

The following is a description of the chain of events as they relate to the movement of Chiricahua Leopard Frog tadpoles and the subsequent changes in the professional career of Refuge Manager, Wayne A. Shifflett.

I have been the manager of the Buenos Aires NWR since June 1985. The reason for the establishment of the Refuge was for the management of Rare and Endangered Species. Since its establishment I have been responsible for managing habitat for the following Rare and Endangered Species: Masked Bobwhite Quail, Kearney Blue-Star, Pima Pineapple Cactus, Lesser Long-nosed Bat, Razor-backed Sucker, Gila Topminnow, Cactus Ferruginous Pygmy Owl, Jaguar, Peregrine Falcon and the Chiricahua Leopard Frog.

Since the 1990's, the Refuge has been managing and providing habitat for a small population of Chiricahua Leopard Frogs. They were first identified in 1986 by the Refuge Manager, but active management wasn't initiated until the 1990's when a small population was discovered in Garcia Tank in 1993, a small pond located on the southeast section of the Refuge. During years of drought, the Manager directed the staff to haul water with Refuge equipment to insure the survival of this population. It was the only population known throughout the Altar Valley. It was considered the westernmost population in the United States and according to Dr. Cecil Schwalbe, Ecologist for the United States Geological Survey and faculty member at the University of Arizona, and Dr. Phil Rosen, Assistant Research Scientist at the same University, it is one of the most important meta-populations left in the United States. Dr. Schwalbe and Dr. Rosen are recognized as leading authorities on amphibians in the southwestern United States. In 2001, a severe drought caused Garcia Tank to dry up even with our best efforts in hauling water at considerable expense to the Refuge. It was assumed that the population had died or moved.

It was during this critical time that the Refuge entered into an Agreement with the University of Arizona and faculty to restore and manage the Chiricahua Leopard Frogs on the Refuge. Doctors Schwalbe and Rosen were awarded a \$119,000 grant to study and restore Chiricahua Leopard Frogs on the Refuge. This Grant was funded by the Arizona Department of Water Resources. These grants are very competitive and received considerable peer review, including personnel from the Arizona Game and Fish Department. The Refuge and Faculty and Staff at the University of Arizona identified tanks on the Refuge needing restoration. With an additional \$20,000 grant to the University of Arizona (co-investigators Rosen and Schwalbe) from the National Fish and Wildlife Foundation, they also constructed a captive breeding facility for Chiricahua Leopard Frogs at Refuge Headquarters that was supposed to be used for propagation and release of leopard frogs into appropriate habitat on the Refuge.

Altogether, the cost to renovate habitat for the recovery of Chiricahua Leopard Frogs on the Refuge was approximately \$100,000. This cost includes staff time and materials contributed by the Refuge, project time on the two University-funded projects, Schwalbe's time provided by USGS, and time contributed by volunteers.

University staff removed bullfrogs from Refuge tanks and marked thousands of bullfrogs to study their movement patterns. During this period, Rosen's and Schwalbe's field crew discovered a second population of leopard frogs in a pond to the west of the Refuge on State Lands. They began to monitor this population, and when Garcia Tank dried up, this new population became very important as the likely sole remaining source of frogs with which to recover the Chiricahua Leopard Frog in the entire valley.

At a meeting on October 8, 2001 (Columbus Day), Drs. Rosen and Schwalbe and Mike Sredl (Arizona Game and Fish Department Amphibian Projects Manager) met with the Altar Valley Conservation Alliance to discuss the leopard frog restoration projects. At the end of the meeting, the Alliance agreed that leopard frogs could be moved into the captive breeding facility at Refuge Headquarters, but that the Alliance did not want frogs released into other habitats on the Refuge at this time. Subsequent to that meeting, Arizona Game and Fish Commissioner Sue Chilton told Arizona Game and Fish Department Director Duane Shroufe that she did not approve of the proposal to move leopard frogs into the captive breeding facility, even though she and her husband Jim Chilton attended the October 8 meeting and did not voice opposition to the decision by the Alliance at the meeting to allow frogs to be placed in the fenced breeding facility. No reason was given for her opposition as a Game and Fish Commissioner.

During the spring of 2002, water level in the leopard frog pond on State Lands began to drop and Dr. Schwalbe, with encouragement from Arizona Game and Fish Department, requested the Refuge's assistance in hauling water to the pond to insure the survival of the frog population. The Refuge responded at considerable expense since the water had to be hauled for a distance of 11 miles over mountainous terrain. Dr. Schwalbe requested a permit from Arizona Game and Fish to move the Frogs onto the Refuge and into the breeding facility but he was denied. No reason was given for the denial. When it became evident that the water levels could not be maintained and the site was going to dry up, Arizona Game and Fish Department gave Dr. Schwalbe approval to move Chiricahua Frogs and Tadpoles into his personal back yard pond in Tucson. In the two weeks before the Federal listing of the Chiricahua Leopard Frog as a Threatened Species went in to effect on July 15, 2002, seven adult frogs (4 males, 3 females) and 12 tadpoles were moved into Schwalbe's pond. According to Dr. Schwalbe, the frogs laid a clutch of eggs in the Tucson pond within three weeks of being moved there, and have laid several clutches since (at least 7 total clutches).

During this process I was working with the Tucson Ecological Service Office of the U. S. Fish and Wildlife Service to get the necessary permission to put the frogs on the Refuge thru a 'Safe Harbor Agreement', a tool used by the Service to allow private landowners to have an endangered species on their private property without having the encumbrance of legal problems enforced by the Endangered Species Act. Each time I was told that Sue Chilton, local Rancher and now Chairperson for Arizona Game and Fish would not sign a 'Safe Harbor' agreement to allow for the transfer. (Ms. Chilton has a Forest Service Lease to run cattle near the eastern boundary of the Refuge) In May, I asked Dr. Schwalbe how the Frogs were doing and he indicated to me that they had bred and he had approximately 1000 tadpoles which could be moved to the Refuge if he had

the necessary paper work from Arizona Game and Fish. I then called up the local Ecological Service person, Marty Teugel and asked about the latest version of the 'Safe Harbor Agreement' presented to Sue Chilton for signature (She would not sign an earlier version of the 'Safe Harbor Agreement'). Mr. Teugel told me that she was not going to sign the agreement. No reason was given why she would not sign the agreement.

A call was placed to Dr. Schwalbe and he was asked what he was going to do. He indicated that he would not move them and indicated that without the movement onto the Refuge, the total population would be eaten by the adult frogs over a period of time. I made a decision to move the tadpoles. My decision was based on nearly 38 years of working experience with the Fish and Wildlife Service and working with endangered species at the Patuxent Wildlife Research Center, 7 years as Manager of the Attwater Prairie Chicken Refuge and nearly 19 years working with eight endangered species on the Buenos Aires National Wildlife Refuge. I had personal experience in the movement of the following species: Mississippi Sandhill Crane eggs from Mississippi to the Patuxent Wildlife Research Center, Laurel Md.: the movement of Andean Condors from New York City to the Patuxent Wildlife Research Center, Laurel, Md.: The movement of Houston Toads from Houston, Texas to the Attwater Prairie Chicken NWR, Eagle Lake, Texas: the movement of Endangered Attwater's Prairie Chickens from League City, Texas to the prairies north of Victoria, Texas. I also was the Manager at the Buenos Aires NWR when Razor-backed Suckers, Gila Chubs, Tarahumara Frogs and Gila Topminnows were transplanted onto the Refuge. I did not move them personally but the translocations were under my general supervision as Manager of the Refuge. Also the Refuge biologist transplanted Masked Bobwhite Quail from Mexico onto the Refuge and also transplanted Masked Bobwhite from breeding facilities located in a private building in Green Valley to the Refuge. The only time where a 'special' permit was required was in the movement of Masked-Bobwhites from Mexico to the Refuge. This required an International permit between the Refuge and Mexico. The movement of the tadpoles from the private breeding facility onto the Refuge was in my opinion similar to all of the other transplants I had participated in over my career. I possessed an Endangered Species Permit from the Regional Office, a Section 7 Biological Consultation had been completed and signed between the Refuge and the Tucson Ecological Service Office of the Fish and Wildlife Service and it had been reviewed and approved by the Arizona Game and Fish Department thru the Comprehensive Conservation Plan (CCP). This document is a 15-year planning document that was approved by the Regional Director and Arizona Game and Fish Department. I strongly felt that the movement of the tadpoles was my last opportunity to save the species from becoming extirpated on the Refuge and Altar Valley and contribute to the long-term conservation of the species (as approved in the CCP). I moved tadpoles (approximately 300) to two ponds. One had a wire fence around it to prevent bullfrogs from getting into the pond and the second pond was a 2-acre pond that we had restored for reintroductions. I also put approximately 100 tadpoles into the 'special built' breeding facility that cost the Refuge \$5,000.

