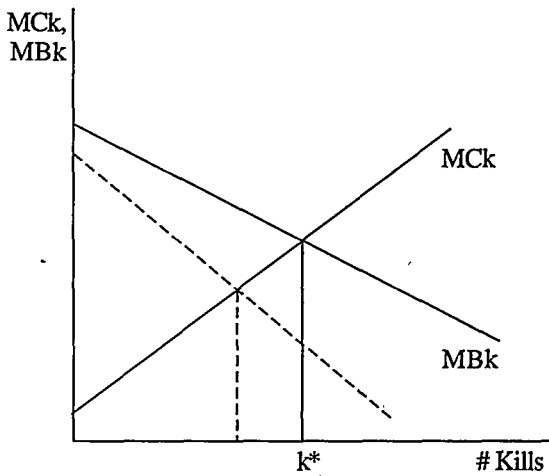
Consider the following non-optimal kill scenarios:

FIGURE 2



When the MBk is overestimated, the "optimal" number of kills (k^*) is exceeded, i.e., too many kills occur.

FIGURE 3



When MCK is overestimated, the "optimal" number of kills (k^*) is not reached, i.e., too few kills occur. This is not a likely occurrence in the current climate of political debate.

Arguably scenario 3 best describes the perspective of livestock producers, who rarely show much enthusiasm for protecting animal rights, as they tend to advocate policy which shifts much of the hunting costs to

taxpayers via the ADC. To the extent that livestock producers dominate the debate, public policy will result in wildlife overkill.¹³¹

What are the implications for policy? Livestock producers could be allowed to hunt wildlife if certain constraints were imposed. They should bear the full cost of hunting (this entails no cost-shifting to taxpayers via ADC). A further cost should be imposed, perhaps in the form of a hunting license, to internalize the value of wildlife killed. Bag limits and stiff fines for over-killing would probably be needed as well. But, the most effective deterrent to overkill might be the threat of losing one's federal grazing permit (and its attendant subsidy). These measures would result in more accurate estimation of the costs and benefits associated with each kill, and perhaps prevent kills that were not optimal.

The above scenarios reveal the technical fundamentals involved in the economics of animal control, but a more holistic application of economics to the political situation is necessary to complete the picture.

[E]conomists would ask two questions about a federal ADC program. First, is federal involvement justified by some sort of market failure that prevents efficient control of wildlife? And second, is federal involvement justified by an equitability problem that forces some people to pay the cost of things from which other people benefit?¹³²

ADC gives several reasons to justify its existence at the federal level.¹³³ The most important is that "wildlife is a publicly owned resource held in trust by State and Federal agencies. Government agencies have a mandate to provide for the welfare and perpetuation of wildlife and must . . . respond to requests for resolution of damage and other problems caused by wildlife."¹³⁴ However, most wildlife are wards of states, not federal agencies, and should not be "protected" in this way by federal revenues.¹³⁵

The ADC also argues that the competition between humans and wildlife for limited habitat is a problem of national scope.¹³⁶ When broken down to specifics, however, each and every instance is quite local in nature. ADC suggests that it actually protects wildlife because, without ADC's efforts, individual ranchers would levy an even more vicious toll upon wildlife perceived to be threatening livestock and crops.¹³⁷ This

¹³¹ Western ranchers, for the myriad reasons synopsized in this text, will resist efforts to internalize costs related to the existence value of predator animals. Clearly, they are both philosophically and economically opposed to such valuation. As long as the ranchers have their way, existence value will neither be recognized nor internalized in calculating cost/benefit analyses of ADC predator control programs.

¹³² O'TOOLE, *supra* note 4, at 30.

¹³³ *Id.*; ADC EIS, *supra* note 11, at 1-1 to 1-18.

¹³⁴ ADC EIS, *supra* note 11, at 1-3. Strange, that the ADC's strongest argument for continuing to exist is the "mandate to provide for the welfare and perpetuation of wildlife . . ." when that very agency is now killing over two million wild animals per year. *Id.*; ADC Program's Fiscal Year 1992 Budget and Animal Kill Figures, *supra* note 5, at 16-17.

¹³⁵ O'TOOLE, *supra* note 4, at 31; but see ADC EIS, *supra* note 11, at 1-3.

¹³⁶ ADC EIS, *supra* note 11, at 1-4; O'TOOLE, *supra* note 4, at 31.

¹³⁷ ADC EIS, *supra* note 11, at 1-4; O'TOOLE, *supra* note 4, at 31.

seems spurious, as the ranchers simply would not have the funds with which to wage an ADC-scale campaign against wildlife, and even if they did, the problem would still be local in nature.¹³⁸

Why then, with such weak arguments, do the western states continue to receive a disproportionately large share of ADC funding?¹³⁹ Because the largest agricultural subsidies go to the states with representatives on the agriculture subcommittees of the House or Senate appropriations committees.¹⁴⁰

Were it not for the legislative stranglehold over agricultural subsidies by the western states, most animal control might be done in a manner similar to the state of Kansas. Kansas accepts no ADC funding and has one agent who operates the entire state's educational program on curbing livestock losses to predators.¹⁴¹ The total cost, including the agent's salary, is approximately sixty thousand dollars a year.¹⁴² Ironically, Kansas routinely records lower livestock losses to predators than its neighboring states of Oklahoma and Nebraska, each of which receive substantial ADC funding.¹⁴³

Modern political economics have become ensconced in the necessities of cost-benefit analysis, and the operation of ADC is no exception. Consequently, there has been considerable debate about the value of wildlife, with its worth usually being divided into two categories: "use value" (derived from hunting, fishing, and recreationally observing) and what natural resource economists have come to call "existence value."¹⁴⁴

Natural resource economists who attribute existence value to wildlife are following the lead of environmental ethicists who claim that "wildlife has an intrinsic right to exist, independent of human attitudes toward their existence."¹⁴⁵ This view adds an ethical dimension to the debate over ADC activities, a dimension that dramatically changes the entire picture ADC presents of its own legitimacy. A brief inquiry into the question of non-economic value inherent in wildlife, whether it is called existence value, intrinsic worth, or anything else, gives us both a broader context and a deeper focus from which to perceive the concept of animal damage control.

C. *Ethical Dimensions: The Moral Rights and Interests of Animals*

Can nonhuman environmental objects be possessed of interests? Can a fox, or a tree, or a river, have a right? Can such entities make direct

¹³⁸ See O'TOOLE, *supra* note 4, at 31.

¹³⁹ See *id.* at 33-34.

¹⁴⁰ *Id.* at 33.

¹⁴¹ *Id.* at 34.

¹⁴² *Id.*

¹⁴³ *Id.* at 34-35.

¹⁴⁴ Thomas H. Stevens et al., *Measuring the Existence Value of Wildlife: What Do CVM Estimates Really Show?*, 67 LAND ECON. 390, 390 (1991) (arguing that the existence value might well be the most important component of the total value of wildlife, but in this anthropocentrically oriented culture, it is viewed with considerable skepticism).

¹⁴⁵ *Id.* at 390.

"claims" as external stakeholders?¹⁴⁶ Here, we leave the familiar ground of homocentricity¹⁴⁷ and explore the biocentric ethic.¹⁴⁸

First consider the case of an animal. The first advocate of animal interests may have been Jeremy Bentham, who said, "the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?"¹⁴⁹ Bentham argued that if animals are capable of suffering and enjoyment, they are capable of having interests.¹⁵⁰ By ascribing interests to animals and human duties attendant to those interests, he brought animals into the utilitarian equation.¹⁵¹ Peter Singer supports Bentham's contention.¹⁵² He insists that if animals can suffer like people, they have interests like people, and that an unwillingness to accept this proposition constitutes "speciesism."¹⁵³

Animal rights proponent Tom Regan argues that animals possess inherent rights which stem from the fact that they are "the subjects of a life that is better or worse for them, logically independently of whether they are valued by anyone else."¹⁵⁴ He claims that those things capable of having preferences or experiencing pain, however modestly or minimally, have interests, and that all things having interests become moral obligees of those capable of discerning right from wrong (moral agents).¹⁵⁵

Critics of this position argue that no inherent rights adhere in beings that are not innocent, and that only moral agents . . . can be innocent, because only they can be guilty [and, perhaps more importantly, only they are capable of offering reciprocal moral indebtedness to all other possessors of moral rights].

¹⁴⁶ Stakeholders are beings whose welfare is affected by the activities of others.

¹⁴⁷ Homocentricity is human-centered valuations, a concept wherein only homo sapiens are entitled to serious moral consideration in pondering the correctness of one's actions.

¹⁴⁸ The biocentric ethic is a more holistic view of nature, in which all beings are entitled to moral consideration by humans whose conduct might affect their well-being.

¹⁴⁹ JEREMY BENTHAM, *THE PRINCIPLES OF MORALS AND LEGISLATION* ch. 17 § 1 (IV) n.1 (Hafner Pub. 1948) (1823).

¹⁵⁰ PETER SINGER, *ANIMAL LIBERATION, A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* 8 (1975).

¹⁵¹ *Id.*

¹⁵² *Id.* at 7-8. Singer's book has become the "Bible" of the animal rights movement, and along with Tom Regan, Singer has become one of the most renowned spokespersons of the movement. This is particularly interesting in light of the fact that, unlike Regan, Singer does not attribute rights to animals. He adopts a classic utilitarian position, suggesting simply that animals' interests must be taken into account based on the principle of equality. See *id.* at 7-9; Tom Regan, *Animal Rights, Human Wrongs, in ALL THAT DWELL THEREIN: ANIMAL RIGHTS AND ENVIRONMENTAL ETHICS* 75, 94 (1982) [hereinafter *Animal Rights, Human Wrongs*].

¹⁵³ "Speciesism" is another term for anthropocentrism, wherein man places himself at the center of the universe and all other species in positions subordinate to that center. Singer defines "speciesism" as "a prejudice or attitude of bias toward the interests of members of one's own species and against those of members of other species." SINGER, *supra* note 150, at 7.

¹⁵⁴ *Animal Rights, Human Wrongs, supra* note 152, at 94.

¹⁵⁵ *Id.* at 98.

Innocents, however, include not only moral agents but moral patients (those capable of being undeserving recipients of wrongs committed by others).¹⁵⁶

If this were not the case, the theory of reciprocal moral agency argues, we would have license to do what we most expediently could with infants, brain-injured parties, and Alzheimer's victims, among others. This realization cuts a wide swath through the fabric of moral agency.

Regan does not distinguish the relative inherent values of different interest-bearing creatures, such as a frog and a chimpanzee.¹⁵⁷ He expands the philosophical paradigm by making a logical and coherent case for the attribution of moral rights to interest-bearing nonhumans.¹⁵⁸ It is debatable whether interests constitute rights, and if so, whether those rights are legal or moral. However, it is difficult to refute the fundamental claim that all beings with the capacity to both prefer and suffer have moral interests, with such a denial being founded upon Singer's "speciesism."

If nonhuman animals¹⁵⁹ have interests, they are moral patients and obligees of those whose activities affect them, whether those obligors are individual actors or corporate (including governmental) institutions. Is not then an actor (rancher, ADC employee, or other party) whose conduct affects the animals in a given ecosystem, obliged to grant moral consideration to animals directly affected by his conduct? Is he not also obligated to take into account the other ecological players in that biotic community (who are indirectly, but perhaps quite substantially, affected by his behavior), so as not to treat them in a manner that would harm the ecological integrity of the community, thereby injuring the interests of its animals?

This is the direction in which the argument goes, and it becomes obvious that if one takes the proposition of moral indebtedness toward interest-bearing nonhumans seriously, the presumed legitimacy of animal damage control activities is dramatically altered. One might argue to restrict predator-killing to those specific animals which actually attack livestock¹⁶⁰ or even against the legitimacy of employing any lethal methods of animal damage control.

¹⁵⁶ David Hoch, *Business Ethics, Law, and the Corporate Use of Laboratory Animals*, 21 AKRON L. REV. 201, 208 (1987) (citing TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 151-56 (1983)).

¹⁵⁷ See Mary Anne Warren, *Difficulties with the Strong Animal Rights Position*, BETWEEN THE SPECIES: A JOURNAL OF ETHICS, Fall 1986, at 163. Warren argues that Tom Regan grants or denies rights on the basis of a non-assessable quality and suggests that we may simply allow the rights of animals with different claims to vary in strength (as she also attributes rights to animals). *Id.* at 164-67. In essence, without calling it by name, Warren foresaw whole cloth, the "moral pluralism" later popularized by law professor and environmental ethicist, Christopher Stone. See CHRISTOPHER D. STONE, *EARTH AND OTHER ETHICS: THE CASE FOR MORAL PLURALISM* 201-40 (1987).

¹⁵⁸ *Animal Rights, Human Wrongs*, *supra* note 152, at 94.

¹⁵⁹ The term animal is not restricted here to mammals, but inclusive of all non-flora living creatures capable of suffering.

¹⁶⁰ And only then, after all nonlethal deterrent methods have failed.

IV. PROPOSALS TO ALLEVIATE THE ADC KILLING FIELDS

Under the National Environmental Policy Act of 1969 (NEPA),¹⁶¹ whenever a federal agency plans to undertake a project that may substantially affect the environment, it is required to first prepare an Environmental Impact Statement (EIS).¹⁶² The EIS explains, among other things, the possible or probable effects of the project upon the environment, as well as alternative means considered for achieving the agency's goals.¹⁶³ In its EIS, the ADC listed its options in five categories.¹⁶⁴ It began with a "No Action Alternative" (disbanding the entire program at the national level), which did not have a strong likelihood of being implemented.¹⁶⁵ It then considered the "Current Program Alternative," which would have maintained the current program's structure.¹⁶⁶ It also considered a "Nonlethal Control Program Alternative," which would have called for the ADC to cease and desist from all lethal means of animal control.¹⁶⁷ The fourth alternative was a "Nonlethal Before Lethal Control Program Alternative," which would have required more rigorous nonlethal control attempts than currently implemented before opting for lethal control methods.¹⁶⁸ The EIS concluded with a "Damage Compensation Program Alternative," which would have simply paid ranchers and farmers for predator-caused damages on a set fee schedule.¹⁶⁹

In a conclusion that comes as utterly no surprise to anyone, the EIS summary states that, "[b]ased on the environmental analysis in Chapter 4, the Current Program Alternative is identified as the USDA APHIS preferred alternative to meet responsibilities under the Animal Damage Control Act of 1931 and other applicable laws."¹⁷⁰ Given the methodology of bureaucracies, it is understandable that ADC recommends continuing the present program unchanged. However, others with interests that go beyond the preservation of the ADC have various suggestions that would alter the status quo.

While different organizations emphasize different primary alterations in the ADC program, most of them are subsumed under the umbrella of intermediary suggestions made by the Predator Project as interim steps to be taken while simultaneously advocating the ultimate termination of the ADC.¹⁷¹ The proposed Predator Project alternatives are as follows:

¹⁶¹ 42 U.S.C. §§ 4321-4370d (1994 & Supp. 1996).

¹⁶² *Id.* § 4332 (C) (1994).

¹⁶³ *Id.*

¹⁶⁴ ADC EIS, *supra* note 11, at 2-1.

¹⁶⁵ *Id.* at 2-14 to 2-15.

¹⁶⁶ *Id.* at 2-15 to 2-37.

¹⁶⁷ *Id.* at 2-38.

¹⁶⁸ *Id.* at 2-38 to 2-39.

¹⁶⁹ *Id.* at 2-40 to 2-43.

¹⁷⁰ *Id.* at 2 (vol. 1).

¹⁷¹ *Appropriations Damage Control: Annual Funding of the Federal Animal Damage Control Program*, PREDATOR PROJECT NEWSL. (Predator Project, Bozeman, MT), March 1993, at 3.

[1] [R]equire that [livestock] producers conduct a certain level of non-lethal work themselves (guard dogs, herders, herding, hazing and scare tactics . . .) prior to requesting ADC's assistance.

[2] [Charge a] direct user fee for ADC's services.

[3] Require [livestock] producers to purchase insurance policies to cover losses due to wildlife . . . and let the consumer pay the direct costs.

[4] Maintain ADC's funding, and mandate that a greater percentage is earmarked for non-lethal research and operations. In addition, require (not simply "encourage") ADC to use non-lethal as their "activity of choice."

[5] Establish a smaller budget for ADC (or abolish the program altogether), and let the consumer of the specific product pay the direct cost of allowing nature to take its course.

[6] Create an incentive program, whereby [livestock] producers would get financial incentives to perform non-lethal control rather than asking for ADC's incentive.

[7] Pay producers to not perform their business in areas where losses are especially high (that presently happens to grain producers when there is a glut in the grain market).¹⁷²

However much politics impedes the process, we are moving inexorably closer to some type of reform in the ADC program. The umbrella of suggestions by Predator Project and other like-minded organizations forms a solid base of options from which to curb the excesses of a federal agency that many feel has run amuck. As its activities become more well-known to the population at large, it seems inconceivable that the American public will continue to accept and fund the wholesale slaughter of wildlife that this agency has engaged in for so many years for the benefit of a relatively small number of welfare ranchers.

V. CONCLUSION

Wildlife Damage Review, in the preface to their special report on ADC, states that "[a]fter years of fighting to reform the U.S. Animal Damage Control program, we have come to the conclusion that it is not reformable and must be abolished."¹⁷³ The Executive Summary of the Cascade Holistic Economic Consultants' (CHEC) Audit of the USDA Animal Damage Control Program, concludes that "Congress should immediately terminate federal funding to ADC . . ."¹⁷⁴ CHEC bases its conclusion on the following findings highlighted in the Executive Summary of its Audit:

[a] ADC's programs are unfairly distributed The livestock protection program primarily benefits western ranchers to the exclusion of most eastern livestock growers.

[b] ADC's livestock protection program creates perverse incentives for ranchers to . . . overgraze public land, and to rely on taxpayers rather than [themselves] to protect their herds.

¹⁷² *Id.*

¹⁷³ WASTE, *supra* note 3, at 1.

¹⁷⁴ O'Toole, *supra* note 4, at 1.

[c] 40 percent of ADC's federal funds are dedicated to the 27,000 ranchers who graze livestock on public lands [at an annual cost of over ten million dollars to protect their animals].

[d] ADC's livestock-protection mission has apparently failed . . . States with active ADC livestock programs experience higher predator losses than states with minimal or no livestock programs.

[e] Shutting down the ADC program would save federal taxpayers \$36 million each year.¹⁷⁵

The more rigorous the scrutiny of ADC activities, the greater appears the folly of its endeavors. Having developed a siege mentality in response to increasingly critical investigation and analysis of the agency's activities, the Western regional public affairs office of the ADC circulated a list of sixteen answers staffers should use to respond to any and all questions from the media.¹⁷⁶ The two most frequently employed suggestions from the list are "ADC is a federal agency that helps protect people's lives, property and health from wildlife when it causes damage" and "ADC is doing the right thing, we are doing it the right way, and we are doing it for the right reasons."¹⁷⁷

Another of the suggested answers is that "[t]ax dollars are used . . . because wildlife—like national forests¹⁷⁸—is a valuable publicly owned resource."¹⁷⁹ How ironic then, that this valuable publicly owned resource is slaughtered at the rate of over two million animals a year, at taxpayers' expense.¹⁸⁰ It is also ironic that the ADC has adopted a new motto, "Living with Wildlife," and has recently changed its name to "Wildlife Services."¹⁸¹

In June 1996, Congressman Peter DeFazio (D-Oregon) offered an amendment to the Agriculture Appropriations Bill, which would have cut the proposed twenty-six million dollar ADC appropriation for fiscal year 1997 by half, with none of the remaining funds made available "for predator control efforts under the Animal Damage Control Program in the western region of the United States . . ."¹⁸² This amendment would have effectively terminated ADC predator control activities in the western

¹⁷⁵ *Id.*

¹⁷⁶ *ADC Shoots Out Its Message With Sixteen Bullets*, PREDATOR PROJECT NEWSLETTER (Predator Project, Bozeman, MT), Summer 1994, at 14.

¹⁷⁷ *Id.* (quoting *Controlling or Causing Damage*, Editorial, SALT LAKE TRIB., May 22, 1994).

¹⁷⁸ Trees from national forests are usually sold by the USFS to lumber companies at a net loss to taxpayers. It is fitting then, that the ADC compares the value of wildlife to the value of federally owned trees.

¹⁷⁹ *ADC Shoots Out Its Message With Sixteen Bullets*, *supra* note 176, at 14.

¹⁸⁰ *ADC Program's Fiscal Year 1992 Budget and Animal Kill Figures*, *supra* note 5, at 16-17.

¹⁸¹ Mitchell, *supra* note 60, at 79. However, the agency appears to have gone back to its former title. See ADC Homepage: <<http://www.aphis.usda.gov/adc>>.

¹⁸² Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, H.R. 3603, 104th Cong. (DeFazio Amendment).

states, but it was soundly defeated by a 279-139 House vote against the amendment.¹⁸³

Despite strong lobbying by a coalition of seventy-three environmental groups supporting the bill,¹⁸⁴ and a narrowly tailored amendment that would "not affect ADC services such as rancher education or bird control at airports . . . [or] prohibit federal money going to predator control to protect human health and safety, or to protect threatened and endangered species,"¹⁸⁵ the amendment was defeated after being misrepresented in House debate. Mr. DeFazio accurately claimed:

[W]e need to eliminate the subsidy . . . and to restore some natural order to the ecosystem of the Western United States. . . . [T]his program over time has wrought devastation in terms of killing a whole lot of nontarget species, and even target species, but it has not been effective as a predator control program.¹⁸⁶

However, DeFazio's opponents on the House floor were telling their colleagues that "ADC plays a vital role in the safety of millions of air travelers. . . . The DeFazio amendment says . . . too bad That is wrong." They also claimed, "ADC activities protect threatened and endangered species from predators. . . . The DeFazio amendment says . . . we may as well terminate these species. That is wrong, plain wrong. . . ."¹⁸⁷

Such inaccuracies, whether intentional or uninformed, typified debate against the amendment, but the point was moot because western ranching interests wield far too much Congressional influence for such an amendment to have passed. Even in the notably parsimonious House of the 104th Congress, it seems federal handouts were acceptable when placed in the right hands. The recent Congressional elections suggest that the 105th Congress will be of similar ilk and the ADC will be free to continue its carnage, wreaking havoc upon the creatures and ecology of the western states.

The ADC, Wildlife Services, or any other name under which it chooses to function, is decidedly not about living with wildlife. The agency exists to reduce livestock losses to predator animals for western ranchers already receiving other substantial federal subsidies. These subsidies perpetuate the existence of a marginal industry that should have

¹⁸³ 142 CONG. REC. H6197 (daily ed. June 12, 1996) (Roll No. 230).

¹⁸⁴ The effort was headed by Defenders of Wildlife (Washington, D.C.) and Taxpayers for Common Sense (Washington, D.C.). See Letter from Defenders of Wildlife and Taxpayers for Common Sense to Members of Congress, *73 Groups Agree: Support the DeFazio Amendment to Reduce Funding for the USDA's Animal Damage Control Program* (June 11, 1996) (on file with Animal Law).

¹⁸⁵ Letter from Peter DeFazio to Members of Congress, *A Cut We Can All Feel Good About* (June 10, 1996) (on file with Animal Law).

¹⁸⁶ 142 CONG. REC. H6192-93 (daily ed. June 12, 1996) (statement of Rep. DeFazio).

¹⁸⁷ *Id.* at H6195 (statement of Rep. Bonilla). Rep. DeFazio's frustration showed itself when, in response to Rep. Bonilla's gross misrepresentations of the amendment, he sarcastically replied, "[t]he gentleman should read the amendment before he rises with such extraordinary charges that the amendment will be responsible for the collapse of American democracy and the final victory of the totalitarian Soviet state. . . ." *Id.*

been rendered defunct a long time ago. For both economic and ethical reasons, the ADC should be terminated. For political reasons, it will not.

