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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY, and THE BAY INSTITUTE,)	
)	
Plaintiffs,)	Case No.: 1:09-CV-02092-OWW-DLB
)	
v.)	
)	
KEN SALAZAR, Secretary of the Interior and UNITED STATES FISH AND WILDLIFE SERVICE,)	Stipulation and Order to Dismiss Claims
)	
Defendants.)	
_____)	

WHEREAS, the U.S. Fish and Wildlife Service (“Service”) listed the delta smelt as a threatened species on March 5, 1993. See 73 Fed. Reg. 39,639, 39,640 (July 10, 2008).

WHEREAS, on March 9, 2006, the Service received a petition, dated March 8, 2006, from the Center for Biological Diversity, The Bay Institute, and the Natural Resources Defense Council to reclassify the listing status of the delta smelt from threatened to endangered status. Id.

WHEREAS, On July 10, 2008, the Service published a 90-day finding in the Federal Register, as required by 16 U.S.C. § 1533(b)(3)(A), which concluded that the petition presented

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2 “substantial information to indicate . . . that reclassification of delta smelt from threatened to
3 endangered may be warranted” and that the Service would accordingly initiate a status review of
4 the species. Id. at 39,643.

5 WHEREAS, on November 13, 2009, the Center for Biological Diversity and The Bay
6 Institute (“Plaintiffs”) filed their Complaint in the above-captioned case under the ESA citizen
7 suit provisions at 16 U.S.C. § 1540(g)(1)(C). Plaintiffs’ Complaint alleged that the Service had
8 missed a mandatory deadline to issue a finding as to whether the petitioned-for reclassification of
9 the delta smelt was warranted, not warranted, or warranted but precluded by other listing
10 priorities, pursuant to 16 U.S.C. § 1533(b)(3)(B).

11 WHEREAS, Plaintiffs’ lawsuit in this action sought declaratory relief and an injunction
12 compelling issuance of the 12-month finding.

13 WHEREAS, on April 7, 2010, the Service issued a 12-month finding regarding the
14 petition to reclassify the delta smelt at 75 Fed. Reg. 17,667 (“12-month Finding”).

15 WHEREAS, on April 12, 2010, this Court issued an Order to Show Cause re Dismissal
16 ordering the parties to show cause as to why the case should not be dismissed as moot in light of
17 the Service’s issuance of the 12-month Finding.

18 NOW THEREFORE, IT IS HEREBY STIPULATED, and agreed to by and between
19 Plaintiffs and Ken Salazar, Secretary of the U.S. Department of the Interior, and the Service
20 (“Defendants”) that publication of the 12-month finding renders Plaintiffs’ claims for injunctive
21 and declaratory relief in this action moot. The parties respectfully request an order from this
22 Court dismissing such claims with prejudice.

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25 Dated: April 19, 2010

26 Respectfully submitted,
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/s/ Justin Augustine
(as authorized on April 17, 2010)

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IT IS SO ORDERED.

Dated: April 20, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE