

**Testimony of Mauricio Guardado, General Manager United Water Conservation District
House Committee on Natural Resources
Subcommittee on Water, Wildlife and Fisheries Legislative Hearing**

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Good afternoon, Subcommittee Chair Hageman and Members of the Subcommittee. On behalf of United Water Conservation District (United), I thank you for the opportunity to present this testimony today.

My name is Mauricio Guardado. I serve as general manager of United, a California Special District focused on managing water resources in the Santa Clara River region of Ventura County. Servicing over 214,000 acres and a population of about 400,000 people, including six cities, agricultural land and the U.S. Naval Base Ventura County, United operates and maintains stormwater capture, groundwater recharge, and water delivery infrastructure, and other water supply activities that are vital to its watershed management efforts.

United is one of California's few legislatively established Water Conservation Districts. In performing its District-wide watershed management efforts, United not only stores water at its Santa Felicia Dam and Lake Piru reservoir, it also directly recharges the groundwater aquifers via its Freeman Diversion. United also provides surface water deliveries to agricultural groundwater users to minimize groundwater extractions near the coastline in its fight to mitigate seawater intrusion from contaminating the aquifers. Additionally, United operates a water treatment facility and wholesale potable water distribution system throughout its service area. United's efforts date back nearly 100 years and have been highly successful in meeting the historic and contemporary challenges facing groundwater management in southern California. Despite United's success and earnest efforts to meet state and federal environmental requirements, United has faced ever increasing regulatory overreach in Endangered Species Act (ESA) implementation by the National Marine Fisheries Service (NMFS), which threatens to undo decades of effective water management in the region.

Over the years, United has changed our operations numerous times to benefit species listed under the ESA while still striving to achieve our mission and statutory purpose of providing water to the region and to our constituents. With each change benefiting the listed species, United has demonstrated a commitment towards compliance with the ESA, and although the process has been increasingly costly and burdensome, the ability to attain compliance has become increasingly elusive as NMFS continues to move the goal posts. Although the overall values of the ESA are not in question, at a practical level, the current framework under which the federal agencies implement the ESA is out of balance and reforms such as those put forth in the ESA Amendments Act of 2025 are necessary to ensure that state, local, and federal projects and activities are evaluated fairly and consistently.

I offered my testimony at the July 2024 hearing of this subcommittee on the previous version of the proposed bill, and I would like to again voice my support for the bill and the important provisions it contains. With my testimony today, I would like to focus on the costs and delays associated with the status quo and the improvements that the ESA Amendments Act of 2025 would provide to stem NMFS' regulatory overreach as it relates to United's facilities and operations.

Regulatory obstacles faced by United largely stem from the listing of the southern California steelhead (*Oncorhynchus mykiss*; steelhead) distinct population segment by NMFS in 1997 (62 FR 43937) and the

subsequent designation of critical habitat in 2005 (70 FR 52487) under the ESA. Following the listing, NMFS issued jeopardy biological opinions for both the Santa Felicia Dam and the Freeman Diversion, relying on *Chevron* deference to support their use of poor science in the issuance of egregious biological opinions. With the Supreme Court overturning *Chevron*, there is an opportunity to fix these past regulatory failures and achieve the objectives that we need to meet as a community and a country.

Unfortunately, consultations between United and NMFS have led to these unsubstantiated jeopardy Biological Opinions for steelhead under the ESA. For instance, NMFS issued a jeopardy opinion for the Santa Felicia Dam, despite there being no documented observation of these fish in the vicinity. In spite of historical evidence confirming the absence of steelhead, NMFS insists on requiring staggering amounts of water for bypass flows and a fish passage system costing over a hundred million dollars, claiming “absence of evidence is not evidence of absence”. They designated critical habitat that is unoccupied and unsuitable for adult and juvenile steelhead, using unchecked authority to impose arbitrary requirements. NMFS has had their thumb on the scale for too long and targeted reforms are essential to balance the needs of listed species and project proponents under the ESA.

The ESA Amendments Act of 2025 legislation addresses definitions of habitat and baseline, incentives for the recovery of listed species, increased transparency and accountability in ESA decisions including the disclosure of data used in listing decisions, and rightfully requires limitations on overreach in mitigation requirements, all of which are critical issues for United’s operations. This legislation would improve the regulatory process by adding important clarification to the ESA. United’s specific experiences with the ESA regulatory process described below offer some insight into real-world implementation challenges faced by applicants, such as United, that provide critical public services.

