

Endangered Species Act

Colorado River Water Conservation District Policy Statements:

Congress should reauthorize the Endangered Species Act (ESA) with amendments providing for better implementation that focuses on species recovery, encourages and rewards constructive and meaningful partnerships with non-federal parties and respects private property rights including water rights. The reauthorized Act should encourage and reward programs and partnerships such as the Upper Colorado River Endangered Fish Recovery Program (Recovery Program), which has proven successful in making progress in species' recovery while allowing continued water use and development as well as avoiding litigation. Any reauthorization or amendment to the ESA must prioritize and encourage proactive programs that prevent species' listings. Additionally, the amended Act should require recovery goals, including reasonable and measurable criteria and for timelines delisting, for all listed species and adequate funding for species' recovery.

Listing actions, critical habitat designations and other recovery program actions must be based on sound scientific information.

Irrespective of Congressional actions or judicial interpretations, the ESA should be administered in a manner respectful of property rights and, to the maximum extent practicable, that rewards voluntary partnerships with affected parties.

Background & Discussion:

Adopted in 1973, the ESA was designed as a law that would protect species believed to be on the brink of extinction. The original bill included a sunset for the Act on October 1, 1992. Although the ESA has not been reauthorized, Congress annually appropriates funds for its continued implementation keeping the Act in full force and effect.

When the law was enacted in 1973, there were 109 species listed for protection. As of 2018, there are more than 1,660 species on the list in the United States and more than 2,300 worldwide, with 61 species considered as "candidates" for listing. As of 2019, Colorado had 32 species listed as threatened or endangered, including 16 animals and 16 plants and an additional 43 species listed as "species of special concern."

Unfortunately, since its inception the ESA has largely failed to achieve recovery and delisting of imperiled species. Only 59 domestic species have been "delisted" or removed from the species list since 1973, 17 due to extinction and 19 due to "data error"; the remaining species benefitted from recovery programs and other activities such as banning the use of certain pesticides.

The ESA is administered primarily by the U.S. Fish and Wildlife Service of the Department of the Interior and NOAA Fisheries of the Department of Commerce. Under the ESA, certain species of plants and animals (both vertebrate and invertebrate) are listed as either "endangered" or "threatened" according to assessments evaluating the risk of extinction. In practice, most new listings result from judicial action, primarily from third parties. Once a species is listed, powerful

legal tools, including third party legal actions, enforce the recovery of the species and protection of its habitat.

A species, subspecies or “distinct population” may be classified as "endangered" when it is in danger of extinction within the foreseeable future throughout all or a significant portion of its range. A "threatened" classification is provided to those animals and plants likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges.

Despite the fact that there are many areas for improvement that opposing interests agree on, past efforts to reauthorize the Act, or even to initiate administrative improvements, have met with vocal opposition; as a result few have passed or been implemented.

The Upper Colorado River and the San Juan River Basin Recovery Programs are multi-agency, multi-party, public-private partnerships designed to help recover listed fish species while allowing historical water use and future water development to continue in the respective basins. Both of these programs have enabled Colorado and surrounding states’ water users to avoid litigation and interruptions of historical water use or denials of water development authorizations that have occurred elsewhere.

The Colorado River District has been an active partner and participant in the Upper Colorado River Recovery Program since its inception. This program has been heralded as exemplary for its continued successes and lack of litigation. This Recovery Program, along with its sister program in the San Juan River Basin, should continue with attendant federal financial and programmatic support.