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Testimony on “Questionable Fish Science and Environmental Lawsuits:
Jobs and Water Supplies At Risk in The Inland Empire”
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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 In short, the Service has overreached in issuing their December 2010 Final Rule and the Final Rule must be rescinded.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.