



Westlands Water District

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For Immediate Release
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Statement of Westlands Water District on Ninth Circuit Decision

FRESNO, CA - Today, the United States Court of Appeals for the Ninth Circuit issued a decision in the appeal taken from the District Court's judgment that the December 2008 biological opinion on effects of the coordinated operations of the Central Valley Project and the State Water Project on the Delta smelt was arbitrary, capricious, and unlawful. In its opinion, on a two – one vote, the appeals court reversed the District Court's judgment.

Westlands Water District is extremely disappointed in this decision. Thomas Birmingham, the District's general manager stated, "The basic premise of the court of appeal's decision is that a court must defer to the judgment of an agency charged with administering a statute. But in this case, there was substantial evidence in the record and introduced in court, that the Fish & Wildlife Service's judgment ignored the best scientific and commercial data available. We continue to believe that Judge Oliver Wanger got it right in his 2010 decision. And we believe that Judge Morris Arnold got it right in his decision dissenting from the appeals court's majority opinion on the merits of the case."

The impact of the 2008 Delta smelt biological opinion on California water supply is being felt this year. Birmingham stated, "This year California is experiencing a drought of near-record proportion and that drought is affecting our water supply. But the zero allocation to public water agencies that receive water from the Central Valley Project and the State Water Project is a direct result of limitations imposed on operations of the projects under the Delta smelt biological opinion. In the 2012-13 water year, that biological opinion reduced the projects' water supplies by more than 800,000 acre-feet. That is enough water to supply more than 1.8 million households for a year or to irrigate 320,000 acres of land. Had we not lost that 800,000 acre-feet of water last year, this year our water supply would be greater than zero. Moreover, it is particularly frustrating that water dedicated to protecting the Delta smelt has not provided any protection to the species. The population of the species continues to decline."

Birmingham also said, "One thing stated by the court of appeals with which the District strongly agrees is that the resolution of fundamental policy questions about the allocation of water resources in California lies with Congress. It is for precisely that reason that the District supports efforts by members of the California congressional delegation in both houses of Congress to enact legislation that would provide direction on how the Endangered Species Act will apply to operations of the Central Valley Project and the State Water Project."

Westlands is evaluating options for potential further judicial review, including whether it should seek *en banc* review of the court of appeals decision.

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