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8 **UNITED STATES DISTRICT COURT**  
 9 **EASTERN DISTRICT OF CALIFORNIA**  
 10 **FRESNO DIVISION**

10 NATURAL RESOURCES DEFENSE )  
 11 COUNCIL, *et al.*, )

12 Plaintiffs, )

13 v. )

14 DIRK KEMPTHORNE, Secretary, United States )  
 15 Department of the Interior, *et al.*, )

16 Defendants. )

) 1:05-cv-01207 OWW SMS

) **Order re Cross Motions for Summary**  
 ) **Judgment re Reasonable and Prudent**  
 ) **Alternative Claims (Docs. 230 & 236)**

17 \_\_\_\_\_ )  
 18 SAN LUIS & DELTA-MENDOTA WATER )  
 19 AUTHORITY, *et al.*, )

20 Defendant-Intervenors. )

21 \_\_\_\_\_ )  
 22 ANDERSON-COTTONWOOD IRRIGATION )  
 23 DISTRICT, *et al.*, )

24 Joined Parties. )

25 \_\_\_\_\_ )  
 26 )  
 27 )  
 28 )

1 Plaintiffs in all five consolidated cases (“Plaintiffs”) have moved for summary judgment  
2 on their “reasonable and prudent alternative” (“RPA”) claims, arguing that the United States Fish  
3 and Wildlife Service (“FWS”) was required to make certain findings in the text of its biological  
4 opinion (“BiOp”) related to its RPA, namely whether (1) the RPA is consistent with continued  
5 operations of the State Water Project (“SWP”) and Central Valley Project (“CVP”), (2)  
6 implementation of the RPA is economically and technologically feasible, and (3) the RPA is  
7 capable of being implemented within the legal authority and jurisdiction of the operators, the  
8 Bureau of Reclamation (“Reclamation”) and the California Department of Water Resources  
9 (“DWR”). Docket No. 237. DWR filed a brief in support of Plaintiffs’ motion. Docket No.  
10 246. The Federal Defendants opposed, Docket No. 274, and Plaintiffs and DWR replied.  
11 Docket Nos. 295 & 300. The Federal Defendants also cross-moved for summary judgment on  
12 these claims, Docket No. 231, which the Plaintiffs and DWR opposed, Docket Nos. 273 & 282,  
13 and the Federal Defendants filed a reply. Docket No. 296. The Plaintiffs moved to strike  
14 Federal Defendants’ cross-motion. Docket No. 284.

15 NOW, THEREFORE, good cause appearing, and for the reasons set out in full in the  
16 Court’s Memorandum Decision re Cross Motions for Summary Judgment re Reasonable and  
17 Prudent Alternative Claims, Docket No. 354 (Oct. 15, 2009), Plaintiffs’ motion for summary  
18 judgment on the narrow issue of whether FWS is required to discuss the first three RPA  
19 requirements on the face of the BiOp is DENIED, as is Federal Defendants’ cross-motion,  
20 WITHOUT PREJUDICE to the next round of dispositive motions which will address the merits  
21 all issues of the BiOp’s sufficiency.

22 In addition, Plaintiffs’ motion to strike is GRANTED WITHOUT PREJUDICE to  
23 Federal Defendants’ renewal of their motion on the same grounds in the next round of briefing.

24 SO ORDERED

25  
26 Dated: October 30, 2009

/s/ OLIVER W. WANGER  
OLIVER W. WANGER  
UNITED STATES DISTRICT JUDGE