

Testimony of Ronda Lucas, Water and Environmental Attorney, to the
United States House of Representatives
House Committee on Natural Resources,
Subcommittee on Water, Wildlife and Fisheries
Oversight Field Hearing Regarding
“Water Abundance: Opportunities and Challenges in California”
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Good morning, Chairman Bentz, Ranking Member Huffman, Congressman Duarte, and esteemed members of the Committee. Thank you for providing me with the opportunity to testify on the opportunities and challenges in California concerning water abundance. My name is Ronda Lucas, and I am an attorney with decades of experience in California water and environmental issues. This career path, while rewarding, frankly, was not the one I envisioned. First and foremost, I am a California farmer’s daughter, granddaughter and great-granddaughter who wanted to return home from college and work alongside three generations of my family farming in California’s Sacramento Valley.

You see, more than a century ago, my great-grandparents emigrated to California and began as laborers on a small dairy. Through hard work, they were able to buy that dairy and begin writing their American dream. As regulations in the dairy industry began to squeeze dairies out of existence, we converted our family farm to growing other crops and sold the cows. Over time, my grandfather and then father were able to expand our land to ensure my siblings, my cousins and future generations would be able to continue farming. However, reality interfered in the form of numerous fish listings under the Endangered Species Act (“ESA”) spanning the early to mid-1990s resulting in our water being shut off and altering my dream and career path.

Rather than coming home to farm alongside my dad, grandfather and countless other cousins, in order to ensure our farm and my hometown, like hundreds if not thousands of other farms, ranches, and entire communities might have a hope of continuing, I traded a tractor for a law degree. I could do more learning the law than farming the land to ensure my farm, my family, my friends and neighbors and my small rural community would have sufficient water to survive.

Sadly, I am not unique or special. My story is the story of too many in this country whose history, dreams, heritage and livelihoods have been built around a life calling only to have these legacies threatened unnecessarily by unelected bureaucrats who choose water scarcity and permanent drought conditions that wreak havoc but produce little to no actual improvements to fish populations or the environment. Last week, I dropped my youngest off to college and, sadly, those same fish are still being used as an excuse to impose water shortages on communities throughout this state and nation without foreseeable recovery or any measurable benefit to either the communities or the environment.

We must do better. We must use science to focus on actual recovery of these fish and all listed species so that neither my children nor any other future generations are prevented from feeding and clothing America or pursuing their American dream.

On Dec. 28, 1973, Congress passed, and President Nixon signed, with little fanfare, legislation that was intended to protect imperiled species from becoming extinct. At the time, neither Congress nor the general public understood that this relatively simple concept would spark the third rail of American politics. As we approach the 51st birthday of the federal Endangered Species Act, one thing is perfectly clear --this well-intentioned act is failing miserably in achieving Congress' main objective of recovering species. Unfortunately, very little is being done to fix this quagmire because extreme political agendas and lifestyle demagoguery are more important to special interest groups and bureaucratic power centers than environmental restoration and saving species.

Today, many measure success under the ESA in terms of the number of species listed. This defies common sense. If society has so depleted a species it is on the verge of extinction, we have failed miserably. The 1973 Congress recognized this and placed emphasis on recovering species rather than on listing species. The listing process is merely the first step. The true work begins when we collectively work toward improving species' status to the point they are no longer in danger. But, as the ESA is currently implemented, the bureaucrats have neither the time, incentive, nor other resources to get beyond this first step and actually recovery and therefore remove species from the ESA. The perverse incentive currently in place in the ESA for bureaucracies is listing equals power and recovery equals a loss of power and control.

Instead of trying to achieve the true purpose of the Act, certain sectors of society spend their resources suing the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries and obtaining millions in tax-payer payouts in the form of "attorneys' fees" that are then used to continue the litigation cycle. In the end, species are listed, not based on the best available scientific information, but based on a court order or settlement agreement. This is not productive and runs counter to Congress's intent that government's actions under the ESA be guided by and based upon science. The National Academy of Sciences, in the early 2000s brought this problem into clear focus when it commented on the "need to reconcile the ESA's legal framework with its scientific foundations."

The ESA requires the government to make decisions regarding species in accordance with very strict deadlines. The ESA also requires the government to make its decisions based on the "best commercial and scientific data available." This structure does not allow the time necessary to make decisions guided by true science. According to the National Academy of Sciences, this creates a situation where the government can make decisions under the ESA that "satisfy the demands of the ESA with an analysis that would not satisfy the demands of scientific review for publication or other peer-reviewed processes common in modern science."

As we mark the ESA's half century of existence, hopefully the time has finally come to have an honest discussion. Leading the discussion, Congress needs to decide which is more important--having decisions based on true scientific processes, or having decisions based on arbitrary deadlines. The last 50 years have taught us we cannot have both.

Unfortunately, because the ESA is now more about political posturing than protecting and preserving species, any attempt to require true scientific processes in decision making and to shift the government's emphasis to recovering species will be met with strong resistance. Never mind we are not saving species as the Act is currently implemented. We are merely listing them. In 50 years, more than 1,700 species have been listed and less than 2% have been recovered.

As Albert Einstein noted, “[w]e cannot solve our problems with the same thinking we used when we created them.” Yet, in the ESA context, this approach is exactly what we have been doing, and with dire consequences to both people and species. In the Columbia River Basin, due to the listing of several species of salmon and steelhead under the ESA, for decades bureaucrats have enacted numerous changes and resulting decreases in available water and energy in the name of ESA requirements ostensibly to “recover” the “wild” salmon and steelhead. Nearly 4 decades and more than \$9 billion dollars have been invested in federal (taxpayer) monies in this effort. Energy production was not allowed, and water was sent out to the ocean unused, with very real costs to the individuals, businesses and communities in the Columbia River Basin and beyond. Drought and rolling blackouts, increased energy costs, loss of jobs and increase in daily stress in the families and communities directly impacted are just some examples. In 2023, a study was finally undertaken to measure the results of this costly undertaking.¹ The study observed the impact of the restoration efforts “remains poorly understood; many observers, including the federal courts, have long been concerned by the lack of evidence of recovery.”² “Despite several decades of federal agency actions in response to these requirements, many observers including local and state governments, community groups, and stakeholders, have been stymied by the paucity of evidence of improvements in fish populations despite these actions and high levels of expenditures.”³ For more than forty years, the efforts continued without study, without accountability, without attempting a different approach in spite of this “paucity of evidence” and in the face of real, devastating impacts to people, communities, and other environments. In 2023, the salmon and steelhead are no closer to recovery, but the study concluded, “[t]he aim of our study has been to look for evidence of the return on investment for the \$9 billion restoration spending in the C[olumbia] R[iver] B[asin] over the last four decades. . . . [W]e find no empirical evidence of an increase in wild fish abundance associated with restoration spending.”⁴ In spite of these facts, we are continuing these failed policies, removing dams, ignoring consequences to people, and allowing bureaucrats to impose water and electricity shortages while wasting billions in our tax dollars with zero benefit.

In this area, we have a similar experience. Less than a decade ago, this area was brought to its knees because bureaucrats decided to use biological opinions to impose drought conditions. The nightly news was filled with stories of food banks being inundated with families simply trying to get enough to eat because every facet of life was facing poverty, unemployment, and scarcity. The instances of asthma, particularly for children and the elderly, and other respiratory illnesses exploded as the water disappeared. The regulatory drought imposed in the name of ESA created

¹ William Jaeger, Mark Scheuerell, *Return(s) on investment: Restoration spending in the Columbia River Basin and increased abundance of salmon and steelhead*, (July 28, 2023), <https://doi.org/10.1371/journal.pone.0289246>.

² *Id.* at abstract.

³ *Id.* at 3.

⁴ *Id.* at 10.

numerous violations of the Clean Air Act, and more importantly, children, the old and the young all suffered with some requiring hospitalization. Instances of domestic violence, petty crime, divorce, depression, anxiety and in some dire instances suicide increased. As the water flowed not into the fields and communities to sustain life, but out to the ocean on the off chance it might somehow improve salmon and steelhead, employment died, dreams died, communities died, and hope died. And, the fish **did not** demonstrably improve. We cannot repeat our past mistakes. We cannot doom ourselves to our failed history by allowing bureaucrats to choose the imposition of water scarcity. Local governments, scientists, the communities where we all live and work and the environments where these species reside all deserve Congress and the government to choose water abundance.

By any reasonable measure, the government has failed to achieve Congress' goal. Albert Einstein also observed "God doesn't play dice with the universe." Bureaucrats should not either. Rather than waste another half century and hundreds of billions of dollars while decimating lives, neighborhoods, communities and species, Congress must exhibit true leadership and recover the ESA from its current political quagmire. America deserves an ESA similar to the one Congress envisioned 51 years ago-an ESA based on common sense, guided by true science and protective of those species that truly warrant protection. America also needs to measure success by the number of species recovered rather than the number of species listed.