

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

6	THE DELTA SMELT CASES,	)	1:09-cv-407 OWW GSA
7		)	1:09-cv-422 OWW GSA
8	SAN LUIS DELTA-MENDOTA WATER	)	1:09-cv-631 OWW GSA
9	AUTHORITY, et al. v. SALAZAR, et	)	1:09-cv-892 OWW GSA
	al. (Case No. 1:09-cv-407)	)	PARTIALLY CONSOLIDATED
		)	WITH: 1:09-cv-480 OWW GSA
10	STATE WATER CONTRACTORS v.	)	AMENDMENT TO JUNE 24, 2009
11	SALAZAR, et al. (Case No. 1:09-	)	SCHEDULING CONFERENCE
12	cv-422)	)	ORDER.
13	COALITION FOR A SUSTAINABLE	)	
14	DELTA, et al. v. UNITED STATES	)	
15	FISH AND WILDLIFE SERVICE, et	)	
16	al. (Case No. 1:09-cv-480)	)	
17	METROPOLITAN WATER DISTRICT V.	)	
18	UNITED STATES FISH AND WILDLIFE	)	
19	SERVICE, et al. (Case No. 1:09-	)	
20	cv-631)	)	
21	STEWART & JASPER ORCHARDS, et	)	
22	al. v. UNITED STATES FISH AND	)	
23	WILDLIFE SERVICE, et al. (Case	)	
24	No. 1:09-cv-892)	)	
25		)	
26		)	

\_\_\_\_\_The June 24, 2009 Scheduling Order in the Delta Smelt Cases provides, in Part V.C., that dispositive motions addressing legal issues appropriate for early resolution are those "set forth in the Matrix listing Common Claims Appropriate for Early Disposition," attached as Exhibit A to the Scheduling Order. The referenced section in that Matrix lists (1) claims brought

1 under the National Environmental Policy Act ("NEPA") and the  
2 Administrative Procedure Act for failure to comply with NEPA  
3 prior to the preparation and issuance of the 2008 Biological  
4 Opinion; and (2) claims brought under the U.S. Constitution  
5 alleging that application of the Endangered Species Act violates  
6 the Commerce Clause.

7 In addition to these claims, Plaintiffs requested at oral  
8 argument that first round of summary judgment motions (i.e.,  
9 those suitable for early disposition) include certain claims  
10 concerning the issuance of the Reasonable and Prudent Alternative  
11 ("RPA"). Plaintiffs assert that these RPA claims can be decided  
12 on the administrative record alone, without supplementation.  
13 (Supplementation, if appropriate, will not be completed by the  
14 time the first round of summary judgment motions is briefed.)  
15 Defendants and Intervenors rejoin that it is not yet possible to  
16 determine whether a decision on the RPA claims will require  
17 supplementation of the record.

18 The moving parties may present their RPA claims with the  
19 early disposition claims. Defendants and Defendant Intervenors  
20 may argue that the Administrative Record is incomplete and that  
21 RPA issues are not ripe for decision.

22 The June 24, 2009 scheduling order is SO AMENDED.  
23

24 IT IS SO ORDERED.

25 Dated: July 6, 2009

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE