

# Court upholds California rules to protect fish, but Newsom wants lenient Delta approach

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A Sacramento judge upheld a decision by California's water regulator to cut back agricultural and municipal water use from the San Joaquin

River. The decision could lend support for future regulations in the rest of the Sacramento-San Joaquin River Delta system.

It comes amid declining [fish populations](#) and increasing pressure on water supply due to climate change. But rather than move forward with strict regulations, the state agency is considering a plan pushed by Gov. Gavin Newsom that would grant water districts more flexibility.

The Friday ruling by Sacramento County Superior Court Judge Stephen Acquisto rejected a litany of lawsuits by water districts against the State Water Resources Control Board's plan to boost river flows and help revive struggling native fish populations.

Agencies that filed suit against the state's plan include large agricultural water suppliers such as the Modesto Irrigation District, Westlands Water District and Merced Irrigation District, as well as the San Francisco Public Utilities Commission and city of Modesto.

The judge ultimately supported the agency's water quality plan for the lower San Joaquin River—including the Tuolumne, Merced and Stanislaus river tributaries—which set specific goals to protect [water flows](#) for key fish species such as [chinook salmon](#) and steelhead trout.

In his ruling, he wrote there is "more than enough valid scientific evidence in the record to support the Board's general conclusion that increased flows in the lower San Joaquin River and its three eastside tributaries are of critical importance to reviving and sustaining native migratory fish populations."

He denied all the petitioner's claims about the water board's 2018 plan for the river that was passed with much controversy. That included complaints about the water board's process and contentions that the agency had abused its regulatory authority.

In the San Joaquin River, which begins high in the Sierra Nevada and flows through the the northern San Joaquin Valley before reaching the ocean through the San Francisco Bay, sometimes more than 80% of its flow is diverted for farms and cities.

The Delta is ecologically ailing. Populations of salmon, delta smelt and other native species have been on a steep decline in recent years. Regulators shut down the fishing season last year because populations of fall-run Chinook salmon last year were so low.

Under its San Joaquin river plan, the water board would limit diversions during certain times of the year to between 50–70% of the river's total flow. Lawsuits quickly followed after the decision. More than five years later, the rules have not been implemented.

Developing regulations for the Delta, the beating heart of California's water supply system, demands not just scientific research but also the ability to balance a variety of stakeholders with competing interests—agriculture, cities, fisheries and ecosystems.

Last week's ruling comes as vindication for the agency as it continues a years long process of updating an overarching plan for the Delta. The 2018 San Joaquin plan was only one part one of the Bay-Delta Water Quality Control Plan, which in itself was the product of nine years of research and stakeholder input—the plan has not seen a substantial update since 1995.

"It's a real validation," said Felicia Marcus, who oversaw the 2018 plan's adoption as then-chair of the water board. "We have over-diverted from our rivers, for good things like agricultural and urban development, but diverted so much that we've shorted the environment. We were re-balancing the system."

The agency is currently considering two different options for the Bay-Delta plan. Traditional regulations would set a minimum flow standard for rivers, such as the one adopted for the San Joaquin and supported in court. But over the last year, the Newsom administration has promoted another approach.

Called "voluntary agreements," his plan would let water agencies pledge to forgo certain amounts of water while funding wetland habitat improvement projects. The governor has framed the plan as a rejection of "old binaries" in favor of new solutions.

But leading water experts, including Marcus, argue that voluntary agreements would only be successful if used to supplement strong regulation. A recent Stanford University report she co-authored concluded that the current proposal is "a perilous strategy."

"It can't be either or," she said. "A voluntary agreement is only good if it's good and this isn't good enough yet. There's got to be a more concerted effort and you're not going to get it unless you move forward with regulations."

Some environmentalists are less optimistic about voluntary agreements, arguing that they lack accountability to meaningfully improve river flows. Under the agreements, science director at Baykeeper Jon Rosenfield said the path toward native fish extinction would only accelerate.

"In the abstract, this ruling should mean full steam ahead for the water board updating its water quality standards," Rosenfield said. "In the real world, we have a governor actively resisting new standards because he favors a voluntary approach negotiated with water users in a back room, and is forcing the water board to consider if not adopt it."

Managers of water districts such as Westlands in the western San Joaquin Valley, one of the litigants against the 2018 plan, continue to prefer a voluntary approach. Strict flow regulations in the Sacramento River would mean less water for the agricultural powerhouse.

"We're reviewing and evaluating next steps," said Westlands Water District spokesperson Elizabeth Jonasson of the court ruling. "We're fully engaged in the voluntary agreements process... we believe in a comprehensive strategy achieved by working together."

A public workshop on voluntary agreements is expected to take place this spring at the water board but has not yet been scheduled.

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