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8 *California Water Impact Network*

9
10 **IN THE UNITED STATES DISTRICT COURT FOR THE**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 AQUALLIANCE; CALIFORNIA
13 SPORTFISHING PROTECTION ALLIANCE;
14 CALIFORNIA WATER IMPACT NETWORK,

15 Plaintiffs,

16 vs.

17 THE UNITED STATES BUREAU OF
18 RECLAMATION; U.S. DEPARTMENT OF
19 THE INTERIOR; DEB HAALAND, in her
20 official capacity; and DOES 1 – 100,

21 Defendants.

Case No.:

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

(National Environmental Policy Act, 42
U.S.C. § 4321 *et seq.*; Administrative
Procedure Act, 5 U.S.C. §§ 701 *et seq.*)

1 **I. INTRODUCTION**

2 1. This is a civil suit brought pursuant to the National Environmental Policy Act (“NEPA”),
3 42 U.S.C. §§ 4321 et seq., the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq.,

4 2. This action is brought by several California conservation organizations to challenge
5 defendants’ environmental review and approval of a 2021 groundwater pumping project
6 covering a significant portion of the Sacramento River Valley, and imposing significant and
7 irreversible threats to the people and sensitive species that rely on these water resources and
8 associated aquatic and riparian habitats.

9 3. The Project would have detrimental effects on groundwater. These adverse groundwater
10 effects will, in turn, adversely affect connected residential and agricultural wells, surface water,
11 and habitats.

12 4. Rather than meaningfully evaluate the potentially significant and adverse impacts of the
13 Project in a full Environmental Impact Statement, Defendant Bureau of Reclamation (hereafter
14 “BOR” or “Reclamation”) has completely abdicated its obligations under NEPA by preparing an
15 Environmental Assessment replete with conclusory, incomplete, and faulty analysis.

16 5. Reclamation has failed to take a hard look at the impacts of the Project.

17 **II. JURISDICTION AND VENUE**

18 6. The Court has subject matter jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §
19 1331 (federal question), 28 U.S.C. § 1346 (United States as a Defendant), and the APA. 11.
20 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because defendant USBR is
21 located in Sacramento County, and a substantial part of the events or omissions giving rise to the
22 claims alleged in this Complaint occurred and will continue to occur in this judicial district. This
23 complaint is timely filed within any and all applicable statutes of limitations.

24 **III. INTRADISTRICT ASSIGNMENT**

25 7. Pursuant to Local Rule 120(d), intradistrict assignment of this matter to the Sacramento or
26 Redding Divisions of the Court would be appropriate in that the events or omissions which give
27 rise to Plaintiffs’ claims occurred, are occurring, and/or will occur in Butte, Colusa, Glenn,
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1 Sacramento, Tehama, Yolo, and Yuba Counties.

2 **IV. PARTIES**

3 8. Plaintiff AQUALLIANCE is a California Public Benefit Corporation organized to protect
4 waters in the northern Sacramento River’s watershed to sustain family farms, communities,
5 creeks and rivers, native flora and fauna, vernal pools, and recreation. AquAlliance has
6 approximately 637 members who rely on Sacramento Valley groundwater for their livelihoods
7 and live, recreate and work in and around waters of the State of California, including the
8 Sacramento River and its tributaries. AquAlliance’s mission is to defend northern California
9 waters and to challenge threats to the hydrologic health of the Sacramento River watershed.
10 AquAlliance is especially focused on confronting the escalating threat to water resources and
11 ecological habitats in Sacramento River hydrologic region resulting from water diversions to
12 other parts of California and groundwater extraction in the area.

13 9. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) is a
14 non-profit public benefit corporation organized under the laws of the State of California with its
15 main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate
16 and work in and around waters of the State of California, including the Sacramento River, San
17 Joaquin River, the Delta, Suisun Bay and San Pablo Bay. CSPA is dedicated to the preservation,
18 protection, and defense of the environment, the wildlife and the natural resources of all waters of
19 California. To further these goals, CSPA actively seeks federal and state agency implementation
20 of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf
21 of itself and its members. CSPA has been actively engaged in proceedings relating to the
22 environmental impact of the SWP as well as the federal Central Valley Project (“CVP”).

23 10. Plaintiff CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is a California non-
24 profit public benefit organization with its principal place of business in Santa Barbara,
25 California. C-WIN’s organization purpose is the protection and restoration of fish and wildlife
26 resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural
27 environmental resources and uses of the rivers and streams of California, including the
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1 Sacramento River, its tributaries, and its underlying groundwater resources. C-WIN has members
2 who reside in, use, and enjoy the Sacramento River Valley and inhabit and use its watershed.
3 They use Sacramento River and its tributaries for nature study, recreation, and aesthetic
4 enjoyment.

5 11. Defendant UNITED STATES BUREAU OF RECLAMATION (“BOR” or
6 “Reclamation”) is a subdivision of the Department of the Interior, an agency of the United States
7 of America, and is the Project’s lead agency under the NEPA, 28 U.S.C. section 4321 et seq.

8 12. Defendant Deb Haaland is the Secretary of the United States Department of Interior.
9 Plaintiffs name Secretary Haaland in this action in her official capacity, for her actions or failures
10 to act in an official capacity, or under color of legal authority. Secretary Haaland is responsible
11 for ensuring that the Department of Interior’s actions comply with its obligations and with the
12 APA.

13 13. Defendant UNITED STATES DEPARTMENT OF INTERIOR is responsible for the
14 administration and implementation of the federal reclamation laws, including the 1902
15 Reclamation Act, as amended, and others, and for projects operating under its authority.

16 **V. LEGAL BACKGROUND**

17 The National Environmental Policy Act (“NEPA”)

18 14. Enacting NEPA, Congress recognized that “each person should enjoy a healthful
19 environment” and the statute therefore requires that the federal government use all practicable
20 means to “assure for all Americans safe, healthful, productive, and esthetically and culturally
21 pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment
22 without degradation, risk to health or safety, or other undesirable and unintended consequences.”
23 Id. § 4331(b)–(c). It declares the federal government’s responsibility to act “as [a] trustee of the
24 environment for succeeding generations” and to use “all practicable means” to “assure . . . safe,
25 healthful, productive, and esthetically and culturally pleasing surroundings,” 42 U.S.C. § 4331.
26 Whether NEPA is implemented to meet those goals, or to defeat them, is the question at stake in
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1 this litigation. And it is a question of critical importance to the health and well-being of
2 Plaintiffs' members and communities.

