

## **CSPA Advisory / 4-27-07**

### **Democrats kill governor's dam-building plan**

By Judy Lin - Capitol Alert

Last Updated 1:15 pm PDT Tuesday, April 24, 2007

Saying they preferred to champion water conservation and protect the Sacramento-San Joaquin Delta ecosystem, Senate Democrats on Tuesday voted down Gov. Arnold Schwarzenegger's \$4 billion plan to put two dams on the 2008 ballot.

Senate Bill 59 by Sen. Dave Cogdill, R-Modesto, had Republican support, but couldn't muster the necessary five votes to pass out of the Democrat-led committee.

SB 59 calls for voters to approve bonds to build one dam at Temperance Flat just above Friant Dam near Fresno, and the other on Sites reservoir in Colusa and Glenn counties. Republicans from the Central Valley argue there hasn't been new dam construction in the last 25 years while the state's population has grown by 15 million.

In a statement, the governor said he would "continue to utilize all available means to push for a solution that includes surface storage, allowing California to implement a water plan to endure longer drought periods and higher flood peaks."

Sen. Mike Machado, D-Linden, said no one questions the need for more water storage, but he questioned the cost and locations of the proposal. Sen. Darrell Steinberg, D-Sacramento, and chair of the Senate Natural Resources and Water Committee, said Democrats were putting their own solution forward in the form of Senate Bill 1002, which allocates bond money for water and conservation.

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### **Media Advisory for Thursday 4/26/07**

Contact: Brian Smith, Earthjustice 510-550-6714

### **Imperiled Delta Fish Species Head Back to Court Fresno U.S. District Court Thursday 4/26/07 at Noon**

Who:

Earthjustice attorneys Trent Orr and Andrea Treece, representing conservation groups, Justice Department attorneys, representing US Fish and Wildlife Service, Attorneys representing intervenors CA Dept. of Water Resources, California Farm Bureau Federation, State Water Contractors, San Luis & Delta Mendota Water Authority, and Westland Water District, and Glenn-Colusa Irrigation District

#### What:

Hearing on the merits of a case that challenges the U.S. Fish and Wildlife Service's 2005 biological opinion that authorizes numerous changes to federal and state water project operations, including a huge increase in water exports from the San Francisco Bay/Delta to Central and Southern California.

#### When & Where:

Noon Thursday 4/26/07

U.S. District Court for the Eastern District of California  
Courtroom 3, United States District Courthouse, 2500 Tulare Street,  
Fresno

#### Background

In 2005, a coalition of conservation and fishing organizations filed suit in federal court against the U. S. Fish and Wildlife Service challenging the agency's biological opinion, which concluded that increasing water exports from the San Francisco Bay-Delta to the San Joaquin Valley would not jeopardize the survival of the federally protected delta smelt, a once common fish viewed by biologists as an indicator of the Delta's overall ecosystem health.

The U.S. Fish and Wildlife Service issued the biological opinion on February 15, 2005, finding that the revised Operating Criteria and Plan (OCAP) for the federal Central Valley Project and the State Water Project posed no jeopardy to the federally listed delta smelt. This plan could result in additional annual pumping of hundreds of thousands of acre-feet of water out of the Delta over the next 25 years.

The groups challenging the biological opinion alleged numerous shortcomings of the document, including the Fish and Wildlife Service's failure to base its analyses on the most current abundance data on delta smelt, which showed the delta smelt had reached a historic low; the reliance on a standardless, under funded adaptive management system to protect the smelt, the opinion's failure to consider impacts to most of the species' critical habitat as well as most project impacts to smelt themselves, and the biological opinion's overall failure to offer any reasonable explanation of how the many impacts it identifies are consistent with its "no jeopardy" conclusion. Because the biological

opinion is so thoroughly flawed, the groups asked the court to invalidate the biological opinion and require a new one based on sound science and current data.

The hearing Thursday in the Fresno federal courthouse will address the merits of this case.

## **Wild salmon win respite in US court Federal judges threaten to breach dams if the government has no recovery plan.**

By Brad Knickerbocker

The Christian Science Monitor

April 17, 2007

Ashland, Ore. - The wild salmon in the Pacific Northwest – already at a fraction of their historic numbers and facing many threats, from sea lions to global warming – may be getting a reprieve.

A federal appeals court has upheld a ruling that threatens to breach the biggest threats to their survival – four major dams in the Columbia River basin – if the US government doesn't come up with a realistic recovery plan.

The decision, rendered last week by the Ninth US Circuit Court of Appeals in San Francisco, represents the latest in a long line of court rulings throwing out salmon-recovery plans by White House administrations of both parties going back to 1993.

"I can strongly affirm that it is the policy of this administration to uphold the law faithfully," Bob Lohn, a regional administrator for the National Oceanic and Atmospheric Administration (NOAA), said after the ruling. "But when the underlying issues are difficult or contentious, there is often great debate about what the law means or how it should be applied."

The salmon's recovery is complicated, however, by a variety of factors, including growing development and climate change.

The dams are particularly controversial. President Bush has said he would not consider breaching or taking out any of the dams, which provide power, irrigation, and barge transportation – all viewed as essential to the region's economy. Under the latest administration plan, the eight dams along the Columbia and Snake Rivers (as well as the irrigation, flood control, and power generation they provide) are considered part of the landscape because they were built before the Endangered Species Act was passed in 1973. In other words, the administration argued, only the effects of dam operations and not the dams themselves should be considered under the Endangered Species Act.

But the appeals court last week found that point of view to be "little more than an analytical sleight of hand" that seemed to imply that salmon "could be gradually destroyed, so long as each step on the path to destruction is sufficiently modest."

"Statistically speaking," the court declared sardonically, "the dead fish were really alive." The court also lambasted NOAA, the agency charged with protecting endangered fish species, for taking a "cramped view" of its authority.

"This decision should compel the federal agencies to look at all recovery options – including removing the four lower Snake River dams, and develop a solution that works for people and fish," said Steve Mashuda of Earthjustice, the nonprofit law firm representing a coalition of fishing business and conservation groups in the case.

Salmon need the right amount of water at the proper temperature to spawn upstream, after which their offspring head out to the Pacific Ocean before returning to the place of their birth several years later to repeat the cycle. Dams, irrigation diversions, logging, mining, and urban development have made the river trips to and from the ocean increasingly difficult.

Before the eight dams were built on the Columbia and Snake rivers, some 16 million salmon a year filled annual fish runs. Today, that number is down to about 1 million fish, and 12 species of salmon are listed under the Endangered Species Act.

Meanwhile, the challenge of reversing the steady decline in salmon populations across an area the size of central Europe is becoming increasingly difficult because of growing commercial and residential development.

Now, say scientists, global warming is making the problem more difficult.

Earlier this month, research scientists from NOAA and the University of Washington in Seattle reported that climate change is likely to cause warmer water temperatures, lower spawning flows, and increased winter water flows – all of which could raise salmon mortality.

"Under assumptions of warming temperatures and shifts in local precipitation, these stream habitat attributes will change for the worse as far as salmon are concerned," said Mary Ruckelshaus, a NOAA fisheries scientist and coauthor of the study, which was published by the National Academy of Sciences.

An earlier University of Washington report found that climate change in the Puget Sound area has been taking place relatively rapidly.

Another relatively recent threat to salmon are the California sea lions that have been gobbling up salmon at the fish ladders designed to help adult salmon over the dams on the way upstream to spawn. Officials have tried scaring off the sea lions with firecrackers and rubber bullets, but it hasn't worked. Sea lions themselves are protected under the 1972 Marine Mammal Protection Act. Congress is now considering a bill that would allow Oregon, Washington, and Columbia River Indian tribes to kill a limited number of sea lions.

In the end, it is likely to be the dams that will have to be addressed if salmon are to survive.

The National Marine Fisheries Service and other federal agencies are expected to present a new strategy for the Columbia River basin next month. Under the Endangered Species Act, such plans must lead to the recovery of species headed toward extinction.

