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7 SPORTFISHING PROTECTION ALLIANCE, PACIFIC  
COAST FEDERATION OF FISHERMEN'S  
8 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
OWNERS ASSOCIATION, INC., and INSTITUTE  
9 FOR FISHERIES RESOURCES

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
13 FRESNO DIVISION

14 NORTH COAST RIVERS ALLIANCE,  
CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE, PACIFIC  
COAST FEDERATION OF  
16 FISHERMEN'S ASSOCIATIONS, SAN  
FRANCISCO CRAB BOAT OWNERS  
17 ASSOCIATION, INC., and INSTITUTE  
FOR FISHERIES RESOURCES,

18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT OF  
THE INTERIOR, UNITED STATES  
21 BUREAU OF RECLAMATION, CITY OF  
FOLSOM; CITY OF ROSEVILLE; EAST  
22 BAY MUNICIPAL UTILITY DISTRICT;  
PLACER COUNTY WATER AGENCY;  
23 SACRAMENTO COUNTY WATER  
AGENCY; SACRAMENTO MUNICIPAL  
24 UTILITY DISTRICT; SAN JUAN WATER  
DISTRICT; WESTLANDS WATER  
25 DISTRICT DISTRIBUTION DISTRICT  
NO. 1; WESTLANDS WATER DISTRICT  
26 DISTRIBUTION DISTRICT NO. 2;  
WESTLANDS WATER DISTRICT  
27 FINANCING CORPORATION; CITY OF  
WEST SACRAMENTO; CITY OF  
28 SHASTA LAKE; MOUNTAIN GATE

) Civ. No. 16-cv-307-DAD-SKO

) **THIRD AMENDED AND  
SUPPLEMENTAL COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

) Judge Dale A. Drozd

) (Filed per Order (Dkt. 151))

1 COMMUNITY SERVICES DISTRICT; )  
2 SHASTA COMMUNITY SERVICES )  
3 DISTRICT; SHASTA COUNTY WATER )  
4 AGENCY; CITY OF REDDING; 4-M )  
5 WATER DISTRICT; BELLA VISTA )  
6 WATER DISTRICT; COLUSA COUNTY )  
7 WATER DISTRICT; CORNING )  
8 WATER DISTRICT; CORTINA WATER )  
9 DISTRICT; DUNNIGAN WATER )  
10 DISTRICT; GLIDE WATER DISTRICT; )  
11 KANAWHA WATER DISTRICT; LA )  
12 GRANDE WATER DISTRICT; STONY )  
13 CREEK WATER DISTRICT; )  
14 CENTERVILLE COMMUNITY )  
15 SERVICES DISTRICT; CENTRAL SAN )  
16 JOAQUIN WATER CONSERVATION )  
17 DISTRICT; DAVIS WATER DISTRICT; )  
18 DEL PUERTO WATER DISTRICT; )  
19 GLENN VALLEY WATER DISTRICT; )  
20 MYERS-MARSH MUTUAL WATER )  
21 COMPANY; ORLAND-ARTOIS WATER )  
22 DISTRICT; STOCKTON EAST WATER )  
23 DISTRICT; WESTSIDE WATER )  
24 DISTRICT; BANTA-CARBONA )  
25 IRRIGATION DISTRICT; BYRON )  
26 BETHANY IRRIGATION DISTRICT; )  
27 EAGLE FIELD WATER DISTRICT; )  
28 FRESNO SLOUGH WATER DISTRICT; )  
HOLTHOUSE WATER DISTRICT; )  
JAMES IRRIGATION 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; )  
COUNTY OF COLUSA; EL DORADO )  
IRRIGATION DISTRICT; CITY OF )  
AVENAL; CITY OF COALINGA; CITY )  
OF HURON; SAN BENITO COUNTY )  
WATER DISTRICT; MERCY SPRINGS )  
WATER DISTRICT; CITY OF LINDSAY; )  
CITY OF ORANGE COVE; CITY OF )  
TRACY; COUNTY OF FRESNO; )  
COUNTY OF MADERA; COUNTY OF )  
TULARE; HILLS VALLEY IRRIGATION )  
DISTRICT; INTERNATIONAL WATER )  
DISTRICT; KERN-TULARE WATER )  
DISTRICT; LAGUNA WATER )

1 DISTRICT; LOWER TULE RIVER )  
 2 IRRIGATION DISTRICT; PIXLEY )  
 3 IRRIGATION DISTRICT; THE COELHO )  
 4 FAMILY TRUST; and TRI VALLEY )  
 5 WATER DISTRICT, )  
 6 Defendants, )  
 7 WESTLANDS WATER DISTRICT, SAN )  
 8 LUIS WATER DISTRICT, and PANOUCHE )  
 9 WATER DISTRICT, )  
 10 Intervenor-Defendants. )

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**INTRODUCTION**

11 1. Plaintiffs NORTH COAST RIVERS ALLIANCE, CALIFORNIA  
 12 SPORTFISHING PROTECTION ALLIANCE, PACIFIC COAST FEDERATION OF  
 13 FISHERMEN’S ASSOCIATIONS, SAN FRANCISCO CRAB BOAT OWNERS  
 14 ASSOCIATION, INC., and INSTITUTE FOR FISHERIES RESOURCES (collectively,  
 15 “plaintiffs”) hereby sue defendants UNITED STATES DEPARTMENT OF THE  
 16 INTERIOR and UNITED STATES BUREAU OF RECLAMATION (collectively,  
 17 “Reclamation”) for violations of the National Environmental Policy Act (“NEPA”), 42  
 18 U.S.C. section 4321 et seq., and the Central Valley Project Improvement Act  
 19 (“CVPIA”), Public Law No. 102-575, 108 Stat. 4600, Title XXXIV (1992). Plaintiffs  
 20 challenge, under the Administrative Procedure Act (“APA”), 5 U.S.C. sections 701-706,  
 21 two sets of decisions by Reclamation that allow environmentally harmful diversions by  
 22 Reclamation’s Central Valley Project of massive quantities of freshwater from the Delta  
 23 formed by the Sacramento and San Joaquin rivers for consumptive use without the  
 24 comprehensive environmental reviews required by NEPA and the CVPIA.

25 2. Previously, plaintiffs sought this Court’s judgment overturning  
 26 Reclamation’s approval in 2016 of six water service contracts based on Reclamation’s  
 27 deficient Revised Environmental Assessment (“2016 Revised EA”) and Finding of No  
 28 Significant Impact (“FONSI,” collectively “2016 EA and FONSI”). Reclamation called

1 this project the *Central Valley Project Interim Renewal Contract for Westlands Water*  
2 *District, Santa Clara Valley Water District, and Pajaro Valley Water Management*  
3 *Agency 2016-2018* (“2016 interim contracts”). The 2016 interim contracts reauthorized  
4 two years of water delivery from Reclamation’s Central Valley Project (“CVP”) to  
5 Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and  
6 Westlands Water District (collectively, the “interim contractors”). Plaintiffs previously  
7 alleged that the 2016 EA and FONSI violated NEPA because (1) they failed to fully  
8 consider and disclose the environmental consequences of the reduced-contract-quantity  
9 and no-action alternatives as required by this statute; (2) they failed to consider a  
10 reasonable range of alternatives; (3) their statement of purpose and need was  
11 inadequate; (4) they ignored the Project’s environmental impacts outside the  
12 contractors’ delivery and service areas; (5) they failed to disclose the environmental  
13 impacts of the Project on source watersheds; (6) they failed to fully analyze and disclose  
14 the Project’s impact on listed species including the giant garter snake and the California  
15 least tern; (7) they failed to consider the extent to which climate change will affect the  
16 environmental impacts of the Project; and (8) they did not disclose the cumulative  
17 impacts of an extended series of interim contract renewals. Plaintiffs alleged that as a  
18 consequence of these erroneous assumptions, omissions and mischaracterizations, the  
19 2016 EA and FONSI erroneously concluded that water deliveries under the interim  
20 contracts would have *no effect on the environment*.

21 3. On November 1, 2021, this Court ruled in its Order Granting Motions to  
22 Dismiss First Claim for Relief as Moot Without Prejudice and Granting Motion to  
23 Compel Joinder of Absent Contractors filed November 1, 2021, that this previous claim  
24 is dismissed because it has become moot. (Dkt. 151 at 4-7.) However, “[b]ecause it is  
25 possible to imagine a scenario in which one or more of the WIIN Act Repayment  
26 Contracts are set aside, it is likewise possible that plaintiffs’ [interim contract] claims  
27 could be revived.” *Id.* at 7. Therefore this Court declined to order plaintiffs’ interim  
28 contract claim dismissed with prejudice, and instead ordered that the dismissal be

1 without prejudice. *Id.* Therefore, while recognizing that this claim may not be revived  
2 without this Court’s further order allowing its reinstatement, the claim is referenced  
3 here and below to provide legal and historical context for the allegations that follow.

4 4. In this Third Amended and Supplemental Complaint for Declaratory and  
5 Injunctive Relief (“Third Amended Complaint”), plaintiffs describe two sets of  
6 decisions by Reclamation. First, plaintiffs reference their previous claim – now  
7 dismissed without prejudice to its reinstatement – requesting this Court’s judgment  
8 overturning Reclamation’s reauthorization in 2020 of these same six interim water  
9 service contracts based on Reclamation’s deficient 2020 Environmental Assessment  
10 (“2020 EA”) and FONSI (“2020 FONSI,” and collectively with the 2020 EA, the “2020  
11 EA and FONSI”) for another two years. This previous, but now dismissed, claim  
12 alleges that the 2020 EA and FONSI violate NEPA in the same eight respects as the  
13 2016 EA and FONSI, as summarized above.

14 5. For more than two decades, Reclamation has been using these interim  
15 contracts and their similar predecessors to avoid preparation of the long-overdue  
16 Environmental Impact Statement (“EIS”) that would otherwise be required by NEPA  
17 and the CVPIA for approving long-term contracts under the CVPIA. Congress required  
18 Reclamation to conduct a thorough environmental review of the impacts of entering into  
19 long-term contracts and then to enter into those contracts with appropriate mitigations  
20 based on that comprehensive review.

21 6. Nearly thirty years later, Reclamation still has not completed this task,  
22 relying instead on repeated renewals of the interim contracts – and now, repayment  
23 contracts ostensibly issued pursuant to the WIIN Act – without adequate environmental  
24 review. Reclamation may not evade meaningful environmental review under NEPA by  
25 entering into an assembly-line cycle of interim contracts based on essentially  
26 meaningless EAs that ignore those contracts’ significant individual and cumulative  
27 environmental impacts, nor on its recent repayment contracts that evade Reclamation’s  
28 environmental review duties under NEPA and the CVPIA entirely.

1           7.       Second, plaintiffs seek this Court’s judgment overturning Reclamation’s  
2 decisions on and after February 28, 2020 to enter into permanent repayment (or  
3 “conversion”) contracts with intervenor-defendant Westlands Water District  
4 (“Westlands”), East Bay Municipal Utility District, City of Folsom, Placer County  
5 Water Agency, City of Roseville, Sacramento County Water Agency, Sacramento  
6 Municipal Utility District, and San Juan Water District, and decisions on and after May  
7 29, 2020, to enter into additional conversion contracts with intervenor-defendant  
8 Westlands and other contractors newly named and joined herein, effective on June 1,  
9 2020 and later, without: (1) conducting the environmental review required by NEPA  
10 and the CVPIA, (2) requiring the contractors to first obtain and provide court judgments  
11 validating the repayment contracts as required under 43 U.S.C. §§ 423e and 511, and (3)  
12 complying with other requirements of Reclamation Law.

13           8.       With regard to this last claim, plaintiffs are informed and believe that  
14 Reclamation has approved and entered into scores of other repayment contracts with the  
15 other water contractors who are newly joined as defendants herein, likewise without  
16 compliance with NEPA, the CVPIA, and other requirements of Reclamation Law.  
17 Accordingly, and as directed by this Court’s Order Granting Motions to Dismiss First  
18 Claim for Relief as Moot Without Prejudice and Granting Motion to Compel Joinder of  
19 Absent Contractors filed November 1, 2021 (Dkt. 151), plaintiffs have joined such  
20 additional water contractors as defendants identified in paragraphs 32 - 101, inclusive,  
21 to this Third Amended Complaint, and accordingly seek declaratory and injunctive  
22 relief on three grounds against these additional unlawful approvals by Reclamation as  
23 well.

24           9.       With respect to the first of these three grounds for plaintiffs’ challenge to  
25 the repayment contracts – Reclamation’s failure to conduct the environmental analysis  
26 required by NEPA and the CVPIA – Reclamation entered, and is entering, into these  
27 repayment contracts to supersede the 2020 EA and FONSI (and other similar interim  
28 contract EAs and FONSI), and to replace the 2020 interim water service contracts

1 between these parties (and other similar interim water contracts), without conducting  
2 required environmental reviews. Reclamation failed to conduct *any* environmental  
3 analysis in connection with its approval of the repayment contracts, despite the  
4 requirements of NEPA and the CVPIA that it do so, on the fallacious grounds that it  
5 lacked discretion to conduct the environmental reviews required by NEPA and the  
6 CVPIA. This Court should reject Reclamation's erroneous claims of impotence to  
7 conduct an adequate environmental review and remedy Reclamation's error by setting  
8 aside its unlawful approval of the repayment contracts and ordering Reclamation to  
9 comply with NEPA and the CVPIA.

10       10. With respect to the second of plaintiffs' three grounds for challenging the  
11 repayment contracts – Reclamation's failure to require the contractors to obtain  
12 validation judgments – Reclamation has failed to require the contractors to secure  
13 validation judgments confirming their authority to enter into those contracts despite its  
14 plain statutory duty to do so. Section 423e of Title 43 of the United States Code  
15 provides in pertinent part that “[n]o water shall be delivered [by a federal reclamation  
16 project] until a contract or contracts in form approved by the Secretary of the Interior  
17 shall have been made with an irrigation district or irrigation districts organized under  
18 State law providing for payment by the district or districts of the cost of constructing,  
19 operating and maintaining the works during the time they are in control of the United  
20 States . . . , and the execution of said contract or contracts shall have been confirmed by  
21 a court of competent jurisdiction.” Section 511 similarly provides in pertinent part that  
22 “[i]n carrying out the purposes of the Act of June 17, 1902 (32 Stat. 388), and Acts  
23 amendatory thereof and supplementary thereto, and known as the reclamation law, . . . .  
24 no contract with an irrigation district under this section [511] and sections 512 and 513  
25 of this title [title 43 of the United States Code] shall be binding on the United States  
26 until the proceedings on the part of the district for the authorization of the execution of  
27 the contract shall have been confirmed by decree of a court of competent jurisdiction, or  
28 pending appellate action if ground for appeal be laid.” Reclamation failed to comply

1 with both of these statutes when it entered into the repayment contracts.

2 11. With respect to the third of plaintiffs' three grounds for challenging the  
3 repayment contracts, Reclamation failed to comply with several other requirements of  
4 Reclamation Law. The first of these unsatisfied requirements is that Reclamation failed  
5 to make the repayment contracts as ultimately modified available for public review prior  
6 to their approval in violation of 43 C.F.R. § 426.22(b) and(d), which respectively direct  
7 in pertinent part that Reclamation must "[p]rovide copies of revised proposed contracts  
8 to all parties who requested copies of the proposed contract in response to the initial  
9 notice," and insure that "[a]nyone can get copies of a proposed contract from the  
10 appropriate regional director. . . ."

11 12. The second of these unsatisfied requirements is that Reclamation's  
12 repayment contract with Westlands exceeds by more than 200,000 acres the maximum  
13 acreage authorized to receive Central Valley Project water by Congress in the San Luis  
14 Act of 1960 (Public Law No. 86-466, 74 Stat. 156 (1960)). Plaintiffs are informed and  
15 believe that Reclamation's repayment contracts with some of the other contractors  
16 named herein likewise exceed the maximum acreage limitations imposed by the San  
17 Luis Act of 1960, the Reclamation Reform Act of 1982 (Public Law No. 97-293, 96  
18 Stat. 1261(1982)) and other similar acreage limitations of federal Reclamation Law.

19 13. The third of these unsatisfied requirements is that Reclamation's repayment  
20 contract with Westlands fails, and its repayment contracts with the other contractors  
21 named herein likewise fail, to assure Westlands' and the other contractors' compliance  
22 with applicable water quality standards as required by the CVPIA. The CVPIA  
23 provides in 43 U.S.C. § 3405(c) that "[a]ll Central Valley Project water service or  
24 repayment contracts for agricultural, municipal or industrial purposes that are entered  
25 into, renewed, or amended under any provision of Federal Reclamation law after the  
26 date of enactment of this title, shall provide that the contracting district or agency shall  
27 be responsible for compliance with all applicable State and Federal water quality  
28 standards applicable to surface and subsurface agricultural drainage discharges



1 generated within its boundaries.” The CVPIA directs further in 43 U.S.C. § 3404(c)(2)  
2 that “[u]pon renewal of any long-term repayment or water service contract providing for  
3 the delivery of water from the Central Valley Project, the Secretary shall incorporate all  
4 requirements imposed by existing law, including provisions of the title, within such  
5 renewed contracts.”

6 14. Contrary to these mandates, Reclamation’s repayment contract with  
7 Westlands does not, and its repayment contracts with other contractors named herein do  
8 not, expressly incorporate any specific State or Federal water quality standards. Instead,  
9 its repayment contracts leave implementation of such standards to the discretion of  
10 Reclamation’s contracting officer, and to Westlands and the other contractors. But  
11 applicable water quality standards and permit requirements are not discretionary under  
12 the law. And, they are being violated by Reclamation’s excessive diversions of water  
13 from the Delta for delivery to its contractors, and by the contaminated agricultural  
14 drainage that has resulted in the past, and will foreseeably result in the future, from  
15 those diversions and deliveries.

16 15. In sum, Reclamation’s environmental review of the interim contracts has  
17 been a meaningless charade, devoid of any effective disclosure and analysis of the  
18 interim contracts’ cumulative adverse effects, and of alternatives and mitigations that  
19 would avoid or reduce those effects. Even worse, Reclamation evaded and is evading  
20 environmental review altogether in approving the successor repayment contracts.  
21 Reclamation violated and is violating Congress’s clear mandate that any such contracts  
22 first be validated by a court judgment, comply with other procedural and substantive  
23 standards of Reclamation Law, and assure thorough public review and implementation  
24 of federal water quality standards. Plaintiffs seek speedy adjudication of this matter to  
25 address and reverse the accelerating decline of water quality and fish and wildlife  
26 caused by the water diversions authorized by the interim contracts and the repayment  
27 contracts.

28 //

**JURISDICTION AND VENUE**

1  
2 16. The Court has jurisdiction over this action under 28 U.S.C. sections 1331  
3 (federal question), 1337 (regulation of commerce), 1346 (United States as defendant),  
4 1361 (mandamus against an officer of the United States), 2201 (declaratory judgment),  
5 and 2202 (injunctive relief), and under the APA, 5 U.S.C. sections 701-706, because (1)  
6 the action arises under the APA, NEPA and the CVPIA; (2) Reclamation is an agency of  
7 the United States government and the individual defendants are sued in their official  
8 capacities as officers of the United States; (3) the action seeks a declaratory judgment  
9 that Reclamation’s 2016 EA and FONSI and 2020 EA and FONSI are inadequate; and  
10 (4) the action also seeks declaratory and injunctive relief declaring unlawful and  
11 vacating Reclamation’s approval of the repayment contracts because they violate the  
12 requirements of NEPA, the CVPIA, and Reclamation Law.

13 17. Venue is proper in this judicial district pursuant to 28 U.S.C. sections  
14 1391(b)(2) and 1391(e)(2) because a substantial part of the events giving rise to  
15 plaintiffs’ claims occurred, and a substantial part of the property that is the subject of  
16 the action is situated, in this judicial district.

17 18. The parties have an actual, justiciable controversy. Plaintiffs are entitled to  
18 a declaration of their rights and of Reclamation’s obligations, and to injunctive relief to  
19 enforce Reclamation’s statutory duties and prevent further irreparable environmental  
20 harm.

21 19. This Complaint is timely filed within the applicable six-year statute of  
22 limitations set forth in 28 U.S.C. section 2401(a). Reclamation approved the 2016  
23 interim contracts (whose approval and plaintiffs’ challenges thereto this Court has  
24 deemed moot) on or about February 29, 2016, and Reclamation signed the updated  
25 FONSI thereon based on the deficient Revised EA on May 31, 2017. Reclamation  
26 issued the 2020 EA and signed the 2020 FONSI on or about February 24, 2020, and  
27 approved the 2020 interim contracts effective March 1, 2020. Reclamation commenced  
28 approving the repayment contracts on or about February 28, 2020, with an effective date

1 on or about June 1, 2020, and, on information and belief, has subsequently approved  
2 scores of additional repayment contracts with the other contractors now named in this  
3 Third Amended Complaint.

4 20. Plaintiffs have standing to assert their claims because they suffer tangible  
5 harm from Reclamation's violations of law as alleged herein. Plaintiffs' interests in  
6 restoring water quality and quantity and dependent fish and wildlife species in the Bay-  
7 Delta and its tributary rivers and watershed will continue to be harmed by the massive  
8 diversions of public water permitted by the interim contracts and repayment contracts.  
9 The contracts' diversion and consumptive use of vast quantities of freshwater not only  
10 harm fish and wildlife directly through reduced freshwater flows in the Delta and  
11 entrainment at the pumping plants. The contracts also harm plaintiffs indirectly through  
12 the discharge of polluted return flows from the contractors' use of the diverted water for  
13 irrigation of contaminated soils in the southern and western San Joaquin Valley. A  
14 ruling from this Court requiring Reclamation to conduct a thorough environmental  
15 review of these impacts as required by NEPA and the CVPIA would redress plaintiffs'  
16 harms in several ways. First, Reclamation would be required to disclose and analyze the  
17 harms that the contracts cause to the Delta and its watershed and their fish and wildlife.  
18 Second, Reclamation would be ordered to evaluate less harmful alternatives and  
19 consider mitigation measures to avoid or reduce the harms that the contracts cause.  
20 Third, Reclamation would be ordered to comply with the environmental restrictions on  
21 its diversions of water from the Delta that are set forth in the CVPIA, thereby conferring  
22 environmental benefits, including protection of water quality and dependent fish and  
23 wildlife, on plaintiffs.

24 21. Plaintiffs have suffered and are suffering procedural injuries due to  
25 Reclamation's failure to fulfill its NEPA, CVPIA, and Reclamation Law duties. As  
26 explained in *Hall v. Norton*, "plaintiff[s] seeking to enforce a procedural requirement  
27 the disregard of which could impair a separate concrete interest of theirs, can establish  
28 standing without meeting all the normal standards for redressability and immediacy.

1 Instead, they need only establish the reasonable probability of the challenged action’s  
 2 threat to [their] concrete interest.” 266 F.3d 969, 975 (9th Cir. 2001) (quotation marks  
 3 and citations omitted); *see also Center for Food Safety v. Vilsack*, 636 F.3d 1166, 1172  
 4 (9th Cir. 2011) (“Once a plaintiff has established an injury in fact under NEPA, the  
 5 causation and redressability requirements are relaxed”). Plaintiffs’ interests in the  
 6 preservation and restoration of water quality and quantity and dependent fish and  
 7 wildlife species in the Bay-Delta and its watershed are just such “concrete interests.”  
 8 *Hall v. Norton*, 266 F.3d at 975.

9 22. Plaintiffs have associational standing because (1) their members would  
 10 have standing to sue in their own right to seek redress for the injuries outlined above;  
 11 (2) the interests at stake are germane to plaintiffs’ purposes, as detailed below; and (3)  
 12 neither the claims asserted nor the relief requested requires the participation of  
 13 plaintiffs’ members in this lawsuit. *Western Watersheds Proj. v. Kraayenbrink*, 632  
 14 F.2d 472, 482-485 (9th Cir. 2010).

15 23. Plaintiffs have exhausted available administrative remedies. Moreover, the  
 16 exhaustion requirement is inapplicable, because Reclamation had independent  
 17 knowledge of the legal defects described below, and because those defects are  
 18 procedural in nature. *‘Ilio‘ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1092-1093  
 19 (9th Cir. 2006).

20 **PARTIES**

21 24. Plaintiff NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit  
 22 unincorporated association with members throughout Northern California. NCRA was  
 23 formed for the purpose of protecting California’s rivers and their watersheds from the  
 24 adverse effects of excessive water diversions, ill-planned urban development, harmful  
 25 resource extraction, pollution, and other forms of degradation. Its members use and  
 26 enjoy California’s rivers and watersheds for recreational, aesthetic, scientific study, and  
 27 related non-consumptive uses. The interests of NCRA and its members have been, are  
 28 being, and unless the relief requested herein is granted, will be adversely affected and

1 injured by Reclamation’s approval of the interim contracts and repayment contracts (and  
2 its threatened future approvals of other repayment contracts) without proper NEPA  
3 review and CVPIA compliance, and by the contracts’ consequent unexamined and  
4 inadequately mitigated impacts on the environment.

5       25. Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN’S  
6 ASSOCIATIONS (“PCFFA”) is a non-profit, tax-exempt corporation which represents  
7 a coalition of 14 fishermen’s organizations in California, Oregon, and Washington with  
8 a combined membership of more than 750 fishing men and women. Each of its  
9 members depends on the ocean’s fishes for his or her livelihood. PCFFA has a vital and  
10 direct interest in Reclamation’s environmental review and management of the CVP  
11 because its operation directly affects water quality and quantity in the Central Valley  
12 and Bay-Delta and the health and population of anadromous fishes including salmon  
13 and steelhead on which PCFFA’s members rely for their sustainable harvest of the  
14 ocean’s fishes. The interests of PCFFA and its members have been, are being, and  
15 unless the relief requested herein is granted, will be adversely affected and injured by  
16 Reclamation’s approval of the interim contracts and repayment contracts (and its  
17 threatened future approvals of other repayment contracts) without proper NEPA review  
18 and CVPIA compliance, and by the contracts’ consequent unexamined and inadequately  
19 mitigated impacts on the environment.

20       26. Plaintiff SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
21 INC. (“Crab Boat Owners Association”) is a California corporation whose members rely  
22 on a sustainable harvest of crustaceans and fishes from San Francisco Bay and the  
23 Pacific Ocean for their livelihoods. The Crab Boat Owners Association has been  
24 protecting the rich seafood fisheries of San Francisco Bay and the Pacific Ocean since  
25 1913. The Crab Boat Owners Association’s members operate small, family-owned  
26 fishing boats that catch Dungeness crab, wild California king salmon, herring, and many  
27 other fish species that live in the cold waters of San Francisco Bay and the Pacific  
28 Ocean. Its members are also actively involved in community education, and fishing

1 resource advocacy to ensure that the rich heritage of commercial fishing for Bay Area  
2 residents will survive for future generations. The interests of the Crab Boat Owners  
3 Association and its members have been, are being, and unless the relief requested herein  
4 is granted, will be adversely affected and injured by Reclamation’s approval of the  
5 interim contracts and repayment contracts (and its threatened future approvals of other  
6 repayment contracts) without proper NEPA review and CVPIA compliance, and by the  
7 contracts’ consequent unexamined and inadequately mitigated impacts on the  
8 environment.

9       27. Plaintiff INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-  
10 profit public benefit corporation headquartered in San Francisco, California. Since  
11 1993, IFR has engaged in fishery research and conservation activities for working  
12 fishing men and women. IFR works on conservation projects and policy issues at the  
13 regional, national and international levels, with a particular focus on salmon protection  
14 and water diversions. The interests of IFR and its members have been, are being, and  
15 unless the relief requested herein is granted, will be adversely affected and injured by  
16 Reclamation’s approval of the interim contracts and repayment contracts (and its  
17 threatened future approvals of other repayment contracts) without proper NEPA review  
18 and CVPIA compliance, and by the contracts’ consequent unexamined and inadequately  
19 mitigated impacts on the environment.

20       28. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
21 (“CSPA”) is a non-profit corporation organized under the laws of the State of  
22 California. CSPA has thousands of members who reside and recreate throughout  
23 California. CSPA’s members are citizens who, in addition to being duly licensed sport  
24 fishing anglers, are interested in the preservation and enhancement of California’s  
25 public trust fishery resources and vigorous enforcement of California’s environmental  
26 laws. CSPA members have been involved for decades in public education and advocacy  
27 efforts to protect and restore the public trust resources of California’s rivers. CSPA  
28 members use California’s rivers and the Bay-Delta for recreation, scientific study and

1 aesthetic enjoyment. The interests of CSPA and its members have been, are being, and  
2 unless the relief requested herein is granted, will be adversely affected and injured by  
3 Reclamation’s approval of the interim contracts and repayment contracts (and its  
4 threatened future approvals of other repayment contracts) without proper NEPA review  
5 and CVPIA compliance, and by the contracts’ consequent unexamined and inadequately  
6 mitigated impacts on the environment.

7 29. Plaintiffs’ injuries are fairly tracable to Reclamation’s actions. These  
8 injuries are actual, concrete, and imminent and cannot be adequately remedied by  
9 money damages. Plaintiffs have no plain, speedy, or adequate remedy at law.  
10 Accordingly, plaintiffs seek injunctive, mandamus and declaratory relief from this Court  
11 to rectify Reclamation’s unlawful acts and thereby redress plaintiffs’ injuries.

12 30. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the  
13 agency of the United States charged with managing the CVP. The United States  
14 Department of the Interior approved the interim contracts and repayment contracts  
15 challenged in this action without compliance with NEPA, the CVPIA, and Reclamation  
16 Law.

17 31. Defendant UNITED STATES BUREAU OF RECLAMATION  
18 (individually, and also collectively with the United States Department of the Interior,  
19 “Reclamation”) is the federal agency within the United States Department of the Interior  
20 charged with managing the CVP. Reclamation approved the interim contracts and  
21 repayment contracts challenged in this action without compliance with NEPA, the  
22 CVPIA, and Reclamation Law.

23 32. Defendant CITY OF FOLSOM is a California public agency that  
24 contracted to receive up to 7,000 acre-feet of Municipal and Industrial (“M&I”) water  
25 service pursuant to a repayment contract executed with Reclamation on or about  
26 February 28, 2020, effective March 1, 2020.

27 33. Defendant CITY OF ROSEVILLE is a California public agency that  
28 contracted to receive up to 32,000 acre-feet of M&I water service pursuant to a

1 repayment contract executed with Reclamation on or about February 28, 2020, effective  
2 March 1, 2020.

3 34. Defendant PLACER COUNTY WATER AGENCY is a California public  
4 agency that contracted to receive up to 35,000 acre-feet of M&I water service pursuant  
5 to a repayment contract executed with Reclamation on or about February 28, 2020,  
6 effective March 1, 2020.

7 35. Defendant SACRAMENTO COUNTY WATER AGENCY is a California  
8 public agency that contracted to receive up to (15,000 and 30,000) acre-feet of M&I  
9 water service pursuant to a repayment contract executed with Reclamation on or about  
10 February 28, 2020, effective March 1, 2020.

11 36. Defendant SACRAMENTO MUNICIPAL UTILITY DISTRICT is a  
12 California public agency that contracted to receive up to 30,000 acre-feet of M&I water  
13 service pursuant to a repayment contract executed with Reclamation on or about  
14 February 28, 2020, effective March 1, 2020.

15 37. Defendant SAN JUAN WATER DISTRICT is a California public agency  
16 that contracted to receive up to 24,200 acre-feet of M&I water service pursuant to a  
17 repayment contract executed with Reclamation on or about February 28, 2020, effective  
18 March 1, 2020.

19 38. Defendant-Intervenor WESTLANDS WATER DISTRICT, together with  
20 its subsidiary entities Defendant WESTLANDS WATER DISTRICT DISTRIBUTION  
21 DISTRICT NO. 1, WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT  
22 NO. 2 , and WESTLANDS WATER DISTRICT FINANCING CORPORATION  
23 (collectively “Westlands”) are California public agencies that contracted to receive up  
24 to at least 1,150,000 acre-feet per year (“afy”), 27,000 afy, 2,500 afy, 2,990 afy, 4198  
25 afy, 4,000 afy, and 2,842 afy of Irrigation and M&I water service for the San Luis Unit  
26 and Delta Division and Facilities pursuant to repayment contracts executed with  
27 Reclamation on or about February 28, 2020, May 29, 2020, September 28, 2020, and  
28 October 22, 2020, with effective dates of June 1, 2020, October 1, 2020, and November



1 1, 2020. As of the filing of this Third Amended Complaint, Westlands' attempts to  
2 secure judgments of validation from the Fresno County Superior Court for these San  
3 Luis Unit repayment contracts have been rejected by the judges of that court.

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

8 40. Defendant CITY OF SHASTA LAKE is a California public agency that  
9 contracted to receive up to 4,400 acre-feet of M&I water service pursuant to a  
10 repayment contract executed with Reclamation on or about June 30, 2020, effective July  
11 1, 2020.

12 41. Defendant MOUNTAIN GATE COMMUNITY SERVICES DISTRICT is  
13 a California public agency that contracted to receive up to 1,350 acre-feet of M&I water  
14 service pursuant to a repayment contract executed with Reclamation on or about June  
15 30, 2020, effective July 1, 2020.

16 42. Defendant SHASTA COMMUNITY SERVICES DISTRICT is a California  
17 public agency that contracted to receive up to 1,000 acre-feet of M&I water service  
18 pursuant to a repayment contract executed with Reclamation on or about June 30, 2020,  
19 effective July 1, 2020.

20 43. Defendant SHASTA COUNTY WATER AGENCY is a California public  
21 agency that contracted to receive up to 1,022 acre-feet of M&I water service pursuant to  
22 a repayment contract executed with Reclamation on or about June 30, 2020, effective  
23 July 1, 2020.

24 44. Defendant CITY OF REDDING is a California public agency that  
25 contracted to receive up to 6,140 acre-feet of M&I water service pursuant to a  
26 repayment contract executed with Reclamation on or about August 11, 2020, effective  
27 September 1, 2020.

28 45. Defendant 4-M WATER DISTRICT is a California public agency that

1 contracted to receive up to 5,700 acre-feet of Irrigation and M&I water service pursuant  
2 to a repayment contract executed with Reclamation on or about September 15, 2020,  
3 effective November 1, 2020.

4 46. Defendant BELLA VISTA WATER DISTRICT is a California public  
5 agency that contracted to receive up to 24,578 acre-feet of Irrigation and M&I water  
6 service pursuant to a repayment contract executed with Reclamation on or about  
7 September 15, 2020, effective October 1, 2020.

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

12 48. Defendant CORNING WATER DISTRICT is a California public agency  
13 that contracted to receive up to 23,000 acre-feet of Irrigation and M&I water service  
14 pursuant to a repayment contract executed with Reclamation on or about September 15,  
15 2020, effective November 1, 2020.

16 49. Defendant CORTINA WATER DISTRICT is a California public agency  
17 that contracted to receive up to 1,700 acre-feet of Irrigation and M&I water service  
18 pursuant to a repayment contract executed with Reclamation on or about September 15,  
19 2020, effective November 1, 2020.

20 50. Defendant DUNNIGAN WATER DISTRICT is a California public agency  
21 that contracted to receive up to 19,000 acre-feet of Irrigation and M&I water service  
22 pursuant to a repayment contract executed with Reclamation on or about September 15,  
23 2020, effective November 1, 2020.

24 51. Defendant GLIDE WATER DISTRICT is a California public agency that  
25 contracted to receive up to 10,500 acre-feet of Irrigation and M&I water service  
26 pursuant to a repayment contract executed with Reclamation on or about September 15,  
27 2020, effective November 1, 2020.

28 52. Defendant KANAWHA WATER DISTRICT is a California public agency

1 that contracted to receive up to 45,000 acre-feet of Irrigation and M&I water service  
2 pursuant to a repayment contract executed with Reclamation on or about September 15,  
3 2020, effective November 1, 2020.

4 53. Defendant LA GRANDE WATER DISTRICT is a California public agency  
5 that contracted to receive up to (2,200 and 5,000) acre-feet of Irrigation and M&I water  
6 service pursuant to a repayment contract executed with Reclamation on or about  
7 September 15, 2020, effective November 1, 2020.

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

12 55. Defendant CENTERVILLE COMMUNITY SERVICES DISTRICT is a  
13 California public agency that contracted to receive up to 2,900 acre-feet of M&I water  
14 service pursuant to a repayment contract executed with Reclamation on or about  
15 September 28, 2020, effective November 1, 2020.

16 56. Defendant CENTRAL SAN JOAQUIN WATER CONSERVATION  
17 DISTRICT is a California public agency that contracted to receive up to 80,000  
18 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed  
19 with Reclamation on or about September 28, 2020, effective November 1, 2020.

20 57. Defendant DAVIS WATER DISTRICT is a California public agency that  
21 contracted to receive up to 4,000 acre-feet of Irrigation and M&I water service pursuant  
22 to a repayment contract executed with Reclamation on or about September 28, 2020,  
23 effective November 1, 2020.

24 58. Defendant DEL PUERTO WATER DISTRICT is a California public  
25 agency that contracted to receive up to 140,210 acre-feet of Irrigation and M&I water  
26 service pursuant to a repayment contract executed with Reclamation on or about  
27 September 28, 2020, effective October 1, 2020.

28 59. Defendant GLENN VALLEY WATER DISTRICT is a California public

1 agency that contracted to receive up to 1,730 acre-feet of Irrigation and M&I water  
2 service pursuant to a repayment contract executed with Reclamation on or about  
3 September 28, 2020, effective November 1, 2020.

4 60. Defendant MYERS-MARSH MUTUAL WATER COMPANY is a mutual  
5 water company organized under California law that contracted to receive up to 255  
6 acre-feet of Irrigation and M&I water service pursuant to a repayment contract executed  
7 with Reclamation on or about September 28, 2020, effective November 1, 2020.

8 61. Defendant ORLAND-ARTOIS WATER DISTRICT is a California public  
9 agency that contracted to receive up to 53,000 acre-feet of Irrigation and M&I water  
10 service pursuant to a repayment contract executed with Reclamation on or about  
11 September 28, 2020, effective November 1, 2020.

12 62. Defendant STOCKTON EAST WATER DISTRICT is a California public  
13 agency that contracted to receive up to 75,000 acre-feet of Irrigation and M&I water  
14 service pursuant to a repayment contract executed with Reclamation on or about  
15 September 28, 2020, effective October 1, 2020.

16 63. Defendant WESTSIDE WATER DISTRICT is a California public agency  
17 that contracted to receive up to 65,000 acre-feet of Irrigation and M&I water service  
18 pursuant to a repayment contract executed with Reclamation on or about September 28,  
19 2020, effective November 1, 2020.

20 64. Defendant BANTA-CARBONA IRRIGATION DISTRICT is a California  
21 public agency that contracted to receive up to 20,000 acre-feet of Irrigation and M&I  
22 water service pursuant to a repayment contract executed with Reclamation on or about  
23 October 22, 2020, effective November 1, 2020.

24 65. Defendant BYRON BETHANY IRRIGATION DISTRICT is a California  
25 public agency that contracted to receive up to 20,600 acre-feet of Irrigation and M&I  
26 water service pursuant to a repayment contract executed with Reclamation on or about  
27 October 22, 2020, effective November 1, 2020.

28 66. Defendant EAGLE FIELD WATER DISTRICT is a California public

1 agency that contracted to receive up to 4,550 acre-feet of Irrigation and M&I water  
2 service pursuant to a repayment contract executed with Reclamation on or about  
3 October 22, 2020, effective November 1, 2020.

4 67. Defendant FRESNO SLOUGH WATER DISTRICT is a California public  
5 agency that contracted to receive up to 4,000 acre-feet of Irrigation and M&I water  
6 service pursuant to a repayment contract executed with Reclamation on or about  
7 October 22, 2020, effective November 1, 2020.

8 68. Defendant HOLTHOUSE WATER DISTRICT is a California public  
9 agency that contracted to receive up to 2,450 acre-feet of Irrigation and M&I water  
10 service pursuant to a repayment contract executed with Reclamation on or about  
11 October 22, 2020, effective November 1, 2020.

12 69. Defendant JAMES IRRIGATION DISTRICT is a California public agency  
13 that contracted to receive up to 35,300 acre-feet of Irrigation and M&I water service  
14 pursuant to a repayment contract executed with Reclamation on or about October 22,  
15 2020, effective November 1, 2020.

16 70. Defendant SANTA CLARA VALLEY WATER DISTRICT is a California  
17 public agency that contracted to receive up to 152,500 acre-feet and an additional  
18 unknown quantity of Irrigation and M&I water service pursuant to a repayment contract  
19 executed with Reclamation on or about October 22, 2020, effective November 1, 2020.

20 71. Defendant PROBERTA WATER DISTRICT is a California public agency  
21 that contracted to receive up to 3,500 acre-feet of Irrigation and M&I water service  
22 pursuant to a repayment contract executed with Reclamation on or about October 22,  
23 2020, effective November 1, 2020.

24 72. Defendant RECLAMATION DISTRICT 1606 is a California public  
25 agency that contracted to receive up to 228 acre-feet of Irrigation and M&I water  
26 service pursuant to a repayment contract executed with Reclamation on or about  
27 October 22, 2020, effective November 1, 2020.

28 73. Defendant THE WEST SIDE IRRIGATION DISTRICT is a California

1 public agency that contracted to receive up to 5,000 acre-feet of Irrigation and M&I  
2 water service pursuant to a repayment contract executed with Reclamation on or about  
3 October 22, 2020, effective November 1, 2020.

4 74. Defendant TRANQUILITY IRRIGATION DISTRICT is a California  
5 public agency that contracted to receive up to 13,800 acre-feet of Irrigation and M&I  
6 water service pursuant to a repayment contract executed with Reclamation on or about  
7 October 22, 2020, effective November 1, 2020.

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

12 76. Defendant PATTERSON IRRIGATION DISTRICT is a California public  
13 agency that contracted to receive up to 16,500 acre-feet of Irrigation and M&I water  
14 service pursuant to a repayment contract executed with Reclamation on or about  
15 October 26, 2020, effective November 1, 2020.

16 77. Defendant TRANQUILITY PUBLIC UTILITY DISTRICT is a California  
17 public agency that contracted to receive up to 70 acre-feet of Irrigation and M&I water  
18 service pursuant to a repayment contract executed with Reclamation on or about  
19 October 26, 2020, effective November 1, 2020.

20 78. Defendant CLEAR CREEK COMMUNITY SERVICES DISTRICT is a  
21 California public agency that contracted to receive up to 15,300 acre-feet of Irrigation  
22 and M&I water service pursuant to a repayment contract executed with Reclamation on  
23 or about November 17, 2020, effective December 1, 2020.

24 79. Defendant CONTRA COSTA WATER DISTRICT is a California public  
25 agency that contracted to receive up to 195,000 acre-feet of M&I water service pursuant  
26 to a repayment contract executed with Reclamation on December 28, 2020, effective  
27 January 1, 2021.

28 80. Defendant PACHECO WATER DISTRICT is a California public agency

1 that contracted to receive up to 10,080 acre-feet of Irrigation and M&I water service  
2 pursuant to a repayment contract executed with Reclamation on December 28, 2020,  
3 effective January 1, 2021.

4 81. Defendant COUNTY OF COLUSA is a California public agency that  
5 contracted to receive up to 20,000 acre-feet of Irrigation and M&I water service  
6 pursuant to a repayment contract executed with Reclamation on or about January 14,  
7 2021, effective February 1, 2021.

8 82. Defendant EL DORADO IRRIGATION DISTRICT is a California public  
9 agency that contracted to receive up to 7,550 acre-feet of M&I water service pursuant to  
10 a repayment contract executed with Reclamation on or about January 14, 2021, effective  
11 March 1, 2021.

12 83. Defendant CITY OF AVENAL is a California public agency that  
13 contracted to receive up to 3,500 acre-feet of M&I water service pursuant to a  
14 repayment contract executed with Reclamation on or about January 22, 2021, effective  
15 February 1, 2021.

16 84. Defendant CITY OF COALINGA is a California public agency that  
17 contracted to receive up to 10,000 acre-feet of M&I water service pursuant to a  
18 repayment contract executed with Reclamation on or about January 22, 2021, effective  
19 February 1, 2021.

20 85. Defendant CITY OF HURON is a California public agency that contracted  
21 to receive up to 3,000 acre-feet of M&I water service pursuant to a repayment contract  
22 executed with Reclamation on or about January 22, 2021, effective February 1, 2021.

23 86. Defendant SAN BENITO COUNTY WATER DISTRICT is a California  
24 public agency that contracted to receive up to 43,800 acre-feet of Irrigation and M&I  
25 water service pursuant to a repayment contract executed with Reclamation on or about  
26 January 22, 2021, effective February 1, 2021.

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

1           88. Defendant CITY OF LINDSAY is a California public agency that  
2 contracted to receive up to 2,500 acre-feet of M&I water service, and which has sought  
3 to enter into a repayment contract with Reclamation. As of the filing of this Third  
4 Amended Complaint, the repayment contract has not been finalized and made available  
5 on Reclamation's website.

6           89. Defendant CITY OF ORANGE COVE is a California public agency that  
7 contracted to receive up to 1,400 acre-feet of M&I water service, and which has sought  
8 to enter into a repayment contract with Reclamation. As of the filing of this Third  
9 Amended Complaint, the repayment contract has not been finalized and made available  
10 on Reclamation's website.

11           90. Defendant CITY OF TRACY is a California public agency that contracted  
12 to receive up to 20,000 acre-feet of Irrigation and M&I water service, and which has  
13 sought to enter into a repayment contract with Reclamation. As of the filing of this  
14 Third Amended Complaint, the repayment contract has not been finalized and made  
15 available on Reclamation's website.

16           91. Defendant COUNTY OF FRESNO is a California public agency that  
17 contracted to receive an unknown quantity of water service, and which has sought to  
18 enter into a repayment contract with Reclamation. As of the filing of this Third  
19 Amended Complaint, the repayment contract has not been finalized and made available  
20 on Reclamation's website.

21           92. Defendant COUNTY OF MADERA is a California public agency that  
22 contracted with Reclamation to receive up to 200 acre-feet of M&I water service.

23           93. Defendant COUNTY OF TULARE is a California public agency that  
24 contracted to receive up to 5,308 acre-feet of Irrigation and M&I water service, and  
25 which has sought to enter into a repayment contract with Reclamation. As of the filing  
26 of this Third Amended Complaint, the repayment contract has not been finalized and  
27 made available on Reclamation's website. .

28           94. Defendant HILLS VALLEY IRRIGATION DISTRICT is a California



1 public agency that contracted to receive up to 3,346 acre-feet of Irrigation and M&I  
2 water service pursuant to a repayment contract executed with Reclamation on or about  
3 October 14, 2021, effective November 1, 2021.

4 95. Defendant INTERNATIONAL WATER DISTRICT is a California public  
5 agency that contracted to receive up to 1,200 acre-feet of Irrigation and M&I water  
6 service, and which has sought to enter into a repayment contract with Reclamation. As  
7 of the filing of this Third Amended Complaint, the repayment contract has not been  
8 finalized and made available on Reclamation's website. .

9 96. Defendant KERN-TULARE WATER DISTRICT is a California public  
10 agency that contracted to receive up to (13,300 and 40,000) acre-feet of Irrigation and  
11 M&I water service pursuant to a repayment contract executed with Reclamation on or  
12 about October 14, 2021, effective November 1, 2021.

13 97. Defendant LAGUNA WATER DISTRICT is a California public agency  
14 that contracted to receive up to 800 acre-feet of Irrigation and M&I water service, and  
15 which has sought to enter into a repayment contract with Reclamation. As of the filing  
16 of this Third Amended Complaint, the repayment contract has not been finalized and  
17 made available on Reclamation's website.

18 98. Defendant LOWER TULE RIVER IRRIGATION DISTRICT is a  
19 California public agency that contracted to receive up to 31,102 acre-feet of Irrigation  
20 and M&I water service pursuant to a repayment contract executed with Reclamation on  
21 or about October 14, 2021, effective November 1, 2021.

22 99. Defendant PIXLEY IRRIGATION DISTRICT is a California public  
23 agency that contracted to receive up to 31,102 acre-feet of Irrigation water service  
24 pursuant to a repayment contract executed with Reclamation on or about October 14,  
25 2021, effective November 1, 2021.

26 100. Defendant THE COELHO FAMILY TRUST is a private trust that  
27 contracted to receive up to 2,080 acre-feet of Irrigation and M&I water service, and  
28 which has sought to enter into a repayment contract with Reclamation. As of the filing

1 of this Third Amended Complaint, the repayment contract has not been finalized and  
2 made available on Reclamation’s website.

3 101. Defendant TRI VALLEY WATER DISTRICT is a California public  
4 agency that contracted to receive up to 1,142 acre-feet of Irrigation and M&I water  
5 service, and which has sought to enter into a repayment contract with Reclamation. As  
6 of the filing of this Third Amended Complaint, the repayment contract has not been  
7 finalized and made available on Reclamation’s website.

8 102. Defendant-Intervenor SAN LUIS WATER DISTRICT (“San Luis”)  
9 intervened as of right in this action in 2016. San Luis is a California public agency that  
10 contracted to receive up to 125,080 acre-feet of Irrigation and M&I water service  
11 pursuant to a repayment contract executed with Reclamation on or about December 18,  
12 2020, effective January 1, 2021.

13 103. Defendant-Intervenor PANOCHE WATER DISTRICT intervened as of  
14 right in this action in 2016, and is a California public agency that contracted to receive  
15 up to 94,000 acre-feet of Irrigation and M&I water service pursuant to a repayment  
16 contract executed with Reclamation on or about January 14, 2021, effective July 1,  
17 2021.

18 104. Defendant-Intervenors Westlands Water District (“Westlands”), San Luis  
19 Water District (“San Luis”) and Panoche Water District (“Panoche”) (collectively  
20 “Intervenors”) are parties to repayment contracts that Reclamation approved without  
21 compliance with NEPA, the CVPIA and Reclamation Law.

## 22 **BACKGROUND**

### 23 **I. Environmental Setting**

24 105. As a result of widespread habitat degradation caused by the construction  
25 and operation of dams on nearly all major California rivers flowing into the Delta,  
26 including many dams built and managed by Reclamation such as Shasta Dam on the  
27 Sacramento River, Folsom Dam on the American River, and Friant Dam on the San  
28 Joaquin River, anadromous and other imperiled fishes dependent on the Delta and its

1 tributaries have suffered severe population declines. The Sacramento River winter and  
2 spring run Chinook salmon, Central Valley steelhead, North American green sturgeon  
3 and Delta smelt, for example, have been driven perilously close to extinction. Winter  
4 run Chinook salmon were initially listed as a federally threatened species in 1990 (55  
5 Fed.Reg. 46515), and then due to continuing losses in population, declared endangered  
6 in 2005 (70 Fed.Reg. 37160). Their critical habitat in the Sacramento River and its  
7 tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run Chinook salmon  
8 were listed as threatened, and their critical habitat designated, in 2005. 70 Fed. Reg.  
9 37160, 52488. Central Valley steelhead were listed as threatened in 2000 (65 Fed.Reg.  
10 52084) and their critical habitat was designated in 2005 (70 Fed.Reg. 52488). The  
11 Southern Distinct Population Segment (“DPS”) of North American green sturgeon was  
12 listed as threatened in 2006 (71 Fed.Reg. 17757) and their critical habitat was  
13 designated in 2008 (73 Fed.Reg. 52084). Delta smelt were listed as endangered in 1993  
14 (58 Fed.Reg. 12854) and their critical habitat was designated in 1994 (59 Fed.Reg.  
15 65256). Many species of fish indigenous to the Delta have already gone extinct; just 12  
16 indigenous species remain. Habitat for the Sacramento River winter and spring run  
17 Chinook salmon, Central Valley steelhead, Southern DPS of the green sturgeon, and the  
18 Delta smelt has been increasingly degraded over the last several decades by excessive  
19 Delta water exports by the CVP and the State Water Project (“SWP”). Those exports  
20 decrease freshwater flows, and increase salinity and the concentration of herbicides,  
21 pesticides and toxic agricultural runoff, in Central Valley water bodies including the  
22 Delta.

23 106. On June 4, 2009, pursuant to its consultation duties under section 7 of the  
24 Endangered Species Act (“ESA”), 16 U.S.C. section 1536, the National Marine  
25 Fisheries Service (“NMFS”) informed Reclamation that:

26 Based on the best available scientific and commercial information, NMFS’  
27 final [Biological] Opinion concludes that the CVP/SWP operations are  
28 *likely to jeopardize* the continued existence of Federally listed:

- 1 • Endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus*
  - 2 *tshawytscha*),
  - 3 • Threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*),
  - 4 • Threatened Central Valley steelhead (*O. mykiss*),
  - 5 • Threatened Southern Distinct Population Segment (DPS) of North
  - 6 American green sturgeon (*Acipenser medirostris*), and
  - 7 • Southern Resident killer whales (*Orcinus orca*) [who feed on the salmon].
- 8 NMFS also concludes that the proposed action is *likely to destroy or*
- 9 *adversely modify* the designated critical habitats of:
- 10 • Central Valley spring-run Chinook salmon,
  - 11 • Central Valley spring-run Chinook salmon, and
  - 12 • Central Valley steelhead, and
  - 13 • proposed critical habitat for the Southern DPS of North American green
  - 14 sturgeon.

15 NMFS' letter to defendant Reclamation transmitting final Biological Opinion on

16 CVP/SWP operations dated June 4, 2009, at pages 1-2 (emphasis added).

17 107. On December 15, 2008, pursuant to its consultation duties under section 7

18 of the ESA, the United States Fish and Wildlife Service ("FWS") informed Reclamation

19 that "the coordinated operations of the CVP and SWP, as proposed, are *likely to*

20 *jeopardize the continued existence of the delta smelt.*" FWS Biological Opinion on

21 Proposed Coordinated Operations of the CVP and SWP, dated December 15, 2008, at

22 page 276 (emphasis added). FWS further concluded that coordinated operation of the

23 CVP and SWP is "likely to adversely modify delta smelt critical habitat." *Id.* at 278.

24 108. The Sacramento River winter and spring run Chinook salmon, Central

25 Valley steelhead, Southern DPS of the green sturgeon and Delta smelt are all indicator

26 species for the health of the San Francisco Bay-Delta ecosystem and for the other

27 special status-fish species that inhabit this fragile estuary such as the Sacramento

28 splittail, longfin smelt and white sturgeon. These species are harmed by Reclamation's

1 continuing failure to conduct a meaningful analysis of the environmental impacts of the  
2 CVP's interim water contracts, and to conduct any environmental analysis at all of the  
3 repayment contracts approved on or after February 28, 2020, and of other, similar  
4 repayment contracts that Reclamation is threatening to approve. All of these species  
5 depend on clean, cold and plentiful freshwater flows through the Delta from its  
6 tributaries. Reclamation's diversions of staggering quantities of water from the Delta  
7 for consumptive use by Westlands and other water contractors by means of these  
8 interim contracts and repayment contracts is depriving these fishes of the clean, cold  
9 and abundant freshwater flows they require to survive and recover their ecological  
10 health.

11 109. The environmental harm caused by Reclamation's water diversions from  
12 the Delta is not limited to the direct loss of clean, cold water from the Delta.  
13 Reclamation's water diversions also harm the environment through their contaminated  
14 agricultural return flows back to the Delta. When the CVP water delivered by  
15 Reclamation is used for irrigation, it passes through the topsoil and enters the  
16 groundwater, which then flows down gradient toward the Delta. Much of this soil,  
17 particularly in the southern and western San Joaquin Valley, is heavily contaminated  
18 with selenium and other pollutants, many of which occur naturally in these soils. As  
19 this irrigation water passes below the surface, it leaches pollutants from the soil and  
20 carries those pollutants into ground and surface waters in the San Joaquin Valley. The  
21 contaminated subsurface and surface drainage water discharges pollutants including  
22 selenium, arsenic, boron, mercury, uranium, chromium, molybdenum and sodium  
23 sulfates into Central Valley rivers and ultimately the Delta. This pollution degrades the  
24 Delta's water quality and exacerbates the existing threats to its endangered and  
25 threatened fish species, including the Delta smelt, salmon, steelhead, and sturgeon. The  
26 contractors' polluted discharge is also drawn into drinking water supplies through the  
27 CVP and SWP, thereby degrading drinking water for 20 million Californians.

28 110. Reclamation's water deliveries also harm several imperiled terrestrial

1 species, including the California least tern and the giant garter snake. FWS concluded  
2 in its Biological Opinion for the 2016 interim contracts that “the proposed project may  
3 affect, and is likely to adversely affect the California least tern and giant garter snake.”  
4 Appendix C to Revised EA at 1. FWS concluded that both the California least tern and  
5 the giant garter snake are likely to be harmed by exposure to polluted drainwater from  
6 agricultural users. *Id.* at 19, 21. While FWS stated that the least tern population in the  
7 area “is expected to be low,” FWS also stated that it “anticipate[s] biological effects  
8 similar to those observed at Kesterson Reservoir in the 1980s could occur to least terns  
9 if exposed to drainage water originating from [Westlands Water District].” *Id.* at 19.  
10 Kesterson received drainage water containing high levels of selenium, and as a result  
11 “[a]bout 40 percent of nests of ducks and other waterbirds contained one or more dead  
12 or deformed embryos and four species of waterbirds . . . *experienced complete*  
13 *reproductive failure.*” *Id.* (emphasis added).

## 14 II. CVPIA

15 111. The CVPIA was enacted by Congress on October 30, 1992, for the express  
16 purpose of ameliorating the adverse environmental impacts that result from CVP  
17 operations. CVPIA, *supra*, §§ 3402(a)-(b), 3406(b). In order “[t]o address impacts of  
18 the Central Valley Project on fish, wildlife and associated habitat,” the CVPIA requires  
19 “appropriate environmental review” under NEPA – which in this case means  
20 preparation of an environmental impact Statement (“EIS”) – before any long-term water  
21 service or repayment contracts can be renewed by Reclamation. CVPIA §§ 3402(a),  
22 3404(c)(1).

23 112. The CVPIA directed that Reclamation was to protect the fish and wildlife  
24 in the Delta and its tributary rivers to assure a doubling *by 2002* of the Central Valley’s  
25 average anadromous fisheries populations during the baseline period of 1967-1991.  
26 CVPIA § 3406(b)(1). This fish doubling goal was never met.

27 113. Despite the fact that Congress enacted the CVPIA nearly 30 years ago,  
28 Reclamation never completed its required NEPA review of the long-term contracts.

1 Instead, it has repeatedly issued short-term, interim contract renewals devoid of  
2 adequate environmental review in a series of nearly identical, essentially meaningless  
3 EAs that ignore these interim contracts’ significant cumulative environmental impacts,  
4 prompting plaintiffs’ filing of this action.

5 **III. Short-Term Contract EAs**

6 114. The short-term, interim contracts were authorized by the CVPIA to bridge  
7 the gap between expiration of the initial long-term contracts and completion of  
8 comprehensive environmental review for, and finalization of, the subsequent,  
9 discretionary, long-term contracts. The informed approval – or disapproval – of these  
10 subsequent short-term, interim contracts is expressly within the discretion of  
11 Reclamation. CVPIA § 3404(c)(1). Specifically, the CVPIA distinguishes between the  
12 initial renewals, which “shall” be granted upon request, and the subsequent, interim  
13 contracts, which “may” be approved:

14 (c) Renewal of Existing Long-Term Contracts. – Notwithstanding the provisions  
15 of the Act of July 2, 1956 (70 Stat. 483), the Secretary *shall*, upon request, renew  
16 any existing long-term repayment or water service contract for the delivery of  
17 water from the Central Valley Project for a period of 25 years and *may* renew  
18 such contracts for successive periods of up to 25 years each.

19 (1) No such renewals shall be authorized until appropriate environmental  
20 review, including the preparation of the environmental impact statement  
21 required in section 3409 of this title, has been completed. Contracts which  
22 expire prior to the completion of the environmental impact statement  
23 required by section 3409 *may be renewed for an interim period* not to  
24 exceed three years in length, and for successive interim periods of not more  
25 than two years in length, until the environmental impact statement required  
26 by section 3409 has been finally completed, at which time such interim  
27 renewal contracts shall be eligible for long-term renewal as provided  
28 above. . . .

1 CVPIA § 3404(c)(1) (emphasis added). Thus, under the CVPIA’s plain language,  
2 Reclamation lacks discretion to disapprove the initial long-term contract renewals, but  
3 retains full discretion to disapprove or alter the interim contracts, which “*may be*  
4 renewed for an interim period.” *Id.* (emphasis added). The Ninth Circuit adopted this  
5 interpretation of the CVPIA when it issued an Amended Memorandum of Decision in  
6 *Pacific Coast Federation of Fishermen’s Associations v. United States Department of*  
7 *Interior (“PCFFA”),* 655 Fed. Appx. 595, 598 (9th Cir. 2016).

8 115. As it had done previously for earlier interim contracts, on or about  
9 February 29, 2016, Reclamation issued another, similar FONSI and EA for the 2016  
10 renewal contracts with the water contractors. Based on that FONSI and EA,  
11 Reclamation approved the six interim contracts initially challenged in this action,  
12 involving water deliveries to the Pajaro Valley Water Management Agency, Santa Clara  
13 Valley Water District, and Westlands Water District.

14 116. On March 4, 2016, plaintiffs filed a Complaint for Declaratory and  
15 Injunctive Relief, challenging Reclamation’s issuance of the 2016 FONSI and EA.

16 117. On July 25, 2016, the Ninth Circuit Court of Appeals issued an Amended  
17 Memorandum of Decision in *PCFFA*. The Ninth Circuit determined that Reclamation’s  
18 prior EA did not comply with NEPA because (1) the EA used an improper no action  
19 alternative, (2) the agency abused its discretion in failing “to give full and meaningful  
20 consideration to the alternative of a reduction in maximum interim contract water  
21 quantities,” and (3) “the agency did not adequately explain why it eliminated this  
22 alternative from detailed study.” *PCFFA*, 655 Fed. Appx. at 598, 599 (quote).

23 118. On August 2, 2016, defendants filed a Motion for Voluntary Remand to  
24 prepare a new EA in light of the Ninth Circuit’s decision in *PCFFA*. ECF No. 28. In  
25 response, on December 16, 2016, District Judge Lawrence O’Neill issued an Order  
26 granting defendants’ Request for Voluntary Remand Without Vacatur, stayed all  
27 proceedings, and retained jurisdiction over this matter. ECF No. 52.

28 119. In March 2017, Reclamation released a Revised Draft EA.



1 120. Plaintiffs submitted timely comments regarding the sufficiency of the  
2 Revised Draft EA by letter to Reclamation dated April 6, 2017.

3 121. On or about May 31, 2017, Reclamation released its Final Revised 2016  
4 EA and FONSI (“2016 EA and FONSI”) for the Project.

5 122. In its 2016 EA and FONSI, Reclamation failed to address the  
6 environmental consequences of the pivotal choices before it, namely: whether or not to  
7 provide the contractors with water, and if so, in what quantities. Although the 2016 EA  
8 states that an alternative of halting water deliveries could have “beneficial effects to  
9 biological resources, including listed species and/or their associated habitat,” it fails to  
10 provide *any* detail about the magnitude or consequence of these “beneficial effects.”  
11 2016 EA 29, 44. In comparing the impacts of contract renewal verses the no-action  
12 alternative, the 2016 EA illogically assumes that under either scenario, Reclamation  
13 would in most circumstances continue to deliver the *same* amount of water to CVP  
14 contractors in the south-of-Delta region, and would operate the CVP at the *same* rate of  
15 pumping. While the 2016 EA concedes that in some years, the operations would differ,  
16 it fails to examine the circumstances or environmental consequences of those differing  
17 operations – and thus it fails to present a true comparison of the action and no-action  
18 alternatives. 2016 EA 11.

19 123. The 2016 EA lacks any substantive analysis of the interim contracts’  
20 impacts on the giant garter snake and the California least tern, despite the fact that FWS  
21 concluded that approval of the interim contracts is *likely* to adversely affect these  
22 species. *Compare* 2016 EA 31 (no mention of either species under the EA’s “Migratory  
23 Birds” and “Federally-listed Species” headings addressing environmental consequences  
24 of Project approval) *with* the FWS’ February 29, 2016 Biological Opinion (i.e., 2016  
25 EA Appendix C) at 1 (“the proposed project may affect, and is likely to adversely affect  
26 the California least tern and giant garter snake”).

27 124. The 2016 EA fails to study in detail a reduced contract quantity alternative,  
28 and fails to use a water needs assessment “for which the data remain accurate” to

1 determine whether such an alternative is appropriate. *PCFFA*, 655 Fed. Appx. at 600-  
2 601. In the 2016 EA, Reclamation provided a water needs assessment that showed that  
3 for the most recent water year with available data, Westlands Water District had a 6%  
4 water surplus despite receiving just an 80% allocation. Ignoring this *actual surplus*,  
5 Reclamation's Revised EA dismissed a reduced contract quantity alternative from  
6 detailed consideration because the speculative water needs *projections for over 30 years*  
7 *hence* – in 2050 and 2051 – showed unmet demand. 2016 EA 13-1-6. But the reduced  
8 contract quantity alternative should have been given full consideration, in light of the  
9 fact that Westlands was enjoying a water surplus even when its supply was curtailed by  
10 20 percent.

11 125. The Revised EA erroneously limits its “Study Area” of the impacts of the  
12 interim contracts to their delivery or service areas. In doing so, Reclamation ignored the  
13 interim contracts' principal environmental impacts. Those impacts take place in the  
14 water bodies that are upstream of the CVP's diversions of water from the Delta. They  
15 include manipulation of the reservoir levels and releases, and timing and quantity of  
16 those releases and resulting downstream river flows, of the CVP's tributary watersheds:  
17 the American, Trinity, Sacramento and San Joaquin rivers. They also necessarily  
18 include the environmental effects of those reservoir level and release manipulations on  
19 their downstream rivers, and on the Delta into which they flow, and on the imperiled  
20 fish and wildlife of these inextricably intertwined lake, river and delta ecosystems.  
21 They also include the direct and indirect effects of Reclamation's diversions of water  
22 from the Delta and from its tributaries including the Sacramento, American and San  
23 Joaquin rivers, on the Delta into which those tributaries flow.

24 126. On or about November 14, 2019, Reclamation circulated a draft EA for the  
25 latest round of interim contracts. Plaintiffs submitted timely comments on the  
26 sufficiency of this draft EA on or about December 14, 2019.

27 127. On or about February 24, 2020, Reclamation issued the Final 2020 EA and  
28 FONSI for the latest round of interim contracts. The 2020 EA and FONSI are

1 substantially similar to the previous, 2016 versions, and thus repeat their deficiencies as  
2 detailed above.

3 **IV. Long-Term Contract Environmental Review**

4 128. The CVPIA required Reclamation to expeditiously conduct comprehensive  
5 environmental review of the long-term contract renewals. The CVPIA recognizes that  
6 the “direct and indirect [environmental] impacts and benefits” of its water diversion and  
7 delivery contracts extend throughout “the Sacramento, San Joaquin, and Trinity River  
8 basins and the San Francisco Bay/Sacramento-San Joaquin River Delta Estuary.” It  
9 states:

10 Not later than three years after the date of enactment of this title [in 1992],  
11 the Secretary shall prepare and complete a programmatic environmental  
12 impact statement pursuant to the National Environmental Policy Act  
13 analyzing the direct and indirect impacts and benefits of implementing this  
14 title, including all fish, wildlife, and habitat restoration actions and the  
15 potential renewal of all existing Central Valley Project water contracts.

16 Such statement shall consider impacts and benefits within the Sacramento,  
17 San Joaquin, and Trinity River basins, and the San Francisco  
18 Bay/Sacramento-San Joaquin River Delta Estuary.

19  
20 CVPIA § 3409. The CVPIA expressly requires Reclamation to undertake “appropriate  
21 environmental review” before entering into any long-term contract renewals. CVPIA §  
22 3404(c)(1).

23 129. Reclamation completed a Programmatic Environmental Impact Statement  
24 (“PEIS”) in October 1999, four years after the required statutory deadline. In it,  
25 Reclamation generally reviewed the broad, overarching impacts of implementing  
26 various aspects of the CVPIA on a regional level. However, because its programmatic  
27 review did not address the project-level, site- and contract-specific environmental  
28 impacts of the long-term contracts, the “appropriate environmental review” required

1 under the CVPIA and NEPA for these project-level long-term contracts required  
2 preparation of an EIS. In recognition of this legal requirement, Reclamation began the  
3 process of preparing project-level EISs for specific long-term contract renewals.  
4 Accordingly, in September 2005, Reclamation prepared and released a Draft EIS for its  
5 anticipated long-term contract renewals for the West San Joaquin Division and San Luis  
6 Unit contractors.

7 130. However, that NEPA review was never completed. Since 2005,  
8 Reclamation's environmental review of the long-term contracts has stalled, despite  
9 Congress' requirement that Reclamation conduct "appropriate environmental review"  
10 for the long-term contracts in an expeditious manner. CVPIA § 3404(c)(1). Instead,  
11 Reclamation has evaded this mandated review by relying for decades on interim  
12 contracts such as the 2016 and 2020 interim contracts previously and currently  
13 challenged in this action.

#### 14 **V. The WIIN Act**

15 131. The Water Infrastructure Improvements for the Nation Act ("WIIN Act"),  
16 Pub. L. 114-322, 130 Stat 1628, was enacted December 16, 2016, and expires on  
17 December 16, 2021.

18 132. The WIIN Act allows water contractors with existing water service  
19 contracts to request conversion of those contracts to repayment contracts. WIIN Act §  
20 4011. It states that "[u]pon request of the contractor, the Secretary of the Interior shall  
21 convert any water service contract in effect on the date of enactment . . . under mutually  
22 agreeable terms and conditions."

23 133. In order to convert water service contracts into repayment contracts, water  
24 contractors must pay Reclamation the "remaining construction costs identified in water  
25 project specific irrigation rate repayment schedules, as adjusted to reflect payment not  
26 reflected in such schedules . . . such amount to be discounted by 1/2 the Treasury rate"  
27 under an accelerated time-table. WIIN Act § 4011(a)(2)(A).

28 134. The WIIN Act provides:

1 Upon a contractor's compliance with and discharge of the obligation of  
2 repayment of the construction costs pursuant to a contract entered into  
3 pursuant to subsection (a)(2)(A), subsections (a) and (b) of section 213 of  
4 the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected  
5 lands.

6 WIIN Act § 4011(c)(1). Subsections (a) and (b) of section 213 of the Reclamation  
7 Reform Act of 1982 relieve the contractor of the "ownership and full cost pricing  
8 limitations" of Federal reclamation law. 43 U.S.C. § 390mm(a) and (b) (Public law 97-  
9 293, October 12, 1982 (96 Stat 1269). In other words, upon repayment, the WIIN Act  
10 removes the acreage and full cost pricing limitations that would otherwise apply to land  
11 within the water contractors' service areas. *Id.*

12 135. Absent the WIIN Act, water contractors could not make "lump sum or  
13 accelerated repayment of construction costs" in order to remove the acreage or full cost  
14 pricing limitations. 43 U.S.C. § 390mm.

15 136. Removal of the acreage and full cost pricing limitations that would  
16 otherwise apply allows individual landowners within the service area to apply CVP  
17 water to more land at lower cost. This change enables these users to increase the  
18 acreage of lands that are served by (and thus dependent upon) CVP deliveries, and  
19 thereby increases the impact of the delivery of CVP water by expanding the acreage of  
20 irrigated lands that generate and discharge contaminated irrigation return flows, among  
21 other impacts, and induces additional demand for CVP water.

22 137. The WIIN Act provides that the obligations of the CVPIA continue to  
23 apply to Reclamation's actions, with the sole exception for "savings provisions for the  
24 Stanislaus River predator management program." WIIN Act § 4012 (a)(2). Further, the  
25 WIIN Act grants Reclamation broad discretion to negotiate "mutually agreeable terms  
26 and conditions" in converting existing contracts to repayment contracts. WIIN Act §  
27 4011(a)(1).

28 138. However, because the provisions of the CVPIA continue to apply to

1 Reclamation, Reclamation must still conduct “appropriate environmental review” under  
2 NEPA before it may enter into long-term water delivery contracts. And, because the  
3 Programmatic EIS that Reclamation prepared in 1999 does not address the project-level,  
4 site-specific impacts of any of the repayment contracts (just as it previously failed to  
5 address the project-level, site-specific impacts of the interim contracts), Reclamation is  
6 still required by NEPA to prepare an EIS detailing the environmental impacts of each  
7 draft repayment contract. Hence, Reclamation must prepare an EIS for the repayment  
8 contracts that Reclamation has approved and is threatening to approve in the future with  
9 the defendants named herein.

10 **FIRST CLAIM FOR RELIEF**

11 **(Violation of National Environmental Policy Act –**  
12 **Failure to Prepare an EIS for Repayment Contracts)**

13 (Against All Defendants)

14 139. The paragraphs set forth above and below are realleged and incorporated  
15 herein by reference.

16 140. Reclamation violated NEPA by failing to prepare an EIS for the repayment  
17 contracts it approved in 2020, and it continues to violate NEPA by failing to prepare an  
18 EIS for the repayment contracts it is continuing to approve. Reclamation began  
19 negotiations with Westlands and other CVP water contractors, including East Bay  
20 Municipal Utility District, City of Folsom, Placer County Water Agency, City of  
21 Roseville, Sacramento County Water Agency, Sacramento Municipal Utility District,  
22 and San Juan Water District, to convert their existing water contracts from water service  
23 contracts to repayment contracts under the WIIN Act on May 29 and May 30, 2019.  
24 Defendants participated in additional negotiation sessions in August 2019.

25 141. Reclamation and Westlands “finalized on Westlands’ primary and largest  
26 WIIN Act contract conversion” and then Reclamation invited public comment on that  
27 draft repayment contract through January 8, 2020.

28 142. Plaintiffs submitted timely comments to Reclamation on December 24,

1 2019, addressing Reclamation’s proposed repayment contract with Westlands.

2 143. In late 2019 and early 2020, Reclamation also negotiated the terms of five  
3 additional repayment contracts with Westlands. Plaintiffs submitted timely comments  
4 on those contracts on February 17, 2020. Reclamation approved these contracts on or  
5 about May 29, 2020.

6 144. Reclamation negotiated other repayment contracts in early 2020. Plaintiffs  
7 submitted timely comments addressing Reclamation’s proposed repayment contracts  
8 with the American River Division contractors, including East Bay Municipal Utility  
9 District, City of Folsom, Placer County Water Agency, City of Roseville, Sacramento  
10 County Water Agency, Sacramento Municipal Utility District, and San Juan Water  
11 District, on February 19, 2020. Reclamation approved these contracts on or about  
12 February 28, 2020. Plaintiffs submitted additional timely comments addressing  
13 Reclamation’s additional proposed repayment contracts with other water contractors on  
14 April 22 and April 24, 2020.

15 145. Reclamation’s approval of each of these repayment contracts is a “major  
16 Federal action[] significantly affecting the quality of the human environment” for which  
17 an environmental impact statement (“EIS”) must be prepared. 42 U.S.C. §  
18 4332(2)(C)(i)-(v). These repayment contracts are “major” Federal actions because they  
19 allow the diversion of over one million acre-feet of freshwater annually from the largest  
20 estuary on the west coast of the Americas, degrading vital freshwater habitat for some of  
21 the most imperiled species in the world, such as the winter-run and spring-run Chinook  
22 salmon and Delta smelt.

23 146. The environmental effects of these repayment contracts are clearly  
24 significant under the governing NEPA regulations, under which significance is  
25 measured both by the impacts’ “context” and by their “intensity.” 40 C.F.R. § 1508.27.

26 147. The contracts’ context demonstrates significance, because the Delta is the  
27 largest estuary on the West Coast of the United States, and supports an extraordinarily  
28 diverse fishery of unparalleled importance both commercially and recreationally. And,

1 the Delta also provides freshwater supplies for over 20 million Californians, as well as  
2 irrigation water for millions of acres of highly productive Central Valley farmland.

3 148. The “intensity” of the repayment contracts likewise demonstrates their  
4 significance. Intensity is determined with reference to ten sub-factors, the presence of  
5 *any* one of which is sufficient to require an EIS. 40 C.F.R. § 1508.27(b); *Ocean*  
6 *Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2004). The  
7 intensity of the contracts’ effects is indisputably significant because (1) the contracts’  
8 diversion of over 1 million acre-feet annually from the Delta, and the contractors’ use of  
9 the water for irrigation in a manner that releases contaminated return flows into the  
10 Delta’s ground and surface tributary waters, directly affect the health and safety of the  
11 public that relies on the Delta and its tributary rivers for their livelihoods, drinking  
12 water, and recreation; (2) the loss of freshwater flows and reduction in water quality  
13 harm the fish and wildlife of the unique and beleaguered Delta ecosystem; (3) the  
14 contracts’ environmental impacts are highly controversial and the extent of their  
15 harmful environmental impacts is uncertain; (4) Reclamation’s approval of these  
16 contracts of potentially permanent duration “establish[es] a precedent for future actions  
17 with significant effects;” (5) the contracts will have potentially significant cumulative  
18 impacts on the Delta’s ecological health and the survival of its imperiled fish and  
19 wildlife; and (6) the contracts will have significant impacts on many endangered  
20 species, each of which has significant scientific value. 40 C.F.R. § 1508.27(b).

21 149. Reclamation nonetheless contends that its approval of these repayment  
22 contracts is exempt from NEPA, on two grounds. Both fail. First, Reclamation claims  
23 that under the WIIN Act, it lacks discretion to disapprove the repayment contracts and  
24 thus its approval of them falls within the “non-discretionary” or “ministerial” exception  
25 to NEPA. That assertion is refuted by the plain language of this statute. Section  
26 4011(a)(1) of the WIIN Act states that “[u]pon request of the contractor, [Reclamation]  
27 shall convert any water service contract in effect on the date of enactment . . .and  
28 between the United States and a water users’ association to allow for prepayment of the



1 repayment contract . . . *under mutually agreeable terms and conditions.*” Public Law  
2 114-322, 130 Stat. 1628, section 4011(a)(1) (emphasis added). This language makes  
3 clear that the terms and conditions of these contracts are to be negotiated by the parties.  
4 Since these terms and conditions are negotiable, it follows that Reclamation necessarily  
5 exercises discretion in their formulation and approval. Therefore these contracts are  
6 discretionary rather than ministerial. Accordingly, NEPA applies to Reclamation’s  
7 exercise of that discretion, to ensure that Reclamation is fully informed regarding the  
8 environmental impacts of the terms and conditions of the contracts as they are  
9 formulated and negotiated.

10 150. Reclamation also claims that the WIIN Act impliedly repeals NEPA to the  
11 extent it might otherwise apply to the contracts. This claim too is readily dispatched.  
12 Repeals by implication are disfavored, particularly when a remedial statute such as  
13 NEPA is in play. “When confronted with two Acts of Congress allegedly touching on  
14 the same topic, [we are] not at liberty to pick and choose among congressional  
15 enactments and must instead strive to give effect to both.” *Stand Up for California v.*  
16 *U.S. Department of the Interior* (“*Stand Up*”), 959 F.3d 1154, 1163 (9th Cir. May 27,  
17 2020), quoting *Epic Sys. Corps. v. Lewis*, 138 S.Ct. 1612, 1624 (2018) (citations and  
18 quotation marks omitted) (enforcing NEPA against Department of Interior  
19 notwithstanding applicability of Indian Gaming Regulatory Act).

20 151. “[A] statute [is not] repealed by a subsequent act unless Congress’s  
21 intention is ‘clear and manifest.’” *San Luis & Delta-Mendota Water Auth. v. Haugrud*,  
22 848 F.3d 1216, 1230 (9th Cir. 2017) (citations omitted). “This is especially true in the  
23 case of NEPA, which “directs that, ‘to the fullest extent possible . . . public laws of the  
24 United States shall be interpreted and administered in accordance with [it].” *Stand Up*  
25 at 1163, quoting *Jamul Action Comm. v. Chaudhuri* (“*Jamul*”), 837 F.3d 958, 961 (9th  
26 Cir. 2016) (in turn quoting *Westlands Water Dist. v. Nat. Res. Def. Council*  
27 (“*Westlands*”), 43 F.3d 457, 460 (9th Cir. 1994). In *Westlands*, the court ruled that  
28 “[t]he lack of discretion exception to NEPA compliance does not apply” where a section

1 of the CVPIA directed that the Secretary of the Interior take certain action if the Hoopa  
2 Valley Tribe and the Secretary reached agreement, explaining that “[t]he automatic,  
3 non-discretionary language was only operative after both the Hoopa Valley Tribe and  
4 the Secretary concurred,” and that the Secretary had full discretion to scope, analyze,  
5 and make any recommendations before any concurrence. *Id.* at 1180. Likewise here,  
6 Reclamation has full discretion to negotiate “*mutually agreeable* terms and conditions”  
7 for any repayment contract. Public Law 114-322, 130 Stat. 1628, section 4011(a)(1)  
8 (emphasis added).

9 152. These rulings are consistent with the Ninth Circuit’s settled rule that “[w]e  
10 have recognized only ‘two circumstances where an agency need not complete an EIS  
11 even in the presence of major federal action and “despite an absence of express statutory  
12 exemption”’: (1) “‘where doing so “would create an irreconcilable and fundamental  
13 conflict” with the substantive statute at issue,’ and (2) where, ‘in limited instances, a  
14 substantive statute “displaces” NEPA’s procedural requirements.’” *Stand Up* at 1163-  
15 1164, quoting *Jamul*, 837 F.3d at 963 (quoting *San Luis & Delta Mendota Water Auth.*  
16 *v. Jewell*, 747 F.3d. 581, 648 (9th Cir. 2014)). Neither circumstance is present here.  
17 The WIIN Act contains no language implying, let alone expressly stating as required to  
18 effect a repeal, that compliance with NEPA “would create an irreconcilable and  
19 fundamental conflict” with the WIIN Act as necessary to foreclose NEPA’s application  
20 to contracts authorized by that Act. *Id.* Nor does the WIIN Act “‘displace[]’ NEPA’s  
21 procedural requirements,” the only other means by which a repeal could occur. *Id.*

22 153. Accordingly, NEPA is fully applicable to Reclamation’s approval of the  
23 repayment contracts. Therefore Reclamation should have prepared an EIS addressing  
24 the potentially significant impacts associated with each of them. Because it failed to do  
25 so, Reclamation’s approval of the repayment contracts is arbitrary and capricious, a  
26 failure to proceed in the manner required by law, and not supported by substantial  
27 evidence, and thus in violation of NEPA. Therefore it should be declared unlawful and  
28 set aside under the APA.

1 154. Reclamation’s threatened entry into other repayment contracts without  
2 compliance with NEPA is likewise arbitrary and capricious, a failure to proceed in the  
3 manner required by law, and not supported by substantial evidence. Accordingly,  
4 Reclamation’s threatened approval of additional repayment contracts should be declared  
5 unlawful and enjoined.

6 **SECOND CLAIM FOR RELIEF**

7 **(Violation of Central Valley Project Improvement Act –**  
8 **Failure to Prepare an EIS for Repayment Contracts)**

9 (Against All Defendants)

10 155. The paragraphs set forth above and below are realleged and incorporated  
11 herein by reference.

12 156. The CVPIA requires Reclamation to conduct a comprehensive  
13 environmental review before it may enter into new long-term contracts with existing  
14 water contractors as a means of correcting the growing imbalance between excessive  
15 water diversions and declining fish and wildlife populations. “To address impacts of  
16 the Central Valley Project on fish, wildlife and associated habitat,” the CVPIA requires  
17 Reclamation to complete “appropriate environmental review, including the preparation  
18 of the environmental impact statement required in section 3409 of [the CVPIA],” before  
19 Reclamation may “renew any existing long-term repayment or water service contract for  
20 the delivery of water from the Central Valley Project for a period of 25 years . . . .”  
21 CVPIA §§ 3402(a), 3404(c)(1), 3409. As noted, the Programmatic EIS that  
22 Reclamation prepared in 1999 pursuant to section 3409 does not address the project-  
23 level, site- and other contract-specific impacts of any of the repayment contracts.  
24 Consequently, Reclamation is still required by NEPA to prepare an EIS detailing the  
25 environmental impacts of each draft repayment contract. Hence, Reclamation must  
26 prepare an EIS for the repayment contracts that Reclamation approved on or about  
27 February 28, 2020, and for the additional repayment contracts that Reclamation has  
28 subsequently approved and is threatening to approve in the future.

1           157. The CVPIA defines the scope of contracts subject to this imperative  
2 broadly, to include “*any* long-term water service or repayment contract for the delivery  
3 of water from the Central Valley Project for a period of 25 years.” CVPIA § 3404(c)  
4 (emphasis added). The repayment contracts Reclamation is now approving authorize  
5 the delivery of CVP water for at least 25 years. Indeed, they potentially authorize the  
6 delivery of CVP water in perpetuity. That means that their impacts will extend at least  
7 as long, and probably much longer, than will the impacts of the 25-year renewal  
8 contracts for which Congress mandated “appropriate environmental review” under  
9 NEPA. CVPIA §§ 3402(a), 3404(c)(1), 3409. Hence, the need for environmental  
10 review of their impacts is at least as great as, and probably even greater than, it is for the  
11 25-year contracts for which Congress mandated preparation of appropriate  
12 environmental review under NEPA in the CVPIA.

13           158. The WIIN Act does not abrogate this CVPIA mandate that “appropriate  
14 environmental review” take place before any long-term water service or repayment  
15 contract may be renewed by Reclamation. To the contrary, the WIIN Act specifically  
16 directs that it “shall not be interpreted or implemented in a manner that . . . (2) affects or  
17 modifies *any* obligation under the [CVPIA] except for the savings provisions of the  
18 Stanislaus River predator management program.” WIIN Act § 4012(a)(2) (emphasis  
19 added). Hence, the CVPIA mandate that appropriate environmental review (which as  
20 explained, necessarily requires an EIS) is required for long term contracts, applies fully  
21 to the repayment contracts that Reclamation is now approving.

22           159. Accordingly, Reclamation’s failure to prepare *any* environmental review –  
23 let alone the required EIS – before entering into the repayment contracts violates the  
24 CVPIA. Therefore, Reclamation’s entry into these repayment contracts is arbitrary and  
25 capricious, a failure to proceed in the manner required by law, and not supported by  
26 substantial evidence. For these reasons, Reclamation’s entry into these repayment  
27 contracts should be declared unlawful and set aside under the APA.

28 //

**THIRD CLAIM FOR RELIEF**

**(Violation of 43 U.S.C. §§ 423e and 511 Requiring  
Validation Judgments for CVP Water Contracts)**

**(Against Reclamation and Westlands Water District)**

160. The paragraphs set forth above and below are realleged and incorporated herein by reference.

161. For nearly a century, Reclamation has acknowledged and adhered to the fundamental and unwavering Congressional mandate that “[i]n carrying out the purposes of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, and known as the reclamation law, . . . no contract with an irrigation district under this section [511] and sections 512 and 513 of this title [title 43 of the United States Code] shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid.” Act of May 15, 1922, section 1, codified at 43 U.S.C. § 511.

162. Section 46 of the Omnibus Adjustment Act of 1926 sets forth a similar Congressional directive that “[n]o water shall be delivered [by a federal reclamation project] until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating and maintaining the works during the time they are in control of the United States . . . , and the execution of said contract or contracts shall have been confirmed by a court of competent jurisdiction.” Act of May 25, 1926, ch. 383, § 46, 44 Stat. 649, as amended, codified at 43 U.S.C. § 423e.

163. The purpose of Congress’s century-old and consistent command that irrigation districts demonstrate their lawful authority to enter into each and every contract for the delivery of public water from federally-owned and operated reclamation

1 facilities is to assure that water from those facilities is only delivered to districts with  
2 judicially confirmed authority and ability to receive and pay for such waters so that the  
3 public's expense in constructing and operating these facilities is protected against fraud  
4 and fully reimbursed. As explained by the Office of the Solicitor of the Department of  
5 the Interior:

6 "[t]he Act of May 15, 1922 requires the judicial confirmation of contracts with  
7 irrigation districts as a measure of protection for the United States. This  
8 confirmation assures the validity of the contract by making sure the irrigation  
9 district has complied with all state law requirements. . . . Congress has required  
10 the proceeding to take place before the United States will be bound by the terms  
11 of the contract."

12 Memorandum of the Office of the Solicitor dated July 9, 1984, citing Solicitor's  
13 Opinion, 71 Interior Decisions 496, 517-18 (1964) and 43 U.S.C. § 511.

14 164. In tacit recognition of this settled law and practice, on or about October 25,  
15 2019 Westlands filed a Complaint for Validation Judgment in Fresno County Superior  
16 Court seeking a court judgment validating Westlands' proposed repayment contract  
17 with Reclamation. See, *Westlands Water District v. All Persons Interested in the Matter*  
18 *of the Contract Between the United States and Westlands Water District Providing for*  
19 *[Central Valley] Project Water Service, San Luis Unit and Delta Division and Facilities*  
20 *Repayment*, Fresno County Superior Court Case No. 19CECG03887. On or about  
21 December 30, 2019 Westlands filed a Motion for Validation of Contract in which it  
22 requested the Superior Court to enter a judgment validating Westlands' repayment  
23 contract with Reclamation. After hearing, the Superior Court, per the Honorable Alan  
24 Simpson, denied Westlands' motion by Minute Order filed March 16, 2020. A true and  
25 complete copy of Judge Simpson's Minute Order is attached as Exhibit 1 hereto.

26 165. In his Minute Order denying validation, Judge Simpson ruled that  
27 Westlands' repayment contract could not be validated under either California Water  
28 Code §35855 (see Exhibit 1 hereto at ¶ 3.a), or California Government Code § 53511

1 (*id.* at ¶ 3.b). Judge Simpson further ruled that the repayment contract “does not meet  
2 [validation] requirements for provisions unrelated to debt because it is a proposed  
3 contract, not an executed contract.” *Id.* at ¶ 3.c. Judge Simpson next ruled that the  
4 repayment contract could not be validated because the contract’s “absence of the actual  
5 final amount and payment schedule render the proposed contract lacking in material  
6 terms and incomplete,” and the “validation statutes do not encompass judicial approval  
7 of incomplete contracts.” *Id.* at ¶ 4. Finally, Judge Simpson ruled that validation was  
8 not possible because “the requested finding of compliance with the Brown Act  
9 [California Government Code §§ 54950 et seq.] cannot be made.” *Id.* at ¶ 5.

10 166. Westlands did not timely seek appellate review of Judge Simpson’s Minute  
11 Order.

12 167. Westlands’ subsequent attempts to secure judicial orders reconsidering and  
13 overruling Judge Simpson’s Minute Order denying validation have all failed, and the  
14 Fresno County Superior Court orders denying Westlands’ attempts are now final, as  
15 explained in paragraph 178 below.

16 168. Similar attempts by Westlands Water District Distribution District No. 1  
17 and Westlands Water District Distribution District No. 2 to validate their respective  
18 repayment contracts with Reclamation have likewise failed, as explained in paragraph  
19 179 below.

20 169. Because Westlands has failed to secure judicial validation of its repayment  
21 contracts, and indeed, has instead received a final Order from the Fresno County  
22 Superior Court refusing to validate those repayment contracts, Reclamation is forbidden  
23 by the Act of May 15, 1922 from entering into, and delivering water pursuant to, those  
24 repayment contracts. *Barcellos & Wolfsen, Inc. v. Westlands Water Dist.*, 491 F. Supp.  
25 263, 265 n.1 (E.D. Cal. 1980) (noting that section 46 of the Omnibus Adjustment Act of  
26 1926 requires that ““no water shall be delivered pursuant to any contract entered into  
27 with an irrigation district until such contracts have been confirmed by a State court of  
28 competent jurisdiction.’ *See* 43 U.S.C. § 511.” ).

1 170. Notwithstanding Westlands’ failure to secure judicial validation of its  
2 repayment contracts, and Judge Simpson’s Minute Order setting forth at least five  
3 separate grounds for denying Westlands’ Motion for Validation of Contract, by letter  
4 dated May 26, 2020, Westlands’ General Manager Thomas Birmingham represented to  
5 Ernest Conant, Regional Director of the Bureau of Reclamation, that judicial  
6 confirmation of Westlands’ authority to enter into the Repayment Contract with  
7 Reclamation had merely been delayed, due to the Covid-19 pandemic and other  
8 undisclosed factors, and was on track for completion soon.

9 171. Mr. Birmingham stated that “[t]he District filed an action to obtain [a  
10 judicial] decree on October 25, 2019, but for multiple reasons, the Court was not able to  
11 validate the District’s proceedings prior to the Court closing for judicial business in  
12 response to the COVID-19 pandemic and the proclamations of emergency by Governor  
13 Gavin Newsom.” Letter from Thomas W. Birmingham to Ernest A. Conant dated May  
14 26, 2020, a true and correct copy of which is attached as Exhibit 2 hereto, at 1.

15 172. Mr. Birmingham did not disclose that several parties had filed Answers  
16 opposing Westlands’ validation action, and that after hearing their grounds for opposing  
17 validation, Judge Simpson had ruled that the District’s Repayment Contract could not  
18 be validated for at least five separate reasons. *Id.* Nor did Mr. Birmingham provide Mr.  
19 Conant with Judge Simpson’s detailed ruling denying Westlands’ motion for validation.  
20 *Id.*

21 173. Instead of disclosing these material facts revealing that the Fresno County  
22 Superior Court had concluded that Westlands’ Repayment Contract could not be  
23 validated, Mr. Birmingham strived to persuade Mr. Conant of just the opposite. He  
24 represented, in direct contradiction of Judge Simpson’s specific findings and final Order  
25 rejecting validation, that “[t]he proceedings on the part of the District to authorize  
26 execution of the Repayment Contract complied with the law, and no one has initiated  
27 legal action to challenge the lawfulness of those proceedings.” *Id.* at 1.

28 174. Mr. Birmingham went on to represent that “[u]nder California’s ‘reverse



1 validation’ statute, any action seeking to challenge the District’s proceedings to  
2 authorize execution of the Repayment Contract would be barred by the 60-day statute of  
3 limitations in California Code of Civil Procedure sections 860 and 863.” *Id.* at 2. But  
4 Mr. Birmingham failed to disclose that there was no need for any party opposed to  
5 validation to file such a “reverse validation” action, since Westlands had itself filed a  
6 validation action to which opposition could, and was in fact, presented by way of the  
7 four Answers that were in fact filed in opposition to Westlands’ validation action and  
8 the four opposition memoranda that were filed in response to Westlands’ subsequent  
9 validation motion.

10 175. Based on these misrepresentations, Mr. Birmingham “request[ed] that  
11 [Reclamation] confirm the District’s understanding that its inability to obtain a  
12 validation judgment does not render the Repayment Contract void.” *Id.* Mr.  
13 Birmingham closed by reassuring Mr. Conant that “the District is confident it will  
14 obtain a final decree confirming the proceedings on its part for the authorization of the  
15 execution of the Repayment Contract.” *Id.* at 2-3.

16 176. Mr. Birmingham’s ploy worked perfectly. Just two days later, apparently  
17 without conducting any independent factual or legal research or even checking the  
18 Fresno County Superior Court’s docket to ascertain the true state of Westlands’  
19 validation proceedings, Mr. Conant gave Reclamation’s complete blessing to  
20 Westlands’ request that Reclamation deem the repayment contract valid. Mr. Conant’s  
21 single-page letter uncritically accepted and indeed, repeated like an echo chamber, Mr.  
22 Birmingham’s representation that “for various reasons, the court was not able to validate  
23 the District’s proceedings prior to the court closing for business in response to the  
24 COVID-19 pandemic and emergency proclamations by California Governor Newsom.”  
25 A true and complete copy of Mr. Conant’s May 28, 2020 letter to Mr. Birmingham is  
26 attached as Exhibit 3 hereto.

27 177. Based solely on Mr. Birmingham’s incomplete and misleading  
28 representation of the facts surrounding Westlands’ inability to secure judicial validation

1 of the repayment contract, and in disregard of the actual facts and ruling by Judge  
2 Simpson denying validation, Mr. Conant concluded his letter by stating “Reclamation  
3 confirms its understanding that the Repayment Contract will govern the rights and  
4 obligations of the United States and the District after the Repayment Contract’s  
5 effective date, June 1, 2020, notwithstanding the District’s inability to obtain a final  
6 decree confirming its proceedings to authorize the execution of this Repayment  
7 Contract. See, 43 U.S.C. § 511.” *Id.*

8 178. Despite Judge Simpson’s Order denying Westlands’ motion for validation  
9 of its repayment contract with Reclamation, on September 17, 2021, Westlands filed a  
10 Renewed Motion for Validation Judgment. Westlands’ motion was denied. On October  
11 27, 2021, the Honorable D. Tyler Tharpe of the Fresno County Superior Court issued a  
12 Minute Order adopting as final Judge Tharpe’s Tentative Ruling dated October 26, 2021  
13 “[t]o deny [Westlands’] renewed motion for a validation judgment, for failure to show  
14 any new or different facts, circumstances, or law that would justify renewal of its prior  
15 motion.” A true and correct copy of Judge Tharpe’s Minute Order and its attached  
16 Tentative Ruling denying Westlands’ renewed motion for a validation judgment is  
17 attached as Exhibit 4 hereto.

