

Panel clears scientists who testified in delta smelt case

After a judge blasts two scientists in a case about California's delta smelt, an independent panel finds that the Interior Department biologists may have been unclear but didn't do anything improper.

Bettina Boxall, Los Angeles Times, 1-6-12

Two federal biologists accused of providing misleading and deceptive testimony in a case involving the imperiled delta smelt did not engage in improper conduct or invoke bad science, according to an independent panel.

The scientists' credibility came under attack last year, when a federal judge who had presided over many of California's most contentious water cases blasted them from the bench.

Shortly before retiring, U.S. District Judge Oliver Wanger said the testimony of Frederick Feyrer and Jennifer Norris was so inconsistent and contradictory that it amounted to deliberate deception and "bad faith" on the part of the Interior Department.

He called Norris, an assistant field supervisor with the U.S. Fish and Wildlife Service, a "zealot" who was "incredible as a witness."

Wanger later said his remarks had been blown out of proportion. Water contractors had circulated his lengthy rebuke, adding fodder to the political battle over endangered species protections that have reduced water deliveries from Northern California.

The Interior Department launched a review and contracted with Resolve, a Washington D.C.-based mediation group. A three-man panel of experts chosen by Resolve found that Feyrer and Norris could have been clearer about the basis of their scientific conclusions.

"We suspect that this failure to provide clear and convincing explanation, more than any other issue, may have led Judge Wanger to reach his conclusions alleging lack of candor and integrity," their report, obtained by The Times, said.

"There is no evidence that either scientist has failed to use [the] 'best available science' appropriately," the panel concluded. "We find that in neither case is there evidence suggesting deliberate falsehood, interpolation of personal opinion into science, or other professional misconduct."

Interior Department press secretary Adam Fetcher said the department's scientific integrity officers agreed that no further investigation was warranted.

"We consider this matter closed," Fetcher said. "The accusations leveled at our scientists were unfounded, and these independent findings will clear their names and allow them to continue their important work without distraction."

Wanger drew criticism in November, two months after he returned to private practice, when he agreed to

represent Westlands Water District in a state court case. One of the most powerful players in California water, the district had been a litigant in many of the high-profile water cases decided by Wanger.

Wanger withdrew from the case a week later, saying he had not violated professional rules of conduct but wanted to avoid any misperception.