



PRESS RELEASE

FOR IMMEDIATE RELEASE
September 27, 2007

Contact: Jann Taber 916/391-8811

Coalition for a Sustainable Delta Files Notice of Intent to Sue Power Plants and the U.S. Army Corps of Engineers for Violations of the Endangered Species Act

Two Mirant Power Plants Widely Believed to be a Major Source of Delta Smelt Decline

SACRAMENTO, CA – The [Coalition for a Sustainable Delta](#) today filed a Notice of Intent to sue Mirant Delta LLC (Mirant) and the U.S. Army Corps of Engineers for violating the Endangered Species Act (ESA). The filing comes on the heels of the recent federal court action that will significantly reduce water availability for 25 million Californians and the state's locally grown food supply, but will do little to protect Delta smelt.

“Mirant’s Contra Costa and Pittsburg gas-fired electric generating power plants are illegally harming endangered and threatened species, including the Delta smelt,” said [Coalition for a Sustainable Delta](#) spokesperson Michael Boccadoro. “We are putting them on notice. Mirant, needs to fix these violations or face legal action.”

The power plants can suck over a billion gallons of water out of the Delta a day to cool steam used to rotate turbines that generate electricity. The water intake structures kill ESA-listed fish and also harm their habitat when the water is returned to the Delta at warmer temperatures. Mirant’s own data clearly establishes that these two power plants have taken, and continue to take, listed species in violation of the Endangered Species Act. According to studies conducted by Mirant, the total estimated Delta smelt killed at the facilities exceed tens of thousands each year.

The two power plants are widely believed to be a significant factor in the decline of the Delta smelt and the Delta’s overall health. In a major report on the Delta entitled, *Envisioning Futures for the Sacramento-San Joaquin Delta*, the [Public Policy Institute of California](#) indicated that “entrainment of fish at the power plants at Pittsburg and Antioch is potentially a major source of mortality, especially of larval fish, that could significantly contribute to the pelagic organism [Delta smelt] decline.”

The [U.S. Fish and Wildlife Service](#) (FWS) Recovery Plan for the Delta smelt similarly finds that the Contra Costa and Pittsburg power plants “entrain large numbers of Delta smelt, juveniles and larvae.” Despite the overwhelming scientific evidence, Mirant has continued to operate its plants illegally for many years and regulators have been unwilling or unable to rectify the situation.

These power plant operations are among the many factors that are likely impacting Delta smelt, and need to be addressed to protect the fish, the state’s economy and its quality-of-life. Other factors which scientists increasingly believe play a strong role in the impact on fisheries include non-native/invasive plant and animal species, unscreened in-delta pumps, wastewater discharges, urban runoff and other toxic contaminants, just to name a few.

“Without addressing the larger issues affecting the health of the delta, we will make little progress toward saving the smelt. Recent court actions, which drastically cut back the water supply of 25 million Californians is not the answer,” said Boccadoro. “In the past, regulators have turned a blind eye to significant, but often overlooked factors in the smelt’s decline. The Coalition’s actions are intended to change that by bringing these issues to the forefront. Until broader actions are taken, the smelt – along with the water supply and quality of life of millions of Californians – will remain threatened.”

###

The Coalition for a Sustainable Delta is an ad hoc group of water users who depend on the delta for a large portion of their water supplies. The Coalition is dedicated to protecting the delta and is committed to promoting a strategy to ensure its sustainability.

For more information, visit www.sustainabledelta.com

What is Causing the Delta Smelt Decline?



The decline of the health of the Sacramento-San Joaquin Delta generally, and the Delta smelt in particular, is a statewide problem that implicates many facets of the economy. For well over a decade, the scientific community has recognized the existence of multiple and synergistic causes of the Delta smelt decline. Nevertheless, a segment of the environmental community has argued vociferously that state and federal pumping operations, which deliver water to more than 25 million residents, over three million acres of prime agricultural farmland, and major businesses and industries, from the Bay Area to southern California, are the principal cause of the decline. **And state and federal officials have vigilantly monitored and regulated pumping operations while largely ignoring other significant contributors to the decline of the Delta smelt.** In recent months, the pumps were shut down entirely.

Despite significant regulation and reductions in state and federal water project operations and water deliveries, the Delta smelt continues to experience a population decline. **More advanced scientific review and the best available scientific data increasingly indicate that the pumping operations are NOT the primary factor in the smelt's decline.** State and federal biologists and other leading independent researchers have identified other factors, or stressors, that directly or indirectly impact the Delta ecosystem and the abundance of Delta smelt. A number of these factors directly impact and limit the

delta smelt's primary food source and therefore, the fish's ability to continue to survive. Following is a brief discussion of the most significant other factors impacting the Delta ecosystem and its fisheries:

- ◆ **Unscreened In Delta Diversions** – Some 2000-3000 largely agricultural, unscreened and unregulated water diversions currently operate in the Delta. A 1993 U.S. Fish and Wildlife Service listing of the Delta smelt estimated that local, private in-Delta diverters exported up to 5,000 cubic feet per second (cfs) – or almost half as much as the combined federal and state pumping plants export rate of up to 11,000 cfs. The number of agricultural in-Delta diversions has expanded over the past decade and therefore, the rate of unscreened and unregulated diversions has likely increased. Unscreened in-Delta diversions impact the Delta smelt through entrainment and hydrodynamic influence. Moreover, to date state and federal regulators have expended little or no effort to regulate or monitor these diversions in order to slow the decline of endangered species.
- ◆ **Municipal Diversions and Pumping** – In addition to the state and federal pumping operations, a number of municipalities operate pumps to serve local communities. These pumping operations serve cities and communities such as Tracy, Vallejo, Stockton, and Discovery Bay. Diversions of Delta waters also result from exports through the North Bay Aqueduct, Contra Costa Canal, and South Bay pumping plants to serve Bay Area communities. Together, these diversions directly impact the quantity and quality of water available for fisheries and the ecosystem. Unlike the state and federal pumping operations these water diversions and pumps are not heavily regulated and monitored.
- ◆ **Municipal Wastewater Discharges** – Over one billion gallons of municipal wastewater are directly discharged to Delta waterways each day from over 300 municipal sources including numerous Publicly Owned Treatment Works (POTWs). Many of these municipal discharges are located in the heart of the Delta, so that they release effluent into the smelt's critical habitat. As northern California's population continues to expand, these discharges and their impact on the Delta's ecosystem and fisheries will continue to grow. Wastewater discharges affect the quantity, quality, and temperature of Delta water flows.
- ◆ **Power Plant Diversions and Discharges** – Two major power plants owned and operated by the Mirant Corporation divert and discharge huge quantities of water directly in the heart of the Delta. Located near the confluence of the Sacramento and San Joaquin Rivers, the Pittsburg and Contra Costa power plants are both within the region of maximum abundance of Delta smelt and the fish's primary habitat. Both plants utilize antiquated once-through cooling systems and divert large quantities of water in smelt's primary habitat, directly entraining large numbers of the species. After the diverted water absorbs heat in the cooling process, the power plants discharge the warm water back into the estuary. Delta smelt are well known to be highly sensitive to temperature and this thermal pollution can also have significant direct implications for the species' survival. In addition to thermal pollution, the use of chlorine to control "condenser slime" contributes additional harmful pollution directly into the delta. Chlorine discharges are widely suspected to have direct implications on the Delta's ecosystem.
- ◆ **Invasive Species** – The Delta is considered one of the most invaded estuaries in the world. More than 250 alien aquatic and plant species have affected the Delta and at least

185 of these species have gained a foothold and are currently inhabiting – and altering – the Delta’s ecosystem. Many of these alien species, such as striped bass and the Asian clam, prey upon or compete with the Delta smelt.

- Striped Bass represent a direct predatory threat to the delta smelt and yet are protected by an on-going California Department of Fish and Game program that regulates fishing and maintains the population. Until recently, the Department restocked striped bass as part of an active population management program.
- Asian Clams (*Orbula Amurensis*) have significantly reduced the abundance of the delta smelt’s plankton food supply and may affect the feeding efficiency and growth of Delta smelt larvae.

◆ **Agricultural Discharges and Toxic Urban Run-off** – Salinity, herbicides, pesticides, and other toxic chemicals and pollutants from urban and agricultural sources directly impact the Delta smelt and its ecosystem. According to the Center for Biological Diversity, which released a recent report, *Poisoning Our Imperiled Wildlife*, “...all life stages of delta smelt are at least periodically exposed to lethal or sub-lethal concentrations of herbicides and pesticides discharged and transported from upstream into their habitat.” According to the Center, both the smelt and the plankton on which it feeds are suffering direct mortality or impairment from the presence of toxic substances in the water. There is also evidence that toxic conditions in the North Delta, in the form of pyrethroids and organophosphates, may have caused a catastrophic loss of young Delta smelt.

◆ **Climate Change** – According to the California Department of Water Resources, climate change is already having an impact on California’s water resources and the Sacramento-San Joaquin Delta. Existing climate change models predict that warmer temperatures, changing patterns of precipitation and run-off and rising sea levels will profoundly affect the Delta ecosystem and ecology.