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5. WATER: Calif. tries to prevent delta pump shutdown

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California water officials headed back to court this week, trying to convince Alameda Superior Court Judge Frank Roesch not to finalize an order that could result in shuttering operations of a major pumping facility on the State Water Project. The judge on March 23 ruled that the state Department of Water Resources was in violation of the California Endangered Species Act because the vulnerable delta smelt and salmon were being killed by operations of the Harvey O. Banks pumping station, near Tracy, Calif. ([Land Letter](#), March 29).

The station is a key component of the California aqueduct that provides water for some 23 million Central and Southern California residents and much of the state's agricultural industry. Once the preliminary order is finalized, the state would have 60 days to obtain an "incidental take permit" for fish kills, or risk having the 11 Banks pumps shut down by the court.

DWR Director Lester Snow told a news conference Monday, "We intend to keep the project operating." State lawyers will argue, once again, that the water project is already in compliance with the ESA's provisions. But also, the state will try to convince the judge against "overreacting" to the decline in smelt populations, which he said was affected by many "stressors" besides water exports. "You could cut off the pumps, lay waste to the entire economy of Southern California, and still not do anything to save the delta smelt," Snow argued.

Still, Snow outlined three strategies that the state will pursue to otherwise prove to the court that it is in compliance with the law. The quickest, he said, would be a "consistency determination" from the state Department of Fish and Game that an existing federal biological opinion and other operational agreements are in compliance with the state ESA. More involved would be going through the process to obtain a take permit. And finally, the state intends to continue pursuing a National Communities Conservation Plan for fish recovery, although Snow said that would take several years.

Previously, state officials said that obtaining a permit could not be done within the time frame set out by the court, but Snow this week said that Fish and Game could respond to the compliance determination request within 30 days. That would not involve a California Environmental Quality Act process, so it would be the fastest approach, Snow told reporters.

Backing up the legal strategy, Snow this week sent letters to both the department of Fish and Game and to the Bureau of Reclamation seeking DWR status as an "applicant" during federal consultations that could serve as the basis for a new consistency determination.

However, he reiterated the state's intent to appeal Roesch's ruling if it is finalized this week. Parties returned to the court yesterday afternoon to file further arguments (no outcome was reported by *Land Letter's* deadline).

Bill revised to deal with delta issues

Meanwhile, state lawmakers are inserting themselves into the delta controversy again, with at least one major legislative vehicle. Sen. Joe Simitian (D) has revamped his previously introduced bill, **S.B. 27** to set a Jan. 1, 2008, deadline for DWR to decide on one of five options for altering water exports to restore the health of the delta. The bill focuses on five options that have been presented in a recent report from the Public Policy Institute ([Land Letter](#), Feb. 8).

The bill had previously centered on construction of a controversial "peripheral canal" that would allow Sacramento River water to bypass delta pumps. The new version of the measure incorporates the canal idea as well as other options outlined in the PPI report, including curtailment of exports or construction of new dams and surface storage. The revision picked up key support from state Sen. Darryl Steinberg (D), chairman of the Senate Natural Resources and Water Committee, if only as a way to end decades of debate. "Let's get to work and pick one option," Steinberg said during a hearing on the measure this week.

Signing on as co-authors of S.B. 27 besides Simitian and Steinberg were Senate President Pro Tem Don Perata (D), and Sen. Mike Machado (D), who has in the past battled Simitian over legislation to promote a peripheral canal. With such unusually unified support, the bill passed unanimously to the Senate Committee on Environmental Quality, where it will be heard April 16.