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4 UNITED STATES DISTRICT COURT  
5 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  
10 ) WITH: 1:09-cv-480 OWW GSA  
11 STATE WATER CONTRACTORS v. ) SECOND AMENDMENT TO JUNE  
SALAZAR, et al. (Case No. 1:09- ) 24, 2009 SCHEDULING  
cv-422) ) CONFERENCE ORDER.  
12 )  
13 COALITION FOR A SUSTAINABLE )  
DELTA, et al. v. UNITED STATES )  
14 FISH AND WILDLIFE SERVICE, et )  
al. (Case No. 1:09-cv-480) )  
15 )  
16 METROPOLITAN WATER DISTRICT V. )  
UNITED STATES FISH AND WILDLIFE )  
17 SERVICE, et al. (Case No. 1:09- )  
cv-631) )  
18 )  
19 STEWART & JASPER ORCHARDS, et )  
al. v. UNITED STATES FISH AND )  
20 WILDLIFE SERVICE, et al. (Case )  
No. 1:09-cv-892) )  
21 )  
22 )

23 The June 24, 2009 Scheduling Order in the Delta Smelt Cases  
24 provides, in Part V.C., that dispositive motions addressing legal  
25 issues appropriate for early resolution are those "set forth in  
26 the Matrix listing Common Claims Appropriate for Early  
27 Disposition," attached as Exhibit A to the Scheduling Order.  
28 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 Intervenorors 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 On July 7, 2009, the Scheduling Conference Order was amended  
19 to permit the parties to "present their RPA claims with the early  
20 disposition claims." Doc. 133. at 2. Defendants and Defendant  
21 Intervenorors were permitted to "argue that the Administrative  
22 Record is incomplete and that RPA issues are not ripe for  
23 decision." *Id.*

24 The parties requested further clarification of the order,  
25 Docs. 135 & 138, and a further scheduling conference was convened  
26 on July 10, 2009. The following clarifying language suggested  
27 by the parties, with a minor modification, is adopted:  
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1           The moving parties may present their RPA claims with  
2           the early disposition claims. RPA claims that are to  
3           be heard with early dispositive motions are to be  
4           limited to facial challenges that address whether the  
          requirements of the law have been met, without the  
          necessity of a determination of disputed factual  
          issues.

5   The scheduling order is SO AMENDED.

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10           IT IS SO ORDERED.

11   Dated: July 15, 2009

/s/ Oliver W. Wanger  
                                  UNITED STATES DISTRICT JUDGE