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7 STOCKTON EAST WATER DISTRICT

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 STOCKTON EAST WATER DISTRICT,

11 Plaintiff,

12 vs.

13 UNITED STATES OF AMERICA,  
14 DEPARTMENT OF THE INTERIOR,  
15 BUREAU OF RECLAMATION; DIRK  
16 KEMPTHORNE, Secretary of the Department  
17 of the Interior; ROBERT JOHNSON,  
18 Commissioner of the Bureau of Reclamation;  
19 MICHAEL FINNEGAN, Regional Director of  
the Bureau of Reclamation’s Mid-Pacific  
Region,

Defendant.

) Case No.:

) **COMPLAINT FOR BREACH OF**  
) **CONTRACT; DECLARATORY RELIEF;**  
) **SPECIFIC PERFORMANCE;**  
) **VIOLATION OF THE FREEDOM OF**  
) **INFORMATION ACT; ATTORNEYS’**  
) **FEES AND COSTS**

20 **INTRODUCTION**

21  
22 1. This is an action for a declaration of rights arising out of a 1983 water supply  
23 contract (the “Stockton East Contract”) between Plaintiff Stockton East Water District  
24 (“Stockton East”) and Defendant United States Bureau of Reclamation (“Reclamation” or  
25 “United States”), specific performance of express and implied contractual obligations imposed  
26 on the United States, and remedy for violations of the Freedom of Information Act (the “FOIA”),  
27 on the United States, and remedy for violations of the Freedom of Information Act (the “FOIA”),  
28 5 U.S.C §552.

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**JURISDICTION AND VENUE**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346, and 2201-2202.

3. Venue in this judicial district is proper pursuant to 5 U.S.C. § 552(a)(4)(B), which grants jurisdiction to the district in which the FOIA requester resides, the district in which the FOIA has its principal place of business, and the district in which the records are situated. Venue also lies in this district under 28 U.S.C. § 1391.

**PARTIES**

4. Plaintiff Stockton East is a California public agency located in San Joaquin County and formed by special action of the California Legislature under Chapter 819, Statutes of 1971, as amended, and is authorized to commence and maintain any action involving or affecting the ownership or use of water on behalf of landowners within its boundaries.

5. Defendant United States of America, Department of the Interior, Bureau of Reclamation is an agency of the United States, within the Department of the Interior, and is charged with administration of the 1902 Reclamation Act, and acts amendatory thereof and supplementary thereto.

6. Defendant Dirk Kempthorne is the Secretary of the United States Department of the Interior and is named herein in his official capacity. The Secretary is responsible for the administration of the 1902 Reclamation Act and acts amendatory thereof and supplementary thereto, and is designated as the Contracting Officer pursuant to Article 1(a) of the Stockton East Contract.



1 uses.

2 12. According to the terms of the Stockton East Contract, Reclamation is required to  
3 make available up to 75,000 acre-feet of water to Stockton East each year. See Article 3(b) of  
4 the Stockton East Contract attached hereto as Exhibit "A". The exact amount of water is  
5 determined by Stockton East's annual request for water under Article 3. Under certain  
6 circumstances, Reclamation may be relieved from liability for failure to deliver the requested  
7 amount pursuant to Article 9(a).

9 13. Article 9(a) of the Stockton East Contract provides:

10 In its operation of the Project, the United States will use all reasonable  
11 means to guard against a condition of shortage in the quantity of water  
12 available to the Contractor pursuant to this contract. Nevertheless, if a  
13 shortage does occur during any year because of drought, or other causes  
14 which, in the opinion of the Contracting Officer, are beyond the control of  
15 the United States, no liability shall accrue [sic] against the United States or  
any of its officers, agents, or employees for any damage, direct or indirect,  
arising therefrom.

16 14. Any determinations made by Reclamation pursuant to Article 9(a) are subject to  
17 challenge by the Contractor pursuant to Article 12 (d) of the Stockton East Contract, which  
18 provides:

19 Where the terms of this contract provide for action to be based upon the  
20 opinion or determination of either party to this contract, whether or not  
21 stated to be conclusive, said terms shall not be construed as permitting  
22 such action be predicated upon arbitrary, capricious, or unreasonable  
23 opinions or determinations. In the event that the Contractor questions any  
24 factual determination made by the Contracting Officer, the findings as to  
25 the facts shall be made by the Secretary only after consultation with the  
26 Contractor and shall be conclusive upon the parties.

