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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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AQUALLIANCE; CALIFORNIA  
SPORTFISHING PROTECTION  
ALLIANCE; and CALIFORNIA WATER  
IMPACT NETWORK,

Plaintiffs,

v.

THE UNITED STATES BUREAU OF  
RECLAMATION; U.S. DEPARTMENT OF  
THE INTERIOR; DEB HAALAND, in  
her official capacity; and DOES  
1 - 100,

Defendants.

No. 2:21-cv-01533 WBS DMC

ORDER RE: REQUEST FOR  
PRELIMINARY INJUNCTION

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Before the court is plaintiffs' motion for a preliminary injunction barring defendants from continuing with a groundwater extraction project in the Sacramento River Valley. (See Pls.' Mot. for TRO and/or Preliminary Injunction ("Mot.") (Docket No. 6).) The court held a hearing on the on

1 September 9, 2021.

2 I. Factual and Procedural History

3 This case concerns a Voluntary Groundwater Pumping  
4 Program ("program") approved by the United States Bureau of  
5 Reclamation ("Reclamation") seeking to incentivize groundwater  
6 pumping in lieu of obtaining water from the Sacramento River.  
7 Under the program, Reclamation will provide funding to offset  
8 costs to those who obtain water by groundwater pumping rather  
9 than by drawing from surface water.

10 On July 7, 2021 Reclamation issued a draft  
11 Environmental Assessment, evaluating the impacts of the project,  
12 for public comment. After the comment period, Reclamation issued  
13 a final Environmental Assessment ("EA"). (See Decl. of James  
14 Thomas Brett, Ex. A, Environmental Assessment (Docket No. 9-  
15 2).) On August 4, 2021, Reclamation issued a Finding of No  
16 Significant Impact ("FONSI"), (see Decl. of Brett, Ex. D, Finding  
17 of No Significant Impact (Docket No. 9-5)), determining that no  
18 Environmental Impact Statement ("EIS") was required.

19 Plaintiffs filed their complaint on August 26, 2021,  
20 and a Motion for Temporary Restraining Order and/or Preliminary  
21 Injunction on September 1, 2021. The motion for temporary  
22 restraining order was heard on September 7, 2021 and denied on  
23 September 8, 2021. A hearing on the request for a preliminary  
24 injunction was held before the undersigned on September 9, 2021.  
25 It is anticipated that the case will be finally submitted to the  
26 court for decision on the merits, either by cross-motions for  
27 summary judgment or after trial on the administrative record,  
28 sometime before the December holidays.

1 II. Discussion

2 Injunctive relief is “an extraordinary and drastic  
3 remedy, one that should not be granted unless the movant, by a  
4 clear showing, carries the burden of persuasion.” Mazurek v.  
5 Armstrong, 520 U.S. 968, 972 (1997) (per curiam). In order to  
6 obtain a preliminary injunction, the moving party must establish  
7 that (1) it is likely to succeed on the merits, (2) it is likely  
8 to suffer irreparable harm in the absence of preliminary relief,  
9 (3) the balance of equities tips in its favor, and (4) an  
10 injunction is in the public interest. Winter v. Nat. Res. Def.  
11 Council, Inc., 555 U.S. 7, 20 (2008); Cal. Trucking Ass’n v.  
12 Bonta, 996 F.3d 644, 652 (9th Cir. 2021). “A plaintiff must make  
13 a showing on all four prongs to obtain a preliminary  
14 injunction.” A Woman’s Friend Pregnancy Res. Clinic v. Becerra,  
15 901 F.3d 1166, 1167 (9th Cir. 2018) (internal quotation marks and  
16 citations omitted).

17 A. Likelihood of Irreparable Harm

18 “Under Winter, plaintiffs must establish that  
19 irreparable harm is likely, not just possible, in order to obtain  
20 a preliminary injunction.” All. for the Wild Rockies v.  
21 Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). The irreparable  
22 harm alleged here is that approving and contracting for  
23 additional groundwater extractions will result in, among other  
24 things, damage to private and public property via land subsidence  
25 and aquifer depletion, and harm to habitats of endangered  
26 species. (Mot. at 21-22 (Docket No. 6-1).) In order to be  
27 entitled to a preliminary injunction, it is not enough that  
28 plaintiffs merely allege irreparable harm -- plaintiffs “must

1 demonstrate immediate threatened injury.” Caribbean Marine  
2 Servs. Co. v. Baldrige, 844 F. 2d 668, 674 (9th Cir. 1998). For  
3 the following reasons, the court concludes that plaintiffs have  
4 failed to meet this burden.

5           The court does not expect plaintiffs to be able to  
6 predict with scientific exactitude the harm which will result if  
7 defendants are not enjoined. But the court does expect more than  
8 the kind of vague generalizations and unquantified conclusions  
9 presented here. For example, plaintiffs rely on the declarations  
10 of Michael Billiou and Kit Custis to support their claim that  
11 groundwater pumping will damage property “due to ongoing and  
12 worsening land subsidence, and aquifer depletion.” (Mot. at 21-  
13 22 (Docket No. 6-1).) However, the best that Billiou has to  
14 offer is that he “believes” prior data shows declines in ground  
15 surface elevation due to pumping that began in 2010, which is the  
16 underlying cause of damage to irrigation infrastructure on his  
17 ranch. Yet he provides no specific evidence of a causal link  
18 between the pumping and damage, or of the similarity of the past  
19 pumping to the current program. (See Decl. of Michael Billiou at  
20 2 (Docket No. 6-2).)

21           Further, Billiou expresses concern that prior pumping  
22 led to subsidence and the need for a replacement well on his  
23 property, but he provides no evidence of how Reclamation’s short-  
24 term project would lead to similar problems. (See id. at 3.)  
25 Similarly, Custis discusses in detail the effects of prior  
26 pumping, but does not even attempt to quantify the predicted  
27 effect of the current program. (See Decl. of Kit Custis at 4-7  
28 (Docket No. 6-3).) Such generalizations are not enough to

1 demonstrate immediate irreparable harm.

2           Plaintiffs further allege in conclusory terms that  
3 groundwater-dependent ecosystems and endangered species are  
4 "likely to be harmed" (Mot. at 22 (Docket No. 6-1) (emphasis  
5 added)), and Custis expresses concern regarding the adequacy of  
6 the monitoring program for groundwater-dependent ecosystems but  
7 provides no basis to anticipate any specific harm that may occur  
8 to these ecosystems. (See Decl. of Kit Custis at 4-11 (Docket  
9 No. 6-3).) Plaintiffs appear to rely on the declaration of  
10 Barbara Vlamis to establish irreparable harm to endangered  
11 species, but Vlamis simply expresses "grave[ ] concern" about the  
12 impact of endangered species without elaborating upon any  
13 specific and immediate consequences. (See Decl. of Barbara  
14 Vlamis at 3 (Docket No. 6-5).) Again, plaintiffs' conclusory  
15 statements are not sufficient to demonstrate the imminence of the  
16 harm to groundwater-dependent ecosystems and endangered species.

17           Plaintiffs claim the project incentivizes groundwater  
18 pumping via contracts that will lead to "new historic groundwater  
19 lows." (Mot. at 22 (Docket No. 6-1).) However, plaintiffs do  
20 not provide information on the baseline of the groundwater  
21 pumping currently occurring, nor do they provide any information  
22 on the increase that will result from the program, if any.<sup>1</sup>  
23 Defendants represented during oral argument that the funding will  
24 be provided to partially offset the cost of groundwater pumping

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25  
26 <sup>1</sup> The court is cognizant of plaintiffs' claim that Reclamation itself does not provide a current baseline, but  
27 nonetheless it remains the plaintiffs' burden to demonstrate  
28 irreparable harm.

1 to program participants. However, because the funding will not  
2 cover the entirety of the cost groundwater users will incur, it  
3 is unclear to what extent Reclamation's incentivization efforts  
4 will be successful, making the program's impact speculative at  
5 this stage.

6 Finally, plaintiffs are complaining of a harm that is  
7 already occurring in the program's absence. The purpose of a  
8 preliminary injunction is to stop or prevent harm that will occur  
9 in the absence of preliminary relief between the time of the  
10 request and the resolution of the case. The groundwater  
11 extraction project does not allow groundwater pumping for the  
12 first time; rather, it merely funds an activity that is already  
13 occurring. Further, plaintiffs admit that the problem of land  
14 subsidence and aquifer depletion is "ongoing," so there is no  
15 showing of any new immediate harm that would occur if an  
16 injunction is not granted. (Mot. at 21 (Docket No. 6-1).)

