

Tiny Fish Tears the Heart Out of California's Water System

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A federal judge last August ordered a dramatic curtailment of pumping water to the San Joaquin Valley and Southern California – an unprecedented decision aimed at protecting a tiny fish in the Sacramento delta, but one that will generate widespread economic and political repercussions from Redding to San Diego. San Joaquin Valley farmers receiving water from the Sacramento-San Joaquin Delta could see their 2008 supplies cut by as much as 50 percent or a reduction in deliveries by as much as 500,000 acre-feet, one of the largest single court-ordered reductions in California water history.

This particular situation could not provide a better example of a “poster child” showing the stupidity that can result when the Endangered Species Act (ESA) is manipulated by agenda-driven activists and implemented by the government and the courts. Judge Wanger’s ruling will provide little benefit to fish, generate enormous costs for farmers and cities, and create tremendous uncertainty for all water users.

The tiny fish that is at the heart of this matter is the Delta smelt, which is listed as a “threatened species” under the ESA. Judge Wanger earlier this year ruled that the biological opinion (BO) that was issued to allow State Water Project (SWP) and Central Valley Project (CVP) operations was legally insufficient with respect to the smelt. Since a new BO would take at least a year to develop, Wanger in August then held a two-week hearing to determine what interim measures would be implemented in the meantime. His August 31 decision from the bench has the potential to radically alter existing water management schemes.

Although Judge Wanger declined to adopt the draconian measures advocated by the environmental community, he imposed significant water requirements for the smelt that will reduce supplies to the CVP and SWP in all year types. Every farmer in the 3 million acres receiving water through the Delta pumps and 25 million residents in the Bay and Los Angeles are at immediate risk resulting from less water flowing to their farms, homes and businesses next year.

There is widespread panic among the growers. Annual water requirements for permanent crops in the CVP south of Delta farming region total 500,000 acre-feet or more. The court-mandated reduction in CVP deliveries to farmers means less water for many other fruit and vegetable crops. Those crops could potentially be fallowed to meet the water needs of permanent crops. Water agencies will have to scramble to find water from willing sellers, potentially creating a bidding war. However, it might be difficult to find a time when the pumps will be allowed to move available water from Northern California.

The judge's decision is disappointing because scientists say that the pumps only account for 5-15 percent of the causes that are affecting the smelt population. Other factors representing a greater effect on the smelt numbers are loss of food supplies and the introduction of foreign plant and fish species that have dramatically altered the environment.

What is truly ironic is that, while the environmentalists plaintiffs complain about the "take" of 2600 juvenile smelt by the water Projects, they utterly ignore the "take" of sub-adult delta smelt, just prior to the onset of the spawning season, by their research colleagues at U.C. Davis. This "take", made up under the terms of a scientific collection permit issued by U.S. Fish and Wildlife Service (USFWS), involves the annual removal of up to 4,500 sub-adult smelt from the Delta's waterways. According to the water users' scientists, the 2418 sub-adult smelt taken by U.C. Davis research colleagues in November-January 2006 convert to almost 22,000 juvenile delta smelt during the prior May-July period. This is more than *eight times* the number of juvenile delta smelt taken by the Projects that was the focus of the Plaintiffs' draconian "interim remedy".

This particular case highlights the dangers involved with the ESA's focus on single species management. In order to mitigate impacts to migrating smelt, part of the judge's injunction entails removing a barrier at Old River, an existing structure that was installed to protect salmon. So, at least part of the latest judicial "remedy" actually pits one imperiled species against another.

Overall, only 10 of the 1,304 species listed on the ESA since the law's inception have been "recovered," or saved to the point the species can be removed from the list. However, this doesn't dissuade environmental activists like the Center for Biological Diversity (CBD), which a few years ago tried to force the Bush administration to list an additional 225 plants and animals as endangered.

There is grave concern about what all of this means. People are searching for answers, and right now, those answers are elusive. A game plan is being developed by the water users to focus on surviving next year and creating a long-term strategy to protect a water supply that supports some of the most productive farmland in the world.

Much will be written about this ruling in the coming months, and the ramifications are enormous. In Sacramento, Judge Wanger's decision may increase pressure on lawmakers to act on proposals to approve reservoirs and build a new fish-friendly plumbing system to deliver water through the delta. With over 20 million urban Californians potentially impacted by this decision, Governor Schwarzenegger may have a better chance to raise public support for his \$5.9 billion water storage program.

Many fights are yet to be had, and potential additional challenges loom, including those thrown into the mix by the usual suspects. Environmentalists – including CBD - on August 8 asked the federal and state governments to list longfin smelt, a relative of the Delta smelt, as an endangered species.