

1 NOW THEREFORE, for the reasons articulated by the Court on the record at the hearing, the
2 Court hereby GRANTS IN PART AND DENIES IN PART Defendant-Intervenors' and Federal
3 Defendants' Motions to Strike Plaintiffs' Extra-Record Declarations and Exhibits. Specifically, the
4 Court hereby STRIKES the following:

5 (1) Testimony in the Declarations of Dr. Ray Hilborn (Docs. 393, 600) offering the legal
6 conclusion that the U.S. Fish & Wildlife Service violated the Endangered Species Act by failing to
7 use quantitative population dynamics modeling in the biological opinion for the delta smelt;

8 (2) Testimony in the Declarations of Dr. Richard B. Deriso (Docs. 396, 401, 605) offering the
9 legal conclusion that the U.S. Fish & Wildlife Service violated the Endangered Species Act by failing
10 to scale raw salvage numbers to population size;

11 (3) Testimony in the Declarations of Dr. Richard B. Deriso (Docs. 396, 401, 605) specifying
12 that the ceiling on Old and Middle River flows should have been set at no lower than negative 6100
13 cfs;

14 (4) Testimony in the Declarations of Dr. Bryan Manly (Docs. 397, 599) offering the legal
15 conclusion that the U.S. Fish & Wildlife Service violated the Endangered Species Act by concluding
16 that entrainment affects subsequent year abundance of delta smelt and that entrainment of
17 *Pseudodiaptomus forbesi* in the summer months is limiting delta smelt abundance;

18 (5) Testimony in the Declarations of Dr. Bryan Manly (Docs. 397, 599) that the U.S. Fish &
19 Wildlife Service erred in its conclusion that entrainment in some years has sporadically reduced delta
20 smelt abundance by a significant portion the following year;

21 (6) Testimony in paragraphs 9-12 of the Declaration of Dr. Bryan Manly (Doc. 397) regarding
22 statistical methods that could have been used by the U.S. Fish & Wildlife Service to analyze the
23 effects of entrainment;

24 (7) Testimony in the Declaration of Dr. Bryan Manly (Doc. 397) regarding statistical methods
25 that could have been used by the U.S. Fish & Wildlife Service to perform its own analysis of whether
26 export operations prevent *Pseudodiaptomus forbesi* populations from migrating into the western Delta
27 where Delta smelt reside;

1 (8) Testimony in paragraphs 14-17 of the Declaration of Charles H. Hanson (Doc. 395)
2 regarding delta smelt habitat;

3 (9) Testimony in paragraphs 23-33 of the Declaration of Charles H. Hanson (Doc. 395)
4 regarding CalSim and DAYFLOW modeling;

5 (10) Testimony in paragraphs 34-37 and 40-42 of the Declaration of Charles H. Hanson (Doc.
6 395), and paragraphs 5-7 of the Reply Declaration of Charles H. Hanson (Doc. 598), regarding the X2
7 standard;

8 (11) Testimony in paragraphs 38-39 of the Declaration of Charles H. Hanson (Doc. 395), and
9 paragraphs 9-10 of the Reply Declaration of Charles H. Hanson (Doc. 598), regarding whether delta
10 smelt are habitat limited;

11 (12) Testimony in paragraphs 11-12 of the Reply Declaration of Charles H. Hanson (Doc. 598)
12 regarding the particle tracking methodology.

13 Defendant-Intervenors' and Federal Defendants' Motions to Strike Plaintiffs' Extra-Record
14 Declarations and Exhibits are hereby DENIED in all other respects.

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17 IT IS SO ORDERED.

18 Dated: August 2, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE