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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	THE DELTA SMELT CASES	Case No. 1:09-cv-407 OWW GSA
12	SAN LUIS & DELTA-MENDOTA	
13	WATER AUTHORITY, et al. v. SALAZAR, et al. (Case No. 1:09-CV-0407)	Judge: Hon. Oliver W. Wanger ORDER REGARDING STATE WATER
14		
15	STATE WATER CONTRACTORS v.	CONTRACTORS' REQUEST TO SUBMIT EXTRA-RECORD TESTIMONY OF
16	SALAZAR, et al. (Case No. 1:09-CV-0422)	CHARLES H. HANSON, PhD.
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18	COALITION FOR A SUSTAINABLE DELTA, et al. v. UNITED STATES FISH	
19	AND WILDLIFE SERVICE, et al. (Case No. 1:09-CV-0480)	
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21	METROPOLITAN WATER DISTRICT v. UNITED STATES FISH AND WILDLIFE	
22	SERVICE, et al. (Case No. 1:09-CV-0631)	
23	STEWART & JASPER ORCHARDS,	
24	et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al.	
25	(Case No. 1:09-CV-0892)	
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ORDER

On October 19, 2009, the Court heard a request by Plaintiff State Water Contactors ("State Contractors") to submit extra-record, expert witness testimony in support of Plaintiffs' motions for summary judgment. (Docs 343; see also Docs 166, 321.)

The Court has fully considered the briefs, evidence, and oral argument submitted by the State Contractors, and good cause appearing therefore, the following orders are made:

- 1. The State Contractors' request for admission of the testimony of Dr. Charles Hanson is GRANTED in part. State Contractors made a threshold showing of the materiality of such testimony and how it would be of assistance to the Court in understanding technical terms and complex subject matter. Dr. Hanson will be allowed to testify that the scientific methods and reasoning used by the United States Fish and Wildlife Service in the 2008 OCAP Delta Smelt Biological Opinion ("BiOp") with respect to Delta smelt habitat issues, including fall X2 (the isohaline standard), Reasonable and Prudent Alternative ("RPA") Component 3, CALSIM modeling and related matters, are contrary to the best available scientific data and generally accepted scientific standards and methods.
- 2. Dr. Hanson will also be permitted to testify that Project operations intended to protect listed salmon and steelhead species (including the measures set out in the National Marine Fisheries Service's 2009 biological opinion) will have effects on the delta smelt that were not considered in the BiOp or were analyzed in the BiOp in a manner contrary to the best available scientific data and generally accepted scientific standards and methods.
- 3. The State Contractors' request for admission of the testimony of Dr. Charles Hanson is DENIED in part. Dr. Hanson may not testify regarding his own opinions on the potential benefits and detriments to the delta smelt of managing fall X2 standards in the manner proposed by the BiOp. Dr. Hanson may also not testify regarding his own opinion on the potential effects of fall X2 operations on salmon, steelhead and/or other listed species, unless he asserts that implementation of the Delta smelt BiOp and the RPA is likely to jeopardize the continued existence of one or more of such other listed species.

1	4. If Dr. Hanson intends to offer separate opinions that implementation of the Delta	
2	smelt BiOp and its RPA is likely to jeopardize the continued existence of one or more other listed	
3	species, such opinion(s) shall be separately stated in a "supplement to opinions re 2008 Delta	
4	smelt BiOp and its RPAs." No decision regarding the admissibility of such opinions in this case	
5	has been made. Upon the filing of any such supplement, all defendants shall have through and	
6	including November 20, 2009 at 4:00 p.m. P.S.T. to file objections. A hearing on any such	
7	objections shall be held at 9:00 a.m. on November 24, 2009 in Courtroom 3. Parties may appear	
8	telephonically. Any response by Plaintiffs to the objections shall be filed by 2:00 p.m. November	
9	23, 2009.	
10	5. This ruling is without prejudice to the parties' ability to object to the admissibility	
11	of the testimony Dr. Hanson intends to submit.	
12	6. Subject to further order of the Court, each declaration shall be filed and served on	
13	or before November 13, 2009.	
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15	Dated: November 9, 2009	
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17	/s/ Oliver W. Wanger OLIVER W. WANGER	
18	U.S. District Court Judge	
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