

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

## THE DELTA SMELT CASES

1:09-CV-407 OWW DLB  
1:09-CV-422 OWW GSA  
1:09-CV-631 OWW DLB  
1:09-CV-892 OWW GSA

SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY, *et al.* v. SALAZAR, *et al.*  
(1:09-CV-407 OWW DLB);

**PARTIALLY CONSOLIDATED  
WITH:**

STATE WATER CONTRACTORS v. SALAZAR, *et al.* (1:09-CV-422 OWW GSA);

1:09-CV-480 OWW GSA  
ORDER CONDITIONALLY  
GRANTING MOTION FOR  
LEAVE TO FILE AMICI  
CURIAE BRIEF

COALITION FOR A SUSTAINABLE DELTA, *et al.* v. UNITED STATES FISH AND WILDLIFE SERVICE, *et al.* (1:09-CV-480 OWW GSA)

METROPOLITAN WATER DISTRICT v. UNITED  
STATES FISH AND WILDLIFE SERVICE, *et  
al.*, (1:09-CV-631 OWW DLB)

STEWART & JASPAR ORCHARDS, *et al.* v.  
UNITED STATES FISH AND WILDLIFE  
SERVICE, *et al.* (1:09-cv-892 OWW GSA)

A group of California farmers and the City of Fresno jointly move for leave to file an *amici curiae* brief in support of the Plaintiffs' motion for summary judgment in *Stewart & Jaspar Orchards, et al., v. U.S. Fish and Wildlife Service, et al.*, 1:09-CV-00892 QWW GSA. Doc. 2. Plaintiffs' motion focuses

1 exclusively on their claim that the United States Fish and  
2 Wildlife Service's ("FWS") application of the Endangered Species  
3 Act ("ESA") to the threatened Delta smelt, a species that resides  
4 exclusively within California, is beyond Congress' authority  
5 under the Commerce Clause. Doc. 228-2.

6 *Amici* applicants include farmers who own, operate, and  
7 manage farms in Fresno and/or Kings County,<sup>1</sup> and the City of  
8 Fresno. Although their interest in this lawsuit is not disputed,  
9 *Amici's* proposed brief repeats many, if not all, of the arguments  
10 made in Plaintiffs' brief. Compare Doc. 228 to Doc. 254.

12 The scheduling order in this case, which consolidated or  
13 partially consolidated five separate lawsuits challenging the  
14 same Biological Opinion issued by FWS, provided for cooperation  
15 between the parties in briefing and written submissions:

17 Each Plaintiff shall have the right to be heard on and  
18 to brief issues presented by that party's complaint.  
19 Counsel for all Plaintiffs in the Consolidated Cases  
20 are requested to confer and cooperate in the  
21 presentation of briefs, other legal memoranda, and  
22 written submissions to minimize duplication and length  
23 of submissions, with a view toward limiting the  
24 repetition and volume of written argument and  
authorities presented to the Court. This direction is  
not intended to foreclose the right of any Plaintiff to  
identify separate issues and to argue those issues.  
This right to be heard shall include Real Party In  
Interest, the State of California and its Department of  
Water Resources and Lester Snow, its director.

25 Doc. 120 at 4.

26 \_\_\_\_\_  
27 <sup>1</sup> Some of the California farmers operate within the Westlands Water  
District, which is already party to one of the consolidated lawsuits. See *San*  
*Luis & Delta-Mendota Water Authority, et al., v. Salazar, et al.*, 1:09-CV-407  
28 OWW DLB.

1           *Amici* applicants may participate, but only insofar as they  
2 advance arguments or issues not raised by existing parties.  
3 Because their proposed brief is not in substantial compliance  
4 with this requirement, as it is excessively duplicative of  
5 motions already presented by the parties, it will not be  
6 considered. *Amici* may submit a revised brief, raising only  
7 unique arguments, on or before 5:00 p.m. on Thursday, August 13,  
8 2009.

10           SO ORDERED  
11           Dated: August 7, 2009

13           \_\_\_\_\_  
14           /s/ Oliver W. Wanger  
15           Oliver W. Wanger  
16           United States District Court.