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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, et al.,

No. 2:11-cv-02980-KJM-CKD

Plaintiffs,

**ORDER SETTING REVISED BRIEFING
AND ARGUMENT SCHEDULE IN
CONNECTION WITH DEFENDANTS'
DISPOSITIVE MOTIONS**

v.

DONALD R. GLASER, Regional Director of
the U.S. Bureau of Reclamation, U.S.
BUREAU OF RECLAMATION, and SAN
LUIS & DELTA-MENDOTA WATER
AUTHORITY

Current Argument Date: March 9, 2012
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Defendants.

Defendant San Luis & Delta-Mendota Water Authority ("Authority"), and Federal Defendants Donald R. Glaser, Regional Director of United States Bureau of Reclamation ("USBR"), and USBR, have jointly moved this Court to set a revised briefing and argument schedule in this case. Plaintiff Pacific Coast Federation of Fishermen's Associations have opposed the motion, arguing that it would unfairly give the Authority additional time to file its reply. It also argues that the USBR has waived its opportunity to file a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure by filing its answer on January 9, 2012.

As plaintiff argues, by filing its answer, USBR has waived its right to bring a motion raising any of the defenses in Rule 12(b). FED. R. CIV. P. 12(b); *Beery v. Hitachi Home Electronics*

1 (*America*), *Inc.*, 157 F.R.D. 477, 479 (C.D. Cal. 1993). To the extent USBR will argue that this
2 court lacks subject matter jurisdiction, however, such a motion may be raised at any time. FED. R.
3 CIV. P. 12(h)(3); *Augustine v. United States*, 704 F.2d 1074, 1075 n.3 (9th Cir. 1983). As a matter of
4 judicial economy, it is preferable that all such challenges be considered at the same time. USBR is
5 counseled, however, that to the extent it attempts to bring a Rule 12(b) motion, it may be subject to
6 sanctions.

7 Therefore upon consideration of the motion and opposition, IT IS HEREBY ORDERED
8 THAT the following schedule shall apply:

- 9 March 16, 2012 Federal Defendants' dispositive motion is due
10 March 23, 2012 Defendant Authority's Reply to Plaintiffs' Opposition (Dkt 24) is due
11 March 30, 2012 Plaintiffs' Opposition to Federal Defendants' dispositive motion is due
12 April 13, 2012 Federal Defendants' Reply is due
13 April 27, 2012 Hearing on the Defendants' two dispositive motions.

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15 DATED: March 6, 2012

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17 UNITED STATES DISTRICT JUDGE
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