A Dozen Water Agencies File Suit Against the U.S. Fish and Wildlife Service Over Critical Habitat Ruling

SAN BERNARDINO, Calif., August 23, 2011 – Twelve water agencies filed suit today against the U.S. Fish and Wildlife Service over a critical habitat ruling that could cost 1 million Southern Californians a third of their water supply. At issue is the Service’s December 2010 ruling to double the critical habitat area for the Santa Ana Sucker, an endangered fish that lives in the Santa Ana River in western Riverside, San Bernardino and Orange counties.

“Western and neighboring districts are working very hard to expand local water sources while at the same time joining forces with other agencies to help protect endangered species by nurturing existing habitats,” explained John Rossi, general manager of Western Municipal Water District in Riverside.

“The expanded critical habitat area for the Sucker is unnecessary and will assuredly lead to increased water costs for our customers,” said Patrick Milligan, president of San Bernardino Valley Municipal Water District, adding, “The decision was based on sloppy science and a flagrant disregard for the requirements of the Endangered Species Act and other federal laws.” The collaborating water agencies believe that the Service violated several tenets of the Endangered Species Act (ESA), which requires the federal agency to consult with and work cooperatively with state and local agencies; to base its decisions on the best available science; and to balance the needs of endangered species with the needs of humans who are likely to be affected by critical habitat rulings. But when it came to designating an expanded critical habitat area for the Sucker, the Service not only failed to consult with or work cooperatively with state and local agencies, but it based its decisions on unscientific survey data, unpublished reports that have not been peer reviewed as well as published reports that, ironically, contradict the Service’s arguments.

According to the water agencies’ complaint filed in U.S. District Court in Santa Ana, the Service ignored extensive written concerns submitted by public agencies, which warned that the expanded habitat area would not only threaten the water supplies of 3 million Southern California residents, but undermine the Inland Empire economy as well.

Indeed, the expanded habitat ruling superimposes federal restrictions that make it difficult to operate and maintain water collection, recycling and groundwater recharge operations in and along the Santa Ana River.

While the Santa Ana River supplies water to 3 million Southern California residents, these restrictions could translate into a net loss of 125,800 acre-feet of San Bernardino Mountain water each year, which amounts to one third of the water supply currently used by 1 million residents of Riverside and San Bernardino counties, cite the 12 water agencies. The ruling also impacts the ability of agencies, like the city of San Bernardino Municipal Water Department, to utilize recycled water currently discharged to the river. If allowed to stand, these restrictions will pull the rug out from under efforts by Inland Southern California water agencies to reduce their dependence on water imports from the Sacramento-San Joaquin Delta, whose supplies are already constrained due to the Service’s efforts to protect the Delta smelt.

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Inland water agencies, led by Western and San Bernardino Valley Municipal Water District, obtained additional Santa Ana River water rights from the State Water Resources Control Board in late 2009 to reduce the region’s dependence on Delta water supplies. But the Service never participated in the water rights process, unlike the California Department of Fish and Game or the U.S. Forest Service, which both participated in the water rights process. Both reached agreements with water agencies that would protect natural resources and provide water for the Inland Empire.

The Service also ignored written comments from the U.S. Army Corps of Engineers, which warned that the new habitat designation could put millions of Southern Californians at risk by interfering with the operation of the Seven Oaks Dam as a flood control facility.

The Service previously established a critical habitat area for the Sucker in 2005, but decided to double the critical habitat area after being sued in 2007 by the Center for Biological Diversity (CBD), an Arizona-based group that frequently files suit against the Service to challenge its decisions. The Service never stated why its 2005 ruling was insufficient, nor has it provided any new scientific information to justify an expansion of critical habitat for the Sucker. Water agencies believe the Service expanded the critical habitat area for the Sucker merely to pacify the CBD, even though the group has not been actively involved in efforts to conserve or protect the Sucker.

Water agencies have no record of CBD representatives participating in Santa Ana Sucker Conservation Team meetings that have taken place during the past decade.

Inland water agencies filed suit against the Service four months after they publicly warned the Service that they would pursue litigation unless the Service rescinded its 2010 habitat ruling. In their notice of intent to file a lawsuit, water agencies reminded the Service that they have spent the past 10 years successfully developing and implementing a Santa Ana Sucker Conservation Program that is already working to recover and restore habitats for this endangered species in collaboration with the California Department of Fish and Game. The program has produced significant research, including reproductive monitoring surveys, the development of population estimates, increased project management, habitat surveying and mapping as well as invasive species removal.

Agencies that are participating in the lawsuit against the Service include Bear Valley Mutual Water Company in Redlands; Big Bear Municipal Water District; City of Redlands; City of Riverside; City of San Bernardino Municipal Water Department; East Valley Water District in Highland; Riverside County Flood Control and Water Conservation District; San Bernardino Valley Municipal Water District; San Bernardino Valley Water Conservation District; Western Municipal Water District in Riverside; West Valley Water District in Rialto; and Yucaipa Valley Water District.

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Western Municipal Water District provides water supply, wastewater disposal and water resource management to the public in a safe, reliable, environmentally sensitive and financially responsible manner.

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