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1 **History of New Melones Contract Implementation**

2 15. Stockton East initially requested water under the 1983 contracts in 1993.  
3 Between 1993 and 2007, Reclamation has rarely allocated Stockton East the amount of water  
4 that was contracted for.

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6 16. In 1993, Stockton East and Central sued the United States in this Court for breach  
7 of contract. Part of that suit was removed to the Court of Federal Claims in 2004. In October  
8 2006, the Court of Federal Claims held a trial to determine whether Reclamation's failure to  
9 deliver water under the 1983 contracts, between 1993 and 2004, amounted to a breach of the  
10 contracts.

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12 17. The Honorable Christine Odell Cook Miller of the Court of Federal Claims  
13 decided the case in February 2007. Judge Miller held that the United States failed to provide  
14 Stockton East and Central with the amounts of water they were entitled to under their contracts,  
15 but that Stockton East and Central failed to meet their burden of proof to establish that  
16 Reclamation's allocations decisions were unreasonable. *Stockton East Water District v. United*  
17 *States* (2007) 75 Fed.Cl. 321 (judgment modified in *Stockton East Water District v. United*  
18 *States* (2007) 76 Fed.Cl. 470). Judge Miller's Decision (in final form as modified by post-trial  
19 motion decisions) is attached hereto as Exhibit "B." See attached pages A67-68, 80, 86.  
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21  
22 18. Stockton East subsequently appealed Judge Miller's decision, and that appeal is  
23 pending. *Stockton East Water District, et al. v. United States, et al.*, (Fed.Cir.) 2007-5142. While  
24 the appeal is pending, Stockton East is attempting to enforce the contracts as interpreted by  
25 Judge Miller. In years when it is allocated an amount of water less than requested, Stockton East  
26 must obtain certain information from the United States to determine whether or not the  
27 Contracting Officer's decision was reasonable and non-arbitrary, to determine whether or not to  
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1 exercise its rights under Article 12(d) to demand a meeting with the Secretary, have the Secretary  
2 issue findings of fact, and then, if necessary, sue for breach.

3 19. The information Stockton East requires to make its determination includes:

- 4 a. whether or not the Contracting Officer has declared a shortage pursuant to  
5 Article 9(a),  
6  
7 b. the reasons for the shortage,  
8  
9 c. the factual determinations regarding the causes of shortage, and  
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11 d. the factual determinations regarding Reclamation's efforts to avoid the  
12 shortage.

13 20. In addition, for this information to be meaningfully used under the contract, it  
14 must be timely, as determinations must be made, and the meeting with the Secretary held, before  
15 the water year is well underway and any unreasonable allocation decision is too late to remedy.

16 21. As Judge Miller instructed, the contractors are entitled to "a record of  
17 Reclamation's decision-making process. . .in years during which they receive[] water allocation  
18 reductions." *Stockton East Water District v. United States* (2007) 75 Fed.Cl. 321, 360. It is that  
19 record of the decision-making process that must be made available to the contractors, and to the  
20 Secretary for review pursuant to 12(d). It is that record of the decision-making process that  
21 Stockton East requested from Reclamation in March of 2007 and has never received for the 2007  
22 water year.

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24 **The 2007 Water Year Allocation and Stockton East's Request for Information**

25 22. On or about October 26, 2006, Stockton East requested 75,000 acre-feet for the  
26 2007 water year pursuant to Article 3 of the Stockton East Contract. See Stockton East Request  
27 Letter attached hereto as Exhibit "C." The United States allocated 45,500 acre-feet of water to  
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1 both Stockton East and Central – less than one-third of their combined 155,000 acre-foot  
2 contractual entitlement. See Reclamation’s February, March and April 2007 News releases  
3 attached hereto as Exhibit “D”.

4  
5 23. The allocation decision was made via a news release issued by Reclamation. The  
6 news releases do not contain any information specific to New Melones to explain the reason for  
7 the reduced allocation, nor do they state that a shortage has been declared pursuant to Article 9 of  
8 the Stockton East Contract, or list any findings of fact to explain that the cause of the shortage  
9 was beyond the control of the United States and/or that Reclamation used all reasonable means  
10 to avoid the shortage.

11  
12 24. The February 23, 2007 news release states that “initial systemwide allocation to  
13 Central Valley Project . . . contractors . . . will be lower than anticipated due to dry weather  
14 conditions.” It states further:

15  
16 January 2007 was the third-driest January since records on precipitation were  
17 begun in 1895. As a result, all Statewide rainfall and runoff indicators are well-  
18 below average, and as of February 1, 2007, Statewide precipitation and runoff  
19 were at 55 percent of average. However, the higher-than-average precipitation last  
20 year has allowed CVP reservoir storage to remain at near-normal for Water Year  
(WY) 2007, and recent and anticipated storms should continue to improve the  
hydrologic conditions (WY 2007 runs from October 1, 2006, through December  
31, 2007).

21 It then addresses the water available to Stockton East and Central, stating: “The water supply  
22 available for the CVP Eastside Division contractors (Stanislaus River) for the Dry and Median  
23 Forecasts is project to be 25,000 acre-feet (16 percent) and 53,000 acre feet (34 percent),  
24 respectively.

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26 25. In order to determine whether Reclamation’s 2007 allocation decision was  
27 “unreasonable” or “arbitrary and capricious” as explained in Article 12(d) of the Stockton East  
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1 Contract, Stockton East must: (1) determine whether or not a shortage has been declared; (2)  
2 what facts support the shortage declaration; and (3) whether Reclamation used all reasonable  
3 means to avoid the shortage. Because this basic information was not provided in the news  
4 release, Stockton East formally requested such information on March 7, 2007. See Exhibit "E".  
5 The letter explained that the request was pursuant to Stockton East's rights under its contract and  
6 the FOIA.  
7

8 26. Reclamation staff responded to Stockton East's FOIA request nearly three months  
9 later, on June 1, 2007. See Exhibit "F." The response did not provide the requested information  
10 and Stockton East made a further request on June 28, 2007. See Exhibit "G". Obviously, by  
11 June 28, 2007 the water year was halfway over.  
12

13 27. Reclamation staff responded to Stockton East's request on August 22, 2007, but  
14 the requested information was not provided. See Exhibit "H". In order to expedite a process that  
15 had already lasted five months, Stockton East requested a meeting, and its representatives met  
16 with Reclamation staff on September 24, 2007. At that meeting, Reclamation orally promised to  
17 provide additional information to Stockton East, including the procedure to be followed to appeal  
18 the Contracting Officer's decision.  
19

20 28. When Reclamation staff had still not responded, Stockton East sent another letter  
21 on October 1, 2007 again requesting the essential information. In addition, in this letter Stockton  
22 East demanded that the Secretary of the Interior confer with Stockton East pursuant to Article  
23 12(d) of the Stockton East Contract even without Reclamation's determinations so that the  
24 process could at least be initiated before the water year was over. See Exhibit "I". Reclamation  
25 did not respond. Stockton East representatives sent a demand letter to Reclamation on  
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1 November 13, 2007, requesting a response by November 30, 2007. See Exhibit "J". Once again,  
2 Reclamation did not respond.

3 29. While still awaiting the 2007 allocation information it requested, on or about  
4 November 6, 2007 (although the letter is dated November 6, 2006, this was an inadvertent error  
5 and it was in fact drafted and sent on November 6, 2007), Stockton East sent a letter to  
6 Reclamation requesting 75,000 acre-feet for the 2008 water year pursuant to Article 3 of the  
7 Stockton East Contract. See Stockton East Request Letter attached hereto as Exhibit "K."

8  
9 30. On or about November 28, 2007, counsel for Reclamation called counsel for  
10 Stockton East and stated that Reclamation needed additional time to finalize a response letter.  
11 Stockton East's counsel agreed to an extension until December 7, 2007. Reclamation sent a  
12 letter confirming the extension. See Exhibit "L".

13  
14 31. Despite this agreed upon deadline for providing the requested information,  
15 Reclamation did not respond by December 7, 2007. Stockton East's counsel called  
16 Reclamation's counsel and the Regional Director's office three times between December 7, 2007  
17 and December 21, 2007 to request an update on the response. On the first call, Stockton East's  
18 counsel was told that the letter was almost done. On the second call, Stockton East's counsel  
19 was told that Reclamation would need to research the matter. On the third call, Stockton East's  
20 counsel was told that Reclamation did not know what letter counsel was referring to.

