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MEETING WITH THE PRESIDENT
ON PREDATOR CONTROL
Monday, September 8, 1975
5:30 p.m.
Cabinet Room

Copy



APPENDIX A - RESTRICTIONS

✓ 1. Use of the M-44 device shall conform to all applicable Federal, State, and local laws and regulations.

1. ✓ 2. The M-44 device shall be used only to take wild canids suspected of preying upon livestock and poultry.

✓ 3. The M-44 device shall not be used solely to take animals for the value of their fur.

✓ 4. The M-44 device shall only be used in instances where actual livestock losses due to predation by wild canids are occurring. M-44 devices may also be used prior to recurrence of seasonal depredation, but only when a chronic problem exists in a specific area. In each case, full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.

2 ✓ 5. The M-44 device shall not be used in: (1) National or State Parks; (2) National or State Monuments; (3) Federally designated Wilderness areas; (4) Wildlife refuge areas; (5) Prairie dog towns; (6) Areas where exposure to the public and family pets is probable.

✓ 6. The M-44 shall not be used in areas where threatened or endangered species might be adversely affected. Each applicator shall be issued a map which clearly indicates such areas.

3. ✓ 7. The M-44 device shall not be placed within 200 feet of any lake, stream, or other body of water.

✓ 8. The M-44 device shall not be placed in areas where food crops are planted.

4. ✓ 9. M-44 devices shall not be placed within 50 feet of public rights of way.

✓ 10. The maximum density of M-44's placed in any 100 acre pastureland area shall not exceed 10; and the density in any one square mile of open range shall not exceed 12.

* 5 11. The M-44 device may be placed in the vicinity of draw stations (livestock carcasses); provided, that no M-44 device shall be placed within 30 feet of a carcass; no more than 4 M-44 devices shall be placed per draw station; and no more than 3 draw stations shall be operated per square mile.

6 12. M-44 devices shall be inspected at least once a week to check for interference or unusual conditions and shall be serviced as required.

7 13. Used sodium cyanide capsules shall be disposed of by deep burial or at a proper landfill site.

7 14. An M-44 device shall be removed from an area if, after 30 days, there is no sign that a target predator has visited the site.

6 15. Damaged or non-functional M-44 devices shall be removed from the field.

8 16. In all areas where the use of the M-44 device is anticipated, local hospitals, doctors, and clinics shall be notified of the intended use, and informed of the antidotal and first-aid measures required for treatment of cyanide poisoning.

7 17. Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

a. Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected weekly to insure their continued presence and insure that they are conspicuous and legible.

b. An elevated sign shall be placed within 6 feet of each individual M-44 device warning persons not to handle the device.

✓ 18. Registrations for sodium cyanide M-44 capsules may be granted to persons other than State and Federal agencies; provided, that such persons shall be authorized to sell said capsules only to State and Federal registrants. Only State and Federal registrants shall be permitted to sell, give, or otherwise distribute capsules to individual applicators. Such State or Federal registrants of sodium cyanide M-44 capsules shall be responsible for insuring that the restrictions set forth herein are observed by individual applicators to whom such registrants sell or distribute such capsules and/or M-44 devices. State and Federal registrants shall train applicators, and such training shall include, but need not be limited to: (1) Training in safe handling and placement of the device; (2) Training in the proper use of the antidote kit; (3) Instructions regarding proper placement of the device; and (4) Instructions in record-keeping.

✓ 19. Each authorized M-44 applicator shall keep records dealing with the placement of the device and the results of each placement. Said records shall include, but need not be limit to:

1. The number of devices placed.
2. The location of each device placed.
3. The date of each placement, as well as the date of each inspection.
4. The number and location of devices which have been discharged and the apparent reason for each discharge.
5. The species of animal taken.
6. All accidents or injuries to humans or domestic animals.

✓ 20. M-44 devices and capsules shall not be sold or transferred to, or entrusted to the care of, any person not licensed by, or under the supervision of a State or Federal registrant.

✓ 21. All persons authorized to possess and use M-44 capsules and devices shall store said devices under lock and key.

- 9
- ✓ 22. Each authorized M-44 applicator shall carry an antidote kit on his person when placing and/or inspecting M-44 devices. The kit shall contain 12 pearls of amyl nitrite and instructions on their use. The kit may also contain sodium nitrite and sodium thiosulfate.
 - ✓ 23. One person other than the individual applicator must have knowledge of the exact placement location of all M-44 devices in the field.
 - ✓ 24. Supervisors shall periodically check the records, signs, and devices of each applicator to verify that all applicable restrictions, laws, and regulations are being strictly followed.
 - ✓ 25. In areas where more than one governmental agency is authorized to place M-44 devices, the agencies shall exchange placement information and other relevant facts to insure that the maximum number of M-44's allowed is not exceeded.
 - ✓ 26. Registrants and applicators shall also be subject to such other restrictions as may be prescribed from time to time by the U.S. Environmental Protection Agency.

ANNOUNCEMENT

Coyotes

Today the President has amended Executive Order 11643 to permit expanded experimental predator control research on Federal lands and in Federal programs. The purpose of the amendment is to allow the development of economically feasible and environmentally acceptable methods to protect livestock producers from coyote predation.

BACKGROUND

- The livestock industry is suffering losses from coyote predation.
- Losses run as high as 30% annually for some Western producers.
- 55.2% of Western range land is owned by the Federal government.
- Federal regulation now bars all methods employing chemical toxicants for predator control, except in emergency circumstances or in certain restricted experimental programs.
- A 1972 Executive Order bans use of chemical toxicants on Federal lands and in Federal programs.
- EPA suspended Federal registration of all chemical toxicants used for predator control.

CURRENT FEDERAL PREDATOR CONTROL ACTIVITY

- DOI operates a combined coyote research and control program with FY 75 budget authority of \$5 million.
- Control methods are largely mechanical (trapping, shooting).
- Experiments are being conducted with the M-44 device and other control mechanisms employing sodium cyanide such as toxic collars.
 - M-44 is a spring-loaded device which propels sodium cyanide into the predator's mouth.
 - Selective control devices are those which work primarily on the coyote attacking the sheep. For example, the toxic collar is placed on target sheep and releases a lethal dose of sodium cyanide when a predator bites the collar.
- EPA has granted experimental M-44 use permits to seven Western states and DOI.

POLICY

The Federal policy of restricting the use of chemical toxicants on Federal lands and in Federal programs remains unaltered. However, in recognition of the plight of the livestock industry, the President, in compliance with all existing statutes, is (1) expediting research efforts which promise low cost control without adverse environmental impact and (2) strengthening the conventional predator program.

ACTIONS TAKEN

- To enhance our national capacity to conduct research to develop environmentally acceptable and selective processes of predation control, the President has made the following decisions:
- (1) Request EPA's expedited decision as to the registration of sodium cyanide in the M-44 device for the purpose of predator control. The EPA decision will be made by September 15, 1975.
 - (2) Implement an expanded experimental program for the research on methods for using sodium cyanide for predator control and at the same time strengthen conventional control programs. These expanded programs are now being put in place and should be fully implemented by September 1, 1975.
 - (3) Amend Executive Order 11643 to allow expanded experimental use of sodium cyanide devices on public lands and in Federal programs for predator control for one year. The amended Executive Order was signed by the President on Friday, July 18, 1975.
- Sodium cyanide administered through selective devices could offer an environmentally acceptable method of control for two reasons:
- (1) If the devices prove successful, only actively predating animals would be killed;
 - (2) Sodium cyanide is a non-persistent chemical. For this reason, it neither harms the environment nor possesses a secondary kill capacity.

EXPANDED PROGRAM BREAKDOWN

- Will increase research and conventional control personnel up to 25% for each category.
- Will expand experimental program to give maximum results..

Costs: \$2.948,000

Financing: The expanded program represents the cooperative efforts of the following organizations:

Agriculture -	\$1,400,000
Interior	\$1,248,000
EPA	\$ 300,000

* * *

Table 1

Coyote kill for the last two years, by technique:

fixed wing aircraft shooting	18,089
helicopter shooting-----	27,105
trapped-----	58,991
denned-----	16,710
ground shot-----	12,682
snared-----	4,747
dogged-----	465
M-44 -----	<u>1,637</u>
TOTAL -----	140,426

Results of April 1975 M-44 use:

Number of States	Number live-stock protected	Number of M-44's	Number coyotes killed
8	137,271	4,225	206

In addition, 117 other animals were killed:

foxes -----	44
wild dogs -----	10
raccoons -----	7
skunks -----	25
opossums -----	<u>31</u>
TOTAL-----	117



THE WHITE HOUSE

WASHINGTON

July 7, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON
FROM: JIM CONNOR *JC*
SUBJECT: Coyote Paper

The President has reviewed your memorandum of July 3rd on the above subject and indicated the following:

"Let's get Domestic Council, Interior, Agriculture, EPA, Marsh, Hartmann and Rumsfeld together in Oval Office for a forty-five minute final analysis. Buchen and others too. ---- Time has come to act."

It was further indicated that this should be given urgent attention.

cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

ACTION

July 3, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON *JC*

SUBJECT: Coyote Paper

Attached (Tab A) is our decision paper on the coyote issue for your review. It has been reviewed by Jack Marsh, Robert T. Hartmann, Phil Buchen (Dudley Chapman), Max Friedersdorf, and Jim Lynn.

Dudley Chapman of Phil Buchen's staff provided some additional views which are at Tab B.

In view of the comments made by the environmentalists at this morning's Cincinnati meeting, you may want us to meet with an environmental group to get their specific recommendations and input prior to your making your final decision.

Attachment

* THE DOMESTIC COUNCIL



WALTON, N. YORK

THE WHITE HOUSE

WASHINGTON

July 3, 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *JC*

SUBJECT: Coyotes

Background

The issue is whether, how and under what conditions the Federal government should permit the use of toxicants (poisons) to control sheep predators, primarily coyotes.

Executive Order 11643 of February, 1972, restricts the use of toxicants for predator control on public lands and in Federal programs.

After the Executive Order was issued, Congress enacted, and President Nixon signed, the Federal Pesticide Control Act of 1972. This legislation provided that the registration of toxicants by EPA on both private and public lands be based on their effect on the environment.

To date, EPA has not authorized the use of any toxicants for coyote control. Therefore, poisons are now banned on all private and public lands by the 1972 law.

Court Situation:

A Wyoming Federal Court on June 12, 1975 revoked EPA suspension of pesticide registration. But because the decision was based on a technicality (i.e, failure to file an environmental impact statement by EPA) it is doubtful that the suspension will last long.



Congressional Situation

Those members favoring action that would permit resuming the use of poison against coyotes primarily represent the Western states and include:

Senators Mansfield, McClure, Garn, Moss, Domenici, Bentsen, Montoya, Fannin, Abourezk, Church, Tower, Bartlett, Laxalt, Curtis, McGovern, Hansen, Dole, Bellmon and Hatfield; and

Representatives Krueger, Runnels, Symms, Lujan, Abdnor, Hansen, Mahon, Melcher, Litton, Poage, Sisk, Burluson, Sam Steiger, Baucus.

Those members concentrating on the environmental concerns primarily represent the Eastern states and include Senators Javits, Hart, Buckley, Gravel, Proxmire, Stafford, Pell, Bayh, Cranston, Brooke, McIntyre, Nelson, Ribicoff, Weicker, Hugh Scott, Mathias, Schweiker, Williams, Pastore.

Max Friedersdorf indicates that the Congressional environmental forces are not active on the issue. On the other hand, the "Mansfield forces" are becoming more intense.

Options

1. Direct EPA and Interior to complete research and administration steps required to enable necessary predator decisions regarding use of one specialized toxicant to be made in time for the fall 1975 lambing season.

Recommend: Marsh, Lynn, Hartmann, **CANNON**

Approve _____ Disapprove _____

2. Rescind Executive Order and introduce legislation seeking to eliminate Federal restrictions on chemical toxicant use for predator control.

Recommend: Friedersdorf, Marsh, Hartmann, **CANNON**

Approve _____ Disapprove _____



B



THE WHITE HOUSE

WASHINGTON

July 3, 1975

MEMORANDUM FOR: JIM CANNON
FROM: DUDLEY CHAPMAN *DC*
SUBJECT: Coyote Paper: Intermediate Options

Following are suggested substitutions for (1) the paragraph entitled Court Situation and (2) Option 1 of your July 2 Options paper:

* * *

Legal Factors

Federal control of pesticides affecting sheep growers derives from three sources:

1. Executive Order 11643, signed by President Nixon in 1972, bans all use of chemical pesticides on Federal lands subject to three very narrow exceptions for (i) the protection of human health or safety, (ii) the preservation of wildlife species threatened with extinction, or (iii) the prevention of substantial and irretrievable damage to nationally significant natural resources.

2. The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (FIFRA) as amended by the Federal Environmental Pesticide Control Act of 1972 (FEPCA). This statute requires EPA to maintain a system of registration restricting permissible pesticide chemicals and their uses. The statute permits emergency exceptions for Federal and State agencies.

3. EPA Regulations. EPA has issued regulations under the above statute which presently prohibit the use of all chemicals that sheep growers want to use. It is expected that one of these chemicals will become available in time for the 1975 fall lambing season. The regulations also provide procedures for invocation of the emergency exception.



NOTE: Litigation. The EPA regulations are presently enjoined from being enforced in a suit brought by livestock interests on the ground that EPA did not file an environmental impact statement. The suit was filed in Wyoming but has nationwide implications, so that in practical effect all the EPA regulations are at least temporarily suspended. The Justice Department is appealing this ruling and expects to be successful. The analysis in this paper assumes that the regulations will be reinstated.

Appeals for Relief

Two levels of relief are being sought by livestock interests. The sheep growers are pressing for a change in the Executive Order only at this time. This change is supported by the Interior Department. Other livestock groups, supported by the Department of Agriculture, prefer that you rescind the Executive Order in its entirety and propose legislation to the Congress to eliminate restrictions on chemical toxicant use for predator control.

Discussion

The need for chemical toxicants is seasonal and will not arise again until the fall of 1975. By that time, one chemical may be approved for use under the existing EPA regulations and would, therefore, be available on non-Federal lands. An amendment to the Executive Order, as proposed by the sheep growers and Interior, would accomplish this. The effect of the amendment would be to add a new ground of exception based on economic impact on livestock owners.

In addition to amending the Executive Order, changes in the EPA regulations may be accomplished by executive action that could be completed by fall. The regulations, like the Executive Order, presently contain no provision for exceptions based on economic impact on livestock owners. Such an exception could be published for public comment and accompanied by an environmental impact statement (neither or which are required for a change to the Executive Order). This could provide a more permanent basis for considering economic impact on livestock owners under the regulations as well as under the Executive Order.



A change in the Executive Order alone is criticized by those favoring the Department of Agriculture's position on the ground that (a) it would have no effect outside Federal lands and (b) even on Federal lands, the EPA regulations would still apply. The sheep growers understand this but are willing to settle at present for an amendment to the Executive Order. The further step of amending the EPA regulations would probably draw both attacks and lawsuits from environmental interests.

* * *

OPTIONS

Option

1. (a) Amend the Executive Order to provide for exceptions based on economic considerations for temporary and limited purposes.

(b) Direct EPA to revise its regulations to provide for exceptions based on economic considerations, with appropriate time limitations and safeguards.

cc: Phil Buchen
Ken Lazarus
Tod Hullin



Orin

THE WHITE HOUSE
WASHINGTON

July 14, 1975

MEMORANDUM FOR THE PRESIDENT
FROM JIM CANNON *JMC*
SUBJECT COYOTES

In your Friday morning meeting on predator control, you made three decisions. Outlined below is a brief description of those decisions and the actions that are being taken to implement them.

DECISION #1

Expedite EPA's determination as to the registration of sodium cyanide in the M-44 device for the purpose of predator control.

ACTION TAKEN

- On Friday, July 11, Russ Train published notice in the Federal Register that EPA will hold hearings on the registration of the M-44 device and sodium cyanide. EPA is now collecting and assessing experimental M-44 and sodium cyanide data.

DEADLINES

- EPA registration hearings convene on or about August 12, 1975.
- The EPA Federal Register notice schedules a decision on the registration of sodium cyanide in the M-44 device by September 15, 1975.

DECISION #2

Put on line a considerably expanded experimental/demonstration program using the toxic collar with sodium cyanide for predator control.



ACTION TAKEN

- EPA, CEQ, Agriculture and OMB are in the process of putting together a program expanding experimental use of the toxic collar with sodium cyanide and increasing personnel within Interior for research (+25%) and conventional predator control methods (+25%). The total program cost will be \$2,948,000, in FY 76.

DEADLINE

- This program has begun and will be in close to full operation by August 15, 1975.

DECISION #3

Amend Executive Order 11643 to allow the expanded experimental use of the toxic collar on public lands and in Federal programs for one year.

ACTION TAKEN

- The White House Counsel's Office is preparing the amended Executive Order and is clearing it with the Justice Department, OMB, CEQ, EPA, Interior and Agriculture.

DEADLINE

- This Executive Order will be to you for signature by Friday, July 18, 1975.



ACTION

THE WHITE HOUSE

WASHINGTON

July 17, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON 

SUBJECT: EXECUTIVE ORDER ON PREDATOR CONTROL

ISSUE

Whether the Executive Order should authorize an experimental program either for --

- use for one year of sodium cyanide only for killing coyotes, or
- use of any chemical toxicant approved by EPA for an indefinite period.

In both cases, an experimental "use permit" would have to be secured from EPA. Procedural safeguards such as notice, hearings and court review are available to environmental groups under EPA's regulations.

OPTIONS

1. Sign Executive Order which authorizes for one year the experimental use of sodium cyanide only for purposes of predator control on Federal lands and in Federal programs.

Recommended by Euchen, Interior, CEQ, EPA. If you approve, sign Executive Order at Tab B.

Approve _____ Disapprove _____

2. Sign Executive Order which authorizes the experimental use of any chemical toxicants approved by EPA for an indefinite period. As in Option 1, the authority would extend to use on all Federal lands and in all Federal programs.

Recommended by Lynn, Butz, Cannon, Marsh, Friedersdorf. If you approve, sign Executive Order at Tab C.

Approve _____ Disapprove _____

NOTE: Attached at Tab A is a more extensive memorandum prepared by OMB on this issue.



Coyotes

July 18, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

ENVIRONMENTAL SAFEGUARDS ON ACTIVITIES FOR
ANIMAL DAMAGE CONTROL ON FEDERAL LANDS

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the provisions of Section 1 of the Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. 426) and the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531 et seq.), Executive Order No. 11643 of February 8, 1972, is amended to read as follows:

"Section 1. It is the policy of the Federal Government, consistent with the authorities cited above, to:

(1) Manage the public lands to protect all animal resources thereon in the manner most consistent with the public trust in which such lands are held.

(2) Conduct all mammal or bird damage control programs in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection of the Nation's wildlife resources, including predatory animals.

(3) Restrict the use on public lands and in Federal predator control programs of any chemical toxicant for the purpose of killing predatory animals or birds which would have secondary poisoning effects.

(4) Restrict the use of chemical toxicants for the purpose of killing predatory or other mammals or birds in Federal programs and on Federal lands in a manner which will balance the need for a responsible animal damage control program consistent with the other policies set forth in this Order; and

(5) assure that where chemical toxicants or devices are used pursuant to Section 3(b), only those combinations of toxicants and techniques will be used which best serve human health and safety and which minimize the use of toxicants and best protect nontarget wildlife species and those individual predatory animals and birds which do not cause damage, consistent with the policies of this Order."

"Sec. 2. Definitions. As used in this Order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs, and (2) real property located in metropolitan areas.

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(b) "Agencies" means the departments, agencies and establishments of the Executive branch of the Federal Government.

(c) "Chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness, or death, to animals or to man.

(d) "Predatory mammal or bird" means any mammal or bird which habitually preys upon other animals, birds, reptiles or fish.

(e) "Secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed, or when applied to or injected into, a mammal, bird, reptile or fish, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man, mammal, bird, reptile or fish, produces the effects set forth in paragraph (c) of this Section.

(f) "Field use" means use on lands not in, or immediately adjacent to, occupied buildings."

"Sec. 3. Restrictions on Use of Toxicants. (a) Heads of agencies shall take such action as is necessary to prevent on any Federal lands under their jurisdiction, or in any Federal program of mammal or bird damage control under their jurisdiction:

(1) the field use of any chemical toxicant for the purpose of killing a predatory mammal or bird; or

(2) the field use of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing mammals, birds, or reptiles.

(b) Notwithstanding the provisions of subsection (a) of this Section, the head of any agency may authorize the emergency use on Federal lands under his jurisdiction of a chemical toxicant for the purpose of killing predatory mammals or birds, or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of the health or safety of human life;

(2) to the preservation of one or more wildlife species threatened with extinction, or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

more

(c) Notwithstanding the provisions of subsection (a) of this Section, the head of an agency may authorize the use, on an experimental basis, of sodium cyanide to control coyote and other predatory mammal or bird damage to livestock on Federal lands or in Federal programs, provided that such use is in accordance with all applicable laws and regulations, including those relating to the use of chemical toxicants, and continues for no more than one year."

"Sec. 4. Rules for Implementation of Order. Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this Order."

GERALD R. FORD

THE WHITE HOUSE,
July 18, 1975

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that. In two devastating wars this century the countries of Europe spilled and spent their blood and treasure. Many in Europe, and Winston Churchill was one of them, saw clearly that the future lay not in states divided and at each others' throats, but with a new unity into which they could sink their differences and work together for the common good. We believe that Britain can bring a major contribution to this new dynamic Europe—a Europe not turned in on itself, but active and interested in the world at large, putting more and more at the disposal of others its great resources and hard-won experience. And we see no incongruity between being Europeans and, at the same time, being close transatlantic friends and allies of America. We think that Europe and America between them can solve most of the difficult problems of the world today.

I have spoken at some length about Britain's present difficulties and prospects because I imagine that is what you wanted to hear from me. Perhaps you will allow me to make a brief reference to your own situation.

You have just passed through two traumatic experiences—the Watergate affair and the bitter *démouement* in Vietnam.

In the wake of those experiences there were some who feared that America might turn isolationist—might wash her hands of other people's problems and concentrate exclusively on her own problems at home. But your leadership—and indeed the mood of the people—gave the lie to that. President Ford's reaffirmation of traditional alliances during his recent visit to Europe was an act of responsible statesmanship which came as a welcome tonic to all who still look to you as the sheet-anchor of their security. There is no escaping the fact that we live in an interdependent world, in which none can be self-sufficient.

So, on a day like today when we are celebrating an event of the past, in the year 1976 when we celebrate the birth of the most powerful nation the world has ever seen, we should not only cast back our minds down the years of history, but also see history as a continuing process: that what we are today is, in part, the creation of the past and what the future will bring for our children and grandchildren will, in large measure, be a result of what we do, or omit to do, today. So a celebration of the past must be a rededication for the future. The world has changed out of all recognition since the early days of Jamestown. It has changed since 1776. It has even changed fundamentally in its shape and possibilities in our own lifetimes. There seem few certainties: the old foundations of world order and prosperity seem to shift before our very eyes. But if we remain as firm in our self-confidence as did John Smith, there is no reason to falter or fail.

The leadership of the free world has passed to you. It is an awesome responsibility. But I ask you to believe that to the limits of our resources, we British will remain, as always, steadfast allies in defense of our joint heritage.

TRANSFER OF OLD FEDERAL COURTHOUSE IN PHILADELPHIA TO LOCAL GOVERNMENT

Mr. HUGH SCOTT. Mr. President, I am pleased that the American Bar Association and the Philadelphia Inquirer have both endorsed legislation introduced by Senator SCHWEIKER and myself to permit the transfer of the old Federal Courthouse at Ninth and Chestnut Streets in Philadelphia to the local government. This bill will help the Philadelphia court system by providing additional space.

Mr. President, I ask unanimous consent that an editorial from yesterday's Philadelphia Inquirer explaining this legislation be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

GOOD USE FOR THE COURTHOUSE

At its recent meeting in Montreal, the American Bar Association gave its support to a bill now before Congress which would meet the critical need—quickly and economically—for more courtroom space in Philadelphia.

The proposed legislation, sponsored by Sens. Scott and Schweiker, would permit the transfer of the old Federal Courthouse at 9th and Chestnut Sts. to the local government now that the new federal Courthouse at 6th and Arch Sts. is occupied.

Such legislation is necessary to make such a transfer possible because under present law property vacated by one federal agency must be made available to other federal agencies before any other use for it can be considered. The result is that some other federal agency usually claims it.

That makes sense as a general proposition, but because of its unique facilities, the Federal Courthouse could not be used by any other agency without extensive and expensive remodeling. The Philadelphia courts, on the other hand, should be able to move in and make immediate use of the space with little or no alterations.

That seems to make sense for the taxpayers, who otherwise would have to bear the expense both of remodeling the Federal Courthouse and providing new space elsewhere for the overcrowded Philadelphia courts.

"At least a portion of the problem" of the delays in Philadelphia's judicial system can be attributed to inadequate physical facilities, the presidents of the Philadelphia and Pennsylvania bar associations told the ABA. And while they are right in cautioning that the Scott-Schweiker bill would not be "a panacea for all current problems of judicial administration" here, they are also right in arguing that it would not only help solve those problems—at least on an interim basis—but would do so at minimal expense. The legislation should be enacted.

NATIONAL SKI PATROL ASSOCIATION CHAPTER

Mr. McINTYRE. Mr. President, I am pleased today to present to the Senate a lengthy list of cosponsors supporting legislation which I introduced granting the National Ski Patrol Association a Federal charter. The National Ski Patrol Association has, for many years, been educating the Nation's many skiers in safe skiing techniques. This nonprofit organization not only teaches skiers about safe skiing practices and safe ski equipment, but helps in protecting skiers while they are on the slopes.

Organizations like the Red Cross and the Boy Scouts of America have been granted Federal charters to aid these nonprofit organizations in dealing with the growing paperwork burden mandated by State chartering.

As the number of Americans enjoying this sport grows every year, the job of the National Ski Patrol Association grows as well. I hope more of my colleagues who come from States which depend on skiing as a revenue source or have con-

stituents who enjoy skiing will join me in supporting this legislation.

GOVERNMENT ACTIONS WHICH HAVE HAD SERIOUS IMPACT ON VIABILITY OF SHEEP, CATTLE, AND POULTRY

Mr. GARN. Mr. President, in 1971, the Federal Government took two actions which have had serious impact on the viability of the sheep, cattle, and poultry industries of the United States. The two actions were the issuance of an Executive order banning the use of chemical toxicants for predator control on Federal land and in Federal programs and the suspension of the registrations of the three chemicals most widely used for this purpose: Sodium cyanide, strychnine, and sodium monofluoroacetate (1080). In the view of many observers, these two actions were taken as a result of political pressure and without any scientific justification. Between them they established a situation marked by rigidity and irrationality, and one which has prevented ranchers from defending their flocks against an increasing predator population.

Last July the President did issue some minor modifications to the Executive order, indicating a growing willingness to face reality in this question, although the modifications were, in my view, mainly cosmetic. At the same time, the Environmental Protection Agency announced hearings into applications for reregistration of sodium cyanide for use in the M-44 ejector device. Under the schedule announced by EPA, the Administrator must, before September 16, make a decision on those applications.

In the meantime, the hearings on the applications have now been completed, and the administrative law judge has issued his opinion on the applications. The findings of the administrative law judge are thoughtful and well reasoned, and I sincerely hope that the Administrator of EPA, Mr. Russell Train, will act in accordance with them. Essentially, the hearings showed that "the conditions of use of the M-44 as embodied in actual practice avoid most if not all of the dangers mentioned in the 1972 order." In fact, Mr. President, the only witness called in opposition to the applications gave evidence which supported the applications.

In view of these facts, Mr. Train should move promptly to register the M-44 device. Such action would not involve a return to the sometimes indiscriminate poisoning which characterized earlier predator control programs. As I have noted before, the Environmental Protection Agency has ample authority to insist on severe restrictions on the application of chemical toxicants, and a number of restrictions are called for by the administrative law judge's findings. The important point is that, if the administrative law judge's recommendation is accepted, the States of Montana, Wyoming, Colorado, Oregon, Nevada, and Texas will be able to use cyanide under these restrictions, and under the supervision of the Bureau of



Sport Fisheries and Wildlife, which will, itself, be a registrant.

I make one further point, Mr. President. The registration called for by the administrative law judge will require some modification in the Executive order which still basically bans the use of chemicals in predator control programs on Federal land. I urge the President, through his Domestic Counsel, to meet with representatives of the States, and with interested Senate offices, to discuss the way in which the modifications can best be accomplished to protect all the interests involved. It is good to see that inflexibility is disappearing in at least this one corner of the bureaucracy, and that progress can be made.

Mr. President, so that all Senators can have the benefit of his findings, I ask unanimous consent that the administrative law judge's findings be printed in the RECORD.

There being no objection, the findings were ordered to be printed in the RECORD, as follows:

[Environmental Protection Agency Before the Administrator—FIFRA Docket No. 382]

INITIAL DECISION¹ OF FREDERICK W. DENNISON, ADMINISTRATIVE LAW JUDGE

In the matter of: Applications to register sodium cyanide for use in the M-44 device to control predators.

This proceeding was initiated by the Administrator's order dated July 11, 1975, published in the Federal Register of July 15, 1975 (40 F.R. 29755). The proceeding is based on an application filed July 7, 1975, by the Fish and Wildlife Service of the U.S. Department of Interior, which seeks to register sodium cyanide M-44 capsules pursuant to Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) (36 Stat. 979, 7 U.S.C. 136a). Pursuant to the provisions of subpart D of the EPA regulations (40 CFR 164.130-133), the application under Section 3 has been treated as a petition for reconsideration of an order issued March 9, 1972 (37 F.R. 5718).

The notice provided for an expedited hearing, which was specified to begin on August 12, 1975, and to last 4 days unless, pursuant to a recommendation of the presiding officer, it was further extended for an additional three days. The parties were allowed 4 days from the close of the hearing to file proposed findings and briefs. The presiding officer was allowed 6 days thereafter for the issuance of his initial decision, to which the parties could file exceptions 4 days thereafter.² Finally, it was provided that the Administrator's final order would be issued 21 days following the hearing, or 7 days after the filing of the exceptions. Saturdays, Sundays, and holidays were to be excluded from the foregoing count.

A prehearing conference was held on July 30, 1975, as a result of which Special Rules for the conduct of the proceedings were discussed, and were included in a Report of First Prehearing Conference issued July 31, 1975 (40 F.R. 33069). A second prehearing conference was held on August 7, 1975, at which some supplemental rules were adopted (Report of Second Prehearing Conference, August 11, 1975).

¹ Exceptions may be filed by the parties pursuant to 40 CFR 164.101 but must be received on or before September 5, 1975. Note: This is a correction of the date of September 4, 1975, announced on the record (Tr. 4-64) the fact that September 1 (Labor Day) is a holiday not having been considered.

² In the original notice, the exceptions were inadvertently referred to as "a reply brief."

As permitted by the initiating order, certain interests filed applications which parallel that of the Fish and Wildlife Service, and by a second order, dated August 8, 1975, the following applications were, in effect, incorporated into this proceeding (40 F.R. 34455, August 15, 1975):

Montana Department of Livestock
Wyoming Department of Agriculture
Colorado Department of Agriculture
Oregon Department of Agriculture
Nevada State Department of Agriculture
Texas Department of Agriculture
M-44 Safety Predator Control Company,
Midland, Texas

Also, as allowed by the order, the following interventions occurred:

Interventions in support of application:

Wyoming
Montana
Navajo Nation
National Turkey Federation
American National Cattlemen's Association
National Wool Growers' Association

Interventions in opposition to application:

Environmental Defense Fund
Defenders of Wildlife
Friends of the Earth
National Audubon Society
Natural Resources Defense Council
National Wildlife Federation
Sierra Club
Oregon Environmental Council
Animal Protection Institute
Wildlife Management Institute
Humane Society of the United States

Amicus Curiae: As further provided by the initiating order, persons desiring to file briefs without becoming parties were permitted to do so and such amicus briefs were filed by the following:

American Farm Bureau Federation
Texas Department of Agriculture
California Department of Food and Agriculture
Montana Wool Growers' Association
Montana Stockgrowers' Association
Congressman W. R. Poage
Texas and Southwestern Cattle Raisers Association

HISTORY OF PROCEEDING

On March 9, 1972, the Administrator issued a notice of suspension of the registration of certain products containing sodium fluoroacetate (1080), strychnine, and sodium cyanide. That document was published in the Federal Register of March 18, 1972 (37 F.R. 5718). The document referred to a report prepared under the aegis of the Secretary of Interior by a committee of which Dr. Stanley Cain, Director, Institute for Environmental Quality and Professor of Botany and Conservation at the University of Michigan, was chairman. The text of that order and the accompanying findings of fact are incorporated herein by reference. The order cancelled and suspended all uses of sodium cyanide and the other chemicals mentioned.

On January 10, 1974, EPA issued a notice that it would consider applications for the use of a so-called M-44 device and sodium cyanide for coyote control (39 F.R. 2295, January 18, 1974). This was followed by an amendment to the EPA regulations dated January 29, 1974 and effective February 1, 1974 by which a new Section 162.19 was added to the Rules which provided for the filing of experimental use applications for the use of sodium cyanide in a spring-loaded ejector unit as a predator control.

³ The precise status of the Council is not clear as notwithstanding intervention in opposition has been entered, the Council, by letter dated June 19, 1975, to the Assistant Director of the State Department of Agriculture, has indicated approval.

Finally, on July 11, 1975, the Administrator issued the instant notice of hearing which commenced this proceeding. In that notice, it was recited that, pursuant to the foregoing regulations, experimental use permits had been issued as follows:

Texas Department of Agriculture
Montana Department of Agriculture
California Department of Food and Agriculture
Department of the Interior
South Dakota Department of Game, Fish, and Parks
Idaho State Department of Agriculture
Nebraska State Department of Agriculture
Kansas State University
Texas A & M

ISSUES

The issues for determination in this proceeding are whether the following three items constitute substantial new evidence:

1. Four of the seven specific findings concerning sodium cyanide in the 1972 Order were directly related to the issue of human safety. Based on the data gathered in accordance with the applicant's experimental use permit, sodium cyanide when used in the M-44 has been shown to be significantly less hazardous to man than sodium cyanide when used in the explosive device for which it was registered at the time of the 1972 Order and which was known to cause injuries to humans.

2. Based on data derived from studies conducted subsequent to the 1972 Order and submitted by the applicant, use of sodium cyanide in the M-44 device is more selective than use of the chemical in the explosive device and more selective than some other chemical and non-chemical predator control methods.

3. In view of the data submitted by the applicant with respect to significant reduced hazards to humans and the greater selectivity of sodium cyanide when used in the M-44, it is likely that proposed restrictions that might be developed, could be adopted and followed as a matter of practice by trained personnel subject to the supervision or control of the applicant.

These are followed by the following, which have been numbered for convenience:

4. Finally, if the above facts are determined to exist and to constitute substantial new evidence, the hearing must also determine whether such facts require modification of the 1972 Order to permit the registration of sodium cyanide for use in the M-44 to control predators in accordance with FIFRA.

5. The determination of these issues shall be made taking into account the human and environmental risks found by the Administrator in the 1972 Order and the cumulative effect of all past and present uses, including the requested use, and uses which may reasonably be anticipated as a result of a modification of the 1972 Order.

Hearings were held on August 12, 13, 14, and 15, 1975, and it was not necessary to seek the three-day extension which was conditionally provided. While arrangements were made to extend the workday for an additional hour on August 13, 14, and 15, the additional time was not required, and the hearing concluded prior to 11:00 o'clock on August 15, 1975. The following appearances of counsel were entered:

David Fisher, Fish and Wildlife Service, U.S. Department of Interior.

Glenn Davis and John H. Midlen, Jr., States of Wyoming and Montana.

George S. Andrews, Special Counsel, State of Wyoming.

Arthur Leo Quinn and Jeffrey Petrash, National Wool Growers' Association, American National Cattlemen's Association, National Turkey Federation, Navajo Nation.

Harold Burke, Assistant Attorney General, State of Oregon.

Richard E. Gutting, Jr., Environmental Defense Fund, Defenders of Wildlife, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, National Wildlife Federation, Oregon-Environmental Council, Sierra Club, Animal Protection Institute, Wildlife Management Institute.

Murdaugh Stuart Madden and Roger A. Kinder, Humane Society of the United States.

Ronald McCallum and Colburn T. Cherney, U.S. Environmental Protection Agency.

Proposed Findings of Fact and Conclusions, and Briefs in support, have been filed by Fish and Wildlife Service, Department of Interior, the States of Montana, Wyoming and Oregon; American Farm Bureau Federation, Environmental Defense Fund and the associated environmentalist groups, and Respondent (Assistant Administrator, U.S. Environmental Protection Agency).

FINDINGS OF FACT

1. The M-44 is a mechanical device used to eject sodium cyanide into the mouth of canids when they activate it. It was developed in response to a need to replace the explosive shell of the Coyote Getter. Although serious injuries (14 documented human injuries for 550,000 getter-years of Service use since 1959) were infrequent with the latter, the potential for serious accidents was sufficient to warrant development of an alternative device. The manner of placement, use of scents that are offensive to humans, and elimination of the explosive charge made the M-44 relatively safe for humans.

2. The M-44 is composed of four parts: (1) the case—a sealed, impermeable plastic capsule containing one gram of formulated toxicant (0.88 gram of NaCN); (2) the case holder—a short, hollow tube wrapped with absorbent material to retain olfactory attractant and into which the case is inserted; (3) the ejector—a spring loaded plunger and triggering mechanism which is seated in and fastened to the tube and to which the case holder is fastened; (4) the tube—a hollow metal tube which is driven into the ground to support and anchor the mechanism.

3. Placement in the field is as follows: The tube is driven into the ground; the ejector is cocked, seated into the tube and the trigger mechanism engaged; the case is placed in the case holder which is then fastened to the ejector mechanism previously placed; and last, the absorbent material on the case holder is saturated with an olfactory attractant. Canids drawn to the attractant grasp the case holder by their teeth and pull up, thus triggering the device, which then ejects the sodium cyanide into the animal's mouth.

4. The M-44 device will be used in accordance with formal policies and regulations established by the U.S. Fish and Wildlife Service. This use will conform to all applicable Federal, State, and local laws and regulations.

5. The U.S. Fish and Wildlife Service does not have authority over most lands on which the M-44 device will be used. To assure consideration, input, and approval from all responsible parties, M-44 use in programs on public lands will be controlled by cooperative agreement with appropriate jurisdictional agencies. Use of the device in programs on private lands would be controlled by written and signed cooperative agreement with the landowner or leasee.

6. Each individual M-44 use will be subject to careful analysis at the field level to assure that application is necessary, safe, and effective. Full documentation of livestock depredations, including evidence that such losses were caused by wild canids, or laboratory-confirmed verification that wild canids are, in fact, vectors of a communicable dis-

ease such as rabies, will be required before application is undertaken.

7. M-44 devices will be used only in areas specified under programs approved by U.S. Fish and Wildlife Service Regional Directors. They will not be used in: (1) National Parks or Monuments; (2) areas where threatened or endangered species might be adversely affected; or (3) areas where excessive exposure to public and family pets is probable.

8. M-44's or capsules will not be given to, or entrusted to the care of, any person not under the supervision of the Service or other cooperating Government agencies. Care will also be taken to prevent theft or loss and the possibility of subsequent use of the capsules by nonauthorized persons.

9. M-44's will be used in locations and at times that will minimize encounters by humans, pets, and nontarget species. Special concern will be given to hunting and other seasonal use areas.

10. On private lands, M-44's will be used in areas where fencing, topography, seasons, climatic conditions, or other factors normally limit human access, while on public lands, M-44's will be used during those times of the year when use of the particular public land by the general public is at a minimum, or on areas not generally frequented by the public. Specific locations and time periods of M-44 use will be established by the appropriate Bureau representative, based upon land-use information provided by the land administrator and with his concurrence.

11. Warning signs in English and Spanish will be used to provide warning of all areas containing M-44's. Individual unit sites also will be clearly identified to protect persons who might happen upon them.

12. All Service-supervised employees will be instructed in the safe use of M-44's before being entrusted with them, including caution to be exercised to prevent personal injury from accidental discharge of the device.

13. Cyanide antidote kits will be carried by all employees using M-44's.

14. Special precautions will be in effect for the storage and disposal of capsules.

15. M-44 devices will be maintained on a routine basis (at least weekly) in order to replace discharged capsules and damaged warning signs, and to check them for human interference or abnormal conditions. They will be removed when unsafe conditions develop (i.e., new human activity in the area), when livestock depredation losses are stopped, or when evidence of the target species can no longer be found in the area.

16. All accidents involving humans and domestic animals as well as reports of animals taken by the device, will be reported immediately in accordance with established procedures.

17. During the experimental permit period from June 1, 1974 to October 31, 1974 the livestock losses were 3.4 percent before M-44 use was initiated and 0.6 percent during and after their use, or a 2.8 percent reduction in losses (M-44 Efficacy report 1974). This shows the trend but is not an exact loss ratio or solely attributable to M-44's for several reasons: 1, in many cases other damage reduction methods were used simultaneously with M-44's; 2, funding does not allow for absolute search for kills; 3, time periods for collecting the "before" and "after" data are not equal.

18. Data taken from the same field reports, but limited to 2 months after initiation of M-44 use on each area, and including 13 months from June 1, 1974 to July 31, 1975 showed a reduction in sheep and goat losses of 2.9 percent from 3.3 percent before M-44 use to 0.4 percent after use began. The same data shows a reduction of cattle losses (mostly calves) of 3.0 percent from 3.3 percent before M-44 use to 0.3 percent after. Again this shows a trend, but not exact losses or exact loss ratios.

19. An important comparison should be pointed out, that these reductions of whatever size they are, were made where mechanical methods had been unsuccessful thus requiring the use of chemical methods.

20. The relative ratio by which M-44's take coyotes and fox as compared to nontarget species is indicated by data from the USFWS 1974 report which shows a target species take of 95 percent and nontarget species 5 percent. Data from the USFWS 1975 report indicates a take of 88 percent target species and 12 percent nontarget species.

21. The leader of the Predator Ecology and Behavior Project of the Fish and Wildlife Service, with credentials both academic and in research in the field of wild animal populations in general and predators in particular, testified as to the overall results of the FWS use of the M-44 device. In his opinion, the M-44 device is an effective device for achieving temporary reductions in canid populations; the device is selective for canids because of the nature of the attractant and manner of exposure; the risk to populations of nontarget species is minimal; and it is significantly safer for operating personnel than the Humane Coyote Getter. The risks associated with the Humane Coyote Getter, as used in the Federal program, were largely related to mechanical injuries caused by the top wad and sealant which effectively became a projectile. Those risks have been essentially eliminated in the M-44. The potential risk of Cyanide toxemia to operating personnel is present with either device, but evidence from the operational programs suggests that risk is extremely low.

22. Data compiled by the Fish and Wildlife Service indicate that the M-44 device is more selective for wild canids than are steel traps. A study covering the period 1970-1973, during which the M-44 and the Humane Coyote Getter were both used during part of the period, indicates that of the animals taken, 89 percent represented coyotes and foxes, and other species such as bear, bobcat, skunk, badger, raccoon, opossum and porcupine, represented very small percentages of the total. On the other hand, a study made in Mexico, Colorado, and Wyoming of carnivores taken on steel trap lines, indicated that coyotes and red foxes comprised only 27.6 percent of the total taken. Thus while some nontarget animals are taken by the M-44's, they represent a very small proportion and substantially less than the steel traps.

23. A research scientist from the Texas A&M University, testified with respect to certain studies of predator-prey relationships. From these studies, he drew the conclusion that the M-44 is a selective device for capturing coyotes.

24. While in the 1972 Order the Administrator found that "There is no true effective antidote" with respect to the use of cyanide there considered, the record does not disclose on what that statement or finding was based. The evidence adduced herein indicates antidotes do exist and one of the requirements of the Fish and Wildlife Service will be that every person engaged in placing the devices must carry an antidote kit. There is question as to whether the antidote treatment could be self-administered by a person who might be suffering from the initial effects of poisoning by making an intravenous injection; however, antidotes do exist and the previous finding in 1972 is incorrect.

25. The States of Montana and Oregon offered copies of the rules governing the use of chemical toxicants for predator control in their states and similar rules for the State of Wyoming were submitted.

26. Currently a critical situation exists in the State of Montana due to serious losses to livestock producers caused by predatory animals, primarily coyotes. Present methods of trapping, denning, shooting and aerial hunting are being employed but livestock depredation continues to be a serious



problem. Various alternate methods of control are being utilized.

27. On April 4, 1974, the Montana Department of Livestock was granted permission to use the M-44 device for experimental use purposes only. The expiration date on that permit is October 15, 1975. From July 1, 1974 to February 20, 1975, a total of 278 people from 22 counties and an Indian reservation were trained by the Montana Department of Livestock and licensed as government pesticide M-44 applicators. The training consists of techniques for the selection of placement sites, recordkeeping and reporting safety precautions, and various aspects of the use of the M-44 device. Special emphasis was given to environmental and human safety precautions to be observed when using the device and predacide.

28. During these training sessions, all participants were issued an amyl nitrite antidote kit and instructed in its proper use. All applicators were required to submit monthly reports on capsule usage, species taken, and the number of M-44 units in the field.

29. Between July 1, 1974 and June 30, 1975, a total of 608 coyotes, 148 foxes, and 23 skunks, 6 raccoons, 4 dogs, and 1 badger were taken by the licensed applicators in Montana. Coyotes and foxes are the target species for this program and account for 96 percent of the species taken. The Department of Livestock computes the cost of the program per coyote or fox taken as \$19.32. This compares to the average cost to take a coyote or fox by the state helicopter, fixed-wing aircraft or state trapper using mechanical methods of \$45.00, \$25.00 and \$200.00, respectively. Thus proving the M-44 to be economically feasible.

30. Montana considers the M-44 device using sodium cyanide to be a selective, efficient, humane, economically and environmentally-safe predatory control tool, and urges its registration.

31. The State of Oregon has adopted a comprehensive system of regulations to implement its application for registration. Those regulations become effective October 15, 1975. Under its program only registered or licensed governmental applicators will be authorized to utilize the toxicant and device, and then only for coyote control.

32. EDF and the opposing group of environmentalists offered the testimony of a field representative for Defenders of Wildlife, Richard L. Randall. Mr. Randall has had life-long experience in varying capacities with livestock and wildlife in the Western areas. He was formerly employed by the Fish and Wildlife Service, or its predecessor, until 1973 when he retired from government service because of injuries suffered in two aerial accidents which occurred while he was hunting coyotes in Wyoming.

33. He has had personal experience in both the Humane Coyote Getter and the M-44. In his experience, use of any predator control was not effective in significantly reducing losses due to predation. Randall believes that the M-44 presents a potential danger to children and others who may be attracted to the devices by the warning signs posted. He indicates that there is much vandalism of the devices by persons damaging them with rocks or running over them with vehicles and that many who disapprove of their use deliberately set them off and therefore they present a hazard to that group of people. Randall perceives no objection to the registration of the M-44 device provided adequate restrictions on its use are promulgated. While he did not specify the particular conditions he deemed appropriate, one of his principal criticisms was in opposition to placing the devices on or near roads. He does not believe that the M-44 is anymore effective or selective than its predecessor the Humane Coyote Getter.

34. The foregoing facts constitute substan-

tial new evidence which was not available to the Administrator when he issued his March 1972 order, and could not have been presented or discovered by parties to that matter in view of the lack of a proceeding.

35. Based on the data gathered in accordance with the applicant's experimental use permit, sodium cyanide when used in the M-44 has been shown to be significantly less hazardous to man than sodium cyanide when used in the explosive device for which it was registered at the time of the 1972 order and which was known to cause injuries to humans.

36. The use of sodium cyanide in the M-44 device is more selective than use of the chemical in the explosive device and more selective than some other chemical and non-chemical predator control methods.

37. It is also apparent that with appropriate restrictions as hereinafter discussed, the use of the M-44 should be approved and that the 1972 order should be modified accordingly.

CONCLUSIONS

The evidence is clear that the conditions of use of the M-44 as embodied in actual practice under the experimental use permits avoid most if not all of the dangers mentioned in the 1972 order. The testimony of the only witness in opposition tends to confirm this fact rather than controvert it. While apparently disagreeing that the M-44 is more selective than the former Humane Coyote Getter, that witness' statement was a general observation unsupported by data, and actual data of record establishes the contrary.

While the evidence presented might be considered lacking in the niceties of politico-economic analysis, when consideration is given to the subject-matter, i.e. wild animal predators, and the vast undeveloped areas in which these devices are utilized, the data presented indicate that the benefits of the proposed use greatly outweigh the risks which are shown to be minimal. A precise dollar evaluation of benefits versus risks, however, is not possible.

OPPOSITION CONTENTIONS

EDF contends it has been denied due process of law and a fair and proper hearing, and in support offers five contentions of procedural errors.

1. *Intervention by Oregon:* EDF points out that the initiating notice of July 11, 1975, provided that motions to intervene were to be filed no later than August 6, 1975. It also provided for states to file M-44 applications and allowed for their filing by July 31, 1975, to be reviewed and then made subject to a determination by the Administrator as to whether they qualified under Subpart D of the Rules. That determination was not made until the August 8, 1975 Notice, or after the date for filing interventions as such. As Oregon became an applicant on that date, it was appropriate that it become a party and offer evidence in support of its application. It should be noted that such evidence dealt with the manner in which the program would be administered within Oregon, but did include a letter of the Oregon Environmental Council expressing approval of these applications.

2. *Application dates:* EDF contends the August 8, 1975 Notice "ruled that applications received after this date [July 31, 1975] would be considered." No such language is contained in the Notice, which lists the applications received "on or before July 31, 1975." It therefore cannot be determined what the basis of this objection may be.

