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## It's Not Easy Being Green Around CUP

### Why Didn't Officials Jump At Chance to Save Frogs?

By Judy Fahys

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Peter Hovingh warned against kissing a spotted frog. If it turned into a prince, he joked, a species would be a step closer to extinction.

The Salt Lake City biochemist and spare-time herpetologist has been concerned about the dwindling number of Western spotted frogs (*Rana pretiosa*) for more than a decade. Four years ago he asked the U.S. Fish and Wildlife Service to protect the frog under the Endangered Species Act.

Today the Fish and Wildlife Service is expected to act on that request and announce that the frogs deserve to be added to the federal list of endangered and threatened species. But the agency can do nothing to protect the frogs because of more pressing problems.

Mr. Hovingh and other critics say the Fish and Wildlife Service



Rick Egan/The Salt Lake Tribune

Foot-dragging in D.C. has doomed  
Western spotted frog, critics say.

has known for three years the frog was going extinct in Utah's Wasatch Mountains and the Great Basin, but it has done nothing.

Fish and Wildlife allowed the Bureau of Reclamation to scoop

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# It's Not Easy Being Green Around CUP

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up the marshes and bogs that were home to the biggest colony of frogs in the Wasatch last year and use the soil to build up the Jordanelle Dam near Heber City.

The agency also waited until the Jordanelle began filling last month before its decision to list the frogs.

Two factors suggest why the frog did not get the help it needed.

One is the Fish and Wildlife Service's bureaucracy, with a backlog of more than 3,000 species to study and thousands of "consultations" aimed at steering endangered species and development projects from a collision course.

The other is political opposition spearheaded by then-Sen. Jake Garn, who vowed to "stop Congress" if the frog impeded progress on the Central Utah Project (CUP) or the Jordanelle Dam.

Environmental activist Jasper Carlton blames those political pressures and bureaucratic foot-dragging for leaving the frog unprotected. He is poised to sue Fish and Wildlife once the announcement is made.

"The whole thing was one big farce brought about by political and economic pressures," said Mr. Carlton, director of the Colorado-based Biodiversity Legal Foundation. "The end result could be the extinction of the spotted frog in the Great Basin, and that would not have occurred if the species had been listed."

Writers of the Endangered Species Act directed the Fish and Wildlife Service to ask, "Is this species headed for extinction?" when deciding whether or not to protect a species. Only after that scientific question is answered is the agency permitted to consider other factors, such as the economic value of a project that might be affected or how politically popular it might be to protect a species.

The General Accounting Office, the investigative arm of Congress, has been looking into the possibility that this principle was violated in the cases of the spotted frog and five other plants and animals. In particular, GAO auditors want to know if politics interfered with agency decisions. Findings are not expected until midsummer.

An Oregon congressman also has raised questions about how the frog's case was handled. Democratic Rep. Peter DeFazio asked last year for hearings to make sure politics were not preventing the frog from getting the attention it deserved. No hearings were held.

Since Mr. Hovingh raised the question about spotted frogs, their decline has been noted across its range. In the Wasatch, the Utah Department of Natural

Resources found 125 spotted frogs in 54 sites. But at least 500 frogs are needed to perpetuate the Wasatch population, said Dave Ross, state herpetologist.

"If the impacts continue the way they look like they will, it doesn't look good for the frog populations in the long run," Mr. Ross said. He gives them 25 years.

Mr. Garn, who retired from Congress in the fall after 18 years of service, acknowledges he did not want the frog on the protected-species list.

The Endangered Species Act was intended to protect such creatures as grizzly bears and bald eagles, he said. It never was meant to cover frogs, subspecies and other "minor species," such as Kanab ambersnails, he added.

"Well, who cares?" said Mr. Garn. "I've got enough snails in my back yard . . . I guess some people would be trying to save the dinosaurs."

He also accused environmentalists of using the law to make mischief with projects like CUP, for which he was seeking about \$1 billion in new federal spending around the time the spotted frog popped into view. Without the money, the Jordanelle would not be finished.

Mr. Garn called the agency's director to his office May 24, 1990, to make sure his stand was clear.

"If the people who are pushing this [spotted-frog listing] think they can stop the CUP, then I'll stop the whole Senate," a congressional aide recalled the senator saying.

Mr. Garn, a member of the Senate subcommittee that sets Fish and Wildlife's budget, could have carried out his threats. Said an agency official: "He certainly had the means to raise a big problem."

Fish and Wildlife officials deny that this meeting — or anything else the senator said — slowed their work on the spotted frog.

Director John Turner defended Mr. Garn's inquiry.

"The nice thing when you come from the West is that you can be outspoken, you can be frank, you can be up front," said Mr. Turner.

He noted that he told the senator it was too soon (in May 1990) to know whether the frog would affect the CUP. And, he added, the law was unlikely to block any project, since thousands of cases had been reviewed in the law's history and only one had been stopped.

Mr. Turner said last week he welcomed the GAO's review, since he has pushed to ensure that all his agency's decisions are scientific and not political.

"We've done a good job enforcing the act and at the same time not shutting things down," said Mr. Turner, whose office was visited frequently by lawmakers angry about a proposed listing. "The record shows the sincerity and good faith and the good biology of our staff, their performance under a tremendous workload."

Whatever the reason, the spotted frog's case advanced slowly, even though a decision about proposing the frog for the list was due — by law — before Mr. Garn met with Mr. Turner. The paperwork nearly was done. The ruling was expected in the summer.

If the agency had acted then, it would have become illegal to spend taxpayer dollars on any project, including Jordanelle, that might kill the protected creatures or destroy their habitat. Protections would have been needed.

But the agency bogged down that summer after spotted frogs were found in the bogs along the Provo River just above dam construction. Fish and Wildlife Service officials directed the bulldozers to steer clear of their habitat while they arranged a hasty rescue effort.

Leon Colburn, a Fish and Wildlife Service biologist based in Salt Lake City, headed a team that examined 69 frogs before tossing them into a Coleman cooler and driving them a few miles downstream.

The team released the frogs in a drainage ditch. Fish and Wildlife officials acknowledge it was not a well-planned effort, but they note that they had no duty to protect spotted frogs as long as they were not on the protected list.

"We did take action to do what we could," said Bob Jacobsen, Fish and Wildlife's assistant regional director for Region 6.

A few months later, startling genetic test results arrived from David Green, a researcher at the Redpath Museum in Montreal. His analysis of the frogs at Jordanelle showed they are so different from other spotted frogs that they are close to becoming a separate species, if they are not already.

When the waters of the ice age receded, communities of spotted frogs settled in pockets of water and became isolated from each another. They are "marvelous examples of tenacity and survival," Mr. Green said.

Biologists inside the Fish and Wildlife Service have been arguing among themselves about the importance of the genetic differences ever since.

Another point of disagreement centered on where to draw the line to protect spotted frogs. Those in Wyoming and Montana were doing fine, but the frogs in Utah were not. They could not figure out how to protect the frogs in need of immediate help without imposing unnecessary restrictions in areas with a healthy population.

Mr. Jacobsen said the agency needed better answers. "We would get massacred" if the agency was not thorough and exact, he insisted.

Galen Buterbaugh, director of the Fish and Wildlife Service's Region 6 before retiring last year, blames too little manpower and money for the agency's slow progress.

His complaint is backed by an Interior Department inspector general's report that shows the agency is up to 48 years behind on reviewing species for the list.

"Until Congress funds it [the endangered-species program] adequately and the administration supports it, we will have this problem," Mr. Buterbaugh said. "That's the fact of the matter, not all this intrigue. Jake Garn didn't jerk the chain out from under us."