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Enviro Groups Block Planned Calif. Highway Project

By **Andrew Scurria**

Law360, New York (May 05, 2014, 2:43 PM ET) -- A California federal judge on Friday halted the state transportation agency's plan to widen two highways running along a river critical to endangered salmon, finding a mess of "contradictory and unclear" impact assessments in the project's document trail.

U.S. District Judge James Donato preliminarily enjoined the California Department of Transportation's roadwork on highways 197 and 199 along the Smith River in the northwestern corner of the state after determining that the National Marine Fisheries Service acted questionably in concurring that the project posed no threat to a critical habitat for the Southern Oregon Northern California Coast coho salmon.

Donato sustained three environmental groups' argument that Caltrans had zigzagged repeatedly when undertaking its Endangered Species Act-mandated consultation with NMFS, and ruled that the "contradictions and critical gaps in reasoning" in the biological assessments Caltrans produced precluded a finding that the federal agency rationally identified potential impacts on the salmon.

"Although the court's review is deferential, it cannot rubber-stamp a haphazard consultation process. The agencies must do more than just go through the motions, and they must provide the court with an 'adequate explanation' so that the court is able to undertake 'meaningful judicial review,'" the judge said. "This is not a case of excusable minor sloppiness, as defendants suggest."

The judge ordered both sides to brief the merits of their claims surrounding the environmental review process on an expedited basis.

Pete McCloskey of Cotchett Pitre & McCarthy LLP, a former California Congressman and U.S. presidential candidate representing the plaintiffs, hailed the decision.

"This case is about Caltrans ignoring the long-term effects of its construction work in favor of large trucking companies," McCloskey said in a statement. "The Smith River, especially due to the salmon, is a profound natural resource. The river should be preserved for the fish, not destroyed for big-box trucks."

A representative for the defendants could not immediately be reached for comment on Monday.

In **their September complaint**, the plaintiffs — the Center For Biological Diversity, the Environmental Protection Information Center and Friends of Del Notre — claimed that the project's goal of narrowing the winding roads on the two highways to accommodate large truck traffic is inappropriate for the shipments of petroleum, toxic chemicals and other substances that would start to pass through.

The road expansion, known as the 197/199 Safe STAA Access Project, calls for major roadwork at seven locations along U.S. Highway 199 and California State Route 197, comes with an estimated \$26 million price tag and is slated to take 300 working days spread over three years of construction seasons to complete. Five of the project locations are within the Smith River Canyon directly above the state's only major river system that flows freely and naturally for its entire length.

Caltrans maintained that widening the highways will make the roads more safe and posed no threat to the salmon, but Donato cited inconsistencies among three biological opinions the department issued, particularly as they related to one construction site known as PCN-2 where work will occur directly on the riverbed.

The NMFS's concurrence "makes little sense" in this context, according to the order.

"It is not possible to readily determine what Caltrans concluded about the potential effects of the project and what NMFS evaluated and concurred in. ... It is equally hard to determine whether Caltrans concluded that formal or informal consultation was proper under the ESA," the judge said. "Despite these inconsistencies, NMFS purported to 'concur' that informal consultation was sufficient. The NMFS concurrence makes little sense in this context."

Donato added that the plaintiffs easily satisfied the other requirements of a preliminary injunction, having shown a likelihood of irreparable harm based on soil erosion and sediment delivery in the river. The balance of equities favors an injunction because Caltrans had made no showing that a delay would impose substantial costs, according to the order.

Having sided with the plaintiffs on their ESA claim against NMFS, the judge did not reach alternative claims against Caltrans and NMFS under the National Environmental Policy Act.

If allowed on the two roads at issue, large trucks would have access to highway 101, a major trucking route in the region. The two highways are the last major access points to highway 101 before it crosses into Oregon.

The plaintiffs are represented by Stuart G. Gross of Gross Law, Sharon Eileen Duggan of the Law Offices of Sharon E. Duggan and Joseph W. Cotchett, Philip L. Gregory and Paul N. McCloskey of Cotchett Pitre & McCarthy LLP.

The California Department of Transportation is represented by Ronald W. Beals, David Gossage, Lucille Y. Baca, Janet Y. Wong and Derek S. Van Hoften.

The case is Souza v. California Department of Transportation, case number 4:13-cv-04407, in U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.

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