3 15. Ultimate responsibility for interpreting and enforcing NEPA falls to the federal courts.
4 *See, e.g., Robertson*, 490 U.S. at 355-56; *NRDC v. Callaway*, 524 F.2d 79, 86 (2d Cir. 1975); *cf.*
5 *Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981);
6 *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

7 16. The Council on Environmental Quality ("CEQ")—an agency within the Executive
8 Office of the President—has promulgated regulations implementing NEPA, see *id.* §§ 1500-
9 1508, which are binding on all federal agencies. *Id.* § 1500.3(a).

10 17. NEPA's goals are to (1) "prevent or eliminate damage to the environment and
11 biosphere," (2) "stimulate the health and welfare" of all people, and (3) "encourage productive
12 and enjoyable harmony between [hu]man[kind] and [the] environment." 42 U.S.C. § 4321. To
13 fulfill these purposes, NEPA requires that: (1) agencies take a "hard look" at the environmental
14 impacts of their actions before the actions occur, thereby ensuring "that the agency, in reaching
15 its decision, will have available, and will carefully consider, detailed information concerning
16 significant environmental impacts," and (2) "the relevant information will be made available to
17 the larger audience that may also play a role in both the decision-making process and the
18 implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,
19 349 (1989). "General statements about 'possible' effects and 'some risk' do not constitute a
20 'hard look' absent a justification regarding why more definitive information could not be
21 provided." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir.
22 1998). Similarly, "[c]onsideration of cumulative impacts requires some quantified or detailed
23 information" that results in a "useful analysis," even when the agency is preparing an EA and not
24 an EIS. *See Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002) (internal
25 quotation marks omitted). "[G]eneral statements about possible effects and some risk do not
26 constitute a hard look absent a justification regarding why more definitive information could not
27 be provided." *Id.* (internal quotation marks omitted).

1 18. NEPA requires all federal agencies to prepare a “detailed statement” for any “major
2 Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. §
3 4332(2)(C). This statement—the environmental impact statement (EIS)—must describe the
4 environmental impacts of the proposed action. *Id.* § 4332(2)(C)(i), (ii). Through this mechanism,
5 Congress intended NEPA to serve as “an environmental full disclosure law” that enables the
6 public to “weigh a project’s benefits against its environmental costs.” *Sierra Club v. U.S. Army*
7 *Corps of Eng’rs*, 772 F.2d 1043, 1049 (2d Cir. 1985). Congress also intended NEPA
8 environmental review to ensure “the integrity of the agency process,” forcing agencies to “face”
9 rather than “ignor[e]” “stubborn, difficult-to-answer objections.” *Id.* “Simply by focusing the
10 agency’s attention on the environmental consequences of a proposed project”—by requiring
11 preparation of a “detailed” environmental impact statement before projects that may have
12 significant environmental impacts are approved—“NEPA ensures that important effects will not
13 be overlooked or underestimated only to be discovered after resources have been committed or
14 the die otherwise cast.” *Robertson*, 490 U.S. at 348-49; see 42 U.S.C. § 4332.4.

15 19. To determine whether a project would have significant effects to be reviewed in an EIS,
16 NEPA allows agencies to first prepare an “Environmental Assessment” (“EA”), as provided,
17 below. If the agency determines no EIS is required, it must support its conclusions in a Finding
18 of No Significant Impact (“FONSI”).

19 20. 40 C.F.R. § 1501.3 provides:

20 **Determine the appropriate level of NEPA review.**

21 (a) In assessing the appropriate level of NEPA review, Federal agencies should
22 determine whether the proposed action:

23 ¶ . . . ¶

24 (2) Is not likely to have significant effects or the significance of the effects is
25 unknown and is therefore appropriate for an environmental assessment (§1501.5); or

26 (3) Is likely to have significant effects and is therefore appropriate for an
27 environmental impact statement . . .
28

1 (b) In considering whether the effects of the proposed action are significant,
2 agencies shall analyze the potentially affected environment and degree of the effects of
3 the action. Agencies should consider connected actions consistent with §1501.9(e)(1).

4 (1) In considering the potentially affected environment, agencies should consider, as
5 appropriate to the specific action, the affected area (national, regional, or local) and its
6 resources, such as listed species and designated critical habitat under the Endangered
7 Species Act. Significance varies with the setting of the proposed action. For instance, in
8 the case of a site-specific action, significance would usually depend only upon the effects
9 in the local area.

10 (2) In considering the degree of the effects, agencies should consider the following,
11 as appropriate to the specific action:

12 (i) Both short- and long-term effects.

13 (ii) Both beneficial and adverse effects.

14 (iii) Effects on public health and safety.

15 (iv) Effects that would violate Federal, State, Tribal, or local law protecting the
16 environment.

17 21. 40 C.F.R. § 1501.5 provides:

18 ENVIRONMENTAL ASSESSMENTS.

19 ¶ . . . ¶

20 (c) An environmental assessment shall:

21 (1) Briefly provide sufficient evidence and analysis for determining whether to
22 prepare an environmental impact statement or a finding of no significant impact; . . .

23 22. 40 C.F.R. § 1501.6 provides:

24 FINDINGS OF NO SIGNIFICANT IMPACT.

25 (a) (2) In the following circumstances, the agency shall make the finding of no
26 significant impact available for public review for 30 days before the agency makes its
27 final determination whether to prepare an environmental impact statement and before the
28 action may begin:

(i) The proposed action is or is closely similar to one that normally requires the
preparation of an environmental impact statement under the procedures adopted by the
agency pursuant to §1507.3 of this chapter; or

1 (ii) The nature of the proposed action is one without precedent.
2 ...

3 (c) The finding of no significant impact shall state the authority for any mitigation
4 that the agency has adopted and any applicable monitoring or enforcement provisions. If
5 the agency finds no significant impacts based on mitigation, the mitigated finding of no
6 significant impact shall state any enforceable mitigation requirements or commitments
7 that will be undertaken to avoid significant impacts.

8 23. 40 C.F.R. § 1506.1 provides:

9 LIMITATIONS ON ACTIONS DURING NEPA PROCESS

10 (a) Except as provided in paragraphs (b) and (c) of this section, until an agency
11 issues a finding of no significant impact, as provided in §1501.6 of this chapter, or record
12 of decision, as provided in §1505.2 of this chapter, no action concerning the proposal
13 may be taken that would:

- 14 (1) Have an adverse environmental impact; or
15 (2) Limit the choice of reasonable alternatives.

16 24. 40 C.F.R. § 1508.1 provides:

17 DEFINITIONS.

18 ¶ . . . ¶

19 (g) *Effects* or *impacts* means changes to the human environment from the proposed
20 action or alternatives that are reasonably foreseeable and have a reasonably close causal
21 relationship to the proposed action or alternatives, including those effects that occur at the
22 same time and place as the proposed action or alternatives and may include effects that
23 are later in time or farther removed in distance from the proposed action or alternatives.

24 (1) Effects include ecological (such as the effects on natural resources and on the
25 components, structures, and functioning of affected ecosystems), aesthetic, historic,
26 cultural, economic (such as the effects on employment), social, or health effects. Effects
27 may also include those resulting from actions that may have both beneficial and
28 detrimental effects, even if on balance the agency believes that the effect will be
beneficial.

¶ . . . ¶

(s) *Mitigation* means measures that avoid, minimize, or compensate for effects
caused by a proposed action or alternatives as described in an environmental document or

1 record of decision and that have a nexus to those effects. While NEPA requires
2 consideration of mitigation, it does not mandate the form or adoption of any mitigation.
Mitigation includes:

3 (1) Avoiding the impact altogether by not taking a certain action or parts of an
4 action.

5 (2) Minimizing impacts by limiting the degree or magnitude of the action and its
6 implementation.

7 (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected
8 environment.

9 (4) Reducing or eliminating the impact over time by preservation and maintenance
10 operations during the life of the action.

11 (5) Compensating for the impact by replacing or providing substitute resources or
12 environments.

13 25. To avoid *post hoc* agency rationalizations, "[p]roper timing is one of NEPA's central
14 themes." *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718 (9th Cir. 1988). The agency must
15 complete an EA before the "go-no go" stage of a project, *Metcalf v. Daley*, 214 F.3d 1135, 1142
16 (9th Cir. 2000) (internal quotation marks omitted), which is to say before "making an irreversible
and irretrievable commitment of resources," *id.* at 1143.

17 The Administrative Procedure Act

18 26. When an agency undertakes final agency action that fails to comply with NEPA, such
19 action is unlawful and set must be aside under the APA. *See Cantrell v. City of Long Beach*, 241
20 F.3d 674, 679 n.2 (9th Cir. 2001) ("Although NEPA does not provide a private right of action for
21 violations of its provisions, private parties may enforce the requirements of NEPA by bringing
22 an action against the federal agency under § 10(a) of the Administrative Procedure Act."). The
23 APA allows the reviewing court to set aside a final agency action only if it is "arbitrary,
24 capricious, an abuse of discretion, or not otherwise in accordance with the law." 5 U.S.C. §
25 706(2)(A). "A decision is arbitrary and capricious if the agency 'has relied on factors which
26 Congress has not intended it to consider, entirely failed to consider an important aspect of the
27 problem, offered an explanation for its decision that runs counter to the evidence before the
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1 agency, or is so implausible that it could not be ascribed to a difference in view or the product of
2 agency expertise." *O'Keeffe's, Inc. v. U.S. Consumer Product Safety Comm'n*, 92 F.3d 940, 942
3 (9th Cir. 1996) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.
4 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983)). An agency action is also arbitrary and
5 capricious if the agency fails to "articulate a satisfactory explanation for its action including a
6 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n*,
7 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S. Ct.
8 239, 9 L. Ed. 2d 207 (1962)).

9 27. Under the arbitrary and capricious standard, and specifically when reviewing an agency
10 decision to forego the preparation of an EIS, the Court must ensure that "the agency has taken a
11 'hard look' at the consequences of its actions, 'based [its decision] on a consideration of the
12 relevant factors,' and provided a 'convincing statement of reasons to explain why a project's
13 impacts are insignificant.'" *Envtl. Prot. Info. Ctr. v. United States Forest Serv.*, 451 F.3d 1005,
14 1008 (9th Cir. 2006) (quoting *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730
15 (9th Cir. 2001)) (internal quotations and citations omitted).

16 **VI. STANDING**

17 28. Members of AquAlliance, CSPA, and C-WIN reside in the Sacramento River Valley.
18 AquAlliance's members rely on groundwater, rivers, and streams for their homes, recreation, to
19 irrigate crops, and to participate in the economy of the region. AquAlliance's members play an
20 active role in water education, planning, policy, and protection. CSPA and its members actively
21 participate in water rights and water quality processes, engage in education and organization of
22 the fishing community, conduct restoration efforts, and vigorously enforce environmental laws
23 enacted to protect fisheries, wildlife, habitat and water quality. AquAlliance's, CSPA's, and C-
24 WIN's members reside and own property throughout California as well as in those areas served
25 by the Central Valley and State Water Projects, and the BOR. AquAlliance's, CSPA's, and C-
26 WIN's member also reside in and around the Sacramento River valley, including within and in
27 close proximity to the Action area, and use the waters, including groundwater, affected by the
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1 Action for gardening, landscaping, and growing crops. As water contractors begin pumping
2 additional groundwater pursuant to the Proposed Action, the project risks degrading or lowering
3 the groundwater in areas where Plaintiffs' members operate wells or otherwise rely on
4 groundwater to maintain their properties.

5 29. Members of AquAlliance, CSPA, and C-WIN use the Sacramento River and its
6 tributaries to fish, sail, boat, kayak, swim, birdwatch, hike, view wildlife and engage in scientific
7 study, including monitoring activities. Members of AquAlliance, CSPA, and C-WIN have
8 enjoyed fishing for salmon and other fish in the Sacramento River watershed, whose numbers
9 and vitality depend on an intact and healthy ecosystem in the Sacramento River watershed.
10 Where elements of that ecosystem are reduced or eliminated, AquAlliance's, CSPA's, and C-
11 WIN's members' recreational uses and aesthetic enjoyment of those areas are reduced by their
12 awareness of the waterway and habitat degradation. As the degradation of the Sacramento River
13 and its tributaries is further exacerbated, Plaintiffs' members' catch fewer fish, and observe
14 fewer wildlife.

15 30. Thus, the interests of Plaintiffs' members have been, are being, and will continue to
16 be adversely affected by Reclamation's failure to comply with NEPA and the likely dramatic
17 impacts to groundwaters, surface waters, and associated species, ecosystems, and human uses.
18 The relief sought herein will redress the harms to Plaintiffs and their members, landowners and
19 water rights holders caused by Defendants' failure to comply with NEPA.

20 31. AquAlliance, CSPA, C-WIN, their members, officers, landowners and water rights
21 holders are deeply concerned about the adverse consequences of Reclamation's Proposed Action
22 to facilitate the additional pumping of up to 60,000 acre-feet of groundwater in the Sacramento
23 River Valley, with inadequate environmental review of the adverse direct, indirect, and
24 cumulative impacts of the pumping facilitated thereby. The Proposed Action will require the use
25 of additional groundwater, increase depletion of Sacramento Valley groundwater basins and
26 streams, residential and agricultural wells, and have potentially catastrophic impacts on the
27 endangered species, including but not limited to the Western Yellow-billed Cuckoo and the
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1 Valley Elderberry Longhorn Beetle. Plaintiffs' members will be injured by the additional water
2 extracted from groundwater basins, as well as the resulting stream impacts without adequate
3 environmental analysis.

4 32. Failure by Reclamation to ensure that the Proposed Action does not impact listed
5 species and their habitats harms Plaintiffs' members' interests in the species. Unless the
6 requested relief is granted, Plaintiffs' interests will continue to be injured. The injuries described
7 above are actual, concrete injuries that will occur unless relief is granted by this Court. The relief
8 sought herein, Reclamation's compliance with NEPA, would redress Plaintiffs' injuries.
9 Plaintiffs have no other adequate remedy at law, and they bring this action on behalf of their
10 adversely affected members.

11 **VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 33. Plaintiffs have performed all conditions precedent to this filing and participated in the
13 administrative process. Plaintiffs actively participated in the administrative process by
14 submitting comments, along with other public agencies, organizations, and members of the
15 public, outlining the claims contained herein. As such, Plaintiffs have fully exhausted their
16 administrative remedies, to the extent such remedies exist and to the extent that exhaustion of
17 administrative remedies is legally necessary.

18 34. Plaintiffs possess no other remedy to challenge Defendants' abuses of discretion and
19 failures to comply with applicable laws and regulations.

20 **VIII. RECLAMATION'S APPROVAL OF THE ACTION**

21 35. On July 7, 2021 Reclamation posted an Environmental Assessment evaluating the
22 impacts of the Project. (hereafter the "Draft EA").

23 36. Reclamation provided the public with a week-long opportunity to comment on the
24 Draft EA, received numerous comments letters, and issued a Final Environmental Assessment
25 (hereafter the "EA").

26 37. On August 4, 2021, and based on the analysis contained in the EA, Reclamation
27 issued a Finding of No Significant Impact (FONSI-21-06-BDO) (hereafter the "FONSI").
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1 38. The FONSI concluded that the Proposed Action in the EA would have no significant
2 impact on the human environment.

3 The Proposed Action

4 39. The stated purpose of the Proposed Action is to “offset surface water diversions from
5 the Sacramento River...[and] incentivize further reductions above current commitments in order
6 to make additional surface water supply available in the Sacramento River.” EA at 1.

7 Reclamation purports to achieve this goal by funding additional pumping of groundwater by
8 “entities in the pilot project who operate existing groundwater wells....” Finding of No
9 Significant Impact, FONSI-21-06-BDO at 1.

10 40. The EA, however, is severely misleading and fails to provide evidentiary support for
11 its assertion that groundwater extracted by the Action will result in up to 60,000 acre feet of
12 surface water to remain in stream, untouched. The EA also fails to take a hard look at the adverse
13 environmental effects resulting from the increased groundwater extraction facilitated by the
14 Proposed Action.

15 41. As the EA notes, California is facing water supply shortages due to over-
16 appropriation, and ongoing worsening climate effects. As such, reduced water usage by the
17 SRSC and others is legally and physically required. These are not voluntary actions by the
18 participants. The FONSI more clearly explains this, in contradiction to the false promises of the
19 EA: “The Proposed Action will have temporary beneficial effects to agricultural lands from
20 increased reliability of water supplies in 2021. The Proposed Action does not take land out of
21 production and allows some land to remain in production.” FONSI at 6. Hence, surface water
22 supplies are, to use the FONSI’s term, *unreliable*, because they are very likely *unavailable*.
23 Thus, as the FONSI notes, additional groundwater may allow some lands to remain in
24 production; implying that without this groundwater, an equal amount of surface water would not
25 be available to support production. The stated purpose of the Action is thus misleading,
26 inaccurate, and unsupported by law or fact.

1 42. The true purpose of the Action is for the Bureau to provide funding appeasement to
2 the SRSC to avoid suit from the SRSC related to the Bureau’s reduced deliveries for other legal
3 and physical reasons.

4 43. The EA states that, “[u]nder the Proposed Action, Reclamation will provide funding
5 for the use of existing groundwater wells to further offset surface water diversions from the
6 Sacramento River, which is estimated to result in a reduction of up to approximately 60,000 AF
7 in surface water diversions by SRSCs from the Sacramento River. The quantity of water
8 represents an approximate maximum; the actual total could be less.” EA at 5. Literally read, the
9 only quantity provided in this passage is an estimated reduction in surface water demands. In
10 turn, the EA asserts that the actual total could be less, which “actual total” refers to the only
11 quantity provided—for potential surface water savings—meaning the actual surface water
12 conservation could be less than the EA estimates.

13 44. Somewhat shockingly, the EA repeatedly asserts a goal of maximum groundwater
14 pumping, even encouraging well owners to establishing new historic low groundwater levels
15 through this Action. For example, the EA states that “the groundwater level data collected during
16 this drier year with the proposed voluntary approach provides an opportunity to gather additional
17 groundwater level.” EA at 6. Similarly, the Bureau has instructed water users that “non-Transfer
18 Program Settlement Contractors may wish to *establish historic lows* on their wells and use this
19 opportunity to establish baseline conditions of their wells for use in future transfers.” EA
20 Appendix B at 2 (emphasis added).

21 45. The EA states that “[f]unding provided by Reclamation would be subject to an
22 agreement outlining the terms required by Reclamation. Participants will be required to comply
23 with the terms of the Proposed Action, or they will not receive funding. Furthermore, non-
24 compliant participants would be required to pay appropriate fees to reschedule water, which act
25 as a deterrent.” Appendix A p. 5, 13. If the referenced agreement is Appendix B to the EA,
26 which is entirely unclear, those terms provide no mitigation or environmental commitments to
27 avoid significant effects, nor any analysis thereof, and in fact clearly show that the Action
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1 groundwater will not offset an equal (if any) surface water diversions. As discussed, below, the
2 additional pumping will most likely drain connected surface waters, which the EA fails to
3 meaningfully analyze.

4 46. Federal regulations would allow BOR to tier and incorporate by reference from prior
5 environmental review documents. See 43 C.F.R. §46.135 (“(b) Citations of specific information
6 or analysis from other source documents should include the pertinent page numbers or other
7 relevant identifying information.”) With a small few exceptions, the EA violates this requirement,
8 and instead generally references prior environmental documents consisting of thousands of pages,
9 without pinpoint page references to the incorporated materials. Moreover, most all pinpoint cites
10 provided generally describe the affected environment, but are dated and so only provide general
11 descriptions, not actual existing conditions during this drought; nor does the incorporated material
12 provide environmental analysis of the proposed Action. The EA clarifies, furthermore, that the
13 “Proposed Action is not tiered from previous projects.” EA at 3. In sum, therefore, the EA’s
14 reference to past related environmental documents serves only to load the record with irrelevant
15 and unincorporated materials.

16 Groundwater Impact Analysis

17 47. The EA fails to take the requisite “hard look” at effects to groundwater.

18 48. The EA fails to provide any meaningful description of the existing environmental
19 conditions that will be affected by the Action. Existing groundwater levels, for example, during
20 this time of drought, are not provided. The final revised EA, for the first time, includes a regional
21 map identifying 160 small green dots as potential Action well locations, with no further
22 information about participating wells or groundwater conditions in the areas surrounding the
23 participating wells. EA at 4, 6.

24 49. Worse, the letter agreement between the Bureau and SRSC expressly excludes prior
25 groundwater pumping this year by the SRSCs from the environmental baseline against which the
26 Action is evaluated, with no legal justification, and no explanation in the EA of how this
27 significant omission clearly renders the groundwater impacts of the project worse than the EA
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1 actually discloses. EA Appx. B at 2. The prior groundwater pumping is not part of typical SRSC
2 operations. The EA is unclear whether any groundwater pumping having already occurred this
3 summer is or is not included as part of this Action.

4 50. One commentator noted that “With respect to groundwater, current standing water
5 levels have dropped below 2014-2015 historic lows. A significant number of domestic wells
6 have lost water with more added to the list daily. Across the west side of Colusa County and
7 extending down into Yolo County Agricultural wells are experiencing record declines
8 necessitating lowering of pumps and in some cases loss of the well.” EA Appx. A at 1. Thus, the
9 Action could easily result in private or public groundwater wells running dry, giving rise to
10 potentially significant health and safety concerns necessitating an EIS. See, 40 C.F.R. §
11 1501.3(b)(2)(iii)).

12 51. Another commenter stressed that groundwater withdrawals from deeper aquifers
13 often have adverse impacts on groundwater availability in shallower aquifers located closer to
14 the surface: “The hydraulic head in the A (and B Level) provides critical support to the overlying
15 C and D (350’ and ±100’) aquifer levels. When water is pumped from the deep levels, this
16 reduction in head slowly telegraphs upward, and lower the C and D levels. Over the 2011 to
17 2015 pumping period, the C and D levels both dropped 8 feet. There is not supposed to be any
18 influence on the B, C or D levels due to this deep pumping. Yet it looks like there are.” EA
19 Appx. A at 3. The EA, however, wholly ignores these concerns and fails to analyze potential
20 impacts to shallow groundwater aquifers as a result of pumping facilitated by the Proposed
21 Action.

22 52. The EA only provides that “Regional groundwater levels under the Proposed Action
23 would be, at a minimum, monitored monthly (or weekly as feasible) prior to, during, and
24 following voluntary groundwater pumping. The monitoring would occur at wells monitored by
25 the DWR and participating SRSCs.” EA at 6. The EA fails to provide any information
26 supporting a standard of monthly monitoring sufficient to avoid significant effects; indeed such
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1 monitoring could and likely may occur only after all groundwater pumping is concluded, thereby
2 providing no opportunity or means to mitigate or avoid any affects at all.

3 53. What's more, the EA fails to account for the time needed to transmit, process, and
4 analyze any monitoring data. This further risks that GDEs in the project area may be irreparably
5 harmed before BOR has been able to evaluate the full effects of groundwater extraction.

6 54. "In the case that groundwater level declines are detected during the period of
7 groundwater pumping for the voluntary program, Reclamation will evaluate the affected area to
8 assess which groundwater wells may need to reduce or cease pumping until groundwater levels
9 recover to restart pumping." EA 6. This statement fails to provide any standard by which BOR
10 will determine whether or why any well would need to reduce or cease pumping, providing no
11 real description of actual environmental effects. Moreover, any area that "recovers" after
12 pumping is reduced would be recovery water from surface waters, or other groundwater
13 migration or mobilization, since no precipitation will occur over this time, which begs the
14 question of what effects will occur, and recur, after supporting "recovery" around a participating
15 well. This falls far short of the requisite hard look.

16 55. The EA also fails to explain how region wide abstractions would provide information
17 on likely localized effects. EA at 6 ("The wells would be distributed throughout the areas where
18 voluntary groundwater pumping occurs in order to provide a representative depiction of basin-
19 wide groundwater levels.")

20 56. One commenter, for example, stresses that Glenn-Colusa Irrigation District ("GCID")
21 "production wells affect other private pumpers up to a four mile radius. "The graphic I produced
22 is more generous and shows what a three mile radius encompasses: 48,900 acres less a little
23 GCID land." EA Appx. A at 3. In response, BOR compares the approximately 60,000 acre-feet
24 of resulting from the Proposed Action, to the 2.25 million acre-feet of groundwater pumping
25 occurring throughout *the entire Sacramento River Valley* stating that "the use of 60,000 AF
26 under this voluntary program is well within the range of historic groundwater use for the region."
27 EA at 20; and EA Appx. A at 3. BOR's analysis comparing total pumping over the entire
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1 Sacramento River Valley, however, does not address the localized impacts (e.g. within three to
2 four miles) to private wells resulting from the increased pumping authorized by the Proposed
3 Action. That an additional 60,000 acre-feet may seem minimal in relation to the total volume of
4 water pumped from the Sacramento River Valley annually, says nothing about the *localized*
5 impacts of those withdrawals to private users.

6 57. At the individual level, the EA shockingly relies solely “on 3rd party complaints of
7 individual performance.” EA at 15. In other words, the EA does nothing to anticipate or avoid
8 effects to third party wells, instead simply waiting for injury to occur, then providing a vague
9 assurance that the Bureau will address it. This assessment is woefully inadequate.

10 58. The EA repeatedly asserts, with no supporting analysis whatsoever, that “Participants
11 under the Proposed Action will comply with all applicable state and Federal laws. Participants
12 will acquire all required and applicable permits or licenses from the appropriate Federal, State, or
13 local authorities necessary for the delivery of water.” EA at 7. This dictate fails to provide any
14 meaningful information about the project.

15 59. Two commenters noted that the groundwater users covered by the Action likely do
16 not possess legal rights to extract the subject groundwater. Specifically, the commenters
17 expressed concerns that beneficiaries of the Proposed Action, including the Glenn-Colusa
18 Irrigation District, lack the requisite groundwater appropriative water rights to conduct the
19 additional extraction facilitated by the Proposed Action. In response to these concerns, the
20 Bureau simply repeated its refrain that all participants would comply with all relevant laws,
21 without taking any look whatsoever as to whether the Action is subsidizing illegal groundwater
22 extraction. EA Appx. A at 2 and 11. Thus, the EA and FONSI fail to rely on any evidence to
23 reach the conclusion that the Action would comply with all relevant law, and an EIS should have
24 been prepared. See, 40 C.F.R. § 1501.3(b)(2)(iv)).

25 60. The EA states that “This real-time groundwater management program would allow
26 the maximum use of groundwater, while minimizing effects,” but fails to provide any actual
27 groundwater impact analysis to support this conclusion. EA at 6.

1 61. The “Environmental Commitment” for the project reaches the exact same result,
2 relying on nothing more than regional monitoring, largely after the fact, and with no discernible
3 explanation of what, where, when, why, or how any adverse environmental effects would be
4 reduced or avoided. EA at 7. The monitoring would not monitor subsidence, nor effects to
5 groundwater dependent ecosystems, nor surface waters, nor effects to third parties; and
6 monitoring results likely would be available only after effects occur.

7 Greenhouse Gas Emissions

8 62. The EA fails to quantify or assess the Proposed Action’s effects of increasing
9 greenhouse gas emissions by subsidizing groundwater pumping. Indeed, the EA completely fails
10 to even explain what level of GHG emissions would be significant. The EA notes that “CARB
11 uses a threshold of 25,000 metric tons CO2 per year as a threshold for including facilities in its
12 cap-and-trade regulation. (17 CCR 95800-96023.)” EA at 10. The EA fails to disclose whether or
13 why this would constitute any meaningful standard for consideration of the effects of this
14 project, or whether the project would exceed that threshold. Similarly, the EA explains that “All
15 diesel-fueled engines are subject to CARB’s Airborne Toxic Control Measure (ATCM) for
16 Stationary Ignition Engines (17 California Code of Regulations [CCR] 93115)” (EA at 11), but
17 that regulation provides no regulation of GHG at all. Thus, when the EA repeats its unsupported
18 assertion that “All pumps proposed to be used by the water agencies would operate in
19 compliance with all rules and regulations at the federal, state, and local levels, including the
20 ATCM,” the EA again fails to provide any meaningful description of the environmental effects
21 of the project, falling far short of the requisite hard look; and the proposed “Environmental
22 Commitment” is essentially none. EA at 10-11.

23 Groundwater Dependent Ecosystems

24 63. The EA acknowledges that this groundwater pumping will likely affect groundwater
25 dependent ecosystems, including riparian habitats of affected surface waters, but the EA and
26 FONSI fail to take hard look at these serious effects, and fail to rely on evidence, or a clear
27 analytical route to their conclusions that effects would not be significant.

1 64. CDWA noted in its July 14, 2021 comment letter, “The production wells proposed
2 for use in groundwater pumping are in areas that likely contain GDEs, which may be impacted
3 by the project...GDEs in the vicinity of production wells are primarily along the Sacramento
4 River and its tributaries.”

5 65. The EA states that “[t]his additional use of groundwater will reduce stream flows
6 during and after pumping as the groundwater aquifer refills. Increased subsurface drawdown will
7 potentially affect fish habitats, such as riverine, riparian, seasonal wetland, and managed wetland
8 habitats, which are reliant on groundwater for all or part of their water supply. Decreased
9 amounts of surface water in these habitats could affect fish species of management concern. The
10 Proposed Action will increase groundwater pumping compared to the No Action Alternative,
11 which will result in reduction of groundwater levels in the vicinity of pumps. Subsurface draw
12 down has the potential to affect riverine, riparian, seasonal wetland, and managed wetland
13 habitats.” EA at 13-14.

14 66. The EA then provides no evidence or project components to support its bald assertion
15 that “Commitments associated with the Proposed Action, such as implementing a regional
16 monitoring network, will avoid adverse impacts to vegetation relative to the proposed
17 groundwater pumping.” EA at 14. The EA fails entirely to further analyze such effects, and
18 completely ignores these effects when concluding the opposite, that “groundwater pumping for
19 the Proposed Action does not impact shallow groundwater conditions.” *Id.* The EA does note
20 that several special status species rely on riparian and aquatic habitats, but provides no
21 discussion of effects to special status species living in riparian habitat affected by groundwater
22 drawdown.

23 67. EA admits that the Groundwater Sustainability Plan (“GSP”) for the project area is
24 not complete. Instead, it uses as a proxy the Yuba County GSP for its analysis of adverse impacts
25 to GDEs. Specifically, BOR concludes that pumping facilitated by the Proposed Action will not
26 substantially affect shallow groundwater conditions because the Yuba GSP finds that shallow
27 groundwater conditions are affected by changes to water in irrigated lands, fields, canals, or
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1 drains, rather than due to groundwater withdrawals such as those resulting from the Proposed
2 Action. EA at 14. The EA assumes here, without any actual analysis, that the same conditions
3 persist throughout the project area as in the Yuba County GSP project area. The Yuba GSP deals
4 with a far smaller area that is separate from the EA project area. The analysis in the Yuba County
5 GSP is inapposite. It does not shed light on existing conditions GDE conditions in the project
6 area, or evaluate the impacts to GDEs located therein. This is a failure to take a hard look at
7 potential impacts to GDE. EA at 14.

8 68. The Yuba GSP actually analyzed and detailed where GDEs are located within the
9 project area, and utilized monitoring well data to support its conclusions regarding the impact of
10 GW depletions on GDEs. The EA simply assumes, without any analysis, that a similar study for
11 the EA project area (which is much larger, and is separate from the GSP area) would have the
12 same results. This is not a hard look at whether the project would have significant impacts on
13 GDEs.

14 69. This also renders the EA's baseline inadequate. The EA assumes the baseline in the
15 Project Area is the same as the Yuba GSP even though the documents deal with completely
16 different geographical areas of analysis, both in terms of location and size. EA at 14. The EA
17 covers actions from Shasta County to Sacramento County, close to 150 miles.

18 70. One commenter notes that Valley Oaks, a common GDE species in the pumping area,
19 are reliant on groundwater located up to 80 feet below the surface. EA Appx. A at 6. The
20 commenter further notes that the EA fails to identify or evaluate GDE impacts to these species
21 that draw on deeper groundwater. *Id.* Indeed, there is no discussion of impacts to the Valley Oak
22 or other deep rooted GDEs in the EA, nor is there any analysis in the EA of GDE rooting depths,
23 or any specific species of plant communities that may be impacted by withdrawals facilitated by
24 the Proposed Action.

25 71. The EA makes several references to groundwater impact assessments in the 2019
26 LWT EIS/EIR, but fails to cite any specific pages of the thousands of pages included in the 2019
27 LWT EIS/EIR record. EA at 14.

1 72. The EA’s Environmental Commitment to monitor regional well monitoring networks
2 for comparisons to low groundwater levels reached in 2014 and 2015 provides no information at
3 all about the effects that may occur, and no avoidance measures or environmental commitments.
4 No information is provided regarding what effects occurred in 2014 and 2015. No information is
5 provided describing present and expected groundwater levels compared to 2014 and 2015. No
6 evaluation of environmental effects during pumping activities is provided, especially where
7 monitoring only occurs at a regional level.

8 73. The failure of the EA to evaluate the impacts of groundwater withdrawals from deep
9 aquifers on shallow groundwater resources, discussed in paragraph 49 above, is equally relevant
10 in the context of GDEs. The EA contains no analysis of the potential impact to GDEs reliant on
11 relatively shallow groundwater supplies resulting from deeper extractions potentially facilitated
12 by the Proposed Action.

13 74. The EA also provides no information or evidence to support its false promise that
14 “The Proposed Action allows for increased availability of water to remain in the Sacramento
15 River or stored in Shasta Reservoir by reducing reliance on surface water diversions. The
16 Proposed Action will also provide water for beneficial uses.” EA at 14. As discussed, above,
17 nothing in the Action requires surface waters to be untouched in an equal amount to the Action
18 groundwater pumping, nor is there a commitment to a specific beneficial use in a specific
19 timeframe, which defies common sense under the circumstances.

20 Hydrology and Surface Waters

21 75. The EA again asserts, with no supporting evidence and defying common sense, that
22 “By reducing reliance on surface water diversions in this very dry year, Reclamation and the
23 SRSCs intend to increase availability of water for beneficial purposes in the Sacramento Valley,
24 including listed aquatic species, fish, birds, farms and cities.” EA at 22. During a time of
25 scarcity, the SRSCs are obviously looking to obtain all water supplies available. The letter
26 agreement between the Bureau and SRSCs makes this perfectly clear, and directly contradicts the
27 Bureau’s falsehood that groundwater in this Action will fully offset and reduce surface water
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1 diversions. EA Appx. B at 1-2. Elsewhere the EA admits that groundwater pumping will
2 decrease surface water supplies, but the EA takes no look at these physical effects whatsoever.
3 Because the significant effects are not addressed, an EIS is required.

4 Listed Species

5 76. The EA fails to take the requisite “hard look” at adverse effects to the Valley
6 Elderberry Longhorn Beetle (“VELB” or the “beetle”) and the Western Yellow-billed Cuckoo,
7 two species listed under the Endangered Species Act at 16 U.S.C. § 1531 et seq.

8 77. BOR states that any effects to the beetle are less than significant because,
9 “groundwater pumping for the Proposed Action does not impact shallow groundwater
10 conditions, as those are driven by contributions from the Sacramento River and from nearby
11 irrigated agriculture. There are no changes...to irrigated lands, or water levels in fields, canals, or
12 drains, as a result of the Proposed Action. Further, Reclamation maintains flows in the
13 Sacramento River....” EA at 15.

14 78. BOR appears to adopt the same analysis here as it does in its discussion of impacts to
15 GDEs generally. Namely, that the GDEs providing habitat for the VELB rely on shallow
16 groundwater that is not affected by the withdrawal resulting from the Proposed Action. For the
17 reasons discussed above in paragraphs 62-73, BOR’s analysis is flawed. Similarly, and also for
18 the same reasons as discussed in paragraphs 50-51, 59, and 71, the regional monitoring network
19 proposed by the EA is not sufficient to mitigate significant impacts to the beetle.

20 79. Finally, the EA lacks and meaningful analysis or discussion on potential adverse
21 impacts to the listed Western Yellow-billed Cuckoo. The EA first states that critical habitat for
22 the Cuckoo extends from Red Bluff to Colusa, California along the Sacramento River. EA at 13.
23 As the Central Delta Water Agency stated in its July 14, 2021 comment letter, the critical habitat
24 within the “Action Area overlaps directly, and is adjacent to, four of the participants, with a fifth
25 participant just downstream of the habitat.”

26 80. The EA’s cursory analysis of potential impacts to the Western Yellow-billed Cuckoo
27 states in full: “[m]anaged wetlands and flooded agriculture in the Sacramento Valley provide
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1 critical nesting and wintering habitat for millions of migratory birds. There are no changes
2 proposed by the participants relative to irrigated lands, or water levels in fields, canals, or drains,
3 as a result of the Proposed Action. There are no changes to critical habitat for the Western
4 Yellow-billed Cuckoo in the Proposed Action area.” EA at 15. The EA fails to discuss habitats
5 other than managed wetlands or flooded agriculture that provide habitat for migratory birds,
6 including the Western Yellow-billed Cuckoo, to what extent those habitats are present in the
7 Project Area, and whether those habitats will be adversely affected by the Proposed Action.
8 Instead, the EA states in conclusory terms that there will be no changes to critical habitat for the
9 species in the Proposed Action area. *Id.* This minimal and conclusory analysis is wholly
10 inadequate, fails to provide an adequate baseline description of Western Yellow-billed Cuckoo
11 habitat, and does not constitute the hard look at the impacts of the Proposed Action on the
12 species required by the APA.

13 Cumulative Effects

14 81. As several commenters note, the EA’s conclusory cumulative impacts analysis
15 section is flawed. EA Appx. A at 5, 12. The EA essentially admits to potentially significant
16 cumulative effects, without actually disclosing or describing them, noting that “[w]hile a
17 groundwater well may continue to be operated, it would not be in connection with the voluntary
18 groundwater pumping approach funded by Reclamation.” EA at 6, 20. In other words, after the
19 Action groundwater pumping causes significant effects, the Bureau will have no authority to stop
20 further pumping and additional significant effects. There is also no documentation of 2021 well
21 use before the project commenced.

