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25 **IN THE UNITED STATES DISTRICT COURT**  
26 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

27 CENTER FOR BIOLOGICAL DIVERSITY;  
28 RESTORE THE DELTA; and PLANNING  
AND CONSERVATION LEAGUE,

Plaintiffs,

v.

UNITED STATES BUREAU OF  
RECLAMATION; DAVID BERNHARDT, in  
his official capacity as Secretary of the Interior;  
and UNITED STATES DEPARTMENT OF  
THE INTERIOR,

Defendants.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1  
2 1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY, RESTORE THE DELTA,  
3 and PLANNING AND CONSERVATION LEAGUE, (collectively, “Plaintiffs”) hereby sue  
4 Defendants UNITED STATES BUREAU OF RECLAMATION, DAVID BERNHARDT, in his  
5 official capacity as Secretary of the Interior, and UNITED STATES DEPARTMENT OF THE  
6 INTERIOR (collectively, “Reclamation”) for violations of the National Environmental Policy  
7 Act (“NEPA”), 42 U.S.C. section 4321 et seq.

8 2. Plaintiffs seek from this Court an order and judgment setting aside and rescinding  
9 Reclamation’s conversion of 14 of its Central Valley Project (“CVP”) renewal contracts into  
10 permanent repayment contracts with water contractors, and ordering Reclamation to comply with  
11 NEPA. Plaintiffs also seek an order and judgment restraining Reclamation from converting, or  
12 converting by amending, any additional contracts including 26 contracts that Reclamation is in  
13 the process of converting into permanent repayment contracts, and ordering Reclamation to  
14 comply with NEPA. Pursuant to the 14 contracts that Reclamation has already converted,  
15 Reclamation would be obligated to deliver about 1,799,148 acre-feet<sup>1</sup> of water through the CVP  
16 to those contractors each year. Pursuant to the 26 contracts that Reclamation is in the process of  
17 converting, Reclamation would be obligated to deliver about 480,679 acre-feet of water to those  
18 contractors each year. The total obligation including contracts already converted, and contracts  
19 Reclamation is the process of converting would be about 2,279,879 acre-feet of water per year.

20 3. Deliveries of CVP water are accomplished by diversions from rivers and the Delta  
21 and therefore have many significant adverse environmental impacts on the watershed, including  
22 the rivers and the San Francisco-San Joaquin Bay-Delta estuary. Adverse impacts include  
23 reducing freshwater flows and worsening already degraded Delta water quality; further  
24 endangering and destroying endangered and threatened fish species and critical habitat; reducing  
25 freshwater flows causing and worsening harmful algal blooms in the Delta; adverse impacts on  
26 public health and safety in the Delta region; and adverse impacts on agriculture in the Delta.

27  
28 <sup>1</sup> An acre-foot is the quantity of water that would cover one acre to a depth of one foot, or about 325,851.4 gallons.

1 Moreover, Reclamation is in the process of converting virtually all of its CVP contracts, about 35  
2 more of them, into permanent contracts like the 40 contracts already converted or in the process  
3 of being converted. Pursuant to NEPA, “cumulative impact” “is the impact on the environment  
4 which results from the incremental impact of the action when added to other past, present, and  
5 reasonably foreseeable future actions . . . .” 40 C.F.R. § 1508.7. The conversion of all of these  
6 contracts would have many significant adverse cumulative impacts on the environment as well as  
7 direct significant adverse environmental impacts. Reclamation has discretion in determining and  
8 negotiating the terms and conditions of the contract conversions, and therefore must comply with  
9 NEPA, including preparation of an Environmental Impact Statement (“EIS”) and/or an  
10 Environmental Assessment (“EA”) before converting the contracts.

11 4. However, Reclamation has refused to prepare an EIS, EA, or comply with NEPA  
12 in any way whatsoever, contending that it has no discretion in determining and negotiating the  
13 terms and conditions of the contract conversions. Reclamation’s conclusion is an erroneous  
14 interpretation of law and of the plain language of the statute Reclamation relies upon.

15 5. Reclamation, therefore, has failed to proceed in the manner required by NEPA  
16 and has unlawfully withheld or unreasonably delayed required agency action pursuant to the  
17 Administrative Procedure Act (“APA”), 5 U.S.C. sections 706. Reclamation’s approvals of the  
18 contract conversions are arbitrary and capricious, and without observance of the procedure  
19 required by law. *Id.* Reclamation has also failed to proceed in the manner required by the  
20 Endangered Species Act (“ESA”), 16 U.S.C. section 1531 et seq. Plaintiffs may amend, or if  
21 required seek leave to amend or supplement, this complaint to allege ESA claims against  
22 Reclamation and additional federal parties following completion of 60 day notice under the ESA.

### 23 JURISDICTION AND VENUE

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

28

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

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

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

13           10.      Plaintiffs have standing to assert their claims because they suffer tangible harm  
14 from Reclamation's violations of law as alleged herein. Plaintiffs' interests in improving water  
15 quality in the Central Valley and preserving fish and wildlife in the Central Valley and Trinity  
16 River watersheds and the San Francisco Bay-Delta Estuary, have been and will continue to be  
17 harmed by the activities permitted by the contracts. The diversion, pumping, delivery, and use of  
18 vast quantities of water from the Bay-Delta pursuant to the contracts directly harms fish through  
19 entrainment at the pumping plants and reduce freshwater flows in the Delta, and also alters the  
20 hydrologic flow patterns in the Delta, adversely affects the Delta's salinity barrier, causes water  
21 contamination in the San Joaquin River and other northern and Central Valley water bodies,  
22 produces toxic drainage that contaminates wetlands, and pollutes water and groundwater basins  
23 underlying much of the Central Valley, among other adverse impacts. A judgment from this  
24 Court requiring Reclamation to conduct a thorough environmental review of the impacts of the  
25 contracts would redress Plaintiffs' harms, at least in part, because Reclamation would be  
26 required to consider less harmful alternative terms and conditions in the contracts and also to a  
27 devise mitigation measures to address harms caused by the contracts.

28

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

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

10 13. All applicable administrative remedies have been adequately exhausted by  
11 Plaintiffs. Within the period for public comment established by Reclamation, Plaintiffs submitted  
12 comment letters dated January 7, February 15, and April 22, 2020, to Reclamation, asserting that  
13 Reclamation must comply with NEPA before converting the contracts. Plaintiff Restore the  
14 Delta also submitted separate comment letters dated January 6 and 7, 2020, and Plaintiffs  
15 Planning and Conservation League and Restore the Delta submitted a comment letter dated  
16 January 6, 2020. Reclamation failed to provide any NEPA notices, prepared no NEPA  
17 documents, and provided no NEPA public comment period.

18 **PARTIES**

19 14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-  
20 profit, public interest organization with over 74,000 active members. The Center has offices in  
21 Oakland, Los Angeles, and Joshua Tree, California, as well as in Arizona, Florida, New Mexico,  
22 Oregon, Colorado, and Washington, D.C. The Center and its members are dedicated to  
23 protecting diverse native species and habitats through science, policy, education, and  
24 environmental law. The Center's members reside and own property throughout California as  
25 well as those areas to be affected and served by the contracts, and use the waters and lands  
26 affected by the contracts for wildlife observation, recreation, scientific research, environmental  
27 education, and aesthetic enjoyment. One of the Center's primary missions is to protect and  
28 restore habitat and populations of imperiled species throughout Western North America. The

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