ENDANGERED SPECIES ACT
STOCKTON, CALIFORNIA

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 NORTHERN CALIFORNIA

APRIL 28, 1995

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CONTENTS

	Page
Hearing held April 28, 1995	1
Statement of Members:	
Condit, Hon. Gary, a U.S. Representative from California	2
Pombo, Hon. Richard W., a U.S. Representative from California, and chairman, Task Force on Endangered Species Act	1
Statement of Witnesses:	
Beedy, Dr. Edward C., wildlife biologist, Woodland, California	82
Prepared statement	311
Belk, Dr. Denton, adjunct professor of biology, Our Lady of the Lake University	81
Prepared statement	307
Byrne, Dan, cattleman	8
Prepared statement	114
Cabral, Robert, supervisor, San Joaquin County	57
Prepared statement plus attachments	268
Coates, Bill, supervisor, Plumas, California	19
Prepared statement plus attachments	178
Comstock, Rose, vice president, California Women in Timber	23
Connolly, Mark, rancher	6
Prepared statement	108
Giampaoli, Peter, president, Epick Homes, Inc., Chico, California	64
Prepared statement	285
Heggerty, Jim, City Council, Paso Robles, California	4
Prepared statement	97
Hood, Lawrence, forester	25
Mathis, Marion, president, Family Water Alliance	10
Prepared statement plus attachments	125
Moriyama, Clifford H., resources and agriculture director, California Chamber of Commerce	38
Prepared statement	235
Ornellas, Leroy, dairy farmer	43
Prepared statement	262
Pernell, Robert, vice president, Board of Directors, Sacramento Municipal Utility District	67
Prepared statement	295
Rivett, Robin, attorney, Pacific Legal Foundation	36
Prepared statement	221
Robinson, Larry, president Local Union 2749 Western Council of Industrial Workers; accompanied by Chris Conrad	21
Prepared statement—Larry Robinson	196
Prepared statement—Chris Conrad	199
Rogers, Laurette, teacher	62
Schneider, Bob, contractor and developer	61
Prepared statement	282
Souza, Anthony F., realtor	59
Prepared statement	278
Sugnet, Paul, Sugnet and Associates, Roseville	77
Taylor, Daniel, National Audubon Society	40
Prepared statement	253
Tellerico, Frank, superintendent of schools, Siskiyou County	24
Prepared statement	202
Vice, Bob, president, California Farm Bureau Federation	34
Prepared statement	207
Wells, Mary, farmer and manager of agricultural water district	5

Page

Statement of Witnesses—Continued
Wells, Mary, farmer and manager of agricultural water district—Continued
Prepared statement 104
Additional material supplied:
Building Industry Professionals for Environmental Responsibility: Petition for reauthorization of the Endangered Species Act 317
Listing of additional submissions for the record 322

ENDANGERED SPECIES ACT—STOCKTON, CALIFORNIA

FRIDAY, APRIL 28, 1995

HOUSE OF REPRESENTATIVES, TASK FORCE ON ENDANGERED SPECIES ACT, COMMITTEE ON RESOURCES,
Washington, DC.

The task force met, pursuant to call, at 11:15 a.m., at the San Joaquin County Fairgrounds, Stockton, California, Hon. Richard W. Pombo [Chairman of the Task Force] presiding.

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

Mr. POMBO. The hearing will come to order. I was honored to be appointed by Chairman Don Young to chair this Task Force and given the job of examining the way in which the Endangered Species Act works. It is a rare thing for Congress to take its hearings outside of Washington, DC. Most people never have the opportunity to attend a congressional hearing, which is why I am particularly happy to bring Congress to my district today.

This hearing is one in a series of seven field hearings conducted in various areas of the country. Our goal in picking the locations of these field hearings is to take this task force to the people most affected by the Endangered Species Act. That means that we have taken these hearings to areas where there are significant numbers of listed species and where the local people have had firsthand experience with the Act and its workings.

The Central Valley of California is one of the areas of the country most impacted by the restrictions imposed under ESA. Someone recently asked if these hearings were open to the public. Not only are they open to the public, but we estimate that close to 5,000 people have attended and participated in these hearings. These hearings, like most congressional oversight hearings are fact-finding. That means that we are interested in firsthand information from people with specific cases involving ESA.

Many people have requested the opportunity to testify, but unfortunately time will not allow us to take oral testimony from everyone who has made a request. However, we are interested in hearing your views and encourage you to submit written testimony for the record. Your written testimony is just as important and will be considered the same as oral testimony that you will hear today. If you have your testimony with you today, we have a box set up for accepting your testimony. If you wish, you may mail your testimony to the Committee at 1320 Longworth HOB, Washington, DC

20515. The hearing record will remain open for two weeks for anyone wishing to submit written testimony.

When this hearing today is completed, we will have heard the testimony of over 100 people and we received hundreds of copies of written testimony submitted for the record. I want to say that although I have seen some press accounts that describe the witnesses as for or against the Endangered Species Act, we have not heard one witness testify that the ESA should be repealed or even significantly weakened. In fact, what the witnesses all seem to be saying is that they want an ESA that works fairly and compassionately protecting the rights of people while conserving our wildlife and natural resources. They want a Federal Government that is both flexible and responsive to their individual problems. They want a law that does not penalize them for being the owners of property containing protected species. They want incentives, not disincentives, to maintain habitat for species. We have heard many witnesses give many different views on how the ESA is working. However, I think that all of the witnesses, whether they are a farmer, an environmentalist, a home builder, a public official or just an average citizen support some changes to the ESA.

Let me emphasize that these hearings have not been divided between two different camps, one opposing and one supporting the Act. Our witnesses have not represented one viewpoint or even two viewpoints, they have represented many, many different view points and many different suggestions for change.

We will take these many suggestions back to our colleagues in Congress and we will work to achieve a bill that improves the way the Endangered Species Act works, ensuring that as we protect species, we also treat people with fairness and compassion.

I would also at this time like to recognize my neighbor and friend, Gary Condit, for his opening statement.

STATEMENT OF HON. GARY CONDIT, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. CONDIT. Thank you very much, Richard. Let me say to you, Richard, that I want to congratulate you and commend you for your leadership in this area and tell you that I personally appreciate you allowing me to participate as a full member of this Task Force, and as someone from the other side of the aisle who probably on this panel is perceived to be one of the endangered species.

This Task Force today, I think brings the legislative process directly to the people who are most impacted by the Endangered Species Act, and that is farmers, businessmen, local government and even environmentalists. The Endangered Species Act is putting our farmers out of business and it is driving business out of this country. We need to restore people's confidence in our government's ability to be reasonable and to act with common sense. Examples abound regarding the failure of government bureaucrats to exercise common sense.

In Santa Nella, an approved project to build a factory outlet has been halted by the U.S. Fish and Wildlife Service. The Service had determined that the development in the area, although outside the area of the endangered kit fox habitat, could eventually result in additional development, which in turn could eventually have an im-

pact upon the kit fox habitat. This Act desperately needs to be changed to bring balance and common sense into the process. Decisions should be based upon sound scientific data. We must consider economic and social consequences of our action and we must protect private property rights. We cannot freeze in our tracks every time we cross the patch of a snaildarter.

We have to make sure that we find a solution; that we can continue to grow as an economy; that farmers can continue to produce and grow their commodities and crops. We need to find common ground, and that is what we are about to do. I believe we have an opportunity with the leadership of Mr. Young, Mr. Pombo and with a new attitude in Congress to find common ground and the solution to bring balance to the Endangered Species Act.

Richard, I am honored to be here. You know that I have to leave in a few minutes. I have made some other commitments, but I pledge to work with you and the rest of my colleagues to find a solution that is important to us here in Stockton, Modesto and the Central Valley. I look forward to working with you. So thank you very much.

Mr. POMBO. I would also like to introduce the other Congressmen that are here with us today. We have Congresswoman Helen Chenoweth from the State of Idaho, who is a member of the Task Force.

Helen has traveled with me to every single one of these field hearings that we have done and has taken a great deal of time away from her family and her district to accompany me and the Task Force on this number of field hearings that we have had and it is appreciated by myself a great deal. And I appreciate her being in my district today.

I would also like to introduce Congressman John Doolittle from Roseville, another member of the Task Force and Congressman George Radanovich from Mariposa, another member of the Task Force.

I would at this time like to begin. We have all the other opening statements of the Congressmen. They all have statements. But we are just going to go ahead and enter those into the record at this point because we do have a very full agenda and we want to get moving.

[At press time these statements had not been received.]

Mr. POMBO. The first panel has already assembled at the front. They are Jim Heggarty, the City Council of Paso Robles; Mary Wells from Williams, California; Mark Connolly from Tracy, California; Dan Byrne from Tulelake and Marion Mathis from Maxwell. They are already assembled at the front.

I would like to point out to you that we operate under what is called the five-minute rule. We have the lights up here; green means go, yellow means hurry up and red means stop. And I would ask you to summarize your written statements. We all have a copy of your written statements, so summarize your written statements so that you can complete your oral testimony within five minutes. At the conclusion of all of the panel's testimony, we will then proceed to questions. And if we try to stay within that five-minute rule it will help because we have a long way to go today. So, I would appreciate it very much.

Councilman Heggarty, you are recognized and you may begin your statement.

STATEMENT OF JIM HEGGARTY, CITY COUNCIL, PASO ROBLES, CALIFORNIA

Mr. HEGGARTY. Thank you. Mr. Congressman and members of the panel, I have two subjects. I will give you the highlights and hopefully get through in five minutes.

We have 37 acres that were donated to us for the Little League ballplayers. There are time constraints to lose $47,000 in a State grant. There are also time constraints because the property will revert back to its original owner if we do not get a Little League ball team in there. Three years ago, Fish and Game Wildlife came in and said this could be possibly kit fox territory. Nobody has seen a kit fox in there—no droppings, no sign. The city has paid $36,000 to have a consultant biologist to come in there and tell us there is no habitat here. In the meantime, to mitigate it, Fish and Game, among other things, said if we would give them $25,000 the problem probably would go away.

The last sentence in the letter that I have here of April 3, is that we can go ahead and start construction; however, to minimize the potential for take of kit fox, the site should be surveyed by a qualified biologist for the presence of active dens before any grading activity begins. This is back to square one.

The other concerns a bridge. It is our main artery on the south end of town. It is the main artery from 101 across the Salinas River to our industrial and commercial area and also the high school and elementary school.

Back in 1980 a CEQA was done. We did not have sufficient funds, so we built two lanes on the bridge for expansion at a later date. NEPA came along and said you have to do a complete EIR. We are going to handle that as a brand new project rather than an expansion. We had to do a whole new EIR. Fish and Game, Wildlife was in there; the Department of Transportation. The project has been delayed now four years. Again, we are up against the possible loss of $2.5 million. Congress is taking back all unspent funds, as you well know, and it sets on Packwood's desk at this time. Four years later, we have not started construction.

The first delay was because the Department of Transportation said that the bridge should be expanded on the south side, even though it was engineered to be expanded on the north side. A year later, they allowed that we could expand it on the north side.

In the EIR, there were absolute asinine delays, one of which is the spelling of Paso Robles. CalTran says it should be just Paso Robles. The Department of Highways came back and said no, your charter says El Paso de Robles and so that is the way it should be. That was only a 60-day delay.

In the meantime, we have a two-lane bridge, no pedestrians allowed, no bicycles. Our plan calls for two more lanes, pedestrians and bicycles. Meanwhile back at the bridge, we have pollution, congestion and no further commercial or industrial growth without expansion.

What we have are RRAs, runaway regulatory agencies. They must be made to follow their own rules and not be arbitrary and capricious, and they have got to be made accountable.

In summation, in talking with a friend of mine in Santa Barbara the other day, he threw something at me that I thought was quite good, particularly for today. We have CEQA in California and we have NEPA at the Federal level. But as he put it, it is ceqacide and nepacide and it spells death for California.

Mr. POMBO. Thank you.

[The statement of Mr. Heggarty can be found at the end of the hearing.]

STATEMENT OF MARY WELLS, FARMER AND MANAGER OF AGRICULTURAL WATER DISTRICT, WILLIAMS, CALIFORNIA

Ms. WELLS. Thank you.

My name is Mary Wells. I appreciate the opportunity to give you my views of the Endangered Species Act. I have developed these views as a fifth generation farmer and manager of an agricultural water district. Congressman Pombo, I really do appreciate the effort you have made to come to California and hear our story.

My family settled and began farming in the 1850's on the very land that is now part of the irrigation district that I manage. We all want to protect California's environment, particularly the species in need. I appreciate the abundance of wildlife on my ranch in the foothills northwest of Sacramento. As a farmer and rancher, I consider myself to be a steward of the land, a stakeholder, not a polluter. And as general manager of the 16,000-acre Westside Water District in the Sacramento Valley, I have a public trust responsibility to protect the environment.

I agree with the overall goals of the Endangered Species Act if we define the goal as protecting the environment. Unfortunately the ESA and its application threatens our unique cultural heritage and the economies of our local communities while often providing very little benefit to the endangered species itself. The ESA has had a significant impact upon myself as a landowner and the Westside Water District. In the Sacramento Valley, we have been harmed the greatest by the listing of the winter run Chinook salmon as an endangered species. One attempt to protect the winter run has been to improve fish passage at the Red Bluff Diversion Dam on the Sacramento River. After nine years and many millions of dollars, this one fish passage problem has not been resolved and the winter run is still endangered. Red Bluff Diversion Dam provides our irrigation water to the Tehama-Colusa and Corning Canals. These canals serve over 140,000 acres of farm land in four counties along the west side of the Sacramento Valley.

If ever there was an example of the need for stakeholders and the public to have input and a right to know the cost of the ESA implementation for the benefit of these species, this is it. Listings as well as recovery plans must be based on a more specific definition than the best scientific and commercial data available. In the case of the Red Bluff Diversion Dam, the so-called best science was used to justify a proposed $50 million Archimedes screw pump project. This project failed to take into consideration many oper-

ational improvements that have been in place since 1986. Such expensive, unproven proposals can no longer be afforded.

Since 1986, we have been forced to limit our water diversions during the critical planning months of April and May. Drought conditions, compounded by increasing water demands from environmental water supplies, including the winter run, have forced five years of supply reduction on the entire 140,000 acres in the TC service area. These cutbacks have resulted in two years of 25 percent water supply and one year of a 35 percent supply. In addition, the cost of water to our farmers has increased 300 percent since we first received our irrigation water in 1980.

When I was 10 years old, my grandfather showed me a map and he said this is going to be the TC Canal. Here is our land. Some day, we will have water on this dry ground. We will be growing tomatoes instead of dryland wheat in a three-year rotation with sheep stubble and fallow ground. The project has made that dream become a reality. However, as water supplies have become uncertain and more costly, farmers look in the short-term to reducing the high yielding crops. In many cases, this means growing a lesser crop. Back to wheat.

This case was illustrated in an April 14th letter to the editor in the Wall Street Journal. The ESA with its moving target of compliance has drastically altered what my grandfather and I once envisioned when we invested our capital, offered our land as security and committed two generations to the full payment of introducing this irrigation water.

We can make things right with the ESA. It will take peer review, stakeholder input, cost-to-benefit consideration and balanced habitat-wide recovery plans. We are anxious for the process to begin.

Thank you very much.

Mr. POMBO. Thank you.

[The statement of Ms. Wells can be found at the end of the hearing.]

Mr. POMBO. Mark Connolly.

STATEMENT OF MARK CONNOLLY, RANCHER, TRACY, CALIFORNIA

Mr. CONNOLLY. My brother and I, as you know, Mr. Chairman, ranch about 9,000 acres in south San Joaquin County and Alameda County, strictly a beef cattle operation. In about 1990, we had our first experience with the Endangered Species Act. A local project, the Safeway project in the south county, wanted to build a 1.7 million-foot warehouse in the south county. The Department of Fish and Game and Fish and Wildlife were concerned about the impact on the kit fox.

We were approached by Safeway as ranchers to sell to the State of California and to San Joaquin Open Space and Farmland Trust mitigation property. In other words, we would keep the property but an easement will be placed on it to allow the preservation of the kit fox. We did that. It was the perfect incentive program. Safeway got to build their warehouse. Safeway paid us for the right—basically what they call development rights on the property—$627,000. That money went to retire our agriculturally incurred debt to Sierra Bay Production Credit Association, which is

a federally chartered agency, and pay off income taxes which were generated. The net result of this was that a private person such as Safeway preserved 627 acres of kit fox habitat, proceeded with their project on a timely basis, because their warehouse in the Bay area had burned down. And there are persons in the San Joaquin County Planning Department that will tell you that that project was not slowed down because of the kit fox, and there was an incentive. And a result of this case, there has been at least, to my knowledge, one other sale of a kit fox easement in San Joaquin County and there are between two and three more pending. Well, I can tell you there are two. We sold another small two- or three-acre one to accommodate another project.

We have created a market in San Joaquin County, that incentive program that all Republicans like myself talk about, to preserve endangered species. I have—because I am also a lawyer—I have farmers coming into my office through the backdoor quietly saying, telling me about this kit fox thing. Does it work? Is there really money there for me to preserve an endangered species? And I tell them just like I am telling you now, yes, there is. If you want to look at the books, look at them. There is an incentive program—it is called the Endangered Species Act—if we use it.

There has been a rumor that is going around that we extorted Safeway. That is a lie. About two weeks after we completed the transaction, I received some of the things that I have up here at my desk. I received in the mail this model Safeway truck and inside it was a bottle of Kit Fox Amber, a type of beer. I want to read to you what came from Safeway along with it, which I have hanging on the wall of my office.

"I would like to thank you on behalf of Safeway and myself for your vital input and contribution to the successful completion in 1992 of Safeway's new Tracy Distribution Center.

"We had hoped to recognize your contribution at the grand opening in 1992, but that was not possible. Nevertheless, we do not want your contribution to go unrecognized.

"As a small token of our appreciation, and as a reminder of it, please accept the model Safeway truck and a bottle of Kit Fox beer.

"The project presented many challenges, some which nearly drove us to drink. The almost-too-large-to-haul bottle of Kit Fox beer is but a symbol of not only the most notable challenge, but also a myriad of other challenges which had to be creatively, cooperatively, and with compromise, mastered. We each worked from a different perspective and on different parts of the project, but we completed the project successfully.

"Thank you for your help with this project."

The proposed reforms of the Endangered Species Act would destroy the incentive program we completed in San Joaquin County. The incentives that are created now would be destroyed. Instead of developers paying for the impacts and purchasing mitigation property, there would be a taxpayer subsidy to preserve endangered species. As part of this mitigation, Safeway funded $200,000 to San Joaquin County to do a kit fox study. Habitat in south county was identified. That plan has never been adopted by San Joaquin County because of a lack of staff. But under the proposed amendments, if that habitat conservation plan was adopted, which includes part

of our property, the property on which, Chairman Pombo, you have your uncle's dairy heifer operation. I do not know whether it is still there. If those areas were included and designated core habitat, we would be entitled to compensation if we are included in it, because it would reduce the market value of our land by 10 to 25 percent, and the taxpayers would pay us. So instead of the incentive program funded by the private development community who create the impacts, we have now got the taxpayers funding it.

If that would not doom the kit fox mitigation in San Joaquin County, the fact that de-listing a subspecies would eliminate protection completely, other proposed amendments would eliminate the protection of isolated pockets of kit fox—San Joaquin kit fox in areas like the south county, and would doom the animal to extinction in our county.

I realize I do not have much time, but I can tell you as a farmer and as a rancher that I have to thank the Endangered Species Act for providing us with the funds to pay off our agriculturally-incurred debt and for allowing us to continue our ranching operation into the fourth and fifth generations.

Mr. POMBO. Thank you.

[The statement of Mr. Connolly can be found at the end of the hearing.]

Mr. POMBO. Mr. Byrne.

STATEMENT OF DAN BYRNE, CATTLEMAN, TULELAKE, CALIFORNIA

Mr. BYRNE. Good morning.

With my brother, I raise cattle on private, Forest Service and U.S. Fish and Wildlife refuge lands. My family humbly accepts our responsibility to act as stewards for all the lands we operate on, both private and public. We are certainly not asking for an end to all land-use regulation. We are simply asking for common sense reform to correct the serious problems of abuse that the Endangered Species Act is creating.

One of the most serious flaws of the Act is the absolute power its Section 7 consultation process gives to the Fish and Wildlife Service over any land-use decision affecting Federal lands or projects. This has reduced my ability to provide for my family, completely subjugated local landowners, including the Forest Service and the Bureau of Reclamation, to the central authority of Service and has actually hindered recovery efforts for endangered species.

Through our hard work and because of our stewardship, we have developed a positive working relationship with the forest biologists, conservationists and staff officers. This relationship has fostered the provision of habitat improvement benefiting wildlife as well as cattle. However, the imposition by Section 7 of a central planning authority, the Service, this process has been derailed. Site-specific standards developed by the Forest based upon current stream survey work are overridden by generalized, more restrictive standards that the Fish and Wildlife Service has developed to address even the most fragile systems west-wide. In response to the Act, we have curtailed our grazing use on one central sensitive allotment, which is comprised significantly of private lands, by up to 84 percent in the past three years since consultation began.

Within the Klamath Project where we farm, Section 7 of the Act covers several aspects. With respect to project operations, the Act has blocked implementation of nearly all of the habitat enhancement projects which were identified in the Klamath Water Users Initial Recovery Plan, which I provided you a copy of. This plan addresses the need of the specie and prescribes solutions that balance the needs of farmers with those of the listed fish.

With respect to critical habitat designation, the Service's proposal goes beyond single purpose dedication to reveal outright hostility toward the local timber and agricultural economy. The Service dismisses impacts on the local timber industry and agriculture by asserting that these sectors of our economy are currently declining. The Service's report concludes that to the extent designation may have adverse impacts on these two leading sectors of the regional economy, they will be more than offset by tourists coming to the region to enjoy the amenity of increased sucker fish populations.

The uncertainly over water deliveries caused by the Service's prescriptions for fish habitat enhancement, coupled with repeatedly dismissed groundless, lawsuits brought under the Act by private interest groups who oppose productive land use as a matter of principal, has wreaked havoc on family farming operations like mine to the point we cannot even prepare timely borrowing and repayment plans.

A third example of the Act as it applies within our project is with agricultural chemical use on the Kuchel Act leases within the project. The Kuchel Act provides for the continuation of existing agricultural activities on land set aside for migratory waterfowl. On these lands, the Service has rejected the rigorous standards for pesticide use developed by the U.S. EPA, as well as the California Department of Pesticide Regulation, and is requiring the Bureau to complete an individual risk assessment for each chemical and each particular site. According to Jack Pandol, Undersecretary of California EPA, this would take his agency 20 to 40 staff-years of work and $2.5 to $6 million to complete. And this is an annual assessment that needs to be done. The end result has been the loss of chemicals and perversely, this has led to the substitution of less effective materials which require more frequent application with added risk.

I must respond to negative comments made at the April 17th meeting concerning compatibility with endangered species on public lands. The west has far more Federal land than State or privately owned land as witnessed by this map. And the access to the public land was guaranteed to local ranchers at the time these lands were withdrawn from settlement instead of being patented to private ownership. Wildlife depend on both these land resources at different seasons of the year, and if the ranches were to fold due to the loss of this public land for grazing, wildlife would suffer greatly. Currently, we plan for 26 separate State and federally-listed candidate species and we have taken into account their needs as well as ours.

In conclusion, I would just like to state that any recovery effort on private land will hinge on the cooperative participation of ordinary people who will conduct the on-the-ground management and

the best incentive for habitat production on ranches is generally for government to intrude the least into private efforts.

Thank you very much.

Mr. POMBO. Thank you.

[The statement of Mr. Byrne can be found at the end of the hearing.]

Mr. POMBO. Ms. Mathis.

STATEMENT OF MARION MATHIS, PRESIDENT, FAMILY WATER ALLIANCE

Ms. MATHIS. My name is Marion Mathis. I am here today as President of Family Water Alliance which is a north State grassroots organization, but also, and maybe more important, as a wife, a mother, a rancher, a farmer, to relate to you my personal and community experience with the ESA.

As farmers and ranchers, my husband and I also value the natural environment of our property; however, ESA is having negative impacts on our farming and ranching activities. We receive our irrigation water from the Tehama-Colusa Canal, part of the Central Valley Project. Annually, delivery of our spring irrigation water is restricted by management of the Red Bluff Diversion Dam to create passage for the winter run Chinook salmon. This is very stressful for spring crops like tomatoes, alfalfa and wheat.

Our CVP contract renewal process was a nightmare. Along with the contract with the Bureau of Reclamation came a biological opinion that was issued by U.S. Fish and Wildlife. In its original form, government agents could enter your private property to survey and search for endangered species and habitat. In the final form, this language was softened, urging cooperation; however, I believe that the intent to survey still remains and constitutes an absolute threat to my farming operation. The critical needs portion is now being compiled which will result in mitigation measures and attempts by the Federal Government to micromanage my family farm and undermine my individual private property rights.

The livestock portion of our private property is used for winter grazing our cattle, and now this is under a cloud because of the listing of the vernal pool fairy shrimp. It is commonly held that this listing was not done with good or sound scientific research, and in fact, in the Wall Street Journal in October of 1994 it was reported that the listing decision was in response to a one-paragraph petition submitted by a botanist in 1990. And his claim was based on a 1978 paper written by a graduate student in botany who now admits he could not substantiate the study's conclusions. So I am faced with a listing decision based on unsubstantiated poor science which will prevent me from using my land as I do today.

I just mentioned our traditional winter grazing practice. Well, in the summer months we move our livestock to Fort Klamath, Oregon. And incredibly, this property is now under a proposed critical habitat designation for the sucker fish. This designation is based not only on waterways but on the 100-year flood plain. If the boundaries remain unchanged, our family property will be rendered virtually unsellable according to the Klamath County tax assessor, and beyond that, its agricultural use will be unreasonably restricted.

I have mentioned my family experience with the ESA, but my community is also under stress. And you have in my written testimony many examples of what has happened to the communities in Glenn and Colusa Counties. The emotional and financial turmoil alive in our community is a factor which is often overlooked and regularly not figured into the cost of the ESA. The burden of environmental correctness is shared each night across the dinner tables of Glenn and Colusa Counties and the children of our area are drawn into this debate as they watch their parents struggle with regulation. As a measure of their concern, I have envelopes of letters here that the school children of Colusa County have written to the Task Force.

Also in my written testimony, there are eight suggested recommendations for change to the ESA, and I will not try to list those now. But I would emphasize the need for economic analysis, sound science and the absolute necessity of including people in the process, because in the end, this is all about people, people like me and people like the ones inside and outside this hearing room who feel the tentacles of government reaching out to wrap themselves around our land, our communities and our hearts. So we urge you to reform the ESA, restore balance and common sense and above all, listen to the stakeholders, the people who have invested their dreams in a piece of land, because they are the ones that have everything to lose.

And finally, as an individual pursued by the ESA, I am painfully aware of the Federal vise which has caught my family in its jaws. The options available to us are being narrowed and the use of our private property undermined by the ESA. It is patently unfair that the largest part of the burden of ESA compliance should fall on the back of natural resource-based producers. The overzealous and often selective application of the ESA is justified by the media, by some members of Congress and by the President himself by referring to me as a polluter. I am insulted. I am a producer, a provider and an employer. I am proud of my ag community. I am proud that our family has been engaged in agriculture for over 100 years. I am proud of our substantial contribution to the economy of this country and the health and well-being of the citizens through a noble cause, that of feeding Americans, and I will not apologize.

Mr. Chairman, I would like to have someone present to you these letters from the children and also extra letters from the community.

Mr. POMBO. Without objection, they will be included in the record.

[Due to the numerous letters received and the cost of printing, the letters have not been included but names of all submittees are listed at the end of the hearing.]

[The statement of Ms. Mathis can be found at the end of the hearing.]

Mr. POMBO. We will begin the next portion—the questions. I would like to remind the members of the Task Force that we are also under the five-minute rule, and to try to stick to five minutes on answering—or asking questions if possible.

Mr. Connolly, in your written testimony and in your oral testimony, you talk about being compensated for habitat, for being per-

manent habitat, and for being inside the kit fox habitat area. Do you feel that—and obviously you do because you signed the contract—but do you feel that you were fairly compensated for becoming permanent habitat or managing your property in such a way that it would remain habitat?

Mr. CONNOLLY. We do not actually manage it, but the answer is yes. We still run livestock on it. A private—a non-profit organization, the Center for Natural Lands manages it under contract with the Department of Fish and Game and supervises it to make sure that we do not do something that is incompatible with the kit fox. We are still running livestock on it.

Mr. POMBO. And you do not see anything wrong with establishing a working relationship between the producers, the farmers and Fish and Wildlife so that they can continue—you know, Ms. Mathis just spoke about all of the wildlife that is on her property. And quite frankly, she sounds like quite a conservationist. Her property is full of so many different species at this time. There should be no reason why she should not be allowed to continue doing what she is doing because she is habitat.

Mr. CONNOLLY. I do not know what her situation is. I can only tell you about mine. We have always had good cooperation with Fish and Game and Fish and Wildlife. They have always been welcomed on our property. We let environmentalists come in and do surveys at any time. We have never had any problem. Our experience with Fish and Wildlife and Fish and Game in negotiating the easement, the terms of the easement, because one had never been negotiated, was one of cooperation in trying to get the easement established to allow the project to proceed, allow the kit fox habitat to be preserved and to allow us to continue to ranch. And those were all accomplished.

Mr. POMBO. I think that one of the biggest debates that is going on right now is on compensation. How do we compensate property owners who are habitat—that become permanent habitat for different species. And I think that HCPs have played a role in trying to compensate property owners that are outside of a city limits or outside a sphere of influence, that become permanent habitat. And that has become one of the debates that we are struggling with in reauthorizing the Act. If HCPs are going to be part of the solution, if they are going to be part of the answer, we have to figure out a way that we can fund them. And one of the solutions that has come up is similar to what you speak about where you pay for it in mitigation fees. Another solution that has been talked about is that society as a whole—that taxpayers pay for permanent habitat. There is a lot of debate on exactly how you go about doing that and what direction we should go in regards to that.

Contrary to what you said in your opening statement, we are not working from a draft bill right now. Basically, we started from a clean sheet of paper on January 4th and said that we were going to try to reach out and listen to people. I believe that some of the ideas that are included in your written testimony are something that we can work with.

You mention in your written testimony—and I know that everybody in the audience has not had a chance to see this. But you do mention agriculture receiving a safe harbor exemption. If they are

managing their properties in a way that is beneficial to wildlife, they ought to be allowed to continue doing that. And that is something that I think that we are reaching consensus on, that we ought to be able to do that.

The other thing is—and I wanted to ask you about this. You specifically pull out the timber interests from agriculture. If the timber interests were able to manage their property so that it was also beneficial to wildlife, should they not also receive the same type of exemption that agriculture would?

Mr. CONNOLLY. Well, I was not dealing—in my comments in my written testimony, what I said about the timber industry was that I think the reforms that are basically being proposed are reforms that are not really reforms. They are attempting to gut the Act. And the reason it is being done is because really developers are leading the charge. And I think to a large extent, the agricultural community is being misused by the development community. You commented about taxpayers paying all of it. Why should I as a taxpayer, who already has 627 acres of permanent kit fox habitat, subsidize a developer developing a parcel of land? The taxpayers should not have to do that. The Safeways or the developers should be the ones in my opinion who mitigate and provide the financial incentive.

Mr. POMBO. I guess the difference in that, Mark, is that you have already been compensated and your neighbors have not been.

I am almost out of time but I just want to make this point. We have to figure out a way so that everyone who is permanent habitat is compensated for that loss. And it is not an easy answer. But we have to figure out a way so that everyone is compensated for it, because major projects like the Safeway project only come along once in a blue moon and that is one of the reasons why we fought so hard to bring it to this county. But I thank you for your answers.

Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I would like to address my questions to Mr. Connolly. Mr. Connolly, how many acres were involved in this voluntary conservation easement?

Mr. CONNOLLY. 627.

Mrs. CHENOWETH. And you have 14,000 acres in the Connolly Ranch?

Mr. CONNOLLY. Right—approximately, right.

Mrs. CHENOWETH. Yes. How much were you paid for this conservation easement?

Mr. CONNOLLY. A thousand dollars an acre, $627,000.

Mrs. CHENOWETH. $627,000. You know, this is a giant corporation with lots of money and the corporation can pass those costs on to their customers.

Mr. CONNOLLY. There were two parties to it and I could not tell you exactly. There was King and Lyons, which was a partnership which was the real estate developer. We had negotiations with them. Safeway was the principal. What the relationship was between the two or where the money came from exactly, I do not know because I am not one of those parties. But I know that I got the beer and the truck and the thank you letter from Safeway.

Mrs. CHENOWETH. You mentioned in your testimony and in your comments that the taxpayers really should be the ones to pay for the kit fox or the fairy shrimp.

Mr. CONNOLLY. No, I did not say that.

Mrs. CHENOWETH. Could you clarify that, please?

Mr. CONNOLLY. What I said was, is that under the current system where a developer who is impacting the species is required to mitigate, that developer has to finance the mitigation. Any proposal which would compensate landowners for merely being designated as habitat when there has been no impact on their operation would merely be a taxpayer's subsidy. It is that simple.

Mrs. CHENOWETH. If a landowner's property is subject to the same type of conservation restrictions as yours, but it is the government that imposes these restrictions; should not the government pay that landowner instead of the developer for the mitigation?

Mr. CONNOLLY. Well, understand—I need to go back and explain something. We did the Safeway easement for kit fox before any portion of it was designated core habitat. Understand, it has not been designated core habitat today because that plan has been adopted by no one. It was produced by environmentalists, but it has been adopted by no one. No one has been impacted by it to today's date.

And normally, existing agricultural operations are not impacted by a designation of such as that as core habitat. We would not be restricted in our operation as it exists today merely by being designated kit fox core habitat.

Mrs. CHENOWETH. Mr. Connolly, I just want to say you are a very, very lucky man because there have been literally thousands and tens of thousands and hundreds of thousands of people across this Nation who have had their homes, their property and their way of life and their ability to make a living taken from them by the government and instead of condemning the situation, count your lucky stars.

Ms. Wells, I want to ask you, in your work in the irrigation district, you are a general manager, right?

Ms. WELLS. [Nodding head affirmatively.]

Mrs. CHENOWETH. How much water was shut off in the system so that you could meet the environmental requirements? How many acre-feet or cubic feet were spilled or bypassed the diversion structures?

Ms. WELLS. There are two levels of answers to that. In terms of Red Bluff itself, since 1986 it has varied every year. I would say in the most critical years where the gates were forced to be left open so fish could pass, we do not have a problem with that. We think that there needs to be flexibility in that time. There were magical dates set by science that was limited. And we feel that by implementing flexibility we do not have to suffer as much, nor do the fish. But to answer your question, at times at the end of April and the end of May when water is so critical to the growing tomatoes, our water was cut in half in my district. In other words, the total orders that were needed, we were on allocations of half of that in the worst times.

Mrs. CHENOWETH. And so, did anyone pay you for that amount of water?

Ms. WELLS. Absolutely not. The crops suffered. We tried to get as much water to the ones that were hurt the worst. It is a very critical situation.

Mrs. CHENOWETH. Can you tell me with regards to the Farm Credit Association and various other banking industries, what has been the impact on applications for operation loans by our agricultural community not only to the Association, but any banker?

Ms. WELLS. I would be happy to. I would focus on the years 1990 to 1994. Our district is in a growing process. Some of the 16,000 acres I mentioned are still developing. We found that because we were being served by the CVP, because of the uncertainty at Red Bluff during critical times when we are growing crops that the banks would like to see us growing instead of wheat, that we were penalized by a 10- to 15-percent reduction on the equity base from which we could borrow on our ongoing capital needs.

Mrs. CHENOWETH. Mr. Chairman, I see my time is up. Thank you very much.

Mr. POMBO. Thank you.

Mr. Doolittle.

Mr. DOOLITTLE. Thank you, Mr. Chairman.

Mr. Byrne, you testified that you have been forced to reduce your grazing use of both the public land and your own private land by 84 percent since consultation began?

Mr. BYRNE. Yes, sir. The way it lays out up there, some of our private land is commingled and it is not fenced separately from the public land and therefore, we manage our land according to the prescriptions developed by the Forest Service which is the agency that controls the surrounding land. And this has worked well for the past 120 years. We have not had a problem. I sound like I am being hard on the Fish and Wildlife Service. It is not particularly the Fish and Wildlife Service; what it is is the process where a central outside power, which in this case happens to be the Fish and Wildlife Service, has been mandated by this Act to get right in the middle of some very site-specific utilization and practice—they are telling us exactly how to graze on a very site-specific basis in our area. And they do not have the time or the expertise to address our particular situation, even though we have consulted with private biological firms to get information that tells us exactly what we should be doing for the benefit of the species. Instead, they have just said well, we are going to look at the west and we are going to worry about developing a standard which if we hold it all the way across the west there is absolutely no place that will have any resource degradation. And it is because of that and because a permit is so valuable to us that we have backed way off on our use so that we can fit even this very highly restrictive standard.

Mr. DOOLITTLE. When did consultation begin?

Mr. BYRNE. The species was listed in 1988 and the elevation of all of these issues came up at that time, the concerns about the resource, and that was good. We got a dialog going and started working toward addressing some of the resource concerns that had not been highlighted to that level before.

Mr. DOOLITTLE. Well, when did you start reducing your use by 84 percent of the public and private land?

Mr. BYRNE. In 1992 and 1994. It was something like 70 percent in 1992 and 84 percent in 1994. Actually in 1991—or 1990, we increased our use slightly because of weather conditions. But about 1991 is when the formal consultations began and that is when the Forest Service decided to back way off.

Mr. DOOLITTLE. OK. It has been reduced by at least 70 percent since 1992?

Mr. BYRNE. Yes, sir.

Mr. DOOLITTLE. Do you see in the foreseeable future when you will regain former use?

Mr. BYRNE. That depends upon your work at fixing the process. If Congress can put common sense back into this where the local people in the agencies, the scientists which are best equipped with what the species needs and what will work on the ground, as well as the ranchers who have the experience with how to implement common sense proposals that will allow us to thrive economically and provide for the species; if you guys can fix that, there is absolutely no reason that the use cannot go up even higher than it was before.

Mr. DOOLITTLE. Well, but absent any change, do you foresee this limitation on your use continuing indefinitely?

Mr. BYRNE. Yes, sir.

Mr. DOOLITTLE. Have you quantified how much that has cost you so far?

Mr. BYRNE. Not specifically in dollars and cents. I know that the permit that we hold has been valued by the Federal Government for estate tax purposes when my father passed away at the end of 1988 and it has gone from being in the low to mid six digits in value to being practically worthless now because of the interpretation of the Act.

Mr. DOOLITTLE. OK. So then it has cost you a great deal.

Mr. BYRNE. Yes, sir.

Mr. DOOLITTLE. Do you think you ought to be compensated for that loss?

Mr. BYRNE. Well, that is complicated. The permit is not for sale. What we want is the law fixed so that we can go ahead and run our life and that our future generations can come in and use this land to the benefit of our community. If the Federal Government sees fit to preclude that use, then, yes, we should be compensated.

Mr. DOOLITTLE. It would seem that at the direction of the Fish and Wildlife Service you have provided in essence a private or quasi-private benefit and now you have made it available for public use at your expense, for which we are all benefiting and you are paying.

Mr. BYRNE. That is part of the big problem. You know, additionally there is over $400,000 of projects in the entire watershed that includes the upper reaches of the Klamath project which Ms. Mathis talked about. There are $400,000 of these projects that have been identified, they are ready to go, they are on private land, they are designed to enhance the resource for the benefit of the listed sucker fish, but because of the way the critical habitat designation can usurp private property rights, those projects are currently on hold and the fish is what suffers.

Mr. DOOLITTLE. Thank you.

Mr. POMBO. Mr. Byrne, before you put that down, you said you did not want to be compensated, you just wanted to be allowed to continue to ranch and farm, is that the——

Mr. BYRNE. That is our first choice. We are in this for the long-run.

Mr. POMBO. Thank you.

Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Marion Mathis, I thought you did a great testimony.

Ms. MATHIS. Thank you.

Mr. RADANOVICH. I think you did a real good job, as well as the other members of the panel. I thought what you had to contribute was very valuable. However, Marion, I have a couple of questions that I would like to ask you and would appreciate your response. In your submitted document, you have listed a couple of things that Family Water Alliance was recommending as far as changes to the Endangered Species Act.

Item 2 says "provide for public notice and county participation in the listing of species. All meetings regarding a species or subspecies should be open to the public and held locally".

Item Number 3 says "local and county governments should have input in the initial review of an endangered species and be involved in all aspects of the studies and reviews".

Could you take a few minutes please, and explain to me how bringing this process down to the local level might make it all have a little more sense?

Ms. MATHIS. Well, I am a firm believer in local control and I think that what works over here in this area does not necessarily work in an area 100 miles away or 500 miles away, and a plan that may be good in one spot is not good in another. So I think it is very important that there be local input into the action before a species is listed. And also, I think that it would mitigate somewhat the local impact of the Act. Because it is the local impact that I was talking about I kind of gave short shrift to on communities. You know, they really suffer. The tax base suffers, employment, social services, everything when ag ground goes out of production because of the Endangered Species Act. So, I think that local government should have a part in this and I think that the public process and opening this up to people will—the input will just be that much greater and the decisions based on something fundamentally sound.

Mr. RADANOVICH. OK. Thank you very much. I also have a question; do you think that there has been a difference over the years with people who use the resources of the State of California for profit, do you think there is less abuse? People are now more conscious of the environment and what effects we have or do you think that pretty much human nature has not changed from 50 years ago and we need a lot of outside control? The point I am trying to get to is the fact that I really believe that the best environmentalist is the one who is using resources for profit, if they are good stewards and good conservationists.

Ms. MATHIS. Well obviously, from my position I am in full agreement with what you say. I think that things have changed considerably over the last 50 years, and if you want to talk about the

California population in general, I think everybody is much, much more aware of what is going on. So, I think the environment has improved. Speaking as a farmer and rancher, if I have not been a good steward for 100 years, there would not be any species to save anywhere.

Mr. RADANOVICH. Then you believe that those people using resources who are good stewards and good conservationists should really have an almost direct role in the development of environmental policy?

Ms. MATHIS. Absolutely, because we are the ones that are down here at the base of this whole thing at the grassroots. We are the ones that are affected by it the absolute most. So we should have an absolute say in the formation of that policy.

Mr. RADANOVICH. Do you then, Marion, believe that the judicious use of natural resources—if you call yourself a conservationist or you are using those resources for profit, but also being a good steward and conservationist of the land, do you regard that as being good or bad?

Ms. MATHIS. Well, I regard that as being good. A good conservationist is something to strive for. In order for us to make a living off the land, we just naturally have to be good conservationists, because it is the land that provides us with our living. So if we abuse the land, we cannot make a living for ourselves. And furthermore, if we abuse the land, we cannot feed everybody in this country and most of the people in the world.

Mr. RADANOVICH. Just one more question then. On Item 8 on your list of recommended changes to the ESA, you mention that every effort should be made to survey government-owned land for endangered species and habitat before the private sector is approached. Do you care to comment on that?

Ms. MATHIS. I certainly do. I can speak most specifically about the State of California where the State and Federal Government owns at least 50 percent of the ground in this State. It is held publicly. It seems to me that there must be a reasonable amount of habitat that would be included in that 50 percent, and those areas should be sought out first, you know, for habitat development long before the private sector is approached.

Mr. RADANOVICH. Thank you very much, Ms. Mathis. And the other members of the panel, all of your testimony was wonderful. I do appreciate it. Thank you.

Mr. POMBO. Thank you.

At this time, I would like to thank the panel for your testimony, as well as for answering the questions. I appreciate you accepting our invitation to testify here today. And again, to you, as well as to everyone else, the official record of the hearing will remain open for two weeks. So if there are more complete answers that you would like to give to questions that were asked, or if you would like to answer a question that you did not get the opportunity to answer, the record will be held open and I welcome your comments.

At this time we are not taking a break. We are just calling up the second panel. The first panel may be excused.

Panel number two. Supervisor Bill Coates; Larry Robinson accompanied by Chris Conrad; Eileen Johnson; Frank Tallerico and

Lawrence Hood. Will you please take your places up at the witness table.

Again, I would like to remind the audience that we are not taking a break. We are just changing panels. We are going to get going right now, so please take your seats. I have been informed that Ms. Eileen Johnson was unable to make it, so Rose Comstock will be delivering her testimony in her place. Thank you for being here.

Supervisor Bill Coates is with us. You are recognized and you may begin your testimony.

Please take your seats. It makes it difficult for anyone to hear if you are all talking and milling around. So please, everyone take your seats so that we can begin.

Mr. Coates—Supervisor Coates, you may begin.

STATEMENT OF BILL COATES, SUPERVISOR, PLUMAS, CALIFORNIA

Mr. COATES. Thank you, Mr. Chairman, and thank you, the whole panel for coming out here. We do not see you guys too often out here in the west as far as hearings go, and we really appreciate this opportunity. So our hats are off to you guys for coming out here to do this. Thanks a lot.

Very quickly, what has the Endangered Species Act done in some of the public lands country? First of all, it has preoccupied the Forest Service for the last five or ten years. They have spent millions of dollars hooting for owls up and down canyons, doing studies. They have studied rural people practically to death, as well as owls. We have been scoped and studied and tested, and while that was going on, millions of dollars were spent and very little happened. What actually started happening to our rural communities is, it started shutting them down.

We are down to 25 percent of the forest activity that we used to have in the Sierras. That is a dangerous level for some reasons that I am going to mention. While they were shutting down a lot of the rural communities with this inactivity, second- and third-generation families were driven out of the rural communities; the schools were hurt; education levels have dropped. We have cut back on counseling, languages, sports, nursing, busing and many of the things that are enjoyed in the rest of the United States. And the education level is really struggling now in these rural areas.

Why would Congress want to save us? That is a good question. Actually, we provide the search and rescue, the schools, the road system, the bridges, law enforcement, Fish and Game, the people that catch the poachers. We have had a lot of trouble with bear poaching in our country. We plant the trees and fight the fires. So if you did not have us, or somebody in Mississippi did not have us, Congress would have to reinvent us, because without us, no one from Mississippi would be able to visit those lands.

We recently had a CASPO team running around the Sierras. You probably have heard of that. They are now admitting—I think some of them at least privately—that they have studied the wrong thing. Meanwhile, they have spent a lot of money. Evidence shows us that the forests are too dense—and some of you have come from that country, so you know what I am talking about. John Muir used to talk about driving a buckboard throughout the Sierras and

talked about the park-like stands. Now you could not take a football and throw it 25 feet through the Sierras without hitting something. Actually in our country we used to have about 10 percent white fir, which is a little Christmas tree-looking thing. We now have 47 percent white fir. So the Forest Service has changed the nature of the land over the last 100 years. As a result, we have dried up the eastern side of the Sierras and we have got fires exploding around us like crazy.

We recently had one of them run at the town of Loyalton four different times last summer and it almost burned the town down.

This, I might emphasize because we are talking about the Endangered Species Act, is an environmental disaster that is being ignored. While we run around studying one species or another, we are ignoring the landscape that we are losing every time one of these fires occurs. In the Loyalton country, Brooks Mitchell told me that they had burned about 120,000 acres in the last 10 or 20 years. That land is not being affected by a natural disaster. This is a catastrophic moonscape that is created while we lose the land for hundreds of years for anything; for spotted owls or for anything else.

What have we done about it? Well, in Quincy, we started the Endangered Communities List. That is now a nationwide list. Congressman Doolittle, I think remembers that. It was started by the counties. It is now done nationally. We have got some communities around the west—it works just like the FBI's 10 Most Wanted List. A community dies, we take it off the list. There is a waiting list now, a threatened communities list. Communities are waiting to get on it. That was all done so that we could show the rest of the United States that man is part of this equation, a very important part, and that the communities are being affected by what this Endangered Species Act is doing.

We have also decided in our country what will work on the ground. We have proposed—and I brought some copies of our proposal—what is now being called the Quincy Library Group proposal. It is basically a list of things that local people think will actually work. And I would echo some of the comments of the previous panel. If you can get local people to figure out what works, then they will buy into it and it generally speaking has a lot more intelligence to it. It is based on local weather conditions, the actual animals, the country we are trying to save, et cetera.

The Quincy Library Group came together to do two things. First of all, to save the communities and second, to save the environment. We would like to put the environment back to its pre-settlement condition. At the same time, we would like to make sure that the rural communities survive. We believe we have done that in this agreement. It is kind of like having two football teams on the field. We have taken one of those teams off the field and the second team still cannot score. The Forest Service was given that plan and they told us if we could get on the same song sheet they could get the job done. We have gotten on the same song sheet and they still cannot get the job done. There is a film available about that work, the Quincy Library Group proposal and you can get copies of that, if you are interested, through the California Forestry Association.

In conclusion—oh, and we had a couple of principles when we put that proposal together. We did not allow the press to come to our meetings and we did not let the Forest Service come. We had good reasons for that, and we locked the door basically and we kept the doors locked until the smoke cleared away and we actually ended up with something we could all get behind.

Recently this CASPO report proposes to treat 4,000 acres a year. That would be like, Chairman Pombo, me telling you that you could mow your lawn but you could only mow eight feet every weekend. Obviously, it will take you a while to get through mowing your lawn and that is exactly what those folks are doing on the Federal land. The reason it is getting so dense and so choked is because there are too many trees in there and at the rate the Forest Service is proposing to move forward, we are going to burn that country up a long time before we do anything else in it, and that will not do any of the endangered species any good. So everybody ought to be talking about forest health in the rural country and instead, they are talking about the spotted owl.

This Committee can do much to help preserve rural families and we are counting on you to do that. And thanks an awful lot for coming out here.

Mr. POMBO. Thank you.

[The statement of Mr. Coates can be found at the end of the hearing.]

Mr. Robinson.

STATEMENT OF LARRY ROBINSON, PRESIDENT, LOCAL UNION 2749, WESTERN COUNCIL OF INDUSTRIAL WORKERS, DIAMOND SPRINGS, CALIFORNIA; ACCOMPANIED BY CHRIS CONRAD, SONORA, CALIFORNIA

Mr. ROBINSON. Mr. Chairman and members of Congress, my name is Larry Robinson and I am President of Local Union 2749, Western Council of Industrial Workers which represents 11 western States and also our parent union is the United Brotherhood of Carpenters and Joiners of America.

Today, I thank you for this opportunity to testify before the Task Force. It has been a long, long time waiting. I am sure as I get on into my testimony that you will understand what has happened to the people and myself who I work with in our community, in our county and what has happened to the State of California with the California spotted owl.

It gives me great pleasure to speak on behalf of the people who construct our homes, the carpenters, the woodworkers, the mill workers who have been deprived a means of a working livelihood. Their homes they have had to sell. Their communities, they have shut down because there is no timber supply. There is a great tragedy in this country and it is time that Congress makes a change. We can no longer wait.

Our mill was very close to shutting down a year ago. Congressman Doolittle, thank you. With your help and the rest of the members of Congress and with our Executive Secretary, Mike Draper of the Western Council, who is now Seventh District Representative for the Carpenters, you helped save our mill. It was because of a

monopoly the Forest Service said was on the land. I can answer questions on that later, but I would really like to move on.

I feel it is important that every representative of the State of California and United States be aware of the catastrophe which has taken place not only in the Pacific Northwest but here in central and northern California, specifically. In 1990, the Lumber Production and Industrial Workers Local Union 2749 joined forces with several organizations like the California Forestry Association, the Forest Products Commission, Sierra Care, a lot of grassroots organizations. We have joined forces with them to try to make political leaders aware of what was going to happen if the wood products industry did not take a firm stand on the balanced approach to the timber issues.

For the last five years representatives from this union have been to the State capital, have met with most of the representatives. We were present at the Forest Summit in Portland, Oregon. We have been to the White House and asked the previous and current administration to adopt a balanced approach that would take care of the needs of both sides of this issue and it has failed.

The U.S. Forest Service management has not been able to do their job. Timber sales that are announced, bid upon and sold never get to the stage where they are actually harvested because of the appeals process, keeping these sales in a loop that goes on forever.

Timber production in the El Dorado National Forest where I work and my family has lived for generations has come to a halt. Almost 50 timber sales never got harvested because of the appeals process or the appeals that happened in 1993 and 1994. And until 1993, the El Dorado National Forest was harvesting 138 million board-feet annually on a sustained yield basis. In 1994, since CASPO and because of the appeals, there have only been about 13 million board-feet harvested off the El Dorado National Forest. That is over 100 million feet of timber reduction. And if anybody can tell me that we have not been affected when a mill that I work at, Michigan-Cal Lumber Company, was in business for 105 years and depended upon having natural resources come from the private lands and having them shut down and not be able to make a business work; somebody that has been in business that long, and had 75,000 acres of their own land, and was not able to get any timber from the U.S. Forest Service or public land, and they have to shut down their business is pretty sad. It is very sad to see a business that has been in operation that long who has been one of the leaders in conservation and has taken care of the forest on their own land. They have cut and harvested trees three times in that 105 years. They were very good stewards of the land. When the milled closed, I lost a lot of good friends, because what happened to us was unmentionable.

And I would just like to thank you for this opportunity to talk to you today. One last comment, we ask you, Mr. Chairman, and members of the Task Force, do not let the Endangered Species Act destroy rural communities. Remember, we are the people that built this great Nation and we have been taking care of the forest for over 100 years.

Thank you.

Mr. POMBO. Thank you.

[The statement of Mr. Robinson can be found at the end of the hearing.]

Mr. POMBO. Ms. Comstock.

STATEMENT OF ROSE COMSTOCK, VICE PRESIDENT, CALIFORNIA WOMEN IN TIMBER

Ms. COMSTOCK. My name is Rose Comstock and I am from Quincy in the northern Sierras. I am very honored to sit in front of your Task Force, Congressman Pombo. I am First Vice President of California Women in Timber and I am speaking for the logging families of California.

I am from a ranching and farming family in rural Trinity County and I now work in the timber industry. We have always made our living from the land, and my story about how the ESA has affected me and my family may be a little bit long. So I will try to only hit what is the most important.

In 1985, I was a very happily married woman with four children and in 1987 I was moving up in my career and I had an opportunity for a promotion and I took it and took my family with me to Port Angeles, Washington. We lived in Port Angeles from 1987 through 1989, which was really a fairly short period of time. My husband worked in the sawmills and we seemed fairly happy. We thought things were going to go very well for us, until one day in May of 1989 my husband did not come home from work. And that was because we lost three sawmills in one day. They shut down due to lack of timber supply.

It was very, very difficult to deal with that sudden change. There were hundreds of people out of work. We were not really sure why. We were not politically active; we voted, but we were just your normal family trying to raise the children and pay bills and just live. So suddenly we were thrown into a circumstance that we were not prepared for.

My husband went to Oregon, where we had lived previously, to look for work and the circumstances were similar there. He went on to northern California to where I had originally lived and there were not any jobs there either. He ended up in Quincy in the Sierras because I had a friend there who had another friend who worked in a sawmill and they needed some hands, so he was hired on. But it left me with the full responsibility of my four children, and with losing half of our income, we did not really have enough money to pay for day care. My son was 2.5 years old and he ended up going back to Roseburg to live with his grandmother until we were able to figure out where we were going to live and move and get the family settled. That was very difficult for me. It was very difficult for him. He thought I was lost. He didn't see me for two months.

You have to excuse me. I am very nervous. We ended up moving that summer. I gave up my career which I had worked very hard for. I got the family taken care of, children in school, and I still was not sure why—why we had to move. In 1990, I found out that it was the northern spotted owl.

At that time, I decided to make a definite career change. I went to work for the U.S. Forest Service marking timber and I was very

proud of that. At that same time, the Forest Service wanted us to go hoot owls because we were now needing to find out how many California spotted owls were living in the Sierra Nevada. And the purpose was to prevent us from turning into a Pacific Northwest disaster that I had just left. I refused to hoot owls.

1990 was a year of great transition. I became very politically involved and began to learn what it was that had disrupted and basically destroyed my family. We went through depression, financial stress. We were broke. Alcoholism, abuse, things that they say do not exist in environmental impact statements. That people really do not get hurt because they are protecting wildlife. I would like compensation for my loss.

In closing, I just want to say that I am very committed to seeing that changes are made to the ESA so that people—so that logging families and children are recognized as a priority in front of wildlife.

Mr. POMBO. Thank you.

Mr. Tallerico.

STATEMENT OF FRANK TALLERICO, SUPERINTENDENT OF SCHOOLS, SISKIYOU COUNTY, YREKA, CALIFORNIA

Mr. TALLERICO. Thank you, Representative Pombo and the rest of the Task Force. I appreciate this opportunity to come before you on behalf of the people I represent.

My name is Frank Tallerico and I am the Siskiyou County Superintendent of Schools. I would like to begin this testimony with a statement. The statement is—contrary to what you have been told, and you have been told this many times, do not believe it because there are jobs lost in rural America. A lot of jobs have been lost over the last five years. For example, in Siskiyou County alone, since 1989, we have lost 620 jobs in the woods, 86 jobs at Morgan Door which is a remanufacture company with high paying jobs. We lost 370 truck driver jobs and 138 jobs in one of the, I believe, highest endangered communities in America, the community of Happy Camp. That is a total of 1,214 jobs lost in one county in the last five years. Siskiyou County has lost 65 percent of its forest-related jobs since 1989.

Contrary also to what others may also tell you, based on the California Department of Fish and Game's data base, in 1977 there were 121 documented pairs of spotted owls in the 13 northern counties. Today, 1995, there are 2,470 documented pairs, and if those are pairs, that means there are 4,940 owls out there in these 13 counties alone.

Contrary again to what many will have you believe—and you heard a personal story—this is not always a matter of dollars and cents, it is a matter of people, community and the socioeconomic impacts on those communities. The issue is not only the issue of one of additional services needed to be provided by government, but also to schools and counties. These services are extremely expensive and tug at the very infrastructure of these rural counties. These communities have the very fabric torn from within themselves, the very fabric of that rural community. This creates an additional need for free and reduced lunches for children, particularly when family income begins to drop below the poverty level because

those jobs that would support them are no longer available to them.

History has it that during times of high unemployment there are additional incidents of child and spousal abuse, along with drug and alcohol abuse. We witnessed these things in the schools of rural America. These actions require an additional need for mental and public health services. It places an additional burden on the juvenile justice system, the district attorneys' offices, law enforcement and probation departments. These needs are greater than these rural counties can provide. And only recently, the most recent statistic I have, 12.5 percent was the unemployment rate in my county. The number of families that go on county general assistance and welfare rolls increases along with aid for dependent children.

With the advent of mill closure and/or layoffs there arises a new need with children; the tremendous psychological and emotional stress that is placed on these young people when their family's principal breadwinner is no longer employed or has to leave town to seek other employment. And with that, I have a statistic for you to give you an idea. In one of my communities, this is a small high school in a rural area, there is a total of 102 children in that high school. In that high school as of April 17, there were 10 children out of 102 that were living with their parents—both parents in the home because several of those—21 of those children's fathers had to leave to seek employment elsewhere. Of that, nine, only nine of those children at this time are not on some sort of public assistance.

It brings to bear that those emotional scars run deep and they take a significant amount of precious time for teachers, counselors, mental health and social worker professionals. Because of this lack of funds that happens and the family support unit beginning to break down, we lose all of our successes and opportunities for these young people.

There are 29 school districts in Siskiyou County with about 8,500 children in K through 12. Of those 29 school districts, 21 or 73 percent of that community, over 50 percent of the community is receiving some sort of assistance, particularly meals for needy children. We feed 3,880 children a day two times, breakfast and lunch. And those who tell you that the Endangered Species Act does not have an impact on a community could come to my town and we could show them that day in and day out.

Thank you for the opportunity.

[The statement of Mr. Tallerico can be found at the end of the hearing.]

Mr. POMBO. Mr. Hood. Mr. Lawrence Hood, you may proceed.

STATEMENT OF LAWRENCE HOOD, FORESTER, SAN LEANDRO, CALIFORNIA

Mr. HOOD. Thank you, Mr. Pombo, and thank the Committee.

My name is Larry Hood. For background purposes, you should understand that I am the owner of a small forest-products business in the Bay area that produces products for the pencil industry worldwide. Our company was formed in 1880 and we began operating on our current site in 1908. We have about 225 employees and

about half of our sales are for domestic use and the other half are exported all over the world.

You should understand that as a graduate forester, I strongly support strict standards for forest health, water quality, sustained yield and species protection. However, the way the ESA is construed and is being applied is killing American companies that are operating in global markets.

At the same time, the environmental results that are occurring globally are precisely opposite and orders of magnitude worse than was originally intended by the ESA. The pencil business worldwide is a very small one, but the effects of ESA on us are very easy to see, and as a result, we believe we are an excellent indicator of the global impact that is occurring. In our industry, the ESA has played a large part in the decline of the worldwide use of renewable good forestry products from the United States while unintentionally contributing to the desecration of the Indonesian and the Brazilian rain forests and the over-harvest of local woods in such places as China. The documentable fact is, the ESA has been a major factor in the 25 percent decline in the U.S. production of our products while foreign producers from Indonesia, Brazil and China have grown by an exactly corresponding amount.

World business is driven very heavily by economics; consequently, our business has lost a huge volume of sales to historical customers because we are now so much more expensive. It is now dramatically cheaper for our customers to buy products from virgin, unmanaged forests overseas where the practices are atrocious and where the concern for the environment is among the lowest of the priorities.

Americans are winning a pyrrhic victory environmentally locally only to export our business and the problems to other places in the world that do an immeasurably worse job. U.S. foresters know more about maintaining ecosystems and have a better infrastructure to accomplish the desired goals than in any other nation on earth.

Nevertheless, during the decades the Federal forests of California have been growing our specie at nearly twice the rate of net reductions, the harvest of our specie has plummeted and there has been an immense increase in regulatory and litigation costs. U.S. prices have skyrocketed and the users everywhere have been forced to turn to other types of materials.

I am not arguing for the elimination of ESA. To the contrary, I believe we can continue to set the world standard for forest protection and sustainable forestry while allowing the skills and the dedication of forestry professionals to make us the most productive and most competitive resource growers in the world.

However, the structure and the execution of the ESA must change from being a weapon that can be used against any sort of public or private land use to one that balances the legitimate needs of both threatened organisms and mankind worldwide. The ESA has been turned into a tool for the obstructionist view. It is now your job to bring the desperately needed reform. The excesses of the ESA are causing us to export the demand for our products that we can grow better here in the United States than anywhere else.

All I ask is that you keep our small example in mind as you create the solution that takes a reasoned and globally-balanced approach to our resource stewardship.

Thank you very much for the chance to address you.

Mr. POMBO. Thank you.

Ms. Comstock, I appreciate you being here to testify and share your story with us. I can tell you that I cannot compensate you for your loss, all I can do is tell you that I can try to make it never happen to anyone else. Thank you.

Mr. POMBO. Mr. Coates, you brought up the Quincy Library Group in your statement and you provided us with information on the group and what they have been able to accomplish locally by pulling local people in to try to solve a problem. You have quite an impressive list of people that have participated in that process, and I believe cover just about every spectrum imaginable in viewpoints on endangered species, forest health, forest management. Why do you feel that that process was successful in coming to consensus on a problem that the entire United States government has not been able to solve?

Mr. COATES. Well, I think it has do with approach. I think we all discovered in the Soviet Union that central planning does not work very well and that is the reason in eastern Europe we are seeing all those countries break up. The same thing could be applied to Washington, DC and communities in general. If you really want to solve something, I think the best way to do it is to go out on the ground, try to include everybody that lives in those rural communities and you will generally come up with pretty good solutions. Then everybody will attempt to implement them. We are pretty excited about the results that we have come up with so far, but we are sure having a tough time getting the Federal Government now to get off the dime and get moving.

Mr. POMBO. Let me just put it this way to you. If in the reform of the Act, if we said that the process had to involve a group like the Quincy Library Group, have local people representing all interests, who sat down and tried to work out the problem; therefore, supporting the solution on a consensus basis, would the Act have worked better if we had come to you and said how do we solve this problem? How do we protect the owl? How do we protect our forests? How do we continue to have employment in your area? Gave you the problem and let you come up with the solution to what is a very real problem to you. Would that have been a better way to go about it than what we have done?

Mr. COATES. Absolutely, much better. The danger there is to not try to take whatever works in our country and apply it to Dan Byrne's country or any other. Each area really has to work its problems out in that area, and I think it ought to include every possible interest group in that area.

One last editorial comment. One of the reasons that we only have 30 or 40 percent of the United States voting anymore is because they are dropping out of government. They are not serving on school boards; they are not serving on PTA boards or on boards of supervisors. The reason for that is that they feel like they cannot make a difference. If we can decentralize government a little bit

and get it back into the local areas everybody will start participating again and I think we will have a better country.

Mr. POMBO. Thank you. And to think we have been criticized for bringing these hearings out into the real world.

Mr. Robinson, in your opinion, having been someone who has worked in the timber industry, do you think that this could have been avoided? That we could have come up with a management plan that would have allowed the timber industry to remain a viable industry and at the same time protect the environment, protect the owls?

Mr. ROBINSON. Yes. As a matter of fact, we have been protecting the environment all along. California has the strictest guidelines in the world and we have been protecting the animals. The Endangered Species Act was written and had good intentions, but what happened was, the environmental community, which is now an industry, has found a way to make money. So they have attacked the appeals process, or used the appeals process to shut down the timber sales. My feeling is, we have to have a way to stop those appeals unless those people are willing to put up a bond that will ensure that if they are right we will pay, but, by God, if they are wrong, they will pay because they have cost us our jobs and they have cost us our communities. It takes a 10-cent stamp and a couple of enviros and, by God, you have got yourself a timber appeal and you have stopped everything that has happened in the county that took two years to make a process for.

Mr. POMBO. Thank you.

Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. Coates, you indicated in your testimony that the Forest Service has been preoccupied. What do you mean preoccupied? What have they been doing?

Mr. COATES. Well, a lot of them have been busy hooting owls up and down the mountains. In fact, we are pretty sure they are now counting each other because they cannot see each other out there in the dark.

On a more serious vein, the fact that we have all been talking about the spotted owl so much means that we have not talked about anything else. There is a lot to get done out there. There are thousands of species and plants and communities and multiple-use work in the production of wood fibre and the reduction of fire danger. We really do a lot of very necessary good things, and most all of that has been shut down while we have preoccupied ourselves with the spotted owl. So really, the way to save species is to make the land healthier. So we ought to be coming up with good healthy land plans in all of these areas and the species will take care of themselves.

Mrs. CHENOWETH. Mr. Coates, the Secretary of Agriculture, who has authority over the Forest Service, operates under certain laws that the Congress passed, the Multiple-Use Sustained Yield Act; the National Forest Management Planning Act; the Resource Renewable Planning Act, and I do not remember any place in those acts that it states that the Forest Service is supposed to be hooting owls. In fact, in Section H of the Endangered Species Act in a section entitled Coordination With Other Laws, it states that "Nothing

in this Act shall prevent the Secretary of Agriculture from carrying out his responsibilities in fact or in law". And I am sorry, but this Administration, has abrogated their responsibilities terribly.

Mr. Robinson, you indicated that almost 50 timber sales never got harvested because of appeals in 1993 and 1994. That is one of the reasons I am advocating term limits for Federal judges.

You indicated that the annual cut has been drastically reduced. Until 1993, the El Dorado National Forest was harvesting over 138 million board-feet annually and in 1994 about 13 million board-feet. I have to ask, where in the world are we putting our money, because in 1975, there was $828 million spent by the Forest Service, and in 1994 $2,000,480,000 spent by the Forest Service and their employees have increased by almost a third in that time. Now surely, they cannot all be working in ecosystem management, which has never been authorized to the Forest Service by the Congress. So, I will look forward to when we can have oversight hearings on the activities of the Forest Service, because I think they have abandoned——

Mr. ROBINSON. The money—I guess if you are asking me a question, where the money is being spent is, they spend two years preparing for a timber sale. They get to that sale process, everybody is out there ready to do their job and the loggers are out there, got their equipment out there, their fallers out there, and an appeal goes in and there is a stay by either a judge, or the Forest Service says hey, we have got to bow down or we are going to lose again. And we are not only going to lose money—and this is the sad part to the taxpayers. The money that the Forest Service spent—which is our money in the first place—to make those sales ready and then to spend money on the appeals process, and then they have to spend money on paying the timber companies back who bought those sales, like what happened on the El Dorado National Forest. And not only that, but all of that money was wasted. Now we have a fire suppression problem because there is a fuel buildup. There we are going to spend millions upon millions of dollars on fire suppression. There is nothing but taxpayers' wasted money because of this process and we have to change it.

Mrs. CHENOWETH. Mr. Robinson, I do want to say that I really feel that there are some very fine, dedicated professionals in the Forest Service who are just about as frustrated as you and I are with this whole process.

Chris Conrad, I would like to ask you about what I heard the other day on the radio where they found a spotted owl in a Kmart sign.

In your opinion, is there a way that we can manage the habitat so that we can have both the owls and jobs and family security?

Mr. CONRAD. Yes, ma'am, I think there is. I have not heard of the owl in the Kmart sign, but we have found owls in a lot of different areas in which the experts told us when we first started looking six years ago we would not find owls. I am a registered professional forester. I work for a company called Fiberboard Corporation up in Tuolumne County. We own about 80,000 acres of second growth timberland. On that timberland, the old growth was basically cut out 20 to 30 years ago. We manage that land on a selection basis. In 1988, I went to a seminar conducted by government

wildlife biologists to learn how to survey for the spotted owl. At that seminar, every wildlife biologist that worked for the government there told us that we would not find owls in second-growth timber. They had looked. They had been out there night after night and they were not there.

One year later when we started sampling for the spotted owl in our second growth timber stands, I would like to tell the panel that we were overwhelmed with the results. We have a higher density of owls, higher reproductive rates——

Mrs. CHENOWETH. Mr. Chairman. Chris, do not forget what you are saying, but I would like to ask the Chairman for unanimous consent to extend my time for three minutes.

Mr. POMBO. Without objection.

Mrs. CHENOWETH. Please continue.

Mr. CONRAD. Thank you. We have a higher density of owls in second-growth timber stands with no old growth timber. We have got a higher density of owls than the Forest Service has in adjacent timberland that is in large part old growth. We have worked thousands of hours with the owl. We know the owl. Frankly, we have come to love that species. It is an incredible species. But I want the panel to know that the American public has been conned about the spotted owl.

Mrs. CHENOWETH. Mr. Conrad, in your opinion, tell us about the spotted owl with regard to its prey base and what it takes to keep the prey base available to keep the owl in the area.

Mr. CONRAD. Well originally, they thought the owl was tied to a species—they were dependent on old growth. And frankly, after working with the spotted owl, I am not real sure there is a species that is dependent on old growth in the whole world. We do know that wildlife species are adaptable and we do know in these second-growth stands that we have, there is a very good likelihood that we have higher prey densities from flying squirrels to woodrats, to white-footed mice, you name it. There is a high prey base in second-growth timber stands, mainly, because they have been opened up. There is light. There is more food in these second-growth stands than there is in dense canopy—dark timber stands, old-growth type.

Mrs. CHENOWETH. Thank you, Mr. Conrad. I really appreciate that kind of information.

Mr. CONRAD. Thank you.

Mrs. CHENOWETH. It is my desire that the Federal Government and agency personnel work with people like you and the members of this panel and come up with the best possible decisions about our environment, and that includes humans and jobs.

And, Rose, I want to say how much I admire you and appreciate you for turning your personal and human tragedy into a determination to make this country a better place to live. That is real grit. Thank you.

Mr. POMBO. I would like to mention at this time that Mr. Conrad had a written statement that has been included in the record.

[The statement of Mr. Conrad can be found at the end of the hearing.]

Mr. POMBO. Mr. Doolittle.

Mr. DOOLITTLE. Mr. Conrad, we have all heard about or read what John Muir saw in his famous hike through the Sierras describing the open and park-like conditions. But I wonder if this has not created a misimpression in the minds of many people about what he actually did see. And my question to you is, were the conditions that he observed the result of the forest simply in its unmanaged state or were they, in fact, the product of a type of forest management? What is your understanding?

Mr. CONRAD. Well, we do know after a considerable historical look at the land management activities of native Americans that native Americans were active land managers. They used controlled burning, light ground fires to keep the forest floor clean. And one thing we do know is, from those kind of land management practices, they probably manipulated the original forests that were here when they showed up to open and park-like conditions like you referred to. And we do know from our work with the spotted owl that those are not timber stands that are real spotted owl "friendly". They were probably—I think that we can definitively say there is more spotted owl habitat today than there has ever been for the last 150 years.

Mr. DOOLITTLE. So, if I may interpolate from what you are saying, had the present Federal bureaucratic structure that we know today been in place in John Muir's era, the Indian tribes involved could have been sanctioned under the Endangered Species Act, is that right?

Mr. CONRAD. This is correct.

Mr. DOOLITTLE. And I believe those sanctions include, what is it, a $25,000 a day fine, plus including imprisonment, is that not correct?

Mr. CONRAD. I am unaware of what the fines are. You would know that better than I would.

Mr. DOOLITTLE. OK. Well, I think the penalties are pretty heavy.

Now the Sierras today—in much of the Sierras where we are having this tremendous overgrowth, would you characterize those as the product of management activities or would those be more properly regarded as unmanaged areas?

Mr. CONRAD. Well, I think the extremely dense stands of timber we have today are the result of a lack of management activities on the ground.

Mr. DOOLITTLE. OK. Ms. Comstock, you have put a human face on this—on the realities of what we live with. I wish I had more time. Let me just ask you this. The Endangered Species Act by its very wording excludes the consideration of economic impact when the decision to list a species is made. Let me just ask you your opinion. Do you think, as we change the Act, that we ought to consider the economic impact on a community when we decide whether or not to list a species as threatened or endangered?

Ms. COMSTOCK. Absolutely.

Mr. DOOLITTLE. Well, I agree with you.

Ms. COMSTOCK. Thank you.

Mr. DOOLITTLE. And it is this kind of testimony that will enable us to go back to Washington and lay a foundation for some very important changes. Thank you.

Ms. COMSTOCK. Thank God.

Mr. POMBO. Thank you.

Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Mr. Coates, welcome. I was a county supervisor once. Good to see you. I do have a question though regarding your capacity. You had mentioned previously that it was very difficult getting people to serve on the local level simply because there is very little authority or a decrease in authority being given at the local level. Would you care to tell this Commission how much control you have of your own budget?

Mr. COATES. We control about seven percent.

Mr. RADANOVICH. And the remaining 93 percent is controlled by what?

Mr. COATES. Generally State mandates.

Mr. RADANOVICH. OK. And Federal mandates as well?

Mr. COATES. Yes.

Mr. RADANOVICH. All right, thanks. Do you believe that if you had more control of your own budgets that more people would be encouraged to serve at the local level?

Mr. COATES. Absolutely. One danger there is that in this drive to work on the Federal mandate and to knock those back, we have got to make sure that it actually gets to the ground. Sometimes we are not any better off when Sacramento gets the money than we are when the Federal Government has it.

Mr. RADANOVICH. You would stress the need to get past the State down to the local level?

Mr. COATES. Absolutely.

Mr. RADANOVICH. All right. Would you welcome increased responsibility? Would you welcome more responsibility in the implementation of something like an Endangered Species Act?

Mr. COATES. Absolutely.

Mr. RADANOVICH. OK, thank you.

I have a question for Mr. Conrad. I have a statement and I wish to know what your opinion is with regard to the Forest Service and its implementation of policy. Do you believe that the Forest Service policy is driven more by a fear of being sued or is the objective really good forest health?

Mr. CONRAD. I do not believe the objective is good forest health. I think—to be frank with you, the Forest Service has changed over the last 10 to 15 years and there is a significant number of Forest Service personnel—I agree with Congresswoman Chenoweth that there are a lot of good people in there, but there is a significant proportion of the Forest Service personnel that does not want to do the job anymore. Their agenda is, they want us out of the woods.

Mr. RADANOVICH. Would you care to comment on the statement that the threat of lawsuits has really driven Forest Service policy. I am sorry, that is just the way I feel. I do not know whether you feel the same way. I wonder if you would care to comment on that?

Mr. CONRAD. I think that is a significant part of the formula. I mean, they manage by fear rather than by——

Mr. RADANOVICH. Thank you. You said it. Thank you very much.

Mr. CONRAD. I would like to add one thing here. We have mentioned the Quincy Library Group and I would like to just mention to the panel that there is not a uniform agreement within people

that work in the woods that that is the way to approach the problem. We are not ready in our area to give money to environmental groups to write land management plans for our forest. We feel the solution for national forest management has got to be a solution that is good for the forest and the whole forest. It is not good for one particular company. And when we manage our national forest lands on that basis, we are going to have a winner. We are going to have a winner for communities, for families, for jobs and for wildlife.

Mr. RADANOVICH. Mr. Conrad, in your opinion has the implementation of the Endangered Species Act actually imperiled the spotted owl or has it helped it?

Mr. CONRAD. I think there is significant evidence, Congressman, that the spotted owl has actually been endangered by the kind of management activities we have seen on national forest land, particularly in our area. And if you will bear with me—I am sorry. But we have—for example, the Stanislaus National Forest has 35 spotted owl habitat areas. These are areas that were set aside before the northern spotted owl was listed and before the interim guidelines were implemented for the California owl. These spotted owl habitat areas are about 1,600 acres in size. Basically there are no management activities in regards to timber harvesting allowed in those spotted owl habitat areas. It is part of the interim guideline proposal for the protection of the California spotted owl.

Now I have a photograph here. This used to be the Rose Creek spotted owl habitat area, and I know it does not take a real educated person to figure out that this is no longer habitat for the California spotted owl. This area was heavily impacted by the drought, this last drought that began in 1987. No timber was allowed to be salvaged out of that area, even though fuel loadings were already high. When dead and dying trees started occurring by the thousands out in that area, there was absolutely no salvage allowed. In 1992, when this area ignited, it burned so hot, that it was incredibly hard to control. Here we have a spotted owl habitat area managed by the government that burned down because they would not allow the fuel management activities in there that we needed.

This next photograph, this is the Five Mile Creek spotted owl habitat area. The exact same thing happened in that area. It was already highly loaded with fuel prior to the drought. During the drought no salvaging was allowed in this area and it also burned. It burned in 1994, threatened the community of Cedar Ridge, was also extremely difficult to control and cost the American taxpayer over one million dollars.

So these are the kinds of "protection measures" that are currently being implemented by the Federal Government to protect an endangered species. And if they want to protect an endangered species with regard to the spotted owl, it needs to be stated pretty emphatically that they need to keep us in the woods.

Mr. RADANOVICH. Thank you very much, Mr. Conrad. My time is up, but I just wanted to say, Ms. Comstock, I salute you.

Thank you very much.

Mr. POMBO. Thank you very much.

I would like to thank the panel for their testimony, for the answers to the questions. Thank you very much for accepting our invitation to testify here today.

Mr. CONRAD. Congressman Pombo, I brought some publications here in regards to photographic history in the western United States, and after seeing the panel, I am an avid viewer of C-Span, I know you have educated yourselves. I am wondering if we could arrange to hand these out to the media to my left here, who are really the ones that need to know what is happening in the forests of the West.

Mr. POMBO. Without objection, I will have Liz take them from you. Again, thank you all very much for being here to testify. We are not taking a break. We are just going to switch panels. Thank you very much, you are excused.

Will panel number three come forward? Bob Vice, Robin Rivett, Cliff Moriyama, Dan Taylor and Leroy Ornellas—would you please come forward.

And to the members of the audience, please remain in your seats. We are not taking a break, we need to keep this moving.

OK, thank you very much. If I could have the witnesses please take their places. I would ask the members of the audience to please be considerate. We are moving on to our third panel. If you would please take your seats, I would like to continue to move on. Thank you very much, you have been great so far, but we have got to keep this process moving, we do have a very full day.

OK, panel number three is made up of Mr. Bob Vice, Mr. Robin Rivett, Cliff Moriyama, Dan Taylor and Mr. Leroy Ornellas.

Mr. Vice, you are recognized and you may proceed.

STATEMENT OF BOB VICE, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION

Mr. VICE. Thank you, Chairman Pombo, and I want to thank you and members of the House Agricultural Resources Committee on Endangered Species for their willingness to come to California so that you can hear testimony directly from our membership throughout the State.

People in agriculture want nothing more than to see long overdue common sense reform. And these hearings are a valuable contribution to constructive change because they bring Washington into direct contact with the people who must live with these laws and it shines a lot of the unintended harm being done to people and their communities by the abuses of this law.

The Act has been the untouchable of untouchables for too long. It has been politicized. We have to get beyond that to achieve the true goals of the Act and that is a healthy and secure human environment enriched by the presence of wildlife in our open spaces. We would remind those who continually seek to polarize this issue to their advantage, that farmers and ranchers provide 75 percent of the wildlife habitat for 75 percent of the wildlife in this nation. These animals and plants exist on taxpaying productive farm and ranch land.

The Endangered Species Act is only a law, it is a well-intended but flawed product of ordinary people. All laws need to be amended as time and experience reveal their flaws, and it is clearly time to

discard the rhetoric, loosen the gridlock and work together for a common sense reform of the Endangered Species Act.

The California Farm Bureau Federation has prepared a detailed analysis of the Act, listing its functional problems, section by section, and recommending narrow amendments that are specifically designed to eliminate those functional flaws. Our recommendation, if adopted, would result in a far wiser governmental instrument for achieving the goals of the Act without ruining human lives, without stifling economic recovery in our struggling local communities and without violating the cherished constitutional rights of our citizens.

We will submit written testimony on behalf of several of our members who have suffered inexcusable hardships, but I would like to summarize some of those problems that landowners are experiencing.

1. Fallow fields are being taken for habitat. You have heard that story before. Endangered species have moved in on probable habitat or vegetation has become established during a fallow period, which in many cases is common agricultural practice, and farmers are being prohibited from re-entering their land. There must be an exemption for normal farming activities, including re-entry of presently farmed fields. Farmers are being prosecuted for unintentionally killing or injuring an endangered species during normal farming activities. The Act makes no allowances for innocent or simply unknown actions that take a species in the course of farming activities. Farmers are not told that their activities may subject them to prosecution. The word "take" must be redefined by eliminating the vague terms "harm" and "harass".

Farmers are not allowed to clear drainage ditches or do normal necessary levee maintenance in vast sections of California because of the presence or even the remote potential presence of endangered species in the area. The Act clearly must allow reasonable actions that affect private property either by exemption or by a broadly applicable general permit. Normal farming activities, again, must be exempt.

Reoccurring levee maintenance, ditch clearing projects and other necessary permits are being held hostage while new mitigation demands for the purpose of compensating for habitat taken by general urban expansion. Agriculture cannot survive if it is treated as the mitigation sump for population growth and urban expansion. The Act should not exempt normal maintenance of existing facilities from mitigation demands.

The Fish and Wildlife Service now claims control over the management of private property simply because it receives water from a Federal irrigation project. Since most human actions including many farming activities receive some Federal funding or permits, there is a real danger that Fish and Wildlife Service will assert broad control over farming practices. The Act should exclude State and local agencies and beneficiaries of Federal projects or programs from the definition of Federal agency or instrumentality unless they elect to be given that status.

Failure to designate critical habitat is creating regulatory limbo that is forcing development onto farmland. The Fish and Wildlife Service is unreasonably delaying critical habitat designation, but at the same time, they are obtaining free habitat indefinitely by pros-

ecuting modification of the so-called habitat on private lands as a criminal take of an endangered species. This is forcing urban development onto prime farm ground planted in crops, and accelerating the loss of this important natural resource. There must be no endangered species restrictions on private land not designated as critical habitat.

I am going to jump to the back of my written testimony and say finally, the Act must address agricultural special needs and problems. Farmers and ranchers provide many of the environmental benefits that improve the quality of life, including open space, clean air and habitat for many of these endangered species. However, farmers can only continue to do this as long as they can maintain the economic viability of their lands. If farmers and ranchers go out of business because of unwise and over-reaching regulations from Washington, the environment will be poorer and many species will become endangered.

Again, I thank you for giving me this opportunity to speak to you on behalf of the California Farm Bureau and its members throughout the State. And Mr. Chairman, I would like to also enter into the record that sitting before me here are 167,000 signatures that have been generated across this country calling for the reform of this Act. I also would like to enter into the record that some 1,500 petitions that have been signed just in the last two days at these hearings, that also call for that, as well as some testimony from county and State farm bureaus throughout the west.

Thank you.

Mr. POMBO. Thank you.

[The statement of Mr. Vice can be found at the end of the hearing.]

Mr. POMBO. Robin.

STATEMENT OF ROBIN RIVETT, ATTORNEY, PACIFIC LEGAL FOUNDATION

Mr. RIVETT. My name is Rob Rivett. I am an attorney with Pacific Legal Foundation, and on behalf of PLF, I wish to thank Chairman Pombo and the Task Force for holding this hearing today.

All who are gathered here today, I am sure appreciate the need for elected representatives to learn first-hand how the ESA has been working, and in many cases, how it has not been working. Thank you for taking the time to obtain this information.

PLF is a non-profit, public interest law organization dedicated to encouraging governmental actions which respect private property rights. We promote environmental and land use decisions which consider their impacts on the economy, on employment, affordable housing, food supply and other societal needs. We have litigated cases for over 20 years nationally, including a number of cases in the U.S. Supreme Court and PLF has addressed numerous environmental issues, including of course, the Endangered Species Act question.

Our lengthy experience with ESA has taught us many things about the Act, and let me summarize those for you:

The goal of ESA is commendable; yet, it has met with limited success. Many people, including entire families have been dev-

astated by the inflexible, narrow focus of this Act. The listing of the northern spotted owl as demonstrated by the previous panel and others has had devastating impacts on many rural northern California dependent communities. Yet it has been well documented since the owl's listing that it is not threatened with extinction, especially in northern California. It is prolific.

We have heard the stories about the fairy shrimp listings; yet, the paucity of data upon which their listings were based is frightening as well as disheartening. As a result, needed affordable housing projects are being delayed and becoming more costly.

The listings of the Stephens kangaroo rat, giant garter snake, California gnatcatcher, salt harvest mice, blunt-nosed leopard lizards and Delhi Sands flower-loving flies, just to name a few, have significantly delayed and brought important projects to a grinding halt.

The California Department of Transportation has been trying for years to build an alternate route around the highly dangerous Devil's Slide on Route 1. They have not been able to do this because of the Endangered Species Act and other environmental laws. Now the point of these anecdotes is that the ESA has turned into an incredibly effective tool for opponents to stop unwanted projects, and in the course cause significant harm to the economic and social and even environmental health of our people. Because the standard to list a species or a sub-species or a distinct population segment is presently easy to satisfy, and because once listed it is illegal, without a permit, to take a species, which presently includes the act of modifying private property thought to be species habitat, the ESA has become a very effective Federal land use control measure. Because this law is so inflexible, paying little heed to community harms caused by listings, and because it primarily concerns itself only with protecting listed species, property owners, and indeed many communities, are being held hostage by the Act. And the Act is uncompromising. It can be manipulated by parties wishing to stop economic activity.

If a species-listing petition has not been acted upon within the Act's time limits, lawsuits are brought to force action. If property owners seek to use their property in a perfectly normal way such as plowing, planting, grading for development and so forth and their land happens to be a potential species habitat, the government can stop the use and seek civil and even criminal penalties.

And if any person—I say any person—believes an ESA violation is going on, such as the harvesting of a tree that is used by some endangered animal, but the government decides to let the harvesting go forward, that person can still sue to stop the harvest, even if it is on private property. This is under the authority of the citizen suit provisions of the Endangered Species Act.

Clearly, implementation and management of ESA has become a product of litigation. Yesterday, I went to my computer and punched up on it the Endangered Species Act and litigation just in the Ninth Circuit. There are 11 other circuits in this country. And I came up with, just in the last ten years 253 cases that have focused on species listings and denying people the use of their property because of a potential violation of the Endangered Species Act.

There are numerous recommendations that need to be made with regard to this Act. Species listings must be based on evidence that is scientifically valid, peer reviewed and statistically significant. Because the cost of listing and protecting species is so high, the ESA should selectively list species, using objective balancing criteria, including the recoverability and cost of recovering a species, the economic and social benefit of the species, the social and economic harm from listing the species, the increase or loss of employment as a result of listing the species, and whether there are reasonable alternatives to listing the species which can still protect that species.

Species should not be broken down into distinct population segments. This is too costly when species as a whole are doing fine.

A system of positive economic incentives is needed for property owners to provide species habitat.

Most important of all, amendments to the Endangered Species Act must ensure that the cost of endangered species protection is spread to the public as a whole. Individual property owners should not be forced to shoulder the entire burden. A statutory takings provision is needed where if significant property value is lost due to ESA prescriptions, the property owner is compensated. When protection costs are forced to be a part of government's operating budget, the cost of protection cannot be hidden and better, more balanced decisions can be expected.

Thank you very much.

[The statement of Mr. Rivett can be found at the end of the hearing.]

Mr. POMBO. Mr. Moriyama.

STATEMENT OF CLIFFORD H. MORIYAMA, CALIFORNIA CHAMBER OF COMMERCE

Mr. MORIYAMA. Chairman Pombo, members of the House ESA Task Force, my name is Cliff Moriyama, I am the Resources and Agriculture Director for the California Chamber of Commerce, and I appreciate the opportunity to address this body.

I would just like to read a preamble to an attachment that was a part of my written comments that you should have received.

The Federal Endangered Species Act has evolved into a classic command and control single purpose Federal program driven by bureaucratic decisions that are remote, private and almost entirely free of accountability to those on whom they have an impact.

This system is fatally flawed because it produces too many bad decisions, and more fundamentally, because it provides little opportunity or reason for affected parties to buy into it. The ESA needs to be reformed to be accessible and objective and to reflect a respect for those who may be asked to share the burdens of achieving the ESA's goals.

Central to this document that I have attached is the respect of private property rights. That is probably the central theme to this document. And I hope you take this into consideration when you go back to Washington and review our reform proposals.

I am also here as the spokesperson for the Fairy Shrimp Study Group, specifically dealing with four species that have been listed by the U.S. Fish and Wildlife Service, known as the vernal pool

and tadpole fairy shrimp, species that I probably know too much about and care to learn too much about.

The Fairy Shrimp Study Group is a group composed of the California Chamber, California Cattlemen's Association, Western Growers Association and several central and northern California private businesses that basically came together because they were concerned about the impact the listing of these species was going to have on California's economy. We believe that there are serious factual and scientific questions regarding these listings.

On November 9, 1990, a one-page letter was sent to the U.S. Fish and Wildlife Service petitioning for the listing of these four species, which are crustaceans that live in seasonal wetlands, mainly vernal pools but have been found to be in tire ruts or drainage ditches. These tiny crustaceans are located throughout the eastern side of California in the Central Valley ranging from Tehama County in the north to Kern County in the south, an area spanning over 300 miles. To us, these species appear to be quite hardy, hatching from eggs years after they have been planted and thriving in, like I said, roadside ditches.

Because of these listings, several industries and groups have been significantly impacted by this listing—cattle ranchers, builders, developers, local and State public works agencies, mining companies and farmers will suffer and have already suffered from this listing. Reuse plans at closed military bases are jeopardized due to this listing. As mentioned before, the price of new homes could increase due to the excessive mitigation requirements that developers will have to agree to in order to have their projects approved.

The group believes that our effort would have greatly expanded the current information on the species when it was listed. But going through our process, we have seen some clear examples as to the problems with the current ESA, as well as in dealing with the Federal regulatory agencies that are in control of this law, the U.S. Fish and Wildlife Service.

I would just like to take this time to highlight one example that we have faced in dealing with this one specific species. In trying to obtain information on where the current populations of fairy shrimp are, we had tried numerous times to contact the U.S. Fish and Wildlife Service agency to ask for their assistance so that we could see if we could promote a study that would increase the existing body of knowledge on this species. After four to five months worth of trading phone calls and trying to establish meetings, we were finally able to get copies of the maps that they had used to base their decision.

In front of me are two maps dealing with two specific species. And if you can see, there are circular areas that designate the locations that they found fairy shrimp. The areas that we have highlighted were the areas that we were going to focus our study on. When we proposed this study to the U.S. Fish and Wildlife Service, they told us that we were not going to add any new information to the existing body of knowledge on the shrimp and were basically not granted our permit to survey. This fact, to us was very conflicting in the sense that we were trying to add new information, yet we were not being allowed to do it. In addition, we were forced to file a Freedom of Information Act request to obtain the actual docu-

ments used in the listing process. We know for a fact that a number of local farmers, ranchers who do not have that capability could never get access to this information, without even knowing to go through this one process. And we are still in the middle of going through our FOIA requests to obtain even more information and trying to figure out why some information was held back from us.

That is just one example that I would just like to show the Committee and hope that our reform proposals that we have suggested try to deal with the situation.

The California Chamber and the Fairy Shrimp Study Group appreciates the opportunity to express our views and is looking forward to working with yourselves and Congress this year in reforming the Federal Endangered Species Act.

Thank you.

Mr. POMBO. Thank you.

[The statement of Mr. Moriyama can be found at the end of the hearing.]

Mr. POMBO. Mr. Dan Taylor.

STATEMENT OF DANIEL TAYLOR, NATIONAL AUDUBON SOCIETY

Mr. TAYLOR. Chairman Pombo and members of the Task Force, I appreciate the opportunity to come today and discuss the reauthorization of the Endangered Species Act. I come here today as a life-long Californian who has spent almost all of his life within 50 miles of where we are sitting here today, and as a conservationist who, for 17 years, has worked to create and implement durable solutions to problems facing wildlife.

I have petitioned the government to list a species. I have not supported some listing efforts and I have supported the withdrawal of petitions when additional information warrants reconsideration. I have been picketed by loggers for threatening their jobs, and by some environmental activists for disagreeing with their positions.

Today, there are almost 700 species in danger of extinction in the United States and thousands worldwide. In 1990, President Bush's Council on Environmental Quality estimated that human activity had caused a ten-fold increase in the rate of historical extinctions. The world may contain up to 100 million species but if current rates of development continue, scientists tell us that one-quarter of them will be eliminated within 50 years. Extinction is real and we are seeing it daily.

So what—who cares? Let me offer these comments about that question. Our nation and every nation in the world contains three forms of wealth—material wealth, our schools, our cities, our roads, our farms, our land; cultural wealth, the society that we are is made up largely by where we came from and the cultures we have brought with us; biological wealth, and much of the food supply and the drugs that we take depend on the biological wealth of our country and our world. When a species goes extinct, it is lost forever and whatever treasures for people it might have possessed are gone.

To those of us who believe in God, the loss of species is, in a sense, an erosion of creation. Our Judeo-Christian literature is rich in references to our role as stewards, looking back to the time of

Noah and the ark. The pull of stewardship is great and with great power comes great responsibility. I do not believe we should knowingly allow a species to go extinct, and we should get on with the business of protecting and restoring habitats that have been impacted by our activities.

Let us look at the Central Valley and the state of the biological wealth of our Central Valley. Wildlife is an integral part of the Central Valley experience since the time the European settlers began arriving here. Just very briefly, in 1854, George Yount, a trapper, wrote this account, that from Benicia, San Pablo Bay to Sutter's Fort, the deer, antelope and elk were beyond count, being so numerous. Wild geese and every species of waterfowl darkened the surface of every bay upon the land, in flocks of millions they went about looking for insects and eating the vegetation that was on the land. The rivers were literally crowded with salmon and the area had such a climate that everyone on the face of the earth boasted of it.

Today—and I say this without prejudice or judgment—five generations of Californians have changed the Central Valley. Habitats, including the riparian forests along our major rivers, the grasslands, the scrub lands of the Central Valley, have been reduced almost entirely from 80 percent to 90 percent to 95 percent. In countless decisions, both large and small, we have made those decisions and we have traded what was for what now is the most productive agricultural landscape that is the envy of the world. And cities that are growing every year to help absorb California's population of 30 million people.

Given that, is it any real surprise that plants and animals which depend on diminished habitats would have trouble getting along? And is there any real debate about who has come first, the critters or the people?

So now we have the Endangered Species Act, and it enters the arena. One comment that is often made is that the Act is ineffective. But here in California alone, we have seen populations of grey whales, Aleutian Canada geese, California condors, bald eagles, peregrine falcons, brown pelicans and sea otters posting remarkable population increases under the Federal Endangered Species Act. Nine different national wildlife refuges have been established in this State to protect endangered species, and habitat conservation plans are now underway to make a real difference there.

I can go on about this, but I ask that the Committee also look beyond much of the simplistic rhetoric which is offered and understand what is at work in our land today. A 1994 editorial in the New York Times looked at Oregon and the Endangered Species Act and the effect of the spotted owl. And their comment was "Economic calamity, which was predicted for the area, never looked so good. Three years into a drastic curtailment of logging in Federal forests, Oregon posted its lowest unemployment rate in a generation."

What was billed as an agonizing choice of jobs versus owls has really proved to be neither. And I have been moved by much of the editorial swing and opinions in Pacific northwest newspapers. The Peninsula Daily News serves the Olympic Peninsula, as hard hit as any area in the western United States on a downturn in timber

jobs. Let me simply quote this, and this is their editorial in 1992. "Timber industry problems are complex, intensified by foreign competition and automation. Jobs were on a downhill skid and inventories were declining even before the ESA and injunctions by a Federal judge halted logging on Federal lands." These are their words. "The injunction came because the Forest Service had been dragging its feet for two years on preparing a management plan for the spotted owl, a performance this judge, an appointee of Ronald Reagan, called a deliberate and systematic refusal to follow Federal law."

We are proposing several amendments to the Endangered Species Act which I think many in this room would find surprising that there is more coming together on many of these core issues than some would like you to believe. My testimony includes some of those.

Preventing species from becoming endangered. The comment has been made several times to have the Federal land management agencies look on public lands first. We agree.

To plan for ecosystems, not just single species. We agree.

To improve the recovery planning process so that recovery plans can get into place quicker and we can then have a road map out of the problem that we are in. We agree.

And last but not least, let me say building partnerships with private landowners. We believe that providing financial incentives and technical assistance for private landowners should be included in amendments to the Endangered Species Act. Remove disincentives that preclude sound management practices.

And I would like to make a special comment about agriculture because that has come up several times today. Agriculture clearly is the most important private land sector from a wildlife point of view in California, and Audubon is active in showing the way by having organized several landowners workshops where we share information about how to provide wildlife habitat on private lands and the landowners have turned out by the hundreds. Many have a strong sense of stewardship and a love for the land and they just need good advice and support.

I do not believe that our farmers, many of whom are here today, are looking for money here. I think they are looking for the ability to go about their practices, and the ones who practice good stewardship like having wildlife on their land. We want to encourage that.

I will close with this comment: Like it or not, we are in this together—the environmental community, the agricultural community and every community that exists in this country. In the conservation movement, we say that a healthy economy requires a healthy environment. And I strongly believe that that is true. But so is the reverse—a healthy environment needs a healthy economy. Preserving biological wealth is an appropriate responsibility for our country and so is the renewed conservation partnership with landowners on whose property many of our most vulnerable species depend. What we need is language and dialog on this issue. What we do not need is rhetoric that simply moves us into our opposing camps without listening to each other. What we do not need are flawed proposals that take away the money that is needed to per-

form good science and that ties us up in endless amounts of red tape for listing and recovery. Ideas of that sort will only kill the efforts now underway to creatively accommodate conservation and economic activity. Hiding from these problems will not make them less severe. Less government is one thing, less wildlife is another.

Thank you very much.

Mr. POMBO. Thank you.

[The statement of Mr. Taylor can be found at the end of the hearing.]

Mr. POMBO. Mr. Ornellas.

STATEMENT OF LEROY ORNELLAS, DAIRY FARMER, TRACY, CALIFORNIA

Mr. ORNELLAS. Thank you, Chairman Pombo and Representatives. I am deeply honored and humbled to be here this afternoon. I want to welcome all of you here to the heartland of the United States. In my opinion, anything 40 miles east of the Pacific Ocean and 40 miles west of the Atlantic Ocean is the heartland of the United States—and welcome. This is a highly charged and emotional issue for all of us and again, I appreciate the opportunity to speak a few words to you.

A little background on myself. My family originally moved to the Tracy, California area here in San Joaquin County from Congressman Radanovich's area in the mid-1930's. I am a third generation dairy farmer. My sons are carrying the load for me this afternoon in order for me to be here. My grandchildren who live on the ranch are fifth generation.

A little other background on myself. Approximately five years ago, a group of landowners and farmers here in San Joaquin County formed a property rights group called the San Joaquin County Citizens Land Alliance, and I am very proud to have been past president of that organization. So if I may, I will give you my presentation.

The Holy Trinity of property rights is quite simple. It is acquisition, protection and transfer. I first read those words in a book by Professor Richard A. Epstein entitled "Takings."

Acquisition, let me explain—purchase, to inherit, to trade or in any way to receive property.

Protection—safely keeping, the protection from trespassing, protection from devaluation, protection from damage by others, including our government.

Transfer—the selling, trading, even giving away of one's property.

These are a few of the basic rights and freedoms that we enjoy in this country. This Nation was founded on those basic beliefs.

Several hundred years ago, you owned property at the whim of monarchs. If you displeased the king or the emperor, he would send in his army, confiscate your property, have you beheaded, give your property to one of his favorite subjects who, in turn, would probably marry your widow. This type of tyranny does not exist today in this country.

In its place, we have a more subtle form of tyranny. It is called the Endangered Species Act.

ESA was passed over 20 years ago. Yet, these past 20 years, Congress has failed us by allowing the Act to be manipulated by regulatory extremists. ESA began in good faith. It has since evolved into something quite unrecognizable.

If your land is designated as critical habitat for endangered species, you could be prohibited from farming, grazing livestock, cutting timber or building farm structures including a family home on your property. Human lives, livelihoods, cultural practices, human heritage, property rights and ownership do not exist in the eyes of this growing monster. It continually craves more listings to feed its ever-growing appetite. Its worker drones gladly kneel at its altar, feeding it more and more listings.

Since 1973, 1,300 species and sub-species have been listed as threatened or endangered. Another 3,500 species and sub-species have been proposed for listing, yet less than half a dozen have been de-listed, making this Act, in my opinion, a miserable failure.

The costs are mind-boggling.

Near Malibu, homeowners lost their homes to fire. Why? Because they were not allowed to clear brush around their homes. This is K-rat habitat. Those few who did saved their homes, but now face the wrath of the Fish and Wildlife Service.

In San Bernardino County, a new medical facility had to mitigate for the presence of eight Delhi sand flies. The cost to the public was $3.3 million or $413,000 per fly.

In Kern County, a farmer had his tractor confiscated for allegedly running over some kangaroo rats. This highly controversial matter is still in court. The point is the defendant can make this problem go away, all he has to do is give up half his ranch for the k-rat habitat and to add insult to injury, he is invited to pay over $70,000 into a fund that would manage the habitat.

Locally, there are farmers who have been prevented from developing new crops on open land because of vernal pools and fairy shrimp.

The unavailability of a reliable source of irrigation water has aggravated the alfalfa shortages in California, raising costs to California dairy farmers.

Now in San Joaquin County, we have to deal with a new proposed habitat conservation plan. This plan, if passed, will map our entire county, listings areas of sensitive species habitat—our farms. Promoters of the HCP have committed hundreds of thousands of dollars of public money to fund its study. Its passage is far from guaranteed, but still it creates great apprehension among those who will be impacted by its creation

There are other local stories of fines and land extractions. Most concerning to us are those horror stories that do not reach the public, where families, farms and businesses are forced to pay extortion by State and Federal agencies, or face public ridicule and prosecution.

The burden on this country's property owners has become unbearable.

My time is up. I had more, but I will go to the closing.

Let me close by reading to you a quote from a book written by one of my favorite authors, P.J. O'Rourke. The book is entitled "All the trouble in the world."

"Property rights, rule of law, responsible government and universal education—that is all we need. Though no society has achieved these perfectly. Our own nation is notably lacking on the fourth point, and such things as huge Federal regulatory agencies and the Menendez jury are not helping items one through three."

Thank you.

[The statement of Mr. Ornellas can be found at the end of the hearing.]

Mr. POMBO. Thank you all for your statements.

Mr. Ornellas, you have heard many people speak of compensation for property owners. What is your position on compensation when property is taken through regulation?

Mr. ORNELLAS. I would prefer that we never get to the point in this country where property owners even need to be compensated. That would be the ultimate goal.

All we ask, as farmers and landowners, is that we be allowed to put our land to its best use—in my case, that is farming it—without fear of any kind of governmental taking, over-regulation or in any way that I am prevented from doing anything that is completely legal on our property.

Compensation—again, I would hope we never have to get to that, but I would not be so presumptuous as to guess or try to give you a figure on what compensation will be. I will leave that up to you.

Mr. POMBO. Thank you.

Mr. Taylor, your testimony, in the written testimony that you submitted as well as your oral testimony, was actually quite good and I enjoyed reading through it, and I think that you bring out a very important point toward the end of your oral testimony in saying that we are really not that far apart in trying to solve some of these problems, in trying to achieve some of these goals. And you outlined a number of issues that you feel would need to be changed in the Act or addressed in the Act, in order to make it more effective. In your experience, do you feel that the Act, the Endangered Species Act, would work more effectively if the farmers and ranchers were not afraid that somebody was going to find endangered species on their property?

Mr. TAYLOR. As I look back over the past 20 years of the Endangered Species Act, one of the—in my opinion—the real tragedies is that somehow the farming and the cattle community are now seen by some on my side of the fence as being the problem. Agriculture is in the business of growing things. Why can we not create incentives to make it desirable to grow things that is in the public benefit on the farms of America? A good example of the elderberry beetle, a listed species. Some very good conservation farmers in Yolo County are saying "I can grow that, I can grow elderberries, I can create more cover using that on my farm." And we say great, do it.

What we would like to see is the de-listing of species. It is not in our interest really—and this is probably a profound irony to many in this room—it is not in the real interest of conservation to see a species get on the list. That is a sign of social failure, it is not a sign of success. Getting the species off the list through recovery—that is when the real success should be enjoyed. So, you know, maybe I have gone on too long here—but there are some very im-

portant discussions going on right now, and I could share those with you having to do with the California Endangered Species Act in the last legislature, how the environmental community and the Farm Bureau came to grips with the issues of temporary habitat, safe harbor, best management practices, all of which would have allowed for thoughtful conservation on private lands, freeing up agriculture from some of the more onerous burdens of the California Endangered Species Act. We came close to carrying that off. And once we had carried it off, we wanted to come back to DC and talk to you folks and show the Congress that success. We failed, because of issues that did not have to do with agriculture and the California Endangered Species Act. We want to try again and we would like to do that.

Mr. POMBO. Thank you. I would agree with you on one very important point and that is that it is time that some of the more inflammatory rhetoric get put aside and we actually get down to business in trying to work out what is the best ESA to protect species and to protect people's property rights.

Mr. Vice, you heard earlier testimony that maybe the farmers were being used in this process, and I think that the testimony that you have heard from other farmers and ranchers about what their feelings are with the ESA—how would you respond to that?

Mr. VICE. Well, I think anyone who thinks that this is some kind of PR sham, that there really are not problems, needs to get out and see some of those personal problems that I see lots and lots of times and the people that I hear from. And quite frankly, I think if you see and hear and know those stories and some of the testimony this Task Force has heard, you cannot then believe that this is something that is not real, that is not egregious. And I think probably the biggest calamity in this whole thing for me is the people that I talk to throughout the State that tell me their story and then quickly tell me "do not use my name and do not use my story because I am very fearful that the Federal Government or the bureaucracy will retaliate against me". And everybody in this room should be abhorred by the fact that that could happen in this country.

Mr. POMBO. I know that my time has expired, but I hope the Committee will beg my indulgence, I need to ask Mr. Rivett one more question.

As you are aware, we have had these hearings all over the country, and one of the statements that I heard made at a recent hearing was that a private property takings claim has never been filed on the Endangered Species Act. Is that true, and if it is true, why do you think that is?

Mr. RIVETT. Congressman, the question being whether or not an endangered species claim has ever been filed—or a takings claim has ever been filed——

Mr. POMBO. By a private property owner.

Mr. RIVETT. By a private property owner. There has not yet been a decision by a court finding a taking under the Endangered Species Act. There are a number of reasons for this.

The first reason is that it is extremely costly for a small private property owner to bring a taking action—it is extremely costly.

There is another reason—the state of takings law is very dynamic right now. It has been changing since 1987.

We never thought that there could be such a thing as a temporary regulatory taking until 1987. Now it has yet to be judicially decided whether there can be a partial taking. By this I mean if a regulation impacts one-third of your property and denies you the economically viable use of that property, you still have two-thirds of your property left. It has been very difficult to get the courts to recognize that a regulation can do the same thing as a government agency coming in and saying we need your property, just one-third of your property, for a road or for some other facility. Under those circumstances, government pays for it. But through regulation, government has not been paying for the use of your property for habitat, for wetlands protection and so forth. And one of the reasons is they have not had to. It has been very easy to not budget for such things but rather accomplish governmental goals off-budget. It is much easier to take property through regulation and we have not gotten to the point yet where the Supreme Court has recognized that there are partial takings through regulation. We have had cases where ranchers have actually been denied the ability to protect their property (sheep) from endangered species predation. When they have tried by shooting the predator, they have been fined under the Endangered Species Act and have not been compensated for the loss of their product, the loss of their sheep in one instance.

But it is a dynamic situation right now, and I would suggest to you, five or ten years ago, we would never have thought that there was such a thing as regulatory takings through such a mechanism as land use controls by zoning. In another five or so years, we are going to see cases that indicate government can take through excessive environmental regulation.

Mr. POMBO. Thank you.

Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. Rivett, I appreciate your comments. I think the way in which the Supreme Court dealt with regulatory takings in Dolan v. The City of Tigart, was very, very encouraging. I am looking forward to the Sweet Home case and what comes out of that. I do want to let you know that I find it interesting that a taking is any modification of habitat or substantial change or any modification or change.

And I want to let you know yesterday I was looking at some vernal pools, and I stepped in the wrong place, and I packed around part of the critical habitat for half the day on the bottom of my boot. If they want to come after me, I am not going to plead Congressional immunity, I promise.

But you know, this is how far it has gone. When I stepped in what we used to call back on the farm a mud puddle, I actually altered some critical habitat.

I thank you and the good work that your organization is doing in trying to bring some common sense to what is fraught with confusion.

Mr. RIVETT. Thank you. I might indicate that you also filled a wetland when you did that.

Mrs. CHENOWETH. That is right. Thank you for your good testimony.

Mr. Taylor, you present yourself so very well, you are a wonderful spokesman for the Audubon Society.

Are you a full time employee of the Society?

Mr. TAYLOR. Yes, I am.

Mrs. CHENOWETH. How long have you worked for them?

Mr. TAYLOR. Seventeen years.

Mrs. CHENOWETH. Well, you are a great spokesman for them. Have you ever missed a paycheck?

Mr. TAYLOR. No, I have not.

Mrs. CHENOWETH. That is great.

You mentioned something, Mr. Taylor, about the simplistic rhetoric that had gone before us, you know, before your testimony. For the record, can you indicate to me what the simplistic rhetoric was?

Mr. TAYLOR. When I talk about the simplistic rhetoric that has gone on before, I will be happy to talk about what has happened this morning, but I would also like to say it is the debate that has been taking place over the past three, four, five months or so.

I sat in the second row and I listened very intensively to everything that was said, and I thought there were some very important stories that were told. The one that came at me, as I was sitting here, was the statement about the Stephens kangaroo rat and the fire. The General Accounting Office reported to you in 1994 that the Stephens kangaroo rat had absolutely nothing to do with the loss of homes because of those fires. Now, people may not like that analysis but that is what the GAO said. And I respect them in their fact-finding ability.

The other point is how often endangered species, the specter of the Endangered Species Act is applied to things that do not even relate to it. The California spotted owl is an example of that. The California spotted owl is not a listed species.

Mrs. CHENOWETH. Yes. Well, I appreciate your delineating the simplistic rhetoric, which I think may include the GAO report, and we will be looking into that.

You make a very interesting statement when you said we have three forms of wealth—material, cultural and biological. And I think you are right, but I do not think we have cultural, material or biological wealth unless we are able to acquire original wealth out of the earth. And I think that is where we may be missing the communication.

You know, it is so good to talk about the elderberry beetle, but we eat food three times a day. And I do not want this to sound like simplistic rhetoric but it is simple, and I think this is the area where we are not communicating together. It is truly my desire to be able to work with you and to learn from you.

Do you know what the congressionally stated purpose of NEPA is?

Mr. TAYLOR. The congressionally stated purpose of NEPA——

Mrs. CHENOWETH. National Environmental Policy Act, which was the grandfather——

Mr. TAYLOR [continuing]. is to analyze and report the environmental effects of Federal actions or actions that require Federal permit in a public and open process.

Mrs. CHENOWETH. That is right. And you know, it does state in the congressional purpose that Congress finds that it is necessary to analyze every Federal action and its impact, both environmentally and economically on man and his environment—not the rat and its environment and not the shrimp and its environment. And I think that through the regulatory process we have distorted that tremendously. And I think together we probably can resolve this problem in a much shorter time than most people anticipate.

And I thank all of you very much for being here today.

Mr. POMBO. Before I recognize Mr. Doolittle, Mr. Taylor, I wanted to just point out one thing for the record in regard to the fires in southern California and the kangaroo rat. At our hearing Wednesday in Riverside, we heard testimony from the local fire chief, that it had contributed to the fires and the losses of homes.

We also received testimony from a local professor at Riverside University—the University at Riverside, who said that it may have contributed, but he did not think that in that intense a fire that they could have stopped the fire in time, that there would have been other management techniques that could have been employed previously with the absence of the restrictions that were on the property, that could have stopped the fire. So there is some controversy still and there is no exact conclusion on that issue.

The other thing that I wanted to point out was that we were told at a previous hearing, especially with the California spotted owl, even though it is not federally listed, that management activities on Federal forests have changed because of the fear that it would be listed or because of the fear that it was on federally owned property. So it has affected management techniques on forest lands. And I just wanted to point that out. Thank you.

Mr. Doolittle.

Mr. DOOLITTLE. Thank you, Mr. Chairman.

Mr. Taylor, although we may not agree on many things, I think there are some things we may agree on. I appreciated your testimony, as did the others. I think that you indicated some common ground.

I am concerned about this issue of the California spotted owl. I, for one, if I had time to ask Mr. Tallerico and some of the others, Mr. Coates, questions, I would have gotten into that. Mr. Tallerico deals with the northern owl and the effects. And in my opinion, from what I know about it, the projections I have seen, the listing of the owl and the policies that have followed from that cost about 60,000 jobs in the Pacific northwest. Mr. Herger has testified that since 1986, he has seen, I think it is 27 mills close in his district alone. Mr. Robinson, from my district, if I had time to ask him, I would have asked why it was that Michigan Cal had to sell in the first place, and the answer he would have given, I believe, is because of the Forest Service regulations about the California spotted owl; there was no longer enough timber to supply the mill. The mill was acquired by another operator who has a variety of mills around the State, and in fact, I believe the plan was to close one of those in order to have a log supply for this recently acquired mill. So we are dealing with a smaller pie, smaller and smaller.

In my humble opinion, the policies in the northern owl have been an utter disaster economically. And Mr. Tallerico and the lady,

whose name escapes me right now--Ms. Comstock—talked about the personal devastation that occurs to communities when we see these kind of decisions being made pursuant to acts like the Endangered Species Act.

I guess my question to you is, do you believe that we should change the Endangered Species Act to allow for some consideration of economic impact on a community with reference to whether a species should be listed, or do you believe that we should continue the present policy where that is simply excluded from consideration?

Mr. TAYLOR. I think that is a very good question. My comment is this—we often hear that what is needed in the Endangered Species Act is more room for public comment and involvement. And I think that is true; however, the Endangered Species Act, in the case of the owl, was implemented because of a fundamental belief—and I think the record would indicate that—that another law, the National Forest Management Act, had failed. The National Forest Management Act is a very heavily publicly invested law with lots of public hearings, local task forces, local groups, building a plan for the forests that reflect a whole range of values. That failed, for reasons that we probably do not want to get into here. Then the owl becomes jeopardized with its future. The Endangered Species Act comes in there.

Should the Endangered Species Act have had to be used? If the National Forest Management Act had done its job—no. We could have avoided the kinds of last-ditch confrontations that I think have not helped either side.

Mr. DOOLITTLE. Well then, do you believe that economic impact should be part of the consideration in a listing process?

Mr. TAYLOR. My comment on that is that after a species is listed, I think it is very appropriate and necessary for economic impact to be discussed.

I look at it this way, whether or not a species is threatened with extinction is a scientific question. It would be like me going to a doctor and the question is "Mr. Taylor, you have cancer." Well, should he tell me that or should he first—we discuss how much it is going to cost to cure my cancer before he talks to me about it. If I have it, I have it. Then let us get into the business of recovery.

Mr. DOOLITTLE. Well, so in other words, we determine you have cancer and we operate or radiate or whatever and then figure out how we live with the results. Is that what you are saying?

Mr. TAYLOR. Yes.

Mr. DOOLITTLE. OK, so really you would not support the sort of change I am advocating, that before we list it, we want to know what are the potential consequences, pro and con, to the listing.

Mr. TAYLOR. I go back to my original comment. Whether or not a species is threatened with extinction is a scientific question. I would rely on scientists to answer that question. Then after it is answered, then let us look at what we as a society choose to do about it.

Mr. DOOLITTLE. Well, I would like to pursue the line of questioning, but we have seen lots of things recently done in the name of science and it turns out not to have been strictly science, it turns out to have been science with a good deal of politics blended in.

Again, I wish we had more time for questions, but we do not. But I do want to ask this one.

My district now is afflicted with the draft EIS on the California spotted owl of the various plans proposed. They all basically get around to proposing a 60 percent reduction in harvesting of timber, in order to protect a species of owl that has been deemed to be neither threatened nor endangered, but we are doing this to make sure they never get into that category. This is going to close mills in our district, throw thousands of people out of work.

Now as a member of the Audubon Society, how do you feel about that? Is that OK?

Mr. TAYLOR. As a human being, I feel loss when other people feel loss.

Mr. DOOLITTLE. But I mean getting directly to the policy.

Mr. TAYLOR. OK, I would like to address the proposal. I do not believe that this is the time to deal with permanent decisions on that question. As you know, in December, there will be a study that we believe has the kinds of scientific underpinning that will tell us more about the Sierra Nevada than we have ever known. And we believe that that is the time to make those sorts of permanent decisions about how we manage the public lands in the Sierra Nevada.

But the question is, yes, people do lose their jobs. Peace was declared, we beat the Soviet Union, and a quarter of a million jobs disappeared in California in 18 months. Change is with us. Is it good, is it easy? No, it is not.

My wife works in health care; 10,000 jobs have been taken out of health care in Sacramento County, Yolo County and San Joaquin County and the Bay area in the past year. That is change. That does not feel good.

Mr. DOOLITTLE. Well, if you will indulge me, Mr. Chairman, just briefly. I would just submit that the type of change we are talking about is quite different in character than the Soviet Union disappearing.

If I may have a last question, I would like to ask Mr. Rivett, here I hold in my hand a vial of—I believe this is the one variety of fairy shrimp that are not endangered, so I cannot be prosecuted should any Fish and Wildlife people be here—do not worry, do not try and find me, do not have me indicted. I did not take an endangered species with this vial before you. But the ones that are endangered look more or less just like this. And I would just ask of Mr. Rivett—I looked at your excellent criteria you propose, and I have got to tell you, even if this were eliminated, as a policymaker, if it's a choice of this or greatly increasing the cost of a house, I have no trouble at all determining that the economic consequences are too severe to justify protecting this.

Mr. Rivett, your changes would allow us to weigh, would they not, the benefit of the species to be listed?

Mr. RIVETT. That is exactly right, Congressman. My suggestion is that there are numerous considerations which must go into the decision of when to list and when not to list a species. And certainly the impact, just not on that species but on society, on people, on their jobs and on their health and on other environmental questions, needs to be addressed, needs to be balanced and needs to be

considered. And if I might just take a moment to address Mr. Taylor's analogy to having cancer.

I definitely would want to have the expert determine whether I have cancer. But before there is any kind of a treatment to cure it, any kind of a process taken to cure my cancer, I am going to want to make absolutely sure I have it. I want to make sure, number one, that there was not just some cursory analysis to determine whether or not I have it, before I have to go through chemotherapy or radiation or have some organ cut out of me. And the way it is happening nowadays, there is not very much evidence necessary to be produced to make the determination whether or not I have cancer or the species should be listed. There should be much better evidence, much more credible evidence. There should be much more thorough surveys. The government should have some responsibilities first to establish that the species is truly in jeopardy before listing should occur.

Mr. DOOLITTLE. Thank you, and thank you, Mr. Chairman, members.

Mr. POMBO. Thank you. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Mr. Vice, it is good to have you here, I appreciate you coming here to testify. I have got one question for you.

With regard to a current environmental policy included in the Endangered Species, but also how it affects California water and such in the San Joaquin Valley. Do you believe that that policy is farmer-friendly?

Mr. VICE. I think that policy is anything but farmer friendly. Again, as I said in my testimony, today, you can be—if you have any kind of a permit or use that has to come through the Federal Government, like a Federal water project, your operation can be held in abeyance because of this law, just because you receive that water. And that is not good policy.

Mr. RADANOVICH. Right. If you had a choice of two scenarios—if current policy was allowed to exist the way it was into perpetuity, do you think the San Joaquin Valley would return to what it was 100 years ago, or do you think it would end up being completely urbanized?

Mr. VICE. Well, we are doing a pretty good job at urbanizing the San Joaquin Valley right now. I do not think there is anything you can do short of eliminating human population, not only here in California but across the country and around the world, that would return this country back to the way it was. And I am not sure that would even happen if you did. But the reality is that that is not going to happen and that we cannot turn it back as it was 100 years ago or 200 years ago. But we have to manage the change that we have to live with. We have not done a very good job of that with the Endangered Species Act because it has not recovered species, which is what it was supposed to have done.

Mr. RADANOVICH. I think my big fear is that under this kind of policy that is so discouraging and unfriendly to farming community, that you will see this valley urbanized as a result of that, in the next 50 years. And that frankly scares me. I think this place is a natural for agriculture and agriculture should be here forever.

And I am afraid that the current environmental policy will destroy that.

Mr. Taylor, I appreciate you coming here today, it is not the easiest thing in the world to do. I know you have some support out there, but not a lot. But I want to say a couple of things. And I like what you had to say, and I am glad you came here to say it. It was very interesting to hear you say some of the things that the woman from Family Farm Alliance was saying with regard to some of the needed changes in the Endangered Species Act. However, I think what I would like you to go away with today would be a sense of the tactics of the environmental community over the last few years in getting the things that they think needs to get done with regard to the environment both here in California and the United States. I think that there are probably two things that have resulted in the big turnover in the elections on November 8, which frankly presented itself as a real shift in the way that we treat Federal law and Federal Government and control over people's lives. And I think what I would like to say is that it has been a lack of respect, I think, by the environmental community for the good intentions of the individual. And the lack of respect for that individual's private property rights, which has led to this shift in balance not in favor of you but in people to have more control personally over their own lives.

I think that it is the use of outside control in the form of Federal Government by the environmental community that has really got us at odds and created these problems that we are having right now. And that is what voters rejected on November 8.

You presented yourself a scenario where the private property owners would be working—be willing to work hand-in-hand with environmentalists and/or the government in order to protect species on their own property. Well, you know, in my own case, in Mariposa, we allowed Nature Conservancy to come onto our property, and there were some pussy paws up there that they wanted to identify. And this was about five years ago, we had no problem with it. Well now, it is being proposed as being listed as one of the ten items of flora in the Endangered Species Act. There is no way on God's green earth I am going to let anybody on that property again.

I think I would like to see the environmental community work with people as individuals, so that there is no fear, give them the benefit of the doubt that they have the same intentions that you do with regard to the environment, and I think that is probably one thing your community needs to begin doing. You are welcome to comment on it.

Mr. TAYLOR. Thank you. There is, I think, a real desire to begin working together and when the microphones are off and the television cameras are gone home, believe me, there are important conversations and relationships that are being created between local folks in agriculture and local folks concerned with conservation. It is happening, and I give you my word that it is happening. And we would like to see a future where that can be augmented and supported. That is why we would like to find more ways to provide technical assistance and other forms of support within the Endan-

gered Species Act, to help farmers do what their natural tendency is to do, and that is to be good stewards of the land.

Mr. RADANOVICH. Right. Well, I think at the expense of sounding like a religious zealot, I think that one point I do want to make, and I appreciated your reference in your comments to nature's God, because I think there is a big difference between individuals and the way policy gets implemented by people who worship nature's God and by people who worship nature. And there is a big difference in that, because people who worship nature end up fearful and you end up controlling things. And I think that is kind of what the big problem within your ranks is, is a general fear of their future and the future of this world. I mean, I live on this planet too, but the fact is that get the people who worship nature out of your ranks and I think that you will have some better approach to the environment and what our God-given rights are on the use of the environment while we are on this planet. I think it is an important thing to consider, and I appreciated your comments about nature's God, because I think it is very important to this.

Thank you.

Mr. POMBO. Thank you.

I would like at this time to recognize one of my colleagues from up north who has joined us—or joined us a little while ago, who has been working on this issue for a number of years, Mr. Wally Herger.

Mr. HERGER. Thank you very much, Mr. Chairman, and I want to apologize for getting here a little late. We have had budget hearings in Washington the last couple of days that went into the early evening. I want to specifically thank you and recognize you for the leadership you have given, as well as the rest of this Task Force, on an issue that is so crucially important to everyone in this room, certainly everyone within the 10 counties that I represent in northern California. As I have listened here—I have been here for maybe about the last 45 minutes or so and listening—I find it somewhat tragic, if you will, that in a room filled with I would guess all of you U.S. citizens, all of you patriotic Americans, that we have to have these cheering sections of one side or the other. I would like to think that somehow we could work together to solve very real problems that all of us recognize as being crucial to ourselves and to our children and grandchildren. I would state that I do not believe it has to be that way.

Mr. Taylor, if I could ask you a question—and I have listened to a lot of people on both sides of this issue over the years on committees in Washington and otherwise, and I want to thank you for the sound of reasonableness that I hear from you, and also from the organization that you represent. And I can say that of the different environmental organizations that I have worked with over the years, yours has always come across as one of the organizations that seemed more reasonable and willing to work with us.

Let me ask you, just to begin with, again in response to a comment I just made, of our room that seems to be divided here, do you feel, as a representative of the environmental community, that it is mutually exclusive to both preserve our environment and preserve the economy of our communities?

Mr. TAYLOR. Mr. Herger, thank you.

Maybe you came in after I made a comment in my original testimony, but my comment was we need a healthy environment to have a healthy economy—clean water, clean air, available soil. And what we have learned, especially in the last recession here in California, is we need a healthy economy to have a healthy environment. We lost a major bond act, which many of the people in this room probably did not like, but we lost, and one reason was because of the economic softness in our State economy.

So are they exclusive? Absolutely not. And we are working overtime trying to find those kernels of common sense that we can unite around. And some of the stuff that we have talked about with agriculture, I think can help us go a long way to alleviating probably half of the problems that people have talked about in this room. There is not that much separating us on those points.

There are major separations on other points, and I do not want to gloss over that at all, and the debate will begin. But we are looking for that compromise that protects wildlife in a sustainable and durable way.

Mr. HERGER. OK. So if I understand the answer to the question, you feel that the directions of both preserving the economy, both agriculture and our timber communities here in at least northern California, here in California, are not mutually exclusive, that we can both protect our environment and—I am making a comment now. My understanding is basically you said yes, is that—yes or no?

Mr. TAYLOR. We are looking at yes and realizing that there is an awful lot of hope that goes into that and that hope may work out or it may not work out.

Mr. HERGER. OK. Well, I agree with you, I happen to also believe they are not mutually exclusive. I represent ten counties and I have some eight national forests within the ten counties that I represent, in addition to some of the richest agricultural area in the northern Sacramento Valley as well.

But have you heard of the Quincy Library Group?

Mr. TAYLOR. Yes, I have.

Mr. HERGER. OK, the Quincy Library Group, for those of you that have not heard of that, that is a group that was set up within about three counties in the Plumas National Forest up around Quincy, also including part of Lassen County, Plumas County, part of Sierra County. Now this is not northern spotted owl area, but it is California spotted owl area, which is being managed the same way. Now there is something very interesting that took place a year or so ago in that area, very unique, in that we actually had a group of environmentalists from the environmental community, timber people, community leaders got together, they called it Quincy Library because they met there. And over a period of some months actually came up with a management program of those forests, the Tahoe, the Plumas and part of the Lassen, in which they agreed on a plan that both protected the environment, the spotted owl, streams, the fish, the other habitat, and also kept the mills going. Now that is unique.

Now at the same time, it was interesting that the national organizations that many of these local groups were representing, at

least as community leaders, opposed this. I find that very—I do not know how you want to call that, that is tragic.

But I just want to conclude here a little bit, the fact is I believe we have examples right here in northern California where we can work together and we can prove that these two sides are not mutually exclusive.

Let me get to a more important issue of your opinion. Now let us talk about, if we can, northern spotted owl area up in the northern part of my district. Have you, as a member of the Audubon Society—again, just yes or no—have you ever had an opportunity to observe the northern spotted owl?

Mr. TAYLOR. Yes, on several occasions.

Mr. HERGER. OK, so have I on several occasions been out, hooted them in relatively new timber area, by the way, timber that had been harvested just 30 years before, on two different occasions.

Now I am just wondering, are you aware of the fact that we have discovered more owls just in northern California, the northern spotted owl, than they thought they had in all of Washington, Oregon and California combined since they listed it—were you aware of that?

Mr. TAYLOR. I am aware of the studies, particularly the studies on the north coast in second growth redwood that show larger densities, greater densities of spotted owls there, yes.

Mr. HERGER. And actually a larger number that they found—there are undoubtedly many more that they have not—this is only in part of the forest. I can just state this, they found more in this area than they thought they had in all three States put together. And since the northern spotted owl has been listed, they have found four times more than they originally thought they had in all three States.

Now my question to you, and you were alluding to this earlier, about your concern about once we list a species, if we find out that a species is prospering, that we de-list it. Would you favor the de-listing with this new science that we have, which at this point has been—as a member of Congress I can tell you—has been completely ignored in Washington? There have not been any changes made. Would you favor the de-listing of the northern spotted owl considering this evidence which you are aware of?

Mr. TAYLOR. I have two comments to that. Number one, you may be aware and I hope that you are, of studies on the demographic trends of the northern spotted owl throughout its range. A group of nationally regarded scientists as of December 1994, meeting in Fort Collins, Colorado, concluded, based on their analysis that the population trends of the northern spotted owl continued to be downward. That is not a function of how many there are today, but a function of what the population trends are throughout its range. I was concerned when I saw that——

Mr. HERGER. Mr. Taylor, excuse me for interrupting. My time is up and our time is limited here, but let me make sure I understand what I hear you saying, and you were going to go into it a little bit more. Even though just in California, we have found more owls than they thought they had in the entire range and even though we found four times more than they thought that cutoff point that they thought below that was endangered, you still would oppose—

basically yes or no—with this new information, you would oppose the de-listing. Basically a no answer to that, is that what you are saying?

Mr. TAYLOR. The second point was, as you know——believe me, I am not a lawyer, I do not take a long time to answer questions. But the Endangered Species Act has within its regulations every five years to review the status of the species. If the Fish and Wildlife Service upon review of that information within that five-year window—and we are at five years now—made such a decision, I would probably greet that decision favorably. I would ask them to make that decision. I would like to have someone who knows more about the population of the bird than I do to tell me that it has reached a point of sustainability. Once that is done, believe me, having the spotted owl off the endangered species list works for me. It works for me, because this has become such a lightning rod for the Endangered Species Act.

Mr. POMBO. Thank you. At this time, I would like to thank the panel for their testimony, for the answers to the questions. I appreciate you accepting our invitation to appear before this Task Force today and I will excuse this panel and call up the next panel—Mr. Robert Cabral, Tony Souza, Bob Schneider, Robert Pernell, Laurette Rogers and Pete Giampaoli.

If I could have everyone take their seats please. We would like to proceed if everyone could take their seats please.

We have with us on panel number four Supervisor Robert Cabral from San Joaquin County; Tony Souza from Tracy; Bob Schneider from Davis; Robert Pernell from the Sacramento Municipal Utility District; Laurette Rogers and Pete Giampaoli from Chico, California. The panel has accumulated at the front here. Mr. Supervisor, Robert Cabral, you are recognized and you may begin your statement. Thank you for being here.

STATEMENT OF ROBERT CABRAL, SUPERVISOR, SAN JOAQUIN COUNTY, CALIFORNIA

Mr. CABRAL. Chairman Pombo and members of the House Resources Committee on Endangered Species, I thank you for this opportunity to speak on an issue of tremendous importance to us in San Joaquin County and throughout the Nation.

Before I begin my comments, I would like to make this one. I used to think that San Joaquin County's claim to fame was that we have one of the richest agricultural counties in the world. But after spending a few days back in Washington, DC recently, I think our claim to fame—I know our claim to fame is our Congressman Richard Pombo. And thank you for inviting your group out here.

As you know, I serve on the San Joaquin County Board of Supervisors and as Chairman of the San Joaquin County Council of Governments, and along with that I am a farmer and had prior service as Executive Director of the San Joaquin Farm Bureau Federation. Today, my testimony is from all of these perspectives as too how we might reform, and need reform, of the Endangered Species Act, and reform that, I must add, is long overdue.

A recent article in a 1995 issue of Science magazine had some very startling statistics. The Act was signed into law in 1973 and at this time there were 122 species on the list. By the end of 1994,

833 were added, either as threatened or endangered. During this whole time, only 21 species have been de-listed and that was for two different reasons—one, they should not have been listed in the first place due to data errors; or two, they are now extinct.

In bringing this discussion a little closer to home, the vast majority of species on either the list or proposed listing come from California, and a great number of those are in San Joaquin County and it is one of the reasons our Council of Governments is undertaking the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. The current list of species that is under consideration is seven pages long and has 93 species, including mammals, birds, reptiles, amphibians, fish, insects and other invertebrates and plants. This list includes federally-listed species, State-listed species, candidate species, proposed species and my personal favorites, the State species of special concern, along with a whole lot of other things listed by the Native Plant Society or other agencies.

It is clear to us, and I am sure you have heard this a number of times before, we need to shift the emphasis from an individual species protection policy to a policy of protection for a multi-species habitat, long term. And I guess if you look at an advantage for doing the plan or a reason to do a plan, this may be the key one. There are downsides, however, and why are we at the table? We have heard testimony that the environmental community and the ag community and the business community are sitting at the same table. I can assure you that the business community and the ag community are at that table because we are scared to death. We are threatened and we have to protect ourselves, not that we necessarily agree that this is the way to approach the Act.

The basic elements of the plan that we are preparing, which by the way is costing the taxpayers in San Joaquin County $500,000 just for the plan, will contain a cost/benefit analysis which we encourage become part of the Endangered Species Act. And I guess if we have the reform that we are talking about, we really would not be required or feel the need to do a local plan, because we are trying to do all those things to protect ourselves from ourselves, if you will.

Although the burden of the Endangered Species Act compliance is clearly heaviest I think on individual permit applicants, our county and local governments also do carry a significant, unrecoverable cost in terms of county staffing, additional applications for any public project and the money it takes to do the kinds of studies needed to accomplish those projects. And illustrating this point, I selected this past week eight different public works projects which included very minor road repairs in some cases, building or rebuilding of bridges in other cases. But these eight projects had hard dollar costs on environmental studies because of a need to address things like the garter snake, the fairy shrimp and the burrowing owl, hard dollar costs to the taxpayers of San Joaquin County, $1,250,000, plus countless staff hours of our staffs as well as the biologists from the Department of Fish and Game and the Fish and Wildlife that also worked with us through this process. We ended up setting aside 175 acres at one of our sanitary landfills for the burrowing owl and the tiger salamander.

We are engaged in a joint project with CalTrans, the State of California, in widening Interstate 205 between the San Joaquin River and the San Joaquin border at Alameda County. We are being forced—again, our county taxpayers—in order to push this project forward, are forced to spend $1 million in an environmental impact report on a roadway right-of-way that has existed for over 100 years and has carried traffic on two lanes each way, back and forth, and we are adding another lane.

I see the yellow light on and I know you have got my written testimony and I would appreciate your comments at some time in the future. But I think one of the things that we might summarize, what needs to be boiled down, is that we use common sense. The American people understand that this Act is not right and I believe our Federal law must recognize the same fact.

And what can be done? I would recommend a couple of things. One, that you look very closely at some of the recommendations for amendments to the Act that have been submitted by the California Farm Bureau Federation as they address each and every one of the concerns which I included in my testimony. It is an act that would preserve both people and habitat in a fair and reasonable manner.

The recommendations would also return to local planning authorities—and here, I am putting my Supervisor hat on again—the power and responsibility for local land use planning given to us by the people that we represent. Federal biologists have to be put back in the proper advisory role. They cannot and should not do land use planning for our communities because they do not have the expertise and, quite frankly, they do not seem to care about people.

Thank you for this opportunity.

[The statement of Mr. Cabral can be found at the end of the hearing.]

Mr. POMBO. Mr. Souza.

STATEMENT OF ANTHONY F. SOUZA, REALTOR, TRACY, CALIFORNIA

Mr. SOUZA. Mr. Chairman, thank you for the opportunity to speak before you today. I wish to submit some comments for the record on the reauthorization of the Endangered Species Act.

As a realtor who specializes in the sale and development of transitional and agricultural land, I have seen first-hand the devastating effects that the ESA has had on housing affordability, land prices and property rights.

ESA was passed in 1972 with noble intentions and worthwhile goals. Unfortunately over time, the ESA has been used not as a protector of endangered species, but as a growth control tool. The Act must be fixed in a way which protects species, respects private property, provides incentives to landowners and is equitable.

Many factors influence the cost of a home in California. The sum of these factors has created a housing cost in California which is among the highest in the country. One of the factors which adds considerably to the cost of housing is compliance with the ESA. The ESA affects the affordability of a house throughout the development of the finished product. The creation of the house from its initial land planning to the closing of escrow is a process which is impacted by the ESA at every stop. The cost of a house is impacted

by the direct mitigation required by the development of the project, as well as the mitigation of numerous other indirectly related projects, including everything from road projects to timber harvests.

The cost of ESA affects the average Californian in many places in addition to home ownership. The application of the Act by the U.S. Fish and Wildlife Service on other government agencies is alarming. This application of the Act serves to increase the cost of building government projects and providing services. The implementation of ESA on the public and private sector has resulted in substantial increases in the price of housing as well as services provided by the government and utilities. The Act must take into consideration all the costs of listing species and strive to mitigate in the most cost-effective methods possible.

The ESA has turned into an exercise of government power resulting in global zoning done at a national level which restricts the bundle of rights without just compensation. Global zoning is what results from listing a species. Once a species is listed, any property with habitat which remotely resembles that of a listed species has very onerous restrictions placed on it. Often the restrictions so severely impact the use of the property that no economically viable use remains. There is no compensation. ESA must be changed to provide for the protection of species, property rights and provide for just compensation.

These restrictions not only affect the rights a person has in property. They also affect the value of property. If a property has a species or habitat on it, its value and desirability decrease substantially. Because of this, farmers who own land they might one day sell for development are regularly advised to include disking of fallow land, herbicide spraying of ditches and fence lines and eradication of rodents in their normal farming practices, although these practices may keep habitat for any species from growing, they will ensure that the landowner will not be subjected to the wraths of ESA.

ESA can be a vital link to the preservation of the ecosystem. Unfortunately it has evolved into a bad law which actually serves to destroy habitat, decrease property value and increase the cost of housing substantially.

My comments reflect two serious flaws of the Act which need to be addressed—economic impact of listings, and property rights. There are other aspects of the Act which need to be addressed. Time does not allow elaboration of each of the points, so I simply list them here:

1. The listing of sub-species needs to be seriously considered.
2. There must be scientific and economic peer review of each listing.
3. Much more effort must be put forth in implementing recovery plans and de-listing species.
4. And finally, duplication between State and Federal acts must be eliminated.

An ESA that is environmentally sensitive, yet allows our nation to be economically competitive is realistic and obtainable and should be what we strive to achieve.

I thank you for the opportunity of allowing me to express my views.

[The statement of Mr. Souza can be found at the end of the hearing.]

Mr. POMBO. Mr. Schneider.

STATEMENT OF BOB SCHNEIDER, CONTRACTOR AND DEVELOPER, DAVIS, CALIFORNIA

Mr. SCHNEIDER. Good afternoon, Representative Pombo and Committee. My name is Bob Schneider. By profession, I am a building contractor and developer. I have been in the construction business for a little over 20 years. We have built single-family homes, multi-family homes, affordable housing, commercial buildings and retail tenant improvements. We have also done residential mixed-use subdivision developments. In addition, I have been involved with environmental issues for 30 years.

Thank you for the opportunity to discuss the Endangered Species Act. It is an important law that has been very successful in its goal of protecting species and habitat. The Act is working and the Act is needed.

Because the building community so directly affects habitat, I feel that we have a special public trust duty to mitigate those impacts. We cannot truly create new farmlands or habitat, but we can help to mitigate those lands we impact by protecting alternative farmland or habitat areas. I do not think my children will thank me for how many houses I build, but they may thank me for the lands I have helped to protect.

Most farmers are good stewards of the land. They have seen the change in the Central Valley, many have seen the change through their families over several generations. They too want to leave some of our original Central Valley ecosystems for their children to enjoy.

On a trip to Tehama County, working on oak-woodland issues, we were driving along Red Bank Creek. I asked my guide, a longtime rancher in the Red Bluff area, "Did you ever catch salmon in that creek?" His reply was yes, he remembered fishing with his dad. There are no more salmon in that creek. The oaks and bankside vegetation have been stripped and too many cattle now graze in the creek, increasing erosion and preventing recovery. Our generation may carelessly, needlessly strip our children of that joy of catching a salmon, seeing them spawn or working in the commercial salmon industry. This is a case of bad environmental policy, resulting in bad economic planning. A stronger, better funded ESA can help to prevent this tragedy and others like it.

My business is involved with these issues. We are committed to finding solutions to balancing environmental concerns with the people's needs for community and housing. As an example, on our last project, we needed to provide a flood control detention and retention pond. In this process, we created a 30-acre urban wildlife habitat pond to serve this function. There, amongst our new human community, nest Canada geese, avocets, stilts, killdeer and other birds. Frogs grow and muskrats swim.

This is an example of good environmental policy being good economic policy. In our experience, the public is willing to pay more

for housing to protect and enhance important environmental areas. Lots abutting our urban wildlife habitat areas sold for $10,000 to $20,000 more than comparable lots in the subdivision. The economic benefit is both immediate and long term.

Good long range planning for our communities requires careful siting of urban development, good planning which works to mitigate problems of urban sprawl and consideration of environmental constraints. When developers are allowed to build in flood plains or sensitive environmental areas, they do the opposite.

Other developers are successful in implementing good economic and good environmental planning. In Yolo County, the building community, environmental community and the farm community have worked together in a cooperative effort, listening to each other's viewpoint, working together to prevent urban encroachment on some of the very best farmland in the world, fighting for legislation to protect these lands, and working together to enhance wildlife habitat on Yolo County farms. I might add additionally, we worked together in developing a joint geographical information system mapping project between the Farm Bureau and the Sierra Club in that project, which has been quite successful.

It is not easy and we have often had our differences, but now we listen to each other. We work to solve problems.

I am greatly disturbed by the rhetoric we now hear. The rhetoric is destructive and impairs the ability to communicate. A friend wrote, "Too often scientists ignore political reality while pragmatists misconstrue changing values." Rapid swings in the pendulum of change result when this happens. I have found that most landowners do care, and in fact, when involved in a cooperative manner, provide many of the answers to enhancing species habitat.

Weakening ESA is not good for my business. There have been problems with implementation of the Act, but most of these problems can be corrected administratively. Any changes in the Act should center around providing additional incentives for landowners to cooperate in protecting our ecological heritage.

In closing, I urge you to reauthorize a strengthened and well-funded Environmental Species Act.

I want to add one thing. I have a short petition here signed by about 85 people involved in the construction industry, it is by the Building Industry Professionals for Environmental Responsibility, and I will just read the end of it. "Much has been made of the detrimental effect the ESA has had on the construction industry. We reject that view and suggest that we in the industry are capable of combining good environmental safeguards with a healthy business climate." And I would like to submit this for the record also.

Mr. POMBO. Without objection.

[The statement of Mr. Schneider can be found at the end of the hearing.]

Mr. POMBO. Ms. Rogers, you may proceed.

STATEMENT OF LAURETTE ROGERS, TEACHER, BAY AREA, CALIFORNIA

Ms. ROGERS. Hi, I am Laurette Rogers, I am a fourth grade teacher and I have been working with my class and some other teachers on a project to help save the California freshwater shrimp

and we have been working with farmers, and we would like to tell you about it.

Mr. MURPHY. Hi, I am Brian Murphy, this is Madeline Merritt, John Elliott and Natasha LaBelle. We are here from the California Freshwater Shrimp Club. I am going to talk about the history of the shrimp club.

One day, Ms. Rogers' fourth grade class was having a class discussion about endangered species. One student raised his hand and said, "What can we do to help the endangered species?" So we got in contact with the Adopt-A-Species Program and they gave us three animals to choose from. They were the trout, salmon and shrimp. We chose the shrimp because they weren't cute and cuddly. Then we got in contact with Liza Prunuske, who brought us in contact with Paul Martin, a dairy rancher on Stemple Creek. We have been working for two years on Paul Martin's ranch. Now we are working on other ranches along Stemple Creek. One of the shrimp club's many goals is to plant plants all along Stumphole Creek.

Miss MERRITT. Hi. I am Madeline Merritt, and I am going to tell you why the Endangered Species Act is important to the shrimp club.

The Endangered Species Act is important to the shrimp club because endangered species are going extinct faster than ever. And if you decide to take off the Endangered Species Act, you will affect our lives and our children's lives forever. Imagine getting up and having to wear a breathing device to go outside. This is what could happen if the Endangered Species Act was taken off.

So instead of waiting until it is too late, why do we not start now by keeping the Endangered Species Act and saving the earth? Do you know that up to 100 species go extinct every day? If we keep on going like this, some day people will be extinct, and it might be because of your decision today. So please make the right choice. After all, a wise man once said, "You do not inherit land from your ancestors, you borrow it from your children".

So please help us by keeping the Endangered Species Act, it will affect every living thing. If you do keep the Endangered Species Act, there will be a nice healthy world. So please consider the future when you decide. America depends on you.

Ms. LABELLE. Hi. My name is Natasha LaBelle, I am going to be talking about why the shrimp are important to the earth and why the Endangered Species Act is important.

The shrimp eat the detritus off the bottom of the creek to help keep them clean for themselves and other freshwater animals. The shrimp are the last of their genus and live in only 15 different creeks. If there are no ecosystems, then everything would start to fall apart. The earth does not have as much value when a species is lost.

Why the shrimp club is important to me is because I am helping the earth. We all found in the shrimp club that we can work with the farmers to save the shrimp. If we can all work together, it will be to everyone's benefit.

We have raised over $100,000 to do this. There need to be certain boundaries within which we will stay. If there are no boundaries on pollution or ways we can hurt the environment, we would not be able to live and neither would any other animals. If humans

make it so another animal cannot survive and may become extinct, this will cause disasters for us in the future. What if another animal began making the human species extinct? Why would it be fair to us? We have to respect every living thing. Let us pitch in and help save the environment.

Mr. ELLIOTT. Hello. My name is John Elliott.

Paul Martin is a farmer who works with the shrimp project. He is the third generation of his family to work the land. I will read a statement from Paul Martin.

He says, "From my observations as a farmer, the problem may not be the Endangered Species Act itself, but the method of enforcement. The shrimp project has been accepted by the farmers in my area because they have been taught to respect the farmer's property and work cooperatively. If the Endangered Species Act were to be put into effect like these kids and their teachers, it would work. We would all be better off."

After working on our project for three years, our project has been trying to save an endangered species, the California freshwater shrimp. We are rehabilitating many creeks that the shrimp live in. Because of the Endangered Species Act, we have been interacting with farmers who might not care otherwise that there is an endangered species on their property. We have been building fences around the creeks to keep the farmers' cattle out of the streams. To make the shrimp's habitat more natural, we have planted native plants around the streams, such as blackberry bushes, willows and other natural grasses. This is all with the help and guidance of a farmer that is working with us.

We have won various awards for our project and received national attention. I am here today to ask for your support in saving the Endangered Species Act. There are ways that we can save a species without people losing jobs. Our project is an example of that.

Thank you for your time.

Ms. ROGERS. Thank you.

Mr. POMBO. Ms. Rogers, did you have anything that you wanted to add to that at this time?

Ms. ROGERS. No, I think they said it very well.

Mr. POMBO. OK, thank you.

Mr. Giampaoli.

STATEMENT OF PETER G. GIAMPAOLI, PRESIDENT, EPICK HOMES, INC., CHICO, CALIFORNIA

Mr. GIAMPAOLI. Thank you, Congressman Pombo and members of the Task Force for the opportunity to speak to you today. I am a local builder from Chico, which is about 75 miles north of Sacramento. I construct approximately 35 to 100 homes per year.

In addition to my experience as a builder, I am also very involved in wildlife conservation activities. I am the founder of a group in Chico which is called "Hooked on Fishing, Not on Drugs" that has introduced nearly 10,000 children to the joy of fishing and the outdoors over the last four years. I am also a Regional Governor of California Trout, and have testified before numerous committees and commissions relating to trout, steelhead and salmon conservation. While I support Congress' original intent behind the

Endangered Species Act, I find myself in strong opposition to recent implementation of the Act.

I would like to tell the story of one project currently subjected to the Endangered Species Act and the Clean Water Act, which causes me great consternation over these Acts as currently administered. The property is 165 acres in size, and is in an area in Chico planned for urban growth in order to protect valuable ag lands to the west of the city. It is encumbered by a $600,000 sewer bond, is within one half mile of a million square foot regional shopping mall, has roads on three sides, is served by all public utilities, has exiting city zoning to allow homes and apartments plus an office complex. Sounds like a reasonable place for development?

The answer is "no" if you are asking U.S. Fish and Wildlife Service and the California Department of Fish and Game, for this property is encumbered by the State and Federal Endangered Species Acts and Section 404 of the Clean Water Act. You see, it also contains 4.88 acres of seasonal wetlands (dry eight to nine months of the year), a four-inch high rare plant species called Butte County meadowfoam (BCM), and two supposedly rare shrimp species, vernal pool fairy shrimp and vernal pool tadpole shrimp. Despite some very genuine biological uncertainty about whether any of these species should be listed at all, they are now being used as the single most relied upon tool in the Chico area to stop orderly development.

Because these species are found in wetlands, years of wetland planning have also ground to a halt with the Federal listing of Butte County meadowfoam in 1992 and the listing of vernal pool fairy and tadpole shrimp in 1994. This caused the abandonment of four and one half years of work under the Nationwide 26 permit process, to embark on yet another Federal process—the individual permit.

Faced with three allegedly endangered species, a plan was conceived based on sound biology, and presented to the Corps, State and Federal resource agencies. We are in the midst of a Section 7 consultation now. The results are not encouraging. Here are some specific examples.

I would like to call to your attention three scenarios depicted on the easel to my right. The percentage shown in each is the amount of our land dedicated to the permanent preserve. Our plan proposes, in addition to an off-site preserve and other provisions: setting aside a 48-acre preserve, fully 30 percent of the site as permanently protected open space. The agency response: You must set aside 82 to 130 acres preserve, 50 to 80 percent of the site, as a permanent open space.

Our plan proposes: to avoid 97 percent of the BCM plants on-site and more than quadruple the size of a contiguous BCM preserve we voluntarily set aside five years ago. The agency response: You must avoid 100 percent of potential BCM habitat everywhere on-site, even though the remaining three percent consists of sporadically occurring, isolated population segments in the least productive 20 percent of the habitat (statistically verified).

Our plan proposes to also: provide a buffer consisting of the entire wetland watershed plus an average of 50 more feet, with fencing, berms, and ditches that will all but limit human intrusion. The

agency response: Provide a buffer consisting of the entire watershed, all our proposed buffering elements plus no less than 200 feet, even though no demonstrable improvement in resource protection can be shown.

Our plan proposes to also acquire an additional 70-acre off-site parcel with wetlands, previously approved for development and protect it as part of an existing 230-acre preserve. The agency response: Question the value of a 70-acre addition to the 230-acre preserve, since the 70-acre piece may not be big enough.

At every turn, the motivation behind ESA implementation becomes more evident—get more land. The economic impact of our original plan alone is $4.5 million, or $6,302 per new home. Just imagine $4.5 million in order to mitigate 3.98 acres. That is $1,125,000 per wetland acre! Imagine the acreage that could be protected for this amount of money if a landowner was given an incentive to do so.

Possibly the most tragic of outcomes is the impact these regulations have on the young, first-time home buyers. The cost of these regulations will not be paid by society, but by new homeowners at $51.00 per month, or $18,300 over the life of a 30-year mortgage. Butte County, which includes Chico, ranks 50 out of 58 counties in lowest median household income in California. It is little wonder fewer than one in four families can afford to purchase a median priced home. ESA and Section 404 have helped place Chico 24th on the Nation's 25 least affordable cities in the United States, according to recent statistics.

In our case, adopting the resource agencies' requirements would cost an additional $2.6 million to provide the additional three percent protection of BCM. That amounts to over $5,000 per plant in an average year. The cost is over $36,000 for the life of a 30-year mortgage for each new home owner and would make our project economically infeasible.

The Section 7 consultation is not yet complete and we risk State and Federal agency retaliation to bring this information to you and to the American public's attention.

However, we believe the system is so out of balance that it must be fixed before another landowner voluntarily offers to protect 97 percent of a species occurring on land under a biologically sound plan, as we did, and that proposal is rejected out of hand and replaced with 100-percent-or-nothing agency counter proposal.

After months of providing additional data to buttress our plan and demonstrate the economic infeasibility of the counter proposal which would take, without compensation, 82 to 130 acres, or 50 to 80 percent of our land, we have yet to see any significant agency movement toward a reasonable middle ground.

As Americans, we cannot turn our backs on environmental protection. People and wetlands and species must survive and prosper together. However, we cannot unfairly preclude younger generations from realizing the American dream older Americans have enjoyed, such as affordable housing.

The Endangered Species Act pendulum must swing back toward the middle to achieve reason, balance, fairness and equity.

Thank you for the opportunity to address the Task Force today on something that is very important to all of us.

Mr. POMBO. Thank you.

[The statement of Mr. Giampaoli can be found at the end of the hearing.]

Mr. POMBO. Mr. Pernell.

STATEMENT OF ROBERT PERNELL, VICE PRESIDENT BOARD OF DIRECTORS, SACRAMENTO MUNICIPAL UTILITY DISTRICT

Mr. PERNELL. Thank you, Mr. Chairman, members of the Task Force. My name is Robert Pernell. I am the Vice President of the Board of Directors for the Sacramento Municipal Utility District (SMUD).

I appreciate the opportunity to testify and share with you SMUD's experience with the Endangered Species Act and the recent listing of the fairy and tadpole shrimp. SMUD strongly supports the preservation of our national resource and is a leading proponent of environmental protection. However, we would like to propose several modifications to aid in the implementation of the Act.

By way of background, SMUD is the Nation's fifth largest publicly owned electric utility providing electric service to the greater Sacramento area. We are currently in the process of developing four cogeneration facilities which will provide over 500 megawatts of new electrical power for the service area. These projects will replace, in part, electricity which was generated by the Rancho Seco nuclear power plant, which is now closed. The projects include:

the Procter & Gamble cogeneration project, a manufacturing facility;

the Campbell Soup cogeneration project, also a manufacturing facility;

the Carson Ice-Gen project, located in south Sacramento Wastewater Treatment Plant facility; and

the Sacramento Ethanol and Power Cogeneration Project, SEPCO, located in Rio Linda, California.

SMUD is also developing a 64-mile natural gas pipeline, which will serve each of the cogeneration plants.

In September, 1994, the fairy shrimp and tadpole shrimp was listed as endangered and threatened species, respectively. Despite careful avoidance of vernal pools and wetlands, the pipeline and two of the cogeneration projects have fairy shrimp and tadpole shrimp on the project sites. On the pipeline and Procter & Gamble cogeneration project sites, the species were not found in vernal pools or wetlands, but in water-filled depressions and mud puddles. And we have pictures that will reflect that, Mr. Chairman.

On the SEPCO cogeneration project site, which is being developed and mitigated for SMUD by a private developer, the species were found in .2 acres of vernal pools.

The California Energy Commission, CEC, has already required mitigation for the fairy shrimp and tadpole shrimp associated with the three projects, prior to the listing of the species. For example, for the pipeline which causes a temporary impact, the CEC required the shrimp species to be removed from the route prior to construction and then replaced once construction is completed. On the Procter & Gamble project, SMUD is required to pay $100,000 for impacts to the vernal pool tadpole shrimp.

However, subsequent to the lengthy CEC licensing process, SMUD was required to initiate discussions with the U.S. Fish and Wildlife Service on additional mitigation for the fairy shrimp and tadpole shrimp, since the species is now listed. SMUD staff negotiated an agreement with the U.S. Fish and Wildlife Service that required establishing a 200-acre environmental conservation/fairy shrimp mitigation bank on property owned by SMUD, adjacent to the Rancho Seco power plant. Up to 25.5 acres of the bank will be used as direct mitigation for the impacts incurred during the construction of the pipeline and the Procter & Gamble cogeneration projects.

The total value of SMUD's resources required for the fairy shrimp mitigation are estimated at $500,000. This estimated value includes $400,000 for the value of the Rancho Seco land, which is very conservative, and $100,000 which was previously committed to the California Energy Commission for the fairy shrimp mitigation for the Procter & Gamble project.

The U.S. Fish and Wildlife Service will allow SMUD to use the remaining 174.5 acres as mitigation credits to support the licensing of future SMUD projects. The estimated market value of this mitigation bank is approximately $1.2 million if SMUD were to sell the credits.

We have proposed modifications to the Act. These modifications were approved by the SMUD Board of Directors on April 20, 1995 and there is a copy of the resolution. They include:

At the time of listing of a species or as soon as possible after listing has occurred, the Secretary shall use best efforts to designate critical habitat for the species.

As mentioned previously, the fairy shrimp and tadpole shrimp located on the Procter & Gamble project site and along the pipeline route are located in water-filled depressions and mud puddles. Had the critical habitat for the fairy shrimp and tadpole shrimp been identified at the time the species were listed, the habitat associated with these two projects would most likely have been excluded.

At the time of listing of a species or as soon as possible after listing has occurred, the Secretary shall use best efforts to adopt a recovery plan which shall identify measures intended to benefit and recover the listed species, consider the community impacts of implementing the plan and develop de-listing criteria.

The Act requires recovery plans for threatened and endangered species to be developed after the species has been listed. Unfortunately, this causes uncertainties and delays for project proponents who need to obtain take permits from the U.S. Fish and Wildlife Service but yet there is no recovery plan in place identifying what mitigation the project proponents should provide. To prevent these delays, the recovery plan should be developed at the time of the listing.

Upon final order of a court invalidating or setting aside listings due to inaccurate or insufficient information, any project proponent shall be relieved of any obligation to comply or continue with any mitigation measure related solely to such species, including any obligation to create and maintain a conservation bank.

If the fairy shrimp and tadpole shrimp are de-listed due to inaccurate or insufficient information, SMUD should no longer be obli-

gated to establish the 200-acre fairy shrimp and tadpole shrimp mitigation bank required by the U.S. Fish and Wildlife Service.

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

Mr. PERNELL. OK.

In conclusion, Mr. Chairman, I have with me Mr. Mayer, who has some photographs he would like to show the Committee. Thank you.

Mr. Mayer. Members of Congress, for the record my name is Lon Mayer. I am an environmental specialist with Sacramento Municipal Utility District.

As Director Pernell mentioned, these photos are attached to your testimony that has been submitted. This is a photo of the vernal pool fairy shrimp. This is a photo of the tadpole fairy shrimp. And both of these species are found throughout the Sacramento area, Central Valley and Sacramento Valley. They inhabit bodies of water such as vernal pools, wetlands and other bodies of water.

As Director Pernell mentioned, one of the four power plants that SMUD is building is located at the Procter & Gamble manufacturing facility in Sacramento. This facility is located in a highly urbanized area of Sacramento. Vernal pool fairy shrimp are found in water-filled depressions found on the project site, as shown in this and the following slides.

SMUD is required to mitigate for building on these sites and in addition, SMUD is now restricted to perform maintenance on existing facilities. As previously mentioned, had critical habitat been identified and defined by the Department of Interior, it is highly unlikely that the project site would be subject to the Endangered Species Act.

The power plants will be supplied with natural gas by an underground pipeline which is going to be built this year. It will be constructed in areas just as you see on the slide, in fact where the body of water is, is where the natural gas pipeline will be constructed. Also in that body of water we discovered vernal pool fairy shrimp and vernal pool tadpole shrimp.

This is another area showing where the pipeline will be constructed.

Mr. POMBO. In that slide you are showing us right there, did you find fairy shrimp there?

Mr. MAYER. Yes, we did.

Mr. PERNELL. Mr. Chairman, there were also fairy shrimp inside the tires, the abandoned tires.

Mr. POMBO. So the tires are critical habitat.

Mr. PERNELL. Shrimp were inside the tires, Mr. Chairman. And we are advocating that critical habitat be defined.

Mr. MAYER. In conclusion, in accordance with the Endangered Species Act, SMUD has agreed to mitigate by setting aside 200 acres of vernal pool habitat. And this is the Rancho Seco site where we have land set aside to mitigate for the impacts of the project. Thank you.

Mr. POMBO. Thank you.

[The statement of Mr. Pernell can be found at the end of the hearing.]

Mr. POMBO. Mr. Pernell, you stated in your written testimony that SMUD was required to pay—or in the initial stages of the

mitigation discussions, that you were required to pay $100,000 for impacts on vernal pool tadpole shrimp. Who were you supposed to pay that to?

Mr. PERNELL. That was to the California Energy Commission. After that, the fairy shrimp and tadpole shrimp were listed, and then the U.S. Fish and Wildlife Service began discussions with SMUD.

Mr. POMBO. So that was prior to listing?

Mr. PERNELL. That was prior to the listing of the fairy shrimp and tadpole shrimp, yes.

Mr. POMBO. Under what authority were they asking you to pay $100,000 for mitigation prior to listing?

Mr. PERNELL. That, Mr. Chairman, I could not answer. But I do have someone here from staff who can.

Mr. POMBO. OK, if you would not mind having your legal counsel provide that answer for me for the record, I would be interested in finding that out.

Mr. PERNELL. I will certainly do that.

Mr. POMBO. And also what the California Energy Commission intended on doing with the $100,000, what were they going to spend the money on.

Mr. PERNELL. Their intent was to create or have the fairy shrimp and tadpole shrimp habitat, even though they were not listed, I would imagine that they were in that process.

Mr. POMBO. OK. If you could provide that for the record for me, I would be interested in finding that out.

Do you have an estimate as to the overall cost of mitigation on these four different projects that you talked about?

Mr. PERNELL. As it stands right now, Mr. Chairman, for the four projects, it is $500,000 plus 200 acres of land.

Mr. POMBO. And how would that be reflected in your rates? Has your staff done a study on that?

Mr. PERNELL. One of the reasons I am here, I am very concerned about rates and the ratepayer. As you know, Mr. Chairman, I am an elected official, as you are, and we are concerned about our constituents. I think it would have an impact on the rates and furthermore, had we not decided to mitigate and went to court, then there is approximately a $350,000 penalty if we do not get this project moving. So we were in kind of a Catch–22 situation, if I can use that phrase.

Mr. POMBO. OK. If you can give me a breakdown—I have not read your entire written statement yet and it may be in there, but if it is not, if you can give me a breakdown on how that would drive the rates of SMUD as well, I would be interested in finding out that information.

You know, this one picture that you guys showed with the tires——

Mr. PERNELL. Yes.

Mr. POMBO. Did anybody tell you to clean that up?

Mr. PERNELL. Our initial intention was to—as a matter of fact, it was suggested that we would go through and clean that up and scrape it all out, clean it up and put it back into what could be perceived as a habitat. But that is not what the final analysis was, it was that we need 200 acres of your land for mitigation bank.

Mr. POMBO. When I was a kid, if the side of our ranch would have looked like that, my dad would have stuck the five of us out there for days cleaning that up. That is a mess. But thank you.

Mr. Souza, in your prepared testimony you outline what the individual cost on ESA would be on a specific project. I believe this is a 76-acre project, 481 units in the Tracy area. And you went through and broke down a cost for everything that would be included under ESA and you came up with a figure of $5,564 per house.

Mr. SOUZA. Yes, sir.

Mr. POMBO. Now, we had testimony on, I believe it was Wednesday in Riverside, that stated that for every $1,000 increase in housing prices, that two percent of the people no longer qualify. Are you familiar with that breakdown?

Mr. SOUZA. Yes, we did a similar type analysis in San Joaquin County and determined by increasing the price of the house by $5,564, that 5,500 potential householders would not be able to qualify to purchase an entry-level home. That is maybe just a little different way of looking at it but the concept is still the same, it pushed 5,500 people out of the ability to be able to purchase a home because of these particular costs. These costs are not all-inclusive. They were an estimate on our part. There clearly are a lot of secondary costs that I have mentioned in the rest of my testimony that are very difficult. I think the SMUD testimony is a perfect example of that, you know, and there are examples of PG&E gas lines, power lines, water sources. Every public project today is having to pay millions and millions of dollars in order to, theoretically, mitigate their impacts. And I say theoretically mitigate their impacts, you know, clearly by the time this SMUD project put their pipeline through I believe it was a better condition in the after-condition than it was in the before-condition. That in itself ought to be good enough mitigation.

Mr. POMBO. Thank you.

Mr. Giampaoli, in your statement, on your particular project that you outlined here, you said that "The economic impact of our original plan alone was $4.5 million or $6,302 per new home." The question I have for you, when you originally started this project, what were you planning on selling the homes for?

Mr. GIAMPAOLI. We have three different densities on this project and we were approximately about $110,000 to $120,000 to a high of about $160,000.

Mr. POMBO. And if you are ever successful in this, what will the price of the homes be at that point?

Mr. GIAMPAOLI. If we are able to get the plan approved that we currently have on the table, which is the plan that we show on the right, which is 30 percent, it will reflect about $6,300 increase, minimum. By the way, that number of $6,300 does not include any lost time or money invested over the last five years in this project.

Mr. POMBO. Thank you.

Ms. Chenoweth.

Ms. CHENOWETH. Thank you, Mr. Chairman.

Mr. Pernell, I am fascinated with your testimony and the slides that you showed. Now, in your written testimony that you pre-

sented to us, there was a Figure 5 here and it showed some tire impressions on a road.

Mr. PERNELL. Yes.

Ms. CHENOWETH. Was this also considered habitat for the shrimp?

Mr. PERNELL. Fairy shrimp were found in those impressions of the soil, so yes, it was. And I might add that one of our proposals for modification is the exemption of operation and maintenance. Utility companies have transmission lines that run, you know, the length of the State, and if we had to get a permit from U.S. Fish and Wildlife every time there was normal maintenance, operation and maintenance of those lines, I think it would be a disservice to the utility as well as the health and safety of the residents of the State of California.

Ms. CHENOWETH. And because of the listing of the shrimp and because of these particular habitats, your project was put off——

Mr. PERNELL. That is correct, it was put off—I am sorry.

Ms. CHENOWETH [continuing]. and delayed. What was the cost associated with your delay?

Mr. PERNELL. For the Procter & Gamble site, the cost is estimated at $350,000 for a 12-week delay, and that is because of the contractual obligations that we were into before the species got listed, and we have to go out to the market and we are going to use bonds for the funding of the project.

Ms. CHENOWETH. So you were under a lot of pressure trying to get the funding going and avoiding not qualifying with the bonding and everything.

Mr. PERNELL. That is correct.

Ms. CHENOWETH. That is incredible. Again, you know, I cannot imagine this from the pictures that I saw, but I do want to say that last August 8, the Chairman of this Committee, Richard Pombo, wrote to the Department of Interior and he wrote August 8 of 1994, and on March 10, of 1995, he received an answer. Now what would happen, Mr. Chairman, if you took six months to answer your constituents' letters?

This is incredible. But they are slow learners sometimes.

Anyway, they did state with regard to the Chairman—you did not know I had this, did you, Mr. Chairman?

Mr. POMBO. No, I did not.

Ms. CHENOWETH. With regard to the Chairman's inquiry about the habitat of the five fairy shrimp species, this is what they said in their letter, in spite of what we just saw on the slides. It is stated, and this is from George Frampton himself, it states, "Your letter stated generically that fairy shrimp had been found in road and railroad ditches, in cow paths, in abandoned quarries, in tire tracks and other temporarily aqueous settings." Now get this. "Because these areas do not represent vernal pool habitat and will not sustain fairy shrimp, they are not considered populations." And I would be happy to submit a copy of this to you, if it is all right with the Chairman, and also I would like to submit this for the record. I think this agency is not being consistent. I am sorry that you have to deal with this kind of inconsistency and it only hurts your customers. My hat is off to you, Mr. Pernell, and to SMUD

for your tenacity and your concern about your customers. Good luck to you.

Mr. PERNELL. Thank you very much.

Ms. CHENOWETH. Mr. Giampaoli, I was fascinated with your testimony too—I mean I was shocked. To repeat what you said, "After months of providing additional data to buttress the plan and to demonstrate economic infeasibility of the counter-proposal, which would have taken, without compensation, up to 130 acres, 80 percent of your land, we have yet to see any significant agency movement toward a reasonable middle ground." They would have proposed to take 80 percent of your land and they called it mitigation?

Mr. GIAMPAOLI. That is correct, and it is reflected on the plan to the left that you see. The portion in green represents the 80 percent if we were to use the alternative that they proposed. The area in blue is the portion that remains for development, and essentially 80 percent of the site would be taken without compensation.

Ms. CHENOWETH. Mr. Giampaoli, that is not mitigation, that is extortion.

Thank you, Mr. Chairman.

Mr. POMBO. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

I have no questions, I just want to thank the panel for making their testimonies, and also to you, Ms. Rogers, I think your school children made their presentation very well. Thank you very much.

Ms. ROGERS. Thank you.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Thank you again, Mr. Chairman.

And again, I want to thank all of you and I particularly want to greet one of my constituents, Mr. Giampaoli, and I thank you for your testimony here today.

Earlier when I spoke, I talked about how I firmly believe that we as Americans can work together, we are a group who put men on the moon several decades ago. Everything I have seen indicates to me that we can preserve our environment and not destroy our economy and destroy the prospect of a better America, or even the same quality of America that we know for our young people. And Ms. Rogers, I want to thank you for bringing these outstanding young people here and the outstanding job that they did.

But I just want to make sure that I understand what I heard correctly from you, Mr. Giampaoli. If I understood, just taking a few notes of your testimony, it was your goal in a community which, as you mentioned in your testimony, ranks as 50th out of 58 as far as the lowest median income in the State, of 58 counties. So we are not talking about a wealthy area, we are talking about an area that is rich in many areas but economically rates 50th out of 58, is that correct?

Mr. GIAMPAOLI. Yes.

Mr. HERGER. Also in your written testimony, you have that this area of Chico, which is where my district office is, is the heart of the 10 counties I represent, or part of it, also ranks as 24th out of 25 of the least affordable homes, is that correct?

Mr. GIAMPAOLI. Twenty fourth out of 25 least affordable cities in the United States.

Mr. HERGER. To live in. So we are talking about an area of basically a low medium income and an area where it is very tough for these young people to some day be able to own a home and the American dream, is that not correct?

Mr. GIAMPAOLI. Yes.

Mr. HERGER. And what you have been attempting to do and you have described what a good citizen you are, your involvement with kids and your involvement with fishing and doing the types of things that help these young people; I have many thousands in my district, by the way, many thousands who live in communities in which, of the excess of 50 mills that have closed down, that parents are out of work, 27 of those mills are in the district that I represent. And the parents of children like this who have been working for three and four generations in the communities to help provide the wood products to be able to build homes that your students can afford to have in the Bay area where you come from, have been shut down and their parents are now on welfare and unemployed.

Again, proceeding with this—and then let me see, it was your goal in between working with the kids, to help build 714 homes in this community, to help our young people to be able to have homes—I am just listing. You had a project that had 165 acres in it. Of this 165 acres, 4.8 acres were determined to be wetlands. Now just a short aside, we do not have much time here, but I am very familiar with the area. I do not know how many in our audience are, but let me ask you, of this 4.8-acre area that is wetlands, do we have tulees growing, are these wet, mushy marsh types of areas, these wetlands?

Mr. GIAMPAOLI. No. Actually this plan is on the east side of town and basically on the soil maps, it is called scab land. There is not a tree on the entire 165-acre parcel; it is devoid of trees because the ground is so bad it will not grow a tree and there are no bulrushes or tulees of any kind. This ground is dry nine months out of the year. And again, initially we moved to the east side of town because the community had made a conscious effort 15–20 years ago, which I was on that committee as well, to try to preserve ag lands to the west side. We have some of the best agricultural land in the world in and around Chico. So we made a conscious effort as a community to shift growth from the west side of town out of the ag lands, similar to Davis, and move to the east side into the lava lands, which before that time, I do not even think you could put a cow/calf unit on this piece of property. It is just almost worthless for anything other than building homes.

Mr. HERGER. OK, thank you. This is the point I wanted to bring out. Again, I am very familiar with this area. For those of you who are not, we are talking about the city of Chico, those of you who have driven through it, you have probably noticed on the east side of Chico, you have ground that will not even grow a bush, it will not grow a tree. I mean this is basically lava land which will not grow anything, it is not worth anything. But directly adjacent to it is some of the richest agricultural land in our State and in our nation today. And the planning that you were a part of some 15–17 years ago, which I think was wise, is that let us not build our

homes out in this prima agricultural land, let us build it on this land that will not grow anything.

Now somehow this very land that will not grow a bush or a tree has been designated a wetland. That is the point I wanted to make.

And the big point I want to make is our total lack of reasonableness with what we are doing. We have a society, again, that somehow can work together to put men on the moon and do it some two and three decades ago—I wish I had time and I could hear why we have red flags back here, but I do not have that time. But this is the type of incredible unreasonableness that we have now.

Now what this has done to homes, remember, this is an area that ranks 50th out of 58 as far as median income, lowest median income. It also is the 24th out of 25 least affordable places to live. We are trying to build homes. The impact of this going into your testimony is $6,300 minimum, that equates to about $18,300 during the life of a 30-year loan.

I want to ask you, Ms. Rogers, if I could, what is this going to do for our young people here and those same outstanding young people who I have in my communities who want to own a home some day. And I also want to ask you—I would like to have you answer that if you could, and also, first of all, I want to ask you do you feel that protecting our environment—and I really need to go into what the recommendation was—the whole point is are we being reasonable? And those of you that have the red and green posters, I want to ask you, are we being reasonable?

Let me go over what was recommended. This is what you recommended—you recommended of this land that you were going to set aside 30 percent—this was your recommendation, this was what you offered to do. There is only 4.6 acres out of 165. You recommended to take, not 4.6 acres, but 30 percent of it you offered to do. You also offered to avoid 97 percent, that is almost—for those of you who grew up in the new math, that is almost 100 percent—97 percent you offered. You were not asked to do this, you offered this, 97 percent to avoid. And also to quadruple, four times, the size of the contiguous other preserves, that you were going to increase by four times the amount that we had. Was this accepted?

First of all, let me ask Ms. Rogers, does this sound reasonable or more than reasonable?

Ms. ROGERS. I think we agree that there are problems with implementation——

Mr. HERGER. OK, answer my question, does this offer, this environment that I have just described, does this sound at minimum reasonable, and some could say overwhelmingly reasonable—yes or no.

Ms. ROGERS. I would need to know more about that particular case. And I wanted to say that with the shrimp project, our motto is there are two endangered species on our creek, the shrimp and the ranchers.

Mr. HERGER. I have asked a specific question——

Ms. ROGERS. We work with the ranchers.

Mr. HERGER [continuing]. I only have a little amount of time. With the example that I have given, which are examples I could give over and over and over again throughout the ten counties that I represent, does that sound like a reasonable effort to you?

Ms. ROGERS. I would have to know more about it. I really think that the most——

Mr. HERGER. In other words, you think maybe it is not a reasonable offer?

Ms. ROGERS. We work with ranchers and I think Paul Martin's words were eloquent in that he is saying in implementing the Act, we need to talk and find solutions that are good for everyone. So I would be working with Mr. Giampoli and indeed, sitting together, we have been sharing water and I believe we could work out something together.

Mr. HERGER. In other words, what do you feel, you would obviously then—I only have a limited amount of time——

Ms. ROGERS. I would like to sit and get to know Pete and I would bet we could work something out.

Mr. HERGER. Well, God bless you, I think if you got to know him better maybe we could work out something.

But let me tell you what people did who are running this program. You sound like those that I have in my Quincy Library Group, who did work together, and came up with a plan that everyone agreed with.

Ms. ROGERS. Exactly.

Mr. HERGER. But yet the national environmental groups opposed and the President has not funded, and even to this day, even though we came up with this three years ago, we still are unable to implement this.

Let me just tell you how reasonable the people were that were managing this program. Thirty percent was not enough for them, they wanted up to 80 percent. Avoiding 97 percent, again almost—that was not enough. They wanted 100 percent, plus. I mean this is the problem that we have. We have ceased to have reasonable people that are working to solve a problem that all of us recognize is a problem.

Ms. Rogers, my time is about up, but let me just conclude with this I have children that are in the district I represent that I would like to contend are every bit as outstanding as these outstanding young people that you have brought to us today. And I can tell you that the lives of their families—these are not people who do not want to work. These are hard-working, salt of the earth families that are being denied the American dream, that are being denied any semblance of fairness.

Ms. ROGERS. That is why we are working with the ranchers.

Mr. HERGER. And I am saying the reason is because of people that are making these kinds of decisions and people who are unwilling to work with us. And I can say this, there was an election last November 8 and we have had enough of what is going on, and by golly, we are going to change it.

Mr. POMBO. The gentleman's time has expired.

I would like to thank the panel for their testimony today, for answering questions and for accepting our invitation to address this panel today. All of your testimony is very important, it is something that we are going to depend on quite heavily as we take on this Act and the reauthorization of this Act, and I thank you for accepting our invitation. You are excused.

I would like to call up the fifth and final panel—would Mr. Paul Sugnet, Dr. Denton Belk, Dr. Edward Beedy please come up.

We really do want to get moving, and to our fifth panel, I apologize for keeping you here so long. I appreciate you sticking with us and we look forward to your testimony a great deal.

Please take your seats, members of the audience, please take your seats. We really do want to keep moving. This is very important testimony that we are about to hear, so please be considerate of the final panel.

To start with, Paul Sugnet from Sugnet and Associates in Roseville, California.

STATEMENT OF PAUL SUGNET, SUGNET AND ASSOCIATES, ROSEVILLE, CALIFORNIA

Mr. SUGNET. Thank you, Congressman Pombo and the Task Force. It is a pleasure to be here today. I really appreciate the opportunity to talk about this important issue. I have a slide show, I am going to move rather quickly, so please pepper me with questions later on.

Mr. POMBO. OK.

Mr. SUGNET. I am going to try to move rather quickly now. I am going to talk about the role of science in Endangered Species Act listing processes, particularly the 90-day petition finding. I want to start by comparing the current standard with a standard that I would recommend based on my experience with listing processes, and in particular the fairy shrimp listing, which I was heavily involved in.

The current standard for the 90-day acceptance of a petition is simply "substantial information." Also there is a term that lawyers used called "the reasonable person test." This is a very general kind of a standard. And my recommendation is that we need outside peer review of substantial data before we begin a very long process that is very costly. And I think this is important. At the very beginning of the process, we need to have outside peer review of substantial data to start the process.

With the final listing determination, I think again the current standard is rather vague, it is just simply best scientific and commercial data available. The standard that I would recommend would be again rigorous outside peer review. Reviewers should consult with all those who have contributed significant data. And peer review and final determination should not be made behind closed doors, as was the case with the fairy shrimp, which I experienced very painfully. Regarding the current peer review—the Secretary of Interior has recently published an article in Science magazine, I think he is in complete agreement with this position. He says that it ought to demand a threshold of proof written into the statute, and he said that for the Fish and Wildlife Service, this means that rather than doing a literature search and designating species as endangered, regulators there must subject their judgment both to outside peer review and to an established threshold of proof. I think this is reasonable and I think everyone should agree this would strengthen the Act, not weaken it.

The fairy shrimp science, a little case study. The petition for the fairy shrimp was a one-paragraph letter naming four species to

start with and asking them to be listed. There was very little substance and that is not surprising because three out of the four had only been described in the literature seven months before the petition was written. There was a second supplementary letter that gave a few references, but very little else. The petitioner later explained that "Many of the rare plants that I have personally had the pleasure of seeing are now under homes. We are trying to hold the line against some very powerful monied interests that are tied to the political power of the State." I do not think that has much to do with science and I think that is a problem that peer review would catch.

The listing determination for the fairy shrimp. There were four studies basically that they looked at—Holland, which is a study of distribution, had identified 2654-square mile sections in the valley with vernal pools. That is a lot of land. But he also fostered a 90-percent loss hypothesis, which turned out to be erroneous. And this was the basis for the proposed rule on fairy shrimp, that the habitat was rare. And we are finding it is not.

The final rule cites arithmetic errors for Holland's study and says that they discovered these errors and that the corrected estimates of the historical vernal pool habitat loss are reasonably close to the range of those determined by commenters. I think they are referring to myself and others. This unfortunate 90-percent hypothesis has created a domino effect in the literature on this subject, and so we have 90-percent loss in virtually every paper that has ever been written about this. And we are trying to now correct this by getting the actual science out.

The other unfortunate consequence of the 90-percent loss hypothesis is that builders have been forced to mitigate habitats on their sites. This is what I call "the earth is flat" problem because if you do not believe any habitat exists out there, then you have got to squeeze it in between homes. And this is what you are seeing here.

Now I began to realize that "the earth was round" about eight years ago flying around the valley, seeing landscapes like this. All the range land on the east side of the valley is covered with vernal pools, about a million acres, and I will get to that in a minute.

So we embarked on a study a couple of years ago at great expense to the four authors because we have virtually no fundings. We are funding it ourselves, and we are looking at the distribution now; we are pretty much finished. We started out talking with the Soil Conservation Service, which has an excellent data base (who no one else had ever consulted with apparently) and found that they could produce an approximate historic map for us based on their soil data base. From there, we went into the detailed data base and we looked at thousands of entries and found that the historic habitat covered approximately 2.1 million acres in the valley. The original study had estimated 4.2 million acres, which was an over-estimate historically of two times.

That is a map (slide) which shows you pretty much where vernal pools occurred historically. We now have estimated just about a million acres remain in the valley, about one million acres of range land covered with vernal pools. The dark green on the map shows you the distribution up and down primarily on the east side of the valley, about 20 counties, 100,000 acres in Sacramento County

alone. The dark green here shows the data base that we have just developed for Sacramento County, about 100,000 acres there, mostly in the rural, southeast part of the county where very few people live or seem to really know much about.

This slide is another example of the Sacramento County landscape littered with vernal pools. This is Solano County. I think this is Merced County here.

The study that the Service ended up using as the definitive study for rarity of fairy shrimp was a pipeline study that runs along the west side of the Central Valley. Now the reason I think the authors (Simovich et al) thought fairy shrimp was rare here is because they simply missed most of the habitat. I do not know what their problem was, but here is their pipeline transect in the red and the habitat is shown in green. One of the authors (Ms. King) wrote a letter to the Service supporting a listing, and urging them to list the species based on the fact that out of their 200 miles, they only encountered the four species in ten miles—in one case ten miles, another four miles, six miles. And she said that that meant they were rare because they had only found in five percent, two percent and three percent of the 200 miles. She forgot to calculate that she only went through 22 miles of the habitat, and therefore the figures in yellow are a little closer to the actual frequency, which is not very rare at all.

The Service was then, I guess, forced to conclude in their final rule that the three crustacean biologists who conducted this "research"—this is this pipeline study—concluded that based on this "random" field survey—now this is an engineered pipeline that was built in the 1960's, so how it was random, I do not know. It was not representative of the habitat, that is for sure. "...These fairy shrimp species and the vernal pool tadpole shrimp are rare throughout their ranges." And this is the definitive statement in the final rule.

We conducted a study in 1993 that was sort of a desperate attempt to get information to the Service on distribution, because there was so little regarding fairy shrimp. These numbers are a little hard to read, but we looked at just about 3,000 locations in the valley, vernal pools and other types of water bodies, and we found the proposed listed species in over 1,000 of those locations. We found them also in the tire rut type situations, along roadside ditches. We were very surprised to find them in abandoned quarries. We also found them in the man-made wetlands that we had been building as mitigation for the Clean Water Act for many years at great expense, and they seemed to be thriving in those habitats as well.

This is a map that shows the distribution of *Linderiella occidentalis,* one of the proposed species. We found 703 occurrences in the valley. The Service had thought there were only 40. So they withdrew that one species. But they went ahead and listed *Branchionecta lynchii,* which we also found in 178 places in just six weeks, and I think we could find a lot more if we had the opportunity. And they explained this by saying that our 178 records represent the 32 known populations of the vernal pool fairy shrimp. Now we could not understand this and the Service would not discuss our study with us. They just interpreted it themselves and

clearly misinterpreted this because there is no literature that indicates anything about 32 known populations. We asked them where they got this information and what the rationale was and they told us they could not reveal it because it was secret; they were worried about vandalism to the populations.

Recently, the State Chamber of Commerce was able to obtain the map of their so-called populations. This is one of them (slide) and it happens to be *our* map (Sugnet and Associates) from our study, a xerox copy, with little pencil circles around certain areas where we found the shrimp. So it looks rather arbitrary. And again, the Service in two years has refused to discuss our study, but has interpreted for their own use—I do not understand it and I wish that we could have that kind of discussion at some point and maybe you can help me with that.

Mr. POMBO. I have been trying.

Mr. SUGNET. This is just a close-up of the Sacramento area where you can see that they have put a bunch of little pencil marks on our map.

Now the Secretary, in the same Science article, says "We are now at the moment of transition for American resource management. We are finally both ready and able to use the best tools of modern science to call forth a very different vision of our future." I do not think this is what he is talking about, I do not think this sort of work is what he is talking about at all.

However, the work that we have been doing in the private sector may be closer to what he is talking about; I hope so. And in Sacramento County, like I say, we have developed our own data base and we are looking at ways that we can do reasonable conservation on these range lands.

We recently used the data base to identify a 400-acre parcel of farmland that had been converted from vernal pool land to farmland several years ago. And Elliott Holmes purchased it at that time to restore vernal pools, for mitigation on a project. This is what it looked like prior to our restoration project last year. The light green farmland in the middle is the site. In the background you can see the rangeland with vernal pools scattered throughout it. This is the restoration project this winter, a few months after completion. This is what it looked like just a few weeks ago on the ground. And by the way, it is teeming with fairy shrimp. So we think we are successfully mitigating for the habitat, but at great cost.

So in closing, I think we have a choice right now. The BEE called this "the curse of the fairy shrimp", and I think maybe we do not have to live with a curse, but at the moment we are. Most of my staff are out in the field day-in and day-out netting fairy shrimp and counting them. And I think this might be appropriate for a university research project, but I do not think the landowners ought to be doing fairy shrimp research day-in and day-out when we know fairy shrimp are widespread through these habitats. I think this is a university research project.

So I think what we ought to do is work with the ranchers on these expansive range land habitats to do reasonable conservation. And I think we can preserve some of these landscapes and preserve these species very well by doing that.

Thank you very much.
Mr. POMBO. Thank you.
Dr. Belk.

STATEMENT OF DR. DENTON BELK, ADJUNCT PROFESSOR OF BIOLOGY, OUR LADY OF THE LAKE UNIVERSITY

Dr. BELK. Thank you, Mr. Chairman and ladies and gentlemen.

In drafting the final rule—and that is what I had to go by because I did not have access to a lot of the data you have seen, the Service did a commendable job of evaluating the best scientific and commercial data available, available as far as I could see it. They uncovered arithmetic errors in the influential paper of Holland treating historic losses of Central Valley vernal pools. Their corrections lowered estimates of historic loss from 90 percent to a range of 60 to 85 percent. They demonstrated openness by accepting Mr. Sugnet's material, even though it had been presented after the closing period.

However, it needs to be understood that for invertebrates which do not have a known economic impact on human activities, information accumulates slowly on the basis of scientific curiosity and interest only. And this is the situation with the four Central Valley fairy shrimp before they became candidate species. Thus, it is not surprising nor unusual that the best scientific and commercial data is found wanting in some respects. One implication of this situation is that research needs to be actively encouraged and pursued. Another implication is new information may demonstrate that one or more of the species is less threatened than originally indicated, and thus support de-listing.

Once the fairy shrimp were listed, take prohibitions made it illegal to conduct scientific surveys without a permit. Despite the efforts by the Service to rush the process of issuing permits and guidelines, a number of planned surveys were blocked during what became this year one of the best fairy shrimp seasons in several years. The resulting loss of distribution information is not only very unfortunate and in some cases very costly to private property owners, it is also scientifically indefensible. Collecting fairy shrimp and preserving even a significant portion of the active adult population for identification is not a threat to their survival. These are not whooping cranes. This is due to the fact that each pool basin contains a large reserve of unhatched resting eggs. One study estimated total resting egg production by a single fairy shrimp population during a single season at 800,000, a sufficient number to ensure survival in the face of all emerging fairy shrimp being killed without reproducing during six or seven following seasons. Fairy shrimp naturally endure heavy predation pressure from insects and birds. Thus, collecting a few for identification is not a threat to the survival of the sampled populations. In the final rule, the Service recognizes that "the primary cause for the decline of these species is loss of habitat."

The Service's guidelines for fairy shrimp surveys present a significant problem for collectors. No more than six specimens of each listed species may be taken per pool. And these must be identified in the field without harming them or keeping them in captivity for more than five minutes. Recently, I have been teaching biologists

here in California how to identify fairy shrimp to species using dead specimens manipulated under a microscope—good conditions. In this situation, I observed 62 percent of these students misidentified one or more of the species on the final practical examination. The need to sample in the field and identify in the laboratory is clearly obvious.

Amending Section 9 of the Endangered Species Act to make establishing take provisions an optional part of the rulemaking process, to be applied using the best scientific information, which in the case of fairy shrimp is you can sample them, seems to me a needed change. In the case of the Central Valley fairy shrimp, taking prohibitions should have been applied to the destruction of natural habitat, but not collecting or working with the animals for research or educational purposes. The fairy shrimp would thus be fully protected without scientific and public education activities being harmed. Changing Section 9 to make take prohibitions part of the rulemaking process on a case-by-case basis will add flexibility and scientific reality to this part of the Endangered Species Act. And it would have let the Fairy Shrimp Study Committee of California's project go forward without being stopped like it was.

And if I may also say, it would have allowed the Nature Conservancy to not skip this season of showing people that come to their reserves what lives in the pools, because they have not received a permit yet to take animals out and show them.

Mr. POMBO. Thank you.

[The statement of Dr. Belk can be found at the end of the hearing.]

Mr. POMBO. Dr. Beedy.

STATEMENT OF DR. EDWARD C. BEEDY, WILDLIFE BIOLOGIST, WOODLAND, CALIFORNIA

Dr. BEEDY. Mr. Chairman, thank you for this opportunity to testify at this important hearing on the Federal Endangered Species Act. My name is Edward Beedy, I am a native Californian and I was raised in a logging community in Humboldt County. I am currently a resident of Woodland and I work as a professional wildlife biologist for a consulting firm in Sacramento. I speak for myself at this hearing and represent no other organization.

I received a doctorate in zoology from UC-Davis in 1982, and since then, I have been a university instructor and have authored scientific articles and books on birds of California. As a consulting wildlife biologist, I have worked on numerous projects concerning California gnatcatchers, San Joaquin kit fox, spotted owls and a host of other endangered species.

In 15 years as a professional wildlife biologist, I have heard many of the concerns and conflicts that developers, loggers, farmers, oil companies and other of my clients share regarding the Act. In my opinion, the most persistent problems of the Act occur during its implementation and could be corrected administratively with clear direction from Congress.

The Act has promoted the successful recovery of bald eagles, American peregrine falcons, brown pelicans and California gray whales. Unfortunately, there are not enough success stories to tell and we still need the Act to prevent the extinction of many native

plants and animals. In my view, proposals to severely weaken the Act will create more, not fewer, conflicts over endangered species.

The Act requires careful revision to ensure that it protects our biological heritage that Americans still strongly value, while treating all citizens in a fair, reasonable and respectful manner. Today, I offer ten suggestions for revising the Act that would provide more fairness to landowners, while at the same time preserving the Act's essential function of preventing the extinction of threatened and endangered species. Some of these, you have already heard, since I am the last speaker, I think.

1. Facilitate landowner participation in recovery efforts. Landowners should be encouraged to create and maintain habitat for listed and candidate species through tax credits, hold harmless agreements and other incentives. Currently, landowners are penalized for damaging sensitive habitats, but the Act offers no direct incentives for preserving or enhancing these habitats on private land.

Most landowners enjoy wildlife and plants and many would probably participate in these programs if they existed.

2. Eliminate critical habitat designations. Critical habitat designations on private property have the potential to restrict land uses and to reduce property values. For these reasons, most landowners oppose such designations, often with litigation. Critical habitat provision is redundant with other sections of the Act and eliminating it would not cause jeopardy or harm to any species.

3. Refine the definition of potential habitat. The term "potential habitat" should only apply to habitat that is suitable for foraging, resting or breeding of the target species and reasonably close to known occupied habitat areas.

4. Establish specific criteria for listing and de-listing species. The Fish and Wildlife Service should publish specific criteria defining what endangerment means for the proposed species before or as part of the listing process. This definition should also provide guidance as to when the species recovery has actually occurred.

5. Develop recovery plans within one year of listing. Recovery plans for individual listed species should be funded and prepared on a fixed time schedule to ensure that clear goals for recovery are defined at an early stage.

6. And this echoes what Dr. Belk has just told you. Assess take at a population level. The definition of take under Section 9 of the Act should be revised so that it does not focus on individuals, but rather includes demonstrable effects on populations.

For many species, such as California condors and Florida panthers, loss of a single individual would have a significant population effect. In contrast, taking one or several or maybe hundreds of fairy shrimp would have no effect on the population as long as their vernal pool habitat remains intact.

7. Develop an administrative appeals process within the Fish and Wildlife Service. The Act needs to provide clearly defined mechanisms and deadlines for the public to appeal Fish and Wildlife's decision, such as biological opinions, mitigation requirements and even listing decisions at regional and national levels within the Service, without resorting to the litigation process in the courts.

There is an existing process very similar in the U.S. Forest Service and I would recommend that we echo that.

8. Streamline the scientific permitting process. Possible ways to speed up the process for obtaining scientific permits which can take up to a year to obtain and cause needless project delays, include increased Fish and Wildlife Service staffing to perform this function, and giving the regional and local offices the authority to issue permits.

9. Streamline the Section 10(a) process. Section 10(a) of the Act is a provision allowing the take of listed species on private land preparing a habitat conservation plan. This process needs to be streamlined to make it easier and cheaper to prepare the plan, much like the Section 7 process available on Federal lands or for Federal projects.

10. Encourage multi-species planning efforts. Habitat conservation plans covering many species and their habitats offer the greatest opportunities to recovery populations of declining species. Coordinated multi-species planning efforts give landowners more predictability in land use planning and more incentives to participate in preserving endangered species and their habitats.

In conclusion, Mr. Chairman, I hope that you and the Committee will seriously consider my ten suggestions for revising the Act to make it better serve both humans and endangered species. Cooperative action is best achieved with public involvement, agency support and landowner protection.

Thank you.

[The statement of Dr. Beedy can be found at the end of the hearing.]

Mr. POMBO. Thank you very much.

Dr. Beedy, you have come up with some very good ideas, and it is something that I would like to explore further in our efforts to reform the Act.

One question that I have for you that I would like you to expand on just briefly is—you say to refine the definition of potential habitat, and I notice that you said you had worked on the kit fox area previously.

Dr. BEEDY. Yes.

Mr. POMBO. Were you involved with that Corps habitat kit fox plan they came up with or were you involved with——

Dr. BEEDY. No, I was not involved in that plan, Mr. Pombo. I have done extensive surveys for San Joaquin kit fox though.

Mr. POMBO. One of the problems that has come up is that they define area as potential habitat, and I have seen biological reports that have come back on developments that have said the kit fox does not live here, no one has ever had a sighting here, there is no evidence that one was ever here. But if one wanted to live here, it could. Therefore, you have to mitigate at a three-to-one, four-to-one, five-to-one mitigation rate. And I think that a lot of our conflicts that have arisen from the Act are because of things like that.

Dr. BEEDY. I would agree with you, Mr. Chairman. I have seen abuses on both sides of the Act, let me tell you that. But I have seen cases where the Fish and Wildlife Service has required mitigation for an orchard where a kit fox had been seen three years before, actually not even in the orchard itself, but somewhere near

it. And they wanted three-to-one mitigation for that. And I think it is fundamentally unfair and I think it gives all of us professional biologists a bad name and bad reputation, because I do not think that is equitable or fair to the landowner.

I think potential habitat, as I said, should reflect the biological reality of the situation—does the animal live here, does it live near here, could it get here on its own under natural circumstances.

Mr. POMBO. Would you agree with me that in the changes in the science in the Act, that if we try to get the politics out of the biology, that maybe we will come up with better science?

Dr. BEEDY. Absolutely.

Mr. POMBO. I think that is one of the most frustrating things. I think that you have heard testimony all day long where they have talked about whether something was endangered or not endangered, and I think that it is time that we got beyond that and started depending more on good science. And it would eliminate a lot of our problems.

The largest mitigation I have seen on the kit fox was 19-to-1. We had a person that testified in Bakersfield that was putting in an oil well, and he had to mitigate at 19-to-1 on that project.

Dr. BEEDY. I have never heard of 19-to-1, that goes beyond anything I have ever seen.

Mr. POMBO. Yes, that was the highest I had ever heard, and it was because it was a small parcel, it was five acres that he was actually affecting. Out of thousands of acres of potential habitat, he was affecting a very small parcel and they made him mitigate it 19-to-1.

But I look forward to working with you on this because I think it is very interesting, I think you have some great ideas that we can work with and it will be very helpful to the Committee.

Dr. BEEDY. I am very glad to hear that, and I think that all of the three panelists here would agree that the better science, the tighter definitions we can use, the less it is going to affect people unfairly. And that is the biggest concern that I have.

Mr. POMBO. Thank you.

Dr. Belk, you would consider yourself an expert on the fairy shrimp?

Dr. BELK. Yes. I have spent 30 years working with them and I have served on committees of a number of people around the world getting Ph.D.s so I guess I come fairly close.

Mr. POMBO. I have heard you described as that, and that is one of the reasons why we wanted you to testify, and I appreciate you accepting our invitation.

There are things that I am confused about in the listing of the fairy shrimp, and I will be very honest with you; I think we made a huge mistake. And maybe somewhere down the line, you may be able to convince me that the fairy shrimp is endangered, but with everything that has been put in front of me up to this point, and I have read everything that I can get my hands on, I have got some concerns about the way that we went about the listing process and the science that was used in that listing process. I think that some of the stuff that Mr. Sugnet brought out about where the habitat is, where the critical habitat is, and for that matter some of the testimony that we just had from Dr. Beedy that says that, you

know, on the fairy shrimp, you may be able to take out, you know, hundreds or thousands of fairy shrimp and not affect the population.

Dr. BELK. Yes, that was basic in my testimony too, in terms of sampling populations.

Mr. POMBO. I just do not understand that. How can you take out, whether it is because you built a house on it or if you took them out for scientific purposes, if you can take out hundreds of thousands of these fairy shrimp and they are still there—in your testimony you said that one shrimp produces—and correct me if I am wrong, if I am misunderstanding you—that one shrimp produces 800,000 eggs?

Dr. BELK. That is one population, that is the reproductive——

Mr. POMBO. What do you mean by one population?

Dr. BELK. In one pool, the animals in one season, produce that many eggs, all the animals together.

Mr. POMBO. OK, so in one pool, they can produce 800,000 eggs.

Dr. BELK. Right.

Mr. POMBO. Do you think it is endangered?

Dr. BELK. Well, there is not really a great definition that I can see in terms——

Mr. POMBO. Without putting you on the spot.

Dr. BELK. OK, look, in terms of the data, of what was being said in the rule that we had 90 percent of the habitat gone and one study in there said that there was a rate of loss of two to three percent a year of the habitat, and another one said in the Sacramento area there was a loss of 10 to 15 percent of the habitat. Given that as the data, yes, they were endangered, because the habitat was being destroyed at those rates.

Mr. POMBO. But with some of the data that has been presented since then, and unfortunately it is stuff I did see before it was listed and that I tried to bring to the attention of Fish and Wildlife, that there are, I believe, a million acres—is that right, Mr. Sugnet, a million acres statewide?

Mr. SUGNET. Approximately one million acres. We are still refining the number, but it is right in that ballpark.

Mr. POMBO. OK, so we are in the neighborhood of a million acres statewide. At a wetlands hearing, I think that was last week in Roseville, we heard testimony that 90 to 95 percent of the habitat is gone. We also heard testimony that there was a million acres of habitat. So you are looking at—if they are both correct, if 90 percent is gone and there is a million acres, you are looking at 90 million acres of habitat. I just want to remind you that California has 100 million acres in it.

Mr. SUGNET. That is correct, Congressman. The math is hard to figure because depending on how you figure it, it (the Central Valley) is about 12 to 15 million acres in total.

Mr. POMBO. OK. Sacramento County has about 100,000 acres that you have mapped.

Mr. SUGNET. About 106,000, that is correct.

Mr. POMBO. 106,000 acres. How many acres are in Sacramento County? Is it about like San Joaquin, roughly a million acres?

Mr. SUGNET. I am not sure of the gross acreage of the county, I do not know, it is probably half a million, something like that.

Mr. POMBO. I will look that up on my own, because I can find that. But it is confusing to me, and I really do not understand why this listing was rushed forward the way it was. I did not understand it at the time we were going through it.

Dr. BELK. It is my understanding that it came forward fast because of a lawsuit where the court directed the Service to either list or drop. That was my understanding. I may be right or wrong.

Mr. POMBO. If that is correct, if we listed it based on a lawsuit, I think that is the worst possible science that we could ever——

Dr. BELK. It is. Litigation should not have anything to do with this. Litigation should be taken out of it. It should be scientific review and appeals processes, as was pointed out by Dr. Beedy.

Mr. POMBO. Would you agree with me, Dr. Belk, that there are needed changes? I mean you are a professional, you are a scientist, this is how you make your living, this is how you have decided to live your life.

Dr. BELK. I make my living in business with horses.

Mr. POMBO. OK. Well, I apologize for that then. But you are an expert in this field and I think that from everybody I have talked to on this, you are highly respected on the fairy shrimp issue and are considered an expert.

And when I hear biologists and scientists that are telling me that we need to use better science, I do not know how people can say there is nothing wrong with the Act.

Dr. BELK. I have said one thing I think needs to be changed in the Act, and I would agree with everything that I heard Dr. Beedy say—Dr. Beedy say. Those are things that seem to me, from a scientist point of view, need to be changed.

Mr. POMBO. Let me ask you one more thing, Dr. Belk. I know my time is way up, but there were five species of shrimp that were proposed for listing.

Dr. BELK. Yes.

Mr. POMBO. Four were listed. Now the fact that one of the species that was not listed by Fish and Wildlife, yet it was found in fewer locations according to Fish and Wildlife's records than two of the species that were listed—can you explain that to me?

Dr. BELK. Well, they went through a process in those circles on the map of deciding reproductive populational complexes of the animal. And they looked at the threat to those complexes rather than to individual numbers of pools. And they found, in the case of one, the vernal pool fairy shrimp, they found it—they identified 32 population complexes and 28 of these they identified as being under threat. So that was a high percentage——

Mr. POMBO. Under threat of what?

Dr. BELK. —of those complexes under threat and so that is why they kept it. Apparently there was not a higher percentage—because they do not really present the data for *Linderiella occidentalis* of why they decided not to list it, that is not in the rule. And so I have no way to judge what they—and you know, if I were to be given a scientific paper, it would have all the data and I could answer your question. But I do not really know what they chose for that. I will say this, I was surprised that if they did not list *occidentalis,* I was surprised that they listed the vernal pool fairy shrimp, because it seemed to me—I have data now in my

files, because I just read a paper being prepared by a biologist here in California for publication, that makes it completely understandable to me why these differences came up in terms of the finding discussed earlier today.

You can find a lot more *Linderiella occidentalis* because they have a longer life span than the vernal pool fairy shrimp and also the vernal pool fairy shrimp has an ability to undergo reproduction in a short enough time that it can live in those funny little tire ruts. And *Linderiella occidentalis* does not.

But the fact that you have shorter life span—and, as I pointed out in part of my testimony, all of this data which I published in the 1990 paper, that came out of part time weekend collecting by Larry Eng and Clyde Erickson and it came out of an accumulation of records dating back to near the turn of the century in the Smithsonian and other museums. So it is not that people went out and did a systematic survey, it is just an accumulation of whatever people found.

Mr. POMBO. It was not really done scientifically.

Dr. BELK. It is the best scientific data, according to the way the law is written. But it is not the sort of way, since you have within the Department of Interior, a U.S. biological survey now called U.S. Biological Service, which I assume the Fish and Wildlife could have called on and said we have this problem, go out and survey these ponds. That seems to me, if you wanted good scientific data, that is the way you would do it at the public expense.

Mr. POMBO. Well, we are trying to find good scientific data. Thank you very much for being here.

Ms. Chenoweth.

Ms. CHENOWETH. Thank you, Mr. Chairman.

Mr. Sugnet, thank you very much for your testimony. Can you tell me about this fairy shrimp? Is it prehistoric? How much has it survived through the eons of history?

Mr. SUGNET. I would have to defer to Dr. Belk probably on the specifics, but I can tell you that it survived, I believe, ice ages because the Central Valley has scoured and backfilled over geologic time several times and I think it survived those occurrences. I think Dr. Belk probably is better qualified to discuss it than I am though.

Ms. CHENOWETH. You said survived ice ages?

Mr. SUGNET. I believe that is correct.

Ms. CHENOWETH. Interesting.

Who is Roxanne Bitman?

Mr. SUGNET. I believe she is a biologist at the California Department of Fish and Game and she was the petitioner who wrote this letter that I showed that started the process that I think got out of control.

Ms. CHENOWETH. Dr. Belk.

Dr. BELK. Yes, ma'am.

Ms. CHENOWETH. I am not a biologist, and I appreciate your discipline. The shrimp is a crustacean, right?

Dr. BELK. Yes, the fairy shrimp is a crustacean. The fossil record goes back about 550 million years. The oldest one known in California is a fossil from the Barstow formation about 25 million years

ago. There are 23 species in the State of California and almost 50 species in the United States as a whole.

Ms. CHENOWETH. So this crustacean is not a mammal, it is an invertebrate.

Dr. BELK. No, no, the crustacean is when you go and get you a crab salad or a shrimp cocktail, that is what you are eating, they are in the same phylum.

Ms. CHENOWETH. So it is not a mammal, it is not an animal, is it?

Dr. BELK. Yes, it is an animal.

Ms. CHENOWETH. It is an animal.

Dr. BELK. It has to be either animal, plant or protist or virus; and there is some confusion about how those classify.

Ms. CHENOWETH. Well, I wish I could talk to you for more than five minutes because it is very interesting.

Let me ask Mr. Sugnet. Dr. Belk indicates that your comments—and obviously you had done extensive surveying, incredible surveying on the fairy shrimp—but your comments were received after the closing period?

Mr. SUGNET. That is correct. I think we submitted our study to the Service on May 4, I think of 1993, and the comment period had closed sometime before that. We were working feverishly to try to cover the 12 or 15 million acres with seven biologists. There is a very short window to go out and sample for species like this. And this is another thing that I do not think anybody touched on, but when you have invertebrates with very short life periods, you may need to have some kind of special provision in the Act, because it is very difficult to identify them. A rancher cannot go out on his land and know whether he has them or not. In fact, even a specialist has a hard time and has to do it only during a certain period and in California, some years we do not have enough rain for the fairy shrimp to even come to life. So it is very difficult—just to identify or to know if you have the species on your property is difficult.

Ms. CHENOWETH. So we do not know whether this little critter lives for days or weeks or months, right?

Mr. SUGNET. Well, they tend to live for months, I think, in most cases, but as Dr. Belk mentioned, different species have different life spans, and we cannot predict in any given year when they are going to bloom and when they are going to die out. It depends on the weather and the rainfall. There are so many unknowns with the fairy shrimp that we know almost nothing about fairy shrimp. I think that is safe to say, right now.

Ms. CHENOWETH. Thank you.

Dr. Belk, did the Fish and Wildlife Service confer with you during the period prior to the listing determination of the fairy shrimp, did they confer with you, did they work with you?

Dr. BELK. Yes. They talked to me about them.

Ms. CHENOWETH. Did they work with any other scientists?

Dr. BELK. They worked with Dr. Rick Brusca and Dr. Marie Simovich and they—I think they had Jamie King in their office for awhile. She does the tadpole shrimp, she is getting her Ph.D. at Davis.

Ms. CHENOWETH. To your knowledge, did they analyze the Sugnet firm's work, survey work? Did they analyze it at all, even though it was received after the closing?

Dr. BELK. It is discussed in the listing and yes, they took note of how many species he collected, how many populations he collected and they grouped them together. So they did use that part of his data, yes.

Ms. CHENOWETH. And they really are the authors of the most extensive field survey, which is a bit different discipline than yours, and obviously they used their maps. Did the Fish and Wildlife Service review their scientific conclusions regarding the mapping of populations, the Sugnet mapping—did they review that?

Dr. BELK. They did not send me any maps showing what they had done and ask me any questions about them. Whether they talked to anyone else, I do not know.

Ms. CHENOWETH. OK. Now did you receive a complete package of scientific conclusions and recommendations and the supporting data on which they were based, for the purpose of providing peer review?

Dr. BELK. No.

Ms. CHENOWETH. That is very interesting to me, Doctor, because in Section 7 of the ESA, it requires that they make all of these decisions based on the best scientific review. That is in the Act. Section 7(b)(1).

Dr. BELK. They called me and asked me specific questions from time to time, but I never got a—as I do frequently—well, most papers that are published on these animals, I get the paper and I review it for the journals.

Ms. CHENOWETH. Mr. Chairman, I realize I am going over my time a little bit, but I would like to say that I have examined the biological opinion consultation that was issued April 4 of this year on the fairy shrimp. And contrary to the letter that they wrote to you, they state here on page 3, item 1, biological opinion, description of the proposed action: "For the purposes of this consultation, habitat of the listed species is considered to include any areas that seasonally pond water in which one or more of the listed vernal pool species could exist. Such areas include, but may not be restricted to, vernal pools and swales. Vernal pools and swales are ephemeral wetlands that typically form in shallow depressions and they are characterized by a barrier to overland flow that causes water to collect and pond."

Now I submit, Mr. Chairman, that this is one of the reasons why this whole process is so frustrating. They tell the Chairman of the Committee one thing and they publish something else in their biological opinion. And this cannot go on.

Until these agencies realize that they have to quit fibbing to congressional panels, and like Mr. Heggarty said, they should live by the same laws we are expected to live by, and understand that you do not lie to a judge and you do not lie to a congressman, or anyone else for that matter, we are not going to be able to reach the conclusion in these problems that we must reach.

Mr. Chairman, I tried not to vent my frustration, but I like to be able to rely on the facts that we get, either by letter or through

testimony, and I have got to commend the three of you for bringing such very clear and good testimony, to us.

I do want to just close with reading a letter from a little girl who is in Maxwell, California. I was so pleased that Ms. Rogers brought the children in, because she is a good teacher. She is going to be teaching them how to get into the public debate and obviously they are doing that.

But this little girl's name is Allison Barrett, and she wrote on April 25, "My dad is a farmer and my grandpa is too. And I am concerned about my grandpa's job and my dad's too. I am concerned about what the Endangered Species Act reform says and will do to our family and our community, and I urge you to remember when you are writing the reform, that people's jobs and families will be greatly affected by what is written and will directly affect us. People are part of the environment, and they deserve to be a big part of the Endangered Species Act equation.

"Thank you for taking the time to read my letter. Most sincerely, Allison Barrett" from Maxwell, California. I would like to submit all of these letters written by these children for the record, Mr. Chairman.

And I want to say, besides the testimony that we have heard today, one of the most gripping pieces of testimony I have heard in all of these hearings was a father who had to get a grip on himself, because he was about to burst into tears, because he said that he had to listen to his children when they prayed, say "Dear God, please do not let my dad lose his job." And you know, it really hit me, because when I was a little child, ten years old, those were not the kind of prayers that I had to ask for. As a child, I could be a child, I could play and do things children do. I did not have to worry about my father's job and the stability of my community. And I hope some day that, although we encourage them to be in the political process, we will let our children be children again.

Mr. POMBO. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Dr. Belk, I am going to read a portion of your testimony and ask for some clarification or some elaboration please.

Dr. BELK. Yes.

Mr. RADANOVICH. "Changing Section 9 to make takings prohibition part of the rulemaking process on a case-by-case basis will add flexibility and scientific reality to this part of the Endangered Species Act." Would you clarify the reasoning for that, please?

Dr. BELK. Well, in the fairy shrimp case, which is the only one I know about because that is the only one I have ever been involved with.

Mr. RADANOVICH. You are the expert on it, yes.

Dr. BELK. If we had used scientific reality, there would be no take permit for going out and pulling fairy shrimp out of the pond. Take would be related only to going out and leveling their pond and filling it in or dumping poison in it or doing something so that they absolutely were gone from it. Because if we go out and kill a few individuals, we are not killing off the species or even that population. All those individuals are going to live and can live a reproductive life, which is a full life for most animals, they can live it within two weeks for the vernal pool fairy shrimp at the end of the

season, they require about eight weeks during the coldest part of the year. And so they are short-lived anyway. The ducks are going to get them or they are going to be dead as individuals. It is only the eggs they leave that go on and on and on.

Mr. RADANOVICH. OK. Well, God forbid the ducks should get them, I guess. Thank you very much, sir.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. And again, I want to thank each of you for your testimonies.

Mr. Sugnet, as you were showing the slides, we were seeing where originally when they were listing the fairy shrimp, or when they were doing the studies evidently, or at least the studies they were indicating they had done, we only saw a few areas that had the fairy shrimp listed there, and yet when you went out and did the studies, or when more studies were completed, we see far more areas that had fairy shrimp, is that correct?

Mr. SUGNET. Yes. Like I said before, there is very little known about the species. Three of the five were only described in the literature, which means no one had ever known they were species or identified them until 1990. So we are on a very steep learning curve about these species and where they exist because no one ever looked for them before. So since 1990, we are on a learning curve that is very steep, until this take provision came in, and now we are having a hard time even sampling for them. So it is kind of leveling off. So yes, the more we look, the more we find. I think that is the case with fairy shrimp, that everywhere we look, pretty much, where there is habitat, we find the species, or at least the more common species.

Mr. HERGER. OK. And Dr. Belk, as I heard you describe in your testimony and some of the questions you were answering, evidently this is not that uncharacteristic—and I want you to correct me, I do not want to put words in your mouth, but as I recall part of your testimony, you indicated when they are looking at a species which is being considered to be endangered, they look at all the data they have, and of course that is data they have at the time, which includes, I think you mentioned, the Smithsonians and wherever it is, and they just very well may not have that much data, just as Mr. Sugnet alluded to.

Dr. BELK. Yes.

Mr. HERGER. And I might even add just one more point to that, and I want to ask a question and have you comment on it. I might mention also in the areas, the some four national forests that are in the northern part of my district, that too would be what I would hear about the northern spotted owl, that when they were listing it, the studies they had, many of which were done by college students who were studying this, who did not have nearly the experience as you have now, someone who has been in the field awhile. You gave the example of some students in one of your classes where you were studying this and 60 percent were not able to identify it.

I think that brings out a point of perhaps those who are studying it are not, obviously are not going to know as much—I am stating the obvious—as someone who has been in the field a long time. The point being, I guess the question, northern spotted owl, I believe

they determined there were some 1,300 pairs at the time that they listed it. I believe there are something like 6,000 now as they go out and discover more. I do not think that they have increased from 1,300 to 6,000 pairs during this period of time, I think they just studied it a little bit more.

And I guess the question I am asking is, hopefully you would think that perhaps peer review, we have heard this, it is in the Act, we are supposed to be having, once those individuals who are making the study come up with a finding, and I am sure they are making it with the best information they have at the time, but hopefully we would go through this process of peer review, people like yourself would be called in, who are experts, who are more than just in the process of studying or doing their Ph.D. thesis on it—and I am not saying these people are not good, but they lack that experience.

My question is could you maybe comment on the degree of peer review we are having in making these incredibly crucial decisions that are determining the fates of the parents of young Miss Barrett, that we heard the little grammar school student in Maxwell, California, an area that I represented for six years. Can you comment, are we having adequate peer review, do we have adequate scientific data to make these crucial decisions, or perhaps are many of these decisions being made with far less than adequate information?

Dr. BELK. Well, in case of the fairy shrimp, I think the critical piece of data is this Holland study, which has crept into all of the scientific literature and was well accepted; I accepted it, I had no reason not to accept it. All of the other papers accepted it, and when you looked at it, looking at it close, they found some errors so it changed the percentages a bit, but the habitat loss was generally accepted among all of the scientists as being both significant and rapid.

Given that scenario, we now see from this new data that is coming up that, yes, there was not enough data there. But really, there were enough scientists looking at it, and I looked at it and I commented on it, and I said yes, given those facts, it looks like to me the things are in trouble.

Now you ask me today after all of this has gone on and after I have got some more data on the individuals, I can say that it looks like to me the vernal pool fairy shrimp, there is enough data there to consider de-listing. The conservancy fairy shrimp; no, it has not really changed much, it is still known from very few places even though now we have been doing a lot of looking. While we found a lot of vernal pool fairy shrimp, the conservancy fairy shrimp, we have not found a lot more of those, and the long-horn fairy shrimp, we have not found more of those. So those two species are standing up as supporting what we thought—or at least what was the best science we knew at the time the listing took place. Now it looks like that because of Sugnet's data and because of just what I know now about the biology of the fairy shrimp, that there is one that should be considered for de-listing.

Mr. HERGER. OK. Just in conclusion, I doubt very much if science changes, at least in our limited period of time that we are living,

but certainly our knowledge of science does change as we gather more.

Dr. BELK. Right.

Mr. HERGER. And I would guess, should we not be making our decisions and perhaps altering those decisions as new science comes up, as in the case of the fairy shrimp, and I would say with the spotted owl and probably a number of other species as well?

Dr. BELK. Yes, we should use the best science, we should continue to review it. It should be the process that as we find data that points toward de-listing, that process should go forward rapidly and in—I lost my train of thought, I am sorry.

Mr. HERGER. Well thank you very much. Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Do any of the Task Force members have a closing statement?

Mr. HERGER. Mr. Chairman, if I could—again, I want to apologize, I was in budget committee last evening, I am sorry for being late.

Mr. POMBO. Well thanks for making it.

Mr. HERGER. But I did just get off the plane, and again I thank you for having this. But I would like to—with your permission, be able to give a statement, if I could.

I do thank you for this opportunity for the hearing, and would like to offer a closing statement. Let me begin by thanking everyone from my district who attended today, particularly those who traveled a long distance to be here. I wish to especially thank Dan Byrne, Peter Giampaoli, Bill Coates and Frank Tallerico for their testimony today.

Mr. Chairman, I commend the property owners—farmers, ranchers and foresters—who have joined us today. These are the hardest working people that I know. They are the stewards of some of our country's most treasured natural resources. Most of their families have lived on and cared for these lands for generations. Certainly we should use the valuable wisdom and common sense these people have gained over the years to consider changing the laws that directly impact their entire way of life.

Unfortunately, these very people who have the most at stake in preserving our natural resources have been miscast and villainized by extremists, bureaucrats and the media throughout the years. They have been made to look like spoilers of the land that they have every incentive to preserve for their children and grandchildren. They have been gagged at hearings like this by past Congresses, despite the fact that it has been their jobs that have been lost, their property that has been taken away and devalued, and their faith in government that has been eroded due to excessive and heartless regulation.

Finally, we are able to hear from them what Paul Harvey would term "the rest of the story." These people have waited a long time to be heard. I suggest that we give great weight to what they have had to say today.

Mr. Chairman, during my tenure in Congress, I have been constantly frustrated by the reports I have received about the decay—yes, the decay—of natural and human resources due to the unreasonable policies and regulations promulgated under the Endan-

gered Species Act. Federal authorities under the influence of extremists and the threat of endless litigation have, for example, protected the spotted owl in northern California with religious zeal, respite the mountains of scientific evidence indicating that the owl is in fact neither threatened nor endangered. They have ignored the fact that the owl flourishes in numbers at least four times greater than the minimum originally established by scientists for a viable population. They have ignored the fact that by prohibiting active forest management, our forests are decaying and dying in epidemic proportions and now hover on the brink of destruction by catastrophic wildfire due to the excessive buildup of natural fuels.

Most important, they have ignored the economic and social devastation that comes to timber communities when local mills close. This tragedy has occurred over 50 times during the last several years and 27 times in my district alone.

Mr. Chairman, these regulatory atrocities are not limited to spotted owl-impacted regions. Farmers and ranchers in the upper Klamath River basin have had their water and land use rights denied, their small family businesses threatened, and a $200 million agricultural-based economy jeopardized due to Federal protection of a sucker fish that has heartedly adapted to a variety of habitats over the last 150 years. Moreover, mosquito abatement districts have been unable to avert the spread of malaria and encephalitis-carrying mosquito populations through the use of environmentally safe pesticides because abatement measures would take place within the critical habitat of the supposedly endangered fairy shrimp. Fairy shrimp and a protected plant species called meadowfoam literally shut down expansion plans in an area east of Chico, which we heard about earlier, that was so arid and rocky that even shrubs would not grow there. Consequently, housing prices in this small community have skyrocketed and developers were forced to invade some of the most fertile farmland in America.

The list of absurdities goes on and on and on. Mr. Chairman, it is time for a fundamental reform of the Endangered Species Act. We are at a point where over-zealousness has swallowed common sense. I firmly believe that if we have the technology to put men on the moon, then certainly we have the wherewithal to protect endangered species without destroying our rural communities. Extremists and litigants have ruled the day far too long. Enough is enough.

I strongly advocate replacing our present ESA with one that is balanced and reasonable, one which replaces one-size-fits-all regulations with localized adaptive management, one which values sound science above political agendas, one which requires Federal agencies to consider economic and social costs along with the benefits of habitat protection, one which requires the government to honor the Fifth Amendment of our Constitution and compensate landowners when regulations revalue their property.

In summary, Mr. Chairman, we have been asked today to bring common sense back to a law that has been taken to ludicrous extremes. We have been asked to restore balance between environmental protection and the constitutional rights of our citizens. We have been asked to give people the same dignity under the law that we have given plants and animals. I strongly encourage this Task

Force to take what we have learned here today back to Washington and craft a piece of legislation that will not only protect our natural resources, but also the people who work the hardest to manage and preserve them.

Thank you.

Mr. POMBO. Thank you, Wally.

I would like to just close the hearing by thanking our final panel for sticking with us all day long. I know it has been a long day and I appreciate it a great deal. I appreciate you accepting the invitation to testify before this hearing. I think that what you added was extremely important to the debate and will play a major role in the reform of the Act. I have heard the fairy shrimp described as the poster child for everything that is wrong with the Act. And I think that if we do not do something to make the Act work better, this is the kind of listing we are going to have in the future.

We need to do a better job than what we are doing right now, and I appreciate a great deal the testimony that you have given, the answers to the questions that we put before you.

I would also like to ask you to be available for further questions that we will submit to you in writing and will be made an official part of the record.

For those members of the audience who stuck with us through this entire hearing, I thank you. I thank you for showing up today, I thank you for your input into what is going on. I encourage you to submit any statements that you may have on the Endangered Species Act reform, on ideas for solutions that you may have. I think that this was a great crowd that we had here today. It did me a lot of good and I know it did the Task Force a lot of good to see so many people turn out for such an important issue, something that affects all of us in such a great way.

I think that our colleague, Congressman Metcalf from Washington, probably summed it up the best when asked about the large turnout we had up there and if he was concerned about it. He looked at the reporter and he said, "I have spent my entire political life trying to get people involved with the system and I am not about to complain now." I think that that is a great attitude to have, because unless we work together, we will never solve these problems. And I appreciate all of you turning out.

I would also like to thank the Stockton Police Department for the great job that they did here today. You guys and gals have been wonderful to work with, we have gotten nothing but great comments on the job that you have done and I appreciate it a great deal. Thank you very much.

I would like to again thank all of you for coming out today. Thank you.

Ms. CHENOWETH. Mr. Chairman, I also want to thank you for all of your hard work and your staff, which has just been outstanding, as well as the Resource staff, who have been very hardworking. Thank you.

Mr. POMBO. Thank you. The hearing is adjourned.

[Whereupon, at 5:23 p.m., the Task Force was adjourned, and the following was submitted for the record:]

TO: Councilman Heggarty

FROM: Ed Gallagher, Housing Programs Manager

SUBJECT: Niblick Bridge Expansion Environmental Document

DATE: April 26, 1995

Attached are the following information items for use, as you see fit, in the upcoming congressional meeting concerning the Niblick Bridge Expansion:

- Chronology of the environmental review process focusing on the Historic Preservation component.
- A full chronology of the environmental review process from start to finish.
- Preliminary Environmental Studies Form, as signed by CalTrans and Federal Highways Administration indicating those issues to be addressed in the environmental documents.
- Letter from the U.S. Fish and Wildlife Service, to CalTrans (Chuck Cesena), dated October 6, 1992 transmitting a list of species to be addressed in the environmental documents. This list includes the Kit Fox.
- Memorandum from CalTrans (Chuck Cesena) to City (Ed Gallagher), dated February 23, 1993 transmitting Kit Fox Survey Protocol from the California Department of Fish and Game.
- Letter from CalTrans (Valerie Levulett) to City (Ed Gallagher) dated April 7, 1994 transmitting comments on the Archaeological Survey Report (ASR). A copy of the ASR with numerous handwritten comments is attached to this letter.
- Letter from City (Ed Gallagher) to CalTrans (Janet McFarland) dated May 9, 1994 transmitting the Historic Property Survey Report. This letter explained that the report would refer to the City by its proper name rather than use the informal name, as recommended by CalTrans.
- Letter from the U.S. Fish and Wildlife Service, to City (Ed Gallagher) dated December 12, 1994, submitting comments on the draft environmental documents. The close of a 45 day public comment period on the draft environmental documents was November 17, 1994.
- Letter from CalTrans (Aileen Loe) to City (Ed Gallagher) dated January 6, 1995 recommending that the City respond to comments submitted by the U.S. Fish and Wildlife Service, even though such comments were submitted a month following the close of the public comment period on the draft environmental documents.

cc Bob Lata

NIBLICK BRIDGE ENVIRONMENTAL REVIEW PROCESS CHRONOLOGY

1-14-92	City submits State-Local Partnership Application form with Draft Preliminary Environmental Studies Form (and supporting text) to CalTrans.
1-28-92	Field Review conducted at west end of bridge with staff from City, CalTrans and Federal Highways Administration (FHWA). CalTrans recommends more studies than what the City had checked on the Preliminary Environmental Studies Form.
6-22-92	FHWA signs off on Preliminary Environmental Studies Form determining what issues the environmental documents will address.
8-06-92	City sent letters to California Department of Fish and Game and California Native Plant Society for lists of species to be studied.
8-06-92	City sent draft consultant selection process to CalTrans for approval.
Interim	City actions: (1) sent letters to environmental agencies to determine the scope of the document, including requesting lists of plant and animal species to be studied; (2) drafted consultant selection process for approval by CalTrans; (3) adopted annual goals for Disadvantaged Business Enterprises. All of these were required by federal regulations prior to hiring a consultant.
10-13-92	Request for Proposals were mailed to consultants.
11-24-92	Prospective consultants were interviewed.
1-05-93	City Council approves contract with a consultant to prepare environmental documents.
2-03-94	Administrative Draft Environmental Documents (Initial Study/Environmental Assessment [IS/EA] plus 6 technical reports) were submitted to CalTrans for review.
3-17-94	CalTrans' letter of comment on all documents except Architectural Survey Report (ASR).
4-07-94	CalTrans' letter of comment on ASR.
5-09-94	Historic Properties Survey Report (HPSR, which incorporates the ASR) submitted to CalTrans for review.
6-03-94	CalTrans letter of comment on HPSR.

NIBLICK BRIDGE ENVIRONMENTAL REVIEW PROCESS CHRONOLOGY, Page 2

6-23-94	CalTrans letter acknowledging HPSR as complete and sending it to FHWA for further submittal to State Historic Preservation Officer (SHPO).
8-11-94	First SHPO letter. (It had a statement that FHWA wanted resolved.)
8-24-94	CalTrans requests that City make further revisions to the administrative draft documents.
8-25-94	Second SHPO letter, which reflected resolution of FHWA's issue.
9-07-94	Revised Administrative Draft documents sent to CalTrans.
9-23-94	FHWA signs Draft IS/EA document, approving its release and that of technical reports for public review.
9-27-94	Public Review Period Begins.
11-07-94	Public Hearing conducted on Draft documents.
11-17-94	Public Review Period ends. Federal regulations require that comments be accepted 10 days following a public hearing.
12-12-94	FWS' letter of comment (received on 12-14-94, 27 days after close of public review period.
1-06-95	CalTrans letter recommending that City respond to FWS' comments and obtain their concurrence to the revised documents.
1-23-95	Revised Final document, which responded to FWS' comments, sent to FWS.
2-02-95	FWS' letter of concurrence with revised document.
2-07-95	City adopts Negative Declaration.
3-14-95	FHWA approves Finding of No Significant Impact.

NIBLICK BRIDGE ENVIRONMENTAL REVIEW PROCESS CHRONOLOGY: PROBLEMS WITH SECTION 106 (HISTORICAL PRESERVATION) REVIEW

2-03-94	Administrative Draft Environmental Documents (Initial Study/Environmental Assessment [IS/EA] plus 6 technical reports) were submitted to CalTrans for review.
3-17-94	CalTrans letter of comment on all documents except Architectural Survey Report (ASR), which was one of the six technical reports.
4-07-94	CalTrans letter of comment on ASR.
5-09-94	Historic Properties Survey Report (HPSR, which incorporates the ASR) was submitted to CalTrans for review. Apparently, the HPSR could not be submitted for review until the ASR was accepted by CalTrans.
6-03-94	CalTrans letter of comment on HPSR calling for revisions.
6-23-94	CalTrans accepted the HPSR as being complete and sent it to FHWA for further submittal to State Historic Preservation Officer (SHPO).
8-11-94	First SHPO letter. (It had a statement that FHWA wanted resolved.)
8-25-94	Second SHPO letter, which reflected resolution of FHWA's issue.
9-07-94	Revised Administrative Draft documents sent to CalTrans.
9-23-94	FHWA signs Draft IS/EA document, approving its release and that of technical reports for public review.
9-27-94	Public Review Period Began.

PROBLEMS

- HPSR apparently could not be reviewed at the same time as the ASR, even though the ASR makes up the bulk of the HPSR.
- Combined review of the ASR and HPSR by CalTrans took four times as long review of other documents; comments received were numerous and concerned with minutiae, indicating that there may be unnecessary micromanagement of the Section 106 (of the National Historic Preservation Act) process.
- HPSR had to be routed to SHPO via FHWA, which cost 2-3 weeks delay by itself. (By federal law, SHPO must complete its review within 30 days.)
- The only potential historic resource within the "Area of Potential Effects" was the foundation of a farm house built in the mid-1940's, which the City razed in 1986. This "resource", which was deemed not significant by SHPO, caused 4 months of delay in the environmental review process.

City of El Paso de Robles

"The Pass of the Oaks"

April 25, 1995

Office of Congresswoman Andrea Seastrand
Attn: Andrew Moore
U.S. House of Representatives
1216 Longworth House Office Building
Washington, D.C. 20515

Subject: NIBLICK BRIDGE PHASE II
City of El Paso De Robles

Dear Mr. Moore:

Ms. Seastrand requested that I send you a one-page summary of the process that the City undertook for the above project. I understand she will be using this information to present to the Appropriations Committee so that the City's Federal Grant of $2.48M is retained for the Niblick Bridge project.

I am also enclosing a letter from the U.S. Department of Transportation dated March 15, 1995, which states that this project has received a Finding of No Significant Impact (FONSI).

Thank you for all your efforts and please let me know if there is anything else you need.

Sincerely,

D. Esp

DITAS ESPERANZA, P.E.
City Engineer

Enclosures

cc w/enc: Walt Macklin, Mayor
Chris Iversen, Councilman
Duane Picanco, Councilman
Jim Heggarty, Councilman
Steve Martin, Councilman
Rich Ramirez, City Manager
John McCarthy, Director of Public Works
Bob Lata, Director of Community Development
Ed Gallagher, Housing Programs Manager

X:\JACKIE\NIBLICK\BRIDGEII.SEA

Department of Public Works • 801 Fourth Street • Paso Robles, CA 93446 • (805) 237-3860 • FAX: (805) 237-6565

NIBLICK ROAD BRIDGE EXPANSION

The City of El Paso de Robles, California with a population of 21,000, is divided by the Salinas River: one third of the City (the oldest portion, including the central business district) lies to the west of the river; two-thirds of the City (the areas of new growth) lie to the east. Until 1987, one two-lane bridge, located at 13th Street, connected the east and west portions of the City. (There is a bridge on Highway 46 at the north end of the City, but it does not provide a direct connection between the central portions of the City.)

The City began the process of building a four-lane bridge at Niblick Road in the 1970's. An Environmental Impact Report (EIR) on a four-lane bridge was prepared in 1980 in accordance with the California Environmental Quality Act (CEQA). However, the City lacked the fiscal resources to construct the full bridge. Because of limited funding, the City sought assistance from U.S. Representative Bill Thomas to secure federal assistance.

With the rapid growth on the east side of the Salinas River, by the mid-1980's, the need for at least a two-lane bridge became critical. In 1986, the City had to proceed with its construction of a minimum two lane bridge (in advance of approval of federal funds, which would have enabled construction of a four-lane bridge). The two-lane bridge did not include paths for pedestrians and bicycles.

The Federal Aid Highway Act of 1987 included a demonstration grant of $2.48 million to the City of El Paso de Robles for construction of a "bridge across the Salinas River located south of the existing bridge". Niblick Road is located nearly a mile south of 13th Street.

The City was informed that the federal funds could be applied to an expansion of the Niblick Bridge to four lanes and, the City has worked diligently since 1987 to make plans, raise funds and obtain clearances to expand the bridge. However, there have been a number of bureaucratic setbacks that have delayed the expansion.

The first setback, which took more than a year to clear, was an interpretation by the Federal Highways Administration (FHWA) that the federal legislation required the expansion to occur on the <u>south</u> side of the existing Niblick Bridge. The Niblick Bridge was designed and constructed to be expanded on its <u>north</u> side; an expansion on the south side is not practically feasible. Eventually, there was agreement that the bridge could be expanded to the north, as planned.

The second setback was the federal environmental review process. Since federal funds were now involved, an environmental document that complied with the National Environmental Policy Act (NEPA) was required. The 1980 EIR prepared to meet CEQA was not considered adequate for NEPA purposes. Further, the California Department of Transportation (CalTrans), acting as agents for FHWA, determined that a new CEQA review was necessary. The process of preparing a joint NEPA/CEQA document was begun in December, 1991 and, because of delays due largely to the demand from several federal and state agencies to continually revise the draft and final documents to be "perfect" in format as well as content, was not completed until March, 1995.

Preparation of design and construction plans for the bridge expansion, a one year task, could not begin until the environmental review process was complete. An engineering firm is presently preparing the design and construction plans and should complete them in early 1996.

The bridge project is expected to cost about $11 million, and will provide the additional two traffic lanes, bikeways and a pedestrian walkway. These bridge improvements are needed to avoid congestion and related air quality impacts. The federal grant is essential to the funding of the bridge. Without the four years of federal delays, the City would not be facing the potential loss of over 20 percent of project funding.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
REGION NINE
CALIFORNIA DIVISION
980 9th Street - Suite 400
Sacramento, California 95814-2724

ARIZONA
CALIFORNIA
NEVADA
HAWAII
GUAM
AMERICAN SAMOA
N. MARIANA IS.

March 15, 1995

IN REPLY REFER TO
HA-CA

Mr. Ken Nelson, Director
CALTRANS, District 05
P.O. Box 8114
San Luis Obispo, California 93403-8114

05-SLO-LSR
DE-0034 (801)
Niblick Rd Br.
Expansion Proj.

Attention: Ms. Aileen K. Loe
Environmental Manager

Dear Mr. Nelson:

Enclosed is the Federal Highway Administration Finding of No Significant Impact (FONSI) for the proposed Niblick Road Bridge Expansion Project in the City of El Paso De Robles, San Luis Obispo County, California.

We have determined based on the Environmental Assessment that this project will not have any significant impact on the human environment.

Should you need any assistance, please contact Mr. Bill Wong at (916) 498-5041.

Sincerely yours,

For
Fred J. Hempel
Division Administrator

Enclosure

Post-it™ Fax Note 7671	Date 3/20/95	# of pages ▶ 2
To Ed Gallagher	From Aileen Loe	
Co./Dept. City Paso Robles	Co. Caltrans	
Phone #	Phone # 549-3103	
Fax # 237-6505	Fax # 549-3077	

TESTIMONY OF MARY WELLS

BEFORE THE HOUSE RESOURCES COMMITTEE
ENDANGERED SPECIES ACT TASK FORCE
STOCKTON, CALIFORNIA
APRIL 28, 1995

My name is Mary Wells. As a fifth generation California farming family member, the general manager of an agricultural water district and board member of the Northern California Water Association, I welcome the opportunity to testify before the House Resources Committee's Endangered Species Act Task Force regarding the Federal Endangered Species Act.

Early each morning, as I leave my ranch, tucked in one of the many valleys found in the foothills along the western side of the Sacramento Valley, I contemplate all of our desires to protect California's magnificent environment. Unfortunately, the Federal Endangered Species Act unintentionally threatens, not only necessary economic activity, but our unique cultural heritage. My great-great grandfather, W. H. Williams, founder of the town of Williams in Colusa County, settled much of the area in the 1850's. His grandson, my grandfather, stood me at attention when I was about 10 years old and tagging along on an excursion to the local attorney's office. "Pay attention now. This map shows the great canal," he said in reference to what is now the Tehema-Colusa Canal. Then he pointed to the map and said, "Here is our land that will someday be irrigated and able to grow tomatoes instead of dry land wheat." He was a man of great foresight like many others in the area, but little did either one of us realize that I would someday be the general manager of the 16,000 acre Westside Water District, serving that very land marked on the map I first saw as a 10 year old girl.

Cropland within Westside Water District is dependent upon Central Valley Project water supplies. The Project provides irrigation water for a number of crops such as, processing tomatoes, vineseeds, orchard produce, wheat, rice, and cotton. My own farm and ranch like other farms and ranches in the Sacramento Valley also serves as habitat for a multitude of plants and animals. Driving through the Valley to our office headquarters I see the environment and its

wildlife in its natural splendor. I see the pheasants, ducks, rabbits, hawks, owls, fox and deer that are flourishing in nearby fields. Sadly, amidst this scene, much of my day, both as a farmer and as a water district manager, revolves around the Endangered Species Act and its impact upon this land and the people who live and work here.

The Federal Endangered Species Act has had a significant impact on myself as a landowner and the Westside Water District, particularly in three areas. The imposition of the ESA has resulted in decreased water supplies and increased water costs. Drought conditions compounded by increasing demands for certainty of environmental water supplies have forced six years of supply reductions including two years of a 25% supply and one year with a 35% supply. In addition, the cost of water for our farmers has increased 300% since we first received irrigation water in 1980. A good portion of that increase is attributed to the application of the ESA.

The second significant ESA impact is the role that regulatory agencies have asserted in other areas. Land use issues and normal on-farm production practices are under siege in other regulatory arenas, such as in the biological opinion required by the completion of interim contracts. This is also an indirect result of the ESA. Proposed layers of repetitive agency review and control are designed to deal with such things as "contaminants" already addressed by the California Department of Pesticide Regulation, the U.S. EPA, and most effectively by the industry itself. The ESA places unreasonable regulations upon sensible farming practices, to the extent that the very act of irrigating cropland triggers regulatory action without concern for direct and indirect economic or social impacts. More specifically, without concern for people, their jobs and their way of life.

The intensity of the mid-day heat in the Sacramento Valley compares with the degree of frustration by noon that I often experience with the third ESA impact. In the Sacramento Valley, we have been harmed the greatest by the listing of the winter-run Chinook salmon. Since 1986, and at a cost of many millions of dollars, the Tehama-Colusa and Corning Canals,

serving 140,000 acres in four counties along the west side of the Sacramento Valley, have been the target of Federal efforts to protect winter-run Chinook salmon by improving fish passage at the Red Bluff Diversion Dam in the Sacramento River.

Local communities in the Sacramento Valley have paid dearly as we have been forced to limit our water diversions, often during the critical months. The Tehama-Colusa Canal's diversion capacity is restricted during the months of April and May, the heart of our planting season. The goal of this law is noble. But if ever there was an example of the need for stakeholders and the local public to have input and a right to know the cost of implementation for the benefit of a particular species, Red Bluff Diversion Dam heads the list. White elephant projects based on poor science are a painful incentive for reasonable and timely recovery plans. Listings as well as plans must be based on a more specific definition than "best scientific and commercial data available." In our case, "best science" in justification of the proposed 50 million dollar Archimedes screw pump project failed to take into consideration that the gate openings at Red Bluff had been extended since 1986 to allow for improved passage. Such costly excesses have been the impetus to complete a Red Bluff Diversion Dam cooperative operational proposal, reached through long hours of consensus building among agriculture, fishing and recreational interests, soon to be submitted to the Bureau of Reclamation.

Evenings should be a time to reflect, even if the work is far from done. Upon reflection of our experiences, the ESA with its moving target of compliance, has drastically altered the vision such people as my grandfather and I once had when we invested our capital, offered our land as security, and committed two generations to the full payment of introducing irrigation water to the land and benefiting the local, state and federal economies. Westside Water District has not reached its full potential. Uncertainty of supply, escalating costs, the fear of losing private property rights and the costly but unresolved fish passage problems at Red Bluff have all but halted the economic growth set forth in our original feasibility studies. I would like to know just how much has been spent at Red Bluff Diversion Dam. When I examine the many

components of the Bureau's annual water rates what portion of O & M and water marketing are attributed to ESA requirements? These figures are not readily available to those of us who must ultimately pay.

Let me be very clear. As a farmer, I am a steward of the land, a stakeholder not a polluter, and as a water district manager I am entrusted by the community to be a compassionate steward of the resource, not an environmental obstructionist. Today we are hostages to certain aspects of this law and its applications. Through science with peer review, stakeholder input, cost to benefit consideration and balanced, habitat-wide recovery plans, I believe that production agriculture and a healthy environment will soon welcome another day.

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Office of Richard Pombo
Attention: Thomas Pyle
2321 W. March Lane, Suite 209
Stockton, CA 95207

April 26, 1995

Re: Hearing Date: April 25, 1995
Endangered Species Act
San Joaquin County

Dear Members of the Endangered Species Task Force:

Thank you for allowing me to present my personal experiences with cattle ranching and the Endangered Species Act.

My brother Matt Connolly and I personally operate a commercial cattle ranch of approximately 9,000 acres of the approximately 14,000 acre Connolly Ranch in the foothills of San Joaquin and Alameda County. The remaining approximate 5,300 acres is operated by my other brother Patrick Connolly, and my three sisters. The operation receives no federal subsidies, and is not part of any price support system like the Dairy Industry. I was raised in Tracy like Chairman Pombo, and in fact Chairman Pombo's family's diary heifer operation was located a few miles from our property.

Many politicians, pro-development interests, and agriculturalists have called for reform of the Endangered Species Act. Some aspects of the existing law should be reformed so that it is made more efficient and fair. I believe the law should be reformed. Most normal agricultural activities should be exempted or at least decriminalized under ESA. Most agriculturalist are good stewards of the land. Occasionally there are developers who disguise themselves in farmers clothing, and reforms should deal with this situation. The real issue here is not between urban environmentalist and the Farm Bureau; the fight is between those would strongly support biodiversity and the development interests who do not want to pay anything to mitigate impacts to endangered species. If we decriminalize normal existing agricultural activities under the law, the it will become obvious to everyone exactly what special interests are behind the move to gut the act: the mining, utility, forestry, and building industries.

Many of the people here today speaking in opposition to the Act do not want to merely reform the Endangered Species Act; they want to

destroy it by rendering it ineffective. If the most extreme reform measures that are being seriously considered by this Committee are adopted, a free market system that is being developed to save endangered species like the San Joaquin County Kit Fox will be replaced with a system where endangered species will be doomed to extinction, while developers and some lucky landowners will be paid off with taxpayers money whenever their property is identified as critical habitat.

Let me explain my experience. The Connolly Ranch, when the SJFB President Patrick Connolly was President of Connolly Ranch, sold a Kit Fox Easement for Safeway/King & Lyons which allowed the company to met its obligation in mitigating the impacts on the kit fox due to construction of a hugh 1.7 million square foot regional warehouse facility in west Tracy. Safeway was on a fast track to build the new warehouse, which serves all of the Safeway stores in Northern California and Nevada, because its existing warehouse in Richmond had burned down. While the kit fox issue became a major concern during the development process, a mitigation program was successfully implemented and, ultimately, the Endangered Species Act, did nothing to delay the scheduled opening of the new warehouse in April 1992. There are public officials from the San Joaquin County Planning Department who will testify to that.

In 1990 Bernard Elissagaray, a neighboring rancher with property near the Pombo Dairy Heifer operation and the Connolly Ranch, contacted me about a person seeking to buy a Kit Fox Easement. Bernard was not interested, but thought we might by interested in selling such an easement. We were placed in contact with a developer, King & Lyons and representatives of Safeway. I was familiar with the Safeway project through Planning Commission hearings where I happened to be present on other projects, and from reading the paper. **At no time had I ever spoken against the Safeway project, or filed any lawsuit concerning the project.** Safeway and King & Lyons wished to build on property outside Tracy which had been identified by Fish & Game, and Fish & Wildlife as Kit Fox Habitat, and pursuant to the Endangered Species Act mitigation of the impacts would be required. The Connolly Ranch, through myself, and Patrick Connolly the SJFB President, entered into an agreement to sell a Kit Fox easement on 627 acres of the Connolly Ranch. The easement would be deeded to the State of California and the San Joaquin Open Space and Farmland Trust, a non-profit organization. We then negotiated the terms of the easement with Fish & Game, and Fish & Wildlife. The total transaction required negotiations with the Governmental entities whose goal was to insure adequate habitat, and the developers to obtain a fair sales price. The easement allows for the continued agricultural and open space use of the land, but prohibits development, and is operated by Patrick Connolly and my sisters today. Since we were aware of no other similar transactions, we seemed to be breaking new ground throughout the process.

The developers also agreed to pay funds to provide for management of the habitat, but we were not a direct party to this

part of the transaction. Safeway/King & Lyons provided mitigation in the form of $200,000.00 submitted to San Joaquin County which was used to prepare a San Joaquin Kit Fox Habitat Conservation Plan. The Kit Fox HCP, a draft plan that has never been heard in public hearing by the County Board of Supervisors because of lack of staff, identified a "Core Conservation Area". The Core areas was composed of 23,000 acres between I-580 and the 1,000 foot elevation, where numerous studies have confirmed Kit Fox presence. **Chairman Pombo's families dairy heifer operation was located in this critical core habitat area.** I have enclosed a copy of the map showing the Core Kit Fox Habitat.

The Connolly Ranch easement/habitat is managed and monitored today by the Center of Natural Lands Management on a contract basis with the California Department of Fish and Game.

All parties in this process viewed the goal as getting the project approved and at the same time protecting the San Joaquin Kit Fox. The Fish & Game representative Dan Gifford had a practical understanding of the needs of our agricultural operation, and the needs of the San Joaquin Kit Fox. Laurie Simons, of Fish & Wildlife, listened to our concerns, and unlike the image of Federal officials often portrayed, worked toward the goal of designing a situation where the project could proceed, the Fox could be protected, and we could continue raising cattle. King and Lyons, Safeway, and their counsel Michael Weed, were sophisticated and socially concerned enough to proceed with a cooperative approach, rather than the combative approach so often taken by developers. Thanks to the attitude of all parties, Safeway is operating its warehouse, and the San Joaquin Kit Fox has 627 acres of permanent habitat.

It should also be noted that all the funds from the sale of the easement went back to the Government. The funds were used by the Connolly Ranch to pay down a loan to Production Credit Association, a quasi-governmental organization established by the Federal Government to make agricultural loans, and to Federal and State Governments to pay tax liabilities generated by the sale of the easement. In summary, private sector funds bought habitat for the San Joaquin Kit Fox, and the funds were used by a family ranch to pay off loans and taxes. Seemingly the perfect Republican private incentive program.

Since this original transaction, the Connolly Ranch sold one more small three acre easement. Another neighbor, again only a few miles from the Pombo Dairy operation, sold an easement on several hundred acres to mitigate for a utility project. A sand and gravel operation is in the process of negotiating another easement. I am also working on another potential easement in the county. In all these cases, ranchers are being paid to preserve their land in its natural open space condition.

The proposed changes to the Endangered Species Act are designed to destroy this market system of incentives we have

established in this county. Amendments to eliminate the protection of Sub-Species would mean the San Joaquin Kit Fox would no longer be protected at all. Proposals to eliminate the protection of pockets of animals isolated from the remaining population, would mean that when species become isolated by developments in South County, they will be allowed to die.

Other proposals are targeted to other important animals in San Joaquin County, such as the Swainsons Hawk, a protected species under State Law. Developers have long argued that since this animal flies to South America, there is no reason to protect it here. The proposed changes incorporate this theory.

Most significant to me, is the fact that the Government will now be asked to pay landowners if their property is designated critical habitat. There can only be one of two possible results in this county. First, taxpayers will be forced to pay landowners for the diminished value of their land if the land is designated habitat, instead of getting paid by the developer impacting the habitat. The second alternative, is that all protection will stop as the price tag is too high for governmental agencies.

In summary, it does not make sense to me to substitute a free market system that has worked in San Joaquin County to establish habitat, with another government subsidy for landowners. Now the private sector provides mitigation. The proposed changes would require the taxpayers to compensate landowners when the San Joaquin Kit Fox Habitat Conservation Plan is adopted by the County. Taxpayers will pay instead of developers.

I have been told that our case is being used as an example of how the Endangered Species Act has failed, and King & Lyons/Safeway were extorted by us. This is completely untrue. How can I prove this? On about February 25, 1993, I received a package in the mail. In it was a model Safeway truck, and in the back of the truck was a large Bottle of "Kit Fox Amber", a brand of beer. A letter which was enclosed summarized my feelings, and apparently Safeway's as well, on how the Endangered Species Act and all the agencies and parties involved, cooperated. The letter, which is framed on my office wall, states as follows:

"Dear Mark:

I would like to thank you on behalf of Safeway and myself for your vitally important contribution to the successful completion in 1992 of Safeway's new Tracy Distribution Center.

We had hoped to recognize your contribution at a grand opening celebration in 1992, but that was not possible. Nevertheless, I did not want your contribution to go unrecognized.

As a small token of our appreciation and as a reminder of

it, please accept the model Safeway truck and bottle of "Kit Fox" beer.

The project presented many challenges-some of which nearly drove us to "drink". The "almost too large to haul" bottle of "Kit Fox" beer is but a symbol of no only the most notable challenge, but also of the myriad of other challenges which had to be creatively, cooperatively, and with compromise, mastered. We each worked from a different perspective and on different parts of the project, but we completed the project successfully.

Thank you for your help with this project.

Sincerely yours,
SAFEWAY INC.

Gary D. Scott
Vice President
Real Estate Law"

In summary, I am sorry to see so many farmers, and particularly Farm Bureau, taking the point position for developers and real estate. Farmers and Ranchers, as good stewards of the land, need to realize they have much more in common with environmentalist. The San Joauqin Farm Bureau President has actively been attempting to market Kit Fox easements within the last few months. Farmers and Ranchers are being used by others to demand a major overhaul of the act, when fine tuning is all that is necessary.

Very truly yours,

MARK V. CONNOLLY

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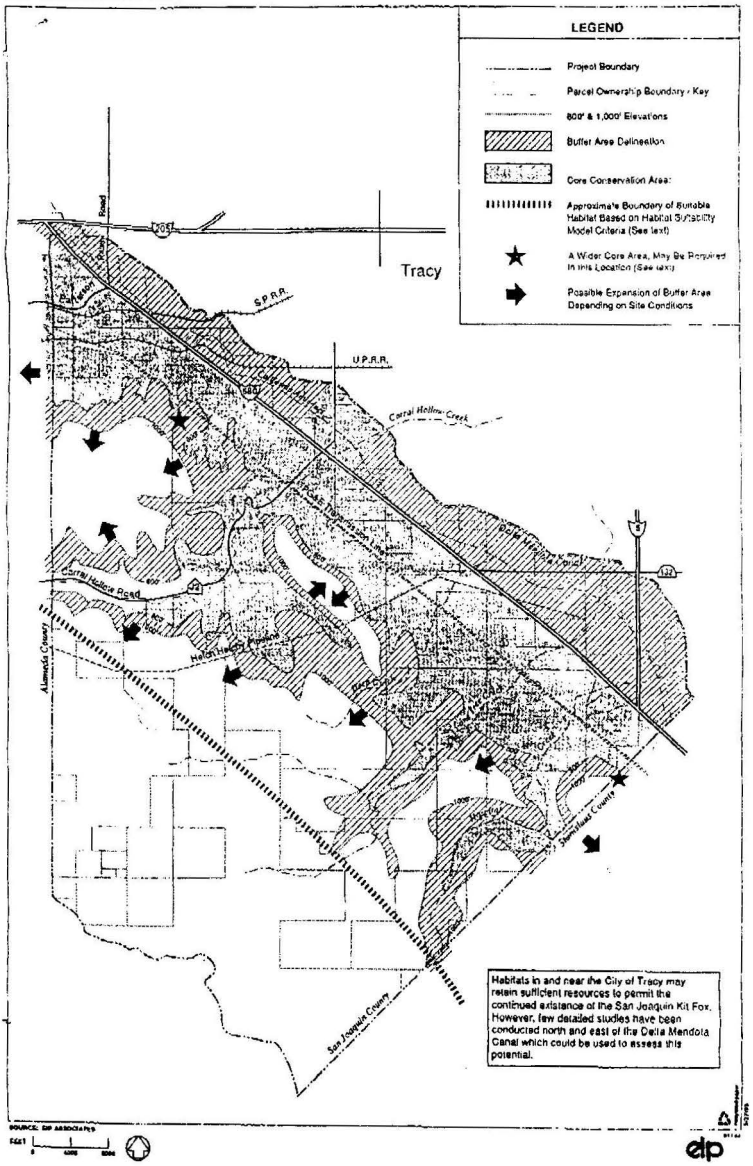
HCP CORE CONSERVATION AREA

FIGURE 4.1



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TESTIMONY OF
DAN BYRNE

SUBMITTED TO
THE HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
ENDANGERED SPECIES TASK FORCE

Stockton California Hearing
April 28, 1995

Chairman Pombo and Members of the House Resources Committee Endangered Species Task Force, thank you for inviting me to speak on behalf of my family and the many other ranch families who have similar problems because of the Endangered Species Act. I am going to focus on reforms needed in the Section 7 consultation process, but I will also address the general issue of grazing on public lands.

I am Dan Byrne, and I am a fourth generation rancher from Modoc County, in the northeastern corner of California. With my brother, I raise cattle, hay and grain on our family's private land, and also graze cattle on federal wildlife refuge and National Forest public lands.

My family humbly accepts our responsibility to act as stewards of all the lands we use, both private and public. We are certainly not asking for an end to all land use regulation. We support reasonable regulations allowing for utilization of our renewable resources while maintaining and improving them. It was ranch families like my own who pushed for the protection of Modoc County's public lands in the first place, by petitioning in 1903 to establish the Modoc National Forest. We are simply asking for common sense reform to correct the serious problems that abuse of the Endangered Species Act is creating for our people and communities, so that future generations may also enjoy the beauty and productivity of these lands.

One of the most serious flaws in the Act is the absolute power its Section 7 consultation process gives to the Fish and Wildlife Service over any land use decision

affecting federal lands or projects. The Service's abuse of Section 7 has reduced my ability to provide for my family, completely subjugated local landowners--including the Forest Service and Bureau of Reclamation--to the central authority of the Service, and has actually hindered recovery efforts for endangered species. The impacts on our ranch serve as an example of how it is affecting the entire northeastern region of California.

1. PROBLEMS OF SECTION 7 CONSULTATION OVER GRAZING PERMITS.

Our ranching operation consists of private land intertwined with Modoc National Forest lands, much of which is by necessity fenced in common and managed by us conjunctively to meet standards set by the Modoc National Forest. Through hard work, and because of our stewardship, we have developed a positive working relationship with the Forest's biologists, conservationists, and staff officers. Historically, this relationship has fostered management strategies and range improvements which have benefitted wildlife as much as cattle on both the private and public lands. For example, we have developed upland water sources to draw both domestic and publicly-owned livestock away from riparian areas, and to provide wildlife water supplies during drought. We have planted willows in riparian areas, and have designed improvements to enhance spawning gravels. We have undertaken intensive grazing management systems, adjusting utilization timing and intensity to maximize rangeland health. We have entered into a public-private partnership agreement for fencing riparian pastures, with individualized utilization parameters designed specifically to benefit particular species listed under the Endangered Species Act.

Our public-private cooperative efforts resulted in significant habitat improvements for all wildlife species on both upland and riparian areas. In-stream habitat was also measurably improved. Then the Fish and Wildlife Service intervened, and planning for improvements was derailed.

The Modoc National Forest was required by Section 7 of the Act to enter into consultation with the Service to ensure that its grazing program did not adversely affect the recently listed, endangered shortnose and Lost River suckers. In today's litigation climate, the Forest was understandably afraid of allowing grazing to continue without thorough scientific documentation showing that it would not adversely affect the species. It must be remembered that this Act provides a powerful weapon to people who want to wield it as a means to stop any use of public lands, but it provides no corresponding shield to agencies or permittees so as to foster innovative cooperation in wise public land management. Agencies are exposed to liability if they deviate from Fish and Wildlife Service prescriptions, even if they have better site-specific information than the Service.

Unfortunately, the needs of the two sucker species were poorly understood. In order to obtain the information required by consultation, we organized a cooperative public/private cost-share effort to commission private biological

consultants to conduct a stream occupancy and habitat survey, in compliance with protocols designed by the Forest's fisheries specialists. We personally put about a thousand dollars into this survey. The Forest praised the work as invaluable to fulfilling their management responsibilities, and the information obtained was used by a Forest interdisciplinary team to develop utilization standards along the surveyed stream reaches.

However, even though this survey and other agency studies all documented that because of our innovative management, there are healthy populations of the species on these stream reaches, and the riparian systems are on a dramatic upward trend, the Fish and Wildlife Service insists on imposing its own, even more restrictive standards. Theirs are not designed for the needs of this location, but are blanket prescriptions aimed to protect even the most fragile systems in the West. The Act does not enable the Forest to override the decision of the Fish and Wildlife Service on the basis of its own site-specific documentation, so the Forest is unable to defend its successful management program or protect the integrity of our habitat planning effort.

The impact on my family has been severe. We have been forced to reduce our grazing use of both the public land and our own private land by 84% since consultation began. This is not economically sustainable, and yet, because of the configuration of the lands, we could not fence our lands off from Forest lands to allow separate utilization. It should not be possible for the Fish and Wildlife Service to insist on generalized standards that impose severe economic hardship when site-specific standards are available which are proven to be successful.

This demonstrates clearly the inadequacy of Section 7 consultation. It imposes no duty on the Fish and Wildlife Service to give full and fair consideration to scientific data provided by a permit applicant, and it strips the land management agency of all power to protect its multiple-use mandate against unnecessary impairment by overly-restrictive demands of a sister agency.

The Fish and Wildlife Service is a single-purpose agency which appears to interpret its consultation duty under the Act as serving solely the needs of the threatened and endangered species on public lands. It does not interpret the "reasonable and prudent alternatives" it must offer under consultation to mean an accommodation which will reasonably balance species needs with economic needs. I believe it is, therefore, an abdication of Congressional responsibility to hard-working public lands permittees and their communities, for this agency to be given the unfettered discretion it has under the Act over what will be allowable public land uses.

2. PROBLEMS OF SECTION 7 CONSULTATION OVER FEDERAL WATER PROJECTS.

We farm within the Klamath Project of the Bureau of Reclamation, and receive

water supplied by the Project. The Fish and Wildlife Service is engaged in on-going Section 7 consultation covering three aspects of the Klamath Project: a) operation of the Project, b) critical habitat designation within the region for the shortnose and Lost River suckers, and c) use of agricultural chemicals on Kuchel Act leases. All three illustrate well why Congress should trim the broad powers the Service has claimed under the Act to allow or deny economic uses.

a) **Klamath Project Operation.**
The Klamath Basin consultation dispute is discussed in detail by the testimony of the Klamath Water Users Association, a copy of which is attached. Not covered in that testimony is the arrogant and dismissive manner in which the Fish and Wildlife Service treated the Klamath Water Users Association's proposed Ecosystem Restoration Plan.

This privately-funded document was the first recovery plan prepared by any party for the endangered suckers. It was drafted by a highly respected private biological consulting firm, at a cost to the Users of more than $150,000. It proposed sound management alternatives that would reasonably accommodate basin farming activities to the needs of the endangered fish, while preventing unnecessary economic impacts. Rather than accepting the document as a sound source of "best available" scientific information, worthy of serious consideration in the habitat designation and recovery effort, the Service ignored it except briefly to respond as if it were merely public comments. The Service clearly does not take applicants' rights during consultation seriously.

b) **Critical Habitat Designation in the Klamath Project.**

The Fish and Wildlife Service's treatment of public economic impact testimony for the critical habitat designation goes beyond single-purpose dedication, to reveal outright hostility toward the local timber and agricultural economy. Briefly summarized, the Service's response to evidence of adverse economic impacts on the local timber industry is that it can be disregarded, because the contribution of timber to the economy has declined in recent years (no mention of the Fish and Wildlife Service's role in that decline). Similarly, the Service dismisses impacts on agriculture by asserting that the contribution of agriculture to the economy is also declining. The Service's report concludes, without documentation, that to the extent the designation may have adverse impacts on these two leading sectors of the regional economy, they will be more than offset by tourists coming to the region to enjoy the amenity of increased sucker fish populations.

Surely, this does not reflect the serious consideration that evidence of impending severe human hardships should receive by any responsible decision-making agency. The uncertainty over water deliveries caused by the Service's prescriptions for fish habitat enhancement, coupled with

repeatedly dismissed, groundless, lawsuits brought under the Act by private interest groups who oppose productive land uses as a matter of principle, has wreaked havoc on family farming operations like mine, which cannot even prepare timely borrowing and repayment plans.

c) **Use of Necessary Agricultural Chemicals on Kuchel Act Leases.**

The third example of the Service's abuse of its Section 7 powers is its handling of agricultural chemical use on Kuchel Act leases for farmlands within the Klamath Project. The Kuchel Act guaranteed the continuation of existing agricultural activities on lands set aside for migratory waterfowl refuges, in recognition that productive use of these lands was vitally important to the regional economy, and that farming provided food and shelter to the birds which more than offset any incidental impacts.

As part of its Section 7 consultation with the Bureau of Reclamation on the Klamath Project, the Service has rejected the rigorous standards for pesticide use developed by the U.S. Environmental Protection Agency as well as the California Department of Pesticide Regulation, and is requiring the Bureau to complete an individual risk assessment for each chemical and each particular site. According to Jack Pandol, Undersecretary of the California EPA, this would take his agency 20-40 staff years and 2.5 to 6 million dollars. He states that such review is not only infeasible, but unnecessary, and surmises that the Service must not understand the stringent data required by the U.S. EPA in registering chemicals for agricultural use. The end result has been the loss of chemicals absolutely essential to the production of many crops traditionally grown on Kuchel Act lands. Perversely, this has led to substitution of other chemicals requiring more frequent application, with attendant added risk of worker exosure, and expense. This is unsound, both economically and environmentally.

3. **PUBLIC LAND GRAZING IS A VALUABLE USE OF RENEWABLE RANGELAND RESOURCES WHICH PROVIDES ENVIRONMENTAL BENEFITS AND IS ENTIRELY COMPATIBLE WITH ENDANGERED SPECIES.**

As a final subject, I must respond to negative comments made at the April 17 hearing in Bakersfield concerning the compatibility of grazing with endangered species' needs on public lands. Cattle have been grazing in the mountain meadows of California since the state was part of Mexico. The ecosystem we now see in these mountains is evolved or adjusted to that use. Grazing enhances the mountain environment for many, many wildlife species, by keeping meadows open and promoting thick growth of forage.

The West has far more federal lands than state or privately-owned lands. Federal lands are therefore an integral part of the Western economy. Access to public land grazing was guaranteed to local ranches at the time these lands

were withdrawn from settlement instead of being patented to private ownership, as in eastern states. It has always been recognized that the public and private lands of the mountainous West must function together in a symbiotic system: each benefits. Without private stewardship, the biological productivity of the mountain rangelands would decrease; without conjunctive use of public range, private ranches could not be sustained. Wildlife also depends on both land resources at different seasons, and if those ranches were to fold due to the loss of public land for grazing, wildlife would suffer greatly.

Range has always been managed in protective stewardship by the vast majority of ranchers. Range management is now being asked to address new resource concerns, and it is accomplishing the change with admirable speed. In our own region we are now managing our public land permits to accommodate the needs of 26 state and federally-listed species. (A roll call of species is attached.) Those who say grazing on public lands is incompatible with endangered species should review the end-of-the-season monitoring report on the Sierra National Forest's Dinkey and Mugler grazing allotments, sent by the Forest to the Fish and Wildlife Service. The report found that the permittees were in full compliance with the very stringent requirements imposed by the Service for the Lahontan cutthroat trout, and that habitat needs were met.

CONCLUSION

Members of the Task Force, in conclusion I ask you to work for the reform of the Endangered Species Act, and in particular for reform of the consultation process. It is critically important to farming and ranching that we give back to land management agencies their authority to regulate use of our public lands according to the mandates of their enabling legislation, and the dictates of maintaining multi-resource, multiple use lands. It is equally important that we provide effective participatory rights to permit holders, applicants, and affected communities.

The attainment of any recovery goal on public or private land will hinge on cooperative participation by ordinary people who will conduct the on-the-ground management of the resources. We cannot afford a government big enough to force compliance with poorly conceived, uneconomical, and often times counter-productive mandates. Although incentives are useful to encourage habitat production under some circumstances, the best incentive for habitat production on our ranches is generally for government to intrude least into private efforts.

DAN BYRNE

STATE AND FEDERALLY-LISTED SPECIES

Bald Eagle
Shortnose and Lost River Suckers
Klamath Largescale Sucker
Spotted Bat
Northern Goshawk
Willow Flycatcher
Western Pond Turtle
Sandhill Crane
Canada Goose and Mallard
Red-Breasted and Red-Naped Sapsucker
Sage Grouse
Mule Deer
Pronghorn
Yellow Warbler
Swainsons Hawk
Golden Eagle
Prairie Falcon
Northern Harrier
Bank Swallow
Long-haired Star Tulip
Stoloniferous Pusseytoes
Columbia Yellow Cress
Egg Lake Monkeyflower

Klamath Water Users Association

Testimony on the Endangered Species Act

In 1988 the United States Fish and Wildlife Service listed the shortnose sucker and Lost River sucker as "endangered" under the Endangered Species Act. With the listing, the flexibility of resource managers in the Klamath Basin was shattered and polarization of interests ensued. Extreme environmentalists pursued legal recourse and sued the Bureau of Reclamation, under the ESA, to stop deliveries of water to the vast majority of irrigators in the federal Klamath Project. The Water Users were forced to intervene in this action - - at a tremendous cost. The complaint has been amended no less than four times, and subsequently rejected in federal court, on all assertions.

The Klamath Project was authorized in 1902 by an act of Congress, more than eighty years ago and at least seventy years prior the enactment of the Endangered Species Act. Nevertheless, federal agencies have interpreted the regulations and conditions under the much younger ESA as superior to the rights and tenets of the decades old Klamath Project. The ESA's conditions for "reasonable and prudent alternatives" has so dramatically altered the irrigators and Bureau of Reclamation's ability to effectively run the irrigation system as to render it inefficient.

Under the requirements of the ESA, consultation must take place between the various government entities and a biological opinion must accompany any major federal action by agencies. The operation of the Klamath Project was inextricably intertwined with numerous biological and interim biological opinions forcing the operation of the billion+ dollar Project to be operated by the needs of the suckers, not for maximum efficiency of water delivery and agricultural production. Landowners potentially effected by the decisions made in formal consultations should have the right to participate individually or collectively as an applicants in the process.

Since July 22, 1992, the Klamath Project has operated under a long-term biological opinion which specifies minimum lake surface elevations. Recently, the Klamath Tribe insisted, under the threat of litigation, that the Bureau of Reclamation reinitiate consultation for a new biological opinion on the operation of the Klamath Project. The Tribe's proposed August lake elevation for the endangered suckers would not meet adequate water Project needs 55% of the time.

In two drought years, 1992 and 1994, the Bureau of Reclamation managed the project primarily for fisheries needs. Thousands of acres of agricultural land went without a full delivery of water. Some farmers were cut off prior to deliveries, while others nearly finished the season only to have water stopped just before completion of an agreed upon water season. The impact to the region was reduced cuttings of hay, less row crop production, reduction and removal of livestock from the Project, uncertainty over future water deliveries, concern by the banking community regarding the repayment of operating loan, diminished water deliveries to the Tule Lake and Lower Klamath Refuges. People and the ecosystem suffered for the benefit of the suckers.

The Klamath Water Users Association, in January 1993, published the ***Initial Ecosystem Restoration Plan.*** This document, the first recovery plan for the species, concentrated on scientific parameters and, importantly, prescriptive, on-the-ground, solutions to the sucker recovery. This project alone cost the Water Users in excess of $150,000; a tax which would prove minimal as ESA mandates progressed. Over the past four years, Klamath area farmers have spent more than $2 million on science, legal defense and administrative activities.

The ESA gives extremist a means to promote their cause no matter how unreasonable. In the Klamath Basin a single group is responsible for the curtailment of many private land restoration projects. The environmental organization insisted that the Service follow the law and determine critical habitat for the suckers. In the Klamath Basin, this action has hurt the species rather than conserved it. The ESA provides no protection for the private participants using federal funds in restoration projects from subsequent legal assaults under the Act. Restoration participation should not be discouraged. At this point, many projects have been halted and recovery efforts for the species on private lands have suffered.

It is far too easy for extremists to bring action and receive compensation and, the accompanying notoriety, under the ESA. The ESA should be modified to allow prevailing defendants to collect from plaintiffs. Further, the fear of legal action by agencies has resulted in "settlements" outside of the court by those with little, if anything, to lose; with compensation and publicity to gain. The resulting system forces resource agencies to kowtow to extremists. To allow the threat of litigation to drive the ESA process, including recovery activities, makes for short-term and, potentially, catastrophic natural resource decisions.

The requirement of making policy on the "best available commercial and scientific data" is a major flaw in the ESA. Quite literally, there were no sucker "experts" a decade ago. Therefore, science for the listing decision was not rigorously challenged. "Sub-species," population censuses, even critical habitat for the two suckers are not well understood. And, the single entity with the most scientific data on the suckers, the Klamath Tribe, will not release their basic data or the methods of collecting and analyzing the data to the public or, as far as we know, federal agencies.

Recent surveys have found many millions of young suckers in the Klamath Basin, unsurveyed prior to the sucker listing decision. One can only wonder if the species would have been listed as endangered if this information were known then rather than now.

Further, nine square meters of spawning habitat for a so-called "sub-population" of suckers in the 370 million square meter Upper Klamath Lake has been used to determine lake levels in the Klamath Project operations biological opinion. It is unreasonable to hold at bay 40% of the basin's economic base due to a few square meters of readily available habitat, to protect a purported sub-population of sucker. The ESA must be amended to better define and deal more fairly with "sub-populations."

The Act should not use the "best available commercial and scientific data" but should

establish reasonable scientific standards including open disclosure of data and methods, and peer review, well before any decisions under the ESA, including listing, are made. Furthermore, federal, state and local laws and rights existing prior to the ESA and socio-economic information should be weighed in the decision process. It is inappropriate and immoral simply to "err on the side of the species." Human life and ecosystem health are in the balance.

The ESA also has been used in the Klamath region to override the authority of state water law. The Bureau of Reclamation has held endangered species water needs above those of state water right holders. The ESA should respect state water right authority and it should be held less authoritative than existing laws.

The communities most directly effected by the listing should have the opportunity to forestall the listing. Many public employees and private citizens in the Klamath Basin are working to conserve the Klamath Bull Trout. The listing of the Bull Trout would only hamper restoration progress by replacing our cooperative work with a legally driven mandate. Our community and any community potentially effected by a listing, should have the opportunity to correct the situation prior to being forced into action.

Once a species is listed, the ESA provides little or no incentive for the agencies to delist a species. In most cases, the listing personnel are dependent upon the continued "endangered" status of the species for their employment and funding priorities. Therefore, specific and realistic recovery targets, with dates and financial parameters (such as cost/benefit), should be included in the ESA.

In the Klamath Basin, we have seen property values drop and parcels of land have been deemed "unsalable" due to the uncertainty over water supply. We have seen increased difficulty in receiving operating loans due to the competition for water between endangered species, tribal trust, wildlife refuges and irrigators. The Klamath County Realtors Association estimates that the determination of the proposed critical habitat for the suckers, if made final, would result in $188 million loss in property values. In our desert climate, agricultural land cannot generate ranching or farming profits without water. The ESA must more fairly balance the economic impacts for all determinations and decisions, and fairly compensate landowners and businesses affected by the decisions.

In 1905 and through both World War I and World War II, veterans and immigrants were *encouraged* to settle the West. Many families have generations of roots in the Klamath basin after receiving parcels of land from our government to homestead the basin. The ESA should not take away these American rights.

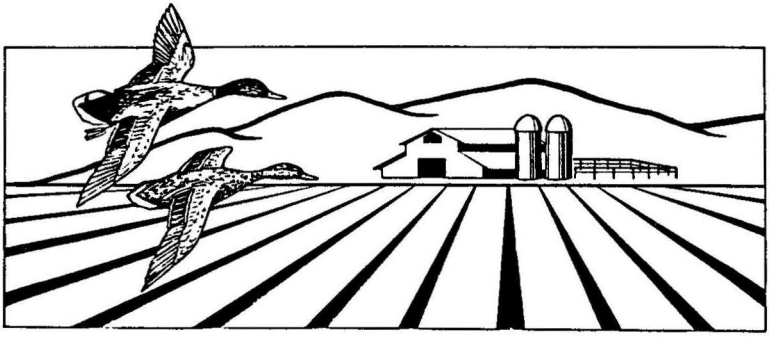
The recovery of endangered species is a national priority, which should provide the funding for species recovery. The Klamath Project, Water Users and private organizations in the basin contribute way more than their fair share toward restoration activity. Not only have we funded research and planning, we have been forced to concede profits and have had our equity in our farms and ranches taken ostensibly for the conservation of the species. It is time for those inflicting the pain on the rural West, to provide significant financial support for their concept of ecosystem health.

We must protect the heart of America by providing balance in the Endangered Species Act. Without balance, the Klamath Basin will suffer, the ecosystem will suffer, and the nation will lose a vital resource.

ESA HEARING TESTIMONY

APRIL 28, 1995

STOCKTON, CALIFORNIA



by: Marion Mathis
FAMILY WATER ALLIANCE
MAXWELL, CALIFORNIA

91-821 O - 95 - 5

ESA HEARING TESTIMONY
APRIL 28. 1995
STOCKTON, CA

By: Marion Mathis

Family Water Alliance

I am here today as President of Family Water Alliance and also as a wife, a mother, and a farmer to relate my personal experience with applications of the Endangered Species Act.

Family Water Alliance is made up of all volunteers, citizens who are concerned about the future of agriculture, private property rights, civil rights and the survival of our wildlife. We believe a balance between man and nature can exist and that common sense solutions can be identified and implemented when citizens are part of the solution process.

Family Water Alliance values nature, we take great pride in our ducks, geese and other waterfowl that over winter in the north state. In Northern California, waterfowl and wildlife are part of the fabric of our daily lives. We enjoy the benefits and beauty of the Pacific Flyway. In Glenn and Colusa Counties, we

currently have thousands of acres which serve as habitat for migrating birds. Private landowners as well as refuges contribute to seasonal wetlands. It has been estimated that approximately 80,000 acres were flooded at the height of the winter season. This equates to about 18% of the total rice base dedicated to seasonal wetlands habitat throughout 7 counties. The contribution of the North State and its citizens to the environment is valuable beyond measure.

As farmers and ranchers, my husband and I also value the intrinsic natural environment of our property. I appreciate the sight of pheasants winding their way back and forth across my yard as they use it like a highway between farm fields. We are excellent stewards of our private property and manage it to the benefit of man and nature.

However, the application of the ESA is having negative impacts on our farming and ranching activities and on wildlife. My family receives water from the Tehama-Colusa Canal which is part of the Central Valley Project. Currently, delivery of our spring irrigation water is restricted by management of the Red Bluff Diversion Dam to create passage for the Winter-Run Chinook Salmon, a listed endangered species. Obviously, this is stressful for spring crops like tomatoes and alfalfa. Even in a year of abundant water, we are forced to risk our stakeholder position and the livelihood of our family.

Our contract renewal process along the CVP can at least be described as a nightmare. Accompanying contracts with the Bureau of Reclamation was a Biological Opinion(BO) required by the ESA and issued by USF&W Service (Exhibit A). In its original form, agents of the government could enter private property without permission to search for and identify endangered species and critical habitat (Exhibit B). It its final form, the BO language was softened, urging cooperation. However, I believe that the intent to survey still remains and constitutes an absolute threat to my farming operation. A survey leads to listings which then lead to land use restrictions. Additionally, I wonder how "cooperation" will be accomplished. To my knowledge, the only compliance tool available to the Bureau is the water supply (Exhibit C). The critical needs portion of the BO is now being compiled and will result in mitigation measures and an attempt by the federal government to micromanage my family farm and undermine my individual private property rights.

The livestock portion of our private property is used to winter graze our cattle. The effective use of this livestock land is clouded by the listing of the vernal pool fairy shrimp. It is commonly held that this listing was not based on good or sound scientific research. As reported in the Wall Street Journal, Friday, October 21, 1994, the federal listing decision was made in response to a one-paragraph petition submitted by a Davis, CA botanist in 1990 (Exhibit D). This claim was based on a 1978

paper written by a graduate student in botany who now admits he could not substantiate the study's conclusions. Yet we are now living under an unscientific listing. Today, there are reports which link cattle and fairy shrimp in a symbionic relationship (Exhibit E). So, I am faced with a listing decision based on unsubstantiated poor science which will prevent me from using my land as I do today (Exhibit F).

Our traditional practice, is to winter graze in Maxwell and during the summer months from May to October, we move our cattle to family property in Fort Klamath, Oregon. Incredibly this property is now included in a proposed designated critical habitat for the Sucker fish. This designation is based not only on waterways but on the 100 year flood plain. If the boundaries remain unchanged, our family property will be rendered virtually unsalable according to the Klamath County Tax Assessor. Beyond that, its agricultural use will be unreasonably restricted (Exhibit G).

I am painfully aware of the Federal vise which has caught my family in its jaws. The options available to us are being narrowed and the use of our private property undermined by the ESA. It is patently unfair that the largest part of the burden for ESA compliance should fall on the backs of natural resource based producers. The overzealous and often selective application

of the ESA is justified by the media, some members of Congress and the President of the United States by referring to me as a polluter. I am insulted. I am a producer, a provider, and an employer. I am proud of what my husband and I do. I am proud that our family has been actively engaged in agriculture for over 100 years. I am proud of our substantial contribution to the economy of this country and the health and well being of its citizens through a noble cause...that of feeding Americans. I will not apologize.

While the ESA eats away at my family financial foundation, it also takes its toll on my community and my county. This winter, the above normal precipitation was a reason for rejoicing until the floods came. The flooding in our local area and Sacramento was exacerbated by our inability to maintain ditches and drains which normally carry flood waters quickly through our area. A direct negative result of the ESA has been the burdensome permit process now required to manage ditches and drains. With continuing maintenance now impossible, vegetation and trees clog the drainage system and impede the flow of water. This increases the pressure on levees and resulted in numerous breaks which flooded towns and cities.

There are also many financial implications to the ESA. Many producers require loans from financial institutions to continue operation. This loan activity has been impacted by the uncertainty created by applications of the ESA (Exhibit H). Our local Farm Credit Association loans over $100 million dollars annually to approximately 500 farmers and ranchers in Colusa and southern Glenn Counties. Because of Federal agency actions and the listing of various species, repayment on some of the loans has been jeopardized. The impact of the Act on the dependability of water sources and historical use of farmland has raised questions regarding secure loans and the potential of repayment. A very serious problem for banks and agricultural borrowers (Exhibit I).

The Act as financial implications to local Counties. When ag ground is taken out of production through government regulation, not only is there a loss of tax base but often agencies do not pay in lieu taxes due to county government. For instance, in Colusa County, USF&W owes $500,000 in back taxes that could be used to reopen libraries, fund schools, and repair roads (Exhibit J).

While my family's farm water supply is reduced, neighboring water districts like the Glenn Colusa Irrigation District have also been sacrificed at the feet of the ESA altar. The district serves 1200 family farms which irrigated 160,000 acres. The district's water supply is diverted from the Sacramento River and

distributed to farms in Glenn and Colusa Counties. GCID remains the only water district in California still under court order as it regards the winter run chinook salmon. The district is not allowed to take one fish while other areas of the state can mitigate for a %5 loss of fish. This is selective enforcement. Farmers within the district are required to pay a 5 million dollar mitigation fee over a three year period payable to National Marine Fisheries. The money to be spent for a new fish screen at the point of diversion. The district initially at its own expense ($1.5 million) has installed an interim flat plate screen in front of the original Fish and Game screen which was installed in 1968. Currently, the interim screen is proving to be successful beyond all expectations in protecting salmon. However, the zest among agencies for a 40 million dollar screen has not abated and will further stress the economic viability of my community. Further, with abundant water because of increased rainfall, GCID will be restricted to 65% of its diversion because of the ESA. Maintenance and dredging of the oxbow channel which serves the screen and pump area with a sufficient flow of water is stalled by the permit process.

The people in my community and county who suffer under the pressure of ESA listings are not limited to farmers and ranchers. We do our business with local merchants and ag suppliers. The third party impacts for agriculturally based communities is enormous. Bankers, truckers, soilbuilders, implement dealers,

restaurant owners and hosts of others are all caught in the web of government regulation represented by the ESA. When farmers and ranchers do not prosper neither do businesses who depend on them. This trickle down, third party effect is felt most earnestly in rural areas and adds mightily to the increasing burden of environmental correctness, a factor which is often overlooked and regularly not figured into the cost of the ESA.

Every phase of the Endangered species Act is riddled with problems. According to the National Wilderness Institute, GOING BROKE, 1994, the following areas should be addressed. Recovery plans often reveal that there is little information about plants or animals considered endangered or threatened. The taxonomic classification of an endangered plant or animal often call for additional laws and regulations or the employment of legal tools other than the Act. Recovery plans often conflict with the definition of "conservation" in the Act by stating that recovery is unlikely or impossible. Recovery plans often have criteria for "delisting" or "downlisting" which appear unattainable. And finally, plans often call for large scale habitat purchase (Exhibit K).

This flawed plan is enormously expensive. Approximately $900 million American tax dollars are being spent on recovery plans

which include some action plans. However, this estimate does not reflect the actual cost of the ESA as many costs are not included in this figure. Many of these hidden costs are born by the private property owner (Exhibit L,pg. 1 & 2, GOING BROKE).

To avoid the serious pitfalls of the ESA and to reduce the exorbitant costs associated with listings, Family Water Alliance recommends the following:

1. Protect private property rights and require full compensation to the owner of the property whenever federal regulators restrict the use of property or devalue property.

2. Provide for full public notice and county participation in the listing of species. All meetings regarding a species or subspecies should be open to the public and held locally.

3. Local and county governments should have input in the initial review of an endangered species and be involved in all aspects of the studies and reviews.

4. Set standards for scientific review and commercial data. Set up a review process to determine the best scientific

and commercial data available.

5. Require the decision on the listing be made simultaneous to the designation for critical habitat, which requires a socioeconomic analysis.

6. Simplify the delisting process. A realistic criteria for the recovery of the species should be in place. A set recovery number for a population should be identified up front and be made available to the public. After this number has been restored, the species should be delisted.

7. A full recovery plan time-line and funding need to be developed and identified prior to a listing. These plans offer aside from the funding, the additional benefit of immediate action after a listing.

8. Every effort should be made to survey government owned land for endangered species and habitat before the private sector is approached.

Family Water Alliance urges the House to reevaluate and reform the Endangered Species Act, to restore the balance that is necessary if agriculture is to remain viable and private property rights to remain protected by the Constitution. Other resource based industries would also benefit from a balanced approach.

Cattlemen are plagued by the vernal pool fairy shrimp while new studies indicated that cattle are beneficial. Rice growers are faced with the listing of 21 species that enjoy the habitat provided by rice fields. Timber people have long suffered under the restrictions imposed by the listing of the spotted owl. Harvest of salvage timber is difficult and as our forests fill with kindling, we all face the threat of major forest fires. These resource based industries are for the most part not mega corporations but family businesses run by people just like me and just like you.

So in the end, this is about PEOPLE. People who are not included in the ESA formula. Why? Because agencies wielding the ESA as a landuse tool have forgotten people. They have forgotten that hardworking citizens who obey the law, pay their taxes, pay their bills, take care business, take care of their families, have certain rights. They have forgotten who gives them their power. They do not include people in the equation because the ESA does not require them to do so.

So this is all about PEOPLE: communities and families. This is about government of, by, and for the people not government of, by, and for the ESA.

This is all about PEOPLE: communities and families. Communities who ask only that their government be fair, consult with them,

and not interfere with self determination. This is about future generations like my grandchild who will not be born until August but whose future may very well be determined by whether or not the ESA is reformed.

This is about the health, safety and stability of our community and its right to be free of over regulation, coercive government action, and spiteful enforcement. This is about the right of the people to protect their freedom and their property from government acquisition through regulation.

(Submit extra letters and letters from school children)

As an individual pursued by the ESA, I beg you to listen to the stakeholders. The people who have invested their dreams, their families, and financial resources in a piece of land. These are the people with everything to lose. Remember me and remember them. People like the ones inside and outside this hearing room who feel the tentacles of the government reaching across 3 thousand miles to wrap themselves around our land, our communities, and our hearts, and then begin to squeeze until all the life is gone.

Thank you

A

FWA
Family Water Alliance
"Every Day is Earth Day on the Farm"
(916) 438-2026
Fax: (916) 438-2940
P. O. Box 365, Maxwell, California 95955

February 7, 1995

MEMORANDUM

TO: Board of Directors

FROM: Marion Mathis
Sue Sutton

RE: Biological opinion issued by Fish & Wildlife on renewal of CVP contracts

We are extremely concerned about the Biological Opinion compiled by the US Fish and Wildlife Service regarding the renewal of three year contracts on the CVP.

The following recaps some of the terms and conditions that will be imposed on farmers if they sign the interim contract. We understand that negotiations are currently underway to revise the Biological Opinion however we are concerned about the overall intent of this document.

We believe it not only violates private property rights but also constitutional rights. In addition, it purposely attempts to circumvent the intent of Congress in regard to National Biological survey in which Congress specifically voted that private property could not be entered without the express permission of the landowner.

Attached you will find additional memorandum with further explanation. We are currently contacting all concerned about this issue and appeared before the Colusa County Board of Supervisors on February 7, 1995. The Board of Supervisors moved to invoke Home Rule and called for a public hearing on February 21, 1995.

1 University Avenue
Suite 205
Sacramento, California
95825-6708
Phone 916/929-3996
Fax 916/929-0732

February 3, 1995

MEMORANDUM

TO: Board of Directors

FROM: John Roberts

RE: Endangered Species Act biological opinion on renewal of CVP water contracts

In the waning days of 1994, the U.S. Fish and Wildlife Service (USFWS) completed its biological opinion on the potential impact on threatened and endangered species of plans by the Bureau of Reclamation to renew 67 CVP water service contracts. The biological opinion is required under the federal Endangered Species Act and provides USFWS the opportunity to evaluate the potential impacts of water contract renewals on listed species. Upon finding that the proposed action will jeopardize threatened or endangered species, the USFWS must recommend "reasonable and prudent" alternatives to minimize the potential harm.

California RICE Industry Association

Not surprisingly, USFWS has decided that the interim renewal of water service contracts for three years will jeopardize threatened and endangered species throughout the Central Valley. The surprise is in the "reasonable and prudent" alternatives. These would greatly increase the federal government's intrusion into day-to-day farming operations. Specifically, the opinion requires the Bureau of Reclamation to do the following:

1. Undertake a comprehensive survey of the lands in the service area to delineate the location of habitat for listed species. The analysis is to be used by the Bureau to:

    - document and map habitats suitable (not necessarily occupied) for listed species
    - survey distribution of the giant garter snake, and other species
    - document recent habitat losses
    - develop and implément a program to compensate for habitat losses (land acquisition)
    - provide notice to landowners of the location of potential habitat
    - inform land owners of the protections afforded listed species under the Act

2. Develop and implement a plan to identify and protect (acquire) habitats requiring immediate protection.

3. Develop and implement a plan to eliminate the potential for harm for listed species from operation

and maintenance of CVP facilities. The plan will address pest and weed control activities, soil erosion and all maintenance/farming operations by reclamation districts, water contractors and individual farmers.

4. Establish mandatory guidelines for the use of herbicides, rodenticides, and other pesticides on land receiving CVP water.

5. Ensure that districts do not supply water to users unless the user agrees to provide access to his or her property to Bureau personnel for the purpose of surveying for the presence of listed species or habitat.

6. Require land owners to inform the Bureau and water district of how they intend to use CVP water prior to receiving water.

7. Require land owners to notify the Bureau and District of any proposed change in the use of water. No delivery of CVP water for a new or changed use will be allowed without prior approval of both the Bureau and USFWS.

8. Evaluate each water district's water uses, crop patterns, agricultural drainage and pesticide use.

9. Develop Integrated Pest Management (IPM) plans to reduce the amount of pesticide applied to CVP lands and facilities and incorporate terms into long-term water contracts requiring "appropriate IPM practices on all agricultural lands receiving CVP water."

CRIA is talking to the Bureau, USFWS and representatives of various water districts regarding the biological opinion. The Bureau and USFWS will be meeting to consider changes to the document.

Finally, even if not served by the CVP, rice producers should be alarmed by this proposal because it inserts a very intrusive federal government role in the California rice industry's use of pesticides. Precedents count for a lot, and we could expect the results of such action to serve as justification for government to later intrude into non-CVP areas. And, this action would serve as another burdensome layer on top of State regulatory agencies with purview over rice. A significant additional level of effort by CRIA would need to be undertaken.

In the end, any way you look at it, this is government regulation at its worst. We'll keep you apprised of changes and developments.

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February 11, 1995

MEMORANDUM

TO: Colusa County Board of Supervisors
Glenn County Board of Supervisors
GCID Board of Directors
Congressman Vic Fazio
Congressman Wally Herger
Congressman Richard Pombo
Congressman John Doolittle
Congressman Don Young
California Senator Maurice Johannnessen
California Assemblyman Tom Woods
Federal Committee on Resources/Mr. Tim Glidden
Mr. Tim LeFever
Mr. Bruce Sessions/KPAY radio
Mr. Alan Etchepare
Mr. Greg Ramos
Mr. Jim Kalfsbeek
Mr. Steve Dennis
Ms. Virginia Kizer/Colusa county Farm Bureau
Family Water Alliance Board of Directors
Family Water Alliance Associate Directors
Mr. John Poyner/Colusa County District Attorney
Mr. Jerry Shadinger/Colusa County Sheriff
Mr. Robert Alvernaz
Mr. Roger Thomas
Colusa County Sun Herald
Colusa County Home Rule Committee
Glenn County Home Rule Committee
Colusa County Ag Commissioner
Glenn County Ag Commissioner
Mrs. Mary Wells/Westside Water District
LaGrande Water District
Davis Water District

FROM: Marion C. Mathis
Susan A. Sutton

RE: Revised opinion issued by U.S. Fish and Wildlife on renewal of CVP contracts.

Attached is a copy of the revised biological opinion issued by U.S. fish and Wildlife on 2/10/95.

It is our opinion that while some language has been softened from the original BO and it appears that the "critical needs" section has been moved to the 120 day comment period, the intent of the document is the same. That intent being land use control, circumvention of Congressional intent, and unfunded mandates. A cost benefit analysis should be demanded before any decision is made about the BO.

The Service believes that the terms and conditions of the BO are "reasonable and prudent" and must be undertaken and included in all contract renewals. To achieve their objectives, they state that discussions must center on supportable scientific data and not the legal (private property rights) and institutional positions of the various parties!

We do not believe that the terms and conditions of the BO are "reasonable and prudent."

We sight just a few items that stood out above others.

REASONABLE AND PRUDENT MEASURES?

1. The Bureau shall complete a comprehensive survey of all lands in the service areas to ascertain the distribution of all remaining habitat of listed species and notify all contractors of the location of wildlands suitable for listed wildlife species.

2. The Bureau shall develop and implement a plan to prevent take associated with operation and maintenance of CVP facilities, and pest control activities by farmers receiving water.

3. The Bureau shall ensure that the districts and landowners receiving CVP water cooperate with Reclamation and the USF&WS in implementing protections for listed wildlife species habitat.

4. The Bureau should develop and implement a plan to minimize the impacts of habitat loss on the California red-legged frog associated with delivery of CVP water.

TERMS AND CONDITIONS:

1. Survey and identify potential habitat

2. Develop a plan to eliminate the potential for take of all maintenance and farming operations by water contractors and individual farmers.

3. Identify all potential land use changes associated with water use at least one year before they take place.

a. The Service will take appropriate action before water is delivered to the land for the changed purpose.

b. The Bureau will work with the districts and landowners to secure permission for access to property for surveys of the presence of listed species or their habitats.

c. Delivery of water for the proposed land use change may commence after it is determined that there will be no adverse effect to listed or proposed species.

REPORTING REQUIREMENTS:

1. The Bureau agreed that compensation habitat would be provided through management or acquisition in perpetuity.

2. The Bureau shall require all contractors and farmer to report immediately the any information about take or suspected take of listed wildlife species. Notification shall include the date, time and precise location of the incident/specimen and other pertinent information.

3. The Bureau shall require specific care of dead, injured or sick animals and the reporting of such.

To insure implementation of the BO, The Service, the Bureau and the California Dept of Fish and Game will set up a separate bureaucracy.

CRITICAL NEEDS:PLAN BASIS

1. Giant Garter Snake
   a. survey for presence
   b. design and implement a reserve system both wetland and upland habitat.
   c. establish mitigation bank
   d. establish minimum water deliveries to ensure suitable habitat.
   e. do not implement any water conservation measures that can harm garter snakes such as concrete linings or vegetation control of conveyance.

Congress of the United States
House of Representatives
Washington, DC 20515

Feb. 16, 1995

The Honorable Bruce Babbitt
Secretary of Interior
Washington, DC 20240

Dear Mr. Secretary:

Sixty-five long-term water service contractors in the Central Valley Project (CVP) of California have recently negotiated interim renewal of 67 contracts with the Bureau of Reclamation (Reclamation) pursuant to provisions of the Central Valley Project Improvement Act (Act). The renewal contracts will be for a maximum of three years in duration and will essentially provide for delivery of the same water to the same lands for the same purposes as provided under previous contracts.

Pursuant to Section 7 of the Endangered Species Act, Reclamation has consulted with the United States Fish and Wildlife Service (Service) regarding the potential impact of these renewals upon species protected by the Act.

The Service issued a Biological Opinion (Opinion) on Dec. 23, 1994 which sought to impose conditions upon the renewal of contracts which were simply outrageous and which bore no resemblance to any impacts associated with the three-year interim contract renewals.

The renewing contractors demanded, and ultimately Reclamation and the Service agreed, to reinitiate the consultation pursuant to Section 7 and to focus the Opinion on those impacts which are clearly associated with the three-year interim contract renewals.

Notwithstanding this commitment, the Service is still demanding the inclusion of many requirements which unreasonably inject it into the management of farming operations. These requirements include, among other things, requirements that pest management activities be approved by the Service before they are implemented upon land served with CVP water; notification and approval of proposed land-use changes, including changes in crops; the implementation of a preserve system for certain species which require the acquisition and dedication of land and water to the preservation of such species; and a prohibition against delivery of CVP water to any lands until such requirements have been met.

These intrusions into on-farm management activities are not supported by any current field species or habitat surveys indicating that activities within any of the 65 renewing

2. Contaminants

   a. common ag practices have resulted in the contamination of the Central Valley environment
   b. evaluate each water district's water uses, crop patterns, drainage, and pesticide use.
   c. establish a monitoring program to determine contaminant levels in irrigation water.
   d. consideration of over eighteen species which may be affected by such contaminants.
   e. develop an integrated pest management plan with the Service and the EPA.

C

RELEASE FROM
CONGRESSMAN
VIC FAZIO

3rd Congressional District — California

FOR IMMEDIATE RELEASE
February 16, 1995

Contact: Richard Harris
(916) 666-5521

Fazio: CVP Biological Opinion Mother of All Power Grabs

Congressman Vic Fazio today joined five other Central Valley congressmen in writing the Director of the U.S. Fish and Wildlife Service, Mollie Beattie, urging the Service to "cure the defects" in a draft Biological Opinion for the interim renewal of Central Valley Project (CVP) water contracts.

"Renewing CVP contracts was not meant to trigger the mother of all power grabs," Fazio said.

Fazio was referring to provisions in the draft Opinion requiring Fish and Wildlife Service approval of crop pattern, land use and pest management changes which are according to the letter, "simply unreasonable and beyond the expertise of water districts, (Bureau of) Reclamation and the Service."

The letter contends the Opinion "intrudes without authority into the management and operation decisions of water users" and attempts as a condition of three-year interim contracts "to rectify alleged impacts" on species created when the Central Valley Project was built.

Importantly, according to Fazio, "The Service has to recognize that contract renewals result in delivering the same water to the same places for the same purposes".

The bi-partisan group of valley congressmen also sent a letter today to Secretary of the Interior, Bruce Babbitt, urging him to limit "any Opinion related to renewal of the 67 contracts (recently negotiated by the Bureau of Reclamation and CVP water users) be limited in its analysis to impacts actually caused by renewal of the contracts."

The letter further asks Babbitt to "direct the Service to acknowledge that interim contract renewal is not the forum within which to develop a long-term conservation plan for threatened and endangered species in the Central Valley of California."

Central Valley Members of Congress who signed the letters Vic Fazio, Calvin Dooley, Gary Condit, George Radanovich, John T. Doolittle, and Richard Pombo.

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districts will have any impact upon the enumerated species.

The draft Opinion is intended to impose upon Reclamation, the renewing districts, and the water users the obligation to prepare and develop long-term recovery plans for the species enumerated even though there is no relationship between the impacts created by renewal of these contracts and the proposed requirements.

There are many other problems with the proposed Opinion, all of which seem to relate to the Service's desire to force Reclamation to develop a long-term species conservation plan at the earliest possible time, even though sufficient data and surveys do not exist which support such requirements. Importantly, the Service has not adopted recovery plans for any of these species.

On behalf of our constituents, we request that you ensure that any Opinion related to renewal of the 67 contracts be limited in its analysis to impacts actually caused by renewal of the contracts. Further, we ask that you direct the Service to acknowledge that interim contract renewal is not the forum within which to develop a long-term conservation plan for threatened and endangered species in the Central Valley of California.

Your immediate attention to this issue is required inasmuch as more than 50 of the renewal contracts in question must be executed by Feb. 28, 1995.

Sincerely,

CALVIN DOOLEY
Member of Congress

GEORGE RADANOVICH
Member of Congress

VIC FAZIO
Member of Congress

JOHN DOOLITTLE
Member of Congress

GARY CONDIT
Member of Congress

RICHARD POMBO
Member of Congress

E

Preserving Vernal Pool Habitat with Cows!

by Sheila Gaertner, UC Cooperative Extension Farm Advisor
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This spring traveling along highway 99 just north of Chico, you can't help but notice the spectacular display of wildflowers that seem to carpet the Vina Plains. The wet and warm winter seemed to provide ideal conditions for the germination, growth, and maturity of annual wildflowers and grasses. There are a few rangeland sites along the highway were the wildflowers are scarce. On these sites seed heads of foxtail barley waiver in the wind or gray mats of medusa head litter cover the ground. Livestock have been excluded from these sites.

This year livestock producers and range managers have a very vivid, visual example of how grazing can enhance the environment. Grazing directly removes plant material which can compete with new seedlings for light and water. The hoof action and trampling of livestock can put dead plant material in contact with decomposer bacteria and invertebrates in the soil to increase soil nutrient cycling and litter turnover. Simply put, grazing livestock can increase and/or maintain the productivity and biological diversity of the rangeland.

Grazing livestock may be particularly important for preserving the plant and animal diversity of vernal pools. Many of the wildflowers that are so evident on grazed lands on the Vina Plains are peculiar to vernal pools. Vernal pools are seasonally dry depressions which catch and hold water from winter precipitation until it evaporates or percolates into the soil in the spring or summer. Vernal pools are a type of wetland unique to California and a few other places in the world. They provide habitat for an unusual diversity of crustaceans (fairy shrimp), native grasses and wildflowers. Currently, three vernal pool plants and four vernal pool invertebrates species occurring in the Sacramento Valley are listed as threatened or endangered under the Endangered Species Act.

The concern for vernal pools has arisen because vernal pool habitats in California have been eliminated by a variety of human activities which directly affect vernal pool hydrology. These activities may include urban development, water supply/flood control activities, and conversion of land to intensive agricultural uses. **However, beyond these activities, the most significant threat to vernal pool habitats is WEEDS (exotic annual plants).**

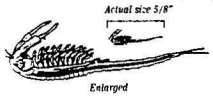
The Wall Street Journal
Friday, October 21, 1994

D

A Fairy Shrimp Tale

Need one more reason why voters are going to register an anti-government vote Nov. 8? Meet the fairy shrimp. The shrimp, as aficionados of this subject probably have guessed, is at the center of a tiff over the Endangered Species Act in the Sacramento, Calif., area. Our protoganist, illustrated nearby, is a fly-sized invertebrate that was discovered only four years ago. Like other critters deemed worthy of federal protection, the poetically named fairy shrimp conjures warm and fuzzy associations. But it's really pretty unromantic.

It's a distant cousin of the "sea monkeys" that used to be sold in the back of comic books. So hardy they



could be mailed across the country, the sea monkeys would flourish in any pot of water.

The fairy shrimp is no different. Millions are to be found in irrigation ditches, ponds, truck ruts – just about any place that a small body of water collects even for a short period. It's found in California, Europe, Asia, Australia and Africa.

Yet last month, the U.S. Fish and Wildlife Service added three varieties of the fairy shrimp to the endangered species list. How that decision was made – and its staggering financial implications for the Sacramento area – speaks volumes about the cavalier manner in which federal bureaucrats operate today.

The federal listing decision was taken in response to a one-paragraph petition submitted by a Davis, Calif., botanist in 1990. The federal proposal to protect the shrimp, approved in its final form by Interior Secretary Bruce Babbitt, doesn't actually claim the thing is in danger of extinction. What it claims is that the fairy shrimp's habitat – "vernal pools and swales," a.k.a. mud holes – are "imperiled." What's the basis for this claim? A 1978 paper written by a graduate student in botany who now admits he could not substantiate the study's conclusions.

This 1978 paper, cited by the Fish and Wildlife Service in the Federal Register (May 8, 1992), claimed that "there were an estimated six million acres of vernal pools in the Central Valley at the time Europeans arrived in California. By 1970 . . . 90% of this amount was destroyed largely by human activities."

Let's see if we understand this: The government wants to put a brake on centuries of European development in California that has caused a sharp decline in mud holes? What next – ripping up the streets of San Francisco to return it to pre-European condition?

The most galling part of this action is that the Fish and Wildlife bureaucrats seem so impervious to reasoned argument. Developers opposed to the listing decision hired a respected environmental consulting firm, Sugnet & Associates, to study the fairy shrimp. Sugnet found 1,226 vernal pools across California containing fairy shrimp – probably only a small fraction of the total number. And far from becoming extinct, mud holes, or vernal pools, cover roughly one million acres in California.

This is the most rigorous scientific study ever undertaken of the fairy shrimp's habitat, yet the Fish and Wildlife Service didn't feel the need to respond to its conclusions during its decision-making process. "The only response we got was an acknowledgement that they've received the documents," says John Sitilides, a spokesman for the developers.

Fish and Wildlife bureaucrats proceeded with the listing decision, saying it would affect only "a small fraction, if that" of development in the Sacramento area. But it's already cut a wide swath. Among its more embarrassing consequences has been the shutdown of a pony ranch that housed a Sacramento program for needy and disabled children. (Its landlord, a construction company, had to take over the property because its other mining operations have been shut down by the shrimp listing.) Over the next decade the listing decision could cost the Sacramento-area housing industry $500 million; there will also be a substantial cost to Central Valley farmers.

The fairy shrimp may also have large political repercussions for the President in a state he feels he must carry in 1996. The listing decision has already drawn protests from a bipartisan group of California lawmakers. Gov. Pete Wilson calls it a "new low for the Endangered Species Act," and even liberal Democratic Reps. Vic Fazio and Bob Matsui have signed letters of protest.

Secretary Babbitt is likely to get an earful on the subject today when he visits Sacramento for a fund-raiser on behalf of Democratic gubernatorial hopeful Kathleen Brown. Turns out that many of the developers worst hit by the shrimp decision have been big Democratic donors. But with the bureaucracy disconnected from just about everything else in the human-populated world, why should it notice politics?

What this points to is the need for drastic and immediate reform of the Endangered Species Act. More than that, this shrimp tale shows the need to make government more responsive to the concerns of ordinary people – not just to the environmental pressure groups. If indeed the roof falls in on the Democrats next month, count the lack of rational control of the Endangered Species machinery as among the reasons.

Some of the exotic annual plants that threaten vernal pool habitats dominate most of California's grass rangelands. These plants were first introduced in 1769 with the arrival of the Spanish Missions. They evolved in Europe during thousands of years of heavy grazing and periodic drought. By their very nature, exotic annual plants are aggressive and highly competitive. They now present a formidable obstacle to the re-establishment and sustainability of California's native plants. One place native plants have been able to maintain a competitive edge over these exotics is in vernal pools. In fact, vernal pools are often dominated by native plants. Livestock grazing may be instrumental in controlling the exotic invaders in vernal pool habitats.

For example, medusahead is one of the dominate exotic annual grasses surrounding vernal pools on the Vina Plains. Once medusahead is established, it grows in dense stands and forms a mat of stems 2 to 5 inches thick. Evidence indicates that other plants fail to grow under this dense litter cover. Field observations in and around ungrazed pools on the Vina Plains show that a dense thatch of medusahead can develop right to the pool's edge. A managed livestock grazing program can control medusahead. This allows for a greater diversity of range plants including vernal pool wildflowers.

Similarly, grazing can sustain vernal pool habitat for stands of *Orcuttia* and *Neostaphia*, endangered native vernal pool plants. Observations across a fenceline that straddles the main portion of a vernal pool at Rancho Seco near Sacramento suggest that a managed grazing regime may help to control a competing plant, *Eleocharis*, (sedge). The density of *Eleocharis* on the side of the pool which is heavily grazed was significantly reduced.

In addition to controlling weedy invaders in vernal pool habitats, grazing may also play an important part in maintaining the hydrology of vernal pools. Although vernal pools appear to initially fill from direct precipitation, surface runoff may be essential for maintaining an adequate inundation period. Many studies have shown that the amount of runoff from rangeland sites is significantly influenced by the amount of vegetation. Grazing animals may help to maintain the hydrology of the uplands surrounding vernal pools by preventing the excessive accumulation of plant material.

Mechanical impact by grazing animals may also be important to help maintain vernal pool hydrology by sustaining the soil conditions that create vernal pool habitat. Research throughout the US on the hydrologic impacts of grazing intensities has repeatedly shown that ungrazed rates of infiltration are statistically different from grazed rates at any grazing intensity. It would appear from these studies that vernal pool habitats on annual grasslands will be maintained if current grazing intensities continue.

In addition to maintaining the hydrologic aspects of a vernal pool, the trampling of grazing animals may also influence the diversity of microecosystems within a vernal pool. When vernal pools are wet, animal disturbances can cause microdepressions. These microdepressions may enable shallower pools to provide habitat for vernal pool plants and animals generally found in deeper vernal pools. For example, *Downigia bella*, a vernal pool wildflower often covers the bottom of deeper pools, but it has been found in shallower pools within microdepressions created by hoofs. Similarly, vernal pool fairy shrimp have been observed in hoof prints when the remaining area of the vernal pool is dry.

A case can clearly be made for the benefits of livestock grazing in vernal pool habitats. Native vernal pool plants and animals have co-existed in these grazed ecosystems for at least the past century. The impact that grazing animals had on vernal pool ecosystem before the arrival of the Spaniards and their livestock is debatable. However, it should be remembered that since the arrival of the Spaniards the grasslands surrounding vernal pools significantly changed. It is this "newly" evolved grassland, full of exotic aggressive annuals, that must be managed if California's native species are to be conserved. Grassland management in vernal pool habitats should not only control the invasion of exotic annuals plants, but also should not compromise the hydrology that creates vernal pools. Excluding livestock grazing from vernal pool habitats without an alternative proven method to manage the surrounding grassland could (and has) resulted in a decline in biological diversity.

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December 8, 1994

NEWSLETTER

FAIRY SHRIMP ARE ADDED TO THE ENDANGERED SPECIES LIST 1

THE LEGISLATURE CONTINUES MODEST REFORM
OF CALIFORNIA ENVIRONMENTAL QUALITY ACT 3

CALIFORNIA SUPREME COURT RULES THAT REGULATORY TAKINGS
CLAIMS BASED ON SUBDIVISION MAPS MUST BE FILED WITHIN
90 DAYS AND FINDS CURRENT ADMINISTRATIVE LAND USE HEARINGS
INADEQUATE FOR DETERMINING THE MERITS OF SUCH CLAIMS 5

CALIFORNIA SUPREME COURT TAKES
CASE ON ARBITRATION CLAUSES OFF THE BOOKS 6

CALIFORNIA APPELLATE COURT SHOOTS DOWN ENVIRONMENTAL
IMPACT REPORT--THE ONLY APPELLATE CASE TO DO SO IN 1994 7

STATEMENTS MADE DURING PUBLIC COMMENT AND REVIEW PROCESS ARE
IMMUNE FROM TORT LIABILITY, RULES CALIFORNIA COURT OF APPEAL 8

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Washburn, Briscoe & McCarthy specializes in civil litigation, appellate advocacy, representation before regulatory agencies, and legislative matters in the fields of land use, land title, environmental, and natural resource law.

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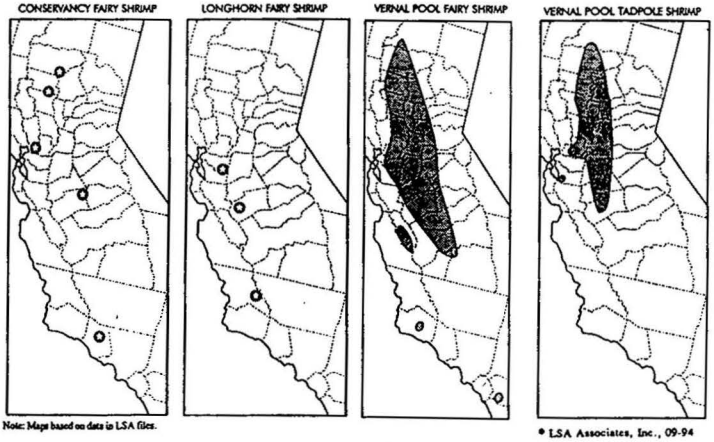
FAIRY SHRIMP ARE ADDED TO THE ENDANGERED SPECIES LIST

The U.S. Fish and Wildlife Service recently listed four species of freshwater shrimp as endangered or threatened. Landowners across much of California, where the shrimp live, are bracing for restrictions that could stop them from developing or improving their land–or perhaps even continuing to use it as they do today.

The Service listed the Conservancy fairy shrimp, longhorn fairy shrimp, and vernal pool tadpole shrimp as endangered and the vernal pool fairy shrimp as threatened. The Service decided against listing a fifth species, the California linderiella, saying that information collected during the two years since the listing was proposed revealed this species to be more abundant than previously known. The four newly listed shrimp, which typically grow less than an inch long, live in temporary

bodies of fresh water like vernal pools and seasonal wetlands--and, occasionally, waterfilled ditches and tire tracks--in northern, central, and isolated areas of southern California. According to the Service, these species are in "danger of extinction principally as a result of urban development, conversion of native habitats to agriculture, and stochastic (random) extinction by virtue of the small isolated nature of many of the remaining populations." In reaching this conclusion, the Service brushed aside the most extensive study of the subject, financed by landowners, showing vernal pools dotting roughly one million acres of land and the shrimp living in thousands of those pools.



Note: Maps based on data in LSA files.

* LSA Associates, Inc., 09-94

The federal Endangered Species Act protects endangered and threatened species and their habitat in two basic ways. First, the act prohibits any person from "taking" a listed species without a permit. Congress defined "take" in the act to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Service, in turn, defined "harm" and "harass" by regulation to include some types of habitat modification. This regulatory embellishment was upheld by one federal appellate court several years ago, and more recently struck down by another. (See Newsletters of October 14, 1988, and April 25, 1994.) Second, the act calls on federal agencies, in "consultation" with the Service, to ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the adverse modification of the officially designated "critical habitat" of any such species.

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THE ECONOMIC IMPACT OF CRITICAL HABITAT DESIGNATION ON CATTLE RANCHES IN FORT KLAMATH, OREGON

John S. Nalivka
March 17, 1995

These comments pertain to the economic impact to Fort Klamath ranchers using water sources included in the critical habitat designation for the Lost River and Shortnose Suckers in the Klamath Basin. While much of the probable impact is linked to changes in the distribution of water within the Basin, an additional and often overlooked impact which occurs regardless of whether there is any alteration of water management, concerns the added uncertainty and risk faced by ranchers and other resource users.

OVERVIEW OF FORT KLAMATH

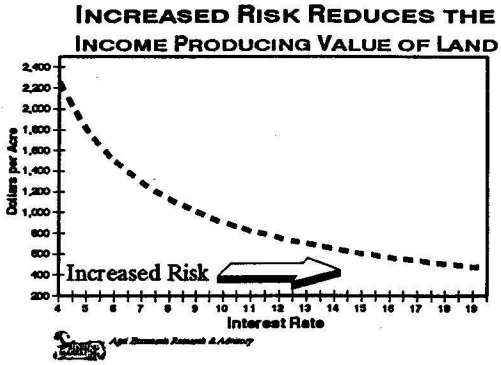
To the tourist travelling through Fort Klamath en route to Crater Lake or to the fisherman enjoying world-class trout fishing on the Wood River, the immediate impression of this valley on the northern end of Klamath Lake may be wondrous awe over the serene beauty of the area. However, while the scenic beauty and recreation offered by the area may present a first impression, the foundation of Fort Klamath's economy is the area's cattle ranches. Native pastures irrigated with water from the Wood River, Annie Creek, Crooked Creek, Agency Creek, and Seven Mile Creek, afford some of the highest quality grazing in the Pacific Northwest to local cattle ranches. This quality grazing and the ensuing opportunity to produce beef were recognized as early as 1863 when Fort Klamath was built to protect the early settlers. Some of the local ranches still adhering to this customary usage of the resources, date to the early Fort Klamath period. Consequently, Fort Klamath's culture has remained generally intact

leaving the area as one of the largest irrigated pasture areas on the West Coast which is not farmed. In fact, over time, customary and beneficial usage of the native pastures has excluded even hay production as a viable alternative. This historic presence and long term stability of the cattle industry in Fort Klamath leads to two important economic considerations: first, because the economic viability of the local cattle ranches is dependent on forage and water, resource stewardship has been a priority. In fact, as a consequent benefit, cattle grazing has played a major role in the enhancement of migratory bird habitat in the Klamath Basin. Second, the industry has formed the foundation for a viable local economy as well as rendered an important contribution to the economy of the Klamath Basin and Klamath County. Any policy, legislation or regulation which fails to consider the development of an industry and the role which it plays in a local economy will ultimately have a negative impact on the local and regional economy.

DESIGNATED CRITICAL HABITAT & LAND VALUES

Ranchers in Fort Klamath, the Klamath Basin, and throughout the United States are faced with risk and uncertainty on a daily basis. While the occurrence of many events creating risk and uncertainty in agriculture, such as weather, are inevitable and cannot be controlled, the impact can be minimized through informed planning and prudent resource stewardship. The listing of an endangered species and the designation of critical habitat for that species creates an ominous sense of uncertainty which is difficult to deal with because it is "open-ended". That is, it may not be just one change in resource policy. Instead, the discretionary nature of the regulations, leave the rancher faced with the uncertainty that there may be future policy decisions that will also impact his business and his livelihood. This situation is different than the inherent risk and uncertainty associated with weather or markets. This type of uncertainty can be far more detrimental to the economic well-being of ranchers, particularly with the potential existing for significant deflation of land values, agriculture's largest asset. Because most ranchers have a largest share of their capital held as land, any factor which reduces the value of the land also reduces the rancher's net worth, the ability to borrow funds, and their incentive to make long term investments.

Land and water are the major inputs to forage production and ultimately, beef production at Fort Klamath. Because the water is important to the quality and quantity of forage, water's contribution to the value of the land is significant. Perhaps, as much as 80% to 90% of the value of an acre of land can be attributed to the availability and application of water to that acre. If the availability of water is hindered, then forage production is limited and ultimately so, is income. Thus, the long term income stream generated by that acre is reduced and this reduction in the income-producing capability of the land in agriculture economy-dependent regions such as the Klamath Basin, leads to a decline in land values.



For a yearling steer grazing operation, net returns have averaged over $90 per acre in recent years. If that net return of $90 per acre is capitalized at a 6.5% rate, the income-producing contribution to the land value alone would be nearly $1,400. By adding an additional risk premium of 2% and raising the capitalization rate to 8.5%, the same capitalized income value will decline to $1,058. This doesn't even take into account a reduction in per acre returns as a result of less forage production if the available water is reduced. Quality grazing regions of

the United Stated such as Fort Klamath have a distinct advantage in that they are able to realize a distinct economic benefit. Consequently, these ranchers have lower costs than in many other areas, are able to remain competitive, and contribute to a stable local economy. A reduction in the quantity and quality of forage disrupts this economic balance and leads to lower gains (pounds of beef produced) and reduced efficiency of forage utilization (pounds of beef produced per acre of forage produced).

RISK AND UNCERTAINTY IN AGRICULTURE

ECO Northwest, in its analysis prepared for the Fish and Wildlife Service, chooses to ignore or downplay the critical issue of risk and uncertainty to agriculture with little consideration to the de-stabilizing impact that a high degree of uncertainty and unmanageable risk can have upon the industry. In their report, they failed to consider the role that the cattle industry plays in maintaining an economic balance and its impact on the local economy and the economy of the Klamath Basin. This may have been by choice or by lack of understanding of the evolution of the local cattle industry, its stability, and subsequent linkages to the economy. Oregon State University's economic report for Klamath County expressed the importance of agriculture to the local economy in their statement, "through their linkages with other industries, most Klamath County residents are affected in some way by changes in these two industries."[1]

Because the microeconomic impact is the relevant impact, risk plays a much greater role. At the local level where decisions occur at the margin and alternatives are fewer, the economic impact, though seemingly of little consequence to many, can be much greater and have a more long lasting impact.

In a given region, successful agricultural producers seek a balance of resource use which offers

[1]Johnson, Rebecca, Bruce Weber, and Robert Chase, "Klamath County Economic Report: An Input-Output Analysis," Department of Forest Resources, Oregon State University, Corvallis, Oregon, February 1994.

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the greatest opportunity to optimize production and returns. In other words, through experience, they simply have an understanding of the resources and therefore, make the best use of those resources to achieve optimal production and sustained yield. Experience with and knowledge of the resources is one of the best tools a rancher has to manage risk. Consequently, from a practical or economic standpoint, it is "easier said than done" to just find grazing elsewhere as was stated in ECO Northwest's study. The continued use of irrigated pasture in the Fort Klamath area by established ranchers is no exception. Through years of experience, ranchers have found that the characteristics of northern California and the Klamath Basin offer a unique opportunity to cattle grazing operations. This grazing situation combines winter grazing in northern California with the strong irrigated pasture forages at Fort Klamath for summer grazing or many ranchers simply use the Fort Klamath pastures to graze purchased stocker cattle during the summer. Generally, the grazing season is from April until November with daily gain averaging about 2½ lbs. Depending upon the weight and condition of the cattle, early season gains may reach 3 lbs. There are cow-calf pairs grazed in the valley, but through historic use, local ranchers have generally found these operations not as economically feasible. Thus, the role of custom and culture is important to success in ranching.

The historic stocking rates at Fort Klamath for Class III and IV land are 1 acre per 1 to 1 ¼ steers for 5 months grazing or 1 to 2 cow-calf pair for 1 month. Ranchers have found that the greatest benefit, both from the standpoint of production and economics, is derived by grazing yearling cattle at the north end of the valley where there are mostly Class III soils and cows at the south end where Class IV soils become increasingly more prevalent.

The competitive nature of the cattle industry is making it imperative for ranchers to find a long term economic advantage with the available resources. Ranchers in Fort Klamath have a distinct economic advantage with their grazing situation. It is the quality grazing resource found in areas such as Fort Klamath that only exists with irrigation, proper management, and investment that contributes to the economic stability of cattle ranching in the area and the economy of the

Klamath Basin. Designation of critical habitat and the ensuing possibility of reduced water available for irrigation would upset that economic advantage and significantly reduce returns to ranchers.

THE ECONOMIC LINKAGE TO THE KLAMATH BASIN

The cost side of cattle production is crucial to the long term economic viability of any ranch. Ranchers must seek a long term strategy which minimizes their costs of operating the ranch while maintaining and enhancing the resources or inputs (forage and water) to raising cattle and producing pounds of beef. But in addition, because successful ranchers are making long term investments and spending money to operate their ranches, there is derived benefit to the community from these investments and costs to the rancher in Fort Klamath. For each dollar spent by ranchers to maintain and enhance forage production on irrigated pastures, that same dollar is income to someone supplying goods and services in the area, whether the cost is an annual expense for labor and material or the depreciation a capital expense. Vertical integration through the marketing channel and value-added contribution to the raw natural resource has the greatest impact on the local economy. It was estimated by Oregon State University that in 1992, in-county purchases for intermediate inputs by Klamath County agricultural producers were $26.5 million or 56% of total purchases.[2] Livestock producers, purchased $17 million worth of their inputs in the county and this represented 65% of the total. This is an important element to the entire issue of environmental regulation, agriculture, and the economics of rural communities. The ability of ranchers to invest, improve their resource base, and make long term contributions to the local economy is only hindered by the risk and uncertainty which results from the designation of critical habitat.

While it has been noted that there has been increased economic activity in trade and services and a subsequent increase in the ratio of service-related jobs to manufacturing jobs, these sectors

[2]Ibid.

alone cannot be sustained without the significant contribution made by production industries like agriculture and timber. This was evidenced by 1992 employment statistics for Klamath County. While 70% of the work force is employed in service industries, these workers generated only half of the 1992 output generated by the remaining one-third of the work force in the goods-producing industries, ie timber and agriculture.[3]

Coupled with the contribution made to the economy through the multiplier effect is the direct contribution to tax revenue from agricultural producing land. In the Fort Klamath area, the assessed value of agricultural land for property taxes is $21,399,470, a significant contribution to the local economy. For that land included in the proposed designated critical habitat, the assessed value is $8,303,120, also of significance. For the entire Klamath Basin, the lands included in the designated critical habitat total $58,000,000 in assessed value. Any reduction in these assessed values as the result of reduced productivity would mean a substantial loss of tax revenue to Klamath County and this could be of significant economic consequence to the county and the services it provides.

[3]Ibid.

The following table provides a summary of the annual fixed and variable costs associated with grazing Class III irrigated pastures at Fort Klamath.

ANNUAL EXPENSES
FORT KLAMATH IRRIGATED PASTURES
FORT KLAMATH, OREGON

Expense Item	Per Acre
Insurance	1.00
Field Dragging	1.93
Fences	
Depreciation	2.20
Annual Maintenance	2.53
Irrigation Structures	
Depreciation	1.88
Erosion Control	2.00
Annual Maintenance	11.14
Fire Patrol	0.20
Management	3.51
Total Expenses	**$26.39**

ADDITIONAL COMMENTS RELATIVE TO THE ECO NORTHWEST REPORT

The impact of policy decisions and laws affecting agriculture are nearly always greater in the rural community which is the focal point of agricultural production. These isolated impacts diminish as one moves further away from that rural community to the extent that they may become nonexistent. ECO Northwest's reference to the size of the Klamath Basin cattle industry as inconsequential with respect to the U.S. industry is correct. But, the comparison is irrelevant. The focus of the impact analysis should be on local and regional economies, not at

the national level. The U.S. cattle industry and U.S. agriculture is comprised of many smaller local industries. The direction of national policies cannot be evaluated only with regard to the national economy or the national welfare while ignoring the importance of the impact on the local or regional economy just because an industry was deemed too small to be of relevance anyway. An industry may seem inconsequential by itself when compared to the national level, but the national economy is the sum total of many smaller local and regional industries.

The authors of the report stated that they had no information about the potential impact on individual communities and stated, "that even though the impact may be smaller in the area's smaller communities, it also may be more severe because they have less ability to cope with change smoothly." Although this statement strikes at the heart of the issue of economic impact, it does not pursue this issue in consideration of its importance and there was no quantitative evidence of economic impact analysis completed at this microeconomic or community level. The fact that the authors of the ECO Northwest study could supply no relevant and quantifiable analysis with regard to the "grassroots" impact of the listing and/or the habitat designation only serves to reveal the inadequacy of their methodology and their conclusions.

The major consideration with regard to the economic impact of the designation stems from the value of the water supplied by the included water sources. Without this value, there can be no assessment of impact as most of the economic value is derived from the contribution of irrigation water.

Nowhere in the report authored by ECO Northwest was the value of water supplied by the Klamath Basin Reclamation Projects quantified with regard to irrigated agriculture. In the report, most of the impact relating to agriculture deals with Federal grazing and even in that regard, there are severe deficiencies in the analysis. The author's estimate of impact from a reduction in grazing is based solely on the BLM grazing fee of about $2.00 when the report was completed plus additional administrative costs. The real economic impact with regard to grazing

must take into account the total cost of utilizing an AUM of Federal grazing, ie. the non fee costs. These non fee costs range from $15 to $18 per AUM and it is these costs which truly generate the economic activity at the local level as costs to the rancher for grazing livestock are prices to the local suppliers of inputs.

In addition to the total value of the forage, which is NOT just the Federal grazing fee, the other issue concerning grazing is the interdependence of resources utilized by a ranch. In other words, while the Federal grazing impact may seem small with regard to total AUMs, the analysis must consider that those AUMs are important to the total operation of one or more ranches. The interdependence of all resources used by a ranch or farm are integral to the overall performance of the operation, it productive capacity, and ultimately, its economic value. The continued existence of this balance is more often than not necessary and this harmony is particularly evident in the forage resource with regard to season of use and forage quality.

Any disruption in the total resource balance of a ranch, for whatever reason, will lead to destabilization of the operation. If a disruption becomes long term or permanent and if management is unable to take compensatory action, then ultimately, the economic viability of the ranch is at risk. This is true for any ranch, of any size, located anywhere in the United States, but is much more critical in the West.

SUMMARY OF COMMENTS

- Fort Klamath irrigated pasture grazing is important to maintaining the balance of many ranching operations in the Klamath Basin. The grazing provided by this area coupled with winter grazing in northern California is unique and affords ranchers greater opportunity to maintain the long term economic viability of their operations.

- A large share of the net worth of cattle ranchers is captured in the value of their land holdings as land is the predominant agricultural resource. In a region where irrigation is important to the production of forage or crops, such as Fort Klamath, as much as 90% of the land value can be attributed to the value of irrigation water.

- Any reduction in the availability of water for irrigation reduces the productive capacity of the land which in turn reduces its income-producing capacity and ranch land values, and ultimately, the net worth of the rancher.

- In addition to an actual reduction in water and the ability to produce income, any potential hinderance of the ability of produce income or uncertainty with regard to the ability to produce income increases the risk, which is realized as higher interest rates, which in turn reduces the capitalized value of land or simply also reduces land values.

- If water allocations and irrigation practices are hindered as a result of the designation of critical habitat and cattle production at Fort Klamath is reduced, the impact will be noted through the economic multiplier effect and reduced tax revenue as cattle production is an important industry in the region. Cattle production in Klamath County accounts for two-thirds of livestock production and one-third of all agricultural production. Unique, quality grazing area such as Fort Klamath make a significant contribution to this agricultural economy.

- Wildlife experts have noted the positive relationship between grazing and the migratory bird populations in the Klamath Basin, so it would be reasonable to believe that a reduction in cattle production at Fort Klamath as a result of a reduction in irrigation water would also have a negative effect on bird populations.

THE ECO NORTHWEST STUDY PREPARED FOR THE U.S. FISH AND WILDLIFE IS FLAWED:

- First, referring to resource users as "habitat degraders" in an economic impact analysis suggest bias on the part of the authors.

- Second, using the agency survey data to directly correlate economic impact without further quantifying the value of water or forage is flawed methodology.

- Third, the value of water was not quantified.

- Fourth, the important issue of risk and uncertainty because of the listing and designation was not given proper credence in the study. The report indicates that the designation "signals" industries who engage in "habitat degrading activities" such as logging and livestock, that the "supply of habitat subjected to such practices will be diminished." "Firms and workers will adjust their plan accordingly."

  The designation of critical habitat and what that means to the Klamath Basin concerns real people's lives and the decisions made every day by businessmen in the Klamath Basin as they deal with the risks facing their businesses. These people's concerns with their economic well-being, perceived and/or real, are only trivialized by ECO Northwest's report.

- Fifth, Too much attention was given to the national level in terms of welfare economics and this is much more subjective. The predominant economic and social issue concerns the local and regional impacts, which has little relevance to "the designation telling people throughout the U.S. and the world that the federal government intends to maintain and even enhance, the intrinsic value of the endangered suckers and the associated flora and fauna." Again, the concerns and well-being of real people in the Klamath Basin was only trivialized by this type of economic analysis.

- Sixth, The economic analysis performed by ECO Northwest was long on textbook theory and short on economic reality.

H

COLUSA-GLENN PRODUCTION CREDIT ASSOCIATION
FEDERAL LAND BANK ASSOCIATION OF COLUSA, FLCA

RESOLUTION

WHEREAS, Colusa-Glenn Production Credit Association and the Federal Land Bank Association of Colusa, FLCA (Farm Credit) Associations loan collateral consists of private property such as farmland, therefore, private property rights must be protected to maintain collateral value;

WHEREAS, the Farm Credit Associations must maintain their financial integrity through the making and holding of sound and collateralized loans;

WHEREAS, Farm Credit has both short and long term loans secured by farmland that receive water from the Central Valley Project (CVP);

WHEREAS, the U.S Fish and Wildlife Service (U.S F. & W.) have issued a draft biological opinion on the potential impact on endangered species of plans by the Bureau of Reclamation to renew CVP water service contracts; and

WHEREAS, the draft biological opinion will adversely affect land values.

NOW, THEREFORE BE IT RESOLVED THAT the Joint Board of Directors of the Farm Credit Associations resolve to protect the collateral supporting their loans by opposing any requirement by U.S. F. & W. and the Bureau of Reclamation which will reduce private property rights of farm landowners; and

BE IT FURTHER RESOLVED that the Farm Credit Associations Boards will instruct their elected United States Officials to protect individual property rights guaranteed by the Constitution of the United States of America.

CERTIFICATE

I, James M. Vierra, Secretary of the Colusa-Glenn Production Credit Association and the FLBA of Colusa, FLCA, hereby certify that the above and foregoing is true and correct copy of the resolution duly adopted by the Board of Directors of said associations at a meeting held on the 15th day of February, 1995.

James M Vierra
Secretary

I

Colusa-Glenn
Farm Credit Association

Federal Land Bank Association of Colusa
Colusa-Glenn Production Credit Association
Administration Office
605 Jay Street, P.O. Box 449
Colusa, California 95932
916/458-4978

April 25, 1995

Endangered Species Act Task Force
1518 Longworth House Office Building
Washington, D.C. 20515

Re: Endangered Species Act Reform

Dear Congressmen:

Our Farm Credit Associations loan over $100 million annually to approximately 500 farmers and ranchers in Colusa and Southern Glenn Counties. The Endangered Species Act (Act) has adversely impacted many of our co-operatives member/borrowers. This in turn has affected our Associations as well as other local rural businesses (third party impact).

Because of Federal Agency actions and the listing of various species, repayment on some of our loans has been jeopardized. The impact of the Act on the dependability of water sources and the historical use of farmland to produce a profit has raised questions regarding the value of collateral securing our loans and the potential repayment of outstanding loans. We in turn have had to take funds out of our earnings to provide for additional provisions for potential loan losses.

Any reform of the Act must consider human, third party and rural America impacts. We must reduce the Federal regulation of individual rights and businesses and adhere to the Constitution of the United States of America. Any taking of private property must be fully compensated.

Thank you for your consideration. The Task Force concern regarding this issue is greatly appreciated.

Very truly yours,

Richard M. Lorenz
President

I

RML:kc

03-Jun-93

EXHIBIT J

FEDERAL WILDLIFE REFUGE IN-LIEU TAX

TAX POTENTIAL COMPARED TO FEDERAL PAYMENT

CO FY DEPOSITED CO TAX RATE YR FEDERAL FY REPORT DATE	REFUGE CODE AREA	FEDERAL ASSESSED VALUE	COUNTY TAX RATE	REFUGE TAX POTENTIAL	FEDERAL TAX IN-LIEU PAYMENT	POTENTIAL TAX LOSS	REQUIRED 3/4 FEDERAL PAYMENT	ACTUAL TAX SHORTAGE	% REQUIRED PAYMENT RECEIVED
1983-84	COLUSA								
1982-83	58-029	393,314	1.073%	4,220.26	2,272.92	1,947.34	3,165.20	892.28	
1983	58-032	1,966,568	1.073%	21,101.27	11,364.60	9,736.67	15,825.95	4,461.35	
12-20-83	58-036	2,035,398	1.073%	21,839.82	11,762.36	10,077.46	16,379.87	4,617.51	
	71-009	983,284	1.039%	10,216.32	5,682.30	4,534.02	7,662.24	1,979.94	
	71-016	4,621,436	1.039%	48,016.72	26,706.82	21,309.90	36,012.54	9,305.72	
		10,000,000		105,394.39	57,789.00	47,605.39	79,045.80	21,256.80	
	DELEVAN								
	71-009	11,630,578	1.114%	129,564.64	67,212.28	62,352.36	97,173.48	29,961.20	
	71-016	2,369,422	1.031%	24,428.74	13,692.72	10,736.02	18,321.56	4,628.84	
		14,000,000		153,993.38	80,905.00	73,088.38	115,495.04	34,590.04	
	SACRAMENTO								
	66-017	3,892,361	1.114%	43,360.90	22,494.00	20,866.90	32,520.68	10,026.68	
	GRAND TOTAL	27,892,361		302,748.67	161,188.00	141,560.67	227,061.52	65,873.52	70.99%
1984-85	COLUSA								
1983-84	58-029	393,314	1.075%	4,228.13	2,187.26	2,040.87	3,171.10	983.84	
1984	58-032	1,966,568	1.075%	21,140.61	10,936.28	10,204.33	15,855.46	4,919.18	
??-11-85	58-036	2,035,398	1.075%	21,880.53	11,319.05	10,561.48	16,410.40	5,091.35	
	71-009	983,284	1.038%	10,206.49	5,468.14	4,738.35	7,654.87	2,186.73	
	71-016	4,621,436	1.038%	47,970.51	25,700.27	22,270.24	35,977.88	10,277.61	
		10,000,000		105,426.27	55,611.00	49,815.27	79,069.71	23,458.71	
	DELEVAN								
	71-009	11,630,578	1.095%	127,354.83	64,678.48	62,676.35	95,516.12	30,837.64	
	71-016	2,369,422	1.050%	24,878.93	13,176.52	11,702.41	18,659.20	5,482.68	
		14,000,000		152,233.76	77,855.00	74,378.76	114,175.32	36,320.32	
	SACRAMENTO								
	66-017	3,892,361	1.095%	42,621.35	21,646.00	20,975.35	31,966.01	10,320.01	
	GRAND TOTAL	27,892,361		300,281.38	155,112.00	145,169.38	225,211.04	70,099.[illegible]	

FEDERAL WILDLIFE REFUGE IN-LIEU TAX

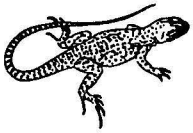
TAX POTENTIAL COMPARED TO FEDERAL PAYMENT

CO FY DEPOSITED) TAX RATE YR FEDERAL FY REPORT DATE	REFUGE CODE AREA	FEDERAL ASSESSED VALUE	COUNTY TAX RATE	REFUGE TAX POTENTIAL	FEDERAL TAX IN-LIEU PAYMENT	POTENTIAL TAX LOSS	REQUIRED 3/4 FEDERAL PAYMENT	ACTUAL TAX SHORTAGE	% REQUIRED PAYMENT RECEIVED
1985-86	COLUSA								
'984-85	58-029	393,314	1.068%	4,200.59	1,898.76	2,301.83	3,150.44	1,251.68	
985	58-032	1,966,568	1.068%	21,002.95	9,493.80	11,509.15	15,752.21	6,258.41	
04-02-86	58-036	2,035,398	1.068%	21,738.05	9,826.09	11,911.96	16,303.54	6,477.45	
	71-009	983,284	1.035%	10,176.99	4,746.90	5,430.09	7,632.74	2,885.84	
	71-016	4,621,436	1.035%	47,831.86	22,310.44	25,521.42	35,873.90	13,563.46	
		10,000,000		104,950.44	48,276.00	56,674.45	78,712.83	30,436.84	
	DELEVAN								
	66-004	11,630,578	1.094%	127,238.52	56,148.28	71,090.24	95,428.89	39,280.61	
	68-006	2,369,422	1.046%	24,784.15	11,438.72	13,345.43	18,588.11	7,149.39	
		14,000,000		152,022.67	67,587.00	84,435.67	114,017.00	46,430.00	
	SACRAMENTO								
	66-017	3,600,000	1.094%	39,384.00	17,379.00	22,005.00	29,538.00	12,159.00	
	GRAND TOTAL	27,600,000		296,357.11	133,242.00	163,115.12	222,267.83	89,025.84	59.95%
				. . . . .					
'986-87	COLUSA								
985-86	58-029	197,561	1.068%	2,109.95	889.99	1,219.96	1,582.46	692.47	
1986	58-032	987,807	1.068%	10,549.78	4,449.95	6,099.83	7,912.34	3,462.39	
02-09-87	58-036	1,022,381	1.068%	10,919.03	4,605.70	6,313.33	8,189.27	3,583.57	
	71-009	493,904	1.034%	5,106.97	2,224.98	2,881.99	3,830.23	1,605.25	
	71-016	2,321,347	1.034%	24,002.73	10,457.38	13,545.35	18,002.05	7,544.67	
		5,023,000		52,688.46	22,628.00	30,060.46	39,516.35	16,888.35	
	DELEVAN								
	66-004	5,815,289	1.103%	64,142.64	26,196.22	37,946.42	48,106.98	21,910.76	
	68-006	1,184,711	1.039%	12,309.15	5,336.78	6,972.37	9,231.86	3,895.08	
		7,000,000		76,451.79	31,533.00	44,918.79	57,338.84	25,805.84	
	SACRAMENTO								
	65-017	2,862,640	1.103%	31,574.92	12,896.00	18,678.92	23,681.19	10,785.19	

K

Going Broke?

Costs of the Endangered Species Act as Revealed in Endangered Species Recovery Plans



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Washington, DC

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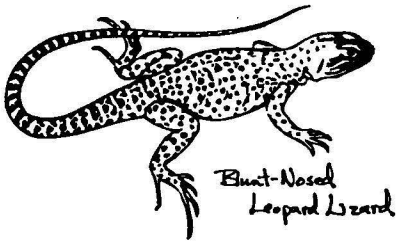
2

RECOVERY PLANS RANKED BY COST

TOP 10 SPECIES

1	Atlantic Green Turtle	$88,236,000[1]
2	Loggerhead Turtle	$85,947,000[1]
3	Blunt-Nosed Leopard Lizard	$70,252,000[2]
4	Kemp's Ridley Sea Turtle	$63,600,000[3]
5 - 8	Colorado Squawfish Humpback Chub Bonytail Chub Razorback Sucker	$57,770,000[4]
9	Black-Capped Vireo	$53,538,000
10	Swamp Pink	$29,026,000



GENERAL FINDINGS

6

During the course of reviewing the recovery plans covered by this study several other important findings were made including:

A. Plans often reveal that there is little information about plants or animals considered endangered or threatened

Examples:

Alabama Lamp Pearly Mussel: "Other aspects of the ecology of this species are totally unknown." "The historically restricted distribution of *L. virescens* and lack of information about changes in various stream populations prevents a more precise determination of the reasons for the species's decline."

Atlantic Green Turtle: "More information is needed before detailed distribution maps or estimates of population number and structure can be made..." "The number of nests deposited in Florida appears to be increasing, but whether this number is due to an increase in the number of nest or more thorough monitoring of the nesting beeches is uncertain."

Cracking Pearly Mussel: "Because of its rarity little is known of the mussel's biology."

Cave Crayfish: "Sufficient data to estimate population size or trends is lacking."

Desert Slender Salamander: "No information is available on the historical distribution of the desert slender salamander..."

Flat-Spired Three-Toothed Snail: "We do not consider surveys to be extensive enough to provide reliable population estimates."

Higgins' Eye Pearly Mussel: "The historical distribution of *L. higginsi* is difficult to accurately assess because of the taxonomic problems involving the species complex to which it belongs." "Numerically *L. higgensi* may be less rare today than previously thought, but in all probability this reflects a significantly greater collecting effort and the ability of a larger number of collectors to identify it."

Hualapai Mexican Vole: "...the subspecies is considered poorly defined owing to limited material available..."

Kentucky Cave Shrimp: "The very small estimated population size of the species at the time of listing (approximately 500 individuals) made it stand out as being extremely vulnerable to extinction. Since the time of listing, new populations have been discovered... Population estimates... range from approximately 7,000 to 12,000 individuals."

Knowlton Cactus: "...there is inadequate biological data for *P. Knowltonii*..."

Louisiana Pearlshell Mussel: "...practically no information on the life history, population levels, and habitat requirements for this species..."

Mona Iguana: "The status of the Mona Iguana prior to... 1972... only can be inferred."

Noonday Snail: "Essentially nothing is known about the snail's biology," "No estimates of population size have been made since the exact range has never been determined."

Palos Verdes Blue Butterfly: "The historical distribution of the butterfly is unknown..."

Painted Snake Coiled Forest Snail: "Information on the snail's ecology and natural history is almost completely lacking."

Price's Potato Bean: "It is very likely that undiscovered populations of *A. priceana* exist..."

Puerto Rican Boa: "A lack of population estimates prevents reaching conclusions regarding the status of the species."

Red Hills Salamander: "Comparative data relating temporal trends in population densities are unavailable..."

Virginia Fringed Mountain Snail: "Almost nothing is known about the numbers, population dynamics or reproduction of *P. virginianus*..."

Virgin Islands Tree Boa: "Population trends cannot be determined because of lack of data," "lack of available information on this secretive, nocturnal snake precludes formulation of a quantitative recovery level."

In at least 79 of the 306 plans reviewed there was some degree of uncertainty regarding the taxonomic classification of an endangered plant or animal.

B. Plans often call for additional laws and regulations or the employment of legal tools other than the Act

Of the 306 plans reviewed in this study, at least 51 called for or suggested that additional laws or regulations be considered to protect a particular species. Numerous plans called for the application of other laws such as the Clean Water Act or consideration for the application of other federal laws such as designating a Scenic River to protect a species. Additionally, numerous plans called for encouraging, requesting or otherwise influencing state or lower level governmental entities to pass regulations, employ other laws or enforce ordinances, such as zoning laws, as a tool to protect listed species.

Examples:

Cumberland Monkeyface Pearly Mussel: "Investigate the use of Scenic River Status, mussel sanctuaries, land acquisition..."

Florida Golden Aster: "Arrange for protection of land through ownership, cooperative agreements with landowners or other legal measures."

Key Tree Cactus: "Local ordinances should be employed to prevent taking from non-federal lands."

Painted Snake Coiled Forest Snail: "The species cannot be fully secure without some control of land use in the cove." "If landowners are not in agreement, investigate other options for protecting habitat."

Blunt-Nosed Leopard Lizard: "Use zoning process and ordinances."

Swamp Pink: "In addition, the enforcement capability of existing regulations will be strengthened where possible, and nontraditional avenues for endangered species protection that may benefit *Helonias* (through wetlands legislation, soil erosion control requirements, etc.) will be investigated."

C. Recovery Plans often conflict with the definition of "conservation" in the Act by stating that recovery is unlikely or impossible

The Endangered Species Act defines "conservation" as the use of all methods and procedures necessary to bring listed species to the point at which the Act's protection is no longer needed. FWS states that, "The principal goal of the U. S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required." Several recovery plans, however, conclude that delisting is unachievable or even not "desirable."

Examples:

Cave Crayfish: "Due to the apparent limited potential for discovering new populations, the delisting objective may never be attainable."

Florida Scrub Jay: "Because of the extreme usefulness of the Act in this case, it is not desirable to remove the scrub jay from protection under the Endangered Species Act." "There is no anticipated date of recovery because it may never be feasible to delist this species."

Mexican Wolf: "...the Mexican Wolf Recovery Team sees no possibility for complete delisting of the Mexican wolf."

Red Hills Salamander: [delisting] "may not be attainable within the foreseeable future because of the animals small range..."

Ring Pink Mussel: "Total recovery is not thought possible."

Spikedace: "Protection of existing population. Eventual delisting, if possible."

Tar River Spinymussel: "Though the ultimate goal is to recover the species to the point where it can be removed from the Federal List of Threatened and Endangered Wildlife and Plants, full recovery of the Tar River Spinymussel may not be possible."

Tuberculed-Blossom, Turgid-Blossom & Yellow-Blossom Pearly Mussels: "it is highly improbable, if and when living specimens of any one of the three subject species are found that... the species can ever recover to the point of delisting."

White Cat's Paw Pearly Mussel: "...recovery to the point where the species no longer requires protection under the Act is unlikely."

D. Plans often have criteria for "delisting" or "downlisting" which appear unattainable

Examples:

Iowa Pleistocene Snail: "With a return to glacial conditions it will be resuscitated over the major part of the upper Midwest, provided its relictual areas are preserved and maintained..."

Mount Graham Red Squirrel: "...at least 100 to 300 years will be necessary to restore Mount Graham red squirrel habitat."

Stock Island Snail: "Although no estimates of historical population sizes are available, the extant population is presumed to have been moderately stable in the recent past because its present habitat has been stable... for the last 40 years... 4.8 acres." Recovery criteria called for expanding the snail's population from the only known 4.8 acre habitat to 20 acres and establishing 30 new populations. "Hopefully, the 'recovered' population would then be able to withstand the major stress of a severe hurricane."

Utah Prairie Dog: "To establish and maintain the species as a self-sustaining, viable unit with retention of 90 percent of its genetic diversity for 200 years."

E. Plans often call for large scale habitat purchase

Of the 306 plans reviewed, at least 184 call for purchase or 'securing' of property for endangered species.

Examples:

Blunt-Nosed Leopard Lizard: " A current target acreage figure of 30,000 acres has been established for the San Joaquin Valley floor, with acquisitions emphasis on optional habitats containing high density blunt-nosed leopard lizard (BNLL) populations in identified "priority" habitat areas... conflicting land users will be reduced or eliminated in an effort to restore habitat to optimal condition. Consideration for delisting would be appropriate when similar objectives have been obtained for adjacent foothill and plain areas known to contain BNLL populations."

Eastern Indigo Snake: "two 10,000-acre tracts recommended for acquisition: one in GA, one in FL."

Loggerhead Turtle: Recovery criteria require that "25% of all available nesting beaches (560 km) is in public ownership..."

L 1

EXECUTIVE SUMMARY

The Endangered Species Act was designed to identify plants and animals endangered with extinction, add them to a list of federally regulated species, and then improve their condition to the point at which they could be removed from the list. After a plant or animal is added to the list, the US Fish & Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) typically produces a plan incorporating the steps that need to be taken to improve the status of a particular plant or animal, a "recovery plan." A plant or animal has reached the Act's ultimate goal of "recovery" once it has improved to the point where it can be "delisted." Between its listing and delisting, the level of protection afforded to a species may change. A species originally listed as "Endangered" whose status has improved to "Threatened" has gone through a "downlisting."

This study reviews the cost estimates of 306 recovery plans written between passage of the Act and 1993. These plans include 8 Amphibians, 72 Birds, 57 Fish, 58 Invertebrates, 35 Mammals, 135 Plants and 23 Reptiles covering 388 of the 853 currently listed endangered and threatened species. In most cases, recovery plans include cost estimates for some of their planned actions. In Section 2, these estimated costs are the basis for a list which ranks reviewed recovery plans by cost with all values expressed in constant 1994 dollars. A brief summary of the review:

Highest Plan Cost	$88,236,000
Median Plan Cost	$367,000
Average Plan Cost	$3,059,391
Total Cost of Plans	$884,164,000

(For purposes of comparison, the Fish and Wildlife Service has requested $81,411,000 for endangered species in FY 1995.)

The reader is cautioned, however, that these figures do not reflect the actual cost of the Endangered Species Act. Many costs are not revealed in the recovery plan cost estimates. Additional costs include:

Actions called for in recovery plans for which costs are not estimated

Costs of maintaining at present levels, downlisting or delisting for those species which have plans with interim goals such as 'stabilization'

Costs of recovery for 466 species already listed but not covered by one of the plans reviewed in this study

Costs of recovery and other associated costs as mentioned above for some fraction of the current 3,996 official candidate species which will be added to the Endangered Species List

Listing and delisting of candidates or delisting species already on the list

Expenditures on any species in this study prior to the approval of its recovery plan

Costs of reduced or terminated business activities and jobs lost as a result of conflict

Increased costs of providing services by federal, state, county or city governments which result from conflict

Losses of tax revenue from reduced or terminated business income, personal income or property devaluation resulting from conflict

Derivative costs of public assistance provided to individuals who have lost jobs as a result of conflict

L

Section 3 provides a comparison between estimated plan costs and actual government expenditures over a three year period. Section 4 provides a count of those plans that reveal existing or potential conflicts wi different activities, businesses, etc. which could result in higher total costs of implementation. Section 5 provides examples of the types of costs described on the previous page that are generally not reflected in recovery plan estimates.

During the course of reviewing the recovery plans in this study, several other important findings were made including:

- Plans often reveal that there is little information about plants or animals considered endangered or threatened
- Plans often call for additional laws and regulations
- Plans, in conflict with the definition of 'conservation' in the Act, often state that recovery is unlikely or impossible
- Plans often have criteria for 'delisting' or 'downlisting' which appear unattainable
- Plans routinely call for habitat purchase; often because the land on which a species exists is privately owned

Section 6 provides examples of these findings. Notes taken from selected recovery plans demonstrate in Section 7 that the cost estimates of recovery plans are often incomplete, and these notes illustrate some of the findings listed above or are of interest for other reasons. Section 8 offers some brief suggestions for improvement of current endangered species policy. Section 9 provides the outline for a guesstimate of the cost of implementing the Endangered Species Act, and Section 10 contains comments on the methodology used in calculating the costs in recovery plans. Finally, the Appendices contain samples of implementation schedules from several recovery plans and a recovery plan action diagram.

Conclusion

The federal endangered species program is out of control. Expenditures identified in recovery plans grossly understate the actual costs of recovery because many tasks called for in the plans do not include cost estimates and none of the costs imposed on the private sector are included. The government has no idea of the true cost of the endangered species program. Cost estimates in the recovery plans do not correspond to actual expenditures identified in ESA expenditure reports given to Congress.

Though unmeasured, the costs of implementing the Act as currently written are in the multi-billions, yet in over twenty years not a single endangered species has legitimately been recovered and delisted as a result of the Endangered Species Act.

Rational, balanced decisions on how to allocate resources available for endangered species cannot be made under the law as presently written.

This study is only a first step toward gaining a full understanding of the costs of the Endangered Species Act. All figures used in this report are taken from government estimates of the cost of implementing official recovery plans.

Quincy Library Group - Community Stability Proposal

Recent discussions between some members of the timber industry, the county governments of Lassen, Plumas and Sierra, fisheries and environmental groups indicate a common desire to implement a short-term strategy of forest management on the Plumas, Lassen, and portions of the Tahoe National Forests. This effort was undertaken to promote forest health, ecological integrity, adequate timber supply and local economic stability. This may allow local communities to survive while long-term plans are developed, yet afford adequate environmental protection during this interim period.

These discussions were initiated by Bill Coates (Plumas County Supervisor) in seeking to find some "common ground" between local environmental groups and the timber industry. Preliminary meetings with Mr. Coates, Michael Jackson (Friends of Plumas Wilderness), and Tom Nelson (Sierra Pacific Industries) led to continuing, expanded discussions with a much broader and diverse group.

Sharing a common belief that present USFS management is inadequate to meet the objectives of any of the members, this group (collectively known as the "Quincy Library Group") has reached agreement on several crucial issues for Federal land management on these National Forests--issues that have previously been the basis for ongoing disputes. They include the following:

1) Communities within Lassen, Plumas and Sierra Counties rely upon the forest products industry for education, roads and basic infrastructure. Specifically, the communities of Susanville, Chester, Quincy, Loyalton, Bieber, and Greenville are highly dependent upon the forest products industry and may not survive the current reductions in Federal timber harvests.

2) To promote forest health we believe that three ecosystem management strategies must be implemented simultaneously:

i. in order to provide an adequate timber supply for community stability and to maintain a relatively continuous forest cover, a management system using group selection (similar to that proposed by the Friends of Plumas Wilderness in the Plumas NF Land Management Plan or that used at UC's Blodgett Forest) and/or individual tree selection (similar to that employed by Collins Pine) must be implemented immediately.

ii. in order to achieve stability in the system the Fire and Fuels management objectives recommended in CASPO must be carried out over the entire landbase.

iii. in order to protect fisheries and watershed health a network of riparian habitats and a watershed restoration program must be established throughout those areas managed for unevenage structure. The initial emphasis should include increases in Forest Service appropriations for improvements in range management and road maintenance to restore and protect riparian areas.

The landbase on which to develop these strategies would include the broadest landscape possible. Certain "sensitive" areas such as roadless areas, Scenic River corridors, and riparian areas would not be scheduled for harvest. (See attached map.)

3) In general, we believe that the implementation of these strategies will expand the existing landbase available for timber production beyond that currently "zoned" for timber production but that environmental effects upon this expanded landbase will be greatly reduced. The intent of these Strategies is to create a forest that will more closely mimic the historic natural landscapes of the Sierra, while protecting and enhancing recreational opportunities.

4) In order to adequately assure community stability, protective mechanisms such as SBA/SSTS set-asides should be continued, stewardship contracts should be expanded, and a "sustained yield unit" as authorized by Congress must be established.

These four concepts were then examined in more detail, to arrive at more definitive recommendations. After analyzing many different technical methods to achieve the Group's common objectives, the following specific agreements were reached:

a) Forest land base:
- i. Plumas NF - as set forth in the Friends of Plumas Wilderness alternative to the Forest Plan.
- ii. Lassen NF - as set forth in the Amenities alternative of the Draft Forest Plan.
- iii. Tahoe NF (Sierraville Ranger District) - as set forth in the Uneven-Age Alternative of the Tahoe LMP.
- iv. All CASPO identified PACs will be deferred from logging during the life of this interim management plan.

b) All silvicultural prescriptions will be uneven-aged management. The Desired Future Condition is an all-age, multi-story, fire-resistant forest approximating pre-settlement conditions. This will be achieved by utilizing individual tree selection such as the system used by Collins Pine and/or group selection (area control to reach regulation).

c) Riparian systems protection during timber harvest activities will be provided by implementation of the Scientific Analysis Team's (SAT) guidelines. Grazing allotment renewal plans will include financing and provisions for restoration and protection of these riparian networks. In addition, the USFS shall seek every opportunity to work with the Federal Energy Regulatory Commission (F.E.R.C.) to restore adequate flows for fisheries and recreation.

d) Administrative approval for a northern Sierra working circle is requested that encompasses the counties of Lassen, Plumas, and the Sierraville Ranger District of the Tahoe NF and includes the SBA set-asides as in "4" above.

e) Fire/Fuels management: CASPO recommendations are endorsed to integrate present fire management programs of the USFS with harvest of smaller material earmarked for local sawmills. CASPO recommendations to inventory dead and down material, and replenish as needed, are also endorsed.

f) Old Growth: It is our opinion that (as long as the above practices and policies are successfully implemented) the remainder of the forest landbase should remain available for timber management. On Dunning Sites 3-5, the equivalent of a 200 year rotation (using uneven-age systems) would be employed and a shorter rotation equivalent would be used on Dunning Sites 1 & 2.

We realize that our opinion is simply an educated opinion and may not be appropriate in the eyes of others. All other opinions have a reasonable possibility of being right. We also believe that we represent a very diverse group of local interests, each with a shared stake in the outcome of these actions. We recommend this method of management for these forests be implemented for five years while the Regional EIS for CASPO is being prepared, decided, appealed, and litigated. We would further propose that any working circle established as a result of our plan sunset five years after installation of that plan.

Representatives from the following organizations and viewpoints voluntarily met to develop these proposals and unanimously approve submittal of this action plan to the United States Forest Service:

Name	Affiliation
Michael Jackson	Friends of Plumas Wilderness
John Preschutti	Friends of Plumas Wilderness
Bob Baiocchi	Calif. Sportfishing Protect. Alliance
Tom Gregory	~~Calif. Sportfishing Protect. Alliance~~
Steve Evans	Friends of the River
Mike Yost	Friends of Plumas Wilderness
Bill Coates	Plumas County Supervisor
Len Gallegos	Sierra County Supervisor
Frank Stewart	Collins Pine Co.
Tom Nelson	Sierra Pacific Industries
Fred Duchi	Siskiyou-Plumas Lbr. Co.
Steve Self	Sierra Pacific Industries
Carl Pew	Pew Logging & Lbr. Co.
Ed Murphy	Sierra Pacific Industries
Bill Banka	Sierra Pacific Industries
Don ~~Houston~~	Collins Pine Co.
Bill Howe	Collins Pine Co.
Mike Kossow	~~Feather River Fly Fishermen~~ FPW
Mike De Lasaux	UC Cooperative Extension

Sierra Count Conser Club

(continued)

Name	Affiliation
John Sheehan	Plumas Corporation
John Redd	Indian Valley Recreation & Parks Dist.
~~John Sheehan~~	~~Plumas Corporation~~
Gary Schaffer	Almanor Forest Products
Donna McElroy	Yellow Ribbon Coalition
Susan Baremore	Feather River Alliance for Resources and the Environment
Rose Comstock	California Women in Timber, Quincy Chapter
Pat Terhune	Plumas Community Coalition
Claude Neily	Lassen County Supervisor
Gary Lempke	Lassen County Supervisor
Jerry McCaffery	Sierra County Supervisor
Brooks Mitchell	Associated California Loggers, Quincy Chapter
Philip E. Nemir (PHILIP E. NEMIR)	Lassen Land + Trails Trust
Anne Eichard (ANNE EICHARD)	
Paul C. Harris	WCTW Local 3074
Harry G Reaves	Quincy resident, environmentalist
Linda L. Plum * See August 10 Addendum	Quincy resident & independent thinker
J. C. Toney	Lassen Range HES.
[illegible]	Plumas Audubon Society
Loretta Strunk Julian	California Women for Timber Quincy Chapter
~~Ernest A Carlson~~ Ch.	North Cal/Nevada Resource Conc & Devel Comm
[illegible]	Greenville Community Services Dist

SILVICULTURE, TIMBER MANAGEMENT and THE DESIRED FUTURE CONDITION

DESIRED FUTURE CONDITION

The Quincy Library Group has described the desired future condition as: "all age, multi-story, fire-resistant forest approximating pre-settlement conditions."

The best data available on pre-settlement conditions relative to stand structure come from Sudworth's plots as reported in CASPO. (McKelvey, K., and James D. Johnston, 1992, *The California Spotted Owl: A Technical Assessment of its Current Status*, P.S.W. U.S.F.S.) (See Attachment B.)

The Desired Future Condition should also include a description of functions as well as structure. I would suggest adding the following statement from the CASPO Report: "We wish to create a forest in which natural processes are fully functional and stable." (McKelvey, K., and C. P., Weatherspoon, 1992, *The California Spotted Owl: A technical Assessment of Its Current Status*, P.S.W. USFS.)

The silvicultural strategies recommended by the Library Group to achieve this condition are intermediate thinning and regeneration harvest using group selection and single tree selection.

It has been recommended that the Quincy Library Group develop a Desired Future Condition and appropriate silvicultural strategy for each major forest type within the three Forests; i.e., true fir, mixed conifer, and eastside pine.

INTERMEDIATE THINNING

Intermediate cuts will mostly be thinnings from below. Forest health is the primary objective.

Fire hazard, risk of insect and disease, over-stocking and overstory suppression are some characteristics considered when selecting trees to cut. Trees removed during thinning operations will generally be in the smaller diameter classes.

Thinning should be structured to achieve stocking levels with the desired species composition and individual phenotypes to grow these areas into future groups.

Where feasible, slash should be chipped or burned following thinning operations and a prescribed fire underburn should be considered.

Planning watersheds are the appropriate landscape element for intermediate thinnings. Third order watersheds would be the most common size.

REGENERATION HARVEST

All Regeneration or harvest cuts should be preceded by a long range plan for the watershed which would include some type of thinning operation as described under the above section on Intermediate Cuts.

The desired future condition, stand structure objectives, wildlife needs, and other resource objectives must also be considered.

Silvicultural strategies include group selection and single tree selection.

GROUP SELECTION:

Group selection is the primary silvicultural method recommended by the Quincy Library Group.

Group selection cuts will be regulated by area control, with third order watersheds as the recommended planning units.

A 150-year rotation is recommended for Dunning Sites 1 and 2 and a 200 year rotation is recommended for Dunning Sites 3-5.

This means that in a planning unit where the average site is 1 or 2, 1/150 of the acres could be harvested in any one year. However, because of the impracticality of harvesting in each unit annually, group selection normally employs the cutting cycle concept where no harvesting is done for a period of years and then the accumulated harvest acres are all cut in one year at the end of the cycle.

For example, a 20 year cutting cycle would allow 13 percent of the area unit within a Site 1 or 2 planning unit to be harvested every 20 years, or 10 percent of the unit if the site were 3-5.

Cutting cycles may vary to allow for flexibility with harvest schedules, and planning units where both site class categories are represented would be broken down into sub-planning units for timber harvest.

SINGLE TREE SELECTION:

In those situations where single tree selection is determined to be the appropriate silviculture method, the allowable cut in any planning unit must be based on annual growth within the unit. Again, cutting cycles may vary. A 20-year cutting cycle would allow the harvest of 20 years of net annual growth within a planning unit.

SELECTING TREES TO BE HARVESTED

The CASPO team has suggested to the Library Group that diameter frequency distribution curves be utilized to determine appropriate distribution of diameters in uneven-aged stands. Dr. Verner commented that "if the bumps on the curve were targeted for harvest you would not be violating CASPO."

It was suggested that this strategy could be applied to either group selection or single tree selection cuts. With group selection, naturally occurring "clumps" of trees would be marked for harvest.

Alternative strategies based on tree health rather than diameter may be more appropriate to the Quincy Library Group goals.

Listed below are several risk-rating systems, all based on crown characteristics, which could be used to select the less vigorous, higher risk trees for harvest:

1. Keen Tree Class System (See attachment A)
2. Collins Pine Crown Classification System.
3. California Pine Risk-rating System.
4. Risk-rating System for Mature Red Fir and White Fir in Northern California. (Ferrell)

SNAG RETENTION

Regardless of silvicultural system, any regeneration-harvest operation must consider snag retention.

One reasonable approach to snag retention has been suggested by Malcolm Hunter. "Within the United States, biologists studying forest types from nearly every region of the country have arrived at recommendations for snag densities that are remarkably consistent (e. g., Scott 1978, Evans and Conner 1979, Thomas et al. 1979c, Harlow and Guynn 1983, Raphael and White 1984, Zarnowitz and Manuawal 1985, McComb et al. 1986a). Furthermore, in a least one context, U.S. National Forests in the Pacific Northwest, forest managers are following the biologists' advice (Bull et al. 1986). It is not certain to what extent this concordance represents independent arrivals at an ecological "truth," especially since it is all based on North American data, but until better models are derived, 5-10 large snags per hectare* seems like a reasonable target. Using this quota as a rule of thumb may be rather simple and unsophisticated, but it is preferable to deciding that the model is too complex and ending up with no snags at all."

Hunter, M.L. 1990. *Wildlife Forests, and Forestry: Principles of Managing Forests for Biological Diversity.* Regents/Prentice Hall.

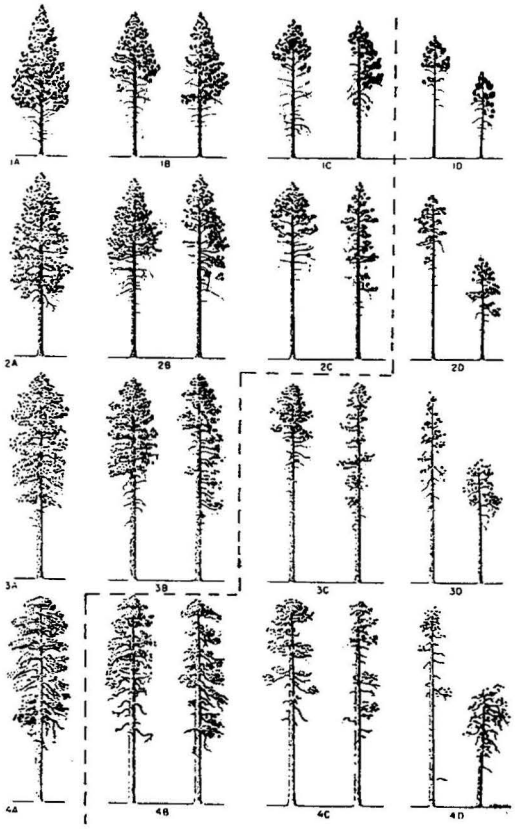
**Note: 5-10 snags per hectare equals 2-4 snags per acre.*

ECOSYSTEM MANAGEMENT

See Attachment C for a description of Ecosystem Management

ATTACHMENT A

Keen's ponderosa pine tree classification, based on age and vigor. Trees to the right of the dashed line are considered to be susceptible to bark beetle attack.



ATTACHMENT B

CHANGES IN STAND STRUCTURE

The graphs below are from CASPO (McKelvey, K., and James D. Johnston, 1992, The California Spotted Owl: A Technical Assessment of its Current Status, P.S.W. U.S.F.S.)

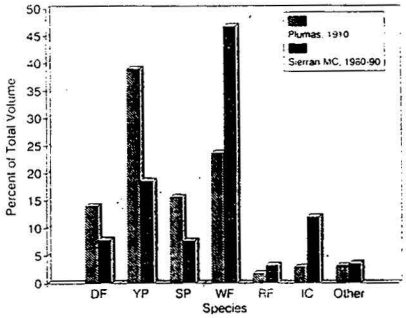


Figure 11O—Volume estimates, by species, in the Plumas National Forest in 1910 (Moore 1913) and from current inventory data. Mixed-conifer (MC) strata M3G, M4P, and M4G were combined for this analysis. See figure 11N for species codes and a description of the timber strata classifications.

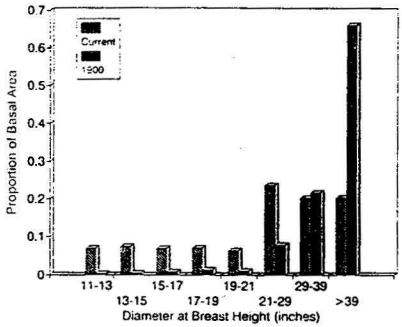


Figure 11L—Basal-area distributions of trees in forests of the Sierra Nevada for 1900 and current stands. The 1900 distribution was based on information presented in figure 11J; the current distribution was based on Forest Service Region 5 inventory data from timber strata for the largest size-classes (4, 5, and 6).

Generally, these data indicate that species composition and diameter distribution have changed significantly since the turn of the century. White fir has become much more prevalent and large diameter trees are much less common.

Any description of the desired future condition should include this information.

ATTACHMENT C

WHAT IS ECOSYSTEM MANAGEMENT?

An ecosystem approach to management focuses on the restoration and maintenance of natural processes, such as water cycling, nutrient cycling, soil formation, and vegetative succession, and the conservation of natural diversity in plant and animal life. Management decisions are based on sustaining ecosystem functions rather than on any single element or species in isolation.

An ecosystem-based management approach is not a tool, rule, or recipe for land management. Instead, it attempts to consider whole natural systems and how they function and to understand how human activities affect and are affected by them. It recognizes that we often don't fully understand how natural systems really work.

From *Hart Mountain National Antelope Refuge Planning Update*, August 1993.

DISCUSSION DRAFT

QLG "BALLPARK " OBJECTIVES

1) Group Selection

Managed landbase = 1.63 MM ac. (incl. deferred)
Average "rotation" = 175 years (150 - Site I-II, 200 - Site III-IV)
= 0.57%/yr.
= 9314 ac./yr.; say 9300 ac./yr.

2) Individual Tree Selection ("Thinning from below" for fuels reduction)

Average cutting cycle = 20 years
therefore: 5% of managed landbase treated/year
= 81,500 ac.
- 9,300 ac. (less "groups")
= 72,200 ac.

Assume:

a) 25% of treated watersheds are within SAT watercourse zones, therefore:
72,200 ac. x 0.75 = 54,150 ac.

b) 50% of available ac. will not require treatment, therefore:
54,150 ac. x 0.50 = 27,075 ac.; say 27,000 ac./yr.

3) Fuelbreak Construction/CASPO Cuts

Assume initial objective to break QLG Forests into 50,000 ac. "blocks" of forest fuels:

a) Gross ac. = 2.5 MM ac. (4000 sq. mi.),therefore:
50 "blocks" @ 50,000 ac./ea. (80 sq. mi.)

b) Fuels reduction on two sides of each block (other two sides considered as overlap) @ 5 ch. wide (330 ft.), therefore:
Total objective = 50 blocks @ 80 sq. mi./each
= 50 x 8.94 mi.
= 447 mi. of initial fuel reduction @ 5 ch. wide
= ~~18,000 ac./yr.~~ 36,000 ac/yr.

4) EXAMPLE - Yearly Targets = 10 Watersheds @ 9,000 ac./ea.:

a) Group Selection = 9,300 ac. (groups)
= 930 ac./watershed
@ 2 ac./group = 465 groups/watershed

b) Individual Tree Selection/Thinning = 27,000 ac.
= 2,700 ac./watershed

c) Fuelbreak Construction = 45 mi. x 5 ch. wide
PLUS 45 mi. (underburn previous years' fuelbreak construction)

d) Watershed Restoration

e) Planning = 2 years in advance for all projects above (a - d)

f) Monitor:

i) 10 watersheds (water quality, fisheries) prior to Selection harvests

ii) 10 watersheds (water quality, fisheries) after harvest but prior to restoration projects (d)

iii) 10 watersheds, after restoration work

iv) Owls - 20 PAC's, as treated

v) Economic trends - outputs, receipts, employment

TCN 11/29/93 QLG.bpkobj

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FUELS MANAGEMENT FOR FIRE PROTECTION
QUINCY LIBRARY GROUP POSITION PAPER

"The fire regime has changed from frequent, low intensity fires to infrequent, high intensity stand replacement fires" (CASPO Interim Guidelines, U. S. Forest Service, 1993)

"Extreme fire behavior and resistance to control will be the norm, rather than the exception." (Regional Forester, U. S. Forest Service R-5, July 1992)

BACKGROUND

Decades of aggressive fire suppression and other recent activities have changed fire regimes of the forests in the northern Sierras. Fire history studies in the Sierras show that the frequency of relatively low intensity fires ranged from 5 to 30 years in the mixed conifer and eastside pine forests.

For example, consider the effect on approximately 935,000 acres in the Plumas National Forest. If you assume an average pre-European settlement fire frequency of 20 years, it implies that 47,000 acres would have burned each year. In contrast, during a recent 20-year period 4,100 acres per year were actually burned on the Plumas.

Until recently this 90% reduction of acreage burned per year was considered a measure of great success for the fire suppression policy. Unfortunately, we are now being awakened to some hard facts:

- The pre-European settlement fires were of low average intensity, while recent fires burn at very much higher and increasing average intensity.
- High intensity translates to high costs for initial attack, higher costs for sustained attack on more numerous and larger escaped fires, and very high costs for loss of tangible and intangible assets in the forest and communities.
- The long-term effect of fire suppression is an accumulation of fuels and the growth of too many understory trees of a species that is not fire adapted for long-term health in that location given climatic variability. These fuels and fire ladders are certain to support increasing numbers of large fires and certain to result in catastrophe unless the fuel is reduced and the understory is thinned.

FIRE COSTS

The Forest Service fire suppression program is paid for in two main categories: Fire Protection (FP) and Fire Fighting (FF). FP funds are for the basic costs of equipment and personnel, while FF funds support the emergency expenses of actually fighting a fire. Recent FF expenditures on the Plumas Forest have ranged from $ 0.5 to $ 9 million per year (Figure 1).

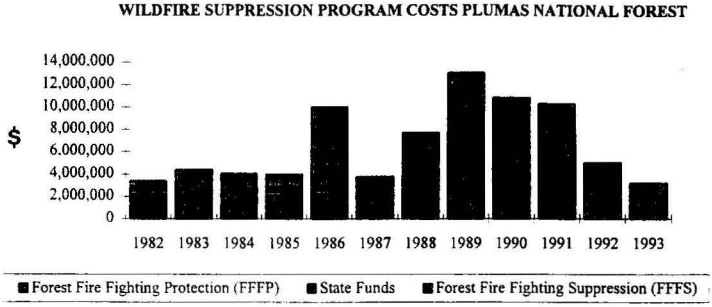

Figure 1. Plumas National Forest wildfire suppression program costs.

The occasional spike in the graph caused by one or two large fires that occur every few years is even more significant than average yearly costs on a single Forest like the Plumas. (Table 1) These spikes in the cost line are the equivalent in FF terms to the Regional Forester's statement, "Extreme fire behavior and resistance to control will be the norm rather than the exception."

Table 1. Summary of costs associated with recent Plumas National Forest wildfires.

Fire	Year	Size (acres)	Suppression Costs	Rehabilitation/ Reforestation Costs	Total Costs	Cost/acre
Layman	1989	4,800	4,599,520	$3,453,597	$8,053,117	$1,678
Rack	1989	580	915,754	$2,000,000	$2,915,74	$5,027
Greenhorn	1990	386	739,459	$125,000	$864,459	$2,239
Walker	1990	1,100	831,404	$150,000	$981,404	$892
					Average	**$2,459**

Another factor that contributes to the rising trend in total fire costs is the movement of more and more people into the Sierras. Inevitably more people mean more sources of ignition, greater loss of assets and risk to life when a fire escapes control, and the necessity for diversion of fire-fighting resources from the forest to the urban interface when catastrophe threatens. The actual cost of wildfire goes well above and rises steeper than the Forest Service shows in its FP and FF accounts.

Unless the trend toward larger and more intense fires is turned around, it is inevitable that a conflagration of multiple out-of-control fires will overwhelm any fire fighting capability that we can afford or are likely to provide. Damage in that fire will be on a scale such that neither

the forest ecosystem nor the communities that depend on it will be likely to recover during a single lifetime.

FUELS MANAGEMENT

The Forest Service now acknowledges that its focus on fire suppression has led to three specific hazards:

1. The accumulation of a large fuel overload on the ground.

2. Crowding of small trees in the understory, creating a fire ladder that carries ground fire into the crowns of large trees, thus converting ordinary fires into stand-destroying fires.

3. Invasion of the understory by excessive numbers of shade-tolerant trees (principally white fir), which dominate the competition for nutrients and soil moisture, thereby adding the mortality of large trees to the fuel load and making the overstory trees even less able to survive crown fires.

These hazards can be reduced only by reducing the load of dead and dying fuel and by thinning the understory. Unfortunately, to date the Forest Service program for fuels reduction in these forests has been only a token effort at best. For example, since 1982 the Plumas National Forest has treated about 600 to 900 acres per year under its "natural fuels" program as part of fire protection, and another 4,500 acres per year under the "brush disposal" program associated with timber harvest. At that rate it would take about 180 years to work through the whole forest.

But given that fact, how can the fuel load ever be reduced and the understory thinned at a rate which will significantly change our current inevitable course toward catastrophe?

The simple answer is that we have no other choice. It isn't a question of whether, but of how, where, and when to begin the fuel treatments. Do we start to work on this pre-catastrophe or post-catastrophe?

A more realistic answer is we know the job can be done because in many previous years the amount of material that needs to be removed actually has been removed. The main difference is this: In previous years most of the material removed was in logs from the largest trees, leaving behind most of the logging slash to add to the fuel load, while in future years, say for the next 30 or so, most of the material must be removed as small logs from understory trees, and biomass, thus reducing the fuel load, not adding to it.

A thirty-year fuels program is not a very attractive proposition; it is not adequate given the "catastrophic" threat and it is not realistic to count on sustaining public or political interest in a "crash" program of that length. Fortunately, Quincy Library Group (QLG) can offer a considerable improvement on the bare-bones 30-year program.

The QLG proposes that all sales should be laid out in patterns that are fully integrated with natural fuels treatments in a strategic fire protection plan.

STRATEGY

The QLG strategic fire protection plan has three requirements:

1. Four years of very high priority.

2. During those four years, natural fuels treatments and sales of thinnings, salvage, and biomass should be done in strips of approximately quarter-mile width according to a prescription that makes these strips defensible fire lines, meets the intent of CASPO (California Spotted Owl) guidelines, and does the least possible damage to other ecosystem values.

3. The acreage treated each year should be at least 1/32 of the total forest.

In practice the strips (similar in concept to shaded fuel breaks) should follow ridge lines, valley bottoms, and convenient roads in a pattern that would isolate all major watersheds (average size of 10 to 12 thousand acres) within the four years.

The intent of the CASPO guidelines would be met because they are based on the concept that intense wildfire is a major short-term threat to owls (and by implication to other wildlife and ecosystem values). Under the QLG strategy there is maximum protection with minimum disturbance to owls or other ecosystem components because: (1) almost all of the treated strips would be along existing roadways, (2) lower density of snags and large down woody debris within the strips could be compensated for by leaving more of those materials farther off roads during subsequent treatments in those areas, and (3) the included roadways would permit efficient removal of the materials with minimal disturbance.

After four years, with a network of fundamental protection in place, a somewhat different long-term strategy would be phased in: you could continue to use strips to divide large areas or areas with high value and/or great fire risk, but most of the remaining forest would be treated more efficiently in areas, not strips. In either case, fuels treatment should continue at the rate of at least 1/32 of the forest area each year.

CONCLUSIONS

What we have laid out are three possible courses:

1. Do nothing different, just wait for "the big one".

2. Increase fuels work, but follow conventional practice that limits strategic placement of fuel breaks to what you can accomplish under the "natural fuels" budget, and confines other fuel removal to sales areas designated in the conventional manner. This would

eventually get the job done, but in scattered units that for many years would protect very little area except the actual acres treated.

3. Increase fuels work, and do both "natural fuels" treatment and timber sales in patterns and under prescriptions that support the QLG Strategic Fire Protection Plan. That is, the sales would be based on understory thinning and biomass removal in a network of strips. This will more quickly reduce the risk of catastrophic wildfire, and at the same time make suppression efforts against the remaining fires more effective and less costly.

The differences among these three cases can be illustrated by three lines on a graph of cost trends over time (Figure 2).

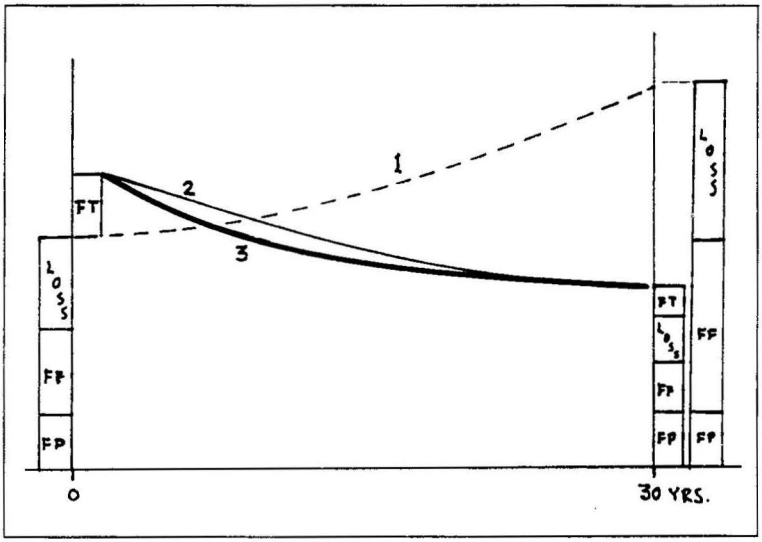

Figure 2 Relative cost for three fuels treatment strategies.

In Figure 2, relative costs are scaled to reflect an assumption that the FP cost remains constant for the whole period.

Curve #1 shows no change of strategy. Fire suppression costs, and the loss of forest and non-forest resources continues to rise. The only likely break would be a huge

spike when "the big one" occurs, followed perhaps by subsidence to a level that would support fire protection for a moonscape forest.

Curve #2 represents the shape to be expected if Fuel Treatment (FT) work is done in a way that follows historic precedent. It would initially cost money that cannot be saved by immediate reduction of other fire protection costs and fire losses. Eventually, however, these costs and losses would be reduced far enough that total cost would fall below the "no treatment" projection, and from then on a continuing return on investment would be achieved. Until most of the forest had been treated, there would not necessarily be many connections among treated areas, so for at least the first half of the period any reduction in FF or Loss costs would be gradual, and there would be only gradual reduction in the risk of catastrophe.

Curve #3 is the shape we believe the QLG strategy would produce. Again you have to add Fuel Treatment (FT) costs at first, but a network of treated strips would reduce the average size of large fires and facilitate the fighting of smaller fires, so the reduction of fire costs and fire losses would be earlier and steeper, with a quicker crossover to profit on the investment, and much earlier and more significant reduction in the risk of catastrophe.

BOTTOM LINE

There is a strong temptation to avoid the initial cost of fuels reduction and understory thinning, because it is not easy to show that a particular catastrophic fire could actually be avoided. On the other hand, we can't escape the certainty that our current course leads inevitably to catastrophic fire.

It's a classic case of "Penny Wise, Pound Foolish". We can easily look thrifty in the short run by avoiding the "penny" of immediate cost to implement the QLG strategy. But that won't look so wise when a catastrophe hits that could otherwise have been avoided or made smaller by spending those early pennies on fuel reduction. At that point it will look foolish indeed to be spending many "pounds" on futile efforts to suppress the conflagration.

LUMBER PRODUCTION
INDUSTRIAL WORKERS
(916) 644-2749

P.O. BOX 451
CAMINO, CA.
95709

MR. CHAIRMAN AND MEMBERS OF CONGRESS:

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE THIS TASK FORCE TODAY.

IT GIVES ME GREAT PLEASURE TO SPEAK ON BEHALF OF THE PEOPLE WHO CONSTRUCT OUR HOMES - CARPENTERS, WOODWORKERS, AND THE MILL WORKERS WHO HAVE BEEN DEPRIVED THE MEANS OF A WORKING LIVELIHOOD. I FEEL IT IS IMPORTANT TO MAKE EVERY REPRESENTATIVE OF THE STATE OF CALIFORNIA AND THE UNITED STATES AWARE OF THE CATASTROPHE WHICH HAS TAKEN PLACE, NOT ONLY IN THE PACIFIC NORTHWEST, BUT HERE IN CENTRAL AND NORTHERN CALIFORNIA SPECIFICALLY.

IN 1990, LUMBER PRODUCTION AND INDUSTRIAL WORKERS LOCAL 2749 JOINED FORCES WITH SEVERAL ORGANIZATIONS TO TRY TO MAKE ALL POLITICAL LEADERS AWARE OF WHAT WAS GOING TO HAPPEN TO THE WOOD PRODUCTS INDUSTRY IF THEY DIDN'T TAKE A FIRM STAND ON A BALANCED APPROACH TO THE TIMBER ISSUES. FOR THE LAST FIVE YEARS, REPRESENTATIVES FROM THIS UNION HAVE BEEN TO THE STATE CAPITOL, HAVE MET WITH MOST OF CALIFORNIA'S REPRESENTATIVES, WAS PRESENT AT THE FOREST SUMMIT IN PORTLAND, OREGON. REPRESENTATIVES FROM LOCAL 2749 HAVE EVEN BEEN TO THE WHITE HOUSE AND ASKED THE PREVIOUS AND CURRENT ADMINISTRATION TO ADOPT A BALANCED APPROACH TO THE TIMBER CRISIS WHICH WOULD SATISFY THE NEED OF BOTH SIDES OF THE ISSUE.

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THE U.S. FOREST SERVICE MANAGEMENT HAS NOT BEEN ABLE TO DO THEIR JOB. TIMBER SALES WHICH WERE ANNOUNCED, BID ON AND SOLD NEVER GOT TO THE STAGE WHERE THEY WERE ACTUALLY HARVESTED BECAUSE OF THE APPEALS PROCESS, KEEPING THESE SALES IN A LOOP THAT GOES ON FOREVER.

TIMBER PRODUCTION IN THE EL DORADO NATIONAL FOREST WHERE I WORK AND MY FAMILY HAS LIVED IN FOR GENERATIONS HAS COME TO A HALT. ALMOST 50 TIMBER SALES NEVER GOT HARVESTED BECAUSE OF APPEALS IN 1993 AND 1994.

UNTIL 1993, THE EL DORADO NATIONAL FOREST WAS HARVESTING OVER 138 MILLION BOARD FEET ANNUALLY ON A SUSTAINED YIELD BASIS.

IN 1994, ABOUT 13 MILLION BOARD FEET WAS HARVESTED OFF THE EL DORADO NATIONAL FOREST. HARVESTING WAS REDUCED OVER 100 MILLION BOARD FEET PER YEAR AND IT IS NOT ANY BETTER TODAY.

MR. CHAIRMAN AND COMMITTEE, THE ENDANGERED SPECIES ACT HAS AFFECTED CENTRAL AND NORTHERN CALIFORNIA FORESTS DIRECTLY BECAUSE OF THE CALIFORNIA SPOTTED OWL CONTROVERSY. THE CALIFORNIA SPOTTED OWL, UNLIKE ITS COUSIN THE NORTHERN SPOTTED OWL, IS NOT ON THE ENDANGERED SPECIES LIST, NOR IS IT ON THE THREATENED SPECIES LIST, BUT SEVERAL POLICY MAKERS ARE WRITING BLANKET HARVEST PRESCRIPTIONS LIKE C.A.S.P.O. AND THE CAL-OWL FOR ALL OF THE FORESTED PUBLIC LANDS.

THESE PRESCRIPTIONS DO NOT WORK ON MOST OF THE FOREST LANDS BECAUSE TOO MUCH FUEL IS LEFT BEHIND, LIKE 20 SNAGS PER ACRE WHICH ARE GREATER THAN 15 INCHES IN DIAMETER. ALSO, THE LARGEST EXISTING DOWN LOGS UP TO A TOTAL OF 12 TONS AN ACRE WILL BE RETAINED.

THIS IS MUCH MORE THAN JUST ANIMAL HABITAT. IT'S AN UNNECESSARY BUILD-UP OF FUEL THAT WILL COST TAX PAYERS MILLIONS OF DOLLARS FOR FIRE SUPPRESSION. LAST SUMMER OVER 2.5 MILLION ACRES OF PUBLIC AND PRIVATE FOREST LANDS IN THE WEST BURNED.

THE U.S. FOREST SERVICE GUIDELINES FOR SPOTTED OWL MANAGEMENT WILL COST CALIFORNIA 12,000 TO 15,000 TIMBER RELATED JOBS, AND WILL COST COUNTIES LIKE EL DORADO MILLIONS OF DOLLARS IN LOST TIMBER SALES RECEIPTS THAT WOULD GO TO THE SCHOOLS AND ROADS.

THERE HAS BEEN A COORDINATED EFFORT BY ALL COUNTIES WITHIN THE SIERRA RANGE TO PASS A RESOLUTION AND TRANSMIT IT TO THE GOVERNOR OF THE STATE OF CALIFORNIA AND TO OUR STATE AND FEDERAL REPRESENTATIVES TO LET THEM KNOW THAT NATURAL RESOURCES WHICH INCLUDE TIMBER, WATER, CATTLE, AND MINING SUPPORT A PRODUCTS INDUSTRY PROVIDING THOUSANDS OF DIRECT JOBS AND HUNDREDS OF THOUSANDS INDIRECT JOBS. THESE NATURAL RESOURCES PROVIDE ESSENTIAL ECONOMIC SUPPORT FOR RURAL COMMUNITIES AND THEIR UNIQUE CULTURE AND WAY OF LIFE.

WE ASK YOU, MR. CHAIRMAN AND MEMBERS OF THE TASK FORCE, DO NOT LET A LAW LIKE THE ENDANGERED SPECIES ACT DESTROY THE RURAL COMMUNITIES.

REMEMBER, WE ARE THE PEOPLE THAT BUILT THIS GREAT NATION, AND HAVE TAKEN CARE OF OUR FORESTS FOR OVER A HUNDRED YEARS.

THANK YOU.

Larry Robinson

LARRY ROBINSON
PRESIDENT, LOCAL 2749

STATEMENT OF CHRIS CONRAD
TO
TASK FORCE ON ENDANGERED SPECIES HEARING
HOUSE OF REPRESENTATIVES COMMITTEE ON RESOURCES
STOCKTON, CA , APRIL 28, 1995

My name is Chris Conrad. I am a registered professional forester employed by Fibreboard Corporation near the Sierra Nevada community of Sonora. I am a graduate of the University of California at Berkeley's School of Forestry and have been employed in the field of forestry for over twenty years.

Fibreboard Corporation owns approximately 80,000 acres of timberland in the central Sierra. As part of the forestry staff for that company I am proud of our track record in regards to nurturing the land to help our forests produce the goods that society needs. I believe that our forest stewardship is second to none.

As part of that stewardship, Fibreboard began surveying for spotted owls on its fee timberlands in 1989. We have surveyed for spotted owls every year since then and will be conducting another survey this year. I believe this Committee may be interested in the results of this work.

The majority of Fibreboard's 80,000 acres has been selectively harvested at least three times. The original old growth timber was harvested from most of these lands twenty to thirty years ago and healthy stands of second growth predominate today. In spite of the absence of old growth these forestlands have been shown, through intensive surveying work over the last five years, to be providing excellent habitat for the California spotted owl.

The densities of spotted owls found in Fibreboard's second growth stands are greater than those being claimed by the U.S. Forest Service for adjacent National Forest lands that are dominated in large areas by old growth timber. We have one occupied territory for every 1,000 to 1,500 acres of company timberland. Current recognized densities on the Stanislaus National Forest in our area are approximately one occupied territory per every 2500 acres. Nesting and roosting sites on the company's timberlands have proven to be abundant and reproduction in second growth timber has been shown to be high .

We are comfortable with the fact that intensive timber harvesting and the protection of the spotted owl are mutually obtainable goals. We are comfortable with that because we have shown through solid field work that it is true.

We have become extemely uncomfortable, however, with the policies which the U.S. Forest Service has implemented to "protect" the California spotted owl. Current Forest Service policy has locked up vast areas of timberland in the Sierra and effectively handcuffed those management tools that are necessary to protect our forests from catastrophic fire.

Our National Forests in the Sierra today are ready to burn. Forestlands that had been kept "open and parklike" in John Muir's day through light Indian caused ground fires, have now grown into dense thickets of highly combustible fuel that can turn into raging conflagrations with one spark. These stands cannot be returned to their previous open and fire resistant condition simply through controlled burning. Forest thinning on a large scale needs to be accomplished over the very short term if the Sierra is not to be devastated further by major forestfires. This thinning can only be done through timber harvest.

Forest Service policies ostensibly to "protect" the spotted owl, however, have been moving our National Forests in the exact opposite direction. Driven by fears that the California spotted owl would be listed as an endangered species, the Forest Service implemented as a result of its 1992 California Spotted Owl (CASPO) Report substantial "interim" restrictions on forest management activities on National Forest lands. These restrictions included the virtual shut-down of National Forest timber management programs in the Sierra, effectively eliminating the salvage of most dead and dying timber and heavily restricting the thinning of overstocked timber stands. Unbelievably, in order to keep the California spotted owl from being listed, the Forest Service implemented guidelines that were more restrictive than those for the listed Northern spotted owl!

The Forest Service has now followed up these "interim" CASPO guidelines with their recently released "Draft EIS for the California Spotted Owl" otherwise known as the "Cal-Owl" Report. Every alternative proposed in this report as possible protection for the spotted owl spells out disaster for the Sierra, its communities, and its wildlife. Although the report itself states that the owl "appears to be abundant and well distributed within the forests on the west slope of the Sierra Nevada", the very timber management activities that are needed to reduce the large quantities of forest fire fuels on National Forest lands will continue to be unnecessarily restricted and our National Forests and our spotted owl habitat will continue to burn.

Two excellent examples of this contradiction in "protective" goals and unintended but disastrous results have recently occurred on the Stanislaus National Forest. Timber harvesting is basically not allowed inside of Spotted Owl Habitat Areas (SOHA's) on National Forest lands in the Sierra. These SOHA's have been set aside by the Forest Service to "protect" the owl. Green timber sales, salvage, and thinning have for all intents and purposes not been allowed within their boundaries even though these activities have been proven to be compatible with healthy spotted owl populations.

Thirty Five of these 1600 acre SOHA's have been set-aside on the Stanislaus. When massive amounts of disease and insect related mortality occurred on this Forest as a result of the drought which began in 1987 many of these SOHA's suffered tree mortality just as did the rest of the forest.

One of the hardest hit of these areas was the Rose Creek SOHA which began to experience large amounts of insect related mortality early in the drought. Because this area was a Spotted Owl Habitat Area, however, the Forest Service allowed no salvaging of the dead and dying trees within its boundaries. Dead trees were left to rot on the site; fuel loadings that were already high built to dangerous proportions. When this area was hit by wildfire in 1992 this heavy fuel loading contributed to the high intensity of the burn and a 3,860 acre conflagration resulted. The Rose Creek SOHA was destroyed.

The 1400 acre Creek Fire which threatened the community of Cedar Ridge in Tuolumne County in late 1994 also had large quantities of unsalvaged dead and dying trees. This fire proved difficult to control and ended up costing over one million dollars to extinguish. Incredibly the dead and dying timber within a large part of this burn was also not allowed to be salvaged prior to the fire due to the fact that it was within the Five Mile Creek SOHA! Although Forest Service policies were ostensibly targeted at protecting both of these areas from man's activities in order to "protect" the spotted owl, they effectively did just the opposite. Disaster for the forest and for the spotted owl was the result.

We feel strongly that it is time for common sense to enter the "endangered" species debate. When forest management programs that are ostensibly intended to protect a species prove to instead be imperiling that very species, we must all agree there is something wrong with the system. I urge this Committee to look closely at the large flaws in the present species protection laws, and then to act. Our forests, our communities, and the spotted owl cannot afford for you to wait.

Siskiyou County
OFFICE of EDUCATION
Frank Tallerico
SUPERINTENDENT
609 South Gold Street • Yreka, California 96097 • 916-842-5751 • FAX 842-8436

Siskiyou County schools and roads have shared approximately $6,500,000 per year in Forest Reserve Receipts over the past several years. These funds are general fund monies to school districts and allocated to programs that directly impact the children. These programs include, but are not limited to, regular education, thus reducing class size and allows for children with special needs to have greater access to classes thus allowing for main streaming into an integrated instructional program. Forest Reserve Receipts also allows school districts to provide and promote science, math, technology, the arts, language arts, and social science, all of which challenge the natural curiosity of the children. These funds are vital to the everyday operation of a totally integrated instructional program.

The Siskiyou County Office of Education provides educational service for the 44 school sites in the county. The services provided by Forest Reserve Receipts are referred to as direct services tc children. These services include Educational Consultants for math, science, technology and environmental education, the arts, including language arts, fine arts, foreign language, social science, economics, and physical education.

The office maintains a multi-media center which includes audio-visual materials and a fully integrated library. The office provides a professional library for teachers from Forest Reserve Receipts. We also provide these media and library services to school sites that are as far away as 115 miles over difficult terrain.

However, the issue is not only one of Forest Reserve Receipts but one of additional services that schools and counties must provide to their constituents. These services are extremely expensive and tug at the very infra-structure of county services and the very fabric of the forest community. This creates an additional need for free and reduced meals to school age children when family income drops below the poverty level.

History has it that during times of high unemployment, there are additional incidents of child and spousal abuse along with drug and alcohol abuse. These actions require an additional need for mental and public health services. It places an additional burden on the juvenile justice system, District Attorney's office, law enforcement and probation departments. These needs are greater than these rural counties can provide. Only recently Siskiyou County's published un-employment rate was at 12.5%. The numbers of families that go on counties general assistance welfare roles increases as well as aid for dependent children.

With the advent of mill closure and/or layoffs there arises a new need for the children. A tremendous burden of psychological and emotional stress that is placed upon these young people when the family's principal bread winner is no longer employed thus hampering the child's education.

These emotional scars run deep and take a significant amount of very precious time from teachers, counselors, mental health and social services professionals provided for by counties. Because of the lack of funds these services are at the breaking point for these rural counties.

Government cannot continue to make decisions that abrogate their responsibilities to the citizens of a region. Government invited investment to these forested regions and invited people to settle here.

Government cannot just walk away from those long standing compacts and agreements. As an example, 63.5% of Siskiyou County is under the direct ownership or management of the federal government. If the largest land owner does not participate in the local support of industry and the economy of the region then the entire infra-structure and a county government's ability to deliver service to its people is at risk. Serious considerations must be given to the socio-economic impacts that imperil the very existence of forest communities and the people who live and work here.

Sincerely,

Frank Tallerico

Frank Tallerico
County Superintendent

/md
c: County Board of Education
County Board of Supervisors
Siskiyou County Grand Jury

SISKIYOU COUNTY OFFICE OF EDUCATION

COUNTY REPORT OF A.F.D.C. SCHOOL-AGE CHILDREN

	F.Y. 1988-89	F.Y. 1989-90	F.Y. 1990-91	F.Y. 1991-92	F.Y. 1992-93	F.Y. 1993-94	F.Y. 94-95
A.D.A.	7936	8076	8203	8319	8398	8478	8468 EST
A.D.A. GROWTH	108	140	127	116	79	80	-10
% GROWTH	1.38%	1.76%	1.57%	1.41%	.95%	.95%	-.12%
A.F.D.C. CHILDREN	1540	1571	1686	1892	1591	1966	2064
A.F.D.C. GROWTH	N/A	31	115	206	-301	375	98
% GROWTH	N/A	2.01%	7.32%	12.22%	-15.91%	23.57%	4.98%
A.F.D.C. / A.D.A.	19.4%	19.5%	20.6%	22.8%	18.94%	23.19%	24.37%
CHILDREN RECEIVING FREE/REDUCED MEALS	2865	2924	3059	3267	3408	3896	3880
GROWTH	N/A	59	135	208	141	488	-16
% GROWTH	N/A	2.06%	4.62%	6.80%	4.32%	13.32%	-.41%
% OF A.D.A.	36.1%	36.2%	37.3%	39.5%	40.58%	45.95%	45.82%

DISTRIBUTION OF A.F.D.C. CHILDREN BY SCHOOL DISTRICT

DISTRICT NAME	# of AFDC 1994-95	# of AFDC 1993-94	# of AFDC 1992-93	# of AFDC 1991-92	# of AFDC 1990-91	# of AFDC 1989-90	# of AFDC 1988-89
BIG SPRINGS ELEM.	38	43	43	48	55	43	33
BOGUS ELEM.	6	8	3	8	6	12	8
BUTTEVILLE ELEM.	25	18	13	23	11	15	15
DELPHIC ELEM.	2	0	1	3	4	2	3
DUNSMUIR ELEM.	136	138	138	145	154	122	152
DUNSMUIR HIGH	32	36	30	29	26	19	20
ETNA ELEM.	60	62	65	81	65	53	52
ETNA HIGH	44	45	34	49	26	24	29
FORKS ELEM.	12	19	4	4	13	13	7
FT. JONES ELEM.	57	48	33	33	24	31	31
GAZELLE ELEM.	17	12	9	18	14	13	8
RENADA ELEM.	18	16	22	26	31	34	27
HAPPY CAMP ELEM.	99	106	89	85	79	53	45
HORNBROOK ELEM.	37	41	19	28	24	30	24
JUNCTION ELEM.	15	7	11	9	5	7	2
KLAMATH RIVER ELEM.	16	8	13	15	2	12	11
LITTLE SHASTA ELEM.	6	4	1	1	5	3	6
McCLOUD ELEM.	69	67	50	52	47	50	39
MONTAGUE ELEM.	110	105	94	110	118	111	99
MT. SHASTA ELEM.	141	125	104	112	108	92	107
QUARTZ VALLEY ELEM.	12	15	14	16	10	9	11
SAWYERS BAR ELEM.	9	8	11	3	2	6	7
SEIAD ELEM.	17	16	22	17	28	21	15
SISKIYOU UNION HIGH	149	137	107	129	93	82	106
WEED ELEM.	267	239	185	214	182	170	202
WILLOW CREEK ELEM.	5	6	4	5	6	18	20
YREKA ELEM.	425	393	266	329	233	230	212
YREKA HIGH	135	140	99	95	92	81	69
BUTTE VALLEY UNIFIED	105	104	107	128	125	127	113
TOTALS.....	2064	1966	1591	1815	1588	1483	1473

DISTRIBUTION OF FREE OR REDUCED MEALS BY SCHOOL DISTRICT

DISTRICT NAME	# of F/R 1994-95	# of F/R 1993-94	# of F/R 1992-93	# of F/R 1991-92	# of F/R 1990-91	% of ADA 1994-95	% of ADA 1993-94	% of ADA 1992-93	% of ADA 1991-92	% of ADA 1990-91
BIG SPRINGS ELEM.	83	108	101	106	108	39.5	48.4	49.1	52.1	54.5
BOGUS ELEM.	19	9	10	13	9	79.2	47.4	71.4	76.5	56.3
BUTTEVILLE ELEM.	55	60	48	45	34	55.0	55.1	55.2	57.7	37.7
DELPHIC ELEM.	22	20	5	9	10	68.8	48.8	20.8	30.1	29.4
DUNSMUIR ELEM.	256	225	253	238	277	71.9	62.5	64.4	60.6	69.4
DUNSMUIR HIGH	84	84	70	58	54	50.3	45.4	37.1	34.1	32.3
ETNA ELEM.	167	174	148	160	153	43.8	42.9	37.6	40.6	38.7
ETNA HIGH	182	154	136	139	118	36.1	31.7	29.1	29.8	26.5
FORKS ELEM.	25	24	23	22	23	78.1	70.6	69.7	68.8	63.8
FT. JONES ELEM.	103	97	99	82	55	56.3	56.4	58.2	50.1	37.1
GAZELLE ELEM.	34	43	34	54	45	63.0	75.4	72.3	98.2	77.6
GRENADA ELEM.	53	73	78	73	38	43.4	48.7	53.4	49.1	25.3
HAPPY CAMP ELEM.	157	190	115	148	144	65.4	72.0	42.9	56.9	51.2
HORNBROOK ELEM.	72	66	81	53	62	93.5	71.0	78.6	62.4	72.1
JUNCTION ELEM.	29	31	33	35	33	78.4	77.5	75.1	81.4	80.5
KLAMATH RIVER ELEM.	42	33	29	34	34	67.8	58.9	46.1	55.7	72.3
LITTLE SHASTA ELEM.	10	7	2	6	6	38.5	31.8	11.8	37.5	33.3
McCLOUD ELEM.	115	112	111	105	115	58.4	58.3	53.6	46.9	52.1
MONTAGUE ELEM.	206	207	185	187	207	64.2	59.8	52.3	51.2	54.2
MT. SHASTA ELEM.	218	204	184	228	130	21.6	20.0	17.4	22.4	12.7
QUARTZ VALLEY ELEM.	40	39	35	29	19	70.2	51.3	54.7	45.3	33.3
SAWYERS BAR ELEM.	12	12	19	17	16	100	100	86.4	77.3	59.2
SEIAD ELEM.	35	25	31	32	37	66.1	54.4	59.6	53.3	53.6
SISKIYOU UNION HIGH	270	272	117	29	24	29.1	30.4	14.1	N/A	N/A
WEED ELEM.	420	409	440	433	422	74.1	71.6	76.4	77.7	75.1
WILLOW CREEK ELEM.	27	21	17	16	22	60.0	61.8	60.7	57.1	64.7
YREKA ELEM.	739	682	630	573	467	54.5	48.5	46.5	43.7	37.2
YREKA HIGH	160	258	104	80	109	17.8	28.2	12.1	9.7	13.7
BUTTE VALLEY UNIFIED	245	257	270	263	288	58.9	53.8	61.6	60.2	67.1
ALS.....	3880	3896	3408	3267	3059	45.82%	45.93%	40.42%	39.27%	37.00%

California Farm Bureau Federation
1601 Exposition Boulevard • Sacramento, CA 95815 • Telephone (916) 924-4000

TESTIMONY OF
BOB L. VICE, PRESIDENT
CALIFORNIA FARM BUREAU FEDERATION

SUBMITTED TO

THE HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
ENDANGERED SPECIES TASK FORCE

Stockton California Hearing
April 28, 1995

Chairman Pombo and Members of the House Resources Committee Endangered Species Task Force, on behalf of California Farm Bureau Federation's more than 70,000 family members, I wish to express our sincere appreciation to you for holding these very important field hearings at three locations in the state, so that our members could communicate with you directly on this tremendously important issue. I will not repeat the numbers, but you are well aware that California has experienced greater hardship due to the misguided excesses of this well-intentioned law than any other state in the nation. We have the most people and the most listed endangered species. Clearly, with base closings, deep recession, and disproportionately great social costs from the need to serve the fundamental health, welfare and educational needs of our great human diversity, our state economy simply cannot afford the additional heavy-handed unfunded mandates being imposed in the name of this law.

Some people are trying to polarize this issue and block real reform of the Act. They characterize us as being "anti-environmental." They say that we are trying to "gut the Endangered Species Act." We know that you recognize that as empty rhetoric, but we thank you for the opportunity to put the truth in the record. People in agriculture want nothing more than to see long overdue common sense reform. These hearings are a very valuable contribution toward achieving constructive change, because they bring Washington into direct contact with the people who have to live with these laws, and shine a light on the unintended harm being done to people in their communities by abuses of this Act.

This Act has been the untouchable of untouchables for too long. It has been politicized as a campaign rallying point. We have to get beyond that to achieve the true goals of the Act: a healthy and secure human environment, enriched by the

presence of wildlife in our open spaces. We would remind those who continually seek to polarize this issue to their advantage, that farmers and ranchers are the true environmentalists, and that 75% of the wildlife in this nation live on tax-paying, productive farm and ranch land.

The Endangered Species Act is only a law: the well-intentioned but flawed product of ordinary fallible people. All laws need to be amended as time and experience reveal their flaws. It is clearly time to discard the rhetoric, loosen the gridlock, and work together for common sense reform of the Endangered Species Act.

California Farm Bureau Federation has prepared a detailed analysis of the Act, listing its functional problems section by section, and recommending narrow amendments specifically designed to eliminate only those functional flaws. Our recommendations, if adopted, would result in a far wiser governmental instrument for achieving the goals of the Act--without ruining human lives, without stifling economic recovery in our struggling communities, and without violating the cherished constitutional rights of our citizens.

We will submit written testimony on behalf of several of our members who have suffered inexcusable hardships due to the misapplication of this law. We have selected their testimony for submission because their cases are typical of problems our membership is facing on a large scale. For purposes of this testimony, therefore, I will simply summarize the types of problems agricultural landowners are experiencing:

1. **FALLOW FIELDS ARE TAKEN FOR HABITAT:** Farmers are being prohibited from reentering their lands after a fallow period, if endangered species have moved in or probable "habitat" vegetation has become established. There is no immunity against prosecution under the Act for previously-farmed lands invaded by species during a fallow period. There must be an exemption for normal farming activities, including re-entry of previously-farmed fields. To subject farmers to prosecution for any prudent farming practice stifles innovation and eliminates incidental environmental benefits by forcing fence-post-to-fence-post discing.

2. **ORDINARY FARMING ACTIVITIES ARE CRIMINALIZED:** Farmers are being prosecuted for unintentional killing or injury of endangered species during normal farming activities. The Act makes no allowance for unknowing or simply ignorant actions that "take" a species in the course of farming activities. Farmers are not put on notice that their activities may subject them to prosecution, and, moreover, many protected species are indistinguishable from agricultural pest species or are invisible during daylight hours to a farmer working his fields. Adding to the threat of liability hanging over law-abiding farmers is the Fish and Wildlife Service's administrative expansion of "take" to include modification of habitat *per se*, with no physical impact on an individual endangered

creature. "Take" must be redefined to eliminate the vague terms "harm" and "harass" and to incorporate the holding of the District of Columbia Circuit Court in Sweet Home vs. Babbitt, interpreting "take" to require a physical impact upon a species.

3. **FARMERS ARE BEING PREVENTED FROM PROTECTING THEIR CROPS OR PROPERTY:** There are serious agricultural pests that are protected by the Act, but cause injury to livestock, crops, and essential agricultural support structures such as private dams or impoundments. Examples are ground squirrels and various small protected rodents in California, which undermine dams and eat crops, and crop-eating birds such as blackbirds which are protected under the Federal Endangered Species Act through the Migratory Bird Treaty Act. Moreover, farmers are unable to clear drainage ditches or do necessary levee maintenance work in vast sections of California because of the mere presence of endangered species in the area. Individual section 10a "incidental take" permits are financially infeasible for farmers and small flood control districts, and too time-consuming to serve the needs of essential seasonal maintenance and emergency response work. The Act clearly must allow reasonable actions to protect private property, either by exemption or by a broadly applicable general permit. Normal farming activity must be exempt.

4. **FARMERS ARE FORCED TO PROVIDE MITIGATION FOR PAST URBAN GROWTH AND HISTORICAL IMPACTS:** The Fish and Wildlife Service is demanding mitigation for cumulative historical impacts on species when new or reissued permits are required for existing, on-going, farming activities. For example, recurring levee maintenance and ditch cleaning projects are being held hostage to new mitigation demands for the purpose of compensating for habitat taken by general urban expansion. Agriculture cannot survive if it is treated as the mitigation sump for population growth and urban expansion. The Act should exempt on-going maintenance and repair of existing facilities from mitigation demands. Mitigation for all projects must not exceed compensation for present impacts. Transient impacts must be balanced against any off-setting species benefits in the mitigation calculus.

5. **THE FISH AND WILDLIFE SERVICE IS FORCING ORDINARY FARMING INTO FEDERAL CONSULTATION:** Courts and the Fish and Wildlife Service have gradually expanded the definition of actions that are "authorized, funded, or carried out" by federal agencies so that many, many non-federal projects may be forced through formal consultation under section 7. For example, the Fish and Wildlife Service is now claiming control over the management of private property simply because it receives water from a federal project. Since most human actions,

including many farm activities, receive some federal funding or permits, there is a real danger that the Fish and Wildlife Service could assert broad control over farming practices. They have put us on notice in their biological opinion on the Central Valley Project that they believe any activity--even a crop change--is subject to their control. The Act should exclude state and local agencies and beneficiaries of federal projects or programs from the definition of federal agency or instrumentality, unless they elect to be given that status.

6. **REFUSAL TO DESIGNATE CRITICAL HABITAT IS CREATING A REGULATORY LIMBO THAT IS FORCING DEVELOPMENT ONTO FARMLAND:** Obviously, we cannot prohibit productive use of all lands that an endangered species may use. The Act does not call for such restrictions. It provides for the designation and protection of "critical habitat" only, and requires this designation to be done concurrently with a listing, or within a year. It also provides for the purchase of private lands needed for critical habitat as the only permissible means of setting aside private property for this public use. The Fish and Wildlife Service is unreasonably delaying critical habitat designation, but at the same time is obtaining free habitat by prosecuting modifications of so-called "habitat" on private lands as a criminal "take" of an endangered species. They are basing their prosecutions on habitat "study zones" drawn from crude, outdated, and vastly overbroad range maps that were produced for academic purposes, not for species management, and drafted without any procedural due process being afforded to landowners whose properties lie within the proposed ranges. This indefinite regulatory limbo is forcing urban development onto already-cropped prime farmland, and artificially accelerating loss of this vitally important natural resource. Critical habitat designation must be required before any land use restrictions are imposed on private property, because it is the only means provided by the law for notice to affected landowners and communities, for their input on economic impacts and suitability of the lands to habitat use, and for "firming up" the regulatory impact zones so that non-critical lands may be developed without fear of prosecution.

7. **FARMLANDS ARE BEING TAKEN WITHOUT COMPENSATION, TO SERVE AS FREE CRITICAL HABITAT:** Both these regulatory limbo "study zones" and critical habitat designations also include vast areas of undeveloped farmland. These lands are being kept in unusable "habitat" status indefinitely by endangered species restrictions, without any compensation for loss of value or loss of use. This is clearly a violation of the landowner's constitutional rights. It is a particular burden for farms and ranches, since undeveloped acreage within existing agricultural operations is no longer available for expansion of the operation, and has lost all value as collateral for essential agricultural financing. Not only

should critical habitat designation be done concurrently with or close upon listing of a species, neither listing nor habitat designation should occur until funds are provided to compensate affected landowners. Once funding is provided, the least restrictive interest in private lands should be taken which is consistent with survival of the species, unless the landowner determines that no economically viable use remains, and elects to relinquish all use, in which case full pre-designation market value should be paid.

8. **MULTIPLE USE PUBLIC LANDS ARE BECOMING SINGLE USE LANDS, THREATENING THE ECONOMIC SURVIVAL OF MANY FARMS AND RANCHES THROUGHOUT CALIFORNIA:** There is no express statutory protection for multiple uses on multiple-use public lands against preemption by the Endangered Species Act. Unreasonably restrictive consultation conditions are being imposed by the Fish and Wildlife Service that effectively withdraw these lands from multiple use. Federal permit applicants have not even been allowed a role in the consultation process. The original mandates of land management agencies must be preserved by requiring endangered species needs to be balanced against the needs of the public to continue important economic uses that were provided for in the enabling legislation creating the federal reserves. Balancing these needs requires determining the least restrictive management alternative, so that economic uses can be maintained to the fullest extent compatible with the needs of the species. The Act should provide that this determination will not be made by the Service, but by the land management agency with input from the Service. We believe this is how "consultation" was intended to function.

9. **HABITAT-FRIENDLY FARMING IS BEING PREVENTED BY THE ACT:** Farmers are discouraged from providing any habitat on their properties by the risk that colonization by endangered species will result in the loss of their land for future productive use, and for present use as collateral. The Act makes any "taking" of a member of a listed species a crime, even though the species may be present because of habitat enhancement provided by a farmer, and even though the species as a whole may benefit more than it is harmed. No farmer can safely provide any habitat that may attract an endangered species today. No prudent lender could encourage such a practice. There must be a "take" exemption for any endangered species drawn to a property by habitat created intentionally or incidentally by the landowner. Creation of such habitat should be encouraged by incentives, not penalized.

Members of the Committee, the biggest flaw in this Act is that it is a blunt instrument in the service of an overreaching bureaucracy with a command and control philosophy. We believe this was not the intention of the original Act, but a result of its

implementation by people who have no faith in the good will of local communities and individual citizens, and no understanding that incentives can produce far better results than penalties. We also believe it was not the intent of the Act to sacrifice economic uses of either public or private land unless absolutely demanded by the critical needs of endangered species. The Endangered Species Act has been made into an environmental trump card that overrides the mandated duties of every other federal agency under every other federal law; imposes extreme, unnecessary and infeasible restrictions on productive use of public land; and makes public land out of private land in a way that defeats constitutional rights, environmental incentives, and economic needs. The long range needs of both people and endangered species call for common sense reform.

Finally, the Act must address agriculture. Farming is not just another industry. Its special needs and problems require separate consideration under the Endangered Species Act. Farmers and ranchers hold their land in productive stewardship and must use the land itself for production of the food and fiber that supports our human environment here and abroad. Farmers and ranchers provide many incidental environmental amenities that improve the quality of life, including open space, clean air, and even habitat for many endangered species. However, they can continue to do this only as long as they can maintain the economic viability of their lands. If farmers and ranchers go out of business because of unwise and overreaching command and control regulation from Washington, the environment will be the poorer, and many more species will become endangered.

Again, I thank you for having given me the opportunity to speak to you on behalf of California Farm Bureau Federation and its individual members throughout the state.

BOB L. VICE

PROPOSED FESA AMENDMENTS

CALIFORNIA FARM BUREAU FEDERATION
DEPARTMENT OF ENVIRONMENTAL ADVOCACY

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS

	CURRENT LAW	PROBLEM	SOLUTION
1.	SECTION 2: 16 U.S.C. §1531, FINDINGS AND PURPOSES OF THE ACT. States that the key to safeguarding species is to encourage states and interested parties to develop and maintain conservation programs through federal financial assistance and a system of incentives; states that the purposes of the Act are to provide a means whereby ecosystems on which threatened and endangered species depend may be conserved.	The intended incentive and enabling function of the Act has been abandoned in favor of the cheaper expedient of prohibitory regulation, which is inflicting unintended, unnecessary, and inequitable burdens on communities and property owners; the ecosystem language is misconstrued as a directive to preserve potential habitat wherever it is found, which has led to prosecutions of landowners for making productive use of lands not designated as critical habitat or even shown to be occupied by protected species; the purpose language is also misconstrued as an absolute mandate to preserve species at all cost, resulting in misallocation of scarce public funds from essential public welfare purposes to wasteful, hopeless, and extremely costly efforts to preserve inherently rare species doomed to extinction by natural processes.	Amend the section to clarify that its habitat enhancement and preservation goals are to be achieved on private land <u>only</u> through purchase, incentives, and voluntary cooperation; to recognize human social and economic stability as an aspect of the human environment equal in value to ecosystem preservation and requiring careful consideration in conservation planning; to emphasize that species should be protected to the extent feasible and consistent with human welfare; to recognize extinction by natural processes.
2.	SECTION 3: 16 U.S.C. §1532, DEFINITIONS.	The definitions are vague and overbroad, leading to the extension of regulatory authority by FWS far beyond the purpose of the Act.	
	Critical Habitat is defined to include areas not occupied by a species if "essential for the conservation of the species."	Critical habitat as defined has lead to unnecessary and overbroad inclusion of private property, in conflict with the voluntary incentive system of species conservation proposed in the findings and purpose language.	Critical habitat must be defined to cover only lands actually occupied by a species at the time of listing, based on credible scientific evidence. Any extension of protected habitat must come through development of a Recovery Plan, implemented by purchase or voluntary cooperation.
	Species is defined to include "any subspecies...and any distinct population segment of any species...."	Species as defined has invited abuse of the listing process by listing small geographic isolates and minor genetic varieties which are not significantly distinct from or essential to the survival of a	Species must be limited to populations so distinct genetically that they cannot interbreed to produce fertile young, and must not allow listing of separate geographic subpopulations unless essential for species survival.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS		
CURRENT LAW	**PROBLEM**	**SOLUTION**
	species as a whole. This has vastly exaggerated both the interference of the Act with necessary public projects and with essential economic activity, and has caused scarce funds to be squandered.	
Federal agency is defined to include "instrumentality."	Federal agency as defined has led to regulation of beneficiaries of state and local agency activities solely because the agencies participated in federal programs or received benefits of federal projects such as water impoundments. This is causing extreme interference with private activities never intended to be regulated by the federal government through this Act.	Federal agency must be defined more precisely by eliminating "instrumentality" or by excluding state and local agencies and beneficiaries of federal projects or programs from the definition; a definition of federal action must be provided that makes it clear that only activities directly conducted by or funded by the federal government are federal actions or agencies under the Act.
Take is defined to include "harass" and "harm."	Take as defined to include "harass" and "harm" has been interpreted to include indirect impacts such as habitat modification and accidental or unintentional impacts. This has led to prosecution of landowners for modification of unoccupied land not designated as critical habitat, even though there is no evidence that the defendant knew or should have known of the potential violation; it has resulted in de facto takings of private property by threat of liability for modification.	The terms "harass" and "harm" must be eliminated from the take definition; it must be clear that only intentional, direct and harmful impacts upon individual members of a species shall constitute a "take."
3. **SECTION 4: 16 U.S.C. §1533, DETERMINATION OF ENDANGERED AND THREATENED SPECIES** Contains procedures for listing and de-listing species, and designating critical habitat.		
3.a. Determination (listing) to be based on "best scientific and commercial data available." §1533(b).	a. Determinations based on "best available" data has led to listings based on scanty, outdated, unverified and unverifiable evidence and has resulted in species being delisted because	a. Determinations (listings) must be based on a preponderance of the evidence, following peer review and public comment, taking into consideration all evidence submitted during public comment. Evidence must be scientifica

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS		
CURRENT LAW	**PROBLEM**	**SOLUTION**
	they should never have been listed; this discredits the entire listing process. Evidence produced by the public is discounted by FWS (U.S. Fish and Wildlife Service), and the lack of any evidentiary standard or burden of proof requiring the FWS to scrutinize proposed listings results in a de facto presumption in favor of listing. This same defect applies to the evidentiary standard for critical habitat designation. (See §1533(b)(B)(2).)	credible; credibility must be established by requiring listing petitions and all data supporting such petitions to be: 1) available to the public, and 2) subjected to peer review by a panel of at least three persons recognized as having expertise in the species. The function of the peer review panel must be: to determine whether the methodology and analyses supporting the petition conform to the methods and standards accepted by experts in the field; to issue specific findings as to the quality and reliability of the methodology and analyses supporting the petition; and to issue an opinion as to whether the petition is supported by sufficient credible evidence that the criteria for listing are met. The findings and opinion of the peer review panel must be published in the federal register and all supporting documentation made available to the public.
3.b. **Critical Habitat Designation** requires critical habitat to be designated concurrently with the listing of a species "to the maximum extent prudent and determinable" unless critical habitat "is not then determinable." Critical habitat designation can be deferred for as long as two years before critical habitat must be designated, and then it must only be designated "to the maximum extent prudent." §1533(a)(3).	b. FWS has abused the exceptions to the critical habitat designation deadlines by always stating that it is not yet determinable or not prudent. As a result, critical habitat has been determined for less than 16% of listed species. FWS has used this uncertainty in habitat to <u>over regulate</u> private property, to delay indefinitely any compensation for loss of use or loss of value, and to subject farmers--without warning--to civil and even criminal liability for modifying purported "habitat" by plowing fields. Recovery planning has been prevented by lack of critical habitat designation, lessening prospects of survival of all listed species.	b. FWS must be required to determine critical habitat at the time of listing. The exemptions/excuses must be eliminated except for emergency listings, and the time limits for emergency listings must be enforced. If critical habitat is not designated within two years of the species' listing, the species should be automatically de-listed by operation of law. Critical habitat designation must be based upon a preponderance of credible scientific evidence.
3.c. **Activities which may adversely modify critical habitat** or which may be affected by critical habitat designation must be identified in the publication of the CHD, "to the maximum extent practicable...." §1533(b)(8).	c. In practice, FWS does not identify potentially impacted activities, and the public is therefore disabled from commenting on economic impacts.	c. Require potentially affected activities to be identified with specificity concurrently with critical habitat designation.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS		
CURRENT LAW	**PROBLEM**	**SOLUTION**
3.d. FWS is required to "take into consideration the economic impact, and any other relevant impact" of critical habitat designation, to weigh the benefits and burdens of including any area within critical habitat, and to exclude any area if the benefits of exclusion outweigh the benefits of inclusion, and if exclusion will not result in extinction. §1533(b)(2).	d. In practice, the FWS does not place any value on economic and social impacts, issues a perfunctory dismissal of any claimed impacts, and limits consideration of the true scope and weight of human impacts by arbitrarily refusing to consider any economic impacts it deems attributable to the listing of the species.	d. Require that all evidence of economic and other impacts be scrutinized and that findings be issued addressing each claimed impact with specificity: provide that all impacts are relevant regardless of whether attributable to listing or critical habitat designation, or some combination thereof. Provide that FWS has an affirmative duty to minimize economic and other human impacts to the greatest extent possible without leading to the extinction of the species.
3.e. Critical habitat designation may include private property. §1533(b)(2) and definition at §1532(5).	e. Property owners are not compensated for loss of use and value at the time critical habitat is designated.	e. Affected property owners must be compensated for loss of use and value when critical habitat is designated.
3.f. Recovery plans are required for endangered and threatened species unless FWS "determines that such a plan will not promote the conservation of the species...." §1533(f).	f. In practice, recovery plans are almost nonexistent, and as a result the Act has not produced a recovery of even one endangered species. The potential impacts on landowners are never analyzed, and no basis for eventually delisting a species is established. The end result is a perpetual purgatory of species limping toward extinction, extending indefinitely the harmful human impacts of their listing.	f. FWS must be required to develop and implement a recovery plan for each listed species, without exception. The recovery plan must be developed concurrently with critical habitat designation, and in compliance with the requirements of economic impact analysis applicable to critical habitat designation. It must set forth specific population goals. The Act should provide that any species for which a recovery plan is not prepared and implemented within five years of listing must automatically be delisted by operation of law.
3.g. Judicial review is provided for decisions not to list species, but no review is provided for decisions in favor of listings. §1533(b)(3)(C)(ii).	g. Affected parties are denied any opportunity to test the scientific basis of a listing decision, thereby disabling the public from ensuring FWS does not abuse its discretion.	g. Any person must be allowed to bring an action to determine whether the decision to list or not to list is supported by a preponderance of the evidence.
4. **SECTION 5: 16 U.S.C. §1534, LAND ACQUISITION.** Provides that to carry out the program to conserve an endangered species, the FWS shall "utilize the land acquisition authority" and may acquire "lands, waters, and interests therein" by "purchase, donation, or otherwise...."	In contrast to the clear intent of the law, the aims of species conservation are being achieved by regulatory prohibition of productive use of private property, and extortion under threat of prosecution. Landowners are provided no compensation for loss of use, loss of value, and impairment of collateral.	In order to ensure that such abuses cannot continue, there must be no interference with private property unless and until the property owner is fully compensated for lost use and lost market value of the restricted property. The Act must provide that the least restrictive interest shall be acquired which is consistent with survival of the species, unless the property owner elects to convey the property in fee.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS

	CURRENT LAW	PROBLEM	SOLUTION
5.	**SECTION 6: 16 U.S.C. §1535, COOPERATION WITH STATES.** Pertains to relationship between federal and state governments in implementing the Act.	Provides no encouragement or security for property owners to enter into pre-listing recovery programs. Allows states to create more restrictive provisions, and is being used by some states to diminish federal constitutional rights.	Authority should be given for landowners, groups of landowners, or local governments to enter into prelisting recovery agreements with FWS; there must be guarantees that no species covered by such an agreement will be listed as long as the agreement is in effect and satisfactory progress is being made to accomplish its stated goals. Authority should also be given for voluntary habitat mitigation banks or reserves to be established by cooperating landowners for the purpose of obtaining compensation for habitat values provided by their land. The existing section allowing states to enact more restrictive measures than federal law must be eliminated to ensure that federal constitutional rights are protected.
6.	**SECTION 7: 16 U.S.C. §1536, INTERAGENCY COOPERATION.**		
	6.a.1) <u>Consultation</u>: Federal agencies must consult with FWS concerning "any action authorized, funded, or carried out" by it to "insure" that its action is not likely to jeopardize the continued existence of any listed species. §1536(a)(2).	a.1) FWS has interpreted "action" to include indirect effects of federal actions, such as farming practices on lands receiving federal water. Such an expansive interpretation of federal agency "action" grants FWS unlimited authority over private activities never intended by Congress to be federalized.	a.1) The section should be amended to eliminate actions merely "authorized" or "funded" by the federal government, and to make it clear that the activities of private beneficiaries of federal programs and projects are not themselves subject to regulation as federal actions.
	6.a.2) Persons dependent on federal permits are disabled from participating in formal consultation unless allowed to do so by the agency. §1536(a)(2), (3), and (4).	a.2) Permittees, licensees, and others directly dependent on a federal permit are not able to protect their rights and reasonable expectations either as full participants in consultations or by challenging the results of consultation in court.	a.2) Federal permittees and licensees should be deemed to be affected interests and be given full and independent rights of participation, as well as clear standing to challenge consultation decisions in court.
	6.a.3) The duty of federal agencies to fulfill the mandates of their authorizing legislation is not recognized expressly under the Act.	a.3) Failure to affirm the duty of agencies to accomplish the purposes of their authorizing legislation results in valuable uses and duties being unnecessarily impaired by FWS demands during consultation.	a.3) It must be clarified that FESA does not override other statutory duties, and that unless it is specifically provided by law, FWS and the agency must preserve all economic activities on federal lands to the maximum extent feasible and consistent with the continued existence of the species.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS			
	CURRENT LAW	PROBLEM	SOLUTION
	6.a.4) The consultation process provides no de minimis exception for small impact activities, either by authorizing a general permit or a categorical exemption from the Act. 6.a.5) No provision is made for continuing existing activities during consultation.	a.4) Low impact activities are required to go through informal consultation at the least, wasting agency time and federal as well as permittee funds. a.5) Federal licensees and permittees are at risk of having their use suspended pending consultation when a new species is listed, even though there is no change of circumstances in the area affected by their use.	a.4) Agencies should be allowed to establish general classifications of low impact activities to be granted categorical exemptions. In addition, the Act should authorize general permits for enumerated activities. a.5) Existing (including seasonal) uses must be defined as the environmental status quo pending completion of consultation; existing uses by a permittee, licensee or a transferee of a permit or license must not be interrupted or suspended during consultation.
6b.	Conservation: Provides that federal agencies shall "use their authorities in furtherance of the purposes of this chapter...." §1533(a)(1).	b. This provision has been used to elevate FESA over the enabling legislation of federal agencies, and to override specific statutory duties of the agency provided therein.	b. The provision should be deleted or amended to provide that unless otherwise specifically stated, agencies shall cooperate with FWS to the extent feasible and consistent with the goals and directives of the laws authorizing and governing their activities.
7.	SECTION 9: 16 U.S.C. §1538, PROHIBITED ACTS. Includes penalties for prohibited "takes." Provides no clear intent threshold, compounding the problem of the Act's vague and overbroad definition of take. Provides no means to excuse unintentional, inadvertent, or negligent takes. Provides no means of distinguishing insignificant violations from actions that substantially affect a species.	People are being prosecuted for unintentional "takes" and for habitat modification without impacts on individuals of an endangered species. Habitat Conservation Plans and Prelisting Recovery Plans are seriously impeded by lack of a means to excuse takes of later-listed species. The overly severe criminal and civil penalties provided under section 11 and excessive delegation of discretion to agency field agents has resulted in inconsistent and inequitable enforcement, criminalizing ordinary law-abiding citizens and severely interfering with productive activities.	As noted in the proposed amendments to definitions, the "take" prohibitions must be limited to intentional actions causing direct, harmful, physical impact to an individual of an endangered species. A de minimis impact threshold must be provided to eliminate liability for insignificant impacts. Clear standards for determining intent must be provided to eliminate prosecutorial abuses. To encourage voluntary habitat conservation planning, future listings must not give rise to "take" liability within any area covered by an approved habitat conservation plan or prelisting recovery plan.
8.	SECTION 10: 16 U.S.C. §1539, EXCEPTIONS.		
8a.	Permits and Exceptions: Provides extremely limited discretionary exceptions to "take" prosecution for pre-existing contracts, and certain Native American activities.	a. For all practical purposes, the incidental take permit is not an option for small landowners or agriculturalists; the process is extremely complex, time-consuming, and prohibitively	a. Multi-species HCPs should be encouraged by providing certainty that after-arising listings will not lead to further liability for unauthorized "take." Some provision must be made to authorize incidental takes for small landowners.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS

CURRENT LAW	PROBLEM	SOLUTION
Provides "incidental take permits" for private projects under limited circumstances, where the take is incidental to an otherwise lawful activity and a habitat conservation plan (HCP) adequately mitigates the impact of the take on the species. All permits apply only to species listed at the time of permitting. §§1539(a) - (i).	expensive for any but large projects with high monetary returns on investment. No provision is made for multi-species prospective planning for local and regional government; such "multi-species HCPs" are discouraged by failure to allow take of species not specifically provided for under the terms of the plan.	Agricultural landowners have unique problems as sustainable land users; provision must be made to recognize the compensatory environmental benefits of farming and to exempt ordinary agricultural activities from "take" liability, as is done under Clean Water Act section 404(f).
8b. <u>Experimental Populations</u>: Provides that FWS may release populations of endangered or threatened species outside their current range. Such experimental populations are to be given full threatened status protection. For federal actions they may be protected only as species proposed for listing, if the Secretary of Interior determines they are not essential to continued existence of the species. §1539(j).	b. Private citizens are disabled from protecting their property from depredation by such imported populations, and are provided with no means to obtain compensation.	b. The Act must allow private citizens to protect their property by all reasonably necessary force; such actions must be exempt from the "take" prohibitions of section 9; a compensation fund and procedure must be established to fully compensate private citizens for all losses caused by such experimental populations.
9. **SECTION 11: 16 U.S.C. §1540, PENALTIES AND ENFORCEMENT.**		
9a. <u>Civil and Criminal Penalties</u>: Provides that "any person who knowingly violates . . . any provision of this Act" may be subject to civil and <u>criminal</u> liability resulting in penalties of up to $10,000 per civil violation and up to $20,000 fine and a year of imprisonment per criminal count. §1540(a), (b).	a. Ordinary law-abiding landowners are being charged with both civil and criminal liability for inadvertent "takes" consisting of plowing and seeding their own land, based on FWS claims that they have either killed sub-surface species or modified their habitat, even though no critical habitat has been declared and no prior knowledge of actual presence of the species can be shown. The penalties are so severe that small landowners and agriculturalists are coerced into plea agreements, relinquishing their rights.	a. There should be <u>no</u> prosecution or penalty for modifying unoccupied habitat. There should be no prosecution or penalty for a "take" by modification of occupied habitat unless the property has been formally designated as critical habitat. The Act must provide that knowledge cannot be imputed from constructive notice; actual notice of the probable presence of an endangered species must be required for both civil and criminal liability. Penalties should be made proportional to the significance of the impact; costs of defense, including attorney fees, should be awarded for successful defense.

ANALYSIS OF ACT WITH PROPOSED AMENDMENTS		
CURRENT LAW	**PROBLEM**	**SOLUTION**
9b. Citizen Suits: Provides that "any person may commence a civil suit" to enforce the listing provisions and prohibitions of the Act. Costs of litigation may be recovered. §1540(g).	b. Although the Act allows a judge to award costs to "any party," successful defendants are seldom compensated and could not receive general damages for economic losses. In addition, courts have denied "standing to sue" to persons who allege that their social or economic, but not environmental, interests are injured by improper governmental actions or determinations taken under the Act.	b. The Act must clearly provide for recovery of costs of defense, including attorney fees, for persons who successfully defend against suits by private citizens alleging violations of the Act. A right of recovery must be provided for economic losses due to the filing of an unmeritorious action. Clear standing to sue must be provided to persons alleging injuries to their social or economic interests from improper governmental determinations or actions taken under the Act.
The above analysis is confined to material defects in the Endangered Species Act which are causing unreasonable and unintended interference with ordinary economic activities, or impairing constitutional rights to due process and the enjoyment of private property.		

TESTIMONY OF PACIFIC LEGAL FOUNDATION PRESENTED TO THE TASK FORCE ON ENDANGERED SPECIES OF THE COMMITTEE ON RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES

Hearing on Endangered Species Act

April 28, 1995

Stockton, California

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INTRODUCTION

On behalf of Pacific Legal Foundation, thank you for the opportunity to present testimony today on the Endangered Species Act (ESA). I am Rob Rivett. I am a lawyer and the Director of Environmental Law for Pacific Legal Foundation. Over the years, I have had considerable experience with ESA and consider it possibly the most powerful environmental law in this country. It contains few features that landowners, tax payers, or economists would embrace. Enacted in 1973, the ESA was well-intentioned in its aim to prevent the extinction of important plant and animal species. However, after some 22 years, the results have been mixed at best. More and more species are being classified by the government as threatened or endangered yet few species ever listed have been removed from the list due to their recovery. With increased listings, America is experiencing ever increasing restrictions on how and even whether certain private properties can be used by their owners. PLF has become very concerned about these seemingly endless restrictions, many of which are apparently designed to control land use rather than protect species and rehabilitate their habitat. PLF is pleased to share with the Task Force examples of such ESA misuse and suggest ways to avoid these problems in the ESA's reauthorization.

Pacific Legal Foundation is a nonprofit, public interest law organization with over 20,000 members, contributors, and supporters throughout the country. Since its establishment in 1973, the same year the ESA was enacted, PLF has engaged in research and litigation over a broad spectrum of public interest issues. PLF supports the concept that governmental action should be limited to a legitimate scope of authority, and that governmental decisions should reflect a careful assessment of the social and economic costs and benefits involved.

One of the basic philosophies of PLF is that the development of governmental policy for environmental and land use issues should include concerns for the economy, employment, property rights, and general welfare of the public as well as concern for the environment. In short, PLF advocates a broad view of the public interest and seeks to ensure that balance and common sense are the bases on which laws and regulations are adopted, interpreted, and administered.

PLF has litigated numerous cases from state courts to the United States Supreme Court in order to fight for the constitutional rights of property owners. For

example, PLF attorneys represented the Nollan family in *Nollan v. California Coastal Commission*,[1] one of three landmark property rights cases decided by the United States Supreme Court in 1987. PLF participated in the other two 1987 cases as amicus curiae[2] just as it did in the two most recent Supreme Court cases in 1982 and 1984 which further refined the interpretation of the Takings Clause of the Fifth Amendment of the United States Constitution.[3] The Foundation has also participated in numerous cases involving the implications of endangered species,[4] wetlands,[5] and other environmental regulations including several cases where millions of dollars have been awarded to property owners who were denied Section 404 dredge and fill permits by the Corps of Engineers.[6] Because of our long held interest in a reasonable, balanced response to national environmental concerns and in the protection of private property rights we appreciate this opportunity to submit our testimony to the ESA Task Force.

THE ACT'S CONSEQUENCES: PROBLEMS WE MUST CORRECT

The ESA has been a noble experiment. Its goal has been to protect fish and wildlife from extinction, but to date, the Act has met with very little success.

In an interview with *Land Rights Letter*, a Maryland-based private property rights organization, Robert J. Smith of the Competitive Enterprise Institute (CEI) in Washington, DC stated: "[A]s a mechanism for effecting the recovery of threatened or

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[1] 483 U.S. 825 (1987).

[2] *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470 (1987); and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

[3] *Lucas v. South Carolina Coastal Council*, 505 U.S. ___, 120 L. Ed. 2d 798 (1992); *Dolan v. City of Tigard*, 512 U.S. ___, 129 L. Ed. 2d 304 (1994).

[4] *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir. 1981); *Sweet Home Chapter of Communities for a Great Oregon v. Lujan*, 17 F.3d 1463 (DC Cir. 1994), *cert. granted*, 63 U.S.L.W. 3513 (Jan. 6, 1995) (No. 94-859).

[5] *Ocie Mills and Carey C. Mills v. United States of America*, 36 F.3d 1052 (11th Cir. 1994), *petition for cert. filed*, 63 U.S.L.W. d68 (Apr. 13, 1995) (No. 94-1678).

[6] *Formanek v. United States*, 26 Cl. Ct. 332 (1992) ($933,921 awarded) and *Loveladies Harbor, Inc. v. United States*, 28 F.3d 1171 (Fed. Cir. 1994) ($2.6 million awarded).

endangered species, the act has pretty much been a failure. But as a mechanism for achieving land use control and stopping development, the act has been a resounding success."

CEI's Ike Sugg explained:

> As of July 1991, only sixteen species had been delisted: four by recovery, five through original "data errors," and seven via extinction. The data errors mean that the species should not have been listed in the first place. Extinction means anything but efficacy.
>
> Furthermore, as of December 1992, the five species [Fish & Wildlife Service] claimed to have "recovered" were the Palau dove, the Palau fantail flycatcher, the Palau owl, the Rydberg milk-vetch, and the American alligator.... However, according to a 1989 General Accounting Office report to the House Merchant Marine and Fisheries Committee, "although officially designated as recovered, the three Palau species owe their 'recovery' more to the discovery of additional birds than to successful recovery efforts." Similarly, the Rydberg milk-vetch, a plant endemic to Utah, was listed in 1978, when it occurred in only "two known locations." Since 1978, "surveys have discovered additional populations of this species, which currently numbers more than 300,000 individuals."

24 CUMBERLAND LAW REVIEW 1, 42-43 (1994). In sum, Mr. Sugg concludes the ESA "utterly fails to accomplish its stated objectives." It has "no true success stories to trumpet."

With such little success, one would hope the attendant costs would at least have been low. But they have not. The costs have been high and the indirect costs have been astronomical.

The National Wilderness Institute (NWI) examined the "recovery" plans for 388 endangered species, written between 1973 and 1993, and found that the minimum *identifiable* cost of trying to protect all of them is ***$884 million***. 5 *Endangered Species Blueprint*, NWI Resource, Issue I (Fall 1994).

First on the top 10 costliest species list is the Atlantic Green Turtle--$88 million; second is the Loggerhead Turtle--$85 million; the Blunt-Nosed Leopard Lizard was third--$70 million. Next is the Kemp's Ridley Sea Turtle--$63 million; the Colorado Squawfish, Humpback Chub, Bonytail Chub, and Razorback Sucker--$57 million; the Black-Capped Vireo--$53 million; and finally, the Swamp Pink--$29 million.

Government expenditures are actually far greater than estimated. For instance, in comparing recovery plan cost estimates with actual government expenditures for 1989-91, NWI found that the cost estimate for saving the Schaus Swallowtail Butterfly was $128,000,

yet identifiable expenditures during that period were $1.4 million. Similarly, the recovery plan cost for California's Valley Elderberry Longhorn Beetle was estimated at $320,000; actual expenditures were $2.3 million. Federal officials estimated recovery of the Florida Scrub Jay would cost only $65,000. According to NWI, the known government expenditure for the period studied was $21,671,000 or 33,340% over the estimate!

Of course, the ultimate costs on society are much higher as figures do *not* reflect costs attributable to losses in private property values, reduced or terminated business activities, lost jobs and tax revenues caused by restrictions imposed by the ESA, costs of local government compliance, and other similar factors.

CALIFORNIA EXAMPLES

Aside from the costs of recovery plans, the citizens of California have been asked to shoulder substantial ESA protection costs due to California's unique status. Because of its climate and favorable geography, as of 1994 California provided a home for 128 federally listed species and nearly 1,000 candidates for listing. 5 *Endangered Species Blueprint*, NWI Resource, Issue I. A United States Fish and Wildlife Service's (USFWS or FWS) regulation protects endangered species habitat on private property and, as applied in this state, forbids many types of otherwise permissible, ordinary land use activities on millions of acres of private land.[7] Numerous examples exist detailing the enormous costs and administrative burdens private landowners have been forced to bear.

For example, the California timber industry has suffered staggering losses as a result of USFWS' regulation protecting endangered species habitat at the expense of private property owners. The Wagner Corporation, a small family owned timber company established in Stockton, California, in 1895, owns and manages 3,400 acres of forest land near Garberville, California. During the 1993 and 1994 forest season, Wagner found a pair of nesting spotted owls (protected under the ESA) in the middle of an area then scheduled for logging. To prevent a "take" by modifying habitat Wagner could log only 45% of the trees selected for harvesting. As a result, the company's revenue losses approached $200,000. Since the area is on a 17-year rotation, Wagner will not be able to harvest the area again until the year 2012.

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[7] 50 C.F.R. 17.3 (1992).

Eel River Sawmills, Inc. (ERS), is another small timber company located in Fortuna, California. Founded in 1948, ERS also has been economically injured by USFWS' determinations regarding the habitat needs of the spotted owl on private lands. Specifically, ERS has been required to leave untouched and standing several million feet of old-growth Douglas fir because according to USFWS any amount of harvest would harm habitat and thus result in the "take" of resident owls. The inability to properly manage its timberlands, in the name of species protection, has caused ERS to suffer considerable economic loss.

Schmidbauer Lumber, Inc., located in Eureka, California, has also consulted with a small private property owner who also has suffered severe financial loss. Even though the property owner had completed all permitting requirements including all surveys for protected spotted owl and marbled murrelet necessary to proceed with a harvest under a state Non-Industrial Timber Management Plan, the property owner was told not to proceed because it was discovered that a *neighboring* property contained murrelet sightings. In order to proceed, a 300-foot no-harvest buffer and a seasonal harvest restriction (April 1-September 15) of one quarter mile buffer were required to be set aside to protect the murrelet.

The California building industry and ultimately the public have suffered startling losses at the hands of USFWS' species habitat protection program on private property. From San Bernardino, California, comes the almost unbelievable story of a "conflict" between the ESA and the construction of the San Bernardino County Medical Center. In order to mitigate for the presence of *eight* Dehli Sands Flower-Loving Flies, the medical center had to move and redesign the much-needed medical facility, in addition to providing 1.92 acres of protected habitat. The expenditure was $3,310,199 total or $413,774.25 per fly and resulted in a one-year construction delay. This cost is equivalent to the average cost of treatment of 494 inpatients or 23,644 outpatients.

In Sacramento, California, Sares Regis Group, Inc., is currently in its *seventh* year of attempting to get approval to develop a 1,225 acre planned community. The planned community will meet current and future area needs and is completely consistent with the Sacramento County General Plan. The Sunrise-Douglas project would concentrate badly needed residential housing near both a major employment area and public transit, and is

expected to bring badly needed new jobs to the Sacramento economy. The project contains some 85 acres of vernal pools[8] and other marginal wetlands.

Unfortunately, in September, 1994, three varieties of fairy shrimp and the vernal pool tadpole shrimp were listed by USFWS as protected species because of USFWS' unverified belief that habitat for the species is in jeopardy. Fairy shrimp are prolific and are found in vernal pools, man-made stock ponds, drainage ditches, and even tire ruts. One of the three fairy shrimp listed as endangered and the one that is considered threatened are found on the Sunrise-Douglas property. Sares-Regis must now modify its wetland mitigation plan to provide additional habitat for the fairy shrimp. The mitigation plan already calls for setting aside 30% of the property as an open space and vernal pool preserve and for creating vernal pools offsite at a rate of 1.3 acres for each acre filled by the project. Now the only question is whether this important project can be kept alive in the face of increased habitat demands by USFWS.

Agriculture has been materially affected as well. For example, in 1988, the Lost River sucker and shortnose sucker were listed as threatened. These fish were considered trash fish and poisoned for years by fish and game personnel and farmers in an attempt to eradicate them. However, due to the near success of the eradication program, these fish now hold hostage the Klamath Reclamation Project and about 210,000 acres of farmland in the Klamath Basin. During California's recent drought, an environmental organization sued to stop the delivery of irrigation water from Upper Klamath Lake claiming that the two fish were in imminent risk of extinction. They argued that the Bureau of Reclamation's drawing of water from the lake causes loss of habitat and poor lake water quality as pollutants are concentrated. As a result, the bureau entered into formal consultation with the USFWS which issued a biological opinion restricting the amount of water that would be released for irrigation in order to protect the suckers and their habitat. With this decision, the Klamath Basin could lose during dry years approximately $200 million in crop sale revenues and 20,000 agricultural related jobs. Moreover, the

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[8] Vernal pools are shallow depressions in the ground that fill with water during fall and winter rains and then evaporate in the spring. The water does not percolate downward because of an impervious subsurface layer such as clay, hardpan, or volcanic stratum. Thus, vernal pools are seasonal water bodies that generally do not exist in the hot and dry summer months.

largest concentration of waterfowl in the Pacific Flyway is dependent upon water releases from Upper Klamath Lake and the largest wintering population of bald eagles in the lower 48 states relies on these waterfowl for critical winter food. Thus, the economy of the Klamath Basin in Northern California and Southern Oregon is jeopardized year after year by the inflexible application of the ESA. Agricultural productivity, food production, and employment rates simply mean nothing when listed species are jeopardized.

These are just a handful of the many instances in California where the inflexibility of the ESA has caused social and economic misery. What must be asked is this --judging from the lack of success of the Act, can America afford such extraordinary costs?

UNINTENDED TOOL TO CONTROL LAND USE

The Act has turned into a mechanism to stop land use activities rather then protect species. The spate of lawsuits to force the listing of the Northern Spotted Owl as a threatened species and stop timber sales is the most celebrated example to date. The preservationists' efforts to list the owl were orchestrated not to protect the owl but to stop the harvest of old-growth timber. The "experts" had insufficient survey data on owl distribution but nevertheless determined that the owl population was in trouble and old growth was essential habitat. Thus, by listing the owl, the proponents could achieve their real goal, stopping the logging.

Northern California's rural economy has suffered severely due to this listing even though it is now clear that the owl is not threatened in Northern California nor is its habitat. Why? The owl adapts quite well to many different habitat forms and probably prefers second and third growth forests. *See* Petition to Remove the Northern Spotted Owl in California From the List of Threatened Species, filed by the California Forestry Association pursuant to 50 Code of Federal Regulations § 424.14.

The recently listed Fairy Shrimp could be the most egregious example of an agency's misuse of the Act. Fairy Shrimp are fly-sized crustaceans (about 5/8ths of an inch from end to end) and, as stated earlier, are found by the millions (if not billions) in California's Central Valley. Impervious to dehydration, these hardy invertebrates are found in ephemeral water bodies, such as irrigation ditches, tire ruts, roadside ditches, airport runoff ditches, stock ponds, backhoe pits, and "vernal pools." During the summer, when

these water "bodies" either shrink or evaporate, Fairy Shrimp leave behind their resistent eggs, either until the next rain or until the eggs can be carried by wind, water, livestock, or migratory birds from one pool to another.

The Interior Department's decision to list these species as endangered or threatened has already halted or significantly delayed numerous housing and other development projects of privately owned land throughout California's central valley. In many cases, the blocked projects have gone through lengthy planning and permitting phases. Having successfully satisfied myriad federal, state, and local permitting requirements, developers are being told that they cannot proceed because of the presence of potential Fairy Shrimp habitat. In order to use their property, they must survey for two years to document the absence of these shrimp or they must agree to mitigation measures such as giving up some of their property for dedication as permanent Fairy Shrimp preserves.

What is particularly aggravating is that the listing of these species should never have occurred. Eager to control the surrounding land uses, FWS listed with insufficient data, ignored contrary data, engaged in little survey work, failed to obtain statistically valid survey samples to determine population locations, and violated its own rules and regulations. Moreover, since the listings, FWS has been very slow to grant permits to researchers attempting to conduct surveys to gather additional data needed to show the species should not have been listed. The agency has been much more interested in pressuring land owners to offer substantial mitigation in return for the agency's issuance of a permit to go forward with scaled down development. As a result of these listings, a lawsuit has been filed which is sure to channel significant financial resources away from species that truly need protection in order to cover the costs of litigation.

THE ESA IS SO INFLEXIBLE AND CITIZEN SUIT PROVISIONS SO GENEROUS THAT ESA LITIGATION CONTROLS ADMINISTRATION AND ENFORCEMENT OF THE ACT. THIS MUST BE CHANGED.

The ESA has supplanted all other Acts as the favorite statutory weapon for mounting administrative and judicial attacks on economic enterprise. It is the most severe and inflexible of all environmental laws. Listing advocates can and regularly do sue the federal government if it decides not to list a species. 16 U.S.C. § 1533(b)(3)(c)(ii); § 1533(b)(6)(B)(ii). Additionally, any person can use the citizen suit provisions of the Act to

stop private property use, such as the plowing of farm land, if the conduct is arguably in violation of the Act. 16 U.S.C. § 1540(g). Thus private citizens and advocacy groups have had a powerful role in administering and enforcing the ESA.

For example, private land owners have been threatened with suit and have been sued under Section 9(a)(1)(B), 16 U.S.C. § 1538(a)(1)(B), and 50 C.F.R. § 17.31(a). These actions make it unlawful for "any person" (which includes all private and public entities, *see* 16 U.S.C. § 1532(13), to "take" a threatened or endangered species. "Take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." Section 3(19), 16 U.S.C. § 1532(19) (emphasis added).

The Secretary defines "harm" as follows:

> *Harm* in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patters, including breeding, feeding or sheltering."

50 C.F.R. § 17.3. Knowing violations of the "harm" regulation are crimes punishable by up to one year in jail and substantial fines. *See* 16 U.S.C. § 1540(b). Violators of the "harm" regulation may also face citizen suits for injunctive relief, as well as civil penalty actions by the federal government. *See* 16 U.S.C. 1540(a), (e)(6), (g)(1)(A).

State and local officials also have been threatened with prosecution or civil suit if they approve private land use activities that purportedly violate the "harm" regulation.[9] Clearly, the coercive nature of citizen suits and even the threat of such suits against private and public defendants have resulted in decisions that recklessly halt normally legal private conduct. House building, farm land cultivation, even fire break discing have been forbidden because the Act is unwavering in its narrow focus: protect listed species regardless of

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[9] *See* R. Thornton, *The Endangered Species Act: Searching for Consensus and Predictability: Habitat Conservation Planning Under the Endangered Species Act of 1973*, 21 ENVTL. L. 605, 613-14 (1991) (quoting a FWS letter to the Planning Director of a California city stating, with respect to a zoning action, that "the approval and implementation of the proposed action may subject ... city officials to investigations by our law enforcement branch regarding potential violations of the Endangered Species Act."

unintended consequences and in so doing give citizens the right to second guess and preempt governmental administrative and enforcement decisions under the Act.

The result of this statutory scheme has been management by lawsuit. The Northern Spotted Owl and ecosystem plan designed to manage its critical and essential habitat are products of extensive lengthy litigation that has been ongoing for years. *See, e.g., Northern Spotted Owl v. Hodel*, 716 F. Supp. 479 (W. D. Wash. 1988); *Seattle Audubon Society v. Espy*, 998 F.2d 699 (9th Cir. 1993). The habitat management of the Winter Run Chinook Salmon in the Sacramento River was has been affected by litigation (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District*, 8 Cal. 4th 1552 (1992)) as has the habitat management of the Lost River Sucker and shortnose sucker in Northern California (*Oregon Natural Resources Clinic v. United States Bureau of Reclamation*, 37 F.3d 1414 (9th Cir. 1994). These listings, of course, have affected thousands of acres of farm land now unable to obtain adequate irrigation water from federal reclamation projects during low water years.

It is time to amend the ESA to avoid management by litigation and to return some balance and reason to species preservation.

RECOMMENDATIONS

1. Species listings must be based on better evidence. Evidence must be not only scientifically valid, it should be statistically significant and peer reviewed. Moreover, a minimum level of field studies and surveys should be conducted by federal personnel prior to listing and scientifically valid public input must be considered. Additionally, all administrative records of the listing process must be open to public review and comment to ensure open and professional decisionmaking. In this way, there would be fewer chances for biased, insupportable listing or delisting decisions based on the paucity of evidence allowed by the present level of acceptable evidence--"best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A). What is "available" is not necessarily adequate or valid!

2. The costs of listing species, establishing critical habitat, developing recovery plans, and enforcing the prohibitions of the Act are daunting. When combined with the social and economic ramifications of listings, the costs are mind boggling especially since to date few if any species have been recovered. Under these circumstances, it would be prudent if not essential to change how and when species are listed. Simply put, the ESA

should embrace selective species listing based a number of objective, balancing criteria. These criteria should include the weighing of:

a. the recoverability and cost of recovering a species;

b. the economic and social benefit of a species;

c. the social and economic harm from listing a species;

d. the increase for loss of employment as a result of listing a species;

e. whether there are reasonable alternatives to a listing, such as a captive breeding program, that will preserve the species from extinction;

f. whether the scope of critical or essential habitat is definable thus allowing private property owners reasonable expectations as to how they can use their property; and

g. whether species should be broken down into subspecies and distinct population segments for listing purposes.[10]

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[10] Currently under the ESA, the term species includes any subspecies of fish, wildlife, or plants and any distinct population segment of species of vertebrate fish or wildlife. 16 U.S.C. § 1532(16). Species is a term generally used to identify those individuals actually or potentially capable of reproducing among themselves but incapable of reproducing with other organisms. The ESA allows species to be broken down further by "subspecies" for listing purposes. Unfortunately, the act of identifying subspecies is highly subjective. Some scientists recognize significant variation in a species without finding a subspecies. Others look for subtle differences in coloration, markings, behavior, and range to establish a separate taxonomic unit and thus subspecies. As an illustration of this methodological conflict, some scientists recognize 74 species and subspecies of the Grizzly Bear while others recognize only one.

Regarding distinct population segments, as the ESA is now written, a separate population can be listed even if the species as a whole is flourishing. This provision allows the ESA to be manipulated to stop unwanted economic activities rather than to protect truly jeopardized plants and animals. The absurdity of such listings was underscored by the humorous filing in 1994 of a petition to list as endangered the Amish and Mennonites. The petitioner argued that these groups of people (animals) meet the criteria of the Act because they each compose a distinct population of mammals with a gene pool that is maintained in a fairly pure state by isolation accomplished by their traditions, culture, customers, and habits. The petitioners compared their eligibility for listing to the Winter Run Chinook Salmon in the Sacramento River which has some genes mixing with the late Fall Run Chinook Salmon but is nevertheless listed as an endangered distinct population segment of a subspecies. Of course, the listing of the Winter Run has caused significant economic harm to agriculture, limiting water diversions for crop irrigation.

These and other factors should be weighed in the listing process to prioritize which species society can afford to list. When resources are finite, decisions have to recognize those limits and act accordingly.

3. A system providing private property owners positive economic incentives to provide species habitat must be developed to avoid (a) the continued failure of the Act and (b) the Act's disregard and nonchalance toward private property rights.

4. If nothing else is done, the Act should ensure that the private property owner is compensated when forced to provide species habitat.

Congress needs to keep in mind what the United States Constitution's Fifth Amendment says: "No person shall be ... deprived of life, liberty or *property* without due process of law ... nor shall *private property* be taken for public use, without just compensation." The purpose of this "Takings Clause" is to bar the government from forcing individual property owners from shouldering public burdens that in all fairness and justice should be borne by the public as a whole.

Although many of the burdens of the ESA have been shouldered by the private property owner, the Takings Clause has not provided an easy mechanism to mete out fairness. Unfortunately, the federal government does not normally offer compensation on its own accord; it is the *landowner* who must first file suit to obtain it. Many of the ESA's victim's are the landowners who do not have the financial resources to defend through affirmative judicial actions their constitutional rights. Most often, the cost of litigating a case through the court system far exceeds the value of the land involved. Thus, few lawsuits against the government are brought, and few landowners are compensated for the governmental actions that take their property. These circumstances place affected landowners on the horns of a terrible dilemma: give up constitutionally guaranteed property rights or violate the ESA. Both choices are obviously unacceptable.

Without a guarantee of compensation, landowners--small or large--will not have the incentive to protect endangered species or preserve the habitats of listed species that are located on their lands. As a result, they end up becoming enemies of conservation instead of conservationists. On the other hand, if Congress adopted market-based incentives such as compensating landowners, or granting them tax breaks, for attracting or preserving

endangered species or setting aside portions of their land as habitat, endangered species could become assets not liabilities.

In closing, PLF thanks the ESA Task Force for this opportunity to offer its concerns about the ESA. It is an important Act with far-reaching, salutary goals. However, without systematic changes these goals won't be reached; rather this country's citizens will continue to view the Act as extorsive and coercive. Private property owners must view species and habitat preservation positively and in their best interests. This will only happen when the Act recognizes that not all species can or should be saved; that the social, economic, and land use consequences of listings are relevant to the listing process, that litigation should be eschewed as the driving force behind ESA listing and management decisions; and that the owner of private land officially used for the benefit of species protection must be compensated.

Thank you.

STATEMENT BY CLIFFORD H. MORIYAMA

DIRECTOR OF AGRICULTURE AND RESOURCES

CALIFORNIA CHAMBER OF COMMERCE

BEFORE THE

HOUSE TASK FORCE ON ENDANGERED SPECIES

STOCKTON, CALIFORNIA

FRIDAY, APRIL 28, 1995

Statement by Clifford H. Moriyama
Director of Agriculture and Resources
California Chamber of Commerce
to the
Task Force on Endangered Species
of the
U.S. House of Representatives

April 28, 1995

Introduction

Chairman Pombo and honorable members of the Task Force on Endangered Species, I would like to thank you for the opportunity to address this task force on an issue that is of the utmost importance to the business community of California - the reform of the federal Endangered Species Act (ESA).

My name is Clifford H. Moriyama. I am the Director of Agriculture and Resources for the California Chamber of Commerce. The California Chamber of Commerce is the largest and most broadly based employer representative in Sacramento which joins the interests of business, industry, and agriculture to work for positive action on key legislative and regulatory issues affecting California's economic and job climate. The California Chamber's membership consists of over 8,500 companies of all sizes and from every industry, 160 member trade associations, and 425 affiliated local chambers of commerce with a statewide network of 275,000 small business owners.

In addition to working for the California Chamber, I am the designated spokesperson for the Fairy Shrimp Study Group. The Fairy Shrimp Study Group was formed in December

1994, under the auspices of the California Chamber of Commerce. Its membership includes the California Cattlemen's Association, Western Growers Association, and several Northern and Central California property owners and businesses. The Fairy Shrimp Study Group was created because its members were concerned about the impact the listing of four vernal pool fairy shrimp and tadpole shrimp as threatened or endangered would have on the economy of California. The Fairy Shrimp Study Group also believes that there are serious factual and scientific questions regarding these listings.

While the California Chamber is concerned about the environment and is opposed to the outright repeal of the Endangered Species Act, the California Chamber does believe that the current ESA and the way the ESA is being implemented suffers from a severe imbalance between the goals of protecting threatened and endangered species and providing for, and taking into consideration, the well-being of the state's citizens and economy.

Impact of the Federal Endangered Species Act

Californians in all regions of the state have been able to experience, first-hand, what some people consider to be the most powerful environmental law in history. Citizens across the state are finding out that the ESA has the capability of crippling whole communities, limiting the use of a person's private property, and even limiting the amount of water that can be distributed throughout California.

A number of species that have been listed as threatened or endangered during the last several years serve as clear examples of major flaws within the current ESA and the way the law is being implemented. Species such as the Delhi sands flower-loving fly, winter-run

chinook salmon, Delta smelt, and the vernal pool fairy shrimp have gained national recognition as classic examples of a law that is in dire need of change and reform.

Impact of Mitigation for the Delhi Sands Flower-Loving Fly on the San Bernardino County Medical Center

The Delhi sands flower-loving fly is a large fly (2.5 centimeters long) with a life span of approximately two weeks. It currently is known to be restricted to seven sites in southwestern San Bernardino County and northwestern Riverside County.

Knowledge of the biology of the Delhi fly is limited to the adult. Nothing is known about the habits of Delhi fly larvae other than 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. Under captive conditions, an adult is known to have lived for two weeks.

In September 1993, the Delhi fly was listed as endangered under the ESA due to ongoing and anticipated construction projects with the fly's habitat.

However, correspondence from the petitioner to the U.S. Fish and Wildlife Service revealed that since no data is available to indicate actual historic population levels of this species, the best estimate of population trends must be based on the extent of

occupied habitat. Yet, the fly was still listed because "current populations of this species occupy about 2.5% of the total area of Delhi series soils in this region. On the basis of habitat loss, approximately 97.5% of all Delhi flies have been eliminated" (Letter from Greg Ballmer, petitioner, to the U.S. Fish and Wildlife Service, October 18, 1989).

The ESA as applied to the construction of the San Bernardino County Medical Center resulted in an expenditure of more than $3.3 million to mitigate for the presence of eight Delhi sands flower-loving flies. This cost is the equivalent to the average cost of treating 494 inpatients or 23,644 outpatients.

The effort, as negotiated with the U.S. Fish and Wildlife Service (USFWS), resulted in moving and redesigning the facility to provide 1.92 acres of protected habitat for the Delhi flies. The cost per fly amounted to $413,774.25 and resulted in a one-year construction delay.

Impact of the Winter-Run Chinook Salmon on California's Water Supplies

Water is one of the most important, if not the most important, natural resource in California. Every sector in California depends on having a reliable supply of water: the agricultural industry, municipalities, and the industrial sector.

However, due to the ESA and the listing of the winter-run chinook salmon as endangered and the Delta smelt as threatened, California's primary water delivery system was forced to a grinding halt in 1993 and in 1994.

Because the State and Federal water project diversion points are located in the middle of critical San Francisco Bay-Sacramento/San Joaquin Delta Estuary fishery habitat for the winter-run chinook salmon and the Delta smelt, constraints on operations of these projects resulted in greatly reduced water supply reliability. Requirements to protect the winter-run chinook salmon and the Delta smelt include cold-water releases from Lake Shasta, additional outflows, and very restrictive "take" limits for both species, with the Delta smelt "take" limits in effect all year.

In 1993, the State Water Project and the federal Central Valley Project pumps that are located in the southern area of the Delta were nearing their "take" limit for the year based on fish that were found in the screens of the pumps. The "take" limit is based on a figure which is the equivalent of 1 percent of the estimated number of young salmon migrating to the ocean. The amount of fish "taken" is based on a mathematical equation which bases the total amount of fish "taken" on the number of fish found in the pumps.

In order to avoid exceeding the "take" limit, the pumps were shut down for a short time. During this time, over 600,000 acre-feet of water that could have been pumped

to regions in California, instead went out into the ocean, making that water unusable. One acre-foot of water is approximately 325,900 gallons of water or the equivalent of the water needs of a family of five for one year.

In 1994, California was facing a similar situation. In March 1994, both water projects had reached the point of eclipsing their "take" limits, thus forcing the pumps to shut down during the fourth driest year on record. The result of shutting down the pumps equated to the loss of approximately 750,000 acre-feet of water that could have been delivered to regions of California that were experiencing major reductions in water supplies.

Impact of the Vernal Pool Fairy Shrimp on Northern and Central California

On November 19, 1990, a one-page letter was sent to the USFWS petitioning for the listing of four species of fairy shrimp - crustaceans that live in seasonal wetlands, including "vernal pools (depressions in the soil that catch and hold water in the winter and completely dry out in the summer).

The USFWS considered these species and one species of tadpole shrimp and listed a total of four species in its final rule published on September 19, 1994. The USFWS claims these species are threatened and endangered because their habitat is threatened by urbanization, agricultural conversion, and random extinction.

Two of the listed invertebrates, the vernal pool fairy shrimp and the vernal pool tadpole shrimp, have been found in abundance throughout a wide geographic range. These tiny crustaceans are located throughout the Eastern side of the California Central Valley from Tehama County in the North to Kern County in the South, an area spanning over 300 miles. These species appear to be quite hearty, hatching from eggs years after they are first planted and thriving in tire ruts, roadside ditches, and other small bodies of seasonal wetlands.

Under the ESA, the USFWS is required to make endangered species listing determinations based solely on the best scientific and commercial data available. There are no scientific studies, however, in the listing file that examine the full range of the habitat and evaluate the alleged threats. Recent findings indicate that there are approximately one million acres of habitat for the shrimp and that most of this acreage is outside project urbanization or agricultural conversion.

Because of the listing of these species, several industries and groups have been significantly impacted by this listing. Cattle ranchers, builders, developers, local and state public works agencies, mining companies, and farmers will suffer, and have suffered from this listing. Re-use plans at closed military bases are jeopardized due to the listing. The price of new homes could increase due to excessive mitigation requirements that developers will have to agree to in order to have their project approved. Utility companies have been forced to set aside hundreds of acres to

compensate for ongoing projects. In spite of all of this economic harm, the USFWS clearly states in its final rule for the fairy shrimp that "economic considerations have no relevance to determinations regarding the status of species."

Fairy Shrimp Study Group

As previously stated, the Fairy Shrimp Study Group is a coalition of business interests that is committed to gathering additional information about the four listed species. If the additional data collected indicates that any of the four listed species is not endangered, the Fairy Shrimp Study Group will submit a delisting petition to the USFWS.

The Group believes that our effort would greatly expand the existing body of information in order to answer some of the most basic questions regarding the extent of the habitat of the fairy shrimp and the overall threat to the habitat.

However, the experiences the Fairy Shrimp Study Group has had in dealing with the current ESA and the USFWS clearly demonstrate the need to reform the Act.

In particular, one of the major problems the Fairy Shrimp Study Group had in trying to conduct our scientific survey was the "taking" prohibitions of Section 9 in the ESA. This particular section makes it illegal to conduct scientific surveys to determine the presence of fairy shrimp without obtaining a permit issued by the USFWS and following the interim guidelines to "take" a species as set forth by the USFWS.

The Fairy Shrimp Study Group believes that the interim guidelines established by the USFWS can be held directly responsible for the Group's inability to conduct scientific

surveys of the shrimp during one of the best seasons for fairy shrimp activity in Central and Northern California.

The interim guidelines for the surveying of fairy shrimp presented a number of significant problems for collectors. No more than six fairy shrimp may be taken from a pool, regardless of the actual amount of fairy shrimp that reside in the pool. In actuality, the collection of fairy shrimp and the "taking" of even a significant proportion of the active adult population for identification purposes is not a threat to the survival of the sampled population. This is due to the fact that each pool contains a large reserve of unhatched resting eggs.

Additional problems the Fairy Shrimp Study Group has had with the ESA and the USFWS include:

1. In trying to obtain any information on where the current populations of fairy shrimp are in order to avoid duplicating the most current information on the fairy shrimp and trying to add new information on the fairy shrimp, the Fairy Shrimp Study Group had to request several meetings with the USFWS staff over the course of four months to discuss our application to conduct a scientific survey of the fairy shrimp and to see the population maps identifying where the known populations of fairy shrimp are located. The USFWS resisted our efforts, indicating our survey would not provide any useful information. This response from USFWS and its unwillingness to assist in designing a more useful scientific survey effectively halted our efforts because the opportunity to sample for the fairy shrimp had passed.

2. After receiving the population maps used as the basis of listing the fairy shrimp - maps which are no more than extrapolated population locations - the Fairy Shrimp Study Group discovered that the locations originally targeted to be sampled under our original permit request were outside of the extrapolated population locations, and our proposed survey would have definitely provided useful information. If the permit had been granted, it would have added new information on the fairy shrimp. In our view, the actions of the USFWS seem extremely inconsistent and very confusing if the agency's objective is to recover the fairy shrimp species. We do not understand why the USFWS would not be willing to approve a permit allowing the "take" of these fairy shrimp species if the only drawback would be the introduction of new information on the fairy shrimp species.

3. In our effort to find out as much information as possible regarding the fairy shrimp species, the Fairy Shrimp Study Group, with the legal assistance from several attorneys, was forced to submit a Freedom of Information Act (FOIA) request to have access to the information in the listing decision file. The Fairy Shrimp Study Group believes the need for a FOIA request to obtain the information on which the USFWS based its decision to list an endangered species, severely limits the ability of the general public to participate in any action taken by the USFWS pursuant to the ESA.

These first-hand experiences the Fairy Shrimp Study Group has had in dealing with the ESA and the USFWS clearly demonstrate the need to reform the ESA. The fact that a species can be listed erroneously and that these listings can have a huge economic impact to private companies and entire communities clearly show that the law is fatally flawed. Currently, the ESA produces too many bad decisions, and more fundamentally, provides little opportunity or reason for affected parties to buy into the process of the ESA.

Reform of the Federal Endangered Species Act

Reform of the ESA is one of the most important legislative issues confronting our social and economic institutions. The California Chamber supports reasonable reforms to the ESA, reforms that will create a balance between the worthy goal of protecting threatened and endangered species and providing for the well-being of our citizens and our economy.

Attached is a copy of the "Federal Endangered Species Act Reform Proposals" document that outlines several amendments supported by 38 statewide organizations. These amendments are intended to "open up" all parts of the endangered species listing process to public participation at the earliest stages. For far too long, that process has been conducted behind closed bureaucratic doors, with public participation occurring only in the final stages.

Second, these proposed amendments are intended to make decision-makers cognizant of the economic and social consequences that may result from their decisions.

The California Chamber believes that these proposed reform proposals will bring balance to a statute which now suffers from a severe imbalance, and will ensure that the fullest possible range of authoritative scientific, economic and social information is not only

available, but is required to be considered in both regulatory and non-regulatory decision-making processes.

Finally, the California Chamber believes that any reform of the ESA would be incomplete without amendments to the ESA that include a strategy of placing greater reliance on incentives instead of regulation, encouraging the development of multi-species habitat-based programs, and providing for complete or partial delegation or deference to competent state programs. Such reforms should create a wider acceptance toward the implementation of reasonable species and habitat conservation goals.

In regards to the Clinton Administration's recently announced 10-point reform program, the California Chamber believes that the reform program appears to move Administration policy towards addressing a number of our expressed concerns with the ESA. However, we believe it is essential that the reforms become a part of the ESA as well as in administrative policy.

The California Chamber appreciates the opportunity to express our views on this important issue and is committed to working with the Task Force and Congress in reforming the ESA to be accessible and objective, and to reflect a respect for those who may be asked to share the burdens of achieving the goals of the Endangered Species Act.

The organizations listed below support responsible changes in the federal Endangered Species Act and support the attached "Federal Endangered Species Act Reform Proposals" document.

Aggregate Producers Association of Northern California
Agricultural Council of California
Associated California Loggers
Association of California Water Agencies
Bay Planning Coalition
Building Industry Association of Southern California
California Association of Nurserymen
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Cattlemen's Association
California Central Valley Flood Control Association
California Chamber of Commerce
California Chapter of the National Association of Industrial & Office Properties
California Cotton Ginners Association
California Cotton Growers Association
California Fertilizer Association
California Milk Producers
California Mining Association
California Off Road Vehicle Association
California Rice Industry Association
California Sod Producers Association
California State Association of Counties
California Tomato Growers Association
California Women for Agriculture
Central Valley Project Water Association
Consulting Engineers and Land Surveyors of California
Council for a Green Environment
Forest Landowners of California
Forest Resources Council
National Natural Resources Coalition
Northern California Water Association
Regional Council of Rural Counties
Sportscoach Owners International
Southern California Water Committee
Western Growers Association
Western States Petroleum Association

Federal Endangered Species Act Reform Proposals

(April 10, 1995)

Bring Credibility to the Decision-Making Process

The federal Endangered Species Act (ESA) evolved as a classic command-and-control single purpose federal program, driven by bureaucratic decisions that were remote, private and almost entirely free of accountability to those on whom they had an impact. Thi system is fatally flawed because it produces too many bad decisions, and more fundamentally, because it provides little opportunity ‹ reason for affected parties to buy into it. The ESA needs to be reformed to be accessible and objective, and to reflect a respect for those who may be asked to share the burdens of achieving the ESA's goals. Specific recommendations include:

■ Remove Bias from the Listing and Other Decisions

Problem: Currently, the same administrative staff that internally recommends a listing also oversees the only public hearings authorized by the ESA. Agency staff are not required, as part of such a hearing, to defend the evidence upon which they seek to rely; nor are they obliged to recognize the existence of contrary evidence indicating that a decision to not list a species is appropriate. In essence, the same agency is acting as judge, prosecutor and jury. The same is true of other important decisions under the ESA.

Solution: Provisions of the ESA should be amended to provide that recommendations regarding the listing of a species shall be made by an administrative law judge or appointed commission, following a noticed evidentiary hearing. In addition, the origin of all data, information, analysis and other information used or considered in the determination to list a species should be identified on such documents, and adequate findings should be required to support all decisions.

■ Require Rigorous, Substantial Data for Decision Making

Problem: Section 4 of the ESA requires that a listing decision be made "solely on the basis of the best scientific and commercial data available." Unfortunately, the ESA and implementing regulations provide no guidance as to what "best available" means or what "commercial data" includes. As a consequence, the listing process has become sloppy, with ill-considered and unreviewed statistical conclusions frequently given equal weight with the results of carefully monitored, rigorous scientific study programs.

Solution: Provisions should be added to the ESA that require rigorous, substantial scientific and commercial data as the evidentiary basis for any listing, recovery or regulatory decision.

■ Grant Equal Rights to Judicial Review

Problem: Section 11 of the ESA provides for judicial review by the federal district courts of actions brought by citizens who are aggrieved by the denial of a petition to list or the deferral of a listing. No equivalent access to the courts is provided for those aggrieved by the listing of a species. This apparent oversight should be corrected.

Solution: Provisions of the ESA should be amended to provide equal access to the courts for those who challenge the listing of a species.

■ Improve Public Notice and Participation

Problem: Currently, the notice provisions regarding the receipt of petitions to list species is haphazard. Frequently, there is no notice of the receipt of a petition until published in the Federal Register fulfilling the 90 day notice requirement under Section 4 of the ESA.

Similarly, there is essentially no public participation provided for in the development of status review reports. Such reports currently are developed in secret by specially appointed individuals who may be biased in favor of a listing. Further, no general public participation exists with respect to the designation of critical habitat and the development of recovery plans even though such plans may have an enormous impact upon local, regional, or state economies.

Solution: Provisions should be added to the ESA that require timely public notice to be given regarding the receipt of listing petitions, the formation and work product of status review panels, the expected direct and indirect social and economic impacts of proposed designations of critical habitat and the intention to develop a recovery plan. In addition, provisions should be added to the ESA to require general public participation in the review of a petition to list, the development of a status report, the proposed designation of critical habitat and the formation of recovery plans.

■ Establish a Peer Review Process

Problem: The ESA currently makes no provisions for independent peer review. The result is that the status review process, listing decisions, designation of critical habitat or development of recovery measures may be based upon unsupported assumptions, findings or conclusions. It is not uncommon and unreasonable for regulatory programs that are highly science-based to include an independent peer review process that involves experts from the private sector to maintain the objectivity of federal agency scientists.

Solution: Provisions should be added to the ESA that establish an independent peer review process to ensure that authoritative science and commercial data is available to, and being used in, the status review process, listing decisions, the designations of critical habitat and the formulation of recovery plans.

Balance the ESA's Species and Habitat Priorities with Other Important Societal Objectives

As written by Congress and interpreted by the courts, the ESA's environmental goals have been elevated to the status of an absolute mandate, before which all other public interests and policies must give way. In the beginning, when the ESA applied to a relatively few charismatic species, the folly of this approach was far less apparent. Today, no area of California is free from the threat of economic and social paralysis attributable to the listing of some hitherto obscure life forms. The ESA needs to be amended to not only allow, but require the consideration of other important public interests, including economic development and private property rights, and to drastically narrow the circumstances under which species protection has an absolute priority over other public concerns. Specific recommendations include:

■ Designate Critical Habitat Simultaneously with Listing

Problem: While the law allows for the designation of critical habitat simultaneously with the listing of a species, it imposes no such requirement and in practice, the lengthy delay between the listing of a species and the designation of critical habitat is the rule. Additionally, no social and economic information supplied by the general public is allowed with respect to the decision of whether a species should be listed.

However, under existing law, social and economic considerations must be evaluated when critical habitat is designated. If the listing decision and the designation of habitat were simultaneous, the decision whether to list would still be based only upon science, but the impact upon the general public, jobs and other economic activities would be ameliorated by a more accurate and timely critical habitat designation.

Solution: Provisions should be added to the ESA that require the designation of critical habitat to be simultaneous with the decision to list a species.

■ Limit "Take" Provisions to Critical Habitat

Problem: Section 4 of the ESA requires the consideration of economic and any other relevant impacts when designating critical habitat. Thus, for social and economic reasons, critical habitat may be designated more narrowly than it would be if such considerations were absent.

However, the "take" provisions of the ESA completely disregard economic and social factors, even when the "take" is incidental and occurs outside of a designated critical habitat area. If a "take" occurs in such circumstances, there appears to be little, if any, justification for making the "take" actionable. If a right of action to proceed against the perpetrator of the incidental "take" is retained however, the ESA should require a balancing of the effect of the incidental "take" against the economic and social benefit of the activity which results in the "take" to avoid economic disruption and hardship to individuals and local communities. Furthermore, Congress should confirm the *Sweet Home v. Babbitt* decision that habitat modification is not a "take."

Solution: Provisions of the ESA should be amended to provide linkage between the designation of critical habitat and the incidental "take" of listed species outside of designated critical habitat areas. Application of the incidental "take" provisions of the ESA should be subject to a social and economic evaluation, and habitat modification should not be considered a "take."

■ Reduce Regulatory Burdens on Routine Resource Management Practices and Emergency Activities

Problem: Regulation under the present ESA is all-encompassing and criminalizes a wide variety of ordinary and necessary economic and non-economic public and private activities. Most of these activities, including farm practices, right-of-way maintenance and emergency activities have relatively little effect on the welfare of species, but are critical to

everyday life. Random enforcement potential for incidental and accidental "take" creates a climate of fear that is both an unfair burden on the citizenry and counterproductive to any cooperative efforts towards species conservation.

Solution: Provisions of the ESA should be amended to require the exemption of routine resource management practices, including normal agricultural and timber cultivation, utility and public works maintenance, from the "take" prohibitions. Exemptions also should be made for emergency activities and the inadvertent or de minimus "take" of species.

- **Protect Against the Uncompensated Taking of Property**

Problem: While the ESA is aimed primarily at restricting federal activities that interfere with threatened or endangered species, application of the ESA has directly harmed the ability of state and local governments and private landowners to place their lands into productive use.

Solution: Provisions of the ESA should be amended expressly to reaffirm Fifth Amendment protections against the uncompensated taking of private property and water and mineral rights, to support the establishment of voluntary rental agreements with property owners to protect habitat, and to allow state and local public agencies (such as water agencies) to sue on behalf of their customers for the diminution of value in property because of proscriptions developed under the terms of the ESA.

- **Require Cost Identification, Analysis and Effectiveness**

Problem: Section 4 of the ESA currently provides that the "estimated cost" of recovery measures must be incorporated into a recovery plan. Congress should clarify that the term "cost" used in Section 4 of the ESA and elsewhere includes the direct and indirect social and economic costs that may result from a recovery measure and identify those costs as either being public or private. Further, adoption of a recovery plan often may produce undesirable effects on other species — in effect, pitting one species against another — which should be explicitly stated and duly considered in any contemplated recovery plan, and avoided where possible. Cost identification and analysis should apply, at a minimum, to all ESA decisions with regulatory content.

Solution: Provisions of the ESA should be amended to explicitly require consideration of direct and indirect social, economic and environmental costs in the development of recovery plans and identify whether these costs are public or private. Recovery plans and regulations should be limited to those found feasible and cost-effective.

- **Limit the Scope of Species Listing**

Problem: Currently, the ESA authorizes the listing of species, subspecies and separate populations of vertebrates, invertebrates and plants. Present listed and candidate species are only the tip of the iceberg. Subspecies and separate population listings have been particularly troublesome, and have led to taxonomic controversies like that involving the California Gnatcatcher. Invertebrates pose an even larger potential problem. Compared to vertebrates, their numbers are staggering, and little is known about most of them. For example, according to a recent environmental publication, more than 30,000 insect species alone have already been described in California, and worldwide, only 20 percent of an estimated 5 million species have even been identified. All this may well mean that almost every acre of land may host some life form that could be listed under some circumstances. This is an impossible burden of unpredictability to place upon landowners under the ESA regulatory scheme. This problem has been further compounded by recent ESA amendments that restrict the ability to establish species priorities.

Solution: Provisions of the ESA should be amended to prioritize the listing of species, and only permit listing of subspecies or separate populations upon a higher level of evidence and a finding of special biological or public significance. In addition, the ESA should not list invertebrates, except on a similar finding of high environmental significance and socio-economic feasibility.

- **Prioritize Public Land for Species Use**

Problem: Tens of millions of federal acres have been withdrawn from any human activity that would interfere with natural habitat. These wilderness areas and other similarly designated areas should be the primary lands used to manage the preservation and recovery of listed species. The potential use of such lands for these purposes should be exhausted before proscriptive programs are applied to multi-use public lands and to private, local or state properties.

Solution: Provisions should be added to the ESA that require recovery and management priorities be established which places the highest priority for species conservation on public lands which have been withdrawn by law from multiple use.

Pursue New Directions for Species Conservation

The two previous sections describe necessary changes in existing ESA processes. Important as those changes are, it is even more important to develop better approaches to species conservation. We should learn from our decades of experience with the ESA, and pursue alternative paths that hold promise of transcending present conflicts and gridlock. The present system has been incredibly costly in time, money and human effort for relatively meager results, and has taught landowners, public agencies and environmental-

ists counterproductive lessons. Three new approaches that together hold great promise for moving public policy in the right directions are multi-species habitat-based planning, increased reliance on rewarded stewardship, and elimination of vertical redundancy through delegation or deference to competent state programs. Specific recommendations include:

■ Expansion of Habitat Conservation Planning

Problem: The ESA currently provides that habitat conservation plans may be developed only for listed species. In addition, the ESA does not appear to encourage the development of multi-species habitat conservation plans (HCPs). This places a chilling effect on any incentives to create larger biological preserves prior to a listing, which could prevent the eventual need to list. Persons making investment decisions with public or private funds need assurances that monies spent in advance of a project for these large preserves will be counted as mitigation later.

Both of these oversights should be corrected to make habitat conservation planning relevant for multiple listed and unlisted species which may subsequently affect a project. Further, the ESA should recognize that projects which are multi-phased and which provide up-front mitigation for known and potential threatened or endangered species require assurances that future listings will not jeopardize the completion and/or operation of the project, and will not result in additional exactions.

Solution: Provisions of the ESA should be amended to explicitly authorize and encourage the development of HCPs for multiple species, including unlisted species, and provide that the development and adoption of such a plan precludes an obligation to comply with additional mitigation measures directed to species covered by the plan, or occupying the same habitat. Landowner participation in HCPs should be voluntary. In addition, participating and affected landowners should be afforded the opportunity to contribute to the development of the HCPs.

■ Increase Reliance on Rewarded Stewardship

Problem: Regulation of species and habitat under the ESA has taught landowners to view these resources as a liability rather than as an asset, and has served as a disincentive to resource stewardship. At a minimum, present regulatory practices need to be purged of disincentives. Beyond that, stewardship needs to be rewarded in new, as well as traditional ways, so that habitat can be perceived as an asset to both public and private property. Federal tax policy has always had a substantial influence on landowners and could be used more creatively to reward conservation. For example, in rural or undeveloped areas, habitat can be encouraged as both a primary or conjunctive use by contracts, leases, income supplements (as in the Farm Bill) or by encouraging multiple income producing uses like recreation.

Solution: Provisions of the ESA should be amended to require that regulation not punish stewardship in general, and to specifically authorize safe harbor protection for landowners who enhance habitat or engage in conservation practices. Public agencies should be encouraged to provide additional habitat in exchange for the protection of their right to fulfill their primary mission. Affirmative stewardship should be rewarded by positive federal tax policy. Also, a variety of contract-based conjunctive use programs should be developed, with public and private funds, to enhance the value of habitat to the landowner by providing income support and incentives to management, and high quality mitigation opportunities.

■ Increase Deference to, and Support for, Competent State Programs

Problem: Although the ESA presently pays lip service to state species and habitat programs, they are at best treated as vassals, with all discretionary power retained at the federal level. This acts as a serious disincentive to states to be proactive, because for states like California, the result is complete vertical redundancy, with both jurisdictions independently regulating the same resources for the same purposes. While environmentalists support this approach as a safety net, it is self-defeating because its unnecessary costs and lack of accountability destroy its effectiveness and credibility. In contrast, most other federal environmental programs rely heavily on delegation of responsibility to state and local governments. This is particularly appropriate for states like California, which are largely biological islands and have well developed state programs suffering from limited resources.

Solution: Provisions of the ESA should be amended to offer and encourage deference to competent state programs and true delegation of authority, particularly to states able to assume it. True delegation involves the avoidance of federal micro-management in an oversight role, and provision of adequate funding derived in whole or in part by elimination of duplicative federal employees and regulatory programs. States should be able to pick from a menu of delegation options, ranging from full delegation of listing, planning and management, to more limited functional species, or regional participation.

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Remarks given by Daniel Taylor, Western Regional Representative, National Audubon Society on the reauthorization of the federal Endangered Species Act.

United States House of Representatives
Endangered Species Task Force

April 28, 1995

Stockton, CA

I appreciate the opportunity today to discuss the issue of reauthorizing the Endangered Species Act. In my view, this will be the defining environmental battle of the decade. It is an issue which mixes equal measures of ethics, economics, and the appropriate role of government. It invites us to debate again the continual question of balancing freedom and order, personal liberties and community responsibilities.

I would like to do several things today: describe where I, and my organization are coming from in addressing this question, briefly frame the problem with species extinction as science now sees it, briefly discuss the Endangered Species Act, offer comments on the relationship between property rights and environmental protection, and present some opinions on where we should be going in reauthorizing the Endangered Species Act.

The mission of the National Audubon Society is to conserve and restore natural ecosystems, focusing on birds and other wildlife for the benefit of humanity and the earth's biological diversity. We are an organization of almost 600,000 members organized into 550 local chapters throughout the Americas. Many Audubon chapter leaders are here today, including Waldo Holt, a leader in the San Joaquin Audubon Society. We very much appreciate the effective work of San Joaquin Audubon, particularly their commitment to riparian habitat protection as it pertains to the Swainson's hawk, a species listed under the California Endangered Species Act. Audubon is people like Mr. Holt who, in communities across the country, volunteer their time and talent in helping to restore and protect local wildlife habitats. At the staff level we are teachers, scientists, policy advocates, and sanctuary managers united in pursuit of the Audubon mission.

I come here today as a life long Californian and an Audubon field person who for 17 years has worked to create and implement policy in a manner which produces durable solutions to the problems facing wildlife in the western United States. My primary work has been in the three areas of forest protection, endangered species,

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and water reform. Relative to our topic today, I have petitioned the government to list a species, I have opposed the listing efforts advanced by some of my conservation colleagues, and I have supported the withdrawal of petitions when additional information warrants reconsideration. I have been picketed by both out of work loggers for costing them their jobs, and Earth First! activists for being too weak in the cause of protecting the planet.

WHAT'S THE PROBLEM?

Since Columbus reached the New World, we know that some 500 plant and animal species have become extinct in the United States. Among them, the great auk, the California grizzly, the passenger pigeon, the Carolina parakeet, the dusky seaside sparrow, eastern cougar and the silver trout. Today there are almost 700 species in danger of extinction in the United States and thousands worldwide. The President's Council on Environmental Quality estimates that human activity has caused a tenfold increase in the historical rate of extinctions. Many conservation biologists believe this number is closer to a thousand fold.

The problem is growing more severe by the increase in human population and increases in our technology--our power to transform the earth grows every day. The world may contain up to 100 million species, but if current rates of development continue, one quarter of them could be eliminated within 50 years. Even with concerted conservation efforts, scientists predict we will inevitably see the disappearance of 10-15 million species. Extinction is real and we are seeing it daily. We are in the grips of the greatest extinction event ever witnessed in the history of life on this planet.

Why should we care? Every nation has three forms of wealth--material, cultural and biological. Biological wealth is taken much less seriously in the dialogue between nations but life as we know it depends on our biological wealth. The food which we eat, many of the clothes we wear, many of the materials we use in our commerce, and many of the drugs we take to fight disease all originate from the plants and animals with which we share this planet. If we look at the diversity of life only in terms of how we directly benefit, the arguments to save biological diversity and to put the brakes on species extinction are enormous. The agricultural literature is rich in examples of how dull nondescript plants have been cultivated to bring new vigor to existing agricultural stocks--feeding millions of people in the process. Drug companies now regularly invest hundreds of millions of dollars to seek new forms of pharmaceutical wealth from plants and animals. Why? Because we now recognize that the world's greatest chemists are not trained in university laboratories--but exist as obscure organisms living in the highlands of Ecuador, the Mongolian steppe, and the rain forests of coastal Oregon. When a species goes extinct, it is lost forever. Whatever treasures for people it might have possessed, and whatever role in supporting the ecological fabric of our planet are gone.

But perhaps the most important reason for why we should care is both ethical and moral. Human civilization is now the dominant cause of change in the environment. Like the moon whose pull moves oceans, and the wind which erodes entire mountains, the hand of our civilization rests heavily on the earth. To those of us who

believe in God, the loss of species is an erosion of the Creation. The Judeo-Christian literature is rich in references to our roles as stewards, keepers of the descendants of those organisms which filed two-by-two onto Noah's Ark long ago. To those who believe in the process of evolution which created the variety of life around us--the pull of stewardship is equally great. With great power comes great responsibility. The ethical imperative is to be prudent--save every scrap of biological wealth as we grow to better understand its relationship to the planet and to humanity--we should not knowingly allow a species to go extinct--and we should commence with the process of restoring the ecological integrity of systems which have been most impacted by our kind. This view casts us as custodians of the planet's heritage--not diminishing the capital, but taking only from the interest in order to sustain it for future generations.

Let us focus on California and especially the Central Valley , and the state of our biological wealth. Wildlife and nature have been an integral part of the California experience since the time European settlers began arriving here. In the Autumn of 1846, having come westward over the plains, Andrew Jackson Grayson and his family caught their first sight of the broad Sacramento Valley from the Sierra Nevada. Here, Grayson later wrote with deep emotion, was the "promised land of our hopes." In this California, with its sunny skies and mild climate were seemingly inexhaustible resources, including astonishing numbers of deer, elk, antelope, waterfowl, and fish of all kinds. In 1854, George C. Yount, a North Carolina-born trapper wrote this account in what is now the city of Benicia -- *It was then nothing more than a wild and expanded lawn; "a place for wild beasts to lie down in" -- The Deer, Antelope and noble Elk held quiet undisputed possession of all that wild domain from San Pablo Bay to Sutter's Fort . . . The above named animals were numerous beyond all parallel--In herds of may hundreds they might be met, so tame that they would merely remove to open a way for the traveler to pass--They were lying or grazing in immense herds on the sunny side of every hill, and their young like lambs, were flocking in all directions -- The wild geese and every species of water fowl darkened the surface of every bay and upon the land, in flocks of millions they wandered in quest of insects and cropping the wild oats which grew there in richest abundance -- When disturbed, they arose to fly the sound of their wings was like that of distant the under -- The rivers, were literally crowded with salmon, which since the pestilence had swept away the Indians, no one disturbed --I t was literally a land of plenty -- and such a climate as no other land upon the face of the earth can boast of.*

Today, we take stock of a different Sacramento Valley, effected by rapid population growth and land conversion from the Gold Rush times into the Twentieth Century. Riparian forests lined the valley's major rivers up to three miles on each side. Two centuries ago, California had 900,000 acres of riparian woodlands. In 1848, some 800,000 acres remained. Today, less than 100,000 acres of riparian lands exist. Wetlands in the Central Valley have been reduced by over 80%. Water flows into the San Francisco Bay estuary stand at less than a quarter of estimated levels before California became a state. Native grassland and scrub habitats in the Central Valley have been reduced by 90-98% from historic levels. In countless decisions both large and small, five generations of Californians have traded these scenes of enormous wildlife and ecological wealth to build a productive agricultural setting the envy of the world, and expanding cities that help absorb California's

population now approaching 30,000,000 people. Is it any real surprise that plants and animals which depend on these declining habitats would deserve being included on an endangered species list?

THE ENDANGERED SPECIES ACT

The Endangered Species Act is our nation's only statute that has attempted to confront our nation's biodiversity crisis. Enacted in 1973 at the request of President Nixon, the Act addresses the problem of accelerating extinction of species caused mainly by destruction of their habitat. The solution put forth in this visionary bill is to list, watch out for, and help imperiled species.

The Endangered Species Act commences with the following language: *The Congress finds and declares that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation; other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction; these species . . . . are of esthetic, ecological, educational, historical, recreational and scientific value to the Nation and its people.*

The Act has been amended several times since 1973 to further define its scope and operation. Perhaps the two most famous amendments were the introduction in 1978 of the Endangered Species Committee--a cabinet level group nicknamed the "God Squad" which can overrule key protections given a species if the benefits of a federal project clearly outweigh the benefits of preserving the species; and, in 1982, the concept of Habitat Conservation Plans which allow for the take or destruction of individuals within a listed species if an adequate plan exists for the species as a whole.

Today the Endangered Species Act is attacked by some who claim it is ineffective, too rigid, and harmful to the economy. Yet a review of the record clearly argues against this view.

Is the Act effective in meeting its goals? Probably the best measurement here cannot be quantified because the primary purpose of the ESA is to prevent species extinction. How many more species would now be extinct if it were not for the Endangered Species Act? There have been many impressive accomplishments which should be credited to the Endangered Species Act--despite the underfunded and understaffed nature of its chief federal agency, the US Fish and Wildlife Service. In California alone, the gray whale population has doubled since its listing, the Aleutian Canada goose increased in numbers tenfold and has been upgraded to a threatened species, California condors now grace our skies stemming from a successful captive breeding program, the bald eagle now occupies 93 breeding territories up from only 16 in 1974. Eagles now fly over Santa Catalina Island and the Big Sur Coastline where they were once extirpated, the Lange's metalmark butterfly has increased in numbers from 20 to 1200; California sea otters are at highest numbers known since listing, nine different national wildlife refuges have been established in the state to protect endangered species, habitat conservation plans

operate successfully for the mission blue butterfly, Stephens' kangaroo rat, and Coachella Valley fringe-toed lizard.

At the national level 56.5% of all listed U.S. species are covered by approved recovery plans and nearly 40% of listed species are stable or improving in their status. Whooping cranes, American alligators, brown pelicans, black-footed ferrets and peregrine falcons are expanding almost yearly.

How about the economy? John C. Sawhill, former Secretary of Energy offered an observation into the economic effects of the ESA which appeared in the February 20, 1992 issue of the *Wall Street Journal*. I would like to paraphrase it here: *In the past five years some 34,600 development projects were evaluated by the US Fish and Wildlife Service for their impact on endangered species. Only 23--less than 0.1% were halted because they put species in jeopardy. To put this in perspective, in the same period 29 airplanes crashed into commercial or residential buildings in the United States. That means a developer faced a greater chance during that time of having an airplane crash into something he built than having a project stopped by the Endangered Species Act.*

The Act has not caused economic collapse as opponents predicted. Protection of the northern spotted owl has not brought broad, regional economic hardship to the Northwest. In fact, the regional economy is booming. According to an October 1994 editorial in the *New York Times* "*... economic calamity has never looked so good. Three years into a drastic curtailment of logging in federal forests, Oregon, the top timber producing state, has posted its lowest unemployment rate in a generation. What was billed as an agonizing choice of jobs versus owls has proved to be neither.*"

However, California and the nation continue to lose habitats and species which depend on them. Species like the northern spotted owl, the winter run chinook salmon, the delta smelt, the California gnatcatcher have come to symbolize the political struggle facing the Endangered Species Act at its reauthorization.

The Endangered Species Act is controversial because it is functioning like a safety net--providing last ditch protection to species and ecosystems coming apart. These species are in demographic freefall because existing laws and regulatory mechanisms are either inadequate or ignored. The northern spotted owl is an excellent example of the latter. Contrary to popular belief, the sale of public timber in the Pacific Northwest was not halted because the owl was listed, but because the Forest Service had repeatedly been found in violation of key laws like the National Forest Management Act and the National Environmental Policy Act. Throughout the late 70's and 80's the Forest Service operated its forests like giant tree farms, departing from sustained yield and true multiple use (wildlife habitat, wood production, watershed protection, grazing, and recreation) in order to meet congressionally mandated cut levels. If properly applied, these laws would have seen to the habitat needs of the owl, other forest species, and the timber industry -- before the owl got to the point of being threatened with extinction.

If we operate as though the Endangered Species Act is the only wildlife law of significance, we will be managing our natural resources like a human community which provides medical care to its people only when they are threatened with death. No health education, no public health programs, no routine checkups, no diagnostic screening--nothing between robust health and the intensive care ward. Or like a highway where the traffic lights were only red and green. Green means go--everything is okay. Red means stop--There is no in-between. In our communities we value investment in preventative medicine and three colored traffic signals. But in wildlife matters, few jurisdictions, to date have seen fit to be proactive in a manner which truly guards against ecological collapse and confrontation over how the last slice of the habitat pie gets used.

The Endangered Species Act enjoys broad public support. A national poll in January 1993 by Stan Greenberg and Celinda Lake reported that support for the ESA had increased to 73% among registered voters, up from 66% in 1992. A poll of Georgians for the *Atlanta Constitution* and *Times-Mirror* in April 1994, found that 75% thought regulations to protect endangered species had not gone far enough, or were in the right balance. Only 16% said protection for species had gone too far.

PRIVATE PROPERTY CONSIDERATIONS

The plants and animals which live with us in the United States are a national treasure which we must steward and pass on to future generations. Like clean air, and the waters which flow through our landscape, the stuff of life which surrounds us must be held in deepest public trust--with government having both the duty and responsibility to make certain our stewardship is worthy of its purpose. This duty of the state may raise in some minds the potential for conflicts over personal liberties and community responsibilities.

It has long been understood that the Fifth Amendment requires payment of compensation if the government takes over private property for some public purpose like a school, road, or a park. Only in the early part of this century, however did the courts recognize that regulations, which restrict an owner's use of land can also constitute a taking. The Fifth Amendment is ripe for conservative judicial activism because the Supreme Court has failed to articulate a clear standard for when the amendment requires payment of compensation. Nonetheless, the Court has identified three important considerations in takings cases: 1) the economic impact of the regulation on the property owner; 2) the extent to which the regulation has interfered with investment-backed expectations; and 3) the character of the governmental action.

There are four strong arguments against applying a broad reading of the Fifth Amendment in the area of environmental regulation and property rights.

The first is that the regulation may be designed to prevent private activity that threatens the public or other property owners with harm. A flood plain regulation may impinge on the uses available to the owner of property within the flood plain, but the regulation also prevents the owner from impinging on the property

interests of persons downstream by building in the flood plain and exacerbating downstream flooding. In principle, who is entitled to the greater protection. What right does a single property owner have to harm his neighbors? Logic commands that property rights cannot be unlimited. Clearly, the public's ability to regulate private activity that causes public harm must be an important consideration in interpreting the Fifth Amendment.

Second, a great deal of land use regulation is designed to reinforce and make official the kind of understandings that citizens normally adopt for the benefit of each of them and the community as a whole. The truth of this proposition is evident in our daily experience. The value of the homes that we own is based in part on the characteristics of the property and the building itself. But the value also is based in part on the beauty and calm of the neighborhood in which our home is located and perhaps most importantly of all, the fair certainty that it will remain that way for the foreseeable future.

Third, a major component of the value of any piece of real property is the value of public investments in roads, sewers, schools, fire and police protection which serve the property. These investments are taxpayer funded and are often recouped from the landowner only in small part. If the public as a whole has created the lion's share of the property's value, why should the public be required to pay again if it decides for some valid purpose that the landowner should not be permitted to exploit the full value of the property which the public already has helped create?

The fourth relates to the proper allocation of decision making authority in our society between unelected life-tenured judges and the politically responsive legislature. A broad reading the Fifth Amendment would increase the power of the judiciary to second guess legislative enactments by authorizing them to examine whether regulations further a valid purpose, to weigh the costs and benefits of regulation and to determine whether the means selected in a particular regulatory program fit the goals of the program.

And finally there is the question whether the property rights debate is fundamentally a debate over means or over ends. To many of us, it is hard to avoid the conclusion that the real agenda of the property rights movement is simply to dismantle regulations which they believe undesirable. Is the takings argument simply a back door way to dismantle environmental protections?

Abuses to nature which occur on privately owned lands do not support the argument that the principles of private ownership, capitalism and democracy are to blame. As we now understand, the genius of the founding fathers in conceiving liberty and devising methods for guaranteeing it lies not in the eternal perfection of laws and institutions crafted in the late 18th century but in the truths these laws and institutions possessed. They were blind to the issues of color; to the right of women to vote; to the power of technologies which would emerge. Referring to these truths, subsequent generations have interpreted the meaning of freedom for themselves in the context of new knowledge, changed circumstances and accumulated experience.

The emphasis on the rights of the individual must be accompanied by a deeper understanding of the responsibilities to the community that every individual must accept if the community is to be a community. If accepted at face value, the private property rights argument swings the balance further in the direction of the individual--and away from the community.

REAUTHORIZING THE ENDANGERED SPECIES ACT

The Endangered Species Act stands as our country's most important wildlife protection law. It is a commitment worth keeping. As the Congress and the Administration enter the debate about our future commitment to the most vulnerable life forms that surround us, it is critical that the focus be on how to more effectively and efficiently recover threatened and endangered species; and how to prevent the need to list species in the first place. Audubon believes reauthorization efforts must include the following points:

Prevent species from becoming endangered--Require federal land management agencies to take inventory of all candidate species on their land and to promote the conservation of these species. Give priority to listings and recovery plans that protect the habitat of candidate species.

Plan for ecosystems, not just single species--Emphasize development of multi-species listings and recovery plans to address the needs of all species within an ecosystem. Establish a revolving fund to provide loans to states, counties and municipalities for the development of plans to conserve habitat of listed and candidate species.

Improve the recovery process--Require the timely completion of recovery plans. Actively involve state agencies and local communities in development of recovery plans.

Build partnerships with private landowners--Provide financial incentives and technical assistance for private landowners to plan for the conservation of listed and candidate species on their property. Remove disincentives that preclude sound conservation practices.

Invest in America's biological infrastructure--Increase the money authorized for the Interior Department to implement the ESA from $83 million in FY 95 to $160 million in FY 1999. Require federal agencies, where scientifically possible, to use public land as the principal tool for species protection and recovery.

Since over half of our nation's listed species occur primarily or exclusively on private lands, I would like to make special mention of important work underway in forging new relationships with agriculture, California's most important private land sector from a wildlife point of view. We are active in showing the way by letting landowners know they can and should be part of the solution--not part of the problem. Over the past three years we have co-sponsored a series of landowner workshops teaching both environmental ethics and practical

ways to improve wildlife habitat on their land. And landowners have responded by the hundreds. Many have a very strong sense of stewardship and love for the land and just need good advice and support.

One of the biggest success stories is with the California rice industry, which in the past five years has been transformed from strictly production agriculture to an industry actively and accurately promoting the environmental benefits of rice farming. Today the rice industry provides 90,000 acres of additional winter habitat for roosting sandhill cranes, snow geese, and shorebirds through flooded rice fields which augment our diminished natural wetlands. This is an industry we did not even talk to five years ago.

There are other new and important ways to develop additional private land owner incentives through programs like the Agricultural Conservation Practices provisions in the Farm Bill (up for reauthorization this year)that could easily be extended to include important endangered species elements. Revisions of the estate tax law could alleviate the disincentives now experienced when cattle ranches are passed to subsequent generations. This could also help keep these ownerships intact and provide significant cooperative ventures to conserve and restore riparian and other habitat values on these lands.

CONCLUSION

The debate over the future of the Endangered Species Act is of critical importance to nature, and to our way of life. It is my hope this debate will be eventually be guided by good science, an accurate appraisal of how the ESA has been implemented, and a rational dialogue on our responsibilities as both stewards and providers.

Meaningful engagement in order to develop truly effective policy on our responsibilities for endangered species will require political leadership and professional courage. We must avoid the clichés, over simplifications, and misrepresentations that mark this issue. I have been moved to read the shift in editorial opinion in the papers of the Pacific Northwest relative to the spotted owl. Many of them have rejected the simplistic view of owls versus the economy. The *Peninsula Daily News* serves the Olympic Peninsula of Washington State--an area economically devastated by the downturn in forest jobs. In their September 16, 1992 editorial they offered the following: *Timber industry problems are complex, intensified by foreign competition and automation. Jobs were on a downhill skid and inventories were declining even before the Endangered Species Act and injunctions by a federal judge halted logging on federal lands. That injunction came because the Forest Service has been dragging its feet for two years on preparing a management plan for the spotted owl--a performance the judge described as "a deliberate and systematic refusal" to follow federal law.*

We welcome new approaches to protecting endangered species while accommodating well-established economic interests. My experience is that intractable conflicts between these two imperatives are very rare. However the strong hand of protective law in preserving biological wealth is an appropriate role for the state -- and so is a renewed and more effective partnership with landowners on whose property many of our most vulnerable species depend. Our commitment to our fellow species must remain deep and effective. Thank you.

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Testimony of Leroy Ornellas

Submitted to:
House of Representatives
Committee on Resources

ESA Task Force
Stockton, California Hearing
April 28, 1995

I am a third generation dairy farmer from Tracy, California. We currently milk approximately 470 cows and farm 500 acres of corn, oats, and alfalfa. All of it is used on our dairy for cattle feed.

Since its inception, over 20 years ago, the Endangered Species Act (ESA) has evolved into something quite difficult to live with. ESA has thousands of species listed and thousands more await listing, yet the burden of complying with the Act has fallen unfairly on Private Property Owners.

The Act should be modified so that Private Property Owners will freely encourage wildlife on their land without fear of governmental intrusion.

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The Holy Trinity of Property Rights is quite simple. It's acquisition, protection and transfer.

I first read those words in a book by, Professor Richard A. Epstein, entitled "Takings".

Acquisition

Purchase, inherit, trade or in any way receive property.

Protection

Safely keeping, protection from trespassing, protection from devaluation, protection from damage by others, including Government.

Transfer

Selling, trading, even giving away.

These are a few of the basic rights and freedoms that we enjoy in this country.

This nation was founded on these basic beliefs.

Several hundred years ago you owned property at the whim of monarchs. If you displeased the King or Emperor, he would send in his army, confiscate your property, have you beheaded, give your property to one of his favorite subjects who, in turn, would probably marry your widow. This type of tyranny does not exist in this country today.

In its place, we have a more subtle form of tyranny. It is called the ESA. The ESA was passed over 20 years ago. Yet, these past 20 years Congress has failed us by allowing the Act to be manipulated by Regulatory Extremists. ESA began in good faith, it has since evolved into something quite unrecognizable.

If your land is designated as critical habitat for an Endangered Species, you could be prohibited from farming, grazing livestock, cutting timber, or building farm structures including a family home, on your property. Human lives, livelihoods, cultural practices, human heritage, property rights and ownership do not exist in the eyes of this growing monster. It continually craves more listings to feed its ever growing appetite. Its worker drones gladly kneel at its altar, feeding it more and more listings.

Since 1973, 1300 species and sub-species have been listed as threatened or endangered. Another 3500 species and sub-species have been proposed for listing, yet less than a half-dozen have been de-listed, making this act a miserable failure.

The costs are mind-boggling!

Near Malibu, home owners lost their homes to fire. WHY? Because they were not allowed to clear brush around their homes. This is K-Rat habitat. Those few who did, saved their homes, but now face the wrath of the Fish and Wildlife Service.

In San Bernardino County, a new medical facility had to mitigate for the presence of Eight Delhi Sand Flies. The cost to the public, $3,300,000. $413,000 per fly!

In Kern County, a farmer had his tractor confiscated for allegedly running over some K-Rats. This highly controversial matter is still in court. The point is the defendant can make this problem go away, all he has to do is give up half of his ranch for K-Rat habitat and to add insult to injury, he is invited to pay over $70,000 into a fund that would manage the habitat.

Locally, there are farmers who have been prevented from developing new crops on open land because of vernal pools and fairy shrimp.

The unavailability of a reliable source of irrigation water has aggravated the alfalfa shortage in California, raising costs to California Dairy Farmers.

Now, in San Joaquin County, we have to deal with a new proposed Habitat Conservation Plan. This plan, if passed, will map the entire county, listing areas of sensitive species habitat, Our Farms! Promoters of the HCP have committed hundreds of thousands of dollars of public money to fund its study. Its passage is far from guaranteed, but still it creates great apprehension among those who would be impacted by its creation.

There are other local stories of fines and land extractions. Most concerning to us are those horror stories that do not reach the public, where families, farms, and businesses are forced to pay extortion by State and Federal Agencies or face public ridicule and prosecution. Often these friends and neighbors quietly pay the extortion, guilty or not.

The burden on this country's property owners has become unbearable.

ESA can and does in many cases devalue our farms. It can greatly impair our ability to harvest our land's resources, be that minerals, lumber, or agricultural commodities. ESA can alter our ability to use normal, legal, farming practices, such as predator and rodent control, pesticides, herbicides, and of course, water, a vital and, because of ESA, a regulated California commodity.

60% of the land in the United States is privately owned. For me that is a surprisingly low number. 60% of the land provides this country's food, fiber, homes, jobs, wealth and a reason to even live here, leaving 40%, and growing, in the hands of government, (local, state, and federal).

There are those who delight at the thought of no Private Property, all of it public owned, all of us living in government housing with collective farms and industries. A utopian world where our environment would be under the safeguard and responsibility of a benevolent government. We only have to look at the failed socialist nations and their ravaged environments to understand, that is a bankrupt philosophy.

In the former Soviet Union, no one owned the land, so no one cared what was dumped on it.

In closing, I would like to read you a quote from a book written by one of my favorite authors, P.J. O'Rourke. The book is entitled, "All The Trouble In The World".

"Property Rights, rule of law, responsible government, and universal education: That's all we need. Though no society has achieved these perfectly. Our own nation is notably lacking on the fourth point, and such things as huge federal regulatory agencies and the Menendez jury aren't helping items one through three."

TESTIMONY OF
ROBERT CABRAL, SUPERVISOR
SAN JOAQUIN COUNTY

SUBMITTED TO
THE HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
ENDANGERED SPECIES TASK FORCE

STOCKTON, CALIFORNIA HEARING
APRIL 28, 1995

Chairman Pombo and members of the House Resources Committee Endangered Species Task Force. Thank you for this opportunity to speak on an issue of tremendous importance in my county.

My name is Bob Cabral, and I am a Supervisor of San Joaquin County and serve as Chairman of the San Joaquin Council of Governments. I am also a farmer, and former Executive Director of the San Joaquin Farm Bureau Federation. My testimony today is that from all of these perspectives, reform of the Endangered species Act is long overdue.

Mr. Chairman, its time to focus on the facts. The March 1995 issue of Science magazine shows us some startling statistics. The Act was signed into law in 1973. At this time there were 122 species on the list. By the end of 1994, another 833 were added as either threatened or endangered. How many species have been de-listed? During this same time period, 21 species were removed from the list. Of these 21 species, most have been taken off of the list because, 1) they should not have been listed in the first place due to data errors, or 2) they are now extinct. The two species often referred to as proof of the Act's success--the bald eagle and peregrine falcon--were both saved not by the Act but by the strict regulation of DDT <u>before</u> the Act was passed.

Let's bring this discussion a little closer to home. The vast majority of species either on the list, or proposed for listing call California home. A great number also call San Joaquin County home. Our County is currently undertaking the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. The current list of species under consideration in this plan is seven pages in length and has 93 species including mammals, birds, reptiles, amphibians, fish, insects, other invertebrates and plants. Furthermore, there have been eight identified "habitat" communities which warrant protection according to the various agencies participating in this process. This list includes Federally listed species, state listed species, candidates species, proposed species, my personal favorites--the "state species of special concern," and a whole host of other unlisted plants and animals submitted by the Native Plant Society or identified by the agencies.

It is clear to us, and I am sure you have heard this a number of times before, we need to shift the emphasis from an individual species protection policy to a policy of protection of long term multi-species habitat. We believe this is the most effective way of protecting endangered species and should become the center piece of legislative changes to the Endangered Species Act.

Futher, we believe that the identification of endangered or protected species needs to have a more scientific approach and needs to avoid going down to the sub-species level unless there is an overriding justification. While this is an important issue, it becomes less critical if we are able to focus the Endangered Species Act on a multi-species habitat concept.

The basic elements of the plan we are preparing in San Joaquin County will contain a cost benefit analysis and the recognition that while the primary objective is to protect valuable habitat, it will be done through voluntary approaches where it effects private property. It is our intention to analyze the cost benefits of the habitat plan to insure that the benefits and costs are fully understood and one does not out weigh the other. Jwe believe these principals are valid and should be included in amendments to the Endangered Species Act.

As a Supervisor, I can tell you that the Endangered Species Act is having a tremendous adverse economic impact on my constituents by imposing an extremely heavy unfunded mandate that has to be paid for out of county revenues. This strains our ability to pay for vitally-needed county services. Our county and the communities within it are struggling to keep our libraries, our school programs, our police and fire protection services. Every additional environmental issue that the federal government imposes on our planning process comes out of county funding. Although the burden of Endangered Species Act compliance is clearly heaviest on individual permit applicants, my county too has to carry significant, unrecoverable, costs in terms of county staffing and additional applicant for any public project it needs to build.

Illustrating this point is appendix A attached to my written testimony regarding eight Public Works projects in this county. Hard dollar costs exceed $1,250,000 plus countless staff hours, project delays totaling over 48 months and the County of San Joaquin setting aside 135 acres at a land fill site for Burrowing Owl and Tiger Salamander habitat.

You will have to take my word that the cost of this Act on private project applicants in my county has been tremendous. I have to tell you frankly that it has been difficult for me to find constituents who will allow me to use their names in my testimony. Believe me, there are no lack of horror stories coming out of San Joaquin County, but my constituents live in fear of Fish and Wildlife Service retribution. This is not hysteria. It is a reasonable response based on unreasonable experiences with this totally ungovernable agency.

This is a single-purpose agency, created by Congress to protect and manage wildlife. The Endangered Species Act has given it unlimited discretion as to whether a private development project, or any productive activity involving land use, can go forward. Remember, very severe criminal and civil penalties result from a violation of the Endangered Species Act. These penalties

can be imposed with few of the due process protections of other criminal laws. People can be criminally prosecuted for any "knowing" violation of the Act. You learned in the Bakersfield hearing about people who were prosecuted or threatened with prosecution for criminal violations of the Act simply because the Service thought that they "should have known" that their property was habitat for some invisible species. Of course, with the threat of prosecution hanging over a project applicant, the project cannot go forward unless and until the Fish and Wildlife Service approves it; this gives the Service the power to hold up a project almost indefinitely, until the applicant loses financing or the window of opportunity for commercial success of the project is lost. To sum up: I will give you some examples of the abuses of the Act in my county and the region, but I will not give names, dates, or places, out of consideration for my constituents.

The valley elderberry longhorn beetle provides a classic example of the kinds of problems we are experiencing with the Act. According to a professional of problems we are experiencing with the Act. According to a professional biologist in my county who is licensed to do authoritative beetle surveys, this species has only been found in riparian habitat along the major Valley rivers, and its designated critical habitat is along the American River in Sacramento. Nevertheless, it is being used to hold up projects anywhere an elderberry shrub is found. Project applicants are being required to provide exorbitant mitigation, even when biological protocol surveys conclude that the beetle has not used the project site, or the project site is on a dry, non-riparian location well above the elevation at which the beetle has ever been found. When I say exorbitant mitigation, I have to give an example, because no rational person would predict that our government would make these demands. They pass all understanding.

For example: there was a proposed project of approximately 300 acres that had 25 elderberry shrubs on the site, and would result in the removal of 17 individual shrubs. A biological survey found that six of the plants had exit holes made by the beetle. The mitigation consisted of:

-- All 17 elderberry shrubs had to be transplanted and 78 additional elderberry seedling had to be planted in ten mitigation areas on site.

-- A conservation easement had to be imposed on all of the mitigation areas.

-- A qualified biologist was required to be on site during the transplanting and planting to ensure that "no unnecessary take of the valley elderberry longhorn beetle occurs." The biologist had to "stop all activity" if it appeared a beetle "take" would occur.

-- The eight plants that were not transplanted would have to be maintained "in perpetuity."

-- Permanent fencing had to be placed around all ten mitigation sites and around the plants that were not moved.

-- No herbicides, pesticides, fertilizers, "or other chemical agents" could be used within 100

feet of any of the mitigation areas, or at any site where they might have the "potential to drift, flow, or be washed" to the mitigation areas.

-- The applicant would have to keep yellow star thistle and other invasive nonnative plants out of the mitigation sites "in perpetuity," without the use of chemical agents.

-- Prominent signs would have to be maintained "in perpetuity" at each of the mitigation areas, notifying the public that these areas are beetle habitat, and providing information on the beetle's biology and ecology. These signs had to be replaced or repaired within ten working days if they were found to be damaged or destroyed.

-- Since the beetles were supposedly found more abundantly in "dense native plant communities with a mature overstory and mixed understory, " the project applicant had to plant a mix of native plants including foothill pine, blue oak, interior live oak, and "other appropriate trees or shrubs" at a ratio of at least two of these species for every five elderberry shrubs. These plants also had to be monitored and cared for "in perpetuity."

-- For a period of ten years, the applicant had to fund work by a qualified biologist who would monitor the plants, do a twice-yearly population census of the beetles and the plants, and prepare a written report analyzing the data for the Service and the Department of Fish and game after each survey.

-- The applicant had to guarantee a survival rate of at least 80% of the elderberry shrubs and associated native plants at the end of the ten year monitoring period.

-- Additional mitigations would be required as needed, had to be done within the project.

The above mitigation demands were taken from the Fish and Wildlife Service's own biological opinion, conditionally approving this one project. There were many, many more conditions imposed on this project, and since they were imposed in accordance with the Fish and Wildlife Service's Draft Guidelines for the Valley Elderberry Longhorn Beetle, they are absolutely typical of what every project is going through in my county if it has an elderberry bush on site.

I probably do not have to tell you what this kind of foolishness is doing to development in my county and the Valley. Throughout this rich agricultural valley, development is being pushed onto our prime farmlands. For evidence, I attach to my testimony a copy of a newspaper article on the situation faced by Ben Ennis, a very forward-thinking and environmentally conscious developer in Kern County. After dealing with the valley elderberry longhorn beetle on several sites, Mr. Ennis' company now only buys farmland that is cropped from fenceline to fenceline.

Now, speaking to you as a farmer, I can say that I think that this is close to criminal national policy. We in California, and I know other states in the West too, have a very firm state policy for the preservation of our valuable farmland resources. We have the federal government, backed up, I confess, by our own California Department of Fish and Game as the state implementing agency, forcing all economic development onto our diminishing farmland resources. On the one hand, farmers being threatened with prosecution for discing invisible rats that have coexisted with their farming activities for several human generations, and several hundred rat generations. On the other hand, we are making their lands the only places suitable for development. Is it any wonder that some farmers are throwing in the towel?

If this is not enough to make the California farmers who feed the world want to just give up, let's consider another result of the Endangered Species Act. As you know the demands of the ESA have resulted in California agriculture having water taken away to protect several well documented species. The social and economic impacts of having to fallow some of the richest farm land in the nation, having to lay off employee's, and having all related business and their communities suffer from increased unemployment. At the same time as agriculture has felt the tremendous burden of having its historic water diverted away from it, I note that every week the newspapers fishing report can tell me where to go, what lure to use, and with state of the art electronic gear that is allowed I can virtually guarantee that as a fisherman I can catch some of those well documented endangered species. Millions of fishing trips a year are launched into the waters that house these species, but do we see the technology that is used to locate the fish, determine at what depth to fish, determine what color of lure to use, or any other aide limited or controlled. The ESA must address all aspects evenly not just one entity which only makes up 2% of the nation (FARMERS).

I would also like to urge that your efforts to reform the federal ESA take a close and hard look at protecting species that are not native. Just a few miles from where you sit today in the Delta there are efforts authorized by the ESA that find the federal government protecting not only introduced species in the Delta, but also protecting introduced species that are predators of native endangered species in these waters. At the same time available surface water has been withheld from agricultural users and not mad available for urban uses within an area with significant groundwater overdraft. Common sense of the American people understands that this is not right, I believe our federal law must recognize the same fact.

What can be done about this? I would recommend that you look closely at the recommendations for amendments to the Act that will be submitted by California Farm Bureau Federation. They address each and every one of these concerns, and, if adopted, could lead to a sensible Endangered Species Act that would preserve both people and habitat in a fair and reasonable manner. The recommendations would also return to local planning authorities--and here I am putting on my Supervisor hat again--the power and responsibility for local land use planning given to them by the people they represent. Federal biologists have to be put back in their proper advisory role. They cannot and should not do land use planning for our communities because they do not have the expertise, and quite frankly, they do not seem to care about people.

IMPACT OF THE ENDANGERED SPECIES ACT ON COUNTY PUBLIC WORKS PROJECTS

BACON ISLAND ROAD BRIDGE PROJECT

Design Phase

The actual impact of the Endangered Species Act on the Bacon Island Bridge is difficult to determine, as research and compliance work was done in conjunction with other environmental requirements and in conjunction with obtaining certification or permit clearance from ten outside agencies. Based on the cost of biological assessments, report preparation and extras charged specifically for addressing the Delta Smelt, which was listed as "threatened" during design, compliance with the Endangered Species Act is estimated at $25,000 to $30,000.

The Project was not specifically delayed by the requirements of the Endangered Species Act; as the nine to ten months needed to meet its requirements ran concurrently with approximately three years of delays caused by Federal Highway Administration design study issues, historical bridge issues and difficulties in obtaining Reclamation Board permits. Had these other issues not been present, the impact to the design schedule would have been approximately one year.

Construction Phase

It is difficult to estimate the cost of delays resulting from the Endangered Species Act without an internal audit of the contractors bid proposal and procedures. It was originally anticipated, however, that delays would cause the 350 working day project (approximately 18 months) to stretch out to 38 months. The Contractor was able to demonstrate to various agencies, however, that they could coordinate their work in such a manner that impacts to endangered species would be eliminated or severely restricted. This allowed the Contractor to continue work during formerly restricted periods and compress their schedule back to approximately 20 months.

The cost of the original schedule restrictions and the cost of negotiations by the Contractor are hidden in the various items of work. It is estimated that at least two additional mobilizations would have been required at a cost of $50,000 to $60,000. Overhead costs for maintaining the job site are estimated at approximately $2,000 per month, or another $40,000.

Based on the above, the total impact of the Endangered Species Act on the Bacon Island Bridge Project is estimated to be approximately $125,000, with an actual delay of two months. As indicated above, this delay would have been increased by approximately one year absent other delay factors.

WAVERLY ROAD BRIDGE PROJECT

Design Phase

Most bridge sites will be required to be surveyed for the presence of "Fairy Shrimp" by a certified biologist over the course of two wet seasons. A report will be required summarizing survey results for the presence or absence of Fairy Shrimp, which must be approved by the United States Fish and Wildlife Service.

If "Fairy Shrimp" are present at the site, mitigation will be required. This is likely to require constructing off-site habitats at a ratio of 5:1 and monitoring the habitats over the next five to ten year period. Waverly Road Bridge No. 29C-309 at Duck Creek could be delayed by two years if the subject Act for Fairy Shrimp is required to be implemented by the United States Fish and Wildlife Service. This Project involves replacement of a two-lane bridge on a low volume rural road over an intermittent waterway. Disturbance of adjacent properties will be minimal since the existing timber structure is to be replaced with a concrete structure of similar layout.

HARNEY LANE RECONSTRUCTION
(Tully Road to Clements Road)

The construction work schedule was affected by Giant Gopher Snakes. No work was allowed in roadside ditches during their hibernation period. Three month construction delay.

DAVIS ROAD RESURFACING
(Turner Road to Woodbridge Road)

The design phase was delayed to study an Oak tree for nesting Raptors.

Field Review	11/02/93
Raptor Study Completed	05/20/94
	Seven Months for Study

MARIPOSA ROAD RESURFACING
(Austin Road to Gawne Road)

The design phase was delayed to prepare a Study of the Project's affect on possible nesting sites for Swainson's Hawks in the area.

Field Review	04/12/94
Environmental Clearance	02/21/95
	Ten Months for Clearance

FE-SD200.N1

STAFF PERSON CONTACT: TOM FLINN, DEPUTY DIRECTOR/ENGINEERING

EFFECTS OF THE ENDANGERED SPECIES ACT

The following are examples of projects where delays or increased costs resulted from mitigations required by the California Department of Fish and Game (DFG) as a "Trustee Agency" concerning the Endangered Species Act.

NORTH COUNTY SANITARY LANDFILL

Mitigation measures and processes which delayed the project and/or increased costs included:

* Hire Jones and Stokes Associates, Inc. to perform a wetlands delineation study and prepare a wetlands mitigation plan.

* Set aside approximately 135 acres for wetlands mitigation, and Burrowing Owl and Tiger Salamander habitats.

* Construction limitations from October 15 to April 15 to protect wetlands and endangered species' habitats during rainy season and mating seasons respectively.

* Replacement of in-kind wetlands on a 3:1 basis.

* Relocation of Burrowing Owls and Tiger Salamanders in the future could cause delays in the development of landfill modules.

* Long-term monitoring of wetlands and these two species required by mitigation plan.

CORRAL HOLLOW SANITARY LANDFILL CLOSURE

* DFG required that the County install a 6' high chain link fence around entire property to prevent the San Joaquin Kit Fox from entering the landfill property. Increased costs to the County due to this requirement are approximately $30,000.

SOUTH COUNTY LANDFILL

The Solid Waste Division has been and still is actively seeking a replacement site for the Corral Hollow Sanitary Landfill in the south county area. A large portion of the south county area has been designated as potential habitat for the San Joaquin Kit Fox and Swainson Hawk, both endangered species. Sites located in areas of potential habitat to these species have been turned down due to anticipated additional costs similar to those incurred in the North County Landfill project above. Impacts include:

* Additional waste transportation of 100 miles round-trip at an annual cost of approximately $1,000,000.

* Additional vehicle emissions from trucks transferring waste further increases air pollution in a "non-attainment" air district.

STAFF CONTACT PERSON: EUGENE DELUCCHI, CHIEF DEPUTY DIRECTOR

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Beetle and bush reign in the wild

Paul Hurley

Opinion Page Editor

Odds are you've never heard of a wildflower called Keck's checkermallow. Presumed extinct, it hadn't been seen since 1939.

Reports of the Keck's checkermallow's demise were somewhat exaggerated. It has turned up in Porterville, of all places, and is challenging the patience and economic reserves of one Ben Ennis.

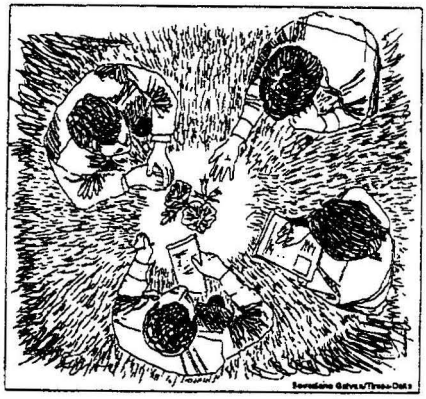
Ennis is a developer, and he wants to build some homes on that apparently is good for nothing but two things: building homes and growing Keck's checkermallow.

But the surprisingly hardy weed might thwart Ennis's plans. Keck's checkermallow, after all, has the support and protection of the United States. Ennis does not.

This is not the first encounter Ennis has had with one of Mother Nature's practical jokes. About a year ago, Ennis was preparing a project for about 300 affordable homes to be developed by his company, Ennis Development Corp. The site was near the Tule River on land too sandy to support agriculture, or much else.

Before starting the project, though, Ennis had to hire a biologist to survey the land and make sure it wasn't home to any endangered species, such as the San Joaquin kit fox.

The biologist returned with good news and bad news. The good news was there were no kit foxes. The bad news was that Valley elderberry longhorn beetles had taken up residence in the many elderberry bushes along the dry river bed.



Bernadette Galvez/Times-Delta

The beetle has been designated a threatened species, even though some entomologists believe there are plenty of them. Regardless, it is a violation of federal law to "intimidate, threaten or harass" it.

After pondering what might constitute harassment of an insect, Ennis sought a solution. The U.S. Fish and Wildlife Service has given him a list of things he has to do, including planting new elderberry bushes and guaranteeing their survival for 10 years. Ennis figures it would cost him $150,000 the first year alone, not counting the cost of the land.

"The funny thing is, I'm an environmentalist. But I have a problem protecting a beetle we don't even know is endangered," Ennis said.

"There's just no common sense in this."

Ennis hadn't figured out what to do about the Valley elderberry longhorn beetle when he discovered another species needing protection.

He was interested in developing about half of an 800-acre piece southeast of Porterville in the foothills. Again the land was good for little else. This time Ennis and a botanist inspected the property together.

They had found nothing spectacular when they came upon a stand of weeds at the top of a hill.

"Well, look at that!" the botanist said, pointing to the weeds. "Keck's checkermallow. Why that hasn't been seen in California since 1939. It's extinct."

"Then by definition, you're not looking at it, are you?" Ennis said.

It was too late. The botanist reported his discovery to the U.S. Fish and Wildlife Service.

Ennis is trying to find out what the government wants to do about the checkermallow. He would be content to devote an acre or two to the plant at the top of the hill and fence it off.

But the feds won't tell him what they want him to do.

"They said, 'It hasn't even been a year yet. These things take eight or nine years.' " Ennis said. "I've never been so frustrated in my life."

All plans for the property are halted. The owner of the land is in limbo.

"I could take a bulldozer and go up there and push the weeds into the canyon, and that would be the end of it," Ennis said. "But I won't. That plant's not hurting anybody."

Except, apparently, Ennis and his dreams.

One other thing Ennis points out: In Porterville he can't build to the south because of the kit fox. He can't build near the river because of the elderberry bushes. He can't build in the foothills because of other species.

What's left?

"Prime ag land," Ennis said. "That's another thing that's so silly. We're losing our prime ag land, but the Endangered Species Act is forcing us to develop there."

If Keck's checkermallows can laugh, they are having a good chuckle.

It's not as funny for those of us who aren't endangered species. Yet.

VISALIA TIMES-DELTA

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STATEMENT OF:
REALTOR ANTHONY F. SOUZA, CRE

SUBMITTED TO:
THE TASK FORCE ON ENDANGERED SPECIES
OF THE
COMMITTEE ON RESOURCES

THE REAUTHORIZATION OF THE ENDANGERED SPECIES ACT
APRIL 28, 1995

INTRODUCTION

Thank you for the opportunity to submit my comments for the record, on the Reauthorization of the Endangered Species Act (ESA). As a REALTOR who specializes in the sales and development of transitional and agricultural land, I have seen first hand the devastating effects the ESA has had on housing affordability, land prices, and property rights.

The ESA was passed in 1972 with noble intentions and worthwhile goals. Unfortunately, over time the ESA has been used not as a protector of endangered species, but as a growth control tool. The Act must be fixed in a way which protects species, respects private property, provides incentives to landowners, and is equitable.

HOUSING AFFORDABILITY

Many factors influence the cost of a home in California. The sum of these factors has created a housing cost in California which is among the highest in the country. One of the factors which ads considerably to the cost of a house is compliance with the ESA.

The ESA affects the affordability of a house throughout the development of the finished product. The creation of a house, from initial land planning to the closing of escrow, is a process which is impacted by the ESA at every stop. The cost of a home is impacted by the direct mitigation required by the development of the project, as well as the mitigation of numerous other indirectly related projects, including everything from road projects to timber harvest. Let me illustrate by giving an accounting of the ESA impact on a 76 acre, 481 unit single family subdivision I am currently developing in Tracy.

IMPACT	COST/UNIT
1. Although the project has urbanization on two sides of it, a major thoroughfare on a third side, and is 3 miles from United States Fish and Wildlife Service (USFWS) designated kit fox habitat, a kit fox survey per USFWS guidelines, was required by the USFWS.	$ 52.00
2. Swainson's Hawk habitat mitigation fees	237.00
3. Increase in traffic fee due to the implementation of the ESA on city, county and state projects (estimate)	500.00
4. Increase in sewer fee due to the implementation of the ESA on city sewer plant expansion (estimate)	150.00
5. Increase in water treatment fee due to the implementation of the ESA on city water plant expansion (estimate)	150.00
6. Increase in water supply fee due to the implementation of the ESA on city purchase of water rights (estimate)	300.00
7. Increase in storm drainage fee due to the implementation of the ESA on city storm drain system (estimate)	150.00
8. Increase in aggregate costs due to the implementation of kit fox mitigation on aggregate supplier (estimate)	25.00
9. Increase in lumber costs due to the implementation of spotted owl mitigation on lumber suppliers (estimate)	4000.00
TOTAL:	$5,564.00

The economists at the National Association of REALTORS have the ability to determine how many San Joaquin County households are unable to qualify for the purchase of a home for every $1,000.00 the price of the home increases. That information indicates that an increase of $5,564.00 in the price of a home makes the realization of the American dream impossible for 5500 more households in San Joaquin County.

The cost of the ESA affects the average Californian in many places in addition to home ownership. The application of the act by the USFWS on other government agencies is alarming. This application of the Act serves to increase the cost of building government projects and providing services. A few examples follow.

1. Our family recently was forced to sell a ranch to Contra Costa County for them to build an airport. A stock pond, which my father built on the ranch 20 years ago and was fed by an irrigation canal, was considered a wetland, and Contra Costa County and the Federal Aviation Administration had to spend $500,000.00 of taxpayer money to relocate the stock pond. They also had to place kit fox conservation easements on 700 acres of land at a cost $4,200,000.00

2. The Contra Costa Water District is in the process of building a reservoir. They will have to acquire 6000 to 7000 acres for ESA mitigation, at a cost estimated to be in excess of $36 million.

3. PG & E had to acquire 1100 acres to mitigate ESA impacts to lay a buried high pressure gas line from Canada to California.

The implementation of the ESA, on the public and private sector, has resulted in a substantial increase in the price of housing, as well as services provided by the government and utilities. The act must take into consideration ***ALL*** the costs of listing species, and strive to mitigate in the most cost effective methods possible.

LAND VALUES AND PROPERTY RIGHTS

The Reference Book of the California Department of Real Estate defines property as follows:

> "Technically, and in the historical legal sense, the word property does not refer to the *thing* owned, but rather to the *rights* or interests which the owner has in the thing owned. These rights include exclusive rights to possess, to use, to encumber, to dispose of and to exclude. Thus property may be said to consist of a 'bundle of rights' or a 'bundle of interests' a person has in a thing, whether the thing is real or personal property."

The Fifth Amendment of the United States Constitution establishes the right to just compensation for the taking of private property for public use. The ESA has turned into an exercise of government power resulting in global zoning done on a national level which restricts the bundle of rights without just compensation.

Global zoning is what results from the listing of a species. Once a species is listed, any property with habitat which remotely resembles that of a listed species has very onerous restrictions placed on it. Often the restrictions so severely impact the use of the property that no economically viable use remains. There is no compensation. The ESA must be changed to provide for the protection of species, property rights and provide for just compensation.

These restrictions not only affect the rights a person has in property, they also affect the value of property. If a property has a species or habitat on it, it's value and desirability decrease substantially. Because of this, farmers who own land they might one day sell for development are regularly advised to include disking of fallow land, herbicide spraying of ditches and fence lines, eradication of rodents, etc.,

in their normal farming practices. Although these practices may keep habitat for ***any*** species from growing, they will ensure that the land owner will not be subject to the ESA.

This illustrates a major flaw of the ESA. If those landowners were provided with incentives to maintain habitat on their land, much more habitat would exist, fewer species would need to be listed, and property values would be more stable. The ESA needs to include mechanisms to provide incentives to landowners to provide habitat, such as tax breaks and including habitat preservation in the Conservation Reserve Program. The Act must also allow "safe harbors" which will not penalize a landowner who has a species on his property due to his efforts to provide habitat. If incentives and safe harbors were in place a much more workable Act would result.

CONCLUSION

The ESA can be a vital link to the preservation of the ecosystem. Unfortunately it has evolved into a bad law which actually serves to destroy habitat, decrease property value and increases the cost of housing substantially

My comments reflect two serious flaws of the Act which need to be addressed; economic impact of listings and property rights. There are other aspects of the Act which need to be addressed. Time does not allow elaboration on each of the points, so I will simply list them here: 1) the listing of sub-species needs to be seriously considered; 2) there must be scientific and economic peer review of each listing; 3) much more effort must be put forth in implementing recovery plans and de-listing species; 4) duplication between state and federal Acts must be eliminated.

An ESA that is environmentally sensitive, yet allows our nation to be economically competitive is realistic and obtainable, and should be what we strive to achieve.

Thank you for the opportunity to express my views.

RIDGE BUILDERS GROUP
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Oversight Task Force Hearing on the
Federal Endangered Species Act
Stockton, California
April 28, 1995

Testimony by Bob Schneider

Good afternoon Representative Pombo and Committee. My name is Bob Schneider. By profession I am a building contractor and developer. I have been in the construction business for a little over twenty years. We have built single family homes, multifamily homes, affordable housing, commercial buildings and retail tenant improvements. We have also done residential mixed use subdivision developments. In addition, I have been involved with environmental issues for thirty years.

Thank you for the opportunity to discuss the Endangered Species Act. It is an important law that has been very successful in its goal of protecting species and habitat. The Act is working and the Act is needed.

Because the building community so directly affects habitat I feel that we have a special public trust duty to mitigate those impacts. We can not truly create new farmlands or habitat, but we can help to mitigate those lands we impact by protecting alternative farmland or habitat areas. I often think that my children will not thank me for how many houses I build, but they may thank me for the lands I have helped to protect.

I am sure many of my farmer friends agree with me. They have seen the change in the Central Valley; many have seen the change through their families over several generations. They too want to leave some of our original Central Valley ecosystems for their children to enjoy. Most are good stewards of the land. The ESA helps to protect us all from ourselves in leaving these remnant ecosystems to our children.

I have worked on oak-woodland issues involving firewood cutting and the protection of habitat, particularly in riparian zones. In this process, I was invited by local ranchers and cutters to tour cutting sites in Tehama County. Some folks did not do a good job, they clearly overcut in inappropriate locations. One landowner, however, did an excellent job; the results clearly demonstrating that owner's reverence for and stewardship of the land. If we were to write regulations for oak tree cutting for firewood, that property would represent the result we would all like to see.

But, what most clearly sits in my mind from that trip was driving along Redbank Creek. I asked my guide, a long time rancher in the Red Bluff area, "Did you ever catch salmon

in that creek?" His reply was yes, he remembered fishing with his dad. But, there are no more salmon in that Creek. The oaks and bankside vegetation have been stripped and too many cattle now graze in the Creek increasing erosion and preventing recovery. Our generation may carelessly, needlessly, (perhaps in some cases knowingly), strip our children of that joy of catching a salmon, seeing them spawn or working in the commercial salmon industry. This is a case of bad environmental policy resulting in bad economic policy. A stronger, better funded ESA can help to prevent this tragedy and others like it.

My business is involved with these issues. We are committed to finding solutions to balancing environmental concerns with peoples needs for community and housing. As an example, in our last project we needed to provide a flood control detention and retention facility. In the process we created a 30 acre urban wildlife habitat pond to serve this function. There amongst our new human community nest Canada Geese, avocets, stilts, killdeer and other birds. Frogs grow and muskrats swim.

This is an example of **good environmental policy being good economic policy**. In our experience, the public is willing to pay more for housing to protect and enhance important environmental areas. Lots abutting our urban wildlife habitat area sold for 10 to 20 thousand dollars more than comparable lots in the subdivision. The economic benefit is both immediate and long term.

We are designing a new project that encompasses nearly 1200 acres. We are looking at building a more sustainable community which addresses many of the concerns so well discussed in the recent Bank of America report on urban sprawl.

We picked our project location based upon environmental sensitivity and awareness. We are building on the poor soils and establishing conservation easements to protect agricultural activities on the good soils in perpetuity. In addition, we plan to establish a 250 acre flood control wetland and upland habitat area along the location of historic swales and channels. This accomplishes three goals. We provide needed flood control, enhance habitat and increase economic values in our project.

Good long range planning for our communities requires careful siting of urban development, good planning which works to mitigate problems of urban sprawl and consideration of environmental constraints. When developers are allowed to build in flood plains or sensitive environmental areas they do the opposite.

Other developers are successful in implementing good economic and good environmental planning. The Evergreen project in Davis recently provided a conservation easement of 120 acres to offset loss of agricultural land, which in Yolo County is important foraging habitat for the Swainsons Hawk. The Woodbridge Developers are enacting a habitat easement for their project which has a Swainsons Hawk nest on site. These developers have also provided wood duck boxes for the community built from recycled barn wood.

The good public will which they have earned by these actions are resulting in successful projects. They win, the environment wins, and our children win.

I support a strong, effective and well-funded Endangered Species Law. There has been a lack of balance in the development of California. We have done a bad planning job. Ninety to ninety-five percent of California's wetlands have been destroyed, most of that by agriculture in the Central Valley. In addition, much of our valley riparian habitat and old growth forests are nearly gone. As a result, many species dependent upon those habitats are now threatened or endangered.

In Yolo County, the building community, environmental community and the farm community have worked together in a cooperative effort, listening to each others viewpoint, working together to prevent urban encroachment on some of the very best farmland in the world, fighting for legislation to protect these lands, and working together to enhance wildlife and habitat on Yolo County farms.

It is not always easy and we have our differences, but now we listen to each other and work to solve problems.

I am greatly disturbed by the rhetoric we now hear. Farmers, ranchers and families become pawns in a war on the environment fueled by dollars from extractive industries and portions of the southern California real estate community. It is interesting that rhetoric has focused on the Kangaroo Rat. The Rat certainly is an easy target. But, there are interesting features about this animal. It does not drink water. It is entirely possible that humans will learn important lessens from this animal for preventing kidney disease.

The rhetoric is destructive and impairs the ability to have real discussion. A friend wrote, "Too often scientists ignore political reality while pragmatists misconstrue changing values." Rapid swings in the pendulum of change result when this happens. I have found that most landowners do care and, in fact, when involved in a cooperative manner provide many of the answers to enhancing species habitat.

Weakening the ESA is not good for my business. There have been problems with implementation of the Act. But, most of these problems could be corrected administratively. Any changes in the Act should center around providing additional incentives for land owners to cooperate in protecting our ecological heritage.

Reauthorize a strengthened and well-funded ESA so the problems we hear about so often can be properly addressed and resolved in a timely manner.

HOUSE RESOURCES COMMITTEE
ENDANGERED SPECIES ACT TASK FORCE
OVERSIGHT FIELD HEARING

TESTIMONY OF PETER G. GIAMPAOLI
PRESIDENT
EPICK HOMES, INC.

STOCKTON, CALIFORNIA
APRIL 28, 1995

Thank you Congressman Pombo and members of the Task Force for the opportunity to speak to you today regarding the Endangered Species Act. I'm a local builder from Chico, which is located 75 miles north of Sacramento. I construct approximately 35-100 homes per year in addition to processing single family lot subdivisions.

In addition to my experience as a builder, I am also very involved in wildlife conservation activities. I am the founder of a group in Chico which is called "Hooked on Fishing, Not on Drugs" that has introduced nearly 10,000 children to the joy of fishing and the outdoors over the last four years. I'm also a Regional Governor of California Trout, and have testified before numerous committees and commissions relating to trout, steelhead and salmon conservation. While I support Congress' original intent behind the Endangered Species Act, I find myself in strong opposition to recent implementation of the Act.

I would like to summarize the story of one project subjected to the Endangered Species Act and other Federal Acts, which causes me great consternation over the Endangered Species Act as currently administered. The property is 165 acres in size, is within current city limits, and is in an area Chico planned for urban growth in order to protect valuable agricultural lands to

the west of the city. It is encumbered by a $600,000 sewer bond, is within 1/2 mile of a 1 million square foot Regional shopping mall, has roads on three sides, is served by all public utilities, has City zoning to allow 714 homes and apartments plus a 60,000 square foot office complex. Sounds like a reasonably well located parcel for development?

The answer is "NO" if asking USFWS and the California DFG, for this property is encumbered by the State and Federal Endangered Species Acts and Section 404 of the Clean Water Act because it contains 4.88 acres of seasonal wetlands (dry 8-9 months of the year), a four-inch high rare plant species, Butte County Meadowfoam (BCM) and two supposedly rare shrimp species, Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp (VPFS & VPTS). The two shrimp species are listed under the Act, yet are presumed by USFWS to inhabit all of the millions of vernal pools in the Central Valley. A population of 100,000-250,000 BCM was recently discovered in an unsurveyed area. Despite some very genuine biological uncertainty about whether any of these species should be listed at all, they are being used as the single most relied upon tool in the Chico area to stop orderly development.

Because these species are found in wetlands, years of wetland planning have also ground to a halt. Wetlands were originally identified on site in 1989, which led to two years planning and research only to be confronted with the Federal

listing of Butte County Meadowfoam in 1992. Two and a half years of planning and permit processing followed until the Federal listing of Vernal Pool Fairy and Tadpole Shrimp in 1994. This caused the abandonment of years of work under the Nationwide 26 permit process, to embark on yet another Federal process - an Individual Permit.

Faced with three allegedly endangered species and wetlands, a plan was conceived based on sound biology which we believe is fair and was presented to the Fish and Wildlife Service, the Corps, and California DFG. We are in the midst of that process and the Section 7 consultation now. The results are not encouraging thus far. Here are specific examples:
Our plan proposes, in addition to an offsite preserve and other provisions:

1. Setting aside a 48-acre preserve, fully 30% of site, as permanently protected open space.

   FWS/DFG response:
   You must set aside an 82 to 130-acre preserve, 50 to 80% of the site, as a permanent open space.

Our plan proposes to:

2. Avoid 97% of the BCM plants found in the last four

years and more than quadruple the size of a contiguous BCM preserve we voluntarily set aside five years ago.

FWS/DFG response:
You must avoid 100% of the BCM found everywhere you have found them in the last four years, even though the remaining 3% consist of isolated population segments in the least productive 20% of the habitat (statistically verified).

Our plan proposes to:

3. Also provide a buffer consisting of the entire wetland watershed plus an average of 50 more feet, with fencing, berms, and ditches that will limit any human intrusion.

FWS response:
Provide a buffer consisting of the entire watershed and all your proposed buffering elements, plus no less than 200 feet, even though FWS can articulate no demonstrable improvement in resource protection.

Our plan proposes to:

4. Also acquire an additional 70-acre offsite parcel with wetlands that was previously approved for development and protect it as part of an existing 230-acre preserve.

   FWS response:
   Question the value of a 70-acre addition to the 230-acre preserve, since wetland mitigation there may affect existing vernal pools and the 70-acre piece may not be big enough.

At every turn the motivation behind ESA implementation becomes more evident - get more land. The economic impact of our original plan alone is $4.5 million or $6,302 per new home. Just imagine $4.5 million in order to mitigate 3.98 acres. That's $1,125,000 per wetland acre! Imagine the acreage that could be protected for this amount of money if a landowner was given an incentive to do so.

Possibly the most tragic of outcomes is the impact these regulations have on the young, first-time home buyer. The cost of these regulations will not be paid by society but by new homeowners at $51 per month, or $18,300 over the life of a 30 year mortgage. Butte County, which includes Chico, ranks 50th

out of 58 Counties in lowest median household income in California. It is little wonder fewer than one in four families can afford to purchase a median priced home. ESA and Section 404 have also placed Chico 24th on the nation's 25 least affordable cities in the country according to recent statistics.

In our case, adopting the FWS/DFG requirements, would cost an additional $2.6 million to provide the additional 3% protection of BCM recommended by FWS. Another $2.6 million for an average of 491 plants per year amounts to over $5,000 per plant in an average year. The cost is over $100 per month or $36,000 for the life of a 30 year mortgage for new homeowners, and would make our project economically infeasible.

The Section 7 consultation is not yet complete and we risk State and Federal agency retaliation to bring this information to you and to the American public's attention.

However, we believe the system is so out-of-balance that it must be fixed before another landowner voluntarily offers to protect 97% of a species occurring on the land under a biologically sound plan, and that proposal is rejected out of hand and replaced with a 100% or nothing agency counter-proposal.

After months of providing additional data to buttress this plan and to demonstrate the economic infeasibility of the counter-proposal which would take without compensation up to 130

acres (80%) of our land, we have yet to see any significant agency movement towards a reasonable middle ground.

We cannot turn our backs on environmental protection. People and wetlands and species must survive and prosper together. However, we cannot unfairly preclude younger generations from realizing the American Dream older Americans have enjoyed - such as affordable housing.

The Endangered Species Act pendulum must swing back towards the middle to achieve balance, reason, fairness and equity.

Thank you for the opportunity to address the Task Force on this very important subject and for holding this hearing in the Central Valley of California. I am happy to answer any questions.

ENDANGERED SPECIES ACT RECOMMENDED CHANGES

- **More thorough scrutiny of petitions and proposals for listing.**
  - Minimum standards for technical data in qualifying petitions to list.
  - Public notice and participation during review of petition and preparation of status review.
  - Shift the burden of proof to Department of Interior to collect necessary field data to unequivocally justify listing.
  - Require peer review of data justifying listing before decision to list. Remove USFWS as Advocate and Judge.
- **Designation of Critical Habitat.**
  - Require peer review of critical habitat designations before adoption.
  - Ease "take" restrictions outside designated critical habitat.
- **Delegation of "take" regulation and species management to the states.**
  - Develop an effective program, including specific criteria, under Section 6 for delegating federally-listed species management to state resources agencies.
  - Provide incentives for states to enter into memoranda of understanding to accept delegation of federal authority.
  - Streamline regulatory compliance procedures for incidental "takes".
- **Initiate a series of market force-based incentives to reward landowners with tax breaks, regulatory streamlining and like programs for preserving and enhancing listed species and their habitat.**
  - Expressly acknowledge the validity of habitat mitigation banking.

91-821 O - 95 - 11

- Expressly provide more favorable capital gains tax rates, inheritance tax rates and income tax deductions for implementing listed species habitat protection measures.

o **Timely and appropriate Recovery Plans.**

- One-year deadline for Recovery Plan after decision to list.

- Recovery team to include both governmental and private sector.

- Consideration of range of alternative plans based on cost-effectiveness.

o **Extend citizen suits to regulated sector.**

- Provide equal opportunity for the regulated sector to challenge inappropriate implementation of ESA.

o **Encourage a multi-species mitigation philosophy to avoid the current chaotic species-by-species protection approach.**

- Expressly authorize pre-listing agreements for multiple species mitigation prior to listing.

- Provide for multi-species "blanket permitting" to local government and private landowners with reasonable, pre-established mitigation criteria, funding assistance mechanisms and fixed timetables for recurring impact mitigation.

o **Mandate federal government compensation for fair market value of property that must be preserved because of its high value due to ESA permit denials or permit conditions.**

- Appropriate increased funding to reimburse the private sector for independent studies or assessments of species proposed for listing or critical habitat designation.

- Provide funding to reimburse landowners for diminutions in value resulting from ESA compliance.

Testimony of Robert Pernell, Vice President Board of Directors
Sacramento Municipal Utility District

Before the
Endangered Species Act Task Force
U.S. House of Representatives

April 28, 1995

Chairman Pombo, Members of the Task Force:

My name is Robert Pernell. I am the Vice President of the Board of Directors for the Sacramento Municipal Utility District (SMUD).

I appreciate the opportunity to testify and share with you SMUD's experience with the Endangered Species Act and the recent listing of the fairy and tadpole shrimp. SMUD strongly supports the preservation of our nation's natural resources and is a leading proponent of environmental protection. However, we would like to propose several modifications to aid in the implementation of the Act.

BACKGROUND

SMUD is the Nation's fifth largest publicly owned electric utility, providing electric service to the greater Sacramento area. We are currently in the process of developing four cogeneration facilities which will provide over 500 megawatts of new electrical power for the service area. These projects will replace in part, electricity which was generated by the Rancho Seco Nuclear Power Plant which is now closed. The cogeneration plants include:

- the Procter & Gamble Cogeneration Project, which will be located at the Procter & Gamble manufacturing facility in Sacramento;

- the Campbell Soup Cogeneration Project, which will be located at the Campbell Soup Company facility in Sacramento;

- The Carson Ice-Gen Project, located at the Sacramento Regional Wastewater Treatment Plant in South Sacramento; and

- the Sacramento Ethanol and Power Cogeneration Project (SEPCO), which will be located in Rio Linda;

SMUD is also developing a 64 mile natural gas pipeline, which will serve each of the cogeneration plants.

MITIGATION

In September 1994, the fairy shrimp and tadpole shrimp were listed as endangered and threatened species, respectively. Despite careful avoidance of vernal pools and wetlands, the pipeline and two of the co-generation projects have fairy shrimp and tadpole shrimp on the project sites. On the Pipeline and Procter and Gamble Cogeneration projects sites, the species were not found in vernal pools or wetlands, but in water-filled depressions and mudpuddles (please refer to attached photographs). On the SEPCO Cogeneration Project site, which is being developed and mitigated for SMUD by a private developer, the species were found in .2 acres of vernal pools.

The California Energy Commission (CEC) had already required mitigation for the fairy shrimp and tadpole shrimp associated with the three projects, prior to the listing of the species. For example, for the pipeline which causes a temporary impact, the CEC required the shrimp species to be removed from the route prior to construction and then replaced once construction is complete. On the Procter & Gamble Project, SMUD is required to pay $100,000 for impacts to the vernal pool tadpole shrimp.

However subsequent to the lengthy CEC licensing process, SMUD was required to initiate discussions with the U.S. Fish and Wildlife Service on additional mitigation for fairy shrimp and tadpole shrimp, since the species were now listed. SMUD staff negotiated an agreement with the U.S Fish and Wildlife Service that requires establishing a 200 acre environmental conservation/fairy shrimp mitigation bank on property owned by SMUD, adjacent to the Rancho Seco Nuclear Power Plant. Up to 25.5 acres of the bank will be used as direct mitigation for the impacts incurred during construction of the Pipeline and the Procter & Gamble Cogeneration projects.

The total value of SMUD resources required for fairy shrimp mitigation are estimated at $500,000. This estimated value includes

$400,000 for the value of the Rancho Seco land and the $100,000 which was previously committed to the California Energy Commission for fairy shrimp mitigation for the Procter & Gamble Project.

The U.S. Fish and Wildlife Service will allow SMUD to use the remaining 174.5 acres as mitigation credits to support the licensing of future SMUD projects. The estimated market value of this mitigation bank is approximately $1.2 million, if SMUD were to sell the credits.

PROPOSED MODIFICATIONS

As Congress moves forward to reauthorize the Act, SMUD would urge the following modifications. These modifications were approved by the SMUD Board of Directors on April 20, 1995 (please see Resolution, attached). The modifications are:

1) At the time of listing of a species or as soon as practicable after listing has occurred, the Secretary shall use best efforts to designate critical habitat for the species.

As mentioned previously, the fairy shrimp and tadpole shrimp located on the Procter & Gamble Project site and along the pipeline route are located in water-filled depressions and mudpuddles. Had the critical habitat for the fairy shrimp and tadpole shrimp been identified at the time the species were listed, the "habitat" associated with these two projects would most likely have been excluded.

2) At the time of listing of a species or as soon as practicable after listing has occurred, the Secretary shall use best efforts to adopt a Recovery Plan which shall identify measures intended to benefit and recover the listed species, consider the community impacts of implementing the Plan, and develop delisting criteria.

The Act requires Recovery Plans for threatened and endangered species to be developed after a species has been listed. Unfortunately, this causes uncertainties and delays for project proponents who need to obtain take permits from the U.S. Fish and Wildlife Service, but yet there is no Recovery Plan in place identifying what mitigation the

project proponent should provide. To prevent these delays, the Recovery Plans should be developed at the time of the listing.

3) Upon final order of a court invalidating or setting aside a listing due to inaccurate or insufficient information, any project proponent shall be relieved of any obligation to comply or continue with any mitigation measure related solely to such species, including any obligation to create and maintain a conservation bank.

If the fairy shrimp and tadpole shrimp are delisted due to inaccurate or insufficient information, SMUD should no longer be obligated to establish the 200 acre fairy shrimp and tadpole shrimp mitigation bank required by the U.S. Fish and Wildlife Service.

4) The takings provisions of the Act shall not apply to the routine maintenance of utility facilities, provided that the utilities use best efforts to protect habitat and avoid unnecessary takings of listed species.

When maintenance of utility facilities is required to ensure the safe and reliable electrical service to our customers, SMUD must be able to conduct these maintenance activities without having to first obtain a take permit from the U.S. Fish and Wildlife Service. Naturally, it is expected that SMUD would take measures to protect habitat and species while conducting these activities.

5) The Secretary shall consider submitting the proposed listing of any species as threatened or endangered under the Act to an independent panel of qualified scientists for review and recommendation.

6) In accordance with the delisting criteria set forth in the Recovery Plan, the Secretary shall periodically review the continued need for the listing of a species.

7) The Secretary shall develop and implement procedures for the granting of expedited permits for incidental takings of a listed species under Sections 7 and 10 of the Act.

CONCLUSION

Thank you for this opportunity to address the Task Force. In summary, SMUD believes that the Endangered Species Act is fundamental to the protection of our environment. However, there are modifications to the Act that while still ensuring that the environment is protected, could assist in the implementation of the Act. These modifications are:

1. Identification of critical habitat at the time of listing;

2. Project proponent relief of mitigation obligations in the event a listing is invalidated or set aside;

3. The takings provision of the Act should not apply to routine maintenance of utility facilities;

4. Identification of recovery plan at the time of listing;

5. The Secretary of the Interior to consider submitting proposed listings to an independent panel of scientists;

6. Development of procedures for granting of expedited permits; and

7. The Secretary of the Interior should periodically review the continued need for the listing of a species.

SMUD looks forward to working with the Task Force and the SMUD Congressional Delegation on this important issue.

RESOLUTION NO. 95 - 04 - 24

WHEREAS, the Endangered Species Act (Act), the environmental law designed to protect endangered and threatened animal and plant species and the ecosystems on which they depend, is subject to reauthorization in the 104th Congress; and

WHEREAS, the Sacramento Municipal Utility District (SMUD) is a leading proponent of environmental protection, and strongly supports the preservation of our nation's natural resources and continued protection of endangered and threatened species; and

WHEREAS, SMUD supports reauthorization of the Act; however, experience under the Act has highlighted areas in which modifications to the Act and its procedures would provide needed relief to project proponents while preserving the intent and effectiveness of the Act. For example, (i) listing decisions should be subject to independent scientific review and increased public participation, (ii) listing decisions should include critical habitat designations, and (iii) recovery plans for listed species should consider community impacts; and

WHEREAS, SMUD is developing four new electrical generating projects and a 64-mile natural gas pipeline which will serve each of the co-generation plants; and

WHEREAS, despite careful avoidance of vernal pools and wetlands, the pipeline and three of the co-generation projects have fairy shrimp and tadpole shrimp on the project site or within the transmission line rights-of-way associated with the projects; and

WHEREAS, the majority of the fairy shrimp and tadpole shrimp associated with the SMUD projects are not found in vernal pools or wetlands, but rather in less than pristine locations such as railroad rights of way and roadway tire depressions; and

WHEREAS, because the listing of the fairy shrimp and tadpole occurred either after licensing or late in the licensing process for the projects, the SMUD projects have been delayed because of permitting requirements under the Act which are duplicative of earlier environmental review; **NOW, THEREFORE,**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT:

Section 1. This Board urges the Congress of the United States to expeditiously move toward reauthorizing the Endangered Species Act (the "Act") and to incorporate the following measures into the reauthorized Act:

a) The Secretary shall consider submitting the proposed listing of any species as threatened or endangered under the Act to an independent panel of qualified scientists for review and recommendation.

b) At the time of listing of a species or as soon as practicable after listing has occurred, the Secretary shall use best efforts to designate critical habitat for the species.

c) At the time of listing of a species or as soon as practicable after listing has occurred, the Secretary shall use best efforts to adopt a Recovery Plan which shall identify measures intended to benefit and recover the listed species, consider the community impacts of implementing the Plan, and develop delisting criteria.

d) In accordance with the delisting criteria set forth in the Recovery Plan, the Secretary shall periodically review the continued need for the listing of a species.

e) Upon final order of a court invalidating or setting aside a listing due to inaccurate or insufficient information, any project proponent shall be relieved of any obligation to comply or continue with any mitigation measure related solely to such species, including any obligation to create and maintain a conservation land bank.

f) The Secretary shall develop and implement procedures for the granting of expedited permits for incidental takings of a listed species under Sections 7 and 10 of the Act.

g) The takings provisions of the Act shall not apply to the routine maintenance of utility facilities; provided that the utility uses best efforts to protect habitat and avoid unnecessary takings of listed species.

Adopted: April 20, 1995

INTRODUCED BY DIRECTOR	Ameloff
SECONDED BY DIRECTOR	Reid

DIRECTOR	AYE	NO	ABSTAIN	ABSENT
COTTRELL			✓	
DAVIS		✓		
REID	✓			
KEAT	✓			
AMELOFF	✓			
PENNELL	✓			
PERCETTI		✓		

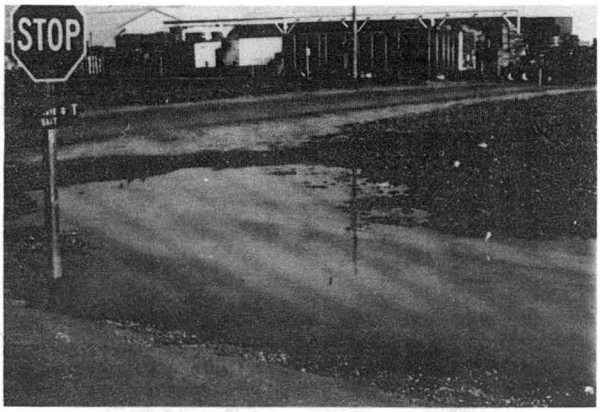

Figure 1. Depression at Procter and Gamble which ponds water in spring. *Branchinecta lynchi* located here.

Figure 2. Same site as above in summer months. *B. lynchi* eggs are abundant at site.

Representative sites from SMUD's Procter and Gamble Cogeneration Site and Natural Gas Pipeline

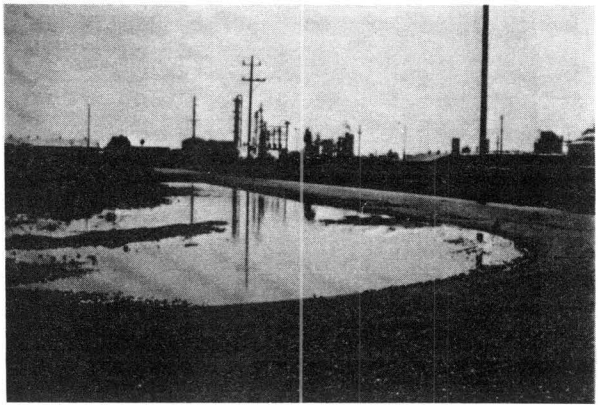

Figure 3. Other depressions at Procter and Gamble which also pond water in spring. *Branchinecta lynchi* also identified here.

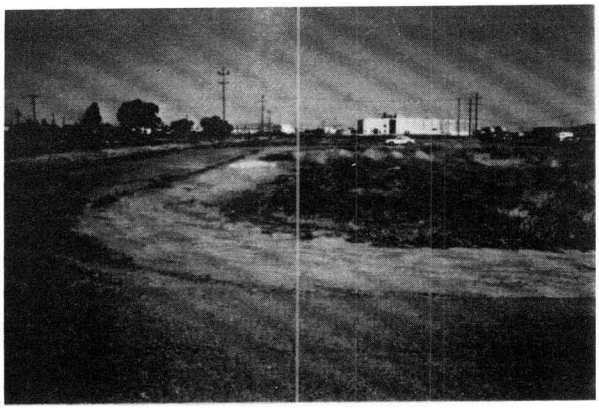

Figure 4. Same site as above in summer months.

Representative sites from SMUD's Procter and Gamble Cogeneration Site and Natural Gas Pipeline

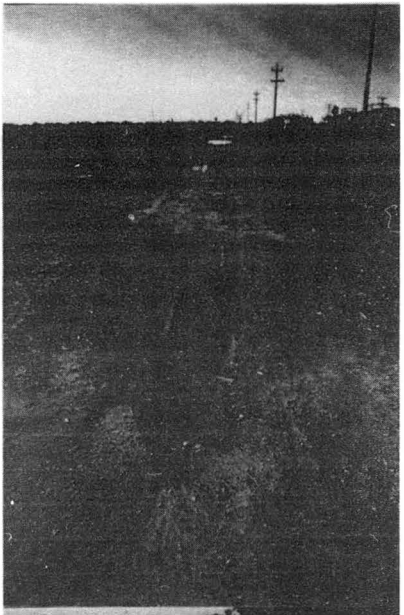

Figure 5. Tire depressions at Procter and Gamble which pond water in spring. *Branchinecta lynchi* also identified at these 4 sites.

Figure 6. Railroad right-of-way where *Lepidurus packardi* and *Linderiella occidentalis* were identified during spring rains.

Representative sites from SMUD's Procter and Gamble Cogeneration Site and Natural Gas Pipeline

testimony of

Dr. Denton Belk, Ph.D.

President, Brackenridge Stables, Inc.

Adjunct Professor of Biology
Our Lady of The Lake University of San Antonio

Chariman, Inland Water Crustacean Specialist Group
Species Survival Commission
IUCN - The World Conservation Union

presented to the

Task Force on Endangered Species of the Committee on Resources U.S. House of Representatives

Stockton, California
April 28, 1995

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THE FINAL RULE - FEDERAL REGISTER 59(180):48136-48154

In drafting the final rule, the Service did a commendable job of evaluating the best scientific and commercial data available. The careful nature of their review is indicated by the fact they uncovered arithmetic errors in the influential paper by Holland (1978) treating historic losses of Central Valley vernal pool habitat. Their corrections lowered estimates of historic habitat loss from 90% to a range of 60 to 85% (see Issue 24). They demonstrated openness to all credible and relevant data by using information in a report provided to them by Sugnet and Associates after the comment period had already closed (see Issue 12).

THE NATURE OF SCIENTIFIC DATA ON FAIRY SHRIMP

For invertebrates which do not have a known economic impact on human activities, information accumulates slowly on the basis of scientific curiosity and interest. This was the situation in relation to the four Central Valley fairy shrimp prior to their becoming candidate species for listing under the Endangered Species Act. Thus it is not surprising, nor unusual, that the "best scientific and commercial data" is found wanting in some respects. One implication of this situation is that research on the listed species needs to be both actively encouraged and pursued. Another implication is, new information may demonstrate that one or more of the species is less threatened than originally indicated and thus support delisting.

THE TAKING PROHIBITION (SECTION 9) AND FAIRY SHRIMP

Once the Central Valley fairy shrimp species were listed on 19 September 1994, taking prohibitions of the Endangered Species Act in section 9 made it illegal to conduct scientific surveys to determine their presence without obtaining a permit issued by the Service and following guidelines set by the Service. Despite efforts by the Service to rush the process of issuing permits and interim guidelines for survey activities, a number of planed surveys were blocked during what became one of the best seasons for fairy shrimp activity in the Central Valley in several years. The resulting loss of distribution information is not only very unfortunate, and in some cases costly to private property owners, it is also scientifically indefensible. Collecting fairy shrimp and preserving even a significant proportion of the active adult population for identification is not a threat to the survival of the sampled populations. This is due to the fact that each pool basin contains a large reserve of

unhatched resting eggs. Hildrew (1985) estimated total resting egg production by a single fairy shrimp population in an African temporary pool at 800,000. His data on hatching and survivorship in this population suggested 800,000 resting eggs is sufficient to insure its survival in the face of all emerging individuals being killed without reproducing during six or seven inundation cycles. Moore (1955, 1963) reported a number of cases in which total populations of young fairy shrimp were killed by drying before they could mature and reproduce. Despite these losses, fairy shrimp did not die out in these pools. Other workers, including myself, have observed the same. In fact, I have observed fairy shrimp to do very well in pools that were heavily collected for research purposes. Fairy shrimp naturally endure heavy predation pressure from insects and birds (Sublette & Sublette, 1967; Swanson *et al.*, 1985). Thus collecting a few to learn which species are present is not a threat to the survival of the sampled populations. In the Final Rule (Summary of Factors Affecting the Species section D), the Service recognizes that "The primary cause for the decline of these species is loss of habitat from human activities."

The Service's interim guidelines for fairy shrimp surveys present a significant problem for collectors. No more than six specimens of each listed species may be taken from a pool as vouchers. And these fairy shrimp must be identified in the field, without harming them, or keeping them in captivity for more than five minutes. These guidelines are not supported by the best scientific data available. In teaching biologists how to identify fairy shrimp to species, using carefully selected dead specimens manipulated under a microscope, I observed 62% of these students misidentified one or more species on the final practical examination (59 of 95 students). The need to sample in the field and identify in the laboratory is obvious.

Amending Section 9 of the Endangered Species Act to make establishing take prohibitions an optional part of the rule making process, to be applied using the best available scientific information on a case by case basis, seems to me like a needed change. In the case of the Central Valley fairy shrimp, taking prohibitions should have been applied to the destruction of habitat, but not to collecting or working with the animals for research or educational purposes. By using this approach, the fairy shrimp would be fully protected without scientific and public education activities being harmed. Changing Section 9, to make taking prohibitions part of the rule making process, on a case by case basis, will add flexibility and scientific reality to this part of the Endangered Species Act.

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TESTIMONY OF
EDWARD C. BEEDY, PH.D.
AT THE TASK FORCE HEARING ON THE
FEDERAL ENDANGERED SPECIES ACT,
STOCKTON, CALIFORNIA

APRIL 28, 1995

Mr. Chairman:

Thank you for the opportunity to testify at this important hearing on the Federal ESA. My name is Edward Beedy and I am a native Californian, and I was raised in a logging community in Humboldt County. I am currently a resident of Woodland, California, and I work as a professional wildlife biologist for a large, Sacramento-based environmental consulting firm. I speak for myself at this hearing and represent no other organization.

I was awarded my doctorate in zoology from University of California at Davis (UCD) in 1982, and taught a variety of upper-division and graduate-level biology courses at UCD and California State University, Sacramento for the following three years. I have published scientific articles and books on the distribution of birds in the Central Valley and Sierra Nevada, and recently completed an long-term statewide survey of the tricolored blackbird, a declining species that is largely restricted to California.

In 1985, I was hired by my current firm where I have worked on a large number of projects where the federal Endangered Species Act (ESA) played an central role. A few of these projects include studies of the impacts of selenium contamination on wildlife at Kesterson Reservoir, Merced County; studies of the California gnatcatcher and other special-status species in coastal sage scrub habitats for The Irvine Company, Orange County; regional surveys for San Joaquin kit fox and a variety of other special-status species for most of the major oil companies in western Kern County; surveys for California spotted owls and other special-status birds in the Coast Range and the western Sierra Nevada; and most recently was responsible for the wildlife analyses for the State Water Resources Control Board's Environmental Impact Report for Mono Lake, Mono County.

In 15 years as a professional wildlife biologist, I have heard many of the concerns and conflicts that private developers, loggers, farmers, and oil companies commonly express regarding the ESA. I have asked my clients and other professional biologists working at private consulting firms, universities, and in state and federal agencies to list the primary problems they have encountered with the ESA.

Based on my informal surveys, the most persistent problems with the ESA occur during its implementation. Most of these problems could be corrected administratively and with clear direction from Congress. Make no mistake: we need a strong ESA to prevent the extinction of many declining species of native plants and animals. During the past 25 years, the ESA has prevented the extinction of many species and has promoted the recovery of many others such as bald eagles, American

peregrine falcons, brown pelicans, and California gray whales. In my view, proposals to severely weaken the ESA will create more, not fewer, conflicts over endangered species.

The ESA requires careful revision to ensure that it protects our biological heritage that Americans still strongly value, while treating all citizens in a fair, reasonable, and respectful manner. Today I offer ten suggestions for revising the ESA to provide more certainty about its implication for landowners. At the same time, these suggestions are intended to preserve the act's essential function of preventing the extinction of threatened and endangered species.

1. Facilitate Landowner Participation in Recovery Efforts

Landowners should be encouraged to create and maintain habitat for listed and candidate species through tax credits, hold harmless agreements, and other incentives. If society values the preservation of habitat for declining species on private lands, it should be willing to reward landowners for protecting these resources. Currently, landowners are penalized for damaging sensitive habitats, but the ESA offers no direct incentives for preserving or enhancing these habitats on private lands.

Most landowners enjoy wildlife and plants and want to maintain them on their property. Examples of financial incentives that could be offered to landowners willing to preserve sensitive habitats include conservation easements, tax deductions, and reduced inheritance taxes. A system of financial rewards would encourage willing landowners to protect and enhance sensitive habitats, and they would facilitate collaboration between landowners, biologists, and regional planners to ensure that the best available scientific data are incorporated into the planning process.

2. Eliminate Critical Habitat Designations

The ESA defines "critical habitat" as specific areas that are essential to the conservation of the species and lands that may require special management consideration or protection. For most listed species, however, critical habitat has not been formally designated. Such designations require significant U.S. Fish and Wildlife Service (USFWS) staff time to prepare and defend, and they provide no substantial benefits after the initial listing has occurred. The USFWS definition of "destruction or adverse modification of critical habitat" is essentially the same as the USFWS definition of "jeopardy"; both definitions require that the survival of a listed species be threatened. Therefore, for all practical purposes, the ESA's critical habitat provisions add nothing to the protection of listed species and are redundant.

For rare, but widespread species, such as the desert tortoise, southwestern willow flycatcher, and least Bell's vireo, designated critical habitats may include some unoccupied habitat areas. In contrast, other undesignated, but occupied, areas offer equivalent habitat values and may be just as worthy of protection.

Critical habitat designations on private property have the potential to restrict land uses and to reduce property values. For these reasons, most landowners usually oppose such designations, often through litigation. Eliminating this provision of the ESA would not jeopardize the future existence of any species, and it would reduce unnecessary conflicts and concerns for private landowners.

Finally, if endangered species were only protected on critical habitats, and not on other lands, substantial losses of existing habitat could occur without adequate scientific review. Further, there would be no incentives for biologists to search for undiscovered populations of endangered species outside critical habitat areas. Discovery of new populations could provide a scientific basis for delisting species that may not qualify for future listed status.

3. Refine the Definition of Potential Habitat

The term "potential habitat" is not rigorously defined under the ESA. Definitions of this term should accurately reflect the importance of a specific habitat for a target species. For example, a recently occupied peregrine falcon eyrie or bald eagle nest is potential habitat, while an isolated, unoccupied patch of coastal sage scrub may not meet the habitat requirements of California gnatcatchers.

The term potential habitat should only apply to habitat that is considered suitable in its current state, and is within reasonable proximity of occupied habitat to promote the recovery of the species. As described in the professional literature, suitable habitats are those that would be commonly used by the species for foraging, resting, or breeding. The term reasonable proximity is defined as the known dispersal capability of the species, based on scientific studies.

4. Establish Specific Criteria for Listing and Delisting Species

USFWS should publish specific criteria in the Federal Register defining what endangerment means for the proposed species. For example, such criteria could identify the percentage of the historical range that is currently occupied by the species, or it could specify the number of populations or individuals below which a species would meet the definition of either threatened or endangered. Such criteria could include specific thresholds, or a range of published values, depending on the reproductive potential and dispersal capabilities of the proposed species. Most important, definitions of threatened or endangered status identified during the listing process should also provide guidance for the appropriate population levels for recovery and delisting of the target species.

5. Develop Recovery Plans within One Year of Listing

The recovery plans for individual listed species should be funded and prepared on a fixed time schedule to ensure that clear goals for recovery are defined at an early stage. This could be accomplished by specifically earmarking funds and assigning specific USFWS personnel to recovery planning and implementation. The goal would be to prepare recovery plans within one year of the

listing decision; if this deadline is not met, USFWS should be directed to prepare a report describing the status of the recovery effort and what additional funding would be required to complete the plan.

Current staffing at USFWS is inadequate to prepare recovery plans for more than a small fraction of the listed species that they are assigned to monitor. Preparation of good recovery plans requires extensive time, energy, and cooperation; therefore, without a significant increase in funding, the plans simply will not be prepared for most species. Lack of adequate recovery plans will increase the public's frustration over endangered species management because clear goals will not be identified and recovery will rarely be achieved. These conflicts could be resolved if USFWS was provided with sufficient funding to prepare recovery plans.

6. Assess Take at a Population Level

The definition of "take" under Section 9 of the ESA includes any loss of individuals of listed species. This provision of the ESA needs to be made more flexible to ensure that it recognizes that species with different reproductive strategies vary in their sensitivity to disturbance and population losses. The definition of take should be revised so it does not focus on individuals, but rather includes demonstrable adverse effects on populations.

For many species, such as bald eagles, California condors, and Florida panthers, loss of a single individual or breeding pair could have significant effects on their local, regional, or global populations. Many other listed vertebrates and some invertebrates are similarly vulnerable to extinction, and current incidental take requirements appropriately reflect the need to protect individuals and local populations.

At the other end of the spectrum, many plants, invertebrates, and some fish species are not vulnerable to the losses of individuals from their populations. Unlike most vertebrates, these organisms produce thousands or millions of progeny per reproductive pair or individual. Thus, for these species, the loss of a single individual would have no population effects as long as their habitats are intact. For example, a taking of one or several fairy shrimp would not jeopardize the continued existence of the species, as long as its vernal pool habitat remains intact.

7. Develop an Administrative Appeals Process within USFWS

The ESA needs to provide clearly defined mechanisms and deadlines for the public to appeal USFWS decisions, similar to the process that currently exists in the U.S. Forest Service. Such an administrative process would enable the public to appeal important decisions made by USFWS staff to higher authority personnel at regional and national levels within USFWS. Much current litigation regarding USFWS actions could be avoided by providing scientifically based administrative solutions to conflicts over listing decisions, biological opinions, and mitigation requirements.

8. Streamline the Permitting Process

Specific deadlines should be required to ensure that all endangered species permits are issued on a timely schedule. The current shortage of USFWS personnel often results in needless and lengthy delays in obtaining permits to conduct surveys for certain listed species. Project delays of up to a year are not uncommon due to USFWS processing survey permits; such delays often translate into increased costs for project proponents. Possible ways to facilitate the permitting process include increased staffing and funding of more positions at USFWS to handle the heavy work load, and giving the regional and local offices the authority to issue permits.

9. Streamline the Section 10(a) Process to Parallel the Section 7 Process Available to Federal Agencies

USFWS has recently developed guidelines to streamline the Section 10(a) process, which legally authorizes the incidental taking of listed species on private land through preparation of a Habitat Conservation Plan (HCP).

Some of the concepts in the USFWS guidelines include less detailed planning and environmental documentation to streamline the HCP process for "low effect" projects. The HCP process, however, is usually lengthy and expensive. In addition to detailed biological studies, it typically requires extensive negotiations among landowners, local governments, and resource agencies. Several years of negotiation may be required to complete the process, and many important HCPs languish for lack of direction or consensus.

Compared to the HCP process, Section 7 consultations are far easier and less costly to implement. Section 7 of the ESA permits the incidental take of listed species on federal land, or for projects with federal funding or other federal involvement. These consultations require the project proponent to prepare a biological assessment for review by USFWS. Within a specified time, USFWS must issue a biological opinion that reviews the project and determines whether it will be likely to jeopardize the continued existence of any listed species. The biological opinion also identifies the incidental take of listed species that is permitted by the project. For many projects, the entire process can be completed within a few months.

Because such Section 7 consultations are faster and less expensive, many project proponents design their projects to include federal land so that their ESA requirements can be met under Section 7, rather than under Section 10(a). This is fundamentally unfair to private landowners because the ESA mandates stricter requirements for private land than those that exist for federal land. Section 10(a) of the act should be streamlined to create parallel processes for ESA consultations on both private and public lands. These revisions should be built into legislation, with adequate funding and mandated response times for agencies.

10. Encourage Multispecies Planning Efforts

Despite the unnecessarily strict requirements of the Section 10(a) process, preparation of large, multispecies protection plans, such as HCPs, offers the greatest opportunities to recover populations of declining species and to promote biodiversity. The objective of multispecies plans is also consistent with the stated goals of the ESA: ". . . to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be preserved . . .". Such efforts should include broadly based citizen groups to evaluate the proposed plans; the task of making environmental policy should not be the exclusive province of taxonomists and other biologists.

Initial HCP efforts were limited to a single listed species and were project specific. Most recently proposed HCPs, however, have the objective of comprehensive regional protection of several species, both listed and unlisted. Overall, project-specific, single-species HCPs tend to be less successful at preserving endangered species habitat because they often result in piecemeal, fragmented mitigation parcels.

In contrast, regional, multispecies HCPs enable long-range planning efforts that have potential to preserve a high diversity of declining species simultaneously. Coordinated, multispecies planning efforts also provide landowners with more predictability in land use planning and more incentives to participate in preserving endangered species and their habitats for future generations.

Conclusions

In conclusion, Mr. Chairman, I hope that you and the committee will seriously consider these 10 suggestions for revising the ESA to better serve both humans and endangered species. Cooperative action is best achieved with broad local public and agency support, landowner consultation, and federal resource agency participation.

Building Industry Professionals for Environmental Responsibility

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Testimony for the Congressional hearing on reauthorization of the Endangered Species Act at Stockton CA on April 28th, 1995.

We, the undersigned, are members of the building industry currently working as architects, engineers, tradespeople, contractors or other professions related to the industry. We believe firmly in the intentions of the Endangered Species Act and do not accept efforts to weaken it with the reauthorization process. Furthermore we recommend strengthening the provisions for protection of habitat for endangered species. Much has been made of the detrimental effect the ESA has had on the construction industry. We reject that view and suggest that we in the industry are capable of combining good environmental safeguards with a healthy business climate.

Name	City & Sate	Profession
John Reed	Berkeley	Contractor.
Kevin Sloane	Berkeley Ca	Carpenter
Philip Bain	Cayucos Ca	Builder
Kathryn Carpenter	San Francisco CA	Architect
Lawrence	Berkeley	CARPENTER.
Brenda Hennessy	SF	Roofer local 40
FRANK ZIP	SF	Painter/carpenter
Jeff Hobson	Davis CA	Mech. Engineer
CHARLS HOWDEN	S.F.	SALES
ROBIN FREEMAN	OAKLAND	DESIGN/BUILD
Kathy Meagson	Richmond CA	Carpenter apprentice
Elizabeth Raybee	SF CA	Mosaic/TILE CONTRACTOR
Susan Steindler	SF CA	Architect
Gwen Nguyen	Oakland	Planning
Elizabeth Budin	Berkely CA	Attorney
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Darrel Delbar	Alameda CA	Architect
PAUL EAMES	OAKLAND CA	HARDWARE MERCHANT
Roger Murray	El Cerrito Ca	Lumber / Hardware Sales
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[illegible]	Oakland CA	General Contractor
[illegible]	[illegible] CA	Lumber Company
LEE VIEIRA	San Leandro, CA	HVAC Contractor
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Green Hose	3008 King St. Berkeley 94703	Landscaper/Gardener
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Name	City & Sate	Profession
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Bob Schneider	Davis, CA	Builder / General Contractor
Jim Heffernan	Woodland	Plumbing cont.
Gary Vanwalsel	Davis Ca	Builder / G.C.
David Quin	DAVIS CA	ARCHITECT
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