

**QUESTIONABLE FISH SCIENCE AND  
ENVIRONMENTAL LAWSUITS: JOBS  
AND WATER SUPPLIES AT RISK IN  
THE INLAND EMPIRE**

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**OVERSIGHT FIELD HEARING**

BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION

Tuesday, October 18, 2011, in Highland, California

**Serial No. 112-73**

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

70-765 PDF

WASHINGTON : 2012

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**OVERSIGHT HEARING ON “QUESTIONABLE  
FISH SCIENCE AND ENVIRONMENTAL LAW-  
SUITS: JOBS AND WATER SUPPLIES AT RISK  
IN THE INLAND EMPIRE.”**

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**Tuesday, October 18, 2011  
U.S. House of Representatives  
Subcommittee on Water and Power  
Committee on Natural Resources  
Highland, California**

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The Subcommittee met, pursuant to call, at 9:51 a.m., at the Highland City Hall, 27215 Base Line, Highland, California, Hon. Tom McClintock [Chairman of the Subcommittee] presiding.

Present: Representative McClintock.

Also Present: Representatives Lewis and Calvert.

**STATEMENT OF THE HON. TOM McCLINTOCK, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. McCLINTOCK. The Subcommittee on Water and Power will come to order. The Subcommittee meets today to hear testimony on a hearing entitled “Questionable Fish Science and Environmental Lawsuits: Jobs and Water Supplies at Risk in the Inland Empire.”

I ask unanimous consent that the gentlemen from California, Mr. Lewis and Mr. Calvert, be allowed to sit with the Subcommittee and participate in the hearing.

Hearing no objection, so ordered.

To begin today’s hearing, I would like to defer to my distinguished colleague, Congressman Jerry Lewis, for a few introductions.

Congressman Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

Today, it is my pleasure to introduce Joe Martinez and his band of ROTC representing the California Baptist University ROTC class. The color guard is here to present the colors and lead us in the Pledge of Allegiance.

Gentlemen?

[Reciting of the Pledge of Allegiance.]

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. McCLINTOCK. Thank you.

I want to thank all of you for coming today. I need to point out that this is a formal congressional hearing that has been called at the request of Congressman Lewis and Congressman Calvert. It is not a public forum, so testimony today is by invitation only for the majority and minority parties.

For those of you in the audience today who would like to have your comments put into the official record, please fill out the forms that are located at the front entrance. Your comments are very important to us and will be included in the official record of the

Committee's hearing. And if you just give the form to one of our staff members, we will ensure that it is printed with the Committee's report.

We will begin with 5-minute opening statements, and we will start with the Chair.

In the 112th Congress, this Subcommittee is focused on restoring abundance as the principal objective of Federal water and power policy. A generation ago, the West was blessed with engineering visionaries who recognized that the prosperity and quality of life in States like California depended on harnessing their enormous resource potential.

These giants had the foresight to construct the dams, hydroelectric facilities, and canal systems that laid the foundation for the thriving industry and commerce that made this State truly golden. At the same time, these projects greatly improved the environment by providing flood control that tamed the devastating cycle of floods and droughts that regularly ravaged the environment and devastated the region, while making possible year-round cold-water fisheries that could not exist without the dams.

Unfortunately, about a generation ago, a radical and retrograde ideology seeped into our public policy, which its practitioners at the time called the "era of limits."

Really shocking stuff.

[Laughter.]

Mr. MCCLINTOCK. These ideologues abandoned projects in mid-construction. They erected impossible bureaucratic barriers to further development of these resources, and they began the process of diverting vast amounts of water and power away from human use for such pet causes as the Delta Smelt, and, as we will hear today, the Santa Ana Sucker fish.

Throughout the West, there is a growing litany of heartbreaking stories of the human suffering that this has caused.

One example is the diversion of 200 billion gallons of contracted water from the Central Valley for the enjoyment of the Delta Smelt. This policy has laid waste to a quarter-million acres of the most fertile farmland in America and destroyed thousands of jobs. It is no accident that four of the 10 metropolitan areas with the highest unemployment in the entire country are all located in California's Central Valley.

Earlier this year, this Subcommittee held a similar field hearing in Fresno so that the local community could tell its story directly to those responsible. This Subcommittee heard tearful testimony of how a region that once prided itself on producing a sizable portion of the Nation's fruits and nuts now imported food from China to stock its food lines. Today's hearing involves a similar situation that threatens to permanently damage the economy of this region in the name of a 6-inch fish called the Santa Ana Sucker.

Once again, it appears we face a taxpayer-financed environmental litigant blissfully unconcerned about the economic suffering that it is causing to a region of millions of people, while attaining little, if any, advantage for the fish.

They seek to destroy the usefulness of the Seven Oaks Dam to provide desperately needed water supplies for the people of this region by invoking the Endangered Species Act in a manner that the

science simply does not support. Even the notorious State Water Resources Control Board, which is hardly a bastion of water development, recognized the need to appropriate water rights from the dam to help provide local water for local use.

No doubt, the next step, having rendered the Seven Oaks Dam functionally useless, will be to advocate its destruction, as we are watching in other regions, most notably the Klamath and Columbia Rivers.

They have found willing accomplices in this Administration. In so doing, the Federal agencies involved have deliberately ignored the economic and scientific arguments and insist on designating critical habitat that has never supported the Sucker fish before.

I note that Congressmen Lewis and Calvert, who are here today, along with Congressman Joe Baca and others, have asked this Administration to withdraw its flawed regulation. I applaud them for their efforts, and I thank them for their leadership on this issue.

In the Central Valley, a Federal court has already declared that these agencies are acting in a, quote, "arbitrary and capricious manner," and using what can only be described as junk science to support political objectives that are causing vast economic damage and hardship to millions of Americans struggling to survive in a difficult economy.

Meanwhile, this matter is also now in litigation. I want to make it clear that when a court rules that a Federal agency has acted not because of an honest difference of opinion, but has, rather, abused its authority in an arbitrary and capricious manner, and has caused enormous damage as a result, this Subcommittee must take notice.

If I have anything to say about it, this Subcommittee will act to identify the specific officials responsible up and down the chain of authority, hold them accountable for the damage they have done, and seek to separate them from the power that they have abused.

Now I will recognize Congressman Lewis for an opening statement.

[The prepared statement of Mr. McClintock follows:]

**Statement of The Honorable Tom McClintock, Chairman,  
Subcommittee on Water and Power**

In the 112th Congress, this Subcommittee has focused on restoring abundance as the principal objective of federal water and power policy. A generation ago, the West was blessed with engineering visionaries who recognized that the prosperity and quality of life in states like California depended on harnessing their enormous resource potential.

These giants had the foresight to construct the dams, hydroelectric facilities and canal systems that laid the foundation for the thriving industry and commerce that made this state truly golden. At the same time, these projects greatly improved the environment by providing flood control that tamed the devastating cycle of floods and droughts that regularly ravaged the environment and devastated the region, while making possible year-round cold-water fisheries that did not exist without the dams.

Unfortunately, a generation ago, a radical and retrograde ideology seeped into our public policy, which its practitioners called the "era of limits." These ideologues abandoned projects in mid-construction, erected impossible bureaucratic barriers to further development of these resources and began the process of diverting vast amounts of water and power away from human use for such pet causes as the Delta Smelt, and as we will hear today, the Santa Ana Sucker Fish.

Throughout the West, there is a growing litany of heart-breaking stories of the human suffering this has caused.

One example is the diversion of 200 billion gallons of contracted water from the Central Valley for the enjoyment of the Delta Smelt. This policy has laid waste to a quarter-million acres of the most fertile farmland in America and destroyed thousands of jobs. It is no accident that four of the ten metropolitan areas with the highest unemployment in the nation are all in California's Central Valley.

Earlier this year, the sub-committee held a similar field hearing in Fresno so that the local community could tell its story directly to those responsible. This sub-committee heard tearful testimony of how a region that once prided itself on producing a sizeable portion of the nation's fruits and nuts now imported food from China to stock its food lines.

Today's hearing involves a similar situation that threatens to permanently damage the economy of this region—in the name of a six-inch fish called the Santa Ana Sucker. Once again, it appears we face a taxpayer-financed environmental litigant blissfully unconcerned about the economic suffering it is causing to a region of millions of people, while attaining little, if any, advantage to the fish.

They seek to destroy the usefulness of the Seven Oaks Dam to provide desperately needed water supplies for the people of this region by invoking the Endangered Species Act in a manner that the science simply does not support. Even the notorious State Water Resources Control Board, hardly a bastion of water development, recognized the need to appropriate water rights from the dam to help provide local water for local use.

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Meanwhile, this matter is also now in litigation. I want to make it clear that when a court rules that an agency has acted not because of an honest difference of opinion, but has abused its authority in an arbitrary and capricious manner, and has caused enormous damage as a result, this sub-committee must take notice.

If I have anything to say about it, this sub-committee will act to identify the specific officials responsible—up and down the chain of authority—hold them accountable for the damage they have done and seek to separate them from the power that they have abused.

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**STATEMENT OF THE HON. JERRY LEWIS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. LEWIS. Thank you very much, Mr. Chairman.

I would take you back, Mr. Chairman, to a few years ago when we experienced one of the major floods in recent history in the Valley. I was a relatively young boy at the time, standing at my back window, and I dropped a ping-pong ball out that window. It fell 3-1/2 feet, hit the water, and floated out through the back fence.

The potential of flooding in this Valley cannot be overestimated. Three million people could be flooded from their homes. More than 100,000 acres could be inundated. As many as 3,000 people could very well lose their lives by way of drowning.

The Corps of Engineers use these figures when they outlined for us that this floodplain is perhaps the most dangerous floodplain west of the Mississippi. Indeed, its potential for economic impact in the region cannot be overestimated.

When the dams that have now been completed to the east were first thought through, it was a design to try to protect from floods this entire Valley, and, if allowed to operate effectively, will have a huge beneficial impact to the entire economy.

Last year, the Fish and Wildlife Service, after a lawsuit from CBD, expanded the critical habitat designation for the Santa Ana Sucker.

When the original design took place for these dams, by the way, the Sucker fish was not on the Endangered Species list. So after the fact, we are dealing with a potential endangered species that could radically change the value of this huge and important design.

Altogether, the dams have cost somewhere in the neighborhood of \$1 billion to construct. If they are allowed to go forward effectively, it will be worth every penny in terms of life and property and economic potential.

If the action by the Fish and Wildlife Service continues, we will not have the water to grow in this region. As of today, the unemployment in San Bernardino and Riverside Counties are at 13.6 and 14.7 percentage points. This just cannot continue, but it will, if we don't give our businesses a chance to succeed.

So, Mr. Chairman, your hearing here today is very much appreciated. It is an opportunity for local officials to address this issue and help us better understand especially the economic impacts of these water control activities.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lewis follows:]

**Statement of The Honorable Jerry Lewis, a Representative  
in Congress from the State of California**

Three million people could be flooded out of their homes. More than 100,000 acres would be under water. As many as 3,000 people might be threatened with drowning. The economy would be hit with a \$15 billion loss. These are the figures the Army Corps of Engineers used when they called the Santa Ana River the worst flood threat west of the Mississippi—mind you those numbers are from 1987. Since then, Congress and the Corps have worked together to construct Seven Oaks and Prado Dam at a cost of over a billion dollars. I've seen the predictive models for a major flood event without the dams and I can tell you it was worth every penny.

When these dams were constructed a great deal of environmental review was done. At the time, the Santa Ana Sucker was not a listed species. When it was listed in 2000 the agencies worked together to designate habitat, but it wasn't enough for the Center for Biological Diversity who made it their mission to have this splendid project destroyed to 'protect' a fish.

Last year the US Fish and Wildlife Service, after a lawsuit from CBD, expanded the critical habitat designation for the Santa Ana Sucker. As part of this process, the Service was required, by law, to do a study on economic impact—a study in which they admit they didn't really do the job. An independent economic analysis by Dr. John Husing, who is in the room today, estimates that this designation will cost the region \$2.7 billion in lost water and jobs. The Service's report guessed it would only be \$6 to \$8 million.

If this action by the Fish and Wildlife Service continues, we will not have the water to grow. As of today the unemployment in San Bernardino and Riverside Counties stands at 13.6 and 14.7 percent. This can't continue, but it will if we don't give our businesses a chance to succeed. To build something you have to prove adequate supply of water—a requirement this part of the country already struggles to meet. How can I tell my constituents in this room, and around my district, that we won't create jobs because we don't have the water?

I'm convinced, that instead of spending another half trillion dollars of taxpayer money on a questionable stimulus plan, Congress needs to help private industry create more jobs by reducing the burden of over-regulation.

In the House of Representatives, we've been searching for ways to get the government out of the way of private job creation. Just before we left Washington, the

House passed legislation to stop the Environmental Protection Agency from creating new rules that threaten many industries—and could affect the very survival of the cement industry in San Bernardino County and across the nation.

I believe it's time to look just as closely at the Fish and Wildlife Service which is threatening thousands of jobs in this community because of over-regulation on behalf of the Santa Ana Sucker fish.

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Mr. McCLINTOCK. Thank you.

And now I would like to recognize the distinguished former Chairman of the Water and Power Subcommittee, Congressman Ken Calvert, for 5 minutes.

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

Mr. CALVERT. Thank you, Mr. Chairman.

I want to start by thanking you for convening today's hearing. I look forward to hearing from those who have come to testify about the U.S. Fish and Wildlife Service's revised critical habitat designation for the Santa Ana Sucker. Specifically, I am concerned that the proposed designation may have devastating and long-reaching economic ramifications.

Jerry Lewis, Joe Baca, and I all represent this area along the Santa Ana River, and we are all joined together, Republican and Democrat, concerned about the economic future of this region, and so we are here today.

Just 3 years ago, the Nation watched as California farms, as the Chairman mentioned, and the tens of thousands of jobs they support, dried up in the Central Valley when the Fish and Wildlife Service cut off Valley farmers from their water supplies to protect the Delta Smelt.

Today, the Inland Empire is facing record unemployment—14.1 percent average between Riverside and San Bernardino Counties.

Congress and community leaders are working to revive our economy and put Americans back to work, and so we have all become more finely tuned and sensitive to impacts on the environment and jobs when new critical habitat designations are finalized.

In the instance of the Santa Ana Sucker, the revised critical habitat designation affects an enormous urban population and its water supply. I am concerned that the revised critical habitat designation for the Sucker could become the Inland Empire's Delta Smelt and cripple our region's economic engine.

It has been projected that by 2035 the Inland Empire's population will increase by over 2 million people. To prepare for this population growth, local water agencies are undertaking major efforts to expand regional water supplies and replenish our depleted groundwater. According to some estimates, the Service's critical habitat designation could mean the loss of almost 126,000 acre-feet of local water every single year. If this water could be replaced with imported water, it would cost the region an additional \$2.87 billion per year, a cost that will ultimately be passed on to working families and job creators in the form of ever-increasing water rates.

However, given current limitations on pumping from the Delta, the sad reality is this lost water may very well be irreplaceable. And all of Southern California's future growth must be supported by increased local water supply.

Further, I am concerned with the Service's decision to designate new critical habitat within the boundaries of the Western Riverside Multi-Species Habitat Conservation Plan, referred to as the HCP. When the Fish and Wildlife Service approved Western Riverside County's HCP, the Service agreed not to designate any new critical habitat.

In return, the county committed to creating a half million acres of habitat that hosts nearly 150 species residing in Western Riverside County. Many people in this room worked on that and spent a lot of dedication to get this plan completed, one of the first major HCPs in the United States

By previously agreeing to implement an HCP, Western Riverside County was able to establish a plan for conservation balanced with a long-term plan for urban growth and infrastructure development. The plan has been designed to preserve native vegetation and meet the habitat needs of multiple species, rather than focusing preservation efforts on one species at a time.

Unfortunately, the Service's decision to designate nearly 3,000 acres of new land within the HCP breaks its agreement with Riverside County, threatens the continued successful implementation of the HCP, and increases development and conservation costs. Without a strong landscape-level plan like the HCP to promote development and conservation side-by-side, Riverside's ability to build new infrastructure and promote business investment in the Inland Empire is stunted.

I look forward to working with Western Riverside's HCP, local stakeholders, and certainly the U.S. Fish and Wildlife Service to reach a resolution for this issue.

Mr. Chairman, without a reliable water supply, our cities cannot grow. Without roads and infrastructure to get our goods to market, our economy cannot grow, and we cannot create jobs.

Mankind has understood these basic concepts for thousands of years. However, today we are gathered to discuss a decision by the Fish and Wildlife Service that would disrupt both the economic prosperity and water supply of one of the largest urban populations in the United States. The Service's decision to expand the critical habitat into areas the Service previously deemed "not essential" when it first moved to protect the Santa Ana Sucker in the 2005 report requires close examination.

I agree that as Americans we must manage our native species so they thrive for future generations; however, I do not believe that managing America's natural resources and promoting America's continued economic prosperity are mutually exclusive.

With that, thank you, Mr. Chairman.

[The prepared statement of Mr. Calvert follows:]

**Statement of The Honorable Ken Calvert, a Representative  
in Congress from the State of California**

Mr. Chairman, I want to start by thanking you for convening today's hearing. I'm looking forward to hearing from those that have come to testify about the U.S. Fish and Wildlife Service's revised critical habitat designation for the Santa Ana Sucker. Specifically, I am concerned that the proposed designation may have devastating and long-reaching economic ramifications.

Just three years ago, the nation watched as California farms, and the tens of thousands of jobs they support, dried up in the Central Valley when the Fish and Wildlife Service cut off Valley farmers from their water supplies to protect the Delta

Smelt. Today, Congress and community leaders are working to revive our economy and put Americans back to work and so we have all become more finely tuned and sensitive to impacts on the environment and jobs when new critical habitat designations are finalized. In the instance of the Santa Ana Sucker, the revised critical habitat designation effects an enormous urban population and its water supply. I am concerned that the revised critical habitat designation for the Santa Ana Sucker could become the Inland Empire's "Delta Smelt"—and cripple our region's economic engine.

It has been projected that by 2035 the Inland Empire's population will increase by over 2 million people. To prepare for this population growth, local water agencies are undertaking major efforts to expand regional water supplies and replenish our depleted groundwater. According to some estimates, the Service's critical habitat designation could mean the loss of almost 126,000 acre feet of local water every year. If this water could be replaced with imported water, it would cost the region an additional \$2.87 billion dollars a year—a cost that will ultimately be passed on to working families and job creators in the form of ever-increasing water rates. However, given current limitations on pumping from California's Delta the sad reality is this lost water may very well be irreplaceable.

Further, I am concerned with the Service's decision to designate new critical habitat within the boundaries of the Western Riverside Multi-Species Habitat Conservation Plan (HCP). When the Fish and Wildlife Service approved Western Riverside County's HCP, the Service agreed not to designate any new critical habitat. In return, the County committed to creating a half million acres set aside for the preservation of habitat that hosts nearly 150 species residing in Western Riverside County.

By previously agreeing to implement the HCP, Western Riverside County was able to establish a plan for conservation balanced with a long term plan for urban growth and infrastructure development. The plan had been designed to preserve native vegetation and meet the habitat needs of multiple species, rather than focusing preservation efforts on one species at a time.

Unfortunately, the Service's decision to designate nearly 3,000 acres of new land within the HCP breaks its agreement with Riverside County, threatens the continued successful implementation of the HCP and increases development and conservation costs. Without a strong landscape-level plan like the HCP to promote development and conservation side-by-side, Riverside's ability to build new infrastructure and promote business investment in the Inland Empire is stunted. I look forward to working with Western Riverside's HCP, local stake holders and the U.S. Fish and Wildlife Service to reach resolution for this issue.

Mr. Chairman, without a reliable supply of water, our cities cannot grow. Without roads and infrastructure to get our goods to market, our economy cannot grow and we cannot create jobs. Mankind has understood these basic concepts for thousands of years. However, today we are gathered to discuss a decision by the Fish and Wildlife Service that would disrupt both the economic prosperity and water supply of one of the largest urban populations in the United States. Their decision to expand the critical habitat into areas the Service previously deemed "not essential" when it first moved to protect the Santa Ana Sucker in 2005 requires close examination.

I agree that as Americans we must manage our native species so they thrive for future generations; however, I do not believe that managing America's natural resources and promoting America's continued economic prosperity are mutually exclusive.

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Mr. MCCLINTOCK. Thank you, Mr. Calvert.

We will now hear from our panel of witnesses. Each witness's written testimony will appear in full in the hearing record, so I would ask that the witnesses keep their oral statements to 5 minutes, as outlined in the invitation letter and also according to our rules.

Let me explain how the timer lights work. It is pretty simple. When you begin to speak, the clerk will start the timer. A green light will go on, meaning you have all the time in the world—well, you have 5 minutes, anyway.

[Laughter.]

Mr. MCCLINTOCK. When the yellow light goes on, that means you need to speak very, very fast because you have 1 minute left. And with a red light goes on, that means we have stopped listening, so you might as well stop talking.

[Laughter.]

Mr. MCCLINTOCK. I will now recognize the Hon. Pete Aguilar, mayor of the City of Redlands, California, to testify. Dr. John Husing, an economist for Economics & Politics, Inc., will accompany the Mayor Aguilar on the panel.

Mr. Mayor?

**STATEMENT OF THE HON. PETE AGUILAR, MAYOR,  
CITY OF REDLANDS, CALIFORNIA**

Mr. AGUILAR. Chairman McClintock and members of the Committee, thank you for this opportunity to testify before you today. My name is Pete Aguilar, and I am the Mayor of the City of Redlands, California.

I appear before you as a representative of a city in an area where the economy will be severely impacted by the new Santa Ana Sucker boundaries drawn by the U.S. Fish and Wildlife Service.

But before I get to that, please let me tell you a little bit about the Inland Empire and our local economy. San Bernardino County is the largest county in the Nation in terms of total land area. San Bernardino County and Riverside County, which lies to the south, comprise the Inland Empire, which was one of the fastest growing metropolitan areas in California and in the United States from 1997 to 2006.

San Bernardino County has a population of 2.1 million people, with just under 608,000 wage and salary jobs. The per capita income of San Bernardino County is just over \$27,000 and the average salary per worker is \$46,000.

But because the area has suffered from large real estate and labor market declines, the economic fallout has been severe over the last few years. Economic growth in Southern California declined sharply in 2008 and 2009, and job losses were the largest on record.

In 2010, 36,500 additional jobs were lost in San Bernardino County, representing a 5.7 percent loss of employment. The unemployment rate increased, as Congressman Calvert mentioned, to 13.9 percent in 2009 and reached 14 percent in 2010. Two sectors to record positive job creation were education and health services.

Even though the national recession officially ended in June 2009, the Inland Empire's economic output continues to shrink.

There is no question the expansion of the critical habitat of the Santa Ana Sucker will bring dire economic consequences for our communities, which are already suffering more than most.

As everyone here is aware, in December 2009, the Fish and Wildlife Service announced that it would revise the Santa Ana Sucker's critical habitat. I believe the Service's decision totally disregards the scientific and economic realities of the Inland Empire and the Sucker's actual needs.

As you know, the Endangered Species Act specifically mandates that the Service's decisions must consider the economic impacts of a community. Unfortunately the Service's new Santa Ana Sucker

habitat designation does not include these required considerations, and, as such, endangers the economic well-being of an entire region.

It goes without saying that providing adequate water supply is one of the biggest challenges in Southern California today and for the foreseeable future. Water shortages have been aggravated by the rulings on the Delta Smelt fish, which has caused reductions in water imported to Southern California.

Restrictions on drawing water from the Delta have a widespread effect, and one of the most effective methods of compensating for the reduced Delta water supplies is the creation of reliable local water. But the expanded critical habitat for the Sucker directly opposes water agency efforts in the Inland Empire to capture stormwater, recharge our basins, and reduce our reliance on imported water.

California law mandates that local water agencies must certify a 20-year supply of water before any major residential, retail, or industrial project can be built. If there is no water to buy at any costs, then the much-needed development cannot move forward.

The region of San Bernardino and Riverside Counties, with a current unemployment rate of over 14 percent, desperately needs economic development. The region also needs to be able to house its growing population. According to economist John Husing, the forecast is that over 472,000 added households will locate in this area impacted by the new Sucker designation.

Jerry Lewis and Ken Calvert have led the effort to include language in the Interior appropriations bill to urge the Fish and Wildlife Service to cooperate with local agencies on Section 7 applications that arise under the Sucker designation.

Meanwhile, Joe Baca led a bipartisan effort to Secretary Salazar, requesting the habitat designation be rescinded. We are extremely grateful for this leadership and request that the agency act accordingly.

Thank you very much for your time.

Economist John Husing and I look forward to answering any questions you might have.

[The prepared statement of Mr. Aguilar follows:]

**Statement of The Honorable Peter Aguilar,  
Mayor, City of Redlands, California**

Chairman McClintock and Members of the Committee, thank you for this opportunity to testify before you today. My name is Pete Aguilar and I am the Mayor of the City of Redlands, California.

I appear before you as a representative of a City in an area where the economy will be severely impacted by the new Santa Ana Sucker boundaries drawn by the US Fish and Wildlife Service. But before I get to that, please let me tell you a little bit about the Inland Empire and its economy.

San Bernardino County is the largest county in the nation in terms of total land area. San Bernardino County and Riverside County, which lies to the south, comprise the Inland Empire, which was one of the fastest growing metropolitan areas of California and the United States from 1997 to 2006. San Bernardino County has a population of 2.1 million people, with just under 608,000 wage and salary jobs. The per capita income in San Bernardino County is \$27,387 and the average salary per worker is \$46,393. But, because the area has suffered from large real estate and labor market declines, the economic fallout has been severe over the last few years.

Economic growth in Southern California declined sharply in 2008 and 2009 and job losses were the largest on record. In 2010, 36,500 total jobs were lost in San Bernardino County, representing a 5.7 percent loss of employment. The unemploy-

ment rate increased to 13.9 percent in 2009 and reached 14 percent in 2010. Employment in the construction sector fell by 8,150 workers, a decline of 24 percent. This contraction was due primarily to a decline in new home production (down 90 percent from the peak in 2004). Employment declined in both the manufacturing and retail trade sectors by just over 7,000 jobs each. The only sector to record positive job creation was education and health services. Even though the national recession officially ended in June 2009, the Inland Empire's economic output shrunk 0.6 percent last year.

There is no question the expansion of the critical habitat of the Santa Ana Sucker will bring dire economic consequences for our communities which are already suffering more than most, and have been severely impacted by foreclosures.

The State of Homelessness 2011 showed San Bernardino County had a 66 percent increase from the 2009 homeless count, with almost 3,000 people counted as being homeless in 2010 compared to almost 2,000 counted in 2009. The National Alliance to End Homelessness conducted the report and found our dismal economy was a significant reason for the increase. Increasing unemployment, decreasing real income for the working poor and an increase in households with incomes below the federal poverty level were all factors associated with the data, according to the report.

As everyone here today is aware, the Santa Ana Sucker is a small fish that lives in the Santa Ana River and has been listed as a Threatened Species since 2001 under the Endangered Species Act. A Task Force was formed when the fish was first listed and has worked with the Fish and Wildlife Service to study the fish and monitor its progress. This Task Force has participated with federal and state agencies in a Habitat Conservation Plan for many years. In 2005, the Fish and Wildlife Service established an area of Critical Habitat for the fish. At the time, they intentionally excluded the dry upper Santa Ana River areas as critical habitat, finding that the dry areas were not essential to the conservation of the species and the enormous costs to the Inland Empire's economy far outweighed any benefits to the species.

But in December 2009, the Service announced that it would revise the Critical Habitat without giving any scientific or economic rationale for doing so. A legal settlement between the USFWS and the Center for Biological Diversity directed the Service to undertake a review of the Sucker's habitat, however the settlement did not require the 2005 designated Critical Habitat be revised in any way. Moreover, the lawsuit settlement did not override existing law.

I believe the Fish and Wildlife Service's decision totally disregards the scientific and economic realities of the Inland Empire. As you know, the Endangered Species Act specifically mandates that the Service's decisions must consider the economic impacts to a community. Unfortunately the Service's new Santa Ana Sucker habitat designation does not include these required considerations, and as such, endangers the economic well being of an entire region, which is already suffering from 14 percent unemployment and other economic ills.

It goes without saying that providing adequate water supply is one of the biggest challenges in Southern California today and for the foreseeable future. Southern California has suffered through repeated droughts and has experienced huge growth. In fact, 2.1 million more people are expected to live in the Inland Empire area between 2008–2035. In addition, water shortages have been aggravated by the situation in California's Delta with the Service's ruling on the Delta Smelt fish which have caused reductions in water imported to Southern California. Restrictions on drawing water from the Delta have had a widespread effect, and one of the most effective methods of compensating for reduced Delta water supplies is the creation of reliable local water supplies.

The expanded Critical Habitat for the Santa Ana Sucker directly opposes water agency efforts in the Inland Empire to capture stormwater, recharge our basins and reduce our reliance on imported water. Local water agencies are undertaking projects intended to better utilize water recycling, desalination, and flood control projects/groundwater recharge projects which will expand our supplies of local water and recharge our depleted groundwater basins. However, the new Sucker Critical Habitat designation will prohibit important projects from moving forward.

Loss of water as a result of the new Sucker habitat designation in the normally dry, ephemeral upper reaches of the Santa Ana River would mean the loss of up to 125,800 acre feet of water a year to the Inland Empire. If there was a source to replace this lost water, which there isn't, the 25 year cost would be \$2.87 billion. If local taxpayers were to put aside money today to buy this water the cost would be \$1.87 billion, using a 3% interest rate. The Service did not use proper accounting methods to arrive at their lower number; rather the Service used several tricks, such as using an unrealistic 7% interest rate. Still, the Service's economists ended up with a \$694 million present day cost to local taxpayers. Much more than our In-

land Empire residents can afford to pay! All this for the inclusion of a dry habitat zone that in 2005 was deemed by the Service not necessary for the species existence.

What is even more important to understand is that there will not be any water to replace the lost 125,800 acre feet of local water, at any cost. Even if we could afford to buy it, there is no water to buy. In March 2011, with California's snow pack at 165% of normal, the State Water Project estimated that it will only be able to supply its regional water agencies 70% of their current water allocations. Those allocations were 50% in 2010, 40% in 2009, 35% in 2008, and 60% in 2007. If the Service's intent is for the Inland Empire to substitute the loss of our local water supply with State Water Project water, due to other Service designations, it will not be available. Because of the Service's prior actions, keeping local water supplies intact is more important than ever.

California law mandates that local water agencies must certify a 20 year supply of water before any major residential, retail, office or industrial project can be built. The San Bernardino and Riverside region, with a current unemployment rate of over 14%, economic development is desperately need. The region also needs to be able to house its growing population. According to economist John Husing, the forecast is that 472,104 added households will locate in the area impacted by the new Sucker designation.

Several area lawmakers have banded together to try to halt the new Sucker designation by placing language in House appropriations legislation. I commend these Members in their efforts to prevent economic catastrophe in the Inland Empire. I respectfully request your Committee work with these Members and the Appropriations Committee to ensure that this language stays intact as the Fiscal Year 2012 appropriations process moves forward to a conclusion.

On behalf of the struggling Inland Empire communities, I respectfully request this Committee play an active role in oversight of the US Fish and Wildlife Service and its use of the Endangered Species Act and ensure the Service follow the mandates of the Endangered Species Act that require the use of impacts to humans and economic realities to determine habitat designations.

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Mr. McCLINTOCK. Thank you, Mr. Mayor.

We now recognize Mr. Bob Stockton, Chairman of the Economic Development Council for the Greater Riverside Chambers of Commerce from Riverside, California, to testify.

**STATEMENT OF BOB STOCKTON, CHAIRMAN, ECONOMIC DEVELOPMENT COUNCIL, GREATER RIVERSIDE CHAMBERS OF COMMERCE, RIVERSIDE, CALIFORNIA**

Mr. STOCKTON. Mr. Chairman, members of the Subcommittee, my name is Bob Stockton. I am Vice President and Principal-in-Charge of Rick Engineering's Riverside office. Thank you for inviting me to testify today regarding the economic impacts of the critical habitat designation for the Santa Ana Sucker.

I come to you today not only as a local businessman, but also as the Chair of the Greater Riverside Chambers of Commerce's Economic Development Council, and as past Chair of the Riverside Board of Public Utilities, which is the water purveyor for the City.

In short, because it would likely stall or even kill regional infrastructure projects, the Santa Ana Sucker critical habitat designation severely threatens to bring an already struggling regional economy into a prolonged and deep recession.

This is not unprecedented. Water cutbacks demanded by Endangered Species Act protections for the Delta Smelt weigh heavily on the Central Valley. Unemployment in parts of the Central Valley surpassed 40 percent, and foreclosure rates have created virtual ghost towns.

No one wants to see what is happening in the Central Valley replicated anywhere else in our country.

The Inland Empire, one of the fastest growing regions in the country during the last decade and, therefore, somewhat dependent on the housing industry, has already been hit hard by this economic downturn. The latest unemployment numbers are from August 2011, and they show that in Riverside County, unemployment is 14.7 percent, and San Bernardino County is only slightly better at 13.6 percent.

But even with the collapse of the homebuilding industry and related businesses, our region continues to grow. The Southern California Association of Governments predicts that it is going to be about 2.6 percent growth rate over the next 5 years and that the region will grow from 3 million to about 4 1/2 million by 2035.

It is crucial to note that about 70 percent of this growth is organic. This is not a case where building roads and homes causes growth. As John Husing has noted, unless someone develops a policy for stopping people from having children, inland agencies have no choice but to prepare for this growth since it is the only area with undeveloped land.

Infrastructure agencies throughout the region have sounded the alarm bells that the Santa Ana Sucker critical habitat designation could force them to forgo crucial projects. That includes bridge and road infrastructure, development, flood control projects, and water projects.

If these projects fail to move forward, then the region is going to take at least a double shot of pain.

First, we are going to lose the jobs that would have been created by those projects. The best estimates are that our already-struggling economy would lose about \$320 million in road and water infrastructure projects.

Second, if we can't build these projects, our roads will be jammed. We can't provide the homes, and perhaps most importantly, we will not have a reliable water system.

Senate Bill 610 is a State law that requires water service providers to prepare a water supply assessment for most development projects. These assessments must evaluate whether water supplies are sufficient to meet a project's water demands over a 20-year period. If the water agencies cannot certify to meet those demands, the projects can't move forward.

A reliable water system is the backbone of a healthy economy. If these projects cannot get an approved water supply assessment, we are not going to be able to expand or even retain even our existing businesses, and there is no way we are going to be able to recruit new businesses to come into the region.

History is going to repeat itself again. The Inland Empire is going to look and feel more and more like the Central Valley.

There is at least one more important issue here. The Implementing Agreement for the Western Riverside County Multi-Species Habitat Conservation Plan, the MSHCP, clearly states that lands within the boundaries of the MSHCP should not be designated as critical habitat unless the Fish and Wildlife Service says the MSHCP is not being implemented. This simply isn't true. And the Department of the Interior signed the Implementing Agreement.

Principle here remains an issue, and the principle is important because it is critical to maintain public support for the plan. If the public believes that the Fish and Wildlife Service is pulling the rug out from under their feet, the plan can be irrevocably harmed and subject to invalidation. The plan's demise would increase project costs and delay placement of crucial infrastructure and further compromise our fragile economy.

I am deeply concerned that Fish and Wildlife chose to ignore the potential for dire economic consequences of their decision to expand this critical habitat designation for the Santa Ana Sucker. It is clear to me that the Santa Ana Sucker critical habitat designation can cripple our already struggling regional economy.

Thank you for your time. I stand ready to answer any questions you may have.

[The prepared statement of Mr. Stockton follows:]

**Statement of Robert Stockton, Vice President and Principal-in-Charge,  
Rick Engineering, Riverside, California**

Mr. Chairman, Members of the Subcommittee, my name is Robert Stockton. I am Vice President and Principal-in-Charge of Rick Engineering in Riverside, California. Thank you for inviting me to testify today regarding the economic impacts of the critical habitat designation for the Santa Ana Sucker (SAS). I come to you today not only as a local businessman, but also as the Chair of the Greater Riverside Chamber of Commerce's Economic Development Council, and also past Chair of the City of Riverside's Board of Public Utilities, which is the water purveyor for the City.

In short, because it would likely stall or even kill regional infrastructure projects, the SAS critical habitat designation severely threatens to send an already struggling regional economy into a prolonged and deep recession.

This is not unprecedented. Water cutbacks demanded by Endangered Species Act protections for the Delta smelt weigh heavily on the Central Valley. Unemployment in parts of that region surpassed 40 percent and the foreclosure rates in some parts of the Valley have created virtual ghost towns.

No one wants to see what's happened in the Central Valley be replicated anywhere in our country.

The Inland Empire, one of the fastest growing regions in the country during the last decade and therefore somewhat dependent on the home building industry, has already been hit hard by the recent economic downturn. The latest unemployment numbers we have for the Inland Empire are from August 2011. Riverside County has 14.7 percent unemployment while San Bernardino County fares slightly better at 13.6 percent.

But even with the collapse of the homebuilding industry and related businesses, the region continues to grow. The California Department of Transportation estimates an annual growth rate of 2.6 percent over the next five years and most analysts assume the region will grow from about 3 million today to almost 4.5 million people in 2035.

It is crucial to note that about 70% of this growth will be organic. This is not a case where building roads and homes causes population growth. As John Husing has noted, "unless someone develops a policy for stopping people from having children, inland agencies have no choice but to prepare for this growth since it is the only area with undeveloped land."

Infrastructure agencies throughout the region have sounded the alarm bells that the SAS critical habitat designation could force them to forgo crucial projects, including bridge and road construction, development, flood control structures, and water projects.

If these projects fail to move forward, the region takes at least a double shot of pain. First, we would lose the jobs that would be created by the projects. The best estimates are that our already-weakened economy would lose about \$320 million worth of water and transportation infrastructure projects.

Second, if we cannot build these projects, our roads will be jammed, there will not be enough homes for the growing population, and perhaps most importantly, we will lack a reliable water system.

SB610 is a state law that requires water service providers to prepare “water supply assessments” for most development projects. These assessments must evaluate whether water supplies are sufficient to meet the proposed project’s water demands over a 20 year period. If the water agencies cannot certify sufficient demand, the project cannot move forward.

A reliable water system is the backbone of a healthy economy. If projects cannot get an approved water supply assessment, we will not be able to expand or even retain our current businesses, much less attract new businesses to the region. History will repeat itself as the Inland Empire starts to look more and more like today’s Central Valley.

There is at least one more important issue here.

The Implementing Agreement for the Western Riverside County Multi-Species Habitat Conservation Plan (MSHCP) clearly states that lands within the boundaries within the MSHCP should not be designated as critical habitat unless the Fish and Wildlife Service finds that the MSHCP is not being implemented. DOI signed that Implementing Agreement. Nonetheless, the US Fish and Wildlife Service overlaid critical habitat for the SAS on MSHCP lands. Fish and Wildlife has done the same with a number of other species as well, though they have never claimed the MSHCP is not being implemented.

In fact, they can’t claim this because it’s simply not true. The MSHCP has a 25-year implementation period and we are only about six years into that period. Even in that short time, the Regional Conservation Authority alone has spent \$257 million to preserve almost 27,000 acres for the Plan. Overall, nearly \$400 million has been spent to preserve about 43,000 acres of land.

From a practical perspective, this issue has been addressed through an updated Biological Opinion for the MSHCP that makes it clear that the SAS critical habitat designation has no impact on covered activities within the MSHCP.

But the principle here remains an issue. And the principle is important because it’s critical to maintain public support for the plan. If the public believes that the Fish and Wildlife is pulling the rug out from under their feet, the plan could be irreparably harmed, and subject to invalidation. The plan’s demise would increase project costs and delay placement of crucial infrastructure, and further compromise our fragile economy.

I am deeply concerned that Fish and Wildlife chose to ignore the potential for dire economic consequences of their decision to expand the critical habitat designation for the SAS. It is clear to me that the SAS critical habitat designation can cripple our already-struggling regional economy.

Thank you for your time. I stand ready to answer any questions you may have.

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Mr. McCLINTOCK. Thank you, Mr. Stockton.

I would now like to recognize Ms. Ileene Anderson, Biologist for the Center for Biological Diversity from Los Angeles, California, to testify.

**STATEMENT OF ILEENE ANDERSON, BIOLOGIST, CENTER FOR BIOLOGICAL DIVERSITY, LOS ANGELES, CALIFORNIA**

Ms. ANDERSON. Chairman McClintock and Representatives Calvert and Lewis, thanks very much for having me here today. I am here to address the science used in the designation of the critical habitat for the Santa Ana Sucker, which as you know is a small native fish found in the Santa Ana River. It is a Federally threatened species under the Federal Endangered Species Act and the State’s species of concern. Its whole range consists of the Santa Ana River and San Bernardino and Riverside and Orange Counties, and the San Gabriel River, and to Tujunga Wash in Los Angeles County.

In 2004, the Fish and Wildlife Service proposed a scientifically based critical habitat for the fish and included the Santa Ana River from just south of Colton down to Prado Basin. In 2005, political appointees in the Bush Administration pushed through a final designation of critical habitat that included zero acres of the Santa

Ana River. In my professional opinion, there was no biological basis for excluding occupied habitat supporting a successfully reproducing population of the Santa Ana Sucker, especially in the fish's namesake river.

So we were interested to see how this came about. And in March 2005, we did a Freedom of Information Act request to the Fish and Wildlife Service for information associated with 2005 critical habitat designation. In those documents, we found clear and unequivocal evidence of political meddling by the Bush Administration appointee Craig Manson, which I submitted as an exhibit to this testimony.

According to the Fish and Wildlife Service staff e-mails, Mr. Manson, who is neither a scientist nor has any background in habitat requirements of the Santa Ana Sucker, decided to remove the proposed critical habitat units in the Santa Ana River from the designation.

So based on that evidence, we challenged the Fish and Wildlife Service in 2007 for their critical habitat designation and quickly came to a settlement agreement whereby Fish and Wildlife Service would revisit the critical habitat designation through their typical public process, and finalize that by 2010, in December.

So in 2009, the Fish and Wildlife Service re-proposed critical habitat and allowed for 60-day public comment. They published an economic analysis on July 2nd, 2010. It discussed the associated costs with the proposed critical habitat and allowed a 30-day public comment.

I submitted comments on both of those documents. And based on my review of the data, I found that the scientific evidence was comprehensive in identifying areas along the Santa Ana River that were essential to the persistence of the Santa Ana Sucker, and also found that the designation included incorporation of new data that had been collected since 2005.

In particular, the inclusion of the upstream areas, which are the source of gravels that form the breeding substrate for the Santa Ana Sucker, is biologically justified.

The 2009 proposed critical habitat designation was very similar to the proposed critical habitat designation in 2004, so this science has been fairly consistent through the proposals and the final 2010 designation.

Our comments on the 2009 proposal—we did point out that they failed to include all suitable habitat for the Santa Ana Sucker, which is required for the recovery of the species, which is the purpose of critical habitat designation, not just keeping them on the brink of extinction, but actually recovering their numbers, so that eventually they can be delisted.

So in my opinion, the 2010 final designation of the critical habitat for the Santa Ana Sucker is scientifically defensible. It includes the necessary components for the persistence of the fish in the Santa Ana River. And the upstream portion of the designation in the Santa Ana River wash includes areas that have ephemeral surface flows, and these areas provide the essential gravels—wash them downstream—upon which the Santa Ana Sucker depends for successful breeding downstream.

And I think with that, I will wrap up my testimony today.

Thank you. I would be happy to answer any questions.  
[The prepared statement of Ms. Anderson follows:]

**Statement of Ileene Anderson, Biologist, Center for Biological Diversity**

**Summary of Testimony**

1. The 2010 final critical habitat designation for the Santa Ana sucker is scientifically based and utilizes the best available science to identify the habitat requirements that the Santa Ana sucker needs to survive.
2. In contrast, a 2005 decision to designate no critical habitat for the fish on its namesake river was not based on any science and was the work of political appointees in the Bush administration.

**Background and Qualifications**

3. I have a Master's of Science in Biology and a Bachelor's of Arts in Biology from the California State University, Northridge.
4. I have 20 years of experience studying the ecology of southern California environments, including the Santa Ana River.
5. I have directed and participated in numerous field surveys of federal and state-listed threatened and endangered species, as well as other rare species. I have written results in conformance with the California Environmental Quality Act and the National Environmental Policy Act.
6. I have written, implemented and monitored a variety of restoration and revegetation plans, primarily implemented as mitigation.
7. I have published articles on these subjects in peer-reviewed scientific journals and presented papers and posters at scientific meetings.
8. I am currently a staff biologist with the Center for Biological Diversity, where I focus on protecting native natural resources primarily in San Bernardino, Riverside, Orange, Los Angeles and Kern counties.
9. I have attended meetings of the Santa Ana Sucker Recovery Team since 2005. I have participated in "river walks" organized by U.S. Fish and Wildlife Service in conjunction with the Santa Ana Sucker Recovery Team. During the "river walks," I helped characterize the suitability of habitat along the Santa Ana River for the Santa Ana sucker fish.

**Use of Science in the Designation of Critical Habitat for the Santa Ana Sucker Fish**

10. The Santa Ana sucker (*Catostoma santaanae*) is a small native fish of the Santa Ana River. It is a federally threatened species and a State species of concern throughout its range, which includes the Santa Ana River in San Bernardino, Riverside and Orange Counties and the San Gabriel River and Tujunga Wash in Los Angeles County.
11. In 2004, the United State Fish and Wildlife Service proposed a scientifically based Critical Habitat for the fish that included the Santa Ana River from just south of Colton downstream to Prado Basin.
12. In 2005, political appointees in the Bush administration pushed through a final designation of critical habitat that included zero acres on the Santa Ana River. In my professional opinion, there was no biological basis for excluding occupied habitat supporting a successfully reproducing population of the Santa Ana sucker especially in the fish's namesake river.
13. On March 15, 2005, the Center for Biological Diversity submitted a Freedom of Information Act request to the U.S. Fish and Wildlife Service for all information associated with the 2005 critical habitat designation for the Santa Ana sucker fish. In those documents, the Center found clear and unequivocal evidence of political meddling by the Bush administration appointee, Craig Manson. According to U.S. Fish and Wildlife Service staff emails, Mr. Manson, who is not a scientist and has no background in habitat requirements of the Santa Ana sucker fish, decided to remove the proposed critical habitat units in the Santa Ana River from the final critical habitat designation. Exhibit 1.
14. Based on the evidence, the Center for Biological Diversity challenged the U.S. Fish and Wildlife Service's 2005 critical habitat designation in federal court on November 15, 2007 and quickly came to a settlement agreement whereby the U.S. Fish and Wildlife Service would revisit the critical habitat designation through their typical public process for critical habitat designations by December 2010.
15. On December 9, 2009, the U.S. Fish and Wildlife Service re-proposed critical habitat for the Santa Ana sucker and allowed a 60-day public comment

period on the draft proposal. On July 2, 2010, the U.S. Fish and Wildlife Service published the availability of the economic analysis of the economic costs associated with the proposed critical habitat designation for the Santa Ana sucker and allowed a 30-day public comment period on the economic analysis.

16. I submitted comments on the proposed critical habitat designation on February 6, 2010 on behalf of the Center for Biological Diversity and Inland Empire Waterkeepers. Based on my review of the data, I found the scientific evidence comprehensive in identifying areas along the Santa Ana River that were essential to the persistence of the Santa Ana sucker. In particular, inclusion of upstream areas which are the source of gravels that form the breeding substrate for the Santa Ana sucker was biologically justified.
17. The 2009 proposed critical habitat designation in the Santa Ana River was very similar to the areas proposed for critical habitat in 2004, which were subsequently deleted in the 2005 final designation by Mr. Manson.
18. Our comments noted that the 2009 proposal failed to include all suitable habitat for the Santa Ana sucker fish.
19. The 2010 final designation of critical habitat for the Santa Ana sucker is scientifically defensible. It includes the necessary components for the persistence of the fish in the Santa Ana River. While the upstream portion of the designation includes areas that have ephemeral surface flows, these areas provide the essential gravels upon which the Santa Ana sucker depends for successful breeding downstream.
20. Between 2004 and 2009, more information on the Santa Ana sucker and its habitat has become available. Unfortunately, this data shows the Santa Ana Sucker has declined from 2001 to 2008. Data about these declines as well as new information about the habitat needs of the species were incorporated into the 2010 designation of critical habitat for the Santa Ana sucker.
21. The Center for Biological receives less than half of one percent of its total annual income from attorney fees recovered through the Equal Access to Justice Act.
22. The majority of cases where legal costs are reimbursed under the Equal Access to Justice Act are filed by individual veterans and social security recipients—not environmental groups.

### Conclusions

In summary:

- In 2004, the Santa Ana river was properly included in the proposed critical habitat designation based on the best available science and because it harbored successfully reproducing Santa Ana sucker.
- In 2005, political interference ignored the scientific evidence and improperly excised the Santa Ana River from the final critical habitat designation, as documented by U.S. Fish and Wildlife Service's emails.
- The 2010, the final critical habitat was designated based on all of the best available science including the most recent data collected between 2005 and 2009.

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Mr. McCLINTOCK. Thank you very much.

I now recognize Mr. Ren Lohofener, Regional Director of the U.S. Fish and Wildlife Service from Sacramento, California, to testify.

### **STATEMENT OF REN LOHOEFENER, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA**

Mr. LOHOEFENER. Good morning, Chairman McClintock, Congressman Calvert, Congressman Lewis. I am Ren Lohofener, I am the Regional Director for the United States Fish and Wildlife Service, our Pacific South West region, which is California, Nevada, and parts of Oregon.

I am happy to be with you this morning to testify on the critical habitat designation for the Federally threatened Santa Ana Sucker.

As pressure increases for human use of water, largely through dams and water diversions, the amount of habitat for the Santa Ana Sucker continues to decrease.

Today we estimate only 20 to 30 percent of the historic habitat remains for this species. Habitat loss occurs because water is generally diverted from the system upstream of areas occupied by the Santa Ana Sucker. Suitable habitat for this native fish is also being impacted by fire, off-road vehicles, mining operations, and nonnative plants. In addition, nonnative predators have been introduced throughout the aquatic system.

Conservation of the Santa Ana Sucker has been the subject of litigation since it was first listed as a threatened species in 2000. In December of 2010, pursuant to a settlement agreement, the Service published a final revised rule that designated 9,331 acres along the Santa Ana River and its tributaries as critical habitat for the Santa Ana Sucker.

This revision of critical habitat was the latest in a series of litigation-driven actions for this species that date to 2004, which relates to critical habitat, when the Service, responding to a court order, designated 21,000 acres along portions of the Santa Ana and its tributaries.

To be clear, critical habitat does not create preserves, wilderness areas, or refuges, nor does it preclude development or use of an area. Rather, the designation of critical habitat prompts analyses of effects for projects proposed to be carried out, funded, or authorized—and this is important—by Federal agencies and Federal agencies only.

This ensures the proposed activities will not destroy or adversely modify the designated critical habitat to the extent that it no longer retains the biological functions needed for conservation of the species.

Since listing the Santa Ana Sucker in 2000, the Service has completed more than 30 consultations—30 consultations—including consultations on projects in critical habitat. Most of the consultations addressed transportation, utility, or other in-stream construction projects.

To date, the Service has not found any proposed project likely to jeopardize the continued existence of the species or adversely modify the species' critical habitat, and no water restrictions have been imposed by the Fish and Wildlife Service.

When designating critical habitat for any species, the Service uses the best scientific and commercial information available to inform our decisions. We are committed to using high-quality science to inform our decisions.

In accordance with our peer-review policy, we solicited review of our December 2010 designation by experts familiar with the Santa Ana Sucker and its habitat.

The Endangered Species Act also requires us to consider the economic impacts of specifying an area as critical habitat. Our economic analysis, prepared by independent economists, determined that incremental impacts associated with specifically the designation of critical habitat could range from \$14.3 million to \$450 million over the next 20 years in present value terms.

The economic analysis took a conservative approach, meaning that it is probably more likely to overestimate the cost than underestimate the costs.

Since the Santa Ana Sucker was listed, the Service has worked with multiple jurisdictions, including the 24 participating permittees, through the Western Riverside Multispecies Habitat Conservation Plan, and also, of course, we are working cooperatively with other Federal, State, and local agencies on the Santa Ana Sucker Conservation Program.

Mr. Chairman, this species continues to be a focus of litigation. Just last August, 10 water agencies and two cities filed a formal complaint in district court, challenging the revised critical habitat for the Santa Ana Sucker. Unfortunately, because of this litigation, I have to be careful in how I answer questions today. I will try to be as forthcoming as I can, but that certainly poses some limitations.

To conclude, we enjoy a great working relationship with the Corps of Engineers. We will continue to work collaboratively with all partners in the area to both conserve habitat for the species, conserve the species, and work to ensure that human use and human considerations are taken into account to the fullest extent possible.

Copies of my testimony have been provided by our Congressional Legislative Affairs Office to the Committee.

[The prepared statement of Mr. Lohofener follows:]

**Statement of Ren Lohofener, Regional Director, Pacific Southwest Region, Fish and Wildlife Service, U.S. Department of the Interior**

Good morning Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. I am Ren Lohofener, Regional Director for the U.S. Fish and Wildlife Service's (Service) Pacific Southwest Region. Thank you for the opportunity to testify. The focus of my testimony will be on the Critical Habitat designation for the federally-threatened Santa Ana sucker.

As pressure increases for water conservation (storage) for human use through dams and water diversions, the amount of suitable habitat (water) available to the Santa Ana sucker declines. This occurs because water is generally diverted from the system upstream of areas occupied by the Santa Ana Sucker. Suitable habitat for this native fish is also being impacted to variable extents by fire, off-road vehicles, mining operations and nonnative plants. Impacts from nonnative predators are also increasing at all six locations where Santa Ana suckers exist.

Conservation of the Santa Ana sucker has been the subject of much litigation since it was first listed as a threatened species under the Endangered Species Act in April 2000. In December 2010, pursuant to a settlement agreement with environmental groups, the Service published a revised final rule designating 9,331 acres along the Santa Ana River and its tributaries as critical habitat for the Santa Ana sucker. This revision of critical habitat was the latest in a series of litigation driven actions for this species that date to 2004 when the Service, responding to a court order, designated 21,129 acres along portions of the Santa Ana and San Gabriel Rivers and Big Tujunga Wash as critical habitat for the sucker.

Critical habitat does not create preserves, wilderness areas or refuges, nor does it necessarily preclude development or use of an area. Rather, designation of critical habitat prompts future analyses of effects for projects that are carried out, funded, or authorized by Federal agencies. This ensures such activities do not destroy or adversely modify the designated habitat to the extent that it no longer retains the biological functions that are essential to conservation of the species.

Since listing the Santa Ana sucker in 2000, the Service completed over 30 consultations on the species, including projects in critical habitat areas. Most of the consultations addressed transportation, utility, or other in-stream construction projects. In no instance did the Service conclude that a proposed project was likely to jeopardize the continued existence of Santa Ana sucker or adversely modify the

species' designated critical habitat, and no water restrictions have been imposed by our agency.

In designating critical habitat for any species, the Service uses the best scientific and commercial data available to inform our decisions. I want to assure you that we remain steadfast in our efforts to have high-quality science and scholarship informing our decisions. In accordance with our peer review policy, we solicited review of our December 2010 revised rule by knowledgeable scientific experts familiar with the Santa Ana sucker, the geographic region, and conservation biology principles pertinent to the species. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for Santa Ana sucker.

The Endangered Species Act also requires us to consider the economic impacts of specifying any area as critical habitat. Our economic analysis, prepared by independent economists, determined that incremental impacts associated specifically with the designation of critical habitat could range from \$14.3 to \$450 million over the next 20 years in present value terms. The economic analysis took a conservative approach—meaning it is more likely to overstate than understate costs.

Since the Santa Ana sucker was listed, the Service has worked with multiple jurisdictions, including 24 participating permittees, through the Western Riverside County Multispecies Habitat Conservation Plan (Plan) which is a regional habitat conservation plan encompassing about 1.26 million acres in western Riverside County. We also have worked cooperatively with other Federal, State, and local agencies on the Santa Ana Sucker Conservation Program (Program).

Mr. Chairman, this species continues to be the focus of litigation. On August 23, 2011, 10 water agencies and two cities filed a formal complaint in U.S. District Court, challenging the revised final designation of critical habitat for the Santa Ana sucker. Because of the ongoing litigation, I am not able to talk about the issues specifically alleged in the complaint. However, I want to make it clear that the Service is continuing to work cooperatively with its many partners, including the 24 permittees to the Western Riverside County Plan, and members of the Santa Ana Sucker Collaborative Task Force, and the Santa Ana Sucker Conservation Program.

We will continue to work collaboratively and transparently with all our partners, including water users, to move forward with potential conservation actions that may help the species. Ultimately, our goal is to realize a healthy, self-sustaining population of Santa Ana sucker and remove it from the list of threatened and endangered species. To achieve this goal, we will work with others to identify and apply a conservation strategy for the Santa Ana sucker so that future projects can be implemented without impacting the species.

Mr. Chairman, this concludes my statement. I will be pleased to answer your questions.

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**Response to questions submitted for the record by the Fish and Wildlife Service, U.S. Department of the Interior**

**Questions from Congresswoman Grace Napolitano:**

The committee received testimony from the hearing where witnesses stated that there is no new science to justify the 2010 final rule and that the same science has been used for both the 2005 and 2010 ruling.

**Question 1: What science was used for the preliminary and final rule for designation of critical habitat in 2005? What science was used in 2010?**

Response: Critical habitat designations are made on the basis of the best available scientific and commercial information at the time of designation. The science used in the 2005 and 2010 critical habitat designations are explained in each of the final rules (70 FR 426: January 4, 2005 and 75 FR 77962: December 14, 2010). The 2010 rule incorporates information used in the 2005 rule and includes information and data generated since 2005. The criteria and methods used to identify and delineate the areas designated as critical habitat include:

- (1) Mapping historical and current digital occurrence data for Santa Ana sucker;
- (2) Delineating the width of occupied areas to include areas that provide sufficient riverine and associated floodplain area for breeding, feeding, and sheltering of adult and juvenile Santa Ana suckers and for the habitat needs of larval stage fish and connectivity within and between populations;
- (3) Delineating the upstream and downstream extents of the areas to either the point of a natural or manmade barrier or to the point where the instream gradient exceeds a 7 degree slope;

- (4) Evaluating stream reaches to determine if additional occupied or unoccupied areas are essential for the conservation of this species and should be included;
- (5) Adjusting the width to included areas containing: (a) wide floodplains; (b) complex channels (such as alluvial fans and braided channels); and (c) a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins needed to provide stream and storm waters necessary to transport sediments to maintain preferred substrate conditions in the downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively; and
- (6) Delineating the upstream limits of some river reaches by identifying the upstream origin of sediment transport in these tributaries to provide stream and storm waters necessary to transport sediments to maintain preferred substrate conditions in the downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively

See the Criteria Used To Identify Critical Habitat section of the final rule for a detailed discussion (70 FR 426: January 4, 2005 and 75 FR 77962: December 14, 2010). FWS also included the literature cited in attached files, which are part of decisional records for each rule and contain all the literature used in our rule-making process. Additionally, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), FWS solicited review of our rule by knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles pertinent to the species. FWS reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for Santa Ana sucker. The peer reviewers generally concurred with FWS methods and conclusions and provided additional information, clarifications, and suggestions that were incorporated into the revised final 2010 rule.

**Question 2: What did the science indicate in 2005?**

Response: The decisional record and the SUMMARY of the 2005 revised final rule (70 FR 426: January 4, 2005) identified 23,719 acres of habitat essential to the conservation of the species.

**Question 3: Why was there a change in the designation between 2005 and 2010?**

Response: The 2010 final revised rule updates our 2005 final critical habitat designation for Santa Ana sucker with the best available data. For some areas that were analyzed in 2005, new information led us to either add or remove an area from the proposed revised critical habitat designation and subsequently from this final rule. A summary of the changes between the 2005 and 2010 designation include:

- (1) Refining the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of Santa Ana sucker;
- (2) Revising criteria to more accurately identify critical habitat;
- (3) Improving the mapping methodology to more accurately define critical habitat boundaries and better represent areas that contain PCEs;
- (4) Reevaluating areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act; and
- (5) Adding to, subtracting from, and revising those areas previously identified as essential to the conservation of Santa Ana sucker to accurately portray lands that meet the definition of critical habitat based on the best scientific data available. One example of a change from 2005 to 2010 is the inclusion as critical habitat of stream reaches which provide coarse sediments to downstream occupied areas. These coarse sediments provide habitat features required for spawning and foraging for the species in the occupied downstream areas.

For a detailed explanation, please see the Summary of Changes From Previously Designated Critical Habitat and Summary of Changes From the 2005 Final Critical Habitat to This Final Critical Habitat Designation sections and Table 1 of the final rule (75 FR 77962; December 14, 2010).

**Question 4: Was the 2005 final rule influenced or affected in anyway by political interference?**

Response: Under section 4(b)(2) of the Endangered Species Act (Act), the Secretary may exercise his discretion to exclude a specific area from critical habitat designation if the determination is made that the benefits of excluding the area outweigh the benefits of inclusion. The rationale for any exclusion is usually included in our final rulemakings.

The 2005 revised final rule (70 FR 426; January 4, 2005) signed by the former Assistant Secretary for Fish and Wildlife and Parks identified 23,719 acres of essential habitat for the Santa Ana sucker. However, only 8,305 acres of essential habitat was included in the final designation.

Neither the 2005 rule nor its record explain the discrepancy between the 23,719 acres of essential habitat identified in the SUMMARY of the final rule as essential to the conservation of the species and the 15,414 acres of essential habitat that were excluded from designation.

**Question 5: Why was the 2005 rule challenged? What caused the FWS to re-evaluate and revisit the 2005 rule?**

Response: On November 15, 2007, several environmental groups filed suit against U.S. Fish and Wildlife Service (FWS) alleging the 2005 final designation of critical habitat violated provisions of the ESA and the Administrative Procedure Act [(California Trout, Inc., et al., v. United States Fish and Wildlife, et al., Case No. 07-CV-05798 (N.D. Cal.) transferred Case No CV 08-4811 (C.D. Cal.)]. The plaintiffs alleged that our January 4, 2005, final revised critical habitat designation for the Santa Ana sucker was insufficient for various reasons, including scientific interference, and that FWS improperly excluded areas in the Santa Ana River as critical habitat. Subsequently, FWS entered into a settlement agreement to reconsider critical habitat for the Santa Ana sucker, and to submit a proposed revision to the Federal Register on or before December 1, 2009. The proposed rule to revise critical habitat for the Santa Ana sucker was published in the Federal Register on December 9, 2009 (74 FR 65056).

**Status of the Species:**

**Question 1: Testimony received from witnesses indicated that the species has not been in a decline since its listing. What is the status of the species now? Has there been a decline of the species since its initial listing?**

Response: FWS is required by section 4(c)(2) of the ESA to conduct a status review of each listed species at least once every 5 years. The purpose of a 5-year review is to evaluate whether or not the species' status has changed since it was listed. In a 5-year review, FWS considers the best available scientific and commercial data on the species, and focuses on new information available since the species was listed or last reviewed. On March, 10, 2011, FWS completed a 5-year review for the Santa Ana sucker. Based on the information that the threats still affecting the species and its habitat persist, FWS recommended no change in the threatened status of the species.

The following text is an excerpt from the synthesis section of our March 10, 2011, 5-year review for this species:

“At listing, Santa Ana suckers occurred at six extant occurrences among three watersheds (two in the Santa Ana River, three in the San Gabriel River, and one in the Los Angeles River). These occurrences were threatened by habitat destruction, natural and human-induced changes in stream flows, urban development and land-use practices, intensive recreation, introduction of nonnative predators, and risks associated with small population size. Santa Ana suckers have persisted at the same six occurrences, but are confined within a smaller portion of their historical range. The number of individuals within these areas has also declined and their remaining habitat is highly fragmented and degraded. Since listing, threats have continued to increase in magnitude and impacts to the habitat have been amplified rangewide, increasing the potential extirpation of the species in two of the three watersheds (Santa Ana River and Los Angeles River).”

The full 5-year review has been attached and provided.

**Questions from Congressman Ken Calvert:**

**Question 1: In 2005, the U.S. Fish and Wildlife Service designated critical habitat to protect the Santa Ana Sucker. What new scientific evidence has been found that lead the service to conclude that a new critical habitat designation was necessary?**

Response: At the time of listing in 2000 (65 FR 19686; April 12, 2000), Santa Ana suckers occurred at six extant areas among three watersheds (two in the Santa Ana River, three in the San Gabriel River, and one in the Los Angeles River). These occurrences were threatened by habitat destruction, natural and human-induced changes in stream flows, urban development and land-use practices, intensive recreation, introduction of nonnative predators, and risks associated with small popu-

lation size. Santa Ana suckers have persisted at the same six occurrences, but are confined within a smaller portion of their historical range. The number of individuals within these areas has also declined and their remaining habitat is highly fragmented and degraded. Based on information gathered since listing, threats to the species have continued to increase in magnitude and impacts to the habitat have been amplified rangewide, increasing the potential extirpation of the species in two of the three watersheds (Santa Ana River and Los Angeles River).

A summary of the changes between the 2005 and 2010 designation include:

- (1) Refining the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of Santa Ana sucker;
- (2) Revising criteria to more accurately identify critical habitat;
- (3) Improving the mapping methodology to more accurately define critical habitat boundaries and better represent areas that contain PCEs;
- (4) Reevaluating areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act; and
- (5) Adding to, subtracting from, and revising those areas previously identified as essential to the conservation of Santa Ana sucker to accurately portray lands that meet the definition of critical habitat based on the best scientific data available. One example of a change from 2005 to 2010 is the inclusion as critical habitat of stream reaches which provide coarse sediments to downstream occupied areas. These coarse sediments provide habitat features required for spawning and foraging for the species in the occupied downstream areas.

For a detailed explanation, please see the Summary of Changes From Previously Designated Critical Habitat and Summary of Changes From the 2005 Final Critical Habitat to This Final Critical Habitat Designation sections and Table 1 of the final rule (75 FR 77962; December 14, 2010).

**Question 2: Areas of dry riverbed have been included in the revised Critical Habitat for the Santa Ana Sucker. How many Santa Ana Suckers live in dry riverbed? Why was dry riverbed included in a Critical Habitat designation for the Santa Ana Sucker? Is there any precedent for such an action?**

Response: While there may be extended periods of time where portions of riverbeds associated with the critical habitat designation for Santa Ana sucker are dry, these areas are essential because they provide for coarse sediment delivery to areas downstream that are occupied by the species during seasonal flows or high water events. These coarse sediments provide habitat features required for spawning and foraging for the species. Our previous rulemakings identified unoccupied portions of the Santa Ana Wash as essential for the conservation of the species.

In the 2004 final rule (69 FR 8839; February 26, 2004) designating critical habitat for the Santa Ana sucker, issued simultaneously with the 2004 proposed critical habitat designation, unoccupied portions of the Santa Ana Wash were identified as essential for the conservation of the species because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; NOAA 2003); convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the downstream portions of the Santa Ana River occupied by the sucker (69 FR 8845).

In the 2010 revised final critical habitat designation for the Santa Ana sucker, FWS reaffirmed that spawning and feeding substrates (gravel and cobble), which are replenished by upstream sources, are essential to the reproductive ability and development of Santa Ana suckers in the downstream occupied reaches (Kondolf 1997, pp. 533–535, 536–537). The sections of the Santa Ana River above Tippecanoe Avenue in San Bernardino, City Creek, and Mill Creek (although not currently occupied) are essential for the conservation of the species since the Seven Oaks Dam has reduced the transport of coarse sediment and altered the natural flow in the downstream, occupied areas of the Santa Ana River. These sections are the primary sources of coarse sediment in the upper Santa Ana River watershed and additionally are part of the Santa Ana River hydrologic system (PCE1), and assist in maintaining water quality and temperature to occupied reaches of the Santa Ana River; therefore, these areas are essential for the conservation of Santa Ana sucker (75 FR 77978).

**Question 3: In December of 2010, your agency revised the Critical Habitat Designation for the Santa Ana Sucker. Several Members of this Congress, including myself, contacted you in advance of your action requesting that the U.S. Fish and Wildlife Service take into account critically important economic and infrastructure concerns that were raised by a group of local stakeholders before that Critical Habitat Designation was made. Can you explain to us why your agency disregarded these concerns in issuing the revised habitat?**

Response: All comments from Members of Congress and stakeholders were taken into consideration when making the revised final designation of critical habitat for the Santa Ana sucker. A draft of the economic analysis was made available for public review and comment. The final economic analysis quantified the economic impacts of all potential conservation efforts for Santa Ana sucker.

