

Dam Operations Authorized Under 1954 Statute Potentially Included Protection of Endangered Species.

The Ninth Circuit held that statutory language defining the scope of operations of Twitchell Dam was sufficiently broad to potentially include releases of water to facilitate migration of Southern California Steelhead to the ocean. *San Luis Obispo Coastkeeper v. Santa Maria Valley Water Conservation District*, No. 21-55479 (9th Cir., Sept. 23, 2022).

Environmental groups sued the agencies that operate the Twitchell Dam in San Luis Obispo County arguing that its operation interfered with endangered Southern California Steelhead migration and constituted an unlawful take under the Endangered Species Act. The groups contended that releases of water from the dam designed to maximize percolation in the riverbed resulted in insufficient flow to the Santa Maria River to sustain Southern California Steelhead migration to the ocean, preventing them from completing their reproductive cycle. They sought an order requiring properly timed releases to support Steelhead migration and reproduction.



Twitchell Dam was constructed in 1958 as authorized by Public Law 774 for the principal purpose of recharging the Santa Maria River Valley's groundwater aquifer and minimizing the threat of flood damage. The District Court granted summary judgment to the agencies on the ground that PL 774 did not give them discretion to release water from Twitchell Dam for protection of endangered species,

The Ninth Circuit reversed, observing that PL 774 authorized Twitchell Dam to be operated for "other purposes" in addition to the enumerated purposes of "irrigation and the conservation of water, [and] flood control." This expansive language, the court said, reflected congressional intent to grant the agencies authority to use the dam for a variety of purposes, including adjusting operations to accommodate changed circumstances such as the enactment of new laws. The court cited other instances in which Congress had used limiting rather than broad language in defining permissible dam operations. In the case of Twitchell Dam, Congress expressly provided that the dam could be used for purposes other than those specified in the statute.

The court acknowledged that PL 774 also required the agencies to operate the dam "substantially in accordance with" the plans and recommendations in the Secretary of the Interior's Report, which contained a recommended flow rate for water releases. To avoid take of Southern California Steelhead, the dam's flow rate would need to deviate slightly from the recommended flow rate at certain times during the year. But this, the court concluded, was consistent with the text of the statute, which required only substantial compliance rather than strict compliance with the Secretary's Report.

Because PL 774 gave the agencies discretion to operate Twitchell Dam for purposes other than irrigation, conservation, and flood control, it was error for the District Court to grant summary judgment on the ground that the law did not provide that authority. However, the Ninth Circuit did not decide whether those purposes included adjusting water discharges to support Southern California Steelhead migration, leaving that issue to be considered by the District Court in the first instance.

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