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2
3 UNITED STATES DISTRICT COURT
4 FOR THE EASTERN DISTRICT OF CALIFORNIA
5

6 COUNCIL FOR ENDANGERED SPECIES
7 ACT RELIABILITY,

8 Plaintiff,

9 v.

10 KEN SALAZAR, et al.,

11 Defendants.

1:09-CV-2091 OWW DLB

ORDER TO SHOW CAUSE RE
DISMISSAL

12 CENTER FOR BIOLOGICAL
13 DIVERSITY,

14 Plaintiff,

15 v.

16 KEN SALAZAR, et al.,

17 Defendants.

1:09-CV-2092 OWW DLB

ORDER TO SHOW CAUSE RE
DISMISSAL

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19 Both of the above-captioned cases concern the United
20 States' Fish and Wildlife Service's ("FWS") failure to issue
21 a 12-month finding in response to a petition seeking to
22 reclassify the delta smelt (*hypomesus transpacificus*) from
23 "threatened" to "endangered" under the Endangered Species Act
24 ("ESA"). The complaints in both cases seek issuance of the
25 required 12-month finding by a date certain. See 1:09-cv-
26 2091, Doc. 13 at ¶7; 1:09-cv-2092, Doc. 1 at ¶6.
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1 On April 7, 2010, in a "Notice of 12-month Petition
2 Finding," FWS concluded: "reclassifying the delta smelt from
3 a threatened to an endangered species is warranted but
4 precluded by other higher priority listing actions." 75 Fed.
5 Reg. 17,667. In light of this Notice, the parties in the
6 above-captioned cases are ORDERED TO SHOW CAUSE IN WRITING ON
7 OR BEFORE WEDNESDAY, APRIL 21, 2010, WHY BOTH CASES SHOULD
8 NOT BE DISMISSED AS MOOT. If there is any substantial
9 dispute, the Court will set a consolidated hearing on these
10 matters.
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12 The hearing on the pending motion to dismiss in *Council*
13 *for Endangered Species Act Reliability v. Salazar*, 1:09-cv-
14 2091, currently set for April 26, 2010, is ORDERED OFF
15 CALENDAR. It will be re-set if appropriate upon resolution
16 of the order to show cause.
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19 SO ORDERED

20 Dated: April 12, 2010

21 /s/ Oliver W. Wanger
22 Oliver W. Wanger
23 United States District Judge
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