Undue Costs and Regulatory Burdens Associated with the Status Quo

As a non-federal entity, United and its projects are subject to the incidental take provisions of Section 7 and Section 10 of the ESA on a project-by-project basis. For example, United’s Santa Felicia Dam operates under a license from the Federal Energy Regulatory Commission (FERC) and is therefore subject to Section 7 incidental take provisions due to the nexus with the federal agency. United’s Freeman Diversion has no such federal nexus and is therefore subject to Section 10 incidental take provisions. However, as addressed below, NMFS has used both processes similarly to advocate for projects, operations, and other compliance requirements that are not supported by the best available science and total nearly half a billion dollars in costs to the local community.

The Santa Felicia Dam and Lake Piru reservoir are crucial in replenishing critically overdrafted groundwater basins, combating seawater intrusion, facilitating the import of State Water Project water, and providing numerous additional benefits, including water for fighting wildfire during the 2017 Thomas Fire, 2020 Lime Fire, and 2024 Felicia Fire. Through the FERC license renewal process at the dam, which culminated in a 2008 license accompanied by a jeopardy Biological Opinion for steelhead, NMFS has mandated that United release approximately 45,000 acre feet (over 14.5 billion gallons) of water from the reservoir since 2012. The replacement cost of this water is approximately \$64 million dollars and increasing every year. On top of these nonsensical mandated water releases, NMFS’ jeopardy Biological Opinion also enabled the agency to demand a fish passage system for steelhead. Costs of such a volitional fish passage facility would exceed \$100 million dollars. The additional regulatory costs to United for scientific studies, permitting, consulting, and legal fees incurred as a result of NMFS’ erroneous Biological Opinion are over \$10 million dollars to date. Santa Felicia Dam ESA compliance costs would approach \$200 million dollars, and NMFS has levied these burdens on United’s

constituents based on designated critical habitat in lower Piru Creek that was not – and still is not – occupied by steelhead.

At the Freeman Diversion facility, United is in the process of completing a Multiple Species Habitat Conservation Plan (MSHCP) under Section 10 of the ESA. This process has been ongoing for approximately 17 years with United committing over \$12 million dollars to engineering design, scientific study, permitting, consulting, and legal fees to date. In addition, the loss of water diversions as a result of NMFS' overreach has totaled 49,800 acre feet (over 16 billion gallons), the replacement cost of which is approximately \$40 million dollars. Ultimately, as part of the MSHCP, United is required to design and construct an improved fish passage facility for steelhead within the Freeman Diversion. This new facility is required despite the fact that United currently has a fully functional fish passage facility to pass steelhead that was designed in coordination with the resource agencies. Since the current fish passage was deemed insufficient, as noted above, United has expended millions and millions of dollars on design and permitting of a new facility to improve the conditions for the listed species. However, NMFS has stymied progress by mandating that United select NMFS rather than United's, the applicant's, preferred design, the cost of which exceeds \$250 million dollars. On top of that, NMFS is advocating for an operational program that would cripple United's water diversion capabilities and ability to meet its mission, which would cause tens or even hundreds of millions of dollars in economic losses and destabilize the future of the region. In total, United's costs associated with ESA compliance would sum up to over \$300 million dollars – and the larger economic losses could double that figure – yet NMFS has failed to present scientific justification to support their requirements.

The ESA Amendments Act of 2025 includes well-reasoned changes to the law that would aim to improve consistency across the country, benefitting both the applicants by tying their commitments to measurable regulatory standards, as well as the protected species by encouraging implementation of conservation measures in place of endless fighting over the arbitrary conditions. The status quo has resulted in unattainable standards and astronomical project costs that are inconsistent with the original intent of the ESA. In terms of United's projects, as a non-profit public agency, the costs are ultimately placed on the local taxpayers who rely on United to strike the appropriate balance in terms of cost and scope. In February 2025, pursuant to President Trump's January 24, 2025, Executive Order "Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas", United submitted information to the Secretaries of Commerce and Interior identifying the Santa Felicia Dam and Freeman Diversion as two major ongoing water supply and storage projects in California that face undue regulatory burden. These critical infrastructure projects are vital to the region and it is incumbent upon United to advance these projects and maintain their long-term service reliability for the benefit of the region.

United continually works to maintain compliance with all relevant regulations, but when it comes to ESA, NMFS' arbitrary and capricious demands have made this truly unattainable. Key reforms included in the ESA Amendments Act of 2025 can help to bring applicant costs and commitments back in line with the original intent of the law.

NMFS Regulatory Overreach is Impacting Santa Felicia Dam Safety

As stated above, United owns and operates the Santa Felicia Dam on Piru Creek, and currently operates the facility under a license from FERC. The Santa Felicia Dam was completed in 1956, and United has been designing safety improvements to replace the original outlet works that is vulnerable to damage from earthquakes, and to increase the size of the spillway to handle larger flood flows. Moving this

project forward expeditiously is critical for the safety of 400,000 people who live downstream of the dam. Because of the large population below the dam, the California Division of Safety of Dams considers the Santa Felicia Dam to be an “extremely high hazard dam.”

The safety improvement project is nearing 100% engineering design, yet NMFS’ unreasonable demands have caused undue delays that affect not only the design but also the schedule of this critical safety project. United has designed the project to address both the human safety needs and requirements of the ESA. NMFS has put up roadblock after roadblock through their exploitation of the ESA, with no acknowledgment of the human safety element, making numerous demands concerning steelhead that have never been documented at the project site. NMFS is falsely claiming authority under the ESA to, among other things, attempt to push FERC to reinstate consultation on United’s existing FERC license, which would lead to additional delays, continued public safety risk, and further arbitrary and capricious demands that threaten United’s operations and thereby the water future of the region.

Piru Creek is Not Occupied by Ocean Run Steelhead and was Erroneously Designated as Critical Habitat

The ESA is clear that the USFWS and NMFS must designate critical habitat based on the occupancy status as it exists at the time the species is listed. 16 U.S.C. § 1532(5)(A)(i). NMFS listed steelhead in 1997 and designated critical habitat for the species in 2005, at the time designating only “occupied” habitat and declining to designate any “unoccupied” areas as critical habitat. Effectively, by designating lower Piru Creek as critical habitat, NMFS made a determination that the reach was “occupied” by the listed unit (ocean run steelhead) at that time. The designated critical habitat in lower Piru Creek was not – and still is not – occupied by ocean run steelhead, and therefore the available habitat within lower Piru Creek does not meet the intent of the ESA.

In their review of areas for designation of critical habitat, the NMFS Critical Habitat Analytical Review Team (CHARTs) report evaluated reaches at Hydrologic Unit scale. The unit that lower Piru Creek fell into also included Hopper Creek and a portion of the Santa Clara River mainstem. Hopper Creek and this portion of the Santa Clara River mainstem often run dry. Yet, NMFS designated migration, spawning, and rearing critical habitat for the entire Hydrologic Unit concluding that it contains habitat of “high conservation value” for the species. In the same year that NMFS designated critical habitat in lower Piru Creek, in correspondence related to United’s FERC license, NMFS made contradictory statements about the quality of the habitat in lower Piru Creek for steelhead, including the characterization of the habitat as “severely degraded” and “unsuitable for the rearing of juvenile steelhead”. United has prepared a petition for removal of this designated critical habitat that lays out the many detailed arguments that clearly exhibit NMFS’ arbitrary and capricious actions in implementing the ESA.

Since the early 1900s, documentation from federal and state fish biologists and other regulatory and research agencies has stated that the Piru Creek watershed in Ventura and Los Angeles Counties is not conducive to ocean run steelhead. In fact, across the breadth of available literature, these researchers have never found ocean run steelhead in this watershed. Related to United’s operation of Santa Felicia Dam, FERC submitted a Biological Assessment that supports this assertion. However, despite clear historical data, consistently dry conditions, natural migration barriers and assessments of the region, NMFS asserts their own position, not supported by evidence or best science. NMFS has taken advantage of its jurisdiction to exert its will on the regulated community, which results in substantial costs in terms of time, money, water, and personnel resources without justification for the requirements imposed.

The requirements that United is facing add up to hundreds of millions of dollars spent and tens of thousands of acre-feet of water lost to provide for a listed species that has never been observed in the

affected area. Associated costs to our ratepayers would add up to over half a billion dollars. Unless there are changes to the ESA and the overreach by federal agencies is reined in, NMFS will continue to exploit the law and impose their will – not the best available science – and the result will be at the cost of taxpayers.

Environmental Baseline and MSHCP Challenges at the Freeman Diversion

United also has a long history of ESA consultation with NMFS at our Freeman Diversion. The Freeman Diversion was constructed in 1991 following a decade-long project design and permitting process primarily involving the California State Water Resources Control Board and California Department of Fish and Game (now CDFW) and including input from NMFS and the USFWS. The Freeman Diversion is a surface water diversion facility utilized as the primary means to recharge the groundwater basins on the Oxnard Plain. Although a fish passage facility was constructed as part of the existing facility and has been in continuous use up to today, since the listing of steelhead in 1997, United has been in various stages of ESA consultation with NMFS. Initially, United proceeded with a Section 7 consultation process with the U.S. Bureau of Reclamation (Reclamation) between 1997-2008, and then with a Section 10 consultation process from 2008 to the present.

With respect to steelhead, NMFS' interpretation of environmental baseline in past biological opinions has effectively placed the species in a state of "baseline jeopardy". From a practical standpoint, this "baseline jeopardy" status severely limits the types of projects and activities that can receive a non-jeopardy biological opinion from NMFS. NMFS' interpretation of the ESA, primarily the environmental baseline, was the main driver in Reclamation making the determination that they could not accept nor implement NMFS' biological opinion and stepping away from the ESA consultation in 2008. Without a nexus to a federal agency, United has since been in the process of developing an MSHCP under Section 10 of the ESA with NMFS and USFWS. United has been working in earnest on MSHCP development for nearly two decades and has dedicated significant staff and financial resources to moving it forward. While the USFWS has been helpful in providing their guidance throughout this process, NMFS has stifled progress due to its interpretation of environmental baseline.

The ESA includes assurances in both Section 7 and Section 10 that require the applicant to improve conditions for the listed species through the implementation of a project. NMFS current interpretation of environmental baseline is incongruous with the ESA and has resulted in years of delay on United's projects, and in receiving incidental take protection for our facilities. This delay has left United to face multiple third-party lawsuits, the most recent of which resulted in several additional years of delays and millions of dollars spent on legal fees. In United's ongoing MSHCP development process, the NMFS Long Beach office, which notably has never approved any MSHCP, has continually utilized its jurisdiction under the ESA to impose requirements that discount or outright ignore the measurable benefits of the proposed fish passage project at the Freeman Diversion, leading to obvious inconsistencies with other ESA consultations and the intent of the ESA. To date, NMFS has not provided the scientific justification for such requirements, even after multiple requests from United for this information, leading United to develop a project and MSHCP under threat of denial by NMFS.

Revisions to the definition of environmental baseline proposed in the ESA Amendments Act of 2025 are necessary to clarify the intention in the ESA to separate existing facilities and ongoing operations from new or modified facilities and operations. The status of a listed species is directly related to existing facilities and ongoing operations and "past and present effects" are appropriately included in the environmental baseline. The implementation of new or modified facilities and operations and their respective effects on a listed species are appropriately included in the effects of the action.

Importance of the ESA Amendments Act of 2025

United is hopeful that the ESA Amendments Act of 2025 can clarify implementation of the ESA and provide a more consistent process for applicants. In United's experience, NMFS has used their jurisdiction under the ESA as both a carrot and stick, with no accountability. A more reasonable regulatory process will enable public and private entities to implement projects in a timely and cost-effective manner to benefit both the listed species and allow for critical infrastructure improvements to be completed.

Habitat Definition

United is encouraged to see the addition of the definition of habitat as it relates to critical habitat in the ESA Amendments Act of 2025 as this could provide a clearer interpretation for both the regulated community and the regulatory agency staff charged with implementing projects that balance our vital resources – whether they are water, land or minerals – in a way that provides a meaningful benefit to the listed species while allowing for our communities to receive what we need to be sustainable into the future. As described above, United's experience with the ESA regulatory process demonstrates that NMFS has repeatedly exploited their jurisdiction to overreach and impose arbitrary and capricious requirements that lack scientific justification, as they did with their designation of critical habitat in lower Piru Creek and associated regulatory requirements.

Environmental Baseline Definition

The additions to the definition of environmental baseline would help to clarify the ESA consultation process, specifically those effects that would fall into the environmental baseline versus those that would fall into the effects of the action. As described above, United has direct experience with the need for clarification on the definition of environmental baseline, which has been inconsistently and erroneously interpreted by NMFS, causing delay or outright stopping of projects, including those that provide an overall benefit to listed species.

I also serve on the Advisory Committee for the Family Farm Alliance, which represents farmers, ranchers and water districts in 16 Western states, including California. A Family Farm Alliance subcommittee was established in 2018 to provide detailed recommendations to USFWS and NMFS in July 2018 on proposed revisions to regulations that implement portions of the ESA. Many of the important sections of the legislation we are discussing today are similar to those recommendations and the definition of environmental baseline was a top priority. The Family Farm Alliance has also submitted written testimony for this hearing.

Title II: Incentivizing Wildlife Conservation on Private Lands

The additions to Section 10(a) of the ESA put forth in the ESA Amendments Act of 2025 regarding conservation plans are important for entities like United who have struggled for years with complex and burdensome ESA Section 10 consultations. The proposed change would allow an MSHCP under Section 10 to be exempt from a duplicative permitting process under Section 7 of the ESA, thereby streamlining the process. United's experience with NMFS has proven that project delays caused by continually moving goal posts with no scientific justification are far too costly. This amendment serves to limit the "bites at the apple". Clarification of the definitions and thresholds to achieve permit issuance criteria is also important to United. A clearer definition of net conservation benefit and a clear standard as it relates to projects that achieve a net conservation benefit could create guardrails against delays, obstacles, and regulatory overreach by agencies such as NMFS.

Title IV: Creating Greater Transparency and Accountability in Recovering Listed Species

In addition to the above remarks, United would like to voice our support for the ESA Amendments Act of 2025 proposals to improve the transparency and accountability in recovering listed species. The regulatory agencies, NMFS and USFWS, should provide all information that is the basis of regulatory decisions and/or requirements under the ESA (e.g., Reasonable and Prudent Measures and Reasonable and Prudent Alternatives) to improve agency and regulatory process transparency. In our experience, NMFS has repeatedly failed to provide adequate justification and underlying data and analysis for their determinations, which calls into question the reasoning and appropriateness of their actions.

Through direct agency outreach and Freedom of Information Act requests, United has attempted to gain a more complete understanding of decisions issued by NMFS, with little success. Improvements in the sharing and distribution of information related to a proposed regulation – and ideally expanded to all regulatory decisions and/or requirements – would only benefit the ESA regulatory process and provide needed clarity in regulatory decisions.

Title V: Streamlining Permitting Process

United would also like to voice our support for the ESA Amendments Act of 2025 proposal to add a limitation on Reasonable Prudent Measures to align with the existing language of the ESA. As noted above, United is engaged in both ESA Section 10 and Section 7 consultation processes that require United to adhere to the impact avoidance and minimization provisions set forth in the ESA, which require extensive and costly mitigation measures. As with many critical infrastructure projects, United's facilities are located in areas which limit design alternatives, and thus, limit the options for minimizing or offsetting impacts associated with their implementation. Without the proposed language in the ESA Amendments Act of 2025, NMFS and USFWS could apply additional Reasonable and Prudent Measures unilaterally in their issuance of a Biological Opinion, leading to potential permitting delays and exorbitant project costs for applicants such as United.

Combined with the definition of the environmental baseline, the additions to Section 7(a) regarding clarifying jeopardy are crucial to the characterization of the effects of the action as they related to the survival and recovery of the listed species. Under the current regulatory framework, a determination that an action is 'likely to jeopardize the continued existence of' a listed species may reflect the effects of the action as well as other effects to the species that are wholly unrelated to the proposed action. In practice, this has led to NMFS "moving the goal posts" in our ongoing consultation processes described above. The effects of the action must be clearly evaluated, and take quantified, to perform a valid assessment of whether the action itself is 'likely to jeopardize the continued existence of' the listed species. This addition does not prevent NMFS and USFWS from evaluating effects unrelated to the action proposed, but rather it puts a stop to NMFS' ability to obscure and conflate the effects of the action with other effects in their jeopardy determination.

Conclusion

In closing, United supports the ESA Amendments Act of 2025 and the necessary clarification and regulatory streamlining it provides to improve implementation of the ESA. United is committed to working with your Committee and Congress to move this legislation forward. I greatly appreciate the opportunity to present this testimony to you today.