22 82. The EA generally acknowledges that several cumulative effects to groundwater
23 resources could occur. “Additional groundwater pumping occurs at other wells across the
24 Sacramento Valley in 2021 to meet water needs. This increased pumping is especially prominent
25 among non-SRSC water users throughout the Sacramento Valley who experience even greater
26 reductions in water supply due to current drought conditions.” EA at 22. “The proposed
27 groundwater pumping would be in addition to groundwater pumping at a well that would occur
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1 in absence of the voluntary approach (i.e., in addition to groundwater pumping due to limited
2 surface water supplies or in addition to participation in a groundwater substitution water
3 transfer). Under the No Action Alternative or under the Proposed Action, SRSCs and landowners
4 could operate additional pumps for groundwater wells outside the discretion of Reclamation, not
5 in connection with a voluntary groundwater pumping approach funded by Reclamation.” EA at
6 23. The cumulative effects discussion vaguely alludes to “separate environmental documents”
7 that analyzed some other projects that would cause cumulative effects, but the EA fails to
8 identify which documents it refers to, fails to provide any page citations to such documents, and,
9 of course, cannot claim that these other project documents assessed the new impacts of this
10 Action, or the cumulative effects of those actions with the Proposed Action.

11 83. One commenter highlights the failure of BOR to evaluate the potentially significant
12 cumulative effects the Central Valley Project (“CVP”) and State Water Project (“SWP”)
13 operations when combined with the Proposed Action. EA Appx. A at 8. In response, BOR states
14 simply that, “Cumulative effects are disclosed in the Cumulative Effects section of the EA. Text
15 has been added to clarify this section.” *Id.* at 8. Yet, the EA plainly contains no analysis of the
16 cumulative effects of the Proposed Action combined with groundwater extractions associated
17 with any other state, federal, or private activities, including the CVP and SWP. EA at 22.

18 84. The EA repeatedly refers to the Action as a “pilot” or “demonstration” project, which
19 can only be read to mean that a repeat of the Action in future years is contemplated or even
20 desired. Yet, the EA fails entirely to discuss this multi-year dimension, and fails to consider the
21 Action in this cumulative context.

22 85. One commenter asked whether several groundwater pumping projects from
23 participating entities had been considered in the cumulative effect assessment, which the Bureau
24 failed to answer. EA Appx. A at 10.

25 86. The EA fails entirely to assess the resulting cumulative effects to other groundwater
26 users, groundwater dependent ecosystems, surface waters, greenhouse gas emissions, or any and
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1 all other affected resources, for that matter. The EA therefore fails to take a hard look at the
2 question. The FONSI is not supported by fact or reason.

3 **IX. INJUNCTIVE AND DECLARATORY RELIEF**

4 87. Injunctive relief is necessary to prevent Defendants from continuing to engage in the
5 unlawful practices alleged herein. Defendants and persons acting in concert therewith have
6 done, are now doing, and will continue to do or cause to be done, the above-described illegal acts
7 unless restrained or enjoined by this Court. Plaintiffs have no plain, speedy, or adequate remedy
8 at law, in that pecuniary compensation alone would not afford adequate and complete relief.
9 Unless Defendants are restrained from committing further illegal acts, their above-described acts
10 will cause great and irreparable damage to Plaintiffs.

11 88. An actual controversy now exists between Plaintiffs and Defendants concerning their
12 rights, privileges, and obligations in that Plaintiffs contend that Defendants' above-mentioned
13 actions have violated and will continue to violate their rights under federal law and Defendants
14 contend in all respects to the contrary.

15 **IX. CLAIM FOR RELIEF**

16 **The Bureau violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.,**
17 **applicable regulations, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.**

18 89. The Bureau's approval of the Action was a major federal action that requires
19 compliance with NEPA. See 42 U.S.C. § 4332(2)(C).

20 90. The Bureau's EA violated NEPA by failing to take the requisite hard look at the
21 significant environmental effects of the Action. See, e.g., 40 C.F.R. §§ 1502.1, 1502.16(a), (b),
22 1501.9(e). Among other things, the EA failed to adequately analyze:

- 23 • the project purpose and need;
- 24 • baseline environmental conditions;
- 25 • significant effects to groundwater, including subsidence, third party users, surface
- 26 waters, and groundwater dependent ecosystems;
- 27 • aquatic and terrestrial species;
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- 1 • species listed pursuant to the Endangered Species Act;
- 2 • public health and safety;
- 3 • compliance with applicable federal, state, and local law;
- 4 • significant cumulative effects; and,
- 5 • greenhouse gas emissions.

6 91. Furthermore, the Bureau’s FONSI was arbitrary and capricious, since the agency
7 failed to make a convincing case that the impacts of the Action are not significant.

8 92. The environmental impacts associated with the Action are “significant,” 40 C.F.R. §
9 1501.3(b), and thus by preparing an EA/FONSI rather than an EIS, the Bureau violated NEPA,
10 42 U.S.C. § 4332(2)(C), and its implementing regulations.

11 93. For each of these reasons, the Bureau’s approval of the EA, FONSI, and the Action,
12 were “arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the
13 law.” *See* 5 U.S.C. § 706(2)(A).

14 **X. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that this Court:

- 16 a) Declare that Reclamation violated the National Environmental Policy Act and its
17 implementing regulations and the Administrative Procedure Act by failing to
18 adequately evaluate the effects of the Action, failing to provide a rational basis or
19 support for its Finding of No Significant Impact, and failing to prepare an
20 environmental impact statement;
- 21 b) Remand the Finding of No Significant Impact and Environmental Assessment for
22 compliance with the National Environmental Policy Act and the Administrative
23 Procedure Act;
- 24 c) Vacate the Finding of No Significant Impact and Environmental Assessment;
- 25 d) Enjoin Reclamation from proceeding with the Action unless and until Reclamation
26 prepares an environmental impact statement evaluating the impacts of the Proposed
27 Action;

- 1 e) Issue such temporary restraining order(s), preliminary injunction(s) and/or
2 permanent injunctive relief as may be requested hereafter by Plaintiffs;
3 f) Award Plaintiffs costs of litigation, including reasonable attorneys' fees; and
4 g) Grant Plaintiffs such other relief as the Court deems just and proper.
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6 DATE: August 26, 2021

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