

Center for Biological Diversity Ramps Up Efforts in California: Ag Water Users Targeted

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The Center for Biological Diversity (CBD), a crafty group of environmental activists well-known to many in the West, prides itself as a group of “legal eagles” standing up for defenseless critters. CBD has long been known for its consistent efforts to thwart the efforts of developers, farmers, ranchers and government agencies through petitions to list more species to the federal Endangered Species Act (ESA), create new ESA critical habitat for other plants and animals, and engage in a seemingly endless string of litigation aimed primarily at the agencies who regulate resource producers.

To potential donors and a sympathetic mainstream media, CBD’s characterizations of an earth teetering on the brink of ecological collapse and the organization’s aggressive courtroom actions are well-received. However, often times, there are hard-working family farmers and ranchers on the receiving end of these actions. CBD’s recent tactics hold the potential for impacting millions of Californians (not just farmers) who will likely not be so sympathetic when their lives are impacted by water rationing and higher utility bills associated with court-ordered actions to protect fish.

CBD has certainly elevated its presence in the California water arena in the past twelve months. The organization started off the new year by filing a notice of intent to sue the Environmental Protection Agency for violations of the ESA, in order to purportedly protect 11 San Francisco Bay Area endangered and threatened species and their habitats that are jeopardized by pesticides. CBD and other conservation groups a few months later submitted a 57-page petition to the California Fish and Game Commission (Commission) requesting emergency listing of the delta smelt as an endangered species under the California Endangered Species Act (CESA). The species is currently listed as threatened under the state law; in March 2006 the organizations previously petitioned to change the fish’s federal listing from threatened to endangered.

CBD and others six months later prepared an emergency petition to protect another Delta fish – the longfin smelt - under CESA. Commission officials declined the request, saying it failed to prove an urgent threat. Commissioners agreed the longfin smelt is at risk but said the petition didn't prove extinction is likely and therefore failed to meet the legal standard for emergency protection.

CBD was also in the newspapers in the months leading up to the order issued in the fall of 2007 by a federal judge regarding the Delta smelt. Last summer, Judge Oliver Wanger ruled that the biological opinion (BO) for the delta smelt that was issued to allow State Water Project (SWP) and Central Valley Project (CVP) water operations was legally insufficient. Wanger later in the year issued a decision which has the potential to radically alter how much water is needed to do

provide an interim remedy. The decision has potentially grave implications for Central Valley irrigators and millions of southern Californians who rely on Bay-Delta water supplies.

Although Judge Wanger declined to adopt the draconian measures advocated by CBD and others in the environmental community, he imposed significant water requirements for the smelt that will reduce supplies to the CVP and SWP in all year types. This could have a devastating impact from Redding all the way to San Diego.

Not satisfied, CBD announced in early September that the federal government would settle a lawsuit brought by CBD against the National Marine Fisheries Service and would propose critical habitat for the green sturgeon, protected by the ESA (via petition submitted by CBD years before). CBD's settlement requires that the government propose critical habitat for the green sturgeon in early 2008, with final designation following within a year. The Sacramento River basin contains the only known spawning population that remains of the ESA-protected southern population of green sturgeon, and CBD claims that habitat has been largely eliminated due to "water projects" and "pollution". This will likely put further constraints on water users who rely on the Bay-Delta for water supplies.

CBD calls itself "North America's Premier Endangered Species Advocate". Through aggressive litigation, petitioning and advocacy – and with a compliant media standing ready to help deliver their message - the organization claims to have obtained federal ESA protection for 349 species and have locked up over 43 million acres of "critical habitat" from Texas to Alaska. In California alone, CBD's actions have affected management of over half the state's total land mass.

CBD's self-proclaimed efforts to protect imperiled species likely resonate well with Western urban dwellers and the newspapers that serve them. How could any hybrid-driving soccer mom, looking for new and creative ways to recycle things around her suburban home, not be impressed with an organization that claims to be protecting noble creatures like grizzly bears, sea otters and beluga whales from the rapacious activities of developers, agribusinesses and industrial corporations?

However, CBD's list of targeted species appears to contain far more insects, plants, reptiles and bottom-dwelling fish than charismatic mammals like polar bears and mountain sheep. It is more probable that critters like lampreys and smelt are selected as priorities for CBD because these same critters happen to live in environments directly impacted by resources producers. Some believe that the approach used by CBD is intended not so much to help the critters but to find ways to hurt the irrigators that rely upon the same water bodies to support their existence

In future columns, we will further investigate CBD's impressive track record with the media, the sometimes ruthless tactics it employs to get results, and the surprising sources from which it receives contributions.

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