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Environmental Concerns: Floodplains, Cranes and Land Use Deals

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1

ENDANGERED SPECIES

- The Endangered Species Act of 1973.
 - Section 9(a)(1)(B): It is unlawful for any person to **take** any endangered species of fish or wild life.
 - Section 3(19) defines 'take' as to harass, **harm**, pursue, hunt, shoot, wound, trap, kill, capture, or collect; or attempt such conduct.

2

ENDANGERED SPECIES

- What is a take?
 - “harm” means an act that actually kills or injures wild life. Such act may include significant habitat modification or degradation where it actually kills or injures wild life by significantly impairing essential behavior patterns, including breeding, feeding or sheltering. 50 C.F.R. § 17.3

3

ENDANGERED SPECIES

- Whooping Cranes
 - The Aransas Project v. Shaw
 - U.S. District Court, S.D. Texas, Corpus Christi Division
 - March 11, 2013 – Judge Jack Decision
 - TCEQ proximately caused an unlawful “take” of at least 23 whooping cranes

4

ENDANGERED SPECIES

How did TCEQ “take” cranes?

1. TCEQ Water Rights Permits & resulting control over inflows;
2. Plus the severe 2008-2009 drought;
3. Reduced freshwater flows to the critical habitat;
4. Which caused salinity to increase in the bay;
5. Which caused a reduction in the blue crabs and wolfberries (preferred Crane food);
6. Which killed 23 cranes.

5

ENDANGERED SPECIES

- Whooping Cranes: Relief granted by district court.
 - Enjoined TCEQ from approving or granting new water permits affecting the San Antonio or Guadalupe Rivers until “Texas provides reasonable assurances to the Court that such permits will not take Whooping Cranes.”
 - Ordered TCEQ to seek a § 10(a) incidental take permit leading to a Habitat Conservation Plan within 30 days.
 - On March 26, 2013 the Fifth Circuit stayed the judgment of the District Court Pending appeals and expedited the appeal process.

6

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