



Rick Swart/ODFW

Coho salmon in an Oregon creek. An Endangered Species Act lawsuit alleges a private irrigation dam in Oregon unlawfully harms threatened salmon.

Lawsuit seeks removal of Oregon ranch's private irrigation dam

By MATEUSZ PERKOWSKI
Capital Press

Operators of an Oregon ranch fear its irrigation supply is under threat from an Endangered Species Act lawsuit alleging its dam blocks upstream fish migration.

WaterWatch of Oregon, an environmental nonprofit, has filed a federal complaint accusing Q Bar X Ranch of unlawfully harming threatened salmon by operating its Pomeroy Dam near Kerby, Ore.

The lawsuit seeks an injunction requiring the ranch's owners to either remove the dam or install a fish passage that meets state and federal regulations.

"The Pomeroy Dam is a passage impediment and hazard for migrating adult and juvenile Southern Oregon Coast Coho on the Illinois River," the plaintiff claims.

All the ranch's irrigation water is drawn from the reservoir above the dam, which it primarily needs for grass hay, according to a member of the ranch family who refused to be named.

Losing that water would be "devastating" to the ranch, whose owners may not find an alternative source of irrigation, he said. "We'll cross that bridge if we come to it."

Pomeroy Dam has existed since the 1940s but its removal has recently become an objective for the environmental group, the family member said.

"They just really don't want to have any dams," he said. "I don't see the logic of it."

The Oregon Farm Bureau isn't directly involved in the lawsuit but is concerned the case may represent a new litigation strategy for WaterWatch, said Mary Anne Cooper, its vice president of government affairs.

"I think this will be another tool in WaterWatch's tool box," she said. "From a precedent standpoint, we will definitely be paying attention to the case."

The lawsuit may be a foreboding sign for other irrigators who rely on pri-

ivate water impoundments, Cooper said. "You can get hauled in and even if the lawsuit is baseless, you can have to spend hundreds of thousands of dollars proving that."

According to WaterWatch, the structure violates the Endangered Species Act's prohibition against "take" of protected fish. That includes killing them or harming them through "significant habitat modification."

"The passage impediment and dam hazards impede migration and spawning as well as causing direct harm to Southern Oregon Coast Coho," the complaint said.

Apart from preventing salmon from reaching about 100 miles of "high-quality spawning and rearing habitat," the dam has raised water temperatures to their detriment, the complaint said.

The dam has created "pool conditions" that increase predation on juvenile salmon, the complaint said. Meanwhile, "inadequate screening" of the irrigation diversion causes adult fish to get stranded and die in irrigation canals and ditches.

Upstream fish passage past Pomeroy Dam is a top priority for state wildlife regulators but the ranch owners have rejected the plaintiff's offer to remove the barrier for no charge, according to the lawsuit.

"WaterWatch's experience with reaching out to defendants causes WaterWatch to be concerned that defendants will refuse and fail to respond to this complaint and/or to any order of this court to remove or fix the Pomeroy Dam," the plaintiff said.

Late berry crop creates bear problems on Oregon coast

By SIERRA DAWN McCLAIN
Capital Press

A late wild berry crop due to this year's cool and wet spring means hungry black bears are entering Oregon's coastal communities looking for food.

According to the Oregon Department of Fish and Wildlife, across the coastline, bears have recently killed livestock, dug through garbage cans and stripped young trees owned by timber companies.

"We have seen an increase in bear activity," said Adam Baylor, ODFW spokesman.

The bears are hungry because the spring's stormy weather damaged or delayed a major food source bears rely on: wild berries, including salmonberries and thimbleberries.

Salmonberries typically are ripe in May, but the extended cool, wet weather this spring on the Oregon coast slowed or disrupted the ripening process. In some areas, blossoms didn't get pollinated and fewer salmon-



Oregon Department of Fish and Wildlife

Hungry black bears are entering Oregon's coastal communities looking for food because a prolonged cool, wet spring damaged or delayed the wild berry crops that bears typically eat.

berries are available.

"Some districts are seeing failures of salmonberry crops," said Stuart Love, wildlife biologist at ODFW's Charleston office.

On the north coast, thimbleberries are also behind schedule.

As a result, black bears are drawing closer to communities in search of something to eat. According to ODFW, hungry bears are digging into

residents' garbage cans, bird feeders, barbecue grills, pet food and chicken and livestock feed. In a few cases, bears have killed livestock.

"ODFW wildlife biologists have their hands full with bear complaints," the agency said.

Jason Badger, wildlife biologist at ODFW's Gold Beach office, has recorded 56 complaints so far this year.

The South Coast, Bad-

ger said, has had two live-stock depredations in 2022. In one incident, a bear killed sheep. In another case, a bear destroyed a chicken coop and killed chickens.

Paul Atwood, wildlife biologist for ODFW's Tillamook office, said the North Coast Wildlife District has logged 12 complaints so far in 2022, all related to garbage or public safety.

"We haven't had any live-stock depredations reported so far this year, but we have talked to a number of folks concerned about chicken coops when they hear there's a bear in the area," said Atwood.

Jason Kirchner, ODFW's mid-coast district wildlife biologist in Newport, said his office has received 27 complaints so far this year, 15 of those in June. He said bears have broken into about five chicken coops in his district.

"This year, it seems like chicken coops are a hot commodity, so they're breaking into chicken coops, killing chickens and a couple ducks," said Kirchner.

Court rejects R-CALF Beef Checkoff appeal

By CAROL RYAN DUMAS
Capital Press

The U.S. Supreme Court on June 27 denied a petition by R-CALF USA to review its case in a lawsuit against USDA and more than a dozen state beef councils challenging the legality of Beef Checkoff promotions by the state councils.

The 9th U.S. Circuit Court of Appeals in July 2021 rejected R-CALF's argument that state beef councils support advertising that's contrary to the interest of independent beef producers and isn't protected as "government speech."

The 9th Circuit upheld an earlier ruling by the Montana District Court that determined state beef council promotions are ultimately under USDA authority, even when third parties develop the advertisements without preapproval from the agency.

R-CALF, represented by Public Justice, petitioned the U.S. Supreme Court in December seeking its review of the 9th Circuit's ruling.

While R-CALF is obviously disappointed in the Supreme Court's decision not to review the case, gains have been made, said Bill Bullard, R-CALF's CEO.

"Our objective in this case was to bring an end to the corrupt manner in which the Beef Checkoff program was being operated. Specifically, we set out to stop the U.S. Department of Agriculture from unconstitutionally compelling U.S. cattle producers to fund the private speech of private state beef councils," he said.

"R-CALF largely succeeded in that effort early

in its case. In response to our lawsuit, the USDA took steps to assume necessary control to limit state beef councils' ability to express private messages with the money that cattle producers are mandated to pay into the program," he said.

R-CALF filed that lawsuit in September 2020 in U.S. District Court for the District of Columbia.

The National Cattlemen's Beef Association said the Supreme Court's decision effectively ends another R-CALF attack on the Beef Checkoff and prevents the attorneys at Public Jus-

tice from further diverting checkoff and beef industry resources.

"For too long we have allowed R-CALF and their attorneys to divide our industry and draw attention away from the important job of beef promotion and research," said Colin Woodall, CEO of NCBA.

"The Supreme Court's rejection of R-CALF's petition confirms the Beef Checkoff, and its overseers, are adhering to the letter and spirit of the laws that protect and guide producer investments in the program," he said.

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