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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
12 FISHERMEN’S ASSOCIATIONS; INSTITUTE
FOR FISHERIES RESOURCES; FRIENDS OF
13 THE RIVER; and SIERRA CLUB

14 Plaintiffs,

15 v.

16 UNITED STATES BUREAU OF
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 public
24 records that will inform Plaintiffs and the public about the agency’s plans and actions to raise the
25 height of Shasta Dam, a major federal project that would have wide-ranging impacts on rivers,
26 imperiled species, tribal lands, and sensitive ecosystems.

27 2. Reclamation’s failure to release public records, in response to two FOIA requests
28 both submitted on January 30, 2020, violates FOIA.

1 3. Plaintiffs seek the same categories of responsive records in these two requests as they
2 previously sought in two prior FOIA requests Plaintiffs submitted to Reclamation on April 30, 2019
3 and June 11, 2019, which, along with a third request submitted on June 10, 2019, are now the subject
4 of litigation in the Northern District of California, No. 4:19-cv-008319-JST (filed Dec. 20, 2019).
5 Those initial requests sought records from August 1, 2018 to the date of Reclamation’s response to
6 the requests.

7 4. After the filing of that lawsuit, in January of 2020, Reclamation made final
8 determinations on and produced records in response to the April 30, 2019 and June 11, 2019 FOIA
9 requests. Despite Plaintiffs’ request that Reclamation use a more recent date as the cut-off date for
10 its search for responsive records, Reclamation searched for and produced records only from
11 August 1, 2018 to May and June of 2019. Thus, by the time Plaintiffs received records from
12 Reclamation in January of 2020, the most recent produced records were more than six months old.
13 To obtain more contemporaneous records, Plaintiffs filed two new FOIA requests.

14 5. The two new FOIA requests that are the subject of this litigation—both filed on
15 January 30, 2020—seek the same categories of records from Reclamation as the April 30, 2019 and
16 June 11, 2019 FOIA requests but specify more recent time periods for the requested records such
17 that they are not duplicative of the older 2019 records that Reclamation produced in response to the
18 two prior requests.

19 6. Reclamation’s failure to release records responsive to Plaintiffs’ January 30, 2020
20 requests deprives Plaintiffs and the public of important information about whether Reclamation’s
21 plan to raise the height of Shasta Dam and enlarge Shasta Reservoir has received necessary oversight
22 with respect to dam safety. The requested information will also likely reveal whether and how
23 Reclamation has communicated with potential non-federal cost-share partners.

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

1 8. As of the filing of this Complaint, Reclamation has failed to respond to Plaintiffs' two
2 FOIA requests.

3 9. Reclamation's actions in relation to Plaintiffs' FOIA requests violate FOIA in several
4 ways. First, Reclamation failed to make timely determinations regarding Plaintiffs' two FOIA
5 requests. Second, Reclamation failed to conduct an adequate search for records responsive to
6 Plaintiffs' FOIA requests. Third, Reclamation improperly withheld and has failed to promptly
7 disclose records responsive to Plaintiffs' FOIA requests. Fourth, Reclamation failed to provide
8 reasonably segregable portions of any lawfully exempt records.

9 10. Reclamation has failed to comply with the statutory deadline to respond to Plaintiffs'
10 two FOIA requests.

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

12 12. Plaintiffs are groups engaged in ongoing public outreach and education regarding
13 government proposals to raise the height of Shasta Dam. Reclamation's repeated failures to comply
14 with FOIA frustrate Plaintiffs' organizational activities.

15 13. Prompt access to these records is necessary to effectuate FOIA's purpose of
16 transparency and open government. Thus, Plaintiffs seek from the Court declaratory relief
17 establishing that Reclamation has violated FOIA and injunctive relief directing Reclamation to
18 conduct an adequate search that uses the date of the search as the cut-off date and to release the
19 improperly withheld records, including all reasonably segregable portions of any lawfully exempt
20 records, without further delay.

21 14. Plaintiffs also submitted a FOIA request to Reclamation on February 19, 2020 that
22 seeks categories of records—namely those related to Reclamation's compliance with the Endangered
23 Species Act and the National Environmental Policy Act—that are identical to those sought in a
24 FOIA request that Plaintiffs submitted previously to Reclamation on June 10, 2019. The February
25 19, 2020 FOIA request specifies a new time period for those records, from June 11, 2019 to the date
26 of receipt of the request. Reclamation estimates it will provide a determination on that request by
27 April 2, 2020, and it is not the subject of the present action.

PARTIES

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

21 16. Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
22 (“PCFFA”) is the largest trade organization of commercial fishing men and women on the West
23 Coast. PCFFA is a federation of port associations and marketing associations in California, Oregon,
24 and Washington. PCFFA is incorporated and has its principal place of business in San Francisco,
25 California. Collectively, PCFFA’s members represent more than 750 commercial fishing families,
26 most of whom are small and mid-sized commercial fishing boat owners and operators. Many of
27 PCFFA’s members derive all or part of their income from the harvesting of salmonids, a valuable
28 business enterprise for the West Coast and California economies. The decline of California’s salmon

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

17 17. Plaintiff INSTITUTE FOR FISHERIES RESOURCES ("IFR") is a non-profit sister
18 organization of PCFFA that is incorporated and has its principal place of business in San Francisco.
19 Established in 1993 by PCFFA, IFR is responsible for meeting the fishery research and conservation
20 needs of working men and women in the fishing industry by executing PCFFA's expanding habitat
21 protection program. From its inception, IFR has helped fishing men and women in California and the
22 Pacific Northwest address salmon protection and restoration issues, with particular focus on dam,
23 water diversion, and forestry concerns. IFR is an active leader in several restoration programs
24 affecting winter-run and spring-run Chinook, including removal of antiquated storage and
25 hydroelectric dams and the reestablishment of volitional and non-volitional fish passage above dams.
26 IFR has actively advocated for the protection and restoration of flows critical to the health of the San
27 Francisco Bay and Delta. IFR regularly uses information received through the Freedom of
28 Information Act to educate and inform its members about issues affecting the salmon industry; its

1 members derive benefits from agencies' compliance with FOIA and from the receipt of public
2 records. Reclamation's failure to comply with FOIA harms IFR's ability to provide full, accurate
3 and current information to its members and the public on the proposal to raise Shasta Dam,
4 Reclamation's dealings with potential non-federal cost-share partners, and the impacts and risks of a
5 raised Shasta Dam, which are matters of public interest. The relief requested in this lawsuit can
6 redress these injuries.

7 18. Plaintiff FRIENDS OF THE RIVER ("FOR") was founded in 1973 and is
8 incorporated under the non-profit laws of the State of California. Its principal place of business is in
9 Sacramento, California. FOR has more than 3,000 members dedicated to the protection,
10 preservation, and restoration of California's rivers, streams, watersheds, and aquatic ecosystems.
11 FOR's members and staff include individuals who visit, study, and recreate in streams, rivers, and
12 riparian areas throughout California, including the McCloud River and the Sacramento River
13 downstream of Shasta Dam. A statewide river preservation group, FOR has provided comments
14 before state and federal agencies on past proposals to raise Shasta Dam. FOR regularly uses
15 information received through the Freedom of Information Act to educate and inform the public about
16 issues affecting California's river ecosystems; its members derive benefits from agencies'
17 compliance with FOIA and from the receipt of public records. Reclamation's failure to comply with
18 FOIA harms FOR'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 19. Plaintiff SIERRA CLUB is a national non-profit organization of approximately
23 779,000 members, including 166,900 members in California. Sierra Club is dedicated to exploring,
24 enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use
25 of the earth's ecosystems and resources; to educating and encouraging humanity to protect and
26 restore the quality of the natural and human environment; and to using all lawful means to carry out
27 these objectives. Sierra Club regularly uses information received through the Freedom of
28 Information Act to educate and inform the public about environmental issues; its members derive

1 benefits from agencies' compliance with FOIA and from the receipt of public records.
2 Reclamation's failure to comply with FOIA harms Sierra Club's ability to provide full, accurate and
3 current information to its members and the public on the proposal to raise Shasta Dam,
4 Reclamation's dealings with potential non-federal cost-share partners, and the impacts and risks of a
5 raised Shasta Dam, which are matters of public interest. The relief requested in this lawsuit can
6 redress these injuries.

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

13 JURISDICTION AND VENUE

14 21. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and
15 28 U.S.C. § 1331, because this action arises under FOIA and the Declaratory Judgment Act, 28
16 U.S.C. §§ 2201-02.

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

22 23. Declaratory relief is appropriate under 28 U.S.C. § 2201.

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

24 INTRADISTRICT ASSIGNMENT

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

1 26. Plaintiffs request assignment to the Oakland Division because this case is related to
2 No. 4:19-cv-008319-JST (filed Dec. 20, 2019). An Administrative Motion to Consider Whether
3 Cases Should Be Related will be filed promptly in that matter pursuant to Civil Local Rule 3-12.

4 **FACTUAL BACKGROUND**

5 27. On January 30, 2020, GSSA, PCFFA, IFR, FOR, and Sierra Club jointly submitted
6 two FOIA requests with Reclamation by email to sha-mpr-foia@usbr.gov and bor_foia@usbr.gov.
7 The first request (hereinafter referred to as the “January 30, 2020 Cost-Share FOIA request”) sought
8 records related to Reclamation’s discussions and agreements with any potential or confirmed non-
9 federal cost-share partners regarding the project to raise the height of Shasta Dam, and sought
10 records from May 16, 2019 to the date of receipt of the request. The second request (hereinafter
11 referred to as the “January 30, 2020 Dam Safety FOIA request”) sought “information that informs or
12 analyzes the risks posed by raising the height of [Shasta Dam] in the context of naturally occurring
13 phenomena such as earthquakes,” and sought records from June 11, 2019 to the date of receipt of the
14 request. Both requests also asked that any fees associated with the search be waived, and requested
15 rolling release of responsive records to expedite receipt.

16 28. Plaintiffs’ requests were familiar to Reclamation, as the agency had previously
17 received a cost-share FOIA request submitted by Plaintiffs in April 2019 and assigned FOIA
18 Tracking Number BOR-2019-00161 (the “April 30, 2019 Cost-Share FOIA request”), and a dam
19 safety FOIA request submitted by Plaintiffs in June 2019 and assigned FOIA Tracking Number
20 BOR-2019-0185 (the “June 11, 2019 Dam Safety FOIA request”).

21 29. As noted previously, both the April 30, 2019 Cost-Share FOIA request and the June
22 11, 2019 Dam Safety FOIA request, along with a third request submitted on June 10, 2019, are now
23 the subject of litigation in the Northern District of California, No. 4:19-cv-008319-JST (filed Dec.
24 20, 2019). After that case was filed, Reclamation made final determinations in January of 2020 and
25 released records responsive to the April 30, 2019 Cost-Share FOIA request and the June 11, 2019
26 Dam Safety FOIA request. Despite Plaintiffs’ request that Reclamation use a more recent date as the
27 cut-off date for its search for responsive records, Reclamation searched for and produced records
28 only from August 1, 2018 to May and June of 2019. Thus, by the time Plaintiffs received records

1 from Reclamation in January of 2020, the most recent produced records were more than six months
2 old. To obtain more contemporaneous records, Plaintiffs filed two new FOIA requests.

3 30. On February 6, 2020, Christopher S. Miller of Reclamation's Mid-Pacific Regional
4 FOIA Office sent an email to Nina Robertson, attorney for the organizations seeking records,
5 acknowledging that both FOIA requests had been received by Reclamation on January 30, 2020.

6 31. Mr. Miller sent Ms. Robertson two separate acknowledgement letters by U.S. mail
7 dated February 7, 2020. The January 30, 2020 Cost-Share FOIA request was assigned the FOIA
8 tracking number BOR-2020-0092. The January 30, 2020 Dam Safety FOIA request was assigned
9 the FOIA tracking number BOR-2020-00091.

10 32. The acknowledgement letters indicated that Reclamation had placed both FOIA
11 requests into Reclamation's "complex" processing track. The letters also indicated that Reclamation
12 had granted both fee waiver requests. Both letters indicated that Reclamation anticipated issuing a
13 determination by March 1, 2020.

14 33. On February 26, 2020, Mr. Miller emailed Ms. Robertson, indicating Reclamation
15 would be unable to provide a determination as to either the January 30, 2020 Cost-Share FOIA
16 request or the January 30, 2020 Dam Safety FOIA Request by the statutory due date.

17 34. On February 27, 2020, Ms. Robertson responded to Mr. Miller, expressing concern
18 about Reclamation's failure to meet the deadlines imposed by FOIA, and requesting that he transmit
19 any future determination by email to avoid the unnecessary delay of U.S. mail.

20 35. On March 3, 2020, Mr. Miller sent Ms. Robertson two letters by U.S. mail and e-
21 mail, which indicated that Reclamation was claiming a ten-day extension on both FOIA requests
22 pursuant to 43 C.F.R. § 2.19. Both letters indicated that Reclamation expected to dispatch a
23 determination on the requests by March 13, 2020.

24 36. On March 3, 2020, Ms. Robertson responded by email to Mr. Miller, expressing
25 disappointment regarding this extension and reiterating a request to receive responsive records on a
26 rolling basis with production in native file format.

27 37. On March 13, 2020, Mr. Miller sent Ms. Robertson two more letters by U.S. mail and
28 e-mail. The March 13 letter responding to the January 30, 2020 Cost-Share FOIA request indicated

1 Reclamation was “unable to make a determination” on the FOIA request by March 13 as previously
2 promised. This was therefore the second time Reclamation failed to meet its estimated date of
3 completion as to this request.

4 38. The letter also indicated that Reclamation was now “unable to provide an estimated
5 completion date” for this request, and that the agency did not anticipate sending rolling responses.

6 39. The letter responding to the January 30, 2020 Dam Safety FOIA request was
7 functionally identical: it stated that Reclamation was “unable to make a determination” on the FOIA
8 request by March 13, indicated Reclamation would be “unable to provide an estimated completion
9 date” for the request, and that the agency did not anticipate sending rolling responses.

10 40. Ms. Robertson has received no further communications from Mr. Miller or any other
11 individual working at Reclamation regarding either of the January 30, 2020 FOIA requests since
12 March 13, 2020.

13 41. Reclamation has not produced any records responsive to either of the January 30,
14 2020 FOIA requests to date.

15 42. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the
16 records that are responsive to either the January 30, 2020 Cost-Share FOIA request or the January
17 30, 2020 Dam Safety FOIA request. *See* 5 U.S.C. § 552(b).

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

21 44. Reclamation’s failure to conduct an adequate search for responsive records or provide
22 responsive records to Plaintiffs undermines FOIA’s primary purpose of transparency and openness
23 in government.

24 45. Plaintiffs now bring this action on their own behalf and on behalf of their members.
25 Reclamation’s FOIA violations have harmed and continue to harm Plaintiffs and their members by
26 preventing Plaintiffs from learning about—and communicating publicly about—Reclamation’s
27 efforts to raise the height of Shasta Dam, its dealings with potential non-federal cost-share partners,
28

1 and the risks and impacts associated with a raised Shasta Dam. The relief requested below will
2 redress these injuries.

3 **LEGAL BACKGROUND**

4 46. FOIA’s fundamental purpose is transparency and openness in government, so that the
5 public can be informed about the activities of government.

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

8 48. Under FOIA, an agency has 20 working days to respond to a FOIA request by
9 determining whether responsive records exist and whether the agency will release them. 5 U.S.C.
10 § 552 (a)(6)(A)(i).

11 49. A determination under FOIA must provide the requester with enough information,
12 presented with sufficient detail, clarity, and verification, to fairly determine what has not been
13 produced and why, and to enable a court to decide whether the exemptions claimed justify any
14 nondisclosure.

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

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

20 52. An agency may only extend the 20-working-day period by giving “timely written
21 notice” to the requester about the presence of “unusual circumstances.” 5 U.S.C. §§ 552(a)(6)(B)(i);
22 552(a)(4)(A)(viii)(II)(aa). Unusual circumstances may include the need to search in field offices,
23 examine voluminous records, or consult with another agency while compiling the records. 5 U.S.C.
24 § 552(a)(6)(B)(iii).

25 53. When “unusual circumstances” are present, the agency may extend its deadline to
26 respond by no more than 10 additional working days. 5 U.S.C. §§ 552(a)(4)(A)(viii)(II)(aa);
27 552(a)(6)(B)(i).

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

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

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

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

13 58. If an agency fails to make a determination on a FOIA request within the statutory
14 timeframe, the agency may not collect search fees or duplication fees from the requester. 5 U.S.C.
15 § 552(a)(4)(A)(viii).

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

19 60. A delay resulting from a “predictable agency workload of [FOIA] requests” does not
20 qualify as an exceptional circumstance. *Id.* § 552(a)(6)(C)(ii).

21 61. FOIA empowers this Court to “enjoin the agency from withholding agency records
22 and to order the production of any agency records improperly withheld from the complainant.” 5
23 U.S.C. § 552(a)(4)(B).

24 **FIRST CLAIM FOR RELIEF**

25 **Violation of the Freedom of Information Act**

26 *Reclamation Failed to Make a Lawful Determination within*
27 *FOIA’s Mandatory Determination Deadlines*

28 62. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding paragraphs.

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

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

6 65. Reclamation has also violated Plaintiffs' rights by unlawfully failing to provide "an
7 estimated date on which the agency will complete action" on Plaintiffs' FOIA requests. 5 U.S.C.
8 § 552(a)(7)(B)(ii).

9 66. Plaintiffs' organizational activities will be adversely affected if Reclamation is
10 allowed to continue violating FOIA's deadlines.

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

13 **SECOND CLAIM FOR RELIEF**

14 **Violation of the Freedom of Information Act**

15 *Reclamation Failed to Conduct Adequate Searches for Records
16 Responsive to Plaintiffs' FOIA Requests*

17 68. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
18 paragraphs.

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

21 70. Reclamation violated Plaintiffs' rights in this regard when it unlawfully failed to
22 undertake a search that is reasonably calculated to locate all records that are responsive to Plaintiffs'
23 FOIA requests.

24 71. Plaintiffs' organizational activities will be adversely affected if Reclamation is
25 allowed to continue violating FOIA.

26 72. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this
27 Court, Reclamation will continue to violate Plaintiffs' rights to receive public records under FOIA.
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THIRD CLAIM FOR RELIEF

Violation of the Freedom of Information Act

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

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4 73. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding
5 paragraphs.

6 74. Plaintiffs have a statutory right to the records they seek in both FOIA requests.

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

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

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

13 78. Plaintiffs' organizational activities will be adversely affected if Reclamation is
14 allowed to continue violating FOIA.

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

FOURTH CLAIM FOR RELIEF

Violation of the Freedom of Information Act

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

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

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

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

27 83. Plaintiffs' organizational activities will be adversely affected if Reclamation is
28 allowed to continue violating FOIA.

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

3
4 **REQUEST FOR RELIEF**

5 Plaintiffs respectfully request that this Court grant the following relief:

6 (1) Declare that Defendant Reclamation violated FOIA by:

7 (a) failing to make a lawful determination on both FOIA requests within FOIA's
8 mandatory determination deadline;

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

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

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

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

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

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

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

24 (6) Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 5 U.S.C.
25 § 552(a)(4)(E); and

26 (7) Grant other such relief as the Court deems just and proper.
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1 Dated: March 23, 2020

Respectfully submitted,

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