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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE CONSOLIDATED SALMON CASES:

SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, et al. v. LOCKE, et al.

STOCKTON EAST WATER DISTRICT v.
NOAA, et al.

STATE WATER CONTRACTORS v. LOCKE,
et al.

KERN COUNTY WATER AGENCY, et al. v.
U.S. DEPARTMENT OF COMMERCE, et al.

OAKDALE IRRIGATION DISTRICT, et al. v.
U.S. DEPARTMENT OF COMMERCE, et al.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA V.
NATIONAL MARINE FISHERIES SERVICE,
et al.

LEAD CASE NO. 1:09-CV-1053-OWW-DLB

Consolidated Cases:

1:09-CV-1090-OWW-DLB

1:09-CV-1378-OWW-DLB

1:09-CV-1520-OWW-SMS

1:09-CV-1580-OWW-DLB

1:09-CV-1625-OWW-SMS

**ORDER RE ADMISSION OF EXTRA-
RECORD TESTIMONY OF DR. KENNETH
CUMMINS**

1 On July 19 and 20, 2010, Plaintiffs Kern County Water Agency (“KCWA”) and the Coalition for
2 a Sustainable Delta’s (“Coalition”) motion to submit extra-record expert testimony in support of
3 Plaintiffs’ motion for summary judgment came for hearing before the Court. Having fully considered
4 the briefs, evidence and oral arguments submitted in support of and in opposition to the motion,

5 THE COURT HEREBY ORDERS:

6 1. KCWA and the Coalition’s motion for admission of extra-record testimony by Dr.
7 Kenneth Cummins is GRANTED. Dr. Cummins is permitted to provide expert testimony related to the
8 use of surrogates in the biological opinion. Dr. Cummins may provide testimony regarding the use of
9 Chinook as a surrogate for steelhead and the use of hatchery Chinook as a surrogate for wild Chinook.

10 2. The Court reserves its ruling on the final admissibility of any testimony provided by Dr.
11 Cummins until it has reviewed his declaration for admissibility on relevance grounds or for failure to
12 meet one of the established exceptions to record review.

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14 IT IS SO ORDERED.

15 Dated: September 2, 2010

16 /s/ Oliver W. Wanger
17 UNITED STATES DISTRICT JUDGE
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