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## California judge grants preliminary injunction in water diversion lawsuit

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(Reuters) - A federal judge in Fresno, California, temporarily halted a plan to divert water to California farmers in the Central Valley so as not to jeopardize endangered fish species, handing a victory to the state and a coalition of fisheries groups who had brought separate lawsuits against the project.

U.S. District Judge Dale Drozd on Monday granted the plaintiffs' request for a preliminary injunction through May 31 to stop implementation of the U.S. Bureau of Reclamation's plan to send water from north California to some 20 million farmers and residents further south, finding that diverting freshwater from rivers risked irreparable harm to fish in violation of the Administrative Procedure Act and the Endangered Species Act (ESA).

In his order, Drozd rejected a request to enjoin water export from the Stanislaus River, but granted the relief for the operations in the Sacramento-San Joaquin Delta. He said that the decision to implement new performance measures warranted a rational explanation under the APA.

California's Attorney General Xavier Becerra and two state environmental agencies sued the Trump administration on Feb. 20, arguing that its diversion plan would harm several endangered fish including the steelhead and Chinook salmon. The Trump administration had announced the plan to divert water to farmers, fulfilling a campaign promise, last October.

A coalition led by the Pacific Coast Federation of Fishermen's Association and represented by Glen Spain of the Institute for Fisheries Resources filed a similar lawsuit in December 2019.

Drozd reviewed the two parties' overlapping applications for preliminary injunctions together.

The lawsuits challenged two 2019 biological opinions issued by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service that analyzed the impact on the listed species of the water diversion plan.

In February, Reclamation approved the project, with limits on the ratio of water exported to the amount left in place, as detailed in the 2009 biological opinions, replaced by other performance measures such as continuous monitoring.

The state, represented by Senior Assistant Attorney General Tracy Windsor, alleged the agencies violated the APA by concluding in their biological opinions the project would not jeopardize the species. The conclusion arbitrarily and capriciously contradicted previous opinions for the same project, in which they had found the operations would endanger the species unless pumping followed a strict inflow-export ratio.

The state also brought claims under the National Environment Policy Act and the California Endangered Species Act. (The coalition's claims are largely identical.)

On April 21, California moved for a preliminary injunction, as did the coalition a month prior, pleading for a quick decision on grounds that state-mandated limits on water pumping for exports would end on May 11, allowing Reclamation to ramp up its pumping along the more permissive levels of the latest biological opinions.

Trump in announcing the project in public remarks in February, told a crowd that the update would result in protecting the environment while directing more water to the state's farmers and ranchers in need.

The defendants are represented by Nicole Smith of the U.S. Department of Justice. DOJ spokesman Wyn Hornbuckle said the department declined to comment.

The cases are California Natural Resources Agency, et al. v. Ross, et al., U.S. District Court for the Eastern District of California, No. 1:20-cv-00426-DAD-EPG.

For California Natural Resources Agency, et al.: Assistant Attorney General Tracy Windsor

For Ross, et al: Nicole Smith of the U.S. Department of Justice

Pacific Coast Federation of Fishermen's Associations, et al. v. Ross, et al, U.S. District Court for the Eastern District of California, No. 1:20-cv-00431-DAD-EPG.

Pacific Coast Federation of Fishermen's Associations, et al.: Glen Spain of Institute for Fisheries Resources.

For Ross, et al: Eve McDonald, of the U.S. Department of Justice

#### ---- Index References ----

Company: US FISH AND WILDLIFE SERVICE (THE); UNITED STATES DEPARTMENT OF JUSTICE (THE)

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