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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 CENTER FOR BIOLOGICAL DIVERSITY,
20 RESTORE THE DELTA, and PLANNING
21 AND CONSERVATION LEAGUE,

22 Plaintiffs,

23 v.

24 UNITED STATES BUREAU OF
25 RECLAMATION; DEB HAALAND, in her
26 official capacity as Secretary of the Interior;
27 UNITED STATES DEPARTMENT OF THE
28 INTERIOR; CITY OF FOLSOM; CITY OF
ROSEVILLE; EAST BAY MUNICIPAL
UTILITY DISTRICT; PLACER COUNTY
WATER AGENCY; SACRAMENTO COUNTY
WATER AGENCY; SACRAMENTO

No: 1:20-cv-00706 DAD-EPG

**FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 MUNICIPAL UTILITY DISTRICT; SAN JUAN
2 WATER DISTRICT; WESTLANDS WATER
3 DISTRICT; WESTLANDS WATER DISTRICT
4 DISTRIBUTION DISTRICT NO. 1;
5 WESTLANDS WATER DISTRICT
6 DISTRIBUTION DISTRICT NO. 2;
7 WESTLANDS WATER DISTRICT
8 FINANCING CORPORATION; CITY OF
9 WEST SACRAMENTO; CITY OF SHASTA
10 LAKE; MOUNTAIN GATE COMMUNITY
11 SERVICES DISTRICT; SHASTA
12 COMMUNITY SERVICES DISTRICT;
13 SHASTA COUNTY WATER AGENCY; CITY
14 OF REDDING; 4-M WATER DISTRICT;
15 BELLA VISTA WATER DISTRICT; COLUSA
16 COUNTY WATER DISTRICT; CORNING
17 WATER DISTRICT; CORTINA WATER
18 DISTRICT; DUNNIGAN WATER DISTRICT;
19 GLIDE WATER DISTRICT; KANAWHA
20 WATER DISTRICT; LA GRANDE WATER
21 DISTRICT; STONY CREEK WATER
22 DISTRICT; CENTERVILLE COMMUNITY
23 SERVICES DISTRICT; CENTRAL SAN
24 JOAQUIN WATER CONSERVATION
25 DISTRICT; DAVIS WATER DISTRICT; DEL
26 PUERTO WATER DISTRICT; GLENN
27 VALLEY WATER DISTRICT; MYERS-
28 MARSH MUTUAL WATER COMPANY;
ORLAND-ARTOIS WATER DISTRICT;
STOCKTON EAST WATER DISTRICT;
WESTSIDE WATER DISTRICT; BANTA-
CARBONA IRRIGATION DISTRICT; BYRON
BETHANY IRRIGATION DISTRICT; EAGLE
FIELD WATER DISTRICT; FRESNO
SLOUGH WATER DISTRICT; HOLTHOUSE
WATER DISTRICT; JAMES IRRIGATION
DISTRICT; PAJARO VALLEY WATER
MANAGEMENT AGENCY; SANTA CLARA
VALLEY WATER DISTRICT; PROBERTA
WATER DISTRICT; RECLAMATION
DISTRICT 1606; THE WEST SIDE
IRRIGATION DISTRICT; TRANQUILITY
IRRIGATION DISTRICT; WEST
STANISLAUS IRRIGATION DISTRICT;
PATTERSON IRRIGATION DISTRICT;
TRANQUILITY PUBLIC UTILITY DISTRICT;
CLEAR CREEK COMMUNITY SERVICES
DISTRICT; CONTRA COSTA WATER
DISTRICT; PACHECO WATER DISTRICT;

SAN LUIS WATER DISTRICT; COUNTY OF COLUSA; EL DORADO IRRIGATION DISTRICT; PANOCHE WATER DISTRICT; CITY OF AVENAL; CITY OF COALINGA; CITY OF HURON; SAN BENITO COUNTY WATER DISTRICT; CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE; MERCY SPRINGS WATER DISTRICT; CARTER MUTUAL WATER COMPANY; CITY OF LINDSAY; CITY OF ORANGE COVE; CITY OF TRACY; CONAWAY PRESERVATION GROUP; COUNTY OF FRESNO; COUNTY OF MADERA; COUNTY OF TULARE; FEATHER WATER DISTRICT; HILLS VALLEY IRRIGATION DISTRICT; INTERNATIONAL WATER DISTRICT; KERN-TULARE WATER DISTRICT; KIRKWOOD WATER DISTRICT; LAGUNA WATER DISTRICT; LOWER TULE RIVER IRRIGATION DISTRICT; MAXWELL IRRIGATION DISTRICT; PIXLEY IRRIGATION DISTRICT; RECLAMATION DISTRICT NO. 1004; SYCAMORE MUTUAL WATER COMPANY; THE COELHO FAMILY TRUST; and TRI VALLEY WATER DISTRICT,

Defendants.

INTRODUCTION

1
2 1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY, RESTORE THE DELTA,
3 and PLANNING AND CONSERVATION LEAGUE, (collectively, “Plaintiffs”) hereby sue
4 Defendants UNITED STATES BUREAU OF RECLAMATION, DEB HAALAND,¹, in her
5 official capacity as Secretary of the Interior, and UNITED STATES DEPARTMENT OF THE
6 INTERIOR (collectively, “Reclamation”) for violations of the National Environmental Policy
7 Act (“NEPA”), 42 U.S.C. section 4321 et seq, and for violations of the Endangered Species Act
8 (“ESA”), 16 U.S.C. §1531 et seq. in connection with Reclamation’s conversion of Central Valley
9 Project (“CVP”) water contracts to permanent repayment contracts. Pursuant to the Court’s
10 February 16, 2021 Order Granting Motion to Compel Joinder of Absent Contractors (Dkt. 23),
11 Plaintiffs also join as Defendants the contractors for the contracts at issue. Pursuant to the
12 Court’s February 16, 2021 Order which also granted Plaintiffs’ motion to amend the complaint,
13 allegations of violations of the Endangered Species Act including the Third Claim for Relief
14 have been added.

15 2. Plaintiffs seek from this Court an order and judgment setting aside and rescinding
16 Reclamation’s conversion of about 69 of its Central Valley Project (“CVP”) renewal contracts
17 into permanent repayment contracts with water contractors, and ordering Reclamation to comply
18 with NEPA. Plaintiffs also seek an order and judgment restraining Reclamation from converting,
19 or converting by amending, any additional contracts including about 22 contracts that
20 Reclamation is in the process of converting into permanent repayment contracts, and ordering
21 Reclamation to comply with NEPA. Pursuant to the 69 contracts that Reclamation has already
22 converted, Reclamation would be obligated to deliver about 3,336,750 acre-feet² of water
23 through the CVP to those contractors each year. Pursuant to the 22 contracts that Reclamation is
24 in the process of converting, Reclamation would be obligated to deliver about 354,744 acre-feet
25 of water to those contractors each year. The total obligation including contracts already

26 ¹ Pursuant to Fed. R. Civ. P. 25(d), Secretary of the Interior Deb Haaland is substituted for
27 original Defendant David Bernhardt, who was sued in his official capacity as Secretary of the
28 Interior.

² An acre-foot is the quantity of water that would cover one acre to a depth of one foot, or about
325,851.4 gallons.

1 converted, and contracts Reclamation is the process of converting would be about 3,691,494
2 acre-feet of water per year.

3 3. Deliveries of CVP water are accomplished by diversions from rivers and the Delta
4 and therefore have many significant adverse environmental impacts on the watershed, including
5 the rivers and the San Francisco-San Joaquin Bay-Delta estuary. Adverse impacts include
6 reducing freshwater flows and worsening already degraded Delta water quality; further
7 endangering and destroying endangered and threatened fish species and critical habitat; reducing
8 freshwater flows causing and worsening harmful algal blooms in the Delta; adverse impacts on
9 public health and safety in the Delta region; and adverse impacts on agriculture in the Delta.
10 Moreover, Reclamation is in the process of converting virtually all of its CVP contracts, about 22
11 more of them, into permanent contracts like the 69 contracts already converted. Pursuant to
12 NEPA, “cumulative impact” “is the impact on the environment which results from the
13 incremental impact of the action when added to other past, present, and reasonably foreseeable
14 future actions” 40 C.F.R. § 1508.7. The conversion of all of these contracts would have
15 many significant adverse cumulative impacts on the environment as well as direct significant
16 adverse environmental impacts. Reclamation has discretion in determining and negotiating the
17 terms and conditions of the contract conversions, and therefore must comply with NEPA,
18 including preparation of an Environmental Impact Statement (“EIS”) and/or an Environmental
19 Assessment (“EA”), and comply with the ESA, including initiation of consultation with the U.S.
20 Fish and Wildlife Service (“FWS”) and the National Marine Fisheries Service (“NMFS”), before
21 converting the contracts.

22 4. However, Reclamation has refused to prepare an EIS, EA, or comply with NEPA
23 in any way whatsoever, and has refused to initiate consultation under the ESA with FWS and
24 NMFS, contending that it has no discretion in determining and negotiating the terms and
25 conditions of the contract conversions. Reclamation’s conclusion is an erroneous interpretation
26 of law and of the plain language of the statute Reclamation relies upon.

27 5. Reclamation, therefore, has failed to proceed in the manner required by NEPA
28 and the ESA and has unlawfully withheld or unreasonably delayed required agency action

pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. sections 706. Reclamation’s approvals of the contract conversions are arbitrary and capricious, and without observance of the procedure required by law. *Id.*

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action under 28 U.S.C. sections 1331 (federal question), 1346 (United States as defendant), 1361 (mandamus against an officer of the United States), 2201 (declaratory judgment), and 2202 (injunctive relief), 16 U.S.C. section 1540 (Endangered Species Act), and under the APA, 5 U.S.C. sections 701-706 (review of final agency action).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. sections 1391(b)(2) and 1391(e)(2) because a substantial part of the events giving rise to Plaintiffs’ claims occurred, and a substantial part of property that is the subject of the action is situated, in this judicial district. Intradistrict assignment of this matter to the Sacramento or Fresno Divisions of the Court would be appropriate as a substantial part of the events giving rise to Plaintiffs’ claims occurred in those divisions.

8. There exists now between the parties hereto an actual, justiciable controversy in which Plaintiffs are entitled to have a declaration of their rights and of Reclamation’s obligations, and further injunctive relief because of the facts and circumstances hereinafter set forth.

9. This Complaint is timely filed within the applicable six-year statute of limitations set forth in 28 U.S.C. section 2401(a).

10. Plaintiffs have standing to assert their claims because they suffer tangible harm from Reclamation’s violations of law as alleged herein. Plaintiffs’ interests in improving water quality in the Central Valley and preserving fish and wildlife in the Central Valley and Trinity River watersheds and the San Francisco Bay-Delta Estuary, have been and will continue to be harmed by the activities permitted by the contracts. The diversion, pumping, delivery, and use of vast quantities of water from the Bay-Delta pursuant to the contracts directly harms fish through entrainment at the pumping plants and reduce freshwater flows in the Delta, and also alters the

hydrologic flow patterns in the Delta, adversely affects the Delta's salinity barrier, causes water contamination in the San Joaquin River and other northern and Central Valley water bodies, produces toxic drainage that contaminates wetlands, and pollutes water and groundwater basins underlying much of the Central Valley, among other adverse impacts. A judgment from this Court requiring Reclamation to conduct a thorough environmental review of the impacts of the contracts would redress Plaintiffs' harms, at least in part, because Reclamation would be required to consider less harmful alternative terms and conditions in the contracts and also to devise mitigation measures to address harms caused by the contracts. A judgment from this Court requiring Reclamation to consult with FWS and NMFS regarding the contract conversions' effects on species listed under the ESA as endangered or threatened would likewise redress Plaintiffs' harms because Reclamation would be subject to reasonable and prudent alternatives, measures, and recommendations imposed through consultation to conserve such species.

11. Plaintiffs have suffered and are suffering procedural and informational injuries due to Reclamation's failure to fulfill its NEPA and ESA duties. Plaintiffs seeking to enforce a procedural requirement that has been disregarded and could impair a separate concrete interest of theirs, can establish standing without meeting all the normal standards for redressability and immediacy. They need only establish the reasonable probability of the challenged action's threat to their concrete interests.

12. Plaintiffs' interests in the preservation of fish and wildlife in the Bay-Delta, Central Valley, Trinity River watershed, and San Francisco Bay, as well as their interests in improving water quality in those areas, are concrete interests.

13. All applicable administrative remedies have been adequately exhausted by Plaintiffs. Within the period for public comment established by Reclamation, all three Plaintiffs submitted or joined in comment letters dated January 7, February 15, April 22, April 27, August 7, August 20, August 31, October 2 and 6, December 15, 2020, and March 1, 2021 to Reclamation, asserting that Reclamation must comply with NEPA and the ESA before converting the contracts. Plaintiff Restore the Delta also submitted separate comment letters

1 dated January 6 and 7, 2020. Plaintiffs Planning and Conservation League and Restore the Delta
2 also submitted comment letters dated January 6, and October 6, 2020. Plaintiffs also submitted a
3 60 day letter to Reclamation on August 10, 2020, asserting that conversion of the contracts
4 violated the Endangered Species Act due to failure to consult with the fish and wildlife agencies
5 and demanded that Reclamation cease converting the contracts. Reclamation failed to provide
6 any NEPA or ESA notices, prepared no NEPA or ESA documents, and provided no NEPA or
7 ESA public comment period.

8 **PARTIES**

9 14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
10 profit, public interest organization with over 84,000 active members. The Center has offices in
11 Oakland, Los Angeles, and Joshua Tree, California, as well as in Arizona, Florida, New Mexico,
12 Oregon, Colorado, and Washington, D.C. The Center and its members are dedicated to
13 protecting diverse native species and habitats through science, policy, education, and
14 environmental law. The Center’s members reside and own property throughout California as
15 well as those areas to be affected and served by the contracts, and use the waters and lands
16 affected by the contracts for wildlife observation, recreation, scientific research, environmental
17 education, and aesthetic enjoyment. One of the Center’s primary missions is to protect and
18 restore habitat and populations of imperiled species throughout Western North America. The
19 group’s members and staff include individuals who visit the streams, rivers, riparian areas and
20 Bay-Delta and have biological, health, educational, scientific research, spiritual, and aesthetic
21 interest in the ecosystems and the species and habitats affected by Central Valley Project
22 including the deliveries of waters to Reclamation’s contractors. The Center’s members and staff
23 regularly use and intend to continue to use these areas for observation, research, aesthetic
24 enjoyment, and other recreational, scientific, and educational activities. The Center’s members
25 and staff have researched, studied, observed, and sought protection for many imperiled species,
26 including federally listed threatened and endangered species that depend on the rivers, streams,
27 riparian habitat, and Bay-Delta in California. The Center’s members and staff have and continue
28 to derive scientific, recreational, educational, conservation, and aesthetic benefits from the

1 continued existence of imperiled species in the wild and the preservation of the ecosystems upon
2 which they depend. Central Valley Project diversions are a detriment to achieving the group's
3 goal of protection and restoration, and its members and staff are injured by Reclamation entering
4 into the permanent contracts in the absence of compliance with NEPA and the ESA. These
5 injuries would be redressed by the relief sought.

6 15. Plaintiff RESTORE THE DELTA ("RTD") is a non-profit public benefit
7 organization based in Stockton, California. RTD is a coalition of Delta residents, business
8 leaders, civic organizations, community groups, faith-based communities, union locals, farmers,
9 fishermen, and environmentalists seeking to strengthen the health of the Bay-Delta estuary and to
10 protect the environmental interests in the Sacramento-San Joaquin Delta, including but not
11 limited to public health, fishing, farming, and recreation. With over 60,000 members statewide,
12 RTD advocates on behalf of local Delta stakeholders to ensure that they have a direct impact on
13 water management decisions affecting the water quality and well-being of their communities,
14 and water sustainability policies for all Californians. RTD works through public education and
15 outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of
16 California's natural heritage, deserving of restoration, seeking a Delta whose waters are fishable,
17 swimmable, drinkable, and farmable, supporting the health of the San Francisco Bay-Delta
18 Estuary. Members of RTD reside in and along the Bay-Delta and its watershed and use the
19 waters of the Central Valley and Bay-Delta for drinking, farming, and for aesthetic, recreational,
20 and educational enjoyment. As just one example of environmental harms inflicted on RTD
21 members by diversions for the Central Valley Project, diversions reduce freshwater flows
22 through the Delta causing and worsening harmful algal blooms (HABs) which threaten the
23 public health of those drinking, fishing in, or swimming in, Delta waters, or inhaling the air near
24 Delta waters. These injuries would be redressed by the relief sought.

25 16. Plaintiff PLANNING AND CONSERVATION LEAGUE ("PCL") is a nonprofit
26 advocacy organization empowered to protect and restore California's natural environment and to
27 promote and defend the public health and safety of the people of California, through legislative,
28 administrative, and judicial action. Founded in 1965, PCL was the first organization devoted to

1 bettering Californians' quality of life through environmental legislation. One of the
2 organization's earliest accomplishments was the enactment in 1970 of the California
3 Environmental Quality Act ("CEQA"), which PCL helped draft and has continually supported
4 over the years. PCL has been a party in successful legal actions to compel compliance with
5 NEPA and CEQA. PCL members reside and own property throughout California as well as those
6 areas to be served by CVP contracts, and use the waters and lands affected by the CVP contracts.
7 PCL's interests have been injured as a result of Reclamation's permanent locking-in of CVP
8 contracts, and these injuries would be redressed by the relief sought.

9 17. Defendant UNITED STATES BUREAU OF RECLAMATION is the federal
10 agency within the United States Department of the Interior charged with managing the CVP and
11 is responsible for complying with NEPA and the ESA in connection with its CVP management
12 actions. Reclamation approved and entered into the contracts challenged in this litigation without
13 adequate or any environmental review, and without carrying out ESA required consultation.

14 18. Defendant DEB HAALAND is sued in her official capacity as Secretary of the
15 Department of the Interior ("Secretary"). She is responsible for the operation of the CVP, subject
16 to the mandates of the Central Valley Project Improvement Act and WIIN Act; and oversees the
17 Department of the Interior and the Bureau of Reclamation.

18 19. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is a cabinet-
19 level federal agency, and the parent agency of the United States Bureau of Reclamation.

20 20. Defendant CITY OF FOLSOM is a California public agency contracted to receive
21 up to 7,000 acre-feet of Municipal and Industrial (M&I) water service pursuant to a repayment
22 contract executed with Reclamation on 2/28/2020, effective 3/1/2020.³

23 21. Defendant CITY OF ROSEVILLE is a California public agency contracted to
24 receive up to 32,000 acre-feet of M&I water service pursuant to a repayment contract executed
25 with Reclamation on 2/28/2020, effective 3/1/2020.

26
27 ³ The information in this and the following paragraphs naming the contractor Defendants was derived from
28 publicly-available information on Reclamation's website, a list provided by Reclamation through the Department of
Justice on March 2, 2021, and other sources based on Plaintiffs' best information and belief, and is subject to errors
and inconsistencies present in the source material.

22. Defendant EAST BAY MUNICIPAL UTILITY DISTRICT is a California public agency contracted to receive up to 433,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 2/28/2020, effective 3/1/2020.

23. Defendant PLACER COUNTY WATER AGENCY is a California public agency contracted to receive up to 35,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 2/28/2020, effective 3/1/2020.

24. Defendant SACRAMENTO COUNTY WATER AGENCY is a California public agency contracted to receive up to (15,000 and 30,000) acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 2/28/2020, effective 3/1/2020.

25. Defendant SACRAMENTO MUNICIPAL UTILITY DISTRICT is a California public agency contracted to receive up to 30,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 2/28/2020, effective 3/1/2020.

26. Defendant SAN JUAN WATER DISTRICT is a California public agency contracted to receive up to 24,200 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 2/28/2020, effective 3/1/2020.

27. Defendant known as WESTLANDS WATER DISTRICT, WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1, WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2 , and WESTLANDS WATER DISTRICT FINANCING CORPORATION (“Westlands Water District or Westlands”) is a California public agency contracted to receive up to (1,150,000; 27,000; 2,500; 2,990; 4198; 4,000; 2,842, and an additional unknown amount of) acre-feet of Irrigation and M&I water service for the San Luis Unit and Delta Division and Facilities pursuant to a repayment contract executed with Reclamation on 2/28/2020; 5/29/20, 9/28/20, and 10/22/20, to become effective on 6/1/2020, 10/1/2020 and 11/01/2020.

28. Defendant CITY OF WEST SACRAMENTO is a California public agency contracted to receive up to 23,600 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 5/26/2020, effective 6/1/2020.

29. Defendant CITY OF SHASTA LAKE is a California public agency contracted to receive up to 4,400 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 6/30/2020, effective 7/1/2020.

30. Defendant MOUNTAIN GATE COMMUNITY SERVICES DISTRICT is a California public agency contracted to receive up to 1,350 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 6/30/2020, effective 7/1/2020.

31. Defendant SHASTA COMMUNITY SERVICES DISTRICT is a California public agency contracted to receive up to 1,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 6/30/2020, effective 7/1/2020.

32. Defendant SHASTA COUNTY WATER AGENCY is a California public agency contracted to receive up to 1,022 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 6/30/2020, effective 7/1/2020.

33. Defendant CITY OF REDDING is a California public agency contracted to receive up to 6,140 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 8/11/2020, effective 9/1/2020.

34. Defendant 4-M WATER DISTRICT is a California public agency contracted to receive up to 5,700 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

35. Defendant BELLA VISTA WATER DISTRICT is a California public agency contracted to receive up to 24,578 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 10/1/2020.

36. Defendant COLUSA COUNTY WATER DISTRICT is a California public agency contracted to receive up to (5,964 and 62,200) acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

37. Defendant CORNING WATER DISTRICT is a California public agency contracted to receive up to 23,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

38. Defendant CORTINA WATER DISTRICT is a California public agency contracted to receive up to 1,700 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

39. Defendant DUNNIGAN WATER DISTRICT is a California public agency contracted to receive up to 19,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

40. Defendant GLIDE WATER DISTRICT is a California public agency contracted to receive up to 10,500 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

41. Defendant KANAWHA WATER DISTRICT is a California public agency contracted to receive up to 45,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

42. Defendant LA GRANDE WATER DISTRICT is a California public agency contracted to receive up to (2,200 and 5,000) acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

43. Defendant STONY CREEK WATER DISTRICT is a California public agency contracted to receive up to 3,345 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/15/2020, effective 11/1/2020.

44. Defendant CENTERVILLE COMMUNITY SERVICES DISTRICT is a California public agency contracted to receive up to 2,900 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

45. Defendant CENTRAL SAN JOAQUIN WATER CONSERVATION DISTRICT is a California public agency contracted to receive up to 80,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

46. Defendant DAVIS WATER DISTRICT is a California public agency contracted to receive up to 4,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

1 47. Defendant DEL PUERTO WATER DISTRICT is a California public agency
2 contracted to receive up to 140,210 acre-feet of Irrigation and M&I water service pursuant to a
3 repayment contract executed with Reclamation on 9/28/2020, effective 10/1/2020.

4 48. Defendant GLENN VALLEY WATER DISTRICT is a California public agency
5 contracted to receive up to 1,730 acre-feet of Irrigation and M&I water service pursuant to a
6 repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

7 49. Defendant MYERS-MARSH MUTUAL WATER COMPANY is a mutual water
8 company organized under California law contracted to receive up to 255 acre-feet of Irrigation
9 and M&I water service pursuant to a repayment contract executed with Reclamation on
10 9/28/2020, effective 11/1/2020.

11 50. Defendant ORLAND-ARTOIS WATER DISTRICT is a California public agency
12 contracted to receive up to 53,000 acre-feet of Irrigation and M&I water service pursuant to a
13 repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

14 51. Defendant STOCKTON EAST WATER DISTRICT is a California public agency
15 contracted to receive up to 75,000 acre-feet of Irrigation and M&I water service pursuant to a
16 repayment contract executed with Reclamation on 9/28/2020, effective 10/1/2020.

17 52. Defendant WESTSIDE WATER DISTRICT is a California public agency
18 contracted to receive up to 65,000 acre-feet of Irrigation and M&I water service pursuant to a
19 repayment contract executed with Reclamation on 9/28/2020, effective 11/1/2020.

20 53. Defendant BANTA-CARBONA IRRIGATION DISTRICT is a California public
21 agency contracted to receive up to 20,000 acre-feet of Irrigation and M&I water service pursuant
22 to a repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

23 54. Defendant BYRON BETHANY IRRIGATION DISTRICT is a California public
24 agency contracted to receive up to 20,600 acre-feet of Irrigation and M&I water service pursuant
25 to a repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

26 55. Defendant EAGLE FIELD WATER DISTRICT is a California public agency
27 contracted to receive up to 4,550 acre-feet of Irrigation and M&I water service pursuant to a
28 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

1 56. Defendant FRESNO SLOUGH WATER DISTRICT is a California public agency
2 contracted to receive up to 4,000 acre-feet of Irrigation and M&I water service pursuant to a
3 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

4 57. Defendant HOLTHOUSE WATER DISTRICT is a California public agency
5 contracted to receive up to 2,450 acre-feet of Irrigation and M&I water service pursuant to a
6 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

7 58. Defendant JAMES IRRIGATION DISTRICT is a California public agency
8 contracted to receive up to 35,300 acre-feet of Irrigation and M&I water service pursuant to a
9 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

10 59. Defendant PAJARO VALLEY WATER MANAGEMENT AGENCY is a
11 California public agency contracted to receive an unknown quantity of acre-feet of Irrigation and
12 M&I water service pursuant to a repayment contract executed with Reclamation on 10/22/2020,
13 effective 11/1/2020.

14 60. Defendant SANTA CLARA VALLEY WATER DISTRICT is a California public
15 agency contracted to receive up to 152,500 and an additional unknown quantity of acre-feet of
16 Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation
17 on 10/22/2020, effective 11/1/2020.

18 61. Defendant PROBERTA WATER DISTRICT is a California public agency
19 contracted to receive up to 3,500 acre-feet of Irrigation and M&I water service pursuant to a
20 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

21 62. Defendant RECLAMATION DISTRICT 1606 is a California public agency
22 contracted to receive up to 228 acre-feet of Irrigation and M&I water service pursuant to a
23 repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

24 63. Defendant THE WEST SIDE IRRIGATION DISTRICT is a California public
25 agency contracted to receive up to 5,000 acre-feet of Irrigation and M&I water service pursuant
26 to a repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

64. Defendant TRANQUILITY IRRIGATION DISTRICT is a California public agency contracted to receive up to 13,800 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

65. Defendant WEST STANISLAUS IRRIGATION DISTRICT is a California public agency contracted to receive up to 50,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 10/22/2020, effective 11/1/2020.

66. Defendant PATTERSON IRRIGATION DISTRICT is a California public agency contracted to receive up to 16,500 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 10/26/2020, effective 11/1/2020.

67. Defendant TRANQUILITY PUBLIC UTILITY DISTRICT is a California public agency contracted to receive up to 70 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 10/26/2020, effective 11/1/2020.

68. Defendant CLEAR CREEK COMMUNITY SERVICES DISTRICT is a California public agency contracted to receive up to 15,300 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 11/17/2020, effective 12/1/2020.

69. Defendant CONTRA COSTA WATER DISTRICT is a California public agency contracted to receive up to 195,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 12/28/2020, effective 1/1/2021.

70. Defendant PACHECO WATER DISTRICT is a California public agency contracted to receive up to 10,080 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 12/28/2020, effective 1/1/2021.

71. Defendant SAN LUIS WATER DISTRICT is a California public agency contracted to receive up to 125,080 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 12/28/2020, effective 1/1/2021.

72. Defendant COUNTY OF COLUSA is a California public agency contracted to receive up to 20,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 1/14/2021, effective 2/1/2021.

73. Defendant EL DORADO IRRIGATION DISTRICT is a California public agency contracted to receive up to 7,550 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 1/14/2021, effective 3/1/2021.

74. Defendant PANOCHE WATER DISTRICT is a California public agency contracted to receive up to 94,000 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 1/14/2021, effective 7/1/2021.

75. Defendant CITY OF AVENAL is a California public agency contracted to receive up to 3,500 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 1/22/2021, effective 2/1/2021.

76. Defendant CITY OF COALINGA is a California public agency contracted to receive up to 10,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 1/22/2021, effective 2/1/2021.

77. Defendant CITY OF HURON is a California public agency contracted to receive up to 3,000 acre-feet of M&I water service pursuant to a repayment contract executed with Reclamation on 1/22/2021, effective 2/1/2021.

78. Defendant SAN BENITO COUNTY WATER DISTRICT is a California public agency contracted to receive up to 43,800 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed with Reclamation on 1/22/2021, effective 2/1/2021.

79. Defendant CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE is a public agency of the State of California contracted to receive up to 10,000 acre-feet of water service.

80. Defendant MERCY SPRINGS WATER DISTRICT is a California public agency contracted to receive up to 2,842 acre-feet of water service.

81. Defendant CARTER MUTUAL WATER COMPANY is a mutual water company organized under California law contracted to receive up to 7,122 acre-feet of Irrigation water service.⁴

⁴ The contracts for the contractors named in this and the following paragraphs naming contractors are still in process.

82. Defendant CITY OF LINDSAY is a California public agency contracted to receive up to 2,500 acre-feet of M&I water service.

83. Defendant CITY OF ORANGE COVE is a California public agency contracted to receive up to 1,400 acre-feet of M&I water service.

84. Defendant CITY OF TRACY is a California public agency contracted to receive up to 20,000 acre-feet of Irrigation and M&I water service.

85. Defendant CONAWAY PRESERVATION GROUP is a private limited liability company contracted to receive up to 50,862 acre-feet of Irrigation water service.

86. Defendant COUNTY OF FRESNO is a California public agency contracted to receive an unknown amount of acre-feet of water service.

87. Defendant COUNTY OF MADERA is a California public agency contracted to receive up to 200 acre-feet of M&I water service.

88. Defendant COUNTY OF TULARE is a California public agency contracted to receive up to 5,308 acre-feet of Irrigation and M&I water service.

89. Defendant FEATHER WATER DISTRICT is a California public agency contracted to receive up to 20,000 acre-feet of Irrigation and M&I water service.

90. Defendant HILLS VALLEY IRRIGATION DISTRICT is a California public agency contracted to receive up to 3,346 acre-feet of Irrigation and M&I water service.

91. Defendant INTERNATIONAL WATER DISTRICT is a California public agency contracted to receive up to 1,200 acre-feet of Irrigation and M&I water service.

92. Defendant KERN-TULARE WATER DISTRICT is a California public agency contracted to receive up to (13,300 and 40,000) acre-feet of Irrigation and M&I water service.

93. Defendant KIRKWOOD WATER DISTRICT is a California public agency contracted to receive up to 2,100 acre-feet of Irrigation and M&I water service.

94. Defendant LAGUNA WATER DISTRICT is a California public agency contracted to receive up to 800 acre-feet of Irrigation and M&I water service.

95. Defendant LOWER TULE RIVER IRRIGATION DISTRICT is a California public agency contracted to receive up to 31,102 acre-feet of Irrigation and M&I water service.

1 96. Defendant MAXWELL IRRIGATION DISTRICT is a California public agency
2 contracted to receive up to 17,980 acre-feet of Irrigation water service.

3 97. Defendant PIXLEY IRRIGATION DISTRICT is a California public agency
4 contracted to receive up to 31,102 acre-feet of Irrigation water service.

5 98. Defendant RECLAMATION DISTRICT NO. 1004 is a California public agency
6 contracted to receive up to 71,400 acre-feet of Irrigation water service.

7 99. Defendant SYCAMORE MUTUAL WATER COMPANY is a mutual water
8 company organized under California law contracted to receive up to 31,800 acre-feet of
9 Irrigation water service.

10 100. Defendant THE COELHO FAMILY TRUST is a private trust contracted to
11 receive up to 2,080 acre-feet of Irrigation and M&I water service.

12 101. Defendant TRI VALLEY WATER DISTRICT is a California public agency
13 contracted to receive up to 1,142 acre-feet of Irrigation and M&I water service.

14 **STATUTORY AND REGULATORY BACKGROUND**

15 **I. THE NATIONAL ENVIRONMENTAL POLICY ACT**

16 102. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R.
17 § 1500.1(a). Congress directed “that, to the fullest extent possible ... the policies, regulations,
18 and public laws of the United States shall be interpreted and administered in accordance with the
19 policies set forth in [NEPA]” 42 U.S.C. § 4332(1).

20 103. NEPA’s goals are to (1) “prevent or eliminate damage to the environment and
21 biosphere,” (2) “stimulate the health and welfare of” all people, and (3) “encourage productive
22 and enjoyable harmony” between humankind and the environment. 42 U.S.C. § 4321. NEPA
23 recognizes that “each person should enjoy a healthful environment” and ensures that the federal
24 government uses all practicable means to “fulfill the responsibilities of each generation as trustee
25 of the environment for succeeding generations” and “assure for all Americans safe, healthful,
26 productive, and esthetically and culturally pleasing surroundings.” *Id.* § 4331(b)-(c).

27 104. To fulfill these purposes, NEPA requires that: (1) agencies take a “hard look” at
28 the environmental impacts of their actions before the actions occur, thereby ensuring “that the

agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and (2) “the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA processes must be integrated with other processes “at the earliest possible time to ensure that planning and decisions reflect environmental values” 40 C.F.R. § 1501.2.

105. NEPA requires federal agencies to prepare an EIS for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

106. “Major Federal actions” subject to NEPA include both new and continuing activities. 40 C.F.R. § 1508.18(a).⁵

107. To determine whether the nature and extent of a proposed action’s environmental effects requires preparing an EIS, federal agencies may first prepare an EA. 40 C.F.R. § 1501.4(b)-(c). If, on the basis of the EA, the agency finds that the proposed action will produce “no significant impact” on the environment, then an EIS need not be prepared. *Id.* § 1501.4(e).

108. An agency’s NEPA analysis must assess the direct, indirect, and cumulative impacts of the action. 40 C.F.R. §§ 1508.8. Cumulative impacts are those that “result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. §§ 1508.7. An agency must prepare an EIS if it is reasonable to anticipate a cumulatively significant impact on the environment. *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 346 (D.C. Cir. 2002).

109. As part of its NEPA review, an agency is also required to prepare a detailed statement regarding the alternatives to a proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii), (E).

⁵ The Council on Environmental Quality (“CEQ”) issued amended NEPA regulations on July 16, 2020. The effective date of the new regulations is September 14, 2020. Reclamation’s actions here are all subject to the previous CEQ regulations as the actions were either completed prior to the effective date of the new regulations or are ongoing actions. Reclamation has not elected to apply the new regulations to such ongoing actions. *See* 40 C.F.R. § 1506.13(2020). All other citations to the CEQ regulations herein are therefore to the governing regulations adopted in 1978 (and subject to a narrow amendment removing the requirement for a worst-case analysis in 1986).

1 This alternatives analysis is the “heart” of NEPA review. 40 C.F.R. § 1502.14; *see also id.* §
2 1508.9(b). An agency must “[r]igorously explore and objectively evaluate all reasonable
3 alternatives,” including a “no-action” alternative. 40 C.F.R. § 1502.14.

4 110. An agency may prepare a programmatic EIS covering a program. 40 C.F.R. §
5 1502.20. Subsequent EISs and EAs covering specific actions within the broader program may
6 “tier” off the programmatic EIS, relying on it to cover the program-level analysis while focusing
7 on the “issues specific to the subsequent action.” *Id.*

8 **II. THE ENDANGERED SPECIES ACT**

9 111. Congress enacted the ESA, in part, to provide a “means whereby the ecosystems
10 upon which endangered species and threatened species depend may be conserved . . . [and] a
11 program for the conservation of such endangered species and threatened species” 16 U.S.C.
12 § 1531(b).

13 112. Section 2(c) of the ESA establishes that it is “the policy of Congress that all
14 Federal departments and agencies shall seek to conserve endangered species and threatened
15 species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. §
16 1531(c)(1). The ESA defines “conservation” to mean “the use of all methods and procedures
17 which are necessary to bring any endangered species or threatened species to the point at which
18 the measures provided pursuant to this Act are no longer necessary.” 16 U.S.C. § 1532(3).

19 113. The ESA vests primary responsibility for administering and enforcing the statute
20 with the Secretaries of Interior and Commerce. The Secretaries of Commerce and Interior have
21 delegated this responsibility to the FWS and NMFS (collectively, the “Services”), respectively.

22 114. The Services must list a species as endangered under the ESA if it is in danger of
23 going extinct throughout all or a significant portion of its range, and must list it as threatened if it
24 is likely to become endangered in the foreseeable future. 16 U.S.C. §§ 1532(6), (20); 1533(a)(1).
25 Once species are listed as threatened or endangered, the Services must designate their critical
26 habitat, which is occupied or unoccupied habitat that contains physical or biological features
27 essential to the conservation of the species and which may require special management
28 considerations or protection. 16 U.S.C. §§ 1532(5), 1533(a)(3).

1 115. Section 7(a)(1) of the ESA requires that all federal agencies shall “utilize their
2 authorities in furtherance of the purposes of this chapter by carrying out programs for the
3 conservation of endangered species... .”

4 116. In order to fulfill the substantive purposes of the ESA, federal agencies are
5 required to engage in consultation with the Services to “insure that any action authorized,
6 funded, or carried out by such agency [hereinafter “agency action”] is not likely to jeopardize the
7 continued existence of any endangered species or threatened species or result in the destruction
8 or adverse modification of habitat of such species which is determined by [the Services] . . . to be
9 critical.” 16 U.S.C. § 1536(a)(2) (“Section 7 consultation”). “Jeopardize” means to engage in an
10 action that reasonably would be expected, directly or indirectly, to reduce appreciably the
11 likelihood of both the survival and recovery of the species in the wild by reducing the
12 reproduction, numbers, or distribution of the species. 50 C.F.R. § 402.02.

13 117. In engaging in Section 7 consultation, both “action agencies” and the Services
14 must “use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

15 118. An agency must initiate Section 7 consultation whenever its action “may affect
16 listed species or critical habitat.” 50 C.F.R. § 402.14. Agency “action” is broadly defined in the
17 ESA’s implementing regulations to encompass “all activities or programs of any kind authorized,
18 funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the
19 high seas.” 50 C.F.R. § 402.02 (definition of “action”). Likewise, the “action area” to be
20 considered in a Section 7 consultation includes “all areas to be affected directly or indirectly by
21 the Federal action and not merely the immediate area involved in the action.” *Id.* The effects of
22 the action must be considered together with “cumulative effects,” which are “those effects of
23 future State or private activities, not involving Federal activities, that are reasonably certain to
24 occur within the action area of the Federal action subject to consultation.” *Id.*

25 119. The Services’ joint consultation handbook states that a “may affect”
26 determination is “the appropriate conclusion when a proposed action may pose *any* effects on
27 listed species or designated critical habitat. When the Federal agency proposing the action
28 determines that a ‘may affect’ situation exists, then they must either initiate formal consultation

or seek written concurrence from the Services that the action ‘is not likely to adversely affect’ listed species.” *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* (hereafter “Joint Consultation Handbook”) at xiv. A “may affect” determination triggering Section 7 consultation is required when “[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character” occurs. 51 Fed. Reg. 19,926, 19,949 (June 3, 1986).

120. To initiate consultation, the action agency must prepare a biological assessment identifying the impacts of the action on listed species and their habitat and provide all relevant information about such impacts to the Services. 50 C.F.R. § 402.14(c). If the action agency determines that an action “may affect,” but is “not likely to adversely affect” the listed species or its critical habitat and the Services concur in writing with that determination, the agency does not have to undergo formal consultation. 50 C.F.R. § 402.13.

121. If, however, the Services do not concur with the not likely to adversely affect determination, or if the action agency determines that the activity is “likely to adversely affect” the listed species or its critical habitat, then the action agency must enter formal consultation with the Services. 50 C.F.R. § 402.14.

122. The end-product of formal consultation is a “biological opinion” in which the Services determine whether the activity will jeopardize the species or result in destruction or adverse modification of critical habitat. 50 C.F.R. § 402.14. If the Services determine that the action will jeopardize the species or adversely modify critical habitat, it must specify one or more “reasonable and prudent alternatives” that would avoid such results. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(5). “[R]easonable and prudent alternatives” are alternative actions identified during formal consultation that (1) can be implemented in a manner consistent with the intended purpose of the action, (2) can be implemented consistent with the scope of the action agency’s legal authority, (3) are economically and technologically feasible, and (4) would avoid the likelihood of jeopardizing the continued existence of listed species and/or avert the destruction or adverse modification of critical habitat. The Services must also formulate

1 discretionary conservation recommendations to reduce or minimize the action's impacts on listed
2 species or critical habitat. 50 C.F.R. § 402.14(g)(6).

3 123. Not only does a Section 7 consultation assist the action agency in discharging its
4 duty to avoid jeopardy and destruction or adverse modification of critical habitat, but the
5 biological opinion also affects the agency's obligation to avoid the "take" of listed species.
6 Under ESA Section 9, 16 U.S.C. § 1538(a)(1)(B), it is illegal for any person—whether a private
7 or governmental entity—to "take" any endangered species of fish or wildlife listed under the
8 ESA. "Take" is defined to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or
9 collect, or attempt to engage in such conduct. 16 U.S.C. § 1532(19). FWS has defined "harm" to
10 include "significant habitat modification or degradation which actually kills or injures fish or
11 wildlife by significantly impairing essential behavioral patterns, including breeding, spawning,
12 rearing, migrating, feeding or sheltering." 50 C.F.R. § 222.102.

13 124. If the Services conclude that an action is not likely to jeopardize listed species, it
14 must nevertheless provide an Incidental Take Statement with the biological opinion, specifying
15 the amount or extent of take that is incidental to the action, but which would otherwise be
16 prohibited under Section 9 of the ESA. Further, the Services must specify "reasonable and
17 prudent measures" necessary or appropriate to minimize such take, and the "terms and
18 conditions" that the action agency must comply with to implement any reasonable and prudent
19 measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

20 125. Reasonable and prudent measures, along with terms and conditions, are
21 nondiscretionary measures included in an Incidental Take Statement that the Services considers
22 necessary to minimize and reduce impact to listed species and avoid jeopardy.

23 126. An Incidental Take Statement insulates the action agency from liability for a take
24 of an endangered or threatened species, provided the agency complies with the statement's terms
25 and conditions. This insulation extends further to any entity receiving a federal permit, license,
26 authorization, or funding subject to, and in compliance with, the statement. 16 U.S.C. §
27 1536(o)(2). Violations of the terms and conditions of a biological opinion and Incidental Take
28

1 Statement expose the action agency and such entities to liability for unauthorized take under the
2 ESA.

3 127. After the issuance of a biological opinion and “where discretionary Federal
4 involvement or control over the action has been retained or is authorized by law,” the action
5 agency must reinitiate consultation if:

- 6 • the amount or extent of taking specified in the Incidental Take Statement is exceeded;
- 7 • new information reveals effects of the action that may affect listed species or critical
8 habitat in a manner or to an extent not previously considered;
- 9 • the identified action is subsequently modified in a manner that causes an effect to the
10 listed species ... that was not considered in the biological opinion; or
- 11 • a new species is listed or critical habitat designated that may be affected by the identified
12 action.

13 50 C.F.R. § 402.16.

14 128. Section 7(d) of the ESA provides that once a federal agency initiates consultation
15 on an action under the ESA, the agency, as well as any applicant for a federal permit, “shall not
16 make any irreversible or irretrievable commitment of resources with respect to the agency action
17 which has the effect of foreclosing the formulation or implementation of any reasonable and
18 prudent alternative measures which would not violate subsection (a)(2) of this section.” 16
19 U.S.C. § 1536(d). The purpose of Section 7(d) is to maintain the environmental status quo
20 pending the completion of consultation. Section 7(d) prohibitions remain in effect throughout the
21 consultation period and until the federal agency has satisfied its obligations under Section 7(a)(2)
22 that the action will not result in jeopardy to listed species or adverse modification of critical
23 habitat.

24 **III. THE ADMINISTRATIVE PROCEDURE ACT**

25 129. The APA provides a right to judicial review for any “person suffering legal wrong
26 because of agency action.” 5 U.S.C. § 702. Final agency actions “for which there is no other
27 adequate remedy in a court” are reviewable under the APA. *Id.* § 704.
28

1 130. Under the APA, a reviewing court shall compel agency action unlawfully
2 withheld or unreasonably delayed and hold unlawful. *Id.* § 706(1). In addition, a reviewing court
3 shall set aside agency action found to be arbitrary, capricious, an abuse of discretion, or
4 otherwise not in accordance with law, or without observance of the procedure required by law.
5 *Id.* §§ 706(2)(A), 706(2)(D).

6
7 **IV. THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

8 131. Congress enacted the Central Valley Project Improvement Act (“CVP
9 Improvement Act”), Title 34, Public Law 102-575, in 1992 to:

- 10 (a) protect, restore, and enhance fish, wildlife, and associated habitats in the Central
Valley and Trinity River basins of California;
11 (b) address impacts of the Central Valley Project on fish, wildlife and associated habitats;
12 (c) improve the operational flexibility of the Central Valley Project;
13 (d) increase water-related benefits provided by the Central Valley Project to the State of
California through expanded use of voluntary water transfers and improved water
14 conservation;
15 (e) contribute to the State of California's interim and long-term efforts to protect the San
Francisco Bay/Sacramento-San Joaquin Delta Estuary; and
16 (f) achieve a reasonable balance among competing demands for use of Central Valley
Project water, including the requirements of fish and wildlife, agricultural, municipal and
17 industrial and power contractors.

18 CVP Improvement Act § 3402.

19 132. The CVP Improvement Act directed the Secretary to operate the CVP “to meet all
20 obligations under State and Federal law, including but not limited to the [ESA], and all decisions
21 of the California State Water Resources Control Board establishing conditions on applicable
22 licenses and permits for the project.” CVP Improvement Act § 3406(a).

23 133. The CVP Improvement Act further directed the Secretary to develop and
24 implement a program to ensure that natural production of anadromous fish in Central Valley
25 rivers and streams is doubled by 2002 compared to 1967-1991 levels. CVP Improvement Act §
26 3406(b)(1).

1 134. To address impacts of the CVP on fish, wildlife, and associated habitat, the CVP
2 Improvement Act among other things requires Reclamation to conduct environmental review
3 before any long-term water service contract can be renewed. CVP Improvement Act §
4 3404(c)(1). Such environmental review must include, but is not limited to, the Secretary's
5 preparation of a programmatic EIS analyzing the effects of implementing the CVP Improvement
6 Act, "including all fish, wildlife, and habitat restoration actions and the potential renewal of all
7 existing Central Valley Project water contracts." CVP Improvement Act § 3409.

8 **V. THE WATER INFRASTRUCTURE IMPROVEMENTS OF THE NATION ACT**

9 135. In 2016, Congress enacted the Water Infrastructure Improvements of the Nation
10 Act ("WIIN Act"), Public Law 114-322.

11 136. The WIIN Act provides that Reclamation shall convert existing CVP water
12 service contracts to permanent repayment contracts upon the request of the contractor, under
13 mutually agreeable terms and conditions. WIIN Act, § 4011(a). The WIIN Act expressly
14 provides that it shall not be interpreted or implemented in a manner that (1) preempts or modifies
15 any obligation of the United States under state law; (2) affects or modifies any obligation under
16 the CVP Improvement Act, subject to a limited exception for the Stanislaus River predator
17 management program; (3) overrides, modifies, or amends applicability of the ESA; (4) "would
18 cause additional adverse effects on listed fish species beyond the range of effects anticipated to
19 occur to the listed fish species for the duration of the applicable biological opinion, using the best
20 scientific and commercial data available"; or (5) overrides, modifies, or amends any obligation
21 of the Pacific Fisheries Management Council. WIIN Act, § 4012(a).

22 **FACTUAL ALLEGATIONS**

23 137. The CVP is the largest surface water storage and delivery system in California. It
24 includes 20 reservoirs with a water storage capacity of nearly 12 million acre-feet, power plants
25 and pump generating plants with a combined generation capacity of about 4.5 million megawatt
26 hours annually, two pumping plants that extract water from the Delta and export it to the Central
27 Valley, and about 500 miles of canals and aqueducts. The CVP provides nearly 6 million acre-

feet of water annually, primarily to agricultural contractors in the Central Valley who account for about 5 million acre-feet.

138. The CVP has numerous adverse environmental effects on the ecosystems of the San Francisco-San Joaquin Bay-Delta estuary, Central Valley, and Trinity River watershed. CVP operations divert or pump water from the Delta, reducing freshwater flows through the Delta. CVP dams and diversions impede fish passage and reduce instream flows. The CVP harms endangered and threatened fish and adversely modifies or destroys their habitats, including areas designated as critical habitat under the Endangered Species Act. Reduced freshwater flows worsen already degraded Delta water quality and contribute to harmful algal blooms in the Delta. Impaired water quality and reduced water quantity adversely affect public health and safety in the Delta region and farming in the Delta.

139. In written comments to Reclamation on the Draft EIS for re-initiation of ESA consultation on the coordinated long-term operation of the CVP and State Water Project (“SWP”), the State Water Resources Control Board explained that “fish and wildlife species are already in poor condition, some of which are on the verge of functional extinction or extirpation” and that the body of scientific evidence shows “that increased freshwater flows through the Delta and aquatic habitat restoration are needed to protect Bay-Delta ecosystem processes and native and migratory fish.” September 25, 2019 SWRCB letter at p. 3.

140. Between February 28, 2020 and March 2, 2021, Reclamation approved the conversion of 69 CVP contracts into permanent water service contracts. The 69 converted contracts are shown on Table A:⁶:

Table A Contract Conversions Approved

Contractor	Contract No.	Date of Conversion	Acre-Feet Per Year
City of Folsom	6-07-20-W1372B-P	2/28/2020	7,000
City of Roseville	4-06-200-3474A- IRI-P	2/28/2020	32,000

⁶ The information in Tables A and B are derived from publicly-available information on Reclamation’s website and other sources based on Plaintiffs’ best information and belief, and is subject to errors and inconsistencies present in the source material.

1	East Bay Municipal Utility District	14-06-200-5183A- LTR1-P	2/28/2020	433,000
2				
3	Placer County Water Agency	14-06-200-5082A- IRI-P	2/28/2020	35,000
4				
5	Sacramento County Water Agency	6-07-20-W1372-P	2/28/2020	15,000
6				
7	Sacramento County Water Agency	14-06-200-5198B- IR1-P	2/28/2020	30,000
8				
9	Sacramento Municipal Utility District	14-06-200-5198A- IR1-P	2/28/2020	30,000
10				
11				
12	San Juan Water District	6-07-20-W1373- LTR1-P	2/28/2020	24,200
13				
14	Westlands Water District	14-06-200-495A- IRI-P	2/28/2020	1,150,000
15				
16	City of West Sacramento	0-07-20-W0187-P	5/26/2020	23,600
17				
18	Westlands Water District Distribution District No. 1 (Broadview Assignment)	14-06-200-8092- IR5-P	5/29/2020	27,000
19				
20				
21				
22				
23	Westlands Water District Distribution District No. 1 (Centinella Assignment)	7-07-20-WO55B-- IR5-P	5/29/2020	2,500
24				
25				
26				
27				
28				

1	Westlands Water	14-06-200-8018B-	5/29/2020	2,990
2	District	IR5-P		
3	Distribution			
4	District No. 1			
5	(Widren			
6	Assignment)			
7	Westlands Water	14-06-200-3365AC-	5/29/2020	4,198
8	District	IR5-P		
9	Distribution			
10	District No. 2			
11	(Mercy Springs			
12	Partial Assignment)			
13	City of Shasta Lake	4-07-20-W1134-P	6/30/2020	4,400
14	Mountain Gate	14-06-200-6998-P	6/30/2020	1,350
15	Community			
16	Services District			
17	Shasta Community	14-06-200-862A-P	6/30/2020	1,000
18	Services Dist.			
19	Shasta County	14-06-200-3367A-P	6/30/2020	1,022
20	Water Agency			
21	City of Redding	14-06-200-5272A-P	8/11/2020	6,140
22	4-M Water District	0-07-20-W0183-P	9/15/2020	5,700
23	Bella Vista Water	14-06-200-851A-P	9/15/2020	24,578
24	District			
25	Colusa County	1-07-20-W0220-P	9/15/2020	5,964
26	Water District			
27	Colusa County	14-06-200-304-A-P	9/15/2020	62,200
28	Water District			
	Corning Water	14-06-200-6575-P	9/15/2020	23,000
	District			

1	Cortina Water	0-07-20-W0206-P	9/15/2020	1,700
2	District			
3	Dunnigan Water	14-06-200-399-A-P	9/15/2020	19,000
4	District			
5	Glide Water	7-07-20-W0040-P	9/15/2020	10,500
6	District			
7	Kanawha Water	14-06-200-466-A-P	9/15/2020	45,000
8	District			
9	La Grande Water	0-07-20-W0190-P	9/15/2020	2,200
10	District			
11	La Grande Water	7-07-20-W0022-P	9/15/2020	5,000
12	District			
13	Stony Creek Water	2-07-20-W0261-P	9/15/2020	3,345
14	District			
15	Centerville	14-06-200-3367X-P	9/28/2020	2,900
16	Community			
17	Services District			
18	Central San	4-07-20-W0330-P	9/28/2020	80,000
19	Joaquin Water			
20	Conservation			
21	District			
22	Davis Water	14-06-200-6001A-P	9/28/2020	4,000
23	District			
24	Del Puerto Water	14-06-200-922-	9/28/2020	140,210
25	District	LTR1-P		
26	Glenn Valley	1-07-20-W0219-P	9/28/2020	1,730
27	Water District			
28	Myers-Marsh	1-07-20-W0225-P	9/28/2020	255
	Mutual Water Co.			

1	Orland-Artois	14-06-200-8382A-P	9/28/2020	53,000
2	Water District			
3	Stockton East	4-07-20-W0329-P	9/28/2020	75,000
4	Water District			
5	Westlands Water	14-06-200-7823J-	9/28/2020	4,000
6	District (Oro	LTR1-P		
7	Loma)			
8	Westside Water	14-06-200-8222-	9/28/2020	65,000
9	District	LTR1-P		
10	Banta-Carbona	14-06-200-4305A-	10/22/2020	20,000
11	Irrigation District	LTR1-P		
12	Byron-Bethany	14-06-200-4305A-	10/22/2020	20,600
13	Irrigation District	LTR1-P		
14	Eagle Field Water	14-06-200-7754-	10/22/2020	4,550
15	District	LTR1-P		
16	Fresno Slough	14-06-200-4019A-	10/22/2020	4,000
17	Water District	LTR1-P		
18	Holthouse Water	1-07-20-W0224-P	10/22/2020	2,450
19	District			
20	James Irrigation	14-06-200-700-A-	10/22/2020	35,300
21	District	LTR1-P		
22	Pajaro Valley	14-06-200-3365AB-	10/22/2020	6,260
23	Water Management	IR5-P		
24	Agency, Santa			
25	Clara Valley Water			
26	District and			
27	Westlands Water			
28	District No. 1			
	(Mercy Springs 3-			
	Way Partial			
	Assignment)			

1	Proberta Water	14-06-200-7311-P	10/22/2020	3,500
2	District			
3	Reclamation Dist.	14-06-200-3802A-	10/22/2020	228
4	No. 1606	LTR1-P		
5	The West Side	7-07-20-W0045-	10/22/2020	5,000
6	Irrigation District	LTR1-P		
7	Tranquility	14-06-200-701-A-	10/22/2020	13,800
8	Irrigation District	LTR1-P		
9	West Stanislaus	14-06-200-1072-	10/22/2020	50,000
10	Irrigation District	LTR1-P		
11	Patterson Irrigation	14-06-200-3598A-	10/26/2020	16,500
12	District	LTR1-P		
13	Tranquility Public	14-06-200-3537A-	10/26/2020	70
14	Utilities District	LTR1-P		
15	Clear Creek	14-06-200-489-A-P	11/17/2020	15,300
16	Community			
17	Services District			
18	Contra Costa Water	175r-3401 A-LTR1-	12/28/2020	195,000
19	District	P		
20	Mercy Springs	14-06-200-3365A-	12/28/2020	2,842
21	Water District	LTR1-P		
22	Pacheco Water	6-07-20-W0469-P	12/28/2020	10,080
23	District			
24	San Luis Water	14-06-200-7773A-	12/28/2020	125,080
25	District	IR1-P		
26	County of Colusa	14-06-200-8310A-P	1/14/2021	20,000
27	El Dorado	14-06-200-1357A-	1/14/2021	7,550
28	Irrigation District	LTR1-P		

Panoche Water District	14-06-200-7864A-IR1-P	1/14/2021	94,000
City of Avenal	14-06-200-4619A-IR1-P	1/22/2021	3,500
City of Coalinga	14-06-200-4173A-IR1-P	1/22/2021	10,000
City of Huron	14-06-200-7081A-IR3	1/22/2021	3,000
San Benito County Water District	8-07-20-W0130A-P	1/22/2021	43,800
California Department of Fish and Wildlife	14-06-200-8033A-IR1-P	Unknown date	10,000
Santa Clara Valley Water District	7-07-20-W0023A	Unknown date	152,500

141. Reclamation is in the process of converting an additional 22 CVP contracts. These contracts are shown on Table B.

Table B Contracts in Process of Conversion

Contractor	Contract No.	Acre-Feet Per Year
Carter Mutual Water Company	14-06-200-2401A	7,122
City of Lindsay	5-07-20-W0428-LTR1	2,500
City of Orange Cove	14-06-200-5230-LTR1	1,400
City of Tracy	14-06-200-7858A-IR1	20,000
Conaway Preservation Group	14-06-200-7422A-R-1	50,862
County of Fresno	14-06-200-8292A-IR17	Unknown amount
County of Madera	14-06-200-2406A-LTR1	200
County of Tulare	14-06-200-8293A-IR17	5,308
Feather Water District	14-06-200-171-A-LTR1	20,000
Hills Valley Irrigation District	14-06-200-8466A-IR17	3,346
International Water District	14-06-200-585A-LTR1 & Amend	1,200

Kern-Tulare Water District	14-06-200-8367A-IR17A	13,300
Kern-Tulare Water District	14-06-200-8601A-IR17	40,000
Kirkwood Water District	7-07-20-W0056-LTR1	2,100
Laguna Water District	2-07-20-W0266-LTR1	800
Lower Tule River Irrigation District	14-06-200-8237A-IR17	31,102
Maxwell Irrigation District	14-06-200-6078A-R-1	17,980
Pixley Irrigation District	14-06-200-8238A-IR17	31,102
Reclamation District No. 1004	14-06-200-890A-R-1	71,400
Sycamore Mutual Water Company	14-06-200-2146A-R-1	31,800
The Coelho Family Trust	14-06-200-7859A-LTR1	2,080
Tri Valley Water District	14-06-200-8565A-IR17	1,142

142. As of March 2, 2021, all of the contracts in Table A, above have been converted. Those contracts listed in Table B above are pending conversion.

143. In 1999, Reclamation issued the programmatic EIS required under the CVP Improvement Act. The programmatic EIS did not evaluate the environmental consequences of converting Reclamation's existing CVP contracts to permanent water service contracts, but provided that future NEPA review would occur at the level of specific actions, including new contracts and contract renewals consistent with NEPA's tiering provisions.

144. In 2000, following consultation with Reclamation pursuant to section 7 of the ESA (16 U.S.C. § 1536), the United States Fish and Wildlife Service released a biological opinion for the implementation of the CVP Improvement Act and the continued operation and maintenance of the CVP. The biological opinion states that:

Once the long-term contract renewal negotiations are completed, the renewals will be subject to a separate, tiered analysis that is consistent with the NEPA tiering in the PEIS. No contracts will be renewed until the appropriate environmental review has been completed. Reclamation will consult either formally or informally with the Service before executing a contract. The site specific, tiered analysis will address direct and indirect effects of contract renewal.

145. In December 2019, Reclamation issued a Final EIS for the Reinitiation of Consultation on the Long-Term Operation of the Central Valley Project and State Water Project ("Reinitiation EIS"). The Reinitiation EIS did not evaluate the environmental consequences of converting existing CVP contracts to permanent water service contracts and did not consider alternatives that might reduce deliveries of CVP water under the converted contracts or

1 otherwise address the contract conversion. Instead, the Reinitiation EIS merely noted, without
2 analysis, that “[c]onversion of such contracts will not affect operations under the action
3 alternatives.” The Reinitiation EIS reflected Reclamation’s current policy to “maximize water
4 deliveries and optimize marketable power generation” while minimizing environmental and
5 regulatory limitations on water deliveries, such as those imposed by NEPA and the ESA.

6 146. Reclamation did not prepare an EIS, EA, or otherwise comply with NEPA in any
7 way whatsoever prior to making its contracts permanent, and its failure to comply with NEPA is
8 ongoing in the case of the contracts that are in the process of conversion.

9 147. Reclamation, on expiration of prior long-term contracts, has issued short-term
10 interim contracts and prepared environmental assessments (“EAs”) to purport to comply with
11 NEPA.

12 148. In the 27 years since the enactment of the CVP Improvement Act, fish species in
13 the Bay-Delta have declined toward extinction including endangered winter-run Chinook
14 salmon, threatened spring-run Chinook salmon, threatened Central Valley steelhead, threatened
15 green sturgeon, threatened Delta smelt, and state-protected longfin smelt. These declines have
16 been caused and worsened by CVP diversions which result in rising water temperatures,
17 increased salinity, sedimentation and other harmful reductions in water quantities, freshwater
18 flows, and water quality. Instead of meeting the salmon-doubling goal of the CVP Improvement
19 Act, the species have continued to decline. Reclamation’s conversion of CVP contracts to
20 permanent water service contracts will perpetuate these declines and is likely to cause further
21 destruction and adverse modification of fish habitat, including designated critical habitat. In
22 addition, the conversion of CVP contracts to permanent water service contracts is likely to
23 impede recovery of endangered and threatened species.

24 149. The NEPA regulations list various factors to be evaluated in determining the
25 intensity (meaning severity) of an impact to determine whether an action “significantly” affects
26 the quality of the human environment requiring preparation of an EIS. 40 C.F.R. § 1508.27(b).
27 The water deliveries to Reclamation’s contractors diminish freshwater flows through the Delta,
28 which decreases water supplies and water quality and worsens the amount and frequency of

1 harmful algal blooms (HABs) in the Delta. In addition to the dangers posed by ingesting HABs,
2 HABs can become airborne and inhaled by Delta residents and users. The conversion of CVP
3 contracts to permanent water service contracts will perpetuate and exacerbate the effects of
4 decreased freshwater flows, including HABs, significantly affecting public health and safety. 40
5 C.F.R. § 1508.27(b)(2).

6 150. The Delta has unique characteristics, being the largest inland estuary in the
7 Western Hemisphere, and which already fails to meet established water quality standards and is
8 an ecologically critical area. Reclamation's conversion of CVP contracts to permanent water
9 service contracts will contribute to and exacerbate the decline of the Delta. 40 C.F.R. §
10 1508.27(b)(3).

11 151. The conversion and locking-in of the water contracts is highly controversial. 40
12 C.F.R. § 1508.27(b)(4.)

13 152. Locking in the contracts for all time in the absence of an EIS or even an EA will
14 have effects on the human environment that are highly uncertain and involve unique and
15 unknown risks, highlighted by the absence of any NEPA environmental analysis whatsoever. 40
16 C.F.R. § 1508.27(b)(5).

17 153. Reclamation's conversion of each contract establishes a precedent for future
18 actions with significant effects and represents a decision in principle about future considerations.
19 40 C.F.R. § 1508.27(b)(6). About 81 contractors have started or completed negotiating
20 conversion of their CVP contracts with Reclamation. Consequently, each contract conversion
21 establishes a precedent for future actions with significant effects.

22 154. Each contract conversion is related to the conversion of about 91 other CVP
23 contracts, as well as to other past, ongoing, and reasonably foreseeable future actions affecting
24 the San Francisco-San Joaquin Bay-Delta estuary, Central Valley, and Trinity River watershed.
25 The incremental impact of each such contract conversion may be cumulatively significant in
26 light of these related actions. 40 C.F.R. § 1508.27(b)(7).

1 155. The conversion of the contracts will adversely affect endangered and threatened
2 species and their habitats that have been determined to be critical under the ESA. 40 C.F.R. §
3 1508.27(b)(9).

4 156. The conversion of the contracts threatens a violation of Federal and State laws
5 and requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b)(10). For
6 example, the CVP Improvement Act requires:

7 Upon renewal of any long-term repayment or water service contract providing for
8 the delivery of water from the Central Valley Project, the Secretary shall
9 incorporate all requirements imposed by existing law, including provisions of this
10 title, within such renewed contracts. The Secretary shall also administer all
existing, new, and renewed contracts in conformance with the requirements and
goals of this title.

11 CVP Improvement Act § 3404(c)(2). The converted contracts do not incorporate all requirements
12 imposed by existing law, in violation of the CVP Improvement Act, and the conversion of the
13 contracts threatens violations of NEPA, the ESA, the CVP Improvement Act, and Reclamation
14 law, among other things.

15 157. Reclamation's failure to prepare an EIS or EA on the conversion of the contracts
16 constitutes failure to proceed in the manner required by NEPA because entering into each
17 contract was a major federal action significantly affecting the quality of the human environment.
18 42 U.S.C. § 4332(2)(C). Reclamation's failure to prepare EIS or EA on the conversion of the
19 contracts also constitutes agency action unlawfully withheld or reasonably delayed.

20 158. Reclamation unlawfully failed to prepare an EIS or first prepare an EA and then
21 an EIS, which must "[r]igorously explore and objectively evaluate all reasonable alternatives" to
22 the action. 40 C.F.R. § 1502.14 (a.) As a result, Reclamation failed to consider alternative terms
23 and conditions that might reduce deliveries of CVP water in order to increase freshwater flows
24 and begin to restore the Delta and watersheds in the Central Valley and Trinity River system.
25 Reclamation further failed to consider alternative terms and conditions requiring periodic
26 contract evaluation for renewal, modification, or termination. These and other alternative terms
27 and conditions are particularly important here because some of the subject lands, such as those
28 serviced by Westlands Water District, continue to become unfarmable over time and be taken out

1 of production because of buildup of selenium, a toxic element that is leached from soil by
2 irrigation.

