

# Committee on Resources

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**Testimony of  
Buddy Powell  
Director  
Mt. Graham International Observatory**

September 20, 2004

The Honorable Greg Walden  
Chairman  
Subcommittee on Forests and Forest Health  
Committee on Resources  
U. S. House of Representatives  
137 Longworth House Office Building  
Washington, D.C. 20515

Re: Testimony for Field Hearing September 20, 2004  
Issues Affecting Rural Communities in the Southwest – National Forest Management and the Endangered Species Act

Dear Congressman Walden:

Thank you for the opportunity to be here today. My name is Buddy Edward Powell and I am employed by the University of Arizona, as the Associate Director of Steward Observatory. I also serve as Director of Mount Graham International Observatory (MGIO). Today, I will share with you and your colleagues my eleven years of experience in working with staff of the U. S. Forest Service to reduce the risk of uncontrollable wildfire at the MGIO. I will also share with you over 100 Federal Court actions and/or administrative appeals, mostly based upon the Endangered Species Act (ESA), filed to stop construction of the Observatory. MGIO is located near Safford, Arizona, and is confined to 8.6 acres of the 200,000 acres of Mount Graham. It was established after the Congress passed and President Reagan signed the Arizona-Idaho Conservation Act of Arizona in 1988 and under a Special Use Permit issued by the U.S. Forest Service in 1989.

The University of Arizona, Steward Observatory, is the lead agency in providing MGIO with cutting-edge facilities to conduct scientific investigations in astronomy. It is an international project with collaborators from institutions in Germany, Italy, the Vatican and the United States. At this time, the facilities at MGIO are valued at approximately \$200 million.

The first part of my testimony will summarize the University of Arizona's correspondence with the U.S. Forest Service concerning the need for fuels reduction at MGIO. Attached are brief summaries of twenty-nine documents relating to fuel reduction at the site: the first document is dated July 15, 1993, and the most recent is dated July 1, 2004 – eleven years later. I have provided copies of my testimony and supporting documents for you today. My testimony will highlight the contents of some of these documents and try to give you a sense of the frustration we have encountered in trying to take simple measures to protect MGIO from catastrophic wildfires which have raged throughout the western United States for the past several drought prone years.

MGIO has attempted, over the course of the last decade, to obtain authorization from the U.S. Forest Service to conduct the necessary actions under the National Environmental Protection Act (NEPA) and in compliance with all laws and regulations including the Endangered Species Act (ESA). During this time, such direction and authorization had been difficult to procure, despite the acknowledgement of all parties that MGIO was at great risk of catastrophic loss from wildfire from at least 1993 onward.

The first document (#1 in the listing) from U.S. Forest Service Safford District Ranger, Richard Kvale, in 1993 established the concern of both the U.S. Forest Service and University of Arizona as well as other

interested parties in the increased potential for insect infestations and devastating wildfires in the upper elevations of the Pinaleno Mountains (also known as Mt. Graham). At this time the U.S. Forest Service requested comments about the situation. I responded to this request with the first of many letters to the U.S. Forest Service supporting action and requesting that such action include work at MGIO (#2). Until 2002, the U.S. Forest Service did not permit action on its part or the part of MGIO at the observatory site except during the Clark Peak wildfire of 1996.

The Clark Peak Fire of 1996 prompted the first and only U.S. Forest Service approval in over one decade to perform fuels reduction work at MGIO (#4). During this decade, fear of suits under the ESA had paralyzed the USFS with regard to active forest management for forest health or wildfire control. The limited USFS authorization as the result of the Clark Peak Fire allowed removal of all dead and down wood and standing snags in a limited south and west area out to a distance of 50 feet from the site. The Clark Peak fire burned within 100 yards of the Vatican telescope facilities. After this approval and subsequent work, the U.S. Forest Service did not permit any additional work around the MGIO site until 2002. U.S. Forest Service "treatments" occurred in campgrounds and other areas on Mt. Graham through 2004. The University of Arizona continued to support the U.S. Forest Service efforts to reduce fire danger on Mt. Graham but with each U.S. Forest Service action under NEPA, the University requested that MGIO be included in the efforts. The U.S. Forest Service declined to include the observatory site in any of its actions and did not indicate until 2002 that the University should take any steps to submit proposals under NEPA to take action itself.

In 1997 (#6), the U.S. Forest Service requested comments on its Pinaleno Ecosystem Management (PEM) Demonstration Program. I responded to the call for comments by supporting the PEM and once again requesting that proposed work include the MGIO area in order to protect the considerable financial investment and red squirrel habitat (#7). District Ranger George Asmus responded that all areas of the PEM project would remain outside the MGIO and Mt. Graham Red Squirrel monitoring project areas (#8).

