

Today the Supreme Court [denied certiorari](#) in the case known to that Court as Stewart & Jasper Orchards v. Salazar.

So why the headline?

This is the commerce clause challenge to ESA protection for the Delta smelt, rejected by the Ninth Circuit this past spring under the name [San Luis & Delta-Mendota Water Authority v. Salazar](#). At the time [I expressed confidence](#) that the Court would “leave this case alone.” Ten days ago, when co-blogger Rick Frank and I appeared on a panel together at the California State Bar’s Environmental Law Conference, I went further out on that limb. Picking up on a nice turn of phrase by our other co-panelist, Richard Lazarus, I said that opinions on the likelihood that the Court would take this case would make a good sobriety test for lawyers. Anyone who thought the Court was going to take the case, I declared, was revealing their predilection for drink or their lack of sanity. So, even aside from the damage the Court might do on the merits, I breathed a sigh of relief for the sake of my reputation as a prognosticator when I saw today’s order list.