

SUBLEGALS

~WE HOOK THE NEWS THAT'S FIT TO NET~

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The least movement is of importance to all nature. The entire ocean is affected by a pebble.

----- Blaise Pascal

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20:17/01. FEINSTEIN'S DROUGHT BILL BUBBLES UP IN CONGRESS: On Wednesday, 29 July, U.S. Senator Dianne Feinstein (D-Calif) introduced a much anticipated new drought relief bill to Congress known as the "California Emergency Drought Relief Act" with updates from her failed attempt to do so last year. This year's bill takes a broader approach than last year's, which was mainly a misguided attempt to work with House Republicans in delivering water to San Joaquin Valley farmers. Also, Feinstein has made herself an authority on California water policy – meaning that it is unlikely a bill related to California's drought will be passed without her approval. Feinstein's bill includes relief for almost all parties. The bill, co-sponsored by fellow California Senator Barbara Boxer (D) allots money for new desalination plants on coastal cities, expanded and new dams, groundwater-recharge projects, water recycling, and more habitat for fish which biologists predict are currently swimming towards extinction. Overall the bill is setting aside \$1.3 billion over a ten year period – almost half of the money going towards dams. Unlike last years behind-closed-doors meetings, this time Feinstein has consulted with Bay Area lawmakers and interest groups, including around a dozen environmental groups, as well as government policymakers and agencies.

For more information see the [29 July SF Gate article](#).

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20:17/02. TWIN TUNNELS OPPONENTS PROTEST IN SACRAMENTO: On Tuesday, 28 July, activists gathered in Sacramento, California, to protest California Governor Brown's \$15 billion Twin Tunnels project. The protest was organized around the State government's public comment meeting on that day, one of two such meetings. The rally brought activists from all over, including a Stockton music teacher who delivered his public comment in song format – to which Stockton City Councilwoman Christina Fugazi sang along. The second meeting was held 29 July Wednesday, in Walnut Grove. About 300 activists packed into the open-house format meeting on Tuesday. More protested outside and handed out literature to the public. Regardless of the outcome of this week's public meetings, the public will have another chance to comment when the plan is brought before other state agencies before it is permitted.

For more information see the [28 July Record Net article](#).

20:17/03. US DEPT. OF COMMERCE AND GREEN GROUPS STAND AGAINST HYDROPOWER PROVISIONS IN SENATE “ENERGY REFORM BILL”: On Monday, 27 July, 11 major environmental groups came out strongly against a bipartisan Senate energy policy bill now under consideration in key Senate Committees. The list of groups includes big names like the Sierra Club, League of Conservation Voters, and Natural Resources Defense Council, among others. The groups find “several provisions in this bill could cause detrimental effects to public health and our environment.” Ten sections were quoted by the groups to be problematic, including: provisions aimed to speed up permitting of fracking exports and mining operations, a section repealing a fossil-fuel phase-out for federal buildings, and changes to hydropower regulations that could put fish and wildlife in danger. The groups claim that the bill may also endanger Environmental Protection Agency (EPA) public health programming, and believe it does not invest enough in clean energy or reduce greenhouse gasses efficiently. The bipartisan bill is a product of months of hearings and negotiations between the two Senate members carrying it: Maria Cantwell (D-Wash) and Lisa Murkowski (R-Alaska). The groups did, however, comment in favor of the bipartisan effort put into the bill, and noted a few commendable sections of the bill as well.

On 29 July, the U.S. Dept. of Commerce, of which the National Marine Fisheries Service (NMFS) is a part, issued a similar rejection letter specifically opposing provisions in that bill written by the Hydropower Industry (Sec. 3001) that would strip NMFS and the U.S. Fish & Wildlife Service of its long-held power to precondition a FERC license or relicensing for any hydropower dam on appropriate mitigation measures to minimize adverse impacts of the dam on fish and wildlife resources, including providing appropriate fish passage for anadromous or otherwise migratory fish like salmon. Stripping the Services of their traditional authority they have had for decades to precondition any FERC dam licensing or relicensing effort on providing appropriate fish passage would not only put tens of billions of dollars of coastal salmon and inland fisheries at grave risk, but would make it nearly impossible to remove or improve dams that threaten these resources with extinction.

There are more than 70,000 licensed dams in the U.S. – *this is more than one dam built for each day since the signing of the Declaration of Independence* – of which several thousand are now obsolete, no longer cost-effective, are safety hazards, or cannot meet modern environmental protection standards. The Hydropower Industry has sought for many years to

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eliminate the decades-old legal authority of the Services (NMFS and USFWS) to require fish passage in an effort to escape billions of dollars of costs necessary to comply with modern fish passage and stream protection standards. Since dams are licensed for between 30-50 years, many of these pre-standards dams (most without effective fish passage) are now coming up for FERC license renewal, and many cannot feasibly meet modern environmental standards so thus would ultimately have to come down under current laws.

For more information see the [27 July *The Hill* article](#).

20:17/04. FARMED BLUEFIN TUNA DIE IN TYPHOON: More than 11,000 farmed Bluefin tuna died last week when a typhoon hit Japan's western coast. The deaths of the tuna will likely produce a loss of about 1.29 billion JPY (or 10.4 million USD) for fish farmers. The high waves and cloudy waters from the typhoon caused the sensitive tuna to suffer panic attacks and crash into a barrier. Damages to the aquaculture facility in Kushimoto is reported at around 300 million JPY, (or 2.4 million USD). Total damage to the agriculture, fisheries, and forestry industries is estimated to be around 2.38 billion JPY, (or 19.2 million USD). As the most expensive fish available at Tokyo's Tsukiji fish market, the largest fish and wholesale seafood market in the world, the loss of the Bluefin tuna will be a devastating hit economically. Environmentalists are reminding the public that the demand for Bluefin tuna is putting "unsustainable pressure" on the fish in the wild.

For more information see the [28 July *FIS* article](#).

20:17/05. NEW *EL NIÑO* SAID TO BE MONSTROUS – BIGGER THAN '97-'98: According to scientific computer models analyzing weather patterns over the Pacific, the current *El Niño* now shaping up may be the strongest in recorded history. The characteristic warmer than normal seawater is spreading and deepening – especially off the coast of Peru (4C warmer) and west of Vancouver and Seattle (3C warmer). It is rivaling and may surpass the 1997-1998 *El Niño*, which swept San Francisco's Bay Area and the rest of California up for months in floods, mudslides, and heavy snowfall. The computer models were provided by the National Weather Service's North American Multi-Model Ensemble. One model suggest a >90% chance of a strong *El Niño*, and a >60% chance of the strongest *El Niño* on record. Scientists caution that these statistics come from only one of many models – and it is too early to decide which model is most reliable.

For more information see the [27 July *Seattle PI* article](#).

20:17/06. WWF HAS CONCERNS OVER MSC CREDIBILITY AFTER CONTROVERSIAL CERTIFICATIONS: The World Wildlife Foundation for Nature (WWF) has raised concerns over the Marine Stewardship Council's (MSC) credibility after multiple controversial certifications. At a special hearing on 31 July, WWF plans to fight against the MSC's proposition to certify the Echebatar Indian Ocean tuna fishery. The WWF does not believe the Echebatar Indian Ocean purse seine skipjack, yellowfin, and bigeye tuna fisheries can be certified to MSC standards. Further, the WWF Foundation commented that the regional fishery management organization in the area – the Indian Ocean Tuna Commission (IOTC) – has failed to put any formal controls or limits on the exploitation of the stocks. The IOTC has even claimed that any decrease in their fish stocks in the last few years is likely due to piracy,

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not their own lack of regulations or controls. The WWF does not feel that a fishery managed by piracy deserves to be awarded MSC recognition.

For more information see the [28 July Undercurrent News article](#).

20:17/07. ARGUMENTS FOR “TAKINGS” RE-EMERGE AS CALIFORNIA RESTRICTS WATER RIGHTS DURING A DROUGHT EMERGENCY: As California dries up, the state government and lawyers are once again considering whether or not California’s government has the right to restrict or eliminate water rights, particularly senior water rights, without compensation when it is in the public interest to do so. Lawyers for irrigators have long pointed to the U.S. Constitution’s 5th Amendment – “no property shall be taken without just compensation” -- to defend their senior water rights holding clients, arguing that water rights are “property” that cannot be restricted without just compensation under the U.S. 5th Amendment.

Environmental lawyers and most academics disagree, arguing that California is merely enforcing rules to address the state of emergency during a drought, but also that water rights are not in fact “private property” rights under California law, but only limited rights to the use of water that continues to be owned solely by the state, and is thus subject to primary Public Trust obligations and beneficial use restrictions, including emergency restrictions during a drought. To date, the California Supreme Court has routinely opposed the irrigators’ theory of law, deeming water rights in California only limited rights to beneficial use, and thus subject to various restrictions, including emergency cutbacks due to drought. However, after a recent U.S. Supreme Court ruling in a government raisin program which sided with a farmer on this issue, agricultural property rights groups are confident they now have a case for keeping their senior water rights as “private property,” thus requiring “takings” compensation when they are restricted.

The California State Water Resources Control Board has already issued emergency orders to roughly 9,200 water rights holders this year to stop diverting. Around 100 senior water rights holders were also told between May and June to stop diverting water for Central Valley agriculture from the Sacramento-San Joaquin River Delta and tributaries—a waterway which also supplies drinking water for about 25 million people and 3 million acres of other farmland, and supports a billion dollar salmon fishing industry in California and Oregon. Court cases have been popping up around the State against these restrictions, and many more are likely to be filed. The question that most court cases will ride on is this: is a water right a true “property right,” or is it merely a right to the use of water for certain beneficial purposes subject to ultimate State ownership and control?

Which legal theory prevails is all the more important in water-starved California because for many decades water rights were distributed with little or no consideration or controls over cumulative impacts, supply restrictions or environmental damages that might result. Estimates from several recent studies of the water rights records in California have estimated that the rivers of the state are now over-appropriated by between 5 to 7 times. In other words, the total volume of water that could be legally extracted from all existing rivers in California now exceeds the total water available each year from all of California’s rivers by between 5 to 7 times! During the current severe drought, the many contradictions of California’s convoluted water rights system have hit all the harder. California is also the only state in the United States that does not

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control its own groundwater by state law or state agency, but instead gives sole authority to distribute groundwater well permits on a county-by-county basis. This has also resulted in a massive “race to the bottom” of the many aquifers in the state that span more than one county, severely depleting groundwater supplies in many regions of the state just when water users are turning to groundwater to supplement depleted rivers during the ongoing drought. Only last year did California Legislators tried to address this problem, taking the first halting steps – often against great political resistance – to bring California’s aquifer depletion problem under unified state regulation.

For more information see the [27 July E&E article](#).

20:17/08. WEST COAST SALMON DYING IN HUGE NUMBERS DUE TO DROUGHT, HEAT: Salmon from Washington to California are dying in rivers that are too hot or have been depleted by drought and excessive water diversions. Hundreds of thousands of returning adult salmon have already died in warm waters in the Columbia River before they could spawn, and a hundred thousand more died in the Yuba River. In addition, another hundred thousand coho salmon died in a hatchery on a tributary of the Toutle River due to high temperature stress. If this trend continues, many key runs of wild salmon may very well go extinct on the Pacific coast in the near future.

For more information see [this 27 July US News article](#) on the Columbia River deaths, [this 29 July Daily News Online article](#) on the hatchery deaths, and [this 28 July Appeal Democrat article](#) on the Yuba River deaths.

20:17/09. PARASITES IN KLAMATH RIVER COULD CAUSE LARGE-SCALE SALMON KILL: A recent outbreak of a deadly salmon parasite has been found in the Klamath River by Tribal researchers, associated with a gill-rot disease that is usually fatal to fish that contract it. The disease, commonly known as “Ich” (short for *Ichthyophthirius multifiliis*, which is caused by a pervasive warm-water protozoan *Ichthyophthirius*), has caused mass salmon kills in the Klamath before, such as in 2002 when it killed some 70,000 Chinook salmon and steelhead, as well as endangered coho, before they could spawn. That massive 2002 fish kill then contributed to a major closure of the 2006 west coast commercial ocean salmon fishery over more than 700 miles of northern California and Oregon coastline, when returning adult Klamath fall Chinook that year were “missing in action” because too few eggs and juveniles survived in the 2002-2003 year class in the Klamath to supply a 2006 fishery. Fish and wildlife authorities are working with the Yurok Tribe to determine what actions are necessary to protect fall-run Chinook, which have not entered the river yet in any large numbers but are expected soon. The disease is being exacerbated by low flows and high water temperatures, both of which are currently present in the Klamath during the ongoing drought.

For more information see [this 24 July Herald and News article](#) about the disease.

20:17/10. GREENHEAD SLOUGH RESTORATION PROJECT IN WA ALMOST COMPLETE: The project to restore the 2,317-acre watershed in Washington State’s Willapa Bay’s Greenhead Slough is nearing completion as dump trucks and earth movers get rid of an existing culvert that was blocking access to 18 miles of salmon habitat. Now that the culvert has been removed, tides will start to wash through the slough and fish are expected to return. The

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re-opening of the watershed re-creates much-needed spawning habitat for cutthroat trout and other salmonids. Major work will wrap up this fall, and planting and seeding of the area will continue through the fall.

For more information see [this 28 July Chinook Observer article](#) about the project.

20:17/11. HAWAIIAN LONGLINERS ON TRACK TO HIT BIGEYE LIMIT: Hawaiian longline fishermen will soon have to stop fishing for bigeye tuna in their most productive fishing grounds west of the Hawaiian Islands. This year, the limit was about seven percent smaller than last year, which meant that fishermen are hitting the limit of 3,500 metric tons about three months earlier than they did last year. Last year the fishermen were able to continue fishing after they got their quota due to rules put in place by federal authorities allowing them to attribute some catch to US territories, but this year there have been no such rules. Fishermen said that the early limit will threaten their livelihoods, and are working to get rules this year allowing them to continue fishing.

For more information see [this 28 July Honolulu Star Advertiser article](#).

20:17/12. PUBLIC MEETINGS SCHEDULED FOR KLAMATH SALMON PLAN: Four open houses have been scheduled by the Bureau of Reclamation from August 5 to 12, in northern California and Klamath Falls, OR to solicit input on the *Long-Term Plan for the Protection of Adult Salmon in the Lower Klamath River*. These meetings mark the beginning of preparation of an Environmental Impact Statement for the plan. Protection of salmon in the Klamath, once the third largest salmon runs in the continental U.S. but now seriously degraded by loss of habitat and fish passage blocked by dams, is crucial as this is a keystone stock by which much of the west coast's ocean salmon fisheries are managed, from at least Monterey, CA to the Oregon-Washington border.

For more information see the Bureau of Reclamation's [14 July release on the meetings](#) and the [full text of the plan](#).

YOUR NEWS, COMMENTS, CORRECTIONS: Submit your news items, comments or any corrections to Editor at: tsloane@ifrfish.org, or call the IFR/PCFFA office with the news and a source at either: (415) 561-FISH (Southwest Office) or (541) 689-2000 (Northwest Office). If you have any trouble subscribing or unsubscribing, contact IFR/PCFFA directly at: tsloane@ifrfish.org. *Sublegals* is a weekly fisheries news bulletin service of Fishlink. "Fishlink" and "Sublegals" are registered trademarks of the Institute for Fisheries Resources. All rights to the use of these trademarks are reserved to IFR. All photos are by IFR unless otherwise accredited. This publication, however, may be freely reproduced and circulated without copyright restriction. Articles taken from Fishlink *Sublegals* may be freely reposted or reprinted with attribution to "Fishlink *Sublegals*." If you are receiving this as a subscriber, please feel free to pass it on to your colleagues.

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