

Committee on Resources

Witness Testimony

Testimony of Brian Holmes, of Wethersfield, Connecticut, Before the U.S. House Resources Committee Hearings on H.R. 3160

February 2, 2000

Chairman Young and Members of the Resources Committee:

I am Brian Holmes, Director of Regulatory Affairs for the Connecticut Construction Industries Association (CCIA), in Wethersfield, Connecticut. My testimony today is as a Member of the Board of Directors of the Nationwide Public Projects Coalition, which is headquartered in Littleton, Colorado. NPPC is a ten-year-old organization. Its members are cities, counties, water and wastewater districts, flood control and drainage districts, highway agencies from the public sector, plus as some of the construction firms that build public infrastructure.

We have about 60 agency and corporate members, as well as several hundred individuals who share NPPC's concerns and ideals. Our symbol is a simple balance like the one that traditionally depicts justice. On one side is the phrase "Environmental Values." The other side says "Needs of People." The scales are in perfect balance. That is our ideal, and careful reading of the Committee reports and the Congressional Record by the NPPC staff shows that this was what the authors of the Endangered Species Act of 1973 had in mind, as well.

Our major concern is that over the years the scales have gotten badly out of balance. The truth is that across the nation public agencies that are tasked to provide for such basic needs as sufficient domestic and agricultural water, wastewater management, safe highways, flood protection and affordable housing are delayed, and sometimes defeated, by Federal policies and practices that gain very little for environmental protection but lose a lot for the equally valid ideal of providing for basic needs of people and an often-forgotten kind of property right -- the lands and infrastructure entrusted to the stewardship of state and local governments.

We are here today not to deliver a history lesson that many of you know just as well as we do. At the same time we believe that a few words about the past are necessary to help frame the issues for those who will be reading the Committee reports and who might not have the perspective that you do.

First, a word about our involvement in ESA. The NPPC has been working actively for the re-balancing of the Endangered Species Act scales for nearly a decade. Our leadership, which included a former Director of the U.S. Fish and Wildlife Service, provided California Congressman Richard Pombo with several kinds of assistance before and after he introduced one of the earliest of the comprehensive ESA reform bills -- the Endangered Species Management Act of 1994, H.R. 3978.

Other constructive bills also have been introduced since that time, but then tumultuous times in the Capitol and the White House took the momentum out of the campaign to return balance to the Act and make it more fair and user-friendly to those who must deal with it.

We are pleased to state that H.R. 3160, accompanied by the property rights protections provided by H.R. 1142, represent a new beginning of the major momentum that will be necessary to re-balance the Endangered Species Act of 1973. While we do feel that some fine-tuning is in order, these are bills to be proud of and to work for.

Our testimony will not be highly anecdotal, but at the same time some of our members would like the record of these hearings to reflect some of the real-world problems caused, in our view, by overzealous and often ideologically-driven regulatory actions by Federal agencies are causing. More often than not those problems are reported by West Coast public agencies, but let me assure you we also have them in the Northeast. In Connecticut, they mostly center on permitting practices under the Clean Water Act.

A classic example involved three leaky sewer pipes under New Haven Harbor. A dispute between the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service about oyster beds and the disposal of dredged material took three years to resolve. All the while the contractor, one of our CCIA members, stood helplessly as five million gallons per day of raw sewage flowed into Long Island Sound.

It's hard to believe that whatever principle was being served by the Federal agencies outweighed the real-world impact of those millions of gallons of untreated sewage.

More recently, there is a story in the current issue of the immensely popular magazine *Reader's Digest* that contains one of the most startling examples of how human needs have taken a back seat to questionable endangered species habitat decisions. Appropriately it appears as the leadoff article in a feature called "That's Outrageous," and it tells the all-too-true story of how a hospital expansion in fast-growing San Bernardino County, California, was delayed for more than two years because the U.S. Fish and Wildlife Service claimed that in theory eight Delhi Sands Flower-Loving Flies lived there. The expansion had to be re-designed and shifted by about 300 feet at an additional cost of \$3.3 million. If eight flies actually lived there, and there was some question about it, the cost per fly was more than \$400,000.

As the article points out the Fish & Wildlife Service also has held up sewer and flood control projects and has put a damper on half a billion dollars worth of commercial projects which, of course, spell jobs and tax base.