The economic impact of the proposed revised critical habitat designation was analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections that are already in place for the species (such as protections under the Act and other Federal, State, and local regulations). The baseline, therefore, represents costs incurred regardless of whether critical habitat is designated.

The "with critical habitat" scenario describes incremental costs attributable solely to the designation of critical habitat above and beyond the baseline costs. The Draft Economic Analysis qualitatively discusses the potential incremental economic benefits associated with the designation of critical habitat.

The analysis forecasts both baseline and incremental impacts likely to occur if FWS finalized the proposed revised critical habitat designation. The final analysis determined incremental impacts associated specifically with the designation of critical habitat could range from \$14.3 to \$450 million over the next 20 years in present value terms using a 7 percent discount. After consideration of the economic impacts, the Secretary did not exercise his delegated discretion under section 4(b)(2) of the Act to exclude any areas from the final critical habitat designation based on the economic impacts.

FWS also reviewed the "Husing" economic report and adjusted the potential economic impacts in the Final Economic Analysis for the designation. For example, the Husing report assumes that all water projects in Unit 1 (Santa Ana River/Plunge Creek) will no longer have access to water sources in critical habitat areas following critical habitat designation for sucker. Some of these projects are existing, ongoing projects, while others are planned future projects. The Husing reports estimate that the total annual volume of water needing replacement, beginning in 2010, is 125,800 acre-feet and then applies the current cost of State Water Project Water (Metropolitan Water District) Tier 2 rate of \$594 (\$811 less \$217 treatment surcharge), raised at a rate of 2.97 percent over inflation over a 26 year period, to estimate the longer term costs of this loss. Husing does not discount his estimates, arriving at an undiscounted total value of \$2.87 billion over 26 years.

Following receipt of public comments on this issue, FWS provided estimates of the likelihood of critical habitat impacts on projects identified in the Husing report. These are included in the Final Economic Analysis (Exhibit 3-3). In the Final Economic Analysis, FWS qualitatively provided its rationale as to why it concluded that the costs identified in the report were an overestimate and did not accurately reflect the incremental costs of the critical habitat designation (Industrial Economics 2010). FWS believes costs identified in the Husing report are overestimates because any projects with a Federal nexus that would impact the Santa Ana sucker would still require section 7 consultation with FWS. Therefore, many of the costs are actually not associated with the designation of critical habitat. Rather, they are baseline costs that would be incurred regardless of critical habitat designation. Also, FWS considers the assumption that all water diversions will be curtailed as was asserted in some of the comments received on the proposed rule to be speculative and not factually supported.

Significant economic and infrastructure concerns were expressed by stakeholders regarding the proposed designation of critical habitat in Plunge Creek above Seven Oaks Dam that is not known to be occupied by the species. In the final revised rule, FWS removed this area from designation.

**Question 4: The Santa Ana Sucker was protected under an existing Habitat Conservation Plan and a Critical Habitat Designation, both of which had been in place for many years. Local agencies were working in partnership with your agency to study the fish and protect its future. Why was a revised Habitat Designation necessary and why was it necessary to designate new lands within the habitat conservation plan?**

Response: Since the Santa Ana sucker was listed over a decade ago, FWS has worked with multiple jurisdictions, including 22 participating permittees, through the Western Riverside County Multiple Species Habitat Conservation Plan (Plan). FWS also have worked cooperatively with other Federal, State, and local agencies on the Santa Ana Sucker Conservation Program (Program).

In the 2010 revised final rule, FWS analyzed the benefits of including lands covered by the Plan and the Program in the final designation and the benefits of excluding those lands from the designation. Although both the Plan and Program have established valuable partnerships that are intended to implement conservation actions for Santa Ana sucker, potential future activities, not addressed by either the Plan or Program but with a Federal nexus, could affect the sucker or its habitat and would be subject to the interagency consultation provisions of section 7 of the Act. In conducting the evaluation under section 4(b)(2) of the ESA, FWS determined the benefits of inclusion outweighed the benefits of excluding these areas because the designation will assist in achieving additional conservation not currently provided under the Plan or Program areas. The analysis and rationale are explained in in the final rule.

Furthermore, activities that were already permitted under the Western Riverside County Multiple Species Habitat Conservation Plan are not affected by the designation of critical habitat. FWS analyzed the potential loss or degradation of up to 376 acres of Santa Ana sucker critical habitat resulting from covered activities under the Plan and completed an amendment to the Biological Opinion for the Plan. Our Biological Opinion concluded that offsetting land conservation and adaptive management prescriptions provided by the Plan are sufficient such that the ecological function and value of the primary constituent elements for the Santa Ana sucker will not be appreciably diminished.

**Question 5: Why did the USFWS decline to participate in the development of the Seven Oaks Dam Project? Since Santa Ana Sucker Habitat was being discussed, wouldn't it have been appropriate and prudent for the Service to participate?**

Response: Congressional authorization enabled construction of Seven Oaks Dam. FWS consulted on effects of the project in 1989. A second consultation on operations of Seven Oaks Dam for flood control purposes was completed in 2002.

Recent hearings before the California State Water Resources Control Board took place to grant water rights for the purpose of appropriating water by direct diversion and storage to groundwater basins for beneficial use. The water rights decision outlined in the STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD DECISION 1649 contains several orders including:

Order: 14. Nothing in this permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, as may be revised in the future, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

Due to the Carlsbad Fish and Wildlife Office having an overwhelming consultation and litigation workload, driven in large part by deadlines that force the FWS to set priorities, the Service was unable to participate in the state water rights hearings.

Furthermore, because the operation of Seven Oaks Dam, in coordination with Prado Dam downstream, is currently permitted for flood control operations only (operations that regulate flows throughout the year in an effort to prevent catastrophic flow events downstream), and not for water storage purposes, the flow of water through the dam currently provides water necessary for reaches of the Santa Ana River downstream that are occupied by the Santa Ana sucker.

Notwithstanding the recent decision by the California State Water Resources Control Board to allow, under certain circumstances, up to 200,000 acre-feet to be diverted from the Seven Oaks Dam reservoir, storing water for the purpose of water conservation is not currently permitted?? by the U.S. Army Corps of Engineers for Seven Oaks Dam. Should the Corps of Engineers propose a reoperation of Seven Oaks Dam so water can be diverted for water conservation purposes, such action would constitute a project requiring consultation under section 7 of the ESA.

Mr. McCLINTOCK. OK, thank you, Mr. Lohofener

I now would like to recognize Colonel Michael Wehr, Commander of the South Pacific division for the U.S. Army Corps of Engineers from San Francisco, California, to testify.

**STATEMENT OF COLONEL MICHAEL WEHR, COMMANDER,  
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS,  
SAN FRANCISCO, CALIFORNIA**

Colonel WEHR. Mr. Chairman, Congressman Lewis, and Congressman Calvert, I am Colonel Mike Wehr, the Commander of South Pacific Division for the U.S. Army Corps of Engineers.

I am honored to be here today to testify, again, on behalf of Major General Temple. My testimony will discuss the Corps' approach to critical habitat management and ongoing construction, operation, and maintenance of the Santa Ana River Mainstem flood risk reduction project, hereon referred to as the project.

The project consists of Seven Oaks Dam in San Bernardino County, the Prado Dam in Orange County. It includes 75 miles of flood protection, fish and wildlife mitigation, and recreational features along the Santa Ana River through Orange County, San Bernardino and Riverside Counties.

In conjunction with the physical construction of our projects, we are committed to protecting life and property, and being good stewards of the environment, while being fully aware of water supply requirements.

The Corps works with the U.S. Fish and Wildlife Service in the objective of recovering the Santa Ana Sucker and protecting its habitat. On 2 August 2010, we submitted a letter related to the Service's Santa Ana Sucker critical habitat proposal and draft economic analysis. In this, comment letter, we alerted the Service of the potential impacts of the critical habitat designation on the ongoing future construction and continued operations of the project. The purpose of the letter was to ensure that the Service was aware of the vital importance of the project in protecting lives and property, and requested that they consider these factors when making its final determination. The Service was responsive to our concerns.

Since the recent designation of the critical habitat, the Corps and the Service have cooperated to ensure the construction is not delayed while we analyze potential effects of ongoing operations. Construction of the bank revetment consisting of sheet piles and riprap below Prado Dam remains on schedule. We recently awarded the construction contract of the initial phase of channel improvements as well.

The Corps and local sponsors also continue to operate Prado and Seven Oaks Dam while completing designs for the remaining features, including bank protection, dikes, and raising the Prado Dam spillway.

The Corps has begun the process of evaluating whether the construction and operation of various features of the project individually and cumulatively may adversely affect critical habitat. The analysis will include a review of the project with and without the project using hydraulic and hydrologic data, existing and predicted future habitat conditions of the Santa Ana Sucker population.

Prior to initiating new construction in the summer of 2012, we must complete this analysis, and if necessary, complete formal section 7 consultation under the Endangered Species Act.

Potential species impacts have been addressed in previous consultations for the project. The Corps has expended \$10 million for Santa Ana Sucker habitat restoration surveys and relocations under section 7. This investment equates to a half a percent of the \$2 billion project cost, which does in fact provide over \$15 billion in protection and flood risk reduction within the watershed.

The Corps is also participating in a collaborative process with resource agencies, water districts, flood control districts, and other interested parties. The objective is to seek potential solutions for improving conditions for the Santa Ana Sucker without adversely impacting vital water resource programs.

In the interim, ongoing construction and distant operations have not been impeded by the critical habitat designation.

In terms of our regulatory program, the expanded designation of critical habitat may increase the number of consultations with the Service for proposed permits under the Rivers and Harbors and Clean Water acts.

As part of the permit application evaluation process, we must ensure the projects and project modifications comply with the Endangered Species Act, potential impacts to critical habitat must be considered in addition the impacts to the species itself. Generally speaking, the presence of critical habitat results in the Corps and Service consultation even when there is no impact or no effect determination made for that species.

In closing, public safety is a number one priority for the Federal community of the Corps of Engineers. The Service works closely with us, and we share a common goal to avoid imminent loss of human life and property while managing flood risk, while incorporating environmental protection and stewardship.

This concludes my statement. Again, I appreciate the opportunity to testify today, and I would look forward to answering questions, along with Mr. Brian Moore of the panel.

[The prepared statement of Colonel Wehr follows:]

**Statement of Colonel Michael C. Wehr, Commander, South Pacific Division,  
U.S. Army Corps of Engineers**

**Introduction**

Mr. Chairman and distinguished members of the Subcommittee, I am Colonel Michael Wehr, Commander of the U.S. Army Corps of Engineers (Corps) South Pacific Division. I am honored to be testifying before your Subcommittee today. My testimony today will discuss the Corps approach to critical habitat management and ongoing construction, operation and maintenance of the Santa Ana River Mainstem project.

**Background**

The Corps supports the U.S. Fish and Wildlife Service's (Service) objective of recovering the Santa Ana sucker and protecting its habitat. In a comment letter dated August 2, 2010, on the Santa Ana Sucker Critical Habitat Proposal and Draft Economic Analysis, Docket No. FWS-R8-ES-2009-0072, the Corps alerted the Service of the potential impacts of critical habitat designation on ongoing and future construction of the Santa Ana River Mainstem flood risk reduction project (SARP), as well as continued operations of project features. The purpose of the letter was to ensure that the Service was aware of the vital importance of the SARP in protecting lives and property, and to request that the Service consider these factors when making its final determination.

**Effects on the Construction and Operations of Santa Ana River Mainstem**

Since the recent designation of critical habitat, the Corps and the Service are working cooperatively to ensure that construction is not delayed while we analyze potential effects of ongoing operations. Construction of "Reach 9 Phase 2B" (below Prado Dam) is on schedule, and we recently awarded the construction contract for "Reach 9 Phase 2A." The Corps and local sponsors also continue to operate Prado Dam and Seven Oaks Dam while we are completing design work for additional features.

The Corps has also begun the process of evaluating whether the construction and operation of various features of the SARP (individually or cumulatively) may adversely modify critical habitat. This analysis will include a review of "with and without project" hydraulic and hydrologic data, existing and predicted future habitat conditions, Santa Ana sucker population data, and other information. This analysis will likely take several months to complete. The Corps Los Angeles District's goal is to complete this analysis and, if necessary, complete formal Section 7 (Endangered Species Act) consultation prior to initiating new construction that would directly affect perennial stream habitat (currently scheduled for late summer 2012).

Currently the Corps does not anticipate that the designation of critical habitat will trigger requirements beyond those just described. Potential species impacts have been addressed in previous consultations, and the Corps has already expended or committed \$10 million for sucker habitat restoration, surveys and relocations under previous Section 7 consultations.

The Corps is also participating in a collaborative process with resources agencies, water districts, flood control districts and other interested parties. The objective is to seek potential solutions for improving conditions for the Santa Ana sucker, without adversely impacting vital water resources programs.

In the interim, ongoing construction and existing operations have not been impeded by the critical habitat designation.

**Regulatory Considerations**

The expanded designation of critical habitat may increase the number of consultations with the Service for proposed activities requiring authorizations under the Rivers and Harbors and Clean Water Acts. As part of the permit application evaluation process, staff from the Corps Regulatory program must ensure that projects and project modifications comply with the Endangered Species Act. Potential impacts to both critical habitat must be considered in addition to impacts to the species itself. The Corps will review the primary constituent elements identified in the Federal Register final rule for critical habitat and determine whether consultation for critical habitat is needed. Generally, the presence of critical habitat results in the Corps and Service undertaking consultation, even where there is a "no effect" determination made for the species. Also, the 2010 redesignation of critical habitat declined to exclude the lands in the Santa Ana River watershed covered by the Santa Ana Sucker Conservation Program and the Western Riverside County Multiple Species Habitat Conservation Plan from critical habitat designation. Consequently, more projects may now be subject to Endangered Species Act Section 7 requirements.

This concludes my statement. Again, I appreciate the opportunity to testify today. I would be pleased to answer any questions you or other Members of the Subcommittee may have.

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Mr. McCLINTOCK. Thank you, Colonel Wehr.

I would now like to recognize Mr. John Rossi, the General Manager of Western Municipal Water District from Riverside, California, to testify.

Welcome.

**STATEMENT OF JOHN ROSSI, GENERAL MANAGER, WESTERN MUNICIPAL WATER DISTRICT, RIVERSIDE, CALIFORNIA**

Mr. ROSSI. Mr. Chairman, Mr. Calvert, Mr. Lewis, thank you for inviting me to testify today regarding the critical habitat designation for the Santa Ana Sucker fish.

To lead with my conclusion, the 2010 critical habitat designation for the Sucker would cause massive economic hardship in a region already besieged by the recent economic downturn, threatens the

already-fragile California Bay-Delta system, and fails to provide any real benefit to the species. The Service should vacate the ruling and revert to their 2005 critical habitat designation.

Western Municipal Water District is a regional wholesale water agency and a member of the Metropolitan Water District of Southern California. We provide wholesale water, retail water, and wastewater services to a 500-square mile service area within Riverside County with a population of over 800,000 people. Our region is still growing in spite of taking a massive hit from the recent economic downturn.

Current growth projections require us to plan for huge increases in water demand over the coming years.

Imported water supplies are facing deep and sustained cuts. For instance, the State Water Project currently accounts for about 60 percent of the needs of Riverside County of the Inland Empire. But Federal court rulings on Delta Smelt left us facing as much as 40 percent cutbacks in just the last couple of years. Due to drought and water quality concerns, the Colorado River is also an uncertain source of water.

Rather than simply praying for rain, our region has undertaken a number of projects to grow in-basin water supplies. One of the most important projects is the Seven Oaks Dam Stormwater Management Project, a joint effort between my agency and the San Bernardino Valley Municipal Water District. It is the largest new water project developed and the Inland Empire since the State Water Project. It will help us to capture up to 200,000 acre-feet of additional stormwater each year from local mountains and use it for groundwater recharge and water banking.

New water supplies created by this project would replace imported water from the State Water Project and the Colorado River in times of drought or other shortages.

We spent many years and millions of dollars developing this project. We also undertook an 18-year process to secure water rights to some of the water stored behind the Seven Oaks Dam. Throughout that time, we worked very closely with the California Department of Fish and Game, as well as the United States Forest Service. As a result of these conversations and discussions, we reached an agreement with both agencies to protect natural resources, including the Santa Ana Sucker habitat. Oddly, the Fish and Wildlife Service did not participate in that process.

During the water rights process, the State Water Resources Control Board found that the project would not harm the Sucker since the water we would store came from areas where the Sucker never existed and because natural water and cobble-moving flows below the dam were sufficient to satisfy the Suckers' needs.

The board's findings were very much in line with the Service's 2005 critical habitat designation for the Sucker. That designation did not include the dry upper Santa Ana River areas as habitat, finding that these areas were, and I quote from the 2005 designation, "not essential to the conservation of the species." That designation in '05 also found that enormous cost to the Inland Empire's economy far outweighed any benefits to the species.

We believe that the '05 designation struck the proper balance between species protection and infrastructure development. The 2010

habitat designation, however, fails to strike that balance. It ignores the best available science, including findings by the State Water Resources Control Board that the Sucker would not be impacted by our project. It also fails to account for the dire economic impacts that could result from the ruling.

There is no clear evidence that any of the newly designated areas have ever supported a population of Suckers. Many of these areas are very dry, bone dry for up to 10 or 11 months out of each year, and others are prone to flooding and do not have the proper substrates, water temperatures, or other environmental conditions needed for the Sucker. Simply put, the decision would not help the Sucker.

Finally, the Service fails to provide the scientific evidence to justify the designation and ignores key environmental data. Again, the critical habitat in 2010 for the Sucker would void innovative local water supply projects, causing economic hardship. It provides no benefit, and it is not supported by the best science.

We urge the Service to rescind the rule and revert to the more defensible '05 action.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rossi follows:]

**Statement of John Rossi, General Manager,  
Western Municipal Water District**

Mr. Chairman, Members of the Subcommittee, thank you for inviting me to testify today regarding the critical habitat designation for the Santa Ana Sucker (Sucker). To lead with my conclusion, the 2010 critical habitat designation for the Sucker would cause massive economic hardship in a region already besieged by the recent economic downturn, threatens the already-fragile California Bay-Delta system, and fails to provide any benefit to the species. The US Fish and Wildlife Service (Service) should vacate the ruling and revert to their 2005 critical habitat designation.

Western Municipal Water District is a regional wholesale water agency and a member of the Metropolitan Water District of Southern California. We provide wholesale and retail water and wastewater services to a 527 square mile service area with a population of over 800,000 people. Our region is still growing in spite of taking a massive hit from the economic downturn. Current growth projections require us to plan for huge increases in water demand over the coming years.

Even while we plan for this growth, imported water supplies are facing deep and sustained cuts. For instance, the State Water Project currently accounts for about 60 percent of the water needs of Riverside County. But federal court rulings on the Delta Smelt left us facing as much as a 40 percent cutback in recent years. Due to drought and water quality concerns, the Colorado River is also an uncertain source of water.

Rather than simply praying for rain, we have undertaken a number of projects to grow in-basin water supplies. One of the most important projects is the Seven Oaks Dam Stormwater Management Project, (Seven Oaks Project), a joint effort between my District and the San Bernardino Valley Municipal Water District. It would be the largest new water project developed in the Inland Empire since the State Water Project. It will enable us to capture up to 200,000 acre-feet of additional stormwater each year from the local mountains and use it for groundwater recharge and water banking.

New water supplies created by the Seven Oaks Project would replace imported water from the California State Water Project and the Colorado River in times of drought or other shortages.

By better managing our precious imported water supplies, it supports the Secretary of the Interior's role as Watermaster of the Lower Colorado River. We believe the project is integral to the State of California's effort to implement the Quantification Settlement Agreement, a key foundation for future Lower Colorado River management by the Secretary.

Further, the project will be integral to the implementation of the "Seven States Agreement" in the Colorado River Basin. We are all very pleased that this accord

has been signed and we now build projects which help address shortages on the Colorado River.

We spent many years and millions of dollars developing the Seven Oaks Project. We also undertook a 18 year process to secure rights to some of the water stored behind the Seven Oaks Dam. Throughout that time, we worked very closely with the California Department of Fish and Game as well as the United States Forest Service. As a result of these discussions, we reached an agreement with both agencies to protect natural resources, including Santa Ana Sucker habitat. Oddly, the US Fish and Wildlife Service declined to participate in that process.

During the water rights process, the State Water Resources Control Board (Board) found that the project would not harm the Sucker since the water we would store came from areas where the Sucker never existed and because natural water and cobble-moving flows below the dam were sufficient to satisfy the Sucker's needs.

The Board's findings were very much in line with the Service's 2005 critical habitat designation for the Sucker. That critical habitat designation did not include the dry upper Santa Ana River areas as critical habitat, finding that these areas were, and I quote from the 2005 designation, "not essential to the conservation of the species." The 2005 designation also found that the enormous costs to the Inland Empire's economy far outweighed any benefits to the species.

We believe the 2005 critical habitat designation struck the proper balance between species protection and infrastructure development. The Service's 2010 critical habitat designation, however, fails to strike that balance. It ignores the best available science, including findings by the State Water Resources Control Board that the Sucker would not be impacted by our project. It also fails to account for the dire economic that could result from their ruling. Let me flesh these issues out a bit.

There is no clear evidence that any of the newly designated areas have ever supported a population of Suckers. Many of these areas are bone dry for up to eleven months out of the year and others are prone to flooding otherwise do not have the proper substrates, water temperatures or other environmental conditions needed for the Sucker. Simply put, this decision will do nothing to help the Sucker.

But the consequences of the critical habitat designation could be enormous. The critical habitat designation threatens our rights to water behind the dam and could spell the end of our Seven Oaks Dam Stormwater Management Project. The impact of that cannot be understated.

You will hear testimony from others on the potential for economic damage, so I will not dwell on that other than to say that imported water is far more expensive than local supplies. We could lose up to 125,800 acre feet of water a year to the Inland Empire. Importing this amount of water each year for 25 years would cost nearly \$3 billion.

And that assumes that imported water is even available. In March 2011, with California's snow pack at 165% of normal, the State Water Project estimated that it will only be able to supply its regional water agencies with 70% of their current water allocations. In recent years those shares were 50% in 2010, 40% in 2009, 35% in 2008 and 60% in 2007. If we need more water from the State Water Project, we will very likely not be able to get it. Therefore this local supply is critical to our region.

The 2010 ruling, couched as environmentally sensitive, is actually an environmental loser. The Sucker's critical habitat designation will force us to curtail water conservation, recycling, and conjunctive use projects. Instead we will have little choice but to rely on whatever imported water is available, including water from the already fragile By-Delta system.

Finally, the Service fails to provide scientific evidence to justify the critical habitat designation and ignored key environmental data. The agency's key argument that high water flows are beneficial to the species is belied by studies that show such flows actually harm Sucker habitat. The Service also ignored the species conservation efforts undertaken by the water agencies, efforts that included monitoring surveys, invasive species removal, and enhanced project management.

Again, the 2010 critical habitat for the Sucker could void innovative local water supply projects thus causing massive economic hardship, threatens the Bay-Delta system, provides no benefit to the species, and is not supported by the best science. We urge the Service to rescind their ruling and revert to their more defensible 2005 decision.

**Response to questions submitted for the record by John Rossi,  
General Manager, Western Municipal Water District**

1. Mr. Chairman, conservation efforts for the Santa Ana Sucker were discussed as part of the hearings and meetings related to our water rights application to the State Water Resources Control Board. The Service declined to participate in that process. Let me provide a timeline of events.  
In 2002, the Service issued a Biological Opinion that found that the operation of Seven Oaks Dam for flood control would not have an adverse effect on the Santa Ana Sucker. When Western Municipal Water District and San Bernardino Valley Municipal Water District prepared the Draft EIR for our water conservation project in 2004, we met with the Service. We explained that the water conservation operation of Seven Oaks would keep the maximum water level below the level analyzed by the Corps of Engineers and found not to adversely effect the Santa Ana Sucker. The Service then chose not to participate in the State Water Resources Control Board hearings on the water right application. Unlike the U.S. Forest Service or the California Department of Fish & Game, the Service did not protest our application, did not appear at the hearing, and never indicated they were concerned about the project's effects on the Santa Ana Sucker. A reason was not forwarded as to why F&S did not participate in the state water resource control board process. Then, in 2009 they agreed to reconsider the critical habitat for the species.
2. Mr. Chairman, Section 7 consultation would have been required for actions that may have affected the Santa Ana Sucker even without the expanded critical habitat designation for the species. However, the designation does add another dimension to a Section 7 consultation. In addition to reviewing a proposed project's effects on the species, we will now have to address impacts to the critical habitat. This higher threshold clearly threatens crucial water supply projects.
3. Mr. Chairman, I question how the Service can claim that infrastructure project delays resulting from "regulatory uncertainty" are only "indirect, incremental impacts of critical habitat designation." Our ratepayers struggle to understand why we are spending millions of dollars of project planning and design if that project may not move forward due to the ever-changing federal rules. In the real world, the effect of the critical habitat designation is neither "indirect" nor "incremental."
4. Mr. Chairman, under California state law, water service providers must evaluate whether water supplies are sufficient to meet the proposed project's water demands over a 20 year period. The projects cannot proceed if the water agencies cannot certify sufficient supplies. The Sucker's critical habitat designation could make it extremely difficult for us to certify that sufficient water exists for projects. In that case, our region will not be able to expand our current businesses, much less attract new businesses to the region. This would kill our already struggling local economy.
5. With the uncertainty that the critical habitat designation causes, it could imperial the agencies ability to fund the improvements necessary to capture the water for storage and distribution. Otherwise, the stormwater, an important source of water, will flow out to the ocean and be lost as a water supply.

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Mr. McCLINTOCK. Thank you, Mr. Rossi.

Our final witness is Ms. Stacey Aldstadt, General Manager of the City of San Bernardino Water Department from San Bernardino, California, to testify.

**STATEMENT OF STACEY ALDSTADT, GENERAL MANAGER,  
CITY OF SAN BERNARDINO WATER DEPARTMENT, SAN  
BERNARDINO, CALIFORNIA**

Ms. ALDSTADT. Good morning, Mr. Chairman, Mr. Lewis, and Mr. Calvert. My name is Stacey Aldstadt, and I am the General Manager for the City of San Bernardino Municipal Water Department.

As reported yesterday in the San Bernardino Sun, our community is one of the poorest in the country, second only to Detroit in those living below the poverty level.

Despite its ranking as one of the poorest cities in the United States, the Federal Government now wants San Bernardino ratepayers to pay even more, more money for mitigation, more money for recycled projects, more money for recharge, without any guarantee that more money will help either the habitat or the existence of the Santa Ana Sucker.

Since 1996 when San Bernardino began discharging highly treated wastewater into the semi-dry stretch of the Santa Ana River below La Cadena Drive in Riverside County, wastewater from our RIX facility has created abundant habitat for the Sucker.

The amount of treatment that San Bernardino uses at the RIX facility is so extensive that the water entering the riverbed is crystal clear, free of pollutants, and very, very high quality.

The people who pay to recycle this water, the ratepayers of San Bernardino, Highland, and Loma Linda, also pay for water from the Bay Delta to recharge our local groundwater basins.

San Bernardino wants to reduce the amount of wastewater that is discharged into the river and recycle it to replenish our groundwater basin. San Bernardino also wants to reduce the amount of water it draws from the Bay Delta, as that water source is unreliable and subject to environmental restrictions.

It isn't enough that some of the poorest people in this Nation support the cost of high-level wastewater treatment. The Center for Biological Diversity would have them shoulder the costs of sustaining the Santa Ana Sucker, the costs to purchase water from the Bay Delta, and the costs of an unsustainable, unstable water supply.

For decades, the San Bernardino Water Department and other regional water agencies have been doing our job in making plans for a sustainable, cost-effective, local water supply. Despite all of the planning that has been done and all of the money that has been spent by regional taxpayers, we might still be left in an artificial drought by the recent actions taken by the United States Fish and Wildlife in expanding the area of critical habitat.

The ultimate irony, of course, is that we all thought we were doing the right things. Our agency's plan for decades to provide sustainable water supplies so that we could reduce our dependence on water from the North and, not coincidentally, to reduce impacts to the Delta Smelt. My agency and others began working on sustainability of the Santa Ana Sucker back in 1999. We have spent money and valuable staff time doing fish population and breeding surveys, water temperature testing, and habitat restoration projects.

We sat at the table side-by-side with the United States Fish and Wildlife for over 10 years and relied on their assurances that we were good stewards and that our efforts would be appreciated. And in fact, in the original 2005 critical habitat designation, the U.S. Fish and Wildlife Service excluded the areas that were under our management in the Santa Ana Sucker Conservation Program for that very reason. At that time, U.S. Fish and Wildlife Service recognized that our team knew what it was doing.

Pushing the costs of preserving a species onto the shoulders of the poorest people in the United States might make sense if the science said that the fish is truly in decline or that there were particular things that would help it. However, after the many hours that we have spent studying the subject, I can say that there is no credible scientific evidence that the Santa Ana Sucker is truly in decline.

The Center for Biological Diversity as a latecomer to the conservation team and a hit-or-miss attendee has absolutely no credibility on this issue. In fact, the numbers are all over the board.

There is no evidence to indicate what if anything is causing a problem for the Suckers. And there is absolutely no plan whatsoever regarding how to increase those numbers.

This is not a case of man vs. fish. Our agencies acted in good faith, used good judgment, and did the right things for both man and fish. We should not be the poster children for the saying, "no good deed goes unpunished."

Members of the Committee, I thank you for this opportunity to testify, and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Aldstadt follows:]

**Statement of Stacey Aldstadt, General Manager,  
City of San Bernardino Municipal Water Department**

Chairman McClintock and Members of the Committee, thank you for this opportunity to testify before you today. My name is Stacey Aldstadt, and I am the General Manager of the City of San Bernardino Municipal Water Department. Your oversight of the Fish and Wildlife Service's Final Rule on the Santa Ana Sucker's Critical Habitat is critically important to my Department. In short, the Service has overreached in issuing their December 2010 Final Rule and the Final Rule must be rescinded.

My Department provides retail water service to over 150,000 customers in the City of San Bernardino, and wastewater service to over 200,000 customers. We own and operate a secondary wastewater facility located in San Bernardino. Secondary wastewater is treated and then piped down to our tertiary wastewater treatment facility, known as the Rapid Infiltration and Extraction or "RIX" facility, which discharges highly treated effluent into the otherwise dry riverbed known as the Santa Ana River. Since we began discharging into the Santa Ana River in 1996, portions of the population of the Santa Ana Sucker have moved into and inhabited the river reach downstream of the RIX facility.

My Department has been involved in the Santa Ana Sucker (SAS) Conservation Team since the group formed in 1998. That multi-agency organization includes federal, state and local partners with the common goal of engaging each agency and the private sector in a river-wide approach to the conservation of the Santa Ana Sucker. Over the years, the SAS Conservation Team has spent over a million dollars collectively, and my agency alone has spent over \$100,000 toward the team's efforts. I have participated in the development of the SAS Conservation Program and, in fact, served as chairperson for the Conservation Team in the early years of its implementation.

The SAS Conservation Program is a regional program that encompasses the Santa Ana River and the lower reaches of its tributaries extending from Tippecanoe Avenue in San Bernardino County downstream to Chapman Avenue in Orange County. It is intended to conserve the Santa Ana Sucker and protect its habitat through: (1) implementation of a systematic approach to conducting routine operations and facilities maintenance; (2) education and outreach; (3) conducting annual surveys to monitor the status of the Sucker and conducting a quantitative assessment of habitat conditions within the program area; (4) conducting surveys for Suckers prior to undertaking routine operations and maintenance; (5) funding research actions to increase the understanding of Sucker biology; and (6) developing and implementing habitat restoration activities that benefit the Santa Ana Sucker.

The SAS Conservation Program has generated significant research on the Santa Ana sucker, including the completion of reproductive monitoring surveys, the development of population estimates, increased project management, pit tagging, invasive

species removal, and habitat surveying and mapping. The Conservation Team's efforts are ongoing. Among other things, it is responsible for the continuing restoration of Sunnyslope Creek in Riverside County. It is interesting to note that, although invited to attend, the Center for Biological Diversity has never attended any of the Conservation Team meetings, nor has it contributed either funding or staff time to our efforts.

During the same timeframe that the above described efforts were taking place in California, the Fish and Wildlife Service was moving forward with a variety of federal actions related to the Sucker. In 2005, the USFWS established an area of Critical Habitat for the fish, a process in which my agency and many others in the Santa Ana Sucker Task Force participated and remember well. At the time, the Service proposed that most of the Santa Ana River be included in the designation. Ultimately, the Service decided not to designate the dry upper Santa Ana River areas as critical habitat, finding that these areas were not, and I quote, "essential to the conservation of the species" and that the enormous costs to the Inland Empire's economy far outweighed any benefits to the species.

Additionally, the Service determined that those segments of the Santa Ana River that had been included in the Santa Ana Sucker Conservation Team's efforts were being managed for the benefit of the fish and, therefore, excluded those segments from the 2005 Critical Habitat designation.

Our water agencies have been conserving the Santa Ana Sucker successfully since 1998, and will continue to do so. Our efforts have included fish surveys, and habitat restoration pilot projects, and we have submitted work plans to build fish spawning grounds in conjunction with other conservation efforts. In addition, we have clearly and repeatedly expressed to the Service our willingness to cooperatively design and protect habitat for the Santa Ana Sucker because we care about the health of the fish.

After the 2005 process concluded, everyone in the region considered the issue to be well-settled. My agency and many others undertook long-term planning for construction of infrastructure and water supply projects which are critical to our region. However, in December 2009, the Service announced that they would revise the Critical Habitat. This was done without giving any scientific or economic rationale for doing so. Certainly, nothing in the biological data showed the species to be in decline, and the Service has not produced any such data. A legal settlement between the Service and the Center for Biological Diversity directed the Service to undertake a review of the Sucker's habitat, but it did not require a habitat expansion. Moreover, the lawsuit settlement did not override existing law.

My Department has acted in good faith, voluntarily and without prompting, to study, monitor and protect the Santa Ana Sucker. We recognize that the fish is in our area, and we wanted to do the right thing under the law and for our environment. My colleagues and I contributed substantial time, money and other resources in collaborative efforts with federal and state agencies. In doing so, we developed expertise about the fish and its needs. I believe that our knowledge about the Santa Ana Sucker is second to none.

When the time came for the Service to take our views into account, our efforts and expertise were ignored. The Santa Ana Sucker Task Force organized in early 2010 in response to the Service's announcement that it would re-visit the Critical Habitat for the Santa Ana Sucker. We were alarmed at the announcement because of the lack of justification for change by the Service. Our group participated in the administrative process at every available opportunity. We hired an experienced biologist who specializes in the Santa Ana Sucker to provide biological data. Furthermore, we commissioned an economic analysis which provides detailed information on the devastating economic losses that we will incur because of the Final Rule.

With the Service's announcement of the Final Critical Habitat Designation for the Santa Ana Sucker in December of 2010, our worst fears were realized because the decision totally disregards the scientific and economic realities which should have been central to the agency's decision, based on the requirements of the Endangered Species Act. In short, the Service did not follow its own rules or Federal law.

Because the Santa Ana Sucker inhabits areas potentially affected by my Department's operations, we will be heavily impacted by the Final Rule. For example, we have a petition pending with the California Water Board seeking to reduce the volume of current discharge from the RIX facility, because we want to begin a recycled water project from our plant in San Bernardino. The Service and the Center for Biological Diversity have each filed separate protests to our change of use petition based on alleged impacts of the water recycling project on the Santa Ana Sucker.

Recycled water is the only truly reliable future source of water for irrigation and groundwater recharge in our area. Historically, when our groundwater basin has needed artificial recharge (as opposed to natural recharge from rain and snowmelt),

we have purchased recharge water from Northern California, which is conveyed via the State Water Project from the San Francisco Bay/Delta. Our planned recycled water project is one that is economically viable and provides for a permanent solution to our need for artificial recharge water.

Currently, we do not use any recycled water in our service area. After thorough (and costly) treatment, around 32 million gallons per day are currently discharged to the Santa Ana River. As envisioned, the Clean Water Factory would be located in San Bernardino and employ advanced technologies to produce quality water that meets or exceeds reuse requirements. The costs of treating and moving this recycled water are less than the current price for additional water from the north. Initially, 18,000 acre-feet per year of recycled water can be used for groundwater recharge and non-potable use, off-setting a portion of the demand on the local groundwater basin. Thus, recycled water would offset demands on the State Water Project and would be reliable and cost-effective.

In addition to the potential impacts to the recycled water projects planned by my agency and others, the new expanded critical habitat designation has potentially devastating impacts to planned water conservation efforts by San Bernardino Valley Municipal Water District and Western Municipal Water District for water stored behind Seven Oaks Dam.

Availability of water supplies is among our region's highest priorities, and this project will provide a reliable supply of water for generations to come. At least six water agencies, representing populations in excess of a million, draw from the aquifer that this project will replenish. Cities that would see a direct benefit include: San Bernardino, Loma Linda, Highland, Colton and Riverside.

The Clean Water Factory and the conservation pool for Seven Oaks Dam are two projects that are critically important to the future of this region. There are others that would be similarly impacted and were described in the materials that we provided to the Service before they made their final determination. We demonstrated that the Final Rule would prevent local water agencies such as mine from using a reliable local water supply and, instead, would force us to rely even more heavily on an oversubscribed water supply imported by the State Water Project from the Delta.

We also described in detail to the Service the devastating economic impacts to Southern California, as the result of losing these supplies, including: (1) the loss of access to 125,800 acre-feet per year of local water, which will force local water providers to spend at least \$2.9 billion over the next 25 years for imported water; (2) loss of development and an inability to meet projected population and economic growth resulting from the inability of cities and counties in San Bernardino and Riverside counties to verify that sufficient water will be available for proposed development for the succeeding twenty years as required by California law (Government Code section 66473.7); (3) lost flood control capability; and (4) more than \$326 million in expenses due to the regulatory uncertainties related to permit issuance, mitigation measures, and lost water production, including related construction losses.

My Department is willing to work cooperatively with the Service, but the Service does not seem willing to work cooperatively with us. We know that decisions concerning the Santa Ana Sucker must be based on the best available science and economic analysis, and unfortunately that did not occur when the Service promulgated its Final Rule designating the expanded critical habitat. Accordingly, the December 2010 Final Rule should be rescinded as soon as possible, which in turn will help foster our ability to create new local water supplies.

Mr. McCLINTOCK. Thank you, Ms. Aldstadt.

That concludes the formal testimony, and we will now begin the series of 5-minute questions from each of the members. And I will begin by recognizing myself for 5 minutes.

Mr. Lohofener, you just testified to this Subcommittee that the National Fish and Wildlife Service uses, quote, "the best scientific and commercial information available to make its decisions." That is explicitly not what the Federal court ruled when it reviewed your Service's work with respect to the Central Valley issues. Judge Wanger called one scientist a zealot who didn't let facts get in the way of her goals, called another an untrustworthy witness. He accused Fish and Wildlife Service scientists of lying to justify

a dramatic reduction in the amount of water being diverted from the Central Valley.

How do you square that review of the Fish and Wildlife Service's work with your assurances to this Subcommittee?

Mr. LOHOEFENER. Chairman McClintock, I am so glad you asked this question.

In your opening remarks, you said you wanted to know where the responsibility for those decisions lay. And the buck stops right here with me.

I was the one that signed the 2008 jeopardy and adverse modification agreement. I was the one that approved the declaration that the Fish and Wildlife Service employed. And I have reviewed the declaration of both the Bureau of Reclamation and Service and stand behind them 100 percent. I disagree with the judge's conclusions.

However, that is not enough. The Department of the Interior takes the judge's allegations very seriously. We have implemented the Department's scientific integrity process. At this moment, we have independent review going on of the judge's allegations and what the consequences may be. I expect those results will be made in a very short period of time.

Mr. MCCLINTOCK. I want to assure you, Mr. Lohoefer, that this Subcommittee also takes the judge's words very, very seriously. As I said in my opening statement, this goes far beyond an honest disagreement over the facts. When a judge uses words like "arbitrary and capricious," accuses the national Fish and Wildlife Service scientists of lying for political goals, we take that very, very seriously.

And I can assure you that that goes well beyond disagreement. That goes to a question of abuse of power.

I appreciate your taking responsibility for that. And I can assure you that you have not heard the end of that issue from this Subcommittee and quite likely from this 112th Congress.

To Mr. Rossi and Ms. Aldstadt, the Center for Biological Diversity has just charged that the 2005 critical habitat designation was politicized by political appointees who were not scientists under the Bush Administration. Of course, the current demonstration also had a nonscientist in that same position.

They changed the critical habitat designation without any scientific or economic rationale being used, to use Ms. Aldstadt's words. That invites the question of whether this new critical habitat designation is political, if it is not scientifically justified.

Has the Fish and Wildlife Service ever explained its rationale for settling with the Center for Biological Diversity on this issue?

Ms. ALDSTADT. Not to my knowledge, no.

Mr. MCCLINTOCK. Mr. Lohoefer?

Mr. LOHOEFENER. The——

Mr. MCCLINTOCK. Just yes or no, have you offered a public justification for settling with the Center for Biological Diversity on this issue?

Mr. LOHOEFENER. Our justification for doing the 2005 biological opinion can be found in both the proposed and final critical habitat rules.

Mr. MCCLINTOCK. Ms. Aldstadt, is it true that there is bipartisan opposition to this reversal of course?

Ms. ALDSTADT. Yes, Mr. Chairman.

Mr. MCCLINTOCK. Is it true that even the State Water Resources Control Board felt that the 2005 habitat was justified?

Ms. ALDSTADT. That is my understanding, Mr. Chairman, yes.

Mr. MCCLINTOCK. Was there any independent peer review of this Administration's decision?

Ms. ALDSTADT. Not that I am aware of, Mr. Chairman.

Mr. MCCLINTOCK. Is there a recovery plan?

Ms. ALDSTADT. No.

Mr. MCCLINTOCK. Do you believe the 2005 critical habitat designation was scientifically justified?

Ms. ALDSTADT. No, I do not, Mr. Chairman.

Mr. MCCLINTOCK. The 2005?

Ms. ALDSTADT. I am sorry, yes. The 2005 critical habitat designation, in my opinion, was valid and was supported by scientific information.

Mr. MCCLINTOCK. Now, both you and Mr. Rossi made statements that the Fish and Wildlife Service did not use the best available science in its latest critical habitat decision, yet the Agency and the Center for Biological Diversity think they did.

You mentioned that you hired an independent biologist. What did that biologist find?

Ms. ALDSTADT. Our biologist, the biologist that we hired, who, by the way, does have a specialty in fish, determined that the 2005 critical habitat designation was supported by the evidence, but that the, at that time, 2010 proposed and now final critical habitat designation were not.

Mr. MCCLINTOCK. That concludes my 5 minutes.  
Congressman Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

I wanted to focus for a moment upon the potential flooding impact of the non-function of the Seven Oaks Dam upon the community of Redlands. Since we are pleased to have the Mayor of Redlands with us today, perhaps he can help us understand what the City of Redlands is thinking about relative to the Seven Oaks Dam not being able to do its job.

The City of Redlands is in a floodplain. The potential for loss of life and property is very, very real.

Has this been an item of discussion within the City of Redlands? And if so, would you share with the Committee?

Mr. AGUILAR. Thank you, Mr. Lewis.

The City of Redlands has had discussions about this topic from a policy perspective. We have been a part of regional efforts that have included Ms. Aldstadt's organization, and we look forward to continued partnerships regionally to try to address this issue.

From our perspective, we are absolutely focused on maintaining our reliability of our water delivery system. And we feel that these current rules will—we will continue to make that a priority for our residents.

Mr. LEWIS. You may be interested to know that in light of last year's hearing with the Appropriations Subcommittee dealing with the Interior, present that day were a combination of David Hayes from the Department and Secretary Salazar himself. I had the pleasure of asking the Secretary specifically about the Santa Ana

Sucker and the focus of the Subcommittee discussion was we do not want to have a Delta Smelt challenge or problem as it relates to the Santa Ana Sucker along the Santa Ana River Basin.

The Secretary suggested to us that he was somewhat hamstrung at that moment, for he had never heard of the Santa Ana Sucker before. Well, it is apparent from testimony today that we had at least 10 years of discussion back and forth between the local leaders in the water arena and the potential impact on the Santa Ana Sucker.

I hope that that discussion with the Secretary has raised this to a level now that will allow us to make sense out of the pathway ahead of us. We do not need to put the Inland Empire in the same condition that we have found in the Central Valley. And if we work together, we can solve those problems.

Today, Mr. Chairman, I am most concerned about the division or diversity that appears to exist between anticipated or proposed economic impacts of the Santa Ana Sucker expressed by local experts who seem to know a lot more about the economy than perhaps our Department of the Interior.

I would like to add Dr. John Husing, if he would, summarize for us his findings, since he probably the most extended expertise in the entire room regarding this subject.

Dr. Husing?

Dr. HUSING. Thank you, Congressman.

First of all, to put some of this in context, the Inland Empire, which is affected, most of it, by what we are discussing here has 4.2 million people. That makes it 400,000 people larger than Oregon and larger than 24 of the 50 States. This is not a minor backwater piece of the United States that the decision potentially impacts. And as you heard repeatedly, the unemployment rate in this area is 14.1.

To put that in context, in the United States, there are 49 areas with 1 million or more people. Of those, we were ranked second-highest to Las Vegas in August in unemployment rate. So these issues are quite serious here.

If you look at what is going on within this region, you end up with the following situation: Southern California is growing; 70 percent of its growth is simply births over deaths. This is not migration. This is not immigration. As I laughingly say in my speeches, we haven't stopped sex just yet.

The Inland Empire is really the only part of Southern California that it is capable of accommodating a huge part of the Valley, because this is where most of the available spaces is for expansion. As a consequence, the Southern California Association puts our potential growth between now and 2035 at 1.3 million people, 472,000 households, and 745,600 jobs—a massive increase, if we can accommodate it.

My instinct, as I have followed this discussion now for several years, is there is a three-prong strategy coming at us, essentially aimed at slowing growth in Southern California that may or may not have anything to do with the fish.

First of all, there is a California law that you have heard cited repeatedly to require 20 years of water certified by the agency be-

fore you can build a major housing project, industrial projects, retail projects. That sort of starts the issue.

Then you cut off the flow of water to Southern California to a large extent with the Delta Smelt, which reduces that access if you need to get it from up North. To put in context exactly what that means, the municipal water district in this area actually stopped a lot of projects because of the unknowns that that situation created. This is not a theory. That has already happened once.

The Santa Ana Sucker now comes along to finish the job by cutting off our access to our own water, which represents roughly 30 percent of all water currently used in this area.

When you look at what the local agency said, they indicated 125,800 acre-feet of water potentially could be lost. I will say that the economists working for the Service did not accept that number. They took a lower number. That was their judgment vs. the judgments of the local water people.

At \$594 an acre-foot, which is the current price that is going for, and looking at how much water prices have been going up beyond inflation, that is a \$2.87 million hit over a 25-year timeframe, which is most of the planning horizons we use in Southern California. If you discount that at 3 percent, that is a \$1.873 billion current value. What that means is if you put that current amount of money in the bank right now at 3 percent, withdrew it each year and paid for the cost of what you would be having to buy, it would come out to 1.87.

The Service numbers that you heard cited a minute ago very simply said one thing. What they said was, at a 7 percent discount rate—you tell me where you can get 7 percent right now. That is how you get much lower numbers.

That is assuming you can get replacement water. As you have heard repeatedly here, and I will finish with this, with that 20-year in place, one of the things I said to their economist is you absolutely have to study was the effect if we couldn't get the water.

Now again, to put that in context, we had last year in California a snowpack that was 165 percent of normal. Even at that, the water resources agency only allowed 80 percent of the existing contracts, not asking for more, to be filled. The water won't be there. It is very simple.

If that is the case, what I said to their economist, you had better study the effect on lost construction, lost jobs, lost economic activity, if we cannot replace the water that you are going to take. They treated that at zero.

Mr. MCCLINTOCK. Thank you.

Mr. Calvert?

Mr. CALVERT. I would like to expand, Mr. Chairman, and on what Mr. Husing was talking about. I had the privilege of chairing the Water and Power Subcommittee some years ago and worked on the Delta, which as you know has been worked on for a long time. And I am sure we will be working on it for a long time in the future.

And I think we can all agree up here, I think we can all agree in the audience, additional water deliveries from the Delta is not certain. There is talk about a bond to build additional projects, which I think need to be built, expand the—build the site's res-

ervoir expansion, storage, Shasta, the Upper San Joaquin, more efficient utilization of the pumps, diversion around the Delta, et cetera. But again, that is prospective, and it is hard to know that that will occur.

We also know that the Colorado River, which I was involved in the negotiation on the quantification settlement agreement, Arizona and the lower basin States, the upper basin States, doggone it, want their water back under the adjudications that were taking place a number of years ago. That means California will have a diminished water supply of a million acre feet per year from the Colorado River.

So a number years ago, these local agencies, wanting to do the right thing, went about conserving water, using water reclamation, doing the projects that were necessary to make sure that we had a stable water supply. And when I hear from Fish and Wildlife as of to date no restriction, you know, I think people look at the Delta and they look at the Delta Smelt and say, there is no certainty. That is what they look at, no certainty.

So people who may want to come to the Inland Empire to expand or build a business may choose not to.

And I want to ask a question of Mr. Stockton.

Do you anticipate, because of this issue—and by the way, this is on page 3 of the Wall Street Journal this last week—when people read about the lack of certainty of a water supply in this part of Southern California, do you think that that would have a negative impact on trying to bring job development to the Inland Empire?

MR. STOCKTON. Well, absolutely. If you think, for years we talked about trying to transition the Inland Empire from a bedroom community supplying jobs to the coastal communities, with the idea that we want to bring businesses with the restriction on water supply assessments and the inability to bring forward any new projects of any significance, if you were a business from out of state or out of the country looking at an area where you would want to come to, you would want to make sure that you have a reliable water supply. Water is so precious.

So it would absolutely have an impact.

MR. CALVERT. Add to that, Mr. Husing?

DR. HUSING. There is no question that California already has a tough time convincing companies to consider us. You add this on top of it, and you have eliminated a whole group of companies from even considering us.

And 20 percent of the people who live in this area currently have to commute; 80 percent work locally, but 20 percent don't. And we are trying to lower that, frankly, for the environment, to reduce our jobs-housing balance issue. This interferes with that.

MR. CALVERT. Mr. Chairman, this project that Mr. Lewis and myself and others over the years have protected and tried to get completed, the all-river plan, and I want to ask a question from the Colonel, is primarily a flood control panel project, as you know, Colonel.

We had severe floods in the 1930s and certainly 1969. And so we went about, the Federal taxpayers, over a billion-dollar investment in a significant infrastructure project to protect the people of San

Bernardino, Riverside County, and Orange County from devastating floods.

And as part of a benefit of that, we want to have water storage behind the Seven Oaks Dam. And you will be getting an application—I am sure you are ready aware of—to expand additional water behind the Prado Dam.

Now you say to date, there is no effect. Do you believe there could be an effect on how you operate this billion-dollar enterprise that the taxpayers pay for?

Colonel WEHR. Well, Congressman Calvert, thank you for the question. That is certainly under study at the moment. There certainly could be an effect. No doubt about that. The review of that will take some time. We have an ongoing water quality and conservation study underway for Seven Oaks, in fact, that will look at that in terms of the impact of the designation.

Mr. CALVERT. Thank you.

Mr. MCCLINTOCK. We'll go to the second round of questions. And I will begin with Mr. Rossi.

The Center for Biological Diversity's testimony, included Fish and Wildlife Service e-mails obtained through the Freedom of Information Act. Clearly, the Agency provided them with these e-mails.

It is my understanding that a number of water utilities have requested e-mails relevant to the Agency's critical habitat decision-making quite a few months ago. Yet there has been no substantive response from the Agency.

Is that correct?

Mr. ROSSI. That is correct.

Mr. MCCLINTOCK. Well, Mr. Lohofener, do you understand how this lack of transparency gives the impression that your Agency is taking sides and only willing to provide information to one side?

Mr. LOHOEFENER. The FOIA requests that have been referred to have been replied to in part. It is true we have not completed that process. Many of the requests are still under review in our solicitor's office.

Mr. MCCLINTOCK. Well, when can we expect that information to be provided?

Mr. LOHOEFENER. We can get back to you on that, because, like I said, it requires the coordination of our solicitor's office, which is not under my purview. We will be happy to give you some information on that.

Mr. MCCLINTOCK. Consider this a request from the Subcommittee that you provide this Subcommittee with that information as well, and that you do so expeditiously.

Ms. Aldstadt and Mr. Rossi, the Fish and Wildlife Service testimony is, essentially, you don't need to worry about the critical habitat decision. All is well, since critical habitat is not going to lead to water supply limitations.

What is your response to that?

Mr. ROSSI. Well, it is very difficult for us to understand what the change in operation of the dam might be. As we said 20 years ago, saw that the world was changing in terms of uncertainty in water supplies and started working on this project, spending millions and millions of dollar. So to include dry riverbed for the purpose of

moving gravel, we can't yet understand the kind of massive flows that would need to come out of the dam to move that gravel down.

And as an example, one last piece of that answer, is we have developed very complicated water budget rate programs to tell each of our customers throughout the region that every gallon is precious to us, we must conserve and do our part, in addition to other water supply projects. And the potential loss of billions of gallons of water each year is just something we can't understand.

Ms. ALDSTADT. Also, with respect to the proposed recycled water project that my department is spearheading, the Center for Biological Diversity and the United States Fish and Wildlife Service have both filed protests against a change of use petition that we submitted to the State Water Resources Control Board, which was one of the necessary prerequisites to our being able to move forward with environmental planning. So they have in fact already protested our ability to use recycled water in the way that we want to use it.

Mr. McCLINTOCK. Well, Mr. Stockton testified that the Administration's critical habitat designation is pulling the rug out from underneath local officials who put a lot of time and money into a multi-species conservation plan that will help the Sucker fish. Is it true even that State Water Resources Control Board approved a local water project in light of all this and previous critical habitat designations?

Could you or perhaps Mr. Rossi or Mr. Stockton elaborate?

Mr. ROSSI. Yes, Mr. Chairman, in 1991, we started a process with the State Water Resources Control Board to get a permit for that water as we saw that project going on, the Seven Oaks Dam. In 2007, we had hearings for a week in Sacramento in front of the board and they made their final ruling that included the lack of that impact in 2009.

Mr. McCLINTOCK. Well, with this added critical habitat help the Sucker fish?

Mr. ROSSI. I do not understand how it would.

Mr. McCLINTOCK. Ms. Aldstadt?

Ms. ALDSTADT. Based upon the scientific information that I have reviewed through my experience on the Santa Ana Sucker conservation team, the science right now is in such flux that it is difficult to understand how all of the critical habitat designation, the new one, will help significantly over the old one.

Mr. McCLINTOCK. Mayor Aguilar, you represent the people who are directly affected by these decisions. Mr. Lohofener has just said that he takes responsibility for these decisions.

What would your constituents say to him as he goes back to Sacramento, where there are no water shortages?

Mr. AGUILAR. I am sure the 68,000 residents of my city that he takes responsibility for that, so—

Mr. McCLINTOCK. What would they want to say to him, if they had the opportunity? You speak for them; you are their Mayor. What do you want to tell this man right now?

Mr. AGUILAR. I think you need to base it on science. And I think we need to—I think my residents would be shocked at the inclusion of dry riverbed, as Mr. Rossi mentioned.

The City of Redlands is adjacent to dry riverbed for more than 10 months of the year, and I think my residents would be shocked that that is designated as critical habitat.

I think that our job as local officials is to build attractive, thriving, and sustaining communities. And I think that is what our residents expect. They expect certainty.

And this rule does not create the certainty that my residents would expect.

Mr. MCCLINTOCK. Thank you.

Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

Ms. Anderson, the center's website clearly states that the long-term goal of—the removal of Seven Oaks Dam is one of their goals. To say the least, I am distressed by that communication. How does the center justify that when the long-term dangers of flooding in the region are so real?

And further, Ms. Anderson, when I see something like that, it makes me wonder if it is not just about fish. It may be more than just about fish and more about a fundamental objection to growth.

How do you respond to those two lines of thinking?

Ms. ANDERSON. Well, the organization is dedicated to the preservation of rare and endangered species and their habitats. And as has been pointed out on this panel, there has been a lot of development within the Inland Empire, and, therefore, many of the species that rely on the Santa Ana River, not just the Sucker, but things like Least Bell's Vireo, Southwestern Willow Flycatcher, San Bernardino kangaroo rat, all of these animals are directly affected by development pressures.

I guess part of our position is, you know, why are we developing in a floodplain anyway? If there are threats of flooding, why would you put people in harm's way? It just doesn't make any sense.

And why not keep that area for species that have evolved over ages to deal with that sort of flooding threat?

Mr. LEWIS. I guess that perhaps Mayor Aguilar constituents and my constituents would suggest that the threat of flooding, if the Seven Oaks Dam were eliminated, could very well impact a very important species they are concerned about. That is human life. It is one of the species I think that maybe you are concerned about protecting.

Ms. ANDERSON. Absolutely.

You know, the situation now is that the floodplain has been built-in and Seven Oaks Dam is there. What we are now left trying to deal with is how to save the species in what remains of the floodplain.

Mr. MCCLINTOCK. Mr. Calvert?

Mr. CALVERT. I would to carry on, on this subject.

On the Seven Oaks Dam, Colonel, if that didn't exist this last season, what would the impact have been on the Prado Dam?

Colonel WEHR. Well, certainly that dam protects up to \$540 million worth of property and livelihoods of those downstream.

Mr. CALVERT. Well, I guess what I mean by that is I was told by others in the Corps that if the Seven Oaks Dam did not exist in this last flood season, it very well could have—water could have gone over the spillway.

Is that correct?

Colonel WEHR. I would have to provide a more detailed answer for the record, but I suspect that is possible.

Mr. CALVERT. If water did go over the spillway at the Santa Ana River, how much of Orange County has been built on a floodplain over the years? Fountain Valley, Huntington Beach, how much of that area was flooded in the 1939 flood?

Colonel WEHR. I would have to check the history, to be honest. But I know that there is \$15 billion worth of protection provided below Prado Dam.

Mr. CALVERT. As I remember the history of that, what is now Fountain Valley was underwater. Huntington Beach was underwater. Good parts of along the Santa Ana River and the Santa Ana was underwater.

And for that reason, they built the dam in 1939. Isn't that correct?

Colonel WEHR. Correct.

Mr. CALVERT. And for the same reason, with the floods of 1968 and 1969, we decided to expand that flood protection, because of development, primarily not in Riverside, San Bernardino Counties, but in Orange County, to develop the Prado Dam to where we are trying to get it to, and the Seven Oaks Dam. Isn't that correct?

Colonel WEHR. That is correct. The feature that is being elevated for the Prado Dam is—

Mr. CALVERT. You know, I want to make a point about Judge Wanger. I am glad the Chairman—his reputation is unblemished. And I want to make that point very clear. He has had a long and distinguished career. He is highly respected by everyone, as I know. And he is retiring and we wish him well.

I don't want any question of the fact that he thought through these decisions very carefully. I mean there was frustration on both sides of the issue, as the judge went through this whole Delta issue very carefully. And I think he acted in a manner that gives credit to fellow judges, who he is.

And I certainly want to make that point, Mr. Chairman, before this hearing is over. Thank you.

Mr. MCCLINTOCK. An important point to make. And I might add that his language left no question what he thought of the abuse of power within the Fish and Wildlife Service and the abuse of science by using junk science in a manner that concluded exactly the opposite of what the real science was pointing to.

And with that, we will begin the third and final round of questioning. And I would like to begin with Ms. Aldstadt.

You testified about the efforts that the Santa Ana Sucker conservation team has pursued on the ground. What efforts are underway for captive breeding of these fish? Why doesn't somebody just build a fish hatchery if we need more of these Sucker fish?

Ms. ALDSTADT. Well, I am not a fish scientist, but I am aware that there are currently fish raceways that are located in the Riverside conservation nonprofit agency, and we also offered to—we, the water agencies involved in the Santa Ana Sucker Task Force—we have all—in fact, San Bernardino Valley Municipal Water District took the lead in developing a proposal to go to U.S. Fish and

Wildlife and California Fish and Game, proposing to expand the breeding raceways for the Santa Ana Sucker.

To my knowledge, that proposal has not gone anywhere yet. However, the water agencies remain committed to sponsoring that proposal still.

Mr. McCLINTOCK. Let me ask—this all started on behalf of the City of San Bernardino, or for Mr. Rossi on behalf of Western Municipal Water, or Mayor Aguilar on behalf of the City of Redlands, where are you going to get the water?

My friend Mr. Calvert is absolutely right. I represent the headwaters of the Sacramento Delta. And I can assure you without additional storage, additional conveyance is a nonstarter. Where are you going to get the water, if you don't use the local sources that you have available?

Mr. ROSSI. We know it is a very precious resource and very limited. We are going to have shortages. We have had shortages over the last 3 years in Southern California, and without—one of the things we recognize is stormwater, allowing it to go into the ocean is just wrong. And we have worked on this for 20 years and spent millions of dollars, so it just should not happen.

Mr. AGUILAR. We are going to have to look at additional strategies, recycling and—and those are the issues that I think are important to us as local communities.

Mr. McCLINTOCK. What is that going to do to your water costs?

Mr. AGUILAR. Oh, and it is going to increase them, without a doubt. We are going to have to be less reliant on the State water. And that is one of the reasons why we are here, because we need to develop more strategies to capture those local sources and to percolate those in our existing system and to deliver those to residents. And I think those strategies are limited by these decisions.

Mr. McCLINTOCK. And, Mr. Stockton, you pointed out that we human beings do lots of things as hobbies. We build stuff, we grow stuff, we do stuff. But what we actually do for a living is we make more living human beings. We have been doing it for a long time. We are getting pretty good at it as a species. And the population is going to grow regardless of the impediments that are imposed by public officials that are supposed to be watching out for the people's interests.

What would those skyrocketing prices for water do to the economy of the region?

Mr. STOCKTON. Well, I think as Dr. Husing testified, over a 25-year period, something close to \$3 billion in rates. And if you extrapolate that over time, that is a huge costs to the ratepayers.

Additionally, you talked about delivering homes for this growing population. What is a bit discouraging to me is my business is, I am a consulting civil engineering company. And finally, after 3 years, we are actually looking at projects, industrial projects, commercial projects, major residential projects, starting to come back online.

Virtually all the projects I have now dusted off after 3 years are subject to a WSA. And 80 percent of them are within Western Municipal Water District; probably not going to be able to do them.

Mr. McCLINTOCK. OK, let me get to one final question.

As I said my opening statement, it is no coincidence that four of the 10 metropolitan areas throughout the country with the worst unemployment rates are in the Central Valley. Mr. Lohofener's decisions, which he has taken responsibility for, blissfully unconcerned about the suffering going on in the Central Valley, appears to now be attempting to impose the same decisions here in this region.

What would the small, struggling businesses that you represent want to tell him if those shopkeepers were here today.

Mr. STOCKTON. Please stop. You're killing us.

Mr. MCCLINTOCK. Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Lohofener, to be gentle with you as a witness, I am interested in knowing, or having you tell us for the record, when a critical habitat is designated, the Service is required to submit potential economic impacts to that designation.

Have you ever received an economic statement and found it to be lacking, maybe send it back for further review?

Mr. LOHOEFENER. Yes.

Mr. LEWIS. Have you done that in this case, with the Santa Ana Sucker?

Mr. LOHOEFENER. I came into this region in 2008. I signed both the proposed rule and the final critical habitat rule. I cannot tell you whether or not the interchange between the independent economist we had and the Service as a whole resulted in changes. I did not personally request any changes.

Mr. LEWIS. It strikes me that when you are faced with the kind of economic impact being on the surface described here only relatively lightly today, that you as a public servant of all people would worry about real impact in terms of jobs, in terms of the communities' economic ability to survive. Are those considerations that would be a part of your responsibility? And have you asked for additional information that would help you better understand those impacts?

Mr. LOHOEFENER. In terms of critical habitat, Mr. Congressman, the Service has two responsibilities. One, we have the responsibility of implementing the Endangered Species Act. Critical habitat is an area where the economic assessment—the economic cost is taken into cost. That is part of the decision process. The decision process on critical habitat is vetted all the way up to the Assistant Secretary of the Department of the Interior.

Mr. LEWIS. The early information I received indicated that your first guesstimates of economic impact kind of pointed the finger at something like \$700 million or \$800 million. That has been adjusted somewhat upward by the Department. But between now and then, the huge gap between that and the information we get from local experts causes at least this Member to not just scratch his head but say, for God's sake, why doesn't the Department, in a sensible way, go back and ask for additional information and find experts who don't just rely upon giving them the answers they want to hear as they go about making a designation?

Mr. LOHOEFENER. Is that a question, sir?

Mr. LEWIS. Sure it was.

Mr. LOHOEFENER. The question I think is—let me put it this way. And again, I am mindful of the litigation we are under here.

The proposed economic analysis and the final economic analysis—and I am no—by no stretch of imagination am I any expert in the realm of economics whatsoever, unlike Dr. Husing.

However, if you look in our final economic analysis, you will find the comments we received, including the analysis by Mr. Husing, responded to in the economic analysis.

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Mr. Calvert?

Mr. CALVERT. Thank you, Mr. Chairman.

When you mentioned, Mr. Lohoefer, that you went up to the Assistant Secretary of the Interior, do you mean David Hayes?

Mr. LOHOEFENER. No, the Assistant Secretary at that time was Tom Strickland.

Mr. CALVERT. Because I know that Mr. Lewis and myself had a hearing with Mr. Hayes not too long ago, and he never heard of the Santa Ana Sucker fish. He has heard of it now, I suspect.

Ms. Anderson, what is your position on desalinization from seawater? What is the position of the Center for Biological Diversity?

Ms. ANDERSON. You know, I don't know what the position is.

Mr. CALVERT. Well, isn't the center opposed to the desalinization project in Santa Cruz? Didn't they come out against that?

Ms. ANDERSON. I don't know. I will have to get back to you on that.

Mr. CALVERT. Is there any water project, that you are aware of, that you have been in favor of?

Why don't you get back to the Committee in writing and submit a list. I am sure it won't take very long.

[Laughter.]

Ms. ANDERSON. Thank you. I will do that.

Mr. CALVERT. I would say she is a straight talker.

Mr. Husing, we have known each other for a long time. And as you know, I don't care what kind of development or what kind of—without water, you can't do anything. Without energy, you can't. Those are the two primary necessities for human life. Obviously, clean air and all the rest. But energy and water are just kind of basic commodities.

In the Inland Empire we suffer—my friend mentions the Central Valley. But, second only to the Central Valley, this area has suffered.

What damage has this done to this region, just the problem of this being out there?

Dr. Husing. It adds to the general view that this is an area that, if I am a firm, I am going to very seriously consider avoiding.

If I might, I would like to add a couple of other quick things on some other points that were brought up, if you don't mind?

Mr. CALVERT. Sure. I have 2 minutes.

Dr. Husing. One of which is, Representative Lewis is old like I am, and I remember being evacuated in a tractor blade in 1969 with 20-foot waves going down that canyon, because there was no Seven Oaks Dam.

The second point, buried in the appendix of this work that was done by the economists for the center was a second look at the

data. And their upper number of their own analysis exceeded \$1 billion, not including anything for the billions and billions and billions of dollars that would be lost if the combination of the Sucker, the 20-year requirement for water, and the Delta Smelt are allowed to come into existence.

I consider, as an economist who has studied this area for 47 years, this to be the single most important issue in this area's long-term economic future, because it could shut us down.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you, Mr. Calvert.

That concludes the questioning and the Chair now yields to the gentleman from California, Mr. Lewis, for a few closing thoughts.

Mr. LEWIS. Thank you, Mr. Chairman.

I would like to take just a moment to express the Committee's deep appreciation to the City of Highland for their extraordinary effort in helping put this meeting together. I especially want to mention Alayna Rodriguez, Betty Hughes, Dennis Barton, David Dinali, Brendon Littleton, and Jack Avon. All of you have gone way above and beyond the call of duty in helping this be very successful and, I think for our region, a very important hearing today.

Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you, Mr. Lewis.

And, of course, I would add my thanks for the hospitality to the City of Highland today and to each of our witnesses for their time and their valuable testimony.

Members of the Subcommittee may have additional questions for witnesses, and we would ask that you respond to those in writing. The hearing record will be kept open for 10 business days to receive those responses.

Mr. MCCLINTOCK. And if there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:37 a.m., the Subcommittee was adjourned.]

