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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 FRESNO DIVISION**

)	
)	Case No.: 1:09-cv-1053-OWW-DLB
)	
THE CONSOLIDATED SALMONID CASES)	ORDER ON THE FEDERAL
)	DEFENDANTS' MOTION TO STRIKE
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This matter came on for hearing on March 30, 2010, after being fully briefed. See
 Docket Nos. 252,272, 276, 277, 279, 280, and 294. Federal Defendants, the Secretary of the

United States Department of Commerce, Gary F. Locke, the United States Department of Commerce, National Oceanic and Atmospheric Administration's National Marine Fisheries Service, Acting Assistant Administrator James W. Balsiger, Administrator for the Southwest Region Rodney R. McInnis, the United States Department of the Interior, United States Bureau of Reclamation, Commissioner of Reclamation Michael L. Connor, and Donald R. Glaser, as Director of Reclamation, Mid-Pacific Region were represented by Bradley H. Oliphant and Bridget Kennedy McNeil, Trial Attorneys, Wildlife and Marine Section, Environment and Natural Resources Division, U.S. Department of Justice.

Plaintiffs San Luis & Delta-Mendota Water Authority and Westlands Water District were represented by Thomas Birmingham, Kronick, Moskovitz, Tiedemann & Girard by Daniel J. O'Hanlon, Esq. and Diepenbrock Harrison by Eileen M. Diepenbrock, Esq. Plaintiff-Intervenor California Department of Water Resources was represented by Daniel S. Harris, Deputy Attorney General, California Attorney General's Office.

The Court has fully considered the briefs filed in support of, and in opposition to, the Motion to Strike as well as the oral arguments presented on March 30, 2010. Accordingly, the Court now memorializes the oral ruling given on March 30, 2010. To the extent that the Court later modified this ruling during the evidentiary hearing conducted March 30-April 2, 2010, those changes are reflected in the appropriate portion of the transcripts and are not memorialized below.

IT IS HEREBY ORDERED as follows:

1. The Declaration of Steven P. Cramer (Doc. No. 167).

The Court DENIES the motion to strike as to paragraphs 1 through 14, 16, and 18 through 20. The Court GRANTS the motion to strike as to Cramer's opinion that NMFS failed to consider other remedies than controlling particle tracks to guide migratory pathways of salmon and smolts in paragraph 15. The Court RESERVES its ruling on paragraph 17 subject to an offer of proof.

2. The Second Supplemental Declaration of Steven P. Cramer (Doc. No. 244).

The Court DENIES the motion to strike as to paragraphs 1 through 3, 5 through 8, 10 through 11, and 20 through 25. The Court GRANTS the motion to strike as to paragraphs 9, 28 and 29, paragraph 32 to 36 except to explain the adult to adult survival studies referenced in those paragraphs and not for any other purpose. The Court GRANTS WITHOUT PREJUDICE the motion to strike as to paragraphs 14 through 19, 26 and 30. The Court RESERVES its ruling on paragraphs 12, 13 and 27. Paragraph 4 is a summary of the findings that come after it and is derivative of the Court's rulings on those paragraphs. Federal Defendants do not challenge to paragraphs 39 to 43. Paragraph 44 provides a summary of opinions and is derivative of the Court's prior rulings.

3. Declaration of Richard Deriso (Doc. No. 195).

The Court DENIES the motion to strike as to the declaration of Richard Deriso.

4. Declaration of Bradley Cavallo (Doc. No. 250).

The Court DENIES the motion to strike as to paragraphs 1 through 10. There does not appear to be a paragraph 12 in the Cavallo declaration. The Court GRANTS the motion to strike as to the first listed paragraph 13, subject to an offer of proof. The Court GRANTS the motion to strike as to the second paragraph 13 subject to an offer of proof that it is offered as scientific explanation and for the lack of use of science would have been not only available, but should have been used. The Court GRANTS the motion to strike as to paragraphs 14 through 17.

Dated: April 20,2010

/s/ OLIVER W. WANGER
THE HONORABLE OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE