
**Order Granting Plaintiff's Application for Temporary Restraining Order
February 3, 2006;**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PLANNING AND CONSERVATION LEAGUE,
Plaintiff,
v.
UNITED STATES BUREAU OF RECLAMATION,
Defendant;
SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY; and WESTLANDS WATER
DISTRICT,
Defendants-Intervenors
(remedies phase only).

No. C 05-3527 CW
ORDER GRANTING
PLAINTIFF'S
APPLICATION FOR
TEMPORARY
RESTRAINING ORDER

Plaintiff Planning and Conversation League moves for a temporary restraining order enjoining construction of the Intertie Project, discussed below, until its preliminary injunction motion is heard. Defendant United States Bureau of Reclamation has filed an opposition to Plaintiff's application for a temporary restraining order and motion for a preliminary injunction. Defendants-Intervenors San Luis & Delta-Mendota Water Authority and Westlands Water District (collectively, Intervenors) also oppose

1 Plaintiff's application for a temporary restraining order. Having
2 considered all of the papers filed by the parties, the Court grants
3 Plaintiff's application for a temporary restraining order.

4 BACKGROUND

5 In this action, Plaintiff challenges an environmental review
6 of a proposed 500-foot-long pipeline and related pumps, which would
7 connect the main delivery canals of two water diversion
8 projects -- the federal Central Valley Project (CVP) and
9 California's State Water Project (SWP) -- in California's Central
10 Valley. These diversion projects draw their water from the estuary
11 formed by the discharge of the Sacramento and San Joaquin River
12 systems into the San Francisco Bay (Bay-Delta). The proposed
13 pipeline at issue is known as the Delta-Mendota Canal/California
14 Aqueduct Intertie (Intertie Project).

15 In September, 2004, the Bureau and the San Luis & Delta-
16 Mendota Water Authority completed a joint environmental review of
17 the Intertie Project titled "Delta-Mendota Canal/California
18 Aqueduct Intertie Proposed Finding of No Significant Impact/
19 Negative Declaration and Draft Environmental Assessment/Initial
20 Study" (Intertie EA/IS). The Intertie EA/IS was released for
21 public comment in November, 2004. Plaintiff and others submitted
22 comments on this study. Plaintiff commented that, because
23 increased pumping associated with the Intertie Project could have
24 significant environmental effects on the Bay-Delta, a full
25 Environmental Impact Statement (EIS) should be prepared as required
26 by the National Environmental Policy Act (NEPA). The Bureau did
27 not prepare an EIS; instead, it signed a Finding of No Significant
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1 Impact (FONSI).

2 Plaintiff filed this action on August 31, 2005. On
3 January 12, 2006, the Court scheduled the parties' cross-motions
4 for summary judgment for hearing on May 28, 2006.

5 On January 17, 2006, Defendant notified Plaintiff it had
6 awarded the construction contract related to the Intertie Project.
7 Construction on the Intertie Project is slated to begin on
8 February 6, 2006.

9 LEGAL STANDARD

10 A temporary restraining order may be issued only if "immediate
11 and irreparable injury, loss, or damage will result to the
12 applicant" if the order does not issue. Fed. R. Civ. P. 65(b). To
13 obtain a temporary restraining order, the moving party must
14 establish either: (1) a combination of probable success on the
15 merits and the possibility of irreparable harm, or (2) that serious
16 questions regarding the merits exist and the balance of hardships
17 tips sharply in the moving party's favor. See Baby Tam & Co. v.
18 City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998); Rodeo
19 Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th Cir.
20 1987).

21 The test for granting a temporary restraining order, like that
22 for a preliminary injunction, is a "continuum in which the required
23 showing of harm varies inversely with the required showing of
24 meritoriousness." Rodeo Collection, 812 F.2d at 1217 (quoting San
25 Diego Comm. Against Registration & the Draft v. Governing Bd. of
26 Grossmont Union High Sch. Dist., 790 F.2d 1471, 1473 n.3 (9th Cir.
27 1986)). The moving party ordinarily must show "a significant

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1 threat of irreparable injury," although there is "a sliding scale
2 in which the required degree of irreparable harm increases as the
3 probability of success decreases," United States v. Odessa Union
4 Warehouse Co-op, 833 F.2d 172, 174, 175 (9th Cir. 1987), and vice
5 versa.

6 DISCUSSION

7 I. Likelihood of Success on the Merits

8 Plaintiff asserts that Defendant violated NEPA by not
9 preparing an EIS. "[A]n EIS must be prepared if 'substantial
10 questions are raised as to whether a project . . . may cause
11 significant degradation of some human environmental factor.'" Ocean
12 Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846, 864
13 (9th Cir. 2005) (quoting Idaho Sporting Cong. v. Thomas, 137 F.3d
14 1146, 1149 (9th Cir. 1998) (alterations and emphasis in original)).
15 Plaintiff argues that it has a high probability of success on the
16 merits because, to trigger the requirement for an EIS, it "need not
17 show that significant effects will in fact occur." See id. at 865
18 (quoting Idaho Sporting, 137 F.3d at 1150)(emphasis in original).
19 Instead, Plaintiff need only raise substantial questions regarding
20 whether the project may have a significant effect. Id.

21 As noted by Defendant, however, in reviewing its decision not
22 to prepare an EIS, this Court's role is "simply to ensure that the
23 agency has adequately considered and disclosed the environmental
24 impact of its actions and that its decision is not arbitrary or
25 capricious." Baltimore Gas and Elec. Co. v. Natural Res. Def.
26 Council, Inc., 462 U.S. 87, 97-98 (1983). The Court may not
27 substitute its own judgment for that of the agency; if the Court
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1 determines that the agency took a "hard look" at a project's
2 environmental consequences, the Court's review is at an end. See
3 National Parks & Conservation Ass'n v. U.S. Dept. of Transp., 222
4 F.3d 677, 680 (9th Cir. 2000).

5 A. Significant Impacts

6 Plaintiff argues that the Intertie EA/IS itself shows that the
7 Intertie Project may have significant impacts on the environment.
8 For example, the Intertie EA/IS predicted that the Intertie Project
9 would move the saltwater/freshwater boundary one kilometer and
10 reduce the delta smelt's habitat by generally less than five
11 percent. Plaintiff contends that these may be significant impacts,
12 especially considering that the Bay-Delta environment is already
13 vulnerable. See Grand Canyon Trust v. FAA, 290 F.3d 339, 343 (D.C.
14 Cir. 2002) (noting that when an environment is already vulnerable
15 even a slight increase in adverse conditions "may represent the
16 straw that breaks the back of the environmental camel"). Plaintiff
17 notes that Defendant has previously recognized that these impacts,
18 which it now purports to be minor, are significant: CALFED Bay-
19 Delta Program Final Programmatic Environmental Impact
20 Statement/Environmental Impact Report, prepared by Defendant and
21 other agencies in July, 2000, states, "For special-status species,
22 such as species listed under federal and California ESAs, harm to
23 individual organisms and their habitat is considered a potentially
24 significant adverse impact."

25 Defendant does not dispute that the Intertie EA/IS documents
26 that harm to the habitats of special-status species, like the delta
27 smelt, could occur. Instead, it contends that it conducted a

1 comprehensive and detailed analysis of the potential effects
2 related to water quality and fisheries, and many other issues not
3 discussed by Plaintiff, such as vegetation, wildlife and air
4 quality, that its conclusion of no significance is supported by the
5 record and that an EIS was not required. Defendant accuses
6 Plaintiff of asking the Court to second-guess its conclusion that
7 the Intertie Project will not have significant impacts on water
8 qualities and fisheries, and reminds the Court that when reviewing
9 a "scientific determination, as opposed to simple findings of fact,
10 a reviewing court must generally be at its most deferential."
11 Baltimore Gas, 462 U.S. at 103. The Ninth Circuit has instructed,
12 "When specialists express conflicting views, an agency must have
13 discretion to rely on the reasonable opinions of its own qualified
14 experts even if, as an original matter, a court might find contrary
15 views more persuasive." Wetlands Action Network v. U.S. Army Corps
16 of Engineers, 222 F.3d 1105, 1121 (9th Cir. 2000). But that does
17 not mean that the Court should merely rubber-stamp the conclusions
18 reached by Defendant's specialists, especially if those conclusions
19 may be unreasonable. As the Supreme Court explained in Marsh v.
20 Oregon Natural Resources Council, 490 U.S. 360, 378 (1989), courts
21 "should not automatically defer" to an agency "without carefully
22 reviewing the record and satisfying themselves that the agency has
23 made a reasoned decision." "A contrary approach would not simply
24 render judicial review generally meaningless, but would be contrary
25 to the demand that courts ensure that agency decisions are founded
26 on a reasoned evaluation of the relevant factors." Id. (inner
27 quotations omitted).

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1 Thus, even providing Defendant with all the deference that it
2 is due, the Court finds that serious questions regarding the merits
3 of this argument exist.

4 B. Cumulative Effects

5 Plaintiff argues that the Intertie EA/IS inadequately
6 addressed cumulative impacts and thus an EIS was required. It
7 notes that NEPA does not allow projects to be analyzed in
8 artificial isolation; instead, it requires a discussion of the
9 cumulative impacts of the proposed project in combination with
10 "past, present, and reasonably foreseeable future actions." See
11 40 C.F.R. § 1508.7. This discussion, however, "must be more than
12 perfunctory." Kern v. U.S. Bureau of Land Management, 284 F.3d
13 1062, 1075 (9th Cir. 2002). The Ninth Circuit requires that the
14 discussion of cumulative impacts provide some quantified or
15 detailed information: "general statements about 'possible' effects
16 and 'some risk' do not constitute a 'hard look' absent a
17 justification regarding why more definitive information could not
18 be provided." Id. (quoting Neighbors of Cuddy Mt. v. U.S. Forest
19 Serv., 137 F.3d 1272, 1279-80 (9th Cir. 1998)).

20 Defendant contends that it adequately assessed the cumulative
21 impacts of reasonably foreseeable projects. This contention,
22 however, is based upon Defendant's definition of "reasonably
23 foreseeable" and its determination of what is speculative. For
24 example, Defendant states that it did not analyze the cumulative
25 effects of the South Delta Improvements Project (SDIP) because, at
26 the time it released the Intertie EA/IS, no published draft
27 environmental document for the SDIP was available. According to
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1 Defendant, a project is not "reasonably foreseeable" until it is
2 supported by published draft environmental documents. See also
3 EA/IS 3-20 ("There are other actions and programs being evaluated
4 and implemented by CALFED agencies that could conceivably
5 contribute to cumulative impacts. However, these are relatively
6 undefined at this time, and it would be speculative to include
7 these other programs in a cumulative analysis.")

8 But the Ninth Circuit has held otherwise. In Muckleshoot
9 Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 812 (9th Cir.
10 1999), the court reversed the district court's determination that a
11 project was too speculative to require analysis. It held that the
12 project was reasonably foreseeable, and should have been
13 considered, because a summary of the proposed project had been
14 prepared the year before, and, five months before the EIS was
15 issued, the Secretary of Agriculture formally announced the
16 proposed project to the public.

17 In response to Plaintiff's allegations that the Intertie EA/IE
18 contained only a perfunctory discussion of cumulative impacts,
19 Defendant notes that a more detailed analysis of cumulative impacts
20 is not required when the agency explains why definitive information
21 could not be provided. Here, Defendant's justification was that
22 various projects were "too speculative" to consider. But, based on
23 the Ninth Circuit's holding in Muckleshoot Indian Tribe, the Court
24 could find that this justification is arbitrary and capricious and
25 that Defendant does not provide the necessary and detailed
26 cumulative analysis, but only "broad and general statements devoid
27 of specific, reasoned conclusions." Id. at 811. Thus, there is a
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1 strong likelihood that Plaintiff will succeed on the merits of this
2 argument.

3 C. CALSIM II Modeling Studies

4 Plaintiff also argues that an EIS is required because the
5 Intertie EA/IS, and the finding of no significant impact, were
6 largely based on models which, while capable of predicting what
7 might happen, are too unreliable to rule out the potential for
8 significant impacts. Furthermore, NEPA requires advance
9 disclosures of relevant short-comings in the data or models, which
10 Plaintiff contends Defendant fails to disclose. See Lands Counsel
11 v. Forester of Region One of the U.S. Forest Serv., 395 F.3d 1019,
12 1032 (9th Cir. 2004).

13 The Intertie EA/IS relies on CALSIM II, a model prepared by
14 Defendant and California Department of Water Resources and used in
15 most Central Valley water planning processes. In 2003, a panel of
16 scientists prepared a peer review of CALSIM II and noted that,
17 while the model's "strengths are many, so are its weaknesses."
18 Plaintiff contends that, although Defendant relied almost
19 exclusively on model-generated numbers to draw its conclusion that
20 increasing Delta exports by thousands of acre-feet per year will
21 not potentially create significant environmental impacts, the
22 Intertie EA/IS did not disclose any weakness in the model, except
23 when the model's predictions showed possible significant impacts.¹

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25 ¹On pages 3-78 and 3-85, Defendant discounted the CALSIM II's
26 finding that, under certain conditions, the Intertie Project could
27 increase the entrainment, i.e., killing, of delta smelt and striped
28 bass by greater than forty to fifty percent: "The increased
entrainment is attributable to a simulated increase in SWP pumping
in June The simulated change in pumping is attributable to

1 When Plaintiff commented on this nondisclosure, and provided
2 Defendant with a copy of the peer review, Defendant responded:

3 We have used the best available data and the best
4 available modeling tools. The data and modeling tools
5 are similar and consistent with the data and modeling
6 tools used in the NOAA BO. Consequently, the EA/IS
7 analysis supports the conclusions to the extent required
8 under CEQA/NEPA.

9 Defendant attacks Plaintiff's argument that the model is too
10 unreliable by asserting that Plaintiff misconstrues the difference
11 between using models for predictive purposes and for comparative
12 purposes. Predictive models, it asserts, "are used to accurately
13 represent physical systems and the potential that a range of
14 physical inputs has to influence the state of physical systems";
15 whereas, comparative models "are used to identify trade-offs
16 between the use of different operational alternatives for meeting
17 system demands within the limits of allowable operations." Because
18 Defendant used the model for comparative, not predictive, purposes,
19 it asserts that Plaintiff's arguments regarding reliability and
20 predictability are entirely misplaced. The scientific review of
21 CALSIM II, however, rejected this assertion, noting that it was
22 skeptical of the notion that, although the model might not generate
23 a highly reliable absolute prediction, it could still produce a
24 reasonably reliable estimate of the relative change in outcome. It
25 noted that, for a predictive analysis, one runs the model once to
26 predict an outcome; for a comparative analysis, one runs the model
27 twice, first as a baseline and second with some specific change, in
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rules within the CALSIM II model and does not represent changes in
SWP pumping that would be expected with actual implementation of
the Proposed Action."

1 order to compare the two results. CALSIM II is not a perfect
2 model; no model is. But its use alone does not show that Defendant
3 was arbitrary and capricious in reaching its finding of no
4 significant impact. As Plaintiff acknowledges, an EA/IS can rely
5 on a model, provided it discloses the assumptions and limitations
6 of the model. See Sierra Club v. Castle, 657 F.2d 298, 332 (D.C.
7 Cir. 1981) (upholding EPA's reliance on modeling because it
8 provided necessary disclosure).

9 Defendant asserts that it sufficiently disclosed any
10 assumptions and limitations. It points to Appendix B, "CALSIM II
11 Modeling Studies of the Delta Canal/California Aqueduct Intertie,"
12 which describes the methodology and the assumptions used in the
13 models, including the assumption that an Environmental Water
14 Account adequately funded to allocate water for fish protection
15 would continue to exist. It argues that it did not have to
16 disclose any limitations of CALSIM II, because, as discussed above,
17 it used the model to compare different alternatives and related
18 environmental effects, not to predict a specific future
19 environmental condition.

20 Defendant discounts Plaintiff's argument that it improperly
21 assumed the existence of a long-term Environmental Water Account,
22 asserting that the Environmental Water Account was properly
23 included in the modeling scenarios. It notes that the
24 Environmental Water Account is entering its sixth year of operation
25 and that it has publicly committed to continuing the Environmental
26 Water Account, or, if it is discontinued, to providing the same
27 level of fish protection by some other means. But Defendant fails
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1 to note that the Intertie EA/IS listed the Environmental Water
2 Account among programs that are "in the very early planning and
3 feasibility stages" and therefore were too speculative to include
4 in a qualitative analysis. Plaintiff points out the inconsistency
5 of including the Environmental Water Account as an assumption in
6 the model but not as a factor in a qualitative analysis.
7 Defendant's opposition, however, fails to address it. Nor does
8 Defendant address Plaintiff's exhibit, showing the Environmental
9 Water Account's dire lack of funding.

10 The Court finds that there is a reasonable likelihood that
11 Plaintiff will succeed on the merits of this argument. See Lands
12 Council, 395 F.3d at 1032 (finding that nondisclosure of relevant
13 shortcomings in model violated NEPA).

14 D. Intervenors' Argument

15 In addition to joining Defendant's arguments, Intervenors
16 argue that Plaintiff cannot succeed because the Intertie Project
17 does not alter the status quo. Intervenors note that the CVP Tracy
18 Pumping Plant has a maximum authorized pumping capacity of 4,600
19 cubic feet per second (cfs) of water. Various constraints,
20 however, have prevented it from operating at that capacity full-
21 time; currently its pumping capacity is limited to approximately
22 4,200 cfs during the winter. The Intertie Project is intended to
23 address one of these constraints and to enable the Tracy Pumping
24 Plant to pump at its full capacity, which was approved before NEPA
25 was enacted. See Westside Property Owners v. Schlesinger, 597 F.2d
26 1214, 1223-25 (9th Cir. 1979) (stating that, as a general matter,
27 NEPA does not apply retroactively).

1 Intervenor argue that, because the Intertie project will only
2 restore the Tracy Pumping Plant to its full, and already approved,
3 capacity, an EIS is not required.² The case they cite in support
4 of this argument, however, is arguably distinguishable. In Upper
5 Snake River Chapter of Trout Unlimited v. Hodel, 921 F.2d 232 (9th
6 Cir. 1990), the court noted that previously it had "held that where
7 a proposed federal action would not change the status quo, an EIS
8 is not necessary," ruling that "an EIS need not discuss the
9 environmental effects of mere continued operation of a facility."
10 921 F.2d at 235 (quoting Burbank Anti-Noise Group v. Goldschmidt,
11 623 F.2d 115, 116 (9th Cir. 1980)). The court in Upper Snake River
12 determined that a dam's reduction in flow did not constitute a
13 major federal action under NEPA because the reduction in flow was a
14 routine and continuing operation of the dam. Here, however, it is
15 not clear if pumping 4,600 cfs is a routine and continuing
16 operation of the Tracy Pumping Plant.

17 The Intervenor fail to provide the Court with evidence to
18 show that pumping 4,600 cfs is a routine and continuing operation
19 of the Tracy Pumping Plant, and thus the Court finds that this
20 argument does not make it less likely that Plaintiff will succeed
21 on the merits.

22 II. Balance of Hardships

23 Plaintiff argues that the balance of hardships tips strongly
24 in favor of the preliminary relief it seeks. The Ninth Circuit has
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26 ²Intervenors contend that, although it was useful to informed
27 decision-making, the Intertie EA/IS was not required under NEPA to
28 analyze the effects of additional pumping at 4,600 cfs.

1 instructed, "Where an EIS is required, allowing a potentially
2 environmentally damaging project to proceed prior to its
3 preparation runs contrary to the very purpose of the statutory
4 requirement." National Parks & Conservation Ass'n v. Babbitt, 241
5 F.3d 722, 737-38 (9th Cir. 2001). Furthermore, as the Supreme
6 Court has explained,

7 Environmental injury, by its nature, can seldom be
8 adequately remedied by money damages and is often
9 permanent or at least of long duration, i.e.,
10 irreparable. If such injury is sufficiently likely,
11 therefore, the balance of harms will usually favor the
12 issuance of an injunction to protect the environment.

13 Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 545
14 (1987).

15 Defendant, however, contends that Plaintiff has proven no
16 irreparable harm and that the balance of harms imposed by an
17 injunction favors Defendant. It asserts that the alleged harm at
18 issue is not the harm imposed by construction of the Intertie
19 Project, but rather the environmental impacts caused by the
20 operational effects of the water flowing through the Intertie,
21 which is not scheduled to occur until late December, 2006, months
22 after the Court hears the cross motions for summary judgment.
23 However, Plaintiff also argues that the construction threatens
24 irreversible environmental harms, for "[a]fter major investment of
25 both time and money, it is likely that more environmental harm will
26 be tolerated." Save the Yaak Committee v. Block, 840 F.2d 714, 718
27 (9th Cir. 1988).

28 Plaintiff also cites Sierra Club v. Marsh, 872 F.2d 497, 504
(1st Cir. 1989), where then-Circuit Judge Breyer explained that

1 "the risk implied by a violation of NEPA is that real environmental
2 harm will occur through inadequate foresight and deliberation."
3 See id. (finding that the "difficulty of stopping a bureaucratic
4 steam roller, once started" is "a perfectly proper factor for a
5 district court to take into account" on a motion for a preliminary
6 injunction). Although perhaps not irreparable harm, Plaintiff has
7 shown serious harm that will be caused by beginning construction on
8 the Intertie Project before the Court rules on the cross motions.
9 That harm, however, must be balanced with the harm to Defendant and
10 Intervenors.

