

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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U.S. COURT OF FEDERAL CLAIMS

_____)
 WOLFSEN LAND & CATTLE COMPANY, a)
 California Corporation; TURNER ISLAND FARMS,)
 INC., a California Corporation; WEST TURNER)
 ISLAND RANCH, a California Co-tenancy)
 Partnership; LONE WILLOW RANCH, a California)
 Co-tenancy Partnership; DONALD C. SKINNER AND)
 LYNN W. SKINNER; LAWRENCE SCOTT)
 SKINNER; THOMAS CLAY SKINNER; LAUREL)
 LYNN SKINNER; STACIE L. SKINNER-HANSON)
 LAWRENCE JOHN WOLFSEN; MEW VENTURES)
 a California Limited Partnership; ROBERT)
 MUELLER AND JOANNE MUELLER;)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
 _____)

Case No. _____

Judge _____

COMPLAINT FOR JUST COMPENSATION

This is a suit by Wolfsen Land and Cattle Company, Turner Island Farms, Inc.,
 West Turner Island Ranch, Lone Willow Ranch, Donald C. and Lynn W. Skinner,
 Lawrence Scott Skinner, Thomas Clay Skinner, Laurel Lynn Skinner, Stacie L. Skinner-
 Hanson, Lawrence John Wolfsen, Mew Ventures, LP, Robert H. Mueller, Joanne
 Mueller, and various other Wolfsen, Skinner, and Mueller family-related companies
 (collectively "Wolfsen"), under the Fifth Amendment of the United States Constitution,
 to recover just compensation for the legislative and physical taking of approximately
 12,973 acres of prime agricultural land, buildings, and crops located in the Central Valley

of California together with appurtenant water rights. This taking is the direct and foreseeable result of Congress' passage of the San Joaquin River Restoration Settlement Act of 2009, Pub. L. 111-11, and implementation of that statute by the acts of the United States Bureau of Reclamation.

I. JURISDICTION

1. This Court has jurisdiction over this case under 28 U.S.C. § 1491 (the Tucker Act) since this suit is a “claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department or upon any express or implied contract with the United States”

II. DEFENDANT

2. Defendant, the United States of America, is a republic formed pursuant to the Constitution of the United States, and exercising the powers described therein subject to certain limitations, including the Fifth Amendment to the United States Constitution, which prohibits the taking of private property for public use without payment of just compensation.

III. PLAINTIFFS

3. Plaintiffs are persons or entities who are all landowners whose land is located adjacent to, or near, or on either (i) the original old riverbed “channel” of the former San Joaquin River in the Central Valley of California (hereinafter referred to as “San Joaquin River original riverbed channel” or “SJR riverbed channel”) or (ii) the “Flood Water Bypass Channels;” which Flood Water Bypass Channels are connected to

the San Joaquin River's original old riverbed channel. Said Flood Water Bypass Channels are known as the Chowchilla Bypass, Sands Slough Control Structure, the Eastside Bypass, and the Mariposa Bypass Channels (hereinafter jointly and severally referred to as the "Flood Bypass Channels" or "Flood Bypass Channels System"), which lands are located within the U.S. Bureau of Reclamations' below-described San Joaquin River Restoration Project areas known as the "Reach 4A or 4B Areas," (collectively Reach 4) which are areas located East of the City of Los Banos, California. *See* Ex. 1, Reaches 4A and 4B on the U.S. Bureau of Reclamation's map attached hereto (on the map, blue represents the San Joaquin River old original riverbed channel and brown represents the Flood Water Bypass Channels System). All of the below listed persons and entities (Plaintiffs) are jointly and severally known as the "Wolfsen Entities" or the "Plaintiffs Wolfsen." All the "Wolfsen Entities" are owned by Mr. and Mrs. Donald C. Skinner and Lynn W. Skinner and Mr. and Mrs. Robert and Joanne Mueller or their children or other relatives. All the Plaintiffs "Wolfsen Entities" have their principal place of business at 1269 West "T" Street, P.O. Box 311, Los Banos, California 93635. The Plaintiffs "Wolfsen Entities" are:

- Wolfsen Land & Cattle Company, a California corporation;
- Turner Island Farms, Inc., a California corporation;
- West Turner Island Ranch, a California co-tenancy Partnership, consisting of tenants-in-common Henry and Warren Wolfsen as co-trustees of Trust A created under Article Four, Paragraph C of the Henry B. Wolfsen and Helen E. Wolfsen 1983 Revocable Trust, and Henry and Warren Wolfsen, Trustees under the Survivor's Trust created under Article Four, Paragraph A of the Henry B. Wolfsen and Helen E. Wolfsen 1983 Revocable Trust, Stacie L. Skinner-Hanson as Trustee

of the Stacie L. Skinner-Hanson Home Ranch Trust, Laurel Lynn Skinner as Trustee of the Laurel Lynn Skinner Home Ranch Trust, Thomas Clay Skinner as Trustee of the Thomas Clay Skinner Home Ranch Trust, Lawrence Scott Skinner as Trustee of the Lawrence Scott Skinner Home Ranch Trust, and MEW Ventures Limited, L.P., by Lawrence J. Wolfsen, g.p.;

- Lone Willow Ranch, a California co-tenancy Partnership, consisting of individual co-owners Lawrence J. Wolfsen, Cherie Wolfsen Hale, Jeannie D. Hunt, Laurie Gatnell, Jason T. Wolfsen, Stacie L. Skinner-Hanson, Laurel Lynn Skinner, Thomas Clay Skinner, and Lawrence S. Skinner;
- Donald C. Skinner, Lynn W. Skinner, Lawrence Scott Skinner, Thomas Clay Skinner, Laurel Lynn Skinner, and Stacie L. Skinner-Hanson, as individuals and residents of California;
- Lawrence John Wolfsen, a married man as his separate property;
- Mew Ventures, LP, a California Limited Partnership;
- Robert and Joanne Mueller, as individuals and residents of California;
- Stacie L. Skinner-Hanson, as Trustee of the Stacie L. Skinner Hanson Home Ranch Trust;
- Laurel Lynn Skinner, as Trustee of the Laurel Lynn Skinner Home Ranch Trust
- Thomas Clay Skinner, as Trustee of the Thomas Clay Skinner Home Ranch Trust;
- Lawrence Scott Skinner, as Trustee of the Lawrence Scott Skinner Home Ranch Trust; and
- Various other Wolfsen/Skinner/Mueller family related companies;

Having the following assessor parcel numbers (APNs) in Merced and Fresno Counties of California:

1. Wolfsen Land & Cattle Co., a.k.a. "Crane Ranch"

	<u>Acres</u>
APN 065-050-012	250
APN 065-050-019	217
<u>APN 065-050-020</u>	<u>250</u>
	717

2. Wolfsen Land & Cattle Co., a.k.a. "Delta Ranch"

	<u>Acres</u>
APN 073-040-04	69
APN 073-040-05	6
APN 073-050-01	526
APN 073-050-04	377
APN 073-060-02	18
APN 073-060-09	319
APN 073-070-09	135
APN 073-070-10	53
APN 073-080-08	9
APN 073-080-11	15
APN 073-080-14	184
APN 073-090-10	121
APN 073-110-17	136
APN 073-110-21	5
APN 073-120-19	54
APN 073-120-23	522
APN 073-130-41	380
APN 073-180-29	32
APN 073-180-30	47
<u>APN 073-180-31</u>	<u>20</u>
	3,028

3. Turner Island Farms

	<u>Acres</u>
APN 049-240-06	560
APN 049-240-08	68
APN 049-240-09	286
APN 049-240-10	390
APN 065-050-04	533
APN 074-010-03	237
APN 074-010-05	447
APN 074-030-01	440
APN 074-030-05	351
APN 074-030-11	604
APN 074-050-01	154
APN 074-050-02	237
(Headquarters)	
	<hr/>
	4397

4. Lawrence J. Wolfesen and MEW Ventures, L.P., a.k.a. "Home Ranch/
Fresno County Ranch"

	<u>Acres</u>
APN 001-080-07	248
APN 001-100-04	32
APN 001-100-08S	6
APN 001-100-10S	4
APN 001-100-12S	3
APN 001-100-13S	522
APN 001-110-07	42
APN 001-110-08	404
APN 001-110-23S	1
APN 001-110-24S	35
APN 001-200-30S	24
APN 001-210-15S	17
APN 001-210-16S	569
	<hr/>
	1907

5. WEST Turner Island

	<u>Acres</u>
APN 049-240-07	586
APN 074-010-01	471
APN 074-010-02	635
<u>APN 074-010-06</u>	<u>614</u>
	2,306

6. Lone Willow Ranch

	<u>Acres</u>
APN 073-120-10	183
APN 073-120-12	122
<u>APN 073-130-05</u>	<u>254</u>
	559

7. "House Parcels" (Donald C. Skinner & Lynn W. Skinner, Lawrence Scott Skinner, Thomas Clay Skinner, Laurel Lynn Skinner, Stacie L. Skinner-Hanson)

	<u>Acres</u>	<u>(Owner)</u>
APN 001-080-04	20	(Donald & Lynn)
APN 001-080-08	10	(Scott)
APN 001-080-09	10	(Clay)
APN 001-100-09S	16	(Laurel)
<u>APN 001-210-145</u>	<u>3</u>	<u>(Stacie)</u>
	59	

IV. THE SAN JOAQUIN RIVER AND THE FRIANT DAM

4. The San Joaquin River is the main artery of California's second largest river system. The San Joaquin River originates high in the Sierra Nevada Mountains, on mountain peaks southeast of Yosemite National Park (near the Ansel Adams Wilderness) and then tumbles westward out of the mountains and into the trough of the Central Valley (running past the north edge of the City of Fresno) towards the City of Mendota. Near

the City of Mendota, the San Joaquin River turns abruptly north (for the final 110 miles of its approximate 350-mile journey). While proceeding north, the San Joaquin River picks up the Fresno and Chowchilla Rivers, and further north it also picks up the Merced, Tuolumne, Stanislaus, Mokelumne, Calaveras, and Cosummes Rivers (as some of the San Joaquin River's major tributaries), before merging with the Sacramento River (which flows Southerly from the North's Sacramento Valley) to converge and form the Sacramento-San Joaquin (Rivers') Delta (also known as the San Francisco Bay-Delta Estuary); which "Delta" then proceeds west eventually spilling into the San Francisco Bay, and then out to the Pacific Ocean.

5. Owned and managed by the United States Bureau of Reclamation, the Central Valley Project is the largest federal water management project in the United States. Originally authorized by the Rivers and Harbors Act of 1935, the project consists of 20 dams and reservoirs, eight power plants, and approximately 500 miles of major canals and aqueducts. Central Valley Project water is used for agricultural, municipal, industrial, and environmental protection purposes. In any given year, the Central Valley Project manages water sufficient to irrigate one-third of the agricultural land in California.

6. On November 5, 1939, the U.S. Bureau of Reclamation, as a major component of the Central Valley Project, began construction of the San Joaquin River's Friant Dam, ("Friant Dam") with its adjacent (up-stream) storage reservoir facility known as Millerton Lake ("Millerton"). The purpose of the Friant Dam was to arrest and store

most of the San Joaquin River flow, and then to divert that water for irrigation purposes to more than a million acres of semi-arid farmland that had previously been short of water or entirely without water.

7. The Friant Dam was completed in 1942 (i.e., 68 years ago), with its related irrigation canals completed in 1944 (the Madera Canal) and in 1947 (the Friant-Kern Canal). As a result, the Friant Dam diverted virtually all of the San Joaquin River's natural flow to irrigation purposes and approximately 60 to 100 miles of the San Joaquin River's old original riverbed channel has lain continuously dry for approximately the last 63 years, except during extremely rare flood events. The water that naturally flowed down the San Joaquin River is now delivered via the Madera Canal and the Friant-Kern Canal to approximately twenty-eight (28) irrigation water districts that serve over 15,000 farmers.

8. Friant Dam is a concrete gravity structure 319 feet high with a crest length of 3,488 feet. The dam controls the San Joaquin River flows and delivers water to a million acres of agricultural land in Fresno, Kern, Madera, and Tulare Counties in the San Joaquin Valley. The reservoir behind the dam, Millerton Lake, first stored water on February 21, 1944. It has a total capacity of 520,528 acre-feet, a surface area of 4,900 acres, and is approximately 15 miles long.

9. The Friant Dam releases the Millerton Reservoir's water through three (3) different system outlets in the Dam:

- One outlet directs water into the Madera Canal (taking irrigation water to the northwest);

- A second outlet releases water to the Friant-Kern Canal (which takes water to the southeast); and
- The third outlet, previously rarely used except in very wet hydrologic years, allows the U.S. Bureau of Reclamation to also release Millerton water back into the old original riverbed channel of the San Joaquin River (which floodwater is later diverted around the Reach 4B riverbed area in the Flood Water Bypass Channels System).

10. In very wet hydrologic years, when the Millerton reservoir's water level exceeds 578 feet, the water automatically flows over the Dam's spillway into the old original San Joaquin River bed channel. Up to that point, the River can moderately accommodate a flow of 8,000 cubic feet per second ("cfs") without flooding the low (Reach 4B) area of the old original riverbed channel of the historic San Joaquin River. But in this low area, which was subject to rare flooding (i.e. Reach 4B), years ago a "Flood Water Bypass Channels System" was built to "bypass" the floodwater around the San Joaquin River's old riverbed channel (Reach 4B) flood low areas. The Flood Water Bypass Channels System consists of the Chowchilla Bifurcation Structure, the Chowchilla Bypass, the Sand Slough Control Structure, the Eastside Bypass, and the Mariposa Flood Bypass. See Ex. 1, Flood Water Bypass Channels System as marked in brown on the U.S. Bureau of Reclamation's map.

11. The water that is the subject of this claim is not flood water. It is only the controlled release of fish water by the U.S. Bureau of Reclamation into the historic riverbed or the Flood Water Bypass Channels System.

12. The entire Flood Water Bypass Channels System, including the relevant Eastside Bypass Channel (which proceeds around the Reach 4B area) was constructed by the Defendant United States and completed in 1966.

