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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DELTA SMELT CONSOLIDATED CASES

Case No. 1:09-cv-407 OWW

~~[Proposed]~~ Order re Cross Motions for Summary Judgment re Reasonable and Prudent Alternative Claims (Docs. 230 & 236)

Plaintiffs in all five consolidated cases ("Plaintiffs") have moved for summary judgment on their "reasonable and prudent alternative" ("RPA") claims, arguing that the United States Fish and Wildlife Service ("FWS") was required to discuss in the text of its biological opinion ("BiOp") whether the RPA (1) can be implemented in a manner consistent with the intended purpose of the State Water Project ("SWP") and Central Valley Project ("CVP"), (2) is economically and technologically feasible, and (3) is capable of being implemented within the legal authority and jurisdiction of the operators, the Bureau of Reclamation ("Reclamation") and the California Department of Water Resources ("DWR"). Docket No. 237. DWR filed a brief in support of Plaintiffs' motion. Docket No. 246. The Federal Defendants opposed, Docket No. 274, and Plaintiffs and DWR replied. Docket Nos. 295 & 300. The Federal Defendants also cross-moved for summary judgment on these claims, Docket No. 231, which the Plaintiffs and DWR opposed, Docket Nos. 273 & 282, and the Federal Defendants filed a reply. Docket No. 296. The Plaintiffs moved to strike Federal Defendants' cross-motion. Docket No. 284.

NOW, THEREFORE, good cause appearing, and for the reasons set out in full in the Court's Memorandum Decision re Cross Motions for Summary Judgment re Reasonable and Prudent Alternative Claims, Docket No. 354 (Oct. 15, 2009), Plaintiffs' motion for summary judgment on the narrow issue of whether FWS is required to discuss the first three RPA requirements on the face of the BiOp is DENIED, as is Federal Defendants' cross-motion, WITHOUT PREJUDICE to the next round of dispositive motions which will address on the merits all issues of the BiOp's sufficiency.

In addition, Plaintiffs' motion to strike is GRANTED WITHOUT PREJUDICE to Federal Defendants' renewal of their motion on the same grounds in the next round of briefing.

SO ORDERED

Dated: 10-30-09

OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE