

1 NINA C. ROBERTSON, State Bar No. 276079
nrobertson@earthjustice.org
2 MARIE E. LOGAN, State Bar No. 308228
mlogan@earthjustice.org
3 EARTHJUSTICE
50 California Street, Ste. 500
4 San Francisco, CA 94111
Tel: 415-217-2000 / Fax: 415-217-2040

5 *Attorneys for All Plaintiffs*

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GOLDEN STATE SALMON ASSOCIATION;
11 PACIFIC COAST FEDERATION OF
FISHERMEN’S ASSOCIATIONS; INSTITUTE
12 FOR FISHERIES RESOURCES; FRIENDS OF
THE RIVER; and SIERRA CLUB

13 Plaintiffs,

14 v.

15 UNITED STATES BUREAU OF
16 RECLAMATION,

17 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Freedom of Information Act Case)

18
19 **INTRODUCTION**

20 1. Plaintiffs Golden State Salmon Association, Pacific Coast Federation of Fishermen’s
21 Associations, Institute for Fisheries Resources, Friends of the River, and Sierra Club (collectively,
22 “Plaintiffs”) bring this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
23 to compel the Defendant United States Bureau of Reclamation (“Reclamation”) to release long-
24 overdue public records that will inform Plaintiffs and the public about the agency’s plans and actions
25 to raise the height of Shasta Dam, a major federal project that would have wide-ranging impacts on
26 rivers, imperiled species, tribal lands, and sensitive ecosystems.

27 2. Reclamation’s failure to release public records, in response to three separate FOIA
28 requests submitted in April and June of 2019, violates FOIA.

1 3. Reclamation’s failure to release these records deprives Plaintiffs and the public of
2 important information about whether Reclamation’s plan to raise the height of Shasta Dam and
3 enlarge Shasta Reservoir has received necessary oversight with respect to dam safety and impacts to
4 threatened and endangered species. The requested information will also likely reveal whether and
5 how Reclamation has communicated with potential non-federal cost-share partners.

6 4. Reclamation’s delay in releasing records is especially egregious as its actions to raise
7 the height of Shasta Dam are imminent. Reclamation publicly announced in 2019 that it intended to
8 secure at least one non-federal cost-share partner in August 2019, issue a record of decision in
9 September 2019, and award a construction contract in December 2019.

10 5. As of the filing of this Complaint, Reclamation has failed to respond to any of
11 Plaintiffs’ three FOIA requests.

12 6. Reclamation’s actions in relation to Plaintiffs’ FOIA requests violate FOIA in several
13 ways. First, Reclamation failed to make timely determinations regarding each of Plaintiffs’ three
14 FOIA requests. Second, Reclamation failed to conduct an adequate search for records responsive to
15 Plaintiffs’ FOIA requests. Third, Reclamation improperly withheld and has failed to promptly
16 disclose records responsive to Plaintiffs’ FOIA requests. Fourth, Reclamation failed to provide
17 reasonably segregable portions of any lawfully exempt records.

18 7. Reclamation’s determinations on each of Plaintiffs’ three FOIA requests are now 127,
19 113, and 113 working days overdue, respectively.

20 8. Plaintiffs are entitled to immediate release of all non-exempt responsive records.

21 9. Plaintiffs are groups engaged in ongoing public outreach and education regarding
22 government proposals to raise the height of Shasta Dam. Reclamation’s repeated failures to comply
23 with FOIA frustrate Plaintiffs’ organizational activities.

24 10. Prompt access to these records is necessary to effectuate FOIA’s purpose of
25 transparency and open government. Thus, Plaintiffs seek from the Court declaratory relief
26 establishing that Reclamation has violated FOIA and injunctive relief directing Reclamation to
27 conduct an adequate search that uses the date of the search as the cut-off date and to release the
28

1 improperly withheld records, including all reasonably segregable portions of any lawfully exempt
2 records, without further delay.

3 **PARTIES**

4 11. Plaintiff GOLDEN STATE SALMON ASSOCIATION (“GSSA”)¹ is a non-profit
5 organization that resides in Pacifica, California, and has its principal place of business in San
6 Francisco, California. GSSA represents a coalition of advocates—including commercial and
7 recreational fishermen, businesses, restaurants, a tribe, and environmentalists—that rely on salmon,
8 from Oregon to California’s Central Coast, through the San Francisco Bay-Delta and into the Central
9 Valley. GSSA seeks to protect and restore California’s largest salmon-producing habitat in the
10 Central Valley for the benefit of the Bay-Delta ecosystem and the diverse communities that rely on
11 salmon as a long-term, sustainable commercial, recreational, and cultural resource. GSSA currently
12 has over 400 active members and an estimated 4,000 to 5,000 members in the affiliated groups that it
13 represents. GSSA works to protect and restore the Sacramento River, including the upper part of the
14 river below Shasta Dam. Among GSSA’s members are fishing guides and anglers who primarily fish
15 the upper Sacramento River including the reach of the river below Shasta Dam. GSSA regularly uses
16 information received through the Freedom of Information Act to educate and inform its members
17 about issues affecting California’s salmon-producing habitat; GSSA’s members derive benefits from
18 agencies’ compliance with FOIA and from the receipt of public records. Reclamation’s failure to
19 comply with FOIA harms GSSA’s ability to provide full, accurate and current information to its
20 members and the public on the proposal to raise Shasta Dam, Reclamation’s dealings with potential
21 non-federal cost-share partners, and the impacts and risks of a raised Shasta Dam, which are matters
22 of public interest. The relief requested in this lawsuit can redress these injuries.

23 12. Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
24 (“PCFFA”) is the largest trade organization of commercial fishing men and women on the West
25 Coast. PCFFA is a federation of port associations and marketing associations in California, Oregon,
26

27 ¹ Plaintiff Golden State Salmon Association was known as Golden Gate Salmon Association
28 until August 2019, when it changed its legal name. The three FOIA requests that are the subject of
this lawsuit were submitted under GSSA’s former name.

1 and Washington. PCFFA is incorporated and has its principal place of business in San Francisco,
2 California. Collectively, PCFFA's members represent more than 750 commercial fishing families,
3 most of whom are small and mid-sized commercial fishing boat owners and operators. Many of
4 PCFFA's members derive all or part of their income from the harvesting of salmonids, a valuable
5 business enterprise for the West Coast and California economies. The decline of California's salmon
6 species has severely impacted PCFFA members in California by limiting commercial harvest
7 opportunities, both through lost production of impaired stocks and because of restrictions imposed
8 on the fishing fleet to protect impaired salmon populations. Habitat losses to date already have cost
9 the West Coast salmon fishing industry (including both commercial and recreational components)
10 tens of thousands of jobs in the last 30 years. These losses are directly related to widespread inland
11 habitat destruction, impaired water quality, and the impediment of volitional fish passage resulting
12 from the construction of dams and diversions of water. Among PCFFA's members are hundreds of
13 commercial fishermen and women who fish for salmon and who therefore depend on sufficient
14 water flows from the Sacramento River for the production of salmon. PCFFA regularly uses
15 information received through the Freedom of Information Act to educate and inform its members
16 about issues affecting the salmon industry; its members derive benefits from agencies' compliance
17 with FOIA and from the receipt of public records. Reclamation's failure to comply with FOIA
18 harms PCFFA's ability to provide full, accurate and current information to its members and the
19 public on the proposal to raise Shasta Dam, Reclamation's dealings with potential non-federal cost-
20 share partners, and the impacts and risks of a raised Shasta Dam, which are matters of public
21 interest. The relief requested in this lawsuit can redress these injuries.

22 13. Plaintiff INSTITUTE FOR FISHERIES RESOURCES ("IFR") is a non-profit sister
23 organization of PCFFA that is incorporated and has its principal place of business in San Francisco.
24 Established in 1993 by PCFFA, IFR is responsible for meeting the fishery research and conservation
25 needs of working men and women in the fishing industry by executing PCFFA's expanding habitat
26 protection program. From its inception, IFR has helped fishing men and women in California and the
27 Pacific Northwest address salmon protection and restoration issues, with particular focus on dam,
28 water diversion, and forestry concerns. IFR is an active leader in several restoration programs

1 affecting winter-run and spring-run Chinook, including removal of antiquated storage and
2 hydroelectric dams and the reestablishment of volitional and non-volitional fish passage above dams.
3 IFR has actively advocated for the protection and restoration of flows critical to the health of the San
4 Francisco Bay and Delta. IFR regularly uses information received through the Freedom of
5 Information Act to educate and inform its members about issues affecting the salmon industry; its
6 members derive benefits from agencies' compliance with FOIA and from the receipt of public
7 records. Reclamation's failure to comply with FOIA harms IFR's ability to provide full, accurate
8 and current information to its members and the public on the proposal to raise Shasta Dam,
9 Reclamation's dealings with potential non-federal cost-share partners, and the impacts and risks of a
10 raised Shasta Dam, which are matters of public interest. The relief requested in this lawsuit can
11 redress these injuries.

12 14. Plaintiff FRIENDS OF THE RIVER ("FOR") was founded in 1973 and is
13 incorporated under the non-profit laws of the State of California. Its principal place of business is in
14 Sacramento, California. FOR has more than 3,000 members dedicated to the protection,
15 preservation, and restoration of California's rivers, streams, watersheds, and aquatic ecosystems.
16 FOR's members and staff include individuals who visit, study, and recreate in streams, rivers, and
17 riparian areas throughout California, including the McCloud River and the Sacramento River
18 downstream of Shasta Dam. A statewide river preservation group, FOR has provided comments
19 before state and federal agencies on past proposals to raise Shasta Dam. FOR regularly uses
20 information received through the Freedom of Information Act to educate and inform the public about
21 issues affecting California's river ecosystems; its members derive benefits from agencies'
22 compliance with FOIA and from the receipt of public records. Reclamation's failure to comply with
23 FOIA harms FOR's ability to provide full, accurate and current information to its members and the
24 public on the proposal to raise Shasta Dam, Reclamation's dealings with potential non-federal cost-
25 share partners, and the impacts and risks of a raised Shasta Dam, which are matters of public
26 interest. The relief requested in this lawsuit can redress these injuries.

27 15. Plaintiff SIERRA CLUB is a national non-profit organization of approximately
28 779,000 members, including 166,900 members in California. Sierra Club is dedicated to exploring,

1 enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use
2 of the earth's ecosystems and resources; to educating and encouraging humanity to protect and
3 restore the quality of the natural and human environment; and to using all lawful means to carry out
4 these objectives. Sierra Club regularly uses information received through the Freedom of
5 Information Act to educate and inform the public about environmental issues; its members derive
6 benefits from agencies' compliance with FOIA and from the receipt of public records.
7 Reclamation's failure to comply with FOIA harms Sierra Club's ability to provide full, accurate and
8 current information to its members and the public on the proposal to raise Shasta Dam,
9 Reclamation's dealings with potential non-federal cost-share partners, and the impacts and risks of a
10 raised Shasta Dam, which are matters of public interest. The relief requested in this lawsuit can
11 redress these injuries.

12 16. Defendant UNITED STATES BUREAU OF RECLAMATION is a federal agency as
13 defined within 5 U.S.C. § 551(1), and is housed within the U.S. Department of the Interior ("DOI").
14 Reclamation is therefore subject to FOIA pursuant to 5 U.S.C. § 552(f)(1). Reclamation is the
15 federal agency that administers dams, power plants and canals in Western states, and is charged with
16 managing, developing, and protecting water and related resources. Reclamation has possession and
17 control of the records that Plaintiffs seek in this action.

18 **JURISDICTION AND VENUE**

19 17. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and
20 28 U.S.C. § 1331, because this action arises under FOIA and the Declaratory Judgment Act, 28
21 U.S.C. §§ 2201-02.

22 18. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) because Plaintiff
23 GSSA resides in Pacifica, California, which is located in San Mateo County, and has its principal
24 place of business in San Francisco, which is in San Francisco County. Additionally, Plaintiffs
25 PCFFA and IFR both reside and have their principal place of business in San Francisco, California.
26 Both San Mateo County and San Francisco County are within the Northern District of California.

27 19. Declaratory relief is appropriate under 28 U.S.C. § 2201.

28 20. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

INTRADISTRICT ASSIGNMENT

21. Assignment to the San Francisco or Oakland Division of this District is proper pursuant to Civil Local Rule 3-2(c)-(d) because Plaintiff GSSA resides in San Mateo County and has its principal place of business in San Francisco County, and Plaintiffs PCFFA and IFR both reside and have their principal place of business in San Francisco County.

FACTUAL BACKGROUND

A. FOIA Request Regarding Shasta Dam Raise Cost-Share Partners (BOR-2019-00161)

22. On April 30, 2019, GSSA, FOR, Sierra Club and other organizations not party to this action jointly filed a FOIA request with Reclamation. The request sought records related to Reclamation’s discussions and agreements with any potential or confirmed non-federal cost-share partners regarding the project to raise the height of Shasta Dam. The April 30 FOIA request also asked that any fees associated with the search be waived, and requested “rolling release” of responsive records to expedite receipt.

23. The April 30 FOIA request defined the “Project” to raise the height of Shasta Dam as follows:

For purposes of this request, the “Project” refers to the “Shasta Dam and Reservoir Enlargement Project” as described on Reclamation’s website, <https://www.usbr.gov/mp/ncao/shasta-enlargement.html>, and any other potential enlargement and/or modification of Shasta Dam and reservoir including plans discussed in Reclamation’s July 2015 Final Feasibility Report and Environmental Impact Statement (“EIS”) for the Shasta Lake Water Resources Investigation (“SLWRI”) and any related activities.

24. On May 23, 2019, Christopher S. Miller of Reclamation’s Mid-Pacific Regional FOIA Office sent an email to Nina Robertson, attorney for the organizations seeking records, attaching a letter acknowledging receipt of the April 30 request. The letter, dated May 23, 2019, indicated that Reclamation had received the April 30 FOIA request on May 7, 2019. The acknowledgement letter assigned the FOIA tracking number BOR-2019-00161 to the April 30 request. Mr. Miller asked Ms. Robertson to narrow the request to two named projects: “Shasta Dam and Reservoir Enlargement” and the “Shasta Lake Water Resources Investigation.”

1 25. The May 23 acknowledgement letter also indicated that Reclamation had placed the
2 April 30 FOIA request into Reclamation’s “complex” processing track, and indicated that searches
3 would take place in Reclamation’s “Mid-Pacific Region only.”

4 26. On May 24, 2019, Ms. Robertson responded to Mr. Miller by email, asserting that the
5 word “Project” had been adequately defined, and declining to narrow the scope of the April 30 FOIA
6 request.

7 27. On May 28, 2019, Mr. Miller wrote back to Ms. Robertson by email, agreeing to
8 accept the April 30 FOIA request as originally written. In his email, Mr. Miller also indicated that
9 the April 30 request invoked “unusual circumstances,” such that Reclamation was entitled to a ten-
10 working-day extension of time to respond to the request. The email also indicated that Reclamation
11 had granted the requested fee waiver.

12 28. On May 28, 2019, Ms. Robertson wrote back to Mr. Miller by email, requesting
13 confirmation that the May 7, 2019 date of receipt by Reclamation would apply for purposes of
14 FOIA’s compliance deadline.

15 29. On May 29, 2019, Mr. Miller wrote back to Ms. Robertson by email. He did not
16 respond to Ms. Robertson’s question regarding the May 7, 2019 date of receipt. He offered an
17 estimated processing completion date of August 19, 2019.

18 30. On May 29, 2019, Ms. Robertson wrote back to Mr. Miller by email, inquiring about
19 how the estimated completion date had been calculated. She also noted the requesters would be
20 happy to accept records on a rolling basis in lieu of narrowing the scope of the request.

21 31. On May 30, 2019, Mr. Miller wrote back to Ms. Robertson by email. He recalculated
22 the estimated completion date to August 2, 2019.

23 32. On May 31, 2019, Ms. Robertson wrote back to Mr. Miller by email, inquiring
24 whether DOI’s online FOIA tracking system would be updated to reflect the revised estimated
25 completion date that he had indicated in his prior email.

26 33. On May 31, 2019, Mr. Miller wrote back to Ms. Robertson by email, explaining that
27 DOI’s online FOIA tracking system would not be updated and would remain inaccurate, because
28 “[t]he date is generated by the data that is input.” Mr. Miller’s emails did not explain why his own

1 calculations were at odds with DOI’s online FOIA tracking system, or why the dates could not be
2 reconciled or corrected in the system.

3 34. The months of June, July, and August 2019 passed without any communications from
4 Reclamation regarding the April 30 FOIA request.

5 35. On September 24, 2019, Mr. Miller wrote Ms. Robertson an email, which stated that
6 the records had been compiled and reviewed by his office, but that he needed to consult with other
7 offices. He estimated the completion date for the request at 10 workdays from the date of his email,
8 excluding any other processing complications.

9 36. On October 7, 2019, Ms. Robertson wrote Mr. Miller by email, reiterating the
10 ongoing request for responsive records, and noting that Reclamation had exceeded FOIA’s statutory
11 deadlines. She noted that she had sought records on a rolling basis, but had received none. She
12 noted that DOI’s online FOIA tracking system continued to incorrectly list August 20, 2019 as an
13 estimated processing completion date.

14 37. Reclamation did not respond to Ms. Robertson’s October 7 email.

15 38. On October 11, 2019, Ms. Robertson wrote to Mr. Miller by email again, requesting a
16 response to her email dated October 7, 2019.

17 39. On October 15, 2019, Mr. Miller responded by email. He stated that the records were
18 undergoing a required review, that Reclamation was unable to provide interim or rolling responses
19 for the request, and he was unable to give an estimate of when the required review would be
20 completed.

21 40. Ms. Robertson has received no further communications from Mr. Miller or any other
22 individual working at Reclamation regarding this request since October 11, 2019.

23 41. Reclamation has not produced any records responsive to this FOIA request to date.

24 42. The online FOIA tracking system continues to incorrectly list August 20, 2019 as the
25 “estimated processing completion date” as of the date of this filing.

26 43. As of the filing of this complaint, which is 127 workdays after the 30-working-day
27 determination deadline of June 19, 2019 (which includes the 10-working-day extension for
28 Reclamation’s alleged “unusual circumstances”), Plaintiffs have received no records and no

1 additional communications from Reclamation on the April 30 FOIA request regarding cost-share
2 partners.

3 44. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the
4 records that are responsive to Plaintiffs’ April 30 FOIA request. *See* 5 U.S.C. § 552(b).

