

Trial Claiming Water District Endangered Fish, Birds Under Way In California

Mealey's (January 10, 2018, 10:46 AM EST) -- SANTA ANA, Calif. — Trial got under way on Dec. 12 in California federal court on claims by a Native American organization and an environmental advocacy group that the operation of a dam by a water district has killed off certain fish and an endangered bird in and around the Santa Clara River (Wishtoyo Foundation, et al. v. United Water Conservation District, No. 16-3869, C.D. Calif., Southern Div., 2017 U.S. Dist. LEXIS 213759).

Wishtoyo Foundation, affiliate Ventura Coastkeeper and the Center for Biological Diversity sued United Water Conservation District in the U.S. District Court over its operation of the Vern Freeman Diversion Dam. The plaintiffs allege that the defendant operates the dam in such a way as to kill (“take”) the steelhead trout and the endangered Southwestern willow flycatcher, a migratory song bird.

The plaintiffs allege that by reducing water released from the dam, downstream steelhead risk being stranded instead of migrating to the sea, maturing and spawning. They also say the operation of the dam prevents fish from using a fish ladder to swim “upstream” and that efforts by United Water to “trap and truck” the fish to upstream locations are not scientifically sound.

As to the willow flycatcher, the plaintiffs say the dam’s operation causes lower reaches of the Santa Clara River to lack lentic, or still, water during spring and summer, affecting the birds’ ability to breed, forage and avoid predators.

Chumash Tribe Relation

The Wishtoyo Foundation was founded by an elder of the Saticoy Turtle Clan to restore the culture of the Chumash Native American tribe.

After the District Court dismissed two claims, the only remaining claims at trial are for unauthorized taking of steelhead and flycatchers in violation of the Endangered Species Act, 16 U.S. Code, §§ 1531 et seq.

United Water says its operation of the dam has not actually killed or injured the steelhead. It says it discontinued the trap-and-truck program in 2014.

Likewise, United Water says its operation of the dam has not actually killed or injured any flycatchers.

Doctrine Of Laches

United Water also says the doctrine of laches should apply to the plaintiffs’ claims because they have failed to respond to the defendant’s proposal to mitigate migration problems.

Judge David O. Carter is presiding.

Wishtoyo Foundation, the Center for Biological Diversity and Ventura Coastkeeper are represented by Geneva E. Branson Thompson and Jason A. Weiner of the Wishtoyo Foundation/Ventura Coastkeeper in Ventura, Calif.; Heather R. Kryczka, Molly Coyne and Christopher A. Sproul of Environmental Advocates in San Francisco; John T. Buse of the Center for Biological Diversity in San Francisco; and Patricia L. Weisselberg of the Patricia Weisselberg Law Office in Mill Valley, Calif.

United Water is represented by Paul S. Simmons, Daniel Lewis-Foote Quinley and Jared Stanton Mueller of Somach, Simmons & Dunn in Sacramento, Calif., and William W. Carter and Jane Ellison Usher of Musick, Peeler & Garrett in Los Angeles.

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