



Press Release

5 August 2015

For Immediate Release

Contact: Bill Jennings, California Sportfishing Protection Alliance: 209-464-5067; cell 209-938-9053; email, deltakeep@me.com
Barbara Vlamis, AquaAlliance; 530-895-9420
Michael Jackson: Law Offices of Michael B. Jackson; 530-283-0712
Jason Flanders, Aqua Terra Aeris Law Group; 916-202-3018

Groups Sue State Water Board to Prevent Fishery Extinctions

*Captive Regulatory Agency Refuses to Enforce and Comply with Laws
Protecting Fisheries and Water Quality*

On 4 August 2015, The California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN) and AquaAlliance, collectively "Petitioners," filed a lawsuit against the State Water Resources Control Board (State Water Board) seeking declaratory and injunctive relief and a writ of mandate, under California Code of Civil Procedure, in Alameda County Superior Court. The lawsuit alleges that the State Water Board and its Executive Director violated the California Water Code, Public Trust Doctrine and a suite of environmental laws when it issued a series of Temporary Urgency Change Orders (TUCP Orders) that weakened legally adopted standards protecting water quality and fisheries.

This action is a companion to a 3 June 2015 federal lawsuit against the Department of Interior and U.S. Bureau of Reclamation for violations of the Administrative Procedure Act, Central Valley Project Improvement Act and Clean Water Act. The lawsuit asks the court to issue a writ of mandate ordering the State Water Board to vacate its TUCP Orders, to preliminarily and permanently enjoin the Board from activities undertaken pursuant to the TUCP Orders, enter a declaratory judgment that the Board has engaged in an illegal pattern and practice of adopting TUCP Orders and enjoin the Board from further engaging in an illegal pattern and practice of adopting TUCP Orders that violate the law.

"This lawsuit is an effort to prevent the extinction of fisheries that thrived for millennia. If Delta and longfin smelt and winter- and spring-run Chinook salmon go extinct, it will not be because of drought. These fish survived the great mega-droughts of the past. They may not survive the State Water Board's serial violations of law," said CSPA Executive Director Bill Jennings adding, "fallowed fields will be replanted after the drought, extinct fisheries are forever lost."

"We're either a society of law or not and this action is an effort to enforce the law. "The Water Board has morphed from an independent regulatory agency into a political agent of a Governor that cares little for the law or fish and wildlife," said Michael Jackson, attorney for the plaintiffs.

Operation of the state and federal water projects by DWR and Reclamation has brought fisheries to historic lows. Since 1967, abundance indices for striped bass, Delta smelt, longfin smelt, American shad, splittail and threadfin shad have declined by 99.7, 97.8, 99.9, 91.9, 98.5 and 97.8%, respectively. Natural production of Sacramento winter-run and spring-run Chinook salmon have decline by 98.2 and 99.3%, respectively, and are only at 5.5 and 1.2 percent of doubling levels mandated by the Central Valley Project Improvement Act, California Water Code and California Fish & Game Code.

The State Water Board's weakening of minimal critically dry year standards has pushed already depressed fishery populations to the brink of extinction. The California Department of Fish and Wildlife's Fall Midwater Trawl, Spring Kodiak Trawl, 20-mm Survey and Summer Towntnet Survey of fish abundance have all reported historically low abundance indices far below previous lows. For example, recent 20-mm Survey trawls of 47 sites (3 trawls each site) found only a single Delta smelt and no longfin smelt. Weakening of Sacramento River temperature standards last year led to the loss of 95% of winter-run, 98% of fall-run and virtually all of the spring-run Chinook salmon. This year, the State Water Board weakened the standards even further setting the stage for another disaster.

"Salmon are the harbinger of the malady afflicting California's greatest watershed – and the agencies sworn to protect them," said AquAlliance Executive Director Barbara Vlamis. "We cannot shut the door on our fisheries because the state and federal water projects drain reservoirs on the Sacramento and Feather Rivers during a drought in the hope that the next year might be wet."

California has experienced 10 multi-year droughts of large-scale extent in the last 100 years, spanning 41 years. Although the state experiences drought conditions more than forty percent of the time, the CVP and SWP continue to operate and deliver water without consideration of drought conditions. They draw down reservoir storage under the assumption that the coming year will be wet, providing little reserve storage in the event the following year is dry. In the event of another dry year, they endeavor to maximize deliveries in the hope that it will rain next year. This pattern has repeated itself for decades, most recently during the 1987-1992, 2000-2002, 2007- 2009 and 2013-2015 droughts.

The Central Valley Project and State Water Project count on the State Water Board to bail them out by relaxing standards and reducing water flows crucial to water quality and healthy and reproducible fisheries. And the Board has obliged the projects by relaxing standards thereby encouraging them to continue to operate on the edge of crisis while fisheries, hanging on the lip of extinction, pay the price. During the drought of 1987-1992, the State Board informed the projects that it would not take enforcement action for more than 245 violations of standards protecting Delta agriculture and fisheries, even though further violations were expected. This drought is little different. In 2013 State Board

Executive Director Tom Howard informed the projects that he would take no action if the projects failed to comply with applicable standards. Last year, he weakened Bay-Delta standards on 9 different occasions and, in 2015, has already relaxed standards 6 times.

“Our fisheries and public trust resources cannot be sacrificed simply because regulatory agencies refuse to balance the public trust with unreasonable demands for water in an arid state,” said CWIN Executive Director Carolee Krieger.

The Aqua Terra Aeris Law Group and the Law Offices of Michael B. Jackson represent CSPA, C-WIN, and AquAlliance in this action.