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A Victory for Salmon

By Zeke Grader

IN AN INTERVIEW ON THE END of his 40 years in the Congress, Representative George Miller commented that there are no permanent victories in politics. Unlike sports, where the final score stands, no sooner than a bill is passed and signed by the President, opponents are organizing attempting to undo what has just been accomplished.

Constant vigilance is what Jefferson reminds us is necessary for Democracy. So, too, with every piece of legislative progress.

The battle had to do with proposed California drought relief legislation in the last Congressional session that would have undone protections for ESA-listed winter and spring-run Central Valley Chinook salmon. Because the bill affected the protections of fish migrating along nearly the entire Pacific Coast, the impact of the legislation was not simply on California.

Weakening protections for ESA-listed species could mean more draconian measures imposed on salmon fisheries, but not just in California and Oregon where most of salmon of the Sacramento and San Joaquin Rivers of the Central Valley watershed are taken. Recent shifts of Central Valley stocks northward, due apparently to climate change, mean that Washington and Southeast Alaska ocean salmon fisheries could be affected as well.

And salmon production itself would also be put at risk. Central Valley fall Chinook account currently for about 90 percent of California's annual salmon production and upwards of 50 percent of Oregon's ocean salmon catch. The protections initiated in a 2009 NMFS Biological Opinion (BiOp) for the listed winter and spring-run Chinook have also protected the fall-run, helping to maintain their abundance – both natural and hatchery production.

At the height of the recent drought, in February 2014, desperate measures were being taken to provide scarce water to cities and farms and still have some left in-stream for fish and wildlife. Fish protections were being waved as groups such as the Golden Gate Salmon Association (GGSA), a coalition of commercial (PCFFA was a founding member) and sport fishing organizations, salmon related businesses, conservation groups, and a Native American Tribe all pushed state and federal fishery agencies to truck or barge as much of the hatchery production as possible downstream and through the Bay-Delta estuary to ensure maximum survival at least of these fish. The agencies were not prepared to do the same for the progeny of natural-spawners.

But in the House that month, San Joaquin Valley Congressional members seized on the drought panic to pass a

measure (H.R. 3964) to override those salmon protections (and state water law) to increase deliveries to the state's most junior water rights holders, all on behalf of politically-powerful almond oligarchs of the Westside portion of that arid valley. It was thought that the bill would be dead in the Senate, but in May, 2014, the Senate passed S.2198, by Senator Dianne Feinstein, under a "hotline" procedure that allows a floor vote without any prior hearings.

Feinstein's 16-page bill was seen as a short-term tool for the year, while the House bill would go much further, reported E&E Daily, "undoing a San Joaquin River restoration program that has been the object of a court settlement and intricate compromises between state and federal officials for decades, as well as capping the delivery of water for environmental purposes, lengthening irrigation contracts and lifting certain environmental protections in area watersheds, among other controversial provisions."

Problematic, the Feinstein bill managed to keep the discussion alive on a water grab by San Joaquin Valley interests under the guise of drought relief. However, the upcoming November election and other "pressing issues" meant the issue was probably dead – unless action was taken in the "lame duck" session following the November



election.

Concern about such action in the lame duck session on the salmon-threatening legislation was raised at the PCFFA October Board meeting in San Francisco with NMFS Western Region Director, Will Stelle. Stelle, under a pledge of secrecy, could acknowledge that discussions were taking place between Senate and House members, water and fishery agencies and the water districts regarding "drought relief," but could say no more until a draft bill was released in the lame duck session. Stelle assured our Board that he would discuss the bill with them once it was released, but that was little comfort, knowing how Congress might act within days, if not hours, of such a release.

As Congress reconvened following the election, fishing and conservation groups got wind of, and some copies of, various drafts being circulated among Senator Feinstein and San Joaquin Valley House members. These negotiations were not just between the Senator, Valley House members and water and fish agencies. They included some powerful water districts (e.g., Westlands Water District, Metropolitan Water District of Southern California) and some private parties, such as Paramount Farms, owned by politically connected billionaires Stewart and Lynda Resnick. Conservation and fishing groups were barred from the talks, even though they also had interests at stake, as were key members of the Northern California House delegation.

PCFFA did have discussions with Senator Feinstein's staff at the time, but those were only to say ESA-salmon protections would not be waived and that PCFFA would see a copy of the draft when it was released. That was little comfort, since other protections for the fish (e.g., fish and wildlife protections under the Central Valley Project Improvement Act (CVPIA)) were left up in the air with little assurance there would be chances to weigh in before a vote.

Most of the intelligence gathering was being done by the three main conservation partners – Earthjustice,

Natural Resources Defense Council, and Defenders of Wildlife. Fishing groups on the coast sprang into action. GGSA and PCFFA sent out action alerts. It didn't take much explaining; groups such as the Oregon Salmon Council, Northwest Sportfishing Alliance, Alaska Trollers Association, Coastal Trollers and others knew immediately the implications and began contacting their Congressional representatives.

A letter was then sent by a majority of the Oregon Congressional delegation to Senator Feinstein, reminding her that this was not just a California issue but affected Oregon salmon fishing communities as well. In response to an inquiry by Congressman Jared Huffman, the Pacific Fishery Management Council (PFMC) also made clear the dangers the legislation posed, which include:

- Water transfers from the Sacramento Valley were to be expedited, circumventing public processes in federal environmental laws;
- Wildlife refuges would be pushed to turn to groundwater instead of relying on what the Central Valley Improvement Act requires in the way of surface water deliveries;
- Most benefits would be for desert agriculture in the southwestern San Joaquin Valley --not California as a whole – and especially not for the area of origin where most of the water comes from: the Sacramento River Watershed; and,
- There would be permanent, devastating impacts on migratory bird and fish populations in California, Oregon, Washington State and Alaska.

Word of these secret negotiations on the legislation began to get out, causing an uproar among Congressional members whose districts would be affected as well as many negative editorials. On the morning of November 19th, the Los Angeles Times released a scathing editorial at the same time Northern California Congressmen George Miller (whose 1992 landmark CVPIA legislation was about to be undone by the bill), Mike Thompson and

Jared Huffman met with California's other Senator, Barbara Boxer, asking her to intervene and stop Senate action.

Indeed, the urgency for a bill was coming into question. That morning the Sacramento Bee reported record revenue for the state's thirsty almond crop. Just the week before the Bee reported on a record state tomato crop.

On the afternoon of the 19th, Senator Feinstein's office issued a statement saying she was dropping her effort in the lame duck session at passing a drought bill.

Undeterred, San Joaquin Valley House members vowed to go ahead. A week and a half after House-Senate negotiations were formally called off, Congressman David Valadao introduced H.R. 5781, which his office said was "aimed at providing short-term relief from California's water crisis." According to the *San Francisco Chronicle's* Carolyn Lochhead, "the bill aimed to move more water from the Delta to farms and towns in the Central Valley. While not as far-reaching as legislation that the House passed earlier this year, it would still dictate higher flows of water south, require wildlife refuges to dig wells or buy water for wildlife and send the surface water to farmers, and truncate environmental reviews."

Doug Obegi, Senior Attorney with the water program at Natural Resources Defense Council (NRDC) said bill would allow "as much as a 50 percent increase in pumping at certain points in the year." That shift could imperil salmon and smelt – which get sucked into the pumps – and potentially, threaten other wildlife, Obegi said. It's more complicated than water for fish versus people, he said.

"All of the thousands of fishing jobs in California and Oregon depend on having healthy salmon," Obegi said. "When you protect healthy salmon, you protect those jobs." Limits on pumping also protect water quality, he said, which helps Delta-area farmers who grow crops nearby.

H.R. 5781 didn't go far. Senator Boxer, who had deferred to her California



colleague in the earlier negotiations with House members, said the latest House bill “would dictate specific pumping levels” of water from the Sacramento-San Joaquin River Delta that “could jeopardize our state’s salmon fishing industry.” With Boxer’s opposition, the bill died in the Senate.

Then, less than a month later came a second salmon victory, this time in a decision from the Ninth Circuit Court of Appeals. At issue was the salmon BiOp for the Central Valley and many of the fish protections that some in Congress were trying to undo only weeks before through drought legislation.

On December 22nd, a three-Judge panel of the Ninth Circuit ruled unanimously in favor of NMFS in appealing a lower court’s decision that would have invalidated several of the water pumping limits and other protections established under the Biological Opinion. Earthjustice and the Natural Resources Defense Council represented PCFFA and the other interveners in the appeal, brought on behalf of the government. The 9th Circuit ruling reinforces federal management plans for the Central Valley Project and State Water Project that protect the watershed’s imperiled fish and their critical habitat.

Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water District sought (but ultimately failed) to invalidate the 2009 salmon Biological

Opinion. Their efforts would have dramatically increased exports of water from the SF Bay Delta, eviscerating protections of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, southern distinct population segment of north American green sturgeon, and southern resident killer whales, all species protected under the federal Endangered Species Act.

“The 2009 salmon BiOp is the legal document that restricts pumping in the Delta in order to keep our salmon runs alive,” wrote GGSA’s John McManus, notifying fishing organizations. “It requires the closure of the Delta Cross Channel during the period of baby salmon outmigration, so they don’t get pulled to their death in the interior Delta. It requires that cold water be retained in Shasta Reservoir for release from May through September to help winter run spawn successfully.

“It has many other required salmon protections aimed at helping winter and spring runs that also provide benefit to fall and late fall salmon. The massive pumping of the Delta that occurred between 2000 and 2007 that led to the fishing closures of ‘08 and ‘09 was stopped by the ‘09 BiOp. Water interests south of the Delta have been fighting tooth and nail ever since to overturn it.

Today they failed again. In addition to fighting it in court, as you know, they’ve also mounted an effort to get

Congress to simply move the goal posts and change the laws so they don’t have to comply anymore.”

The pumping reductions were based on the BiOp drafted by NMFS in 2008, and issued in 2009, that in turn originated out of the earlier case, PCFFA v. Gutierrez. It said the water projects’ operations – through water pollution, temperature changes, shortages in Delta water supplies, and pumps that trap and kill migrating salmon – were “likely to jeopardize the continued existence” of the Chinook salmon, the steelhead, the green sturgeon, and, by reducing its natural prey, a rare species of orca whale.

“By extracting the water, people dramatically alter the rivers’ natural state and threaten the viability of the species that depend on them,” Judge Richard Tallman said in the 9th Circuit ruling. “People need water, but so do fish.”

While we could celebrate a victory for the fish and salmon fishing communities at the end of last year, we have to remain vigilant in this New Year with a new Congress. As Congressman Miller reminds us, nothing is ever permanent in politics. **FN**

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