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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 THE DELTA SMELT CASES

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

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

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

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

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

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

PARTIALLY CONSOLIDATED  
WITH:

1:09-CV-480 OWW GSA

ORDER CONDITIONALLY  
GRANTING MOTION FOR  
LEAVE TO FILE AMICI  
CURIAE BRIEF

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23 A group of California farmers and the City of Fresno jointly  
24 move for leave to file an *amici curiae* brief in support of the  
25 Plaintiffs' motion for summary judgment in *Stewart & Jaspar*  
26 *Orchards, et al., v. U.S. Fish and Wildlife Service, et al.*,  
27 1:09-CV-00892 OWW GSA. Doc. 2. Plaintiffs' motion focuses  
28

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  
7 *Amici* applicants include farmers who own, operate, and  
8 manage farms in Fresno and/or Kings County,<sup>1</sup> and the City of  
9 Fresno. Although their interest in this lawsuit is not disputed,  
10 *Amici's* proposed brief repeats many, if not all, of the arguments  
11 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:  
16

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  
25 authorities presented to the Court. This direction is  
26 not intended to foreclose the right of any Plaintiff to  
27 identify separate issues and to argue those issues.  
28 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.

Doc. 120 at 4.

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<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 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.  
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10  
11 SO ORDERED  
12 Dated: August 7, 2009

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