

THE SESPE WILD

The Newsletter of the Keep the Sespe Wild Committee

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UNITED WATER'S POLITICAL INTERFERENCE WITH A FEDERAL COURT RULING ON THE SANTA CLARA RIVER

APRIL 2019

In our last newsletter, we described U.S. District Judge David A. Carter's ruling against the United Water Conservation District (United) in a lawsuit brought by the Wishtoyo Foundation in support of effective fish passage at the Freeman Diversion on the Santa Clara River near Saticoy. United spent millions of dollars fighting what was clearly required by the Endangered Species Act, and they still lost in federal court.

The Freeman Diversion was constructed to take surface water from the Santa Clara River and to pipe it to nearby spreading grounds where the water can percolate down into underground aquifers that have been depleted by over-pumping for agriculture, and some cities, on the Oxnard Plain.

United has for several decades now done everything they could to delay effective fish passage at the Freeman Diversion, where the long, low diversion dam that they operate prevents the endangered southern steelhead from passing upstream to access their ancestral spawning and rearing grounds in the upper reaches of Santa Paula, Sespe and Piru Creeks (and other smaller creeks and tributaries.)

The original and current fish ladder at the Freeman Diversion was never successful at allowing steelhead to migrate upstream, since its design did not take into account the massive quantities of sediment and debris that can move downstream in Southern California's rivers in winter storms. These materials can and do easily block the fish ladder at the Freeman Diversion.

Judge David A. Carter's September 2018 federal court decision found United to be in violation of the Endangered Species Act (ESA), because of their failure to provide adequate fish passage and fish flows for the southern steel-

head at their Freeman Diversion on the Santa Clara River.

Fish passage flows at the Freeman Diversion are important for two reasons - they must be strong enough to enable the upstream migrating steelhead to actually locate the fish ladder, and they must also maintain enough water in the river between the estuary and the Freeman Diversion for the fish to swim in. Obviously, fish cannot migrate upstream if the river flows are too low, or if they dry up in places.

The Court's decision came ten years after the National Marine Fisheries Service (NMFS) issued a jeopardy Biological Opinion for the operation of the Freeman Diversion, and nearly twenty years after the southern steelhead were listed as endangered under the U.S. Endangered Species Act (ESA).

The Court found "the record clearly demonstrates that in the last decade or more United has proven unable and unwilling to tackle the two key problems identified perpetuating harm to steelhead -

- (1) the inadequate fish ladder and the need for a new fish passage structure, and
- (2) the need for sufficient bypass flows to mimic the natural flow of the river and preserve the bulk of migration opportunities for steelhead.

Further, "United's operation of [the Freeman Diversion] is causing ongoing harm to steelhead, particularly in terms of fish passage and water diversions."

Rather than acknowledging the Court decision and focusing their efforts on implementing the Court's decision, United has instead launched a public relations and lobbying campaign to downplay the Wishtoyo Foundation's Court victory, and to hobble the role of NMFS'

Long Beach staff, who are responsible for implementing the ESA in southern California, and for reviewing and signing off on the fish passage and flow measures mandated by the Court at the Freeman Diversion.

United's website, upon which they rely to inform their customers and the general public about their activities, makes no mention of the Wishtoyo Foundation's court case, or of the judge's September 2018 decision. Instead, it contains a link featuring an article written by a lobbying group, which provides an inaccurate and highly-partisan account of the court case.

United's December 2018 newsletter features a photo of United's directors at the entrance to NMFS' Silver Spring, Maryland, head office, with a caption announcing that they "met with NOAA's Assistant Administrator Chris Oliver in September." (NOAA is the parent agency of NOAA Fisheries, which is also known as the National Marine Fisheries Service.)

That newsletter also quotes John Krist, the Executive Director of the Ventura County Farm Bureau, who attended the same meeting in Silver Spring, claiming "Two of the top NOAA Fisheries administrators looked us all in the eye and pledged to make resolving this situation a top priority for the agency."

United's lobbying team has also met in Washington D.C. with our local Representatives Julia Brownley and Salud Carbajal, and with staff for Senator Dianne Feinstein.



A steelhead trout removed by United from the dysfunctional fish ladder at the Freeman Diversion in April 2012.

NMFS' Long Beach staff, as evidenced by the history of the Biological Opinion for the Freeman Diversion and the development of a recovery plan for the southern steelhead, has consistently identified recovery of the Santa Clara

River southern steelhead as a high priority, since its listing as an endangered species in 1997.

United's lobbying efforts in Washington D.C. and in Maryland are in fact not intended to "resolve this situation as a top priority for the agency", as asserted by John Krist's summary of United's meeting with NOAA Fisheries officials in Silver Spring.

That resolution was articulated by the Court in its 2018 decision in the Wishtoyo Foundation vs. United case, which mandated that fish passage facilities be designed, and related operational flows be implemented, under a very tight time frame, to avoid further delay in implementing the ESA and recovering the endangered southern steelhead in the Santa Clara River.

United has spent two decades now, since the southern steelhead's listing as endangered, in postponing progress towards the Freeman Diversion's new fish passage, repeatedly changing tactics and direction, with one constant goal - to do nothing substantial or permanent towards implementing fish passage and river flows.

The Wishtoyo Foundation court case has apparently not changed United's basic goal, only refocusing its strategy by attempting to undercut the Court's ruling by politicizing NOAA Fisheries' important role in implementing the Court order. It is likely that United's board of directors sees a window of opportunity under the current administration in D.C. to push for an end to the environmental regulation of their Santa Clara River operations (which includes their operation of Santa Felicia Dam on Piru Creek as well as the Freeman Diversion near Saticoy.) Whether this approach will serve United in the long run remains to be seen.

It also remains to be seen what Judge David A. Carter's response will be to United's political maneuvering in order to escape their responsibilities under his September 2018 Court order.

This order, among other requirements, calls on United to provide the Court with detailed reports every four months on their progress (under a tight time frame) towards designing and constructing a new fish passage facility at their Freeman Diversion.

What progress can United show the judge, if they are clearly trying instead to eradicate their

responsibilities for functional fish passage under the court order?

Local environmental organizations, including Friends of the Santa Clara River, Los Padres ForestWatch, and KSWC, are unanimously opposed to United's political interference regarding the federal Court ruling, which mandates that adequate fish passage and flows be provided at the Freeman Diversion as soon as possible. Nationally, the Center for Biological Diversity is supporting these local organizations.

We are asking our elected officials in Washington D.C. to ensure that NMFS' staff in Long Beach are allowed to do their job on the Santa Clara River without political interference.

United has by now spent multiple millions of dollars on legal fees, fighting against doing what is clearly required by the Endangered Species Act. \$3 million alone was what United was earlier this year required by the Court to pay to the attorneys for the Wishtoyo Foundation and the co-plaintiffs.

Imagine if United had instead invested those millions on designing an effective fish ladder, something the judge has ordered them to do. United's board and general manager need to be held accountable for this gross waste of taxpayer dollars. The time for new leadership at United is clearly at hand.

Just as we go to the printer's, the latest news is that United on April 04 filed an appeal against Judge David A. Carter's September 2018 ruling against them.



A migrating southern steelhead netted by United at the Freeman Diversion facility.

PLEASE SEND US A DONATION!

Your donations are what keep us going at KSWC. Please continue supporting our volunteer efforts to protect and bring you news of what's happening in the Sespe watershed. Donations are not tax-deductible. Thanks to all our recent donors.

IN MEMORY OF THOSE WHO LOST THEIR LIVES IN THE SESPE IN THE 1969 FLOODS

This year marks the 50th. anniversary of the tragic loss of life that occurred on the very rainy night of Monday January 20, 1969.

A fast-rising Sespe Creek swept six boys from Canoga Park and their adult trip leader to their deaths. They were attempting to cross Sespe Creek on a bulldozer that stalled mid creek when a wave flooded the engine.

As the water continued to rise, in the middle of the night, the passengers were eventually all swept away. Also drowned in the same way were the 3 adults who comprised the ill-fated rescue party - Forest Ranger John Greenhill, U.S. Navy Seabee Robert Sears, and Sheriff's Deputy Chester Larson.

The sole survivor was fellow hiker Scott Eckersley of Ojai, who had joined the boys and adults seeking to get home safely that stormy night. Scott was also washed off the stalled bulldozer, but woke up some hours later wet and shivering at the edge of the creek. When dawn came, he sought and eventually found help. He lived to tell the sad story.

The party had been safe and warm inside a cabin at Cottrell Flat, about 14 miles east of the trailhead, near the Sespe Hotsprings, when the rescue party arrived with the bulldozer, after dark, with the plan to get the kids home to their parents that same night. They set off on foot, in the pouring rain, only riding on the bulldozer at creek crossings.

Tragically, the flood waters peaked soon after the bulldozer stalled in the middle of Sespe Creek, about 5 miles from safety, in the biggest rain event for many decades.

We wish to honor the memories of those who drowned that night fifty years ago along Sespe Creek.

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Sespe Creek near Potrero John Trail on Hwy. 33, April.

RECREATIONAL TARGET SHOOTING BANNED IN LOS PADRES FOREST

The U.S. Forest Service has banned shooting in Los Padres National Forest. This has been the case for a while now in the other three Southern California National Forests.

Shooters may still practice their skills at facilities set aside for target shooting, such as: the Ojai Valley Gun Club near Sespe Creek in Rose Valley, up Hwy. 33 from Ojai, and the Winchester Gun Club on Camino Cielo up above Santa Barbara. We look forward to less trash in areas formerly frequented by shooters. Hunters are not affected by this ban.

