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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

The Delta Smelt Consolidated
Cases

1:09-CV-00407 OWW DLB
QUESTIONS FOR 706 EXPERTS

The Court, having considered the parties input and objections, has the following instructions for and asks the following questions of the 706 Experts:

Preliminary Instructions: Your responses to these questions should be limited to information contained in the Biological Opinion ("BiOp"), administrative record, declarations, and pleadings in this case (collectively referenced as "the record"). You need not comb the entire administrative record to find answers to these questions. Rather, you may rely on the BiOp, the parties' pleadings, and the declarations to help identify relevant portions of the administrative record. However, if you do find other relevant documents in the administrative record, you are free to use them as you see fit. Your answers should be provided in the form of a written memorandum directed to the Court's attention. If a question cannot be answered based on the record, please indicate why the question cannot be answered. If you need further clarification, please communicate your requests to the Court.

1 Questions:

2 1. Please explain the evidence in the record that supports
3 the Fish and Wildlife Service's ("FWS") conclusion that
4 entrainment has "sporadically significant" effect on
5 population dynamics?

6 a. If not encompassed in the answer to the above
7 question, please explain any other evidence in the
8 record that supports FWS's general conclusion that
9 entrainment has an effect on subsequent abundance?

10 2. Please explain the evidence in the record that supports
11 FWS's contention(s) regarding the existence of "break
12 points" (i.e., that at certain flows less negative or
13 equal to -5000 cfs, entrainment of smelt increases
14 noticeably)?

15 a. Does the Johnson study cited in the BiOp, or any
16 other document in the record, such as AR 9454,
17 provide support for this?

18 b. What role does figure B-13 play in FWS's rationale
19 for flow restrictions?

20 c. Was relevant population data available as of the date
21 of issuance of the BiOp (December 15, 2008) for use
22 in evaluating the impact of negative OMR flows on
23 entrainment?

24 d. If so, was it unreasonable for FWS to rely in part on
25 the information represented in figure B-13 (which
26 compares OMR flows against raw salvage numbers)?

27 e. Does Dr. Deriso's independent analysis of data in the
28 record take into consideration all relevant factors
(e.g., geographic distribution)?

f. Does the record contain evidence supporting FWS's
conclusion that the specific flow regimes imposed by

1 the BiOp are necessary to minimize entrainment of
2 delta smelt by project operations?

3
4 3. Please explain the evidence in the record that supports
5 the use of turbidity as an indicator for the timing of
6 upstream migration of delta smelt?

7
8 4. Please explain any record evidence of historical delta
9 smelt migration patterns that reflect migration of delta
10 smelt into the South and Central delta each year,
11 independent of operation of the pumps?

12
13 5. Is FWS's comparison of historical baseline data to CALSIM
14 runs scientifically reasonable, in light of FWS's
15 conclusion that CALSIM runs intended to represent
16 historical conditions did not accurately nor precisely
17 match historical baseline data?

18
19 6. Were FWS's decisions (in light of the justifications
20 offered by FWS) regarding the years it chose to construct
21 the incidental take statement scientifically reasonable?

22
23 7. Please explain the evidence in the record demonstrating
24 that project operations exacerbate the effect/impact of
25 other "stressors" (e.g., toxics)?

26 SO ORDERED

27 Dated: February 19, 2010

28
/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge