

[← Back to Original Article](#)

## Ruling may increase water for Southern California, San Joaquin Valley

*A U.S. agency acted arbitrarily in imposing pumping limits to protect migrating salmon and steelhead, a federal judge rules. But he did not jettison the curbs that are reducing water exports from the Sacramento-San Joaquin delta.*

May 19, 2010 | By Bettina Boxall, Los Angeles Times

More water may be headed to the Southland and the San Joaquin Valley after a judge concluded Tuesday that a federal agency acted arbitrarily when it imposed pumping limits to protect migrating salmon and steelhead.

The decision by U.S. District Court Judge Oliver W. Wanger is the latest development in a tangle of legal challenges to restrictions based on the Endangered Species Act that are cutting water exports from the Sacramento-San Joaquin delta, east of San Francisco.

Wanger sharply criticized some of the scientific rationale for the pumping curbs, but stopped short of jettisoning them, saying he needed more information before deciding on a cure.

The 134-page decision gave something to both sides in the pumping wars, which have grown more intense with the state's recent drought.

Water users, including San Joaquin Valley agriculture and the Metropolitan Water District of Southern California, have argued the fish protections are too severe, cause economic harm and don't adequately address other factors that are hurting salmon populations.

"There are a lot of things we think are very positive in what the judge said," said Dan Nelson, executive director of the San Luis & Delta-Mendota Water Authority, which represents San Joaquin Valley agriculture and cities supplied by the pumps.

But Nelson, whose agency is a plaintiff in the case, acknowledged that it was "uncertain as to how this thing is going to play out."

Wanger has previously ruled that protections for salmon and delta smelt were inadequate, decisions that forced federal and state agencies to take the steps now being challenged in court.

His Tuesday ruling was sternly worded: "Federal defendants have acted arbitrarily and capriciously in formulating [pumping limits] to protect threatened species under the ESA that lack factual and scientific justification, while effectively ignoring the irreparable harm those ... actions have inflicted on humans and the human environment."

The restrictions, he wrote, are the "product of guesstimations ... rendering it impossible to determine whether [they] are adequately protective, too protective, or not protective enough."

A National Marine Fisheries Service spokesman had no comment.

Wanger warned that any fix for the problems he found "must be done without jeopardizing the species and their critical habitat."

"It's difficult to parse out what his bottom line is," said Doug Obegi, an attorney with the Natural Resources Defense Council, which is representing salmon fishermen, tribes and conservation groups intervening in the case.

Wanger's wording indicates he believes that "unfettered pumping would cause jeopardy," Obegi said, and he doubted that the judge would make substantial changes in the restrictions.

Glen Spain, northwest regional director of the Pacific Coast Federation of Fishermen's Assns., said he expected "the judge will probably send some portion back to the agency for reanalysis. But it's unlikely that they will be canceled."

[bettina.boxall@latimes.com](mailto:bettina.boxall@latimes.com)