Letters in 2000 and 2001 from the University of Arizona, the Vatican Observatory Foundation, owner of the Vatican Advanced Technology Telescope at MGIO, and the Large Binocular Telescope (LBT) Corporation, owner of the LBT under construction at MGIO, reiterated the need for a fuels reduction program around MGIO to protect their investments (#9-10). In 2002 the Arizona Game and Fish Commission added its call to the U.S. Forest Service to take meaningful action on insect infestation, deteriorating forest health and related wildlife impacts and associated high risk of wildfire on Mt. Graham (#14). These and other requests of 2000-2002 (#11-14,17) culminated in a letter (#18) from Richard C. Powell, Vice President of Research at the University of Arizona, to John McGee, Forest Supervisor of the Coronado National Forest, commenting on the cost of conducting an environmental assessment suggested in 2002 by McGee and requesting authorization for appropriate measures to be implemented before the occurrence of a catastrophic wildfire.

In 2002 the University of Arizona requested that Jack Cohen, Fire Scientist at the U.S. Forest Service in Missoula, Montana, visit MGIO and give us recommendations on what should be done to protect the Observatory from wildfires. Mr. Cohen is a well-known expert on structure protection during wildfire events. The result of Mr. Cohen's visit was a Proposed Action submitted by the University of Arizona to the U.S. Forest Service and a Decision Memo from the U.S. Forest Service that allowed MGIO to proceed with limited fuels reduction work under a NEPA Categorical Exclusion (#19-22). MGIO has proceeded with the authorized work during the summers of 2002, 2003 and 2004.

In October 2003, the University again requested authorization for full implementation of the Cohen recommendations by commencing an Environmental Assessment under NEPA (#23 and 24). The University had received a one-year grant from the State of Arizona for fuels reduction work. The University revised this Proposed Action based on directions in meetings with the U.S. Forest Service and resubmitted the proposal in March 2004. The U.S. Forest Service told the University at different times that it was reluctant to review or respond to this proposal because it wanted to include it with other projects for future consideration. The University responded to these U.S. Forest Service concerns in letters in March and April 2004 (#25-27). The final documents in this listing are the U.S. Forest Service letter in June 2004 from Forest Supervisor Jeannine Derby to Richard C. Powell discussing actions at MGIO and a document clarifying points in that letter (#28 and 29).

The Nuttall-Gibson Fire on July 2, 2004 approached to within one quarter mile of MGIO. Firefighters did a tremendous job of protecting the site but at substantial cost. Firefighters prepared the site for protection from the oncoming wildfire with rapid thinning, clearing and cleaning of the forest surrounding MGIO. In two days, these people conducted more extensive work around MGIO than the University and its partners were allowed to conduct for eleven years. At Mr. Cohen's last site visit (August 2004) he reiterated that if MGIO

had been allowed to proceed with controlled, long-term manicuring of the area around MGIO out to a minimum distance of 150-200 feet, such uncontrolled, extensive work would not be needed to protect the facilities from catastrophic wildfire.

While MGIO suffered no damage, approximately ninety percent of the red squirrel designated critical habitat was lost to the Nuttall wildfire this year. In 2003 a Red Squirrel Monitoring Program study indicated that only about twenty percent of the red squirrel population is in the spruce-fir forest at the elevations of MGIO while eighty percent live in the mixed conifer below the Observatory.

For me personally, perhaps the final irony is how ESA was misused to delay construction of the Large Binocular Telescope for two years. In 1993, University biologists came to me and requested we relocate the LBT about 600 yards to the east of its initially projected location to minimize impact on the Mount Graham Red Squirrel. About six squirrels were living in the approved construction site and none were living at the location preferred by the biologists. University staff conducted tests of the atmosphere to determine the quality of site and determined it was equal to or perhaps slightly better than the approved site. USFS biologists conducted an Environmental Assessment and found the proposed site would have less impact on the squirrel. Based upon the results of the studies, we concluded it was a "win-win situation" and we requested USFS approval to relocate the LBT. USFS approved our request and in December 1993 the trees at the new site were cut and removed. In May 1994, radical activists filed suit alleging location of LBT was improper. In July 1994, U. S. District Court entered a restraining order prohibiting any further work on the LBT. After nine separate Court actions, on July 31, 1995, the 9th Circuit Court of Appeals denied our petition for a re-hearing. Congressman Jim Kolbe introduced legislation to clarify the intent of the U. S. Congress that LBT should be constructed where it would have the least impact on the Mount Graham Red Squirrel, and the proposed location met the intent of the U. S. Congress. As a result of Congressman Kolbe's legislative efforts, the U. S. District Court on May 16, 1996, two years later, granted relief from the judgment by dissolving the injunction against construction, and work was restarted on the LBT.

I and others believe that compliance with the Endangered Species Act should not preclude operation or protection of MGIO based on the limited work we need to do to protect the site and on the results of the monitoring studies of the squirrel. I and other stakeholders simply request that the managers of the national forests use reasonable implementation of the Endangered Species Act and other laws; implementation that balances the true needs of the species with prudent requests of stakeholders. We believe that although the Endangered Species Act is important and a well-intentioned law, it is broken and needs to be fixed. The Endangered Species Act should be used to protect species from extinction, not as an obstacle to prevent legitimate actions. One constructive step would be to leave enforcement of ESA to the Federal agencies and not permit its use by private individuals to promote private agendas.

Thank you for this opportunity to testify before your subcommittee today.

Sincerely,

B. E. Powell  
Associate Director, Steward Observatory  
and Director, Mount Graham International Observatory