Kole Upton Written Testimony

Opening Comment

Albert Einstein said, "Insanity is doing the same thing over and over again and expecting different results."

As one of the affected folks who has the misfortune to live and farm in the 'Wye' portion of the California High Speed Rail Project, I am now experiencing the third attempt by the California High Speed Rail Authority (CHSRA) and its consulting engineers to develop a route in the 'Wye' area.

The first attempt was the infamous A3 route which traveled through 24 miles of farm land in Merced and Madera counties, usually at an angle. After virtually unanimous opposition, the CHSR Board abandoned the route in March of 2010.

In June of 2010 at a joint Technical Committee of public agencies in Merced and Madera counties and CHSRA with its consulting engineers, the public agencies provided input that the 'Wye' route should be SOUTH of the City of Chowchilla. Remarkably, the consulting engineers for the Merced to Fresno section and CHSRA announced in July of 2010 that the 'Wye' route would be NORTH of Chowchilla. They called the route the West Chowchilla Design Option (WCDO). In addition, the WCDO was basically the northern portion of Route A3 which had been rejected by the CHSR Board.

Other folks in the 'Wye' area had similar experiences with the Authority involving Avenues 21 and 24, and Route A1 during this time frame. This led to the formation of the group, Preserve Our Heritage (POH). Over the past several years, we have had many interactions with the Authority and its representatives. One of the POH suggestions adopted by the Authority involves studying the use of Highway 152 as a possible East-West route through the 'Wye', and a North-South route east of the city of Chowchilla. To its credit, the Authority listened in this case, and these options are now two of the four (4) options for the 'Wye'.

Regrettably, however, the Authority continues the study of Ave. 21 as an East-West option as well as Road 13 as a North-South option through the 'Wye'. This is important because it represents the Authority ignoring years of written and verbal input from local public agencies and private individuals demonstrating virtually unanimous opposition to these options. These letters, resolutions, and comments are part of the public record for this project.

In December of 2011, consulting engineers for the Merced to Fresno section and the Authority announced their recommendation for a 'Preferred Route'. This route was called the 'Hybrid Route'. In the 'Wye' area, it included a slight modification of the WCDO. Instead of going down Road 13, it now purported to go down Road 12 & ¼. However, such a road does NOT exist.

Several months later, the CSHR Board adopted the recommendation. However, it excised out the 'Wye' portion of the Merced to Fresno section and delayed its implementation until a another study could be done. Further, it assigned the study to the consulting engineers from the Merced to San Jose section. Since that time, POH has again coordinated and met many times with Authority representatives in an effort to come up with route options that are compatible with the project's goals and our existing infrastructure.

After a about a year, it appears that the "Wye' route decision has come down to four options with the Authority continuing to interact with local citizens and their public and private organizations. The results of the recent open houses in the Chowchilla area are consistent with the historical input on the 'Wye'. Clearly, the the preferred option should be some permutation of the Highway 152 and Road 18 options. However, it is imperative that the Authority do the necessary 'tweaking' of the Road 18 option to minimize the effects on those affected.

If the Authority again tries to inflict Road 13 and/or Ave. 21 on this area as the Preferred 'Wye' Alternative, then it should expect the same vigorous and uncompromising reaction as occurred the last two times. If one rejects Mr. Einstein's thesis for the Authority's action, then it must be assumed that the Authority has never had any intention of listening to local input on this issue.

Authority Board, Staff, and Consultants

The key to the successful implementation of this project is the people representing the Authority and their work. One of the elements necessary for success is working with local interests who are affected by the proposed routes. To do this effectively, people representing the Authority have to deal with locals with integrity, respect, and competence. Until the last several months, Authority personnel have failed in all of these areas.

November 2009 – June 2012

My involvement in this situation started in November of 2009 when I received written notification that our farm was being considered as part of route A3. We were asked to allow various technical experts on the land to do studies. We refused in that the implementing language for the project and bond indicated that existing corridors should be used and the effects on agricultural land should be minimized. Both of these stipulations were violated with the proposed route through our property.

A group of us traveled to the next Authority board meeting in Sacramento in December of 2009. After my verbal testimony, the Chairman, Curt Pringle, suggested I roll up my sleeves and work with the Authority to devise appropriate routes. I thought that was a reasonable suggestion. In addition to attending open houses and providing written input, I volunteered to be on the Technical Committees of Merced and Madera counties. As an elected official of water districts in the two counties, I was eligible.

Previously, I have referred to the decision concerning the WCDO and the fact that it was in direct opposion to the recommendation of the Technical Committees. When I challenged one of the consultants in charge as to how the process could be said to have integrity when such a decision was made? He said the City of Chowchilla wanted it. A quick cell phone call to the Mayor of Chowchilla exposed that canard. Then, it was alleged that the Federal Railroad Administration (FRA) wanted it. A Freedom of Information Act (FOIA) request was made to the FRA. After a delay of about a year, the reply indicated the FRA had nothing to do with the selection of the WCDO.

During the time of August 2010 to December of 2011, POH interacted with the Authority on many occasions and proposed that the Authority study Highway 152 and an East of Chowchilla option for the North-South and East-West 'Wye' connections. In any event, we and others in the area were clear that the WCDO was unacceptable as a North-South option.

We were shocked and angry when in December 2011 consulting engineers and Authority staff presented their Preferred Route for the North-South option in the 'Wye'. However, instead of now going along Road 13, they now altered it to go along Road 12 & ¼ which was even more of an abomination than the Road 13 option. They did not select a preferred option for East-West. Frankly, some of us interpreted this 'Hybrid Route' selection as an 'in your face' approach to demonstrate the power of the Authority.

This would be consistent with a statement made early on by one of the consulting engineers. In a meeting with farm appraisers, he indicated that the Authority was a 'super agency'. It had both a federal and a state mandate, and it would go where it wanted. Further, that individual businesses or farmers had no say. During this time period, I would certainly not dispute his assertion.

Later in the spring of 2012, to its credit, the CHSR Board removed the 'Wye' portion from the immediate construction package for the Merced to Fresno section, and assigned it to the Merced to San Jose group for further study.

June 2012 – present

Discussions began in June 2012 between Authority staff, Merced to San Jose section consultants, and persons and organizations who would be affected by the 'Wye' route. The Merced to San Jose consultants seemed to have a more cooperative and interactive approach with local representatives.

The situation improved dramatically after Diana Gomez, the new Regional Director for the Central Valley became involved later in the year. Ms. Gomez has roots in the San Joaquin Valley and has an understanding of culture and history of the area.

She took the time to meet with my employees and recognized that the Road 13 route would cause a loss of jobs in agriculture. On my farm which is equipment intensive, most of the employees own their houses, have health benefits, and have worked on this farm for over 20 years. Many of their children have graduated or attend colleges. In fact, one of them attends CSU Stanislaus and participated in the meeting.

The process has continued to reduce the number of possible routes for consideration. On the bright side, Highway 152 and Road 18 made the cut. Unfortunately, Road 13 and Ave. 21 were also included among the four finalists for consideration as the 'Preferred route'.

Among the possible routes eliminated was the Road 11 route. It was eliminated by someone in the federal government. This has happened before, and there is apparently no way to challenge either the criteria used, or the result itself.

The bottom line here is that despite CHSRA having improved its outreach and integrity when dealing with locals, it will all be moot if CHSRA decides on Road 13 and/or Ave. 21.

Jobs

Jobs in agriculture have a geometric factor in that every job in agriculture is multiplied several times as the product moves from the farm to the consumer. For instance, I grow Corn Nuts. The product leaves my farm, is stored in Firebaugh, and then sent to the Kraft plant in Fresno for distribution around the world.

Ms. Gomez seems to get the concept that the High Speed Rail project should be compatible with our existing infrastructure. Rather than replacing good agriculturally related jobs with High Speed Rail jobs, we should try to have both.

Upton Wildlife Retreat

The Road 13 option also threatens the wildlife sanctuary on our property. This was established over 40 years ago, and the 14 acres is the home for many different species. The local raptor center returns injured raptors to the wild by first releasing them in to this habitat. The 'Hybrid Route' announced in December of 2011 bisected the habitat and would have totally destroyed it.

The latest Road 13 option would come within 600 to 800 feet of the retreat. This distance is well within the normal hunting radius of the species living in this habitat. Obviously, it will also have a devastating effect on the retreat.

Attached is my submission to the Surface Transportation Board with PICTURES of the wildlife in the retreat.

Conclusion

Most of the problems associated with this project in this area were self-inflicted by the Authority in the years 2009 until the spring of 2012. Now, it has the opportunity to make a decision that can be supported by the vast majority of the citizens affected by the 'Wye'. The selection of Highway 152 and Road 18 as the 'Preferred Route' for the 'Wye' is the obvious choice.

234060

Findley M. Upton Family Trust

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Chowchilla, CA. 93610

ENTERED
Office of Proceedings
April 11, 2013
Part of Public Record

April 10, 2013

Ms. Cynthia Brown

Chief, Section of Administration

Office of Proceedings

Surface Transportation Board (STB)

395 E Street, S.W.

Washington, D C. 20423-0111

Re: California High Speed Rail Project, Your Reference Number – FD35724

Dear Ms Brown

Enclosed with this letter are pictures of some of the many magnificent creatures (primarily birds) whose home is a unique environmental retreat on our property This retreat is threatened with destruction by the California High Speed Rail Project. This retreat has been in existence for over 40 years. It was planted with every type of tree, and has not been farmed during that time. The local raptor center has utilized our retreat to release injured raptors once they are nursed back to health

Currently, the California High Speed Rail Project has a *'preferred route' bisecting this retreat* Although the criteria for the Project recommends using existing transportation corridors and avoiding impacts of this nature, the consulting engineers devised a route along a so called road 12 & ¼ that does NOT exist It destroys this unique habitat along with devastating many farms along this fantasy road Regrettably, the CHSRA Board adopted this 'preferred route' in April of 2012

Recently, the CHSRA has changed consulting engineers from this area, and is in the process of selecting new alternatives Unfortunately, one of these alternatives includes a route currently programmed to come within 600 to 800 feet of the retreat. Since the hunting radius and other activities of some of the species such as hawks extend well beyond 600 to 800 feet, it is obvious that a 220 MPH train will not be compatible with this retreat

Despite our continued involvement in the environmental process and the 'open house' discussions with CHSRA representatives, we do not feel our legitimate concerns have been addressed. We strongly urge you to review the California high Speed Rail Project and NOT grant an exemption from STB oversight.

Please include us in any notices concerning this situation. Thank you.

Sincerely,

Kole Upton

Kole Upton, Trustee,

Findley M. Upton Family Trust

Enclosed: Upton Wildlife Retreat Pictures

Upton Wildlife Retreat

All pictures taken at the retreat or on the ranch's property where the retreat is located.
Chowchilla, CA

14 Acres of land set aside over 40 years ago for wildlife to thrive in a safe and unbothered environment.

This photograph was taken over 30 years ago of a nest found with 3 young Red Tail Hawks. Having 3 babies is not common for Red Tails. Red Tail Hawk's clutch size depends almost exclusively on the availability of food in the adult's habitat. Red Tails mate for life and return to the same nest each season.

Contents

Red Tail Hawk female w/baby..... 1
3 baby Red Tail Hawks

Red Tail Hawk female w/ 3 fledglings standing on nest 2
2 Immature Cooper's Hawks

Red Shoulders 3
Red Shoulder Nesting

Red Tail Hawk pair nesting..... 4
Female Great Horn Owl Nesting

Group of Hawks gathered on the ground..... 5
(Red Tail, Swainson & Ferruginous Hawks)

Swainson Hawk Nesting..... 6
Pair of Swainson babies

Barn Owls..... 7
Baby Barn Owls

Burrowing Owl..... 8
Burrowing Owl & Burrow

Pair of White Tail Kite..... 9
Merlin Falcon

Sharp Shinned Hawks 10

Osprey..... 11
Northern Harriers

King Fishers..... 12

Pied-billed Grebe female with baby..... 13
Pied-billed Grebe baby

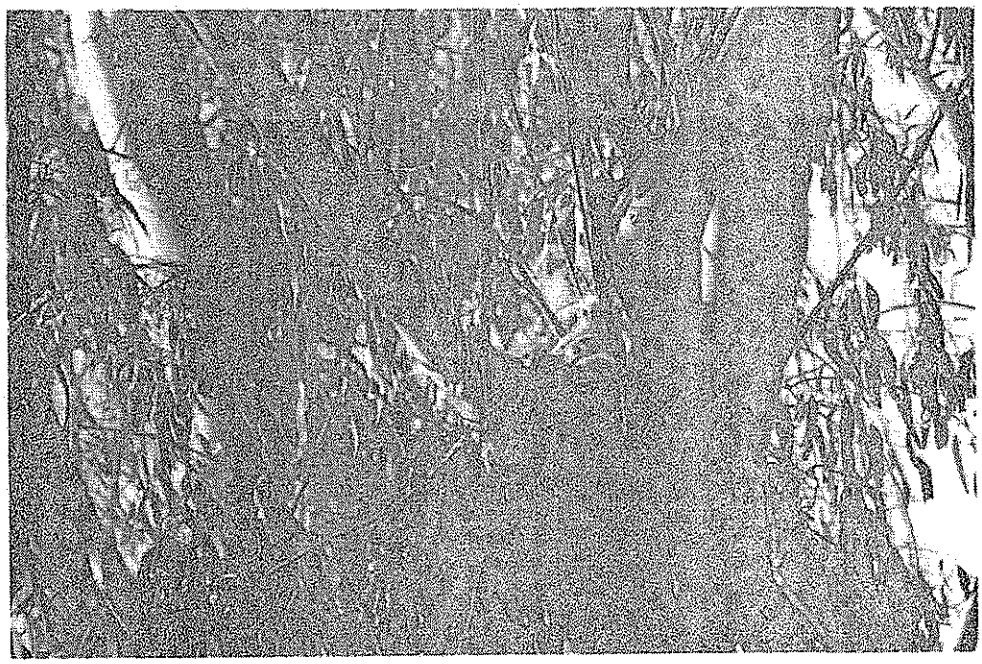
Night Heron..... 14
Double Crested Cormorant

Female Duck with babies..... 15
Mergansers

Green Heron..... 16
Goldeneye

Sandhill Cranes..... 17
White Faced Ibis

Female Red Tail with newly hatched baby



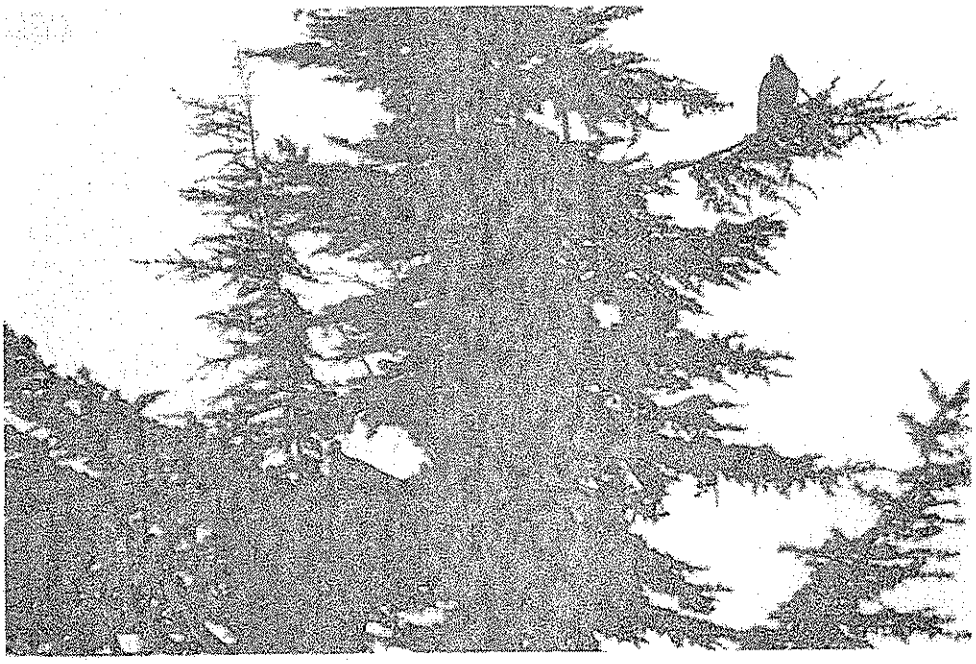
Few days later her clutch of 3

Female Red Tail with 3 fledglings ready to leave the nest

2 immature Coopers Hawks

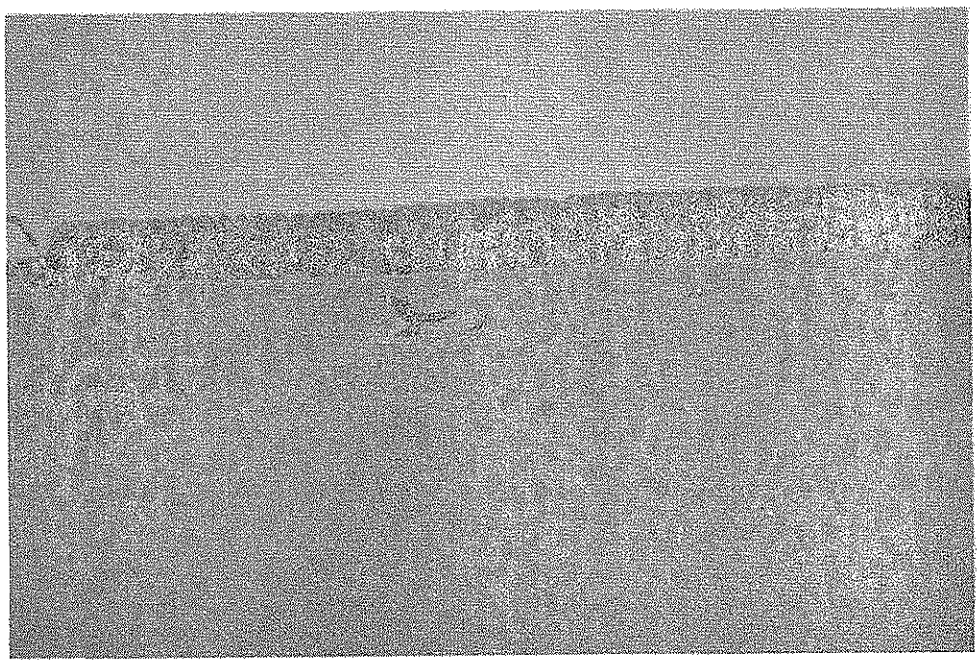
Male and Female Red Shoulder Hawk

Female Red Shoulder nesting



Male and Female Red tail in nest

Female Great Horn Owl nesting

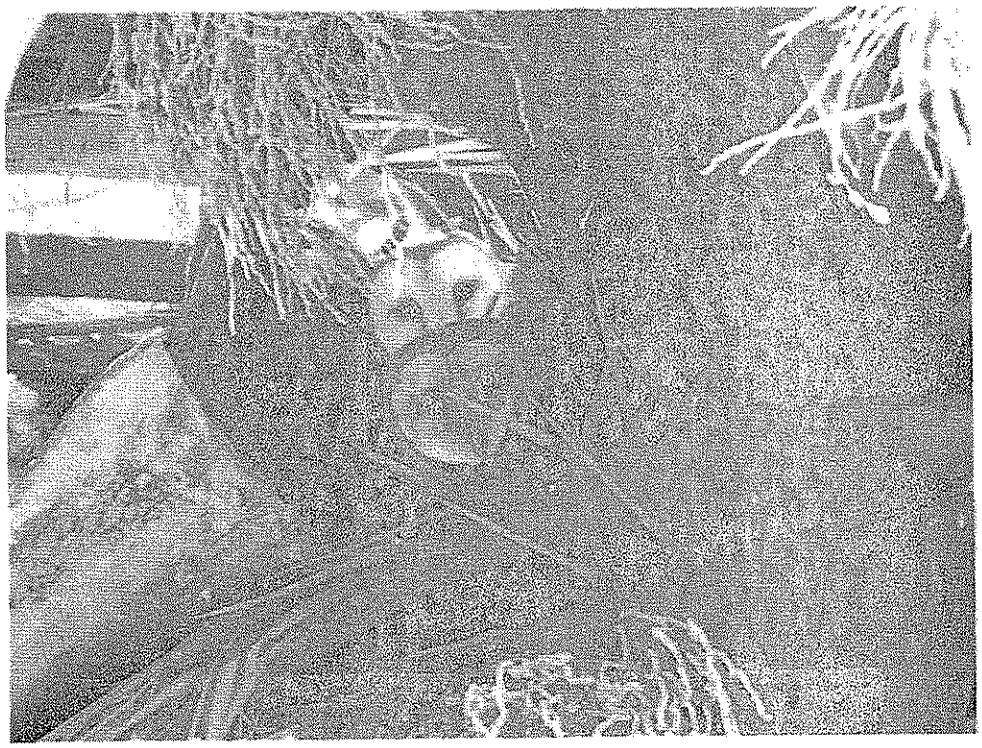


Mass mix of Red Tail, Swainson and Ferruginous Hawks in harvest alfalfa field

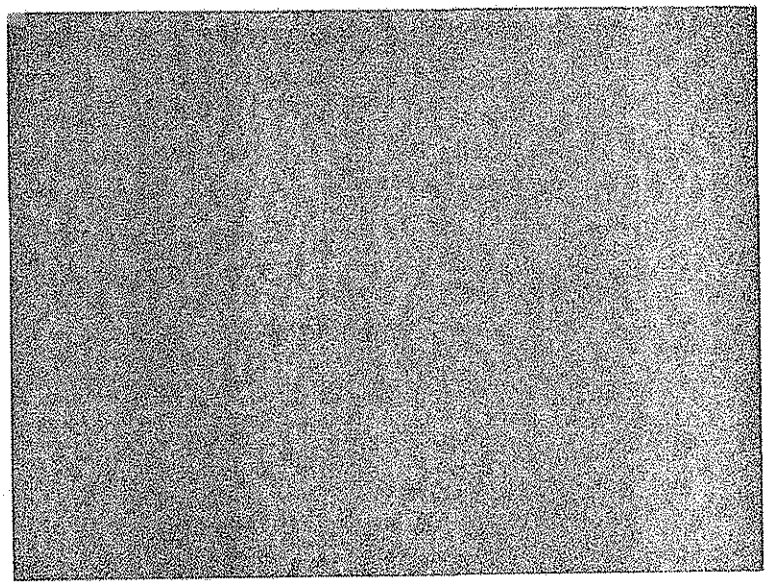
Mass sometimes 50-100 in numbers

Female Swainson Hawk and her first baby to appear

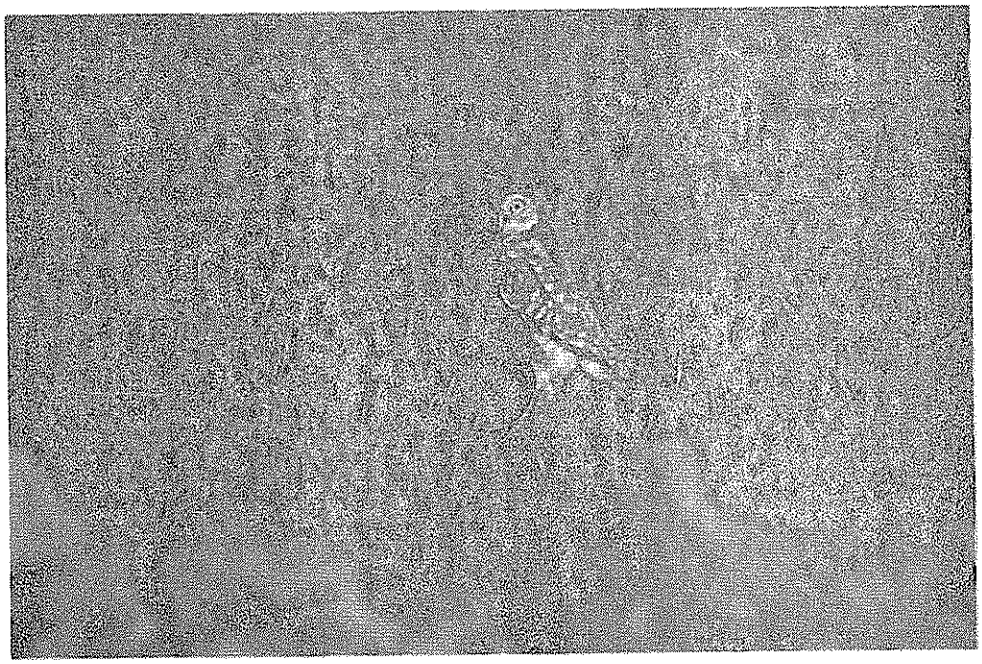
2 baby Swainson Hawks



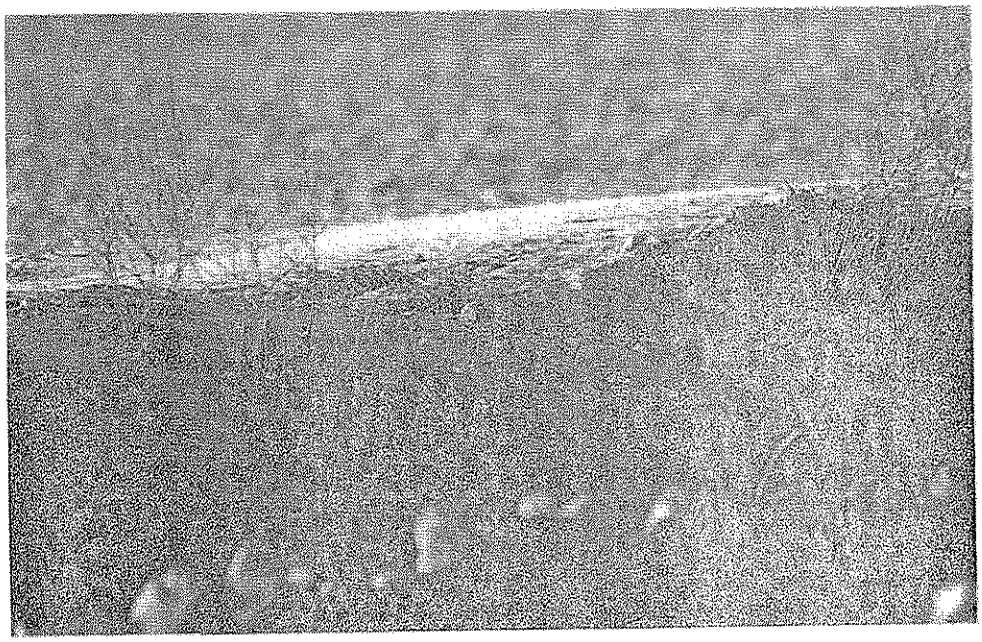
Pair of Barn Owls



4 Baby Barn Owls learning to fly



Burrowing Owl



Burrowing Owl guarding the burrow

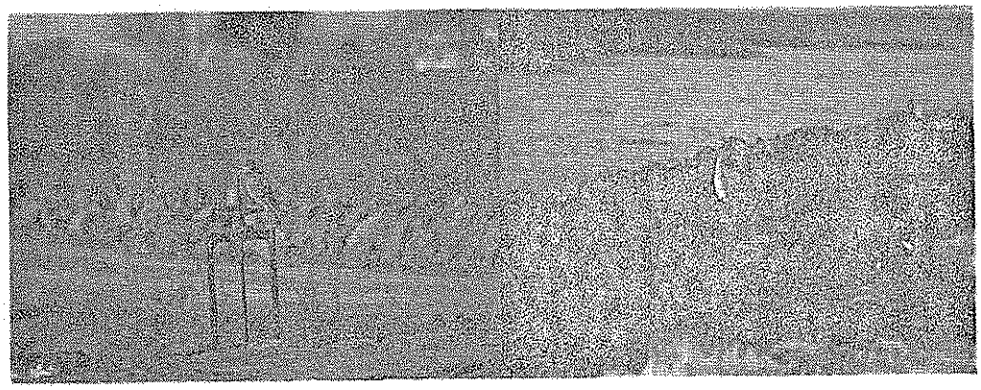
Male and Female White Tailed Kites

Merlin- Smallest species of falcon in the Northern Hemisphere

Female Sharp Shinned Hawk- One of the most secretive of all hawks in their nesting.

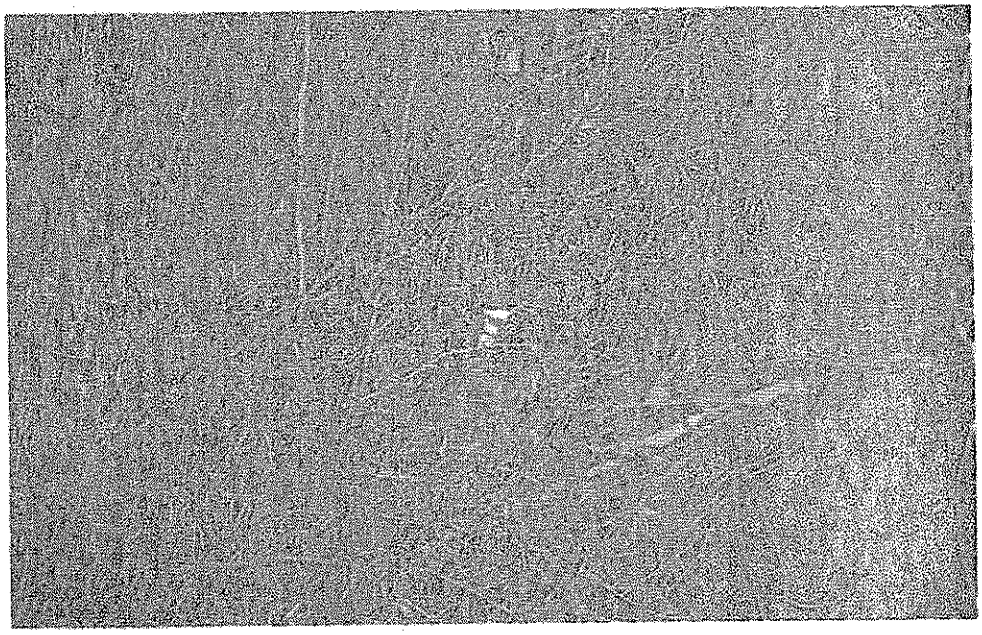
Male Sharp Shinned Hawk

Osprey



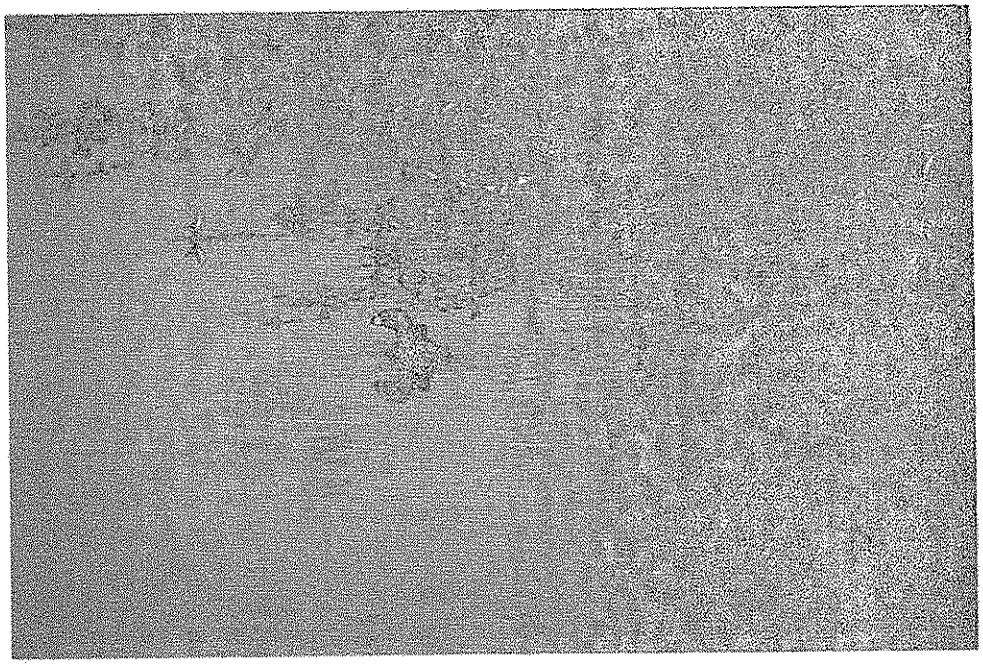
Female Northern Harrier

Male Northern Harrier

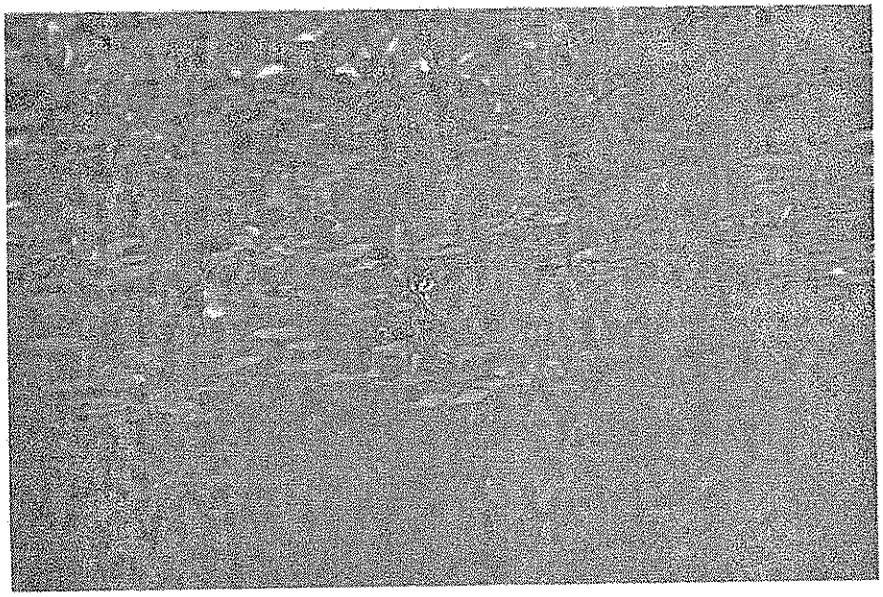


Female King Fisher

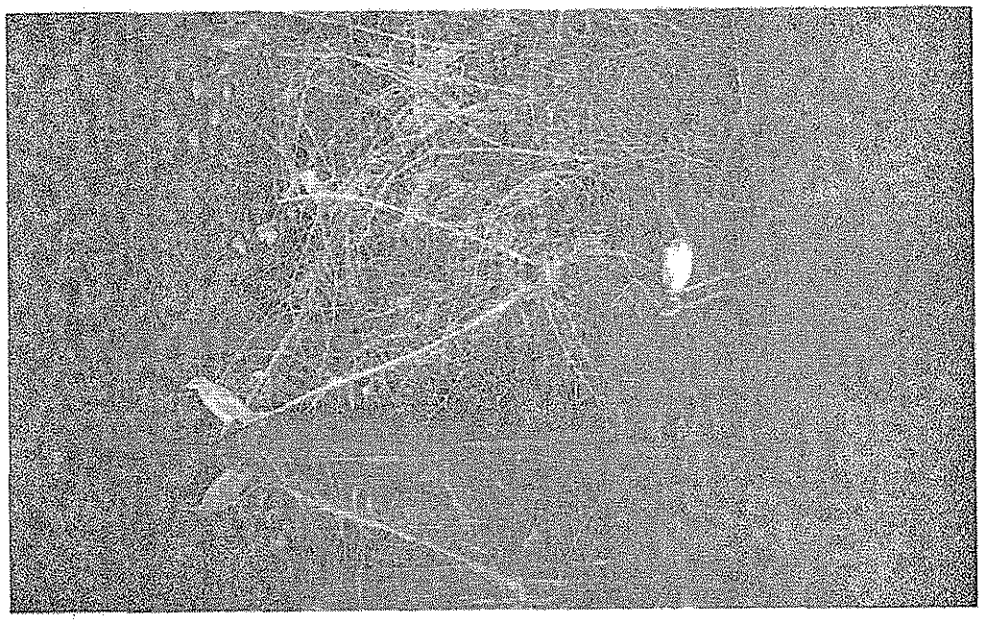
Male King Fisher



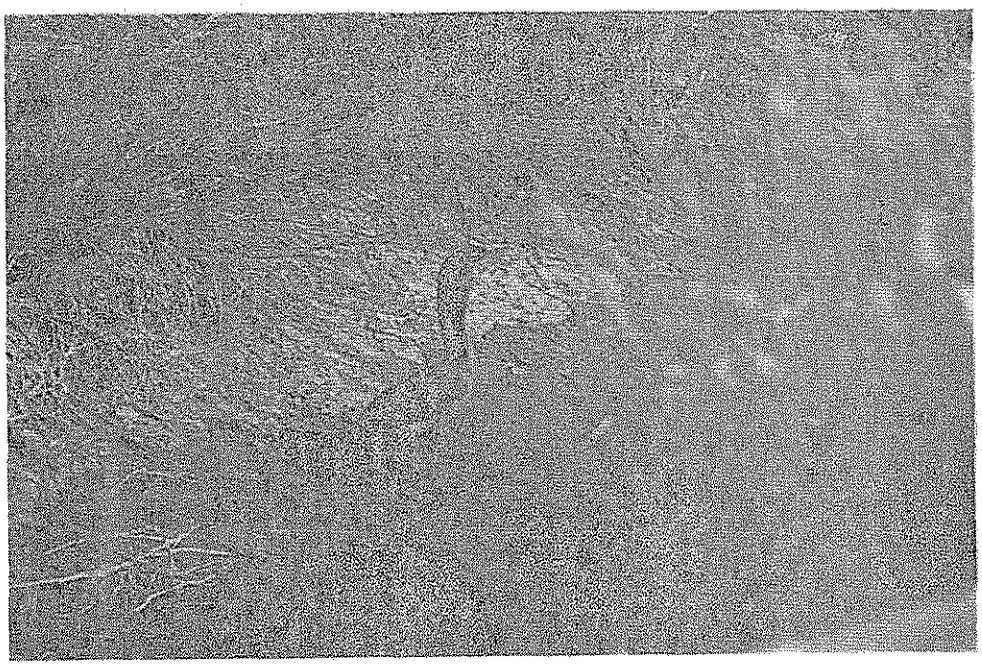
Female Pied-billed Grebe with baby on her back



