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Biological Opinions for the Sacramento-San Joaquin Delta: A Case Law Summary

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Summary

For decades biologists, water users, and lawmakers (both federal and state) have attempted to craft a system that meets the needs of California water users while ensuring sufficient usable water for fish. Under California's hybrid system of appropriative water rights, users are issued permits for water diverted from rivers and streams regardless of the users' proximity to the source of water. The state of California has issued permits to the Bureau of Reclamation (the Bureau) to store, divert, and deliver water from the federal Central Valley Project (CVP), which consists of facilities on the Sacramento, Stanislaus, and San Joaquin Rivers, including the Shasta, New Melones, and Friant Dams. The Bureau diverts CVP and State Water Project (SWP) water from the southern portion of the Sacramento-San Joaquin Delta to the southern part of California. Although the amount of water available from the CVP/SWP is relatively constant, notwithstanding periods of drought and periods of excessive rain (e.g., El Niño years), the amount of water diverted from major rivers and their tributaries has increased over time, and fish populations have declined.

In the CVP/SWP watershed, the Endangered Species Act (ESA) protects multiple species or populations of fish, including the endangered Sacramento River winter-run Chinook salmon, the threatened Central Valley spring-run Chinook salmon, the threatened Central Valley steelhead, the threatened Southern population of North American green sturgeon, and the threatened delta smelt. The ESA requires the Bureau to consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (together, the Services) to see whether planned actions are likely to jeopardize a listed species or damage critical habitat. (FWS is consulted for impacts related to the Delta smelt. NMFS is consulted on potential impacts to salmon.) The consultation process concludes with the Service issuing a biological opinion (BiOp) along with an incidental take statement, allowing the federal action to proceed without prosecution for incidental harm to listed species. If the Service finds the action is likely to jeopardize a listed species, a jeopardy BiOp is issued, which will include reasonable and prudent alternatives (RPAs) to the planned action to avoid extinction of a species. Otherwise a no-jeopardy BiOp is issued.

In 2004, the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan (OCAP) was issued by California and the Bureau to meet the system's water needs. Pursuant to OCAP, the Services issued both jeopardy and no-jeopardy opinions. Lawsuits challenged both types of BiOp. If jeopardy was found, water users argued that the BiOp failed to consider impacts on junior water users sufficiently. If no jeopardy was found, environmentalists and fishermen argued that the BiOp did not fully consider the extent of the harm to the species. Judge Oliver W. Wanger of the federal court for the Eastern District of California has found the BiOps or the RPAs to be inadequate for various reasons, including failing to comply with the National Environmental Policy Act (NEPA). (He retired from the bench at the end of September 2011.) In March 2014, the Ninth Circuit held that the FWS BiOp was legally sufficient, reversing the district court, and in January 2015, the Supreme Court refused to review the Ninth Circuit decision. In December 2014, the Ninth Circuit held that the NMFS BiOp was legally sufficient, again reversing the district court. This report summarizes the proceedings on the BiOps issued since 2004.

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Proceedings Related to OCAP BiOps

Case Name	Date	Document Title	Summary
NRDC v. Norton, 1:05-cv-1207, 2007 WL 14283 (E.D. Cal. Jan. 3, 2007)	1/3/07	Order Denying Motions for Dismissal, Remand, and Stay	Despite the fact that new BiOps were being prepared by both FWS and NMFS, the court refused to dismiss as moot the cases challenging the 2004 and 2005 BiOps. The court refused to stay Bureau's operations to pre-2004 levels or to consolidate suit against FWS with Pacific Coast Federation's suit against NMFS. (Bureau reinitiated consultation with FWS on OCAP after new data on delta smelt showed 2005 No Jeopardy BiOp needed to be revisited. Bureau reinitiated consultation with NMFS after species not listed at time of 2004 No Jeopardy BiOp became protected.)
NRDC v. Kempthorne, 506 F. Supp. 2d 322 (E.D. Cal. 2007)	5/25/07	Order Remanding 2005 FWS BiOp	The court held the 2005 FWS BiOp conclusion that delta smelt were not in jeopardy was arbitrary and capricious and remanded to the agency. The court found that the BiOp's take limits were based on inadequate historical data that did not reasonably estimate the delta smelt's population. The court also found that FWS did not consider available data on climate change and the possible impacts on the smelt's critical habitat. Finally, the court was not convinced mitigation efforts were reasonably certain to occur.
Pac. Coast Fed'n of Fishermen's Ass'n/Inst. for Fisheries Res. v. Gutierrez, 1:06-cv-00245, 2007 WL 1752289 (E.D. Cal. June 15, 2007)	6/15/07	Dismissing NEPA Claim	The court dismissed Plaintiff's NEPA claim that the Bureau was required to prepare an EIS for the 2004 OCAP. The OCAP was a descriptive document rather than a final agency action because it was not the "last word" on the issue and lacked legal effect.
NRDC v. Kempthorne, 1:05-cv-1207, 2007 WL 1989015 (E.D. Cal. July 3, 2007)	7/3/07	Denying TRO to Reduce Water Flow Provided by FWS BiOp	The court refused to grant a TRO on the 2005 FWS BiOp to reduce water flow to downstream users, holding that the evidence did not prove the delta smelt faced irreparable harm. The potential harm to the species did not outweigh the potential harms to societal and economic interests from reduced pumping.
NRDC v. Kempthorne, 1:05-cv-1207, 2007 WL 4462391 (E.D. Cal. Dec. 14, 2007)	12/14/07	Order granting Interim Remedial Relief for Flow Limits	The court granted remedial relief that set flow limits and triggering events. The court also required that FWS draft a new BiOp and stated that remedial relief would remain in place until the new BiOp was complete.
Pacific Coast Federation of Fishermen's Associations v. Gutierrez, 606 F. Supp. 2d 1122 (E.D. Cal. 2008)	5/20/08	Remanding 2004 NMFS BiOp	The court held that the 2004 NMFS BiOp conclusion that salmon and steelhead were not in jeopardy was arbitrary and capricious and remanded to the agency. The BiOp failed to analyze the impact of global climate change and the damage to salmon and steelhead critical habitats.

Case Name	Date	Document Title	Summary
Pacific Coast Federation of Fishermen's Associations v. Gutierrez, 606 F. Supp. 2d 1195 (E.D. Cal. 2008)	7/18/08	Denying Plaintiff's Requests for Emergency Interim Remedies while New NMFS BiOp Being Prepared	The court refused to grant remedial relief of increased water flows at Clear Creek and raised gates at the Red Bluff Diversion Dam while the new BiOp was being prepared based on scientific and evidentiary disputes. The court found that the NMFS 2004 BiOp could place the salmon and steelhead at great risk of irreparable harm, and that the government failed to prove that the project would not make extinction or destruction of critical habitats more likely.
NRDC v. Kempthorne, 1:05-cv-01207, 2008 WL 4369308 (E.D. Cal. Sept. 22, 2008)	9/22/08	Order Extending Time for FWS to Complete Revised Delta Smelt BiOp	The court extended the deadline for FWS to complete the BiOp for the CVP from 9/15/2008 to 12/15/2008.
BiOp	12/15/08	FWS BiOp Issued	FWS issued a BiOp pertaining to the effect of CVP and SWP on delta smelt. FWS found the operations could jeopardize the continued existence of the species.
Delta Smelt Consolidated Cases, No. 1:09-cv-407 (E.D. Cal. 2009)	3/3/09	Complaint Filed that Became Delta Smelt Consolidated Cases	First complaint filed against 2008 FWS BiOp by San Luis & Delta-Mendota Water Authority and Westlands Water District. Five other complaints were filed and consolidated: Coalition for Sustainable Delta (1:09-cv-422); Metropolitan Water District of Southern California (1:09-cv-631); State Water Contractors (1:09-cv-480); Stewart and Jasper Orchards (1:09-cv-892); Family Farm Alliance (1:09-cv-1201).
NRDC v. Kempthorne, 621 F. Supp. 2d 954 (E.D. Cal. 2009)	4/27/09	Renewal of Senior Water Rights Contracts Not Subject to ESA	The court held that Bureau does not have to consult under ESA for water contracts. Senior water rights contracts were non-discretionary obligation for Bureau, so ESA did not apply.
Delta Smelt Consolidated Cases, 1:09-CV-407, 2009 WL 1575169 (E.D. Cal. May 29, 2009)	5/29/09	Granting Preliminary Injunction to Halt FWS BiOp RPA Component 2	The court granted preliminary injunction of 2008 FWS BiOp RPA Component 2. The court held that it was likely that FWS had failed to comply with NEPA before issuing BiOp and did not base holding on ESA.
BiOp	6/4/09	NMFS BiOp Issued	NMFS issued a BiOp pertaining to the effect of CVP and SWP on Chinook salmon, steelhead trout, green sturgeon, and southern resident killer whales. NMFS found the CVP/SWP operations could jeopardize the continued existence of the species.
Consolidated Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2009)	6/15/09	Complaint Filed that Became Consolidated Salmonid Cases	San Luis & Delta-Mendota Water Authority and Westlands Water District file case, which becomes the Consolidated Salmonid Cases upon 9/23/2009 consolidation with cases brought by Stockton East Water District, Metropolitan Water District of Southern California, Oakdale Irrigation District, Kern County Water Agency, and State Water Contractors.

Case Name	Date	Document Title	Summary
NRDC v. Kempthorne, 1:05-cv-01207, 2009 WL 2849626 (E.D. Cal. Sept. 1, 2009)	9/1/09	Renewal of CVPIA Contracts Not Subject to ESA	The court rejected NRDC's argument that Bureau failed to perform ESA consultation for executing contracts under CVPIA. The court held that contracts were nondiscretionary. Also, because the contracts already allowed Bureau to stop delivery if delta smelt would be harmed, there was no basis for any ESA claim.
Consolid. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2009)	9/3/09	Granting Intervention for Defendant-Intervenors	Federal defendants (Department of Commerce, NOAA, NMFS, Department of the Interior, FWS, Bureau) are joined by defendant intervenors: Pacific Coast Federation of Fishermen's Associations/Institute for Fisheries Resources, The Bay Institute, Friends of the River, Natural Resources Defense Council, Northern California Council of the Federation of Fly Fishers, San Francisco Baykeeper, Sacramento River Preservation Trust, and Winnemem Wintu Tribe.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2009)	9/4/09	Amended Complaint	Plaintiffs, San Luis & Delta Mendota Water District and Westlands Water District, amended complaint to add Bureau as defendant.
NRDC v. Kempthorne, 1:05-cv-1207 (E.D. Cal. 2009)	9/23/09	Judgment	Resolved complaints by NRDC and others against Bureau and FWS for 2005 BiOp and water flow issues. Notices of appeals filed by Department of the Interior (11/19/2009) and NRDC (11/25/2009).
Delta Smelt Consolidated Cases, 666 F. Supp. 2d 1137 (E.D. Cal. 2009)	10/15/09	RPAs are Not Procedurally Flawed	The court rejected the summary judgment motion that FWS's failure to make findings within the 2008 FWS BiOp regarding four factors in the regulatory definition of RPA was arbitrary and capricious.
Delta Smelt Consolidated Cases, 686 F. Supp. 2d 1026 (E.D. Cal. 2009)	11/13/09	Requiring Bureau to Comply with NEPA for FWS BiOp RPAs	The court held that Bureau's implementation of the 2008 FWS BiOp RPA was a major federal action. Bureau had to prepare EIS before implementing BiOp. Summary judgment in favor of plaintiffs. Order issued 12/9/2009.
Coalition for a Sustainable Delta v. U.S. Fish and Wildlife Service, 1:09-cv-480, 2009 WL 3857417 (E.D. Cal. 2009)	11/17/09	Consolidates 2008 BiOp Claims with Other Delta Smelt Cases	The court granted FWS's motion to sever claims against EPA and other agencies from the BiOp claims against FWS. The plaintiff had argued the other agencies were also responsible for harm to the smelt. The claims related to the FWS 2008 BiOp were consolidated with the other delta smelt cases.
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2010)	1/27/10	Motion for TRO Filed/ Motion for Preliminary Injunction	Motions filed by San Luis & Delta-Mendota Water Authority and Westlands Water District to halt implementation of 2009 NMFS BiOp RPA Action IV.2.3.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2010)	1/27/10	Motion for TRO	Motion filed by San Luis & Delta-Mendota Water Authority and Westlands Water District to halt implementation of 2008 FWS BiOp RPA Component I.
Consol. Salmonid Cases, 1:09-cv-1053, 2010 WL 500455 (E.D. Cal. Feb. 5, 2010)	2/5/10	Granting TRO for NMFS BiOp RPA IV.2.3	The court granted a TRO to 2009 NMFS BiOp RPA Action IV.2.3 regarding storing water from storms. The court found that the plaintiffs had not shown a likelihood of success on the ESA claims, but the NEPA violation had been established.

Case Name	Date	Document Title	Summary
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2010)	2/5/10	Denying TRO for FWS BiOp	The court denied the TRO for the 2008 FWS BiOp. No smelt were spotted in the area of the pumps; therefore, the federal government was not implementing the RPA that was being challenged.
Delta Smelt Consolidated Cases, 693 F. Supp. 2d 1145 (E.D. Cal. 2010)	2/12/10	Denying Second Motion for TRO for FWS BiOp Component I	The court refused to grant a TRO that would have prevented the water flow reductions described in 2008 FWS BiOp Component 1, Action 2. The court held that it could not issue a TRO based solely on NEPA if it would lead to a violation of the ESA. The court noted FWS argument that stopping the RPA could jeopardize delta smelt.
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2010)	2/22/10	Motion for TRO	Motion filed by San Luis & Delta Mendota Water Authority and Westlands Water District to halt implementation of RPA Action IV.2.1.
Consol. Salmonid Cases, 688 F. Supp. 2d 1013 (E.D. Cal. 2010)	3/5/10	Requiring Bureau to Comply with NEPA for NMFS BiOp RPAs (Order issued 3/18/10)	The court held that the Bureau failed to comply with NEPA in implementing RPAs from the 2009 NMFS BiOp.
Consol. Salmonid Cases, 713 F. Supp. 2d 1116 (E.D. Cal. 2010)	5/18/10	Granting Preliminary Injunction Against Implementation of 2009 NMFS BiOp RPA IV.2.1 and IV.2.3 (Order Issued 5/27/10)	The court granted a preliminary injunction halting implementation of RPA IV.2.1 (through May 31) and IV.2.3 (through June 15) of 2009 NMFS BiOp. The court held that the balance of equities weighed in favor of the injunction—effects of loss of water supply would be more severe than effects of reduced water for salmon and steelhead. The court questioned NMFS’s conclusion that exports hurt salmon survival without examining other negative impacts on salmon. Supplemental Findings of Fact were issued 6/1/2010.
Delta Smelt Consolidated Cases, 717 F. Supp. 2d 1021 (E.D. Cal. 2010)	5/27/10	Preliminary Injunction Against Implementation of 2008 FWS BiOp	The court granted a preliminary injunction of 2008 FWS BiOp RPA Component 2, having to do with water flow from the time delta smelt have spawned until June 20 of each year. The court found that FWS did not use best available science to support water flow levels, particularly regarding use of gross salvage numbers, and that FWS violated NEPA.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	6/22/10	Operational Plan	All parties stipulated to joint operational plan for term of preliminary injunction.
Delta Smelt Consolidated Cases, 760 F. Supp. 2d 855 (E.D. Cal. 2010)	12/14/10	Decision Remanding 2008 FWS BiOp (Order Issued 12/23/2010)	The court remanded the 2008 FWS BiOp for violating the ESA in part by relying on data that were not the best available science. The court found that the conclusion—that pump entrainment will adversely affect the smelt—was justified, but the flow prescriptions were flawed. The court also held that FWS failed to consider whether RPAs were economically and technically feasible, interpreting those terms as applying to downstream water users. FWS did not violate NEPA when issuing BiOp.
NRDC v. Salazar, 1:05-cv-1207 (E.D. Cal. 2011)	2/2/11	Stipulation Settling Attorneys Fees	Department of the Interior will pay \$1,906,500 to NRDC in full settlement of attorneys’ fees and costs for challenges of 2004 and 2005 BiOps.

Case Name	Date	Document Title	Summary
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2011)	2/3/11	Motion for Preliminary Injunction	Motion filed by Coalition for a Sustainable Delta and Kern County Water Agency to halt implementation of certain RPAs.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	2/24/11	Proposed Interim Remedy Through 6/30/2011	The parties agreed that while Components 2 and 3 of the 2008 FWS BiOp were in effect, water flow would have a 14-day average flow between -1,250 and -6,100 cfs.
San Luis & Delta-Mendota Water Authority v. Salazar, 638 F.3d 1163 (9 th Cir. 2011)	3/25/11	Upholding ESA Constitutionality	The Ninth Circuit upheld lower court that application of the ESA to delta smelt (an intrastate fish with no commercial value) is nonetheless constitutional. Based on Supreme Court precedent, the Ninth Circuit found that the ESA is "substantially related" to interstate commerce. Upholds decision of 663 F. Supp. 2d 922 (E.D. Cal. 2009).
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2011)	3/28/11	Notification of Court	Federal defendants notified the court that RPA Action IV.2.1 will not be implemented this year.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	3/29/11	Judgment ending Delta Smelt Consolidated Cases	Final decision summarizing earlier orders: Reclamation violated NEPA and ESA; FWS did not violate NEPA; BiOp violated ESA; RPA is remanded with new BiOp to be completed by 10/1/2011; and Interim remedy ordered on 2/24/2011 remains in place through 6/30/2011.
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2011)	3/30/11	Order	Parties agreed that pending motions for TRO and a preliminary injunction were moot in light of federal defendants' announcement of 3/28/2011. Motions withdrawn.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	4/7/11	Notice of Appeal Filed	NRDC and The Bay Institute (defendant-intervenors) filed an appeal with the Ninth Circuit.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	5/4/11	Amended Judgment	In response to motion by federal defendants, Court modified 12/14/10 judgment to require completion of FWS BiOp by 12/1/13, instead of 10/1/11.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	6/8/11	Motion for Preliminary Injunction Filed	Water users challenged 2008 FWS BiOp RPA Fall X2, which would take place in September 2011, arguing that science did not show that those water flow reductions would increase delta smelt abundance.
San Luis & Delta Mendota Water Authority v. U.S. Department of the Interior, 1:11-cv-952 (E.D. Cal. 2011)	6/10/11	Motions for TRO and Preliminary Injunction	Motion for TRO and preliminary injunction filed to halt Bureau's reduction of water flow to aid fall-run Chinook salmon, which is not an ESA-listed species. Suit alleged violation of CVPIA §3411(b).
San Luis & Delta Mendota Water Authority v. U.S. Department of the Interior, 1:11-cv-952 (E.D. Cal. 2011)	6/15/11	Order	The court ruled from the bench, denying plaintiffs' motions for TRO and preliminary injunction to increase water flow at delta pumps.

Case Name	Date	Document Title	Summary
Stewart & Jasper Orchards v. Salazar, No. 10-1551 (S. Ct. 2011)	6/22/11	Petition for a Writ of Certiorari Filed	Water users wanted the U.S. Supreme Court to review a March 2011 Ninth Circuit decision, which held that applying the ESA to delta smelt is constitutional (638 F.3d 1163 (9 th Cir. 2011)).
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	6/24/11	Jurisdiction to Hear Motion for Preliminary Injunction	Court found that it had jurisdiction to review 6/8/11 Motion for Preliminary Injunction, rejecting federal defendants' argument that court's 12/14/10 decision (now on appeal) prevented review.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	6/30/11	Notice of Appeal Filed	State Water Contractors filed an appeal of 12/14/10 decision with the Ninth Circuit.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	7/1/11	Notice of Appeal Filed	Federal defendants filed appeal of 12/14/10 decision with the Ninth Circuit.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	9/2/11	Preliminary Injunction	Court halted implementation of 2008 FWS BiOp RPA Fall X2, which pertains to flow levels. The timing and measurement of that action were allowed to continue.
San Luis & Delta Mendota Water Authority v. U.S. Department of the Interior, 1:11-cv-952, 2011 U.S. Dist. LEXIS 99956 (E.D. Cal. 2011)	9/6/11	Written Decision of 6/15 Denial of Preliminary Injunction	Court denied motion for preliminary injunction to restore flow at a pump station. Motion was based on CVPIA §3411.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011) (Ninth Cir. Doc. No. 11-17143)	9/6/11	Notice of Appeal Filed/Motion for Stay Filed	NRDC and The Bay Institute (defendant-intervenors) filed an appeal with the Ninth Circuit of the 9/2/11 decision halting implementation of 2008 FWS BiOp RPA. A motion to stay that decision was also filed.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	9/13/11	Amended Order	Court amended the Preliminary Injunction of 9/2/11 to prohibit implementation of 2008 FWS BiOp RPA 74km X2 Target during 2011, or setting the X2 Target downstream or west of 79 km in 2011.
Consol. Salmonid Cases, 791 F. Supp. 2d 802 (E.D. Cal. 2011)	9/20/11	Memorandum Decision on Summary Judgment	Court held that jeopardy conclusion of 2009 NMFS BiOp was correct, but that RPAs were not adequately justified or supported by the record. BiOp was remanded.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2011)	9/26/11	Second Amended Order/Partial Stay	Court stayed Amended Order of 9/13/11 to allow Fall X2 water flow through 10/15/11 but prohibited implementation of 74 km X2 Target from 10/16/11 through 11/30/11, and prohibited setting the X2 Target downstream or west of 79 km from 10/16/11 through 12/31/11.
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2011)	9/29/11	Order	Court directed the remand of the 2009 NMFS BiOp (as discussed in the Memorandum Decision of 9/20/11). The BiOp was not vacated.
Stewart & Jasper Orchards v. Salazar, No. 10-1551 (S. Ct. 2011)	10/31/11	Petition for writ of certiorari denied	Supreme Court refused to review issue of whether ESA application to delta smelt was constitutional.

Case Name	Date	Document Title	Summary
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2011)	12/12/11	Final Judgment	Court ordered NMFS to transmit a draft salmon BiOp by 10/1/14, and a final BiOp by 2/1/16; and the Bureau to issue a final EIS by 2/1/16, and a record of decision by 4/29/16.
Consol. Salmonid Cases, 1:09-cv-1053	1/19/12	Notice of Appeal	Environmental groups appealed the judgment of 12/12/11.
Delta Smelt Consolidated Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Salazar), No. 11-17143 (9 th Cir.)	8/23/12	Order	Court dismissed appeal by NRDC and the Bay Institute challenging the Fall X2 injunction. Court ruled appeal was moot.
Delta Smelt Consolidated Cases, No. 11-17143 (9 th Cir.)	9/10/12	Oral Argument	
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2013)	4/9/13	Order	Federal defendants and CDWR moved for extension to participate in an adaptive management process, Court modified its original judgments (filed FWS-12/14/10; NMFS-12/12/11). The court extended the deadlines by one year (FWS—12/1/14; NMFS—2/1/17). The court required a status report from all parties by 2/15/14. If substantial progress has been made, the court will extend the deadline another year (FWS—12/1/15; NMFS—2/1/18), and if substantial progress is shown again, the deadlines will be extended one more year (FWS—12/1/16; NMFS—2/1/19).
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2013)			
Consolidated Salmonid Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Pacific Coast Federation of Fishermen's Associations), No. 12-15144	9/14/14	Scheduled date for Oral Argument	Original date for oral argument of 2/10/14 was moved in anticipation of a decision in the Delta Smelt Consolidated Cases appeal.
Delta Smelt Consolidated Cases, 1:09-cv-407 (E.D. Cal. 2013)	3/5/14	Order	Court extended the deadline for production of BiOps another year (FWS—12/1/15; NMFS—2/1/18).
Consol. Salmonid Cases, 1:09-cv-1053 (E.D. Cal. 2013)			
Delta Smelt Consolidated Cases, 747 F.3d 581 (9 th Cir.)	3/13/2014	Opinion	Ninth Circuit reversed district court's remand of FWS BiOp, upholding the scientific basis of the BiOp. Affirmed the decision that the Bureau must complete an EIS for implementing the BiOp.
Consol. Salmonid Cases, 12-15444 (9 th Cir.)	12/22/2014	Opinion	Ninth Circuit reversed district court's remand of NMFS BiOp, upholding the scientific basis of the BiOp.
Delta Smelt Consolidated Cases, 747 F.3d 581 (9 th Cir.)	1/12/2015	Certiorari denied	Supreme Court refused to review the Ninth Circuit's decision, denying the petitions for review in <i>Stewart & Jasper Orchards v. Jewell</i> , No. 14-377, and <i>State Water Contractors v. Jewell</i> , No. 14-402.

Appendix A. List of Acronyms and Abbreviations Used in Table

BiOp	Biological Opinion (see 16 U.S.C. §1536(b))
Bureau	U.S. Bureau of Reclamation of the Department of the Interior
CDWR	California Department of Water Resources
cfs	cubic feet per second
CVP	Central Valley Project
CVPIA	Central Valley Project Improvement Act (P.L. 102-575, Title 34)
DOI	Department of the Interior
E.D. Cal.	Federal District Court for the Eastern District of California
EIS	Environmental Impact Statement
ESA	Endangered Species Act (16 U.S.C. §§1531-1544)
FWS	U.S. Fish and Wildlife Service of the Department of the Interior
NEPA	National Environmental Policy Act (42 U.S.C. §§4321-4332)
NMFS	National Marine Fisheries Service of the Department of Commerce
NRDC	Natural Resources Defense Council
OCAP	Operations Criteria and Plan
RPA	Reasonable and Prudent Alternatives (see 16 U.S.C. §1536(b)(3)(A))
S. Ct.	U.S. Supreme Court
SWP	State Water Project
TRO	Temporary Restraining Order
X2	Geographical location where the isohaline levels of a river are at 2 parts per thousand. Setting X2 Targets requires changing freshwater flow levels in order to push that concentration level farther out to the estuaries.
9th Cir.	U.S. Federal Court of Appeals for the Ninth Circuit (which includes the Eastern District of California)

Appendix B. Brief Description of Cases in Table

Party(ies)	Case No. and Court	Basis of Claim(s)
NRDC v. Kempthorne (originally NRDC v. Norton)	1:05-cv-1207 (E.D. Cal)	Adequacy of FWS 2004 and 2005 Delta Smelt BiOps (which found fish were not jeopardized by CVP/SWP operations).
Pacific Coast Federation of Fishermen's Associations v. Gutierrez	1:06-cv-245 (E.D. Cal.)	Adequacy of NMFS 2005 Salmonid BiOp (which found fish were not jeopardized by CVP/SWP operations).
Delta Smelt Consolidated Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Salazar)	1:09-cv-407 (E.D. Cal.)	Adequacy of 2008 FWS Delta Smelt BiOp (which found fish were jeopardized by CVP/SWP operations).
Coalition for a Sustainable Delta v. U.S. Fish and Wildlife Service	1:09-cv-480 (E.D. Cal.)	Adequacy of 2008 FWS Delta Smelt BiOp (which found fish were jeopardized by CVP/SWP operations).
Consolidated Salmonid Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Locke)	1:09-cv-1053 (E.D. Cal.)	Adequacy of 2009 NMFS Salmonid BiOp (which found fish were jeopardized by CVP/SWP operations).
San Luis & Delta-Mendota Water Authority v. U.S. Department of the Interior	1:11-cv-952 (E.D. Cal.)	Lawfulness of water flow reduction to aid fall-run Chinook, which is not a listed species. Not part of BiOp challenges.
Stewart & Jasper Orchards v. Salazar (part of Delta Smelt Consolidated Cases)	No. 10-1551 (S. Ct.)	Constitutionality of ESA consultation requirement as applied to delta smelt.
Delta Smelt Consolidated Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Salazar)	No. 11-17143 (9 th Cir.)	Fall X2 injunction.
Consolidated Salmonid Cases (a.k.a. San Luis & Delta-Mendota Water Authority v. Pacific Coast Federation of Fishermen's Associations)	No. 12-15144 (9 th Cir.)	Adequacy of 2009 NMFS Salmonid BiOp.

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