

River groups accuse Nevada Irrigation District of trying to circumvent federal law

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Local river protection groups and a state regulatory board are protesting what they characterize as an attempt by Nevada Irrigation District to circumvent the federal law.

At issue is the relicensing process for NID's Yuba Bear hydroelectric project — which includes French, Faucherie, Sawmill and Bowman lakes and Rollins Reservoir, as well as four powerhouses (Bowman, Dutch Flat, Chicago Park and Rollins).

The legal wrangling all stems from a recent federal court ruling having to do with the Klamath River, and the regulatory authority of California and Oregon over the water projects on that river. The D.C. Circuit Court of Appeal ruled in favor of the Hoopa Valley Indian Tribe, which reportedly had grown weary of the endless delays in decommissioning a series of dams on the Klamath.

The federal court ruled that a common practice of state water boards to allow water agencies to continually withdraw and re-submit their applications to get around a one-year time clock was not valid and meant they had lost their regulatory authority over the project.

Whether that legal decision in that specific case has anything to do with other water projects and water districts is up in the air — and that ambiguity is being challenged on a number of different fronts.

Arguably at the forefront of the battle is Nevada Irrigation District. The local water district is the first California water agency to ask whether that decision means that California no longer has regulatory jurisdiction in whether they meet federal safe water quality legal requirements.

Opponents to that move, including the State Water Resources Control Board, see a dangerous precedent and a deliberate effort to circumvent the federal Clean Water Act and the California Environmental Quality Act. The water district, however, says its request is simply an attempt to clarify the ruling.

"NID risks the health of the Yuba River watershed and jeopardizes years of stakeholder collaboration," said South Yuba River Citizens League Executive Director Melinda Booth. "Their course of action could ... undermine environmental protections for waterways nationwide."

NID CLAIMS RULING IS CLEAR

The decision made by the federal court was not limited to the parties in that particular case, NID Assistant General Manager Greg Jones said in an email.

"The opinion is rather clear that the state has waived its 401 Water Quality Certification authority when it fails to act on an application within a period of one year," Jones said. "In NID's case, the State Water Resource Control Board has not acted on NID's application in more than seven years. The opinion speaks for itself."

The Yuba Bear hydroelectric project was granted a license by the federal government in 1963, which expired in April 2013. The water district had been granted a series of extensions since the relicensing process began in 2007.

According to Jones, the water district is not trying to avoid the state process. Rather, it asked the federal agency to clarify whether it is still required to have an application pending with the state for its relicensing application to be in good standing. And, Jones said, the district's letter was triggered by the state water board denying its application in January, which in turn was due to the Hoopa Valley decision.

NID just happens to be one of the first licensees to receive a denial, Jones said, and thus is one of the first to look into how Hoopa Valley affects its pending license application.

"NID did not write its letter ... in order to set some kind of precedent," he said.

STAKEHOLDERS FIRE BACK

Foothills Water Network and SYRCL subsequently filed a protest letter to the federal agency, asking that NID's request not be approved in order to protect the Yuba and Bear watersheds.

According to the letter, which also was signed by 11 other groups including American Rivers and Sierra Club's Mother Lode chapter, the water district is premature in its request because the ruling is still in the appeals process. SYRCL has joined 15 states, numerous tribes and conservation groups in asking the D.C. Circuit court to review the Hoopa decision.

The letter also notes the water board has repeatedly asked Nevada Irrigation District for a completed environmental review, adding, "The ball is squarely in NID's court."

The state water board filed a similar letter, asking the Federal Energy Regulatory Commission to "deny simply ignore NID's unsolicited and unwarranted request."

"NID voluntarily and unilaterally withdrew its previously pending requests," the letter stated. Furthermore, it stated, "the delay ... has been due to NID's own failure to complete its required environmental analyses."

According to Jones, the water district has completed the federally required Environmental Impact Statement and is waiting for a federal consultation.

Since 2006, the water district has held over 250 meetings with interested parties to develop conditions for the new license, Jones said. Some disagreements remain, especially concerning the introduction of anadromous fishes (such as salmon and sturgeon) into the Middle Yuba River, and a new trail at the lower Bear River.

A National Environmental Policy Act Final Environmental Impact Statement was completed in December 2014. That still needs to be reviewed by the National Marine Fisheries Service, which is slated to receive a draft biological assessment in late 2019.

In the meantime, there is no specific timeline for the federal agency to respond to the local water district's request.

"Our hope is that they will wait until the U.S. District Court decides whether it will re-hear the Hoopa case," SYRCL's Booth said. "We expect that will be within two to three months."

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