21  
22 32. Finally, on February 14, 2008 (two months after the conclusion of the 2007  
23 contract year), Reclamation provided the following information about the 2007 allocation  
24 decision (See Exhibit "M"):

25  
26 Pursuant to the Bureau of Reclamation's standard practice of announcing annual  
27 allocations. The Contracting Officer {Regional Director, Mid-Pacific Region}  
28 acting through the Operations Manager, Central Valley Operations Office (CVO),  
provided a news release dated February 23, 2007, announcing that the "initial

1 system-wide allocation to Central Valley Project agricultural contractors,  
2 municipal and industrial contractors, and Federal refuges would be lower than  
3 anticipated due to dry weather conditions.” The February news release projected  
4 the water supply available for the Project’s Eastside Division contractors for the  
5 Dry and Median Forecasts to be 25,000 acre-feet (16 percent) and 53,000 acre-  
6 feet (34 percent), respectively. Subsequently, on April 16, 2007, the Contracting  
7 Officer provide an updated 2007 Project Allocation which increased the Project’s  
8 Eastside Division Dry and Median Forecasts to 45,000 acre-feet (29 percent) and  
9 50,000 acre-feet (32 percent), respectively.

7 Both the February and April 2007 Project Allocations provided the Eastside  
8 Division contractors with less than a full allocation due to critically dry hydrology  
9 and low projected inflows to New Melones Reservoir. Specifically, the allocation  
10 was predicated on the District’s allocation table in the Interim Operations Plan  
11 (IOP) spreadsheet. This table, based on long-term modeling studies designed to  
12 protect the reservoir against recurrence of drought, uses a hydrologic index  
13 referred to as the Water Supply parameter (WSP) which is defined as the end of  
14 February storage plus March through September actual forecasted inflow) to  
15 produce an allocation of water for the contractors. The Water Year Runoff  
16 Forecast, published monthly by the Department of Water Resources From  
17 December 2007 [sic] through May 2007, was the source for the inflows used to  
18 calculate the WSP. *We note that the IOP is merely a guide to decision making.*  
19 *As such, once the IOP number was calculated, it was reviewed by CVO staff and*  
20 *determined to be the amount that Reclamation could provide to these districts*  
21 *given all the facts. As the facts changed, CVO staff re-evaluated the initial*  
22 *February water projections and increased the districts allocation in its April*  
23 *decision. (Emphasis added.)*

18 No evidence was provided of the “review” undertaken by CVO staff, of the “facts” that were  
19 reviewed, of the “facts” that changed, or of what factors went into the re-evaluation.

20 33. As of the date of this Complaint, it has been a full year since Stockton East first  
21 requested that Reclamation inform Stockton East whether or not the Contracting Officer had  
22 declared a shortage pursuant to Article 9(a) of the contracts, and what findings of fact supported  
23 that decision. As of this date, Reclamation has still not informed Stockton East that it has  
24 declared a shortage, and has not provided Stockton East with any factual determinations required  
25 by Section 12(d) of the Stockton East Contract.  
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1           34. Stockton East also requested that Reclamation identify the “Contracting Officer”  
2 for purposes of Article 9(a), and the “Secretary” for purposes of the Article 12(d) appeal process.  
3 See Exhibits “E” and “G”. Initially, in its June 1, 2007 letter, Reclamation identified the  
4 Regional Director of Reclamation’s Mid-Pacific Region as the “Contracting Officer.” See  
5 Exhibit “F”. Reclamation also originally identified the same Regional Director as the  
6 “Secretary” for the purposes of an Article 12(d) appeal:  
7

8           “14. By “appeal process’ we understand that you are referring to the process  
9 described in Article 12(d) of Contract No. 4-07-20-W0329 which states, in part,  
10 ‘In the event that the Contractor questions any factual determination made by the  
11 Contracting Officer, the findings as to the facts shall be made by the Secretary  
12 only after consultation with the Contractor and shall be conclusive upon the  
13 parties.’ As Article 1(a) defines ‘Secretary’ or ‘Contracting Officer’ as the  
14 Secretary of the Interior or his duly authorized representative” and as the Regional  
15 Director is the Secretary’s duly authorized representative, any questions the  
16 Contractor has as to an opinion or a determination made by the Contracting  
17 Officer should be directed to the Regional Director. Based on the language of  
18 those articles, if you intend to question a factual determination made by the  
19 contracting Officer, we recommend you correspond with the Regional Director’s  
20 office.”

21 See Exhibit “F”. Stockton East requested clarification of this response, as it would defeat the  
22 purpose of a review process to have one person prepare factual determinations and have the same  
23 individual review those factual determinations for reasonableness.

24           35. In February 2008, Reclamation provided different direction, stating:

25           In light of the language found in Article 12(d) of the contracts referred to above,  
26 any “appeal” under Article 12(d) would be to the Commissioner of the Bureau of  
27 Reclamation.

28           If, at any time in the future, the District chooses to question a factual  
determination made by the Regional Director, and/or his/her designee, as the  
Contracting Officer in connection with the administration of their contracts, the  
District should provide a detailed explanation to the Commissioner outlining its  
specific challenges to the factual determinations they believe to have been made  
in error and all relevant supporting documentation.

See Exhibit “M”.

1 36. As of the date of this Complaint, Reclamation has announced the initial 2008  
2 CVP contract allocations, yet Stockton East has yet to receive sufficient information to resolve  
3 its appeal of the 2007 allocation decision.

4  
5 37. The 2008 allocation announcement was made by a news release dated February  
6 27, 2008. See Exhibit "N". Once again, this news release does not state whether or not the  
7 Contracting Officer has declared a shortage pursuant to Article 9(a), or issued any factual  
8 determinations. Due to Reclamation's non-responsiveness, Stockton East has no choice but to  
9 file this suit.

10  
11 **COUNT ONE**

12 **(Breach of Contract – Declaratory Relief)**  
13 **28 U.S.C. § 2201**

14 38. Stockton East realleges and incorporates herein, all of the preceding allegations  
15 contained in this Complaint and further alleges as follows:

16 39. The terms of the Stockton East Contract, specifically Article 9(a) and Article  
17 12(d), contemplate a process by which the United States either will or will not declare a shortage  
18 in available supplies in allocating water to Stockton East each year, and Stockton East can  
19 challenge that decision if it is unreasonable, arbitrary or capricious.

20  
21 40. Stockton East has requested that Reclamation inform it whether or not the United  
22 States declared a shortage for 2007, and provide it with the information required to determine  
23 whether or not that decision complies with the requirements of Articles 9(a) and 12(d). The  
24 United States has failed to provide the requested information, thereby violating the terms of the  
25 Stockton East contract, and making it impossible for Stockton East to enforce its contractual  
26 rights.  
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1           41. Every contract includes an implied covenant of good faith and fair dealing. By  
2 failing and refusing to provide the information that Stockton East has requested regarding  
3 Reclamation's 2007 allocation decision, the United States has violated the covenant of good faith  
4 and fair dealing and has acted in bad faith to prevent Stockton East from being able to enforce its  
5 rights under the contract to understand, and dispute if necessary, any declaration of shortage.  
6

7           42. An actual controversy now exists between Stockton East and Reclamation  
8 regarding the nature and scope of Reclamation's obligations to provide information and  
9 documents to Stockton East regarding shortage declarations pursuant to Article 9(a). Stockton  
10 East contends that Reclamation, pursuant to Article 9(a) is required to provide Stockton East  
11 with answers to its questions regarding the allocation decision and documents that support the  
12 allocation decision. Reclamation contends that it does not have to provide this information or  
13 supporting documents to Stockton East.  
14

15           43. Stockton East desires a judicial declaration concerning Reclamation's obligations  
16 with regard to creating, disclosing and releasing information and documents relating to its  
17 allocation decisions pursuant to Article 9(a) of the Stockton East Contract. Specifically,  
18 Stockton East desires a declaration that it has a right to obtain the following information from  
19 Reclamation in a timely fashion each year:  
20

- 21           a. The identity of the "Contracting Officer" pursuant to Article 9(a).  
22           b. The identity of the "Secretary" pursuant to Article 12(d).  
23           c. A "yes" or "no" answer to the question: "Has the contracting officer  
24 declared a shortage pursuant to Article 9(a)?"  
25           d. A statement containing the Contracting Officer's factual determinations to  
26 support the shortage allocation under Article 9(a), which specifies each  
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“cause” of the shortage and why, in the opinion of the Contracting Officer, that cause is “beyond the control” of the United States.

e. A statement explaining the means used by the United States, if any, to avoid a shortage under the contract.

44. Stockton East also desires a judicial declaration that (1) Stockton East has a contractual right to demand a meeting with the Secretary pursuant to Article 12(d) of the contract, (2) that the Secretary must meet with the Stockton East Board of Directors within 30 days of such a demand, and (3) that the Secretary must issue factual determinations to Stockton East within 30 days of such a meeting.

**SECOND COUNT**

**(Breach of Contract – Specific Performance)  
28 U.S.C. §1346(a)(2)**

45. Stockton East realleges and incorporates herein, all of the preceding allegations contained in this Complaint and further alleges as follows:

46. The Stockton East Contract is a valid, binding, and enforceable contract between Stockton East and the United States.

47. Plaintiff complied with the terms of the Stockton East Contract in requesting CVP water allocations for 2007. Further, Plaintiff complied with the Contract in requesting information and documents from Reclamation required to determine whether or not the United States declared a shortage in 2007, and to determine whether or not that decision complies with Articles 9(a) and 12(d) of the Contract.

48. The United States has failed or refused to perform its obligations under the Stockton East Contract. Specifically, the United States failed to allocate Stockton East’s contractual entitlement of water for 2007; failed to explain the reason for the reduced allocation;



1 failed to state whether or not a shortage was declared pursuant to Article 9(a) of the Stockton  
2 East Contract; failed to provide Stockton East with factual determinations to support a shortage  
3 declaration; and failed to respond to Stockton East's demand for a meeting with the Secretary  
4 pursuant to Article 12(d) of the Stockton East D Contract.  
5

6 49. Stockton East has no adequate remedy at law and Reclamation should be ordered  
7 to immediately perform its obligations under the Stockton East Contract.

8 **THIRD COUNT**

9 **(Injunctive Relief – Violation of the Freedom of Information Act for Wrongful**  
10 **Withholding of Agency Records)**  
11 **5 U.S.C. § 552**

12 50. Stockton East realleges and incorporates herein, all of the preceding allegations  
13 contained in this Complaint and further alleges as follows:

14 51. The FOIA establishes the statutory right of any person to access any federal  
15 agency records. 5 U.S.C. §552 (a)(3).

16 52. The FOIA provides that an agency is required to provide its response to a FOIA  
17 request within 20 working days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i).  
18 However, an agency may extend the 20-day limit by notifying the requester in writing of  
19 “unusual circumstances” necessitating an extension and the date upon which a determination on  
20 the request is expected. 5 U.S.C. § 552(a)(6)(B)(i).  
21

22 53. If the agency fails to provide written notification within the 20-day time limit, the  
23 requester is deemed to have constructively exhausted administrative remedies and may seek  
24 relief in federal district court. 5 U.S.C. § 552(a)(6)(C)(i).  
25

26 54. Adverse decisions on a FOIA request must notify the requester of the right to seek  
27 an administrative appeal. 5 U.S.C. § 552(a)(6)(A)(i). If such notice is not provided, the  
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1 requester is deemed to have constructively exhausted administrative remedies and may seek  
2 relief in federal district court. *Ruotolo v. Dep't of Justice*, 53 F.3d 5, 8-9 (2d Cir. 1995)

3 55. On or about March 7, 2007, in a letter to Michael R. Finnegan, Area Manager of  
4 Reclamation ("FOIA Request"), Plaintiff requested, pursuant to its contract rights and the FOIA,  
5 various documents related to Reclamation's 2007 allocation decision. Regarding the information  
6 requested, the March 7, 2007 letter from Plaintiff expressed specifically that: "The contractors  
7 are entitled to this information pursuant to the terms of its 1983 Contract with Reclamation as  
8 well as the Freedom of Information Act." See Exhibit "E".  
9

10 56. On or about April 11, 2007, Stockton East sent a copy of the March 7, 2007 FOIA  
11 Request via certified mail to Kathleen Christian, Reclamation's Mid-Pacific FOIA Officer. See  
12 Exhibit "O" attached hereto.  
13

14 57. On or about April 16, 2007, Ms. Christian advised Plaintiff during a phone  
15 conversation, that she had received a copy of the March 7, 2007 FOIA Request. Ms. Christian  
16 further stated that Reclamation was in the process of preparing an initial response. On that same  
17 day, Plaintiff sent a letter to Ms. Christian confirming Reclamation's receipt of Plaintiff's FOIA  
18 Request, attached hereto as Exhibit "P".  
19

