

1 4. To the extent that the testimony is responsive to admissible testimony from Mr.
2 Jeff Stuart, the Court DENIES Defendants’ motion to strike the second declaration of Dr.
3 Charles Hanson (Doc. 496).

4 5. The Court GRANTS Defendants’ motion to strike paragraphs 16-32, and 38-40,
5 of the first declaration of Dr. Richard B. Deriso (Doc. 440). The Court DENIES Defendants’
6 motion to strike paragraphs 33-37, except to the extent that the testimony is cumulative with Dr.
7 Hilborn’s testimony regarding life-cycle modeling. The Court DENIES Defendants’ motion to
8 strike paragraphs 13-15. The Court GRANTS Defendants’ motions to strike paragraphs 11-12
9 because such testimony is relevant to paragraphs that were stricken above. The Court reserves its
10 ruling on the admissibility of paragraphs 41-50.

11 6. The Court reserves its ruling as to the admissibility of the second declaration of
12 Dr. Richard B. Deriso (Doc. 505), and will exclude any testimony that is cumulative or
13 redundant.

14 7. The Court GRANTS Defendants’ motion to strike paragraphs 4-37, 45-47, and
15 48-52, of the first declaration of Mr. Steven P. Cramer (Doc. 448). The Court reserves its ruling
16 as to the admissibility of paragraphs 38-44.

17 8. The Court GRANTS Defendants’ motion to strike the second declaration of Mr.
18 Steven P. Cramer (Doc. 491), except for paragraphs 20-26, as to which the Court reserves its
19 ruling as to admissibility.

20 9. The Court DENIES Defendants’ motion to strike the first declaration of Mr.
21 Bradley Cavallo (Doc. 452), except that the Court reserves its ruling on paragraphs 45-51
22 concerning DSM-II HYDRO because Plaintiff-Intervenor DWR has not laid the foundation that
23 the DSMII HYDRO model was one that the National Marine Fisheries Service “had access to”
24 and was “existing and known science.”

25 10. The Court DENIES Defendants’ motion to strike the second declaration of Mr.
26 Bradley Cavallo (Doc. 497) to the extent that it is responsive to the testimony of Mr. Jeff Stuart.
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1 11. The Court DENIES Defendants’ motion to strike paragraphs 2 – 9 of the first
2 declaration of Mr. James Snow (Doc. 444). The Court GRANTS the motion with respect to
3 paragraphs 16-17 of the same document, as it presents testimony on a legal argument, but
4 clarifies that Plaintiffs’ counsel may present the legal argument.

5 12. The Court DENIES Defendants’ motion to strike the second declaration of Mr.
6 James Snow (Doc. 494) to the extent that Mr. Snow is replying to the testimony of Mr. Milligan
7 and Mr. Hilts, which responds to the portions of the first Snow declaration which are admissible.

8 13. The Court DENIES Defendants’ motion to strike the first declaration of Dr.
9 Kenneth Burnham (Doc. 439).

10 14. The Court DENIES Defendants’ motion to strike the second declaration of Dr.
11 Kenneth Burnham (Doc. 504), except to the extent the testimony is cumulative of his first
12 declaration.

13 15. The Court GRANTS IN PART Defendants’ motion to strike as to those portions
14 of the first and second declarations of Dr. Kenneth Cummins (Docs. 445, 490) that opine that the
15 Service should have conducted experiments to validate the choice of surrogates and DENIES IN
16 PART Defendants’ motion to strike as to the remaining portions of those declarations on the
17 grounds that the testimony explains technical terms or complex subject matter.

18 16. The Court DENIES the Defendants’ motion to strike the declaration of Mr.
19 Daniel Steiner (Doc. 437).

20 17. The Court DENIES the Defendants’ motion to strike the declaration of Mr. Avry
21 Dotan (Doc. 442).

22 18. The Court GRANTS Defendants’ motions to strike the first and second
23 declarations of Dr. Daniel Schindler, except to the extent that they provide non-cumulative
24 explanatory science. (Docs. 441 & 506).

25 19. The Court GRANTS Defendants’ motion to strike the 2010 Ocean Harvest BiOp
26 and any reference to the conclusions or facts in the biological opinion, but will take judicial
27 notice of the existence of the 2010 Ocean Harvest BiOp and consider argument concerning
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1 whether the 2010 Ocean Harvest BiOp was otherwise admissible for purposes of impeachment
2 and/or bad faith.

3 20. The Court DENIES Plaintiff-Intervenor’s motion to strike references in the
4 Fourth Declaration of Jeffrey Stuart to the National Marine Fisheries Service (2009) Endangered
5 Species Act – Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery
6 Conservation and Management Act Consultation: Reinitiation of Formal Consultation for the
7 South Delta Water Exports, the Appendix J of the 2005 SDIP Draft EIR/EIS, and page 19 line 24
8 through page 20, line 3 of the Fourth Declaration of Jeffrey Stuart. The Court overrules the
9 objection to references to 2010 Delta passage model, Miller (2002), Newman and Brandes
10 (2010), Vogel (2002), and Wilbur (2000), because these documents may be considered
11 for impeachment purposes. The Court will consider Mr. Stuart’s reference to the National
12 Academy of Science (2010) report on the issue of whether a reasonable scientist would analyze
13 the issues as NMFS did.

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16 IT IS SO ORDERED.

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18 Dated: January 19, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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