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## **Habitat Protections Sought for Imperiled Green Sturgeon Government Delays May Drive Prehistoric Fish Extinct**

By: Center for Biological Diversity

Apr 18, 2007

The Center for Biological Diversity today sent notice of intent to sue the National Marine Fisheries Service for failure to designate critical habitat and protective regulations for the southern population of the green sturgeon (*Acipenser medirostris*), an imperiled migratory fish that has survived since the Pleistocene. The Fisheries Service listed the southern population, comprised of green sturgeon in the San Francisco Bay and Delta that spawn in the Sacramento River basin, as a threatened species under the Endangered Species Act in April 2006.

"Despite some of the lowest recorded numbers of spawning sturgeon in the Sacramento River recently and the obvious importance of habitat protection, the green sturgeon still does not have the protection it needs for conservation and recovery," said Jeff Miller, conservation advocate with the Center for Biological Diversity. "With so few green sturgeon left and the Delta food web they depend upon unraveling, it is imperative we protect critical habitat for this ancient fish in the Sacramento River and Bay Delta."

The Fisheries Service was required to designate critical habitat - specific areas essential to the conservation of the species or which may require special management considerations or protection - when the sturgeon was listed. Instead it made a finding

that critical habitat was "not determinable" at the time of listing, meaning it had one more year to complete the designation. For threatened species the agency must also issue a special regulation defining how they will be protected from "take" and other harmful activities, which in this case it has failed to do.

Critical habitat provides an important additional layer of protection beyond species listing. A peer-reviewed study by the Center for Biological Diversity published in the April 2005 issue of *BioScience* and titled "The Effectiveness of the Endangered Species Act: A Quantitative Analysis" concludes that species with critical habitat designated for two or more years are more than twice as likely to have improving population trends than species without it.

In listing the green sturgeon as threatened, the Fisheries Service concluded it is likely to become endangered because of "the destruction, modification or curtailment of habitat and inadequacy of existing regulatory mechanisms," particularly citing the loss of spawning habitat as a major threat. The southern green sturgeon population only spawns in the Sacramento River system below Shasta Dam, making it especially susceptible to habitat destruction.

The estimated abundance of green sturgeon in the Sacramento River has plummeted by 95 percent between 2001, when the Center first petitioned for Endangered Species Act protection for the species, and 2006. The California Department of Fish and Game predicted that fewer than 25 female green sturgeon would migrate to Sacramento River spawning grounds in 2006. The state adopted emergency sturgeon-fishing regulations in 2006 to protect declining populations of white and green sturgeon in the Sacramento-San Joaquin River system, prohibiting anglers statewide from catching and keeping any green sturgeon.

The severe green and white sturgeon declines come as scientists have also documented catastrophic declines of open-water fish species in the Delta, warning of wholesale collapse of the Delta ecosystem. The Center petitioned for increased state and federal protection for Delta smelt in 2006. Longfin smelt, threadfin shad and striped bass have also fallen to alarmingly low levels due to the combined effects of Delta water diversions and exports, pesticides and pollution, and impacts of introduced species on the Delta's planktonic food web. Copepods that sustain the Delta food chain and are a food source for green sturgeon have fallen to the lowest levels ever recorded.

The green sturgeon is one of the most ancient fish species in the world, remaining unchanged in appearance since it first emerged 200 million years ago. Green sturgeon are among the largest and longest living fish species found in freshwater, living up to 70 years, reaching 7.5 feet in length, and weighing up to 350 pounds. Sturgeon have a prehistoric appearance, with a skeleton consisting of mostly cartilage and rows of bony plates for scales. They have snouts like shovels and mouths like vacuum cleaners that are used to siphon shrimp and other food from sandy depths.

Like salmon, sturgeon are anadromous, migrating to the ocean and returning to freshwater to spawn. Although adult green sturgeon in North America range from Alaska to Mexico in marine waters and feed in estuaries and bays from San Francisco Bay to British Columbia, only three known spawning grounds remain - in the Sacramento and Klamath Rivers in California and the Rogue River in Oregon. Between

four and seven spawning populations have already been eliminated in California and Oregon due to habitat destruction, water withdrawals from spawning rivers, and over-fishing. The National Marine Fisheries Service declined to list the imperiled northern green sturgeon population, ranging from the Eel River in Humboldt County, California to the Columbia River in Washington.

[http://www.yubanet.com/artman/publish/article\\_55060.shtml](http://www.yubanet.com/artman/publish/article_55060.shtml)

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## **Lawsuit Challenges Endangered Species Protection for Salmon Across West**

April 18, 2007

By JEFF BARNARD

Associated Press

Property rights advocates, farm groups and development interests asked a federal judge Wednesday to lift Endangered Species Act protections from all threatened and endangered salmon across the West, arguing that the government failed to count fish spawned in hatcheries.

The federal government and conservation groups countered that the Endangered Species Act requires consideration of the best available science, which clearly indicates that depending on fish raised in hatcheries to boost salmon numbers will, over the long run, harm fish that spawn naturally in rivers.

U.S. District Judge Michael Hogan gave no indication when he might rule on the case, or how he might rule. Pacific Legal Foundation, a property rights public interest law firm based in Sacramento, Calif., brought the lawsuit on behalf of the Building Industry Association of Washington, the Coalition for Idaho Water, farm bureaus in Idaho and Washington, the California State Grange and others.

The lawsuit builds on Hogan's 2001 ruling that NOAA Fisheries, the federal agency in charge of restoring dwindling salmon populations, violated the Endangered Species Act when it put wild and hatchery fish in the same group, known as an evolutionarily significant unit, or ESU, but then protected only the wild fish. The ruling led to lifting threatened species status for the Oregon coastal coho.

The plaintiffs want the court to lift threatened and endangered species listings for all 16 protected populations of salmon in Washington, Idaho, Oregon and California. If they win, some restrictions on logging, irrigation and urban development could eventually be lifted around the West.

Several salmon populations are protected in the Seattle and Portland metropolitan areas. Irrigation water was shut off to farms in the Klamath Basin of Oregon and California in 2001 to provide enough water for threatened coho salmon in the Klamath River during a drought. Many timber sales on national forests have been blocked to protect salmon.

Restrictions on hydroelectric dam operations in the Columbia Basin would not be directly affected, because the case does not challenge 10 populations of steelhead,

which overlap many of the protected salmon zones. Pacific Legal Foundation is challenging those listings, too, in a separate case in U.S. District Court in Fresno, Calif. Pacific Legal Foundation lawyer Damien M. Schiff argued that NOAA Fisheries did not follow Hogan's 2001 ruling when it developed a new policy on hatchery fish and reconsidered its protections for salmon, because it made no effort to determine whether hatcheries could be relied upon as the principal means of assuring the survival of the fish.

He added that the need to consider the best available science stops once the hatchery and wild fish are put into the same population group, which NOAA Fisheries did.

Paul Lall, a U.S. Justice Department lawyer, countered that NOAA Fisheries had carefully considered Hogan's 2001 ruling, and that under the best available science, it had to consider more than just population numbers. It also had to consider whether salmon could reproduce effectively, if they were genetically diverse, and whether they were well distributed over their geographic range.

Science showed that fish raised in hatcheries eventually adapted to life in hatcheries, rather than the wild, and while they could help spread geographic distribution, they could sometimes harm genetic diversity and reproductive success, Lall added.

Jan Hasselman, representing Trout Unlimited, argued that the plaintiffs had not challenged the science behind the creation of the salmon population groups, and added that NOAA Fisheries' blue ribbon panel of scientists had declared it was "biologically indefensible" to count hatchery fish when deciding whether a group was in danger of extinction.

The judge's only question for lawyers was whether various runs of salmon within the same population group, such as spring chinook and fall chinook, could be expected to interbreed, given the fact that they spawn in different parts of the river and at different times of year.

The question was apparently in reference to the plaintiffs' claim that NOAA Fisheries had protected some salmon population groups that were too large geographically, said Schiff.

Lall told the judge that there was scientific evidence that over time, some different runs did interbreed — enough to make those within a larger group genetically similar. He added that the alternative to creating broad population groups, known as evolutionarily significant units, would be to list each seasonal run of salmon in each little stream.

<http://www.kgw.com/sharedcontent/APStories/stories/D80J7C500.html>

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