

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE CALIFORNIA NATURAL  
RESOURCES AGENCY, *et al.*,

Plaintiffs,

v.

WILBUR ROSS, *et al.*,

Defendants.

No. 1:20-CV-00426-DAD-EPG

ORDER GRANTING MOTION FOR  
PRELIMINARY INJUNCTION

(Doc. No. 54)

PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS, *et al.*,

Plaintiffs,

v.

WILBUR ROSS, *et al.*,

Defendants.

No. 1:20-CV-00431-DAD-EPG

ORDER GRANTING IN PART AND  
DENYING IN PART AS MOOT  
MOTION FOR PRELIMINARY  
INJUNCTION AND HOLDING  
CERTAIN ISSUES IN ABEYANCE

(Doc. No. 81.)

**INTRODUCTION**

This order addresses motions for preliminary injunction filed in two largely overlapping cases: *California Natural Resources Agency v. Ross*, No. 1:20-CV-00426-DAD-EPG (CNRA), and *Pacific Coast Federation of Fishermen's Associations v. Ross*, 1:20-CV-00431-DAD-EPG

1 (PCFFA). In *CNRA*, plaintiffs are the People of the State of California, California's Natural  
2 Resources Agency, and California's Environmental Protection Agency (collectively,  
3 "California"). In *PCFFA*, plaintiffs are a coalition of six environmental organizations led by  
4 PCFFA (collectively, "PCFFA").

5 Both sets of plaintiffs bring claims against the National Marine Fisheries Service (NMFS),  
6 the U.S. Fish and Wildlife Service (FWS), the U.S. Bureau of Reclamation (Reclamation), and  
7 various official representatives of those agencies. (*CNRA*, Doc. No. 51, First Amended  
8 Complaint (FAC); *PCFFA*, Doc. No. 52, FAC.) California's first and second claims for relief in  
9 *CNRA* challenge the adoption by NMFS and FWS, respectively, of a pair of "biological opinions"  
10 (BiOps) issued in 2019 pursuant to the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*,  
11 regarding the impact on various ESA-listed species of implementing Reclamation's updated Plan  
12 for the long-term operation of the Central Valley Project (CVP) and the State Water Project  
13 (SWP) (collectively, "Water Projects" "Plan" or "Proposed Action"). More specifically, in its  
14 first and second claims for relief California alleges that NMFS and FWS violated the  
15 Administrative Procedure Act (APA), 5 U.S.C. § 706, in various ways by concluding that the  
16 Water Projects would not jeopardize the continued existence of the ESA-listed species addressed  
17 in each biological opinion. California also brings claims against Reclamation under the ESA  
18 (third claim for relief) for unlawfully relying on the 2019 BiOps in formally adopting and  
19 implementing the Proposed Action, and the National Environmental Policy Act (NEPA), 42  
20 U.S.C. § 4321 *et seq.*, (fourth claim for relief). Finally, California alleges in its fifth claim for  
21 relief that Reclamation has violated the APA by failing to comply with the California Endangered  
22 Species Act (CESA), which compliance California alleges is required by various provisions of  
23 federal law. PCFFA's claims are largely identical to California's, although its complaint does not  
24 include a CESA-based claim. (*PCFFA*, Doc. No. 52, First Amended Complaint.)

25 On March 25, 2020, these cases were transferred to this district from the U.S. District  
26 Court for the Northern District of California in light of related cases already pending before the  
27 undersigned. (*CNRA*, Doc. No. 26; *PCFFA*, Doc. No. 112.)

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1 Now pending before the court are inter-related and overlapping motions for preliminary  
2 injunction in both cases. (*PCFFA*, Doc. No. 81 (filed March 5, 2019); *CNRA*, Doc. No. 54 (filed  
3 April 21, 2019).) The briefs, declarations, and attachments submitted in connection with these  
4 pending motions make up a lengthy and complex record. *PCFFA* and California have urged the  
5 court to act expeditiously before certain events take place in May. Accordingly, the court  
6 accelerated the briefing schedule where necessary and set a hearing on the pending motions for  
7 May 7, 2020. All parties made appearances through counsel at an all-day videoconference  
8 hearing on that date, as stated on the record. (*See PCFFA*, Doc. No. 167; *CNRA*, Doc. No. 99).  
9 Thereafter, the parties submitted a small number of additional documents referenced at the  
10 hearing, which the court has also reviewed.

11 *PCFFA* requests that the court issue a broad preliminary injunction order “temporarily  
12 setting aside” the 2019 BiOps and prohibiting Federal Defendants from implementing or taking  
13 any actions in reliance on those BiOps, including prohibiting Reclamation from implementing the  
14 Proposed Action in reliance on those BiOps. (*PCFFA*, Doc. No. 81-1 at 2–3.) *PCFFA* also has  
15 requested that the court order Federal Defendants to instead adhere to the **previous** operational  
16 regime for the Water Projects authorized pursuant to previously-controlling BiOps issued in 2008  
17 and 2009 by FWS and NMFS, respectively, until this court can resolve the merits of *PCFFA*’s  
18 claims asserted in the pending action. (*Id.* at 2.) *PCFFA*’s request was accompanied by extensive  
19 and wide-ranging briefing challenging numerous aspects of the Proposed Action and the 2019  
20 BiOps, focusing on issues related to operations at the Water Projects’ export pumping facilities in  
21 the southern portion of the Sacramento-San Joaquin Delta (Delta) as well as instream temperature  
22 management planning and protocols for Shasta Dam on the Upper Sacramento River and New  
23 Melones Reservoir on the Stanislaus River. (*See generally PCFFA*, Doc. No. 86.) The record  
24 presented by *PCFFA*, Federal Defendants, and Defendant Intervenors in *PCFFA* in connection  
25 with the pending motions also contains extensive information addressing how the planned  
26 operations may, or may not, harm ESA-listed winter-run Chinook salmon (winter-run), spring-run  
27 Chinook salmon (spring-run), California Central Valley steelhead (CCV steelhead), and Delta  
28 smelt.

1 California's motion for preliminary injunction is more narrowly focused on the period  
2 from now until May 31, 2020. It requests that the current operating regime (i.e., the Proposed  
3 Action as approved by the 2019 BiOps) be enjoined from the date of this court's order through  
4 and including May 31, 2020, "to the extent that operation is inconsistent with the requirement in  
5 ***Reasonable and Prudent Alternative Action IV.2.1***," which was contained within NMFS's 2009  
6 BiOp (2009 NMFS BiOp). (CNRA, Doc. No. 60 at 7–8.) (emphasis added). The emphasized text  
7 requests imposition of one aspect of the 2009 NMFS BiOp that was not carried forward into the  
8 2019 NMFS BiOp: a restriction on the amount of exports permitted at the CVP and SWP  
9 pumping plants in the South Delta that operates by imposing an inflow to export ratio, with the  
10 inflow numerator based upon flow in the San Joaquin River measured at Vernalis. California's  
11 motion focuses on harm during this narrower period to ESA-listed Delta smelt and CCV  
12 steelhead, as well as to CESA-listed Longfin smelt. (*See generally* CNRA, Doc. No. 54.)

13 These requests for preliminary injunctive relief are not mutually exclusive, since the  
14 broader injunction sought by PCFFA's motion encompasses the relief requested by California.

15 Having considered the papers filed thus far and the parties' arguments, for the reasons  
16 explained below, the court will: (a) grants plaintiffs' joint request to enjoin the Proposed  
17 Action's export operations in the South Delta and reinstate RPA Action IV.2.1 from the 2009  
18 NMFS BiOp from the date of this order up to and through May 31, 2020, on the specific ground  
19 that operations carried out pursuant to the Proposed Action will irreparably harm threatened CCV  
20 steelhead; (b) deny California's motion in all other respects as having been rendered moot by this  
21 order; (c) deny PCFFA's request to enjoin operations on the Stanislaus River as moot; and  
22 (d) hold all other aspects of PCFFA's motion in abeyance with the understanding that the court  
23 intends to issue a separate order addressing those remaining requests for injunctive relief in the  
24 near future.

### 25 STANDARD OF DECISION

26 "The proper legal standard for preliminary injunctive relief requires a party to demonstrate  
27 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the  
28 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); see also *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011) (“After *Winter*, ‘plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.”); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). The Ninth Circuit has also held that an “injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.” *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (internal quotation and citation omitted).<sup>1</sup> For the purposes of injunctive relief,

“serious questions” refers to questions which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the *status quo* lest one side prevent resolution of the questions or execution of any judgment by altering the status quo. Serious questions are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.

*Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (quotations marks and citation omitted).

The party seeking an injunction bears the burden of proving these elements. *Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009); see also *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted) (“A plaintiff must do more than merely allege imminent harm sufficient to establish standing; a plaintiff must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief.”). Finally, an injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.

An injunction must be narrowly tailored to avoid the irreparable identified. *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 823 (9th Cir. 2018). “There must be a

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<sup>1</sup> The Ninth Circuit has found that this “serious question” version of the circuit’s sliding scale approach survives “when applied as part of the four-element *Winter* test.” *All. for the Wild Rockies*, 632 F.3d at 1134. “That is, ‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest” *Id.* at 1135

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