

**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. 1:09-cv-1201)**

Case No. 1:09-cv-407-LJO-BAM  
1:09-cv-422-LJO-DLB  
1:09-cv-631-LJO-DLB  
1:09-cv-892-LJO-DLB

Partially Consolidated With:  
1:09-cv-480-LJO-GSA  
1:09-cv-1201-LJO-DLB

**STIPULATION AND ORDER  
REGARDING MOTION FOR  
ATTORNEYS' FEES AND OTHER  
EXPENSES**

Judge: Hon. Lawrence J. O'Neill

To facilitate settlement discussions regarding Plaintiff San Luis & Delta-Mendota Water Authority's ("Authority") claim for attorneys' fees and other expenses in this case, the Authority and Defendants Sally Jewell, Secretary of Interior, *et al.* ("Federal Defendants") jointly move this Court to stay briefing on the Authority's motion for an award of attorneys' fees and other expenses for 149 days. In support of this motion, the Authority and Federal Defendants stipulate as follows:

1. The Court entered judgment in this action on March 29, 2011. Doc. 851. The Natural Resources Defense Council and The Bay Institute filed a Notice of Appeal on April 7, 2011. Doc. 853. The Judgment was subsequently amended on May 18, 2011. Doc. 884. On June 10, 2011, the Court entered an order extending the deadline for filing a motion for attorneys' fees,

1 costs and other expenses to “subsequent to the entry of a final order disposing of any appeal” in  
2 accordance with applicable law. Doc. 907. Federal Defendants filed a Notice of Appeal on July  
3 1, 2011. Doc. 937. The Authority filed a Notice of Cross-Appeal on July 1, 2011. Doc. 939. The  
4 Ninth Circuit Court of Appeals issued its opinion on the appeals and cross-appeal on March 13,  
5 2014. Doc. 1117; *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581 (9th Cir. 2014).  
6 On April 17, 2014 the Ninth Circuit issued an order extending the time for filing a petition for  
7 rehearing en banc. Doc. 1122. On May 12, 2014, the Authority timely filed a petition for  
8 rehearing en banc with the Ninth Circuit Court of Appeals. On July 23, 2014, the Ninth Circuit  
9 issued an order denying the Authority’s petition for rehearing en banc. Doc. 1129. On October 1,  
10 2014 this Court issued an Amended Judgment, in response to the Ninth Circuit’s opinion. Doc.  
11 1135. On October 6, 2014, the Authority filed a petition for writ of certiorari with the Supreme  
12 Court of the United States, seeking review of the Ninth Circuit’s opinion. On January 12, 2015,  
13 the Supreme Court issued an order denying the petition for writ of certiorari, and that order  
14 represents the “final order disposing of any appeal” and is date of “final judgment” in this action.  
15 *See* Doc. 907; *see also* 28 U.S.C. § 2412(d)(1)(B).

16         2.         Concurrently with this joint motion and stipulation, the Authority has filed a  
17 motion for an award of attorneys’ fees and other expenses for this litigation. Before filing the  
18 motion for award of attorneys’ fees and other expenses, the Authority presented Federal  
19 Defendants with a confidential request to settle its claim, which request includes the amount  
20 sought to date, an itemized statement of the actual time expended by attorneys, experts, and other  
21 personnel representing or appearing on behalf of the Authority, the rates at which fees and other  
22 expenses were computed, and an itemized statement of other expenses incurred in the litigation.  
23 Federal Defendants are, thus, in receipt of the information specified by the Equal Access to Justice  
24 Act (“EAJA”), 28 U.S.C. § 2412(d)(1)(B), as well as Local Rule 293, and will not be prejudiced  
25 by the Authority deferring the filing of memoranda, evidentiary and other materials supporting its  
26 motion at this time.

27         3.         Discussions regarding the Authority’s request are ongoing, and the Authority and  
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1 Federal Defendants seek additional time to attempt to settle the Authority's claims without  
2 unnecessarily burdening the Court. The Authority and Federal Defendants agree that briefing and  
3 argument on the Authority's claim for fees and other expenses may be unnecessary in light of the  
4 parties' intent to attempt to settle the Authority's claim.

5 4. Accordingly, the Authority and Federal Defendants agree that further proceedings  
6 on the Authority's motion for an award of fees and other expenses, including the filing of further  
7 memoranda and evidentiary and other materials supporting that motion, and any opposition  
8 thereafter, should be stayed for 149 days to allow for settlement discussions.

9 5. At the conclusion of 149 days, the Authority and Federal Defendants will apprise  
10 the Court of any settlement or further requested action, or jointly propose a briefing schedule to  
11 address the Authority's motion for fees and other expenses if there has been no settlement. That  
12 schedule will provide for the Authority to supplement its motion for award of attorneys' fees and  
13 other expenses with documentation of all time and expenses sought, including the additional time  
14 spent in seeking fees, opposition by the Federal Defendants, and reply by the Authority, with a  
15 hearing if the Court deems a hearing necessary.

16 Based on the joint stipulation set forth above, the parties respectfully request that this  
17 Court stay briefing and argument on the Authority's concurrently filed motion for an award of  
18 attorneys' fees and other expenses for 149 days from the date of the Court's order granting such  
19 stay, in the manner provided above.

20 Respectfully submitted this 11th day of February, 2015.

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22 Dated: February 10, 2015

DIEPENBROCK ELKIN, LLP  
A Professional Corporation

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25 By: /s/ Eileen M. Diepenbrock  
Eileen M. Diepenbrock  
26 Attorneys for Plaintiff, SAN LUIS & DELTA-  
27 MENDOTA WATER AUTHORITY  
28

1 Dated: February 10, 2015

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

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4 By: /s/ Daniel J. O'Hanlon  
5 Daniel J. O'Hanlon  
6 Attorneys for Plaintiff, SAN LUIS & DELTA-  
7 MENDOTA WATER AUTHORITY

8 Dated: February 10, 2015

U.S. DEPARTMENT OF JUSTICE  
Environmental & Natural Resources Division

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11 By: /s/ William Shapiro  
12 William Shapiro, Trial Attorney  
13 Attorneys for FEDERAL DEFENDANTS

14 ORDER

15 The Parties' stipulation as set forth above is approved.

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17 IT IS SO ORDERED.

18 Dated: February 11, 2015

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE