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Judge Tosses Biological Opinion for Salmon and Steelhead in California

Groups say delta water project operations must protect water supply for fish and people

FRESNO, Calif. – A federal judge has invalidated a water plan that would have allowed more pumping from the San Francisco Bay Delta at the expense of five species of protected salmon and steelhead trout. Fishing and conservation groups and a California tribe called the ruling a victory for the millions of Californians who depend on the delta for drinking water, fishing jobs and agriculture. The ruling comes in the wake of federal fisheries managers' unprecedented April 10 decision to cancel this year's salmon fishing season because of a record decline in spawning fish.

The decision is the second time the court has ruled that water export plans would harm the threatened estuary. The court scheduled a conference on April 25 for the parties to address developing interim remedies to protect the fish.

In his opinion Judge Oliver W. Wanger relied on the National Marine Fisheries Services' (NMFS) own finding that diverting water from the bay-delta was killing huge numbers of salmon. He said, "This morbid projection is inconsistent, if not irreconcilable" with the agency's opinion that the project operations did not jeopardize the survival of the fish. He also faulted the agency for failing to analyze the effects of global warming on the fish, calling that failure "arbitrary and capricious."

The court also cited NMFS' findings that "current operations result in the loss of 42 percent of the juvenile winter-run Chinook population, and proposed project effects are expected to result in an additional 3 to 20 percent loss of the juvenile population." NMFS also found that proposed water project operations would kill as many as 66 percent of Central Valley steelhead and 57 percent of juvenile spring run Chinook salmon – likely leading to the extirpation of the spring run in the Sacramento River and steelhead in the Central Valley. These findings, the court ruled, are the "diametric opposite" of the finding that the projects would not jeopardized listed salmon species.

"When most of our native fish species are struggling to survive, the water project's plans to eliminate habitat, reduce cold water flow requirements and increase delta exports made no sense," said Dr. Christina Swanson, a biologist with The Bay Institute, a plaintiff in the case. "Ecological collapse in our rivers and in the delta is not just bad for fish, it's bad for the millions of people who depend on delta water for farming and drinking."

The plaintiffs challenged a 2004 long-term water plan known as OCAP (Operating Criteria and Plan) that would have allowed increased exports south of the delta by reversing many of the decade-old

protections credited with saving endangered winter-run Chinook salmon from extinction, including relaxing cold water flow requirements and eliminating nearly half of the available spawning habitat in the Sacramento River. These operational changes have corresponded with significant declines in protected Chinook salmon populations since 2004. This year's salmon run has largely failed to show up.

"Salmon need cool, clean water," said Kate Poole, a senior attorney with the Natural Resources Defense Council (NRDC), a plaintiff in the case. "Meeting their needs can keep clean water flowing from our taps as well, without losing our salmon fishing industry."

"We've never seen the Sacramento salmon return as bad as this year," said Zeke Grader, executive director of the Pacific Coast Federation of Fisherman's Associations, a plaintiff in the case. "California's water projects must be operated in a way that helps protect these commercially important species, rather than driving them to extinction."

The court's ruling follows an August 31, 2007 decision to protect the delta smelt. In that ruling the court ordered state and federal water managers to reoperate the giant pumps that draw water from the delta to supply farms and cities in the San Joaquin Valley and Southern California. The fishing and conservation groups say keeping enough fresh water in the delta is vital to protecting the fragile ecosystem.

Biologists have grown alarmed in recent years about a cascading series of crashing delta fish populations; salmon, steelhead, delta smelt, striped bass, longfin smelt, sturgeon and Sacramento splittail are all in trouble.

"With his decision today, Judge Wanger has placed salmon survival back at the center of California's struggle to protect our natural heritage," said Mike Sherwood, an attorney from Earthjustice who represented the coalition of fishing and conservationists. "There are several man-made factors that have contributed to the collapse of salmon runs. One factor is pumping too much of our water from the delta and exporting it south. This ruling makes it clear that there are biological limits to the amount of water we can export south."

The Delta's fragile ecosystem and drinking water supplies already face severe pollution threats from agricultural pesticides and dairy waste," said Sejal Choksi, program director for San Francisco Baykeeper. "Today's ruling is a huge step forward in restoring our Delta to a healthy state."

The court will now schedule hearings to establish an interim salmon protection plan for project operations. Agencies predict that a new Biological Opinion for salmon will be complete by December 2008.

Conservationists say water managers could restore the delta by following the advice of the state's own master water plan, which identifies conservation, water recycling and better groundwater management as the biggest, cheapest sources of untapped water supply.

BACKGROUND

Prior to construction of the state and federal delta water pumping systems, chinook (or “king”) salmon and steelhead were abundant in the Sacramento and San Joaquin River systems. Sacramento River salmon were of great cultural and spiritual importance to the Winnemem Wintu Tribe and remain a major economic contributor to northern California. As a part of the pumping projects, a necklace of dams was constructed up and down the western slope of the Sierra Nevada on every major river flowing into the Sacramento and San Joaquin Rivers blocking the upstream migration of chinook salmon and steelhead to and from their historic spawning grounds. Of the 6,000 miles of historic steelhead spawning grounds, today only 300 miles remain. Friant Dam on the San Joaquin River resulted in the extinction of the spring-run chinook salmon in that river. Shasta and Keswick Dams on the Sacramento River blocked the winter-run chinook salmon from their historic spawning grounds, forcing them to spawn in a 40-mile stretch of less favorable river habitat below those dams. Every year the pumping of huge volumes of fresh water out of the Sacramento-San Joaquin River delta sucks in and grinds up juvenile salmon and steelhead as they attempt migrate down the rivers and though the delta on their way to the ocean. As a result, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon and Central Valley steelhead populations have plummeted from historic abundance and all three species are protected under the federal Endangered Species Act.

In August 2004, federal scientists charged with reviewing the plan to increase pumping to 8 million acre feet concluded that doing so would illegally jeopardize protected salmon. However, after political interference, the agency flip flopped and released a final opinion in October 2004 that concluded that the project operations plan would not harm listed salmon and steelhead species. But after several negative independent science reviews and widespread concern over inappropriate political influences on the opinion, the U.S. Bureau of Reclamation and the State Department of Water Resources asked NOAA Fisheries to reconsider the plan in April/May 2006. Yet the agencies continued to implement the new plan without any lawful analysis of its impacts to listed fish species while a new opinion is written.

The plaintiff coalition that launched the legal challenge includes: Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources, The Bay Institute, Baykeeper, California Trout, Friends of the River, Natural Resources Defense Council, Northern California Council of the Federation of Fly Fishers, and the Winnemem Wintu Tribe.

Read the decision online here: http://www.earthjustice.org/library/legal_docs/salmon-decision-41608.pdf