3 159. The Westlands contract obligates Reclamation to deliver to Westlands about 1.19
4 million acre-feet of water each year (subject to its availability), making it the largest single CVP
5 contract. Many of the lands in Westlands Water District have impaired drainage, that contributes
6 to the buildup of selenium and other contaminants. The Ninth Circuit Court of Appeals reversed
7 a district court decision denying environmental plaintiffs' summary judgment because the
8 challenged environmental document issued by Reclamation under NEPA for eight interim CVP
9 contracts including Westlands Water District's interim contract, "did not give full and
10 meaningful consideration to the alternative of a reduction in maximum water quantities." *Pacific*
11 *Coast Federation of Fishermen's Assn's v. U.S. Dept. of the Interior*, 655 Fed.Appx. 595 (9th
12 Cir., No. 14-15514, July 25, 2016) (not selected for publication). "Reclamation's decision not to
13 give full and meaningful consideration to the alternative of a reduction in maximum interim
14 contract water quantities was an abuse of discretion and the agency did not adequately explain
15 why it eliminated this alternative from detailed study." *Id.* at 599. Reclamation's "reasoning in
16 large part reflects a policy decision to promote the economic security of agricultural users, rather
17 than an explanation of why reducing maximum contract quantities was so infeasible as to
18 preclude study of its environmental impacts." *Id.* at 600. The decision pertained to interim two-
19 year contract renewals. This case involves permanent contracts. NEPA alternatives analysis
20 would allow meaningful consideration of the trade-offs between water deliveries and
21 environmental harm as well as opportunities to reduce deliveries over time due to such
22 developments as agricultural lands becoming drainage impaired and innovations and
23 improvements in technology such as conservation, water recycling, and drip irrigation leading to
24 the reduction in claimed needs for water deliveries. An example of one obvious alternative is to
25 limit the term of the contracts so as to reduce quantities over time to reflect worsening conditions
26 caused by climate change as well as reduction in needs for exports due to continued innovation.
27 Other examples of alternatives include retiring drainage impaired lands and basing contractual
28

1 water quantities on real water available and the impacts of providing real water, instead of basing
2 quantities on “paper water.”

3 160. Reclamation also failed to conduct NEPA-required “scoping” and failed to
4 publish a NEPA-required notice of intent in the Federal Register. 40 C.F.R. § 1501.7.

5 161. Reclamation contends it has no discretion with respect to contract conversion
6 because of the WIIN Act. For example, the Westlands Water District Contract No. 14-06-200-
7 495A-IRI-P recites:

8 WHEREAS, 4011(a)(1) provides that ‘upon request of the contractor, the
9 Secretary of the Interior *shall* convert any water service contract in effect on the
10 date of enactment of this subtitle and between the United States and a water users’
Association [Contractor] to allow for prepayment of the repayment contract
pursuant to paragraph (2) *under mutually agreeable terms and conditions.*’

11 Contract No. 14-06-200-495A-IRI-P, at p. 4 (emphasis added). But while the WIIN Act may
12 require Reclamation to convert the contract, Reclamation retains discretion over the terms and
13 conditions of the converted contract. The Westlands contract further recites:

14 This amended Contract has been negotiated and reviewed by the parties hereto,
15 each of whom is sophisticated in the matters to which this amended Contract
16 pertains. The double-spaced Articles of this amended Contract have been drafted,
negotiated, and reviewed by the parties, and no one party shall be considered to
have drafted the stated Articles.”

17 *Id.*, ¶ 46, p. 71 (emphasis added). Each contract contains similar provisions to those set forth in
18 this paragraph. The title Reclamation uses on its website listing the contracts is “Negotiated
19 Draft Conversion Contracts.”

20 162. Contrary to Reclamation’s contention that it has no discretion and therefore no
21 duty to comply with NEPA before converting the contracts, Reclamation has discretion under the
22 plain language of the WIIN Act section it relies upon, because the “terms and conditions” of any
23 contract must be “mutually agreeable” to the Secretary of the Interior. The terms and conditions
24 of the contracts were *negotiated* by Reclamation with the contractors.

25 163. Contrary to Reclamation’s contention that it has no duty to comply with NEPA
26 before converting the contracts, NEPA compliance is also required by the CVP Improvement
27 Act. The WIIN Act’s savings language expressly preserves Reclamation’s obligations under the
28 CVP Improvement Act. WIIN Act, § 4012(a)(2). As alleged above in ¶ 34, the CVP

Improvement Act requires Reclamation to conduct environmental review before any long-term water service contract can be renewed. CVP Improvement Act, §§ 3402(a), 3404(c)(1).

164. NEPA compliance by Reclamation before converting the contracts is also necessary to create accurate information and analysis to ensure that the WIIN Act's savings language prohibiting interpretation or implementation in a manner that "preempts or modifies any obligation of the United States to act in conformance with applicable State law, including applicable State water law"; "overrides, modifies, or amends the applicability of the Endangered Species Act of 1973 ... to the operation of the Central Valley Project or the State Water Project"; or that "would cause additional adverse effects on listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion, using the best scientific and commercial data available ..." are not violated. WIIN Act, §§ 4012(a)(1), 4012(a)(3), 4012(a)(4).

165. Reclamation did not initiate or reinstate consultation with FWS or NMFS under the ESA prior to making its contracts permanent, and its failure to comply with the ESA is ongoing in the case of the contracts that are in the process of conversion.

CLAIMS FOR RELIEF

First Claim for Relief

(Violations of NEPA and the APA)

166. The paragraphs set forth above are realleged and incorporated herein by this reference.

167. Reclamation's approvals of conversion of the CVP contracts to permanent water service contracts constitute a major federal action or actions that will significantly affect the quality of the human environment. Reclamation had a duty under NEPA to prepare an EIS or an EA before approving conversion of the contracts.

168. Reclamation failed to prepare an EIS or an EA before approving the conversion contracts in violation of NEPA.

169. Reclamation failed to develop or consider alternatives to the proposed contract conversion actions in violation of NEPA.

170. Reclamation's failure to comply with NEPA prior to its approvals of the contract conversions constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and procedures required by law. 5 U.S.C. § 706(2)(A), (D).

171. Reclamation's failure to comply with NEPA prior to its approvals of the contract conversions constitutes agency action unlawfully withheld or unreasonably delayed under the APA. 5 U.S.C. § 706(1).

Second Claim for Relief

(Violations of NEPA and the APA)

172. The paragraphs set forth above are realleged and incorporated herein by this reference.

173. Reclamation's approvals of the conversion of the CVP contracts to permanent water service contracts without any compliance with NEPA constitute agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and without observance of the procedure required by law. 5 U.S.C. § 706(2).

Third Claim for Relief

(Violations of ESA)

174. The paragraphs set forth above are realleged and incorporated herein by this reference.

175. Reclamation’s conversion of the CVP contracts is an activity or program carried out in whole or in part by Reclamation that directly or indirectly causes modification to the land, water, or air and thus is an “agency action” under the ESA that may affect ESA-listed species and/or their critical habitats, within the meaning of the statute and implementing regulations; therefore, Reclamation was required to consult with FWS and NMFS before approving the contracts.

176. Reclamation did not initiate and complete consultation with FWS or NMFS pursuant to the ESA and implementing regulations in order to ensure against jeopardy or adverse modification and, did not prepare a biological assessment on the contract conversions.

177. On Plaintiffs' information and belief, no prior ESA consultations address the contract conversions on either a programmatic or action-specific level. In any event, Reclamation did not reinitiate consultation with FWS or NMFS regarding the contract conversions.

178. Reclamation violated the ESA by failing to engage in any form of consultation with the Services prior to approving the contracts which not only may, but will, adversely affect listed species and designated critical habitats. 16 U.S.C. § 1536 (a)(2), 1540(g)(1); 50 C.F.R. § 402.11-14. Additionally, Reclamation failed to seek or obtain the written concurrence of the Services that such activities would not likely adversely affect ESA-listed species or their critical habitat.

179. Reclamation further violated the ESA by making an irretrievable commitment of resources in entering into the permanent contracts prior to completing consultation with federal wildlife agencies to address impacts to listed species and critical habitat. 16 U.S.C. § 1536 (d); 50 C.F.R. § 402.09.

180. Alternatively, Reclamation’s failure to engage in any form of consultation under the ESA regarding the contract conversions constitutes agency action that has been “unlawfully withheld or unreasonably delayed” in violation of 5 U.S.C. § 706(1). Reclamation’s entry into and approval of the contracts without engaging in any form of ESA consultation constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and procedures required by law. 5 U.S.C. § 706(2)(A), (D).

181. On August 10, 2020, Plaintiffs provided Defendants with notice of intent to sue for violations of the ESA. The 60-day notice of intent to sue requirement of the ESA is now satisfied. 16 U.S.C. § 1540(g)(2)(A).

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

1 A. Find and declare that Reclamation's failure to prepare an EIS or an EA to assess,
2 disclose, and consider alternatives to the environmental effects of the contract conversions
3 violates NEPA.

4 B. Find and declare that Reclamation's failure to consult with the U.S. Fish and
5 Wildlife Service and National Marine Fisheries Service and failure to prepare a Biological
6 Assessment prior to converting the contracts violates the ESA.

7 C. Find and declare that Reclamation's approvals of the conversion contracts are
8 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and
9 without observance of the procedure required by law.

10 D. Order Reclamation on remand to comply with NEPA by preparing an EIS or an
11 EA for the contract conversions.

12 E. Order Reclamation on remand to comply with the ESA by consulting with the
13 U.S. Fish and Wildlife Service and National Marine Fisheries Service for the contract
14 conversions and by preparing a Biological Assessment on the contract conversions.

15 F. Vacate, set aside, and rescind Reclamation's contract conversions.

16 G. Enjoin Defendants from taking any action pursuant to the contract conversions,
17 until Defendants have fully complied with NEPA and the ESA.

18 H. Enjoin Defendants from converting any other contracts until Defendants have
19 fully complied with NEPA and the ESA.

20 I. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees as
21 provided for by the ESA, 16 U.S.C. § 1540(g), and the Equal Access to Justice Act, 28 U.S.C. §
22 2412.

23 J. Grant any other relief as the Court deems just and proper.

24
25 Respectfully submitted,

26 DATED: April 2, 2021

/s/ John Buse

John Buse

Ross Middlemiss

CENTER FOR BIOLOGICAL DIVERSITY

Attorneys for Plaintiff Center for Biological Diversity

1
2 Dated: April 2, 2021

/s/ E. Robert Wright
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