

***HYDROPOWER AND SPECIES***

**APPLICATION OF FEDERAL AND CALIFORNIA LAW TO  
RECLAMATION DAMS IMPACTING FISHERIES**



**PAUL STANTON KIBEL**

**PROFESSOR OF WATER LAW  
GOLDEN GATE UNIVERSITY SCHOOL OF LAW**

**NATURAL RESOURCE COUNSEL  
WATER AND POWER LAW GROUP**

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# RECLAMATION DAMS - OUTSIDE OF THE FERC- RELICENSING PROCESS UNDER THE FEDERAL POWER ACT



- Under the Federal Power Act (FPA), most non-federal hydropower dams must be licensed and relicensed by the Federal Energy Regulatory Commission (FERC).
- Pursuant to the FERC hydro relicensing process, conditions concerning downstream releases of water to maintain and restore fisheries are often included in the terms of the FERC license.

# RECLAMATION DAMS - OUTSIDE OF THE FERC-RELICENSING PROCESS UNDER THE FEDERAL POWER ACT



- The FERC hydro relicensing process does **not** apply to federal dams operated by the United States Bureau of Reclamation (e.g. Central Valley Project dams).
- However, in connection with impacts on fisheries, Reclamation dams in California may be subject to the provisions of:
  - Other non-FPA federal laws (**federal Endangered Species Act, Clean Water Act, NEPA**) and
  - California law (**California Endangered Species Act, public trust law, reasonable use law, Section 5973 of California Fish and Game Code**).

# EXAMPLES OF NON-FPA FEDERAL LAW AND CALIFORNIA LAW APPLIED TO RECLAMATION DAMS



- 1986 California Court of Appeal Racinelli decision regarding the application of California reasonable use law to operation of Central Valley Project
- 2004 federal district ruling in *NRDC v. Patterson* regarding the application of Section 5973 of California Fish and Game Code to Friant Dam
- Efforts by California during the Trump Administration years to apply the California Endangered Species Act to CVP operations
- 2022 decision by Ninth Circuit Court of Appeal (*San Luis Obispo Coastkeeper*) regarding the application of the federal Endangered Species Act to Twitchell Dam

## TWO PARTS TO PANEL ON HYDROPOWER AND SPECIES



- Part One: **Non-FPA Sources of Federal Law** Relating to Impacts of Reclamation Dams on California Fisheries
- Part Two: **California Sources of Law** Relating to Impacts of Reclamation Dams on California Fisheries

## ADDITIONAL READING



- Nathan Matthews, *Rewatering the San Joaquin River: A Summary of the Friant Dam Litigation*, 34 *Ecology L.Q.* 1109, 1112 (2007)
- *San Luis Obispo Coastkeeper v. Santa Maria Valley Water Conservation Dist.*, 49 F.4th 1242, 1244 (9th Cir. 2022)