

## Judge dismisses delta smelt protections

*U.S. Fish & Wildlife Service must rewrite rules for pumping water to Southern California.*

**Bettina Boxall, Los Angeles Times, 12-15-10**

A federal judge Tuesday threw out much-disputed delta smelt protections that have cut water shipments to Southern California and the San Joaquin Valley, finding that federal biologists failed to justify aspects of the restrictions.

But the ruling in a long-running legal battle was not a clear-cut victory for water contractors, who lost some of their fundamental arguments against the pumping reductions.

The decision by U.S. District Judge Oliver Wanger means that the U.S. Fish & Wildlife Service will for the second time have to rewrite the endangered species document that regulates operation of the huge state and federal pumps that send water south from the Sacramento-San Joaquin Delta.

Whether the pumping limits will be relaxed in the meantime will not be decided until more court hearings are held early next year.

Both sides in the case saw reason for hope in Wanger's complex 225-page ruling.

Wanger concluded that fish and wildlife's rationale for several of the key pumping limits was flawed, rendering its 2008 biological opinion for smelt arbitrary and capricious. But he also found support for the agency's determination that the pumping operations "are likely to jeopardize the continued existence" of the smelt, a once-abundant native of the delta driven to the edge of extinction.

And the decision supported the agency's reliance on certain delta conditions as triggers for imposing pumping curbs.

"This is a limited victory" for water users, said Natural Resources Defense Council attorney Doug Obegi. "I tend to think that they will have very similar pumping restrictions in the next round."

But Linus Masouredis, chief deputy general counsel for the Metropolitan Water District of Southern California, said that if the fish and wildlife agency merely tinkers with the existing biological opinion, it will be back in court.

Wanger "identified some major defects," he said, adding that the agency will have to take new studies into account that focus on other factors that have hurt the delta ecosystem.

"I think we will get less onerous restrictions," Masouredis said. "There are other third-party stressors out there that are more important."