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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**

THE DELTA SMELT CASES
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY et al. v. SALAZAR et al. (Case No. 1:09-cv-407)
STATE WATER CONTRACTORS v. SALAZAR et al. (Case No. 1:09-cv-422)
COALITION FOR A SUSTAINABLE DELTA et al. v. UNITED STATES FISH AND WILDLIFE SERVICE et al. (Case No. 1:09-cv-480)
METROPOLITAN WATER DISTRICT v. UNITED STATES FISH AND WILDLIFE SERVICE et al. (Case No. 1:09-cv-631)
STEWART & JASPER ORCHARDS et al. v. UNITED STATES FISH AND WILDLIFE SERVICE et al. (Case No. 1:09-cv-892)

1:09-cv-00407-OWW-GSA
1:09-cv-00422-OWW-GSA
1:09-cv-00631-OWW-GSA
1:09-cv-00892-OWW-GSA
PARTIALLY CONSOLIDATED WITH:
1:09-cv-00480-OWW-GSA

**ORDER GRANTING AND DENYING
CROSS-MOTIONS FOR SUMMARY
JUDGMENT ON NEPA ISSUES**

Date: October 2, 2009
Time: 10:00 a.m.
Courtroom: 3

Judge: Honorable Oliver W. Wanger

{00204024; 2}

**ORDER GRANTING AND DENYING
CROSS-MOTIONS FOR SUMMARY JUDGMENT ON NEPA ISSUES**

ORDER

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

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