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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELTA SMELT CONSOLIDATED CASES,)
_____)
SAN LUIS & DELTA-MENDOTA WATER)
AUTHORITY, et al. v. SALAZAR, et)
al.)
_____)
STATE WATER CONTRACTORS v.)
SALAZAR, et al.)
_____)
COALITION FOR A SUSTAINABLE)
DELTA, et al. v. UNITED STATES)
FISH AND WILDLIFE SERVICE, et)
al.)
_____)
METROPOLITAN WATER DISTRICT v.)
UNITED STATES FISH AND WILDLIFE)
SERVICE, et al.)
_____)
STEWART & JASPER ORCHARDS, et)
al. v. UNITED STATES FISH AND)
WILDLIFE SERVICE.)
_____)

1:09-cv-0407 OWW DLB

ORDER RE: FURTHER NEPA
BRIEFING ON THE PARTIES'
CROSS-MOTIONS FOR SUMMARY
JUDGMENT

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Court has read, fully considered, and heard argument concerning the parties' cross-motions for summary judgment on NEPA issues.

Plaintiffs have amended their Complaint to state a NEPA

1 claim against the United States Bureau of Reclamation, the action
2 agency under the Biological Opinion at dispute. The Court finds
3 incontrovertible that the Reasonable and Prudent Alternative and
4 its five components partially adopted and provisionally adopted
5 and implemented by the Bureau of Reclamation during the 2008-2009
6 water year is agency action under the Endangered Species Act
7 pursuant to issuance of the 2008 Biological Opinion and RPA for
8 OCAP operations by the United States Fish and Wildlife Service,
9 the consulting agency, pursuant to the Endangered Species Act
10 section 7.

11 The parties have fully briefed and argued all aspects of the
12 United States Bureau of Reclamation's role as the action agency
13 and relationship to FWS as issuing agency. The matter has been
14 fully and exhaustively treated in all the legal memoranda in
15 support of and opposition to the motions for summary adjudication
16 of NEPA issues and in extended oral argument. To avoid needless
17 expenditure of party resources and court resources, and in the
18 interest of judicial economy to further avoid delay:

19 ANY PARTY SHALL HAVE THROUGH AND INCLUDING OCTOBER 16, 2009
20 TO SUPPLEMENT its LEGAL MEMORANDA OF POINTS AND AUTHORITIES
21 REGARDING SUMMARY ADJUDICATION OF NEPA ISSUES. Such legal
22 memoranda shall not exceed seven (7) pages in length, whereupon
23 the NEPA cross motions; for summary adjudication shall be
24 RESUBMITTED.

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28 IT IS SO ORDERED.

1 Dated: October 7, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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