



## Press Release

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**For Immediate Release**

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## **Groups Sue Department of Interior, Bureau of Reclamation, State Water Board and DWR to Prevent Fishery Extinctions**

*Captive Regulatory Agencies Unable to Enforce and Comply with Laws Protecting Fisheries and Water Quality*

On 3 June 2015, The California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN), AquAlliance and Restore the Delta (RTD), collectively "Petitioners," filed a complaint for declaratory and injunctive relief, under the Administrative Procedures Act, and a Petition for Writ of Mandate, under California Code of Civil Procedure, in federal District Court for the Eastern District of California. The lawsuit alleges that the United States Department of Interior and Bureau of Reclamation (Reclamation), the State Water Resources Control Board (State Water Board) and its Executive Director and Members and the California Department of Water Resources (DWR) violated the federal Clean Water Act, the Bay-Delta Plan, Central Valley Project Improvement Act, the Delta Protection Act and other state and federal statutes.

The lawsuit asks the court to declare that Reclamation is required to comply with Bay-Delta water quality standards, that the State Water Board's February 2015 Temporary Urgency Change Order did not relieve Reclamation of the duty to comply with the Bay-Delta Plan and Clean Water Act, that Reclamation is violating water quality standards and that Reclamation actions are not in accordance with law. It asks the court to enjoin Reclamation from operating the Central Valley Project (CVP) in violation of water quality standards and to issue a writ of mandate against Members of the State Water Board and its Executive Director setting aside the February Temporary Urgency Change Order that severely weakened already inadequate water quality standards protecting fisheries and water quality in the Bay-Delta.

"We bring this lawsuit in an effort to prevent the impending extinction of fisheries that thrived for millennia. Delta smelt, once the most abundant species in the estuary, are on the

precipice of extinction and longfin smelt and winter-run and spring-run Chinook salmon are close behind,” said CSPA Executive Director Bill Jennings adding “we cannot stand aside and watch species go extinct simply because special interests have captured our regulatory agencies and they refuse to comply with laws enacted to protect fish and water quality. The situation is critical and we’re left with no alternative but the courts.”

The lawsuit involves a decision that relaxed standards in February. Normally, Petitioners could have pursued legal action within 30 days of the decision. However, as the decision was rendered by delegated staff, Petitioners were required to request reconsideration by the entire State Water Board, thus delaying the opportunity to litigate for 90 days. The State Board refused to respond to Petitioner’s protest, reconsider the matter or schedule a requested evidentiary hearing. In fact the Board has refused to hold formal hearings for all 12 decisions taken to weaken legally promulgated Bay-Delta standards over the last three years. Since February, additional standards have been weakened and Petitioners will contest those modifications at the appropriate time.

“The Bureau of Reclamation cannot operate the Central Valley Project in a manner that ignores and violates water quality laws for Delta fisheries and communities,” said Restore the Delta Executive Director Barbara Barrigan-Parrilla. “We made our case clear to the State Water Board that the environmental and economic well-being of the five Delta counties’ four million residents is tied to a healthy Delta, but our comments and protests were ignored. Therefore, we had to take legal action.”

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.

Fishery declines have accelerated in the last few years. In the spring of 2015, the Department of Fish and Wildlife’s monthly spring Kodiak Trawls of spawning Delta smelt collected only 6, 1, and 8 fish in March, April and May, respectively, leading fishery scientists to speak of impending extinction. Relaxation of temperature standards in the Sacramento River and unnecessary depletion of Shasta cold-water storage last year caused Chinook salmon losses of 95% of winter-run, 98% of fall-run and virtually all of the spring-run. Fish that manage to survive lethal temperatures in the upper river are further impacted by Reclamation’s failure to meet Bay-Delta standards. Reclamation has already indicated that it is uncertain if temperatures can be met this year, while it has again scheduled to deliver almost 1.6 MAF of water to Sacramento Valley water contractors.

“Extinction is forever,” said AquAlliance Executive Director Barbara Vlamis. “We cannot shut the door on our fisheries because the state and federal water projects drain reservoirs during a drought on the hope that the next year might be wet.”

While fisheries have been devastated, the latest statistics from the California Department of Agriculture reveal the agricultural crop production in California and the Central Valley actually increased during the first two years (2012-2013). The latest employment data from the California Economic Development Department shows that farm employment in each of the first three years of the drought (2012-2014). The State Water Board made little effort to strike a balance between impacts to beneficial uses during the drought.

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 CVP and SWP 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 3 times. Additional requests to weaken water quality standards are pending, as fisheries face extinction.

“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.