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

CONSOLIDATED SALMONID CASES
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, et al. v. GARY F. LOCKE, et al. (Case No. 1:09-cv-1053)
STOCKTON EAST WATER DISTRICT v. NOAA, et al. (Case No. 1:09-cv-1090)
STATE WATER CONTRACTORS v. GARY F. LOCKE, et al. (Case No. 1:09-cv-1378)
KERN COUNTY WATER AGENCY, et al. v. U.S. DEPARTMENT OF COMMERCE, et al. (Case No. 1:09-cv-1520)
OAKDALE IRRIGATION DISTRICT, et al. v. U.S. DEPARTMENT OF COMMERCE, et al. (Case No. 1:09-cv-1580)
METROPOLITAN WATER DISTRICT OF 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-1580-OWW-DLB
1:09-cv-1625-OWW-SMS

ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT

The Court has read and considered the memoranda of points and authorities and all other documents and evidence in support of and in opposition to the motions and cross-motions for summary judgment brought by: (1) Plaintiffs San Luis & Delta Mendota Water Authority and Westlands Water District, Metropolitan Water District of Southern California, State Water Contractors, Kern County Water Agency, and Coalition for a Sustainable Delta (collectively, “Export Plaintiffs”); (2) Plaintiffs Stockton East Water District, Oakdale Irrigation District, and South San Joaquin Irrigation District (collectively, “Stanislaus River

1 Plaintiffs”); (3) Plaintiff-Intervenor California Department of Water Resources (“DWR”); (4)
2 Defendants United States Department of Commerce, National Oceanic and Atmospheric
3 Administration, United States National Marine Fisheries Service (“NMFS”), United States
4 Department of the Interior, and United States Bureau of Reclamation (“Reclamation”)
5 (collectively, “Federal Defendants”); and (5) Defendant-Intervenors California Trout, Friends
6 Of The River, Natural Resources Defense Council, Northern California Council of the
7 Federation of Fly Fishers, Pacific Coast Federation of Fishermen’s Associations/Institute for
8 Fisheries Resources, Sacramento River Preservation Trust, San Francisco Baykeeper, The Bay
9 Institute, and the Winnemem Wintu Tribe (collectively, “Defendant-Intervenors”).¹

10 The Court has heard all the testimony and evidence, and the arguments of counsel at the
11 hearing on these matters held on December 16 and 17, 2010.

12 The motions and cross-motions for summary judgment at issue relate to NMFS’s June
13 4, 2009, biological opinion (“BiOp”) regarding the effects of the proposed operations of the
14 federal Central Valley Project (“CVP”) and the State Water Project (“SWP”). On September
15 20, 2011, the Court filed its “Memorandum Decision Re Cross Motions for Summary
16 Judgment (Docs. 430, 435, 446, 474, 477)” (“Memorandum Decision”; Doc. 633). The
17 September 20, 2011 Memorandum Decision constitutes the statement of decision for the
18 Court’s ruling.

19 Good cause appearing, and for the reasons more fully explained in the Court’s
20 Memorandum Decision, IT IS ORDERED:

21 (1) Export Plaintiffs’ motion for summary judgment that the BiOp violates the
22 Endangered Species Act (“ESA”) and the Administrative Procedures Act (“APA”) is
23 GRANTED IN PART AND DENIED IN PART; and Federal Defendants’ and Defendant-
24 Intervenors’ cross-motions are GRANTED IN PART AND DENIED IN PART, as set forth in
25 the Memorandum Decision.

26 (2) Plaintiff-Intervenor DWR’s motion for summary judgment that the BiOp
27 violates the ESA and APA is GRANTED IN PART AND DENIED IN PART; and Federal

28 ¹ The Export Plaintiffs, Stanislaus River Plaintiffs, and DWR are collectively referred to as “Plaintiffs.”

1 Defendants' and Defendant-Intervenors' cross-motions are GRANTED IN PART AND
2 DENIED IN PART, as set forth in the Memorandum Decision.

3 (3) Stanislaus River Plaintiffs' motion for summary judgment that the BiOp violates
4 the ESA and the APA is GRANTED IN PART AND DENIED IN PART; and Federal
5 Defendants' and Defendant-Intervenors' cross-motions are GRANTED IN PART AND
6 DENIED IN PART, as set forth in the Memorandum Decision.

7 (4) Plaintiffs' motions for summary judgment that Reclamation violated the ESA
8 and/or the APA are DENIED; and Federal Defendant and Defendant-Intervenors' cross-
9 motions are GRANTED.

10 (5) The BiOp and its Reasonable and Prudent Alternative ("RPA") are
11 ARBITRARY, CAPRICIOUS, and UNLAWFUL, and are REMANDED WITHOUT
12 VACATUR to NMFS for further consideration in accordance with the Memorandum Decision
13 and the requirements of law. Such remand without vacatur is not intended to be issue or claim
14 preclusive to the extent it could be cited as a ground to prevent the hearing or decision on any
15 provisional remedy justified in law or equity.

16 (6) The Court retains jurisdiction over this matter to the fullest extent permitted by
17 law.

18 (7) Within five (5) days of service of this Court's Memorandum Decision Federal
19 Defendants shall provide a proposed date by which they shall file the new BiOp and any RPA.

20
21 SO ORDERED

22 Dated: September 29, 2011

23 /s/ Oliver W. Wanger
24 United States District Judge
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