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17  
18 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
19 SACRAMENTO DIVISION

20 UNITED STATES OF AMERICA,  
Plaintiff,  
21 v.  
22 STATE WATER RESOURCES CONTROL  
23 BOARD & STATE WATER RESOURCES  
24 CONTROL BOARD CHAIR E. JOAQUIN  
ESQUIVEL, in his official capacity,  
25 Defendants.

No.  
**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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1 The United States of America, through its undersigned attorneys, by the authority of the Attorney  
2 General, and at the request of the United States Department of the Interior, through its Bureau of  
3 Reclamation (“Reclamation”), files this action in this Court pursuant to 28 U.S.C. § 1345 and Federal  
4 Rule of Civil Procedure 81(b) seeking declaratory and injunctive relief for violations of the California  
5 Environmental Quality Act, Public Resources Code § 21000 *et seq.*, directing Defendants the California  
6 State Water Resources Control Board and its Chair, E. Joaquin Esquivel (in his official capacity) to vacate  
7 and set aside its December 12, 2018 decision to adopt Resolution No. 2018-0059, approving and adopting  
8 amendments to the 2006 *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin*  
9 *Delta Estuary* and the related Substitute Environmental Document.

## 11 I. INTRODUCTION

12 1. On December 12, 2018, the California State Water Resources Control Board (“Board”)  
13 approved and adopted amendments to the *Water Quality Control Plan for the San Francisco*  
14 *Bay/Sacramento–San Joaquin Delta Estuary* (“Amended Plan”<sup>1</sup>) and the related Substitute Environmental  
15 Document (“Final SED”).

17 2. The Amended Plan adopts new flow objectives for the Lower San Joaquin River and its  
18 tributaries.

19 3. In approving the Amended Plan and Final SED, the Board failed to comply with the  
20 requirements of the California Environmental Quality Act (“CEQA”), CAL. PUB. RES. CODE §§ 21000-  
21 21189.57 (West 2019), in the following ways:

- 23 • The Board failed to provide an accurate, stable, and finite project description, because  
24 the Board analyzed a project materially different from the project described in the  
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26 <sup>1</sup> The Amended Plan is found at Appendix K to the Final SED. The Board’s website for the Amended  
27 Plan is located at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta) (last  
28 visited March 28, 2019). The Plan revisions are found at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_plan/water\\_quality\\_control\\_planning/2018\\_sed/docs/appx\\_k.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/appx_k.pdf) (last visited March 28, 2019) and also include Change Sheets #1, 2, and 3.

1 project description;

- 2
- 3 • The Board improperly masked potential environmental impacts of the Amended Plan  
4 by including mitigation measures in the form of carryover storage targets and other  
5 reservoir controls in its impacts analysis and by not analyzing the impacts of the  
6 Amended Plan on the environment without such mitigation measures; and
  - 7 • The Board failed to adequately analyze the impacts of the Amended Plan, including  
8 with respect to water temperature and related water quality conditions, and water  
9 supply.

10 4. The United States holds water rights that are managed by Reclamation for the federal New  
11 Melones Dam and Reservoir project (“New Melones Project”), located on the Stanislaus River, that is  
12 subject to the Amended Plan. The New Melones Project is owned by the United States and operated by  
13 Reclamation under federal Reclamation laws<sup>2</sup> and is a component of the federal Central Valley Project  
14 (“CVP”).  
15

16 5. The United States will be directly, substantially, and adversely impacted by the Board’s  
17 actions, which impacts include, but are not limited to, substantial operational constraints on the New  
18 Melones Project, loss of available surface water supplies for New Melones Project purposes, including  
19 CVP water service contracts, and involuntary dedication of federal reservoir space for Board policies and  
20 purposes.  
21

22 6. The New Melones Project is located on the Stanislaus River, approximately sixty miles  
23 upstream from the river’s confluence with the San Joaquin River. The dam was authorized by Congress  
24 under the Flood Control Act of 1944, ch. 665, 58 Stat. 887, and re-authorized by the Flood Control Act of  
25 1962, Pub. L. No. 87-874, 76 Stat. 1173. While originally authorized as a flood control project, in  
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28 <sup>2</sup> Act of June 17, 1902, ch. 1093, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto.

