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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE DELTA SMELT CASES
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, et al. v. SALAZAR, et al. (Case No. 1:09-cv-407)
STATE WATER CONTRACTORS v. SALAZAR, et al. (Case No. 1:09-cv-422)
COALITION FOR A SUSTAINABLE DELTA, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-480)
METROPOLITAN WATER DISTRICT v. UNITED STATES FISH & WILDLIFE SERVICE, et al. (Case No. 1:09-cv-631)
STEWART & JASPER ORCHARDS, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-892)
FAMILY FARM ALLIANCE v. SALAZAR, et al. (Case No. 09-cv-1201)

CASE NO. 1:09-cv-407-LJO-DLB
1:09-cv-422-LJO-DLB
1:09-cv-631-LJO-DLB
1:09-cv-892-LJO-GSA
PARTIALLY CONSOLIDATED WITH:
1:09-cv-480-LJO-GSA
1:09-cv-1201-LJO-DLB

SECOND JOINT STIPULATION AND ORDER AMENDING SCHEDULE FOR TRANSMITTAL OF DRAFT SMELT BIOLOGICAL OPINION

Judge: Honorable Lawrence J. O'Neill

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RECITALS

1. On May 19, 2011, this Court entered its Amended Judgment in these *Delta Smelt Consolidated Cases* requiring the United States Fish and Wildlife Service ("FWS") to "transmit to [the Bureau of] Reclamation by October 1, 2011 a draft delta smelt Biological Opinion consistent with the requirements of law." (Amended Judgment, Doc. 884 at 3:18-19.)

2. On September 30, 2011, this Court vacated the October 1, 2011 deadline in the Amended Judgment (Doc. 884) for transmittal of the draft delta smelt Biological Opinion ("draft BiOp"). (Doc. 1061.) The Court ordered instead that by October 31, 2011 the parties file a written report stating whether the parties have jointly agreed upon a revised completion date for the draft BiOp. The Court further ordered that failing such agreement, the draft BiOp was to be transmitted by November 11, 2011.

3. Since the Court's order, a number of the parties have engaged in discussions regarding a restructuring of the consultation process and a new deadline for the draft BiOp, but have not yet reached agreement. However, these parties would like to continue these discussions, and agree they need more time beyond October 31, 2011 to complete discussions and potentially reach agreement.

Good cause exists for the granting of the below requested schedule change for transmittal of the draft BiOp, and the parties respectfully request that the dates set by this Court be modified as shown below.

STIPULATION

Plaintiffs San Luis & Delta-Mendota Water Authority, Westlands Water District, State Water Contractors, Metropolitan Water District of Southern California, Coalition for a Sustainable Delta, Kern County Water Agency, Stewart & Jasper Orchards, Arroyo Farms, LLC, King Pistachio Grove, and Family Farm Alliance ("Plaintiffs"), Plaintiff-Intervenor California Department of Water Resources ("DWR"), Federal Defendants, and Defendant-Intervenors Natural Resources Defense Council and The Bay Institute by and through their respective counsel, hereby stipulate and agree as follows:

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1. The October 31, 2011 and November 11, 2011 deadlines in the Court's previous order (Doc. 1061) should be hereby vacated to allow time for further discussions between now and December 2, 2011.

2. By December 2, 2011, the parties shall file with the Court a written report, preferably a joint report, stating whether the parties have jointly agreed to a remand schedule. .

3. If there is not agreement among all parties, then the draft BiOp shall be transmitted no later than December 14, 2011.

SO STIPULATED.

Dated: October 31, 2011

H. CRAIG MANSON
Westlands Water District
DIEPENBROCK ELKIN, LLP
KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Professional Corporation

By /s/ Daniel J. O'Hanlon
DANIEL J. O'HANLON
EILEEN M. DIEPENBROCK
Attorneys for Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY and WESTLANDS WATER
DISTRICT

Dated: October 31, 2011

BROWNSTEIN HYATT FARBER SCHRECK LLP

By: /s/ Steve O. Sims
STEVE O. SIMS
MICHELLE C. KALES
Attorneys for Plaintiff
WESTLANDS WATER DISTRICT

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Dated: October 31, 2011

BEST BEST & KRIEGER LLP

By: Isl Steven M. Anderson
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STEVEN M. ANDERSON
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MELISSA R. CUSHMAN
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STATE WATER CONTRACTORS

Dated: October 31, 2011

NOSSAMAN LLP

By: Isl Paul S. Weiland
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AUDREY HUANG
Attorneys for Plaintiffs
COALITION FOR A SUSTAINABLE DELTA
and KERN COUNTY WATER AGENCY

Dated: October 31, 2011

MORRISON & FOERSTER LLP

By: /s/ William M. Sloan
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WILLIAM M. SLOAN
Attorneys for Plaintiff
THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA

1 Dated: October 31, 2011

PACIFIC LEGAL FOUNDATION

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By: /s/ Brandon M. Middleton

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M. REED HOPPER

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DAMIEN M. SCHIFF

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BRANDON M. MIDDLETON

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Attorneys for Plaintiffs

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STEWART & JASPER ORCHARDS;

ARROYO FARMS, LLC; and KING

PISTACHIO GROVE

9 Dated: October 31, 2011

THE BRENDA DAVIS LAW GROUP

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By: /s/ Brenda W. Davis

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BRENDA W. DAVIS

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LESLIE R. WAGLEY

Attorneys For Plaintiff

FAMILY FARM ALLIANCE

14 Dated: October 31, 2011

KAMALA D. HARRIS, ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

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By: /s/ Clifford T. Lee

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CLIFFORD T. LEE

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CECILIA L. DENNIS

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MICHAEL M. EDSON

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ALLISON GOLDSMITH

Deputies Attorney General

Attorneys for Plaintiff-In-Intervention

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

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1 Dated: October 31, 2011

IGNACIA S. MORENO, ASSISTANT ATTORNEY
GENERAL
United States Department of Justice, Environmental
& Natural Resources Division
SETH M. BARSKY, CHIEF

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By: /s/ S. Jay Govindan
S. JAY GOVINDAN
Wildlife & Marine Resources Section
Attorneys for FEDERAL DEFENDANTS

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8 Dated: October 31, 2011

NATURAL RESOURCES DEFENSE COUNCIL

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By: /s/ Katherine Poole
KATHERINE POOLE
DOUG OBEGI
Attorneys for Defendant-Intervenor NATURAL
RESOURCES DEFENSE COUNCIL

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14 Dated: October 31, 2011

EARTH JUSTICE

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By: /s/ Trent W.
TRENT W. ORR
GEORGE M. TORGUN
Attorneys for Defendant-Intervenors
NATURAL RESOURCES DEFENSE
COUNCIL; THE BAY INSTITUTE

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ORDER

Based on the stipulation of the above parties, the Court hereby vacates the previously ordered October 31, 2011 deadline for submission of a written status report, and the alternative November 11, 2011 deadline for transmittal of the draft delta smelt Biological Opinion ("draft BiOp"). By December 2, 2011, the parties shall file with the Court a written report, preferably a joint report, stating whether the parties have jointly agreed upon the three items listed above in the stipulation. If there is not agreement among all parties on these items, then the draft BiOp shall be transmitted no later than December 14, 2011.

IT IS SO ORDERED.

Dated: November 1, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE