

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE DELTA SMELT CASES

Case No. 1:09-cv-407 OWW GSA

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY, et al. v.
SALAZAR, et al.
(Case No. 1:09-CV-0407)

Judge: Hon. Oliver W. Wanger

**ORDER REGARDING STATE WATER
CONTRACTORS' REQUEST TO SUBMIT
EXTRA-RECORD TESTIMONY OF
CHARLES H. HANSON, PhD.**

STATE WATER CONTRACTORS v.
SALAZAR, et al.
(Case No. 1:09-CV-0422)

COALITION FOR A SUSTAINABLE
DELTA, et al. v. UNITED STATES FISH
AND WILDLIFE SERVICE, et al.
(Case No. 1:09-CV-0480)

METROPOLITAN WATER DISTRICT v.
UNITED STATES FISH AND WILDLIFE
SERVICE, et al. (Case No. 1:09-CV-0631)

STEWART & JASPER ORCHARDS,
et al. v. UNITED STATES FISH AND
WILDLIFE SERVICE, et al.
(Case No. 1:09-CV-0892)

1 **ORDER**

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

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

7 1. The State Contractors’ request for admission of the testimony of Dr. Charles
8 Hanson is GRANTED in part. State Contractors made a threshold showing of the materiality of
9 such testimony and how it would be of assistance to the Court in understanding technical terms
10 and complex subject matter. Dr. Hanson will be allowed to testify that the scientific methods and
11 reasoning used by the United States Fish and Wildlife Service in the 2008 OCAP Delta Smelt
12 Biological Opinion (“BiOp”) with respect to Delta smelt habitat issues, including fall X2 (the
13 isohaline standard), Reasonable and Prudent Alternative (“RPA”) Component 3, CALSIM
14 modeling and related matters, are contrary to the best available scientific data and generally
15 accepted scientific standards and methods.

16 2. Dr. Hanson will also be permitted to testify that Project operations intended to
17 protect listed salmon and steelhead species (including the measures set out in the National Marine
18 Fisheries Service’s 2009 biological opinion) will have effects on the delta smelt that were not
19 considered in the BiOp or were analyzed in the BiOp in a manner contrary to the best available
20 scientific data and generally accepted scientific standards and methods.

21 3. The State Contractors’ request for admission of the testimony of Dr. Charles
22 Hanson is DENIED in part. Dr. Hanson may not testify regarding his own opinions on the
23 potential benefits and detriments to the delta smelt of managing fall X2 standards in the manner
24 proposed by the BiOp. Dr. Hanson may also not testify regarding his own opinion on the
25 potential effects of fall X2 operations on salmon, steelhead and/or other listed species, unless he
26 asserts that implementation of the Delta smelt BiOp and the RPA is likely to jeopardize the
27 continued existence of one or more of such other listed species.
28

