

Endangered Species Laws Should Balance Protecting Environment, Accommodating Economic Growth

Summary

Background

A long-term problem confronting the California business community is how to provide enough private land for housing, agriculture, transportation and basic infrastructure needs, including water, gas and electricity, in the face of ever-encroaching environmental laws, such as the federal and state endangered species acts. The California Chamber of Commerce supports reforming endangered species laws to achieve a balance between protecting the environment and accommodating growth.

Current Federal/State Policy

California is one of a handful of states that is subject to regulation by three endangered species laws—the federal Endangered Species Act, the California Endangered Species Act (CESA) and the California Fully Protected Species Act. Endangered species laws require that no activity be allowed that threatens the well-being of the listed species unless permission to “take” the species is granted. Federal law requires critical habitat designations within one year of listing.

Impact on Business, Employers, Economy

At a great expense, farmers and ranchers have been forced to alter farm management practices to accommodate species living on their land. Timber companies have spent millions of dollars preserving species habitat on timberlands while losing millions on trees that cannot be cut.

The cost of building new housing and commercial developments continues to rise while selling prices have plummeted during this economic downturn. Part of what drives increases in costs to build are the mitigation measures imposed on builders under the endangered species acts. Basic infrastructure needs like highways and wastewater facilities take much longer to complete and invariably cost much more than originally budgeted due to regulatory impacts of the species. Water agencies and districts are struggling with how to provide water to existing connections without having to raise rates prohibitively and seek alternative water sources, given a federal court ruling limiting by almost a third the amount of water that may be pumped from the Delta during certain timeframes.

Anticipated Actions

Over the last few years, several species have been listed as either threatened or endangered in California. Some listings, like the Delta smelt and salmon, have further limited water supplies. Other listings, like the mountain yellow-legged frog, which was declared a candidate species in September 2010, may limit timber operations, as well as water storage and conveyance activities. The frog’s range encompasses most of the Sierra Nevada mountain range. Within one year the state Fish and Game Commission (Commission) must decide whether to list the species as endangered or threatened. Meanwhile, the species is protected from harm, which involves imposing restrictions on land use that can severely limit landowners’ ability to conduct business.

The environmental community has pursued court cases, forcing the Commission to revisit decisions where it has declined to list various species as threatened or endangered. The Commission recently lost an appeal and is required to list the California tiger salamander as threatened—its habitat covers a significant portion of the Central Valley. In October 2010 a state judge ruled that the Commission has to reconsider whether the American pika warrants protection under CESA. It’s the second time in two years that the court has faulted the Commission for rejecting the Center for Biological Diversity (Center) 2007 petition to list the pika as a threatened species. The species is one of the first to be included in a scientific petition by the Center to be listed in California under CESA due to threats from global warming.

The Center filed nine separate lawsuits against the U.S. Department of the Interior and the U.S. Fish and Wildlife Service (Service) in 2010 seeking further listing of species. Four lawsuits have been settled and five are pending. The Center filed 18 lawsuits in California in 2009. Most of the resolved cases resulted in the Service agreeing to redo the critical habitat designations. The Center publicly

criticized the Obama administration for listing just two species as endangered from the federal list of 249 candidate species. The Center also has a pending lawsuit in Washington, D.C., arguing that continued delay in protecting the candidate species is illegal.

The National Research Council, a panel of scientists and experts assembled in 2009, is conducting a \$1.5 million California water study following requests for a review from California lawmakers and Obama administration officials to review the scientific basis of actions that have been, and could be taken to simultaneously achieve both an environmentally sustainable Bay-Delta and a reliable water supply. Part of that review will include a re-examination of the “biological opinions” (the bases of the federal court rulings), which have resulted in as much as a 30 percent reduction of Delta water exports. The first report (released in March 2010) examined the “scientific questions, assumptions and conclusions” that were included in the biological opinions. The second report (due November 2011) will study how to incorporate “science and adaptive management concepts” into the Bay-Delta management and restoration planning process.

CalChamber Position

The California Chamber of Commerce supports reforms to state and federal laws that achieve a balanced approach between environmental protection and socioeconomic progress. Because of the challenges posed by endangered species listings, business, agriculture and transportation, and water agencies must participate in stakeholder groups to provide comments to proposed state and federal rules. This involves providing expert testimony, refuting unsubstantiated proposals and filing amicus briefs to stem the tide of encroaching endangered species act provisions that further erode land use, restrict necessary public infrastructure and shut down economic development.

Reasons for Position

- Environmental regulations should be based on sound science, subject to peer review.
- Economic impacts should be evaluated to ensure that the benefits outweigh the social costs of imposing mitigation measures.

Staff Contact

Valerie Nera

Policy Advocate

valerie.nera@calchamber.com

California Chamber of Commerce

P.O. Box 1736, Sacramento, CA 95812-1736

(916) 444-6670

www.calchamber.com

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