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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE DELTA SMELT CASES
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, et al. v. SALAZAR, et al. (Case No. 1:09-cv-407)
STATE WATER CONTRACTORS v. SALAZAR, et al. (Case No. 1:09-cv-422)
COALITION FOR A SUSTAINABLE DELTA, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-480)
METROPOLITAN WATER DISTRICT v. UNITED STATES FISH & WILDLIFE SERVICE, et al. (Case No. 1:09-cv-631)
STEWART & JASPER ORCHARDS, et al. v. UNITED STATES FISH AND WILDLIFE SERVICE, et al. (Case No. 1:09-cv-892)
FAMILY FARM ALLIANCE v. SALAZAR, et al. (Case No. 09-cv-1201)

CASE NO. 1:09-cv-407-LJO-DLB
1:09-cv-422-LJO-DLB
1:09-cv-631-LJO-DLB
1:09-cv-892-LJO-GSA
PARTIALLY CONSOLIDATED WITH:
1:09-cv-480-LJO-GSA
1:09-cv-1201-LJO-DLB

Declaration of Rodney R. McInnis In Support of Defendants' Unopposed Motion to Extend Remand Schedule

Judge: Honorable Lawrence J. O'Neill

1 I, Rodney R. McInnis, declare as follows:

2 1. I am the Regional Administrator of the Southwest Region of the NOAA's National
3 Marine Fisheries Service (NMFS). In this capacity I oversee approximately 170 staff in
4 California, employed in, among other things, the support of numerous programs regarding
5 fisheries management, the protection of living marine resources under the Endangered Species
6 Act (ESA) and the Marine Mammal Protection Act, and the restoration of coastal, estuarine and
7 riparian habitat throughout California. Conservation and restoration responsibilities within the
8 Region include the evaluation of impacts of development activities on marine, estuarine, and
9 anadromous fishery resources and the habitats that support them.

10 2. NMFS, along with the other federal and state agencies that are Parties to the
11 Consolidated Salmonid Cases, are requesting a three-year extension of the schedule to complete
12 a new ESA Section 7 consultation so we can use our limited resources in ways that are most
13 effective for the short and long-term protection of ESA listed species. The three-year extension
14 is part of a plan that includes a robust science and adaptive management process that will
15 amplify our ability to address key issues by increasing the cooperation of relevant stakeholders
16 and expertise. The revised process will improve our understanding about the species under
17 NMFS' jurisdiction. The Central Valley Project (CVP) and State Water Project (SWP),
18 managed for an additional 3 years in accordance with the existing biological opinion and
19 associated Reasonable and Prudent Alternative (RPA), will continue to avoid the likelihood of
20 jeopardizing the survival and recovery of the species and the destruction or adverse modification
21 of designated critical habitat. The proposed enhanced management process will give us a
22 greater ability to respond quickly to real-time information and employ effective adaptive
23 management. Furthermore, with the three-year extension, the same federal and state staff
24 engaged in the ESA Section 7 consultation would be better able to concentrate efforts to
25 complete the Bay-Delta Conservation Plan (BDCP), which in turn is expected to improve
26 conditions for the same ESA listed species. The current remand schedule does not allow for this
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1 effort to move forward as our resources are focused on completing the ESA Section 7
2 consultation.

3 3. The Southwest Region's Central Valley Office in Sacramento is staffed by
4 approximately 41 employees. Among its many responsibilities, this office administers the ESA
5 in the Sacramento-San Joaquin Delta Region (Delta), which included the preparation of the draft
6 and final Biological Opinion (BiOp) regarding the effects of the continued long-term operations
7 of the CVP and SWP on salmon, steelhead, green sturgeon, and killer whale species.
8 Additionally, this office works on many important efforts in the Delta and its tributaries, such as
9 providing technical assistance in the development of the BDCP and participating as a federal co-
10 lead agency in the corresponding National Environmental Policy Act (NEPA) process, finalizing
11 the NMFS Recovery Plan for Central Valley listed salmonids, and participating in the State
12 Water Resources Control Board's revision of the Water Quality Control Plan for the Delta.

13 4. I approved and signed NMFS' final biological opinion on the long-term operations of
14 the CVP and SWP (2009 BiOp) that found, based on the best available scientific and commercial
15 information, that the CVP/SWP operations are: likely to jeopardize the continued existence of
16 endangered Sacramento River winter-run Chinook salmon, threatened Central Valley spring-run
17 Chinook salmon, threatened California Central Valley steelhead, threatened Southern distinct
18 population segment (DPS) of North American green sturgeon, and endangered Southern
19 Resident killer whales; not likely to adversely affect Central California Coast steelhead; likely to
20 destroy or adversely modify the designated critical habitat of Sacramento River winter-run
21 Chinook salmon, Central Valley spring-run Chinook salmon, California Central Valley
22 steelhead, and the proposed critical habitat of Southern DPS of North American green sturgeon;
23 and not likely to adversely affect the designated critical habitat of Central California Coast
24 steelhead. The 2009 BiOp included a RPA to the Proposed Action, for implementation by the
25 U.S. Bureau of Reclamation (Reclamation) to avoid jeopardizing the continued existence of the
26 species and the destruction or adverse modification of designated critical habitat.

1 5. I am familiar with the litigation on the 2009 BiOp that followed and still continues
2 today. The litigation has been a major drain on NMFS employee resources in the Regional
3 Office, and specifically the Central Valley Office, since 2009. NMFS staff are working
4 diligently on the remanded 2009 BiOp pursuant to the Order of this court, fully committed to
5 addressing the concerns raised in the Court's Memorandum Decision Re Cross Motions for
6 Summary Judgment (Doc. 633, Sept. 20, 2011).

7 6. NMFS, the U.S. Fish and Wildlife Service (FWS), Reclamation, and other federal
8 agencies are working in close partnership with the Department of Water Resources (DWR) of the
9 State of California to develop both short-term actions and a long-term strategy for providing
10 successful ecosystem restoration in the Delta Region. Part of this strategy is the BDCP, a habitat
11 conservation plan initiated over five years ago, which is being developed pursuant to the
12 requirements of Section 10 of the ESA. The BDCP will be submitted by DWR to NMFS with its
13 application for an incidental take permit under Section 10. Providing technical assistance to
14 DWR in its development of the BDCP, and exercising independent responsibilities under the
15 ESA and NEPA for BDCP, is extremely staff intensive and requires the same areas of scientific
16 and technical expertise as the remanded Section 7 ESA process for the 2009 BiOp. Additionally,
17 these and other high priority projects are running on similar timelines, creating competing
18 demands for the same limited staff resources.

19 7. In January 2012, federal defendants entered into a Joint Stipulation with the plaintiffs
20 and plaintiff-intervenor, addressing 2012 April and May water operations. Doc. 660 (Order
21 entering Joint Stipulation) (Jan. 19, 2012). In accordance with the Stipulation, scientific study of
22 salmon migration patterns in the south Delta were carried out and water operations were
23 modified. The data from that study are currently being analyzed. Additional time is necessary to
24 adequately refine the analyses prior to working with Reclamation on an updated RPA. A three-
25 year extension of the deadline to complete the remanded BiOp would provide us with an
26 important opportunity to work collaboratively with research scientists and stakeholders to better
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1 interpret the results of the new study, with the necessary time to resolve any competing
2 interpretations of the data.

3 8. The state and federal parties to the remand litigation have committed to the creation of
4 a collaborative science and adaptive management process to help inform operational strategies
5 proposed for a three-year extension of the remand schedule. This program is described in the
6 “Federal and State Proposal for Modification to the Remand Schedule and an Alternative Process
7 for Development of Operational Strategies and a Collaborative Science and Adaptive
8 Management Program,” attached to the Unopposed Joint Motion To Extend Remand Schedule at
9 Exhibit A. This collaborative science and adaptive management process will provide the
10 opportunity for all parties to help design and evaluate a scientifically robust adaptive
11 management process for implementing key actions in the RPAs in the FWS and NMFS BiOps,
12 through annual operations and fish conservation strategies. This process is intended to help
13 resolve key scientific uncertainties while continuing to provide equal or better protection for
14 listed fish. In addition, this process is structured on an adaptive management process that is
15 similar to what has been proposed for the BDCP. This three-year process will provide a valuable
16 proof-of-concept for the adaptive management process proposed in the BDCP.

17 9. Based on all of the above, NMFS requests an extension from the current deadline of
18 February 1, 2016 for three years, to February 1, 2019, to issue its final salmonid BiOp to
19 Reclamation. The assumptions and interim steps stated in previous court declarations of Maria
20 Rea (Docs. 637-1, 651) are unchanged at this time. Interim steps may be refined at a later date
21 depending on Reclamation’s exercise of its discretion to amend the 2008 project description, or
22 any other change in those assumptions.

23 10. As discussed in the 2009 BiOp, based on the best available scientific and commercial
24 data, implementing the RPA—including during the three-year extension—will avoid the
25 likelihood of jeopardizing the survival and recovery of the species and the destruction or adverse
26 modification of designated critical habitat. The collaborative science and adaptive management
27 process does not make substantive changes to the RPA, but allows NMFS to consider

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Defs.’ Motion for Remand Extension

1 modifications to the RPA through Adaptive Management as provided within the BiOp, if
2 necessary, or as may be allowed by existing law and administrative procedures. The
3 collaborative science and adaptive management process undertaken during the three year
4 extension will provide for the ability to quickly respond to evolving science. Adjustments to the
5 RPA may be adopted and implemented if they are likely to provide equivalent or improved
6 biological protection for the listed species. Accordingly, the three-year extension and
7 collaborative science and adaptive management process will not increase the risk of extinction to
8 the species under NMFS' jurisdiction.

9 I declare under the penalty of perjury under the laws of the State of California and the
10 United States, that the foregoing is true and correct to the best of my knowledge.

11 Dated this 29th day of November, 2012

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16 Rodney R. McInnis
17 Regional Administrator, Southwest Region
18 National Marine Fisheries Service
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