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 12 Attorneys for the Federal Defendants

13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA  
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|---|---|
| 16 KERN COUNTY WATER AGENCY, <i>et al.</i> )                    | CASE NO. 1:09-CV-1520-OWW-SMS   |
| 17                     Plaintiffs,                     )        | <b>STIPULATION AND<br/>ORDER TO ADD CASE TO<br/>MOTION TO CONSOLIDATE</b> |
| 18                     v.                                     ) |   |
| 19 UNITED STATES DEPARTMENT OF                     )            |   |
| 20 COMMERCE, <i>et al.</i> )                                    | (Deferred) Hearing: September 10, 2009                                    |
| )   | Time: 8:15 A.M.   |
| )   | Ctrm: 3   |
| 21                     Defendants.                     )        | Judge: Hon. Oliver W. Wanger  |

22             On August 28, 2009, the above-captioned action was filed, challenging the NMFS 2009  
 23 biological opinion, the same agency action at issue in Stockton East Water District v. NOAA,  
 24 No. 1:09-CV-1090-OWW-DLB, San Luis & Delta-Mendota Water Authority, et al. v. Locke et  
 25 al. (“San Luis”), No. 1:09-CV-1053-OWW-DLB, State Water Contractors v. Locke, No. 1:09-  
 26 CV-1378-OWW-SMS, and Oakdale Irrigation District, et al. v. U.S. Dep’t of Commerce, et al.,

27 Stipulation  
 28 NO. 1:09-CV-1520-OWW-SMS

1 No 2:09-CV-2452-JAM-KJM.

2 On July 29, 2009, the Federal Defendants moved to consolidate the Stockton East and  
3 San Luis cases. See 1:09-CV-1053, Docket No. 26; 1:09-CV-1090, Docket No. 11. On August  
4 6, the State Water Contractors case was filed. On August 20, 2009, the parties in all three cases  
5 stipulated to add the State Water Contractors case to the pending motion to consolidate and  
6 advance the scheduling conference to September 10, with the Stockton East and San Luis cases.  
7 See 1:09-CV-1378, Docket No. 13. This stipulation was approved on August 28, 2009. Id. at  
8 Docket No. 19.

9 At the August 31, 2009 hearing on the motion to consolidate, the Court deferred ruling on  
10 the motion until scheduling issues were clarified through the joint scheduling report and the  
11 September 10, 2009 scheduling conference. In light of the deferral, the Federal Defendants  
12 requested that the newly-filed Kern County Water Agency case be added to the motion to  
13 consolidate. Counsel for the plaintiffs in the Kern County Water Agency case was present in the  
14 courtroom and agreed to the request.

15 Like the other four cases, the Federal Defendants assert that the above-captioned case  
16 meets the consolidation factors outlined in the pending motion, as all cases involve the same  
17 parties, are based on the same or similar claims, involve the same transaction or event and  
18 involve similar questions of fact and law such that their assignment to the same Judge is likely to  
19 effect a substantial savings of judicial effort. As with consolidation of the cases named in our  
20 Motion, the Plaintiffs in all five cases “agree that some consolidation of the matters is desirable.”  
21 See San Luis, Docket No. 29 at 1. In this regard, it is the above-captioned Plaintiffs' position that  
22 they should be permitted to independently pursue all of their individual claims. With respect to  
23 any overlapping claims, the above-captioned Plaintiffs agree to coordinate regarding the filing of  
24 any motions.

25 Accordingly, the parties in all five matters hereby stipulate that the above-captioned case  
26 be added to Federal Defendants' Motion to Consolidate, originally set for hearing on August 31,

1 2009, but now deferred to the September 10 scheduling conference. The parties also stipulate  
2 that the case management conference in the above-captioned case be advanced to the date and  
3 time set for the case management conferences in the San Luis, Stockton East, and State Water  
4 Contractors cases (September 10, 2009, 8:15 A.M.).

5  
6 **IT IS SO ORDERED.**

7 Dated: 9/8/2009

8 /s/ OLIVER W. WANGER  
9 The Hon. Oliver W. Wanger

10 Respectfully submitted this 3rd day of September, 2009.

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**CERTIFICATE OF SERVICE**

\_\_\_\_\_ I hereby certify that on the 3rd day of September, 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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