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ENFORCEMENT OF THE ENDANGERED SPECIES ACT IN CALIFORNIA

FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JULY 9, 1999, HEMET, CALIFORNIA

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ENFORCEMENT OF THE ENDANGERED SPECIES ACT IN CALIFORNIA

FRIDAY, JULY 9, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Hemet, California.

The Committee met, pursuant to call, at 9:39 a.m., in Room 305, East Devonshire, Simpson Center, Hemet, California, the Hon. Richard Pombo presiding.

Member present: Representative Pombo

Mr. POMBO. [presiding] Let's get started. I would like to ask everybody to please fill in the seats. There are several seats up here in the front, if I could have you come forward and fill in any of the empty seats, please. We need to have everybody take a seat to the extent possible. Even to the extent, take the witness seats up here in the front row if need be.

STATEMENT OF HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. POMBO. Good morning. I want to welcome all of you to this hearing of the House of Representatives Committee on Resources. I am Congressman Richard Pombo from Tracy, California.

Chairman Don Young has asked me to chair this hearing today on his behalf and sends his regrets that he could not be here.

I represent California's Congressional District 11, and I am very happy to be here at the invitation of my Southern California colleagues, Congresswoman Mary Bono, Congressman Ken Calvert, Congressman Duncan Hunter, and Congressman Gary Miller.

Southern California is fortunate to have some of the most effective, hardest working Members of Congress.

We are also joined this morning by Congresswoman Helen Chenoweth of Idaho, my colleague on the Resources Committee.

I particularly want to thank the good people of Hemet, California for their hospitality in hosting this hearing and to the Simpson Center for allowing us to use this wonderful facility.

The Committee on Resources is here today to receive testimony from the citizens from Southern California who have experienced first hand how the Endangered Species Act is enforced and implemented.

I have become increasingly concerned that the ESA is no longer the national law that Congress intended it to be when it was originally enacted in 1973. Instead, it is increasingly used as a tool to stop growth and economic development in only certain areas of the country, particularly here in the West.

We are seeing increasing evidence that this law is used very selectively, not to truly save endangered species or threatened species, but as a means to allow Federal agencies to dictate Federal policies to local communities on everything from urban sprawl to land use policies.

In some areas of the country species are protected and recovery is achieved using cooperation and common sense. You just don't hear about conflict over the ESA in the Northeast or Midwest because Fish and Wildlife Service offices in those regions focus their efforts on helping people protect wildlife using cooperation rather than confrontation. They do not require the set-aside of thousands of acres of private land or the payment of millions of dollars in mitigation fees.

I believe that the ESA can achieve its goal without conflict and confrontation and without infringing on the rights of private property owners. I believe that we can have an ESA that does not destroy jobs in local economies. I believe that a common sense approach that appeals to our national desire for a more beautiful world can work.

However, as long as the real agenda is to stop growth, eliminate jobs, and take private property for public use without payment of just compensation, then both people and wildlife will continue to suffer.

Again, I thank you for allowing this Committee to come to your community and for your warm and courteous welcome.

I would like at this time to recognize my colleague from this district, Ms. Bono.

STATEMENT OF HON. MARY BONO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. BONO. Thank you, Mr. Chairman.

I would like to take this opportunity to welcome my colleagues to the beautiful City of Hemet in the 44th Congressional District in California. I really appreciate your giving up a part of your vacation time to be here.

One of our goals today is to come up with ideas on how to make the Endangered Species Act work for everyone. For several years Southern California has been at an impasse in terms of how to balance our growth and economic prosperity with saving the many unique species residing here. To sacrifice one for the other is not an option.

The Inland Empire is one of the fastest growing areas in the United States. People want to live here because they can make a good living and relish Southern California's unrivaled surroundings. Right now our standard of living is in jeopardy because we do not have a consistent method of applying the Endangered Species Act.

I believe there is a willingness to comply by most property owners. All they ask for is some certainty to the process.

I hope the hearing will provide our constituents with an understanding of how they can comply with the law as it applies equally to everyone.

Mr. Chairman, before I close, I would also like to thank the City of Hemet, the Hemet Police Department, and the Director of the Simpson Center for giving us such a wonderful venue.

Thank you, and I yield back the balance of my time.

Mr. POMBO. Thank you.

I would like to recognize the gentleman who first approached me about holding this hearing, Mr. Calvert.

STATEMENT OF HON. KENNETH CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Thank you, Mr. Chairman.

And I am happy to be here in Hemet. I have got to tell you a quick story. My mother met my father here in Hemet. She was a nurse at the Hemet Hospital, and my father had a rock and sand business up in Idyllwild and got hurt, and if it was not for that, I would not be here.

[Laughter.]

Mr. CALVERT. So some of you probably wish that never occurred, but it did.

As many of you who are here today are aware, as the Fish and Wildlife Service certainly is aware, I have recently become very concerned about the implementation of the Endangered Species Act, especially by the Fish and Wildlife Service's Carlsbad office.

The impetus for my actions is the accelerated rise in the number of complaints from my constituents. In the six years since I was first elected to represent western Riverside County, the number of complaints my office has received about the Carlsbad office and their implementation of ESA has literally skyrocketed, and keep in mind that is only counting the people who have been willing to come forward.

Fish and Wildlife has been accused of creating an atmosphere of intimidation in everyone, from landowners and developers to farmers and homeowners and public agencies.

In response to the rising number of complaints, I have requested a GAO audit of the service operations with my friend and colleague House Resources Chairman, Don Young, and I am happy to say that all of the California members on this panel today have signed that letter, along with a total of 26 members of the California delegation in support of this, both Republicans and Democrats.

The Carlsbad office frequently laments that they are under staffed and under budget. An independent audit will hopefully determine where the problems are located.

A shared theme in all of the complaints I have received is that the policies of the Carlsbad office lack common sense, and in my opinion, the office has made themselves an easy target due to some of the their demands.

For example, a hospital in San Bernardino moved 250 feet at a cost of $4.5 million to save eight flies. A Fish and Wildlife biologist recommended shutting down the I-10 freeway during August and September, at least slowing it to 10 to 15 miles an hour so that fewer flies got caught on windshields during the mating season.

[Laughter.]

Mr. CALVERT. I do not make this stuff up, folks.

[Laughter.]

Mr. CALVERT. Demanding retroactive mitigation for ongoing uses that have taken place for 30 years, including trimming trees at the end of the Corona airport runway, a safety measure that is mandated by the FAA. I think someone found out I used to be a pilot.

Originally demanding $32 million in mitigation for a $20 million interchange project because a biologist from the Carlsbad Fish and Wildlife office apparently believed that a fly was located nearby, but no one had ever seen one.

Producing a map that shows the Quino checkerspot butterfly habitat in all but the most industrial areas of Southern California.

Now, those are just a few examples. I am sure that we will hear many more, and if the ramifications were not so serious to property owners and the endangered species alike, the statements coming out of that office would almost seem laughable, and that is part of the problem. These are just statements, not even policy.

If endangered and threatened species are going to be truly protected for future generations, our Federal agencies must have credibility and deal in good faith with all citizens.

I am also extremely concerned about reprisals and intimidation. Whether directly or indirectly through consultants against our witnesses today and others with whom this Committee will speak in the future, this is something that will not be tolerated, and I will monitor this situation closely, as I am sure the Chairman will and the rest of this panel.

It is my hope and expectation that I do not hear any abuse of power in the future.

That said, I have several goals I hope this hearing can accomplish.

One, any person who applies for a Section 7 or 10(a) permit will have the trust and confidence that the Fish and Wildlife Service keeps its commitments.

Two, mitigation must be done with equal habitat value per acre as determined by the applicant survey biologist and the Fish and Wildlife Service.

Three, only sound and legally obtained science can be used to obtain habitat.

Four, that the policies are consistent.

Five, that the office advocate alternative ways in which economic development can go forward while going through the formal stages of the permitting process.

My colleagues and I are here today because the Federal Government must find a way to logically and fairly address the situation and reach a solution that does not put the rights of the species before the rights of people.

I want to emphasize I recognize Southern California is the most densely populated region in the United States and one of the fastest growing, which has resulted in growing pains that include additional stress on habitat. Riverside County's first encounter with ESA problems was the fringe toed lizard. This was followed by the Stephen's Kangaroo Rat, which took eight years to complete at a cost of $42 million.

But the Carlsbad employees have not consistently dealt with us in good faith. When a deal is made, as in the case of San Diego and the Fish and Wildlife office and its employees can no longer

be relied upon, the problem becomes that the community loses trust in the agency and, in part, loses trust in the United States Government, and that is not a good thing.

Southern California, especially Riverside, San Bernardino, San Diego, and Orange Counties, have shown an enormous commitment, not only to protect endangered and threatened species, but also to establish a strong working relationship with Fish and Wildlife and other conservation agencies.

I am hopeful that we can one time again return to a strong working relationship, and I look forward to hearing the testimony of today's witnesses, Mr. Chairman.

And I thank you.

Mr. POMBO. Thank you.

[Applause.]

Mr. POMBO. I would like to recognize the gentle woman from Idaho, Mrs. Chenoweth.

STATEMENT OF HON. HELEN CHENOWETH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I want to thank you and our hostess, Mary Bono, for this opportunity to delve into an issue, the Endangered Species Act, that obviously from the comments of Congressman Calvert and from our knowledge in working back there in the Congress, the Endangered Species Act has been totally misused.

It is an Act that has not succeeded in saving species, but has succeeded in dimming down the enthusiasm for a productive economy and a vibrant and growing society that is growing in the right way, not necessarily growing out as far as people are concerned, but the continued vibrancy that really has built this country.

So, again, thank you very much for inviting me to the hearing, and I look forward to hearing from the witnesses.

Mr. POMBO. Thank you.

I would like to recognize Mr. Hunter.

STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUNTER. Thank you, Mr. Chairman.

And I want to thank my colleagues, our host, Ken and Mary, for hosting this hearing, and you for coming such a long way to make it a reality, and Helen, of course, for her great contribution.

You know, Southern California used to be a place where you could dream, where a young couple could get married, and they could have children, and they could have a dream, and they could pursue that dream, and in many cases achieve it.

And a centerpiece of that dream was home ownership, and my reason, Mr. Chairman, for being here is because I think that that dream is disappearing rapidly, and I can see it very clearly in the facts and figures we're going to put up in a few minutes when we have testimony from some of our witnesses.

But, you know, the average home in San Diego County today is $265,000, and the estimates are that as a result partly of Fish and Wildlife in Carlsbad and other factors—there are other agencies that are involved—that 265, $270,000 median priced home in San

Diego County is about 35 percent higher than it needs to be, and that money does not go to profit for developers. It does not go to the construction crews, the people that carry the lunch buckets and build the homes. Those are actually fairly low costs. They are basically in line with the rest of the country.

Plywood and two-by-fours cost the same across the country, but what makes our homes so expensive is the cost of regulation, and so that dream is becoming unachievable. Today you have to make about $70,000 a year to be able to qualify for the median priced home in San Diego County, and that means that our young couples are not able to buy homes.

And most of our growth now is coming from people who are having families in our districts. It is not coming from outside folks coming into San Diego and Riverside Counties. So we have a real problem. The American dream is slipping away.

And part of the answer is going to be brought about, I think, by this hearing because we are going to listen to some people who would have been able to have built those homes, and I think home building is a very honorable profession, Mr. Chairman. They would have been able to build those homes for a lot less money, sell them for a lot less money, and that young couple would not have been paying 7 or 7½ percent interest on an additional 30 or $40,000 per home for the next 30 years if government had acted reasonably.

And I have said this before, Mr. Chairman. This may be a little strong, but I talked to one person who actually took a photograph of one of the bumper strips on one of the Federal employee's cars at the Carlsbad office that said essentially, "Home Builders Can Go to Hell." Now, I thought about that.

What if you were a veteran and were going into the Veteran's Affairs Office to try to get your veterans check and you saw the car, happened to see the car of one of the people who was supposed to wait on you and serve you, and it said, "Veterans Can Go to Hell. That's my attitude," or what if you were a senior citizen going to the Social Security Administration and you saw a bumper strip that said, "Senior Citizens Can Go to Hell"? What kind of service would you expect when you walked in those doors?

Unfortunately, Mr. Chairman, I think that that attitude has largely been manifested in real action by some members of the Carlsbad Fish and Wildlife office. I've been admonished by Mary Bono, a very reasonable and good person, that we should be optimistic that we can solve these problems, and I hope we can solve them. I think some positive recommendations will come forth today.

But let's make this hearing contribute to that most important goal for Southern California, and that is, once again, making the dream of home ownership achievable.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hunter follows:]

STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate the opportunity to be here in Hemet, California today to participate with the House Resources Committee to discuss the operations of the Carlsbad office of the U.S. Fish and Wildlife Service (CFWS). In addition, I would

like to commend our friend and colleague, Congresswoman Mary Bono, for convening this hearing to explore what I believe to be questionable behavior by CFWS.

Today, Mr. Chairman, this Committee will hear testimony by a wide array of witnesses, some of whom being just ordinary citizens, who will highlight a consistent pattern by CFWS of misusing the Endangered Species Act (ESA). We will hear from private developers, local officials and even a construction-site foreman, all of which will detail how the misapplication of the ESA has impeded growth and development in Southern California. I believe that it is important, however, to emphasize that most of our witnesses will not necessarily be advocating the rescinding or minimizing of the ESA, but will instead only call for the appropriate implementation of this law.

As all of us know, the ESA was passed to ensure that endangered or threatened animals, plants and fish are protected from human activity so as to avoid their ultimate extinction. While I believe that the goal of this law is commendable and certainly well-intentioned, the overly broad discretionary powers it gives to the enforcers of the ESA, specifically CFWS, have created an atmosphere in Southern California where our landowners and developers are routinely forced to meet redundant, time-consuming and very expensive ESA compliance requirements before any construction can begin. Mr. Chairman, it is my earnest hope that today's hearing will provide CFWS the insight and incentive to pursue a more compromise-oriented approach when administering the ESA.

Among other witnesses, this Committee will receive testimony from a number of individuals from my home area of San Diego County. These good people represent an even larger number of San Diegans who have absorbed the impacts associated with burdensome and costly environmental compliance. The impacts that I have referenced, speak to the built-in, artificial expense factored into housing costs for home buyers. In fact, in San Diego County, roughly 30 percent of the cost associated in purchasing a home is the direct result of the developer having to finance the environmental compliance efforts. I think that everyone here will readily agree that inordinately high home costs were not the intent of Congress when the ESA was enacted into law.

As many of us are aware, San Diego County is expected to realize an increase of 1.5 million new citizens within the next 10 years. Unfortunately, estimates show that new housing construction is woefully behind in meeting this expected influx, with many of our young, new families having to live in high density apartment and condominium complexes. While I cannot overemphasize the importance of protecting the environment for our future generations, this effort must be pursued in a reasonable and realistic fashion if we are to provide sufficient housing for the multitudes of expected new residents.

Mr. Chairman, one of our initial witnesses will be Mr. Bruce Turecek, who is currently seeking to develop part of his property in eastern San Diego County. After three years, thousands of dollars and numerous consultations, Mr. Turecek has conclusively determined that his property is devoid of any endangered species. Unfortunately, CFWS will not provide Mr. Turecek with a definitive plan to as to whether or not his efforts will suffice and allow for the development of his property. Instead, CFWS has repeatedly engaged in a practice of only providing critiques of his biological surveys and vague directions to Mr. Turecek. I would submit that this behavior legitimately can be interpreted as a conscious effort to delay and ultimately derail his project. Sadly, the circumstances surrounding Mr. Turecek's situation are too often the norm rather than the exception in our region of California. We must work to rectify the situation before Mr. Turecek and others like him can no longer build homes that average, working families can afford to buy.

Finally, I would remind the Committee and our audience that Southern California used to be a place where one could work hard and save their money and achieve the American dream of owning their own home. Unfortunately, because of the outrageous costs associated with exhaustive environmental compliance requirements, this dream is rapidly becoming a thing of the past in our area. Recognizing that this costly and burdensome practice has become the standard by which CFWS operates, I am hopeful this hearing will provide the insight and incentive necessary to rectify the problems that I have already referenced.

Mr. POMBO. Thank you.

[Applause.]

Mr. POMBO. I would like to call up our first panel, Mr. Lawrence Libeu, Mr. Mark Bragg, Ms. Judith Rosen, the Reverend Peter Moore-Kochlacs, and Mr. Virgal Woolfolk.

If you would join us up here at the witness stand, and if you could remain standing just momentarily. If I could have you raise your right hand.

[Witnesses sworn.]

Mr. POMBO. Let the record show that they all answered in the affirmative.

Please join us at the witness table.

Now, for those of you unfamiliar with the process, your entire written statements will be included in the record. We like to keep the oral testimony to five minutes. There is a light bar sitting at the table there, and it is green, start; yellow, hurry up; and red means stop, and just like a traffic light.

[Laughter.]

Mr. POMBO. We have a cop sitting in the back of the room. He's going to watch me drive out of here.

[Laughter.]

Mr. POMBO. But if you could try to keep your oral statements to the five minutes, we do have a very long hearing. It would be appreciate by the Committee.

Mr. Libeu, if you are ready, you can begin.

STATEMENT OF LAWRENCE M. LIBEU, DIRECTOR OF LEGISLATIVE AFFAIRS, EASTERN MUNICIPAL WATER DISTRICT

Mr. LIBEU. Thank you, Mr. Chairman and members of the Committee, for allowing us this opportunity to be heard.

My name is Larry Libeu. I am Director of Legislative Affairs for the Eastern Municipal Water District, known as EMWD, as well as the California Director on the Natural Water Resources Association, known as NWRA, and I am the President of the Western Coalition of Arid States, known as WESCAS.

EMWD is a water and waste water agency serving about 420,000 people in a 555 square mile area of Riverside County where this hearing is being held today. As you no doubt observed and probably already surmised, much of our district is open space and potential habitat.

As noted earlier, population is exploding in our region, and one way we are able to stretch our available fresh water supply to meet this burgeoning demand is through the extensive use of recycled water from our five waste water treatment facilities and the responsible management of our local groundwater basins.

Other efforts we undertake to stretch our water supply include aggressive and comprehensive conservation program, water harvesting, brackish desalination of groundwater basins, and rehabilitation of contaminated wells.

Despite all of these efforts, however, our success and the success of other water agencies within this region will depend on our abilities to comply with the often too subjective, locally interpreted, and increasingly complex and expensive environmental regulations at the state and Federal level. Let me just offer a few examples.

Over the past eight years, EMWD has developed a seasonal storage and recovery project to recharge a vast groundwater basin underlying the San Jacinto River, which is an ephemeral stream. To implement this project, we will utilize imported water, surplus imported water when it's available.

The project is good for the environment and will reduce the demand for imported water in the future for this area, but the Fish and Wildlife Service is insisting that we restore long disturbed portions of the river bed to their original condition, primarily for the benefit of a recently listed subspecies known as the San Bernardino kangaroo rat. The restoration requirement will require us to set aside at least three times the land area of the recharge project, and that land will have to be set aside for mitigation.

As a further price for the recharge project, we expect the Fish and Wildlife Service will require us either to abandon or set aside another large area of land upstream from the recharge project as mitigation for maintenance of an upstream diversion which we have had in operation for over 35 years.

Secondly, in order to reliably, even safely serve our customers, we must maintain our facilities, including those that are in outlying areas. Fish and Wildlife has now begun referring to these sites, many established for decades and devoid of endangered species, as degraded habitat, and we perceive their goal to be the requirement for further mitigation of lands.

Thirdly, the Santa Ana sucker is a fish that is about to be listed as threatened, and I say about to be. During excessively wet weather, EMWD must occasionally discharge recycled water into the Temescal wash, which is a tributary to the Santa Ana River. Past experience indicates that Fish and Wildlife Service may well require year round flows in order to support the Santa Ana sucker. Such a requirement would consume a huge portion of our recycled water, thus defeating the reason for putting that water to beneficial use within our district.

We believe the following changes need to be made to the Endangered Species Act in order to achieve its expressed goals without causing undue harm in other ways.

First, greater consistency and predictability are essential to administrating the Endangered Species Act. These values must be based on not only greater objectivity in the rules and guidelines, but on the regional economic impacts.

Second, a revolving loan fund should be established to help local governments cope with the increasingly expensive requirements of habit conservation plans.

Next, the no surprises policy must be codified to prevent imposition of additional mitigation after the fact.

Fourth, basic safety, maintenance, and repair work on existing utility facilities serving the public must be exempted from ESA requirements.

And finally, the administration's safe harbor policy should be expanded to include habitat created by either historical or prospective water discharges.

In conclusion, Mr. Chairman, it must be noted that water in the West is a valuable resource which is growing more scarce daily. Continued parochial interpretation and implementation of ESA further exacerbates this situation.

We in the water industry in the regulatory arena need to come together to foster working partnerships which will bring to closure the uncertainty of this interpretation, as well as create positive results for both sides as we move into the 21st century.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Libeu follows:]

STATEMENT OF LAWRENCE M. LIBEU, DIRECTOR OF LEGISLATIVE AFFAIRS, EASTERN MUNICIPAL WATER DISTRICT, DIRECTOR, NATIONAL WATER RESOURCES ASSOCIATION BOARD OF DIRECTORS, PRESIDENT, WESTERN COALITION OF ARID STATES

INTRODUCTION

Good Morning. I am pleased to be here today on behalf of Eastern Municipal Water District (EMWD), to express its views with regard to implementation of the Endangered Species Act (ESA) and to present recommendations for changes. In addition to being the Director of Legislative Affairs at EMWD, I am a director on the National Water Resources Association Board of Directors, and president of the Western Coalition of Arid States.

EMWD is a water and wastewater agency serving a population of 420,000 in a 555 square mile area. The District is located in Southern California in the western part of Riverside County. Our service area includes the communities of Hemet, San Jacinto, Moreno Valley, Perris, Sun City, Murrieta, and Temecula, portions of four other cities, and unincorporated areas of Riverside County.

EMWD was formed during the 1950's with the primary mission of delivering a secure supply of supplemental water to this region. As time progressed, EMWD added sewage collection and treatment and water recycling to the services offered to its customers. EMWD is a member agency of the Metropolitan Water District of Southern California (MWD), which supplies Southern California with imported water from the Colorado River and from Northern California via the State Water Project. EMWD currently purchases approximately 75 percent of its water supply from MWD.

Development and population within EMWD's service are increasing at a rapid rate. Water demand by residents, businesses, agriculture, and other interests is growing and is straining available water supplies, and the threat of future water shortages is very real. Increased population and water use also bring along increased wastewater flows. EMWD's goal is to reuse 100 percent of its wastewater for agricultural, landscaping, and groundwater recharge uses.

EMWD will continue to depend upon imported water from MWD, but the availability of this water is dependent upon many factors. These factors include: environmental water demands at the point of origin, the structural adequacy of delivery systems, competing needs for water in Southern California, and drought. To deal with these challenges to the reliability of its imported water supply, EMWD is actively implementing programs to optimize the use of all available water resources within its service area. These programs include: extensive use of recycled water, comprehensive water conservation, water harvesting, brackish groundwater desalination, rehabilitation of contaminated wells, and proper management of local ground water basins. The success of these programs, as well as other innovative water management programs throughout California, depends upon the ability of water agencies to comply with increasingly complex, expensive, often subjective, and locally interpreted environmental regulations mandated by State and Federal agencies for the protection of threatened and endangered species. Unless modified, these regulations could have a crippling impact on the ability of water agencies to meet the future water supply needs of the citizens of this state. The result will be significantly restrictive growth rates for all urban communities of the state.

BACKGROUND

EMWD believes species conservation, like other issues such as clean water and clean air, is necessary and vital for our lifestyles. However, meeting increased demands for water and finding ways to reuse the corresponding wastewater will challenge EMWD. First, by balancing future water demands, and second, by complying with the ESA in its current form. Clearly, the ability to address water supply and wastewater management problems in the future is hampered by the arbitrary interpretation and implementation of the ESA by the U.S. Fish and Wildlife Service (FWS).

EMWD is a member of the National Water Resources Association, also known as NWRA, a water industry association representing agricultural and urban water agencies seeking to promote water supply reliability through its activities with Federal agencies and regional and national legislators. The NWRA is the oldest and most active national association concerned with water resource policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

EMWD is also a member of the Western Coalition of Arid States (WESTCAS), an organization formed by a group of western water and wastewater agencies concerned about the manner in which water quality and water resource management issues are being addressed in states throughout the arid and semi-arid West. WESTCAS is dedicated to developing appropriate and practical water quality regulations, policies and laws that would be more responsive to the unique ecosystems found in the arid and semiarid regions of the western states.

The West is a region of the country where many federally listed threatened or endangered species call home. NWRA and WESTCAS members are intimately involved in multiple facets of species identification and conservation including habitat protection. It became clear, as NWRA and WESTCAS members shared species conservation experiences, that regulations and policies implementing the ESA are either restricting, or increasing the cost of water resource management strategies and wastewater treatment operations without any substantial benefit to the species those policies and regulations were designed to protect.

NWRA and WESTCAS members are experiencing substantial impacts as a result of the listing of several terrestrial species. These include delays to projects, unclear or unrealistic mitigation requirements, and significant additional costs borne by our ratepayers. Listings of aquatic species and the involvement of FWS in the establishment of water quality criteria will impact our future. Examples of recent and future impacts of the ESA on EMWD include:

San Jacinto Seasonal Storage and Recovery Project

EMWD has proposed a seasonal storage and recovery project to recharge the San Jacinto River aquifer with up to 3,000 acre-feet of surplus water annually. The San Jacinto River is an ephemeral stream that flows only in response to intense and prolonged rainfall. This project will benefit the environment by allowing storage of surplus water locally, thereby reducing demand on other sources of water from the Colorado River and the Bay Delta system in Northern California. The recharge site will be constructed on about five acres in the disturbed portion of the San Jacinto riverbed. The FWS is concerned because it perceives indirect adverse impacts on the habitat of the San Bernardino Kangaroo Rat (SBKR), a federally listed endangered species.

The FWS initially required EMWD to develop mitigation actions for this project. After submitting our recommendations, FWS has the discretionary power to accept or reject EMWD's proposals for arbitrary and capricious reasons. If they reject our suggestions, we must submit new mitigation recommendations for approval. The process of proposing and negotiating recommendations for mitigation may continue for years, delaying implementation of this environmentally beneficial project.

During consultations with FWS on this project, it became clear to EMWD staff that the goal of the FWS was to restore that portion of the San Jacinto River Basin inhabited by the SBKR to its natural condition. The impression received was that to get approval EMWD would have to allow another project, our groundwater recharge ponds located upstream, which has been operating for over 30 years, to revert to its natural state. We believe this is an unreasonable and unjustifiable request because of the significant loss of a local water supply to the San Jacinto Valley. It appears that this recommendation has little to do with whether the SBKR will be ultimately helped and more to do with a particular biologists view of what the San Jacinto River and its habitat should look like.

So far, this project has been delayed over a year resulting in a lost savings to our customers of at least $300,000. As this project continues to be delayed, our lost savings will increase. Without this project, we will not be able to meet the groundwater basin demands of the area and we will be forced to supplement our water supply with lower quality water. This will reduce the quality of our wastewater and will hinder our ability to meet our discharge limits mandated by the Regional Water Quality Control Board.

It was also apparent that the FWS is looking for EMWD to become the agency to take the lead in a Habitat Conservation Plan (HCP) for the entire San Jacinto River Basin. EMWD has agreed to addressing mitigation actions relating directly to its project and in our service area, in fact our Board of Directors 2 months ago authorized the purchase of 87 acres in the San Jacinto River at a cost of $88,000 to enhance EMWD's ability to provide future mitigation offsets in the river. However, for us to be held responsible for developing and managing habitat conservation over the entire 1,000 acre range of the SBKR in the San Jacinto River, where we do not have management responsibility, is clearly not appropriate for a public water district. Letting the existing groundwater recharge ponds revert to their natural state and taking the lead in HCP development is not equitable mitigation for this type of project.

Searl Tank

EMWD has 78 water storage tanks in its service area. As the population increases, either additional tanks must be built or existing tanks must be expanded to provide adequate service to our customers. EMWD is currently expanding an existing tank site located in an area that is habitat for the California Gnatcatcher, a federally listed endangered species. This project is located on a parcel of land that is less than one acre in size. No gnatcatchers were actually detected onsite. EMWD was informed that appropriate mitigation would be the purchase of land or credits at a 3 to 1 ratio to mitigate our project. We do not argue with this requirement. What we do argue, however, is during informal consultation FWS also indicated EMWD would have to address the "growth inducing impacts" of the project. Such a request is not within the intent of the ESA or the charter of the FWS. EMWD's mandate as a water agency is to provide existing and future customers with safe and reliable water. EMWD has no control over land use development. That is the purview of cities and counties. EMWD must provide service when it is needed.

Maintenance

Another problem we have with ESA implementation is the ongoing maintenance of our water and wastewater facilities. These activities may involve the upkeep of existing access roads to facilities, removal of encroaching vegetation, repairs, or safety modifications to our facilities. These routine activities are necessary to ensure smooth operation of our water and wastewater facilities, to provide safe drinking water that is sufficient to meet our customers needs, and provide water quality to meet the recycled water requirements within the service area. Because these facilities already exist, there are few, if any, impacts to species or their habitat. FWS has begun referring pejoratively to some of these areas as "degraded habitat" with a perceived goal of requiring mitigation for lands that have not been occupied by any endangered species for many years. EMWD maintains that we should not be mandated to mitigate on a retroactive basis or for routine maintenance activities.

Aquatic Species Impacts

The FWS is currently considering listing the Santa Ana Sucker, a small freshwater fish that feeds on algae, as a threatened species. This fish is native to several Southern California rivers, including the Santa Ana River. EMWID's goal is to recycle all of its treated wastewater, however there will be times during wet weather when discharges will occur into the Temescal Creek, an ephemeral stream tributary to the Santa Ana River. The listing of the Santa Ana Sucker will have significant implications for dischargers like us. Past experience demonstrates that additional water quality regulations could be required, but more importantly, water quantity could be regulated. The flow might be required year-round instead of seasonally, and at a higher level in order to support habitat for the Sucker. This could preclude us from sending recycled water to other points of use for other beneficial uses including wildlife habitat enhancement and agricultural water supply—thus defeating the reclamation purpose of the recycled water program in the first place. Forcing the continued discharge of recycled water will create artificial habitat at the expense of native habitat. Recycled water use offsets the need to export water from native watersheds, leaving more water in the state's rivers and streams. In the arid southwest, water recycling is vital to reducing demand for imported water. Mandating wastewater flows removes much of the incentive for dischargers to contemplate environmentally beneficial recycled water projects while having far reaching regional impacts on existing communities of these states.

Looming in the future is the involvement of FWS in the development of the Environmental Protection Agency's (EPA) water quality criteria, state water quality standards and permits, and Total Maximum Daily Loads. This will affect all wastewater dischargers, not just EMWD. Very briefly, under the Clean Water Act, EPA has the authority to establish national water quality criteria, and it has done so for the past 27 years. However, under the ESA, the EPA must consult with the National Marine Fisheries Service and the FWS before approving water quality standards to determine whether they might impact listed species. The FWS has no experience in this area. The *opinions* of FWS biologists regarding various water quality constituents, including those on the national criteria list, are based on limited experience with a limited number of species under very limited circumstances. Consultation on the national criteria will provide FWS biologists with an opportunity to broadly apply their limited data in order to overturn the scientific process for establishing national criteria which EPA has refined over a period of many years.

FWS involvement in these areas provides the opportunity for economic impacts on wastewater discharge permit holders. These impacts may involve multi-year bio-

logical studies and research, bioassessments, requirements for provision of habitat, including water resources, etc. These measures are often very expensive.

ISSUES AND RECOMMENDATIONS

To remedy what we perceive as shortcomings to the current implementation of the ESA, we provide the following list of issues and recommendations for your consideration.

ISSUE 1: The FWS has too much discretionary power and requires mitigation based upon ill-defined or non-existent goals for habitat protection and species recovery.

RECOMMENDATION: In consultation with state and local governments, the FWS should develop scientifically based procedures, guidelines, and criteria subject to public review and comment to ensure consistency and predictability in the implementation of the ESA. This regulatory framework should include deadlines for FWS to provide information and decisions and require mitigation ratios to be defined in Habitat Conservation Plans (HCPs). Adequate funding must be provided to FWS to develop these needed elements.

ISSUE 2: ESA implementation places an unfair economic burden on local governments.

RECOMMENDATION: A revolving loan fund should be established to help local governments prepare regional HCPs that address both the habitat needs of species and human development needs.

ISSUE 3: There is no assurance when developing an HCP that additional mitigation will not be required at a later date.

RECOMMENDATION: Codify the "No Surprises" policy for HCPs and expand it to non-Federal parties participating in the implementation of recovery plans under ESA section 7 consultations.

ISSUE 4: The ESA makes preventive or emergency maintenance extremely arduous.

RECOMMENDATION: Exempt preventive or emergency maintenance, repairs, and safety modifications of existing water and wastewater projects from ESA requirements.

ISSUE 5: The ESA as currently implemented could remove the incentive for wastewater dischargers to consider environmentally beneficial water recycling projects.

RECOMMENDATION: Expand the "Safe Harbor" Policy that provides incentives for non-Federal property owners to restore, enhance, or maintain habitats for listed species to include habitat created by either historical or prospective discharges of water or wastewater to otherwise dry or ephemeral streams or washes.

Conclusion

The implementation of the ESA must be based on scientifically derived data, that provides for protection and recovery of endangered and threatened species while fully recognizing the social and economic realities of implementation. Southern California and the and West are dynamic regions with vast and varied natural resources and a rich biological diversity. The consequences of implementing the ESA are serious and significant. The consequences of implementing the ESA arbitrarily and capriciously are devastating. If these fundamental issues associated with ESA implementation are not resolved, the associated regulatory burdens threaten to outstrip available financial resources and will impact public agencies' ability to serve their customers and severely impact the economic stability of Southern California. Thank you.

Mr. POMBO. Thank you.

Mr. Bragg.

STATEMENT OF MARK BRAGG, PALM SPRINGS, CALIFORNIA

Mr. BRAGG. Mr. Chairman, members, the Endangered Species Act is not about animals. The Endangered Species Act is about money and power. It has given the U.S. Fish and Wildlife Service unprecedented power to seize the private property of law abiding American citizens, while also giving them the authority to extort money from us.

Protecting endangered species is a laudable public goal, but if it's important to public policy, then it should be a public responsibility

to preserve habitat. If a piece of private property is that important to the preservation of the species, then condemn it and buy it.

Instead the ESA has made this public imperative into a nightmare for private property owners who have had our land seized by power mad bureaucrats who also demand tribute to allow us to use the remaining property. Ours is the case of Shadowrock Resort in Palm Springs.

This project originally covered 1,100 acres. It is approved through the city entitlement process and the California Environmental Quality Act for the construction of a golf course and a club house, a hotel and adjoining town homes, and approximately 126 single family homes.

The project will create more than 600 construction period jobs, 300 permanent jobs, and approximately $10 million in annual state and local tax revenue.

Our original intent was to cooperate with the various levels of government in order to be responsible as developers. We voluntarily contributed all of our mountain land to permanent bighorn sheep habitat, in case they come back one day, which reduced the project from 1,100 acres to 358 acres.

Now comes the U.S. Fish and Wildlife Service in Carlsbad, along with the Army Corps of Engineers and other governmental agencies that often work in tandem with each other. They demanded that we reduce our project to 150 acres, and that we pay them $500,000 for the right to use our remaining land.

We have refused. We will not allow them to seize our land, and we have refused to pay their extortion demands. Unlike Slobodan Milosovic, who sent in his army to seize the land of the Kosovars, we believe this is America and the government cannot seize our land through regulation or any other unlawful taking.

They also cannot take our money in order to give it to their friends in the biological community who agree with them. By the way, they do not give funds to people who disagree with them.

In addition, we do not believe it was ever the intent of Congress to permit this kind of seizure and extortion. From the time of the Magna Carta it has been the right of free men and women to use their land productively without unreasonable interference from government bureaucrats.

However, we also know that the only freedoms we can continue to enjoy are those that we are willing to defend. We have, therefore, rejected the authority of the U.S. Fish and Wildlife Service to impose such demands on us. If they insist on trying to take our land and extort money, we will stand firm as the government agents come to take us away in chains, but we will never ever give up our rights to the power hungry bureaucrats.

I offer the attached letter. You will find it in the booklet that we provided yesterday under Section 1, which we entitled "Demand for Payment, Notice of Intent to Seize Property." I offer the attached letter as evidence of the high handed tactics of the United States Government against its own taxpaying, law abiding citizens.

In the past, developers agreed to demands like this because it's simply too expensive to fight the U.S. Government. We have decided to fight.

[The prepared statement of Mr. Bragg follows:]

STATEMENT OF MARK BRAGG, PALM SPRINGS, CALIFORNIA

The Endangered Species Act is about money and power. It has given the U.S. Fish and Wildlife Service unprecedented power to seize the private property of law-abiding American citizens while also giving them the authority to extort money from us. Protecting endangered species is a laudable public goal. But if it is important to public policy, then it should be a public responsibility to preserve habitat. If a piece of private property is that important to the preservation of a species, then condemn it and buy it. Instead, the ESA has made this public imperative into a nightmare for private property owners who have had our land seized by power-mad bureaucrats who also demand tribute to "allow" us to use our own property. Ours is the case of Shadowrock Resort in Palm Springs. This project originally covered eleven hundred acres. It is approved through the city entitlement process and the California Environmental Quality Act for the construction of a golf course and club house, a hotel and adjoining townhomes and approximately 126 single family homes. The project will create more than 600 construction-period jobs, 300 permanent jobs and approximately $10 million in state and local tax revenue.

Our original intent was to cooperate with various levels of government in order to be a responsible developer. We voluntarily contributed all of our mountain land to permanent bighorn sheep habitat in case they come back one day, which reduced the project to 358 acres. Now comes the U.S. Fish & Wildlife Service Carlsbad office along with Army Corps of Engineers and other government agencies that often work in tandem with each other. They demand that we reduce the project to 150 acres and that we pay them five hundred thousand dollars for the right to use our remaining land.

We have refused to allow them to seize our land and we have refused to pay their extortion demands. Unlike Slobodan Milosovic who sent his Army to seize the land of the Kosovars, we believe this is America, and the government cannot seize our land through regulation or any other unlawful taking. They also cannot take our money in order to give to their friends in the biological community who agree with them. By the way, they don't give funds to people who disagree with them.

In addition, we do not believe it was ever the intent of Congress to permit this kind of seizure and extortion. From the time of the Magna Carta, it has been the right of free men and women to use their land productively without unreasonable interference from government bureaucrats. However, we also know that the only freedoms we can continue to enjoy are those that we are willing to defend. We have, therefore, rejected the authority of the U.S. Fish & Wildlife Service to impose such demands upon us. If they insist on trying to take our land and extort money, we will stand firm as the government agents come to take us away in chains. But we will never, ever give up our rights to the power hungry bureaucrats. I offer the attached letter as evidence of the highhanded tactics of the United States government against its own, taxpaying, law-abiding citizens. In the past developers agreed to demands like this because it is simply too expensive to fight the U.S. Government. We have decided to fight.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE. 11th Avenue
Portland, Oregon 97232-4181

IN REPLY REFER TO

DEC 2 1997

Mark A. Bragg
Shadowrock, LLC
801 East Tahquitz Canyon Way, Suite 101
Palm Springs, California 92262

Dear Mr. Bragg:

We appreciate the opportunity you extended to meet with us on November 21, 1997, to discuss your ideas on alternative movement corridor configurations for bighorn sheep. We also have reviewed your development proposal, as described in your letter of November 21, 1997. Our comments below address the numbered items in your letter.

1. The Fish and Wildlife Service's (Service) 200-acre project footprint outlined in our reasonable and prudent alternative in our conference opinion with the U.S. Army Corps of Engineers (Corps) was designed to provide an unobstructed (lacking dense riparian vegetation) corridor east of the cienega. Though your recent proposal to move hole #11 farther east represents an improvement upon earlier designs, this modification still is not sufficient to ensure continued sheep passage across Chino Canyon, especially south of the tramway road; therefore, it does not avoid or offset the jeopardizing impacts of the project on bighorn sheep.

2. A fence around the entire 200-acre project footprint is needed to curtail sheep movement onto the project site and prevent behavior habituation associated with the intrusion of human activities into sheep habitat. The many adverse effects of urban interface on bighorn sheep have led the Service and California Department of Fish and Game to adopt a standard requirement for fencing projects within bighorn sheep habitat.

3. Your counter offer of $250K would not provide a sufficient management endowment to accomplish the tasks needed to implement conservation initiatives necessary to offset the effects of the proposed Shadowrock project on bighorn sheep. For other projects of similar size, the Service and California Department of Fish and Game have accepted management endowments in the $500K to $750K range. The interest bearing endowment of $500K in our reasonable and prudent alternative was designed to meet the logistics and costs associated with such bighorn sheep management activities.

We intend to complete our conference opinion with the Corps no later than December 12, 1997. The opinion will contain the changes to the reasonable and prudent alternative where we have reached agreement.

Again, thank you for taking the time to meet with us. Please contact either me at 503-231-6158 or Gail Kobetich or Sherry Barrett of our Carlsbad Fish and Wildlife Office at 760/431-9440 if you have further questions regarding our position on your project proposal.

Sincerely,

Vicki M. Finn

Assistant Regional Director
Southern California Ecoregion

[Applause.]

Mr. POMBO. Thank you.

Ms. Rosen.

STATEMENT OF JUDITH I. ROSEN, PRESIDENT, MURRIETA VALLEY UNIFIED SCHOOL DISTRICT

Ms. ROSEN. I am here today as the President of the Murrieta Valley Unified School District.

School districts are unique among the participants here today because we do not create growth, but we are mandated to accommodate growth.

Our school district is a K-12 district. It is on 125 square miles. In 1989, we had 500 students in a single school. Today we have 11,280 students. We have grown at a rate of 6 to 15 percent per year since 1992, and our greatest growth is occurring at the high school, the single high school we have, and our two middle schools.

This year we have added 200 new students to our high school. It was built to accommodate 2,475 students. We have also added 16 portables, nine of them in the teachers' parking lot.

It takes three to five years to build a high school. So the earliest we can deliver the second high school is 2003. By that time we will have probably 3,300 to 3,400 students at that school.

This exacerbates safety issues, and it is a very grave concern for our community.

Our middle schools are also in very great need, and that is really why I am here today.

The property that we have, that we can build a high school on, that we have been looking at and working on within the community and was a key component to getting a GO bond passed in 1998 is owned by the City of Murrieta. It is part of a 250 acre site, and one of the really wonderful things about it is that in purchasing property, they were able to buy it for $15,000 an acre as opposed to the $100,000 an acre we get charged with, or have our sites appraised for, in the rest of the district.

We need about 50 to 55 acres for a school site and 20 acres for a middle school site.

In 1998 a survey was done on the site, and there were three areas where Gnatcatchers were found, none of them where the schools were proposed, and on three different occasions, ten butterflies, Quino checkerspot butterflies were seen. One butterfly was seen near the boundary of the high school site.

The city and school district worked hard and finally were able on March 25th of 1999 to meet with the Carlsbad office to talk to them about the 250 acres because they want to do sports complex, open space, et cetera; the service looked at it and said, even though the biology report says that the species are limited in habitat to 70 to 80 acres, that they deemed the entire 250 acres as habitat.

Since that time, we have determined that the middle school site is rendered almost unusable because of what we would have to go through in order to build a school. We perhaps can get 40 acres cleared for a high school site. We would have to go off site, buy an additional 17 acres at $100,000 an acre from an owner who has a commercial property next door, but that property hasn't been surveyed for butterflies yet. It cannot be until next spring.

So our dilemma really has several aspects. First of all, as a school district, we are not in a position to take risks with time and money. We are not in this for profit. The uncertainty of how long, if ever, it may take to obtain approvals to develop the site makes it extremely difficult for the district to proceed with planning and designing a high school.

If the district purchases a school site without a clearance on environmental issues, the state does not have to reimburse the district its 50 percent share through the state school building program. The high school will cost about $45 million without a pool or a stadium.

The district is not in the development business. Its focus is educating the children of Murrieta. This entire process is costly, filled with land use risk, and beyond our area of expertise. We are very good at working with the complex state school building program, and we are a neophyte in the Federal arena. None of our consultants can tell us definitively if you do this, you can have a school.

School sites cannot go just anywhere. We are constrained by airports, traffic, utility availability. We ask the following: that the U.S. Fish and Wildlife be mandated to recognize school projects as a public priority, and that these projects be fast tracked with specific time lines for processing; that clear, concise information be provided to school districts by the service to assist the districts in obtaining approval to build schools; require that the Federal agencies offer solutions, provide options, and seek resolutions of identified problems during this fast tracking.

The Murrieta district must be assisted in obtaining environmental clearances to build a school on the city site. We want to use 55 acres and pay $15,000 an acre. We want to do one-to-one mitigation ratios or create a bank or buy land somewhere else.

Our district at build-out will have about 300 acres. We need about 200 acres more. We would like to do a district-wide approach to mitigation and work with the service. We want the service to be mandated to work with us in a cost effective, timely fashion within a six month process, and we want the entire site to be looked at as a joint use land project for the city and the schools.

In closing, our values in our school district are learning, respect, community, communication, and accountability. We would like to think we could work with the Federal Government in the same way.

Thank you.

[The prepared statement of Ms. Rosen follows:]

U.S. House of Representatives
Committee on Resources Hearing
Hemet California

Judith Rosen

President of the Board of Trustees

Murrieta Valley Unified School District

U.S. House of Representatives
Committee on Resources Hearing
Hemet California

Community Overview

The City of Murrieta was incorporated in 1989 and is located at the juncture of interstate freeways 15 and 215, approximately 80 miles southeast of the City of Los Angeles, 60 miles southwest of Palm Springs, and 60 miles north of the City of San Diego. Southwest Riverside County, including the City of Murrieta, is one of the fastest growing areas in the United States. 3,109 new housing units have been constructed between 1992 and 1997 in Murrieta alone. Murrieta's current population is 36,054, and its projected buildout by the year 2021 is 102,959.

School District Overview

Murrieta School District was formed in 1885 as a K-8 district housed in one school, Murrieta Elementary School. As late as 1987, the District's enrollment was approximately 500 students. Development in the area resulted in enrollment growth, and in 1989 the community voted to unify and became Murrieta Valley Unified School District, serving a K-12 enrollment and adult education (within the same boundaries as the old Murrieta School District) over a 125 square mile area. The District has experienced continuous enrollment growth ranging from 6-15% per year since 1992. District enrollment projections for 1999/2000 are at 11,279 students, representing 8.7% growth district wide with an increase of over 200 students at our only comprehensive high school. Enrollment projections for the long term (ten years plus) show the District growing to over 23,000 students at maturity. Accordingly, there is a pressing need for additional schools.

MVUSD Facilities

Current	Additional Schools Needed
Six K-5 Elementary Schools	Eight K-5 Elementary Schools
Two 6-8 Middle Schools	Two 6-8 Middle Schools
One 9-12 Comprehensive HS	Two 9-12 Comprehensive HS
One 9-12 Alternative Ed. HS	

The greatest growth is occurring at the grade levels where the District needs additional schools now, namely the high school and middle schools. This overcrowding exacerbates safety and security issues with this student population. The District has added 16 portables to the high school to house the students; 9 of the portables are placed in the staff parking lot. MVHS was constructed in 1991 with community GO Bond funds to house 2,475 students; it will start this school year with nearly 3,000 students. It takes 3-5 years lead time to build a state approved high school; therefore, we will add many more portables to the parking lots to house many more students than the 3,000 currently in attendance before the second high school can be opened. Funding for school facilities is always a challenge, and between 1995 and 1998 4 different GO Bond elections went before the voters. In April of 1998 our community passed a GO Bond in the amount of $37.5 million with 71% voter approval. A key component of this bond campaign was our ability to work jointly with the City of Murrieta and acquire both a high school and middle school site at the City owned Los Alamos Hills Property.

U.S. House of Representatives
Committee on Resources Hearing
Hemet California

The Los Alamos Hills Property

Our current high school and one of our middle schools are located on the west side of interstates 15 and 215. The Los Alamos Hills Property is located east of interstate 215 where most of the residential growth is occurring in Murrieta. The City acquired this 250+ acre site in 1995 for a very good price. Because the City and district work closely in efforts to provide the highest quality services at cost efficiencies, the District could acquire the schools sites for $15,000/acre. Other school sites in the District are appraising for approximately $100,000/acre. The District's most pressing need is a high school site of 50-55 acres. We have been working jointly with the City and a land use consulting firm to plan the LAH Property, determining that the high school should go on the north end of the property at Clinton Keith Road. The middle school site is in the center section of the property, with a sports park, community center and approximately 100 acres of open space on the remainder. Infrastructure must be brought from the south to the north of the property via a new road, and a water tank needs to be constructed on the neighboring property to serve the schools and other planned development for fire flow. In the Spring of 1998, our consultants completed focused studies on the entire 250+ acres for both the Quino Checkerspot Butterfly and the California Gnatcatcher. The following points from the survey report are significant:

- It was determined that 70-80 acres of the 273 acres were suitable habitat for both species and warranted study
- California Gnatcatchers were observed at 3 distinct locations, on or immediately adjacent to the LAH property
- Quino Checkerspot Butterflies were observed hilltopping on the northeastern portion of the LAH site, and one QCB was observed nectaring in the northern portion of the site. QCBs were observed offsite, and the observers believe this off-site area is the primary habitat due to the size of the host plant patches and abundance of larval host plants plus the large number of QCBs sited off-site.

The City and District staff met with the Service on March 25, 1999 to review the land use needs and the survey findings for the LAH site. At that meeting they were told by USF&W personnel that the Service considered the entire LAH property to be habitat even though the biological technical representatives indicated that only a portion of the site is occupied. No further assistance was offered. As a result of this meeting, the City, the district And their consultant have proposed setting aside approximately 100 acres as open space with the District purchasing 40 acres of the northerly grassland on the LAH site for the high school plus 20 acres in the mid-section for a middle school. (See Exhibit 1) In this plan, the District must go to the neighboring property owner to purchase additional acreage. This will of course cost far more than $15,000 per acre; the neighboring site is approved for commercial and multi family development, and the owner has set a value of $100,000/acre on it. Furthermore, the neighboring site needs to have a biological study completed (which cannot be done until the Spring of 2000). In order to build the school here we still need to extend infrastructure via a street and build the water tank; these require disturbing some small areas outside the 40 acre site proposed.

The District's Dilemma

The uncertainty of how long, if ever, it may take to obtain approvals to develop the site makes it extremely difficult for the District to proceed with the planning and design of a high school. The District absolutely cannot proceed on this site unless it can be guaranteed that a mitigation process can be implemented in a timely manner. Every year of delay finds 200 or more additional students needing to be housed at the existing high school.

If the District purchases a site without a clearance on environmental issues, the state does not have to reimburse the District its 50% share per the State School Building Program. We cannot afford to take this sort of financial risk. Therefore, if we are to proceed with the City's 40 acres and the much more costly neighboring 17 acres, we would have to buy the neighboring site (in order to secure it) before we have any inkling of whether or not we can obtain environmental clearances. This is not good stewardship of public funds.

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The District's Requests

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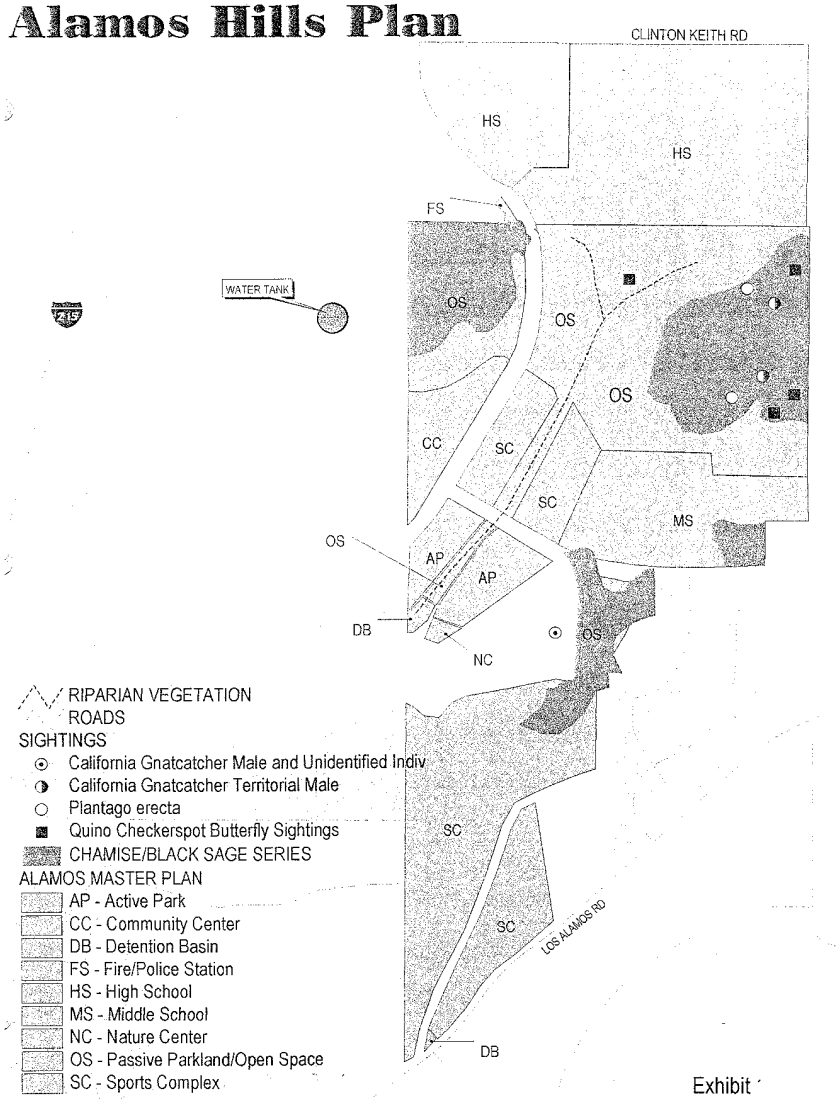
U.S. House of Representatives
Committee on Resources Hearing
Hemet California

Close

School districts are unique among all the participants here today. We do not create growth, but we are mandated to accommodate growth. This mandate requires that new schools be built in a timely, cost efficient fashion. It is interesting to note the flurry of interest voiced at the State and National level regarding a myriad of educational issues – including the need for facilities. With the existing global view of education, you should recognize that there is also a local focus with respect to the community's needs and expectations for obtaining adequate education and park facilities. That is why the Murrieta joint school/park venture at Los Alamos Hills is so important. Thank you for this opportunity to address you.

Alamos Hills Plan



Exhibit

U.S. House of Representatives
Committee on Resources Hearing
Hemet California

Community Overview

The City of Murrieta was incorporated in 1989 and is located at the juncture of interstate freeways 15 and 215, approximately 80 miles southeast of the City of Los Angeles, 60 miles southwest of Palm Springs, and 60 miles north of the City of San Diego. Southwest Riverside County, including the City of Murrieta, is one of the fastest growing areas in the United States. 3,109 new housing units have been constructed between 1992 and 1997 in Murrieta alone. Murrieta's current population is 36,054, and its projected buildout by the year 2021 is 102,959.

School District Overview

Murrieta School District was formed in 1885 as a K-8 district housed in one school, Murrieta Elementary School. As late as 1987, the District's enrollment was approximately 500 students. Development in the area resulted in enrollment growth, and in 1989 the community voted to unify and became Murrieta Valley Unified School District, serving a K-12 enrollment and adult education (within the same boundaries as the old Murrieta School District) over a 125 square mile area. The District has experienced continuous enrollment growth ranging from 6-15% per year since 1992. District enrollment projections for 1999/2000 are at 11,279 students, representing 8.7% growth district wide with an increase of over 200 students at our only comprehensive high school. Enrollment projections for the long term (ten years plus) show the District growing to over 23,000 students at maturity. Accordingly, there is a pressing need for additional schools.

MVUSD Facilities

Current	Additional Schools Needed
Six K-5 Elementary Schools	Eight K-5 Elementary Schools
Two 6-8 Middle Schools	Two 6-8 Middle Schools
One 9-12 Comprehensive HS	Two 9-12 Comprehensive HS
One 9-12 Alternative Ed. HS	

The greatest growth is occurring at the grade levels where the District needs additional schools now, namely the high school and middle schools. This overcrowding exacerbates safety and security issues with this student population. The District has added 16 portables to the high school to house the students; 9 of the portables are placed in the staff parking lot. MVHS was constructed in 1991 with community GO Bond funds to house 2,475 students; it will start this school year with nearly 3,000 students. It takes 3-5 years lead time to build a state approved high school; therefore, we will add many more portables to the parking lots to house many more students than the 3,000 currently in attendance before the second high school can be opened. Funding for school facilities is always a challenge, and between 1995 and 1998 4 different GO Bond elections went before the voters. In April of 1998 our community passed a GO Bond in the amount of $37.5 million with 71% voter approval. A key component of this bond campaign was our ability to work jointly with the City of Murrieta and acquire both a high school and middle school site at the City owned Los Alamos Hills Property.

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The Los Alamos Hills Property

Our current high school and one of our middle schools are located on the west side of interstates 15 and 215. The Los Alamos Hills Property is located east of interstate 215 where most of the residential growth is occurring in Murrieta. The City acquired this 250+ acre site in 1995 for a very good price. Because the City and district work closely in efforts to provide the highest quality services at cost efficiencies, the District could acquire the schools sites for $15,000/acre. Other school sites in the District are appraising for approximately $100,000/acre. The District's most pressing need is a high school site of 50-55 acres. We have been working jointly with the City and a land use consulting firm to plan the LAH Property, determining that the high school should go on the north end of the property at Clinton Keith Road. The middle school site is in the center section of the property, with a sports park, community center and approximately 100 acres of open space on the remainder. Infrastructure must be brought from the south to the north of the property via a new road, and a water tank needs to be constructed on the neighboring property to serve the schools and other planned development for fire flow. In the Spring of 1998, our consultants completed focused studies on the entire 250+ acres for both the Quino Checkerspot Butterfly and the California Gnatcatcher. The following points from the survey report are significant:

- It was determined that 70-80 acres of the 273 acres were suitable habitat for both species and warranted study
- California Gnatcatchers were observed at 3 distinct locations, on or immediately adjacent to the LAH property
- Quino Checkerspot Butterflies were observed hilltopping on the northeastern portion of the LAH site, and one QCB was observed nectaring in the northern portion of the site. QCBs were observed offsite, and the observers believe this off-site area is the primary habitat due to the size of the host plant patches and abundance of larval host plants plus the large number of QCBs sited off-site.

The City and District staff met with the Service on March 25, 1999 to review the land use needs and the survey findings for the LAH site. At that meeting they were told by USF&W personnel that the Service considered the entire LAH property to be habitat even though the biological technical representatives indicated that only a portion of the site is occupied. No further assistance was offered. As a result of this meeting, the City, the district And their consultant have proposed setting aside approximately 100 acres as open space with the District purchasing 40 acres of the northerly grassland on the LAH site for the high school plus 20 acres in the mid-section for a middle school. (See Exhibit 1) In this plan, the District must go to the neighboring property owner to purchase additional acreage. This will of course cost far more than $15,000 per acre; the neighboring site is approved for commercial and multi family development, and the owner has set a value of $100,000/acre on it. Furthermore, the neighboring site needs to have a biological study completed (which cannot be done until the Spring of 2000). In order to build the school here we still need to extend infrastructure via a street and build the water tank; these require disturbing some small areas outside the 40 acre site proposed.

The District's Dilemma

The uncertainty of how long, if ever, it may take to obtain approvals to develop the site makes it extremely difficult for the District to proceed with the planning and design of a high school. The District absolutely cannot proceed on this site unless it can be guaranteed that a mitigation process can be implemented in a timely manner. Every year of delay finds 200 or more additional students needing to be housed at the existing high school.

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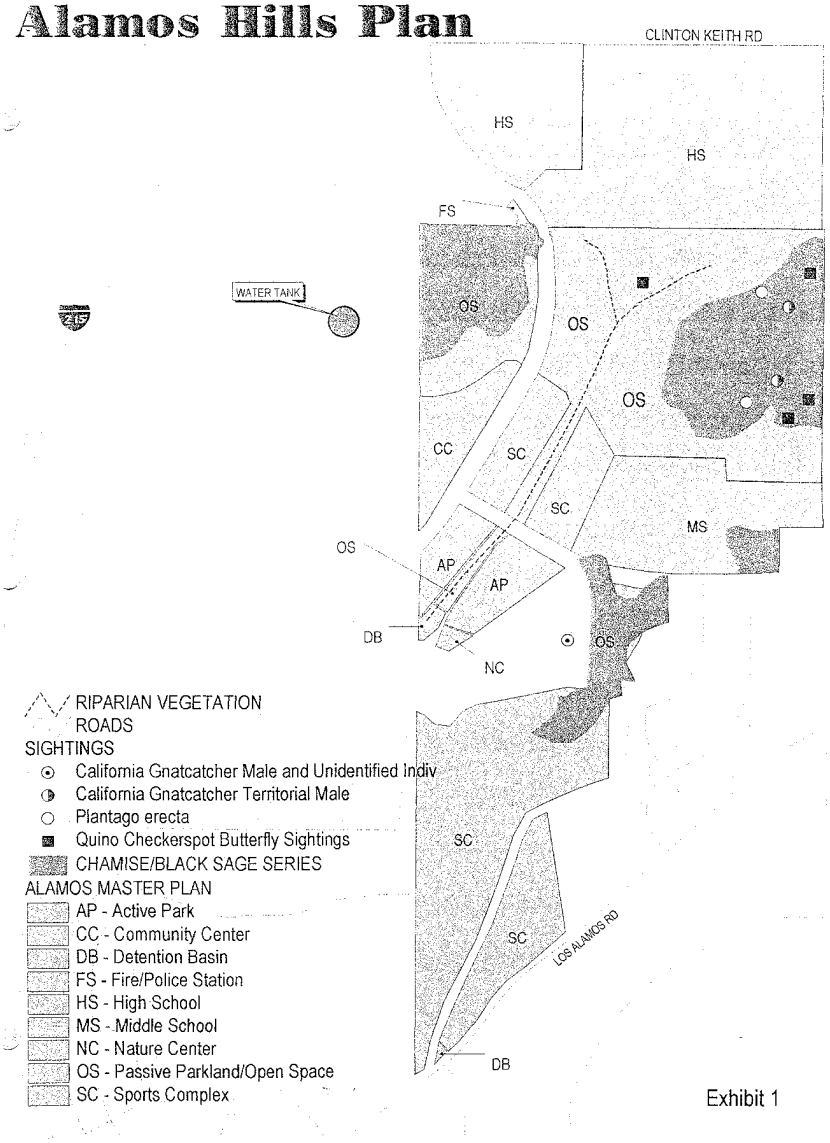

Exhibit 1

Mr. POMBO. Thank you.

[Applause.]

Mr. POMBO. Reverend.

STATEMENT OF THE REVEREND PETER MOORE-KOCHLACS, DIRECTOR, ENVIRONMENTAL MINISTRIES OF SOUTHERN CALIFORNIA

Rev. MOORE-KOCHLACS. Hello. I am Peter Moore-Kochlacs, and I am the Director of Environmental Ministries.

To begin with, I want to share a story from the Talmud. Two men were fighting over a piece of land. Each claimed ownership and had papers to prove their claims. To resolve their differences, they agreed to put the case before the rabbi.

The rabbi listened, but could not come to a decision. Finally he said, "Since I cannot decide to whom this land belongs, let us ask the land." He put his ear to the ground, and after a moment straightened up. "Gentlemen, the land says it belongs to neither of you, but that you belong to it."

We six billion humans, along with countless other species, belong to the land, to the habitat, to the web of creation, to God. The Psalmist is very clear. "The Earth is the Lord's." [Psalm 24.]

In our human arrogance, greed, lust for power, and desire for ownership, we forget our divinely appointed role. This role is one of trusteeship and stewardship. It is a call of a parent to serve and protect the land, the garden, the planet we dwell upon and not oppress it.

Isaiah, the prophet, critiqued the oppressive ways of humans in his time. He said, "Ah you, who join house to house, who add field to field, until there is room, for no one, but you, and you are left, to live alone, in the midst of the land."

Ezekiel pronounced, "Ah, you shepherds of Israel, who have been feeding yourselves! Should not, shepherds, feed the sheep? . . . Is it not enough for you to feed on the good pasture, but you must tread down with your feet the rest of your pasture? When you drink of clear water, must you foul the rest with your feet? And must my sheep eat what you have trodden with your feet and drink what you have fouled with your feet?"

The question for us is: does our human heritage today have to be so oppressive to other humans and to creation? My answer is no.

As irony, or God's great mystery of life would have it, next year is the great Christian celebration Jubilee 2000, the 2000th anniversary of Jesus' birth, as well as Earth Day 2000.

Recall Jesus' announcement of the new Jubilee of freedom in Luke 4:18. "The Spirit of the Lord is upon me because he has anointed me to bring good news to the poor. He has sent me to proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord's favor."

Doesn't this Jubilee remind you a little of our original 4th of July experience?

Both religious and secular organizations have taken up the ethical call of Jubilee 2000. It is a call to grant debt relief to impoverished nations that they might be freed from the oppressive burden of international debt.

These hearings that you are holding on the Endangered Species Act give us a unique opportunity to take this Jubilee 2000 vision a step further by incorporating it with the vision of the approaching Earth Day 2000, a vision to bring healing, wholeness, and greater harmony to our planet, to God's creation; a vision of freedom that calls a halt to and a Sabbath rest from the onslaught of human unsustainable actions.

With Earth Day 2000, the 30th anniversary of Earth Day, falling during Holy Week 2000, between Good Friday and Easter Sunday, I wonder if God is asking us this question about the future of our world. Do we want the earth to be a Good Friday world of crucifixion and death for our habitat, biosphere, endangered species, and humans? Or do we seek for our home planet Jubilee, freedom, resurrection, new life, restoration, and renewal?

The United Methodist Church in June of 1996, at Redlands, California, answered yes to the question of restoration of God's creation. The question now for you Congressmen and women is: do you have the faith and the moral courage to affirm the goodness of the whole of God's creation by truly focusing on species protection, or will you perpetuate a Good Friday world?

Thank you.

[The prepared statement of Rev. Moore-Kochlacs follows:]

STATEMENT OF REV. PETER MOORE-KOCHLACS, DIRECTOR–ENVIRONMENTAL MINISTRIES

I want to thank you for the opportunity to participate in this hearing. I have been an ordained United Methodist minister for 25 years. Currently I am appointed to the position of Director of Environmental Ministries of Southern California. The network's goal is to encourage congregations of faith to see that earthkeeping, habitat and endangered species protection, and the public health threats caused by toxics and pollution are, for all of us, real scriptural and moral concerns, concerns so important to God that they need to be among the highest missional priorities, the church, and other religious communities have as we move into the new millennium.

A second priority we have is to educate, train, and advocate for public policies that serve and protect God's Good Creation. To begin, I want to share a story from the Talmud, the collection of Jewish law and tradition dating back 1600 years ago. "Two men were fighting over a piece of land. Both claimed ownership and had papers to prove their claims. To resolve their differences, they agreed to put the case before the Rabbi. The Rabbi listened but could not come to a decision. Finally he said, 'Since I cannot decide to whom this land belongs, let us ask the land.' He put his ear to the ground and after a moment straightened up. 'Gentlemen, the land says it belongs to neither of you—but that you belong to it.'"

Yes, we six billion humans, along with countless other species, belong to the land, to the habitat, to the web of life, to God. The Psalmist is very clear—"The Earth is the Lord's" (Psalm 24:1). In our human arrogance, greed, lust for power, and desire for ownership we forget our divinely appointed role. This role is one of trusteeship and stewardship. It is a call, a vocation to serve and protect the land, the garden, the planet we dwell upon (Genesis 2:15).

Instead of earthkeeping we press and oppress other people, the land, water, and air, and endanger all the other creatures who look to us for compassion and justice, because they are without human voice and standing. The Metropolitan of the world Christian Orthodox Churches recently labeled this unjust behavior sinful.

Isaiah the prophet critiqued our oppression in this way—"Ah, you who join house to house, who add field to field, until there is room for no one but you and you are left to live alone in the midst of the land!" Jeremiah echoed, "I brought you into a plentiful land, to eat its fruits and its good things, but when you entered you defiled my land and made my heritage an abomination." (Jeremiah 2:7) And finally Ezekiel pronounced, "Ah, you shepherds of Israel who have been feeding yourselves! Should not shepherds feed the sheep? You eat the fat, you clothe yourselves with the wool, you slaughter the fattlings, but you do not feed the sheep .... Is it not enough for you to feed on the good pasture, but you must tread down with your feet the rest of your pasture? When you drink of clear water, must you foul the rest with

your feet? And must my sheep eat what you have trodden with your feet and drink what you have fouled with your feet?"

The question is, does our human heritage today have to be so oppressive to other humans and to creation? No!!!

As irony, or God's great mystery of life would have it, next year is the great Christian celebration, Jubilee 2000—the 200th anniversary of Jesus' birth—as well as Earth Day 2000! Recall Jesus' announcement of the new Jubilee of freedom in Luke 4-18 (based on Isaiah 61-2). "The Spirit of the Lord is upon me because he has anointed me to bring good news to the poor. He has sent me to proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord's favor!" Doesn't this Jubilee remind you a little of the original 4th of July experience?!

Both religious and secular organizations have taken up the ethical call of Jubilee 2000. In our time it is a call to grant debt relief for the impoverished nations that they might be freed from the oppressive burden of international debt and enabled to feed, educate, care for, employ their people, and hopefully care for their natural environment.

These hearings that you are holding on the E.S.A. give us a unique opportunity to take this Jubilee 2000 vision a step further, by incorporating with it the vision of the approaching Earth Day 2000. A vision to bring healing, wholeness and greater harmony to our planet, to God's Creation! A jubilee vision to call a halt to and a sabbath's rest from the onslaught of our human unsustainable activities and actions.

With Earth Day 2000, the 30th anniversary of Earth Day, falling during Holy Week 2000 between Good Friday and Easter Sunday, I wonder if God is asking us this question about the future of our world. Do we want the earth to be a Good Friday world of crucifixion and death for our habitat, biosphere, endangered species, and humans? Or do we seek for our home planet Jubilee—freedom, resurrection, new life, renewal, and restoration?

The United Methodist Church in June of 1996 at Redlands, California, not far from here answered "yes" to the question of the restoration of God's Creation. They passed by a large majority vote a resolution asking you, the Congress, to reauthorize a stronger, not a weaker, endangered species act. The resolution follows on the next page.

CALIFORNIA-PACIFIC CONFERENCE 1996 UNITED METHODIST CHURCH
RESOLUTION #95

SUBJECT: Reauthorization of the Endangered Species Act of 1973

SUBMITTED BY: Conference Board of Church and Society

WHEREAS Noah was directed by God to save every kind of animal in order to keep them alive (Genesis 6:19 and 20);

WHEREAS the Social Principles (Section 1 The Natural World) affirm the preservation of animals now threatened with extinction (par70C) and supports regulations designed to protect plant life (par70A);

WHEREAS the Endangered Species Act (E.S.A.) of 1973 is will come before Congress to be in 1996 1996/1997;

WHEREAS the E.S.A. has been a successful tool in saving several endangered species, including the American Bald Eagle and the California Condor;

WHEREAS human health and welfare depends upon the gene pool of all species, down to the single cell plankton, to preserve the balance of nature, so that it may continue to sustain life;

THEREFORE, BE IT, RESOLVED that the California-Pacific Annual Conference support the reauthorization of a strengthened version of the Endangered Species Act of 1973 by forwarding this resolution to congressional representatives within the bounds of the Annual Conference;

BE IT FURTHER RESOLVED that the churches of this Annual Conference continue their studies of the issues of biodiversity and the need to protect and steward all of God's Creation;

BE IT FURTHER RESOLVED that the California-Pacific Annual Conference inform our California State legislatures that we support a strong California Endangered Species Act.

Adopted by the Annual Conference as amended–Plenary 6-June 16, 1996

The question now for you Congressmen and Congresswomen is do you have the faith and the moral courage to affirm the goodness of the whole of God's Creation by focusing on species protection or will you perpetuate a Good Friday World?!

Mr. POMBO. Thank you.
[Applause.]
Mr. POMBO. Mr. Woolfolk.

STATEMENT OF VIRGAL WOOLFOLK, JMAW ENVIRONMENTAL SERVICE GROUP

Mr. WOOLFOLK. Good morning. My name is Virgal Woolfolk, and I am the senior managing partner of JMAW Environmental Science Group. We are a disabled veteran minority business.

Rather than read something to you, I am going to tell you a story. A couple of months ago we were hired by a home builder called Pacific Community, itself a minority owned business, to come out and do an assessment on some property down in Murrieta to determine if, in fact, based on the greater permits requirement from the City of Murrieta, if they needed to do any additional work.

We began the process. We did an assessment, and we found that, in fact, there were three plants particularly an erected that was located in the southwest corner of the property. We reported this back to our client, and we made up a plan to go and speak to Fish and Wildlife Service to try to see what we needed to do to mitigate the situation.

Now, before I started my own company, I worked at Easton Water District. In fact, one of the projects that Mr. Libeu talked about with the San Bernardino kangaroo rat, we had worked out an agreement with Fish and Wildlife before I left. There was a solid agreement, and then, in fact, they have broke that promise now I find out as well.

So we went down; we talked to them; and we told them the assessment of the property; that, in fact, the habitat was of a low grade; that, in fact, we believed that because we had kind of missed the survey season because they had kind of kept the public off balance, they said that they might extend the survey period for the Quino because the weather was kind of cool, and then all of a sudden they decided at the last moment not to.

So we went down, and we spoke to one of their representatives. She met with us, said, "We agree with you the habitat is such that we agree with your mitigations to kind of keep five acres around the plant until we can find out what happens next year."

We thanked them. We left. We informed the city of the process. We informed our client of that. I then sent a letter back to the city seeing the Fish and Wildlife Service saying that all we agreed to.

Then about a week later I get a call from the City of Murrieta, and they are saying, "Virg, we have got a problem, Fish and Wildlife Service saying everything you wrote here is not true."

I said, "Wait."

So I called down and nobody would return my call. So I finally called again, and I spoke to this lady named Ms. Cramer who, in fact, was the person who stopped it. She, in essence, told me that because she was not at the meeting and she felt that she should

have been at the meeting, she had stopped the project, but they never informed us of it.

I then began to ask her why she did this, and she said that, again, she controlled what happened in the Murrieta area, quote, unquote.

And so I said, "Well, in essence, lady, you have told me that what I wrote was a lie here, and you put me in a bad position."

And she said, "Well, I do not have time to deal with you now," in essence, and she hung up the phone.

And at that point, I basically said it is on now, and so I sat down, and I started calling, and I started writing a letter, and I talked to my partner, and I said, "If we do not fight these people and stand up and fix the problem, we cannot operate any further, and my business may be in jeopardy, but we need to do the right thing."

So we took them on, and I went back down, and we began to talk to them, and basically they kind of let me know that they are the only game in town and that is just how it was going to be.

We even attempted to try to mitigate for the K. rat and pay a fee and say, "Okay. We agree that it is on the property. Let's do that."

And they said, "No, there is just no way to mitigate it."

And then what was most important was that they refused to come out to the site to help us make a decision. We wrote letters giving them a five-day turnaround, asking them for their help. Nobody responded.

So I called Portland. At Portland, I spoke to a lady there named Ms. Finn. She was very upset at what they did and basically said, "I am of the opinion that if Fish and Wildlife Service makes an agreement, they should keep their word," but then no one did.

We called Mike Spear, never got a return call. Six weeks later, after I made some calls to Washington, DC, I got a call, and they decided to come out on site, and we visited the site, and we have it on video where one of the representatives said, "We do not believe that the Quino butterfly is on the property, but you still have to do a study because we found a butterfly across the street. So because we found the butterfly across the street, you have to do this."

The problem that we have is that when we try to find solutions to the problem and working with them, it just was not there, and I have worked with Fish and Wildlife Service for over 15 years, and what I have seen is a total degrading of their ability to work with the public.

In fact, I had a conversation just the other week with Cheryl Brown. She is the editor of Black Voice Newspaper. Many of you know her, and she is also on the Planning Commission of San Bernardino, and when I brought this issue up, she said, "Those people are just rude to us no matter what we do."

So then we met with them the other week, and they said, "Well, we will let you mitigate this. You have to go buy credits at a mitigation bank."

We tried to do that, and there is no program. So we are really

frustrated about this process and hope that this will kind of bring some attention to it.

Thank you very much.

[The prepared statement of Mr. Woolfolk follows:]

The Committee on Resources
Hearing on the Endangered Species
Act

JMAW Environmental Service Group
July 9, 1999

JMAW Environmental Service Group
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949-367-1000 949-367-0117 jmaic@earthlink.net

Environmental & Engineering Service Group

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909-654-9129 (FAX)
woolfolkv@earthlink.net

July 7, 1999

Don Young
Chairman
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

Subject: Hearing on the Implementation of the Endangered Species Act

Dear Mr. Young,

My name is Virgal Woolfolk. I am the Senior Managing Partner of JMAW Environmental Service Group (JMAW) and we are honored to be chosen to provide testimony before this congressional committee regarding the impacts of the Endangered Species Act (ESA) and the character of the members of the US Fish and Wildlife Service's (USFWS) Carlsbad office in enforcing the ESA in Riverside County, the repercussions associated with the listing of the Quino checkerspot butterfly, and how the listing has stopped the development of affordable housing in Riverside County.

JMAW has gained the reputation as a quality firm, which carries a Disabled Veteran Business Enterprises (DVBE) and a Minority Business Enterprises (MBE) certification. JMAW's primary mission is to ensure that our clients have cost effective technical excellence on every project. Creative environmental problem solving, a high degree of commitment to our clients, high quality of work products, and solid results have become the trademark of JMAW's success in environmental consulting and program development.

During the latter part of April 1999, Pacific Community Homes Builders (PCHB) employed JMAW to address potential biological impacts associated with approximately 55 acres of land within the jurisdiction of the City of Murrieta. Based on my recommendation, a biological assessment was conducted for the proposed housing Tract # 25362 (See Figures 1,2,3). JMAW representing PCHB contacted Thomas Olsen Associates, Inc. (TMA) to perform a biological assessment of the Tentative Tract #25362 to meet conditions established by the City of Murrieta for grading permits. On May 3-4, 1999, Cindy A. Thielman of TMA visited the potential grading site to re-evaluate the vegetation on-site and to determine if any substantial biological studies were necessary per the City of Murrieta grading permits issuance policies. Actions were taken to access current conditions of vegetation on-site and evaluate and compare existing observations with a prior biological report prepared by Tierra Madre in 1990 (See attached report from Tierra Madre (Attachment A).

Based on the comparison, the biological report prepared by TOA on May 3, 1999 found the location of native vegetation on-site to be similar to that described in the 1990 biological assessment (See Attachment B).

As part of the site evaluation, JMAW determined that the project site was located within the designated area, in Riverside County, for the Quino checkerspot butterfly (*Euphydryas editha quino*) suitable habitat.

In January 1999, the USFWS issued a revised protocol for habitat and presence/absence surveys for the Quino checkerspot butterfly. With the flying period ending for the Quino checkerspot butterfly, JMAW directed TOA to determine if suitable habitat existed on-site.

With the understanding that a survey for the Quino checkerspot butterfly may be warranted, JMAW contacted the Carlsbad office to determine if the rumors were true that the season may extended due to the unseasonable cool weather. JMAW was told that a decision would be made on May 3, but to proceed until such time a decision would be made public. We complied and on May 3, 1999 the USFWS notified the public the survey period would end.

Based on the protocol established by the USFWS, a habitat suitability evaluation was conducted on 55 acres (See attachment D) and three patches of Quino checkerspot butterfly larval host-plant P*lantago erecta* were found on the southeastern corner of the site, near Nutmeg Street. The patches were approximately 2 meters in size (See Figure 3). One patch was identified in what is proposed to be lot number 73 of parcel 1 - Tentative Tract number 25362, and is relatively dense. The second patch was located immediately northwest of lot 73 on a proposed residential street and is comparatively sparse. The patch on lot number 73 is also within the City of Murrieta's right-of-way and expansion of Nutmeg Street. In addition, JMAW instructed the biologist to perform a survey for the California gnatcatcher. The biologist from TOA determined that a study for the gnatcatcher was not warranted based on the quality of coastal sage scrub onsite. However, once on-site weeks later, the USFWS believed a survey for the gnatcatcher was warranted without stating clearly why TOA's original assessment not to perform a study was deficient.

Although the proposed project site is located within the adult survey boundary and larval host plants were present, the existence did not rise to level of consideration established in the protocol for a focused adult survey. A formal consultation with the USFWS as was recommended in the biologist's report. JMAW believed that an informal consultation was more appropriate because of the health issues associated with the expansion of the street that included water and sewer pipelines. I met with the City of Murrieta to discuss the information and recommended that the City of Murrieta also attend meetings with the USFWS. Because the plants were in the right-of-way of the expansion of Nutmeg Street adjacent to the proposed project site, water and sewer services for the community would be impacted no regardless if PCHD began construction of the proposed residential Tract #25352 (See Figure 4).

In conversation with the City of Murrieta's Planning staff, JMAW recommended allowing the grading permits to be drawn by the applicant (PCHD) with the condition that the area associated with the patches of dwarf plantain (*Plantago erecta*) be left undisturbed until informal or formal hearings had taken place between the USFWS Carlsbad office, the City of Murrieta, and JMAW, and PCHD regarding the presence of the species within the Nutmeg Street right-of-way. I also contacted three prominent, certified biologists that specialize in conducting surveys for the Quino checkerspot butterfly to determine if the 5-acre radius proposed between the plants and grading was adequate. "Off the record," JMAW was told the mitigation I had proposed was more than adequate considering that only a few patches were found and the quality of the vegetation was poor. Although the City of Murrieta was receptive to conditions proposed, I was instructed by staff to receive confirmation from the USFWS. JMAW immediately contacted the USFWS to request a meeting with the person in-charge of the Quino checkerspot butterfly program in Riverside. During this period, I also contacted Multispecies Habitat staff with the County of Riverside. I was informed that unlike other species that had been listed, no programs had been established to assist landowner in addressing the protocol for the Quino. Each case had to be brought to the USFWS individually.

Having secured a date and time (May 12,1999) to meet with a Ms. Mullen of the USFWS to discuss our project, I was admonished for showing up at the USFWS without an appointment. After providing evidence that JMAW had taken the proper steps in scheduling the meeting, I was told that I would have

to come back at 3:00 p.m. in the afternoon. The meeting had been schedule at 09:00 am. Therefore I had to reschedule other meetings. I had left my office in San Jacinto at 06:00 am to drive through rush hour traffic only to have to wait an entire day to maintain a meeting the USFWS failed to acknowledge. Later that day at 3:00 p.m., my partner Dr. John Minch and I met with Ms. Mullen at the Carlsbad office to discuss the facts of the project in an informal process. She was very helpful, polite and decisive in her decision making. We explained the following facts:

- The character of the patches of *Plantago erecta* was of a quality that it could not support an adult Quino checkerspot butterfly.
- JMAW had attempted to photograph the plants to substantiate our facts. However, they had disappeared within two days.
- The location of one patch was within the right-of-way of the proposed expansion of Nutmeg Street in Murrieta. The other patch was located within the right-of-way of a proposed cul-de-sac where utilities would be constructed.
- Land use adjacent to the plants consisted of residential homes, an open space lot that was designated for commercial use, streets, the I-15 highway and existing acreage to the north that had been graded for house pads and streets. Nearby residents had been using the project site for recreational off-road motor biking and trucking, hiking, horse back riding, with children using the mounds near the *Plantago erecta* to jump bikes. In addition, local residents had decided to use the site to dump their trash and household items like sofas.
- The land had been mowed and based on the scars on the land, its use had been agricultural purposes for decades.
- Based on the report submitted by the biologist that had employed protocol established by the USFWS, the habitat was not suitable for the adult Quino checkerspot butterfly. However, based on the protocol mandated by the USFWS he was required to report that an adult survey was necessary.
- No grading would take place within 3-5 acres of the locations of the plants. The only activity would be some trenching for the water and sewer lines to provide services to the future residents on the north-end of the property. The top-soil was to be removed and replaced resulting in minimum impact. In addition, a qualified biologist would be on site during the construction period.
- To ensure no harm to the existing plants PCHD is willing to erect a fence around the plants until a full survey could be conducted next spring.

After outlining our position, Ms. Mullen excused herself and stated she would be reviewing this information with her supervisor . After she returned, Ms. Mullen replied that based on the protocol for presence/absence of the Quino checkerspot butterfly established by USFWS, the habitat did not appear to be suitable for the Quino checkerspot butterfly and that the City of Murrieta had the authority to establish "conditions of approval" for the project site. We were instructed to write a memo to the City of Murrieta of the findings and submit a copy to the USFWS for their record. Thanking her we left and informed the City of Murrieta by telephone of the USFWS's decision. JMAW provided Attachment "E" for the City of Murrieta's review and record. Later that afternoon, JMAW met with staff from the City of Murrieta to discuss what the USFWS had proposed. It was agreed that JMAW would provide a summary of events for the record and the telephone number of Ms. Mullen for further confirmation. Attachment "E" met that requirement.

A few days after establishing the agreement with the USFWS, I was called by the City of Murrieta and was told that the USFWS no longer supported the proposed mitigation outline in the memo. The City indicated that a Ms. Kramer, a junior employee with USFWS, contacted the City of Murrieta and told them that I had misrepresented the facts regarding the memo or Attachment "E". I was able later to confirm that she had taken this action without management knowledge according to Andy Ewing. Attempts to contact Ms. Mullen were unsuccessful.

After a few days and many telephone calls I finally spoke to Ms. Kramer. She told me that she was in-charge of the Murrieta area and Ms. Mullen had no authority to make any type of arrangements. Ms. Kramer was very clear that she should have been at the meeting and she was upset with Ms. Mullen for meeting with us. She also told me that in the future I was only to talk to her and that she would determine what construction took place in Murrieta. She also chastised me for "dropping in without an appointment". When I attempted to explain that I did in fact have an appointment she told me that she would deal with the situation when she was ready. I attempted to be polite and requested to speak to her supervisor. She said it would do no good and she would deal with the situation when she had time. When I attempted to secure a reason for her giving the impression that I had falsified the instructions outlined by Ms. Mullen and to have Ms. Mullen to come to phone to endorse what I had written, she told me that she was too busy to continue this conversation and she would get back to us when she had the time. She hung up the phone.

I immediately redialed and requested to speak to a person in senior management. I was told that Mr. Burns would return my call. No one returned my telephone call. I then dialed Portland and attempted to bring this issue to the regional director, Mike Shear. No reply. I was finally able to speak with a Ms. Finn who agreed that if the USFWS makes an agreement they should keep their word. She was also very interested in my observation of a member of the USFWS arriving to a multispecies habitat meeting in Riverside County with a woman he was kissing in the parking lot before the meeting. Once the meeting began I determined that the employee was a member of the USFWS and the woman was associated with environmental group. During the meeting this woman was a roadblock in reaching an agreement and the employee of the USFWS did not comment or offer any reasonable mitigation to any issues being addressed. After the meeting, the two again kissed in the parking lot and departed the meeting together. Later I attempted to contact Ms. Finn after received the letter of denial from Ms. Kramer without a hearing. She did not return any further telephone calls.

I later spoke with Andy Yuen (a.k.a. Ewing). He indicated that he would investigate why Ms. Kramer made the call without upper management knowledge. He stated that she was overworked and because of the congressional hearing all Section 10 project inquiries were being given a low priority of 10 on a scale of 1-10. I responded that if Congressman Calvert believed that the USFWS was helping the public address issues that otherwise delayed his hearing if notified and confirmed he would not be upset. It became apparent that this was being done to show disdain for being required to provide information by Congressman Calvert's office. I explained to Mr. Yuen that I had worked with the USFWS for almost 20 years in one capacity or another and I found his attitude and the attitude of his staff a sad commentary. I explained that he and the staff were playing a deadly game of "chicken" with congress and the public it could have serious consequences. Throughout our conversation, he would only state that their office was overworked. I countered by stating that I was sure their office was being mis-managed and that being a good biologist does not qualify one as good business manager or politician. When I questioned him regarding how priorities were being determined, he refused to acknowledge any problems with the public and particularly the Supervisors of the County of Riverside. I indicated that if they did not begin to work with the public that the Multispecies Habitat program would most likely be dismantled. I told him that others and I had worked for years establishing this program to be able to manage growth and to protect habitat in Riverside County and that it was all being jeopardized by this office's inability to set priorities. He disagreed. Within a month of our conversation, the County Board of Supervisors of Riverside County dissolved the Multispecies Habitat program. When I tried to address the mis-conduct of Ms. Kramer which included her contacting the City of Murrieta without upper management approval, her refusal to assist us in visiting the site before making a determination, and her cancellation of several meetings, he would only respond that Ms. Kramer was so extremely overworked. I then wrote my letter to the USFWS (See Attachment F).

The USFWS did not respond to my letter. We attempted on several occasions to have a meeting in the field to discuss the issues, but Ms. Kramer refused. She denied our petition for mitigation without visiting

site and later made statements that she had responded to our letter when she could not produce the letter. During this ordeal the USFWS canceled three meeting to discuss the project and wrote a letter denying our petition to grade before agreeing to visit the site nearly six weeks later after I had contacted Washington D.C. several times. Therefore it did not matter if we had a meeting our not, Ms.Kramer had already decided to deny our mitigation without proper review or due process.

On one occasion we mailed a letter, after several meetings were canceled giving the USFWS five days to respond (Attachment G), we received no response. PCHB's attorney, Bob Uram, was outraged at the arrogance of their staff in not responding. In one of the meetings I had with Mr. Yuen he made it clear they were "the only game in town" and if I sought the City's approval in allowing the project to be graded without the approval from the USFWS there would be consequences. This statement was conflicting and a contradiction to the statements provided to Congressman Calvert in a letter from USFWS and to JMAW.

The City Attorney of Murrieta agreed later that the City does have the authority to determine if mitigation is adequate based on the letter written to Congressman Calvert by the USFWS. However, we were unable to have even one qualified biologist to assist us in formally acknowledging that the mitigation was adequate for the species for fear that they would not be certified next year by the USFWS. The science used to list the species is poor and incomplete and is lacking in the formal criteria used to help the public determine if any mitigation is adequate. No mitigation banking program has been established and no agreements have been created to help the public. Clearly before the species was listed these programs and policies should have been established. It is obvious that the Carlsbad office is out of control. The listing of the Quino checkerspot butterfly without fully preparing the public and assisting the public is a crime. And so is stopping one from using private property after being approved by local agencies without due process. Where does the public go to appeal such a verdict by Ms. Kramer?

For years I have worked to support the ESA. But over the last five years, I find myself doing battle with the USFWS and other environmental groups like the Sierra Club that no longer are concern about the quality of life of the working poor and minority residents of California.

There is a television commercial for trucks that start out by stating "... the rules have changed". And the same holds true regarding how the Carlsbad office is implementing the ESA and has changed the rules regarding how jeopardy or adverse modification of critical habitat is determined. It has been my understanding and experience of the law that in determining jeopardy, the USFWS must first look at the environmental baseline, i.e. the present status of the species. Added to the baseline are the direct, indirect, interrelated, and interdependent effects of the Federal action undergoing consultation. Cumulative effects, which are those State and private actions reasonably certain to occur in the future, are also to be considered. These effects (both beneficial and adverse) are to be weighed against biological and environmental considerations specific to the species. If the net effect is so damaging to the species that the federal action is likely to jeopardize the continued existence of that species in the wild or adversely modify critical habitat designated for it, a "jeopardy" or "adverse modification" opinion is rendered by the USFWS. The USFWS and the federal action agency should seek alternatives or project modifications that serve to relieve such jeopardy or adverse modification, allowing projects to go forward. This process is not occurring at the Carlsbad office.

Much discussion over the last week by President Clinton has been directed at improving the quality of life for those that have not seen the windfall of these prosperous economic times. In Southern California, there has been limited development of low income housing in new residential developments because of greed, fees and the continual nonsense of protecting area that have long since been disturbed by the continual growth in California. The homes that will be built by Pacific Community, a minority owned business, attempts to bridge the gap for those seeking their own American dream. It is imperative that each member of Congress, especially Congresswoman Maxine Walters and other members of the Black

Caucus must come to understand that the USFWS is out of control. This agency must be brought to task the same way Congress dealt with the IRS and Department of Agriculture for not giving loans to black farmers. The USFWS mission should be more directed at maintain a proper environment for those that use the outdoors and no longer a vehicle of the Sierra Club and other environmental groups that have decided to hide behind their insurgents at the USFWS to promote their agenda.

The following are some of my observations of how the office in Carlsbad has been inadequately operated and supervised over the last five years:

- The Carlsbad office was one of the few offices of the USFWS that did not concur with bringing the American Eagle of the Endangered Species list.
- The Carlsbad office has listed more species than any other office, yet they have no time to confer in the field.
- The Carlsbad office constantly complains that they have limited resources. This office must learn how utilize their staff by establishing priorities of which species can be saved and the needs of the people they serve.
- The Carlsbad office has one of the poorest records of hiring minority workers. In almost 20 years I have yet to be introduced at a public meeting to any middle management or senior management employees that were Black, Native American and/or Hispanic. Also, there record of hiring minority business and disabled veteran businesses is one of the worst in the federal government considering their budget.
- The Carlsbad office as a whole does not respond in an effective or a polite manner to those landowners of color that have species on their property and make no effort reach out to educate those least knowledgeable about the impacts of species on their property.
- The Carlsbad office appears to have placed Section 10 consultation with the public as a low priority to show their disdain with the committee's investigation of their practices. Therefore requests by firms like JMAW and Pacific Community were deliberately delayed to present a picture of an overworked group.
- The Carlsbad listed the Quino checkerspot butterfly under pressure from environmental groups without adequate science and without implementing an effective program to educate the public in how to mitigate or promote the species from its endangered status. They have no plans for mitigation or management of the Quino checkerspot butterfly.
- The Carlsbad office staff members through their current control over the certification of the Quino checkerspot butterfly have biologists afraid to disagree with the protocol outline mandated by the Carlsbad office for fear of losing their certification. If this is so they should be removed.
- Finally, the Carlsbad office can not be trusted and continues to break agreements at whims without any corrections from the Portland office or their superiors in Washington DC.

The ESA is a good law, which if implemented correctly can be effective. But the abuse and insolence of the existing staff of the Carlsbad office has tarnished the effectiveness of the Act and places many more species in harms way. Throughout Riverside County we have landowner destroying property rather that setting aside habitat for species due to the heavy handiness of the USFWS.

From the day this Administration arrived in 1993, I have repeatedly voiced to the Congress my view that it was not yet the time to re-authorize the Endangered Species Act. The reason, I explained, was that like many civil rights and affirmative actions programs, no one had ever really tried to make the Act work. Too many of our predecessors had virtually ignored the Act, watched it collapse around them, and then threw themselves at the mercy of the courts claiming it wasn't their fault that the Act didn't work. The Endangered Species Act, I believe, is a good piece of legislation, that has much flexibility and potential for innovation. Given a chance and given the time without outside influence from the Sierra Club and other environmental groups, I am sure that the employees of the USFWS can go out onto the land to work with communities and private landowners, to prove how we can both protect the environment and permit sound economic development, while protecting those species of significant concern.

Now, after almost seven years in the field watching this Carlsbad office mismanagement of trying to protect more plants and animals than five offices could handle; watching the relationship with landowners and developers being changed with more conflict than consensus. I hope you will return to Capitol Hill and present our case to show how the Act is **not** working, and to explain to President Clinton and Vice President Gore that administrative reforms are greatly needed.

The Endangered Species Act is ripe for re-authorization. We know what works and what does not. We hope we have shed some light on what needs to be reformed, and have created enough on-the-ground feedback to this committee to engage debate with other members of congress in how to improve the Act.

The Endangered Species Act is the most comprehensive of all our environmental laws. It is the law that embodies our commitment to live in harmony with Creation, to carry out the Biblical covenant, sealed by the rainbow, between the Creator "and all living things on earth."

It is a shame to see how far the support of the public has degraded since those currently managing the Carlsbad office arrived. Under this administration since January 1996, we now have a complete impasse on what is adequate habitat for the Quino checkspot butterfly. An impending crisis threatening to shut down home-building in Southern California. The Multispecies Habitat program that I worked over the years to create and support was recently dismantled by the County of Riverside, and a total breakdown of trust and cooperation are creating divisions between those that formally worked together to protect the environment day by day.

I recall a speech made by the President Clinton during the last election on CSPAN where he inaugurated a new chapter in conservation history where he encourage the USFWS to meet with citizens, local officials, researchers, landowners, farmers, and environmentalists. He then directed the USFWS to work together to produce a solution, consistent with good science, the law, and the needs of local communities. Mr. President, please come down here and remind Mr. Babbit, Mr. Shear, Mr. Yuen and Ms. Kramer and the resent staff at the Carlsbad office of your directive and demand them to get this program back on course.

Respectfully Submitted,

Virgal Woolfolk
Managing Partner

Enclosures: Attachment A: Tierra Madre Biological Report (1990)
Attachment B: Thomas Olsen & Associates Biological Report (October 1998)
Attachment C: Thomas Olsen & Associates Biological Report (May 1998)
Attachment D: Thomas Olsen & Associates Habitat Suitability Evaluation (May 1998)
Attachment E: JMAW Memo to City of Murrieta
Attachment F: JMAW Letter to USFWS (05/24/99)
Attachment G: JMAW 5-Day Response Letter (June 3, 1999)
Figure 1: Tract #25362
Figure 2: Tract #25362

Figure 3: Tract #25362 *Plantano erecta* locations
Figure 4: Tract #25352 Residential Map

Attachment "A"

Vesting Tentative Tract 25362
Biological Assessment

Stephen J. Myers
Tierra Madre Consultants, Inc.
January, 1990

Introduction

This report was contracted by Southland Engineering as part of the baseline data necessary for consideration of the proposed project by the Riverside County Planning Department and other concerned regulating agencies. The property described in this report is a 55 acre parcel located between Interstate 15 and Jackson Avenue in the Murrieta area. As proposed by the Vesting Tentative Tract Map, the property will be developed into 213 single family residences. The biological resources of the project area are described, potential impacts to those resources as a result of the proposed project are discussed, and recommendations are made for mitigation measures intended to minimize those impacts.

Methods

A literature review was conducted to identify any sensitive elements which are known to occur on or in the vicinity of the property. This included consultation with the California Natural Diversity Data Base (Data Base), and a review of the California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California.

Following the literature review, a field survey was performed by Stephen Myers on December 27, 1990. The site was systematically walked and all plant and animal species detected were recorded in field notes. Plant species of uncertain identity were collected and subsequently identified by Andrew C. Sanders, herbarium curator at the University of California, Riverside campus. Suitable voucher specimens were then deposited into the UCR herbarium. Visual observations of wildlife species were aided by the use of 10 X 40 binoculars. Additional detections of wildlife were made by the presence of sign (tracks, scat, burrows, etc.), and by identification of vocalizations. All species are referred to in the text by their common names. Complete species lists, using both scientific and common names, are included at the end of the report.

Results

Soils

The soil survey for the Western Riverside County area indicates seven soil types on the subject property:

AtC2 - Arlington and Greenfield fine sandy loams, 2-8% slopes, eroded.
AtD2 - Arlington and Greenfield fine sandy loams, 8-15% slopes, eroded.
GzG - Gullied land.
HaC - Hanford loamy fine sand, 0-8% slopes.
HfD - Hanford sandy loam, 2-5% slopes.
RnD2 - Ramona and Buren loams, 5-15% slopes, eroded.
RnE3 - Ramona and Buren loams, 5-25% slopes, severely eroded.

These soil types are widespread in Riverside County, and are not known to support unusual vegetation or to be substrate for plant species of limited distribution that are associated only with specific soil types. The soil series found on the site are discussed more fully below:

Arlington - Well drained soils on alluvial fans and terraces. These soils are developed on alluvium, mostly from granitic rocks. Vegetation is chiefly annual grasses, forbs, and chamise.

Buren - Moderately well drained soils on terraces and alluvial fans. Soils developed on alluvium from mixed sources and are underlain by weakly cemented pan. Vegetation is annual grasses, chamise, and forbs.

Greenfield - Developed on alluvial fans and terraces from granitic materials. Vegetation is annual grasses, forbs, sumac, chamise, and scattered oaks.

Hanford - Well drained and somewhat excessively drained soils on alluvial fans developed from granitic materials. Chiefly annual grasses, forbs, and chamise.

Ramona - Well drained soils on alluvial fans and terraces. Developed on alluvium consisting mostly of granitic materials. Annual grasses, forbs, chamise, salvia, chamise, and California buckwheat are common.

All of the soil series present on the property except "gullied land" are known to support potential habitat for the Stephens' kangaroo rat (SKR), an endangered species known to occur in the vicinity of the project site (Price, unpublished

data - see Price, 1989; O'Farrell and Uptain, 1989).

Vegetation and flora

A large portion of the project site contains a non-native annual grassland plant community dominated by red brome, soft chess, slender wild oat, fiddleneck, short-pod mustard, and filaree. The topography in the annual grassland areas varies from gently rolling to moderately steep. The grassland was once under cultivation, although it now appears to be well established and common cultivars are not evident. It is also possible that the area has been used for grazing in the past.

Small areas of coastal sage scrub also occur on the site. The coastal sage scrub in these areas is dense, and dominated by California buckwheat and California sagebrush, with lesser amounts of white sage and Palmer's goldenbush. Understory vegetation is comprised of red brome, slender wild oat, filaree, deerweed, and corethrogyne. Two species of cactus, coast prickly pear and valley cholla, are also fairly common.

A drainage identified as an intermittent blueline stream by the USGS 7.5 minute Murrieta quad crosses the project site near its southwest end. Near the southernmost corner the drainage enters from the south and flows northeast across the property. This drainage contains sparse willow riparian scrub, which is comprised of red willow, arroyo willow, tarragon, western ragweed, and mulefat. Other plants present indicative of mesic conditions include salt heliotrope and wild lettuce. One coast live oak tree is located within the narrow strip of the parcel which parallels Interstate 15 at the southern end of the site.

A wildfire occurred on the site during the summer of 1989. Coastal sage scrub was burned between the Interstate highway and the blueline stream, as was some of the riparian vegetation along the stream. These communities are known to recover well after fire.

Wildlife habitat and fauna

Fourteen species of birds were observed during the field survey. Most of these were utilizing the willow riparian scrub and coastal sage scrub plant communuties. These communities provide the needed food and cover for not only birds, but reptiles and mammals as well. The bird species recorded were typical for these habitats during the season that the field survey was conducted, and included white-crowned sparrow, horned lark, western meadowlark, savannah sparrow, and lesser goldfinch. A flock of approximately 50 house finches was present during the survey.

The annual grassland on the project site also is valuable to wildlife species who utilize plant material for food, and is also much used by burrowing mammals such as pocket gophers, Beechey ground squirrels, deer mice, and rabbits for construction of burrows. Grassland plant communities such as this support large numbers of these small mammals which, in turn, support predatory animals such as coyotes and raptors. Red-tailed hawks were seen foraging in the area during the field survey. The region surrounding the site is known as an important wintering area for raptors, including northern harriers, ferruginous and rough-legged hawks, and prairie falcons (California Department of Fish and Game, 1979).

Sensitive species

The literature review indicated that eight sensitive plants and nine sensitive animals have been known to occur in the vicinity of the project site. Sensitive species and communities are so-called because their populations are declining, they are especially vulnerable to habitat change, or because they have restricted distributions and are naturally rare.

Of the sensitive plants, 7 occur only in vernal pools or on clay soils. Neither of these conditions exists on the project site. These species have been eliminated from further consideration.

One of the sensitive animals known from the area has also been eliminated from further consideration. The western pond turtle requires perennial streams or ponds. No perennial water occurs on the project site.

For a summary of those sensitive species occurring in the vicinity deserving further consideration of occurring on the site, see Table 1. More detailed information about each species follows the table.

Table 1. Sensitive species considered for Vesting Tentative Tract 25362.

Sensitive species and associated habitat	Status*	Occurrence Probability**	Number of Sightings
Caulanthus simulans **Payson's caulanthus** Fire follower in chaparral, granitic soils	1)C2 2)ND 3)List 1 R-2 E-1 D-3	High	0
Cnemidophorus hyperythrus **Orange-throated whiptail** Dense brush with rock outcrops	1)C2 2)CSC	High	0
Phrynosoma coronatum blainvillei **San Diego horned lizard** Sandy areas in grassland or brush	1)C2 2)CSC	High	0
Accipiter cooperi **Cooper's hawk** Woodlands	1)ND 2)CSC	High	0
Accipiter striatus **Sharp-shinned hawk** Hilly areas, dense brush, woodlands	1)ND 2)CSC, W	High	0
Aquila chrysaetos **Golden eagle** Grasslands, mountains hilly areas	1)ND 2)CP, CSC	Moderate	0
Polioptila californica **California gnatcatcher** Coastal sage scrub	1)C2 2)CSC	Moderate	0
Dipodomys stephensi **Stephen's kangaroo rat** Level to moderately sloping grasslands	1)E 2)CT	Absent	0

* For status designations, see following page.
** For definitions of occurrence probability, see page 7.

Status designations

1) **Federal designations:**

E = Federally listed, endangered.
C2 = Category 2 candidate species. Threat and/or distribution data are insufficient to support federal listing.
ND = Not designated.

2) **State designations:**

CT = State listed, threatened (previously listed as rare).
CP = Fully protected under California Fish and Game Code, Sections 3511, 4700, 5050, 5515.
CSC = California Department of Fish and Game Species of Special Concern.
W = Watch list, the California Department of Fish and Game is currently collecting distribution information on these species.
SA = California Department of Fish and Game "Special Animals" list.
ND = Not designated.

3. **California Native Plant Society (CNPS):**

List 1 - Plants rare and endangered in California and elsewhere.
List 2 - Plants rare or endangered in California, but more common elsewhere.
List 3 - Plants about which we need more information.
List 4 - Plants of limited distribution (a watch list).

R-E-D CODE:

R (Rarity)
1 - Rare, but found in sufficient numbers and distributed widely enough that the potential for extinction or extirpation is low at this time.
2 - Occurrence confined to several populations or one extended population.
3 - Occurrence limited to one or a few highly restricted populations, or present in such small numbers that it is seldom reported.

E (Endangerment)
1 - Not endangered.
2 - Endangered in a portion of its range.
3 - Endangered throughout its range.

D (Distribution)
1 - More or less widespread outside California.
2 - Rare outside California.
3 - Endemic to California (i.e., does not occur outside California).

Definitions of occurrence probability:

High: Observed on similar habitat in surrounding region by field personnel of Tierra Madre Consultants, or habitat on the site is a type often utilized by the species and the site is within the known range of the species.

Moderate: Reported sightings in surrounding region, habitat on the site is a type occasionally utilized by the species; or site is within the known range of the species and habitat on the site is a type occasionally utilized by the species.

Absent: A focused study for this species failed to reveal its presence, or, no suitable habitat is present.

Information sources of status descriptions are derived from the California Natural Diversity Data Base and California Native Plant Society.

Payson's caulanthus is an annual plant which inhabits chaparral and coastal sage scrub areas following fire. It has been reported recently as close as 3.5 miles northwest of the project site. Suitable habitat for this species exists on the site, and in view of the recent wildfire, there is a high probability of it occurring.

The **orange-throated whiptail** occupies washes and other sandy areas where there are rocks and patches of brush nearby. This species is common in coastal chaparral, thornscrub, and streamside growth. It feeds on insects and spiders, and is especially fond of termites. Populations of this species are declining as a result of habitat loss due to land conversion for agriculture and urban development. Habitat is suitable for the orange-throated whiptail on the project site, and there is a high probability it occurs. A springtime survey would be needed to confirm this.

The **San Diego horned lizard** frequents a variety of habitat types including coastal sage scrub, broad-leaved woodlands, and grasslands. This species is common in areas where there is loose sandy soil with low-growing brush nearby. Ants are the primary food of this species, although it also takes beetles and other insects. When this species inhabits an area, distinctive fecal pellets containing mostly ant parts are often visible. Populations of this lizard are declining due to extensive collecting on wildlands near urban development areas and as a result of its habitat being converted to agricultural and urban lands. Because its habitat requirements are similar to those of the orange-throated whiptail, habitat on the project site is judged to be suitable for this species. As with the whiptail, a springtime survey is the only way its presence can be confirmed.

Cooper's hawk is an uncommon permanent resident of the region which prefers lowland riparian woodland or less frequently, mountain canyons for nesting and foraging activities. It requires fairly open groves of cottonwoods, willows, sycamores, or oaks and feeds almost exclusively on small birds, which it captures during low, swift flights through the understory. It is considered a declining species due to habitat loss and the effects of pesticides in the food chain resulting in egg shell thinning. Although no Cooper's hawks were seen on the subject property, three individuals were observed during a biological assessment survey performed on a neighboring site during the spring of 1988. These birds were seen in oak woodland where it was thought they had nested that year. In view of this, it seems highly likely that foraging by this species occasionally occurs on the project site.

Sharp-shinned hawks have life histories similar to Cooper's hawks, with whom they are closely related. This raptor feeds on small birds, such as white-crowned sparrows and juncos. The sharp-shinned hawk is a fairly common visitor to southern Riverside County during the winter, but is very rare during the breeding season, with only occasional nestings having been documented in recent times. There is a high probability sharp-shins occasionally occur during the winter on the property, as coastal sage scrub is often used by wintering birds for foraging.

Golden eagles nest in rugged mountainous areas which have adjacent open grassland or scrubland where prey occurs. It feeds mainly on ground squirrels, rabbits, and other small to medium-sized mammals. Its home range averages approximately 35 square miles. Threats to this species are numerous: eggshell thinning from pesticide ingestion; loss of habitat; shooting; electrocution from high-voltage power lines; and poisoning during predator control programs. There are numerous sites in this region of Riverside and San Diego counties where suitable nesting habitat may be found. No suitable nesting sites exist on the property, but the more open areas of the property may be utilized for foraging. There is at least a moderate probability a golden eagle occasionally forages over the property.

The **California gnatcatcher** is found only in southern California in areas of coastal sage scrub, and in Baja California in other habitats. This species has only recently been recognized as a distinct species by the American Ornithologists' Union, which previously considered it a race of the black-tailed gnatcatcher (Polioptila melanura). This decision was based largely upon a recent detailed study of the genus by Atwood (1988). Studies have revealed severely reduced population levels and a major loss of coastal sage scrub in recent years (Atwood 1980). Andy Sanders of the UCR herbarium estimates that less than ten percent of the original coastal sage scrub community in Riverside County is still present. Atwood estimated a remaining population of about 1355 pairs, which he felt may be an overestimate. Approximately 400 pairs were estimated in Riverside

County.

Although no California gnatcatchers were found during the field survey, it is known that 1 to 2 pairs currently occupy coastal sage scrub habitat approximately 1500 feet north of proposed Tract 25362. California gnatcatchers have been shown to nest in areas of coastal sage scrub from 8.5 to 12.7 acres (RECON 1987). The coastal sage scrub remaining on the subject property is probably too fragmented to support nesting gnatcatchers, although individuals from the known territories to the north may sometimes wander onto the property to forage. Thus, its occurrence probability is judged to be at least moderate.

The **Stephens' kangaroo rat** is listed by the state of California as threatened and by the U. S. Fish and Wildlife Service as endangered. It is endemic to the San Jacinto Valley and nearby valleys of western Riverside and northern San Diego counties. Level to slightly sloping terrain with vegetative cover limited primarily to annual grasses and/or herbaceous plants is the species' preferred habitat. This species is known to be sympatric with the Pacific kangaroo rat, a similar species with a much more widespread distribution.

The Stephens' kangaroo rat inhabits underground burrows which it excavates. In some cases it re-excavates abandoned gopher burrows. The species is nocturnally active, emerging to feed on vegetation and seeds and to bathe in dry, shallow dusty depressions (dustbaths). Kangaroo rats often cache food in their burrows or nearby holes presumably for periods when food is otherwise unavailable.

The limited range of the Stephens' kangaroo rat and the conversion of its habitat to agricultural lands and developed areas are the primary factors which have contributed to its decline and led to its listing as an endangered species.

During a preliminary biological assessment in July, 1989, Tierra Madre Consultants, Inc. determined that SKR was absent from the property, based upon the lack of kangaroo rat sign (burrows). A copy of the preliminary report is attached. During Myers' visit of December 27, 1989, no kangaroo rat burrows were found, thus corroborating the earlier findings.

Although the Data Base search revealed no records of least **Bell's vireos** within 5 miles of the project site, its endangered status justifies a brief discussion of its occurrence likelihood. Its preferred nesting habitat is dense riparian scrub or woodland, always containing shrubby willows or mulefat, and almost always near permanent or vernal surface water. The riparian scrub on the project site is much too sparse to support nesting Bell's vireos. It is possible, though unlikely, that an occasional migrant may stop over to forage on the property.

Discussion

Project impacts

Construction of the residential development as proposed on the Vesting Tentative Tract Map will essentially result in the elimination of all biological resources now existing on the project site, with the exception of the thin strip of land which parallels Interstate 15 at the southwestern corner. Lot layouts indicate extensive grading and a complete denudation of present vegetation during construction of building pads and their connecting infrastructure. The most significant on-site impact will be the loss of habitat for those sensitive species potentially occurring on the site.

Additional impacts will include:

1. The cumulative loss of contiguous open space in the region. This impact will affect local wide-ranging territorial species such as coyotes and raptors.

2. Impacts to nearby natural areas off-site. Indirect impacts from residential development can take many forms. Increased human population in the immediate area will result in the following impacts on these natural areas:

a. An increase in human disturbance of wildlife. During breeding season many animals, especially birds, are quite susceptible to human activities. The proposed project will undoubtedly result in an increase in activities such as off-road vehicle use. Collection of wildlife as pets (e.g., lizards, snakes, etc.) by children could over time have a pronounced effect on local populations of some of these species.

b. An increase in the number of domestic pets in the area. Dogs and cats are known to take a wide variety of wildlife species as prey. Cats are efficient predators capable of capturing large numbers of lizards, rodents, and birds. Dogs also can capture certain species and harass many others. Unlike dogs, which are to a point controlled by local leash laws, cats generally are able to range freely. Predation by these animals can affect local populations of some wildlife species to a large degree.

c. The introduction of additional exotic plant species to the area. Some ornamental species are quite invasive, and can ultimately displace some native vegetation.

Mitigating measures

Mitigating measures

Approval of Vesting Tentative Tract 25362 will result in the loss of biological resources on the site, and mitigating measures are generally infeasible. Preservation of a small amount of coastal sage scrub at the southwestern corner of the property is possible and desirable. However, this very small amount of retained natural open space will do very little to offset the loss of the remainder of the site.

We recommend that the coast live oak in this area be retained, and incorporated into the development. This appears to be consistent with the current lot layout.

Any alteration of the blueline stream or of riparian vegetation on the property may require permits from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, and/or the California Department of Fish and Game under Chapter 6, Sections 1601-3 of the Fish and Game Code. These agencies should be consulted before proceeding with alterations of drainages on the property. Mitigation as required by the permitting agency may be required in addition to requirements of Riverside County. It appears that the amount of acreage impacted by this project will be under 1 acre, in which case a "nationwide general" permit might be issued by the Corps.

Development on the project site should be landscaped with plants native to the region, which will help to enhance the area biologically and provide some habitat for native wildlife. Particularly valuable landscaping species are California sycamore (Platanus racemosa), California walnut (Juglans californica), Fremont cottonwood (Populus fremontii), toyon (Heteromeles arbutifolia), holly-leaf redberry (Rhamnus ilicifolia), Nevin's barberry (Mahonia nevinii), Mexican elderberry (Sambucus mexicana), and holly-leaf cherry (Prunus ilicifolia).

Mitigation monitoring

Future property development should be monitored during construction to insure that mitigation measures are being addressed. A new state law, AB 3180, requires that a mitigation monitoring program be established to ensure that CEQA-imposed conditions of approval are carried out.

References

Abrams, Leroy and Roxana S. Ferris. 1960. Illustrated Flora of the Pacific States. In four volumes. Stanford University Press. Stanford, CA.

American Ornithologists' Union. 1983. Checklist of North American Birds. Sixth edition. AOU, Washington, D.C.

_____. 1985. Thirty-fifth supplement to the American Ornithologists' Union check-list of North American Birds. Auk 102:680-686.

_____. 1987. Thirty-sixth supplement to the American Ornithologists' Union check-list of North American Birds.

_____. 1989. Thirty-seventh supplement to the American Ornithologists' Union check-list of North American Birds.

Atwood, Jonathon L. 1980. The United States distribution of the California Black-tailed Gnatcatcher. Western Birds: Volume 11, number 2. Pp. 65-78.

Atwood, J. L. 1988. Speciation and Geographical Variation in Black-tailed Gnatcatchers. Ornithological monograph #42, American Ornithologists' Union. 74 pages.

Beauchamp, R. Mitchel. 1986. A Flora of San Diego County. Sweetwater River Press. National City, CA.

California Department of Fish and Game. 1989. 1988 annual report on the status of California's state listed threatened and endangered plants and animals. California Department of Fish and Game. Sacramento, CA.

California Department of Fish and Game. 1979. Areas of special biological importance. Sacramento, Calif.

California Native Plant Society. 1988. Inventory of Rare and Endangered Vascular Plants of California. Spec. Pub. No. 1 (4th ed.), CNPS, Sacramento, Calif.

California Natural Diversity Data Base. 1988. Computerized records check for sensitive elements on the USGS 7.5' Murrieta and Wildomar quads. California Department of Fish and Game. Sacramento, Calif.

County of Riverside. 1984. Comprehensive General Plan, Riverside County Planning Department, Riverside, Calif.

Franzreb, K.E. 1987. Endangered status and strategies for conservation of the Least Bell's Vireo (Vireo bellii pusillus) in California. Western Birds 18: 43-49.

Garrett, Kimball and Dunn, Jon, 1981. Birds of Southern California, status and distribution. Los Angeles Audubon Society, Los Angeles, Calif. 408 pp.

Glaser, H. S. Robert, 1970. The Distribution of Amphibians and Reptiles in Riverside County. Natural History Series No. 1, Riverside Museum Press, Riverside, CA.

Goldwasser, S., D. Gaines, and S.R. Wilbur. 1980. The Least Bell's Vireo in California: a defacto endangered race. American Birds 34: 742-745

Goldwasser, S. 1978. Distribution, reproductive success and impact of nest parasitism by Brown-headed Cowbirds on Least Bell's Vireos. Prepared for The Resources Agency, California Department of Fish and Game. Sacramento, CA.

Gray, M. V., and J. M. Greaves, 1981. Breeding Bell's Vireos in Santa Barbara County, California, 1980: A preliminary report. California Department of Fish and Game. Sacramento, CA. Unpublished draft.

Holland, Robert, 1986. Preliminary descriptions of the terrestrial natural communities of California. California Department of Fish and Game. Sacramento, CA.

Ingles, Lloyd, 1965. Mammals of the Pacific States. Stanford University Press. Stanford, CA.

Kaufman, Nancy M. and Larry R. Salata. 1984. Status of the Least Bell's Vireo at Camp Pendleton, California: a report on research done in 1984. U. S. Fish and Wildlife Service, Division of Ecological Services. Laguna Niguel, CA.

Munz, Philip, 1974. A Flora of Southern California. University of California Press. Berkeley, CA.

National Geographic Society. 1983. Field Guide to the Birds of North America. National Geographic Society. Washington D.C.

O'Farrell, Michael and Curt Uptain. 1989. Distribution and status of the Stephens' kangaroo rat. Rough draft. Submitted to the California Department of Fish and Game.

Price, M.V. and P.R. Endo. 1989. Estimating the distribution and abundance of a cryptic species, Dipodomys stephensi (Rodentia: Heteromyidae), and implications for management. Conservation Biology: 3:3 (293-301).

Remsen, J.V. 1978. Bird species of special concern in California. Prepared for the California Department of Fish and Game. Sacramento, CA.

Soil Conservation Service, 1971. Soil Survey of Western Riverside Area, California, USDA, Washington, D.C.

Stebbins, Robert, 1985. A Field Guide to Western Reptiles and Amphibians. Houghton Mifflin Company. Boston, MA.

U. S. Dept. of the Interior, Fish and Wildlife Service, 1985. "Endangered and Threatened Wildlife and Plants: Review of Plant Taxa for Listing as Endangered or Threatened Species", Federal Register 50(188): 39526-39584.

U. S. Dept. of the Interior, Fish and Wildlife Service, 1985. "Endangered and Threatened Wildlife and Plants: Review of Vertebrate Wildlife", Federal Register 50(181):37958-37967.

U. S. Dept. of the Interior, Fish and Wildlife Service, 1988. "Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Stephens' Kangaroo Rat." Federal Register 53(190): 38465-38469.

Williams, Daniel F. 1986. Mammalian species of special concern in California. Prepared for the California Department of Fish and Game. Sacramento, CA.

Plants

ANGIOSPERMIAE: DICOTYLEDONEAE	DICOT FLOWERING PLANTS
Asteraceae	**Sunflower family**
Ambrosia psilostachya	Western ragweed
Artemisia californica	California sagebrush
Artemisia dracunculus	Tarragon
Baccharis emoryi	Emory's baccharis
Baccharis glutinosa	Mulefat
**Centaurea melitensis*	Star-thistle
**Conyza canadensis*	Common horseweed
Corethrogyne filaginifolia	Corethrogyne
Gutierrezia bracteata	Matchweed
Haplopappus palmeri	Palmer's goldenbush
Helianthus annuus	Western sunflower
Hemizonia kelloggii	Tarweed
Boraginaceae	**Borage family**
Amsinckia intermedia	Rancher's fiddleneck
Heliotropium curvassavicum	Salt heliotrope
Brassicaceae	**Mustard family**
**Brassica geniculata*	Short-pod mustard
Cactaceae	**Cactus family**
Opuntia littoralis	Prickly pear
Opuntia parryi	Valley cholla
Caprifoliaceae	**Honeysuckle family**
Sambucus mexicana	Elderberry
Euphorbiaceae	**Spurge family**
Croton californicus	California croton
Eremocarpus setigerus	Doveweed
Euphorbia albimarginata	Rattlesnake weed
Fabaceae	**Pea family**
Astragalus sp.	Locoweed
Lotus scoparius	Deerweed
Geraniaceae	**Geranium family**
**Erodium cicutarium*	Red-stemmed filaree
Lamiaceae	**Mint family**
Salvia apiana	White sage
Polemoniaceae	**Phlox family**
Eriastrum sapphirinum	Woolly-star
Polygonaceae	**Buckwheat family**
Eriogonum fasciculatum	California buckwheat

Eriogonum gracile	Woolly buckwheat
**Rumex crispus*	Curly dock
Salicaceae	**Willow family**
Salix laevigata	Red willow
Salix lasiolepis	Arroyo willow
Solanaceae	**Nightshade family**
Datura metaloides	Jimson weed
ANGIOSPERMIAE: MONOCOTYLEDONES	MONOCOT FLOWERING PLANTS
Poaceae	**Grass family**
**Avena barbata*	Slender wild oats
**Bromus diandrus*	Common ripgut-grass
**Bromus mollis*	Soft chess
**Bromus rubens*	Red brome
**Schismus barbatus*	Abu mashi

* - denotes introduced (non-native) species.
c.f. - "compares favorably" to a known species when the observed species is not determinable.
sp. - species unknown.

This list reports only those plant species actually observed on the site by this study. Other plants may have been overlooked or undetectable due to the seasonal nature of their occurrence.

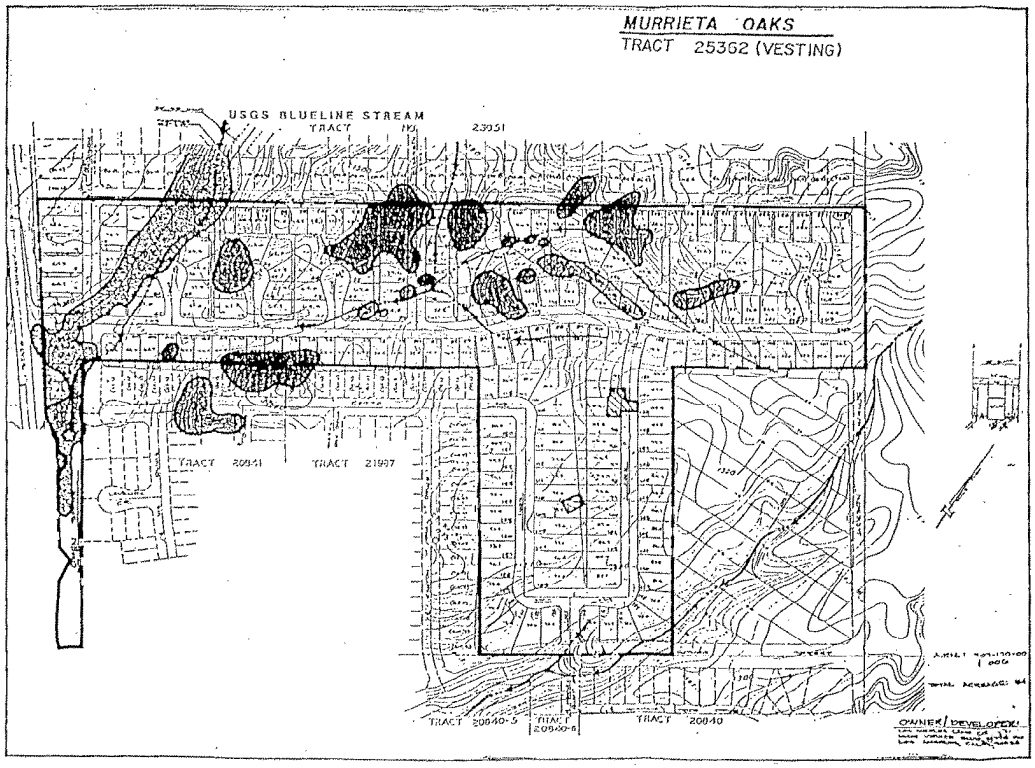
Animals

AVES	BIRDS
Cathartidae *Cathartes aura*	**Vultures** Turkey vulture
Accipitridae *Buteo jamaicensis*	**Hawks, eagles, harriers** Red-tailed hawk
Charadriidae *Charadrius vociferus*	**Plovers** Killdeer
Trochilidae *Calypte anna*	**Hummingbirds** Anna's hummingbird
Picidae *Picoides nuttallii*	**Woodpeckers** Nuttall's woodpecker
Alaudidae *Eremophila alpestris*	**Larks** Horned lark
Corvidae *Corvus corax*	**Crows and jays** Common raven
Troglodytidae *Thryomanes bewickii*	**Wrens** Bewick's wren
Mimidae *Mimus polyglottos*	**Mockingbirds and thrashers** Northern mockingbird
Motacillidae *Anthus rubescens*	**Wagtails and pipits** American pipit
Emberizidae *Dendroica coronata* *Pipilo crissalis* *Passerculus sandwichensis* *Zonotrichia leucophrys* *Sturnella neglecta*	**Sparrows, warblers, tanagers** Yellow-rumped warbler California towhee Savannah sparrow White-crowned sparrow Western meadowlark
Fringillidae *Carpodacus mexicanus* *Carduelis psaltria*	**Finches** House finch Lesser goldfinch

MAMMALIA	MAMMALS
Leporidae *Lepus californicus* *Sylvilagus audubonii*	**Hares and rabbits** Black-tailed hare Audubon cottontail
Sciuridae *Otospermophilus beecheyi*	**Squirrels** Beechey ground squirrel

Geomyidae	**Pocket gophers**
Thomomys bottae	Botta pocket gopher
Canidae	**Foxes, wolves and coyotes**
Canis latrans	Coyote
Urocyon cinereoargenteus	Gray fox

Nomenclature follows Stebbins, *A Field Guide to Western Reptiles and Amphibians*, the American Ornithologists' Union, *Checklist of North American Birds*, sixth edition (+ supplements through the 37th supplement), and Ingles, *Mammals of the Pacific States*.



MAP 1. BIOLOGICAL RESOURCES OF VTT 25362.

- SPARSE WILLOW RIPARIAN SCRUB
- COASTAL SAGE SCRUB
- CULTIVATED LAND/ NON-NATIVE GRASSLAND
- EXISTING STRUCTURES
- COAST LIVE OAK

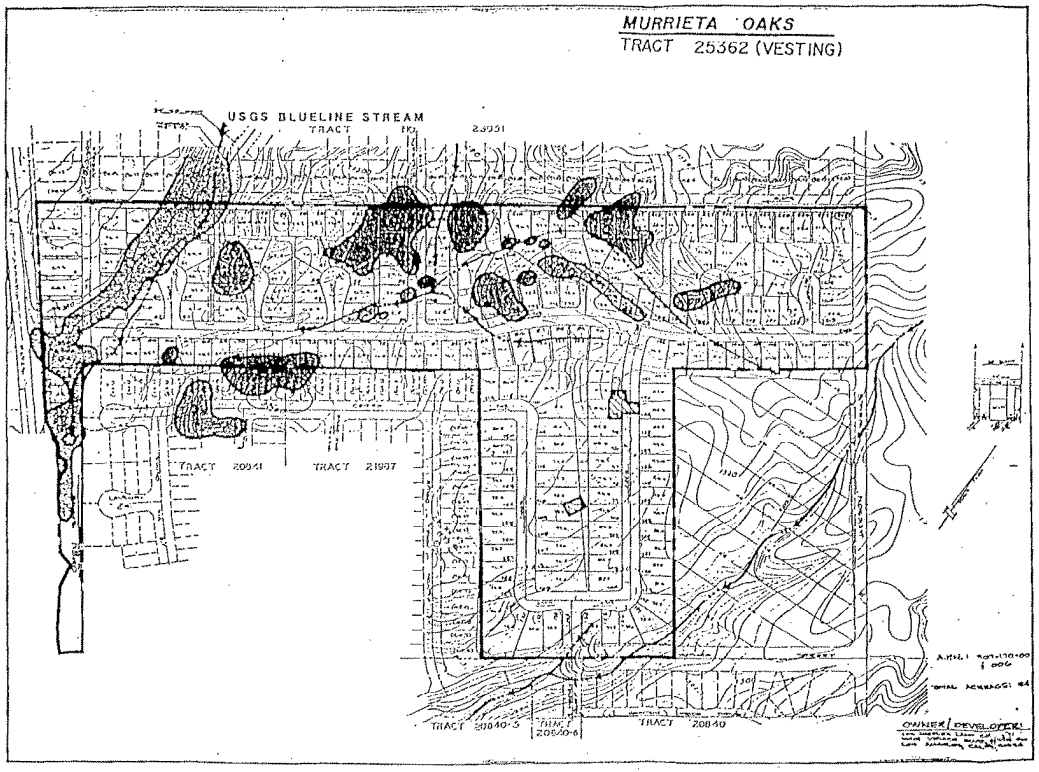
MAP SOURCE: SOUTHLAND ENGINEERING

Reduced

SCALE: 1" = 100'

1/19/90:mb

Tierra Madre Consultants



MAP 1. BIOLOGICAL RESOURCES OF VTT 25362.

- SPARSE WILLOW RIPARIAN SCRUB
- COASTAL SAGE SCRUB
- CULTIVATED LAND/ NON-NATIVE GRASSLAND
- EXISTING STRUCTURES
- COAST LIVE OAK

MAP SOURCE: SOUTHLAND ENGINEERING

Reduced

SCALE: 1" = 100

1/19/90:mp

Sierra Madre Consultants

Attachment "B"

THOMAS OLSEN ASSOCIATES, INC.

May 26, 1999

Mr. John Minch
John Minch and Associates, Inc.
26461 Crown Valley Parkway, Suite 200
Mission Viejo, CA 92691

Re: Results of the Quino checkerspot butterfly habitat suitability evaluation of the Pacific Communities site located in the City of Murrieta, Riverside County, California.

Dear Mr. Minch:

On Tuesday May 4, 1999, Thomas Olsen Associates, Inc. (Olsen Associates) conducted a habitat suitability evaluation (a.k.a. "focused habitat assessment") for the Quino checkerspot butterfly (*Euphydryas editha quino*) on the 55-acre Pacific Communities site (APN 949-020-003, 004 and 006) located in the City of Murrieta, Riverside County, California.

The proposed project site is located within the "adult survey area" identified in U.S. Fish and Wildlife Service (Service) protocol dated January 25, 1999. Lands within this area are required to be surveyed weekly for the duration of the flight period (typically early March through mid-May) prior to the issuance of a grading permit. This survey was conducted in order to ascertain whether or not site conditions might, by Service determination, preclude this property from regional protocol.

Habitat on-site is less than ideal, given that it is vegetated primarily by dense annual grassland. Coastal sage scrub (CSS) on-site is dead. The project site contains several sparse to dense patches of potential nectar sources, including fiddleneck (*Amsinckia* sp.), cryptantha (*Cryptantha* sp.), and deerweed (*Lotus scoparius*).

Two patches of dwarf plantain (*Plantago erecta*), the requisite host plant of Quino checkerspot larvae, were initially found within the proposed development area. (The proposed development area is assumed to be that 40 acres of the 55-acre site which is situated immediately north of the USGS blueline stream.) Both patches were approximately 2 meters in diameter (Figure 1).

A follow up site visit was performed on May 21, 1999 to more accurately plot the position of these patches with relation to the revised project description. In so doing, a third patch of the host plants was found which measured approximately 10 meters in length by 5 meters in width (Figure 1).

ENVIRONMENTAL AND BIOLOGICAL CONSULTING
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2829 S. State St. Hemet, CA 92543 909•766•4655 FAX•766•4658
110 S. Church, Ste. 1260 Tucson, AZ 85701 520•623•2800 FAX•623•2900

The section of the property in which these host plant distributions were discovered is bounded on the southwest by tract homes, on the southeast by Nutmeg Street, and on the northeast by approximately 15 acres of dense CSS that is not part of the project site. The site itself is bordered on the southwest by the 15 Freeway, on the northwest by graded land, on the northeast by Jackson Avenue and undisturbed CSS, and on the southeast by Nutmeg street and tract homes. By being in such close proximity to residential areas, the site has been illegally used as a dump and is subject to trespass by off-road vehicles.

To summarize, the proposed project site is located within the adult survey boundary and larval host plants are present. To comply with the federal Endangered Species Act, focused adult surveys should be conducted to establish presence or absence of the Quino checkerspot butterfly prior to development. In lieu of a focused adult survey, the project proponent may assume occupation by the Quino checkerspot butterfly and submit an application for a Section 10 (a) incidental take permit to the Service.

If you have any questions regarding the findings of the survey effort or this letter report, please feel free to contact me at our Hemet office.

Sincerely,

Brian Drake
Staff Biologist

Attachment "C"

MR\ GRP

THOMAS OLSEN ASSOCIATES, INC.

Mr. Ernest Liu
Director of Engineering
Pacific Communities
1000 Dove Street, Suite 100
Newport Beach, CA 92660

October 8, 1998

Re: **Report on Water Issues for Murrieta Project - Tentative Tract 25362**

Dear Mr. Liu:

On September 30, 1998, Thomas Olsen Associates, Inc. (TOA, Inc.) visited the project site to determine the extent of the projects affects to the on-site blue-line stream. Evaluation of the grading plans and site inspection indicate that there will not be permanent effects to the stream banks (e.g., dredge, fill activity). There may be effects to the riparian vegetation on the banks of the stream during construction.

The blue-line stream on-site is considered "waters of the United States." As such, it falls under the jurisdiction of the U.S. Army Corps of Engineers (Corps), who are charged with enforcing the federal Clean Water Act (CWA). The proposed project qualifies for the Corps' Nationwide Permit 26. Compliance with this permit requires a post-construction notification to the Corps (see Attachment A). The proposed project also will require a Section 1603 (Streambed Alteration) Agreement with the California Department of Fish and Game (CDFG) and certification of compliance with Section 401 of the Clean Water Act by the Regional Water Quality Control Board. The 1603 agreement and 401 certification must be obtained prior to any disturbance of the stream or associated vegetation. The site conditions and permitting requirements are discussed below.

Site Description

The unnamed blue-line stream crosses the southwestern corner of the project site. It traverses the site for approximately ____ linear feet and has an average width of 25 feet. The stream enters the site from a 96 inch storm drain and exits the site into a similarly sized storm drain crossing under the 215 Freeway. Banks of the stream are vegetated with a few willows (*Salix lasiolepsis*) and dominated by mulefat shrubs (*Baccharis salicifolia*). The land adjacent to the stream contains patches of Riversidian sage scrub (RSS) and ruderal habitat. The RSS vegetation has been recently mowed in accordance with weed abatement requirements.

IN
P.O. Box
2829 S. S
P

Post-it® Fax Note 7671	Date	# of pages ▶
To John M.	From Albert Sh	
Co./Dept.	Co. PCB	
Phone #	Phone # 66t-8988	
Fax # 367-0117	Fax # 660-8866	

Clean Water Act Section 404

Nationwide Permit 26 (NWP 26) permits discharges of dredged or fill material into headwaters and isolated waters provided that the activity meets the following criteria: The discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters for a distance greater than 500 linear feet of stream bed. Due to grading and compacting requirements on adjacent slopes, the potential for short-term encroachment by construction equipment exists. The proposed project will affect 230 linear feet by 12 feet of the stream's width, or 0.06 acres of jurisdictional waters. Approximately ten (10) arroyo willows and fourty (40) mulefat shrubs will be impacted. No dredge of or fill material will be placed in the stream. No channelization or permanent stream bed alteration is proposed. If encroachment into the stream bed occurs, bed and bank will be returned to pre-construction grade. Since less than 0.33 acres will be disturbed, pre-construction notification of the Corps is not necessary. The project proponent must submit a report within thirty (30) days of completion of the work. Attachment A contains the information necessary for post-construction notification under NWP 26.

Water Quality Certification (Clean Water Act Section 401)

Prior to initiation of any activities within waters of the U.S., a Section 401 water quality certification must be obtained or waived by the Regional Water Quality Control Board (RWQCB). Use of NWP 26 is not valid unless the action is "certified" by the state on a case-by-case basis. This application must be submitted at least ninety (90) days in advance of the project's start up date. The application must include the following information:

1. Applicant/Agent name, address, phone and fax numbers.
2. Federal permit being sought: NWP 26.
3. Project Description: Including purpose, location of project, total acreage of project site, type of water bodies within the project site, total acres of waters of the U.S., wetland areas, and riparian habitats (type and impacts).
4. Water Quality Impact: Including types of pollutants expected to be generated by the project, impacts to beneficial uses of the water body (e.g., loss of ground water recharge), expected diversions of water around the project, cumulative impacts of the Master project that includes the proposed project (if applicable).
5. Proposed Mitigation Measures: Where (on-site/off-site), what type of mitigation (creation, restoration, enhancement, etc.), ratio (acreage, value, in-kind or out-of-kind), status of State Department of Fish and Game and Federal Fish and Wildlife Service review/approval.
6. A copy of the federal application for the federal license or permit.
7. A copy of any agreement with the CDFG per Sections 1600-1603. If a CDFG agreement has been applied for, but not yet received, include a copy of the application.
8. CEQA compliance: Include a copy of the CEQA Initial Study and Negative Declaration. Or, if exempt under CEQA, specify the section under which it is exempt.

9. Filing Fee: A flat fee of $1000.00 applies for fill of one acre or less. If there is no potential for water quality impacts (as determined by the Regional Board), a $500.00 filing fee to cover the cost of a 401 waiver applies.

The California Regional Water Quality Control Board (RWQCB), Santa Ana Region, has specified that a "minor stream channel alteration" can be granted a waiver without need for formal hearing, provided:

1. The alterations are conducted in accordance with an agreement with the California Department of Fish and Game, Sections 1600-1603, and;

2. Materials used for fill are inert as defined in Section 2524 of Chapter 15, Title 23, of the California Code of Regulations, or as approved by the RWQCB Executive Officer, and;

3. There shall be no fueling, lubrication, or maintenance of construction equipment within the streambed. All spilled material from such activities shall be contained and immediately cleaned up.

4. The activity must also not "create a nuisance or pollution as defined in the California Water Code."

5. The project must not cause a violation of any applicable water quality standard for receiving waters adopted by the Regional Board or State Water Resources Control Board, as required by the Clean Water Act.

6. The project must not result in the discharge of any substance in concentrations toxic to animal or plant life is prohibited.

The 401 Certification/Waiver will be issued within sixty (60) days of receipt of a complete application package. This 60-day period includes a 21-day public comment period. If the Board fails to act within sixty (60) days of receipt of the application, the Corps will consider the certification to be administratively waived.

California Department of Fish and Game Streambed Alteration Agreement

The California Department of Fish and Game (CDFG) has jurisdiction over all streams, lakes and rivers within the State. Section 1603(a) of the California Fish and Game Code states that a Streambed/Lake Alteration Agreement must be obtained from the CDFG for any project that will "substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the [CDFG], or use any material from the streambed(s), without first notifying the [CDFG] of that activity" (1997). A "Notification of Removal of Materials and/or Alteration of Lake, River, or Streambed Bottom or Margin" (Form FG-2023) must be submitted to the California Department of Fish and Game, Region 5 prior to any activities. Within thirty (30) days of receipt of the application, the CDFG will make a determination as to whether or not the project will "substantially adversely affect" an existing fish or wildlife resource. If the CDFG fails to act within thirty days, the applicant may commence the activity.

Information required on Form FG-2023 includes:

1. Name and address of applicant.
2. Legal description of project location and County Assessor's Parcel Number(s).
3. Name of property owner(s), if different from applicant.
4. Volume of material removed, displaced or added.
5. Equipment to be used.
6. Use of water (i.e., domestic, irrigation, gravel washing, etc.).
7. Type and density of vegetation to be affected, and estimate of area involved.
8. Actions proposed to protect fish and wildlife resources and/or mitigate for project impacts.
9. Brief description of proposed construction methods. Including diagram showing the location of the operation, existing and proposed future conditions, the stream to be affected and the distance from a named public road.
10. An application fee is also required: $132.00 for projects costing less than $25,000; $662.00 for projects costing from $25,000 to $500,000, and; $1,191.00 for projects costing more than $500,000.

Prior to completion of CDFG and RWQCB permit applications, we will need additional, project specific information. I will call you on Monday, October 12th to discuss this letter with you.

Sincerely,

Thomas G. Olsen

Attachment A: Nationwide Permit 26 Post-Construction Notification

For discharges causing the loss of 1/3 acre or less of waters of the United States the permittee must submit a report within thirty (30) days of completion, containing the following information:

1. Name, address and telephone number of the permittee:

   _____

   _____

   _____

2. Location of work: **[need APN #(s) of site and legal description]**

3. Description of work: Clearing, grading and compaction (cut and fill) of ____ acres of land to form pads for construction of residential dwellings.

4. Type and acreage (or square feet) of the loss of waters of the United States (e.g., 0.10 acres of marsh and 50 square feet of a stream):

5. Date of completion of work:

6. Permittee's signature and title certifying the accuracy of the above information.

Subject:	Call US Fish and Wildlife Service about Quinto Butterfly
Start Date:	Friday, May 07, 1999
Due Date:	Friday, May 07, 1999
Priority:	High
Status:	Not Started
Percent Complete:	0%
Total Work:	45 hours
Actual Work:	6 hours
Owner:	Me
Contacts:	John Minch, Tom Olsen
Company:	Pacific Communities
Billing Information:	5x135
Mileage:	120 miles

Spoke with Christen Moen regarding Quino Butterfly listing. She is in-charge of the listing of the Quino Butterfly. She indicated that a decision "should be made today regarding whether to extend the survey season of the listing".

I explained to her that we had found a patch of a plant associated with the endangered species. I did not reveal the site location, only that it was in the Temecula/Murrieta area. And, that the site was near adjacent residential units, a existing street, and that the area has been disturbed for agricultural purpose on a consistent basis.

Ms. Moen indicated that if we had the biologist include photos (at least seven) of the plants and the surrounding sites and include appropriate language indicating why the plant is of such poor quality as to not be a substainable level for the species, then an informal consultation would end the manner.

Recommend that we have the biologist include specific photos and language to indicate why the designated plants is not worth retaining because the biology is lacking.

In any case, an informal meeting with USFWS is mandatory.

Next, after the report is completed, recommend sending a copy to the City of Murrieta. In that the species existing within the existing right-of-way of Nutegg Avenue, the city could be an added supporting in allowing construction of the site.

At the worst, the two lots associated with the presence of the species could be avoided.

Attachment "D"

THOMAS OLSEN ASSOCIATES, INC.

May 11, 1999

Mr. John Minch
John Minch and Associates, Inc.
26461 Crown Valley Parkway, Suite 200
Mission Viejo, CA 92691

Re: Habitat Re-Evaluation and Wetland Delineation Results for Pacific Communities Murrieta Site, Tentative Tract 25362, Riverside County, California

Dear Mr. Minch:

On May 3 and 4, 1999, Thomas Olsen Associates, Inc. (TOA, Inc.) staff biologist, Cindy A. Thielman, visited the approximately 55-acre Pacific Communities Murrieta site (Tentative Tract 25362) to re-evaluate the vegetation on-site and determine if any further biological studies were needed prior to issuance of grading permits by the City of Murrieta. Only the land north of the blueline stream on-site (approximately 40 acres) was evaluated. It is Olsen Associates understanding that the southern portion of the site will not be disturbed by the proposed first phase of grading and construction. Eventual alteration of the on-site blueline stream will be performed by the proponents of the adjacent project to the west in conjunction with development of that site.

The current condition of the vegetation on the project site was evaluated and compared with the January 1990 Tierra Madre Biological Assessment of the site. Their report indicated that the site was primarily non-native annual grasslands with approximately nine areas of coastal sage scrub dominated by California buckwheat (*Eriogonum fasciculatum*) and California sagebrush (*Artemisia californica*). The report also shows the locations of several stands of mulefat (*Baccharis* sp.) and willow trees (*Salix* sp.).

Habitat Re-Evaluation Findings

The May 3, 1999 re-evaluation by TOA, Inc. found the location of native vegetation on-site to be similar to that described in the 1990 Tierra Madre Biological Assessment of the site. However, since the 1990 report the site, including the patches of coastal sage scrub, was mowed, some of the mulefat was taken out and herbicide was applied to much of the coastal sage scrub. Currently, there is essentially no native plant communities left on the northern 40 acres of the site (see Figure 1).

In January 1999, the U.S. Fish and Wildlife Service (Service) issued a revised protocol for habitat and presence/absence surveys for the Quino checkerspot butterfly (*Euphydryas editha quino*) (Quino). The project site falls within the area in which adult focused surveys for Quino are required if suitable habitat occurs. TOA, Inc. staff biologist, Brian Drake, performed a habitat suitability evaluation of

ENVIRONMENTAL AND BIOLOGICAL CONSULTING
P.O. Box 1016 Flagstaff, AZ 86002 520•773•0127 FAX•773•0023
2829 S. State St. Hemet, CA 92543 909•766•4655 FAX•766•4658
110 S. Church, Ste. 1260 Tucson, AZ 85701 520•623•2800 FAX•623•2900

the northern 40 acres of the site on May 3, 1999. Patches of Quino larval host-plant *Plantago erecta* were found in the eastern corner of the site (near Nutmeg Street). The complete results of TOA, Inc.'s Quino checkerspot butterfly habitat evaluation are being submitted under separate cover.

Jurisdictional Waters Delineation Findings

TOA, Inc. also recommended delineation of jurisdictional waters on the project site north of the blueline stream. The delineation was performed on May 3, 1999. It was determined that an unnamed drainage located roughly in the center of the site (Drainage 1) and an unnamed drainage running across the northeastern most corner of the site, near Nutmeg Street (Drainage 2) are "waters of the United States" (see Figure 1). As such, they fall under the jurisdiction of the U.S. Army Corps of Engineers (Corps), who are charged with enforcing the federal Clean Water Act (CWA).

Drainage 1 is primarily an erosional feature that originates in two swales to the north and runs south for 397 linear feet until terminating without connecting to any other body of water. Drainage 1 covers approximately 0.013 acres. The dominant plant species present is short-pod mustard (*Hirschfeldia incana*). There are five separate small stands of mulefat (*Baccharis* sp.) located along the drainage and one fairly large willow tree (*Salix* sp.) located near the drainage's terminus (See Figure 1). No wetlands are associated with Drainage 1.

Drainage 2 crosses the northeastern-most corner of the project site and enters a pipe culvert at the eastern edge of the property, at Nutmeg Street. The drainage runs across 94 linear feet on the project site before entering the culvert at Nutmeg Street and encompasses approximately 0.003 acres on-site. Dominant vegetation is short-pod mustard (*Hirschfeldia incana*). There is a large willow tree growing next to the culvert and one small stand of mulefat located just before the northern border of the site. No wetlands are associated with Drainage 2. Upstream, off the project site to the north, Drainage 2 runs through dense coastal sage scrub habitat.

In total, the proposed phase of the project will result in fill of 0.016 acres (491 linear feet) of waters of the United States. No jurisdictional wetlands or special aquatic sites will be affected. The proposed development qualifies for the Corps' Nationwide Permit 26 Compliance with this permit requires a post-construction notification to the Corps.

It is TOA, Inc.'s understanding that the project proponent has been in contact with Dee Suddeth of the California Department of Fish and Game (CDFG) and a Section 1603 (Streambed Alteration) Agreement with the California Department of Fish and Game (CDFG) will not be required for the site. A certification of compliance with Section 401 of the Clean Water Act by the Regional Water Quality Control Board may also be needed prior to any disturbance of the drainages.

Nationwide Permit 26

Nationwide Permit 26 (NWP 26) permits discharges of dredged or fill material into headwaters and isolated waters provided that the activity meets the following criteria: the discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters for a distance greater than 500 linear feet of stream bed. The proposed project only affects 491 linear feet (0.016 acres) of jurisdictional waters. Since less than 0.33 acres and 500 linear feet will be disturbed, pre-notification of the Corps is not necessary. The "permitee" must submit a report (post-construction notice) within thirty (30) days of completion of the work. Attachment A contains all the information necessary for post-construction notification under NWP 26.

Please contact Olsen Associates at 909-766-4655 if there are any questions regarding this report.

Sincerely,

Cindy A. Thielman

Cindy A. Thielman

Attachments: 2

Attachment A: Nationwide Permit 26 Post-Construction Notification

For discharges causing the loss of 1/3 acre or less and 500 linear feet or less of waters of the United States the permitee must submit a report within thirty (30) days of completion, containing the following information:

1. Name, address and telephone number of the permitee:

   Pacific Communities Builders, Inc.
   1000 Dove Street, Suite 100
   Newport Beach, California 92660

2. Location of work:

   APN 949-020-003, APN 949-020-004, and APN 949-020-006

   USGS 7.5' series Murrieta quadrangle, Township 7 south, Range 3 west, southeast quarter of Section 6, southwest quarter of Section 5, and northeast quarter of Section 7.

   Located northeast of Interstate 15 freeway, just southwest of the Murrieta boundary, southwest of Jackson Avenue and northwest of Via Cedro and Nutmeg Street, in the City of Murrieta, Riverside County, California.

3. Description of work:

   Clearing, grading (cut and fill) and compaction of approximately 40 acres of land to form pads for construction of residential dwellings. A total of approximately 422,000 cubic yards of earth moved.

4. Type and acreage (or square feet) of the loss of waters of the United States:

   Approximately 0.016 acres
   Approximately 491 linear feet of stream bank

5. Date of completion of work:

   Work initiated May 1999. Work completed: _____.

6. Permitee's signature and title certifying the accuracy of the above information.

   _____ _____
   Signature Date

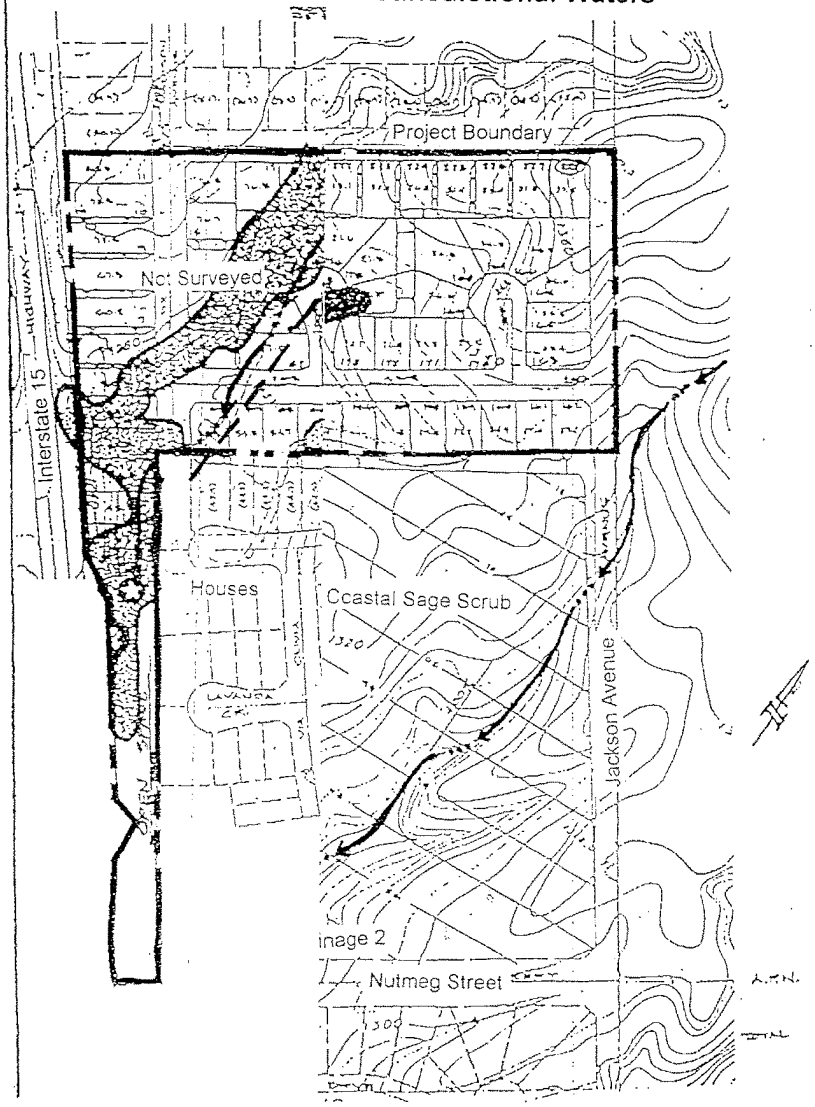
   Name: _____

   Title: _____

APN 949-020-003, APN 949-020-0 OAKS
362 (VESTING)

USGS 7.5' series Murrieta quadrang
of Section 6, southwest quarter of S

Figure 1. Habitat and Jurisdictional Waters



Attachment "E"

JMAW
Environmental & Engineering
Service Group

26471 Crown Valley Parkway, Suite 100
Mission Viejo, CA 92691
949-367-1000
949-367-0117 (FAX)

1419 Genoa Lane
San Jacinto, CA 92583
909-654-4092
909-654-9129 (FAX)

Date: 5/24/99

To: Andy Ewing, US Fish and Wildlife Service (Carlsbad)

Cc: US Fish and Wildlife – Portland Office
City of Murrieta
County of Riverside Supervisors - Buster, Mullen, Venerable
Congressman George Brown
Congressman Mary Bono
Congressman Ken Calvert
Congresswoman Maxine Walters
Pacific Community Homes
Builders Industry Association of Riverside County
Riverside County Farm Bureau
Eastern Municipal Water District
Rancho Water District
Southern California Edison
Metropolitan Water District
Inland Empire Urban League

From: Virgal Woolfolk – President of JMAW Environmental Service Group

RE: Result of the Quino checkerspot butterfly habitat evaulation of the Pacific Community site located in the City of Murrieta, Riverside County, California

---

Per our telephone conversation of today (May 24, 1999) and last Friday afternoon (May 21, 1999), I have attached a second version of the biological habitat suitability evaluation completed for the project site within the City of Murrieta by Olsen Environmental.

I authorized a second report mainly due to your staff interpretation of the first report. Comments drawn from the first report by your staff in a telephone conversation between Ms.Kramer, Ms. Moen and their supervisor, and myself on Friday clearly showed a determine conclusion. The biologist who wrote the report concurred that your staff was reading more into the report than he intended.

To be direct Mr. Ewing, your staff is out of control and there is limited communications taking place among your staff members. Each one is doing their "own" thing. It really is a sorry state of affairs. This is one of the reasons I decided to have Portland review this project and contacted Ms. Vickie Finn. The other was due to the arrogance of your staff, which has become so common place with the Service lately. The Service is responsible and is accountable to people of the United States (me) and not the other way around. The Service was established to work for the people and exist to serve the people. Again, this includes any person that calls your office, or walks through your door. The Service must show concern for issues other than those supported by the Sierra Club and other environmental groups. Years ago, the Service was responsible for the whole environment to protect lands for fishing and hunting. Now it only purpose is to stop growth. That is not what the majority of the American public desires of this agency.

It is clear that the Service has to be brought to task on how they have implemented this program to protect the Quino checkerspot butterfly. To wait until the last moment and give the residents of Riverside County only a few weeks to confirm its existence on a plant that can disappear within two days- as it was with this project- creates mistrust and confusion among the people. Basically, if you have a dishonest biologist, the person can say that the plant is on-site, then charge you more to do the study, and still more to complete the process under Section 10. This process places low income and minority residents especially at a substantial disadvantage considering they must be in competition with large housing developers for the biologist. If you are biologist, which client will you chose, the poor resident with the 5 acres, or the developer with 40 acres plus? It is not a crime to make money, but it is a crime not to provide equal access to all the residents impacted by such a cumbersome standard mandated by the federal government. I would not be surprise if the Supreme Court makes a ruling on this very issue regarding the implementation of the Endangered Species Act. You can not implement a law that places hindrance and a financial hardship on a majority of the populace to comply. In addition, the Service has failed to educate the populace on how this process should work and when reasonable exceptions would be allowed. Clearly an exception is warranted when the habitat is of such a poor quality, land-locked, disturbed with no natural vegetation, and has a possible lack of movement corridor for the species.

Because it has been my practice, I attempted to contact the Service to explain a situation we had with the project site to ensure we were in compliance with the standards implemented by your agency. We requested to speak to the person who was responsible for the Quino checkerspot butterfly for Riverside County. After providing the information to Ms. Moen in a good faith effort, the Service then reneged on our agreement because Ms. Kramer thought we should have included her in the meeting. What type of nonsense is that? Your staff told us the person in-charge was Ms. Moen, not Ms. Kramer. Furthermore, during our meeting with Ms. Moen, never did she say or give any impression that she did not have the authority to assist us in this cumbersome process, or inform us that Ms. Kramer had to make the final decision.

We attempted to follow the rules. For that action, we had an employee of yours get on the telephone and not offer to visit the site, not offer to help with mitigation, not offer help to set up a meeting to bring our data in for review, not offer to meet with the parties involved to determine if an informal or formal consultation was warranted. We had a Service employee who spoke to me like I was a servant. She lectured me on how I should have only spoken with her. She said that when she got around to it she would review our project. She was out of line to talk to any public person in that manner.

Next, once your agency makes an agreement, by God, keep your word. That is why all the work of people like myself and former members of the Service like Art Davenport, John Bradley, Zeb, Brooks Harper and others are being quickly eroded by this type of nonsense. For fifteen years I have worked with the County of Riverside and other public agencies to make sure we had a solid environment. An environment that represented progress for future homeowners and habitat for wildlife. Now the County wants to dissolve the Multispecies program and the K-rat plan. If they do, your office is directly responsible for such actions.

The project site in Murrieta is almost land-locked. It has no natural vegetation and had been used for farming purposes for a number of years. Recently the decision was made to convert the property for residential purposes. Many of the existing homes that were on the site have been destroyed. Only the foundations are remaining. Because the site is vacant, children use the site for a large playground. There is solid evidence of the use of off-road vehicles that are seriously impacting the site. Nearby residents have begun using the site for a large dumping ground.

I could understand the Service having reservation if the project site was in pristine habitat and large 4,000 square foot homes were being constructed. This is not the case. The homes are affordable and within an established residential area.

When I spoke to Ms. Moen, I was clear that the biologist had discovered two small patches of dwarf plantain (*Plantago erecta*) on-site. I also explained that because the protected vegetation was found

partially within the right-of-way of the City of Murrieta expansion of Nutmeg Street, informal consultation would be required by the City and JMAW representing Pacific Communities. Ms. Moen told myself and my partner that "because the habitat was not significant in grade, if the City did not object, the Service had no major problems with the grading and the issuance of the grading permits to Pacific Communities." The City would allow the developer to begin grading, except for the lots we found the plants. That was a solution that met everybody's needs. We leave and tell our client and the City what she said. My client is overjoyed and the City believes my approach provided a balance solution to the problem. I followed the discussion by sending a memo. Next the City of Murrieta calls the Service and Ms. Kramer tells the City what I had written was incorrect. Now it appears I tried to falsify what Ms. Moen had told us. Ms. Moen had full knowledge of what the project scope involved.

I have a reputation of being honest and keeping my word. I do not like what has evolved regarding this project and the method Ms. Kramer used to stop the project. If she wanted us to mitigate under Section 10, we would have done so, but that is not what occurred and not what Ms. Moen told us.

Furthermore, Ms. Kramer assured me that she would call me last Wednesday to discuss the project. She failed to call and I ended up calling you. Then she told me she would meet with Ms. Moen and call me between 8:00am and 9:00am on Friday morning. I waited until 11:30 before I finally left a message for you and called Portland. This is downright unprofessional. I promised another client I would be on site and this caused a conflict. How do you expect others to follow the protocol of the Service when your agency does not keep its word?

Now, I want you office to keep its word regarding this project as was agreed by Ms. Moen. Allow us to grade the site, reserving if necessary, the proposed lots where the *Plantago erecta* has been identified. If necessary, we will then meet with the Service and the City of Murrieta to determine how this section of the project should be developed. But keep in mind each day those kids are impacting the site with their off-road vehicles, bikes and skateboard, and adults are using the site for horse backing riding and off-road vehicles. This does not include the use of the land for a dumping ground.

I expect a meeting with Ms. Moen by this Wednesday (June 27) to resolve this issue and a telephone call by tomorrow morning. However, no meeting would be necessary if your office would keep its original agreement as proposed by the Portland office. Ms. Finn was clear that if the Service gave their word on a project, it should keep its agreement. I agree.

If you are going to be effective in this area, Andy, your staff and the Service must keep its word. I have learned that not all the people are going to take a "shine to you" as my grandmother said, but your word must be good and kept. The Service has a hard job, but it is being made harder by the negative attitude that has become such a fabric of the organization lately.

Respectfully submitted,
JMAW Environmental Service Group

Virgal Woolfolk
Managing Partner

Attachment "F"

United States Department of the Interior
Fish and Wildlife Service
Ecological Services
Carlsbad Fish and Wildlife Office
2730 Loker Avenue West
Carlsbad, California 92008

JUN 1 5 1999

Mr. Ed McCoy, Senior Planner
City of Murrieta
26442 Beckman Court,
Murrieta, California 92562

Re: Pacific Communities Site, Tentative Tract 25362 in Murrieta, Western Riverside County, California

Dear Mr. McCoy:

We have reviewed the information on the biological resources present on the Pacific Communities Site, Tentative Tract 25362, provided to us by Mr. Virgal Woolfolk from Thomas Olsen Associates. This includes a letter dated May 11, 1999, to Mr. John Minch of John Minch and Associates, Inc. from Brian Drake of Thomas Olsen Associates with 3 maps and a letter dated May 21, 1999, also to Mr. John Minch from Brian Drake with 1 attached map.

In both letters, the consulting biologist states that the larval host plant for the federally endangered Quino Checkerspot Butterfly (*Euphydryas editha quino*) is present on the site. According to the description given in both letters, the larval host plant is present in sufficient densities to warrant adult-focused surveys for the Quino Checkerspot butterfly according to the January 1999, survey protocol established by our office. The consulting biologist recommended adult-focused butterfly surveys.

We agree with the biologist's recommendations for this property. If you have any questions or comments please contact Dr. Kate Kramer or Christine Moen of my staff at (760) 431-9440.

Sincerely,

Michelle Shaughnessy

for Jim A. Bartel
Assistant Field Supervisor

1-6-9-HC-245

cc: Mr. Virgal Woolfolk (JMAW Environmental Service Group)
Mr. John Minch (John Minch and Associates, Inc.)

CITY OF MURRIETA

26112 Beckman Court, Murrieta, CA 92562
Telephone: 909-698-1040 Fax: 909-698-4509

Internet Address:
ci.murrieta.ca.us

June 15, 1999

Dr. Kate Kramer
US Department of the Interior
Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Pacific Communities Tract 25362

Dear Dr. Kramer:

I am in receipt of your letter dated June 15, 1999, regarding the subject tract and the F&WS requirements for an adult focused survey for Quino Checkerspot Butterfly. Based upon my conversations with Pacific Communities consultant, Virgal Woolfolk, it is our understanding that the host plant for the QCB occurs in small isolated areas on site. Mr. Woolfolk explained to me that they (Pacific Communities) are willing to fence off an expanded area around the host plant areas and conduct the focused adult survey next year. A copy of the most recent letter from Mr. Woolfolk is provided with this correspondence. They would like to commence grading on the remaining areas of the site. Please let me know, in writing, if this is acceptable to the F&WS.

Sincerely,

Ed McCoy, AICP
Senior Planner

Attachment "G"

JMAW

Environmental & Engineering Service Group
26471 Crown Valley Parkway, Suite 100
Mission Viejo, CA 92691
949-367-1000
949-367-0117 (FAX)

1419 Genoa Lane
San Jacinto, CA 92583
909-654-4092
909-654-9129 (FAX)

Thursday, June 03, 1999

Mr. Ken Berg
US Fish and Wildlife Service
Carlsbad, CA

Subject: Resolution of Murrieta Site

Per our conversation of May 28, 1999, I am again submitting a response to allow Pacific Community Homes to begin grading of affordable housing within the City of Murrieta. This letter is to procure your signature and/or Andy Yuen's signature to allow immediate grading by Pacific Community of the site.

As you are aware, JMAW's Environmental team of Dr. John Minch and myself met with Ms. Moen at your office and outlined the scope of the project. The significant facts presented were:

- Vegetatively, the project site in Murrieta is almost land locked. The project site has no natural vegetation and had been used for farming purposes for years. Homes that were located on site have since been vacated and destroyed with only the foundations remaining. Recently the decision was made to convert the property for residential purposes.

- The proposed project site is located within the "adult survey area" identified in the U.S. Fish and Wildlife Service (Service) protocol dated January 25, 1999. On May 4, 1999, Thomas Olsen Associates (TOS) conducted a habitat suitability evaluation (a.k.a. "focused habitat assessment") for the Quino checkerspot butterfly (*Euphydryas editha quino*) on the 55-acre Pacific Community site (APN 9494-020-003, 004 and 006) located within the City of Murrieta, in Riverside County. This survey was conducted by TOS to determine whether or not site conditions might, by Service determination and facts presented, preclude this property from regional protocol.

- It was determined by the biologist that the habitat is less than ideal for support of adult butterflies given that the site is vegetated primarily by dense annual grassland. The coastal sage scrub (CSS) on-site is dead. The project site contains several sparse to dense patches of potential nectar sources, including fiddleneck (*Amsinckia sp.*) *cryptantha* (*Cryptantha sp.*) and deerweed (*Lotus scoparius*).

- As of the time the JMAW Environmental team met with Ms. Moen, two patches of dwaft plantain (Plantago erecta), the requisite host plant of Quino checkerspot larvae, were known within the proposed development area. Both patches were approximately 2 meters in diameter (Figure 1). Since our initial meeting with Ms. Moen, in a subsequent re-visit to the project site on May 21, 1999, a third patch of the host plant was found a few feet from the first plant which measured approximately 10 meters in length by 5 meters in width (Figure 1).

- The section of the property in which these host plants distribution were discovered is bounded on the southwest by tract homes, on the southeast by Nutmeg Street, and on the northeast by approximately 15 acres of dense CSS that is not part of the project site. The project site is bordered on the southwest I-15 Freeway, on the northwest by graded land, on the northeast by Jackson Avenue and undisturbed CSS, and on the southeast by Nutmeg and tract homes. By being in such close proximity to residential areas, the site is being used for illegal dumping and is subject to trespass by off-road vehicles.

- Because the site is vacant near the designated plants, children use the site for a large playground. There is solid evidence, as viewed by JMAW Environmental staff, that the children area seriously impacting the existing sensitive plants,

- We proposed that to offset the potential impacts of the plants, we would be willing to create a buffer around the plant of several acres. This would allow remaining site to be graded, while allowing JMAW Environmental to establish a meeting between the Service, the City of Murrieta and Pacific Community to determine if an adult survey would be required. Because the plant are located with the designated right-of-way of Nutmeg Street and within a proposed street within the future housing tract further meetings were necessary. Based on conversation with the biologist and other experienced biologist I know, I concluded that an area of approximately 3 acres would be substantial in avoidance of any substantial disturbance of the plant. This action was taken although the sensitive area is being disturbed daily by recreational activities. In addition, once grading was approved, a barrier would be created around the sensitive area to protect it from further impact.

Having spoken to Ms. Moen and providing her with the above-mentioned information, it was clear that Ms. Moen understood the project scope. In fact, she left to room to speak with her supervisor. With my partner present, Ms. Moen stated that..."because the habitat was not significant in grade, if the City did not object, the Service had no problems with the grading and the issuance of the grading permits to Pacific Community."

As you recall, it was after we had approval of this plan by the Service and our memo was sent to the City as directed by the Service that problems developed due to Ms. Kramers unauthorized conversations with the City.

Although the City of Murrieta approved this plan, we have been stalled by the actions of the Service. We desired that your office signed this letter to allow the Pacific Community to begin immediate grading of the site. Having had the project reviewed by your Portland office and Mr. Bob Uram - an attorney and former Clinton Administration administrator - we believe the mitigation plan to buffer the site is appropriate.

But most important, in a letter from the Service to Congressman Ken Calvert dated March 15, 1999; the question was answered by Service regarding whether local governments are obligated to enforce the Service's protocol. The following is the Service's reply:

> *The decision to use the survey protocol is made by the local governments to meet their local needs in considering environmental values and impacts in their lands use planning and approval process, such as compliance with the California Environmental Quality Act (CEQA). We recommended the protocol to the local jurisdictions and others to ensure a biologically based, uniform method for determining the presence or absence of the endangered Quino checkerspot butterfly throughout southern California. It is the local jurisdiction's discretion whether to use the protocol. Adherence to the survey protocol enables the Service to make an informal and consistent response to local jurisdictions when we are asked to concur with the local jurisdiction's CEQA findings.*

Here, the City of Murrieta has already approved the project in compliance with CEQA. Based on the proposed plan to mitigate the sensitive plants by creating a buffer, the city agreed this was a logical solution. In that the Service believed the proposed plan was adequate until the interference by Ms. Kramer and that the Portland office agrees that it is important that the Service keeps its word on project, we propose the following.

We have created a line for the person in charge of the Riverside area, whether that is Mr. Berg, or Mr. Yuen to acknowledge what was agreed. We believe it is important and vital that your office keeps its word regarding this project as was agreed by Ms. Moen. Allow us to grade the remaining of the site, except for the proposed lots where the Plantago erecta has been identified. We will then meet with the Service and the City of Murrieta to determine how this section of the project should be developed. But keep in mind each day those kids are impacting the site with their out-road vehicles, bikes and skateboard; and adults are using the site for horse backing riding and off-road vehicles. This does not include the use of the land for a dumping ground.

We thank you for your cooperation in this matter and I hope we can work together in the future in ensuring fairness in the implementation of the Endangered Species Act.

Thank you,

Virgal Woolfolk

Figure 1

MURRIETA OAKS (TRACT 25362)
E.e. quino HOST PLANT LOCATION MAP

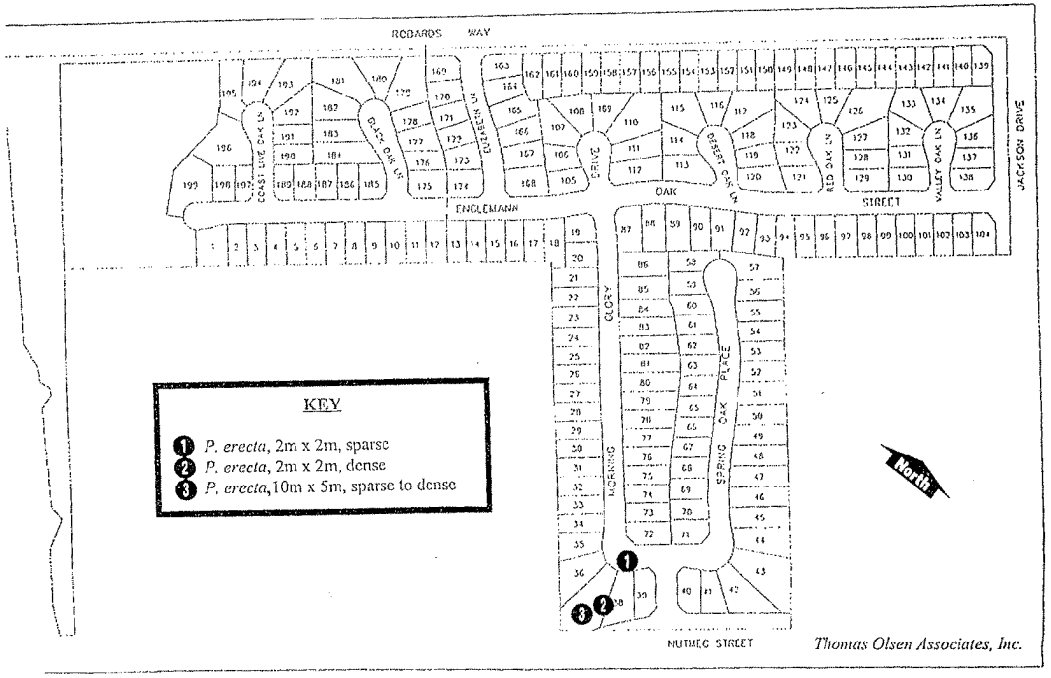


Figure 2

MURRIETA OAKS (TRACT 25362)

~~*E.c. quino* HOST PLANT LOCATION MAP~~

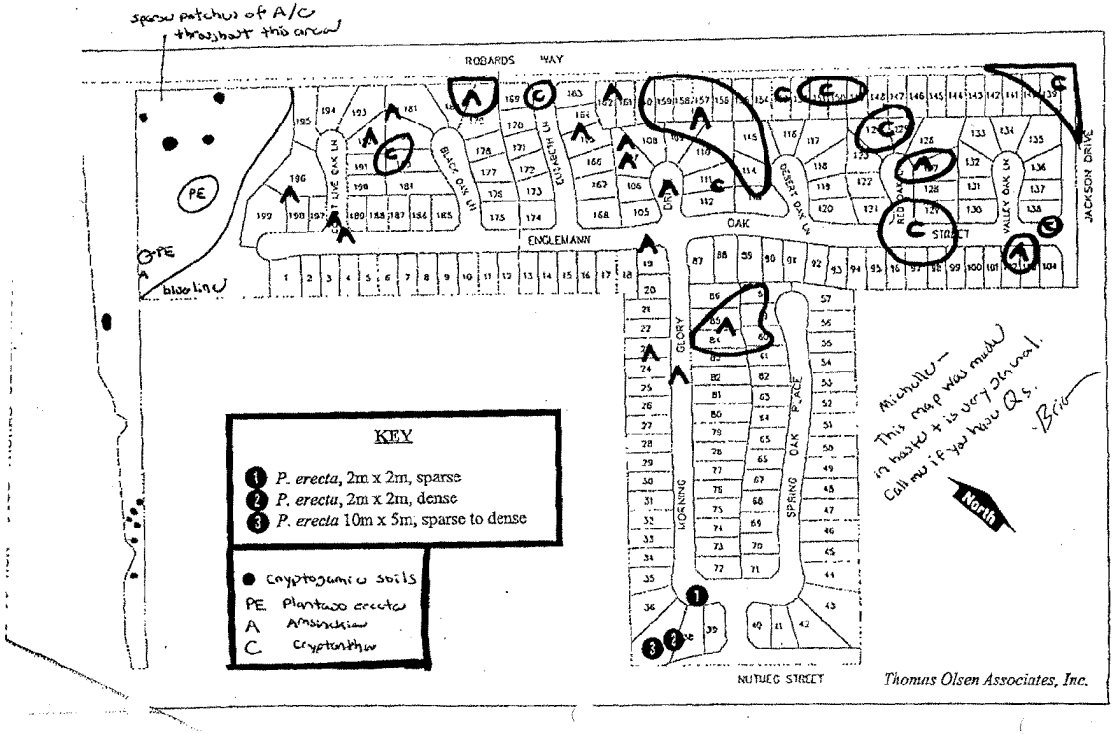


Figure 3

MURRIETA OAKS (TRACT 25362)
E.e. quino HOST PLANT LOCATION MAP

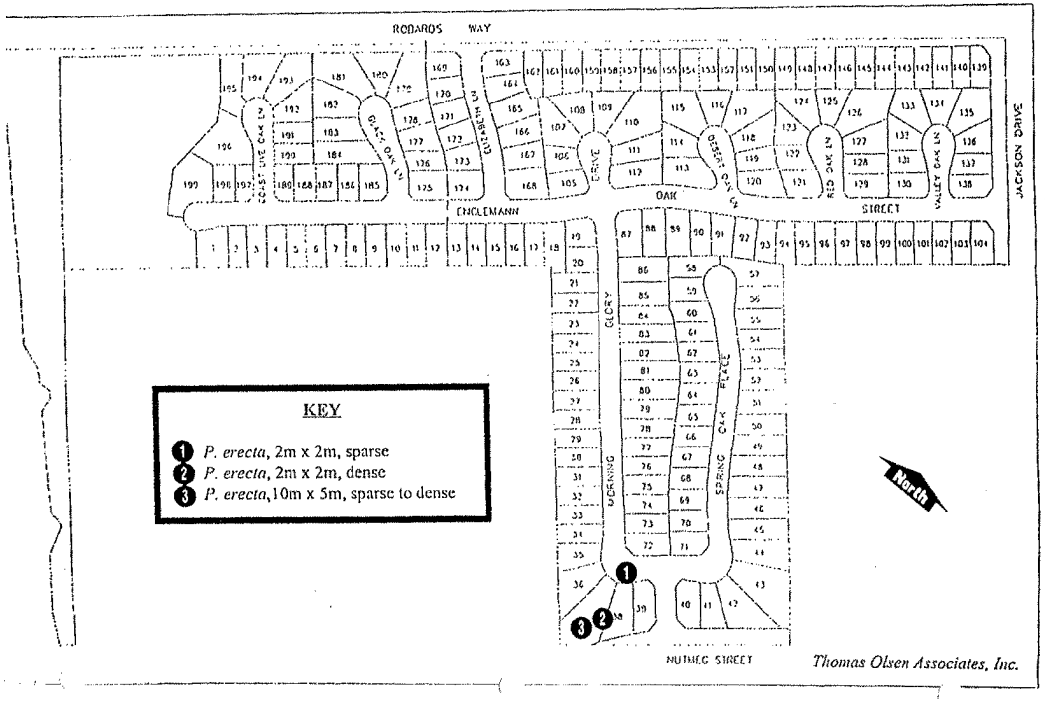
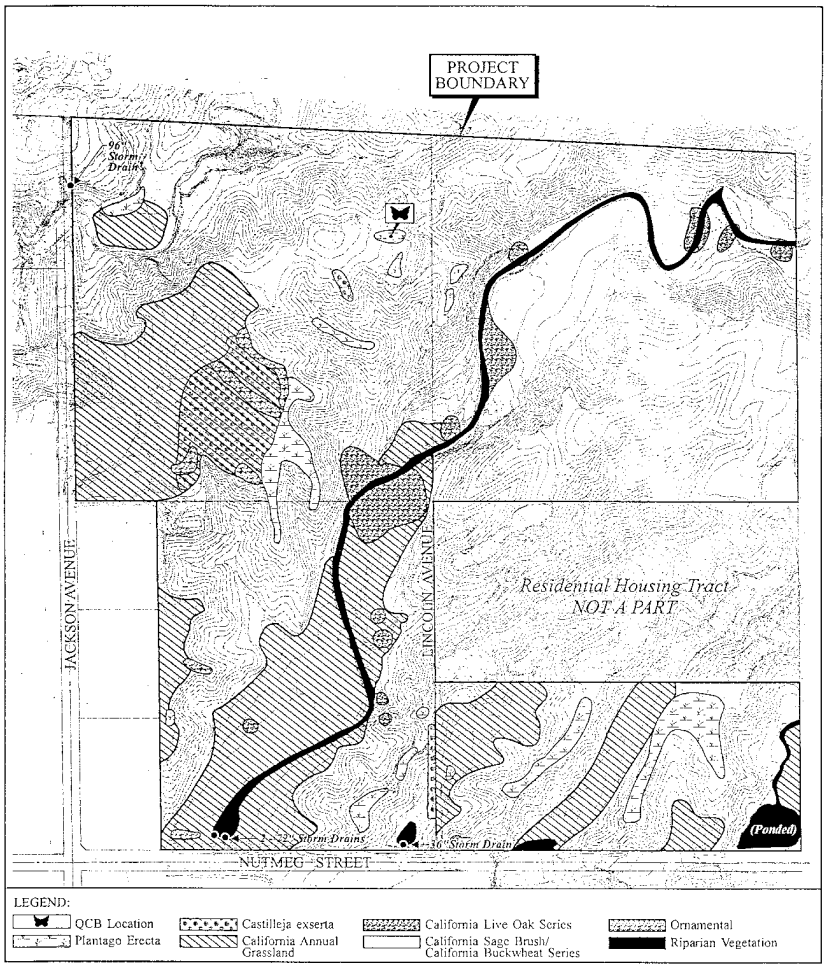


Figure 4



6/26/98(BUI830)

Figure 3

N

LSA

Scale in Feet
0 200' 400'

TTM 23435 Vegetation Map Showing
Quino Checkerspot Butterfly (QCB) Location

[Applause.]

Mr. POMBO. Thank you.

I would like to recognize Mr. Calvert for his questions.

Mr. CALVERT. Thank you, Mr. Chairman.

Ms. Rosen, I am certainly very interested in your testimony. Let me get this straight. You acquired a 250 acre site in Murrieta to build a high school site and another school site. Your biologists looked over and found 70 to 80 acres of habitat, which you are apparently willing to give up, and Fish and Wildlife told you that they wanted the entire 250 acres.

Ms. ROSEN. Yes, sir. The site was actually acquired by the City of Murrieta. So it is a joint use project with the city and the school district, and, yes, that is correct.

Mr. CALVERT. Did they give any reason why they wanted the 250 acres other than the fact that they believed that it was all apparently important habitat?

Ms. ROSEN. No. Basically it was that they deemed it to be all habitat, and nothing else was forthcoming.

Mr. CALVERT. When you say "they," when your biologists say 70 to 80 acres were suitable habitat, did they give you any scientific information to prove——

Ms. ROSEN. The biologists?

Mr. CALVERT. I mean from their point of view, Fish and Wildlife's point of view. Did they give you any background information to show why they wanted the entire 250 acres of property?

Ms. ROSEN. No, sir.

Mr. CALVERT. They just said they wanted the entire 250 acres?

Ms. ROSEN. Yes, sir.

Mr. CALVERT. Mr. Woolfolk.

Mr. WOOLFOLK. Yes, sir.

Mr. CALVERT. You have been dealing with Fish and Wildlife, you say, for the last 15 years?

Mr. WOOLFOLK. I started out working with them when I was in the Navy, working some projects for them back then in the 1980s.

Mr. CALVERT. Have you dealt primarily with the Carlsbad office or did you deal with other offices?

Mr. WOOLFOLK. Well, back in those days when we first started, their office was in Laguna Miguel.

Mr. CALVERT. Right, right.

Mr. WOOLFOLK. And then over the last couple of years, they are now in Carlsbad.

Mr. CALVERT. But basically the same people.

Mr. WOOLFOLK. The same group.

Mr. CALVERT. So would you say that the operation has changed over the last 10 years?

Mr. WOOLFOLK. Yes, sir. What I see is the folks that originally used to be there, they looked at for hunting and fishing and kind of looked at the whole environment overall.

Now we have a group of folks that are just these biologists that want to protect these species, but what really concerns me most of all is that it appears that environmental groups have manipulated the system so that these people cannot make decisions, and their relationships with them are so tight here that they are not open

minded and balanced about making these decisions for overall people.

I thought that when they picked the people who were on the committee for this Quino butterfly, it was only picked by one guy up in Sacramento. He picked basically all of these scientists that they know.

My concern with that is as a business who is specializing in this area, we as a disabled veteran business cannot bid on these jobs because they pick folks who they want to do the contract. So if you start looking at who do they give business to, you never see any other people besides these certain people always getting the contracts.

Mr. CALVERT. You indicated, too, the attitude of the employees that you are talking to.

Mr. WOOLFOLK. That is correct.

Mr. CALVERT. They are not treating you with any courtesy at the desk or when you are on telephone calls.

Mr. WOOLFOLK. Their attitude is, "We will get to you when we get to you." You walk in there, and it is like, "Well, we will call you later," or they do not return phone calls. That is the biggest issue. They just do not return phone calls.

And we are the American public. We pay their salaries. I think that must be very, very, very clear, and right now we have the President kind of walking around the country talking about that we need to invest in minority communities and do things and that aspect, but when we have this agency who is out there that can basically stop you from doing that, then how are we going to get this turn-around? It is really important that be address this issue because it has great economic impacts.

I sit on the Work Force Development Board for Riverside County. I was the assistant board on that, and one of the issues that we tried to address was that issue. We cannot get a development here in this area and new economic enterprises if they are going to be stopped every time they start a project.

Mr. CALVERT. Thank you.

Thank you, Mr. Chairman.

Mr. POMBO. Ms. Chenoweth.

Mrs. CHENOWETH. Thank you very much.

I wanted to address some of my questions to the pastor or to the Reverend.

Reverend, I was looking over your disclosure statement. Have you pastored a church?

Rev. MOORE-KOCHLACS. Yes. In fact, I pastored the Redlands United Methodist Church, and a couple of the water people here were members of my congregation.

Mrs. CHENOWETH. And are you still pastoring that church?

Rev. MOORE-KOCHLACS. No. My wife is a district superintendent for the San Diego district of the United Methodist Church. She oversees about 50 churches in San Diego County and Imperial County, and when she got the promotion, her husband followed her.

Mrs. CHENOWETH. You are a real '90s man, aren't you? But I can imagine you have a lot to talk about in your relationship. That is commendable.

You are head of the Environmental Ministries of Southern California or Director?

Rev. MOORE-KOCHLACS. Yes, I am the Director, yes.

Mrs. CHENOWETH. And does the Methodist Church pay you for that position or are you paid by someone else?

Rev. MOORE-KOCHLACS. No, the bishop appoints me without a stipend, and so I have to raise my own funds for that position, and I manage to come up with about $5,000 per year.

Mrs. CHENOWETH. And those funds usually come from?

Rev. MOORE-KOCHLACS. Individuals.

Mrs. CHENOWETH. From individuals?

Rev. MOORE-KOCHLACS. Right.

Mrs. CHENOWETH. I notice that they were not on your disclosure statement, the funds.

Rev. MOORE-KOCHLACS. Well, when you get 50—I did not know that for each 50 and $100 contribution I needed to put down who those persons were who had contributed.

Mrs. CHENOWETH. You know, as a man of the cloth, you said some pretty startling things, and one thing is that in our human arrogance, greed, lust for power, and desire for ownership we forget our divinely appointed role.

Rev. MOORE-KOCHLACS. Yes.

Mrs. CHENOWETH. And I wonder if you can help me understand what you mean, our greed and lust and desire for power. Can you give us more specifics?

Rev. MOORE-KOCHLACS. Sure. I think that as we focus on both the development of the land and as we have become so focused on our corporate development, those that lose out are those without a voice, and the church has always been for those without a voice. It seeks to speak for those.

And that part of our neighborhood, those neighbors of ours who are without voice right now in the majority are the endangered species, and so it is our sense of overlooking them; it is our sense of being so anthropocentrically focused that we lose sight of the biocentric world that God has created and called good.

And so that is where the arrogance comes in. We become so species focused, so human focused that we lose our regard for those species about us who are without voice.

Mrs. CHENOWETH. And did I hear you say that one of the purposes of the church is to speak for the species? Did I understand that?

Rev. MOORE-KOCHLACS. Yes. Yes, you did.

Mrs. CHENOWETH. I see. Hum.

[Laughter.]

Rev. MOORE-KOCHLACS. If you would look at Genesis 2:15 you would read that we are called to be stewards and protectors of the garden, to till and to tend, which is the first commandment in a sense that we find, and that call of to till and to tend means to protect and serve in Hebrew, and what are we called to protect and serve? The bounty.

If you read Genesis, you find that at each point, each stage of creation God looks out and calls it good, calls it blessed, calls us to stewardship.

Mrs. CHENOWETH. I think he does call us to stewardship, and I find it interesting, and in all due respect, if you look at Genesis 2:5, it concludes God's peopling of the earth and putting all of the animals and plants together and the herbs and so forth, and then the last part of that verse says, "And there was no man to till the soil, and then God created Adam from the dust of the earth."

I think that God did create us to be productive and that His creation is very orderly and that humans are part of that order, and, Reverend Kochlacs, I would just love to invite you to come to Idaho or the northwestern states and look at the forests that have become utter natural disorder because of the management of the endangered species and management of our natural resources under the Endangered Species.

The chaotic and catastrophic fires that occur I do not believe are in God's plan for order and productivity in this earth, and in all due respect, I would love to be able to sit down and talk to you, learn from you, and be able to share with you some of my concerns.

Thank you very much.

Rev. MOORE-KOCHLACS. I would be glad to do that.

[Applause.]

Mr. POMBO. Mr. Miller.

Mr. MILLER. Thank you.

Jesus said something interesting that is really refreshing to me right now, that no prophet is a private interpretation of the Scriptures, and based on what you had presented in your comments there actually baffles me because the Scriptures I read deals with man's relationship to God and how God created the earth, and basically man is in charge and oversight of that.

And when man moved away from God, it is amazing what God did. He spoke to a man named Noah because of his anger, and he told him to build an ark, and he told him to take two of each kind of animals and more of others that they would eat and place them on that ark. Then he caused rain to fall and killed everything, except he put man with some animals and moved them somewhere else.

Now, if we had to go through that today, it would be a nightmare. I would like to read you a little cute story.

[Laughter.]

Mr. MILLER. And I would like you to listen to this, and if Noah was alive today, just think of this.

And the Lord spoke to Noah and said, "In six months I am going to make it rain until the whole earth is covered with water and all of the evil people are destroyed, but I want to save a few good people and two of every kind of living thing on the planet. I am ordering you to build me an ark."

And in a flash of lightning, he delivered the specifications for the ark. "Okay," Noah said, trembling in fear and fumbling with the blueprints.

Six months later and it starts to rain. Thundered the Lord, "You had better have my ark completed or learn to swim for a very long time." And six months passed. The skies begin to cloud up. Rain began to fall. The Lord saw that Noah was sitting in the front yard weeping, and there was no ark.

"Noah," shouted the Lord, "where is my ark?" A lightning bolt crashed to the ground next to Noah.

"Lord, please forgive me," begged Noah. "I did my best, but there were big problems. First I had to get a building permit for the ark's construction project, and your plans did not meet code. So I had to hire an engineer to redraw the plans. Then I got into a big fight over whether or not the ark needed a fire sprinkler system."

[Laughter.]

Mr. MILLER. "My neighbors objected claiming I was violating zoning by building the ark in my front yard. So I had to get a variance from the City Planning Commission. Then I had a big problem getting enough wood for the ark because there was a ban on cutting trees because of the spotted owl. I had to convince U.S. Fish and Wildlife that I needed the wood to save the owl, but they would not let me catch any owls. So no owls."

[Laughter.]

Mr. MILLER. "Then the carpenters formed a union and went out on strike. I had to negotiate a settlement with the National Labor Relations Board before anyone could pick up a saw or hammer. Now I have 16 carpenters going on the boat and still no owl.

"Then I started gathering up animals and got sued by an animals rights group. They objected to me taking only two of each kind. Just when I got the lawsuit dismissed, EPA notified me that I could not complete the ark without filing an environmental impact statement on the proposed flood. They did not take kindly to the idea that you had jurisdiction over your conduct and you were the supreme being.

"Then the Army Corps of Engineers wanted a map of the proposed new flood plain."

[Laughter.]

Mr. MILLER. "Right now I am still trying to resolve a complaint from the Equal Employment Opportunity Commission over how many Croatians I am supposed to hire, and the IRS has seized all of my assets claiming I am trying to avoid paying taxes by leaving the country, and I just got a notice from the state about owing some kind of use tax. I really do not think I can finish your ark for at least another five years," Noah wailed.

Then the skies began to clear. The sun began to shine. The rainbow arched across the sky, and Noah looked up with a smile. "You mean you are not going to destroy the earth?" Noah asked hopefully.

"No," said the Lord sadly. "The government already has."

[Laughter and applause.]

Mr. MILLER. You know, the individual to the right of me——

Rev. MOORE-KOCHLACS. Do I have a chance to respond?

Mr. MILLER. No, you do not. I heard enough of your hypocrisy on the use of the Scriptures.

Rev. MOORE-KOCHLACS. Well, that is not true because the endangered——

Mr. MILLER. I believe I have the floor.

[Applause.]

Rev. MOORE-KOCHACS. Because the Noah story is the first——

Mr. MILLER. This individual to your right—Mr. Chairman, I——

Rev. MOORE-KOCHLACS. [continuing] Endangered Species Act, and every creature was protected by that rainbow.

Mr. MILLER. I do not believe anybody——

Rev. MOORE-KOCHLACS. And so your presentation of the story——

Mr. MILLER. Sir.

Rev. MOORE-KOCHLACS. [continuing] is a distortion of the biblical story.

Mr. MILLER. I do not believe anybody interrupted you when you were making your presentation. Please be a gentleman and allow me the same courtesy.

This individual to your right, or you left, my right, is the one who is impacted because of your desires. In fact, I am submitting a bill, and I hope my colleagues will support me, that says if the Federal Government desires to list an endangered species on the list, that the government should buy the property of those that are impacted because they want to set aside habitat for endangered species, not put the burden on the property ownership or somebody who inherited the property just because a species decided to move there.

If government wants to preserve habitat, I think that is good, but government should bear the burden, and agencies of the government should not——

[Applause.]

Mr. MILLER. [continuing] lose sight of what the intent is, and that is to represent the people of the United States who vote us into office and to hire them to serve for their betterment.

And it is a shame that government has got so far out of control. The original Constitution in its draft said "live, liberty and property." Now, because of slavery, it was changed to "live, liberty and the pursuit of happiness," because the Founding Fathers in their wisdom realized that they did not want the southern states to start thinking of the concept that black people were property and they had a constitutional right to own them. That was a wise move on their part.

However, in the process, the concept of property rights and the rights of individuals owning property and the kind of government now placing his will and his wants on those property owners was lost and has been lost over the years, and it is really sad.

It is a worthwhile endeavor to say we need to preserve those that are endangered, but I was reading an article yesterday, and it talks about some dinosaur bones they are still digging up, and I do not believe humans had anything to do with their extinction. In fact, we know very little about them.

But we need to do what we can to protect endangered species. I do not argue that, but in our effort, we should not create an unfunded mandate that is placed on property owners and private citizens that they should bear the cost of that preservation.

God, in His wisdom, had the intelligence to pick those animals up and move them, and when we talk about doing that, people think we are mean and mean spirited.

The burden should never fall on the individual who cannot defend himself from government. Government is supposed to create an environment where the individual is defended, and I think that

is what we are trying to do, and some government agencies are out of control, placing an intent on individual property owners as a burden and a mandate, and they have gone far beyond, far beyond what we consider reasonable.

And I believe many of us are here today to discuss that and to talk about issues that are important, and I hear this constant saying of separation of church and state when it comes to prayer, but then you want to beat property owners over the head with the Bible when it comes to saving endangered species, and you should be ashamed of yourself.

[Applause and boos.]

Mr. POMBO. I am going to have to ask the audience to please refrain from responding to the statements, if possible.

Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. Chairman, one point that has come out that I would like to pursue is the ratio of taking, and I do not know, Mr. Bragg or Mr. Woolfolk, if you have comments on this, but one thing that bothered me is that we have a mixture, obviously, as all counties do in San Diego County of public and private property, and we have got huge national forests. The Cleveland comes down almost to the Mexican border in my district and also state reserves, state parks, tens of thousands of acres of military land that will never be developed, and it for practical purposes amounts to a refuge for species.

And then mixed in among that we have private property, and every time I talk to somebody who wants to use their property and they will say, "I finally got permission from Fish and Wildlife to use three acres, but in return for that, I had to go out and buy nine acres," a ratio of three to one, or, "I had to buy 50 acres," and the ratio is always skewed in favor of government. If government lets private people use one acre of their own land, they always get a multiple of that for government use.

And one thing that I am concerned about is the amount of money or the amount of land that is being acquired by government, taken over by government as a result of this mitigation.

So I would like to ask Mr. Bragg and Mr. Woolfolk could you comment on that, on the ratios of taking or of exchange.

Mr. BRAGG. I will defer to Mr. Woolfolk.

Mr. WOOLFOLK. Yes, sir, if I may. There have been at least five different projects that I have worked on, but this particular project, we met with Fish and Wildlife this week to try to come up with some mitigation for this, and they referred us to this mitigation banking, those three options that they gave us.

One of them was BLM land that they have that is being operated through the county of Riverside. So I went up and spoke to Brian Low yesterday, and he is the Director of the Multi-species Plan, and Brian has 40 acres on BLM land that we might be able to purchase and then be able to degrade our 40 acres here, but it is one to one.

But during my time working at Easton, I have worked on some projects where Fish and Wildlife wanted eight to one, 12 to one in one case for the Senihoy Spotted Flower. So really when you start trying to equate the species and get some information, it is kind of hard.

One of the things that always concerned me is when we look at governmental land that is available, they never want to look at that land. No studies, to my knowledge, have been done like we do on private property to go out and see if there is the same species or habitat on these government lands and these parts in the BLM land that can be used to kind of offset this. So that is one of the issues that I have with it.

Mr. HUNTER. Okay. Mr. Libeu, you may have a comment on that or Mr. Bragg also with respect to the ratios. So you have seen ratios as high as eight to one.

Mr. WOOLFOLK. And 12 to one.

Mr. HUNTER. Eight to one and 12 to one. Mr. Libeu and Mr. Bragg, do you have any comments on that?

Mr. LIBEU. Earlier in this decade in the '90s we had projects that Mr. Woolfolk could talk about where the ratio was between 11 and 12 to one for vernal pool and this spotted horn flower that he's talking about.

The project that I identified today in my testimony, we do not know the exact set-aside, but we know the minimum is going to be at least three to one. Our project encompasses about 50 acres. That means Fish and Wildlife, the U.S. Government, will need at least 150 acres to mitigate the project, and again, that is just an open door right now. We do not know the exact answer, and that is one of the problems that all of us here at this table face, is that there is an open ended uncertainty to the actual finality of whatever the Fish and Wildlife is going to decide.

Mr. HUNTER. Is there any relationship—go ahead, Mr. Bragg, and then I will ask a follow-up question.

Mr. BRAGG. Well, in our instance, we started out with 1,100 acres, and we voluntarily contributed close to 600 of those acres to permanent open space habitat, and the authority of the Fish and Wildlife Service here, by the way, you should recognize comes from the identification of this property as waters of the United States.

Mr. HUNTER. Maybe a staff member could hold that where everybody can see that, including the panel and the audience, Mr. Chairman.

Mr. BRAGG. Waters of the United States, as defined in the Clean Water Act, is what triggered the Section 7 consultation around endangered species. Now, unfortunately it is not highlighted very well there, but the area in blue, and by the way, it is in Section 5 of the book that we provided to everybody; in that map, you can see the area outlined in blue was our original property, and the area outlined in yellow on this map is what the Fish and Wildlife Service has designated as the reasonable and prudent alternative.

The problem is about 50 acres of that does not even belong to us. So it has got to be eliminated. It reduces us down to about 150 acres, and that——

Mr. HUNTER. So you started with 1,100 acres, and when they are finished paring you down, you will have 150 usable acres?

Mr. BRAGG. Well, we cannot build the project on 150 acres. It is not reasonable or prudent, but the multiple is correct. We have got about maybe 12 percent of our original land remaining in the project.

Now, the Reverend—I would like to refer to part of what was said there. My father used to always tell me that broad generalizations are always bad, including this one. However, the broad generalization that was presumed here is that all corporate development is bad somehow, and I just do not agree with that.

We are attempting to do a responsible, reasonable development that benefits humans and in the process benefits the bighorn sheep that were federally listed in the middle of our project, and as a consequence, we are not out there being motivated by greed and corruption. We are being motivated by producing a positive result for everybody concerned.

Mr. HUNTER. I agree with that totally. In fact, there was a gentleman who is a fairly central character in the Bible who did a little home building himself. He is referred to on occasion.

You know, I think the Reverend would agree with this. You know, I do not think anybody agrees with the idea that you do not return phone calls. I do not think anybody agrees with the idea that you tell people that you are the boss, and if you were not in a meeting even though your office issued a particular position, that position is revoked because you were not there.

And to go back to the multiple, the fact that to get to be able to use an acre of your own land you have to give either in fee and give a deed in this mitigation or you have to perpetuate it as open space, which for practical purposes is giving it to the government, although you get the right to pay taxes on it for the rest of your life; the idea that that is always a multiple that accrues to the benefit of the government bothers me. It is always three to one, four to one, ten to one.

You cannot go on doing that forever. I have seen a lot of the private land now in San Diego county that is now owned by Uncle Sugar, even though Uncle Sam has 25,000 acres in Miramar. He has got millions of acres in the national forest that extend from the Mexican border north. They are taking that private property, and it is always in a large multiple.

So I wanted to ask you one other question, Mr. Woolfolk, Mr. Bragg, and Mr. Libeu, and then I will move on, but simply when the determination is given that you have to give a ten to one or a 12 to one or a three to one, do you get to appeal that? How does that work?

Mr. WOOLFOLK. Sir, that is one of the things that I wrote in my letter, that there is no appeal, and here is an example of how this works. If we can accept Mr. Chen, who is back there, if you can stand for a second, we attempted to get some biologists to come out and say that the mitigation that we had established, which was basically five acres around these plants, were adequate.

So then I went up, and I spoke to professors at UCR that I have known ten years, biologists that I have worked with for ten years, and nobody would come out and do this survey because they were afraid that if they did, Fish and Wildlife would not give them their certification next year, and they would not be able to work.

So, therefore, there is no way to appeal this. Even if we went out and tried to get experts to come and say this mitigation is out of line of three to one, eight to one, 12 to one, but for the Quino but-

terfly, particularly, then everybody is afraid to do it because they may not get their certification next year.

So there is no way to appeal this system. It is really, in my view, a very corrupt and this process is very corrupt, and it is thievery. This is thievery, and though I am not a minister, but I guess I hand around Jesse Jackson enough to be one. There is a Scripture that says the birds have their nest, right? You know, the sinner man has nowhere to lay his head.

Clearly, this property is to build homes for people who can afford them, and also I want the pastor here to know that I work on church development projects. We have a project in San Diego in your area where a church bought property. We are talking about $2 million, and went out and was getting ready to build, and the Fish and Wildlife came in and said they could not. Now the church is in holy—everybody has left, they cannot build, and they have got a $2 million bill.

So this is how this is happening in church communities. I want him to know that as well. I do that. So we really have a problem here.

Mr. HUNTER. Okay.

Mr. BRAGG. There is no rationale in the demand made of us for $500,000 to use our land. It was going someplace where we knew not. We do not have a clue where they are going to take $500,000, what they are going to do with it. So the accountability for the, quote, mitigation, unquote, needs to be addressed.

We have asked the Inspector General of the Department of the Interior to audit where that mitigation, so-called, goes and to whom it is paid and probably more importantly, to whom it is not paid because selective benefactoring of biologists who agree with the Fish and Wildlife Service we think is rampant.

Mr. POMBO. Thank you.

I would like to recognize Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman.

Before I start, I would first like to thank all of the witnesses who are here before us and remind us all that each and every one of them is here because they are respected by their peers. I think they have something to add to this, and I just want to say I appreciate your being here.

But with that my first three or four questions are for the Reverend, and if I could ask for a simple yes or no in the sake of brevity, I would appreciate it.

In the third paragraph of your statement, you say, "In our human arrogance, greed, lust for power, and desire for ownership, we forget out divinely appointed role."

So in reference to that, a simple yes or no, please. Again, do you own a home?

Rev. MOORE-KOCHLACS. No.

Ms. BONO. You do not own a home.

Rev. MOORE-KOCHLACS. No.

Ms. BONO. So you rent a home?

Rev. MOORE-KOCHLACS. Yes. In a sense, yes.

Ms. BONO. Does your wife own a home?

Rev. MOORE-KOCHLACS. No. It comes with the job.

Ms. BONO. It comes with the job. Okay. Do you use public utilities?

Rev. MOORE-KOCHLACS. Oh, yes.

Ms. BONO. And you use public transportation, public roads to get here?

Rev. MOORE-KOCHLACS. Yes.

Ms. BONO. Thank you. I know it's a simple question, but big to me.

Moving on to Mark Bragg, I have to be truthful with the audience. I know this developer quite well. He is in my district. I have driven by this project for 15 years now, and it is something that when Sonny ran for mayor in 1988, he believed wholeheartedly was going to be the salvation of Palm Springs. Realizing that tourism is the number one economic base in the City of Palm Springs, this gateway to Palm Springs was of vital importance to the continued growth and, if you would, even rebirth of Palm Springs.

So this is something that I have been interested in watching for a number of years, and I want to let you all know that beforehand. This is something that I believe in.

I want to ask Mr. Bragg: excluding the land, how much has this process cost you?

Mr. BRAGG. Excluding the cost of the land, about six and a half million dollars.

Ms. BONO. Six and a half million dollars on what?

Mr. BRAGG. Well, we have been dealing with the Fish and Wildlife Service since 1992. We approached them early on in the process to try and find out what it was that would make sense in our relationship because it was our interest, and it was in our interest, we thought, to be cooperative with government agencies.

Of course my opinion of that and my advice to other developers has changed dramatically in the last seven years, but between legal fees, carrying costs, the cost of continuing our operation, the cost of redesigning this project four times to satisfy the Fish and Wildlife Service is a significant cost.

We were told in 1996 that if we would eliminate some of the upper holes on the project that the service would then allow us to go forward. We went back and spent three months and about $170,000 redesigning the project and came back to the next meeting with the Fish and Wildlife Service, and they said they had changed their minds.

So the waste of our resources and the indifference to what the costs, we have approximately 2,000 small, small investors, many of whom have their life savings involved in this project, and to have them treated with such disdain has just been difficult, but that is the cost to this group of people.

Ms. BONO. Thank you.

Just a simple question. In Palm Springs, throughout the Coachella Valley, I think we use the symbol, the statue of the bighorn sheep throughout. I think we use it to promote tourism. We know that it is something that only enhances our area.

Do you believe that if actually there were a proliferation of the bighorn sheep near your project that it would actually help your project?

Mr. BRAGG. Sure. We have done everything we can think of to do to try and encourage the rebirth, the reemergence of bighorn sheep as a viable population.

Unfortunately there are so many factors working against them that have nothing to do with us that we have not done anything. So it does not have anything to do with us that the population has declined.

It probably has declined to the point where it may not be salvageable, but that really is not for us. I think that is probably for the Lord to decide.

Ms. BONO. Thank you.

Thank you.

Mr. POMBO. Mr. Bragg, I reviewed with some interest your letter that you presented as part of your testimony from Fish and Wildlife Service. We had testimony I believe it was about two months ago at a hearing in Washington, DC, where Fish and Wildlife Service testified and Department of Interior testified that HCPs and mitigation were voluntary and that it was the official position of Fish and Wildlife Service that——

Mr. BRAGG. Is this the U.S. Fish and Wildlife?

Mr. POMBO. Yes.

[Laughter.]

Mr. POMBO. I was somewhat surprised at the time during the hearing when they testified to that, but it is their official position that these agreements are voluntary and that individual property owners, school districts, cities, water districts that enter into these, voluntarily entering into that, that it is not an extortion, but it is a voluntary payment.

And in reviewing this particular letter, it appears that they outline how much land you will have to give up, and it also appears that they give you a range of between a half a million and three quarters of a million dollars that you will have to pay to them in order to use your property.

You began to answer this earlier, and I would just like for clarification. Do you know what they were going to do with the half a million dollars that you would pay them?

Mr. BRAGG. Nothing that I would approve of.

[Laughter.]

Mr. POMBO. What would they do? Do you have any idea?

Mr. BRAGG. I have no idea, sir. This was an arbitrary number that was arrived at through a mysterious process, and I have no clue where they were going to send that money.

But if it was voluntary, I respectfully decline.

[Laughter.]

Mr. POMBO. Are you aware of other developments within your area that have paid similar fees?

Mr. BRAGG. Yes, I am.

Mr. POMBO. Do you know what they have done with that money?

Mr. BRAGG. I have no idea.

Mr. POMBO. Is there anything apparent in terms of activity that is occurring in your area that would bring the bighorn sheep back or you have seen them putting in a lot of guzzlers or doing propagation?

Mr. BRAGG. No, absolutely not.

Mr. POMBO. Or doing anything that is bringing the sheep back?

Mr. BRAGG. Nothing at all.

Mr. POMBO. I am somewhat familiar with the area. I have not seen your project specifically. I am somewhat familiar with that area. I do know that a very large percentage of the land in that surrounding area is government owned currently.

In fact, for the record, over 50 percent of the State of California is owned by the government, and most of that land is set aside with a conservation easement of some type under Federal law, whether that be wilderness, national park, conservation areas. The vast majority of that land is set aside in some kind of conservation status, as is most of the land within this entire region.

And it is somewhat troubling that we are here discussing endangered species and you are testifying that you have seen very little, if any, activity to bring back endangered species.

Mr. BRAGG. There is activity. I do not mean to say that there is no activity at all. There just is no activity on the part of the U.S. Fish and Wildlife Service that I am aware of.

Mr. POMBO. Well, that is specifically what I am talking about, is on the part of Fish and Wildlife.

Mr. BRAGG. From Palm Springs to the Mexican border there is approximately 10,000 square miles of bighorn sheep habitat that is largely unpopulated by anyone, including bighorn sheep. There are only 280 animals remaining of the herd.

Our science says that there is no genetic difference between this allegedly endangered species that has caused all of this difficulty now. There is no difference between them and the species that thrives in other areas of the Southwest.

So this particular herd has been designated as an endangered herd. It is not an entirely endangered species.

Mr. POMBO. It is a subspecies?

Mr. BRAGG. Well, according to our information and the science that we have seen, which I think the Fish and Wildlife Service has chosen not to look at, it is basically the same species, genetically identical to the rest of the species in the Southwest, perhaps not all of the Southwest, and there are other species of bighorn sheep in the Southwest, but this particular one is not literally an endangered species. It is an endangered herd.

Mr. POMBO. That is the word I was looking for, distinct population safety.

Has that information been provided to Fish and Wildlife Service?

Mr. BRAGG. Many times, yes.

Mr. POMBO. Well, thank you.

My time has expired. I want to thank this panel for your testimony, all of you for your testimony. Particularly I would like to thank those of you that have projects before Fish and Wildlife Service for your courage of coming forward. I know that it was a difficult decision for many of you and many of our witnesses that we will have today whether or not to make the effort to come forward, and I do appreciate you having the courage to come forward and share your experiences with us.

I am going to dismiss this panel and call up the second page. Thank you very much.

Our second panel, Mr. Bruce Turecek, Dr. Dan Silver, Mr. Hugh Hewitt, and Mr. Michael Spear.

Thank you for joining us. If I could have you all stand and take the oath. For those of you who are testifying, if you could raise your right hand.

[Witnesses sworn.]

Mr. POMBO. Let the record show they all answered in the affirmative.

Thank you for joining us today. I think you all heard the explanation of timing and process. Your entire statements will be included in the record.

Mr. Turecek, we will begin with you. Pull the mike right up to you there. Thank you.

STATEMENT OF BRUCE TURECEK, JACUMBA VALLEY RANCH

Mr. TURECEK. Thank you, Mr. Chairman and members of the Committee.

I appreciate this opportunity to——

Mr. POMBO. You need to pull it a little bit closer.

Mr. TURECEK. A little closer, yes, sir.

Anyway, thank you for having me here today.

I hope all of you have a copy of the statement that I prepared.

Mr. POMBO. We do.

Mr. TURECEK. First, I did want to mention that it was very difficult for me to be here today because I have been in fear of reprisals and repercussions because my project is still pending, and it was a choice that I had to make because there are problems, and I want to see something made right, and that is the reason I am here, because there are difficulties that do need to be corrected.

I am going to dive right on into a couple of statements that were made in the documentation of the Fish and Wildlife Service letters that they have done in response to the environmental impact report that we have prepared, and I want to try to get a point of clarification.

Number one of those statements, in a letter from 1997 is the proposed Jacumba—oh, by the way, I represent the Jacumba Valley Ranch. I am not a consultant. I am not an attorney. Basically I am a business manager. Straightforwardly and directly, I am a rancher. I have a 1,250 acre ranch out in the southeast corner of San Diego County.

One of the first comment letters from Fish and Wildlife Service is the proposed Jacumba Valley Ranch project will result in the direct loss of native wildlife and their habitats on nearly all of the 1,250 acre site, with likely significant indirect and cumulative adverse impacts to the surrounding area. That was the letter from 1997.

The more recent letter from 1999, the statement is included. The proposed Jacumba Valley Ranch project will directly impact and eliminate all of the habitat on site except for the 229.9 acres proposed of natural open space.

In rebuttal to that particular statement, I want to explain exactly what this habitat that they are talking about is, and I did bring an aerial photograph that I would like to have you have a look at. I have got a better copy of it here. I did include a short,

small one in the portfolio that I put together for the members of the panel.

This is the habitat that they are discussing, and if you will notice, those are plowed agricultural fields.

[Laughter.]

Mr. TURECEK. Okay. Similarly, these are the same fields, 1940.

This is a photograph of the entire ranch, again, era about 1940. This particular was originally put together as a dairy and constructed in 1927.

Once again, a photograph of 1940. This property has been in ranching or agriculture. I have been able to date it all the way back to about 1927, with what crops were grown on which fields all that period of time.

That is basically what I wanted to point out, back to the statement of we are going to eliminate 1,250 acres of natural habitat.

Mr. HUNTER. Was the entire acreage under farming?

Mr. TURECEK. No, part of it was under grazing. It is probably 600, 650 acres that can be tilled and raise crops. The rest of it is pasture land. In that it originally was a dairy, there were 500 cows being milked continuously. Traditionally or historically it was known as the Mountain Meadows Dairy.

Congressman Hunter kind of beat me to the punch a little bit earlier, but I did want to point out one other important aspect of this, and this is the generalized ownership map that was prepared by SANDAG, San Diego Association of Governments, and what is reflected is if it has got a color on it, it already belongs to the government or is already controlled by the government.

And what you are seeing here is essentially two thirds of the eastern half of San Diego County is already controlled by the government.

Now, if you will turn it back around for me one second, I wanted to point out to the panel my ranch is this little part right here. I have got the Anzo Borego Desert here. I have got the national forest over here. I have got government lands all around me.

Finally, there is a map or an aerial photograph that I have got that was actually taken by the Mexican government, and it is an excellent aerial photograph, and it shows how much natural habitat actually surrounds. All of this is natural habitat. There is my ranch.

So that is the first problem I have got, is the Fish and Wildlife Service has mislabeled what my project is. If you are to read their letter, it sounds like I am going to go out and cut down the Redlands or something like that. I am going to eliminate habitat.

The letters, the way they have put them together, are basically designed to confuse the issue and weaken the text of the documents that I have submitted, and by weakening it, it makes it more subject to legal challenge, and I do want to address that aspect of it.

Specifically, and I have included it in my notes, the word that they have used in their letters of comment, and I have got to find it myself, is often the word "inadequate," but they never say what is inadequate. How many hundreds of hours does it take surveying this property before it has been adequately done?

"Likely." They say it likely contains species. However, and this is a very important point, to date with all of the biological surveys that have been done on our property, we have no endangered species on our property whatsoever. Therefore, the Fish and Wildlife Service, if I am not mistaken, has no authority to control us, but they do not ever acknowledge that. It is keep working; do another survey. All right. You did a survey for a toad. Well, we have got new information. They have actually said that: well, there is new information. We want you to do another survey for a frog or for the toad. I almost got to the frog. I will get to the frog.

The endangered California red legged frog species was taken from the vicinity of the ranch back in 1928.

Mr. POMBO. Sir, your time has expired, if you could wrap it up, please.

Mr. TURECEK. Sure. From the Federal Register, it appears that the frog is not there. The same thing with other species, yet they still have not acknowledged that, and they have not acknowledged that any of the what I feel a qualified biologist who has done this work is acceptable; yet these biologists are experts in their field.

Thank you.

[The prepared statement of Mr. Turecek follows:]

July 9, 1999

Fish & Wildlife Testimony of Bruce Turecek representing Jacumba Valley Ranch.

Contents:
1. Chronology of Events
2. Attachments of Environmental Documents and Minutes of Meetings
3. Attachments of Associated Communications
4. Comments that need to be addressed
5. Brief overview of problematic processing

CHRONOLOGY (Documents and events)

1. Jacumba Valley Ranch draft Environmental Impact Report dated January 24, 1997 was circulated by the County of San Diego for Public Review.
2. Department of Interior, Fish and Wildlife Service, Carlsbad office submitted to the County a comment letter dated March 28, 1997 to be included into the Public Record.
3. To address the concerns of the F&W Service, Jacumba Valley Ranch engaged the services of Pacific Southwest Biological Services to conduct a **Sensitive Species Directed Survey**. The results of that survey were completed on July 3, 1997 and were forwarded to the F&W Service.
4. On July 23, 1997 a meeting was conducted at the Carlsbad F&W office to discuss the comments included in the March 28, 1997 comment letter and the results of the **Sensitive Species Directed Survey**. (no minutes kept)
5. The F&W Service submitted a letter of additional information regarding the endangered Quino checkerspot butterfly dated August 11, 1997.
6. At the request of Jacumba Valley Ranch, F&W personnel did a site assessment on August 22, 1997 for the purpose of evaluating previous documentation. (no minutes available)
7. At the request of Congressman Duncan Hunter a meeting was held at the F&W Carlsbad office on September 26, 1997 for clarification of F&W concerns.
8. The F&W Service re-addressed their concerns in a letter dated November 19, 1997.
9. Focused Surveys for the Quino Checkerspot Butterfly dated July 24, 1998 prepared by Tierra Madre Consultants, Inc.
10. Draft Environmental Impact Report dated January 1999 for the Jacumba Valley Ranch, circulated by the County of San Diego.

11. Department of Interior, Fish and Wildlife Service, Carlsbad office submitted to the County a comment letter dated March 16, 1999 to be included into the Public Record.
12. Response to comments prepared for the Fish and Wildlife letter dated March 16, 1999.

Comments that need to be addressed

Document # 2, Fish and Wildlife letter dated March 28, 1999.
On page 1, in the last paragraph the statement is made: "The site currently supports chaparral, saltbrush scrub, desert sink scrub, riparian, mesquite woodland, freshwater marsh, and other habitats. These communities provide valuable habitat for migratory and resident birds, mammals, and other native animals and plants. The site also likely provides habitat for animal and plant species that are listed or candidates for listing under the Act." Paragraph 3 on page 2 adds the statement: "The proposed Jacumba Valley Rancho project will result in the direct loss of native wildlife and their habitats on nearly all of the 1,250 acre site, with likely significant indirect and cumulative adverse impacts to the surrounding area (pages 9-25 of the DEIR)."

This statement is misleading as an aerial photograph quickly reveals. One such photograph is on the cover of the document. These photographs evidence that the ranch is an ongoing agricultural entity and that the "habitat" referred to is actually crop fields and grazing lands.

On page 3, item #3 states "The amount and quality of the field work on the 1,250-acre site that served as the basis for the conclusions and mitigations in the DEIR and BS is inadequate. The total fieldwork on the project site consists of approximately 55 hours conducted during three days in 1989, 2 days in 1991, and 2 days in 1995 (page 9 of the BS) and does not provide an adequate amount of information to determine the impacts of the proposed project on wildlife. We recommend that an adequate survey.....be conducted prior to certification of the final environmental documents."

Actually Table 1. Field Survey Summary presented on page 9 of the Biological Survey shows that 98 hours were spent on field survey; but the first part of this comment evidences one of the primary problems with the letters that the F&W Carlsbad office generates. "The amount and quality of the field work....is inadequate." What does this statement tell the reader? It states that not enough time was spent. If that is the case, the F&W Service should so state. Then if there exists a criteria number of hours that goal can be accomplished. As the statement reads, the goal can never be accomplished and, therefore, surveys will

never be completed. Next the statement challenges the integrity of the work performed and, thereby, the integrity of the biologists who did the actual work. These biologists all have been qualified to do this specific type of work and hold all necessary permits issued by the F&W Service. If the Service is now challenging the biologists abilities as the statement indicated, the Service must so state.

In item #4 of page 3 the Service states: "We recommend avoidance of impacts to wetlands and waters of the United States as the preferred form of mitigation for projects which contain wildlife habitat..... The portions of Boundary Creek remaining after project implementation would have a much lower value to wildlife based on the information presented in the DEIR. The removal of approximately 0.34 acre of vegetation, channelization, extraction, and deposition of fill in the creekbed for flood control would significantly degrade the riparian habitat. The proposed mitigation as described in the DEIR (page 54) is vague and inadequate. The Service recommends that the project be redesigned to avoid all adverse impacts to Boundary Creek."

First, to "avoid" impacts is not "mitigation", it is no impact at all. In this case the result of avoidance means the needed flood control improvements are not done, which would be to subject the existing residents of the town to flood events. Second, the Service has offered no solution to this very real flood problem by suggesting simple advoidance. They state essentially that one third acre of vegetation is more important than the people of the town. Finally, the recommendation of redesigning the project indicates that the Service does not have adequate understanding of flood control engineering and, thereby, is unqualified to even make such a statement. I support this statement with the fact that the design was done by a qualified registered engineer using the most recent techniques which do not eliminate riparian habitats while providing necessary control for flood events.

In summation the Service's letter makes some fifteen comments using words such as (a) "inadequate", without saying why it is inadequate; (b) "likely", without first doing a field examination and verification; (c) "potential", same comment; (d) "redesigning", without offering how such a redesign could be accomplished; and (e) "concerned", without stating **exactly** what problem exists.

These nonspecific statements and implications are now used by environmental opportunists as allegations in preliminary statements intended

for use as a basis of legal action against the project which we will have to defend.

Because of the comments stated in the F&W letter dated March 28, 1997 Pacific Southwest Biological Services (PSBS) was retained to review the F&W comments and address the Service's concerns including additional site surveying to verify existence or nonexistence of stated species on the Ranch. A **Sensitive Species Directed Survey** was completed on July 3, 1997 and forwarded to the Service for review which precipitated a meeting for discussion purposes on July 23, 1997 at the Carlsbad office. Art Davenport stated that the various reports submitted still did not contain sufficient information to satisfy the Service. Specifically his comment was: "I'm not convinced." Once again it is evidence that we are dealing with **opinion.**

In an effort to have the Service focus on what the true status of the ranch is Bruce Turecek invited Service personnel to inspect the ranch which was done on August 22, 1997. It was clear to Bruce Turecek that the Service was not interested in acknowledging that the continued surveying requests were excessive; rather the ranch could be surveyed forever, and the Service would never admit that it was satisfied. Also evident was the Service's challenging the wetland delineation that had been completed by the Natural Resource Conservation Service. Because Jacumba Valley Ranch sincerely wants to be in compliance with all applicable laws including the Endangered Species Act and because the Service appeared to be unwilling to assist with such conformance, Bruce Turecek requested assistance from Congressman Duncan Hunter.

On September 26, 1997 Congressman Hunter's aide, Gary Becks, along with Bruce Turecek met with Service personnel Dr. Chris Nagano, Art Davenport, and Pete Sorensen in the Carlsbad office. The primary objective of this meeting was the specific question: "What specifically is needed to complete the requirements of the Service"? At this time Bruce Turecek explained how frustrating it is that after four independent biological studies have been done by qualified biologists who hold all appropriate Service permits that the Service finds them to be inadequate. Bruce Turecek therefore asked for the Service to provide a "penciled" copy of the reports. The following dialogue then occurred:

Chris, "You mean that you want us to critique the reports".

Bruce, "Yes so I can see what's wrong".

Chris, "We don't do that".

Bruce, "Then it's impossible for me to comply, because I don't know how and evidently the experts don't know either".

Pete, "We have occasionally done that".
Chris, "We don't have time"
Pete, "We'll try to find the time".
Bruce, "Please be very specific as to what's wrong, amd what you want, including the language that needs to be inserted, and if necessary when certain surveys can be done. Can I have such a letter within two weeks"?
Pete, "Yes".

The Service did not honor this request. On November 24, 1997 Bruce Turecek did receive a letter from the Service date stamped Nov. 19, 1997. So after two months time the Service did send a short letter, but not a "penciled" copy of the reports as promised. The letter offered no assistance as requested, but rather was another criticism of existing reports.

1. On page one of the letter the statement is made that: "Focused surveys were not completed for the threatened California red-legged frog. The survey was not conducted apparently because the biological consultants failed to recognize the presence of suitable survey conditions at the project site".

This statement attacks of the competency of the biological consultants and is absolutely false. The consultants in fact preliminary surveyed the ranch and notified the Service that suitable conditions did exist and asked the Service for permission to do the survey. The Service denied permission with the statement via telephone to the consultants by Art Davenport of the Service "Don't bother doing the survey for the frog because it is beyond the known range.

2. On page two the statement is made: a) "The report asserts that there is no suitable habitat on the project site for the endangered least Bell's vireo and the endangered southwestern willow flycatcher". Also, b) "In addition, no surveys were conducted for these species due to their incorrect assessment of habitat suitability. c) Moreover, the project has the potential to impact suitable habitat off-site through ground water pumping; this issue was not addressed in the DEIR or the report".

a) The Service has failed to recognize the ongoing agricultural activities and status of the ranch, facts that the biological consultants did recognize. Specifically, Service personnel recognized hydrophytic vegetation in the head and tail water ditches that are on the ranch and thereby incorrectly would label them suitable habitat. The consultants recognized that it is not suitable habitat because such ditches have to be cleaned out on a regular basis so as to be functional and which is the normal functioning of an ongoing agricultural operation. So it is not suitable habitat because is not sustained for any duration of time necessary to establish it as habitat.

b) The above paragraph emphasizes why the Service is incorrect not the biological consultants.

c) How can the project impact habitat off-site through groundwater pumping?
This is a condition that the DEIR documents say has been occurring for seventy years and no impact has yet been identified and no change of this condition has been suggested. The last part of this statement that this issue was not addressed in the DEIR is an absolutely erroneous statement. The Service did not bother to read the document. If they had, they would have found that the issue was analyzed exhaustively and documented with facts and testimony.

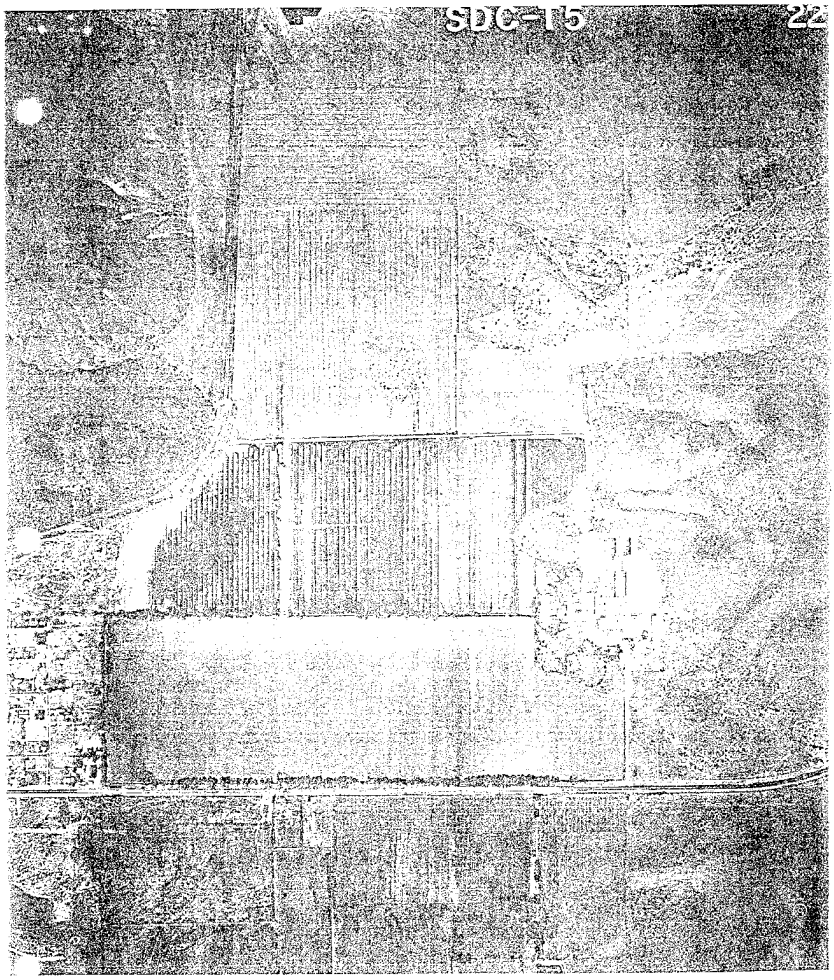
On page 3 of the letter the statement is made: "The information contained on the species of special concern is inadequate and lacks the specificity necessary for determining if any of these taxa are present and potential adverse impacts that may occur as a result of project implementation".

To complete the report the ranch was once again surveyed by one of the best experts and the Service's statement listed above is a blatant attempt to discredit the expert. So if that is their intent they should state that the Service finds that the expert is unqualified to do a proper survey. It must be recognized that this particular expert has repetitively surveyed this area of the County since the early 1970's. He wrote the book on plant diversity in San Diego County, which all other biologists reference and quote in their analysis. It once again shows how the Service implies inadequacy while not making specific statements.

The letter finishes with the statement "We recommend that an adequate analysis of direct, indirect, and cumulative impacts to listed species, proposed species, species of species concern, and other Federal wildlife resources be completed".

The above statement is an exact quote. I do not comprehend what the underlined portion thereof even means.

I must refer back to the conversation of the meeting on September 26, 1997 commencing on page 5 of this statement where I asked the Service for help, where I asked to see a "penciled", i.e. marked up copy of previous reports so that I could see what was wrong. As the above discussion clearly points out the Service was unwilling to comply with my request, but rather avoided the issue of what must be done to comply. They always circle around to recommending another adequate analysis. Can the Service define what an adequate analysis is? This letter sure avoided doing so.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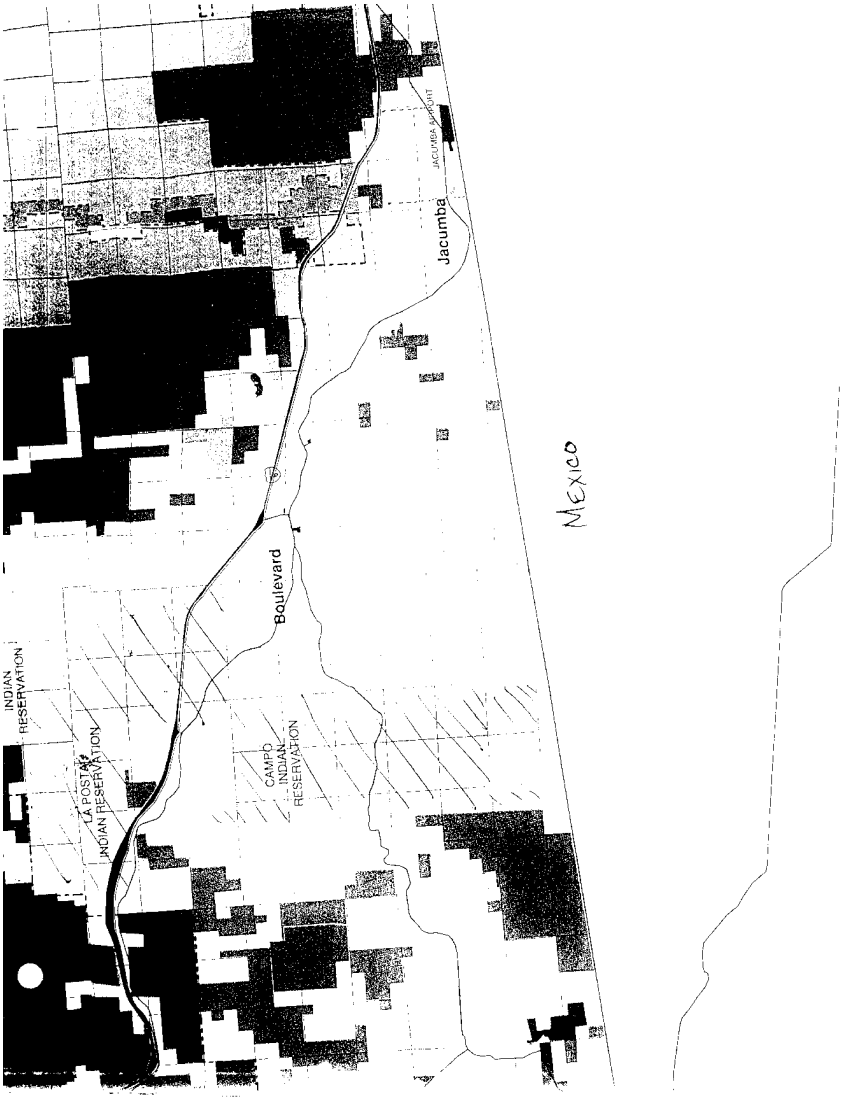
INDIAN
RESERVATION
LA POSTA
INDIAN RESERVATION
CAMPO
INDIAN
RESERVATION
Boulevard
Jacumba
JACUMBA SUBUNIT
Mexico

Table 1. Field Survey Summary

Date/Time	Observers	Weather	Area Surveyed
June 5, 1989 0700-1530	W.L. Sward R. Brimm	Clear skies; light breeze began mid-morning; 60°F at 0700, 85°F at 1200.	Round Mountain, hills west of railway and north of Jacumba area south of Highway 80, and northwestern woodland.
June 16, 1989 0830-1400	W.L. Sward	Cirrus clouds; westerly winds to 10 mph; 80°F at 0830; 94°F at 1215.	Eastern hills, including area adjacent to I-8, eastern part of valley and pond.
August 17, 1989 0745-1615	W.L. Sward A.M. Tipton	Clear skies; light breeze from north; 75°F at 0745, 95°F at 1200.	Northwestern woodland, central and western part of valley, and area south of Highway 80.
February 19, 1991 0900-1615	W.L. Sward F. Sproul	Cool, sunny, 65°F at 0900.	Semi-desert chaparral, mesquite woodland, Round Mountain, and off-site channel.
March 8, 1991 0900-1615	W.L. Sward F. Sproul	Cool, sunny, 65°F at 0900.	Southeastern part of property, freshwater marsh, and vegetation mapping off-site.
April 11, 1995 1120-1730	L. Embree G.T. Baird	Wispy clouds, light breeze, sunny, mid 70's.	Eastern hills, mid and southern parts of property.
April 26, 1995 0900-1845	L. Embree G.T. Baird	Wispy clouds, light breeze, 72°F at 0900, 80°F at 1145.	Round Mountain, hills west of railway and vegetation mapping off-site.

A wetland determination study conducted by the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) (USDA 1995) was also used for the biological resources section. The NRCS used the Army Corps of Engineers Wetlands Delineation Manual during their study which focused on those locations that had been or were adjacent to areas historically farmed.Wetland issues discussed in this report are based on the NRCS's determinations. A Memorandum of Agreement (MOA) between the Departments of Agriculture, Interior, and Army and the Environmental Protection Agency acknowledges that the Secretary of the USDA, acting through the Chief of the NRCS (formerly the Soil Conservation Service (SCS)), has the ultimate authority to determine the geographic scope of wetlands for Food Security Act (FSA) purposes and to make delineations relative to the FSA. Using the NRCS for the wetland delineation was therefore relevant since the property has historically and still is being used as cropland. A March 28, 1995 letter from DPLU states that DPLU will accept the NRCS study as authoritative in terms of the existence and location of any wetlands on the project site. Although USDA has purview over the wetlands on-site because of the agriculture conditions, a permit from the Army Corps of Engineers (ACOE) will still be required because the agricultural use will be converted. The NRCS report is attached as Attachment 1.

The following discussion provides a summary of all three reports. The following references or field guides were used for the biological resource inventory: habitats, Holland 1986, Beauchamp 1986; flora, Bailey 1924, Munz 1974, Beauchamp 1986, and Hickman 1993; birds, Binford 1986 and DeBenedictis 1989; mammals, Jones, et al. 1982 and Jameson and Peeters 1988; reptiles and amphibians, Jennings 1983.

Mr. POMBO. Thank you.
Dr. Silver.

STATEMENT OF DAN SILVER, M.D., COORDINATOR, ENDANGERED HABITATS LEAGUE

Dr. SILVER. Thank you. Good morning, honorable members.

Since 1991, the Endangered Habitats League has been a stakeholder in efforts to protect endangered species and resolve economic conflicts in Los Angeles, Riverside, San Bernardino, San Diego, and Orange Counties.

Early on, it became clear to us that project by project application of the Endangered Species Act, like you have been hearing today in all of these examples, was ineffective for species conservation and costly and inefficient for landowners.

We saw this with the California gantcatcher in San Diego, and we see it today, for example, with the Delhi Sands fly in San Bernardino. Given the number of threatened species in Southern California, there has to be a better way, and indeed, there is.

Large scale, multiple species plans, comprehensive habitat plans are in place today in Orange and San Diego Counties. They are working reasonably well. Riverside County is moving forward with theirs.

The benefits to wildlife is obvious. With local government as a partner, implementation comes much easier. Furthermore, and this is crucial, these programs allow the public at large to contribute its fair share to the process.

The benefits to landowners are summed up by the concept of streamlining. There is one stop shopping for local ordinances, California laws, and the Endangered Species Act. Certainty is an important byproduct.

From the local government perspective, based on the San Diego experience, the effects of such planning on the overall supply of housing, commercial, and industrial land is not significant.

Planning is not easy though. Scientific credibility is difficult to obtain, and negotiation on an individual project basis is unfortunately still necessary for those projects which are well advanced.

Please do not underestimate the difficult of the job the U.S. Fish and Wildlife Service faces in these instances. Because local governments often have neglected the mandates of the California Environmental Quality Act, the need to avoid or mitigate impacts to habitat often does come up very late in the process, regrettably so. And in the absence of ready acquisition funds, the service from our point of view often tries too hard to strike a balance and errs against the species and gives away too much.

Environmentalists have been highly critical of the results of many projects. San Joaquin Hills tollroad, Dana Point Headlands, Las Montanas, Carmel Mountain, Forster Ranch. I could go on, but we have found the agency steadfast in these outcomes, despite the results.

Nevertheless, we recognize the commitment the service has made to the success of multiple species planning, and my organization shares that commitment. This is, indeed, the best hope for endangered species, and it also achieves other community goals.

Consider Riverside County where we are today. If natural open space can be maintained between communities, what makes Riverside County beautiful and unique and attractive to residents and businesses alike will be maintained as future growth occurs. Thus, from the long term perspective, if we can get over these initial hurdles, there really is no conflict between the Endangered Species Act, human communities, and economic competitiveness, but indeed, there is a symbiosis.

How can we do better? My first recommendation is for all parties to emphasize accurate and unambiguous communication. I am struck by the frequency and seriousness of misunderstandings.

Secondly, the Federal Government, and indeed, it is Congress that holds the purse strings, the Federal Government needs to step forward with funding for both agency, staff, and for land acquisition. Substantial acquisition funding early in the process is essential, and leverage is state and local contributions, as well as reasonable private mitigation.

This funding is the single most important thing that you can do to make preserve creation equitable and successful.

I would like to close by thanking many members of the Committee for your past record of support for habitat planning, for making these programs in Southern California work. It not only solves problems, but it is part of the foundation for a high quality of life in the future.

Thank you very much.

[The prepared statement of Dr. Silver follows:]

STATEMENT OF DAN SILVER, M.D., COORDINATOR, ENDANGERED HABITATS LEAGUE

Honorable Chair and Committee Members: The Endangered Habitats League is dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. Since 1991, we have been stakeholders in efforts to protect endangered species and resolve economic conflicts in Los Angeles, Riverside, San Bernardino, San Diego, and Orange Counties.

Early on, it became clear to us that project-by-project application of the Endangered Species Act was ineffective for species conservation and costly and inefficient for landowners. If one's goal is to create win-win solutions, such solutions are often impossible one parcel at a time. We saw this with the California gnatcatcher in San Diego, and we see it today with the Delhi Sands flower-loving fly in San Bernardino and Riverside Counties. Given the number of threatened species in Southern California, there has to be a better way.

Large scale multiple species plans, often called Natural Community Conservation Plans, are in place in Orange and San Diego Counties. Riverside County is moving forward on theirs. The benefits to wildlife are obvious, as the larger scale of planning allows consolidation of large blocks of habitat and the maintenance of connectivity. With local government as a partner, implementation becomes far easier. Furthermore, and this is crucial, these programs allow the public at large to contribute its fair share to the process.

The benefits to landowners are summed up by the concept of streamlining. "One stop shopping" is produced for local ordinances, the California Environmental Quality Act, and state and Federal Endangered Species Acts. Certainty is an important by-product. From the local government perspective, if the San Diego experience continues, the effects of such planning on the overall supply of housing, commercial, and industrial land is not significant.

Planning is not easy, though. Not only is scientific credibility challenging to attain, but negotiation on an individual project basis is still necessary for those projects which are already well-advanced. Do not underestimate the difficulty of the job the U.S. Fish and Wildlife Service faces in these instances. Because local governments may have neglected the mandates of the California Environmental Quality Act, the need to avoid or mitigate impacts to habitat comes up late in the process. In the absence of ready acquisition funds, the Service often tries too hard to strike a balance, erring against the species. Environmentalists have been highly critical

of the results of many projects. To name a few: San Joaquin Hills tollroad, Foothill-Eastern tollroad, Dana Point Headlands, Fanita Ranch, Las Montaflas, Carillo Ranch, Carmel Mountain, Forster Ranch. We have found the agencies steadfast in these outcomes, despite the results.

Nevertheless, we recognize the commitment of the Service to the success of multiple species planning in Southern California, a commitment my organization shares. Not only is this the best hope for endangered species, but it achieves other community goals. Consider Riverside County, where we are today. If natural open space can be maintained between communities, then what makes Riverside County beautiful and unique, and attractive to residents and business alike, will be maintained as growth occurs. Thus, from the long-term perspective, there is no conflict between the ESA, human communities, and economic competitiveness, but a symbiosis.

How to do better! My first recommendation is for all parties—business interests, agency staff, local officials—to emphasize accurate and unambiguous communication. I am struck by frequency and seriousness of misunderstandings. Second, the Federal Government needs to step forward with funding for adequate agency staff and for land acquisition. Substantial acquisition funding early in the process is essential, and leverages local and state contributions. This is the single most important thing you can do to make preserve creation equitable and successful.

I would like to close by expressing my appreciation for your record of support for Southern California habitat planning. It not only solves problems but it is part of the foundation a high quality future for this region. Thank you.

[Applause.]

Mr. POMBO. Thank you.

Mr. Hewitt.

STATEMENT OF HUGH HEWITT, ESQ, IRVINE, CALIFORNIA

Mr. HEWITT. Thank you, Mr. Chairman and members of the Committee.

My name is Hugh Hewitt. I am a partner in the law firm of Hewitt & McGuire, with offices in Irvine, California, and Portland, Oregon.

At the outset I would like to thank you for your interest in this issue. I would also like to recognize and thank you for the efforts of your staff, which have been professional and thorough, especially Congressman Calvert's staff, Linda and Dave, both here in the district and back in Washington. Ms. Meginson, as well, Chief Counsel to the Committee, has been an extraordinary help to landowners who are buffeted by the Carlsbad office.

For the past ten years I have practiced in the area of endangered species law in California, Nevada, and Hawaii. Prior to that time, I served for nearly six years in the Reagan Administration in a variety of posts, including Assistant Counsel in the White House; Deputy Director and General Counsel of the National Office of Personnel Management; and General Counsel of the National Endowment for the Humanities.

I have served as a member of the Administrative Conference of the United States, and I teach at Chapman Law School in the area of constitutional law and Federal administrative law.

I reference this experience to assure the Committee that I am not inexperienced in the operation of Federal agencies and the requirements of Federal administrative law. In fact, my frustration with the Carlsbad office of the U.S. Fish and Wildlife Service grows out of my understanding of the Federal Administrative Procedures Act and my belief that Federal agencies are obliged to always act in accord with its guarantees of openness and procedural fair play.

I appear today to urge the Committee to press ahead with its request on the General Accounting Office to understand a systematic and thorough review of the services of the Carlsbad office. If GAO undertakes the audit that you have requested, I believe that the record it compiles will prompt the Congress to address systemic problems in the administration of the Endangered Species Act.

I would specifically urge you to ask the GAO to consider four things, among many.

First, the refusal of the Carlsbad office to conduct Section 7 consultation in accord with the ESA regulations promulgated pursuant to the ESA. The Carlsbad office routinely refuses to initiate Section 7 consultation citing incomplete information. This novel interpretation of law allows the service to deny landowners rapid consideration of the merits of their proposed land uses, while at the same time placing them in a legal limbo that courts will be hesitant to review due to the doctrine of the failure to exhaust administrative remedies.

Second, the promulgation of species, survey guidelines, and protocols without any notice and comment rulemaking. The most recent example of such illegal, and it is illegal, rulemaking is the promulgation of the Quino checkerspot butterfly survey protocols.

Number three, the increasing tendency of the Carlsbad office to require biologists surveying for listed species in noninvasive ways, that is, naturally harming, harassing, or touching the species, first obtain a Section 10(a)(1) permit from the Carlsbad office. These permits are written so as to require that all survey data generated on private property be turned over to the service, and they are also written so as to enable the Carlsbad office to revoke or not renew the permits of biologists without appropriate judicial safeguards or checks upon this power. It is the equivalent of an administrative star chamber, for those of you who are familiar with legal history.

Finally, and just for emphasis purposes—this list could go on for quite some time—the refusal to process Section 10(a) permit applications in a timely fashion. Lockheed Martin Corporation, for example, a client of mine, filed such an application on May 8th, 1996. More than three years later, the service has taken no action on this permit application. It has not responded to repeated phone calls and letters requesting that it simply process it to a finality even if that were to be denial. That would perfect our administrative record.

Now, we all know congressional hearings are useful in generating interest. I have spent some uncomfortable hours in front of you in various capacities when I was in the Federal Government. Congressman Sikorsky looms in my mind from the old days, but genuine reform requires painstaking work of data collection, review, and analysis.

I can recall quite clearly the seriousness and the efficiency with which the GAO went about its work at OPM when I was its Deputy Director. I can only hope that the Congress will consider the Southern California region of the service as sufficiently important to warrant the allocation of major GAO resources here.

As Samuel Johnson said, it concentrates the mind wonderfully when the prospect of hanging is in front of you.

I have some additional materials to submit for your review, and I have provided copies to the Committee. I am providing only one specific file, one that my colleague Andrew Hartzell has been handling for a number of years, but that is very illustrative of the many, many, and I underscore "many," horror stories concerning operation of the Carlsbad office.

We believe that it is vital that the GAO be allowed to investigate carefully such accounts. This one concerns Lauren Development. The details will shock you.

There are many other similar stories. I compliment you for your interest, and I thank you for your time.

[The prepared statement of Mr. Hewitt follows:]

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Witness for Committee on Resources
July 9, 1999

07-07-99
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Mr. Chairman, Members of the Committee. My name is Hugh Hewitt. I am a partner in the law firm Hewitt & McGuire with offices in Irvine, California and Portland, Oregon. For the past ten years I have practiced in the area of endangered species law in California, Nevada and Hawaii. Prior to that time, I served for nearly six years in the Reagan Administration in a variety of posts, including Assistant Counsel in the White House, Deputy Director and General Counsel of the U.S. Office of Personnel Management, and General Counsel of the National Endowment for the Humanities. I also served as a Member of the Administrative Conference of the U.S. In addition to my private practice, I am an Associate Professor of Law at Chapman University Law School where I teach Constitutional Law and Federal Administrative Law. I reference this experience to assure the Committee that I am not inexperienced in the operation of federal agencies and the requirements of federal administrative law. In fact, my frustration with the Carlsbad Office of the U.S. Fish & Wildlife Service grows out of my understanding of the Federal Administrative Procedures Act and my belief that federal agencies are obliged to always act in accord with its guarantees of openness and procedural fair play.

I appear today to urge the Committee to press the General Accounting Office to undertake a systematic review of the Service's Carlsbad office. If the GAO undertakes this review, I believe the record it compiles will prompt the Congress to address systemic problems in the administration of the Endangered Species Act. I would specifically urge the GAO to consider:

1. The refusal of the Carlsbad office to conduct Section 7 consultations in accord with the ESA regulations promulgated pursuant to the ESA. The Carlsbad office routinely refuses to initiate Section 7 consultations, citing "incomplete information." This novel interpretation of the law allows the Service to deny landowners rapid consideration of the merits of their proposed land uses while at the same time placing them in a legal limbo that courts will be hesitant to review due to the doctrine of exhaustion.

2. The promulgation of species survey "guidelines" and "protocols" without any notice and comment rulemaking. The most recent example of such illegal rulemaking is the promulgation of the Quino checkerspot butterfly survey protocol.

3. The increasing tendency of the Carlsbad office to "require" that biologists surveying for listed species in non-invasive ways first obtain Section 10(a)(1)(A) permits from the Carlsbad office. These permits are also written so as to require that all survey data generated on private property be submitted to the Service and also written so as to enable the Carlsbad office to revoke or not renew the permits of biologists without appropriate judicial safeguards or checks on this power.

4. The refusal to process Section 10(a) permit applications in a timely fashion. Lockheed Martin Corporation, for example, filed such an application on May 8, 1996. Three years later the Service has taken no action on the permit application.

Congressional hearings are useful in generating interest in a particular area. But genuine reform requires the painstaking work of data collection, review and analysis. I can recall quite clearly the seriousness and efficiency with which the GAO went about its work at OPM when I was there. I can only hope that the Congress will consider the southern California region of the Service as sufficiently important to warrant the allocation of GAO resources here.

I have some additional materials to submit for your review, and have provided the copies the Committee requested. I am providing an account of one file my colleague, Andrew Hartzell, has handled because it is illustrative of the many, many horror stories concerning the operation of the Carlsbad office. We believe it is vital that GAO be allowed to investigate carefully and fully such accounts, and the story of Lauren Development is just one example of what the GAO will discover if it is directed to undertake a comprehensive review of this office's operations. While it is true that there are some well-intentioned people in the Carlsbad office and that there are some high profile negotiated settlements such as the MSCP in San Diego County, and the NCCP in Orange County, these are the exceptions and not the rule. If you are a small landowner that seeks simply to have the ESA work as it does in 49 other states, it is likely that your experience will be close to that of Lauren Development.

The experience of Lauren Development, Inc. is the story of a small landowner caught up in the maladministration of a large Act and in the tactics of an overzealous staff. Lauren's proposal to construct 40 homes on a 25-acre parcel in the City of Rancho Cucamonga, California ("City") is an archetype for the experience of many landowners that come in contact with the Service.

One of the problems associated with the Carlsbad office is not a factor of insufficient staff or funding, but rather stems from a misallocation of staff resources into areas which are beyond the jurisdiction of the Service and beyond the reach of the Endangered Species Act ("ESA"). In so doing, the Service can allow itself to be used for the private agendas of disputing landowners.

The tentative tract map for Lauren's small residential project was approved by the City in accordance with the California Environmental Quality Act ("CEQA") and entitled for the development of 40 homes in 1990. Due to the economic downturn of the early 1990's the project was placed on hold subsequent to its approval. When market conditions improved again in 1997, the project moved forward. At this point, the project simply needed to go through an architectural/design review at the City, a standard and straightforward review.

Although environmental review had already been completed for the project, Lauren desired to re-confirm for itself that its development would not result in the take of any listed species. In the years between 1990 and 1997, the coastal California gnatcatcher ("Gnatcatcher") had been listed as "threatened" by the USFWS, and Lauren's project was located within the potential range of this avian species.

Lauren's only legal obligation was to avoid the "take" of any Gnatcatchers.

Thus, Lauren elected to conduct a survey for the Gnatcatcher on its 25-acre property to satisfy itself that no Gnatcatchers occupied the site. It hired experienced Gnatcatcher biologists to survey, and also asked the USFWS Carlsbad staff for their recommendations regarding surveying procedures.

The Carlsbad staff told Lauren that they were changing the recommended number of survey days for this species. Although the Service had previously recommended three (3) surveys (spaced a week apart), Carlsbad informed Lauren that they were now recommending seven (7) to nine (9) surveys (spaced a week apart) to confirm the absence of the Gnatcatcher on property. As this 7-9 survey recommendation was new, Lauren asked the Service whether it had reduced those recommendations for a new survey protocol to writing, whether they had formally notified the public of this change in Service recommendation, or provided a written, published explanation of the reasoning motivating this change. Staff informed Lauren that they had not yet done so.

As Lauren needed solely to satisfy itself that the Gnatcatcher was not occupying its property, as Gnatcatcher sightings in this part of San Bernardino County were markedly uncommon (this area being at the outer limit of the species' current range), and given the biological and geographic characteristics of the property, Lauren decided that the 3-survey protocol approach would be sufficient for it to determine whether the species occupied the property. (It is important to note here that no federal or state law required Lauren to conduct <u>any</u> surveying or use any particular methodology of surveying.)[1]

Lauren conducted its surveys during January 1997. It provided the results of those surveys to the Service in a report dated February 28, 1997. The results of the surveys were as follows: no Gnatcatchers observed or detected. The Carlsbad office published its new Gnatcatcher survey methodology recommendations in early March. The Service explicitly "grandfathered" the "acceptability" of prior surveys using only 3 weeks of surveying. However, the Service interpreted Lauren's surveys as not falling within this grandfathering provision.

In April of 1997, Lauren received a letter from the Carlsbad staff stating that the Service believed Lauren's number of surveys to be inadequate to yield a reliable conclusion that the Gnatcatcher was not occupying Lauren's 25 acres. The Service sent a similar letter to the City of Rancho Cucamonga, which would review Lauren's architectural drawings for this City-approved project and ultimately issue a grading permit. The Service requested that Lauren conduct an additional 3 surveys, spaced one week apart.

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[1] Lauren ultimately conducted 4 surveys in 1997 because one of the surveys was felt to have been conducted during weather conditions unfavorable to yielding fully reliable survey results.

Lauren contacted the Carlsbad office and explained that it understood that the Service was now recommending that projects outside of areas undergoing active NCCP program planning[2] should survey for 7 to 9 weeks. Lauren explained, however, that it was not requesting any particular Service authorization as part of its project, that there was no law that required the Service to "accept" the results of the survey, that Lauren was not asking the Service to formally "accept" the survey results, that it believed that its four surveys were fully sufficient given the existing biological conditions to confirm that Gnatcatchers did not occupy its 25-acre site, that it intended to comply with all state and federal environmental laws, including the ESA, and that it believed that its actions did not in any way run afoul of the ESA. Lauren further noted to the Carlsbad staff that under the ESA, even if Lauren conducted 30 surveys for the species and none detected a Gnatcatcher – but Lauren's grading still ultimately resulted in injury to a Gnatcatcher – Lauren would be liable under the strict liability reach of the Act. Thus, in this situation, the ultimate issue was simply that Lauren needed to satisfy itself that the grading of its property would not result in the take of a Gnatcatcher. No more, no less.

The Carlsbad office did not identify any statutory or regulatory provision indicating that Lauren was incorrect about the reach or applicability of the ESA in this regard.

The architectural review of Lauren's proposed homes was brought before the City Planning Commission in June 1997. At that time, one or more neighboring homeowners appear to have contacted the Carlsbad office to elicit Service support in opposing Lauren's approved project.

On June 10, 1997, the Carlsbad office wrote to the City, stating that Lauren's Gnatcatcher surveys "were not adequate to provide clearance under the Endangered Species Act." The letter further stated that "Because this area has been determined to be suitable California gnatcatcher habitat by Service biologists and others, and because the property is adjacent to known occupied California gnatcatcher habitat, any site disturbance prior to a determination of absence received and approved by the Service would be considered to be a violation of the Take prohibition of Section 9 of the [ESA]. Therefore no grading permits should be issued by the City until this issue is resolved." (emphasis added).

In Lauren's opinion, the Carlsbad office had significantly overstated the facts and significantly misapplied the ESA's provisions.

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[2] NCCP program planning refers to multi-jurisdictional, multi-species and habitat conservation planning conducted under California's Natural Communities Conservation Planning Act. For areas undergoing active NCCP planning, the Service believed that three Gnatcatcher surveys were still sufficient to provide reliable presence/absence conclusions.

As this was the first time that the Service had claimed: (1) that Lauren would violate the ESA if it graded its property without conducting more surveys, and (2) that Lauren's 25-acre property was "adjacent to known occupied" Gnatcatcher habitat, Lauren contacted the Carlsbad office. Lauren asked Carlsbad for the basis for the Service's claims that its grading "would" violate the Act, since Lauren had detected no Gnatcatchers on its property or within at least 500 feet of its property boundaries and Lauren was unaware of any nearby Gnatcatchers, let alone any Gnatcatchers occupying sage scrub adjacent to its property.

The information obtained from Carlsbad was fascinating for its insufficiency to support the Service's very serious allegations. The pertinent facts learned in that conversation were memorialized in a confirming letter to the Service dated June 26, 1997. The Carlsbad office, upon inquiry, admitted that it lacked a sufficient basis for its assertion that the project site was adjacent to known occupied Gnatcatcher habitat. As recapped in the June 26 confirming letter:

1. The Service statement is based on a single, oral report relayed to the Service in the course of a telephone conversation from an unknown individual.

2. The Service has no written record of this observation or report; data on this alleged observation does not exist in Service files.

3. The Service does not know the identity of the individual who reportedly saw one or, at most, possibly two gnatcatchers in San Bernardino County, the alleged observation which forms the basis of the above statement.

4. The Service does not know if this individual was a biologist or, if so, what his or her qualifications are, as the Service does not know the identity of this individual who made the alleged sighting.

5. This information, which the Service received orally via telephone, may not have been from the actual observer but may have been from an individual once or twice removed from the alleged observation.

6. The "observation" of one gnatcatcher or two was allegedly in or adjacent to the North Etiwanda Preserve property (an area of approximately 760 acres containing potentially suitable habitat for this species).

> 7. You are uncertain as to whether this "observation" was made in 1997 or in 1996, but believe the observation was likely made last year.
>
> To summarize, the Service cannot provide [Lauren] with any documentation to enable [it] to assess the validity, or understand the exact nature, of the "observation" which forms the basis of this serious Service allegation.
>
> I would like to point out, however, that this "observation" was not made on my client's property or immediately adjacent to it. The North Etiwanda Preserve property lies approximately 1½ miles from my client's property. Gnatcatcher territories typically range from 3 to 20 acres. Thus, if a gnatcatcher was seen in the North Etiwanda Preserve it undoubtedly has more than sufficient habitat on the 760-acre preserve.
>
> Given the above information from the Service, I do not believe that it is in any way possible for the Service to support the statement contained in its June 10 letter to the City of Rancho Cucamonga that grading of the Lauren Development site at this time would constitute a prohibited take of the California gnatcatcher. To quote the Service directly, the Service has stated that "any site disturbance prior to a determination of absence . . . approved by the Service would be considered to be a violation of the Take prohibition of Section 9 of the Endangered Species Act."

Letter from Hewitt & McGuire, LLP to USFWS Carlsbad office, dated June 26, 1997.

The Carlsbad office responded to Lauren's request for a justification of its position in its June 10 letter by issuing a "clarification" letter to the City on July 9, 1997.

Sadly, the clarification letter ultimately written by the Service did little to really clarify the Service's belief of how the ESA applied, if at all, to Lauren's project. Instead of admitting that it had written its June 10 letter without really understanding the pertinent biological facts and that there was no legal requirement for Lauren to conduct more Gnatcatcher surveys, the Carlsbad office made two technical "corrections" to its earlier letter and left the matter at that.

Later that year, the City directed Lauren to revise various elements of the architectural features of the homes for its approved development. Lauren proceeded to do just that. The City conducted its review of the new architectural plans for these homes in the summer of 1998.

In the meantime, Lauren elected of its own volition and its own expense to conduct further Gnatcatcher surveying in 1998. In this second year of surveying, Lauren conducted the expanded number of surveys being requested by the Service. Once again, no Gnatcatchers were observed or detected on the property or within 500 feet of the property's boundaries. In addition, Lauren also elected to conduct surveys for the recently listed San Bernardino Kangaroo Rat ("SBKR"), again in accordance with Service recommended survey methodology (i.e., protocol). Those surveys also found that the site did not contain any SBKR. Lauren forwarded both survey reports to the Carlsbad office for their information. Lauren received no reply from the Service in response to the submittal of these reports.

On August 5, 1998, Lauren sent a detailed letter to the Carlsbad office informing the Service that opponents of the Lauren project had demonstrated a pattern of contacting state and federal agencies and providing them with misleading and inaccurate information about the Lauren project in the hopes of generating agency letters to the City critical of the Lauren project. Lauren specifically requested that the Carlsbad office contact Lauren if the opposition made an appeal to the Service for such a letter, so as to provide Lauren with an opportunity to provide the Service with the correct facts concerning the project. Lauren even followed this letter with a telephone conversation with the Carlsbad office to confirm that the Service understood Lauren's request.

The Service never indicated to Lauren that it had any remaining concerns about the project. Nor did the Service ever indicate to Lauren during this time that it had had discussions with individuals opposed to the project.

When the City reviewed Lauren's revised architectural designs, certain neighbors again opposed the approved project and again contacted the Service to elicit Service support for their opposition. The City reviewed the architectural drawings in committee. The committee's approval of the plans was then appealed to the Planning Commission by those opposed to the project. The Planning Commission held a public hearing in August 12, 1998. The Service did not provide any comments to the Planning Commission. The Planning Commission approved the architectural plans. The opposing neighbors then appealed to the City Council.

The City Council held a public hearing on the appeal on September 16, 1998. Again, the Service did not provide any comments to the City Council on this project, nor did it contact Lauren to indicate that it had any remaining concerns.[3]

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[3] Of course, since Lauren had conducted another round of Gnatcatcher surveys using the new method recommended by the Service and since it had also conducted SBKR surveys in this manner, it was not expected that the Service would have any remaining concerns.

The City Council closed the public comments and the public hearing on September 16. The City Council subsequently scheduled a vote on the architectural review appeal for November 18, 1998. On the evening of that vote, and for the first time, the Carlsbad office faxed a letter opposing the project to the City Council. For the first time, in over two years of commenting on the project, the Service stated that "We . . . maintain that the project would result in significant unmitigated impacts to biological resources not addressed during the initial environmental analysis in 1990. Therefore, we believe that in-kind mitigation for lost habitat must be in place to offset these impacts." Although the Carlsbad letter claims to have raised these issues previously to the City in written comments, the Service had done no such thing. Similarly, for the first time the Service letter alleged that the approved Lauren project could have even more, unsupported and never before raised, adverse environmental impacts.

Approximately two hours before the scheduled City Council vote, the Carlsbad office contacted Lauren and informed Lauren that it would be faxing a letter to Council critical of the Lauren project and contending that the project would have adverse environmental impacts. Lauren informed the Service that such identified concerns had never been expressed previously in the Service's several prior letters to the City or Lauren and that Lauren was concerned that the Service did not have sufficient and accurate facts to enable the Service to reach its conclusions. The Service nevertheless submitted its letter.

Six months later, the Carlsbad office sent a negative letter concerning the Lauren project to the Los Angeles Department of Water and Power ("DWP").

Again, the Carlsbad office sent this letter at the request of individuals opposed to this approved residential project. Again, the Service did not notify Lauren in advance that it was planning to write this letter. In fact, the Service did not even copy Lauren on its letter to the DWP. By not discussing its intent in advance with Lauren, the Carlsbad office once again presented significant incorrect facts to another agency about the project, prejudicing the project in the eyes of the DWP.

Again, Lauren contacted the Service when it later learned that this letter had been sent. It explained that the letter contained significant factual errors and biological conclusions. Once again, upon further discussion with Lauren, the Service was able to understand that it had written an important letter concerning a property owner without first having had the proper facts about the project. The Carlsbad office subsequently issued a clarification letter to the DWP.

Among the many mysteries and frustrations surrounding the Service's behavior towards this project is the fact that the Service elects to spend valuable staff time and resources attacking a project which does not fall within the Service's jurisdiction and fully complies with the Endangered Species Act – and to do so without first discussing the project with the property owner in an attempt to obtain the true facts concerning the property and the project. Inappropriate use of staff time to devote to issues beyond the Services' jurisdiction and which

plays to the private agenda of neighboring landowners opposing a small residential development does little to inspire the public's confidence in the agency.

Again, Lauren is not an isolated case. It is one of scores of horror stories that a GAO audit will uncover and analyze, and report upon. Landowners need the protection of anonymity and the Congress needs the assurance of balance and professionalism. I certainly hope you will be willing to urge the full Committee to direct GAO to begin this critically needed inquiry immediately.

I would be pleased to answer any questions that you have.

[Applause.]

Mr. POMBO. Thank you.

Mr. Spear.

STATEMENT OF MICHAEL SPEAR, MANAGER, CALIFORNIA/NEVADA OPERATIONS OFFICE, FISH AND WILDLIFE SERVICE, ACCOMPANIED BY KEN BERG, FIELD SUPERVISOR, AND SEAN SKAGGS, COUNSEL TO THE ASSISTANT SECRETARY

Mr. SPEAR. Mr. Chairman, members of the Committee, I appreciate this opportunity to discuss how the Fish and Wildlife Service implements the Endangered Species Act across the country and specifically in Southern California.

I am joined by Sean Skaggs, Special Counsel to Secretary Don Berry, and Ken Berg, supervisor of the Carlsbad office.

Let me first reiterate the major point Director Jamie Clark stated at the May 26th hearing in Washington on this issue. The service is working aggressively to improve the efficiency and effectiveness of ESA. The bold reforms we instituted in recent years can serve the species and provide flexibility and certainty to business and private landowners.

The service is committed to streamlining and improving the consultation and habitat conservation planning components of the Federal endangered species program throughout the country. We are working with many partners to develop recovery plans for listed species.

In addition, we have instituted 256 incidental take permits to habitat conservation plans and more than 200 HCPs are in some stage of development. Of these, 55 HCPs are in California ranging from San Diego, MSCP in Southern California to Pacific Lumber or Headwaters HCP in Northern California.

Just as we are providing certainty for species and landowners, we are also insuring that development does not stop because of endangered species. The U.S. economy has never been stronger, and this is particularly true in Southern California. The American public has demonstrated they want to preserve our natural heritage while allowing economic development to continue. We are achieving that goal through the ESA.

To continue making progress in implementation of the ESA, an increase in funding for an endangered species program is necessary. As of June 30th, 1999, there are 1,186 domestic species on the list of endangered and threatened species. This represents a 30 percent increase in just five years.

For California, the listed species numbers have doubled in five years. Consultations, HCPs, recovery work loads increased tremendously as a result of these new listings, and that is specifically true in California.

The service anticipates that approximately 500 HCPs will be in some stage of development or implementation by fiscal year 2000. More than 40,000 Federal projects will be reviewed under Section 7 in fiscal year 2000.

The service's capability to meet the demand is critical to completing reviews in a timely manner.

The President's fiscal 2000 budget request for endangered species is essential to allow the service to provide greater technical assist-

ance to private landowners and to expedite consultation and permitting actions throughout the nation.

In California, the need for more resources to provide a timely response to landowners is great. One of the biggest complaints we hear from constituents, and we have heard it this morning, when we serve is that the time it takes to get an approved permit is too long. Time is money for applicants.

We appreciate their needs and try our best to fulfill the growing demand for technical assistance, permit approval, and information. However, without increased funding in California and across the country, people will continue to be frustrated by our inability to respond quickly to their needs.

I urge Congress to adopt the President's budget request for endangered species for fiscal 2000. The House and Senate Appropriations Committees last week passed Fish and Wildlife Service's budget and included some increase for endangered species program above 1999 levels, but did not provide the increases we requested in the President's budget to fully address increased work load demands and the land acquisition needs that are essential for HCPs.

In our May 26th testimony, Director Clark gave a detailed explanation of how the service implements sections 7 and 10 of the ESA throughout the country. I would like to refer you to my written statement for a summary of these remarks and examples from around the country of how we are implementing the law.

I would like to focus the remainder of my time on the Committee's concerns about California. As of June 30th, 1999, California is currently home to 260 listed, 18 proposed, and 11 candidate species, many of which are narrow endemics restricted to small remnants of their former range.

The needs of the rapidly expanding human population in California created many resource conflicts. These conflicts are magnified by the booming economy and resulting development pressures.

The service does not believe that conservation of imperiled species and a healthy economy are mutually exclusive. However, the successful meshing of these two objectives will require the service to continue working with the business community to develop solutions.

Our hard working service staff in California, particularly Carlsbad, works also closely with the California Fish and Game to provide one stop shopping to the extent possible.

The nature and extent of resource conflict in California challenge our ability to make the ESA work. It is especially difficult in offices like Carlsbad where we do not have the staff to meet the demands. There are many entities seeking immediate assistance in project planning related to listed species, wetlands, and other resource issues.

The demands for information and assistance in Carlsbad are high and likely to increase. We believe that in Carlsbad, as well as in the rest of California, the only hope is for county-wide type landscape level multiple species plans. Working with local land use authorities, we can do the most for species while local entities deal with project by project development under a multiple species framework.

In addition to this, the Carlsbad staff is responsible for overseeing the implementation of 20 already approved HCPs covering 1.4 billion acres. In other words, our work has not stopped just in signing that habitat conservation plan. This involves dedicated staff working with local jurisdictions to insure timely implementation.

Despite this challenging task, we administer the ESA to the best of our ability, focusing conservation of the species, but providing for development.

The Director and I have spoken many times about the concerns raised by the Committee that we in California administer the ESA differently than other parts of the country. We have provided testimony and answered questions about this issue many times in the past and will continue to work with the Committee to clarify and address your concerns.

I want to reiterate what the Director testified to on May 26th. The service is intent on administering ESA fairly and consistently throughout the country. Different needs dictate different solutions. However, we have a nationwide program, and we intend to implement it in that fashion.

Mr. Chairman, that concludes my prepared testimony. I will be pleased to respond to any questions.

[The prepared statement of Mr. Spear follows:]

STATEMENT OF MIKE SPEAR, MANAGER OF THE CALIFORNIA AND NEVADA OPERATIONS OFFICE, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, I appreciate this opportunity to discuss how the U.S. Fish and Wildlife Service implements the Endangered Species Act (ESA) across the country and to address the Committee's concerns that we implement the law differently in California than in other parts of the country.

Introduction

Let me first reiterate the major points Director Jamie Clark stated at the May 26 hearing in Washington, DC on this issue. The Service is working aggressively to improve the efficiency and effectiveness of the ESA. The bold reforms we instituted in recent years conserve species and provide flexibility and certainty to businesses and private landowners. The Service is committed to streamlining and improving the consultation and permitting components of the Federal endangered species program throughout the country. We are working harder than ever to achieve species conservation and recovery. We are also improving our efforts to promote and achieve cooperation, rather than confrontation, when working with the many entities that have a vital role in species recovery.

Over the past 7 years, we have developed partnerships with the States, tribal governments, local communities and individual landowners to provide flexibility and certainty in the way we administer the ESA. Our reforms are paying off. We are working with many partners to develop recovery plans for listed species. In addition, we have issued 256 incidental take permits through 246 Habitat Conservation Plans (HCPs) and more than 200 HCPs are in some stage of development. Of these, 55 HCPs (65 permits) are in California ranging from the San Diego MSCP in southern California to the Pacific Lumber HCP in northern California. HCPs are a tool under the law to provide certainty to landowners while managing species conservation for the long term. We provided a list of all the approved HCPs to the Committee when Director Clark testified on May 26.

Just as we are providing certainty for species and landowners, we are also ensuring that development does not stop because of endangered species. The U.S. economy has never been stronger. At the same time, more species are being protected and recovered than ever before. The American public has demonstrated that they want to preserve our natural heritage while allowing economic development to continue. We are achieving that goal through the ESA.

FY 2000 Budget Request

To continue making progress on implementation of the ESA, an increase in funding for our endangered species program is necessary. As of June 30, 1999, there are 1,186 domestic species on the List of Endangered and Threatened Species; this represents a 30 percent increase in just 5 years. Consultations, HCPs and recovery workloads have increased tremendously at the same time that the Administration has been working to streamline and expedite the consultation and HCP processes. The Service anticipates that approximately 500 HCPs will be in some stage of development or implementation by fiscal year 2000. More than 40,500 Federal projects will be reviewed in fiscal year 2000. The Service's capability to meet the demand is critical to completing reviews in a timely manner. Furthermore, the interest among private landowners in two new conservation tools, Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, is already great and is expected to grow. The demand for these new types of voluntary conservation agreements and the tremendous growth in the number of HCPs has combined to generate a significant increase in workload pressures.

While trying to deliver all of the Administration's reforms and to respond to this increased workload, the Endangered Species Program's budget experienced a decrease in fiscal year 1996 and only modest increases in fiscal years 1997, 1998 and 1999. The Administration recognizes that increased funding support is essential to continue our successful record of reform. The President's fiscal year 2000 budget request for endangered species is essential to allow the Service to provide greater technical assistance to private landowners and to expedite consultation and permitting actions throughout the nation.

In California, the need for more resources to provide a timely response to individual landowners is great. One of the biggest complaints we hear from the constituents whom we serve is that the time it takes to get an approved permit from us is too long. Time is money for many applicants. We appreciate their needs and try our best to fulfill the growing demand for technical assistance, permit approval and information. However, without increased funding in California and across the country, people will continue to be frustrated by our inability to respond quickly to their needs. At the May 26 hearing, a common theme from a number of the witnesses who testified was the need for the Service to have more money to provide better service.

I urge the Committee to address the needs of your constituents and urge Congress to adopt the President's budget request for the Endangered Species program for fiscal year 2000. The House and Senate Appropriations Committees last week passed the Fish and Wildlife Service's budget and included general increases for the Endangered Species program above 1999 levels but did not provide the increases we requested in the President's budget to fully address increased workload demands.

In her May 26 testimony, Director Clark gave a detailed explanation of how the Service implements Section 7 and 10 of the ESA throughout the country. Let me summarize her remarks and provide examples.

Section 10

Section 10(a)(2)(A) of the ESA requires an applicant for an incidental take permit to submit a Habitat Conservation Plan (HCP) that specifies, among other things, the impacts that are likely to result from the project and the measures the permit applicant will undertake to minimize and mitigate such impacts. One of the statutory requirements for obtaining an incidental take permit is that applicants minimize and mitigate the effects of their actions to the maximum extent practicable. Section 10(a)(1)(B) of the ESA outlines the other criteria and process for issuance of incidental take permits to non-Federal parties.

Minimization and mitigation requirements can take many forms depending on the habitat needs and status of the species, and the size and scope of the project. Because applicants come to us with many types of projects that vary in size, scope and impact, and because we try to be flexible in meeting the needs of applicants, we don't use a cookie cutter approach in developing HCPs. The law does not specify HCP minimization or mitigation standards but gives the Service the flexibility to work with applicants to develop the best plan appropriate to the project. Minimization and mitigation can include restoration and creation of habitat, preservation of habitat, research, and/or public education programs.

For example, part of the mitigation associated with the Washington County, Utah HCP includes fees to acquire and manage land and implement an education program regarding desert tortoise conservation. The Service uses the best scientific information available during the development, review, and monitoring of HCPs and ensures that the minimization and mitigation strategies of a plan are as effective as possible. This is reflected in the Service's new 5-point policy proposal for HCPs

that improves the process even further. Our purpose is to help the applicants comply with the law and conserve listed species while allowing development to occur. We've done that successfully throughout the country.

There are a number of tools or strategies that landowners may use to minimize and mitigate the impacts of their actions. In the southeast, International Paper is establishing a mitigation bank as part of their red-cockaded woodpecker HCP. International Paper will actively manage approximately 5,300 acres of habitat for the red-cockaded woodpecker and has established a target population of 25–30 red-cockaded woodpecker family clusters. If the number of family clusters exceeds the number necessary for implementation of the HCP, International Paper will use those family clusters to support a private mitigation bank.

Individual HCPs for the Florida scrub jay in Brevard County, Florida typically contribute to a larger preserve strategy and a management endowment based on the scope of the proposed project area. By providing applicants with this type of option of contributing to a large preserve strategy, the effort into developing and implementing their HCP is greatly simplified, without on-going responsibility for habitat maintenance.

The Service provides assistance and support to applicants who are seeking an incidental take permit under the ESA. In many instances, the Service helps the applicant identify the actions that the applicant needs to undertake to reduce or offset adverse effects of a proposed activity on the species covered by the HCP. The Service encourages applicants to discuss their applications at the earliest time possible, so that we can help them design an HCP that will meet the permit issuance criteria and advise them on the permitting process. However, regardless of the extent to which an application incorporates Service input, if the application meets the issuance criteria, we will issue a permit.

Section 7

Section 7(a)(2) requires Federal agencies to consult with the Service to ensure proposed Federal activities are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. The Service encourages Federal action agencies to work with us early in the project development phase to ensure that discussions about the potential impacts of a Federal project or permit on listed species are addressed. In this way, we are able to identify potential problems and solutions without delaying projects unnecessarily. The action agency is responsible for determining the effects of a proposed action. If they determine that the action is not likely to adversely affect threatened and endangered species and the Service concurs in that determination, the section 7 obligation is fulfilled. In fact, during fiscal year 1998, 97.2 percent of the consultations across the country were completed at the informal stage (i.e., the proposed project was determined to have no effect or not likely to adversely affect).

When a proposed project is likely to adversely affect listed species or critical habitat, the Service and an action agency enter formal consultation. During formal consultation, the action agency and the Service may work together to identify what steps may be incorporated into a proposed project or into the biological opinion to minimize effects on listed species or critical habitat. These steps are often minor adaptations to the project that the action agency and the applicant are willing to undertake in order to reduce the harmful effects, and in some cases provide benefits, to listed species. Action agencies and applicants often refer to these modifications as "mitigation." This is especially true when agencies and applicants are also complying with other statutes, such as the Clean Water Act and the National Environmental Policy Act, where mitigation is a key requirement. In this context, the term "mitigation" is broadly applied to include avoidance and minimization of adverse effects to listed species or critical habitat. Unfortunately, this has led to confusion over the difference between minimization and mitigation under section 7 of the ESA.

Mr. Chairman, let me clarify for the Committee that when working through the formal consultation process with the action agency and the applicant it may appear that the project will jeopardize a listed species early in the talks. When this occurs, we work with the action agency and applicant to identify changes to the proposed project that would avoid jeopardy. Alternatively, the action agency or applicant may develop their own measures to avoid jeopardy. If these or other appropriate changes are incorporated into the project, we then issue a non-jeopardy opinion. In most cases this process works well and is the best approach to ensure that the project proceeds in a timely manner and without significant adverse effects on the species. For example, the Prairie Du Chien consultation in Region 3 analyzed the proposed maintenance and on-going operation of the east channel of the Mississippi River (a side channel used for commercial barge traffic). Due to those impacts, we deter-

mined that the indirect effect of commercial barge-traffic would result in jeopardy. The Army Corps of Engineers and their applicant were involved with developing project changes, and as a result, the project was modified such that jeopardy was avoided. The Army Corps of Engineers and applicant were supportive of the results.

When preparing a biological opinion, the Service is required by the ESA and its implementing regulations to include an incidental take statement that specifies reasonable and prudent measures and implementing terms and conditions to minimize the impacts of incidental take. Our Interagency Consultation Handbook clarifies that reasonable and prudent measures and implementing terms and conditions must minimize effects to the specific individuals that we anticipate will be incidentally taken and must not involve mitigation for the impacts of any anticipated take. The Service is committed to ensuring that we follow the policy direction in our handbook.

Demands in California

Already the most populous state with over 36 million residents, or one out of every eight people in the United States, California continues to grow at an unprecedented rate. Reasonable estimates expect an additional 18 million residents by 2025. Much of the growth is expected to occur in southern California, which now has five of the six most populous counties in the nation, four of which are also the fastest growing. As one of the most ecologically diverse areas in the country, California is also home to a high number of unique species. Twenty percent of all federally listed species are found in California, more than any other state except Hawaii. Conserving California's natural resources, while accommodating the projected population growth, will require planning and cooperation.

As of June 30, 1999, California is currently home to 260 listed, 18 proposed, and 11 candidate species, many of which are narrow endemics restricted to small remnants of their former range. The needs of the rapidly expanding human population in California have created many resource conflicts. These conflicts are magnified by the booming economy and resulting development pressures. The Service does not believe that conservation of imperiled species and a healthy economy are mutually exclusive. However, the successful meshing of these two objectives will require the Service to continue working with the business community to develop creative solutions. Our hardworking Service staff in California work closely with California Fish and Game to expedite the permitting process to the extent possible and have approved an assortment of conservation programs and banking agreements that ensure conservation of listed species while allowing development projects to proceed.

The nature and extent of resource conflicts in California challenge the Service's ability to make the ESA work. This challenge is especially difficult in offices like Carlsbad where we do not have the staff to address the demands from the many entities seeking immediate assistance in project planning related to listed species, wetlands and other resource issues. The demands for information and assistance in the Carlsbad office are high and continue to increase. For example, in 1998, the Carlsbad office worked on 57 formal consultations; provided 205 informal consultations/technical assistance responses; prepared documents for the listing of 7 species (6 plants and 1 mammal); issued 3 incidental take permits; finalized 6 candidate conservation agreements; and prepared draft recovery plans for southern maritime chaparral species, peninsular bighorn sheep, carbonate endemic plants, Stephen's kangaroo rat, and alluvial fan scrub species. In addition, Carlsbad staff are responsible for overseeing the implementation of 20 approved HCPs covering 1,367,946 acres. This involves dedicating staff to work with local jurisdictions to ensure timely implementation of the HCP. Despite this challenging task, we administer the ESA to the best of our ability, focusing on conservation of species but providing for development to go forward.

The Director and I have spoken many times about the concerns raised by the Committee that we in California administer the ESA differently than in other parts of the country. We have provided testimony and answered questions about this issue many times in the past and will continue to work with the Committee to clarify and address your concerns. I want to reiterate what the Director testified to at the May 26 hearing; the Service is intent on administering the ESA fairly and consistently throughout the country. Different needs dictate different solutions; however, we have nationwide ESA implementation policies and we intend to implement them fairly nationwide.

We regret that we may have inadvertently and inappropriately confused members of the Committee or the public by using terms like "mitigation" in the context of ESA when we should have used the narrower definition of minimization which is required under Section 7 of the law. Again, this confusion may be the result of the Service working closely with the State of California and other Federal agencies to

provide a streamlined process for applicants to receive Federal and State permits where other Federal and State laws requiring different standards and actions apply. These various Federal laws, such as the Clean Water Act and the National Environmental Policy Act (NEPA), often use the word "mitigation" and involve review and coordination from the Service. We appreciate that addressing the various requirements of the Clean Water Act, NEPA, and ESA can be complicated and be a source of misunderstanding between applicants and the Service. For example, wetland mitigation under section 404 of the Clean Water Act may also provide conservation benefits for listed species that occupy wetlands. Regardless of the reasons for our use of the wrong term, let me assure the Committee that we will redouble our efforts to be more accurate in our use of the correct terminology and to ensure that we do our part to provide the fair and consistent implementation of the ESA that the Director has promised.

In closing, Mr. Chairman, the Service is making great efforts, with limited resources, to ensure that implementation of the ESA is scientifically sound, flexibly applied, and consistently enforced throughout the country. The Service, under this Administration, has endeavored to fairly protect landowners' interests in their land, while providing incentives to manage their lands in ways that benefit endangered species. The Service is fully committed to finding this balance between economic development and endangered species protection. Finding that balance requires early, open discussions between all parties involved in order to mesh the two needs, either through section 7 or section 10. I am confident that with full implementation of the Administration's reforms, the Endangered Species Act will continue to protect the most vulnerable biological resources of the Nation without imposing undue burdens on individual citizens.

Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you might have.

Mr. POMBO. Thank you.

Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. Spear, we have heard from a lot of witnesses today, and we are going to hear from a few more, and I think you can tell from the diverse nature of these folks, public agencies, school boards, developers, elected officials, it seems they all have a problem with the Carlsbad office.

Do you believe there is a problem there? Do you think there is a pervasive problem with the policies and practices of that office?

Mr. SPEAR. No, I do not believe there is a pervasive problem with the policies and practice of the office.

Mr. CALVERT. So it would be your opinion that the witnesses that are here today, both public and private, and the scores of others who are not here, are just exceptions to the rule?

Mr. SPEAR. No, I think they have raised concerns that I think we must be attentive to, but what I am saying is that it does not represent some sort of pervasive problem. The Carlsbad office works hard to deal with the issues with the resources it has, and there is no doubt that within all it is difficult to administer the Endangered Species Act, that it affects private property; that these kinds of issues are going to surface. There is going to be disagreements over science. There are differences over terms of process.

Mr. CALVERT. Just regaining my time, let's talk about science. If you notice in the panel we have here today, we do not have any biologists. We could not get one biologist to agree to testify today. We asked a number of biologists. I do not know. The Chairman may have a number in mind, seven, eight, nine. I don't know. A number which would have liked to testify. They claimed that they had a fear of retaliation as one of the main reasons why they would not testify at today's hearing.

Do you think there is a retaliation problem in the Carlsbad office?

Mr. SPEAR. Absolutely not, and frankly——

[Laughter.]

Mr. SPEAR. [continuing] one of the comments that concerns me the most, and I, frankly, welcome the Committee in their comment this morning that said they would continue to be observant in this fashion, and so will I, and if it is ever detected, it will be dealt with.

Mr. CALVERT. And I am an old employer, in business most of my life. I like to think any phone call I get I return it the same day. It is just something my father taught me when I was in business. If I did not do it, he would probably fire me, even though he is my own father, and I would like to think that with my own employees. You know, if somebody calls, you return the phone call, even if you are going to get back to them the next day and you do not have a lot of time, but you return the phone call.

And you treat people courteously, especially if we are a Federal agency. This is something that really bothers me. If that is a problem in that office, that ought to get fixed because when I heard that from one of the witnesses today, and I have heard that before, Mr. Spear, so I think you ought to look into that and make sure that the taxpayers and constituents of all of us are not being treated unfairly or without all due courtesy.

Mr. SPEAR. That is a very fair comment, Mr. Calvert, and I am guilty of that I know at times, and I take that as very appropriate and something we will work on.

Mr. CALVERT. Now, you heard the testimony of the previous witness here today, Ms. Rosen, about the school site there in Murrieta, and Murrieta is a city that I represent, and obviously I am very concerned about Murrieta, about 250 acres of land. They get a biologist. They say 70, 80 acres is habitat, and Fish and Wildlife wants the entire 250 acres of property. Do you think that is reasonable?

Mr. SPEAR. I do not think it is reasonable, and I do not think that is what we said. I got a briefing on this yesterday. There is no doubt that this school site is in an area which is an important, as far as a corridor, but I——

Mr. CALVERT. Okay. Are you saying—Ms. Rosen is here today, made a comment, and I asked her. She made her testimony, and I asked the question again. Is 250 acres required? And she said yes. Are you saying that Ms. Rosen is not being truthful to this Committee?

Mr. SPEAR. I do not understand exactly what happened or the context.

Mr. CALVERT. I would say at the very least we have a communication problem here.

Mr. SPEAR. I would say that is true. This is under negotiation now. My people were telling me yesterday how they are trying to work out. Clearly, the original plan that was presented was one that our people thought contained too much development on that site, but it is not my impression now from discussions I had yesterday that our people are seeking the whole 250 acres.

Mr. CALVERT. Well, how much do you want? Do you want 200 acres?

Mr. SPEAR. I do not know the exact number. They are trying to work out so we can have the school site. I am not here to have that level of detail to know exactly what that number is. I mean, my staff is dedicated——

Mr. CALVERT. Just between you and I——

[Laughter.]

Mr. CALVERT. [continuing] do you think 200 acres is unreasonable?

Mr. SPEAR. I do not think this is a good place to negotiate numbers.

[Laughter.]

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. POMBO. Ms. Chenoweth.

Mrs. CHENOWETH. Thank you.

Mr. Spear, by law Fish and Wildlife Service has 90 days to respond to petitions to list or de-list a species; isn't that correct?

Mr. SPEAR. Yes, it is.

Mrs. CHENOWETH. Well, Riverside County Farm Bureau filed a petition to de-list the kangaroo rat in 1995. They received absolutely no response on that, and you are sitting here telling this body of Congressmen there is no problem, and this is just one example.

What do you have to say for yourself?

Mr. SPEAR. We have a listing priority guidance which we follow.

Mrs. CHENOWETH. I thought the law said 90 days.

Mr. SPEAR. Well, we have established the listed priority guidance.

Mrs. CHENOWETH. So your listing priority guidance overrules the law?

Mr. SPEAR. I will let the people in Washington who deal with the regulatory process determine exactly how that worked out, but there is a listing priority guidance that we have established through the regulatory process that sets the standards. We work with the courts as to how when we have limited funds we will work through the listing process.

Mrs. CHENOWETH. Limited funds? Comes on now. I mean, there is a major disconnect here, Mr. Spear, and you have heard startling testimony just as we have. I came into this hearing feeling fairly sanguine that this would be like any other of the number of hearings Mr. Pombo has held on the Endangered Species Act.

As I sat here and listened to the testimony, I became utterly frustrated and shocked at what I am hearing. You heard the same thing.

[Applause.]

Mrs. CHENOWETH. Do not give this body an answer that you need more money. What about the 43 biologists, some of whom may be having bumper stickers on their cars that say, "Developers Can Go to Hell"? What do you have to say about that kind of activity on government property? Mr. Spear?

Mr. SPEAR. I do not know that the allegation indicated that that was on a government vehicle, but——

Mrs. CHENOWETH. Then you did not hear Congressman Hunter then.

Mr. SPEAR. I did not hear him say it was on a government vehicle. I do not.

Mr. HUNTER. Would the gentle lady yield?

Mrs. CHENOWETH. Yes, I will yield.

Mr. HUNTER. The photo that was taken of that bumper strip, that was on one of the government employees who works in the Carlsbad office on their car that they drive to work. So my point was if you are a veteran and you are going into the Veterans' Administration and you see Joe Smith's car and he is going to be your case worker and he has got a bumper strip that says "Veterans Can Go to Hell," you probably cannot expect great service from that particular individual.

And so if the gentle lady would yield, do you think that is a proper attitude for a government employee whose job is to process these permits?

Mr. SPEAR. I will answer the question. I just wanted to clarify that I did not think that was on a government vehicle, but——

Mr. HUNTER. No, it was on a private car of a government worker.

Mr. SPEAR. I will get to the specific question and answer your question. No, I do not think it is proper in terms of the image it sends and for exactly the reasons you have outlined.

I am not sure what I can do about it other than pass on to the fact that it is inappropriate because of people's, you know, private rights.

Mr. HUNTER. Well, we did not offer it for the purpose of getting rid of the bumper strip. They took it off when they saw that somebody had photographed it and was taking a record of it.

The point is the attitude that it represents is something that I think, Mr. Spear, you do not acknowledge exists, and you might look a little deeper.

Mr. SPEAR. I think it is improper, and I will—I agree with you on that.

Mrs. CHENOWETH. Reclaiming my time, Mr. Spear, you asked us for more dollars, but let me say it does not take more dollars to return a telephone call, and I think you have a major mess on your hands in this Carlsbad office. It is peopled by people——

[Applause.]

Mrs. CHENOWETH. [continuing] like the 43 biologists who have no respect for not only the rule of law, but the people that they are entrusted to work with, no respect, no common sense, and what we are seeing come out of this office is chaotic.

I do want to say, Mr. Chairman, if I might just ask for a couple of minutes, unanimous consent for an additional two minutes.

Mr. POMBO. Without objection, the gentle lady requests two additional minutes.

Mrs. CHENOWETH. In some correspondence from Jamie Clark, April 10th, 1998, out of concern that we have had all along for the mitigation that the Fish and Wildlife Service has been involved in, that letter from your Director states, "While it has been the policy of the Service that it is not appropriate to require mitigation to offset incidental take, it was not explicitly stated in the 1994 Section 7 consultation handbook. Because the Service is aware that there occasionally has been an inconsistent application of this policy, it clarified the policy in its recently approved endangered species con-

sultant handbook. The Service's new handbook clearly states that it is not appropriate to require mitigation for the impacts of incidental take."

And incidental take takes many forms, setting aside lands or restricting activities, and so forth, but also in a Supreme Court decision that came out of Oregon, Dolen v. Tiger, the Supreme Court held that governmental authority to exact such a condition as taking from developers was circumscribed by the Fifth and 14th Amendment.

Under the well settled doctrine of unconstitutional conditions the government may not require a person to give up a constitutional right, here the right to receive just compensation when property is taken for a public use in exchange for a discretionary benefit conferred by the government, where the property sought has little or no relationship in its benefit.

And now we have moved from 1998 to 1999, where in this office alone, they are imposing 31 regional HCPs, and one of the reasons that they are imposing the HCPs is to serve as a mechanism to address over arching social concerns, such as urban sprawl, transportation congestion, and open space planning, while enabling jurisdictions to keep their ESA obligations.

It seems to me that this agency has suddenly taken upon itself to become the nation's land use planners, and this authority was never conferred on this agency by Congress.

Yes, there is a major disconnect, and my major concern is that in spite of what the Constitution says, in spite of what even your handbook says, your agency continues to impact good, sound development with unreasonable requirements and requiring them to give up land in exchange, in mitigation.

Henry Hyde said in his closing debate in the impeachment debate on the floor of the House that when we disregard the rule of law, it is a national tragedy, and it is up to us to catch that falling flag in time before we have utter tyranny and chaos.

And, Mr. Spear, these agencies are running this country without a rule of law, and we are going to be running in to tyranny and chaos, and I do not think you want to end your long and distinguished career with that kind of legacy.

We would ask that you get connected to what is happening in your Carlsbad office and make the necessary corrections in spite of what may be the politically correct thing of the day. The Fish and Wildlife Service and the relationship of agencies to the people need to go on in a manner that is productive and not destructive.

Thank you.

[Applause.]

Mr. POMBO. Mr. Miller.

Mr. MILLER. No questions.

Mr. POMBO. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. Spear, thank you for being with us, and I think it is good that you are appearing on the panel with some of our folks that have had some of the problems because it allows for a real connection.

First, when we last had a meeting in Washington, DC, you told me that this butterfly breeding season for the Quino checkerspot

butterfly would serve as a model for that particular survey protocol. Has that direction been given to the local folks?

Mr. SPEAR. I am not sure I quite understand the question.

Mr. HUNTER. Well, remember you explained to you and you said there was concern in the field that at that time there had not been enough rain up by the March or April time, for this to serve as a model for the breeding season for the checkerspot butterfly, but that your determination was that it was.

In fact, we had had some rain recently when we were meeting here, and that was that this would be the model. They would not have to wait for another year before they could do a survey.

Mr. SPEAR. When we spoke back then, it was at the beginning of the season. The question back then was not whether or not it was going to be the only year, but whether or not you would count this year, and, yes, we did.

Mr. HUNTER. Yes.

Mr. SPEAR. We were able to get a year in this year. We did have the appropriate seasonal conditions and were able to do the surveys this year, yes.

Mr. HUNTER. Okay. Let me ask you a couple of questions with respect to Mr. Turecek's project because I think it is representative.

The information I have here is that he, and, Bruce, break in if I am wrong here, but you have done three separate biological surveys now that were required by the Fish and Wildlife Service. Do I take it you did those with people who were well credentialed and qualified biologists to do the surveys?

Mr. TURECEK. All of them permitted biologists.

Mr. HUNTER. How much did you spend on those surveys?

Mr. TURECEK. Up until 1996, the surveying took about $50,000 specifically just for the biologists.

Mr. HUNTER. Okay. Now, when you did those surveys, the last survey you did was the result of an eight page critique of the survey before that by Fish and Wildlife. So they did a critique of the survey and said, "Here are the additional things we want you to look at"; is that right?

Mr. TURECEK. Unfortunately they did not do a critique. We requested a critique. All they gave was another three page complaint letter.

Mr. HUNTER. Okay.

Mr. TURECEK. However, I did have another biology firm that went out for approximately another $13,000 to resurvey the property. Following that, it required also an additional survey for the Quino checkerspot butterfly. That was an additional $18,000 on top of all the rest of that.

Mr. HUNTER. Okay. Have they ever found any endangered species on that property?

Mr. TURECEK. Never. I do have the butterfly adjacent to the property next door, and I do have a food source for the larvae on the property that I have dedicated off into open space. We planned for that to be an open space from the beginning.

But as far as endangered species on the property, no.

Mr. HUNTER. Okay. Mr. Spear, I think this is one of our problems. Here you have got a landowner. He is a rancher. He has got, I presume, a limited amount of capital. He has put out a lot of

cash, $50,000, to do three surveys, each of which is rejected by Fish and Wildlife even though they are done by credentialed biologists. They have never found any endangered species, and you tell us you need more money.

Well, they have apparently spent a lot of staff time figuring out reasons to reject Mr. Turecek's request, and don't you feel that we are not bringing these cases to closure in a reasonable way? I mean that would be my instinctive reaction to listening to this chronology of surveys.

And, Mr. Berg, if you can enlighten us, please jump in, too. We are not restricting it to Mr. Spear to answer the questions, but do you see what we are talking about here?

Mr. SPEAR. Mr. Hunter, I think this is a good example we need to spend a couple of minutes on because whether or not this is a failure of communications as brought out earlier, there is a real misunderstanding of exactly what has happened so far in this project.

First of all, there have been no Federal permits applied for at this stage. What has happened is the state and Federal resource agencies, Fish and Game and Fish and Wildlife Service, provided joint comments like we try to do so that we get up front a comment about what it is we believe needs to be stated in the documents to provide us the information to make the decisions. Okay? So that is where we are.

Nobody has said that this was—let me read something in here that talks to something that was brought up by Mr. Turecek.

Mr. HUNTER. But first on that point, let's get this straight. Mr. Turecek wants to develop his land. So if he is doing these things gratuitously and he could just start building homes, I am sure he would love to do it.

Mr. SPEAR. Oh, he is doing the right thing.

Mr. HUNTER. All right.

Mr. SPEAR. But this is—let me just go——

Mr. HUNTER. But let me hold you up here because this is an important point. People being able to in an affordable way develop their property is an important factor here. You are saying he has spent 50 grand so far doing three surveys, and he has to do it before he can make the applications. I presume this guy is not made out of money, and my instincts are he probably will not have the legs or the financial endurance to get through this process, and I think part of your job is to make this process a reasonable one where average people with some money—I mean he has gone out and borrowed 50 grand and gotten it from someplace just to start the project—where average Americans can get through this process without being bankrupted.

We never intended, we never said in the Endangered Species Act we want you to set up a regulatory process that will bankrupt the average citizen before he can get through. You agree with that. That is not part of the law.

Mr. SPEAR. I agree.

Mr. HUNTER. And I think that part of the problem that we have here is that we have not made this thing user friendly where average folks can get through it. Don't you agree with that?

Mr. SPEAR. Well, we have to have the information to be able to make a determination about the species that are listed.

Mr. HUNTER. But he has made three surveys.

Mr. SPEAR. Yes.

Mr. HUNTER. And each one has been rejected.

Mr. SPEAR. I do not think that is the case that we have rejected them.

Mr. HUNTER. But why has he——

Mr. SPEAR. I guess I will let Mr. Berg speak at this stage about the details of that. I would like to get back to a couple of other points.

Mr. HUNTER. Okay.

Mr. BERG. My name is Ken Berg. I am the field supervisor for the Carlsbad Fish and Wildlife office.

It is my understanding that Mr. Turecek is applying through the county for a development permit that requires that he also prepare an environmental impact report under the California Environmental Quality Act. Our comments and the comments of the California Department of Fish and Game have been provided to the county so they can do the environmental disclosure through the California Environmental Quality Act.

One of the issues that needs to be addressed under the California Environmental Quality Act is the presence of endangered species habitat. So our technical assistance has been trying to assist Mr. Turecek and the county in assuring that the environmental documentation is adequate to disclose the potential environmental effect of his proposed development on endangered species.

And one of the things that is necessary to do a thorough job so that Mr. Turecek and the county is not vulnerable to citizen lawsuits about failure to comply with the California Environmental Quality Act is that he does adequate surveys for endangered species to determine whether or not they are present.

Mr. HUNTER. Mr. Chairman, I know we are going over our time, but this is the only case I am going to want to direct my comments to. Could I ask for a couple more minutes here just to follow this up and get to the bottom line here?

Mr. POMBO. Without objection.

Mr. HUNTER. Thank you.

Mr. Berg, as I understand it, he has got to get a basically clean bill of health, if you will, from Fish and Wildlife, and, Bruce, jump in if you want to here, in order to get permission to build from the state subdivision, which is the county; is that right? In other words, he is not doing this for fun. He is——

Mr. BERG. We give advice to the county. The county does not have to follow our advice.

Mr. HUNTER. But they do.

[Laughter.]

Mr. HUNTER. But my point is as a practical thing, he has to get a clean bill of health from you guys before the county—the counties will put as a condition you have got to pass the environmental or Endangered Species Act requirements before they are going to give him a permit.

He is not spending this 50 grand because he wants to. He is doing it because he has to, right?

Mr. BERG. He is doing it because the county is requiring that provide——

Mr. HUNTER. I understand.

Mr. BERG. [continuing] further documents.

Mr. POMBO. If the gentleman would yield, that is not exactly accurate. According to a Supreme Court case, the county can be held liable if they do not follow the advice of Fish and Wildlife Service. So for you to say that they are not——

[Applause.]

Mr. POMBO. And furthermore, if this gentleman has no endangered species present on his property, he does not need a Section 10 permit. What he needs to do is do the biological survey to determine whether or not he has endangered species on that. It is your responsibility to review those biological assessments, determine whether or not they are adequate. If they are adequate, then you give him a clean bill of health and say he does not have endangered species on his property, and he does not need a Section 10 permit.

So you cannot use the law and use the county and use everything that is put in front of you to delay a project and put this gentleman in the position where he spends millions of dollars in order to meet your criteria and then stand back and put your hands up and tell this Committee that you had nothing to do with it.

[Applause.]

Mr. HUNTER. Well, now, Bruce, where are you right now on this thing?

Mr. TURECEK. By the way, I wanted to clarify. The first survey was $50,000, and there is at least another $25,000 beyond that.

The problem I have is that the letters and the communication I get back always uses words "inadequate," and never tells me why it is inadequate. If it is inadequate because of minimum number of hours or qualifications of my biologist, whatever makes it inadequate, my question is I want to find out why. I want to get to a completion. They never allow me to get to that completion.

Mr. HUNTER. Okay. Now, Mr. Spear, because I want this to be a constructive session, and I know you do, too, here is the problem. We have got an average citizen of the United States. He is not a big corporation which a lot of the environmental folks talk about. He is just a guy that has got some land out there in his county, and he has got a right to use his land. Presumably he has paid taxes on it. He has paid his mortgages. He has gone through rough economic times. He has got a piece of property in America, and he wants to use it.

We have a structure that is built up so that he has not even gotten into the initial permitting process yet, and he has already spent $75,000. So what you are saying is we have built a structure that the average person cannot afford. That is not right.

And what is not right, I think there is some fault here, Mr. Berg. If you have a system where an average guy cannot walk in and say, "Tell me what I need. Tell me what I need. Sit down with me. Show me what I have got to do," and you cannot show him in a streamlined fashion, and this obviously is not an endangered species rich piece of property because you have never found a single

one out there, but if you cannot show him for less than 75 grand what he needs to know, then the system is broken.

If that was your aunt and she had willed this property to you or her resources to you and she only had $75,000 in her pocket and you walked out and said, "Aunt, how is my inheritance going?" and she said, "Mr. Berg, I just gave it all to the biologists and yet we are not even a third of the way through the reports," you would be as mad as heck.

And so I think, Mr. Spear, we have to develop a system that is user friendly for average Americans who own property to go down and learn in common language what they have to do and have the system a reasonable enough system so that you can get through it without having to make multiple reports, especially when you do not have the first endangered species found.

Don't you agree with that?

Mr. SPEAR. Mr. Chairman, we——

[Applause.]

Mr. SPEAR. Mr. Hunter, we do need to make it, and we certainly owe applicants not only the issue of what is needed in a survey, but also when something is provided and we have a problem, to be able to explain to him how to fix it. That technical assistance function is clearly ours, and we need to do it.

There is a cost to being able to go through the survey processes in an endangered species rich area like Southern California. There is a cost to get this kind of information. I do not want to indicate to you today that we can figure out how to eliminate those costs. We need to make them as efficient as possible, et cetera, but in the environment we have down here, there is a certain amount of information that we need to get, and we need to figure out how to help people get that as easy as possible.

Mr. HUNTER. Well, I understand. I agree, but in this case, we have not found a single one of those species on his property. So it is not——

Mr. SPEAR. Well, a survey is to determine that.

Mr. HUNTER. Well, Mr. Berg, can we make another stab at this Mr. Turecek's operation here? I would like to——

Mr. BERG. It is my understanding that we had explained to him the kind of surveys that would be adequate, but if he—if we have not done that adequately, we will get back.

Mr. HUNTER. I would just ask that you engage with my constituent and give him the time and the attention so that he as an average citizen can learn how to walk through this process without bankrupting his family. If you could do that, I would appreciate it.

Thank you, Mr. Chairman.

Mr. LIBEU. Mr. Chairman, may I have just one minute? Just one minute.

Mr. POMBO. I will give you a minute of my time. Go ahead.

Mr. LIBEU. The problem that I have with the way that they have responded to my letters is now their letters have been used by others to generate comments letters to put me literally at suit, to sue me. In other words, now others are taking their letters as a basis and attempting to setting up the preliminary steps to put me at legal challenge. That is the problem I have with their letters.

Mr. POMBO. Mr. Spear, would you respond to that, please?

Mr. SPEAR. Yes, Mr. Chairman. This is a real Catch-22.

[Laughter.]

Mr. SPEAR. If we provide clear technical assistance and letters in response, try to give the information and provide them the assistance with the kind of detail and support, then you get the kind of problem perhaps that he is talking about.

If you make them fuzzy so that they are unusable, then they are not helpful to him, et cetera. So I think this is a letter early on in the process, not a Federal process, under a state process, where we join with the state to provide the information as early as possible so that we are not coming around later and doing it at a later time.

I mean, how to communicate clearly, officially, here is what we see, here is what we think is needed, without others being able to say, "All right. I will use it one way or the other," I am not sure how we do that. I understand the dilemma, but I think we are also calling for clear communication.

Mr. POMBO. I would like to recognize Mr. Miller.

Mr. MILLER. I mean this in a positive way, but I am listening to what you say, and it is like an individual going to court, putting themselves in the proper position, and you are assumed guilty until you can in some way prove you are innocent.

I mean you used the words of "endangered species rich environment" of the entire State of California, and Mr. Turecek, I know exactly what he is saying. I have been involved in real estate for about 30 years now, and I have done a lot of the EIRs, and I have read many of your responses, and I have read many of your responses to EIRs that I know that have just been proposed, and you use words like "it appears," the study, "to be inadequate," "it appears that this was not taken into consideration," even when a full EIR has been prepared and circulated, and you are to come back with comments. Your comments do not relate to what the study said that was generated in the EIR. You come back with words like "it appears," which the individual here is correct. Then an individual will take that letter to court and say, "Obviously something was not done because the letter clearly says it appears."

And your responses in many cases, and I would like you to think about this because I think it is only fair, are based on your assumption that something is there even though there is no evidence before you that that exists, and that is the problem I have.

And it angers people, and when you see individuals, and Congressman Hunter is exactly right. I have witnessed a lot of people lose property because they could not afford to carry it any longer because the lender would not extend the loan because it had been too long. It had taken too long for the process to occur for the individual to get entitlements on their piece of property, and they could no longer afford the process. They had indebted themselves trying to perform the process that we believe they are supposed to go through to insure that we are protecting the environment.

And I believe this applicant here has done that. He has tried to insure that he has protected the environment. He has done what we require him to do based on what we believed should have been done when laws are passed. The problem is it is taken to a dif-

ferent degree when it is being applied, and we use words like "appears."

And when you say "appears," you have no basis for that because if there was an inadequacy in the EIR, you should say the EIR did not address these given areas, and they should address them.

Now, you do that occasionally, yes. When you see an EIR has not adequately addressed an issue, you will state that, but then the response goes on with other language like "the study appears to not address," and you have no evidence that it did not address it. It was not taken into consideration by the biologist, but that type of vague, ambiguous language creates a Catch-22 you spoke of earlier, and it puts that property owner in the situation where if he does finally get an entitlement, then he could end up in court because of your letter saying "it appears."

Now, if the county decides, well, you say "appears," but we see no evidence that that is the situation and they go ahead with the entitlement, he is stuck in the situation where any individual or group that can afford an attorney can tie that individual property owner up in court for years, and that is the problem I have.

When I built my house, I bought a lot and I graded it, and there was not a tree on my lot, and I planted 250 of them because I like the environment. I like trees. I like living with nature, but if I want to go out and cut some of those trees down on my hillsides and use them in my fireplace, I also want a right to do that, and I do not want to have to get a permit to do it.

But I think we need to start looking at property owners and saying that is the person we work for, not them working for us, and if there is some inadequacy in an EIR, then address it and ask that they respond to it.

But when we continue to use words like "appears" and "it might be" and "could be," those are vague and ambiguous, and it puts the property owner in a situation where it could be very litigious in the long run, and I do not think we are serving anybody by doing that.

[Applause.]

Mr. POMBO. Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman.

Boy, what a mess. I do not know where else to begin. Mr. Spear, you spoke about the necessity for clear communication, I think, being paramount here. You and I discussed this in Washington personally. Are you aware of one of your employees saying to one of my developers after I spent an entire morning with Mr. Berg in the Carlsbad office going over projects, discussing projects with you; are you aware that my developer was told, "Going to your Congresswoman will not help you"?

Mr. SPEAR. I have heard that allegation. I have not been able to confirm it.

Ms. BONO. Mr. Berg, are you aware of that comment?

Mr. BERG. No, I am not.

Ms. BONO. I think that it has been pretty widely substantiated. You would have to agree with me you heard it; I heard it. I mean, everybody heard it.

Ken, how much did Bighorn Golf Development give for mitigation efforts, $500,000, $750,000?

Mr. BERG. I am not sure which project you are referring to.

Ms. BONO. The Bighorn golf course, not the development.

Mr. BERG. I think it was 500.

Ms. BONO. Five hundred thousand dollars. So when they work with you and they get to the point of total frustration, throwing up there hands, having nowhere to go other than to their Congresswoman, and then they are told going to your Congresswoman will not help $500,000 later, is that not an extremely sad state of affairs here?

Mr. BERG. Ms. Bono, I believe the $500,000 is part of the state process, not the Federal permit. I do not think that was a result of our——

Ms. BONO. Okay. So the Federal bighorn sheep and the state bighorn sheep, I guess they know, I mean?

Mr. BERG. No, but I am just saying——

[Laughter.]

Ms. BONO. I mean, you know, that has been part of my frustration, that project. We have talked about it and talked about it, you know, again, the state requiring Bighorn Golf Development to put up a five foot fence, and then we were told a five foot fence was inadequate. They need to remove it and put up an eight foot fence. Yes, the state did not talk to the Federal Government. There is no question there. The developer was the one who was stuck with the bill.

But when they are that frustrated, when they come to me and then they are told in my view they are threatened, going to me will not help them, that is a very, very sad state, and I want to know. You are hearing it. You are hearing it behind you. We have heard it. We have talked about it. In my one year of tenure, you and I have talked about this before.

What have you done to make changes so far in your office with personnel? And I think this goes back to the question. It is not the bumper sticker itself. It is obviously the personality of the bumper sticker. What have you done in that Carlsbad office over the course of time to make these changes, to know that these people are actually serving the people in their best interest?

Mr. SPEAR. Well, I have spent more time working with—perhaps the word "on" is appropriate—the Carlsbad office since 1995 when I got a call from Molly Bater, then Director, who had just talked to the Secretary, and he said something like Mike Spear needs to get to Southern California quick.

Okay. Since 1995, I have been working with the Carlsbad office. We have made major changes in structure. Specifically we have aligned our staffs geographically oriented. We used to have one part of a staff that would do the endangered species part. Then in that same area another group would look at the wetlands, and then the two might not have talked well enough together or somebody else was doing listing.

Now, they are all aligned geographically so that when we have an issue in Riverside County or Coachella Valley, one set of people who work on all aspects of that issue. We have brought in new staff, changed the structure, brought in leadership like Ken, whom I'm very proud of, and there has been a major effort.

And also we have brought resources. I have allocated lots of additional resources within what I have received to the office.

What I want to indicate to you is I have personally spent more time trying to get the Carlsbad office to a point where it can deal with the issues, the tremendous pressures of Southern California than I have in any other office either when I was Regional Director or now that I am just in California and Nevada. I am very proud of where they have arrived. I am very proud of the individuals, the organization, and the direction that they are taking, their ability to try to work on the solutions, try to get away from the project by project, look at the big picture.

So we will continue to work on it. I will; Ken will, and to respond to the kind of concerns that you are bringing out at this hearing.

I understand it is there. The pressures are enormous on everyone.

Ms. BONO. All right. Let me reclaim my time here. First of all, I want to give you a little credit here, and Mr. Berg as well. I do know that the process can work. But I think you guys ask for an awful lot of blood to be drawn in the process to get there. I think the success of the Ritz Carls and I think we found a reasonable, I guess, agreement there, and I am excited. I am happy it is going to go forward. So I know it can be done.

So I do not want to beat up on you guys because I think, yes, I know it can happen. Maybe I am the only believer maybe in this room, but I know you are capable of doing it, but what you are hearing here is people are really begging you, please, you know. It is time now to get it together.

And my last thing, if I could indulge the Chairman just for a minute, back to the bumper sticker, and it is not, again, the bumper sticker. It is the messenger. Director Jamie Rappaport Clark, again in her statement that Mrs. Chenoweth referred to, said they are currently 31 regional HCPs, and then goes on to say they serve as a mechanism to address over arching social concerns, such as urban sprawl, transportation congestion, and open space planning, while enabling jurisdictions to meet their ESA obligations.

Is that not meaning that all of these people are subjected to the guy with the bumper sticker on his car?

Mr. SPEAR. I think what was being referred to in that statement is that this mechanism is a local mechanism. It is not a Fish and Wildlife Service mechanism.

Ms. BONO. That is your interpretation of that?

Mr. SPEAR. It is our ability to work with local communities within the HCP context to provide the biological context for larger planning purposes.

What we have here in Riverside County, and western Riverside County is a good example, is close cooperation with the supervisors. They have just put out a brochure, questions and answers about the Riverside County integrated plan where they have put together a land use plan, multiple species plan, a transportation plan to be done over the next two to three years.

Ms. BONO. And on that plan, and I will give back my time, but on that plan how in the world do you expect us to have any good faith in you or the Carlsbad office, knowing that we go through this plan, we give you what you want, and the next day you guys come around and say, you know, a mile down the road here is the latest

species and this is what we have to do now rather than put up a sign "Your habitat is that way. Go find it"?

Mr. SPEAR. I think that that allegation concerns me greatly, this notion of there is no deal is a deal. As we have been saying and the Secretary has been saying all the way along, a deal is a deal.

The deal is as written. The Quino example in San Diego County is a good example. It gets thrown back at us. You changed the deal.

We did not change the deal. The Quino was not a covered species, and people knew that. Mayor Golding made that statement. We knew it was not a covered species. We provided money to San Diego County to go in and add that to the covered species list, but we have not changed the deal that was signed.

And that same commitment goes to western Riverside County. People will know what they get. That deal will be lived up to. On both sides it must be lived up to.

Ms. BONO. But I believe, and then I will yield back, that if a deal were a deal, we would not be here today.

So with that, I yield back.

Mr. POMBO. Mr. Calvert.

Mr. CALVERT. I want to give the other witnesses an opportunity real quickly, and the subject of HCP has been brought up. As you know, Mr. Spear, I have been trying to work out some of these things over the years.

Dr. Silver made a comment about HCPs as potentially the only reasonable way to work out some of these problems, and, Mr. Hewitt, I know you have been involved in negotiating with development companies over the years. You made a comment that a deal is a deal and that Fish and Wildlife keeps their commitments.

I would question, for instance, on the Agua Mansa industrial area where they had a letter stating they were clear of species and then you had a new species come up, and then they had, in essence, an in jeopardy property, and that property was not able to be developed.

I would also say that it is impossible, and I would think you would agree with this, to know what species may come down the line when you are negotiating these HCPs. I would like to hear from Dr. Silver especially on this.

Don't you think that when landowners in good faith or counties in good faith, whether it is Orange County or San Diego County, sit down and negotiate an HCP and they put up the money and they put up the land, with the implied agreement that they will be able to go ahead and use what land is left to develop, don't you think that is the implication of that agreement or do you think it is something different than that?

Dr. SILVER. I would agree with you.

Mr. CALVERT. You would agree. Now, I will tell you, to be very candid, and I think you know this. I really got energized when the Quino listing, as you well know.

Mr. SPEAR. I know.

Mr. CALVERT. As you well know, Mr. Spear, and we chatted that very day, I think.

Mr. SPEAR. Yes.

Mr. CALVERT. Because I felt that map—when I saw that map for the first time, I was in Riverside, and I was, as a matter of fact,

sitting with a bunch of folks that were really concerned about that map. You know, how on the earth did somebody come up with that map that basically shows the entire area of Southern California with the exception of downtown Los Angeles and a few other exceptions?

That, in my opinion, and I think a lot of biologists would have been here today if they did not feel threatened, I guess, to comment, but that was not a very scientifically derived map. Wouldn't you agree with that?

Mr. SPEAR. I would not agree that it is not scientifically derived. What I will certainly agree with, if I ever have a chance to do it over again, is that we will do a lot better job of explaining what our intentions are. I will not call that one of our great public relations successes.

Mr. CALVERT. But this is an important point here. We are attempting to potentially enter into an HCP here in Riverside County, and what happened to San Diego County is a big concern to this area, and it is a big concern to other areas in the state.

I know I have heard testimony from other counties throughout the state, both from the north and the south and other areas of this country. Why should they enter into an HCP if there is no agreement in effect?

I mean, you say a deal is a deal, but you will admit that if a species is not initially agreed to and on this list of species that are in that HCP, that there is nothing you can do. Isn't that correct that that is exactly what has happened with the Quino Checkerspot Butterfly?

Mr. SPEAR. In the way you explained it, that is correct, but what is on the deal is a list of species that are covered.

Mr. CALVERT. But how about if something comes up? If a biologist somewhere out there wants to find a species and get it listed, what is to stop them?

Mr. SPEAR. Well, if the biology is there and the science is there, it would get listed.

Mr. CALVERT. That is correct.

Any other comments? And I know my time has expired. Mr. Hewitt, do you have a comment? Doctor?

Dr. SILVER. I was just going to say that the way the San Diego plan works is that there are procedures in the plan so that if a species that was not initially covered becomes listed in the future, there are procedures in the plan so that each of the parties knows what their responsibilities will be, kind of trying to divide up the responsibilities in the event that happens.

So the plan makes an effort to deal with that problem.

Mr. CALVERT. Well, do you think they dealt with it in San Diego very well?

Dr. SILVER. I think that there are—my understanding is that there are procedures now being worked on to add the Quino to the list. I cannot tell you what those are in detail, but I think that that is simply part of what was anticipated, that if a species was not on the list, then people would go back to the document and——

Mr. CALVERT. My time has expired, but don't you agree that there is a problem here in communication between Fish and Wild-

life, the counties, all of the participants; that this could have an effect on negotiating future HCPs?

Dr. SILVER. I think there has to be this level of trust. I just have to say I have not seen a case where there has been a commitment in an HCP that the service has not kept, and from our point of view, there have been a lot of commitments that we have not liked, but again, you know, I just have not seen a case where they have not kept them.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. POMBO. Dr. Silver, I appreciate your testimony, and from what I have been able to learn about you and your organization, I really do believe that your effort is to protect endangered species and that that is what you are trying to do, and I appreciate that because I believe that there are many others that have a different agenda, and they have been able to use the Endangered Species Act to achieve that agenda, and it has very little, if anything, to do with protecting endangered species.

When we look at a case like Mr. Turecek or one of the others that testified earlier today and those, in fact, that we are going to hear from, I think that we begin to see what is really wrong with the implementation of the Endangered Species Act and not the Act itself, but the implementation of that Act.

As has been said, I have held these hearings all over the country, and I have had the opportunity to hear people in every region of our country and what their problems are with the Endangered Species Act. It has always struck me that in some regions of the country they do not seem to have these problems, and it is not because they do not have endangered species. It is not because they do not have destruction of habitat.

It is because there is a very different attitude when it comes to the implementation of the Act, and when I talk to Congressmen from different parts of the country and they say, "Well, what is the problem? Why don't you sit down with Fish and Wildlife and work this out?" we do not have that option out here. We do not sit down with Fish and Wildlife and work things out.

And if you want to know why, it is because you are unreasonable. It is because——

[Applause.]

Mr. POMBO. Please, please. Mr. Turecek, can you hold up that picture from 1940 or whatever you had? That one with the corn.

Mr. TURECEK. Yes, sir.

Mr. POMBO. Now, this is not natural habitat. It may have been at some point in time that this was natural habitat for species. It has become habitat for other species now, and I can guarantee you that if you go through this place, you'll find species. Some may be endangered, may not be endangered. I do not know because I am not familiar with this, but this is not natural habitat.

And when your biologists or your people go to this guy and say this is natural habitat, what is he supposed to do? How is he supposed to get out of that?

Now, what we have ended up with, at least in the implementation of endangered species here in California, and this is probably the most frustrating thing for me, is we do almost nothing to protect endangered species. There is almost zero being done to protect

endangered species. We are doing a hell of a lot to control water, to control growth, to control, timber, to control mining, to control grazing. We are doing a lot on that, and we are using the Endangered Species Act to achieve that goal.

But when it comes to protecting endangered species, there is almost nothing you guys can hold up and say, "This is our success. These are the increased numbers that we have had. This is what we have done."

Now, you talk about money. Now, Fish and Wildlife Service requested almost $111 million in the President's budget for endangered species, and there is one very interesting thing about this, is that you requested a cut—$114 million; excuse me—you requested a cut in your recovery budget.

Now, the reason that you do that is because this guy is going to pay for it. That is who is going to pay for it. Now, this $114 million that you requested does not include all of the other Federal agencies. It includes Fish and Wildlife Service. The money that our Defense Department puts up for recovery, the money that Ag. Department, the money that all the other Federal agencies put up for endangered species is not included in this, and that is just a minuscule amount of the money that is spent on endangered species in this country.

The bulk of the money is coming out of guys like this that are writing 50, 100. We had testimony earlier of several million dollars to recover endangered species, and we are not doing anything with it.

Now, the people that are here that consider themselves environmentalists, who consider themselves conservationists, who care about endangered species, if they had any idea how much money we spend on endangered species recovery in this country and how dismal a record we have of recovery, how dismal a record we have of actually doing anything about endangered species at the same time that we have gentlemen like this who are about to lose their property, who are spending everything they have got to hang onto it, who are disrupting their lives; when I have got people in my district who are out of work because of the actions that your department takes and the suicides and the poverty and everything that is attached to that because of the actions that your department takes, I would say this has been a complete failure.

We are doing nothing to protect endangered species or almost nothing to protect endangered species and recover those species. At the same time, the social and economic dislocation that has occurred in the State of California because of the actions of your agencies is immense, and we can do a better job.

And I will agree with Mary on this. We can do a better job, and a lot of that comes down to communication, but the first thing you have got to decide is that your job is to protect endangered species. It is not to stop him from building, and there is a huge difference.

Figure out a way to protect endangered species so that economic activity can go on.

Now, I know that you have had a long and distinguished career, Mr. Spear, and I respect you, and on a personal level, I think you are a pretty decent guy, but you have got to get a hold of the people that are working in these different agencies and these different

departments, these different offices that are under your control, and I will tell you: use Mr. Hunter's example. If somebody showed up at Veteran's Affairs with a bumper sticker that said "Veterans Can Go to Hell," they would be fired that day. There is no question.

[Applause.]

Mr. POMBO. Society would demand it.

And whether somebody is a developer or a realtor, they are no less an American than anybody else, and they should not be allowed to be treated differently by the agency.

I appreciate the testimony of this panel. Mr. Spear, I appreciate you being here and answering the questions. I know that myself and the other members of the Resources Committee, the other Members of Congress look forward to working with you and hope that we can get a lot of these problems straightened out in a timely manner.

And, Mr. Berg, to you I will tell you that not only will the representatives of this area be watching closely as to how the people that had the courage to come forward and testify are treated in the future. I will closely be watching how those people are treated because I had several people that I requested testify at this hearing that at the last minute told me no because they were terrified of the reprisals that may occur because of their testifying here today.

Now, I know that you would never allow that to happen within your agency, but I will be looking closely to make sure that it does not, and I thank you for being here.

I will dismiss this panel.

[Applause.]

Mr. POMBO. Our third panel will be made up of Mr. David Zappe, Mr. Dennis Moser, Mr. Dennis Hollingsworth, Mr. John Tavaglione, and Mr. Doug Evans. If you could join us at the witness table, please.

I would like to ask the audience we do have a very long hearing today and we are trying to stay on time if possible. If the gentlemen will join me up front at the witness table.

Do we have all of the witnesses present? Gentlemen, if I could have you raise your right hands.

[Witnesses sworn.]

Mr. POMBO. Let the record show they all answered in the affirmative.

You can join us at the witness table.

Is it Zappe?

Mr. ZAPPE. Correct.

Mr. POMBO. Mr. Zappe, you may begin.

STATEMENT OF DAVID P. ZAPPE, GENERAL MANAGER-CHIEF ENGINEERING, RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Mr. ZAPPE. Mr. Chairman, members of the Committee, we appreciate you being here in our county.

Mr. POMBO. Go ahead and pull that mike right up close.

Mr. ZAPPE. Okay.

Mr. POMBO. Thank you.

Mr. ZAPPE. We appreciate you being here and allowing us this opportunity to relate to you some of our district's more recent expe-

riences with Fish and Wildlife Service and their enforcement of the Endangered Species Act.

Development practices in the early days of this county were such that today we find many areas subject to extreme flood hazards and the public's health and safety put at risk every time it rains. While much of the need for drainage facilities is brought about by new development, the construction program administered by our district focuses mainly on the need to protect existing development.

Accordingly, our mission is very simple and very straightforward: to protect life and property from flooding through responsible and efficient storm water management. Over the past 50 years the district has developed an extensive flood control system that requires timely maintenance to insure the continued protection of our residents.

However, over the past several years, our efforts have been hampered through the regulatory activities of the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Environmental Protection Agency. These agencies have veto power over local flood control construction and maintenance activities by virtue of regulations promulgated under the Endangered Species Act and the Clean Water Act.

Although these laws have been on the books for many years, their impacts have become more burdensome as Federal agencies have issued new and more stringent regulations, often without the authority of new law and sometimes as a means to negotiate settlement of environmental lawsuits of questionable merit.

Specifically, recent dealings with the Fish and Wildlife Service have proven to be particularly frustrating. In some cases, negotiations with the service drag on for no apparent reason other than for the sole purpose of delaying a project. Other cases involve the attempt to impose unwarranted and illegal requirements on a project.

I would like to relate two specific cases which I believe illustrate my points. In the first example, the district performed a general biological assessment of the area that would be impacted by a proposed project. An independent biologist concluded that the proposed project had no potential of impacting the recently listed Quino checkerspot butterfly. This determination was based on the highly disturbed nature of the project area and the extremely low potential for the presence of any of the butterfly's host plants.

Forty days after receiving a copy of the biological assessment, the service decided that the assessment had not been performed at the appropriate time of year and, therefore, a focused habitat assessment was required. This was in direct contradiction to the service's own survey protocol of January 1999, which states, in part, that general biological assessments may occur throughout the year.

Only if the potential for the host plant exists should focused habitat assessments be conducted. The district questioned this finding in a second letter and asked the service to justify its position in writing. This time the service did determine that focused surveys were not required after all.

I should point out that the district's second letter was copied to Congressmen Calvert and Pombo and Senators Boxer and Feinstein.

I believe that the notification of these congressional members caused the service to more honestly consider the district's position and its own protocol and to arrive at an appropriate conclusion, a conclusion that should have been properly reached earlier without hesitation by the service, a conclusion which I fully believe would not have been reached without vigilant oversight of our district and the notification of the congressional delegation.

The second example I would like to cite involves the flooding of the City of Temecula from overflow in 1993 from Murrieta Creek. Over $10 million in damages to businesses and residences resulted from the refusal of Federal officials to allow mechanical clearing of the vegetation and removal of accumulated sediment from the creek partially due to alleged concerns for the endangered least Bell's vireo, though none had been found in the creek.

To avoid repetition of this tragic event in 1997, the District requested the Corps of Engineers to prepare a flood plain maintenance plan for Murrieta Creek. Several coordination meetings involving the Corps, the service, and other Federal and state agencies were held. As a result, a baseline which struck a delicate balance between proper maintenance and environmental concerns was established and agreed to by all parties, including the service.

Upon finalization of the plan last April, the district commenced a considerable effort to obtain the required Section 404 permit. A month later in May, the service suddenly decided that they were not in agreement with the baseline and wanted it redone.

When confronted with the fact that they did not express this displeasure during the many coordination meetings and, in fact, had agreed to the baseline, they simply stated they did not recall agreeing to the baseline.

The district and the Corps in good faith have each expended over $100,000 toward the implementation of this plan, and now the service tells us they would like to start over because they do not recall any commitment, and even if they did, they have now changed their mind.

Survival of endangered or threatened species was not at stake in either of the cases that I have cited, but rather inflexibility built into the Endangered Species Act.

Our citizens rely on existing flood control systems and upon their timely maintenance to protect them and their homes and businesses. It is the responsibility of all of us to insure that their safety is not compromised.

Thank you.

[The prepared statement of Mr. Zappe follows:]

DAVID P. ZAPPE
General Manager-Chief Engineer

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RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

July 9, 1999

Mr. Don Young, Chairman
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

Re: Hearing on the Implementation of the
Endangered Species Act in Southern California

Dear Mr. Young and Members of the Committee:

As the General Manager-Chief Engineer of the Riverside County Flood Control and Water Conservation District, I am submitting this statement to be included as part of the official written testimony regarding the implementation of the Endangered Species Act (ESA) in Southern California. This serves to expand on the verbal testimony I presented at the Committee Hearing on July 9, 1999 in Hemet, California.

We appreciate this opportunity to relate to you some of our more recent experiences with the U.S. Fish and Wildlife Service (USFWS) and their enforcement of the ESA. We hope this information will be of use to you in your endeavor to correct problems within the agency.

This District's mission is simple and straight forward - to protect life and property from flooding through responsible and efficient stormwater management. The accomplishment of this charge is two-fold; construction of needed drainage infrastructure, followed by the assurance of proper operation of that infrastructure through regular maintenance.

While much of the need for drainage infrastructure is brought about by new development, the construction program administered by our District focuses mainly on the need to protect existing development. Development practices in the early days of this county were such that today we find many areas subject to extreme flood hazard and the public's health and safety put at risk every time it rains.

Over the past fifty years, the District has developed an extensive flood control system, including 35 dams and detention basins, 50 miles of levees, and nearly 400 miles of open charinels and underground storm drains. Construction of necessary drainage infrastructure is only the first step, however. Timely maintenance of this system is critical to ensure the continued protection of our residents. In addition, the District is mandated to maintain projects constructed with and by Federal partners to standards dictated by those partners. Also, the Federal Emergency Management Agency, or FEMA, mandates local government to maintain its flood control facilities as a condition of participation in the National Flood Insurance Program. Failure to do so can result in expulsion from the Program and other sanctions.

For decades, the District routinely constructed needed facilities and maintained its system without conflict. However, over the past several years, we have been hamstrung in this effort through the regulatory activities of the Corps of Engineers (Corps), the USFWS, and the Environmental Protection Agency (EPA). These Federal agencies have veto power over local flood control maintenance activities by virtue of regulations promulgated under authority of the Clean Water Act (CWA) and the ESA. Although these laws have been on the books for many years, their impacts have become more burdensome as Federal agencies have issued new and more stringent regulations, often without the authority of new law, and sometimes as a means to negotiate settlement of environmental lawsuits of questionable merit.

Today, several Federal authorizations are required under the CWA to construct, operate and maintain the District's flood control systems, including a Section 404 Dredge and Fill Permit from the Corps. In the process of issuing 404 authorization, the Corps is required to "consult" with the USFWS under Section 7 of the ESA, where a permitted activity may jeopardize a listed endangered or threatened species. Furthermore, EPA retains veto power over any permit issued by the Corps. This web of permit requirements, with oversight and veto authority by multiple agencies, results in lengthy construction delays and prevents timely maintenance of critical flood control facilities.

Specifically, recent dealings with the USFWS have proven to be particularly frustrating. In some cases negotiations with the USFWS drag on for no apparent reason, other than for the sole purpose of delaying a project. Other cases involve the attempt to impose unwarranted or illegal requirements on a project.

The following examples illustrate my points:

1. In this first example, the District performed a general biological assessment for the area that would be impacted by a proposed channel in the city of Murrieta. An independent biologist concluded that the proposed project had no **potential of impacting** the recently listed Quino Checkerspot Butterfly. This determination was based on the highly disturbed nature of the project area and the extremely low potential for the presence of any of the Butterfly's host plants. A copy of the biological assessment along with a letter was sent to the USFWS requesting their concurrence with this determination. After nearly a month and a half the USFWS initiated a phone call to the District during which they decided that, since the project's general biological assessment had not been performed at the appropriate time of the year, a focused habitat assessment was required. This was in direct contradiction to the USFWS's own survey protocol of January 25, 1999, which states in part that general assessments may occur **throughout** the year. **Only** if the potential for the host plant exists, should focused habitat assessments be conducted. The District followed up with another letter recalling the phone conversation, quoting the protocol, and asking that the need for a focused habitat study be put in writing. The USFWS finally determine that, after further review, focused surveys for the host plant would not be required. I should point out that the District's second letter was copied to Congressmen Calvert and Pombo, and Senators Boxer and Feinstein. I believe that the

notification of these Congressional members caused the USFWS to more honestly consider the District's position and their own protocol to arrive at the appropriate conclusion – a conclusion, I should point out, that should have been properly reached earlier without hesitation by the USFWS. A conclusion which, I fully believe, would not have been reached without the vigilant oversight of this District and the notification of the congressional delegation

2. The second example I would like to cite involves the flooding of the city of Temecula resulting from the overflow of Murrieta Creek in the southerly part of the County. In January 1993, flows exceeded the banks of the creek and raged through businesses, restaurants and residences, causing over ten million dollars in property damage. The real tragedy is that the flooding was absolutely preventable. Prior to the flood, Federal officials had refused to allow mechanical clearing of vegetation and removal of accumulated sediment from the creek, partially due to alleged concerns for the endangered least Bell's vireo, although none had been found within the creek. Only after the damage occurred was the critically needed maintenance allowed to take place. To avoid a repetition of this tragic event, in 1997 the District requested that the Corps prepare a Flood Plain Maintenance Plan for Murrieta Creek. Several coordination meetings involving the Corps, the USFWS, and other Federal and State agencies were held. Numerous issues involving the delicate task of balancing the proper maintenance of the facility with the environmental concerns were discussed. As a result, a baseline determining how much conveyance could be lost before triggering maintenance, which reaches could support a vegetative corridor, and when maintenance would be warranted, was established and agreed to by all parties, including the USFWS. The Corps finalized the plan in April of this year, and the District commenced a considerable effort to obtain an accompanying Section 404 permit. A month later, in May, the USFWS decided that they were not in agreement with the baseline used for the plan and they wanted it redone. When confronted with the fact that they did not express this displeasure during the many coordination meetings, and in fact had agreed to the baseline, they simply stated they did not recall agreeing to any baseline. The District and the Corps, in good faith, have each expended over $100,000 toward the implementation of this plan, and now the USFWS tells us they would like to start over because they don't recall any commitment and even if they did, they've now changed their mind.

3. The third example I would like to cite, involves the District's need to remove accumulated sediment from the Potrero Debris Basin, located along the San Jacinto River. This need resulted from the previous season's rainstorms, which annually deposit large amounts of sediment laden runoff into the basin. The basin was constructed for the sole purpose of trapping this sediment before the runoff is discharged downstream into the San Jacinto River. In the process of negotiating the required permits needed to perform this work, the USFWS demanded that a survey for the endangered Stephen's Kangaroo Rat be performed. It took a full two weeks and numerous phone calls to convince the USFWS that a survey was not required under the terms of Riverside County's recently approved,

Kangaroo Rat Habitat Conservation Plan (HCP) – an HCP prepared in conjunction with and approved by the USFWS. Again, only when called to task, and then very reluctantly, did the USFWS agree to abide by their own rules.

Survival of an endangered or threatened species was not at stake in any of the cited cases, but inflexibility built into the ESA, coupled with indifference to public health and safety issues on the part the USFWS, prevented the District from taking appropriate corrective measures in a timely manner, unnecessarily jeopardizing lives and property. The District fully understands that flood control programs and projects are currently undergoing dramatic change. But numerous citizens still rely on existing flood control systems and on necessary flood control improvements to protect them and their existing homes and businesses. It is the responsibility of all of us to assure that their safety is not compromised.

With this in mind, the following are specific reforms to the ESA recommended by this District:

- A categorical exemption should be added to provide for routine maintenance and emergency repair of all existing flood control facilities and appurtenant structures which protect the public's health and safety, including, dams, detention basins, open channels and highway drainage structures. (Of course, assuming the absence of any evidence from the USFWS that extinction of a species would results from such activity.)

- Standards should be established for the quality of the science required to justify a proposed listing, and the science and administrative record should be subject to review and approval by an independent panel of qualified scientists before a proposed listing may be published in the Federal Register.

- Criteria should be established for distinguishing true species from subspecies, and only true species should quality for listing.

- The time period for public comment, and for requesting a public hearing concerning the proposed listing of a species should be increased, and the time periods should be included in the Act itself rather than implementing regulations. It is recommended that the time allotted for public comments be increased to 120 days, and the time allotted to request a public hearing be 90 days. In addition, proposals to list a species should be published prominently in newspapers of broad general circulation.

- Early consultation with potentially affected local government, including counties and incorporated cities, should be mandatory before a proposed listing is published in the Federal Register.

- Processing and review of permit applications, habitat conservation plans, and Section 7 consultations should be subject to specific time periods for completion, and should be deemed approved if not completed within the allotted time.

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Thank you for your consideration of these remarks and recommendations. Please feel free to contact me at 909.955.1250 if I can be of any further assistance or if you require any additional information.

Very truly yours,

DAVID P. ZAPPE
General Manager-Chief Engineer

ZS:DW:bjp

Mr. POMBO. Thank you.
Mr. Moser.

STATEMENT OF DENNIS M. MOSER, VICE PRESIDENT, KELWOOD DEVELOPMENT COMPANY

Mr. MOSER. Good afternoon, Mr. Chairman, members, and guests. My name is Dennis Moser. I am Vice President of Kelwood Development Company, managers of the 4S Kelwood General Partnership.

4S Kelwood is the owner and developer of the 4S Ranch property in north central San Diego County. The 4S Ranch is a 3,500 acre master plan community which has generally been recognized as a model for smart growth through its transit oriented bikable community design with emphasis on habitat conservation, parks, and public facilities, and its commitment to regional transportation.

We have also been at the forefront of multiple species conservation planning in Southern California over the last decade. Indeed, former California Secretary of Resources, Douglas Wheeler, wrote that the 4S Ranch "offers tangible, on-the-ground proof that the NCCP program goal of creating a network of wildlife corridor spanning five counties can succeed."

Along with Dr. Silver and many other distinguished people, I personally served on the MSCP city advisory board, the country advisory board, the MHCP advisory board, and am the co-author of a document called "Habitat Transaction Method," which is a market based financing program for HCPs.

Our leadership was recognized in a certificate of appreciation from Secretary of the Interior, Bruce Babbitt and also from Congressman Brian Bilbray and State Senator David Kelly.

Now, I give you all of this only to establish our credentials as a participant and a facilitator on the regional conservation planning efforts over the last 10 years. I believe it is a fair statement to say that the 4S Ranch and our personal involvement, you know, is generally recognized as a poster child for how the process is supposed to work, and we are probably one of the success stories; we may be the only success story that you are going to hear today simply because we have been through the process and have been permitted.

We support multiple species conservation planning. We support HCPs. We have in the past, and we will continue to do so in the future.

Now, having said all of that, the issues of implementation credibility, in my view, seriously threaten to destroy what amounts to a decade of thousands of hours of intense efforts and negotiations by a cast of hundreds that have resulted in MSCP.

You know, I wrote sort of a marginal note. To me the HCPs, the whole multiple species process was always intended to be a very democratic process, and I use the term "democratic" because to me it was based on three fundamentals: those of representation, those of compromise, and those of trust.

Clearly, everyone had a seat at the table. Clearly, nobody got everything they wanted in the MSCP, not anyone. But, fundamentally, it was based on trust that at the end of the day, as was said

earlier, a deal was a deal, and that was it. And whatever the decision was, we would move forward on that basis.

Now, I have two cases or two examples where I think this concept is being jeopardized, and the first one is failure to issue a take authorization, a Section 10(a) permit for the complete list of covered species subject to incidental take.

This document is the implementing agreement which was signed by the jurisdictions and the wildlife agencies and represents, if you will, the contract where all of these assurances were set forward of how the process was to be implemented.

The implementing agreement is unambiguous. It is clear. It is obvious. Its language is unambiguous. It is a legal, binding kind of document, and relative to the issuance of the permits, the implementing agreement says, "Concurrent with the effective date, the U.S. Fish and Wildlife Service will issue Section 10(a) permits to the county for authorizing take of the complete list of covered species subject to incidental take," some 82 species.

This is the actual permit that was issued to the county, and in the permit that was issued, a total of 29 species were not covered. They were removed from the permit itself. These are wetland dependent species, if you will. There was no qualification in the implementing agreement that dealt with not issuing coverage for all of them, but coverage has not been issued to all of them, and the actual permit says that coverage for those 29 will be subject to a further process.

Now, I see that as a breach in the trust of a deal is a deal and that the coverage would be as stated.

There was also some testimony that you heard relative to the listing of the Quino checkerspot, and Dr. Silver referenced a process by which new species were to be considered in the MSCP, and I would like to quote a number of passages from the implementing agreement of what was supposed to occur.

Prior to the listing of any noncovered species Fish and Wildlife was to, first, "use their best efforts to identify the conservation measures within six months of a proposed listing which would be necessary to adequately protect the species."

And then, two, to "determine whether those measures were already contained in the MSCP document."

The species has been now listed for two and a half years. As far as I am aware, I have not seen, nor do I know of anyone who has seen any documentation that that assessment was actually completed.

Now, if the determination was that the conservation measures were not adequate, then there was a priority established of what Fish and Wildlife Service was supposed to do, and those priorities went or additional conservation measures went as follows.

First, habitat management practices and enhancement opportunities were to be assessed using existing management resources.

If that was not enough, habitat acquisition through reallocation of Federal, state, and/or regional funds was to be examined.

And then, only after all of those things had been analyzed and determined there were still inadequate measures to consider the species, only at that point were additional conservation measures to be looked at, and then with this qualification, that preference

would be given by U.S. Fish and Wildlife Service and the California Department of Fish and Game to additional conservation measures that do not require additional mitigation or dedication of land.

So additional mitigation or dedication of land would come as the absolute last resort. I think what we have seen over the last two years, two and a half years is actually quite the opposite. The individual projects are being required to dedicate, to mitigate and to dedicate, in land and in money to mitigate for the Quino checkerspot.

Let me just, I guess, offer one other thing. I see my time has run out. We do have in our groups that I am a part of numbers of recommendations on some management activities that we believe would help in solving some of the issues that you have heard raised today, and I would be happy to go into those at the end of today, or however you would like to address them.

Thank you.

[The prepared statement of Mr. Moser follows:]

TESTIMONY OF DENNIS M. MOSER

HOUSE RESOURCES COMMITTEE
CONGRESSIONAL FIELD HEARING

HEMET, CALIFORNIA
JULY 9, 1999

Good Afternoon Mr. Chairman, members and guests. My name is Dennis Moser. I am vice president of Kelwood Development Company, manager of the 4S Kelwood General Partnership. 4S Kelwood is the owner and developer of the 4S Ranch property in north central San Diego County. The 4S Ranch is a 3,500-acre master planned community, which has been recognized as a model for "smart" growth through its transit-oriented and walkable/bikeable community design, its emphasis on habitat conservation, parks and public facilities, and its commitment to regional transportation facilities.

Beyond our community planning vision, we have been at the forefront of multiple species conservation planning in Southern California over the last decade. The 4S Ranch was one of the first private landholdings in San Diego County to voluntarily enroll in the State's Natural Communities Conservation Program. The Summer 1995 edition of the NCCP newsletter featured 4S under the headline "4S Ranch: A Blueprint for Smart Growth." Indeed, former California Secretary for Resources Douglas Wheeler wrote that 4S Ranch "offers tangible, on-the-ground proof that the NCCP program goal of creating a network of wildlife corridors spanning five counties can succeed." 4S Ranch pioneered the Lake Hodges Subarea Plan of the San Diego County MSCP, and is generally viewed as the leader in proactive conservation planning within this area of the County.

We have also consistently sought to work within the system. 4S was one of the founding members of the Alliance for Habitat Conservation (AHC), a landowner's association dedicated to advocating and implementing feasible and reasonable solutions to endangered species issues. 4S is also a member of the Coalition for Habitat Conservation (CHC), a similar Orange County organization. I personally served as co-chair of the AHC over several years of the formation of the San Diego County Multiple Species Conservation Plan (MSCP). I served on the San Diego City MSCP Advisory Working Group, the

San Diego County MSCP Advisory Committee, and the North County MHCP Advisory Committee. I also am the co-author of "The Habitat Transaction Method," a market based financing program for multiple species conservation programs, which has been adopted in modified versions in several programs.

Our leadership efforts in conservation planning and consensus building have not gone unnoticed. In 1998, I was awarded a Certificate of Appreciation from Secretary of the Interior Bruce Babbitt for our contributions to the San Diego County MSCP. In 1999, I received a Certificate of Special Congressional Recognition from Congressman Brian Bilbray again for our environmental contributions. Also in 1999, I received a California State Senate Certificate of Recognition from Senator David Kelley related to our receipt of a Peacemaker Award from the San Diego Mediation Center. Perhaps our greatest endorsement, however, stems from the fact that the 4S Ranch development plan was unanimously adopted by the County Board of Supervisors in November 1998, without opposition from any environmental organization. Indeed, 4S can claim to be one of very few, and perhaps the only of its size, major development programs to be approved in California in the last 20 years and not sued.

All of the foregoing is meant only to establish our credentials as a leader and facilitator of regional conservation activities. I believe it a fair statement to say that 4S Ranch, and our personal commitment to and involvement in the planning process, is generally recognized as a "poster child" for how regional conservation planning was envisioned to work.

We have been and continue to be a strong supporter of multiple species conservation planning. I want to repeat that we support the MSCP and the concept of HCPs in general. However, issues of implementation credibility seriously threaten to destroy a decade of thousands of hours of intense efforts and negotiations by a cast of hundreds that have resulted in the MSCP. I wish to address you today on two examples of what the participating landowners see as erosion of program credibility.

1. Failure of USF&WS to Issue Take Authorization for the List of Covered Species Subject to Incidental Take

The key implementation document of any HCP, and especially of the MSCP, is the Implementing Agreement. This agreement is a contract between the USF&WS and the local jurisdiction, which spells out the rights and obligations of each of the parties. The significance of the

MSCP Implementing Agreement is clear and obvious. Its language is unambiguous. It is the document intended to provide absolute assurances to the local jurisdictions and participating landowners, as third party beneficiaries of the agreement, of the take authorizations granted the jurisdictions and landowners. It is also the document that clearly and unambiguously specifies the process by which future non-covered species considered for listing are to be evaluated for coverage.

With respect to Take Authorization, both the City and County of San Diego MSCP Implementing Agreements stipulate:

> *"Issuance of Take Authorizations" [Section 12.0]*
>
> *"Findings – USF&WS – Covered Species Subject to Incidental Take. In addition to the findings in Section 12.2 above, the USF&WS has found that the Covered species Subject to Incidental Take will be adequately conserved in the Subarea as the result of Subarea Plan and this Agreement.* ***Accordingly, concurrent with the Effective Date the USF&WS will issue the Section 10(a) Permit to the County authorizing the Incidental Take of the Covered species Subject to Incidental Take.*** *The Section 10(a) Permit will be effective for 50 years, and will be renewable utilizing the ESA procedures in effect at the time of renewal." [Section 12.3] (emphasis added)*

The County Implementing Agreement stipulates, under "Exhibit D – MSCP Covered Species Subject to Incidental Take," a total of 82 plant and animal species for which a section 10(a) permit was to have been issued. **However, the actual Section 10(a) Permit issued by USF&WS specifically excluded 29 species from the Covered Species Subject to Incidental Take list.** This can only be interpreted as a breach on the part of USF&WS to abide by the contract terms of the agreement it entered into with the County and participating landowners. This constitutes a serious diminishment of USF&WS credibility.

2. Failure of USF&WS to follow established Implementing Agreement procedures for Non-Covered Species in the case of the Quino Checkerspot Butterfly listing

The Implementing Agreements for both the City and County of San Diego contain explicit provisions detailing a process and procedure of actions USF&WS must follow related to any Non-Covered Species subsequently proposed for listing. Prior to any listing, the USFWS:

> *"(1) Will use their best efforts to identify the conservation measures within six months* (of a proposal for listing as threatened or endangered), *if any, which are necessary to adequately protect the species, and (2) determine whether such conservation measures are beyond those prescribed by the MSCP." [Section 9.7C]*

There is no documentation of which we are aware that USF&WS provided the County or participating landowners with either the identification of conservation measures necessary or whether those conservation measures were beyond those already prescribed by the MSCP prior to or even concurrent with the listing. Indeed, to this day some 30 months after the listing, there has been no determination of the conservation measures required.

The Implementing Agreement further stipulates that:

> *"If the USF&WS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan, and this Agreement, and other approved Subarea Plans do not adequately fulfill the conservation measures identified pursuant to subsection C above, then the USF&WS and CDFG will work with County and other Participating Local Jurisdictions, to identify and jointly implement any Additional conservation Measures identified as being necessary to add such species to the list of Covered Species Subject to Incidental Take..." [Section 9.7C(2)a]*

Presumably, although we find no written documentation of confirmation as required by the Implementing Agreement, the USF&WS does not believe that the conservation measures currently within the MSCP are adequate for the conservation of the butterfly. If it did, the Service would be obligated under the Implementing Agreement to add the species to the List of Covered Species Subject to Incidental Take. While it is our understanding that butterfly coverage discussions between the County

and USF&WS are currently underway, these discussions were initiated over two years after the listing. The whole intent of the MSCP and Implementing Agreement was to deal with Non-Covered Species in an expeditious and proactive manner.

Finally, the Implementing Agreement stipulates a hierarchy of Additional Conservation Measures to be considered as follows:

> *"In developing the set of Additional Conservation Measures, the parties will look to the following, in order of preference:*
>
> *(i) Habitat management practices and enhancement opportunities within the MHPA, using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species.*
>
> *(ii) Habitat acquisition through the reallocation of federal, state and/or regional funds identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species." [Section 9.7C(2)a]*

To this date, we are unaware of any Additional Conservation Measures identified or formulated that comply with the contract obligations of the Implementing Agreement cited above.

Finally, when, and only when, all other conservation measures are determined to be inadequate to conserve the species, the Implementing Agreement stipulates that:

> *"If the foregoing options are not adequate to fulfill the conservation measures identified pursuant to subsection C above, then the USF&WS and CDFG will determine, consistent with the ESA, CESA and/or the NCCP Act, the Additional Conservation Measures necessary to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, including measures beyond those required by the MSCP.* ***Preference will be given by the USF&WS and CDFG to Additional Conservation measures that do not require additional mitigation or dedications of land.****" [Section 9.7C(2)b] (emphasis added)*

Notwithstanding these provisions, the USF&WS is currently requiring substantial additional dedications of land and other costly mitigation measures for all projects in San Diego County, whether or not such projects are within the MSCP area.

In conclusion, we continue to support the MSCP and HCPs in general, notwithstanding recent attacks on these plans by a variety of environmental groups. We are deeply concerned, however, with the long-term credibility of federal agencies to deliver to the participating jurisdictions and landowners what has been promised through these programs. For years during the MSCP planning process, we were repeatedly told by senior assigned management of the Department of Interior to "trust us." If we can't even trust that the federal agencies will do what is required under the Implementing Agreement contract, how can we trust someone's simple word in the future?

Not only is it imperative that no erosion occur to the "No Surprises" policies and other assurances granted landowners for their participation in these programs, but all prior federal commitments and obligations related to the MSCP and similar programs must be met. This is particularly true of the Section 10(a) Permit take authorizations for all Covered Species Subject to Incidental Take and the procedures for dealing with proposed and/or actual new listings.

Thank you for your time and consideration of my remarks. We continue to seek equitable, practical and, above all, predictable solutions to balancing multiple species conservation and economic growth. We will remain dedicated to that task.

Dennis M. Moser
Vice President, Kelwood Development Company

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NEW THINKING - FRESH IDEAS
Making ESA User Friendly

Administrative Reforms

- Reform Current Internal Project Review Process
- Set & *Meet* Deadlines
- Create Method That Promotes Initiative & Creativity
- Create Dispute Resolution Facilitator
- Appoint Special Liaison To Interior Secretary For Multiple Species Planning and Implementation
- Support Effort To Create And Implement A Single Project Review Methodology For USFW, ACOE, & EPA
- Expedite Critical Habitat Designation
- Strengthen & Enforce Critical Habitat Economic Impact Evaluations

NEW THINKING - FRESH IDEAS
Making ESA User Friendly

Regulatory Reforms

- Establish Solution Oriented Policies
- Recognize the Economic & Social Values of Growth And Development
- Local Control of the Land Use Process
- Regulation Definitions Should Not Equal Redundant Delays
- Say What You Mean & Mean What You Say
- Develop Clear Unambiguous ESA Violations definitions

NEW THINKING - FRESH IDEAS
Making ESA User Friendly

Create Policy Implementation Plan

- Get The Right People For The Right Job
- Provide Diverse And *Balanced* Employee Expertise
- Set Performance Goals
- Reward Creative Solutions
- Develop One Time List For Early Warning Agency Concern
- Create A Project Application Tracking System
- Establish And *Meet* Deadlines
- Establish Committee To Seek Input From Regulated Community & Others And Report Findings In Six Months

NEW THINKING - FRESH IDEAS
Making ESA User Friendly

Budget Priorities

- Balance FWS Budget Priorities
- Provide Essential Budget for Critical Habitat & Recovery Plan Completion To Eliminate Lawsuit-Based Prioritization
- Promote Success - Budget the De-listing Process

Mr. POMBO. Thank you.
Mr. Hollingsworth.

STATEMENT OF DENNIS HOLLINGSWORTH, RIVERSIDE COUNTY FARM BUREAU

Mr. HOLLINGSWORTH. Thank you, Mr. Chairman, for the opportunity to speak with your Committee today.

I also want to thank Congressman Calvert and Congressman Bono for bringing the Committee to Riverside county so all of you can hear from the people who are living every day under the laws that Congress passes and the regulations the Federal agencies implement.

I am the Legislative Director of Riverside County Farm Bureau, and the Farm Bureau represents over 1,700 member families throughout Riverside County. My testimony today will tell you about the Farm Bureau's experiences with the Carlsbad office of the Fish and Wildlife Service and the Endangered Species Act. I will highlight several experiences that expose the decade long history of abuses and systematic misrepresentations of fact by the Fish and Wildlife Service in Southern California.

Finally, I will discuss the inability of the public to invest any amount of trust in the Fish and Wildlife Service due to their blatant disregard for their written commitments.

As you know, the endangered listings of the Stephen's kangaroo rat caused severe problems in our county. Since its listing in 1988, farm families suffered economic loss, restrictions on the normal use of their properties, and diminution in their land values.

You are well aware of the injustices that were done to the Domenigoni family and the destruction of 29 homes caused by a wildfire, the damage exacerbated by Stephen's kangaroo rat restrictions in the Winchester area in 1993.

In 1992, I was hired by the Farm Bureau to investigate and prepare a de-listing petition asking for the Fish and Wildlife Service to remove the species from the list, and this is where we come in with the issue that the Fish and Wildlife Service impedes the public's right to know and openly violates the Freedom of Information Act.

The first item of business in preparing a de-listing petition is to find out what was known about the species and why it was listed. Well, to find this out, we had to file a Freedom of Information Act request.

Well, the service heavily censored those reports, and they were essentially useless. The service did not want the public to have the right to judge the adequacy and the accuracy of the science backing up their assertion that the K. rat was endangered. So they withheld this information, even though there are only two allowed exemptions from disclosure found in the Freedom of Information Act. One is for national security reasons, and the other is protect the privacy of personnel files.

Their response to our pointing out the inconsistency of their actions with the law? They told us to sue them.

One stated reason for not releasing the exact location of the K. rats was their fear that we might go out and destroy the kangaroo rats if we learned of their locations. Well, this is carrying national

security concerns to new heights. It also points out that the inherent problem with the ESA itself is that people do not want to have species on their property.

Two, the listing of the Stephen's kangaroo rat is based on fraudulent misrepresentation of scientific facts. The service sought to prevent the public from knowing the information in their files because the public would rightly judge that the listing of the Stephen's kangaroo rat as endangered is a fraud. The Fish and Wildlife Service blatantly disregarded important facts and misrepresented others.

Among many other things, they even went so far as to claim the species was extinct in areas that are now preserves for the species that contain thousands of acres of occupied habitat.

Third, the Fish and Wildlife Service abuses the discretion Congress gives the agency. As you know, Congress has given the Fish and Wildlife Service the discretion to decide whether a species is threatened or endangered. Would you like for me to read for you the entire analysis that the Fish and Wildlife Service completed in determining to list the species as endangered rather than threatened? It will not take long.

"Ron called and asked some questions about the kangaroo rat package. He said that in general, I had presented a good case. He wanted the acreage figures clarified and some place names clarified as well. He wanted to know how much habitat is left as best as I could come up with some acreages. We then discussed whether threatened or endangered status would be more appropriate. We decided upon endangered."

That is the record of a phone conversation that we found through the Freedom of Information Act.

The Fish and Wildlife Service ignores our de-listing petition despite the legal requirement to respond within 90 days.

You are well aware of the impact of the Endangered Species Act on the Domenigoni family and their loss of over $400,000 in income and expenditures in order to try and get their 800 acres, which was shut down by the Fish and Wildlife Service after they were illegally trespassed on by a biologist.

Then the U.S. Fish and Wildlife Service smears Endangered Species Act victims who speak out. In 1995, the Domenigonis found out that they had been targeted in a smear campaign waged by the Fish and Wildlife Service against individuals who had spoken about the injury they had suffered from the implementation of the Act. They received a document entitled "Facts about the Endangered Species Act." One whole chapter in it is devoted to casting the Domenigonis and other ESA victims as liars.

Yet nowhere in that portion of that story is there anything attributing it to any contact people, any telephone numbers, no authors or attribution anywhere, and it is not published on government letterhead.

The Fish and Wildlife Service fails to adhere to their written commitments to Riverside County. This, I am sure, has been discussed with you as Congress members, and I am sure it will be discussed more with subsequent witnesses today, but let me just point out that there was a planning agreement signed in 1997 where the Fish and Wildlife Service agreed to provide rough conservation re-

quirements so that we would know what we were getting into if we were to get into a multi-species plan.

However, after signing that agreement, they blatantly failed to comply with that agreement.

Well, how do we rein in the Fish and Wildlife Service's abuses? I have to tell you that at this point in the controversy, this is a point we have been at several times before, and it is very predictable. The service does something that is egregious, and the Board of Supervisors objects, and the Regional Director comes down from Portland to smooth things over.

I have even been to these parties back when it was Marv Leonard who was coming down, and today it is Mike Spear.

When the service does something a little more outrageous, Washington, DC gets involved, and we get to meet Assistant Secretary John Garamendi, who then smooth out the ruffled feathers, and today this job has been handed to David Hayes.

But when they really, really do something bad, well, all of you are here. Well, they are really, really doing something bad, and I hope that this hearing and the legislative process subsequent to this will break this cycle.

Well, how do we change this? First, we need to change the burden of proof requirement.

Second, only to the unconstitutional takings of private property that occur with the ESA is the travesty that private citizens have to prove to the government that they will not violate the ESA. As you mentioned, Congressman Hunter, it is as though you are proving that you are not guilty. You are proving that you are not.

Legislatively change the judicial deference given to agency regulations to a de novo review.

Require that the judicial branch looks at regulations from the agencies fresh without the deference that has been given to them.

Limit standing in the courts in ESA challenges to persons who are actually impacted by the Act.

Legislate a Federal version of California's permit streamlining Act. They get one chance to bite at the apple, and that is it, and if they do not tell you how they are going to bite at the apple completely, they do not get to come back for more.

Legislate that there are definite consequences to the agency for not acting.

Prohibit the use of information obtained by trespass.

All of these things, if successful, might help to curtail many of the abuses we have seen in Southern California. Yet even the passage of all of these reforms would only be half measures. That is because none of them remove the disincentives for property owners to have species on their land.

In fact, what is needed is an Endangered Species Act that can serve species by allowing and encouraging landowners, farmers, and ranchers to be good stewards of the land. It should be an Act that is so simple as to be immune from the bureaucratic evils that so often do not become apparent until years after the bill has left Congress and become law.

In order to have a law in which the agencies can no longer twist, ignore, subvert, and use both the scientific evidence and the statutory process to further a political or ideological agenda, it must be

a law that is simple, incentive based, and unregulatory. Our experience has shown that given the regulatory power and the historically wide latitude of discretion given by the courts, agencies will be sure to misconstrue and ignore the intent of Congress. I see your challenge is to make a law that is both successful for conservation of wildlife and upholds the rights and freedoms of the people it affects.

Thank you.

[The prepared statement of Mr. Hollingsworth follows:]

Testimony of Dennis Hollingsworth, Legislative Director, Riverside County Farm Bureau To Committee on Resources, US House of Representatives Hemet, CA July 9, 1999

Thank you, Mr. Chairman, for the opportunity to speak to your committee today. I also thank Congressman Calvert and Congresswoman Bono for bringing your committee to Riverside County, so all of you can hear from the people who are living every day under the laws Congress passes and the regulations the federal agencies implement.

I am the Legislative Director of the Riverside County Farm Bureau. The Farm Bureau represents the interests of over 1,700 member families from throughout the county. Riverside County Farm Bureau is affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation. Together we represent the interests of over 4 million of the nation's farmers, ranchers, and rural communities.

My testimony will tell you about the Farm Bureau's experiences with the Carlsbad office of the US Fish and Wildlife Service, the Department of the Interior, and the Endangered Species Act over the seven years of my tenure with the Farm Bureau. My testimony will highlight the years of preparation and submission of a petition to delist a species that has never been in any danger of extinction. I will point out how the Carlsbad office of the Fish and Wildlife Service has engaged in systematic deception of the public, and misrepresentations of fact, going back all the way to 1987, particularly regarding the Stephens' kangaroo rat. And my testimony will also discuss the experiences of some of our member farmers who have been severely impacted by the actions of the Fish and Wildlife Service and the ESA. I will point out how the Fish and Wildlife Service simply picks and chooses which areas of the law to implement, while blithely ignoring those requirements in the law the agency finds distasteful. Finally, I will discuss the inability for the public to invest any amount of trust in the Fish and Wildlife Service due to their blatant disregard for their written commitments.

The egregious actions of the Fish and Wildlife Service are not limited in time to the past couple of years, nor are they limited to the quino checkerspot butterfly, the gnatcatcher, or the delhi sands flower-loving fly. They have been abusing their authority, and in so doing, abusing Southern California's citizens, for more than a decade.

The Stephens' Kangaroo Rat

As you know, the endangered listing of the Stephens' kangaroo rat has caused severe problems in our county. Since its listing in 1988, many of our farm families have suffered economic loss, restrictions on the normal use of their properties, and diminution of the value of their most important asset, their land. You are well acquainted with the terrible injustice done to the Domenigoni family, and the devastation of 29 homes caused by an out of control wildfire, exacerbated by Stephens' kangaroo rat restrictions, in the Winchester area of the county in 1993.

In 1992, members of the Farm Bureau's board of directors began to wonder how a species that was supposed to be so rare, could be causing such widespread upheaval throughout a vast portion of our county. After the listing and the imposition of a regional Habitat Conservation Plan effort, Stephens' kangaroo rats began popping up all over the

place. It seemed anywhere an economic activity or new land use was about to occur, kangaroo rats would be found, extensive surveys would have to be performed, and expensive fees paid.

In March of 1992 I was hired by the Farm Bureau to investigate the status of the k-rat. Based on this research, I prepared a delisting petition, (asking for the Fish and Wildlife Service to remove the species from the list.) The Farm Bureau directors had no idea what the scope of the effort they were taking on would entail. With little experience dealing with federal agencies or kangaroo rats, I had no idea what I was getting into, either.

Fish and Wildlife Service Ignores the Publics' Right to Know

The first item of business for researching for a possible petition was to find out what was known about the species and discover under what circumstances the species was listed. To do this we first requested the files and reports on the species from our local office of the Fish and Wildlife Service in Carlsbad. The result was a handful of reports and documents handed over, reluctantly and sporadically. After a several months of requests, and despite assurances that we had received the entire file on the k-rat, we thought there had to be more in the Service's files on the species. In order for our friendly request to be taken seriously, we had to file a Freedom of Information Act request.

Our request was received at the regional office in Portland on August 13, 1992. Shortly thereafter, we received a reply assuring us they would quickly assemble all of the records and make them available to us in the Carlsbad office for review.

After months of waiting, prodding and appeals, and despite statutory requirements in FOIA requiring adherence to strict response deadlines, we finally received the last of the materials we had requested on May 13, 1993. This was nine months after the Service had received our request. However, we were not finished battling the Service over what we should be allowed to see in the k-rat reports.

Central to our argument that the species is not endangered is not only finding out how many populations of the species are known to exist, but also where these populations are. Answers to questions such as: Are the k-rats using habitat that is different than what was once thought to be unsuitable? Are the populations on lands that are government owned, or otherwise safe from urban development? And, most importantly, are populations of this species being discovered far outside what was thought to be a small, localized range? were essential to our case. (Incidentally, we were eventually able to learn that the answers to all of these questions are yes.)

The Service wanted to heavily censor all of the reports that indicated the presence of the species. Among the information they sought to censor were any references to the locations of Stephens' kangaroo rat populations. As a result, the first reports we received from the Service were essentially useless in developing a picture of the status of the species for a delisting petition. After some protest, we were able to get the Service to only censor the exact locations of the populations, and information about who the private landowners were that had k-rats on their land. The reports were still highly censored, and made it very

difficult to find the information we needed to make our case. Their response to our pointing out the inconsistency of their actions with the law? They told us to sue them.

The Service sought to prevent the public from having the right to judge the adequacy and accuracy of the science backing up their assertion that the k-rat was endangered. They said they had to prevent the public from having this information in order to protect the species, even though there are only two allowed exemptions from disclosure found in the Freedom of Information Act. The first is for national security reasons, the second is to protect the privacy of personnel files.

Interestingly, the Service was extremely concerned about protecting the privacy of landowners when it came to letting us know if they had endangered species on their land. It seems the federal Fish and Wildlife Service sought to protect the privacy of landowners from their local association of farmers and ranchers. Yet, most landowners were, and remain unaware that each and every time there is a survey performed on their land for an endangered species by a private biologist who holds a scientific study permit under section 10 of the act, a copy of the survey automatically goes to the Carlsbad office of the Service. Often, we found that the copy got to the Service long before the actual report got to the private landowner paying for it.

Another stated reason for not releasing the exact locations of the k-rats was that their disclosure might endanger the safety of the populations. In other words, we might go out and destroy k-rats and their habitat if we learned of their locations. While this is carrying national security concerns to new heights, it also points out the inherent problem with the ESA itself, and it shows that the Service is well aware of the disincentives to conservation presented by the current Act.

By so zealously protecting the locations of endangered species, the Service admits that the Act has created powerful disincentives to conserve species. No law that depends so heavily on the goodwill of the nation's private landowners can ever succeed without the support of those landowners. The fact that the Service fears for the k-rats' safety if landowners knew they lived on their land shows that the incentive in this top-down, command and control ESA is for landowners to destroy, rather than conserve species and their habitats on private land. This is the unfortunate adversarial situation landowners and America's wildlife have been placed in by this ill conceived law, and is a testament to its failure.

Listing of the Stephens' Kangaroo Rat is Based on Fraudulent Misrepresentation of Scientific Facts

Despite all of the assertions of keeping the information secret in order to protect the species, it is most convincing that the real reason the Fish and Wildlife Service sought to prevent the public from knowing the complete information in their files is because the public would rightly judge the listing of the Stephens' kangaroo rat as endangered as a fraud. The Fish and Wildlife Service blatantly disregarded facts showing the presence of the species in greater numbers and on widely varied habitats, and ignored indications of a much wider range than they put forth in their listing. They even went so far as to claim the species was extinct in areas that are now preserves for the species containing thousands of

acres of occupied habitat. The claims by the Service were known to be false, from the information in their possession, at the time they were promulgating the rule to list.

I could spend several hours just telling you some of the interesting and shocking things we learned through this process. Let me discuss only a few.

Our investigation has revealed that the Stephens' kangaroo rat is not now, nor has it ever been in any danger of extinction. The Service's assumptions that the species' range, habitat requirements, population size, population density, protected populations, reproductive ability, ability to persist in small patches, coexistence with human disturbances, and colonization capability were all substantially underestimated. Likewise, the Service's analysis of the threats to the species were grossly overestimated and purposely exaggerated. I have included a copy of our petition with previous testimony, and it is also available at the Farm Bureau's website, www.riversidecfb.com.

Abuse of the Discretion Congress Gives the Agency

As the implementing agency of the laws Congress makes, the public places a great amount of trust in the Fish and Wildlife Service not to abuse the large amount of discretion in their hands. Unfortunately, we discovered that incidences of abuse of this discretion were frequent throughout the record for the k-rat.

One such example was the method by which the species was determined to be endangered, rather than threatened. In the entire record presented to us through the Freedom of Information Act, only one, single page document was all that we could find that provided any clue as to how the Service determined to list the k-rat as endangered rather than threatened. This was a record of a telephone conversation that I have included the text of herein.

It is a record of a conversation between the biologist in the Southern California Service office who was preparing the listing package, and Ron Nowak in the Office of Endangered Species.

> The record says: *"Ron called and asked some questions about the Kangaroo Rat package. He said that in general I had presented a good case. He wanted the acreage figures clarified and some place names clarified as well. He wanted to know how much habitat is left.*
>
> *"I as best as I could came up with some acreages.*
>
> *"We then discussed whether threatened or endangered status would be more appropriate. We decided upon endangered."*

In an entire record of over 20,000 pages and hundreds of surveys, reports, meeting records, agendas, and documents of all types, this is the only evidence we can find of any analysis as to why the species should be listed under the more onerous status of endangered, rather than threatened.

Fish and Wildlife Ignores Delisting Petition Despite Legal Requirement to Respond

After this research and several months of compilation, the Riverside County Farm Bureau submitted its petition to remove the Stephens' kangaroo rat from the list of federal

endangered species in April of 1995. First, let me provide for you the relevant portion of the Endangered Species Act that requires the Fish and Wildlife Service to respond to our petition with a finding within ninety days. Following is a timeline that shows how, after more than four years, the Fish and Wildlife Service has yet to even respond with a finding to our petition.

Section 4 (b)(3)(A): To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

--The Endangered Species Act of 1973 as amended

Here is a recounting of the timeline of events concerning our petition:

• **March 1995:** Secretary of the Interior Bruce Babbitt announces his ten point "reform" initiative for the implementation of the Endangered Species Act. Included are points calling for scientific peer review, and a commitment to greater responsiveness and cooperation on the part of the US Fish and Wildlife Service with those who have to deal with the Act.

• **April 26, 1995:** The Riverside County Farm Bureau files a petition with the Fish and Wildlife Service to delist the Stephens' kangaroo rat. On May 12, 1995 a foot high packet of scientific studies, biological surveys, internal memoranda, and other documents obtained from the Service through the Freedom of Information Act, and used by the Farm Bureau in the preparation of the delisting petition, is hand delivered, by me, to the Carlsbad office of the Fish and Wildlife Service.

• **August 1, 1995:** After inquiring about the status of the delisting petition and informing the Service of their failure to comply with the 90 day finding obligation, I was informed by the Carlsbad Field Supervisor that the Service "will soon be publishing a finding" in the Federal Register. The following day, the Farm Bureau is contacted by a Service biologist who claims not to have received the background packet of scientific information (obtained by the Farm Bureau from the Service's files) that was hand delivered, by me, to the Service in May.

• **October 31, 1995:** With a cover letter signed by Resources Committee Chairman Don Young and our Congressional representatives Ken Calvert and Sonny Bono, along with several other local congressmen, the petition and background packet are resubmitted to Mollie Beattie, Director of the Fish and Wildlife Service, on behalf of the Farm Bureau. Beattie acknowledges receipt of the petition and background packet.

• **October 1995 through April 1996:** Fish and Wildlife Service claims that the moratorium imposed legislatively by Congress on listings under the ESA also prohibits the processing of delisting petitions, though the moratorium specifically exempts (allows) the processing of permits and other actions which result in less regulation, (including delisting petitions.)

When informed of this, the Service responds that federal government shut downs and operating under Continuing Resolutions prohibit them from processing delisting petitions. "We are under a strict moratorium not to process any listings or delistings while operating under these CR's [Continuing Resolutions]." says the Field Supervisor of the Carlsbad office.

• **May 1996:** Fiscal year 1995-96 Federal Budget is approved and signed by the president. At this point, over one year after submission of the petition to delist, the Service is still unable to provide an estimate as to when they will publish their 90 day finding, other than "soon."

On May 8, 1996, Secretary Babbitt appeared in Riverside at a press conference to sign the section 10(a) permit for the long term HCP for the k-rat. After his remarks, I was able to remind him of his ten point "reform" initiatives of 1995, including greater responsiveness by the agencies. I informed him of the lack of compliance by his agency, and asked whether he could provide us with an estimate as to when the Service might be able to process our petition and finally provide us with a 90 day initial finding.

The Secretary's somewhat irritated response was that I should be not be speaking with him, that I should be speaking to my congressman, and ask for more money for the ESA. When I asked if that meant he was saying that there was money in the budget for processing listings, but no money for processing delistings, his reply was "absolutely." When I reminded him that the Act didn't appear to differentiate the processes, that the two were to receive the same processing priority, he became very irritated, and stormed away from me and a group of friendly reporters waiting to ask him questions.

The law seems pretty clear that the Secretary has a responsibility to process delisting petitions just as much as his responsibility to process listings.

The Secretary's reluctance to process delisting petitions is not only, in my opinion, contrary to the law, I also think it is bad policy. After all, the whole point of the ESA is to list a species in trouble, get it recovered, and then delist it. When the public loses confidence in those who enforce the laws, (as is clearly the case here in Southern California) when they clearly see that the one portion of the law is being implemented unjustly or unfairly over another, they begin to mistrust the application of the whole law. In time, the mistrust spreads to other laws.

1996 to Present: To date, over four years after our submission of the petition to delist the species and despite a requirement to respond within ninety days to our request, the Fish and Wildlife Service has yet to respond.

The Secretary's priorities, as implemented by the Carlsbad office of the Fish and Wildlife Service, rather than showing that the current ESA is workable and does not need reform, and the blatant disregard for the sections of the Act that are distasteful to his administration, show that tremendous oversight needs to be brought to bear on the Fish and Wildlife Service's implementation of the Act.

Impact of the Endangered Species Act and the Fish and Wildlife Service's Actions on the Domenigoni Family Farm

In 1990, without their knowledge or consent, over 1,600 acres of the Domenigoni Ranch were placed in a reserve "study area" as part of a Habitat Conservation Plan for the

Stephens' kangaroo rat, under section 10 (a) of the Endangered Species Act. The Domenigonis later discovered private biologists illegally trespassing on their ranch. These biologists then returned with a US Fish and Wildlife Service biologist and an armed Fish and Wildlife Service law enforcement officer. The Domenigonis were informed that their planned preparation of over 800 acres of our farm for grain planting would constitute an illegal "take" of the kangaroo rats that the Fish and Wildlife Service said were found inhabiting their fields.

Because their property is in a reserve "study area" the Domenigonis were not allowed any incidental take. They have only been able to legally take kangaroo rats if they went through a very expensive and lengthy "Boundary Modification" process, asking for the removal of this designation from their property. The Riverside County Habitat Conservation Agency, California Department of Fish and Game, and the US Fish and Wildlife Service would all have to sign off, allowing their property out of the study area, after they had paid for extensive surveys, a per acre "processing fee," and a flat fee for the privilege of requesting that their property have this designation that they never asked for, removed.

As a result of shutting down their ability to farm that property, the Domenigonis incurred over $75,000 in lost income for each of the three years that they were unable to grow grain there. They also spent over $175,000 on legal fees, biological surveys, and other related costs. Their costs total over $400,000 in lost income and direct costs because of the impact of the Endangered Species Act. These costs do not include thousands of dollars in damages to their fences and equipment that occurred during the California Fire of October 1993.

US Fish and Wildlife Service Smears ESA Victims Who Speak Out

In 1995 the Domenigonis found out they had been targeted in a smear campaign waged by the US Fish and Wildlife Service against individuals who had spoken up about injury they had suffered from implementation of the Act. They received a document titled, "Facts about the Endangered Species Act." One whole chapter in it is devoted to casting the Domenigonis and other ESA victims who have had the courage to speak out in public as liars.

In the first portion of this document, the Service trumpets the "success stories" of species they claim owe their recovery to the Act. This portion of the "Fact" sheet proudly lists names and contact telephone numbers for Service personnel, and state wildlife agency personnel. It would have taken only one telephone call to get additional information about these "Endangered Species Act Success Stories."

The "Fact" sheet attempts to unjustly cast as lies the stories of many of the people who have been seriously abused by this Act. The Fish and Wildlife Service attempts to obfuscate and mislead the truth by creating several "strawmen" accusations. In the publication, under the heading of "The Allegation," they create outlandish charges that the ESA has done or caused things that no one has ever accused the Act of doing, the Service is then able to easily refute these untrue "allegations" that were never actually made.

Yet, also contained in this document were vicious attacks on numerous individual citizens who have had the courage to speak out publicly about the impacts they had suffered. These attacks were couched in a section titled, "The Endangered Species Act: The Rest of the Story." But in this section of the "Fact" sheet, the Service had no contact people, no telephone numbers, no authors or attribution anywhere. The Service obviously thought they would be able to publish this document, and no one would ever wonder where it came from.

Wasn't the Service worried that its distortions of fact, twists of real allegations, and construction of strawmen might cause those they maligned to fight back? Why didn't the Service stand behind this scandalous document? Why isn't it published on government letterhead? The answers are obvious. The Service feared legal liability for printing blatantly false and hurtful accusations about the ESA's victims. I believe the Service also lacked the fortitude to stand up after launching this salvo.

The Department of Interior and the Fish and Wildlife Service Attempts to Hide From Scrutiny

When the Domenigonis sought to find out the sources of the information used in the document, it took not only numerous unsuccessful phone calls, but also a formal Freedom of Information Act Request ("FOIA"). This FOIA request also required numerous telephone calls, and an additional FOIA Appeal in order to get any of the information that the Service relied on for the "allegations" and "responses" in the "Rest of the Story" section.

They submitted their FOIA request in October 1995. It was followed in December by a denial of the request. The Domenigonis filed an appeal on December 26th, 1995. That was answered with a partial reply that was still woefully incomplete.

In their official request for information, the Domenigonis asked eighteen specific questions, seeking the sources for the statements contained in the document. The first response by the Department of the Interior tried to absolve itself of any responsibility for the statements it made in the "Fact" sheet by stating that the Office of Public Affairs for the Fish and Wildlife Service was, "not the office of record" for the documents they themselves used in making the statements. Again, the Fish and Wildlife Service improperly refused to supply the papers, acting inconsistently with the requirements of the Freedom of Information Act.

The Domenigonis appealed this determination, and the Department of the Interior's second answer was still woefully incomplete. Of the eighteen questions the Domenigonis asked, the Washington Office of Public Affairs (the place where the document was published) referred to the Regional Director's Office of the Fish and Wildlife Service in Portland Oregon, for nine of the questions. The response then referred to a "pop up card" published by a group of labor unions and interests as the source for three of the questions, then cited

the General Accounting Office report on the 1993 fire as the source for three more questions. A printing requisition form was the answer for one question, a National Wildlife Federation (an environmental group) "document" for another, and, incredibly, they even cited Cindy Domenigoni's Congressional testimony as one "source." The response to the request for the persons responsible for developing and distributing the publication was a printing requisition sheet, and printing invoice, all referencing "Mark Newcastle, Printing Specialist."

Adding further insult to injury is the Service's response to the Domenigonis query about the source of the information for many of the statements, in the smear publication. The Department of Interior's FOIA response cites "conversations" with Service personnel in the Carlsbad field office. Yet the "Facts" document never mentions the examination of the Domenigonis' farm by a Service biologist in June of 1992, where the Service cited the presence of k-rats as the reason for a prohibition on the disking of fire breaks. This is directly contradictory to statements in the publication that say the 800 acre farm field was "subsequently" found not to be k-rat habitat.

First the Fish and Wildlife Service nearly drives the Domenigonis out of business with its prohibitions stopping them from farming their own land. Then it nearly cost them their lives, home and cattle by forcing them to abandon safe fire prevention practices, then they attack the Domenigonis for simply telling what happened. All the while using tax dollars to accomplish this attack on private citizens.

The Service's publication also targets other property owners like the Domenigonis, who have testified before Congress because of the impacts to them of the ESA.

The Service's publication is another indication that, despite its rhetoric, the Department of the Interior and the Fish and Wildlife Service are not interested in working to implement the ESA in a manner that "avoids train wrecks" between species regulations and property owners. Quite the contrary, it appears the Fish and Wildlife Service works very hard to falsely deny the wrecks ever happened.

Without Congressional remedy to the Endangered Species Act, the Service will continue to issue edicts, citing the Act as its authority, with no regard for the legitimate interests of safety, health, the privacy of individuals, and their Constitutionally guaranteed rights.

Fish and Wildlife Service Fails to Adhere to Their Written Commitment to Riverside County

In 1997 the County, the Riverside County Habitat Conservation Agency, several cities and the Fish and Wildlife Service and California Department of Fish and Game each signed a central guiding document called a Planning Agreement that outlined the terms under which each of the signatories would be willing to operate in the design of a multi-species plan. The document was the result of months of negotiations by many of the private and public

interests involved or impacted by the plan. Among the Planning Agreement's central tenets is that any final plan
will be incentive-based and voluntary. Second most important in the agreement is that the state and federal agencies will tell us, up front, and in rough terms, what kind of benefits the plan will offer for what ultimate cost.

The reason for, and the importance of this aspect of the Planning Agreement was because past experience had shown that the federal government was extremely cagey when it came to revealing what the requirements are for the granting of a permit exempting landowners from the Endangered Species Act prohibitions for listed species. The Stephens' kangaroo rat plan (indeed most of such plans) had been described as the Fish and Wildlife Service pointing at a pile of rocks and telling Riversiders, "Go bring us a rock" and when the hapless citizen brings back a rock the government says, "Nope, not that one." --And the process goes on and on for years as it did with the SKR plan, until it ultimately took eight years to get approval and the
cost came to over $42 million.

The bureaucratic inertia of the SKR plan kept carrying it forward, all the while nowhere in the process was a careful analysis done of the eventual benefits of actually doing the plan. Consequently, the citizens of Riverside County declared any new multi-species plan would have the elected leaders of the county estimate the costs and benefits of such a plan up front, from the requirements given by the Fish and Wildlife Service, and then make a clear, informed decision (a "go/no go" decision) whether what was to be gained from such an effort would be worth the cost. With its refusal to provide this information, it appears the Service wants to keep the county rummaging through the rock pile.

The Fish and Wildlife Service signed the Planning Agreement in 1997, agreeing they would provide these "rough conservation requirements" within six months of signing the agreement and commencement of work on the plan. With the county taking the reins of leadership from the RCHCA, the Fish and Wildlife Service sought to delay presentation of the requirements until things had settled into a structure that would firmly indicate the direction the County would take in doing the plan. That concern alleviated, the Service was supposed to present the requirements in December 1998. --That didn't happen. The county then allowed the Service time to complete the analysis of the requirements by amending the Planning Agreement
timeline to give them more time.

Fish and Wildlife Personnel Misrepresent the Truth to the Public

This was then reported to the Advisory Committee by the Fish and Wildlife Service as a wholesale deletion of the "go/no go" provision. Follow up with the Board of Supervisors reflected that this was not true. Yet, the Fish and Wildlife Service sought to pass off this wishful double-speak as truth to the public at the Advisory Committee. When the actual truth of the situation was rectified, the Service then responded that they would present the requirements at a subsequent meeting of the Advisory Committee.

After several more delays, that was to finally happen at the March meeting of the Advisory Committee. What actually happened was a stupendous display by no less than eight Fish and Wildlife Service employees of some fine dog and pony tricks lasting more than two hours. The public advisory committee was treated to a fancy show of toads, fairy shrimp, checkerspot butterflies, and their threatened habitats from slides taken all over Riverside County. --But when the show was over, there was still no mention of rough conservation requirements.

When asked when they would be presented, the Fish and Wildlife Service first responded that it would not be possible without the input and analysis of the UC Riverside Scientific Advisory Committee and the County's consultant. After more discussion, they jumped to the response that the Fish and Wildlife Service "can't write the plan for you" (as though we would really be asking that.) After this attempt at obfuscating the real issue, the next car on the excuse train was that the presentation of the rough conservation requirements would put the plan in peril of a successful lawsuit by environmentalists because of the questionable legality of providing such information.

The Fish and Wildlife Service then claimed that they didn't have the expertise to provide the rough conservation requirements. Several other excuses were then produced. The Field Chief even sought to pass off the excuse that they simply didn't have the staff time to accomplish such a feat, what with all the development proposals coming into their offices lately, going so far as to claim that there would be no way to do such an extensive analysis with full-time devotion of the vast array of public resources assembled in the room that day. When it was pointed out that the Fish and Wildlife Service, as a lead agency, would be responsible for a much more in-depth environmental analysis under their NEPA and ESA responsibilities than what was now being asked for when they would have to give final approval of the permit. The Field Chief then quickly conferred with the Branch Chief (this was probably because he was seated too far away from the Region Chief's Special Assistant) and got a nod from his Branch Chief and Field Biologist that the point was correct.

The exasperated members of the advisory committee finally sought to elicit a solution to get around the Fish and Wildlife's road block. There was no solution offered. The eight Fish and Wildlife Service staff people sat there arm-crossed, blatantly refusing to follow through on their written and signed commitment. In the end, this shameless display of flimflam, stall, and arrogance has infuriated the representatives of the landowning community.

To date, there remains a great possibility that the Farm Bureau, Building Industry Association and the Property Owners' Association may oppose any further work on the multi-species plan if the Fish and Wildlife Service does not live up to the compromise position that was finally worked out by the county's consultant over the next month. It is impossible to imply to landowners that their interests will be faithfully considered if an informed "go/no go decision point" provision is ignored.

How to Rein In the Fish and Wildlife Service's Abuses

The regulatory abuses of the Fish and Wildlife Service in Southern California have been both numerous and egregious. At this point Farm Bureau will suggest some possible administrative reforms that could help to prevent the excesses of this agency.

- **Change the burden of proof requirement.** Second only to the unconstitutional takings of private property that occur with the ESA is the travesty that private citizens have to prove to the government that they will not violate the ESA. This occurs when a property owner has to prove that he or she does not have the species on their property and even that the way the person intends to use their land will not violate the ESA. It turns our system of justice on its head.

- **Legislatively Change the Judicial Deference given to Agency Regulations to De Novo Review.** Now, any regulation promulgated by an agency to implement any federal law, if challenged, is looked at by the courts with a deference to a broad rule making authority by the agency. The result has been regulations that are far from the original intent of Congress. This should be changed by Congress to explicitly state to the judiciary that regulations promulgated by agencies will be looked at fresh, with a clean slate, in order to judge their compliance with the intent of Congress.

- **Limit Standing in the Courts in ESA Challenges to Persons Actually Impacted by the Act.** Presently, anyone who disagrees with a particular activity on public or private land, anywhere in the country, can challenge either the enforcement, or the lack of enforcement of the ESA. They are thereby able to force their agenda onto people who live and deal with the Act nowhere near where the plaintiffs in the suit reside or operate.

- **Legislate a Federal Version of California's Permit Streamlining Act.** The passage of such a law would require that the Fish and Wildlife Service respond in a timely manner to permit requests, with a well defined remedy outlined if the permit application was deemed unacceptable. There would be one chance for the agency to describe how to make the application acceptable, and they would have to do so within a well defined time limit. After the permit applicant has resubmitted a remedied application, if the agency fails to act within a defined time period, the permit would automatically be deemed approved.

- **Legislate That There Are Definite Consequences to the Agency For Not Acting.** Unless the legislation governing an agency actually imposes specific penalties on the agency for not carrying out a part of the law, courts have held that those mandates are only advisory. Specific Congressional legislation that describes penalties to the Fish and Wildlife Service for failure to act in compliance with the law would prevent the kind of failure of the agency to implement those areas of the law that the agency does not agree with such as the Farm Bureau's delisting petition.

- **Prohibit the Use of Information Obtained by Trespass.** Passage of this legislation would prevent such injustices as those done to the Domenigonis, where they were stopped from farming after discovering a non-federal biologist illegally trespassing on their land.

Congressional legislation in these areas would do much to prevent the types of abuses by the Fish and Wildlife Service that we have seen here in Southern California. Yet passage of all these reforms would only be half measures. That is because none of them would remove the acknowledged disincentives for private property owners to have sensitive species on their land. Under this current system of command and control, top down federal Endangered Species Act regulation, property owners have no incentive to provide habitat for species on their land. In fact, all of the incentives are for property owners to destroy habitat on their land in order to prevent it from being made worthless because an endangered species has been found on it.

What is needed is an Endangered Species Act that conserves species, by allowing and encouraging landowners, farmers and ranchers to be good stewards of the land. It should also be an Act that is so simple as to be immune to the bureaucratic evils that so often do not become apparent until years after the bill has left Congress and become law. In order to have an Endangered Species Act in which the agencies can no longer twist, ignore, subvert and use both the scientific evidence and the statutory processes to further a political or ideological agenda, it must be a law that is simple, incentive based, and non-regulatory. Our experience has shown us that, given the regulatory power and the historically wide latitude of discretion given by the courts, the agencies will be sure to abuse and ignore the intent of Congress. I see your challenge is to make a law that is both successful for conservation of wildlife, and also upholds the rights and freedoms of the people it affects. Thank you.

Mr. POMBO. Thank you.

[Applause.]

Mr. POMBO. Mr. Tavaglione.

STATEMENT OF JOHN TAVAGLIONE, SUPERVISOR, RIVERSIDE COUNTY

Mr. TAVAGLIONE. Thank you, Mr. Chair.

I want to thank you all for allowing us to be here today. You have taken on a great task, as we all know.

My colleague, Supervisor Jim Venable, who represents this area, also wants to welcome you to the beautiful Town of Hemet, and I also want to thank our good friends, Congressman Bono and Congressman Calvert for their leadership in dealing with this very, very difficult Act.

I first became aware of the problems, the severe problems, with the Endangered Species Act sitting as a city council member on the City of Riverside reading a biological report for a property owner who held a family property for a number of years, 20 acres. They wanted to develop it into eight lots, yet he was told he could not do it because he may have a lizard, an endangered lizard on that property, and since they do not know, they wanted him to put radio controlled collars around lizards that were found and monitor them for five years.

[Laughter.]

Mr. TAVAGLIONE. It was at that point I realized that something was very wrong, and this is eight years ago.

As you all know, Riverside County has been one of the first throughout the nation to embark upon dealing with this Endangered Species Act in a very positive way. We first started with the fringe toed lizard back in 1984, the habitat conservation plan; the short term Stephen's kangaroo rat plan in 1992, followed by the long term kangaroo rat plan in 1997. It only took eight and a half years to get through a kangaroo rat habitat conservation plan, and they say things are done in a timely manner. Only eight and a half years and $125 million to deal with the Stephen's kangaroo rat.

As we speak today, we have engineers, consultants, private property owners, state resource agencies, Federal resource agencies and the country working on a very commendable process called the integrated planning process. Some of you have already heard of that. That is where we are embarking upon a program here in Riverside County to deal with a three tiered program: land use planning, general plan, multi-species planning, and corridor planning to deal with our congested corridors, recognizing that all three or at least the land use and the general plan corridors or—excuse me—the transportation corridors will require some mitigation efforts for endangered species.

We have already set aside $22 million to deal just with the initial planning of that. I as one colleague on board have reluctantly supported that, recognizing that if we get three years down the road, the chances of having an agreement by Fish and Wildlife Service or the chances of having agreement change during that three-year process are extremely high.

Landowners, farmers, building organizations, public/private enterprises have given you comments today on the frustrations they

have had. You have heard from our flood control Chief Engineer and General Manager, Mr. Zappe, about the problems in the Murrieta Creek and the inability to clear the way of that creek so that the water could flow. Tens of millions of dollars of property that were lost back in 1993.

What Mr. Zappe did not tell you is that because of that flood, a family, an entire family was lost trying to cross a creek. So we are not just talking about property damage. We are talking about lives.

Today we have in Congressman Calvert's district a river that is at risk and has been at risk for well over six years because of the lack of or the inability to clear the sediment. We have a plan in place to deal with that. We have the funds to deal with that. Yet Fish and Wildlife Service wants to increase the mitigation, double the mitigation which is going to double the cost from $8 million to at least $16 million and possibly $20 million.

We have back in 1993 or—excuse me—1995 a fly. Now, this is not the Delhi Sands fly that I am going to talk about in a second. We had a Mediterranean fruitfly in the City of Corona, western Riverside County. It was very much endangering our citrus orchards.

As you probably know, we have a $1 billion industry in Riverside County with regard to our orchards, agriculture.

The State Agriculture Commissioner decided that it was the time to do the aerial spraying on most of western Riverside County in a series of evenings over about three weeks. They were going to spray the insecticide over homes, backyards, school grounds, playground equipment, and it was okay to do that.

Yet Fish and Wildlife Service representatives from Carlsbad said, "No, you cannot do that over endangered species area because we are in fear that the least Bell's vireo or we are in fear that the Stephen's kangaroo rat might die because the spraying may occur on their endangered habitat."

It seemed awfully odd that we could spray over school grounds but not over endangered species area. It makes you wonder if our kids are endangered in the eyes of many of these biologists.

In my district, I happen to have the Delhi Sands flower-loving fly, and this is an endangered species. Myself and Supervisor Jerry East from San Bernardino County are known as the parents of the Delhi Sands flower-loving fly, and we are very proud of that I want you to know.

You have heard the story of San Bernardino County's regional medical center that was soon to get under construction about four years ago. They were put to a complete stop because Fish and Wildlife biologists determined that there may be flies on a particular site, on a portion of the site where this hospital is going to go.

Not a problem, they said. Move the hospital over to the tune of about $2 million, and we will let you have your hospital.

Well, they did that because they needed to get their hospital built to serve the indigent who need the care, the medical care, but they also have a multi-million dollar hospital, a $150 million hospital and a $3 million fly park now sitting next to it, something for the patients to observe and get well with.

In my county, in Riverside County, about 10 miles to the west of this particular hospital we had a developer. This is the most active economic development area in the State of California as we speak. It is in an area called Harupa Valley, Maraloma. Most of you are aware of it. A tremendous amount of business growth occurring, job production, people being put off of welfare because of the new jobs that are being incurred here.

One developer wanted to build a 750,000 warehouse distribution facility for one of the country's leading computer manufacturers. This is a former dairy land where manure was very prevalent, and there had been no real farming on this site for many, many years. Yet Fish and Wildlife biologists felt it might be a good site for the Delhi Sands flower-loving fly, and they felt that it could have been there at one point in time.

They required us to do a study. We did a study for the habitat, found that there was marginal habitat, if any at all, the Delhi Sands sand, and we also did a study to determine whether the fly was there.

No, there was no fly there. You could only do the study during September and August, August and September of each year because the rest of the time the flies burrow under the sand.

There wasn't a fly, but an intern biologist from UCLA thought that he heard the fly.

[Laughter.]

Mr. TAVAGLIONE. Now, when the fly was heard, and that letter was provided to the representatives of the Carlsbad office of the Fish and Wildlife Service, and the subsequent hearing came before my board to decide whether this project should be built, the comments by Fish and Wildlife Service, "We believe that the fly is there because we have letters that the fly was heard."

Well, board approved that project, did not listen. It is still in litigation, continues to be in litigation by environmentalists who work hand in hand with the Fish and Wildlife Service. If anyone tells you they are not, that is not true. But yet the project is still under delay and will continue to be under delay while environmentalists continue to challenge it because of a fly being heard.

One that is closest to me is the interchange because of all of the industrial and business activity, and Congressman Calvert is well aware of this. We have needed to build a new interchange on the 15 corridor to deal with traffic congestion, but also to deal with all of the trucks that are coming from the new industry. We are trying to be proactive in doing so. We tried to move the project along as quickly as possible to eliminate the congestion.

We sat down with Fish and Wildlife. This was two years ago, to work out a plan that we could move forward and assume that the project was inhabited. We had to do that because it was the Federal nexus that is being provided here because it is a Federal highways project.

And because we did not want to go through the two years of study and delay it two years further or a total of four years, we had to assume habitation or occupation of the property.

In the end it was determined that we could probably get by, even though there was no occupation by flies, very little soil if any; we

determined that we could get by with either to 10 acres of mitigation.

I attended personally this meeting when we were ready to move forward and hopefully strike a deal when members of the Fish and Wildlife Service looked me straight in the face and said, "Well, we have changed our mind. The eight to ten acres is not sufficient. We want 200 acres."

Now, that is when I blew my stack. I have to be honest with you. That is when I realized that something was wrong. That is when I called my Congressman, Congressman Calvert, and said, "We need your help again, Ken," and he was very helpful.

We have, to the credit of many and to the credit of Fish and Wildlife Service, we have reached an agreement. It is not eight to ten acres. It is 40 acres. It is about 10, 15 miles away from the site where the interchange will occur, and the agreement is tentative at this point.

And I have to tell you as others have today; I tell you this story knowing the risk that could occur, that this is a tentative deal, and that things may not transpire because of certain testimony that occurs today. But I have to put the faith in Mr. Spear and Mr. Berg that they are going to take the bull by the horns and make some change.

We have a few suggestions for you in terms of how you can change.

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

Mr. TAVAGLIONE. I am going to wrap it up. I was just going to say we have four suggestions here, Mr. Pombo, and they are in my written testimony. We ask that you take those very seriously.

After working very closely with the Fish and Wildlife Service, as county staff has done, we feel that this is the only way that some sense is going to come into this law.

Thank you very much.

[The prepared statement of Mr. Tavaglione follows:]

STATEMENT OF JOHN F. TAVAGLIONE, SUPERVISOR, RIVERSIDE COUNTY BOARD OF SUPERVISORS

Honorable Chairman and members of the Committee, my name is John Tavaglione, member of the Riverside County Board of Supervisors, and on behalf of my colleagues and all the citizens of our fine county, I want to welcome you here today. I've been asked by my colleague, Supervisor Jim Venable to especially welcome you to his beautiful hometown of Hemet.

First, I would like to personally thank all of you for providing the leadership which is so desperately needed to bring some sensibility and reasonableness to the Federal Endangered Species Act (ESA). I especially want to thank my good friend Congressman Calvert, who has spent countless hours listening to the concerns of local government agencies, private property owners, and professional organizations; and for his leadership in introducing new legislation in hope of establishing some "common sense" reform to the Endangered Species Act (ESA).

As you may know, Riverside County was one of the first in the U.S., to take the lead in formulating a Habitat Conservation Plan (HCP)—first with the Fringe-Toed Lizard HCP in 1984, followed by the "Short-Term" Stephens' Kangaroo Rat (SKR) HCP in 1992, and subsequent "Long-Term" SKR in 1997. As well, since the early 90's, our County has put into place two (2) Multi-Species Habitat Conservation Plans (MSHCP) in cooperation with the Metropolitan Water District. And, as we speak, County agencies, along with professional engineers, consultants, and both the State & Federal resource agencies are working closely together to establish the country's first multi-tiered approach to habitat conservation, growth management/land-use planning, and the planning & designation of major transportation corridors. This extremely aggressive but worthwhile program is known as the Inte-

grated Planning Process, which was given the nod of approval by our board a little less than a year ago, with the charge of adopting, within a 3 year period a county-wide multi-species plan, a new general land-use plan, and the identification of new, major transportation corridors. All of you, I'm sure, know, that Riverside County (along with our neighboring San Bernardino County) is one of the fastest growing regions in the country; has some of the most congested freeways in the U.S.; and, as many of us believe and feel, we are looked at by Federal Resource Agencies and environmental groups as the prime target (because of our growth) for insuring that a very worthy, but extremely flawed Federal Act is adhered to.

As you can see, our County has not just sat back and tried to push the envelope with the regulatory agencies in dealing with the ESA—quite the opposite—we are one of the few local jurisdictions in the U.S. to take the lead, and are quite proud of our "attempt" to be a strong team player with the U.S. Fish & Wildlife Service in conforming with the ESA. Unfortunately, many will believe as I do, that such attempts at working cooperatively have, in too many cases, only worked against us, causing very costly delays in important and critical public and private projects throughout the region.

Today you will hear (or have already heard) testimony from private landowners, farmers, professional building organizations, and other public and private entities, who will share with you the frustrations each have encountered while dealing with the ESA and the local Carlsbad Field Office. Later today, you will hear from the General Manager and Chief Engineer of our County Flood Control and Water Conservation District, who will share with you the difficulties his agency has had in dealing with the permitting of local flood "safety" projects——projects, that because of delays in permitting, resulted in severe damage to property, and the loss of life. And I too, would like to share with you some examples that we, as a local government organization have been challenged with.

Let me start by saying that we in Riverside County and the Inland Empire Region have nearly 200 species that have been identified as "endangered" or "threatened." While not all of these species have caused us heartache yet, a few of the more notable ones (which you have already, or likely heard of) have—such as the kangaroo rat, the Fairy Shrimp, the Quino Checkeredspot Butterfly, and my favorite—the one that I'm most familiar with—the Delhi Sands Flower-Loving Fly. First, I would like to share with you a couple of stories that truly give the meaning and original nature of the Endangered Species Act a bad name, and ones that border on the area of being ridiculous, sometimes funny, and unfortunately very tragic. I'll start with the tragic and end with the funny. In 1993, heavy rains were experienced throughout the region. Specifically, in the southwestern part of the county, in the city of Temecula, the banks of the Murrieta Creek overflowed causing much of the lower-lying areas of the city to flood, causing severe damages (in the millions of dollars) to businesses and residential neighborhoods. One entire family was lost when they attempted to cross a flood road in their family vehicle. Should they have attempted to cross? Probably not! Could all of this been avoided? Yes, simply by being given the proper emergency permits to maintain and clear sediment from the creek—yet this was not possible due to concerns for the endangered least Bell's vireo. The same bird has prevented us from clearing accumulated sediment in the Santa Ana River which runs through San Bernardino, Riverside, and Orange Counties. Extensive damage has been caused to one specific bridge crossing this river, which, with some reasonable cooperation from the local Carlsbad office, could be replaced the with funds already allocated. Yet because of the personal agendas and indecisive nature of some in that office, coupled with the bureaucratic maze, costs have tripled, and the replacement bridge may never get built.

I'm sure you have also heard about the Mediterranean Fruit Fly. No, thankfully it is not endangered. In fact, it poses quite a threat to our abundance of fruit orchards here in Riverside County. In 1994, the fruit fly posed such a severe threat that the State Agriculture Commissioner ordered the aerial spraying of insecticides over a major portion of the inhabited cities of our western county. School yards and their play equipment along with the residential neighborhoods were sprayed on a series of evenings over a month-long period. While it was o.k. for children and their play areas to be subjected to this spraying, representatives of the U.S. Fish & Wildlife Service ordered no spraying to occur over areas that were inhabited by the least Bell's vireo and the Stephens' Kangaroo Rat.

I've saved what I consider to be the best for last—the Delhi Sands Flower-Loving Fly (DSF). This is the same species that prompted members of the Carlsbad office to determine that a specific area in southern San Bernardino County, was heavily inhabited by the fly and needed to be preserved. Unfortunately, it happened to be (partially) the site which was soon to be the new home of their county's new regional medical center. Not a problem, according to U.S. Fish & Wildlife Service representa-

tives, "move the hospital a few hundred feet and we'll be o.k."—o.k. to the tune of over 2 million "taxpayer" dollars! Down the road about 10 miles West of this location, in the regions most active economic development area, which also happens to be my direct responsibility, a developer desired to build a 750,000 square foot warehouse/distribution facility for one of our country's leading computer manufacturers. U.S. Fish & Wildlife Service representatives contacted the developer and my office, indicating the need to do a survey on the property to determine the presence of the fly, since, in their opinion, the property had the prime Delhi Sands soil by which the fly tended to inhabit. We instructed the developer to do those surveys——one to determine the quality of the soil and vegetation, which can be done at any time of the year, and which was found in this case, to be marginal at best. The second survey was to determine the presence of the fly, and could only be done during the actual "fly" season—as the Delhi Sands Fly only shows it's wings during the months of August & September—burrowing in the sand the remaining 10 months of the year. Biologists permitted by the Carlsbad office spent approximately 8 weeks (at times sitting in chairs on the site for 8 hours—observing) surveying and watching for the fly. While none were ever observed by the biologists conducting the actual study, a biologist "intern" from the University of California, Los Angeles (UCLA), just happened to be observing the same site during a field observation trip. The intern claimed that, he too, did not see any flies on the site, but heard one as it flew by. This second hand information, brought forward by the intern's professor in biology (and fly expert) caused representatives of the local Carlsbad office to make an appearance before me and my colleagues, urging us to deny the approval of the project, and delay the economic progress of the region. Despite the unsubstantiated concerns raised by the Carlsbad office, our Board approved the project. However, a regional environmental group subsequently sued the county and the developer, and has delayed the project and continues to delay the project for nearly a year and a half. To date, the courts found absolutely no flaw in the surveys conducted. Not less than a mile directly to the south of this particular area, and due to the active industrial development of the region, a new freeway interchange, along Interstate 15, was deemed necessary in order to address the corresponding existing, and increased truck traffic to the area. Congressman Calvert gave us great assistance by securing partial Federal funding for the project, and with this in hand we began to expedite the design and construction in order to stay ahead of the congestion curve. Since there was a Federal nexus with the project, we were required to consult with the U.S. Fish & Wildlife Service on this project. Recognizing that the particular area of the new interchange was not prime for habitat, or a known "flight" area for the Delhi Sands Fly, County staff sat down with members of the Carlsbad office, where they all agreed that in order to expedite the project, they would "assume" some amount of occupation by the fly (even though none have ever been observed there) and provide for a reasonable level of mitigation. This process would allow us to keep the project moving without having to conduct the normal 2 year protocol observation (during August and September) for the fly. The process moves along in a fairly decent time frame, with Federal requirements adhered to, and a reasonable level of fly mitigation provided—setting the stage for consultation (prior to Federal Highway approval) with the local Carlsbad office of U.S. Federal Fish & Wildlife Service. After 2 years of discusssions, representatives from Carlsbad indicated that the 8–10 acres of low-value, non-occupied mitigation for the fly "is not sufficient, as due to the abundance of industrial development occurring in the area, the interchange project causes cumulative impacts, and will likely require approximately 200 acres of mitigation." Quite frankly, Mr. Chairman and members of the Committee, it was at this point in time, in my 6 years in dealing with the Endangered Species Act, and the local Carlsbad office, that I, personally, blew my stack!

It was at this meeting, where I realized that agreements—hand shakes, verbal, written, or otherwise, meant nothing to certain members of the Carlsbad office. Too often, decisions are arbitrary in nature, with little or no thought, basis, or real science behind them. At times it appears as if decisions are made strictly by ones own personal beliefs or agendas, and often times, only for the purpose of delaying a project, with the ultimate hope of stopping growth and economic productivity. Now, to the credit of certain members of the Carlsbad office, we have recently reached a tentative agreement on this particular interchange which will require not the 8-10 acres of mitigation, but 40 acres with a substantial buffer area for protection of the habitat. The project should have and could have been under construction by now. Instead, we will be fortunate to see its construction commence in under 12 months.

While I know I've been somewhat lengthy in expressing some examples and the concerns we in Riverside County have with the ESA and the Carlsbad office, I thought it would help you in your review.

Mr. Chairman, I'd like to close by offering some recommendations for reform to the Carlsbad Field Office, and the Endangered Species Act:

(1) Standardized mitigation and survey requirements should be developed and adhered to. The U.S. Federal Fish & Wildlife Service, should immediately establish reasonable, uniform, and standard mitigation and survey requirements for all currently listed species. It does not appear reasonable that when certain species can only be observed seasonally, or during 2 months out of the year, that a 2 year survey should be required, potentially delaying economic productivity. Such mitigation and survey requirements should also be developed prior to the listing of the species in order to limit further delays after listing, and only upon adequate and detailed science to back-up the protocol.

(2) Consultations conducted pursuant to Section 7 of the ESA should be completed within the time period mandated by Federal regulations. Section 7 now requires the consultation to be completed within 150 days of the submittal to the local field office. In the case of Riverside County's Stephens' Kangaroo Rat "Short-Term" Habitat Plan (HCP), the U.S. Fish & Wildlife Service took well over 18 months to consult, and there are other similar examples.

(3) A time period for processing an application for an incidental take permit issued pursuant to Section 10(a) of the ESA and approval of a Habitat Conservation Plan should be established by Federal regulation and complied with.

(4) The lack of consistency with respect to commitments and agreements, both verbal and written, must be addressed. The U.S. Fish & Wildlife Service representatives must honor all of its obligations under the ESA and must fulfill all commitments made in agreements with local governments. Senior management of the service must hold their personnel accountable for failure to adhere to requirements of law and interagency agreements. Clear and concise policy direction concerning goals and objections must be provided to field staff by management and policymakers. It is the perception of the regulated community that there continues to be a lack of management and oversight of field staff.

Honorable Chairman and Committee members, thank you for giving us the opportunity to address you—we in Riverside County very much appreciate the leadership you are all providing to bring a level of reasonableness to this important Act of protecting certain species.

Mr. POMBO. Thank you.

Mr. Evans.

STATEMENT OF DOUG EVANS, CITY MANAGER, CITY OF PALM SPRINGS

Mr. EVANS. Thank you very much.

My name is Doug Evans. I am Director of Planning and Building for the City of Palm Springs, and I would like to thank the Chair, members of the Resources Committee, and also Congresswoman Bono for having this opportunity to address you.

The City of Palm Springs has had a long term commitment to resources. We feel we have a lot of success stories to talk about, and I am going to talk about what we think is a success story that has not been acknowledged.

Now, the City of Palm Springs and many property owners have been frustrated by the service and how they have implemented the Endangered Species Act. Since 1993, the city council has approved three major projects, and currently all three are being delayed by the Fish and Wildlife Service. In all three instances, the service has required significant modifications, revisions, or other mitigation measures which make the projects economically unfeasible and have contributed to the city's financial challenges.

In order to augment city resources or revenues, the city council has had to cut programs and has had to impose a local utility tax to maintain essential public services.

The delays caused by Fish and Wildlife Service have kept the city from expanding its primary industry, tourism, while neighboring jurisdictions in the Coachella Valley have expanded and developed resorts in similar terrain and with similar biological resources.

For the past 25 years, the City of Palm Springs has been a leader in environmental protection and acquisition of sensitive habitats. The city's general plan designates 33,000 acres for conservation, open space, parks, recreation and water course. That is 66 percent of the land in the City of Palm Springs.

Our general plan and zoning ordinance requirements are very restrictive. We have never been complimented as a city that is easy to develop in, although I have been charged with trying to change that. To show its commitment, the city council has acquired through purchases, trades, dedications 3,400 acres of prime bighorn sheep habitat. These lands form an almost continuous no development boundary along the base of the San Jacinto Mountains.

The exhibit to my left with the bright green on it shows all of the city owned lands, and in the areas outlined in blue—it does not show up very well—show two of the three development projects I am going to speak about today. The area in purple shows the areas that were disputed with the agency or the service.

The city council has offered to place additional deed restrictions on these lands or possibly even dedicate these lands to the state or Federal Government if these properties can be developed that I am going to speak about.

Let me put it in context as far as acreage. There is over 33,000 acres of bighorn sheep habitat in the San Jacinto Mountains on that map. We are asking if we can develop the last 500 acres to fill out the western edge of our city. The rest of the area available is either owned by the city or undevelopable because of the size of the mountain, the steepness of the mountain, and the other environmental factors.

You have heard a lot about the Shadowrock development. Mr. Bragg has worked very hard. I have worked personally with him 15 years on that project.

He did not tell you the first position from Fish and Wildlife Service, and this position was stated in initial meetings. It was also stated in a settlement agreement meeting with California Fish and Game over a lawsuit.

Fish and Wildlife staff's initial position was for the owner to call the Nature Conservancy because he would never be able to develop his land. Mr. Bragg outlined what is left, 150 acres from 1,100.

Mountain Falls Golf Resort, a very similar story. Fish and Wildlife Service reduced the area from development from 120 acres to 60 acres, enough land to develop a seven to nine hole golf course. This is just a golf course project with 20 condominiums. It is not a big project. There is no other land to move the golf course to around the property.

Every time the Mountain Falls developer has met with Fish and Game or Fish and Wildlife Service, they have been asked to move the golf course down the mountain. They did. They moved the line, and we submitted in our information where they put the line.

They have taken 120 acres, made it 60. You can barely do nine holes of golf. That is not a project.

Canyon Hotel and Resort, this project was approved by the city back in 1993 and was a direct result of the vision from former Mayor and Congressmen Bono. This is a project that Fish and Wildlife Service scared a development team, a very notable development team, in a hotel operation that we would love to have in our community by claiming that an existing golf course, an existing street, an existing bridge, and an existing flood control channel formed a significant bighorn sheep corridor, this in spite of the fact that there is a tribal park a half mile away that cost the state $17 million, and the county just added several million dollars to that, that has a wonderful corridor through it. It is about five to eight miles wide.

After three or four subsequent meetings, Fish and Game and Fish and Wildlife Service changed their mind. That area is not a corridor.

Well, the developer is gone. The project still is undeveloped, and the tribal council which owns the land is struggling with how do you make the project work with all of these restrictions.

One of the things that we have run into is the availability of information from the service when we look at projects. I am going to give you an example.

The city asked for detailed information for approximately two years to prepare an EIR. Fish and Wildlife Service, and now working in conjunction with Fish and Game, did not provide any on site data. In fact, today on another project they tell me they do not need field surveys because they know where the habitat is.

Then at the eleventh hour, the Sierra Club or the Bighorn Institute submits data, sometimes with Fish and Wildlife Service titles on it, into the record with the intent of trying to disrupt the project at the last public hearing.

In our experience, we found the staff to be accessible. We tend to be able to have meetings, but we do not feel that they consider all of the available information. We do not believe that they participate effectively in consultations and public meetings. We also believe that they clearly extend beyond their legal authority to discourage development at the very, very beginning.

We have listed some questions. I note my time is up. They are suggestions. One of the items we would like you to try to push is the release of the recovery plan. We have been asking for the bighorn sheep recovery plan for a long time. We are told that this will help resolve problems, and it is probably over a year late.

Thank you very much. We need your help, and I appreciate the opportunity to address you today.

[The prepared statement of Mr. Evans follows:]

U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

TESTIMONY FOR

DOUGLAS R. EVANS,
DIRECTOR OF PLANNING & BUILDING
CITY OF PALM SPRINGS
JULY 9, 1999

INTRODUCTION

***Palm Springs Commitment to Resources*:**

Mayor Kleindienst's letter dated July 9, 1999 outlines the City's General Plan programs, concerns and frustrations. I would like to read several paragraphs from the Mayor's letter:

> "The City Council of the City of Palm Springs and many property owners have become frustrated by the Fish and Wildlife Service practices in implementing the Endangered Species Act. Since 1993, the City Council has approved three major economic development projects, and currently all three are being delayed by the Fish and Wildlife Service. In all three instances, the Fish and Wildlife Service has required significant modifications, revisions, or other mitigation measures which make the projects economically unfeasible, and has contributed to the City's fiscal challenges. In order to augment City revenues, the City Council has cut important programs, and has had to impose a local utility tax to maintain essential public services.
>
> "The delays caused by Fish and Wildlife Service have kept the City from expanding its primary industry, tourism, while neighboring jurisdictions have expanded and developed resort developments in similar terrain, and with similar biological resources.
>
> "For the past 25 years, the City of Palm Springs has been a leader in environmental protection and acquisition of sensitive habitats. The City's General Plan has designated approximately 33,530 acres of land for conservation, open space, parks, recreation, and watercourse. This represents 66 percent of the total land within the City. Our General Plan and Zoning Ordinance have very restrictive land use designations and conservation policies.
>
> "To show its commitment, the City Council has acquired, through purchases, trades, and dedications, 3,400 acres of prime Peninsular bighorn sheep habitat. These lands form an almost continuous no-development boundary along the base of the San Jacinto Mountains.

"The City Council has offered to place additional deed restrictions, or possibly even dedicate these lands, to the State or Federal Government if certain properties can be developed."

Development Projects and City Experiences:

ShadowRock - 331-acre resort near Palm Springs Aerial Tramway. Fish and Wildlife Service's (FWS) initial opinion was to advise the property owner to call the Nature Conservancy, since it would never allow development of the site. After years of debate, a draft jeopardy opinion was issued which would require elimination of almost all homesites, 9 to 11 golf holes and the acquisition of adjacent property to essentially relocate the project. After dedications, and to comply with FWS demands, the original 1,100-acre site now has approximately 150 developable acres. Is this reasonable and prudent? The City Council and property owner think not.

Mountain Falls - A similar story. FWS has reduced the area to be developed from 120 acres to approximately 60 acres, or enough land to develop a 7 to 9-hole golf course . FWS and California Department of Fish & Game (F&G), acting as a team, have lowered the limits of development every time the developer would re-design the project to meet FWS/F & G demands. The last FWS position makes the project unfeasible. This is no longer an issue of a take permit for Endangered Species, but a taking of private/public land by FWS and F & G.

Canyon Hotel & Resort - This project was approved by the City as a result of former Mayor and Congressman Bono's vision. This year FWS and F & G scared away a development team, Omni Hotels and Landmark Development, by claiming that an existing golf course, street, bridge and flood control channel formed a bighorn sheep corridor. This is in spite of the existence of a Tribal park (purchased by the State for $17 million) that exists within ½ mile of the subject project. After 3 or 4 subsequent meetings, FWS changed its mind. The potential development team gave up, and the project remains without a developer.

Availability of FWS Biological Resource Information:

FWS does not provide, nor share, technical information on which it bases its opinion in letters. Example: The City has asked for detailed technical information for over two years. FWS and F & G do not provide any site specific data. Then, at the 11th hour, the Sierra Club or Bighorn Institute submits data, sometimes with FWS titles, into the record. This forces City Council to evaluate information without adequate review time. City decision makers and staff need technical supporting information in advance, and FWS staff needs to provide data it uses to formulate its decisions.

It is our experience that FWS staff, while accessible for meetings, does not consider all available information, does not participate effectively in consultations and public meetings, does not provide supporting information to support opinions, and may extend beyond its legal authority to discourage development.

A few suggestions:

1. FWS needs a local office. Currently, FWS staff spends substantial amounts of time traveling *from Carlsbad* to the Coachella Valley.

2. ESA needs to be amended to allow for a greater balance between economic and ecologic needs.

3. FWS letters and opinions need to be documented with supporting information.

4. Establish regional hearing bodies to evaluate FWS programs and decisions. Allow for timely and efficient appeals. All local government (City and County) staff have oversight by Boards, Commissions, and Councils.

5. Local government and property owners need your help to increase accountability of FWS.

6. Bighorn Sheep Recovery Plan needs to be completed and released.

We need your help to allow reasonable development opportunities within Palm Springs.

Thank you very much for the opportunity to address the Committee on Resources.

CITY OF PALM SPRINGS
SHADOW ROCK RESORT
SUMMARY - BIOLOGICAL RESOURCES
MITIGATION

CITY IMPOSED MITIGATION:

1. Least Bell's Vireo / Riparian Habitat Mitigation:

   A. Restrict road widening and construction timing
   B. Prohibit infrastructure within oasis areas
   C. Fire breaks prohibited from impinging upon riparian area
   D. Restrict blasting
   E. Redesign residential areas
   F. Cowbird monitoring and trapping program
   G. No disturbance buffers near riparian habitat

2. Desert Tortoise Monitoring During Construction

3. Bighorn Sheep Mitigation:

   A. Construct permanent drinking stations off-site
   B. Restrict domestic dogs within project
   C. Dedicate bighorn sheep habitat to City; 565 acres have been dedicated to City

4. ESA/CSA Compliance, if required by law

CALIFORNIA DEPARTMENT OF FISH & GAME SETTLEMENT AGREEMENT MITIGATION:

1. Expand wildlife corridor, resulting in loss of over 100 homesites.
2. Establish no development zones.
3. Restrict golf play to one hour following sunrise and one hour before sunset.
4. Replacement of sheep habitat. Allocate up to $300,000 to acquire 340 off-site acres.
5. Fringe-toed lizard mitigation, if necessary.
6. Bighorn Sheep Study - Pay $50,000 for continuing study of bighorn sheep - equal payments over five years.
7. Letter of Credit to California Fish & Game in amount of $350,000

CITY OF PALM SPRINGS
MOUNTAIN FALLS MITIGATION
SUMMARY - BIOLOGICAL RESOURCES
ADOPTED DECEMBER 16, 1998

1. OPEN SPACE ACQUISITION

Purchase and Dedication of off-site Bighorn Sheep habitat at a ratio of 3 acres preserved per each acre developed (approximately 368 acres).

2. OPEN SPACE RESTRICTION

Open space deed restriction on remaining leasehold interest (approximately 236 acres).

3. MONITORING FUND

Bighorn sheep monitoring fund of $50,000, payable over 5 years.

4.a. LANDSCAPE RESTRICTIONS

Restricted landscape plan addressing predator cover, toxic plants, invasive plants, and use of native plants.

4. b. TRAIL RELOCATION

Relocated existing hiking trail downslope.

5.a. GOLF COURSE MANAGEMENT

Golf course management plan for operation and maintenance of golf course, including lake management, vector controls, turf testing for parasites, restricted sunrise and sunset golf play, chemical application programs, and no lighting on golf course

5.b. BARRIER FENCE

Construct a barrier fence 8' high if there is a demonstrated threat to bighorn sheep if:

1. Sheep are attracted to golf course
2. New information developed which demonstrates health of sheep affected by a golf course
3. Sheep are coming onto golf course and are adversely affected

5.c. ENDANGERED SPECIES ACT

Demonstrate compliance with CESA and FESA prior to issuance of grading permits

NOTE: The complete Biological Resources Mitigation Program is attached .

15. Measure: Hours of operation for the clubhouse including the pro shop/restaurant/bar shall be from sunrise to 9:00 p.m., seven days per week. Determining the time of sunrise shall be based upon the official time as noted in the Farmer's Almanac. Golf course/clubhouse parking lot lights shall be turned off at 9:30 p.m except for minimum security lighting of the parking area subject to the approval of the Director of Planning & Building.

    Implementation: Prior to issuance of occupancy permits, the applicant shall provide an operating schedule contained within the CC&Rs to the City Planning Department indicating compliance with the approved hours of operation.

    Compliance Record:

    Timing: Prior to issuance of occupancy permit.

    Monitoring Entity: City of Palm Springs Department of Planning & Building

    Date Completed:

16. Measure: For additional noise attenuation, parking areas adjacent to the nine homes fronting on Crescent Drive to the north shall be excavated to a depth of at least two feet below existing grade with a 2'-4' high block wall and berm.

    Implementation: Prior to issuance of grading permits, the applicant shall provide grading plans which show the one foot excavation below existing grade for the parking area.

    Compliance Record:

    Timing: Prior to issuance of grading permit.

    Monitoring Entity: City of Palm Springs Engineering Division

    Date Completed:

BIOLOGICAL RESOURCES

The following measures will mitigate impacts due to the direct loss of habitat for bighorn sheep, as well as Sonoran Creosote Bush Scrub habitat, and the indirect impact of reduction of use of adjacent areas:

1. Measure: Dedication of habitat elsewhere to offset the loss of bighorn sheep foraging habitat. The conservation area to be dedicated shall be at a ratio of three (3) acres preserved for each acre disturbed. The dedication can either be outright donation of land, purchase of additional property, or moneys dedicated to preservation of bighorn sheep habitat, or a combination of all three. The dedication will be provided by the project proponent to the City of Palm Springs for the purpose of managing wildlife habitat.

    Implementation: Prior to issuance of grading permits, the applicant shall enter into an agreement with the City of Palm Springs regarding the necessary replacement habitat. The 3:1 ratio is a minimum and may be counted toward any habitat replacement program established by the California Department of Fish and Game and/or the U.S. Fish and Wildlife Service during any required State and Federal permitting.

    Compliance Record:

    Timing: Prior to issuance of grading permits.

    Monitoring Entity: City of Palm Springs Department of Planning & Building.

    Date Completed:

2. Measure: The non-used portions of the site shall be protected by deed restriction to prevent future development. Areas shown on project maps as "No Development Areas" surrounding the golf course shall be incorporated into the project design as permanent open space. All areas outside of and between the modified target golf course limits of grading shall remain in a natural condition.

   Implementation: Prior to the issuance of grading permits, a final site plan which identifies "No Development Areas" shall be submitted to the Palm Springs Director of Planning & Building for approval. Prior to the issuance of occupancy permits, a deed restriction shall be recorded which retains all undeveloped portions of the site as natural open space.

   Compliance Record:

   Timing: Prior to issuance of grading permits.

   Monitoring Entity: City of Palm Springs Department of Planning & Building.

   Date Completed:

The following measures are required to mitigate indirect impacts to bighorn sheep as well as other species:

3. Measure: A monetary payment in the amount of $50,000, payable over 5 years in annual $10,000 installments, shall be provided by the proponent to the City of Palm Springs prior to issuance of grading permits. The City shall manage the funds to support studies for the purpose of bighorn sheep conservation and preservation.

   Implementation: Prior to the issuance of grading permits, the applicant shall make the required 1st year installment of $10,000 to the City of Palm Springs which initiates compliance with the above measure.

   Compliance Record:

   Timing: Prior to issuance of grading permits.

   Monitoring Entity: City of Palm Springs Department of Planning & Building.

   Date Completed:

4. Measure: The golf course developer shall prepare a detailed landscape plan for City review and approval prior to the issuance of building permits. The plan shall incorporate the following mitigation measures.

   - No tall shrubs or dense cover shall be allowed within 50 yards of the boundary of the golf course in areas adjacent to native scrub habitat. This will avoid providing approach and hiding cover for bighorn predators.

   - No plant species toxic to wildlife shall be used on the golf course. The proposed plant palette shall be reviewed by a qualified botanist with knowledge of toxic plant species, and approval of the palette will be subject to this review prior to approval by the City. The plant palette shall incorporate the use of native plants salvaged from the site to the extent feasible per City Policy. Plants species with known toxicity are prohibited from use on the site. These species include:

     Oleander
     Pyracantha
     Lantana
     Castor

If additional species become known to the City to have toxic interactions with wildlife species in the future they will also be prohibited from use on site. If they have been planted prior to such information being available then the golf course operator shall remove them from the site.

- No invasive non-native species shall be used on the golf course. The proposed plant palette shall be reviewed by a qualified native landscape specialist prior to approval of the landscape plan by the City.
- The proposed relocation of the existing hiking/equestrian trail shall be redesigned to remain downslope of the golf course.
- Upon completion of construction all drainages shall be revegetated using native plants such as catclaw (*Acacia*), desert lavender (*Hyptis*), honey mesquite (*Prosopis*) and smoke tree (*Psorothamnus*).

Implementation: Prior to the issuance of building permits, the golf course developer shall submit detailed landscape/irrigation plans to the Department of Planning & Building for approval. Prior to the issuance of occupancy permits, the Department of Planning & Building will conduct an on-site visit to ensure that the above measures have been implemented.

Compliance Record:

Timing: Prior to the issuance of building permits.

Monitoring Entity: City of Palm Springs Department of Planning & Building and the project biologist.

Date Completed:

5. Measure: The golf course developer shall prepare a management plan for the operation and maintenance of the course for City review and approval prior to the issuance of building permits. The plan shall include the following mitigation measures:

- Identification of mosquito control measures that avoid contamination of water sources. Such measures could include the use of mosquito fish or other natural methods. Mosquito control will be the responsibility of the golf course operator.
- The golf course lake and other features shall be designed to discourage vector breeding (mosquitos, and midges, bees, rats, etc.). The lake should be steep sided, the water level should fluctuate widely and no vegetation shall be allowed to grow in the lake.
- Control of intestinal parasites through periodic testing of turf and water, and cleanup of golf course ponds. These measures must avoid the use of groundwater contaminants (fertilizers and pesticides). Parasite control will be the responsibility of the golf course operator.
- Upon completion of the golf course, property owners and golf course users shall be provided with information on the wildlife values of the surrounding habitats and the potential effects of their activities. In particular, the information will focus on bighorn sheep use and behavior in the surrounding mountains. The information will be prepared by a qualified biologist. The information will be provided by the project proponent and made available to golf course users on an ongoing basis by the golf course operator.
- Golf play and use of the driving range shall be restricted to the hours between sunrise and sunset.
- A fertilizer and pesticide management plan shall be prepared and implemented.

Implementation: Prior to the issuance of building permits, the Golf Course Developer shall submit a golf course operation and maintenance plan addressing the above mitigations to the City of Palm Springs Department of Planning & Building. The golf course operator shall continue these mitigation measures throughout the life of the project.

Compliance Record:

Timing: Prior to issuance of building permits.

Monitoring Entity: City of Palm Springs Department of Planning & Building.

Date Completed:

5 cont Measure:

- No lighting of the golf course and driving range shall be allowed.

Implementation: Prior to the issuance of building permits, the Golf Course Developer shall submit a Landscape and Lighting Plan indicating that no lighting shall be constructed within the golf course or driving range.

Compliance Record:

Timing: Prior to issuance of building permits.

Monitoring Entity: City of Palm Springs Department of Planning & Building.

Date Completed:

5 cont Measure:

- Human traffic into Tachevah Canyon from the existing recreational trail shall be obstructed by emplacement of a rock barrier in order to discourage human intrusion into the canyon.

Implementation: Prior to the issuance of building permits, the Golf Course Developer shall submit a final site plan to the Department of Planning & Building addressing the location of the rock barrier. A requirement to construct the barrier shall be included in the contractor specifications.

Compliance Record:

Timing: Prior to issuance of building permits.

Monitoring Entity: City of Palm Springs Department of Planning & Building.

Date Completed:

5 cont Measure:

- The developer/owner/golf course operator shall construct a fence at least eight (8) feet high around the entire golf course between the golf course and hillside areas for the purpose of keeping bighorn sheep off the golf course. Such fence shall be constructed when there is a determination of need by the "Fence Review Committee" consisting of the City's Director of Planning and Building, a representative biologist appointed by the owner of the golf course, and a representative appointed by the California Department of Fish and Game. The committee shall determine that a need exists based upon scientific information,

field observations or other reliable information, if such data shows that 1) the golf course is tending to attract sheep to the golf course or its environs, or 2) new information has developed showing, with a degree of reliability, that the health of sheep is adversely affected by browsing on golf course vegetation, or 3) that sheep are coming onto the golf course and are adversely affected thereby. At the option of the committee, the committee may order further scientific study of the issue, at the sole cost of the owner, to develop information necessary to determine if the need for the fence exists. The study may recommend additional monitoring at the expense of the owner. The property owner shall have the right to install the fence in lieu of performing any such additional study. The design and location of the fence shall be approved by the Director. The fence shall be completely installed at the sole cost of the golf course owner within one (1) year after the committee gives notice thereof. Failure to timely complete installation shall permit City to close down the operation of the course until there is compliance.

Implementation:

Prior to issuance of occupancy permits, the "Fence Review Committee" shall be formed.

Compliance Record:

Timing: Prior to issuance of occupancy permits.

Monitoring Entity: City of Palm Springs Director of Planning & Building.

Date Completed:

5 cont Measure:

- The developer/owner/golf course operator shall demonstrate compliance with the Federal ESA prior to issuance of grading permits. Compliance shall be in the form of an opinion from competent legal counsel experience in federal and state endangered species.

Implementation: Prior to the issuance of grading permits, the Golf Course Developer shall demonstrate compliance with the Federal and State ESA to the satisfaction of the Director of Planning & Building. Compliance shall be in the form acceptable to the Director of Planning & Building and the City Attorney.

Compliance Record:

Timing: Prior to issuance of grading permits.

Monitoring Entity: City of Palm Springs Department of Planning & Building.

Date Completed:

GEOTECHNIC

In order to reduce the project's potential geotechnical hazards to a level of insignificance, the following mitigation measures shall be implemented:

1. Measure: A seismicity analysis shall be prepared for the project including probabilistic evaluation of peak ground acceleration and response spectra prior to issuance of a grading permit.

   Implementation: Prior to issuance of grading permits, the applicant shall submit a seismicity analysis prepared by a registered civil engineer to the Building Department for approval.

US Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
2730 Loker Avenue, West
Carlsbad, CA 92008
(760) 431-9440
FAX (760) 431-5902 + 9618

CA Dept. of Fish & Game
1416 Ninth Street
PO Box 944209
Sacramento, CA 94244-2090
(916) 653-2458
FAX (916) 653-2588

Mr. Fred Grand
Preserve Golf Company
11839 Sorrento Valley Road
San Diego, CA 92121

May 13, 1999

Re: Mountain Falls Golf Preserve, Palm Springs, CA

Dear Mr. Grand,

The United States Fish and Wildlife Service and California Department of Fish and Game (Wildlife Agencies) have reviewed your most recent proposal for a golf course in Tachevah Canyon, Palm Springs Ca. The golf course holes proposed for the hillsides up slope from the Tachevah basin are of the greatest concern to the Agencies. The areas of concern are highlighted on the map and aerial photograph taken from the Draft Environmental Impact Report for the project (see enclosed figures). This area is used by peninsular bighorn sheep (*Ovis canadensis*) for feeding and sheltering as well as lambing and rearing habitat.

The Wildlife Agencies are concerned that development in this area will reduce the range of peninsular bighorn sheep (*Ovis canadensis*) and constrict habitat at the narrowest portion of the species range. The area provides essential habitat for bighorn and represents core habitat for the few bighorn sheep remaining in the San Jacinto population. Resulting habitat loss and fragmentation from development would reduce habitat values in the range. The cumulative effects of habitat loss and fragmentation from past projects and future projects in association with direct and indirect effects from this project, have the potential to interfere with movement and reproduction within the range. Any reduction in reproductive capacity of this small population of bighorn could cause its extirpation.

Development at this location would likely result in take of peninsular bighorn sheep (*Ovis canadensis*), a fully protected, state-listed threatened and federally-listed endangered species. Harm and harassment of the species can be expected as result of construction and development of the project, and operations of the golf course in the future. Due to the essential habitat values associated with the project site and the critical status of the San Jacinto population of bighorn

sheep, the Wildlife Agencies do not endorse the current proposed project configuration within the habitat areas highlighted in the attached figures. We appreciate the opportunity to review and provided additional comments on the project. If you should have any questions please refer to our earlier correspondence or contact Pete Sorenson at (760) 431-9440 or Glenn Black at (909) 597-5043.

Sincerely,

Glenn Black

Sheryl L. Barrett
Assistant Field Supervisor
U.S. Fish and Wildlife Service

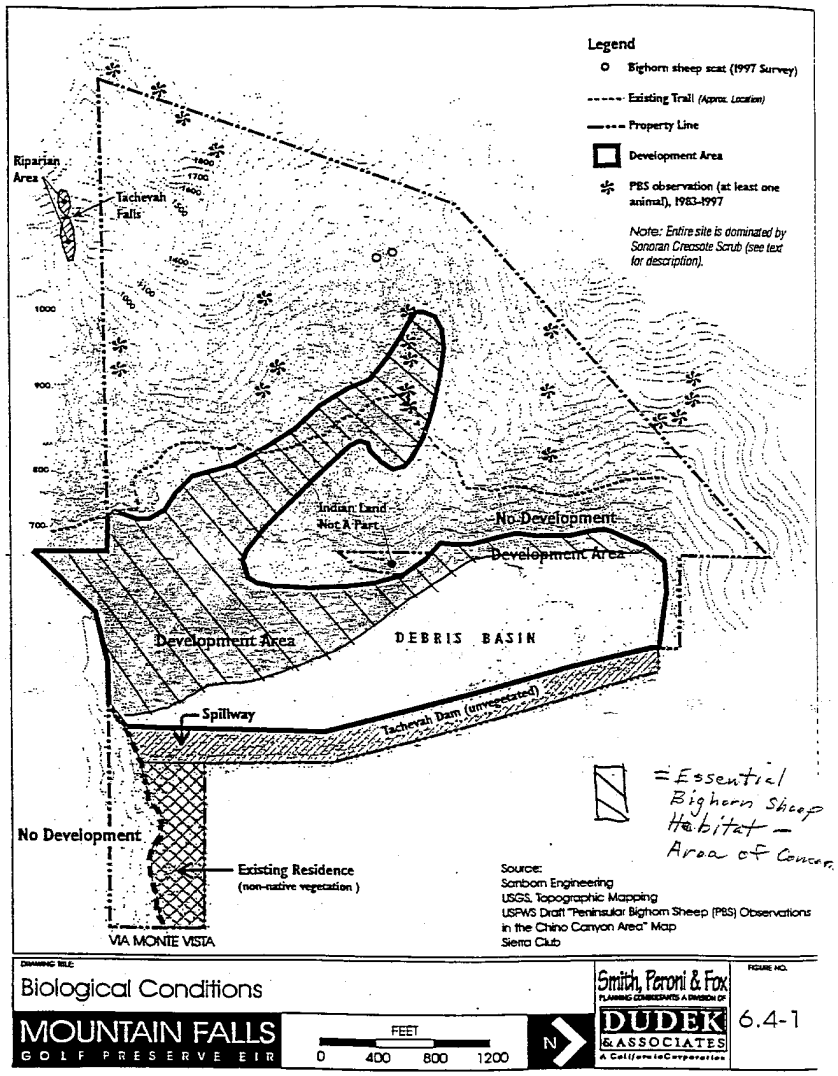
Glenn Black
Environmental Services Supervisor
California Department of Fish and Game

provided additional comments on the project. If you should have any questions please refer to our earlier correspondence or contact Pete Sorenson at (760) 431-9440 or Glen Black at (909) 597-5043.

Sincerely,

Sheryl L. Barrett
Assistant Field Supervisor
U.S. Fish and Wildlife Service

Glen Black
Senior Biologist
California Department of Fish and Game



DRAWING TITLE
Biological Conditions

MOUNTAIN FALLS
GOLF PRESERVE EIR

FEET
0 400 800 1200

N

Smith, Peroni & Fox
PLANNING CONSULTANTS A DIVISION OF
DUDEK & ASSOCIATES
A California Corporation

FIGURE NO.
6.4-1

Mr. POMBO. Thank you very much.

Mr. Calvert.

[Applause.]

Mr. CALVERT. Thank you, Mr. Chairman.

Supervisor Tavaglione, obviously we have a common interest with the Galena Exchange, and I would just like you to get into potentially more detail to the Committee on how the 40 acre mitigation agreement was reached when the Fish and Wildlife Service initially wanted 200 acres.

Mr. TAVAGLIONE. Mr. Calvert, there are three recovery areas for the fly, one in the Algomanza Colton area that has been mentioned earlier, one in the Herupa area, and the one in Ontario, the Ontario recovery area. This particular interchange is in the Ontario recovery area, though it is in Riverside county, and very little habitat remains in that recovery area.

Yet because this is a Federal project and there is little habitat remaining or at least anything to really force certain properties to be brought into habitat, it was mentioned that the 200 acres could provide mitigation for the entire recovery area, Ontario recovery area.

Mr. CALVERT. Just for the Committee's information, 200 acres in that area would cost per acre how much would you estimate?

Mr. TAVAGLIONE. Two hundred acres today would cost $100,000 an acre minimum.

Mr. CALVERT. Hundred thousand dollars an acre for 200 acres, and what was the cost of the entire Galena project?

Mr. TAVAGLIONE. The cost of the entire Galena project is $15 million.

Mr. CALVERT. So the cost of the initial mitigation exceeded the cost of the entire project?

Mr. TAVAGLIONE. That is correct. That is correct.

Now, the 40 acres, since there is little land remaining or little recovery area remaining for this fly in the recovery area, yet we have a need to keep this project moving. I volunteered the ability to, if they would give us the ability to, mitigate outside the recovery area, which they agreed to do, 40 acres of prime habitat which is going to be well beyond 40 acres after we include some buffer area for protection of the fly. This is above the Stringfellow acid pits, which I think many of you are aware of, which is a state infrastructure or a superstructure fund property.

Forty acres is being provided. To date I have not seen any real science that leads to either the 200 acres, the eight to ten acres that we originally wanted to provide for mitigation, nor has there been any real science for the 40 acres other than that the fly has been observed in abundance.

Mr. CALVERT. Thank you.

Mr. TAVAGLIONE. Yes, sir.

Mr. CALVERT. Mr. Zappe, what would you consider to be the most frustrating issue when you deal with the Carlsbad office, in your opinion?

Mr. ZAPPE. Well, I guess I would have to say that at least on the part of some of the staff, the lack of integrity and our inability to trust what we hear very often.

Mr. CALVERT. That is a pretty powerful statement. You head up one of the largest agencies in Riverside County. Obviously you, I guess, would be considered a bureaucrat, work for the government, and you believe that there is a lack of integrity, that you question in fact whether or not a deal is a deal per se in that office?

Mr. ZAPPE. I think our experience tells us that a deal is not a deal. Unfortunately very often it is difficult to get a commitment out of staff. It is even rarer that you can get a written commitment from staff, and when we do, we pursue that particular course of action only to find later a change of heart, a change of mind, and someone saying on staff, "Let's do it a different way."

So we invest a lot of time and money going down a particular path only to be told we do not think that is going to work. Let's go another direction.

Mr. CALVERT. Now, you deal with issues that obviously are involving public health and safety. Your requirement and your job is to make sure that the public's health and safety is protected. Do you think that the Fish and Wildlife Service puts any consideration in the health and safety of the people that you are mandated to help?

Mr. ZAPPE. I have not seen much evidence of that. I think that the service seems to have a fairly myopic, environmentally biased view, we feel, our experience with them. I think that as Mr. Woolfolk mentioned much earlier today, I think there is tremendous influence from the environmental community upon the staff at Carlsbad.

The bumper sticker example has been cited. We have heard that. We fully believe that. I think we know who that is from our own experience in working with some of the field staff.

We see the purpose of the staff to be, one, to fairly and dispassionately administer the law with, you know, a neutral bias, with no bias, being neutral with regard to projects that are brought forward. We do not feel that that is the case.

Their mission certainly appears to be at cross-purposes with our own which you mentioned, and that is to provide public health and safety. Our purpose is certainly to keep humans off the endangered species list.

Mr. CALVERT. I appreciate your testimony.

Thank you, Mr. Chairman.

Mr. POMBO. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. Chairman, I am sure my colleagues feel the same way. We want to really thank you as this hearing goes on for the great direction you have given us and leadership.

Mr. Moser, one of the rewards for being one of the few in the bold who are willing to take the witness table here is that you get to make recommendations, as a number of our people have. You have put together, along with a number of other folks in San Diego County, some recommendations, constructive recommendations to make this relationship between Fish and Wildlife and the consumer a better relationship, and could you tell us about some of your major proposals here?

Mr. MOSER. Well, let me just touch on a few. There are also some boards, I think, over to the side perhaps somebody can put up.

I think one is simply to promote success, and the one way of doing that is to actually budget the de-listing process. I think, Congressman Pombo, you noted that the success rate has not been what Congress had intended. Perhaps as part of your appropriations, you should look at a specific budget that goes strictly and solely to de-listing species which would provide an incentive to actually make the program work.

On more of perhaps an administrative level, one of the things that is, I think, unique in these multi-species conversation programs is that they are not just about biology. They are an attempt to balance biology, economics, development, a whole host of things. They are, indeed, a compromise solution.

So what we would recommend is that they be staffed with people that come from a varied background, not just biologists. You know, you could have an economist who works at Fish and Wildlife Service. Even a builder might be nice, you know, maybe one.

But beyond that, the establishment of performance goals, and by performance I do not mean performance in the sense of how many projects can be delayed or how many species can be listed, but really performance in the sense of how quickly you can respond to the varied administrative tasks that one has, and certainly we do that in business all the time.

You are given an assignment. You have a time period in which to respond, and you are evaluated on whether you respond within that time frame, and perhaps one of the ways of tracking that is really an application tracking system. I know the County of San Diego has initiated that. They can tell you on any given instant that you call them by pulling it up on the computer where your application is or where your letter is or whatever it is, where it is in the process.

You cannot get that from Fish and Wildlife Service today. So those are a few. We are happy to provide you with additional ones.

Mr. HUNTER. Okay, and, Mr. Chairman, with your permission, if we could ask Mr. Moser's recommendations to be made a part of the record, and, Mike, maybe you folks could review them and take a look at them and maybe make a comment on them for Mr. Speak, if you would do that.

Mr. POMBO. Without objection, they will be included.

Mr. HUNTER. Let me just throw a couple of things out that I think would expedite the process and make it more fair. You have obviously got a lot of entities and obviously several Federal entities that are interested in the same issues, the Fish and Wildlife, the environment, the Corps of Engineers, and then you have got your state subdivisions, the counties, cities, et cetera.

As I understand, one of the frustrations that I have heard about, and, Dennis, maybe you could speak to this, is that we seem to have a consecutive situation here you will first have where the agencies will sometimes string out their participation. So you do not have a coming together of all of the affected entities who sit down and say, "Let's have the environmental planning meeting, and let's figure out what we are going to do with this particular stream that goes through the affected property."

And then you could get Fish and Wildlife to comment on it. You could get Corps of Engineers to comment on it. You could get the

local government and, if applicable, the state government to comment and to put together a plan with respect to that aspect of that particular piece of property.

Instead, and tell me if I am wrong, what I understand is one agency will make their scrub, and they will say, "We want so many acres in mitigation, and here is out plan," and when that gets finished, the next agency will say, "Now, we will take a look at it after the other guy is finished, and we will make our scrub."

Is that an accurate description of what happens?

Mr. MOSER. Well, it is accurate, but in fairness to the agencies, I would say that, you know, the bringing together of everybody at the table is a difficult process because Army Corps is working under one set of legislative mandates and so forth, and Fish and Wildlife and EPA under others.

So I do not think that there is a lack of desire to do that, but there is a lot of hindrances to the process, and certainly there is a need to bring everybody to the table at one time.

Mr. HUNTER. Okay. I just had a meeting with the Corps on this. They said they would be happy to sit down. You know, Mike, you were talking about lack of resources. Being able to sit down at the same meeting with all of the agencies and review the aspects that you are all going to look over so that you do not have to reinvent the wheel for each individual agency I think has an efficiency aspect.

So I would like to make a recommendation, Mr. Chairman, and maybe put it into writing at some point here that we have a memorandum of understanding between Federal and state subdivisions and the Fish and Wildlife and the Corps that provides for some joint meetings early on in the process.

And, Dennis, maybe you could give us some input there.

And so thank you, Mr. Chairman. Just the last thing I would ask, Mr. Berg, if you can, I know my constituent who drove up here from Jacumba, Mr. Turecek, is going to be around for a while, and I ask if you could re-engage with him and try to help him walk through this process, and if you could take a minute with him before the meeting is over, I would sure appreciate it. Thank you.

Thank you, Mr. Chairman. I appreciate it.

Mr. POMBO. Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman.

It is a pleasure to have Doug Evans here before me. It is kind of ironic that he is here. Just on a personal note, he is one of the reasons Sonny got into politics in the beginning, working at City Hall, and Sonny ran into you and bureaucracy and decided to run for mayor and became your boss.

Mr. EVANS. Because he wouldn't give him the permit?

Ms. BONO. No, he is the guy who replaced the guy who would not give him his permit.

Mr. EVANS. Thank you very much for that clarification.

[Applause.]

Ms. BONO. There is hope. My question is for you, Doug.

Do you believe that the agencies, among them the U.S. Fish and Wildlife Service, California Department of Fish and Game, Bighorn Institute, and the Sierra Club, or local employees of the agencies

have worked together against the City of Palm Springs or project proponents to stop development?

Mr. EVANS. Well, there is very, very little doubt there. I mean we have sat down with the agencies, asked for information, very specifically for information, told we would receive it. We would not receive it.

And then on the Shadowrock project, the Sierra Club walked in with a document with Fish and Wildlife Service letterhead on it showing location of sheep sightings. It is actually a part of the information on this exhibit.

On another project more recently, Mountain Falls, we have been trying to get sheep information, actually where do they exist in the mountains, and at the last public hearing, probably after midnight, the Bighorn Institute walked up and handed the information to us. It was GIS coordinate level information. So it looked like a scientific formula. You couldn't read it that night and make a decision.

We waited. The council continued the hearing so we could plot the information, and the ironic thing is it was confirming every bit of the information we had in our environmental impact report, and yet the agencies were standing there telling us that the information was not accurate. They had better information.

Once we got that information, it confirmed that we had good information and that council acted with good information.

Ms. BONO. You deal with an awful lot of, I think, different governmental agencies obviously with your job. Can I ask for your unbiased opinion with the Carlsbad office here, and your frustrations with it?

Mr. EVANS. I think, you know, one of the things that they need to do and something that we have worked with our staff on is to encourage them to be less afraid of making a decision and then having the supervisors accept the decisions of the staff and empower the staff to work with people.

What we run into is you work with a field biologist and you get right up to where you think you're going somewhere, and then they say, "Well, the decision is really my supervisor. Well, it is really the assistant field supervisor," and I think what you have heard today, it is really Mr. Spear.

And it is a very cumbersome process to work up the chain that far to deal with issues that really are business decision. They are business for Fish and Wildlife Service. They are business for the city. They are business for property owners, and it is very frustrating to never be able to meet with a decision maker that will sit at the table and say, "I can make a decision on this."

Ms. BONO. Thank you.

Is there any scientific data that the City of Palm Springs has been provided by the U.S. Fish and Wildlife Service that supports the conclusion that the Mountain Falls Golf Preserve project will cause a take of the peninsular bighorn sheep?

Mr. EVANS. We have received very lengthy letters basically criticizing the information in the public record, but the service has not provided any site specific information. That information came on that particular project either through the Sierra Club or the Bighorn Institute, a nonprofit organization in the Coachella Valley.

Agencies tend to say when you ask, "Well, where is data?" Fish and Wildlife and Fish and Game tend to respond, "The data is collected by the Bighorn Institute. They are a nonprofit corporation. We cannot share their data."

Well, we believe most of their data is collected with public money, and if the agencies are using it for a decision, we should be able to look at the same information, have it analyzed, present it to our decision makers who have to make tough decisions.

And we submitted the mitigation outlines for two of the projects to you in your materials. Our council is tough. It required off site mitigation. They have required relocation projects. So the council has tried to work in a balanced situation and has taken some tough positions.

I know Mr. Bragg and the Mountain Falls people have not been happy with all of those decisions. It would help us if we had the information up front as opposed to after midnight the last night city council is going to consider a project.

Ms. BONO. Thank you.

My time has expired, Mr. Chairman. Thank you.

Mr. POMBO. Mr. Evans, I would like to just follow up with something you were just saying. I am a little curious. You are saying that you believe that the biological data is gathered by a private organization.

Mr. EVANS. The data that we typically receive, and what we're typically looking for is we can go out and evaluate the quality of habitat by the technical surveys and have professionals do that. What we always need is where are the sheep. Where do they spend most of their time? What are the lambing areas, you know? What are the corridors? Where are the water sources, things of that nature?

And where we have trouble is the entity that seems to collect that information is the nonprofit, but they share the information with the agencies, and then the agencies consider it confidential and will not share it with the city, and we have to kind of wait until the last——

Mr. POMBO. Do they base their decision on that information?

Mr. EVANS. Fish and Wildlife Service?

Mr. POMBO. Yes.

Mr. EVANS. It is my belief that they do. That is the only data that is available. The data represented on that map, the sheep sighting information is the best information the city council could get after two years of working with the agencies, and we did not get it from Fish and Wildlife Service. We got it from either the Sierra Club or the Bighorn Institute, and almost always at the last possible minute.

And the agencies know the information is there. They know what it is, and all they have to do is probably make a phone call and say, "I think it is time to share the information."

You as decision makers know that if you have good information, if you have time to consider it, you make better decisions. Evidently the service, Cal. Fish and Game do not believe in that at the local level. That is my experience.

Mr. POMBO. All right. I may want to follow up with you on this. I have some questions I need to go over with staff on exactly the

way this should work, but I may want to follow up, and I may provide questions in writing for you after the hearing.

Mr. Hollingsworth, you are here representing the Farm Bureau. I know my experience typically. The farmers and ranchers are not the best friends with the developers. They are not typically on the same side of most issues, and yet your testimony brings out many of the complaints, many of the concerns that we have heard from those in the development community.

In your experience, has the agency been that difficult to deal with in terms of the farmers that are out there? They are not developing. It is the guys who are out there farming. Have they had the same kind of difficulties?

Mr. HOLLINGSWORTH. Well, you have to, and I am sure you do, understand the unique situation that agriculture is in in dealing with the Endangered Species Act. Agriculture does not have the ability to say you are going to go out and farm some grain or you are going to put in a new orchard. They do not have the ability to take their property and put half of it aside and hand it over to the government as mitigation in order to get an endangered species permit.

So what usually happens, if somebody is planning an agricultural activity on the property and the Fish and Wildlife Service stops them because there is a species there, it just does not happen. The agriculture does not happen. That is exactly what has happened with the Stephen's kangaroo rat in most instances in the county, and I am afraid that is what is going to happen with a number of species elsewhere in the country.

And you are right. We have been able to work very closely with the builders in this county. We have formed what I think is a very valuable coalition with the builders and the property owners association, along with the Farm Bureau, in dealing with these issues, and we have put forth what we think is a workable solution under the existing Endangered Species Act that protects what we all have in common, and that is protection of our private property rights, but deals with the ESA in the situation that we have today.

Mr. POMBO. Let me ask you a question about mitigation lands. I know in my area, typically when it is decided that we are going to set aside land for habitat conservation plans, that it is typically farmland that ends up, whether it is grazing land or land that is being farmed.

And I know that a lot of farmers in my area are not real comfortable with them ending up being permanent habitat and in compensation levels that are talking about are not necessarily in line with what it means being permanent habitat.

How do the farmers and ranchers in this area feel about becoming permanent open space?

Mr. HOLLINGSWORTH. Well, again, I think it goes back to their private property rights. If they are not forced to, I think they have a right to do that with their property if that is their own individual decision without pressure from government regulatory agencies.

Mr. POMBO. So as long as it is their choice and if they are choosing to sell part of their property right, part of their bundle of property rights, you think they are okay with that?

Mr. HOLLINGSWORTH. I think if the individual wants to do that and he is not pressured unduly by a regulatory situation or by, you know, a neighboring government ownership of property that keeps harassing him in his activities and where he just gives up and has to sell or sell a conservation easement, but I think there is a larger issue there.

Where does that stop? You know, there is a difference between agricultural preservation and continuing agricultural viability. Agricultural preservation is what you end up with with most green belts, is a museum piece that is not productive. It is not producing food for the country or anybody else, and it is not producing income for the person who owns that property.

What we need are ideas that make agriculture viable and able to change to the marketplace and able to stay in places like Southern California that are rapidly growing, with a change in agricultural marketplace.

I mean, people think that Riverside County is just an urbanizing county, and as Supervisor Tavaglione correctly pointed out, we are still one of the top agricultural counties in the state and in the country with over $1.2 billion in agricultural receipts last year, and that went up $100 million from the year before.

So agriculture just has to have that ability to remain viable. In order to have that ability, it needs to be able to change and adapt.

Mr. POMBO. Well, thank you.

I thank the panel for your testimony. I am going to excuse this panel and call up our fourth panel.

Mr. Edwin Sauls, Mr. Don Fife, Ms. Lorrae Fuentes, and Mr. Randy Kading.

Thank you. Now that you sat down, if I could have you stand up for just a second and raise your right hand.

[Witnesses sworn.]

Mr. POMBO. Let the record show they all answered in the affirmative.

Thank you very much for joining us.

Mr. Sauls, you can begin.

STATEMENT OF EDWIN G. SAULS, THE SAULS COMPANY AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA

Mr. SAULS. Thank you, Mr. Chairman, members of the Committee.

Good afternoon. My name is Ed Sauls. I am speaking here to share with you my experiences as Chairman of the Endangered Species Task Force for Building Industry Association of Southern California, also as a land developer, and as a consultant in resolving conflicts between endangered species and development.

Let me give an overview here. From the development perspective, the purpose, the purpose of the Endangered Species Act is a very good one. As an industry, we value species protection. We also value good planning. In fact, Building Industry Association has joined with many others and taken a leadership role in advocating good planning for western Riverside County and other areas of Southern California, good planning that includes the production and conservation of sensitive habitat and species.

Such planning can create a balance between development and conservation. It can create highly desirable communities. However, effective conservation requires a cooperative effort with U.S. Fish and Wildlife Service and those whom they regulate. It requires trust, communication, and close cooperation.

Now, let me step back a moment and share with you that two years ago I was particularly frustrated in my dealings with the Carlsbad office of Fish and Wildlife Service, and I thought, well, maybe this is something that is personal. Maybe I am the wrong guy to be doing this, and so I conducted an informal survey.

Now, this was a survey, as I said, that was informal. It was mainly with other people in the development industry, but it was with people that had a continuing experience, an ongoing experience with U.S. Fish and Wildlife Service.

And the results of that concluded that there is substantial frustration among most applicants that deal with Fish and Wildlife Service. Now, the findings of this survey were reviewed with upper management of the Carlsbad office and Mr. Spear. They were reviewed in 1997 and again in 1998 when Mr. Berg took over management of that office.

Some things have changed since then, but I tell you the trust, communication, and close cooperation needed to accomplish effective wildlife conservation is not adequate. Implementing the Endangered Species Act in Southern California is in sore need of improvement.

Today there continues to be a lack of trust between the Carlsbad office and many of the landowners they regulate. Projects continue to be stalled because conflicts are not resolved. There are no predefined time frames for actions regarding Section 10 permits. In fact, many people have been told habitat conservation plans are not going to be processed.

And if you are operating under a Section 7 consultation where there are time frames established, you have heard today that there are delays in getting the process started.

The authority and limits of authority of Fish and Wildlife Service under the ESA is not consistently applied and can vary depending on the individual that you work with.

Incentives to conserve sensitive habitat, such as conservation banking, are ineffectively implemented.

You know, landowners who are experienced in working with the Endangered Species Act are not motivated in these circumstances to conserve habitat. In their dealings with the service, their incentive is not to be proactive in conservation.

To offer a more complete perspective, let me say that I have worked closely with the Carlsbad office since 1991. The staff is hard working and committed to the protection of endangered species. Together we have solved problems on more than a dozen incidental take permits, adopted new Federal policies, created three conservation banks, and addressed many other landowners' issues.

So as Congresswoman Bono told us earlier, there are some successes, and I confirm those successes. I have seen Mike Spear work to improve the HCP process and restructure the Carlsbad organization. Ken Berg, Jim Bartell and Sherry Barrett are senior man-

agers that regularly meet with the building industry to facilitate communication. These are good things.

But I tell you problems do persist, and there is much room for improvement.

Now, let me share with you something, an action that has been taken this year that I think epitomizes the problem. You have heard about the—I will make it brief—you have heard about the multiple species plan for western Riverside County. Mr. Spear referred to it as a good example. This is supposed to be the solution for all the conflict that we face. This is what occurred.

We have a planning agreement that sets forth obligations of the Fish and Wildlife Service. That planning agreement said that Fish and Wildlife Service will provide some information to us and be cooperative in the process.

The reality is Fish and Wildlife Service reneged on their commitment. They refused to provide and refused to provide without apology the information they were supposed to provide. I do not think this is a good example, as Mr. Spear indicated, of how we solve these problems.

In my testimony I offered further clarification of the problems. I think this describes it. I have offered further clarification of the solutions. Mr. Moser has a pretty comprehensive list, and mine would only complement his.

Let me conclude by saying that Southern California is a hotbed of conflict between population growth and endangered species conservation. More than 13 million people live here. In areas such as western Riverside County, the population is expected to double by the year 2010. A housing shortage exists, and it is a major struggle to produce affordable housing.

This is also one of the most biologically diverse areas. We must do a better job of resolving these conflicts. We must constantly seek to improve the working relationship between the service and the regulated community.

I believe we are at a turning point. We must either take an affirmative action now and take action. I believe words are no longer adequate. Action must be taken to rebuild the trust, and trust would be accomplished by doing some of the things presented here and presented in my testimony.

If we do not, we will fail to accomplish the quality of communities we desire to build. We will fail to accomplish meaningful wildlife conservation. Improve or fail, this is our choice.

Thank you.

[The prepared statement of Mr. Sauls follows:]

STATEMENT OF EDWIN G. SAULS, CHAIRMAN, ENDANGERED SPECIES TASK FORCE, BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA

Mr. Chairman and Members of the Committee:

Good morning, my name is Ed Sauls. I am pleased to have the opportunity to share with you some of my experience in implementing the Endangered Species Act in Southern California as Chairman of the Endangered Species Task Force for the Building Industry Association of Southern California, and as a developer and consultant to landowners specializing in resolving endangered species issues.

OVERVIEW

The purpose of the Endangered Species Act is very good. As an industry, we value protection of species and their habitat. We value good planning. In fact, the Building Industry Association has taken a leadership role in advocating multispecies plan-

ning to promote wildlife conservation and balance it with housing demand. Such planning can create highly desirable communities. However, effective conservation requires a cooperative effort between the U.S Fish and Wildlife Service (FWS) and those whom they regulate. It requires trust, communication and close cooperation.

Two years ago, I was particularly concerned about my personal frustrations in working with the FWS Carlsbad Field Office. I was interested to know if my experience was unique and I wanted to learn how we might improve the relationship between FWS and the people they regulate. Accordingly, I conducted an informal survey of people who were experienced in working with the Carlsbad Field Office. The results of this survey concluded that there is substantial frustration among most applicants interviewed. The findings of this survey and resulting recommendations to improve industry and agency relations were presented to FWS management in 1997 and again in September 1998 after Ken Berg became Field Office Supervisor.

Since then, some improvements have taken place. For example, the office has reorganized and the current chain of command is much more clearly defined. However, frustrations remain very high and many improvements are needed. The trust, communication and close cooperation needed to accomplish effective wildlife conservation in Southern California is not adequate. Implementing the Endangered Species Act (ESA) in Southern California is sorely in need of improvement.

- There continues to exist a lack of trust between the Carlsbad Field Office and many of the landowners that they regulate.
- Survey protocols vary yearly as to how and when landowners are required to survey for listed species.
- Projects continue to be stalled because conflicts are not resolved.
- Scientific information, used as the basis of permit decisions, is limited and often inadequate. Better information is needed and FWS should openly encourage the exchange of information from outside sources, including consulting biologists.
- The cost of complying with the ESA is difficult to predict. Mitigation requirements can vary dramatically between neighboring properties. In many instances, mitigation demands by FWS are excessive.
- The authority, and limits of authority, of FWS under the ESA is not consistently applied and can vary depending upon the individual staff member assigned to a project.
- Landowners who require Endangered Species Take permits can be delayed one, two, three years or more.
- There are no predefined timeframes for actions regarding Section 10 permits. Section 7 consultations, that are supposed to have timeframes, are continually delayed.
- Enforcement of ESA violations are confusing, limited and ineffective.
- Incentives to conserve sensitive habitat such as Conservation Banking are ineffectively implemented.
- Landowners who are experienced in working with the Endangered Species Act are not motivated to proactively conserve habitat. Instead, current policy encourages compliance with only the minimum requirements of the law. Sometimes landowners are encouraged to destroy habitat when the gray areas of the law allow them to do so.

To offer a more complete perspective, let me say that I have worked closely with the Carlsbad office since May 1991. Without exception, the staff is very hard working and strongly committed to the protection of endangered species. Together, we have solved problems on more than a dozen incidental take permits, adopted new Federal policies, created three conservation banks and addressed many other landowner issues. For example, I have seen Mike Spear work to improve the HCP process and restructure the Carlsbad organization. Ken Berg, Jim Bartel and Sherry Barrett meet regularly with the Building Industry Association to facilitate communication. Many other examples of good working relationships exist with individual employees of FWS. During the last eight years, we have had successes and there are a lot of very good people at the Carlsbad Field Office. But problems do persist, and there is much room for improvement.

RECENT ACTIONS

Some recent actions of FWS will help articulate the current relationship with FWS. On March 4, 1999, approximately 40 people participated in a meeting to plan the Multiple Species Habitat Conservation Plan (MSHCP) for Western Riverside County. If successful, this plan will change the future of Western Riverside County. This plan has the expectation of solving the inherent problems between population growth and wildlife conservation. It presents the single best opportunity to reconcile the conflicts over an individual's right to the use of their property on one hand and

a community goal of assuring wildlife conservation on the other. This plan can also be the solution to solving the individual permit problems and horror stories we hear about. Through the plan, we also expect to protect more than one hundred species when (or if) this plan is implemented.

Equally important, it is possible this plan can serve as a new prototype for other parts of our nation looking to solve their endangered species problems. To say that a lot is riding on this plan is an understatement.

A Planning Agreement, executed on August 28, 1997 by Michael Spear, Regional Director, sets forth the ground rules of the planning process for the MSHCP including the obligations of FWS. This document took more than 2 years to carefully negotiate with FWS and representatives of various stakeholder interests. The executed agreement called for FWS to provide a "rough cut" of the requirements necessary to obtain approval of the MSHCP. It also called for a cooperative process among the participants including stakeholders and the U.S. Fish and Wildlife Service.

Delivery of this information was promised more than a year earlier, but was finally scheduled for March 4, of this year. FWS did present considerable, impressive information at the meeting, but the "rough cut" information was not delivered!

More than five representatives from a broad spectrum of interests including biologists, environmental groups, farming and landowner interests agreed and clearly stated that the FWS had failed to provide the long awaited information.

Many of the attendees felt insulted that FWS tried to pass off the other information they presented as fulfilling their commitment to provide the "rough cut." FWS was challenged to provide the promised information. Without apology, FWS unilaterally decided to renege on their promise as set forth in the Planning Agreement and signed by the Regional Director.

At a subsequent MSHCP planning meeting, the issue was raised again. It was agreed that FWS clearly reneged on their promise. Many participants responses were, "So what else is new from FWS? They do this type of thing all the time." (See attachments).

PROBLEMS:

This conduct and other ongoing actions on the part of FWS create major problems in implementing the ESA in Southern California. It leads landowners and local government agencies to conclude that:

- FWS does not live up to its commitments even when they are in writing.
- Their prior decisions cannot be relied on.
- Information known to FWS, and which is critical to permit decisions, is withheld.
- FWS' commitment to cooperatively participate in a stakeholder process is not reliable.
- Trust has clearly been broken by FWS.
- Landowners are not benefited by meeting with FWS early in development approvals.
- Decisions and formal processing of projects are often delayed unnecessarily.
- Meetings with FWS staff members occur without resolution of project conflicts.
- Interpretations regarding the limits and authorities of the FWS vary with individual staff members.
- No clearly delineated understanding exists regarding the authority or lack of authority of FWS.
- Staff members do not regularly present reasonable and prudent solutions to address endangered species impacts.
- Mitigation varies with each project and it is extremely expensive.
- When disagreements occur, project proponents are concerned that elevating the problem will result in retributions in getting permits processed.

SOLUTIONS:

Is there room for improved management of the FWS? Absolutely yes! This is why we are here today. This is not a witch-hunt. We are not here to burn anyone. We are here to recognize a problem and provide our collective best efforts to resolve it. We are looking for better ways to facilitate communication, to resolve conflicts, reestablish an overall trust relationship and to provide that the process maintains mutual respect.

Major changes are urgently needed now to correct the degraded relationship between FWS and those they regulate. Accordingly, FWS should:

- Provide improved management including closer supervision, more active participation by senior managers and better accessibility of management to resolve conflicts.

- Establish the position of an ombudsman who reports to an authority other than FWS. This position should be created to actively facilitate communication, processing, interagency communication and problem solving.
- Conduct substantive, pre-project processing meetings with senior management in attendance.
- Assign staff members to projects according to their experience level.
- Set standards for conflict resolution and milestones associated with project processing including reasonable time lines. Track and report performance according to these standards.
- Clearly articulate the authority and limits of staff authority as provided in the ESA.
- Stress the importance that needless delays do not benefit species protection and present unacceptable costs to private landowners.
- Require staff members to respect stakeholders and understand the importance of their role in multispecies plans as team members working to a common goal.
- More proactively provide applicants the information they need.
- Encourage staff to provide applicants reasonable and prudent measures consistent with the goals and purposes of the proposed project. (similar to that which is required in Section 7 jeopardy opinions, but provided early in the consultation process)
- Create positive incentives for personnel to improve relations with those they regulate.
- Provide a climate that encourages landowners to consult early with the FWS.

Most importantly, FWS should take action now that rebuilds trust. If it is rebuilt, particularly through implementation of recommendations such as described above, we can accomplish a lot.

CONCLUSION:

Southern California is a hotbed of conflict between population growth and endangered species conservation. More than 13 million people live here. In areas such as Western Riverside County, the population is expected to double by the year 2010. A housing shortage exists and it is a major struggle to produce housing affordable to this growing population. Concurrently, Southern California is one of the most biologically diverse regions in the world. We must do a better job of resolving conflicts between endangered species and growth. We must constantly seek to improve the working relationship between the U.S. Fish and Wildlife Service and those they regulate.

We are at a turning point in implementing the ESA in Southern California. We must either make an affirmative commitment and take immediate action to improve relations between the Southern California office of FWS and those they regulate, or we will fail. We will fail to accomplish the quality of communities we desire to build. We will fail to accomplish meaningful wildlife conservation. Improve, or fail. This is our choice.

ATTACHMENTS

MEMORANDUM

Wednesday, March 10, 1999

TO: Michael Spear, California/Nevada Operations Manager, U. S. Fish and Wildlife Service
Corky Larson, Executive Director, Coachella Valley Association of Governments
Members of the MSHCP Advisory Committee
Riverside County Board of Supervisors, c/o Supervisors Tom Mullen and Jim Venable

FROM: Ed Sauls, Chair
Building Industry Association of Southern California
Endangered Species Committee

RE: A significant problem with the MSCHP resulting from U. S. Fish and Wildlife Service's refusal to provide previously committed information to the Advisory Committee.

The following information is presented on behalf of Building Industry Association of Southern California and Building Industry Association of Riverside County with the hope that this problem is more clearly understood and that it is resolvable. This problem MUST be resolved as the MSHCP Advisory Committee cannot function effectively as long as the U.S. Fish and Wildlife Service is permitted to arbitrarily violate the terms of our Planning Agreement. Further, lacking a prompt resolution to this problem, causes continued participation in the MSHCP process by committee members and by myself, to be a waste of time and effort.

THE PROBLEM

According to the executed Planning Agreement for the Multiple Species Habitat Conservation Plan (MSHCP), the U.S. Fish and Wildlife Service (FWS) is obligated to provide information to the MSHCP Advisory Committee:

> ". . . **including a rough estimate of the number, general location, and size of such additional Core Reserves and Viable Habitat Linkages which may be necessary to obtain approval for a MSHCP covering the species identified by the Advisory Committee;**"

This information is essential to the MSHCP plan and process and it is long overdue. The Building Industry Association and other key members of the AC-stakeholders groups have relied upon commitments from FWS to provide us this information. This commitment is a fundamental component of the planning process agreed upon, in writing, by the stakeholders and FWS in the Planning Agreement (See Planning Agreement executed in June 1997 by the RCHCA Board and subsequently executed by Michael Spear Regional Director August 28, 1997 and John Garamendi on behalf of the Department of Interior). The information was due within six months of the executed Planning Agreement. By any measure of delay or excuse, this information is long overdue.

On Thursday March 4, 1999, FWS refused to present this information to the Multiple Species Habitat Conservation Plan (MSHCP) Advisory Committee (AC). FWS failed to provide criteria upon which the AC could develop alternative plans that will meet requirements necessary to comply with the Federal Endangered Species Act. FWS made it very clear that they will not fulfill this commitment.

No less than five of the stakeholders, from conservationists to landowner representatives, expressed dissatisfaction with FWS at this AC meeting. We told FWS that the information they did present fell significantly short of their commitment. The response from FWS was unchanged. They would not give us promised criteria upon which we could prepare a plan to provide for conservation and incidental take of the agreed upon sensitive species.

WHY IS THIS A BIG DEAL?

Trust, accountability to the stakeholders, fulfillment of commitments, and reliance upon timely and accurate FWS information are big deals. This entire MSHCP is dependent upon this step by FWS, both in terms of the information FWS is to provide and the commitments they are to make. This first step is essential to the planning process and we are either held up without this information or must result to uneducated guesses about the requirements of a plan that will comply with FWS standards. This information is critical to the first step of the agreed upon planning process. Further, if we cannot trust FWS to uphold their commitments now, how can we trust them to uphold commitments later? They must be accountable for their actions and inactions in this planning process.

Not only was it wrong for FWS's failure to fulfill a long promised commitment, a commitment which the other stakeholders have acted in reliance upon, we were also insulted. FWS did make a very good presentation of maps, slides and overhead projections. Eight FWS staff members were there to present this information. But we were insulted that they tried to pass this information off as an adequate fulfillment of their responsibilities.

FWS excuses varied. One response was that they are prevented from providing this rough estimate. This is in direct conflict with their executed agreement. Also, it seems inconceivable that FWS can on one hand negotiate daily with private and government interests in issuing biological opinions and take permits and yet on the other hand conclude that they cannot provide rough estimates necessary to obtain approval of a MSCHP. Another excuse was that they did not have the staff or the time to provide this information. This is in direct contradiction with Mike Spear's statement that this HCP is their highest priority. It also does not reconcile with their written commitment to provide this information. Another excuse was that they did not want to do the plan for us, that it needs to be a locally developed plan. Such an excuse deviates so fundamentally from the FWS Planning Agreement commitment that it can only be attributed to ignorance of agreements reached with the stakeholders or willful breach of their agreement. Another excuse was that the Scientific Advisory Committee (SAC) would provide us the information we need. This is contrary to the stakeholder and FWS agreed process and it places the SAC in a position they did not agree upon. Their role is only to consult to FWS and the AC, not provide criteria for habitat linkages and corridors to meet FWS permit requirements.

No excuse will make up for FWS failure. Commitments from many of the other stakeholders were made in reliance upon this FWS commitment. Eight days prior to this AC meeting, Regional Director Mike Spear emphasized the need for cooperation and trust. The fragile trust that existed between the stakeholders and FWS is not only undermined by this action, it is broken. I believe such trust still remains with most of the other participants, however, it now fails to exist with FWS. We were severely let down. We have been told by many of our constituents that such a breach of agreement is consistent with typical FWS actions and that because of such experiences, the FWS could not be trusted. We urged constituents to rely on the process and cooperate with FWS and yet now find that our constituents' worst fears were confirmed. We have apparently been wrong in trusting FWS.

THE RESULTING PROCESS IS NOT WHAT WE WANT

If FWS will not put forth criteria for what is to become the MSHCP, then:

1. They are not accountable to the Advisory Committee
2. They are not accountable to the commitments they made to the AC or the Planning Agreement they signed.
3. They will not be accountable to other commitments essential throughout the plan.
4. We have no basis upon which to prepare the plan. To accept this is to accept the position that we will prepare plans and plan alternatives that can only blindly hope for FWS approval.
5. FWS will not be accountable to their final commitments under an approved plan.

A process such as this is unacceptable.

RELATIONSHIP CHANGE NEEDED

Rather than share with the AC that FWS had a problem, and let the AC work through the problem, they chose to pretend that the information presented was fulfillment of their commitment. When confronted, FWS refused to provide the committed information. This action fails to acknowledge the validity of the AC. FWS did not respect the AC and bring the issue to the table for attempted resolution. Instead FWS demonstrates that they are willing to bluff the AC and when the bluff fails, unilaterally decide against commitments made in the Planning Agreement. Instead, they should have respected the AC, brought up the problems and sought to resolve the issues at hand. If any process continues, FWS must respect their responsibility to the AC.

NOW IS THE TIME FOR THE FWS TO RESOLVE THIS CONFLICT

FWS can provide us the criteria we need, they must do so and must seek to rebuild the trust they have broken. They may be afraid to present this information. Some speculate that the financial costs to provide the necessary level of conservation will be too expensive for stakeholders, elected officials and ultimately the public to support. However, the premise of our agreed upon planning process, as set forth in the executed Planning Agreement, is to face the realities of this program early on. We have no desire to bury this information or to deceive anyone about the requirements of this plan. We are willing to help FWS overcome their fears and otherwise address any legitimate constraints. At the same time, we must not fail in holding them accountable for the commitment to provide criteria for the plan. Trust has been broken and trust, always a fragile element in any relationship, will be difficult to rebuild. It is the responsibility of FWS to rebuild that trust. They must perform in a manner that earns and reestablishes trust. And if this plan is to continue, it is essential that this issue be addressed now.

BIA AND OTHERS MAY NOT PARTICIPATE AS A RESULT OF FWS FAILURE

I cannot, in good conscience, lead the constituents I represent into a process that does not hold FWS accountable for their commitments. Nor can I recommend to them that they should continue to negotiate with FWS if FWS will not uphold their commitments. Our end result of a multispecies plan will be an agreement with FWS. Why should we be able to rely on such an agreement if FWS will not fulfill agreed upon commitments during the planning process? How is this not an exercise in futility?

ACTIONS NEEDED

If the MSHCP is to succeed, we need action NOW. If FWS chooses to retract their position of March 4, apologize to the AC and makes a new pledge on their part to honor our agreement, I will support continuing negotiations. Until they provide this information we are very clearly on hold. If FWS desires to discuss their reasons for blatantly and arbitrarily breaking the PA commitment with the AC and if they can support the legitimacy of their concerns to the satisfaction of each of the stakeholders, I and probably the other members of the AC will be interested in finding ways to address their problems. However, FWS's failure to recognize their responsibility to us, reneging on their commitment and continuing with the position that they cannot, or will not, provide this rough estimate, jeopardizes the plan.

Riverside County Chapter

Building Industry Association of Southern California

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Chicago Title

Norwest Mortgage, Inc.

Southern California Gas Company

Monday, March 22, 1999

Mr. Michael Spear
California/Nevada Operations Manager
U.S. Fish and Wildlife Service
2233 Watt Avenue, Suite 120
Sacramento, CA 95825

Dear Mike:

This letter presents a review of information the Fish and Wildlife Service ("FWS") should have available to providing the Rough Cut criteria for the Riverside County MSHCP.

As stated in an earlier letter, the goal of this Rough Cut information is to provide the stakeholders sufficient material to prepare alternative multispecies plans. We do not want the Service to prepare a plan. However, it is essential that the FWS provide the criteria necessary to conserve the species proposed to be covered in the plan. This is essential to the planning process, both with respect to the existence of trust between the parties of interest and in the fulfillment of FWS obligations in the Planning Agreement.

AVAILABLE INFORMATION

Available Information – Riverside County

FWS has considerable information for species in Riverside County, which should be readily available to provide the Rough Cut information. In fact, FWS is required to have information regarding conservation requirements for most of these species. In their regular course of business, FWS makes decisions about requirements for endangered species take permits. This includes permits FWS has issued for species such as Stephens' kangaroo rat (SKR), least Bell's vireo, California gnatcatcher, Willow flycatcher and other listed species. I believe San Bernardino kangaroo rat and Delhi sands fly permits have also been issued. To issue these permits, FWS has to make findings regarding the species. Decisions are made about levels of take that may result in jeopardy to the species and their conservation requirements. In addition to individual project permits, FWS adopted multispecies plan(s) for MWD within the MSHCP plan area. Under these plans, permits were issued to MWD for species covering impacts to many of the same species recommended by the MSHCP Advisory Committee. MWD's multispecies plan required information regarding the conservation of these species. These project specific permit decisions and MWD's multispecies plans require the FWS to have information necessary to justify their decisions for take of these species.

Other information is available from FWS. Information exists regarding conservation of riparian habitat in Riverside County which, is habitat for the vireo and flycatcher. Information also exists as a result of the SKR draft recovery plan. All of this is information FWS retains as a necessary part of their decisions currently made for species in western Riverside County.

Available Information – Outside Riverside County

FWS has also made decisions regarding conservation of many of these species in Orange and San Diego counties. Decisions regarding adequate preserve requirements for gnatcatchers and more than thirty other coastal sage scrub dependent species were made in Orange County. San Diego's MSCP is permitted for sage scrub species and many other habitats as well. As I recall, the MSCP plan covers more than ninety species. Some adjustments are required for application to Riverside's MSHCP plan area, but the FWS has made detailed decisions regarding conservation requirements in these plan areas. A rough cut can be extrapolated from this information.

Existing Riverside County Preserves and Public Lands

Another source of information is from Riverside's existing preserves. Habitat acreage, species population and preserve viability information should already exist for these preserves. FWS may provide rough cut conservation requirements based upon this information. For example, they can respond to the rough cut by considering the lands already preserved and the status of other public lands (such as National Forest lands). FWS may provide information as to what species may be covered given existing preserves and public lands. They can also provide us an answer as to what species may be added if corridor connections are added to these preserves. Further, it should not be difficult to tell us what additional conservation or enhancements may be required to add coverage for the remaining species to be covered.

Indicator Species

A commonly accepted approach to multispecies conservation is the "Indicator", or "Umbrella" species approach. Consider species such as SKR, California gnatcatcher, vireo and other indicator species as discussed above. If conservation for these species is accomplished, which other species dependent upon similar habitats such as grasslands (SKR), coastal sage scrub (Cag) and Riparian (LBV) can also be considered as adequately preserved? We will most likely find that conservation for these species will adequately address a majority of the MSHCP sensitive species dependent upon the same habitats.

Specialized Habitats and Species

Certain other habitats (vernal pools, playa, alkaline marsh) are more site specific and limited in their geographic scope. FWS can provide us soil type, location information and other criteria such as percent needed to conserve, special hydrology conditions, edge conditions, etc. so that we can apply this information to the alternative MSHCP plans. Some species-specific information may be needed for species that do not fit particular habitat type(s). In such cases, acres, connectivity requirements or percent of habitat may be appropriate information. Quino checkerspot butterfly is a potential example here. In this case, FWS should tell us as much as possible about conservation requirements. They should tell us if insufficient information exists

to know what is required for conservation, or put another way, they should tell us if they do not know what "take" will jeopardize such a species.

FORMAT FOR PRESENTATION OF THE ROUGH CUT INFORMATION

Considerable flexibility exists in the alternative methods FWS may present the Rough Cut criteria. We have discussed many of these alternatives with your staff in the context of Advisory Committee meetings. Some of the alternatives include species specific information (acreage requirements, percentage of habitat, population viability criteria, etc) comparisons to existing preserves identifying gaps between existing preserves and anticipated preserves, use of indicator species and representative habitats as discussed above or some combination of this information. FWS may also provide the MSHCP ranges of conservation requirements.

SUMMARY

FWS already makes conservation decisions on a regular basis regarding the species of interest to the MSHCP. Information FWS uses in current permit decisions and existing multispecies plans in neighboring counties can also provide the basis for the MSHCP Rough Cut information. The species addressed in these plans and permits represent many of the habitats of general concern to the MSHCP including riparian, grasslands and sage scrub. Each of these plans and permits provide for take of species (probably the highest priority species with the exception of Quino checkerspot butterfly) in which FWS has made decisions, based upon the best available information, as to conservation requirements, take authorizations and what mitigation is appropriate. It is not difficult to combine this information with public land and existing preserve information, and generally accepted and FWS permitted preserve criteria to provide the MSHCP with the Rough Cut requirements. This information should be readily available and can be provided to the MSCHP in various formats.

Please call us to discuss this and my prior letter. Thank you

Sincerely,

BIA OF SOUTHERN CALIFORNIA, INC., Riverside County Chapter

Ed Sauls, Chair
Subcommittee on Endangered Species

Borre Winckel, Executive Director

CC. Ken Berg , Field Supervisor, USFWS Carlsbad Office
Tom Mullen, Riverside County Supervisor, Fifth District
Jim Venable, Riverside County Supervisor, Third District
Corky Larson, Coachella Valley Association of Governments
MSHCP Advisory Committee Members

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Chicago Title

Norwest Mortgage, Inc.

Southern California Gas Company

June 5, 1999

Michael Spear
U.S. Fish and Wildlife Service
2233 Watt Avenue, Suite 120
Sacramento, CA 95825

Dear Mike:

In a telephone conversation with you in April we talked about the failure of the Service to provide promised information to the Riverside Multispecies Habitat Conservation Plan Stakeholders Advisory Committee. You recognized the need to address this issue. We then scheduled a meeting for May 17 through Supervisor Tom Mullen's office, which was subsequently cancelled. Since then I have called you and Tom to reschedule the meeting and I am still awaiting a reply.

As I communicated to you at our meeting on February 25, the relationship between the Service and the landowner community is at an all time low. One week later, the Service announced their "new position," that they will no longer follow the terms of the prior Planning Agreement on March 4.

Since this issue has not been addressed in a timely manner, I cannot foresee the Service reversing their position. Had this problem been properly reviewed with the Stakeholders Advisory Committee, I believe it could have been satisfactorily resolved. However, this action and the manner in which it was handled, did considerable damage to the image of the Service and the integrity of the Multispecies Habitat Conservation Plan process.

Borre Winckel and I are eager to assist in bridging a resolution of this issue. It remains to be a festering problem until it is properly addressed. An atmosphere of trust and the ability to respectfully consider each party's concerns would greatly enhance our ability to resolve the remaining challenges to this plan. Three months have already passed. This seems to be a long time to let an issue of integrity and important relationships to go unresolved.

We look forward to meeting with you on this issue.

Sincerely,

Ed Sauls

Ed Sauls

c. Tom Mullen, County of Riverside Supervisor
Corky Larson

Mr. POMBO. Thank you.
Mr. Fife.

STATEMENT OF DON FIFE, NATIONAL ASSOCIATION OF MINING DISTRICTS

Mr. FIFE. Mr. Chairman, members of the task force, I am Donald Fife. I am a professional scientist specializing in environmental mining and engineering geology for more than 20 years in both government and private industry. My experience deals with environmental aspects of land use planning, natural resources planning at both the state and Federal levels.

I have worked with the state clearing house as a reviewer for EISes and EIRs. I am a former Government Employees Union Local president for the Antelope Valley region. I belong to numerous professional societies, Geological Society, and even Sierra Club and the Native Plant Society.

My education includes a Bachelor's degree in paleontology, stratigraphy, and geology from San Diego State University and additional studies at University of California, Riverside; University of Dayton; and University of the Philippines in the Republic of the Philippines.

I currently serve as Chairman of the Nonrenewable Resources Committee of the American Land Rights Association. I chair the National Association of Mining Districts, and as a Director of Holcomb Valley Mining District, I work with prospectors and small miners and with large mining corporations. Our largest member is the Cushenbury Mine Trust, which is the trustee for the employees that lost their jobs at the Kaiser steel mill and mine in Fontana and Eagle Mountain in the early 1980s.

In the bankruptcy of Kaiser Steel, there was a trust created by agreement with the former Kaiser company, Kaiser Steel, and the United Steelworkers of America, AFL–CIO. Royalties from their interest go to pay for vision insurance, dental insurance, and death benefits; they would expand these benefits if they were allowed to to mine their other reserves. They sell high-grade limestone to more major mining companies than probably any other group: Mitsubishi, Omya, Specialty Minerals, and several cement plants in the Lucerne Valley-Victorville area.

This district is an extremely important resource in California. The yearly production is $200 million FOB mine. This generates more than $1 billion per year and probably closer to $2 billion per year to the local economy, and creates thousands of jobs in Southern California.

It is all now at risk because we have listed endangered weeds. The U.S. Fish and Wildlife Service has listed five allegedly carbonate or limestone endemic weeds have put thousands of jobs at risk. The plants have been used by the Forest Service to propose a withdrawal of 30,000 acres of the highest mineral potential in the San Bernardino Mountains.

The State of California has zoned the minerals to protect them from incompatible land uses. This proven mineral resource is currently proposed and may be listed as an emergency closure to mineral entry by the Bureau of Land Management. The Forest Service

supervisor, Gene Zimmerman, has made that request. It could be published in the Federal Register at any time.

It is our concern that there has been virtually no real science or justification for the listing of these plants by the U.S. Fish and Wildlife. We try to get reports through the Freedom of Information process. We get reports that come back censored with black felt pen marks.

I am currently co-owner with the trust of one of the large mines there, and we have great concern that we are going to be put out of business. This 30,000 acres includes properties that are about to be permitted as well. In this area, the Parton Mine was put completely out of business, destroying that asset to the community, the jobs, and the tax base. This was done with so-called endangered plants, such as the Cushenbury buckwheat, which the literature actually shows is not restricted to the San Bernardino Mountains and is not endangered. The exact same variety is used all over the western United States, according to University of British Columbia, Professor Brooks, as a geochemical indicator for prospecting for base metals.

We submitted factual information on the listing when the process was going on. Talking to the U.S. Fish and Wildlife Service is like talking to a brick wall. These plants are dependent on disturbance, such as mining, fire breaks, and wildland fire for habitat expansion. They totally ignored this. This is non-science. They will not even let us use the plants for mitigation when we are reclaiming quarries, even though they will naturally revegetate there.

The Forest Service blew up a road in 1991 and started a wildland fire to re-wild the area for Senator Feinstein's Desert to Wilderness Bill. The next year in an area where there were virtually no endangered plants, two such weeds, Parish's daisy and a locoweed, (incidentally, a toxic, noxious weed that is against the law to knowingly grow on your property) came back in the rebuilt road thriving there and in the wildland fire area—absolute proof that these weeds are dependent on fire and disturbance for habitat expansion.

In Lone Valley, the Forest Service's own quarry has filled naturally in the abandoned portions with this Cushenbury buckwheat. In fact, in November 16th, 1997, the Forest Service parked 20 vehicles from the State Off Road Commissioner's field trip right on top of the endangered weeds. These are inadvertent species that go into open areas. They need open, disturbed spaces.

We are totally disappointed with their kind of "science," if you want to call it that. There is nothing that I have seen published in a scientific journal that says or proves these plants are actually limestone endemic and/or threatened or endangered. Yet we have $1 billion of our economy threatened with these allegedly limestone endemic weeds. We know they grow in granite and sandstone and other mixtures.

So anyway, I will end there and entertain any questions that the Committee might have.

[The prepared statement of Mr. Fife follows:]

STATEMENT OF DONALD L. FIFE, DIRECTOR, HOLCOMB VALLEY MINING DISTRICT, & CHAIRMAN, NATIONAL ASSOCIATION OF MINING DISTRICTS, TUSTIN, CALIFORNIA

Chairman Pombo and Members of the Committee:

I am a professional scientist, specializing in Environmental, Mining, and Engineering Geology for more than 20 years. My experience includes geotechnical, surface-ground water, and environmental aspects of land-use planning and natural resource planning at local, state and Federal levels. While with the state of California I was technical reviewer for the Department of Real Estate and Office of Architecture and Construction and also for the State Clearinghouse for EIR/EIS documents. While a government employee, I served as the President of the State Employees Union (CSEA) for the Antelope Valley Region. During the past decade I have belonged to numerous scientific or professional societies, such as the Geologic Society of America, Society of Mining Engineers, South Coast Geologic Society, Association of Engineering Geologists, American Institute of Professional Geologists, and also the Sierra Club and California Native Plant Society.

My education includes San Diego State University, Bachelor and Masters Degrees in Paleontology-Stratigraphy and Geology with additional studies in Pharmacy at the U.S. Air Force, School of Aviation, Gunter AFB, Alabama, University of California at Los Angeles and Riverside, and University of Dayton, Dayton, Ohio and University of the Philippines, Republic of the Philippines. My state professional licenses include Certified Engineering Geologist, Registered Geologist, and a Lifetime Earth Science Teaching Credential. From 1981 to 1989 I served four Secretaries of the Interior as their appointee/advisor on geology, energy and minerals for the 25 million-acre California Desert Conservation Area.

Currently I serve as Chairman of the Non-Renewal Resource Committee of the American Land Rights Association and Chairman of the National Association of Mining Districts. As a Director of the Holcomb Valley Mining District I work with mom and pop miners and prospectors as well as large corporate miners. Our largest member is the Cushenbury Mine Trust, Vision Insurance Fund for the United Steel Workers of America (AFL–CIO). These are the union workers who lost their jobs when the Kaiser Steel Mill in Fontana and the Eagle Mountain Iron Mine were closed by overzealous environmental regulations and Japanese dumping of steel in the late 1970's and early 1980's. The union workers pensions and health insurance were not well funded, so in the bankruptcy of Kaiser, they acquired all the limestone-mining claims of Kaiser in the San Bernardino Mountains for their Vision Insurance Fund. They sell limestone to most of the operating mines and processing plants. Mining income goes to several thousand beneficiaries for eye exams, eyeglasses, eye surgery, and services for blind union members and their dependants. I am co-owner of the White Ridge/White Knob Calcite (limestone) Mine with the Vision Insurance Fund.

The Holcomb Valley Mining District was established in 1860 after William F. Holcomb discovered gold in this valley on May 4, 1860. More than $100 million in gold has been mined since that time and numerous gold deposits still exist in the district. Since 1947 and the discovery of the Lucerne Valley Limestone Province, high-grade limestone production has over-shadowed gold production. Presently the district is the largest producer of cement and other limestone products in the western United States. There are only five high-grade limestone districts in the entire United States. Local production is more than 5 million tons per year worth more than $200 million dollars per year FOB mine. This raw material supports several thousand jobs in California and neighboring states. The value added to the economy is greater than a billion dollars per year.

Calcite, the mineral that makes up limestone is considered the "cement of modern civilization" and per capita consumption is about 1,000 lbs per year per person. Limestone makes up about 80 percent of Portland cement, and is used a white pigment and filler-extender in rubber, plastics, paints, putties, crayons, and other commodities. It is essential in making steel, glass, and refining sugar. It's used in chewing gum and tooth paste as an abrasive and acid neutralizer to prevent cavities. It is used in food and pharmaceuticals. "Tums" the antacid, is ninety-percent calcite or limestone. It is essential in water purification and air pollution control. McDonalds is test marketing "Earth Shell" a biodegradable product made of potato starch, limestone, and binder. This product has the potential to replace Styrofoam and paper in the fast food industry.

The California State Board of Mines and Geology has spent several years identifying, classifying and zoning mineral deposits in the San Bernardino Mountains. Under the State Mine Reclamation Act (SMARA) they are charged with protecting valuable mineral deposits from incompatible land uses that would preclude society access to these raw materials. Under the National Environmental Policy Act

(NEPA) Federal agencies are required to include these local government planning documents in Federal land use plans such as the San Bernardino National Forest (SBNF) Plan. However, the San Bernardino National Forest in league with the U.S. Fish and Wildlife Service appear to have "invented" several "endangered" plants that only grow on limestone, the mineral that we are mining!

This has been a twenty year process, starting with so called "Cushenbury Buckwheat" or *Eriogonium ovalifolium*, vareity *vineum* in mid-1970's. District Ranger Jerry Mitchell told me while reviewing a proposed plan of operation for the White Knob Calcite Mine, that the "only place in the world that this plant was found" was on the one acre of limestone we proposed to mine. He said the SBNF had this plant on their sensitive plant list and they had to treat it as if it was endangered.

I went home that day and looked the plant up in Edmond Yeager's 1940 Desert Wildflower book and found he reported it (including the variety *vineum*-Latin for wine colored) as occurring from the Sierra Nevada Range to the Laguna Mountains in San Diego County and even as far as Arizona or New Mexico. Ranger Mitchell suggested we hire and ex-forest service biologist buddy of his, Tim Krantz, who could write us a "dispensation" so we could mine. I believe we paid this biologist about $11,000 dollars for his report. Since that times the SBNF put together a listing package for five alleged "Limestone Endemic Plants," and submitted it to U.S. Fish and Wildlife Service for listing under the ESA. USFWS ignored the industry objections that there was little or no scientific data to support these plants as being limestone endemic or even restricted to the San Bernardino Mountains.

Talking to USFWS was like talking to a brick wall, they ignored the fact that all the reports submitted by the SBNF were in house unpublished reports on government letterhead or environment subcontractors. None of these reports in my opinion as a scientist could be published in a professional scientific journal. Normally real scientists are proud of their work and seek to have it published in a peer review journal.

USFWS ignored the fact that *Eriogonium ovalifolium*; var. *vineum* was reported as occurring in the literature (Munz, 1974 *California Flora* and Hickman, 1993. *The Jepson Manual of Higher Plants of California*, 1993) as being found all over western North America. Professor R.R. Brooks of the University of British Columbia, in his 1993 paper *Biological Methods in Geochemical Prospecting,* indicates this same species is being use all over the western region of north America as a prospecting tool to find base metals. The flower apparently turns wine colored, if a few parts per million base metals are present in the soil or rock substrate.

The five ESA listed plants are invader species, or, as laymen would call them, "weeds." Such plants are nature's first step in restoring the "climax vegetation" in open space for a given geographic area. In my experience they require soil disturbance through clearing the chaparral or forest canopy. They grow in areas such as firebreaks, abandoned roads, mines and mine dumps, or in areas cleared by wildland fire. The Coyote Flat fire in July 1976 at the White Ridge/White Knob created a population explosion in *Erogonium ovalifolium*, var. *vineum* in the newly built firebreaks and in the burned areas.

However, an even more dramatic example was the September 14, 1991 destruction of the historic Horse Thief Flats Cabin and SBNF Road 3NO3A. Forest Supervisor Gene Zimmerman, brought the Marines in to blast the historic cabin and road out of existence. The Marines were told they were destroying these to keep drug lords out of the area. The real reason was to manufacture wilderness for the Feinstein's "Desert Closure Act," S-21 (see testimony before The Committee on Resources, June 18, 1996—*The Bighorn Mtn. Wilderness, CA: A Case Study in Federal Land Use Planning: Abuse of Authority, Fraud, Waste, and Violation of the Public Trust to "Manufacture Wilderness to Deceive Congress as to Wilderness Suitability"...).*

They blasted the road in four places, the last blast vaporized about forty tons on my family property and sprayed hot shrapnel into the tinder dry forest. The Forest Service staff and the Marines went home and dozens of small fires burned all night and into the next day—for 18 hours these fires were coalescing into a single wildland fire. A citizen reported smoke, and SBNF and California Division of Forestry (CDF) fire fighters came in and put the fire out. The Road 3NO3A was rebuilt after several congressmen contacted the SBNF. December 11, 1991, District Ranger Rebecca Aus sent out a letter of apology for the fire and destruction of the road. Fortunately the Santa Ana winds stopped the day before or the 16,000 down-wind residents of Bear Valley would have had a dangerous wildland fire on their doorsteps. About $200,000 was spent to put the fire out and rebuild the road.

The next spring I noticed that two of the alleged endangered species, Cushenbury milk-vetch *(Astragalus albens)* and Parish's daisy *(Eriogeron parishii)* were thriving in the disturbed ground of the rebuilt road and the area destroyed by the wildland

fire. *Astragalus albens* has the cute name milk vetch, but in consulting the scientific literature, I found it is a noxious poisonous weed, called locoweed. It can cause delusions, blindness, or even death if eaten by browsing animals or humans. The San Bernardino County weed abatement tells me it is against local laws and ordinances to knowingly propagate it on your property. You can be fined for not removing it, but it is now federally listed as endangered and it is a felony to remove it from your pasture or property!

Another good example of these weeds needing disturbed or cleared ground for habitat expansion is the SBNF own road material quarry at the east end of Lone Valley near Rose Mine, where 3NO3 and 2NO2 join. Several acres have been cleared down to bedrock for barrow material during the last few decades. As the SBNF road crews abandon portions of their quarry about 10 percent to 20 percent of the naturally invading species are *Eriogonium ovalifolium* var. *vineum*! On Saturday November 16, 1996 SBNF staffers Ruth Wenstrom, Gail Van Der Bie and John Wimbaugh unknowingly directed about 20 vehicles, some of them state OHV Commissioners, to park right on top of the "endangered" buckwheat. They announced that the SBNF had just spent thousands of dollars of State Greensticker funds to prove there were *no* ESA listed weeds growing there! This is probably the best and healthiest population of this species in the entire SBNF. Thus, the USFS proved that these species could be used to reclaim mined areas.

It is very obvious that facts don't count with USFWS and SBNF. They appear to be out to shut down mining in the SBNF. Science doesn't support listing of these weeds under the ESA. One of the four large mines in our area, the Partin Limestone Mine, was driven out of business by way of using these weeds to stop mining. Over the last decade I have testified that this was going on to both House and Senate Resource Committees. It is now a fact the Partin mine with millions of dollars in reserves is dead. These weeds are just another "surrogate" used to shut mining down. In a secret June 10, 1999 meeting (not open to the public in violation of the Federal Administrative Procedures Act) Forest Supervisor Gene Zimmerman distributed an April 28, 1999 letter he wrote on SBNF letterhead to the Pacific SW Forester and BLM requesting that these phony USFWS ESA listed "carbonate endemic" weeds be used to close about 30,000 acres of the highest mineral valued lands, mostly zoned by the state under SMARA classification and zoning to remain open to mining. These plans to close the region to mineral entry are now being implemented. This action will destroy the union Dental, Vision, and Life Insurance Fund and other mineral rights holder's mineral assets. This Zimmerman request could be published in the Federal Register at any time.

As part of my written testimony I am incorporating a published paper by Howard Brown (1994) in Murbach and Baldwin (editors), *Mojave Desert*, South Coast Geologic Society, Annual Guidebook #22, pp. 458470. His paper documents many of the abuses of USFWS in the listing of the alleged limestone endemic weeds.

Many botanists and biologists that have worked on these weeds privately doubt that they are really thretened or endangered. However, everyone who told me this said they were afraid of retaliation, and would be black-listed and never work again, if they openly opposed USFWS or USFS conclusions that these weeds are threatened or endangered.

If the USFWS listing stands, the SBNF will close one of the nations richest mining districts to mineral entry and the few existing mines will be depleted and die a slow death. Two of the major mines are already looking for other deposits in Arizona or other areas, in case they can't utilize the remaining reserves in the San Bernardino Mountains. We request the Committee on Resources take action to stop this closure to mineral entry ASAP.

We would like to invite the Committee and staff to visit Forest Supervisor Gene Zimmerman's proposed 30,000 acre "endangered weed sanctuary" in the near future.

Thanks for the opportunity to appear before your Committee.

Mr. POMBO. Thank you.

Ms. Fuentes.

STATEMENT OF LORRAE FUENTES, VICE PRESIDENT OF EDUCATION, CALIFORNIA NATIVE PLANT SOCIETY

Ms. FUENTES. Chairman and Committee members, it is a pleasure for me to be here today to testify before you. My name is Lorrae Fuentes, and I am a native to Southern California. I have lived here all my life. I am currently a resident in Riverside and a homeowner.

I have a degree in biological sciences at one of our local universities. I have been an educator for 20 years both in the classroom teaching science to children, and am currently an educator in informal science institutions.

I also still hold my teaching credential active.

I am a representative today of the California Native Plant Society. I serve in that organization on the executive council as Vice President for Education.

California Native Plant Society is dedicated to the preservation of California native flora and is an organization of laymen and professionals united by an interest in the plants of California.

The work of the society is done mostly by volunteers who, along with staff members, work to promote awareness of California's unique flora.

The California Native Plant Society is a science based organization and is the primary scientific repository of information on rare plants of California.

California is, indeed, blessed with a wealth of plant life that reflects the diversity of its natural landscape. California has over 6,000 native species of plants. One third of those are endemic to the state, that is, they are found nowhere else in the world, and over 1,700 of those have some kind of listing, rare, threatened or uncommon.

In general principle, CNPS, the California Native Plant Society, supports the current Federal Endangered Species Act. If allowed to be implemented and enforced properly, it serves species well and is a useful tool for protecting biodiversity the plants, animals, habitats, and ecosystems in California and nationwide.

It is not that the law will never need improvement. On the contrary, new scientific knowledge and knowledge of what works best in both practical and political terms can lead conservationists and politicians alike to seek improvement in the law.

Any law, of course, is only as good as its consistent, effective implementation and reliable enforcement. It is here that CNPS takes issue in regards to the Federal Endangered Species Act. The two previous administrations but especially the current one failed to live up to the responsibilities to fulfill the intent of the Endangered Species Act, that is, to recover imperiled species.

Resources to conduct good scientific studies to support listings, development of recovery plans, designation of critical habitat, and protection of species on private and public lands has not been allocated sufficiently. Without listing species receive little protection. Yet review of almost all listing petitions has ceased.

Habitat conservation plans are conceptually a good tool and popular with the public because it protects habitat. However, inadequate habitat conservation plans are being developed and approved. Scientists have identified numerous deficiencies with pending and approved conservation agreements and raised serious questions about habitat conservation plans and their credibility.

The administration has refused furthermore to designate critical habitat aimed at helping species and get them off the endangered species list. The majority of landowners affected by endangered species regulations are willing to and want to comply, but instead

become increasingly frustrated with slow permitting and habitat conservation planning process.

Furthermore, there are landowners willing to sell land and to protect species, but, again, the resources are not available for land acquisition.

I would like to point out again that the Federal Endangered Species Act is fundamentally good. The implementation and enforcement needs improvement. Congress only needs to provide adequate funding to establish necessary support mechanisms mainly in gathering of adequate scientific data, then good habitat conservation plans can be crafted listing of species and designation of critical habitat can proceed and land acquisition, where possible, can occur.

The Sierra Club, Audubon Society, groups deal largely with a variety of environmental issues, but only the California Native Plant Society is focused specifically on the needs of plant species in communities. Few people realize that the Federal Endangered Species Act provides almost no protection to most currently endangered, threatened plants, and in fact, the Federal Endangered Species Act protects animals everywhere but allows unlimited destruction of federally listed and threatened endangered plant species outside of Federal land where more than 80 percent of the federally listed plants are found in California.

This outdated policy flies in the face of biological reality, and we wish that the Endangered Species Act would be amended to give plants equal protection.

Thank you very much.

[The prepared statement of Ms. Fuentes follows:]

STATEMENT OF LORRAE CAROL FUENTES, VICE PRESIDENT OF EDUCATION, CALIFORNIA NATIVE PLANT SOCIETY

Good morning. My name is Lorrae Fuentes and I am here as a representative of the California Native Plant Society to present testimony to this Committee. It is a pleasure to be here and to provide you with this important input into the issues regarding the implementation and enforcement of the Federal Endangered Species Act.

The California Native Plant Society is dedicated to the preservation of the California native flora and is an organization of laymen and professionals united by an interest in the plants of California. The work of the society is done mostly by volunteers who, along with staff members, work to promote awareness of California's unique flora so that a more knowledgeable public will insist on the preservation of native plants and their habitats for future generations. The California Native Plant Society is a science-based organization and is the primary scientific repository of information on rare plants of California.

California is blessed with a wealth of plant life that reflects the diversity of its natural landscape. I work with the general public in my role as educator. People of all ages clearly grasp the concept of biodiversity. On a global scale, people understand that human beings depend on the functioning of ecosystems absolutely. The ecosystems that we manage in order to produce food and other essentials—farm field, rangelands, and forests—are intimately connected with the global ecology and are not immune from the detrimental effects of the loss of biodiversity. On a regional basis, people clearly understand that the economic wealth of California is an expression of its natural diversity, and that when economic prosperity is manufactured from natural diversity, as it has been in California change in landscape and loss of diversity is inevitable.

In general principle, CNPS supports the current Federal Endangered Species Act. If allowed to be implemented and enforced properly, it serves species well and is a useful tool for protecting biodiversity—the plants, animals, habitats and ecosystems in California and nationwide. Furthermore, the Federal ESA has and continues to serve as a model for global protection of biodiversity. It is not that the law will never need improvement. On the contrary, new scientific knowledge and

knowledge of what works best in practical and political terms can lead conservationists and politicians alike to seek improvement in the law. Any law of course is only as good as its consistent effective implementation and reliable enforcement. It is here that CNPS takes issue in regards to the Federal Endangered Species Act.

The two previous Admnistrations but especially the Clinton Administration have failed to live up to its responsibilities to fulfill the intent of the ESA—that is to recover imperiled species. Sufficient resources to conduct good scientific studies to support listings, development of recovery plants, designation of critical habitat and protection of species on private and public lands has not been allocated.

Without listing, species receive little protection. Yet, review of almost all listing petitions has ceased. Inadequate Habitat Conservation Plans are being developed and approved. Scientists have identified numerous deficiencies with pending and approved conservation agreements and raised serious questions about HCPs credibility. Too often HCPs data on species populations and habitat requirements are incomplete or missing, assessments of impacts to species are inadequate, resources to monitor the plan's impacts are meager, and plans frequently rely on unproven management prescriptions.

This Administration has refused to designate critical habitat aimed at helping species to recover and get species off the endangered species list even though the ESA makes it clear that critical habitat is a primary mechanism for species recovery. As a practical matter, designating critical habitat helps agencies and individuals understand the areas that need to be protected to maintain a species' viability. Unfortunately, the Federal Government's reluctance to designate critical habitat has severely hampered species recovery efforts. To date, less than 10 percent of all species listed in the U.S. have official critical habitat.

The majority of landowners affected by ESA regulations are willing to and want to comply, but instead, become increasingly frustrated with the slow permitting and HCP process. Furthermore, there are landowners willing to sell land to protect species. But again, the resources are not available for land acquisition.

I would like to point out once again that the Federal Endangered Species Act is fundamentally good. It is the implementation and enforcement that needs improvement.

Congress needs only to provide adequate funding to establish the necessary support mechanisms, mainly the gathering of adequate scientific data so that good Habitat Conservation Plans can be crafted, listing of species, and designation of critical habitat can proceed and land acquisition, where possible can occur.

There are inadequacies in the ESA of concern to the California Native Plant Society that I would like to address. The Sierra Club, Audubon Society and groups deal with a large variety of environmental issues but only the California Native Plant Society is focused specifically on the needs of plant species and communities. Few people realize that the Federal Endangered Species Act provides almost no protection to most federally endangered and threatened plants. In fact, although FESA protects federally listed animals everywhere, it allows nearly unlimited destruction of federally listed threatened and endangered plants outside Federal lands, where more than 80 percent of federally listed plants are found in California.

This outdated policy flies in the face of biological reality. Science tells us that plants and animals are inextricably intertwined and contribute equally to the health and survival of the ecosystems that sustain us all. If we are to conserve healthy ecosystems and biological diversity, we cannot pick some species to save and ignore others.

The California Native Plant Society would like to see the Federal Endangered Species Act amended where necessary to protect plants with the same protections that are currently provided to animals.

Finally, even though this is not linked directly to the issue of the Federal Endangered Species Act, we would like to be included in the growing number of groups commending the sponsors of H.R. 701, H.R. 798, S. 25 and S. 446 which is sound legislation to provide dedicated funding for land and resource conservation.

Thank You.

Mr. POMBO. Thank you.

Mr. Kading.

STATEMENT OF RANDY KADING, FIELD SUPERINTENDENT, C&H FRAMING

Mr. KADING. Good afternoon, Mr. Chairman and members of the Committee. My name is Randy Kading. I am a field superintendent

for C&H Framing, a contracting firm working in Southern California.

Currently I am working on a residential housing project on the north coast of San Diego County in the City of Encinitas. The company subcontracts with builders after a piece of land has been completely entitled and permitted.

I have worked in most of the western states since the date of 1971.

By way of additional background, back in 1958, my parents purchased this little two bedroom house in Wichita, Kansas. What was unique about this house is along the front and down the side approximately 100 feet was this fence that had three rails on it, and by the time I was seven years old, I could walk this fence without falling down. My mother hated the idea.

Little did I know that in 1971 I would be hired to do the same thing by building houses, single story and two story houses. I was being paid at that time three times minimum wage being a first period apprentice. I fell in love with the trade, could not believe I was being paid to have this much fun.

Two years later, I walked into my first recession experience when OPEC decided to become a world player and flex their muscles. The construction industry was affected, and because of this I was forced to, well, walk away from everything I had acquired at that time, stuck my thumb out, and ended up in New Mexico where I lived on a ranch for two years, and these people were small time developers, and I was able to increase my assets by learning how to not just frame houses, but to stucco and lay tile, floor covering, and roof.

During that time nearly everyone I knew was thrown out of work, and it was not just the trades people on the job site. It was the folks who supplied the products, the truck drivers, the loggers, the delivery people. I learned very early on that a recession can have a profound impact on people's lives and their families.

Now, generally the life of a framer or anyone else on the job site can be very nomadic, as I have moved around a lot. In the last 28 years, I myself have worked all over the western United States, including Texas and Louisiana. Basically you go from job site to job site, depending on where the work is.

In the past, as I have alluded to previously, our ability to get work has been related to economic cycles. I now have been through three of these recessions. The last one, which was the most devastating, was the one in the 1980s and the early 1990s. It took a while to overcome that one.

In working with my guys, what generally happens is they either toughen up and survive by moving on, which only works with the single guys. The ones with wives are usually forced to take lower paying jobs, but one that has more of a consistent paycheck, whether it be driving a Wonder Bread truck or maybe working at the postal system.

This is especially hard for me to watch because I see their love for the trade on their faces on a daily basis, and when one of these recessions hits, which will happen pretty soon, as an apprentice, they do not have a lot of assets. Even though they have spent a lot of their money buying their equipment, they have not acquired

the skill to stick around or to be kept around when it gets real tight, when there is not a lot of work to keep them busy.

And so you can see that they are going to be forced to take jobs that will put food on the table, and they will just look back on their experience as a carpenter or as a builder, as a person in the trade as one of just something that let them down.

And, frankly, it is the fear of the recession that all of us think about most of the time. Not a day goes by when I do not wonder about when work is going to end. I have made my own self recession proof because what I learned in the last one that I experienced was do not acquire anything anymore. The only thing I do now is save all the money I can so that I can survive the one or two year cycle that happens to put me out of work because there was a couple that I did not do that, and it was a real struggle.

So in essence, our ability to maintain a consistent work load and, therefore, to receive a consistent paycheck is directly related to the landowner's ability to get required permits from all jurisdictions, including what I understand can be the most difficult, the Federal Government.

In Southern California, I have noticed by the ebb and flow of work the difficulty landowners have in securing these permits so we can do our jobs and earn a paycheck and put food on the table. I want to make something clear. I am not opposed to protecting our environment, but it seems to me that when people who are supposed to be protecting the environment seem more interested in just stopping growth that there must be a problem.

Oftentimes the focus in on the builder and developer when it comes to these environmental issues and concerns. I am here today, however, to make it clear that they are not the only ones impacted by unreasonable and arbitrary decisions aimed at stopping growth, and I must say it pains me to know that when my guys are—what they are in for in the next recession hits. No matter what the cost, frankly, recession caused by economy, albeit unfortunate, is easier to understand than one caused by well meaning but misguided and poorly interpreted environmental regulations.

What we need is balance. We need fairness. There needs to be a bipartisan committee established between Carlsbad and the building industry and the developers, who I consider to be the good stewards of putting these projects together because what I want in the future is not the boom we are in now. I want controlled growth because that is better than no growth, and that is what takes the hope out of most of the people that are out there in the trade now, is the fact that within just the next couple of years they will be in the midst of their first and my fourth, and it becomes a desperate situation for all of us.

Thank you.

[The prepared statement of Mr. Kading follows:]

STATEMENT OF RANDY KADING, FIELD SUPERINTENDENT, C&H FRAMING

Good Afternoon Mr. Chairman and Members of the Committee, my name is Randy Kading. I am a field superintendent for C&H Framing, a contracting firm working in Southern California. Currently, I am working on a residential housing project on the north coast of San Diego County in the city of Encinitas. Our company sub-contracts with builders after a piece of land has been completely entitled and permitted. I have been working in all seven southwestern states since 1971.

By way of additional background, my family purchased a modest 2-bedroom house in Wichita, Kansas. It was growing up in this house where I first gained an appreciation and love for the art of carpentry. As I learned the trade, I remember thinking why can't everyone have this much fun. I realized shortly thereafter, in the summer of 1973, that the fun can quickly come to an end. What happened? Well, that's when OPEC decided to flex its muscle and threw the United States into a deep recession. One of the first industries to be impacted was the construction industry. Because of this, I was forced to move to New Mexico for the better part of 2 years just to survive.

During that time, nearly everyone I knew was thrown out of work. And it wasn't just the trades' people on the job site. It was all of the folks who supplied the products for construction, the delivery people and anyone else even tangentially related to the industry. I learned very early that a recession can have a profound impact on people's lives and their families.

Generally, the life of a framer (or any one else on the job site) can be very nomadic. In the last 28 years, I myself have worked all over the southwestern United States. Basically, you go from job site to job site depending on where the work is. In the past, as I alluded to previously, our ability to get work has been related to economic cycles. As you can imagine, the most recent recession of the late 80's and early 90's made this profession again very difficult.

In working with my guys, what generally happens is they either tough it out and survive by moving around (which really only works for the single guys), or their wives force them to take lower paying but more stable job in a different line work. This is especially hard for me to watch because I see their faces on a daily basis and I know how much they enjoy their jobs. It breaks my heart to know that they don't want to leave, but will have to because they won't be able to weather the next recession.

Frankly, it is the fear of recession that all of us think about most of the time. Not a day goes by when I wonder when the work is going to end. Now, even in these very good economic conditions, it seems that the demand in the market for new housing can not be met because of the difficulty of getting land entitled. Recession is the thing that will ruin our lives. And recession, whether caused by a down economy or environmental concerns, is still a recession. And rest assured, many of us, as working class, regular folks, will lose their jobs, their incomes, their possessions and some will even lose their very families.

In essence, our ability to maintain a consistent workload and therefore, to receive a consistent paycheck is directly related to a landowners ability to get the required permits from all jurisdictions including, what I understand can be the most difficult, the Federal Government.

In Southern California, I have noticed, by the ebb and flow of work, the difficulty landowners have in securing these permits so we can do our jobs, earn a paycheck and put food on the table of our families.

I want to make a something clear. I am not opposed to protecting our environment. But it seems to me when people who are supposed to be protecting the environment seem more interested in just stopping growth that there must be a problem. To be blunt, which I am, I do not want arbitrary political decisions to stop our ability to build houses and earn a living.

Protecting the environment and providing housing are NOT mutually exclusive, in my opinion.

Often times, the focus is on the builder and developer when it comes to these environmental issues and concerns. I am here today, however, to make it clear that they are not the only ones impacted by unreasonable and arbitrary decisions aimed at stopping growth.

I am the face of the working person in the field whose job depends upon builders being able to supply housing.

I am a mirror of the guys in the field who work for me.

And, I must say, it pains me to know what my guys are in for when the next recession hits, no matter what the cause. Frankly, recession caused by the economy, albeit unfortunate, is easier to understand than one caused by well meaning but misguided and poorly interpreted environmental regulations.

You can imagine, as a framer in Southern California, what I must think about these articles condemning growth and the support no-growthers seem to get from the environmental agencies. I remember the coastal initiatives of the 70's. Lately there's been the fairy shrimp on the coast and the kangaroo rat in Riverside. And now we have butterflies again blocking the folks we work for from getting their permits. You may think it's just the landowners that know about this stuff, but we pay attention because it effects us so directly.

I myself am even an avid back-packer who has hiked the Pacific Crest Trail from Baja to Washington State. I enjoy the environment, whether on foot in the mountains, or in the ocean on my surfboard. Some may scoff, but it is the truth. I say this only because it is automatically assumed that folks in our industry don't care about the environment. But we do. We also care about providing shelter for families. A quality product, which I think many in this room may take for granted. Well, I'm saying you just shouldn't.

Our guys come from all over the political spectrum. Their top concern is making sure we have work to sustain our families. Previously, many were unable to make their opinions known, let alone gather information about important issues like these. Fortunately, with the internet, we're now able to not only learn more about these issues and better educate ourselves, we are also better able to communicate with other people in the trade and also better able to make our voices heard.

And I guarantee, we will be heard!

The other side of the equation for trades' people in the field is being able to find housing we can afford. The closest we'll get to the houses we're helping build are the days we spend framing. You don't need to ask why when the average new home in San Diego County will soon exceed $300,000. There's not a housing project my guys work on that where they'll be able to afford a unit . . . that is unless they hit the lottery. Many of these guys live with their parents or find other ways to improvise and survive.

I see a big problem with the American Dream in Southern California and I know some of it has to do with all the environmental regulations forced down the throat of the landowner and paid for by the blood, sweat and tears of working men and women throughout Southern California. With my butchered hands, I have built these homes the new buyer comes home to after work. When I'm gone, they'll still have their jobs. But that does not mean we cannot fight for what's right.

In closing, there is probably a myriad of solutions to make the situation better. Any solution should assure a much-needed supply of land to house people affordably, at all income levels and I don't just mean in apartments either. We, the people who build these houses, know the value of homeownership. I think it's pretty ironic that many of us can't afford to but one and live the American dream.

What do we need? We need balance. We need fairness. We need someone working on behalf of the working men and women whose daily existence depends upon their job, not just their net worth.

I want to be able to tell my guys that something is being done to preserve their ability to earn money and care for their families. I hope I can leave here today with that message. Please help me provide them with the security I so desperately want to provide my guys.

Thank you for this opportunity. I'm not accustomed to this kind of setting for airing my concerns, but I'm glad that you all traveled from your districts to hear what we had to say.

Mr. POMBO. Thank you.

Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. Sauls, why would biologists and private landowners be reluctant to testify at a hearing like this one that you are participating in today?

Mr. SAULS. Congressman Calvert, I think the answer in its shortest form is fear of retribution. I cannot tell you that that retribution is reality. I have heard that it is. I have heard that permitted biologists are denied permits.

You understand clearly that Fish and Wildlife Service has the ability to issue those permits, and I have heard directly from biologists that they are, in fact, reluctant to testify for that reason.

The same thing is true for landowners. They have unresolved issues with the agencies, and they are concerned that their speaking out will draw further attention to them or problems with them.

Mr. CALVERT. And how would an agency such as this do that? Just not process the application? Just continue it?

Mr. SAULS. Well, for biologists, they have to receive their permits. That is one way. That would be to deny or delay their permits for conducting their business.

For a landowner, the habitat conservation plans are deemed to be a discretionary permit process. You take the plan, put it on the back shelf, and there is little or no recourse. If you're lucky enough to have a Section 7 permit you might have some time frames, but as we have shared with you, there are ways to ask continually for more information such that the Section 7 process is not initiated.

Mr. CALVERT. Well, I have yet to see a time frame that has been met yet in the experience I have had lately with Fish and Wildlife, but moving on, a witness on an earlier panel, the Reverend—I cannot pronounce his last name—testified about his beliefs regarding the loss of species habitat and his belief that it is tied to overpopulation, too many people.

How do you feel about that, since you represent the building industry?

Mr. SAULS. I do not create all of those people. I have my own children, and I happen to love them dearly.

[Laughter.]

Mr. SAULS. I do want to agree with one thing that the good Reverend communicated, and that is that we are to be stewards of the world we live in. I think it is a gift from God, but I think God also told us to love your neighbor. In fact, I think that was the second most important commandment that Christ communicated, and part of loving your neighbor is an element of respect, and I believe that that is the issue that many people are bringing before you here today, that that respect is either lacking or needs dramatic improvement.

Mr. CALVERT. Thank you.

Mr. Fife: I used to be Chairman of the Mining and Resource Committee a few years ago and before I took on a different subcommittee. I spent a lot of time on issues regarding mining, and mining I have always considered one of the base industries. As our Chairman, Don Young, would say, everything there is is either mined or farmed, you know, and those are the basic industries in this country, what is derived from those industries.

How much of the mining that is taking place, from your background, has been exported outside of the United States lately, the last few years? What is just your own feeling about that?

Mr. FIFE. Just the exploration and development money is in the billions of dollars. We have actually exported hundreds of thousands of jobs. The United States in many cases has become a Third World country. If you can mine something, you cannot process it here because of the enormous environmental hurdles you have to get over.

Mr. CALVERT. And many people, as yourself, are aware of the value added jobs that go along with mining and the importance of the mining industry in providing for those. By the way, I believe probably some of the best paid blue collar jobs in the country, primarily union jobs, and an industry that has probably been as devastated as any industry and continues to be devastated even in this recovery.

So I just wanted to point that out, Mr. Chairman, and I know my time has expired.

Mr. POMBO. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. Kading, you build homes.

Mr. KADING. Yes, sir.

Mr. HUNTER. And I think that is a very honorable profession. You know, my dad built homes for many years and said at one point the thing he was proudest of was the fact that he was able to make a payroll every Friday. That is a tough thing to do, and I know that you are concerned also about the people who work with you, working folks, and their ability to buy the homes that they are building.

We led this hearing off; at least that was my statement. I know my friend Mike Spear was not in the audience at that time, and Mike mentioned later the relative prosperity that we are experiencing right now, but one of my points was in San Diego County the average home, and I believe it is about $270,000. In fact, we can have one of our staff folks hold that up. I think it is 265.

You see, Richie is shopping for a house in San Diego County. It is 265. The median home is $265,000. That requires with today's interest rates about a $70,000 paycheck, annual paycheck, and that requirement has placed the ability to buy a home in San Diego County beyond the means of many of the working folks who work in the building industry.

But are there many of your folks who can afford to build the median home in San Diego County?

Mr. KADING. No, not at all.

Mr. HUNTER. Beyond that, the information that I have, and I have talked to some builders, for example, one builder, for example, that built a $185,000 home was making $10,000 profit per unit, but the hard cost of building the home was only $59,000 out of the remaining $175,000, and I said, "What is the rest of it?"

He said, "Land and land use regulation." He said all of the consultants you have to hire, the biologists you have to hire, the time you have got to spend working with the Federal agencies and state and local government, which also have their own level of bureaucracy.

So the rest of that, that almost $60,000 out of $175,000 is not building the home at all. It's that little piece of land that it is on and the land use regulation, and the estimates that I have seen is that we could avoid or lower costs of housing by almost 35 percent in San Diego County if we offset or took away the cost of regulation, land use regulation.

So I guess my second question is in the old days at least, when we were building homes up in Arupa Hills up in Riverside, we built homes for a lot of working people. I mean, in fact, a lot of the folks working on our homes ended up buying our homes. They were good homes, good 1,500, 1,600 square foot homes.

You do not see that. Do you see many working people being able to purchase their homes in San Diego County now?

Mr. KADING. No. Actually most of the people that purchase or work in San Diego County that I am familiar with live in Riverside

County. They are forced to commute because it is cheaper up in Riverside County.

Mr. HUNTER. So they are driving how far?

Mr. KADING. Oh, one way, 60 miles, 70 miles, more.

Mr. HUNTER. Okay.

Mr. KADING. Some are working as far south as Chula Vista.

Mr. HUNTER. And isn't that the area out north of March Air Force Base? A lot of the folks there work, in fact, in Orange County and Los Angeles County from what I understand.

Mr. KADING. That is correct.

Mr. HUNTER. I think that shows some of the misguided policies, and, Mr. Chairman, I think this falls on our back as well as those of the Administrators. In this effort that is to protect the environment and the perversion that I think we have made of some of the regulations, we have actually damaged the environment. We have massive traffic jams that are a result of people not being able to afford homes in the areas where they work.

One reason they cannot afford homes is because we are protecting their environment in the communities where they work. So we have them put out tons of smog on the freeway to get 60 miles away where they can afford a home.

So I think that working America has a real stake in seeing to it that we pull back regulation, make it more reasonable and make it more applicable to folks like the gentleman who was in here, Mr. Turecek. I do not know if you saw him, but average people that have pieces of land that they want to develop, to give them a fighting chance at it.

Mr. Kading, I appreciate all of the witnesses, but I especially appreciate you being here and laying out the perspective of a working man.

Mr. KADING. Thank you.

Mr. HUNTER. Thank you.

[Applause.]

Mr. POMBO. Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman.

I really just want to thank the panelists. I think their testimony was extremely straightforward, and I have no questions. I would yield back the balance of my time.

Mr. POMBO. Thank you.

Mr. Fife, I know that you have spent a lot of time. You and I have had the opportunity to talk in the past, and you have spent a lot of time on the issues that you have testified about. One of the questions that I have for you is how is it that you have such a difficult time and others have such a difficult time when it comes to the science and getting Fish and Wildlife to look at that science?

You know, it would seem to me that it would be natural that they would go to the people that are living and working in an area and say, you know, in your example, an endangered plant, "Where do these grow? Where do you see them?"

Why is it so difficult to put that information together and give it to Fish and Wildlife and have them do something with it?

Mr. FIFE. Well, I think probably it is either incompetence or actually the desire to get as many things listed and build as big an

empire and get as much authority over the private sector as possible. I do not know how to explain it.

There is virtually nothing published in the scientific literature that supports these plants, for instance, as being restricted to the San Bernardino Mountains or endangered. In fact, there is information to the contrary that is right out there for anybody.

I mean I am a paleontologist, and my specialty is in micro plants, but I mean, it does not take much effort for me to find these things in the literature.

And where are these people coming from? It is either incompetence or it is an intention to seize some kind of power. What happens is you get the listing package for the Forest Service for these five plants. One of the plants does not even grow on limestone. We have never been able to find it on limestone. I mean, how could it be limestone endemic? It grows on granite.

It is just amazing how they get away with this. The listing package the Forest Service sent to Fish and Wildlife was totally inadequate. They went out and counted 3,721 of these plants, "known in the world."

I come out with my botanist, and of course, I have been dealing with these for over 20 years, and we can count that many in a day just walking around.

And then we find other things going on, such as I was hoping to bring a gentleman here today to introduce you to, a former Forest Service employee who contacted me to apologize for the fact that the Forest Service had bought a seed spreader and was spreading seeds on my property to prevent me from mining, and sure enough, we have been held up since August 1990 to get a permit on that property.

Mr. POMBO. Now, wait a minute.

[Laughter.]

Mr. POMBO. They are doing what? They are spreading seeds?

Mr. FIFE. They are collecting the seeds from these allegedly endangered plants and they are spreading them on my roads and other roads with a seed spreader. I took one of the gentlemen who was on the witness list that did not come in today, a botanist, a local guy; took him out, and we walked a newly built off road vehicle trail, and we were amazed at the endangered locoweed. It looked like lawn on each side of it, like somebody—we did not think at the time it could have been planted, but that explains why this stuff is growing there.

And I had this not from just this ranger that told me, and he said he is willing to testify in court or wherever. I was told before that by volunteers that worked as volunteers for the Forest Service on off road vehicle road restoration projects. Two couples said that the Forest Service was doing this. I really did not believe it until this forest ranger actually told me about it.

And I would certainly like to have the GAO investigators depose this guy or interview him. He is willing to do it. We have name, rank, serial number, time. I mean I even have the records, the time cards of when these people were out there doing this, and we do have evidence.

Mr. POMBO. It is my understanding of the Endangered Species Act, and I will have to ask Mr. Spear about this later, but that would be illegal.

[Laughter.]

Mr. FIFE. I think it is called habitat manipulation. I think that is what the Act calls it, and I believe if you are going to do it, you have to go through the legal process within at least an EA to do this, but I guess maybe NEPA does not apply to the Endangered Species Act.

Mr. POMBO. Yes, we are going to have a series of questions for you, Mr. Fife, because if you do have evidence that this is occurring, I think the Committee needs to investigate that further, and the Committee hearing will be left open for you to provide additional information on that.

Ms. Fuentes, a question of you. In your prepared statement, even though you and Mr. Fife come from a little bit different angle on this, unfortunately it appears that your complaints are very similar to his, and they may be coming from different ends of the spectrum, so to speak, but you have a real problem with the science that is being used as well and do not feel that it is adequate or that the efforts that are being made are adequate.

Would you like to respond to what you have heard here?

Ms. FUENTES. I cannot respond to——

Mr. POMBO. Not that specifically.

Ms. FUENTES. Okay. Thank you.

Mr. POMBO. I would not do that to you.

[Laughter.]

Mr. POMBO. But I mean just in terms of the science end of it. You were not out spreading seeds out there, were you?

[Laughter.]

Ms. FUENTES. No. I do not believe I would comply with the law if I did that.

I think our main point here coming from the Native Plant Society is that there has been an incredible backlog in the listing of endangered species, especially endangered plants, and designation of critical habitat. Habitat conservation plans that are put together, although conceptually I think they are a good tool but inadequate for plants, which means there is not enough of good science based information.

And I think the agencies involved just have been under-resourced for over a decade, and that there is not enough good scientific information for people to come together for good negotiations, and sit down with, you know, just common sense and come up with a plan to protect species.

You have to have them listed. They cannot be protected unless they are listed, and there is just this huge backlog of listing, and they do have recovery plans in place for them, but I think what we are coming at if "inadequate science" is that there is just not enough of it. You have to have the resources available to go out there and get the good baseline information that you need to make good decisions.

Mr. POMBO. Mr. Kading, I know my time has expired. I just wanted to end with you.

The houses that you are working on now, where are you working in San Diego County?

Mr. KADING. Just west of La Casta Resort, Interstate 5 and La Casta Avenue up on the bluff there.

Mr. POMBO. Approximately what size houses are going up in that area?

Mr. KADING. The present project I am on, the smallest home is 3,820. The biggest one is 5,000 square feet.

Mr. POMBO. This is, I think, the real problem that we face, and I am seeing this in my own community. The more expensive you make land, the more expensive you make the process to go through. The only thing the developer can do at that point is build a bigger house and sell it to the higher end of the market.

Mr. KADING. Yes.

Mr. POMBO. And what we are seeing in my area, and I would like you to comment on this, is that we have seen the two bedroom starter home disappear from the market. We do not have houses that a young couple, just married couple that is starting out can move into. We have got a lot of houses that are 350, $400,000, but in the starter home area you either have to end up in an apartment somewhere or you are out of luck.

And is that what you are seeing happen down here?

Mr. KADING. Well, the current project I am working on, the houses start at $1 million, and I have not seen the homes you are talking about in 15 years. I would not even know where they built those at anymore.

Mr. POMBO. Now, I do not know. You know, it is real frustrating because a lot of what we hear is that, well, this only hurts the rich guy. You know, it is the big developer, the big landowner. Those are the only guys that get hurt by this, and we really do not care if they have to spend $1 million on a habitat conservation plan. It does not matter to us because that is just the wealthy guy that has to pay.

But that is not what is happening in my area. In my area, it is the little guy that is getting hurt because he cannot find a house to buy, and he cannot find a job, a place to work, and we are unfortunately going through a lot of the same things that you do.

I live in a little farming community, what used to be a little farming community that has now become a suburb of the San Francisco Bay area because people are driving all the way, some of them two and a half hours each way commute because there is no place they can afford to live. It is the only place they can afford to buy a house.

And that cannot be good for them. It cannot be good for their family. It cannot be good for the environment no matter how you look at it.

Mr. KADING. No, it is not.

Mr. POMBO. But that is what we are ending up with, and I appreciate all of your testimony.

Mr. Fife, I will have a series of questions for you that I will submit in writing, and if you can answer.

I thank all of you for your testimony. I guess more importantly I thank you for your patience in waiting around, and I apologize, but somebody had to be on the last panel, but I appreciate all of

you for your testimony and for your answers to our questions, and thank you for being here.

Mr. HUNTER. Mr. Chairman.

Mr. POMBO. Yes, Mr. Hunter.

Mr. HUNTER. Mr. Chairman, I want to thank our host, Ken and Mary, and you for such a wonderful hearing. You came a long way to run this hearing. It is very important to our working people. It is very important to our landowners and everybody that believes in basic fairness.

Thanks a lot for holding this hearing. We appreciate it.

Mr. POMBO. Thank you.

[Applause.]

Mr. CALVERT. Mr. Chairman, let me just add onto that and thank you for taking the time. I know that it does take a lot of time. I have done it, as well as you have, to come out and do these hearings, and I certainly appreciate. I am sure both Mary and I understand that, and we really do appreciate it.

I just wanted to say that there is some terminology we heard today, "practical," "reasonable," "balanced," "fairness," those types of words, and I hope, Mike, that you and I and Fish and Wildlife, we can work toward trying to get back to that because I think Fish and Wildlife's reputation from when I was a kid is a lot different than it is today, and I would like to look to the day that we can say that it is back to where it should be.

With that, Mr. Chairman, thank you very much.

Ms. BONO. My turn, Mr. Chairman?

Mr. POMBO. Go ahead.

[Applause.]

Ms. BONO. I, too, would like to thank you, Chairman Pombo, for holding this hearing, for again spending part of your vacation time here with us.

I think we have learned an awful lot. I think it has been very productive.

I want to also take this time to thank my colleagues, Ken Calvert and Duncan Hunter. I work so often with them on so many issues, as you all know, especially the Salton Sea. I think the three of us have sort of become a little—I do not know what you would want to call us—some sort of strange Three Stooges. I do not know.

[Laughter.]

Ms. BONO. But it is always a pleasure and it is truly an honor for me to work with all of these gentlemen. I my one year in Congress I have learned so much, but I have to tell you that I have learned that there are a lot of really very decent people in Congress, and I think this whole panel was evidence of that.

I would like to thank the City of Hemet for hosting this event, the Senior Center, the police department, once again, for all of their hard work, but there is somebody I really, really want to thank. She is asleep right now or she is peeking an eye. My daughter Chianna has stayed through this entire hearing, and I just want to thank her for being here.

[Applause.]

Ms. BONO. So thank you, Mr. Chairman.

Mr. POMBO. Well, thank you all very much.

I would like to just close the hearing by saying that we have a lot of different ideas, a lot of different directions that people would like to do. I think we all agree that the goal of the Endangered Species Act should be to protect endangered species, and if we can get beyond a lot of the issues that we have dealt with today and can get back to what the original intention of the Act was, we would not have to hold hearings like this, and some day I hope to see that happen.

Some day I hope that we can pass a reauthorization bill that gets beyond a lot of the fights and a lot of the problems that we have now, and I hope my kids or my grand kids could look back at it and say we did a better job of protecting endangered species than what I am looking back at now.

But to Fish and Wildlife Service, we all look forward to the changes that will come here. We look forward to working with you, and I hope if nothing else, I hope this hearing pointed out to you that there are some real problems. It is not just a few guys out there who are not straight shooters, who are not playing right. There are some problems, and it is not just created in someone's mind somewhere, and I hope that you can go back with that and look at what has been going on and make some changes so that it does not have to happen again.

But I appreciate you being here. I appreciate you sticking through the entire hearing with us. That does mean a lot to me that you were willing to stick here and listen to all of the testimony.

But thank you all very much. The hearing is adjourned.

[Whereupon, at 2:35 p.m., the hearing was concluded.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. BILL THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for the opportunity to give this statement to the Committee and to discuss the concerns of my Kern and Tulare County constituents from California's 21st District. Your dedication to holding hearings on this matter and keeping the spotlight on the many problems of species protection laws is very much appreciated by me and by rural landusers in California.

We Need Real Conservation

As you know, I have introduced three Endangered Species Act reform bills, H.R 494—The ESA Fair Process Reform bill, H.R. 495—Fair Land Management Reform bill, and H.R. 496—The Liability Reform bill. In my last appearance before this Committee I had only time to briefly touch upon these bills and their goals. I want to give you some specific comments on other reforms that are needed.

My constituents have been severely affected by the designation of over 20 Federal threatened and endangered species and almost 100 candidate species. Kern County comprising two-thirds of my district embraces more than 8,000 square miles of desert, mountain and valley terrain (equal to the size of Massachusetts), including two important military facilities, Edwards Air Force Base and the Naval Air Warfare Center at China Lake.

Rural land users can never have faith in the government's action toward endangered species protection unless we are a part of that process of listing species and devising plans for their recovery and management. That is why I wrote the *Fair Process Reform bill* to correct the current problems of land users being shut out of the process. People need to have equal access to inforrnation relied upon by Federal agencies when making decisions on endangered species. If the government collects insufficient or inadequate information, then the public should be able to point that out and present necessary information. There needs to be a legitimate hearing by government officials, not a meeting in which a government clerk collects local complaints and says "I'll pass this on" to the people who actually make the decisions. "I'll pass this on" means that complaints from local landowners will be dropped into the black hole of a government file folder.

A legitimate hearing involves an opportunity to call government officials as witnesses, question their actions, put on independent witnesses and experts, and provide more scientific evidence. A rural landowner who may ultimately bear the burden of paying for endangered species protection has the right to look in the eye of the government bureaucrat who is listing a species and ask, "Why did you ignore this information?" and "Our witnesses show this species is not endangered. How do you respond?" That is why I included in my bill a provision for such a hearing process with full disclosure of information by the agencies. My bill includes provisions for open access to the public for scientific studies and underlying study data. My bill also includes provisions to improve the scientific basis of government decisions such as minimal information requirements for petitioners, peer review of multiple scientific studies used to support listing or government action, and economic impact analysis of its actions required for listings.

I have previously spoken in support of Chairman Young's bill, H.R. 1142, that compensates landowners for significant government takings. I wrote my bill, H.R. 496—the *Fair Land Management Reform bill*, with a similar provision. You also know, however, about the general practice of the government in extracting ridiculous mitigation requirements from landowners. No doubt today you will hear many more such examples. The problem is one that is built into the current system. The government is staffed with people who follow their own view of species protection and have taken power far beyond what Congress envisioned. Since Congress does not provide money to protect these species, government officials force landowners to pay. Frankly, with nothing stopping them, Washington has taken on the power to demand land and money from landowners which is why we continue to hear stories of these outrageous mitigation requirements. I include a provision in H.R. 496 that limits the how much mitigation the government can require for both land and water projects. If there must be mitigation, then it should be on an acre for acre basis.

Lastly, we must stop penalizing landowners for "harming species" when no harm occurs. In my last testimony to this Committee, I recounted how the government made my constituents sandbag a tree that would be flooded; the tree was assumed to be the habitat for a species, but in fact there was no species present in that tree. The government nonetheless would not relent and demanded that the tree be sandbagged regardless of the work and cost. My bill, H.R. 495, the *Liability Reform bill*, would stop such nonsensical actions. In no way do we affect the current criminal and civil penalties in the Endangered Species Act against intentional actions. If a person intends to harm a species by cutting down trees with the nests of spotted

owls or plowing fields with endangered kit foxes, the current law would operate just as it does today. But criminal and civil penalties should be limited to actual and intentional takings of an endangered species, not accidental or hypothetical ones. My bill also includes "Safe harbor" and "No surprises" provisions to end the string of broken promises and added obligations put on landowners by the government such as those mentioned above. It is sad that we need a law to ensure government honesty, but apparently that is needed.

Until such steps are taken, the Endangered Species Act will continue to fail to achieve its intended goal of Federal wildlife protection, which reflects the will of the American people. I ask this Committee to consider the bills I introduced as means to fulfill America's promise to protect endangered species and endangered family farm and landowners as well.

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Shadowrock

SHADOWROCK DEVELOPMENT ENVIRONMENTAL HISTORY & MITIGATION PROPOSAL

July, 1999

SHADOWROCK DEVELOPMENT CORPORATION
PALM SPRINGS, CALIFORNIA

Shadowrock

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SECTION ONE: Demand for Payment, Notice of Intent to Seize Property

United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE. 11th Avenue
Portland, Oregon 97232-4181

IN REPLY REFER TO

DEC 2 1997

Mark A. Bragg
Shadowrock, LLC
801 East Tahquitz Canyon Way, Suite 101
Palm Springs, California 92262

Dear Mr. Bragg:

We appreciate the opportunity you extended to meet with us on November 21, 1997, to discuss your ideas on alternative movement corridor configurations for bighorn sheep. We also have reviewed your development proposal, as described in your letter of November 21, 1997. Our comments below address the numbered items in your letter.

1. The Fish and Wildlife Service's (Service) 200-acre project footprint outlined in our reasonable and prudent alternative in our conference opinion with the U.S. Army Corps of Engineers (Corps) was designed to provide an unobstructed (lacking dense riparian vegetation) corridor east of the cienega. Though your recent proposal to move hole #11 farther east represents an improvement upon earlier designs, this modification still is not sufficient to ensure continued sheep passage across Chino Canyon, especially south of the tramway road; therefore, it does not avoid or offset the jeopardizing impacts of the project on bighorn sheep.

2. A fence around the entire 200-acre project footprint is needed to curtail sheep movement onto the project site and prevent behavior habituation associated with the intrusion of human activities into sheep habitat. The many adverse effects of urban interface on bighorn sheep have led the Service and California Department of Fish and Game to adopt a standard requirement for fencing projects within bighorn sheep habitat.

3. Your counter offer of $250K would not provide a sufficient management endowment to accomplish the tasks needed to implement conservation initiatives necessary to offset the effects of the proposed Shadowrock project on bighorn sheep. For other projects of similar size, the Service and California Department of Fish and Game have accepted management endowments in the $500K to $750K range. The interest bearing endowment of $500K in our reasonable and prudent alternative was designed to meet the logistics and costs associated with such bighorn sheep management activities.

We intend to complete our conference opinion with the Corps no later than December 12, 1997. The opinion will contain the changes to the reasonable and prudent alternative where we have reached agreement.

Again, thank you for taking the time to meet with us. Please contact either me at 503-231-6158 or Gail Kobetich or Sherry Barrett of our Carlsbad Fish and Wildlife Office at 760/431-9440 if you have further questions regarding our position on your project proposal.

Sincerely,

Vicki M. Finn

Assistant Regional Director
Southern California Ecoregion

Project Overview

- Develop 18-hole golf course, hotel & townhomes along Tramway Road as approved by City, County and State
- Tramway Road traveled by 500,000 people each year
- Current discussions on golf course only, originally approved for 180 acres
- Project has full support of City Council
  - Unanimous approval of TTM
  - Letter from Mayor extending total support
- Largest Economic and Fiscal Impact in City
  - $10 million annual revenue for government entities
  - 300 new jobs during construction
  - 600 new jobs as project built out
  - $75 million annual economic contribution
- Vital boost to depressed area of town
  - Economic rejuvination
  - Job creation
- Project as planned is already environmentally sensitive & highly mitigated

Shadowrock

Shadowrock

SECTION THREE: Project History

Project History

- Original land purchased in 1983
- First planning discussion with USF&WS in August, 1992
- Final EIR certified in 1993
- Project approved by City of Palm Springs in 1993
  - City of Palm Springs adopted statement outlining numerous benefits of project on May 5, 1993
- Sued by California Department of Fish & Game in 1993
- Court Supervised Settlement Agreement signed with CDF&G in October, 1993
  - USF&WS participated in settlement (prior to federal listing of PBS)
  - Sierra Club participated in settlement
- Pre-construction bond financing issued in March, 1996
- Began series of meetings with USF&WS (1996)
- Received USF&WS Draft Jeopardy Opinion Letter in August, 1997
  - "Final Opinion" not received until June, 1999
- Unanimous approval of Phase One TTM in September, 1997
- PBS federal listing in March, 1998
- Sierra Club filed lawsuit in October, 1997
  - Sierra Club's request under CEQA denied on May 12, 1998
  - Sierra Club's request to USF&WS to file suit against Shadowrock declined in September, 1998
- Fourth & final cause of CESA action dismissed in May, 1999

Shadowrock

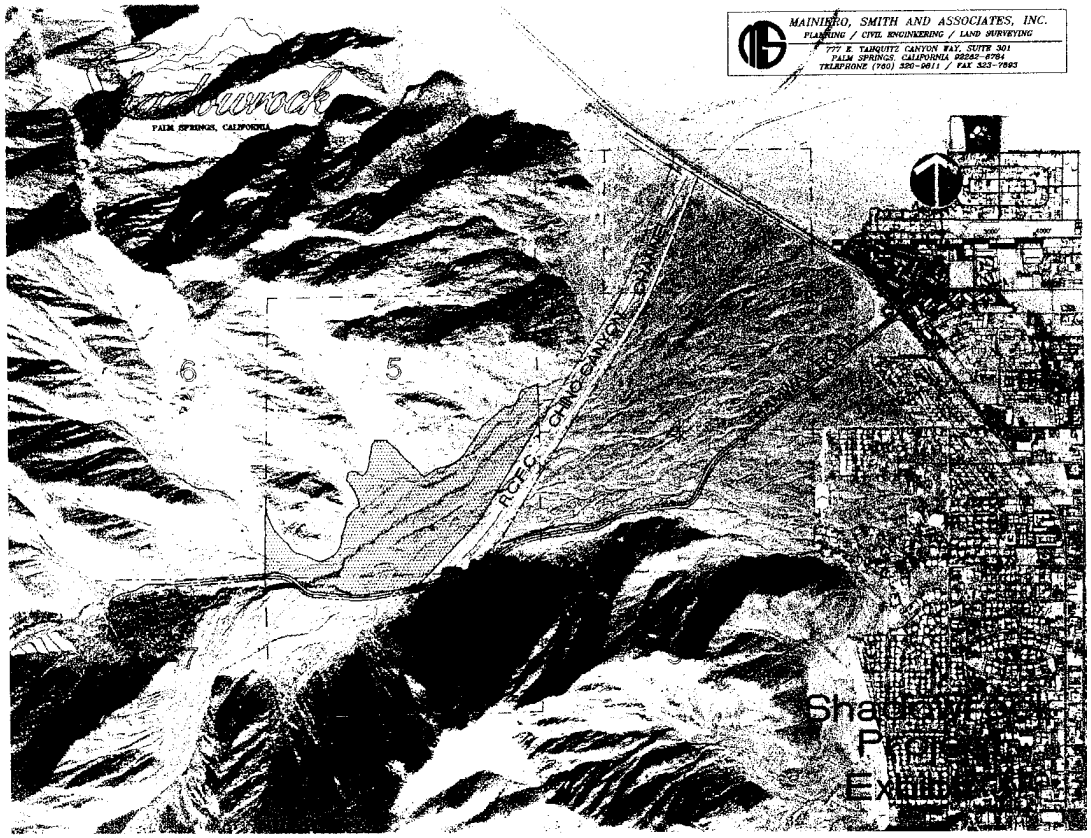
Mitigation Summary

- Reduce homesites by 96
- 769 acres dedicated to City as permanent open space
- "No development corridor" totaling 842.27 acres of permanently dedicated natural open space in addition to golf course
- $300,000 for acquisition of habitat
- $50,000 for research
- Development of water facilities for watering sheep
- Drinking stations in Nichols Canyon
- Education program for employees and guests
- No golf within "no building" area for one hour following sunrise and one hour preceding sunset
- No widening on south side of Tramway Road adjacent to cienega
- Widening of Tramway Road at Chino Creek crossing limited to north side
- Road construction – October 1 to April 1
- No project related infrastructure within the cienega
- Chino Creek bridges may not intrude into habitat or channel in any fashion
- Utility infrastructure crossing Chino Creek must be attached to bridges
- All native, non-toxic landscape, disease-free water features, restricted access to course

Shadowrock

MAINIERO, SMITH AND ASSOCIATES, INC.
TRANSPORTATION ENGINEERING CIVIL ENGINEERING LAND SURVEYING
TELEPHONE (760) 325-1928 FAX (760) 325-9811
1111 E. TAHQUITZ CANYON WAY, SUITE 101
PALM SPRINGS, CALIFORNIA 92262
Sheet 11
RCFC
Chino Canyon
Lake
5
6
Coachella
PALM SPRINGS, CALIFORNIA

MAINGRO, SMITH AND ASSOCIATES, INC.
CIVIL ENGINEERING / LAND SURVEYING
Sheet P-III
ROCKY CANYON
5
6
PALM SPRINGS, CALIFORNIA


MAINIERO, SMITH AND ASSOCIATES, INC.
PLANNING / CIVIL ENGINEERING / LAND SURVEYING
777 E. TAHQUITZ CANYON WAY, SUITE 301
PALM SPRINGS, CALIFORNIA 92262-6764
TELEPHONE (760) 320-9811 / FAX 323-7593
PALM SPRINGS, CALIFORNIA
6
5
RCFC & WCD
CHINO CANYON
Shadowrock
Project
Exhibit

Shadowrock

SECTION SIX: Current Status

Current Status

- Draft biological opinion received August, 1997
  - Contrary to Settlement Agreement with Cal Fish & Game
    - Forces development in "no-development" corridor
    - Requires fence which is prohibited by State agreement
  - Proposed RPA takes 180 acres
  - Proposed RPA mistakenly attributes ACOE land as part of development
  - Proposed RPA makes 18-hole golf course infeasible
- RPA fails to comply with legal requirements:
  - Cannot be implemented consistent with intended purpose of approved plan
  - Is economically & technologically impossible
- Science does not support jeopardy conclusion
  - Jeopardize means to take action to directly or indirectly reduce appreciably the likelihood of survival & recovery of species
  - Service used CDFG data which caused the CDFG Settlement
  - Service's mitigation proposal kills the project
  - Service predetermined conclusion lacks objectivity
- Final USFWS Biological Opinion received June, 1999
- Service's RPA is neither Reasonable, Prudent, nor Possible

Shadowrock

SECTION SEVEN: Proposed Solution

Proposed Solution

- Offer to eliminate 122 acres (option to purchase in favor of Friends of the Desert Mountains)

- Maximize golf density on existing site given considerations of:
  - Minimum safety issues
  - Topographical constraints
  - Economic viability

- Use all available contiguous land

- Resulting Routing Plan
  - Avoids most sensitive areas
  - Of remaining acres, all within the high traffic area of Tramway Road

Shadowrock

Shadowrock

April 30, 1999
Mr. Peter Sorensen
United States Department of the Interior
Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California

Re: Shadowrock Project, Chino Canyon, Palm Springs, California (the "Project").

Dear Mr. Sorensen,

This letter is being sent to you as a result of a meeting on April 21, 1999 between, among others, the U.S. Fish and Wildlife Service ("Service") and Shadowrock LLC ("Applicant"). The original Shadowrock Project included nearly 1,100 acres. Through a series of gifts from the developer and restrictions imposed by various government agencies, the project was reduced to 358 acres when we applied to the Corps of Engineers for a 404 permit.

As you may know, based on expert biological opinions, the Applicant feels that Chino Canyon is virtually uninhabitable by peninsular bighorn sheep ("PBS") because of the construction of Tramway Road (traveled by nearly 500,000 persons per year) more than 35 years ago. The Applicant also feels that the Project is overly mitigated by virtue of a court supervised settlement agreement with the California State Department of Fish and Game specifically regarding PBS. This Settlement Agreement was entered into with the full knowledge and consent of the Service. I am sure you are aware of the concessions made by Applicant in that settlement agreement, not the least of which was the contribution of 565 acres of permanent open space for PBS habitat, $50,000 for a PBS study, $300,000 for PBS habitat and Project limitations valued at more than $45,000,000.

Attached to this letter is a map of the Applicant's proposed RPA area for what remains of the Project. We intend to move forward with the construction of the Project's golf course within the area depicted. The Service's proposed RPA area shown in Figure 7 of the Service's draft letter, circa August 25,1997 (we have never received a final version) claims to show a "reasonable and prudent alternative" development area of 200 acres. It includes, however, steep areas and boulder fields which are undevelopable and which are located outside Fish and Game's approved development area. It also includes about 40 acres belonging to the Army Corps of Engineers. The Applicant's alternative area shown on the attached map is only 178 acres (22 acres less than the area which the Service found reasonable and prudent). Since we have tentatively agreed to give an option (subject to acceptable price and terms) to the Friends of the Desert Mountains for about 97 acres on the south side of Tramway Road, the area shown on our attached map as Applicant's RPA is the bare minimum necessary to construct our golf course.

801 East Tahquitz Canyon Way, Suite 101, Palm Springs, CA 92262 (760) 416-1188 Fax (760) 416-1159

Shadowrock

The 97 acres being optioned is shaded in blue on the attached map and includes 96 approved home-sites and seven golf holes which will be eliminated if acquired by the Friends of the Desert Mountains.

At the request of your representatives in the April 21, 1999 meeting, set forth below is our response to the eleven conditions contained in the Service's draft letter:

1. The Service recognizes that Shadowrock has contributed 565 acres of land as permanent Bighorn Sheep Habitat. To reduce the loss of alleged canyon bottom habitat and allow for on adequate movement corridor across Chino Canyon, the overall footprint of the project must not exceed 200 acres (exclusive of any area east of the Applicant's RPA area toward Highway 111 which may be developed in the future) and must be constructed within the boundary depicted on the attached map unless such eastern area becomes available for development. In addition, large buildings, such as the hotel/resort must be located as far down-slope as possible from the sheep movement corridor to the west of the Project. Project design shall be reviewed and approved by the Corps prior to adoption.

2. The mitigation offered for this item is the aforementioned option to the Friends of the Desert Mountains for the entitled land south of Tramway Road. If any PBS decide to cross Tramway Road onto this property, they will be able to do so to the west of the Project.

3. No construction blasting-related activities shall occur between February and August to address, in part, the impacts of construction during the lambing season.

4. To offset impacts resulting from potential disturbance of PBS, a management endowment of $10,000 per year for five years shall be provided and used in research and enhancing sheep population. The endowment shall be established with a party agreeable to the Service, who shall dispense and expend funds on management/research activities subject to prior approval by the Service.

5. To help offset impacts from shrub encroachment due to fire suppression and potential adverse impacts to the alleged lambing area in the south mountainous area of Chino Canyon, good faith efforts toward an agreement shall be pursued with the City of Palm Springs, Shadowrock Development Corp. the Service and other involved land owners to permanently protect the other known lambing areas in the San Jacinto Mountains against any potential adverse actions that otherwise may be approved by the City in the future. The lambing management areas are associated with the south mountainous areas of Chino Canyon as well as Tachevah, Blaisdell and Tahquitz Canyons.

6. The applicant will work with the City of Palm Springs and The Tramway Authority to institute a shuttle service to reduce traffic on Tramway Road. The Service recognizes

that this item is outside of Applicant's authority.

7. The Applicant shall work to secure a binding agreement and permanent commitment by the City to approve the installation of traffic control devices such as raised dots, grooved pavement, or other acceptable measures along Tramway Road from Highway 111 to the Shadowrock project. The speed limit shall be set as low as possible in accordance with City standards. The Service recognizes that this item is outside of the Applicant's authority.

8. Applicant will join a task force with the City of Palm Springs and other property owners to investigate the feasibility of the installation of fencing in certain critical areas (such as the west side of the Project) if PBS are observed on the Applicant's golf course after construction.

9. Outdoor concerts and other potentially disturbing situations beyond golfing-related activities shall be prohibited in strict adherence to the City Noise Ordinance. If necessary, a prohibition by the City shall be secured to implement this provision.

10. Any observed PBS habitat shall be shielded from artificial light sources to preclude disturbance and exposure to increased predation.

11. An education program for clients and residents of the Shadowrock project shall be developed that provides information on the status, sensitivity, and conservation needs of the PBS.

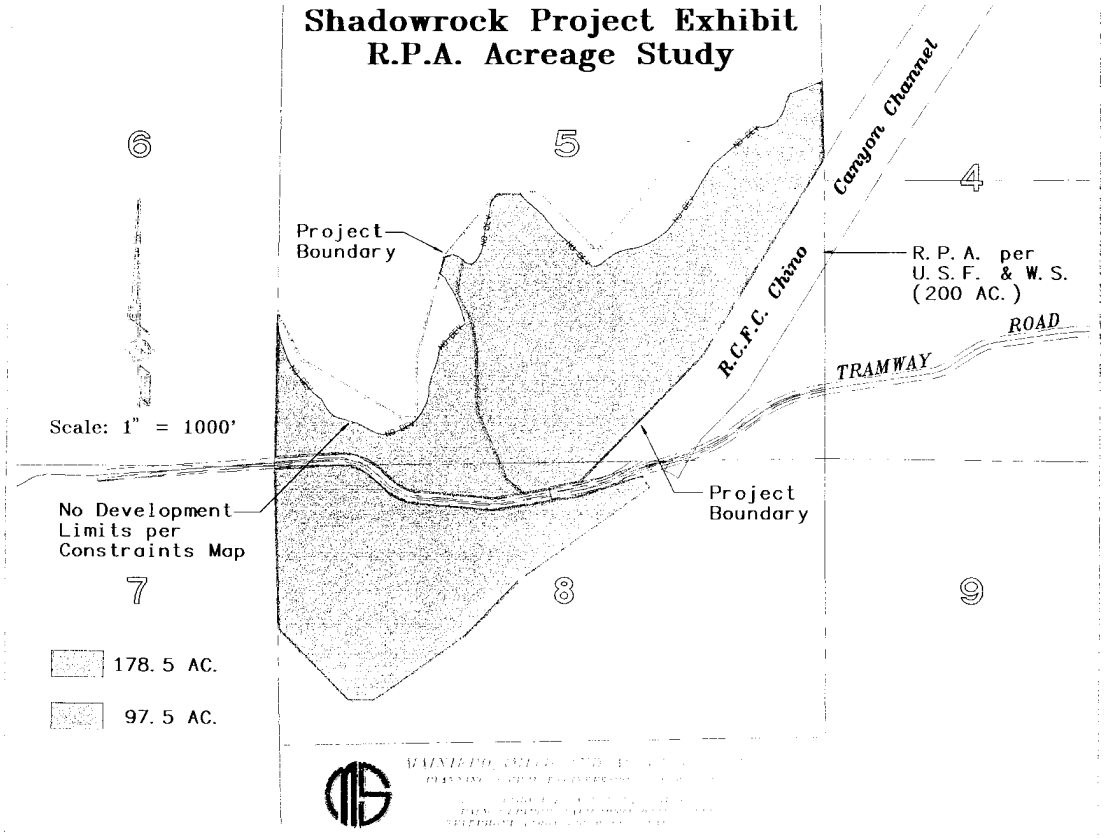
Your representatives advised the Applicant that a response from the Service could be expected within seven days of their delivery of the attached map. Please contact the undersigned or Russell Kruse at (760) 416-1158 if you have questions.

Very truly yours,

Mark A. Bragg

Cc:
Col. John P. Carroll, Army Corps of Engineers
Ken Berg, Carlsbad Fish and Wildlife Office
Michael Spear, Regional Director, USF&WS
Curt Taucher, California State Department of Fish and Game

Shadowrock Project Exhibit
R.P.A. Acreage Study



Shadowrock

SECTION EIGHT: Arguments Against USFWS Proposal

Biological Arguments

Service Biological Findings	Arguments Ignored by Service
Extirpation of SJM ewe group	No verified presence of PBS
Development is threat to PBS	Mountain Lions are #1 cause of death for PBS
SJM loss will lead to loss of SRM PBS	Mitigation efforts mean no contribution to cumulative effects
Impair goal of "viable" 1,000 member Herd	Species thrives throughout West in larger and smaller herds
Impair exchange between ewe groups	No impact to agreed corridor
Construction & presence of people will compromise lambing area	Site not documented lambing area. Agreed to no construction during lambing season
Exposure to golfers a threat to PBS	Site is well below PBS habitat with no obstruction to crossing canyon
Exacerbate restricted home range	Site never documented as within home range

Shadowrock

Inconsistencies in Service's Draft Opinion

On Page 13, the Service says:

"bighorn sheep are known to avoid areas supporting suitable habitats if those areas are within close proximity to, and lower in elevation than, human activities and urban developments."

This is Supported by the Expert Biological Opinion of Jim Cornett:

"During my field time over the course of more than twenty years, not once have sheep been observed in the project area....Although bighorn do occur on the mountainsides and ridges above the project site, their absence from the alluvial fan that emanates from Chino Canyon is at least partially a result of the more than 1,000 car trips that occur on Tramway Road each day. It is my belief that sheep avoid the Shadowrock Project Site because of vehicular traffic on Tramway Road."

But, the Service contradicts their own statement on page 16 of their Draft Opinion:

"The installation and operation of the Tramway at the head of Chino Canyon appears to have caused a partial fragmentation of the habitat used by PBS in the area. PBS now essentially avoid the upper canyon. This is important because the geographical connection between the northern and southern portions of the SJM ewe group's home range has been pushed down the canyon to the vicinity of the proposed Shadowrock project."

Shadowrock

CLIVE CLARK DESIGN

74080 ALESSANDRO, SUITE E
PALM DESERT, CA 92260

TEL: (760) 773-1907 (Office)
TEL: (760) 771-0400 (Home)
FAX: (760) 773-5815

17th May 1999

Mr Russ Kruse
Shadowrock Development Corporation
801 E.Tahquitz Canyon
Palm Springs
California 92262

Dear Mr Kruse,

SHADOWROCK GOLF PROJECT – PALM SPRINGS

I have reviewed the land area contained within the "Reasonable & Prudent Alternative" map created by the U.S. Fish & Wildlife Service.

In my professional opinion as a golf course architect, it is a physical impossibility to create a golf course within the acreage outlined. Because it would be unsafe, I believe the proposal is neither reasonable nor prudent.

Yours sincerely,

CLIVE CLARK
President

Shadowrock

SECTION NINE: Supporting Documents & Experts

City of Palm Springs

Office of the Mayor
3200 Tahquitz Canyon Way • Palm Springs, California 92262
TEL (760) 323-8200 • FAX (760) 323-8207 • TDD (760) 864-9527

September 29, 1998

Mr. Mark Bragg, President
Shadowrock
801 E. Tahquitz Canyon Way, Ste. 101
Palm Springs, CA 92262

Dear Mr. Bragg:

Palm Springs anxiously awaits the development of the Shadowrock Resort. This property will offer our visitors a vacation experience that cannot be encountered anywhere else in our city, our valley and perhaps the world. I believe Shadowrock, as proposed, will offer a carefully selected palette of amenities and activities to entertain, excite and entice visitors with diverse destination dreams.

It is noteworthy that this large, full-service resort will be sited on some of the choicest real estate available in the Southwest Desert. Visitors to Shadowrock will enjoy the phenomenal, natural setting of the peaceful San Jacinto Mountain Range as a back-drop along with the cooling breezes of the pass and panoramic views of the desert below. Shadowrock has the potential to become a Mecca for thousands of worldwide visitors.

As you know, this extraordinary addition to our internationally recognized and renowned hospitality community has been embraced by an excited and supportive Palm Springs business community. The City of Palm Springs has consistently and unanimously committed its unwavering support for this "jewel". This City Council, and every City Council ever involved in the review of this project, has demonstrated unanimous endorsement of this marvelous project.

Please accept this letter of support from the Palm Springs City Council and our professional staff. I am available to meet with anyone who has an interest in being part of this dream.

Sincerely,

William G. Kleindienst
Mayor

WGK/llp

James W. Cornett Ecological Consultants

O. Box 846 Palm Springs California 92263 Telephone (760) 320-8135; Fax (760) 320-2664

November 2, 1997

COPY

Mr. Mark Bragg
Shadowrock Corporation
801 East Tahquitz Canyon Way
Palm Springs, California 92262

Dear Mr. Bragg:

I have reviewed the Sierra Club's request for a supplemental EIR with regard to the proposed Shadowrock development located in Chino Canyon. I would like to respond to some of the points they make regarding the need for additional studies.

However, before I address their concerns in detail, I feel it is appropriate to review my qualifications with regard to the wildlife resources of Chino Canyon.

Beginning in 1973 I have regularly visited Chino Canyon while engaged in a wide variety of ecological activities. In 1982 I was retained to conduct a biological resources assessment of the proposed Shadowrock project site as part of the environmental review process. The most important aspect of the study was the evaluation of bighorn sheep use of the project site and vicinity. Since 1982 over 500 hours of field time have been spent investigating this problem. Most recently bighorn surveys were conducted on October 30 and November 1 and 2, 1997. In short, I have spent more time in Chino Canyon studying wildlife, particularly bighorn sheep, than all other biologists combined. I have enclosed my curriculum vitae for your review.

In addition to my personal field time, I have conducted numerous interviews with people who have either lived or worked in Chino Canyon. One of the persons interviewed had worked at the Palm Springs Aerial Tramway since it opened to the public in 1963.

Through my own experience as well as the experiences of others described to me during the course of my interviews, it is clear that the project site has not been significant habitat for bighorn sheep for the past three decades. I should add that my surveys for bighorn were not confined just to the project site but extended beyond the site boundaries for a distance of approximately 100 yards. During my field time over the course of more than twenty years, not once have sheep been observed in the project area. In addition, no evidence of bighorn presence (tracks, droppings, etc.) has ever been found on this site. In addition, during the course of the interviews no individual could ever remember observing bighorn on or near the project site.

Although bighorn do occur on the mountainsides and ridges above the project site, their absence from the alluvial fan that emanates from Chino Canyon is at least partially a result of the more than 1,000 car trips that occur on Tramway Road each day. The road itself traverses up the center of the alluvial fan and through the middle of the canyon. It is my belief that sheep avoid the Shadowrock Project Site because of vehicular traffic on Tramway Road.

The Sierra Club's request for a new EIR also expressed concern over the inclusion of a golf course as part of the Shadowrock project. A parasitic invertebrate, known as the *Strongyles* worm can occur in moist soil including the moist soil of golf course greens. Some biologists believe that this parasite is ingested by bighorn that come down to lawns and golf course fairways to feed on the grass. If this is true, then the problem is easily solved by erecting barriers that would prevent sheep from wandering onto golf courses.

My comments here are essentially the same as my comments and recommendations included in my original biological studies of 1992 and 1994. Nonetheless, I appreciate the opportunity to respond once again.

Sincerely,

James W. Cornett
Consulting Ecologist

James W. Cornett
Ecological Consultants

James W. Cornett - Ecological Consultants is a biological consulting firm specializing in biological surveys within the California deserts as part of the environmental review process. Since 1976 the firm has completed over two hundred surveys and reports for both private enterprise and governmental agencies including the **Bureau of Land Management, Army Corps of Engineers, The Nature Conservancy** and the **City of Palm Springs**. Numerous studies have focused on endangered species including the Peninsular Bighorn Sheep, Coachella Valley Fringe-toed Lizard, Least Bell's Vireo and Desert Tortoise. JWC Ecological Consultants is the most experienced biological consulting firm in the Coachella Valley. As of September 30, 1997, it has conducted more biological studies within the Coachella Valley than all other firms combined.

The principle of the firm is **James W. Cornett**, the Curator of Natural Science at the fully accredited **Palm Springs Desert Museum**. In addition to being the principle author of the firm's reports, Mr. Cornett holds both B.A. and M.S. degrees in biology with an emphasis in ecology. He has been the investigator and lead writer on more than 40 scientific papers and is the author of several books including *Wildlife of the Western Mountains, Death Valley National Park, Wildlife of The North American Deserts, The Sonoran Desert: A Brief Natural History,* and *Desert Palm Oasis.* At the present time he is under contract with the University of California Press to write the definitive book on the ecology of the California deserts.

Some of the more recent and significant projects completed by **James W. Cornett - Ecological Consultants** are as follows:

Palm Springs General Plan - General review and surveys of the biological components of the new proposed boundaries of the City of Palm Springs. This was the most comprehensive biological report ever completed for Palm Springs and is the baseline document for all current and future biological studies done within the city limits. Included within the study were documentation of all unique habitats, listed or candidate plant and animal species and maps delineating potential ranges and locations of the significant biological elements.

Altamira Project - A biological survey and subsequent report of the largest development ever proposed for the City of Palm Desert. Included within this study were detailed mitigation proposals for maintaining the populations of Peninsular Bighorn Sheep within the city boundaries, comparisons of significant resources elsewhere in the Coachella Valley and proposals for dealing with a research facility adjacent the project area.

Canyon Park Project - Field investigations and subsequent report on a controversial proposal to place a destination resort adjacent an Indian tribal park. Field studies included intensive surveys for the endangered Desert Tortoise and Peninsular Bighorn Sheep.

JAMES W. CORNETT - CURRICULUM VITAE

Personal Data

Name---James W. Cornett

Mailing Address---P.O. Box 846, Palm Springs, California 92263

Telephone Number---760-320-8135

Place of Birth---South Gate, California, U.S.A.

Education

B.A., Biology, University of California at Riverside, 1976

M.S., Biology, California State University at San Bernardino, 1980

Positions Held

January, 1976 - Present
Owner-principal, JWC Ecological Consultants, P.O. Box 846, Palm Springs, California 92263

January, 1980 - Present
Curator of Natural Science, Palm Springs Desert Museum, 101 Museum Drive, Palm Springs, California 92263, 760-325-7186.

September, 1976 - December, 1979
Assistant Curator of Natural Science, Palm Springs Desert Museum

September, 1975 - June, 1976
Natural Science Instructor, Palm Springs Desert Museum

January, 1973 - Present
Weekly Nature Columnist, Desert Sun-Gannett Newspapers, P.O. Box 2734, Palm Springs, California 92263.

January, 1981 - Present
Biology Instructor (part-time), University of California Extension, Riverside, California 92521, 909-787-4105. Courses taught: Mammals of The Colorado Desert, Endangered Species of the California Deserts, Ecology of The North American Deserts, Ecology of The Colorado Desert and Ecology of The Coachella Valley.

October, 1975 - June, 1983
Biology and Natural Resources Instructor (part-time), College of The Desert, 43500 Monterey Road, Palm Desert, California 92260, 760-346-8041.

January, 1973 - June, 1974
Assistant Naturalist (part-time), The Living Desert, 47900 Portola Avenue, Palm Desert, California 92260, 760-346-5694.

Professional Affiliations

American Association of Museums
American Society of Mammalogists
Bureau of Land Management Colorado Desert Advisory Committee
California Botanical Society
California Native Plant Society
Ecological Society of America
Herpetologists League
International Palm Society
Southern California Academy of Sciences
Southern California Botanists
Southwestern Naturalists' Society
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June 24, 1997

Mr. Mark Bragg
Shadowrock
801 East Tahquitz Canyon Way
Suite 101
Palm Springs, CA 92262

RE: Bighorn Sheep and Shadowrock Planned Development District

Dear Mark:

At your request I visited Palm Springs to examine the potential site for Shadowrock Planned Development District, and comment on the influence it may have on Peninsular Bighorn Sheep [Ovis canadenses cremnobates]. I visited the site for approximately 30 minutes on 20 June, and 2 hours on 21 June, and reviewed numerous documents including those listed at the end of this letter. My comments are related to my observations, discussions with you, the listed documents, my knowledge of bighorn sheep, and the available scientific literature.

Your question of whether the project will influence the small population of bighorn sheep in the area is complex to answer because there are few situations that are similar. However, biologists are well aware that bighorn sheep have been classified as "wilderness species", or as animals that do not do well in the presence of humans. However, quantitative data are lacking, and tolerance levels of desert sheep relative to human activity requires further work to establish dependable criteria.

Desert bighorn are a species that have great difficulty adjusting to human encroachment. Behavior of bighorns is rigid and ritualized. Behavior patterns such as periodic range shifts are passed from adults to young animals, and these shifts play an important role in their survival beyond the obvious advantage of disturbing their impact on the vegetation portion of the habitat.

Disturbances, whether directed toward bighorn or not, have been observed to cause reactions adverse to population welfare. The point at which harm results is not clear, but bighorn have been found to abandon the use of historic ranges when human activity increased suddenly over a few years time (Krausman 1993). Light and Weaver (1973) studied bighorn behavioral responses to humans in numerous environmental situations in

addressing the development of a ski resort in the San Bernardino National Forest, California. They found that human visitation created a spatial displacement effect on bighorn. Bighorn and their sign were absent in a line-of-sight pattern from the center of the human influence. Bighorn adapted to his human influence by using habitat out of sight of the influence. Light and Weaver (1973) concluded that bighorn: (1) maintain their area of distribution as a living tradition and rarely depart from it; (2) fail to extend their range despite ample opportunity; (3) reduce use of historical habitat where human use is > 500 visitor-days/year; (4) avoid historical range when visitor-days/year reach 500 to 900; (5) may reduce numbers as a result of insufficient forage, increased predation, increased disease, and external harassment; and (6) curtail movements resulting in reduced gene flow and gene-pool size, which may ultimately affect the future existence of a bighorn population.

Holl and Bleich (1983) reported on the effects of humans by documenting the reaction of bighorn to the presence of the investigators in the San Gabriel Mountains, California. At a mean distance of 645 m bighorn (n = 302) usually were unconcerned with the investigators' presence. At a mean distance of 167 m, sheep (n = 78) usually exhibited a curious or concerned reaction. The maximum distance at which one of these reactions occurred was, 1,500 m. However, the mean distance at which flight occurred was 440 m. Similar bighorn-human interactions have been documented in Utah (King and Workman 1982, Bates and Workman 1983), Nevada (Leslie 1977, McQuivey 1978), California (Kovach 1979, DeForge 1980, Hamilton et al. 1982), Arizona (Seegmiller and Ohmart 1981, Purdy and Shaw 1981), and New Mexico (Sandoval 1979a, Watts 1979, Bavin 1982, Elenowitz 1983). The influence of humans on bighorn sheep is not always immediate. The bighorn sheep in Pusch Ridge Wilderness near Tucson, Arizona declined from a huntable population to nearly extinct in over 15 years. The sheep were not able to withstand the increasing influence of humans (e.g., recreation, housing, fire suppression).

Clearly, bighorn sheep do not do well in the presence of humans. Because more than 500,000 people (more than 500 vehicles/day) move up the canyon to the Palm Springs Aerial Tram it is unlikely that portion of the canyon will be important for the conservation of sheep. However, sheep have been in the vicinity of the development based on comments from James W. Cornett. My observations were consistent with his. During my visit I observed sheep tracks and possibly the humerus from a sheep (distinguishing this bone between sheep and goats is difficult). I also observed three pellet groups that could be from sheep or deer. In addition, the locations of radiocollared

sheep in the San Jacinto Mountains (provided in the 26 March 1997 letter from Kevin Barry Brennan) indicated that sheep were in the area. However, the calculation of the "polygon" was not constructed correctly, and without additional information on the sheep I could not determine if the radiocollared sheep used the potential site.

Because of the current disturbance in the canyon I would discourage the translocation of sheep to the area. Based on previous studies it is unlikely they would use the area. The addition of other developments would further reduce the suitability of the area for sheep.

Documents Reviewed

1) Summary background Provided by Shadowrock combined mitigation measures for preservation of bighorn sheep, Shadowrock & Ritz Carlton Golf Course projects. Provided by Shadowrock.

2) Kobetich, G.C. 1997. Briefing statement entitled "Peninsular bighorn sheep".

3) Miscellaneous letters, newspaper articles and related items. Provided by Shadowrock.

4) Project summary report. Shadowrock Golf Course project, Palm Springs, CA. Provided by Shadowrock.

5) Settlement agreements, mitigation measures, and maps. Provided by Shadowrock.

6) Smith, Peroni, & Fox, Planning Consultants, Inc. 1993. Final environmental impact report for the Shadowrock Planned Development District, including the Technical appendix. State Clearing-house NO 92052 104, case number 5.0609-PD-224.

7) The Planning Associates. 1997. Compendium of comments received by the United States Fish and Wildlife Service regarding the endangered listing of the peninsular bighorn sheep. The Planning Associates, Costa Mesa, Calif. Various pagination.

REFERENCES

Bates, J. W. Jr. and G. W. Workman. 1983. Desert bighorn sheep habitat utilization in Canyonlands National Park. Desert Bighorn Counc. Trans. 27:25-28.

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Bavin, R. L. 1975. Ecology and behavior of the Persian ibex in the Florida Mountains, New Mexico. M.S. Thesis, Colorado State Univ., Ft. Collins. 141pp.

DeForge, J.R. 1980. Stress: is it limiting bighorn? Desert Bighorn Counc. Trans. 20:30-31. 1980. Population biology of desert bighorn sheep in the San Gabriel Mountains of California. Desert Bighorn Counc. Trans. 24:29-32.

Elenowitz, A.S. 1983. Habitat use and population dynamics of transplanted desert bighorn sheep in the Peloncillo Mountains, New Mexico. M.S. Thesis, New Mexico State Univ., Las Cruces. 158pp.

Hamilton, K.S., S.A. Holl, and C.L. Douglas. 1982. An evaluation of the effects of recreational activity on bighorn sheep in the San Gabriel Mountains, California. Desert Bighorn Counc. Trans. 26:50-55.

Holl, S.A. and V.C. Bleich. 1983. San Gabriel mountain sheep: biological and management considerations. USDA For. Serv., San Bernardino Nat'l. For. Admin. Rep. 136pp.

King, M.M., and G.W. Workman. 1982. Desert bighorn on BLM lands in southeastern Utah. Desert Bighorn Counc.Trans.26:104-106.

Kovach, S.D. 1979. An ecological survey of the White Mountain Peak bighorn. Desert Bighorn Counc. Trans. 23:57-61.

Krausman, P.R. 1993a. The exit of the last wild mountain sheep. Pages 242-250 in G.P. Nabhan, ed. Counting sheep. Univ Arizona Press, Tucson.

Leslie,D.M.,Jr. 1977. Home range, group size, and group integrity of the desert bighorn sheep in the River Mountains. Nevada. Desert Bighorn Counc. Trans. 21:25-28.

Light, J.T.,Jr. and R. Weaver. 1973. Report on bighorn sheep habitat study in the area for which an application was made to expand the Mt. Baldy winter sports facility. U.S. Dep. Agric, San Bernardino Nat. For. 39pp.

McQuivey,R.P. 1978. The desert bighorn sheep of Nevada. Nevada Dep. Wildl. Biol.Bull 6. 81pp.

Purdy,K.G. and W.W. Shaw. 1981. An analysis of recreational use patterns in desert bighorn habitat: the Pusch Ridge Wilderness case. Desert Bighorn Counc. Trans. 25:1-5.

Sandoval,A.V. 1979a. Preferred habitat of desert bighorn sheep in the San Andres Mountains, New Mexico. M.S. Thesis. Colorado State Univ., Ft. Collins. 314 pp.

Seegmiller, R.F., and R.D. Ohmart. 1981. Ecological relationships of feral burros and desert bighorn sheep. Wildl. Monogr. 78.58pp.

Watts, T.J. 1979. Detrimental movement patterns in a remnant population of bighorn sheep (Ovis canadensis mexicana). M.S. Thesis, New Mexico State University, Las Cruces, New Mexico, 185pp.

Sincerely,

Paul R. Krausman

Paul R. Krausman
Professor and
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MEMORANDUM

TO: FILE

FROM: HARDY M. STROZIER

DATE: MAY 12, 1997

SUBJECT: DISCUSSIONS WITH DR. CHARLES DOUGLAS, UNIVERSITY OF NEVADA, LAS VEGAS, EXPERT IN STUDY OF BIGHORN SHEEP

Over the last several weeks I have had several conversations with Dr. Charles Douglas, University of Nevada, Las Vegas. Dr. Douglas is an "expert's" expert in the study of Bighorn Sheep. We were introduced to Dr. Douglas through the offices of Attorney, Paul Selzer, who had an acquaintance with Dr. Douglas through Mr. Selzer's numerous dealings with resource agency matters. The major focus of my discussion with Dr. Douglas centered upon the proposed impact of the Shadowrock project and more particularly golf courses on the habits of the Bighorn Sheep. As part of our initial discussion, I provided Dr. Douglas a complete package on the Shadowrock project including, but not necessarily limited to, the material provided the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the California Department of Fish and Game. The material was contained in a report entitled Project Summary Report and this Report was augmented with numerous graphics that characterized the various manmade and natural elements on and around the Shadowrock project.

The various graphics characterized a links or target golf course that identified around 90 acres of golf elements that was bordered and trans-sected with numerous natural and naturalized linkages which would permit wildlife, albeit deer, Bighorn Sheep, cougar, coyote, etc., to move through and around the golf course without having to touch any golf course elements i.e., walk across tees, greens or fairways if the animal chose not to take that course. The graphics noted that there were north, south, east and west animal activity corridors maintained throughout the golf course area.

Dr. Douglas reviewed the material provided him, through my office, and I followed-up with a subsequent telephone conversation with him regarding the project matter. Dr. Douglas indicated that based on his many years experience with the Bighorn that the proposed link-style golf course should not pose any significant danger to the long-term survivability of the Bighorn Sheep. He felt that the Sheep would continue their migration patterns in, around and through the golf course given the relatively benign nature of the project's design impact on the environment. The added value of the animal activity corridors provided through the link-style nature of the golf course added to his opinion that the golf course would not propose any significant threat to the Bighorn Sheep.

ILBURN
RPORATION

Strategic Planning & Environmental Services

July 22, 1997

Mr. Mark Bragg
Shadowrock
801 East Tahquitz, Suite 101
Palm Springs, California 92262

Subject: Shadowrock – Nationwide Permit No. 96-0038900-RRS

Dear Mr. Bragg:

This letter is sent in response to your request to address issues raised by the US Fish and Wildlife Service (Service) in their July 14, 1997, letter to you. The letter states that neither the Service nor the US Army Corps of Engineers (Corps) has received the results of surveys conducted for seven species of concern to the Service relative to the Shadowrock project. My understanding is that there were three additional species to survey this spring. That understanding is based on our January 17, 1997 and March 6, 1997 meetings with the Service and the Corps. At these meetings, we discussed at great length what if any additional surveys were needed for the project and what protocols should be followed. At our March 6 meeting, I informed Service and Corps staff that the spring surveys had been started and discussions about protocol needed to be concluded immediately in order to conduct surveys during the spring season.

The July 14, 1997 letter from the Corps does not accurately represent the discussions that we had with the Service and the Corps. Subsequent to the March 6 meeting, I communicated the survey protocols in my March 11, 1997 letter to the Service, which was responded to in their March 18, 1997 letter to me. Those communications all refer to three species only. The surveys for those three species were sent to you and Mr. Hardy Strozier on June 13, 1997.

Although the earlier surveys of the site did not necessarily target these species, they did indicate that there was little likelihood of these species being found on-site. However, we conducted the indicated surveys per the protocols identified in the Service's March 19th letter. The results of those surveys were negative for the California red-legged frog, southwestern arroyo toad, and the triple-ribbed milkvetch. The site is within the potential range of these species but does not contain the specialized habitat requirements for them. No bighorn sheep had been observed in the earlier surveys nor where any sheep observed this spring.

The surveys that were conducted this spring, April-June 1997, were complete surveys of the site. Therefore, they meet the protocol for desert tortoise surveys in addition to the three species that were originally identified by the Service. The biologists conducting the surveys have many years of experience with these species in desert environments and would have observed any

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desert tortoise (or habitat) while searching for the triple-ribbed milkvetch, also they would have observed any desert slender salamander (or habitat) while looking for California red-legged frogs and southwestern arroyo toads. While the surveys were intended to target the original three species, their conduct is sufficient to determine presence or absence of all five species referred to in the latest letter.

The avian species mentioned were surveyed for last year and were found to occur in the Chino Creek drainage. Since that survey, we have assumed that the creek is habitat for both the least Bell's vireo and the southwest willow flycatcher. It is my understanding that the course was redesigned to avoid these areas due to the presumption of habitat.

I hope this clarifies for you the surveys that were conducted. It should also be noted that these results are consistent with the previous surveys conducted by others on this site. If you have any other questions please call me at 909/890-1818.

Sincerely,

Paul Kielhold

Paul Kielhold

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"LIMESTONE ENDEMIC " PLANTS IN THE SAN BERNARDINO MOUNTAINS, EXAMINATION OF THE FACTS

HOWARD BROWN, PLUESS-STAUFER (CALIFORNIA) INC. P. O. BOX 825 LUCERNE VALLEY CA, 92356

INTRODUCTION

The U.S. Fish and Wildlife Service (U.S.F.W.S.) has proposed listing as threatened and endangered five plants which are believed to be restricted to limestone substrates in the northern San Bernardino Mountains, Southern California (Fig. 1). The U.S.F.W.S. proposal indicates the plants are limestone endemic, and that they are threatened by habit loss from limestone mining and commercial developments (Federal Register 1991, Vol. 56, No. 223, page 58332).

The plants proposed for listing include *Erigeron parishii (Parish's Daisy), Eriogonium ovalifolium var. vineum (Cushenbury Buckwheat), Astragalus albens (Cushenbury Milkvetch), Lesquerella kingii ssp. bernardina (San Bernardino Mountains Bladderpod), and Oxytheca parishii var. goodmaniana (Cushenbury oxytheca).*

During the last 10 years numerous biological studies have been completed in the vicinity of existing or proposed limestone mines in the San Bernardino Mountains. During that time a hypothesis has evolved that the plants in question grow only on limestone, and the literature is filled with references to that effect (Barrows 1988, Krantz 1979, 1990, Neel 1987, U.S.F.S. 1988).

During the last two years all available data has been analyzed regarding the proposed listing, and as a result, it is concluded that the hypothesis of "limestone endemic" plants is incorrect, and has been perpetuated through the use of incorrect identification of the rock types on which the plants grow.

Based on the recent analysis of the data, the facts do not support the proposed listing of these plants as proposed by the U.S.F.W.S.

The following report summarizes the facts, and includes supporting data and references. Proposed alternative methods of plant protection are also presented.

SUMMARY OF CONCLUSIONS

The U.S.F.W.S. has not followed the procedures of the Endangered Species act of 1973 4(b)(6)(A, B), 16 U.S.C.A. 1533(b)(6)(A, B) or the Administrative Procedures Act, and has knowingly withheld from the public key scientific evidence used to arrive at their proposal.

Furthermore, this study of the facts has arrived at the following conclusions:

A. The plants are not limestone endemic. At least 34% of known populations do not grow on limestone.

B. Existing biological survey data is inadequate. Less than 1/2 of the potential populations may have been surveyed.

C. Future habitat disruption by limestone mining will be very minimal. Only 4% of the carbonate rock meets criteria to allow mining.

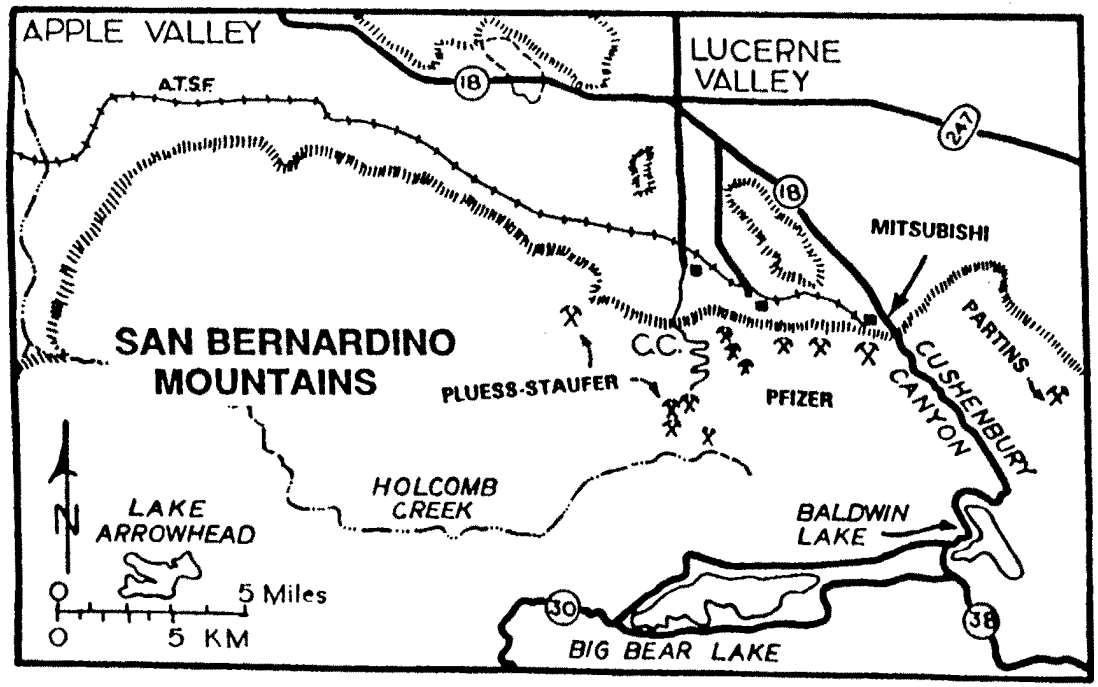

FIGURE 1. LOCATION MAP OF THE NORTHERN SAN BERNARDINO MOUNTAINS SHOWING MAJOR LIMESTONE MINING OPERATIONS

D. Natural recolonization of disturbed sites does occur for all species.

E. Reclamation potential to reestablish plant populations is high. Self sustaining populations have been established.

F. Plant refugia can be established which are not subject to habitat disruption, without negatively impacting the mining industry.

The facts do not support the proposed listing, and the plants should not be listed as Threatened or Endangered.

THE LIMESTONE ENDEMIC PLANT HYPOTHESIS

During the last decade a hypothesis has been proposed that the five plants proposed for listing in the San Bernardino Mountains grow only on limestone substrata (numerous biological references). Numerous biological reports have been written, and some published which state and restate that the only place on the planet the plants grow is on limestone in the San Bernardino Mountains (Krantz 1990). Use of the terms "limestone endemic" implies knowledge of geology. Biologists have been trained to identify plants, but are not geologists, and have misidentified rock types and substrata. This is partly the fault of previous poor geologic work, which had produced poor maps, in which all carbonate rock is lumped as limestone (Dibblee 1964). The biological studies then started and perpetuated the limestone endemic hypothesis, as well as the idea that all carbonate is limestone, and that all limestone is destined to be mined, and thus the habitat will be lost and the plants will become extinct.

Unfortunately, untill recently the facts have not been known. It is time to present the facts and dispell the incorrect hypothesis.

Detailed geologic mapping in the San Bernardino Mountains (Brown 1987, 1991, 1992, Matti et al. 1994) has shown that sedimentary carbonate rocks formerly known as the Furnace Limestone (of Carboniferous age) are in fact nearly 40% dolomite (and include rocks of Cambrian thru Pennsylvanian age). Many of the so called "limestone endemic" plants are not growing on limestone, but are in fact growing on other rock types. During the last few years a lot of good new geological and biological data has become available, some of which was not known at the time the plants were proposed for listing. The remainder of this paper will focus on presenting the facts regarding the so called "limestone endemic" plants.

THE PLANTS ARE NOT LIMESTONE ENDEMIC.

Many populations have been documented which are not growing on limestone substrates. Tables 1 and 2 show the distribution of the plants by substrata type. Of the 120 plant populations shown in Table 1, 40 populations or 34% are not growing on limestone. Table 2 using an expanded data area, indicates that 42% of the known combined populations are not growing on limestone. A recent itemized listing documents 50 occurrences not growing on limestone, and includes populations not shown on Table 1. Data presented by Tierra Madre (1992), and Table 2 indicates numerous populations (8) of Parish's Daisy (15%) are growing on granite substrata. Table 2 shows that 60% of the known populations of Cushenbury Buckwheat are not growing on limestone. Clearly, this large number demonstrates that plant

TABLE 1. DISTRIBUTION OF THE 5 PLANTS AND SUBSTRATA TYPE BY AREA.

QUAD NAME	TOTAL PLANT OCCURRENCES	PLANT POPULATIONS ON LIMESTONE SUBSTRATA	PLANT POPULATIONS NOT ON LIMESTONE SUBSTRATA
FAWNSKIN	24	10	14
BUTLER PEAK	4	3	1
BIG BEAR CITY	79	65	15
COUGAR BUTTES	0	0	0
RATTLESNAKE CANYON	4	1	3
ONYX PEAK	4	2	2
MOONRIDGE BIG BEAR LAKE	1	0	1
PIONEERTOWN YUCCA VALLEY AREA	4	0	4
TOTAL	120	81 (66%)	40 (34%)

Based on Tierra Madre overlays on Geology maps.2

populations are not limestone endemic as claimed in the proposal. As can be seen from the tables, no known populations of Lesquerellia Kingii are growing on limestone.

EXISTING SURVEY DATA IS INADEQUATE TO SUPPORT THE PROPOSED LISTING

Recent studies have identified over 120 populations, and several more populations have been recently identified during 1994. The total known number of combined populations of the five plants is at least 130. At the time of the proposed listing, the U.S.F.W.S. indicated that there were less than 75 known populations of the five species combined. During the last two years the number of known populations has nearly doubled.

All recent surveys have documented new plant populations, many not growing on limestone. The surveys by Barrows in 1988 resulted in significant increases in plant populations and estimates of total numbers of plants. The recent T.M.C. survey recognized at least 9 previously undocumented occurrences and populations during only a 4 day period. Their study indicates large areas of unsurveyed habitat, and it is likely that less than half of the plant populations have been surveyed. A recent survey which included geologists and biologists identified 13 previously undocumented plant populations in one day (John Minch and Associates personal communication 1993). This indicates that at the time the plants were proposed for listing innadequate survey data was available.

Map overlays showing plant populations demonstrate that within the Fawnskin and

TABLE 2. DISTRIBUTION OF SUBSTRATA BY SPECIES

Plant Name	Number of Known Populations	Growing on limestone Substrata	Not growing on Limestone Substrata % of total
Eriogonium Ovalifolium var. Vineum	30	12	18 (60%)
Erigeron Parishii	56	34	22 (39%)
Astragalus Albens	29	26	3 (10%)
Lesquerelia Kingii	6	0	6 (100%)
Oxytheca Parishii	4	0?	4? (100%?)
TOTAL	125	72 (58%)	53 (42%)

Based on known populations 42% are not growing on limestone. As a whole the plants are not limestone endemic. Includes data from Yucca Valley area and Tierra Madre data.

Big Bear City Quadrangles, 83% of the known plant occurrences are within 1 mile of existing limestone quarries. This indicates that surveys are concentrated in the vicinity of the existing limestone mines (because of the proposed mining activities). Large areas of Limestone and Dolomite of identical habitat have been inadequately surveyed or not surveyed at all.

Based on the most heavily surveyed areas (Big Bear City quad), a plant population occurs every 122 acres of carbonate rock. It may be predicted therefore, that the 32,000 acres of virtually identical carbonate habitat may contain 267 plant populations within the 8 quadrangles. This data suggests that less than half of the potential populations may have been surveyed.

Several populations of Parish's daisy are known to be growing on granite substrata in the Pioneer Town, Yucca Valley area, more than 20 miles from the Big Bear area. No survey data is available for the intervening area, which covers up to 20,000 additional acres.

Population estimates used by the U.S.F.W.S. were low and did not consider climatic fluctuations. Several new populations of Cushenbury Milkvetch were found during 1993 and 1994 after the heavy winter rains.

Habitat boundaries are not well defined, and many habitat areas have not been surveyed. The recent Tierra Madre (1992) study extended the habitat boundaries, and suggested that large areas of land have been inadequately surveyed.

Available data reinforces the conclusion that survey data is inadequate to support the proposed listing.

FUTURE HABITAT AND PLANT DISRUPTION BY LIMESTONE MINING WILL BE MINIMAL.

Compilations from geologic map overlays indicate only 2-4% of the total carbonate rock meets criteria to consider mining in the foreseeable future. Only 0.1% of the total surface area of the San Bernardino National Forest will be impacted by future limestone mining.

Limestone is the only product produced. No or other carbonate is currently produced as a product from mining in the San Bernardino Mountains.

Table 3 shows that a study of known plant population distribution relative to future minable limestone deposits indicates that only 15 occurrences or 12% have been, or may be impacted by existing and or future limestone mining.

As previously shown, surveys have concentrated within 1 mile of existing quarries, and inadequate survey data is available away from limestone mines. As survey data improves, and the number of plant populations increases in areas of no minable Limestone or Dolomite, the percentage of impacted populations will decrease and may ultimately be 6% or less.

Table 3 shows future impact to plant habitat and populations is very small relative to the benefits to society as a result of products produced from limestone mined in the San Bernardino Mountains.

The facts indicate minimal threat to the plant populations by limestone mining, and thus listing is unwarranted.

NATURAL RECOLONIZATION OF DISTURBED SITES DOES OCCUR FOR ALL SPECIES

Virtually all recent studies (Barrows 1988, Krantz 1979, and TMC 1993) document natural recolonization does occur for all species proposed for listing. Plants growing in disturbed sites in some cases are more vigorous and have higher proportion of flowering individuals.

Parishs Daisy (Erigeron Parishii) Barrow s (1988) noted, "The species can tolerate slight disturbance. . ." She noted Parish's Daisy growing in roads at seven locations. Some of the roads had been disturbed within one year. She noted two sites where Parish's Daisy was growing in an old slide area.

Barrows (1988) studies in Blackhawk Canyon noted 21 Parish's Daisy had recolonized disturbed sites including old roads and drill pads. In another disturbed area she noted 1500 plants were growing. She noted "here as elsewhere in its range, Parish's Daisy was found growing in the recently graded roads that bisect the population. Plants growing in the roads were very healthy looking with 15-25 flower heads per plant or more."

Barrows (1988) studies at Partins Limestone indicated that "Parish's Daisy appears to tolerate slight disturbance and grow readily in old or slightly used roads. Plants growing on roads appear quite vigorous. . ." Maile Neel (U.S.F.S. 1987) noted "Parish's Daisy is sometimes found on and along roads, and appears to be capable of recovering after moderate disturbance."

TABLE 3. EXISTING AND POTENTIAL FUTURE IMPACT BY LIMESTONE MINING

Species Name	Known Populations	Impacted by Future Mining	% Impacted
Erigonium Ovalifolium	30	3	10%
Erigeron Parishii (Includes Pioneertown area populations)	56	7	12.5%
Astragalus Albens	29	5	17%
Lesquerellia Kingii	6	0	0%
Oxytheca Parishii	4	0	0%
Total	125	15	12%

88% of known populations would not be impacted by future mining.
.Based on Tierra Madre overlays.

T.M.C. (1992) has observed Parish's Daisy growing in an old road in the Furnace Canyon area. Parishs Daisy has also been observed naturally recolonizing a road cut (Orlando Mistrata Rancho Santa Ana pers. comm 1992) and growing in an old quarry at White Ridge (Tim Krantz personal communication 1986). USDA Forest Service data (1992) indicate that Parish's Daisy has recolonized at 2 quarries (Bonnie Camp and Gordon) on the Pfizer Inc. claims.

Numerous studies show that Parish's Daisy naturally recolonizes disturbed sites.

Cushenbury Buckwheat (Erigonium Ovalifolium var vineum) Barrows (1988) indicated, "There are a few instances. . . where individual plants can be found growing on old roads, slides, or overburden piles." Krantz (1979) noted 4000 plants at Blackhawk Canyon near inactive mines, some of which may have recolonized disturbed sites. Krantz also noted small numbers of plants on talus slopes at terrace springs. T.M.C. (1992) surveys noted several examples of Cushenbury Buckwheat growing in old roads in the Rose Mine area. Other examples include a drill road near the Arctic Canyon Quarry, an old road near Furnace Canyon, and an old road near White Ridge. T.M.C. (1992) noted several Cushenbury Buckwheat growing in mine tailings on the north slope of North Peak, west of White Knob.

Several recent studies have documented Cushenbury Buckwheat recolonizing old roads, slides, overburden and tailings piles.

Astragalus Albens is known from several studies to naturally recolonize disturbed sites.
The U.S.F.S. (1992) documented Astragalus

TABLE 4. DISTRIBUTION OF CARBONATE ROCKS NORTHERN SAN BERNARDINO MOUNTAINS AND ACRES OF LIMESTONE TO BE MINED IN THE FUTURE

7 1/2' QUADRANGLE NAME	APPROXIMATE TOTAL ACRES CARBONATE ROCK	APPROXIMATE ACRES DOLOMITE	APPROXIMATE ACRES LIMESTONE	APPROXIMATE ACRES LIMESTONE DOLOMITE MIX OR NOT KNOWN	APPROXIMATE ACRES WHITE LIMESTONE TO BE MINED IN FUTURE*	APPROXIMATE ACRES CEMENT GRADE LIMESTONE TO BE MINED IN FUTURE*
FAWNSKIN	10,350	5,650	2,550	1,950	200	0
BUTLER PEAK/ LUCERNE VALLEY	1,350	320	370	610	50	0
BIG BEAR CITY	9,650	1,750	7,480	0	120	300
COUGAR BUTTES	6,250	0	6,250	0	0	0
RATTLESNAKE CANYON	1,170	260	875	0	35	0
ONYX PEAK	2,500	650	1,300	0	0	0
MOONRIDGE/ BIG BEAR LAKE	1,350	1,350	0	0	0	0
TOTALS	32,620 ACRES	9,980 ACRES 30.6 %	18,825 ACRES 57.7%	3,110 ACRES 9.5 %	405 ACRES 1.2%	300 ACRES 0.9%

* Does not count previously mined limestone (existing quarry limits), potential plant recolonization or reclamation. Considers only acres of ore to be mined. Does not count overburden dumps or roads, which may or may not be constructed in carbonate rock.

recolonization of a disturbed site at the Right Star mine area. They noted that while densities were lower in the disturbed area, the proportion of flowering adult individuals was higher than in undisturbed sites. Astragalus has also been documented recolonizing at old quarries (Bonnie Camp and Gordon) on the Pfizer claims (U.S.F.S. 1992).

Barrows (1988) indicated "Astragalus appears to tolerate slight disturbance." At 4 locations plants were found growing in the middle of old mining roads. At Partins she indicated that at one location "more plants (Astragalus) were found on the roads than on the undisturbed habitat on the same slope. Other studies noting that Astragalus naturally recolonizes disturbed sites include California Native Plant Society (1988), Maile Neel U.S.F.S. (1987), and Tierra Madre study (1992).

Numerous botanical studies have demonstrated Astragalus Albens naturally recolonizes sites disturbed by mining related activities.

Lesquerella Kingii and Oxytheca Parishii have been documented along road edges at two sites (U.S.F.S. 1992). Lesquerella Kingii has also been documented in areas of limited disturbance. The U.S.F.S. (1992) indicates that individuals were found in areas that had been lightly graded, and in an area that had been trenched and backfilled.

These plants have received less study than the other species, but both have been documented to recolonize disturbed sites.

Numerous studies have shown that all five species naturally recolonize disturbed sites including old roads, quarries, slides, overburden and tailings piles. Furthermore, several studies show that populations in disturbed sites may be more vigorous in terms of flower and stem production than populations in adjacent undisturbed sites. The fact that the plants show strong natural recolonization potential indicates they are not threatened, and therefore, listing is unwarranted.

RECLAMATION POTENTIAL TO REESTABLISH PLANT POPULATIONS IS HIGH

Current work by Rancho Santa Ana has established self sustaining populations of Parish's Daisy and Cushenbury Buckwheat at White Knob. Studies show that properties of the soil, specifically moisture retention is dominant over soil type. They indicate the plants perform equally well or better on some soil types which are not limestone derived.

Rancho Santa Ana Botanical Gardens have completed two separate outplantings of Eriogonium Ovalifolium var vineum, and Erigeron Parishii at White Knob Quarry area.

The outplantings were propigated from seeds collected on site, and sprouted at the botanic gardens. The outplantings at White Knob were established during May 1991 and May 1992. The outplantings are adjacent to each other in a road cut along the haul road just below the quarry area, at an elevation of approximately 5000 feet. Substrata is granite bedrock, with a thin mantle of talus composed of mixed carbonate (Limestone and Dolomite) and non carbonate (Granite, Chert, Hornfels) materials. The site approximates the natural habitat.

The first outplanting was May 1991, and 81 Parishs Daisy and 70 Cushenbury Buckwheat were planted. They were hand watered

TABLE 5. RECOLONIZATION POTENTIAL

Species	Recolonization Examples	References
Erigeron Parishii	Roads (7 locations)	Barrows 1988
	Slides	Barrows 1988
	Drill Pads	Barrows 1988
	Roads	Neel 1987
	Roads several locations	TMC 1992
	Road cut	Mistrata 1992
	Quarry	Krantz 1986
	Quarries (2 locations)	U.S.F.S. 1992
Eriogonum Ovalifolium var vineum	Roads	Barrows 1988
	Slides	Barrows 1988
	Overburden piles	Barrows 1988
	Inactive mines	Krantz 1979
	Roads (5 or more locations)	T.M.C. 1992
	Tailings piles	T.M.C. 1992
Astragalus Albens	Quarries (3 locations)	U.S.F.S. 1992
	Roads (4 locations)	Barrows 1988
		C.N.P.S. 1988
		Neel 1987
		T.M.C. 1992
Lesquerella Kingii	Graded area	U.S.F.S. 1992
	Trenched area	U.S.F.S. 1992
Oxytheca Parishii	Road edges (2 locations)	U.S.F.S. 1992
TOTAL ALL 5 SPECIES DOCUMENTED RECOLONIZATION	36 EXAMPLES OF RECOLONIZATION (118 KNOWN POPULATIONS) INCLUDING ROADS, QUARRIES, DRILL PADS, OVERBURDEN PILES, TAILINGS PILES.	

through November 1991, and have received no supplemental care since that time. Current (July 1994) survival statistics are as follows:

Erigeron Parishii 68%
Eriogonum Ovalifolium var vineum 77%

Erigeron Parishii has flowered more or less continuously through the growing season. To date (1993) 266 seedlings of Erigeron Parishii have been observed. All counted seedlings are in close proximity to planted individuals. Seedlings were first observed in July, 1992. Eriogonum Ovalifolium var. vineum plants outplanted in 1991, flowered in May of 1992. 54 produced inflorescences during this month. A few seedling Eriogonum have also been observed to date.

Second outplanting was May, 1992, and 74 individuals of Erigeron Parishii and 97 individuals of Eriogonum Ovalifolium var vineum were planted. These plants were watered through a drip system for one season (1992). Current (1993) survival statistics are as follows:

Erigeron Parishii 100%
Eriogonum Ovalifolium var. vineum 97%

Rancho Santa Ana studies indicate that soil properties such as moisture retention is dominant over soil type, and that plants perform equally well in some soil types not derived from limestone. Although studies are not yet complete, the data indicates self sustaining populations of sensitive plants can be established. Through reclamation it may be possible to realize a net increase in plant populations, and thus the proposed listing as threatened and endangered is unnecessary.

ALTERNATIVE PLAN FOR PLANT PROTECTION

The San Bernardino National Forest Management Plan was completed in 1987. The intent of direction of L.R.M.P. is that 2/3 of the plant populations would be protected in perpetuity. Most of the known populations are on National Forest managed land.

Data indicates that only 2-4% of carbonate habitat, and perhaps only 6% of the plant populations will ever be impacted by Limestone mining (assuming no recolonization or reclamation, which has been demonstrated to occur). Therefore, the Forest Service management goals of preserving 2/3 of the populations can be met without negatively impacting the mining industry.

The geological/botanical overlay maps now available will allow good land use planning. Refugia can be established in areas which contain no minable limestone resources, which would allow protection of the plants without negatively impacting the future economic limestone resources.
Thus, it is clear that Forest Service management goals can be met, and listing of the plants is unnecessary.

A cooperative planning effort involving both botanical, geological and mineral resource input, and both government management agencies, and the mining companies, can produce a land use plan which protects plants without sacrificing future limestone mineral resources upon which our society depends.

CONCLUSIONS

The U.S.F.W.S. has not followed the procedures of the Endangered Species act of 1973 4(b)(6)(A, B), 16 U.S.C.A. 1533(b)(6)(A, B) or the Administrative Procedures Act, and has knowingly withheld from the public key scientific evidence used to arrive at their proposal.

Furthermore, this study of the facts has arrived at the following conclusions:

A. The hypothesis that the plants are "limestone endemic" is incorrect. The plants are not limestone endemic. More than 1/3 of the known populations are not growing on limestone.

B. Existing survey data at the time the plants were proposed for listing was inadequate. Data suggests that far less than 1/2 of the populations may have been surveyed.

C. Future habitat disruption by limestone mining will be minimal. Only 2-4% of the carbonate rock meets criteria to allow mining. Threat to habitat has not been established.

D. Natural recolonization of disturbed sites does occur for all species.

E. Reclamation potential to reestablish plant populations is high. Self sustaining populations have been established.

F. Plant refugia can be established to protect plants without negatively impacting the mining industry, or sacrificing limestone mineral resources upon which our society depends.

It is the conclusion of this study that the facts indicate the plants should not be listed. A cooperative approach involving land management agencies and the mining industry can produce a land use plan which protects plants without sacrificing mineral resources.

REFERENCES

Barrows, K., 1988a, Element Conservation Plan: Astragalus albens; unpub report. To San Bernardino National Forest and Nature Conservancy.

Barrows, K., 1988b, Element conservation Plan: Erigeron Parishii; unpubreport to San Bernardino National Forest, and Nature conservancy.

Barrows, K., 1988c, Element Conservation Plan Eriogonum Ovalifolim ssp.vineum; unpub report to San Bernardino National Forest and Nature Conservancy.

Barrows, K., and Myers, M., 1988, Element Conservation Plan Lesquerellia kingii ssp. bernardina; unpub. report to San Bernardino National Forest and Nature Conservancy.

Brown, H., 1987, Geological setting of the Lucerne Valley Limestone mining district, California; in Pierce, W. ed., 21st Annual Industrial Minerals Confrence Procedings, Ariz. Bur. Mines Spec. Rept 4, p. 44-54.

Brown, H., 1991, Stratigraphy and peleogeographic setting of Paleozoic rocks in the San Bernardino Mountains California; in, Cooper, J. D. and Stevens, C. H., Paleozoic Paleogeography of the Western United States II; S.E.P.M., p. 193-208.

Brown , H., 1991, Detailed Geologic Maps of the San Bernardino Mountains; Goelogy Society of America, abs. w. prog. v. 23 p. A478.

Brown, H., 1992, Limestone and Dolomite in a portion of the San Bernardino Mountains including the Fawnskin, Lucerne Valley, Butler Peak, Big Bear City, Rattlesnake Canyon, Couger Buttes and Onyx Summit and Moonridge 7 1/2' quadrangles: unpub maps scale 1:24,000.

California Native Plant Society, 1988, Inventory of Rare and Endangered Vascular Plants of California.

California Natural Diversity Data Base 1991, Information on occurrences of various plants.

Dibblee, T., 1964, Geologic map of the Lucerne Valley Quadrangle (15'); U.S.G.S. Misc. Inv Map I-426.

Krantz, T., 1979a, A Botanical Investigation of Erigeron Parishii; unpub. report to San Bernarndino National Forest

Krantz, T., 1979b, A Botanical Investigation of Eriogonium Ovalifolium ssp vineum; unpub report to San Bernarndino National Forest

Krantz, T., 1990, A guide to the rare and unusual wildflowers of the Big Bear Valley Preserve; Pub. by Friends of the Big Bear Valley Preserve, p. 28-29.

Matti, J., and others, 1994, Geologic Map of the San Bernardino Mountains area; U.S. Geological Survey Open File Rept. 93-544.

1992, Pluess-Staufer (California), Inc. Reclamation plan for mining operations on Forest Service Land; submitted to San Bernardino County.

Powell and others, 1982, Mineral Resource Potential of the Sugarloaf Roadless area California; U.S. Geological Survey Misc. field studies map MF 1606A.

Rancho Santa Ana Botanical Gardens 1992, Report on Planting Data at White Knob; unpub report to Pluess-Staufer (California), Inc.

Sadler, P.M., 1982, Geology of the Onyx Peak 7 1/2' Quadrangle; California Div. Mines, OFR 82-18.

San Bernardino National Forest 1988, Environmental Assessment of the Pluess-Staufer (California), Inc. Plan of Operations.

San Bernardino National Forest 1989, Land and Resource Management Plan.

San Bernardino National Forest 1992, Technical Comments on Proposed Plant Listing.

Tierra Madre Contsultants, 1992, Evaluation of Carbonate Substrates and Distribuions for Five Plants Reported from the San Bernardino Mountains, San Bernardino County, California; unpub. report with appendices and maps, pp. 31.

KERN COUNTY
WATER AGENCY

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Division 7

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Written Statement of the Kern County Water Agency
Pursuant to the
Resources Committee Field Hearing on the Endangered Species Act
July 9, 1999
Hemet, California

Kern County is located at the southern end of the San Joaquin Valley, and is part of the large agricultural heartland of California's Central Valley. The Kern County Water Agency is the second-largest contractor for a water supply from the California State Water Project. Most of this water supply is used to irrigate a wide variety of high value crops, such as almonds, grapes, cotton and alfalfa. The result of this irrigation is Kern County's $2 billion agricultural economy.

In recent weeks, however, that economy was threatened by actions taken by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act. In order for Kern County to receive its water supply, water must be pumped from the Sacramento-San Joaquin Delta, where most of the state's rivers converge. The Delta is both home and migratory pathway for several federally-listed endangered species of fish. In May, a portion of the population of one species, the Delta smelt, converged in an area of the Delta located near the State Water Project pumping plant, and remained there for several weeks longer than usual. While we have become resigned to operating under certain pumping restrictions required by the Service under the ESA, this year these restrictions lasted well into our peak irrigation season. As demand for water went up, water from a reservoir located south of the Delta was used, and it began to be drawn down at a dangerously rapid rate. As the pumping restrictions continued, water supplies began to run short.

Farmers in the San Joaquin Valley, with hundreds of thousands of acres of growing crops in the ground, suddenly found themselves faced with water shortages--and this in a year which had been classified by the state Department of Water Resources as "wet." *The water shortage was actually being caused by the ESA.* In addition, as the supply declined water quality began to suffer. This had serious implications for Silicon Valley microchip manufacturers, who must have a high-quality water supply. So two of California's major economic engines were being impacted by ESA restrictions for the Delta smelt.

While we realize that the Service needs to protect the Delta smelt under the ESA, it is not clear that pumping restrictions are necessary to carry out that responsibility. It appears from scientific data analysis that the actual effect of the pumps on the overall Delta smelt population may not be significant enough to warrant pumping restrictions such as we saw this spring. Additional evidence of this may be seen in the less restrictive way in which the Service has handled similar risks to Delta smelt in other locations in the Delta area. These other locations have not been subjected to pumping restrictions of any kind.

Mailing Address:
P.O. Box 58
Bakersfield, CA 93302-0058
Phone: 805/634-1400
Fax: 805/634-1428

The ESA calls for the federal government to cooperate with state and local agencies to resolve conflicts between preservation of endangered species and reliable water supplies. During this recent emergency, the Service appeared to be ignoring the serious concerns of state and local agencies. Even more frustrating, however, is that earlier this year, negotiations had been underway with the Service to create an "environmental water account." This account would have set aside an amount of water specifically earmarked for environmental flows, which the Service could then use to meet fishery needs. Our Agency was a major part of the proposed plan, by offering to backstop environmental water needs with banked groundwater supplies. Negotiations came to a halt in March, however, when the Service indicated that the replacement cost of such water, to be paid to the state and federal contractors providing it, was too high. Had the environmental water account been in place, water contractors would have had a "cushion" for Delta smelt pumping restrictions. As it is, the Service has essentially allowed almost half a million acre-feet of SWP and Central Valley Project supplies to flow out into the Pacific Ocean, with no financial or supply compensation to the water contractors.

State Water Contractors
455 Capitol Mall, Suite 220 • Sacramento, CA 95814-4502
Steve Macaulay, *General Manager* (916) 447-7357 • FAX 447-2734

Directors

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Wallace G. Spinardi
Antelope Valley-East Kern Water Agency

June 18, 1999

Mr. Wayne White
United States. Fish and Wildlife Service
3310 El Camino Avenue, Suite 301
Sacramento, CA 95821

Re: Potential Delta Smelt Take from Pittsburg and Contra Costa Pumping Plants

Dear Mr. White:

Last November we reviewed the Environmental Assessment (EA) for the Pacific Gas and Electric Company's (PG&E) Multi-species Habitat Conservation Plan (HCP) for their Pittsburg and Contra Costa power generating facilities and provided comments to you. The data presented in the EA indicated that an average of 500,000 Delta smelt are killed annually through impingement and entrainment at the facilities' cooling water pumps. This amount of Delta smelt take is comparable in magnitude to Delta smelt take at the State Water Project (SWP) and Central Valley Project (CVP) export pumps. Since the release of the EA, PG&E has sold the two power generating facilities to Southern Energy, Inc.

In recent weeks, SWP and CVP exports have been drastically reduced to lower the incidental take of Delta smelt. To date, no realistic and complete makeup plan has been identified to repay these water supply reductions as provided for in the December 1994 Bay-Delta Accord. One goal of these export reductions has been to provide for migration of Delta smelt downstream of the Delta. As indicated by the most recent mid-water trawl distribution (copy attached), a majority of the Delta smelt are either already downstream of the Delta (below Station 520), or on the downstream edge of the Delta (Stations 801-889). Unfortunately, this preferred location for the Delta smelt is directly within the influence of the Southern Energy, Inc. power generating facilities.

Questions about the amount and significance of the Delta smelt take at the Southern Energy, Inc. plants have been asked of U.S. Fish and Wildlife Service officials at both the May 25, 1999 and June 15, 1999 CALFED Ops Group meetings. Additionally, numerous phone calls to USFWS staff have requested the same information. No information has been provided by the USFWS in response to these requests, other than a verbal response at the June 15, 1999 CALFED Ops Group that no monitoring is occurring at the Southern Energy, Inc. plants.

Currently, the USFWS appears to be selectively enforcing the Endangered Species Act. SWP and CVP exports in the southern Delta, where recent surveys indicate that smelt concentrations are relatively low, have been drastically reduced. By contrast, we are not aware of any additional restrictions, or even a monitoring requirement, that have been enforced on the Southern Energy pump intakes in the portion of the estuary with the highest current densities of smelt. Allowing the continuing take of Delta smelt at the Southern Energy power plants implies that the USFWS does not consider the Delta smelt to be in jeopardy and should not limit pumping operations of other water users in the Delta.

As indicated earlier, we have been unable to receive several pieces of information from the USFWS and would appreciate responses to the following questions:

1. What permits for take have been issued to the Southern Energy, Inc. power generating facilities?
2. How much have the Southern Energy, Inc. power generating facilities been operated during the months of May and June?
3. What kind of monitoring is being conducted at the Southern Energy, Inc. power generating facilities to identify the possible take of Delta smelt?

If you have any questions about our concerns, please call me at (916) 447-7357. Thank you for your attention in this matter.

Sincerely,

Steve Macaulay
General Manager

Attachment

Cc: Secretary Bruce Babbitt
Senator Dianne Feinstein
Senator Barbara Boxer
Michael Spear, USFWS
Lester Snow, CALFED
Thomas Hannigan, DWR
Kirk Rodgers, USBR
Member Agencies

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

June 22, 1999

The Honorable Bruce Babbitt
Secretary of the Interior
United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Mr. Babbitt:

We write to express the concerns of the California Senate Committee on Agriculture and Water Resources and the California Assembly Committee on Water, Parks and Wildlife regarding a potential water supply crisis for California users that receive water supplies from the Sacramento-San Joaquin River Delta. This crisis could have devastating consequences for much of the state, with resulting economic impacts that will be felt from California to Washington D.C. We ask that you intervene immediately to mediate the situation before it grows worse.

The crisis we write about is the current constraint on Delta export pumps imposed by the U.S. Fish and Wildlife Service (Service) for the protection of Delta Smelt. Our two committees held a joint hearing on this topic today and took testimony from state and federal officials, and from stakeholders. The testimony reveals that this is a difficult and complex issue, with no easy answers. However, based on the testimony, some conclusions can be drawn.

First, it seems clear that the water supply crisis for Delta water users is real. The current rate of draw down of San Luis Reservoir is such that Silicon Valley manufacturers may experience economically damaging degradation of water quality in August, and farmers throughout the San Joaquin Valley could literally run out of water during the peak of their growing season.

Second, while it is clear the Service must protect Delta Smelt under the law, it is less clear that the current pumping restrictions are necessary to discharge that legal obligation. It appears that the actual effect of the Delta pumps on the majority of the Smelt population may be much less significant than originally thought. Also, the approach the Service is taking toward similar pumping operations elsewhere in the Delta is significantly less restrictive than is being imposed on the export pumps.

The Honroable Bruce Babbitt
Page 2
June 23, 1999

Third, in light of the evidence that Delta Smelt populations will not be jeopardized by an increase in export pumping, and the evidence of current and future damage to urban and agricultural California, we ask that you take immediate action to increase pumping at the Delta export pumps. Further, we ask that you work with local agencies to develop appropriate compensation for measures those agencies have already taken to shift to more costly sources of supply in an effort to help avert this crisis.

Fourth, it was clear from today's testimony that this crisis could have been avoided. As part of the CALFED effort, state and federal agencies and stakeholders spent January and February this year developing a program known as the Environmental Water Account to avert just this type of crisis. Unfortunately, that program was halted by the U.S. Department of Interior before it could be completed. As a result, California is forced to manage the water supply for a $40 billion computer industry, and a $28 billion agriculture industry in crisis mode. Instead of a CALFED success story, we are left with yet another example of poor planning that requires emergency measures to solve.

Finally, we must conclude that the Bay-Delta Accord signed by you and former Governor Wilson did not provide Delta water users with the protections from endangered species actions that were represented. This crisis and earlier actions by the Service regarding in-Delta barriers raise serious questions about the Service's commitment to the provisions of the Endangered Species Act that call for the federal government to work with state and local agencies in a cooperative manner to resolve conflicts between actions to protect endangered species and reliable water supplies. This, in turn, casts doubt on the prospects for a CALFED solution with sufficient credibility to warrant the faith and trust of the water user community.

We recognize that there are a variety of views on this issue, and that much needs to be done to comprehensively solve the causes of such problems, rather than merely treating the symptoms when crises such as this arise. We believe you can best accomplish this by ensuring that the agencies within your department work to achieve a balanced solution.

In closing, we commit our time and energies to work with you and your staff in resolving this crisis and developing lasting solutions to these difficult problems.

Sincerely,

JIM COSTA, Chair
Senate Committee on Agriculture
and Water Resources

MICHAEL J. MACHADO, Chair
Assembly Committee on Water,
Parks and Wildlife

State Water Contractors
San Luis & Delta-Mendota Water Authority

June 28, 1999

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Secretary Mary Nichols
Resources Agency
1416 9th Street
Sacramento, CA 95814

Acting Regional Director Kirk Rodgers
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Director Thomas Hannigan
Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Director Mike Spear
U. S. Fish and Wildlife Service
2233 Watt Avenue, Suite 120
Sacramento, CA 95825

Director Robert Hight
Department of Fish and Game
1416 9th Street
Sacramento, CA 95814

Dear Secretaries Babbitt and Nichols, Directors Hannigan, Hight, Rodgers, and Spear,

As you are aware, we have been and are still being confronted with an ongoing water supply crisis. Continued Endangered Species Act restrictions on Delta pumping, coupled with summer water requirements south of the Delta, could result in San Luis Reservoir being nearly empty causing severe water quality and water supply impacts in our service areas.

Information available to us from your agencies late Friday is encouraging. We understand the most recent monitoring shows Delta Smelt are not threatened by operation of the federal and state Delta pumps. As a result, your agencies agreed to continue to increase pumping on Friday with the goal, barring unforeseen circumstances, to restore project operations by the end of this week. We appreciate the collaborative effort by your federal and state agencies in the last ten days that led to this decision.

At the local level, our agencies have been working daily with the Department of Water Resources (DWR) and the Bureau of Reclamation to evaluate and adjust our scheduled summer water deliveries from the State Water Project (SWP) and Central Valley Project (CVP) and to implement local voluntary programs with federal assistance to reduce summer deliveries from San Luis Reservoir.

The most recent projections available from DWR indicate that assuming the goal to restore Delta pumping moves ahead as planned together with reductions of our summer water deliveries from the SWP and CVP, storage at San Luis Reservoir may be maintained at levels which would

hopefully avoid the immediate water quality and water supply shortages feared by our water users.

While this immediate water crisis may be easing, we urge you to stay on top of this issue and continue the same level of diligence and cooperation to recover project storage as soon as possible.

The actions to protect fish over the past two months have been extraordinary and unprecedented. While we believe that planning and operational mistakes have been made this year, the purpose of this letter is not to criticize, but to urge a continued creative and proactive effort to solve water problems caused by this year's fish protection actions.

The actions imposed by the U.S. Fish and Wildlife Service since mid-April have reduced storage at San Luis Reservoir by almost 500,000 acre-feet. Absent these actions, San Luis Reservoir storage would have recovered sufficiently by year-end to safeguard water supplies should year 2000 bring dry conditions or unforeseen emergencies.

Recognizing that the fish protection actions this year were extraordinary, we urge equally extraordinary actions be taken this summer and fall to recover storage at San Luis Reservoir by the close of the year. If we fail to meet this goal, both fish protection measures and water supplies for our users will be in jeopardy next year.

This summer's crisis pales in comparison to what may be coming next year. An action plan must be developed to recover storage at San Luis Reservoir. We respectfully request this issue receive attention at the highest levels and you convene the responsible federal, state and local agencies together with the California stakeholders to move forward with the actions and funding required.

We look forward to your prompt response and pledge to do everything we can to assist.

Xc: President Clinton
Governor Gray Davis
Senator Dianne Feinstein
Senator Barbara Boxer
California Congressional Delegation
Senator Jim Costa
Assemblyman Mike Machado
California State Legislature
Assistant Secretary Patricia Beneke
California Business, Labor and Water Coalition
Agricultural Water Caucus
Environmental Water Caucus
Urban Water Caucus

Sincerely,

Walter L. Wadlow
President,
State Water Contractors

On Behalf of,
Alameda County Flood Control and Water Conservation District, Zone 7
Alameda County Water District
Antelope Valley-East Kern Water Agency
Casitas Municipal Water District
Castaic Lake Water Agency
Central Coast Water Authority
City of Yuba City
Coachella Valley Water District
County of Kings
Crestline-Lake Arrowhead Water Agency
Desert Water Agency
Dudley Ridge Water District
Empire-Westside Irrigation District
Kern County Water Agency
Littlerock Creek Irrigation District
Metropolitan Water District of Southern California
Mojave Water Agency
Napa County Flood Control and Water Conservation District
Oak Flat Water District
Palmdale Water District
San Bernardino Valley Municipal Water District
San Gabriel Valley Municipal Water District
San Gorgonio Pass Water Agency
San Luis Obispo County Flood Control and Water Conservation District
Santa Clara Valley Water District
Solano County Water Agency
Tulare Lake Basin Water Storage District

Sincerely,

Michael Stearns
President,
San Luis & Delta-Mendota Water Authority

On Behalf of,
Banta-Carbona Irrigation District
Broadview Water District
Central California Irrigation District
Centinella Water District
City of Tracy
Columbia Canal Company
Del Puerto Water District
Eagle Field Water District
Firebaugh Canal Water District
Fresno Slough Water District
Grassland Water District
James Irrigation District
Laguna Water District
Mercey Springs Water District
Oro Loma Water District
Pacheco Water District
Pajaro Valley Water Management Agency
Panoche Water District
Patterson Water District
Plain View Water District
Pleasant Valley Water District
Reclamation District 1608
San Benito County Water District
San Luis Canal Company
San Luis Water District
Santa Clara Valley Water District
Tranquility Irrigation District
Turner Island Water District
West Side Irrigation District
West Stanislaus Irrigation District
Westlands Water District
Widren Water District

BEAR VALLEY MINING DISTRICT

Established 1859
1000 Nana
Big Bear City, California
92314

RICHARD POMBO, CHAIRMAN
ESA OVERSIGHT FIELD HEARING, HEMET, CA
U.S. HOUSE OF REPRESENTATIVES
2411 RAYBURN H.O.B.
WASHINGTON D.C. 20515

RE; ILLEGALLY TRANSPLANTING ENDANGERED SPECIES FROM BEAR VALLEY TO HOLCOMB VALLEY BY BOTANIST TIM KRANTZ--TESTIMONY FOR THE OFFICIAL RECORD.

DEAR CHAIRMAN POMBO AND MEMBER OF THE COMMITTEE

I AM A LONG TIME RESIDENT OF BEAR VALLEY AND MY FAMILY HAS BEEN INVOLVED IN PROSPECTING AND MINING IN THE SAN BERNARDINO MOUNTAINS FOR MORE THAN 50 YEARS. CURRENTLY I AM COORDINATOR FOR THE BEAR VALLEY MINING DISTRICT.

SEVERAL YEARS AGO DURING THE 19980"S I WENT ON A FIELD TRIP WITH A LOCAL ENVIRONMENTAL GROUP TO SEE THE LOCAL FLORA OF THE AREA , THIS INCLUDED THE HOLCOMB VALLEY AREA IN THE SAN BERNARDINO NATIONAL FOREST NORTH OF BIG BEAR LAKE AND BIG BEAR CITY WHERE I LIVE. HERE IN BEAR VALLEY WE HAVE AN ENDANGERED PLANT, THE BIG CAR BEAR CHECKERBLOOM WHICH IS ON THE ENDANGERED SPECIES LIST. IT HAS BEEN FEDERALLY LISTED FOR YEARS.

ON THIS ENVIRONMENTAL FIELD TRIP ONE OF THE FIELD TRIP LEADERS WAS A BOTANIST NAMED TIM KRANTZ, WHO WAS WELL KNOWN FOR HIS ENVIRONMENTAL ACTIVISM.. HE WAS KNOWN FOR PROMOTING THE ENDANGERED STATUS OF THE BIG BEAR CHECKERBLOOM AND THE SO CALL LIMESTONE ENDEMIC WEEDS IN THE SAN BERNARDINO NATIONAL FOREST. HE IS A FORMER FOREST SERVICE EMPLOYEE WHEN HE FIRST CAME UP WITH THE IDEA THAT CERTAIN WEEDS WERE LIMESTONE ENDEMIC AND HAS BEEN A BOTANY CONSULTANT TO THE FOREST SERVICE AND THE OTHERS WHO NEED PERMITS WHERE THESE ENDANGERED PLANTS GROW.

THE BIG BEAR CHECKERBLOOM WAS LISTED BECAUSE KRANTZ AND OTHER CLAIMED IT WAS ONLY FOUND ON A FEW ACRES OF BEAR VALLEY AND NO PLACE ELSE IN THE WORLD. I WAS SURPRISED ON THIS FIELD TRIP BECAUSE, MR. KRANTZ WAS NOW PLANTING BIG BEAR CHECKERBLOOMS IN HOLCOMB VALLEY, WHERE NONE WERE KNOWN TO GROWN NATURALLY!

HOLCOMB VALLEY WAS THE SITE OF A GOLD RUSH IN THE 1860'S AND CONTINUES TO HAVE MANY SMALL GOLD MINERS WHO WORK THEIR CLAIMS ON A SMALL SCALE. THE SAN BERNARDINO NATIONAL FOREST IS NOW TRYING TO SHUT DOWN ALL MINING IN THE AREA USING THE ESA LISTED WEEDS AS WELL AS THE ARROYO TOAD AS THE REASON!

VERY SINCERELY,

Lois Burbridge
LOIS BURBRIDGE
10-24-99

WITNESS JONATHAN ROSSI

SUSAN D. KOCSIS

INCLUDED EXHIBITS "A" + B REGARDING ENVIRONMENTAL FIELD WHEN ILLEGAL PLANTING TOOK PLACE.

EXHIBIT "A"

BIG BEAR VALLEY PRESERVE NEWS

Volume 4, Number 1 Spring, 1986

A NOTE FROM THE PRESIDENT. . .

I would like to take this opportunity to welcome all of the new Friends who have joined us since our last newsletter, and on behalf of all of our members, to thank you for your support. Many of you participated in the Eagle Tours that we offered this winter, and it is our hope that your experience was an enjoyable one. Any comments or suggestions for improvement that you may have would be appreciated. Your active involvement in the Friends of the Big Bear Valley Preserve will be necessary, if we are to continue as an effective community service organization.

Many major accomplishments have been acheived over the past three years through the dedication, hard work, and generosity of our members. As we continue to grow in strength, even greater challenges await us. The Nature Conservancy has made a substantial financial commitment to the preservation of Big Bear's rare and unique flora and fauna, but it is up to each of us to contribute as much of our time as our individual situations will allow. This is especially true for all local members, because without your continued help and vigilance, the Big Bear Valley Preserve will exist only on paper.

Some of the activities you may want to get involved with, include leading or just helping with eagle and wildflower tours, biological monitoring, preserve maintenance and patrol, development of our visitors center, fund raising, or letter writing, to name just a few. If you have the time, we can find a productive and pleasurable way for you to help us reach our goals! In addition to the quarterly newsletter that we produce, information concerning our activities can be obtained by attending the general meetings that are held on the second Tuesday of every month in the Big Bear Branch Library at 7:00 p.m.

For those of you who are unable to attend these meetings, but still want to take part in whatever manner you can, renewing your membership is all that it takes. Contributions of dollars are as equally critical as hours to our successful and expanding programs. All donations (dues) are not only tax deductible, but the volunteer status of all of our members enables us to put those funds to their maximum use. For a unique and unusual experience, I hope you will join one of the Spring fieldtrips and see for yourselves what you have become a very important part of.

--John McMains

NEW BOARD MEMBERS

The Big Bear Valley Preserve is proud to announce the election of it's new board members. The 1986 board members are:

President - John McMains
Vice President - Tim Krantz
Treasurer - Gloria Hill
Secretary - Ruth Terry
Education - Kay Brown
Eagle Tours - Sondra Haile
Newsletter - Lauren Pollock
Wildflower Tours - Karen Nelson
Membership - Carol Dingley

FOREST PLAN DUE OUT IN APRIL

The management plan for the San Bernardino National Forest still is not available for review, they now say it is due out in April. This important document will plan for all multiple uses of our National Forest Lands. It deserves careful and comprehensive review, involving all environmental organizations. We need to express our concerns! The fate of the Big Bear Valley Preserves, especially with respect to control of off road vehicles, hangs in the balance. Eight of the fifteen areas targetted for protection of significant biotic resources in the BBVP System involve Forest Service jurisdiction, thus their continued support for the regional management of our unique wildlife and wildflowers is essential.

Please attend ou· regular meeting at the County Library, 40940 Big Bear Blvd.,Tuesday nights at 7:00 p.m., April 8th and May 13th. We will assign areas and/or topics for review. We need your help to digest this all-encompassing plan. If you can't make it to the meeting, send us a note with your address to Forest Plan, POB 1418, Sugarloaf, CA., 92386, and we'll keep you posted! We need letters requesting only highway licensed vehicles on dirt roads in Big Bear and Holcomb Valleys! And seasonal closures for all vehicles on some dirt roads crossing sensitive resource areas. Be specific if you know some of the problem areas personally, such as Holcomb Valley, Gold Mountain Road, North Baldwin Lake, or the Sugarloaf town area.

TWO NEW PRESERVE ADDITIONS

I am proud to announce two new immportant additions to the Big Bear Valley Preserve System. The Pasadena YMCA Board of Directors voted to add Camp Bluff Lake to the Nature Conservancy's Register of Natural Areas. Bluff Lake is a private camp and is not open to the general public. The Register program is a voluntary "handshake" agreement on the part of TNC and private landowners which basically acknowledges the presence of significant natural resources on private properties, and agrees to manage the properties with the protection of those resources in mind. The Bluff Lake camp contains about 25 acres of subalpine meadowlands with at least six rare species of plants, including the endangered Checkerbloom, Sidalcea pedata. The camp is NOT open for general public visitation. For its part, the Friends of BBVP will help to accomplish an inventory of the sensitive biotic resources, and will make its natural history docents available to lead some guided tours for the YMCA this summer. Special thanks to Ms. Lynn Lozier in the San Francisco office of TNC for her help in negotiating this important addition to the Big Bear Valley Preserve System.

The Starland tract consisted of a 1926 subdivision of 521 lots averaging less than 2200 square feet situated at the east end of Holcomb Valley about a mile west of North Baldwin Lake. Entirely surrounded by Forest Service lands and with no municipal services, the difficulties associated with development of the property were substantial. The owners gave the property in fee to The Nature Conservancy as a charitable contribution, with a dozen or so individual owners of lots outstanding. The 25 acre property contains a combination of relict alpine pebble plains crossed by several vernal creeks, creating a diversity of habitats for thirteen rare plant species! Caught behind several outcrops of beautiful orange and white saragossa quartzite, the vernal creeks create temporary ponds in June lined with such diminutive rarities as the Eye-strain Monkey flower and Yellow Owl's-clover. The Eye-strain is the smallest Monkeyflower in the world of some 150 species! It is known only from Big Bear and Holcomb Valleys with the exception of one collection in 1882 in Baja California.

Guided field trips to these areas are scheduled for May and June. See Calendar for details.

--Tim Krantz

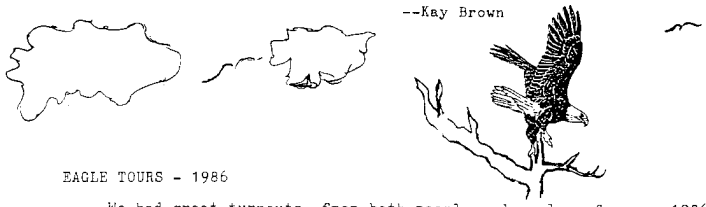
WILDLIFE NOTES. . . THE WESTERN BLUEBIRD

Brilliantly colored, gentle in manner, the bluebird delights all who sees it. The bird "carries the sky on it's back" said Henry Thoreau. The settlers of Plymouth Colony noted the rusty breast and called it the "blue robin." The male's deep blue hood and upperparts, rusty red breast and crescent mark across a white belly contrast sharply with the diluted, paler colors of his female. The females are attracted by the vivid blue of the male and by the availability of nesting holes. Once the male secures a nesting hole he entices the female with a colorful display that also repels rivals. His red breast, like that of the robin, is a signal of aggression toward other males.

The bluebird prefers open ranges and can be found in parklike woodlands in the mountains where conifers and hardwoods such as oaks grow at elevations above 5,000 feet. In fact, our Western Blue bird generally will nest in old woodpecker holes or natural cavities in oaks and yellow pines. Bluebirds also readily settle into bird boxes or nest boxes set on poles 8 to 12 feet above ground in open areas. Since bluebirds seem to prefer large territories, the boxes should not be set too close together. An entrance hole measuring 1½ inches in diameter will keep starlings out. Sometimes when tree holes or bird boxes are not available, these bluebirds will raise their family in a building or even a cliff swallows' nest.

As March approaches we look forward to this bright harbinger of Spring. An irridescent flash as the bluebird darts out from his high perch to catch his insect meal on the wing, or flutters down to capture them on the ground, reminds us that nature's colors are dazzling.

--Kay Brown



EAGLE TOURS - 1986

We had great turnouts, from both people and eagles, for our 1986 Eagle Tours. We have, unfortunately, even had to turn away some interested people. I hope they will join us next year.

Our only problem this year was some people who parked in restricted eagle areas and disturbed the eagles. If you see anyone in the preserve areas, please tell them, nicely, that they are on private property and are disturbing the eagles and spoiling the chance for all of us to enjoy these spectacular seasonal valley visitors.

I hope all of you have had many opportunities to see the eagles and even to come on one of our tours.

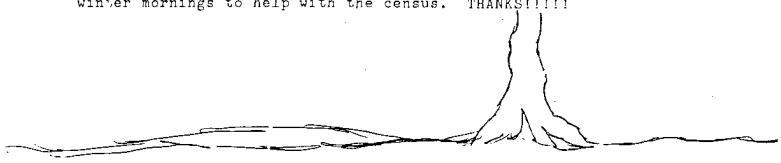
We are incredibly fortunate to have the eagles here in our Big Bear Valley. But, when Spring comes and the eagles go, then wildflowers can't be too far behind. . .

--Sondra Haile

EAGLE CENSUS

Two official eagle census's took place this winter. Our December census recorded 17 eagles. The raptors were spread throughout the entire valley, so everyone spotted one or more.

The January census was even more successful. In the one hour census, Approximately 24 birds were spotted. This count included 10 adults and 14 immatures. The highest census ever recorded was 32 birds. The Preserve wishes to thank all of the people who braved the early winter mornings to help with the census. THANKS!!!!!



PRESERVE CARETAKER POSITION OPENING

John McMains has taken a job with the County Planning Department after serving as the first Preserve Caretaker for the past year. John, who still serves as President of the Friends, has given generously of his time and energy, overseeing the construction of miles of fencing, talking to hundreds of school children and Preserve visitors, and providing guidance with the Friends' incorporation as a non-profit organization. The Preserves are much in his debt.

There is still much work to be done! Principal tasks of the caretaker involve contacting and organizing work parties, finishing the Visitor Center, fence mending, etc. Local retirees with some carpentry or maintenance experience are encouraged to apply. The position pays $8.00 per hour, 20 hours per week, with some "on call" and weekdays time necessary. Interested persons send resumes to Mr. Steve Johnson, The Nature Conservancy, 785 Market Street, San Francisco, 94103.

Columbine (Aquilega pubescens)

checkerbloom

WILD ABOUT WILDFLOWERS?
TOURS, TOURS, TOURS!

The winter season has been wet and mild to the dismay of skiers, but promises beautiful Spring wildflower displays in April and May. The Big Bear Valley Preserves offer a tremendous diversity of unique species. Beginning with the pebble plains and meadows at North Baldwin Lake, the Preserve wildflower tours will visit the historic gold mine fields and vernal ponds of Holcomb Valley, and the lemon lily springs of southwest Big Bear Lake in May and June.

Anyone interested in helping with the wildflower tour program is welcome to attend the first two weekend workshops offered by Tim Krantz. These will emphasize plant identification in the field and recognition of some of the basic plant families and their characteristics -- a "how to identify plants" class. Learn how to prepare mounted specimens and help the Friends start a complete Preserve herbarium of our hundreds of species of flowering plants. Then you can polish your skills along with other botanical buffs on a series of tours that will visit all of the 15 preserve areas over the Spring and Summer season. Aspiring wildflower docents should try to attend the April Friends meeting at the library to see the Preserve Wildflowers slide show.

All tours and workshops meet at the "Horse House" shack on Hwy. 18 at North Baldwin Lake at 10 a.m. Bring a sack lunch, sunscreen, and good walking shoes. Reservations are not required. All tours will "pay their dues" with an hour of clean-up work after lunch. Bring a pair of gloves and lend a hand!

See map on last page for location

CALENDAR

March-May 1986

March 11 — Regular meeting. 7PM at Library. Get ready for Spring! Wildflower docents can warm up botanical memories with a slideshow of some blossoms soon to bloom.

March 15 — Wildflower Identification Workshop with Tim Krantz. All aspiring docents should try to attend. As with the rest of the wildflower tours below, all groups meet at the "Horse House" parking area on Highway 18 at the north end of Baldwin Lake.

April 5 — 2nd Wildflower Workshop. Details same as above. Learn how to prepare herbarium specimens for the Preserve collection.

April 8 — Regular meeting. Forest Plan workshop. Important that as many attend as possible! We need your help!

April 12 — Wildflower tour of North Baldwin Lake Preserve and hike along the Mojave View section of the Pacific Crest Trail (4.0 miles r.t.). Carpets of violets, cresses, and dwarf shooting stars!

April 19 — Sugarloaf Preserve. Meet same as above and caravan to the beautiful pebble plains of Sugarloaf and to Monkeyflower Springs (first group to visit here!).

April 26 — North Baldwin Lake and environs. Meet same as above but this time we'll hike (climb) up to the 40 acre pebble plain on Gold Mountain for the view! Another first!

May 3,4 — Endemic Wildflowers Marathon! A joint CNPS/TNC tour, the group will tally as many San Bernardino Mountain endemics as we can in 48 hours! Krantz says we can approach 20! We'll camp at the Pacific Trail Camp at North Baldwin Lake Sat. night and botanize Holcomb Valley and search for limestone endemics Sunday.

May 13 — Regular meeting. Forest Plan update!

May 17 — Castle Glen, Eagle Rock Tour. Caravan to Castle Glen Preserve to see evergreen and purple monkeyflowers, then to the Eagle Tract Preserve for the endangered checkerblooms and slender-petalled mustards.

May 24 — Late bloomers at North Baldwin, then up to the new Starland property acquisition with vernal creeks lined with marbles.

For more information please call (714)866-4190, Karen Nelson

****

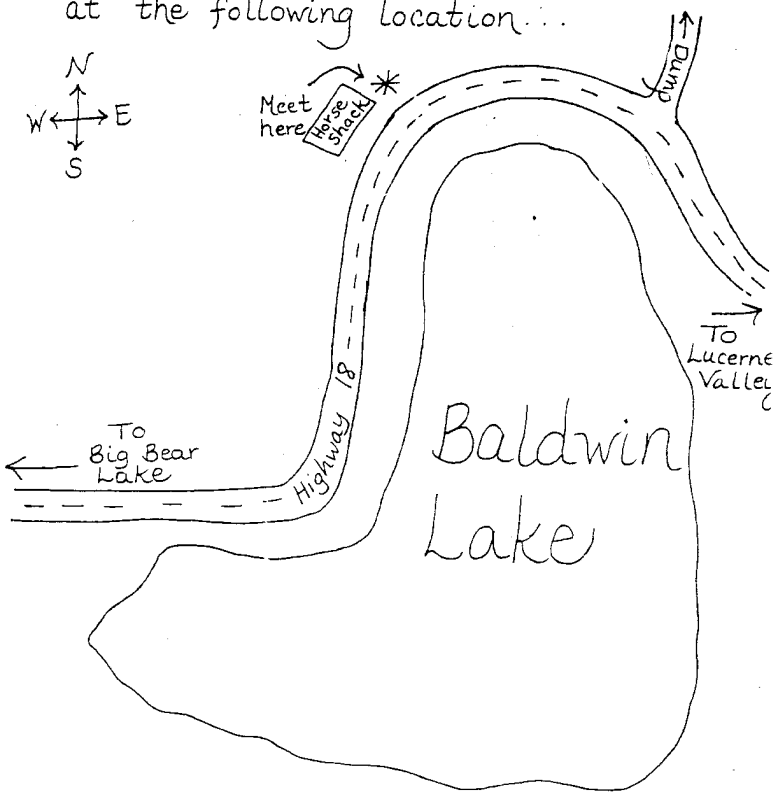
JOIN THE FRIENDS OF THE BIG BEAR VALLEY PRESERVE

Anual Membership Dues
$ 5.00 - Newsletter only
$15.00 - Friend of the Preserve
$25.00 - Contributing Member
$50.00 - Supporting Member --- Thank You!!!!!
_____ - check here if this is a renewal
All contributions are tax deductible. Make check or money order payable to Big Bear Valley Preserve.

Name (please Print) _____
Address _____
City, State, Zip _____

MAP

Our Wildflower Walks will meet at the following location...

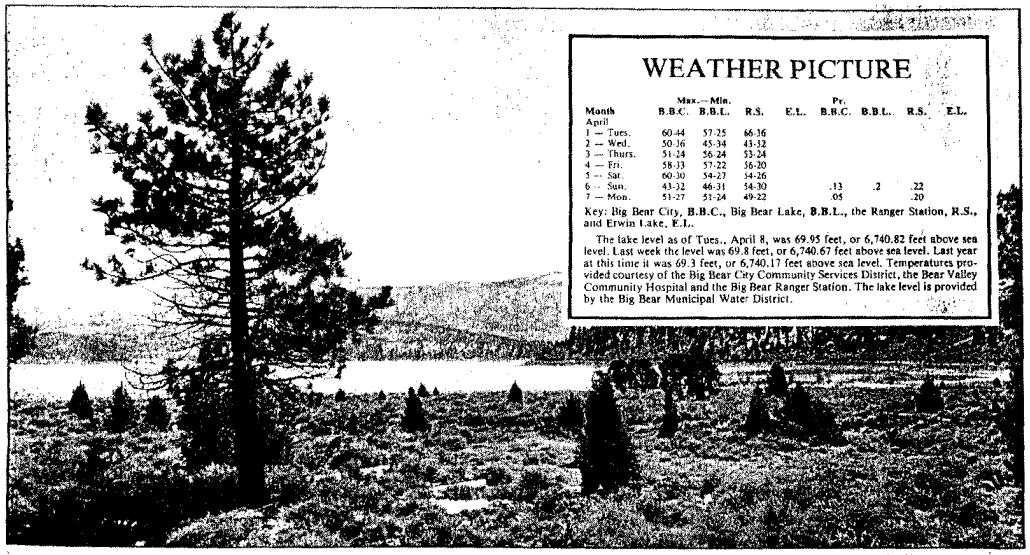


Friends of the Big Bear Valley Preserve
P.O. Box 1418
Sugarloaf, California, 92386

BULK RATE
U.S. Postage
PAID
Permit No. 47
Big Bear City
CA 92314

EXHIBIT "B"

EDITORIAL



WEATHER PICTURE

Month	Max.—Min. B.B.C.	B.B.L.	R.S.	E.L.	Pr. B.B.C.	B.B.L.	R.S.	E.L.
April								
1 — Tues.	60-44	57-25	66-36					
2 — Wed.	50-36	45-34	43-32					
3 — Thurs.	51-24	56-24	53-24					
4 — Fri.	58-33	57-22	56-20					
5 — Sat.	60-30	54-27	54-26					
6 — Sun.	43-32	46-31	54-30		.13	.2	.22	
7 — Mon.	51-27	51-24	49-22		.05		.20	

Key: Big Bear City, **B.B.C.**, Big Bear Lake, **B.B.L.**, the Ranger Station, **R.S.**, and Erwin Lake, **E.L.**.

The lake level as of Tues., April 8, was 69.95 feet, or 6,740.82 feet above sea level. Last week the level was 69.8 feet, or 6,740.67 feet above sea level. Last year at this time it was 69.3 feet, or 6,740.17 feet above sea level. Temperatures provided courtesy of the Big Bear City Community Services District, the Bear Valley Community Hospital and the Big Bear Ranger Station. The lake level is provided by the Big Bear Municipal Water District.

THE VALLEY RECEIVED a light dusting of snow over the weekend, but not enough to disturb the wildflowers at the North Baldwin Lake Preserve, which will be the location of the Friends of the Big Bear Valley Preserve's first spring wildflower tour, Saturday, April 12. The tour is open to the public and will begin at 9 a.m. at the "horse house" at the north end of Baldwin Lake. —Grizzly photo by Mike Kapusta

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In response reply to:
AEA/FWS

MAY 14 1999

Honorable Don Young
Chairman
House Resources Committee
Washington, D.C. 20515

Dear Mr. Chairman:

Attached are the answers to the questions that you submitted to the Fish and Wildlife Service on April 19, 1999 regarding implementation of the Endangered Species Act. We have additional information to provide but due to time constraints were unable to assemble it in time. We will provide that information under separate cover within five working days.

Thank you for the opportunity to answer these questions. Please contact me if you need additional information.

Sincerely,

ACTING DIRECTOR

Secretary Babbitt, et al
June 28, 1999
Page 3

Sincerely,

Walter L. Wadlow
President,
State Water Contractors

On Behalf of,
Alameda County Flood Control and Water Conservation District, Zone 7
Alameda County Water District
Antelope Valley-East Kern Water Agency
Casitas Municipal Water District
Castaic Lake Water Agency
Central Coast Water Authority
City of Yuba City
Coachella Valley Water District
County of Kings
Crestline-Lake Arrowhead Water Agency
Desert Water Agency
Dudley Ridge Water District
Empire-Westside Irrigation District
Kern County Water Agency
Littlerock Creek Irrigation District
Metropolitan Water District of Southern California
Mojave Water Agency
Napa County Flood Control and Water Conservation District
Oak Flat Water District
Palmdale Water District
San Bernardino Valley Municipal Water District
San Gabriel Valley Municipal Water District
San Gorgonio Pass Water Agency
San Luis Obispo County Flood Control and Water Conservation District
Santa Clara Valley Water District
Solano County Water Agency
Tulare Lake Basin Water Storage District

Sincerely,

Michael Stearns
President,
San Luis & Delta-Mendota Water Authority

On Behalf of,
Banta-Carbona Irrigation District
Broadview Water District
Central California Irrigation District
Centinella Water District
City of Tracy
Columbia Canal Company
Del Puerto Water District
Eagle Field Water District
Firebaugh Canal Water District
Fresno Slough Water District
Grassland Water District
James Irrigation District
Laguna Water District
Mercey Springs Water District
Oro Loma Water District
Pacheco Water District
Pajaro Valley Water Management Agency
Panoche Water District
Patterson Water District
Plain View Water District
Pleasant Valley Water District
Reclamation District 1608
San Benito County Water District
San Luis Canal Company
San Luis Water District
Santa Clara Valley Water District
Tranquility Irrigation District
Turner Island Water District
West Side Irrigation District
West Stanislaus Irrigation District
Westlands Water District
Widren Water District

(I) specifies the impact of such incidental taking on the species,
(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,
(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and
(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

The Service regulation 50 CFR 402.14(I) states the following:

(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(I) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;
(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;
(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under (ii) above; and
(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

Section 10(a)(2) of the Endangered Species Act states the following:

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies--
(I) the impact which will likely result from such taking;
(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.
(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that--
(I) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
(iii) the applicant will ensure that adequate funding for the plan will be

provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met;

Based upon the citations acknowledged above, the Service believes it has the authority to identify, within reason and based on science, actions to minimize the impact of otherwise legal activities on listed species. Where appropriate, such minimization can include actions such as the payment of funds and setting aside of land. Any funds must be utilized to provide for the conservation of the affected species.

QUESTION 2 (b): For the time period between January 1, 1993, and April 20, 1999, please provide a list of all payments of mitigation into any mitigation funds, the amount, the recipient of the payment, and the permit number.

See Appendix 2; because the Service is not the repository for the requested information, in some cases the information was unavailable in the time frame provided for this response; information regarding the Washington County and Iron County HCPs in Utah will be provided under separate cover by May 21, 1999

QUESTION 2 (c): What is a "mitigation bank" (for the purposes of ESA) and how many such mitigation banks are administered or operated by the U.S. Fish and Wildlife Service.

For the purposes of the ESA, conservation/mitigation banks are used to offset impacts to listed species when the location of the impact will not jeopardize the species and where on-site conservation actions are not appropriate or viable . The bank owner sells habitat credits to parties who must offset the environmental impacts of their activities or who wish to fund land conservation efforts. Banks must be Service-approved if credits are to count toward listed species conservation.

Service approval requires completion and implementation of a project agreement, mutually agreed upon management plan, a funding mechanism to carry out the management plan, and a Service-approved perpetual conservation easement recorded on the bank site. The easement holder is chosen by the bank owner and must meet State and Federal requirements. When the number of available credits and the service area are agreed upon by the Service and the bank owner, and all mitigation banking documents are finalized, the bank is approved. It can then sell credits within its designated service area, or as otherwise approved by the Service. When all the credits in the bank are sold, the bank is closed and remains as a preserve in perpetuity.

A conservation/mitigation bank is a free-market enterprise that offers non-Federal landowners economic incentives to protect natural resources; saves developers time and money by providing

them with a streamlined method for identifying and conserving conservation lands (e.g., appraisals, title searches, real estate transactions, biological surveys, management plans, and protective easements have already been conducted by the conservation/mitigation bank owner); and provides long-term protection and management of sensitive habitat. Conservation/mitigation banks have long been used to minimize the impacts of wetland development projects. In the endangered species arena, they are being used as an effective and efficient means to minimize the impacts to listed species of otherwise legal activities.

Conservation/mitigation banks approved by the Service are privately owned and are administered, managed, and monitored by the owners or owner-designated bank managers. The Service does not establish mitigation funds. Furthermore, the Service does not hold, nor does it receive, financial gain from such accounts. Conservation/mitigation banks allow for off-site minimization of projects' impacts when off-site minimization is appropriate. Species funds can be set up to hold money while conservation banks or other habitat acquisitions for listed species are going through the agency approval process.

Conservation/mitigation banks can be extremely useful in building habitat preserve systems and streamlining local, State, and Federal permit processes. Because monies are pooled, acquisition and restoration of larger preserves are possible through the conservation banking process. This avoids piecemeal mitigation and small, on-site, biologically indefensible avoidance areas that often result when individual development projects compensate on-site. Thus, the banking process produces results that are more biologically sound for the species and cost-effective for the developers.

Question 2(c) continued: If none are administered or operated by the U.S. Fish and Wildlife Service, how many are sanctioned, recommended, or approved by the Service for the purpose of providing a repository for the payment of mitigation funds. Give the name of the organization operating the mitigation bank, the amount of land in the mitigation bank or the amount of money in the mitigation bank, and it's location.

see Appendix 3

QUESTION 2 (d): Does the Service require or recommend payments to be made to private nonprofit or for profit organizations for the purpose of providing mitigation?

Contributions to a species fund or conservation bank are voluntary and are included as part of a project applicant's project description. In fact, many conservation banks were developed from project applicants' desire to expedite the section 7 and section 10 processes. Because it is usually more cost effective and time-saving for project applicants, many prefer contributing to a conservation bank or fund rather than minimizing projects' impacts on an individual project basis. If the Service approves off-site minimization, the applicant usually has the option of

participating in the conservation banking program but is not required to do so. If an applicant builds the contribution of funds into their project design, but fails to make the appropriate payment, they are out of compliance with an approved Section 7 biological opinion or Section 10 permit because they did not implement the project as proposed and, therefore, incidental take coverage would lapse. All payments of fees to species funds or purchase credits purchased in mitigation/conservation banks are voluntary. Project applicants may always offset the impacts of take of listed species' habitat on their own and need not participate in the banking program.

In some cases, private non-profit organizations act as repositories for mitigation funds. An example would be the payment of mitigation fees to The Nature Conservancy for the acquisition and management of Coachella Valley fringe-toed lizard habitat in eastern Riverside County. This particular mitigation fund was recommended and is being implemented by the County of Riverside and the local cities as a condition of the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan. The Service has also recommended the use of the National Fish and Wildlife Foundation as a repository of mitigation funds until such funds can be expended on the intended mitigation.

Because mitigation payments increase flexibility and facilitate the process, the option to use mitigation payments is highly valued by local jurisdictions involved in county-wide or multi-jurisdictional habitat conservation planning efforts. In southern California, local jurisdictions have established in lieu fees that are used to buy habitat or endowment funds that are used to maintain or enhance habitat. The City of Poway has established an in lieu fee as an option to off-site mitigation as part of their Subarea Plan. The City of San Marcos provided for an in lieu fee for a Section 4(d)-related project to allow the developer greater flexibility. Additionally, the City of San Diego established a mitigation fund for city public works project. The funds were combined from several public works projects to purchase mitigation lands in one larger location. Combining these funds saved money by allowing the City to buy a single, larger parcel rather then multiple parcels, as well as lowering the overall price per acre of land. In the Santa Ana River Watershed, the Orange County Water District has established and administers an endowment account that funds the management of endangered species, the restoration of riparian habitats, and the control of exotic plants and animals on their lands and within the watershed. Since the establishment of the endowment account, the Army Corps of Engineers (Corps), the County of Orange, and two residential developers have contributed to the fund.

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A list of Section 7 projects that included payments as part of the overall proposed actions are included in the tables in Appendix 2.

QUESTION 2(e): Please provide the names of each private organization that the Service has recommended or required that mitigation payments be made to.

The following organizations have received funds or have been recommended or accepted by the Service:

Marbled Murrelet Study Trust and Conservation Research Fund
The Nature Conservancy
National Fish and Wildlife Foundation.
Trust for Public Land
Center for Natural Lands Management
Desert Tortoise Preserve Committee
Southwest Wetlands Interpretive Association

QUESTION 3: What is a management endowment and how is it used? If funds are transferred, to whom are they transferred?

A management endowment is an interest-bearing account established by agreement among the landowner, Service, and State agency to manage and monitor the conservation/mitigation bank. The interest from the endowment is used for perpetual management of the lands preserved within the conservation/mitigation bank. The funds for the management endowment are generally retained by an established financial institution that pays interest.

A management endowment or other funding mechanism is established when a bank opens to maintain and monitor the bank site in perpetuity. Some of these endowments are special accounts that are established in perpetuity with money being added on a regular basis and some are one-time transfers of funds. The owner may choose to set aside the entire amount up front or in installments over the first few years of the bank's operation. In a few cases, the endowment is funded by diverting a portion of the monies collected for credits sold into the endowment fund. The endowment fund may be held by the permittee, easement holder, or other appropriate entity. The holder of the fund transfers monies from the fund to the bank owner/operator as needed to maintain the bank and as agreed to in the management plan for the bank.

A management endowment is often useful when it is necessary to ensure that long-term management of a habitat area is accomplished. Natural ecosystems are dynamic in nature, they typically "evolve" through a series of successional stages. For this reason it is often necessary to implement certain management techniques in an effort to mimic natural processes and maintain specific habitat types. For example, if it is desirable to maintain grassland habitat, there may be the need to periodically conduct controlled burns to ensure that the area does not succeed to forest.

QUESTION 4: In a letter dated March 30, 1998, you were asked to provide, for Region 1, a list of every section 10 permit that has been issued that required off-site mitigation or mitigation which requires the permanent preservation or set aside of land and to provide the mitigation ratio for each permit. A copy of your answer is attached to this letter. In your answer you list 46 Permits that required mitigation in Region 1. As you know the same question was asked for Region 3 and Region 5. At that time there had been no Section 10 permits issued in Region 3 and only one in Region 5, and that permit did not require mitigation. Of the 46 permits you listed in the attached answer requiring mitigation, all 46 were in the State of California.

a. Which California office handled the issuance of each of these permits?

The Portland Regional Office, in coordination with its field offices, issued the permits listed in the table that was provided in response to your March 30, 1998, request for information. The field offices that worked on these HCPs are named below.

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2. Lennane Properties
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4. Coalinga Cogeneration
5. Envirocycle
6. Granite Construction
7. Champagne Shores

8. Metropolitan Bakersfield
9. City of Waterford
10. Chevron Pipeline
11. ARCO Western Energy
12. Parkside Homes (Les York)
13. P.G.&E. Blackhawk Power Plant
14. Teichert
15. Raley's Landing
16. Kern County Waste Facilities
17. Kern Water Bank
18. Natomas (City of Sacramento)
19. San Bruno Mountain

Carlsbad Fish and Wildlife Office

20. Riverside County Stephens Kangaroo Rat Long-term
21. Corona Development
22. Citation Builders
23. Coyote Hills East
24. Pacific Gateway Homes
25. John Laing Homes, Corona
26. Fieldstone and City of Carlsbad
27. City of Colton Transmission Line
28. Lake Mathews (Metropolitan Water District of Southern California)
29. San Diego Gas & Electric
30. Orange County Central/Coastal
31. City of Poway
32. Shell Oil/Metropolitan Water District of Southern California
33. Ocean Trails
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39. Sunland Communities
40. Cushenbury Sand and Gravel
41. D.B.O. Development Company (North of Playa Shopping Center)
42. Quail Hollow Quarry
43. Seascape Uplands
44. E.L. Yeager Company (Wildwash Mine)

Nevada Fish and Wildlife Office

45. Clark County Desert Tortoise Long-term
46. Valley of Fire State Park

QUESTION 4 (b): Please provide an explanation as to why out of all the states of Region 1, including Hawaii, only California residents appear to be required to undertake offsite mitigation or mitigation that requires a set aside of land.

Off-site mitigation requirements and on-site land set-asides are not unique to California HCPs or to Region 1 of the Service. As indicated in the appendices responding to Questions 2 (b) and (c) Regions 2, 4, and 6 of the Service have also approved off-site mitigation or land set-asides through the Section 7 and 10 processes.

When development results in incidental take through the permanent loss of habitat, under Section 10 it is the Service policy to seek habitat protection in perpetuity to minimize and mitigate the impacts to species to the maximum extent practicable. On-site land set-asides commonly are used to mitigate development HCPs. Where on-site set-asides are not feasible or would have little value to the species, off-site lands may be acquired. Within Region 1 of the Service, development HCPs have only been approved in California and Nevada to date. No HCPs have been approved yet in Hawaii and Idaho. Until recently, State law in Hawaii prohibited its citizens from taking advantage of Section 10 of the ESA and Habitat Conservation Planning was unavailable to them. This law was changed and the Service now anticipates that it will be asked to assist individuals, communities, and others in their development of HCPs where private, non-Federal actions may result in the take of listed species. At this time, only forest HCPs have been approved in Washington and Oregon. Forest HCPs typically do not require on-site set-asides or off-site land acquisition because habitat degradation is temporary. Timber management prescriptions are implemented to off-set temporary losses of habitat quality and quantity due to timber harvest.

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In response reply to:
AEA/FWS

MAY 14 1999

Honorable Don Young
Chairman
House Resources Committee
Washington, D.C. 20515

Dear Mr. Chairman:

Attached are the answers to the questions that you submitted to the Fish and Wildlife Service on April 19, 1999 regarding implementation of the Endangered Species Act. We have additional information to provide but due to time constraints were unable to assemble it in time. We will provide that information under separate cover within five working days.

Thank you for the opportunity to answer these questions. Please contact me if you need additional information.

Sincerely,

John G. Rogers

ACTING DIRECTOR

QUESTION 1: For each of the Fish and Wildlife Service Regions, please provide the name, address, and phone number of each field office that administers, enforces, or implements the Endangered Species Act. Please include the name and title of the highest ranking supervisory employee in each office. How many employees in each field office work full time on endangered species issues and how many work part time on endangered species issues?

See Appendix 1.

QUESTION 2: As part of the process of issuing Section 10 permits or incidental take statements under Section 7, the Service has in the past included requirements that the applicant make payments of money for the purpose of mitigating impacts on endangered species.

a. Please provide the statutory and regulatory citation for the legal authority to require the payment of funds for mitigation.

There is no reference in the ESA to mitigation banks, mitigation endowments, or other such payments, nor are such mechanisms expressly included in implementing regulations for Sections 7 and 10. However, Section 9 of the ESA prohibits take of endangered and threatened species by any person subject to the jurisdiction of the United States. Sections 7(b) and 10(a)(1) of the ESA, provide for exceptions to that take prohibition where Federal agencies or applicants, including private landowners, chose to carry out actions that incidentally take listed species. Associated with the provision for incidental take is a requirement to minimize the impact of that take. The statutory and regulatory authorities for this provision are listed here:

Section 2 (c) of the Endangered Species Act states the following:

> (1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

Section 7(a)(1) of the Endangered Species Act states the following:

> (1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

Section 7(b)(4)(C) of the Endangered Species Act indicates the following:

> (C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title;
> the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that--

(I) specifies the impact of such incidental taking on the species,
(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,
(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and
(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

The Service regulation 50 CFR 402.14(I) states the following:

(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(I) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;
(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;
(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under (ii) above; and
(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

Section 10(a)(2) of the Endangered Species Act states the following:

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies--
(I) the impact which will likely result from such taking;
(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.
(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that--
(I) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
(iii) the applicant will ensure that adequate funding for the plan will be

provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met;

Based upon the citations acknowledged above, the Service believes it has the authority to identify, within reason and based on science, actions to minimize the impact of otherwise legal activities on listed species. Where appropriate, such minimization can include actions such as the payment of funds and setting aside of land. Any funds must be utilized to provide for the conservation of the affected species.

QUESTION 2 (b): For the time period between January 1, 1993, and April 20, 1999, please provide a list of all payments of mitigation into any mitigation funds, the amount, the recipient of the payment, and the permit number.

See Appendix 2; because the Service is not the repository for the requested information, in some cases the information was unavailable in the time frame provided for this response; information regarding the Washington County and Iron County HCPs in Utah will be provided under separate cover by May 21, 1999

QUESTION 2 (c): What is a "mitigation bank" (for the purposes of ESA) and how many such mitigation banks are administered or operated by the U.S. Fish and Wildlife Service.

For the purposes of the ESA, conservation/mitigation banks are used to offset impacts to listed species when the location of the impact will not jeopardize the species and where on-site conservation actions are not appropriate or viable . The bank owner sells habitat credits to parties who must offset the environmental impacts of their activities or who wish to fund land conservation efforts. Banks must be Service-approved if credits are to count toward listed species conservation.

Service approval requires completion and implementation of a project agreement, mutually agreed upon management plan, a funding mechanism to carry out the management plan, and a Service-approved perpetual conservation easement recorded on the bank site. The easement holder is chosen by the bank owner and must meet State and Federal requirements. When the number of available credits and the service area are agreed upon by the Service and the bank owner, and all mitigation banking documents are finalized, the bank is approved. It can then sell credits within its designated service area, or as otherwise approved by the Service. When all the credits in the bank are sold, the bank is closed and remains as a preserve in perpetuity.

A conservation/mitigation bank is a free-market enterprise that offers non-Federal landowners economic incentives to protect natural resources; saves developers time and money by providing

them with a streamlined method for identifying and conserving conservation lands (e.g., appraisals, title searches, real estate transactions, biological surveys, management plans, and protective easements have already been conducted by the conservation/mitigation bank owner); and provides long-term protection and management of sensitive habitat. Conservation/mitigation banks have long been used to minimize the impacts of wetland development projects. In the endangered species arena, they are being used as an effective and efficient means to minimize the impacts to listed species of otherwise legal activities.

Conservation/mitigation banks approved by the Service are privately owned and are administered, managed, and monitored by the owners or owner-designated bank managers. The Service does not establish mitigation funds. Furthermore, the Service does not hold, nor does it receive, financial gain from such accounts. Conservation/mitigation banks allow for off-site minimization of projects' impacts when off-site minimization is appropriate. Species funds can be set up to hold money while conservation banks or other habitat acquisitions for listed species are going through the agency approval process.

Conservation/mitigation banks can be extremely useful in building habitat preserve systems and streamlining local, State, and Federal permit processes. Because monies are pooled, acquisition and restoration of larger preserves are possible through the conservation banking process. This avoids piecemeal mitigation and small, on-site, biologically indefensible avoidance areas that often result when individual development projects compensate on-site. Thus, the banking process produces results that are more biologically sound for the species and cost-effective for the developers.

Question 2(c) continued: If none are administered or operated by the U.S. Fish and Wildlife Service, how many are sanctioned, recommended, or approved by the Service for the purpose of providing a repository for the payment of mitigation funds. Give the name of the organization operating the mitigation bank, the amount of land in the mitigation bank or the amount of money in the mitigation bank, and it's location.

see Appendix 3

QUESTION 2 (d): Does the Service require or recommend payments to be made to private nonprofit or for profit organizations for the purpose of providing mitigation?

Contributions to a species fund or conservation bank are voluntary and are included as part of a project applicant's project description. In fact, many conservation banks were developed from project applicants' desire to expedite the section 7 and section 10 processes. Because it is usually more cost effective and time-saving for project applicants, many prefer contributing to a conservation bank or fund rather than minimizing projects' impacts on an individual project basis. If the Service approves off-site minimization, the applicant usually has the option of

participating in the conservation banking program but is not required to do so. If an applicant builds the contribution of funds into their project design, but fails to make the appropriate payment, they are out of compliance with an approved Section 7 biological opinion or Section 10 permit because they did not implement the project as proposed and, therefore, incidental take coverage would lapse. All payments of fees to species funds or purchase credits purchased in mitigation/conservation banks are voluntary. Project applicants may always offset the impacts of take of listed species' habitat on their own and need not participate in the banking program.

In some cases, private non-profit organizations act as repositories for mitigation funds. An example would be the payment of mitigation fees to The Nature Conservancy for the acquisition and management of Coachella Valley fringe-toed lizard habitat in eastern Riverside County. This particular mitigation fund was recommended and is being implemented by the County of Riverside and the local cities as a condition of the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan. The Service has also recommended the use of the National Fish and Wildlife Foundation as a repository of mitigation funds until such funds can be expended on the intended mitigation.

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46. Valley of Fire State Park

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APPENDIX I

REGION 1

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees *	Full-Time	Part-Time
Arcata Fish and Wildlife Office	1125 16th Street, Room 209 Arcata, CA 95521-5582	(707) 822-7201	Bruce Halstead	39	32	7
Carlsbad Fish and Wildlife Office	2730 Loker Avenue West Carlsbad, CA 92008	(760) 431-9440	Ken S. Berg	68	57	11
Klamath Falls Fish and Wildlife Office	6610 Washburn Way, Klamath Falls, OR 97603	(541) 885-8481	Steven A. Lewis, Project Leader	6	6	0
Sacramento Fish and Wildlife Office	3310 El Camino, Suite130, 95821	(916) 979-2729	Wayne White	55	54	1
Reno Fish and Wildlife Office	Nevada State Office 1340 Financial Blvd, Reno NV 89502	~~(702)~~ 775 861-6300	Bob Williams	12	12	0

APPENDIX I

REGION 1

Ventura Fish and Wildlife Office	2493 Portola Road, Suite B, Ventura, California 93003	(805) 644-1766	Diane K. Noda	27	19	8
Yreka Fish and Wildlife Office	1215 South Main, Suite 212, Yreka, CA 96097-1006	(530) 842-5763	Phil Detrich	4	4	0
Pacific Islands Ecosystem Office	300 Ala Moana Blvd., Rm 3-122 Honolulu, HI 96850	(808) 541-3441	Robert P. Smith, Pacific Islands Manager	29	6	23
Upper Snake River Basin Fish and Wildlife Office	1387 South Vinnell Way, Room 368 Boise, Idaho 83709	(208) 378-5243	Robert Ruesink	21	13	8
Oregon State Office	2600 S.E. 98th Avenue, Suite 100 Portland, OR 97266	(503) 231-6179	Russell D. Peterson, State Supervisor	30	20	10

APPENDIX I

REGION 1

Oregon Coastal Field Office	2127 S.W. OSU Drive Newport, OR 97365	(541) 867-4550	Carrie Phillips, Fish and Wildlife Biologist	1		1
Southwest Oregon Field Office	2900 N.W. Stewart Parkway Roseburg, OR 97470	(541) 957-3470	Craig Tuss	5	3	2
Central Oregon Field Office	20300 Empire Avenue Bend, OR 97701	(541) 383-7146	Jerry Cordova	3	1	2
Western Washington Fish and Wildlife Office	510 Desmond Drive SE, Suite 102 Lacey, WA 98501	(360) 753-9440	Gerry A. Jackson	35	14 (+ 18 in Forest Plan division work full and part time simultaneously)	3
Upper Columbia River Basin Fish and Wildlife Office	11103 E. Montgomery Dr. Spokane, WA 99206	(509) 891-6839	Philip Laumeyer	7	4	3
Upper Columbia River Basin Suboffice	517 South Buchanan Moses Lake, WA 98837	(509) 765-6125	Mark Miller, Asst. Field Supervisor	3	1	2
		Total		345	264	81
		California		193		
		Other		152		

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REGION 2

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
U.S. Fish & Wildlife Service	2321 W. Roybal Palm Road, Ste. 103 Phoenix, AZ 85021	(602) 640-2770/2721 FAX 640-2730	David Harlow	27		
U.S. Fish & Wildlife Service	2105 Osuna NE Albuquerque, NM 87113	(505) 761-4525 FAX 761-4542	Jennifer Fowler-Propst	9.75		
U.S. Fish & Wildlife Service	222 S. Houston, Ste A Tulsa, OK 74127	(918) 581-7458 FAX 581-7467	Jerry Brabander	7.75		
Austin ESO U.S. Fish & Wildlife Service	Harland Bank Bldg 10711 Burnet Rd., Ste 200 Austin, TX 78758	(512) 490-0057 FAX 490-0974	Dave Frederick	15		
Arlington ESO U.S. Fish & Wildlife Service	Stadium Center Bldg. 711 Stadium Dr., Ste. 252 Arlington, TX 76011	(817) 277-1100 FAX 277-1129	Tom Cloud, acting	2		
Clear Lake ESO U.S. Fish & Wildlife Service	17629 El Camino Real, Ste. 211 Houston, TX 77058	(281) 286-8282 FAX 488-5882	Carlos Mendoza	3.5		

APPENDIX I

REGION 2

Corpus Christi ESO U.S. Fish & Wildlife Service	c/o Corpus Christi State Universiy Campus Box 338 6300 Ocean Drive Corpus Christi, TX 78412	(512) 994-9005 FAX 994-8262	Thomas D. Serota	1		
Regional Office	Division of Endangered Species P.O. Box 1306 Albuquerque, NM 87103	(505) 248-6920	Steve Chambers, Chief 11 FTE	11		

Total 77

APPENDIX I

REGION 3

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Bloomington, IN	620 S Walker St. Bloomington, IN 47403-2121	812-334-4261	Vacant	1.25	1	.25
Northern Indiana Suboffice	Suite 230 120 S Lake Street Warsaw, IN 46580	219-269-7640	Liz McCloskey	.25	0	.25
Chicago, IL	Suite 180 1000 Hart Road Barrington, IL 60010	847-381-2253	John D. Rogner	1.50	1	.50
Columbia, MO	Room 200 608 E Cherry St Columbia, MO 65201	573-876-1911	R. Mark Wilson	2.25	1	1.25
East Lansing, MI	2651 Coolidge Road E Lansing, MI 48823	517-351-2555	Vacant	2.50	2	.50
Green Bay, WI	1015 Challenger Court Green Bay, WI 54311	920-465-7440	Janet M. Smith	2.25	1	1.25
Marion Suboffice	8588 Route 148 Marion, IL 62959	618-997-3344	Joyce A. Collins	.50	0	.50

APPENDIX I

REGION 3

Rock Island, IL	4469 48th Ave Court Rock Island, IL 61201	309-793-5800	Richard C. Nelson	1	1	
Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Reynoldsburg, OH	6950-H Americana Parkway Reynoldsburg, OH 43068	614-469-6923	Kent E. Kroone-meyer	1.75	1	.75
Twin Cities, MN	4101 E 80th St Bloomington, MN 55425	612-725-3548	Vacant	2.35	1	1.35
Regional Office	1 Federal Dr. Fort Snelling, MN.	612-713-5178	Charles Wooley	8.10	6	2.10

Total 23.7

REGION 4

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Asheville Field Office	160 Zillicoa Street Asheville, NC 28801	828-258-3939 fax: 828-258-5330	Brian Cole	7	6	1
Boqueron Field Office	Carr 301, KM 5.1, BO Corozo P.O. Box 491 Boqueron, PR 00622	787-851-7297 fax: 787-851-7440	James (Jim) Oland	7	4	3
Brunswick Field Office	4270 Norwich Street Brunswick, GA 31520	912-265-9336 fax: 912-265-1061	Lee Andrews (see Ft.Benning Field Office)	10	2	8
Charleston Field Office	217 Fort Johnson Road P.O. Box 12559 Charleston, SC 29422	843-727-4707 fax: 843-727-4218	Roger Banks	2	1	1
Clemson Field Office Department of Forest Resources	261 Lehotsky Hall, Box 341003 Clemson, SC 29634	864-656-2432 fax: 864-656-1350	Ralph Costa	1	1	0
Conway, Arkansas Field Office	1500 Museum Road Suite 105 Conway, Arkansas 72032	501-513-4480 fax: 501-513-4470	Allan Mueller	1	0	1

REGION 4

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Cookeville Field Office	446 Neal Street Cookeville, TN 38501	913-528-6481 fax: 931-528-7075	Lee Barclay	9	3	6
Daphne Field Office	446 Neal Street P.O. Drawer 1190 Daphne, AL 36526	334-441-5181 fax: 334-441-6222	Larry Goldman	6	3	3
Ft. Benning Field Office	P.O. Box 52560 Ft. Benning, GA 31195	706-544-6428/6422	Lee Andrews	1	0	1
Jackson Field Office	6578 Dogwood View Pkwy. Ste. A Jackson, MS 39213	601-965-4900 fax: 601-965-4340	Robert Bowker	5	4	1
Jacksonville Field Office	6620 Southpoint Drive, South Suite 310 Jacksonville, FL 32216	904-232-2580 fax: 904-232-2404	David Hankla	15	6	9
Lafayette Field Office	646 Cajundome Blvd. Suite 400 Lafayette, LA 70506	318-291-3100 fax: 318-291-3139	David Frugé	14	4	9
North Georgia Field Office	380 Meigs Street Athens, GA 30601	706-613-9493 fax: 706-613-6059	Robin Goodloe	2	0	2

REGION 4

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Panama City Field Office	1612 June Avenue Panama City, FL 32405	850-769-0552 fax: 850-763-2177	Gail Carmody	12	3	9
Raleigh Field Office	551-F Pylon Drive P.O. Box 33726 Raleigh, NC 27636	919-856-4520 fax: 919-856-4556	John Hefner	7	1	6
Edificio Suarez Calle Garcia DeLa Noceda	Local No. 1 P.O. Box 1600 Rio Grande, PR 00745	787-887-8769 fax: 787-887-7512	Augie Valido	8	8	0
Vero Beach Field Office	1360 U.S. Hwy 1, #5 P.O. Box 2676 Vero Beach, FL 32961	561-562-3909 fax: 561-562-4288	Jay Slack	19	6	13
Office of the Florida State Supervisor	1360 U.S. Hwy 1, #5 P.O. Box 2676 Vero Beach, FL 32961	561-778-0896/7671 fax: 561-564-7393	Steve Forsythe	2	2	0
Vicksburg Field Office	2524 S. Frontage Rd., Ste. B Vicksburg, MS 39180	601-629-6607 fax:601-636-0128	Bob Bowker	2	0	2

Total 130

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REGION 5

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Maine Field Office (Sub-Office of the New England Field Office)	1033 South Main Street Old Town, Maine 04468	207-827-5938	Gordon Russell	1	1	0
New England Field Office	22 Bridge Street Concord, New Hampshire 03301	603-225-1411	Michael Bartlett	2	2	0
New York Field Office	3817 Luker Road Cortland, New York 13045	607-753-9334	David Stilwell	1	1	0
Long Island Field Office (Sub-Office of the New York Field Office)	500 St. Marks Lane Islip, New York 11751	516-581-2941	Steven Mars	2	1	1
New Jersey Field Office	927 Main Street, Building D Pleasantville, New Jersey 08232	609-646-0620	Clifford Day	3	2	1
Chesapeake Bay Field Office	177 Admiral Cochrane Drive Annapolis, Maryland 21401	410-573-4500	John Wolflin	4	2	2

APPENDIX I

REGION 5

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Pennsylvania Field Office	315 South Allen Street, Suite 322 State College, Pennsylvania 16801	814-234-4090	David Densmore	2	2	0
Virginia Field Office (Sub-Office to the Chesapeake Bay Field Office)	P.O. Box 99 Gloucester, Virginia 23061	804-693-6694	Karen Mayne	1	1	0
Southwest Virginia Field Office (Sub-Office of the Virginia Field Office)	988 W. Main Street Abingdon, Virginia 24210	540-623-1233	Roberta Hylton	1	1	0
West Virginia Field Office (Sub-Office of the Pennsylvania Field Office)	Route 250, South Elkins Shopping Plaza Elkins, West Virginia 26241	304-636-6586	Jeffrey Towner	1	1	0

Total 18

APPENDIX I

REGION 6

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Colorado Ecological Services Field Office	P.O. Box 25486, DFC Denver CO 80225-0046	303-275-2370	LeRoy Carlson	15	0	15
Kansas Ecological Services Field Office	315 Houston Street, Suite E, Manhattan, Kansas 66502	913-539-3474	William Gill	8	2	6
Nebraska Ecological Services Field Office	203 West Second Street Federal Building, 2nd Floor Grand Island, Nebraska 68801	308-382-6468	Steve Anschutz , Acting	13	5	8
North Dakota Ecological Services Field Office	1500 E. Capitol Avenue Bismarck, North Dakota 58501	701-250-4481	Al Sapa	8	0	8
South Dakota Ecological Services Field Office	420 South Garfield Avenue Suite 400, Pierre South Dakota 57501-5408	605-224-8693	Pete Gober	13	6	7
Montana Ecological Services Field Office	100 North Park, Suite 320 Helena, Montana 59601	406-449-5225	Kemper McMaster	22 (includes grizzly bear and wolf coordinators' offices and staffs:)	11	11

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REGION 6

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Wyoming Ecological Services Field Office	4000 Morrie Avenue Cheyenne, Wyoming 82001	307-772-2374	Mike Long	7	3	4
Utah Ecological Services Field Office	145 East 1300 South, Suite 404, Salt Lake City, Utah 84115	801-524-5001	Reed Harris	10	7	3
Colorado River Recovery Program	P.O. Box 25486, DFC Denver, Colorado 80225-0486	303-243-2778	Henry Maddux Coordinator	9	9	0

Total 105

APPENDIX I

REGION 7

Field Office	Address	Phone number	Field Supervisor	Total ESA Employees	Full-Time	Part-Time
Regional Office	1011 E. Tudor Road Anchorage, Alaska 99503	907-786-3493	LaVerne Smith, Assistant Regional Director	2	1	1
Anchorage Ecological Services Field Office	605 West 4th Avenue, Room G-62 Anchorage, Ak 99501	907-271-2787	Ann Rappoport	2	1	1
Fairbanks Ecological Services Field Office	10112th Avenue, Box 19 (Room 110) Fairbanks, Ak 99701	907-456-0327	Patrick Sousa	2	2	0
Juneau Ecological Services Field Office	3000 Vintage Park Blvd, Suite 201 Juneau, AK 99801	907-586-7240	Teresa Woods	2	0	2

Total - 8

Appendix 2 Mitigation fund payments, amount, recipient and permit number (Jan 1993-April 1999)

REGION 1 RESPONSE:

The following tables identify all the mitigation payments, amount, recipient and permit number issued in California and Nevada from January 1993-April 1999. Because the use of mitigation funds or conservation banks are at the discretion of the project applicant, there is not a uniform distribution of projects using this approach across all Service Fish and Wildlife Offices. For example, the Klamath Fish and Wildlife Office does not have any projects that fall into this category, whereas both the Carlsbad and Sacramento Fish and Wildlife Offices do.

In Nevada, under an interlocal contract between the Service and Clark County, fees are collected for desert tortoise habitat that is disturbed by section 10 and section 7 formal consultation projects. These fees of $550.00/acre are deposited into the Desert Tortoise Public Lands Conservation Fund (for section 7 projects) managed by the County. Monies from section 10 activities are kept separately in the Clark County HCP account. However, both funds are used to implement tasks in the Desert Tortoise Recovery Plan that will promote recovery and ultimately delisting through activities including desert tortoise research, and securing and enhancing desert tortoise habitat. See attached table for Clark County Nevada Desert Conservation Plan PRT 756260 Mitigation Fees.

In Oregon, there have been three Corps Clean Water Act Section 404 permit projects in the City of Roseburg area that were subject to formal consultation under section 7 of the Endangered Species Act (ESA). Under a Memorandum of Agreement between the City and the Oregon Department of Fish and Wildlife (ODFW) an account was established for minimizing the impacts, including take by harm, to Corps jurisdictional wetlands and other habitats occupied by the endangered Columbian white-tailed deer. In part because of conservation actions such as this, the Columbian white-tailed deer was proposed for delisting on May 11, 1999. A total of at least $96,000 for habitat protection has been deposited into the account for these projects. Douglas County administers this accound as part of their steelhead habitat improvement program. The requested information associated with the account is currently not in the Service's files. That information is being requested from the City of Roseburg and will be provided shortly under separate cover.

Under the Clark County Nevada Desert Conservation Plan (DCP) (PRT 756260), the permitees impose a mitigation fee of $550 per acre for land disturbance activities in desert tortoise habitat. The fee is collected by the building departments of Clark County and the cities of Henderson, Las Vegas, North Las Vegas, Boulder City, and Mesquite, and forwarded to the DCP account on a monthly basis. Fees are also collected under an interlocal contract between the Service and the County, to minimize the impacts of take of desert tortoise habitat under Section 7 of the ESA. These acreage-based fees are deposited into the Desert Tortoise Public Lands Conservation Fund (Number 730-9999-2315), and are used for securing and enhancing tortoise habitat, and for tortoise research. Clark County manages this account under the terms of the interlocal contract.

Carlsbad Fish and Wildlife Office Area

Clark County Nevada
Desert Conservation Plan
PRT 756260
Mitigation Fees

	HENDERSON	N. LAS VEGAS	BOULDER CITY	MESQUITE	LAS VEGAS	CLARK COUNTY	NDOT	INTEREST	TOTAL	TOTAL EXCLUDING INTEREST
JULY 1997	$0	$0	$0	$0	$0	$176,370	$0	$0	$176,370	$176,370
AUGUST 1997	$69,626	$25,135	$160	$0	$0	$134,404	$2,956	$96,503	$328,785	$232,281
SEPTEMBER 1997	$0	$15,355	$908	$0	$44,854	$139,269	$1,980	($181,990)	$20,376	$202,366
OCTOBER 1997	$195,911	$1,452	$672	$0	$0	$95,487	$825	$120,383	$414,730	$294,347
NOVEMBER 1997	$73,522	$51,599	$0	$0	$189,900	$193,591	$0	$74,796	$583,407	$508,611
DECEMBER 1997	$16,936	$14,195	$0	$3,102	$219,798	$161,899	$0	$77,381	$493,311	$415,929
JANUARY 1998	$25,898	$33,692	$4,406	$0	$0	$213,442	$0	$102,726	$380,163	$277,437
FEBRUARY 1998	$57,857	$41,709	$0	$0	$174,883	$77,094	$0	$130,769	$482,312	$351,544
MARCH 1998	$32,124	$4,197	$215	$0	$63,277	$350,308	$0	$120,937	$571,056	$450,119
APRIL 1998	$35,591	$80,509	$63,338	$18,607	$45,232	$233,304	$3,575	$126,529	$606,684	$480,155
MAY 1998	$51,722	$17,221	$0	$0	$44,779	$153,066	$0	$129,614	$396,401	$266,787
JUNE 1998	$73,216	$49,841	$215	$0	$96,284	$101,944	$0	$383,772	$705,273	$321,501
JULY 1998	$32,857	$32,384	$0	$0	$0	$115,851	$0	$0	$181,092	$181,092
AUGUST 1998	$158,180	$14,894	$242	$0	$0	$106,025	$0	$109,075	$388,416	$279,341
SEPTEMBER 1998	$93,650	$62,139	$358	$4,521	$62,507	$120,533	$0	($72,435)	$271,271	$343,706
OCTOBER 1998	$89,870	$20,955	$0	$1,727	$105,088	$123,576	$0	$117,677	$458,893	$341,216
NOVEMBER 1998	$87,583	$0	$132	$0	$104,822	$78,742	$0	$102,731	$374,011	$271,279
DECEMBER 1998	$0	$97,709	$106,227	$2,812	$0	$157,360	$0	$153,410	$517,517	$364,107
JANUARY 1999	$109,225	$29,497	$0	$0	$41,436	$148,509	$0	$65,032	$393,698	$328,666
FEBRUARY 1999	$25,520	$20,477	$748	$0	$93,973	$151,531	$0	$86,588	$378,835	$292,248
MARCH 1999	$47,297	$1,540	$0	$7,970	$104,439	$661,156	$0	$117,321	$939,722	$822,402
APRIL 1999									$0	$0
MAY 1999									$0	$0
JUNE 1999									$0	$0
SUB-TOTAL FY '98	$632,405	$334,903	$69,912	$21,709	$879,006	$2,030,177	$9,336	$1,181,420	$5,158,868	$7,201,505
SUB-TOTAL FY '99	$644,181	$279,594	$107,707	$17,029	$512,264	$1,663,283	$0	$679,398	$3,903,455	$3,224,057
TOTAL BIEN '99	$1,276,586	$614,497	$177,619	$38,738	$1,391,270	$3,693,460	$9,336	$1,860,818	$9,062,323	$10,425,562

Clark County Nevada
Desert Conservation Plan
PRT 756260
Mitigation Fees

	HENDERSON	N. LAS VEGAS	BOULDER CITY	MESQUITE	LAS VEGAS	CLARK COUNTY	TOTAL
Jan-93	$153,093	$13,453	$83	$0	$165,252	$51,333	**$383,214**
Feb-93	$43,338	$19,547	$436	$0	$0	$107,730	**$171,050**
Mar-93	$30,501	$77,182	$113	$0	$33,263	$73,715	**$214,774**
Apr-93	$35,091	$25,768	$253	$1,810	$62,483	$70,057	**$195,461**
May-93	$105,737	$4,975	$628	$0	$76,090	$43,314	**$230,745**
Jun-93	$113,565	$48,260	$6,350	$9,455	$241,275	$113,688	**$532,593**
SUB-TOTAL	**$481,324**	**$189,184**	**$7,863**	**$11,264**	**$578,363**	**$459,838**	**$1,727,836**

Clark County Nevada
Desert Conservation Plan
PRT 756260
Mitigation Fees

	CLARK CO.	HENDERSON	LAS VEGAS	N. LAS VEGAS	BOULDER CITY	MESQUITE	NDOT	INTEREST	TOTAL	TOTAL EXCLUDING INTEREST
ALANCE FWD	$5,445,994.00	$3,383,270.00	$6,325,284.00	$1,570,283.00	$106,829.00	$0.00	$0.00	$2,155,232.00	$18,986,892.00	$16,831,660.00
ULY 1995	$215,439.65	$213,860.73	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$429,300.38	$429,300.38
UGUST 1995	$103,460.52	$40,686.09	$0.00	$1,163.50	$0.00	$0.00	$0.00	$83,022.63	$228,332.74	$145,310.11
EPTEMBER 1995	$125,898.36	$0.00	$0.00	$7,888.58	$0.00	$0.00	$0.00	$86,902.90	$220,689.84	$133,786.94
CTOBER 1995	$112,970.55	$130,188.34	$0.00	$30,035.50	$17,015.53	$0.00	$0.00	$60,197.44	$350,407.36	$290,209.92
OVEMBER 1995	$96,003.17	$92,241.76	$0.00	$25,558.50	$0.00	$0.00	$0.00	$66,495.88	$280,299.31	$213,803.43
ECEMBER 1995	$121,155.82	$70,155.09	$314,282.71	$0.00	$0.00	$8,375.00	$0.00	$86,313.42	$600,282.04	$513,968.62
ANUARY 1996	$145,400.20	$111,102.27	$0.00	$18,824.50	$14,842.30	$112,750.00	$0.00	$60,753.03	$463,672.30	$402,919.27
EBRUARY 1996	$249,633.22	$114,913.91	$0.00	$20,025.50	$0.00	$8,690.00	$0.00	($27,047.48)	$366,215.15	$393,262.63
ARCH 1996	$137,135.09	$65,731.15	$175,990.95	$22,313.50	$6,827.06	$0.00	$0.00	$96,521.15	$504,518.90	$407,997.75
PRIL 1996	$123,221.95	$124,750.00	$0.00	$24,359.50	$0.00	$1,685.75	$0.00	$36,435.82	$310,453.02	$274,017.20
AY 1996	$129,971.10	$32,044.06	$0.00	$43,483.00	$0.00	$34,006.00	$0.00	$69,559.38	$309,063.54	$239,504.16
UNE 1996	$177,900.75	$47,927.16	$815,812.42	$98,691.94	$32,319.54	$0.00	$0.00	$336,757.99	$1,509,409.80	$1,172,651.81
ULY 1996	$272,737.26	$19,182.44	$0.00	$25,272.50	$0.00	$0.00	$0.00	$0.00	$317,172.20	$317,172.20
UGUST 1996	$35,561.40	$60,187.82	$0.00	($30,849.94)	$363.00	$0.00	$0.00	$83,189.34	$148,451.62	$65,262.28
EPTEMBER 1996	$118,613.55	$41,906.82	$0.00	$33,137.50	$0.00	$11,165.00	$0.00	($120,811.21)	$84,011.66	$204,822.87
CTOBER 1996	$220,821.15	$19,198.53	$0.00	$3,740.00	$0.00	$0.00	$0.00	$116,363.08	$360,122.76	$243,759.68
OVEMBER 1996	$60,810.70	$51,303.69	$215,376.10	$24,200.00	$0.00	$0.00	$0.00	$76,243.58	$427,934.07	$351,690.49
ECEMBER 1996	$107,696.33	$96,701.31	$0.00	$37,181.35	$0.00	$18,672.50	$0.00	$95,526.99	$355,778.48	$260,251.49
ANUARY 1997	$168,525.50	$9,394.00	$0.00	$27,079.00	$0.00	$0.00	$0.00	$81,689.82	$286,688.32	$204,998.50
EBRUARY 1997	$97,206.18	$91,743.84	$0.00	$0.00	$264.00	$0.00	$0.00	$88,013.33	$277,227.35	$189,214.02
ARCH 1997	$217,149.35	$65,342.71	$0.00	$71,875.65	$137.50	$0.00	$0.00	$143,964.82	$498,470.03	$354,505.21
PRIL 1997	$162,609.00	$40,413.17	$0.00	$19,262.50	$1,050.00	$0.00	$0.00	$69,346.86	$292,681.53	$223,334.67
AY 1997	$109,421.85	$97,715.78	$291,738.58	$0.00	$13,915.50	$6,033.50	$0.00	$48,782.53	$567,607.74	$518,825.21
UNE 1997	$235,981.90	$46,153.43	$258,050.44	$274,343.00	$3,696.50	$0.00	$505.00	$460,346.35	$1,279,076.62	$818,730.27
UB-TOTAL FY 96'	$1,738,190.38	$1,043,600.56	$1,306,086.08	$292,344.02	$71,004.43	$165,506.75	$0.00	$955,912.16	$5,572,644.38	$4,616,732.22
UB-TOTAL FY 97'	$1,807,134.17	$639,223.54	$765,165.12	$485,241.56	$19,426.50	$35,871.00	$505.00	$1,142,655.49	$4,895,222.38	$3,752,566.89
OTAL FY 96'/97'	$3,545,324.55	$1,682,824.10	$2,071,251.20	$777,585.58	$90,430.93	$201,377.75	$505.00	$2,098,567.65	$10,467,866.76	$8,368,794.11

Clark County Nevada
Desert Conservation Plan
PRT 756260
Mitigation Fees

	HENDERSON	N. LAS VEGAS	BOULDER CITY	MESQUITE	LAS VEGAS	CLARK COUNTY	TOTAL
Jul-93	$0	$0	$0	$0	$0	$83,027	**$83,027**
Aug-93	$73,199	$3,300	$105	$0	$0	$64,057	**$140,661**
Sep-93	$0	$0	$0	$118	$151,968	$101,140	**$253,225**
Oct-93	$0	$27,311	$1,393	$0	$23,653	$60,777	**$113,133**
Nov-93	$117,302	$10,808	$0	$375	$80,555	$57,506	**$266,545**
Dec-93	$54,558	$11,831	$413	$0	$101,692	$92,390	**$260,884**
Jan-94	$48,090	$0	$827	$250	$69,826	$331,472	**$450,465**
Feb-94	$38,473	$166,685	$0	$85,902	$115,810	$91,917	**$498,787**
Mar-94	$50,055	$34,623	$1,316	$0	$92,335	$65,912	**$244,240**
Apr-94	$68,859	$0	$3,706	$3,750	$142,031	$169,379	**$387,725**
May-94	$14,395	$0	$1,010	$0	$98,197	$65,490	**$179,092**
Jun-94	$217,157	$71,599	$612	$2,143	$244,685	$118,379	**$654,574**
Jul-94	$0	$0	$0	$0	$134,409	$81,343	**$215,752**
Aug-94	$48,757	$77,886	$0	$0	$0	$130,363	**$257,006**
Sep-94	$242,785	$25,911	$7,485	$24,550	$148,333	$73,185	**$522,248**
Oct-94	$62,362	$0	$0	$0	$115,206	$73,809	**$251,377**
Nov-94	$71,581	$0	$4,131	$0	$0	$117,525	**$193,238**
Dec-94	$80,885	$18,667	$0	$0	$466,601	$42,719	**$608,871**
Jan-95	$111,283	$15,439	$0	$15,225	$0	$93,873	**$235,819**
Feb-95	$48,914	$207,930	$5,158	$0	$105,576	$101,951	**$469,529**
Mar-95	$270,897	$59,048	$0	$917	$310,973	$167,231	**$809,066**
Apr-95	$199,556	$23,986	$5,584	$1,750	$0	$124,873	**$355,749**
May-95	$75,938	$115,989	$4,066	$1,500	$234,897	$146,131	**$578,522**
Jun-95	$0	$107,027	$1,019	$750	$631,005	$151,188	**$890,987**
SUB-TOTAL FY '94	**$682,086**	**$326,155**	**$9,381**	**$92,537**	**$1,120,753**	**$1,301,447**	**$8,920,524**
SUB-TOTAL FY '95	**$1,212,958**	**$651,880**	**$27,444**	**$44,692**	**$2,147,000**	**$1,304,191**	**$5,388,165**
TOTAL BIEN	**$1,895,044**	**$978,035**	**$36,825**	**$137,229**	**$3,267,753**	**$2,605,637**	**$14,308,690**

Carlsbad Office

Permit Number/Consultation[1]	Amount of Payment	Bank/Fund Receiving Payment
Lake Matthews HCP(805-839)	$2,500,000	Metropolitan Water District
Metropolitan Water District	$1,000,000	Nature Reserve, Orange County
Southern California Edison	$400,000	Nature Reserve, Orange County
Irvine Ranch Water District	$1,000,000	Nature Reserve, Orange County
Santiago County Water District	$150,000	Nature Reserve, Orange County
Chandis Sherman	$850,000	Nature Reserve, Orange County
Fairfield Ranch	$281,700	Orange County Water District
Riverndale Land Development Company	$67,509	Orange County Water District
Mission Valley West Light Rail Transit Project/ Metropolitan Transit Development Board	$382,000 endowment with interest only available for enhancement of the San Diego River	San Diego River Endowment Fund/Southwest Wetlands Interpretative Association
San Diego Mitigation Fund (1-6-94-F-32; 1-6-94-F-37; 1-6-93-F-47)	$1,036,950	City of San Diego

Sacramento Fish and Wildlife Office Area
Vernal Pool Preservation Fund -This fund was originally established June 1995 by The Nature Conservancy. It was transferred to Center for Natural Lands Management March 1999. Both are nonprofit organizations.

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[1] In those cases where mitigation payments were received in conjunction with section 7 consultations, the payments were typically included as a conservation measure in the project description by the applicant or were part of a reasonable and prudent alternative necessary to avoid jeopardizing the continued existence of a listed species.

Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
1-1-95-F-0080	$2,800	Orchard Creek Conservation Bank
1-1-95-F-0088	$1,820	Orchard Creek Conservation Bank
1-1-95-F-0103	$11,900	Orchard Creek Conservation Bank
1-1-95-F-0076	$2,800	Orchard Creek Conservation Bank
1-1-95-F-0081	$5,600	Orchard Creek Conservation Bank
1-1-95-F-0091	$56,000	Transfer expected by 12/31/99
1-1-95-F-0133	$351,400	Sunrise Douglas Conservation Bank
1-1-95-F-0089	$15540	Transfer expected by 12/31/99
1-1-95-F-0145	$25,200	Orchard Creek Conservation Bank
1-1-96-F-0041	$138,600	Sunrise Douglas Conservation Bank
1-1-96-F-0026	$19,600	Orchard Creek Conservation Bank
1-1-96-F-0107	$18,200	Orchard Creek Conservation Bank
1-1-96-F-0004	$2,800	Orchard Creek Conservation Bank
Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
1-1-96-F-0095	$4,200	Orchard Creek Conservation Bank

1-1-95-F-0142	$19,600	Orchard Creek Conservation Bank
1-1-96-F-0049	$840	Transfer expected by 12/31/99
1-1-95-F-0131	$51,800	Orchard Creek Conservation Bank
1-1-96-F-0045	$23,100	Transfer expected by 12/31/99
1-1-96-F-0111	$12,600	Transfer expected by 12/31/99
1-1-96-F-0094	$21,000	Arroyo Seco Conservation Bank
1-1-95-F-0087	$2,800	Transfer expected by 12/31/99
1-1-97-F-0054	$5,040	Transfer expected by 12/31/99
1-1-97-F-0070	$280	Arroyo Seco Conservation Bank
1-1-97-F-0171	$8,400	Transfer expected by 12/31/99
1-1-98-F-0014	$65,520	Arroyo Seco Conservation Bank
1-1-97-F-0088	$7,000	TBA for location in Butte County
1-1-98-F-0023	$33,600	TBA for location in eastern Contra Costa County
1-1-97-F-0046	$79,800	Transfer expected by 12/31/99
Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
1-1-97-F-0045	$46,200	Arroyo Seco Conservation Bank

1-1-95-F-0019	$92,000	TBA for location in Butte County
1-1-95-F-0059	$9,800	Arroyo Seco Conservation Bank

2,603,990

Vernal Pool Creation Fund This fund is held by Center for Natural Lands Management. It was established July 1997.

Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
1-1-98-F-0167	$47,600	TBA pending applicant establishing a bank
1-1-95-F-0087	$1,400	Transfer expected by 12/31/99
1-1-97-F-0054	$2,520	Transfer expected by 12/31/99
1-1-97-F-0171	$4,200	Transfer expected by 12/31/99
1-1-96-F-0045	$11,550	Transfer expected by 12/31/99
1-1-98-F-0023	$16,800	TBA for location in eastern Contra Costa County
1-1-98-F-0024	$12,600	Transfer expected by 12/31/99
1-1-97-F-0088	$3,500	TBA for location in Butte County

California Red-legged Frog Conservation Fund -This fund is held by Center for Natural Lands Management. It was established March 1999. No deposits have been made to date.

Ventura Fish and Wildlife Office Area

Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
Los Osos Center	$38,000	Trust for Public Land
839580	Applicant deeded land to BLM or CDFG	
770981	$9,100	Desert Tortoise Preserve Committee
842781	$155,000	BLM
837867	$238,770 (management fee stipulated by CDFG)	CDFG
795218	$25,600 (management fee stipulated by CDFG)	CDFG
749374	$300,000	Center for Lands Management
842273	On-site mitigation area will be transferred to an entity to be determined prior to permit termination	TBA
830417	Applicant granted two conservation easements to County of Santa Cruz and sold a third mitigation area to the county	TBA
808240	Approx. $562,600 for on-site restoration plus $15,000/year	City of Sand City

Region 2 Fish and Wildlife Office Area 10,233,236

The reasonable and prudent alternative in the April 20, 1994, jeopardy biological opinion on the Central Arizona Project in the Gila River Basin (Consultation # 20-21-90-F-119) required the Bureau of Reclamation to deposit $250,000 annually for 25 years into an "escrow-type" account in the name of the FWS. The funds are to be used for activities (including research) for controlling exotic fishes that CAP is expected to bring to the Basin. Additional funding is now being considered for inclusion in the reasonable and prudent alternative in the Santa Cruz River segment of CAP.

The Kelly Air Force Base (Texas) realignment and operation project includes the Air Force's payment of $200,000 to the National Fish and Wildlife Foundation for work to conserve Edward Aquifer species.

The Corps of Engineers proposed to pay into accounts held by the National Fish and Wildlife Foundation to facilitate conservation of species adversely affected by the Pinnacle ($110,965), Delhi ($5520) and Koch ($44,259) pipelines in Texas. A similar conservation measure was proposed by the Corps of Engineers and the Environmental Protection Agency, where the two agencies deposited $88,057 in another National Fish and Wildlife Foundation account to facilitate conservation of species adversely affected by the Jewett Mine in Texas.

All HCP mitigation funds to date in Region 2 have been deposited with the Balcones Canyonlands Preserve Coordinating Committee for acquisition of endangered species habitat in the Greater Austin, TX area.

Permit Number/Consultation	Amount of Payment	Fund/Bank Receiving Payment
782186	$90,000	Balcones Canyonlands Preserve Coordinating Committee (BCPCC)
787880	$1,500	BCCPC
788841	$318,379	BCCPC
793122	$33,000	BCCPC
798286	$1,500	BCCPC
798288	$1,500	BCCPC
798299	$1,500	BCCPC
798290	$1,500	BCCPC
798291	$1,500	BCCPC
798292	$1,500	BCCPC
798293	$1,500	BCCPC
798294	$1,500	BCCPC
798295	$1,500	BCCPC
798297	$1,500	BCCPC
798298	$1,500	BCCPC

Permit Number/Consultation	Amount of Payment	Fund/Bank Receiving Payment
798299	$1,500	BCCPC
798300	$1,500	BCCPC
798301	$1,500	BCCPC
798302	$1,500	BCCPC
798532	$1,500	BCCPC
798667	$1,500	BCCPC
798674	$1,500	BCCPC
799859	$1,500	BCCPC
799863	$1,500	BCCPC
799945	$1,500	BCCPC
799946	$1,500	BCCPC
800080	$1,500	BCCPC
800130	$1,500	BCCPC
800131	$1,500	BCCPC
800438	$1,500	BCCPC
800439	$1,500	BCCPC
800440	$1,500	BCCPC
800441	$1,500	BCCPC
800442	$1,500	BCCPC
800443	$1,500	BCCPC
801373	$1,500	BCCPC
801588	$1,500	BCCPC
801381	$1,500	BCCPC
801823	$1,500	BCCPC
801837	$1,500	BCCPC

Permit Number/Consultation	Amount of Payment	Fund/Bank Receiving Payment
801838	$1,500	BCCPC
801839	$1,500	BCCPC
803131	$1,500	BCCPC
803132	$1,500	BCCPC
803133	$1,500	BCCPC
803135	$1,500	BCCPC
803148	$1,500	BCCPC
804125	$1,500	BCCPC
804126	$1,500	BCCPC
804127	$1,500	BCCPC
804128	$1,500	BCCPC
804129	$1,500	BCCPC
804130	$1,500	BCCPC
804131	$1,500	BCCPC
804132	$1,500	BCCPC
804133	$1,500	BCCPC
804135	$1,500	BCCPC
804136	$1,500	BCCPC
804137	$1,500	BCCPC
804138	$1,500	BCCPC
804139	$1,500	BCCPC
806824	$1,500	BCCPC
806825	$1,500	BCCPC
806827	$1,500	BCCPC
806829	$1,500	BCCPC

Permit Number/Consultation	Amount of Payment	Fund/Bank Receiving Payment
809215	$1,500	BCCPC
809217	$1,500	BCCPC
809218	$1,500	BCCPC
809220	$1,500	BCCPC
812703	$1,500	BCCPC
813476	$1,500	BCCPC
813478	$1,500	BCCPC
818874	$1,500	BCCPC
818877	$1,500	BCCPC
840322	$1,500	BCCPC
Central Arizona Project-Gila River Basin	$250,000/ann. (25-year term) 6,250,000	account in the name of FWS
Kelly Air Force Base Realignment and Operation	$200,000	National Fish and Wildlife Foundation
Pinnacle Pipeline	$110,965	National Fish and Wildlife Foundation
Delhi Pipeline	$5520	National Fish and Wildlife Foundation
Koch Pipeline	$44,259	National Fish and Wildlife Foundation
Jewett Mine	$88,057	National Fish and Wildlife Foundation

Region 4 Fish and Wildlife Office Area

Permit Number/Consultation	Amount of Payment	Fund/Bank Receiving Payment
TE004632-0	$103,320	The National Fish and Wildlife Foundation
840501	$4,500 management endowment and 4.5 acres off-site mitigation	Brevard County Government
834795	$20,865 and an annual assessment of $200 per dwelling	Individual accounts in Permittee's name (Brett Robinson/Phoenix Viii
832539	$17,773 and an annual assessment of $75 per dwelling 4.3 acres	Individual accounts in Permittee's name (Tidewater)
831754	$4,600 management endowment and 4.6 acres off-site mitigation	Brevard County Government
819464	$150,000 and an annual assessment of $50 per dwelling	Individual accounts in Permittee's name (Fort Morgan Paradise Joint Venture/Beach Club
816555	Annual assessment of $50 per dwelling	Individual accounts in Permittee's name (Plantation Palms
819363	Annual assessment of $50 per dwelling 1996 11.2 acres	Individual accounts in Permittee's name (Collins-Miller Bay to Breakers
816732	$25,000 - Conditional - if eagles abandon nest site	The National Fish and Wildlife Foundation
816491	$45,000 1996 - RCW	Private environmental consultants, National Forest units, and the No. Carolina Wildlife Resources Comm.

Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment
808474 Windover Farms Pineda Crossing Brevard Co., Fla. 1996 RCW	$4,500 management endowment 1,263 acres	Individual accounts in Permittee's name (Windover Farms/Pineda Crossing Corp./EKS
811902 Woodbright Venture 1996 Indian River, Fla.	$6,400 mngt endowment and 6.4 acres off-site mitigation 312 acres	Brevard County Government
800150 Waterside Down Brevard Co., Fla. 1996 FSJ	$94,000 mngt endowment and 94 acres off-site mitigation 42 acres	Lands owned and individual accounts in Permittee's name (Waterside Down Dev. Corp. - Cochran)
811416 Sage Development Baldwin City, Ala. 1996	$61,340 and an annual assessment of $100 per dwelling 25 acres ABM	Individual accounts in Permittee's name (Sage Development The Dunes & Phases I & II)
806150 Joseph Hill Brevard City 1996 - Fla. FSJ	$4,100 mngt endowment and 4.1 acres off-site mitigation 1.7 acres	Brevard County Government
809898 Brett Real estate Phoenix VI & VII Orange Beach, Ala. 1996 - ABM	$80,000 and an annual assessment of $50 per dwelling 22 acres	Individual accounts in Permittee's name (Brett/Robinson a.k.a. Phoenix VI & VII)
802986 Aronov Baldwin City, Ala. 1996 - ABM	$60,000 and an annual assessment of $50 per dwelling 52 acres	Individual accounts in Permittee's name (Martinique Developments LLC/Aronov/ Martinique on the Gulf)
800149 Red Cate Timber Co. - Vernon Parish, LA. - 1995 RCW	$50,000 mngt endowment and 50 acres off-site mitigation 1106 acres	Brevard County Government
798698 RNR Properties Brevard City, Fla. 1995	$57,400 mngt endowment and 57.4 acres off-site mitigation 225 acres	Brevard County Government
795856 - Cavalcade Co. Brevard Co., Fla. 1995 FSJ	$31,500 mngt endowment and 31.5 acres off-site mitigation 104 acres	Brevard County Government
Permit Number/Consultation	Amount of Payment	Bank/Fund Receiving Payment

797088 - Coconut Pointe Brevard Cty, Fla. 1995 - FSJ	$22,500 mngt endowment and 22.5 acres off-site mitigation 11.29	Brevard County Government
796769 Stallworth Preserve - Walton Co Fla. - 1995 CBJD	$70,000 and an annual assessment of $1,400 per dwelling 7 acres	Individual accounts in Permittee's name (Stallworth Preserve Owners Assoc.)
794359 539 - General Real Estate 1994 Brevard City, Fla	$30,630 mngt endowment and 30.63 acres off-site mitigation 15.1	Brevard County Government
791241 - Brandon Capital 1994 - FSJ 4acres	$7,500 mngt endowment and 7.5 acres off-site mitigation	Brevard County Government
791244	$3,000 mngt endowment and 3.0 acres off-site mitigation	Brevard County Government
787965 Ocean Ridge Ltd. Brevard Co, Fla. 1994	$4,200 mngt endowment and 4.2 acres off-site mitigation FSJ 9 acres	Brevard County Government
787698 Ed-Kran Plumbing - Baldwin Co. Ala. 1994	$28,000 and an annual assessment of $50 per dwelling 270 acres	Individual accounts in Permittee's name (Caribe Walking Village/ Wireman)
787172 D+E Investments 1994 - Baldwin Co. Ala. FBM	Annual assessment of $50 per dwelling 258 acres	Individual accounts in Permittee's name (D&E Investments - Kiva Dunes)
784126 Sea Mist Inc. Baldwin Co. Ala. 1993	Annual assessment of $50 per dwelling 46 acres	Individual accounts in Permittee's name (Sea Mist, Inc./Laguna Key)
774703 [illegible] ? 1993	$40,000 mngt endowment and 40 acres off-site mitigation 25 acres	Archbold Biological Station
4-C-95-2494	$8,000 for study	U.S. Fish & Wildlife Service

Region 6 Fish and Wildlife Office Area 10.34.28

The attached tables for Upper Colorado River mitigation payments and Platte River mitigation payments reflect payments received under programmatic biological opinions covering water depletions from these systems.

PFW Watchorn	4,658	NFWF
98-40328 TransSystems Corp.	1,466	NFWF
98-10290 Northwoods LLC	4	NFWF
99-40010	356	NFWF
Bear Creek Ranger Dist.	18	NFWF
Granite Mtn. grazing allot.	863	NFWF
99-40033	557	NFWF
98-10564 Overton S&G	59	NFWF
93-40338 Duer Wagner	431	NFWF

30,752

SUMMARY OF ACTIONS COVERED UNDER THE PLATTE RIVER
MAJOR WATER DEPLETION BIOLOGICAL OPINION
FOR PERIOD 06/13/96--04/20/99

PROJECT	BO NUMBER	AMOUNT RECEIVED ($)	RECIPIENT
Idaho Springs storage res.	CO-98-F-006	813	NFWF
Lakewood Pipeline	CO-97-F-023	100,000	NFWF
Broomfield-McKay Ditch	CO-99-F-002	429	NFWF

101,242

SUMMARY OF ACTIONS COVERED UNDER THE PLATTE RIVER MINOR WATER DEPLETION BIOLOGICAL OPINION (#6-96-F01) FOR PERIOD 06/13/96--04/20/99

ROJECT	AMOUNT RECEIVED ($)	RECIPIENT
95-50814 Connell sandpit ex	708	NFWF
95-50918 Kopecky reuse pit	344	NFWF
95-50744 Peterson pond ex	44	NFWF
95-50030 Overton S&G sandpit ex.	3,018	NFWF
95-50631 Hoffmeister sandpit ex.	451	NFWF
94-50821 Werner sandpit ex.	1,121	NFWF
95-50166 Nelson sandpit ex.	104	NFWF
96-50331 Lambert pond ex.	115	NFWF
96-50481 Broadfoot sandpit ex.	697	NFWF
96-50401 Broadfoot sandpit ex.	928	NFWF
Emulsified Asphalt, Inc., reservoir const.	43	NFWF
Chapman Wellfield	877	NFWF
Brad Wind create wetland	2,113	NFWF
Two Ponds NWR	70	NFWF
Range Improvements	672	NFWF
96-80932 Nichols pond ex.	129	NFWF
96-50525 Paulsen sandpit ex.	928	NFWF
96-10250 Lower Platte South NRD dry dam	4	NFWF
Ginger Quill create wetland	270	NFWF
-50862 Quality S&G sandpit ex.	104	NFWF
Bloomfield Tom Frost Reservoir	2,346	NFWF
Brook Forest special use permit	185	NFWF
97-50559 Stevens pond ex.	100	NFWF
97-50613 Newkirk pond ex.	517	NFWF
97-40276 pond ex.	1,497	NFWF
97-50615 Norris pond ex.	216	NFWF
Snowy Range special use permit	178	NFWF
97-50014 Wiggs pond ex.	93	NFWF
97-50734 Weber pond ex.	7	NFWF
97-50713 Warner pond ex.	129	NFWF
98-50109 Anderson pit ex.	86	NFWF
98-50125 Robertson pit ex.	64	NFWF
98-80039 Mayes pond	49	NFWF
98-80891 Cub Creek pond	495	NFWF
97-80986 Meadow Sanct. pond	641	NFWF
Kenny Trout wetland dev.	237	NFWF
97-10312/98-10105 Hingorani dam const.	44	NFWF
98-50296 Cullinan ex. pond	86	NFWF
98-50059 Schmunk sandpit ex.	1,121	NFWF
enchwoman #1 oil well	65	NFWF
Williams Draw spring	32	NFWF
Middle Field water	47	NFWF
Vernon Spring	17	NFWF
98-40221 Allshouse dam const.	1,348	NFWF

SUMMARY OF DEPLETIONS COVERED BY PLATTE RIVER BIOLOGICAL OPINION (#CO-93-F-026) FOR PERIOD 01/01/93--06/13/96

PROJECT	DEPLETION COST ($)	RECIPIENT
Joe Wright Reservoir	3,235	NFWF
Long Draw Reservoir	2,245	NFWF
Barnes Meadow Reservoir	813	NFWF
Peterson Lake	1,559	NFWF
Idylwilde Hydroelectric	0.93	NFWF
Boulder Hydro Gravity Line	6,838	NFWF

14690.93

Biological Opinions Containing Water Depletion Charges for the Upper Colorado River Endangered Fish Recovery Program
January 1, 1993 - March 31, 1999
Note: all payments were made to the National Fish and Wildlife Foundation

Federal Agency	Project Name	State	Depletion Charge	Date Biological Opinion Finalized
BLM	Chapman-Ricbold Amend	CO	$419.00	29 July 1993
BLM	Greenhorn Stock Pond	CO	$31.00	7 April 1994
BLM	Dad Ponds	WY	$1,676.25	19 August 1997
BLM	Wolford Mtn. Resv.	CO	$79,670.00	4 March 1998
BLM	Mountain Coal	CO	$12.00	21 December 1993
BLM	Aable Trucking Co	UT	$240.00	21 June 1993
BLM	Trans-Colorado Gas Pipeline 2	CO	$1,712.44	18 May 1998
BLM	Devils Canyon	CO	$180.00	29 July 1993
BLM	Clough-Alber Ponds	CO	$16.00	31 May 1994
BLM	Taylor Grazing Pond	CO	$16.00	22 February 1994
BLM	Cason Irrigation Pipeline	CO	$169.00	13 January 1994
BLM	North Northwater Spring	CO	$20.00	31 May 1994
BLM	Ute Pipeline	CO	$14,555.74	2 February 1998
BLM	Balcron Oil & Gas Development	UT	$5,605.00	21 April 1995
BLM	Monument Butte	UT	$6,170.00	18 July 1994
BLM	JQS Pit Reservoirs	CO	$31.00	22 February 1994
BLM	Rocky Mt. Natural Gas	CO	$108.00	27 August 1993
BLM	Vasten Homestead Waterfowl	CO	$79.00	22 February 1994
BLM	Lisbon Valley Copper Project	UT	$12,162.87	26 November 1996
BR	Narrows Amendment	UT	$1,995.00	9 January 1995
COE	West Pond	CO	$2.00	13 January 1994
COE	Welfelt Wetland	CO	$56.00	15 April 1994
COE	Den Pond	CO	$5.00	31 May 1994

COE	Little Twin Creek	WY	$81.00	19 May 1994
COE	Carns Pond	CO	$93.00	29 March 1994
COE	Jimmy Creek	WY	$100.00	17 March 1994
COE	Evans/McKenzie Ponds	CO	$5.00	1 November 1993
COE	Dry Hollow Creek	CO	$28.00	4 April 1994
COE	Independence Pond	CO	$27.00	31 May 1994
COE	Corral Creek	WY	$17.00	15 March 1994
COE	Avon Metro	CO	$14.00	31 May 1994
COE	Palmer Creek	CO	$12.00	28 March 1994
COE	Rivergreen	CO	$12.00	31 May 1994
COE	Lake Windemere	CO	$48.00	7 September 1993
COE	Hahn's Peak Dam	CO	$357.00	12 February 1993
COE	Pollard Pond	CO	$46.00	1 July 1994
COE	Permit 94-475135	CO	$4.00	1 July 1994
COE	City of Steamboat Spgs Glf Crs	CO	$2,283.00	21 August 1995
COE	Miller Creek Ranches	CO	$563.00	28 June 1994
COE	Upper Eagle Diversion	CO	$7,664.00	26 July 1995
COE	Flannery Reservoir	CO	$1,598.00	2 July 1993
COE	Green River/Rock Springs Water Board	WY	$18,533.00	27 September 1993
COE	Killdeer Pond	WY	$1,381.20	26 September 1996
COE	Alpine Land Dev.	CO	$3,142.00	8 July 1994
DOE	Uran Mill Tailings-Slickrock	CO	$707.00	27 August 1993
DOE	Naval Oil Shale Res #3	CO	$60.00	1 June 1994
DOE	Maybell UMTRA	CO	$3,559.00	17 February 1995
FS	Snowmass Ski Devel	CO	$1,218.00	10 February 1995
FS	Alsbury Res. Enlargement	CO	$1,641.00	10 February 1994
FS	Yampcolo Resv. enlarge.	CO	$1,983.00	1 May 1996

FS	Pelican Ponds	WY	$2,145.00	22 September 1994
FS	Yampa Ranger District	CO	$3,797.75	8 December 1997
FS	Telluride Ski Resort	CO	$5,453.00	22 March 1995
FS	Gilbert Family Trust	CO	$24.00	4 September 1993
FS	Fish Creek Reserv Expansion	CO	$7,059.00	24 September 1993
FS	Irwin Water Lines	CO	$6.00	22 February 1994
FS	7 Natl Forests Small Dep	CO	$2,937.00	07-Sep-93
FS	Porter Ditch	CO	$5,553.00	15-Aug-94
NRC	Atlas Mill Tailings Reclamation	UT	$2,130.88	29-Jul-98
OSM	Foidel Creek Mine	CO	$2,103.00	04-May-95
OSM	Mt. Coal West Elk	CO	$211.00	30-Jun-94
OSM	Foidel Creek Mine Expansion	CO	$1,808.87	11-Jul-97
OSM	Lion Coal Swanson Mine	WY	$148.00	22-Dec-93
OSM	Sanborn East Tract	CO	$364.00	03-Feb-93
OSM	Orchard Valley Mine	CO	$463.00	31-May-94
OSM	Bowie Mine #2	CO	$1,611.74	03-Sep-96
OSM	Cyprus Plateau's Willow Creek Mine	UT	$9,789.30	04-Nov-96
OSM	Hayden Gulch Loadout	CO	$676.00	23-Jul-93
OSM	Bear Mine #3	CO	$189.00	31-May-94
OSM	Bowie Mine #2, Tech. Revision #7	CO	$2,578.73	22-Mar-99
SCS	Bray Irrigation	CO	$146.00	03-Jun-94

219301.77

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/AEA/

MAY 21 1999

Honorable Don Young
Chairman
House Resources Committee
Washington, DC 20515

Dear Mr. Chairman:

As promised in our recent correspondence, please find enclosed the remaining answers to questions you submitted to the Fish and Wildlife Service, dated April 19, 1999, regarding implementation of the Endangered Species Act. We appreciate your patience in allowing us time to collect all of the materials relating to your request.

Thank you once again for the opportunity to answer your questions. Please feel free to contact me if you require any additional information.

Sincerely,

Thomas O. Melius
Assistant Director-External Affairs

Enclosure

Section 10(a)(1)(B) Permits Issued by the Utah Field Office of the U.S. Fish and Wildlife Service Through May, 1999

1. Flandro Venture Capital Group
   Permit Number: PRT-784336 issued 2/10/94
   Applicant's Payment: $7,500
   Recipient: spent directly by applicant for conservation: construction of peregrine falcon nest box and maintenance.

2. Heritage Arts Foundation, Inc. (Tuacahn Theater)
   Permit Number: PRT-798634 issued 3/31/95
   Applicant's Payment: $140,000
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3. West Hills, L.L.C.
   Permit Number: PRT-804479 issued 9/20/95
   Applicant's Payment: $800
   Recipient: U.S. Bureau of Land Management (to improve Utah prairie dog habitat on public land)

4. Coleman Company
   Permit Number: PRT-804404 issued 9/20/95
   Applicant's Payment: $560
   Recipient: U.S. Bureau of Land Management (to improve Utah prairie dog habitat on public land)

5. Washington County, Utah
   Permit Number: PRT-811471 issued 2/23/96
   Payment: $2,588,200 to date from 5,829 individuals.
   Recipient: Washington County (for land acquisition and management, translocation study)

6. Smead Manufacturing Company
   Permit Number: PRT-814008 issued 5/29/96
   Payment: $28,950
   Recipient: National Fish and Wildlife Foundation Utah Prairie Dog Account (used by Bureau of Land Management to improve Utah prairie dog habitat on public land)

7. Connel Gower Construction, Inc.
   Permit Number: PRT-817340 issued 10/13/96
   Applicant's Payment: $56,700
   Recipient: National Fish and Wildlife Foundation Utah Prairie Dog Account (used by Bureau of Land Management to improve Utah prairie dog habitat on public land)

8. Church of Jesus Christ of Latter-Day Saints
Permit Number: PRT-825570 issued 3/27/97
Applicant's Payment: $5,670
Recipient: National Fish and Wildlife Foundation Utah Prairie Dog Account (used by Bureau of Land Management to improve Utah prairie dog habitat on public land)

9. Jose Noriega, Sam Zitting, Phillip Finch
Permit Number: PRT-835638 issued 12/16/97
Applicant's Payment: $1,494 mitigation fee
Recipient: National Fish and Wildlife Foundation Utah Prairie Dog Account (used by Bureau of Land Management to improve Utah prairie dog habitat on public land)

10. Iron County Habitat Conservation Plan
Permit Number: PRT-MB000142-0 issued 7/9/98
Applicants' Payments: $14,555 to date from ten individuals and $15,000 from County
Recipient: Iron County (for translocation study, habitat maintenance, managment and acquisition on public land)

Appendix 3 Table of Organizations Operating Mitigation Banks, the Amount of Land in the Mitigation Bank or the Amount of Money in the Mitigation Bank, and It's Location

REGION 1 RESPONSE:

Of the mitigation/conservation banks in Region 1, the Service administers the tracking of the credit ledger only for the Rancho San Diego bank. The Service does not own the credits however; as the credits are sold or used the money is received by the California Department of Transportation (CALTRANS), the County of San Diego, and the San Diego Association of Governments (SANDAG). These three agencies acquired Rancho San Diego specifically as a mitigation bank, and subsequently turned it over to the Service to be managed as part of the San Diego National Wildlife Refuge. The Service also manages the land conserved by the San Miguel, Singing Hills, and the Chula Vista Capital mitigation/conservation banks as part of the San Diego National Wildlife Refuge Complex. The Wrights Bank in Sonoma County is administered by the California Department of Fish and Game. The remainder of the banks are operated and managed by entities other than the Service including private land owners, cities, and non-profit organizations like the Boys and Girls Clubs and The Nature Conservancy.

Table 2 is a list of mitigation banks with signed implementing agreements with the Service and the California Department of Fish and Game that are available to project applicants in southern California to use in offsetting their project impacts, as applicable. Additionally, other mitigation/conservation banks are in use by private and public entities but do not have signed agreements with the State and Federal wildlife agencies.

Table 2. Mitigation Banks.

Carlsbad FWO

Bank Name or Organization	Credits in the Bank/Credit Used	Credit Ownership /Management Obligation	Location by County, State
Metropolitan Water District (Lake Mathews)	657/15	Metropolitan Water District	Riverside County, CA
CALMAT	591/19	CALMAT	San Bernadino County, CA
Prado Basin	no land/exotic plant removal	Orange County Water District	Riverside County, CA

Rancho San Diego Mitigation Bank	1,705/51	Caltrans, County of San Diego and the San Diego Association of governments / Land owned & managed by USFWS.	San Diego County, CA
Carlsbad Highlands Conservation Bank	180/55	Tech-Bilt, Inc / Managed by CDFG	San Diego County, CA
Chula Vista Capital Mitigation Credit .	83/0 Wetlands Bank	Hampton LLP / Land owned & managed by USFWS	San Diego County, CA
Cornerstones Conservation Bank	1000/0	City of San Diego / Lands owned & managed by City of San Diego	San Diego County, CA
Crestridge Conservation Bank	2,603/310	The Nature Conservancy and CDFG / Land owned and managed by TNC & CDFG	San Diego County, CA
Daley Ranch Conservation Bank	2,642/11	City of Escondido / Lands owned & managed by City of Escondido	San Diego County, CA
Del Mar Mesa Mitigation Bank	18/0	City of San Diego / Lands owned & managed by City of San Diego	San Diego County, CA
Manchester Avenue Conservation Bank	168/45	Tech-Bilt, Inc, / Lands owned and managed by the Center for Natural Lands Management	San Diego County, CA
Mission Bay Park Mitigation Bank	10/1 Wetlands Bank	City of San Diego / Lands owned & managed by the City of San Diego	San Diego County, CA

Pilgrim Creek	26/4 Wetland Bank	Caltrans / Lands are owned and managed by Caltrans	San Diego County, CA
San Miguel Conservation Bank	1,186/2	Emerald Properties / Land owned and managed by USFWS	San Diego County, CA
San Vicente Conservation Bank	320/72	Boys and Girls Clubs of East County Foundation / Lands owned & managed by The Environmental Trust.	San Diego County, CA
Orange County Transportation Corridor Agency	1,132/327	TCA/TCA	Chiquita Canyon, Orange County
Singing Hills Conservation Bank	70/0	County of San Diego / Lands owned & managed by USFWS	San Diego County, CA
Whelan Ranch Conservation Bank	136/26	Bank of America / Lands owned & managed by Center for Natural Lands Management	San Diego County, CA

Sacramento FWO

Bank Name	**Bank Owner/Manager**	**Location**	**Size (acres)**
Wildlands (Sheridan)	Wildlands, Inc.	Placer County	300
Orchard Creek Conservation Bank	Wildlands, Inc.	Placer County	632
Arroyo Seco Conservation Bank	Conservation Resources, L.L.C.	Sacramento County	240
Sunrise Douglas Mitigation Bank	Kiefer Sunrise Associates	Sacramento County	482

Laguna Creek Conservation Bank	Conservation Resources, L.L.C.	Sacramento County	780
Pleasanton Ridge Conservation Bank	Wildlands, Inc.	Alameda County	654
Dolan Ranch Conservation Bank	Wildlands, Inc.	Colusa County	252
Kimball Island Mitigation Bank	Wildlands, Inc.	Sacramento County	100
Southwest Santa Rosa	Ron Engle	Sonoma County	39
Wrights	California Dept. of Fish & Game	Sonoma County	162
Wikiup	Charlie Patterson	Sonoma County	12
ARCO/Coles Levee	ARCO	Kern County	6059
Kern Water Bank	Kern Water Bank Association	Kern County	3267

REGION 2 RESPONSE:

Region 2 has one mitigation bank in operation. This bank of excellent oak/juniper habitat for endangered species in the Austin TX area (also known as the 942-acre Ivanhoe property) was acquired by the Lakeway Partners L.L.C. for use as a mitigation credit account.

REGION 4 RESPONSE:

Although specific guidance has not been developed to date, Region 4 of the Fish and Wildlife Service has approved the concept of a mitigation bank, as a component of an approved Habitat Conservation Plan and approved Incidental Take Permit. The Service approved an HCP for International Paper Company that included the development of a mitigation bank that focuses on the red-cockaded woodpecker (RCW). International Paper Company must first develop a plan for the bank that will include guidance related to establishing, operating, and maintaining the bank. Additionally, this plan must be approved by the Service before implementation. International Paper Company's RCW Mitigation Bank will be operated with the expectation of providing RCW "credits" to offer for sale to other non-Federal entities with "debits" produced by the mitigation requirements of obtaining an ITP. The "credit" and "debit" system for RCWs is essentially the RCW family and the accompanying habitat. The transaction will likely involve International Paper recouping the costs of creating and managing RCWs (through establish

translocation and cavity creation methods).

Organization Operating the Bank:	International Paper Company
Amount of Land	Approximately 1,200 acres with about 12 RCW groups.
Location:	Southlands Experiment Forest, located near Bainbridge, Georgia.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/AEA/

MAY 21 1999

Honorable Don Young
Chairman
House Resources Committee
Washington, DC 20515

Dear Mr. Chairman:

As promised in our recent correspondence, please find enclosed the remaining answers to questions you submitted to the Fish and Wildlife Service, dated April 19, 1999, regarding implementation of the Endangered Species Act. We appreciate your patience in allowing us time to collect all of the materials relating to your request.

Thank you once again for the opportunity to answer your questions. Please feel free to contact me if you require any additional information.

Sincerely,

Thomas O. Melius
Assistant Director-External Affairs

Enclosure

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Recipient: Iron County (for translocation study, habitat maintenance, managment and acquisition on public land)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/DTE/CCU99-01051

Jul 15, 1999

Honorable Don Young
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is our response to your May 19, 1999, letter requesting specific information regarding the endangered species program at our Carlsbad Fish and Wildlife Office in southern California. The enclosure provides a point-by-point response to the specific questions you raised in your letter.

We apologize for the delay in responding to your May 19, 1999, letter. The Carlsbad Fish and Wildlife Office met with the City of Corona, U.S. Army Corps of Engineers, and a representative from Congressman Ken Calvert's office on June 10, 1999, to discuss several of the issues raised in your letter. We believed that the results of this meeting, which are summarized in the enclosure under the response to question 3, would be of interest to you and your committee; hence, our late response to your letter.

Thank you for the opportunity to respond.

Sincerely,

DIRECTOR

Enclosure

Enclosure. Responses to the Questions Raised in the May 19, 1999 Letter:

Question 1. Please provide the Committee with an explanation of the discrepancy between the demands made in the attached FWS letter dated August 4, 1998, and your representations made to the Committee pertaining to mitigation.

Response: The emergency and non-emergency projects described in the City of Corona's (City) Operations and Maintenance Manual for the Prado Basin require authorization from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. The Corps also has procedural and regulatory requirements under the National Environmental Policy Act (NEPA) and Clean Water Act to analyze the environmental effects of issuing a permit and using Federal lands in Prado Basin for the projects described in the City's Operation and Maintenance Plan. In turn, the Corps is required to consult with the Carlsbad Fish and Wildlife Office (CFWO) under section 7 of the Endangered Species Act (ESA) because the issuance of a Corps permit and the use of Federal lands in Prado Basin may affect federally-listed species and their designated critical habitats. The specific proposed projects may adversely affect two endangered species, the least Bell's vireo (vireo) and southwestern willow flycatcher (flycatcher) and their designated critical habitats. Approximately 12 acres of habitat for the vireo and flycatcher would be lost by the proposed construction or maintenance of flood control, sewer main, sewer ponds, outfall, levees, roads, and airport infrastructure.

Measures that are proposed to offset the environmental effects of the project become an important part of the project description that is analyzed by the CFWO during the review of the Corps permit, and NEPA document. The term "mitigation" is specifically discussed in the implementing regulations for NEPA and section 404 of the Clean Water Act and is used in the context of these authorities. Proposed mitigation can incorporate one or more of the following actions: avoid the impact, rectify the impact, reduce or eliminate the impact over time, or compensate for the impact. The project-related mitigation measures that result from the appropriate implementation of NEPA and the Clean Water Act also serve to avoid, minimize, and reduce impacts to listed species and designated critical habitats, which is the goal and mandate of the Service, the Corps, and all other Federal agencies pursuant to section 7 of the ESA.

In the August 4, 1998, letter from the CFWO to the Corps, the term "mitigation" is specifically used in the context of NEPA and the Clean Water Act. The CFWO recommended that the conservation measures listed in the August 4 letter be incorporated into the draft environmental assessment for the proposed projects in Prado Basin. In this context, the Service recommended that the Corps and the City consider creation of habitat for the endangered vireo and flycatcher as part of the proposed action to minimize adverse effects associated with the proposed destruction of approximately 12 acres, including designated critical habitat. This request is consistent with the characterization of the consultation process outlined in the May 26, 1999, testimony to the Committee. That testimony referred to our emphasis on working with Federal action agencies and applicants through the informal consultation process to modify proposed actions in a manner that maximizes avoidance and minimizes adverse effects on listed species and their critical

habitats. The CFWO has expressed strong interest and availability to work with the City to resolve any potential misunderstandings or confusion regarding the application of the Clean Water Act, NEPA, and ESA for the proposed projects in Prado Basin.

Question 2. What is the Service doing to ensure that your employees follow established Service-wide policies, rules and regulations?

Response: There are a variety of ways that this is achieved. New employees in the Ecological Services Program, which includes the Division of Endangered Species, are required to attend orientation training sessions at the regional and national levels where Service-wide policies, rules, and regulations are discussed. Opportunities are also provided on a regular basis at both the regional level and through our National Conservation Training Center in West Virginia to all employees for specific formal training on implementing procedures for ESA sections 7 and 10. These training courses include discussions of Service-wide policies, rules, and regulations related to consultation and habitat conservation planning procedures.

In addition to training, the Service, in cooperation with the National Marine Fisheries Service, has produced national handbooks for both the section 7 and section 10 programs. These handbooks constitute national policy and are intended to promote efficiency and nationwide consistency within and between the Services.

Memoranda issued at the national and regional level are also used to reaffirm and clarify existing and new regulations, rules, and policies and to institute new policies and rules.

Regular coordination occurs in the form of monthly conference calls between the Washington Office and our regional Endangered Species Chiefs to share information, including that related to Service-wide policies, rules, and regulations pertaining to the section 7 and section 10 programs. National and regional meetings are also convened to share information and calibrate our implementation of the ESA. In Region 1, there are weekly conference calls between the Regional Office and Ecological Services project leaders to share such information.

Finally, as decision documents (e.g., biological opinions, incidental take permits) are finalized, the surnaming process reflects manager concurrence that the document is consistent with all relevant regulations, rules, and policies.

Question 3. Please explain why the Carlsbad office has refused to participate in and conclude in a timely fashion the consultation of the Corps request for consultation in the City of Corona case as required by the Endangered Species Act.

Response: Section 7 of the ESA outlines the procedures for interagency cooperation to conserve federally-listed species and designated critical habitat. Under section 7 of the ESA, all Federal agencies are required to consult with the Service to ensure that they are not undertaking, funding, permitting, or authorizing actions that are likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. The Service assists Federal

agencies in ensuring that their actions comply with the section 7 directive by providing a process for informal and formal consultation between the agencies. Through the consultation process, the Service advises Federal agencies on whether their actions are likely to affect listed species or critical habitat.

In turn, the Federal action agency has the obligation to provide a complete initiation package with the request for formal consultation. The initiation package must include the description of the action being considered; description of the specific area that may be affected by the action; description of any listed species or critical habitat that may be affected by the action; description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects; relevant reports, including any environmental impact statements, environmental assessments, biological assessment or other analyses prepared on the proposal; and any relevant studies or other information available on the action, the affected listed species, or critical habitat (50 CFR Part 402.14c).

Where adverse effects are anticipated, the Service determines whether the Federal action under review is or is not likely to "jeopardize the continued existence of" a listed species or "destroy or adversely modify" designated critical habitat. The Service frequently assists Federal action agencies in determining if any listed species or critical habitats are in the action area and, if so, whether they may be affected by the proposed action. The Service also assists the Federal agency and applicant by recommending project modifications that allow the project to go forward in such a way that adverse impacts on listed species are avoided, thereby negating need for formal consultation. Should a Federal agency determine that any of their anticipated actions may adversely affect a listed species or critical habitat, that agency is required to initiate formal section 7 consultation with the Service. If jeopardy or adverse modification is determined, the Service is required to work with the Federal action agency to develop "reasonable and prudent alternatives" that avoid jeopardy and can be implemented consistent with the intended purpose of the action, are within the agency's authority, and are economically and technologically feasible.

In the case of the City of Corona, the Corps is the Federal action agency by virtue of being both a landowner in the Prado Basin and the agency that implements the regulatory program under section 404 of the Clean Water Act. The Corps, along with the City of Corona, has the responsibility to provide the CFWO with the information needed to initiate and complete the section 7 consultation. The implementation of the City's Operations and Maintenance Manual would impact Federal lands within the Prado Basin that support populations of the endangered least Bell's vireo, endangered southwestern willow flycatcher and riparian habitats designated as critical habitat for these species. Because most or all of these projects may adversely affect the least Bell's vireo or the southwestern willow flycatcher and their designated critical habitats, consultation between the CFWO and the Corps is required by section 7 of the ESA.

The Corps requested formal consultation with the CFWO on May 20, 1998. The CFWO responded to the Corps on August 4, 1998, and agreed that formal consultation was necessary due to the adverse impacts to the least Bell's vireo, southwestern willow flycatcher, and to designated critical habitat for these listed species. According to the August 4, 1998, letter, the

CFWO indicated they were unable to initiate consultation with the Corps due to the lack of specific information on the effects of the action on the least Bell's vireo, southwestern willow flycatcher, and designated critical habitat for these species within the project area. The specific information needed to initiate consultation was detailed in the August 4, 1998, letter to the Corps as follows:

> (1) a description of the operations and maintenance specifics of City projects in the action area, (2) descriptions of the manner in which the action (including indirect, inter-dependent or interrelated effects) may affect the listed species and an analysis of any cumulative effects, and (3) any other relevant available information on the action.

As indicated throughout the letter, the Service is concerned with the potential direct and indirect impacts of the proposed activities. The additional information requested would assist in describing the magnitude and significance of those impacts to the listed species in the project area.

The CFWO met with the City of Corona and the Corps on March 19, 1999, to discuss the Operations and Maintenance Manual for Prado Basin. At this meeting, the CFWO again reiterated the information and analysis that was needed to begin the formal consultation process for both emergency and non-emergency projects in the Prado Basin. Based on that meeting, the City of Corona sent a letter dated March 26, 1999, to the CFWO and the Corps that stated "We believe progress was made in understanding the additional information needed to bring this project to a successful conclusion. Steve Powers [of the City of Corona] will be working with Carvel Bass [of the Corps] this next week and will have this requested information to you in the near future." (Attachment 1). To date, the CFWO has not received the information referenced in the City's March 26, 1999, correspondence. Thus, the CFWO has been unable to initiate formal consultation with the Corps on this project.

The CFWO is committed to working with the City of Corona and the Corps in resolving the issues related to the Operations and Maintenance Manual for the Prado Basin. The CFWO has responded to the Corps request for consultation in accordance with the established section 7 process and has attempted to conclude the consultation process in a timely fashion. The CFWO met again with the City of Corona, their consultant, a representative from Congressman Ken Calvert's office, and the Corps on June 10, 1999, to discuss concerns about the adequacy of the Corps' effects analysis, especially regarding indirect effects. The Corps agreed to provide additional information on direct and indirect effects of the project to complete the information needed to initiate formal consultation with the CFWO. The CFWO anticipates receiving this information shortly and completing the consultation within 135 days of receipt of the complete information package, as provided for under the implementing regulations for section 7.

The CFWO's interest in assisting the City of Corona is reflected in their cooperation with the Corps for several emergency projects in the Prado Basin. At a meeting in December 1998, the City of Corona and the Corps notified the CFWO that there was an immediate need to begin

several operation and maintenance projects because of public health and safety concerns. The CFWO immediately agreed on the need to implement these emergency actions. The Corps authorized the emergency actions, and 3.5 acres of wetlands or waters of the United States were impacted within Prado Basin. While the Federal action agency is exempt from consulting during an emergency prior to taking the action, the Federal agency is still required to consult with the Service soon after the emergency situation has passed. The Corps still has not consulted with the CFWO on the emergency authorizations for the work completed by the City of Corona in the Prado Basin.

Question 4. What is the FWS policy with regard to the use of "volunteers" to implement any function of the Service under the Endangered Species Act, including surveying property for the presence of species or habitat, monitoring activities on covered properties, review of biological opinions, or other data and any other function required to be performed by the Services under the ESA? Is the Carlsbad office using volunteers for any function which they perform under the ESA and particularly to survey private or public lands, to provide research assistance, or to assist in negotiations with permit applicants?

Response: We use officially enrolled Federal volunteers to assist us in accomplishing our mission. A wide variety of activities may be carried out under our nationwide volunteer program. In that regard, volunteers are used for a variety of tasks including trail maintenance, interpretative outreach, preparing newsletters, and a number of clerical and administrative functions. In addition, some volunteers are skilled biologists and may, under the supervision of Service biologists and in concert with on-going activities, monitor, collect species data, or conduct surveys. These types of volunteer field assignments are also utilized for refuges, fisheries and migratory bird activities, and are not limited to ESA-related projects. Under our program, volunteers are not allowed to be involved in active law enforcement, carry out certain hazardous jobs (e.g., firefighting) or any job involving the handling of government money, except the collection of entrance fees pursuant to Public Law 99-645. At the CFWO, volunteers assist staff through administrative and clerical activities, such as photocopying, but do not review biological opinions or assist in negotiations with permit applicants. Qualified volunteers have also been used to assist with field work on listed species.

Question 5. Many citizens who contact the Committee, particularly those from California, express the fear of retaliation or retribution from the FWS staff in California for providing information to the Congress on the implementation of the Endangered Species Act. What is your policy with regard to the protection of citizen "whistleblowers" who come forward to provide information to Congressional Committees?

Response: With respect to "whistleblowers," we are committed to implementing the ESA in a fair, efficient, effective, and consistent manner. We are not aware of, nor do we advocate or tolerate any sort of retaliation. If anyone has factual information relevant to our program that they wish to share with the Committee (and, we hope, with us as well) we would encourage them to do so.

ATTACHMENT 1

Ammy Marshall	From Andy Yuen
Dept./Agency 21	Phone #
Fax #	Fax #

OFFICE OF CITY MANAGER

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

815 WEST SIXTH STREET (P.O. BOX 940), CORONA, CALIFORNIA 91718-0090

March 26, 1999

RECEIVED
MAR 30 1999
US FWS
CARLSBAD FIELD OFFICE, CA

Mr. Loren R. Hays, Sr. Wildlife Biologist
Mr. Jon Avery, Wildlife Biologist
Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Mr. Robert R. Smith, Engineer/Project Manager
Mr. Carvel Bass, Senior Ecologist
U.S. Army Corps of Engineers
911 Wilshire Boulevard
P.O. Box 532711, CESPL-CO-O
Los Angeles, CA 90053-2325

Dear Gentlemen:

On behalf of the City of Corona, I would like to thank you for taking the time to meet with Steve Powers and myself regarding our Maintenance Operations Manual for the Prado Basin.

We believe progress was made in understanding the additional information needed to bring this project to a successful conclusion. Steve Powers will be working with Carvel Bass this next week and will have this requested information to you in the near future. While our submittal will propose mitigation for the Maintenance Operations Manual, the City of Corona does not believe it should be mitigating for routine maintenance activities.

Again, thank you for your time. Please let me know if there is anything further which needs to be done.

Sincerely,

Laura Manchester
Assistant to the City Manager

c: William P. Workman, City Manager
Steve Powers, Public Works
Darlene Shelley, Tettemer
Congressman Ken Calvert

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/TE/CCU99-01586

SEP 29 1999

Honorable Don Young
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is our response to your July 23, 1999, letter requesting a more detailed explanation of our interpretation of the National Environmental Policy Act as well as the Clean Water Act. The enclosure provides a point-by-point response to the specific questions you raised in your most recent letter.

As indicated below, the Solicitor of the Interior has reviewed and concurs with the Service's response. Thank you for the opportunity to respond.

Sincerely,

DIRECTOR

Enclosure

Concur: _____
John D. Leshy, Solicitor

Enclosure
Responses to Questions Raised in the Honorable Don Young's July 23, 1999 Letter:

Question 1. *Your letter states in the answer to question 1– "In the August 4, 1998 letter from the CFWO to the Corps, the term "mitigation" is specifically used in the context of NEPA and the Clean Water Act."*

1A. *Please provide the Committee with the citation in NEPA and its implementing regulations that requires a permit applicant to "mitigate" for the impacts of a proposed project and that would support the demand for mitigation being made not only on the City of Corona, but on almost every community in southern California.*

Response: The term mitigation is described in the National Environmental Policy Act's implementing regulations at 40 CFR 1508.20. The Council on Environmental Quality's NEPA regulations, reflecting the intent of the Act, require as a procedural provision that appropriate mitigation be identified in the proposed action and alternatives (40 CFR 1502.14(f)). This procedural, rather than substantive, statute and regulatory requirement was confirmed by the Supreme Court in Robertson v. Methow Valley Citizens Council (1989). The Court found a fundamental distinction between a substantive requirement that a mitigation plan be formulated and adopted, and a procedural requirement that mitigation be discussed in sufficient detail to ensure that the decision maker fairly evaluates the environmental consequences, and is fully aware of the choices that can be made to offset any adverse impacts in the final decision. Federal agencies, like the Fish and Wildlife Service, and the public, through the review process, can strongly recommend that the decision maker (the Army Corps of Engineers in this case) adopt the identified mitigation measures. In many cases, the Corps has adopted some or all of the recommended mitigation recommendations, consistent with the intent of NEPA.

In fulfilling its duties under NEPA, the Corps entered into discussions with the Service regarding impacts to listed species and other resources in the project area. The Service, under its NEPA and Fish and Wildlife Coordination Act responsibilities, provided recommendations for the Corps and City to consider that were intended to reduce project impacts to natural resources. In so doing, the Service's Carlsbad Fish and Wildlife Office did not make demands that the Corps and City were required to meet. It is the Corps' responsibility, utilizing its authorities, to evaluate the environmental impacts of project alternatives and to consider and implement mitigation, if possible.

1B. *Our review of the letter to the City of Corona from the Army Corps of Engineers indicates that only 5 acres of "waters of the U.S." were to be impacted by the project and some of this acreage had already been mitigated. You however, were requiring mitigation for 12 acres of lost habitat for endangered species including critical habitat. Please provide us with the statutory and regulatory authority for requiring, pursuant to the Clean Water Act, mitigation for habitat losses that are not "Waters of the U.S."*

Response: In fulfilling its responsibilities under the Fish and Wildlife Coordination Act, the Corps consulted with the Service for its biological expertise in providing recommendations for the Corps' consideration on measures for reducing project impacts. The source of information used by the CFWO to estimate impacts to fish and wildlife was the draft Environmental Assessment for the operations and maintenance manual for the Prado Basin prepared for the Corps by the City of Corona. This document identified the "Loss of 11.94 acres of critical habitat for the endangered least Bell's vireo and southwestern willow flycatcher habitat." With respect to its authorities under the Fish and Wildlife Coordination Act and NEPA, the CFWO did not identify required mitigation, but made project design recommendations for the Corps and the City to consider as a means of reducing the environmental impacts of their proposed project. This is fully consistent with the role and responsibilities of the Service under the Fish and Wildlife Coordination Act.

1C. *Your response seems to infer that the impact on designated critical habitat gives rise to mitigation requirements. Please clarify the role of critical habitat and whether the fact that an area is critical habitat requires mitigation versus an area that is not critical habitat and provide the statutory and regulatory authority for your position.*

Response: It was not our intent to imply that the impact on designated critical habitat gives rise to mitigation requirements. Rather, the portion of our response we believe your question refers to was meant to indicate that the CFWO's recommendations were specifically not made in an ESA context:

> "In the August 4, 1998, letter from the CFWO to the Corps, the term "mitigation" is specifically used in the context of NEPA and the Clean Water Act.... In this context, the Service recommended that the Corps and the City consider creation of habitat for the endangered vireo and flycatcher..."

We apologize if this intent was not clear.

The role of critical habitat is to identify specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection (ESA sections 3 and 4; 50 CFR 424.12). We are unaware of any statutes or regulations that specifically make a distinction with respect to mitigation, between areas that have been designated as critical habitat versus areas that have not been designated as critical habitat. However, pursuant to our responsibilities under the Fish and Wildlife Coordination Act, we identify measures that will mitigate impacts to fish and wildlife, and areas designated as critical habitat are, by definition, essential to the conservation of particularly at-risk species.

Question 2. *Your response to question 4 states that there is an "official federal nationwide volunteer" program. Please provide the committee with your statutory authorization to use volunteers in regulations, policies, criteria, qualifications or other requirements for a citizen who wishes to volunteer. Who may volunteer and for what? How do you reconcile your nationwide volunteer program with 31 U.S.C. 1342[?]*

Response: Regarding the Service's reconciliation of its volunteer programs with 31 U.S.C. 1342, our reading of the Limitation on Voluntary Services is that, in the absence of specific legislative authority, Federal agencies are prohibited from accepting volunteer services. The Fish and Wildlife Service is authorized to have a volunteer program by the Fish and Wildlife Act of 1956, as amended by the Fish and Wildlife Improvement Act of 1978. Specifically, section 4 (3)(c)(1) of the Fish and Wildlife Improvement Act states:

> The Secretary of the Interior and the Secretary of Commerce may each recruit, train, and accept, without regard to the provisions of Title 5, United States Code, the services of individuals without compensation as volunteers for, or in aid of programs conducted by either Secretary through the United States Fish and Wildlife Service or the National Oceanic and Atmospheric Administration.

For your review, we are enclosing regulations found at 29 CFR 553.104, "Private individuals who volunteer services to public agencies," along with Chapter 9, "Volunteer and Youth Programs," from the *Fish and Wildlife Service Manual*, describing age requirements and restricted activities. .

Question 3. *Your response states that volunteers "monitor, collect species data, or conduct surveys." Please provide the Committee with information on those species for which volunteers are being used and whether surveys conducted by volunteers were used as the basis for listing decisions. In addition, what is the policy with regard to your volunteers entry on to private property? Do your volunteers identify themselves as volunteers and not employees of the Service? While you have indicated that volunteers do not assist in negotiations regarding permits, have you allowed volunteers to participate in meetings at which negotiations have taken place. If so, have you identified those individuals as volunteers?*

Response: We use officially enrolled Federal volunteers to assist us in accomplishing our mission. A wide variety of activities may be carried out under our volunteer program. The CFWO uses skilled volunteer biologists, under the supervision of Service biologists and in concert with on-going activities, to monitor, collect species data, and conduct surveys of the vireo and flycatcher.

Surveys conducted by CFWO volunteers have not been used as the basis for listing decisions. Species are eligible for listing when they are in danger of extinction throughout all or a significant portion of their range (endangered) or are likely to become so within the foreseeable future (threatened). A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act, which include the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; and the inadequacy of existing regulatory mechanisms or other natural or manmade factors affecting its continued existence. It is the analysis of threats that forms the basis for a listing decision as described in section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424)

promulgated to implement the listing provisions of the Act. The process for listing species is further described in the Endangered Species Listing Handbook (USFWS 1994).

The Service's policy regarding entry onto private lands is the same for employees and volunteers. The policy is to obtain either written or verbal permission from the landowner prior to entry onto private lands. Furthermore, our policy is for volunteers to identify themselves as volunteers and not as employees. In the training that is provided to prospective volunteers by the CFWO and other field offices, the role of volunteers is emphasized to ensure that volunteers understand that they are not Service employees. The CFWO also provides volunteers with shirts that are printed with the term "volunteer."

The CFWO has on rare occasions had a volunteer participate in meetings at which negotiations may have occurred. In these few cases, the volunteer's role in participating in the meeting was to answer questions on the results of a biological survey. In all cases, Service employees identified the volunteer as a volunteer.

Question 4. *Your response states that you use volunteers for copying documents. Many of the documents submitted to your office are subject to the protections of the Privacy Act. How do you insure that the privacy of citizens is protected from those volunteers who are not entitled under the law to access to private information?*

Response: Thirty-seven CFWO staff members have received training on the Freedom of Information Act and the Privacy Act by the Regional Office's FOIA Officer. Staff biologists screen documents to be copied by volunteers to ensure compliance with the Privacy Act. Access to files by volunteers is controlled and monitored by Service staff to ensure that the security of private information is maintained.

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply ReferTo:
FWS/TE/CCU99-01788

Honorable Don Young
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of August 24, 1999, regarding the conservation of the endangered Peninsular bighorn sheep in southern California, particularly in relation to the proposed Shadowrock project. Referring to a letter of December 2, 1997, from the Fish and Wildlife Service's Carlsbad Office to Mr. Mark A. Bragg of Shadowrock, LLC, you requested information about a management endowment for the conservation of the species. You also asked about a standard requirement for fencing in Peninsular bighorn sheep habitat.

At the time of our letter, the California Department of Fish and Game had agreed on a management endowment for another project affecting the Peninsular bighorn sheep, the Canyons at Bighorn, while the Service and the California Department of Fish and Game had agreed on an endowment for the Ritz-Carlton golf course project, which also affects the species. The Service used these agreements to evaluate the adequacy of the management endowment for the Shadowrock project.

For the Canyons at Bighorn project, the California Department of Fish and Game, the City of Palm Desert, and the developer agreed to a $750,000 endowment. The developer remitted the funding to the City over a 5-year schedule, whereupon the City conveyed the money to the California Department of Fish and Game for the purposes of bighorn sheep recovery and monitoring (see enclosure 1). The Service was not a party to this agreement.

For the proposed Ritz-Carlton golf course, the developer had verbally proposed a $500,000 management endowment for the Peninsular bighorn sheep at the time of our letter to Mr. Bragg. A Streambed Alteration Agreement of May 1, 1998, later incorporated this commitment to provide a management endowment between the project proponent and the California Department of Fish and Game (see enclosure 2). Our biological opinion of June 23, 1999, regarding the project noted this commitment (see enclosure 3). Because all parties have not given the project final approval, the land management agency that will receive the management endowment for the Ritz-Carlton golf course has not yet been determined.

To answer your question about a requirement for fencing within Peninsular bighorn sheep habitat, although there is not a written "standard requirement," the California Department of Fish and Game and the Service have consistently advised project proponents and local governments, both before and after December 1997, of the need for fencing along the interface between bighorn sheep habitat and urban land uses. Fencing is needed to prevent bighorn sheep from becoming habituated to artificial sources of food and water. Ongoing research, primarily conducted by the Bighorn Institute, has documented that attraction to urban areas where fencing does not exist is a major source of mortality (about 34 percent) to the bighorn sheep herd in the northern Santa Rosa Mountains.

Accordingly, we have been coordinating with local governments on the design and construction of regional fencing strategies for existing developments and proposed projects. The draft Peninsular Bighorn Sheep Recovery Plan will recommend fencing between bighorn sheep habitat and urban areas. The Canyons at Bighorn and Ritz-Carlton golf course projects, as well as other more recent developments, have agreed to install such fencing. We believe that cooperative agreements, like those in southern California, can provide for economic development consistent with endangered species conservation.

Sincerely,

DIRECTOR

Enclosures