

Death by One Thousand Cuts...(or just a few biological opinions)

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Federal regulators earlier this month imposed an additional, new regime of restrictions, cutbacks and prohibitions on California's water supplies without performing any environmental analysis of its potentially devastating effects. The National Marine Fisheries Service (NMFS) on June 4 released its new biological opinion intended to protect salmon and several other species, and the additional water that it moves away from California farmers represents the latest in a series of agency-driven regulatory cuts that are bringing Central Valley farming communities to their knees.

Governor Arnold Schwarzenegger captured the issue well in his public statement.

“This federal biological opinion puts fish above the needs of millions of Californians and the health and security of the world's eighth largest economy,” the governor said. “The piling on of one federal court decision after another in a species-by-species approach is killing our economy and undermining the integrity of the Endangered Species Act.”

The court decisions – driven by litigation launched by well-funded environmental organizations – have steadily depleted the primary water source that supplies some of the planet's most productive farmland.

The original water supply available to Central Valley Project (CVP) farmers south of the Bay-Delta was 1.8 million acre-feet (AF). Water lost to regulations generated by the Central Valley Project Improvement Act, Clean Water Act and Endangered Species Act (ESA) starting in the early 1990's totaled 630,000 AF. The 2008 Delta Smelt biological opinion issued by the U.S. Fish and Wildlife Service (USFWS) took another 337,500 AF away. The latest NMFS salmon opinion moves 195,570 AF away from farmers towards fish.

What's left for farmers on the West side of the San Joaquin Valley? Less than 640,000 AF, or 35% of their original water supply.

What's scary about the recent smelt and salmon decisions is the cavalier attitude shown by the federal fisheries agencies, where biological opinions were issued without bothering to prepare environmental documents showing what the impacts to others who share the environment – including humans – might be.

A federal judge provided room for optimism last month when he ruled that the federal government must consider the impacts of its ESA decisions on the human environment – not just fish - when allocating water for the environment. U.S. District Judge Wanger said USFWS officials must focus not just on protecting the endangered delta smelt when discussing these issues. They also must take into account "the harm being visited upon humans, the community

and the environment." He also said federal officials must explain and justify how they reached their water-allocation decisions.

The fact that requiring USFWS to consider how its action will hurt people, and requiring USFWS to justify why that harm is necessary to avoid jeopardy to fish will be a major change in how USFWS does things shows how distorted the administration of the ESA has become. That is the big picture importance of the ruling, which could have an important bearing on the recent salmon opinion issued by NMFS, which suffers from the same defect.

The good news is that because of existing water conditions, the most damaging aspects of the salmon opinion are not likely to take effect until much later in the year. That means there will be time for water users to ask the federal court to suspend the salmon biological opinion and compel the federal fisheries agencies to comply with the law that requires the preparation of a proper environmental impact statement.

The environmental laws apply to everyone. They require the federal government to prepare an environmental impact statement before taking any action that would significantly impact the environment. In each biological opinion, federal fisheries agencies proposed a massive transfer of water supplies, huge construction projects, and all sorts of other actions that will profoundly impact natural resources, people and other species. Those agencies have to play by the rules, too, and that's why they are facing litigation to force them to comply with the law and go back to the drawing board to do the work they should have done in the first place.

Communities in the San Joaquin Valley are already experiencing 40 percent unemployment rates. If allowed to stand, cuts caused by these biological opinions would contribute to the death of large parts of California's rural economy.