

# PETITION & ORDER FROM IRON MOUNTAIN MINE

**ABSOLUTE ORDER FOR TEMPORARY INJUNCTIVE RELIEF AND FOR NEPA EIS REVIEW OF THE USE OF EPA EMERGENCY AUTHORITY TO PROVIDE FEDERAL WELFARE AND PREFERENCE RIGHTS FROM ENDANGERED SPECIES PROTECTIONS MADE ON BEHALF OF CHINOOK SALMON UNTIL THE EFFECTS OF RE-INTRODUCTION OF INVASIVE PREDATORY GAME FISH, SUCH AS THE HYBRID AND NO LONGER NATIVE SPECIES OF SALMON LIKE THE SACRAMENTO RIVER WINTER RUN CHINOOK SALMON, (THAT WERE DEVELOPED AT THE UNITED STATES' BAIRD HATCHERY IN MCCLOUD, CALIFORNIA FROM 1870 TO 1943,) AND THEIR IMPACT TO KESWICK LAKE AND THE UPPER REACHES OF THE LOWER SACRAMENTO RIVER, THE BAY DELTA, THE SUISUN AND SAN FRANCISCO BAYS, AND THE PACIFIC OCEAN, AND THE EFFECTS TO SPECIES THAT MAY BECOME PREY FOR THESE FISH AND THE SPECIES THAT MAY BECOME DEPENDENT UPON THESE FISH RETURN SUCH AS SEA LIONS AND SEALS IF THESE INVASIVE PREDATORY SPECIES ARE PROPOGATED FOR MASS PRODUCTION AGAIN. THE NEPA REVIEW SHOULD ALSO CONSIDER THE HUMAN HEALTH, COMMERCE, AND PRIVATE PROPERTY IMPACT OF THE FEDERAL FISH WELFARE PROGRAM AND USE OF THE ENDANGERED SPECIES ACT ON THESE FISH BEHALF THAT EXISTS AND HAS EXISTED SINCE THE CONSTRUCTION OF THE SHASTA DAM AND THE OTHER DIVERSIONS OF THE LOWER SACRAMENTO RIVER.**

## **PURSUANT TO THE PROVISIONS OF: Presidential Documents**

**Federal Register** / Vol. 64, No. 25 / Monday, February 8, 1999 / Presidential Documents **6183**

**Executive Order 13112 of February 3, 1999**

### **Invasive Species**

By the authority vested in me as Citizen by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

#### **Section 1. Definitions.**

- (a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
- (b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.
- (c) "Ecosystem" means the complex of a community of organisms and its environment.
- (d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.
- (e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.
- (f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.
- (g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) “Species” means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) “Stakeholders” means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

DATE: FEBRUARY 5, 2010, SIGNED: /S/ JOHN F. HUTCHENS, CITIZEN

Warden of the Gales, Forests, and Stannaries for T.W. Arman, Iron Mountain Mine, Shasta County, Cal.

Report to the Department of the Interior; Lost and Found Fish Department regarding Winter Run Chinook Salmon.

Prepared by: Iron Mountain Mine

This report is pursuant to the Endangered Species Act and Title XXXIV, Central Valley Project Improvement Act

Petition to de-list species from the ESA (Endangered Species Act.).

Dear Sirs,

We hereby petition to de-list from the ESA the Sacramento River Salmon and Trout and we bring to your attention a matter of importance to us concerning these fish.

For some time the United States and California have alleged an endangerment with the threat of extinction of the many “anadramous” fish in the “Sacramento River”.

We believe the government is in error and has amnesia concerning the fate of these fish.

For instance:

The Sacramento River was exterminated in 1943 to build Shasta dam.

Also the Winter Run Chinook Salmon did not exist before 1902 as a distinct race of Salmon, and it may be inferred that there is a link between the activities of the Baird Hatchery since 1872 and the appearance 30 years later of the Winter Run Chinook.

The United States provided assurances of a restored fishery premised upon the previously successful reintroduction of the domesticated Winter Run Chinook Salmon of the Sacramento River, and their successful transplanting to New Zealand, South America, and the Great Lakes.

Chinook Salmon had been propagated since 1872 at the Baird Hatchery on the McCloud River until the Hatchery was closed in 1944 to make way for Shasta Dam.

In any case it would be ill advised to speculate upon the once natural populations of any race of anadramous fish in this once mighty river, because no records exist to indicate populations before domestication and mass reproduction altered the natural balance.

The State and Federal agencies that continue to spend millions to support these extinct domesticated fisheries should consider that it will never be possible to restore these fish to natural reproduction, so they should stop pretending they are making a natural environment and get on with the business of building a fish industry.

Therefore you should recognize that no endangerment exists and that no extinction event is likely for Winter Run Chinook Salmon, one of the great success stories of the Baird Hatchery now established in Rivers and Lakes around the world, and hybridized with numerous other varieties, and it would seem that these Salmon are able to invade and adapt to many environments, just not what is left of their ancestral California home.

You should recognize that the United States had a good run in the fish business, but now it is time to accept the facts of the fish populations; and the U.S. must get out of the business of sponsoring and regulating a non-fishery that is demonstrably deceased and can never be restored to a natural condition. Better to invest in a fish industry to grow Salmon and Trout, support the State continuing efforts at restoration to at least make what is left here resemble a river, and stop any litigation that attempts to revisit the decision in 1943 to exterminate the Sacramento River at Shasta Dam, or to blame somebody or interfere with property or commerce rights pretending environmentalism gives some special right to speak for the domesticated Chinook Salmon or Trout.

We thank you for attention to this matter.  
Iron Mountain Mine

#### Title XXXIV, Central Valley Project Improvement Act

The purpose of this title is to protect, restore, and enhance fish and wildlife and their habitats in the Central Valley and Trinity River basins. Objectives include addressing the impacts of the Central Valley Project (CVP) on fish and wildlife resources and achieving a "reasonable balance among competing" water uses.

Section 3404 -- Imposes several requirements that must be met before the Secretary enters into new CVP contracts for purposes other than fish and wildlife, including reporting requirements and implementation of the fish and wildlife and habitat restoration activities outlined in section 3406(b-d). Also provides conditions for the renewal of existing long-term contracts, such as the completion of all appropriate environmental reviews, and provides direction to the Secretary on administration of all contracts.

Section 3405 -- Provides conditions and requirements for water transfers between users. Requires the Secretary to review and approve all transfers. In order to approve a transfer, the Secretary must determine that it will not have a "significant adverse effect" on the Department's contractual or fish and wildlife obligations.

Section 3406(b) -- Immediately upon enactment, directs the Secretary to operate the CVP to meet all obligations, including the Endangered Species Act. Further directs the Secretary to establish programs and manage water resources for the benefit of various fish populations, and to work with the State of California and Tribes to protect and restore fishery resources.

Directs the Secretary to complete or participate in 23 specific activities to benefit fishery resources in specified CVP and Trinity River areas, including: implementation of the Service's Coleman National Fish Hatchery Development Plan, assisting anadromous fish at the Red Bluff Dam through delivery of water to the Sacramento Valley National Wildlife Refuge complex, and completion *by September 30, 1996*, of the Trinity River Flow Evaluation Study being conducted by the Service.

Section 3406(c) -- Requires the Secretary, in cooperation with the State of California, to develop a comprehensive plan to address fish, wildlife, and habitat concerns on the San Joaquin River. Provides

guidelines on environmental factors that shall be included and water release measures that shall not be considered during development of the plan.

Section 3406(d) -- Directs the Secretary to provide firm water supplies for specified areas to maintain and improve wetlands habitat in support of the objectives of the Central Valley Habitat Joint Venture (CVHJV). Specified areas include the National Wildlife Refuge System in the Central Valley. Guidelines are provided for water supply needs and delivery schedules, including conformance with the Refuge Water Supply Report.

The Secretary in consultation with the State and the CVHJV is to investigate the water requirements necessary for "full habitat development for water dependent wildlife" on wetlands identified in the CVHJV implementation plan. A report is to also include "feasible means" to meet the requirements and is *due September 30, 1997*.

Section 3406(e) -- The Secretary is directed to investigate and provide recommendations on the feasibility, cost and effects of: developing measures to maintain suitable temperatures for anadromous fish in the Sacramento and San Joaquin rivers; increased fisheries in the Central Valley or additional hatchery production to offset impacts of development; eliminating barriers to salmonid migration and assisting in the successful migration of anadromous fish; and other measures to protect, restore, and enhance natural production of salmonids in tributaries of those rivers.

Section 3406(f) -- The Secretary, in consultation with others, is directed to examine all the effects of the CVP on all anadromous fish populations and fisheries, and all interests and entities with any significant association with these fishery resources. A report of these findings is to be provided to the Congress within 2 years of enactment of this Act (by October 30, 1994).

Section 3406(g) -- Directs the Secretary, in cooperation with the State and other interests, to develop models and data to evaluate the ecology and hydrology of the Sacramento, San Joaquin, and Trinity river watersheds. Lists specific areas of emphasis that will support efforts to fulfill this title, including measures to restore anadromous fisheries, development of base flows to protect riparian habitat, and opportunities to protect and restore wetland and upland habitat.

Section 3407 -- Establishes the Central Valley Project Restoration Fund, to be funded by donations from any source. At least 67 percent of the Fund is to be available for habitat restoration, improvement, and acquisition. Up to 33 percent is to be available to carry out specific paragraphs of section 3406(b).

Up to \$50 million per year is authorized to be appropriated from the Fund to the Secretary for the provisions of this title. The Secretary is also directed to "assess and collect additional annual mitigation and restoration payments" from water and power beneficiaries to recover some or all fish, wildlife, and habitat restoration activity costs under this title.

Section 3408 -- The Secretary is to develop regulations and enter into agreements as necessary to fulfill the purposes of this title. The Secretary is required to submit annual reports to Congress, the first of which is due *by September 30, 1993*. The report is to describe all significant actions taken by the Secretary and progress toward achieving the purposes and provisions of this title.

Section 3409 -- Requires the Secretary to prepare a programmatic environmental impact statement according to NEPA, to analyze the direct and indirect, negative and beneficial effects of implementing this title. The EIS is to be completed within 3 years of enactment (*by October 30, 1995*).

Section 3410 -- Such sums as may be necessary are authorized to be appropriated to carry out this title, and are to remain available until expended without fiscal year limitation.

## **Central Valley Project, California**

Central Valley Project, California (16 U.S.C 695d-695j). The Emergency Relief Appropriations Act (Chapter 48, April 8, 1935; 49 Stat. 115) authorized expenditures of funds for various types of public works projects, including water conservation and irrigation. The Central Valley Project (CVP), a series of dams, reservoirs and canals in the San Joaquin Valley of California, was first established under this authority. This authority has been subsequently amended as follows:

Chapter 689; June 2, 1936; 74 Stat. 1622; Chapter 832; August 26, 1937; 50 Stat. 844, 850; Chapter 895; October 17, 1940; 54 Stat. 1198; Chapter 690; October 19, 1949; 63 Stat. 852; Chapter 1047; September 26, 1950; 64 Stat. 1036; Public Law 674; August 27, 1954; 68 Stat. 879; P.L. 95-616; November 8, 1978; 92 Stat. 3115; and P.L. 102-575, October 30, 1992; 106 Stat. 4600.

The Flood Control Act of 1936 formally authorized funds for the project by name and the project was reauthorized by statutes enacted in 1937 (Chapter 832), 1940 (Chapter 895), 1949 (Chapter 690), 1950 (Chapter 1047), and 1954 (Public Law 674). The 1940 statute broadened the project's purpose to include navigation improvements, flood control, and energy development purposes.

The 1949 statute reauthorized the CVP to include the Folsom dam and reservoir. The 1950 statute again reauthorized the Central Valley project and declared the purpose of the project to be for improving navigation, regulating the flow of the San Joaquin and Sacramento Rivers, flood control, irrigation, and electric power.

Public Law 674, enacted in 1954, declared use of water for fish and wildlife as a project purpose in addition to all other previously stated purposes. It also provided authority and conditions for delivery of water to the Grasslands areas of the San Joaquin Valley for waterfowl purposes as stipulated in the 1950 DOI report entitled "Waterfowl Conservation in the Lower San Joaquin Valley, Its Relationship to the Grasslands and the Central Valley Project."

Public Law 95-616, approved November 8, 1978, amended the 1954 Act to guarantee the delivery of 3000 acre-feet of water each fall and 4000 acre-feet of water each summer, when available, and authorized construction of the water delivery system to deliver water to Federal waterfowl refuges in the San Joaquin Valley.

P.L. 102-575, signed October 30, 1992 (106 Stat. 4600) included provisions to protect, restore, and enhance fish and wildlife and their habitats in the Central Valley and Trinity River basins. Objectives include addressing the impacts of the CVP on fish and wildlife resources and achieving a "reasonable balance among competing" water uses. (For more detail, see the entry on P.L. 102-575, the Reclamation Projects Authorization and Adjustment Act of 1992, particularly Title XXXIV, the Central Valley Project Improvement Act.)