11 Plaintiff contends that Defendant and its contractors will
12 suffer little or no harm from a delay. But Defendant has shown
13 that it will suffer a financial hardship. If construction of the
14 Intertie Project is halted, Defendant will either have to suspend
15 or terminate the construction contract; both alternatives are
16 costly. Under contract suspension, Defendant is still responsible
17 for the contractor's daily cost; Defendant estimates that, given
18 the size of the contract, the cost would amount to \$3,000 to \$5,000
19 per day. In addition, Defendant would be responsible for any
20 escalated cost of material and labor. If Defendant terminated the
21 contract, it would be responsible for all costs incurred by the
22 contractor through the time the contract is terminated and for
23 anticipatory profits, which it estimates would exceed one million
24 dollars.

25 In addition to the financial harm it would experience,
26 Defendant points to the harm that others, such as the public
27 agencies who have advanced twenty-five million dollars toward
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1 project construction, would experience. Intervenors note that
2 member districts are not earning any interest on that twenty-five
3 million dollars, at a cost of about \$2,600 per day. They further
4 note that, if the Intertie Project is not completed for use from
5 January through March of 2007, CVP water users south of the Delta
6 stand to lose up to 793 acre-feet of water supply during those
7 months. Defendant asserts that the public interests at stake weigh
8 in favor of the Intertie Project moving forward. It does not
9 address Plaintiff's argument that the general public would be
10 benefitted by an injunction because agencies can make better
11 decisions, and adopt better policies and projects, if informed by
12 adequate, and required, environmental studies.

13 The Court regrets the tax-payer dollars that will have to be
14 spent due to the granting of this temporary restraining order, but
15 those dollars could have been saved had Defendant conducted an EIS
16 or waited to commit to a construction contract until after the
17 legal challenges were resolved. Balancing the hardships that each
18 side will suffer, the Court finds that the balance tips sharply in
19 Plaintiff's favor. Environmental injury, as noted above, generally
20 cannot be adequately remedied by money damages and it is often
21 permanent. Defendant has acknowledged that the Delta is a
22 "critical resource" in "steady decline." CALFED Bay-Delta Program
23 Final Programmatic Environmental Impact Statement/Environmental
24 Impact Report, 1-2.

25 III. Bond

26 Plaintiff states that it is a non-profit corporation pursuing
27 environmental litigation in the public interest and requests that
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1 the Court dispense with any security requirement. See People of
2 State of Cal. ex rel. Van De Kamp v. Tahoe Regional Planning
3 Agency, 766 F.2d 1319, 1325-26 (9th Cir. 1985) (finding that the
4 district court properly exercised its discretion to allow a non-
5 profit environmental group to proceed without posting a bond).
6 Defendant objects to this request and asks the Court require a bond
7 in the amount of at least \$50,000, which would reflect the high-end
8 amount of costs that Defendant would experience due to a temporary
9 restraining order lasting ten days. Citing Save Our Sonoran, Inc.
10 v. Flowers, 408 F.3d 1113 (9th Cir. 2005), Defendant notes that
11 environmental organizations are not exempt from the bond
12 requirement. In Save Our Sonoran, the court affirmed the district
13 court's requirement of a \$50,000 bond from an environmental
14 organization. 408 F.3d at 1126. But the court also recognized
15 that it has affirmed nominal bonds in public interest cases. Each
16 case is fact-specific, and the court found that, as long as a
17 district court does not set such a high bond that it serves to
18 thwart citizen actions, it does not abuse its discretion. Id.

19 Intervenor also request that Plaintiff be required to post a
20 bond. Noting that Plaintiff is a consortium of over one-hundred
21 environmental organizations, Intervenor argue that, based on
22 Plaintiff's size alone, it should have the resources to post a bond
23 sufficient to protect the San Luis & Delta-Mendota Water Authority
24 from any costs or damages resulting from being wrongfully
25 restrained.

26 Because Plaintiff is a public interest organization, the Court
27 will not require it to post a bond.

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CONCLUSION

For the foregoing reasons, the Court grants Plaintiff's application for a temporary restraining order. Defendant is enjoined from beginning construction on the Intertie Project until the preliminary injunction hearing. Plaintiff's motion for a preliminary injunction will be heard on February 14, 2006, at 2:00 p.m. If Defendant and/or Intervenors wish to file additional briefing, they must do so before noon on February 7, 2006; Plaintiff has until noon on February 9, 2006, to reply. The parties may stipulate to a longer briefing schedule and later hearing date.

IT IS SO ORDERED.

Dated: 2/3/06



CLAUDIA WILKEN
United States District Judge