

Delta smelt: U.S. Supreme Court won't hear appeal of pumping limits

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FRESNO, Calif. (AP) -- A tiny, threatened fish unique to California received protection Monday when the U.S. Supreme Court refused to consider an appeal by Central Valley farmers and water districts that want more water pumped from the delta where the fish live.

The decision lets stand a U.S. Fish and Wildlife Service plan to safeguard the 3-inch-long Delta smelt, a species listed as threatened in 1993 under the federal Endangered Species Act.

The plan restricts the amount of water that can be pumped out of the Sacramento-San Joaquin Delta and sent south to Central Valley farmers and water districts.

The smelt only lives in the delta -- the largest estuary on the West Coast that supplies much of California with drinking water and irrigates millions of acres of farmland.

Farmers contend that under the smelt regulations, vast amounts of water from the Sierra Nevada snow pack are sent through the delta and into the ocean, exacerbating hardships endured by the growers in the three-year drought.

Farmers say their economic interests have been ignored while officials protect the fish. Roadside signs throughout the Central Valley decry the lack of leadership while warning of a second Dust Bowl.

"I'd like to see a little more common sense put into it," said Jim Jasper, an almond farmer who appealed to the high court. "Agriculture has been overlooked."

Because of the drought and restrictions to protect smelt, Jasper said he had to cut down one-fifth of his almond trees last year. The 70-year-old farmer who runs Stewart & Jasper Orchards in Newman anticipates taking out some of his citrus crops if the drought persists.

Many farmers such as Jasper did not get any irrigation water last year from a federal system of canals and reservoirs, forcing them to rely on diminishing groundwater or rip out trees.

The 9th U.S. Circuit Court of Appeals in San Francisco last year largely upheld the Fish and Wildlife Service's 2008 biological opinion that restrictions were needed on the use of massive pumps that move water through the state's system of canals to deliver it to farms and cities in Central and Southern California.

Katherine Poole, an attorney for the Natural Resources Defense Council, welcomed the Supreme Court decision on Monday. The smelt's decline signals the poor health of the massive estuary, she said, adding that a thriving delta benefits farmers and the millions of people who rely on it for drinking water.

"We need to keep this estuary healthy and functional for everybody," Poole said. "The smelt is telling us that we're not doing a good enough job of that right now."

Earthjustice attorney Trent Orr said the court's decision is a victory for the Endangered Species Act.

"Contrary to their claims, there have been no reductions in water allotment for protection of this species," Orr said. "The drought is what's causing a water shortage, not the smelt."

The ruling was no surprise to Marcia Scully, general counsel of the huge Metropolitan Water District of Southern California, which supplies 19 million people with drinking water. The district is one of several that joined the appeal.

"The water agencies understood the long odds," she said, noting that the Supreme Court takes up less than 1 percent of appeals. "We will continue to work with the regulatory agencies to improve the underlying science in the delta."

The Supreme Court's decision on this aspect of the Delta smelt plan can't be appealed further, but attorney James Burling, who represents Central Valley farmers at the Pacific Legal Foundation, said he will continue to challenge the unfair application of the federal environmental law at every opportunity.

"It may take a while," he said. "But eventually we'll have other opportunities to get issues dealing with the Delta smelt back to the Supreme Court."

Burling said the smelt ruling resembles a 1978 Supreme Court decision blocking completion of a Tennessee dam that threatened the endangered snail darter fish.

Congress later amended the endangered species law to give federal authorities more flexibility to include economic and technical feasibility.

However, Burling said the law is being used now to favor the smelt, without consideration of the economic hardships.