20 58. On or about April 17, 2007, Stockton East received a letter from Reclamation  
21 signed by Mr. Finnegan, indicating that Reclamation had received Stockton East's request for the  
22 records and "would provide the information requested as soon as possible." See Exhibit "Q"  
23 attached hereto. Reclamation's letter did not indicate a date upon which a final determination  
24 would be made or whether the records would be released to Stockton East. The letter also failed  
25 to notify Stockton East of its right to appeal Reclamation's decision.  
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1           59. On or about June 1, 2007, Reclamation provided an additional response to  
2 Stockton East's request (see Exhibit "F"); however, this response was incomplete.

3           60. On or about June 7, 2007, Stockton East received a letter from Katherine  
4 Thompson, Assistant Regional Director for Support Services from Reclamation's Mid-Pacific  
5 Regional Office, indicating that Reclamation did not interpret Stockton East's March 7, 2007  
6 letter as a FOIA request and the documents provided by Reclamation on June 1, 2007 were not  
7 processed under the Act. See Exhibit "R" attached hereto. The letter also stated if  
8 Reclamation's response did not satisfy Stockton East's request, a "new request under the FOIA"  
9 was required.  
10

11           61. On or about June 28, 2007, Stockton East made a further request for documents  
12 pursuant to the FOIA. See Exhibit "G".  
13

14           62. On or about July 6, 2007, Stockton East received a letter from Reclamation  
15 stating the agency was reviewing the request and anticipated completing a cost estimate by July  
16 16, 2007, attached hereto as Exhibit "S".  
17

18           63. On or about July 19, 2007, Stockton East received a cost estimate from  
19 Reclamation, attached hereto as Exhibit "T".  
20

21           64. On or about July 25, 2007, Stockton East sent an email confirming its intention to  
22 pay the estimated cost, attached hereto as Exhibit "U".  
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24           65. On or about August 22, 2007, Reclamation provided a response and additional  
25 documents. See Exhibit "H". Again, the response and documents provided were incomplete.  
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27           66. On or about October 1, 2007, Stockton East sent a letter requesting the additional  
28 documents Reclamation had not provided (see Exhibit "I"). Reclamation did not respond to this  
request.

1           67.    On or about November 13, 2007, Stockton East sent another letter to Reclamation  
2 demanding the documents and a response by November 30, 2007. See Exhibit "J".

3           68.    On or about November 28, 2007, Reclamation requested an extension until  
4 December 7, 2007. See Exhibit "L".

5           69.    To date, Reclamation has not yet provided a final determination regarding  
6 Stockton East's FOIA request, has not released all of the requested records, has not provided  
7 Stockton East with any information regarding how to appeal the denial of records pursuant to  
8 FOIA, or how to appeal the shortage decision, if any, pursuant to Article 9(a) of the contracts.

9           70.    Stockton East has a statutory right to the records it seeks, and there is no legal  
10 basis for Reclamation's failure to disclose them to Stockton East.

11           71.    Reclamation's failure to timely respond to Stockton East's request for records  
12 pertaining to Reclamation's 2007 allocation decision violates the FOIA. 5 U.S.C. §  
13 552(a)(6)(A)(i).

14           72.    Reclamation's initial response failed to request an extension, failed to notify  
15 Stockton East of "unusual circumstances" necessitating an extension, and failed to provide the  
16 date upon which a final determination on Stockton East's request would be made, resulting in a  
17 violation of the FOIA. 5 U.S.C. § 552(a)(6)(B)(i).

18           73.    Reclamation's initial response failed to notify Stockton East of its right to seek an  
19 administrative appeal of Reclamation's decision. 5 U.S.C. § 552(a)(6)(A)(i).

20           74.    Stockton East is therefore deemed to have constructively exhausted the applicable  
21 administrative remedies under FOIA because Reclamation has failed to meet these statutory  
22 requirements.

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HERMAN CRABTREE BROWN  
ATTORNEYS AT LAW



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- immediately and issue the required findings of fact within 30 days; and (3) to  
comply with these obligations each year that the contract is in effect;
4. Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. §  
552(a)(4)(E); and
  5. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

Dated: March 10, 2008

HERUM CRABTREE BROWN  
*A California Professional Corporation*

By: /S/Jennifer L. Spaletta

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STOCKTON EAST WATER DISTRICT