
United States District Court, Eastern District of California, "*Pacific Coast Federation of Fishermen's Associations, et al. v. Gutierrez, et al.*, No. 06-CV-00245-OWW-GSA (E.D. Cal. 2008)" ("2008 Wanger decision")

1 MICHAEL R. SHERWOOD, State Bar No. 63702
TRENT W. ORR, State Bar No. 077656
2 GEORGE M. TORGUN, State Bar No. 222085
Earthjustice
3 426 17th Street, 5th Floor
Oakland, CA 94612
4 msherwood@earthjustice.org; torr@earthjustice.org;
gtorgun@earthjustice.org
5 Telephone: (510) 550-6725

6 Attorneys for Plaintiffs

7 KATHERINE POOLE, State Bar No. 195010
MICHAEL E. WALL, State Bar No. 170238
8 Natural Resources Defense Council
111 Sutter St., 20th Floor
9 San Francisco, CA 94104
kpoole@nrdc.org; mwall@nrdc.org
10 Telephone: (415) 875-6100

11 FRED H. ALTSHULER, State Bar No. 43878
JAMIE L. CROOK, State Bar No. 245757
12 Altshuler Berzon LLP
177 Post Street, Suite 300
13 San Francisco, CA 94108
faltshuler@altber.com; jcrook@altber.com
14 Telephone: (415) 421-7151

15 Attorneys for Plaintiff NRDC

16
17 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

18 PACIFIC COAST FEDERATION OF)
19 FISHERMEN'S ASSOCIATIONS/INSTITUTE)
FOR FISHERIES RESOURCES, *et al.*,)

20 Plaintiffs,)

21 v.)

22 CARLOS M. GUTIERREZ, in his official)
23 capacity as Secretary of Commerce *et al.*,)

24 Defendants.)

25 SAN LUIS & DELTA-MENDOTA WATER)
26 AUTHORITY, *et al.*,)

27 Defendant-Intervenors.)
28

Case No. 1:06-CV-0245 OWW GSA

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT AND
GRANTING IN PART AND DENYING IN
PART FEDERAL DEFENDANTS' CROSS-
MOTION FOR SUMMARY JUDGMENT

1 The Court has read and considered the memoranda of points and authorities and other
2 documents in support of and in opposition to Plaintiffs' motion for summary judgment and Federal
3 Defendants' cross-motion for summary judgment, and has heard and considered the arguments of
4 counsel at the hearing on these matters held on October 3, 2007. NOW THEREFORE, good cause
5 appearing, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs' motion for summary
6 judgment, as follows.

7 1. As to the lawfulness of the National Marine Fisheries Service's ("NMFS") 2004
8 Biological Opinion on the impacts of the long-term operations of the Central Valley Project and
9 State Water Project on Sacramento River winter-run Chinook, Central Valley spring-run Chinook,
10 Central Valley steelhead ("CV steelhead"), Southern Oregon/Northern California Coast coho, and
11 Central California Coast steelhead ("Biological Opinion") under the Administrative Procedure Act
12 ("APA") and the Endangered Species Act ("ESA"), Plaintiffs' motion for summary judgment is:

13 (a) GRANTED as to NMFS's record findings and analyses, which fail to explain
14 contradictory evidence as to the survival and recovery of winter-run Chinook, spring-run Chinook,
15 and CV steelhead ("the three species"). Federal Defendants' cross-motion for summary judgment on
16 this issue is DENIED.

17 (b) GRANTED as to the failure to analyze adverse effects on and modification to
18 the critical habitat of the three species. Federal Defendants' cross-motion for summary judgment on
19 this issue is DENIED.

20 (c) GRANTED as to whether NMFS failed to conduct an ESA analysis on the
21 three species' life cycles and population dynamics. NMFS is ordered to complete the required ESA
22 analysis on the three species' life cycles and population dynamics in its forthcoming biological
23 opinion. Federal Defendants' cross-motion for summary judgment on this issue is DENIED.

24 (d) GRANTED as to whether NMFS's focus on incremental Project impacts was
25 arbitrary and capricious. NMFS is ordered to complete the required ESA analysis on incremental
26 Project impacts in relation to baseline conditions in its forthcoming biological opinion. Federal
27 Defendants' cross-motion for summary judgment on this issue is DENIED.

1 (e) DENIED as to the failure to address “Entire Agency Action.” Federal
2 Defendants’ cross-motion for summary judgment on this issue is GRANTED.

3 (f) GRANTED as to the issue of global climate change and effects of the
4 hydrology of northern California rivers. Federal Defendants’ cross-motion for summary judgment
5 on this issue is DENIED.

6 (g) DENIED on the issue of the sufficiency of the Biological Opinion’s adaptive
7 management plan and mitigation measures. Federal Defendants’ cross-motion for summary
8 judgment on this issue is GRANTED.

9 2. Plaintiffs’ motion for summary judgment against the Bureau of Reclamation
10 (“Bureau”) under ESA § 7(a)(2) is:

11 (a) DENIED as to the issue of the Bureau’s political bad faith. Federal
12 Defendants’ cross-motion for summary judgment on this issue is GRANTED.

13 (b) DENIED as to the issue of mitigation standards. Federal Defendants’ cross-
14 motion for summary judgment on this issue is GRANTED.

15 (c) GRANTED as to unexplained internal contradictions about jeopardy and
16 recovery of the species. Federal Defendants’ cross-motion for summary judgment on this issue is
17 DENIED.

18 (d) GRANTED as to the issue of the Bureau’s reliance upon a biological opinion
19 that failed to consider all relevant factors, including recovery and critical habitat impacts. Federal
20 Defendants’ cross-motion for summary judgment on this issue is DENIED.

21 (e) DENIED on the issue of global climate change. Federal Defendants’ cross-
22 motion on this issue is GRANTED, upon the condition that the Bureau complete a legally sufficient
23 biological assessment that considers global climate change.

24 (f) DENIED as to the issue of the Temperature Control Point location. Federal
25 Defendants’ cross-motion for summary judgment on this issue is GRANTED.

26 (g) DENIED as to alleged failure to consider 100% of water deliveries. Federal
27 Defendants’ cross-motion for summary judgment on this issue is GRANTED.

1 (h) DENIED as to the issue of the Bureau's continued reliance on the Biological
2 Opinion in the face of post-issuance information. Federal Defendants' cross-motion for summary
3 judgment on this issue is GRANTED.

4 3. As to the Bureau's obligations under ESA § 7(d), Plaintiffs' Motion is DENIED. The
5 Federal Defendants' cross-motion for summary judgment on this issue is GRANTED, upon the
6 condition that Federal Defendants continue to take no actions during reconsultation that make any
7 irreversible or irretrievable commitment of resources which forecloses the formulation or
8 implementation of any reasonable and prudent alternative measures.

9 The parties shall comply with the schedule for the June 6, 2008, hearing on interim remedies
10 and on whether the Biological Opinion should be remanded without vacatur.

11
12 **SO ORDERED.**

13
14 DATED: June 10, 2008

/s/ OLIVER W. WANGER
Oliver W. Wanger
United States District Judge