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# Ninth Circuit Reverses District Court Ruling and Upholds the National Marine Fisheries Service (NMFS) Biological Opinion for Central Valley Project Operations in California's Central Valley

December 22, 2014

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The Ninth Circuit Court of Appeals today issued its decision in *San Luis & Delta-Mendota Water Authority v. Locke*. The decision reverses and remands a previous district court decision that found NMFS' 2009 biological opinion (BiOp) concerning the Central Valley Project and its impact to salmon species to be arbitrary and capricious. The BiOp recommended that the Bureau of Reclamation change its operations with respect to diverting water for the Central Valley Project in order to avoid jeopardizing endangered salmon species.

Relying on its recent decision in *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581 (9th Cir. 2014), a case that addressed a 2008 BiOp regarding irrigation impacts on the threatened smelt, the court of appeals found that the district court did not give the NMFS the "substantial deference" that the agency is due under the Administrative Procedure Act (APA).

Independently reviewing the record in support of the BiOp, and excluding supplemental declarations that were reviewed by the district court, the appellate court found the NMFS' 2009 BiOp to be reasonable and supported by the record. The appellate court also found that the NMFS is not required to show that each requirement it imposes on a project such as the CVP is "essential to avoid jeopardy."

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