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10 Attorneys for Plaintiffs  
 SAN LUIS & DELTA-MENDOTA WATER  
 11 AUTHORITY; WESTLANDS WATER DISTRICT

12  
 13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA

15  
 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)  
 27

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 FOLLOWING JANUARY 11, 2010  
 SCHEDULING CONFERENCE**

Judge: Hon. Oliver W. Wanger

1 The Court held a scheduling conference in these consolidated actions on January 11, 2010,  
2 at the request of plaintiffs. Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands  
3 Water District were represented by Daniel J. O'Hanlon, Kronick, Moskovitz, Tiedemann &  
4 Girard; plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency were  
5 represented by Robert Thornton and Paul S. Weiland, Nossaman LLP; plaintiff Metropolitan  
6 Water District of Southern California was represented by Christopher J. Carr, Morrison &  
7 Forester LLP, and Linus Masouredis; plaintiff State Water Contractors was represented by  
8 Gregory K. Wilkinson, Best Best & Krieger LLP; plaintiffs Stewart & Jasper Orchards, et al.,  
9 were represented by Brandon M. Middleton, Pacific Legal Foundation; Federal Defendants were  
10 represented by Ethan Eddy, S. Jay Govindan and William J. Shapiro, United States Department of  
11 Justice; defendant-intervenors Natural Resources Defense Council and The Bay Institute were  
12 represented by Katherine Poole and George M. Torgun; California Department of Water  
13 Resources was represented by Clifford T. Lee and Allison Goldsmith; and the Family Farm  
14 Alliance was represented by Brenda Davis, The Brenda Davis Law Group.

15 The plaintiffs requested the conference to address the circumstance of the unavailability of  
16 an expert witness, Dr. Deriso, to appear and testify on the date scheduled to hear testimony  
17 relating to plaintiffs' pending motion for interim remedies and preliminary injunction. An  
18 evidentiary hearing on the motion had been set for January 20 through 22, and February 2 and 3.

19 At the scheduling conference, counsel for the plaintiff Metropolitan Water District of  
20 Southern California, Mr. Carr, reported that due to a recent heart attack, Dr. Deriso would not be  
21 able to proceed with his testimony beginning on January 20. Further, counsel reported that it was  
22 uncertain when Dr. Deriso would be sufficiently recovered to testify. Counsel expected that Dr.  
23 Deriso would have a better sense of his availability by January 26.

24 Counsel for plaintiff Metropolitan Water District of Southern California requested an  
25 extension of time, until January 26, 2010, to file reply papers, including a declaration by Dr.  
26 Deriso, in support of the motion for interim remedies and preliminary injunction. No party  
27 objected to this request for extension of time.

28 Counsel for plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water

1 District, Mr. O'Hanlon, advised the Court that these plaintiffs did not wish to proceed with the  
2 hearing as scheduled if Dr. Deriso was unavailable to testify. No party objected to the  
3 postponement of the hearing. Counsel for these plaintiffs further requested that the hearing be  
4 reset for mid-March. Federal defendants and defendant-intervenors objected to setting the  
5 hearing in mid-March unless some change is made to the March 19 deadline for filing their  
6 opposition to cross-motions for summary judgment.

7 At the scheduling conference, the Court tentatively set new dates of March 17, 18, 19 and  
8 23, 2010 for hearing testimony related to the motion for interim remedies and preliminary  
9 injunction. However, upon further consideration of its calendar, and the unavailability of the  
10 Court's FRE 706 experts on March 18 and 19, by notice filed on January 14, 2010, the Court  
11 requested the parties to consider the alternative dates of March 9, 10 and 11, 2010.

12 Accordingly, IT IS HEREBY ORDERED THAT:

13 1. The San Luis & Delta-Mendota Water Authority and Westlands Water District  
14 plaintiffs' motion for interim remedies and preliminary injunction previously set for January 20,  
15 21, 22 and February 2 and 3, 2010 will be reset following a further status conference.

16 2. The Court will hold a further telephonic status conference in this matter on  
17 January 26, 2010 at noon, to receive a report regarding Dr. Deriso's expected availability to  
18 testify and to address future scheduling.

19 3. The March dates proposed above for the hearing on the motion for interim  
20 remedies and preliminary injunction, and any alternative dates, will be discussed at the  
21 January 26, 2010 telephonic status conference.

22 4. After the date for hearing the motion for preliminary injunction has been settled,  
23 the parties shall meet and confer regarding adjustments, if any, to the schedule for briefing the  
24 cross-motions for summary judgment. If the parties reach agreement on the briefing schedule,  
25 they shall present a stipulation to the Court. Absent such agreement, the Court shall set the  
26 briefing schedule in a further status conference.

27 5. The time for the Metropolitan Water District of Southern California to file its reply  
28 in support of the motion for interim remedies and preliminary injunction is extended to

1 January 26, 2010.

2 6. Counsel for the plaintiff Farm Family Alliance in Case No. 09-cv-1201-OWW  
3 shall confer with counsel for the other plaintiffs regarding presentation of evidence at the hearing  
4 of the motion for interim remedies and preliminary injunction, and at the January 26, 2010 status  
5 conference shall be prepared to address its anticipated role and what evidence it will seek to  
6 present in that hearing.

7  
8 DATED: January 29, 2010

9  
10 /s/ OLIVER W. WANGER  
11 Unites States Senior District Court Judge