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12 Attorneys for the Federal Defendants

13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA

15 STOCKTON EAST WATER DISTRICT,	)	CASE NO. 1:09-CV-1090-OWW-DLB
16	)	
Plaintiffs,	)	
17	)	
v.	)	<b>STIPULATION TO ADD CASE TO</b>
18	)	<b>FEDERAL DEFENDANTS' MOTION</b>
	)	<b>TO CONSOLIDATE</b>
19 NATIONAL OCEANIC AND	)	
ATMOSPHERIC ADMINISTRATION,	)	Hearing: August 31, 2009
20 <i>et al.</i> ,	)	Time: 10:00 A.M.
	)	Ctrm: 3
Defendants.	)	Judge: Hon. Oliver W. Wanger
21	)	

22 On July 29, 2009, Federal Defendants moved to consolidate the above-captioned case  
 23 and San Luis & Delta-Mendota Water Authority et al. v. Locke et al. (“San Luis”), No.  
 24 1:09-CV-1053-OWW-DLB. See Docket No. 26. Plaintiffs filed a statement of non-opposition  
 25 on August 12, 2009. See Docket No. 26.

26 On August 6, 2009, a new case was filed challenging the NMFS 2009 biological opinion,

27 Stipulation  
 28 NO. 1:09-CV-1090-OWW-DLB

1 the same agency action at issue in the above-captioned case and the San Luis cases. See State  
2 Water Contractors v. Locke, et al., No. 1:09-CV-1378-OWW-SMS. On August 12, 2009, the  
3 State Water Contractors filed a Notice of Related Case, stating that their challenge is related to  
4 the above-captioned case because the challenges “both involve the same parties (Defendants);  
5 both cases are based on the same and similar claims (Defendants’ violations of the ESA and  
6 other laws in preparing, approving and enforcing the 2009 OCAP BiOp); both cases involve the  
7 same transaction or event (Defendants’ preparation, approval and enforcement of the 2009  
8 OCAP BiOp); and both cases involve similar questions of fact and law such that their assignment  
9 to the same Judge is likely to effect a substantial savings of judicial effort.” See State Water  
10 Contractors v. Locke, No. 1:09-CV-1378, Docket No. 11-2 at 9. The same arguments are raised  
11 with respect to the relationship between the State Water Contractors case and the San Luis case.  
12 Id. at 8.

13 Federal Defendants agree with the statements in the State Water Contractors’ Notice of  
14 Related Case and assert that this challenge meets the consolidation factors outlined in our  
15 Motion to Consolidate. As with consolidation of the cases named in our Motion, the Plaintiffs in  
16 all three cases “agree that some consolidation of the matters is desirable.” See San Luis, Docket  
17 No. 29 at 1. In this regard, the State Water Contractors Plaintiff is concerned that while “some  
18 consolidation” is appropriate, the issues raised in each of the cases are individual to those cases  
19 and that a wholesale merger of the actions is inappropriate. Accordingly, Plaintiff believes any  
20 consolidation Order must not prejudice the State Water Contractors’ substantive or procedural  
21 rights, including their right to file separate briefs and make separate arguments in support of their  
22 case. Plaintiff joins in the Response to Federal Defendants’ Motion to Consolidate heretofore  
23 filed by Plaintiffs San Luis & Delta Mendota Water Authority and Westlands Water District.  
24 See San Luis, Docket No. 29.

25 Accordingly, the parties in all three matters hereby stipulate that the State Water  
26 Contractors case be added to Federal Defendants’ Motion to Consolidate, set for hearing on

1 August 31, 2009, and that the State Water Contractors case management conference be advanced  
2 to the date and time set for the case management conferences in the San Luis and Stockton East  
3 cases (September 10, 2009, 8:15 A.M.).  
4

5 **IT IS SO ORDERED**

6 Dated: August 28, 2009

/s/ Oliver W. Wanger  
\_\_\_\_\_  
The Hon. Oliver W. Wanger

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9  
10 Respectfully submitted this 20th day of August, 2009.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of August, 2009, I filed a true and correct copy of the foregoing Stipulation to Add Case to Federal Defendants' Motion to Consolidate with the Court' CM/ECF system, which will generate a Notice of Filing on the following:

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