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Extra pumping starts in Delta a day after court ruling

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Cities and farmers quickly started pulling more water from the Delta following a controversial court ruling, prompting concern that more young salmon would be killed in the pumps.

The ruling Tuesday by U.S. District Judge Oliver Wanger invalidated some of the rules imposed by the National Marine Fisheries Service to protect endangered salmon. The victors are a host of farm and urban water agencies who say the resulting water shortages caused economic harm.

The rules limited diversions from the Sacramento-San Joaquin Delta to 1,500 cubic feet per second to protect juvenile salmon migrating to the sea.

On Wednesday, the California Department of Water Resources and U.S. Bureau of Reclamation wasted no time boosting water diversions. They planned to reach 2,800 cfs Wednesday, 4,200 today and 5,800 by Friday, said Carl Torgersen, chief of operations and maintenance at DWR.

Water agencies estimated the increased pumping will deliver about 200,000 acre-feet of additional water, enough to serve about 400,000 homes for a year. Recipients include both farms in the San Joaquin Valley and cities from San Jose to San Diego.

But the action raises risks that more salmon will be killed by the pumps, which have already claimed nearly 2,500 fish this month. It also poses new legal risks for the state.

The Department of Water Resources must obtain permission under both the state and federal Endangered Species Acts for its water diversions. State law requires full restoration of an affected species, not just mitigation of harmful effects.

DWR has operated for years without a state Endangered Species Act permit from the Department of Fish and Game. Rather, it has relied on a "consistency determination" from the department, which concludes that federal rules satisfy the state law.

Environmental groups and some state lawmakers have long questioned this strategy.

"If they had been fully mitigating, we wouldn't have had a crash of the Delta fishes," said Bill Jennings, executive director of the California Sportfishing Protection Alliance.

Tuesday's court ruling essentially left nothing for state law to be consistent with.

Anticipating this, DWR on Monday asked Fish and Game for a new consistency determination, and

it was issued Wednesday, said Jerry Johns, DWR deputy director. It concludes that what's left of the federal protections still "fully mitigate" harm to salmon, and finds that a separate state permit is not needed.

"This is just kind of temporary to cover the time period of the (court) injunction," Johns said.

Jennings was awed by the speed of the action, and noted that the former boss of DWR, Lester Snow, now oversees the state Natural Resources Agency, which also oversees Fish and Game.

"We'll be going over it with a magnifying glass," he said.

The National Marine Fisheries Service said it will monitor the increased pumping.

"We will take immediate action, including seeking emergency relief from the court order," if the fish kill increases, said Howard Brown, acting regional supervisor.

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