

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**COUNCIL FOR ENDANGERED SPECIES  
ACT RELIABILITY,**

1:09-CV-2091 OWW DLB

**ORDER TO SHOW CAUSE RE  
DISMISSAL**

v.

KEN SALAZAR, et al.,

## Defendants .

**CENTER FOR BIOLOGICAL  
DIVERSITY,**

1:09-CV-2092 OWW DLB

**ORDER TO SHOW CAUSE RE  
DISMISSAL**

Y.

**KEN SALAZAR, et al.,**

## Defendants.

Both of the above-captioned cases concern the United States' Fish and Wildlife Service's ("FWS") failure to issue a 12-month finding in response to a petition seeking to reclassify the delta smelt (*hypomesus transpacificus*) from "threatened" to "endangered" under the Endangered Species Act ("ESA"). The complaints in both cases seek issuance of the required 12-month finding by a date certain. See 1:09-cv-2091, Doc. 13 at ¶7; 1:09-cv-2092, Doc. 1 at ¶6.

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.

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.

18  
19           SO ORDERED  
20           Dated: April 12, 2010

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