ENDANGERED SPECIES ACT—RIVERSIDE, CA

OVERSIGHT HEARING

BEFORE THE

TASK FORCE ON ENDANGERED SPECIES ACT

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE IMPACT OF THE ENDANGERED SPECIES ACT ON THE AREA AROUND RIVERSIDE, CALIFORNIA

APRIL 26, 1995—RIVERSIDE, CA

Serial No. 104–11

Printed for the use of the Committee on Resources



U.S. GOVERNMENT PRINTING OFFICE

91–616cc ⇆ WASHINGTON : 1995

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-047379-9

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ENDANGERED SPECIES ACT—RIVERSIDE, CA

WEDNESDAY, APRIL 26, 1995

HOUSE OF REPRESENTATIVES
TASK FORCE ON ENDANGERED SPECIES ACT,
COMMITTEE ON RESOURCES,
Riverside, CA.

The task force met, pursuant to call, at 10:08 a.m., in the Riverside Convention Center, Riverside, California, Hon. Richard W. Pombo (Chairman of the Task Force) presiding.

STATEMENT OF HON. RICHARD POMBO, A U.S. REPRESENTATIVE FROM CALIFORNIA, AND CHAIRMAN, TASK FORCE ON ENDANGERED SPECIES ACT

Mr. POMBO. Good morning. The Task Force on Endangered Species Act hearing will come to order. I have a prepared statement that I will ask to be included in the record and I will just make a brief opening statement.

I appreciate a great deal all of you being here today. When we sat down several months ago and mapped out the idea behind doing a number of field hearings on the Endangered Species Act, this is probably exactly what we had in mind—the opportunity to go out to an area that has had some impact from the Endangered Species Act, that has moved along the process to some degree, and also, to have the chance to hear from a number of people who live within that community. I also think the fact that we have had such a great turnout here this morning owes to the fact that this is an important issue and that a number of people took their time and their effort to turn out for this hearing shows how important it is in this area, and I appreciate all of you for taking the time to be here this morning.

As we go through this process of looking at the Endangered Species Act, reauthorizing the Endangered Species Act, I think one of the most important things that we can do is to listen to the people who have been affected by it in one way or another. And I think that the process of holding field hearings across the country has worked to the degree that we have heard so far from over 100 witnesses who have been affected by the Act, who have ideas for changes or reforms, who have ideas for parts of the Act that are working well that should be maintained. And I think as we work through this process, and hopefully come up with an Endangered Species Act that is going to be supported by the people, that is going to work in the real world, that this process has played an important role in that.

I would like to thank my fellow congressmen, men and women, for taking their time away from their districts, away from their schedules, away from their families to be with me here today in Riverside.

I would like at this time to recognize the ranking Democrat who is here with us this morning, Mr. Faleomavaega, for his opening comments.

[The statement of Mr. Pombo follows:]

STATEMENT OF HON. RICHARD W. POMBO, A U.S. REPRESENTATIVE FROM CALIFORNIA, AND CHAIRMAN, TASK FORCE ON ENDANGERED SPECIES ACT

Good morning, ladies and gentlemen. It is good to be in Riverside today, and especially good to be back in California after the fast-paced first hundred days of the 104th Congress. This is the sixth in a series of field hearings on the direction of our national policy on endangered species.

I would like to welcome all Members, witnesses and guests to this morning's hearing. I am glad that our Resources Chairman, Don Young, has asked that these hearings take place outside Washington, for it is in Riverside—not our nation's Capitol—that the outcome of this Congress' efforts to reform the Endangered Species Act will have lasting consequences on both species and people.

As you know, California is home to more than 30 million Americans. Under the Endangered Species Act, it is also home to 1,100 "candidate" species. With such large numbers of both people and endangered species, it is inevitable that both have increasingly come into contact with one another in California's growing communities. Nowhere is this more true than right here in Riverside, which has agreed to develop a Habitat Conservation Plan (HCP) under Section 10 of the Endangered Species Act. Many other southern California communities have turned to HCP's as an effort on their part to perform "species friendly planning." As these communities are discovering, however, HCP's are often not good enough for the bureaucrats in charge of enforcing this well intended, but often misused law.

The current Endangered Species Act is being implemented without consideration of the social and economic impacts that listings create. In many cases, such as the 1992 Winchester fires, it is also not being implemented with common sense. The measures taken to protect the kangaroo rat undoubtedly contributed to the fires, endangering the lives of the residents of this small community. While thankfully no one was killed, many residents were left homeless. Ironically, so too were the kangaroo rats. Studies prove that the sage habitat that the Fish and Wildlife Service was protecting in this area was what fed the flames of this devastating wildfire.

We need to change the Endangered Species Act to provide—in law—a measure of certainty for communities that agree to multispecies planning. We also need to provide more flexibility in this law, to prevent once-and-for-all the possibility of endangering human lives to protect species.

As a fourth generation rancher from Tracy, I understand the importance of engaging in a new dialog on how to protect threatened or endangered species. My constituents are suffering from the same problems that folks must live with right here in Riverside. From the delhi sands-flower loving fly to the kangaroo rat, the citizens of Riverside have paid a heavy price for endangered species protection.

Many of my constituents are frustrated and angry about the law that allows government bureaucrats to put the protection of a rat, or fairy shrimp—or any other species—above the lives and safety of human beings. They are frustrated because they believe that the balance of wildlife protection has swung too far away from the reality of meeting the needs of the people of this country for food, clothing, housing, fuel, and other vital public goods and services.

They are also angry that they are being forced to give up their private property rights without any regards to the Fifth Amendment. I firmly believe that when the government places restrictions on a landowner, as it often does in the name of the Endangered Species Act, it has the responsibility to ensure that such laws are equitable and that the public benefits derived from them are paid for by the entire public, not by a select few whose only crime is that they own private property.

As farmers and ranchers, their entire lives have been shaped by the traditions and values associated with the proper stewardship of the land. Yet they are considered to be the bad guys by government bureaucrats who think that only they know how to best protect endangered species.

The people of the 11th Congressional district sent me to Congress to bring some sanity and reason back to the way in which we manage our natural resources—to

search for a new equilibrium between conserving the land and meeting the needs and rights of people. As we conduct these hearings around the country, we want to look at the true impacts and costs involved in endangered species protection. With your input, the 104th Congress will pass an Endangered Species Act that replaces the regulatory nightmare that this law has become with an incentive based approach towards the protection of species. By providing incentives, and not threats, the American people will find ways to conserve our biological resources without the heavy hand of a central bureaucracy. That, I firmly believe, is how best to save threatened or endangered species.

The job of this task force is to bring together the information that will lead us to good public policy. We hope that the witnesses we will hear from today and over the course of the next two weeks will help us to make the best policy possible for achieving both conservation of our resources and compassion for our people. Thank you all very much for contributing to this process.

STATEMENT OF HON. ENI FALEOMAVAEGA, A U.S. DELEGATE FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I feel like an endangered species amongst my colleagues.

I certainly would like to say my commendations to Chairman Don Young for taking this initiative. Certainly this is a new approach that the Congress is taking by establishing the task force system whereby we have this opportunity to certainly reach out to the communities, and especially wanting to know from those citizens most affected by the provisions of the Endangered Species Act.

We are here as part of our ongoing process to re-examine, to review the provisions of the Act, and I might also remind my colleagues, and I am sure it is well known, the fact that this Act has been amended almost nine times since it was first enacted in 1966. So, I hope that we do not think that this law as written cannot be changed. I just want to state that observation to my colleagues and to the members of the community here in California. No doubt, Mr. Chairman, you agree that those of us on the other side of the aisle also want appropriate changes in the law that hopefully will strike a balance between our ecosystem, problems affecting the constitutional rights of our citizenry and certainly one that we should take the most appropriate action that best fits into the environment that we live in.

Mr. Chairman, from just the sheer numbers alone, it is inevitable that we need to re-examine the provisions of this law. This law was passed some 30 years ago and at that time our country did not have 260 million people to provide for. Thirty years ago, Mr. Chairman, I was on my way to Vietnam, and I do not need to say anything more about that.

I just would like to offer my personal welcome to our witnesses here this morning. I also want to offer my special hello to my colleagues and especially to you, Mr. Chairman, for your initiative and your leadership in providing for these hearings. I love the great state of California.

I do not know if some of you have heard of Samoans. I am a member of the Samoan tribe. There are not too many of us here in the country. I believe the last poll that was taken, there are about 10 Samoans that play for the NFL and three made all pro. So I think that is not bad for a small community.

So, Mr. Chairman, I thank you for giving me this opportunity to say a few words in our opening comments. I look forward to hearing from our witnesses this morning.

Mr. POMBO. Thank you. We have been trying to talk Don Young into letting us go to your district for a field hearing, but have been unsuccessful in that so far.

Mr. FALEOMAVAEGA. I welcome all of my friends here to come to Samoa, but pay for your own ticket.

[Laughter.]

Mr. POMBO. I would like at this time to recognize Congressman Ken Calvert, who is hosting us here this morning, for his opening remarks.

STATEMENT OF HON. KEN CALVERT, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. CALVERT. Thank you, Mr. Chairman.

I also want to thank Chairman Don Young for allowing us to have these Task Force hearings throughout the United States. As you can tell by the attendance here today, and from what I understand at all of the Task Force hearings, it has been a full room. And a lot of that credit goes to the Chairman for putting together this Task Force and for selecting an excellent chairman, Mr. Pombo, from our great state of California and getting around the country and talking to real people about the effects of the Endangered Species Act.

I also want to thank Helen Chenoweth. She has been at every one of these Task Force hearings, I understand, and that is quite a sacrifice. Congresswoman Chenoweth is from the state of Idaho, and has been very dedicated in this mission to examine the Endangered Species Act.

I look forward to the witnesses. I would like to welcome everyone to Riverside. It is a wonderful community, and I hope that you will have time to look at it a little bit before you leave. But welcome, and I look forward to the hearing.

Thank you very much, Mr. Chairman.

Mr. POMBO. Thank you.

Mr. Lewis, do you have an opening statement?

STATEMENT OF HON. JERRY LEWIS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. LEWIS. Thank you very much, Mr. Chairman, and Ken Calvert for having this hearing in Riverside. Mr. Chairman, I do have a few remarks.

First, I want to express my deep appreciation to you, as well as to Don Young and the Committee, for having these hearings which are long overdue, I must say.

Moving away from my prepared statement, I would like to just comment to the people in the audience that I see with green shirts, especially because they may not know about this background. I consider myself to be a rather reasonable environmentalist with considerable credentials, as a member of the state legislature. I chaired a committee that dealt with the field of air quality and was the author of the legislation that created the South Coast Air Quality Management District, which is considered to be the toughest air

quality district in the country, maybe in the entire world. Above and beyond that, I was involved in things like passing legislation that we at one time dubbed the Cactus Napper Bill. This legislation essentially strengthened the law whereby we could control people who were coming from out of state to steal cactus plants from our desert communities and transfer them to adjacent states. Recently, I was a co-sponsor of legislation that renewed the Clean Air Act, strengthening that language that deals with alternative fuels. I feel very strongly about the environment.

Having said that, my district involves most of San Bernardino County and all of Inyo County. The Endangered Species Act has had a huge impact upon my district. I would like to bring to your attention just one piece of that. Out of all the testimony we may hear today, this is most disturbing to me. A few years ago we were not able to effect the designation as endangered, the Delhi Sands Flower-Loving Fly. Please allow me to explain in greater detail about that species.

The Endangered Species Act as applied to the construction of San Bernardino County's new medical building in Colton, California; the application of that endangered species designation to this flower-loving fly resulted in an expenditure of $3,110,199 to mitigate for the presence of eight Delhi Sands Flower-Loving Flies. The extensive mitigation effort resulted in the moving and the redesigning of that medical center to provide for 1.92 acres of protected habitat for eight flies believed to be occupying the site. This listing resulted in an expenditure of about $413,000 per fly and a one-year delay in construction of the medical center. This cost is equivalent to the average cost of treatment of 494 in-patients or 23,644 outpatients at that medical center. So we have got a situation where we were forced to delay the treatment of human patients because we were forced—because some of those people who are relatively overzealous in the Bureau of Fish and Wildlife suggesting that this expenditure was very important because of the possible presence of those eight flies.

Beyond that, the listing of the Delhi Sands Flower-Loving Fly was based on, at best, extremely questionable scientific data. As far as I am concerned, this one case is reason enough to provide Congress with the impetus to provide a long overdue fix of ESA. The ESA should provide protection to those species such as the bald eagle, maybe even my desert tortoise. Protection for those species that truly are in danger and deserve our attention. In the meantime, there is little question that we have seen this pendulum move a long ways over the years.

I was elected to the state legislature in 1968. It was about 1969 that we learned about the term "environment," one of the more important developments in our society in my judgment. There is little doubt that we need to examine where we have been in terms of affecting the environment. We also need to re-examine where we have come since 1968. For indeed, the pendulum has swung so far that this Act is now under serious, serious review. It is, in my own view, important that we review the ESA in no small part, because there are some people who would like to throw it out the window. But also, we should review it because there are some people who actually believe that its implementation has disallowed my chil-

dren, maybe my grandchildren from being able to afford to buy a home.

This discussion is long overdue. I must say, Mr. Chairman, I never expected to have such a hearing in Riverside County. I welcome and I look forward to your testimony and am most intrigued with legislation that may be the result of this work.

Thank you.

Mr. POMBO. Thank you.

Mrs. Chenoweth, did you have an opening statement?

STATEMENT OF HON. HELEN CHENOWETH, A U.S. REPRESENTATIVE FROM IDAHO

Ms. CHENOWETH. Well, just very briefly, Mr. Chairman.

It is wonderful to see the interest. I also reflect what my colleagues have said, that we certainly believe that when the people lead the politicians follow. Obviously, we are finally giving the people a chance to say what is on their minds and the direction that they want us to take in these fact-finding hearings on the Endangered Species Act.

I think it is important for the press to realize that in 1973 when this Act was passed, it was purposed that it would sunset in 20 years. In 1993, the prevailing party in the Congress did not have the courage to go out and seek the opinions of the people and get into reauthorizing the Endangered Species Act. My hat is off to Don Young and Richard Pombo for the courage that they have taken and the time that they are spending on this particular Act, because the Act is without authority right now. It simply was refunded, but it was never reauthorized. So it is not like we are taking a live Act and trying to do something with it. It did sunset in 1993.

And, you know, all of us had a dream—all of our forefathers and parents had a dream when they came west, and that dream was land. It was not like the gold rush in 1849. What really settled the west was people who loved the land and realized that when we are good to the land, the land is good back to us. I know my parents had that same feeling and that is the reason that they came west. And right now, we are seeing a number of political scenarios that cause us to be separated from our land and our ability to produce off the land. We need to be able to strike a balance where we can continue making a living and provide incentives for people to not only be able to help find endangered species on their property, but incentives to keep them alive. And right now, the way the law is acting, it is simply too punitive. To make it a crime to step on a plant that may be listed is indicative of a burgeoning Federal Government that has gone way too far.

I want to thank Congressman Lewis, and Congressman Calvert and Congressman's Calvert's staff for the wonderful hospitality that has been shown to us here in Riverside County. Thank you very much.

Mr. POMBO. Mr. Bilbray.

STATEMENT OF HON. BRIAN BILBRAY, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. BILBRAY. Yes, Mr. Chairman. I would like to thank both chairmen for allowing me to participate in this meeting. And actually, I want to thank you for holding these hearings so that people across the board can discuss these issues.

I think it is about time that we do more outreach about "well-intentioned" Federal regulations, and do a reality check. Until January, I was one of those people out there that had to administer the law, had to work with the law, had to try to protect the environment with the existing law. And let me tell you, mine were the frustrations of somebody who has not only served on the state Air Resources Board in California and worked on those environmental problems, but somebody who has worked over 20 years on environmental problems along the Mexican border which extensively involved endangered species issues. The frustration of some of us that are trying to work to protect the environment comes when we run into Federal regulations that were meant to protect the environment, yet have actually become barriers to where the bureaucratic agenda becomes more important than the environmental agenda. And as somebody who has had his Miranda rights read to him standing up for the environment, it is kind of frustrating.

I was not going to Vietnam in 1966, I was in junior high school. So I get to, you know, claim the Fifth on that. But I think that it is sort of an indication that I think of laws and regulations as vehicles, as vehicles to carry us forward into a better future. And I would just like us to reflect on the fact that we may want to think of the Endangered Species Act as a 1966 Mustang. There may be those of us that love it, cherish it and would not give it up no matter what. There are those, like a lot of us with the air pollution issues, who would purport to totally abolish the use of the automobile because it may fulfill an agenda. I think that what we have to do is much like the owner of a 1966 Mustang. We may have the right to try to preserve it, but we also have the responsibility to make sure that it is improved and cleaned up. And I think old, 30-year old regulations can be just as environmentally damaging as a 30-year old car that has not been upgraded, has not been maintained. And I think those of us that really want to see the environment protected have a responsibility to improve and to make better those things that were designed in the past.

Mr. Chairman, my real concern here is that we need to update; we need to look at this and we need to fine tune. And those of us that want to preserve the Act, not only have the right, but we have the responsibility to be willing to look for its faults, look at maybe the faults of those who are administering the law and try to eliminate those faults. Because I think that those who refuse to change are our worst enemies, not those who are screaming at us from the other side of the aisle. And as somebody who has been very involved with the environmental movement starting back in the '70s when I was in high school, I have to sort of reflect the words of the founder of the original Earth Day, Senator Gaylord Nelson, and I think he says it quite well. "There are good environmentalists who see too much red tape and too many mandates and they think it can be improved, and they are right. The environmentalists—

many environmentalists have failed on this. They have not fought to ensure environmental laws that are effective without being excessive. They have not done a damned thing about that."

I think those of us that want to see the Act changed must recognize that the Act needs to protect the species, and those of us who want to see the Act preserved must recognize that we have an obligation to make sure we fine tune and improve it. And the greatest threat to the Endangered Species Act is those that refuse to improve it, because it will end up being junked like our 1966 Mustang. And so, I hope today that we can keep the dialog and the rhetoric pointed at what can we do to take a 30-year old law and prepare it for the next century, not only for ourselves but also for future generations. And with that, I look forward to the testimony so that we can move forward and protect the environment and protect this law and make sure we improve both for the next century.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bilbray may be found at end of hearing.]

Mr. POMBO. Thank you.

I would also like to announce at this time that Congressman Bono who was scheduled to be with us here this morning has the flu and was unable to make it, but sends his regards to the Task Force.

Our first panel has assembled at the front. We have Kay Ceniceros——

Ms. CENICEROS. Ceniceros.

Mr. POMBO. Pardon?

Ms. CENICEROS. Ceniceros.

Mr. POMBO. Ceniceros. Excuse me, if I mess up your names; I apologize ahead of time. Ms. Ceniceros is the Chairman of the Riverside County Board of Supervisors. You may begin with your testimony, but I have got to tell you about these lights first. We have the lights here and we operate under the five-minute rule. What we do is, you get the green light when it is OK to go; the yellow light comes on when it is time to hurry up and then the red light comes on when it is time to stop.

[Laughter.]

Mr. POMBO. I do not want to be rude but we have got to try to keep to the five minutes because we do have a long list of people that want to testify and if we do not do it, we do not allow time for questions and it will not be fair to the people that are on the third panel. So please try to stick to the five minutes.

Ms. Ceniceros, you may begin.

STATEMENT OF KAY CENICEROS, CHAIRMAN, RIVERSIDE COUNTY BOARD OF COMMISSIONERS, RIVERSIDE, CALIFORNIA

Ms. CENICEROS. First, I would—it is not on.

Mr. POMBO. I think it is on now.

Ms. CENICEROS. First, I would like to thank you again for coming to Riverside County. We have been in may ways a laboratory for implementation of the Endangered Species Act. So, Chairman Pombo and our own Congressman, Ken Calvert, and our neighbor,

Congressman Lewis, we appreciate you and those who are less familiar with our area coming before us today.

I was asked specifically to speak to Riverside's experience, since we have established four habitat conservation plans in full or in part. But I want to tell you first that I very much appreciate the comments that I hear which talk about the balance that is needed. I did include, off the topic I was assigned, a set of principles that our board has adopted for altering the Endangered Species Act. They are 10 one-liners basically with some backup for discussion and they are very much in tune with some of the comments I have heard here this morning about trying to create some reform without necessarily losing sight of the original purposes of the Act—making it work better.

Now my testimony as requested on our habitat conservation agency will illustrate some of the reasons why those reforms are necessary. It has been our experience that it is not so much what is written on paper but the way that it has been administered that has been so terribly burdensome to us.

The first species that we were asked to protect was the fringed toed lizard, going back to 1980. And I know that Congressman Lewis knows all about that because he represented part of our county at that time. It was actually the private sector led by the building industry out in the Coachella Valley in the Palm Springs area as well as the biologists and environmentalists who asked that we in the county put together a program. It was successfully adopted with a goal of avoiding the absolute listing of that specie.

Having had relative success in getting that plan adopted, when we were told some years later that the Stephens kangaroo rat—a squirrel like animal, but not a glamorous bald eagle as was referenced—was going to be listed, the same actors came and talked to us. We collected a task force and then a steering committee made up of biologists representing developers, as well as the Service, as well as environmental groups and the principals involved in those organizations as well to try to put together a plan. This was far more complicated because the Stephens kangaroo rat, unlike the lizard, did not like cheap land. He liked good developable land. He liked areas where we wanted to build schools and roads and flood control facilities as well.

We have labored since 1988 to put together a plan and we have had constant complications—I thought of a worse word but I will not say it—from the agencies in trying to get them to respect our efforts to implement the national objectives reflected in the ESA. We have been stopped in doing flood maintenance which contributed significantly to personal property damage. And you will hear from our chief engineer of the flood control agency later. We have been disallowed the ability to continue a program of requiring disking for fire safety and being allowed only to mow instead, which is not very effective. And you will hear from our chief of our fire department later on as well. And you will hear from some of those people that were victimized by that process.

If our process was flawed, it was not intended. But I do in retrospect believe that we did not bring all of the property owners in early enough in that process. Certainly, everybody had availability to our first discussions on the Stephens kangaroo rat habitat con-

servation plan. We anticipated that we would raise about half of the money to finance that plan and we, our board of supervisors and the Habitat Conservation Agency, adopted formally a consortium of city and county actors, informally, a goal of only acquiring land through market purchase, and of trying to concentrate as much of the habitat conservation on lands that were already in public ownership.

We have completed that plan—actually, we completed that plan some many months ago, nearly a year ago and have had trouble in getting it transmitted through the bureaucracy in the Fish and Wildlife Service. We have since January—when quite frankly, we threw a very public tantrum about our frustration—had a great deal of cooperation and we have been assured that that plan will—the goal of the Department of Interior is to adopt that plan no later than the end of this calendar year. But it was not moving anywhere. Now the problem that is created is a problem for the public agencies trying to provide infrastructure, but more importantly, for the private sector who is attempting to do their program.

One of the other projects, and the reason that we had our well publicized tantrum, was that we had worked to avoid listing—avoiding the pressures on animals that would require them to be listed. One of those examples is the salt bush, where we worked with the leadership of private property owners to establish a program that would provide recreation, flood control and development and still allow the species to exist. And it was only when we had that virtually consummated that the species itself was listed. It was not a good faith effort.

You will see in our principles an effort to try to get the bureaucracy more closely guided to better definition of the program to make sure that the taxonomy is correct—the science is correct—that we are not dealing with subtle nuances of species. And most of this comes from the philosophy that there is value in maintaining species for the future for man's use as well. But we must remember that one generation should not be responsible for reversing the tide of centuries in this country.

Thank you.

[The statement of Ms. Ceniceros may be found at end of hearing.]

Mr. POMBO. Thank you.

Mr. Scott Woodward from the BIA of Southern California. You may begin.

STATEMENT OF SCOTT WOODWARD, BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, RANCHO SANTA MARGUARITA, CALIFORNIA

Mr. WOODWARD. Good morning, Mr. Chairman, and distinguished members of the panel. My name is Scott Woodward. I am the Project Director for Bramalea California, Inc., a landowner here in Riverside County and a homebuilding company located in Newport Beach. I am also the Vice President of Governmental Affairs for the Building Industry Association of Southern California, the Riverside Chapter. On behalf of my fellow 1500 BIA members throughout southern California, I am quite pleased this morning to have the opportunity to comment on the Federal Endangered Spe-

cies Act, specifically as it relates to the burden the ESA has placed on property owners here in Riverside County.

I have been asked to provide you with two real life stories of how the ESA has been affecting the cost of housing here in Riverside.

Winchester 1800, a project by Coscan/Stewart Partnership, is a 1800 acre development here in Riverside, California. The proposed project is to provide approximately 5000 new homes which will accommodate the growing population demand here in Riverside. As part of the development process, the developers have been required under the Endangered Species Act to provide mitigation for the Stephens kangaroo rat, which was listed in October of 1988. The mitigation consists of paying $1950 per acre for the entire 1800 acres, even though only eight acres of habitat exists on the site. This project will pay mitigation fees in excess of $3.5 million to save rats. This cost will be passed on to the new home buyer.

Another BIA member, Republic Development, has suffered delays, expense and loss of market opportunity as a result of the Endangered Species Act. Their proposed project, Mockingbird Canyon, consists of 272 lots located on 590 acres and has received unanimous community support at public hearings, but has been delayed for years because of the ESA Act. Today, the total cost to address the endangered species on this project is exceeding $1.5 million. This adds up to $5500 to the cost of buying a home in Mockingbird Canyon. When this cost is amortized into the home buyer's mortgage at today's interest rates, the total amount paid by the homeowner is in excess of $15,000.

On a larger scale, the ESA affects every resident in Riverside County. One such example of this in Riverside County is the Riverside County Habitat Conservation Agency. Thus far, the RCHCA has collected approximately $30 million to implement the K-rat plan. The projected costs to complete the plan may exceed $50 million. You may note that the K-rat is not the only listed species we have. We have the fringe toed lizard, the Riverside fairy shrimp and the least bell's vireo to name a few. The cost for the Stephens kangaroo rat program does not stop at $50 million. No one has accounted for the loss of property tax revenue when public land is put aside for ESA implementation. In addition, numerous public agencies and utility companies have been severely impacted and required to provide mitigation for their projects. The figure is beginning to exceed $120 million, all being spent for a single species protection. These costs will eventually be paid through utility rate hike increases, increases to fees paid by the homeowners. If it is in the national interest to protect these species—and I am a believer that it is in the national interest to protect these species—we must not place the cost solely on the property owners of Riverside County. This in effect is a point of sale tax burden. Imagine, just how much habitat for humans we can create with an investment of $120 million. As a homebuilder, I submit to you that we could shelter over 2000 people.

Clearly this was not the intent of the ESA when it was adopted in 1973. Financial impacts must be a part of this complex equation. In the final analysis, every additional $1000 added to the price of a home forces two percent of the buying population here in southern California out of the market. In the Mockingbird Canyon exam-

ple, that will be over 10 percent, because of the $5500, that will be locked out of the opportunity to buy the American dream.

What we need in Riverside is ESA reform. I have attached a list of reforms which will bring relief to our industry and the residents here in Riverside County. The National Association of Home Builders and our local chapters stand ready to meet with you and your staff on the reauthorization of the Endangered Species Act.

As a final note, the BIA of Riverside County has sponsored a comprehensive species strategy. This was a collective effort not only by the BIA, but the Farm Bureau, Property Owners Association and the Real Estate Council of Riverside County. This proposal supports a multi-species comprehensive approach to protect and preserve the multitude of the County's habitat and the species, a concept that is widely regarded as the most sensible way to plan for conservation. The strategy focuses on presenting choices to landowners which are not economically disruptive and are practical, effective, and in a traditional way of conserving our valuable land. We urge Congress to consider this forward thinking concept in our proposed strategy in their reauthorization of the ESA.

Thank you for taking your time from your congressional recess and coming here into our community and listening to our concerns, not only by the home builders but by the potato growers and most of all the people. Only substantive changes to the ESA through significant incentives and respect for private property rights will result in effective and ultimately greater preservation of all species.

Thank you very much.

[The appendix to statement of Mr. Woodward may be found at end of hearing.]

Mr. POMBO. Thank you.

Mr. Mike McLaughlin, San Diego Association of Governments. You may begin.

STATEMENT OF MIKE MCLAUGHLIN, SAN DIEGO ASSOCIATION OF GOVERNMENTS, SAN DIEGO, CALIFORNIA

Mr. MCLAUGHLIN. Thank you, Mr. Pombo, and panel members.

Good morning, I am Mike McLaughlin, Director of Planning for the San Diego Association of Governments.

I will briefly describe the San Diego region, emphasizing habitat characteristics; summarize habitat conservation planning activities in our region; and identify for your consideration some changes in the Endangered Species Act that would improve the future of regional conservation planning. I will try to do that in five minutes.

Although you may have some familiarity with the San Diego region, I need to stress a few basics. San Diego is the place south of southern California.

[Laughter.]

Mr. MCLAUGHLIN. The time does not count against me for that.

[Laughter.]

Mr. MCLAUGHLIN. We are defined by our open space. Our open space and habitat are linked to our economic well being. Businesses and industries come to San Diego to enjoy our quality of life. Two needs are pressuring our region. The first is a need to protect a rapidly dwindling supply of these natural resources. The San Diego has a vast array of habitats that you literally can experience

in less than an hour's driving time—from lagoons and estuaries along the coast to the coastal plains and mesas to the foothills and the mountains to the deserts in the far eastern county. It is no wonder, but it always seems to come as a surprise to a lot of people that with all these micro-climates and habitats, San Diego County has more rare, threatened and endangered species than any other county in the continental United States.

The second is a need to ensure our economic well-being. SANDAG has projected that our region will grow by over a million people and a half million houses and jobs in the next 20 years. This growth will consume over 200,000 acres of open space, much of it on our urban fringes where our valuable habitat is most abundant.

The way we have chosen to resolve these issues is through the participation and cooperation in large-scale multiple habitat and species conservation planning. The San Diego region has two such efforts that cover much of the county—the southern half by the Multiple Species Conservation Program, the MSCP, and the northern half by the Multiple Habitat Conservation Plan, the MHCP. The east county effort will follow at a later date.

Although a substantial portion of the funding for the preparation of these plans has been generated at the local level, especially by the City of San Diego as sponsors of the southern effort, we have, through the support of Congressman Packard, received assistance from the Federal Government during the planning stages.

While each program reflects its own unique and special conditions, they have a number of common attributes that I want to emphasize and suggest to you as agendas for changes in the Endangered Species Act.

As you may have inferred from the alphabet soup—MSCP, MHCP—they plan for multiple habitat and species—dunes and beaches, chaparrals, grasslands, woodlands, forests, riparian, wetlands are all covered by these plans. Thus the plan agreements and permits would cover between 60 to 90 species, depending upon the design of the final preserve system.

Our plans cover both listed and unlisted species. It is important to deal with threatened resources before they are at the edge of extinction when the options are limited and the solutions are much more expensive, as you have heard here today in terms of the Riverside experiences. We need to avoid the "Endangered Species of the Month Club" approach. Our plans take a more proactive stance and will require agreements for both listed and pre-listed species.

The plans have involved multiple jurisdiction and agency participation from the very beginning. The program involves all 18 of our cities, the county, the San Diego County Water Authority, the California Fish and Game, the U.S. Fish and Wildlife Service, and the state Transportation Department. Such participation needs to occur and often. It is not acceptable to our planning efforts to have a last minute "hit" from the Federal and state agencies.

We have completely integrated our efforts with the state's Natural Communities Conservation Program, and our plans will be the functional equivalent of the state's NCCP program. It is just that we are going to cover more than coastal sage and gnatcatchers that are associated with the NCCP.

Our plans have been developed with extensive stakeholder participation. Advisory committees consisting of representatives of virtually every possible interest group—environmentalists, builders and property owners, community groups, farmers and taxpayers have been involved from the very beginning of the process.

The key objective of our plans is to provide certainty. And certainty means different things to different people. To the environmentalist, it means the certainty associated with preserve systems that will protect a biologically sound ecosystem. To property owners, developers and farmers, it means certainty associated with knowing what plans and activities can proceed without government interference, where mitigation can be provided, and what species are covered, so they will not be surprised with future listings.

The plans are built on scientific and biologically sound approaches that provide for the integration of land use and economics. It is important that a preserve system works as an integral part of the region's land use economy, but it also must be based on solid biology. These programs should be viewed as models for how the Endangered Species Act could be more rationally structured and implemented.

These plans are important to our region's economy. Water availability, work force training, education, hazardous material disposal and transportation are traditional examples of elements of the infrastructure important to a region's economic prosperity. We are, in effect, attempting to treat habitat as just another important element of the region's infrastructure. We need these infrastructures to ensure sustainable development, economic competitiveness of our region, and also the preservation of the quality of our life.

So we think the Act should encourage these kinds of multiple habitat jurisdiction-based planning. It should integrate local land use and economic considerations as part of the planning process. It requires a commitment from the Federal Government from planning to implementation. And the Endangered Species Act should encourage steps that return land use controls back to the local communities.

Thank you for taking time to hear from us.

[The statement of Mr. McLaughlin may be found at end of hearing.]

Mr. POMBO. Thank you.

Cindy Domenigoni, you may begin.

STATEMENT OF CINDY DOMENIGONI, FARMER, WINCHESTER, CALIFORNIA

Ms. DOMENIGONI. Mr. Chairman, members of the Task Force, my name is Cindy Domenigoni and I am a member of a fifth generation farming family. I am also a director of the Riverside County Farm Bureau and chairwoman of their Endangered Species Committee.

My family's farm is located in Winchester, California in the Domenigoni Valley, named after my husband's great grandfather, Angelo Domenigoni, who settled there in 1879. Our ranch consists of about 2500 acres. We grow wheat, barley and oats, as well as irrigated alfalfa. We also run a small cattle operation on the harvested fields and hillsides.

Our lives, livelihood and stewardship of our lands were harmonious until about five years ago when the Fish and Wildlife Service listed the Stephens kangaroo rat as a federally protected endangered species. Unfortunately, after this rodent was identified as an endangered species, portions of our ranch became part of the kangaroo rat study area, as part of a regional habitat conservation program under Section 10 of the Endangered Species Act. The study areas originally encompassed over 80,000 acres in Riverside County.

Property owners were never notified that their properties were being placed within the study area. The impact of the study area designation on us has been devastating. Over 1600 acres of our ranch was included in the designation without our knowledge. In October, 1990, biologists were discovered illegally trespassing and conducting surveys on our ranch. Even though this data was illegally obtained, the information was forwarded to the Fish and Wildlife Service. The following month, as we began preparing our fields for planting, we were notified by the Fish and Wildlife not to farm about 800 acres of our land within the study area, which had been left fallow the previous year. We were further warned that disking the fields would likely constitute an illegal take of the rat and we would be arrested and prosecuted. We were told we would be subject to $50,000 and/or one year in prison per individual rat harmed or disturbed by the farming.

The lunacy of this is still difficult for us to understand. We had co-existed with the species for over 100 years. The evidence of this is that the rats have moved into the field during the normal crop rotation so quickly.

For three years, we were not able to farm this land. As a result, we incurred over $400,000 in lost income and direct expenses due to the K-rat regulations. It has been an emotional and personal ordeal for the three generations of our family still living on the farm. Though we had no use of our land, we continued to pay property taxes and assessments.

The effect of the K-rat regulations on our farm were not limited to just our farming activity. In the spring of 1992, Fish and Wildlife Service denied our request to disk firebreaks on the property. This exposed our neighbors, their homes, livestock and crops to the extreme fire danger posed by the overgrowth of brush in the fields due to the years that we could not farm it.

Tragically, our worst nightmares and fears were realized in a nightmare that occurred in October, 1993. The California fire, as it is called, devastated over 25,000 acres and 29 homes. It began in one part of the reserve and burned nearly all the reserve, K-rat study area and surrounding lands. What is painfully clear is that this devastation might have been avoidable if we would have been able to disk firebreaks and farm our properties as we had in the past. The fire could have been controlled sooner and with less damage had we been allowed to protect ourselves as we knew was necessary, and as we are required to do under local ordinance and state law.

A few days after the fire, my husband and I contacted our local Fish and Wildlife Service biologist requesting he evaluate the area we had been restricted from farming on. We personally had sur-

veyed our properties and it appeared to us there were no signs of K-rats after the fire. The biologist concurred that there were no rats present, but the reason he cited was the rats did not leave because of the fire, that the rats left before the fire, because the brush and weeds grew too thick for their habitat needs and they moved out of the area.

[Laughter.]

Ms. DOMENIGONI. After receiving the verbal authorization from Fish and Wildlife Service, we have resumed farming the 800 acres that we had been forced to idle. However, we still live in fear that we could again be prohibited from farming because the Fish and Wildlife Service had not given us the written permission we have requested.

Recently, the Fish and Wildlife Service announced its intention to keep the California gnatcatcher listed as threatened. This is yet another threat to our farm that causes us great concern for our future.

Mr. Chairman, one of the most frustrating aspects of this whole situation is that for over 100 years our family cared for, encouraged and were proud to have a wide diversity and abundance of species and wildlife habitat on our land. Our family's good stewardship was rewarded by the loss of the use of our land and a financial impact of over $400,000.

We are not the only landowners in this situation. Private property owners across the country are disking their land, burning their ditch banks, cutting the trees on their property in efforts to avoid the regulations of the Act.

The regulations imposed on us by the Endangered Species Act have placed ourselves and the species and habitats in adversarial roles. We are no longer pleased to see an eagle or a hawk or a previously unnoticed flower on our land. Sights like these now cause us great concern that our livelihood and that our heritage will be stripped away from us.

The current form of protecting species has failed to deliver by not recovering listed species, and it has clearly eroded the fundamental rights to own and use property. Its only success is in building an empire within the government agency that has been charged with protecting species, yet which seems to be more interested in Federal land use control.

I invite you to look at the record of the over 800 species listed in the 22-year history of the Act. The Fish and Wildlife Service has grown tremendously, yet fewer than two and one half percent of those 800 species have been de-listed, with most of those due to the original data errors and extinction, not recovery.

There has been a lot of talk lately about increasing the incentives for landowners in a new ESA. Yet, what is needed in a reformed Endangered Species Act is to remove the perverse incentives that have been created.

Secretary Babbitt, previous reform bills and even environmentalists like Michael Bean have voiced the need for increased incentives in the Act. However, all of these incentives and initiatives fail to remove the biggest disincentive to encouraging species and habitat on private property—that is the removal of the regulation. Efforts at increasing the incentives, yet holding onto the ability to

regulate are like holding out the carrot, but keeping the stick ready to strike. Farmers and landowners are not going to place their land at risk by encouraging species and habitat if they know that their land use can be taken away from them later through the imposition of the regulation.

A truly reformed Endangered Species Act should be based on incentives and should not violate the constitutional rights of any individual. It should compensate landowners for any action that diminishes the value or use of their land and should make habitats and species valuable attributes of landownership, not detriments, as unwelcome as toxic waste.

Reforming the Endangered Species Act in these reasonable ways will do more to protect species, uphold landowners' constitutional rights, keep rural communities viable and restore the traditional heritage of stewardship of the wildlife and habitats on private property. Finally, possibly the most important benefit of an Endangered Species Act reformed in these ways should be restored faith in the fairness of the Federal Government and a confidence that our constitutional freedoms will be protected.

Mr. Chairman, I know I have gone over time and my good friend and neighbor next to me had conceded a minute or two of her time, which I have used.

I would also like to, with your permission, have some additional material and reports entered into the record.

Mr. POMBO. Without objection.

Ms. DOMENIGONI. Thank you. The Riverside County Farm Bureau has their petition to de-list the Stephens kangaroo rat.

[Applause.]

Ms. DOMENIGONI. Golden State Resource Management Group has their analysis of a California fire, as well as does the Competitive Enterprise Institute and the testimony on behalf of Eastern Municipal Water District.

Thank you very much.

Mr. POMBO. Thank you.

[The material referred to was placed in the hearing record files of the committee.]

Mr. POMBO. Ms. Judy Fowler, President of the San Diego County Farm Bureau, you may proceed.

STATEMENT OF JUDY FOWLER, PRESIDENT, SAN DIEGO COUNTY FARM BUREAU, FALLBROOK, CALIFORNIA

Ms. FOWLER. Thank you.

Mr. POMBO. Remember, you gave her some of your time.

Ms. FOWLER. Right. My name is Judy Fowler. I am a commercial field flower grower in north San Diego County, and as you said, I am President of the San Diego County Farm Bureau and member of Governor Wilson's rural task force. And for Congressman Lewis' benefit, I am a native of Inyo County, Owens Valley, so it is very nice to meet him today.

First of all, I would like to thank Congressman Pombo and the Task Force for providing this hearing so close to the area being so severely impacted by the Endangered Species Act. It is difficult for farmers such as myself to travel to Washington, D.C., so we appre-

ciate that you have taken the time to listen to the grassroots of this country.

Secondly, I do not feel that there are any better environmentalists, keepers of the land, if you will, than farmers. We understand the value of sustaining and renewing our natural resources. I would like to be clear that we are not advocating the repeal of the Act. What we are asking of you is to provide meaningful reform that brings common sense back into the process, and lift the financial burden off the individual landowner and the local economy.

I have served as an advisor on the Multiple Habitat Conservation Program in San Diego since its inception, a program created to preserve habitats and ecosystem rather than the species approach of the current ESA. I initially felt that it would be the best course of action for a community in that it would provide certainty in the listing process and ultimately place most land use decisions appropriately back at the local level. I am now of the opinion that (1) not only does the Act itself doom this process to failure, but (2) over-zealous bureaucrats and the mainstream environmental community will, if allowed to succeed, destroy the economic base of this state.

(1) The basis for failure lies in the inability of the Federal and state governments to provide any assurances that once a habitat preserve is completed, they will not list any further species within a reasonable period of time. That defeats the entire motivation of any community to participate. There is simply no incentive to participate when there is no security.

(2) When the gnatcatcher was listed, the state took the habitat approach under the state's NCCP program, and constrained some 465,000 acres in a five county area, most of which was unoccupied by gnatcatchers. The carrot was an allowable five percent take by communities needing to get projects moved forward. The constrained acreage in San Diego County became part of the habitat preserve study. Once lines are drawn, private property owners are impacted immediately in the disposition of their own land. Especially hard hit are farmers needing production loans. Many lending institutions loan money on the real estate value of the property versus the farmgate value. The conventional wisdom of some of the environmental community is that the question of whether the gnatcatcher is truly endangered is not important. A listing was needed to drive this process, leading me to believe that the object of the NCCP process, for certain very powerful and litigious interests, is simply to constrain productive use of land. Clearly, unless the Endangered Species Act is amended to allow complete immunity against any further land use restrictions for later-listed species, such people will always be able to derail the process.

We ask that this Task Force strongly consider the following points:

1. Require sound science with peer review, including verification of species numbers, habitat conservation criteria and recovery plans.

2. Require volunteer, incentive-based plans to protect species when private property is affected. When private property is impacted, compensation for lost value or use must be included.

3. Require an analysis to be accomplished on the economic impact to a community of any listing.

4. Farmers and ranchers who develop conservation habitat programs should be granted safe harbor protections against accidental take. Habitat modification should not be considered a take.

And finally, a lot of my Farm Bureau friends and neighbors are in this audience supporting this hearing. And I think I speak for all of them when I tell you that current enforcement of the Endangered Species Act has produced frustration, fear and anger. Landowners are fearful of harboring an endangered or threatened species. All too often, farmers and ranchers are the victims of the Endangered Species Act. As long as this feeling exists, efforts to save species will prove counter-productive. Congress must change the law to remove the sense of fear. Landowners need safe harbor protections and meaningful incentives to help them be part of the solution. It is time to put some common sense back in the Act.

Mr. POMBO. Thank you.

Ms. Leeona Klippstein, you may proceed.

STATEMENT OF LEEONA KLIPPSTEIN, SAN BERNARDINO SAGE FRIENDS, SPIRIT OF THE SAGE COUNCIL AND THE NATIONAL ESA/HCP NETWORK, SAN BERNARDINO, CALIFORNIA

Ms. KLIPPSTEIN. Thank you. Good morning, Mr. Chairman and distinguished members of the panel. Thank you for your invitation and the opportunity to speak to the very important matter at hand—the United States Endangered Species Act. I am Leeona Klippstein, born and raised in southern California. I current live in San Bernardino County. I am a veteran of the United States Armed Forces and formally educated in medical sciences and health therapies. By profession, I am a patient care specialist and child care consultant, although I have become a full time conservationist and a community organizer.

I am affiliated with three conservation organizations, which I have co-founded—San Bernardino Sage Friends, Spirit of the Sage Council and the National ESA/HCP Network. All three organizations focus on preserving America's natural heritage through protecting native plants, native animals and the ecosystems upon which they depend to flourish.

The Chairman has notified me that the Committee would be most interested in my views regarding the effect of the Endangered Species Act on the people of southern California and how the Committee might address my concerns in future legislation.

I am in a unique position to address these concerns since Spirit of the Sage Council was named and co-founded by my friend, Vera Rocha, hereditary chief of the Gabrielino band of the Shoshone Nation. Vera Rocha and I met through mutual concerns of the threats to the southern California coastal sage scrub communities, both biological and cultural.

It is a fact that as native seed banks, native plants and native animals become threatened and endangered, so do native languages, native cultures and native people. Ecocide and genocide are reflections of the land and the consciousness of governments. The first nations people of southern California still referred to as Mission Indians by the United States government, the Uto-Azteca-Sho-

shone are very much alive but very threatened and endangered by the loss of their communities. The Gabrielino-Shoshone have been taken (killed), removed, displaced, harmed, harassed, bothered and invaded by non-natives. Their populations have significantly declined in their range and distribution. They have become restricted to a small isolated population.

As more and more of southern California wildlife become endangered, so do the people. Approximately 90 percent of the plants endemic to coastal sage scrub associated communities have medicinal and life-sustaining properties. Sage is a sacred ceremonial and medicinal plant integral to the health and culture of the native people of southern California. However, the native people of the land are little recognized or included in the important task at hand—preserving America's natural heritage, and protecting America's endangered wildlife and wildlands. The U.S. Fish and Wildlife Service does have a policy on Native Americans, but I have not yet experienced its implementation nor witnessed any of the policy benefits to Vera Rocha or the Gabrielino-Shoshone people.

The Endangered Species Act is very important to the health and well-being of all species including the human species.

[Applause.]

Ms. KLIPPSTEIN. It is my personal experience as a 91-Charlie patient care specialist in the U.S. Armed Forces and working later with a pediatrician, that convinced me of the importance of protecting endangered species, especially plants. Thanks to the rosy periwinkle, childhood leukemia and Hodgkin's disease are largely curable. Taxol, a medicinal product derived from the Pacific yew tree, has offered hope to thousands of women suffering from ovarian cancer. In my research, I was also made aware of the economic benefits that plants provide to pharmaceutical corporations, a $40 billion industry that depends on natural compounds from various plant species.

Before we had medical centers, European barbers and an army of primarily male M.D.s in the United States, there were Shoshone medicine people, women healers and midwives that knew the sacred lands and the sites of the plants that could cure. One of these plant medicines have become so common in all of our households today that I could safely assume that every Committee member today has consumed it. Aspirin is derived from the willow. Just as we humans need the willow, so does the endangered southwestern willow flycatcher and the endangered least bells vireo. When the Gabrielino-Shoshone Nation, the first people of southern California, come forward to protect the sage and their culture, they are also a voice for the endangered plants and animals. The Shoshone Nation, the California gnatcatcher, San Bernardino kangaroo rat, Stephens kangaroo rat, bells sage sparrow and over 100 plants and animals that have been identified, depend upon the southern California coastal sage scrub communities for their survival and recovery.

According to the research of Dr. Linda McMahan, Executive Director of the Berry Botanic Garden, Portland, Oregon, "half—probably more than half—of the rare and endangered plants in this country are related to plants that have been used medicinally by

Native Americans or, in other uses, are used medicinally around the world."

I ask today that the Chairman and the Committee consider amending the Endangered Species Act to include provisions for ethnobotany that would protect plants of medicinal and religious significance to the American Indian descendants. This is a very important aspect of America's natural heritage and has been dismissed by the Endangered Species Act.

The important relationship between plants and people dates back thousands of years in human history. I strongly recommend and encourage that the Committee and Task Force on Endangered Species make revisions and amendments to the Endangered Species Act that would provide for greater protection of all plant species and their recovery—especially their recovery.

I should add that by protecting and preserving the sage scrub communities there is also an economic benefit to local businesses. Miller's American Honey Company of Colton, California in San Bernardino County has been in business for 101 years. They have 30 full time employees, distribute approximately 10 million pounds of sage and buckwheat honey and makes approximately $7.5 million annually. The two greatest economic threats to Miller's business is development, loss of the sage scrub ecosystem and pesticides. As the saying goes, the first rule of tinkering is not to throw away any of the parts. How are we to know which of the parts are critical to making the whole system work?

If the United States does not provide greater protection to endangered insects, it will be nearly impossible to protect and recover endangered plants. It is important to protect California's treasure chest of biological diversity. It truly does not have a price tag—biological diversity is invaluable.

A very important feature of the Endangered Species Act is the designation of critical habitat. It is my opinion that U.S. Fish and Wildlife does not implement this section of the Endangered Species Act enough, primarily because of political influences, and secondarily, due to a lack of funding through appropriations. Of the 880 listed endangered species, only 111 have been provided with a critical habitat designation. Designating critical habitat is relevant for endangered plants throughout their range when addressed in chemical terms. At different portions of their range, organisms tend to be different genetically and chemically. Compounds produced by a plant in New England may be absent from its relatives in Georgia. Critical habitat designations are also important steps toward recovery of endangered species in the wild and eventual de-listing of stabilized populations.

I believe that this was the main intent and goal of the Endangered Species Act enacted in 1973 by President Richard Nixon.

It is vital that America's endangered wildlife is recovered in the wild. Wildlife cannot be maintained in the long-term in artificial settings. Recovery of endangered species through the Endangered Species Act continues to be minimal due to lack of enforcement, politics, and again, insufficient funding.

Mr. POMBO. I am going to have to ask you to wrap it up. The entire thing will be included in the record.

Ms. KLIPPSTEIN. OK. Well, in conclusion, I would like to add that in the 22 years since the enactment of the Endangered Species Act, there has never been a taking of private property in the U.S. Court of Claims.

[Verbal expressions from the audience.]

Ms. KLIPPSTEIN. America is only as great as her natural resources and the richness of her natural landscape. America's natural heritage is a treasure that the American public has entrusted to our government. America's wilderness and wildlife are the backbone of the United States. If a foreign country dumped acid rain on us from the skies, polluted our drinking water and air with toxic chemicals, took the land away from our wildlife and killed them, we would view this as a threat to our national security and an act of war. However, we are doing this to ourselves and we must stop. The Endangered Species Act protects the health and well-being of all species and is the greatest piece of legislation written in our century. I believe that we can continue to make the Endangered Species Act work and improve its effectiveness through additional strengthening measures.

Thank you very much.

Mr. POMBO. Thank you.

[The statement of Ms. Klippstein may be found at end of hearing.]

Mr. POMBO. Thank you very much. I thank the panel for your testimony and I would just like to tell you that all of your complete statements will be included in the record and also remind you that we are under the five minute rule in questions, so as we ask questions if possible, remember that we have to try to do this all within five minutes as well.

Ms. Ceniceros, you talked a little bit in your statement about the HCP process here. Do you feel that the HCPs are part of the solution to recovery?

Ms. CENICEROS. One small part. And I think that if they were handled much, much better than they have been, with a quicker response to submittal of proposals, for example, it would be much fairer. One of the downsides of the HCP, and this was said by both Ms. Fowler and Ms. Domenigoni, who are landowners, is that they are held up—it creates a cloud for a period of time while that study is completed and then while lands are acquired that are deemed to be adequate to take the species out of the listing or to avoid the listing, when we are operating under 10(a). For the fringe toed lizard, that was a matter of a couple of years. It has been seven, as I said, for the Stephens kangaroo rat. The process needs to be much reformed.

Mr. POMBO. You also made a statement about including all property owners in the process.

Ms. CENICEROS. In the planning process. They all were before anything formal was done, but it seems to me that being early at the table with a variety of representation is important. Our process did get driven a lot by both biologists representing environmental faction in and out of the Service and by the development industry, which was the immediate victim, because they had plans ready to go. And so it tended to focus on the impact on them. But there are

people who have not subtle impacts on them, as you heard from the representatives of farming.

Mr. POMBO. Mr. McLaughlin, you have also worked quite extensively with the HCP process. Have you brought in all of the affected property owners into the room, so to speak, or given them a seat at the table when you go through the HCP process?

Mr. MCLAUGHLIN. We could not fit 150,000 people or so in the same room. What we have tried to do is get representation from both small and large property owners as representatives. We have also dedicated a lot of effort to outreach, trying to get information out as the planning process unfolds rather than waiting until the plans are done and completed and say, surprise, here they are. The plans are going through extensive public hearings throughout the San Diego region, as we speak, for comments from all property owners, mailing in the tens of thousands in terms of notices to property owners are going on right now.

Mr. POMBO. How do you plan to pay for the HCP? What is the mechanism that you are going through?

Mr. MCLAUGHLIN. We are trying to broker a partnership between the Federal/state/local government and the local residents in terms of a fair share contribution to the implementation of the program. That is still being worked out as we speak, so there is not a specific proposal at this point.

Mr. POMBO. So that is still in the planning stages in terms of how actually you are going to come up with the money to pay for it?

Mr. MCLAUGHLIN. The specific proposal is still being developed, right—the hard part.

Mr. POMBO. Ms. Domenigoni, you stated that—and correct me if I am wrong—you stated that your property was within a critical habitat area?

Ms. DOMENIGONI. A study area.

Mr. POMBO. A study area.

Ms. DOMENIGONI. It was not identified as critical habitat.

Mr. POMBO. Whose study area?

Ms. DOMENIGONI. The county formed an HCP that was going to—it was an interim plan to allow some building to move forward. It was supposed to be a two-year interim plan where they selected ten areas as study area. And within that two-year plan, they were to identify where the preserves would be located and then a formal plan was to be done at that time. We are five years into the process and we do not have an approved final plan to date.

Mr. POMBO. And how did you find out about the study area?

Ms. DOMENIGONI. We were not officially notified. Lines were drawn around our property without our participation or knowledge. At the time that we finally did find out that our properties were included within a study area, we were told by a friend that had attended a meeting, but not—we were never notified directly. So we never had early input into that process.

Mr. POMBO. Were any restrictions put on you because of the study area, or did that happen at a later time?

Ms. DOMENIGONI. Well, that occurred after the study areas had been formally put into place and then the restrictions, we had the restrictions on part of our ranch for farming, yes.

Mr. POMBO. Mr. Woodward, you feel that HCPs play a role in the Endangered Species Act. You feel that that is a needed mitigation measure?

Mr. WOODWARD. That is correct, I do.

Mr. POMBO. How do you respond to the criticism that HCPs are used to provide—so that someone else becomes—your mitigation with the city, and that those people outside of that sphere of influence or that ring of development around a city do not have any input into who ends up being in the HCP, or what happens with the HCP. How do we close that loop, so that the people that become open space are somehow part of the process?

Mr. WOODWARD. Well, what we have proposed in our Multi-Species Strategy Plan is to have a system of trade-offs where we can set aside certain critical areas that are needed for species protection and at the same time we are able to transfer the land use ability to other areas of the property that are not impacted or not needed to preserve species protection.

We also have to look at this whole process on a macro level. We need to stop drawing lines over the land of our area. So when we look at things in a macro sense, in a broad level and look at the habitat and the species that occupy these areas, then we can look and deal with the big picture and that is what we need to focus on, not singularly.

Mr. POMBO. Unfortunately my time has expired, but I guess you can answer this with just a yes or a no. You would not be opposed to the people who become the permanent habitat being compensated by this whole process that is going on. I mean all of you talked about hundreds of millions of dollars that have been involved in this process. Should not the people who end up being the permanent habitat be compensated for that?

Mr. WOODWARD. Absolutely, they have to be compensated for it.

Mr. POMBO. OK, thank you.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Because of my limited time, I would like to ask our first five witnesses—I gather that there seems to be a consensus or agreement that the problem here is that you are not against protecting the species, but you have some very serious problems with the bureaucracy in having to deal with the administration process.

I would like to ask Mr. McLaughlin—in my last reading of geography, I understand that San Diego County is the largest county in the United States. Am I correct on that?

Mr. MCLAUGHLIN. Riverside.

[Verbal expressions from the audience.]

Mr. MCLAUGHLIN. Coming to Riverside, you should not say that. But San Diego is a sizable county, we are talking about 4200 square miles.

Mr. FALEOMAVAEGA. But at one time, you were the largest county in the United States, no?

[Laughter.]

Mr. MCLAUGHLIN. No.

Mr. FALEOMAVAEGA. Gee whiz. I will take that back, I had better read history again.

You have elaborated quite well on your statement concerning habitat conservation planning and you give an indication that your county is currently working very closely with the Federal agencies involved in the planning process. And I just wanted to ask you do you find the process cumbersome, to say the least, or do you find that it is workable if given the proper resources?

Mr. MCLAUGHLIN. I think it is workable, but like Riverside, we have experienced times where plans and proposals kind of go into this black hole and they do not come out for awhile, and we are working with a limited budget and a timeframe and it is important for us to kind of march along but we have had good cooperation with the local Department of the Interior and the Fish and Wildlife Service staff. In fact, the Bureau of Land Management has provided their resources as part of a contribution to the development of a preserve area. So we have had some good inputs and opportunities from the Federal agencies.

Mr. FALEOMAVAEGA. Well, added to the subject matter and I guess to the complications of the problems that we are faced with, supposedly there is a movement let us say to cut the ESA budget. Now by cutting the budget, this obviously means less services. Am I correct in this basic assessment? I am not an expert on budget things, but I am just saying if there is a current movement to cut the Endangered Species Act budget for the operations, whatever you do with the species, this also means less responsiveness from those in Washington dealing with the communities like the problems that you have cited here earlier this morning. And I am just asking for a general response from members of the panel.

Mr. MCLAUGHLIN. My initial response would be that if there is additional funding, that it ought to flow to the local communities where those kinds of decisions can best be made, not back in D.C.

[Applause.]

Ms. CENICEROS. I would like to add to that because in response to the Chairman's question, in our county we have only bought property if never condemned property. And primarily it has been through a willing seller, but the delays in acquiring it——

[Verbal expressions from the audience.]

Ms. CENICEROS. In our county that is the case. The delays before you acquire that property are quite damaging to property owners.

Mr. FALEOMAVAEGA. Can you say specifically—when you talk about delays—nine months, two months?

Ms. CENICEROS. Well, we have one property owner who is very anxious to sell us what is the last missing piece on the K-rat program and we have not consummated that and it has been two and a half years.

Mr. FALEOMAVAEGA. Two and a half years.

Ms. Klippstein, I just wanted to ask you, you mentioned something concerning the Gabrielino-Shoshone Tribe, originally what was the number of the population of the tribe here in this region?

Ms. KLIPPSTEIN. I do not know the exact number, but the Gabrielino-Shoshone nation territory is from just south of Malibu down to Aliso Creek in Orange County, out to the Santa Catalina Islands and inland to the San Gabriels and portions of the San Bernardino mountains. Many of the cities are still named after their village sites, such as Cucamonga, Tahunga, Topanga,

Cuhennga, all of these were village sites. And the city of Pasadena recently honored the Gabrielo-Shoshone by naming an area of the Arroyo Seco back to its original name of Hahamongna.

Mr. FALEOMAVAEGA. Are they a federally recognized tribe?

Ms. KLIPPSTEIN. Unfortunately they are not. The government does know of them, the state of California does recognize them. Vera Rocha is the most likely descendent. They do have the records on file, but unfortunately the U.S. Government still considers them Mission Indians.

I am also involved with habitat conservation planning and I do have some statements that I would like to include about HCPs, if I may.

Mr. FALEOMAVAEGA. Well, if the Chairman will not object to include the statements.

Mrs. CHENOWETH. If the gentleman would like to yield the rest of his time.

Mr. FALEOMAVAEGA. Sure—well, no, I think she is requesting submission of additional statements for the record.

Ms. KLIPPSTEIN. Well, in this discussion about habitat conservation plans, whether in Riverside or in San Diego, overall when Section 10(a) was amended to the Endangered Species Act——

Mr. FALEOMAVAEGA. No, no, wait—I reclaim my time. You would like to submit additional statements to be part of the record, is that correct?

Ms. KLIPPSTEIN. They are in here.

Mrs. CHENOWETH. I would like to ask for unanimous consent for her to be able to submit to the written record.

Mr. FALEOMAVAEGA. All right.

Ms. KLIPPSTEIN. Thank you.

Mr. FALEOMAVAEGA. Just one more quick question since I see the yellow light.

To our two commercial farmers. I do not think there is anybody that can appreciate more the concerns of the seasons, always the problem of wanting to know whether you are going to have a bumper crop or you are going to have problems dealing with the environment, and I can appreciate also the fact that our farmers here in our community can well appreciate what farmers go through in the process, and I, for one, do not know if the provisions of this Act was ever taken into consideration the needs of our farmers, and I think this is the reason why we are here today, to seek out what really are the concerns and the problems that you have encountered in the process.

I am not an expert on the kangaroo rat, but I just wanted to ask, this seems to be a common rodent here in this region. And since you are the expert here dealing with the rat as a fifth generation farmer, Ms. Domenigoni, how do you deal with the rat?

Ms. DOMENIGONI. Domenigoni (pronouncing).

Mr. FALEOMAVAEGA. I am sorry.

Ms. DOMENIGONI. It is just like saying Faleomavaega, you know. [Laughter.]

Ms. DOMENIGONI. I am sorry, what was the question again?

Mr. FALEOMAVAEGA. As a fifth generation farmer, and I am sure this is true with all our farmers here in the audience, I just want

to know how did you deal with it, was it ever a problem in your farming?

Ms. DOMENIGONI. No, and I guess that is the point. Evidently the way that we conduct our business and take care of our land has made us a target, because we have taken care of the land and the natural resources that we have. And unfortunately that is what is hard to understand in this process, is that when you do try to be good stewards of the land, and you are rewarded by being regulated. It seems extremely unfair. And it is not only unfair to us, but it is unfair to those species that we have protected on our ranch over the years. Because as you note, with the fire, who lost? Everyone lost in the fire—the species as well as the humans.

Mr. FALEOMAVAEGA. I am sorry, my time is up. Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Ms. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I would like to address my questions first to Ms. Ceniceros. You have a lot of responsibility here, and in looking at your local ordinances or the responsibilities that the legislature has given you, statute-by-statute, have they ever given you or covered this local unit of government with statutory authority for you to enter into an HCP?

Ms. CENICEROS. It has been proposed from the ground up, by those property owners affected that came to us first, first with the fringe toed lizard, as I said. There is statutory authority in several sections of the ESA Section 10 and Section 4 and others, that allow mitigation to avoid a listing. But one of the problems that occur under ESA is that the language is not very precise and so it allows for a great deal of interpretation, according to the views of the person reviewing the proposal. That I think is one of our fundamental problems. It does not give us guidance.

I characterized this to one of the senior members of the Department of Interior as putting us in a dark room, locking the doors and saying that there is a key in there somewhere and it may fit one of the locks. And we have tried to find that key to get us out of, through compliance, but get us out of the situation where people do not know if they are going to be able to use their land or not, we do not know if we are going to be able to do regular public works projects.

Mrs. CHENOWETH. So actually, as I look at Section 10(a), I do not see the authority there to enter into a contractual obligation whereby your local unit of government may see their financial revenues constricted by the operation of a Federal program. The listing of the kangaroo rat and the winged toed lizard was made on the Federal level, right?

Ms. CENICEROS. Correct.

Mrs. CHENOWETH. My concern is that when the Federal Government, through whatever means they use, put a situation forth that entices a local unit of government to get into an agreement to assist them in taking land and taking revenue, they are assuming the liability. And I am just real concerned about local units of government and people getting into these kinds of agreements. And unless the Federal Government has covered you with an exemption

from the liability and they have made you totally exempt, I would just caution local units of government to watch very carefully.

Now——

Ms. CENICEROS. Can I respond to that just a minute?

Mrs. CHENOWETH. Sure, I would like to hear from you.

Ms. CENICEROS. I think that is more relevant to the proposal for the NCCP, the Natural Coastal Communities Plan. I did not see any support in the law for going to a strictly habitat based approach. It may be a more intelligent approach. But I was asked to participate in a three-county, southern California county effort guided by the state with a resolution authorizing it from the Secretary of the Interior. I would not support our county going into it because of the absence of clear law on the issue, just as you suggested.

Mrs. CHENOWETH. That is good leadership, Kay. I appreciate that because it—they are buying the liability and without a fully study under the National Environmental Policy Act, which by the way has been made a part of the Act by reference, and without you and people like Mr. McLaughlin realizing the full economic impact on your responsibility, fiduciary responsibility, to provide for the necessary services that you have to provide for, they are putting you personally and your government in a terrible situation. And I would just ask you to be very, very cautious.

Mr. McLaughlin, have you read the stated Congressional purpose of the National Environmental Policy Act?

Mr. MCLAUGHLIN. NEPA, yes, ma'am.

Mrs. CHENOWETH. Can you tell me what it says?

Mr. MCLAUGHLIN. Did you want me to use up your five minutes, or——

Mrs. CHENOWETH. No, it will not take that long. Let me tell you what it says. It says that for every major Federal action—which certainly a whole county, an impact on a whole county is a major Federal action—you have to get into an environmental impact statement, an economic impact statement and the key phrase there is "to understand the impact of the Federal action on man and his environment." It is not on the kangaroo rat and his environment or the wing toed lizard and his environment. It is on man and his environment.

Our desire in the Congress now is to turn more and more authority over to you, but to make sure that you are protected. I hope I live to see the day that your jobs are far more important than the jobs of Congressmen because we have returned local control back to the people and put it in the hands of people like you.

I see my yellow light is on, but is there—has there been a clear local consensus from the people in the area in favor of the HCP program?

Ms. CENICEROS. Probably it is the most divisive issue in Riverside County in the decade—absolutely no consensus, but very strong feelings in favor, very strong feelings for alternatives, but in favor of the sense of the Act, and very strong feelings opposed to the whole idea.

Mrs. CHENOWETH. I really appreciate the ten points that you have offered us and they will be very useful to us. Thank you very much to all of you. Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Mr. Ken Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

My first question is for Supervisor Ceniceros. Supervisor, approximately—and I know that there is no certain numbers for this—but approximately how much of Riverside County is out of bounds for any type of development? How much of it is open space?

Ms. CENICEROS. In terms of our general plans as well as species?

Mr. CALVERT. Just how much would you approximate would be permanent open space based—what is owned by the Federal Government, the state of California, the county of Riverside.

Ms. CENICEROS. Given the vast amount of desert which is checkerboarded and more with BLM land, we probably have about 60 percent in some kind of public ownership or under some kind of easement—not necessarily the county. In fact, usually not the county, it is usually Federal.

Mr. CALVERT. OK, so you would say a minimum of 60 percent possibly of Riverside County is designated open space?

Ms. CENICEROS. Yes.

Mr. CALVERT. San Diego County, how much do you believe, Mr. McLaughlin, is in San Diego County right now?

Mr. MCLAUGHLIN. A comparable figure is under state and Federal ownership at the present time. Most of our non-Federal and non-state lands are in the western coastal plans.

Mr. CALVERT. And San Bernardino County, I would suspect—we have an expert on San Bernardino County that will appear, but I suspect at least that number, possibly more, in San Bernardino County is permanent open space.

Mr. LEWIS. A little over 70 percent.

Mr. CALVERT. A little over 70 percent. Ms. Klippstein, what—the position of your organization obviously, from your testimony, is that that is not a sufficient amount of property in order to maintain species and necessary habitat must be accommodated. Is it your position then that the government should take public property or private property?

Ms. KLIPPSTEIN. Mr. Calvert, my position is that biological diversity does not have any political boundaries and that it is very difficult to make a determination in acreage of exactly how much land should be set aside and for how many species. I believe that we need to protect all of them. As far as——

Mr. CALVERT. How much land is sufficient. If not 60 or 70 percent, is it 80 percent or 90 percent?

Ms. KLIPPSTEIN. Well, you know, to separate them, whether it is non-Federal lands, state lands or privately held lands, I do believe that because it is all within the United States or within a state, that both the United States and the state does have that right to regulate our natural resources, and that is part of the public trust.

Mr. CALVERT. Are we saying then that the people who own property in fact do not have complete ownership of that property, and you are saying that we need to expand that habitat to take private property holdings? Is that your position?

Ms. KLIPPSTEIN. My position is that private landowners are not sovereign nations and that they are landowners within a nation that does have a right to regulate those natural resources.

[Verbal expressions from the audience.]

Mr. CALVERT. So you believe then that these property owners have no rights to their property?

Ms. KLIPPSTEIN. I do not think it is a matter of one or the other.

Mr. CALVERT. Should they be compensated for their property?

Ms. KLIPPSTEIN. I believe definitely in the Constitution and that non-federal lands should be compensated, but it is also a matter of whether the requested compensation is extortion or not. When a non-federal land holder is willing to sell a piece of land—say for example, the Bolsachica wetlands in Orange County. The Koll company is asking for $160 million for an area that is of biological and cultural significance. How can the American public possibly be expected to pay one company that much money?

Mr. CALVERT. You believe the property owner should be paid fair market value for their property?

Ms. KLIPPSTEIN. Yes, fair market value, not extortion.

Mr. CALVERT. Thank you very much.

Thank you, Mr. Chairman.

Mr. POMBO. Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. I very much appreciate the commentary by each of the panelists, it is very helpful to us.

There is little question that this Congress is going to take a number of unprecedented steps, unprecedented at least in terms of the last half century, by seriously reviewing a whole series of regulations and areas of statute that are long overdue in terms of re-evaluation. The Endangered Species Act is among those.

Presently, one of the major projects in our region involves the Santa Ana River Basin, a flood control project that starts with the Seven Oaks Dam in the San Bernardino Mountains and extends all the way to the oceanside. There is a minor little item interfering with a piece of that at this moment, known as the woolly star. The woolly star is a cactus like small plant that blooms a couple weekends a year with a little purple flower. Presently it is interfering with the reconstruction of two crossways that go across the Santa Ana river basin that were recently flooded out. It is potentially impacting the development of that flood control project and the potential protection of land that involves millions of lives and billions of dollars of developed property, particularly in Orange County. There is little doubt that there is a major problem if you want to compensate that potential loss.

Ms. Klippstein, I am very interested in the question of compensation, for it seems to me that we have a responsibility to protect endangered species and indeed, we do not want to go to extremes in either direction. I mean idiocy is not what government is about, but rather sensible——

[Laughter.]

Mr. LEWIS [continuing]. sensible public policy. That was not in jest.

I am interested in knowing if your organizations—you mentioned several organizations that are involved in conservation and so on.

Ms. KLIPPSTEIN. Yes.

Mr. LEWIS. Are you formally on record, and was your comment or response to Mr. Calvert's question, serious about compensation? I am not worried about big corporations.

Ms. KLIPPSTEIN. Uh-huh.

Mr. LEWIS. I am worried about individual homeowners. Do you actually believe that we should have a change of public policy that says there will be speedy compensation for fair market value for property that is either lost or devalued as a result of protecting species?

Ms. KLIPPSTEIN. I have considered this in quite great depth and also looked for solutions on how we could possibly compensate, where could the money even come from. Like the canary in the coal mine, endangered species are also indicators for determining whether it is healthy or not for people to live there. When you ask about compensation, I think it is very similar whenever there is an earthquake or fires or floods, that the local governments ask the FEMA for help and to provide for funding from that agency. I think that we could consider looking at combining assistance, perhaps through a joint memorandum of understanding, USDA, U.S. Fish and Wildlife Service, USGS and FEMA on possibly funding lands acquisition in these areas that are also hazardous for people, especially in San Bernardino County. Most of these flood prone areas that we are looking at for endangered species, like you mentioned for the Santa Ana woolly star in the wash areas, are areas of flooding that we would not want people to live near. The same with the high fire hazard areas.

Mr. LEWIS. In Orange County, they are already there, that is the problem. There are billions of dollars of property development.

Ms. KLIPPSTEIN. We now have the opportunity to correct that, that we do not have to go down this road of destruction. We have learned from those mistakes.

So I do not believe we need to build in these hazardous areas. The woolly star is perhaps saving people's lives right now by the Act protecting the woolly star. So I think that we should look perhaps at how FEMA—I know that they have done this in Georgia and Mississippi with the floods there—has actually come in and acquired lands now so that people would not have to go through these same disasters and loss of life again. I think this is something that could definitely be applied, especially in San Bernardino County.

Mr. LEWIS. She believes in compensation.

Ms. KLIPPSTEIN. Sure. Fair and not extorted. I think there is going to be some debate around that, Mr. Lewis.

Mr. LEWIS. I am not sure exactly—I think we are in agreement in connection with that, but just average homeowners' compensation, or that farmer who was going to be put in jail in the Central Valley. Questions of that kind carry us to the extreme.

Ms. Domenigoni—is that correct?

Ms. DOMENIGONI. It is pretty close, yeah.

Mr. LEWIS. Not bad, huh?

[Laughter.]

Mr. LEWIS. I want to mention to Mr. Faleomavaega—hi, babe—I call him Eni, because it is easier for me——

Mr. FALEOMAVAEGA. John Wayne is just fine.

[Laughter.]

Mr. LEWIS. Just for the record, I want you to know that you can put four eastern states in my desert in San Bernardino County. It is the largest county in the country.

It is very important for those in the audience to know that these task force hearings are very serious hearings because the Congress is about to either reauthorize or not reauthorize the Endangered Species Act. There will be some very, very serious adjustments in recent past history in that connection. So if you really are concerned about endangered species, if you are really concerned about making sure that land use is reasonably dealt with insofar as the Federal Government is concerned, you should know that we need help in trying to weigh and measure and balance the differences here. It really does not solve many problems by cheering or booing when you agree or disagree with an extreme position. But without any doubt, there is going to be a change in the law, and it is because the pendulum has moved so far relative to the government's view of land use and how much control they should have over people's land.

So the time to address yourself to the Congress is now over the next several months—not years, but several months. So this panel being here today is very helpful to us, but also all of you participating and focusing at this point in our history is helpful as well.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

As a Representative from San Diego County, I have got to remind my colleagues that at one time, San Bernardino and Riverside were part of San Diego County.

[Laughter.]

Mr. LEWIS. But all in my Congressional District.

Mr. FALEOMAVAEGA. I thought I was right somewhere.

Mr. BILBRAY. I want to defend the position that there is an historical link there.

Cindy, I apologize, I am not going to ask you any question because your name scares me to death.

[Laughter.]

Mr. BILBRAY. Mr. Woodward, you were talking about the horror stories of the Endangered Species Act and making some references. In your experience with these terrible situations, is it your opinion that it was the letter of the law that was creating the problem, or was it the application or the interpretation by the bureaucracy that was administering both?

Mr. WOODWARD. Well, in our review of the ESA law in particular, it provides provisions and flexibility. We believe it clearly is, as you describe it, a very, very narrow interpretation by the agencies that are the enforcers. In particular, the ESA seems to be the leader of the movement, so to speak, and there is very, very narrow interpretations and that is what has been, when applied, a misapplication, and a very burdensome one.

Mr. BILBRAY. So, in other words, your big concern here is the fact that you may have a good law, but if the agent who is enforcing the law is abusive, or is not using common sense, the problem is

the law is based on the concept that there will be good discretion used in the implementation, and your concern is that that is what is lacking at this time?

Mr. WOODWARD. That is correct, and it certainly takes the leadership of our elected officials in Washington to get the message to the bureaucrats and let them know what the people say.

Mr. BILBRAY. OK. I just think it is important—sometimes we go after the inanimate object because it is easier to scream at the Endangered Species Act rather than try to focus on this ever-moving bureaucracy that may be manipulating the Act and not applying it appropriately. And I think we need to be fair about that.

Ms. Klippstein, you seem to have a pretty good grasp of the Endangered Species Act and, you know, we have a situation down in my neighborhood where for ten years we had 14 million gallons of raw sewage pouring into our regional park and the estuarian wildlife preserve, Tijuana, which is supposed to be the most protected land in America, in fact, to the demise of the clapper rail and the least tern and five other endangered species. And during ten years, the Endangered Species Act was never invoked by anyone to force the state department and EPA and the rest of them to stop the poisoning of this valley.

When we finally got the bureaucracy to agree that we were going to catch the sewage and stop it from polluting the valley, we ended up being confronted by Fish and Wildlife with a term they said that after ten years of pollution, it had wiped out the natural ecology and we now had a "sewage-based ecology".

[Laughter.]

Mr. BILBRAY. You know, it is not a laughing matter when you are trying to protect public health and save a wildlife preserve. They then invoked the Endangered Species Act to stop us from cleaning up the sewage.

Now can you explain to me the sewage-based ecology and can you explain to me, did the Endangered Species Act when it was passed in the 1970's, did it mean to stop us from doing those good things for the environment that many of us have been trying to do?

Ms. KLIPPSTEIN. My believe is that when the Endangered Species Act was enacted, that it was to be proactive, so that these type of situations would not occur. Unfortunately now it has become more reactive. If the Endangered Species Act, if implemented, even the way it is written now, I believe that we would have many more species recovered and de-listed. The problem is that it is not being implemented the way that it is written, and largely because it is not funded the way that it needs to be. And some of that I think is done deliberately too, because of campaign interest groups and lobbying that it is not. It becomes a very political issue if you want to step in and try to save an endangered species. So that it is, funding and politics.

As far as the sewage ecology, I am not a sewage ecologist, but because——

Mr. BILBRAY. Thank God.

Ms. KLIPPSTEIN. [continuing] because it was going on for a long period of time, and because of those micro-organisms that occurred and that built up and built a resistance to the sewage, I would say that logically yes, there was another type of ecosystem that formed.

There are many ecosystems that are always evolving, but I do personally feel that it was a shame that that happened, that the local agencies did not step in. Why did they not when this was going on? Why does it always have to be a citizen group or an environmental group that has to take the initiative and spend their money to make sure that this Act is implemented. Again, Fish and Wildlife Service has excellent biologists, but when you go further up into Portland or into Washington, often they are squashed, unable to do what needs to be done because of those local politics and the influence in Washington.

Mr. BILBRAY. I need to point out to you that the local people have worked on this for over a decade. The larger environmental groups—and I challenge all of you to go back and look at this—were not involved, because they had concerns that it might cause a bad impact with a foreign country. There was a public relations problem and I was told flat out by many of my friends who were involved in the environmental community that they were concerned about the public relations aspect of confronting Mexico with an environmental disaster, and pressuring the State Department to address it.

What we had here was a situation where public health was not given the same priority as a local interpretation of the Endangered Species Act. Do you feel that the Endangered Species Act, when written, was intended to create a situation where encephalitis, malaria, hepatitis were becoming extensively a public health threat? Do you think that if you interpret the Endangered Species Act to allow a health threat to exist, is it being interpreted properly?

Ms. KLIPPSTEIN. If the Endangered Species Act had been enacted prior to this polluter, why was this polluter in the first place allowed to put this sludge in there? Why was that not stopped?

But again, like the canary in the coal mine, the Endangered Species Act, if implemented correctly, could have prevented all of this from happening. But again, you know, politics are largely involved, not only at the local, state and Federal level or within certain agencies, but probably also within those groups. More and more people need to get off the fence and say we are going to protect endangered species, whether it is Section 10(a) incidental take permits that allow the continued killing of endangered species in this country, under the misnomer of habitat conservation——

[Applause.]

Mr. BILBRAY. Leeona, what I am saying though is the polluter here was the city of Tijuana, which no local people could address, and the EPA and the Fish and Wildlife refused to pressure the State Department, and it became a reactive—and I think you hit on the proactive issue. And what we have got to do is get away from the reactive and stop finding excuses for stopping people from doing the right thing and start finding reasons to do the right thing.

Ms. KLIPPSTEIN. We definitely need to do the right thing and be proactive in protecting America's natural heritage. I would agree with you.

Mr. BILBRAY. And I only bring this up because I do not think environmental laws are meant to hurt the environment. But there are interpretations with that effect that are occurring, and I will

talk to you about it any time you want, where the environment is being hurt by the bureaucracy, and that is the big gap here.

Ms. KLIPPSTEIN. By the bureaucracy.

Mr. BILBRAY. The bureaucracy.

Ms. KLIPPSTEIN. It, the environment, was definitely hurt by the bureaucracy and campaign influence. We need to do something about the campaign influences at the higher level.

Mr. POMBO. Thank you.

I would like to thank the panel very much for your testimony and for the answers to the questions. I would like to excuse this panel and call up panel number two. We are not taking a break, we are just calling up the next panel, so if you will please all remain in your seats.

Panel number two—Chief Mike Harris, Richard Minnich, Ken Edwards, John Bell, Carolyn Powers. Would you please come up?

[Pause.]

Mr. POMBO. If you would take your seats, we are going to get going with panel number two.

OK, I would like to welcome the second panel to testify. Chief Mike Harris from the Riverside County Fire Department, welcome, and you may proceed.

STATEMENT OF MIKE HARRIS, CHIEF, RIVERSIDE COUNTY FIRE DEPARTMENT, PERRIS, CALIFORNIA

Mr. HARRIS. Thank you. I am Chief Mike Harris of the Riverside County Fire Department. I also manage the operations of the California Department of Forestry and Fire Protection and 13 municipal fire organizations in Riverside County. I offer this introduction of myself to indicate to you that my comments today come from the perspective of both an urban and wildland fire service manager with over 30 years of experience in providing public protection.

Both California state law and Riverside County ordinances require the removal of flammable vegetation to bare mineral soil around all homes and improvements. The intent of these laws is to break the unobstructed travel of fire from a wildland area into the structures or from the structures into the wildland habitat. These laws and ordinances have proven effective over the years at providing a reasonable and prudent level of public safety.

In 1989, the Fish and Wildlife Service established regulations for the protection of the Stephens kangaroo rat that, in effect, eliminated our ability to enforce the public protection hazard reduction laws of the state and the county.

The kangaroo rat regulations were developed by the Fish and Wildlife Service without conferring with the appropriate fire officials or affected citizens. There were three major impacts from these actions:

1. The fire service lost a very valuable public protection tool.

2. The regulations caused confusion on the part of government officials and the public, leading in some cases to inaction.

3. The lack of proper hazard reduction contributed to the loss of homes and other improvements during the California fire.

The General Accounting Office's report on the California fire concluded that the lack of hazard reduction activities had no impact

on the losses caused by the California fire. I do not agree with their conclusions.

The experience of firefighters has proven that dwellings need to be separated from flammable vegetation by fire breaks. This eliminates flames coming into direct contact with the dwelling and provides a defensible space in which firefighters can work to save the home.

One year after the California fire, we signed an agreement with the Fish and Wildlife Service which allows the removal of flammable vegetation around homes and improvements. This agreement allows the fire protection agencies and the citizens of this county to again take reasonable and prudent fire safety measures required by state and county ordinances.

It is my position that the regulation development process of the Endangered Species Act is flawed.

I would urge your consideration of a modification in the process to require:

1. The direct involvement of public safety providers when developing regulations that involve habitat also occupied by humans. This involvement must be before the development of regulations and must be entered into with a desire to protect human life and property as well as providing species protection.

2. We need to look more toward watershed or habitat management and less at species-by-species regulation. If we do not make this change, the future holds a never-ending series of regulations for the protection of individual species. This will become unmanageable for public safety agencies and will cause unnecessary confusion and hostility with the public.

The 1993 California fire serves us best at this point as a window to the future. If we do not make some positive changes in the regulation development process of the Endangered Species Act, we will see more California fires occurring in more and more locations.

Thank you for the opportunity to address your group.

Mr. POMBO. Thank you.

Mr. Richard Minnich, you may proceed.

STATEMENT OF RICHARD MINNICH, ASSOCIATE PROFESSOR OF EARTH SCIENCES, UNIVERSITY OF CALIFORNIA, RIVERSIDE, CALIFORNIA

Mr. MINNICH. Thank you. I am an Associate Professor of Earth Sciences at the University of California, Riverside. My research concentrates on the fire ecology of California ecosystems. I also coteach a course in natural hazards and disasters.

The Endangered Species Act as applied to California will very likely involve land use that interfaces with wildlands, so my remarks address wildland management systems that relate to the ESA.

Several of my studies compare the patterns of wildland fire in brushlands under fire suppression in California and without fire intervention in neighboring northern Baja California, Mexico. These studies have permitted an analysis of the impacts of fire control in California wildlands.

With respect to housing and other infrastructure destroyed by the California fire, it is important for you to understand that this

disaster occurred almost simultaneously with conflagrations at Laguna Beach, Malibu, Altadena and Cherry Valley, during which time about 1000 homes were burned at a cost of roughly one billion dollars. This disaster has not so much to do with the Stephens kangaroo rat as it has to do with fire suppression of the Forest Service, California Division of Forestry and other land management agencies.

The disaster is also related to uncontrolled land use encroachment into dangerous habitat, forming extensive urban/wildland interface zones in southern California. Such urbanization is encouraged by the belief that fire control actually reduces fire probability and protects infrastructure by extinguishing all fires when they are small—the so-called ten o'clock policy implemented in the 1920's. In fact, suppression leads to unintended, counter-productive effects. Fire control encourages abnormal fuel build-up by lengthening fire intervals. But more importantly, the efficient suppression of tiny fires selectively provokes uncontrolled large fires to escape during the worst possible weather conditions, notably Santa Ana winds. Fire intensities are so high that it is impossible for firefighting agencies to protect property and resources. The recent Santa Ana wind blown California conflagration and the other fires in southern California are a symptom of suppression, as similar disasters have occurred repeatedly during this century. In the California fire, with high spread rates in 30 to 50 mile an hour Santa Ana winds, it made little difference whether houses had 100 foot fuel clearance. Fire brands and embers can establish flames a mile ahead of the fire front. Safety considerations often make it prohibitive for fire engines to protect individual houses.

In Baja California, fires are smaller, even without suppression, burn at low intensities in ordinary weather, and seldom destroy property and resources. To simulate such a regime, U.S. land management agencies must become involved in prescribed burning programs at an extensive scale to prevent catastrophic fire. But this will inevitably require reform on questions of liability on land management agencies. Effective fuel management cannot proceed unless threats of lawsuits from those living in dangerous environments are alleviated.

Part of the fire problem is the disaster relief institutions at the Federal and state levels. Declaration of natural disasters is an important mechanism for the transfer of capital for relief from region to region. However, relief can become part of the problem in areas subject to frequent disasters. California brushlands are subject to current burning and federally subsidized loans encourage people to rebuild in dangerous places. Disaster actions should perhaps be privatized so that people living in dangerous habitats pay premiums that reflect the true hazard of their land. Such would doubtless result in more rational land use.

During this century, there have been two general trends concerning natural disasters. (1) There has been reduced fatalities due to such efforts as improved weather forecasting and construction of earthquake-safe buildings. But the other trend is skyrocketing costs of infrastructure damage. Given current land use trends, this country will inevitably become unable to afford natural disasters under the present system of FEMA type programs.

In summary, I believe the focus of this hearing on the Endangered Species Act should also consider the long-term impacts of other Federal and state policies and programs.

Thank you.

Mr. POMBO. Thank you. Mr. Ken Edwards, Riverside County Flood Control and Water Conservation District. You may proceed.

STATEMENT OF KEN EDWARDS, RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RIVERSIDE, CALIFORNIA

Ms. EDWARDS. Mr. Chairman, members of the Task Force, my name is Kenneth Edwards. I am the General Manager-Chief Engineer of the Riverside County Flood Control and Water Conservation District. We do appreciate the opportunity to present the Task Force with information regarding the impacts of the Endangered Species Act on our district, and to provide recommendations for reform.

Our district has developed an extensive flood control system in western Riverside County over the past 50 years, which includes 35 dams and detention basins, 48 miles of levees and 188 miles of channels.

We have routinely maintained the flood control system for many decades. But more recently, Federal agencies, including the Corps of Engineers, EPA and the Fish and Wildlife Service have effectively prevented proper maintenance activities through regulations promulgated under the authority of both the Clean Water Act and the Endangered Species Act. While these laws have existed for many years, the adverse impacts have only been felt in recent years as Federal agencies have issued ever more stringent regulations, often without the authority of new law and sometimes to settle environmental lawsuits of questionable merit.

Onerous Federal permit and mitigation requirements delay or prevent maintenance of critical flood control facilities, impose a serious threat to public health and safety. Some examples.

In January of 1993, over $10 million of property damage occurred in Old Town Temecula when Murrieta Creek overflowed its banks. Federal officials refused to allow maintenance which would have prevented the flooding, partially due to the alleged concerns about the least Bell's vireo. Ironically, after the flooding, Federal authorities allowed the maintenance to take place.

In another case, we were prevented from controlling burrowing rodents in large earth fill flood control dams that protect the cities of Riverside and Moreno Valley over concerns for the endangered Stephens kangaroo rat. It was considered that they might be living in our earth fill dams.

Finally, the district has been prevented for more than two years from making critical repairs to the Santa Ana River levees which protect the city of Riverside, because two endangered woolly-star plants were discovered in the river bottom near the proposed work.

Survival of a species was not at stake in any of these cases, but we were prevented from taking immediate, appropriate action to protect the health and safety. I might add that our County Transportation Department has experienced similar problems maintaining bridge and other drainage structures.

We have also experienced major difficulties in getting critically needed flood control projects approved because of the ESA. This can be illustrated by the district's San Jacinto River flood control project near Perris, California. In 1988, the district entered into six years of negotiations with the Fish and Wildlife Service to address concerns they had for the San Jacinto salt bush plant. Those lengthy negotiations resulted in an agreement to add significant environmental enhancements to the project, including a 100-foot wide riparian corridor for the entire 10-mile length of the project and an additional 250-foot wide corridor of land contiguous to the channel to provide mitigation protection for the San Jacinto salt bush and potentially other plant species.

In order to provide guarantees to the regulatory agencies, the flood control district, the county and the city of Perris executed a memorandum of understanding with the Service. A special study developing a conceptual corridor plan was submitted to the Service in the fall of 1993. Their response to this proposal was to essential abrogate the MOU and proceed to listing the salt bush and three other plant species.

There seems to be little or no interest by the Service to work with local officials to arrive at an acceptable plan. It appeared the service was more interested in stopping some new development that would be allowed with the flood protection the project would provide. The listing itself we believe was flawed as we do not believe their scientific basis for listing was valid.

We are also critical of the Service for failure to meet mandatory timeframes in the Section 7 consultation process. In November in 1988, the Corps of Engineers, in connection with our permit application, requested that the Service initiate a Section 7 consultation for the San Jacinto River flood control project in connection with the Stephens kangaroo rat, a process, which current rules allow 135 days to complete. The Service did not complete the biological opinion until—actually they have not finished it yet, it is supposed to be close to being finished, now we are in April of 1995, seven years later.

Statutory reform of the ESA is needed to address the problems I have discussed today. Specific reforms recommended by the district are as follows:

A categorical exemption should be provided to provide for the routine maintenance and emergency repair of all existing flood control facilities, including dams, debris basins, open channels, highway drainage structures.

Review and approval of supporting science in the administrative record by an independent panel should be required prior to a proposed listing being published in the FEDERAL REGISTER.

The time allotted for public comment on a proposed listing should be doubled to 120 days and the time to request a public hearing to 90 days.

In addition, all proposed listings should be prominently published in newspapers of broad general circulation.

And finally, specific time periods should be established for completion of processing and review of permit applications, habitat conservation plans and Section 7 consultations, with provision made

that all such submittals be deemed approved if not acted upon by the Service within the allotted time.

Mr. Chairman, we have submitted a more detailed written statement for the record. Thank you for the opportunity to make this presentation.

[The statement of Mr. Edwards may be found at end of hearing.]

Mr. POMBO. Mr. John Bell.

STATEMENT OF JOHN BELL, BUSINESSMAN, TEMECULA, CALIFORNIA

Mr. BELL. Thank you for this opportunity. My name is John Bell, I live in Murrieta and work in Temecula. My family has owned and operated a medical device manufacturing company in Temecula for over 20 years and we employ approximately 500 hard-working men and women in the Temecula Valley.

On January 16, 1993, our company, along with several hundred other Temecula businesses were flooded due to a flood control channel that had overflowed its banks. Damages to the communities of Murrieta and Temecula amounted to over $10 million. Our company sustained several hundred thousand dollars alone in losses due to down time to manufacturing production cycles and facility damage. And of course the families that were employed there were without income for a period of two days and our company was in no position to reimburse that to them.

The flooding event resulted in a Presidential declaration as a Federal disaster area.

Historically, the Murrieta Creek flood control channel had always been maintained on an annual basis. Debris, vegetation and sedimentation was traditionally removed in an effort to allow the channel to perform its intended function as a flood control facility. But for several years preceding the 1993 disaster, vegetation that had once been removed on an annual basis was allowed to establish itself. As time went on, the vegetation had gotten so dense that when Temecula had finally experienced heavy rainfall after several years of drought, the vegetation had acted as a diversion dam and sediment trap causing a wall of mud and water to be dumped into the commercial and industrial areas of Temecula.

Subsequent to that 1993 disaster, further research has revealed a sequence of events that took place that further explain the reasons as to why the flood control channel had been allowed to become filled with vegetation and sedimentation.

As it turns out, a small bird call the least Bell's vireo, an official endangered species, has habitat just downstream from the Murrieta Creek flood control facility. In an attempt to expand the habitat range of this protected species as well as protection of other wildlife species, several special interest groups had successfully lobbied the various state and Federal regulatory agencies in preventing the issuance of the necessary permits and/or maintenance requirements necessary in allowing the adequate drainage velocities and volumes to occur.

Several documents and letters of correspondence can be referenced to show the concerns raised by the various flood control engineers and specialists prior to the January event. Their concerns centered around the fact that the intended function of the flood

control channel had been severely diminished due to the onset of the established vegetation and sedimentation. Warnings were foretold that an eminent disaster was about to happen. But the political pressures associated with the protection of the downstream habitat of an endangered species obviously outweighed the secondary regard for human life and property.

While I still have a green light, I really appreciate Ms. Chenoweth's comments bringing attention to our county local officials, the liability associated with assuming a role in protection of a Federal Act. And I hope the victims that have suffered the losses due to the protection of some of the species sue the socks off of Riverside County.

And I would like also to tell the Members of Congress here that your Commander in Chief along with his Vice President Al Gore has signed what they call a biodiversity treaty and through a management system called Ecosystem Management, the White House—there is a White House Task Force that has been instigated and from what research we have been able to gather on that, the Endangered Species Act will be dwarfed in comparison to the regulations that we will see on the American way of life in relation to that. And for the record, I would like to submit documentation on that. But be looking out for the words "Biodiversity," "ecosystem management" and "comprehensive watershed management approach," which a pilot program has been implemented here in Riverside County.

Thank you very much.

Mr. POMBO. Thank you. Without objection the additional information will be submitted for the record.

Mr. BELL. Thank you.

Mr. POMBO. Ms. Carolyn Powers.

STATEMENT OF CAROLYN POWERS, TIJUANA RIVER VALLEY TASK FORCE, IMPERIAL BEACH, CALIFORNIA

Ms. POWERS. Hello. My name is Carolyn Powers and I am on the Tijuana River Valley Task Force, the Tia Juana Valley County Water District and represent the city of Imperial Beach at the San Diego Tijuana Border Task Force on wastewater treatment along the border down here.

I feel like I could sit quietly here and if you had enough witnesses in front of me, you would have encountered our problems time after time, other than the fact that we have rather a unique twist, as Congressman Bilbray pointed out, with the sewage down here.

Thank you, Congressman Pombo and the Task Force for allowing me to address you on some of the effects the Endangered Species Act has had on my community.

The Endangered Species Act does need a tune up. It was enacted at a time when this country's environmental needs were being shamefully neglected. We have protected many endangered species from the reality of extinction with this well-intended Act. However, subsequent enforcement and multi-levels of legal interpretation have mutated the original intent to a bureaucratic boondoggle that defies all common sense.

Federal regulatory agencies need to be put on notice to give human health and safety needs priority. If the enforcement of the Act results in health hazards to mankind, then that enforcement should be stayed. We also require the rightful use of land, comfort and safety to the human being.

We have a symptomatic representation of a little of what ails the current interpretation of the Endangered Species Act in our little southwest corner of the United States. The "endangered species", and I put quotation marks around that, most impacting our pursuit of health and safety are the least Bell's vireo, the California least tern, the coastal California gnatcatcher and lastly, the Pacific pocket mouse, the presence of which, despite the best nightly trapping efforts of Fish and Wildlife, remain unsubstantiated. They have not found it in our valley yet. And I think if anyone else does find it in the valley, they probably still will not find it in our valley.

The least Bell's vireo and the California least tern are migratory birds returning to Baja and southern California to nest each year. Both species are plentiful in Baja. This is the outer part of the summer range of the California tern. As with all migratory species, the stronger, genetically superior of the breed claim the center of their range. Somehow, magically, when these slightly less vigorous specimens of their species cross the invisible line that marks the Mexican-U.S. border, they become the California least tern, not the California tern that they are known as in Mexico. That title "least" has cost U.S. taxpayers a lot of money. They have been known to nest on passenger jet runways at Lindberg Field and Fish and Wildlife has forced their costly removal and subsequent mitigation. I do not think they are particularly intelligent either. I would have a hard time relaxing out there.

[Laughter.]

Ms. POWERS. The Tijuana River watershed encompasses 1724 square miles, two-thirds of these lands are located in Mexico. The watershed and all it carries eventually drains into the Tijuana River, flowing across the border into the United States through the Tijuana River Valley, and after entering the Tijuana estuary out to the Pacific Ocean, through the city of San Diego, San Diego County park lands, as Congressman Bilbray mentioned, San Ysidro and Imperial Beach. Tijuana is the fastest growing city in the world. However, the growth of its infrastructure is sadly lacking. Renegade sewage flows from Mexico into the Tijuana River and north to the United States have characterized this sensitive border region with the notoriety of having a sewage-based ecosystem or ecology, as Congressman Bilbray pointed out.

Resultant sewage contamination has closed our beaches for months at a time, causing enormous economic deprivation to coastal cities. Untreated sewage flowing in the usually seasonal Tijuana River 12 months a year has also resulted in the growth of a willow congested riparian habitat, in what had been arid sand dunes and well watered agricultural lands. Under normal conditions, the Tijuana River flows only during winter months, acting as a watershed runoff channel or it carries groundwater seepage after a few years of excess precipitation. With the sewage coming down, it was really 12 months a year and that is what created our riparian habitat.

Fish and Wildlife is now categorizing this agricultural land as disturbed habitat, claiming that if the land had not been farmed, it too would be a riparian habitat due to the daily urban-induced sewage-furnished water and fertilizer flowing through the lands.

This new riparian habitat has attracted the endangered least Bell's vireo, and is now regarded as protected habitat.

We can no longer clear and maintain river channels choked with willow, reeds, cattails. Resultant sediment build up causes river waters, fed by rainwater and sewage and heavy metals contamination, to flow and pond laterally from the central line of the river throughout the every growing thicketed outreaches of the valley.

This superior mosquito breeding habitat has the potential to transmit encephalitis, malaria, hepatitis and life threatening diseases to man and livestock alike. And yet cattail, reed and willow clearance in this environment is denied during the very months that mosquitoes flourish. Why? Because the least Bell's vireo claims the same romantic season as the mosquitoes and disrupting interference is legally restricted between March 15 through September 25. The vireo's six months of x-rated bliss has become a nightmare for San Diego County Health Department vector control, whose only hope for mosquito abatement programs is to send people into this bog with hand carried mosquito fish and U.S. Fish and Wildlife approved insecticides, while said mosquitoes perform quite unfriendly services to their persons.

The progress and cost of the international wastewater treatment plant, with its land and ocean outfalls, has been plagued with extended endangered species studies and reports. Frivolous lawsuits from the Sierra Club as well as some time constraints on the actual scheduling of the construction have again plagued this whole project.

The city of San Diego Metropolitan Wastewater Department just sent me a summary of costs associated with mitigation for the South Bay aproject—and mind you, our big pipe that goes nowhere is the only thing on the ground right now, that and some site preparation where the site is actually going to be—and yet the city of San Diego alone, and that is not counting International Boundary Water Commission, the city has spent over $4,320,000 and identified another $1,235,000 short-term future investiture into solving a problem that should have been solved a long time ago.

Mitigating the loss of an artificially man-induced habitat has added to the taxpayers' burden by requiring mitigation. All lands being disturbed have to be replaced by other acreage, sometimes at the ratio of eight-to-one. The area to be mitigated requires land purchase, engineering, plan approval, grading, plumbing for irrigation, planting with appropriate habitat species, monitoring and watering with imported northern California water, even if it occurs during the middle of a drought like we just had, when neighbors caught using excess water are fined as punishment for wasting this precious commodity, and the sewage just keeps on coming. This blatant example of bureaucratic terrorism needs to be stopped. We should not be penalized by our own agencies for stopping this 60-year old affront to our southern border.

Mr. POMBO. I am going to have to ask you to wrap it up.

Ms. POWERS. OK. Then I will make them real happy and zip right to the end here. I did have a lot more to cover on Border Patrol, and I hope someone else does because they have a lot of financial as well as time constraints.

Mr. POMBO. Your entire statement will be included in the record.

Ms. POWERS. OK, thank you.

This type of systematic abuse, implemented time after time on basic, ageless problems—flooding, pestilence, sewage control and guarding the borders—has got to end. To have federally mandated laws pit agency against agency with the taxpayer picking up the ever increasing tab is insane. If we the people cannot balance this Act, then it should be rewritten with common sense as the preferred criteria.

I would also like to make sure that you know that you have present a representative from Congressman Duncan Hunter, Muriel Watson's testimony is up at your desk.

Mr. POMBO. Thank you.

[The statement of Ms. Powers may be found at end of hearing.]

Mr. POMBO. Ms. Powers, I am sure that no one here supports dumping raw sewage into the river. Do you have any idea why it was not stopped before?

Ms. POWERS. I will send it to you and you can put it on the record, "60 years of sewage"—it has been plagued by broken treaties on the U.S. side, on the Mexican side, by budgets appropriated and spent in other directions. There has been a variety of problems and probably the easiest to explain is that we have been a forgotten corner of the southwestern part of the United States, and it was easy to ignore us until fairly recently. We have had a lot of good Congressional support, by the way, I thank all of you.

Mr. POMBO. I know Congressman Bilbray has talked to me and I am sure everybody else over the past couple of months about his problems and what has gone on down there. But I would like to have that included in the record. So if you could——

Ms. POWERS. I would be glad to send it.

Mr. POMBO. I would like to have that included in the official record.

Ms. POWERS. It is sort of an unofficial Bible when people really ask that same question, we go "glad you asked."

Mr. POMBO. Thank you.

Mr. Harris, why do you believe that you came to a different conclusion than the GAO report that we received, I guess it was about a year ago?

Mr. HARRIS. It is beyond my capability to understand how the GAO's office drew the conclusion that they drew, based on the questions and our response to those questions. I guess—I am not trying to avoid a direct answer here, I just do not understand. Their question specifically put to us was "Could you prove in a court of law that the reason a given home burned down was because the vegetation had been mowed and not disked under." And obviously we cannot prove that, nor can anybody. It is a contributing factor. We made that point repeatedly with the GAO's staff. Their ultimate conclusion was there was no impact because of the velocity of the fire.

If I could give you a comparison, the Replar fire, which occurred during the same series of fires was in the San Gorgonio Pass area near Banning and Beaumont, a comparable wind condition and fire condition, other than the fuel loading on the Replar fire was much higher than it was, so the potential for loss is higher. The other major difference is there is no prohibition from a landowner or the county doing hazardous reduction clearance. We lost four homes there.

The point that Mr. Minnich made about, you know, there are serious conditions during those crisis kinds of fires; that is true, there are a number of contributing factors. But if I can make a very quick example here, if we assume this piece of paper is a structure and we provide a fire break so the direct flame impingement is out here somewhere, you do not have to be a rocket scientist or the fire chief to figure out that that is less potential for loss of this home than if you put that flame right here. And all we are saying is that the law needs to be adjusted to allow that to happen.

Mr. POMBO. It was also brought up in other testimony both on this panel and a previous panel about people living in dangerous areas. How would you respond to—I mean, unfortunately Congressman Lewis had to leave and he is really the one that is the expert on FEMA, but how would that—the actions of the Federal Government and our need to take a real serious look at FEMA and its actions in the future, but how do we deal with that with areas that are already developed and where people already live?

Mr. HARRIS. There may be some clear logic to the concept that the Federal Government might want to invest some of their funds in preparing areas to deal with natural disasters or mitigating them before they occur, as opposed to always putting money in after the disaster occurs.

Mr. POMBO. Mr. Minnich, did you want to respond to that?

Mr. MINNICH. One thing we have to have in mind is that the fire will be inevitable. The question is what kind of fire you are going to get. By trying to preempt the catastrophic burn by prescribed burning, you are going to get a fire that certainly will not be as potentially disastrous and will be much better potential for fire management agencies to protect property and resources. If we looked at the Malibu burn and Laguna Beach, there is a tremendous loss of houses in these areas and many times we would see a fire engine unit going to a house where they knew the flame line was about to reach it, but just for their own protection, the fire was just so intense, they had to walk away from it.

Mr. POMBO. So you would suggest that in these smaller fires where the conditions are ideal to allow a burn—that we allow those to burn?

Mr. MINNICH. You just simply have to plan for it. There is no way we can go back to Mexico, which is an area I am studying right now. But there are probably many pathways, you obviously have to get the fuels away from the structures. If you do not have scattered structures within chaparral, the worst case scenario is the Santa Monica Mountains. It is better to have cohesive urban units that are solid units with no fuel at all.

Mr. POMBO. But the reality is we do have houses out there now.

Mr. MINNICH. Well, and then FEMA comes along and more or less promotes the process in a sense, because every time we get a disaster like this, there is money to go back to these sites and they rebuild a home that is twice as expensive.

Mr. POMBO. Yeah, and that is something that we are all dealing with right now, especially with those of us from California, with the amount of money that has come to California through FEMA lately, we hear on a daily basis about the need to restructure that.

I realize my time has run out, but for my own mind, I do not really think you are saying anything that is that much different than Chief Harris.

Mr. MINNICH. Not at all.

Mr. POMBO. And I just wanted to understand. You do think that it is appropriate to clear vegetation from around occupied structures.

Mr. MINNICH. No problem. Any way that you can do to improve your chances, but it is literally that, it is a chance. In this particular burn the spread rates were really intense and the fire literally went several miles in several hours. And as I recall, the Malibu burn began just before, is that correct?

Mr. HARRIS. After.

Mr. MINNICH. It began after. But there was enough burning around that the resources were stretched out among several burns because they were more or less simultaneously. So it was very difficult.

Mr. POMBO. Thank you very much.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. Minnich, you indicated earlier in your statement that this fire that caused the loss of 1000 homes and dollar value of over a billion dollars, and you were critical of the U.S. Forest Service. Can you elaborate on why that observation? They did not do their job or——

Mr. MINNICH. Sure, they did their job. The question is, it is a new action or management system that has been implemented on brushland ecosystems that never had them before. The policy is so old that people just do not remember what it was like without fire management. I mean, it has been in force for 100 years.

So my research has gone on to very similar ecosystems on the Mexican side, and I asked the question what happens if you do not have management, and the answer is several, there are much smaller burns—there are a lot of burns, it tends to fragment the fuel in the landscape. The fires are smaller because they keep running into other fires that occurred maybe 10 years before. And the fires tend to sample the climate, in the sense that they occur randomly and they occur in ordinary weather. Whereas on this side of the border—and I really think this is the biggest problem of the management—is their efficiency of putting out the tiny fires, 99 percent of them, and then promoting that one percent of events to take off in the worst case weather. It is easy to put a small fire out in good weather. But in rough weather, it is selective. The big ones are going to come out in rough weather.

Mr. FALEOMAVAEGA. I do not want to use the term "the big one", but I just wanted to ask—I do not mean earthquakes.

Mr. MINNICH. Oh, sorry.

Mr. FALEOMAVAEGA. I just wanted to ask for your opinion and your understanding, I am sure you have done an extensive study of this major fire, if there were other Federal agencies that were involved and if, in your opinion, the Federal assistance that was provided in this was adequate or they just did not do their job, period.

Mr. MINNICH. I think the problem is that the resources were stretched because there were multiple burns at the same time. So probably if it were a singular fire at that moment of time, they could have gotten the resources to Sage, more resources than they would otherwise. But this has become a problem with the management in a sense, in that we are getting synchroniety of conflagrations, many at once. It would be much nicer if they always occurred randomly and not overlapping in time and then the resources could be more effectively moved from one place to another.

Mr. FALEOMAVAEGA. I suspect that you probably are one of the few specialists in this area about fires and I just wanted to ask you further if you have given specific recommendations, at least on the Federal level, how to improve the response and the resources that could handle the major fires, as you have indicated in your statement. Has this been done before? I mean, has this been brought to the attention of the Forest Service or at least those of us——

Mr. MINNICH. Certainly. These are questions that have been important in the minds of forestry agencies, all the land management agencies, I would say especially since 1970, which was a year of enormous conflagrations. They were in Malibu, San Diego County, other places. The problem is we are in a bad situation with heavy fuels over huge areas and it is getting ourselves out of it. They are aware of it, there are legal problems—there was a planned burn in the Corona area several years ago that took off and consumed a house or two, and of course this led to I am sure lawsuits, and it also makes a certain timidity in trying to be involved in land management agencies for which they are not going to take risks. And this is a real problem, especially when you have the urban/wildland infrastructure or interface already developed. And of course, the length of interface is increasing with time, as we keep on urbanizing these landscapes.

There is a study by Tom Scott in our department just on a geographic information system, but the urban/wildland interface length in this county right now is like 1500 miles.

Mr. FALEOMAVAEGA. My concern is that certainly this is not the last time that we are going to have major fires and the problem is are we adequately prepared to meet those kinds of situations. And I appreciate your comments on that.

Mr. MINNICH. Once a fire is large—and really all that means is like 50 acres—it is gone. The firefighting efforts are largely to protect structures at that point. They are not trying to really—they cannot really control the destiny of the actual flame fronts at that point in time, especially in severe weather.

Mr. FALEOMAVAEGA. Thank you.

I would like to ask Fire Chief Harris, I still am not clear, as a follow up to the Chairman's question, how the Endangered Species

Act has lessened your ability to put out fires. If you could kind of elaborate on that, I would appreciate it.

Mr. HARRIS. Yes, sir. In 1989, the Fish and Wildlife Service established a regulation for the protection of Stephens kangaroo rat, which in effect said you cannot remove—you cannot build that fire break around homes and improvements.

Mr. FALEOMAVAEGA. While the fire is on?

Mr. HARRIS. No, you cannot go out as a homeowner and provide that protection, you cannot take responsibility to provide some protection to yourself. In effect what we had here, sir, from my view is one level of government being empowered to develop a regulation without consultation with other levels of government, that says, you know, we are overpowering your local regulation, no matter how much logic or reason is there. To me, that is not good government.

And the point I would like to make today is I would like to see that change in the regulation development process.

Mr. FALEOMAVAEGA. My time is up. Thank you, Mr. Chairman.

Mr. POMBO. Thank you. Congresswoman Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Chief Harris, I was fascinated with your testimony. I am sure it hurt you very deeply, as a professional fireman and a chief, to see what happened in terms of the many homes that were lost because of the failure to be able to properly follow state law and disk a 30 foot wide area around homes.

I do want to say, sir, that I have not found in the Endangered Species Act, the Act itself, any place where that law supersedes human safety, and I know that as we look at the Endangered Species Act, that will be again something that will be made so clear that even a Federal judge can understand it.

[Laughter and applause.]

Mrs. CHENOWETH. And I submit also that, you know, you do not need more Federal funds, you just need to be able to be free to do your job and protect your people as you have been trained to do.

Mr. HARRIS. Thank you.

Mrs. CHENOWETH. And I really appreciate firemen, even though I am a grandmother. I still like firemen and appreciate all the risks that your people take. And I thank you very much.

Mr. HARRIS. Thank you.

Mrs. CHENOWETH. Mr. Edwards, is Mystic Lake in your area of jurisdiction?

Ms. EDWARDS. Yes, it is.

Mrs. CHENOWETH. And you have been unable to trench out the natural channel and that is what caused the flooding out there in Mystic Lake?

Ms. EDWARDS. No, Mystic Lake is a natural sink. It is in a geologic area, a major fault goes through and it is a natural sink and flood water transverse down the San Jacinto River and then they pond out in Mystic Lake and the water reaches a certain elevation and then it flows on out through the river down into Lake Elsnore. But Mystic Lake is a natural phenomenon, it is sort of a natural sink.

Mrs. CHENOWETH. Sir, I did see some areas yesterday where they were not allowed to trench out and it was real apparent to me that

that was one of the major problems, and the flooding that has taken the production of about 1000 acres of production here.

Ms. EDWARDS. That is correct. That is upstream of Mystic Lake where that occurred.

Mrs. CHENOWETH. Yeah. But as I understand it, and from what I could see, it would impact the flooding at Mystic Lake.

Ms. EDWARDS. Well, yes, because of the flooding that occurred, it went through major agricultural land and major dairies and we got pollution into Mystic Lake that would not have otherwise been there. There is a levee system that has been around since the 1920's. Our district has maintained it for about 50 years. And from time to time we have to clean the sediment out of the channel to maintain capacity. And we ran into this problem, suddenly we have to get permits to remove this sediment and then they want to place mitigation requirements and we do not have the funds to do that. And we have been sort of debating with the Corps to get permits to clean the channel out. The flood came. We could not even close the breach in the levees until we could get in and clean the sediment out. And in fact, my first request for an emergency permit was denied and after I appealed to the District Engineer and said we have got a pollution problem besides, they finally realized. The permit was just issued two weeks ago.

Mrs. CHENOWETH. You know, you have been operating here in Riverside County under an HCP and it has been widely quoted to me that Section 10(a) of the Endangered Species Act is what you are operating under, but you know, that Act says that the Secretary may permit, under such terms and conditions as he shall prescribe, any taking, if such taking is incidental to and not the purpose of the carrying out of an otherwise lawful activity. Now taking into consideration the Federal flood control act or state flood control act, I would submit for the record, sir, that you are engaged in lawful activity, and the Secretary is violating the public trust by not working with you more cooperatively.

Ms. EDWARDS. I have to say that our position, our district's position—remember, we are first with the Clean Water Act, because most of our permits come from the Corps of Engineers, but they always consult with the Fish and Wildlife and that is where the ESA really starts to come into play—we have contended that the Clean Water Act exempts our facilities, but the Corps of Engineers all the way up to Washington takes exception to that. And therefore we have to get the permits and I have not been excited about wearing horizontal pinstripes and so we try to work within the system to get the permits properly. We just desire not to be fighting the Corps in Federal court.

Mrs. CHENOWETH. I think, sir, that we all need to fight for our people, whether it be in Federal court, in the Congress or in the positions that you are in. We have a responsibility to fight for our people and their property.

[Applause.]

Mrs. CHENOWETH. Let me ask you in your wastewater treatment plant what has happened to your NPDES permit? Is there not a clear violation of your NPDES permit at your wastewater treatment plant? And how can the Secretary reconcile that?

Ms. POWERS. Which Secretary are you speaking of?

Mrs. CHENOWETH. Of Interior, Bruce Babbitt.

Ms. POWERS. Well, we do not know—I do not know that. So much of this goes back to the State Department and the negotiations with the sovereign government of Mexico. People were asking before how can we let Mexico do this to us—well, it falls out of the realm of our local politicians to do much more than stomp tables and put up signs and what-not, because it is the United States government allowing the Mexican government to not only send a barrage of people here to take personal services, et cetera, but also to dump their toilets right into our backyards.

Right now, by the way, as of five o'clock yesterday morning, for 48 hours, the entire sewage flow that Congressman Bilbray had mentioned, was coming down before. They have shut down the Mexican sewage treatment plant for repairs, so what do they do with the sewage? It is going right down the Tijuana River onto the beaches, and it is going to close the beaches right on up through Coronado, which is why President Clinton was unable to take his family swimming last Easter when he was out here—truly. The beaches in Coronado were closed then too. They will be closed right now.

Mrs. CHENOWETH. Thank you so much, Ms. Powers.

I do want to say I used that incident in my campaign and people would not believe me in Idaho until I produced the paperwork. It is unbelievable. Thank you.

Mr. POMBO. Thank you.

Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

Chief Harris, as you know, we have had quite a bit of rain this year and it is pretty green outside, but it is not going to be green for long. I am curious, has the U.S. Fish and Wildlife put in writing their change of regulation in support of disking? Have you got anything from them?

Mr. HARRIS. Yes, sir, we have. They have signed an agreement with the county of Riverside that allows us now to do what we historically have done within 100 feet of any improvement or structure, we can disk.

Mr. CALVERT. Are they now cooperating with you better than they have in the past?

Mr. HARRIS. I think it would be fair to say there has been an improvement in the cooperation level.

Mr. CALVERT. Beyond disking, and I think that Mr. Minnich has a point, there is activity on the land, farming, which in effect has acted as a large fire break, is that not correct?

Mr. HARRIS. True.

Mr. CALVERT. If in fact, the Domenigoni's were allowed to continue to farm their property, would that not have acted as a natural fire break and solved a lot of the problems in that area?

Mr. HARRIS. Anything that we can do that reduces the fuel loading, either through prescribed fires, as Mr. Minnich discussed, or through farming activities or whatever, obviously reduces the intensity of fire.

Mr. CALVERT. And I agree on prescribed burning. In the Laguna Beach fire, the problem in Emerald Canyon, I flew over that area right after the fire and as you know, Mr. Minnich, that fire was

set by an arsonist and the city of Laguna Beach and the county, I understand of Orange County, were unable to do a prescribed burn in that area. It was told to me the primary reason for that is that Emerald Canyon was prime habitat for the gnatcatcher, and that was one of the reasons why they were unable to do prescribed burns within Emerald Canyon, and the fuel load built up over the years and unfortunately, as you mentioned, the fire is inevitable in southern California—I agree to that—that fire was set and because of that fuel load, it was able to leap the Pacific coast highway and destroy several hundred homes along the Pacific coast.

Mr. MINNICH. Well, this represents one of many legal barriers to fire management agencies to get a free hand.

Mr. CALVERT. So would you agree then that ESA in this case, possibly contributed to the fact that we could not do a prescribed burn?

Mr. MINNICH. Not really, because there are many things that contributed to that. I mean, there was 20–30 years of fuel buildup and many other processes ongoing that led up to that, including fire control. And again, the worst part of fire control is the escape of the unmanageable fire in the worst possible weather. If a fire had gotten away in ordinary weather, I do not think we would have had nearly the same disaster. There are many institutions and programs involved that led into this problem.

Mr. CALVERT. Of course, arsonist set fires probably at the worst possible moment in time because they precisely want to create as much damage as possible.

Mr. MINNICH. I certainly do not want to leave you with the impression that people were igniting set fires, it is a trigger to a reaction that fuel had been building up for 30 years and it is the plants that cause fires, it is the vegetation. You can send an arsonist to Death Valley and he is not going to get arrested.

Mr. CALVERT. Back to Chief Harris, if in fact prescribed burnings work, if for instance in the area of Rancho Corello up above Lake Elsnore, where we have had a tremendous amount of fuel load build up over the years, if in fact that is gnatcatcher habitat in the area around that community, could you get a permit to have a prescribed burn?

Mr. HARRIS. We assume we could go through the process to get a permit. To the best of my knowledge, to reference back to your question about the Laguna fire—and I hesitate to speak on behalf of the Orange County fire organization—but part of my understanding of what that problem was when I discussed it with Chief Holmes, was they were not able to get a negative declaration, you know, to move forward with the environmental assessment part of the thing, and they had invested somewhere in the neighborhood of two or three years in the biological study required to get permission to burn. And that was the delay. The intent in the Laguna Canyon area was to have burned that previous to the fire.

Mr. CALVERT. I understand they were trying to have a prescribed fire during the non-mating season of the gnatcatcher, I understand. But the period in which it took to get that permit was too long, the fire in fact started and it was too late.

One other question on flood control, Mr. Edwards. We have a problem in my Congressional district, I understand that we finally

received some funds to improve highway 74 through Lake Elsnore and we can start that work immediately. As you know, much of Lake Elsnore has been cut off to emergency vehicles and access. I understand we cannot start that work until September. What is the reason for that?

Ms. EDWARDS. That is because there is least Bell's vireo habitat on both sides of the highway, not in the highway right-of-way itself, and I was told yesterday that Caltrans is ready to start this work within 30 days, but they were told they have to wait until September when the gnatcatcher migrates south before they can actually go in and do the work to do that highway repair and reconstruction.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

Chief, I do not know if you are aware of the gaping hole in the Endangered Species Act with hand clearing, at least from the Fish and Wildlife Service. I guess that this has been a gaping hole we saw in it, basically that the permit process was not triggered unless equipment was being used. And I only kind of raise this because it shows you that there are deficiencies from the implementation side again and again. And one of the concerns I have is that we look at the product and not just the process of the Endangered Species Act proceedings.

Now Mr. Chairman, I need to clarify to the members of the panel and to the public that Ms. Powers does not come here with a small amount of background from the environmental point of view. I think in all fairness, those of you who were hissing should understand that she has spent over a decade working at the preservation of the estuarian sanctuary, and been a volunteer involved in the monitoring, and in the mounted patrol to stop the violations within the preserve. And I think that her volunteerism, her involvement, is what has led to her frustration with the way the Act works out—not the way the Act was meant to be. And Ms. Powers, I apologize for the hissing. It does not help anybody, but I imagine after spending ten years of trying to protect this area's ecology, how frustrating it is to basically be impugned by people who mean to protect the environment like you do, but may not agree with the words you are saying.

There was a major issue that we ran into in that area with trying to protect the least Bell's vireo, the least tern and the clapper rail from the illegal entry into the United States and the burning by smugglers of the gnatcatcher habitat in the smuggling operations along the border. And there was a proposal for lights to go up in there. Do you want to explain to us the frustration of trying to protect the wildlife preserve and the endangered species therein, and then the agencies that stood in your way of trying to get that protection put up?

Ms. POWERS. Sure. It is multi-pronged and it covers a lot of ground. The fence that was going up, what did we call it, the Tortilla Curtain? The fence along the border. That was studied in Section 7 Consultation from Fish and Wildlife to put up and they fought it because they wanted to see wildlife corridors that went along Goats Canyon, Smugglers Gulch and other places that you

may or may not have read about, the rather colorful names, so that the wildlife could go back and forth through these corridors which, of course, opens the door to the—our vacationing immigrants at the same time and stops the very process of the purpose of the fence, as well as along the beaches. The beaches, we are trying—they have attempted to close them down to Border Patrol agents because that is where the California least tern is nesting at, and yet, the illegals come running all through there, hiding behind the sand dunes. It has been very frustrating.

Also, in the creation of these fences and the lights, they have had to build numerous maintenance and construction roads and they were required to mitigate the loss of the habitat to the construction roads on these sandy mesas mostly by mitigating property nearby. And it just seems an awful shame to have federally mandated agencies such as the Border Patrol have to pay out of their budget money back to mitigate the loss of the land while they obey their mandates.

Mr. BILBRAY. Mr. Chairman, I want to point out too that there was least Bell's vireo habitat issues that were raised and the local management team was trying to take care of it. Because of the system, you ended up having flooding that occurred and caused major erosion that not only wiped out 20 times—20 times—more habitat because there wasn't a management plan implemented. But we also had the drowning of over 41 people in a matter of a couple of weeks. I happened to be an ex-lifeguard and was called in and was actually involved in rescuing many of the people that were trapped in this game that we are playing along the border.

Ms. POWERS. Well, it is 17 this year alone, Brian.

Mr. BILBRAY. And I think that the aggressive program that you have used with cowbird trapping, the $11 million that we put together to purchase the habitat area, is showing that there is a commitment to the environment here. And I would just like to say to those of you who really want the endangered species program to work, this lady is an example of what you need to listen to, because this is a lady who has spent a decade working on endangered species issues. And that is why we need to find this common ground. Because when you have got Carolyn Powers saying there is a problem, that is the type of person you need to be worried about. You do not need to worry about somebody with a bulldozer. You darned well ought to listen to your friends who will tell you what you need to hear. And I appreciate you having the guts to be here today.

Ms. POWERS. Thank you, Brian.

Mr. POMBO. Thank you.

I would like to thank this panel for your testimony and for answering the questions. I appreciate it a great deal, you taking the time to spend with us.

I would like to excuse this panel and call up the third panel. We are not taking a break, we are just switching panels here. Panel number 3—Peter McCrohan, Jerry Eaves, Robert Thornton, Mark Messersmith and Mike Ahrens. Would you please come up and take your place.

[Pause.]

Mr. POMBO. We are ready to start with the third panel. Thank you for joining us here today. We are going to start with Mr. McCrohan.

Mr. MCCROHAN. McCrohan, right.

Mr. POMBO. McCrohan. Excuse me. You are recognized and you may proceed.

STATEMENT OF PETER R. MCCROHAN, GENTRY EXPERIMENTAL FARM, MURRIETA, CALIFORNIA

Mr. MCCROHAN. My name is Peter McCrohan. I live at 37100 Los Alamos Road, Murrieta, California.

Mr. POMBO. Peter, pull that right up.

Mr. MCCROHAN. OK. Is this better? I will start all over.

Mr. POMBO. OK.

Mr. MCCROHAN. That is one line I have down. My name is Peter McCrohan. I live at 37100 Los Alamos Road, Murrieta, California. I am here today to explain how the biodiversity of the southwestern United States is the foundation of my agricultural enterprise, or more simply, how I make a living farming with native plants.

I have managed and operated Gentry Experimental Farm in Murrieta for the last 10 years. The land itself has been in my wife's family since the 1880's. Her great-grandfather homesteaded the land and the family continued to farm as a dryland grain operation. In the 1950's, Dr. Howard Gentry for whom the farm in named, began research on the farm into new crops. His research on jojoba from the Riverside County stands near Aguanga was the impetus for further study and plantings by others in the Southwest. It is now an established oil crop. As a plant explorer for the U.S. Department of Agriculture, Dr. Gentry spent 25 years seeking new sources of germplasm worldwide to benefit farms and industry in the United States. His collections were used to improve existing U.S. crops for disease resistance; to assist research in new industrial oil crops, medicinals and food. New industries have been started by some of his early discoveries.

The farm is now 48 acres, half of which is under cultivation. We have eight acres of white squill, a plant in the lily family from North Africa, three acres of several California native plants which we grow for the cut flower trade. Several acres of other native and Mediterranean plants we cultivate for their new crop potential.

As our name implies, we are constantly experimenting with new crops. We believe that any successful farming operation depends on continual research. In our area, it must also be water efficient. Our crops are winter growing and summer dormant to utilize—excuse me—summer dormant to take advantage of the winter rains. The foundation of our work are native plants that have been previously ignored or under-utilized. During the past 40 years, we have worked with plants which have usefulness as sources of industrial oils, fragrances, culinary herbs, rodenticides, cut flowers and medicinals. Most of these projects are still ongoing either in the experimental stage or as cash crops for the farm.

We market our products through wholesale distributors throughout the United States. There is interest for our products in both Europe and Japan.

The plants we work with come from the wild, uncultivated areas of southern California, Arizona, northwestern Mexico, the Mediterranean regions of north Africa and southern Europe. We collect seeds or germplasm from these natural areas, learn about a plant's cultural requirements, and select individual plants that have the most marketable characteristics. Without the diverse habitat in southern California, Arizona and other parts of the world, we would not have the basic material we need to develop new crops.

Within sight of our farm is Cleveland National Forest and the San Bernardino National Forest. I have collected plants in these areas which we now use on the farm for commercial purposes. Currently, I am harvesting and selling Penstemon spectabalis as a cut flower from seeds I collected locally. I am also growing several of the native sages from the area as a potential fragrance crop. I am cooperating with researchers at U.C. Riverside on a project to introduce chia, Salvia columbarae and Salvia hispanica into cultivation in the U.S. Again, the germplasm came from the local area.

Neighboring growers in my area are using the local flora as a basis for new products in the nursery trade.

There is a major community of researchers and growers in the United States, of which we are a part, that are investigating new crops taken from the bioregions of the U.S. The vigorous work in this area is evident in publications such as Advances in New Crops, papers presented in the Journal of the Society for Economic Botany and the meetings of the American Association of Industrial Crops

The basis for progress in new crop agriculture is the presence of diverse habitat. This is why I am in favor of the Endangered Species Act. Biodiversity is a valuable commodity.

From our farm, I can see hundreds of acres where the native vegetation and farming areas have either been turned into housing tracts or stripped bare of vegetation in anticipation of more building. All of the changes have occurred during the past 10 years with the Endangered Species Act in place. Without the balance between development and habitat protection created by the Act, the change would have been even greater.

Without the ongoing presence of the local biodiversity at a viable and healthy level, we face the loss of an opportunity to collect and learn about new plants and products. The cost of this loss for future farming and future development of the new industries far outweighs the short-term cost for housing development.

I believe we need a government to protect our long-term national interest. The leadership of Congress is necessary to support the integrated system where agriculture and biodiversity complement one another in order to provide crops for medicinal, fibers, foods, forage and ornamentals and industrial oils.

I would like to end by saying our continued farming and research is dependent on the health of the bioregion. Please continue the Endangered Species Act.

Mr. POMBO. Thank you.

Mr. Eaves.

STATEMENT OF JERRY EAVES, FIFTH DISTRICT SUPERVISOR, SAN BERNARDINO COUNTY, SAN BERNARDINO, CALIFORNIA

Mr. EAVES. Thank you, Mr. Chairman.

My name is Jerry Eaves. I am a member of the County Board of Supervisors for San Bernardino County. Through the expanded duties of a county supervisor, I am also a member of the Board of Directors of the San Bernardino Association of Governments and the Inland Valley Development Agency. The public agency positions have provided me with direct experience related to endangered species issues and private/public land conflicts. I would like to take this time to share with you some of those experiences.

First, the Delhi Sands Flower-Loving Fly. On September 22, 1993, the U.S. Fish and Wildlife Service emergency listed the Delhi Sand Flower-Loving Fly. In doing so, the Service significantly impacted the San Bernardino County with a number of projects, with the greatest impact affecting the County Medical Center Replacement Facility.

Though very little is known about the fly, it is currently believed to be restricted to seven sites in southwestern San Bernardino County and northwestern Riverside County. All known colonies occur on private land within a 10-mile radius. Nothing is known about the habits of the fly in the larvae stage. The adult emerges only from late July through mid-September and is thought to have a life span of up to one week.

The listing of the fly created an endangered species land development conflict that resulted in the preparation of a Habitat Preservation Enhancement and Impact Avoidance Plan for the San Bernardino County Medical Center Replacement Facility. The plan was completed in cooperation with U.S. Fish and Wildlife Service in order to obtain the determination from USFWS that the project would not constitute a taking under Section 9 of ESA. This determination meant that the Section 10(a) permit and formal habitat conservation plan would not be required.

San Bernardino County is in the process of replacing the existing medical center with a new facility that would provide better medical care for the citizens of the county in a seismically-safe facility. Work on the project has been in progress for many years with a final site selection occurring in 1990. The County Medical Center Replacement Facility is located in the city of Colton within San Bernardino County on a 78-acre parcel. A study was conducted on the site during the summer of 1993 to determine the presence or absence of the fly. A total of eight sightings, representing seven or eight individuals of both sexes of the fly were made. All sightings were made near the southern boundary of the site. The amount of the existing suitable habitat on the site was estimated to be no more than two acres. The balance of the site proposed for the Medical Center development was not suitable habitat. One note, it was not verified that each sighting of these seven or eight flies were not the same fly.

The County concluded that its original Medical Center layout and design proposal prepared prior to the September 22, 1993, listing would have an adverse impact on the Delhi Sands Fly and would have required incidental take authorization under Section 10(a) of the ESA if the Medical Center design were not modified. Because the Medical Center's financing and construction schedules were well underway at the time the Delhi Sand Fly was listed endangered, the County concluded that the delay associated with ob-

taining a Section 10(a) permit would effectively terminate the project, or a delay or termination of the Medical Center construction would cause a public health crisis in the County.

As a result of the field studies and recommendations of the County staff consultants, a resolution for habitat preservation acceptable to the Wildlife Service was developed for the site. It included avoidance of the entire Delhi Sands area identified as the occupied or suitable habitat by moving the Medical Center complex footprint 250 feet north. The resulting Medical Center footprint leaves a rectangular area 8.35 acres in size, which encompasses the 1.92 acre occupied by the Delhi Fly habitat as a preserve.

Long-term protection of occupied habitat and the preserve area will be assisted by the installation of fencing, vegetative barriers, erosion and run-off control. These measures are designed to prevent human activity and encroachment with the habitat preserve area. Regular policing of the preserved habitat area for litter and other human disturbances will be provided.

The Medical Center itself will have no effect on the dune-forming activity on the site. Erosion and sand migration, if any, of the occupied habitat area will be studied annually to determine whether steps are needed, wind barriers and sand stabilization structures to maintain the integrity of the habitat. This will be part of the ongoing site monitoring.

Now the bad new, the cost of the mitigation—a total of eight individual flies have been sighted on the project during the field surveys. As of June 8, 1994, the total cost for mitigation had reached $3,310,199. A total of 41.8 percent can be attributed to the land cost. The Habitat Preservation Enhancement and Impact Avoidance Plan accounted for $910,000 of the budgeted amount. The cost for redesigned engineering construction and direct cost per fly projected at that time was $413,000 per fly. We also included a three-month delay in the project to get this accomplished.

There are a number of other species. I know that time is not available. I have submitted the full text of my testimony—not just what I have submitted, but today, we are also submitting from one of our other supervisors some testimony about the desert tortoise, which is a story almost as bad as this one.

We have—we are in the process of setting up a habitat conservation plan which will serve the entire valley of San Bernardino County, with the cooperation of the County and 15 cities. We have the memorandum of understanding now. We are going back to each one of the individual cities to get an agreement on that memorandum. After we get the agreement, we are going to take it to Washington and get the Secretary of the Interior, or someone on that level to agree to this memorandum so we do not have the problem that we have had in the past with people talking about black holes.

There are a number of recommended changes in the Endangered Species Act that are also part of my testimony and I would like to have that submitted.

Thank you.

Mr. POMBO. Without objection. Thank you very much.

[The statement of Mr. Eaves may be found at end of hearing.]

Mr. POMBO. Mr. Robert Thornton.

STATEMENT OF ROBERT THORNTON, NOSSAMAN, GUTHNER, KNOX & ELLIOT, IRVINE, CALIFORNIA

Mr. THORNTON. Thank you, Mr. Chairman, and members of the Task Force. My name is Robert Thornton and I have acted as the counsel in the litigation brought by several parties challenging the listing of the California gnatcatcher as a threatened species. As you may know, in June of 1994 the District Court for the District of Columbia vacated the listing of the gnatcatcher on the grounds that the Fish and Wildlife Service had violated the Endangered Species Act and the Administrative Procedure Act because the Service had failed to obtain and make available for public review the data relied on by the Service to support the listing.

We believe that the position taken by the Service in the listing and subsequent to the release of the data raises very significant issues for Congress relative to the listing process. This is, in short, a case of enormous taxonomic gerrymandering, if you will, and I think it is best told by reference to the exhibits or figures that are attached to my paper.

If you look at Figure 1, you will see a dramatic difference in the projected range of the northern subspecies of gnatcatcher. In 1988, Dr. Jonathan Atwood, who is the petitioner for the listing, published a paper identifying a separate species of gnatcatcher in southern California and the Baja distinct from the species of gnatcatchers found commonly in the Southwest and in mainland Mexico. He, at the same time, concluded that there were two subspecies of what became known as Polioptila californica, or the California gnatcatcher, and that the northern subspecies extended, if you look at the figure, from southern California throughout much of Baja, California. And quoting Dr. Atwood, he stated at that time "gnatcatchers were common and widespread throughout the Baja, California peninsula".

In 1990, we had a very different view of the same data set by Dr. Atwood. In 1990, he joined forces with the Natural Resources Defense Council which had opened a law office in Los Angeles and their first item of business was to challenge three long planned transportation facilities in Orange County and a number of other development projects. They petitioned to list the coastal California gnatcatcher as a threatened species, and based that petition on a new paper by Dr. Atwood which dramatically changed his position relative to the number of subspecies and the range of the northern subspecies. And if you look at Figure 1 showing the range that he projected in 1990, he concluded that the range extended from southern California to 30 degrees north latitude in Baja or the northern portion of Baja. This was a very dramatic change in his view, and frankly, the listing fundamentally depended on that change.

If you look at Figure 2, we indicate what the best evidence is regarding the population of gnatcatchers as you proceed south from southern California through the Baja Peninsula. Best estimates are that there are probably three million gnatcatchers from southern California through the tip of Baja. The Fish and Wildlife Service estimates that there are 5000 pairs, in what they regard as the northern subspecies, from southern California to 30 degrees north latitude. So you can see just on the basis of the numbers how dra-

matically the taxonomic flip/flop that Dr. Atwood engaged in in 1990—or 1988 to 1990 dramatically changed the potential for listing.

A number of us representing parties who were affected by the listing, or the proposed listing, began to ask questions about this change and requested access to Dr. Atwood's data and he refused all of those requests claiming that the data was proprietary.

We then made a number of requests to the Fish and Wildlife Service over a lengthy period of time requesting that they ask Dr. Atwood for his data and those requests were also rejected. The Service took the position that they could rely on Dr. Atwood's published paper and did not need to obtain his underlying data.

We then engaged folks with impeccable credentials, the Chairman of the Department of Ornithology of the American Museum of Natural History, a Dr. George Barrowclough, Dr. Lyman McDonald, a nationally known bio-statistician, to look at the two papers. They came to the conclusion that you could not make a determination whether Dr. Atwood was correct in 1988 or 1990 without access to the data. And it was on that basis that we brought the lawsuit and ultimately prevailed and obtain access to the data. There are a number of other aspects of this story I will not go into given the limited time.

We have the data. It has been analyzed by a very eminent group of scientists, Dr. Barrowclough; Dr. Skalski at the University of Washington; Dr. Boyce at the University of Wisconsin; Dr. McDonald, again and Dr. Matt Cronin. All of them have come to the same conclusion, that you cannot justify the taxonomic conclusion that was reached by the Fish and Wildlife Service and Dr. Atwood in 1990.

I will quickly refer you to Figure 3, which gives you one example of that. The taxonomic conclusion in the final analysis largely hinged on the data concerning brightness of breast feathers of the gnatcatchers. And if you look at the top of Figure 3, that is as that data was shown in Dr. Atwood's 1990 paper. The Y-axis at the bottom of the figure is the latitude. What that indicates is a fairly sharp step at 30 degrees for brightness of breast feathers. And it was on the basis of that one characteristic that Dr. Atwood said, ah ha, there is a break at 30 degrees; therefore, the birds north of 30 degrees are different from those birds south of 30 degrees. When we got the actual data and plotted it, which is the lower graph, you will see that a very, very different picture emerges. And that is, there is a significant overlap for the characteristic of brightness of breast feathers throughout the entire length of the population from southern California through the Baja peninsula.

There is much other information in our written testimony which I will not go into.

In conclusion, Mr. Chairman, we think that there are some significant reforms that need to be made to address this particular problem. I have listed three suggestions:

One fairly common sense suggestion is that petitions to list should be rejected at the outset when the petitioner refuses to provide the data that he has available to him.

Secondly, I think that the notice and comment listing process is fundamentally flawed and really has to go or be modified in the

context of listing issues where there is substantial scientific disagreement. There has to be the opportunity to directly confront experts on both sides of the issue in a fair and open hearing.

Thank you very much.

[The statement of Mr. Thornton may be found at end of hearing.]

Mr. POMBO. Thank you.

Mr. Messersmith, you may proceed.

STATEMENT OF MARK MESSERSMITH, VICE PRESIDENT, KRIEGER & STEWART, INC., RIVERSIDE, CALIFORNIA

Mr. MESSERSMITH. Thank you, Mr. Chairman and members of the Task Force. My name is Mark Messersmith with the firm of Krieger & Stewart Engineering Consultants here in Riverside. I would like to share with you a history of a project that we were involved with for one of our clients.

Mr. POMBO. You have to talk right into that thing.

Mr. MESSERSMITH. Do you want me to start over again?

Mr. POMBO. Yeah, go ahead.

Mr. MESSERSMITH. OK. My name is Mark Messersmith with the firm of Krieger & Stewart, Engineering Consultants, here in Riverside. I would like to share with you a history of a project that we have been involved with for one of our clients, the Joshua Basin Water District.

Joshua Basin Water District is a water district located approximately 60 miles easterly of Riverside in San Bernardino County. In 1988 the Joshua Basin Water District prepared contract documents for Assessment District Number 87–1 for construction of water facilities to serve a portion of the District's service area that is presently without water. The proposed facilities included approximately 106 miles of water lines, two water storage reservoirs and two booster pumping stations.

Of the 106 miles of pipelines, approximately 36 miles of pipelines were to be constructed across property under the jurisdiction of the Bureau of Land Management. In July of 1988, the District submitted an application to BLM for right-of-way across the BLM parcels.

In November of 1989, approximately 16 months after the District submitted the right-of-way application, it received a letter from BLM stating that the U.S. Fish and Wildlife Service had designated the desert tortoise as endangered species; therefore, BLM in accordance with Section 7 of the Endangered Species Act had to consult with the Service and obtain its biological opinion on the effect of the proposed project on the desert tortoise. BLM further informed the District that it expected to initiate the consultation with the Service immediately.

Approximately one year later in October of 1990, the Service received BLM's request for formal consultation. Two months later in November of 1990, the Service declined to initiate formal consultation until additional information could be made available. At that time, the District retained both an attorney specializing in the Endangered Species Act and a consulting biologist specializing in the desert tortoise in an effort to expedite the right-of-way and environmental permit process.

In February of 1991, the District met with representatives from BLM, the Service and the California Department of Fish and Game

to review the project and initiate the California Department of Fish and Game 2081 permit; however, the California Department of Fish and Game advised that it would wait for the biological opinion from the Service before issuing a 2081 permit.

In June of 1991, the Service issued a biological opinion for the proposed project. That opinion stated: "It is the opinion of the Service that the proposed project is not likely to jeopardize the continued existence of the desert tortoise. Critical habitat has not been designated for the desert tortoise; therefore, no critical habitat will be affected by the proposed action." Said opinion continued to list 17 mitigation measures, including a requirement that the District purchase 388 acres of compensation land and transfer it to BLM.

After the District obtained a copy of the Service's biological opinion, the District attempted to locate and purchase the compensation land. It also continued to pursue the California Department of Fish and Game 2081 permit.

During an August 1991 meeting between the BLM and the District, the District was advised that BLM would not issue the right-of-way permit until BLM obtained California Department of Fish and Game approval.

Between September 1991 and August 1992, the District provided additional data as requested by BLM and California Department of Fish and Game to obtain the right-of-way and permits. The biggest obstacle was that BLM and California Department of Fish and Game could not agree on which agency would own the compensation land. The District's legal counsel wrote to the BLM state director in August of 1992 stating that the project could not proceed because BLM and California Department of Fish and Game could not agree on who would take title of the compensation land. The letter also stated that the District estimated the delays caused solely by the inability of BLM and Fish and Game to agree on title to compensation land had cost the District over $250,000.

In September of 1992, the District finally obtained the BLM permit for right-of-way. In November of 1992, the District received a copy of the 2081 permit; however, the District did not receive the 2081 permit until they had deposited over $305,000 with the Department as security that the District would purchase the compensation land.

In 1993, due to increased project costs and changing economic conditions, the District could not sell the bonds to finance the project and the project was terminated.

In summary, it required the District over four years to obtain the BLM right-of-way grant and California Department of Fish and Game 2081 permit for the project. The District and its consultants found it extremely frustrating to work with Federal and state agencies to obtain the approvals necessary to construct a project in full compliance with the Endangered Species Act. Conflicts between Federal and state requirements and lack of cooperation among the agencies made the process even more difficult.

Complying with the Endangered Species Act is a time consuming and costly procedure. The District expended over $1 million for design, assessment proceedings, easement acquisition, acquiring BLM right-of-way and obtaining the California Department of Fish and Game 2081 permit. Due to time delays and increased costs, the

District could not proceed with the project once it finally obtained all the necessary approvals. The project area is still without water, even though the District has finally acquired the right-of-way and the permits required under the Endangered Species Act.

Thank you for your time.

Mr. POMBO. Thank you.

Mr. Ahrens, you may begin.

STATEMENT OF MIKE AHRENS, HEMET, CALIFORNIA

Mr. AHRENS. Thank you, Mr. Chairman and members of the Committee for the opportunity to appear before you today.

My name is Mike Ahrens and I live in the city of Hemet here in Riverside County. I am the natural resources consultant for the National Natural Resources Coalition.

The NNRC includes approximately 50,000 citizens from four western states concerned about over-restrictive public land management. Today, I would like to shift the debate here just slightly over to public land management. I think appropriately the Committee has heard a lot of debate about the effects of the ESA on private lands, and we are very supportive of all the reforms that we have heard here today. But left out of this debate thus far, we believe, has been the effect of the ESA on public lands, and we would like to share some ideas about that with you today.

Our members include certainly private property owners, but also members who are just families and want to get out on the land to enjoy various forms of recreation including rock hounding, hunting, fishing, sightseeing, general camping, and ghost town exploration. All of these forms of recreation are dependent on the ability to access public lands. We believe our way of life is under assault, often for a noble cause but just as often in a manner that is ill-conceived and unlikely to achieve the desired results.

In the last year, in the California Desert Bill, hundreds of miles of roads were closed to public access. Mr. Pombo, you are very familiar with that.

Mr. Calvert was a big help with that also.

Now the public access to the region may be further restricted through recovery plans for the desert tortoise, fringed toed lizard and other endangered species.

In addition to being an important way to escape urban living, motorized recreation contributes greatly to the California economy. A recent study conducted by the Institute for Social Research found that in California, 14.2 percent of the households, or 3.5 million people are involved in some form of motorized recreation on a regular basis.

One example of how the ESA has inappropriately impacted motorized recreation is the desert tortoise. It is well known that the desert tortoise population has been decreasing, due primarily to disease, predation and what I am going to call poaching. Others try to call that public access. The numbers of tortoise impacted by recreational vehicles is actually so low that the figures are often lumped together with highway-related so that they would appear relevant.

But let us look at the recovery strategy for the desert tortoise. The plan essentially is to establish preserves, close off the land to

the public. How this will eliminate disease, predation, poaching, of the tortoise, I am not sure. While, in fact, there are those who will go out and pick up tortoise, to take them home, and there are even those that will indiscriminately injure and harass the tortoise, it is highly unlikely that a closed area sign would stop that same person. So again, I call that poaching, not a public access problem. I think we have ways of dealing with poaching and we need to do that.

Recreation is an easy target for recovery strategies because it tends to be such a large, intangible community and because it is often much easier to simply close an area off to the public than to, for example, reduce the exploding populations of ravens, the tortoise's principal predator.

We would like to see the ESA reformed in such a manner that the Fish and Wildlife Service would be required to address the major causes of a species' decline rather than the easiest ones.

One flaw with the ESA is the inadequate analysis before listing. I would like to talk a little bit about this whole concept of best-available science. I think that sounds appropriate on the surface, but what it has become is a blank check for special interest groups who want to restrict access to public lands and stymie development. What we have seen is that by limiting the debate to strictly the best-available science, we have seen species listed with nearly no science. We do not think this can continue.

We strongly believe that there should be a more clearly defined criteria for listing of a species. The criteria must include the impacts of local economies, families, private property holders and public land users and also public land users. Furthermore, because a listing can have a far-reaching impact on private citizens, the ESA should put the burden of scientific analysis on the Service and not on the public.

Another problem with the ESA is that there is no formal recource for our voice, the public, to be heard. The private property owners have every right to be real mad about the mitigation process for their uses of their land, but to some extent that process is better than no process at all. And that is what recreation has had to deal with. When recreation is found to be jeopardizing, or allegedly jeopardizing, the species, we are just out of there and there is no recourse.

In conclusion, the ESA, we feel, is in desperate need of reform. On behalf of the NNRC, we want to recommend the Committee consider the following reforms:

One, protect public access to public lands.

Require a complete scientific analysis including not only why the population has declined, but to what degree each cause of that decline is responsible.

And how listing a species may impact local economies, families, private property owners and public land users.

We think that the recovery plan should be developed before listing. We think recovery plans should be required to focus on the leading causes of decline rather than the easiest causes to restrict or eliminate.

And again, the establishment of some form of mitigation process for public uses on public lands we think needs to be addressed.

Finally, I cannot overstate the importance of leaving public lands open for recreation and how that activity enhances our financial and emotional standards of living.

Thank you very much for your consideration. I would be happy to answer any of your questions.

Oh, Mr. Chairman, also with your permission, I have some testimony I would like to submit for the record from some other individuals.

Mr. POMBO. Yes, absolutely, without objection.

[The statement of Mr. Ahrens may be found at end of hearing.]

Mr. POMBO. Mike, in your testimony, you stated that maybe sometimes—not maybe, but that it should be—that we should look for what the decline in species, what the major cause in the decline in species is, as part of the recovery plan, versus just what is the easiest or politically acceptable way to do that, where you affect the people.

I guess the interesting thing about that is that in Vancouver on Monday, we heard that exact same thing from a number of the members of the environmental groups up there, that they felt that in that area the exact thing was happening, to the benefit of others. I think that as we strive to reform the ESA and put some common sense into what the actions are, maybe by removing politics from the science side of it, maybe we can accomplish that.

Mr. AHRENS. Right. I am actually glad to hear that. I think that some of that common ground that we talked about that we actually probably have, can often become polarized and do not recognize it. We think, without a doubt, the biggest flaw in this plan is the lack of science, real science, that is involved in listings and the recovery strategies for different species.

Mr. POMBO. Yeah. A lot of times, unfortunately, in this debate people have responded negatively to someone they may disagree with versus actually listening, and maybe there are common grounds that we can reach here to find some solutions. I appreciate that.

Mr. McCrohan.

[Verbal comment from the audience.]

Mr. POMBO. I am sorry.

Your story is very interesting and I think that as a person who is fourth generation on my farm, I can relate to how your family feels about what you have in your ranch. It is interesting what you have gotten into, the different plants and the new markets that you have tried to open up. And I think that that is really one of our solutions to a lot of the problems that we have with the ESA, is that people like you ought to be encouraged to go out and open new markets and find uses for native plants that grew here naturally. I think that that is a big part of the solution, but there is one thing that I want to ask you about, and it is something that has come up at a number of our hearings.

It was mentioned earlier in testimony about the woolly star cactus type plant. What would happen if in the mitigation—I think one of the gentlemen earlier was from an irrigation district and they talked about them being stopped from development because a couple of these plants were there. What would happen if the mitigation money that they are putting up in their attempt, or the

mitigation money that any of these people have put up, any of the developers have put up—if we used that money and went to you and said develop as many of these plants as you possibly can with this money and replant them in natural settings throughout their natural habitat. What would be wrong with doing that?

Mr. MCCROHAN. I have two replies to that. First of all—and I do not mean to be flippant here—you would not offer that money.

Secondly—and we could even take it one step farther—you are referring to—I cannot remember all of the specialized species we were talking about here today, but let us get back to the flower-loving fly. Could we use the same analogy?

Mr. POMBO. Yes.

Mr. MCCROHAN. OK. Just prior to Dr. Gentry's death, he received a letter from an agronomist at I believe it was Fort Collins at the germplasm bank that they have there—and this could go back to Idaho—I understand you are from Idaho.

Mrs. CHENOWETH. Yes.

Mr. MCCROHAN. Yes. They grow a lot of beans in Idaho, they grow seed beans. They are the most valuable beans. There was a problem with a virus in the beans. And this researcher went back to the germplasm and tested thousands of beans. He came up with one bean that was resistant to that virus. And Dr. Gentry had collected that bean in the 1950's and it remained at the germplasm bank all those years and that was the first time it was used.

That area where he collected that bean is now under a dam, that valley is no longer there, nor is that bean there. The amount of money that was saved by that virus that was previously attacking beans was astronomical, far greater than any amount of pesticide—in fact, it even helped the environment.

So I submit to you that these individual species have their value, we may not have found out what it is yet.

Mr. POMBO. And I do not think we disagree. I do not think what I am saying to you is in disagreement. What I am trying to say is how can I use your talents and your abilities so that we can keep the woolly star from becoming extinct. How can I use your talents——

Mr. MCCROHAN. OK, I understand your question now.

Mr. POMBO. I do not think you are being flippant when you say that I would not offer you the money, because actually that is one of the options that we have in front of us in reforming ESA, is what we do with the money. There are billions of dollars that go into mitigation throughout this country every year and I, quite frankly, do not feel like it is going to the best use.

Mr. MCCROHAN. Right, OK. I think one thing we could do that could help both farmers and individuals who are trying to preserve the ESA would be to develop a program that does research on crops, be they new crops or established crops, to where these crops have a minimum amount of impact on endangered species. For instance you could have crops—if you were to do some research on crops that were more arid adapted, that could be very helpful. There was a farmer I believe at your last hearing, who was complaining about not having enough water, some of his water was cut off and therefore he could not grow, I believe it was cotton, I read a testimony. Well, we should be doing research so that this farmer

is not displaced, this farmer knows that the Federal Government is taking funds to find ways to replace cotton as a crop and have a crop that still brings in a profit for this farmer. And that would just be some type of research program that could be set up.

Mr. POMBO. And I think that if we put aside all the rhetoric for a few minutes and actually talk about what is going on and what you are suggesting, I think we have got some room to go here. I think that there is some common ground that we can work on, because the problem is, the way ESA is working right now is reactionary, is totally reactionary. And we need to be much more proactive in dealing with endangered plants and animals and maintain what you describe as biodiversity.

I think we can do that, but, you know, if anybody digs in their heels and says we are not going to touch it, we are not going to touch it, we will never get there. And we need to open up these discussions so that testimony like yours can come out, so that we can say OK, how can we develop new crops, new products, how can we use your talent so that the wooly star never does become extinct? How can we do that without digging in our heels and saying we are not going to touch it, we are not going to touch it. That is what is happening.

You know, we have tried to listen to some of these ideas that are coming out, and quite frankly what you are saying is not that much different than what the cotton farmer said.

Mr. MCCROHAN. Right.

Mr. POMBO. It is not that much different. The only difference is in the middle of a water contract, he got his water taken away. The bank took away his ranch and he was broke. And his fourth generation farm that had been in his family for all those years—he was the guy that lost it. And I know that you being on the ranch and knowing what that feels like, it does not feel very good to be the generation that lost the ranch.

Mr. MCCROHAN. No.

Mr. POMBO. And we need to figure out a way so that that does not happen again, so that we can stop that.

Unfortunately my time is gone and I know I went over and I apologize to the Committee.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I think since we started the hearing this morning from the other two panels as well as this one before us, the phrase that always seems to stick in my mind, and something that I want to challenge the members of the panel as well as the members of the Committee, is always where do we find a balance, a sense of balance, or striking that balance between developing an ecosystem—and I will be frank with you, I am not an expert in saying that we have the answer, that is why we are here.

There is some concern, and I want to compliment your testimony, Mr. McCrohan, I am familiar with what you said about this, the value of plants. Who would ever say that polio, the cure for polio came from a plant. If I was wrong about that, correct me. There are currently in my own district approximately 200 herbal plants that are being studied right now by the Cancer Research Institute for possibility that this could be a cure. I think all of us here, mem-

bers of the Committee, are very much favorable to the very thing that you have shared with us, about the value of plants and species. At the same time, there is also concern about what happens to that little farmer out there that just does not get any sense of justice from the bureaucrats in Washington. We have to express that concern as well.

I want to ask Mr. Thornton about the questions you raised about the gnatcatchers. I want to compliment your very comprehensive brief on the issue, and certainly you raise some very interesting questions about Dr. Atwood's findings on the gnatcatcher. In fairness to Dr. Atwood—I am not defending him but I wish he were here to respond to the questions that you raised on this.

But be that as it may, you eventually were able to obtain data from Dr. Atwood's research. And I wanted to ask you, what was the Fish and Wildlife Service's response to these findings that you discovered about Dr. Atwood's research?

Mr. THORNTON. The response was to relist the gnatcatcher. As I indicated in my testimony in eight pages of FEDERAL REGISTER text, they largely ignored the detailed technical comments that were submitted. Dr. Barrowclough's name was not mentioned once in the Fish and Wildlife Service response, so to a great extent the comments were ignored, which led to my recommendation that there has to be a more open process that frankly involves a more rigorous procedure for challenging the experts on both sides. And you know, frankly, I think it is fair that the experts on both sides be subject to the same scrutiny.

Mr. FALEOMAVAEGA. I think Mr. Eaves and Mr. Messersmith also make emphasis of that fact, that perhaps from the bureaucracy that we have in Washington, we need a little more scientific and thorough examination of the species before their listings. Am I correct in hearing this from both of you, gentlemen? Are you suggesting that there just is not enough available scientific data to justify the listings that these scientists are——

Mr. EAVES. We feel that way, but we also feel that there needs to be blind review. That the peer pressure in the scientific community at times puts undue pressure on various scientists. If you do a blind review where there is no fear of any kind of peer pressure, then you get a lot better results and you have a true scientific evaluation of both sides.

Mr. FALEOMAVAEGA. I am having this very serious problem with the recognition of American Indian tribes to be federally recognized. You would not believe the criterias and the kinds of things that these poor tribes have to go through, after going through the procedure that the BIA, the Bureau of Indian Affairs, has devised for the past 10 years. So I can appreciate where you are coming from on that line.

Mr. Ahrens, I am very interested about your motorized recreation and how this translates into the economy of the state. I was wanting to know if you feel that ESA is not doing justice to your organization's needs, am I hearing this correctly? I mean, what seems to be the problem?

Mr. AHRENS. Absolutely, you are right. Primarily again, the problem is a lack of science. Oftentimes, and I cite several species in my written testimony that probably have some real problems, there

is not a lot of science, but there probably are some problems. One that comes to mind is the peninsula big-horned sheep where the sheep's population is isolated, and that is a problem because we built freeways and we built communities. It has also got a problem with predation. We decided in the state to protect the mountain lion and now 22 percent of the takes on big-horn sheep are because of mountain lions.

And what we are talking about now in a habitat conservation plan is again restricting public access. How that will keep mountain lions from eating sheep or solve this gene pool problem, I do not understand that, and it seems very unreasonable.

Mr. FALEOMAVAEGA. I wanted to ask the members of the panel how would we address the burden of saying OK, we do not have enough scientific studies, we do not have this, we cannot do that. And if we are going to cut the budget that is going to limit the resources available for these agencies to do their—to fulfill their responsibilities by law. How do we make an equation so that we balance that concern, to say that we cannot do this and we do not have the resources, but then what if in fact the Congress cuts the resources from these agencies to do their work?

Mr. AHRENS. Sir, I would say that in my mind anyway, you ask a difficult question and I am frankly glad I do not have to make that decision. But I would also say that in my mind what that tells me is just in my own budget, I do the things that really have to be done, not the things that feel good to be done. And from our perspective anyway, if you want to help big-horn sheep or desert tortoise, you go after those key causes of the decline, where your money is probably the best spent, rather than trying to lock up private property or restrict public access, which is easy and feels good, but it does not help the species.

Mr. FALEOMAVAEGA. My time is up, Mr. Chairman, thank you.

Mr. POMBO. Thank you.

Ms. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Dr. Thornton, I would like to ask you—by the way, your testimony was extremely interesting and I know that the law requires that we make these listings based on gene pool science. Based on Figure 3 and Figure 4 of Dr. Atwood's work, it does not appear that gene pools were used in the listing of this species. I mean how can we equate the color of breast feathers to gene pools?

Mr. THORNTON. Well, that is an excellent point, and one of the suggestions that we made and our experts made was that there had to be some genetic testing conducted in this instance, and for reasons that we cannot understand, the Service resisted doing that, although they have done that in other instances. Because attempting to define whether there is a distinct genetic stock on the basis of very indirect inferential references from the coloration of breast feathers, frankly is quite a subjective business and one of the underlying problems here.

Mrs. CHENOWETH. I would personally be interested in working with you further on this and getting some of the data on that for our further work.

Mr. THORNTON. Be happy to do so.

Mrs. CHENOWETH. Thank you very much.

Mr. Eaves, your testimony is absolutely incredible. How in the world can they measure—I mean, I like flowers too, but I am not a Delhi Sands flower-loving fly. How in the world can they possibly measure the population of these flies?

Mr. EAVES. They have about six people out on the sand dunes looking for them.

Mrs. CHENOWETH. And that is their way of collecting the science?

Mr. EAVES. Yes.

Mrs. CHENOWETH. That is their way of counting the flies?

Mr. EAVES. Yes.

[Laughter.]

Mr. EAVES. We are paying about $90,000 a year for them to go out and spend time, a number of observers, spending time on this 1.92 acres that we have set aside, and this past year, I think they did sight—they had 20 sightings, but again, they cannot—I mean you cannot grab a fly and put a tag around it or put a homing device on it——

Mrs. CHENOWETH. Or a radio tracking collar.

Mr. EAVES. Right. So they had 20 sightings, but that was over a period of like the six hours that they were there every day for like seven days. But they do not know whether that was—they did sight four or five at one time, so I mean there was a minimum of four or five, but it could have been those four or five that they sighted on a number of occasions.

Mrs. CHENOWETH. Have they done gene pool analysis on these flies?

Mr. EAVES. No, we do not think they have. We do not think there is any scientific data on the larvae or the pupae or whatever they are. They are burrowed in the sand for 11 months out of the year and it is very difficult for them to do—and we are concerned about the credibility of the study that was done.

Mrs. CHENOWETH. Well, you certainly have a heavy responsibility, because when it does come to public health crisis versus a fly, I vote for you and making sure that we have the facilities for a public health crisis.

[Applause.]

Mr. EAVES. Part of the response to this though, and some of what I have heard, we have started trying to set up a multi-species habitat conservation plan, and we are talking about taking all of the land that is existing, the flood control land, the land that has already been dedicated for natural parks and Edison easements, all the easements that we have got, and try to—our proposal is 41 species—that is animal species—and 32 plant species, to protect them, to have an ongoing plan. The problem is it is probably going to cost us about $1.8 million to do the study, another million to set the plan up and about probably $15 million to $20 million to purchase enough land to do this.

Mrs. CHENOWETH. Mr. Eaves, I really appreciate your forward thinking concept, but again, I would urge you to go slow on this. I would urge you——

Mr. EAVES. We are going real slow.

Mrs. CHENOWETH [continuing]. to take a look at the Supreme Court case which emerged out of the Claims Court, by the way, entitled Dolan v. The City of Tigart, because it is really the local

units of government with regards to the impact that their decisions make on private property that have to pay. And that is the most recent Supreme Court decision with regards to the taking of property.

I do want to ask Mr. Messersmith, you indicated that you had received a notice on November 16, 16 months after the district submitted the right-of-way application to the BLM to Fish and Wildlife Service, and that they had designated a wild desert tortoise population in accordance with Section 7 of the Endangered Species Act. Did they show you any science or any work that they had done to make sure that they had done the proper work before not allowing you to proceed with what the public trust asks you to do?

Mr. MESSERSMITH. No, we just received a copy of a letter from BLM stating the fact.

Mrs. CHENOWETH. Let me read to you a section of the Endangered Species Act, it is out of Section 7, it is under (c)(1), which says "To facilitate compliance with this Act, each agency, with respect to any action of the agency for which no contract for construction has been entered into and for which no construction has begun, on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action." Now listen, "If the Secretary advises..." and this is their words "...based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action." And your project was stopped not by a biological assessment, but by a simple letter, right?

Mr. MESSERSMITH. Well, the project really was not stopped by the simple letter, but the intent of the letter, in order to obtain the biological opinion from the Service and the 2081 permit from the California Department of Fish and Game, because of the time involved with obtaining those permits, that is what stopped the project.

Mrs. CHENOWETH. Well, I think that it is important for all local units of government to make sure that the necessary assessments and scientific data has been accumulated, to make sure you do not assume the liability.

And you know, I just want to thank all of you and the people of Riverside County. It was the Secretary of Interior who at one time said "Private property is that antiquated Anglo-Saxon concept that has passed its time." And that we must identify our enemies and drive them into oblivion. And little did I believe——

[Verbal expression from the audience.]

Mrs. CHENOWETH. Thank you very much.

Mr. POMBO. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. Thornton, in your testimony, you go into detail with the frustrating process that you had to obtain the data that Dr. Atwood used to come to his conclusion regarding the gnatcatcher. Through your experience, do we find that same type of activity getting data that is being used to make a case for an endangered species being proprietary and that that data is not public information?

Mr. THORNTON. Well, I think frankly the position that Dr. Atwood took was outrageous and obviously the Court found that it was unlawful. My view of that is when someone enters the regulatory arena, the data that they are relying on has to be made available to the public. If Dr. Atwood wanted to remain an academic researcher and to keep his data proprietary, he certainly had the right to do that in my view. But when he entered the regulatory arena by petitioning the listing, then it seems to me that his data is fair game.

I think the underlying message of this story is that you cannot have these decisions made simply on the basis of published articles. He published two articles; they were peer reviewed articles; they came to diametrically opposite conclusions. None of the so-called peer reviewers of his articles identified the fundamental underlying problems that we have subsequently discovered. And that says to me that you have to have access to the data. And frankly, this is not a novel concept. I mean, the principle of law that we relied on in our litigation frankly goes back 15–20 years under the Administrative Procedures Act. It requires Federal agencies to make the underlying information available to the public.

Mr. CALVERT. Then would you say this was an isolated incident or are there other cases, information, data that has been obtained to make a case for an endangered species that has been hidden from public view?

Mr. THORNTON. Well, this is certainly the most egregious example that I am aware of. I think it says that in all instances you really have to have that underlying data that is made available for scrutiny one way or the other.

Mr. CALVERT. I think that is excellent advice and I would think as we move toward changing the Endangered Species Act that data used by either side, either pro or con, that information in its entirety should be able to be reviewed by the public and by other members of the science community. So I appreciate your testimony.

Mr. McCrohan, I found your testimony interesting and I agree that there are plant species and animal species that need to be preserved. Do you realize that under the Act as it is written today, that if you collect species from the national forests and subsequently one of those species becomes listed, you are not able to obtain that species any longer?

Mr. MCCROHAN. Right.

Mr. CALVERT. Do you not believe that if in fact a species becomes listed as endangered, you should be able to take that species and collect it in a reasonable manner to propagate that species or to encourage its continued existence?

Mr. MCCROHAN. I think anything like that should be done under some scientific control through a university or through U.S. Department of Agriculture. I do not think a private citizen should have the right to go out there and do that.

Mr. CALVERT. But under those situations, you believe that it should be able to be done?

Mr. MCCROHAN. Yes.

Mr. CALVERT. Through a controlled situation, either the University of California, for instance, if that is chosen, or others, that should be an allowed practice.

Mr. MCCROHAN. Well, there certainly is going to be a difference between populations if you are going to have eight flies to collect; no, you probably should not. If you have 8000 of another species—I think the question is a little too broad for a competent answer.

Mr. CALVERT. Now as you know, there are many endangered species.

Mr. MCCROHAN. Yes, I do.

Mr. CALVERT. And as you go out collecting those species, does it concern you that sometimes you might make a mistake and by accident—not anything on purpose—collect a species that has been listed?

Mr. MCCROHAN. I know the species I am looking for and I know which ones in the area are endangered when I go into the area.

Mr. CALVERT. So you are confident when you do that, that you will absolutely make no mistakes at all?

Mr. MCCROHAN. I am never that confident about anything, I will admit that.

Mr. CALVERT. Thank you very much.

Thank you, Mr. Chairman. And I want to also thank all the witnesses and everyone who attended this hearing today and I want to thank the Chairman for coming to Riverside and I want to thank Don Young, our Resources Chairman, for allowing us to have these Task Force hearings. And again, welcome all to Riverside, and thank you very much.

Mr. POMBO. Thank you.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I neglected to express earlier also my appreciation for the good people of Riverside allowing me the opportunity to visit your good city and the good citizens of this county, and also meeting with Congressman Calvert.

I would like to ask Mr. Chairman's indulgence—and I realize that because of the factor of time situation that perhaps there were others that may have wanted to testify before the Task Force, that if the record could be kept open and allow other members of the Community to submit statements to be made part of the record. And certainly allow others so that we will have a thoroughly comprehensive record of the Task Force as we set about our task in trying to sift through the tremendous amount of testimony and the kind of constructive, I believe, suggestions that have been offered by several panelists. And I certainly appreciate their time and their effort. If the Chairman would not object, I would like to offer that as a motion to the Task Force on behalf of our side of the aisle, since I am the only one here, so that we could make that allowance for the other members of the community here to submit those statements.

Mr. POMBO. Without objection, and I will point out that in every other hearing we have had, as in this hearing, the official record of this hearing will remain open for 14 days. We have received literally hundreds of requests for people to testify and time does not allow us to take oral testimony from everyone. But the Task Force official record will be held open for 14 days. If you have testimony that you would like to present, ideas, solutions, anything that we can put of value into this debate, I would not only welcome but encourage you to submit that testimony for the record. It will be

treated exactly the same way as the testimony that was given orally, it will be included in the official record of the Task Force and will be included in the official record.

I would also like to point out that you can mail in testimony to 1320 Longworth, in Washington, D.C. and the zip code is 20515. So if you did not have the opportunity to bring testimony with you today or if there are things that you heard that you want to make comment on or anything that pertains to the Endangered Species Act, you can mail in the testimony to 1320 Longworth, Washington, D. C. 20515.

Mr. FALEOMAVAEGA. If the Chairman would yield further.

Mr. POMBO. Yes.

Mr. FALEOMAVAEGA. I believe perhaps the members of the Committee are not aware that the ranking Democrat on the Task Force is Congressman Jerry Studds from Massachusetts and that the ranking Majority member of the Democratic side of the Committee is Congressman George Miller. So if there are any problems in submitting the statements directly to the Task Force, you can certainly submit your statements directly to these gentlemen, and I would like to offer that as an additional suggestion. Thank you, Mr. Chairman.

Mr. POMBO. Absolutely.

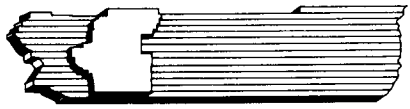
In closing, I would like to thank all of you for being here today. A special thanks to all of the people who were here to testify, for the work that you put into your testimony. I appreciate it a great deal.

I would like to say that one of the reporters before this all started asked me if we were concerned about the number of people that showed up today. And I think that Congressman Metcalf from Washington probably said it the best on Monday when we were asked the same question in Vancouver. He said, "I have spent my entire political career trying to get people interested in what was going on and now that they turn out, I am not about to complain about it." I think that this is a great sign that we are on our way toward a very profitable debate over what changes need to be made and what needs to be preserved and what we can do in trying to make an Endangered Species Act that is going to be supported by the people, that we can really work with, that will work in the real world.

I appreciate a great deal the hospitality of the people of Riverside, of our host, Congressman Ken Calvert, and to the other members of the Task Force for being here with me today.

Thank you very much. The meeting is adjourned.

[Whereupon, at 2:17 p.m., the Task Force was adjourned; and the following was submitted for the record:]



3rd District

KAY S. CENICEROS
3rd District Supervisor
County of Riverside

Jessie Myers, Administrative Assistant
Margo Hamilton, Administrative Assistant
Fran Grey, Executive Secretary
Valerie Chase, Executive Secretary
Rebecca Matteson, Executive Secretary

TESTIMONY BEFORE THE

HOUSE SUBCOMMITTEE ON THE ENDANGERED SPECIES ACT

April 26, 1995
By Supervisor Kay Ceniceros
Riverside County Board of Supervisors

Mr. Chairman, we in Riverside County appreciate the courtesy of your visit and especially extend our thanks to you and our own Congressman Ken Calvert.

When the Stephens' Kangaroo Rat was listed in 1988 it followed many months of expectation and a previous proposed listing of the Coachella Fringed Toed Lizard in our desert area. In the desert situation private property owners, both ranchers and developers, gave leadership to a partnership that led to adoption of a planned habitat that would avoid the lizard's listing as endangered.

As the potential listing of the K-rat was pending, the County was approached to try a similar mechanism to avoid prohibitions on development of private land and public infrastructure. We were informed by the Fish and Wildlife Service that a building permit issued by the County or its cities would make us party to any incidental take attendant to the development process itself. This would effectively create a moratorium over much of Western Riverside County.

A task force that had been preparing for the listing became a Steering Committee to deal with the listing. It was made up of the Building Industry Association, the Sierra Club, individual developers and county representatives. The concept was to identify areas that were inhabited or that had historically high levels of habitation as study areas and ultimately identify a maximum of 80% of the land necessary to sustain the species. If such a plan was accepted as adequate mitigation by the Department of Interior, most lands would be freed from constraint.

It was envisioned that those lands that were potential, but unoccupied, habitat would contribute financially to a mitigation fund so that more appropriate land could be acquired for the long-term preserves. A number of meetings were held on this approach with biologists drawing maps, largely based on the field research of Dr. Michael O'Farrell as well as on additional field work as study areas were refined. Biologists working for developers, as well as Fish and Wildlife Service, participated in this mapping.

A Habitat Conservation Agency was established and cities and counties affected by the listing participate in decisions of the agency. The County proposed, and the HCA concurred, that all land would be purchased through negotiation with NO condemnation and, further, that to the greatest extent possible lands would be designated as preserves that were already in public ownership.

The County's goals in participating were:

- relieve the property owner from the burden on individual negotiations and the risk of sanctions if there was a "take".

- create an orderly process that would protect property values and relieve individual properties as quickly as possible.
- comply with the Federal law in a way that would provide other benefits to the people.

- allow school districts, flood control and other public works agencies to provide needed infrastructure so that economic growth could continue.

The HCA has operated independently of the cities and the County, holding its own hearings and supported with a tiny staff. Its goal was to adopt the plan and see most lands released as the Endangered Species Act's objectives were met. As soon as adequate lands were purchased or, in the case of public lands, dedicated to species preservation, all private lands would be freed from constraint.

The recession that hit California hard since 1990 has slowed the development process and the collection of fees adequate to purchase the needed acreage even while reducing the pressure on the species. We have now submitted a plan that is being analyzed in accordance with NEPA and the public comment process. It is our hope that all property owners will have been relieved of the burdens of being in a study area by the end of 1995.

We have been frustrated with the lack of flexibility shown by the Fish and Wildlife and State Fish and Game Departments and the massive delays in reviews of individual development proposals. We are convinced that this has cost the public both in dollars and in public safety. We believe that we are experiencing substantial improvements in our working relationship currently. We strongly believe that Statutes that have been deemed of "national interest" should be financially supported by the Federal Government and not disproportionately imposed on one region and one generation.

Thank you for the opportunity to share this information with you. Although I have not served on the task force or on the HCA, this program has had its greatest effect on my district and its farmers and other property owners. I appreciate you interest.

Submitted by Scott E. Woodward

APPENDIX A

NEEDED ESA REFORMS:

- **Compensation to landowners for regulatory taking of private property.**

  If private property is devalued as a result of federal regulations regarding endangered species, the landowner should receive compensation.

  "We currently understand that the U.S. House of Representatives passed H.R. 925 on March 3rd which provides for compensation as a result of federal regulations. But we need your help in making H.R. 925 become the law."

- **Consideration of Economic Impacts.**

  The ESA must be amended to require the federal government to thoroughly take into account the socioeconomic impacts of listings decisions and critical habitat designations. For too long, regulatory decisions have been made without any thought to lost jobs, reduced property value, lost tax revenue and other impacts. Any ESA reauthorization legislation must include provisions which would require economic analysis, which would ensure that species protection and human needs are balanced.

- **The Listing Process.**

  US Fish & Wildlife Service routinely relies on insufficient and questionable criteria when listing species. Congress should ensure that the Act's protections are extended only to those species which are truly in danger of extinction, and the only means of accurately doing that is to improve the scientific data upon which listing decisions are made. Field testing should be required to verify the data used in the listing process. Congress should also direct US Fish & Wildlife Service to peer review the data used in the listing process. Poor and inadequate science allows non-endangered species to be listed as endangered.

  In California, US Fish & Wildlife Service was permitted to list the California gnatcatcher without even receiving the raw biological data to review and determine if it was accurate and credible.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
TASK FORCE ON ENDANGERED SPECIES ACT
HABITAT CONSERVATION PLANNING

TESTIMONY BY MICHAEL MCLAUGHLIN

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

April 26, 1995

Good morning, I am Mike McLaughlin, Director of Land Use and Public Facilities Planning for the San Diego Association of Governments (SANDAG).

I will do three things during my remarks:

- Briefly describe the San Diego region, emphasizing its habitat characteristics;

- Summarize the habitat conservation planning activities in the region; and

- Identify changes in the Endangered Species Act that would improve the future of regional conservation planning.

1. First, I want to take a minute to set the context. Although you all have some familiarity with the region, some basics need to be stressed.

San Diego is the place south of southern California, supporting a natural and diverse biological environment. We are defined by our open space with Marine Base Camp Pendleton to the north, the mountains and desert to the east and the ocean to the west. The southern edge is marked by the international boundary.

Of our 4,200 square miles, more than 90% is open space, agricultural, parks, water, or undeveloped. In other words, we have a lot of open space. A vast majority of our 2.8 million people and 1.0 million housing units are concentrated in the western one-third region in the coastal plains. The eastern two-thirds and far north county areas are largely undeveloped and primarily owned by state and local government.

Open space and habitat are integrally linked to our economic well being. Businesses and industries come to San Diego to enjoy our quality of life. The dry, mediterranean climate and open space character make it an outdoor "user friendly" environment. I would be remiss if I did not emphasize that our wonderful shoreline and beaches are also a part of the open space system that's important to the economy, especially tourism.

Under this first part, I want to focus on two needs that are pressuring the San Diego region:

A. **The first is a need to protect a rapidly dwindling supply of natural resources**. The San Diego region has a vast array of habitats that you literally can experience in less than an hour's driving time: from lagoons and estuaries along the shoreline, to coastal plains and mesas along the coastal plains, to the foothills and mountains, to the deserts in the far eastern county areas. It's no wonder, but it always seems to come as a surprise to a lot of people, that with all these micro-climates and habitats, San Diego County has more rare, threatened, and endangered species than any other county in the continental United States.

B. **The second is a need to ensure our economic well-being**. SANDAG has projected that the San Diego region will grow by over a million people and a half million houses and jobs in the next 20 years. This growth will consume over 200,000 acres of open

space, much of it on our urban fringes where our valuable habitat is most abundant.

2. The second part of my testimony will center on the question of whether these two needs are irreconcilable. We in the San Diego region don't think so! The way we have chosen to resolve these issues is through participation and cooperation in large scale, multiple habitat/species conservation planning. I will outline those efforts in the San Diego region.

The San Diego region is covered by three such habitat conservation plans: (1) the southern county **Multiple Species Conservation Program - MSCP**; (2) the northern county **Multiple Habitat Conservation Program - MHCP**; and (3) the east county **Multiple Habitat Conservation and Open Space Program - MHCOS**.

Although a substantial portion of funding for preparation of these plans has been generated at the local level, especially the City of San Diego, we have, through the support of Congressman Packard, received

assistance from the federal government during the planning stage. While each program reflects its own unique and special conditions, they have a number of common attributes that I want to emphasize.

A. As you may have inferred from the alphabet soup - MSCP, MHCP, etc., **they plan for multiple habitat and species**: dunes and beaches, chaparrals, grasslands, woodlands and forests, riparian and wetlands, etc. are all covered by these plans. Thus, the agreements could cover between 60 to 90 species depending on the design of the final preserve systems.

B. **The plans cover both listed and unlisted species**: It is important to deal with threatened resources before they are at the edge of extinction when the options are limited and when the solutions are much more expensive. We need to avoid the "endangered species-of-the month club" approach. Our plans take a more proactive stance and would require agreements for both listed and pre-listed species; something that hasn't occurred much but has been agreed upon by both state and federal agencies as part of our plans.

C. **The plans involved multiple jurisdiction and/or agency participation from beginning to end**. Both the south and north county programs involve all cities, the county, San Diego County Water Authority, Fish and Game, Fish and Wildlife, and Caltrans. We also felt that such participation should occur early and often. It is not acceptable to have a last minute "hit" from federal and state agencies.

We have completely integrated our efforts with the state's Natural Communities Conservation Program and our plans will be the functional equivalent of an NCCP -- it's just that we will cover more than just the coastal sage communities of the NCCP.

D. **Both plans are being developed with extensive stake holder participation**. Advisory committees consisting of 30-40 representatives of virtually every possible interest group: environmentalists, builders and property owners, community groups, farmers, taxpayers association, and local/state/federal agencies have been involved from the beginning.

E. **The key objective of the plans is to provide certainty**. Certainty means different things to different people. To the environmentalists, it means the certainty associated with preserve systems that will protect a biologically sound ecosystem. To the developers, it means the certainty associated with knowing: what areas can proceed with development, where the mitigation can be provided, and what species are covered so they won't be "surprised" with future listings.

F. **The plans build on solid scientific and biologically sound approaches that provide for the integration of land use and economics**. It is important that the preserve system works as an integral part of the region's land use and economy. It also must be based on sound biology. These programs should be viewed as models for how the Endangered Species Act could be more rationally structured and implemented.

G. **The plans are important to the region's economy**. Water availability , work force training and education, hazardous material

disposal, and transportation are traditional examples of elements of the infrastructure important to the region's economic prosperity. We are, in effect, attempting to treat habitat as just another important element of the region's infrastructure. We need this infrastructure to ensure sustainable development, economic competitiveness of the region, and preservation of our quality of life.

3. The third, and last part, of my testimony focuses on changes in the Endangered Species Act that would improve the future of regional conservation planning.

   A. The Act should encourage multiple habitat/multiple jurisdiction based conservation planning. These changes should promote the ability to deal with both pre-listed and listed species and provide greater flexibility to add additional covered species as warranted. This step would provide greater certainty to local governments and the private sector as part of the implementing agreements and avoid the uncertainty and costs associated with a species-by-species approach.

B. The ESA should encourage plans that are built on solid and strong biology and reasonably available science, which also integrate local economic and land use considerations. Both plans in the San Diego region contain such an integration. These objectives are not irreconcilable conflicts.

C. The federal government should provide commitment to conservation planning and implementation. Our effort, after all, is a significant contribution to the preservation of the national heritage. The local/state/federal partnership that our plans have developed should be used as a guide for cooperative efforts from the earliest planning stages to implementation, management, and operation.

D. The ESA should encourage steps that return local land use controls back to communities. Local commitments to protection of natural resources and implementation of the HCPs' objectives should be encouraged. It is time for a new partnership where we implement these processes jointly and eliminate costly and adversarial approaches of the current regulations and processes.

Attachments:

1. HCP Status Report
2. MSCP Executive Summary
3. Information Bulletin

TESTIMONY OF

Leeona C. Klippstein

Co-founder and Environmental Coordinator
San Bernardino Sage Friends, Spirit of the Sage Council and
the National ESA/HCP Network.

PERSONAL VIEW ON THE EFFECT OF THE ENDANGERED SPECIES ACT ON RESOURCES AND PEOPLE

before the

U.S. House of Representatives
Committee on Resources
Task Force on Endangered Species
Field Hearing in Riverside, California
on April 26,1995

Testimony of Leeona Klippstein to the Committee on Resources,
Task Force on Endangered Species, Field Hearing, Riverside, CA. 4/26/95.
continued page 2 of 6

To the Committee:

Good morning Mr. Chairman and distinguished members of the Committee. Thank you for your invitation and the opportunity to speak to the very important matter at hand, the United States Endangered Species Act. I am Leeona Klippstein, born and raised in Southern California, I currently live within San Bernardino County. I am a veteran of the United States Armed Forces and formally educated in medical sciences and health therapies. By profession I am a patient care specialist and child care consultant, although I have become a full-time conservationist and environmental community organizer.

I am affiliated with three conservation organizations of which I co-founded, San Bernardino Sage Friends, Spirit of the Sage Council and the National ESA/HCP Network. All three organizations focus on preserving Americas Natural Heritage through protecting native plants, native animals and the ecosystems on which they depend upon to flourish.

The Chairman has notified me that the Committee would be most interested in my " views regarding the effect of the Endangered Species Act on the people of Southern California" and how the committee might address my concerns in future legislation.

I am in a unique position to address these concerns since Spirit of the Sage Council was named and co-founded by my friend Vera Rocha, hereditary chief of the Gabrielino band of the Shoshone Nation. Vera Rocha and I met through our mutual concerns of the threats to the Southern California Coastal Sage Scrub Ecosystem, both biological and cultural.

It is a fact that as native seed banks, native plants and native animals become threatened and endangered, so do native languages, native cultures and native people. Ecocide and genocide are reflections of the land and the consciousness of governments. The first nations people of Southern California, still referred to as "Mission Indians" by the U.S. Government, the Uto-Aztec-Shoshone, are very much alive but very threatened and endangered by the loss of their ecosystem, their habitat, Southern California Coastal Sage Scrub associated natural communities. The Gabrielino-Shoshone have been "taken" (killed), removed, displaced, harassed, harmed, bothered and invaded by non-natives. Their populations have significantly declined in their range and distribution, they have become restricted to a small isolated populations. As more and more of southern Californian wildlife become endangered, so do the people. Approximately, 90% of the plants endemic to Coastal Sage Scrub associated communities have medicinal and life sustaining properties. Sage is a sacred ceremonial and medicinal plant integral to the health and culture of the native people of Southern California. However, the native people of the land are little recognized or included in the important task at hand, preserving Americas Natural Heritage and protecting Americas Endangered Wildlife and Wildlands. The U.S. Fish and Wildlife Service does have a "policy" on Native Americans but I have not yet experienced its implementation nor witnessed any of the "policy" benefits to Vera Rocha or the Gabrielino-Shoshone people.

It appears that the U.S. Government and public are more interested in "Foreign Affairs" and exotic ecosystems. Many people are concerned about the loss of tropical rainforests and the impacts to native people and native cultures of the rainforest, such as the Yanomami and Pygmy. I am also very concerned about the rainforests and people of the rainforests. However, if Americans are unable to help the native people of California, the first Americans and Americas Natural Heritage, we have little chance of saving tropical rainforests. I believe that every American has the responsibility to do whatever we can to protect biological diversity.

Testimony of Leeona Klippstein to the Committee on Resources,
Task Force on Endangered Species, Field Hearing, Riverside, CA. 4/26/95.
continued page 3 of 6

The Endangered Species Act is very important to the health and well being of all species including the human species.

It was my personal experience as a 91C, Patient Care Specialist in the U.S. Armed Forces and later working with a Pediatrician, that convinced me of the importance of protecting Endangered Species, especially plants. Working in emergency rooms and with children, I was required to explain how my patients were to take or apply the medications that were prescribed to them by the physicians. In performing this routine activity I began researching what these medications were made from. Thanks to the rosy periwinkle, childhood leukemia and Hodgkin's disease are largely curable. Taxol, a medicinal product derived from the Pacific yew tree, has offered hope to thousands of women suffering from ovarian cancer.[1] In my research I was also made aware of the economic benefits that plants provide to Pharmaceutical Corporations, a $40 billion industry that depends on natural compounds from various plant species.

Before we had Medical Centers, European Barbers and an army of primarily male M.D.s in the United States, there were Shoshone Medicine People, women healers and midwives that knew the sacred lands and sites of the plants that could cure. One of these plant medicines have become so common in all of our households today that I could safely assume that every Committee member has consumed it. Aspirin is derived from the willow. Just as we humans need the willow, so to does the endangered Southwestern willow flycatcher and endangered Least Bells Vireo. When the Gabrielino-Shoshone Nation, the first people of Southern California, come forward to protect the Sage and their culture, they are also a voice for the endangered plants and animals. The Shoshone Nation, the California gnatcatcher, San Bernardino Kangaroo-Rat, Stephens Kangaroo-Rat, Bells Sage Sparrow and over 100 plants and animals, that have been identified, need and depend upon the Southern California Coastal Sage Scrub communities for their survival and recovery. I ask today that the Chairman and Committee consider amending the Endangered Species Act to include provisions for ethnobotany, that would protect plants of medicinal and religious significance to American Indian descendants. This is a very important aspect of Americas Natural Heritage that has been dismissed by the Endangered Species Act.

According to the research of Dr. Linda R. McMahan, Executive Director of the Berry Botanic Garden, Portland, Oregon, "(h)alf - probably more than half - of the rare and endangered plants in this country are related to plants that have been used medicinally by Native Americans or, in other uses, are used medicinally around the world".[2]

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1. Hearing before the Subcomittee on Environment and Natural Resources of the Committee on Merchant Marine and Fisheries. House of Representatives. One Hundred Third Congress. First Session on Medicinal Uses of Plants: Cures made possible by Certain Plants and Discussion of whether the Endangered Species Act adequately protects Plants. November 9, 1993. Serial No. 103-74. Statement of Hon. Gerry E. Studds, A U.S. Representative from Massachusetts, and Chairman. Subcommittee on Environment and Natural Resources.

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2. Hearing before the Subcomittee on Environment and Natural Resources of the Committee on Merchant Marine and Fisheries. House of Representatives. One Hundred Third Congress. First Session on Medicinal Uses of Plants: Cures made possible by Certain Plants and Discussion of whether the Endangered Species Act adequately protects Plants. November 9, 1993. Serial No. 103-74. Statement of Dr. Linda R. McMahan. Executive Director. The Berry Botanic Garden. Portland, Oregon.

Testimony of Leeona Klippstein to the Committee on Resources,
Task Force on Endangered Species, Field Hearing, Riverside, CA. 4/26/95.
continued page 4 of 6

The important relationship between plants and people dates back thousands of years in human history. It is most unfortunate that the United States government and Americans have not placed a greater emphasis on the protection and recovery of endangered plants through the Endangered Species Act. I strongly recommend and encourage the Committee and Task Force on Endangered Species to make revisions and amendments to the Endangered Species Act that would provide for greater protection of plant species.

I should add that protecting and preserving the Sage Scrub Communities is also an economic benefit to local business. Miller's American Honey, Inc. of Colton, California (San Bernardino County) has been in business for 101 years, has 30 full-time employees, distributes approximately 10 million pounds of Sage and Buckwheat Honey and makes approximately $7.5 million dollars annually. The two greatest economic threats to Miller's business is development (loss of sage scrub ecosystem) and pesticides.[3]

The native Riverside Bee is a candidate species for listing as endangered. I believe that the American public is very fortunate to have provided protection to the endangered Delhi Sands flower-loving fly, another important pollinator of plants. There are so many very important pollinators and insects that have not yet been classified, studied or protected. As the saying goes, the first rule of tinkering is not to throw away any of the parts. How are we to know which of the parts are critical to making the whole system work? If the United States does not provide greater protection to endangered insects it will be nearly impossible to protect and recover endangered plants. It is important to protect Californias' treasure chest of biological diversity. It truly doesn't have a price tag, biological diversity is invaluable.

A very important feature of the Endangered Species Act is the designation of "Critical Habitat". It is of my opinion that U.S. Fish and Wildlife does not implement this section (16 U.S.C. § 1532(5)(A); 50 C.F.R. § 424.02(d)) of the Endangered Species Act enough, primarily because of political influences and secondarily due to lack of funding through appropriations. Of the 886 listed endangered species (June 15,1994) only 111 have been provided with a critical habitat designation.[4] Designating "Critical Habitat" is relevant for endangered plants throughout their range when addressed in chemical terms. At different portions of their range, organisms tend to differ genetically and chemically. "Compounds produced by a plant in New England may be absent from its relatives in Georgia."[5] Critical habitat designations are also an important step towards the recovery of endangered species in the wild, and the eventual delisting of stabilized populations. I believe this was the main intent and goal of the Endangered Species Act, enacted in 1973, by President Richard Nixon.

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3. Telephone communication with Steve Smith of Miller's American Honey, Inc., Colton, CA. April 18, 1995.

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4. U.S. Department of the Interior. Questions and Answers for the Senate Oversight Hearings on the Endangered Species Act. June 15, 1994.

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5. Hearing before the Subcomittee on Environment and Natural Resources of the Committee on Merchant Marine and Fisheries, House of Representatives, One Hundred Third Congress, First Session on Medicinal Uses of Plants: Cures made possible by Certain Plants and Discussion of whether the Endangered Species Act adequately protects Plants. November 9, 1993. Serial No. 103-74. Statement of Dr. Thomas Eisner, Director, Cornell Institute for Research and Chemical Ecology, Cornell University, Ithaca, New York.

Testimony of Leeona Klippstein to the Committee on Resources,
Task Force on Endangered Species, Field Hearing, Riverside, CA. 4/26/95.
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It is vital that America's endangered wildlife is recovered in the wild. Wildlife cannot be maintained in the long term in artificial settings. The undisturbed, untreated soils and hydrology that plants in the wild depend upon produce needed chemicals that plants in an artificial setting cannot. The insects, pollinators, birds and mammals may also depend upon these plant chemicals for their digestion, nourishment and reproduction. Recovery of endangered species through the Endangered Species Act continues to be minimal due to lack of enforcement, politics and insufficient funding. Appropriations to the Fish and Wildlife Service in FY 1991 - $32.0 million to protect and recover endangered species nationwide was less than Washington, D.C. area residents spent on Domino's pizza that year and less than it costs to build one mile of urban highway.[6] Instead of subsidizing the construction of "Toll Roads" and Dams in southern California endangered species habitat, the state and federal government should be protecting Americas Natural Heritage through lands acquisition.

While Fish and Wildlife Service have approved "Recovery Plans" for 526 listed endangered species (as of October 1, 1994), it is questionable whether these recovery plans have or will be successfully implemented. Again this is due to politics, lack of enforcement and minimal funding.

Politics continue to dominate and make ineffective otherwise sound biological sciences. This is most apparent in section 7 consultations and section 10 "Incidental Take Permits" and "Habitat Conservation Plans". Politically driving a "Toll Road" through endangered species habitat and "exempting" these massive roads from the Endangered Species Act is biologically unsound and an abuse of section 7 consultations. "From 1988-1994, more than 118,000 informal section 7 consultations and 2,071 formal consultations were completed on federal actions."[7] Of the 120,071 section 7 consultations only 341 were identified as "jeopardy opinions" and less than 1% (18) of the total had no reasonable and prudent alternatives and did not go forward as planned. Although these projects did not go forward as planned, they did go forward. Americas endangered species were "taken" (killed) through negotiations, compromises and the "flexibility" of the Endangered Species Act.

In the twenty-two years since the enactment of the Endangered Species Act there has never been a "taking" of "Private Property" in the U.S. Court of Claims.

Section 10 "Habitat Conservation Plans" has been repeatedly abused by the Fish and Wildlife Service in order to provide "flexibility" in accommodating non-federal land holders and corporations during negotiations of "Incidental Take Permits" of endangered species and their habitat. Although the desert tortoise has a "Recovery Plan" it is doubtful whether the plan will be successfully implemented, considering the proposed human refuse dumps and Ward Valley nuclear waste dump in this endangered species habitat.

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6 and 7. National Wildlife Federation publication of Endangered Species At A Glance. 1995.

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8. U.S. Department of the Interior. Questions and Answers for the Senate Oversight Hearings on the Endangered Species Act. June 15, 1994.

Testimony of Leeona Klippstein to the Committee on Resources,
Task Force on Endangered Species, Field Hearing, Riverside, CA. 4/26/95.
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Section 10(a)(1)(B), was an experimental amendment to the Endangered Species Act in 1982, and a compromise made to non-federal land holders and corporations. In thirteen years since the enactment of "Habitat Conservation Plans" (HCPs) there has not been a "recovery " or "delisting" of an endangered species' due to this section. Of the 41 approved "Habitat Conservation Plans", only one species, the desert tortoise, has an adopted "Recovery Plan". It is my understanding that the Fish and Wildlife Service estimates that there are an additional 100 section 10(a) "Incidental Take Permits" and "Habitat Conservation Plans" under various stages of development. Perhaps, Secretary Babbitt believes in the saying "If at first you don't succeed, try try again", however when you haven't succeeded after 41 tries, I believe there must be a mistake being made and going unrecognized. I believe that the Clinton Administration, U.S. Department of the Interior and the Fish and Wildlife Service should learn from past mistakes instead of repeating them another 100 times. I believe that the United States of America can find a reasonable and prudent means to protect Americas Natural History. I believe we can all work together to create a stronger Endangered Species Act. I believe that we can do better than this.

We are moving from an Industrial Society into an Information Society. We are a society at a historic transition point and we are experiencing growing pains. Southern California grew much too quickly during the 1970s and '80s. Those individuals and corporations who made an enormous amount of money in real estate, development and looting Savings and Loans want to keep riding the gravy train, but there isn't enough room left, in our natural landscape, for compromises. There is too much anger and too much fear, due to the ignorance of the issue of endangered species and their importance.

America is only as great as her Natural Resources and the richness of her natural landscape. Americas' Natural Heritage is a treasure that the American public has entrusted to our government. Americas' Wilderness and Wildlife are the backbone of the United States. If a foreign country dumped acid rain on us from the skies, polluted our drinking water and air with toxic chemicals, took the land away from our wildlife and killed them, we would view this as a threat to our national security and an act of war. However, we are doing this to ourselves and we must stop. The Endangered Species Act protects the health and well being of all species and is the greatest piece of legislation written in our century. I believe that we can continue to make the Endangered Species work and improve its effectiveness through additional strengthening measures.

I am honored that the Committee on Resources and Mr. Richard Pombo, Chairman of the Task Force on Endangered Species invited me to testify on this very important topic, the Endangered Species Act and its effect on the people of Southern California. If I may be of additional service to you during the re-authorization of the U.S. Endangered Species Act, please due not hesitate in contacting me. Thank you.

For the Earth,

Leeona Klippstein

Leeona C. Klippstein

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STATEMENT OF

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

REGARDING

ENDANGERED SPECIES ACT REAUTHORIZATION

TO: U.S. House of Representatives
Committee on Resources
Task Force on Endangered Species
Riverside, California
April 26, 1995

Honorable Richard Pombo, Chairman

ENDANGERED SPECIES ACT REAUTHORIZATION

The Riverside County Flood Control and Water Conservation District appreciates this opportunity to present the Committee with information regarding the impacts of the existing Endangered Species Act on the District, and the public it serves, and to provide recommendations for reform.

CATEGORICAL EXEMPTION FOR MAINTENANCE OF CRITICAL INFRASTRUCTURE

The District has developed an extensive flood control system in western Riverside County over the past 50 years including: 35 dams, debris and detention basins, 48 miles of levees, 188 miles of open channel and 182 miles of underground storm drain. Proper operation and maintenance of these critical flood control facilities is essential to protect the public health and safety, and the economy of western Riverside County.

Several of the major flood control projects have been constructed with Federal partners, including the U.S. Army of Corps of Engineers and the Soil Conservation Service. The District is mandated to operate and maintain these projects to standards dictated by the Federal agencies, and to indemnify and hold them harmless from all liability and damages. In addition, participation in the National Flood Insurance program, administered by the Federal Emergency Management Agency (FEMA) requires the "Community", in this case Riverside County and its incorporated Cities, to maintain the carrying capacity of all flood control facilities. As owner of most of the regional facilities this responsibility ultimately falls on the District. Communities which fail to meet their maintenance responsibility are subject to expulsion from the National Flood Insurance Program, loss of other Federal aid, and even exposure to suits by FEMA for recovery of flood insurance claims and disaster payments.

For decades the District routinely maintained the flood control system, but has been hamstrung in this effort in recent years through the regulatory activities of several Federal agencies. These agencies, primarily the U.S. Army Corps of Engineers, the Environmental Protection Agency and the U.S. Fish and Wildlife Service, have effectively given themselves veto power over local flood control maintenance activities by virtue of regulations promulgated under authority of the Federal Clean Water and Endangered Species Acts. While these laws have been on the books for many years, their impacts have steadily grown more burdensome as Federal agencies issued new and more stringent regulations, without the authority of new law, often the result of negotiations

to settle environmental lawsuits of questionable merit. In addition, the Fish and Wildlife Service has stepped up its pace of new listings of endangered plant species under a quota system agreed to by the Service to settle an environmental suit, again listings proposed under the auspices of questionable science. The result is that formerly routine maintenance activities of existing flood control facilities, many constructed in Federal partnership, are now subject to onerous Federal permit and mitigation requirements, along with the attendant delays, increased costs and threat to the public health and safety.

Examples abound of the adverse impacts of the present Federal regulations on the public's health and safety:

* In January of 1993, the flooding of Old Town Temecula by Murrieta Creek resulted in over ten million dollars of property damage. Federal officials refused to allow mechanical clearing and removal of accumulated sediment on the creek, partially due to alleged concerns about the endangered least Bell's vireo, and only after the flood damage occurred were they willing to allow critically needed flood control maintenance to take place. Ironically, FEMA, another Federal agency, later reimbursed the District and the City of Temecula for the costs of this maintenance under a Federal Disaster Declaration, and also paid flood insurance and damage claims to those flooded.

* The District has been advised that we could not control burrowing rodents in the earth fill Alessandro and Pigeon Pass flood control dams for fear of accidentally "taking" the endangered Stephens' kangaroo rat. Obviously, failure to control burrowing rodents in these large earth fill dams could lead to a catastrophic failure impacting large areas of the cities of Riverside and Moreno Valley.

* The District has been prevented for more than two years from making critical repairs to the Santa Ana River levees, a Federally constructed flood control project owned and operated by the District, which protects the City of Riverside, because two endangered woolly-star plants were discovered in the general area of the repair work.

Survival of a species was not at stake in any of these cases, but inflexibility built into the Endangered Species Act, coupled with indifference to public health and safety issues on the part of the regulatory staff, has created an environment where reason and the public interest are of little consequence. To correct this problem, the Endangered Species Act should be amended to:

* **provide a categorical exemption for emergency repair and routine maintenance of existing flood control facilities, including, but not limited to dams, debris basins, detention basins, leveed channels and open channels, as well as all FEMA mapped watercourses.**

SAN JACINTO RIVER FLOOD CONTROL PROJECT

In 1988, the District entered into voluntary negotiations with the U.S. Fish and Wildlife Service (Service) for the purpose of gaining its support in obtaining a Section 404 permit for the construction of flood control improvements on the San Jacinto River, near the City of Perris. These negotiations resulted in agreement to add several significant environmental enhancements to the project including a 100-foot wide riparian corridor for the entire 10 mile length of the project, plus an additional 250-foot wide average strip of land contiguous to the channel to provide mitigation for the San Jacinto Saltbush and potentially, other plant species. In order to provide guarantees to the resource agencies, the Flood Control District, the County of Riverside and the City of Perris executed a Memorandum of Understanding with the Fish and Wildlife Service and the California Department of Fish and Game. The MOU provided for development of a habitat corridor plan for the San Jacinto River subject to review and approval by the Service, and a final draft plan was submitted to the Service for consideration and approval in November 1993. The MOU and corridor plan were developed voluntarily by local government, working directly with representatives of the Fish and Wildlife Service specifically to address their concerns about the San Jacinto Saltbush. In response to this extensive local initiative, the Service immediately thereafter unilaterally abrogated the MOU, and subsequently proposed listing of the Saltbush and three other species. Even under provisions of the existing Endangered Species Act, the District believes that the Service was obligated to have first considered the local efforts that had gone into the local plan to protect the species; and second, recognize that implementation of the plan by local government would have obviated the need to list the Saltbush and other species. Unfortunately, the bad faith exhibited by the Service in this matter was not an isolated incident.

The quality of the Administrative record supporting listing of the Saltbush and the other species, is also at issue. Under the provisions of the Endangered Species Act, the determination to list a species as endangered or threatened must be "solely on the basis

of the best scientific and commercial data available". Of the total information contained in the Administrative Record for the proposed listing of the San Jacinto Saltbush and the other species involved, only about one-half is even closely related to the listing proposal. And of the remaining material only an insignificant fraction could be considered to be serious scientific data, certainly not enough information to substantiate the need to list the identified species. And most disturbing, the District's biological assessment prepared at the direct request of the Service by Tierra Madre Consultants for the San Jacinto River Improvement Project, was not even included in the record. This work is probably the most comprehensive biological assessment ever done along the San Jacinto River between the Ramona Expressway and Railroad Canyon, where much of the historic range of Saltbush is purported to have existed. Another problem relates to the designation of "critical habitat". Under provisions of the Endangered Species Act, such action is required to be "on the basis of the best scientific data available". But the Services' proposed boundary line for critical Saltbush habitat follows section lines and property lines, neither of which have any relationship with biological functions.

Finally, during negotiations over the proposed San Jacinto River flood control project, on three separate occasions beginning in November 1988, the U.S. Army Corps of Engineers requested that the Service initiate a Section 7 Consultation under provisions of the Endangered Species Act. Under current rules, the Service has 90 days to conclude such a consultation, and thereafter has an additional 45 days to provide a biological opinion to the requesting agency. In this case, the Service unilaterally terminated the first two consultations, and failed to meet the required deadline for the third consultation. The Service finally issued a biological opinion for the proposed project in March of 1995, more than six years after the initial request.

Major reform of the Endangered Species Act is mandatory to ensure Service personnel act in good faith with the public they serve in the future, and to ensure all future listings are based on quality science, are fully justified and in the public interest. Specific reforms which should be undertaken include the following:

* **Standards should be established for the quality of the science required to justify a proposed listing, and the science and administrative record should be subject to review and approval by an independent panel of qualified scientists before a proposed listing may be published in the Federal Register.**

* Criteria should be establish for distinguishing true species from subspecies, and only true species should qualify for listing.

* The time period for public comment, and/or for requesting a public hearing, concerning the proposed listing of a species should be increased, and the time periods should be included in the Act itself rather than implementing regulations. It is recommended that the time allotted for public comment be increased to 120 days, and the time to request a public hearing be 90 days. In addition, proposals to list a species should be published prominently in newspapers of broad general circulation.

* Early consultation with potentially affected local government, including counties and incorporated cities, should be mandatory before a proposed listing is published in the Federal Register.

* Processing and review of permit applications, habitat conservation plans, and Section 7 consultations should be subject to specific time periods for completion, and should be deemed approved if not completed within the allotted time.

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COMMITTEE ON RESOURCES
TASK FORCE HEARING ON ENDANGERED SPECIES

APRIL 26, 1995
RIVERSIDE, CALIFORNIA
RIVERSIDE CONVENTION CENTER

CAROLYN POWERS

MY NAME IS CAROLYN POWERS. I AM ON THE TIJUANA RIVER VALLEY TASK FORCE, THE TIA JUANA VALLEY COUNTY WATER DISTRICT AND REPRESENT THE CITY OF IMPERIAL BEACH AT THE SAN DIEGO TIJUANA BORDER TASK FORCE ON WASTEWATER TREATMENT.

THANK YOU CONGRESSMAN POMBO AND THE TASK FORCE FOR ALLOWING ME TO ADDRESS YOU ON SOME OF THE EFFECTS THE ENDANGERED SPECIES ACT HAS HAD ON MY COMMUNITY.

THE ENDANGERED SPECIES ACT NEEDS A TUNE UP. IT WAS ENACTED 22 YEARS AGO, AT A TIME WHEN THIS COUNTRY'S ENVIRONMENTAL NEEDS WERE BEING SHAMEFULLY NEGLECTED. WE HAVE PROTECTED MANY ENDANGERED SPECIES FROM THE REALITY OF EXTINCTION WITH THIS WELL INTENDED ACT. HOWEVER, SUBSEQUENT ENFORCEMENT AND MULTI-LEVELS OF LEGAL INTERPRETATION HAVE MUTATED THE ORIGINAL INTENT TO A BUREAUCRATIC BOONDOGGLE THAT DEFIES ALL COMMON SENSE.

FEDERAL REGULATORY AGENCIES NEED TO BE PUT ON NOTICE TO GIVE HUMAN HEALTH AND SAFETY NEEDS PRIORITY. IF THE ENFORCEMENT OF THE ACT RESULTS IN HEALTH HAZARDS TO MANKIND, THEN THAT ENFORCEMENT SHOULD BE STAYED. WE, ALSO, REQUIRE THE RIGHTFUL USE OF LAND, COMFORT AND SAFETY.

WE HAVE A SYMPTOMATIC REPRESENTATION OF A LITTLE OF WHAT AILS THE CURRENT INTERPRETATION OF THE ENDANGERED SPECIES ACT IN OUR LITTLE SOUTHWEST CORNER OF THE UNITED STATES. THE "ENDANGERED SPECIES" MOST IMPACTING OUR PURSUIT OF HEALTH AND SAFETY ARE THE LEAST BELLS VIREO, THE CALIFORNIA LEAST TERN, THE COASTAL CALIFORNIA GNATCATCHER AND LASTLY, THE PACIFIC POCKET MOUSE, THE PRESENCE OF WHICH, DESPITE THE BEST NIGHTLY TRAPPING EFFORTS OF THE DEPARTMENT OF FISH AND WILDLIFE SERVICE, REMAIN UNSUBSTANTIATED.

THE LEAST BELLS VIREO AND THE CALIFORNIA LEAST TERN ARE MIGRATORY BIRDS RETURNING TO BAJA AND SOUTHERN CALIFORNIA TO NEST EACH

YEAR. BOTH SPECIES ARE PLENTIFUL IN BAJA. THIS IS THE OUTER PART OF THE SUMMER RANGE OF THE CALIFORNIA TERN. AS WITH ALL MIGRATORY SPECIES, THE STRONGER, GENETICALLY SUPERIOR OF THE BREED CLAIM THE CENTER OF THEIR RANGE. SOMEHOW, MAGICALLY, WHEN THESE SLIGHTLY LESS VIGOROUS SPECIMENS OF THEIR SPECIES CROSS THE INVISIBLE LINE THAT MARKS THE MEXICAN-U.S. BORDER THEY BECOME THE CALIFORNIA "LEAST" TERN , NOT THE CALIFORNIA TERN THAT THEY ARE KNOWN AS IN MEXICO. THAT TITLE, "LEAST", HAS COST U.S. TAXPAYERS A LOT OF MONEY. THEY HAVE BEEN KNOWN TO NEST ON PASSENGER JET RUNWAYS AT LINDBERG FIELD AND FISH AND WILDLIFE HAS FORCED THEIR COSTLY REMOVAL AND SUBSEQUENT MITIGATION.

THE TIJUANA RIVER WATERSHED ENCOMPASSES 1,724 SQUARE MILES. TWO THIRDS OF THESE LANDS ARE LOCATED IN MEXICO. THE WATERSHED AND ALL IT CARRIES EVENTUALLY DRAINS INTO THE TIJUANA RIVER, FLOWING ACROSS THE BORDER INTO THE UNITED STATES, THROUGH THE TIJUANA RIVER VALLEY AND AFTER ENTERING THE TIJUANA ESTUARY OUT TO THE PACIFIC OCEAN - THROUGH THE CITY OF SAN DIEGO, SAN DIEGO COUNTY PARK LANDS, SAN YSIDRO AND IMPERIAL BEACH. TIJUANA IS THE FASTEST GROWING CITY IN THE WORLD, HOWEVER, THE GROWTH OF ITS INFRASTRUCTURE IS SADLY LACKING. RENEGADE SEWAGE FLOWS FROM MEXICO INTO THE TIJUANA RIVER AND NORTH TO THE U.S. HAVE CHARACTERIZED THIS SENSITIVE BORDER REGION WITH THE NOTORIETY OF HAVING A **"SEWAGE BASED ECOSYSTEM"**.

RESULTANT SEWAGE CONTAMINATION HAS CLOSED OUR BEACHES FOR MONTHS AT A TIME CAUSING ENORMOUS ECONOMIC DEPRIVATION TO COASTAL CITIES. UNTREATED SEWAGE FLOWING IN THE USUALLY SEASONAL TIJUANA RIVER TWELVE MONTHS A YEAR HAS ALSO RESULTED IN THE GROWTH OF A WILLOW CONGESTED RIPARIAN HABITAT, IN WHAT HAD BEEN ARID SAND DUNES AND WELL WATERED AGRICULTURAL LANDS. UNDER NORMAL CONDITIONS, THE TIJUANA RIVER FLOWS ONLY DURING WINTER MONTHS, ACTING AS A WATERSHED RUNOFF CHANNEL OR CARRYING GROUNDWATER SEEPAGE AFTER A FEW YEARS OF EXCESS PRECIPITATION.

FISH AND WILDLIFE IS NOW CATEGORIZING THIS AGRICULTURAL LAND AS "DISTURBED HABITAT", CLAIMING THAT IF THE LAND HAD NOT BEEN FARMED, IT TOO WOULD BE RIPARIAN HABITAT, DUE TO THE DAILY URBAN-INDUCED, SEWAGE-FURNISHED WATER AND FERTILIZER FLOWING THROUGH THE LANDS.

THIS NEW RIPARIAN HABITAT HAS ATTRACTED THE "ENDANGERED" LEAST BELLS VIREO AND IS NOW REGARDED AS PROTECTED HABITAT. THIS STATUS CONFERS VERY NEBULOUS HONORS TO THE NEEDS OF THE COMMUNITIES IN AND AROUND THE TIJUANA RIVER VALLEY.

WE CAN NO LONGER CLEAR AND MAINTAIN RIVER CHANNELS CHOKED WITH WILLOWS, REEDS AND CATTAILS. RESULTANT SEDIMENTATION BUILD UP CAUSES RIVER WATERS, FED BY RAINWATER AND SEWAGE AND HEAVY METALS CONTAMINATION TO FLOW AND POND LATERALLY FROM THE CENTRAL LINE OF THE RIVER, THROUGHOUT THE EVER GROWING THICKETED OUTREACHES OF THE VALLEY.

THIS SUPERIOR MOSQUITO BREEDING HABITAT HAS THE POTENTIAL TO TRANSMIT ENCEPHALITIS, MALARIA, HEPATITIS AND OTHER LIFE THREATENING DISEASES TO MAN AND LIVESTOCK ALIKE. AND YET..... CATTAIL, REED AND WILLOW CLEARANCE IN THIS ENVIRONMENT IS DENIED DURING THE VERY MONTHS THAT MOSQUITOES FLOURISH. WHY? ... BECAUSE THE LEAST BELLS VIREO CLAIMS THE SAME ROMANTIC SEASON AS THE MOSQUITOES AND DISRUPTING INTERFERENCE IS LEGALLY RESTRICTED BETWEEN MARCH 15TH THROUGH SEPTEMBER 25TH. THE VIREOS SIX MONTHS OF X-RATED BLISS HAS BECOME A NIGHTMARE FOR SAN DIEGO COUNTY HEALTH DEPARTMENT'S VECTOR CONTROL, WHOSE ONLY HOPE FOR MOSQUITO ABATEMENT PROGRAMS IS TO SEND PEOPLE INTO THIS BOG WITH HAND CARRIED MOSQUITO FISH AND U.S. FISH AND WILDLIFE APPROVED INSECTICIDES, WHILE SAID MOSQUITOES PERFORM UNFRIENDLY SERVICES TO THEIR PERSONS.

TO BE PERFECTLY FAIR TO THE OVERWORKED STAFF IN F & W, THEY ARE PERSONALLY, AS WELL AS AGENCY-WIDE, LIBEL TO LAWSUITS AND DAMAGES FOR FAILING TO ENFORCE THE CURRENT LETTER OF THE LAW. OUR OWN FISH AND WILDLIFE BIOLOGIST, MARTIN KENNY, HAS BEEN AS JUST AS HE IS ABLE, TO THE INTERPRETATION OF ENVIRONMENTAL LAW. THERE ARE OTHER, EVEN MORE DEVASTATING EFFECTS TO OUR HEALTH, SAFETY AND ECONOMIC EXPECTATIONS INHERENT IN THIS ACT AS IT STANDS RIGHT NOW.

THE PROGRESS AND COST OF THE INTERNATIONAL WASTEWATER TREATMENT PLANT, WITH ITS LAND AND OCEAN OUTFALLS, HAS BEEN PLAGUED WITH EXTENDED ENDANGERED SPECIES STUDIES AND REPORTS, FRIVOLOUS LAWSUITS FROM THE SIERRA CLUB, AS WELL AS SOME TIME CONSTRAINTS ON THE ACTUAL SCHEDULING OF CONSTRUCTION.

THE CITY OF SAN DIEGO METROPOLITAN WASTEWATER DEPARTMENT JUST SENT ME A "SUMMARY OF COSTS ASSOCIATED WITH MITIGATION FOR THE SOUTH BAY PROJECTS". THEY HAVE ALREADY SPENT $4,320,607.00 AND HAVE IDENTIFIED YET ANOTHER $1,235,000.00 IN FUTURE SPENDING.

MITIGATING THE LOSS OF AN ARTIFICIALLY, MAN INDUCED HABITAT HAS ADDED TO THE TAXPAYERS' BURDEN BY REQUIRING MITIGATION - ALL LANDS BEING "DISTURBED" TO BE REPLACED BY OTHER ACREAGE,

SOMETIMES AT THE RATIO OF 8 TO 1. THE AREA TO BE MITIGATED REQUIRES LAND PURCHASE, ENGINEERING, PLAN APPROVAL, GRADING, PLUMBING FOR IRRIGATION, PLANTING WITH APPROPRIATE HABITAT SPECIES, MONITORING AND WATERING WITH IMPORTED NORTHERN CALIFORNIA WATER, EVEN IF IT OCCURS DURING THE MIDDLE OF A DROUGHT, WHEN NEIGHBORS CAUGHT USING EXCESS WATER ARE FINED AS PUNISHMENT FOR WASTING THIS PRECIOUS COMMODITY. . . AND THE SEWAGE KEEPS COMING. THIS BLATANT EXAMPLE OF BUREAUCRATIC TERRORISM NEEDS TO BE STOPPED. WE SHOULDN'T BE PENALIZED BY OUR OWN AGENCIES FOR STOPPING THIS 60-ODD YEAR AFFRONT TO OUR SOUTHERN BORDER .

THIS SEWAGE BASED ECOSYSTEM IS A CANCER FEEDING ON THE ENTIRE SURROUNDING COMMUNITY.

THE DELAYS IN SEWAGE TREATMENT HAVE CAUGHT UP WITH IMPERIAL BEACH. THIS BELEAGUERED CITY HAS THE DUBIOUS DISTINCTION OF HAVING THE MOST POLLUTED BEACH IN THE UNITED STATES. HER RESIDENTIAL SHORES WERE CLOSED TO HUMAN CONTACT FOR A RECORD 187 DAYS IN 1993 ALONE. HER SOUTHERN SHORES, EXTENDING TO THE MEXICAN BORDER HAVE BEEN PERMANENTLY CLOSED UNTIL WE HAVE A SEWAGE TREATMENT FACILITY ON LINE.

A ONE BEDROOM, ONE BATH CONDOMINIUM ON THE BEACH IN IMPERIAL BEACH IS WORTH $135,000 LESS THAN ITS CORONADO COUNTERPART, A SCANT EIGHT MILES NORTH. THIS IS A CLOSE KNIT, HARD WORKING CITY WITH A LOT OF HOPES AND DREAMS FOR A BETTER FUTURE.

CONGRESSMAN BRIAN BILBRAY KNOWS I.B. - HE GREW UP AND IS EVEN NOW RAISING HIS FAMILY IN IMPERIAL BEACH. HE AND HIS SON PATRICK SURF HER SHORES - WHEN THEY ARE OPEN. THE CONGRESSMAN HAS BEEN FIGHTING MEXICAN SEWAGE HIS ENTIRE ADULT LIFE. I KNOW THAT HE SHARES OUR DESPAIR AT SEEING OUR SEWAGE TREATMENT PLANT, SCHEDULED TO BE BUILT BY THE INTERNATIONAL BOUNDARY AND WATER COMMISSION, THREATENED WITH ANY FURTHER DELAY OR COSTS.

THE IBWC IS NOT THE ONLY FEDERAL AGENCY TO BE HAMPERED BY THE CURRENT INTERPRETATION OF THE ENDANGERED SPECIES ACT. THE U.S. BORDER PATROL HAS BEEN MANDATED TO ENFORCE OUR BAN ON ILLEGAL IMMIGRATION AT THE MEXICAN BORDER. "OPERATION GATEKEEPER" RELIES ON MORE MANPOWER, A FENCE EXTENDING ALONG THE BORDER FROM THE BEACH TO THE SAN YSIDRO CROSSING, MORE SOPHISTICATED SURVEILLANCE DEVICES AND TALL LAMP POSTS TO "LIGHT UP THE BORDER"- THANK YOU MURIEL WATSON AND CONGRESSMAN HUNTER FOR THE ENDLESS FIGHT FOR YOUR BOYS AND GIRLS ON THE BORDER PATROL.

THE BORDER FENCES WOULD BE MUCH MORE EFFECTIVE IF WILDLIFE

CORRIDOR GAPS HADN'T BEEN REQUIRED TO ALLOW THE ALLEGEDLY ENDANGERED GNATCATCHER TRANS BORDER INTERNATIONAL ACCESS. THE BORDER PATROL HAD TO BUILD ACCESS AND MAINTENANCE ROADS ACROSS THE VERY SAME MESAS AND CANYONS THAT HAVE PREVIOUSLY SPORTED STAMPEDING MASSES OF DESPERATE HUMANITY - AN ESTIMATED 1,800,000 NON-DOCUMENTED ALIENS A YEAR - FRANTIC TO GET TO THE PROMISED LAND.

THE BORDER PATROL IS A VERY HANDS ON, CAN DO AGENCY. "DO IT NOW AND ASK QUESTIONS LATER" HAS SEEMED TO BE THEIR CREED. THE QUESTION THEY WERE ASKED WAS, NOT HOW, BUT WHEN AND WHERE ARE YOU GOING TO MITIGATE THIS LOSS OF HABITAT YOU CAUSED WITH YOUR ROADS AND YOUR SURVEILLANCE SITES AND YOUR LIGHTS? KA-CHING! THE SOUND YOU JUST HEARD WAS THE SUFFERING TAXPAYER RIPPING OUT HIS WALLET TO PAY FOR THE MITIGATION OF COASTAL SAGE SCRUB , SUSPECT HABITAT FOR THE GNATCATCHER - A MATING PAIR WAS SPOTTED NEAR GOATS CANYON LAST YEAR.

FARMLANDS DESTROYED IN THE 1993 FLOODS ARE BEING DENIED THE RIGHT TO CLEAR WILLOW HABITAT, NO MATTER HOW SMALL, THAT HAVE SPRUNG UP DURING THE FINANCIAL REGROUPING AND LAND RESTRUCTURING PERIOD FOLLOWING THE FLOOD, BY THE ARMY CORPS OF ENGINEERS, DUE TO BEING REGARDED AS NEW RIPARIAN HABITAT. THE USE OF THESE PRIME AGRICULTURAL LANDS MAY BE LOST FROM OUR FOOD CHAIN FOREVER. A TEMPORARY FLOOD CONTROL MEASURE, A 2-1/2 FOOT TALL BY 16 FOOT WIDE EARTHEN CHANNEL REQUIRED A NINE MONTH DELAY, A FISH AND WILDLIFE REPORT AND A 404 PERMIT FROM THE ARMY CORPS OF ENGINEERS TO CONSTRUCT.

MITIGATION AT THE AVERAGE RATIO OF 4 TO 1, FOR A TOTAL OF 9.8 ACRES AND AN ESTIMATED COST OF $500,000 WAS THE COST OF THIS CHANNEL, TO BE PAID FOR BY THE CITY OF SAN DIEGO. THE MITIGATION SITE WILL OBSTRUCT A 60 YEAR OLD EQUESTRIAN TRAIL LINKING THE BEACH TO EQUESTRIAN BOARDING RANCHES. THERE ARE OVER 2,000 HORSES IN THE VALLEY WITH RENTAL RIDERS, ALONE, ACCOUNTING FOR OVER 20,000 RIDES TO BORDERFIELD STATE PARK BEACH EACH YEAR. THIS IS THE LAST SUCH BEACH RIDE REMAINING IN THE STATE OF CALIFORNIA. INCIDENTALLY, I DON'T SUPPOSE ANY OF YOU WOULD BELIEVE THAT IT'S A COINCIDENCE THAT THE OBSTRUCTED TRAIL IS CALLED "BRIAN'S BRIDLE PATH".

THIS TYPE OF SYSTEMATIC ABUSE, IMPLEMENTED TIME AFTER TIME ON BASIC, AGELESS PROBLEMS - FLOODING, PESTILENCE, SEWAGE CONTROL AND GUARDING THE BORDERS - HAS GOT TO END. TO HAVE FEDERALLY MANDATED LAWS PIT AGENCY AGAINST AGENCY WITH THE TAXPAYER PICKING UP THE EVER INCREASING TAB, IS INSANE. IF WE, THE PEOPLE, CANNOT BALANCE THIS ACT, THAN IT SHOULD BE REWRITTEN WITH

COMMON SENSE AS THE PREFERRED CRITERIA.

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR ALLOWING ME TO ADDRESS YOU AND YOUR TASK FORCE, HERE IN RIVERSIDE.

THE INFORMATION GATHERED FOR THIS PRESENTATION HAS BEEN GATHERED FROM THE FOLLOWING SOURCES:

U.S. INTERNATIONAL BOUNDARY AND WATER COMMISSION
U.S. BORDER PATROL
COUNTY OF SAN DIEGO HEALTH DEPARTMENT
COUNTY OF SAN DIEGO VECTOR CONTROL
CITY OF SAN DIEGO ENGINEERING DEPARTMENT
CITY OF SAN DIEGO METROPOLITAN WASTEWATER DEPARTMENT
CITY OF IMPERIAL BEACH
TIA JUANA VALLEY COUNTY WATER DISTRICT
WEST CONSULTANTS
DUDEK & ASSOCIATES
DALL & ASSOCIATES
SUSAN TRAEGER, ATTY.
MURIEL WATSON
& MANY OTHERS GENEROUS WITH THEIR KNOWLEDGE

Testimony Given by Jerry Eaves, Fifth District Supervisor, San Bernardino County
Before the U.S. House of Representatives Committee on Resources
at a Hearing in Riverside, California
April 26, 1995

INTRODUCTION

My name is Jerry Eaves; I am a member of the County Board of Supervisors for San Bernardino County, California. Through my extended duties as a County Supervisor, I am a member of the Board of Directors of the San Bernardino Association of Governments and the Inland Valley Development Agency. These public agency positions have provided me with direct experience related to endangered species issues and private/public land conflicts. I would like to take this time to share some of my experiences with you relative to the ESA so you will be aware of the local concerns.

THE DELHI SANDS FLOWER-LOVING FLY

The Delhi Sands Flower-Loving Fly (*Rhaphiomidas terminatus abdominalis*) is a large fly (*Diptera*) in the family *Apioceridae*. It is approximately 2.5 centimeters long, orange-brown in color with dark brown oval spots on the upper surface of the abdomen.

The Delhi Sands Fly is currently known from and believed to be restricted to seven sites in southwestern San Bernardino County and northwestern Riverside County. All known colonies occur on private land within a 10-mile radius. Knowledge of the biology of the Delhi Sands Fly is extremely limited. It is believed that larvae and pupae live beneath the sand, and adults emerge only from late July through mid-September. The species is associated with fine, sandy soils with wholly or partly consolidated dunes and sparse (30-50% cover) native vegetation. Egg-laying and larval development are assumed to take place in Delhi sand and in association with the Riversidian sage scrub plant community (Olsen, February 3, 1994).

Although it is presumed that the Delhi Fly once occurred throughout the distribution of Delhi sands in Riverside and San Bernardino Counties, nearly all extant populations are located within an approximately 5,000-acre area of Delhi sands which includes portions of the cities of Colton and Rialto and portions of unincorporated Riverside and San Bernardino Counties.

Knowledge of the biology of the Delhi Sands Fly is limited to the adult. Nothing is known about the habits of Delhi Sands Fly larvae other than that they live below the soil surface. Information about the larval stage is limited to a very few laboratory experiments. The larval growth period is thought to last about one year with maturation in mid to late summer. Adult life span in nature is unknown but may be up to one week (Olsen, February 3, 1994).

The Final Rule listing the Delhi Sands Fly as endangered was announced and became effective on September 22, 1993.

The listing of the fly created an endangered species-land development conflict that resulted in the preparation of a habitat preservation, enhancement and impact avoidance plan for the San Bernardino County Medical Center Replacement Facility. The plan was completed in cooperation with the U S. Fish and Wildlife Service (USFWS) in order to obtain a determination from the USFWS that the project would not constitute a taking under Section 9 of the ESA. This determination meant that a Section 10(a) permit and a formal Habitat Conservation Plan would not be required.

THE SAN BERNARDINO COUNTY MEDICAL CENTER REPLACEMENT FACILITY

San Bernardino County is in the process of replacing its existing Medical Center with a new facility that would provide better medical care for the citizens of the county in a seismically safer facility. Work on the project has been in progress for many years with final site selection occurring in 1990. The County Medical Center Replacement Facility is located in the City of Colton within San Bernardino County on a 76-acre parcel. Although the Medical Center project involved no federal approval or funding which would invoke federal agency consultation responsibilities under Section 7 of the ESA. A study was conducted on the site during the summer of 1993 to determine the presence or absence of the fly. A total of 43 person-hours were spent surveying the site. A total of eight sightings, representing seven or eight individuals of both sexes, of *Rhaphiomidas terminatus abdominalis* were made on August 15th (1 sighting), August 21st (6 sightings) and 29 August (1 sighting). All sightings were made near the southern boundary of the site. The amount of existing suitable habitat on the site was estimated to be no more than two acres. The balance of the site proposed for Medical Center development was not suitable habitat. Please note, it was not verified that each sighting represented a separate individual fly.

The County concluded that its original Medical Center layout and design proposal, prepared prior to the September 22, 1993 listing, would have had an adverse impact on the Delhi Sands Fly and would have required incidental take authorization under Section 10(a) of the ESA if the Medical Center design were not modified. Because the Medical Center's financing and construction schedules were well underway at the time the Delhi Sands Fly was listed endangered on September 22, 1993, the County concluded that the delay associated with obtaining a Section 10(a) permit would effectively terminate the project. A delay in, or termination of, Medical Center construction could cause a public health crisis in the County.

IMPACTS TO THE PROJECT

As a result of the field studies and recommendations of County staff consultants, a resolution for habitat preservation acceptable to USFWS was developed for the site. It included:

- Avoidance of the entire Delhi sands area identified as occupied or suitable habitat by moving the Medical Center complex footprint 250 feet north from the original design location and moving parking out of the occupied area. The resulting Medical Center footprint leaves a rectangular area 8.35 acres in size which encompasses the 1.92 acre occupied Delhi Fly habitat as a preserve.

- Long-term protection of occupied habitat and the preserve area will be assisted by the installation of fencing, vegetative barriers and erosion and run-off control structures. These measures are designed to prevent human activities and encroachment within the habitat preserve area. Regular policing of the preserved habitat area for litter and other human disturbances will be provided.

- The Medical Center will have no effect on dune-forming activity on site. Erosion and sand migration, if any, of the occupied habitat area will be studied annually to determine whether steps are needed (e.g., wind barriers, and sand stabilizing structures) to maintain geologic integrity of the occupied habitat. Sand transport is critical to the long-term existence of dunes. Upwind development has critically reduced the availability of wind blown sands in the area. This will be part of an ongoing site monitoring program developed as part of the mitigation plan and paid for by the County.

COST OF MITIGATION

A total of eight individual flies may have been sighted on the project site during the field surveys. As of June 8, l994, the total cost for mitigation had reached $3,310,199. This amounts to $362,000 in design and engineering costs, $2,482,174 in direct costs, and $466,020 in construction costs. Of the total, 41.8% can be attributed to land cost. The Habitat Preservation, Enhancement, and Impact Avoidance Plan accounts for $910,000 of the budgeted amount. The cost for redesign, engineering, construction, and direct cost per fly protected at that time was $413,774 25 ($3,310,199 ÷ 8). Delays to the construction project totaled 3 months.

CONCLUSION

The fly has been listed as endangered based on a very limited amount of untested data. The author of the listing package indicates that life cycle characteristics of the species is uncertain. The site specific data is inconclusive and cannot ascertain the total number of specimens on the site, or if in fact, the flies identified are separate individuals The proposed mitigation affords limited protection to a small number of insects, protects a limited amount of habitat, and provides for ongoing research into the species itself.

The existing County Medical Center admitted 15,500 inpatients per year (1993 Fiscal year) at an average cost of $6,695 per patient. Outpatients number 190,000 at an average cost of $140 per patient. A total of 494 inpatients or 23,644 outpatients could have been treated for the amount of money expended on the mitigation for the Delhi Sands Flower-loving Fly.

The County's experience with the Delhi Sands Fly is just one example of the impact of the ESA on our financial resources. This was further emphasized by our efforts to provide mitigation for the fly within our Aqua Mansa Industrial Park. Cost to date for that project have exceeded $100,000.

A pending emergency listing of the San Bernardino kangaroo rat for which 39,000 acres of habitat has been requested could severely affect plans to redevelop Norton AFB and halt construction of the Seven Oaks Dam, the largest federally funded public works project in the western U.S.

San Bernardino Valley Multi-Species Habitat Conservation Plan

As a result of the impacts that various listings and proposed listings have made on projects within the San Bernardino Valley, I have proposed the preparation of Multi-Species Habitat Conservation Plan (MSHCP) for the San Bernardino Valley. This plan is intended to accomplish the following:

- To conserve and protect covered species and the ecosystems on which they depend in perpetuity within southwestern San Bernardino County pursuant to the ESA and the California Endangered Species Act (CESA), and not preclude recovery of listed species.

- To provide a comprehensive means to coordinate and standardize mitigation and compensation requirements so that public and private actions will be regulated equally and consistently, reducing delays, expenses, and regulatory duplication. It is intended that the plan will eliminate uncertainty in developing private projects and will prescribe a system to ensure that the costs of compensation and mitigation are applied equitably to all.

- To prescribe mitigation measures for private development and agency actions to lessen or avoid cumulative impacts to the covered species and eliminate, whenever possible, case-by-case review of impacts of projects when consistent with the mitigation and compensation requirements prescribed by the plan.

- To obtain the necessary permits or take authorizations from the USFWS and the California Department of Fish and Game to authorize the incidental take of listed species covered in the plan in connection with otherwise lawful activities within the

area subject to the plan as provided by Section 10(a) of the ESA and Section 2081 of the CESA.

- The MSHCP is intended to provide for the long term preservation of covered species not currently listed as threatened or endangered pursuant to the ESA or CESA such that should they become listed, the Department and the Service shall, barring "unforeseen or extraordinary" conditions, authorize incidental take for the species. To accomplish this, all non-listed species being considered under this plan will be treated as if they are already listed.

- To establish a means in which the MSHCP will provide appropriate and successful methods of: (1) reporting; (2) accounting audits; (3) funding (short and long term); (4) periodic and independent biological evaluation; and (5) opportunities for adequate public participation.

Initially, this plan proposes to address some 41 animal species and 32 plant species — a very ambitious effort that will also be very expensive. We currently expect our cost of preparation of the plan to be $1,815,000. This is very conservative in light of the dollars expended in Orange and Riverside Counties on similar efforts. Funding this program is extremely difficult. The current economic climate of the area and the inability of cash-strapped local cities and the County to pay for plan preparation is a major hurdle in aggressively pursuing the plan.

Recommended Changes to the Endangered Species Act

The National Association of Counties (NACO) will formally present a comprehensive package of recommendations of changes to the ESA to this committee within the next three weeks. San Bernardino County strongly endorses these recommendations. Our own experiences in the county have also produced some specific recommendations to change the ESA, some of which are covered in the NACO recommendations. The following suggestions would provide solutions to the difficulties created by a bill that inadequately provides sound environmental policy.

- **Require a study of the economic impact, determine the cost of recovery of listed species and develop a recovery plan.**

  During the one year period of review for proposed listings, the federal government should prepare a detailed economic study that outlines the total impact on local government, jobs, housing availability and cost, essential public services, and the overall impact on the quality of life in the communities affected by the proposed listing. This study should be incorporated with an accurate, species-wide recovery plan that is completed and ready for implementation at the time of the listing. Along with accurately estimating biological factors and a definite time-line of milestones to

recovery, the recovery plan should address the number of species required to sustain the population, allowable take, habitat required to support the population, total cost of acquisition of habitat and all other costs, direct and indirect, of preservation of the species. If it is subsequently determined that it is either biologically or financially impossible to recover the species to sustaining levels, then this should be recognized in the protection the species receives under the Act.

- **The Endangered Species Act must uphold all private property provisions of the 5th and 14th Amendments.**

  The Endangered Species Act must recognize and fairly compensate landowners for all takings, even in the interim, of private property for endangered species protection. In current form, the Act places the burden of protection disproportionately upon the private landowners who have endangered species, or their habitat, on their land. Not only are the costs of protection placed unduly upon landowners, but often the value and use of their land is also denied without proper compensation or due process.

- **The benefits of protecting species are shared by all citizens, therefore all citizens should share the costs.**

  The federal government should provide the funding for the protection it mandates under the federal Endangered Species Act. The Endangered Species Act is a federal law, with the goal of protecting the country's diversity of species. However, the financial burden of protecting these species is now borne primarily by private landowners where the species are found. In its current form, the Act serves as a disincentive for landowners to conserve threatened and endangered species or their habitat.

- **Improve the public notice process for proposed listings.**

  The current practice of notifying the public about proposed listings in the *Federal Register* is inadequate. Few members of the public ever read the *Federal Register*. A better system would include public notices with maps of affected lands in general circulation newspapers in affected communities, automatic public hearings in areas affected by the listing, and mailing of specific notices to landowners identified as having the species or its habitat on their property. An improved public notice process will foster greater understanding and cooperation in endangered species conservation.

- **Improve the requirement for "best scientific evidence available" in listings.**

  There needs to be a "check-list" of necessary studies completed before listing. The check-list should include accurate estimates of the number of individuals and the amount of habitat thought to exist. There should also be accurate information required showing the population trend of the species. Greater emphasis should be placed on surveys of all possible habitat in public ownership before determining the degree of threat to species.

- **Require independent "blind scientific review" of listing and delisting requests.**

  A panel of private citizens and scientists should review all proposals. In current form, the Act does not require anonymous, critical review of scientific evidence presented for listings. Without anonymity, objectivity suffers within the close knit scientific community.

- **The Endangered Species Act should recognize that many species that occur in the U. S. occur on the fringe of their range and have always been rare within our boarders.**

  Consideration needs to be given to the status of species in the entirety of their range, even if that includes Canada or Mexico. Political boundaries also should not be a factor in determining regional listings within the United States, nor should political boundaries factor in the taxonomic classification of species.

- **Responsibilities of enforcing the Endangered Species Act should be deferred to states.**

  In states where their ESA laws are compatible with the federal requirements, the federal government should defer enforcement responsibilities to the states. This would eliminate dual processing and enforcement as well as redundancies in permit compliance. This is particularly useful where federal listings extend to private lands.

- **When differences arise involving the listings under the Endangered Species Act, provide a dispute resolution provision with specific timelines/milestones for a speedy remedy.**

  Often environmental disputes end up in lengthy and costly legal battles where neither party is well served. Provide provisions under the act where both parties can have their disputes arbitrated/mediated in a timely manner. This will discourage individuals who are today using the court system not to protect species, but seeking any available legal means to discourage or delay development through lengthy and costly litigation. Bonding for plaintiff suits would also be encouraged.

I wish to thank you for the opportunity to share our concerns about the Endangered Species Act and its reauthorization. Hopefully, these thoughts will enable you to adopt a bill that will protect and preserve endangered species without creating the many problems that the current act has created.

TESTIMONY OF

ROBERT D. THORNTON

Nossaman, Guthner, Knox & Elliott

Before

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

ENDANGERED SPECIES TASK FORCE

Riverside, California

April 26, 1995

951140004

I. INTRODUCTION.

Mr. Chairman and members of the Committee. My name is Robert Thornton. I am a partner in the law firm of Nossaman, Guthner, Knox & Elliott. We have acted as counsel to the plaintiffs[1/] in the litigation challenging the listing of the California gnatcatcher as a threatened species. (Endangered Species Committee of the Building Industry Association of Southern California v. Babbitt, 852 F.Supp. 32 (D.D.C. 1994.) As a result of our litigation efforts, in June 1994 the District Court for the District of Columbia vacated the listing of the gnatcatcher on the grounds that the Fish and Wildlife Service had violated the Endangered Species Act and the Administrative Procedure Act because the Service failed to obtain, and make available for public review, the data relied on by the Service to support the listing.

The position taken by the U.S. Fish and Wildlife Service regarding the need to provide the underlying data concerning the listing, and the position taken by the Service since the release of the data, raises important issues concerning the listing process under the Endangered Species Act ("ESA").

1/ Endangered Species Committee of the Building Industry Association of Southern California, Foothill/Eastern Transportation Corridor Agency, and San Joaquin Hills Transportation Corridor Agency.

II. 1988: DR. ATWOOD IDENTIFIES NEW SPECIES OF GNATCATCHER AND TWO SUBSPECIES.

In 1988, Dr. Jonathan Atwood, a biologist who did his Ph.D dissertation on the gnatcatchers of the southwest and Mexico, published a paper that claimed that the gnatcatchers in southern California and Baja, Mexico were a separate species from the black-tailed gnatcatcher ("Polioptila melanura") found widely in the southwest and Mexico. Dr. Atwood designated his new species Polioptila californica. In this paper, Dr. Atwood concluded that there were two subspecies of P. californica and the range of the northernmost species (P. californica californica) ranged from southern California through much of Baja to 25 degrees N. latitude (See attached map).

Dr. Atwood commented in the paper that Polioptila californica californica:

> "is nearly endemic to Baja, California, with its range barely extending northward into the United States along the coast of Southern California . . . . It is common and widespread throughout the Baja California peninsula . . . ."

Dr. Atwood explicitly rejected the idea that there were three subspecies of Polioptila californica, stating that he could see "no compelling reason to maintain [a third subspecies] for populations in central Baja, California, which in most characters merely seem to exhibit smooth clinal variation with [P.c.c.]."

III. THE TAXONOMIC FLIP/FLOP. ATWOOD CHANGES POSITION AND CONCLUDES THAT THERE ARE THREE SUBSPECIES. HE PETITIONS TO LIST NORTHERN SUBSPECIES.

In 1990, the Natural Resources Defense Council opened a law office in Los Angeles. The NRDC's first item of business was seeking to block three long-proposed toll roads in southern California and other development projects. In late 1990, the NRDC and Dr. Atwood filed petitions under the Endangered Species Act and the California Endangered Species Act to list Polioptila californica californica as an endangered species. (As you know, the ESA defines species to include subspecies.) The petitions are supported virtually entirely by a new paper by Atwood that concludes, in contrast to his 1988 paper, that there are three subspecies of P. californica and also claims that the range of P. californica californica extends only to 30 degrees N. latitude. (See Figure 1). The 1990 paper reaches these dramatic new conclusions based on the exact same data set utilized in the 1988 paper.

Atwood's flip/flop on the taxonomy and range of P. californica californica is absolutely central to the NRDC's argument the gnatcatcher deserves listing because as Atwood himself testified:

> "No credible scientist would claim or has claimed that California gnatcatchers as a species are endangered throughout their entire range."

There are an estimated three million gnatcatchers in Baja, Mexico north of 25 degrees N. latitude. (See Figure 2) The Fish and Wildlife Service estimates that there are approximately five thousand pairs north of 30 degrees N. latitude. Thus, Atwood's taxonomic flip/flop magically turned a common Mexican bird into an uncommon southern California bird.

In 1991, the U.S. Fish and Wildlife Service proposes to list P. californica californica based entirely on Atwood's dramatic new taxonomic conclusions. No mention is made of the fact that Atwood reached the opposite taxonomic conclusion only two years earlier.

IV. ATWOOD REFUSE TO PROVIDE DATA FOR PUBLIC REVIEW. SERVICE FAILS TO ASK FOR DATA.

A number of affected parties start investigating the basis for Atwood's position. They ask him for permission to see the data supporting his 1988 and 1990 papers, but he refuses claiming that the data is "proprietary."[2] (The data set is a set of measurements of 31 morphological characteristics from 212 gnatcatcher specimens that Atwood obtained over a six year period as part of his Ph.D work). Neither Atwood's

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2 When several parties seek to subpoena Dr. Atwood's data, the NRDC successfully blocks the subpoena claiming that the data is outside of the administrative record. In another case, the NRDC withdraws Dr. Atwood's name as an expert witness after parties attempt to take his deposition.

1988 or his 1990 paper included the measurements, but only included averages of pooled data or statistical manipulations of the data.

A number of affected parties ask the Fish and Wildlife Service to obtain the data from Atwood. Despite repeated requests, the Fish and Wildlife Service never asks Atwood for his data. Instead, they ask the American Ornithological Union to conduct a secret "independent" review of the issue. By secret, I mean that the Service did not advise the public (except Dr. Atwood) that they had asked the AOU for the review until the so-called "review" had been completed. As a result, no one (except again Dr. Atwood) had an opportunity to submit comments to the AOU. The Service also didn't advise the public that the AOU had already taken an official position supporting listing, nor did the Service advise the public that the AOU had stated that further review of the taxonomic issue would be "gratuitous." As a result of correspondence with the AOU, we subsequently discovered that the AOU review was a complete and utter sham. The President of the AOU admitted to me in writing that the "review" never happened. He stated that there had "been no formal deliberations or conclusions on subspecies of the California gnatcatcher . . . ."

V. SERVICE REQUESTS SECRET REVIEW OF TAXONOMIC ISSUE BY AN ADVOCATE FOR THE LISTING.

After the Fish and Wildlife Service is confronted with these facts, they ask (once again in secret) their chief ornithologist, Dr. Richard Banks, to review Atwood's papers. Without reviewing Atwood's data, in February 1992, Dr. Banks issues a report

supporting Atwood's 1990 taxonomic conclusions. He imperiously rejects the demands that the Service obtain Atwood's data stating "he saw no reason to review [Dr. Atwood's] primary data" and stating "it seems obvious that those asking for the data intend to subject them to scrutiny for the purposes of refuting Atwood's conclusions." As if to suggest that there is something wrong with that!

As a result of a Freedom of Information Act request, we subsequently discovered that Dr. Banks helped Atwood draft the 1990 paper and had suggested that Atwood's change in position between 1988 and 1990 might not be supported by his raw data but in fact might have been designed to provide a contrived basis for listing "perhaps regardless of the facts." Dr. Banks' letter to Atwood suggested that this wouldn't have been the first time that this happened:

> "I might not be so sensitive to this if I had not gotten burned by such a situation. My study of geographic variation in the Yellow-billed Cuckoo was requested by the FWS Regional Office. When the study showed that the western subspecies should not be recognized, the biologists where were upset (furious?) because they wanted it recognized so it could be listed, and they reanalyzed my data so they could prove me wrong, call it a race, and list it."

As a result of the FOIA request, we also discovered that Dr. Banks had also previously advocated the listing of the gnatcatcher on behalf of an environmental organization despite his admission to Atwood that taking a position on the listing would put Banks "into what at the very least could be construed as a conflict of interest situation."

VI. DRS. BARROWCLOUGH AND McDONALD REVIEW ATWOOD PAPERS AND CONCLUDE THAT IT IS IMPOSSIBLE TO ANALYZE ISSUE WITHOUT ACCESS TO THE DATA.

In response to Banks' unusual report, we engaged Dr. George Barrowclough, the Chairman of the Department of Ornithology of the American Museum of Natural History and Dr. Lyman McDonald, a nationally recognized bio-statistician, to review Atwood's papers and the Banks report. Drs. Barrowclough and McDonald advised us that it was impossible to determine whether Atwood was correct in 1988 or in 1990 without access to the underlying data. They also identified a number of curious anomalies, inconsistencies and outright errors in Atwood's 1990 paper. Atwood himself later acknowledged one of the major errors, but claimed that his 1990 conclusions did not depend on it.

VII. SERVICE IGNORES BARROWCLOUGH AND McDONALD COMMENTS AND LISTS COASTAL CALIFORNIA GNATCATCHER.

In March 1993, the Fish and Wildlife Service lists Polioptila californica californica as a threatened species. Despite the detailed critique of Atwood's 1990 paper

by Drs. Barrowclough and McDonald (and Atwood's own admission of at least one major error), the final rule concludes that "there has been no indication that [Dr. Atwood] used inappropriate statistical methods." The final rule does not even mention Dr. Barrowclough or Dr. McDonald. We later discover why: the rule was drafted in December 1992 -- three months before the public comment period closed and before the Service received the Barrowclough/McDonald comments. Although the rule was circulated up through the chain of command after the comment period, (except for one person) everyone signed off on the content of the rule the same day that it appeared in their in box.

VIII. COURT ORDERS RELEASE OF DATA. THE DATA DOES NOT SUPPORT ATWOOD'S 1990 TAXONOMIC FLIP/FLOP.

After four years of effort by the regulated community, and a federal court order, Dr. Atwood finally relents and releases his "data." Analysis of the Atwood data set by nationally-recognized ornithologists and biostatisticians demonstrates why Dr. Atwood was so reluctant to allow public review of the data. The data set released by Dr. Atwood does not support his 1991 conclusion that the range of P.c.c extends only to 30 degrees N. Indeed, the analyses of the data set by Dr. George Barrowclough of the American Museum of Natural History, Dr. McDonald, several professors at Utah State University as well as Dr. Atwood's own sworn testimony documents that P.c.c. should not be listed as an endangered or threatened species because gnatcatchers found in southern California and northern Baja, Mexico are not distinct from the very large populations of gnatcatchers found throughout the Baja peninsula.

The analyses of the data set by Dr. Lyman McDonald, Dr. George Barrowclough, and recent dramatic admissions by Dr. Atwood in his deposition indicates the following:

- The measurements of the morphological characteristics for each of the 213 P.c.c. specimens in the data set overlap substantially regardless of the latitude at which the specimen was collected. Dr. McDonald states: "There is little corroborating evidence from graphical plots of original data on specimens to support hypothesized steps in trend of any variables."

- Sophisticated multivariate analyses of the data set also do not indicate that gnatcatchers in southern California and northern Baja are distinct from gnatcatchers found in central and southern Baja. Dr. Barrowclough states: "[M]y interpretation of the revised findings [the McDonald Report] indicates a lack of justification for recognizing subspecies that have biological meaning beyond single character aspects of the bird." Figures 5-10 graphically demonstrate the basis for Dr. Barrowclough's opinion.

- Dr. Atwood testified that his 1991 conclusions are based on the results of a cluster analysis. Neither Dr. McDonald or the Utah State University group (in separate independent efforts) have been able to replicate Atwood's 1991 cluster analysis using Atwood's

own data set. Moreover, Dr. Barrowclough states emphatically that cluster analysis cannot be used to define subspecies: "[T]he results of such an analysis would be seriously misleading . . . [C]lustering should never be used to look for subspecies . . . ."

- Even Dr. Atwood admitted that the cluster analysis will cluster sampling areas in the absence of a significant step between sampling areas.

- Dr. Atwood testified that the only morphological variables shown in his 1991 paper that exhibited any step at approximately 30 degrees N. were brightness of breast feathers (BRSTB) and purity of back feathers (BACKP). When these same data are plotted for all specimens (as opposed to means), it is clear that there is no "sharp step" at 30 degrees as claimed by Atwood in his 1991 paper.

- Moreover, Dr. Atwood has now admitted "serious doubts" about the accuracy of his color measurements because of technical problems with the device that he utilized to measure plumage color.

- Dr. McDonald has documented that the age of the gnatcatcher specimen (some of which are over 100 years old) significantly influences the color of the plumage. Dr. Atwood never considered

the effect of age on feather color despite the fact that it is a well-documented phenomenon.

- The evaluation of means of the morphological characteristics from the nine sample areas in the data set using a statistical test utilized by Atwood in 1988 and 1991 (Gabriel's Test) does not suggest a significant step or break at 30 degrees. Indeed, Dr. Atwood testified that the results of his own use of Gabriel's Test in the 1991 paper did not even suggest a clear step for back purity at 30 degrees N. despite the fact that he significantly relied on this color characteristic to support a division at 30 degrees N.

- Using Gabriel's Test as recommended Dr. Gabriel and by Dr. Barrowclough also does not indicate a step or break in morphological characteristics of P.c. specimens at 30 degrees. For example, none of variables describing the size of specimens measured show any step along the entire range of P.c.

- A statistical test (Intervention Analysis) used to measure changes in the rate of change of morphological characters did not support the Banks and Gardner hypothesis of a significant rate of change at 30 degrees N. The Intervention Analysis did not indicate a significant rate of change for the either the size, pattern or color variables along the entire range of P.c.

The data released by Dr. Atwood, and the deposition testimony of Dr. Atwood, raise many other disturbing questions about Dr. Atwood's treatment and handling of the data and Dr. Atwood's 1991 analysis:

- Dr. Atwood inexplicably destroyed the raw data sheets (the sheets of paper on which he recorded the measurements of specimens) two years before the publication of the 1988 Monograph and five years before the publication of the 1991 paper. According to this testimony, he even destroyed the data sheets before his dissertation was approved.

- The Dean of the College of Science at Utah State University has commented "[e]specially disturbing is the fact that Atwood apparently no longer has available the raw data used in his original analyses . . . it is unusual that a worker would not maintain an independent data set, especially if it involved taxonomic decisions."

- Atwood also discarded the physical results of the spectrophotometer (the device utilized to measure the key color characteristics). As a result, it is impossible to verify the accuracy of the measurement of brightness of breast feathers and purity of back plumage -- the key variables relied on by Dr. Atwood in 1991 to support a P.c.c. subspecies limit at 30 degrees N.

- Atwood also discarded all record of computer programming instructions that he utilized in the development of his 1988 and 1991 papers. His deposition testimony suggests that this information may have been destroyed after the May 2, 1994 decision of the District Court for the District of Columbia vacating the listing of the P.c.c.

- Despite running over 140 different options, Dr. McDonald was unable to replicate the results of the cluster analysis reported by Atwood in the 1991 paper. The Utah State group was also unable to replicate the Atwood cluster analysis.

- Dr. McDonald states: "We find it extremely disconcerting that we can easily verify the results of Atwood (1991) for analyses conducted on one variable at-a-time, but were not able to duplicate some of his analyses which involve several variables simultaneously. . . Because we could not replicate some of the multivariate results and because original data forms were not available, we must express reservations concerning the integrity of the data released . . . Something serious is wrong."

- Despite testifying that he used exactly the same data set in his 1986 dissertation, the 1988 Monograph, the 1990 Status Review and the 1991 paper, Dr. Atwood was unable to explain why the sample

sizes reported in the four papers are all inconsistent with each other and with the data set released in May 1994. For example, the 1986 dissertation reports that he examined 851 Polioptila specimens while the May 1994 data set includes 907 Polioptila specimens. The 1988 Monograph reported that he analyzed 196 male P.c.c. specimens while the 1991 paper reported that he analyzed male 212 P.c.c. specimens. In contrast, the May 1994 data set includes 213 male P.c.c. specimens.

- Atwood testified that the data set exists exactly as it was originally recorded by him on the now destroyed data sheets. He also testified, however, that after the data was entered into the computer he altered the data set to change one specimen from a female to a male and also deleted one specimen from the P.c.c. data set entirely. He testified that he "cannot say with a hundred percent certainty" that he didn't make other changes in the data set.

- Atwood testified that he deleted worn and soiled specimens from the data set, but he did not have any written protocol to insure consistency of these determinations.

- Atwood admitted that he may have replaced missing values in the data set with other values, but he has no record of what missing values he replaced or what he replaced them with.

IX. CONCLUSIONS AND RECOMMENDATIONS.

During the four years of administrative proceedings and litigation concerning the listing of P.c.c. various explanations have been proffered by Dr. Atwood and others to explain his taxonomic flip-flop and to support his 1991 conclusions. One by one the explanations have been demonstrated to be false.

First, the American Ornithologists Union and Dr. Fitzpatrick relied on Table 2 of the 1991 paper and claimed that Table 2 supported a P.c.c. subspecies limit at 30 degrees N. When Dr. McDonald and others pointed out that Table 2 was invalid because it relied on pooled data, Dr. Atwood agreed with the criticism and claimed that he never relied on Table 2.

Next, Dr. Atwood claimed that the subspecies limit at 30 degree N. was supported by the variation in plumage coloration (in particular brightness of breast feathers and back feather purity). When technical problems with the machine used to analyze plumage color were identified, Dr. Atwood expressed "serious doubts" about the accuracy of the color data.

Finally, Dr. Atwood in his deposition has stated that his 1991 taxonomic conclusions are based on the UPGMA cluster analysis. But he has also admitted that the UPGMA test will cluster sampling areas even in the absence of a step in morphological characteristics in the sampling areas. But Dr. Barrowclough emphasizes that "clustering should never be used to look for subspecies."

In summary, there is no longer a credible factual basis to support Dr. Atwood's 1991 conclusion that the southern limit of the range of P.c.c. is 30 degrees N. Dr. Barrowclough has indicated that there is a "lack of justification" to support the identification of any subspecies of Polioptila californica.

Despite all of these dramatic new revelations, on March 27, 1995 the Service re-listed the coastal California gnatcatcher as a threatened species. Perhaps most disturbing is the fact that the Federal Register notice explaining the listing largely ignores the detailed scientific critique of the Atwood data by Drs. McDonald, Barrowclough, Skalski, Boyce, Cronin, McMahon and others. Remarkably, in eight pages of Federal Register text, the comments by Drs. Barrowclough, Skalski, Cronin and McMahon are not even mentioned once.

The foregoing experience strongly suggests the need for certain changes in the ESA listing process. I would recommend the following:

1. The Fish and Wildlife Service should be required to reject petitions to list that do not include the underlying data when that data is available to the petitioner.

2. The Fish and Wildlife Service should be required to obtain additional data when there is a substantial scientific disagreement regarding the accuracy of the existing data.

3. The notice and comment listing process is not adequate when there is substantial scientific disagreement regarding the basis for a listing. Under the current

procedures, the Fish and Wildlife Service is free to ignore significant scientific comments and listing opponents have no opportunity to directly confront the technical basis for the listing. There should be an opportunity for an adjudicatory proceeding which allows the examination of the experts on all sides when there is a significant scientific controversy.

FIGURE 1

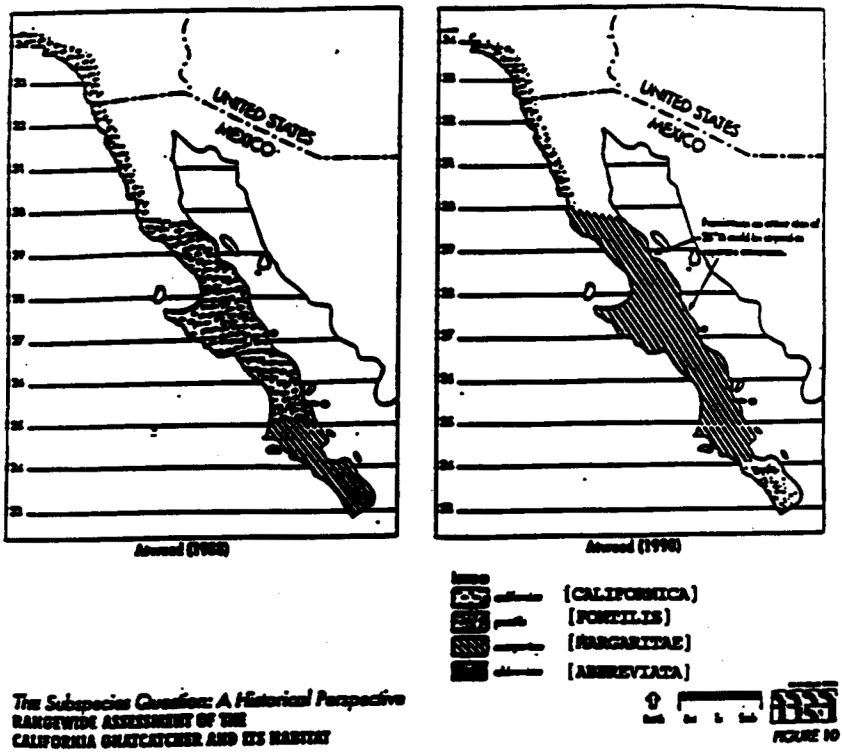

UNITED STATES
MEXICO
UNITED STATES
MEXICO
[CALIFORNICA]
[FOTHILIS]
[MARGARITAE]
[ABBREVIATA]
The Subspecies Question: A Historical Perspective
RANGEWIDE ASSESSMENT OF THE
CALIFORNIA GNATCATCHER AND ITS HABITAT
FIGURE 10

FIGURE 2

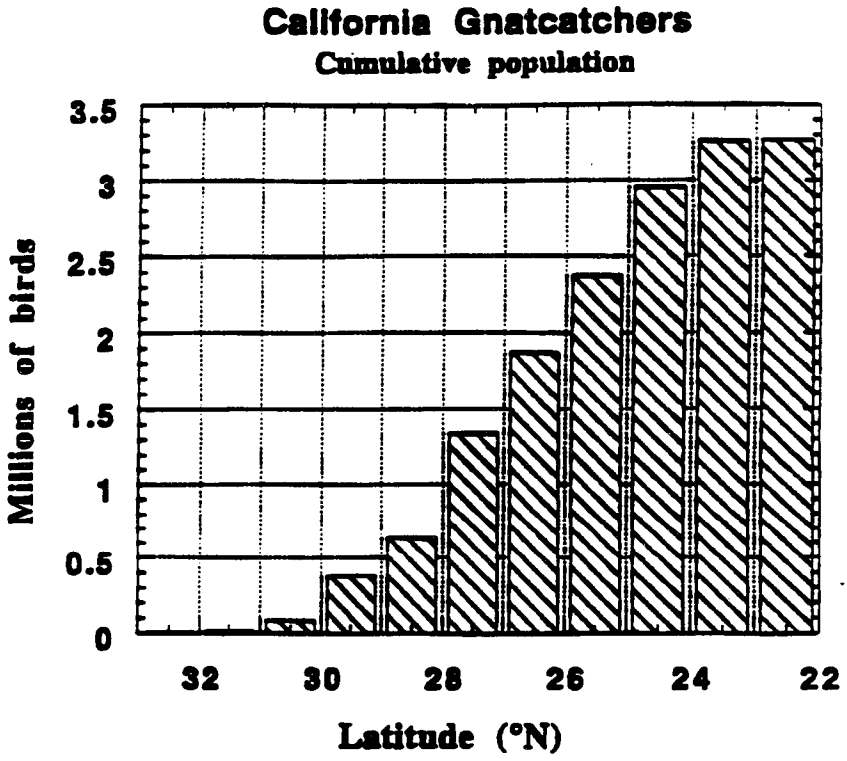

California Gnatcatchers
Cumulative population
Millions of birds
3.5
3
2.5
2
1.5
1
0.5
0
32
30
28
26
24
22
Latitude (°N)

FIGURE 3
Brightness of breast feather data as plotted by Dr. Atwood in 1990.

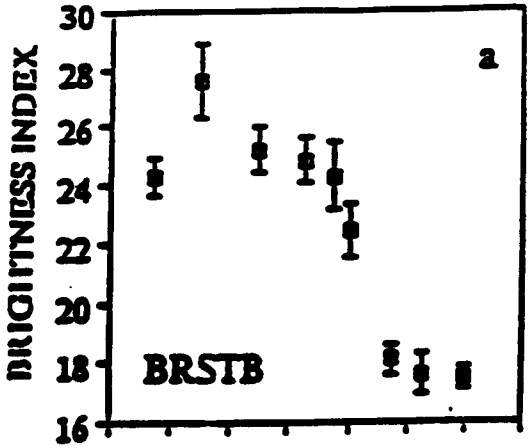
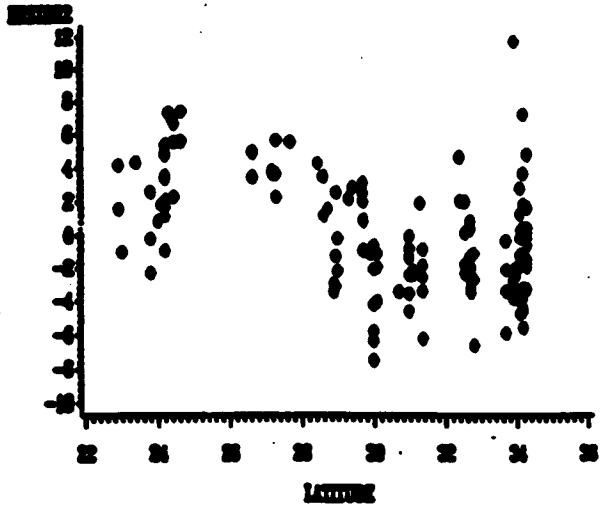


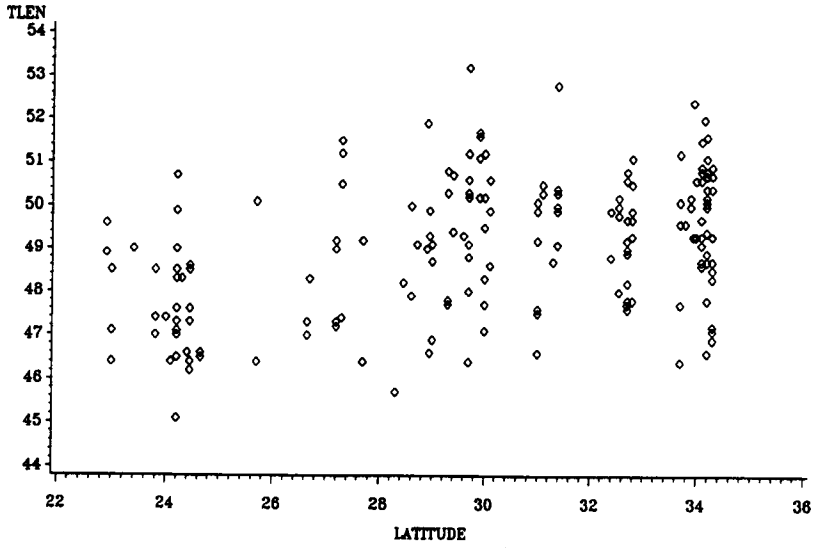
FIGURE 4
Actual data points (adjusted for age effects).



e)

FIGURE 5

SIZE VARIABLE
Tail Length (mm)
Males Collected October - April



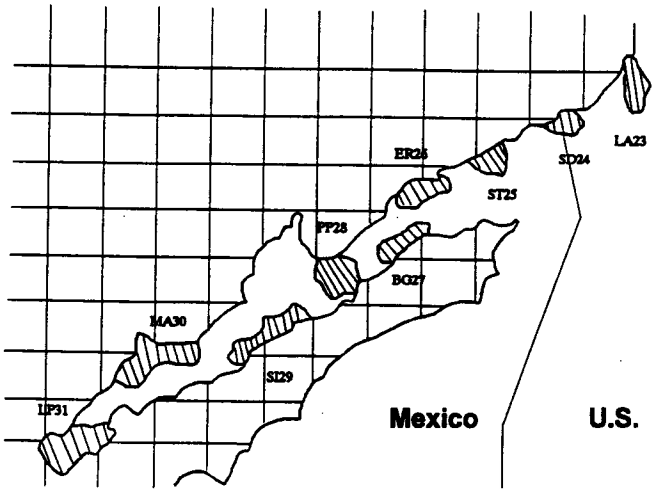
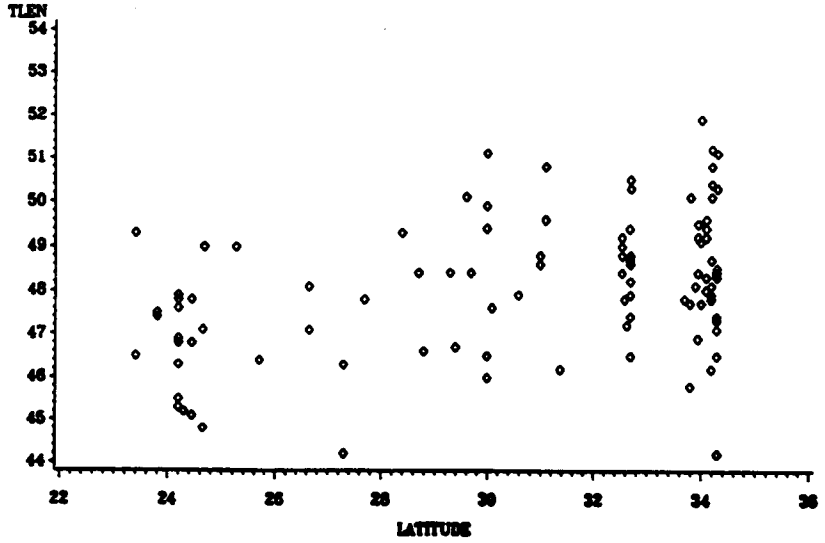


FIGURE 6

SIZE VARIABLE
Tail Length (mm)
Females Collected October - April



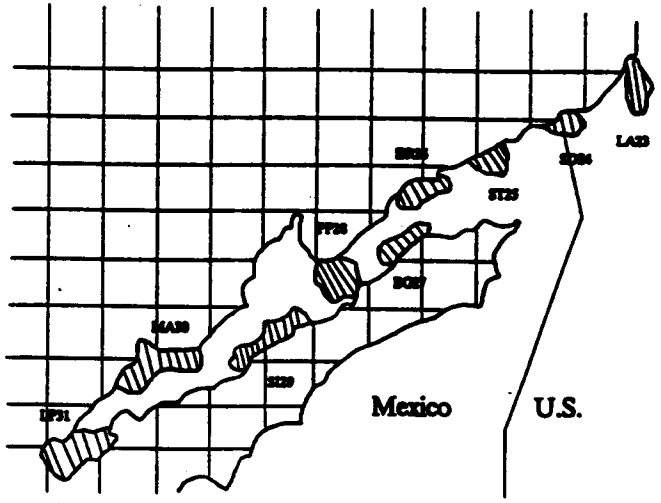
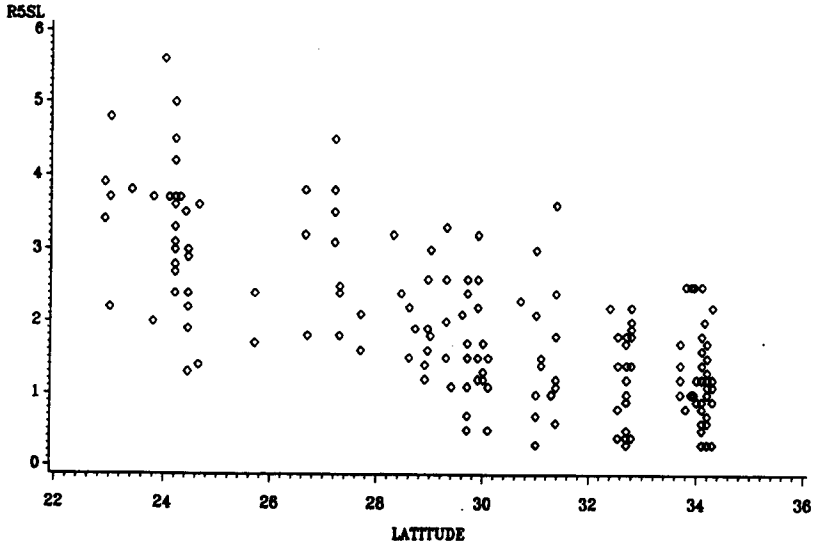


FIGURE 7

PATTERN VARIABLES
Retrix 5 Tail Spot Length
Males Collected October - April



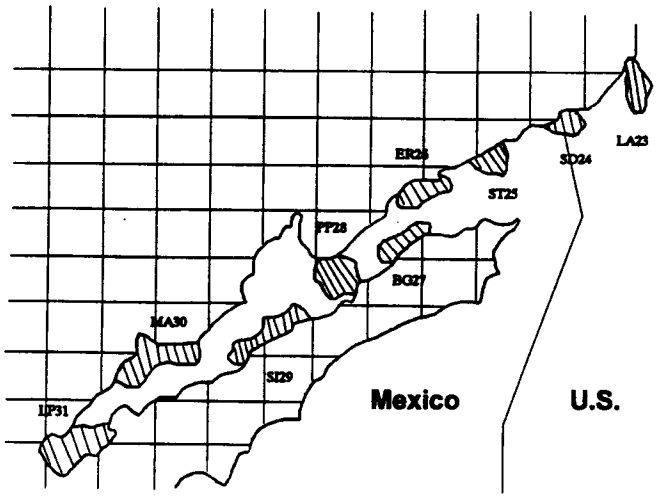
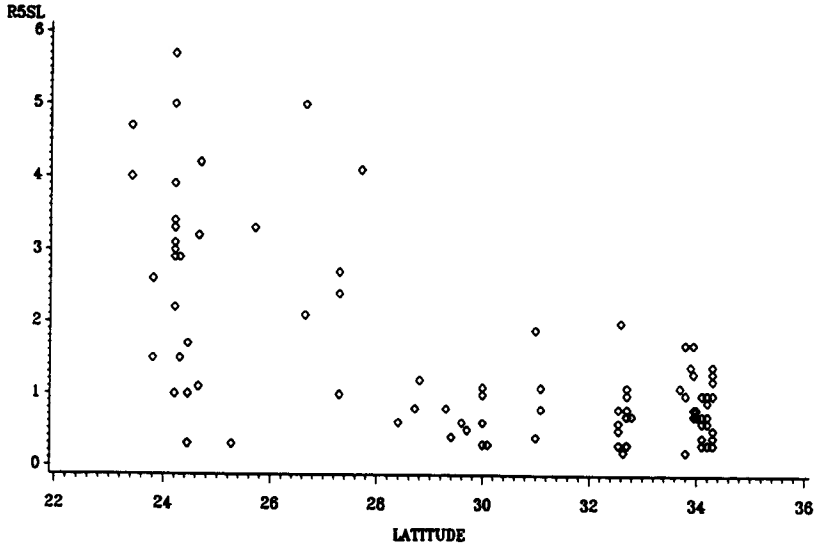


FIGURE 8

PATTERN VARIABLE
Retrix 5 Tail Spot Length
Females Collected October - April



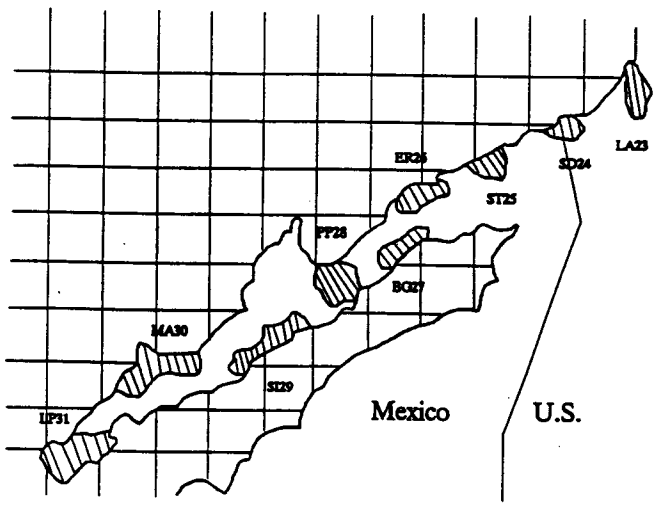


FIGURE 9

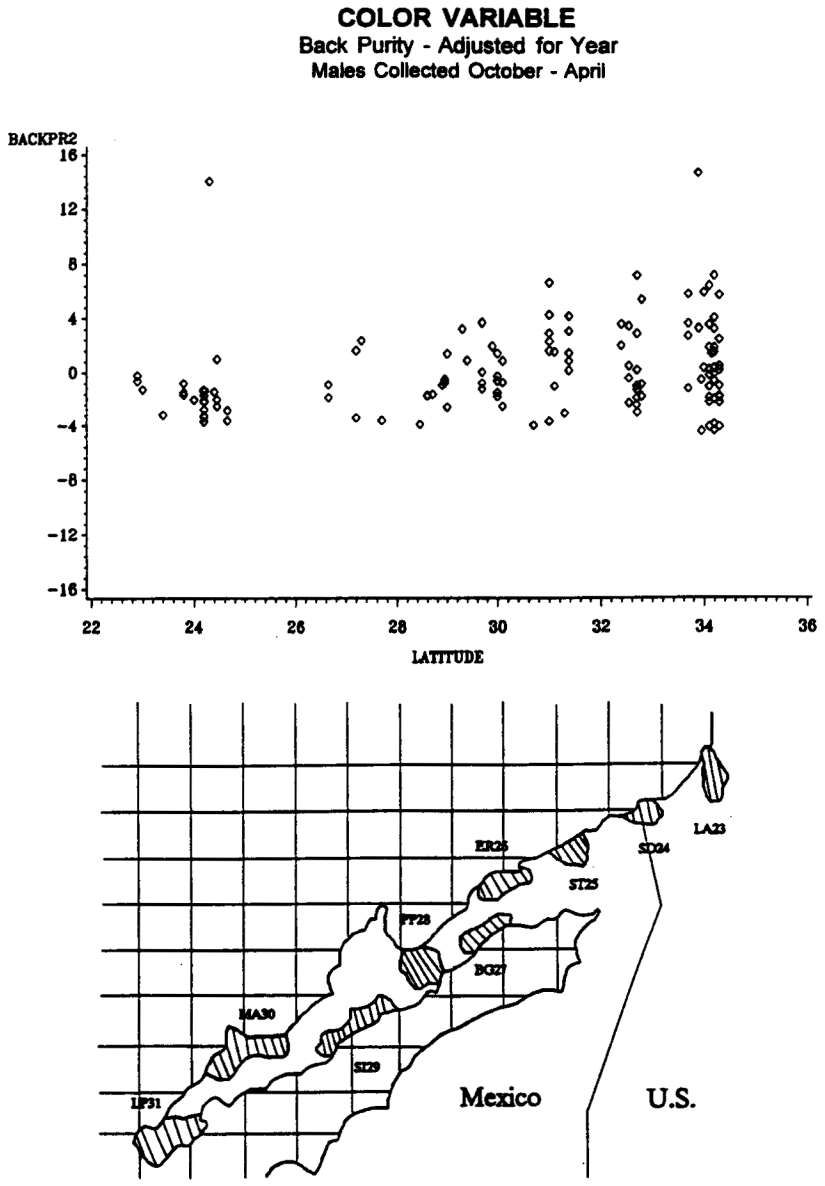

COLOR VARIABLE
Back Purity - Adjusted for Year
Males Collected October - April
BACKPR2
16
12
8
4
0
-4
-8
-12
-16
22
24
26
28
30
32
34
36
LATITUDE
LA23
SD24
ER26
ST25
PT28
BG27
MA30
SI29
LP31
Mexico
U.S.

FIGURE 10

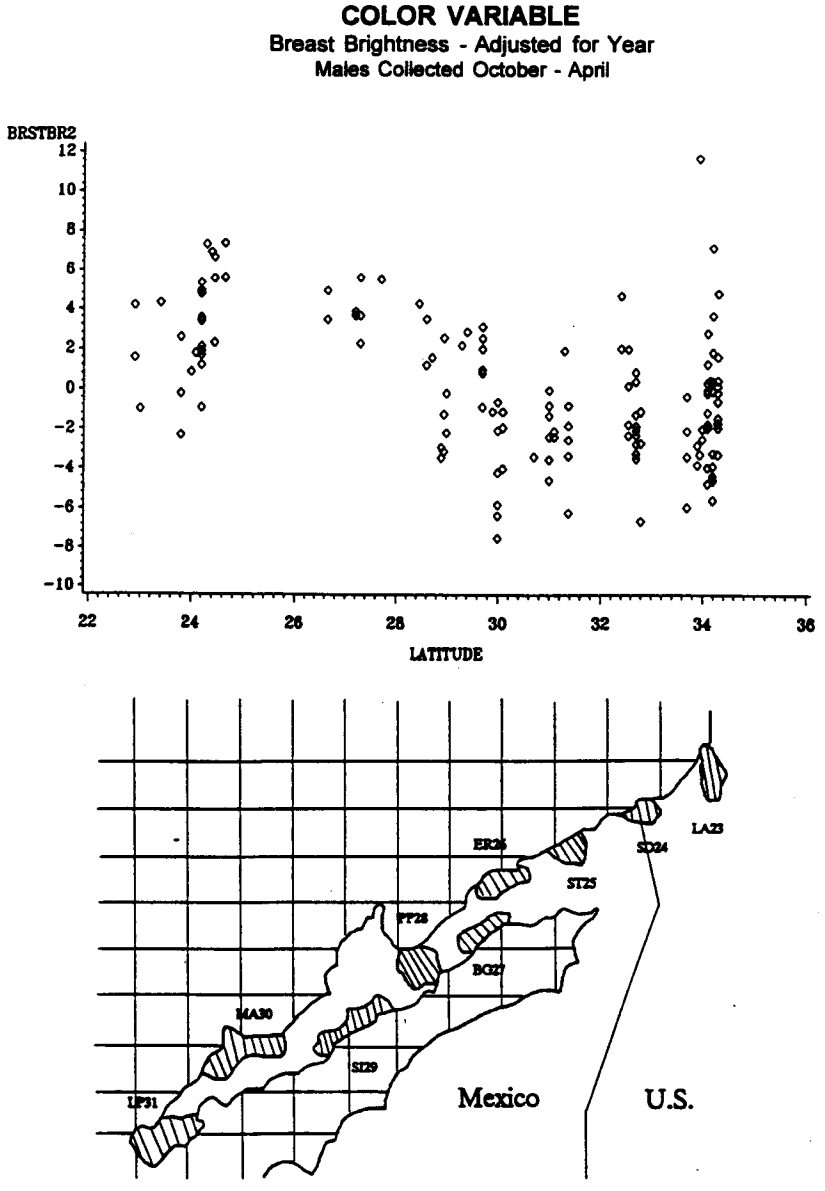
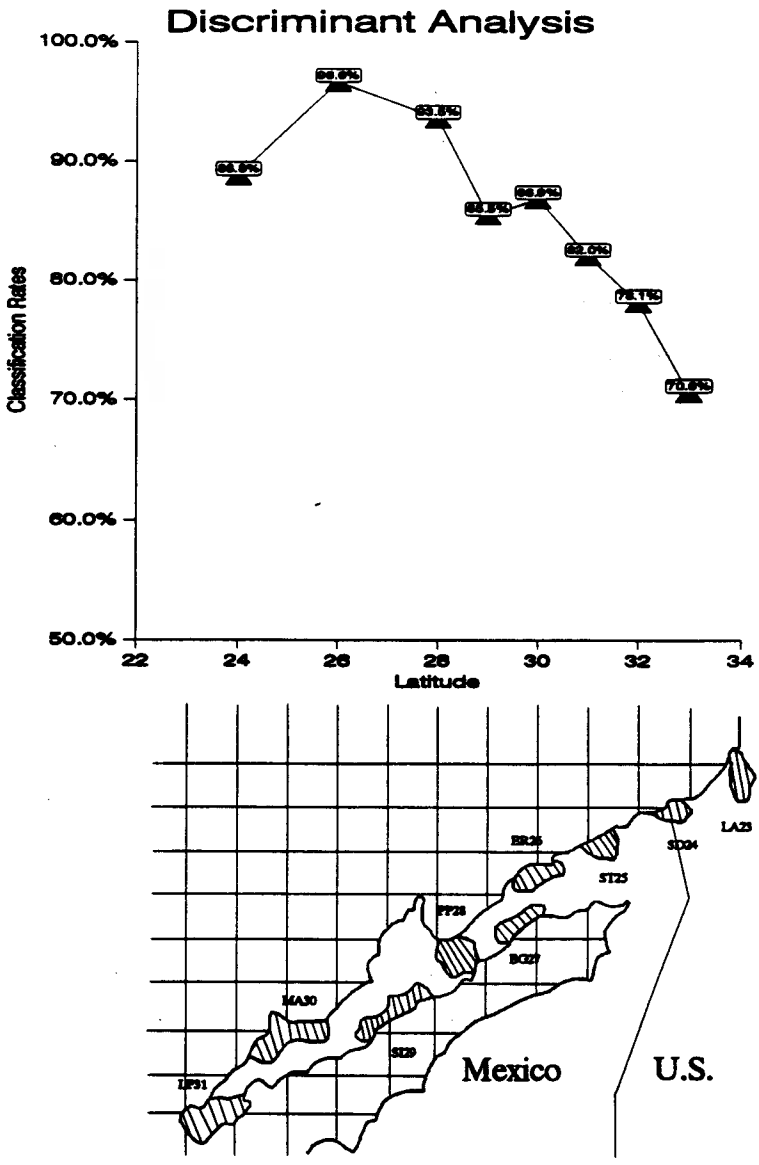

COLOR VARIABLE
Breast Brightness - Adjusted for Year
Males Collected October - April
BRSTBR2
12
10
8
6
4
2
0
-2
-4
-6
-8
-10
22
24
26
28
30
32
34
36
LATITUDE
LA23
SD24
ER26
ST25
FT28
BG27
MA30
SI29
LP31
Mexico
U.S.

FIGURE 11


Discriminant Analysis
100.0%
90.0%
80.0%
70.0%
60.0%
50.0%
Classification Rates
22
24
26
28
30
32
34
Latitude
LA23
SD24
ST25
PT26
BG27
MA30
SI29
IP31
Mexico
U.S.



Testimony to the Task Force on the Endangered Species Act

Presented by Mike Ahrens, Natural Resources Consultant

April 24, 1995

Thank you for this opportunity to share our concerns with the implementation of the present Endangered Species Act. My name is Mike Ahrens I live in the City of Hemet here in Riverside County. I am a member of the Interest Group Committee to the North and Eastern Colorado Desert Coordinated Management Plan, focusing on the recovery and protection of the Desert tortoise and other sensitive species. I operate a private consulting firm representing the needs of several recreation oriented groups which rely on motorized vehicles either as their form of recreation or to access public lands to pursue their particular form of recreation. These recreational pursuits include Rock Hounding, Hunting, Fishing, Sightseeing, Disbursed Camping, and Historic Site Exploration. Today I am testifying on behalf of the National Natural Resources Coalition. We are a coalition of 50,000 concerned citizens from four western states bound together by one common thread -- we are dependent on access to public land for our livelihood, recreation, and our way of life.

Typically our members are families which enjoy these activities together. Many times several families will join together and form clubs, sometimes with several generations of different families that enjoy the same type of recreation and each others company. The forms of recreation vary somewhat but what is similar is their dependency on public lands. Recreationists will drive several hours from metropolitan areas to remote areas on public land. Some will camp in camp grounds or just off the side of a dirt road with their RV and then access other smaller dirt roads in four wheel drives or on trail bikes returning back each night to camp. Others will take their camping gear with them and tour the back country on remote Jeep roads pulling off to camp at the end of the day.

Motorized recreation contributes greatly to California's economy. Manufacturing, retail outlets, restaurants, camp grounds, motels, service and repair stations all benefit from motorized recreation. In a study completed last year by the city of Brawly, one of our desert communities in Imperial County, motorized recreation was found to contribute over 2 million dollars to the local economy. In a study completed by the Institute for Social Research, California State University, Sacramento, motorized recreation was found to generate 3 billion dollars in economic activity statewide, and supported 43,000 jobs. The study reports that approximately 14.2 percent of the households, or 3.5 million people in California participate in some kind of motorized recreation.

We believe our way of life is under assault, often for a noble goal but just as often in a manner that is ill conceived and unlikely to achieve the desired result. Just last year motorized recreation opportunities were restricted from eight million acres of land in the California Desert. Currently the public's ability and right to access public land is threatened by the implementation of recovery plans for the Desert Tortoise, Fringed Toed Lizard, Nat Catcher, Arroyo Toad, Least Bell's Vireo, Willow Fly Catcher, Mojave Ground Squirrel, Snowy Plover, Fairy Shrimp, Spotted Owl, Furbearers and countless other listed species.

I would like to focus for a moment on some of the ways that the recovery of endangered species has inappropriately impacted motorized recreation. It is well understood that the demise of the Desert Tortoise is primarily caused by disease and predation. Actual recorded impacts to the Desert Tortoise caused by motorized recreation is so low, that to make the figures appear relevant

motorized recreation impacts are lumped together with those of highway related take. Clearly there is less potential impact from a family driving down a two track road at 5-10 mph than a semi-truck travailing at 60 on the interstate. The mere difference in the amount of traffic would lead most to believe that these may be separate issues. Further lumped into the argument is vandalism. It is true that some will pick up tortoises and take them home, and others regrettably have even intentionally killed them. I will not begin to explain this behavior but I will point out that when this happens in other species it is called poaching and the issue is dealt with through education and enforcement of game laws.

The recovery of the Desert Tortoise is centered on the establishment of Desert Wildlife Management Areas (DWMA's). These are preserve areas where the primary management action is to restrict public access. How this will eliminate disease within the Desert Tortoise population I don't understand. What affect it will have on the Raven population, the Tortoises key predator, whose population is increasing at a rate of 1500% annually, is unclear. What it will do is restrict public access to over 4.5 million acres of California Desert. Keeping law abiding citizens out of the back country will not stop poaching and could make it easier for those intent on breaking the law to go unnoticed.

The plan to save the Snowy Plover is another example of limiting access with no evidence it will benefit the species. Even though Californians enjoy motorized access on only four miles of our coastline, one of the recommended recovery actions by the Fish and Wildlife Service to protect the endangered Snowy Plover is to eliminate that use during night time hours. The reasoning is based on the idea that as vehicles drive on the beach at the posted 15 mph speed limit, one of the endangered birds might fixate on the headlights and fly into the vehicle. There is absolutely no evidence that this has ever happened to a Snowy Plover or any other kind of bird on the beach. For the last several years Pismo State Vehicle Recreation Area (SVRA) has voluntarily been fencing off nesting areas for the Plover and has reported very successful nesting seasons. This restriction will ultimately eliminate overnight camping at Pismo SVRA which now enjoys over 1,000,000 visitor use days annually. The SVRA generates $91 million dollars of economic impact to the local area annually and supports 1,546 jobs.

There is currently an effort to develop a Cooperative Management Agreement for the protection of the Peninsular Bighorn Sheep. The sheep are not currently federally listed but will be if this agreement can not be negotiated. The sheep have been in decline due primarily to poor recruitment of young animals, which has been cause by, a limited gene pool, and predation by an increasing population of Mountain Lion. The Peninsular Bighorn range has been isolated by the creation of Interstate highway 10 and 8, and state highway 86. The sheep's movement is further restricted by urbanization at the base of the San Jacinto, Santa Rosa Mountains and the Anza Borrego State Park.

According to a letter from Boyd Gibbons, Director of the California Department of Fish and Game to State Senator Tom Hayden Chairman of the Senate Natural Resources Committee, "A substantial increase in the number of lions verified in areas which were long ago urbanized strongly suggest an increasing population, ... Mountain lions have been determined to be the cause of approximately 22 percent of bighorn mortalities in the Peninsular bighorn sheep populations in Riverside and San Diego Counties." Establishing preserve management will do nothing to prevent the predation of the sheep or to expand the gene pool. It serves only to further restrict the ability of the public to access the public lands. As with the Desert Tortoise and the Snowy Plover, public access is the easy target when in fact there is no scientific evidence to prove such action will have any effect on stabilizing the sheep population.

I know that the committee has heard considerable testimony concerning the taking of private property and unreasonable mitigation. As citizens of this country we are also alarmed by this but hope that the committee will consider that when public uses are deemed to be to the detriment of a species there is no mitigation process available. As bad as the mitigation process is for private property owners it does normally allow for business or life styles to continue. One proposal we have heard is to exempt private property from the ESA and to focus recovery on public lands only. We support the protection of private property, but limiting the ESA to public lands is as ill conceived as the current law. We strongly support the immediate reform of this process, but we urge the committee to protect the public's access to public lands. The committee needs to realize that when public access to public land is revoked, the quality of life for millions of people deteriorates. The rights of both private property owners and public land users must be protected.

Because recreation is so intangible it becomes an easy target for recovery strategies. This often leads to agencies doing feel good land closures in the name of species protection and not addressing the harder issues of eliminating predation, controlling disease or enhancing the species' biological condition. Let's face it, bureaucracies tend to take the path of least resistance and it is much easier to dump on recreation with it's fragmented representation than to consider reducing the population of ravens or transplanting bighorn from other populations to expand the gene pool. To some extent this will never change but there are some things that the committee can do to limit this effect.

In the process of developing the listing of a species, the service should be required to identify the causes of decline and the extent of each cause. It further seems to us that the ESA should mandate that recovery actions focus on perhaps the top 80% of the cause rather than the easiest 20%. This would be much more effective and would add a level of reasonableness not found today in the ESA.

This raises the issue of science and the ESA. Currently, the statue requires "the best available science" for listing an endangered species. This sounds appropriate but it has become a blank check for special interest groups that want to restrict access to public lands and stymie development. What we have seen is that by limiting the review to the best available science, species have been listed with almost no science. This is simply not acceptable.

Let me sight an example. A few months ago there was concern for the Sand Mountain Blue Butterfly. Protection measures were being planned during a field trip at Sand Mountain Nevada. A recreationist who happened to be out that day involved himself in the conversation and after having the species described to him and the urgency of protection, he left to look personally for the species. The scientists were on foot and of course could not travel much in the way of distance in the soft sand. The recreationist was on an OHV and in a short time located thousands of these allegedly endangered species.

The point is that because the science team was mandated to only review the <u>best</u> science they did not conduct a <u>thorough</u> review for the species. In fact it could be said that finding that the species

is not in need of protection, is not in the best interest of someone charged with protecting species. The lack of available science actually benefits those charged with protecting species in that it can simplify the listing process. The burden of proof should not be put upon public and private property holders.

We strongly believe that there should be a more clearly defined criteria for listing a species. This criteria must include the impacts on local economies, families, private property holders and public land users. Furthermore, because a listing can have such a far reaching impact on private citizens, a listing must be based on a thorough scientific analysis and not simply "the best available science."

In conclusion the ESA is in desperate need of reform. Those reforms should require complete scientific analysis and the listing should identify the causes of decline and show to what degree each cause is responsible for the decline. The recovery plan should be developed before listing, and the ESA should mandate that the recovery be focused on the leading causes of decline rather than the easiest causes to restrict or eliminate. Recovery plans need to be sensitive to the value of public recreation and the need for access to public lands for recreational purposes. It should protect private property, and be sensitive to the uses of the public on public lands. Recreation adds to our standard of living both emotionally and financially. Access to public land is essential for recreational pursuits.

BRIAN P. BILBRAY
49TH DISTRICT, CALIFORNIA

COMMERCE COMMITTEE

SUBCOMMITTEE ON
HEALTH AND ENVIRONMENT

SUBCOMMITTEE ON
COMMERCE, TRADE AND
HAZARDOUS MATERIALS



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Congress of the United States
House of Representatives
Washington, DC 20515

Statement of the Honorable Brian Bilbray
Before the Endangered Species Task Force
of the House Resources Committee
Riverside, California
April 26, 1995

Mr. Chairman, thank you for this opportunity to appear here today, and for holding these hearings on an issue of such significance to southern California, and the country as a whole. I will be brief in my remarks, because we in Congress will have ample opportunity to discuss this matter at length. The purpose of these field hearings is after all to provide a forum for those outside the abstract and sometimes bizarre realm of policy-making, whose lives have been and are being directly affected by the Endangered Species Act.

Before hearing from our panel of witnesses, however, I want to make a couple of quick observations. As we enter into this reauthorization process, it is important for the American public to realize just how we arrived at this point, and what it is we are trying to accomplish with these hearings.

The bottom line is that the Endangered Species Act has been manipulated and mutilated over the last two decades. It is not beyond redemption, but its sins have to be addressed. Its original mission has become nebulous and unfocused. It is not presently effective in accomplishing its conservation mandate, although it has been effective in fulfilling other, less noble agendas. This equation is out of balance. What needs to be understood is that the lion's share of the problems which have been caused by the ESA can be laid directly at the feet of those who have claimed to be the Act's most ardent supporters. The bureaucrats, regulators, and activists who have been most shrill and inflexible in upholding the "sanctity" of the ESA have, in my opinion, been guilty of varying degrees of myopia, arrogance, and outright ignorance in recognizing and reacting to the effects and excesses of this well-intended and much-manipulated law.

Americans love their nation, and its riches of natural beauty. We as a people have lived in harmony with, benefited from, and enjoyed our natural surroundings for generation after generation. For many Americans, every day really is an Earth Day. Not an arbitrary and politically motivated event to be dusted off once a year, whether we need it or not, but genuine interaction with and respect for one's surroundings. However, it has been these same people who have been left behind by bureaucratic manifestations of what it means to be an environmentalist. People whose first instincts and inclinations would tend to be pro-environment have been sacrificed on political altars of agendas other than that for which the ESA was intended. The resulting level of unhappiness with the ESA should then come as no surprise, at least to anyone

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ho has been paying attention.

eal peoples' lives, families, and businesses have been disrupted, public health standards ›mpromised, and yet to date, all efforts to right some of the most obvious wrongs in the ESA ıve been dismissed out of hand as radical attempts to"gut" this statute. What we have itnessed is the triumph of process over product, and this is wrong. We ought not to be afraid of ıallenging the conventional orthodoxy that our environmental laws (many of which were ritten over 20 years ago) are immutable, and incapable of being improved by the careful ›plication of modern science and technology. This is what we are morally bound to do with e ESA, if we are serious about striking a legitimate balance between conservation policies, and e needs of the people who are affected by them. These goals can no longer be considered to be utually exclusive.

'e are here today to listen to the people who should have had a voice in this process long before is. These are the people next door, who are simply trying to live their lives and do the right ing. Their stories are real, and their frustration and outrage justified. But let us remember from hence this emotion came.

ıis is not a blind anti-environmental frenzy, as defenders of the status quo are so fond of aiming. Rather, it is a reaction to ideological interpretation and political implementation of a atute which was and is still supposed to be based on sound science and biology. This is an ıportant distinction to draw, and one which needs to be kept in mind throughout this process.

ans of the ESA as it is now implemented like to make the claim that it is flexible enough to ldress any problems through administrative actions, and in a perfect world that would probably : true. I doubt that the authors of the Act in 1973 envisioned the regulatory nightmare that ›uld come to pass incrementally. However, we did not hear from the government agencies or e environmental community about the wonderful "flexibility" inherent in the Act, until after veral of the highly publicized "train wrecks" (the Pacific Northwest, the Winchester fires, etc.) hich have shown the ESA's lack of efficacy as now implemented, and fueled the public ıhappiness which has come to characterize public perception of the ESA.

'hy didn't we know of this flexibility, and potential for cooperation, sooner than this? Bottom ıe was, the agencies who implemented and enforced the Act didn't need to be flexible or ›operative; they had the blessing of a Congress beholden to special interest environmental oups. This amounts to a complete default on the responsibility to create sound public policy, d has left little alternatives beyond that of legislative solutions. So let us take the cries of the ıicken Littles for what they are, and with a grain of salt; ours is a situation which need not have curred this way. This point is best illustrated, I think, in the telling words of the founder of the iginal Earth Day, former Senator Gaylord Nelson:

there are good environmentalists who see too much red tape and too many mandates, and they ink it can be improved and they're right. The environmentalists have failed on this. They ıven't fought to ensure environmental laws were effective without being excessive. They haven't ›ne a damn thing about that."

A profound observation indeed; however, keep in mind that there are good environmentalists out there, who have tried to do the right thing, yet have been marginalized by the dogma of the influential and well-heeled national organizations. While the actions and rhetoric of the "environmental community" have contributed heavily to the emotional "jobs vs. the environment" argument which has characterized much of the debate over the ESA, it would be inaccurate and unfair to tar all environmental groups with the same broad brush.

There have been, at least in my experience, notable exceptions to this. In fact, during my time in local government, it used to be commonplace for local environmental and conservation groups to work together with elected officials, businesses, individuals and others in the community to craft workable solutions to regional or local problems, such as the Health Risk Assessment of San Diego Bay. In these situations, people tended to understand the full dynamic of all the different issues which comprise such negotiations, and their actions and decisions reflected mutual understanding and respect. While such interaction is not yet completely extinct, it has certainly become the exception rather than the rule. What has emerged in its stead is an inflexible and imperious attitude which has defined the "correct" stances on natural resources issues. Unfortunately, this arrogance has long been shared and supported by the old guard in Congress; it is to the credit of Chairmen Young and Pombo that we now actually have an open forum in which to discuss these issues.

My point is simply this: for too long this debate has been poisoned by rhetoric and demonization, to the detriment of the need for sound policy. That time has passed; we now have leaders in Congress who are willing to move forward and face these tough questions, while soliciting input from the people who are most affected by them in the process. This is probably the most radical concept I could have envisioned for the shaping of environmental policy; seeking the direction and counsel of regular people who have to live and work under what Congress decrees to be best for the environment. I look forward to working to capitalize on this unparalleled opportunity.

SUBMISSIONS FOR THE RECORD

Due to the high cost of printing, the material submitted by the following was placed in the hearing record files of the committee:

Armstrong, Alice
Backstrand, Lee
Bahner, Robert H., and Felice
Ballmer, Greg
Bell, John
Brown, Larry, Save Our Forest Association, Inc.
Campbell, Bruce
Ceniceros, Kay
Curti, Barbara, Nevada Farm Bureau Federation
Declaration of Coexistence
Domenigoni, Cindy
Easley, Paula P., Coalition for Environmental Mandate Reform
Eaves, Jerry
Edwards, Kenneth L., Riverside County Flood Control and Water Conservation District
Elkan, Harold S., Old Vail Partners
Fife, Donald, Holcomb Valley Mining District
Forbes, James H., Property Owners Association of Riverside County
Gordon, Robert, Jim Streeter, Jim Lacy, Laura Young, and Brian Seasholes, National Wilderness Institute
Hartzell, Andrew K., Hewitt & McGuire
Horn, Bill, County of San Diego
Hughes, Elden E.
Jacobson, Cheri
Jeska, Renee, and concerned citizens of Pasadena, CA
Keith, Wayne C., Western Municipal Water District of Riverside County
Kibbee, Bonnie, and Trudy Thomas, California Taxpayer's Network, Inc.
Klimko, Anna M.
Lires, Raymond G.
MacDonald, Joseph H.
Marvin, Millard C., and Margie A.
Mendoza, Ramon
Perkins, Robert Eli, Riverside County Farm Bureau
Petition containing 34 names in support of the current ESA
Rennie, Bill E.
Roger F. Honberger, County of San Diego
Saiz, Jill A.
Sandoval, Esther
Shkorupa, Ernie, and Jan
Silver, Dan, Endangered Habitats League
Spenger, Constance, Friends of the Tecate Cypress
Sutton, John P., and Susan A.
Tessier, Kenneth M.
Tucker, Joseph J.

Turoci, Marsha, San Bernardino County Board of Supervisors
Watson, Muriel, Light Up The Border
Western Riverside Council of Governments
Woodrow, Taylor

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ISBN 0-16-047379-9

