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4 **UNITED STATES DISTRICT COURT**
5 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
6

7 **DELTA SMELT CONSOLIDATED**
8 **CASES**

1:09-CV-407 OWW DLB

9 **SAN LUIS & DELTA-MENDOTA**
10 **WATER AUTHORITY, et al. v.**
11 **SALAZAR, et al.**

ORDER DENYING WITHOUT
PREJUDICE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
(511)

12 **STATE WATER CONTRACTORS v.**
13 **SALAZAR, et al.**

14 **COALITION FOR A SUSTAINABLE**
15 **DELTA, et al. v. UNITED**
16 **STATES FISH AND WILDLIFE**
17 **SERVICE, et al.**

18 **METROPOLITAN WATER DISTRICT**
19 **v. UNITED STATES FISH AND**
20 **WILDLIFE SERVICE, et al.**

21 **STEWART & JASPER ORCHARDS et**
22 **al. v. UNITED STATES FISH**
23 **AND WILDLIFE SERVICE.**

24 **Plaintiffs' application for a temporary restraining**
25 **order came on for hearing, on shortened notice, on**
26 **February 2, 2010. Doc. 511, filed Jan. 27, 2010. The**
27 **parties were represented by counsel, as noted in the**
28 **record.**

For reasons stated in open court, which are incorporated
by this reference, and because the United States is not
implementing any Reasonable and Prudent Alternative

1 pursuant to the Delta Smelt Biological Opinion, based on
2 the non-presence of Delta Smelt in the vicinity of the
3 pumps, fish collection facilities, or other areas of
4 concern, there is no present irreparable injury or
5 imminent threat of injury as there is no indication that
6 any Reasonable and Prudent Alternative will affect a
7 reduction in pumping of water for storage and later
8 delivery to State and Federal Contractors.
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10 For these reasons, there is no showing of imminent
11 injury or irreparable harm, and an absence of any present
12 need for a temporary restraining order. All Plaintiffs
13 affected by the Delta Smelt Biological Opinion issued by
14 the United States Fish and Wildlife Service may, at such
15 time that actual harm or an imminent threat of an actual
16 harm arises, seek appropriate relief.
17

18 The motions for temporary restraining order, brought
19 by all Plaintiffs in the Delta Smelt Cases, is DENIED
20 WITHOUT PREJUDICE.
21

22 IT IS SO ORDERED.

23 DATED: February 5, 2010.
24

25 /s/ Oliver W. Wanger
26 Oliver W. Wanger
27 United States District Judge
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