

Enviros Say Calif. Water District Violated Dam Design Order

By [Michael Phillis](#)

Law360 (March 31, 2020, 9:15 PM EDT) -- Environmental and indigenous groups have accused a California water district of “acting as a law unto itself” by ignoring court deadlines to design fish passages to help the protected steelhead navigate the Vern Freeman Dam.

The Wishtoyo Foundation, the [Center for Biological Diversity](#) and others told a California federal court Monday that despite an end-of-January deadline for the United Water Conservation District to engineer and model two fish passage possibilities, the district hasn’t complied. Instead it has tried to wiggle out of its obligations, according to the groups.

The advocates want the court to declare the district in contempt and appoint a receiver to make sure the district complies with the order. If the court doesn’t think a receiver is necessary, it should still take steps to force the district to comply.

The groups allege the district is ignoring key provisions of a lengthy 2018 order that said the district’s operation of a dam on the Santa Clara River harmed the protected steelhead by impairing its breeding and migration. The order said the Vern Freeman Dam’s fish ladder didn’t sufficiently facilitate the upstream migration of the fish. As a result, the court ordered the district to design and model two types of fish passages, but that hasn’t happened, the groups said. Nor has the district met its requirements to pay roughly \$3.2 million in attorney fees and costs.

The groups, who also filed their opposition to the district’s move to alter the 2018 injunction, said those delays should not be tolerated.

“Vindicating respect for the rule of law demands that United be held accountable for its contemptuous conduct,” the groups said.

In February, a Ninth Circuit panel affirmed the lower court’s 2018 order, which required the district to design a pair of alternatives for fish passage, the "hardened ramp" and "notch" alternatives. If both sides agreed, an option called “vertical slot” could be considered. The design of the options align with their names. For example, the hardened ramp would be a ramp for the fish to travel around the dam, according to the groups.

In a filing earlier this month, the district said the 2018 order and injunction needed to be changed. But after talking with the federal government, the notch was no longer considered viable and the hardened ramp presented “substantial design and engineering obstacles that cannot be overcome.” It would cost as much as \$122 million, according to the district, and thus only wanted to consider the vertical slot option. It said if the court forces design work on the hardened ramp, it should extend the deadlines by a year.

That shouldn’t be allowed, according to the groups.

“United on a unilateral frolic of its own has chosen to act as if the court order has been modified to allow it not only to substitute the vertical slot for the notch but to select the vertical slot as the sole fish passage option for United to continue to do detailed study and design work for,” the groups said.

John Buse, an attorney for the Center for Biological Diversity, said the district has effectively abandoned work on the hardened ramp alternative that a lot of parties prefer.

“It appears that they have tied their own hands, undermining their own ability to comply with the injunction,” Buse told Law360 in an email. “I really have never seen anything like this behavior, and we had little other recourse than to file the motion for contempt.”

A representative with the district did not immediately return a request for comment.

The groups are collectively represented by Christopher Sproul, Brian Orion, Stuart Wilcox of Environmental Advocates, Jason Weiner of Wishtoyo Foundation and Wishtoyo's Ventura Coastkeeper Program, John Buse of the Center for Biological Diversity and Patricia Linn.

The district is represented by Mark T. Palin, David D. Boyer, Brian M. Wheeler and Shawn M. Ogle of [Atkinson Andelson Loya Ruud & Romo PLC](#) and Paul S. Simmons and Jared S. Mueller of [Somach Simmons & Dunn PC](#).

The case is Wishtoyo Foundation et al. v. United Water Conservation District, case number [2:16-cv-03869](#), in the [U.S. District Court for the Central District of California](#).

--Editing by Gemma Horowitz.