

SCVNews.com | Appeals Court Upholds Endangered Steelhead Ruling

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Press Release

SAN FRANCISCO — A federal court's 2018 ruling that United Water Conservation District violated the Endangered Species Act by jeopardizing steelhead survival and recovery in the Santa Clara River was upheld by the Ninth Circuit Court of Appeals on Thursday.

The violation resulted from Ventura County-based UWCD's inadequate fish ladder and diversion of river flows at the Vern Freeman Dam near Santa Paula, according to the [152-page decision](#) handed down by the Honorable Judge David O. Carter.

The decision upheld the 2018 ruling, which ordered United to design and implement a needed long-term steelhead passage solution for the dam and to release sufficient water downstream needed for steelhead migration.

The new ruling rejects all of United's arguments on appeal.

Southern California steelhead is a federally protected, endangered anadromous fish that matures in the ocean but returns inland to spawn in freshwater upstream. The Santa Clara River historically supported thousands of steelhead and is critical for the recovery of steelhead throughout their range.

The 1,200-foot-wide, 25-foot-high Freeman Dam's ineffective fish ladder, combined with United's diversion of the Santa Clara River's flow at the dam, prevent steelhead from returning to their prime upstream spawning habitat in the river and migrating to the ocean.

Finding that [United also "dragged its feet"](#) on critical solutions, and that "United has proved itself unable and unwilling to tackle the two key problems repeatedly identified as perpetuating harm to steelhead," Judge Carter ordered measures needed to prevent the harm from continuing and to allow for steelhead recovery.

The court's ruling requires United to immediately ensure the river has sufficient flows for steelhead to swim the 10.5-mile stretch of river to and from the ocean. In addition, by January 2020, the court's ruling requires United to fully design both a 400-foot-wide notch and a hardened ramp solution to allow fish to migrate past the dam, and to construct the fish passage option acceptable to the National Marine Fisheries Service.

The Chumash name for Southern California steelhead is "Isha'kowoch" (glistening salmon). The Chumash people have a strong cultural interest in the recovery of the Isha'kowoch, which for more than 10,000 years have played a significant role in

When free-flowing rivers are dammed and channelized, migratory fish such as the Southern steelhead trout are unable

sustaining a healthy Santa Clara River ecosystem that spiritually and physically supported Chumash communities and villages.

to reach their spawning grounds, and the entire population declines. | Photo: Jennifer Strickland, USFWS.

“Our victory is important for all First Nations Peoples that place a critical cultural value on endangered steelhead that were once abundant in our coastal watersheds,” said Mati Waiya, Wishtoyo Chumash Foundation executive director and ceremonial elder of the Santa Clara River Turtle Clan.

“Wishtoyo is grateful to its talented and hard-working legal team on the case and remains ever vigilant in its mission to protect the Utom (Santa Clara) River’s and Southern California’s natural cultural resources,” Waiya said. “By eliminating physical barriers to steelhead passage, we are not only protecting an endangered species, but we are also overcoming barriers that have interrupted the continuity of our ancestral traditions.”

Steelhead hold a central and honored place in Wishtoyo culture. “Restoring instream flows to the Santa Clara River allows steelhead access to their spawning sites, and also allows restoration of our ancestral connection celebrating the seasonal return of the steelhead through our shared waters,” Waiya said. “Our victory is important for all First Nations peoples that place a critical cultural value on steelhead that were once abundant in our coastal watersheds.”

“The court’s decision affirms a well-known fact amongst fish passage experts, people who are knowledgeable about steelhead in Southern California, and state and federal fisheries agencies: United’s operation of the Vern Freeman Dam is a barrier to the migration of steelhead on the Santa Clara River and has led to decimation of the species in the watershed and beyond,” said Jason Weiner, general counsel for the Wishtoyo Chumash Foundation.

“More importantly, the decision brings an end to over 20 years of inaction by United to implement steelhead passage and flow-release solutions at the dam that are needed for steelhead survival and recovery,” Weiner said. “Restoring steelhead to the Santa Clara River is now possible and critical not only for the species but (also) for so many of the river’s communities whose wellbeing is dependent upon their rights to enjoy and benefit from a healthy river system.

“In addition, the decision continues to allow for the diversion of sufficient water for the maintenance of sustainable agriculture and municipal use in the Santa Clara River watershed and Oxnard Plain,” Weiner said.

“With (the decision) in hand, we expect that significant progress will be made in protecting and restoring the steelhead, which have been decimated by United’s dam, diversion and long-standing pattern and practice of inaction. United is now required to fix what it has wronged,” Weiner said.

“The Ninth Circuit’s ruling signals that the courts won’t tolerate more foot-dragging on

measures to protect endangered steelhead,” said John Buse, senior counsel for the Center for Biological Diversity. “United officials need to get on with their court-ordered duty to design and quickly implement effective fish passage for the Vern Freeman Dam.”

United Water Conservation District did not respond to a request for comment before this story was published Friday afternoon.

The ruling resolves a lawsuit filed in 2016 by Wishtoyo Chumash Foundation and the Center for Biological Diversity. The groups were represented on appeal by lead counsel Christopher Sproul of Environmental Advocates; Jason Weiner, senior counsel for Wishtoyo Foundation, and John Buse of the Center for Biological Diversity.

Founded in 1997, Wishtoyo Foundation is a 501(c)(3) nonprofit grassroots organization that enhances the well being of communities by preserving and protecting Chumash Native American culture, and the natural resources all people depend upon throughout California and the traditional Chumash range in Ventura, Los Angeles, Santa Barbara and San Luis Obispo counties.

To learn more about Wishtoyo visit www.wishtoyo.org.