

Issue Alert

Alliance Sets Up Legal Fund

The Family Farm Alliance Board of Directors on June 9, 2009 took extraordinary action by directing staff to seek a judicial order requiring the federal government to use the best available scientific data in documents intended to protect the Delta Smelt under the Endangered Species Act (ESA), and is seeking contributions for a special fund established to support that effort. The organization is asking for contributions to fund legal action that will be filed later this week.

“This effort is on top of ongoing Alliance activities, for which funding is already tight,” said Alliance Executive Director Dan Keppen (OREGON).

The U.S. Fish and Wildlife Service’s Biological Opinion demands severe reductions in the operation of the State Water Project (SWP) and the Central Valley Project (CVP) in order to protect an endangered species of minnow called the Delta Smelt. The restrictions are having a devastating effect on water supplies for two thirds of the state’s residents and more than two million acres of irrigated croplands.

The Alliance in December 2008 filed a request under the Information Quality Act (IQA) that was intended to ensure that the new requirements proposed by the U.S. Fish and Wildlife Service (USFWS) were based solely on the best available scientific data. The Alliance believes the USFWS failed to comply with the requirements of the IQA when it developed the Delta Smelt Biological Opinion. The Alliance and USFWS have traded letters for the past six months, and the attorney representing the Alliance in this matter noted that administrative measures are not going

to help San Joaquin Valley communities.

“We have been forced to seek a judicial order requiring the USFWS to use the best available scientific data under ESA, withdraw the 2008 smelt opinion from the public domain, and make corrections under the IQA,” said Brenda Davis, the attorney from Sacramento who is representing the Alliance. The action is an important one, not just for San Joaquin growers, but for farmers and ranchers throughout the West whose water supply certainty can be put at risk by agency opinions that ignore sound science to focus solely on control of irrigation diversions and dams. The Alliance hopes to judicially confirm that agencies must comply with the IQA when developing technical information that will affect water users.

“There are many, many stressors impacting Delta smelt, but the federal agencies appear to be focused only on one: the water project pumps,” said Keppen. “We question the viability of their science and want to see their files associated with the science.”

“If we are successful in this endeavor, the IQA - as backed by the court - would give agriculture a new way of dealing with agency science decisions,” said Alliance Board member Chris Hurd, who farms in the San Joaquin Valley.

“USFWS has already concluded that it does not need to act. This shows they don’t believe we are serious.”

“This is the first time the Family Farm Alliance has engaged in litigation, and it’s not a step we take lightly. We don’t expect to become a litigant on a regular basis, but our board unanimously felt other avenues used to advance our Information Quality Act request had run into dead ends,” said Alliance President Patrick O’Toole (WYOMING). “Litigation provides our only opportunity to advance our argument against the U.S. Fish and Wildlife Service and turn around the faulty science that has shut down our members’ operations in California.”

As a result of the 2008 Biological Opinion for Delta Smelt prepared by the USFWS, members of the Alliance are facing potential damage to crops in the range of \$23 million to \$1 billion.

The Alliance has announced that it will create a legal fund exclusively to support this effort and is asking its membership to contribute. **If you would like to participate in this important endeavor, please contact Dan Keppen at 541-892-6244 or by email: dankeppen@charter.net. Contributions can also be mailed directly to: Family Farm Alliance Legal Fund, 22895 S. Dickenson Avenue, Riverdale, CA 93656.**