5 45. Reclamation failed to provide Plaintiffs with reasonably segregable portions of the
6 requested records after deletion of any portions which may be lawfully withheld from disclosure
7 under any FOIA exemptions. *See* 5 U.S.C. § 552(b).

8 46. Reclamation’s failure to conduct an adequate search for responsive records or provide
9 responsive records to Plaintiffs undermines FOIA’s primary purpose of transparency and openness
10 in government.

11 **B. FOIA Request Regarding ESA Consultations and NEPA Analysis (BOR-2019-0186)**

12 47. On June 10, 2019, GSSA, PCFFA, IFR, FOR, Sierra Club and other organizations not
13 party to this action jointly filed a FOIA request with Reclamation, seeking information regarding
14 “(1) any consultation conducted pursuant to Section 7 of the U.S. Endangered Species Act [“ESA”]
15 related to a potential raise of Shasta Dam; and (2) any analysis conducted pursuant to the National
16 Environmental Policy Act [“NEPA”] related to a potential raise of Shasta Dam.” The June 10 FOIA
17 request also asked that any fees associated with the search be waived, and requested “rolling release”
18 of responsive records to expedite receipt.

19 48. Mr. Miller sent Ms. Robertson an acknowledgement letter by U.S. mail dated June
20 19, 2019. The letter indicated Reclamation had received the June 10 FOIA request on June 11,
21 2019. The letter assigned the FOIA tracking number BOR-2019-0186 to the June 10 FOIA request.

22 49. The acknowledgement letter placed the June 10 FOIA request into Reclamation’s
23 “complex” processing track. The letter also indicated that Reclamation had granted the fee waiver
24 request.

25 50. On July 2 and July 8, 2019, Ms. Robertson wrote Mr. Miller by email to inquire about
26 the status of the request.

1 51. On July 9, 2019, Mr. Miller responded to Ms. Robertson by email, confirming that
2 the request—and Ms. Robertson’s subsequent emails—had been received. His email did not provide
3 an estimated completion date or a date by which records would be produced.

4 52. On August 5, 2019, Ms. Robertson emailed Mr. Miller to inquire about the status of
5 the June 10 FOIA request. She noted that Reclamation was already in violation of FOIA for failing
6 to respond promptly to the request. She also noted that DOI’s online FOIA tracking system was
7 providing misleading and incorrect information, because both the “due date for completion” and
8 “estimated processing completion dates” were marked as “N/A” (i.e., not applicable). Ms.
9 Robertson noted that both dates were, in fact, applicable under FOIA. She urged Reclamation to
10 disclose all responsive records as soon as possible.

11 53. On August 6, 2019, Mr. Miller responded to Ms. Robertson, stating that he was
12 awaiting records from an area office. Mr. Miller again failed to provide an estimated completion
13 date or a date by which records would be produced, and he had no comment on the DOI’s inaccurate
14 FOIA tracking system. Mr. Miller also stated that, because he was unsure how many pages would
15 be processed, he could not suggest a way for the requesters to reduce the scope of the request to
16 obtain records more quickly.

17 54. On September 20, 2019, Ms. Robertson wrote Mr. Miller to request a determination
18 on the June 10 FOIA request, as well as an estimated date of completion for the production of
19 responsive records. She noted that DOI’s online FOIA tracking system indicated an estimated
20 completion date of July 17, 2019, which was inaccurate as the date was two months past and
21 Plaintiffs had received no responsive records. She also reiterated the request to receive responsive
22 records on a rolling basis.

23 55. On September 24, 2019, Mr. Miller responded by email, stating that the requested
24 records had been compiled and were under review. He stated he was not able to provide an
25 estimated completion date.

26 56. Ms. Robertson has received no further communications from Mr. Miller or any other
27 individual working at Reclamation regarding this request since September 24, 2019.

28 57. Reclamation has not produced any records responsive to this FOIA request to date.

1 58. As of the date of this filing, DOI’s online FOIA tracking system continues to
2 incorrectly list July 17, 2019 as the “estimated processing completion date.”

3 59. As of the filing of this complaint, which is 113 workdays after the 20-working-day
4 determination deadline of July 10, 2019, Plaintiffs have received no records and no additional
5 communications from Reclamation on the June 10 FOIA request regarding ESA consultations and
6 NEPA analysis.

7 60. Reclamation has not requested additional information from Plaintiffs or notified
8 Plaintiffs of any “unusual circumstances” that prevent it from complying with FOIA’s 20-working-
9 day deadline for a determination. *See* 5 U.S.C. § 552(a)(6)(A)-(B).

10 61. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the
11 records that are responsive to Plaintiffs’ June 10 FOIA request. *See* 5 U.S.C. § 552(b).

12 62. Reclamation failed to provide Plaintiffs with reasonably segregable portions of the
13 requested records after deletion of any portions which may be lawfully withheld from disclosure
14 under any FOIA exemptions. *See* 5 U.S.C. § 552(b).

15 63. Reclamation’s failure to conduct an adequate search for responsive records or provide
16 responsive records to Plaintiffs undermines FOIA’s primary purpose of transparency and openness
17 in government.

18 **C. FOIA Request Regarding Dam Safety (BOR-2019-0185)**

19 64. On June 11, 2019, GSSA, PCFFA, IFR, FOR, Sierra Club and other organizations not
20 party to this action jointly filed a FOIA request with Reclamation, seeking “information that informs
21 or analyzes the risks posed by raising the height of [Shasta Dam] in the context of naturally
22 occurring phenomena such as earthquakes.” The June 11 FOIA request also asked that any fees
23 associated with the search be waived, and requested “rolling release” of responsive records to
24 expedite receipt.

25 65. Mr. Miller sent Ms. Robertson an acknowledgement letter by U.S. mail dated
26 June 19, 2019. The letter indicated that Reclamation had received the June 11 FOIA request on
27 June 11, 2019. The letter assigned the FOIA tracking number BOR-2019-0185 to the June 11 FOIA
28 request.

1 66. The acknowledgement letter indicated that Reclamation had placed the June 11 FOIA
2 request into Reclamation’s “normal” processing track. The letter also indicated that Reclamation
3 had granted the requesters’ fee waiver request. It did not provide an estimated date of completion or
4 a date upon which the records would be produced.

5 67. On August 5, 2019, Ms. Robertson emailed Mr. Miller to inquire about the status of
6 the June 11 FOIA request. She noted that Reclamation was in violation of FOIA for failing to
7 respond promptly to the request. She also noted that DOI’s online FOIA tracking system was
8 providing misleading and incorrect information, because both the “due date for completion” and
9 “estimated processing completion dates” were marked as “N/A” (i.e., not applicable). Ms.
10 Robertson noted that both dates were, in fact, applicable under FOIA. She requested that
11 Reclamation disclose all responsive records as soon as possible.

12 68. On August 6, 2019, Mr. Miller responded by email to Ms. Robertson. He stated that
13 he was awaiting records from an area office, and also that the request had “evolved” from a normal
14 into a complex request. He stated that he had “no comments regarding the Department of the
15 Interior’s [online] FOIA Tracker.” He stated that he was unable to provide an estimated completion
16 date for the June 11, 2019 FOIA request.

17 69. On September 20, 2019, Ms. Robertson again wrote Mr. Miller by email to request a
18 determination as to the June 11 FOIA request, as well as an estimated date of completion and
19 production of responsive records. She noted that DOI’s online FOIA tracking system indicated an
20 estimated completion date of September 12, 2019, which was inaccurate as the date had past and she
21 had received no responsive records. She also reiterated the request to receive responsive records on
22 a rolling basis.

23 70. On September 24, 2019, Mr. Miller responded by email to Ms. Robertson. He stated
24 that the records had not yet been compiled and he was unable to provide an estimated completion
25 date.

26 71. Ms. Robertson has received no further communications from Mr. Miller or any other
27 individual working at Reclamation regarding this request since September 24, 2019.

28 72. Reclamation has not produced any records responsive to this FOIA request to date.

1 73. As of the date of this filing, DOI’s online FOIA tracking system continues to
2 incorrectly list September 12, 2019 as the “estimated processing completion date.”

3 74. As of the filing of this complaint, which is 113 workdays after the 20-working-day
4 determination deadline of July 10, 2019, Plaintiffs have received no records and no additional
5 communications from Reclamation on the June 11 FOIA request regarding dam safety.

6 75. Reclamation has not requested additional information from Plaintiffs or notified
7 Plaintiffs of any “unusual circumstances” that prevent it from complying with FOIA’s 20-working-
8 day deadline for a determination. *See* 5 U.S.C. § 552(a)(6)(A)-(B).

9 76. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the
10 records that are responsive to Plaintiffs’ June 11, 2019 FOIA request. *See* 5 U.S.C. § 552(b).

11 77. Reclamation failed to provide Plaintiffs with reasonably segregable portions of the
12 requested records after deletion of any portions which may be lawfully withheld from disclosure
13 under any FOIA exemptions. *See* 5 U.S.C. § 552(b).

14 78. Reclamation’s failure to conduct an adequate search for responsive records or provide
15 responsive records to Plaintiffs undermines FOIA’s primary purpose of transparency and openness
16 in government.

17 79. Plaintiffs now bring this action on their own behalf and on behalf of their members.
18 Reclamation’s FOIA violations have harmed and continue to harm Plaintiffs and their members by
19 preventing Plaintiffs from learning about—and communicating publicly about—Reclamation’s
20 efforts to raise the height of Shasta Dam, its dealings with potential non-federal cost-share partners,
21 and the risks and impacts associated with a raised Shasta Dam. The relief requested below will
22 redress these injuries.

23 **LEGAL BACKGROUND**

24 80. FOIA’s fundamental purpose is transparency and openness in government, so that the
25 public can be informed about the activities of government.

26 81. Unless a record responsive to a FOIA request falls within at least one of FOIA’s
27 enumerated exemptions, it must be disclosed. 5 U.S.C. § 552(b)(1)-(9).

1 82. Under FOIA, an agency has 20 working days to respond to a FOIA request by
2 determining whether responsive records exist and whether the agency will release them. 5 U.S.C.
3 § 552 (a)(6)(A)(i).

4 83. A determination under FOIA must provide the requester with enough information,
5 presented with sufficient detail, clarity, and verification, to fairly determine what has not been
6 produced and why, and to enable a court to decide whether the exemptions claimed justify any
7 nondisclosure.

8 84. The 20-working-day clock begins running on the date the request is first received by
9 the appropriate component of the agency. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

10 85. An agency must make reasonable efforts within the 20-working-day period to search
11 for records in a manner that is reasonably calculated to locate all records responsive to the FOIA
12 request. 5 U.S.C. § 552(a)(3)(C)-(D).

13 86. An agency may only extend the 20-working-day period by giving “timely written
14 notice” to the requester about the presence of “unusual circumstances.” 5 U.S.C. §§ 552(a)(6)(B)(i);
15 552(a)(4)(A)(viii)(II)(aa). Unusual circumstances may include the need to search in field offices,
16 examine voluminous records, or consult with another agency while compiling the records. 5 U.S.C.
17 § 552(a)(6)(B)(iii).

18 87. When “unusual circumstances” are present, the agency may extend its deadline to
19 respond by no more than 10 additional working days. 5 U.S.C. §§ 552(a)(4)(A)(viii)(II)(aa);
20 552(a)(6)(B)(i).

21 88. An agency’s failure to provide timely written notice that unusual circumstances apply
22 prevents it from claiming the additional 10 working days, and its determination must be issued
23 within the original 20-working-day limit. *See* 5 U.S.C. §§ 552(a)(6)(B)(i); 552(a)(4)(A)(viii)(II)(aa).

24 89. FOIA requires that “each agency . . . shall make . . . records promptly available to any
25 person” upon receipt of a proper request, unless certain narrow exemptions to disclosure apply. 5
26 U.S.C. § 552(a)(3)(A).

27 90. FOIA places the burden on the agency to prove that it may withhold responsive
28 records from a requester. 5 U.S.C. § 552(a)(4)(B).

1 91. If an agency fails to notify a FOIA requester before the statutory deadline of the
2 agency's determination about whether it will comply with a request, the requester is deemed to have
3 exhausted its administrative remedies and may immediately seek review in an appropriate district
4 court. 5 U.S.C. §§ 552(a)(6)(C)(i); 552(a)(4)(B).

5 92. If an agency fails to make a determination on a FOIA request within the statutory
6 timeframe, the agency may not collect search fees or duplication fees from the requester. 5 U.S.C.
7 § 552(a)(4)(A)(viii).

8 93. If the government can show that "exceptional circumstances" exist and that the
9 agency is exercising due diligence in responding to the request, the court may retain jurisdiction and
10 allow the agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i).

11 94. A delay resulting from a "predictable agency workload of [FOIA] requests" does not
12 qualify as an exceptional circumstance. *Id.* § 552(a)(6)(C)(ii).

13 95. FOIA empowers this Court to "enjoin the agency from withholding agency records
14 and to order the production of any agency records improperly withheld from the complainant." 5
15 U.S.C. § 552(a)(4)(B).

16 **FIRST CLAIM FOR RELIEF**

17 **Violation of the Freedom of Information Act**

18 *Reclamation Failed to Make a Lawful Determination within FOIA's Mandatory Determination Deadlines*

19 96. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
20 paragraphs.

21 97. Plaintiffs have a statutory right to a lawful determination by Reclamation, in a manner
22 that complies with FOIA, on Plaintiffs' FOIA requests. *See* 5 U.S.C. § 552(a)(6)(A)(i)(I).

23 98. Reclamation has violated Plaintiffs' rights by unlawfully delaying the issuance of a
24 determination on Plaintiffs' FOIA requests beyond the deadlines that FOIA mandates. 5 U.S.C.
25 § 552(a)(6)(A)(i)(I).

26 99. Reclamation has also violated Plaintiffs' rights by unlawfully failing to provide "an
27 estimated date on which the agency will complete action" on Plaintiffs' FOIA requests. 5 U.S.C.
28 § 552(a)(7)(B)(ii).

1 100. Plaintiffs' organizational activities will be adversely affected if Reclamation is
2 allowed to continue violating FOIA's deadlines.

3 101. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this
4 Court, Reclamation will continue to violate Plaintiffs' rights to receive public records under FOIA.

5 **SECOND CLAIM FOR RELIEF**

6 **Violation of the Freedom of Information Act**

7 *Reclamation Failed to Conduct Adequate Searches for Records*
8 *Responsive to Plaintiffs' FOIA Requests*

9 102. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
10 paragraphs.

11 103. Plaintiffs have a statutory right to have Reclamation process its FOIA requests in a
12 manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

13 104. Reclamation violated Plaintiffs' rights in this regard when it unlawfully failed to
14 undertake a search that is reasonably calculated to locate all records that are responsive to Plaintiffs'
15 FOIA requests.

16 105. Plaintiffs' organizational activities will be adversely affected if Reclamation is
17 allowed to continue violating FOIA.

18 106. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this
19 Court, Reclamation will continue to violate Plaintiffs' rights to receive public records under FOIA.

20 **THIRD CLAIM FOR RELIEF**

21 **Violation of the Freedom of Information Act**

22 *Reclamation Failed to Promptly Disclose and Improperly Withheld Records*
23 *Responsive to Plaintiffs' FOIA Requests*

24 107. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
25 paragraphs.

26 108. Plaintiffs have a statutory right to the records they seek in each of their three FOIA
27 requests.

28 109. Reclamation violated FOIA by failing to promptly disclose records that are
responsive to Plaintiffs' FOIA requests. 5 U.S.C. §§ 552(a)(3)(A); (a)(6)(C)(i).

1 110. Reclamation also violated Plaintiffs' rights by improperly withholding information
2 responsive to their FOIA requests. 5 U.S.C. § 552(a)(4)(B).

3 111. None of FOIA's statutory exemptions apply to the records that Plaintiffs seek. *See* 5
4 U.S.C. § 552(b).

5 112. Plaintiffs' organizational activities will be adversely affected if Reclamation is
6 allowed to continue violating FOIA.

7 113. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this
8 Court, Reclamation will continue to violate Plaintiffs' rights to receive public records under FOIA.

9 **FOURTH CLAIM FOR RELIEF**

10 **Violation of the Freedom of Information Act**

11 *Reclamation Failed to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records*

12 114. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
13 paragraphs.

14 115. Plaintiffs have a statutory right to any reasonably segregable portion of a record that
15 contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

16 116. Reclamation violated Plaintiffs' rights in this regard by unlawfully withholding
17 reasonably segregable portions of any lawfully exempt records that are responsive to Plaintiffs'
18 FOIA requests. *See* 5 U.S.C. § 552(a)(4)(B).

19 117. Plaintiffs' organizational activities will be adversely affected if Reclamation is
20 allowed to continue violating FOIA.

21 118. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this
22 Court, Reclamation will continue to violate Plaintiffs' rights to receive public records under FOIA.
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REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court grant the following relief:

(1) Declare that Defendant Reclamation violated FOIA by:

(a) failing to make a lawful determination on all three FOIA requests within FOIA's mandatory determination deadline;

(b) failing to conduct a search that is reasonably calculated to locate all records that are responsive to Plaintiffs' FOIA requests;

(c) improperly withholding and failing to promptly disclose all records responsive to Plaintiffs' three FOIA requests; and

(d) failing to provide reasonably segregable portions of any lawfully exempt records;

(2) Order Reclamation to conduct a search that is reasonably calculated to locate all records responsive to each of Plaintiffs' FOIA requests, with the cut-off date being the date that such search is conducted;

(3) Order that Reclamation make all responsive records and reasonably segregable portions of lawfully exempt records available to Plaintiffs promptly and at no cost;

(4) Retain jurisdiction over this case to rule on any assertions by Reclamation that any responsive records are exempt from disclosure, in whole or in part;

(5) Order Reclamation to produce an index identifying any records or parts thereof that it determines to be exempt from disclosure, along with the specific exemption applied, should Reclamation determine that any responsive records are exempt from disclosure;

(6) Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

(7) Grant other such relief as the Court deems just and proper.

Dated: December 20, 2019

Respectfully submitted,

/s/ Marie E. Logan

MARIE E. LOGAN, CA Bar No. 308228

mlogan@earthjustice.org

NINA C. ROBERTSON, CA Bar No. 276079

nrobertson@earthjustice.org

EARTHJUSTICE
50 California Street, Ste. 500
San Francisco, CA 94111
Tel: 415-217-2000 / Fax: 415-217-2040

Attorneys for All Plaintiffs

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