

1 IGNACIA S. MORENO, Assistant Attorney General  
 United States Department of Justice  
 2 Environment & Natural Resources Division  
 3 TOM CLARK, Acting Chief  
 KEITH SAXE, Assistant Chief  
 4 WILLIAM J. SHAPIRO, Trial Attorney  
 Natural Resources Section  
 5 SETH M. BARSKY, Chief  
 S. JAY GOVINDAN, Assistant Chief  
 6 ROBERT P. WILLIAMS, Trial Attorney  
 7 ETHAN CARSON EDDY, Trial Attorney  
 Wildlife and Marine Resources Section  
 8 Benjamin Franklin Station, P.O. Box 7369  
 Washington, D.C. 20044-7369  
 9 Telephone: (202) 305-0202 / Facsimile: (202) 305-0275

10 *Attorneys for Federal Defendants*

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **EASTERN DISTRICT OF CALIFORNIA**  
 14 **FRESNO DIVISION**

15  
 16  
 17 THE DELTA SMELT  
 18 CONSOLIDATED CASES

)  
 ) Case No. 1:09-cv-00407-OWW-DLB  
 )  
 ) **Federal Defendants' Application for an**  
 ) **Order Shortening Time to Hear Motion**  
 ) **To Alter or Amend the Judgment Or In**  
 ) **the Alternative For a Stay**  
 )  
 ) **Declaration of Ethan Carson Eddy**  
 )  
 ) **Order Shortening Time**  
 )  
 )

19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 **Application for Order Shortening Time**

2 Pursuant to Local Civ. R. 144(e), the Federal Defendants respectfully apply for an order  
3 shortening the time to hear their Motion to Alter or Amend the Judgment Or In the Alternative  
4 For a Stay (hereinafter “Motion to Amend”), filed concurrently. The undersigned contacted  
5 counsel for all parties on April 7, 2011 to obtain their position on this application to shorten time.  
6 Counsel for all plaintiffs have indicated that their clients oppose this application. Defendant-  
7 Intervenors support this application.

8 The Federal Defendants request that the Court enter an Order in response to this  
9 Application providing that any responses to the Motion to Amend be submitted by 5:00pm on  
10 Friday, April 15, 2011, that any reply in support of the Motion to Amend be due by 5:00pm on  
11 Wednesday, April 20, and that the Motion to Amend be heard at 9:00am on Monday, April 25,  
12 2011, or as soon thereafter as the Court is available to hear it. In the event of a federal  
13 government shutdown, Federal Defendants will notify the Court and the parties as soon as  
14 possible if an alteration of this proposed schedule is needed.

15 This Court has authority to shorten the time to hear the Motion to Amend. Rule 6(c) of  
16 the Federal Rules of Civil Procedure sets forth the time for hearings on noticed motions “except[  
17 ] . . . when a court order – which a party may, for good cause, apply for ex parte – sets a different  
18 time.” Fed. R. Civ. P. 6(c)(1); *see also United States v. Fitch*, 472 F.2d 548, 549 n.5 (9th Cir.  
19 1973) (citing former Rule 6(c) and explaining that this rule “allows the district court discretion to  
20 shorten time”). The Civil Local Rules for the U.S. District Court for the Eastern District of  
21 California recognize this authority, and provide that “applications to shorten time shall set forth  
22 by affidavit of counsel the circumstances claimed to justify the issuance of an order shortening  
23 time.” Local R. 144(e).

24 Good cause exists for this application. As explained further in the Motion to Amend and  
25 supporting declarations filed today, it is impossible for Federal Defendants to comply with the  
26 terms of the Court’s March 29, 2011 Judgment in this matter, *see* Docket No. 851, by the  
27 deadlines set in that Judgment. Accordingly, Federal Defendants would like to obtain certainty  
28 as quickly as possible as to how the agencies must proceed, including relief from the Court of

1 Appeals if necessary, before the deadlines become imminent. If Federal Defendants must seek  
2 relief from the deadlines in the Court of Appeals, it would be prejudicial to Federal Defendants  
3 to delay the start of that process any longer than absolutely necessary, so as to give the Court of  
4 Appeals sufficient time to hear and resolve the matter on a timeframe that would still provide  
5 relief to the defendant agencies. Federal Defendants thus respectfully request that the Court  
6 exercise the authority granted to it Fed. R. Civ. P. 6(c)(1) and Local Civil Rule 144(e) here and  
7 shorten the time by which the Motion to Amend will be briefed and heard.

8 Respectfully submitted this 8th day of April, 2011.

9 IGNACIA S. MORENO, Assistant Attorney General  
10 United States Department of Justice  
11 Environment & Natural Resources Division  
12 TOM CLARK, Chief  
13 KEITH SAXE, Assistant Chief  
14 WILLIAM J. SHAPIRO, Trial Attorney  
15 Natural Resources Section  
16 SETH M. BARSKY, Chief  
17 S. JAY GOVINDAN, Assistant Chief  
18 ROBERT P. WILLIAMS, Trial Attorney

19 /s/ Ethan Carson Eddy  
20 ETHAN CARSON EDDY, Trial Attorney  
21 Wildlife and Marine Resources Section  
22 Benjamin Franklin Station, P.O. Box 7369  
23 Washington, D.C. 20044-7369  
24 Telephone: (202) 305-0202 / Facsimile: (202) 305-0275

25 *Attorneys for Federal Defendants*

26 OF COUNSEL:

27 Jim Monroe  
28 Kaylee Allen  
Office of the Regional Solicitor  
Department of the Interior  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825-1890

1 **Declaration of Ethan Carson Eddy**

2 1. I am one of the trial counsel representing the Federal Defendants in this matter. I  
3 make this declaration pursuant to Local Rule 144(e).

4 2. The defendant federal agencies do not believe it is possible for them to comply  
5 with the terms of the Court’s March 29, 2011 Judgment in this matter, *see* Docket No. 851, by  
6 the deadlines set in that Judgment, as explained in their Motion to Alter or Amend the Judgment  
7 Or In the Alternative For a Stay and supporting declarations filed today.

8 3. The defendant federal agencies seek expedited consideration of that Motion  
9 because they need to obtain certainty as quickly as possible as to how they must proceed with the  
10 remand, including relief from the Court of Appeals if necessary, before the deadlines in the  
11 Judgment become imminent.

12 4. If the defendant federal agencies must seek relief from the deadlines in the Court  
13 of Appeals, it would be prejudicial to their interests to delay the start of that process any longer  
14 than absolutely necessary, so as to give the Court of Appeals sufficient time to hear and resolve  
15 the matter on a timeframe that would still provide relief to the defendant agencies.

16 5. On April 7, 2011, I contacted counsel for all parties to the litigation, via electronic  
17 mail, to obtain their position on this Application for Order Shortening Time.

18 6. Counsel for all plaintiffs have indicated that their clients oppose this application.  
19 Defendant-Intervenors support this application.

20 7. I began work on the Motion to Amend, as well as this request for an Order to  
21 Shorten Time, as soon as the need became apparent to me.

22 8. For these reasons, the Federal Defendants respectfully request that the Court enter  
23 the proposed Order in response to this Application, affixed below.

24  
25 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
26 knowledge.

27 ///

28 ///

1 Respectfully submitted this 8th day of April, 2011.

2  
3 /s/ Ethan Carson Eddy

4 ETHAN CARSON EDDY, Trial Attorney

5  
6  
7 **Order Shortening Time**

8 Upon application of the Federal Defendants, and good cause appearing, **IT IS HEREBY**  
9 **ORDERED** that the time for hearing the Federal Defendants' Motion to Alter or Amend the  
10 Judgment Or In the Alternative For a Stay is hereby shortened, and the hearing on said motion  
11 shall be on April 22, 2011, at 12:00PM. Any response to that motion shall be filed by 5:00PM  
12 on April 15, 2011. Any reply brief shall be filed by 12:00PM on April 20, 2011.

13  
14  
15 IT IS SO ORDERED.

16  
17 Dated: April 11, 2011

/s/ OLIVER W. WANGER

18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28