

COLONEL MICHAEL C. WEHR  
COMMANDER  
SOUTH PACIFIC DIVISION

U.S. ARMY CORPS OF ENGINEERS

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

COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON WATER AND POWER

**UNITED STATES HOUSE OF REPRESENTATIVES**

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### 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.