3. *Irrelevant material:* Throughout the hearing, EDF objected to any evidence beyond the issues 1 and 2 above, dealing with human hazards and selectivity, and thus asserts that irrelevant material was received. In taking this position, EDF ignores issues 4 and 5 in the initiating order as summar-

ized above and cites no testimony which is irrelevant to those issues.

4. *Special Rules:* EDF points out that the Special Rules issued by the Presiding Officer provided for submission of all testimony on applications in writing and the distribution to parties on August 7, 1975, but that it did not receive the Oregon and Montana exhibits until after that date. As noted above, the Order incorporating those applications was not issued until August 8, 1975, and being proper parties provision for their testimony was required. In any event, EDF received the testimony in advance of the witness taking the stand and had opportunity for prior review; there is no indication that EDF was in any way prejudiced by this procedure.

5. *Underlying data:* EDF correctly points out that the Special Rule (Report of First Prehearing Conference) provided that data must be made available by the proponents of exhibits or expert testimony, but alleges testimony was allowed where such was unavailable to EDF, citing two references to the transcript. Those references indicate that EDF did in fact have the underlying studies when questioning the witness, and afford no support for its contention. Further, the record indicates that where a witness had failed to supply the complete article from which he had quoted excerpts, the proposed testimony was stricken (Tr. 2-22). Moreover, with respect to the Special Rules which were discussed at the Prehearing Conference of July 30, 1975, various counsel, including EDF, urged that provision be made for special situations, and the Administrative Law Judge indicated that such would be entertained. (Tr. 1-28).

6. *Subpoena of EPA official:* A witness in the course of his testimony stated that an EPA official had told him the present applications would be granted. Later, EDF requested and was denied a subpoena requiring that official to testify and be cross-examined, on the grounds of relevancy. The decision-making process, in this instance, involves the Administrative Law Judge in the first instance and the Administrator, or his delegate, in the second. The views of staff members outside of this record are irrelevant unless it would appear to be related to the development of "secret law" as to which there is no indication here. Compare *Sterling Drug Inc. v. F.T.C.*, 4502d 698 (1971).

Applicability of Section 102 of the National Environmental Policy Act: On brief, EDF also contends that Section 102(3)(c) of the National Environmental Policy Act (NEPA) [83 Stat. 852; 42 U.S.C. 4332(2)(c)] requires that an environmental impact statement (EIS) is a prerequisite to the FWS application, and that its absence prevents any modification of the 1972 Order. In support, it offers a quotation from *Aberdeen and Rockfish Railroad et al. v. S.C.R.A.P.* (— U.S. — No. 73-1966, June 24, 1975). The quotation is *dictum* in a case in which such a statement was held not to be required, and affords little guidance here. The issuance of the initiating notice herein, by the Administrator in the absence of an EIS, necessarily represented a determination by him that none was required. With regard to EPA itself, none is required and this proceeding does not fall within those as to which the Administrator has announced a voluntary program of preparing the EIS. See Statement of Policy and Procedures, 39 F.R. 16186 and 37119.

Effect of E.O. 11870: EDF contends the present FWS proposal is prohibited by Executive Order No. 11870 (July 18, 1975) (40 F.R. 30611) which amended Executive Order No. 11643 of February 8, 1972, by citing Section 3(c) thereof which deals with programs limited to one year. But this proceeding would be governed by Section 3(b), and no doubt represents the consultation with EPA which is required.

Section 3 of FIFRA: Finally, EDF contends the applications do not meet the require-

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ments of Section 3 of FIFRA by asserting that the proposed use would have "unreasonable adverse effects on the environment." No attempt is made to justify the assertion, but reference is made to 40 CFR 162.11 of the recently issued Registration rules, effective August 4, 1975. But this proceeding is subject to Section 18 of FIFRA, as well as Section 3, and is governed by Subpart D of the Rules (40 CFR 164.130) and the statement of issues herein.

RESTRICTIONS

The Respondent in this proceeding (Assistant Administrator of EPA), on brief, urges the modification of the 1972 Order to permit the registration of sodium cyanide for use in the M-44 device to control canid predators subject to the 26 numbered conditions or restrictions set forth in the Appendix hereto.

These restrictions are based on the statements of intended use by the applicant witnesses herein or may reasonably be inferred from their testimony and appear to be appropriate in the light of the record. They also appear to meet the suggested restrictions, offered by EDF in the alternative that their challenge of the proceeding is not accepted, and accordingly, the approval granted herein will be made subject to those restrictions.⁴

ULTIMATE FINDINGS AND CONCLUSIONS

In view of the foregoing, the 1972 Order should be modified to permit the registration of the M-44 device by the applicants herein subject to the conditions set forth in the Appendix hereto.

FREDERICK W. DENNISTON,
Administrative Law Judge.

August 29, 1975.

APPENDIX A—RESTRICTIONS

1. Use of the M-44 device shall conform to all applicable Federal, State, and local laws and regulations.
2. The M-44 device shall be used only to take wild canids suspected of preying upon livestock and poultry.
3. The M-44 device shall not be used solely to take animals for the value of their fur.
4. The M-44 device shall only be used in instances where actual livestock losses due to predation by wild canids are occurring. M-44 devices may also be used prior to recurrence of seasonal depredation, but only when a chronic problem exists in a specific area. In each case, full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.
5. The M-44 device shall not be used in: (1) National or State Parks; (2) National or State Monuments; (3) Federally designated Wilderness areas; (4) Wildlife refuge areas; (5) Prairie dog towns; (6) Areas where exposure to the public and family pets is probable.
6. The M-44 shall not be used in areas where threatened or endangered species might be adversely affected. Each applicator shall be issued a map which clearly indicates such areas.
7. The M-44 device shall not be placed within 200 feet of any lake, stream, or other body of water.
8. The M-44 device shall not be placed in areas where food crops are planted.
9. M-44 devices shall not be placed within 50 feet of public rights-of-way.

⁴ It is noted that by letter of August 27, 1975, counsel for the State of Montana takes exception to proposed restrictions No. 2, 14 and 22. No provision was made for such a filing, which is essentially a reply brief, and time does not permit provision therefor, and they have not been considered. They may, of course, be renewed on exceptions.

10. The maximum density of M-44's placed in any 100-acre pastureland area shall not exceed 10; and the density in any one square mile of open range shall not exceed 12.

11. The M-44 device may be placed in the vicinity of draw stations (livestock carcasses); provided, that no M-44 device shall be placed within 30 feet of a carcass; no more than 4 M-44 devices shall be placed per draw station; and no more than 3 draw stations shall be operated per square mile.

12. M-44 devices shall be inspected at least once a week to check for interference or unusual conditions and shall be serviced as required.

13. Used sodium cyanide capsules shall be disposed of by deep burial or at a proper landfill site.

14. An M-44 device shall be removed from an area if, after 30 days, there is no sign that a target predator has visited the site.

15. Damaged or non-functional M-44 devices shall be removed from the field.

16. In all areas where the use of the M-44 device is anticipated, local hospitals, doctors, and clinics shall be notified of the intended use, and informed of the antidotal and first-cyanide poisoning.

17. Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

a. Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected weekly to insure their continued presence and insure that they are conspicuous and legible.

b. An elevated sign shall be placed within 6 feet of each individual M-44 device warning persons not to handle the device.

18. Registrations for sodium cyanide M-44 capsules may be granted to persons other than State and Federal agencies; provided, that such persons shall be authorized to sell said capsules, only to State and Federal registrants. Only State and Federal registrants shall be permitted to sell, give, or otherwise distribute capsules to individual applicators. Such State or Federal registrants of sodium cyanide M-44 capsules shall be responsible for insuring that the restrictions set forth herein are observed by individual applicators to whom such registrants sell or distribute such capsules and/or M-44 devices. State and Federal registrants shall train applicators, and such training shall include, but need not be limited to: (1) Training in safe handling and placement of the device; (2) Training in the proper use of the antidote kit; (3) Instructions regarding proper placement of the device; and (4) Instructions in recordkeeping.

19. Each authorized M-44 applicator shall keep records dealing with the placement of the device and the results of each placement. Said records shall include, but need not be limited to:

1. The number of devices placed.
2. The location of each device placed.
3. The date of each placement, as well as the date of each inspection.
4. The number and location of devices which have been discharged and the apparent reason for each discharge.
5. The species of animal taken.
6. All accidents or injuries to humans or domestic animals.

20. M-44 devices and capsules shall not be sold or transferred to, or entrusted to the care of, any person not licensed by, or under the supervision of a State or Federal registrant.

21. All persons authorized to possess and use M-44 capsules and devices shall store said devices under lock and key.

22. Each authorized M-44 applicator shall carry an antidote kit on his person when

placing and/or inspecting M-44 devices. The kit shall contain 12 pearls of amyl nitrite and instructions on their use. The kit may also contain sodium nitrite and sodium thiosulfate.

23. One person other than the individual applicator must have knowledge of the exact placement location of all M-44 devices in the field.

24. Supervisors shall periodically check the records, signs, and devices of each applicator to verify that all applicable restrictions, laws, and regulations are being strictly followed.

25. In areas where more than one governmental agency is authorized to place M-44 devices, the agencies shall exchange placement information and other relevant facts to insure that the maximum number of M-44's allowed is not exceeded.

26. Registrants and applicators shall also be subject to such other restrictions as may be prescribed from time to time by the U.S. Environmental Protection Agency.

THE 1975 CROP DISASTER PROGRAM

Mr. McGOVERN. Mr. President, during my travels in South Dakota over the congressional recess, one of the persistent complaints I received was the manner in which the U.S. Department of Agriculture was administering the current crop disaster program. Prolonged drought and hot weather severely damaged our South Dakota corn crop. Similar conditions prevailed in 1974. However, this year the Department's administration of the program has had the net effect of costing farmers in my State almost \$10 million. Crop disaster payments of about 46 cents per bushel is little enough to assist a farmer with little or no corn in his fields. The Department's formula of docking the producer 7 bushels of corn for each ton of silage he can salvage has about cut the program in half.

Robert N. Duxbury, the secretary of the South Dakota Department of Agriculture has sent me a copy of a well-reasoned letter to Secretary Butz on this question. For the information of my colleagues, I ask unanimous consent that the text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE,
Pierre, S. Dak., August 28, 1975.

HON. EARL L. BUTZ,
Secretary of Agriculture,
U.S. Department of Agriculture,
Washington, D.C.

MY DEAR MR. SECRETARY: I am sure you agree with me that if we are to have a disaster program, it should be administered as efficiently as possible and be designed, as nearly as possible, to help those who need it most. I believe that the changes you have made in this year's program, primarily that all silage produced will count against production when determining the producer's disaster payment, is counterproductive to that intent.

It is difficult to understand, for example, why we should further penalize the grain producer, who has seen his total crop wiped out by drought, by requiring any silage he may salvage be used to reduce his disaster payment.

Some of my reasonings are as follows:

1. The payment of 46c per bushel is very small in comparison to his production costs and can only be considered a token amount



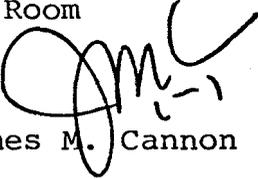
THE WHITE HOUSE

WASHINGTON

September 5, 1975

MEETING TO DISCUSS PREDATOR CONTROL

Monday, September 8, 1975
5:30 p.m. (30 minutes)
The Cabinet Room

From:  James M. Cannon

I. PURPOSE

To discuss further the problems of predator control.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background: The sheep and livestock growers continue to feel that they are suffering unmanageable losses from coyote predation. The reaction to your July 18 Executive Order amendment was generally negative -- the experimental work on the M-44 pellet device has been virtually completed and the toxic collars are unacceptable to shepherders.

Currently on appeal by the Justice Department is a Wyoming Federal court decision revoking the EPA suspension. This decision is expected to be reversed possibly by late fall.

Administrator Train is due to render a decision on the re-registration of sodium cyanide use in the M-44 device on September 15. The Counsel's Office advises it would be inappropriate to prejudge or appear to influence this decision.

Attached at Tab A is a more detailed memorandum on the background and status.

*Wyoming
Circuit
Court*

B. Participants: See list attached at Tab B.
Russ Train is disqualified from this discussion
because he is in the process of rulemaking.

C. Press Plan: To be announced.

III.

TALKING POINTS

1. I am aware of the continuing problem and am prepared to discuss it further.
2. I know that the fall lambing season creates some urgency.

THE WHITE HOUSE

WASHINGTON

September 5, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES M. CANNON

SUBJECT: Predator Control - Meeting for September 8

The most effective poisons for coyote control (sodium cyanide, strychnine, 1080) are banned from use by two actions:

1. Executive Order 11643 of 1972 applying to Federal lands. On July 18, 1975, you amended this Executive Order to allow for expanded experimentation with sodium cyanide. (The basic delivery methods to be used are the M-44 pellet and the toxic collar.)
2. EPA suspension of registration on all lands under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

On June 12, 1975, a Wyoming Federal court revoked the EPA suspension on a technicality (failure to file an environmental impact statement by EPA). The decision is under appeal and it is widely expected that the EPA suspensions will be reinstated, possibly by early fall.

After your Executive Order of July 18, EPA Administrator Train issued a one-year experimental use permit for toxic collars, and opened hearings by an administrative judge in order to determine if the use of the M-44 device could be re-registered. The Administrator's decision is due September 15.



The allowance for additional research on sodium cyanide in your Executive Order amendment resulted in field tests on the toxic collar which started in North Dakota on August 11 with additional field tests in Montana and Texas starting September 8. Pen testing is going on now in Utah and Colorado to study coyote attack pattern, collar design, and bait setting alternatives.

Research and testing on the M-44 device (a spring-fired cyanide pellet) has been going on for years and is virtually completed. Although additional testing is now going on, it is basically duplicative of the earlier work.

The sheep industry case for using 1080 seems to have a great deal of merit, but discussion on this problem of re-registration should probably be explored after the September 15 EPA decision.

PARTICIPANTS FOR PREDATOR CONTROL MEETING (Sept. 8)

Senators attending:

Paul J. Fannin
E. J. (Jake) Garn
Clifford P. Hansen
Paul Laxalt
James A. McClure

Congressmen attending:

Glenn English
James P. Johnson
W. R. Poage
Robert Kroeger
Keith G. Sebelius
~~William C. Wampler~~
Sam Steiger

Honorable Earl Butz, Secretary of Agriculture
Honorable Kent Frizzell, Acting Secretary of Interior

Mr. Steven D. Jellinek
Staff Director, Council on Environmental Quality

Congressional Liaison:

Pat O'Donnell

Domestic Council:

James M. Cannon
George W. Humphreys



9/8/75

See W³ Chem =

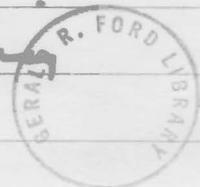
1) One year too short -
w/ lead-time, main only
next spring lamb crop
protected.

2) Failure to allow
any use ^{TOXIC}
control elements

~~3) 1080~~ Exp - would like
to use 1080 in
controlled experiment

3) M. & F. usefully around
target populations of livestock
with ^{of it}
use ~~exp~~ in game
management.

Dr. Lee J. ...
Jan. 1975 - "mixed results"
first positive step of ...
viewed 72 Act ...
& ...



1080 being bootlegged & being
used in uncontrolled
ways.

used in covert control
want to demonstrate
that 1080, normally
used, is good drug..

Answer 1080 look

W^o drug - ^{some original use} ^{and} ^{control}
structure

then under -
was arbitrary.

put 1080 under
same restrictions.

as existing Act

EPA's regulation



outward even more
as stop from law

Page. cut down on govt

paperwork & reports

4 pages of exception

to budget on 11-44-

most go to paperwork

EPA's Paperwork Agency.

In direct conflict w/
fundamental idea to act
down on paperwork

Complete EPA - regulatory paperwork.

Butz = Careful we don't
stop EPA in its
tracks



CEO - EPA - Int . To prevent
experimental use of 1080

Most effective way to poison
mice in den.

Medata on game - getting fewer

~~#~~ May again do

Make this experimental ✓

Get evidence on it

but howed in for evidence
was in.

select own method
plan would be

Let's get evidence
now for an order
again then to go
to now quickly



Don't get involved in
long letters -
Get same & fast

Don't -
going to Lye -
would take days in
the order

* But - develop
center - person groups

Sam - Arizona State
admission source
per 1080.

Jim Turner -
Neway -

Sam Allen + gate
with use of 1080



Casualty - 1,500, see to
you run 100,000

1080 eventually Whitman
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program - they were
the problem - not
the computers

P. Boni law on Tues.
Conte was into it
statements of one side
of issues
legislative history

Document as we live up
commitment of Sam -
get into -
less, antelapse.
the main kernel



Subject info re how

Will talk w/ T. [unclear]
to inform how

fact suggest being
officer, discuss

Hansen - Let Tom see &

John [unclear]

see possible date

page

~~*~~

