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The County's Entertainment Paper

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Steelhead water wars

Battle for the Steelhead: Endangered Trout vs. Lawyers, Hired Guns, and Money

BY CATHY MURILLO

In the Santa Ynez River, high above the water-siphoning dams, steelhead trout live in the cool, perennial streams of the Los Padres National Forest. They are waiting—waiting to fulfill their natural destiny.

Steelhead thrived in the 100-mile-long river and its numerous tributaries for tens of thousands of years. Every rainy season, the trout would get the calling to leave its freshwater habitat and migrate down to the Pacific. There it would live for two or three years, maturing while fattening on small shrimp and other ocean delicacies.

When it was time to spawn, the trout used a remarkable sense of smell to find its home river or creek. Needing the river to be full of water so it could ascend upstream, the fish was again cued by winter storms, but also knew to wait for the worst of the turbid runoff to pass before starting back to its gravely pools to reproduce. And so a new cycle would begin.



Dam the Fish: Built in 1953, Bradbury Dam (top) effectively ruined the steelhead trout runs in the Santa Ynez River. Historical accounts from the 1940s say as many as 25,000 adults once thrived in the river (center); now, fewer than 100 adults swim the Santa Ynez. (Bottom) Attorney Gregory Wilkinson represented the Cachuma water agencies that take water out of the river to supply the South Coast and parts of the Santa Ynez Valley.

ONE FISH, TWO FISH

While as many as 25,000 adult steelhead used to swim in the Santa Ynez River annually, now fewer than 100 struggle in the ecosystem changed by the construction of three dams—Juncal, Gibraltar, and Bradbury, which supply water to Santa Barbara, Goleta, Montecito, Carpinteria, and parts of the Santa Ynez Valley.

Bradbury Dam, built in 1953 at the midpoint of the river basin, has had the most impact. The fish has successfully adapted to many challenges over the years—drought, sediment-choked flows after wildfires, predators, even the last Ice Age—but jumping over the 200-foot vertical structure proved insurmountable. So some fish are below the dam, blocked from their ancestral spawning grounds, and others are “landlocked,” trapped above the dam and unable to participate in the migratory lifestyle.

As a result, the population has dwindled nearly to extinction, and restoring the Santa Ynez steelhead has become a subject of debate among state water authorities, conservationists, water purveyors, and sports anglers. During a recent six-day water rights hearing in Sacramento, the State Water Resources Control Board heard testimony about how the water should be divided to benefit South Coast water users, Lompoc water users, and river resources—in particular, the steelhead trout.

Years ago, sportfishing groups told the State Water Board that the fish weren't getting enough water and asked for a review of the water rights permit issued to the Bureau of Reclamation—the federal agency that builds and operates dams—and to the water agencies that take water from Cachuma reservoir. But bureaucracy, budget problems, and drought conditions prevented studies and data collection from being completed until now.

continued►

◀ **Steelhead continued**

In the meantime, the trout was declared “endangered” under the Endangered Species Act by federal environmental regulators. Since 1997, a new urgency was aimed at saving the fish. Wanting to influence state officials, a California Trout, asked to be part of the water rights hearing. Cal Trout, statewide nonprofit as the group is commonly known, is made up of anglers and environmentalists who advocate for wild fish.

Represented by attorneys Karen Kraus and Linda Krop of the Environmental Defense Center, based in Santa Barbara, Cal Trout rallied the two government agencies charged with fish stewardship—the California Department of Fish and Game and NOAA Fisheries, the fish protection division of the federal National Oceanic and Atmospheric Administration—to join their fight to return the steelhead to the Santa Ynez River.

It was this trio that made the “pro-fish” argument at the Sacramento water rights hearing, which concluded November 13. Conducted much like a court trial, smart lawyers, sworn witnesses, hired experts, voluminous reports, and spiffy Power Point presentations were the order of the day.

Arguing against Cal Trout—and advocating that water supplies for people should be a priority—were lawyers representing the City of Santa Barbara, Goleta Water District, Carpinteria Valley Water District, Montecito Water District, a Santa Ynez water supplier, and the Bureau of Reclamation. The water purveyors are collectively called the Cachuma Operations and Maintenance Board, or COMB.

For anyone who has an inkling of the dramatic, live-or-die importance of water politics in California, Cal Trout’s endeavor must be seen as historic. And however the State Water Board finally decides to handle the water rights case, the outcome will be far-reaching.

“There are roughly 1,100 miles of coastline in California and dams up and down the coast,” said Craig Fusaro, a Santa Barbara City College science teacher and member of Cal Trout’s board of governors. “The State Water Board grants permits to the Bureau of Reclamation for water diversion, and this is the first hearing before the water board in which there is an endangered species issue.”

Underlying Cal Trout’s case is a plea for the state board to make its Santa Ynez River decision based on California’s “public trust doctrine”—a principle of state law requiring the protection of natural elements such as water, air, plants, and animals because they belong to the people. Natural resources, so the doctrine goes, should be managed for the people’s benefit.

Underlying Cal Trout’s case is a plea for the state board to make its Santa Ynez River decision based on California’s “public trust doctrine”—a principle of state law requiring the protection of natural elements such as water, air, plants, and animals because they belong to the people.

And if applied, the doctrine could dictate not only more water for the fish, for migration and spawning, but most important, a method for getting the steelhead over and around Bradbury Dam. Methods suggested include installing either a fish ladder (a series of increasingly elevated pools), a channel that goes around the dam, or implementing a trap-and-transport system (catching the trout below the dam, putting them in a water tank, and trucking them above the dam).

On the other side, the COMB water agencies and the Bureau of Reclamation say a reliable water supply ulti-



Every Drop You Drink: Cal Trout believes South Coast residents can conserve enough water in order to send more generous flows down the Santa Ynez and help the endangered steelhead trout migrate and reproduce.

mately benefits the people. And they do care about the trout, they insist, as evidenced by the fact that for the last 10 years they have been working on a plan to help the fish. Known as the Lower Santa Ynez River Fish Management Plan, the proposals became the lynchpin in the water agencies’ case before the State Water Board.

FISH FOR FIGHTING

In the early 1990s, 40 years after Bradbury was erected, it became clear the steelhead were on the brink of disappearing. Certain that it would soon be put on the endangered species list, the COMB water agencies decided they wanted to get ahead of the regulatory game and come up with a plan before ordered to do so. “We didn’t want Cal Trout to pretend they knew everything,” said Russell Ruiz, attorney for Goleta Water District, the largest of the South Coast water suppliers. “We hired our own fancy fish biologists.”

Focusing on the stretch of river and tributaries below Bradbury Dam, the Lower Santa Ynez River Fish Management Plan proposed a series of projects and actions designed to improve steelhead habitat. First, raising Bradbury Dam by three feet would collect more water in Cachuma Reservoir in rainy years. This extra water could be added to the regular downstream release to benefit fish. Physical improvements come next, such as removing passage barriers (road crossings, culverts), and constructing pools with enhanced vegetation where the fish can hang out or spawn.

Boosting COMB’s argument that the Fish Management Plan is an effective proposal is the “Biological Opinion” they secured from NOAA Fisheries (formerly the National Marine Fisheries



Save the Trout: The NOAA Fisheries panel included (top left to right) Jonathon Mann, Mark Capelli, Craig Wingert, and James Lecky. The Cal Trout team included Linda Krop, attorney for the Environmental Defense Center, Dana Haasz, a water conservation specialist with Pacific Institute, EDC attorney Karen Kraus, and EDC analyst Brian Trautwein. These upstart fish advocates gave the old-school water buffaloes a hard time over restoring the steelhead.

Service). After the steelhead was declared endangered, NOAA formally looked at Cachuma Project operations, and in late 2000, issued the Biological Opinion—essentially a report card on the Fish Management Plan’s proposals—which said, basically, “Good for you, these are actions that will help the fish and not contribute to its extinction.”

Furthermore, NOAA Fisheries and Fish and Game participated, to a certain extent, in the development of the Fish Management Plan. It irks water purveyors that NOAA now criticizes the plan. “We invited them to the table in a spirit of consensus,” said Kevin Walsh, general manager of the Goleta Water District, during a break in the hearing. “And now they’re changing their position and have not submitted evidence for the change.”

The COMB contingent also strenuously objected to the amount of water Cal Trout proposed giving to the fish. The current safe yield (the water removed) from the reservoir is about 25,000 acre-feet. Cal Trout has requested that between 7,000 acre-feet and 8,000 acre-feet go to the trout, roughly a third of the reservoir’s yield. (An acre-foot is equal to 326,000 gallons, the amount of water it takes to supply two California households for one year.)

According to the water suppliers, that amount would not leave a buffer in drought times to securely serve the area’s 275,000 residents and 36,000 acres of farmland. “It brings us right to the edge,” testified Steve Mack, the water manager for the City of

COMB VS. CAL TROUT

reach their historic spawning areas in tributaries with calm, deep, shaded pools perfect for laying eggs.

COMB’s fish plan proposes trying to make the area below the dam suitable for spawning, a fairly risky goal. Cal Trout and the regulatory agencies also picked apart some of the science of the plan and exposed that the water agencies have no way of monitoring river flows at the Highway 154 bridge—one of the plan’s critical management zones.

Hammering home the idea that the steelhead has to get around the dam, Cal Trout asked the State Water Board to compel the water agencies to conduct a feasibility study on ways the trout could migrate up and down the river. Cal Trout, Fish and Game, and NOAA Fisheries presented witnesses who gave many suggestions—technical and conceptual—regarding fish passage. The message was yes, Bradbury is tall, indeed taller than most dams with a ladder, but getting the fish over it is not impossible.

As for water releases, Cal Trout suggested that COMB look at ways to release Lompoc’s water allotment so that the Lompoc groundwater basin is recharged, but that the water also stays in the river for a longer period so the trout can swim in it. Currently, water is let go from Bradbury in one big dose in late summer.

A big part of Cal Trout’s case rested on the assertion that Cachuma’s urban water users could conserve more water, thus making more available to the fish. They brought in experts to demonstrate how this could be accomplished. The State Water Board must decide if conservation should play a role in balancing the needs of people and the needs of fish. Cal Trout is hoping the board will follow the precedent set in the Mono Lake decision **continued►**

Santa Barbara. He and other COMB presenters described for the board the drought of the late 1980s that scared the electorate into approving a \$600-million bond to hook up to the State Water Project’s California Aqueduct, and an expenditure of \$45 million for a desalination plant.

“The result of the water shortage to our community was devastating,” testified Jan Abel, president of the Montecito water board. Abel evoked memories of people having to use green spray paint on their brown lawns, and told the state panel that the people of south Santa Barbara County learned all about water conservation after that drought and as a result commonly practice great self-restraint and innovative methods.

This point was hotly argued from both sides because the State Water Board must weigh whether supplies from the State Water Project and desalination facility would ameliorate the shifting of water to natural resources during the next drought.

HIGH AND DRY

Cal Trout and company argued that the agencies’ Fish Management Plan doesn’t go far enough, for many reasons, but mainly because it makes no attempt to bring the fish around the dam so they could



The Way They Were: All that's left of these whoppin' fish hauls are photographs in the Lompoc Valley Historical Society archives. The handwritten date says, "Jan. 31, 1912." That's before the city of Santa Barbara built Gibraltar Dam, which is doing its own environmental damage upstream from Bradbury.

◀ **Steelhead continued**

of 1994. In that state board ruling, the city of Los Angeles was compelled to implement water saving practices.

"Those measures, when implemented, in a minor way, made a big difference," said Cal Trout's attorney Karen Kraus. "We are not advocating that urban and ag users need to suffer for the steelhead. All can be accommodated."

The pro-fish legal trio also worked hard to explain NOAA's Biological Opinion, which seems to support COMB's Fish Management Plan. The plan only addresses the lower river, not the entire Santa Ynez River watershed. "It's a good start," said Jim Lecky, NOAA's chief of protected species program, but added that much more can be done to help recover the fish. As to whether or not NOAA and Fish and Game helped develop the fish plan, it was clear during the hearing that the water agencies controlled the meetings and that dissenting opinions were not incorporated into the final document.

"Fish and Game is under-funded, overworked, and demoralized. They can't put gas in their state vehicles. They are like a lost stepchild in the state bureaucracy. Why? Because Fish and Game has a say-so in how water is allocated in California. Nobody wants them to have that kind of political power." — Craig Fusaro, Cal Trout.

Cal Trout's Fusaro has been attending meetings of the fish plan committee for 10 years, and offered this perspective on Fish and Game: "Their participation in the Fish Management Plan was on-again, off-again. Fish and Game is under-funded, overworked, and demoralized. They can't put gas in their state vehicles. They are like a lost stepchild in the state bureaucracy. Why? Because Fish and Game has a say-so in how water is allocated in California. Nobody wants them to have that kind of political power."

The main problem with COMB's Fish Management Plan, according to Fusaro, is that it accepts the fact that steelhead will always be an endangered species. "That's not acceptable to Cal Trout," he said.

ALL THINGS CONSIDERED

Now that the formal hearing is over, the respective lawyers are writing 30-page closing briefs to be filed with the state in February. The state board staff—environmental specialists and attorneys—will take all the documentation and testimony into consideration and prepare a recommendation for the five-member State Water Board. A final decision will probably be made before summer.

Also affecting the decision will be the State Water Board's final environmental impact report (EIR), as it weighs in on the Fish Management Plan's water management proposals. For instance, some 450 oak trees will be put under water once the dam and the lake level are raised to store more water for the fish. Chumash archaeological sites on the lakeshore would be eroded and/or submerged.



Now and Then: Scientists say the bass and other non-native fish in Cachuma reservoir (top) can be removed in sufficient numbers to accommodate steelhead in the upper watershed. Another historical photo (at left) bears the caption: "Dan Smith's daughter, winter of 1943-44, Dan Smith's Sporting Goods Store, Goleta."

The County of Santa Barbara, which operates a boat launch and campground around the lake, would be forced to move its recreational facilities to higher waters, at an estimated cost of \$12 million. County attorneys have already cut a deal with the Bureau of Reclamation and

COMB, and the lake raising will be done in phases to allow the county more time to secure its marina and other structures. Plus, the county would get a \$50,000 cash payoff.

Even with the recreation impacts resolved, the issue of the oak trees remains. How will the county handle it, in the light of its hard-fought oak protection ordinance? How will the State Water Board handle it after making an issue of the trees in its draft EIR?

If the water board takes the public trust doctrine seriously, then some of the most compelling testimony came from the Fish and Game scientists, most of them older, grizzled men who are fascinated

by the ancient, resilient, and unsinkable steelhead trout. Proven to have adapted to drought cycles that can last decades, the trout has managed to hang on even in the face of Bradbury Dam, which has interrupted the natural function of the 900-square-mile river basin.

Their sentimental admiration, based in scientific understanding, echoed the following passage from Claude Kreider's book, *Steelhead*, written in 1948, just before Bradbury's construction. "And here—only one hundred and fifty miles from the great Los Angeles metropolitan area—flows the Santa Ynez, the most productive of all the little steelhead rivers of the south. A tiny brook in midsummer, it heads far back in the higher reaches of the Coast Range to become, with this immense watershed, a real river after the first rains of winter. And then with a continued flow assured it receives not only one but several good runs of large steelhead through the winter. And the splendid fish taken in great numbers there each good season in this easily reached region so close to a great center of population are a constant reminder of nature's marvelous works." ■

HOW STEELHEAD MAKE BABIES



Steelhead trout reproduce when a female—arriving from the ocean full of eggs—finds an adult male in an area suitable for a redd, or nest. The two swim very close together and at once she will release roe—eggs—and he releases milt—sperm—which together mix in the water made turbulent by their love dance. The female flicks her tail to bury the fertilized eggs in gravel, which "hatch" in about five weeks.