

Pushing for Fairness and Scientific Integrity in Regulatory Decisions

By Dan Keppen

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The organization I work for – the Family Farm Alliance - last July filed a lawsuit in the federal district court challenging the biological opinion on delta smelt issued by the US Fish and Wildlife Service (USFWS) in December, 2008. Despite being in existence for over twenty years, this is the first time we have filed a lawsuit, and this was not our initial intent. Last December, we immediately brought our concerns with the adequacy of the scientific data used to develop the opinion to the attention of the government, using the federal agency's own administrative procedures to seek correction of the opinion. The government refused to address the problems we raised or correct the opinion. Hence, we were left with no alternative other than filing the lawsuit.

We want the court to order the government to revise the opinion to comply with the fundamental requirements of the Endangered Species Act (ESA) and the Information Quality Act (IQA) regarding the quality, objectivity, and integrity of scientific decision-making by federal agencies.

For example, the mandated Independent Peer Review of the biological opinion was not performed properly under the ESA. The government is specifically required to ensure the peer reviewers do not have conflicts of interest for such a highly influential document. In this case, two of the reviewers were either authors of papers upon which the opinion is based and/or receive funding or commissions from the government agencies which authored the opinion.

We also believe the biological opinion is based on assumptions and speculation, not actual scientific data, and contains analysis that is not reproducible. The water cutbacks that USFWS has ordered are all based on the premise that pumping water through the Delta is the reason for the smelt's decline. But fifteen years of failure should be enough to demonstrate that the pumps are not the problem. For the past 15 years, federal regulators have ordered more and more stringent restrictions on the water supplies pumped through the Delta to serve California's farms and cities. Those restrictions have cost California billions of dollars in economic losses and tens of thousands of jobs. But instead of showing any benefit from these measures, the population of delta smelt has continued to decline.

There are many reasons for the decline in the smelt population that are not related to the water pumping that are being ignored by the government, including urban water pollutants, increases in non-native fish that feed on the smelt, and climate changes. The water cutbacks that have already occurred are not increasing the delta smelt population and further cutbacks will only serve to harm agriculture and other water users.

San Joaquin Valley farmers cannot afford any more cutbacks in the water deliveries. The region cannot sustain more fallowed crops and further unemployment for the workers that will result. More cutbacks will also add to unemployment that already has reached Depression-era levels in agricultural towns up and down the Valley.

In the bigger picture, fewer crops coming out of the San Joaquin Valley will increase the need for imported fruits, vegetables, and nuts from other countries. Increased dependence upon

imported produce leads to increased vulnerability to food safety problems such as toxins, exotic pests, diseases, not to mention terrorism. That is because other countries produce food ingredients that are being grown and processed under conditions that would violate our public safety standards in the U.S.

Water use is a critical issue throughout California and the other western states. All of our members in farming are vulnerable to arbitrary or capricious actions by federal regulators. It is inherent in the basic nature of our alliance that we work together to ensure that fairness and scientific integrity are observed in regulatory decisions that could wind up affecting us all.