

Committee on Resources

Witness Testimony

**Testimony Before the House of Representatives
Submitted by Christopher Lee,
Trustee Reclamation District 556,
Walnut Grove, California**

Members of Committee:

INTRODUCTION

I speak to your committee today wearing three (3) hats. One is an attorney active in representing Reclamation Districts' and general farm problems. Two as a farmer, engaged in active orchard agriculture. Three, and more importantly as a trustee of Reclamation District 556. This reclamation district was organized almost ninety (90) years ago to maintain the existing levees on Upper Andrus Island. During the past 22 years of living in the Delta my family and I have survived three (3) floods of significance, 1982, 1983, 1986 and 1997. All of these floods were significant in that the levees were breached, overtopped and substantial residential, commercial and farm land was destroyed at the collective cost in excess of \$1,000,000,000 dollars in our area of California. I speak to you today as a trustee for Reclamation District 556 located in Walnut Grove, California at no compensation. This district is a 2,300 acre island growing multiple species of pears, cherries, grapes, alfalfa, turf grass, corn, wheat, tomatoes and sugar beets. This island also contains numerous residences of the farmers located on the island.

NATURE OF THE PROBLEM

The subject matter affected by the proposed legislation is in fact levees. These are common construction structures throughout all rivers in the United States. The California levees in the Delta and regions North and South of the Delta began shortly after the gold rush and increased in width and height and have been necessarily enlarged upon since that time. The major levee construction done in the Sacramento Delta occurred from 1880 through 1920. Beginning with the gold rush and continuing up until the enactment of the Endangered Species Act these levees received regular maintenance and reconstruction due to the constant pull or flow of water and the velocity of said water against them.

MAINTENANCE AND DREDGING TO ASSIST MAINTENANCE OF THESE LEVEES HAS BEEN FOR OVER A HUNDRED YEARS CONSIDERED A FACT OF LIFE

Up until the enactment of Endanger Species Act dredging of the Sacramento River, its tributaries, the Consummous River, Mokulmne River and San Joaquin Rivers and their tributaries was conducted on a regular basis by Corps of Engineers and reclamation districts. These normal maintenance activities were considered absolutely necessary to (1) maintain the levees for the purpose in which they were constructed; (2) keep the drainage rivers in the Central California Valleys at historical depths to allow flood waters and routine drainage waters to flow unimpeded into San Francisco Bay. Levee maintenance and river dredging were considered routine, not exceptional, not destructive but positive in the protection of the rivers, human lives, property and safety.

With the passage of the Endangered Species Act in 1973 congress listed an additional protective concern and that was species . . . , not a bad idea. Many of us in the farm community have long considered the rush to pave over tens of thousands of acres of land in the name of progress not to be particularly wise. This was especially true when much of the land was prime farming ground not subject to being reproduced.

However, with all good ideas the law of unintended consequences has taken over especially with the publishing of the Federal Register in June 3, 1986, of the rules and regulations implementing the Endangered Species Act. I submit a copy of these regulations as Exhibit "A" to my testimony and urges any of the committee members who does not like a staff member and wishes to punish them to make them read these regulations extensively and be prepared to answer questions on them. Obviously my serious point is these regulations are an invitation to disaster and in fact have greatly impeded what would be normally again a routine process.

CONCEPT AND SCOPE

Our societal laws contain volumes of laws and regulations pertaining to things that are considered vital to public safety and welfare. In major disasters Endangered Species Laws are superseded on a regular basis. As a California example when the Oakland Bay Bridge fell as a result of the 1989 earthquake it was fixed in one (1) month. When the Century Freeway in Los Angeles fell down as a result of the Northridge Earthquake it was fixed in record time. When Folsom Dam broke a flow gate within the last two years which caused the loss of 200,000 acre feet of stored water during the summer period, the gate was fixed immediately. When our Reclamation District levee was threatened with collapse in January of this year on Upper Andrus Island the Corps of Engineers arrived in the nick-of-time, negotiated the contract with our district in five (5) minutes, ordered the rock that afternoon and in three (3) days using a 24 hour a day a construction operation, substantially repaired and eliminated the threat to not only our island but several islands. In other words, despite the Endangered Species Act in extreme emergencies any of these projects that would have normally taken years of study at preliminary construction stage were fixed without the necessity of referring to the Endangered Species Act in any significant way.

THE PROPOSAL BEFORE YOU TO EXEMPT THE FIXING AND MAINTENANCE OF LEVEES FROM THE ENDANGERED SPECIES ACT IS NECESSARY TO MAINTAIN OUR LEVEES

This must be analyzed in the context of comparing the levees in Central and Northern California to levees constructed in Southern California. In the Los Angeles basin water is only against the levees for a short period of time during severe weather. The Corps of Engineers was able to cement the sides of Los Angeles River and create a very strong levee that has withstood the test and ravages of weather since the mid 50's. However the levees in Central and Northern California normally have a great deal water against them which precludes the type of construction initiated and maintained by the Corps in Southern California. This means regular inspections, regular maintenance, placement of rock grading, dredging, strengthening of the levees is a part of necessary maintenance. These repairs are no different than fixing pot-holes on a freeway, or the now common practice in California of retrofitting freeway overpasses for earthquake safety, making sure an airliner is safe prior to its flying or any other safety program that we maintain for the benefit of the general public. Likewise river dredging can be compared to snow removal on public highways. Our rivers need regular dredging to make levees work. During the 1997 flood Senator Feinstein personally observed the terrible effects on the Sacramento River whose bed had raised four (4) feet in ten (10) years. Without dredging the levees will not work!!!

What is abundantly clear is that these levees provide safety for homes, businesses, humans and the

endangered species. Without them the Central Valley of California would be flooded a considerable amount of time and you would have to displace approximately 10 to 14 million people. In many areas of the Delta the levees are below sea level, much like in Holland. All of these problems portend and demand regular maintenance.

CAN REGULAR MAINTENANCE BE MAINTAINED WITH THE CONTRADICTIONS OF THE ENDANGERED SPECIES ACT THE THORNTON LEVEE: A TEXT BOOK EXAMPLE

It has been our experience that the application of the Endangered Species Act to regular levee maintenance and reconstruction the Federal regulations controlling the US Fire & Wildlife Service, California Fish & Game, the Regional Water Quality Control Board, the Corps of Engineers and the State Department of Water Resources that routine, cost effective regular maintenance of the levees and river dredging has become prohibitive and in fact non existent.

In my comments I have attached a July 20, 1994, letter from the Fish & Wildlife Service to the Corps of Engineers containing the Fish & Wildlife Services demands for the privilege of the Thornton Reclamation District 348 to fix their levee. (Exhibit "B")

In the case of the Thornton levee the existence on the levee of bushes that might have contained the Elder Berry Beetle became the controlling environmental restriction on levee repairs.

Now why did the Thornton have to fix their levee? The answer is clear. The levee failed in 1986 flooding the town of Thornton and flooded the entire farming area of Thornton which adjoins Interstate 5 on both sides. This happened during the same storm which closed Interstate 5 for approximately one (1) month. As most of you know Interstate 5 is the major North/South freeway connecting Canada to Mexico. The letter is, upon analysis, a classic example of why this bill should be passed. The wildlife service was only doing its job under the regulations, by the way. (Exhibit "B")

However we need to ask "when dealing with levees and dealing with public safety, do we really need this?" These 1986 regulations in fact (1) increased costs; and (2) frustrated the project without making the Wildlife service responsible for non-repairs caused by the usual bureaucratic wish lists. The whole problem with this process is that this process is being controlled by the US Fish & Wildlife Service through the Corps of Engineers and the group responsible for maintaining that Thornton levee Reclamation District 348 had no say. The levee repairs to District 348 began as a state grant but the Endangered Species Act caused Federal agencies to become involved. Thus the whole project took eight (8) years from 1988-1996 to complete five in a half (5 1/2) miles of repairs. The repairs should have taken eight (8) months.

To add further insult to injury during this eight (8) year period the Thornton Reclamation District was prevented from doing any levee repairs on the water side of the levee due to environmental restrictions. This incomprehensible environmental restriction was simply bad government.

An example of this crooked thinking would have us envision our local highway department being prevented from fixing the fast lane on our area freeways because of the Elder Berry Beetle.

Critical thinking requires all of us to conclude that fixing levees before they fail and flood is a far more economic and safe approach to this problem.

The environmental restrictions were the tail wagging the dog, hamstringing the reclamation district from

repairing the levee. In the case of Thornton levee the Fish & Wildlife Agency only had a regulatory enforcement position in the levee repair process. They were absolved under the law from the effects of their staffs positions. The agency involved in protecting the public and private property, farm, business and homes was forced by the Federal agency to mitigate land, place signs identifying Elder Berry Beetle habitat, make written reports analyzing monitored data, put fences around bushes and "train" on site personnel regarding the presence of Elder Berry Beetle.

What may you ask does this have to do with the levees being used to keep water away from freeways, farms and homes? I suppose we may conclude that environmental species act and its hyper technical and over burdensome regulations has a different set of priorities different from us common folk who depend on levees for our physical existence. Member of this committee, common sense has to enter the equation. Nineteen ninety-seven has taught us that our rivers must be dredged and our levees repaired immediately in the most cost effective way. Federal and State government bureaucracies can not, and must not be used to impede that most important of government functions, namely protecting the life and property of its citizens. The ESA and the 1986 regulations implementing the legislation have proven by bitter experience in our area to draw out, impede and in some cases make economically impossible the primary goal of our reclamation districts.

On the other hand the existence of these levees not only provide "water highways" for Federal and State water projects in California but as equal value by their continued maintenance protect existing endangered species from the ravages of flood.

Numerous levee failures in 1997 killed untold millions of endangered species in tens of thousands of flooded acres.

By passing this legislation and suspending the Endangered Species Act authority over levee rebuilding and river dredging the Congress will have taken a giant step towards insuring the continued habitat of all endangered species included the two legged ones.

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