



FOR IMMEDIATE RELEASE:

August 31, 2011

CONTACT:

Fiona Hutton

Ann Newton

(818) 760-2121

**COURT BLOCKS FEDERAL AGENCIES FROM IMPOSING ARBITRARY REGULATION ON
THE STATE WATER PROJECT**

*Proposed “Fall X2” Measure Lacked Scientific Basis, Would Trigger Significant Water
Losses*

Sacramento, CA – Federal Judge Oliver Wanger ruled today that federal agencies will not be allowed to implement a regulatory measure, known as Fall X2, as originally proposed. The judge ordered a modified proposal that greatly minimizes water supply impacts.

The measure would have potentially triggered enormous water losses for the State Water Contractors, with no known environmental benefit. The U.S. Fish & Wildlife Service’s Fall X2 proposal, which would have started on September 1, was based on questionable science, according to the ruling.

“Plaintiffs will suffer irreparable harm from the significant amount of water that will be lost if Federal Defendants impose the Fall X2 Action this year. By contrast, the best available scientific data do not show that the location of X2 bears a rational relationship to the subsequent abundance of delta smelt, or is necessary to avoid adverse modification to its critical habitat,” wrote Judge Oliver Wanger in the court order.

As background, public water agencies filed for an injunction earlier this year to prevent regulatory agencies from implementing Fall X2, which is one of the more restrictive elements of a previously-overturned biological opinion. X2, simply put, is the location where freshwater from the Sierra watershed and saltwater from San Francisco Bay meet in the Sacramento-San Joaquin Delta (Delta). The U.S. Fish & Wildlife Service had proposed a measure to release much larger than usual amounts of freshwater from the state’s reservoirs this year to move the X2 location westward. The proposal was based on a highly disputed hypothesis that moving this intersection of salt and fresh waters would lead to increased delta smelt populations.

Under the federal proposal, the State Water Project (SWP) would have faced losses from 300,000 acre-feet up to 670,000 acre-feet of water—enough to serve more than four million people for up to a year.

In his ruling Judge Wanger wrote, “Here, by erroneously by-passing NEPA [National Environmental Policy Act], Federal Defendants completely abdicated their responsibility to consider reasonable alternatives to the Fall X2 Action that would not only protect the species, but would also minimize the adverse impact on humans and the human environment.”

“The scientific evidence in support of imposing any Fall X2 action is manifestly equivocal. There is essentially no biological evidence to support the necessity of the specific 74 km requirement set to be triggered in this ‘wet’ water year,” the ruling also noted.

The court has ordered X2 to be moved no further west than 79 km; this decision substantially minimizes impacts to water supplies.

In December 2010, Federal Judge Oliver Wanger overruled most of the 2008 federal biological opinion for delta smelt and directed the U.S. Fish & Wildlife Service to rewrite the opinion. The biological opinion set guidelines for SWP and Central Valley Project pumping operations out of the Delta in an effort to protect the delta smelt, an endangered fish species, and required significant cutbacks in water exports during the past two years. The December 2010 decision found most of the pumping restrictions in the opinion to be based on inadequate science. While federal agencies continue the effort to rewrite the biological opinion, it has remained operative, which is what drove public water agencies to request this injunction.

At the center of the state’s water supply woes is the failing Delta—a critical estuary and the hub of California’s primary water delivery systems. Public water agencies, environmental organizations, and state and federal agencies are working together to develop a long-term solution. The Bay Delta Conservation Plan, a comprehensive conservation plan for the Delta, will provide a basis for addressing the many threats to the Delta needed for fishery and ecosystem recovery, while finding a way to continue to deliver water to Californians throughout the state.

###

The State Water Contractors is a statewide, non-profit association of 27 public agencies from Northern, Central and Southern California that purchase water under contract from the California State Water Project. Collectively the State Water Contractors deliver water to more than 25 million residents throughout the state and more than 750,000 acres of agricultural lands. For more information on the State Water Contractors, please visit www.swc.org.