17 Moreover, Reclamation is not committing the alleged  
18 harm -- third parties are currently pumping groundwater and will  
19 continue do so regardless of the outcome of this program.  
20 Indeed, plaintiffs concede that Reclamation has no power to stop  
21 landowners from pumping. It is unclear at this stage what  
22 effect, if any, Reclamation's program will have on the amount of  
23 groundwater to be pumped. Since the payments to the users of  
24 groundwater will not even cover the full additional costs they  
25 will incur for pumping groundwater instead of using surface  
26 water, it is not even clear that the program will result in any  
27 additional pumping of groundwater. That is entirely speculative  
28 at this stage.

1           For all of the foregoing reasons, plaintiffs have  
2 failed to demonstrate the likelihood of irreparable harm, and for  
3 that reason alone the court would be required to deny their  
4 request for a preliminary injunction.

5           B.   Likelihood of Success on the Merits

6           Even assuming plaintiffs were able to show a likelihood  
7 of irreparable harm, they nonetheless fail to show a likelihood  
8 of success on the merits.

9           The court reviews plaintiffs' National Environmental  
10 Policy Act ("NEPA") claims challenging Reclamation's decision  
11 under the Administrative Procedure Act ("APA"). Lands Council v.  
12 Powell, 395 F.3d 1019, 1026 (9th Cir. 2005) (reviewing NEPA  
13 claims under APA); Ocean Advocs. v. U.S. Army Corps of  
14 Eng'rs, 402 F.3d 846, 858 (9th Cir. 2005) (same). Under the APA,  
15 5 U.S.C. § 706(2) (A), the reviewing court must set aside agency  
16 actions found to be "arbitrary, capricious, an abuse of  
17 discretion, or otherwise not in accordance with the law." See  
18 Marsh v. Or. Nat. Res. Council, 490 U.S. 360, 376-77 (1989).

19           An agency action may be deemed arbitrary or capricious  
20 if the agency "has relied on factors which Congress has not  
21 intended it to consider, entirely failed to consider an important  
22 aspect of the problem, offered an explanation for its decision  
23 that runs counter to the evidence before the agency, or is so  
24 implausible that it could not be ascribed to a difference in view  
25 or the product of agency expertise." Pac. Coast Fed'n of  
26 Fishermen's Ass'ns, Inc. v. Nat'l Marine Fisheries Serv., 265  
27 F.3d 1028, 1034 (9th Cir. 2001) (quoting Motor Vehicle Mfrs.  
28

1 Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43  
2 (1983)).

3           The court must ask "whether the agency considered the  
4 relevant factors and articulated a rational connection between  
5 the facts found and the choice made." Nat. Res. Def. Council v.  
6 U.S. Dep't of the Interior, 113 F.3d 1121, 1124 (9th Cir. 1997)  
7 (internal quotation marks omitted). The court should conduct  
8 this review based on the administrative record presented by the  
9 agency. See Ctr. for Biological Diversity v. U.S. Fish &  
10 Wildlife Serv., 450 F.3d 930, 943 (9th Cir. 2006) ("When  
11 reviewing an agency decision, the focal point for judicial review  
12 should be the administrative record already in existence, not  
13 some new record made initially in the reviewing court.")  
14 (internal quotations and citations omitted).

15           NEPA, which "exists to ensure a process, not particular  
16 substantive results," Hells Canyon Alliance v. U.S. Forest  
17 Service, 227 F.3d 1170, 1177 (9th Cir. 2000), imposes additional  
18 requirements. Specifically, where a federal agency recommends or  
19 reports on "proposals for legislation and other major Federal  
20 actions significantly affecting the quality of the human  
21 environment," the agency must include "a detailed statement . . .  
22 on (i) the environmental impact of the proposed action." 42  
23 U.S.C. § 4332(2)(C).

24           "Where an EIS is not categorically required, the agency  
25 must prepare an Environmental Assessment to determine whether the  
26 environmental impact is significant enough to warrant an  
27 EIS." Ocean Advocs., 402 F.3d at 864. If, after preparation of  
28 the EA, the agency determines that it is not, the agency must put



1 forth a "convincing statement of reasons [in the form of a FONSI]  
2 that explain why the project will impact the environment no more  
3 than insignificantly." Id. (citation omitted); see also 40  
4 C.F.R. § 1508.13 (listing requirements for a FONSI). For an  
5 agency's decision to satisfy NEPA, the record must show that the  
6 agency took a "hard look" at the project's potential impact.  
7 Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350  
8 (1989).

9 In their motion for a preliminary injunction,  
10 Plaintiffs raise six ways in which they contend the EA and FONSI  
11 are deficient and therefore inadequate under NEPA. The court  
12 addresses each of these in turn.

13 1. Failure to Describe Existing Conditions

14 Plaintiffs first contend that the EA fails to describe  
15 current environmental conditions, thereby providing an inadequate  
16 baseline against which to measure potential harms attributable to  
17 the program. (Mot. at 6-7 (Docket. No. 6-1).) This claim is  
18 without merit.

19 The EA includes a proposal to use water years 2014 and  
20 2015 as a baseline against which to measure the project's effects  
21 on groundwater levels. (EA at 15-16, 20-21.) Public comments  
22 submitted in response to a draft version of the EA do not contest  
23 the adequacy of the use of this proposed baseline. (See Decl. of  
24 Brett, Ex. B, Comments and Responses (Docket No. 9-3) ("Comments  
25 and Responses"); Decl. Brett, Ex. E Comment Letters (Docket No.  
26 9-6).) The EA justifies the use of the 2014 and 2015 years by  
27 noting that these water years were "critical drought years" that  
28 represented "historic lows." (EA at 15, 16.) Reclamation

1 contends that the failure to object to this approach results in  
2 the waiver of plaintiffs' ability to raise the argument in this  
3 litigation. (Opp. to Pls.' Motion for TRO at 10-11 (Docket. No.  
4 14).)

5 Even assuming that formal waiver does not apply, the EA  
6 and FONSI's omission of a more current baseline may be fairly  
7 attributed to Reclamation's rational opinion that data  
8 representing recent historic lows would be adequate for the  
9 purposes of this limited project.<sup>2</sup> Accordingly, plaintiffs'  
10 challenge to the EA on the basis that it lacks a description of  
11 existing groundwater levels does not demonstrate that Reclamation  
12 failed to take the requisite hard look at the project's potential  
13 impacts.

14 This conclusion receives additional support from the  
15 fact that the project provides incentives for the pumping of  
16 60,000 additional acre feet ("AF") of water, which the EA and  
17 FONSI emphasize is a low amount compared with average annual  
18 groundwater use (2.25 million AF) and groundwater pumped during  
19 dry years (4.5 million AF). (EA at 20; FONSI at 6; see also  
20 Comments and Responses at 3 (raising this point in response to  
21 public comment).) The FONSI further notes that adverse effects  
22 are likely to be brief due to the action's short term, which runs  
23

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24  
25 <sup>2</sup> One public comment includes a passing reference to  
26 current water levels being "below 2014-2015 historic lows."  
27 Comments and Responses at 1. It is unclear, however, and public  
28 comments do not address, whether this differential renders the  
2014 and 2015 data inadequate for use in this project.

1 from August to October 2021.<sup>3</sup> (FONSI at 6.) Under these  
2 circumstances, Reclamation's determination that a current and  
3 exact baseline was not required to adequately mitigate harm  
4 appears reasonable.

5 2. Effects to Third-Party Groundwater Users

6 Plaintiffs next claim that the EA inadequately  
7 evaluated the possibility of adverse effects on third-party  
8 groundwater users, thereby creating the possibility of  
9 "significant adverse effects to third party property." (Mot. at  
10 8 (Docket. No. 6-1).) Specifically, plaintiffs contend that  
11 "land subsidence[ ] and impacts to groundwater wells[ ] might  
12 occur" as a result of the increased groundwater pumping the  
13 program seeks to incentivize. (Id.) This claim also lacks  
14 merit.

15 Here, the EA acknowledges these possible impacts to  
16 ground wells and possible subsidence, noting rates of subsidence  
17 measured in recent decades and expressly attributing this to  
18 "groundwater pumping and subsequent consolidation of loose  
19 aquifer sediments." (EA at 19.) The EA further acknowledges  
20 that "[e]xtraction of groundwater used in lieu of diverting  
21 surface water to make surface water available could decrease  
22 groundwater levels, increasing the potential for  
23 subsidence." (Id. at 20.) Nevertheless, the EA also explains  
24 that Reclamation will continuously monitor pumping at  
25 participating wells to evaluate the impact of additional

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26  
27 <sup>3</sup> A portion of this period has already elapsed, meaning  
28 the true project period would be shorter.

1 production through a hybrid approach, tracking groundwater levels  
2 regionally and at individual wells. (Id.) The EA goes on to  
3 explain how, pursuant to the program, Reclamation will suspend  
4 individual wells' participation in the program, and suspend  
5 incentive payments accordingly, if local groundwater levels drop  
6 below acceptable levels. (Id.)

7 This monitoring plan reflects a considered response on  
8 Reclamation's part to the acknowledged risks posed by additional  
9 groundwater pumping, offering "sufficient detail to ensure that  
10 environmental consequences have been fairly evaluated," see S.  
11 Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of  
12 Interior, 588 F.3d 718, 727 (9th Cir. 2009) (citation omitted),  
13 and thus withstands "hard look" review as to third-party  
14 effects. In seeking to use mitigation measures to soften a  
15 proposed action's impact, "agenc[ies] must provide an assessment  
16 of whether the proposed mitigation measures can be effective and  
17 whether anticipated environmental impacts can be  
18 avoided." Protect Our Cmty's. Found. v. Jewell, 825 F.3d 571, 582  
19 (9th Cir. 2016) (internal quotation and alteration marks  
20 omitted). Reclamation has specifically done so here. (See EA at  
21 20 (stating that if problems arise due to pumping promoted by the  
22 action, "large portions of the production well network will be  
23 shut down and not allowed to participate in the voluntary program  
24 until the monitoring network recovers"); FONSI at 7 (same).)

25 The EA also notes that this monitoring will occur  
26 "prior to, during, and following" pumping. (EA at 6.) That this  
27 monitoring will, in part, occur "prior to" participants'  
28 additional groundwater pumping contradicts plaintiffs' claim that

1 "Reclamation will only consider effects to third parties after  
2 they occur." (Mot. at 9 (Docket. No. 6-1) (emphasis in  
3 original).) Given that no contracts have yet been entered into  
4 for additional pumping under the program, Reclamation retains the  
5 opportunity to follow through on this commitment prior to the  
6 commencement of additional pumping -- a commitment it reaffirmed  
7 at oral argument -- and as a steward of critical public resources  
8 this court expects that it will do so.

9 3. Impacts to Groundwater-Dependent Ecosystems,  
10 Hydrology, and Threatened Species

11 Plaintiffs next complain that Reclamation used data  
12 from the Yuba County Groundwater Sustainability Plan ("Yuba  
13 Sustainability Plan") in determining that the project was  
14 unlikely to significantly impact shallow groundwater in the  
15 Sacramento River Valley, arguing that the two areas are  
16 different. (Mot. at 11 (Docket. No. 6-1).) The EA explains,  
17 however, that because a Groundwater Sustainability Plan for the  
18 project area has not yet been completed, the Yuba Sustainability  
19 Plan provides the most comparable analysis available in light of  
20 the two areas' similarities. (EA at 14.) Under the  
21 circumstances, Reclamation's comparison suffices to constitute a  
22 hard look on this point.

23 Plaintiffs also contend that Reclamation failed to take  
24 a hard look at whether the program would succeed in its goal of  
25 increasing surface water availability by incentivizing the use of  
26 additional groundwater in lieu of surface water, or at whether  
27 additional groundwater use would result in a temporary decrease  
28

1 to surface water flows. At oral argument, however, Reclamation  
2 clarified that program contracts would obligate participants to  
3 forgo using an amount of surface water equal to the amount of  
4 additional groundwater they pump as a condition of receiving  
5 incentive payments. Even without such a guarantee, Reclamation  
6 could reasonably conclude that additional groundwater pumped due  
7 to program incentives would likely achieve this result. (See id.  
8 at 5-6; FONSI at 6.)

9 Next, Plaintiffs contend that Reclamation failed to  
10 take a hard look at the project's impact on two species listed as  
11 threatened, the Western Yellow-Billed Cuckoo and the Valley  
12 Elderberry Longhorn Beetle. (Mot. at 13 (Docket. No. 6-  
13 1).) However, the EA addresses both, noting that in both cases  
14 agricultural lands on which these species rely will not be  
15 impacted by the program, based on Reclamation's estimation that  
16 pumping does not significantly impact shallow groundwater levels  
17 in these areas. (EA at 15.) Reclamation's treatment of these  
18 concerns survives "hard look" review.

#### 19 4. Mitigations Measures

20 In its EA, Reclamation includes groundwater monitoring  
21 as a mitigation measure to evaluate performance. (See id. at  
22 20.) Reclamation is not required to include a completely  
23 developed mitigation plan as part of its program. See Robertson  
24 v. Methow Valley Citizens Council, 490 U.S. 332, 352-53 (1989).  
25 Rather, a "reasonably thorough discussion of mitigation measures"  
26 is enough to satisfy the "hard look" standard. See City of  
27 Carmel-by-the-Sea v. U.S. Dep't of Transp., 123 F.3d 1142, 1154  
28 (9th Cir. 1997) ("Mitigation must be discussed in sufficient

1 detail to ensure that environmental consequences have been fairly  
2 evaluated.”).

3 Plaintiffs claim the mitigation measure lacks data  
4 demonstrating that it will be effective in avoiding potentially  
5 adverse impacts. (See Mot. at 16 (Docket No. 6-1).) Reclamation  
6 does plan to consider analytical data provided by a regional  
7 groundwater monitoring network to evaluate performance in  
8 comparison to the baseline data from 2014 and 2015. (See EA at  
9 6, 20-21.) Based on this data, if groundwater drops below  
10 expected levels, Reclamation will shut down portions of the  
11 production well network until the network performs consistently  
12 with expectations. (See id. at 6, 20.) Reclamation’s use of  
13 data provided by the regional networks demonstrates the informed  
14 nature of Reclamation’s program.

15 Plaintiffs next claim Reclamation omits consideration  
16 of long-term damage. (Mot. at 16 (Docket No. 6-1).) However,  
17 Reclamation’s mitigation plan accounts for the need to stop any  
18 potential long-term damage by shutting down portions of the  
19 production well network that are not meeting expectations or  
20 impacting third-party wells. (See EA at 20-21.) Further, the  
21 monitoring will concur “prior to, during, and following” the  
22 pumping. (See id. at 6.) Reclamation’s plan for monitoring  
23 demonstrates that it considered the long-term effects of the  
24 program.

25 Plaintiffs also contend that Reclamation impermissibly  
26 fails to prescribe monitoring of third-party wells, groundwater-  
27 dependent ecosystems, surface waters, or threatened species.  
28 However, the EA states Reclamation will receive and consider

1 complaints regarding third-party impacts. (See id. at 21.)  
2 Plaintiffs' contention, if correct, would require Reclamation to  
3 examine the program's impact on an extensive list of things that  
4 may be impacted, but this would be unfeasible, especially for a  
5 short-term project. An indirect change to the environment is not  
6 enough to require a "hard look" at every aspect. See Native  
7 Ecosystems Council v. Weldon, 697 F.3d 1043, 1053 (9th Cir. 2012)  
8 (quoting Tri-Valley CAREs v. U.S. Dep't of Energy, 671 F.3d 1113,  
9 1129 (9th Cir. 2012)) ("We do not require the agency 'to compile  
10 an exhaustive examination of each and every tangential event that  
11 could impact the local environment.'"). Here, Reclamation  
12 appropriately considered a mitigation plan to overcome effects of  
13 the program.

#### 14 5. Greenhouse Gas Emissions

15 Plaintiffs also claim Reclamation failed to take a hard  
16 look at effects of greenhouse gas emissions resulting from the  
17 program. However, Reclamation's EA explicitly lists the  
18 pollutants that are emitted by groundwater pumping. (See EA at  
19 9-10.) Further, Reclamation relies on data regarding the  
20 greenhouse gas emissions to determine the environmental impact  
21 and concludes that emissions would not be significant. (See id.  
22 at 10-11.) Reclamation also ensures the program's compliance  
23 with local rules and regulations concerning air quality and  
24 greenhouse gas emissions. (See id.) Reclamation's inclusion of  
25 these items demonstrates that it took a hard look at greenhouse  
26 gas emissions.

#### 27 6. Cumulative Effects

28 Lastly, plaintiffs argue that Reclamation fails to



1 consider any cumulative effects the program may have. Yet,  
2 Reclamation examined the groundwater pumping already occurring in  
3 the region to determine cumulative effects. The proposed pumping  
4 was found to be insignificant relative to the total groundwater  
5 pumping in the area, leading to no significant cumulative effect.  
6 (See id. at 20, 22-23.) Under these circumstances, Reclamation  
7 adequately considered the cumulative effect of the program.

8 For the foregoing reasons, plaintiffs have not met  
9 their burden of showing a likelihood of success on the merits,  
10 and for that additional reason their request for preliminary  
11 injunctive relief must be denied.

12 C. Balance of Equities and Public Interest

13 When the government is a party, the balance of equities  
14 and public interest factors merge. Drakes Bay Oyster Co. v.  
15 Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing Nken v.  
16 Holder, 556 U.S. 418, 435 (2009)). To determine the balance of  
17 equities, the court must “balance the interests of all parties  
18 and weigh the damage to each.” Stormans, Inc. v. Selecky, 586  
19 F.3d 1109, 1138 (9th Cir. 2009) (citation omitted). Here, both  
20 sides seek to preserve important environmental resources,  
21 demonstrating a strong public interest, but propose different  
22 means of achieving those interests.

23 As discussed above, the harm that plaintiffs allege  
24 will occur to property, groundwater-dependent ecosystems,  
25 threatened species, and the water supply, absent injunctive  
26 relief, is largely speculative. On the other side, Reclamation  
27 is attempting to deal as best it can with the critical problem of  
28 too little water to meet the essential needs of all of the users

1 in the Sacramento River Valley. In addressing that problem,  
2 Reclamation seeks to achieve a more balanced use of surface and  
3 groundwater. As Reclamation explained in the EA, the FONSI, and  
4 at oral argument, the benefits of preserving available surface  
5 water are many and include ensuring availability of drinking  
6 water for the public, water for migratory birds, fresh water to  
7 repel saltwater intrusions into the Sacramento River Delta, and  
8 cold water to aid the survival of salmon during upcoming seasonal  
9 runs.<sup>4</sup> (See EA at 2; FONSI at 1; Opp. at 2 (Docket No. 14).)

10 Reclamation's proposal appears to be in the public interest.

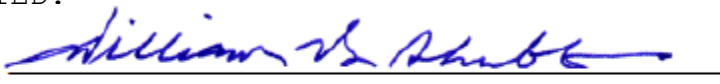
11 It also appears to be in the best interest of the  
12 public to implement the program as soon as possible in order to  
13 reduce the amount of surface water being used during a period of  
14 serious drought. Because Reclamation's program is only in effect  
15 from August to October, 2021 -- a portion of which has already  
16 elapsed, with no implementation thus far -- further delay risks  
17 entirely precluding the project's implementation, and therefore  
18 its expected beneficial impact. On balance, given the project's  
19 short time frame -- now effectively from September to October --  
20 and the need for increased surface water availability, the  
21 balance of equities and public interest appear to weigh against  
22 the issuance of an injunction.

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23  
24 <sup>4</sup> As noted above, project contracts will obligate  
25 participants to forgo use of surface waters in an amount equal to  
26 the additional groundwater they pump, ensuring that additional  
27 pumping done under the project will result in reduced surface  
28 water use. In other words, to the extent that participants pump  
additional ground water pursuant to the project, Reclamation will  
achieve its stated goal of increasing surface water availability.

1           Because plaintiffs have not met their burden on any of  
2 the Winter injunctive relief factors, IT IS HEREBY ORDERED that  
3 Plaintiffs' Motion for Preliminary Injunction (Docket No. 6) be,  
4 and the same hereby is, DENIED.

5 Dated: September 14, 2021



**WILLIAM B. SHUBB**  
**UNITED STATES DISTRICT JUDGE**

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