



## **Timeline of Key Events to Protect Yuba River Salmon**

- 1906 Daguerre Point Dam (“Daguerre”) constructed.
- 1941 Englebright Dam (“Englebright”) constructed.
- 1965 Current fish ladders at Daguerre constructed.
- 1986 Ownership of Daguerre and Englebright transferred to the US Army Corps of Engineers (“Corps”).
- 1998 NMFS lists Central Valley steelhead as threatened under the Endangered Species Act (“ESA”).
- 1999 NMFS lists spring-run Chinook salmon as threatened under the ESA.
- 1999 The South Yuba River Citizens League (SYRCL) files suit to require the Corps to initiate ESA consultation with the National Marine Fisheries Service (“NMFS”) concerning the impacts of Daguerre, Englebright, and various water diversions authorized by the Corps (“the Project”) on spring Chinook salmon and steelhead.
- 2000 The Corps initiates consultation with NMFS concerning the impacts of the Project on spring Chinook and steelhead.
- 2002 NMFS issues the first Biological Opinion, which lasts for a period of five years. NMFS finds the Project will not cause “jeopardy” to the listed species or adversely modify their designated critical habitat. NMFS specifies four measures the Corps must implement to comply with the ESA.
- Among other things, NMFS found that implementation of a gravel injection program to restore spawning gravel below Englebright was required for the Corps to comply with the ESA. The Corps failed to comply with this condition.
- NMFS also noted that the Corps was pursuing funding for implementation of a Fish Passage Improvement Project at Daguerre. No such project has been implemented to date.
- 2006 NMFS lists green sturgeon as threatened under the ESA.
- 2006 SYRCL and Friends of the River sue NMFS and the Corps. The complaint alleges that the Biological Opinion fails to rationally analyze the impacts of the Project and seeks

an order requiring a new Biological Opinion.

2007 NMFS issues a new one-year interim Biological Opinion. NMFS requires the Corps to conduct a pilot gravel injection program to restore spawning gravel below Englebright within one year. In November 2007, the Corps injected 500 tons of gravel as a pilot project. (April)

2007 NMFS issues a new long-term Biological Opinion. NMFS finds the Project will not cause “jeopardy” or adverse modification of critical habitat. NMFS specifies five measures the Corps must implement to comply with the ESA. (November)

- One such measure was a requirement for the Corps to study the results of the pilot gravel injection program and use that information to “commence implementation” of a long-term gravel augmentation program below Englebright within three years, or by November 21, 2010.

On September 30, 2010, the Corps issued a “Gravel/Cobble Augmentation implementation Plan,” which called for a pilot gravel injection and further study and design of a long-term plan thereafter. On the last day for implementation – November 21, 2010 – the Corps completed this injection of 5,000 tons of gravel below Englebright.

- The Biological Opinion also contained a requirement for the Corps to complete a feasibility study and the Planning, Engineering, and Design (“PED”) phases of a Fish Passage Improvement Project at Daguerre within five years, or by November 2012. To date, the Corps has not completed a feasibility study or the PED phases for such a project.
- In addition, the Biological Opinion specified that the Corps must study how to effectively place large wood into the lower Yuba River to replenish the supply of large wood being trapped behind upstream reservoirs, and to physically place large wood into the river pursuant to this study within four years, or by November 21, 2011.

On December 15, 2011, the Corps released the study, called the “Lower Yuba River Large Woody Material Management Plan.” The plan called for a pilot introduction of large wood in September 2012, two years to study the results, and implementation of large wood placement, “if necessary,” by September 2014. To date, the Corps has not placed any large wood into the lower Yuba River.

2010 The Biological Opinion is overturned. The District Court in Sacramento finds that NMFS acted arbitrarily and capriciously in the November 2007 BiOp’s no-jeopardy and no adverse modification conclusions, and in issuing the incidental take statement. Additionally, NMFS failed to explain how its conclusions were consistent with contrary evidence and failed to consider important issues like climate change,



impacts from a nearby hatchery, and adverse conditions in the Sacramento-San Joaquin Delta. The Court remands to NMFS for preparation of a new Biological Opinion. (July)

2011 The Court orders NMFS to complete the new Biological Opinion by November 2011. (April)

2011 The Court orders the Corps to implement five injunctive relief measures to protect the fish while the new Biological Opinion is being prepared. (July) These include:

- Requirements to install locking grates on the fish ladders at Daguerre to prevent poaching. The Corps implemented this measure in August 2011.
- Measures to promote flows through, and to clear debris from, the fish ladders at Daguerre. The Corps partially implemented this measure by improving its fish ladder clearing activities, but failed to clear the fish ladders within the timeframes required by the order.
- Requirements to prepare a study of ways to segregate spring Chinook from harmful species below Englebright. On September 20, 2011, the Corps partially implemented this measure by producing a plan to evaluate a way to implement a segregation weir, but rejected the plan as requiring up to two years to implement.

2011 The Court grants NMFS an extension for issuance of the new Biological Opinion, to February 29, 2012. (December)

2012 NMFS issues the new Biological Opinion on February 29, 2012. For the first time, NMFS finds the Project is causing “jeopardy” to the Listed Species and adversely modifying their critical habitat. NMFS specifies numerous actions the Corps must implement to avoid this jeopardy and adverse modification. These actions include:

- Implementing a “Yuba River Fish Passage Improvement Strategy and Plan”: This requires the Corps to convene working groups to study ways to feasibly implement fish passage past Englebright. By December 31, 2017, the Corps is required to submit a long-term fish passage plan to NMFS, and to implement the plan by January 31, 2020.
- Completion of the feasibility and PED phases of a Fish Passage Improvement Project by November 21, 2012. The Corps must implement the fish passage project by November 2017.

- Conducting annual gravel injections of 15,000 tons below Englebright until the deficit of 63,000 to 101,000 tons is eliminated. NMFS notes that annual injections of 15,000 tons are required to eliminate the deficit and to account for the gravel that slowly migrates downstream over time.
- Implementing a channel restoration program to restore properly-functioning channel morphology and depositional surfaces to the channel below Englebright that was impacted by dam-related shot-rock.
- Implementing a large wood placement program by submitting a plan to NMFS and then placing a minimum quantity of large wood into the river in 2012, 2013, 2014, and annually until modified by NMFS. In August 2012, the Corps submitted a plan to NMFS committing to a pilot study in the fall of 2012 and 2013. To date, the Corps has not placed any large wood into the river.
- Implementing a predator control plan at Daguerre by November 1, 2012, to reduce the death of juvenile spring Chinook and steelhead as they plunge over the face of Daguerre into the turbulent water below, where they are eaten by predator fish. To date, the Corps has not developed or implemented a predator reduction plan at Daguerre.

2012 The Corps states publicly that it will not comply with some of the measures required by the Biological Opinion. In particular, the Corps states that the requirement to study and implement fish passage at Englebright exceeds the Corps' authority over the dam. (March)

2012 The Corps and Yuba County Water Agency ("YCWA") hold a series of meetings with NMFS to discuss the Biological Opinion.

2012 The Corps completes injection of an additional 5,000 tons of gravel below Englebright in September 2012.

2012 NMFS sends the Corps a letter on November 27, 2012 extending by up to three years the deadlines for the Corps to implement a number of the actions required by the Biological Opinion. For example, the letter changes the requirement to complete the feasibility and PED phases of a Daguerre Point Dam Fish Passage Improvement Plan from November 21, 2012 to November 21, 2015. This is 13 years after the Corps originally committed to pursuing the project in 2002.

In addition, the letter made the new deadlines "subject to Congressional appropriations for Corps implementation." The Corps has often mentioned the inability to obtain appropriations from Congress as the reason for its failure to implement measures on the Yuba River, including the Daguerre fish passage project mentioned above.



- 2012 SYRCL sends NMFS a letter on December 10, 2012 objecting to the deadline extensions as inconsistent with NMFS's findings in the Biological Opinion that these actions needed to be implemented within specific deadlines to avoid jeopardy to the fish. SYRCL requested that NMFS reinstate the previous deadlines and convene a stakeholder meeting to discuss implementation.
- 2013 YCWA files suit against NMFS on January 9, 2013 to challenge the Biological Opinion.
- 2013 SYRCL files suit against NMFS on January 11, 2013 to challenge the indefinite extensions of the deadlines in the Biological Opinion.
- 2013 After expiration of 60-day waiting period, SYRCL and Friends of the River file suit against the Corps on January 28, 2013 for violating the ESA by failing to implement the measures in the Biological Opinion.

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