

Smelt Supreme Court ruling goes against farmers

Bob Egelko, San Francisco Chronicle, 11-1-11

SAN FRANCISCO -- The U.S. Supreme Court denied an appeal today by Central California farmers who claimed the federal government lacks constitutional authority to protect the imperiled delta smelt by limiting north-to-south water shipments.

Three San Joaquin Valley growers challenged the government's use of the Endangered Species Act to protect a fish that exists only in California and has no commercial value.

But the Ninth U.S. Circuit Court of Appeals in San Francisco ruled in March that the law is constitutional because preserving rare wildlife from extinction is a form of economic regulation that is part of Congress' constitutional power to regulate interstate commerce.

Courts around the nation have agreed that "the protection of threatened or endangered species implicates economic concerns," even for species found only in one state, the three-judge panel said. The Supreme Court denied review today without comment.

The Pacific Legal Foundation, a property-rights organization that represented the growers, said it would continue to fight restrictions on water shipments. "This is a long-term battle to stop federal intrusion that robs people of their livelihoods and liberties," said foundation attorney Brandon Middleton.

Jason Rylander, a lawyer with Defenders of Wildlife, said it was the sixth time that the high court had "rebuffed radical attacks on the constitutionality of the Endangered Species Act."

The case is *Stewart & Jasper Orchards vs. Salazar*, 10-1551.