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 SAN LUIS & DELTA-MENDOTA WATER
 11 AUTHORITY; WESTLANDS WATER DISTRICT

12
 13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

16 THE DELTA SMELT CASES
 17 SAN LUIS & DELTA-MENDOTA
 WATER AUTHORITY, et al. v.
 18 SALAZAR, et al. (Case No. 1:09-cv-407)

19 STATE WATER CONTRACTORS v.
 SALAZAR, et al. (Case No. 1:09-cv-422)

20 COALITION FOR A SUSTAINABLE
 21 DELTA, et al. v. UNITED STATES FISH
 AND WILDLIFE SERVICE, et al.
 22 (Case No. 1:09-cv-480)

23 METROPOLITAN WATER DISTRICT v.
 24 UNITED STATES FISH & WILDLIFE
 SERVICE, et al. (Case No. 1:09-cv-631)

25 STEWART & JASPER ORCHARDS,
 et al. v. UNITED STATES FISH AND
 26 WILDLIFE SERVICE, et al.
 Case No. 1:09-cv-892)
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CASE NO. 1:09-cv-407-OWW-DLB
 1:09-cv-422-OWW-DLB
 1:09-cv-631-OWW-DLB
 1:09-cv-892-OWW-GSA
 PARTIALLY CONSOLIDATED WITH:
 1:09-cv-480-OWW-GSA

**ORDER REGARDING EXTRA-RECORD
 DECLARATIONS BY DR. BRYAN
 MANLY AND DR. RAY HILBORN**

1 **ORDER**

2 On October 19, 2009, the Court heard a request by Plaintiffs San Luis & Delta-Mendota
3 Water Authority and Westlands Water District (together, "San Luis Plaintiffs") to submit extra-
4 record declarations by Dr. Bryan Manly and Dr. Ray Hilborn in support of the San Luis
5 Plaintiffs' anticipated motion for summary judgment. (Docs. 159, 319, 346.)

6 The Court having fully considered the briefs, evidence, and oral argument in support of
7 and in opposition to the motion, and good cause appearing therefor, the motion by the San Luis
8 Plaintiffs for leave to submit extra-record declarations by Dr. Bryan Manly and Dr. Ray Hilborn
9 is hereby GRANTED in part and DENIED in part, and the Court further ORDERS as follows:

10 1. Dr. Manly's declaration may be submitted to explain: (a) that the Fish and Wildlife
11 Service did not rely on the best available scientific data or generally accepted scientific standards
12 and methods to reach its conclusion in the Biological Opinion that in some years, i.e.,
13 sporadically, the entrainment of delta smelt at Central Valley Project and State Water Project
14 export pumps has a population level effect; and (b) that the conclusion in the Biological Opinion
15 that entrainment of *Pseudodiaptomus forbesi* by the Central Valley Project and State Water
16 Project exports pumps in the months from June through September has significantly affected the
17 food supply available to delta smelt in these months is contrary to the best available scientific
18 data and contrary to generally accepted scientific standards and methods. Dr. Manly's testimony
19 shall be limited to these issues.

20 2. Dr. Hilborn's declaration may be submitted to explain: (a) that the appropriate and
21 generally accepted scientific method within the discipline of fisheries sciences to estimate the
22 effects of Central Valley Project and State Water Project operations on delta smelt population size
23 would be to use a spawner-recruit model or a stage by stage life history model; and (b) that the
24 Fish and Wildlife Service failed to use such models here and this failure is not in accordance with
25 generally accepted scientific standards and methods. Dr. Hilborn's testimony shall be limited to
26 these issues.

27 3. This order is without prejudice to the Defendants and Defendant-Intervenors'
28 ability to object to the admissibility of the testimony in each declaration.

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4. Subject to further order of the Court, each declaration shall be filed and served on or before November 13, 2009.

DATED: _November 10, 2009

/s/ OLIVER W. WANGER
OLIVER W. WANGER
U.S. DISTRICT COURT JUDGE
Attorneys for Plaintiffs
San Luis & Delta-Mendota Water Authority and
Westlands Water District