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Special to The Union

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Fisheries service reverses position on Englebright dam



Water spilling over the dam at Englebright dam in April 2011.



Photo for The Union by John Hart Water spilling over the dam at Englebright dam last April 2011.

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The controversy surrounding Englebright Dam and its effects on endangered fish took another turn this week, and environmental groups are outraged over the result.

The National Marine Fisheries Service released documents regarding Englebright and Daguerre Point dams on Monday. The documents represent a stark change of position on the effects of the facilities on Chinook salmon and steelhead outlined in a 2012 biological opinion that was challenged in court.

The 2012 biological opinion identified dam removal and other fish passage improvements as the preferred approach to improving conditions for endangered fish.

The Yuba County Water Agency, along with Pacific Gas and Electric Co., the Nevada Irrigation District, state water project contractors and several Yuba County irrigation districts, legally challenged the biological opinion, arguing fish passage improvements or dam removal would negatively impact water deliveries and hydropower generation.

U.S. District Court Judge Morrison C. England instructed the fisheries service to issue a new biological opinion by May 12, 2014, and to not cite the 2012 opinion while preparing the new opinion.

The new biological opinion on Daguerre Point Dam and a concurrence letter concerning Englebright Dam delete many of the mitigation measures required in previous opinions, according to conservation groups.

The concurrence letter agrees with a new legal theory from the U.S. Army Corps of Engineers, contending that existing dams are not subject to the Endangered Species Act, and the Corps has no authority to take actions that would benefit endangered species.

Mandatory measures contained in previous Yuba River biological opinions, such as requiring the Corps to place spawning gravel and woody material in the river to provide safe havens for juvenile fish, are now voluntary, according to a South Yuba River Citizens League press release.

The Corps is no longer required to improve fish passage at the dams, to reduce predatory fish at Daguerre, and to impose conditions on Yuba County Water Agency to improve its fish screen at the Brophy Diversion, according to the release.

The Corps' new legal position that Englebright Dam is not subject to the Endangered Species Act leaves the organization open to lawsuits, and conservation groups are considering their legal options, said Patricia Weisselberg, attorney for SYRCL and Friends of the River.

Englebright Dam is a complete barrier to the historic Chinook salmon, steelhead and green sturgeon spawning grounds in the upper Yuba watershed.

An NFMS spokesperson did not return a phone call for this story.

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