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Judge Favors Salmon Protection In Northern California Rivers

Water diversion permits for Shasta and Scott Rivers struck down

San Francisco, CA — A San Francisco Superior Court judge has ruled that a program allowing ranchers to divert water from the Shasta and Scott Rivers is illegal. The judge ruled the program, run by the California Department of Fish and Game (CDFG), failed to adequately consider the harm to protected coho salmon caused by diverting water for farm irrigation from both rivers to grow hay. The two rivers, both tributaries of the Klamath River, often run dry in summer months due to the water diversion. Both support dwindling populations of state and federally protected coho salmon.

Permits to divert river water were recently required after years of unregulated water diversions and the widespread loss or “incidental take” of endangered salmon.

Environmental groups challenged the permit program, alleging violations of the California Endangered Species Act and other laws. The Department of Fish and Game will now have to rework any new permit process to adequately account for the needs of the salmon.

“Fish and Game needs to take the court’s ruling seriously and modify the permit program so enough water is left in the rivers for the salmon to survive,” said Wendy Park, attorney for Earthjustice. “We’ll be watching the process all the way.”

"Though the programs proposed to do some good things for fish habitat, CDFG undermined their own success from the beginning by ignoring the fact that water diversions are making the rivers go completely dry at some points in the year. The simple fact is that fish need water," said Klamath Riverkeeper's Erica Terence.

"This ruling tells the state and the ranchers that band-aid solutions such as installing fish screens and ladders on diversion ditches and dams or revegetating stream banks are not an acceptable substitute for leaving water in the river," Terence said.

In his decision issued last week, Judge Ernest Goldsmith found that the Department of Fish and Game’s permits were based on an erroneous assumption that ongoing water diversions couldn’t be restricted and would harm coho salmon regardless of whether CDFG permitted the diversions or not.

“Despite DFG’s good faith efforts and potential hardship to water users, the Court must uphold the legislature’s mandate to preserve listed species and conduct environmental review of all foreseeable consequences,” Judge Goldsmith wrote in his decision.

“The state essentially set up the permitting program without studying the harm that water diversions cause to salmon,” said Park of Earthjustice. “This resulted in no meaningful restrictions on water diversions to protect the last remaining salmon that still spawn in these rivers.”

The court further ruled the permit program violated the California Endangered Species Act (CESA) because the Department of Fish and Game didn’t quantify how many fish deaths the water diversions would cause, didn’t show the sufficiency of mitigation measures to protect and restore coho, and didn’t seek public input on whether the program would further jeopardize the salmon.

In December of 2009, CDFG scientists reported that two out of three generations of coho salmon in the Shasta River are "functionally extinct." Coho salmon have a three-year life cycle that results in three distinct generations of coho in any given year. The only viable generation spawned in fall of 2010, and the resulting juvenile fish are now hatching and emerging from the gravels to face their odds this spring. However, coho are likely to rebound if adequate water is left in the rivers.

“Such a permit program can do a lot of good for the salmon, if properly constructed,” commented Glen Spain of the Pacific Coast Federation of Fishermen’s Associations, whose member’s fishing industry jobs are directly affected by salmon declines in these rivers. “But as the Court has now ruled, it cannot just be a rubber stamp given to the extinction-level *status quo*. Business as usual leads only to salmon extinctions and more jobs lost in our industry.”

The public interest law firm Earthjustice is representing Klamath Riverkeeper, the Pacific Coast Federation of Fishermen's Associations, the Quartz Valley Indian Reservation, the Environmental Protection Information Center, Sierra Club and the Northcoast Environmental Center in the case.

The plaintiffs sued CDFG in fall of 2009 when the agency approved the program in spite of substantial and repeated written objections and concerns about the program. The California Farm Bureau joined the lawsuit in 2010 on behalf of the landowners. The Farm Bureau claimed that the permits could not be used to regulate “mere” stream diversions, but then subsequently withdrew its lawsuit in January and opted instead to apply political pressure on CDFG to ease restrictions on the permits.

The ruling leaves both fishermen and farmers in a wash of regulatory uncertainty. Without any endangered species permits, many landowners and water users in Siskiyou County have been out of legal compliance since the irrigation season began on April 1.

"If this court judgment tells us anything, it's that the status quo of excessive water extraction in the Scott and Shasta cannot stand. The laws that require water in the stream to protect salmon are already on the books. Now it's up to Fish and Game to use them to restore these rivers and give coho salmon a chance at survival," Terence said.

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To download and read the entire court ruling, visit www.earthjustice.org or www.klamathriver.org