

1 EILEEN M. DIEPENBROCK, State Bar No. 119254  
 JON D. RUBIN, State Bar No. 196944  
 2 DAVID A. DIEPENBROCK, State Bar No. 215679  
 JONATHAN R. MARZ, State Bar No. 221188  
 3 DIEPENBROCK HARRISON  
 400 Capitol Mall, 18th Floor  
 4 Sacramento, CA 95814  
 Telephone: (916) 492-5000  
 5 Facsimile: (916) 446-4535

6 DANIEL J. O'HANLON, State Bar No. 122380  
 K. ERIC ADAIR, State Bar No. 150650  
 7 HANSPETER WALTER, State Bar No. 244847  
 REBECCA R. AKROYD, State Bar No. 267305  
 8 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
 A Professional Corporation  
 9 400 Capitol Mall, 27th Floor  
 Sacramento, CA 95814-4416  
 10 Telephone: (916) 321-4500  
 Facsimile: (916) 321-4555

11 Attorneys for Plaintiffs SAN LUIS & DELTA-  
 12 MENDOTA WATER AUTHORITY and  
 WESTLANDS WATER DISTRICT

13  
 14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 CONSOLIDATED SALMON CASES

17 SAN LUIS & DELTA-MENDOTA WATER  
 AUTHORITY, et al. v. GARY F. LOCKE,  
 18 et al. (Case No. 1:09-cv-1053)

19 STOCKTON EAST WATER DISTRICT v.  
 NOAA, et al. (Case No. 1:09-cv-1090)

20 STATE WATER CONTRACTORS v.  
 21 GARY F. LOCKE, et al.  
 (Case No. 1:09-cv-1378)

22 KERN COUNTY WATER AGENCY, et al.  
 23 v. U.S. DEPARTMENT OF COMMERCE,  
 et al. (Case No. 1:09-cv-1520)

24 OAKDALE IRRIGATION DISTRICT, et al.  
 25 v. U.S. DEPARTMENT OF COMMERCE,  
 et al. (Case No. 1:09-cv-2452)

26 METROPOLITAN WATER DISTRICT OF  
 27 SOUTHERN CALIFORNIA v. NMFS, et al.  
 (Case No. 1:09-cv-1625)

CASE NOS.

1:09-cv-1053-OWW-DLB  
 1:09-cv-1090-OWW-DLB  
 1:09-cv-1378-OWW-DLB  
 1:09-cv-1520-OWW-DLB  
 1:09-cv-2452-OWW-DLB  
 1:09-cv-1625-OWW-SMS

**ORDER FOLLOWING JANUARY 26,  
 2010 STATUS CONFERENCE**

1 The Court held a scheduling conference in this consolidated actions on January 26, 2010.  
2 Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water District were  
3 represented by Daniel J. O'Hanlon, Kronick, Moskovitz, Tiedemann & Girard; plaintiffs  
4 Coalition for a Sustainable Delta and Kern County Water Agency were represented by Paul S.  
5 Weiland, Nossaman LLP; plaintiff Metropolitan Water District of Southern California was  
6 represented by Christopher J. Carr, Morrison & Forester LLP; plaintiff State Water Contractors  
7 was represented by Gregory K. Wilkinson, Best Best & Krieger LLP; plaintiff Stockton East  
8 Water District was represented by Jennifer L. Spaletta, Herum Crabtree; plaintiffs Oakdale  
9 Irrigation District et al. were represented by William C. Paris, O'Laughlin & Paris, LLP; real  
10 parties in interest California Department of Water Resources and its Director, Lester Snow, were  
11 represented by Deputy Attorney General Clifford Lee of the California Attorney General's  
12 Office; the Federal Defendants were represented by Bridget Kennedy McNeil, United States  
13 Department of Justice; defendant-intervenors were represented by Michael R. Sherwood and  
14 Erin M. Tobin, Earthjustice; and defendant-intervenor Natural Resources Defense Council was  
15 represented by Katherine Poole.

16 The purpose of the conference was to address the procedure related to whether to engage  
17 FRE 706 experts for these cases. In the Joint Scheduling Conference Order and Order  
18 Consolidating Cases filed September 25, 2009 ("Scheduling Order"; Doc. 51), the Court stated its  
19 intention "to provide notice to counsel concerning its decision whether a 706 expert is required in  
20 this case and the proposed terms on which the expert would serve on or before December 21,  
21 2009." Doc. 51, pp. 22-24. However, as a result of various schedule changes and other  
22 developments, the Court has not yet done so.

23 In addition, counsel for plaintiffs San Luis & Delta-Mendota Water Authority and  
24 Westlands Water District confirmed that they had provided the other parties with notice of an  
25 intention to seek a temporary restraining order against implementation of Action IV.2.3 of the  
26 biological opinion challenged in this action. The parties and the Court discussed the timing for  
27 briefing and a hearing regarding the anticipated motion for a temporary restraining order.

28 After discussion with the parties, the Court HEREBY ORDERS THAT:

1           1.       The San Luis & Delta-Mendota Water Authority and Westlands Water District  
2 plaintiffs' application for a temporary restraining order shall be heard on February 2, 2010  
3 beginning at 1:00 p.m. Their papers filed in support of the application shall be filed by 10:00  
4 a.m. on January 27, 2010, and copies shall promptly be provided electronically to counsel for the  
5 defendants and the intervenor-defendants. Any papers filed by other parties who wish to join in  
6 support of the application shall be filed by 10:00 a.m. on January 28, 2010, and copies shall  
7 promptly be provided electronically to counsel for the Federal Defendants and the intervenor-  
8 defendants. Any papers filed in opposition to the application shall be filed by noon on  
9 February 1, 2010, and copies shall promptly be provided electronically to counsel for the  
10 plaintiffs.

11           2.       The Court will provide parties with its tentative view regarding whether to retain  
12 one or more FRE 706 experts for these consolidated cases and the proposed terms on which the  
13 expert or experts would serve, and anticipates that it will do so by February 5, 2010. The parties  
14 may provide their response by February 16, 2010.

15           3.       The further scheduling of these consolidated cases will be addressed in the  
16 upcoming status conferences set for February 4, 2010 at 1 p.m. and March 1, 2010 at 11:00 a.m.

17  
18 DATED: January 29, 2010 \_\_\_\_\_

19  
20 /s/ OLIVER W. WANGER \_\_\_\_\_  
United States Senior District Court Judge