13. To provide irrigation water for the Friant Project, in 1939 the United States acquired certain rights to the use of the historic flows of the San Joaquin River, including some of the riparian and pre-1914 appropriative water rights then owned by the Miller-Lux entities. However, the Miller-Lux entities, which then owned most of the water rights in the San Joaquin River, reserved to themselves a top priority right to a flow of 50 cubic feet per second from the San Joaquin River and Wolfsens, as successors in interest to Miller-Lux, now own this and other water rights that the United States did not acquire from Miller-Lux, including rights retained for the San Joaquin River Exchange Contractors and administered under a joint powers agreement. All of the rights acquired by the United States from Miller-Lux are limited to the irrigation/reclamation purposes of the Friant Project, and do not include any right to in-stream flows for the benefit of fish.

V. THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

14. Before construction of the Friant Dam, and the resulting water diversion, the San Joaquin River had been home to annual migrations of Chinook Salmon. This salmon population disappeared entirely around 1947 when the Friant Dam and the Friant-Kern Canal were completed and full water diversion began. The salmon were essentially left without water.

15. In 1988, a coalition of environmental groups filed suit in the U.S. District Court for the Eastern District of California, challenging the federal Government's compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The lawsuit also argued that the Federal Government was required under Section 5937 of the California Fish & Game Code to release sufficient water to maintain the salmon in "good condition."

16. On September 13, 2006, this suit was conditionally resolved when the United States entered into a settlement agreement to restore water flows for salmon in the San Joaquin River below Friant Dam, undertaking one of the West's largest river restoration efforts. That settlement agreement, however, was conditional and would not become effective until and unless Congress passed authorizing legislation.

17. Congress enacted and, on March 30, 2009, President Obama signed such authorizing legislation in the form of a statute known as Public Law No. 111-11, the San Joaquin River Restoration Settlement Act of 2009, which directs and authorizes the Secretary of the Interior to implement the terms and conditions of the September 13, 2006 settlement agreement, including modification of Friant Dam operations so as to provide restoration flows in the San Joaquin River for the benefit of salmon. The Act states in part:

The Secretary of the Interior is hereby authorized and directed to implement the terms and conditions of the Settlement . . . including the following measures as these measures are prescribed in the Settlement. . . . Modify

Friant Dam operations so as to provide Restoration Flows and Interim Flows.¹

18. The Restoration Settlement Agreement has three basic parts. The first part is channel improvements that will be made to the San Joaquin River channel, which, for much of its length, has not seen water for over sixty-eight years. Second, the Agreement calls for restoration flows of water, wherein sufficient water will be procured from current users for release from the Friant Dam so that a continuous fish water flow down the River's length will be maintained (at a sufficient level to support salmon). Third, and finally, the reintroduction of the salmon fish themselves (both a spring and fall run) is slated to occur at some time before December 31, 2010.

19. The Settlement further provides that Defendant United States shall perform the following activities that directly, foreseeably, and materially impact Plaintiffs' private property:

- (1) Create a bypass canal around the Mendota Pool to convey at least 4,500 cfs of water from Reach 2B downstream to Reach 3;
- (2) Deepen the old original San Joaquin River's riverbed channel to increase the water flow capacity to at least 475 cfs (or more to 4,500 cfs) through Reach 4B (Reach 4B's current capacity is now zero);
- (3) Modify the Reach 4B head gate on the San Joaquin River's riverbed channel to enable flow routing of between 500 cfs and 4,500 cfs into Reach 4B;
- (4) Modify the Eastside Flood Water Bypass Channel and the Mariposa Flood Water Bypass Channels to establish a permanent year-round flow of fish water rather than periodic floodwaters;

¹ Pub. L. No. 111-11, § 10004(a).

- (5) Modify the Sand Slough Control Structure to allow up to 4,500 cfs or fish water flow in Reach 4B;
- (6) Annually purchase initially at least 40,000-acre feet of water from any willing sellers until exhausted, then purchase at least 28,000-acre feet of water from willing sellers for additional fish water releases;
- (7) Periodically requires the release of even more water so as to “adjust” for downstream losses of the fish water flows due to the expected (surface or underground) losses from percolations and seepage and evaporation losses to the earlier fish water releases;
- (8) Subject to existing downstream diversion rights of farmers like the Plaintiffs, the United States shall acquire (purchase) all rights to manage the fish restoration flows (from the Friant Dam to the Sacramento-San Joaquin Delta), including requesting necessary permit modifications from the State of California;
- (9) United States shall monetarily charge a fee to all Friant Dam irrigation water Users a surcharge fee of \$8 million dollars per year, forever;
- (10) The United States shall allocate \$2 million dollars per year for fish restoration costs (from the current \$11 million dollars paid annually by all Friant irrigation water Users/farmers);
- (11) The United States shall assign (transfer) to the fish restoration project budget the sum of \$10 million dollars per year for nine (9) years (i.e., \$90 million dollars). This money is coming from the Friant irrigation districts/Users/farmers’ CVP capital repayment-maintain budget/operation; and
- (12) Further, the Settlement provides for at least an authorization by Congress of an immediate \$250 million dollars release; which money to be taken out of the Friant Dam irrigation water Users/farmers capital reimbursement-maintain budget fund, to be given to the fish restoration project.

20. In compliance with the San Joaquin River Restoration Settlement Act of 2009, on October 2, 2009, the Bureau of Reclamation opened the valves at the base of Friant Dam, releasing water into the river at the rate of 185 cubic feet per second, or approximately 83,250 gallons per minute. The water released through the valves is in

addition to the water already flowing through the Dam's turbines, bringing total releases to 350 cubic feet per second. Those rates subsequently doubled to 700 cubic feet per second in November 2009. In February 2010, the rates of releases of water from Friant Dam increased to about 1,600 cubic feet per second. Even greater releases are anticipated for the future as the Bureau of Reclamation continues to comply with the statutory mandate that it restore the flows of the San Joaquin River that were cut off 60 years ago, so as to restore the salmon populations downstream of Friant Dam.

21. The direct, foreseeable, and proximate result of the Government's new and substantial releases of water into the formerly dry bed of the San Joaquin River, in compliance with the San Joaquin River Restoration Settlement Act, was to flood, erode, seep under, and physically inundate and invade the Wolfsen properties, thereby taking their property for public use because the Wolfsens are located immediately adjacent to the formerly dry riverbed of the San Joaquin. And, adding insult to injury, a significant portion of the water being released is the property of Wolfsen.

VI. CLAIMS FOR RELIEF

22. The United States' past, current and future activities as directed by the San Joaquin River Restoration Settlement Act with respect to water releases into the San Joaquin River's old riverbed channel (from the Friant Dam) and otherwise have taken Plaintiffs Wolfsen Entities' private property without just compensation, thus constituting compensable inverse condemnation.

23. The United States' past, current, and future activities as directed by the San Joaquin River Restoration Settlement Act with respect to water releases into the Bypass Channels System and otherwise have taken the real and personal property and businesses of Plaintiffs Wolfsen Entities without just compensation, thus constituting compensable inverse condemnation.

24. Public Law 111-11 provides for annual test releases and then a continuous forever release of fish water by 2011-2013 of the Friant Dam's San Joaquin River water down the "restored" River's old actual riverbed channel and down the Flood Water Bypass Channels System. Said United States controlled fish water releases, as directed by Congress, (a.k.a. Restoration) has taken the Plaintiffs' private property interests as follows. Each below-described Claim incorporates into the Claim all paragraphs of this Complaint appearing before and after the Claim.

Claim No. 1 – Taking of Water

25. The United States' taking or using of water for fish, rather than irrigation purposes, is a taking of Plaintiffs Wolfsen Entities' riparian and pre-1914 appropriative water rights without just compensation, including (but not limited to) a taking without just compensation of the Wolfsen Entities' "premier" (off the top) highest priority 50 cfs water rights.

26. A diversion for enhancement of fish from the Sacramento River is also a "taking" of successor-in-interest Plaintiffs Wolfsen's water, without just compensation, particularly when Wolfsen is being charged for that water.

27. In summary, although the U.S. Bureau of Reclamation purchased the use of certain irrigation water from Plaintiff Wolfsen's predecessors-in-interest Miller-Lux, to implement Congress' direction in the San Joaquin River Restoration Settlement Act, the U.S. Bureau of Reclamation is using some of that irrigation water for fish releases, thereby depriving Plaintiffs Wolfsen of water (either directly or through their irrigation companies) while simultaneously increasing Wolfsen's replacement costs for the taken irrigation water, thus harming Wolfsen's lands and farming and cattle grazing businesses as described in this Complaint. The fish water is being taken without just compensation.

Claim No. 2 – Taking by Excavation of and Construction upon Plaintiff's land

28. The San Joaquin River Restoration Settlement Act enacted by Congress requires the United States to make various structural changes upon Plaintiffs Wolfsen's lands and businesses, including floodwater channels, and the use of the Bypass or the excavation of the Reach 4B riverbed channel, and the erection of buildings and equipment. These construction projects, as directed by Public Law 111-11, include (but are not limited to):

- The digging out and modification of the old original San Joaquin riverbed channel located on Plaintiffs' land at Reach 4B that currently has a zero flow capacity. This Reach 4B old riverbed channel has been flat and farmed over by Plaintiffs or their predecessors for approximately 68 years. Plaintiffs Wolfsen Entities own portions of both the width and length of Reach 4B. Defendant United States, under the Settlement, is required to study how to dig out the old original Reach 4B channel, a portion of which soil is owned by Plaintiffs. This digging out of the Reach 4B by the U.S. Bureau of Reclamation is required before the U.S. Bureau of Reclamation can run fish flows down Reach 4B. In the meantime, the U.S. Bureau of Reclamation is using the Flood Water Bypass Channels System for the fish flows in violation of the Plaintiffs' easements for floodwater only. The United States has indicated it will continuously breach the Floodwater Bypass

easement by continuously running (non-flood) fish water through the Eastside Bypass Channel, before and after the U.S. Bureau of Reclamation considers digging out any of Reach 4B. Further, the U.S. Bureau of Reclamation has indicated that if it decides to use both the Bypass and Reach 4B, then the U.S. Bureau of Reclamation will remove from the Reach 4B channel the Plaintiffs' private soil to a depth of between 4 to 9 feet from the surface, and remove a width (swath) of 300 feet to 1,000 feet, for a length of 20 to 30 miles partially on, under and through Plaintiffs' real property.

- Head gates structures, slough control structures, and Sack Dam modifications, to be erected on and with access through Plaintiffs' private property. The aforementioned excavation of Reach 4B and other construction constitutes a permanent taking without just compensation of Plaintiffs Wolfsen Entities' private property.

Claim No. 3 – Taking of Expansion of Bypass Easement

29. Further, the U.S. Bureau of Reclamation's aforementioned use of the Eastside Bypass and other channels of the Flood Water Bypass Channels System, constitutes usurping (surcharging and exceeding) the terms of the Plaintiffs' flood water easement by the continuous use of the channels for non-flood water —rather than the rare use for periodic floodwater. This constituting another independent taking without just compensation.

Claim No. 4 – Taking of Flood Seepage Easement Around Bypass

30. The continuous non-flood fish flows in the Bypass channels are causing and will continue to cause a taking and injury to Plaintiffs as described above. Namely, the continuous flow of water in the Bypass system causes water seepage, underground percolation, inundation, and flooding on and under Plaintiffs' lands. As the underground water tables (levels) are rising, so too are the crop damaging salts in the soil rising. Thus in the lands within a radius of 3,000 to 5,000 feet on both sides of the Bypass, the

Plaintiffs' farmland is or will become damaged, and unfarmable for most if not all crops. Many permanent crop plantings (trees and vines) require underground water tables and salt tables to be lower than 10 feet from the surface. And most row crops require that the underground water and salt tables remain below 5 feet of the surface. Thus, rising levels are permanently harming and injuring Plaintiffs' lands and their farming and cattle grazing businesses substantially and permanently so as to cause an inverse condemnation (a governmental taking of a flood seepage easement) without just compensation.

Claim No. 5 – Taking of Flood Seepage Easement Around Reach 4A and Reach 4B

31. As previously stated regarding the congressionally mandated continuous flow of fish water in the Bypass and the resulting seepage and raising of underground water and salt levels pursuant to the San Joaquin River Restoration Settlement Act, the same is occurring in Reach 4A of the old riverbed channel and will certainly occur in the future in Reach 4B if the U.S. Bureau of Reclamation elects to excavate the Reach 4B old riverbed channel. Thus, like Bypass flows, the old riverbed flows are causing underground water seepage, percolation, inundation and flooding in a radius of up to one mile from the riverbed, directly causing a substantial rise of the underground water levels and salts levels so as to likewise take a seepage easement over Plaintiffs' lands and farming and cattle grazing business without just compensation.

32. The U.S. Bureau of Reclamation's own issued Seepage Estimate Report has already been shown to be an underestimate of the actual seepage damage. The U.S. Bureau of Reclamation itself estimates that from the riverbed seepage or the bypass

seepage, the U.S. Bureau of Reclamation will be directly causing an unfarmable swath—on both sides of the riverbed and the Bypass Channel—having a radius of up to one mile on both sides, which will become so-called non-farmable “forested/wooded plains,” (better called by the Plaintiffs the “flooded plains”). This will destroy thousands of acres of Plaintiffs’ farmland or Plaintiffs’ farming business.

Claim No. 6 – Bypass Severance Damages

33. The continuous flow of fish water down the Bypass Channel System pursuant to congressional directive in the San Joaquin River Restoration Settlement Act has caused a physical severance of Plaintiffs Wolfsen’s agricultural and cattle grazing lands, taking both those lands and the agricultural and cattle businesses that Plaintiffs operate upon them.

34. The original Flood Water Bypass easement only allowed for rare floodwater releases to run down the flood bypass channels, on average during the flood years occurring once every seven to nine years. The rest of the time, the Bypass Channels remain dry. These channels are hundreds of feet wide, but in the vast majority of years, and even in the flood years when the Bypass Channels are not being used, the Plaintiffs’ farming vehicles and cattle simply traverse over and through the dry Bypass Channels, so as to move farming vehicles from one side of the farm to the other side. Now, because Congress has directed that the fish water flow continuously, the farming or cattle grazing vehicles must be placed on trailers and hauled miles up and alongside the Bypass Channels until a bridge can be located to cross-over the channel; at which time

the vehicles must be driven back to get to the other side of the farm. The U.S. Bureau of Reclamation did not erect any bridges, nor build any roads, over or alongside the Bypass channels before running continuous fish flows. Thus, the severance damages are substantial and directly constitute further inverse condemnation, without just compensation.

Claim No. 7 – Reach 4A and 4B Severance Damages

35. Likewise, the congressionally directed continuous flow of fish water down Reach 4A and Reach 4B pursuant to the San Joaquin River Restoration Settlement Act has taken by physical severance Plaintiffs Wolfsen's adjacent and nearby lands, their farming operations or cattle grazing operations.

36. Again, the U.S. Bureau of Reclamation has not built any bridges or roads or underground piping systems for utilities or infrastructure, so that the farming and cattle ranching operations of 63-68 years are substantially interfered with by an intersecting full-time water running riverbed channel.

Claim No. 8 – Injury to Buildings In Reach 4A and 4B

37. The aforementioned water seepage, underground percolation and inundation, and flooding from the old riverbed channel or from the Bypass Channels, the direct and foreseeable result of the flows directed by Congress in the San Joaquin river Restoration Act, will destroy or severely damage repair/shop, building, houses at Turner Island, including/and will cause basement damage or flooding at Mr. and Mrs. Skinner's home site, roads, and other improvements.

Claim No. 9 – Taking Of Water Within The Reach 4A/4B River

38. Plaintiffs enjoy “riparian” and “pre-1914” appropriative rights on Reach 4A and Reach 4B which rights have never been severed or taken away from the Plaintiffs’ parcels (in or outside the Exchange Contractor’s Territory).

39. In addition, Plaintiffs Wolfsen are the successors-in-interest to the recorded Indenture made on December 8, 1893 between Miller-Lux and the then named East Side Canal and Irrigation Company—whereby Miller-Lux, for its successors-in-interest (i.e., Plaintiffs), conveyed the canals but retained fifty (50) cfs of water from the flows of the San Joaquin River for the benefit of Miller-Lux’s successors—which water rights have never been severed or taken from Plaintiffs’ parcels.

40. Plaintiffs are informed and believe that Defendant, the United States, will not allow them to divert any of the water in the San Joaquin River Reach 4B or the bypass, since this would decrease the water available for fish flows mandated by Congress. This prohibition on Plaintiffs’ use of their riparian water rights is a taking of water without just compensation.

Claim No. 10 – Public Easement on Farm For Fishing Access

41. As a condition of approving a tentative or final parcel map on any land parcel, the California Subdivision Map Act (California Government Code Section 66410, etc.), provides that any legal parcel through which a public river flows or touches must provide ingress and egress roadway access and certain contiguous riverbank access to the public for fishing and other recreational activities. Putting aside the issue that it is

somewhat ironic that the U.S. Bureau of Reclamation is taking Plaintiffs' private property to reestablish salmon which the public will be fishing out of the river, Plaintiffs private property will be permanently damaged and diminished in value, and the farming and cattle grazing business will be permanently damaged, by the public's access onto Plaintiffs' private land that will be required if the U.S. Bureau of Reclamation re-creates the flows down Reach 4A or 4B. This is particularly true since the river has been dry and farmed virtually continuously for the last 63 to 68 years without members of the public having ingress and egress. Such is a taking without just compensation. *See* Government Code Section 66478.4(a)-(c), 66478.5, and 66478.6.

**Claim No. 11 – Plaintiffs Wolfsen Entities Owns Reach 4B Land –
Taking of Easement to Flow Water Over It**

42. Plaintiffs Wolfsen Entities own the land known as Reach 4B (or substantial portions thereof). The U.S. Bureau of Reclamation's excavation and then release of continuous fish water upon any of the Reach 4B, is therefore a taking of Plaintiff Wolfsen's solely owned private property without just compensation.

**VII. REQUEST FOR DAMAGES, REASONABLE ATTORNEYS' FEES AND
EXPERT WITNESS FEES AND OTHER LITIGATION COSTS**

The following allegations apply to each and every Claim for Relief stated in this Complaint:

43. The Fifth Amendment of the United States Constitution requires that the United States pay just compensation for all private property that it takes for public use.

44. Despite this mandatory requirement of the Fifth Amendment, Wolfsen has received no just compensation for the water rights, land, improvements, and other property that the Government has taken for public use.

45. As a direct, foreseeable, and proximate result of the acts of Defendant, Wolfsen has been damaged in an amount as yet unascertained, equal to the just compensation due it under the Fifth Amendment, including interest thereon from the date of taking until paid at a rate to be established by this Court.

46. To date, the United States acting through the U.S. Bureau of Reclamation has refused to enter into any litigation Stay Agreement, to pay just compensation for the property taken, or otherwise refrained from engaging in any meaningful settlement conferences with the Plaintiffs. Therefore, Plaintiffs have had to engage a law firm, appraisers, and expert witnesses. Plaintiffs will sustain other litigation costs and expenses to obtain just compensation for the United States' taking of their property. Plaintiffs have and will continue to incur said attorneys' fees, appraiser, expert witness' fees, and other costs of litigation. Evidence of these fees, costs, and expenses will be provided when ascertained, in compliance with the Rules of this Court.

VIII. PRAYER FOR RELIEF

Wherefore, Plaintiffs' Wolfsen Entities now pray for Judgment against Defendant United States, as follows:

1. For the takings and/or injuries sustained by Plaintiffs, as a result of Defendant's inverse condemnation of Plaintiffs' real and personal property, an award of compensatory damages in an amount to be proven at trial, equal to the just compensation owed for the taking including interest from the date of taking until paid;
2. For the Plaintiffs' cost of suit incurred herein, including reasonable attorneys' fees, and for appraisers and other expert witness fees and other litigation costs;
3. For pre-judgment and post-judgment interest on all sums awarded; and,
4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,



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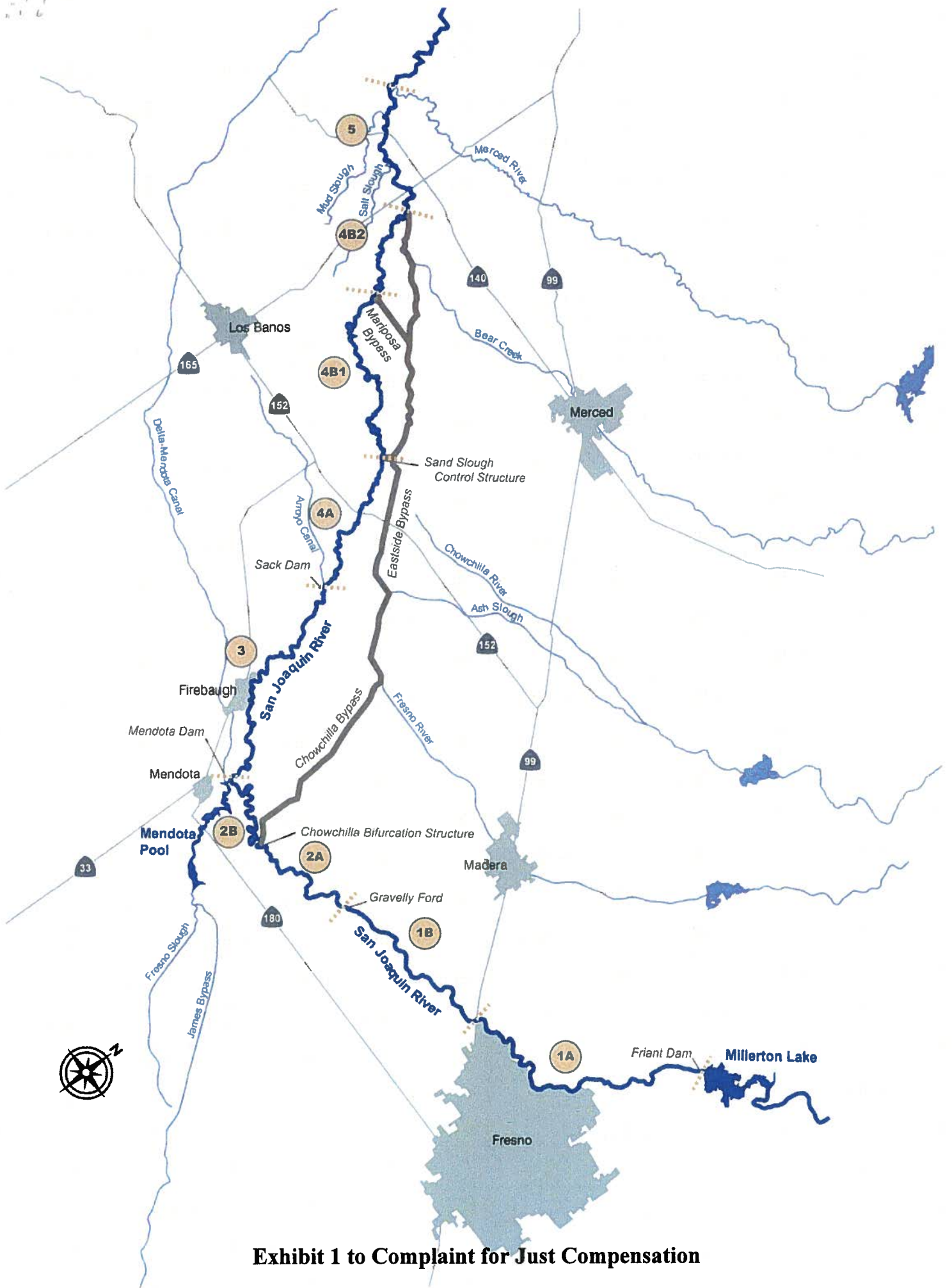


Exhibit 1 to Complaint for Just Compensation