

## National Resources Defense Council v. Patterson

September 17, 2004

Hatch & Parent is monitoring an important court case that could significantly affect the surface water supplies available to municipalities and water districts throughout California. A prominent national environmental organization brought the suit to challenge, and alter, the operations

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of the Friant Dam on the San Joaquin River. In a surprisingly broad ruling issued in late August, Federal District Court Judge Lawrence Karlton found that those ongoing operations failed to comply with a state law that protects fish downstream of dams (Cal. Fish & Game Code § 5937) (National Resources Defense Council v. Patterson, USDN. Dist. Cal.).

The statute cited by Judge Karlton is simple on its face:

"The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam." (Cal. Fish & Game Code § 5937)

In a long line of decisions prior to Judge Karlton's ruling, California courts and administrative agencies have recognized that surface water resources are subject to many competing demands, and that protecting fish resources is merely one of those demands. By contrast, Judge Karlton's ruling does not give much recognition to other uses to which surface water supplies may be committed and instead views protection of fishery resources as the primary statutory objective.

Because of the procedural posture of the case, the litigants do not yet know how much water the judge might order be released to satisfy the statute. At this point, the judge simply found that the current dam operations violated the law. However, case observers note that, in related proceedings before the State Water Resources Control Board, one of the interested environmental groups requested that the Friant Dam release 500,000 acre-feet per year - one third of the average river runoff - to maintain downstream fisheries. Such a significant change in dam operations could have a devastating impact on the Central Valley agricultural community.

There are other implications as well. As a Federal District Court decision that is published, the ruling might be cited in cases challenging operations of every dam and reservoir in the state. Thus, the case may affect the Central Valley Project, the State Water Project, and innumerable local projects. The availability of water to most of California could be affected through this court decision.

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We are informed that the Bureau of Reclamation and the Friant Water Users Authority intend to appeal this decision. Hatch & Parent will be leading an effort to prepare a "friend of the court" brief in support of a more balanced interpretation of the statute - one that recognizes the importance of the consumptive uses of the water supplies.

If you would like more information on National Resources Defense Council v. Patterson, please feel free to contact Rob Saperstein at (805) 963-7000 or email at [RSaperstein@HatchParent.com](mailto:RSaperstein@HatchParent.com).