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## Judge Does Not Require Dam to Alter Water Flows for ESA Species Protection

By [Chuck Sensiba](#), [Angela Levin](#) & [Morgan Gerard](#) on June 3, 2021

POSTED IN [ENDANGERED SPECIES](#)

On April 15, Judge André Birotte Jr. for the U.S. District Court for the Central District of California determined that the U.S. Bureau of Reclamation's (Bureau) operation of the Twitchell Dam with certain water flows did not result in an unlawful take of Southern California Steelhead trout, a species listed as endangered under the federal Endangered Species Act. Plaintiffs San Luis Obispo Coastkeeper and Los Padres Forestwatch claimed that the Bureau's Standard Operating Procedures (SOP) for the Twitchell Dam limit the timing and volume of releases from the dam in a manner that has diminished trout habitat and resulted in harm to the trout population by impairing behavioral patterns including breeding, spawning, rearing, and migrating.

The dam's 1954 authorization act (1954 Act) set its operating priorities for the Bureau, and the district court concluded that providing water for species protection was not among Congress' listed "other" priorities. According to the 1954 Act and historical sources, the court concluded that the dam's purpose was to conserve water, and flows to the ocean were considered a waste. Since the 1954 Act did not provide the Bureau discretion over water uses, Judge Birotte found that the Bureau's actions under its SOP was not the proximate cause of a prohibited take of a listed species. Moreover, the opinion stated that "the use plaintiffs seek [for the protection of species] is not incidental to the express purposes of the project, but instead is a wholly different purpose that detracts from fulfilling the project's express purposes."

This decision emphasizes the importance of whether a federal agency is deemed to have sufficient discretion to operate to protect listed species under the implementing legislation for a given project.

Tags: [Bureau of Reclamation](#), [Endangered Species Act](#), [Federal Dam](#), [Twitchell Dam](#)



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