18 179. Westlands Water District Distribution District No. 1 and Westlands Water  
19 District Distribution District No. 2 likewise sought validation of their repayment  
20 contracts with Reclamation. Both requests for validation were denied. On March 18,  
21 2020, each filed a Complaint for Validation Judgment in Fresno County Superior Court  
22 seeking a court judgment validating their proposed repayment contracts with  
23 Reclamation. See, *Westlands Water District Distribution District No. 1 v. All Persons*  
24 *Interested in the Matter of the Contracts Between the United States and Westlands*  
25 *Water District Distribution District No. 1 Providing For Project Water Service and*  
26 *Facilities Repayment*, Fresno County Superior Court Case No. 20CECG01011, and  
27 *Westlands Water District Distribution District No. 2 v. All Persons Interested in the*  
28 *Matter of the Contract Between the United States and Westlands Water District*

1 *Distribution District No. 2 Providing For Project Water Service and Facilities*

2 *Repayment*, Fresno County Superior Court Case No. 20CECG01012. On September 24,  
3 2021, Westlands Water District Distribution District No. 1 and Westlands Water District  
4 Distribution District No. 2 each filed a Motion for Entry of Validation Judgment. After  
5 hearing, the Superior Court, per the Honorable Kimberly A. Gaab, denied their motions  
6 by Minute Order filed November 5, 2021. A true and complete copy of Judge Gaab's  
7 Orders are attached as Exhibit 5 (Westlands Water District Distribution District No. 1)  
8 and Exhibit 6 (Westlands Water District Distribution District No. 2) hereto. Each  
9 Minute Order adopted as final Judge Gaab's Tentative Ruling dated October 25, 2021 in  
10 each case "[t]o deny the motions for validation judgments by plaintiff Westlands Water  
11 District Distribution District No. 1 and plaintiff Westlands Water District Distribution  
12 District No. 2."

13 180. Reclamation's execution of its repayment contract with Westlands on or  
14 about February 28, 2020, and purported waiver, by letter dated May 28, 2020, of  
15 Reclamation's statutory duty to confirm that Westlands had in fact secured a judicial  
16 validation of that contract, are both final agency actions subject to this Court's  
17 jurisdiction and review under the APA, 5 U.S.C. § 706.

18 181. Reclamation's execution on or about February 28, 2020, May 29, 2020,  
19 September 28, 2020, and October 22, 2020, with effective dates of June 1, 2020,  
20 October 1, 2020, and November 1, 2020, of its repayment contract with Westlands  
21 notwithstanding Westlands' failure to first secure a judicial decree confirming and  
22 validating Westlands' authority to enter into that contract, and Reclamation's purported  
23 disavowal, by letter dated May 29, 2020, of its statutory duty to require Westlands to  
24 secure that judicial decree before recognizing that contract as valid and enforceable  
25 against Reclamation, violate 43 U.S.C. §§ 423e and 511.

26 182. Accordingly, Reclamation's entry into its repayment contract with  
27 Westlands notwithstanding Westlands' failure to first secure a judicial decree validating  
28 its authority to enter into that contract, and Reclamation's subsequent purported

1 disavowal of its duty to require Westlands to secure that judicial decree, are both  
2 arbitrary and capricious, failures to proceed in the manner required by law, and not  
3 supported by substantial evidence. For these reasons, Reclamation’s entry into its  
4 repayment contract with Westlands and purported disavowal of its duty to require  
5 Westlands to secure that judicial decree, should be declared unlawful and set aside  
6 under the APA.

7 183. Plaintiffs are informed and believe, and on that basis allege, that  
8 Reclamation has approved, or is threatening to approve, additional repayment contracts  
9 with other water districts without requiring the districts to first secure a judicial decree  
10 confirming their authority to enter into such contracts. Such approvals are, or would be,  
11 contrary to law in the same respects as Reclamation’s approval of the repayment  
12 contract with Westlands alleged above, and for that reason are, or would be, arbitrary  
13 and capricious, failures to proceed in the manner required by law, and not supported by  
14 substantial evidence, and accordingly should be declared unlawful and set aside under  
15 the APA.

#### 16 **FOURTH CLAIM FOR RELIEF**

##### 17 **(Violation of Reclamation Law Requirements for CVP Water Contracts)**

18 (Against All Defendants)

19 184. The paragraphs set forth above and below are realleged and incorporated  
20 herein by reference.

21 185. Reclamation’s repayment contracts with Westlands violate several  
22 additional substantive and procedural requirements applicable to Reclamation’s entry  
23 into water service and repayment contracts that arise under the Reclamation Law. First,  
24 Reclamation failed to release the repayment contracts as ultimately modified for public  
25 review prior to their approval in violation of 43 C.F.R. §§ 426.22(b) and(d), which  
26 respectively direct in pertinent part that Reclamation must “[p]rovide copies of revised  
27 proposed contracts to all parties who requested copies of the proposed contract in  
28 response to the initial notice,” and insure that “[a]nyone can get copies of a proposed

1 contract from the appropriate regional director. . . .”

2 186. Second, Reclamation’s repayment contracts with Westlands exceed by  
3 more than 200,000 acres the maximum acreage authorized to receive Central Valley  
4 Project water by Congress in the San Luis Act of 1960, Public Law No. 86-466, 74 Stat.  
5 156 (1960). When Congress passed the San Luis Act in 1960, it imposed limits on the  
6 acreage available to receive water from the San Luis Project. It directed in section 1(a)  
7 of the Act that Reclamation was authorized to “construct, operate, and maintain the San  
8 Luis unit as an integral part of the Central Valley Project” in accordance with the 1956  
9 San Luis Unit Feasibility Study for the purpose of irrigating a service area that is limited  
10 to just 496,000 acres, based on a long-term crop utilization pattern for 440,000 acres, in  
11 the entire San Luis Unit in three counties – Merced, Fresno and Kings – as delineated in  
12 the map prepared as part of that study. *See*, U.S. Department of the Interior, Feasibility  
13 Report (approved by President Roosevelt, December 2, 1935), reprinted in House  
14 Committee on Interior & Insular Affairs, Central Valley Project, Documents-Part One:  
15 Authorizing Documents, H.R. Doc. No. 416, 84th Cong., 2d Sess. 563 (1956) at p. 36  
16 (map).

17 187. Exhibit A – the Map of the Contractor’s Service Area – to Reclamation’s  
18 first repayment contract with Westlands, however, reveals that a much larger area would  
19 be served by Central Valley Project water delivered pursuant to the repayment contracts  
20 than is permitted under the San Luis Act. It shows, after subtracting the acreage for the  
21 San Luis, Panoche and Pacheco water districts, and deducting an additional roughly  
22 100,000 acres that has already been retired with taxpayer dollars and largely put to  
23 industrial uses, that roughly 300,000 acres of land within Westlands Water District are  
24 eligible to receive water from the San Luis Unit. Yet contrary to this acreage limitation,  
25 Reclamation’s repayment contracts with Westlands would irrigate more than 600,000  
26 acres of land within Westlands Water District as shown in Exhibit A to the first  
27 repayment contract.

28 188. Under Reclamation’s repayment contract with Westlands, that more than

1 600,000 acres of land to be irrigated with CVP water would be allocated between 2.2  
2 and 1.7 acre-feet of water per acre per year. The repayment contract's inclusion of  
3 roughly 300,000 acres of ineligible lands in the lands to be irrigated with CVP water  
4 therefore represents the delivery of more than 500,000 acre-feet of additional public  
5 water not authorized by Congress in the San Luis Act. The subsequent repayment  
6 contracts likewise allow excess deliveries. This unauthorized reallocation of these  
7 scarce waters unlawfully takes water from other Central Valley Project contractors,  
8 communities, and the environment. It also leads to increased impacts on the areas from  
9 which the water would be exported, including the watersheds of the Trinity, Sacramento  
10 and American rivers, and the San Joaquin-Sacramento Delta and Estuary, as well as  
11 increased contamination of ground and surface waters from the polluted irrigation return  
12 flows draining the lands irrigated with this water.

13 189. Third, Reclamation's repayment contracts with Westlands violate  
14 Reclamation's duty under the Coordinated Operations Act of 1986 (Public Law 99-546,  
15 100 Stat. 3050, § 305 (amending 43 U.S.C. § 422d)) to demonstrate that lands receiving  
16 Central Valley Project water are capable of "successful irrigability of those lands and  
17 [that] their susceptibility to sustained production of agricultural crops by means of  
18 irrigation has been demonstrated in practice." This Act also requires Reclamation to  
19 show that it has conducted "an investigation of soil characteristics which might result in  
20 toxic or hazardous irrigation return flows." Contrary to this duty, Reclamation has  
21 conducted no studies and provided no evidence or documentation in support of the  
22 permanent allocation of water to irrigate these lands as described in Exhibit A of the  
23 first repayment contract. In fact, the San Luis Drainage Feature Re-evaluation EIS  
24 found that roughly 300,000 acres of the lands proposed for irrigation under these  
25 contracts within Westlands' service area are drainage-impaired and will generate "toxic  
26 or hazardous irrigation return flows" to ground or surface water.

27 190. Fourth, Reclamation's repayment contracts with Westlands fail to assure  
28 Westlands' compliance with applicable water quality standards as required by the

1 CVPIA. The CVPIA provides in 43 U.S.C. § 3405(c) that “[a]ll Central Valley Project  
2 water service or repayment contracts for agricultural, municipal or industrial purposes  
3 that are entered into, renewed, or amended under any provision of Federal Reclamation  
4 law after the date of enactment of this title, shall provide that the contracting district or  
5 agency shall be responsible for compliance with all applicable State and Federal water  
6 quality standards applicable to surface and subsurface agricultural drainage discharges  
7 generated within its boundaries.” The CVPIA directs further in 43 U.S.C. § 3404(c)(2)  
8 that “[u]pon renewal of any long-term repayment or water service contract providing for  
9 the delivery of water from the Central Valley Project, the Secretary shall incorporate all  
10 requirements imposed by existing law, including provisions of the title, within such  
11 renewed contracts.”

12 191. Contrary to these Congressional mandates requiring adherence to state and  
13 federal water quality standards, Reclamation’s repayment contracts with Westlands do  
14 not expressly incorporate any specific water quality standards, and impermissibly leave  
15 compliance with such standards to the discretion of Reclamation’s contracting officer  
16 and Westlands. But applicable water quality standards and permit requirements are not  
17 discretionary under the law, and are being violated by Reclamation’s excessive  
18 diversions of water from the Delta for delivery to its contractors, and by the  
19 contaminated agricultural drainage that has resulted in the past, and will foreseeably  
20 result in the future, from those diversions and deliveries. For example, although the  
21 repayment contract will generate irrigation return flows that contaminate ground and  
22 surface waters with selenium and other pollutants, including discharges from point  
23 sources requiring permits under the Clean Water Act’s National Pollutant Discharge  
24 Elimination System under 33 U.S.C. §1342, the contract makes no provision for  
25 compliance with that statutory duty. And, although the repayment contracts will cause  
26 continuing and worsening declines in Delta water quality due to excessive diversions of  
27 water from the Delta for irrigation, they make no provision for complying with the  
28 federal water quality standards adopted by the United States Environmental Protection

1 Agency for the Delta in 1995 pursuant to federal court orders and codified at 40 C.F.R.  
2 § 131.37.

3 192. In sum, Reclamation's approval of its repayment contracts with Westlands  
4 conflicts with numerous procedural and substantive requirements of the CVPIA and  
5 other components of Reclamation Law, and fails to protect water quality as required by  
6 those laws. Accordingly, Plaintiffs seek speedy adjudication of this matter to address  
7 and reverse the accelerating decline of water quality and fish and wildlife caused by the  
8 water diversions and irrigation return flows authorized by Reclamation's approval of the  
9 repayment contracts with Westlands, and the other similar repayment contracts it has  
10 recently approved and is approving as alleged above.

11  
12 **PRAYER FOR RELIEF**

13 As relief for the above violations of law, plaintiffs respectfully request the  
14 following:

- 15 1. A declaration that defendants acted contrary to law by approving and  
16 entering into repayment contracts with Westlands and others without first  
17 preparing appropriate environmental review including an EIS as required  
18 by NEPA and the CVPIA.
- 19 2. An injunction ordering defendants to withdraw their approval of and entry  
20 into their repayment contracts with Westlands and others without first  
21 preparing appropriate environmental review including an EIS as required  
22 by NEPA and the CVPIA.
- 23 3. A declaration that defendants acted contrary to law by approving and  
24 entering into their repayment contracts with Westlands and other water  
25 contractors notwithstanding the failure of those contractors to first secure a  
26 judicial decree confirming their authority to enter into the repayment  
27 contracts.
- 28 4. An injunction ordering defendants to withdraw their approval of and entry



1 into their repayment contracts with Westlands and others notwithstanding  
2 the failure of those contractors to first secure a judicial decree confirming  
3 their authority to enter into the repayment contracts.

4 5. A declaration that defendants may not approve and enter into any  
5 repayment contracts without compliance with all substantive and  
6 procedural requirements of Reclamation Law, including protection and  
7 restoration of water quality where mandated by applicable state and federal  
8 environmental laws.

9 6. An injunction ordering defendants to withdraw, or to refrain from granting,  
10 their approval of any repayment contracts unless those contracts comply  
11 with all substantive and procedural requirements of Reclamation Law,  
12 including protection and restoration of water quality where mandated by  
13 applicable state and federal environmental laws.

14 7. An award of costs and reasonable attorney's fees and expenses that  
15 plaintiffs incurred in the litigation of this action under the Equal Access to  
16 Justice Act, 28 U.S.C. section 2412, and any other applicable fee recovery  
17 law or doctrine.

18 8. Any other relief that this Court deems just and proper.

19 Dated: December 1, 2021

Respectfully submitted,

20 *s/ Stephan C. Volker*

21 STEPHAN C. VOLKER

22 Attorney for Plaintiffs

23 NORTH COAST RIVERS ALLIANCE,  
24 CALIFORNIA SPORTFISHING PROTECTION  
25 ALLIANCE, PACIFIC COAST FEDERATION OF  
26 FISHERMEN'S ASSOCIATIONS, SAN  
27 FRANCISCO CRAB BOAT OWNERS  
28 ASSOCIATION, INC., AND INSTITUTE FOR  
FISHERIES RESOURCES