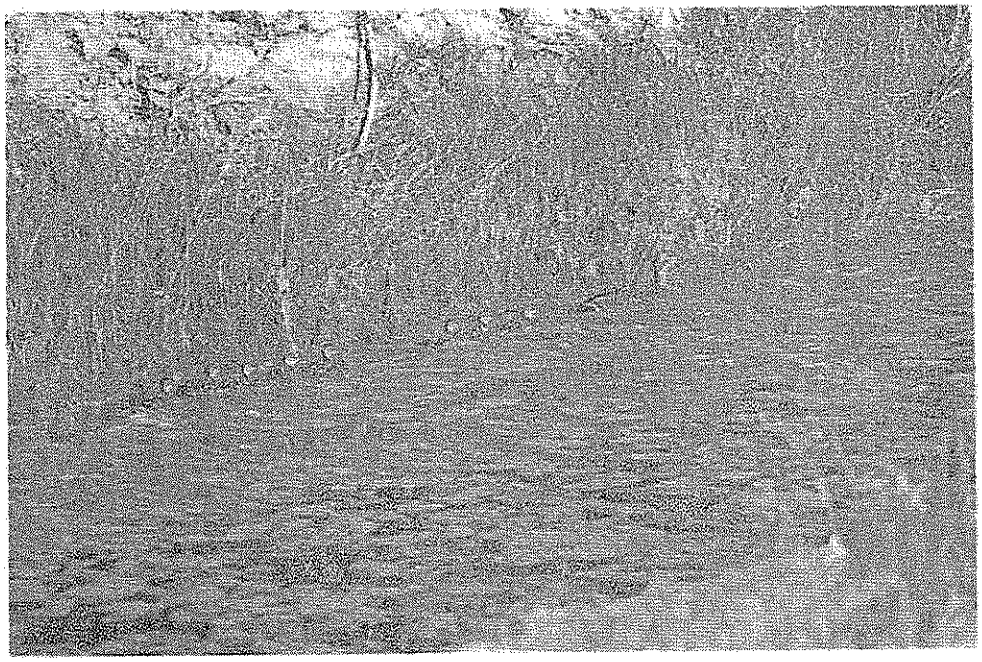
Pied-billed Grebe baby



Adult Night Heron and 2 immature Night Heron



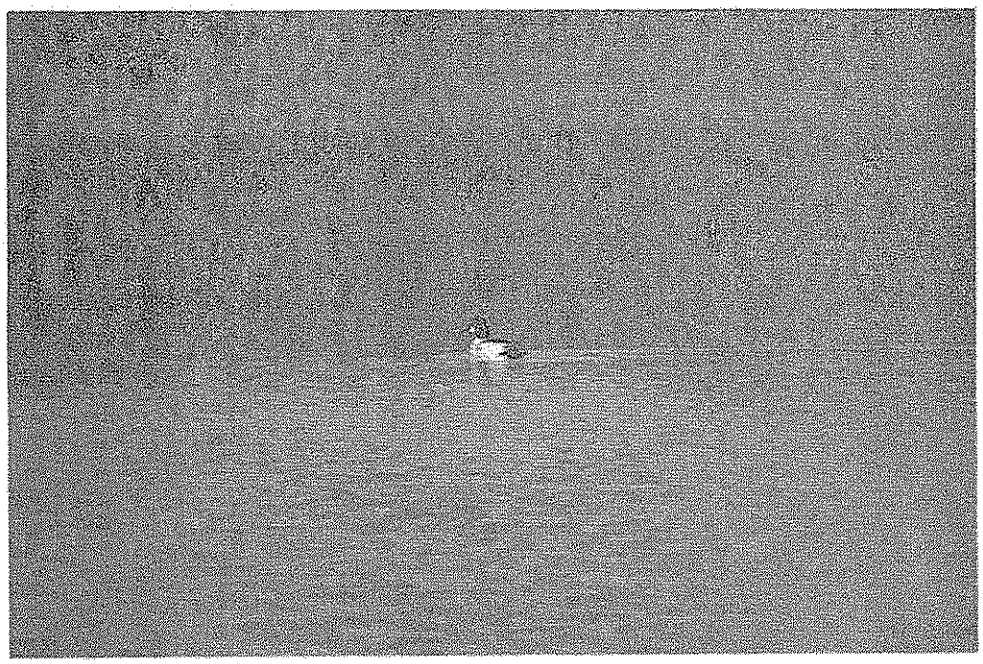
Double Crested Cormorant



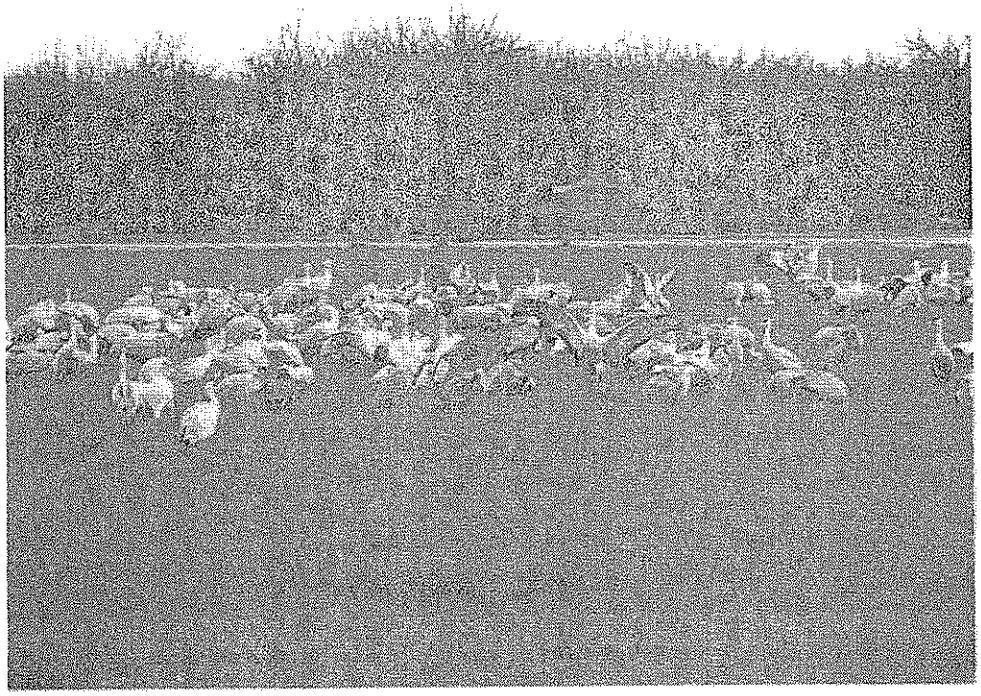
Female duck with her babies

Mergansers

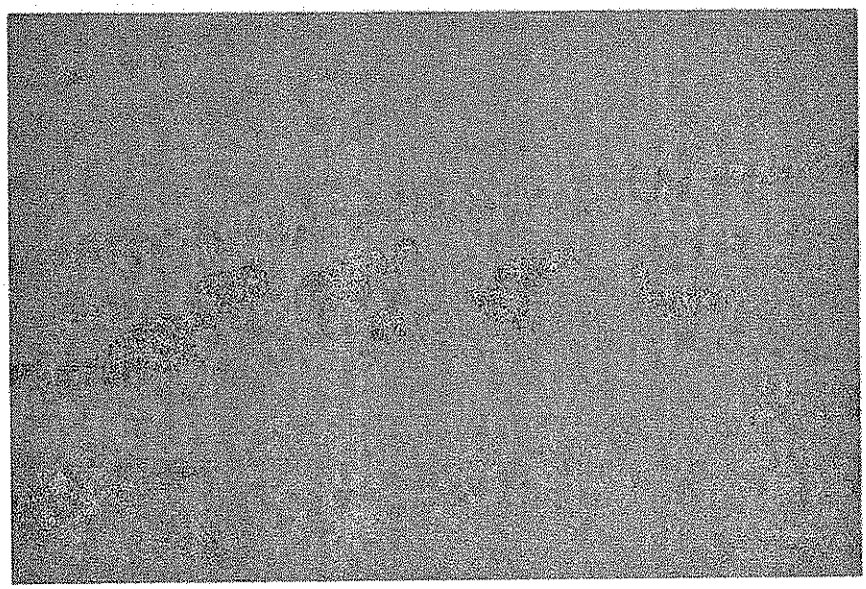
Green Heron



Goldeneye



Sandhill Cranes



White Faced Ibis