What it doesn't say is that one of NPPC's founding member agencies, the West San Bernardino County Water District, had major new wells for domestic water supplies made useless by the Flower Loving Fly critical habitat action. The Federal bureaucrats said that the District couldn't temporarily disturb a very small part of the habitat by installing a pipeline to get the water to where it is needed. That's where it stands today, with the needs filled by temporary measures. We believe that H.R. 3160's requirements for good science, peer review and safeguards for the rights of project sponsors and landowners -- had they been in place in 1995 -- likely would have given the homes of the District more water supplies, and not at the expense of the Flower Loving Flies. Although admittedly we are not entomologists, we believe that common sense justifies that

conclusion.

Now, I'd like to mention very briefly some other costly consequences of ESA permitting and enforcement by Federal agencies that shouldn't have happened and, we believe, would have been averted or mitigated had H.R. 3160 been enacted four or five years ago. These examples have been provided by NPPC member agencies, and we would be happy to provide the fine details should Committee members or staff need them.

In 1993 the U.S. Fish & Wildlife Service refused to allow homeowners in Riverside County, California, to continue to clear firebreaks in dry brush near their homes, as was the practice. The reason given was that the area was habitat to one of several subspecies of Kangaroo Rats that have been designated as endangered. It was a bad wildfire year, and more than a dozen families that obeyed the Federal edict stood by helplessly as their homes burned to the ground. Several of

their neighbors broke the law, disked firebreaks and saved their homes. The rules were relaxed a bit later, but we believe that the law needs to be fixed to prevent future preventable human disasters.

H.R. 3160 does address easing of ESA regulations when the President has declared an place to be a major disaster area, but that takes time.

We would urge the Committee to consider adding the more immediate kind of exemptions suggested in Congressman Pombo's H.R. 1101, which center on flood disasters but could be broadened.

In the summer of 1999 the presence of a small group of Delta Smelt in the vicinity of pumps used to export water from both the Federal and State water projects resulted in an order to severely curtail pumping. That was despite the fact the small, sardine-like fish was known to be increasing in numbers in the Delta. The result was the loss of 500,000 acre-feet of available water, enough to irrigate more than 100,000 acres of productive farmland or sustain a million families for a year. Moreover, emergency procedures caused rapid withdrawal of water from the San Luis Reservoir, and aroused concerns about its structural integrity. The quality of water from the reservoir, which supplies Silicon Valley, also was threatened, and may be again.

Two months ago another conflict that might have been avoided by the "good science," peer review and enhanced legal remedies contained in H.R. 3160 arose in the Sacramento-San Joaquin Delta. In that case Federal and state regulators ordered closure of the cross-channel gates in the Delta for the benefit of migrating spring-run salmon. The salt levels became so high in the vicinity of the pumps exporting water to southern users that pumping had to be curtailed, resulting in further water supply losses.

Mr. Chairman and members of the Resources Committee, our Coalition believes that one reason previous ESA re-balancing bills have faced tough sledding in Congress is the fact that the brunt of the Federal agency actions has fallen on the West Coast and the South, and not so much elsewhere. But, there is evidence that this is changing, and officials of at least one part of the nation that hasn't been as hard hit as California have become most vocal about their dilemma.

I refer to the alarm that was sounded by Maine public officials in January when, as reported by wire

services, Federal agencies decided to seek endangered species listing on eight Maine rivers, claiming that the wild Atlantic salmon are genetically different from other salmon.

Governor Angus King questioned the scientific basis for the government's decision. One of your colleagues, Congressman John Baldacci of Maine, called for the Interior Secretary to be more forthright in releasing the scientific data behind the decision. And, they joined in noting that listing of the salmon would have a tremendous impact on Washington County, Maine, where five of the eight rivers in question are located and which depends on aquiculture and river water for a blueberry industry for much of its economy. We believe that some of the ESA changes that are imbedded in H.R. 3160 might well have averted this crisis Down East.

In closing let me pledge that, should the Committee see fit to move this bill to the House floor, we will do everything in our power to persuade uncommitted Members to vote for it.

Thank you for the work you are doing. It is tough. It is thankless. But we believe it is in the best interests of the nation and the principles upon which it was founded.

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