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U.S. agency's smelt plan 'arbitrary,' judges rules

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(12-14) 21:05 PST FRESNO -- A federal judge has ruled that a landmark 2008 environmental study laying the groundwork for controversial water cutbacks from the Sacramento-San Joaquin River Delta relied on faulty science.

In his much-anticipated decision released Tuesday, U.S. District Judge Oliver Wanger ordered the U.S. Fish and Wildlife Service to re-examine and rewrite its plan for the threatened delta smelt.

The agency's solution for shoring up the collapsing species - namely cutting water exports to California cities and farms - is "arbitrary" and "capricious," the Fresno judge wrote in his 225-page decision.

"Despite the harm visited on California water users, (the Fish and Wildlife Service) has failed to provide lawful explanations for the apparent over-appropriation of project water supplies for species protection," Wanger wrote. "The public cannot afford sloppy science and uni-directional prescriptions that ignore California's water needs."

Five-year battle

Tuesday's decision is the latest development in a five-year battle over a species that many see as a stand-in for the beleaguered delta itself.

Twenty-five million Californians rely on the delta for drinking water, as do farmers who each year produce vegetables, fruit, nuts, rice and milk worth billions of dollars. Despite its importance, however, the delta's ecosystem has declined in the last few decades because of pollution, booming urban development, invasive species and increased water demands from agriculture.

But few species have deteriorated as radically as the thumb-size smelt, which smells like cucumber and spawns in the central and southern delta - a location that puts the fish directly in the path of the massive pumps that funnel water to the Bay Area, Central Valley and Southern California.



Wanger's ruling upheld the evidence showing that the delta pumps do indeed trap and kill many delta smelt - a consolation for environmental groups that had fought for pumping cutbacks. However, the judge found fundamental flaws in the scientific analysis on the benefits of trimming water supplies to urban and rural areas and said the federal agency failed to examine the economic impacts of such a policy.

Water districts happy

Agricultural water districts, plaintiffs in the case and the most vocal critic of the 2008 Fish and Wildlife Service report - officially termed a "biological opinion"- were delighted with Tuesday's decision.

"With the economy struggling and unemployment still soaring, it is welcome to see a judge refusing to rubber-stamp extreme, destructive and unjustified environmental regulations," said Damien Schiff, attorney for the Pacific Legal Foundation, which backed several farmers in a lawsuit against the federal government. "Bottom line: The people win; junk science loses."

Environmentalists, however, say siphoning more water from the delta will push the smelt - which they term an "indicator species" measuring the estuary's overall health - to oblivion.

"In our view, the biological opinion was based on sound science, and it put in place measures that were needed to protect a species that is on the edge of extinction," said Earthjustice attorney George Torgun.

It is unclear whether Wanger's decision will lift restrictions on water exports from the delta, in part, because wet weather this winter might provide additional flows for the smelt.

Farming and environmental groups, along with the federal and state operators of the delta pumps, are scheduled to meet Jan. 4 in Wanger's courtroom to determine how to proceed.

Fish management

Tuesday's ruling dates back to a 2005 Fish and Wildlife Service plan for managing a dwindling delta smelt population. That first biological opinion concluded that the pumps in the south delta near Tracy posed no threat to the species. The Natural Resources Defense Council and other environmental groups disagreed and filed suit later that year.

In 2007, Wanger sided with them, invalidating the opinion and ordering the agency to rewrite it.

The next year, the Fish and Wildlife Service reversed itself entirely and declared the pumps "likely to jeopardize" the federally protected smelt. That set the stage for 15 percent to 40 percent water cutbacks from the delta at the same time California was in the grip of a nasty dry spell. As tens of thousands of acres lay fallow in 2008 and 2009, Central Valley farmers and conservative commentators took to calling the situation a "Congress-created California dust bowl."

In 2008, it was the farmers' and urban water districts' turn to file suit against the Fish and Wildlife Service. Tuesday's decision was the culmination of those combined lawsuits.

Officials from the wildlife agency said they were still reviewing Tuesday's ruling and could not comment.

Smelt

Food: Small organisms called zooplankton

Life span: 1 to 2 years

Breeding season: from late winter to early summer

Size: 2-3 inches, but can reach 5 inches

Habitat: brackish waters in the Sacramento-San Joaquin River Delta

Status: threatened

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