

**PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS
(PCFFA), ENVIRONMENTAL LAW FOUNDATION (ELF), and the
INSTITUTE FOR FISHERIES RESOURCES (IFR)**

For immediate release

**Date: June 24, 2010
10:00 AM**

Press Contacts:

Glen Spain (PCFFA) (541)689-2000
Jim Wheaton (ELF) (510)208-4555
Jennifer Maier (ELF) (510)208-4555

**FISHING AND CONSERVATION GROUPS SUE OVER POOR WATER
MANAGEMENT ON NORTHERN CALIFORNIA'S SCOTT RIVER**

**The State and County have allowed groundwater depletion and damage to
ESA-listed coho runs in violation of the Public Trust.**

Sacramento, CA -- On June 24th, the west coast's largest trade association of commercial fishing families, the Pacific Coast Federation of Fishermen's Associations (PCFFA), teamed up with the California conservation organization Environmental Law Foundation (ELF) to jointly file a landmark lawsuit against the California State Water Resources Control Board ("Water Board") and Siskiyou County for their joint failure to leave enough water in the river to protect endangered and threatened salmon in Northern California's Scott River.

The case (*Environmental Law Foundation, et al. vs. State Water Resources Control Board and Siskiyou County*, filed in the Superior Court of Sacramento County) alleges widespread violations of the Public Trust Doctrine, resulting from years of rubber-stamp Water Board and County approvals of well permits that have seriously depleted the local aquifer, creating severe water depletion of Northern California's Scott River, once an important salmon-bearing tributary to the Klamath River and still the home of federally and state protected Endangered Species Act (ESA)-listed coho salmon.

"Scott River water depletion has gotten so bad that today coho salmon are on the verge of extinction there, once one of their major refuges," noted Glen Spain, PCFFA Northwest Regional Director. "All the while, the state's water agencies have been looking the other way and doing little to stop it. But rivers and their fish are public resources, and public agencies are obligated to protect them, not deplete them."

The Public Trust Doctrine, which goes all the way back to the laws of the Roman Emperor Justinian issued in 535 A.C.E, requires the waters of the State (and its aquatic wildlife) to be held

in public trust for the common good, and therefore to be protected by the State against depletion or damage by private interests.

The California Supreme Court recognized that the Public Trust Doctrine applies to water management in California rivers in the landmark 1983 “Mono Lake Case” (*National Audubon Society vs. Superior Court*, 33 Cal.3d 419 (1983)) but has not yet ruled on how this Doctrine would apply to groundwater depletion that in turn affects nearby river flows.

This case is likely to set new legal precedent on this key water issue at a time when many of California’s aquifers are suffering widespread depletion, drying up many aquifer-fed streams. Yet California is one of only two US states (the other being Texas) that does not manage its own groundwater, leaving groundwater management entirely to the Counties instead, who have neither the expertise nor the political will to develop or enforce aquifer drawdown limits. Many of California’s aquifers also span multiple counties.

Groundwater aquifers in the Scott Valley have been increasingly depleted by well permits issued by the County, and low water aquifers reduce the flows from springs that feed cold groundwater into the river itself. Depleted aquifers mean a depleted river where fish now die by the droves nearly every year. But the County continues to give out new well permits anyway.

State law, however, acknowledges the connection between surface water flows and groundwater aquifers in the Scott sub-basin and provides for state regulation of Scott River groundwater supplies which are interconnected with the Scott River, at Cal. Water Code Sec. 2500.5. However, the State Water Board has not used that authority in more than 30 years.

Coho salmon inhabiting the Scott River have so diminished in numbers in recent years that they have been protected as “threatened with extinction” under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531, et seq.) since May 6, 1997 (62 Fed Reg. 24,588). Scott River coho salmon have also been protected since August 30, 2002 under the California Endangered Species Act (CESA) (CAL. FISH & GAME CODE § 2050, et seq.). The Scott River has also been federally listed under the ESA as “critical habitat” for ESA-listed coho salmon since May 5, 1999 (64 Fed. Reg. 24,049). The California Fish and Game Commission also adopted a *Recovery Strategy for California Coho Salmon* on February 4, 2004 which contains numerous measures to protect coho salmon in the Scott River basin.

Yet state and federally protected coho salmon are now down to double-digit numbers in the Scott River, where they once sheltered in the thousands. Only 81 ESA-listed coho came back to that river in 2009, according to California Department of Fish and Game fish surveys. Most biologists believe a population size of at least 500 is required to truly prevent extinction.

Chinook salmon and steelhead also spawn and rear within the Scott River, and their numbers too are today greatly diminished from their historical abundance, for the same reasons.

“The Public Trust ensures that our waters are protected for everyone, not just those who can take it,” noted Jim Wheaton, with Environmental Law Foundation. “Where one person's take harms other uses and the public, the Public Trust Doctrine requires the State to protect the public and future generations.”

“Unchecked groundwater pumping is bleeding this river literally dry, driving formerly productive fish runs there to the edge of extinction, and no one is being held accountable,” said Erica Terence of the Klamath Riverkeeper group, which works on salmon conservation issues in the Scott River. “Siskiyou County and the State Water Board have an obligation to the public to close this loophole in Scott River water balancing that allows hay growers to take more than their fair share.”

The Scott River is also vitally important to resident American Indian Tribes who have ancestral lands in the Scott Basin. “The quality and quantity of Scott River water threatens the existing habitat of the diminishing Scott River salmon runs,” noted Crystal Bowman, Environmental Director for the Quartz Valley Indian Reservation, which is situated within the Scott Valley. “Although local resource agencies attempt to improve these conditions through various programs, un-regulated groundwater pumping greatly contributes to the unsuitable water quality conditions salmon in the Scott River have to face. Lowering the water table has negative impacts on surface water depth, velocity, temperature, and connectivity. The health of riparian vegetation and nearby environments are also negatively impacted, which prevents the necessary pollutant load reductions from being realized and reduces habitat for a plethora of terrestrial species. It is time to acknowledge these basic ecological principles and coordinate surface and groundwater use in Scott Valley so that the Scott River and its salmon runs can recover before it's too late.”

“As commercial fishing families, maintaining abundant salmon runs in the Scott River is a bread and butter issue,” added PCFFA’s Glen Spain. “Without the Scott River it will be very hard indeed to recover the seriously damaged salmon runs from the Klamath River and bring these runs back into their previous abundance.”

For a copy of the *Petition for a Writ of Mandate* and a Fact Sheet on the Public Trust Doctrine and how it applies in this case, see ELF’s Current Case Docket at:

www.envirolaw.org/currentcases.html

To find out more about the dewatering of the Scott River in 2009, see the Klamath Riverkeeper web site at: www.klamathriverkeeper.org/tribs/SOSS.html

####

--30--