1 2 3 4 UNITED STATES DISTRICT COURT 5 EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION 6 7 THE DELTA SMELT CASES 8 SAN LUIS & DELTA-MENDOTA WATER 9 AUTHORITY et al. v. SALAZAR et al. (Case 1:09-cv-00407-OWW-GSA 1:09-cv-00422-OWW-GSA No. 1:09-cv-407) 10 1:09-cv-00631-OWW-GSA 1:09-cv-00892-OWW-GSA 11 PARTIALLY CONSOLIDATED WITH: STATE WATER CONTRACTORS v. 1:09-cv-00480-OWW-GSA 12 SALAZAR et al. (Case No. 1:09-cv-422) 13 ORDER GRANTING AND DENYING COALITION FOR A SUSTAINABLE DELTA **CROSS-MOTIONS FOR SUMMARY** 14 et al. v. UNITED STATES FISH AND JUDGMENT ON NEPA ISSUES WIDLIFE SERVICE et al. (Case No. 1:09-cv-15 Date: October 2, 2009 480) Time: 10:00 a.m. 16 Courtroom: 3 METROPOLITAN WATER DISTRICT v. 17 UNITED STATES FISH AND WILDLIFE SERVICE et al. (Case No. 1:09-cv-631) 18 Judge: Honorable Oliver W. Wanger 19 STEWART & JASPER ORCHARDS et al. v. 20 UNITED STATES FISH AND WILDLIFE SERVICE et al. (Case No. 1:09-cv-892) 21 22 23 24 25 26 27 {00204024; 2} 28 ORDER GRANTING AND DENYING DIEPENBROCK CROSS-MOTIONS FOR SUMMARY JUDGMENT ON NEPA ISSUES HARRISON CORPORATION

## **ORDER**

The cross-motions for summary judgment on National Environmental Policy Ac
("NEPA"; 42 U.S.C. § 4321, et seq.) issues filed by Plaintiffs San Luis & Delta-Mendota Water
Authority and Westlands Water District ("San Luis Plaintiffs"), Plaintiff State Water
Contractors, and Plaintiff Metropolitan Water District of Southern California ("MWD") on the
one hand, and Defendant-Intervenors The Bay Institute and Natural Resources Defense Counci
on the other, came on regularly for hearing on October 2, 2009. San Luis Plaintiffs were
represented by Kronick, Moskovitz, Tiedemann & Girard by Daniel J. O'Hanlon, Esq., and
Diepenbrock Harrison, by Eileen M. Diepenbrock, Esq. State Water Contractors was
represented by Best, Best & Krieger, by Gregory K. Wilkinson, Esq. MWD was represented by
Morrison & Foerster, by Christopher J. Carr, Esq. Federal Defendants, including the Secretary
of the Interior Kenneth Lee Salazar, the United States Department of the Interior, U.S. Fish and
Wildlife Service ("FWS"), Acting director of the USFWS Rowan Gould, Regional Director of
USFWS Ren Lohoefenor, United States Bureau of Reclamation ("Reclamation"), Acting
Commissioner of Reclamation J. William McDonald, and Regional Director Donald Glaser were
represented by William J. Shapiro, Trial Attorney, Natural Resources Section, and James A
Maysonett, Esq., Trial Attorney, Wildlife and Marine Resources Section, U.S. Department of
Justice. Defendant-Intervenors The Bay Institute and Natural Resources Defense Council were
represented by Earthjustice, Trent W. Orr, Esq., and Natural Resources Defense Council
Katherine Poole, Esq.

The cross-motions for summary judgment at issue relate to the December 15, 2008, biological opinion regarding the effects of the proposed operations of the federal Central Valley Project and State Water Project on the delta smelt and its critical habitat issued by FWS ("2008 BiOp"). The Court has fully considered the briefs and evidence filed in support of Plaintiffs' Motion for Summary Adjudication on NEPA Issues ("Plaintiffs' NEPA MSJ"), as well as the briefs and evidence filed in support of Defendant-Intervenors' Motion for Summary Judgment on Early Disposition Claims ("Defendant-Intervenors' NEPA MSJ"). The Court also has fully

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considered the briefs and evidence filed in opposition to these motions filed by Plaintiffs, Federal 1 Defendants, and Defendant-Intervenors. The Court heard oral argument on the motions on 2 October 2, 2009, and took the matter under submission at the conclusion of the hearing. The 3 Court subsequently solicited supplemental briefings from the parties and the Court has also fully 4 considered those briefs. 5 On November 13, 2009, the Court filed its "Memorandum Decision Re Cross-Motions 6 for Summary Judgment on NEPA Issues" ("Memorandum Decision"; Doc. 399). The November 7 13, 2009, Memorandum Decision constitutes the statement of reasons for the Court's ruling. 8 9 Accordingly, and as stated more fully in its November 13, 2009, Memorandum Decision, the Court now enters the following order: 10 IT IS HEREBY ORDERED that Plaintiffs are entitled to summary judgment on their 11 claim against the United States Bureau of Reclamation ("Reclamation") and Secretary of the 12 Interior, Kenneth Lee Salazar, that Reclamation violated NEPA by failing to perform any NEPA 13 analysis prior to provisionally adopting and implementing the 2008 BiOp and its reasonable and 14 prudent alternative. 15 Therefore, IT IS ORDERED that Plaintiffs' NEPA MSJ is hereby GRANTED in part. 16 17 18 19 Dated: \_December2, 2009 20 /s/ OLIVER W. WANGER\_ 21 HONORABLE OLIVER W. WANGER UNITED STATES DISTRICT JUDGE 22 23 24 25 26 27 28 {00204024; 2} DIEPENBROCK HARRISON ORDER GRANTING AND DENYING

CROSS-MOTIONS FOR SUMMARY JUDGMENT ON NEPA ISSUES