

The next big California vs. Trump fight is over water and endangered species

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Just how far will California Gov. Gavin Newsom go in his high-profile fight with the Trump administration over environmental protections?

The next few months will provide an answer, as Newsom is forced to take a stand on Trump rollbacks in a long-contested battleground—the Northern California [delta](#) that helps supply more than half the state's population with drinking [water](#) and fills irrigation canals on millions of acres of farmland.

The battle lines are not nearly as clearly drawn as they are on climate change or air pollution, where the state is presenting a fairly unified front against Washington. When it comes to California water, there is no unity.

Some of the state's biggest and most powerful water agencies are eager for the [federal government](#) to weaken endangered species protections that have cut their delta deliveries. And they want the Newsom administration to go along.

If it does, the revisions could turn into the Trump-Newsom rollbacks—not great branding in a state that considers itself the leader of the Trump resistance.

On the other hand, if California bucks the feds and develops a tougher set of state species protections to govern water exports from the Sacramento-San Joaquin Delta, it's uncertain if it can force the big federal irrigation project to obey them.

And if the delta winds up with one set of environmental rules governing pumping by the State Water Project and another set for the federal Central Valley Project, it will get very, very messy.

All of this is likely to play out this fall after federal fishery agencies release new rules for protecting imperiled native delta fish under the Endangered Species Act.

Those rules are being written under President Donald Trump's 2018 directive to ramp up water deliveries to the Central Valley Project's farm customers, including Westlands Water District, whose former lobbyist, David Bernhardt, is now U.S. Interior secretary.

As reported earlier by The Times, scientists with the National Marine Fisheries Service on July 1 submitted a 1,123-page report, called a biological opinion, that found the proposed pumping increases would probably jeopardize the continued existence of endangered winter-run Chinook salmon, threatened spring-run Chinook and threatened Central Valley steelhead, as well as endangered Southern Resident killer whales that eat salmon.

The so-called jeopardy finding, if adopted, would make it difficult to significantly ramp up deliveries from the delta. Two days after the opinion was submitted, a regional U.S. Fish and Wildlife Service official who is overseeing a separate review of delta smelt protections pulled the document, saying it was a draft in need of improvement. He assembled a new team to rework it.

Federal agencies are expected to release the new smelt and salmon biological opinions this month. It is widely expected that they will relax pumping curbs the agencies imposed in 2008 and 2009.

The State Water Project's delta operations have historically adhered to federal endangered species protections. But Trump's directive is prompting California to develop its own pumping rules under the state Endangered Species Act, which protects Chinook salmon and delta smelt independent of federal law.

The anticipated federal rollback led "us to do something we'd never done before," California Natural Resources Secretary Wade Crowfoot said last month in an interview. "That is untether ourselves from relying on

that federal biological opinion and to ensure we have an objective, science-based process to update those pumping rules, and that we are not trapped in the political paradigm set out by the president."

At this point, it is unclear what the state rules will be, to what degree they might conflict with the yet-to-be issued federal rules—and what the state will do if they do conflict.

"We're not in a position to suggest what hasn't come out yet and what we'll do," Crowfoot said.

Jeffrey Kightlinger, general manager of the Metropolitan Water District of Southern California, the state project's biggest customer, is pushing for no conflict.

"I'm hoping that they're harmonized and they have the same requirements," he said. "We're pushing the states and feds to find consensus on science as opposed to each side cherry-picking their science."

Kightlinger chuckled when asked how state officials have so far responded. "They agree that in the perfect world, that would be the best approach. They also seem to be saying, we don't know if that works in today's world with our administrations so far apart from each other philosophically."

Newsom has already gotten a taste of the political costs of choosing sides in the decades-long battle over the delta.

Last month, Metropolitan and other water agencies lobbied the governor to oppose Senate Bill 1, which would have allowed California to preserve Obama-era endangered species protections and water-pumping restrictions in the delta.

Newsom came under harsh criticism from environmentalists when he vetoed the bill by state Senate leader Toni Atkins (D-San Diego). The governor argued that the legislation would have limited the state's flexibility in dealing with delta problems and would also torpedo settlement negotiations with water agencies over river flow requirements in the Central Valley.

"The governor continues to put himself out there as an environmentalist," said Kim Delfino of Defenders of Wildlife, an environmental group.

"And he is good on a lot of issues," she added. "But it will not look good if you veto SB1 and then you put out (an endangered species) permit that results in even less water going to the fish than previously. How do you spin that one?"

Metropolitan, Westlands and other delta water users waged years of legal battles against pumping curbs contained in the 2008 and 2009 biological opinions for salmon and smelt. The restrictions were ultimately upheld in federal appeals court.

Now the districts are hoping the Trump administration will do what the courts didn't do.

But in the careful-for-what-you-wish-for department, the delta could wind up with two sets of pumping rules, and that would be a nightmare for Metropolitan and other customers of the State Water Project.

State exporters would lose water if they faced stricter pumping limits than their federal counterparts, while Westlands and other Central Valley Project irrigation customers would gain deliveries.

"Is there a basis to challenge the state on that? Do they really have the

authority to make us pay just because they can't get at somebody else?" Kightlinger asked.

"I'm hopeful that after the appropriate amount of posturing, the agencies that really call the shots on these (matters) get together and work it out as they always have in the past. That may be naive in this era," he said.

Crowfoot said his agency's position is that both the state and federal delta operations would have to obey new state rules. "But that raises a lot of questions we're not yet ready to answer, which is how do you enforce that?"

Under the 1902 Reclamation Act, federal irrigation projects in the West must comply with state laws relating "to the control, appropriation, use, or distribution of water used in irrigation." But whether that includes state endangered species law has never been legally settled.

California has other weapons. The State Water Quality Control Board could amend the Central Valley Project's water rights permit to require more delta protections.

And the state could refuse to let the federal project use state pumps and canals, as it sometimes needs to.

"Our projects are so intertwined between the reservoirs and the pumps and the conveyance," Crowfoot said. "Our agencies weaponizing lawsuits against each other as it relates to water management is highly problematic."

"At the same time, we're very clear," he added. "We will protect the state's interests as we need to."

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