

# Ross Borba Jr.: Let's try balanced fixes for environmental challenges

By Ross Borba  
Jr.

Today is Earth Day. It's always an appropriate time to review how environmental laws are working. But especially now, during our historic drought, we should ask whether they're easing — or exacerbating — the problems facing the human and natural environments.

Unfortunately, the answer isn't always encouraging.

Take the 42-year-old federal Endangered Species Act (ESA). Its name implies it's a boon for the environment, a strong tool to revive slumping species. But its record of achievements is shockingly short. Of the 2,100 "threatened" or "endangered" species, less than 2% have improved enough to be taken off the ESA list.

Why such meager results? In part, blame a rigid style of enforcement that undermines effectiveness. For instance, there's the way "harm" to a species is defined. It's so broad that even indirect impacts can earn someone big fines or jail time.

Government also shows little interest in partnering with property owners on win-win plans to help species and allow conscientious land use. One example is on display in the Utah town of Cedar City. Federal regulations for the Utah prairie dog have blocked residents from building on their land — or protecting lawns and gardens. Folks can't even relocate the prairie dogs onto federal property, because that would be an illegal "take."

Pacific Legal Foundation, which litigates for environmental balance, won a court ruling that said the feds are overstepping because the prairie dog is not an "interstate" species. However, the government has appealed; it's still invested in confrontation rather than cooperation.

The most negative showcase for wrongheaded ESA regulations is in the San Joaquin Valley. For six years, we've been hit with draconian cutbacks in water deliveries, in a dubious strategy to help delta smelt and salmon.

And less water has been captured in reservoirs — deliberately. Result: Vast areas of farmland went unplanted and agricultural unemployment soared, even before the drought.

Now, the drought's impacts are greater because water was withheld from reservoirs. In the winter of 2012-13, a reported 700,000 acre-feet of water was sent to sea — instead of stored to serve millions. In all, more than 50% of California's water is off-limits to human use due to environmental policies.

The contrast with the major drought 25 years ago is instructive. Back then, we were using reservoirs to save as much water as possible for times of need. So, even during four dry years beginning in the late 1980s, allocations for south of delta farmers were 100%, 100%, 100% and 50%. How different from today's four-year drought, when farmers have been starved with allocations of 40%, 20%, 0% and 0%.

The ESA water cutbacks always had an environmental cost. In 2009, then-U.S. District Judge Oliver Wanger observed "catastrophic" effects, such as dust from fields dirtying air, and groundwater use sinking land.

The collateral damage includes a number of Valley species. Talk about irony. On the one hand, water cutbacks have questionable benefits for the smelt, which is still declining. On the other hand, they hurt ESA-listed species that need water, such as condors and San Joaquin kit foxes.

I was disappointed when the Supreme Court recently declined to hear challenges to the smelt water reductions. But the legal fight continues. I say this with confidence, as a board member of Pacific Legal Foundation: It will keep litigating against misguided ESA policies.

For instance, the bureaucracies should be challenged for drafting rules for a single species, like smelt, without considering the needs of other species, like condors.

But we could all be spared more rounds of litigation by straightforward public-policy changes. For instance, Congress should give good-faith landowners more leeway to use property without fear of liability for unintended, “incidental takes” of listed species. This would make it easier to enlist owners as creative allies in the species-protection cause.

It’s time to ditch the “tunnel vision” when ESA regulations are drafted. Rule-makers should start weighing all major impacts of proposed regulations — including for other species and for what Judge Wanger called “the human environment.” The ESA’s own language — which says key regulations must be “reasonable” and “prudent” — could and should be read as requiring a holistic approach, as opposed to the myopic focus, exclusively on the benefits for a single regulated species, that currently prevails.

Our public discussion is locked in an inflexible framework that offers an “either-or” choice between helping fish or helping people. Is it not possible to do both? The feds’ current policy is to not even ask.

That must change. Sensible regulations should at least try to harmonize environmental mandates with concern for the economy, property rights — and our need for water. On Earth Day, let’s commit to pushing for reform — a balanced approach that makes the ESA a help for all species, including human beings.

Ross Borba Jr. is a fourth generation member of a farming family that has conducted farming operations in the Valley for more than 80 years.