

Toads, Humans, Sage Grouse and the Endangered Species Act  
By David Spicer  
Rancher and Miner from Beatty, Nevada

## INTRODUCTION

Following is Part Two of a three part interview with David Spicer, a rancher from Beatty Nevada, who speaks of his experiences and actions when he faced the potential listing of an amphibian in his valley under the Endangered Species Act. He also owns and operates a mining company and formed the non-profit, STORM-OV, which is dedicated to keeping species from becoming endangered through cooperative programs and educational approaches. It stands for Saving Toads through Off-road racing, Ranching, and Mining in Oasis Valley. You can find out more on the web-site [www.STORM-OV.org](http://www.STORM-OV.org).

## HOW DID YOU PROCEED? DID YOU SEE ANYTHING BEGIN TO CHANGE?

We started out here on the ranch demonstrating that our occupancy and use of it benefitted the toad. You have to remember that at first....grazing cattle, over-farming and over use of fertilizers and pesticides, mining, recreational driving and certainly off-road racing were at the top of the list as to why the toad was endangered.

We went straight ahead with our mining machinery, digging out and improving old springs that for centuries have been filling in with debris. After cleaning these waterways we restored their ability to produce clean water, basically forever.

After digging all the muck out, we backfilled them with crushed native stone, installed a drain system manifold, sealed the top with HDPE, established a water distribution pipeline to fill newly constructed breeding ponds, backfilled with native dirt, raked it out and grew toads.

All of this produced direct increases in the Amargosa toads' habitat and more importantly, their population. Here in the tri-property study, known as the Spicer, Mullin, and Torrance Ranches, we've had an 86% increase documented during the bi-annual cooperative "Toad Count", through 2009. And for 2010, continued increases again were documented; further demonstrations of our procedures being successful.

I was doing most of this work out of my own pocket to begin with. By this good faith act, individuals and agencies began to slowly realize that the actions we were taking were necessary. The violent excavation, the trucks rolling that were hauling all the muck away, the loaders digging....was hard to take, but when they saw tadpoles and toadlets, they became believers, and in some cases, advocates. All parties began to put emotions aside and look at reality. The reality was that the environment here no longer was producing the "cleansing" actions to keep the water sources open and that it hadn't been for a long time. No longer were there fires burning off the excess vegetation, no native Indians or ranchers engaging the springs, cleaning them to get a drink, no calamitous floods to gorge out the river bottom creating breeding ponds. The energy required to do these things, seemingly doesn't exist here anymore, in this part of the world. We were simply, replacing the lost energies of previous natural processes with mechanical ones.

We began forming our non-profit STORM-OV, Inc. in Sept, 2008, and officially filed our Articles of Incorporation in February, 2009. As the process of habitat reconstruction moved forward, so

too, did the number of participants in this action. Some of the agencies told us that there were grants and funding available and that they wanted to help. Many other industries made important donations. We realized that we had not only increased the population of the Amargosa toad, but had also created a compelling force that everyone wanted to join and participate in. This has truly been the accomplishment, bringing the public, private sector, environmental groups, county, state, and federal agencies together; a task not easily done in the litigious atmosphere of the Endangered Species Act.

We started our non-profit STORM-OV (saving toads through off-road racing, ranching, and mining, in Oasis Valley), after many years of on-going individual efforts. We modeled our ranch and its resources into a "Toad Farm". We knew to answer the requirements of ESA we needed to increase the population of toads. Who better to do this than a farmer or rancher. We can make anything grow, anywhere. Just look at our existence in this desert we live in. We proudly told every official that we didn't need the government's fist telling us what to do...we were capable of doing what was necessary ourselves. We demonstrated increased water through spring reconstructions. Ran pipelines out to critical areas. Provided exclusionary fencing so livestock could be rotated in and out. Built new reservoirs, created new habitat and "directly increased the population of the Amargosa toads". All of it out of our own pockets, all on our own land.

We realized that our progress had to be up-scaled, enlarged, shared, if you will. All of our success had been on our own ranch, our own land. It was spectacular, no one denied that. But it was our success, driven by us, managed by us. And it was subject to our whims and desires. I was reminded of this one day by my good friend Brad while we were patting ourselves on our backs. He said, "Dave, we're winning the battle against the environmentalists trying to list our toads, but no matter what we do, it's still on our land, we could sell it and it could become a Wal-Mart parking lot tomorrow. We've impressed ourselves and those close to us but have we affected the lawsuit?"

All of us are living under the threat of the environmental lawsuit every day. We have to remember the government, not us, gets sued for failure to protect the species that live mostly on our land. And the proof of whether or not its listing is warranted falls squarely on the back of the government. They have to gather the data, study the habits, evaluate the threats and do species counts during the evaluation process. This process can take decades; all on our land, all at the expense of us taxpayers without the benefit of the accusers' participation. Nowhere else in our judicial system does something like this exist. Only the ESA allows the plaintiff (accuser) to make its accusations as its only contribution to a lawsuit, then sit back in full enjoyment while the defendant (that's us taxpayers), bear the full costs and proof of burden. We the people are funding the government to defend itself against lawsuits wherein it created laws allowing itself to get sued, that if it loses, it enforces against us. Us landowners, us taxpayers, us citizens. What the hell have we done to ourselves?

As insane as this sounds, so it must have appeared to some within the government. From our entry point into our struggle in 1994, things have changed. At first, all we heard was what we were going to have to do, or how we'd have to manage our land, once the toad was listed; there weren't many tools in the box usable or palatable to us landowners. The big one we choked on was where you sold your farm to the government, you could live there the rest of your life with little change, but when you died they got it, not your family or children. We were told this was a good way to protect your property, that this process and similar ones were what was needed to demonstrate our willingness to protect our endangered species. Or we could start a fund by

charging any landowner a fee for new disturbances which then could be used for habitat enhancement at some undisclosed place or time. Needless to say, none of this stimulated anyone to do anything. Our meetings began to deteriorate into frustrating experiences of increasing numbers of government specialists and diminishing numbers of landowners. All of us just wanted to make a living from our land like our fathers and grandfathers before us.

Somewhere in that time, things like the Partners Program, the Landowners Incentive Program, the Noxious and Invasive Weed Program, and adaptations of Farm Bills' aid to assist in protection of potentially endangered species began to show up. A movement away from instant and final enforcement was occurring. A desire to mitigate the plight of the landowner was apparent. New faces began to show up, friendly ones without guns and badges. They were carrying potential funding deals with them. Deals that could help us on our ranches, making them more productive as long as we could "demonstrate" how this helps the environment. It was up to us to figure this out. Draft and design up an idea, do some engineering, follow it with a cost analysis----show its value. Add in some matching funds....and wah-la you're saving something. The only commitment required was that you maintain the enhancement for 5-10 years or so. At the end of it, your commitment is over; you still own the land....no sneaky stuff. A whole new way of thinking. A much needed and necessary change in the way landowners were treated. Respect had been re-established. Recognition of land owners' rights was being practiced. We celebrated these new approaches, jumped at the opportunities, and worked to cause them to happen. My relationship with my government now was meaningful, not confrontational.

We had created trust between us. A willingness to commit and cooperate grew on all sides. How could we not get involved? These deals were not with The Devil anymore, we weren't selling our souls. We were saving our lifestyles, our right to ranch, preserving our futures, and protecting the environment we live in. Making the differences between the environmentalist and ourselves dissolve by creating these partnerships and conservation actions on our properties. Giving not only ourselves some peace but also relief to the government from the lawsuits it faces. All of us together have to do this. Gather around the idea that it can be done.

The payoff is watching the divide that exists between us crumble. Changing the idea that we land owners and users and our relationship to other species does not exist as Violator and Victim. To have brought opposite sides together, on the one side farmers, ranchers, miners, racers – America's Land Users; on the other, environmental groups and their law firms. And last but not least, the target of petitions and legal actions....the U.S. government and many of its agencies, all brought together into a joint effort. One that we land owners are at the center of, demonstrating that further diversification of our land and resources benefits all creatures. That a hands off approach does not work. To replace accusations and blame with praise and reward. To find a solution to the problem of us landowners taking the full brunt of the responsibility. Awakening everyone to this fact and getting cooperative efforts occurring. Ultimately to maintain freedom on the land we own and use, making it financially and environmentally productive.

By committing and improving parts of our land, then getting involved in partnership agreements, land incentive programs, USDA farm bills, and other state and federal programs, we've kept the Wolf away. In these programs, the grants and funding that they've provided have gone a long way in adding to the productivity of our practices as well as adding important wildlife increases. One could say this is an important revenue stream for farm and ranch improvements we could not otherwise afford. Our work also stimulated other industries to commit time, money, and energy into the message of the voice we now have.

The people I have worked with within the government as well as other environmental non-profits have become my friends and they have my respect for working as hard as I have in keeping things off the endangered list. Many long nights in the wind and rain have been spent away from home with volunteers they managed to motivate, counting our toads, catching them, tagging them, measuring them....much of it on their own time. All of this done to keep a lawsuit away from us. To keep themselves and us from becoming targeted as a failure to take care of the world we live in; putting sense and meaning into all of our efforts.

It does not escape me that if these efforts are not genuine and productive, we fall back under the looking glass. That the power of the Endangered Species Act has not diminished and our relationship with our government can quickly slide from the cooperation we have now into an enforcement action for the ESA. Really, this is no different than the democracy we live in and the freedom it affords us. The price of it is constant vigilance.

**Part 2**  
**Text Box 1**

Society for Range Management literally wrote the book on Coordinated Resource Management (CRM) back in 1993. Today the groups that meet voluntarily to solve problems for resource management issues are called collaborative, which is a stakeholder consensus decision-making process. Stakeholders are any interest with a stake in the consequences of the decision. In this process, the stakeholders make decisions by consensus, rather than by traditional voting and majority rule.

The original “CRM Guidelines” by Rex Cleary and Dennis Phillippi state, “It is also our belief that these thrusts must be done first at the local level. Local response to changing times and conditions must occur before anything substantial and enduring can be accomplished. In other words, ‘if the local people don’t agree, then you have a conflict and/or a stalemate’ in the making.”

**Part 2**  
**Text Box 2**

“We knew we stood wrongly accused. This was a challenge to take on, a wrong that needed to be righted. So we set to it.”

Dave Spicer