

PLF PRESS RELEASE

Court ruling sinks Cal. state assault on recreational fishing

Victory preserves jobs, recreational opportunities for individuals, families

Sacramento, CA; February 10, 2015: The California Third District Court of Appeal has struck down the state Department of Fish and Wildlife's illegally drafted permitting requirements on recreational freshwater fishing — regulations that threatened to decimate the \$2.4 billion industry by driving fishing lakes, private hatcheries, and fish farms out of business.

The ruling came in a lawsuit against the California Department of Fish and Wildlife (DFW), by Pacific Legal Foundation (PLF), representing the California Association for Recreational Fishing (CARF), a grass-roots organization of freshwater recreational fishermen and businesses that serve them. PLF represents CARF — as with all clients — free of charge.

Even though the state's freshwater fish population is historically healthy, DFW devised a radical new mandate on hatcheries and stocking ponds. Before they could stock or raise any fish, DFW would have to determine there would be no effect on dozens of arbitrarily-selected species — including species that are abundant and thriving in California.

This process would be so cumbersome and drawn out that it could effectively block many stocking ponds and hatcheries from continuing to operate.

Heavy-handed regulations adopted without public input

PLF challenged the new requirements because they were drafted without public input, as mandated by the California Administrative Procedure Act (CAPA). In ruling for PLF and striking them down, the Third District agreed they are illegal 'underground regulations' — *i.e.* the bureaucracy did not comply with CAPA's requirements for public review and comments.

PLF statement: A win for accountability in government

“This court ruling is a powerful victory for everyone who values recreational fishing opportunities, and for everyone who values openness and accountability in government,” said PLF Senior Staff Attorney Joshua Thompson. “The DFW concocted these radical regulations all on its own, without any request from the Legislature and without seeking public review and comment as state law requires. This court victory saves recreational fishing from out-of-control regulators and protects everyone's rights by reminding bureaucrats they aren't above the law.”

The controversial new regulations are rooted in a 2010 Fish and Wildlife Environmental Impact Report (EIR) that claims the stocking of lakes and ponds with hatchery bred fish

puts indigenous fish and habitat in danger. The report also radically changed the permitting process for stocking private fishing lakes and ponds without any public review or input, and without direction from the State Legislature.

The state agency changed its fish stocking permitting process in the EIR by prohibiting all stocking which would have an adverse effect on "decision species." More than half of these so-called "decision species" are not listed under any statute or regulation, but were included by agency whim, stated Thompson. The EIR also required private hatcheries to engage in continuous and expensive monitoring for invasive species, the results of which must be reported to the Department for use in its investigations and permitting decisions.

The regulations would also have required environmental reports for California fishing lakes, at costs potentially exceeding \$100,000 every 1-5 years, threatening the ability of fishing lakes to remain in operation and provide an affordable form of outdoor recreation.

Under CAPA, agencies must follow notice and comment procedures before adopting regulations. These procedures not only protect the people who will be subject to the regulation, but benefit everyone by ensuring that agencies only adopt regulations once the consequences have been brought to light. As the Third District affirmed in striking down the new permitting requirements, any regulation that is adopted without following these procedures is an "underground regulation" and void.

CARF president: A win for families who love freshwater fishing

"We could not be more pleased with the Appellate Court's rejection of the Department's illegal regulations," said Craig Elliott, President of CARF and a recreational fishing lakes operator and fish farmer. "This ruling ensures that freshwater fishing will continue to be an affordable and accessible form of recreation for California families and a source of jobs. California anglers owe a debt of gratitude to PLF for championing our cause."

The case is *California Association for Recreational Fishing v. California Department of Fish and Wildlife*. More information, and the original complaint, may be found at PLF's website: www.pacificlegal.org.

Additional information regarding the California Association for Recreational Fishing can be found at www.savecalfishing.org.

About Pacific Legal Foundation

Donor-supported Pacific Legal Foundation is the leading legal watchdog organization that litigates for limited government, property rights, and a balanced approach to environmental regulations, in courts across the country.

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