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THE METROPOLITAN WATER DISTRICT
15 OF SOUTHERN CALIFORNIA

16 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

17 THE DELTA SMELT CASES,
18 SAN LUIS & DELTA-MENDOTA WATER
19 AUTHORITY, *et al.* v. SALAZAR, *et al.*
(Case No. 1:09-cv-407)

20 STATE WATER CONTRACTORS v. SALAZAR,
21 *et al.* (Case No. 1:09-cv-422)

22 COALITION FOR A SUSTAINABLE DELTA,
23 *et al.* v. UNITED STATES FISH AND WILDLIFE
SERVICE, *et al.* (Case No. 1:09-cv-480)

24 METROPOLITAN WATER DISTRICT v.
25 UNITED STATES FISH AND WILDLIFE
SERVICE, *et al.* (Case No. 1:09-cv-631)

26 STEWART & JASPER ORCHARDS, *et al.* v.
27 UNITED STATES FISH AND WILDLIFE
SERVICE, *et al.* (Case No. 1:09-cv-892)

1:09-cv-407 OWW GSA
1:09-cv-422 OWW GSA
1:09-cv-631 OWW GSA
1:09-cv-892 OWW GSA
PARTIALLY CONSOLIDATED WITH:
1:09-cv-480 OWW GSA
1:09-cv-1201-OWW-DLB

**ORDER FOLLOWING
FEBRUARY 12, 2010 STATUS
CONFERENCE**

Judge: Hon. Oliver W. Wanger

1 The Court held a status conference in these consolidated actions on February 12, 2010, at
2 the request of Plaintiffs. Plaintiff Metropolitan Water District of Southern California was
3 represented by William M. Sloan, Morrison & Foerster LLP; Plaintiffs San Luis & Delta-
4 Mendota Water Authority and Westlands Water District were represented by Daniel J.
5 O'Hanlon, Kronick, Moskovitz, Tiedemann & Girard, and Eileen M. Diepenbrock, Diepenbrock
6 Harrison; Plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency were
7 represented by Audrey Huang, Nossaman LLP; Plaintiff State Water Contractors was
8 represented by Gregory K. Wilkinson, Best Best & Krieger LLP; Plaintiffs Stewart & Jasper
9 Orchards, et al., were represented by Brandon M. Middleton, Pacific Legal Foundation; Plaintiff
10 Family Farm Alliance was represented by Brenda Davis, The Brenda Davis Law Group;
11 Plaintiff-Intervenor California Department of Water Resources was represented by Allison
12 Goldsmith; Federal Defendants were represented by Ethan Eddy, S. Jay Govindan and William J.
13 Shapiro, United States Department of Justice; and Defendant-Intervenors Natural Resources
14 Defense Council and The Bay Institute were represented by George M. Torgun.

15 In the conference, the parties discussed the expert witnesses who will be permitted to
16 testify in opposition to the preliminary injunction. Plaintiffs indicated that they opposed the
17 testimony of Frederick V. Feyrer, Ken B. Newman, Lenny Grimaldo, and Derek Hilts, because
18 Federal Defendants did not file the declarations of these witnesses until January 8, 2010, ten days
19 after Defendants filed their brief in opposition to Plaintiffs' motion for a preliminary injunction.
20 Federal Defendants stated that they would like to preserve the opportunity to present testimony
21 during that hearing from Dr. Newman, Dr. Grimaldo, Mr. Feyrer, and Mr. Hilts, as well as Cay
22 Collette Goude. The Court finds that Dr. Newman, Dr. Grimaldo, Mr. Feyrer, Mr. Hilts, and Ms.
23 Goude may testify at the preliminary injunction hearing, currently scheduled in conjunction with
24 the consolidated Salmon cases for March 31, April 1, April 2, April 5 and April 6. Plaintiffs
25 requested that if such testimony is allowed, that they be permitted an opportunity to respond to
26 the declarations filed by the first four experts on January 8, 2010. The Federal Defendants did
27 not object to that request. In addition, the Court requested that the hearing on the motions for

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1 summary judgment be rescheduled to accommodate the Court's schedule. After discussion with
2 the parties, the Court HEREBY ORDERS THAT:

3 1. Response to Expert Declarations Filed by Federal Defendants

4 Plaintiffs may file a response by March 1, 2010 to the expert declarations of Frederick V.
5 Feyrer (Doc. 481), Ken B. Newman (Doc. 484), Lenny Grimaldo (Doc. 498-2), and Derek Hilts
6 (Doc. 482).

7 2. Disclosure of Expert Witnesses to Testify at Hearing on Motion for Preliminary
8 Injunction

9 The parties shall disclose the names and business addresses of any expert witnesses they
10 intend to present at the preliminary injunction hearing set to begin on March 31, 2010. The
11 parties shall make this disclosure by no later than 5:00 pm on March 1, 2010. In addition to the
12 identity of the witnesses, that disclosure shall include a description of the subject matter of the
13 witnesses' expected testimony.

14 Each party shall also identify and exchange with all other parties and the Court any
15 exhibits outside the Administrative Record that will be used to summarize or support the expert's
16 opinions; provided, however, that such exhibits may be updated or rewritten by the designated
17 expert witnesses to provide current information regarding water supply impacts, and delta smelt
18 distribution and abundance, up to the time of hearing. The parties will exchange any exhibits
19 outside the Administrative Record by no later than 5:00 p.m. on March 17, 2010.

20 3. Hearing on Motions for Summary Judgment

21 The hearing on the motions for summary judgment (Docs. 548, 549, and 550), currently
22 noticed for April 29 and April 30, 2010, is rescheduled to May 25 and May 26, 2010.

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24 DATED: 2/26/2010

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