1 reauthorizing the dam, Congress mandated that it become an integral part of the CVP, operated and  
2 maintained by the Department of the Interior under the federal Reclamation laws. The Flood Control Act  
3 of 1962 also included preservation and propagation of fish and wildlife in the New Melones Project, and  
4 regulation of streamflow for the purpose of downstream water quality control as authorized purposes. *Id.*  
5 at 1191. The dam was completed in 1979.

6  
7 7. The CVP, operated by Reclamation, is “the nation's largest federal water management  
8 project.” *San Luis & Delta-Mendota Water Auth. v. United States*, 672 F.3d 676, 681-82 (9th Cir. 2012).  
9 The CVP was re-authorized by section 2 of the Act of August 26, 1937, 50 Stat. 850.

10 8. The New Melones Project has a storage capacity of approximately 2.4 million acre feet  
11 (“af”). Reclamation has entered into contracts, pursuant to the federal Reclamation laws, with water  
12 districts for the delivery of water from the New Melones Project for irrigation and municipal and industrial  
13 purposes.  
14

15 9. The new flow objectives in the Amended Plan would significantly reduce the amount of  
16 water available in New Melones reservoir for meeting congressionally authorized purposes of the New  
17 Melones Project, including irrigation, municipal and industrial purposes, power generation, and  
18 recreational opportunities at New Melones. The reduced water available for New Melones Project  
19 purposes would also impair Reclamation’s delivery of water under contracts it presently holds with  
20 irrigation and water districts.  
21

22 10. The Court should therefore grant the relief sought in this Complaint directing the Board to  
23 set aside its approval of the Amended Plan and the Final SED.

## 24 **II. PARTIES**

25 11. Plaintiff is the United States of America. The U.S. Department of the Interior is a Cabinet-  
26 level agency and the U.S. Bureau of Reclamation is a federal agency within the Department of the Interior.  
27 Reclamation operates the New Melones Project as part of the CVP.  
28

1 12. Defendants are the State Water Resources Control Board and Board Chair E. Joaquin  
2 Esquivel in his official capacity.

3 **III. JURISDICTION AND VENUE**

4 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1345 (United States as plaintiff), 28  
5 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2201 (injunctive relief), and 28 U.S.C. § 1651 (necessary  
6 and appropriate writs).

7  
8 14. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(1)-  
9 (2), because the Board resides in this judicial district, a substantial part of the events or omissions giving  
10 rise to the claims asserted herein occurred in this judicial district, and the New Melones Project is situated  
11 in this judicial district.

12 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 15. The United States has fully exhausted all administrative remedies. The United States  
14 submitted comments to the Board on the Amended Plan. Each of the legal deficiencies asserted in this  
15 Complaint were raised before the Board by the United States, or by others, prior to the Board's adoption  
16 of the Final SED and approval of Amended Plan.

17 **V. STATUTE OF LIMITATIONS**

18 16. On December 12, 2018, the Board approved and adopted the Amended Plan and Final  
19 SED. Pursuant to the California Administrative Procedure Act, Government Code section 11353, the  
20 Board then submitted the Amended Plan, together with the administrative record of the action, to the  
21 Office of Administrative Law ("OAL") for approval. On February 25, 2019, OAL approved the Amended  
22 Plan and the Board's action to approve the Amended Plan became final upon transmission to the Secretary  
23 of State for filing.

24 17. On February 26, 2019, the Board filed a Notice of Decision with the Secretary of the  
25 California Natural Resources Agency, which filing commenced the applicable thirty-day statute of  
26  
27  
28

1 limitations under section 21080.5(g) of the Public Resources Code.

2 18. This Complaint is timely filed in accordance with California Public Resources Code  
3 section 21080.5(g).

4 **VI. NOTICE OF CEQA SUIT**

5 19. Plaintiff has complied with California Public Resources Code section 21167.5 by providing  
6 written notice of commencement of this action to the Board prior to filing this Complaint. A true and  
7 correct copy of the notice with proof of service is attached hereto as Exhibit A.

8 **VII. ELECTION TO PREPARE ADMINISTRATIVE RECORD**

9 20. Plaintiff elects to prepare the CEQA administrative record in this proceeding pursuant to  
10 California Public Resources Code section 21167.6(b)(2). A true and correct copy of such notice is  
11 attached hereto as Exhibit B.

12 **VIII. CONCURRENT STATE COURT ACTION AND RULE 81(b) SUBSTITUTE**  
13 **FEDERAL ACTION**

14 21. Plaintiff has concurrently filed a substantially similar action in California state court in  
15 Sacramento County.

16 22. Plaintiff files this action in federal district court to preserve its choice of a federal forum to  
17 resolve its claims—a choice of forum that Congress established by specifying that “civil actions, suits or  
18 proceedings” can be brought in federal court when the United States acts as a plaintiff. 28 U.S.C. § 1345.<sup>3</sup>  
19 This Complaint is a civil action. *See also, e.g., United States v. Commonwealth of Puerto Rico*, 721 F.2d  
20 832 (1st Cir. 1983) (Breyer, J., on panel) (upholding propriety of Section 1345 suit in federal district court  
21 directed against Puerto Rico’s unlawful attempt to confine to its Commonwealth courts judicial review of  
22 its refusal to take agency action to allow certain activities at a federal facility).

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27 <sup>3</sup> Plaintiff filed the concurrent action in state court only out of an abundance of caution in the event that,  
28 for any reason, this action is not adjudicated on the merits in this Court and to ensure that the state statute  
of limitations was scrupulously complied with.

1 23. Plaintiff anticipates that it may seek to amend this Complaint to bring federal claims against  
2 the Board related to the Board’s future adoption, implementation, and/or enforcement of the Amended  
3 Plan and Final SED.

4 24. In state court, an action seeking review of CEQA errors by the Defendants would be  
5 pursued under a “petition for a writ of mandate” or “petition for a writ of administrative mandate” under  
6 California Code of Civil Procedure §§ 1085 or 1094.5, respectively.<sup>4</sup> But such California writs are  
7 California-specific names for the older (and more commonly called) writ of mandamus. *See* CAL. CIV.  
8 PROC. CODE § 1084 (West 2019) (“Writ of mandamus denominated writ of mandate. The writ of  
9 mandamus may be denominated a writ of mandate.”); *see also generally* CAL. CIV. PROC. CODE, pt. 3 “Of  
10 Special Proceedings of a Civil Nature”, tit. 1 “Of Writs of Review, Mandate, and Prohibition”, ch. 2 “Writ  
11 of Mandate.”

12 25. However, Federal Rule of Civil Procedure 81(b) has abolished writs of mandamus in  
13 federal district court. *See* Fed. R. Civ. P. 81(b) (“Scire Facias and Mandamus. The writs of scire facias  
14 and mandamus are abolished. Relief previously available through them may be obtained *by appropriate*  
15 *action or motion* under these rules.”) (emphasis added).

16 26. Hence, this Section 1345 action by the United States as plaintiff is premised on the  
17 substitute cause of action for a writ of mandamus established by Rule 81(b). Moreover, it is a basic  
18 consequence of the adoption of the Federal Rules of Civil Procedure that all questions of procedure in this  
19 case should be governed exclusively by those rules and not by the California Code of Civil Procedure.  
20 *See, e.g., Hanna v. Plumer*, 380 U.S. 460, 465 (1965) (“[F]ederal courts are to apply state substantive law  
21 and federal procedural law”). California CEQA law acts here as the substantive state law with Rule 81(b)  
22 providing that a cause of action in federal court to enforce CEQA against Defendants is the appropriate  
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27 \_\_\_\_\_  
28 <sup>4</sup> And indeed, the concurrent action filed by Plaintiff in state court proceeds under California Code of Civil  
Procedure §§ 1085 & 1094.5.

1 procedural device carrying forward the merits of this case.

2 27. This action is also premised in the alternative on the All Writs Act, 28 U.S.C. § 1651, as  
3 interpreted in *Stern v. S. Chester Tube Co.*, 390 U.S. 606 (1968) (holding district court had jurisdiction  
4 under the All Writs Act to issue an order in the nature of mandamus). *Stern* looks past any mandamus  
5 labels States might apply to the creation of causes of action to enforce state law. Here, such an approach  
6 permits a federal court to entertain an action ordering Defendants to comply with CEQA.  
7

### 8 **IX. FACTUAL BACKGROUND**

9 28. In 1978 the Board adopted the *Water Quality Control Plan for the San Francisco*  
10 *Bay/Sacramento–San Joaquin Delta Estuary* (“Bay-Delta Plan”) pursuant to its water quality authority  
11 under California’s Porter-Cologne Water Quality Act (“Porter-Cologne Act”), CAL. WATER CODE §§  
12 13000-16104 (West 2019). The Board subsequently amended the Bay-Delta Plan three times: in 1991,  
13 1995, and 2006.  
14

15 29. In 2009, the Board again initiated proceedings to amend the Bay-Delta Plan. On December  
16 31, 2012, the Board released a Draft SED for public review and comment. On September 15, 2016, the  
17 Board recirculated a revised draft SED. On July 6, 2018, the Board released its proposed Final SED.  
18

19 30. On December 12, 2018, the Board adopted Resolution No. 2018-0059, approving the  
20 Amended Plan. The Amended Plan, among other things, modified the Bay-Delta Plan flow objectives for  
21 the Lower San Joaquin River and its tributaries (“LSJR flow objectives”).

22 31. The Amended Plan’s LSJR flow objectives include both narrative objectives and numeric  
23 flow criteria. The LSJR numeric flow objectives require maintenance of 40% of unimpaired flow (“UIF”),  
24 measured on a seven-day running average, for each of the Stanislaus, Tuolumne, and Merced Rivers from  
25 February through June. Final SED, App. K, at 25. The narrative objectives require that the Board  
26 “[m]aintain inflow conditions [in the relevant reaches] sufficient to support and maintain the natural  
27 production of viable native San Joaquin River water shed fish populations migrating through the Delta.”  
28



1 *Id.* at 15.

2 32. The Amended Plan includes “adaptive implementation” measures such as flow shaping  
3 and flow shifting. Specifically, the Amended Plan provides that:

- 4 • The percent of unimpaired flow may be adjusted to any value within an adaptive range  
5 of 30 to 50% UIF on either a short or long-term basis;
- 6 • The percent of unimpaired flow for February–June may be managed as a total volume  
7 of water and released on an adaptive schedule during that period;
- 8 • As long as at least 30% UIF is provided during the February–June time frame, flows  
9 may be shifted from the February– June time frame to other times of year to prevent  
10 adverse temperature effects; and
- 11 • The February–June Vernalis base flow requirement may be adjusted on an annual or  
12 long-term basis to any value between 800 and 1,200 cfs.

13 *Id.* at 26-27.

14 33. In Chapter 3 of the Final SED, the Board describes “LSJR Alternative 3” as follows:

15  
16  
17 LSJR Alternative 3 implements the 30–50 percent numeric flow water  
18 quality objective range by initially requiring maintenance of 40 percent of  
19 unimpaired flows at the confluences of each of the Stanislaus, Tuolumne,  
20 and Merced Rivers with the LSJR from February–June based on a 7-day  
21 minimum running average. As described above in Section 3.3.3, *Adaptive*  
22 *Implementation*, the flow requirements could be adaptively adjusted in the  
23 same manner for LSJR Alternatives 2, 3, and 4. The following discussion  
24 describes aspects of adaptive implementation as specifically applied to  
25 LSJR Alternative 3.

- 26 1. Adjust the minimum unimpaired flow objective within a range of 30  
27 percent to 50 percent.
- 28 2. Implementing this method would allow an increase or decrease of up to  
10 percent in the February–June 40 percent minimum unimpaired flow  
requirement (with a minimum of 30 percent and maximum of 50  
percent).
3. Manage the February–June percent of unimpaired flow as a total volume

1 of water and release the water on an adaptive schedule during that period  
2 where scientific information indicates a flow pattern different from that  
3 which would occur by tracking the unimpaired flow percentage, would  
4 better protect fish and wildlife beneficial uses. Applying this method,  
5 the total volume of water released would be the same as LSJR  
6 Alternative 3 without adaptive implementation; however the rate could  
7 vary from the actual (7-day running average) unimpaired flow rate and  
8 the volume for each month could vary.

6 4. Allow a portion of the total February–June unimpaired flow volume to  
7 be held and released after June in order to prevent adverse effects to  
8 fisheries, including temperature, that would otherwise result from  
9 implementation of the February–June flow requirements. If the  
10 requirement is greater than 30 percent but less than 40 percent, the  
11 amount of flow that may be released after June is limited to the portion  
12 of the unimpaired flow requirement over 30 percent. If the requirement  
13 is 40 percent or greater, then 25 percent of the total volume of the flow  
14 requirement may be released after June.

12 5. The minimum required LSJR base flow objective for February–June of  
13 1,000 cfs, based on a minimum 7-day running average, at Vernalis may  
14 be adjusted to a value between 800 and 1,200 cfs.

14 Final SED at 3-15 to 3-16.

15 34. LSJR Alternative 3 is the alternative that the Board adopted as the Amended Plan.

16 35. The Board’s description of LSJR Alternative 3 in Chapter 3 does not mention, describe, or  
17 otherwise discuss carryover storage targets, or other reservoir controls, that would directly impact the New  
18 Melones Project. Nor does its discussion of the potential impacts on Agricultural Resources (Chapter 11)  
19 or Service Providers (Chapter 13) mention such targets or controls.

21 36. In contrast, the Board’s hydrologic modeling used for its impacts analysis assumes the  
22 imposition of a precise 700,000 af end-of-September carryover storage target, maximum storage  
23 withdrawals, and that certain drought-refill criteria are met by the New Melones Project.

24 37. Elsewhere in the Final SED, the Board explains that “adaptive implementation” of the  
25 LSJR flow objectives and carryover storage targets are necessary to prevent adverse environmental  
26 impacts of tracking the daily unimpaired flow percentage based on a running average of no more than  
27 seven days:  
28

1 Through adaptive implementation, however, a portion of the February–June  
2 flows could be shifted to other months to avoid adverse temperature impacts  
3 on fish and wildlife. Without this flow shifting there could otherwise be  
4 insufficient water available to achieve temperature criteria in the summer  
5 and fall. In addition, when implementing the LSJR flow objectives, the State  
6 Water Board will include minimum reservoir carryover storage targets or  
7 other requirements to help ensure that implementation of the flow objectives  
8 will not have adverse temperature or other impacts on fish and wildlife or,  
9 if feasible, other beneficial uses, and does not impact supplies of water for  
10 minimum health and safety needs, particularly during drought periods.

11 Final SED, Executive Summary, at ES-14.

12 38. In Appendix K to the Final SED, the Board states that

13 When implementing the LSJR flow objectives, the State Water Board will  
14 include **minimum reservoir carryover storage targets or other**  
15 **requirements** to help ensure that providing flows to meet the flow  
16 objectives will not have significant adverse temperature or other impacts on  
17 fish and wildlife or, if feasible, on other beneficial uses.

18 Final SED, App. K, at 28 (emphasis added).

19 39. The Board’s water quality control planning program is a certified regulatory program under  
20 section 21080.5 of CEQA. The Board is the lead agency responsible under CEQA for evaluating the  
21 environmental impacts of the project under the SED.

### 22 **INJUNCTIVE AND DECLARATORY RELIEF**

23 40. The Board prejudicially abused its discretion and failed to proceed in the manner required  
24 by law in its review and approval of the Amended Plan and Final SED. The Board’s adoption of the  
25 Amended Plan and Final SED was arbitrary, lacking in evidentiary support, and contrary to law, for the  
26 reasons alleged herein.

27 41. Injunctive relief is necessary, because unless this Court restrains the Board from taking  
28 further action pursuant to its unlawful approval of the Amended Plan irreparable harm will be done to the  
United States. The United States has no plain, speedy, or adequate remedy in the ordinary course of law,  
and pecuniary compensation alone cannot afford adequate and complete relief. *See also Stern*, 390 U.S.  
at 609 (focus should be on the power of the federal court to order action to be taken to vindicate state-law

1 rights, not on whether the label is one sounding in mandamus or for injunctive relief, in light of the merger  
2 of law and equity).

3  
4 **FIRST CAUSE OF ACTION**  
**(Violation of CEQA–Failure to Provide Accurate, Stable and Finite Project Description)**

5 42. The United States realleges and incorporates, as though fully set forth herein, each and  
6 every allegation in paragraphs 1 through 41 of this Complaint.

7 43. In adopting the Final SED and the Amended Plan, the Board prejudicially abused its  
8 discretion and failed to proceed in a manner required by law.

9 44. The Board failed to proceed in a manner required by law, because the Final SED fails to  
10 provide “[a]n accurate, stable and finite project description.” *Rio Vista Farm Bureau Ctr. v. Cty. of*  
11 *Solano*, 7 Cal. Rptr. 2d 307, 314 (Cal. Dist. Ct. App. 1992) (internal citation omitted).

12 45. The “project description” for purposes of CEQA constitutes the Board’s description of  
13 LSJR Alternative 3 in the Final SED.

14 46. The Board violated CEQA because its project description is inconsistent with its analysis  
15 of the project. In brief, the Board modeled and analyzed the environmental effects of a project that is  
16 materially different from that described in the project description.

17 47. The project description lacks any discussion of reservoir controls, *yet*, when the Board  
18 analyzed the impacts of the Amended Plan the Board imposed reservoir controls on the New Melones  
19 Project, specifically: (i) a minimum end-of-September carryover storage target of 700,000 af; (ii)  
20 maximum allowable draw from storage over the irrigation season in order to achieve the 700,000 af end-  
21 of-September carryover storage target; and (iii) end-of-drought storage refill criteria. Final SED, App.  
22 F.1, at F.1-31 to 1-32; F.1-36; Final SED, Master Response 3.2: Surface Water Analyses and Modeling,  
23 at 49-50.

24 48. The Board does not, except in the modeling done for its impacts analysis, identify a precise  
25 700,000 af carryover storage target that would apply to the New Melones Project. Final SED, App. F.1,  
26

1 at F.1-36.

2 49. In other places in the Final SED, the Board states it will “include minimum reservoir  
3 carryover storage targets or other requirements . . . .” Final SED, App. K, at 28. The Board also states  
4 that a different target, or other measures, may be adopted following a site-specific analysis. Final SED,  
5 Master Response 2.1, at 35; Final SED, Master Response 3.2, at 49, 55.

6  
7 50. The Board also violated CEQA, because it failed to disclose in the project description that  
8 the carryover storage targets and reservoir controls it modeled as part of its impacts analysis were  
9 mitigation measures and not part of the project itself.

10 51. The Board’s decision to approve the Final SED and adopt the Amended Plan thereby  
11 constitutes a prejudicial abuse of discretion. The Court therefore should declare or order the Board to set  
12 aside its approval of the Final SED and adoption of the Amended Plan and enjoin the Board from  
13 implementing them unless and until the Board complies with CEQA.  
14

15 **SECOND CAUSE OF ACTION**  
16 **(Violation of CEQA—Improper Compression of Impacts and Mitigation)**

17 52. The United States realleges and incorporates, as though fully set forth herein, each and  
18 every allegation in paragraphs 1 through 51 of this Complaint.

19 53. In adopting the Final SED and the Amended Plan, the Board prejudicially abused its  
20 discretion and failed to proceed in a matter required by law.

21 54. The Final SED violates CEQA by unlawfully compressing the analysis of impacts and  
22 mitigation measures, specifically with regard to carryover storage targets, in violation of the principle set  
23 forth in *Lotus v. Department of Transportation*, 167 Cal. Rptr. 3d 382, 388, 391 (Cal. Dist. Ct. App. 2014).  
24 In other words, CEQA requires impacts of a project to be disclosed without mitigation and the Board  
25 failed to do so here.  
26

27 55. The carryover storage targets are mitigation measures, and the Board consistently describes  
28 the carryover storage targets as mitigation or otherwise indicates that the targets constitute mitigation

1 measures.

2 56. The Board included carryover storage targets and other reservoir controls in its impacts  
3 analysis in order to mask the true potential environmental impacts of the flow objectives.

4 57. The Board's conclusions that the project would not adversely impact water temperature  
5 and related water quality conditions were based on an analysis that improperly included mitigation  
6 measures, specifically the carryover storage targets, maximum allowable draw from storage, and drought-  
7 refill criteria.  
8

9 58. Because mitigation measures are improperly included in the impacts analysis it is  
10 impossible for Reclamation or the public to determine the true impact of the Amended Plan, including on  
11 river temperatures and related water quality conditions, water supply reliability, flood control and power  
12 operations, as well as on recreation at New Melones.  
13

14 59. The Board's decision to approve the Final SED and adopt the Amended Plan thereby  
15 constitutes a prejudicial abuse of discretion. The Court therefore should declare or order the Board to set  
16 aside its approval of the Final SED and adoption of the Amended Plan and enjoin the Board from  
17 implementing them unless and until the Board complies with CEQA.  
18

19 **THIRD CAUSE OF ACTION**  
**(Violation of CEQA—Failure to Adequately Evaluate Impacts)**

20 60. The United States realleges and incorporates, as though fully set forth herein, each and  
21 every allegation in paragraphs 1 through 59 of this Complaint.

22 61. The Final SED fails to sufficiently evaluate the Amended Plan's significant or potentially  
23 significant impacts on the New Melones Project, in particular, the Amended Plan's impacts on temperature  
24 and related water quality conditions.  
25

26 62. According to the Board's technical analysis, the Amended Plan does not result in  
27 detrimental impacts on water temperatures in the tributaries and on the mainstem of the San Joaquin River.  
28 But that analysis is fundamentally flawed, because the Board incorporated carryover storage and other

1 reservoir controls, *i.e.*, mitigation measures, into its modeling. Doing so reserved hundreds of thousands  
2 of acre feet of water in reservoir storage at New Melones that may otherwise have been used for New  
3 Melones Project purposes, and serves to mask the true impacts of the Amended Plan on stream  
4 temperatures and related water quality conditions.

5  
6 63. In violation of CEQA, the Board fails to disclose and analyze the impacts the Amended  
7 Plan would have on water temperatures and related water quality conditions absent the imposition of an  
8 end-of-September carryover storage target of 700,000 af. In violation of CEQA, the Board fails to disclose  
9 and analyze the impacts the Amended Plan would have on water temperatures and related water quality  
10 conditions without the imposition of maximum allowable draw and drought-refill requirements on the  
11 New Melones Project.

12  
13 64. The Board also fails to adequately analyze the impacts of the Amended Plan without  
14 carryover storage or other reservoir controls on Reclamation's CVP water service contractors. The  
15 impacts of the Amended Plan on Reclamation's CVP contractors will exceed the Board's estimated  
16 impacts.

17  
18 65. Imposing reservoir controls on top of the water supply impacts of the 40% unimpaired flow  
19 objective will mean that even less water is available from the New Melones Project for congressionally  
20 authorized purposes. The Board's impacts analysis assumes that water will be distributed out-of-priority  
21 such that junior water rights holders do not absorb the entire shortfall.

22  
23 66. The Board fails to adequately analyze the impacts of the reservoir controls it imposes on  
the New Melones Project by including them as modeling assumptions in its impacts analysis.

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25 67. The Board's decision to approve the Final SED and adopt the Amended Plan thereby  
26 constitutes a prejudicial abuse of discretion. The Court therefore should declare or order the Board to set  
27 aside its approval of the Final SED and adoption of the Amended Plan and enjoin the Board from  
28 implementing them unless and until the Board complies with CEQA.

**PRAYER FOR RELIEF**

WHEREFORE, the United States prays for relief as follows:

1. For a declaratory judgment that the Board violated CEQA in its approval and adoption of the Amended Plan and Final SED;

2. For a preliminary and permanent injunction prohibiting the Board from taking any action to implement and/or enforce the Amended Plan unless and until the Board fully complies with the requirements of CEQA;

3. In the alternative, for a necessary and appropriate *Stern* writ in the nature of mandamus issued pursuant to 28 U.S.C. § 1651 directing the Board to:

(a) Vacate and set aside its Final SED and any adoption and approvals thereof;

(b) Suspend all activity under its approval of the Amended Plan and Final SED, including action to commence an implementation phase of the Amended Plan until the Board has taken action to bring the Final SED into compliance with CEQA;

(c) Prepare, circulate, and consider a revised and legally adequate SED and otherwise comply with CEQA in any subsequent action taken to approve the Amended Plan;

4. For such other equitable or legal relief that the Court considers just and proper.



1 DATED: March 28, 2019  
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3 Respectfully submitted,

4 JEFFREY BOSSERT CLARK  
Assistant Attorney General  
Environment & Natural Resources Division

5 Of Counsel:  
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12 By: */s/ Erika Norman*

13 Erika Norman  
14 Attorneys for Plaintiff  
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**VERIFICATION**

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2 I, Kristin White, am the Deputy Operations Manager, Central Valley Operations, for the United  
3 States Bureau of Reclamation, Mid-Pacific Region, a party to this action, and am authorized to make this  
4 verification for that reason. I am informed and believe, and on that ground allege, that the matters stated  
5 in the foregoing Complaint are true and correct.  
6

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
8 true and correct.

9 Executed on March 28th, 2019 at Sacramento, California.  
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12 Kristin White  
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