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**COUNSEL IDENTIFICATION ON FINAL PAGE**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THE DELTA SMELT CASES
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, et al. v. SALAZAR, et al. (Case No. 1:09-cv-407)
STATE WATER CONTRACTORS v. SALAZAR, et al. (Case No. 1:09-cv-422)
COALITION FOR A SUSTAINABLE DELTA, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-480)
METROPOLITAN WATER DISTRICT v. UNITED STATES FISH & WILDLIFE SERVICE, et al. (Case No. 1:09-cv-631)
STEWART & JASPER ORCHARDS, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-892)
FAMILY FARM ALLIANCE v. SALAZAR, et al. (Case No. 09-cv-1201)

CASE NO. 1:09-cv-407-OWW-DLB  
1:09-cv-422-OWW-DLB  
1:09-cv-631-OWW-DLB  
1:09-cv-892-OWW-GSA  
PARTIALLY CONSOLIDATED WITH:  
1:09-cv-480-OWW-GSA  
1:09-cv-1201-OWW-DLB

**JOINT STIPULATION AND ORDER AMENDING SCHEDULE FOR TRANSMITTAL OF DRAFT SMELT BIOLOGICAL OPINION**

Judge: Honorable Oliver W. Wanger

1 **RECITALS**

2 1. On May 19, 2011, this Court entered its Amended Judgment in these *Delta Smelt*  
3 *Consolidated Cases* requiring the United States Fish and Wildlife Service ("FWS") to "transmit to  
4 [the Bureau of] Reclamation by October 1, 2011 a draft delta smelt Biological Opinion ("BiOp")  
5 consistent with the requirements of law." (Amended Judgment, Doc. 884 at 3:18-19.)

6 2. On September 20, 2011, the Court entered its Memorandum Decision re Cross  
7 Motions for Summary Judgment (Doc. 633) in the *Consolidated Salmonid Cases*, Case No. 1:09-  
8 cv-01053-OWW-DLB regarding the 2009 Salmonid Biological Opinion ("2009 Salmonid  
9 BiOp"). This decision found the 2009 Salmonid BiOp and its RPA arbitrary, capricious, and  
10 unlawful, and remanded the 2009 Salmonid BiOp to the National Marine Fisheries Service for  
11 further consideration in accordance with the Court's decision and the requirements of law.

12 3. In light of the recent ruling in the *Consolidated Salmonid Cases*, described above,  
13 the United States Bureau of Reclamation ("Reclamation") must reevaluate the project description  
14 that will serve as the basis for the Section 7 consultation for the draft delta smelt BiOp.

15 4. In light of the Court's decision regarding the 2009 Salmonid BiOp, each of the  
16 undersigned parties agrees that the current deadline for completion of the draft delta smelt BiOp  
17 should be extended to enable Reclamation to reevaluate and potentially modify the current project  
18 description.

19 5. Furthermore, Federal Defendants and some of the parties have discussed greater  
20 participation in the consultation process for a new delta smelt BiOp. In order to fully explore  
21 whether discussions among the parties may result in a restructuring of the consultation process,  
22 and whether additional time may be required to complete a restructured consultation on the draft  
23 delta smelt BiOp, all parties believe that the modification below to the draft BiOp schedule is  
24 appropriate, and will be mutually beneficial.

25 Good cause exists for the granting of the below requested schedule change for transmittal  
26 of the draft delta smelt BiOp, and the parties respectfully request that the date set by this Court be  
27 modified as shown below.

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**STIPULATION**

Plaintiffs San Luis & Delta-Mendota Water Authority, Westlands Water District, State Water Contractors, Metropolitan Water District of Southern California, Coalition for a Sustainable Delta, Kern County Water Agency, Stewart & Jasper Orchards, Arroyo Farms, LLC, King Pistachio Grove, and Family Farm Alliance (“Plaintiffs”), Plaintiff-Intervenor California Department of Water Resources (“DWR”), Federal Defendants, and Defendant-Intervenors Natural Resources Defense Council and The Bay Institute, by and through their respective counsel, hereby stipulate and agree as follows:

1. The October 1, 2011 deadline in the Amended Judgment for transmittal of the draft delta smelt Biological Opinion is hereby vacated.
2. By October 31, 2011, the parties shall file with the Court a written report, preferably a joint report, stating whether the parties have jointly agreed upon a revised completion date for the draft delta smelt BiOp.
3. If there is not agreement among all parties on any completion date for the draft BiOp, then the draft BiOp shall be transmitted no later than November 11, 2011.

1 Dated: September 30, 2011

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Dated: September 30, 2011

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Dated: September 30, 2011

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Dated: September 30, 2011

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THE BAY INSTITUTE

1 **ORDER**

2 Based on the stipulation of the above parties, the Court hereby vacates the October 1,  
3 2011 deadline in the Amended Judgment (Doc. 884), for transmittal of the draft delta smelt  
4 Biological Opinion (“BiOp”). By October 31, 2011, the parties shall file with the Court a written  
5 report, preferably a joint report, stating whether the parties have jointly agreed upon a revised  
6 completion date for the draft delta smelt BiOp. If there is not agreement among all parties on any  
7 completion date for the draft BiOp, then the draft BiOp shall be transmitted no later than  
8 November 11, 2011.

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10  
11 IT IS SO ORDERED.

12 Dated: September 30, 2011

/s/ Oliver W. Wanger  
13 UNITED STATES DISTRICT JUDGE