



Statement for the Record

Ron Calkins, President

American Public Works Association

U.S. House of Representatives Committee on Natural Resources

Subcommittee on Oversight & Investigations

Hearing on

*Oversight Hearing on ESA Consultation Impediments to Economic and Infrastructure  
Development*

March 28, 2017

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The American Public Works Association (APWA) is pleased to provide the following statement to the House Natural Resources Oversight and Investigations Subcommittee hearing on the Endangered Species Act Consultation Process.

APWA is an organization dedicated to providing public works infrastructure and services to millions of people in rural and urban communities, both small and large. Working in the public interest, APWA's more than 29,500 members plan, design, build, operate and maintain our vast water infrastructure network, as well as other key infrastructure assets essential to our nation's economy and way of life. We wish to offer our assistance to the Subcommittee and full Committee on any matter related to public works and infrastructure.

Healthy and prosperous communities require the construction and maintenance of infrastructure. As the stewards of infrastructure, we are concerned that the consultation process with federal agencies, during federal permitting, can prolong maintenance and repairs to critical public safety infrastructure. We support federal protections of endangered species which balance the needs of the species with the need for public works professionals to build and maintain public safety infrastructure. Further, we support Congress modernizing the ESA so the public is protected from natural disasters while ensuring adequate protections for threatened species.

**The Consultation Process: Inconsistent and Wasteful**

Good morning, and thank you, Chairman Labrador and Ranking Member McEachin for holding this hearing and inviting me to participate. My name is Ron Calkins; I am formerly the Public Works Director for Ventura, California, and served in that role for 17 years. I am also the current President of the American Public Works Association. APWA is an organization dedicated to providing public works infrastructure and services to millions of people in small, large, rural, and urban communities across our country. Working in the public interest, APWA's more than 29,500 members plan, design, build, operate and maintain our nation's vast infrastructure assets, which are essential to our nation's economy and way of life. We are especially pleased to be here today to share with you some of the challenges that public works professionals face when dealing with the balance between protecting endangered species and implementing important public works and infrastructure projects to protect the health, safety and welfare of citizens of the United States. As I am sure you are aware, the Endangered Species Act, while well-intentioned, has had negative impacts from time to time on caring for our nation's infrastructure.

Ventura has a population of 110,000 on the Pacific coast and is located about 60 miles north of Los Angeles. Two rivers, the Ventura River and the Santa Clara River border the city. In 2003, Ventura was sued to keep water in the Ventura River, and at the same time was sued to take water out of the Santa Clara River – both in an attempt to protect the Steelhead Trout. As you can see this can be very confusing and sends many mixed messages.

Ventura has discharged highly treated water to the mouth of the Santa Clara River for over 50 years. This estuary is habitat for both Steelhead Trout and the Tidewater Goby—both of which are on the endangered species list. Scientific studies have shown that the treated wastewater is of higher quality than the water that naturally occurs in this estuary. In 2008, the State of California began working on the renewal of the discharge permit. Due to pressure from a non-governmental organization, Heal the Bay, the state was considering requiring that discharges into the estuary end. However, National Marine Fisheries Service (NMFS) and the U.S. Fish & Wildlife Service (FWS) were both concerned that an end to the discharge would threaten the Steelhead Trout. With conflicting views, Ventura was required to conduct a study. Three rounds of multiyear scientific studies costing \$4 million lasted nine years, and are just now being wrapped up. After nine years of study, Ventura is just now hoping to define this project and start the National Environmental Protection Act (NEPA) review and Endangered Species Act (ESA) consultation processes later this year.

Another illustration of how the ESA has caused confusion, delays and increased costs to important public works and infrastructure projects deals with drinking water. The City of Ventura faces significant challenges with its drinking water source from Lake Casitas. Congress authorized the construction of Casitas Dam on Coyote Creek in 1956 to provide the area with a stable water source and has a capacity of 254,000 Acre-feet. The Los Robles Diversion Channel was built to carry Ventura River water to the lake since the lake is located on a tributary of the main river. In 1997, NMFS listed the Steelhead Trout as endangered on the Ventura River, even though the river is on the southern fringe of the population habitat. In 1999, the consultation process started after a lawsuit was filed by Cal Trout. The process did not end until 2003 when NMFS issued the Biological Opinion, requiring the construction of a fish ladder to allow upstream travel of the steelhead to the habit. The passage was completed in 2006 at the cost of \$9 million.

As part of the Biological Opinion, the district was required to bypass 50 cubic feet per second, down from the standard 170 cubic feet per second during the “initial period.” This bypass requirement has resulted in a long-term average annual loss of 1,100 Acre-feet of drinking water each year. NMFS has extended this time beyond the initial five years because of the drought. NMFS is expected to reopen the consultation process later this year. Many in the community fear that this consultation process will require that additional flows be bypassed without any demonstrated benefit to the endangered species.

In spite of a relatively wet winter in CA, we are still in a severe drought, especially in Ventura and Santa Barbara counties. Many years and millions of dollars have been spent to provide scientific data to accommodate what is required by the Endangered Species Act. The process is so lengthy that the circumstances influencing the water levels vary considerably, leading to agencies making decisions without the most relevant scientific data. We fear additional “take”

without any proven benefit for the species, particularly in a time when we are still in severe drought.

Further, aside from the increase in costs, are the risks to human life. In 1986, Reclamation District 784 (RD 784) in California attempted to repair a levee along the Feather River and Federal approval was needed to proceed. In 1990, the Army Corps of Engineers agreed, but six years passed before approval would be granted for construction to start. RD 784 spent more than \$10 million on ESA mitigation for the elderberry beetle before the bidding process began. On January 2, 1997, the levee broke, killing three people and flooding 25 square miles. RD 784 determined that the lag in repairs and the mitigation itself contributed to the levee's failure. The mitigation for the beetle stopped maintenance of the levee, such as crack repair and clearing brush.

Lastly, another example of increased costs in complying with the ESA happened in 2012 when the Texas Department of Transportation planned to build an underpass connecting Loop 1604 and Texas Highway 151 in San Antonio. Unfortunately, biologists working at the site found a spider listed as endangered, the Braken Bat Cave Meshweaver. FWS listed the spider as endangered in 2000. Texas Department of Transportation (DOT) had to halt the project for two years as changes were made. The final cost for the needed changes totaled \$44 million. The original project cost was \$15.1 million. A nearly \$30 million increase in costs is a significant expense at a time when the Highway Trust Fund is insolvent.

### **Modernization is Imperative**

APWA believes that we need to modernize the Endangered Species Act in a way that balances species protection with the need to care for essential public works services and infrastructure. Such legislation should contain full integration of sound scientific and economic principles which ensure that habitats and species can be preserved in harmony with critically needed public projects. Reform legislation should respect the original intent of the Act, which is the protection and recovery of species. APWA strongly supports environmental preservation and protection of species determined to be threatened or endangered by balanced, integrated approaches that are applied openly with equity, prudence, and foresight. APWA believes it is imperative that varying interests work smarter together, to develop and implement open, collaborative strategies for achieving balance among the many competing demands of modern life. In the public policy arena relating to endangered species, APWA encourages complete consideration of the social and economic, as well as the environmental, impacts of habitat designations and preservation strategies.

There is a need to balance endangered species and habitat preservation with the infrastructure development, operation, and maintenance needs of local citizens. Such a local, balanced approach will provide the best options for preservation, growth, and management of our invaluable natural resources, as we continue to work together to carry out the mandates required of us all to serve the needs of American citizens. The implementation of programs has resulted in a process that has caused delays, prohibitions, and added costs for infrastructure development, operations, and maintenance. Local or municipal infrastructure projects sometimes, of necessity

for safety, health, and the welfare of citizens, affect habitat relating to fish, wildlife, and species that may be determined to be threatened or endangered. In some cases, municipalities have been prevented from operating, managing, and maintaining their infrastructure and other municipal facilities in a timely and efficient manner. Also, in some cases, critically needed infrastructure projects are stalled or prohibited entirely because of bureaucratically-imposed processes that fail to achieve goals mandated by legislation. At issue is the need to reform the Endangered Species Act to build stronger partnerships, to reduce delay and uncertainty for states, local governments, private industry, and individuals; and to provide greater administrative flexibility that minimizes disruption and harmful socio-economic effects while continuing to conserve and preserve America's priceless environmental heritage.

In detail, APWA specifically recommends the following:

- That the process for resolving appeals be reformed to encourage timely resolution. We support the inclusion of specific administrative time limits in the reform legislation.
- That the law open all aspects of the decision process to verifiable peer review, improved data collection and field testing of data – to tap the country's best wisdom in resolving these issues. Endangered species decisions must be based on verifiable, sound, and objective scientific data.
- That national priority is given to aggressive pre-listing incentives for affected governments and landowners, to avoid negative impacts of the act and to improve conservation.
- That the post-listing consultation and decision-making process include full partnership for affected states, local governments, and private property owners – including habitat designations, conservation, and recovery plans, so that decisions can be made with full collaboration and cooperation.
- That the law allow the existing federal exemption process to allow interested parties consultation with the U.S. Department of the Interior to determine whether a proposed action will jeopardize a species. If the species is determined to be in jeopardy, economically feasible and prudent alternatives for its preservation should be considered.
- That preservation programs make effective use of limited public and private resources by focusing on groups of species dependent upon the same habitat.
- That public education programs be required at all levels to provide various stakeholders with an understanding of the issues.
- That species relocation is permissible so that constructions can go forward in a prudent fashion.
- That an exception to waive studies when building, maintaining, or operating critical infrastructure is provided to protect public health and safety in dire situations.

## **In Conclusion**

We need a better balance between the protection of endangered species and the ability to implement important public works and infrastructure projects -- especially when public safety and health is threatened by a lack of water supply. These resources belong to the people, and local needs should drive their management. Public Works professionals are up to the challenge of satisfying community needs with limited resources. We offer to be a resource as the committee considers modernizing this legislation to ensure scarce taxpayer funds are well-spent and communities are protected. Thank you.