



Volume 9, Issue 10 - October 8, 2019

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Director's Corner

9th Circuit Sides with Friends of the River in Endangered Species Lawsuit

By Eric Wesselman, Executive Director

Daguerre Point and Englebright Dams have sped the decline of threatened salmon, steelhead, and green sturgeon in the Yuba River for close to a century. These species are now threatened with extinction. A few years ago, Friends of the River filed litigation to hold the U.S. Army Corps of Engineers (Corps) responsible for these harms. Last week, the Ninth Circuit Court of Appeals ruled that the Corps has to explain themselves.



For more than a decade the National Marine Fisheries Service (NMFS) held the Corps accountable under the Endangered Species Act (ESA) for the harms their dams caused threatened fish in the Yuba River. In 2014 NMFS suddenly let them off the hook by issuing an opinion that the Corps was not responsible under the ESA for these harms. Last Thursday the court found NMFS' decision was unexplained and unlawful and directed the lower court to order NMFS to reassess the 2014 opinions. That was welcome news!

The court also agreed with Friends of the River that district court failed to rule on our claim that the Corps is liable under the ESA for the harm their dams cause to listed species on the Yuba. Friends of the River presented evidence that numerous adult and juvenile fish, protected under the ESA, have been killed or harmed by these facilities but the lower court did not address this claim in its decision. Accordingly, the Ninth Circuit sent that back to the

lower court for a decision.

We believe the evidence is overwhelming that the powerplants and the diversion are harming these protected fish. Corps licenses and easements enable operations if these facilities and the Corps did not consult with NMFS to determine how to minimize this harm. We hope that when Judge Mendez considers this evidence he agrees that under the law the Corps is liable for this harm.

The Ninth Circuit decision is *Friends of the River v. National Marine Fisheries Service, et al.*, No. 18-15623, (9th Cir. Oct. 3, 2019). The appellate court panel was Carlos Bea, Michelle Friedland, and J. Clifford Wallace.

We are encouraged by this ruling. It's a good step in the right direction and our work continues.

News and Updates



Last day to purchase tickets or RSVP!

Join us for the 22nd Annual [California River Awards](#)

We're honoring artist and naturalist Obi Kaufmann, author of *The State of Water: Understanding California's Most Precious Resource*.

When: October 12, 2019 6:00pm

Where: Marines Memorial Club & Hotel, San Francisco

Tickets sales close at 5 pm, Tuesday, October 8.

[Sponsor the Event](#)

[Purchase Tickets](#)

Stanislaus 50-year Reunion

Calling all Stanislaus veterans! Join us this October for the 50th Anniversary since the beginning of the grassroots campaign to save the Stanislaus (1969).

We will also celebrate the 40th Anniversary of Mark's direct action in the canyon (1979) and it is 15 years since our first reunion (2004). As with past reunions, this one will be held at Camp Lotus. We are inviting Stan veterans and their families to join us Oct. 25-27 (Friday to Sunday) to renew friendships, hear talks and see videos on Stan history, and possibly a boating trip or two.



For more details, please contact Paul at pathfinder@cal.net

Congress considering adding 650 miles of California Rivers to Wild and Scenic Rivers Act

On October 2nd, 1968 the United States Congress chose to protect certain rivers that have "outstandingly remarkable, scenic, recreational, geologic, fish and wildlife, historic,

cultural, and other similar values" (Wild and Scenic Rivers Act, 1968). This ensured that the original eight rivers would remain in a free-flowing state, that they would be preserved for the enjoyment of current and future generations. Furthermore Congress declared "the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free flowing condition" (Wild and Scenic Rivers Act, 1968).

Though the law initially only protected eight rivers, it set the stage for more rivers to join. Those eight have now grown to an amazing 226 rivers have been designated Wild and Scenic! In total, 13,413 miles of this nation's rivers are protected! Of those, 1,999 miles of California rivers are designated.

More work remains though! There are three bills before Congress currently that would add an additional 650 miles to the designated rivers within California:

- Central Coast Heritage Protection Act
- Northwest California Wilderness, Recreation
- Working Forests Act, and the San Gabriel Mountains Foothills and Rivers Protection Act

All need your support! Let's help ensure the protection of more rivers in California!

Contact your representative today!

Get Involved!

Join our River Advocacy Training School (RATS) next January

Want to take action to protect our rivers? Have you always been curious about the complex world of California water? Join us for the 7th cohort of the RATS program! The program runs mid-January through mid-May and provides a free 4-day training. RATS volunteer 4-6 hrs/week on their own schedule to help FOR deepen their impact on a current campaign. RATS become our advocacy muscle and extend the reach of FOR.



[Applications come out in early November.](#)

[Learn more on our website.](#)

CANOEING

Canoe Adventures—Salmon Paddles Nov. 2 and Nov. 16

Our popular Salmon Paddles are back! Join us for a one-day canoe trip on the Lower American River with a salmon expert. Learn more about the life cycle of salmon and the success and challenges they face on our urban Wild and Scenic River.



No experience needed. Equipment provided.

River Currents

By Ron Stork, *Policy Director*

[View Full River Currents Article!](#)

Shasta Dam raise lawsuits against Westlands update

After losing appeals to a state appeals court and the California Supreme Court, the Westlands Water District announced last week that it had terminated its Shasta Dam raise project environmental impact report (EIR). In July, California Attorney General Xavier Becerra had won a preliminary injunction against the EIR, claiming it was illegally impermissible assistance and cooperation in the planning of the reservoir expansion. Provisions of the California Wild and Scenic Rivers Act were the basis of this claim...



Reclamation and the Shasta Dam raise

The Shasta Dam is a project operated by the U.S. Bureau of Reclamation (Reclamation) for the benefit of its Central Valley Project customer. Reclamation, along with the Department of the Interior, is also the implementor for the proposed Shasta Dam raise.

It is thus of interest what Reclamation recently told the Redding Record Searchlight:

The bureau said it also hoped to issue its first construction contracts for the project in December of this year...

Yuba Water Agency being naughty

Seeking to capitalize on the fallout from the D.C. Court of Appeals Hoopa Valley Tribe v. FERC decision, the Yuba Water Agency has asked the Federal Energy Regulatory Commission (FERC) to dismiss (waive) the state of California's right to establish conditions meant to protect water quality on the upcoming new license for New Bullards Bar Dam on the Yuba River.

Seemingly an arcane piece of bureaucratic procedural minutia, the certification authority of the states and some Indian tribes to protect clean water is the key to giving these entities a seat at the table in how some major dams are operated in the states. And you're going to find this one straight out of Alice in Wonderland...

Hoopa case to the U.S. Supremes

No we are not talking about the Supremes, Motown Records' premier act from the 60s and 70s. We talking about the nine black-robed justices in Washington, D.C.

At the urging of many states, California Trout and Trout Unlimited, the only parties that could, asked the U.S. Supreme Court to review the case. You can take a peek at some of the filings if you are so inclined...

And back in the California courts

Sometimes things get off track completely unexpectedly. Here's an example, and pardon the legalese:

Friends of the River (FOR) and the California Sportfishing Protection Alliance (CSPA) are

parties in the Oroville Dam relicensing proceeding (since 2005 in part about that little matter of a dangerous spillway). Butte County, also a party, challenged the Department of Water Resources' EIR supporting the SWRCB's water quality certification of the pending new license. When on appeal to the Third Appellate District, the appeals court brought up without prompting the notion that water quality certification EIRs were not appealable to state courts because these certifications were pre-empted by the Federal Power Act...

Fleecing California Taxpayers

The end of session in the California legislature is always a crazy time and there was no exception this year. The legislature, however, in at least a temporary spell of good sense, put off passing Senator Hurtado's S.B. 559, a measure to hand \$400 million in state taxpayer dollars to the federal water contractors of the Friant Water Authority (Friant) to pay to reconstruct the federal Friant-Kern Canal, which Friant is responsible for maintaining and had been damaged by overpumping from Friant's water contractors and other nearby water users.

To the say the least, S.B. 559 was no respecter of proper boundaries.

Of course S.B. 559 could be taken up again next year. But that is not all, there's talk of another California Water Bond...

And more drama between the legislature and the Governor

Some of you will remember AB 2975 (Friedman), which gave the California Natural Resources Secretary the power to administratively add (during a two-term Trump Administration) national wild & scenic rivers in California into the state wild & scenic rivers system that had been de-designated by the Congress or the President. It was signed by Governor Jerry Brown without fanfare or major controversy.

Enter SB 1, a much broader measure to accomplish similar state goals as federal protections are extinguished by a wide range of actions in Washington D.C. To the legislature's credit, S.B. 1 cleared both houses of the legislature. Alas, it then drew a veto from the new Governor of California...

Click here to read the October [*River Currents*](#) article by Ron Stork

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Thank you for supporting rivers by staying informed.
We can't wait to see you at our next event!

Sincerely,
the FOR Staff: Eric, Ron, Brittney, Bob, Toby, Kellie and Colton

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