

1 **COUNSEL IDENTIFICATION ON FINAL PAGE**

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3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA

6 CONSOLIDATED SALMON CASES

CASE NOS.

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

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

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

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

**STIPULATION AND ORDER RE:
EXHIBITS, WITNESSES AND ORAL
ARGUMENT FOR MOTION FOR
PRELIMINARY INJUNCTION**

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

Judge: Honorable Oliver W. Wanger

Date: March 23-25, 2011

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

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

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20 The parties, by and through their respective counsel of record, as identified below, have
21 met and conferred and hereby propose the following schedule for the hearing on Plaintiffs'
22 Motion for Injunctive Relief scheduled for March 23-25, 2011:

23 1. The parties shall serve and file their respective witness and exhibit lists by 5:00
24 p.m. **Wednesday, March 16, 2011**. The exhibit lists shall identify those exhibits to be used for
25 each party's case-in-chief, including case-in-chief demonstrative exhibits, and need not include
26 exhibits that may be used for cross-examination and/or rebuttal purposes, including demonstrative
27 exhibits that may be used for cross-examination and/or rebuttal purposes. The exhibit lists shall
28 identify the Administrative Record cite for each exhibit from the Administrative Record, or the

1 docket number if previously filed with the Court's ECF system. For exhibits not included within
2 the Administrative Record or previously filed with the Court's ECF system, the parties shall serve
3 on each other copies of the exhibits by email with their exhibit lists or on disks served by
4 overnight delivery for receipt on **Thursday, March 17, 2011**, except that case-in-chief
5 demonstrative exhibits shall be served for their receipt by 5:00 p.m. **Monday, March 21, 2011**.

6 The parties agree to label their exhibits numerically using the following number ranges:

7 Plaintiffs: 0-400

8 Plaintiff-Intervenor Department of Water Resources: 401-500

9 Federal Defendants: 501-1000

10 Defendant-Intervenors: 1001-1500

11 2. The parties anticipate that they will offer and rely upon during the hearing updated
12 testimony and information regarding project operations, flows, and the status and location of the
13 species that includes or is based on data that was not available when the declarations and exhibits
14 were filed and served. Nothing in this stipulation is intended to preclude admission of such
15 evidence, provided the possibility of such evidence is noted in the parties' exhibit lists filed and
16 served on March 16, 2011.

17 3. Given the proximity of the hearing dates to the April 1, 2011 automatic trigger of
18 RPA Action IV.2.1, the Plaintiffs and Plaintiff-Intervenor intend to seek a motion for temporary
19 restraining order on Action IV.2.1. The parties have agreed, subject to Court approval, to an
20 abbreviated motion and briefing schedule for such motion, as follows: Plaintiffs and Plaintiff-
21 Intervenor shall file a notice and request for the temporary restraining order by 5:00 p.m. on
22 Wednesday, March 16, and shall rely on their briefing on the motion for preliminary injunction to
23 support such motion and shall not file any additional evidence in support of the temporary
24 restraining order; Defendants and Defendant-Intervenors shall rely on their briefing opposing the
25 motion for preliminary injunction to oppose such motion, except to the extent that Defendant and
26 Defendant-Intervenors intend to raise additional objections or defenses to such motion; any
27 additional defenses or objections to the request for temporary restraining order shall be filed by
28 5:00 p.m. on Monday, March 21, 2011, shall not include additional evidence, and shall be limited

1 to one page. The parties agree, subject to Court approval, that the Court may rule on the
2 requested temporary restraining order from the bench at the conclusion of the hearing on Friday,
3 March 25, 2011. Any bench ruling granting the requested temporary restraining order will expire
4 at the end of the 14 day period set forth in Fed. R. Civ.P. 65(b)(2), unless before that time the
5 Court, for good cause, affirmatively extends the order for a like period. As required by Fed. R.
6 Civ. P. 65(b)(2), the reasons for an extension must be entered in the record.

7 4. The parties have agreed to submit the Federal Defendants' Motion to Strike, in
8 which Defendant-Intervenors have joined, on the papers unless the Court has questions for the
9 parties. As that motion is not directed against witnesses who will be presenting live testimony per
10 paragraph 5 below, the parties respectfully request that the Court reserve its ruling on the motion
11 until it issues its decision on the motion for preliminary injunction. The time not used by the
12 Court for any questions on the motion to strike shall be divided evenly between (a) Plaintiffs and
13 Plaintiff-Intervenor on the one hand, and (b) Federal Defendants and Defendant-Intervenors on
14 the other hand.

15 5. Based on a court day of 8:30 a.m. to 5:00 p.m. each day and the Court's routine
16 practice of scheduling one 15 minute break each morning, one 90 minute break at lunch, and one
17 15 minute break each afternoon, the parties anticipate that there will be 19.5 court hours for
18 evidence and argument. Therefore, each side will be allocated a total of 9.75 hours to be used by
19 each side in its discretion among opening statements, arguments, and direct, cross and rebuttal
20 examinations, subject to (1) the witness availability issues that are included in the order of
21 witnesses below and (2) not exceeding the total hours per side per case. Any party may at its sole
22 discretion cede all or a portion of its time to any other party.

23 6. The following is the order of opening statements, witnesses and closing arguments.
24 This has been set based on the parties' best estimates of time for examinations. If the
25 examination of any witness finishes early, the next witness in order will be called to testify,
26 regardless of the date scheduled below, except that per witness availability, Mr. Steve Cramer
27 shall testify on March 24.

28 **March 23, 2011**

- 1 • Opening Statements
- 2 • Terry Erlewine
- 3 • Jim Snow
- 4 • Bradley Cavallo

5 **March 24, 2011**

- 6 • Steve Cramer
- 7 • Jeffrey Stuart
- 8 • Steve Cramer Rebuttal

9 **March 25, 2011**

- 10 • Paul Fujitani
- 11 • Dr. Cameron Speir
- 12 • Dr. David Sunding
- 13 • Plaintiff and Plaintiff-Intervenor rebuttal witnesses
- 14 • Closing Arguments

15 7. The parties' rebuttal witnesses shall be limited to witnesses who provided
16 declarations in support of the parties' briefs in support of, or in opposition to, the motions for
17 preliminary injunction.
18

19 8. In addition to the foregoing live testimony, the parties further stipulate that the
20 following witnesses may testify via their previously submitted declarations and that the parties
21 will not raise a hearsay objection against the admissibility of such declarations on the grounds
22 that the declaration is a statement that was made other than while testifying at the trial or hearing:
23 Russ Freeman, Dr. Frank Gornick, Daniel G. Nelson, Robert Silva, Todd Allen, Joe Del Bosque,
24 Chris Hurd, Andy Souza, Margaret Beckett, William F. "Zeke" Grader, Gary Hayward Slaughter
25 Mulcahy, Peter Grenell, and Richard Pool. In so stipulating, the parties against whom the
26 declarations have been offered do not stipulate that the facts stated within the declarations are
27 undisputed or waive any other evidentiary objections.

28 9. As the evidence and written and oral arguments regarding the merits previously

1 have been presented to the Court as part of the parties' respective motions for summary judgment,
2 heard by the Court on December 16 and 17, 2010, the parties further stipulate that they may rely
3 upon, and are not required to re-present, that evidence and those arguments for their respective
4 positions on the "likelihood of success" element of the pending motion for preliminary injunction
5 and motion for temporary restraining order, and that such arguments and evidence shall be limited
6 to the Court's consideration of the Plaintiffs' and Plaintiff-Intervenors' likelihood of success on
7 the merits. However, Defendants and Defendant-Intervenors restate their objection to the Court's
8 reliance on extra-record testimony and evidence for purposes of evaluating Plaintiffs' and
9 Plaintiff-Intervenors' likelihood of success on the merits of their Administrative Procedure Act
10 claims.

11 **SO STIPULATED**

12 Dated: March 16, 2011

DIEPENBROCK HARRISON
A Professional Corporation
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

14 By /s/ Eileen M. Diepenbrock
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16 MENDOTA WATER AUTHORITY and
17 WESTLANDS WATER DISTRICT

18 Dated: March 16, 2011

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22 DISTRICT

23 Dated: March_16, 2011

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26 By /s/ Gregory K. Wilkinson
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27 CONTRACTORS

Dated: March_16, 2011

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By /s/ Christopher J. Carr
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SUSTAINABLE DELTA

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Dated: March_16, 2011 NATURAL RESOURCES DEFENSE COUNCIL

By /s/ Katherine S. Poole
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Attorneys for Defendant-Intervenor NATURAL
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Dated: March_16 2011

EARTHJUSTICE

By /s/ Erin M. Tobin
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CALIFORNIA COUNCIL OF THE FEDERATION
OF FLY FISHERS, PACIFIC COAST
FEDERATION OF FISHERMEN'S
ASSOCIATIONS/INSTITUTE FOR FISHERIES
RESOURCES, SACRAMENTO RIVER
PRESERVATION TRUST, SAN FRANCISCO
BAYKEEPER, THE BAY INSTITUTE,
WINNEMEM WINTU TRIBE

IT IS SO ORDERED.

Dated: March 16, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE