

State's Farm Bureau sues Dept. of Fish and Game

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In a case aimed at determining the scope of a long-standing state environmental law, the California Farm Bureau Federation filed a lawsuit Tuesday that charges the state Department of Fish and Game with exceeding its authority by threatening to restrict farmers' rights to irrigate their crops.

On three occasions this spring, the Department of Fish and Game sent letters to farmers and ranchers along the Scott and Shasta rivers in Northern California, warning them of possible civil and criminal penalties if they do not notify the department of their water use and potentially obtain a permit from the agency. That permit, known as a Lake and Streambed Alteration Agreement, has never before been required for farmers who use water from the rivers to irrigate crops without actually altering the riverbed itself.

In its lawsuit, Farm Bureau alleges that the Department of Fish and Game recently reinterpreted a law enacted in 1961, in an attempt to create a "fundamental change" that would give it broad new authority to oversee water rights--a function already performed by a separate state agency, the State Water Resources Control Board. The Department of Fish and Game began following the new interpretation, Farm Bureau says, as it pursued a recovery strategy for coho salmon in the two rivers, which are protected under the state Endangered Species Act.

"Farmers and ranchers understand that Fish and Game has a legitimate role to play in protecting fish, and the department already has many other ways to do that," said Chris Scheuring, managing counsel of the California Farm Bureau Natural Resources and Environmental Division. "Farmers along the Scott and Shasta rivers have taken a number of steps to benefit the salmon. But we do not believe Fish and Game has blanket authority to regulate every farmer's water rights, and that's what it's trying to do."

Scheuring said the streambed-alteration rules, originally drafted in response to gravel mining, were never intended to apply to farmers who merely lift a headgate near a stream to obtain water for crops. Reinterpreting the original rules nearly 50 years after they were enacted, he said, leads to a duplication of government functions never intended by the Legislature.

Through its lawsuit, Farm Bureau seeks to clarify the law and to relieve farmers of the additional time, expense and threat of punishment imposed by the extra layer of regulation. Scheuring called the lawsuit a test case that "will have widespread repercussions" for water rights and environmental enforcement statewide.