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JUDGE ORDERS STATE: STOP KILLING DELTA FISH

Agency told to obey law in 60 days or shut down pumps that
send water to Southern California

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The pumps that send water to 24 million Californians illegally kill endangered and threatened fish species and must be shut down, an Alameda County judge has decided.

The judge's draft decision, released Friday, is far-reaching in scope, but nobody expects immediate rationing in the areas that receive the water -- the East Bay, the South Bay and Southern California. Judge Frank Roesch gave the state 60 days to figure out a way to comply with the law.

Ultimately, the state Department of Water Resources could be forced to radically change the way it allocates water via a complicated set of canals and reservoirs known as the State Water Project. Changes could mean more water for the beleaguered Sacramento-San Joaquin River Delta and less for

municipalities and Central Valley farms.

The decision further undercuts the faltering consensus approach that has guided state water politics during the past decade, and it harks back to the 1970s and 1980s, when acrimony and litigation prevailed.

Consequences of changing State Water Project operations are huge: The system is a major source of water for cities like Los Angeles and irrigates 775,000 acres of cropland. State officials say it is also directly responsible for a \$300 billion portion of the California economy.

At a minimum, complying with the judge's decision will force the state water agency to obtain a permit from the California Department of Fish and Game allowing the "incidental" killing of delta smelt and chinook salmon at the Harvey O. Banks Pumping Plant near Tracy as well as to develop a plan to aid in the recovery of the protected fish.

Roesch's ruling was in response to a 2006 lawsuit over the killing of the fish. The suit was filed by the California Sportfishing Protection Alliance against the California Resources Agency, which oversees the Department of Water Resources and the State Water Project.

Officials have two weeks to provide more information, after which Roesch can either modify or maintain his order.

"This was a bell ringer," said Bill Jennings, the executive director of the Alliance, a confederation of anglers based in Stockton. "We have a real likelihood now that the delta will receive more water," he said.

Jennings said that the Water Resources Department ignored the California Endangered Species Act and state Fish and Game codes in operating its pumps, which have ground up large numbers of fish.

The state's pumping station can

transport 10,300 cubic feet of water a second, equivalent to a large river. The nearby pumps that sustain the federal Central Valley Project are much smaller, with a capacity of about 4,600 cfs. The Central Valley Project is not affected by Roesch's decision.

The Water Resources Department maintained it was given a pass on state laws by virtue of five agreements concluded in the 1990s, including two negotiated by CalFed, the joint state and federal agency created to solve California's water disputes.

Roesch ruled that the agreements did not constitute a permit to kill the salmon and smelt, as the state contended.

The best that can be said of the five agreements, Roesch wrote, "is that (they) accept fish will be killed in the Henry O. Banks Pumping Plant operations and that the parties agree that mitigation measures will be undertaken."

State officials expressed dismay at the decision.

"We obviously strongly disagree with the court's proposed decision and will present additional information to challenge (it)," state Resources Secretary Mike Chrisman said.

Ryan Broddrick, the director of the California Department of Fish and Game, said conservation strategies of the kind Roesch requires are complicated and time-consuming.

"We want to find solutions for the delta that have long-term sustainability," Broddrick said. "The (60-day) time frame offered is not sufficient."

Lester Snow, the director of the Water Resources Department and the former director of CalFed, agreed with Broddrick and noted that the state recently authorized a \$1 billion delta habitat conservation plan. Such a comprehensive and well-funded effort, Snow said, is preferable to fighting the matter out in court.

"(Roesch's) response is devoid of any recognition of this conservation plan," he said.

Snow also said that the consequences of curtailing Southern California water deliveries would be unacceptable.

"The California gross product is \$1.6 trillion," he said. "Of that, the State Water Project directly supports \$300 billion. That's a lot of farm and industrial jobs."

Water contractors also are concerned.

"We get 80 percent of our water from the state project, so we find this very worrisome," said Jill Duerig, the general manager of the Zone 7 Water Agency, which serves the East Bay cities of Pleasanton, Dublin and Livermore.

"It highlights the uncertainty and risks we face in securing our drinking water supplies," she said.

But Jennings said Roesch's decision "blew away the smoke screen" that obscured many delta problems and underscored the general failure of CalFed.

"Under CalFed, water exports from the delta have increased, and we've seen the general collapse of the region's ecosystem," he said. "It became clear to anglers that if we were going to have any fish left in the delta, we were going to have to step away from the backroom deals and hold the agencies accountable to the law."

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The State Water Project

A look at major components of the system by the numbers:

24 million - Number of Californians who get drinking water from the project

775,000 - Acres of crops irrigated

29 - Number of agencies served by the water system

1957 - Year construction began on the first part of the State Water Project

4 million - Amount of water, in acre-feet, that the system can deliver in wet years

5.8 million - Amount of water, in acre-feet, that can be stored in the State Water Project

444 - Length, in miles, of the California Aqueduct

Southern California - Water is transported around Southern California and stored in many lakes, including Lake Castaic and Pyramid Lake.

Banks pumps - Near Tracy, the state-operated pumps send water down the California Aqueduct.

The pumping operations are blamed for killing endangered and threatened fish. Near here, a separate canal delivers some of the water to the South Bay.

Lake Oroville - One of the largest dams that make up the State Water Project. It holds about 3.5 million acre-feet of Feather River water.

Sacramento River - Supports weak migrations of winter- and spring-run chinook salmon, which are protected under state and federal law. Water from Lake Oroville eventually runs down this river.

San Luis Joint-Use Complex - Both federal and state water operators use this facility, which stores water for users located further south.

Tehachapi pipes - The Edmonston Pumping Plant lifts water up about 2,000 feet, over the Tehachapi Mountains, through 10 miles of tunnels.

Declining Delta Smelt

A small native fish long used as an indicator of the delta's biological health, the delta smelt has sustained steady declines over the past several years. Fresh water diversions from the delta to Southern California appear to be the leading cause, with smelt populations declining in general proportion to the amount of water shipped south.

Smelt need brackish water to survive, and the brackish zone in the delta is decreased when

fresh water is exported. The government pumps have also been implicated in directly destroying smelt by sucking them into their intakes.

Breeding season: From late winter to early summer. Fast growing, with majority of growth within the first 7 to 9 months of life.

Food: Small organisms called zooplankton Life span: 1-2 years

Status: Threatened

Size: 2-3 inches, but can reach 5 inches

Habitat: Brackish waters in the Sacramento-San Joaquin River Delta

Source: California Department of Fish and Game