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12 IN THE UNITED STATES DISTRICT COURT  
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 **THE DELTA SMELT CASES**

1:09-cv-407 OWW

16 **SAN LUIS DELTA-MENDOTA WATER**  
 17 **AUTHORITY, et al. v. SALAZAR, et al.**

Consolidated With:  
 Case No. 1:09-cv-422 OWW  
 Case No. 1:09-cv-480 OWW  
 Case No. 1:09-cv-631 OWW  
 Case No. 1:09-cv-892 OWW

18 **STATE WATER CONTRACTORS v.**  
 19 **SALAZAR, et al.**

20 **COALITION FOR A SUSTAINABLE**  
 21 **DELTA, et al. v. UNITED STATES FISH**  
 22 **AND WILDLIFE SERVICE, et al.**

**ORDER granting DWR's MOTION TO**  
**ALLOW Extra record evidence to**  
**explain technical terms and complex**  
**subject matter**

23 **METROPOLITAN WATER DISTRICT v.**  
 24 **UNITED STATES FISH AND WILDLIFE**  
 25 **SERVICE, et al.**

Date: October 19, 2009  
 Time: 11:30 a.m.  
 Ctrm: 3  
 Judge: Hon. Oliver W. Wanger

26 **STEWART & JASPER ORCHARDS, et al.**  
 27 **v. UNITED STATES FISH AND**  
 28 **WILDLIFE SERVICE, et al.**

1 On October 19, 2009, the Court heard the Motion to Allow Extra Record Evidence to  
2 Explain Technical Terms and Complex Subject Matter filed by California Department of Water  
3 Resources and its Director, Lester Snow (collectively "DWR") (Doc. Nos. 156; 345);

4 Having fully considered the briefs and oral arguments submitted by the parties, and good  
5 cause appearing therefore, THE COURT HEREBY ORDERS:

6 DWR's Motion to Allow Extra Record Evidence to Explain Technical Terms and Complex  
7 Subject Matter Motion is GRANTED with respect to its request to present testimony by a DWR  
8 expert concerning DWR's CALSIM II Simulation Modeling, because DWR made a threshold  
9 showing of the materiality of such testimony.

10 The Court will allow a DWR expert to file a declaration explaining why comparing the  
11 historical data to CALSIM II -modeled data is not a scientifically acceptable practice (not "best  
12 available science"), and thus why the Service's comparison of historic data with modeled data  
13 resulted in an inaccurate determination of the change in X2 attributable to future project  
14 operations.

15 To establish that the Service's comparison of data modeled by CALSIM II with actual  
16 historic data resulted in a materially flawed analysis, the Court will allow DWR's expert to  
17 explain the CALSIM II modeling program, and explain the extent to which the modeling data can  
18 be appropriately used to assess the effect of future project operations on X2 and delta smelt  
19 habitat.

20 This order is without prejudice to the Defendants and Defendant-Intervenors' ability to  
21 object to the admissibility of the testimony in the declaration.

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

24  
25 Dated: November 17, 2009

/s/ OLIVER W. WANGER  
OLIVER W. WANGER  
U.S. District Court Judge