

# California fishermen win key ruling over Delta water supply

**Dale Kasler, The Sacramento Bee, 8-1-16**

A group of commercial fishermen won a potentially significant court ruling in the seemingly endless battle over California's water supply and the volumes of water pumped south through the Sacramento-San Joaquin Delta.

A federal appeals court last week ruled that the U.S. Bureau of Reclamation, which delivers water from the Delta via the federal Central Valley Project, violated federal environmental law by renewing a series of two-year delivery contracts for south-of-Delta agricultural customers. The court said the bureau should have given "full and meaningful consideration" to the idea of reducing the amount of water available for delivery in the contracts.

The ruling by the U.S. 9th Circuit Court of Appeals won't void any of the supply contracts, said Stephan Volker, an Oakland lawyer representing the fishermen. But it could force the Bureau of Reclamation eventually to reduce the amount of Central Valley Project water pumped through the Delta to farmers and leave more water in the estuary to help endangered fish species.

Numerous lawsuits have been filed by environmental groups, fishermen and others over Delta pumping operations. Volker said the 9th Circuit ruling represents a rare victory for those seeking to restrain pumping levels.

The decision comes as Gov. Jerry Brown's controversial plan to build twin tunnels beneath the Delta, in an effort to repair its battered plumbing system, enters a crucial phase. The State Water Resources Control Board is in the early stages of months of hearings on the \$15.5 billion proposal, known as California WaterFix.

Regardless of court decisions or the fate of Brown's proposal, many observers say big changes are coming to the Delta. Pumping operations are likely to be throttled back in the coming years, even in wet years, to satisfy increasingly stringent environmental restrictions.

Volker said he believes the fishermen's lawsuit could put more pressure in the near term on operators of the Delta pumps to let more water flow into the ocean. However, he said the ruling won't translate into immediate relief for the salmon and other fish whose populations have dwindled in recent years.

"Everything's an uphill battle," said Volker, who represents the Pacific Coast Federation of Fishermen's Associations and the San Francisco Crab Boat Owners Association.

The fishermen's lawsuit, originally filed four years ago in U.S. District Court in Fresno, focuses on a series of two-year supply contracts with farm customers like the Westlands Water District, which delivers Central Valley Project water to a major swath of the San Joaquin Valley. The contracts cover about half the water delivered to the valley by the Central Valley Project in a rainy year, according to data supplied by the Bureau of Reclamation.

The south-of-Delta water deliveries have been sharply curtailed by the drought. Even this year, following a fairly wet winter, many Central Valley Project customers have been told to expect just 5 percent of their contracted supplies. But Volker said his lawsuit is important because water pumping hurts fish populations even when there's a relatively healthy water supply.

Every contract renewal “is another nail in the coffin” for fish species in the Delta, he said.

Bureau of Reclamation spokesman Louis Moore said his agency couldn’t comment on the ruling. “This is still being reviewed, and is active,” he said.

At Westlands, one of the largest Central Valley Project customers, the ruling was greeted with derision. “Any time the water supply for millions of Californians is under attack, we take it seriously,” said deputy general manager Johnny Amaral in an emailed statement. He criticized the fishermen for trying to take water from “the region of the state that actually feeds people.”

Volker said the lawsuit could undermine the argument for building the Delta tunnels, which are designed to shore up the reliability of water deliveries to south-of-Delta regions. If the courts ultimately rule that less water needs to be pumped south, there’s less reason to build the tunnels, he said.

Nancy Vogel, a spokeswoman for the state Natural Resources Agency, said “the ruling does not affect California WaterFix.”

Under Brown’s plan, a portion of the Sacramento River’s water would be diverted into a pair of tunnels near Courtland, and then piped 30 miles south to the pumping stations at Tracy. This upstream diversion is designed to alter the water flows in a way that reduces harm to migratory fish.