

STATE OF CALIFORNIA SUES TRUMP ADMINISTRATION TO SAVE THE CHINOOK SALMON

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California Sues Trump Administration to Save The Endangered Chinook Salmon

Last week, the Trump Administration increased, [via a press memo](#), the amount of water that can be pumped from the Sacramento-San Joaquin Delta Estuary in California. After pumping, this water is to be delivered to the San Joaquin Valley and Southern California for agricultural, municipal, and industrial purposes. How and when water is pumped—and how much of it—from the Delta has been the subject of litigation ever since protections for native species went into effect over a decade ago. Trump’s memorandum memorializes changes to rules governing water pumping and dispenses with certain protections for endangered fish species living and migrating through the Delta.

Two Rivers Run Through It

The federal Central Valley Project (“CVP”) and the State Water Project (“SWP”) are the two largest water projects in California.-The federal Bureau of Reclamation (“Reclamation”) operates the CVP which consists of 20 dams and reservoirs that deliver water to 29 of California’s 58 counties.- The amount of water delivered by the CVP is massive – approximately 5.6 million acre-feet of water a year on average to 270 water contractors.-

The California Department of Water Resources (“DWR”) operates the State Water Project which stores water mainly at Oroville Dam and San Luis Reservoir, which it operates jointly with Reclamation.- DWR delivers on average 2.6 million acre-feet of water a year to 29 public water agencies located throughout California.

On October 19, 2018, President Trump issued [a memorandum](#) entitled “Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West.”- 83 Fed. Reg. 53,961.- The memorandum directed the Secretary of the Interior (i.e. U.S. Fish and Wildlife Service) and the Secretary of Commerce (i.e., National Marine Fisheries Service) to take steps “to minimize unnecessary regulatory burdens and foster more efficient decision-making so that water projects are better able to meet the demands of their authorized purposes.” Translation: the President asked the water authorities at the Federal level to figure out a way to pump more water out of the Delta and into the Central Valley of California.

Unfortunately, it is a little more complicated than this. There are a few steps involved in getting water pumped out of an estuary where endangered species live. Theoretically, somebody has to determine if the endangered species will be put at risk by altering the environment in which they live. That’s where the US Fish and Wildlife Service (“USFWS”) and the National Marine Fisheries Service (“NMFS”) come in.

Matters of Biological Opinions

On February 5, 2019, Reclamation released [a Biological Assessment](#) for the re-initiation of consultation under ESA on the coordinated long-term operation of the CVP and SWP.- The proposed actions outlined in the BA included:

1. Temperature management at Shasta dam;
2. New habitat and salinity measures in the Delta; and
3. Entrainment management related to water exports.

Reclamation states “these proposed actions aim to give water operators more flexibility, maximize water supply delivery and optimize power generation consistent with applicable laws.”

The Biological Assessment was sent to the US Fish and Wildlife Service and the National Marine Fisheries Service for development of new biological opinions covering the new CVP and SWP operations. The biological opinions were issued on October 21, 2019, under Section 7(a)(2) of ESA, and concluded that the proposed actions and the continued operation of the CVP and SWP **would not** jeopardize threatened or endangered species or adversely modify their designated critical habitats.- The fish species at issue are the chinook salmon, steelhead trout and the Delta smelt.

On December 19, 2019, **Reclamation announced** “a major step to optimize water deliveries and power production for California communities and farms in an environmentally sound manner.” In support of this claim, it released its final Environmental Impact Statement under NEPA analyzing the two water projects’ long-term operations, based on the new BiOps from the US Fish and Wildlife Service and the National Marine Fisheries Service.

The Environmental Impact Statement’s preferred alternative was soon adopted in Reclamation’s **Record of Decision** issued on February 18, 2020. Reclamation states in the ROD that

the purpose of the action considered in the EIS is to continue operation of the CVP in coordination with the SWP, for their authorized purposes, in a manner that enables Reclamation and DWR to maximize water deliveries and optimize marketable power generation and to augment operational flexibility by addressing the status of listed species.- The need for the action is to use updated scientific information so that Reclamation and DWR can better meet statutory responsibilities for operating the CVP and SWP.

One day later, Trump released a **presidential memorandum** and gave a **speech in Bakersfield** with regard to Reclamation’s ROD.- Trump argued that California wastes water by “pour[ing]” “millions and millions and millions of gallons ... into the Pacific Ocean.”- Trump said the changes to the “outdated scientific research and biological opinions” would now allow “as much water as possible, which will be a magnificent amount, a massive amount of water for the use of California farmers and ranchers.”- Trump further noted that “A major obstacle to providing water for the region’s farmers has now been totally eliminated by the federal government.”

Endangered Fish and Endangered Governors?

California immediately sued the federal government (i.e., NMFS, USFWS, and Reclamation). California’s Attorney General Xavier Becerra stated, “As we face the unprecedented threat of a climate emergency, now is the time to strengthen our planet’s biodiversity, not destroy it.”- Becerra further stated that “California won’t silently spectate as the Trump Administration adopts scientifically-challenged biological opinions that push species to extinction and harm our natural resources and waterways.”-

The lawsuit alleges violation of ESA, NEPA and the APA.- The complaint alleges that contrary to the findings of “no jeopardy” by the NMFS and USFWS biological opinions, the proposed federal actions “actually significantly reduce protections for the listed species and their designated critical habitat, thereby increasing the likelihood of their extinction, contravening the requirements of Section 7 of ESA and the ESA’s conservation purpose.”- California seeks “a declaration that the USFWS and NMFS each violated the ESA and the APA by

adopting biological opinions that are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law” and that Reclamation violated and continues to violate:

1. the ESA and the APA by adopting the 2019 Biological opinions; and
2. NEPA and the APA by issuing the Record of Decision without adequately considering the environmental impacts.”-

California also seeks “injunctive relief to halt and redress the irreparable injuries caused by these legal violations.”- The case was filed in the United States District Court for the Northern District of California.

As for Trump, he seems undaunted by the lawsuit. He assured the crowd in Bakersfield that he would “get [them] [their] water and put a lot of pressure on [their] governor,” and, “frankly, if he doesn’t do it, [they’re] going to get a new governor.”- Endangered fish and governors?