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## **Temporary May 11 Preliminary Injunction Was Not About Delta Smelt, Longfin Smelt or Delta Outflow...So What Was It About?**

By Jennifer Pierre

Several media outlets have reported that the [May 11 federal court ruling](#) related to the Federal Biological Opinion case governing Central Valley Project (CVP) and State Water Project (SWP) operations was a wholesale rebuke of the 2019 Biological Opinions. However, none of the articles I have read have mentioned the very narrow scope of the resulting injunction and that most aspects were denied.

In hearing the two separate preliminary injunction requests from PCFFA, NRDC, et. al. and the State of California, the Judge organized the ruling into three topics: Shasta operations, Stanislaus River operations, and Delta operations. Within the Delta operations, the State claimed irreparable harm to Delta Smelt, Longfin Smelt, and San Joaquin River steelhead. The State requested that the Delta operations revert to the San Joaquin River inflow to export (I/E) ratio – a reasonable and prudent alternative in the 2009 Biological Opinions – through the end of May. PCFFA, NRDC, et. al., requested that the whole 2019 Biological Opinions be set aside in favor of having the U.S. Bureau of Reclamation and California Department of Water Resources (DWR) implement the 2008/09 Biological Opinions until the full case can be decided.

In its May 11 ruling, the court denied the PCFFA, NRDC, et. al., preliminary injunction for Stanislaus River and stated it will rule separately on Shasta operations. The remainder of the ruling focused on Delta operations, but was far from a slam dunk for the State.

The ruling was not about Delta Smelt or Longfin Smelt, or Delta outflow as the State argued. The ruling was narrow and focused on the last 20 days of May, specifically on San Joaquin River steelhead. The court's acknowledgment of the plaintiff's concerns with the National Marine Fisheries Service's (NMFS) approach to the I/E ratio was reached with limited time to review the Biological Opinions and without the benefit of the full administrative record. The court ultimately decided that "[t]he record is too mixed for the court to conclude at this time that plaintiffs are clearly likely to be able to show that NMFS has violated the Administrative Procedures Act."

We applaud the Judge's commitment to sifting through substantial technical and legal materials that were submitted by all parties, and his caution in granting unfettered injunctions. Unfortunately, the Attorney General is correct that this is likely to be a long fight. It's too bad, because we were very close to a pathway where the CVP, SWP and other water users all worked together to develop habitat and flows to the benefit

of the entire watershed through the Voluntary Agreements. We hope we can find our way back to that path.