In July I got a call from Dr. Schwalbe who related to me that his staff had discovered approximately 25 adult Leopard Frogs in Carpenter Tank This tank had been restored for the reintroduction of Leopard Frogs and has a natural spring. We assumed that the

frogs had moved from some unknown water source. The closest known tank previously containing leopard frogs was almost 5 miles distant. We were all elated about the event. I reported the success story to Marty Teugel of the Ecological Services in Tucson and Dom Ciccone, U. S. Fish and Wildlife Chief of Refuges in the Albuquerque Regional Office.

In mid-December I got a visit from two Federal Agents who said they were there to investigate a report that I had moved frogs and Gila Topminnows onto the Refuge. They also indicated that I had moved them to my house in Tucson. I told them what I had done orally and in writing and showed them the places where the tadpoles had been put. They indicated that I had violated the following felony crimes: The Lacey Act, The Endangered Species Act, The Refuge Administration Act and State Statutes even though I had in my possession an Endangered Species Permit issued by the Regional Fish and Wildlife Service Endangered Species Office.

The translocation of the tadpoles and the subsequent natural movement of the Chiricahua Leopard Frogs onto the Refuge has saved the population from becoming extirpated on the Refuge and according to Drs. Schwalbe and Rosen it has contributed to the long-term conservation of the species. Without the conservation efforts of the Refuge Manager, Drs. Schwalbe and Rosen, and staff the population would be extirpated throughout the Altar Valley.

On January 6, 2004, I received a telephone call from Gary Montoya, my Supervisor from the Albuquerque Regional Office who informed me that I was being removed as Manager of the Buenos Aires National Wildlife Refuge and Sally Gall, my former Assistant would be the Acting Manager until further notice. He indicated that I was being put on administrative leave until further notice. He told me not to talk to or communicate with any of my employees or volunteers about the issues. He told me I could visit my personal residence but not to go anywhere else on the Refuge. He recommended that I get legal counsel because these were serious charges. I then hired a lawyer for legal guidance. He also sent a letter to effect this change.

On March 18, 2004, I received a telephone call from Gary Montoya indicating that I was being directed to a work detail in Texas on Land Acquisition. I was told to report the next week. I requested annual leave for that period and it was granted. I was told that I would be stationed in Tucson, Arizona, and working out of the Federal building.

On March 30th, my legal counsel indicated to me that I had two choices. The local U.S. Attorney's office in Tucson would not prosecute the case but that it had been shopped to Phoenix for prosecution. I could accept a misdemeanor or take my chances on felony charges if they could find a US Attorney who would prosecute the case. If it goes to court, my legal counsel has indicated that it would cost me approximately \$25-30,000 in legal fees.

As a side line, according to Dr. Schwalbe, The University of Arizona is negotiating with Arizona Water Protection Fund because AWPf did not reimburse the University for all the money that Schwalbe, Rosen and their field crew had expended on their project to

restore habitat for the Chiricahua Leopard Frog on Buenos Aires National Wildlife Refuge before AWPf canceled the contract because the scientists were unable to provide one of the deliverables in their contract; that deliverable was an Environmental Assessment (EA) Checklist, a document provided by Arizona Game and Fish Department evaluating the potential effects of proposed projects on State- or Federal-sensitive species. AGFD had agreed before the project began to provide the necessary environmental permits and documents and during the project had accepted between four and five thousand dollars to pay for their administrative costs in producing the EA Checklist. However, because of Commissioner Chilton's disapproval of moving frogs onto the Refuge, the EA Checklist was never provided. One of the outcomes of the negotiations is a possible lawsuit against AWPf and AGFD for the approximately \$38,000 not reimbursed to the University for money expended on the project before it was canceled. The University legal team will be led by Thomas M. (Tommy) Thompson.

I have attached two Endangered Species Permits. The first permit is for the period 7/31/01 thru 12/31/03. The Chiricahua Leopard Frog is not listed on this permit because the Frog was listed as Threatened on June 13, 2002. No additional permits were issued even though the Listing was covered in the Federal Register during this period. An updated Endangered Species Permit is issued for the period 11/17/03 thru 12/31/2008. This permit lists the Chiricahua Leopard Frog as 'Threatened'.

In conclusion, I have managed Threatened and Endangered Species throughout my 38-year career. At all times I operated under the Endangered Species Permit issued for use at the Refuge. I have also always considered it a challenge and privilege to address the real issues affecting our endangered species and have always been successful in contributing to their long-term survival.

Sincerely

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April 5, 2004